

ESTTA Tracking number: **ESTTA823276**

Filing date: **05/25/2017**

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	FMTM Distribution LTD		
Entity	Corporation	Citizenship	British Virgin Islands
Address	3A and 3B Freeport Ballasalla, Isle of Man, IM92AP UNITED KINGDOM		

Attorney information	Robert M. Wasnofski, Jr. Dorsey & Whitney LLP 51 West 52nd Street New York, NY 10019-6119 UNITED STATES ny.trademark@dorsey.com, wasnofski.robert@dorsey.com, osowski.kaydi@dorsey.com Phone:(212) 415-9200
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**Registration Subject to Cancellation**

Registration No	4307112	Registration date	03/26/2013
International Registration No.	NONE	International Registration Date	NONE
Registrant	Primark Holdings P.O. Box 644, 47 Mary Street Dublin 1, IRELAND		

**Goods/Services Subject to Cancellation**

<p>Class 018. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Luggage, all-purpose carrying bags, handbags, duffel bags, holdalls, rucksacks, haversacks, knapsacks, leather shoulderbelts, belt bags, vanity cases sold empty, briefcases, attaché cases, suitcases, travel bags, purses, wallets, briefcase-type portfolios, card wallets, trunks, pouches of leather, umbrellas, parasols, walking sticks, leather, namely, tanned leather, leather thongs, leather threads, imitation leather, skins and hides, imitation skins and hides, harnesses and saddlery, parts and fittings for all the aforesaid goods, namely, leather straps, shoulder straps, straps for luggage, straps for handbags</p>
<p>Class 024. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Bed linen, bedsheets, pillowcases, bed blankets, table cloths not of paper, terry towels, mattress covers, quilts, bed spreads, tea towels, textile fabrics for home and commercial interiors, curtain fabrics, curtains, face cloths, textile fabrics for the manufacture of clothing, handkerchiefs</p>
<p>Class 028. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Athletic sporting goods, namely, weight-lifting belts, exercise equipment, namely, stationary cycles, rowing machines, stair-stepping machines, manually-operated exercise equipment, fitness equipment, namely, sports fitness restraint straps for running in tandem or pair, sports equipment, namely, balls for games, golf tees, golf tee markers, soft-ball, baseball, and table tennis bats, cue sticks, nets for ball games, and rackets for playing sports,</p>

namely, tennis, racquetball, and squash, footballs, baseballs, baseball bats, hockey sticks and pucks, soccer balls, basketballs, volleyballs, flying discs, shooters for balls and flying discs, guards, namely, leg, elbow, and knee guards for athletic use, shoulder pads for use in football, gloves for playing sports, namely, batting gloves, boxing gloves, baseball batting gloves, hockey gloves, golf gloves; bags and cases especially adapted for sports equipment; Christmas tree ornaments and decorations; golf balls; non-motorized golf carts; golf bags with or without wheels; games, namely, jigsaw puzzles, parlor games, board games, action skill games, card games, role-playing games, hand-held units for playing electronic games, trading card games; toys, namely, children's multiple activity toys, plush toys, stuffed toys, plastic and vinyl toy characters and toy animals, toy figures, ride-on toys, push toys, pull toys, radio-controlled toy vehicles, mechanical toys, toy construction sets, building toys, namely, toy building blocks, toy building blocks capable of interconnection, wind-up toys, water squirting toys, musical toys, inflatable toys, infant toy rattles

## Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	BACKSWING Petition to Cancel.pdf(25551 bytes )
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Signature	/rmw/
Name	Robert M. Wasnofski, Jr.
Date	05/25/2017

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

IN THE MATTER OF:

Mark: BACKSWING  
Registrant: Primark Holdings  
Registration No.: 4,307,112  
Registration Date: March 26, 2013

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FMTM DISTRIBUTION LTD,	:	
	:	
Petitioner,	:	Cancellation No.
	:	
v.	:	
	:	
PRIMARK HOLDINGS,	:	
	:	
Respondent.	:	
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**PETITION FOR CANCELLATION**

Petitioner, FMTM Distribution Ltd (“Petitioner”), believes that it is or will be damaged by the continued registration of the trademark BACKSWING covered by Registration No. 4,307,112, in the name of Primark Holdings (“Respondent”), and hereby petitions to cancel same. As grounds for cancellation, it is alleged that:

1. Petitioner, FMTM Distribution Ltd, is a corporation organized and existing under the laws of the British Virgin Islands, having its principal place of business at 3A and 3B Freeport, Ballasalla, Isle of Man, United Kingdom, IM92AP.

2. On May 19, 2016, Petitioner applied to register the trademark BACKSWING in the United States Patent and Trademark Office (the “USPTO”) in connection with watches and horological instruments and related goods under Application Serial No. 87/042,839 (“Petitioner’s Application”).

3. Respondent is the owner of Registration No. 4,307,112 for the trademark BACKSWING, issued on March 26, 2013, for “*luggage, all-purpose carrying bags, handbags, duffel bags, holdalls, rucksacks, haversacks, knapsacks, leather shoulder belts, belt bags, vanity cases sold empty, briefcases, attaché cases, suitcases, travel bags, purses, wallets, briefcase-type portfolios, card wallets, trunks, pouches of leather, umbrellas, parasols, walking sticks, leather, namely, tanned leather, leather thongs, leather threads, imitation leather, skins and hides, imitation skins and hides, harnesses and saddlery, parts and fittings for all the aforesaid goods, namely, leather straps, shoulder straps, straps for luggage, straps for handbags*” in Class 18; “*bed linen, bedsheets, pillowcases, bed blankets, table cloths not of paper, terry towels, mattress covers, quilts, bed spreads, tea towels, textile fabrics for home and commercial interiors, curtain fabrics, curtains, face cloths, textile fabrics for the manufacture of clothing, handkerchiefs*” in Class 24; and “*athletic sporting goods, namely, weight-lifting belts, exercise equipment, namely, stationary cycles, rowing machines, stair-stepping machines, manually-operated exercise equipment, fitness equipment, namely, sports fitness restraint straps for running in tandem or pair, sports equipment, namely, balls for games, golf tees, golf tee markers, softball, baseball, and table tennis bats, cue sticks, nets for ball games, and rackets for playing sports, namely, tennis, racquetball, and squash, footballs, baseballs, baseball bats, hockey sticks and pucks, soccer balls, basketballs, volleyballs, flying discs, shooters for balls and flying discs, guards, namely, leg, elbow, and knee guards for athletic use, shoulder pads for use in football, gloves for playing sports, namely, batting gloves, boxing gloves, baseball batting gloves, hockey gloves, golf gloves; bags and cases especially adapted for sports equipment; Christmas tree ornaments and decorations; golf balls; non-motorized golf carts; golf bags with or without wheels; games, namely, jigsaw puzzles, parlor games, board games, action skill games, card games, role-playing*”

*games, hand-held units for playing electronic games, trading card games; toys, namely, children's multiple activity toys, plush toys, stuffed toys, plastic and vinyl toy characters and toy animals, toy figures, ride-on toys, push toys, pull toys, radio-controlled toy vehicles, mechanical toys, toy construction sets, building toys, namely, toy building blocks, toy building blocks capable of interconnection, wind-up toys, water squirting toys, musical toys, inflatable toys, infant toy rattles*" in Class 28 (the "Registration" or the "Registered Mark").

4. Petitioner's Application has been refused by the USPTO, in part, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on the Registration.

5. Upon information and belief, Respondent remains the owner of record of the Registration.

#### **Count 1 - Abandonment**

6. Petitioner repeats and reavers paragraphs 1 through 5 of the Petition for Cancellation.

7. Upon information and belief, on January 23, 2008, Respondent, through its attorney, filed with the USPTO an application to register the mark BACKSWING based on Sections 1(b) and 44(e) of the Lanham Act, 15 U.S.C. §§ 1051(a) and 1126(e), which application later issued to registration as Reg. No. 4,307,112.

8. Upon information and belief, on October 1, 2012, Respondent, through its attorney, filed with the USPTO a petition to amend the basis of its application post-publication in order to delete the Section 1(b) basis and rely solely upon Section 44(e) as a basis for registration.

