



**FACSIMILE  
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1901 L STREET, N.W., SUITE 800  
WASHINGTON, DC 20036-3506  
TELEPHONE: (202) 457-0160  
FACSIMILE: (202) 659-1559  
<http://www.dickinsonwright.com>

CONFIRMATION

TO: <b>Angela Lykos, Esq.</b>	COMPANY: <b>Trademark Trial and Appeal Board</b>
FAX NUMBER: <b>(703) 746 - 7070</b>	PHONE NUMBER: <b>(703) 308 - 9330 ext. 254</b>

**From:** Marc A. Bergsman

**Date:** March 13, 2003

**Total Number of Pages Including Cover Sheet:** 6

**Message:** Pursuant to our telephone conference on March 12, 2003.

If you have not received the total number of pages, please call the facsimile department at (202) 457-0160. *Thank you.*

**IMPORTANT** – This message is intended solely to be used by the individual or entity to which it is addressed. It may contain information which is privileged, confidential and otherwise exempt by law from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to its intended recipient, you are herewith notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately and return this communication to us at the above address via the United States Postal Service. *Thank you.*

**OFFICE CODE**

**Client Name:**  
**Client/Matter Number:**  
**Attorney Number:** [369]  
**Secretary/Ext.:**

**Matter Name:**  
**Attorney Initials:** MAB  
**No. of Pages:** 6  
**Amount:**



*Applicant's Agenda For Telephone Conference*

After receiving approval for a telephone conference, counsel for Applicant contacted counsel for Opposer and requested Opposer to withdraw the written discovery. The parties discussed the issue but were unable to reach an acceptable resolution.

**II. Facts**

In its February 5, 2003 Order, the Board made the following rulings:

a. It denied Opposer's motion to allow Opposer to enter Applicant's property to inspect documents pursuant to Fed.R.Civ.P. 34 stating *inter alia* that to the extent Opposer seeks the same information from Applicant which Applicant sought from opposer, but to which Opposer objected as confidential, Opposer cannot now move to compel that same type of information from Applicant;

b. It denied Opposer's motion to stay the depositions of Paul Fernstrum, Sean Fernstrum, Todd Fernstrum, and Rule 30(b)(6) witness pending its review of Applicant's documents because Opposer waited until the final month of the discovery period to notice the depositions and seek production of documents through an inspection of premises and, thus, denied itself the opportunity for follow-up discovery;

c. It denied Opposer's combined motion to compel responses to Opposer's first and second sets of document requests and interrogatories because, in part, Opposer waited six months after it filed its initial discovery motions to file its motion to compel, thereby unnecessarily delaying this proceeding;

d. It allowed Opposer thirty days to re-notice of the depositions of Paul Fernstrum, Sean Fernstrum, Todd Fernstrum, and the Rule 30(b)(6) witness to take place in one of the six days remaining in discovery; and,

**Applicant's Agenda For Telephone Conference**

e. It scheduled discovery to open April 24, 2003 and to close on April 30, 2003.

*Maybe request*

In telephone conferences and e-mail communications between February 27, 2003 and March 3, 2003, Applicant agreed to Opposer's request only to schedule the depositions for the week of April 14, 2003 (including the deposition of Paul Fernstrum on April 22, 2003).<sup>1</sup> This concession related only to the deposition examinations and did not embrace or otherwise include any written discovery.

*previously noted*

*where did parties agree*

On March 7, 2003, Opposer served Notices of Deposition for the witnesses including "Opposer's Request For Production Of Documents" pursuant to Rule 30(b)(5) and Rule 34 of the Federal Rules of Civil Procedure.

*Explain deferral from old order or attempt to inspect documents on Δ's premises*

*Is the request an attempt to avoid R. 34 or are they within scope of dep's?*

*\* Check 30(b) & 34 + get view notice*

*30(b)(6) witnesses - previously noticed (but not named)*

<sup>1</sup> Applicant also consented to the depositions of Dale Gusick and Frank Bjorkman, employees of Applicant.

*Applicant's Agenda For Telephone Conference*

**III. Issue Presented**

In view of the Board's February 5, 2003 Order re-opening discovery for only a 5-day period beginning on April 24, 2003, whether Opposer's Request For Production Of Documents served on March 7, 2003 is proper or timely.

**R. W. FERNSTRUM & COMPANY**

Date: March 13, 2003

By:



Samuel D. Littlepage, Esquire  
Marc A. Bergsman, Esquire  
Nicole M. Meyer, Esquire  
**Dickinson Wright PLLC**  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036  
Tel: (202) 457-0160  
Fax: (202) 659-1559

**Counsel For Applicant**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of March, 2003, a true and correct copy of the foregoing **APPLICANT'S AGENDA FOR TELEPHONE CONFERENCE** was served via e-mail and fax upon:

D. Peter Hochberg, Esquire  
**D. Peter Hochberg Co., L.P.A.**  
The Baker Building, Sixth Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114

Fax: (216) 771-3804  
E-Mail: [dphochberg@aol.com](mailto:dphochberg@aol.com)



**DICKINSON  
WRIGHT** PLLC  
Counsellors At Law

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1901 L STREET, N.W., SUITE 800  
WASHINGTON, DC 20036-3506  
TELEPHONE: (202) 457-0160  
FACSIMILE: (202) 659-1559  
<http://www.dickinson-wright.com>

CONFIRMATION 

TO: D. Peter Hochberg, Esq.	COMPANY: D. Peter Hochberg Co., L.P.A.
FAX NUMBER: (216) 771 - 3804	PHONE NUMBER: (216) 771- 3800
TO: Angela Lykos, Esq.	COMPANY: TTAB
FAX NUMBER: (703) 746 - 7070	PHONE NUMBER: (703) 308 - 9300 ext. 254

From: Marc A. Bergsman

Date: March 17, 2003

Total Number of Pages Including Cover Sheet: 8

**Message:** Pursuant to Ms. Lykos' request in the telephone conference this afternoon, I am transmitting the cover pages, signature pages, and proof of service for Opposer's First Set of Interrogatories and Initial Requests For Production Of Documents and Applicant's response thereto.

DC 71119-37 72370-2

If you have not received the total number of pages, please call the facsimile department at (202) 457-0160. *Thank you.*

**IMPORTANT** - This message is intended solely to be used by the individual or entity to which it is addressed. It may contain information which is privileged, confidential and otherwise exempt by law from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to its intended recipient, you are herewith notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately and return this communication to us at the above address via the United States Postal Service. *Thank you.*

**OFFICE CODE**

Client Name: R. W. Fernstrum & Company  
Client/Matter Number: 71119-0037  
Attorney Number: [369]  
Secretary/Ext.: GiGi 6947

Matter Name: Duramax v. Fernstrum  
Attorney Initials: MAB  
No. of Pages: 8  
Amount:

DETROIT BLOOMFIELD HILLS LANSING GRAND RAPIDS ANN ARBOR WASHINGTON, D.C.

Received from &lt; &gt; at 3/17/03 3:01:38 PM [Eastern Standard Time]

Attorney Docket: DX-3 (#90545)

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

In the Matter of U.S. Trademark Application Serial No. 75/701,707 filed May 10, 1999  
Mark: DRAWING OF MARINE HEAT EXCHANGER  
Published in The Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	OPPOSITION NO. 119,899
	)	
R.W. FERNSTRUM & COMPANY	)	
	)	
Applicant	)	

**OPPOSER'S FIRST SET OF INTERROGATORIES AND INITIAL  
REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT**

Please take notice that pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, Applicant R.W. FERNSTRUM & COMPANY, hereinafter referred to as Applicant or Fernstrum is required to serve upon the undersigned within thirty (30) days after service hereof, answers under oath to each of the interrogatories set forth below, and produce documents as requested below.

**INSTRUCTIONS**

The following instructions apply to each Interrogatory and/or Request:

1. Applicant's responses to these interrogatories shall set forth each corresponding Interrogatory and/or Request in full before each answer or objection.
2. The information requested includes such information as Applicant knows of its own personal knowledge, as well as that which is available to Applicant, including, but not limited to, information which is in the possession of Applicant's attorney, accountant, investigators, insurance carriers, agents or employees and anyone else acting in Applicant's behalf or on their behalf.

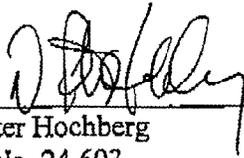
- a) the date of first use of the Keel Cooler Drawing mark by Applicant or a licensee or any prior owners of Serial No. 75/701,707;
- b) the manner in which Applicant or licensee or a potential licensee plans to use the Keel Cooler Drawing mark on the goods to which it will be applied;
- 
- and
- c) a description of the types of media in which Applicant or a licensee or a potential licensee or a distributor or a manufacturer has plans to use the mark the Keel Cooler Drawing in any way in the advertising of the goods in the United States.

14. To the extent not produced in response to Request Nos. 1-13, all documents identified or requested in response to Interrogatory Nos. 1-30 served simultaneously herewith and all documents to which Applicant referred in answering those interrogatories.

15. To the extent not produced in response to Request Nos. 1-14, all documents Applicant intends to submit or rely on in this opposition proceeding.

Respectfully submitted,

Dated: August 1, 2001

  
\_\_\_\_\_  
D. Peter Hochberg  
Reg. No. 24,603

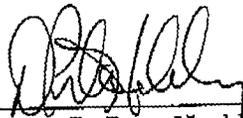
D. PETER HOCHBERG CO., L.P.A.  
The Baker Building, 6th Floor  
1940 East 6th Street  
Cleveland, Ohio 44114  
(216) 771-3800

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES AND INITIAL REQUESTS FOR PRODUCTION OF DOCUMENTS TO**

**APPLICANT** was served on the following, via first class mail, postage prepaid, on the date noted below:

Samuel D. Littlepage  
Dickinson Wright PLLC  
1901 "L" Street, N.W.  
Suite 800 Street  
Washington, D.C. 20036-3541



D. Peter Hochberg  
D. Peter Hochberg Co., L.P.A.  
1940 E. 6<sup>th</sup> Street  
Cleveland, Ohio 44114-  
Attorney for Petitioner

Date: August 1, 2001

DX-3 73101



*Duramax Marine, LLC v. R.W. Fernstrum & Co.*  
*Opposition No. 119,899*  
*Serial No. 75/701,707*

**Document Request No. 15**

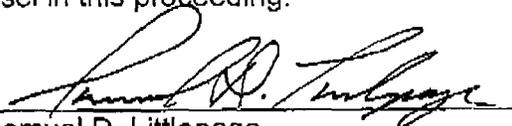
To the extent not produced in response to Request Nos. 1-14, all documents Applicant intends to submit or rely on in this opposition proceeding.

**Response:**

Applicant objects to this document request as not describing or specifying, with reasonable particularity, the documents sought. Accordingly, the request fails to meet the requirements of FED.R.CIV.P. 34(b). Without waiving the aforesaid objection, Applicant states that it is presently unaware of which documents it intends to submit or rely upon in this proceeding (apart from those documents submitted to the United States Patent and Trademark Office in connection with the prosecution of Application Serial No. 75/701,707).

\* \* \* \* \*

All objections asserted on behalf of R.W. Fernstrum & Company were made by Samuel D. Littlepage, Esq., its undersigned counsel in this proceeding.

  
Samuel D. Littlepage  
Counsel For Applicant  
**Dickinson Wright PLLC**  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036  
Tel: (202) 457-0160  
Fax: (202) 659-1559

*Duramax Marine, LLC v. R.W. Fernstrum & Co.  
Opposition No. 119,899  
Serial No. 75/701,707*

**DECLARATION**

I hereby declare and verify, under penalty of perjury and in accordance with 28 U.S.C. §1746, that the foregoing is true and correct.

---

**R. W. FERNSTRUM & COMPANY**

Date: ~~September~~ <sup>August</sup> 28, 2001

By:   
Mr. Paul W. Fernstrum  
President

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of September, 2001, a true and correct copy of the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES AND INITIAL REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT** was served via first class, postage prepaid, U.S. mail upon:

D. Peter Hochberg, Esquire  
**D. Peter Hochberg Co., L.P.A.**  
The Baker Building, Sixth Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114



D PETER HOCHBERG CO LPA

216 771 3804

03/07/03 18:32 :12

NO:211

Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707  
Mark: Drawing of a Marine Heat Exchanger  
Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, I.L.C	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

**NOTICE OF DEPOSITION**

To: Samuel D. Littlepage, Esq. Via Facsimile/Mail Confirmation: 1 (202) 659-1559  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Attorneys for Applicant

PLEASE TAKE NOTICE that Opposer Duramax Marine, LLC, pursuant to Rule 30 of the Federal Rules of Civil Procedure, will take the deposition, upon oral examination, of Dale Gusick commencing on April 14, 2003, beginning at 9:00 o'clock, a.m., at the law office of Jonathan P. Barstow, P.C., 104 Sixth Ave., Menominee, Michigan, 49859 for use in the trial of the above-captioned matter. Such deposition is for use in preparation for trial in the above-captioned matter and such other purposes permitted by applicable rules.

D PETER HOCHBERG CO LPA

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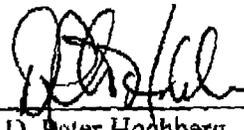
NO:211

The deposition will take place before a Notary Public or other officer authorized by law to administer oaths and will continue from day to day until completed, with such adjournments as to time and place as may be necessary or mutually agreed upon by counsel for the parties.

You are invited to attend and cross-examine the witness.

Dated this 7<sup>th</sup> day of March, 2003.

Date: March 7, 2003

By: 

D. Peter Hochberg  
Counsel for Opposer  
D. Peter Hochberg Co., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114  
(216) 771-3800

Enc.: Opposer's Request for Production  
of Documents  
Subpoena  
DPH/ek

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing "NOTICE OF DEPOSITION" was served on the attorney for applicant via facsimile and first class, postage prepaid, U.S. mail on the date noted below to:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Date: March 7, 2003

By:   
D. Peter Hochberg

D PETER HOCHBERG CO LPA

216 771 3804

03/07/03 18:32 :14

NO:211

AOB (Rev. 1/94) Subpoena in a Civil Case

Issued by the UNITED STATES DISTRICT COURT

WESTERN

DISTRICT OF

MICHIGAN

DURAMAX MARINE, LLC

SUBPOENA IN A CIVIL CASE

V.

R.W. FERNSTRUM & COMPANY

Case Number:

TO: Dale Gusick, R.W. Fernstrum & Company, 1716 11th Avenue, Menominee, MI 49859

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

Table with 2 columns: PLACE OF TESTIMONY, COURTROOM. Includes DATE AND TIME field.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Table with 2 columns: PLACE OF DEPOSITION, DATE AND TIME. Includes address: Law office of Jonathan P. Barstow, P.C., 104 Sixth Avenue, Menominee, MI 49859.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

(See attached.)

Table with 2 columns: PLACE, DATE AND TIME. Includes address: Law office of Jonathan P. Barstow, P.C., 104 Sixth Avenue, Menominee, MI 49859.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

Table with 2 columns: PREMISES, DATE AND TIME.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Table with 2 columns: ISSUING OFFICER'S SIGNATURE AND TITLE, DATE. Includes signature of D. Peter Hochberg, Attorney for Opposer, dated March 7, 2003.

Table with 1 column: ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER. Includes address: D. Peter Hochberg, Esq. - D. Peter Hochberg Co., L.P.A., 1940 E. 6th Street, Cleveland, OH 44114 Phone: (216) 771-3800.

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

If action is pending in district other than district of issuance, state district under case number.

D PETER HOCHBERG CO LPA

216 771 3804

03/07/03 18:32 :15

NO:211

AORR (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

	DATE	PLACE
SERVED	March 7, 2003	Dickinson Wright PLLC 1901 "L" Street, N.W. - Ste. 800 Washington, D.C. 20036-3541
SERVED ON (PRINT NAME)		MANNER OF SERVICE
	Dale Gusick	Fax and mail
SERVED BY (PRINT NAME)		TITLE
	D. Peter Hochberg	Attorney for Opposer

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on March 7, 2003  
DATE

  
 SIGNATURE OF SERVER  
 D. Peter Hochberg Co., L.P.A.  
 1940 E. 6th Street - 6th Floor  
 ADDRESS OF SERVER  
 Cleveland, OH 44114

D PETER HOCHBERG CO LPA

216 771 3804

03/07/03 18:32 :16

NO:211

/Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707  
Mark: Drawing of a Marine Heat Exchanger  
Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

**OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS**

Please take notice that pursuant to Rule 30(b)(5) and 34 of the Federal Rules of Civil Procedure, Deponent Dale Gusick, an employee of Applicant, R.W. FERNSTRUM & COMPANY, is required to produce documents and tangible things as requested below at the deposition examination.

The following request for production of documents is to be interpreted and responded to in accordance with the "Definitions" set forth below:

**DEFINITIONS**

The following definitions apply to each Request:

- a) The term "document" as used in these Requests includes (without limitation and irrespective of whether original, copy or draft) all documents, objects, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, books of

D PETER HOCHBERG CO LPA

☎ 216 771 3804

03/07/03 18:32 ☐ :17

NO:211

account, order, statements, computation sheets, reports, photographs, drawings of any kind, layouts, art work, tracings, blueprints, sketches, charts, schematic diagrams, catalogs, brochures, computer programs and print outs and tapes and magnetic disks, books, papers, files, purchase orders, bills, invoices, accounts, canceled checks, ledgers, correspondence, inter-office communications, communications of any kind, letters, notes (in pencil, ink, or typewritten), including notes of records of oral communications, notebooks, telexes, telegrams (and other messages) audio or video tapes, and advertising or promotional material, instructions, or material of any kind, whether or not the document is privileged or within Applicant's possession, control, or custody, as well as all drafts thereof and all copies bearing any notations not appearing on the original.

b) "Opposer" means Duramax Marine, LLC.

c) "Applicant" and "Fernstrum" means Applicant, R.W.

FERNSTRUM & COMPANY, including related companies within the meaning of Section 45(d) of the Trademark Act of 1946 (15 U.S.C. 1127), its predecessors in interest, successors, divisions, subsidiaries, affiliates, licensees, franchises and all officers, directors, employees, attorneys, consultants, agents, servants, accountants and all other persons or entities acting on behalf of or representing R.W. FERNSTRUM & COMPANY.

d) "Person affiliated with Fernstrum" means any person who is now or has ever been an officer or director or, employed by, under the control of, under contract with, or a representative of Fernstrum.

REQUESTS

1. All advertising and promotional material distributed by and used by Applicant featuring a picture, photograph or drawing of Applicant's one-piece keel cooler(s).
2. All advertising and promotional material distributed by and used by Applicant featuring a picture, photograph or drawing of Applicant's one-piece keel cooler(s) and comparing and/or contrasting Applicant's one-piece keel cooler(s) with that of Opposer or with any other competitor.
3. All documents that describe or explain the making, manufacturing, production, or construction of Applicant's one-piece keel cooler(s) having rectangular fore and aft headers.
4. All documents that describe or explain any design, making, manufacturing, production, or construction of Applicant's one-piece keel cooler(s) having rectangular fore and aft headers.
5. All drawings, blue prints, printed designs, technical specifications and photographs used by Applicant in connection with the design, manufacture, inspection and sale of keel coolers of Applicant.
6. All documents that describe or explain the problems or perceived problems that will be encountered by Applicant in advertising and promoting its one-piece keel cooler(s) if Opposer advertises or promotes its one-piece keel cooler with beveled fore and aft headers, but not depicting the beveled fore and aft headers.

7. All documents explaining why one-piece keel coolers having rectangular fore and aft headers are superior in function to one-piece keel coolers having beveled fore and aft headers.

8. All documents explaining why one-piece keel coolers having beveled fore and aft headers are not superior in function to one-piece keel coolers having rectangular fore and aft headers.

9. All documents explaining why one-piece keel coolers having beveled fore and aft headers are superior in function to one-piece keel coolers having rectangular fore and aft headers.

10. All documents explaining why one-piece keel coolers having rectangular fore and aft headers are not superior in function to one-piece keel coolers having beveled fore and aft headers.

11. All documents (including invoices) evidencing the sale of one-piece keel coolers having rectangular headers since August 5, 1999.

12. All documents objecting to the design or configuration of the one-piece keel coolers having beveled fore and aft headers of Opposer.

13. All documents related to Applicant, or any person associated with Applicant or with any related company of Applicant objecting to any advertising, promotions, pictures, photographs or drawings of the one-piece keel cooler having beveled fore and aft headers of Opposer.

14. All documents relating to violations by R.W. Fernstrum & Company of the Settlement and Mutual Release Agreement signed by R.W. Fernstrum & Company, East Park Radiator & Battery Shop, Inc., Duramax, Inc., and Donovan Marine, LLC.

15. All documents relating to violations by East Park Radiator & Battery Shop, Inc., Duramax, Inc., and/or Donovan Marine, LI,C of the Settlement and Mutual Release Agreement signed by R.W. Fernstrum & Company, East Park Radiator & Battery Shop, Inc., Duramax, Inc., and Donovan Marine, LLC.
16. All documents explaining or referring to why Opposer would or would not be able to show drawings or photographs of its one-piece keel coolers if the mark in application Serial No. 75/701,707 were registered.
17. All documents explaining or referring to why Applicant would or would not be bring suit upon Opposer for displaying and demonstrating Opposer's one-piece keel cooler if the mark in application Serial No. 75/701,707 were registered.
18. All documents explaining or referring to why Applicant would or would not be bring suit upon Opposer for trademark infringement for publishing photographs and/or drawings of Opposer's one-piece keel cooler if the mark in application Serial No. 75/701,707 were registered.
19. All surveys, market studies, competitive research and/or investigations relating to or referring to Applicant's keel cooler(s) that is the subject of the mark in application Serial No. 75/701,707.
20. All surveys, market studies, competitive research and/or investigations referring to any comparisons and/or contrasts between Applicant's keel cooler(s) having rectangular fore and aft headers and the one-piece keel cooler having beveled fore and aft headers of Opposer.
21. All internal memoranda prepared by any present or former director, officer, manager, partner, or employee of Applicant, or any company related to

Applicant, which refers to, or in any manner mentions; Applicant's mark in application Serial No. 75/701,707.

22. All photographs, pictures, or drawings of Opposer's one-piece keel coolers which Applicant believes Opposer would not be prohibited from showing if Applicant is allowed to obtain a federal trademark registration for the drawing that is the subject of application Serial No. 75/701,707.

23. All documents showing sketches, drawings or pictures used for the manufacture by Applicant of all or part of its keel cooler(s).

24. All documents showing sketches, drawings or pictures used for the inspection of keel coolers manufactured by Applicant of all or part of its keel cooler(s).

25. All documents which have been distributed to or by Applicant's employees, officers and/or sales representatives and which show sketches, drawings or pictures of all or part of its keel cooler(s).

26. All sketches or drawings in Applicant's possession or under its control relating to "retro fit" keel coolers.

27. All documents concerning, relating to or referring to any visual similarities between a keel cooler of Applicant and a keel cooler of Opposer.

28. All internal memoranda prepared by any present or former director, officer, manager, partner or employee of Applicant which refers to the configuration of Applicant's keel cooler(s).

29. All internal memoranda prepared by any present or former director, officer, manager, partner or employee of Applicant which refers to the configuration of Opposer's keel cooler.

D PETER HOCHBERG CO LPA

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03/07/03 18:32 :22

NO:211

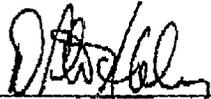
30. All different drawings and "specs" of the keel cooler(s) of Applicant.

31. All documents setting forth the comments of any third parties concerning (a) the design or visual appearance of the Applicant's keel cooler(s); (b) the design or visual appearance of Opposer's keel cooler; and (c) any similarities between the Applicant's keel cooler(s) and Opposer's keel cooler.

32. All "communications" between Applicant and any person concerning or relating to any investigation to be conducted by, or on behalf of, Applicant regarding trade or consumer perception of: (a) Applicant's keel cooler(s); or (b) Opposer's keel cooler.

Respectfully submitted,

Date: March 7, 2003

By:   
D. Peter Hochberg  
Reg. No. 24,603

D. PETER HOCHBERG CO., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 771-3800

DPH/ck

D PETER HOCHBERG CO LPA

216 771 3804

03/07/03 18:32 :01

NO:211

Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707  
Mark: Drawing of a Marine Heat Exchanger  
Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

**NOTICE OF DEPOSITION**

To: Samuel D. Littlepage, Esq. Via Facsimile/Mail Confirmation: 1 (202) 659-1559  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Attorneys for Applicant

PLEASE TAKE NOTICE that Opposer Duramax Marine, LLC, pursuant to Rule 30 of the Federal Rules of Civil Procedure, will take the deposition, upon oral examination, of Frank Bjorkman commencing on April 14, 2003, beginning at 9:00 o'clock, a.m., at the law office of Jonathan P. Barstow, P.C., 104 Sixth Ave., Menominee, Michigan, 49859 for use in the trial of the above-captioned matter. Such deposition is for use in preparation for trial in the above-captioned matter and such other purposes permitted by applicable rules.

D PETER HOCHBERG CO LPA

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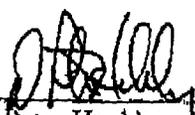
NO:211

The deposition will take place before a Notary Public or other officer authorized by law to administer oaths and will continue from day to day until completed, with such adjournments as to time and place as may be necessary or mutually agreed upon by counsel for the parties.

You are invited to attend and cross-examine the witness.

Dated this 7<sup>th</sup> day of March, 2003.

Date: March 7, 2003

By: 

D. Peter Hochberg  
Counsel for Opposer  
D. Peter Hochberg Co., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114  
(216) 771-3800

Enc.: Opposer's Request for Production  
of Documents  
Subpoena

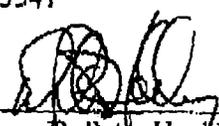
DPH/ck

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing "NOTICE OF DEPOSITION" was served on the attorney for applicant via facsimile and first class, postage prepaid, U.S. mail on the date noted below to:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Date: March 7, 2003

By:   
D. Peter Hochberg

D PETER HOCHBERG CO LPA

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NO:211

AOXX (Rev. 1/91) Subpoena in a Civil Case

Issued by the UNITED STATES DISTRICT COURT

WESTERN

DISTRICT OF

MICHIGAN

DURAMAX MARINE, LLC

SUBPOENA IN A CIVIL CASE

V.

R.W. FERNSTRUM & COMPANY

Case Number: 1

TO: Frank Bjorkman R.W. Fernstrum & Company 1716 11th Avenue Menominee, MI 49858

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

Table with 2 columns: PLACE OF TESTIMONY, COURTROOM. Includes DATE AND TIME field.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Table with 2 columns: PLACE OF DEPOSITION, DATE AND TIME. Includes address: Law office of Jonathan P. Barstow, P.C. 104 Sixth Avenue, Menominee, MI 49859.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached.

Table with 2 columns: PLACE, DATE AND TIME. Includes address: Law office of Jonathan P. Barstow, P.C. 104 Sixth Avenue, Menominee, MI 49859.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

Table with 2 columns: PREMISES, DATE AND TIME.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Table with 2 columns: ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT), DATE. Includes signature of D. Peter Hochberg, Attorney for Opposer, dated March 7, 2003.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: D. Peter Hochberg, Esq. - D. Peter Hochberg Co., L.P.A. 1940 E. 6th Street, Cleveland, OH 44114 Phone: (216) 771-3800

(See Rule 45, Federal Rules of Civil Procedure, Part C & D on next page)

1 If location is pending in district other than district of issuance, state district under case number.

03/14/03 10:00 FAX

Dickinson Wright DC

016

D PETER HOCHBERG CO LPA

216 771 3804

03/07/03 18:32 :04

NO:211

AO88 / Rev. 1/91 Subpoena in a Civil Case

PROOF OF SERVICE

	DATE	PLACE
SERVED	March 7, 2003	Dickinson Wright PLLC 1901 "L" Street, N.W. - Ste. 800 Washington, D.C. 20036-3541
SERVED ON (PRINT NAME)	Frank Bjorkman	MANNER OF SERVICE Fax and mail
SERVED BY (PRINT NAME)	D. Peter Hochberg	TITLE Attorney for Opposer

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on March 7, 2003  
DATE

  
 SIGNATURE OF SERVER  
 D. Peter Hochberg Co., L.P.A.  
 1940 E. 6th Street - 6th Floor  
 ADDRESS OF SERVER  
 Cleveland, OH 44114

/Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707  
Mark: Drawing of a Marine Heat Exchanger  
Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

**OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS**

Please take notice that pursuant to Rule 30(b)(5) and 34 of the Federal Rules of Civil Procedure, Deponent Frank Bjorkman, an employee of Applicant, R.W. FERNSTRUM & COMPANY, is required to produce documents and tangible things as requested below at the deposition examination.

The following request for production of documents is to be interpreted and responded to in accordance with the "Definitions" set forth below:

**DEFINITIONS**

The following definitions apply to each Request:

- a) The term "document" as used in these Requests includes (without limitation and irrespective of whether original, copy or draft) all documents, objects, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, books of

D PETER HOCHBERG CO LPA

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account, order, statements, computation sheets, reports, photographs, drawings of any kind, layouts, art work, tracings, blueprints, sketches, charts, schematic diagrams, catalogs, brochures, computer programs and print outs and tapes and magnetic disks, books, papers, files, purchase orders, bills, invoices, accounts, canceled checks, ledgers, correspondence, inter-office communications, communications of any kind, letters, notes (in pencil, ink, or typewritten), including notes of records of oral communications, notebooks, telexes, telegrams (and other messages) audio or video tapes, and advertising or promotional material, instructions, or material of any kind, whether or not the document is privileged or within Applicant's possession, control, or custody, as well as all drafts thereof and all copies bearing any notations not appearing on the original.

b) "Opposer" means Duramax Marine, LLC.

c) "Applicant" and "Fernstrum" means Applicant, R. W.

FERNSTRUM & COMPANY, including related companies within the meaning of Section 45(d) of the Trademark Act of 1946 (15 U.S.C. 1127), its predecessors in interest, successors, divisions, subsidiaries, affiliates, licensees, franchisees and all officers, directors, employees, attorneys, consultants, agents, servants, accountants and all other persons or entities acting on behalf of or representing R. W. FERNSTRUM & COMPANY.

d) "Person affiliated with Fernstrum" means any person who is now or has ever been an officer or director or, employed by, under the control of, under contract with, or a representative of Fernstrum.

REQUESTS

1. All advertising and promotional material distributed by and used by Applicant featuring a picture, photograph or drawing of Applicant's one-piece keel cooler(s).
2. All advertising and promotional material distributed by and used by Applicant featuring a picture, photograph or drawing of Applicant's one-piece keel cooler(s) and comparing and/or contrasting Applicant's one-piece keel cooler(s) with that of Opposer or with any other competitor.
3. All documents that describe or explain the making, manufacturing, production, or construction of Applicant's one-piece keel cooler(s) having rectangular fore and aft headers.
4. All documents that describe or explain any design, making, manufacturing, production, or construction of Applicant's one-piece keel cooler(s) having rectangular fore and aft headers.
5. All drawings, blue prints, printed designs, technical specifications and photographs used by Applicant in connection with the design, manufacture, inspection and sale of keel coolers of Applicant.
6. All documents that describe or explain the problems or perceived problems that will be encountered by Applicant in advertising and promoting its one-piece keel cooler(s) if Opposer advertises or promotes its one-piece keel cooler with beveled fore and aft headers, but not depicting the beveled fore and aft headers.

7. All documents explaining why one-piece keel coolers having rectangular fore and aft headers are superior in function to one-piece keel coolers having beveled fore and aft headers.

8. All documents explaining why one-piece keel coolers having beveled fore and aft headers are not superior in function to one-piece keel coolers having rectangular fore and aft headers.

9. All documents explaining why one-piece keel coolers having beveled fore and aft headers are superior in function to one-piece keel coolers having rectangular fore and aft headers.

10. All documents explaining why one-piece keel coolers having rectangular fore and aft headers are not superior in function to one-piece keel coolers having beveled fore and aft headers.

11. All documents (including invoices) evidencing the sale of one-piece keel coolers having rectangular headers since August 5, 1999.

12. All documents objecting to the design or configuration of the one-piece keel coolers having beveled fore and aft headers of Opposer.

13. All documents related to Applicant, or any person associated with Applicant or with any related company of Applicant objecting to any advertising, promotions, pictures, photographs or drawings of the one-piece keel cooler having beveled fore and aft headers of Opposer.

14. All documents relating to violations by R.W. Fernstrum & Company of the Settlement and Mutual Release Agreement signed by R.W. Fernstrum & Company, East Park Radiator & Battery Shop, Inc., Duramax, Inc., and Donovan Marine, LLC.

15. All documents relating to violations by East Park Radiator & Battery Shop, Inc., Duramax, Inc., and/or Donovan Marine, LLC of the Settlement and Mutual Release Agreement signed by R.W. Fernstrum & Company, East Park Radiator & Battery Shop, Inc., Duramax, Inc., and Donovan Marine, I.L.C.
16. All documents explaining or referring to why Opposer would or would not be able to show drawings or photographs of its one-piece keel coolers if the mark in application Serial No. 75/701,707 were registered.
17. All documents explaining or referring to why Applicant would or would not be bring suit upon Opposer for displaying and demonstrating Opposer's one-piece keel cooler if the mark in application Serial No. 75/701,707 were registered.
18. All documents explaining or referring to why Applicant would or would not be bring suit upon Opposer for trademark infringement for publishing photographs and/or drawings of Opposer's one-piece keel cooler if the mark in application Serial No. 75/701,707 were registered.
19. All surveys, market studies, competitive research and/or investigations relating to or referring to Applicant's keel cooler(s) that is the subject of the mark in application Serial No. 75/701,707.
20. All surveys, market studies, competitive research and/or investigations referring to any comparisons and/or contrasts between Applicant's keel cooler(s) having rectangular fore and aft headers and the one-piece keel cooler having beveled fore and aft headers of Opposer.
21. All internal memoranda prepared by any present or former director, officer, manager, partner, or employee of Applicant, or any company related to

Applicant, which refers to, or in any manner mentions, Applicant's mark in application Serial No. 75/701,707.

22. All photographs, pictures, or drawings of Opposer's one-piece keel coolers which Applicant believes Opposer would not be prohibited from showing if Applicant is allowed to obtain a federal trademark registration for the drawing that is the subject of application Serial No. 75/701,707.

23. All documents showing sketches, drawings or pictures used for the manufacture by Applicant of all or part of its keel cooler(s).

24. All documents showing sketches, drawings or pictures used for the inspection of keel coolers manufactured by Applicant of all or part of its keel cooler(s).

25. All documents which have been distributed to or by Applicant's employees, officers and/or sales representatives and which show sketches, drawings or pictures of all or part of its keel cooler(s).

26. All sketches or drawings in Applicant's possession or under its control relating to "retro fit" keel coolers.

27. All documents concerning, relating to or referring to any visual similarities between a keel cooler of Applicant and a keel cooler of Opposer.

28. All internal memoranda prepared by any present or former director, officer, manager, partner or employee of Applicant which refers to the configuration of Applicant's keel cooler(s).

29. All internal memoranda prepared by any present or former director, officer, manager, partner or employee of Applicant which refers to the configuration of Opposer's keel cooler.

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30. All different drawings and "specs" of the keel cooler(s) of Applicant.

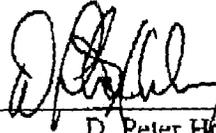
31. All documents setting forth the comments of any third parties concerning (a) the design or visual appearance of the Applicant's keel cooler(s); (b) the design or visual appearance of Opposer's keel cooler; and (c) any similarities between the Applicant's keel cooler(s) and Opposer's keel cooler.

32. All "communications" between Applicant and any person concerning or relating to any investigation to be conducted by, or on behalf of, Applicant regarding trade or consumer perception of: (a) Applicant's keel cooler(s); or (b) Opposer's keel cooler.

Respectfully submitted,

Date: March 7, 2003

By: \_\_\_\_\_



D. Peter Hochberg  
Reg. No. 24,603

D. PETER HOCHBERG CO., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 771-3800

DPH/ck

Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707  
Mark: Drawing of a Marine Heat Exchanger  
Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

NOTICE OF DEPOSITION

To: Samuel D. Littlepage, Esq. Via Facsimile/Mail Confirmation: 1 (202) 659-1559  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Attorneys for Applicant

PLEASE TAKE NOTICE that Opposer Duramax Marine, LLC, pursuant to Rule 30 of the Federal Rules of Civil Procedure, will take the deposition, upon oral examination, of R.W. Fernstrum & Company ("Fernstrum"), under Rule 30(b)(6) through its officers, directors, employees, agents or other designees, commencing on April 14, 2003, beginning at 9:00 o'clock, a.m., at the law office of Jonathan P. Barstow, P.C., 104 Sixth Ave., Menominee, Michigan, 49859 for use in the trial of the above-captioned matter. Such deposition is for use in preparation for trial in the above-captioned matter and such other purposes permitted by applicable rules. Fernstrum shall designate one or

D PETER HOCHBERG CO LPA

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more persons to testify on its behalf concerning each of the specific matters set forth in Exhibit A and on Opposer's Request for Production of Documents.

The deposition will take place before a Notary Public or other officer authorized by law to administer oaths and will continue from day to day until completed, with such adjournments as to time and place as may be necessary or mutually agreed upon by counsel for the parties.

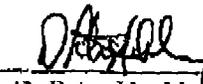
In connection with this deposition, the Applicant is required to produce at the deposition each of the documents and things as required to be produced under the attached Opposer's Requests for the Production of Documents, pursuant to Fed. R. Civ. P. Rule 34.

You are invited to attend and cross-examine the witness.

Dated this 7<sup>th</sup> day of March, 2003.

Date: March 7, 2003

By: \_\_\_\_\_



D. Peter Hochberg  
Counsel for Opposer  
D. Peter Hochberg Co., L.P.A.  
The Baker Building 6<sup>th</sup> Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114  
(216) 771-3800

DPII/ck

Att.: Exhibit A  
Opposer's Request for Production  
of Documents

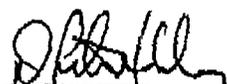
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing "NOTICE OF DEPOSITION" was served on the attorney for applicant via facsimile and first class, postage prepaid, U.S. mail on the date noted below to:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Date: March 7, 2003

By: \_\_\_\_\_



D. Peter Hochberg

D PETER HOCHBERG CO LPA

☎ 216 771 3804

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EXHIBIT A

1. All documents relating to or referring to drawings or photographs of keel coolers used in the business of R.W. Fernstrum & Co. ("Fernstrum").
2. All documents used in advertising and promotional materials of Fernstrum.
3. All documents used in the planning of the designs of keel coolers made by Fernstrum.
4. All documents used in the installation of Fernstrum keel coolers.
5. All documents used in the advertising of Fernstrum keel cooler.
6. Publications of literature showing drawings, pictures, photographs, and the illustration of Fernstrum keel coolers.
7. The chronological history of publications showing drawings, photographs and other illustrations of Fernstrum keel coolers.
8. Documents shipped or otherwise sent by Fernstrum to customers who have bought Fernstrum keel coolers.
9. A description of the drawing used in U.S. Trademark Application Serial No. 75/701,707.
10. Documents used in the manufacturing of Fernstrum keel coolers.
11. All three dimensional items depicting Fernstrum keel coolers.
12. The material from which the "representative specimens showing actual use of the mark" set forth in the Answer to Interrogatory No. 11(a) were taken.
13. The "promotional materials, including flyers and magazine advertisements" set forth in the Answer to Interrogatory No. 11(d).

14. All corporate papers, business plans and other business papers showing a depiction of a keel cooler.
15. Any videotapes and motion pictures showing a Fernstrum keel cooler.
16. The design of Fernstrum keel coolers.
17. The manufacture of Fernstrum keel coolers.
18. The installation of Fernstrum keel coolers.
19. The repair of Fernstrum keel coolers.
20. Obsolete literature, advertising material, artwork, photographs, articles and ad clips showing depictions of Fernstrum keel coolers.

/Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707  
Mark: Drawing of a Marine Heat Exchanger  
Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, I.L.C	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

**OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS**

Please take notice that pursuant to Rule 30(b)(5) and 34 of the Federal Rules of Civil Procedure, Applicant, R.W. FERNSTRUM & COMPANY, is required to produce documents and tangible things as requested below at the deposition examination.

The following request for production of documents is to be interpreted and responded to in accordance with the "Definitions" set forth below:

**DEFINITIONS**

The following definitions apply to each Request:

- a) The term "document" as used in these Requests includes (without limitation and irrespective of whether original, copy or draft) all documents, objects, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, books of account, order, statements, computation sheets, reports, photographs, drawings of any

kind, layouts, art work, tracings, blueprints, sketches, charts, schematic diagrams, catalogs, brochures, computer programs and print outs and tapes and magnetic disks, books, papers, files, purchase orders, bills, invoices, accounts, canceled checks, ledgers, correspondence, inter-office communications, communications of any kind, letters, notes (in pencil, ink, or typewritten), including notes of records of oral communications, notebooks, telexes, telegrams (and other messages) audio or video tapes, and advertising or promotional material, instructions, or material of any kind, whether or not the document is privileged or within Applicant's possession, control, or custody, as well as all drafts thereof and all copies bearing any notations not appearing on the original.

b) "Opposer" means Duramax Marine, LLC.

c) "Applicant" and "Fernstrum" means Applicant, R.W.

FERNSTRUM & COMPANY, including related companies within the meaning of Section 45(d) of the Trademark Act of 1946 (15 U.S.C. 1127), its predecessors in interest, successors, divisions, subsidiaries, affiliates, licensees, franchises and all officers, directors, employees, attorneys, consultants, agents, servants, accountants and all other persons or entities acting on behalf of or representing R.W. FERNSTRUM & COMPANY.

d) "Person affiliated with Fernstrum" means any person who is now or has ever been an officer or director or, employed by, under the control of, under contract with, or a representative of Fernstrum.

REQUESTS

1. All advertising and promotional material distributed by and used by Applicant featuring a picture, photograph or drawing of Applicant's one-piece keel cooler(s).
2. All advertising and promotional material distributed by and used by Applicant featuring a picture, photograph or drawing of Applicant's one-piece keel cooler(s) and comparing and/or contrasting Applicant's one-piece keel cooler(s) with that of Opposer or with any other competitor.
3. All documents that describe or explain the making, manufacturing, production, or construction of Applicant's one-piece keel cooler(s) having rectangular fore and aft headers.
4. All documents that describe or explain any design, making, manufacturing, production, or construction of Applicant's one-piece keel cooler(s) having rectangular fore and aft headers.
5. All drawings, blue prints, printed designs, technical specifications and photographs used by Applicant in connection with the design, manufacture, inspection and sale of keel coolers of Applicant.
6. All documents that describe or explain the problems or perceived problems that will be encountered by Applicant in advertising and promoting its one-piece keel cooler(s) if Opposer advertises or promotes its one-piece keel cooler with beveled fore and aft headers, but not depicting the beveled fore and aft headers.

7. All documents explaining why one-piece keel coolers having rectangular fore and aft headers are superior in function to one-piece keel coolers having beveled fore and aft headers.

8. All documents explaining why one-piece keel coolers having beveled fore and aft headers are not superior in function to one-piece keel coolers having rectangular fore and aft headers.

9. All documents explaining why one-piece keel coolers having beveled fore and aft headers are superior in function to one-piece keel coolers having rectangular fore and aft headers.

10. All documents explaining why one-piece keel coolers having rectangular fore and aft headers are not superior in function to one-piece keel coolers having beveled fore and aft headers.

11. All documents (including invoices) evidencing the sale of one-piece keel coolers having rectangular headers since August 5, 1999.

12. All documents objecting to the design or configuration of the one-piece keel coolers having beveled fore and aft headers of Opposer.

13. All documents related to Applicant, or any person associated with Applicant or with any related company of Applicant objecting to any advertising, promotions, pictures, photographs or drawings of the one-piece keel cooler having beveled fore and aft headers of Opposer.

14. All documents relating to violations by R.W. Fernstrum & Company of the Settlement and Mutual Release Agreement signed by R.W. Fernstrum & Company, East Park Radiator & Battery Shop, Inc., Duramax, Inc., and Donovan Marine, LLC.

15. All documents relating to violations by East Park Radiator & Battery Shop, Inc., Duramax, Inc., and/or Donovan Marine, L.L.C of the Settlement and Mutual Release Agreement signed by R.W. Fernstrum & Company, East Park Radiator & Battery Shop, Inc., Duramax, Inc., and Donovan Marine, L.L.C.
16. All documents explaining or referring to why Opposer would or would not be able to show drawings or photographs of its one-piece keel coolers if the mark in application Serial No. 75/701,707 were registered.
17. All documents explaining or referring to why Applicant would or would not be bring suit upon Opposer for displaying and demonstrating Opposer's one-piece keel cooler if the mark in application Serial No. 75/701,707 were registered.
18. All documents explaining or referring to why Applicant would or would not be bring suit upon Opposer for trademark infringement for publishing photographs and/or drawings of Opposer's one-piece keel cooler if the mark in application Serial No. 75/701,707 were registered.
19. All surveys, market studies, competitive research and/or investigations relating to or referring to Applicant's keel cooler(s) that is the subject of the mark in application Serial No. 75/701,707.
20. All surveys, market studies, competitive research and/or investigations referring to any comparisons and/or contrasts between Applicant's keel cooler(s) having rectangular fore and aft headers and the one-piece keel cooler having beveled fore and aft headers of Opposer.
21. All internal memoranda prepared by any present or former director, officer, manager, partner, or employee of Applicant, or any company related to

Applicant, which refers to, or in any manner mentions, Applicant's mark in application Serial No. 75/701,707.

22. All photographs, pictures, or drawings of Opposer's one-piece keel coolers which Applicant believes Opposer would not be prohibited from showing if Applicant is allowed to obtain a federal trademark registration for the drawing that is the subject of application Serial No. 75/701,707.

23. All documents showing sketches, drawings or pictures used for the manufacture by Applicant of all or part of its keel cooler(s).

24. All documents showing sketches, drawings or pictures used for the inspection of keel coolers manufactured by Applicant of all or part of its keel cooler(s).

25. All documents which have been distributed to or by Applicant's employees, officers and/or sales representatives and which show sketches, drawings or pictures of all or part of its keel cooler(s).

26. All sketches or drawings in Applicant's possession or under its control relating to "retro fit" keel coolers.

27. All documents concerning, relating to or referring to any visual similarities between a keel cooler of Applicant and a keel cooler of Opposer.

28. All internal memoranda prepared by any present or former director, officer, manager, partner or employee of Applicant which refers to the configuration of Applicant's keel cooler(s).

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D PETER HOCHBERG CO LPA

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30. All different drawings and "specs" of the keel cooler(s) of Applicant.

31. All documents setting forth the comments of any third parties concerning (a) the design or visual appearance of the Applicant's keel cooler(s); (b) the design or visual appearance of Opposer's keel cooler; and (c) any similarities between the Applicant's keel cooler(s) and Opposer's keel cooler.

32. All "communications" between Applicant and any person concerning or relating to any investigation to be conducted by, or on behalf of, Applicant regarding trade or consumer perception of: (a) Applicant's keel cooler(s); or (b) Opposer's keel cooler.

Respectfully submitted,

Date: March 7, 2003

By:   
D. Peter Hochberg  
Reg. No. 24603

D. PETER HOCHBERG CO., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 771-3800

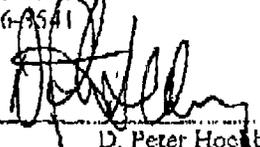
DPH/ck

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing "OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS" was served on the attorney for applicant via facsimile and first class, postage prepaid, U.S. mail on the date noted below to:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 200  
Washington, D.C. 20036-3541

Date: March 7, 2003

By:   
D. Peter Hochberg

Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707  
Mark: Drawing of a Marine Heat Exchanger  
Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

**NOTICE OF DEPOSITION**

To: Samuel D. Littlepage, Esq. Via Facsimile/Mail Confirmation: 1 (202) 659-1559  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Attorneys for Applicant

PLEASE TAKE NOTICE that Opposer Duramax Marine, I.L.C, pursuant to Rule 30 of the Federal Rules of Civil Procedure, will take the deposition, upon oral examination, of Sean W. Fernstrum commencing on April 14, 2003, beginning at 9:00 o'clock, a.m., at the law office of Jonathan P. Barstow, P.C., 104 Sixth Ave., Menominee, Michigan, 49859 for use in the trial of the above-captioned matter. Such deposition is for use in preparation for trial in the above-captioned matter and such other purposes permitted by applicable rules.

D PETER HOCHBERG CO LPA

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The deposition will take place before a Notary Public or other officer authorized by law to administer oaths and will continue from day to day until completed, with such adjournments as to time and place as may be necessary or mutually agreed upon by counsel for the parties.

You are invited to attend and cross-examine the witness.

Dated this 7<sup>th</sup> day of March, 2003.

Date: March 7, 2003

By:   
D. Peter Hochberg  
Counsel for Opposer  
D. Peter Hochberg Co., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114  
(216) 771-3800

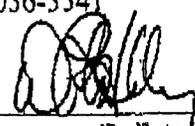
DPH/ek

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Samuel D. Littlepage, Esq.  
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1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Date: March 7, 2003

By:   
D. Peter Hochberg

/Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707  
Mark: Drawing of a Marine Heat Exchanger  
Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

**OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS**

Please take notice that pursuant to Rule 30(b)(5) and 34 of the Federal Rules of Civil Procedure, Deponent Sean Fernstrum, an employee of Applicant, R.W. FERNSTRUM & COMPANY, is required to produce documents and tangible things as requested below at the deposition examination.

The following request for production of documents is to be interpreted and responded to in accordance with the "Definitions" set forth below:

**DEFINITIONS**

The following definitions apply to each Request:

- a) The term "document" as used in these Requests includes (without limitation and irrespective of whether original, copy or draft) all documents, objects, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, books of

account, order, statements, computation sheets, reports, photographs, drawings of any kind, layouts, art work, tracings, blueprints, sketches, charts, schematic diagrams, catalogs, brochures, computer programs and print outs and tapes and magnetic disks, books, papers, files, purchase orders, bills, invoices, accounts, canceled checks, ledgers, correspondence, inter-office communications, communications of any kind, letters, notes (in pencil, ink, or typewritten), including notes of records of oral communications, notebooks, telexes, telegrams (and other messages) audio or video tapes, and advertising or promotional material, instructions, or material of any kind, whether or not the document is privileged or within Applicant's possession, control, or custody, as well as all drafts thereof and all copies bearing any notations not appearing on the original.

b) "Opposer" means Duramax Marine, L.L.C.

c) "Applicant" and "Fernstrum" means Applicant, R.W.

FERNSTRUM & COMPANY, including related companies within the meaning of Section 45(d) of the Trademark Act of 1946 (15 U.S.C. 1127), its predecessors in interest, successors, divisions, subsidiaries, affiliates, licensees, franchises and all officers, directors, employees, attorneys, consultants, agents, servants, accountants and all other persons or entities acting on behalf of or representing R.W. FERNSTRUM & COMPANY.

d) "Person affiliated with Fernstrum" means any person who is now or has ever been an officer or director or, employed by, under the control of, under contract with, or a representative of Fernstrum.

REQUESTS

1. All advertising and promotional material distributed by and used by Applicant featuring a picture, photograph or drawing of Applicant's one-piece keel cooler(s).
2. All advertising and promotional material distributed by and used by Applicant featuring a picture, photograph or drawing of Applicant's one-piece keel cooler(s) and comparing and/or contrasting Applicant's one-piece keel cooler(s) with that of Opposer or with any other competitor.
3. All documents that describe or explain the making, manufacturing, production, or construction of Applicant's one-piece keel cooler(s) having rectangular fore and aft headers.
4. All documents that describe or explain any design, making, manufacturing, production, or construction of Applicant's one-piece keel cooler(s) having rectangular fore and aft headers.
5. All drawings, blue prints, printed designs, technical specifications and photographs used by Applicant in connection with the design, manufacture, inspection and sale of keel coolers of Applicant.
6. All documents that describe or explain the problems or perceived problems that will be encountered by Applicant in advertising and promoting its one-piece keel cooler(s) if Opposer advertises or promotes its one-piece keel cooler with beveled fore and aft headers, but not depicting the beveled fore and aft headers.

7. All documents explaining why one-piece keel coolers having rectangular fore and aft headers are superior in function to one-piece keel coolers having beveled fore and aft headers.

8. All documents explaining why one-piece keel coolers having beveled fore and aft headers are not superior in function to one-piece keel coolers having rectangular fore and aft headers.

9. All documents explaining why one-piece keel coolers having beveled fore and aft headers are superior in function to one-piece keel coolers having rectangular fore and aft headers.

10. All documents explaining why one-piece keel coolers having rectangular fore and aft headers are not superior in function to one-piece keel coolers having beveled fore and aft headers.

11. All documents (including invoices) evidencing the sale of one-piece keel coolers having rectangular headers since August 5, 1999.

12. All documents objecting to the design or configuration of the one-piece keel coolers having beveled fore and aft headers of Opposer.

13. All documents related to Applicant, or any person associated with Applicant or with any related company of Applicant objecting to any advertising, promotions, pictures, photographs or drawings of the one-piece keel cooler having beveled fore and aft headers of Opposer.

14. All documents relating to violations by R.W. Fernstrum & Company of the Settlement and Mutual Release Agreement signed by R.W. Fernstrum & Company, East Park Radiator & Battery Shop, Inc., Duramax, Inc., and Donovan Marine, L.L.C.

15. All documents relating to violations by East Park Radiator & Battery Shop, Inc., Duramax, Inc., and/or Donovan Marine, LLC of the Settlement and Mutual Release Agreement signed by R.W. Fernstrum & Company, East Park Radiator & Battery Shop, Inc., Duramax, Inc., and Donovan Marine, LLC.

16. All documents explaining or referring to why Opposer would or would not be able to show drawings or photographs of its one-piece keel coolers if the mark in application Serial No. 75/701,707 were registered.

17. All documents explaining or referring to why Applicant would or would not be bring suit upon Opposer for displaying and demonstrating Opposer's one-piece keel cooler if the mark in application Serial No. 75/701,707 were registered.

18. All documents explaining or referring to why Applicant would or would not be bring suit upon Opposer for trademark infringement for publishing photographs and/or drawings of Opposer's one-piece keel cooler if the mark in application Serial No. 75/701,707 were registered.

19. All surveys, market studies, competitive research and/or investigations relating to or referring to Applicant's keel cooler(s) that is the subject of the mark in application Serial No. 75/701,707.

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Applicant, which refers to, or in any manner mentions, Applicant's mark in application Serial No. 75/701,707.

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32. All "communications" between Applicant and any person concerning or relating to any investigation to be conducted by, or on behalf of, Applicant regarding trade or consumer perception of: (a) Applicant's keel cooler(s); or (b) Opposer's keel cooler.

Respectfully submitted,

Date: March 7, 2003

By:   
D. Peter Hochberg  
Reg. No. 24,603

D. PETER HOCHBERG CO., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 771-3800

DPH/ck

Attorney Docket DX-3 (#90545)

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

In the Matter of:

Application Serial No. 75/701,707

Mark: Drawing of a Marine Heat Exchanger

Published in the Official Gazette at Page TM 400 on May 9, 2000

DURAMAX MARINE, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 119,899
	)	
R.W. FERNSTRUM & COMPANY,	)	
	)	
Applicant	)	

NOTICE OF DEPOSITION

To: Samuel D. Littlepage, Esq. Via Facsimile/Mail Confirmation: 1 (202) 659-1559  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Attorneys for Applicant

PLEASE TAKE NOTICE that Opposer Duramax Marine, LLC, pursuant to Rule 30 of the Federal Rules of Civil Procedure, will take the deposition, upon oral examination, of Todd S. Fernstrum commencing on April 14, 2003, beginning at 9:00 o'clock, a.m., at the law office of Jonathan P. Barstow, P.C., 104 Sixth Ave., Menominee, Michigan, 49859 for use in the trial of the above-captioned matter. Such deposition is for use in preparation for trial in the above-captioned matter and such other purposes permitted by applicable rules.

D PETER HOCHBERG CO LPA

216 771 3804

03/07/03 18:46 :02

NO:213

The deposition will take place before a Notary Public or other officer authorized by law to administer oaths and will continue from day to day until completed, with such adjournments as to time and place as may be necessary or mutually agreed upon by counsel for the parties.

You are invited to attend and cross-examine the witness.

Dated this 7<sup>th</sup> day of March, 2003.

Date: March 7, 2003

By: 

D. Peter Hochberg  
Counsel for Opposer  
D. Peter Hochberg Co., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114  
(216) 771-3800

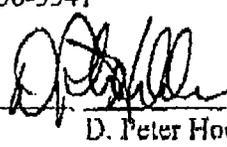
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Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3541

Date: March 7, 2003

By: 

D. Peter Hochberg

/Attorney Docket DX-3 (#90545)

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

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	)	
Opposer,	)	
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	)	
R.W. FERNSTRUM & COMPANY,	)	
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Applicant	)	

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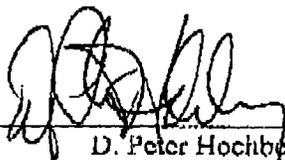
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Respectfully submitted,

Date: March 7, 2003

By:   
D. Peter Hochberg  
Reg. No. 24,608

D. PETER HOCHBERG CO., L.P.A.  
The Baker Building - 6<sup>th</sup> Floor  
1940 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 771-3800

DPH/ck