

ESTTA Tracking number: **ESTTA927918**

Filing date: **10/11/2018**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Probst Handling Equipment GmbH		
Entity	GmbH	Citizenship	Germany
Address	Gottlieb-Daimler-Str. # 6 Erdmannhausen, 71729 GERMANY		

Attorney information	Z. Peter Sawicki Westman, Champlin & Koehler, P.A. 900 Second Avenue South, Suite 1400 Minneapolis, MN 55402 UNITED STATES psawicki@wck.com, aprise@wck.com, mneumann@wck.com 6123343222		
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Registration Subject to Cancellation

Registration No.	5573734	Registration date	10/02/2018
Registrant	Windy Ridge Corporation PO Box 32 190 Ossipee Mountain Highway Tamworth, NH 03886 UNITED STATES		

Goods/Services Subject to Cancellation

Class 007. First Use: 2017/11/27 First Use In Commerce: 2017/11/27 All goods and services in the class are subject to cancellation, namely: Air suction machines, namely, apparatus that uses vacuum pressure to grip smooth and nonporous surfaces for purposes of lifting and handling

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88067204	Application Date	08/06/2018
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	STONEMAGNET
Design Mark	
Description of Mark	NONE
Goods/Services	Class 007. First use: First Use: 2005/00/00 First Use In Commerce: 2005/00/00 Vacuum device for handling, lifting and moving natural stone, slab or precast concrete products

Attachments	88067204#TMSN.png(bytes) Cancellation.pdf(28013 bytes)
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Signature	/Amanda M. Prose/
Name	Amanda M. Prose
Date	10/11/2018

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

In the matter of:
Registration No. 5,573,734
Mark: STONEMAGNET
Registration Date: October 2, 2018

Probst Handling Equipment GmbH Petitioner, v. Windy Ridge Corporation Respondent.	Cancellation No.
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PETITION FOR CANCELLATION

Probst Handling Equipment GmbH, a German entity, believes that it will be damaged by the continued registration of the mark shown in Registration No. 5,573,734, and hereby petitions the Trademark Trial and Appeal Board for cancellation of the same. The grounds for the petition for cancellation are as follows:

1. Petitioner, Probst Handling Equipment GmbH, (hereinafter "Petitioner") is a gesellschaft mit beschränkter haftung (GmbH), organized and existing under the laws of Germany, having its principal place of business at Gottlieb-Daimler-Straße 6 Erdmannhausen, 71729 Germany.
2. According to the records of the USPTO, the current owner of U.S. Trademark Registration No. 5,573,734 is Windy Ridge Corporation (hereinafter "Respondent") a New Hampshire Corporation having an address at PO Box 32 190. Ossipee Mountain Highway,

Tamworth, New Hampshire 03886.

3. U.S. Trademark Registration No. 5,573,734 was filed on December 13, 2017 under Section 1(a) of the Lanham Act based on use in commerce at least as early as November 27, 2017.

4. The mark STONEMAGNET is registered for the following listed goods, "Air suction machines, namely, apparatus that uses vacuum pressure to grip smooth and nonporous surfaces for purposes of lifting and handling" in International Class 007 (hereinafter "the '734 Registration").

5. Petitioner adopted and has continuously used its STONEMAGNET trademark in the United States in connection with vacuum devices for handling, lifting and moving natural stone, slab or precast concrete products since at least as early as 2005.

6. Petitioner is the owner of U.S. Trademark Application No. 88/067,204, filed on August 6, 2018, under Section 1(a) of the Lanham Act for the mark STONEMAGNET and claiming a first date of use in the U.S. at least as early as 2005.

7. Upon information and belief, Petitioner has enjoyed continuous and substantial sales of goods in connection with the STONEMAGNET mark beginning before Registrant can claim any priority in its mark.

8. Upon information and belief, Petitioner has continuously used the STONEMAGNET trademark for vacuum device for handling, lifting and moving natural stone, slab or precast concrete products, prior to Registrant's U.S. filing date of December 13, 2017.

9. Upon information and belief, Petitioner has continuously used the STONEMAGNET trademark for vacuum devices for handling, lifting and moving natural stone, slab or precast

concrete products prior to Registrant's declared first date of use of November 27, 2017.

10. Respondent's mark and Petitioner's mark are both STONEMAGNET.

11. The identification of goods description in Respondent's '734 Registration does not contain an express limitation as to the channels of trade for Respondent's goods.

12. Respondent's goods as identified in the '734 Registration are air suction machines, namely, apparatus that uses vacuum pressure to grip smooth and nonporous surfaces for purposes of lifting and handling and are related to Petitioner's goods offered in connection with Petitioner's STONEMAGNET mark.

13. Respondent's goods as identified in the '734 Registration are air suction machines, namely, apparatus that uses vacuum pressure to grip smooth and nonporous surfaces for purposes of lifting and handling and are similar to Petitioner's goods offered in connection with Petitioner's STONEMAGNET mark.

14. Upon information and belief, Respondent's goods travel in the same channels of trade as Petitioner's goods.

15. Upon information and belief, Respondent's mark so resembles Petitioner's STONEMAGNET mark that purchasers and prospective purchasers are likely to mistakenly believe that Respondent's goods sold under Respondent's mark are sponsored, endorsed, or approved by Petitioner, or are in some other way affiliated, connected, or associated with Petitioner, all to the detriment of Petitioner.

17. Cancellation of the mark for its goods, as specified in the '734 Registration is herein requested and such registration has and will continue to damage, impair, diminish, and dilute Petitioner's goodwill and rights in its STONEMAGNET mark causing irreparable injury to the

Petitioner.

18. For all the reasons stated above, the continued registration of Respondent's mark is likely to create consumer confusion. Therefore, Respondent's '734 Registration should be cancelled under 15 U.S.C. §§ 1052(d) and 1064.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, through its attorney, respectfully requests that the Board grant its petition and issue an order cancelling Respondent's Registration No. 5,573,734.

Respectfully submitted,

WESTMAN, CHAMPLIN & KOEHLER, P.A.

Dated: October 11, 2018

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**ATTORNEYS FOR PETITIONER
Probst Handling Equipment GmbH**