

ESTTA Tracking number: **ESTTA746065**

Filing date: **05/12/2016**

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	Swift Green Filters Ltd.		
Entity	limited company	Citizenship	Canada
Address	2523 Marr Creek Court West Vancouver, BC V7S0A3 CANADA		

Attorney information	Joshua M. Gerben, Esq. Gerben Law Firm, PLLC 1050 CONNECTICUT AVE NW Suite 500 Washington, DC 20036 UNITED STATES jgerben@gerbenlawfirm.com Phone:2022942287		
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Registration Subject to Cancellation

Registration No	3942718	Registration date	04/12/2011
International Registration No.	NONE	International Registration Date	NONE
Registrant	GROHE AG Hauptstrasse 137 58675 Hemer, GERMANY		

Goods/Services Subject to Cancellation

Class 011. First Use: 0 First Use In Commerce: 0

All goods and services in the class are cancelled, namely: Lighting apparatus for bathrooms and wash rooms, namely, sconces and electric lamps; lighting apparatus, namely, electric lighting fixtures for mirrors; water supply equipment, apparatus and installations for water supply and drainage, treatment, availability, and distribution, removal and heating of drinking water and service water, comprised of plumbing fittings, namely, bibbs, cocks, traps, shower control valves, tub control valves, aerators for faucets, drains, faucet filters, spouts, and sink strainers; plumbing fixtures, namely, sink sprayers and shower sprayers; strainers for plumbing drains; plumbing valves for kitchens and bathrooms; fittings for showers, washing, flushing, bidet and WC installations, namely, valves and sprayers; sink stands and sink unit fittings, namely, sink taps, bar taps, pot fillers, sink mixers, sink mixers with swivel spouts, sink mixers with extractable spouts, extractable mousseurs and extractable aerators; fittings for collective cold and hot water use, namely, single-lever and two-handed mixing faucets for mixing and controlling flow of water; energy and water conservation fittings, namely, valves for connecting to water conduit installations and for sanitary installations, and water self-close faucets; filters for preventing impurities in water; control, regulating, mixing, stop and self-close valves for water conduit installations and sanitary installations; showers, spray nozzles, spray heads, shower panels, shower columns, shower cubicles; and replacements parts for all the aforesaid goods

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Swift Green_Petition to Cancel_May 12.pdf(186978 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	/Joshua M. Gerben/
Name	Joshua M. Gerben, Esq.
Date	05/12/2016

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

GROHE AG,

Petitioner,

v.

Swift Green Filters Ltd.,

Registrant,

Cancellation No.: _____

Mark: SWIFT

Registration No: 3942718

PETITION TO CANCEL

Swift Green Filters Ltd. (“Petitioner”) hereby petitions for the cancellation of Registration No. 3942718 for the mark SWIFT, registered to GROHE AG. (“Registrant”), and states as follows:

1. Petitioner is a Canadian limited company.
2. The United States Patent and Trademark Office (“USPTO”) records identify Registrant, a German aktiengesellschaft having an address of Hauptstrasse 137 58675 Hemer Germany as the owner of U.S. Registration No. 3942718 for the mark SWIFT (the “Registered Mark”) in International Class 11 for “Lighting apparatus for bathrooms and wash rooms, namely, sconces and electric lamps; lighting apparatus, namely, electric lighting fixtures for mirrors; water supply equipment, apparatus and installations for water supply and drainage, treatment, availability, and distribution, removal and heating of drinking water and service water, comprised of plumbing fittings, namely, bibbs, cocks, traps, shower control valves, tub control valves, aerators for faucets, drains, faucet filters, spouts, and sink strainers; plumbing fixtures, namely, sink sprayers and shower sprayers; strainers for plumbing drains; plumbing valves for kitchens and bathrooms; fittings for showers, washing, flushing, bidet and WC installations, namely, valves and sprayers; sink stands and sink unit fittings, namely, sink taps, bar taps, pot fillers, sink mixers, sink mixers with swivel spouts,

sink mixers with extractable spouts, extractable mousseurs and extractable aerators; fittings for collective cold and hot water use, namely, single-lever and two-handed mixing faucets for mixing and controlling flow of water; energy and water conservation fittings, namely, valves for connecting to water conduit installations and for sanitary installations, and water self-close faucets; filters for preventing impurities in water; control, regulating, mixing, stop and self-close valves for water conduit installations and sanitary installations; showers, spray nozzles, spray heads, shower panels, shower columns, shower cubicles; and replacements parts for all the aforesaid goods” (“Registrant’s Goods”). The Registered Mark’s U.S. priority date is November 18, 2009, the date it filed its application on the basis of Section 44(e).

3. On August 18, 2015, Petitioner filed an application for the mark SWIFT GREEN FILTERS for “Water filters; Water filtration and purification units and replacement cartridges and filters therefor; Water filtration and purification units and replacement cartridges and filters therefor for refrigerators” in International Class 11 (“Petitioner’s Goods”) and was assigned serial no. 86/729000 (the “Petitioner’s Application”).

4. On December 2, 2015, the USPTO Examining Attorney refused registration of Petitioner’s Application under Trademark Act Section 2(d), based on a likelihood of confusion with the Registered Mark.

PRIORITY AND LIKELIHOOD OF CONFUSION

5. Petitioner has been using the mark SWIFT GREEN FILTERS (“Petitioner’s Mark”) in the United States in connection with Petitioner’s Goods in International Class 11 since at least as early as April 1, 2009, a date prior to any priority date to which Registrant is entitled.

6. Petitioner’s use of the mark SWIFT GREEN FILTERS has been valid and continuous since its date of first use and has not been abandoned. Petitioner’s Mark is symbolic of extensive goodwill and consumer recognition built up by Petitioner through substantial amounts of time and effort in promotion of its goods and services. In view of the fact that the parties’ respective marks are similar and their goods are closely related, it is alleged that the Registered Mark so resembles Petitioner’s Mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

7. Petitioner is damaged by the Registered Mark because, when used in connection with Registrant’s Goods, so resembles Petitioner’s Mark as to be likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection or association of Registrant with Petitioner, or as to the origin, sponsorship or approval of Registrant’s Goods by Petitioner.

8. Petitioner is further damaged by the Registered Mark because such registration gives color of exclusive statutory rights to Registrant in violation and derogation of the prior superior rights of Petitioner.

9. Upon information and belief the Registrant’s Registration is inconsistent with the Petitioner’s right to use and register the mark SWIFT GREEN FILTERS for the Petitioner’s Goods.

10. In fact, on December 2, 2015, a USPTO Trademark Examining Attorney issued a § 2(d) refusal of Petitioner's Application because the Trademark Examining Attorney was concerned that the Registered Mark and Petitioner's, if co-existing, could cause confusion in the marketplace.

11. By reason of all the foregoing, Petitioner is gravely damaged by the registration of the Registered Mark.

ABANDONMENT BASED ON NON-USE

12. On information and belief, Registrant, has not made commercial use of the Registered Mark and, if it has, it had not done so for three years. Registrant has presumptively abandoned the Registered Mark in connection with Registrant's Goods based on a failure to use the mark in commerce for at least three years.

13. Petitioner's search of the Internet and online marketplaces uncovered no offers for sale or promotion of the SWIFT mark in the United States by Registrant. A search of Registrant's on-line U.S. catalog shows no listings using the SWIFT mark.

14. On information and belief, Registrant, if it ever made use of the mark, has abandoned all use and has no bona fide intent to resume use of the Registered Mark in connection with the Registrant's Goods in interstate commerce.

15. On information and belief, Registrant has, since its registration of the mark, never used the Registered Mark as a trademark in commerce.

16. On information and belief, Registrant has abandoned the Registered Mark within the meaning of Section 45 of the Lanham Act, 15 U.S.C. § 1127.

17. Because Registrant's registration gives it at least a *prima facie* exclusive right in the Registered Mark, Petitioner maintains that its legal use and registration of the SWIFT GREEN FILTERS mark will be impaired by continued registration of the Registered Mark.

18. In fact, on December 2, 2015, a USPTO Trademark Examining Attorney issued a § 2(d) refusal of Petitioner's Application because the Trademark Examining Attorney was concerned that the Registered Mark and Petitioner's, if co-existing, could cause confusion in the marketplace.

19. In view of the above, Registrant's Registration is not entitled to continued registration, as Petitioner has priority in a similar mark for closely related services and Registrant, if it ever had use in the United States, has presumptively abandoned all use of the mark and has no intent to resume use of the mark.

20. By reason of all of the foregoing, Petitioner will be gravely damaged by the continuance of Registrant's registration.

WHEREFORE, Petitioner is damaged by U.S. Registration No. 3942718 and prays that the same be canceled immediately, and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

Dated: May 12, 2016



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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2016, a true and correct copy of the foregoing Petition to Cancel is being served by First-Class mail on Registrant as shown in the correspondence record in the Office, with a copy sent to its listed attorney, as follows:

GROHE AG
Hauptstrasse 137
58675 Hemer GERMANY

Martin R. Geissler
MUNCY, GEISLER, OLDS & LOWE, P.C.
4000 Legato Road, Suite 310
Fairfax, VIRGINIA UNITED STATES 22033

Respectfully submitted,



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Dated: May 12, 2016