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December 21, 2005

BY EXPRESS MAIL NO. EQ271520781 US

Honorable Commissioner for Trademarks
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

RE: The Black & Decker Corporation v. WaterTech LLC
Reg. No. 2,809,325 / 78092569
Our Ref.: 14470.0039

Dear Commissioner for Trademarks:

On behalf of The Black & Decker Corporation, Petitioner in the above-referenced matter, please find for filing the Petition to Cancel the Registration No. 2,809,325. This Petition to Cancel is submitted in duplicate pursuant to 37 C.F.R. § 2.122.

A check in the amount of \$300.00 is enclosed to cover the required fee:
1 x \$300.00 = \$300.00 (Petition to Cancel for 1 class)

If any additional fees are due in connection with this filing, please debit our Deposit Account No. 19-4293 and provide us with a receipt.

Also enclosed is a self-addressed, stamped postcard acknowledging receipt of the Petition to Cancel and fee to be date-stamped and returned by mail. If you have any questions, please do not hesitate to contact me.

Sincerely,

Rachel M. Marmer
Rachel M. Marmer

Enclosure



12-21-2005
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #72

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

In the Matter of Registration No. 2,809,325
Date of Issue: January 27, 2004

The Black & Decker Corporation

Petitioner,

v.

Water Tech LLC,

Registrant..

Cancellation No. _____

Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

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PETITION FOR CANCELLATION

The Black & Decker Corporation, a corporation organized and existing under the laws of the State of Maryland, with a place of business located at 701 East Joppa Road, Towson, Maryland 21286 ("Petitioner"), believes that it is being and will continue to be damaged by the presence on the Principal Register of the mark POOLBUSTER, Registration No. 2,809,325, dated January 27, 2004, and hereby petitions to cancel the same.

To the best of Petitioner's knowledge, the name and address of the current owner of Reg. No. 2,809,325 is Water Tech LLC, located at 44 W. Ferris Street, Suite A, East Brunswick, New Jersey 08816.

"Express Mail" Mailing Label No. EQ 271520781 US: I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on this 21st day of December, 2005, and is addressed to the Honorable Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451 Alexandria, VA 22313-1451.

Rachel M. Trarmer

As grounds for cancellation it is alleged that:

1. Petitioner now and for many years has been engaged in the business of marketing and selling throughout the United States, by itself or through related companies, a wide range of power tools, outdoor equipment, power cleaning products, home and kitchen appliances and many other consumer, professional and industrial products, including rechargeable, handheld vacuum cleaners and scrubbers.

2. At least as early as November 1978, and long prior to September 10, 2003, the date of first use claimed by Registrant, Petitioner adopted and began to use DUSTBUSTER as a trademark for rechargeable, handheld vacuum cleaners, and since then, Petitioner has continuously and conspicuously used the mark DUSTBUSTER, alone and with other elements for such products, and for accessories, parts and other related products. Said products so marked have been widely and extensively shipped, distributed and sold in interstate commerce throughout the United States. The DUSTBUSTER trademark has been widely, and extensively used and advertised by Petitioner for its said products and has become extremely well known and recognized, and distinguishes Petitioner's products from the products of others. DUSTBUSTER is a famous mark which has come to represent a large and extremely valuable goodwill belonging exclusively to Petitioner.

3. For many years past, and long prior to September 10, 2003, the date of first use claimed by Registrant, Petitioner has employed the extensive goodwill and public recognition of its DUSTBUSTER trademark by adopting and using other trademarks which likewise are composed of two words, combining the word "BUSTER," as a distinctive and formative element with a preceding word, such as SCUMBUSTER,

FLOORBUSTER and STEAM BUSTER (the "BUSTER Marks") as trademarks for a variety of rechargeable, handheld cleaning products. Each of said BUSTER Marks, since its first use, has been conspicuously used for and in connection with rechargeable, handheld cleaning products, accessories and parts therefor and has been applied to and displayed upon the goods and the containers in which said goods are packaged, shipped and sold. Said goods identified by said marks have been extensively advertised and promoted, and have been widely shipped, distributed, and sold in interstate commerce throughout the United States.

4. By virtue of the long, continued and widespread sale of said goods and the extensive advertising and promotion and quality of said goods, each of the BUSTER Marks, including the DUSTBUSTER, SCUMBUSTER, FLOORBUSTER and STEAM BUSTER trademarks, is presently, and has been, relied upon by the trade and the public as identifying Petitioner's products and as distinguishing said products from the products of others. The BUSTER Marks, individually and together, have come to represent a vast and extremely valuable goodwill belonging exclusively to Black & Decker.

5. For many years past, and long prior to September 10, 2003, the date of first use claimed by Registrant, Petitioner has widely and extensively advertised and promoted its BUSTER Marks as identifying products emanating from the same trade source. The trade and public have come to recognize rechargeable, handheld cleaning products sold under marks which are composed of two words with the second word "BUSTER," as companion products and as coming from a single source, and to recognize said BUSTER Marks as being a family of marks emanating from a single source.

6. Petitioner is the owner in the United States Patent and Trademark Office of Reg. No. 1,283,187 of the mark DUSTBUSTER for “hand-held household vacuum cleaners and replacement filter bags and nozzles used therewith;” Reg. No. 2,688,859 of the mark DUSTBUSTER for “vacuum cleaners;” Reg. No. 1,569,475 of the mark DUSTBUSTER PLUS for “hand-held vacuum cleaners and replacement filter bags and nozzles used therewith;” Reg. No. 2,064,068 of the mark FLOORBUSTER for “vacuum cleaners;” Reg. No. 2,196,230 of the mark SCUMBUSTER for “hand held, powered, scrubbing and polishing machines;” and Reg. No. 2,887,521 of the mark STEAM BUSTER for “steam vacuums.” Said registrations are and continue to be valid, subsisting, unrevoked, uncanceled and in full force and effect.

7. The trademark POOLBUSTER was registered on the Principal Register in the United States Patent and Trademark Office under Reg. No. 2,809,325, dated January 27, 2004, for “swimming pool cleaners, in the nature of a vacuum-type unit.” Upon information and belief, Registrant is the owner of the POOLBUSTER registration.

8. Registrant’s POOLBUSTER mark closely resembles the DUSTBUSTER mark, and each of the other BUSTER Marks of Black & Decker, including the SCUMBUSTER, FLOORBUSTER and STEAM BUSTER marks.

9. Registrant’s POOLBUSTER mark so nearly resembles Petitioner’s DUSTBUSTER mark and each of its other BUSTER Marks, including the SCUMBUSTER, FLOORBUSTER and STEAM BUSTER marks, as to be likely, when applied to the goods described in the POOLBUSTER registration, to cause confusion, to cause mistake, and to deceive, with consequent injury to Petitioner, the trade and the public, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

10. Registrant's mark POOLBUSTER so nearly resembles Petitioner's family of BUSTER Marks, as to be likely, when applied to the goods described in the POOLBUSTER registration, to cause confusion, to cause mistake, and to deceive with consequent injury to Petitioner, the trade and the public in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

11. Petitioner will be damaged by the registration that is the subject of this petition because such registration gives color of exclusive statutory rights in Registrant in violation and derogation of the prior and superior rights of Petitioner.

WHEREFORE, Petitioner believes that it is being and will continue to be damaged by the continued presence on the Principal Register of said Reg. No. 2,809,325, and prays that it be canceled.

Please recognize as attorneys for The Black & Decker Corporation in this proceeding, William G. Pecau (a member of the bars of the states of New York and California, and the District of Columbia) and Rachel M. Marmer (a member of the bar of the state of Maryland and the District of Columbia) whose address is Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036. Please address all communications to William G. Pecau, Esq. at the above address.

Enclosed please find a check for \$300.00 to cover the required fee for this Petition for Cancellation. If any additional fees are due in connection with this filing, please debit our Deposit Account No. 19-4293 and provide us with a receipt.

This Petition for Cancellation is submitted in duplicate pursuant to Rule
2.112 of the Trademark Rules of Practice.

Respectfully submitted,

Step toe & Johnson LLP

By: 

William G. Pecau

Rachel M. Marmer

Step toe & Johnson LLP

1330 Connecticut Avenue, NW

Washington, DC 20006

(202) 429-6244

*Attorneys for The Black & Decker
Corporation*

Dated: December 21, 2005

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Dated: December 21, 2005