

ESTTA Tracking number: **ESTTA828951**

Filing date: **06/23/2017**

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

Proceeding	92063801
Party	Defendant LVD Acquisition, LLC
Correspondence Address	JEFFREY S STANDLEY STANDLEY LAW GROUP LLP 6300 RIVERSIDE DRIVE DUBLIN, OH 43017 UNITED STATES Email: trademarks@standleyllp.com,mmccurdy@standleyllp.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Melissa Rogers McCurdy
Filer's email	trademarks@standleyllp.com, mmccurdy@standleyllp.com
Signature	/Melissa Rogers McCurdy/
Date	06/23/2017
Attachments	Motion to Suspend and Exhibit A.pdf(1256379 bytes)

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

IN THE MATTER OF REGISTRATION NO.: 717876

MARK: AQUARIUS

Swift Green Filters Ltd.,
Petitioner,

v.

LVD Acquisition, LLC,
Registrant.

CANCELLATION NO. 92063801

REGISTRANT'S MOTION TO SUSPEND FOR CIVIL ACTION

Pursuant to 37 C.F.R. § 2.117(a) and T.B.M.P. § 510.02, Registrant LVD Acquisition, LLC (“Registrant”), through its undersigned counsel, hereby requests that the Trademark Trial and Appeal Board (“TTAB”) suspend the above-captioned Cancellation Action pending the determination of a federal lawsuit for trademark infringement, unfair competition, and unjust enrichment.

I. FACTUAL BACKGROUND

Registrant is the owner of U.S. Trademark Registration No. 717,876 for the AQUARIUS mark (hereinafter referred to as “the ’876 Registration”) as well as of U.S. Trademark Registration No. 3,593,399 for the GREEN FILTER mark (hereinafter referred to as “the ’399 Registration”). Registrant uses both the AQUARIUS and GREEN FILTER marks in commerce in conjunction with water-consumption related goods. The ’876 and ’399 Registrations are both federally registered in International Class 011.

On May 31, 2016, Petitioner filed a Petition to cancel the '876 Registration alleging that the AQUARIUS mark has been abandoned by Registrant based on non-use. According to the Petition to cancel, Petitioner previously sought to register the AQUARIUS mark in conjunction with “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. Registrant answered the Petition by denying the allegations of abandonment and asking that the Petition to cancel the AQUARIUS mark be denied. The cancellation action involving the AQUARIUS mark is still in the discovery phase. On May 11, 2017, Petitioner filed a Petition to cancel the '399 Registration alleging that the GREEN FILTER mark is generic. According to the Petition to cancel, Petitioner previously sought to register the SWIFT GREEN FILTER mark in conjunction with “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 011. Registrant has just recently answered the Petition to Cancel the GREEN FILTER registration denying Petitioner’s allegations and asking that the Petition to Cancel be denied.

On June 19, 2017, Registrant filed a complaint against Petitioner in the U.S. District Court for the District of South Carolina – *LVD Acquisition, LLC v. Swift Green Filters Ltd.*, Civil Action No. 2:17-cv-01598-RMG (“the Lawsuit”). Attached hereto as Exhibit A is a true and correct copy of the Complaint filed by Registrant. The Lawsuit alleges, in relevant part, that the '876 and '399 Registrations are valid and enforceable and that the AQUARIUS and GREEN FILTER marks are being infringed by Petitioner.

II. THIS CANCELLATION ACTION SHOULD BE SUSPENDED PENDING A FINAL DECISION IN THE LAWSUIT WHICH INVOLVES THE SAME PARTIES AND SIMILAR ISSUES OF FACT AND LAW

It is proper for the Board to suspend a cancellation proceeding where, as here, there is a co-pending civil action involving the same parties that may have a bearing on an issue in the proceeding before the Board. *See* 37 C.F.R. § 2.117(a) (“Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action... which may have a bearing on the case, proceedings before the Board may be suspending until termination of the civil action.”) “The only question for determination [by the Board], therefore, is whether the outcome of the civil action will have a bearing on the issues involved in the [proceeding before it].” *The Other Tel. Co. v. Conn. Nat’l Tel. Co.*, 181 U.S.P.Q. 125, 127 (TTAB 1974). The Board will usually analyze the allegations of the complaint filed in the civil action in order to decide whether the final determination of the suit will directly affect the resolution of the issues that are involved in the proceeding before it. *See id.*

The Registrant respectfully submits that this Cancellation Action should be suspended pending resolution of the Lawsuit because the Lawsuit should resolve the legal and factual issues presently before the Board. The Lawsuit alleges that both the ’876 and ’399 Registrations owned by the Registrant are valid and enforceable and that the marks they encompass are being infringed by the Petitioner. Accordingly, determination of the Lawsuit will require a determination of the issues of abandonment (with respect to the ’876 Registration and the AQUARIUS mark) and of genericness (with respect to the ’399 Registration and the GREEN FILTER mark) that are at issue in the Cancellation proceedings that have been initiated by Petitioner.

In light of the related nature of the legal and factual issues present in the Lawsuit and this proceeding, resolution of the Lawsuit will have a bearing on and may dispose of the issues in this proceeding. *See generally* T.B.M.P. 510.02(a) (“To the extent that a civil action in a Federal District Court involves issues in common with those in a proceeding before the Board, the decision of the Federal District Court is typically binding upon the Board...”) In such situations, the Board should suspend proceedings in the case before it. *Id. See also Gen. Motors Corp. v. Cadillac Club Fashions Inc.*, 22 U.S.P.Q.2d 1933, 1936 – 37 (T.T.A.B. 1992).

To hopefully avoid the burden associated with maintaining two parallel proceedings involving issues that have a bearing on one another, Registrant respectfully requests suspension of this Cancellation Action until resolution of the Lawsuit. Proceeding with this Cancellation during the pendency of the Lawsuit would waste the resources of the parties and the Board. It is respectfully submitted that the interests of the parties and the Board would be best served by suspending this Cancellation Action pending the outcome of the Lawsuit.

III. CONCLUSION

Because the Lawsuit will likely resolve the issues in this Cancellation, Registrant respectfully requests that this Cancellation Action be stayed pending the outcome of the Lawsuit.

Respectfully submitted,

LVD Acquisition, LLC

Dated: June 23, 2017

By: /Melissa Rogers McCurdy/

Jeffrey S. Standley
Melissa A. Rogers McCurdy
STANDLEY LAW GROUP LLP
6300 Riverside Drive
Dublin, Ohio 43017
Telephone: (614) 792-5555
Facsimile: (614) 792-5536

E-mail: mmccurdy@standleyllp.com
E-mail: jstandley@standleyllp.com
Attorneys for Registrant

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing REGISTRANT'S MOTION TO SUSPEND FOR CIVIL ACTION to be served, via email, on this 23rd day of June 2017, to:

Joshua M. Gerben, Esq.
Eric J. Perrott, Esq.
Attorneys for Petitioner
Gerben Law Firm, PLLC
1050 Connecticut Ave NW
Suite 500
Washington, DC 20036
email: jgerben@gerbenlawfirm.com

/Melissa Rogers McCurdy/

REGISTRANT'S EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LVD ACQUISITION, LLC)	Case No.: 2:17-cv-1598-RMG
(dba Oasis International))	
a Delaware corporation,)	
)	
Plaintiff,)	
)	COMPLAINT FOR TRADEMARK
v.)	INFRINGEMENT
)	
SWIFT GREEN FILTERS LTD.)	JURY TRIAL DEMANDED
a Canadian limited company,)	
)	
Defendant.)	
_____)	

Plaintiff, LVD Acquisition, LLC, hereby complains of Defendant, Swift Green Filters Ltd. (“Defendant”), and alleges as follows:

I. THE PARTIES

1. LVD Acquisition, LLC, (hereinafter “LVD” or “LVD Acquisition”) is a limited liability company of the state of Delaware, which does business as Oasis International, and which has a principal place of business at 222 E. Campus View Blvd., Columbus, Ohio 43235.
2. Upon information and belief, Defendant Swift Green Filters Ltd. (hereinafter “Defendant”) is a Canadian limited company that sells water filter products within the United States, including but not limited to within the state of South Carolina, and which has a facility located within this judicial district at 2678 Ram Bay Road, Manning, South Carolina 29102.

II. JURISDICTION AND VENUE

3. This is an action for 1) trademark infringement, false designation of origin, and unjust enrichment under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* (“Lanham

Act”), and for trademark infringement, unfair competition, and unjust enrichment under the laws of the State of South Carolina.

4. This Court has jurisdiction over this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and Title 28 of the United States Code, §§ 1331 and 1338, and it has supplemental jurisdiction over Oasis International’s claims under state law pursuant to 28 U.S.C. § 1367(a).
5. This Court has personal jurisdiction over Defendant because Defendant has a continuous, systematic, and substantial presence within this Judicial District and within South Carolina. Upon information and belief, Defendant has a facility in Manning, South Carolina where a substantial part of the events giving rise to the acts complained of herein occurred. Through its website available at, <http://www.swiftgreenfilters.com/contact-us/>, Defendant advertises its Manning, South Carolina facility and states that this is its manufacturing complex where at least some of the products at issue in this matter are made.
6. The following information is additionally provided on Defendant’s website regarding its Facility in Manning, South Carolina:

For Recycling: Customer please
send to:

Swift Green Filters Recycling Facility
2678 Ram Bay RD
Manning, SC 29102
Telephone: [1-888-223-6762](tel:1-888-223-6762)



7. Upon information and belief, Defendant regularly conducts business in South Carolina, it has a facility in Manning, South Carolina, and a substantial part of the events giving rise to the acts complained of herein occurred in this District. Therefore, venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(b) and (c).
8. This matter is properly assigned to the Charleston Division pursuant to Local Civil Rule 3.01 (D.S.C.).

III. FACTS

Plaintiff's Rights in the AQUARIUS and GREEN FILTER trademarks:

9. Oasis International is a manufacturing company that originated in the United States of America in 1910 as the D.A. Ebinger Sanitary Manufacturing Company (“D.A. Ebinger”), which manufactured and sold water cooler and dehumidifier products.
10. In 1935, the assets of D.A. Ebinger were purchased by a group of executives in Columbus, Ohio and the company was renamed EBCO Manufacturing Company. At approximately this time, the company began doing business as Oasis International developing a robust business of manufacturing and selling water-consumption related goods within the United States, which continues to the present day.
11. At least as early as the 1970's, EBCO Manufacturing Company began selling its water-consumption related goods, including water fountains and water coolers, internationally.
12. In 1996, EBCO Manufacturing Company changed its name to the Oasis Corporation.
13. In 2005, Oasis Corporation was purchased by Zohar Waterworks LLC which was subsequently purchased by LVD Acquisition, LLC in 2009. The company has continued to sell water coolers and other water consumption-related products in commerce (throughout the world and within United States commerce).
14. Hereinafter, the term “Plaintiff” shall refer to LVD Acquisition and shall be inclusive of the rights that LVD Acquisition has acquired through its own actions as well as those of its predecessors-in-interest discussed above.
15. Included in the products that Plaintiff sells in commerce throughout the United States and the world are water coolers, water chillers, water fountains, and water filters.

16. Plaintiff has been selling water filters in the United States since at least as early as the early 1990's.
17. Plaintiff is known by consumers within the United States to be a manufacturer of water coolers, water fountains, and water filter products, as well as other water-consumption related goods.
18. Plaintiff has sold its water-consumption related goods throughout the United States and the world under a variety of trademarks.
19. One of LVD Acquisition's oldest and most valuable trademarks is the AQUARIUS mark.
20. On September 19, 1960, Plaintiff's predecessor EBCO Manufacturing Company filed U.S. Trademark Application Serial No. 72/104,701 with the United States Trademark Office to register the AQUARIUS trademark as associated with "Electrically Refrigerated Water Coolers or Drinking Fountains" and claiming a first use in commerce of the AQUARIUS Mark at least as early as August 10, 1960.
21. On July 4, 1961, the U.S. Trademark Office issued U.S. Registration No. 0717876 (the '876 Registration) for the AQUARIUS mark as associated with "Electrically Refrigerated Water Coolers or Drinking Fountains" in International Class 011.
22. A true and correct copy of the '876 Registration is hereby attached to this Complaint as Exhibit A.
23. The '876 Registration is in good standing, is incontestable, and is owned by Plaintiff.
24. The '876 Registration constitutes conclusive evidence of the validity of the AQUARIUS mark and of the mark's registration, of the Plaintiff's ownership of the AQUARIUS mark, and of the Plaintiff's exclusive right to use the AQUARIUS mark in commerce.

25. Since at least as early as August 10, 1960 and up to the present day, Plaintiff, by itself and/or through its related companies whose trademark use inures to the benefit of Plaintiff, has been selling water coolers and water fountains within the United States under the AQUARIUS mark.
26. Plaintiff has also been selling its AQUARIUS water coolers internationally since at least as early as the 1970's.
27. Additionally, since at least the 1970's and up to the present day, Plaintiff, by itself and/or through its related companies whose trademark use inures to the benefit of Plaintiff, has been selling water cooler parts and water fountain parts in commerce within the United States under the AQUARIUS mark.
28. For example, since at least as early as the late 1990's, Plaintiff has sold dip trays for water coolers under the AQUARIUS mark within United States commerce.
29. Plaintiff's use of the AQUARIUS mark as discussed herein is believed to have been continuous from August of 1960 to the present day. However, any nonuse of the AQUARIUS mark that may have occurred over this period of time has been excusable and/or it has occurred during limited periods of time in which Plaintiff maintained an intent to resume use of the AQUARIUS mark such that Plaintiff's rights in the AQUARIUS mark remain valid and enforceable.
30. Another valuable trademark owned by Plaintiff is the GREEN FILTER trademark, which Plaintiff has used in commerce since at least as early as 2009 on water filters.
31. On April 7, 2008, Plaintiff's predecessor Zohar Waterworks, LLC filed U.S. Trademark Application Serial No. 77/441,521 to register the GREEN FILTER mark as associated with its intent to use the mark on "filters for drinking water; Filtering units for water filtering" in international class 011.

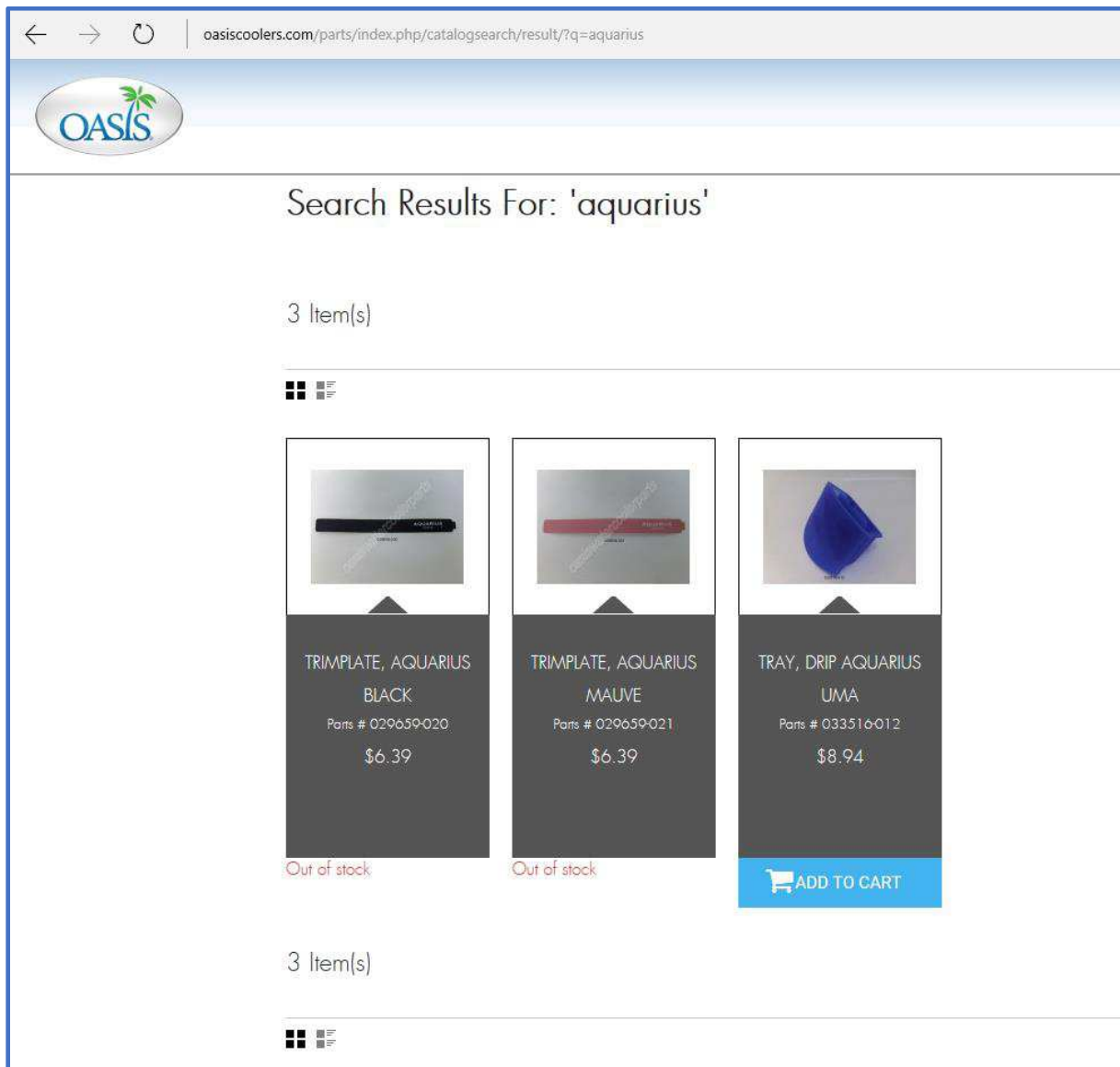
32. On March 17, 2009, the Trademark Office issued U.S. Registration No. 3,593,399 (“the ’399 Registration”) for the GREEN FILTER mark on the Supplemental Register.
33. A true and accurate copy of the ’399 Registration is hereby attached as Exhibit B.
34. The ’399 Registration is in good standing and is owned by Plaintiff.
35. Since at least as early as March of 2009, Plaintiff has continuously used the GREEN FILTER mark on water filters sold within the United States.
36. The following is an image of a GREEN FILTER product that is being sold by Plaintiff in the United States:

GREEN FILTER SYSTEM

[HOME](#) > [CONSUMER PRODUCTS](#) > [FILTRATION](#) > [GREEN FILTER SYSTEM](#) > [G](#)



- 37. Many of Plaintiff’s water cooler and water filtration products are discussed and advertised through its U.S. website which is available at www.oasiscoolers.com (hereinafter “Plaintiff’s website”).
- 38. Some, but not all, of Plaintiff’s products may actually be purchased through Plaintiff’s website.
- 39. For example, AQUARIUS water cooler parts may be ordered through Plaintiff’s website as shown in the screenshot below:



40. The AQUARIUS dip tray shown above, which has been offered for sale through Plaintiff's website for quite some time, carries the AQUARIUS mark.
41. Plaintiff's GREEN FILTER water filters can also be purchased through Plaintiff's website.
42. Plaintiff's GREEN FILTER water filters, and many of its other products such as water coolers, are also sold online through Amazon.
43. In addition to its website, Plaintiff has expended significant resources on advertising and promoting the AQUARIUS and GREEN FILTER Marks through a variety of media including by promoting the products, in print and at trade shows within the United States.
44. Over the years, Plaintiff has invested hundreds of thousands – if not millions – of dollars in advertising and promoting its goods including those sold under the AQUARIUS and GREEN FILTER trademarks. As a result, Plaintiff has developed goodwill, public recognition, and strong rights in the AQUARIUS and GREEN FILTER trademarks which consumers have come to know and trust as symbols of quality and value.
45. The AQUARIUS and GREEN FILTER marks are inherently distinctive as source identifiers of Plaintiff's goods.
46. Additionally and alternatively, Plaintiff's expenditures and resources that have been devoted to the development and advertisement of the GREEN FILTER and AQUARIUS trademarks, have been such that the marks have acquired secondary meaning: the primary significance of each of the AQUARIUS and GREEN FILTER marks to the consuming public is as a source identifier of Plaintiff's goods distinguishing Plaintiff's goods and services from the goods and services of others, and distinguishing the source or origin of Plaintiff's goods and services.

47. Plaintiff is one of the most widely recognized suppliers of water-consumption related goods within the United States and its AQUARIUS and GREEN FILTER marks are well-known, if not famous, source identifiers of Plaintiff.

DEFENDANT’S MISAPPROPRIATION OF AND USE OF MARKS THAT ARE IDENTICAL OR SIMILAR TO THOSE OWNED BY PLAINTIFF:

48. Upon information and belief, Defendant sells water filters throughout the United States, including but not limited to within and throughout the state of South Carolina.
49. Upon information and belief, Defendant maintains and operates the website available at www.swiftgreenfilters.com (hereinafter the “Swift Green Filters website”).
50. Defendant’s website advertises various water filter products being sold by Defendant within the United States which include “Refrigerator Filters,” “Commercial Filters,” “Filtration Equipment,” and “Filter Replacements.”
51. Upon information and belief, Defendant sells certain water filters within the United States that are marked with the SWIFT GREEN FILTERS and/or GREEN FILTERS trademark(s).
52. The following is an image of some of Defendant’s water filter products that are sold within the U.S. under the SWIFT GREEN FILTERS and/or GREEN FILTERS trademark(s):



- 53. According to Defendant’s website, the water filters shown in the preceding paragraph are produced at Defendant’s manufacturing complex located in Manning, South Carolina.
- 54. The Defendant sometimes uses the mark shown below in U.S. commerce in conjunction with the provision of water filter products and related services:



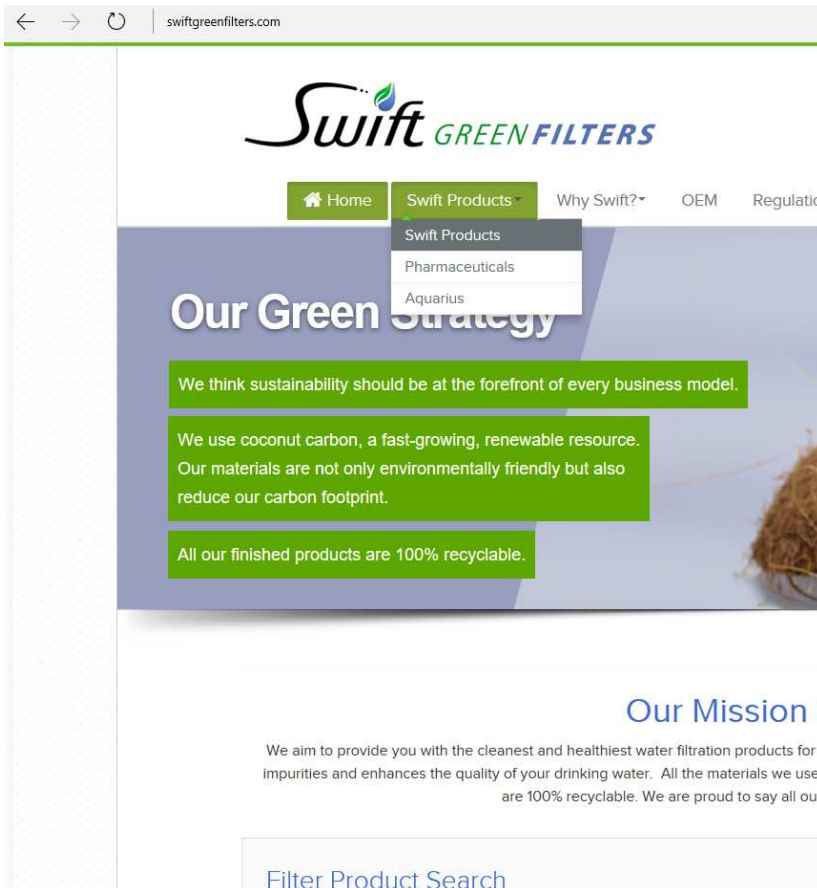
- 55. Defendant’s water filters sold in the U.S. under the SWIFT GREEN FILTERS and/or GREEN FILTERS mark(s) are sold online, including but not limited to, through the Amazon.com website.

56. The following screenshot from the Amazon.com website shows some of Defendant's water filters being offered for sale within the United States under the SWIFT GREEN FILTERS and/or GREEN FILTERS mark(s):

57. On August 18, 2015, Defendant filed an application to federally register the SWIFT GREEN FILTERS mark with the United States Trademark Office as associated with “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 011.
58. The application filed by the Defendant for the SWIFT GREEN FILTERS mark was assigned U.S. Trademark App. Serial No. 86/729,000 and was filed based on Defendant's alleged use

of the SWIFT GREEN FILTERS mark in United States commerce since at least as early as April 1, 2009.

59. On December 2, 2015, the United States Trademark Office issued an Office Action rejecting the Defendant's '000 Application based on a Likelihood of Confusion with two pre-existing registrations, including the Plaintiff's '399 Registration.
60. In November of 2016, the U.S. Trademark Office made its rejection of the '000 Application based on Plaintiff's '399 Registration Final.
61. Upon information and belief, Defendant also sells certain water filters within the United States under the AQUARIUS trademark.
62. The following screenshot from the www.swiftgreenfilters.com website shows AQUARIUS listed under "Swift Products":



63. The following image shows some of Defendant’s water filter products that are being sold under the AQUARIUS mark within the United States:



64. On August 18, 2015, Defendant filed an application to federally register the AQUARIUS mark with the United States Trademark Office as associated with “Water filters; Water filtration and purification unites and replacement cartridges and filters therefor; Water filtration and purification units and replacement cartridges and filters therefor for refrigerators” in international class 011. That application was assigned U.S. Trademark App. Serial No. 86/729,005 (“the ’005 application”).
65. The ’005 Application was based on Defendant’s alleged use of the AQUARIUS mark in U.S. commerce since at least as early as April 1, 2009.

66. On December 2, 2015, the United States Trademark Office issued an Office Action rejecting the Defendant's Application based on a Likelihood of Confusion with Plaintiff's '876 Registration for the AQUARIUS mark.
67. Many, if not all, of the water filters sold by the Defendant under the SWIFT GREEN FILTERS and/or GREEN FILTERS and AQUARIUS marks are water-consumption related goods of the type sold by Plaintiff.
68. Upon information and belief, at least some of the water filters sold by Defendant under the SWIFT GREEN FILTERS and/or AQUARIUS marks could be used in conjunction with water coolers and/or water fountains sold by Plaintiff such as those the Plaintiff has sold within the U.S. under the AQUARIUS mark.
69. The water filters sold by Plaintiff and at least many of the water filters sold by Defendant throughout the United States are intended to serve the purpose of providing filtered drinking water and are sold to the same classes of consumers.
70. Upon information and belief, Defendant had knowledge of Plaintiff as a supplier of water-consumption related goods, including water filters and water coolers and fountains (including those that use or might use water filters of the type sold by Defendant), before Defendant commenced doing business in the United States and before it commenced using the SWIFT GREEN FILTERS and/or GREEN FILTERS and AQUARIUS trademarks.
71. Upon information and belief, Defendant had knowledge of Plaintiff's utilization of the AQUARIUS and GREEN FILTER trademarks before it adopted and began using the SWIFT GREEN FILTERS and/or GREEN FILTERS and AQUARIUS trademarks on water filters.

72. Upon information and belief, Defendant has set out on a deliberate course of conduct to misappropriate multiple trademarks owned by the Plaintiff in order to trade on Plaintiff's valuable goodwill in the water-consumption industry.
73. Defendant's use of the AQUARIUS and SWIFT GREEN FILTERS/ GREEN FILTERS marks is without the permission or authority of Plaintiff.
74. Defendant's unauthorized use of the AUQARIUS and SWIFT GREEN FILTERS/GREEN FILTERS marks began after those marks became well-known to consumers as source identifiers of Plaintiff.

The Effect of Defendant's Actions on Plaintiff and the Consuming Public

75. Defendant's unauthorized use of the AQUARIUS and SWIFT GREEN FILTERS/GREEN FILTERS marks is likely to cause confusion, to cause mistake, or to deceive customers and potential customers of the parties as to some affiliation, connection, or association of Defendant's business with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's goods and/or services.
76. Defendant's unauthorized use of the AQUARIUS and SWIFT GREEN FILTERS marks falsely indicates to the purchasing public that Defendant, his business, and his goods or services originate with Plaintiff, or are affiliated, connected, or associated with Plaintiff, or are sponsored, endorsed, or approved by Plaintiff or are in some manner related to Plaintiff or its goods or services.
77. Defendant's unauthorized use of the AQUARIUS and SWIFT GREEN FILTERS marks falsely designates the origin of Defendants goods and/or services, and falsely or misleadingly describes and represents facts with respect to Defendant and his goods and/or services.

78. Defendant's unauthorized use of the AQUARIUS and SWIFT GREEN FILTERS/GREEN FILTERS trademarks enables Defendant to trade on and receive the benefit and goodwill built up at great labor and expense over many years by Plaintiff, and to gain acceptance for Defendant's goods and/or services not solely on Defendant's own merits, but on the reputation and goodwill of Plaintiff, its marks, trade dress, goods, and services.
79. Defendant's unauthorized use of the AQUARIUS and SWIFT GREEN FILTERS/GREEN FILTERS trademarks removes from Plaintiff the ability to control the nature and quality of goods and services provided under its marks, and places the valuable reputation and goodwill of Plaintiff in the hands of Defendant, over whom Plaintiff has no control.
80. The harm being caused to Plaintiff and consumers in this case is exacerbated by Defendant's adoption, and utilization of multiple marks owned and used by Plaintiff on goods that are identical or closely related to those being sold by Defendant under the misappropriated trademarks.
81. Alternatively, if the Court were to find that either one of the GREEN FILTER and AQUARIUS marks is not a source identifying trademark of Plaintiff, Defendant's use of the other Mark that is a source identifying mark of Plaintiff would nonetheless cause the confusion, mistake, and deception discussed in the preceding paragraphs.

The Willful Nature of the Defendant's Wrongful Acts

82. Upon information and belief, Defendant's acts of infringement and unfair competition complained of herein have been malicious, fraudulent, deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of Plaintiff's rights. In view of the egregious nature of Defendant's actions, this is an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

IV. SPECIFIC COUNTS

COUNT I: INFRINGEMENT OF REGISTERED MARKS

83. Plaintiff repeats the above allegations as if fully set forth herein.
84. The acts of Defendant complained of herein constitute infringement of Plaintiff's federally registered trademarks in violations of Section 32 of the Lanham Act, 15 U.S.C. § 1114.
85. Plaintiff has been damaged by Defendant's acts of federal trademark infringement.
86. Defendant's infringement has been willful and in bad faith, making this an exceptional case under 15 U.S.C. § 1117.
87. Defendant, by its actions, has irreparably injured Plaintiff. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of Plaintiff's rights, for which Plaintiff has no adequate remedy at law.

COUNT II: VIOLATION OF LANHAM ACT SECTION 43(a)

88. Plaintiff repeats the above allegations as if fully set forth herein.
89. The acts of Defendant complained of herein constitute trademark infringement, false designation of origin, false or misleading descriptions or representations of fact, and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
90. Plaintiff has been damaged by Defendant's acts of trademark infringement, false designation of origin, false or misleading descriptions or representations of fact, and unfair competition.
91. Defendant's acts of trademark infringement, false designation of origin, false or misleading descriptions or representations of fact, and unfair competition have been willful and in bad faith, making this an exceptional case under 15 U.S.C. § 1117.

92. Defendant, by its actions, has irreparably injured Plaintiff. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of Plaintiff's rights, for which Plaintiff has no adequate remedy at law.

COUNT III: TRADEMARK INFRINGEMENT UNDER STATE LAW

93. Plaintiff repeats the above allegations as if fully set forth herein.

94. The acts of Defendant complained of herein constitute trademark infringement in violation of South Carolina Code § 39-5-20.

95. Plaintiff has been damaged by Defendant's acts of trademark infringement.

96. Defendant, by its actions, has irreparably injured Plaintiff. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of Plaintiff's rights, for which Plaintiff has no adequate remedy at law.

COUNT IV: COMMON LAW UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT

97. Plaintiff repeats the above allegations as if fully set forth herein.

98. In addition to its registered trademark rights, Plaintiff has common law rights in the AQUARIUS trademark as associated with water coolers, water fountains, parts for the same, and other water-consumption related goods.

99. Moreover, Plaintiff's natural zone of expansion for the AQUARIUS mark includes water filter products.

100. In addition to its registered trademark rights, Plaintiff has common law rights in the GREEN FILTER trademark as associated with water consumption related products and water filters.

101. The acts of Defendant complained of herein constitute unfair competition and trademark infringement in violation of the common law of the State of South Carolina.

102. Plaintiff has been damaged by Defendant's acts of common law unfair competition and trademark infringement.

103. Defendant, by its actions, has irreparably injured Plaintiff. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of Plaintiff's rights, for which Plaintiff has no adequate remedy at law.

COUNT V: UNJUST ENRICHMENT

104. Plaintiff repeats the above allegations as if fully set forth herein.

105. The acts of Defendant complained of herein constitute unjust enrichment of Defendant at Plaintiff's expense.

106. Plaintiff has been damaged by Defendant's acts of unjust enrichment.

107. Defendant, by its actions, has irreparably injured Plaintiff. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of Plaintiff's rights, for which Plaintiff has no adequate remedy at law.

V. PRAYER FOR RELIEF

Wherefore, Plaintiff prays that:

- a) Defendant, Defendant's agents, servants, employees, attorneys, and all those persons in active concert or participation with them, be preliminarily and permanently enjoined from using the AQUARIUS and GREEN FILTER marks, any element thereof, and any mark confusingly similar thereto including the SWIFT GREEN FILTERS and GREEN FILTERS marks.
- b) Defendant, Defendant's agents, servants, employees, attorneys, and all those persons in active concert or participation with them, be required to immediately and permanently remove the AQUARIUS, SWIFT GREEN FILTERS, and GREEN FILTERS marks from

its website and from its water-consumption related products being sold in commerce including water filters;

- c) Defendant be ordered to file with this Court and to serve upon Plaintiff, within 30 days after the entry and service on Defendant of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;
- d) Plaintiff recover all damages it has sustained as a result of Defendant's infringement, false designation of origin, unfair competition and unfair and deceptive business practices, and that such damages be trebled;
- e) An accounting be directed to determine Defendant's profits resulting from Defendant's activities, and that such profits be paid over to Plaintiff, increased as the Court finds to be just under the circumstances of this case or trebled under 15 U.S.C. § 1117;
- f) Alternatively, if greater, Plaintiff recover statutory damages under 15 U.S.C. § 1117;
- g) Plaintiff recover its reasonable attorneys' fees;
- h) Plaintiff recover its costs of this action and prejudgment and post-judgment interest; and
- i) Plaintiff recover such other relief as the Court may find appropriate.

VI. JURY DEMAND

Under Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues triable of right by a jury.

Respectfully submitted,

s/Christy Ford Allen

Christy F. Allen (Fed. Bar No. 7549)
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, SC 29402

Telephone: (843)727-1144
Fax: (843)727-7696
Email: callen@wmalawfirm.net

Jeffrey S. Standley
Melissa A. Rogers McCurdy
Pro Hac Vice Applications to be Submitted
STANDLEY LAW GROUP LLP
6300 Riverside Drive
Dublin, Ohio 43017
Telephone: (614)792-5555
Fax: (614)792-5536
Email: jstandley@standleyllp.com
mmccurdy@standleyllp.com
litigation@standleyllp.com

**ATTORNEYS FOR PLAINTIFF
LVD ACQUISITION, LLC**

EXHIBIT A

United States Patent Office

717,876
Registered July 4, 1961

PRINCIPAL REGISTER Trademark

Ser. No. 104,701, filed Sept. 19, 1960

AQUARIUS

The Ebco Manufacturing Company (Ohio corporation)
265 N. Hamilton Road
Columbus 13, Ohio

For: ELECTRICALLY REFRIGERATED WATER
COOLERS OR DRINKING FOUNTAINS, in CLASS
31.

First use Aug. 10, 1960; in commerce Aug. 10, 1960,
Owner of Reg. No. 643,274.

COMB. AFF. SEC 8 & 15

13 JUL 1966

EXHIBIT B

Int. Cl.: 11

Prior U.S. Cls.: 13, 21, 23, 31, and 34

Reg. No. 3,593,399

United States Patent and Trademark Office

Registered Mar. 17, 2009

**TRADEMARK
SUPPLEMENTAL REGISTER**

GREEN FILTER

ZOHAR WATERWORKS, LLC (DELAWARE LIMITED LIABILITY COMPANY)
222 E. CAMPUS VIEW BLVD.
COLUMBUS, OH 43235

FOR: FILTERS FOR DRINKING WATER; FILTERING UNITS FOR WATER FILTERING, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 1-15-2009; IN COMMERCE 1-15-2009.

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

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FILTER", APART FROM THE MARK AS SHOWN.

SER. NO. 77-441,521, FILED P.R. 4-7-2008; AM. S.R. 1-16-2009.

FRANK LATTUCA, EXAMINING ATTORNEY