

ESTTA Tracking number: **ESTTA366799**

Filing date: **09/03/2010**

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	Watermill Express, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	177 West Jessup Brighton, CO 80601 UNITED STATES		

Attorney information	Marc C. Levy FAEGRE & BENSON LLP 1700 Lincoln Street 3200 Wells Fargo Center Denver, CO 80203-4532 UNITED STATES trademarkdnvr@faegre.com, mlevy@faegre.com, jcollins@faegre.com Phone:303-607-3500		
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Registration Subject to Cancellation

Registration No	3843172	Registration date	08/31/2010
Registrant	GWYNNE 5 BEVERAGE, LLC 2520 FLATBUSH AVENUE SUITE 2 BROOKLYN, NY 11234 UNITED STATES		

Goods/Services Subject to Cancellation

Class 011. First Use: 2010/06/10 First Use In Commerce: 2010/06/10 All goods and services in the class are cancelled, namely: Temperature controlled beverage dispensing systems comprised of filtering, processing and storing units, for drinking water, spring water, flavored water, table water, aerated water, mineral water, soda water, carbonated water, non-carbonated water, and soft drinks
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1651912	Application Date	03/05/1990
Registration Date	07/23/1991	Foreign Priority Date	NONE
Word Mark	WATERMILL EXPRESS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1990/08/00 First Use In Commerce: 1990/08/00 coin operated vending machines for dispensing pure water

Attachments	WATERMILLER 3843172 Petition to Cancel.pdf (9 pages)(269412 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	/Marc C. Levy/
Name	Marc C. Levy
Date	09/03/2010

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

WATERMILL EXPRESS, LLC

Petitioner,

v.

GWYNNE 5 BEVERAGE, LLC

Registrant.

Cancellation No. _____

Mark: **WATERMILLER**

Registration No.: 3,843,172

Registration Date: August 31, 2010

PETITION TO CANCEL

Watermill Express, LLC (“Petitioner”), a limited liability company organized under the laws of the State of Delaware, having its principal place of business at 177 West Jessup, Brighton, Colorado 80601, believes that it will be damaged by Registration No. 3,843,172, and hereby petitions to cancel the same.

As grounds for this Petition to Cancel, Petitioner alleges as follows:

1. Petitioner is the owner of the mark WATERMILL EXPRESS. Since at least as early as August, 1990, Petitioner (including its predecessors, related companies and licensees) has used the WATERMILL EXPRESS mark in commerce in connection with filtered water, water treatment processing, vending machines dispensing water and bottles sold for storing water. Petitioner’s WATERMILL EXPRESS mark has not been abandoned.

2. Petitioner is the owner of the following United States Trademark Registration for the WATERMILL EXPRESS mark:

Mark	Reg. No.	Goods/Class	Reg. Date
WATERMILL EXPRESS	1,651,912	coin operated vending machines for	July 23, 1991

		dispensing pure water in International Class 9	
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True and correct printouts of information from the USPTO TARR electronic database showing the current status and title of the above registration are attached as **Exhibit A**.

3. Petitioner (including its predecessors, related companies and licensees), manufactures, owns, operates, and licenses to third parties the right to own and operate Watermill Express outlets or stations which include coin operated vending machines for dispensing pure drinking water. There are more than 1,200 Watermill Express outlets located in California, Arizona, Nevada, New Mexico, Colorado, Texas, Louisiana, Florida and Ohio.

4. Upon information and belief, Registrant Gwynne 5 Beverage, LLC (“Registrant”), is a New York limited liability company with an address at 2520 Flatbush Avenue Suite 2, Brooklyn, New York 11234.

5. Upon information and belief, Registrant is the owner of Registration No. 3,843,172, registered August 31, 2010, for the mark WATERMILLER for use in connection with the following goods:

“Temperature controlled beverage dispensing systems comprised of filtering, processing and storing units, for drinking water, spring water, flavored water, table water, aerated water, mineral water, soda water, carbonated water, non-carbonated water, and soft drinks” in Class 11 (the “Gwynne 5 Registration”).

6. The application that matured into the Gwynne 5 Registration was filed on November 30, 2005. A copy of the Gwynne Registration is attached hereto as **Exhibit B**.

7. Petitioner is not connected in any way with Registrant and Registrant’s use of the WATERMILLER mark is unauthorized.

8. The WATERMILL EXPRESS mark is distinctive in connection with Petitioner's goods and services.

9. Registrant's use of or intended use of the WATERMILLER mark is without Petitioner's consent or permission.

10. The WATERMILLER mark so resembles the WATERMILL EXPRESS mark as to be likely, when used on or in connection with the goods of the Registrant, to cause confusion, or to cause mistake, or to deceive.

11. Because the WATERMILLER mark so resembles the WATERMILL EXPRESS mark that it is likely to cause confusion, or to cause mistake, or to deceive, Petitioner is being damaged by the Gwynne 5 Registration.

12. In view of the foregoing, Petitioner is being damaged by the Gwynne 5 Registration and the Gwynne 5 Registration should be canceled pursuant to 15 U.S.C. § 1052(d).

WHEREFORE, Petitioner believes that it is likely to be damaged by Registration No. 3,843,172, and prays that this Petition to Cancel be sustained and that Registration No. 3,843,172 be canceled.

Dated: September 3, 2010

Respectfully submitted,

By: /Marc C. Levy/
Marc C. Levy
Jennifer Daniel Collins
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, Colorado 80203-4532
(303) 607-3500

Attorneys for Petitioner
Watermill Express, LLC

Filed Electronically via ESSTA.

CERTIFICATE OF SERVICE

I do hereby certify that on this 3rd day of September, 2010, a true and correct copy of the above and foregoing **PETITION TO CANCEL** was sent via first class mail delivery, to:

David M. Carter
Carter, Deluca, Farrell & Schmidt, LLP
445 Broadhollow Rd., Ste 420
Melville, NY 11747-3685

Arlana S. Cohen
Cowan Liebowitz & Latman
1133 Avenue of the Americas
New York, NY 10036-6799

/Jennifer Daniel Collins/

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-09-03 13:59:33 ET

Serial Number: 74034232 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1651912

Mark (words only): WATERMILL EXPRESS

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2001-10-10

Filing Date: 1990-03-05

Transformed into a National Application: No

Registration Date: 1991-07-23

Register: Principal

Law Office Assigned: LAW OFFICE 14

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-11-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. WATERMILL EXPRESS, LLC

Address:

WATERMILL EXPRESS, LLC
177 WEST JESSUP
BRIGHTON, CO 80601
United States

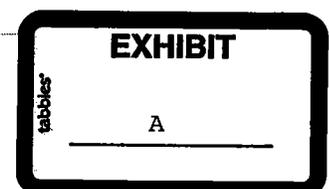
Legal Entity Type: Limited Liability Company

State or Country Where Organized: Delaware

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active



coin operated vending machines for dispensing pure water

Basis: 1(a)

First Use Date: 1990-08-00

First Use in Commerce Date: 1990-08-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-11-08 - Case File In TICRS

2001-10-10 - First renewal 10 year

2001-10-10 - Section 8 (10-year) accepted/ Section 9 granted

2001-07-16 - Combined Section 8 (10-year)/Section 9 filed

1997-08-04 - Section 8 (6-year) accepted & Section 15 acknowledged

1997-07-17 - Section 8 (6-year) and Section 15 Filed

1991-07-23 - Registered - Principal Register

1991-05-28 - Assigned To Examiner

1991-03-20 - Allowed for Registration - Principal Register (SOU accepted)

1991-03-20 - Assigned To Examiner

1991-03-20 - Assigned To Examiner

1991-03-01 - Assigned To Examiner

1991-02-27 - Statement Of Use Processing Complete

1991-02-19 - Use Amendment Filed

1991-01-08 - NOA Mailed - SOU Required From Applicant

1990-10-16 - Published for opposition

1990-09-15 - Notice of publication

1990-07-27 - Approved For Pub - Principal Register

1990-07-16 - Non-final action mailed

1990-06-20 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

GARRETT M. TUTTLE

Correspondent

GARRETT M. TUTTLE

PERKINS COIE LLP

1899 WYNKOOP STREET, SUITE 700

DENVER, COLORADO 80202-1043

United States of America

United States Patent and Trademark Office

WATERMILLER

Reg. No. 3,843,172

Registered Aug. 31, 2010

Int. Cl.: 11

TRADEMARK

PRINCIPAL REGISTER

GWYNNE 5 BEVERAGE, LLC (NEW YORK LIMITED LIABILITY COMPANY)
2520 FLATBUSH AVENUE
SUITE 2
BROOKLYN, NY 11234

FOR: TEMPERATURE CONTROLLED BEVERAGE DISPENSING SYSTEMS COMPRISED OF FILTERING, PROCESSING AND STORING UNITS, FOR DRINKING WATER, SPRING WATER, FLAVORED WATER, TABLE WATER, AERATED WATER, MINERAL WATER, SODA WATER, CARBONATED WATER, NON-CARBONATED WATER, AND SOFT DRINKS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 6-10-2010; IN COMMERCE 6-10-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-763,514, FILED 11-30-2005.

BARBARA GAYNOR, EXAMINING ATTORNEY



David S. Kyros

Director of the United States Patent and Trademark Office

