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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Sportade Corporation ehf		
Entity	limited liability company	Citizenship	Iceland
Address	Hofdabakka 9 Reykjavik, IS-110 ICELAND		

Attorney information	Mitchell D. Bernstein Moses & Singer LLP 405 Lexington Avenue New York, NY 10174 UNITED STATES mbernstein@mosessinger.com Phone:212 554-7868
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**Registration Subject to Cancellation**

Registration No	876371	Registration date	09/09/1969
Registrant	BALAKIAN, ARAX 57 CRABTREE LANE TENAFLY, NJ 07670 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class U018 (International Class 005). First Use: 1967/05/31 First Use In Commerce: 1967/05/31 All goods and services in the class are cancelled, namely: DIETARY SUPPLEMENT, COMPRISED, IN PART, OF SUGAR, SALT, AND VITAMIN C, FOR USE AFTER PHYSICAL EXERTION
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**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	SPORTADEpetition to cancel(1).PDF ( 3 pages )(204317 bytes )
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**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Mitchell Bernstein/
Name	Mitchell D. Bernstein

Date	05/01/2008
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## PETITION FOR CANCELLATION

Petitioner, Sportade Corporation ehf. (“Petitioner”), by and through its attorneys, Moses & Singer LLP, hereby petitions this Honorable Board to order the cancellation of United States trademark registration No. 0876371, registered September 9, 1969 to Becton, Dickinson and Company (“Becton”) for the mark SPORTADE (the “Registration”).

To the best of Petitioner’s knowledge, the name and address of the current Registrant is Arax Balakian, who resides at 57 Crabtree Lane, Tenafly, NJ 07670.

Petitioner believes that it will be damaged by the above-identified Registration and hereby petitions to cancel same for the detailed reasons set forth herein.

The grounds for this Petition are as follows:

1. Petitioner is an Icelandic limited liability company with a principal place of business at Hofdabakka 9, Reykjavik, IS-110, Iceland.
2. The Registration sought to be cancelled herein covers the word SPORTADE as applied to products in International Class 5, namely for “dietary supplement, comprised, in part, of sugar, salt, and vitamin C, for use after physical exertion”. The Registration issued on September 9, 1969 and was thereafter renewed on December 19, 1989 and again on December 9, 2000.
3. Upon information and belief, Dr. Gerard Balakian invented the SPORTADE drink in or about 1966 while employed by Becton. Upon further information and belief, Becton assigned the Registration to Dr. Balakian on or about September 9, 1977 but retained the exclusive right to use and license the SPORTADE mark.
4. According to the records of the Patent and Trademark Office, the Registration was thereafter assigned to Arax Balakian, as Executor of the Last Will and Testament of Gerard Balakian, on September 22, 1989 and again to Arax Balakian, individually, on the same date. (Gerard Balakian and Arax Balakian are hereinafter collectively referred to as “Balakian”)
5. Petitioner is without belief as to the specific nature or extent of Becton’s use or marketing of SPORTADE as a “dietary supplement” in the United States.
6. According to documents filed with the Securities and Exchange Commission (“SEC”), Becton assigned its exclusive right to use and license SPORTADE to Ocean Beverage International, Inc. (“OBI”) in or about 1993, which company began doing business as SportAde International.
7. According to documents filed with the SEC, Emerald Capital Holdings Inc. (“Emerald”) acquired OBI and SportAde International in or about September 1995, together with the exclusive right to use the SPORTADE trademark.
8. According to documents filed with the SEC, Emerald discontinued its beverage operations and wrote off all of its SPORTADE assets as of December 31, 1996. Also, effective as

of December 31, 1996, Emerald sold its SPORTADE assets and interests to AquaFlor, Ltda. (“AquaFlor”), but retained certain non-exclusive distribution rights in and to the SPORTADE beverage in North America.

9. Upon information and belief, Balakian had no involvement with or control over Becton’s use of the SPORTADE mark.

10. Upon information and belief, Balakian had no involvement with or control over OBI’s use of the SPORTADE mark.

11. Upon information and belief, Balakian had no involvement with or control over Emerald’s use of the SPORTADE mark.

12. Upon information and belief, Balakian had no involvement with or control over AquaFlor’s use of the SPORTADE mark.

13. Upon information and belief, the SPORTADE drink was no longer available for sale in the United States as of January 2000 and was not being used in the U.S. at such time in conjunction with the sale or marketing of dietary supplements.

14. Upon information and belief, no SPORTADE product was being marketed or used in interstate commerce by Emerald, AquaFlor, Balakian or anyone else as of January 2000.

15. Upon information and belief, no SPORTADE product has been marketed or used in the U.S. since at least January 2000, if not several years earlier.

16. Upon information and belief, at the time Balakian filed a renewal application for the Registration in March 2000, the SPORTADE mark had not been used in conjunction with the registered goods for several years.

17. Under 15 U.S.C. §1127, Balakian’s non-use of the SPORTADE mark for two consecutive years constituted *prima facie* abandonment.

18. Upon information and belief, the SPORTADE mark was abandoned prior to the renewal of the Registration in December 2000.

19. Based on all of the foregoing, Balakian’s execution and submission of Section 8 and 9 affidavits in March 2000 constituted fraud by the Registrant upon the Trademark Office.

20. On or about July 10, 2006, Petitioner filed an application to register the word mark SOCCERADE in International Class 032. Petitioner’s proposed goods and services for its SOCCERADE application, as subsequently amended, covered “beers, mineral and aerated waters and other non-alcoholic drinks, namely, fruit flavored beverages; fruit drinks and fruit juices syrups and other preparations, namely fruit extracts, concentrates and powders for making beverages; fruit drinks, drinks for athletes, in liquid or semi jellied form and preparations for making sports drinks

for athletes; non-alcoholic sports drinks". Based on a foreign filing date (in Iceland), Petitioner claimed priority of the SOCCERADE mark dating back to January 23, 2006.

21. Petitioner's SOCCERADE application engendered several Office Actions. One, dated February 13, 2007, raised a likelihood of confusion with several registered and pending applications for SOCCERADE and one for SPORTADE. Following Petitioner's August 13, 2007 response to the February 2007 Office Action, a final refusal based only on the potential likelihood of confusion with the Registration was issued on November 5, 2007.

22. Although Petitioner disagrees that there could be a likelihood of confusion between SPORTADE and SOCCERADE (and responded as much in its response to the February 2007 Action), the continued registration of Registrant's long-abandoned mark plainly interferes with Petitioner's effort to register SOCCERADE.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained in favor of Petitioner, that Registration No. 0876371 be cancelled immediately, and that the application for Serial No. 78/925944 be published for opposition in due course.

Dated: May 1, 2008

Respectfully submitted,

Mitchell D. Bernstein  
Moses & Singer LLP  
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