

ESTTA Tracking number: **ESTTA50104**

Filing date: **10/24/2005**

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

<b>Name</b>	Kohler Co.		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Wisconsin
<b>Address</b>	444 Highland Drive Kohler, WI 53044 UNITED STATES		

<b>Attorney information</b>	Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-9944 UNITED STATES sjohnston@merchant-gould.com, slindemeier@merchant-gould.com Phone:(612) 332-5300
-----------------------------	--

#### Registration Subject to Cancellation

<b>Registration No</b>	2799452	<b>Registration date</b>	12/23/2003
<b>Registrant</b>	American Standard International Inc. 15 West 54th Street New York, NY 10019 UNITED STATES		
<b>Goods/Services Subject to Cancellation</b>	Class 011. First Use: 20030513, First Use In Commerce: 20030513 Goods/Services: Plumbing fittings, namely faucets, faucet handles, shower heads, bath spouts, hand showers, and parts thereof		

<b>Attachments</b>	2005 10 24 Petition for Cancellation.pdf ( 4 pages )
--------------------	--

<b>Signature</b>	/SWJ/
------------------	-------

<b>Name</b>	Scott W. Johnston
-------------	-------------------

<b>Date</b>	10/24/2005
-------------	------------

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

Kohler Co.,	)	Cancellation No. _____
	)	
Petitioner,	)	Mark: <b>HATTERAS</b>
	)	
v.	)	Registration No.: 2,799,452
	)	
American Standard International Inc.,	)	Filing Date: December 3, 2002
	)	
Registrant.	)	Registration Date: December 23, 2003
_____	)	

**PETITION FOR CANCELLATION**

Kohler Co., a Wisconsin corporation having a principal place of business at 444 Highland Drive, Kohler, Wisconsin 53044 (hereinafter referred to as "Petitioner"), believes that it may be damaged by the continued registration of the mark HATTERAS as shown in Registration No. 2,799,452, owned by American Standard International Inc., and hereby petitions to cancel the registration. The grounds for cancellation are as follows:

1. Registrant has obtained a registration on the Principal Register for the term HATTERAS for "plumbing fittings, namely faucets, faucet handles, shower heads, bath spouts, hand showers, and parts thereof," in International Class 11 ("Registrant's Mark"). Registrant's registration is based on an application filed December 3, 2002, and asserts a first use date of May 13, 2003.
2. Since at least as early as January 1994, Petitioner has been using the designation CAPE HATTERAS as a trademark, in commerce, in connection with bath and shower stalls.

3. On June 13, 2003, Petitioner filed trademark application Serial No. 78/262,314 for the mark CAPE HATTERAS for "bath and shower stalls," in International Class 11 ("Petitioner's Mark").

4. Petitioner has advertised and promoted its CAPE HATTERAS mark extensively. As a result of such use and promotion, Petitioner's CAPE HATTERAS mark has developed and represents valuable goodwill inuring to the benefit of Petitioner.

5. Petitioner adopted and commenced use of Petitioner's CAPE HATTERAS mark as a trademark long before Registrant adopted or used the HATTERAS mark. Petitioner's usage of the term CAPE HATTERAS as a trademark commenced at least as early as January 1994, eight (8) years prior to the filing date of Registrant's application for its HATTERAS mark, and nine (9) years prior to the first use date alleged in Registrant's application. Petitioner therefore has priority over Registrant with respect to the marks at issue.

6. Petitioner has been and is being damaged because registration of Petitioner's Mark has been refused under Section 2(d) of the Trademark Act because of Registrant's Mark.

7. Registrant's goods are closely related to Petitioner's goods marketed and sold by Petitioner in connection with its CAPE HATTERAS mark. Registrant's goods are plumbing fittings, including shower heads, bath spouts and hand showers. These are complementary with Petitioner's bath and shower stalls, are sold for use in the same room of the house, and may be used together by purchasers.

8. Upon information and belief, Petitioner's and Registrant's goods are marketed in the same channels of trade to the same consumers or class of consumers.

9. Due to the similarity between Registrant's Mark, HATTERAS and Petitioner's previously used CAPE HATTERAS mark, the closely related nature of the goods of the respective parties, customers and potential customers are likely to believe that Registrant's goods originate from Petitioner, resulting in a likelihood of confusion in the marketplace, and damage to Petitioner.

10. The use and continued registration by Registrant of the mark HATTERAS for Registrant's goods is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Petitioner's previously used CAPE HATTERAS mark, again resulting in damage to Petitioner.

11. Because of the closely related nature of the goods, and the similarity of the marks, use and continued registration of the term HATTERAS by Registrant is likely to cause confusion, mistake, or deception that Registrant's goods are those of Petitioner, or are otherwise endorsed, sponsored, or approved by Petitioner for use with Petitioner's goods causing further damage to Petitioner.

12. Continued registration of the mark shown in Registration No. 2,799,452 will result in damage to Petitioner under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. Section 1052, pursuant to the allegations stated above.

WHEREFORE, Petitioner asks that its petition to this registration be sustained and that Registration No. 2,799,452 be cancelled.

Please direct all correspondence to:

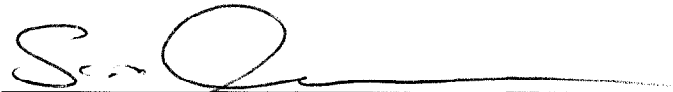
Scott W. Johnston  
MERCHANT & GOULD P.C.  
P.O. Box 2910  
Minneapolis, MN 55402-9944

Petitioner herein appoints Paul A. Welter, Reg. No. 20,890; D. Randall King; John A. Clifford, Reg. No. 30,247; John L. Beard, Reg. No. 27,612; Scott W. Johnston, Reg. No. 39,721; Ernest Grumbles III; Sandra Epp Ryan, Reg. No. 39,667; Gregory C. Golla; Andrew S. Ehard; Christopher J. Schulte and Danielle I. Mattessich, of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

KOHLER CO.

By its Attorneys,



Scott W. Johnston  
MERCHANT & GOULD P.C.  
80 South Eighth Street, Suite 3200  
Minneapolis, Minnesota 55402-2215  
(612) 332-5300

Date: 10-24-05