

ESTTA Tracking number: **ESTTA436177**

Filing date: **10/17/2011**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Delavan Ag Pumps, Inc.
Granted to Date of previous extension	10/19/2011
Address	1228 Chestnut Avenue Minneapolis, MN 55403 UNITED STATES
Attorney information	Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-0910 UNITED STATES sjohnston@merchantgould.com, slindemeier@merchantgould.com Phone:612-332-5300

Applicant Information

Application No	85231279	Publication date	06/21/2011
Opposition Filing Date	10/17/2011	Opposition Period Ends	10/19/2011
Applicant	Aquatech International, Inc. 17422 Pullman Avenue Irvine, CA 92614 UNITED STATES		

Goods/Services Affected by Opposition

Class 007. First Use: 2007/03/31 First Use In Commerce: 2007/03/31 All goods and services in the class are opposed, namely: Pumps, namely, diaphragm pumps and water pumps for land vehicles and for use in motors and engines

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Applicant#s attempt to register the FATBOY mark for pumps violates Opposer#s common law rights in the FATBOY mark for pumps. In addition, Applicant#s false statements regarding its alleged first use date and use on the goods as amended constitute fraud.

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FATBOY		
Goods/Services	Diaphragm pumps		

Attachments	2011 10 17 Notice of Opposition 85231279.PDF (5 pages)(171760 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	/SWJ/
Name	Scott W. Johnston
Date	10/17/2011

4. Since 2008, Opposer has continuously used the trademark FATBOY in interstate commerce in the United States to identify a line of its diaphragm pumps.

5. From 2008 to 2011, Applicant manufactured diaphragm pumps under the FATBOY mark for Opposer. Prior to December 31, 2009, Applicant supplied pumps to Opposer pursuant to an exclusive contract. On December 31, 2009, the exclusive supply relationship between Applicant and Opposer ended, and Applicant continued to supply pumps under the FATBOY mark to Opposer and Opposer continued to market and sell diaphragm pumps under the FATBOY trademark.

6. Opposer has advertised and promoted its FATBOY mark extensively, Opposer has and continues to expend considerable financial and other resources in promoting public recognition of the diaphragm pumps provided under the FATBOY trademark. Opposer has used and advertised its FATBOY mark via usage online and through distribution of its catalogs and advertisements. As a result of such use and promotion, Opposer's FATBOY mark has developed and represents valuable goodwill inuring to the benefit of Opposer.

7. Opposer's FATBOY mark is distinctive and has secondary meaning signifying Opposer and the diaphragm pumps provided by Opposer nationwide.

8. On December 15, 2010, Opposer notified Applicant that Opposer owned the FATBOY mark in connection with diaphragm pumps.

9. Applicant asserts in its application that it has been using the FATBOY mark in commerce since March 31, 2007. Opposer believes that date has been falsified and that Applicant had never used the FATBOY mark prior to Opposer coining the mark in 2008.

10. Applicant is infringing upon Opposer's common law trademark by using a mark which is the same as or confusingly similar to Opposer trademark.

11. Applicant's use of the FATBOY mark will create a substantial likelihood of confusion, deception, or mistake among Opposer's customers and potential customers.

12. Applicant is using in commerce a mark identical to Opposer's common law FATBOY mark in connection with the sale, distribution, or marketing of products, in a manner likely to cause confusion, to cause mistake, or to deceive as to source or origin, among consumers.

13. Upon information and belief, Applicant was aware of Opposer and its FATBOY mark before making any sales of Applicant's FATBOY branded pumps and before filing an application to register the FATBOY mark.

14. Upon information and belief, Applicant knowingly and in bad faith pursued registration of application Serial No. 85/231,279 for the trademark FATBOY despite having knowledge that it was not the true owner of the FATBOY mark.

15. Upon information and belief, Applicant fraudulently asserted in its application that it has been using the FATBOY mark in commerce since March 31, 2007.

16. Applicant also committed fraud when it amended the goods covered by the application to "pumps, namely, diaphragm pumps and water pumps for land vehicles and for use in motors and engines." Upon information and belief, Applicant has not used the FATBOY mark on any diaphragm pumps and water pumps for land vehicles or for use in motors and engines.

17. Registration of the mark shown in application Serial No. 85/231,279 will result in damage to Opposer 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, Opposer asks that its opposition to this application be sustained and that registration of the term FATBOY for the goods set forth therein be refused.

Please direct all correspondence to:

**Scott W. Johnston
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910**

Opposer herein appoints John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Andrew S. Ehard; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I. Mattessich; Scott M. Oslick; Christopher J. Schulte; William D. Schultz, and all other attorneys 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,

DELAVAN AG PUMPS, INC.

By its Attorneys.



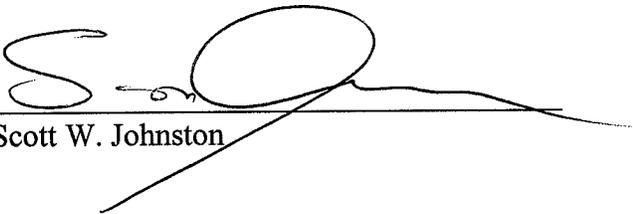
Scott W. Johnston
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612) 332-5300

Date: 10-17-11

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon the following attorney of record for Applicant by First Class Mail, postage prepaid, this 17th day of October, 2011:

Timothy Clise
Clise, Billion & Cyr, P.A.
605 Highway 169 North, Suite 300
Plymouth, MN 55441-6454



Scott W. Johnston