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I hereby certify that this document is being deposited with the United States Postal Service as First Class mail in an envelope addressed: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on the date noted below:

Date: November 15, 2004

  
Sean Mellino

**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	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION OF  
DAVID L. CULPEPPER PURSUANT TO 37 C.F.R. § 2.125(c)**

Opposer, Duramax Marine, LLC, by its attorneys, herewith files the certified transcript of the testimony deposition of David L. Culpepper taken in connection with this proceeding on May 12, 2004, along with Opposer's Exhibit Nos. 25 through 27, pursuant to Trademark Rule 2.123, 37 C.F.R. § 2.123. This transcript has been certified by the officer taking the deposition and it and the exhibits have been prepared for filing pursuant to Trademark Rule 2.123(f), 37 C.F.R. § 2.123(f).

Respectfully submitted,

Date: November 15, 2004

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/sm

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION OF DAVID L. CULPEPPER PURSUANT TO 37 C.F.R. § 2.125(c)" was served via first class, postage prepaid, U.S. mail upon:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3506

**ATTORNEYS FOR APPLICANT**

Date: November 15, 2004

By:   
D. Peter Hochberg

1 IN THE UNITED STATES PATENT AND  
2 TRADEMARK OFFICE BEFORE THE  
3 TRADEMARK TRIAL AND APPEAL BOARD  
4  
5

6 In the Matter of:

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

10 DURAMAX MARINE, LLC,  
11 Opposer

12 VERSUS

Opposition No.  
91119899

13 R.W. FERNSTRUM & COMPANY,  
14 Applicant

15

16

17 Deposition of **DAVID L. CULPEPPER, ESQ.,**  
18 400 Poydras Street, Suite 1710, New Orleans  
19 Louisiana 70114, taken in the offices of  
David M. Culpepper, L.L.C., 400 Poydras  
street, Suite 1710, New Orleans, Louisiana  
70114, on Wednesday, the 12th day of May,  
2004.

21

APPEARANCES:

22

23 D.PETER HOCHBERG CO., L.P.A.  
(BY: D. Peter Hochberg, Esq.)  
24 The Baker Building - 6th Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114

25

Counsel for The Opposer

**ORIGINAL**

1 DICKINSON & WRIGHT  
(BY: Marc A. Bergsman, Esq.)  
2 1901 I Street, N.W.  
Washington, D.C. 20036-3506

3 Counsel for The Applicant  
4

5

6 REPORTED BY:

7

8 MARIE THERIOT TORTORICH,  
Certified Court Reporter  
9 PROFESSIONAL SHORTHAND REPORTERS, INC.  
Pan-American Life Center  
10 601 Poydras Street - Suite 1615  
New Orleans, Louisiana 70130  
11 (504) 529-5255 (800) 536-5255

12

E X A M I N A T I O N I N D E X

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14

15 Examination by Mr. Hochberg..... 4

16 Examination by Mr. Bergsman..... 18

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E X H I B I T I N D E X

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19 Exhibit No. 25 - Opposer's Notice of  
Testimony Deposition of David M. Culpepper.

20

21 Exhibit No. 26 - Copy of Term Sheet.

22

23 Exhibit No. 27 - Settlement and Mutual  
Release Agreement.

24

\* \* \* \*

25

1                                   **DAVID CULPEPPER,**

2     after having been first duly sworn by the  
3     above-mentioned court reporter, did testify  
4     as follows:

5     EXAMINATION BY MR. HOCHBERG:

6             Q       Will you please identify  
7     Exhibit 25?

8             A       Yes.   It's a Notice of Testimony  
9     Deposition that you sent me by mail in this  
10    proceeding.

11            Q       Can you please give us your name  
12    and address?

13            A       Okay.  My name is David M.  
14    Culpepper, and my home address is 2417 State  
15    Street in New Orleans.  The zip is 70118.  
16    And the office address is suite 1710, 400  
17    Poydras Street, New Orleans 70130.

18            Q       Can you give us your education  
19    starting with high school?

20            A       Yes.  I graduated from high school  
21    from St. Martin's Episcopal School, which is  
22    in Metairie, Louisiana.  I went there for 12  
23    years, and I graduated from undergraduate  
24    school in 1973 from Louisiana State  
25    University in Baton Rouge.  B.A. in history,

1 I think. And I received a J.D. degree in  
2 1977 from Tulane University School of Law,  
3 and then took the Bar, was admitted to  
4 practice in Louisiana on October 7, 1977.  
5 I'm also admitted to practice in a few other  
6 courts in addition to Louisiana.

7 Q Did you represent Donovan Marine  
8 in its legal actions with the R.W. Fernstrum  
9 & Company?

10 A I did.

11 Q I will show you a document which I  
12 will first have marked as Exhibit 26 and I  
13 will ask if you will review that.

14 (Whereupon, a brief recess was taken.)

15 EXAMINATION BY MR. HOCHBERG:

16 Q My question is: Can you look at  
17 Exhibit 26, and if you're familiar with it,  
18 can you identify it?

19 A Yes, I am familiar with it. It is  
20 the Term Sheet that was executed by the  
21 parties to the Donovan/Fernstrum/East Park  
22 litigation, together with Duramax, to  
23 essentially set out in principal the  
24 settlement agreement that was reached.

25 Q Can you give us the background

1 behind the drawing up of the Term Sheet?

2 MR. BERGSMAN:

3 Objection. I believe this  
4 testimony is irrelevant.

5 THE WITNESS:

6 The Term Sheet was reached after  
7 about day and a half of trial in U.S.  
8 District Court, and at the conclusion of one  
9 witness, the Judge, District Judge suggested  
10 the parties revisit their settlement  
11 position. So we readjusted to my former  
12 law office at 755 Magazine Street, and  
13 throughout the course of the afternoon of  
14 May 5, 1999, this agreement was essentially  
15 confected and typed up in my office and  
16 signed by Paul Fernstrum in my presence on  
17 that date.

18 Q Can you review the document and  
19 let us know if there's any provision in  
20 there that would preclude Duramax from  
21 bringing the present opposition?

22 MR. BERGSMAN:

23 Objection. This is an agreement,  
24 so it's basically a legal document, so this  
25 is -- what you're asking is for a legal

1 conclusion. You're not asking him to  
2 testify as to about facts. The Board can  
3 look at this and reach the same conclusion  
4 that you're asking him to testify to, you're  
5 asking the witness to testify to. So you're  
6 just asking the witness to testify as to a  
7 legal conclusion, because an interpretation  
8 of a contract is a legal issue, not a  
9 factual issue.

10 MR. HOCHBERG:

11 Mr. Culpepper is the one who  
12 prepared the agreement and he's the one  
13 who's probably as able as anybody to testify  
14 as to what meaning there is to it, and I  
15 think his testimony will be very helpful to  
16 the Board when they review the Term Sheet.

17 THE WITNESS:

18 To answer your question, there's  
19 no provision in this Term Sheet that has any  
20 preclusive effect on Duramax challenging any  
21 sort of trademark application by Fernstrum.  
22 In fact, it was never discussed at the time  
23 this was confected. The subject just never  
24 came up.

25 EXAMINATION BY MR. HOCHBERG:

1 Q Can you review Exhibit 27 and see  
2 if you are familiar with it and, if so, can  
3 you identify it?

4 A I am familiar with it and I can  
5 identify it. It is the actual Settlement  
6 and Mutual Release Agreement entered into by  
7 the same parties that signed the Term Sheet  
8 as a formal settlement agreement to  
9 memorialize the agreement in principal as  
10 set forth in the Term Sheet.

11 The Term Sheet itself, Exhibit 26,  
12 was basically the bare bones, although very  
13 important bare bones, of the deal between  
14 the parties, and was actually signed and  
15 actually recited in front of the Court. It  
16 was filed, but it needed a more complete  
17 document, and so that's what Exhibit 27 is.

18 Q Who wrote Exhibit 26?

19 A Exhibit 26 was really -- was  
20 written as a result of the discussions  
21 between Mr. Littlepage for Fernstrum, myself  
22 on Donovan Marine's part, and Greg Smith for  
23 East Park Radiator, and you and Richard  
24 Gurst (phonetic) for Duramax. So there were  
25 discussions, there were agreements on the

1 various points and then those were  
2 transcribed and typed and proofread and  
3 finalized in my office.

4 Q Okay. Now, can you --

5 A Can I make one more point?

6 Q Please.

7 A Subsequent to signing, it was  
8 actually also filed of record in this  
9 consolidated civil action and has the file  
10 stamp of May 11, '99, at the direction of  
11 the District Judge. It was actually filed  
12 at my direction.

13 Q I think you started to -- I'm not  
14 sure if you finished identifying Exhibit 27.

15 A Like I said, it is the Settlement  
16 and Mutual Release Agreement that was  
17 executed by the parties in fulfillment of  
18 the arrangement set forth in the Term Sheet,  
19 Exhibit 26. I'm familiar with it.

20 Q Is there any provision in  
21 Exhibit 27 which would preclude Duramax from  
22 bringing the present opposition?

23 MR. BERGSMAN:

24 Again, I will object on the  
25 grounds that you're asking the witness to

1 give a legal conclusion rather than testify  
2 about facts.

3 MR. HOCHBERG:

4 Mr. Culpepper is testifying about  
5 the facts. He was largely responsible for  
6 preparing this document and he may be able  
7 to find provisions, or the lack thereof,  
8 that maybe someone would not be as ready or  
9 as capable of doing.

10 THE WITNESS:

11 In answer to your question, the  
12 answer is "No." There's nothing in here as  
13 there was nothing in the Term Sheet that  
14 would preclude Duramax from opposing a  
15 trademark application by R.W. Fernstrum.

16 This document, No. 27, Exhibit 27,  
17 was basically written by me. I took the  
18 shot, first shot at drafting this document,  
19 and much of this is very much the way I  
20 wrote it. It was circulated to  
21 Mr. Littlepage for Fernstrum, Greg Smith for  
22 East Park, I think you and Mr. Gurst for  
23 Duramax for comment, and there were a few  
24 things added in here, but there is nothing  
25 in here that would bar or purport to bar

1 Duramax from opposing any sort of trademark  
2 application as part of the settlement. It  
3 was simply not an issue and was never  
4 discussed, never came up. So, yes, I did  
5 write most of this. There's some of it in  
6 here that Mr. Littlepage may have added or  
7 you may have added, but it was primarily  
8 written in my office and came out of my  
9 office.

10 MR. HOCHBERG:

11 I have no further questions.

12 EXAMINATION BY MR. BERGSMAN:

13 Q Without waiving the objection  
14 about legal conclusion, Mr. Culpepper, I  
15 would like to direct your attention to  
16 Paragraph No. 11 on Page 7 of the agreement,  
17 Exhibit 27.

18 A Okay.

19 Q And in that agreement in  
20 provision, Paragraph No. 11, the agreement  
21 provides that Duramax and East Park will  
22 modify the design and configuration of their  
23 respective keel coolers to incorporate a  
24 beveled fore and aft header; is that  
25 correct?

1 A Yes.

2 Q And that they will limit, and then  
3 they will limit their use or they will limit  
4 their manufacturing and sales of keel  
5 coolers to those with beveled headers until  
6 Fernstrum no longer uses a header  
7 configuration with a vertical edge at the  
8 aft and fore of the headers?

9 A Uh-hum.

10 Q Were you able to get that? It's  
11 just Mr. Culpepper you said "um-hum"?

12 A I agree that was -- the beveled  
13 header discussion was a very significant  
14 part of the give and take between the  
15 parties in reaching this deal, not so much  
16 from the dominant end, but from the East  
17 Park, Duramax end, because we only sell, we  
18 don't manufacture. So, yeah, it was an  
19 agreement that these things would have  
20 beveled headers. And, to my knowledge,  
21 that's true today.

22 Q And I direct your attention to  
23 Paragraph 13, Page 8 of Exhibit No. 27, and  
24 in that provision, Paragraph No. 13, Duramax  
25 and East Park agreed that the advertising

1 for their keel coolers will clearly display  
2 the beveled ends of the header  
3 configurations?

4 A Yes. Subject to the restriction  
5 that obviously there were existing  
6 advertising materials and existing stock  
7 of -- I think that's covered in the other  
8 paragraph -- of keel coolers that had the  
9 square heads and that could -- the existing  
10 advertising material could still be used and  
11 the existing stock could still be sold, but,  
12 yeah, that's true.

13 The advertising going forward  
14 would show the beveled headers. And again,  
15 this was something that, except for the  
16 advertising part, I was a scribe on that,  
17 really. I was present when it was agreed to  
18 and tried to memorialize it.

19 Q And then your attention is  
20 directed to Paragraph No. 15 on Page 8.  
21 Actually, I'm more interested in the last  
22 sentence which carries over onto Page 9, and  
23 there parties agreed that nothing would  
24 preclude Fernstrum from seeking to register  
25 a two-dimensional design format of its

1 trademark logo featuring the one-piece keel  
2 cooler?

3 A Yes.

4 MR. BERGSMAN:

5 No more questions.

6 THE WITNESS:

7 It does say that.

8 MR. BERGSMAN:

9 No more questions.

10 (Whereupon, the deposition was  
11 concluded.)

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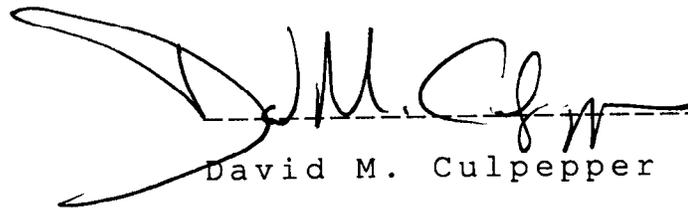
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WITNESS' CERTIFICATE

I have read or have had the foregoing testimony read to me and hereby certify that it is a true and correct transcription of my testimony with the exception of any attached corrections or changes.

  
David M. Culpepper

PLEASE INDICATE

( ) NO CORRECTIONS

CORRECTIONS; ERRATA SHEET(S) ENCLOSED

REPORTER'S CERTIFICATE

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I, MARIE T. TORTORICH, Certified Shorthand Reporter, do hereby certify that the above-named witness, after having been first duly sworn by me to testify to the truth, did testify as hereinabove set forth;

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or parties hereto, and not in any way interested in the outcome of this matter.

*Marie T. Tortorich*

-----  
MARIE THERIOT TORTORICH

Certified Shorthand Reporter



PROFESSIONAL SHORTHAND REPORTERS, INC.

ERRATA SHEET

WITNESS: DAVID L. CULPEPPER, ESQ.
DATE TAKEN: 05/12/2004
CASE CAPTION: DURAMAX MARINE, LLC VS R.W. FERNSTRUM & COMPANY
CASE NO.: 91119899
REPORTER: MARIE T. TORTORICH
JOB NUMBER: 1-37179

Table with 4 columns: PAGE #, LINE #, CORRECTION:, REASON FOR CORRECTION:. Contains handwritten entries for corrections on pages 6, 7, 9, and 11.

DATE: 6/3/04
\*IMPORTANT NOTES:

SIGNATURE: [Handwritten Signature]

PLEASE SIGN THE WITNESS CERTIFICATE LOCATED AT THE END OF THE TRANSCRIPT. ALSO, IF MAKING CORRECTIONS BE SURE TO INDICATE REASON FOR CORRECTIONS (CHANGING OR ADDING TO TESTIMONY, SPELLING, REPORTER'S ERROR, ETC.)

**PROFESSIONAL SHORTHAND REPORTERS, INC.**

**June 18, 2004**

**PROCES VERBAL**

**PARISH OF ORLEANS**

**STATE OF LOUISIANA**

**DURAMAX MARINE, LLC VS R.W. FERNSTRUM & COMPANY**

**CASE NO. 91119899**

I, Marie T. Tortorich, Certified Shorthand Reporter in and for the Parish of Orleans, State of Louisiana, do hereby depose and state that the following corrections to the deposition of, David L. Culpepper, have been submitted to me for attachment to said deposition.



Certified Shorthand Reporter

**CERTIFICATE OF MAILING**

I hereby certify that this document is being deposited with the United States Postal Service as First Class mail in an envelope addressed: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on the date noted below:

Date: November 15, 2004

  
Sean Mellino

**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	)	

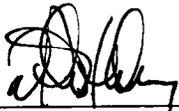
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION OF  
STEVEN GARVER PURSUANT TO 37 C.F.R. § 2.125(c)**

Opposer, Duramax Marine, LLC, by its attorneys, herewith files the certified transcript of the testimony deposition of Steven Garver taken in connection with this proceeding on May 12, 2004, along with Opposer's Exhibit Nos. 1, 2 and 8 through 11, pursuant to Trademark Rule 2.123, 37 C.F.R. § 2.123. This transcript has been certified by the officer taking the deposition and it and the exhibits have been prepared for filing pursuant to Trademark Rule 2.123(f), 37 C.F.R. § 2.123(f).

Respectfully submitted,

Date: November 15, 2004

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  
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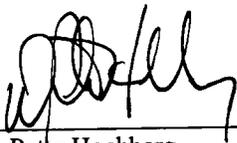
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION OF STEVEN GARVER PURSUANT TO 37 C.F.R. § 2.125(c)" was served via first class, postage prepaid, U.S. mail upon:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3506

**ATTORNEYS FOR APPLICANT**

Date: November 15, 2004

By:   
D. Peter Hochberg

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

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6 In the Matter of:

7 Application Serial No. 75/701,707  
8 Mark: Drawing of a Marine Heat  
9 Exchanger Published in the  
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on May 9, 2000

10 DURAMAX MARINE, LLC,  
11 Opposer

12 VERSUS Opposition No.  
91119899

13 R.W. FERNSTRUM & COMPANY,  
14 Applicant

15

16 Deposition of **STEVEN GARVER**, 3404 North  
17 Tunrball Drive, Metairie, Louisiana 70002,  
18 taken in the offices of David M. Culpepper,  
L.L.C., 400 Poydras street, Suite 1710, New  
19 Orleans, Louisiana 70114, on Wednesday, the  
12th day of May, 2004.

20 APPEARANCES:

21 D.PETER HOCHBERG CO., L.P.A.  
22 (BY: D. Peter Hochberg, Esq.)  
23 The Baker Building - 6th Floor  
24 1940 East Sixth Street  
Cleveland, Ohio 44114

25 Counsel for The Opposer

**ORIGINAL**

1 DICKINSON & WRIGHT  
(BY: Marc A. Bergsman, Esq.)  
2 1901 I Street, N.W.  
Washington, D.C. 20036-3506

3 Counsel for The Applicant  
4

5

6 REPORTED BY:

7

8 MARIE THERIOT TORTORICH,  
Certified Court Reporter  
9 PROFESSIONAL SHORTHAND REPORTERS, INC.  
Pan-American Life Center  
10 601 Poydras Street - Suite 1615  
New Orleans, Louisiana 70130  
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E X A M I N A T I O N I N D E X

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15 Examination by Mr. Hochberg..... 4

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Exhibit No. 1 - Opposer's Notice of  
Testimony Deposition for George K. McHugh.

Exhibit No. 2 - General information.

Exhibit No. 8 - Pictures of grid cooler.

Exhibit No. 9 - Opposer's Notice of  
Testimony Deposition of Steve Garver.

Exhibit No. 10 - Copy of ad for R.W.  
Fernstrum & Company in Passenger Vessel News  
magazine.

Exhibit No. 11 - Copy of ad for R.W.  
Fernstrum in Alaska Fisherman's.

\* \* \* \*

1                                   **STEVEN GARVER,**

2       after having been first duly sworn by the  
3       above-mentioned court reporter, did testify  
4       as follows:

5       EXAMINATION BY MR. HOCHBERG:

6                   Q       First, I'm going to show you the  
7       Notice of Deposition. This is Exhibit 9.  
8       I'm going to give you this, it's identical  
9       to what you have. Would you identify that,  
10      Exhibit 1?

11                  A       This is my notice of my subpoena  
12      to be here this morning.

13                  Q       It's not a subpoena.

14                  A       Okay. For me to be here this  
15      morning and talk to you guys. Got it, yes.

16                  Q       I'm going to stack the exhibits  
17      here just to keep them in order.

18                           Now, can you please give us your  
19      name and address?

20                  A       Steven Garver, 3404 North Turnbull  
21      Drive, Metairie, Louisiana 70002.

22                  Q       Can you give us a summary of your  
23      education starting with high school?

24                  A       I graduated from East Jefferson  
25      High School in 1973, and I got a Bachelor of

1 Science degree from Louisiana State  
2 University in December of '79.

3 Q Can you go through your work  
4 experience since you got out of college?

5 A When I was in college I started  
6 working in the marine industry back in '76.  
7 I started with a local outfit, Centers Boat  
8 Works. I've been -- except for a six-month  
9 period, I've been exclusively in the marine  
10 business since then. I have done sales,  
11 I've done shipyard level work where I was a  
12 drydock operator, crane operator, yard  
13 foreman, service manager. I've been a desk  
14 jockey now. I did that for a quite a few  
15 years. I've been backup behind a desk  
16 about -- I've been inside ten years now. I  
17 have been with Donovan Marine. I'm in my  
18 18<sup>th</sup> year. I was outside sales and I have  
19 been in charge of the Commercial Division  
20 for about eight or nine years now, maybe ten  
21 years.

22 Q In your course of your work  
23 experience, have you done work with keel  
24 coolers?

25 A Quite a few times.

1 Q Can you summarize the work that  
2 you have done with keel coolers?

3 A When I was in the yard level, I  
4 had dropped and installed a few keel coolers  
5 on different vessels, some were homemade  
6 pipe coolers. I did a few Walter coolers.  
7 On one occasion I did drop and rebed a  
8 Fernstrum cooler. That was on a little  
9 shrimp boat.

10 I did some repair on channel  
11 coolers, locating some pinhole leaks at one  
12 time. That's on the service level.

13 When I came with Donovan Marine, I  
14 got a lot more involved in selling coolers.  
15 When I came onboard with Donovan, we were  
16 both a Duramax Marine distributor and a  
17 Fernstrum distributor.

18 Q What kind of keel coolers did you  
19 sell for Donovan Marine?

20 A When I was with Donovan Marine, we  
21 sold Fernstrum coolers and Duramax coolers,  
22 and I don't recall selling any Walter. We  
23 were a Walter distributor, but I don't  
24 recall ever selling any.

25 For Duramax Marine, we sold both

1 demountable and their one-piece cooler.

2 Q And how about for Fernstrum?

3 A For Fernstrum, the only coolers I  
4 ever sold was their one-piece cooler.

5 Q How long did you sell Fernstrum  
6 coolers?

7 A I want to say until -- I think the  
8 judgment was in 1997. We had some problems  
9 with Fernstrum.

10 Q When did you start selling for  
11 Fernstrum?

12 A When I came onboard for Donovan in  
13 1997, that was about ten years that I sold  
14 Fernstrum.

15 Q I'm going to show you Exhibit 2,  
16 which this is the trademark application of  
17 Fernstrum. This is called a Bates number  
18 and it's 0069, and I'm going to ask if you  
19 can identify the images on that page?

20 A It's a one-piece keel cooler.

21 Q Is this a realistic version of a  
22 keel cooler?

23 A It's a line drawing. It's a  
24 pretty accurate depiction of a one-piece  
25 keel cooler.

1 Q Are there any artist renderings  
2 which would show anything different than  
3 being a realistic keel cooler on that image?

4 A Not to me. It's a relatively  
5 short rendition. "Short" meaning length  
6 between the nozzle nuts, because I don't see  
7 any support studs. The support studs are  
8 usually used on the longer units, so this  
9 is, just to my knowledge, a relatively short  
10 unit.

11 Q Is there any aspect on this image  
12 of Page 0069 of Exhibit 2 which is not an  
13 accurate representation of a one-piece keel  
14 cooler?

15 A I believe it's a pretty good  
16 rendition.

17 Q While you were selling Fernstrum  
18 keel coolers, did you ever understand that  
19 this image was their trademark?

20 A No, sir.

21 Q Did anyone at Fernstrum ever tell  
22 you that it was a trademark?

23 A No, sir.

24 Q Could this image be a keel cooler  
25 of another company other than Fernstrum?

1           A        Sure.  It could have been a  
2 DuraCooler, it could have been an East Park.

3           Q        I'm going to show you some  
4 exhibits, just a few.  I will mark this  
5 Exhibit 10.  This is Bates 78.  I will ask  
6 if you're familiar enough with that  
7 Exhibit 10 to identify it?

8           A        This is an R.W. Fernstrum Company  
9 ad.  I'm pretty sure I remember reading this  
10 when it was out of trade journals.

11          Q        Is there an image shown on that  
12 advertisement?

13          A        Yeah.  Screened in here behind  
14 "Built by Patti Shipyard," yeah.

15          Q        What is the image of?

16          A        That's a one-piece keel cooler.

17          Q        Is that a realistic version of a  
18 keel cooler?

19          A        Pretty much, yeah.  What I can see  
20 of it.  Once again, it's behind the writing,  
21 but, yeah, looks like a one-piece keel  
22 cooler to me.

23          Q        Okay.  I'm now going to give you  
24 Exhibit 11, and I will ask if you're  
25 familiar with it enough to identify it, and,

1 if so, to identify it.

2 MR. BERGSMAN:

3 What Bates is that one? Got it.

4 THE WITNESS:

5 This is another ad. I don't  
6 recall reading this when it came out in the  
7 journals, but, apparently, it's a an  
8 R.W. Fernstrum advertisement for a keel  
9 cooler.

10 EXAMINATION BY MR. HOCHBERG:

11 Q Have you seen that ad in other  
12 magazines?

13 A I may have. I don't recall, but  
14 I've seen ads very similar to this.

15 Q How long have you been reading  
16 trade journals in your business?

17 A Since I got in the industry back  
18 in 1976. I started reading -- Work-Boat was  
19 the first one I started reading.

20 Q Can you recognize an image in that  
21 advertisement?

22 A It's the same thing, showing the  
23 same one-piece keel cooler.

24 Q And to the extent that you can  
25 read it, does it look like an accurate

1 representation of a keel cooler?

2 A Pretty accurate. This is even a  
3 lesser copy than the last one, but, yeah, it  
4 looks like a one-piece keel cooler.

5 Q Why is it a lesser copy?

6 A I just can't see the bottom lines  
7 as well. It -- probably because it's been  
8 copied a few times and it's overwritten, but  
9 it looks like a one-piece keel cooler.

10 Q I'm going to show you three images  
11 and these are Exhibit 8, so I would like to  
12 show them to you and ask you if you can  
13 recognize those.

14 A Looks like it's probably a  
15 picture, a copy of a picture, and they look  
16 like the rectangular tubes on a one-piece  
17 keel cooler, but I'm not a hundred percent  
18 sure, but that's what it resembles to me.

19 Q Why do you think that?

20 A It just looks like the tubes.  
21 Looks like a picture of the tubes of a  
22 one-piece, but you can't see headers, so,  
23 once again, it could be anything, but kind  
24 of that's what it resembles to me.

25 MR. HOCHBERG:

1                   No further questions.

2           (Whereupon, a brief recess was taken.)

3           EXAMINATION BY MR. BERGSMAN:

4           Q           Donovan Marine is a distributor of  
5           marine products manufactured and sold by  
6           Duramax Marine?

7           A           Correct.

8           Q           And Donovan Marine promotes the  
9           Duramax DuraCooler?

10          A           Correct.

11          Q           And you're familiar with  
12          advertising and promotion that Duramax does  
13          for the Dura keel cooler?

14          A           I read the ads in the trade  
15          journals, correct.

16          Q           And the Duramax DuraCooler has  
17          beveled headers?

18          A           Correct.

19          Q           Duramax promotes the  
20          beveled-header design on its the DuraCooler?

21          A           That's one of the features of a  
22          DuraCooler.

23          Q           And Duramax promotes that feature?

24          A           Sure.

25          Q           Duramax promotes the efficiency of

1 the beveled-header design on the DuraCooler?

2 A They have.

3 Q And Duramax promotes the fact that  
4 its beveled-header design increases internal  
5 coolant flow?

6 A That's what I've been told, yes.  
7 I haven't done the testing, but Duramax  
8 tells me that it does. They tested it.

9 Q Duramax promotes the fact that its  
10 beveled-header design increases external  
11 seawater flow around the DuraCooler?

12 A I believe they do.

13 Q And Duramax promotes the fact that  
14 its beveled-header design reduces pressure  
15 drop?

16 A It may. Depending on the  
17 application.

18 Q To your knowledge, does Duramax  
19 promote the fact that it's beveled-header  
20 design reduces pressure drop?

21 A It does reduce pressure drop in  
22 certain applications. Just like all the  
23 other parameters, whether internal coolant  
24 flow and all the other. Depends on the  
25 exact application, because you got to match

1 the keel cooler to the engine to the boat.  
2 It's a lot of parameters, but in certain  
3 applications it will reduce pressure drop.

4 Q Now, listen to my question  
5 carefully, because I'm not asking you if the  
6 DuraCooler reduces pressure drop. I'm  
7 asking you does Duramax promote the fact  
8 that the beveled-header design reduces  
9 pressure?

10 A I believe they do.

11 Q Okay. And Duramax promotes the  
12 fact that its beveled-header design promotes  
13 optimum heat transfer efficiency?

14 A I believe so. I would have to go  
15 read an ad to get it word for word, but  
16 there are different reasons why they use the  
17 bevel head, correct.

18 Q And Duramax promotes the fact that  
19 the beveled-header design may reduce the  
20 size for the footprint of the cooler?

21 A The bevel head has nothing to do  
22 with the footprint.

23 Q Does Duramax promote the fact that  
24 its beveled-header design may reduce the  
25 size of the footprint of the keel cooler?

1           A       I don't know if they do. I don't  
2 think the bevel edge reduces the footprint.  
3 The bevel edge has nothing to do with the  
4 footprint. The footprint has to do with  
5 where the nozzle or flange is bolted up to  
6 the hull. The bevel edge does not reduce the  
7 footprint. So if they promoted it, they  
8 can, but I don't see how it does.

9           Q       Again, I'm not asking you whether  
10 it does or whether it doesn't. I'm asking  
11 you whether Duramax promotes that fact.

12          A       I don't think they do.

13          Q       Does Duramax promote the fact that  
14 its beveled-header design reduces cooling  
15 system costs?

16          A       I believe they do.

17          Q       Okay. And Duramax promotes the  
18 fact that its beveled-header design provides  
19 less drag?

20          A       Sure.

21          Q       And Duramax promotes the fact that  
22 its beveled-header design deflects debris  
23 away from the cooler?

24          A       Sure.

25          Q       And Duramax promotes the fact that

1 its beveled-header design promotes maximum  
2 strength?

3 A I believe so.

4 Q And Duramax promotes the fact that  
5 its beveled-header design provides maximum  
6 leak resistance?

7 A They may.

8 MR. BERGSMAN:

9 Okay. I have no more questions.

10 (Whereupon, the deposition was  
11 concluded.)

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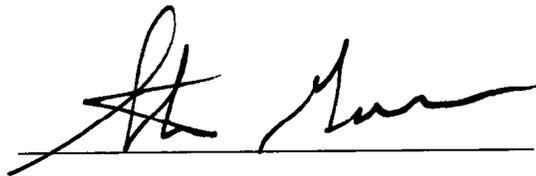
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WITNESS' CERTIFICATE

I have read or have had the foregoing testimony read to me and hereby certify that it is a true and correct transcription of my testimony with the exception of any attached corrections or changes.



Steven Garver

PLEASE INDICATE

( ) NO CORRECTIONS

( / ) CORRECTIONS; ERRATA SHEET(S) ENCLOSED

REPORTER'S CERTIFICATE

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I, MARIE T. TORTORICH, Certified Shorthand Reporter, do hereby certify that the above-named witness, after having been first duly sworn by me to testify to the truth, did testify as hereinabove set forth;

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or parties hereto, and not in any way interested in the outcome of this matter.

*Marie T. Tortorich*

-----  
MARIE THERIOT TORTORICH

Certified Shorthand Reporter





**PROFESSIONAL SHORTHAND REPORTERS, INC.**

**June 18, 2004**

**PROCES VERBAL  
PARISH OF ORLEANS  
STATE OF LOUISIANA**

**DURAMAX MARINE, LLC VS R.W. FERNSTRUM  
CASE NO. 91119899**

I, Marie T. Tortorich, Certified Shorthand Reporter in and for the Parish of Orleans, State of Louisiana, do hereby depose and state that the following corrections to the deposition of, Steven Garver, have been submitted to me for attachment to said deposition.

  
Certified Shorthand Reporter

**CERTIFICATE OF MAILING**

I hereby certify that this document is being deposited with the United States Postal Service as First Class mail in an envelope addressed: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on the date noted below:

Date: November 15, 2004

  
Sean Mellino

**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	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

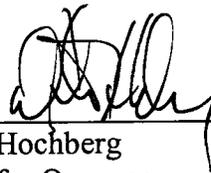
**OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION OF**

**GEORGE KYLE MCHUGH PURSUANT TO 37 C.F.R. § 2.125(c)**

Opposer, Duramax Marine, LLC, by its attorneys, herewith files the certified transcript of the testimony deposition of George Kyle McHugh taken in connection with this proceeding on May 12, 2004, along with Opposer's Exhibit Nos. 1 through 8, pursuant to Trademark Rule 2.123, 37 C.F.R. § 2.123. This transcript has been certified by the officer taking the deposition and it and the exhibits have been prepared for filing pursuant to Trademark Rule 2.123(f), 37 C.F.R. § 2.123(f).

Respectfully submitted,

Date: November 15, 2004

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  
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DPH/sm

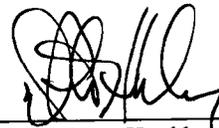
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION OF GEORGE KYLE MCHUGH PURSUANT TO 37 C.F.R. § 2.125(c)" was served via first class, postage prepaid, U.S. mail upon:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3506

**ATTORNEYS FOR APPLICANT**

Date: November 15, 2004

By:   
D. Peter Hochberg

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

4

5

6   In the Matter of:

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

10   DURAMAX MARINE, LLC,  
 Opposer

11

VERSUS

Opposition No.  
 91119899

12

13   R.W. FERNSTRUM & COMPANY,  
 Applicant

14

15

16                   Deposition of **GEORGE KYLE McHUGH**,  
 24429 Azaelea Street, Big Branch, Louisiana  
 17   70445, taken in the offices of David M.  
 Culpepper, L.L.C., 400 Poydras street,  
 18   Suite 1710, New Orleans, Louisiana 70114,  
 on Wednesday, the 12th day of May, 2004.

19

20   APPEARANCES:

21

22                   D. PETER HOCHBERG CO., L.P.A.  
 (BY: D. Peter Hochberg, Esq.)  
 The Baker Building - 6th Floor  
 23   1940 East Sixth Street  
 Cleveland, Ohio 44114

24

Counsel for The Opposer

25

ORIGINAL

1 DICKINSON & WRIGHT  
2 (BY: Marc A. Bergsman, Esq.)  
3 1901 I Street, N.W.  
4 Washington, D.C. 20036-3506

5  
6 Counsel for The Applicant

7  
8 REPORTED BY:

9 MARIE THERIOT TORTORICH,  
10 Certified Court Reporter  
11 PROFESSIONAL SHORTHAND REPORTERS, INC.  
12 Pan-American Life Center  
13 601 Poydras Street - Suite 1615  
14 New Orleans, Louisiana 70130  
15 (504) 529-5255 (800) 536-5255

16 E X A M I N A T I O N I N D E X

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18 Examination by Mr. Bergsman.....	28

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1                    E X H I B I T            I N D E X

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3

4    Exhibit No. 1 - Opposer's Notice of  
5    Testimony Deposition for George K. McHugh.

6

7    Exhibit No. 2 - General information.

8

9    Exhibit No. 3 - Copy of R.W. Fernstrum &  
Company ad from Work-Boat publication.

10

11    Exhibit No. 4 - Copy of R.W. Fernstrum &  
Company ad from Maritime Directory magazine.

12

13    Exhibit No. 5 - Copy of ad for R.W.  
Fernstrum & Company from Work-Boat and  
14    Passenger Vessel News.

15    Exhibit No. 6 - Copy of ad for R.W.  
Fernstrum & Company.

16

17    Exhibit No. 7 - Copy of ad for R.W.  
Fernstrum & Company in Work-Boat.

18

19    Exhibit No. 8 - Pictures of grid cooler.

20

21

22

23

24

25

1                                   **GEORGE KYLE McHUGH,**  
2     after having been first duly sworn by the  
3     above-mentioned court reporter, did testify  
4     as follows:

5     EXAMINATION BY MR. HOCHBERG:

6             Q       Mr. McHugh, I will be asking you  
7     questions during this testimony deposition.  
8     If for any reason you don't understand  
9     something I'm saying, please ask me to  
10    repeat it and I will try and do it so it  
11    will be clear. Everything that is being  
12    said today is going to be recorded, so we  
13    should try to keep the answers complete,  
14    since what will be observed later will be  
15    the transcript.

16            Now, I'm going to show you  
17    Exhibit 1 and ask if you could identify  
18    that.

19            A       It's the Notice of Deposition, of  
20    my deposition.

21            Q       Can you please give us your name  
22    and your address?

23            A       George Kyle McHugh, 24429 Azaelea  
24    Street, Big Branch, Louisiana 70445.

25            Q       Can you please tell us your

1 education starting with high school?

2 A Graduated from high school in 1965  
3 and went two years of college and went to  
4 work.

5 Q What college did you go to?

6 A Southeastern University, Hammond,  
7 Louisiana.

8 Q Can you go through your work  
9 experience?

10 A Let's see. 1969, I believe it  
11 was, I went to work for a manufacturer's rep  
12 firm in New Orleans. I went in as inside  
13 sales and clerical work. I worked with them  
14 for approximately 20 years. After I was  
15 there about, I guess ten years, I went into  
16 outside sales and started selling marine  
17 equipment.

18 Q What was the name of the first  
19 company you worked with?

20 A F.F. Tranchina Company.

21 Q What were the lines of goods that  
22 you were selling?

23 A Marine, different marine  
24 equipment, rope and anchors and compasses,  
25 marine related, all various types of marine

1 equipment, bearings and things of that  
2 nature, keel coolers.

3 Q And then when you went into  
4 business after that, what was the name of  
5 that company?

6 A McHugh & Associates.

7 Q What line of goods does that  
8 company sell?

9 A Also marine equipment, you know,  
10 winches and bearings, keel coolers, marine  
11 pilot chairs, anodes, sacrificial anodes,  
12 marine exhaust hose, all types of marine  
13 equipment.

14 Q Can you tell us what your  
15 experience is in selling -- well, keel  
16 coolers in general, how long have you been  
17 selling keel coolers?

18 A With both companies?

19 Q Yes.

20 A Oh, 20 years.

21 Q And what kind of keel coolers were  
22 these?

23 A Originally they were what they  
24 called demountable coolers manufactured by  
25 Johnson Rubber Company. It was a tube

1 cooler and it was a cooler that, you know,  
2 you could replace parts and change out, you  
3 could change out whole coolers, replace  
4 various parts, that type of thing.

5 Q Are there other kinds of keel  
6 coolers that you sell as well?

7 A At the present time I sell both,  
8 still the demountable cooler and the  
9 one-piece keel cooler that is manufactured  
10 now by Duramax Marine.

11 Q Are you familiar with the various  
12 trade publications that promote keel  
13 coolers?

14 A Magazines like Work-Boat,  
15 Fish-Boat, Maritime Reporter, these are  
16 magazines that I normally see regularly.

17 Q I'm going to show you an exhibit.  
18 This is the trademark application that's  
19 involved in the present opposition, and I  
20 guess we better make that an exhibit for  
21 this deposition as well. This is Serial No.  
22 75/701707.

23 MR. BERGSMAN:

24 Counselor, do you have a copy of  
25 that for me?

1 MR. HOCHBERG:

2 I don't have a copy of it, but I  
3 will show it to you. I didn't bring it with  
4 me.

5 MR. BERGSMAN:

6 Let me take a look at it. Are you  
7 going to use this in other depositions  
8 today?

9 MR. HOCHBERG:

10 Yes, I am.

11 MR. BERGSMAN:

12 Okay. Maybe at some point we  
13 should get an extra copy so that we can work  
14 with it.

15 EXAMINATION BY MR. HOCHBERG:

16 Q Okay. I'm going to show you what  
17 has been numbered Bates -- it's a kind of  
18 numbering system -- Bates 0069, and I will  
19 ask you if you can identify what's shown on  
20 this page?

21 A It's a single unit keel cooler.

22 Q When you say "single unit keel  
23 cooler," is that synonymous with another  
24 term that would be used for this type of  
25 keel cooler?

1           A       Well, there's different types of  
2 coolers.

3           Q       Are there other ways of describing  
4 what you just called a single type keel  
5 cooler?

6           A       Other descriptions?

7           Q       Just another name for this?

8           A       Grid cooler, keel cooler, heat  
9 exchanger.

10          Q       If it's all right, I just want to  
11 clarify the record for a little bit.

12                   MR. BERGSMAN:

13                   No. You ask him a question and he  
14 can answer the question.

15                   EXAMINATION BY MR. HOCHBERG:

16          Q       You described a keel cooler when  
17 you first started being deposed today and  
18 you used a different word other than single  
19 type. What did you call it? Single type  
20 keel cooler. I want to be sure that the  
21 record will show that you're talking about  
22 the same kind of keel cooler?

23          A       It's a one-piece cooler. It's not  
24 a multiple-piece cooler.

25          Q       Okay. And this is from the

1 trademark application, and so what you have  
2 identified is a picture of this keel cooler?

3 A Yes.

4 Q Now, how would you describe -- I'm  
5 going to call this an image. How would you  
6 describe this image of a keel cooler? Let  
7 me say that a little more clearly.

8 Does this picture have any kind  
9 of, is it a fanciful picture of the keel  
10 cooler or does it have any different  
11 characteristics?

12 MR. BERGSMAN:

13 Objection. It's a compound  
14 question.

15 EXAMINATION BY MR. HOCHBERG:

16 Q Does this image have any fanciful  
17 artist rendering in this image?

18 A No. Just look likes a keel  
19 cooler.

20 Q Is it a realistic version of a  
21 keel cooler or is it stylized in any way?

22 A No. It looks like a realistic  
23 picture of any keel cooler.

24 Q What do you think was the source  
25 of this image?

1 MR. BERGSMAN:

2 Objection. Calls for speculation.

3 MR. HOCHBERG:

4 I asked him what he thought it  
5 was.

6 MR. BERGSMAN:

7 It calls for speculation. He  
8 doesn't know where this came from.

9 MR. HOCHBERG:

10 My question was what is his  
11 thought. I didn't ask him whether he knew  
12 it for sure. I asked him what he thought it  
13 was.

14 MR. BERGSMAN:

15 Objection. Speculation.

16 EXAMINATION BY MR. HOCHBERG:

17 Q Can you answer the question?

18 A It's a drawing of a keel cooler,  
19 picture of a keel cooler.

20 Q When you look at this picture, at  
21 this image, what sources of keel cooler  
22 would you think this had come from, in other  
23 words --

24 A Could be East Park, Duramax,  
25 Fernstrum, could be any one of the three of

1 them.

2 Q That's as of today, which today is  
3 May 12, 2004. Was there any time where  
4 there would be a fewer number of producers  
5 of this type of keel cooler?

6 A A fewer?

7 Q Yes.

8 A Well, I would say probably before  
9 ten years ago there was only Fernstrum, as  
10 far as I knew, of a cooler of this type.  
11 I'm guessing, eight to ten years, something  
12 like that.

13 Q Is there any portion of this image  
14 which indicates that it comes from  
15 Fernstrum?

16 A Well, at this point, the Duramax  
17 and the East Park coolers have a slanted  
18 head, and as far as I know, Fernstrum still  
19 has a square head. But, I guess it would --  
20 you know, portrayed in this picture, you  
21 know, at that angle, a square head, as far  
22 as I know, would be Fernstrum, but prior to,  
23 you know, originally, I don't know how many  
24 years, but prior, everybody's head was  
25 square, all of them were the same.

1           Q       In your course of business, I  
2 presume that you go to trade shows; is that  
3 correct?

4           A       Yes.

5           Q       And you said that you also view  
6 trade journals?

7           A       Yes.

8           Q       If you were to see a keel cooler  
9 that had a bevel or a slanted header, is  
10 that something that you would recognize  
11 immediately?

12          A       Well, yeah, I would, if you could  
13 see the header, the slanted header, yeah.  
14 If it was in the position to see the slant,  
15 I would know it was either an East Park or a  
16 Duramax.

17          Q       Now, would there be times when --  
18 you said it was in a certain position, if  
19 you looked at it from a certain position,  
20 are there times when you would not realize  
21 that it was an East Park or a Duramax Marine  
22 keel cooler?

23          A       Well, yeah, there's times, like if  
24 it was up on a boat and it was 14 feet up in  
25 the air, on the bottom of a boat, you were

1 on drydock and you looked up, you weren't  
2 able to clearly see the ends, then you  
3 wouldn't necessarily be able to tell the  
4 difference.

5 Q How about leafing through trade  
6 journals?

7 A It would depend on whether you  
8 could see the slant. That's the only thing  
9 that would tell me it's a DuraCooler or an  
10 East Park.

11 Q I'm going to show you some, just a  
12 few publications just to give you a little  
13 background. These are publications that  
14 were provided to us during this discovery in  
15 opposition by Fernstrum and there's a list  
16 --

17 MR. BERGSMAN:

18 Objection. You're not testifying.

19 MR. HOCHBERG:

20 I'm just telling him what --

21 MR. BERGSMAN:

22 Objection. You're not testifying.

23 You should give him the documents, ask him  
24 if he can identify them. You don't need to  
25 explain to him or lay a foundation for him.

1 That's his job.

2 MR. HOCHBERG:

3 Unfortunately, what I have here  
4 are 296 exhibits, and I thought it would be  
5 easier, other than having him go through all  
6 of them, just to pick out some of them. I  
7 think it would be helpful for the record for  
8 him to know exactly what the source of these  
9 things are.

10 MR. BERGSMAN:

11 No, that's your testimony.

12 MR. HOCHBERG:

13 It's not my testimony. I'm  
14 telling him what the stack is.

15 MR. BERGSMAN:

16 I'm objecting to your testimony.  
17 I think you're tainting this testimony.

18 Also, counsel, do you have a copy  
19 of those for me?

20 MR. HOCHBERG:

21 No. I don't have a copy of them.  
22 I will make copies of those items that are  
23 going to be --

24 MR. BERGSMAN:

25 Let's take a break for a few

1 minutes and decide which ones you're going  
2 to use. Make copies, one to give to the  
3 witness that we can mark as an exhibit and  
4 one for you to use and one for me to use.

5 MR. HOCHBERG:

6 Let's take a break. I will make  
7 copies for all of the pages from this  
8 exhibit that will be used during this  
9 deposition.

10 (Whereupon, a brief recess was taken.)

11 EXAMINATION BY MR. HOCHBERG:

12 Q I'm going to show you Exhibit 3  
13 and ask if you are familiar with that for  
14 the purpose of identifying it?

15 A Yeah. I've seen this ad before.

16 Q And there's an image shown in that  
17 ad, there's some photographs --

18 MR. BERGSMAN:

19 Objection. I don't think a proper  
20 foundation has been laid.

21 EXAMINATION BY MR. HOCHBERG:

22 Q Can you please identify what  
23 Exhibit 3 is?

24 A It's a picture of a keel cooler.

25 Q How about the entire image that's

1 on Exhibit 3?

2 A Entire image?

3 Q Yes.

4 A Well, it's a picture of different  
5 style vessels that this cooler would be  
6 applicable to be used on.

7 Q Does that cooler, are there any  
8 like unusual characteristics on that cooler?

9 A No.

10 Q Is there any fanciful artist  
11 renditions on that image of the keel cooler?

12 A No. Not that I see.

13 Q Could you tell by looking at that  
14 image what kind of image it is?

15 A No. What kind of image? It's a  
16 picture. I mean --

17 Q What kind of picture is it?

18 A It's a picture of a cooler, of a  
19 keel cooler.

20 Q Is it a blueprint?

21 MR. BERGSMAN:

22 Objection.

23 EXAMINATION BY MR. HOCHBERG:

24 Q You can answer the question.

25 A I wouldn't know. To me, it's a

1 picture. That's the most I can say. It  
2 just looks like a picture to me.

3 Q Okay. I'm going to go to the next  
4 exhibit now. I will give you Exhibit 4 and  
5 I will ask you if you are familiar with it  
6 enough to identify it?

7 A Yes.

8 Q Can you identify what Exhibit 4  
9 is?

10 A It's an ad with a picture of a  
11 single-piece keel cooler used by this  
12 Washburn & Doughty on this boat.

13 Q Now, what company do you think  
14 made that keel cooler?

15 A Fernstrum.

16 Q How would you know that it's  
17 Fernstrum?

18 A Well, it says "Fernstrum" on the  
19 ad.

20 Q Now, if it did not say "Fernstrum"  
21 on the ad, in fact, if you just saw the  
22 image without any words around it at all,  
23 would you know which company made that keel  
24 cooler?

25 MR. BERGSMAN:

1                   Objection.   Calls for speculation.

2                   THE WITNESS:

3                   Without the picture, no, no.

4                   EXAMINATION BY MR. HOCHBERG:

5                   Q       No.   The picture has to be there.

6                   Without the words?

7                   A       Without the words, if it was just  
8                   that picture, no, I wouldn't.

9                   Q       What other companies could have  
10                  made that keel cooler?

11                  A       Well, Duramax could have made it  
12                  or East Park Radiator could have made it.

13                  Q       Now, I'm going to give you  
14                  Exhibit 5 and I will ask you if you can  
15                  identify both portions of Exhibit 5?

16                  A       Again, it's single-unit keel  
17                  coolers, pictures of coolers.

18                  Q       Can you identify what the top  
19                  portion of Exhibit 5 is?

20                  A       The top portion?

21                  Q       Well, the upper half of the page.

22                  A       The upper half, it's a picture of  
23                  a keel cooler.   A single-unit keel cooler.

24                  Q       And what company made that keel  
25                  cooler, can you tell by looking at that

1 advertisement?

2 A Well, because it says "Fernstrum  
3 Engineered Keel Cooling," I can, yeah.

4 Q If it did not say "Fernstrum,"  
5 would you know?

6 MR. BERGSMAN:

7 Objection. I don't think a proper  
8 foundation has been laid for Exhibit No. 5.

9 MR. HOCHBERG:

10 What's missing from the  
11 foundation?

12 MR. BERGSMAN:

13 Where he's seen it, when he's seen  
14 it, how he's seen it.

15 EXAMINATION BY MR. HOCHBERG:

16 Q For how many years have you been  
17 looking at trade publications in the marine  
18 business?

19 A 25 years.

20 Q In those 25 years, have you viewed  
21 images identical to both of those on  
22 Exhibit 5?

23 A I've seen images similar. I mean,  
24 I have seen many ads on keel coolers over  
25 those years. I can't say identical. You

1 know, I don't read every marine publication  
2 out there.

3 Q And over 25 years, that would be a  
4 lot to memorize, but you are familiar with  
5 this type of ad?

6 A Yeah. I've seen many of them.

7 Q How about the lower half of  
8 Exhibit 5, are you familiar with that  
9 advertisement?

10 A Yes.

11 Q And what image is shown on that  
12 lower portion of Exhibit 5?

13 A A keel cooler, a picture of a  
14 single-unit keel cooler.

15 Q Is that a realistic picture of a  
16 keel cooler or is it characterized in any  
17 way?

18 MR. BERGSMAN:

19 Objection. Compound question.

20 MR. HOCHBERG:

21 It's not a compound question.

22 MR. BERGSMAN:

23 Yes, yes, it's a compound  
24 question.

25 EXAMINATION BY MR. HOCHBERG:

1 Q Is that a realistic picture of a  
2 keel cooler?

3 A Yes, I think it's a realistic  
4 picture.

5 Q Is it a characterized picture of a  
6 keel cooler?

7 A I'm not quite sure I understand  
8 what you mean by "characterized."

9 Q Whoever made that picture, did  
10 they put any kind of features on it that are  
11 not part of an ordinary keel cooler?

12 MR. BERGSMAN:

13 Objection. Calls for speculation.

14 THE WITNESS:

15 No. I don't see anything special  
16 about it. Looks like just a regular cooler.

17 MR. HOCHBERG:

18 I don't think that that called for  
19 speculation. This witness understands keel  
20 coolers. He can look at a keel cooler and  
21 see whether or not there's anything unusual  
22 about it. I think that was a perfectly  
23 proper question.

24 EXAMINATION BY MR. HOCHBERG:

25 Q I'm now going to show you

1 Exhibit 6. This is Bates 000076. Now, are  
2 you familiar enough with that to identify  
3 it?

4 A As far as the ad?

5 Q Yes.

6 A I can't say, no, what publication,  
7 just that it's a cooler ad.

8 Q Have you seen ads identical to  
9 this, very similar to this?

10 A I've seen similar.

11 Q Could they have been identical to  
12 this?

13 A I guess they could have. I can't  
14 say that I have seen any identical to that.

15 Q What images are shown --

16 MR. BERGSMAN:

17 I object. I don't think a proper  
18 foundation has been laid for this exhibit.

19 EXAMINATION BY MR. HOCHBERG:

20 Q Where do you think you would have  
21 seen an ad like this, like Exhibit 6

22 A Either something like a Work-Boat  
23 magazine, Fish-Boat magazine, Passenger  
24 Vessel News, Waterways Journal, those are  
25 the publications I read, so that's why I'm

1 assuming that would have been where I would  
2 have seen it.

3 Q Can you identify the image shown  
4 in that advertisement of Exhibit 6?

5 A Yeah. It's a keel cooler.

6 Q And is this a realistic keel  
7 cooler?

8 A I believe so.

9 Q Is there anything that would make  
10 you think it is not a realistic keel cooler?

11 A No.

12 Q Thank you.

13 I'm going to show you Exhibit 7  
14 and ask if you are familiar enough with this  
15 advertisement to identify it?

16 MR. BERGSMAN:

17 What Bates number is that?

18 MR. HOCHBERG:

19 77, 000077.

20 THE WITNESS:

21 Yes. I've seen this ad before.

22 EXAMINATION BY MR. HOCHBERG:

23 Q And what is the advertisement  
24 from?

25 A From Work-Boat magazine.

1 MR. BERGSMAN:

2 Objection. I don't think a proper  
3 foundation has been laid and Work-Boat  
4 magazine is right there on the exhibit.

5 MR. HOCHBERG:

6 How else is a person going to  
7 identify an advertisement unless you can see  
8 where it came from? It's just like if  
9 someone saw an advertisement in the New York  
10 Times which appears week after week for  
11 years, and you ask the witness to identify  
12 which one it came from, how could he  
13 identify that? The only way he could do it  
14 is by having some indication where it came  
15 from.

16 This witness has testified that  
17 he's viewed this magazine and he's viewed it  
18 for many years, so I think a proper  
19 foundation was made.

20 EXAMINATION BY MR. HOCHBERG:

21 Q Can you please identify the image  
22 that's shown on Exhibit 7?

23 A It's a picture of a Fernstrum keel  
24 cooler.

25 Q How do you know it's a Fernstrum

1 keel cooler?

2 A It's says "Fernstrum Engineered  
3 Keel Cooling" right next to the cooler.

4 Q If those words were absent from  
5 that advertisement, in fact, if all you saw  
6 was the image there, would you know which  
7 company made that keel cooler?

8 MR. BERGSMAN:

9 Objection. Calls for speculation.

10 EXAMINATION BY MR. HOCHBERG:

11 Q Would you know?

12 A Couldn't say for certain, no.

13 Q Okay. Thank you.

14 I'm going back to Exhibit 2 now,  
15 and I have made copies of three pages of  
16 this trademark file.

17 MR. BERGSMAN:

18 Again, objection. Again, you're  
19 testifying instead of allowing the witness  
20 to testify.

21 MR. HOCHBERG:

22 I haven't made any -- I told him  
23 where the pages came from.

24 MR. BERGSMAN:

25 Fine. I'm objecting. I believe

1 you're testifying rather than letting the  
2 witness testify.

3 EXAMINATION BY MR. HOCHBERG:

4 Q Can you identify these three pages  
5 of Exhibit 8? This is Page 0111, 0112,  
6 0113, do you know what these are?

7 A It looks like tubes, I guess.  
8 Keel cooler tubes. It's hard to tell  
9 because of the photo. It's not real clear.

10 Q Why do you think they're keel  
11 cooler tubes?

12 A Well, it looks like the  
13 rectangular tubes and it looks like the rows  
14 of tubes that you would have on a cooler.  
15 But, I mean, like I said, it's not really a  
16 clear photo.

17 Q How do you know it's a photo?

18 A Or a copy. I guess I don't know.

19 Q How do you know that it came from  
20 a keel cooler?

21 A Well, I guess I don't know for  
22 sure. I'm just -- since this is what this  
23 deposition is about, I'm assuming, but, I  
24 mean, it's not in color. I can't clearly  
25 see. I'm just saying it looks like the rows

1 of tubes. But from those pictures I can't  
2 say positively that that's what it is.

3 Q You are testifying that you  
4 thought, initially thought that they were  
5 tubes because this is a trademark  
6 deposition. Suppose you just saw these  
7 tubes, not part of a trademark deposition,  
8 you just saw pictures like this in another  
9 context?

10 MR. BERGSMAN:

11 Objection. Calls for speculation  
12 and is irrelevant.

13 EXAMINATION BY MR. HOCHBERG:

14 Q You can answer the question.

15 A It just looks like just tubes.

16 MR. HOCHBERG:

17 That's the end of my questions.

18 MR. BERGSMAN:

19 Give me a minute or two.

20 (Whereupon, a brief recess was taken.)

21 EXAMINATION BY MR. BERGSMAN:

22 Q Mr. McHugh, you testified that  
23 you're a manufacturer's representative?

24 A Correct, yes.

25 Q An you have been a manufacturer's

1 rep for Duramax Marine?

2 A Actually, I worked for another  
3 company that represented Johnson Rubber,  
4 which was originally -- Duramax Marine  
5 bought Johnson Rubber, but I have  
6 represented Duramax Marine for 16 years.

7 Q And you're familiar with the  
8 advertising that Duramax Marine does for its  
9 keel coolers?

10 A Yes.

11 Q And the Duramax DuraCooler has  
12 beveled headers?

13 A Yes.

14 Q And Duramax Marine promotes the  
15 beveled-header design on its DuraCooler?

16 A Yes.

17 Q Duramax Marine promotes the  
18 efficiency of the beveled-header design on  
19 its keel cooler?

20 A Yes.

21 Q And Duramax Marine promotes the  
22 fact that it's beveled-header design  
23 increases internal coolant flow?

24 A Yes.

25 Q And Duramax Marine promotes the

1 fact that it's beveled-header design  
2 increases external seawater flow around the  
3 dura cooler?

4 A Yes.

5 Q And Duramax Marine promotes the  
6 fact that its beveled-header design reduces  
7 pressure drop?

8 A Yes.

9 Q And Duramax Marine promotes the  
10 fact that its beveled-header design provides  
11 optimum heat transfer efficiency?

12 A Yes.

13 Q And Duramax Marine promotes the  
14 fact that its beveled-header design may  
15 reduce the size for footprint of the keel  
16 cooler?

17 A Yes.

18 Q And Duramax Marine promotes the  
19 fact that its beveled-header design reduces  
20 cooling system costs?

21 A Yes.

22 Q And Duramax Marine promotes the  
23 fact that its beveled-header design provides  
24 better fuel efficiency?

25 A That's one I'm not sure of.

1 Q Okay. Duramax Marine promotes the  
2 fact that its beveled-header design provides  
3 less drag?

4 A Yes.

5 Q And Duramax Marine promotes the  
6 fact that its beveled-header design deflects  
7 debris away from the cooler?

8 A Yes.

9 Q And Duramax Marine promotes the  
10 fact that its beveled-header design provides  
11 maximum strength?

12 A I'm not familiar with that one.

13 Q Duramax Marine promotes the fact  
14 that its beveled-header design provides  
15 maximum leak resistance?

16 A Yes.

17 MR. BERGSMAN:

18 That's all my questions.

19 (Whereupon, the deposition was  
20 concluded.)

21

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25

WITNESS' CERTIFICATE

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George K. McHugh

14 PLEASE INDICATE

15 ( ) NO CORRECTIONS

16 (X) CORRECTIONS; ERRATA SHEET(S) ENCLOSED

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REPORTER'S CERTIFICATE

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I, MARIE T. TORTORICH, Certified Shorthand Reporter, do hereby certify that the above-named witness, after having been first duly sworn by me to testify to the truth, did testify as hereinabove set forth;

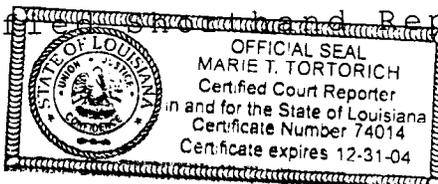
That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or parties hereto, and not in any way interested in the outcome of this matter.

*Marie T. Tortorich*

MARIE THERIOT TORTORICH

Certified Shorthand Reporter





**PROFESSIONAL SHORTHAND REPORTERS, INC.**

**May 27, 2004**

**PROCES VERBAL  
PARISH OF ORLEANS  
STATE OF LOUISIANA**

**Duramax Marine, LLC vs R.W. Fernstrum & Company  
CASE NO. 91119899**

I, Marie T. Tortorich, Certified Shorthand Reporter in and for the Parish of Orleans, State of Louisiana, do hereby depose and state that the following corrections to the deposition of, George McHugh, have been submitted to me for attachment to said deposition.

Marie T. Tortorich

Certified Shorthand Reporter

**CERTIFICATE OF MAILING**

I hereby certify that this document is being deposited with the United States Postal Service as First Class mail in an envelope addressed: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on the date noted below:

Date: November 15, 2004

Sean Mellino  
Sean Mellino

**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	)	

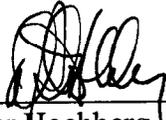
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION  
OF TODD P. BOUDREAUX PURSUANT TO 37 C.F.R. § 2.125(c)**

Opposer, Duramax Marine, LLC, by its attorneys, herewith files the certified transcript of the testimony deposition of Todd P. Boudreaux taken in connection with this proceeding on May 12, 2004, along with Opposer's Exhibit Nos. 1, 6 and 12 through 18, pursuant to Trademark Rule 2.123, 37 C.F.R. § 2.123. This transcript has been certified by the officer taking the deposition and it and the exhibits have been prepared for filing pursuant to Trademark Rule 2.123(f), 37 C.F.R. § 2.123(f).

Respectfully submitted,

Date: November 15, 2004

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/sm

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing “OPPOSER’S NOTICE OF FILING THE TESTIMONY DEPOSITION OF TODD P. BOUDREAUX PURSUANT TO 37 C.F.R. § 2.125(c)” was served via first class, postage prepaid, U.S. mail upon:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 “L” Street, N.W., Suite 800  
Washington, D.C. 20036-3506

**ATTORNEYS FOR APPLICANT**

Date: November 15, 2004

By:   
D. Peter Hochberg

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

4

5

6   In the Matter of:

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

10   DURAMAX MARINE, LLC,  
11   Opposer

11

12   VERSUS

Opposition No.  
91119899

12

13   R.W. FERNSTRUM & COMPANY,  
14   Applicant

14

15

16           Deposition of **TODD P. BOUDREAUX**, 4037  
17   Benton, Bourg, Louisiana 70343, taken in the  
18   offices of David M. Culpepper, L.L.C., 400  
19   Poydras street, Suite 1710, New Orleans,  
20   Louisiana 70114, on Wednesday, the 12th day  
21   of May, 2004.

19

20   APPEARANCES:

21

22           D.PETER HOCHBERG CO., L.P.A.  
23           (BY: D. Peter Hochberg, Esq.)  
24           The Baker Building - 6th Floor  
25           1940 East Sixth Street  
              Cleveland, Ohio 44114

24

25

Counsel for The Opposer **ORIGINAL**

1 DICKINSON & WRIGHT  
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5  
6 Counsel for The Applicant

7  
8 REPORTED BY:

9 MARIE THERIOT TORTORICH,  
10 Certified Court Reporter  
11 PROFESSIONAL SHORTHAND REPORTERS, INC.  
12 Pan-American Life Center  
13 601 Poydras Street - Suite 1615  
14 New Orleans, Louisiana 70130  
15 (504) 529-5255 (800) 536-5255

16 E X A M I N A T I O N I N D E X

17		Page
18		
19	Examination by Mr. Hochberg.....	4
20	Examination by Mr. Bergsman.....	21

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E X H I B I T I N D E X

Exhibit No. 1 - Opposer's Notice of  
Testimony Deposition for George K. McHugh.

Exhibit No. 6 - Copy of ad for R.W.  
Fernstrum & Company.

Exhibit No. 12 - Opposer's Notice of  
Testimony Deposition of Todd Boudreaux.

Exhibit No. 13 - Copy of advertisement for  
East Park Radiator & Batter Shop, Inc. in  
BellSouth Yellow Pages.

Exhibit No. 14 - Copy of ad for East Park  
Radiator & Batter Shop, Inc. in BellSouth  
Yellow Pages.

Exhibit No. 15 - Copy of ad for East Park  
Radiator & Battery Shop, Inc. in BellSouth  
Yellow Pages.

Exhibit No. 16 - Letter to Darryl J.  
Belanger from Samuel D. Littlepage, dated  
October 20, 1997, with attachments.

Exhibit No. 17 - Declaration of Todd  
Boudreaux in Support of Defendant's  
Opposition to Plaintiff's Motion for  
Temporary Restraining Order.

Exhibit No. 18 - Copies of photographs of  
grid coolers.

1                   **TODD PAUL BOUDREAUX,**  
2     after having been first duly sworn by the  
3     above-mentioned court reporter, did testify  
4     as follows:

5     EXAMINATION BY MR. HOCHBERG:

6           Q       I'm going to show you this  
7     document which is Exhibit 12 and ask if you  
8     can identify that?

9           A       Yeah. That's the deposition for  
10    me to appear.

11          Q       Can you please give us your name  
12    and address?

13          A       Name is Todd Paul Boudreaux, 4037  
14    Benton Drive, Bourg, Louisiana.

15          Q       Can you tell us your education?

16          A       I have a Bachelor of Science  
17    degree out of Nicholls State in Electrical  
18    Engineering Technology.

19          Q       When did you graduate?

20          A       1986.

21          Q       Can you give us your work  
22    experience during college, if you worked in  
23    college, and then up to the present time?

24          A       I started working for this company  
25    in high school, '78, 1978.

1 Q Which company?

2 A East Park Radiator. Then I worked  
3 on and off solid for the company parttime  
4 while I was in school and through on until I  
5 went through college, and then I stayed with  
6 the company after.

7 Q And has your position changed at  
8 the company over the years?

9 A Oh, yes. I started from the man  
10 that swept the floor and washed the parts  
11 all the way to the owner/president now.

12 Q How long have you been repairing  
13 one-piece keel coolers?

14 A Since the mid '80s.

15 Q I actually asked that incorrectly.  
16 Have you repaired the one-piece keel  
17 coolers?

18 A Yes.

19 Q And when did you say you started  
20 doing that?

21 A Mid '80s.

22 Q And have you continued doing that?

23 A Yes.

24 Q Has there been a period of time  
25 when you did not do it?

1 A No.

2 Q Did your company ever have any  
3 business with one-piece keel coolers besides  
4 repairing them?

5 A Prior to '97 -- repeat that  
6 question.

7 Q Let me ask you: In addition to  
8 repairing one-piece keel coolers, what other  
9 work have you done with one-piece keel  
10 coolers?

11 A We've manufactured them since '97.

12 Q Did East Park ever have an  
13 advertisement in the Yellow Pages regarding  
14 their one-piece keel coolers?

15 A Yes.

16 Q I'm going to ask that this be  
17 marked as Exhibit 13.

18 I'm going to show you Exhibit 13  
19 and ask you if you are familiar with it  
20 enough to identify it.

21 A That looks like our Yellow Page ad  
22 way before we started manufacturing keel  
23 coolers.

24 Q And what does the ad show?

25 A It shows a picture of a keel

1 cooler and a picture of our heat exchangers  
2 and just regular what all we do.

3 Q And now I'm going to show you  
4 Exhibit 14 and ask if you are familiar with  
5 it enough and see if you can identify that?

6 A It's another Yellow Page ad. It  
7 has another picture of a keel cooler in it  
8 with just probably a different Yellow Page  
9 ad. It's probably -- kind of looks like the  
10 Lafourche telephone directory.

11 Q When you say "the ad," this is on  
12 the record, so could you identify which  
13 company?

14 A East Park Radiators ad.

15 Q And I'm now going to show you  
16 Exhibit 15 and ask if you are familiar with  
17 this enough to identify it?

18 A That's another Yellow Page ad for  
19 East Park Radiator with another picture of a  
20 keel cooler heat exchanger, shows what we  
21 do.

22 Q For what period of time have you  
23 had ads in Yellow Pages like Exhibits 13, 14  
24 and 15?

25 A That started probably in the early

1 '90s, to my best recollection, up until  
2 right about the time we started  
3 manufacturing the keel cooler. We didn't  
4 realize we had the word "gridcooler" in  
5 there, and we found out it was copyrighted,  
6 and we agreed to pull it out, which did  
7 cause some litigation between us and R.W.  
8 Fernstrum.

9 Q Did R.W. Fernstrum ever contact  
10 you with respect to the Yellow Page ad?

11 A Through a letter from an attorney  
12 of theirs. It was Samuel Littlepage, I  
13 believe, is the attorney.

14 Q We'll mark this as Exhibit 16.  
15 Can you review Exhibit 16 and identify that,  
16 if you are able?

17 A That's the letter they sent me.  
18 They sent it to the president at the time  
19 but it was passed on to me.

20 Q Why was it passed on to you?

21 A Because, basically, I'm the one  
22 got all the headaches of the office.

23 Q So when you say you got the  
24 headaches for your office, you were  
25 responsible for taking care of whatever

1 problem arose?

2 A Exactly.

3 Q Can you read the first and fourth  
4 paragraph of that letter?

5 A "Gentlemen: We are trademark  
6 counsel for R.W. Fernstrum & Company, a  
7 Michigan corporation having its corporate  
8 headquarters in Menominee, Michigan. Our  
9 client, as you are probably aware, is well  
10 known for its external cooling systems used  
11 in connection with boat engines. Indeed,  
12 R.W. Fernstrum has been manufacturing and  
13 selling such cooling systems for over fifty  
14 years on a nationwide basis."

15 "Over the years, our client has  
16 extensively promoted the visual grid-like  
17 appearance of its marine cooling unit (see  
18 Exhibit B). As previously noted, the long  
19 and extensive use and promotion of the  
20 particular design has led it to acquire a  
21 'secondary meaning' or association between  
22 the product and a single manufacturing  
23 source -- namely, R.W. Fernstrum."

24 Q Can you review the attachments to  
25 this letter, starting with, these are called

1 Bates numbers, they're the page numbers. I  
2 want you to do each one in turn, but see  
3 whether you can identify each one of them  
4 that are attached to this letter. This  
5 would be Pages 1192 through 1211, if you can  
6 just look at them and see if you a familiar  
7 with them.

8 A Picture of a keel cooler.

9 Q Right.

10 A With a globe behind it, normally  
11 Fernstrum's ad.

12 There's another -- 1193, there's a  
13 picture of, looks like a keel cooler, some  
14 shadowing on it, photograph, another  
15 Fernstrum.

16 1194 look likes another picture of  
17 a keel cooler.

18 Q What kind of a picture is that?

19 A A keel cooler.

20 Q Is it a realistic picture?

21 A Basically it's a photograph or a  
22 copy of a picture, looks like to me.

23 Looks like the same picture in  
24 1195. That's kind of hard to say what that  
25 is, but it says "Fernstrum" up here, so I'm

1 assuming that's a keel cooler.

2 Q You have to say what page it is?

3 A 1196.

4 Q Now, what does that page show?

5 A It shows a one-piece keel cooler  
6 and it's R.W. Fernstrum & Company.

7 Q Why is the picture a little bit  
8 difficult to understand?

9 A It's all wrote all over. You can  
10 barely see it. There is another one, 1197,  
11 looks like another ad, has "R.W. Fernstrum."  
12 Or pretty well looks like an image or a  
13 picture of a keel cooler.

14 Q Okay.

15 A Same thing for 1198.

16 Again, 1199.

17 Q When you say "again"?

18 A It's like a picture or an image of  
19 a keel cooler -- I mean, shadowing.

20 That's another picture of a keel  
21 cooler with a globe.

22 Q What page?

23 A 1200.

24 1201, they have two pictures. One  
25 look likes the same picture we have been

1 looking at. The other picture is a  
2 different view of a keel cooler.

3 Q And what kind of images are these?

4 A Basically it looks like a copy of  
5 a picture.

6 Q You say "a copy of a picture,"  
7 what was the original picture? You say it's  
8 a copy of a picture, what was the original  
9 picture?

10 MR. BERGSMAN:

11 Objection. Calls for speculation.

12 EXAMINATION BY MR. HOCHBERG:

13 Q What kind of a picture is that?

14 A I don't --

15 Q Is it a realistic picture?

16 A Yeah. I guess it could be. I  
17 mean --

18 Q Actually, what is the top picture?

19 A The top picture up here, it's a  
20 keel cooler. It looks like an image of a  
21 keel cooler of some sort, with -- you know,  
22 it has some shadowing going on to enhance  
23 it.

24 Q How about the one below it, 1201?

25 A The one below is a different view

1 of a keel cooler. It's more of an image or  
2 an artist's sketch of it or something.

3 Q Is there anything, is it fanciful  
4 in any way?

5 A No. Figure 1202, Page 1202, it  
6 looks like another image or drawing, not  
7 fancy, however you want to say it, fanciful,  
8 or whatever, in any way to me. Just looks  
9 like a regular old keel cooler to me.

10 Q What number is that?

11 A Page 1203.

12 Page 1204, from what I can  
13 ascertain, it looks like the globe, probably  
14 that keel cooler in there, probably, again,  
15 the same picture.

16 1205, basically the same thing.

17 1206, same thing.

18 1207, keel cooler with a globe  
19 again.

20 Q How many keel coolers are showing  
21 on Page 1207?

22 A There's three of them. Basically  
23 two kind of look the same. The third one is  
24 at a different angle with a different  
25 looking globe.

1 Q Okay.

2 A Looks like another -- 1208 looks  
3 like another keel cooler image with a  
4 shadow, the same picture as the beginning.

5 1209 looks like the same picture  
6 in a different ad off to the side on here.  
7 I don't know what's off to the right of that  
8 ad.

9 1210 looks like that same cooler  
10 to me, keel cooler.

11 1211, I don't see no cooler at  
12 all. I don't see anything.

13 Q Okay. That was the attachment to  
14 the letter, Exhibit 16. Okay.

15 (Off the record discussion.)

16 EXAMINATION BY MR. HOCHBERG:

17 Q When you read Exhibit 16 before,  
18 in the fourth paragraph you referred to  
19 Exhibit B?

20 A Yes.

21 Q Now, can you find Exhibit B, it's  
22 attached to that letter, Exhibit 16?

23 A Exhibit B, yes.

24 Q Now, can you read the first three  
25 sentences of the paragraph that begins at

1 the bottom of page -- well, the first page  
2 of Exhibit 16, which is Bates No. 1189, just  
3 the first three sentences?

4 A "It has recently come to the  
5 attention of our client that your company is  
6 now manufacturing, selling and offering for  
7 sale a keel cooling unit that is a  
8 substantial 'knockoff' of our clients's  
9 product. In fact, persons who have viewed  
10 your 'knockoff' have erroneously --"

11 Q The first three sentences.

12 A "-- assumed that it originated  
13 with our client (or there was some  
14 connection between your company and R.W.  
15 Fernstrum). Compounding the damage caused  
16 by this confusion over the products'  
17 appearance is the Yellow Pages telephone  
18 advertising recently placed by your company  
19 (see Exhibit C).

20 Q Now, can you compare Exhibit C of  
21 the letter to Exhibits 13, 14 and 15, and  
22 let me know if those are the same or  
23 different?

24 A This one, are you talking about  
25 this one (indicating)?

1 Q Right.

2 A That's the same.

3 Q And let's go to the next one.

4 A I'm still on Exhibit C.

5 Q Okay. Can you tell me what  
6 Exhibit C shows?

7 A Exhibit C is a Yellow Page ad we  
8 were running in the Yellow Pages -- this  
9 looks like the Houma telephone directory --  
10 back from the early '90s on to approximately  
11 '97.

12 Q I will give you another exhibit  
13 and ask if you can review that exhibit and  
14 let me know if you can review it and see if  
15 you are familiar enough with it to identify  
16 it. This is Exhibit 17.

17 A That's a declaration I used in the  
18 first litigation between East Park and R.W.  
19 Fernstrum, a declaration of myself.

20 Q Can you read Paragraphs 1 and 4  
21 from your declaration?

22 A "My name is Todd Boudreaux, and I  
23 am Vice President and part owner of East  
24 Park Radiator and Battery Shop, Inc.,  
25 located at 801 Odette Street, Houma,

1 Louisiana 70763 (hereinafter 'East Park  
2 Radiator'). I have been employed by East  
3 Park Radiator since 1978."

4 Paragraph 4, "On or about  
5 October 23, 1997, Mr. Darryl J. Belanger,  
6 president of East Park Radiator, received a  
7 letter, together with a group of  
8 attachments, from an attorney, Samuel D.  
9 Littlepage, who represents R.W. Fernstrum &  
10 Co., accusing East Park Radiator of  
11 infringement of the registered trademark  
12 GRIDCOOLER owned by R.W. Fernstrum & Co.,  
13 its grid cooler visual logo, which as I  
14 understand is the subject of a trademark  
15 application, and the trade dress of the  
16 product which is the use of rectangular  
17 shaped tubing to create a 'grid-like'  
18 appearance. That letter is attached as  
19 Exhibit 1."

20 Q And is Exhibit 1 the same exhibit  
21 as what you just testified which we  
22 identified as Exhibit 16?  
23 (Off the record discussion.)

24 EXAMINATION BY MR. HOCHBERG:

25 Q Does Exhibit 1 from Exhibit 17,

1 your declaration, is that the same letter as  
2 Exhibit 16?

3 A Yes.

4 Q Can you read Paragraph 13 from  
5 your declaration, which is Exhibit 17?

6 A "I am also attaching photographs  
7 of my product, Exhibit 6, which I have  
8 labeled through lettering which shows that  
9 my DURAWELD keel cooler is constructed very  
10 similar in appearance to the Fernstrum  
11 gridcooler, all of the similarities being  
12 for functional reasons."

13 Q I'm going to give you Exhibit 6 --

14 MR. BERGSMAN:

15 Objection.

16 MR. HOCHBERG:

17 What's the objection?

18 MR. BERGSMAN:

19 You're telling him what you are  
20 giving him. Let him look at it and identify  
21 it.

22 EXAMINATION BY MR. HOCHBERG:

23 Q Exhibit 18, which has just been  
24 identified, is composed of four --

25 MR. BERGSMAN:

1                   Objection. Let him identify  
2 Exhibit 18.

3 EXAMINATION BY MR. HOCHBERG:

4           Q       Okay. Can you please review  
5 Exhibit 18 and identify what is shown in  
6 that exhibit?

7           A       It's a picture of our Duraweld  
8 keel cooler that we manufacture.

9           MR. BERGSMAN:

10                   May I take a look at Exhibit 18?

11           THE WITNESS:

12                   Around the year '97, to somewhere  
13 around '99, 2000.

14                   Off the record.

15           (Off the record discussion.)

16 EXAMINATION BY MR. HOCHBERG:

17           Q       I'm going to give you Exhibit 18  
18 and ask you if you can identify it?

19           A       That's a picture of a Duraweld  
20 keel cooler manufactured, '97 to  
21 approximately '99, 2000.

22           Q       Now, Exhibit 18 was also -- you  
23 see what it says?

24           A       Exhibit 6?

25           Q       Exhibit 6. And in your

1 declaration that you have just been reading  
2 from you referred to Exhibit 6?

3 A Right.

4 Q So now can you continue reading  
5 from your declaration and you can refer to  
6 Exhibit 18 as well.

7 MR. BERGSMAN:

8 Objection. He's got -- you've got  
9 Exhibit 17, you've identified it. So why  
10 don't you ask him questions about it instead  
11 of -- because it's already in the record. I  
12 didn't object to it. Why don't you just ask  
13 him questions about it, if you have some  
14 questions.

15 EXAMINATION BY MR. HOCHBERG:

16 Q All right. Let's go to the last  
17 two pages of Exhibit 18, which are Bates  
18 numbers 1242 and 1243, and I will ask if you  
19 can identify what's on those two pages.

20 A That is a picture of our Duraweld  
21 keel cooler that we manufactured. It shows  
22 the rectangular tubes, shows the threaded  
23 nozzles, shows the mounting hardware, shows  
24 the name, shows the sacrificial anodes. You  
25 can see the intermediate studs.

1 Q Okay. I'm going to show you an  
2 exhibit -- I will show you Exhibit 8 and ask  
3 if you can identify what that is?

4 A Don't look like much of nothing to  
5 me there. That was No. 113?

6 Q Right.

7 A 112, same thing.

8 111, kind of don't see nothing  
9 there. Could be a number of things.

10 MR. HOCHBERG:

11 That's the end of my questions.  
12 (Whereupon, a brief recess was taken.)

13 EXAMINATION BY MR. BERGSMAN:

14 Q Now, Mr. Boudreaux, you have been  
15 working for East Park Radiator since 1978?

16 A Yes, sir.

17 Q And East Park Radiator had been  
18 repairing Fernstrum grid coolers since as  
19 early as the time you first began working  
20 for East Park?

21 A Yes, sir.

22 Q And in your experience, the  
23 Fernstrum GRIDCOOLER is well known in the  
24 marine industry?

25 A Oh, yes.

1 Q East Park Radiator used the image  
2 of the Fernstrum GRIDCOOLER in its Yellow  
3 Page advertisements?

4 A Yes.

5 Q And East Park Radiator stopped  
6 using the image of the Fernstrum GRIDCOOLER  
7 in its advertising?

8 A Right.

9 Q East Park Radiator stopped using  
10 the image of the Fernstrum GRIDCOOLER in  
11 1997?

12 A Yes.

13 Q And East Park Radiator stopped  
14 using the Fernstrum GRIDCOOLER after  
15 Fernstrum objected to the use of that image?

16 A Right. Now, I don't know if I  
17 should say this, but, anyway, there was an  
18 ad put -- I'm not sure if it was '97 or  
19 '98 -- was put in there also by the Yellow  
20 Page people, made a mistake, but it wasn't  
21 by us.

22 Q Today East Park Radiator does not  
23 use the image of the Fernstrum GRIDCOOLER in  
24 its advertising?

25 A When you say "image," I mean, that

1 same image?

2 Q The image that we looked at in  
3 your exhibits that you previously testified  
4 about?

5 A No. Right now we don't have no  
6 image. We have pictures of keel coolers.

7 Q Now, East Park Radiator  
8 manufactures what is called a Duraweld keel  
9 cooler?

10 A Yes, it does.

11 Q And the Duraweld keel cooler has a  
12 beveled header?

13 A Not at first. Now it does. At  
14 first it did not.

15 Q Well, you implemented the design  
16 of the beveled header in 1999?

17 A Yes.

18 Q And East Park Radiator advertises  
19 that the beveled header improves the outside  
20 water flow around the keel cooler?

21 A East Park Radiator uses the bevel.  
22 It does streamline the cooler somewhat.

23 Q Do you advertise that it --

24 A I can't say if I do or not right  
25 now. I just don't know.

1 Q Does East Park Radiator advertise  
2 its Duraweld keel cooler?

3 A Not very much.

4 Q But you're not familiar -- are you  
5 familiar with the advertising that your  
6 company does?

7 A Somewhat familiar. But I don't  
8 remember it all, no. As per se, if that  
9 particular ad is in there or not, I don't  
10 know.

11 Q Do you know if East Park Radiator  
12 advertises that the beveled header improves  
13 the internal coolant inside the keel  
14 coolant?

15 A That's up to opinion, in my  
16 opinion.

17 Q In your opinion, does the beveled  
18 header improve the internal coolant inside  
19 the keel cooler?

20 A It depends what aspect you  
21 actually induce into it, and not all phases  
22 does it improve the efficiency.

23 MR. BERGSMAN:

24 I have no more questions.

25 (Whereupon, the deposition was

1 concluded.)

2

3

4

WITNESS' CERTIFICATE

5

6 I have read or have had the foregoing  
7 testimony read to me and hereby certify that  
8 it is a true and correct transcription of my  
9 testimony with the exception of any attached  
10 corrections or changes.

11

12

13

14

15

*Todd P. Boudreaux*

16

-----  
Todd P. Boudreaux

17 PLEASE INDICATE

18 (  ) NO CORRECTIONS

19 ( ) CORRECTIONS; ERRATA SHEET(S) ENCLOSED

20

21

22

23

24

25

REPORTER'S CERTIFICATE

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I, MARIE T. TORTORICH, Certified Shorthand Reporter, do hereby certify that the above-named witness, after having been first duly sworn by me to testify to the truth, did testify as hereinabove set forth;

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or parties hereto, and not in any way interested in the outcome of this matter.

*Marie T. Tortorich*

MARIE THERIOT TORTORICH

Certified Shorthand Reporter





**CERTIFICATE OF MAILING**

I hereby certify that this document is being deposited with the United States Postal Service as First Class mail in an envelope addressed: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on the date noted below:

Date: November 15, 2004

  
Sean Mellino

**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	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION OF  
PAUL MICHAEL BOUDREAUX PURSUANT TO 37 C.F.R. § 2.125(c)**

Opposer, Duramax Marine, LLC, by its attorneys, herewith files the certified transcript of the testimony deposition of Paul Michael Boudreaux taken in connection with this proceeding on May 12, 2004, along with Opposer's Exhibit Nos. 2, 8 and 19 through 24, pursuant to Trademark Rule 2.123, 37 C.F.R. § 2.123. This transcript has been certified by the officer taking the deposition and it and the exhibits have been prepared for filing pursuant to Trademark Rule 2.123(f), 37 C.F.R. § 2.123(f).

Respectfully submitted,

Date: November 15, 2004

By:   
D. Peter Hochberg  
Counsel for Opposer  
D. Peter Hochberg Co., L.P.A.  
The Baker Building – 6<sup>th</sup> Floor  
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DPH/sm

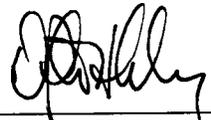
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "OPPOSER'S NOTICE OF FILING THE TESTIMONY DEPOSITION OF PAUL MICHAEL BOUDREAUX PURSUANT TO 37 C.F.R. § 2.125(c)" was served via first class, postage prepaid, U.S. mail upon:

Samuel D. Littlepage, Esq.  
Dickinson Wright PLLC  
1901 "L" Street, N.W., Suite 800  
Washington, D.C. 20036-3506

**ATTORNEYS FOR APPLICANT**

Date: November 15, 2004

By:   
D. Peter Hochberg

1 IN THE UNITED STATES PATENT AND  
2 TRADEMARK OFFICE BEFORE THE  
3 TRADEMARK TRIAL AND APPEAL BOARD  
4  
5

6 In the Matter of:

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

10 DURAMAX MARINE, LLC,  
11 Opposer

12 VERSUS

Opposition No.  
91119899

13 R.W. FERNSTRUM & COMPANY,  
14 Applicant

15  
16 Deposition of **PAUL MICHAEL BOUDREAUX**,  
17 425 Avenue I, Marrero, Louisiana 70072,  
18 taken in the offices of David M. Culpepper,  
19 L.L.C., 400 Poydras street, Suite 1710, New  
Orleans, Louisiana 70114, on Wednesday, the  
12th day of May, 2004.

20 APPEARANCES:

21 D.PETER HOCHBERG CO., L.P.A.  
22 (BY: D. Peter Hochberg, Esq.)  
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24 1940 East Sixth Street  
Cleveland, Ohio 44114

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25 Counsel for The Opposer

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3 1901 I Street, N.W.  
4 Washington, D.C. 20036-3506

5  
6 Counsel for The Applicant

7  
8 REPORTED BY:

9 MARIE THERIOT TORTORICH,  
10 Certified Court Reporter  
11 PROFESSIONAL SHORTHAND REPORTERS, INC.  
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13 601 Poydras Street - Suite 1615  
14 New Orleans, Louisiana 70130  
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16 E X A M I N A T I O N I N D E X

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18 Examination by Mr. Bergsman.....	32

19 \* \* \* \*

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1                    E X H I B I T            I N D E X

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Exhibit No. 2 - General information.

5

6

Exhibit No. 8 - Pictures of grid cooler.

7

8            Exhibit No. 19 - Opposer's Notice of  
Testimony Deposition of Paul Boudreaux.

9

10           Exhibit No. 20 - Copy of ad for R.W.  
Fernstrum & Company in Alaska Fisherman's  
11           newspaper.

11

12           Exhibit No. 21 - Copy of ad for R.W.  
Fernstrum & Company in Pacific Fishing  
13           magazine.

14

Exhibit No. 22 - Copy of ad for R.W.  
15           Fernstrum & Company.

16

Exhibit No. 23 - Copy of ad for R.W.  
17           Fernstrum & Company in Maritime Reporter  
18           magazine.

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19           Exhibit No. 24 - Copy of ad for R.W.  
Fernstrum & Company in PSGA magazine.

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1                   **PAUL MICHAEL BOUDREAU**,  
2     after having been first duly sworn by the  
3     above-mentioned court reporter, did testify  
4     as follows:

5     EXAMINATION BY MR. HOCHBERG:

6           Q       First I'm going to give you  
7     Exhibit 19 and just ask if you could  
8     identify that?

9           A       Okay. I mean, I've never seen it  
10    before. But I do identify it as -- okay,  
11    this is the order for me to take a  
12    deposition.

13          Q       Right. Can you please give us  
14    your name and address?

15          A       Paul M. Boudreaux, 425 Avenue I,  
16    Marrero, Louisiana 70072.

17          Q       And can you please give us your  
18    education, let's say, starting from high  
19    school?

20          A       Sure. High school was DeLaSalle  
21    High School in New Orleans through twelfth.  
22    And then during my tenure at DeLaSalle, I  
23    went to a vocational/technical school for  
24    welding and drafting and blueprint reading.  
25    Left there and went to Delgado for blueprint

1 reading, and that's when I went to work in  
2 the shipyard business thereafter.

3 Q When did you start working in the  
4 shipyard?

5 A Probably about 1984 on a part-time  
6 basis.

7 Q What was the name of the shipyard?

8 A That was Zito Metcalf Drydock,  
9 which was located in Kenner, Louisiana.

10 Q What did you do there, just in  
11 general terms?

12 A I was just a crane operator, press  
13 operator, kind of like a roustabout.

14 Q And when did you leave that  
15 position?

16 A In about '89, I left there.

17 Q Where did you go then?

18 A Harvey Canal Marine Repair, in  
19 which I played the role of the yard  
20 superintendent, and we had some drydocks and  
21 some marine railways, and I stayed there  
22 until about '94. '94 I went to Cody Marine,  
23 which is a shipyard located on the Harvey  
24 Canal, and I was the executive vice  
25 president over there from '94 until 2001,

1 and that's when I went out on my own and  
2 opened up Ashton Marine and have been in  
3 business at Ashton Marine since October of  
4 2001, as the owner and president.

5 Q Now, going back to your position  
6 before you went to Cody Marine, what was the  
7 name of that?

8 A Harvey Canal Marine Repair.

9 Q When you were at Harvey Canal  
10 Marine & Repair, did you work with keel  
11 coolers amongst your other jobs?

12 A Yeah, absolutely. In fact, even  
13 at Zito, the company before that, is when I  
14 started doing AKA boat work. And please  
15 keep in mind for the record, all of these  
16 shipyards, I was in the boat division for  
17 all of these shipyards. The first shipyard  
18 we named, Zito, they do a lot of barge work,  
19 but I just did boat work. And probably  
20 when -- you know, in the late '80s and early  
21 '90s, that's what I was doing a lot of, is  
22 keel cooler removals and reinstallations,  
23 repowers, retrofits, that type of stuff.

24 Q What kind of keel coolers were  
25 these?

1           A           Some were Fernstrum. Especially  
2 way back in those days, some of them were  
3 demountable Johnsons, some of them were a  
4 lot of channel iron coolers. In these boats  
5 that we have down in South Louisiana, they  
6 weld channel coolers to the hull, but they  
7 was mostly Fernstrum, I would say, would be  
8 the cooler.

9           Q           Now, this did -- I may be  
10 repeating your answer, but you said you did  
11 this at Zito. How do you spell Zito by the  
12 way?

13          A           Z-I-T-O.

14          Q           Did you continue that work at  
15 Harvey Canal Marine?

16          A           Correct. When we left Zito, we  
17 went there. At Zito we were limited to what  
18 we could do as far as the boat division.  
19 When we went to Harvey Canal Marine &  
20 Repair, it was more of a, strictly just  
21 emphasized on just boat repairs and boat  
22 refurbishments and repowers and stuff.

23          Q           So your work with keel coolers,  
24 was it the same there or less work?

25          A           Yes. Throughout my entire career,

1 I've been dealing with keel coolers, drydock  
2 master and what have you. I have probably  
3 done 3 to 4,000 drydockings, and which  
4 probably 2 to 3,000 boats have these coolers  
5 on them, or these type of coolers, whether  
6 it's Fernstrum or Dura Cooler or Duraweld,  
7 whatever you want to call them.

8 Q And do you still do that at your  
9 present position at Ashton Marine?

10 A Yes, I certainly do. In fact,  
11 I've removed some coolers this week on some  
12 vessels.

13 Q During any of your positions at --  
14 I think I got them right -- Zito, Harvey  
15 Canal Marine, Cody Marine and Ashton Marine,  
16 were you ever in any way associated with  
17 Duramax Marine?

18 A Absolutely not.

19 Q Were you ever in any way involved  
20 or affiliated with Johnston Rubber?

21 A No, sir.

22 Q Were you involved or affiliated in  
23 any way with R.W. Fernstrum & Company?

24 A No, sir. Again, I've done work  
25 with all of the guys, you know, from

1 Fernstrum to Dura Cool within these last few  
2 years for sizings and what have you, but no  
3 affiliation other than them being a vendor  
4 of mine.

5 Q Do you consider yourself to be a  
6 typical shipyard owner?

7 A Yes. Absolutely.

8 Q I will show you a document. Well,  
9 by looking at this document, can you tell  
10 what this is? This is a rather thick  
11 document, this is Exhibit 2.

12 A No.

13 Q Let me show you a little bit more.  
14 What I showed you just now is the cover  
15 page, which is just a printed document, just  
16 printed information on it. Then this is  
17 the -- I guess is the second page. It looks  
18 like a cover page, too. I'm just leafing  
19 through here now. Now I'm showing you Page  
20 0065. Can you tell what this document is by  
21 looking at that page?

22 A It looks like a trademark  
23 application, serial number, what have you.

24 Q Right. And can you read the  
25 serial number for me?

1           A        It's 75/701707.

2           MR. BERGSMAN:

3                   Object to this testimony. The  
4 witness can't identify the document. Proper  
5 foundation hasn't been laid for this.

6           MR. HOCHBERG:

7                   I'm not asking him to identify the  
8 document. I'm just leading up to -- I just  
9 want him to understand what he's testifying  
10 about.

11          MR. BERGSMAN:

12                   Fine. I object to the testimony.  
13 You're asking him questions about a document  
14 he can't identify. I don't think that's  
15 proper.

16          MR. HOCHBERG:

17                   He just testified just by reading  
18 the title of it it's a trademark  
19 application.

20          MR. BERGSMAN:

21                   Then he's not testifying based on  
22 his own knowledge.

23          MR. HOCHBERG:

24                   Well, I think he will be  
25 testifying based on his own knowledge once

1 we get to the application itself.

2 EXAMINATION BY MR. HOCHBERG:

3 Q I'm showing you Page 0069, can you  
4 identify what you see there?

5 A It looks like a heat exchange/grid  
6 cooler.

7 Q Can you explain in a little more  
8 detail what the image shows?

9 A It shows from my expertise, as,  
10 you know, having a lot of experience with  
11 removing and reinstalling grid coolers, it  
12 looks like a grid cooler to me.

13 Q GRIDCOOLER is a trademark. Is  
14 there another name you would use for it?

15 A Heat exchanger.

16 Q What other words could be used for  
17 this?

18 A It is a -- it thermally conducts  
19 the engine's coolant system, coolant circuit  
20 system.

21 Q There are different kinds of keel  
22 coolers?

23 A Correct.

24 MR. BERGSMAN:

25 Objection. You're testifying.

1 EXAMINATION BY MR. HOCHBERG:

2 Q Can you tell me the different  
3 kinds of keel coolers that exist for ships?

4 A As I said earlier, they have three  
5 of them that I know of that are on the  
6 market. One would be Duraweld, one would be  
7 Dura Cooler and one would be R.W. Fernstrum.

8 Q Now, my question was, what kind of  
9 keel coolers are there. You identified a  
10 type of -- I'm not sure exactly what you  
11 were identifying. What kind of keel cooler  
12 were you just referring to when you answered  
13 the last question?

14 A What -- I'm sorry, I didn't  
15 understand that.

16 Q What kind of keel coolers are  
17 there that are installed in ships, not the  
18 names, not the brand names.

19 MR. BERGSMAN:

20 Objection. You asked the  
21 question. Let him answer the question.

22 MR. HOCHBERG:

23 I'm clarifying the question. The  
24 question I was asking him was the kind of  
25 keel coolers as distinguished from the

1 brands of keel coolers or the trademarks for  
2 the keel coolers.

3 THE WITNESS:

4 I couldn't tell if that would be a  
5 cooler from any of the three.

6 EXAMINATION BY MR. HOCHBERG:

7 Q That's not my question. My  
8 question is: What types, not what brands,  
9 what names go with them, but what types of  
10 keel coolers could there be? You actually  
11 testified to this before.

12 A In other words, they have  
13 demountable coolers, they have channel  
14 coolers. This would be what I would call a  
15 grid cooler.

16 Q What other names would you use  
17 besides grid cooler?

18 A I mean, other than heat exchanger,  
19 I could use it as a DuraCooler, I could use  
20 it as a Duraweld cooler, I could use it as a  
21 Fernstrum cooler. In this picture, it just  
22 looks like a grid cooler to me. I wish I  
23 could tell you more.

24 Q And if we weren't doing this  
25 deposition, you probably would use some of

1 these terms all the time.

2 Let me ask you maybe a similar  
3 question. What kind of a keel cooler is  
4 this, not what brand, but what kind of keel  
5 cooler is it?

6 A It's a cooper nickel --

7 Q No, that's not what I was asking.  
8 Before -- you just testified and you said --  
9 I think you said there were channel keel  
10 coolers, demountable keel coolers, and I  
11 can't remember what the other keel cooler  
12 you said there was. There was another type  
13 of keel cooler you had mentioned. I'm just  
14 asking --

15 MR. BERGSMAN:

16 Objection. Asked and answered.

17 THE WITNESS:

18 Okay. Could we pull up the  
19 stenographer and see what it says?

20 EXAMINATION BY MR. HOCHBERG:

21 Q We could just answer it again, it  
22 might be faster.

23 I said that there was AKA heat  
24 exchanger, there was a cooler, there was  
25 a --

1           A       I get confused into the names,  
2 because I call one of them a Duraweld  
3 cooler, one of them a DuraCooler and one of  
4 them a Fernstrum cooler.

5           Q       But what I'm asking for is, that's  
6 a particular kind of a cooler?

7           A       Right.

8           Q       The things you just mentioned,  
9 what kind of cooler are those?

10          A       They're all for thermal conduction  
11 on engines.

12          Q       Were any of those demountable  
13 coolers?

14          A       Yeah.

15          MR. BERGSMAN:

16                    Objection. Leading question.

17          THE WITNESS:

18                    Johnson made a demountable cooler  
19 which has no similarities to this particular  
20 picture.

21          EXAMINATION BY MR. HOCHBERG:

22          Q       What kind of picture is this of?

23          MR. BERGSMAN:

24                    Objection. Asked and answered.

25          THE WITNESS:

1 I would say that would be a  
2 picture of a -- could be one of the three.  
3 I believe there's only three manufacturers  
4 of that type of a cooler.

5 EXAMINATION BY MR. HOCHBERG:

6 Q Does this cooler to you seem like  
7 a realistic image of a keel cooler?

8 A Absolutely.

9 Q Is it fanciful in any way?

10 A I don't understand the question or  
11 the term "fanciful."

12 Q Are there any characteristics that  
13 the person that made this picture added to  
14 it so that it would not be a realistic keel  
15 cooler?

16 A Not that I can -- I mean, to me,  
17 it's a sketch that was maybe even  
18 hand-drawn. But I cannot tell that from --  
19 it just looks like a regular demount -- I  
20 mean a regular one-piece dual nozzle. Let  
21 me see, it looks like a 12-tube grid cooler.

22 Q But you just used the words "one  
23 piece"?

24 A Correct.

25 Q Okay.

1           A           When I said "one piece," what I  
2           mean by "one piece" is, the Johnson  
3           demountable coolers have several removable  
4           components and removable parts and grommets  
5           and header plates and a lot of differentials  
6           that go into these. These one-piece coolers  
7           that are made by three manufacturers, all  
8           are one-piece grid coolers.

9           Q           If you were to see this picture,  
10          would you know what company made this  
11          particular grid cooler that's shown on Page  
12          0069?

13          A           Absolutely not.

14          Q           Do you regularly read trade  
15          publications?

16          A           Yes, sir, I do. In fact, I just  
17          had a full page write-up on my company about  
18          a refurbishment in the Waterways Journal,  
19          which is a national magazine for inland  
20          boats, and I think the -- I think it was the  
21          April 17<sup>th</sup> issue of that particular  
22          magazine.

23                        Yes, I do read Work-Boat,  
24          Waterways Journal. I read Maritime Reporter  
25          and what have you.

1 Q I'm going to give you Exhibit 20  
2 and ask if you can -- are you familiar  
3 enough with that to identify it?

4 A Well, in the reading below it says  
5 something about the Fernstrum GRIDCOOLER,  
6 but just by looking at the caption of the  
7 cooler, I cannot tell the difference between  
8 that and any other demountable cooler,  
9 one-piece demountable cooler.

10 MR. BERGSMAN:

11 Objection. Move to strike the  
12 answer, not responsive.

13 COURT REPORTER:

14 Question: "I'm going to give you  
15 Exhibit 20 and ask if you can -- are you  
16 familiar enough with that to identify it?"

17 EXAMINATION BY MR. HOCHBERG:

18 Q I will ask the question again.

19 My question was: First of all,  
20 can you identify that document which is  
21 Exhibit 20?

22 A Yes, I can identify it. It's an  
23 ad out of the Alaska Fisherman's newspaper.

24 Q Can you see an image on that?

25 A There's an image of a one-piece

1 grid cooler and, obviously, from the writing  
2 around the subscription, it looks to be, it  
3 has "Fernstrum" writing all over it, so it  
4 could be a Fernstrum cooler.

5 Q If the words were not there?

6 MR. BERGSMAN:

7 Objection. I don't believe a  
8 proper foundation has been laid for this  
9 document.

10 MR. HOCHBERG:

11 I asked him if he recognized the  
12 document and to identify it, and he did  
13 identify it.

14 MR. BERGSMAN:

15 You know what, on your exhibit you  
16 have Alaska Fisherman's right up there.

17 MR. HOCHBERG:

18 This was an exhibit that Fernstrum  
19 provided to us. What am I supposed to do,  
20 distort the document?

21 MR. BERGSMAN:

22 If you're asking him to identify  
23 the document and if you're asking him what  
24 it is, you can't be putting clues on it like  
25 that.

1 MR. HOCHBERG:

2 I didn't put the clue on it, you  
3 put the clue on it.

4 MR. BERGSMAN:

5 You asked us to provide you with  
6 documents of our use. We have provided  
7 those documents and we identified where they  
8 came from. Now you're asking this witness,  
9 who's not involved in this litigation, to  
10 come in, and as an objective third party,  
11 testify about things on this document, but  
12 yet you're giving him the clues, you're  
13 giving him information so that he can  
14 identify it. There's no way for me and  
15 there's no way for the Trademark Trial and  
16 Appeal Board to know whether he's  
17 identifying this document based on what he  
18 is seeing here where it says Alaska  
19 Fisherman's Newspaper or whether he's  
20 identifying this document based on his own  
21 knowledge and his own experience, testifying  
22 from what he has served and seen.

23 EXAMINATION BY MR. HOCHBERG:

24 Q I will ask the question  
25 differently. I don't think there's any

1 other way to present it because this was the  
2 way it was presented by Fernstrum. I'll ask  
3 the question this way.

4 Have you seen an ad like this in  
5 any of the publications you have seen?  
6 Ignore this business providing Alaska  
7 Fisherman's, have you seen this ad in  
8 other --

9 A Several publications.

10 Q Now, in this publication, or in  
11 this Exhibit 20, is there an image that you  
12 could identify?

13 A The only image that I can  
14 identify, other than the boat running  
15 through the water, would be the one-piece  
16 grid cooler.

17 Q Now, if the word "Fernstrum" there  
18 was deleted, would you know what kind of  
19 keel cooler that was?

20 MR. BERGSMAN:

21 Objection. Asking the witness to  
22 speculate.

23 THE WITNESS:

24 Well, as I said originally, you  
25 know, "Fernstrum" is written all over it,

1 so, obviously, that could be a Fernstrum  
2 cooler, but if you were to erase all of the  
3 "Fernstrum" stuff, I could not tell that  
4 cooler from any other cooler.

5 EXAMINATION BY MR. HOCHBERG:

6 Q Now, an objection was made that  
7 you were speculating. Do you think you were  
8 speculating when you gave that response?

9 A I don't think I'm speculating. If  
10 you guys looked at my experience, I don't  
11 think that I'm going to speculate when it  
12 comes to any type of grid cooler, keel  
13 cooler whatsoever, being that of my  
14 experience in the shipyard and the whole  
15 conception of looking at a grid cooler,  
16 telling you what it is, being able to count  
17 the tubes, and if it was to scale, I could  
18 even tell you what size it was.

19 MR. BERGSMAN:

20 I'm going to object to this  
21 testimony on the grounds that it's expert  
22 testimony and an expert witness hasn't been  
23 identified.

24 MR. HOCHBERG:

25 Mr. Boudreaux is not an expert.

1 He is a lay witness. He's testifying as the  
2 way he sees things. He's also said that  
3 he's been in the shipyard business for many  
4 years. I can go through a whole list of  
5 things that show that he was qualified to  
6 make his testimony as a lay witness. He's  
7 not referring to any scientific  
8 publications, any scientific facts. He's  
9 referring to his own experience and his own  
10 viewing of these exhibits.

11 THE WITNESS:

12 And I'm not making any opinions as  
13 well. I'm just giving you what I see. To  
14 be an expert, you have to have an opinion.

15 EXAMINATION BY MR. HOCHBERG:

16 Q I will show you Exhibit 21 and ask  
17 if you can, are you familiar with it enough  
18 to identify this exhibit, ignoring what's  
19 written across the top?

20 A Again, I see the same cooler,  
21 one-piece grid cooler.

22 MR. BERGSMAN:

23 Objection. Move to strike the  
24 answer on the grounds that it's not  
25 responsive. Also, I don't think proper

1 foundation has been laid for this testimony.

2 MR. HOCHBERG:

3 I asked the witness if he could  
4 identify this, if he's familiar enough with  
5 it to identify it, and he did identify it  
6 and he said he's seen it in trade  
7 publications.

8 MR. BERGSMAN:

9 I don't know that that was his  
10 testimony.

11 THE WITNESS:

12 That was my testimony. You can  
13 pull it up and see what I said. I read  
14 several publications.

15 EXAMINATION BY MR. HOCHBERG:

16 Q The image that is shown on  
17 Exhibit 21, how would you describe the image  
18 that's shown there?

19 A I would describe that as a  
20 one-piece dual nozzle, rectangular tubular  
21 with two headers grid cooler.

22 Q Okay. One of the problems that  
23 I'm having in producing exhibits that were  
24 supplied to us by Fernstrum is that the  
25 copies are so bad, that I can't understand

1 what they're showing. So I think I'm not  
2 going to ask you further questions with  
3 these exhibits.

4 A If I can say something for the  
5 record.

6 MR. BERGSMAN:

7 Actually, no. You have to be  
8 asked a question.

9 EXAMINATION BY MR. HOCHBERG:

10 Q Do you have a comment to make  
11 about the exhibits I've just shown you?

12 MR. BERGSMAN:

13 Objection.

14 THE WITNESS:

15 Yes, I do.

16 EXAMINATION BY MR. HOCHBERG:

17 Q I'm going to give to you Exhibits  
18 21, 20 and 21, and I'm also going to ask  
19 that the following exhibits be marked.  
20 (Off the record discussion.)

21 EXAMINATION BY MR. HOCHBERG:

22 Q Now, I'm going to ask a few  
23 additional questions.

24 First, I'm going to ask if you can  
25 tell me whether you are familiar enough with

1 this to identify Exhibit 22?

2 A Again, I'm very familiar with it.  
3 It's a grid cooler, several tube grid cooler  
4 with two nozzles, two nuts, one-piece unit.  
5 However, it has --

6 MR. BERGSMAN:

7 Objection. I don't believe that  
8 the testimony is responsive to the question.

9 MR. HOCHBERG:

10 I asked him to identify what the  
11 exhibit was and so that's what he's doing.

12 MR. BERGSMAN:

13 He's going way beyond that.

14 EXAMINATION BY MR. HOCHBERG:

15 Q That's enough. I will give you  
16 another exhibit and ask you if you can  
17 identify Exhibit 23. Just to identify  
18 whether or not you have seen it before and  
19 whether you can identify it?

20 A Exhibit 23, this is Maritime  
21 Reporter, which is a publication that I get  
22 on my desk every month, whenever they come  
23 out.

24 Q Is there an image on there that  
25 you can --

1           A           There's an image on it, but  
2 there's no way to tell what it is. This has  
3 probably been copied so many times, it's  
4 very difficult to even see. If you had a  
5 better copy, I might be able to.

6           Q           Can you identify Exhibit 22?

7           A           Yes. I can identify this. This  
8 is the same thing, a one-piece GRIDCOOLER  
9 with two nozzles, two header, nuts.

10          Q           Viewing all of the exhibits which  
11 you have looked at so far, which this would  
12 be Page 0069 from Exhibit 2, the images  
13 shown in Exhibits 21 through 24, are the  
14 images shown there, are they realistic views  
15 of one-piece keel coolers?

16          A           Absolutely.

17          Q           If the views shown on any of these  
18 exhibits, if they had a bevel on them, as  
19 you have testified to earlier that two  
20 companies have, would this be something that  
21 would be apparent to you in your ordinary  
22 viewing of these documents?

23                   MR. BERGSMAN:

24                           Objection. I think you have  
25 mischaracterized his testimony.

1 MR. HOCHBERG:

2 What did I mischaracterize?

3 MR. BERGSMAN:

4 I don't think he testified about  
5 any bevel.

6 MR. HOCHBERG:

7 I thought that he did.

8 EXAMINATION BY MR. HOCHBERG:

9 Q Well --

10 A I didn't.

11 Q You didn't, okay.

12 Well, let's go back a little bit.

13 You testified earlier that a  
14 one-piece keel cooler could be made by three  
15 different companies?

16 A Correct.

17 Q Now, looking at the products that  
18 are made by those companies today, would  
19 they be distinguishable to you in viewing  
20 them?

21 A It depends what view you look at  
22 them. Again, you know, I have a lot of  
23 experience removing and reinstalling these  
24 coolers and upsizing and repowering, so,  
25 therefore, you have to use larger one-piece

1 coolers, depending on what vessel you're  
2 repowering and what have you. So I've seen  
3 a lot of coolers from these three companies  
4 and I've been associated with sizings from  
5 all three companies and what have you. It  
6 would depend. In all honesty, the angles  
7 that you are showing me these coolers are  
8 all upside down angles with the nozzles  
9 facing up. There's no definitive way to --  
10 in all of these photos that you showed me,  
11 there's no definitive way to say that one is  
12 made by Company A, Company B or Company C.

13 Q What is the difference between  
14 Company A, Company B and Company C? Why  
15 don't you identify what A, B and C are?

16 A Company A would be East Park  
17 Radiator, which calls their cooler Duraweld.  
18 B would be R.W. Fernstrum Company's  
19 one-piece cooler. And then Company C would  
20 be DuraCooler, which I'm familiar with all  
21 three of them. Two of them have a 45-degree  
22 bevel on the header plates of each one. And  
23 from my engineering experience, those bevels  
24 cut down on the cavitation inside the  
25 cooler.

1           But from all of these pictures  
2   that you showed me, the way that the coolers  
3   are in place upside down, and which I'm  
4   going to call this term "upside down," and  
5   please understand this when I'm saying, you  
6   cannot tell because you can't see the  
7   bevels.

8           Q       I'm going to show you Exhibit 0069  
9   and ask whether there's any part of this  
10  image of the keel cooler that's shown here  
11  that is not a functional part of that keel  
12  cooler; in other words --

13          A       Okay. I totally understand the  
14  question.

15          Q       Is there any portion of that that  
16  is not functional?

17               MR. BERGSMAN:

18                   Objection. This is expert  
19  testimony.

20               MR. HOCHBERG:

21                   This is not expert testimony.  
22  This witness is testifying about his own  
23  perception, he's not referring to any  
24  scientific writings. He's testifying about  
25  something that he has seen and that he has

1 worked with, and he's talking about his own  
2 perception.

3 MR. BERGSMAN:

4 You're asking him to testify about  
5 some technical-based information and that  
6 becomes expert testimony, and no expert  
7 witnesses were identified, and I'm voicing  
8 my objection for the record.

9 I will reassert this objection  
10 when we write our brief on the case.

11 MR. HOCHBERG:

12 I think that objection is not well  
13 taken.

14 MR. BERGSMAN:

15 You're not -- you're an advocate.

16 MR. HOCHBERG:

17 I knew there was a reason.

18 THE WITNESS:

19 This flat bar would be the piece  
20 that would not be anything to do with the  
21 cooler.

22 EXAMINATION BY MR. HOCHBERG:

23 Q It does have a function, though?

24 MR. BERGSMAN:

25 I don't know what piece he's

1 referring to.

2 THE WITNESS:

3 It's the piece between the two  
4 nozzles, the flat bar that holds the  
5 rectangular tubes together. And, yes,  
6 that's the function, to hold the rectangular  
7 tubes together and it has no emphasis on the  
8 cooler as far as its operation other than  
9 holding the tubes together.

10 MR. BERGSMAN:

11 Also, I would like to object on  
12 the grounds that I don't believe a proper  
13 foundation -- no. No. Never mind. Strike  
14 that.

15 EXAMINATION BY MR. HOCHBERG:

16 Q I would like to ask if you can  
17 identify an exhibit I'm going to show you,  
18 Exhibit 8, and ask whether you can identify  
19 what's shown in Exhibit 8?

20 A That looks like a skid mark to me.

21 Q Okay.

22 MR. HOCHBERG:

23 No further questions.

24 EXAMINATION BY MR. BERGSMAN:

25 Q Are you related to Todd Boudreaux?

1 A Absolutely not.

2 Q Have you ever worked for East Park  
3 Radiator?

4 A No, sir.

5 Q In your opinion, is the Fernstrum  
6 GRIDCOOLER well known in the marine  
7 industry?

8 A I don't think I'm an expert  
9 witness where I can have an opinion.

10 Q You can answer my question.

11 In your opinion, is the Fernstrum  
12 GRIDCOOLER well known in the marine  
13 industry?

14 A Well, considering the other guys'  
15 coolers have only been out for three years,  
16 I would say Fernstrum is the most well known  
17 in the marine industry.

18 Q Are you familiar with any  
19 advertising that Duramax has done for its  
20 DuraCooler?

21 A I read different publications and  
22 I see a lot of advertisements and what have  
23 you. I mean, again --

24 Q Are you aware of the fact that the  
25 Duramax DuraCooler has a beveled header?

1 A Yes, I am.

2 Q Are you aware that Duramax  
3 advertises that the beveled header improves  
4 the outside water flow around the keel  
5 cooler?

6 A I wouldn't say that. I would say  
7 it improves the cavitation from -- I would  
8 say that -- again, I would just say that it  
9 improves the cavitation in the inside  
10 because it allows the water to flow through  
11 rather than cavitate in the corner.

12 Q Okay. But my question, listen  
13 specifically.

14 Are you aware that Duramax  
15 advertises that the beveled header improves  
16 the outside water flow around the keel  
17 cooler?

18 A I'm sure I read it.

19 Q Are you aware that Duramax  
20 advertises that the beveled header improves  
21 the internal flow around the cooler?

22 A Yes. I read the publications.

23 Q Okay. Are you aware that Duramax  
24 advertises that the beveled header improves  
25 the pressure drop?

1           A       Absolutely.

2           Q       Are you aware of the fact that  
3 Duramax advertises that the beveled header  
4 optimizes the heat transfer efficiency of  
5 the keel cooler?

6           A       In the publications?

7           Q       I'm asking you if you are aware  
8 that Duramax advertises that fact?

9           A       Yes, yes. Absolutely.

10          MR. BERGSMAN:

11                   No more questions.

12                   (Whereupon, the deposition was  
13 concluded.)

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WITNESS' CERTIFICATE

I have read or have had the foregoing testimony read to me and hereby certify that it is a true and correct transcription of my testimony with the exception of any attached corrections or changes.

  
Paul M. Boudreaux

10-30-04

PLEASE INDICATE

NO CORRECTIONS

CORRECTIONS; ERRATA SHEET(S) ENCLOSED

REPORTER'S CERTIFICATE

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I, MARIE T. TORTORICH, Certified Shorthand Reporter, do hereby certify that the above-named witness, after having been first duly sworn by me to testify to the truth, did testify as hereinabove set forth;

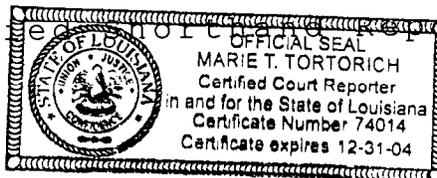
That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or parties hereto, and not in any way interested in the outcome of this matter.

*Marie Theriot Tortorich*

-----  
MARIE THERIOT TORTORICH

Certified Shorthand Reporter



**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	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**TRIAL TESTIMONY DEPOSITION EXHIBITS**

The following exhibit numbers 1 – 27 pertain to the trial testimony depositions of Todd P. Boudreaux, Paul Michael Boudreaux, George Kyle McHugh, Steven Garver and David L. Culpepper taken in connection with the above-referenced proceeding.

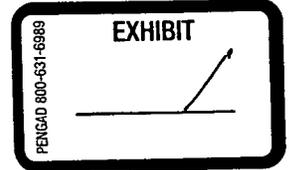
**Original documents were not bound  
due to limited left margins (holes  
would have punched through text).**

**All of our binding methods require  
hole punching on the left.**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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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. )  
 )  
R.W. FERNSTRUM & COMPANY, )  
 )  
Applicant )

Opposition No. 91119899

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**OPPOSER'S NOTICE OF TESTIMONY DEPOSITION**

Please take notice that, pursuant to Trademark Rule 2.123(c), Opposer Duramax Marine, LLC, by its attorney, will take the testimony deposition upon oral examination of Kyle McHugh, a manufacturer's representative for marine equipment of 24429 Azalea Street, Big Branch, Louisiana 70445, on May 12, 2004 at 10:00 a.m. at the Office of David M. Culpepper, L.L.C., 400 Poydras Street, Suite 1710, New Orleans, Louisiana, 70114.

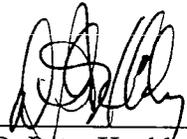
The deposition shall take place before a certified court reporter and shall continue until completed. The deposition shall seek background information about the deponent, the deponent's identification of documents, the deponent's testimony regarding the proposed trademark of Application Serial No. 75/701,707, the proposed trademark of Application Serial No. 75/701,707's relationship to keel coolers, and the deponent's testimony on the keel cooler industry.

You are invited to attend and cross-examine.

Date: April 28, 2004

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

Respectfully submitted,

By:   
\_\_\_\_\_  
D. Peter Hochberg  
Counsel for Opposer

**CERTIFICATE OF SERVICE**

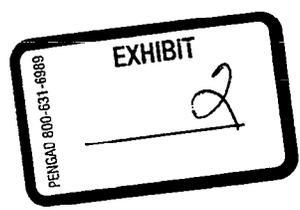
The undersigned hereby certifies that the OPPOSER'S NOTICE OF TESTIMONY DEPOSITION is being served by regular U.S. Mail, postage prepaid, to counsel for Applicant, Samuel D. Littlepage, Dickinson Wright PLLC, 1901 L Street, N.W. – Suite 800, Washington, D.C. 20036-3506, on the date shown below.

Date: April 28, 2004

Sean Mellino  
Sean Mellino



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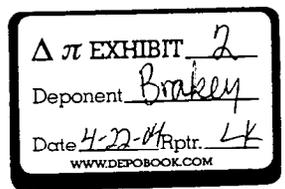
GENERAL INFORMATION

SER NO 75/701707 REG NO 0000000 FIL DT 05/10/1999 REG DT  
EXAMINING ATTORNEY LAW OFFICE CHLO LOCC 650 LOC DT 03/27/2000  
ALT, JILL C. 114 CHEM STAC 802 STA DT 06/21/2000  
MARK MISCELLANEOUS DESIGN CLASS CT 01  
INT CL 040 DRAW 2 REGISTER PRINCIPAL  
US CL 100 103 106 SEC. 2F AMDED TO  
GOODS/ (040) - MANUFACTURE OF MARINE HEAT EXCHA MK TYPE SM  
SERVICES NGERS TO THE ORDER AND SPECIFICATION OF ABAN DT  
OTHERS CAN DT  
OWNER R. W. Fernstrum & Company PUB DT 05/09/2000  
TTAB REPORTED LOST  
OWNER Menominee TTAB PROCEEDING- NO  
ADDRESS MICHIGAN 498580097 SEC 8 NO  
PROSECUTION HISTORY SEC 15 NO  
008 06/09/00 EXTENSION OF TIME TO OPPOSE FILED REPLY 12C NO  
007 05/09/00 PUBLISHED FOR OPPOSITION 1ST USE  
006 04/08/00 NOTICE OF PUBLICATION 00/00/1975-040  
005 02/17/00 APPROVED FOR PUB - PRINCIPAL REGISTER 1ST USE COM  
004 12/22/99 COMMUNICATION RECEIVED FROM APPLICANT 00/00/1975-040  
003 11/05/99 NON-FINAL ACTION MAILED  
002 10/27/99 ASSIGNED TO EXAMINER NO. 068113

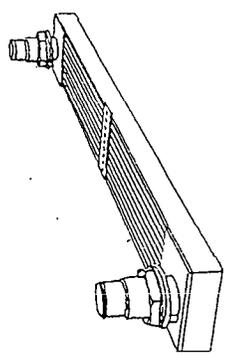
LOCATION-STATUS INFORMATION

SER NO 75/701707 REG NO 0000000 FIL DT 05/10/1999 REG DT  
EXAMINING ATTORNEY LAW OFFICE CHLO LOCC 650 LOC DT 03/27/2000  
ALT, JILL C. 114 CHEM STAC 802 STA DT 06/21/2000  
MARK MISCELLANEOUS DESIGN CLASS CT 01  
TTAB REPORTED LOST

LOC PUBLICATION AND ISSUE SECTION  
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STATUS REQUEST FOR EXTENSION OF TIME TO FILE OPPOSITION  
ITU EXMNR. ALLOWANCE NOTICE DATE  
PUBLICATION DATE 05/09/2000 ABANDONMENT DATE  
TTAB PROCEEDINGS  
06/09/00 EXTENSION OF TIME TO OPPOSE FILED



75-701707



LAW OFFICE 102

PRINCIPAL

ATTORNEY ADVISOR: ALT

Examining Attorney—(Please Print Name) <u>EDWARD C. ALT</u>	Date Published in Trademark O.G. <u>PUBLISHED</u> <u>05/09/00</u>
Approved for Publication (Principal Register)—(Signature) <u>[Signature]</u> <u>2-17-00</u>	
Approved for Registration (Section 1(d))—(Signature)	
Approved for Registration (Supplemental Register)—(Signature)	Section 9 Renewal Accepted—(Signature)

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TRADEMARK



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New Case

NOV 25 1999

OCT 26 1999

Law Office 112

LAW OFFICE Entry

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*Amend A, encls* FEB 8 2000 *cl*

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\*\*\* User: jalt \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	"75701707"[sn]
02	1	0	1	1	0:01	"75715815"[sn]
03	409	N/A	0	0	0:01	"130325"[dc]
04	490	N/A	0	0	0:01	"150925"[dc]
05	2	2	0	0	0:01	3 and 4
06	697457	N/A	0	0	0:03	"040"[cc]
07	76	44	32	32	0:01	3 and 6
08	93	41	51	51	0:01	4 and 6
09	1738	N/A	0	0	0:01	"heat exchangers" [gs]
10	979964	N/A	0	0	0:04	applicant [on]
11	1310	N/A	41	41	0:01	9 not 10

Session started 11/5/99 10:53:27 AM  
Session finished 11/5/99 11:11:35 AM  
Total search duration 0:16 minutes  
Session Duration 18:08 minutes

Default NEAR limit= 1 ADJ limit= 1

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TRADEMARK APPLICATION SERIAL NO. \_\_\_\_\_ SER219

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

05/21/1999 FNACK1 00000008 75701707

01 FC:561 245.00 DP

Mark: Miscellaneous DESIGNED  
RECEIVED

Class: 40 1999 MAY 10 P 4: 06

US PATENT &  
TRADEMARK OFFICE

TO THE COMMISSIONER OF PATENTS:

Applicant: R. W. Fernstrum & Company  
a Michigan corporation

Address: 1716 Eleventh Avenue  
P.O. Box 97  
Menominee, Michigan 49858-0097

The above-identified applicant has adopted and is using the trademark shown on the accompanying drawing for the following goods:

**MANUFACTURE OF MARINE HEAT EXCHANGERS TO THE ORDER AND SPECIFICATION OF OTHERS**

and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5.

The mark was first used in connection with the services at least as early as 1975; was first used in connection with the services in interstate commerce at least as early as 1975; and is now in use in commerce. The mark was first used in another form in connection with the services at least as early as 1955; was first used in another form in interstate commerce at least as early as 1955.

The mark is used in advertising and promotional materials and three (3) specimens showing the mark as actually used in trade magazines are presented herewith.

#### POWER OF ATTORNEY

The undersigned hereby appoints Marc A. Bergsman, Samuel D. Littlepage, Conrad J. Clark, David R. Haarz, Christopher W. Brody, J. John Shimazaki, and Jeffrey M. Petrash, all members of the District of Columbia Bar, and all located at 1901 L Street, N.W., Suite 800, Washington, D.C. 20036, and Theresa A. Orr, a member of the Michigan Bar, located at 500 Woodward Avenue, Detroit, Michigan 48226-3425, to file this application with full power of substitution and revocation, and to transact all business in the Patent and Trademark Office in connection therewith.

Furthermore, Applicant hereby authorizes Dickinson Wright PPC its employees and agents, to act in connection with this application and upon whom may be served notices or process in proceedings affecting the mark.

The Patent and Trademark Office is requested to send correspondence to Marc A. Bergsman, of Dickinson Wright PLLC at 1901 L Street, N.W., Suite 800, Washington, D.C. 20036, or to telephone (202) 457-0160.

Enclosed is a check for \$245 made payable to the Commissioner of Patents and Trademarks. Please charge any fee deficiency to Deposit Account No. 04-1061.

**DECLARATION**

The undersigned declares that he is the President of Applicant corporation, and is authorized to execute this application on behalf of said corporation; he believes said corporation to be the owner of the mark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; all statements made herein of his own knowledge are true and all statements made on information and belief are believed to be true; and further these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

**R. W. FERNSTRUM & COMPANY**

Dated: May 5, 1999

By: Paul W. Fernstrum  
Paul W. Fernstrum  
President

APPLICANT R. W. Fernstrum & Company

ADDRESS 1716 Eleventh Avenue  
P.O. Box 97  
Menominee, Michigan 49858-0097

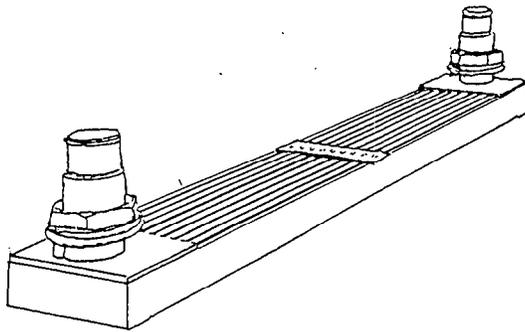
FIRST USE 1975 IN COMMERCE 1975

GOODS OR SERVICES Manufacture of marine heat exchangers to the order  
and specification of others



05-10-1999

U.S. Patent & TMO/™ Mail Rpt DL #11



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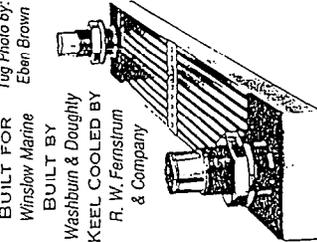


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**BUILT FOR**  
Winslow Marine  
**BUILT BY**  
Washburn & Doughty  
**KEEL COOLED BY**  
R. W. Fernstrum  
& Company

Top Photo by:  
Eben Brown



You want the best of everything on your boat...as long as it's affordable...right? Then why don't you give us a call? For the cost of a phone call, we'll figure out which of over 800 different Gridcoolerse is right for cooling your engine in your boat.

How can you go wrong?  
Get the best cooling system you can...get a Fernstrum Gridcooler.

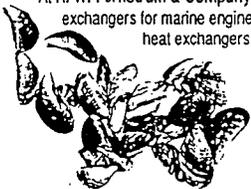
**OVER 40 YEARS EXPERIENCE IN KEEL COOLING**

**CHECK THESE UNIQUE QUALITIES FOUND IN THE GRIDCOOLER**

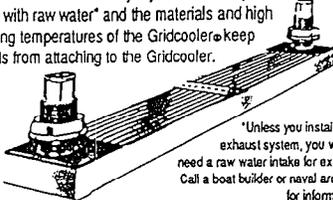
- Completely assembled and factory tested to assure reliability
- Silver brazed and welded joints form a rugged keel cooler
- Heavy gauge 90/10 copper/nickel or 5000 series aluminum rectangular tube
- Custom designed to meet owner's operating conditions and the engine manufacturer's exact requirements
- The most compact form of keel cooling

**R. W. FERNSTRUM & COMPANY** 1716 11th Avenue Phone: (906) 863-5553  
Menominee, MI 49858 Fax: (906) 863-5634

Do you have to worry about zebra mussels? If you do, you're not alone, and soon almost everyone on the Great Lakes will have to take them into consideration. At R. W. Fernstrum & Company, we've built the best heat exchangers for marine engines for over 40 years. Our heat exchangers, Gridcoolers, are closed cooling systems made of one of the best antifouling materials available, copper-nickel. Therefore, our Gridcoolers can solve part of your zebra mussel problem in two different ways: you don't cool your engine with raw water\* and the materials and high operating temperatures of the Gridcooler keep mussels from attaching to the Gridcooler.



**KEEP ZEBRA MUSSELS OUT OF YOUR COOLING SYSTEM**



\*Unless you install a dry exhaust system, you will still need a raw water intake for exhaust. Call a boat builder or naval architect for information.

**FERNSTRUM ENGINEERED KEEL COOLING**

Why Fernstrum Gridcoolers on your boat? Because Fernstrum Gridcoolers have been proven durable, reliable, economical and lightweight in over 40 years of actual use by the military and many facets of the commercial and recreational marine industries. If you're sick of zebra mussels overheating your engine, call us... we'll let you know which of our Gridcoolers is right for you.

**CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:**

Completely assembled and factory tested to assure reliability. No complicated time consuming assembly before installation. Silver brazed and welded joints form a rugged keel cooler, no slip joints or "O" rings to leak.	Heavy gauge 90/10 copper-nickel or 5000 series aluminum rectangular tube, structurally stronger with more cooling surface, and twice the wall thickness of other package kit type keel coolers with round tube.	Custom designed to meet owner's operating conditions and the engine manufacturer's exact cooling requirements. The most compact form of keel cooling, can be recessed for a flush with hull installation.
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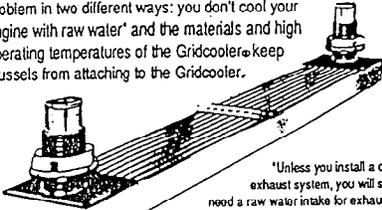
**R. W. Fernstrum & Company** 1716 11th Avenue • P. O. Box 97 Phone: (906) 863-5553  
Menominee, MI 49858 Fax: (906) 863-5634

#9  
5-9-91

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Menominee, MI 49858 Fax: (906) 863-5634

#10  
5-9-91

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

<b>SERIAL NO.</b> 75/701707 R. W. Fernstrum & Company		<b>APPLICANT</b>		<b>PAPER NO.</b>	
<b>MARK</b> MISCELLANEOUS DESIGN		<b>ADDRESS:</b> Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513		If no fees are enclosed, the address should include the words "Box Responses - No Fee."	
<b>ADDRESS</b> MARC A. BERGSMAN DICKINSON WRIGHT PLLC 1901 L STREET, N.W., SUITE 500 WASHINGTON, D.C. 20036		<b>ACTION NO.</b>		<b>Please provide in all correspondence:</b>	
<b>FORM PTO-1525 (5-90)</b>		<b>U.S. DEPT. OF COMM. PAT. &amp; TM OFFICE</b>		1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.	
		<b>MAILING DATE</b> NOV - 8 1985			
		<b>REF. NO.</b>			

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/701707

The assigned examining attorney has reviewed the referenced application and determined the following.

**THE MARK IS MERELY DESCRIPTIVE**

The examining attorney refuses registration on the Principal Register under Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1), on the ground that the proposed mark is merely descriptive in that it consists of a representation of an important feature or characteristic of the services. *In re Society for Private and Commercial Earth Stations*, 226 USPQ 436 (TTAB 1985); *In re Underwater Connections, Inc.*, 221 USPQ 95 (TTAB 1983).

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. 1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP section 1209.01(b).

Here, applicant seeks to register a fairly straightforward representation of its marine heat exchanger for custom manufacture of marine heat exchangers. A picture of the product applicant is custom manufacturing is telling a great deal about what the product looks like but indicates very little about the commercial source of the product. Indicating the commercial source of a product is the work of a trademark. Showing a picture of the goods is the work of marketing and advertising.

It is extremely dubious whether any among the relevant buying public will perceive the proposed mark as a service mark. Applicant's specimens make it appear as if the term "GRIDCOOLER" is the trademark for the goods and that the pictorial representation on the promotional piece is a picture of a "GRIDCOOLER".

The applicant should also note the following additional ground for refusal.

#### **THE MARK DOES NOT FUNCTION AS A SERVICE MARK**

The examining attorney refuses registration because the proposed mark does not function as a service mark to identify and distinguish the applicant's services from those of others and to indicate their source. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Sections 1051, 1052, 1053 and 1127; TMEP section 1301.02. Specifically, the proposed mark does not function as a service mark because it is merely informational. *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986).

The mark appears to be a pictorial representation of applicant's marine heat exchangers, the product of its custom manufacturing service. It shows a customer what the goods look like, perhaps. It is informative in this regard. However, in the specimens of use, the pictorial representation appears to be just that – a picture of the goods. The trademark for the goods appears to be "GRIDCOOLER" and the picture or drawing is just a picture of a "GRIDCOOLER" and not a symbol of custom manufacturing services.

The examining attorney will reconsider this refusal if the applicant submits a substitute specimen showing use as a service mark. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimen was in use in commerce at least as early as the filing date of the application. 37 C.F.R. Section 2.59 (a); TMEP section 905.10.

#### **DESCRIPTION OF THE MARK**

The applicant must submit a concise description of the mark. 37 C.F.R. Section 2.35; TMEP section 808 et seq. The statement may be in the following form:

The mark consists of ^.

#### **LITERATURE REQUIREMENT**

The exact nature of the service and its product is not clear from the present record. In order to allow proper analysis of the services in connection with which the applicant intends to use the mark, the applicant must submit samples of advertisements or promotional materials for services of the same type. If such materials are not available, the applicant must describe the nature, purpose and channels of trade of the services with which the applicant has asserted a bona fide intent to use

the mark. 37 C.F.R. Section 2.61(b); TMEP sections 1103.04 and 1105.02. This requirement is non-waivable. Token compliance will be deemed non-compliance.

#### EXPEDITED COMMUNICATIONS DATA

The e-mail address is [jill.alt@uspto.gov](mailto:jill.alt@uspto.gov). The fax number is (703) 308-9207. The examining attorney's telephone number is (703) 308-9114 Ext. 133. Fax or e-mail avoid the twin possibilities of "telephone tag" and mailroom delay.

#### NO CONFLICTING REGISTRATIONS

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.



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L0114

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of	)	
R. W. Fernstrum & Co.	)	Examining Attorney
Serial No. 75/701,707	)	Jill C. Alt, Esq.
Filing Date: May 10, 1999	)	Law Office 114
Mark: Miscellaneous Design	)	

2A

AMENDMENT

Hon. Commissioner Of Patents  
And Trademarks  
Washington, D.C. 20231



12-22-1999

U.S. Patent & TMO/Trade Mark Mail Rpt Dt. #26

Dear Sir:

This is responsive to Trademark Office Action No. 1 dated November 8, 1999.

✓ Please amend the application to register the mark under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).

✓ Please amend the application to include the following statement: "The mark consists of a drawing of a marine heat exchanger."

REMARKS

A. The Mark Has Acquired Distinctiveness

Registration was refused on the ground that the proposed mark is merely descriptive because it consists of a representation of a marine heat exchanger. According to the Trademark Examining Attorney, "It is extremely dubious whether any among the relevant buying public will perceive the proposed mark as a service mark."

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US PATENT & TRADEMARK OFFICE  
HAND MARK FOR PROCESS RECEIVED

In response to the descriptiveness refusal, Applicant has amended the above-captioned application to seek registration under the provisions of Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f). To support its claim that the design of the heat exchanger has acquired distinctiveness or secondary meaning, Applicant submits *A Survey Of Secondary Meaning Of The Shape And Appearance Of the Fernstrum Keel Cooler Tubing* by the Sorensen Marketing Management Corporation (September, 1998) (hereinafter "Survey").<sup>1</sup> The survey is attached as Applicant's Exhibit 1. "Survey evidence, market research and consumer reaction studies are relevant in establishing acquired distinctiveness." TMEP § 1212.06(d); *Federal Glass Co. v. Corning Glass Works*, 162 U.S.P.Q. 279 (T.T.A.B. 1969)(survey evidence of various types accepted as proof of secondary meaning in mark); *In re Levis Strauss & Co.*, 165 U.S.P.Q. 348 (T.T.A.B. 1970)(survey proper evidence to prove secondary meaning in mark); 5 McCarthy On Trademarks And Unfair Competition § 32:158, p. 32-225 (4<sup>th</sup> ed. 1999)("Surveys as to the state of mind of prospective purchasers have been offered as evidence of the existence of secondary meaning in a mark")

The purpose of the survey was to determine whether the appearance of the heat exchanger had acquired secondary meaning. Survey, at p. 3. To accomplish this, the survey interviewer, a research and consulting company in the boat building and maintenance industry, prepared a data base of approximately 200 companies that sell, replace, or repair marine heat exchangers in states bordering the Gulf of Mexico. The

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<sup>1</sup> The heat exchanger at issue is a keel cooler. It is called a keel cooler because it is attached to the keel of a ship which allows the ambient sea water to cool the engine cooling fluid. The term keel cooler is used in the Survey.

interviewer conducted 150 interviews. Survey, at pp. 5-6. The interview subjects were shown three photographs of the tubing of the heat exchanger and instructed to look at them as if they were examining a catalog or brochure. Survey, at p. 8.

Fifty-seven percent of the survey respondents said that the heat exchanger was manufactured by one company. Survey, at p. 12. Ninety-five percent of the respondents who said that the heat exchanger was manufactured by one company identified applicant as the manufacturer. Survey, at p. 14. Eighty-one percent of the total survey respondents identified applicant as the manufacturer of the heat exchanger. Survey, at p. 13. Based on these results, the market research company concluded that the appearance of the heat exchanger had acquired secondary meaning.<sup>2</sup>

In view of the foregoing, Applicant respectfully requests that the descriptiveness refusal be withdrawn and that the application should be approved for publication under Section 2(f).

B. The Subject Matter Sought To Be Registered Functions As A Service Mark.

Registration was refused on the ground that the proposed mark does not function as a service mark to identify and to distinguish the Applicant's services from those of others and to indicate their source. According to the Trademark Examining Attorney,

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<sup>2</sup> Figures over 50 percent are generally regarded as sufficient to establish secondary meaning. 5 McCarthy On Trademarks And Unfair Competition § 32:190, p. 32-286 (4<sup>th</sup> ed. 1999). See, *Monsieur Henri Wines, Ltd. v. Duran*, 204 U.S.P.Q. 601 (T.T.A.B. 1979)(37 percent of the interviewees associated opposer's brand with a background design; probative to corroborate finding of strong trademark in design).

the subject matter sought to be registered is merely informational - - a picture of the product - - and not a symbol of custom manufacturing services.

The GRIDCOOLER keel cooler designed and manufactured by Applicant is a marine heat exchanger (*i.e.*, a radiator) that is attached to the hull of a boat. It is one of many different ways to cool a marine engine. Because of the different types of boats, engines, uses,<sup>3</sup> and positioning,<sup>4</sup> every marine heat exchanger is custom manufactured for the customer. An off-the-shelf purchase is the exception to the rule. Attached as Applicant's Exhibit 2 is the GRIDCOOLER information/questionnaire with the information necessary for applicant to design and build a GRIDCOOLER keel cooler. The required information has been highlighted. Boat owners and boat builders know that keel coolers must be custom manufactured for each application. This means that as far as the relevant public is concerned, Applicant's product and manufacturing services are inseparable. Therefore, a mark associated with the product will automatically be associated with the manufacturing services.

Attached as Applicant's Exhibit 3 is a product brochure. The design of the GRIDCOOLER keel cooler (*i.e.*, the mark) is prominently displayed on the cover of the brochure. Immediately underneath the mark is the legend "Engineered Keel Cooling". Because consumers and prospective consumers are knowledgeable/sophisticated marine purchasers who realize that each keel cooler must be custom designed and

<sup>3</sup> Marine engines are used for propulsion, bowthrusters, generators, and other uses.

<sup>4</sup> Keel coolers are mounted on the bottom or the sides of hulls, they are recessed into the hull or mounted on the hull, and they have different styles of shielding or protection. Each of these characteristics effects the cooling ability and, therefore, the design and size of the keel cooler.

manufactured, the relevant public associates the mark and the legend "Engineered Keel Cooling" with the manufacturing services rendered by Applicant.

In the middle of the brochure, Applicant points out that each keel cooler is custom manufactured: "Tailored to your exact specifications, the GRIDCOOLER is designed as a complete assembly." The mark is prominently on the top of the open brochure thereby leading the reader to make a direct association between the mark and the services. On the bottom of the center pages, the brochure proudly proclaims the following: "FERNSTRUM GRIDCOOLERS ARE CUSTOM-ENGINEERED FOR ALL TYPES OF VESSELS AND MARINE SERVICE."

Attached as Applicant's Exhibit 4 is a sample of Applicant's letterhead. In the upper left-hand corner in a rectangular box is the mark sought to be registered superimposed over a globe and above the legend "Engineered keel cooling". This directs the viewer to make a direct association between the mark and the services.

Attached as Applicant's Exhibit 5 is a sample of Applicant's shipping label. The mark sought to be registered appears in the upper left-hand corner next to the Applicant's trade name and the legend "Engineered keel cooling" allowing the viewer to make a direct association between the mark and the services. The customer has just bought a custom built GRIDCOOLER keel cooler and has received a package with this label attached. The customer will naturally associate the mark and "Engineered keel cooling" with the product built to his order and specifications by Applicant.

As Applicant's survey pointed out, the largest number of reasons given for the one company source identification centered on references to the appearance of the product. Applicant's Exhibit 1, at page 17 (number 2). Because every keel cooler is

custom manufactured for a particular customer, the customers associate the shape of the product with the design and manufacturing process. Ordering the product entails custom manufacturing and mark is used on every piece of promotional and sales literature.

All of Applicant's advertising includes the subject matter sought to be registered and highlights the fact that the product is custom manufactured to meet the owner's operating conditions and the engine manufacturer's cooling requirements. Attached as Applicant's Exhibit 6 are copies of representative advertisements featuring the design of the GRIDCOOLER keel cooler directly associated with the custom manufacturing feature.

Applicant's Exhibit 1 demonstrates that the relevant consumers associate the mark with Applicant. Marine keel coolers are custom manufactured for the specific application of the prospective customer. Applicant prominently displays the mark in all of its advertising, promotional, and sales materials with the legend "Engineered Keel Cooling". Customers naturally associate the mark with the manufacturing services rendered by Applicant.

With this background, the Examining Attorney should understand how and why the relevant public associates the mark and the manufacturing services rendered by Applicant. The specimens originally filed with the application demonstrate the association between the mark and the services. Accordingly, the requirement for new specimens supported by a declaration should be unnecessary.

C. Literature Requirement

The materials in Applicant's Exhibit Nos. 3 and 6 should satisfy the requirement for additional literature.

\* \* \* \*

In view of the foregoing, Applicant respectfully requests that the refusals to register on the grounds that the mark is merely descriptive and fails to function as a service mark should be withdrawn and the application should be approved for publication.

R. W. FERNSTRUM & CO.

Date: December 20, 1999



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Attorneys For Applicant



Survey Research Studies Report

A SURVEY OF SECONDARY MEANING OF THE SHAPE AND APPEARANCE  
OF THE FERNSTRUM KEEL COOLER TUBING

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September 1998

Sorensen Marketing\Management Corporation

Survey Research Studies Report

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A SURVEY OF SECONDARY MEANING OF THE SHAPE AND APPEARANCE  
OF THE FERNSTRUM KEEL COOLER TUBING

September 1998

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## I. BACKGROUND AND PURPOSE OF STUDY

A question has arisen concerning the trademark significance, if any, of certain visible elements, i.e., rectangular tubing, of a marine keel cooler manufactured by R.W. Fernstrum & Company ("Fernstrum") in connection not only with its application for federal trademark registration, but also in certain pending civil actions involving Fernstrum. This question addressed by this survey arose from allegations by Fernstrum that certain other companies had begun manufacturing and selling marine keel coolers possessing rectangular tubing that rendered them confusingly similar in appearance to those keel coolers manufactured and sold by Fernstrum.

The critical group (population) that has played, and continues to play, an important role in the marketplace relationships between Fernstrum and any other company manufacturing and selling keel coolers, are those persons and their companies who specify, recommend, buy, or install keel coolers for inboard boat engines.

The salient purpose of this study was three-fold:

(1) To learn whether or not and, if so, to what extent, members of the above defined relevant population identify and associate the appearance of the Fernstrum keel cooler tubing with a single particular source;

(2) If so, to ascertain what company source and brand identifications, if any, are made in any source attributions offered by members of this population on the basis of seeing unlabelled untitled photographs of the tubing portion of the

Fernstrum keel cooler; and

(3) To determine what, if any, explanations these respondents offer for the source and brand identifications they make when they see the Fernstrum keel cooler tubing.

Sorensen Marketing/Management Corporation, a market research and marketing counsel firm in New York, New York was retained in early 1998 by Samuel D. Littlepage, Esq. of Dickinson Wright, PLLC in Washington, D.C. to design, implement and report on this study with the direct involvement and supervision of Dr. Robert C. Sorensen who also prepared this Report.

The Curriculum Vitae for Dr. Sorensen, including his publications of the past ten years, is appended to this Survey Report as Exhibit G.

The cases in which Dr. Sorensen has offered deposition or courtroom expert testimony during the past six years are listed in Exhibit H appended to this Survey Report.

The fees and costs of this survey, including \$26,527.36 paid to the field data base and interviewing organization for its time and travel expenses in five states, total \$57,268.55 with the submission of this Report and appended Exhibits.

## II. STUDY METHODS

### A. Defined population (the universe) and sampling technique

The population identified for this study was defined as persons who during the past two years have personally been involved in specifying, recommending, buying, or installing any keel

coolers. Some respondents suggested they had sold, replaced, repaired, and/or provided maintenance service on new or used marine keel coolers. All such persons and their companies are marketing targets for companies manufacturing and distributing keel coolers.

For purposes of this survey, Dr. Sorensen retained Mr. Edward D. Fry of Edward Fry & Associates, Inc., a research and consulting company in the boat building and maintenance industry, to prepare a data base of all known companies located in the southern area of the United States bordering on the Gulf of Mexico that would fit the above listed specifications. The resulting data base listed nearly two hundred (200) such companies in five states, i.e., Alabama, Florida, Louisiana, Mississippi, and Texas. This list of companies was then approved by Dr. Sorensen for market research purposes.

Because these companies are targeted by a variety of keel cooler manufacturers, and because all such companies were wanted for this data base of prospective survey respondents, no criteria were either specified or implemented in the provision of company names. Thus no pruning or special selection of any company took place. No other company attributes were specified such as size, dollar sales, or product specialties.

In conversation with Mr. Littlepage, counsel for Fernstrum, Dr. Sorensen required and obliged counsel and Fernstrum not to inform or in any way suggest to any company or person on any list that a survey was to be conducted, or that a party had been or might be interviewed, what the interview was about, or that it had

anything to do with litigation. Mr. Fry and Mr. Littlepage were neither introduced to nor in communication with one another. Moreover, Dr. Sorensen made it abundantly clear that under no circumstances would he inform anyone before or after the survey was completed, of his interviewer's determination of which companies to contact, or the names of the persons therein qualified for interview, or the identity of any companies and persons contacted, or what anyone from a participating company had to say to the interviewers. It was also understood that the interviewing organization retained by the Sorensen firm would make the actual selection of companies for interview without Dr. Sorensen's knowledge or input other than his request for a systematic effort to complete one hundred fifty (150) interviews from the data base the interviewing organization developed.

The population was sampled on an intercept interview basis through the aforementioned company lists, sometimes first by telephone and other times by "drop-in" contact when the interviewer was in the vicinity of the company site. Additional persons were contacted but not interviewed because of their failure to qualify for the sample or because of their stated unwillingness or lack of time to participate.

The sample from the defined population is not depicted as a probability sample because its members did not have an equal or known chance of being selected for interview. But because the questionnaires were very carefully designed, the interviewing procedure well defined, the sample drawn from a variety of

locations in a five states region, and the results of the stimuli clearly indicating majorities in salient responses, it is appropriate to infer that the results of a larger probability sample would not differ significantly from those obtained from this survey except for reason of potential sampling error beyond our control.

B. Sample characteristics (Tables 4A-7A and 4B-7B)

Respondents were distributed geographically among the five states territory depending on how they "fell". The five states and the percentages of the 150 completed interviews from each are as follows (Tables 7A and 7B):

<u>State</u>	
Alabama	20.7%
Florida	07.3%
Louisiana	47.3%
Mississippi	07.3%
Texas	17.3%

Tables 4A and 4B indicate that 96.0% of total survey respondents were males and 4.0% were females. (Question 4a)

All respondents were asked Question 4b concerning their age: 12.7% were under 21 to 34 years of age; 46.7% were 35 to 49 years of age; and 40.7% were 50 years of age and over. (Tables 4A and 4B)

Tables 5A and 5B tabulate for all respondents "How many years have you been involved in specifying, recommending, buying, or

installing keel coolers?" (Question 5a), and Tables 6A and 6B answer for all respondents "What is your position with the company?" (Question 6).

#### C. The interview questionnaires and photographs

Dr. Sorensen designed the Screener Questionnaire (Exhibit A) and the Main Questionnaire. (Exhibit B) The purpose of the Screener Questionnaire in the sample selection process was to determine whether or not a prospective respondent in fact qualified as a member of the defined population in accordance with the above mentioned specifications. The Main Questionnaire consists of the definitive interview questions that address the survey's purpose set forth above.

A set of three (3) four-color photographs of the unlabelled Fernstrum keel cooler tubing from different angles were produced in accordance with Dr. Sorensen's specifications. The three photographs, appended collectively hereto as Exhibit C, were referred to in Question 1 which reads, in part: "Please look at these photographs taken from different angles of the same keel cooler one by one as I hand each to you and then lay them down in front of you. Look these photos over as you would if you were examining them in a catalog or brochure."

All respondents were told in Question 1 before the first query in the Main Questionnaire: "Now if you can't answer a question in this interview, it's okay to tell me so." (Exhibit B, page 1)

#### D. Interviewer instructions

Dr. Sorensen personally prepared three pages of detailed instructions for the field interviewer (Exhibit E). He further conducted a telephone briefing session and was available for questions by telephone.

These instructions provide basic ground rules for contacting people for interview, as well as how to screen respondents to be sure they are members of the appropriate universe and meet other quota screening specifications. They set forth rules, prohibitions and procedures; and they deal with critical matters such as assurance of confidentiality and what to say about the survey and its purpose. Moreover, Dr. Sorensen and his office were in frequent touch with the various interviewer supervisors.

#### E. Interviewer affirmation and interview validation

Interviewers were instructed to ask all questions in each Screener and Main Questionnaire exactly as they were printed, and interviewers were required to record accurately the respondent's complete answers to the questions in the Main Questionnaire. Each interviewer was asked to attest that she or he had selected and interviewed the indicated respondent in the listed company and had fully complied with the aforementioned interviewer instructions in conducting the interview. Thus, in the closing paragraph of each questionnaire, the responsible interviewer was required to sign and date the following certification: "This is to affirm that I have interviewed the above named respondent to the best of my ability in

accordance with the interviewing briefing instructions and that I recorded, as fully and accurately as possible, all of this respondent's answers to the above questions on the date below."

Moreover, 15.3% of the interviewer's work was validated by an independent organization, The Wats Room, Inc., an organization that specializes in telephone interviewing and telephone validations of survey interviews. This organization made its own random selection of respondents with whom survey questionnaires were completed and telephoned these persons for confirmation that the interview had taken place. As attested in a letter from the project manager, no difficulty was encountered. (Exhibit E) In this same appended exhibit is a copy of the script used in the conversation between validator-interviewer and each respondent contacted.

#### F. Coding and tabulating procedures

Dr. Sorensen personally read each one of the one hundred-fifty (150) completed questionnaires containing the answers to the questions. Answers to questions asked in an interview and recorded on a questionnaire must be broken down into identifiable categories of words, themes and names so that they can be quantified and thus counted, tabulated and analyzed. Some of these content categories already exist as "pre-coded" answers to closed-end questions that dictate known predictable factual specifics such as gender or age group answers. Other content categories are word and thematic content in answers to open-end questions and identified for use in quantifying each respondent's replies to the survey questions.

Using a code structure, the contents of all answers are examined and broken down into the specified categories utilized in Part III-STUDY FINDINGS and Exhibit I-TABLES OF INFORMATION of this final Report. This coding operation includes the assignment of a specific code number to each unit of content designated by specific words or themes. The coding analyst records the appropriate code numbers representing the corresponding open-ended answer on each questionnaire.

The raw data now in numerical form were then converted under Dr. Sorensen's direction to computer tables that appear herein as Exhibit I-TABLES OF INFORMATION. These tables, 1A through 7A and 1B through 7B consist of cross-tabulations of salient data and the "Marginals" which include literally the quantification of the entire answer data coded and tabulated by each one of the subject codes. "Code Sheets" which can be used to read the "Marginals" are appended hereto as Exhibit F.

G. Non-mention of litigation implications of study

The survey interviewer was not informed by Dr. Sorensen that the survey was being conducted for possible use in litigation or the name of the party in whose behalf the survey was being conducted. Moreover, the interviewer instructions and the interview questionnaire were designed to avoid providing any suggestions to survey respondents about who the survey sponsor or interested parties might be.

### III. STUDY FINDINGS

#### A. Whether or not the keel cooler was manufactured by one company or more than one company (Tables 1A and 1B)

Special Note: The contents of this section are keyed to all tables and "marginals" located in Exhibit I.

As earlier indicated, Question 1 dealt with the introduction and display of three photographs of the same unmarked Fernstrum keel cooler tubing to all survey respondents. The three color photographs remained in front of the respondents until all questions concerning the keel cooler had been asked and answered.

All survey respondents were asked Question 2a: "Do you believe the same keel cooler shown in these three pictures is manufactured by one company or more than one company?" 57.3% of total survey respondents said "One company" when viewing the picture of the Fernstrum keel cooler tubing, 32.0% said "More than one company", and 10.7% said "Don't know" or "Not sure".

All survey respondents, regardless of their answer to Question 2a, were asked Question 2b: "What causes you to say that?"

20.9% of all respondents answering "One company" (12.0% of total survey respondents) made a comment bearing on the design and appearance of the keel cooler tubing they were viewing as the reason for their "One company" answer. Another same number and percentage of people, 20.9% of all respondents answering "One company" (12.0% of total survey respondents), referred to their knowledge of the field and their experience. 36.0% of those saying

"One company" (20.7% of total survey respondents) said that they only knew of one company making a keel cooler with the shape of tubing they were looking at.

Reasons given by respondents saying "More than one company" were scattered, the largest number-37.5% of those saying "More than one company" (12.0% of total survey respondents) answering "Have more than one supplier/know of more than one manufacturer". One respondent referred to "Shape/design", another to "Standard keel cooler design" and 3 said they are "Aware that this design is copied".

**B. Company source name identifications (Tables 2A and 2B)**

All respondents, no matter what their answer to Questions 2a and 2b were asked Question 3a: "What do you believe is the name of the company ("companies" if respondent said "more than one company" in answer to Q. 2a) that manufacture(s) the keel cooler shown in the pictures you are looking at?"

No respondent replied "Don't know/not sure" to this question; 3.3% of total survey respondents said "Photographs provide insufficient I.D. information".

A net unduplicated 81.3% of total survey respondents made a Fernstrum company identification. Broken down, 78.7% of total survey respondents said "Fernstrum/R.W. Fernstrum", 2.7% said "Fernstrum Gridcooler" and 1.3% said "Gridcooler". (Note: GRIDCOOLER is the registered word trademark for the keel cooler product made and sold by Fernstrum.)

In addition, 3.3% of total survey respondents said "East Park Radiator/East Park", 1.3% said "Donovan Marine", 2.7% said "Duramax/Duramax Marine", and 7.3% said "Johnson/Johnson Marine". A substantial portion of respondents making these identifications, adding to 14.6% of total survey respondents, can be inferred as persons who would otherwise have made a Fernstrum identification if these four companies' keel cooler products had not existed, given what has been represented to me as the substantially identical overall shape, elements and appearance of these companies' respective products to those attributes of the Fernstrum keel cooler.

These Fernstrum source attributions to other brand named keel cooler products by respondents viewing the Fernstrum rectangular tubing indicate these respondents' confusion of the Fernstrum source with the sources of these other competing keel coolers utilizing the rectangular tubing.

No respondent cited "Johnson Rubber" or "Walter/Walter Machine", two companies which make a keel cooler with cylindrical or "round" tubing.

A net unduplicated 54.7% of total survey respondents, i.e., 95.3% of all survey respondents who had answered "One company", said "Fernstrum/R.W. Fernstrum" (including one person saying "Fernstrum Gridcooler") is the name of the company manufacturing the keel cooler shown them in the picture. No other company or brand name was mentioned by those who had answered "One company".

A net unduplicated 23.3% of total survey respondents, i.e.,

72.9% of all survey respondents who had answered "More than one company" made the Fernstrum identification. Among those saying "More than one company", 66.7% (an additional 21.3% of total survey respondents) said "Fernstrum/R.W. Fernstrum", 6.3% (an additional 2.0% of total survey respondents) said "Fernstrum Gridcooler", 4.2% (an additional 1.3% of total survey respondents) said "Gridcooler". As indicated in the preceding paragraph, all of the tabulated four non-Fernstrum source name identifications were made by respondents who had said the keel cooler they were viewing was made by "More than one company". (Table 2A)

C. Reasons for company source name identifications (Tables 3A and 3B)

All survey respondents were asked Question 3b for whatever company name or names they had previously cited: "What, if anything, in these pictures, causes you to say that?", followed by Question 3c: "Anything else?" The answers to these two questions are grouped and analyzed together.

The reasons given for a specific source name identification centered on the perceived design of the keel cooler tubing that respondents were seeing in the photographs. The largest number of reasons, given as an explanation for the "Fernstrum" company name identification by a net unduplicated 68.7% of total survey respondents, are grouped in three categories and break down as follows in the tabulation of individual reasons: 25.3% of total survey respondents (31.1% of all those identifying the keel cooler

as Fernstrum said Fernstrum for reason of "Shape/design"; 16.0% (19.7%) - "Rectangular 'grid' form"; and 46.7% (57.4%) - "Rectangular/square 'tubes'/shape of 'tubes'".

A few respondents who gave any one of these three explanations for the company they identified as a manufacturer of the keel cooler they were viewing named a company other than Fernstrum. Of the 5 persons (3.3% of total survey respondents) naming "East Park Radiator/East Park" as one of the sources, 1 said "Shape/design", 1 said "Rectangular 'grid' form", and 3 said "Rectangular/square 'tubes'/shape of 'tubes'". Of the 2 persons (1.3% of total survey respondents) who had named "Donovan Marine" as one of the sources, 1 said "Shape/design" and 1 said "Rectangular 'grid' form". Of the 4 persons (2.7% of total survey respondents) who had named "Duramax/Duramax, Inc.", all 4 said "Rectangular/square 'tubes'/shape of 'tubes'". Of the 11 persons (7.3% of total survey respondents) naming "Johnson/Johnson Marine" as one of the sources, 2 said "Shape/design", 1 said "Rectangular 'grid' form", and 9 said "Rectangular/square 'tubes'/shape of 'tubes'".

The reasons given for the mistaken source identifications of sources other than "Fernstrum" embody in substantial numbers the shape and appearance of the keel cooler rectangular tubing respondents were viewing.

#### IV. CONCLUSIONS

On the basis of findings from a survey of a representative sample of the defined relevant population of people dealing with

keel coolers, the following is clear:

1. 57.3% of the above-named relevant population, when viewing three photographs of Fernstrum keel cooler tubing, unmarked and unlabelled, believed that the keel cooler with this tubing is manufactured by one company.

2. The largest number of reasons given for the one company source identification--as opposed to more than one company--centered on references to appearance and to people's knowledge of the field or their experience.

3. A net unduplicated 81.3% of total survey respondents made a Fernstrum company identification. Broken down, 78.7% of total survey respondents said "Fernstrum/R.W. Fernstrum", 2.7% said "Fernstrum Gridcooler" and 1.3% said "Gridcooler".

4. It is likely that still other respondents would have made a Fernstrum source identification had they not erroneously identified other sources of a keel cooler that is substantially the same in visible elements and appearance as that made by Fernstrum.

5. 54.7% of total survey respondents, i.e., 95.3% of all survey respondents who had answered "One company", made a "Fernstrum/R.W. Fernstrum" source identification including one person saying "Fernstrum Gridcooler". No other company or brand name was mentioned by those who had answered "One company".

6. No respondent cited either "Walter/Walter Machine" or "Johnson Rubber" companies. Neither of these two companies makes nor markets a keel cooler with rectangular tubing that is similar to that of the Fernstrum keel cooler.

7. The largest number of reasons given for the "Fernstrum" source identification, offered by a net unduplicated 68.7% of total survey respondents are grouped in three categories: "Shape/design", "Rectangular 'grid' form" and "Rectangular/square 'tubes'/shape of 'tubes'". Moreover, only a few of the people who gave any one of these three explanations for the company they identified as a manufacturer named a company other than Fernstrum.

8. Confusion of the source of other keel cooler products having rectangular tubing with the Fernstrum keel cooler was indicated by respondents erroneously citing the non-Fernstrum products by name and referring to their rectangular tubing as their reasons for doing so.

9. For these reasons, it is clear that a high incidence of attribution or secondary meaning exists for Fernstrum with respect to the visual elements and appearance of its keel cooler tubing and, thus, for the Fernstrum keel cooler product itself.

September 1, 1978

Robert C. Sorenson

EXHIBITS A THROUGH I

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Exhibit A

SORENSEN MARKETING/MANAGEMENT CORPORATION  
SMMC - SDL - APRIL 1998

Qst. #: \_\_\_\_\_ 5-8  
Int. #: \_\_\_\_\_ 9/  
Survey # \_\_\_\_\_ 10  
Area : \_\_\_\_\_ 11/

BOAT SURVEY

SCREENER QUESTIONNAIRE (USE PEN ONLY)

1. Hello, I'm (MY NAME) from (BLANK), a market research company. We're conducting a study in this area and I would like to ask you a few quick questions. We are ABSOLUTELY not selling or promoting any products.

2. We're talking about different boating items with different people. During the past two (2) years, have you personally been involved in specifying, recommending, buying, or installing any one of the following three items for any boat that you or your company is building, maintaining or repairing? Please do not guess. Tell me "Yes" or "No" or "Don't know" for each of the following: **READ ENTIRE LIST, BUT GET ANSWER FOR EACH ITEM BEFORE ASKING ABOUT NEXT ITEM.**

- (1) Propellers and prop shafts?
- (2) A keel cooler?
- (3) A generator set?

...  
IF RESPONDENT ANSWERS "YES" TO Q.2. (2), "A KEEL COOLER",  
GO TO Q. 4. IF OTHERWISE, GO TO Q. 3.

3. Still talking about these different boating items, do you believe that over the next six months you will or will not be personally responsible for specifying, recommending, buying or installing any one of the following three items for any boat that you or your company is building, maintaining or repairing? Again please do not guess. Just tell me "I believe I will" or "I believe I won't" or "I have no opinion". about any one of the following three items I'm going to read to you. **READ ENTIRE LIST, BUT GET ANSWER FOR EACH ITEM BEFORE ASKING ABOUT NEXT ITEM.**

- (1) Propellers and prop shafts?
- (2) A keel cooler?
- (3) A generator set?

IF RESPONDENT ANSWERS "YES" TO Q.3, "A KEEL COOLER",  
GO TO Q. 4. IF OTHERWISE, TERMINATE AND RECORD BELOW

NOT QUALIFIED RE KEEL COOLER IN QUESTIONS 2 AND 3

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15

4. Have you been interviewed in a market research survey any time in the last two months?  
 TERMINATE AND RECORD BELOW YES  
 GO TO Q 5A DON'T KNOW  
 TERMINATE AND RECORD BELOW NO

PROBLEM WITH PAST MARKET RESEARCH INTERVIEW  
 01 02 03 04 05 06 07 08 09 10 11 12 13 14 15

5a. Do you generally wear eye glasses or contacts when you are carefully examining photographs of products such as those we discussed?  
 GO TO Q 5b YES  
 GO TO Q 6 NO  
 GO TO Q 5b DK/NS

5b. IF "YES" TO Q 5a. Can you please wear your glasses (contacts) during the rest of this interview? Thank you.  
 GO TO Q 6 YES  
 TERMINATE AND RECORD BELOW NO  
 TERMINATE AND RECORD BELOW DK/NS

PROBLEM WITH EYE GLASSES/CONTACTS  
 01 02 03 04 05 06 07 08 09 10 11 12 13 14 15

6. DO NOT ASK: IF RESPONDENT APPEARS TO HAVE ANY LANGUAGE, HEARING, OR READING DIFFICULTIES, OR APPEARS TO BE IN A HURRY, TERMINATE AND RECORD BELOW

LANGUAGE/HEARING/READING/TIME DIFFICULTIES  
 01 02 03 04 05 06 07 08 09 10 11 12 13 14 15

7. Now I have only a few more questions where I need to show you some items. IF NOW AT SITE. Can we go some place here that is private with a desk or table so I can lay down some items for you to look at? IF TELEPHONING. Can we arrange a time today or tomorrow, when I can visit you at your work or home, where we can go some place private with a desk or table, so I can lay down some items for you to look at? IF "NO", TERMINATE AND RECORD.

UNWILLING TO BE INTERVIEWED FURTHER  
 01 02 03 04 05 06 07 08 09 10 11 12 13 14 15

Exhibit B

SORENSEN MARKETING/MANAGEMENT CORPORATION  
SMMC - SDL- APRIL 1998

Qs. #: \_\_\_\_\_ 5-8  
Int. #: \_\_\_\_\_ 9/  
Survey #: \_\_\_\_\_ 10/  
Area: \_\_\_\_\_ 11/

MAIN QUESTIONNAIRE

BOAT SURVEY

1. Hand each of three pictures one by one to respondent in order beginning with encircled item. (1)"A", (2)"K" and (3)"X". Continue asking this question: Please look at these photographs taken from different angles of the same keel cooler one by one as I hand each to you and then lay them down in front of you. Look these photos over as you would if you were examining them in a catalogue or brochure. Now, if you can't answer a question in this interview, it's okay to tell me so. Pick up any of these photographs and look at them if you like. Tell me when you're ready for a couple of questions.

2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one company or more than one company?

One company	12/1
More than one company	/2
DK/NS	/3

2b. What causes you to say that? \_\_\_\_\_ 13/  
\_\_\_\_\_ 14/

3a. What do you believe is the name of the company (companies if respondent said "more than one company" in answer to Q2a) that manufactures the keel cooler shown in the pictures you are looking at?

\_\_\_\_\_ 15/  
\_\_\_\_\_ 16/

3b. Ask and indicate answer for whatever company mentioned. What, if anything, in these pictures, causes you to say that?

\_\_\_\_\_ 17/  
\_\_\_\_\_ 18/

3c. Anything else? \_\_\_\_\_ 19/  
\_\_\_\_\_ 20/

TAKE BACK AND CONCEAL PICTURES

4a. Indicate (encircle code) Male 21/1  
Female /2

4b. Just so we can divide our interviewees into groups, will you please tell me which one of these age groups you are in? Read out loud and indicate. 21 to 34? 22/1  
35 to 49? /2  
50 and over? /3  
Refused all ages /4

5a. For about how many years have you been involved with specifying, recommending, buying, or installing keel coolers?  
\_\_\_\_\_ 23-24

5b. Which are you most involved with: specifying, recommending, buying, or installing keel coolers?  
Specifying 25/1  
Recommending /2  
Buying /3  
Installing /4

6. What is your position with your company? \_\_\_\_\_ 26-27

7. Just in case my supervisor wants to check that we had this interview, will you please let me reconfirm your name, address and telephone number? This information is confidential and we are not selling or promoting any products. Thank you very much for your help. We would appreciate your not mentioning this interview to anyone.

RESPONDENT'S NAME: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_ 28-32

8. Thank you for your cooperation. ZIP CODE DK/NS 33/

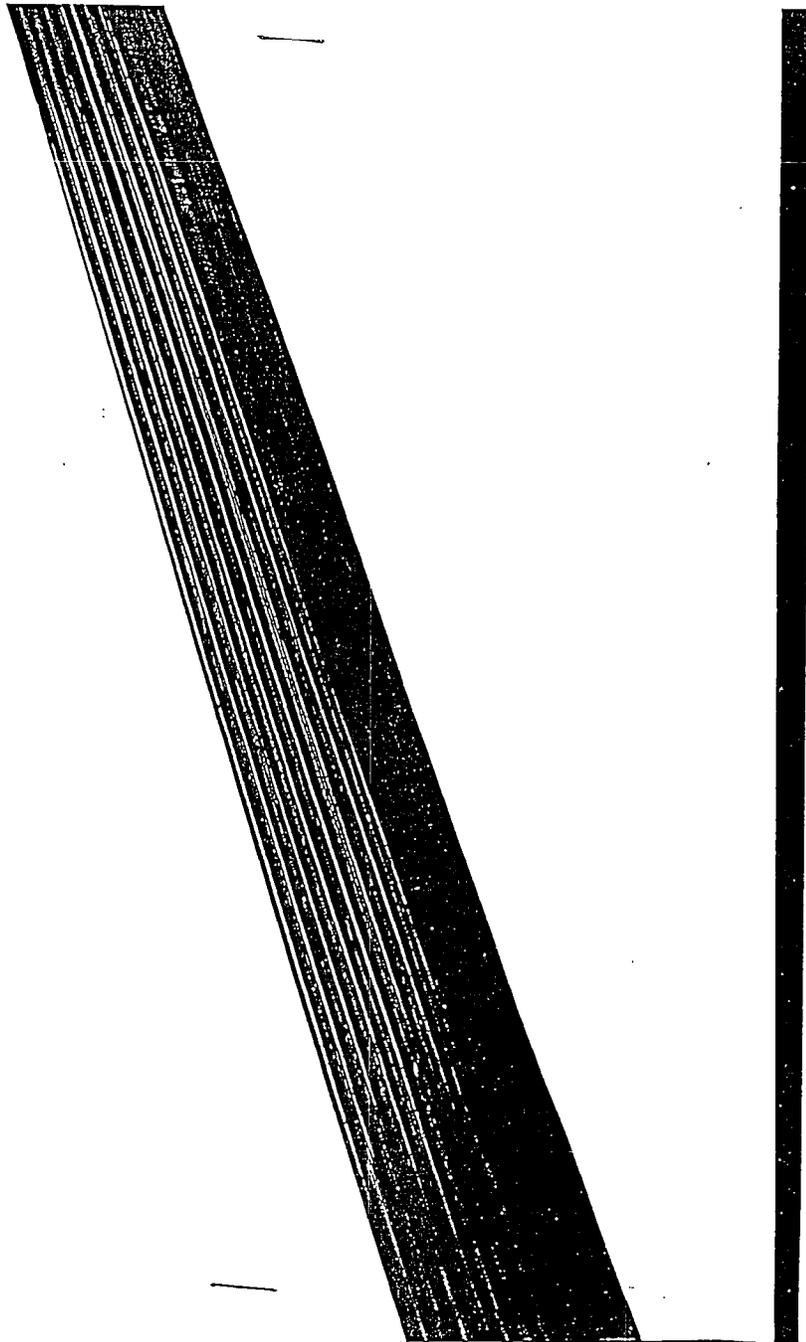
To be signed by the interviewer: This is to affirm that I have interviewed the above named respondent to the best of my ability in accordance with the interviewing briefing instructions and that I recorded, as fully and accurately as possible, all of this respondent's answers to the above questions on the date below.

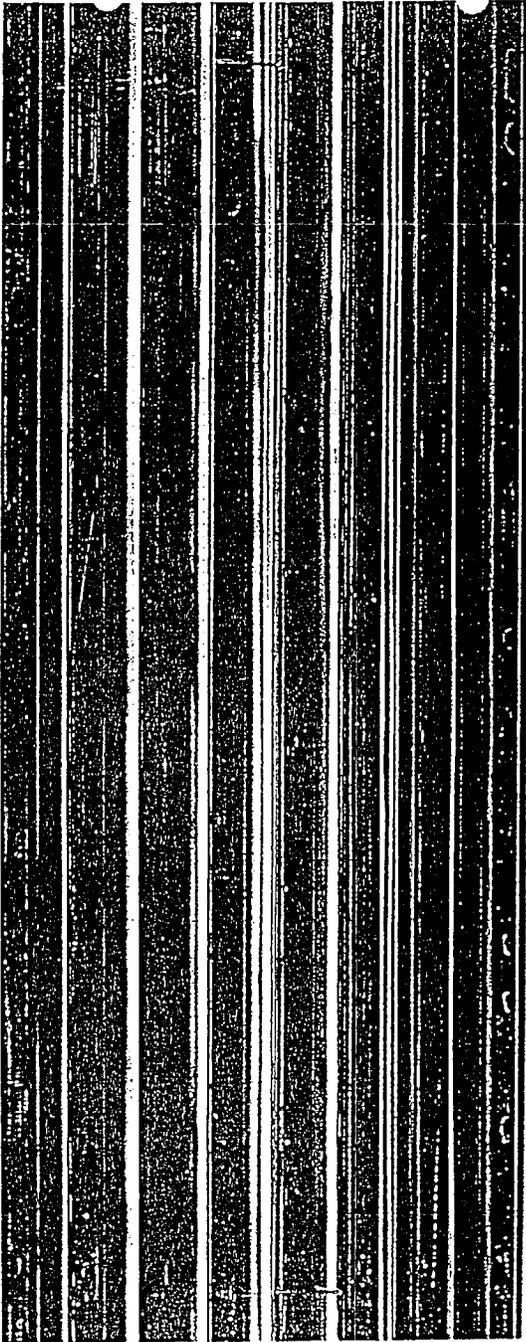
Interviewer's full name (no initials):

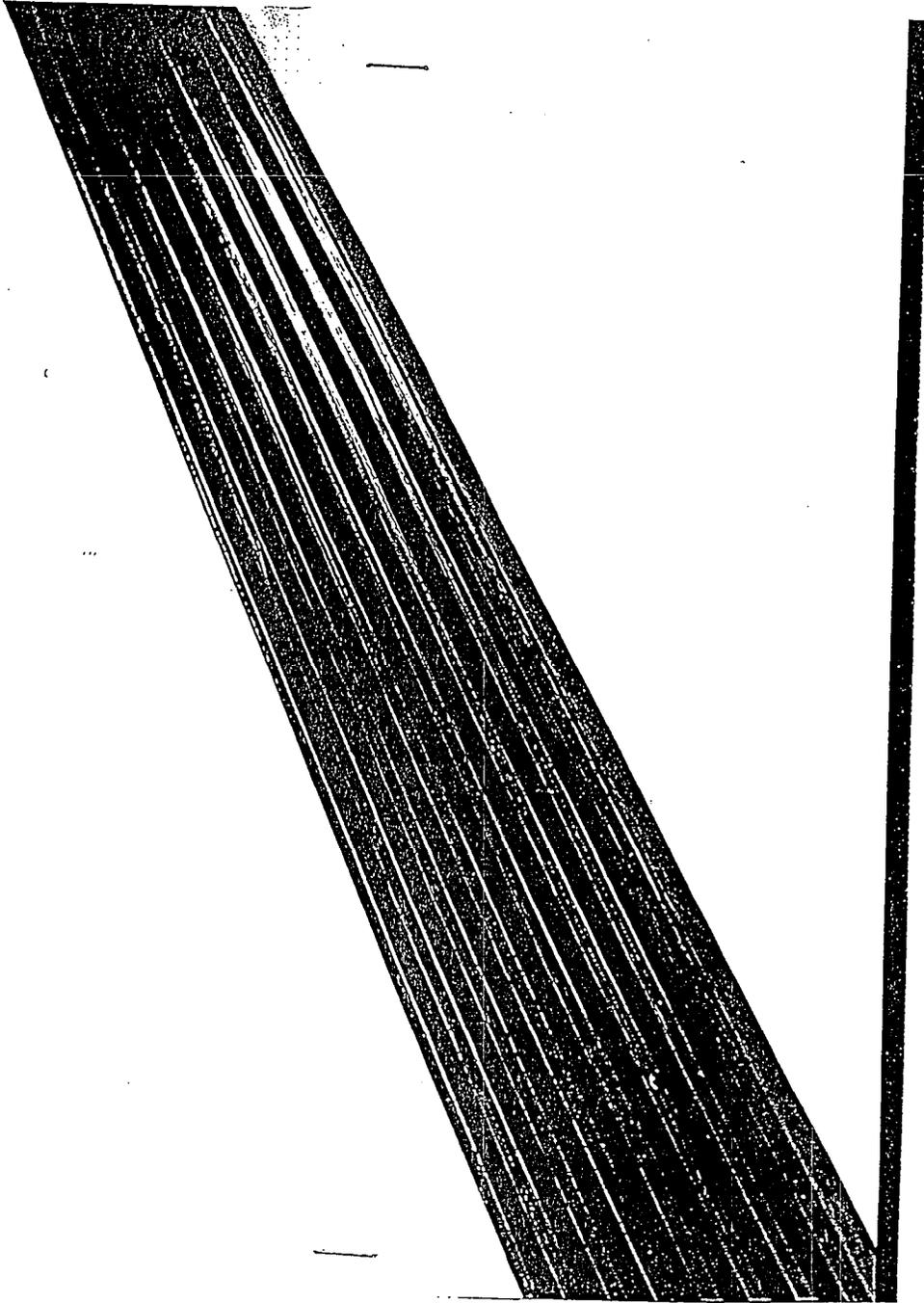
Name: \_\_\_\_\_ Date: \_\_\_\_\_

Exhibit C

SURVEY PHOTOGRAPHS







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Exhibit D

SORENSEN MARKETING/MANAGEMENT CORPORATION  
SMMC - SDL - APRIL 1998 *Strictly Confidential*

GENERAL INSTRUCTIONS - BOAT SURVEY STUDY

Thank you for working with us on this study. I appreciate your care and professionalism in this study because careful attention to detail and getting every word down is very important to us. Please keep and read these instructions carefully. Sign the "Briefing Attendance List" before you begin your interviewing. You are interviewer #1. Any other interviewer on this project must sign the attendance sheet as well, using the number on the "sign-in" line as his interviewer number. Every interviewer must have a copy of these instructions in hand before and during a survey briefing.

In this survey we will consider an interview as completed only if the respondent has been taken through the entire Screener Questionnaire and Main Questionnaire. The purpose of this survey is to learn more about people's reactions to three photographs of the same boat keel cooler.

RESPONDENT QUOTAS

150 completed interviews (Screeners and Main Questionnaires) are required from the sample provided you.

RESPONDENT CONTACT, ESTABLISHING RAPPORT, AND OTHER PROCEDURES

1. Please do not try to interview anyone who seems to be in a big hurry or is not willing to be interviewed. Don't hesitate to terminate the interview under these circumstances. On the other hand, see if the person can be qualified so that an effective interview can be conducted on another occasion.
2. If any respondent is hesitant about answering any of the questions, make it very clear that you are "not selling or promoting any thing" and that "this not a test".
3. You can also truthfully say that you don't know what the sponsor wants to know except "to learn more about the opinions of people who work with boats as defined in our Screening questions".
4. You can certainly tell people that this study is confidential and that every individual response will be combined together in a computerized total. We are not interested in keeping information about what any one individual thinks. Respondents' names and company affiliations are strictly confidential!!
5. Although this is a very unlikely possibility, do not interview a member of your family or a friend or relative. The person you interview must not be someone you personally know.

6. Never interview a person if anyone else is present with him/her. You can always request the person to be alone in the room with you during your interview.

7. The questionnaires and questions are constructed for a steady-paced interview, but don't encourage respondents to give thoughtless answers. We are asking for spontaneous responses, regardless of what experience or expertise the respondent may have

8. Particularly in this survey, it is essential that you be as full and accurate as possible in recording the respondent's answers to the questions in this questionnaire. Record the respondent's full answers to any open ended questions in his/her own words. Do not condense, summarize, paraphrase or abbreviate!

9. If you are asked who is sponsoring this study, make the truth clear: you do not know.

10. Write down the name of each individual for whom you have completed a Screener and Main Questionnaire on the validation form which has been issued to you. If there is an additional interviewer, each validation form must contain the work of only one interviewer. Be sure the top right-hand corner portion of each validation form is filled in, except for the "Supervisor's Name". Disregard the top left-hand corner portion if all interviews are from the same metropolitan area. Do not fill in the left hand column entitled "VAL. INT'S. NAME", but be sure to fill in the respondent's name, respondent's telephone number, date of interview, and Quest.# (interview number) for each completed interview.

11. The validation form, as well as the sign-in sheet, Screener Questionnaire and Main Questionnaire forms must be filled out with a dark black or blue ball point pen -- NOT in pencil. If anything you have written on any form must be changed, e.g., the respondent's name, draw a neat line through what you are changing and write a correction above or in a nearby margin or on the back of the form you are using. (Indicate whenever you go to the back of the page!) Erasures or ink blot-outs on any of these forms will require the entire interview to be rejected by our office.

#### USING THE QUESTIONNAIRES

Detailed instructions for the asking of each question are set forth in the screening and main portions of the questionnaires themselves. It is urgent that you follow them carefully and accurately. The following are important additional instructions:

1. Each interviewer need only use one Screener Questionnaire. A separate record must be kept of all interview terminations.

2. Each Main Questionnaire is numbered. If any replacement Main Questionnaire is needed, a blank questionnaire must be used for the replacement interview, numbered exactly the same as the replaced questionnaire, and stapled on top of the replaced questionnaire.

3. Even if a respondent asks, do not define any word or explain any name. If you are pushed on this, you can only say: "I'm sorry; I am not supposed to say anything other than to ask questions."

4. If the respondent does not understand a question, do not explain it in your own words or re-word it; just re-read the question as it appears in the questionnaire. If the respondent wants to change an answer to any question, indicate the question number and additional comment or newly revised answer on your questionnaire form. DO NOT eliminate or cross out the original answer under these circumstances.

5. Please read all questions to the respondent exactly as they are written. Do not add or subtract any words. You should have no opinion about what respondents are going to say, so please don't say anything or make sounds whose meaning is subject to any interpretation by the respondent other than your interest in her/him. You must pay very careful attention to hearing and recording the respondent's answers.

6. **PROBING:** We are asking you NOT to probe responses in the usual sense of seeking to learn everything in the respondent's mind relative to your interview question. We want their spontaneous reactions fully recorded. **BUT:** It is vital that you ask a respondent "Please explain your answer." or "Tell me what you mean." or "Why do you say that?" when you perceive the answer is unclear. Be sure to write down any probe question that you had to put to the respondent. Questionnaires that fail to reflect needed probing of this sort will NOT be accepted by our firm and will need to be replaced by you.

7. Where a person makes a comment even in reply to a closed-end question, please write it somewhere on your questionnaire page for that interview, indicating the question number to which it applies.

8. **IMPORTANT:** Sign each Main Questionnaire with your full name (no initials).

9. Also important!! Please write clearly. We are unable to accept questionnaires with answers that are even partly unreadable.

PLEASE BE SURE TO REFER ANY QUESTIONS IMMEDIATELY TO ROBERT SORENSEN OR COLIN SCOTT BY PHONE OR FAX. Do not give out any company name but your own. Thank you!!

Exhibit E

THE WATS ROOM, INC.  
18 RAILROAD AVENUE  
ROCHELLE PARK, NJ 07662  
Tel (201) 845-3100 Fax (201) 845-3131  
e-mail: awilson@twri.com

June 12, 1998

Dr. Robert C. Sorensen, President  
Sorensen Marketing / Management  
Corporation  
50 East 77nd Street  
New York City, NY 10021-1836

Dear Dr. Sorensen:

This is to certify that The Wats Room, Inc., an independent Interviewer service, has completed validation of the Boat Survey. Our interviewers established contact with 23 respondents at the telephone numbers listed on the validation forms. These respondents were chosen solely and randomly by The Wats Room, Inc. This represents fifteen per cent of each interviewer's work.

Our interviewers asked all of the following validation questions and accurately noted the responses thereto. Each telephone validator initialed the individual's telephone validation space, recorded the responses and ascertained that there were no problems.

The questions asked are as follows:

1. Did you participate in an interview at your office or workplace about keel coolers for boats?  
YES 23 NO 0 DK 0
2. The people who participated in the interview were shown color photographs of sections of keel coolers and asked questions about them. Do you recall that interview?  
YES 23 NO 0 DK 0

SINCERELY,



Ann Wilson  
Project Manager

Exhibit F

SORENSEN MARKETING/MANAGEMENT CORPORATION  
SMMC - SDL - APRIL 1998

BOAT SURVEY  
CODE SHEETS

5-8 Questionnaire #  
9 Interviewer #  
10/ Survey #  
11/1 Alabama  
/2 Florida  
/3 Louisiana  
/4 Mississippi  
/5 Texas

Q 1. Respondent is shown three photographs of the same keel cooler and asked to examine them as if in a catalogue or brochure.

Q 2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one company or by more than one company?

12/1 One company  
/2 More than one company  
/3 Don't know/not sure

Q 2b. What causes you to say that?

13/1 General appearance  
/2 Shape/design  
/3 Shape/design is unique  
/4 Materials from which cooler is fabricated  
/5 Standard keel cooler design  
/6 Knowledge of field/experience  
/7 Rectangular/square 'tubes'  
/8 Only one company has rectangular 'grid' design/other brands have different designs  
/9 Typical Fernstrum design  
/0 Aware that this design is copied

- 14/1 Only know of one company/the only company I know
- /2 Use this type/brand of cooler/Only type/brand used
- /3 Most commonly used cooler
- /4 Have seen magazine advertisements, catalogs, etc.
- /5 Other coolers/makers have similar designs
- /6 Have more than one supplier/know of more than one manufacturer
- /7 Photographs provide insufficient information for identification
- /8 Other
- /9 Miscellaneous
- /0 Don't know/not sure
- /X Other brands use round/cylindrical 'tubes'
- /Y Photographs appear to show same cooler

Q 3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

- 15/1 Donovan Marine
- /2 Duramax/Duramax Marine
- /3 East Park Radiator/East Park
- /4 Fernstrum/R.W. Fernstrum
- /5 Fernstrum Gridcooler
- /6 Gridcooler
- /7 Johnson/Johnson Marine
- /8 Johnson Rubber
- /9 Photographs provide insufficient I.D. information

- 16/1 Walter/Walter Machine
- /8 Other
- /9 Miscellaneous
- /0 Don't know/not sure

Q 3b/c. What causes you to say that?

- 17/1 Shape/design
- /2 Materials from which cooler is fabricated
- /3 Color
- /4 Rectangular 'grid' form
- /5 Rectangular copper/brass/alloy design
- /6 Rectangular/square 'tubes'/shape of 'tubes'
- /7 Other brands use round/cylindrical tubes
- /8 Photographs appear to show same cooler
- /9 Most commonly used cooler
- /0 Have seen magazine advertisements

18/1 Minimal/non involvement in brand purchase/specifications  
 /6 Fernstrum is principal manufacturer/Fernstrum is standard  
 /7 Use Fernstrum all the time  
 /8 Aware of Fernstrum 'knock-offs'  
 /9 Looks like Fernstrum design  
 /0 Have installed many of these

19/1 Looks like the coolers we use  
 /2 Mainly use inboard coolers  
 /3 Photographs provide insufficient I.D.  
 /4 It is a gridcooler  
 /5 Only Fernstrum has this design  
 /6 Install brand supplied with engine

20/8 Other  
 /9 Miscellaneous  
 /0 Don't know/not sure

Q 4a. ...

21/1 Male  
 /2 Female

Q 4b.

22/1 21 to 34  
 /2 35 to 49  
 /3 50 and over  
 /4 Refused all ages

Q 5a. How many years have you been involved in specifying, recommending, buying, or installing keel coolers?

23/1 Less than 1 year  
 /2 1 to 3 years  
 /3 4 to 6 years  
 /4 7 to 9 years  
 /5 10 to 12 years  
 /6 13 to 15 years  
 /7 16 to 18 years  
 /8 19 to 21 years  
 /9 22 to 24 years  
 /0 25 to 27 years

- 24/1 28 to 30 years
- /2 31 to 33 years
- /3 34 to 36 years
- /4 37 to 39 years
- /5 40 to 42 years
- /6 43 to 45 years
- /7 46 to 48 years
- /8 Other
- /9 Miscellaneous
- /0 Don't know/not sure

Q 5b. Which are you most involved with: Specifying, recommending, buying, or installing keel coolers?

- 25/1 Specifying
- /2 Recommending
- /3 Buying
- /4 Installing
- /8 Other
- /9 Miscellaneous
- /0 Don't know/not sure

Q 6. What is your position with the company?

- 26/1 Owner
  - /2 President
  - /3 Vice-President
  - /4 Managing Director
  - /5 General Manager
  - /6 Program Manager
  - /7 Project Manager
  - /8 Engineering Manager
  - /9 Operations Manager
  - /0 Technical Manager
- 
- 27/1 Supervisor
  - /2 Buyer/Purchaser/Estimator
  - /3 Foreman
  - /4 Superintendent
  - /5 Engineer
  - /6 Sales
  - /7 Naval Architect
  - /8 Other
  - /9 Miscellaneous
  - /0 Don't know/not sure

28-32 Zip Code

33/ Don't know Zip Code

Exhibit G

SORENSEN MARKETING/MANAGEMENT CORPORATION  
50 EAST 77th STREET NEW YORK, NY 10021-1836  
Tel (212) 879-5821 Fax (212) 879-5823 e-mail: mrktgsage@aol.com

ROBERT C. SORENSEN

CURRICULUM VITAE  
As of February 1998

Profession: Marketing counsel and research/behavioral science; educator.

Education:

- A.B. University of Chicago - 1944  
Major: Sociology and Political Science
- M.A. University of Chicago - 1948  
Major: Sociology
- Ph.D. University of Chicago - 1954  
Major: Sociology (Social Psychology). Interdepartmental Majors:  
Mass Communications, Industrial Relations. Dissertation: The Role of  
Public Sentiment and Personal Prejudice in Criminal Jury Trials.

PRESENT AND PAST POSITIONS

President: Sorensen Marketing/Management Corporation: 1968-Present.

Provide analysis and information to meet specialized needs of institutional, corporate and law firm clients. Counsel for new product introduction, consumer behavior, marketing management, and acquisitions/mergers. Mass communications research and policy evaluation. Specialized counsel, research and expert testimony in intellectual property, advertising and anti-trust litigation. Research in change of venue, juror selection, and problems of proof. Testimony as expert market research/marketing witness in over 35 cases in United States District Courts and International Trade Commission.

Professor (Full, tenured) of Marketing, Rider University, Graduate and Undergraduate School of Business Administration: 1981 - 1993. Professor Emeritus since July 1993.

Taught courses in Market Research, Consumer Behavior, Marketing Management, Social Issues in Marketing, Creative Advertising, Advertising Principles, and Trademarks: Their Creation, Uses and Protection (a special topics course). Chairman: School of Business Academic Policy Committee (1990-92).

ROBERT C. SORENSEN - PRESENT AND PAST POSITIONS (continued)

Vice President and Corporate Director of Marketing, Warner Communications, Inc., *now Time Warner*: 1972-74.

Directed studies and concerned with serving marketing and economic needs of this information and entertainment conglomerate.

Executive Director, The Center For Advanced Practice, The Interpublic Group of Companies, Inc.: 1966-68.

Member of interdisciplinary "think tank" group concerned with product development and new product introduction for major clients world wide. First publisher of Psychology Today magazine.

Vice President and Corporate Director of Research, D'Arcy Advertising Company (now D'Arcy-Masius-Benton & Bowles): 1961-66.

Supervised all marketing research in main office (New York City), policy direction concerning research in other offices throughout the country, and assistant to board chairman and chief executive officer.

Director of Research, This Week Magazine: 1959-61.

Responsible for all marketing, media, and circulation research for Sunday Magazine supplement appearing in 14 million Sunday newspapers each week.

Director of Audience Research and Analysis, Radio Free Europe, Munich: 1954-59.

Organized and administered research into broadcasting effectiveness, audience characteristics and media content analysis concerning western broadcasts and other forms of political warfare communications to and in five East European countries.

Operations Analyst and Korean Team Leader, Operations Research Office of The Johns Hopkins University: 1952-54.

Member of interdisciplinary group concerned with applying the behavioral sciences to military economic and political problems. Team leader in Korea during Korean war concerned with recruitment and utilization of Korean civilians by U.S. Army.

Assistant Professor of Legislation, College of Law, University of Nebraska: 1948-52.

Only social scientist on law school faculty concerned with application of the social sciences to legal drafting, problems of proof, legal research projects, and expert testimony for all senior law students.

Visiting Lecturer in Sociology, Northwestern University: Summer 1948.

Director of the Prelegal Division and member of prelegal faculty (part-time), The John Marshall Law School: 1946-48.

ROBERT C. SORENSEN - PRESENT AND PAST POSITIONS (continued)

Member: Editorial Board of The Trademark Reporter - 1990-92

Associate editor and Member of Publications Board: ZYGON: Journal of Religion and Science -  
Published by the Institute On Religion In An Age Of Science.

Current Member and/or Board Memberships:

American Association for the Advancement of Science  
American Association for Public Opinion Research  
American Marketing Association  
American Sociological Association  
Center for Advanced Studies in Religion and Science (Board Member)  
Center for Learning and Living of Marymount Manhattan College (Facilitator)  
The Dutch Treat Club  
Institute on Religion in an Age of Science (Vice President  
and ex officio Council Member)  
International Trademark Association  
Marketing Research Association  
Market Research Council  
Childreach/Plan International - Formerly: Foster Parents Plan.  
(Past International Board Member and Chairman; present  
U.S. Board/Executive Committee Member and Past Chairman of  
Marketing Committee)  
Scandinavian Seminar (Board Member and past Chairman)  
Scandinavian Seminar College, Copenhagen (Past Board Member)  
The University Club

Lecturer to many groups

Biographical Listings:

American Men and Women of Science (1973)  
Who's Who in the World }  
Who's Who in America }  
Who's Who in the East } Current editions  
Who's Who in Finance & Industry }  
Who's Who in Advertising }

ROBERT C. SORENSEN

PUBLICATIONS

Trademarks

Preparing and Proving Survey Research in Trademark Litigation. The first of a series of Practice Papers, monographs published by the U.S. Trademark Association, September 1990.

"Survey Research Execution in Trademark Litigation: Does Practice Make Perfection?"  
The Trademark Reporter (New York, July-August, 1983), Vol. 2, No. 4, p.349.

"Research Techniques for Measuring the Impact of Disparaging Use."  
1980-81 Trademark Law Handbook (New York, 1980), p.209. The United States Trademark Association and Clark Boardman Company, Ltd.

"The Use of Survey Research in Trademark Law and Unfair Competition."  
Current Developments in Trademark Law and Unfair Competition (New York, July 12-14, 1978), p.71. Practising Law Institute.

"Trademarks, Technology, and Social Change: Research Into Trademark Confusion."  
The Trademark Reporter (New York, January-February, 1972), Vol. 62, No. 1, p.43.

Communications/Marketing Research in Litigation

"Jury Selection and the Behavioral Sciences."  
Litigation (Winter 1976) Vol. 2, No. 2, p.30. Published by the Litigation Section of the American Bar Association.

Ph.D. Dissertation: Public Sentiment and Personal Prejudice in Criminal Jury Trials, University of Chicago, 1954.

"The Admissibility and Use of Opinion Research Evidence" (with Theodore C. Sorensen).  
New York University Law Review, Vol. 28, No. 7, November 1953, p.1213.

"Responding to Objections Against the Use of Opinion Survey Findings in the Courts" (with Theodore C. Sorensen).  
The Journal of Marketing, October, 1955, p.133.

"Re-Examining the Traditional Legal Test of Literary Similarity: A Proposal for Content Analysis" (with Theodore C. Sorensen).  
Cornell Law Quarterly, Vol. 37, No. 4, Summer 1952, p. 638.

"The Effectiveness of the Oath to Obtain a Witness' True Personal Opinion."  
Journal of Criminal Law, Criminology and Police Science.  
September-October, 1956.

ROBERT C. SORENSEN - PUBLICATIONS (continued)

"United States v. Hiss: Its Significance for Criminology." Journal of Criminal Law, Criminology and Police Science, September-October, 1952, p. 299

Books

Free Will and Determinism (Editor with Viggo Mortensen). Includes own "Foreword" and paper - "Abundance and the Illusion of Free Choice." Aarhus (Denmark): University of Aarhus Press, 1987.

Adolescent Sexuality in Contemporary America.  
New York: World Publishing Company, 1972.

Marketing and Economic Research

"Marketing for Product Use: Its Potential Role in Reducing Product Liability Problems"  
Proceedings: Academy of Marketing Science - Developments in Marketing Science,  
May 1989.

"The Economics of Information," Challenge, April 1960.

"Marketing Information and the Determination of Value."  
Handbook of Mergers, Acquisitions and Buyouts. Steven James Lee and Robert Douglas Coleman, Editors. Prentice Hall, 1981.

Army Procurement and Payment of South Korean Labor. A declassified Monograph.  
Washington, D.C.: Operations Research Office, The Johns Hopkins University, 1954.

"The Role of Attrition in Non-Profit Subscriber Service Organizations" (with M.A. Walsh)

Proceedings: International Conference on Services Marketing, October 1988.

"Corporate Marketing."

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"An Analysis of the Social Aspects of Complaint Reporting: A Survey of VCR Owners" (with William M. Strahle)

Journal of Consumer Satisfaction, Dissatisfaction and Complaining Behavior, January 1990.

"A Study of Complaining Behavior: VCR Owners in Puerto Rico" (with William M. Strahle, Sigfredo Hernandez and Hector L. Garcia)

Journal of Consumer Satisfaction, Dissatisfaction and Complaining Behavior, 1991-92.

ROBERT C. SORENSEN - PUBLICATIONS (continued)

"A Cross Cultural Study of Consumer Complaining Behavior: VCR Owners in the U.S. and Puerto Rico (with William M. Strahle, Sigfredo Hernandez and Hector L. Garcia)  
Journal of Consumer Policy, 1991, Vol. 14, p. 35.

Communications Research

New Indicators of Psychological Operations Effects. A Monograph.  
With F. Tims and F. Mushal, Washington: General Research Corporation, 1975.

"The Future of Communications" in Creativity and the Future,  
A book published by British Petroleum Corporation, England 1970.

"Adolescent Sexuality: Crucible for Generational Conflict." Journal of Clinical Psychology, Vol.3, No.3, Fall-Winter 1974, p.44.

"Effective Communications and Personal Values."  
The University of Missouri: Second International Symposium for Communications Research, 1966.

"New Perspectives in Advertising."  
Ethics, Advertising and Responsibility, Francis X. Quinn, S.J.,  
Editor, 1963, p.41, Institute of Social Ethics, Georgetown University.

"Media Research Can Learn From Psychological Warfare." Media/scope, March 1961, p.86.

"Can Advertising Be Both Moral and Legal?"  
Advertising, Scripps-Howard Newspapers, 1961, Cincinnati.

"Sociological Aspects of Psychological Warfare."  
J.S. Roucek, Editor, Contemporary Sociology. New York, Philosophical Library, 1958.

"Local Uses of Wired Radio in Communist Ruled Poland" (with Leszek L. Meyer).  
Journalism Quarterly, Vol. 32, No. 3, Summer 1955, p. 343.

"The Influence of Public Opinion Polls Upon Legislators,"  
Sociology and Social Research, 1950.

Education

"Scandinavian Seminar: Forty Years of Cultural Immersion." Scandinavian Review. Vol. 77,  
No. 2, Summer 1989, p. 65.

Exhibit H

SORENSEN MARKETING/MANAGEMENT CORPORATION  
50 EAST 77TH STREET NEW YORK, NY 10021-1836  
Tel (212) 879-5821 Fax (212) 879-5823 e-mail mrktgsage@aol.com

CASES IN WHICH ROBERT C. SORENSEN, Ph.D. HAS TESTIFIED:  
IN COURT AND/OR BY DEPOSITION 1992-1998.

June 1998

1. 1998 - Graham Webb International Limited Partnership v. Helene Curtis, Inc.
2. 1998 - ND Industries, Opposer and Nylock Fastener Corporation, Opposer.
3. 1997 - Mast-Jägermeister Aktiengesellschaft v. Frank-Lin Int'l Products, Ltd.,  
Richard M. Trachtenberg & Joel K. Beth
4. 1997 - Brady v. Bodum/Bodum adv. Brady and Bodum v. Culinary Parts  
Unlimited, Inc.
5. 1997 - Sara Lee Corporation v. American Leather Products, Inc. and Donald  
Rappin
6. 1997 - Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. B.E.Windows  
Corporation
7. 1997 - Cardservice International, Inc. v. Webster R. McGee and WRM Associates.
8. 1997 - Touch Tel Corporation, v. AirTouch Communications, U.S. Patent and  
Trademark Office, Trademark Trial and Appeal Board.
9. 1996 - Warren Distribution, Inc., v. Prestone Products Corporation.
10. 1996 - The Black & Decker Corporation et als v. International Sales and  
Marketing, GSI Engineering Ltd. et als.
11. 1995 - National Presto Industries, Inc. v. Dazey Corporation.
12. 1995 - Crown Moving And Storage Company dba Crown Worldwide Moving &  
Storage v. Crown World Wide Movers, Inc. and Crown Pacific, Inc.
13. 1995 - Sportschannel Associates v. Commissioner of Patents and Trademarks.
14. 1994 - Church and Dwight Co., Inc. v. S.C. Johnson & Son, Inc.
15. 1994 - Nora Beverages, Inc. v. The Perrier Group of America, Inc.
16. 1994 - Masco Corp. of Indiana v. Globe-Union Industrial Corp.

CASES IN WHICH ROBERT C. SORENSEN, Ph.D. HAS TESTIFIED:  
IN COURT AND/OR BY DEPOSITION 1992-1998.  
(Continued)

17. 1993 - Marc Kasky, et al. v. Perrier Group of America, Inc.
18. 1992 - Ristvedt-Johnson, Inc. and Cummins-Allison Corp. v. Brandt, Inc. U.S. District Court, Chicago, Illinois. Civil Action 88C-3834.
19. 1992 - Zotos International, Inc. v. Conair Corporation. State District Court, Stamford, Connecticut.
20. 1992 - Outboard Marine Corporation, Opposor v. Brunswick Corporation, Applicant. U.S. Patent and Trademark Office, Washington, D.C.
21. 1992 - Hard Rock Cafe: Eastern District v. Western District. Arbitration proceedings in Los Angeles, California.  
...

Exhibit I

TABLES OF INFORMATION

Tables 1A through 7A

Tables 1B through 7B

"Marginals"

SOERENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q2b. What causes you to say that?

Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?

	Total Resp.	One Company	More Than One Company	Don't Know/Not Sure
TOTAL RESPONDENTS	150 100.0%	86 100.0%	48 100.0%	16 100.0%
General appearance	1 0.7%	1 1.2%	-	-
Shape/design	5 3.3%	4 4.7%	1 2.1%	-
Shape/design is unique	4 2.7%	4 4.7%	-	-
Materials from which cooler is fabricated	1 0.7%	1 1.2%	-	-
Standard keel cooler design	1 0.7%	-	1 2.1%	-
Knowledge of field/experience	24 16.0%	18 20.9%	6 12.5%	-
Rectangular/square 'tubes'	6 4.0%	6 7.0%	-	-
Only one company has rectangular 'grid' design/other brands are different	2 1.3%	2 2.3%	-	-

TABLE 1A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q2b. What causes you to say that?

	Total Resp.	Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?			Don't Know/ Not Sure
		One Company	More Than One Company		
TOTAL RESPONDENTS	150 100.0% 100.0%	86 100.0% 57.3%	48 100.0% 32.0%	16 100.0% 10.7%	
Typical Fernstrum design	1 0.7% 0.7%	1 1.2% 0.7%	-	-	
Aware that this design is copies	3 2.0% 2.0%	-	3 6.3% 2.0%	-	
Only know one company/ the only company I know	32 21.3% 21.3%	31 36.0% 20.7%	1 2.1% 0.7%	-	
Use this type/brand of cooler/ only type/brand used	10 6.7% 6.7%	9 10.5% 6.0%	1 2.1% 0.7%	-	
Most commonly used cooler	2 1.3% 1.3%	1 1.2% 0.7%	1 2.1% 0.7%	-	
Have seen magazine advertisements, catalogs, etc.	6 4.0% 4.0%	-	6 12.5% 4.0%	-	
Other coolers/makers have similar designs	1 0.7% 0.7%	-	1 2.1% 0.7%	-	
Have more than one supplier/ know of more than one manufacturer	18 12.0% 12.0%	-	18 37.5% 12.0%	-	

CONTINUATION OF TABLE 1A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q2b. What causes you to say that?

	Total Resp.	One Company		More Than One Company		Don't Know/ Not Sure	
			%		%		%
TOTAL RESPONDENTS	150 100.0%	86 57.3%	100.0%	48 32.0%	16 10.7%	100.0%	10.7%
Photographs provide insufficient information for identification	5 3.3%	1 0.7%	1.2%	-	4 2.7%	25.0%	2.7%
Other brands use round/ cylindrical 'tubes'	1 0.7%	1 0.7%	1.2%	-	-	-	-
Photographs appear to show same cooler	3 2.0%	3 2.0%	3.5%	-	-	-	-
Other	18 12.0%	8 5.3%	9.3%	6 4.0%	4 2.7%	25.0%	2.7%
Miscellaneous	6 4.0%	1 0.7%	1.2%	3 2.0%	2 1.3%	12.5%	1.3%
Don't know/not sure	2 1.3%	-	-	-	2 1.3%	12.5%	1.3%

CONTINUATION OF TABLE 1A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?

	Total Resp.	One Company	More Than One Company	Don't Know/Not Sure
TOTAL RESPONDENTS	150 100.0% 100.0%	86 100.0% 57.3%	48 100.0% 32.0%	16 100.0% 10.7%
Donovan Marine	2 1.3% 1.3%	-	2 4.2% 1.3%	-
Duramax/Duramax Marine	4 2.7% 2.7%	-	4 8.3% 2.7%	-
East Park Radiator/ East Park	5 3.3% 3.3%	-	5 10.4% 3.3%	-
Fernstrum/R.W. Fernstrum	118 78.7% 78.7%	81 94.2% 54.0%	32 66.7% 21.3%	5 31.3% 3.3%
Fernstrum Gridcooler	4 2.7% 2.7%	1 1.2% 0.7%	3 6.3% 2.0%	-
Gridcooler	2 1.3% 1.3%	-	2 4.2% 1.3%	-
Johnson/Johnson Marine	11 7.3% 7.3%	-	11 22.9% 7.3%	-
Johnson Rubber	-	-	-	-

TABLE 2A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?

	Total Resp.	One Company	More Than One Company	Don't Know/Not Sure
TOTAL RESPONDENTS	150 100.0%	86 100.0%	48 100.0%	16 100.0%
Walter/Walter Machine	-	-	-	-
Photographs provide insufficient I.D. information	5 3.3%	1 1.2%	4 8.3%	-
Other	7 4.7%	-	7 14.6%	-
Miscellaneous	2 1.3%	-	2 4.2%	-
Don't know/not sure	-	-	-	-

CONTINUATION OF TABLE 2A

SOERSEN MARKETING/  
MANAGEMENT CORPORATION  
MARKET SURVEY

Q3b/c. What causes you to say that?

	Total Resp.	Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?		
		One Company	More Than One Company	Don't Know/Not Sure
TOTAL RESPONDENTS	150 100.0%	86 100.0%	48 32.0%	16 10.7%
Shape/design	41 27.3%	29 33.7%	9 18.8%	3 18.8%
Materials from which cooler is fabricated	27.3%	19.3%	6.0%	2.0%
Color	4	3	-	1
	2.7%	3.5%	-	6.3%
	2.7%	2.0%	-	0.7%
	3	2	1	-
	2.0%	2.3%	2.1%	-
	2.0%	1.3%	0.7%	-
Rectangular 'grid' form	25	17	7	1
	16.7%	19.8%	14.6%	6.3%
	16.7%	11.3%	4.7%	0.7%
Rectangular copper/brass/alloy design	11	10	1	-
	7.3%	11.6%	2.1%	-
	7.3%	6.7%	0.7%	-
Rectangular/square 'tubes'/shape of 'tubes'	72	47	25	-
	48.0%	54.7%	52.1%	-
	48.0%	31.3%	16.7%	-
Other brands use round/cylindrical tubes	12	6	5	1
	8.0%	7.0%	10.4%	6.3%
	8.0%	4.0%	3.3%	0.7%
Photographs appear to show same cooler	1	-	1	-
	0.7%	-	2.1%	-
	0.7%	-	0.7%	-

TABLE 3A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q3b/c. What causes you to say that?

	Total Resp.	Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?			Don't Know/ Not Sure
		One Company	More Than One Company		
TOTAL RESPONDENTS	150 100.0% 100.0%	86 100.0% 57.3%	48 100.0% 32.0%	16 100.0% 10.7%	
Most commonly used cooler	2 1.3% 1.3%	2 2.3% 1.3%	-	-	
Have seen magazine advertisements	1 0.7% 0.7%	-	1 2.1% 0.7%	-	
Minimal/non involvement in brand purchase/specifications	5 3.3% 3.3%	1 1.2% 0.7%	1 2.1% 0.7%	3 18.8% 2.0%	
Fernstrum is principal manufacturer/Fernstrum is standard	1 0.7% 0.7%	-	1 2.1% 0.7%	-	
Use Fernstrum all the time	2 1.3% 1.3%	1 1.2% 0.7%	-	1 6.3% 0.7%	
Aware of Fernstrum 'knock-offs'	2 1.3% 1.3%	1 1.2% 0.7%	1 2.1% 0.7%	-	
Looks like Fernstrum design	6 4.0% 4.0%	1 1.2% 0.7%	3 6.3% 2.0%	2 12.5% 1.3%	
Have installed many of these	-	-	-	-	

CONTINUATION OF TABLE 3A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q3b/c. What causes you to say that?

	Total Resp.	Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?		
		One Company	More Than One Company	Don't Know/ Not Sure
TOTAL RESPONDENTS	150 100.0% 100.0%	86 100.0% 57.3%	48 100.0% 32.0%	16 100.0% 10.7%
Looks like the coolers we use	5 3.3% 3.3%	3 3.5% 2.0%	2 4.2% 1.3%	-
Mainly use inboard coolers	1 0.7% 0.7%	-	1 2.1% 0.7%	-
Photographs provide insufficient I.D.	7 4.7% 4.7%	1 1.2% 0.7%	4 8.3% 2.7%	2 12.5% 1.3%
It is a Gridcooler	2 1.3% 1.3%	2 2.3% 1.3%	-	-
Only Fernstrum has this design	3 2.0% 2.0%	1 1.2% 0.7%	2 4.2% 1.3%	-
Install brand supplied with engine	3 2.0% 2.0%	-	3 6.3% 2.0%	-
Other	11 7.3% 7.3%	-	4 8.3% 2.7%	3 18.8% 2.0%
Miscellaneous	26 17.3% 17.3%	11 12.8% 7.3%	14 29.2% 9.3%	1 6.3% 0.7%

CONTINUATION OF TABLE 3A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q3b/c. What causes you to say that?

Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?

	Total Resp.	One Company	More Than One Company	Don't Know/Not Sure
TOTAL RESPONDENTS	150 100.0%	86 100.0%	48 100.0%	16 100.0%
Don't know/not sure	1 0.7%	-	1 2.1%	- 0.7%

CONTINUATION OF TABLE 3A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q4a. Respondent's Sex  
Q4b. Respondent's Age

Q2a. Do you believe the same keel  
cooler shown in these three  
pictures is manufactured by one  
or by more than one company?

	Total Resp.	Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?		
		One Company	More Than One Company	Don't Know/ Not Sure
TOTAL RESPONDENTS	159 100.0%	86 57.3%	48 32.0%	16 10.7%
SEX				
Male	144 96.0%	84 97.7%	45 30.0%	15 93.8%
Female	6 4.0%	2 2.3%	3 6.3%	1 6.3%
AGE				
21 to 34	19 12.7%	8 9.3%	6 12.5%	5 31.3%
35 to 49	70 46.7%	36 41.9%	30 62.5%	4 25.0%
50 and over	61 40.7%	42 48.8%	20 28.0%	7 43.8%
Refused all eyes	-	-	-	-

TABLE 4A

SOERSENEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q5a. How many years have you been involved in specifying, recommending,  
buying, or installing keel coolers?

Q2a. Do you believe the same keel  
cooler shown in these three  
pictures is manufactured by one  
or by more than one company?

	Total Resp.	One Company		More Than One Company		Don't Know/ Not Sure	
		%	#	%	#	%	#
TOTAL RESPONDENTS	150 100.0%	86 57.3%	48 32.0%	16 10.7%			
Less than 1 Year	1 0.7%	-	-	1 0.7%			
1 to 3 years	3 2.0%	2 1.3%	1 0.7%	1 0.7%			
4 to 6 years	7 4.7%	3 2.0%	1 0.7%	3 2.0%			
7 to 9 years	4 2.7%	2 1.3%	1 0.7%	1 0.7%			
10 to 12 years	8 5.3%	5 3.3%	3 2.0%	3 2.0%			
13 to 15 years	8 5.3%	3 2.0%	4 2.7%	4 2.7%			
16 to 18 years	7 4.7%	1 0.7%	5 3.3%	5 3.3%			
19 to 21 years	26 17.3%	13 8.7%	8 5.3%	5 3.3%			

TABLE 5A

SOBENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q5a. How many years have you been involved in specifying, recommending,  
buying, or installing Kool coolers?

	Total Resp.	One Company	More Than One Company	Don't Know/ Not Sure
TOTAL RESPONDENTS	150 100.0% 100.0%	86 100.0% 57.3%	48 100.0% 32.0%	16 100.0% 10.7%
22 to 24 years	= 23 8.7% 8.7%	8 9.3% 5.3%	5 10.4% 3.3%	-
25 to 27 years	= 26 14.0% 14.0%	12 14.0% 8.0%	9 18.8% 6.0%	-
28 to 30 years	= 29 10.7% 10.7%	13 15.1% 8.7%	3 6.3% 2.0%	-
31 to 33 years	= 32 2.7% 2.7%	2 2.3% 1.3%	2 4.2% 1.3%	-
34 to 36 years	= 35 10.0% 10.0%	11 12.8% 7.3%	3 6.3% 2.0%	1 6.3% 0.7%
37 to 39 years	= 38 0.7% 0.7%	-	-	1 6.3% 0.7%
40-42 years	= 41 6.0% 6.0%	5 5.8% 3.3%	2 4.2% 1.3%	2 12.5% 1.3%
43 to 45 years	= 44 0.7% 0.7%	1 1.2% 0.7%	-	-

CONTINUATION OF TABLE 5A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q5a. How many years have you been involved in specifying, recommending,  
buying, or installing keel coolers?

Q2a. Do you believe the same keel  
cooler shown in these three  
pictures is manufactured by one  
or by more than one company?

	Total Resp.	-----			Don't Know/ Not Sure
		One Company	More Than One Company		
TOTAL RESPONDENTS	150 100.0%	86 100.0%	48 100.0%	16 100.0%	
46 to 48 years	n = 47 0.7%	1 0.7%	- 0.7%	- 0.7%	
Other	3 2.0%	2 2.3%	1 2.1%	- 0.7%	
Miscellaneous	-	-	-	-	
Don't know/not sure	-	-	-	-	
MEDIAN	22.0	24.1	20.4	17.7	
MEAN	23.3	24.7	22.0	19.3	

CONTINUATION OF TABLE 5A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q6. What is your position with the company?

Q2a. Do you believe the same keel  
color shown in these three  
pictures is manufactured by one  
or by more than one company?

	Total Resp.	Q2a.			Don't Know/ Not Sure
		One Company	More Than One Company	More Than One Company	
TOTAL RESPONDENTS	150 100.0% 100.0%	86 100.0% 57.3%	48 100.0% 32.0%	16 100.0% 10.7%	
Owner	11 7.3% 7.3%	9 10.5% 6.0%	1 2.1% 0.7%	1 6.3% 0.7%	
President	11 7.3% 7.3%	10 11.6% 6.7%	-	1 6.3% 0.7%	
Vice-President	5 3.3% 3.3%	3 3.5% 2.0%	1 2.1% 0.7%	1 6.3% 0.7%	
Managing Director	1 0.7% 0.7%	-	-	1 6.3% 0.7%	
General Manager	11 7.3% 7.3%	9 10.5% 6.0%	2 4.2% 1.3%	-	
Program Manager	4 2.7% 2.7%	3 3.5% 2.0%	1 2.1% 0.7%	-	
Project Manager	6 4.0% 4.0%	3 3.5% 2.0%	3 6.3% 2.0%	-	
Engineering Manager	4 2.7% 2.7%	4 4.7% 2.7%	-	-	

TABLE GA

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q6. What is your position with the company?

Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?

	Total Resp.	Q2a.		
		One Company	More Than One Company	Don't Know/Not Sure
TOTAL RESPONDENTS	150 100.0% 100.0%	86 100.0% 57.3%	48 100.0% 32.0%	16 100.0% 10.7%
Operations Manager	8 5.3% 5.3%	4 4.7% 2.7%	4 8.3% 2.7%	-
Technical Manager	2 1.3% 1.3%	1 1.2% 0.7%	1 2.1% 0.7%	-
Supervisor	8 5.3% 5.3%	3 3.5% 2.0%	3 6.3% 2.0%	2 12.5% 1.3%
Buyer/Purchaser/Estimator	27 18.0% 18.0%	11 12.8% 7.3%	12 25.0% 8.0%	4 25.0% 2.7%
Foreman	3 2.0% 2.0%	2 2.3% 1.3%	-	1 6.3% 0.7%
Superintendent	11 7.3% 7.3%	4 4.7% 2.7%	6 12.5% 4.0%	1 6.3% 0.7%
Engineer	19 12.7% 12.7%	11 12.8% 7.3%	8 16.7% 5.3%	-
Sales	3 2.0% 2.0%	1 1.2% 0.7%	1 2.1% 0.7%	1 6.3% 0.7%

CONTINUATION OF TABLE 6A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q6. What is your position with the company?

Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?

	Total Resp.	One Company			More Than One Company			Don't Know/Not Sure
		86	100.0%	57.3%	48	100.0%	32.0%	
TOTAL RESPONDENTS	150 100.0%	86 100.0%	57.3%	48 100.0%	100.0%	32.0%	16 100.0%	
Naval Architect	3 2.0%	2 2.3%	1.3%	1 2.1%	0.7%	-	-	
Other	14 9.3%	7 8.1%	4.7%	4 8.3%	2.7%	3 18.8%	2.0%	
Miscellaneous	1 0.7%	1 1.2%	0.7%	-	-	-	-	
Don't know/not sure	1 0.7%	1 1.2%	0.7%	-	-	-	-	

CONTINUATION OF TABLE 6A

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Interview Location

	Total Resp.	Q2a. Do you believe the same keel cooler shown in these three pictures is manufactured by one or by more than one company?			
		One Company	More Than One Company	Don't Know/ Not Sure	
TOTAL RESPONDENTS	150 100.0% 100.0%	86 100.0% 57.3%	48 100.0% 32.0%	16 100.0% 10.7%	
Alabama	31 20.7% 20.7%	15 17.4% 10.0%	11 22.9% 7.3%	5 31.3% 3.3%	
Florida	11 7.3% 7.3%	7 8.1% 4.7%	3 6.3% 2.0%	1 6.3% 0.7%	
Louisiana	71 47.3% 47.3%	34 39.5% 22.7%	29 60.4% 19.3%	8 50.0% 5.3%	
Mississippi	11 7.3% 7.3%	7 8.1% 4.7%	4 8.3% 2.7%	-	
Texas	26 17.3% 17.3%	23 26.7% 15.3%	1 2.1% 0.7%	2 12.5% 1.3%	

TABLE 7A

COBURN MOUNTING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q2b. What causes you to say that?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

	Total Resp.	Donavin Marine		Duramax Marine		East Park Fernstrum Radiator/R.W. East Park Fernstrum cooler		Fernstrum Grid-cooler		Johnson Marine Rubber		Walter Ineff. Machine		Photos Provide ID Info		Other	Misc.	DK/NS	
		2	100.0%	4	100.0%	5	118	4	100.0%	2	11	-	5	7	100.0%				3.3%
TOTAL RESPONDENTS	150 100.0%	2 100.0%	100.0%	4 2.7%	100.0%	5 3.3%	118 78.7%	4 2.7%	100.0%	2 1.3%	11 7.3%	-	5 3.3%	7 4.7%	100.0%	2 1.3%	100.0%	8 5.3%	
General appearance	1 0.7%	-	-	-	-	-	1 0.8%	-	-	-	-	-	-	-	-	-	-	-	-
Shape/design	5 3.3%	-	-	-	-	-	4 3.4%	1 25.0%	1 50.0%	1 0.7%	-	-	-	-	-	-	-	-	-
Shape/design is unique	4 2.7%	-	-	-	-	-	3 2.5%	-	-	-	-	-	-	-	-	-	-	-	-
Materials from which cooler is fabricated	1 0.7%	-	-	-	-	-	1 0.8%	-	-	-	-	-	-	-	-	-	-	-	-
Hard keel cooler design	1 0.7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1 0.7%
Knowledge of field/experience	24 16.0%	-	-	1 25.0%	40.0%	2 1.3%	23 19.5%	1 25.0%	3 27.3%	2 2.0%	-	-	1 14.3%	1 0.7%	-	-	-	-	-
Rectangular/square 'tubes'	6 4.0%	-	-	-	-	-	6 5.1%	-	-	-	-	-	-	-	-	-	-	-	-
Only one company has rectangular 'grid' design/other brands are different	2 1.3%	-	-	-	-	-	2 1.7%	-	-	-	-	-	-	-	-	-	-	-	-

TABLE 1B

SOERSEN MARKETING/  
 SOERSEN CORPORATION  
 BOAT SURVEY

Q2b. What causes you to say that?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

	Total Resp.	Donavan Marine		Duramax Marine		East Park Radiator/R.W. East Park Fernstrum cooler		Fernstrum Grid-cooler		Johnson Marine		Walter Johnson Rubber Machine		Photos Provide Inseuf. ID info		Other	Misc.	DK/NS	
		2	100.0%	4	100.0%	5	118	4	100.0%	2	11	-	-	5	100.0%				7
TOTAL RESPONDENTS	150	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Typical Fernstrum design	1	0.7%	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Aware that this design is copies	3	2.0%	-	-	-	-	3	-	-	-	-	-	-	-	-	-	-	-	-
Only know one company/ the only company I know	32	21.3%	-	-	-	-	32	-	-	-	-	-	-	-	-	-	-	-	-
Use this type/brand of cooler/ only type/brand used	10	6.7%	-	-	-	-	10	-	-	-	-	-	-	-	-	-	-	-	-
Most commonly used cooler	2	1.3%	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-
Have seen magazine advertisements, catalogs, etc.	6	4.0%	-	-	-	-	6	-	-	-	-	-	-	-	-	-	-	-	-
Other coolers/makers have similar designs	1	0.7%	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Have more than one supplier/ know of more than one manufacturer	18	12.0%	1	3	3	11	1	1	2	6	2	2	2	2	40.0%	28.6%	50.0%	12.5%	0.7%

CONTINUATION OF TABLE 1B







SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q3b/c. What causes you to say that?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

TOTAL RESPONDENTS	Donsvan Marine		Duramax Marine		East Park Radiator/R.W. East Park		Fornstrum Cooler		Grid-cooler		Johnson Marine		Johnson Rubber		Walter Machine		Photos Provide Insuff. ID Info		Other		Misc.		DK/NS
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	
150	100.0%	100.0%	2	1.3%	4	2.7%	5	3.3%	118	78.7%	4	2.7%	100.0%	100.0%	2	1.3%	100.0%	100.0%	7	4.7%	100.0%	100.0%	8
100.0%	100.0%	100.0%	1	0.7%	1	0.7%	1	0.7%	36	24.0%	2	1.3%	50.0%	50.0%	1	0.7%	50.0%	50.0%	2	1.3%	100.0%	100.0%	2
27.3%	27.3%	27.3%	1	0.7%	1	0.7%	1	0.7%	30.3%	24.0%	1	0.7%	50.0%	50.0%	1	0.7%	50.0%	50.0%	2	1.3%	100.0%	100.0%	1
27.3%	27.3%	27.3%	1	0.7%	1	0.7%	1	0.7%	30.3%	24.0%	1	0.7%	50.0%	50.0%	1	0.7%	50.0%	50.0%	2	1.3%	100.0%	100.0%	1
4	2.7%	2.7%	1	0.7%	1	0.7%	1	0.7%	3.4%	2.7%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	2	1.3%	100.0%	100.0%	1
2.7%	2.7%	2.7%	1	0.7%	1	0.7%	1	0.7%	3.4%	2.7%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	2	1.3%	100.0%	100.0%	1
3	2.0%	2.0%	1	0.7%	1	0.7%	1	0.7%	2.5%	2.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
2.0%	2.0%	2.0%	1	0.7%	1	0.7%	1	0.7%	2.5%	2.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
25	16.7%	16.7%	1	0.7%	1	0.7%	1	0.7%	23	15.3%	1	0.7%	25.0%	25.0%	1	0.7%	25.0%	25.0%	1	0.7%	100.0%	100.0%	1
16.7%	16.7%	16.7%	1	0.7%	1	0.7%	1	0.7%	23	15.3%	1	0.7%	25.0%	25.0%	1	0.7%	25.0%	25.0%	1	0.7%	100.0%	100.0%	1
11	7.3%	7.3%	1	0.7%	1	0.7%	1	0.7%	11	7.3%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
7.3%	7.3%	7.3%	1	0.7%	1	0.7%	1	0.7%	11	7.3%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
72	48.0%	48.0%	1	0.7%	1	0.7%	1	0.7%	69	45.3%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
48.0%	48.0%	48.0%	1	0.7%	1	0.7%	1	0.7%	69	45.3%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
48.0%	48.0%	48.0%	1	0.7%	1	0.7%	1	0.7%	69	45.3%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
12	8.0%	8.0%	1	0.7%	1	0.7%	1	0.7%	11	7.3%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
8.0%	8.0%	8.0%	1	0.7%	1	0.7%	1	0.7%	11	7.3%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
8.0%	8.0%	8.0%	1	0.7%	1	0.7%	1	0.7%	11	7.3%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
1	0.7%	0.7%	1	0.7%	1	0.7%	1	0.7%	1	0.7%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1
0.7%	0.7%	0.7%	1	0.7%	1	0.7%	1	0.7%	1	0.7%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1	0.7%	100.0%	100.0%	1

TABLE 3B

SORENSEN MARKETING/  
MARKING CORPORATION  
BOAT SURVEY

Q3b/c. What causes you to say that?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the picture?

	Total Resp.	Donavan Marine	Duramax/ Duramax Marine	East Park Radcoz/ R.M. Marine	Fernstrum /R.M. Marine	Grid- cooler	Johnson/ Johnson Marine	Johnson/ Johnson Rubber	Walter/ Walter Machine	Photos Provide ID Info	Other	Misc.	DK/NS
TOTAL RESPONDENTS	150 100.0%	2 1.3%	4 2.7%	5 3.3%	118 78.7%	4 2.7%	2 1.3%	11 7.3%	-	5 3.3%	7 4.7%	2 1.3%	8 5.3%
Most commonly used cooler	2 1.3%	-	-	-	2 1.7%	-	-	-	-	100.0%	-	-	-
Have seen magazine advertisements	1 0.7%	-	-	-	1 0.8%	-	-	-	-	-	-	-	-
Minimal/non involvement in brand purchase/specifications	5 3.3%	-	-	-	1 0.7%	-	-	-	-	1 0.7%	-	-	-
Fernstrum is principal manufacturer/Fernstrum is standard	1 0.7%	-	-	-	1 0.7%	-	-	-	-	20.0%	-	-	12.5%
Use Fernstrum all the time	2 1.3%	-	-	-	2 1.7%	-	-	-	-	-	-	-	-
Aware of Fernstrum 'knock-offs'	2 1.3%	-	-	-	2 1.7%	-	-	-	-	-	1 0.7%	-	-
Looks like Fernstrum design	6 4.0%	1 0.7%	-	-	4 2.7%	-	-	-	-	-	1 0.7%	1 0.7%	12.5%
Have installed many of these	-	-	-	-	-	-	-	-	-	-	-	-	-

CONTINUATION OF TABLE 3B

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q3b/c. What causes you to say that?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the picture?

	Total Resp.	Donavan Marine		Duramax/ Duramax Marine		East Park Fernstrum East Park Fernstrum cooler		East Park Fernstrum Grid- cooler		Johnson/ Johnson Marine		Johnson/ Johnson Rubber		Maltor/ Maltor Machine		Photos Provide ID Info		Other	Misc.	DK/NS				
		2	100.0%	4	100.0%	5	118	4	100.0%	2	11	11	100.0%	5	100.0%	7	100.0%				7	100.0%		
TOTAL RESPONDENTS	150	100.0%	100.0%	2	1.3%	4	2.7%	5	3.3%	118	78.7%	4	2.7%	2	1.3%	100.0%	3.3%	7	4.7%	2	1.3%	100.0%	3	2.0%
Looks like the coolers we use	5	3.3%	3.3%	-	-	-	-	1	0.7%	4	2.7%	-	-	-	-	100.0%	3.3%	7	4.7%	-	-	100.0%	3	2.0%
Mainly use inboard coolers	1	0.7%	0.7%	-	-	-	-	1	0.7%	5	3.3%	-	-	-	-	-	-	1	0.7%	-	-	14.3%	1	0.7%
Photographs provide insufficient I.C.	7	4.7%	4.7%	-	-	-	-	2	1.3%	4	2.7%	-	-	-	-	20.0%	0.7%	-	-	-	-	20.0%	1	0.7%
It is a Gridcooler	2	1.3%	1.3%	-	-	-	-	-	-	2	1.3%	-	-	-	-	20.0%	0.7%	-	-	-	-	20.0%	1	0.7%
Onl. Fernstrum has this	3	2.0%	2.0%	1	0.7%	2	1.3%	-	-	1.7%	1.3%	-	-	-	-	-	-	-	-	-	-	-	-	-
Install brand supplied with engine	3	2.0%	2.0%	1	0.7%	2	1.3%	-	-	3	2.0%	-	-	-	-	-	-	-	-	-	-	-	-	-
Other	11	7.3%	7.3%	-	-	-	-	1	0.7%	7	4.7%	-	-	-	-	-	-	1	0.7%	-	-	14.3%	1	0.7%
Miscellaneous	26	17.3%	17.3%	1	0.7%	2	1.3%	2	1.3%	17	11.3%	2	1.3%	1	0.7%	50.0%	2.0%	1	0.7%	-	-	50.0%	1	0.7%

CONTINUATION OF TABLE 33

SORENSEN MARKETING/  
MARKETING CORPORATION  
BOAT SURVEY

Q3b/c. What causes you to say that?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

Total Resp.	Donavan Marine		Durmax/Durmax Marine		East Park Fernstrum		East Park Fernstrum		Grid-cooler		Johnson/Johnson Marine		Walter/Walter Machine		Photos Provide Info		DK/NS	
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%		
150	2	1.3%	4	2.7%	5	3.3%	118	78.7%	4	2.7%	2	1.3%	11	7.3%	5	3.3%	8	
100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
1	0.7%	50.0%	1	0.7%	1	0.8%	1	0.8%	1	0.7%	1	0.8%	1	0.7%	1	0.8%	1	0.7%
0.7%	0.7%	50.0%	0.7%	0.7%	0.7%	0.8%	0.8%	0.7%	0.7%	0.7%	0.8%	0.8%	0.7%	0.7%	0.7%	0.8%	0.7%	0.7%

CONTINUATION OF TABLE 3B

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q4a. Respondent's Sex  
Q4b. Respondent's Age

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

Total Resp.	Donavan Marine		Duramax/ Duramax Marine		East Park/ East Park		Fernstrum/ Fernstrum		Grid- cooler		Johnson/ Johnson Marine		Johnson/ Johnson Rubber		Walter/ Walter Machine		Photos Provide Info		Other Masc.		DK/NS
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	
150 100.0%	2 1.3%	100.0%	4 2.7%	100.0%	5 3.3%	100.0%	4 2.7%	100.0%	2 1.3%	100.0%	11 7.3%	100.0%	2 1.3%	100.0%	7 4.7%	100.0%	5 3.3%	100.0%	2 1.3%	100.0%	9 5.3%
96.0%	2 1.3%	100.0%	4 2.7%	100.0%	5 3.3%	100.0%	4 2.7%	100.0%	2 1.3%	100.0%	11 7.3%	100.0%	2 1.3%	100.0%	7 4.7%	100.0%	5 3.3%	100.0%	2 1.3%	100.0%	7 4.7%
4.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1 0.7%
4.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1 0.7%
19 12.7%	0	0.0%	1 0.7%	25.0%	0	0.0%	10 6.7%	50.0%	0	0.0%	1 5.3%	100.0%	0	0.0%	2 1.3%	20.0%	1 0.7%	100.0%	1 0.7%	50.0%	2 1.3%
70 46.7%	0	0.0%	3 2.0%	75.0%	5 3.3%	100.0%	45.8%	75.0%	1 0.7%	50.0%	7 4.7%	100.0%	0	0.0%	4 2.7%	60.0%	3 2.0%	100.0%	0	0.0%	5 3.3%
61 40.7%	2 1.3%	100.0%	0	0.0%	0	0.0%	54 36.0%	88.5%	1 0.7%	50.0%	3 2.0%	100.0%	0	0.0%	1 0.7%	20.0%	1 0.7%	100.0%	1 0.7%	50.0%	1 0.7%
Refused all ages	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0

TABLE 4B

SORENSEN MANUFACTURING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q5. How many years have you been involved in specifying, recommending,  
buying, or installing keel coolers?

Q3. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

	Total Resp.	Donavan Marine		Duramax/ Marine		East Park Fernstrum Radiador/ R.M. East Park Fernstrum cooler		Fernstrum Grid- cooler		Johnson/ Johnson Marine		Johnson Rubber Machine		Walter/ Walter Machine		Photo Provide Insuff. ID Info		Other		DK/NS
		100.0%	1.3%	100.0%	2.7%	100.0%	3.3%	11%	100.0%	100.0%	7.3%	11	100.0%	4.7%	5	100.0%	100.0%	7	2	
TOTAL RESPONDENTS	150 100.0%	2 1.3%	4 2.7%	5 3.3%	118 78.7%	6 2.7%	100.0%	2 1.3%	2 1.3%	11 7.3%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	8 5.3%
Less than 1 year	1 0.7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1 0.7%
1 to 3 years	3 2.0%	-	-	-	2 1.7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4 to 6 years	7 4.7%	-	-	-	3 2.0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2 1.3%
7 to 9 years	4 2.7%	-	-	-	2 1.7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2 1.3%
10 to 12 years	8 5.3%	-	1 0.7%	-	6 4.0%	-	-	-	-	2 1.3%	18.2%	18.2%	18.2%	18.2%	18.2%	18.2%	18.2%	18.2%	18.2%	1 0.7%
13 to 15 years	8 5.3%	-	-	-	4 2.7%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1 0.7%
16 to 18 years	7 4.7%	-	1 0.7%	-	6 4.0%	-	-	-	-	1 0.7%	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	1 0.7%
19 to 21 years	26 17.3%	-	1 0.7%	1 0.7%	18 12.0%	2 1.3%	50.0%	50.0%	50.0%	1 0.7%	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	2 1.3%

TABLE 5B



SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q5a. How many years have you been involved in specifying, recommending,  
buying, or installing keel coolers?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

Total Resp.	Donavan Marine	Duramax/ Marine	East Park Radiator/ Marine	East Park Fornstrum Grid- cooler	Fornstrum /R.W.	Fornstrum cooler	Johnson/ Marine	Johnson Rubber	Walter/ Walter Machine	Photos Provide ID Info	Other	Misc.	DK/NS
150	2	4	5	118	4	2	11	-	-	5	7	2	8
100.0%	1.3%	2.7%	3.3%	78.7%	2.7%	1.3%	7.3%	-	-	100.0%	4.7%	1.3%	100.0%
46 to 48 years	-	-	-	-	-	-	-	-	-	3.3%	-	-	5.3%
	0.7%	-	-	-	-	-	-	-	-	20.0%	-	-	-
	0.7%	-	-	-	-	-	-	-	-	0.7%	-	-	-
Other	3	-	-	3	-	-	-	-	-	-	-	-	-
	2.0%	-	-	2.5%	-	-	-	-	-	-	-	-	-
	2.0%	-	-	2.0%	-	-	-	-	-	-	-	-	-
Miscellaneous	-	-	-	-	-	-	-	-	-	-	-	-	-
Don't know/not sure	-	-	-	-	-	-	-	-	-	-	-	-	-
IAN	22.0	29.0	17.0	23.8	25.8	20.0	22.3	-	-	12.6	21.5	14.0	11.0
MEAN	23.3	32.0	20.0	24.8	24.6	26.0	22.5	-	-	21.2	21.7	24.5	15.7

CONTINUATION OF TABLE 5B

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q6. What is your position with the company?

Q3. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

TOTAL RESPONDENTS	Donavan Marine		Duramax/ Marine		East Park Radiator/ R.M. East Park		Fernstrum Grid-cooler		Johnson/ John Marine		Walter/ Johnson Rubber Machine		Photos Provide Inseuff. ID Info		Kscr.	DK/NS			
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%					
150	100.0%	2	1.3%	4	2.7%	5	3.3%	4	2.7%	11	7.3%	7	4.7%	5	3.3%	2	1.3%	8	5.3%
Owner																			
President																			
Vice-President																			
Managing Director																			
General Manager																			
Program Manager																			
Project Manager																			
Engineering Manager																			

TABLE 68

SORENSEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

Q6. What is your position with the company?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

	Total Resp.	Donavan Marine		Duramax/ Marine		East Park Radiators/R.W.		Fornstrum cooler		Grid- cooler		Johnson/ Marine		Johnson Rubber		Walter/ Machic		Photos Provide ID Info		Other Misc.		DK/MS
		2 100.00	1.30	4 100.00	2.70	5 100.00	3.30	4 100.00	2.70	2 100.00	1.30	11 100.00	7 100.00	5 100.00	3.30	7 100.00	2 100.00	2 100.00	100.00	100.00	100.00	
TOTAL RESPONDENTS	150 5.30	100.00	1.30	100.00	2.70	100.00	3.30	100.00	2.70	100.00	1.30	100.00	7.30	100.00	4.70	100.00	3.30	100.00	100.00	100.00	100.00	8
Operations Manager	8 5.30	-	-	-	-	6 5.10	4.00	-	-	-	-	-	-	-	1 14.30	1 50.00	-	-	-	-	1 0.70	-
Technical Manager	2 1.30	-	-	1 20.00	0.70	1.70	1.30	-	-	-	-	1 9.10	0.70	-	-	-	-	-	-	-	-	-
Supervisor	8 5.30	-	-	2 40.00	1.30	4.20	3.30	-	-	-	2 18.20	1.30	-	-	-	-	-	-	-	-	-	2 25.00
Buyer/Purchaser/Estimator	27 18.00	-	-	1 20.00	0.70	16.90	25.00	1 25.00	0.70	-	4 36.40	2.70	-	-	2 28.60	-	-	2 12.50	1.30	1.30	1.30	1 12.50
F an	3 2.00	-	-	-	-	1 0.80	0.70	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2 25.00
Supazintendant	11 7.30	-	-	-	-	8 6.80	3.30	-	-	1 50.00	0.70	1 9.10	0.70	-	1 14.30	-	-	-	-	-	-	2 25.00
Engineer	19 12.70	-	-	1 25.00	0.70	13.60	25.00	1 25.00	0.70	1 10.70	0.70	1 9.10	0.70	-	1 14.30	-	-	1 20.00	0.70	0.70	0.70	-
Sales	3 2.00	-	-	-	-	2 1.70	1.30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

CONTINUATION OF TABLE 6B

SOESENEN MARKETING/  
MANAGEMENT CORPORATION  
BOAT SURVEY

06. What is your position with the company?

Q3a. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the picture?

Total Resp.	Donavan Marine		Duramax Marine		East Part Radiator/R.M. East Part		Fornatrum Grid-cooler		Johnson Marine		Johnson Rubber		Maltor/Inauff. Machine		Photos Provide ID Info		Other	Misc.	DK/MS
	2	100.0%	4	100.0%	5	118	4	100.0%	11	11	1	100.0%	5	100.0%	7	100.0%			
150	100.0%	100.0%	2.7%	1.3%	3.3%	78.7%	2.7%	1.3%	7.3%	-	-	-	3.3%	4.7%	1.3%	5.3%	-	-	-
100.0%	100.0%	100.0%	2.7%	1.3%	3.3%	78.7%	2.7%	1.3%	7.3%	-	-	-	3.3%	4.7%	1.3%	5.3%	-	-	-
Naval Architect	1	50.0%	-	-	-	0.8%	-	-	-	-	-	-	-	-	-	-	-	-	-
2.0%	2.0%	0.7%	-	-	-	0.7%	-	-	-	-	-	-	-	-	-	-	-	-	-
Other	14	9.3%	-	-	1	0.7%	1	-	1	-	-	-	-	-	-	-	-	-	-
9.3%	9.3%	0.7%	-	-	20.0%	7.6%	25.0%	9.1%	0.7%	-	-	-	-	-	-	-	-	-	-
Miscellaneous	1	0.7%	-	-	-	6.0%	0.7%	-	0.7%	-	-	-	-	-	-	-	-	-	-
0.7%	0.7%	0.7%	-	-	-	-	25.0%	-	-	-	-	-	-	-	-	-	-	-	-
0.7%	0.7%	0.7%	-	-	-	0.7%	0.7%	-	-	-	-	-	-	-	-	-	-	-	-
0.7%	0.7%	0.7%	-	-	-	-	0.7%	-	-	-	-	-	-	-	-	-	-	-	-
0.7%	0.7%	0.7%	-	-	-	-	0.7%	-	-	-	-	-	-	-	-	-	-	-	-
0.7%	0.7%	0.7%	-	-	-	-	0.7%	-	-	-	-	-	-	-	-	-	-	-	-

SORENSEN MARINE/INVESTMENT CORPORATION  
BOAT SURVEY

Interview Location

Q14. What do you believe is the name of the company/companies that manufactures the keel cooler shown in the pictures?

TOTAL RESP.	Durmax/ Marine		East Park Fernstrum Radiator/ R.W. Grid- cooler		Johnson/ Marine		Johnson RUBBAR Machine		Walter/ Walter Machine		Photos Provide Inseuff. ID Info		Other	Misc.	DK/NS
	2	4	5	118	11	11	7	5	7	2	8				
150 100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
7.3%	1.3%	2.7%	78.7%	3.3%	7.3%	4.7%	3.3%	4.7%	1.3%	1.3%	3.3%	4.7%	1.3%	3.3%	
20.7%	-	-	21	-	1	2	1	2	1	2	1	2	1	5	
20.7%	-	-	17.2%	14.0%	25.0%	9.1%	0.7%	28.6%	50.0%	50.0%	62.5%	50.0%	0.7%	3.3%	
11	-	-	8	-	-	-	-	-	-	-	-	-	-	1	
7.3%	-	-	6.8%	5.3%	-	-	-	-	-	-	-	-	-	1	
7.3%	-	-	5.3%	-	-	-	-	-	-	-	-	-	-	1	
71	1	4	55	4	9	4	9	4	1	1	2	4	1	2	
47.3%	50.0%	100.0%	46.6%	80.0%	81.8%	75.0%	60%	60%	57.1%	50.0%	60.0%	57.1%	50.0%	25.0%	
47.3%	0.7%	2.7%	36.7%	2.0%	6.0%	2.0%	6.0%	2.7%	2.7%	0.7%	2.0%	2.7%	0.7%	1.3%	
11	1	-	10	-	1	-	1	-	-	-	1	-	-	-	
7.3%	50.0%	20.0%	8.5%	0.7%	0.7%	0.7%	9.1%	0.7%	0.7%	0.7%	20.0%	0.7%	0.7%	-	
7.3%	0.7%	-	6.7%	-	-	-	-	-	-	-	0.7%	-	-	-	
26	-	-	24	-	-	-	-	-	-	-	-	-	-	-	
17.3%	-	-	20.3%	-	-	-	-	-	-	-	-	-	-	-	
17.3%	-	-	16.0%	-	-	-	-	-	-	-	-	-	-	-	

TABLE 7B

SORENSEN MARKETING/MANAGEMENT CORPORATION  
BOAT SURVEY

COLUMN TYPE/ NO. HIGH	1	2	3	4	5	6	7	8	9	0	X	Y	REJ.	STG.	QUAL. RESP.	TOTAL RESP.
105 (V-Y)	0	0	0	0	0	0	0	0	0	150	0	0	0	150	150	150
106 (V-Y)	51	0	0	0	0	0	0	0	0	0	0	0	0	100.0	100.0	100.0
107 (V-Y)	34.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.3	150	150
108 (V-Y)	20	20	20	20	11	10	10	10	10	19	0	0	0	150	150	150
109 (V-Y)	13.3	13.3	13.3	13.3	7.3	6.7	6.7	6.7	6.7	12.7	0.0	0.0	0.0	100.0	100.0	100.0
110 (V-Y)	15	15	15	15	15	15	15	15	15	15	0	0	0	150	150	150
111 (S-5)	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	0.0	0.0	0.0	100.0	100.0	100.0
112 (S-3)	31	11	71	11	26	0	0	0	0	0	0	0	0	150	150	150
113 (H-0)	20.7	7.3	47.3	7.3	17.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0
114 (H-1)	86	48	16	0	0	0	0	0	0	0	0	0	0	150	150	150
115 (H-9)	57.3	32.0	10.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0
116 (H-0)	1	5	4	1	1	24	6	2	1	3	0	0	105	48	150	150
117 (H-0)	0.7	3.3	2.7	0.7	16.0	4.0	1.3	0.7	2.0	0.0	0.0	0.0	70.0	32.0	100.0	100.0
118 (H-0)	32	10	2	6	1	18	5	18	6	2	1	3	50	104	150	150
119 (H-0)	21.3	6.7	1.3	4.0	0.7	12.0	3.3	12.0	4.0	1.3	0.7	2.0	33.3	69.3	100.0	100.0
120 (H-0)	2	4	5	118	4	2	11	0	5	0	0	0	21	151	150	150
121 (S-2)	1.3	2.7	3.3	78.7	2.7	1.3	7.3	0.0	3.3	0.0	0.0	0.0	14.0	100.7	100.0	100.0
122 (S-4)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0
123 (H-0)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	150	150	150
124 (H-0)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0
125 (H-0)	41	4	3	25	11	72	12	1	2	1	0	0	39	172	150	150
126 (H-0)	27.3	2.7	2.0	16.7	7.3	48.0	8.0	0.7	1.3	0.7	0.0	0.0	26.0	114.7	100.0	100.0
127 (H-0)	5	0	0	0	0	1	2	2	6	0	0	0	136	16	150	150
128 (H-0)	3.3	0.0	0.0	0.0	0.0	0.7	1.3	1.3	4.0	0.0	0.0	0.0	89.3	10.7	100.0	100.0
129 (H-6)	5	1	7	2	3	3	0	0	0	0	0	0	130	21	150	150
130 (H-0)	3.3	0.7	4.7	1.3	2.0	2.0	0.0	0.0	0.0	0.0	0.0	0.0	86.7	14.0	100.0	100.0
131 (H-0)	0	0	0	0	0	0	0	0	0	0	0	0	0	100.0	100.0	100.0
132 (S-2)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	38	150	150
133 (S-2)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	25.3	100.0	100.0
134 (S-2)	144	6	0	0	0	0	0	0	0	0	0	0	0	150	150	150
135 (S-4)	96.0	4.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0
136 (S-4)	19	70	61	0	0	0	0	0	0	0	0	0	0	150	150	150
137 (S-4)	12.7	46.7	40.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0

SORENSEN MARKETING/MANAGEMENT CORPORATION  
BOAT SURVEY

COLUMN TYPE/ NO. HIGH	1	2	3	4	5	6	7	8	9	0	X	Y	REJ.	SIG.	QUAL. RESP.	TOTAL RESP.
123 (S-0)	1	3	7	4	8	8	7	26	13	21	0	0	52	98	150	150
	0.7	2.0	4.7	2.7	5.3	5.3	4.7	17.3	8.7	14.0	0.0	0.0	34.7	65.3	100.0	100.0
124 (S-0)	16	4	15	1	9	1	1	3	0	0	0	0	100	50	150	150
	10.7	2.7	10.0	0.7	6.0	0.7	0.7	2.0	0.0	0.0	0.0	0.0	66.7	33.3	100.0	100.0
125 (H-0)	27	55	75	79	0	0	0	0	0	0	0	0	1	236	150	150
	18.0	36.7	50.0	52.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.7	157.3	100.0	100.0
126 (H-0)	11	11	5	1	11	4	6	4	8	2	0	0	87	63	150	150
	7.3	7.3	3.3	0.7	7.3	2.7	4.0	2.7	5.3	1.3	0.0	0.0	58.0	42.0	100.0	100.0
127 (H-0)	8	27	3	11	19	3	3	14	1	1	0	0	63	90	150	150
	5.3	18.0	2.0	7.3	12.7	2.0	2.0	9.3	0.7	0.7	0.0	0.0	42.0	60.0	100.0	100.0
128 (V-Y)	0	0	53	0	0	0	97	0	0	0	0	0	0	150	150	150
	0.0	0.0	35.3	0.0	0.0	0.0	64.7	0.0	0.0	0.0	0.0	0.0	0.0	100.0	100.0	100.0
129 (V-Y)	0	11	0	0	0	31	26	0	11	71	0	0	0	150	150	150
	0.0	7.3	0.0	0.0	0.0	20.7	17.3	0.0	7.3	47.3	0.0	0.0	0.0	100.0	100.0	100.0
130 (V-Y)	5	0	45	8	52	25	0	0	0	15	0	0	0	150	150	150
	3.3	0.0	30.0	5.3	34.7	16.7	0.0	0.0	0.0	10.0	0.0	0.0	0.0	100.0	100.0	100.0
131 (V-Y)	5	5	13	13	26	22	12	13	6	35	0	0	0	150	150	150
	3.3	3.3	8.7	8.7	17.3	14.7	8.0	8.7	4.0	23.3	0.0	0.0	0.0	100.0	100.0	100.0
132 (V-Y)	26	20	14	13	3	8	9	11	25	21	0	0	0	150	150	150
	17.3	13.3	9.3	8.7	2.0	5.3	6.0	7.3	16.7	14.0	0.0	0.0	0.0	100.0	100.0	100.0
35 (S-1)	1	0	0	0	0	0	0	0	0	0	0	0	169	1	150	150
	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	99.3	0.7	100.0	100.0





# FERNSTRUM GRIDCOOLER

## Recommendation

[From Page Save Results Component]

(required fields listed in red)

- Home Page**
- Product Info**
- Sales / Forms**
- Representatives**
- Distributors**
- Contact**

---ENGINE INFORMATION---

Use:  other:

Manifold:  Wet  Dry

Make:

Model:

HP (PM):

Heat rejection:

Fresh water flow rate:

Fresh water temp into Gridcooler:

Fresh water:  temp out of or  temp drop across Gridcooler:

Minimum hull speed at full rated power (under full load) (If speed is 0 knots, or the engine is used as a generator size for 1/2 mph.)

Maximum seawater temp:

Engine age:

% Air freeze used:

Make & model of gear:

[Back to Top](#)

---BOAT INFORMATION---

Boat type:  other:

Hull construction:  other:

Painted

Unpainted

---COMMENTS---

---CONTACT INFORMATION---

Contact Name:   
Company Name:   
Phone:   
Fax:   
Email:

---FORM SUBMISSION---

Thank you for taking the time to answer the questions in our recommendation form. Using this form will provide you with information from us as to what Gridcooler will best suit your needs. We will contact you shortly through phone, fax, or email with our recommendation.

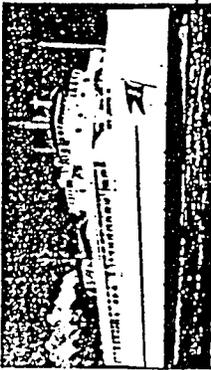
[Back to Top](#)

PRODUCT INFO SALES  
© 1999 Copyright R.W. Fernstrum & Company  
316 11th Avenue, P.O. Box 1000, Merrimack, NH 03003  
Phone: 603-865-1111 Fax: 603-865-1111

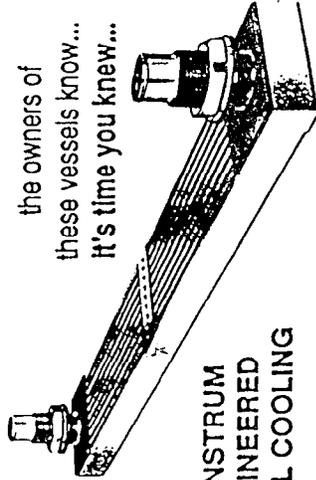




WORK BOAT



the owners of  
these vessels know...  
it's time you knew...



**FERNSTRUM  
ENGINEERED  
KEEL COOLING**

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

Ask any of our thousands of customers; they'll say the same thing. You can't find a better fresh water cooling system anywhere. Call us... we'll let you know which of our over 8000 different Gridcoolers is right for you.

**CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:**

Completely assembled and factory tested to assure reliability. No complicated, time consuming assembly before installation. Silver brazed and welded joints form a rugged keel cooler, no slip joints or "O" rings to leak.

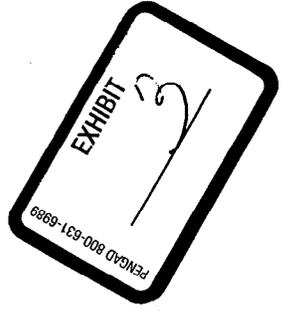
Heavy gauge 90/10 copper-nickel or 5000 series aluminum rectangular tube, structurally stronger with more cooling surface, and twice the wall thickness of other package kit type keel coolers with round tube.

Custom designed to meet owner's operating conditions and the engine manufacturer's exact cooling requirements.

The most compact form of keel cooling, can be recessed for a flush with hull installation.

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Phone: (906) 863-5553  
Fax: (906) 863-5634





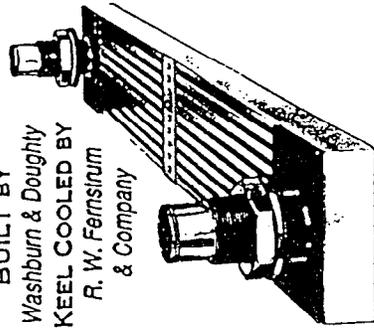
# Maritime Directory magazine

4-1/2 W x 4-7/8 H



**BUILT FOR** Tug Photo by:  
*Winslow Marine*  
*Eben Brown*

**BUILT BY**  
*Washburn & Doughty*  
**KEEL COOLED BY**  
*R. W. Fernstrum*  
*& Company*



You want the best of everything on your boat...as long as it's affordable...right? Then why don't you give us a call? For the cost of a phone call, we'll figure out which of over 8000 different Gridcoolers is right for cooling your engine in your boat.

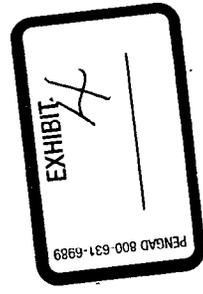
How can you go wrong?  
Get the best cooling system you can...get a Fernstrum Gridcooler.

**OVER 40 YEARS EXPERIENCE IN KEEL COOLING**

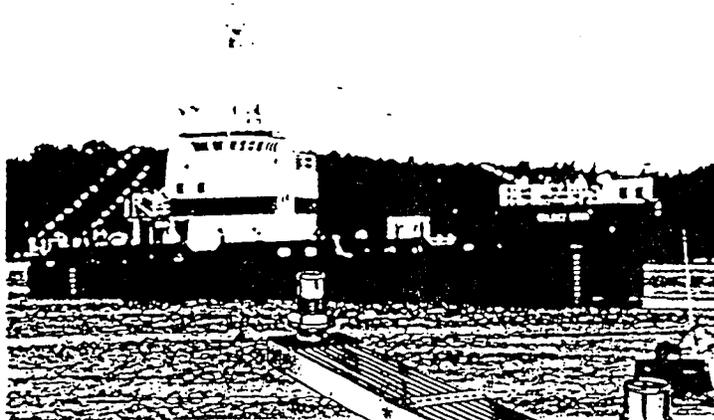
**CHECK THESE UNIQUE QUALITIES FOUND IN THE GRIDCOOLER:**

- Completely assembled and factory tested to assure reliability.
- Silver brazed and welded joints form a rugged keel cooler.
- Heavy gauge, 90/10 copper/nickel or 5000 series aluminum rectangular tube.
- Custom designed to meet owner's operating conditions and the engine manufacturer's exact requirements.
- The most compact form of keel cooling.

**R. W. FERNSTRUM & COMPANY** 1716 11th Avenue Menominee, MI 49858 Phone: (906) 863-5553 Fax: (906) 863-5634







**FERNSTRUM ENGINEERED KEEL COOLING**

- CHECK THESE UNIQUE QUALITIES FOUND IN THE GRIDCOOLER:**
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  - Silver brazed and welded joints form a rugged keel cooler
  - Heavy gauge 90/10 copper-nickel or 5000 series aluminum rectangular tube
  - Custom designed to meet owner's operating conditions and the engine manufacturer's exact requirements
  - The most compact form of keel cooling

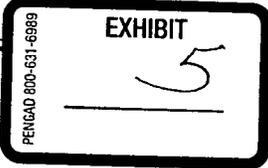
The Valdez Star...  
 Built by Goudy & Stevens  
 Designed by JBF Scientific  
 Owned by Alyeska Pipeline  
 Keel Cooled by R. W. Fernstrum & Company

Why Fernstrum Gridcoolers on an oil skimmer?  
 Because Fernstrum Gridcoolers have been proven durable, reliable, economical and lightweight in over 40 years of actual use by the military and many facets of the commercial marine industry.

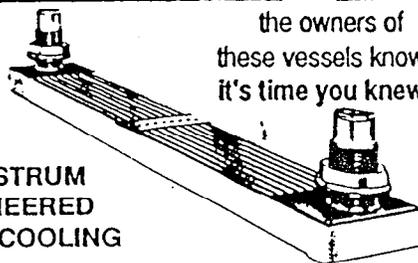
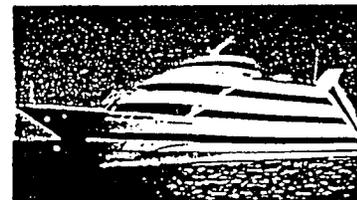
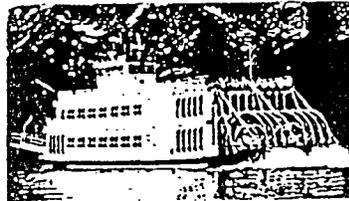
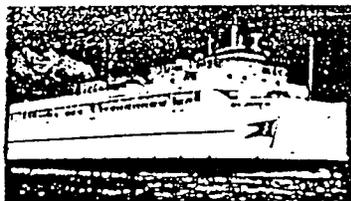
Why Fernstrum Gridcoolers on the Valdez Star?  
 Because JBF Scientific wanted to design the most reliable vessel they could to clean up oil spills. For that reason, they chose the most reliable keel cooling system available.

If you have an oil skimmer that needs to operate effectively in or near an oil spill, call us... we'll let you know which of our over 8000 different Gridcoolers is right for your vessel.

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**Workboat march/april**



**FERNSTRUM ENGINEERED KEEL COOLING**

the owners of these vessels know... it's time you knew...

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

Ask any of our thousands of customers; they'll say the same thing. You can't find a better fresh water cooling system anywhere. Call us... we'll let you know which of our over 8000 different Gridcoolers is right for you.

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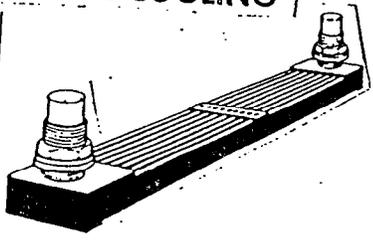


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equipped with

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**GRIDCOOLER.**  
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- The Most Efficient and Economical Keel Cooling in the Maritime Industry
- Computer-designed to your specific needs
- Factory-tested
- Completely assembled

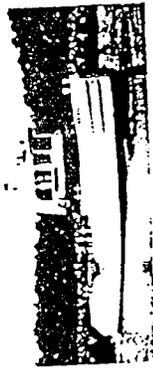
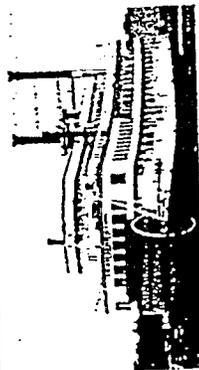


To contact us . . .

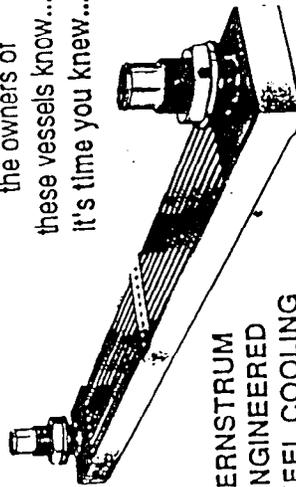
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Menominee, MI 49858  
(906) 863-5553 / Telex 263-3493



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the owners of  
 these vessels know...  
 it's time you knew...



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kit type keel coolers with round tube.

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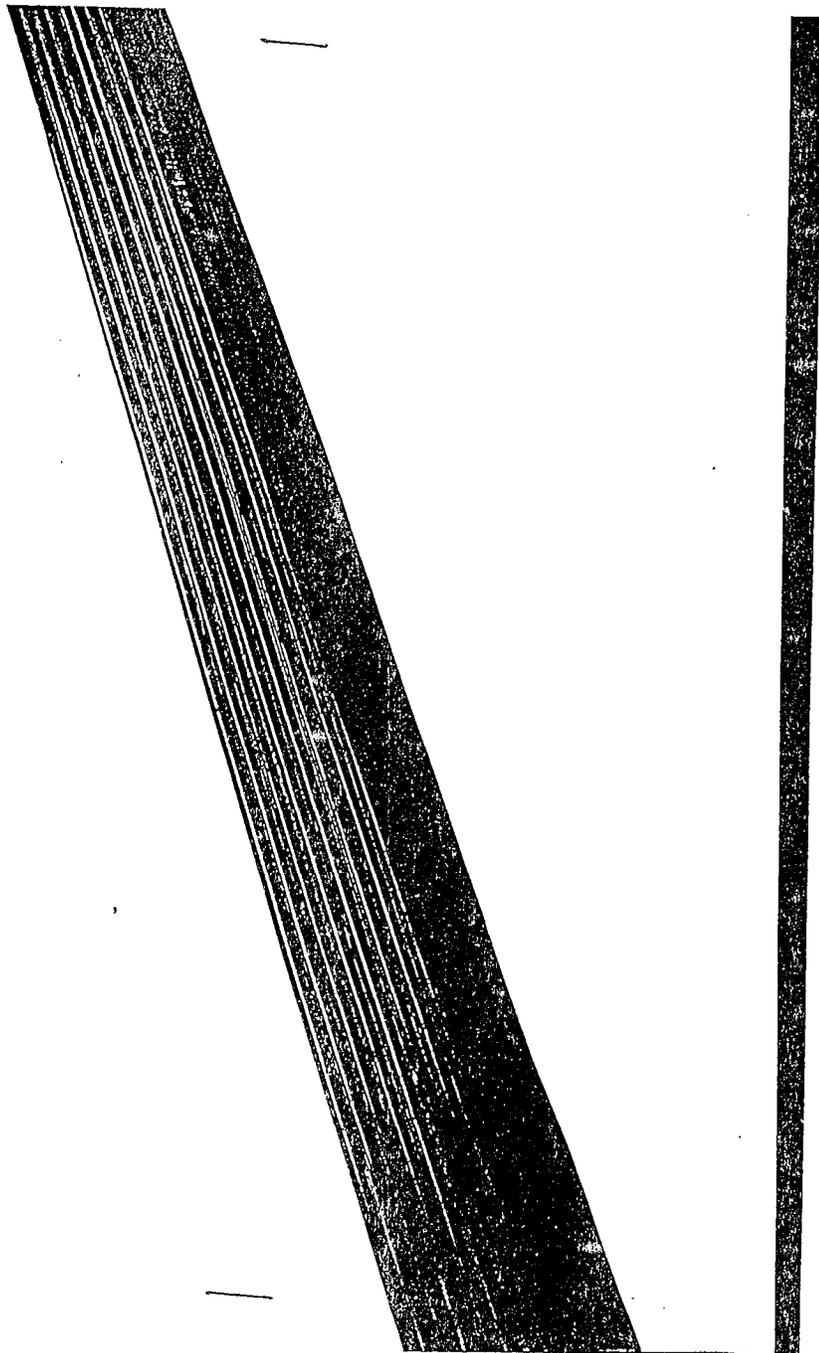
**R. W. Fernstrum & Company**

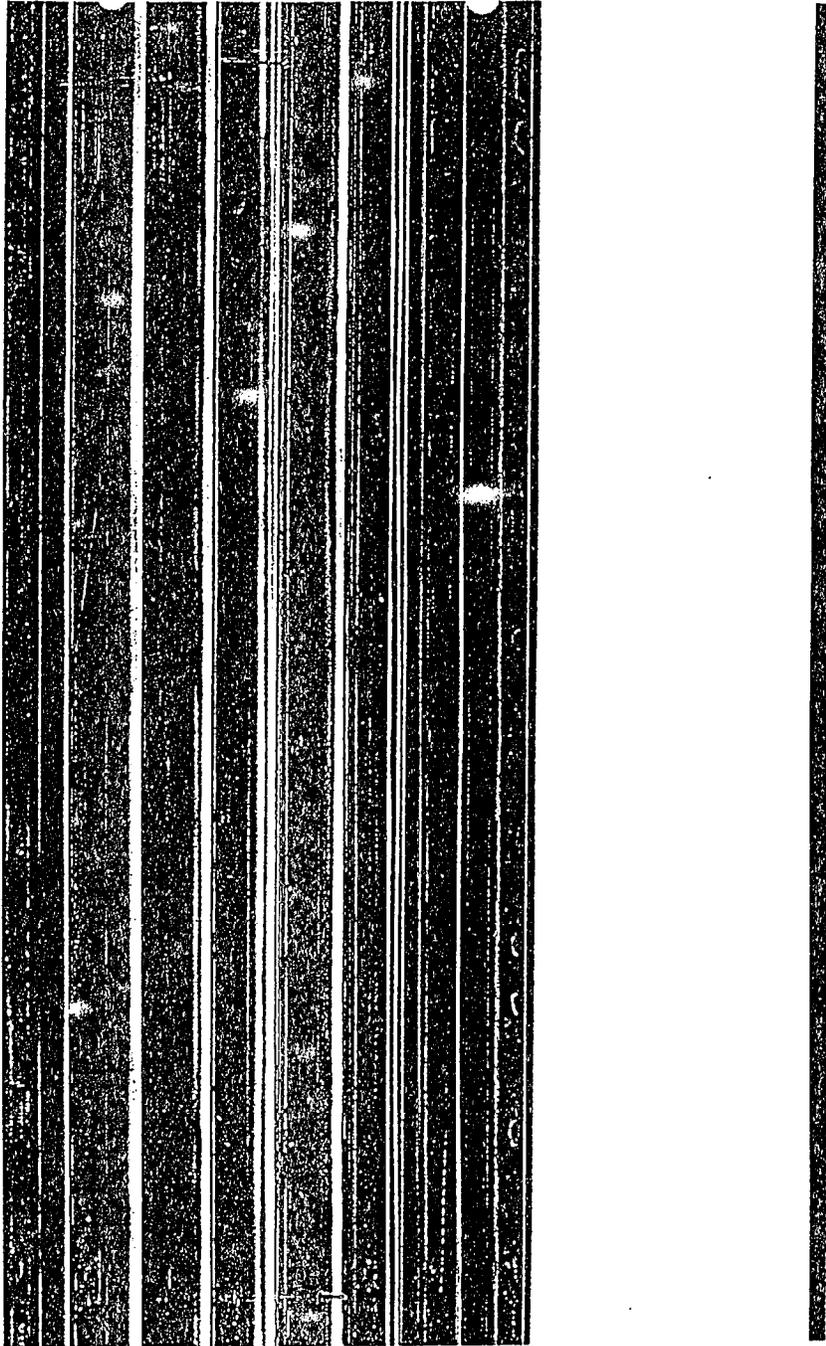
Phone: (906) 863-5553  
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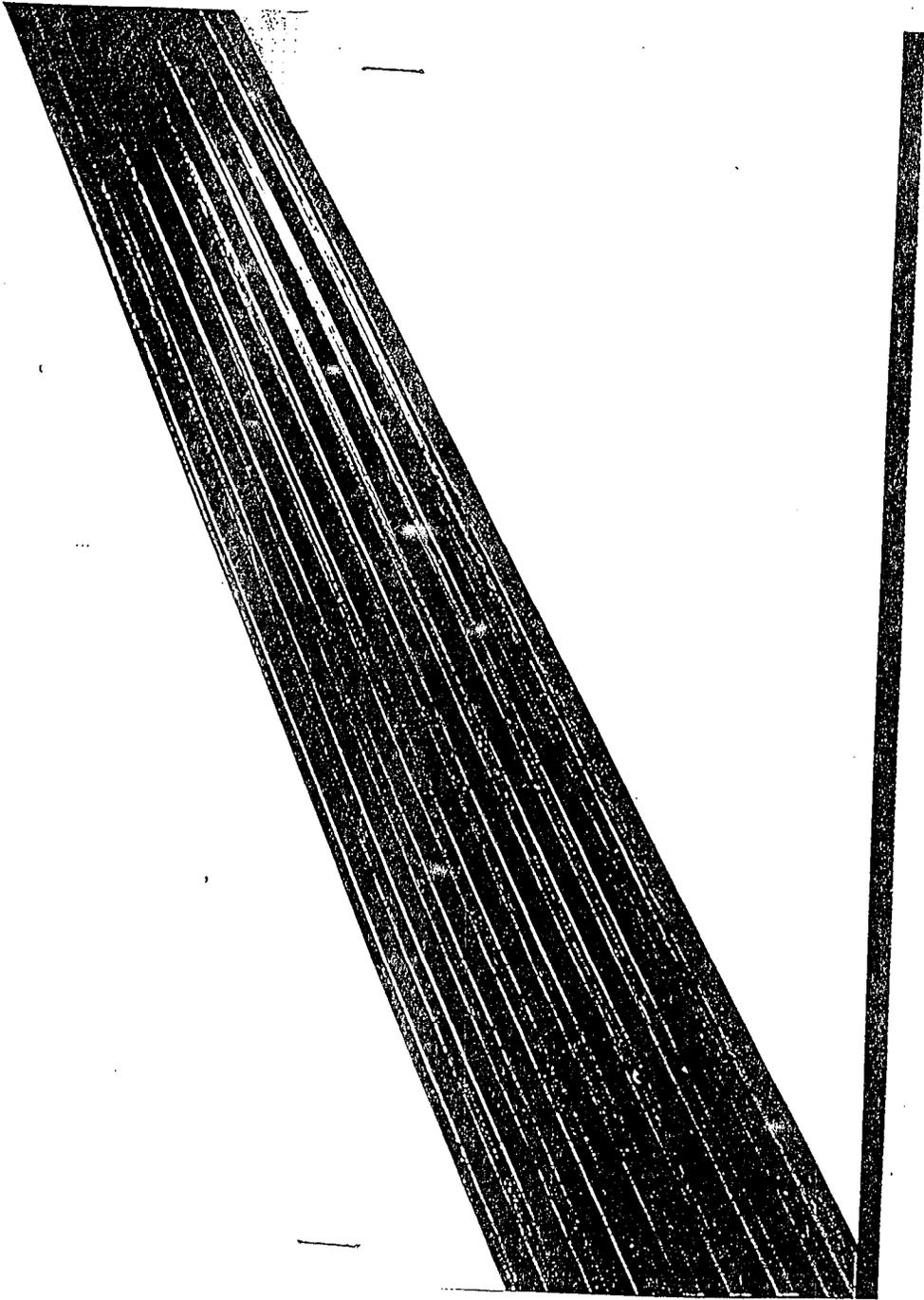
WorkBoat 7 W x 4-7/8 H MAGAZINE



PEKGAU 809-521-5089  
EXHIBIT  
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**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. )  
)  
R.W. FERNSTRUM & COMPANY, )  
)  
Applicant )

Opposition No. 91119899

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**OPPOSER'S NOTICE OF TESTIMONY DEPOSITION**

Please take notice that, pursuant to Trademark Rule 2.123(c), Opposer Duramax Marine, LLC, by its attorney, will take the testimony deposition upon oral examination of Steven Garver, the Vice President of Commercial Sales of Donovan Marine, Inc. a third party, 3404 North Turnbull Drive, Metairie, Louisiana 70002, on May 12, 2004 at 10:00 a.m. at the Office of David M. Culpepper, L.L.C., 400 Poydras Street, Suite 1710, New Orleans, Louisiana, 70114.

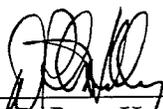
The deposition shall take place before a certified court reporter and shall continue until completed. The deposition shall seek background information about the deponent, the deponent's identification of documents, the deponent's testimony regarding the proposed trademark of Application Serial No. 75/701,707, the proposed trademark of Application Serial No. 75/701,707's relationship to keel coolers, and the deponent's testimony on the keel cooler industry.

You are invited to attend and cross-examine.

Respectfully submitted,

Date: April 28, 2004

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

By:   
\_\_\_\_\_  
D. Peter Hochberg  
Counsel for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the OPPOSER'S NOTICE OF TESTIMONY DEPOSITION is being served by regular U.S. Mail, postage prepaid, to counsel for Applicant, Samuel D. Littlepage, Dickinson Wright PLLC, 1901 L Street, N.W. - Suite 800, Washington, D.C. 20036-3506, on the date shown below.

Date: April 28, 2004

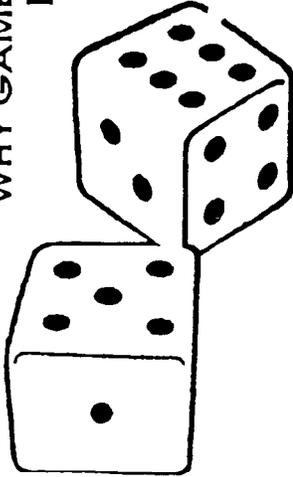
Sean Mellino

Sean Mellino



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WHY GAMBLE WITH DEPENDABILITY...  
**FERNSTRUM  
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For over 40 years, we've been making cooling systems for all types of marine engines... and that's all we make. Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers. Why take chances when it comes to your engines' dependability? Do it right the first time... get Fernstrum Gridcoolers.



Dubuque Casino Belle  
Built by  
Patti Shipyard  
Keel cooled by  
R. W. Fernstrum  
& Company

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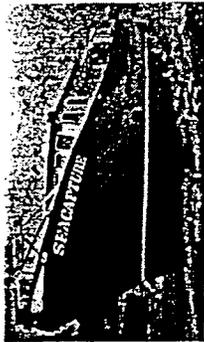


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Washburn & Doughty  
BUILT BY  
Washburn & Doughty  
KEEL COOLED BY  
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& Company



**OVER 40 YEARS EXPERIENCE IN  
KEEL COOLING**

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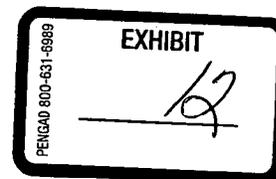
**R. W. FERNSTRUM  
& COMPANY**  
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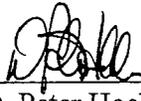
The deposition shall take place before a certified court reporter and shall continue until completed. The deposition shall seek background information about the deponent, the deponent's identification of documents, the deponent's testimony regarding the proposed trademark of Application Serial No. 75/701,707, the deponent's prior business relationship with Applicant, prior disputes between East Park Battery and Radiator Shop, Inc. and Applicant, and the proposed mark's relationship to keel coolers.

You are invited to attend and cross-examine.

Respectfully submitted,

Date: April 28, 2004

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

By:   
D. Peter Hochberg  
Counsel for Opposer

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Date: April 28, 2004



Sean Mellino



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**COASTAL RADIO & RADAR SERVICE**  
 INC  
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**EMT ELECTRONICS**  
 3089 Grand Calhou Rd-----879-2084

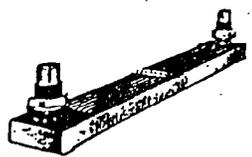
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 Standard - Yaesu  
 233 Safety Rd-----868-4648  
 (Classification Continued Next Page)



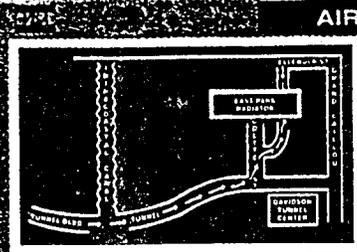
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RADIATOR  
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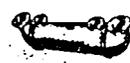


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See Social Service Organizations

**Ready Mixed Concrete**

See Concrete-Ready Mixed

**Radar Equipment & Supplies**

**E M T ELECTRONICS**

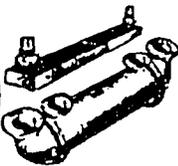
3089 Grand Calibou Rd. Houma..... 879-2084

(See Advertisement This Page)

TURK'S ELECTRONICS 131 East 127th St Gatlano. 632-7627

**Radiators-Automotive**

**EAST PARK  
RADIATOR  
& BATTERY  
SHOP, INC.**



- RADIATORS - HEATERS - CONDENSERS
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801 ODETTE ST. HOUMA



EAST PARK RADIATOR & BATTERY SHOP  
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(See Advertisement This Page)

SANDERS RADIATOR  
165 West 214th St. Golden Meadow..... 475-7433

**Radio Communication  
Equipment & Systems**

BEIER FRANK L RADIO INC  
15422 West Main St. Cut Off..... 632-6591

EUI 11603 Hwy 308 Larose..... 798-7788  
(See Advertisement This Page)

ELECTRONICS UNLIMITED INC  
11603 Hwy 308 Larose..... 798-7788

MAXON 2-WAY RADIO-  
AUTHORIZED DEALERS

ELECTRONICS UNLIMITED INC  
11603 Hwy 308 Larose..... 798-7788

SOLA COMMUNICATIONS INC  
13268 West Main St. Larose..... 693-0678  
(See Advertisement This Page)

TIDELAND ELECTRONICS  
17333 East Main St. Gatlano..... 632-7252

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C-107  
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**EUI**

TELECOMMUNICATIONS

SALES • SERVICE • RENTALS

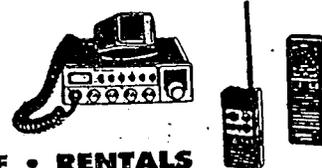
- CELLULAR TELEPHONES
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11603 HWY 308  
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14

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Hardware - Heating

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JUST A NAME, IT'S OUR WAY OF DOING BUSINESS.

**WE SERVICE WHAT WE SELL**

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AFTER STORE HOURS CALL 475-5022  
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COMPLETE LINE OF  
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Nation's largest Hardware Chain... over 6,000 stores in 50 states.  
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## Hardwood Floor Refinishing

See Floor Laying, Refinishing & Resurfacing

## Headstones

See Monuments

## Health Clubs

See Also Clubs; Exercise & Physical Fitness Programs; Recreation Centers

**BETTER BODIES HEALTH CLUB & SMOOTHIE BAR**  
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"Audiologists Do Make A Difference"

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141 WEST 147th St Galliano

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HEARING AIDS  
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### BELTONE HEARING AIDS

- Free hearing evaluations
- Professional, courteous service • Satisfaction assured by our BelCare™ commitment • Licensed Hearing Instrument Specialist • Financing Available



"FOR INFORMATION CALL"

**BELTONE HEARING AID CENTERS**  
Wednesdays 9AM-Noon At Cut Off Clinic  
14064 West Main St Cut Off ..... 798-7002

**EAR MASTERS**  
141 West 147th St Galliano ..... 632-3393  
(See Advertisement This Page)

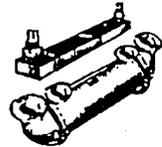
## Heart Associations

See Social Service Organizations



## Heat Exchangers

**EAST PARK RADIATOR & BATTERY SHOP INC.**



CLEAN - REPAIR - RETUBE - NEW  
• HEAT EXCHANGERS  
• OIL COOLERS • AFTER COOLERS  
• GRID COOLERS • AERIAL COOLERS

24 HR. AVAILABILITY

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801 Odette Houma ..... 876-3120  
(See Advertisement This Page)

## Heating Contractors

**AAA COMPLETE ELECTRIC & AIR CONDITIONING**  
15416 West Main St Cut Off ..... 632-7500

### BAYOU SERVICES

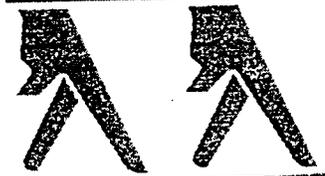
HEATING • COOLING • ELECTRIC  
SEE OUR AD AT  
AIR CONDITIONING CONTRACTORS & SYSTEMS  
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SALES & SERVICE  
GAS • ELECTRIC • HEAT PUMPS  
FREE ESTIMATES

17396 W Main St Galliano ..... 632-6428

**SOUTH LAFOURCHE AIR CONDITIONING SERVICE INC**  
16028 West Main St Cut Off ..... 632-5452



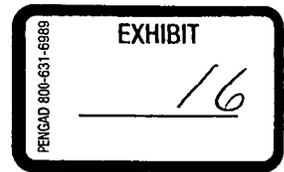
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DICKINSON, WRIGHT, MOON, VAN DUSEN & FREEMAN

COUNSELLORS AT LAW

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WASHINGTON, D.C. 20036-3506

TELEPHONE (202) 457-0160

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CHICAGO, ILLINOIS

October 20, 1997

Darryl J. Belanger  
President  
East Park Radiator & Battery Shop, Inc.  
801 Odette Street  
Houma, LA 70363

VIA FEDERAL EXPRESS

Re: Trademark Infringement and Unfair Competition  
Our Ref: 7119-0001

Gentlemen:

We are trademark counsel for R.W. Fernstrum & Company, a Michigan corporation having its corporate headquarters in Menominee, Michigan. Our client, as you are probably aware, is well known for its external cooling systems used in connection with boat engines. Indeed, R.W. Fernstrum has been manufacturing and selling such cooling systems for over fifty years on a nationwide basis.

Our client's well-known product is sold under the trademark GRIDCOOLER, a mark that has been registered in the U.S. Patent and Trademark Office for over twenty-five years. A copy of our client's federal registration is attached as Exhibit A.

The GRIDCOOLER unit is widely recognized by the relevant trade and consuming public as originating with R.W. Fernstrum. The keel cooling product is particularly identifiable through its use of rectangular-shaped tubing to create a "grid-like" appearance. That design has long served, and continues to serve, as the distinctive trade dress for our client's product. Indeed, that visual configuration, itself, serves as an indicia of origin (*i.e.*, trademark) that connects the product uniquely with our client. Moreover, that grid design is now the subject of a pending application for trademark registration in the U.S. Patent and Trademark Office.

Over the years, our client has extensively promoted the visual grid-like appearance of its marine cooling unit (see Exhibit B). As previously noted, the long and extensive use and promotion of the particular design has led it to acquire a "secondary meaning" or association between the product and a single manufacturing source – namely, R.W. Fernstrum.

It has recently come to the attention of our client that your company is now manufacturing, selling and offering for sale a keel cooling unit that is a substantial "knockoff" of our client's product. In fact, persons who have viewed your "knockoff" have erroneously

October 20, 1997

Page 2

assumed that it originated with our client (or that there was some connection between your company and R.W. Fernstrum). Compounding the damage caused by this confusion over the products' appearance is the Yellow Pages telephone advertising recently placed by your company (see Exhibit C). Not only does your company depict the grid-like trade dress associated with our client's product, but it also improperly uses, in a generic fashion, our client's federally-registered GRIDCOOLER trademark.

The above-noted actions on the part of your company have obviously and understandably caused great concern on the part of our client. Such commercial activities cannot continue. Your company is neither authorized to utilize the distinctive grid trade dress of our client, nor is it authorized to use the term "Grid Cooler," either in a generic manner or as a trademark. Such unfair commercial conduct violates Sections 1114 and 1125(a) of Title 15 of the United States Code (the federal "Lanham Act").

By way of this correspondence, your company is placed on notice concerning the proprietary rights of R.W. Fernstrum in its grid-like trade dress and its GRIDCOOLER trademark, as well as our client's intention to protect the same against your company's unauthorized and unlawful use of these properties. Accordingly, our client requests that your company immediately halt all further use of our client's trade dress and trademark, including the taking of effective measures to halt further promotion of that trade dress and trademark in the above-noted telephone Yellow Pages (and any other promotional materials or advertisements).

We request that you provide us with your company's written assurances, prior to November 1, 1997, that all further use and promotion of the subject trade dress and trademark has been halted by your company. If such assurances are timely forthcoming and your company abides by the same, our client is willing to consider this matter closed. If, however, those written assurances are not made, then our client will have no alternative other than to seek its appropriate legal remedies in a federal court.

I look forward to receiving your company's prompt response to the foregoing and hope that this entire matter can still be resolved on an amicable basis.

Very truly yours,



Samuel D. Littlepage

cc: C. Nord

23

Exhibit A  
Int. Cl. 7

# United States Patent Office

941,382  
Registered Aug. 22, 1972

PRINCIPAL REGISTER  
Trademark

Ser. No. 343,833, filed Nov. 18, 1969

## GRIDCOOLER

see  
for  
10 yrs.

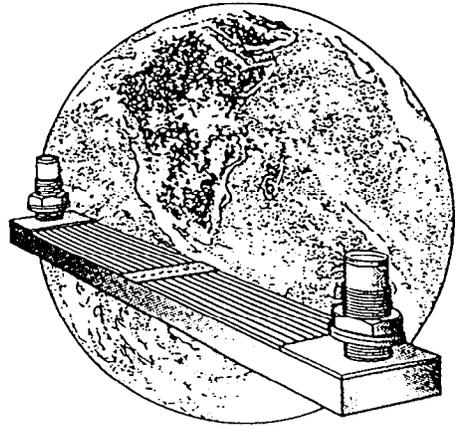
R. W. Fernstrum & Company (Michigan corporation)  
Menominee, Mich. 49858

For: EXTERNAL COOLING SYSTEM FOR  
MARINE ENGINES AND INSTALLED UPON THE  
HULLS OF WATER CRAFT, in CLASS 23 (INT. CL. 7).  
First use on or about June 1, 1950; in commerce on or  
about June 1, 1950.

A. D. HOOKS, Examiner

Exhibit B

R. W. FERNSTRUM & COMPANY



AN AREA BUSINESS  
FOR OVER 40 YEARS  
SERVING THE MARINE INDUSTRY  
WORLDWIDE

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

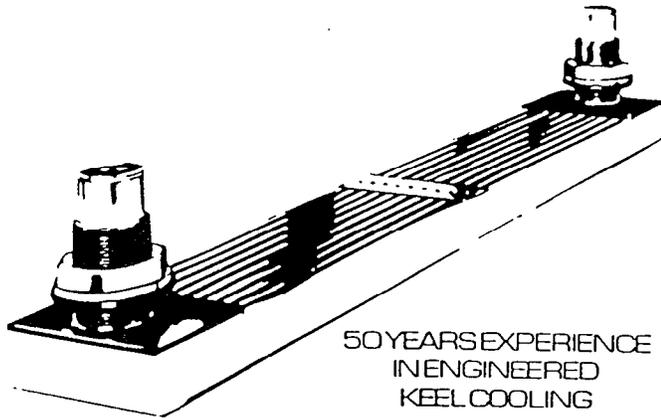
You want the best of everything on your boat...as long as it's affordable...right?

Then why don't you give us a call? For the cost of a phone call, we'll figure out which of over 8000 different Gridcoolers® is right for cooling your engine in your application.

How can you go wrong?

We've been engineering cooling systems for all types of marine engines for the last 50 years. Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers.

Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.



50 YEARS EXPERIENCE  
IN ENGINEERED  
KEEL COOLING

**CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:**

Completely assembled and factory tested to assure reliability. No complicated, time consuming assembly before installation.

Silver brazed and welded joints form a rugged keel cooler, no slip joints or "O" rings to leak.

Heavy guage 90/10 copper-nickel or 5000 series aluminum rectangular tube, structurally stronger with more cooling surface, and twice the wall thickness of other package kit type keel coolers with round tube.

Custom designed to meet owner's operating conditions and the engine manufacturer's exact cooling requirements.

The most compact form of keel cooling, can be recessed for a flush with hull installation.

**R. W. FERNSTRUM & COMPANY**

1716 11th Avenue  
Menominee, MI 49858

Phone: (906) 863-5553  
Fax: (906) 863-5634

MARINE NEWS 7 1/2 by 6  
NEWSPAPER

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

You want the best of everything on your boat...as long as it's affordable...right? Then why don't you give us a call? For the cost of a phone call, we'll figure out which of over 8000 different Gridcoolers is right for cooling your engine in your application.

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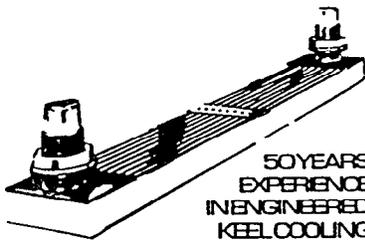
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**R. W. FERNSTRUM  
& COMPANY**

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Menominee, MI 49858

Phone: (906) 863-5553  
Fax: (906) 863-5634



50 YEARS  
EXPERIENCE  
IN ENGINEERED  
KEEL COOLING

**QUALITIES ONLY FOUND IN  
THE FERNSTRUM GRIDCOOLER**

- Completely assembled and factory tested
- Silver brazed and wetted joints
- Heavy gauge 90/10 copper-nickel or 5000 series aluminum rectangular tube
- Custom designed
- The most compact form of keel cooling

**NAT. FISHERMAN**

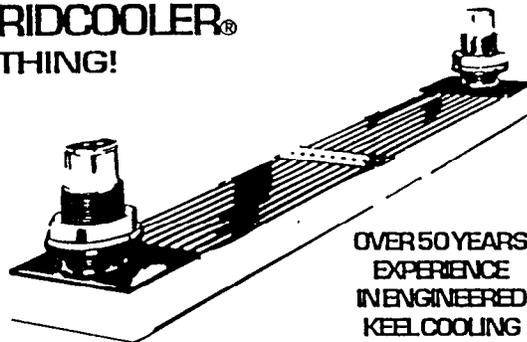
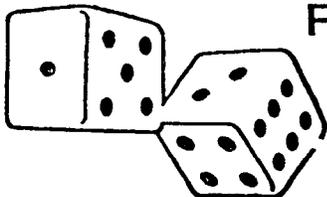
4 7/8 by 5  
NEWSPAPER

Passenger Vessel News 7W x 4-5/8 H  
MAGAZINE

WHY GAMBLE WITH DEPENDABILITY...

**FERNSTRUM GRIDCOOLER®**

IS A SURE THING!



For over 50 years, we've been making cooling systems for all types of marine engines... and that's all we make. Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers.

Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.

OVER 50 YEARS  
EXPERIENCE  
IN ENGINEERED  
KEEL COOLING

**CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:**

Completely assembled and factory tested to assure reliability. No components, the cooling assembly before installation. Silver brazed and welded joints on a rugged keel holder, to ship, joints or "O" rings or leak.

Heavy gauge 90/10 copper/nickel or 5000 series aluminum rectangular tube, structurally stronger with no cooling surface, and free the wall thickness of other packages of type keel coolers with our tube.

Custom design allows owners operating conditions and the engine manufacturer's and cooling requirements. The most compact form of keel cooling, can be recessed or flush with hull insulation.

**R. W. FERNSTRUM & COMPANY**

1716 11th Avenue  
Menominee, WI 49858

Phone: (906) 863-5553  
Fax: (906) 863-5634

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

## 50 YEARS EXPERIENCE IN ENGINEERED KEEL COOLING

Do you have overheating problems? Tired of messing around with pumps, strainers and sea cocks for your cooling system? Is marine fouling a problem for you?

Then why don't you give us a call? We'll figure out which Gridcooler is right for cooling your engine in your application.

How can you go wrong?

We've been engineering cooling systems for all types of marine engines for the last 50 years. Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers.

In the commercial marine industry, our Gridcoolers are on push boats, tugs, dredges, dinner boats, oil recovery vessels, and gambling boats. We're also on high speed boats like crew supply boats, catamarans, river fishing boats and search and rescue boats.

Gridcoolers can also be found on yachts like the late Malcolm Forbes' yacht *Highlander* or the Roosevelt Presidential yacht *M/V Potomac*.

Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.

**KEEL COOLER** — The Gridcooler is a heat exchanger of the outboard or hull type, often referred to as a keel cooler because of its usual location, near the keel.

**PROTECTION** — The Gridcooler provides closed circuit engine cooling, eliminating sand and silt deposits in engine jackets, and protecting your engine from corrosion and deposits in salt water operation. A closed circuit cooling system also allows antifreeze to be added to the cooling system for colder climates.

**UNIQUE DESIGN** — The Gridcooler eliminates the sea water pump, strainer, scoop and sea cock. (Except for wet type exhaust systems, which usually require a small capacity pump). Gridcoolers are completely assembled and 100% tested (unlike kit type keel coolers). The Gridcooler's unique design also eliminates the objections associated with other types of keel cooling—such as bulkiness, drag, fouling and weight.

**COME SEE US AT BOOTH 205**

### CHECK THESE QUALITIES FOUND IN THE GRIDCOOLER:

Completely assembled and factory tested to assure reliability. No complicated, time consuming assembly before installation.	Heavy gauge 90/10 copper-nickel rectangular tube is structurally strong and increases the cooling surface over a given area.	Eliminates marine fouling problems associated with conventional inboard heat exchangers.
Silver brazed and welded joints form a rugged keel cooler, no slip joints or O-rings to leak.	Used for decades on commercial and military vessels. Gridcoolers were designed for the U.S. Navy during World War II.	Closed cooling system like your car's radiator, antifreeze can be added to the system for colder applications.
Custom designed to meet owners' operating conditions and the engine manufacturer's exact cooling requirements.	U.S. Navy 20 year rating lets you know Fernstrum Gridcoolers are built to last.	Eliminates sea cock, pumps and strainers. Gridcoolers only need the engine's jacket water pump for coolant flow and an expansion tank.

## R. W. FERNSTRUM & COMPANY

P.O. BOX 97 • 1716 11th AVE.  
MENOMINEE, MI 49858

PHONE: (906) 863-5553  
FAX: (906) 863-5634

1196

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

Do you have overheating problems? Tired of messing around with pumps and strainers for your cooling system? Is marine fouling a problem for you?

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We've been engineering cooling systems for all types of marine engines for the last 50 years. Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers.

Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.

**QUALITIES FOUND IN THE GRIDCOOLER:**

Closed cooling system  
Completely assembled  
and factory tested  
Heavy gauge 90/10  
copper-nickel  
rectangular tube

Excellent anti-foulant  
capabilities  
Silver brazed joints  
Custom designed  
Used for decades on  
commercial and  
military vessels

**R. W. FERNSTRUM & COMPANY**

1716 11th Avenue Phone: (906) 863-5553  
Menominee, MI 49858 Fax: (906) 863-5634

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Used for decades on  
commercial and  
military vessels

**R. W. FERNSTRUM & COMPANY**

1716 11th Avenue Phone: (906) 863-5553  
Menominee, MI 49858 Fax: (906) 863-5634

# Professional Boatbuilder

3-3/8 W x 4-7/8 H MAGAZINE

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

Do you have overheating problems? Tired of messing around with pumps and strainers for your cooling system? Is marine fouling a problem for you?  
 Then why don't you give us a call? We'll figure out which Gridcooler is right for cooling your engine in your application.  
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**QUALITIES FOUND IN THE GRIDCOOLER:**

Closed cooling system	Excellent anti-foulant capabilities
Completely assembled and factory tested	Silver brazed joints
Heavy guage 90/10 copper-nickel rectangular tube	Custom designed
	Used for decades on commercial and military vessels

**R. W. FERNSTRUM & COMPANY**

1716 11th Avenue Phone: (906) 863-5553  
 Menominee, MI 49858 Fax: (906) 863-5634

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

Do you have overheating problems? Tired of messing around with pumps and strainers for your cooling system? Is marine fouling a problem for you?  
 Then why don't you give us a call? We'll figure out which Gridcooler is right for cooling your engine in your application.  
 How can you go wrong?

We've been engineering cooling systems for all types of marine engines for the last 50 years. Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers.  
 Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.

**QUALITIES FOUND IN THE GRIDCOOLER:**

Closed cooling system	Excellent anti-foulant capabilities
Completely assembled and factory tested	Silver brazed joints
Heavy guage 90/10 copper-nickel rectangular tube	Custom designed
	Used for decades on commercial and military vessels

**R. W. FERNSTRUM & COMPANY**

1716 11th Avenue Phone: (906) 863-5553  
 Menominee, MI 49858 Fax: (906) 863-5634

# Professional Mariner

3-3/8 W x 4-7/8 H MAGAZINE

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**UNIQUE QUALITIES FOUND IN THE GRIDCOOLER:**

Closed cooling system	Silver brazed joints
Completely assembled and factory tested	Custom designed
Heavy guage 90/10 copper-nickel rectangular tube	Used for decades on commercial and military vessels
Excellent anti-foulant capabilities	U.S. Navy 20 year rating
	Over 8000 models available

**R. W. FERNSTRUM & COMPANY**

1716 11th Avenue  
Menominee, MI 49858

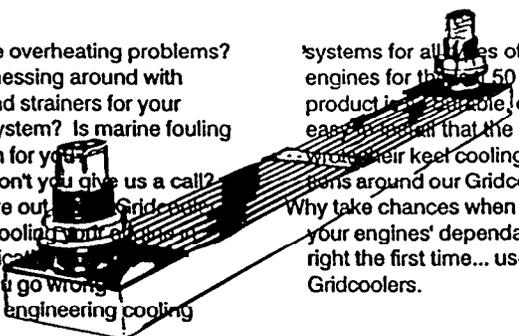
Phone: (906) 863-5553  
Fax: (906) 863-5634

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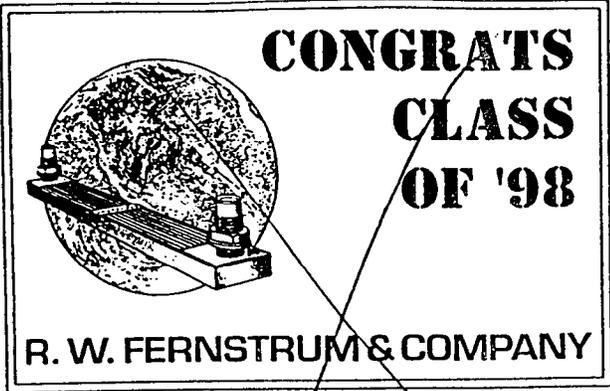
**R. W. FERNSTRUM & COMPANY**

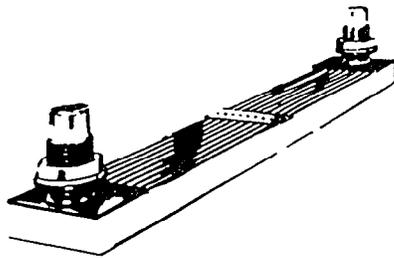
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Menominee, MI 49858

Phone: (906) 863-5553  
Fax: (906) 863-5634

**Pacific Fishing**

4-5/8 W x 4-3/4 H MAGAZINE





# FERNSTRUM GRIDCOOLER

You want the best of everything on your boat...as long as it's affordable...right?

Then why don't you give us a call? For the cost of a phone call, we'll figure out which of over 3000 different Gridcoolers® is right for cooling your engine in your application.

How can you go wrong?

We've been engineering cooling systems for all types of marine engines for the last 50 years. Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers.

Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.

## CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:

Complete assembly built and factory tested to assure ability to withstand the corrosive, assembly and installation.	Heavy gauge (3/16) copper/nickel rectangular aluminum pipe, which will hold its shape under 6000 lbs. of load and is non-heat expansion than most other aluminum alloys.
Stainless steel and welded joints using quality steel to give parts a 20 year life.	The most superior form of keel coating for maximum protection in the water.
Custom designed to accommodate cleaning, maintenance and the engine manufacturer's warranty requirements.	U.S. Navy 20 year warranty for use from Fernstrum Gridcoolers 25 to 30 years.

**50 YEARS EXPERIENCE IN ENGINEERED KEEL COOLING**

**R. W. FERNSTRUM & COMPANY**  
 P.O. BOX 97 • 1716 11th AVE. PHONE: (906) 863-5553  
 MENOMINEE, MI 49858 FAX: (906) 863-5634

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

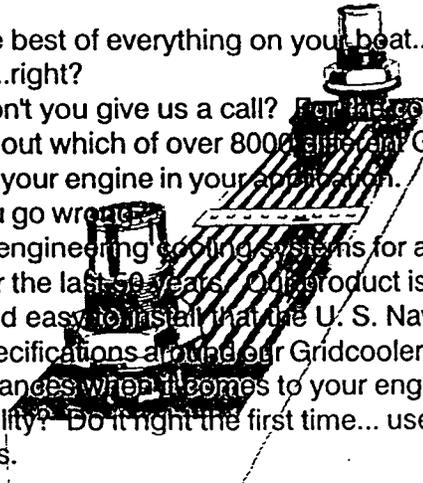
You want the best of everything on your boat...as long as it's affordable...right?

Then why don't you give us a call? For the cost of a phone call, we'll figure out which of over 800 different Gridcoolers is right for cooling your engine in your application.

How can you go wrong?

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Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.



**CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:**

Completely assembled and factory tested for reliability. No complicated fire consuming assembly by the installer.  
 Silver brazed end welded joints form a rugged leak proof seal. No pipe or fittings to leak.  
 Custom designed for optimum operating conditions and life cycle manufacturing and testing requirements.

Heavy gauge 80/10 copper-nickel rectangular tubes are stronger with more cooling surface. Tube to wall thickness and 1/2 inch heat treated bar round ends for type test results.  
 The most compact form of keel cooling, can be recessed for a flush fit to the keel plate.  
 U.S. Navy 20 year rating as you know Fernstrum Gridcoolers use for decades.

**50 YEARS EXPERIENCE IN ENGINEERED KEEL COOLING**

**R. W. FERNSTRUM & COMPANY**

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 MENOMINEE, MI 49858

PHONE: (906) 863-5553  
 FAX: (906) 863-5634

**GREENWOOD'S  
 GUIDE 5by8  
 133 Line Screen**

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

You want the best of everything on your boat...as long as it's affordable...right?

Then why don't you give us a call? For the cost of a phone call, we'll figure out which of over 8000 different Gridcoolers is right for cooling your engine in your application.

How can you go wrong?

We've been engineering cooling systems for all types of marine engines for the last 50 years. Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers.

Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.

**CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• Completely assembled and factory tested for reliability in a protected indoor storage assembly plant.</li> <li>• Strong travel and work stations for rugged use with no slip, grip or springs to break.</li> <li>• Custom designed for all types of cooling systems and to original manufacturers' keel cooling requirements.</li> </ul> | <ul style="list-style-type: none"> <li>• Heavy gauge 304 10 down nickel rectangular tubular stainless steel with non-porous surface. Twice the wall thickness and 50% more heat rejection than any other type keel cooler.</li> <li>• The most compact form of keel cooling ever developed and designed for installation.</li> <li>• U.S. Navy 20 year practice as you own Fernstrum Gridcoolers used for decades.</li> </ul> |
|---|---|

**50 YEARS EXPERIENCE IN ENGINEERED KEEL COOLING**

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P.O. BOX 97 • 1716 11th AVE.      PHONE: (906) 863-5553  
 MENOMINEE, MI 49858      FAX: (906) 863-5634

**BOATS & HARBORS**

4-3/4 by 8  
 NEWSPAPER



You want the best of everything on your boat...as long as it's affordable...right?

Then why don't you give us a call? For the cost of a phone call, we'll figure out which of over 8000 different Gridcoolers is right for cooling your engine in your application.

How can you go wrong?

We've been engineering cooling systems for all types of marine engines for the last 50 years. Our products are so durable, efficient and easy to install that the U.S. Navy wrote their keel cooling specifications around our Gridcoolers.

Why take chances when it comes to your engines' dependability? Do it right the first time... use Fernstrum Gridcoolers.

### CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:

Completely assembled and factory tested to assure reliability. No complicated, time consuming assembly before installation.

Silver brazed and welded joints form a rugged keel cooler, no slip joints or "O" rings to leak.

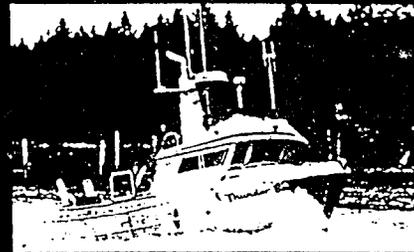
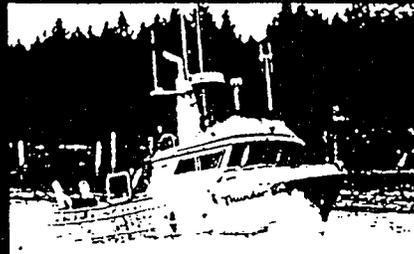
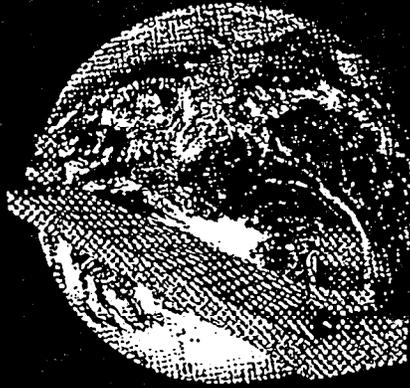
Custom designed to meet owner's operating conditions and the engine manufacturer's exact cooling requirements.

Heavy gauge 90/10 copper-nickel rectangular tube is structurally stronger with more cooling surface, twice the wall thickness and 1/3 more heat rejection than round tube, kit type keel coolers.

The most compact form of keel cooling, can be recessed for a flush with hull installation.

U.S. Navy 20 year rating lets you know Fernstrum Gridcoolers last for decades.

**50 YEARS EXPERIENCE IN  
ENGINEERED KEEL COOLING**



**R. W. FERNSTRUM  
& COMPANY**

**P.O. BOX 97 • 1716 11th AVE.**

**MENOMINEE, MI 49858**

**PHONE: (906) 863-5553**

**FAX: (906) 863-5634**

"The Fernstrum Gridcooler is the simplest and most dependable form of fresh water cooling available."

Our customers have been saying things like this for decades. We've been engineering cooling systems for all types of marine engines for the last 50 years. Our product is so durable, efficient and easy to install that the U.S. Navy wrote their keel cooling specifications around our Gridcoolers and gave them a 20 year rating.

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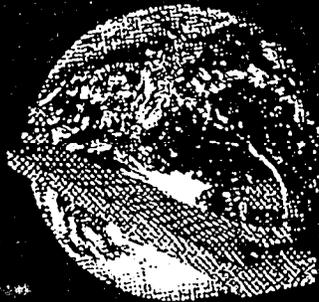
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& COMPANY**

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MENOMINEE, MI 49858  
PHONE: (906) 863-5553  
FAX: (906) 863-5634**

## FERNSTRUM GRIDCOOLER®



Engineered Keel Cooling For  
YOUR Marine Engine

**R. W. Fernstrum & Co.**

P.O. Box 97, Menominee, MI 49858

Phone: (906) 863-5553

Fax: (906) 863-5634

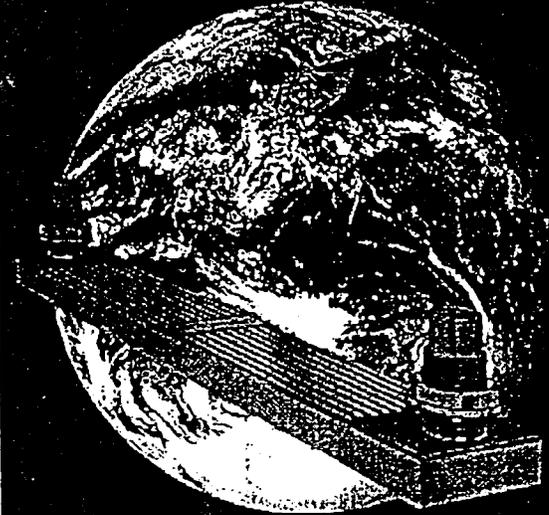
### FERNSTRUM GRIDCOOLERS

- Closed cooling system
- Completely assembled
- Keel Cooling for your vessel in your conditions
- Over 8 000 models
- 50 years experience



ENGINEERED  
KEEL COOLING

# FERNSTRUM GRIDCOOLER®



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ENGINEERED KEEL COOLING**

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PHONE: (906) 863-5553 • FAX: (906) 863-5634

**"The FERNSTRUM GRIDCOOLER® is the simplest and most dependable form of fresh water cooling available."**

If you wouldn't use river water to cool your car's engine, why are you using it to cool your boat's engine?

There are alternatives.

We manufacture closed cooling systems called keel coolers.

Our product name is Gridcooler.

Our product is so durable, efficient and easy to install that the U. S. Navy wrote their keel cooling specifications around our Gridcoolers. They also gave our Gridcoolers a 20 year rating.

Call us and find out why Fernstrum Gridcoolers have been used on commercial and military vessels for over 50 years.

50 YEARS  
EXPERIENCE  
IN ENGINEERED  
KEEL COOLING

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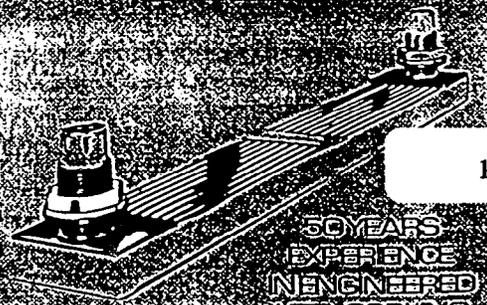
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50 YEARS  
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IN ENGINEERED  
KEEL COOLING

1208

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Menominee, MI 49858

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Fax: (906) 863-5634

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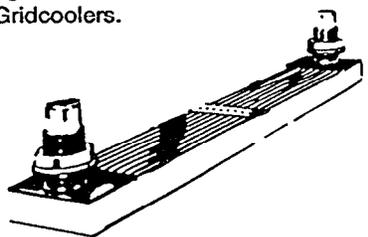
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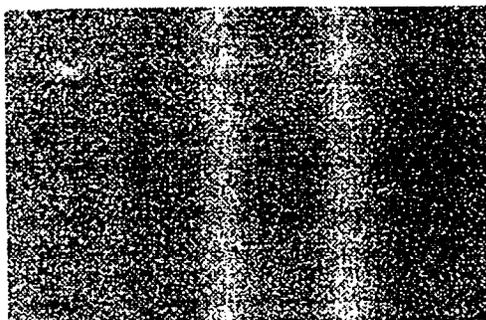
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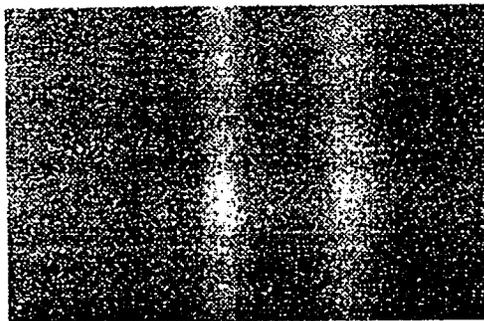
Built By: **Sachal & Stevens**

Keel Cooled By: **R. W. Fernstrum & Company**



Built By: **Sachal & Stevens**

Keel Cooled By: **R. W. Fernstrum & Company**



**CHECK THESE UNIQUE QUALITIES ONLY FOUND IN THE GRIDCOOLER:**

Completely assembled and factory tested for sure reliability. No complicated and confusing assembly before installation.

The most compact form of keel cooling can be accessed for a flush with hull installation.

Silver brazed and welded joints minimize leakage. Keel cooler to ship units or 9" fins to boat.

Heavy gauge 30/40 copper-nickel or 5000 series aluminum rectangular tube structure stronger than most cooling surfaces and twice the wall thickness of other packages. No type keel coolers with round tubes.

Custom designed for maximum operating conditions and the engine manufacturer's exact cooling requirements.

**R. W. FERNSTRUM & COMPANY**

1716 11th Avenue • Menominee, MI 49858 USA

Phone: (906) 863-5553 • Fax: (906) 863-5203

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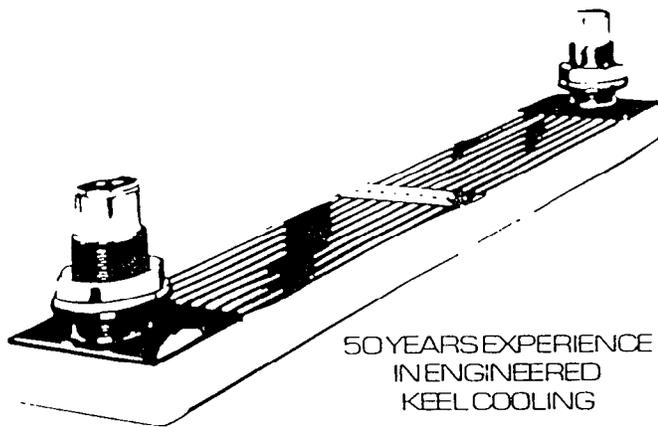
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Custom designed

20 year lifecycle rating by U. S. Navy



50 YEARS EXPERIENCE  
IN ENGINEERED  
KEEL COOLING

**R. W. FERNSTRUM & COMPANY**

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Menominee, MI 49858

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Fax: (906) 863-5634

MARITIMEREPORTER<sup>71/2by6</sup>  
NEWSPAPER

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1211

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Silver brazed and welded joints on a rugged keel cooler, no slip joints or O-rings to

Heavy gauge 99/10 copper-nickel or 5000 series aluminum rectangular tube, structurally stronger with more cooling surface, and twice the wall thickness of other package type keel coolers with round tube.

Custom designed to meet your operating conditions and the engine manufacturer's exact cooling requirements.

The most compact form of keel cooling, can be recessed to a flush with hull installation.

**BELLSOUTH**

Radiators - Radio



Exhibit C

**Radiators - Automotive (Cont'd)**

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Equipment & Systems  
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Business Needs.

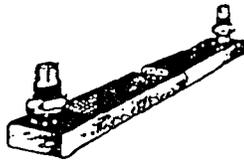
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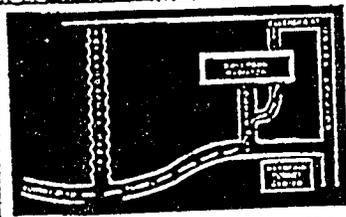
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HOUMA, LA 70363**





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AUGUST 19, 1993

\$ 120.62

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& BATTERY SHOP, INC.**  
801 ODETTIE ST. 876-6944  
HOUMA, LA 70363

ORDER OF R.W. Fernstrum & Company

120 DOLLARS 62 CTS

DOLLARS

**Premier Bank** Houma, La.  
Bank Code 08

ACCOUNT NUMBER: 1-5010500

*Handwritten:* **NON-NEGOTIABLE**

⑆032914⑆ ⑆065400564⑆800 8239 71 9⑆

DETACH AND RETAIN THIS STATEMENT  
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IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY, NO RECEIPT DESIRED

EAST PARK RADIATOR  
& BATTERY SHOP, INC.  
HOUMA, LA 70363

DATE	INVOICE NUMBER	DESCRIPTION	AMOUNT	DEDUCTIONS		NET AMOUNT
				PARTICULARS	AMOUNT	
07-30-93	024002	Resale Merchandise CODE NUMBER: 501	\$120.62			\$120.62

NON-NEGOTIABLE

REVISED 1992  
024007

**W. FERNBUSH COMPANY**  
 P. O. BOX 87 • 1718 ELEVENTH AVE. • MENOMINEE, MI 49858 U.S.A.  
 PHONE: 808/883-5853 • TELEX: 86-3483 • (ANSWER BACK: FERNBUSH MNOM)  
 FAX: 808/883-5834



ENGINEERED  
KEEL COOLING

CUST. NO.	DATE
1- 5010500	7/30/93

SOLD TO [ ]  
 EAST PARK RADIATOR  
 801 ODETTE STREET  
 HOUMA LA 70363

SHIP TO [ ]  
 EAST PARK RADIATOR  
 801 ODETTE STREET  
 HOUMA LA 70363

REFERENCE NO.	SHIP VIA	ORDER NO.	SLS. NO.	TERMS	
PHONE	UPS - SECOND DAY AIR, PREPAID	C003045		1% 10 NET 30 DAYS	
ITEM NUMBER	DESCRIPTION	U/M	QUANTITY	PRICE	AMOUNT
1856	SUPPORT PLATE BOLT	EA	8	19.750	158.00
	UPS FREIGHT CHARGES			8.05	45.43-
	LESS 28.750% TRD DISC				8.05
	TOTAL FREIGHT				
TERMS DISCOUNT ALLOWED -	1.12.			PAY THIS AMOUNT	120.62

ORIGINAL

12962  
FERNSTRUM & CO., INC.  
EAST PARK RADIATOR & BATTERY SHOP, INC.  
1716 W. 11TH AVE.  
MENDOTA, ILL. 61850

027110

09/24/97

60042962

EAST PARK RADIATOR & BATTERY SHOP, INC.

1801 ODETTE ST.  
HOUMA, LA 70363-4969  
PH: 504-876-3120

FOR DEPOSIT ONLY  
PAY TO THE ORDER OF EAST PARK RADIATOR & BATTERY SHOP, INC. \$387.00 DOLLARS

DATE: 09/24/97

R. W. FERNSTRUM & CO., INC.  
P.O. BOX 97  
1716 W. 11TH AVE.  
MENDOTA, ILL. 61850

00042962  
BANK ONE LOUISIANA  
184-50054  
42962  
DATE: 09/24/97  
AMOUNT: \$387.00  
NOT NEGOTIABLE

POLYREP™ H065400551800 B239

GRIDCOOLER



**R. W. FERNSTRUM & COMPANY, INC.**

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 PHONE 806/863-5553 • FAX 806/863-5834 • EXPORT FAX 806/863-5203

INVOICE	PAGE
027110	1

CUST. NO.	DATE
1- 5010500	8/22/97

SOLD TO EAST PARK RADIATOR  
 801 ODETTE STREET

LA HOUMA

LA 70363

SHIP TO

EAST PARK RADIATOR  
 801 ODETTE STREET

LA HOUMA

LA 70363

TERMS

1% 10 NET 30 DAYS

ORDER NO. SLS. NO.

C006184

SHIP VIA

UNITED PARCEL SERVICE PREPAID

REFERENCE NO.

3528

ITEM NUMBER	DESCRIPTION	U/M	QUANTITY	PRICE	AMOUNT
1807	D SIZE COUPLING	EA	50	8.625	431.25
1943	3 1/2" NIPPLE WASHER	EA	6	23.700	142.20
1228	2" HEX NIPPLE NUT	EA	1	20.400	20.40
1259	2" NIPPLE WASHER	EA	2	8.287	16.57
1828	2 1/2" HEX NIPPLE NUT	EA	7	32.325	226.28
1831	2 1/2" NIPPLE WASHER	EA	6	21.525	129.15
1565	1 1/2" HEX NIPPLE NUT	EA	4	19.425	77.70
1568	1 1/2" NIPPLE WASHER	EA	4	2.737	10.95
1928	HEADER STUD WASHER	EA	4	4.912	19.65
1915	HEADER STUD/SUP. STUD WASHER	EA	12	4.837	58.04
1908	3 1/2" HEX NIPPLE NUT	EA	2	48.937	97.87
	UNITED PARCEL SERVICE CHARGE			22.31	22.31
	TOTAL FREIGHT				
	DISCOUNT ALLOWED -				
	PAY THIS AMOUNT				1,252.38

1218

TERMS

DISCOUNT ALLOWED -

12.30

PAY THIS AMOUNT

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ORIGINAL

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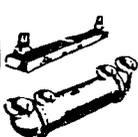
**384-1873**

IF NO ANSWER DIAL 385-2284 - 385-2752

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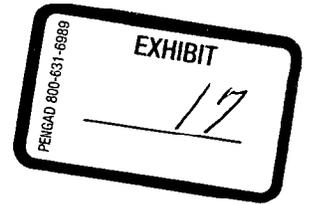
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Declaration of Todd Boudreaux in Support of Defendants Opposition to Plaintiff's Motion for Temporary Restraining Order

1. My name is Todd Boudreaux, and I am Vice President and part owner of East Park Radiator and Battery Shop, Inc., located at 801 Odette Street, Houma, LA 70363 (hereinafter "East Park Radiator"). I have been employed by East Park Radiator since 1978.

2. I received a Bachelor of Science degree in electrical engineering technology from Nicholls State University, Thibodaux, LA, and my duties with East Park Radiator include the design of new and old projects, including heat exchangers and keel coolers.

3. My experience in the design and functioning of keel coolers dates back to 1978, and I have specialized in the subject matter of keel coolers since at least 1988, becoming thoroughly familiar with their functioning, including the keel cooler which is sold under the trademark GRIDCOOLER by R. W. Fernstrum & Co.

4. On or about October 23, 1997, Mr. Darryl J. Belanger, president of East Park Radiator, received a letter, together with a group of attachments, from an attorney, Samuel D. Littlepage, who represents R. W. Fernstrum & Co., accusing East Part Radiator of infringement of the registered trademark GRIDCOOLER owned by R. W. Fernstrum & Co., its grid cooler visual logo, which, as I understand is the subject of a trademark application, and the trade dress of the product which is the use of rectangular shaped tubing to create a "grid-like" appearance. That letter is attached as Exhibit 1.

5. East Park Radiator has had a long association with R. W. Fernstrum having purchased parts from R. W. Fernstrum in the repair and refurbishing of their GRIDCOOLER product, with the parts being purchased by East Park Radiator from R. W. Fernstrum. Exhibit 2 is copies of two sample invoices, the first dated August 19, 1993, No.

32914, in the amount of \$120.62, and the second dated September 24, 1997, No. 42962, in the amount of \$1,2052.38, both for merchandise purchased from R. W. Fernstrum. Between the years 1993 and 1997, as indicated on these two sample invoices, East Park Radiator has had a continuing business relationship with R. W. Fernstrum, throughout that time, which has been to the benefit of both companies.

6. East Park Radiator has, in the past, indicated in its yellow page ads, copies of which are attached as Exhibit 3, that it was in the business of repairing "grid coolers" and did in fact, and showed a visual appearance of the grid cooler. East Park Radiator set up such ads not understanding that grid cooler was a registered trademark of R. W. Fernstrum, but was simply a generic term for the product being sold. Ads of competitors of East Park Radiator also use the term "grid cooler" since it is a term which has become synonymous with this type of cooling system or heat exchange system for vessels. See "Ray's Radiator, Inc." ad on page 1 of Exhibit 3.

7. In September of 1997 I requested a patent attorney, Mr. Gregory C. Smith, to undertake a trademark search for the mark DURAWELD for heat exchangers which I wanted to establish as a name for my product, and the word GRIDCOOLER in order to see whether GRIDCOOLER was registered. The results of the search which was forwarded to me on or about that date indicated to my surprise that the word GRIDCOOLER was in fact registered by R.W. Fernstrum & Company. Once I learned that, I immediately contacted the Yellow Pages, who were setting up the 1998 ads and instructed them to remove any reference to the GRIDCOOLER mark. That has been done. I have also removed any reference to grid cooler in my brochures or any other advertising for my company's services.

8. Additionally, since East Park Radiator received Mr. Littlepage's letter of October 20, 1997, in an abundance of

caution, although the GRIDCOOLER visual logo is not registered, I did not want to continue to use that image since it may one day be registered, or it may be considered to be an unfair use of that image. Therefore, I have removed that image as was shown as an attachment to Mr. Littlepage's letter (Exhibit 1) from any future ads or brochures or signage of my company and no longer utilize that image in the business of East Park Radiators.

9. Recently, East Park Radiator made a decision to manufacture its own keel cooler, and when that decision was made, I was told that there was a patent on the R.W. Fernstrum grid cooler product. My patent attorney, Gregory C. Smith, ordered a copy of U.S. Patent No. 2,382,218, issued to R.W. Fernstrum, entitled "Outboard Marine Heat Exchanger," (the Fernstrum patent) which is attached hereto as Exhibit 4, indicates that the patent was issued in 1945 and therefore, expired after its 17 year term, in 1961. The subject matter of the patent was in the public domain.

10. To my surprise, Mr. Littlepage in his October 20th letter asserts that the "use of rectangular-shaped tubing to create a grid like appearance" is the "distinctive trade dress for our client's product." That came as quite a surprise to me, since the grid like appearance for that product in my opinion as a man skilled in this art is wholly and unequivocally functional features.

11. For example, in column 2, lines 50-58 of the Fernstrum patent, discusses the functional advantage of increased surface area allowing for an increase in heat conduction that is afforded by the rectangular-shaped tubing feature.

12. In that regard, I am attaching Exhibit 5, which is a copy of a brochure which was forwarded to us with Mr. Littlepage's letter. Language from the brochure, which I have underlined, states as follows: "Heavy gauge 90/10 copper-nickel rectangular tube is structurally stronger with more cooling surface, twice the

wall thickness and 1/3 more heat rejection than round tube, kit type keel coolers." It is clear as a man skilled in this art from that language that the rectangular grid of the keel cooler is in fact a functional aspect of the grid cooler product as indicated both in that ad and in the patent which expired in 1961.

13. I am also attaching photographs of my product, Exhibit 6, which I have labeled through lettering which shows that my DURAWELD keel cooler is constructed very similar in appearance to the Fernstrum gridcooler, all of the similarities being for functional reasons:

a. The DURAWELD keel cooler is rectangular in shape, having a flat upper face "A", with a low profile, so that it can fit in a recess in the underside of a vessel, as shown in the Fernstrum patent.

b. There is a series of longitudinal rectangular flow tubes "B", which flow from one end "C" of the DURAWELD keel cooler to the second end "D" of the keel cooler.

c. There is a fluid entry line "D" entering into a chamber "E", which flows into the flow tubes "B", and flows out through fluid exit line "F".

d. As engine water flows through the longitudinal rectangular flow tubes "B" of the DURAWELD keel cooler, the rectangular shape offers greater surface area in order to cool the water, as explained in Exhibit 5, the Fernstrum brochure. Also, this rectangular configuration of the tubes are clearly seen in Fig. 2 of the Fernstrum patent, Exhibit 4.

14. All of the features listed in (a) through (d) above are superior functional features which allow the DURAWELD keel cooler to work more efficiently than any other keel cooler in the

industry. Without these functional features, East Park Radiator would have an inferior product to offer to its customers.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Todd P. Boudreaux  
Todd Boudreaux

Exhibit 1



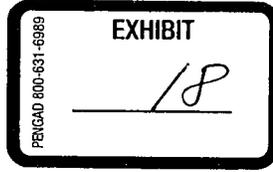
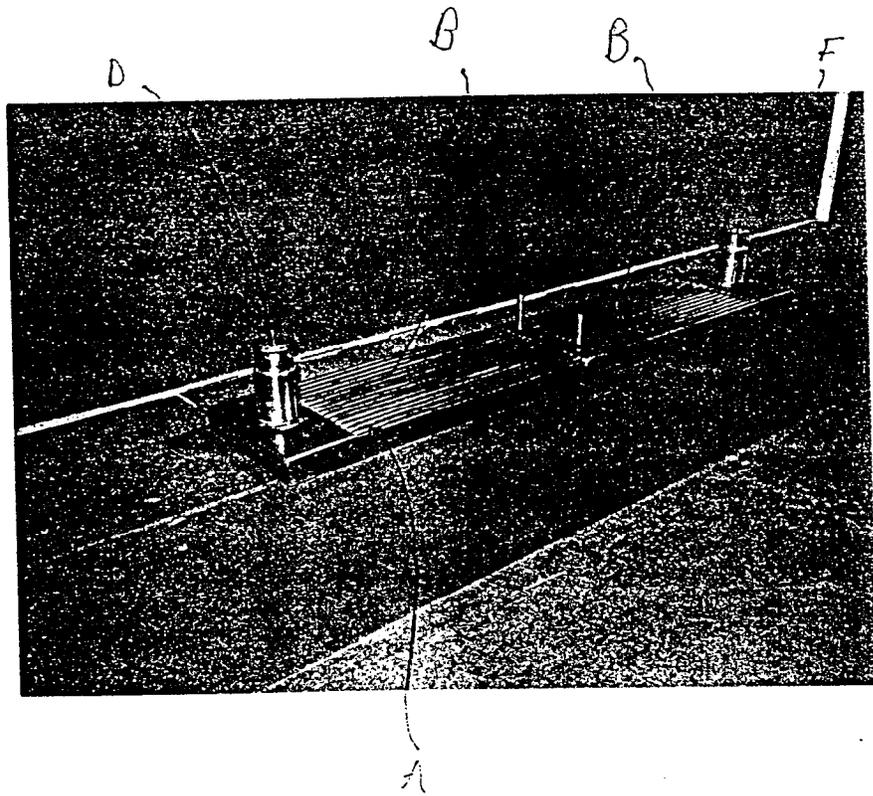
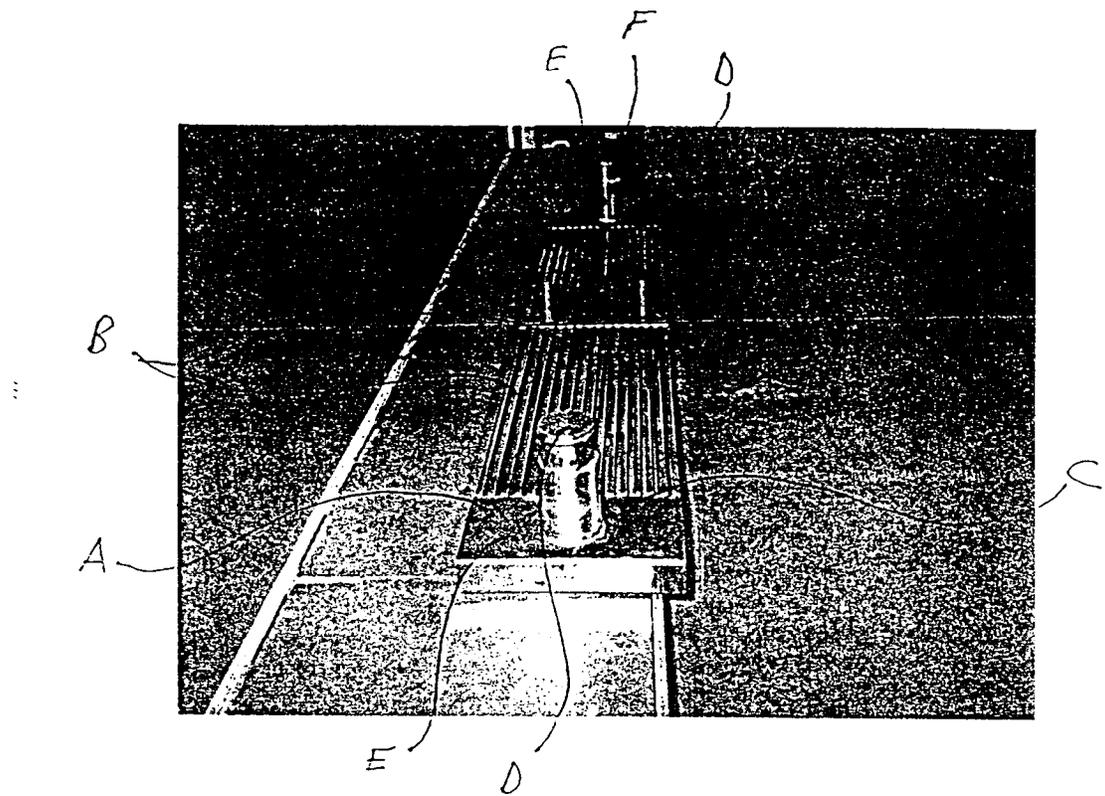
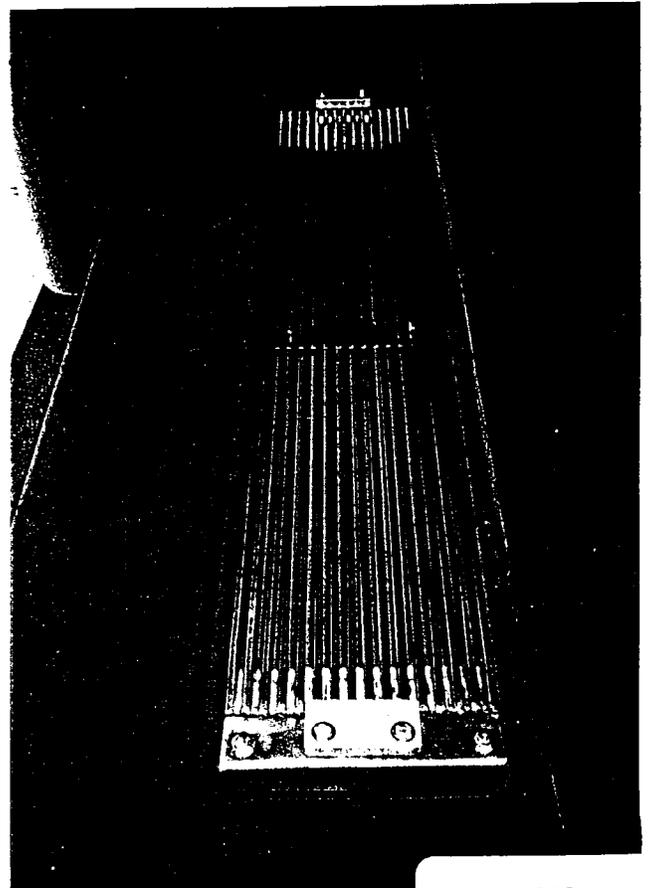
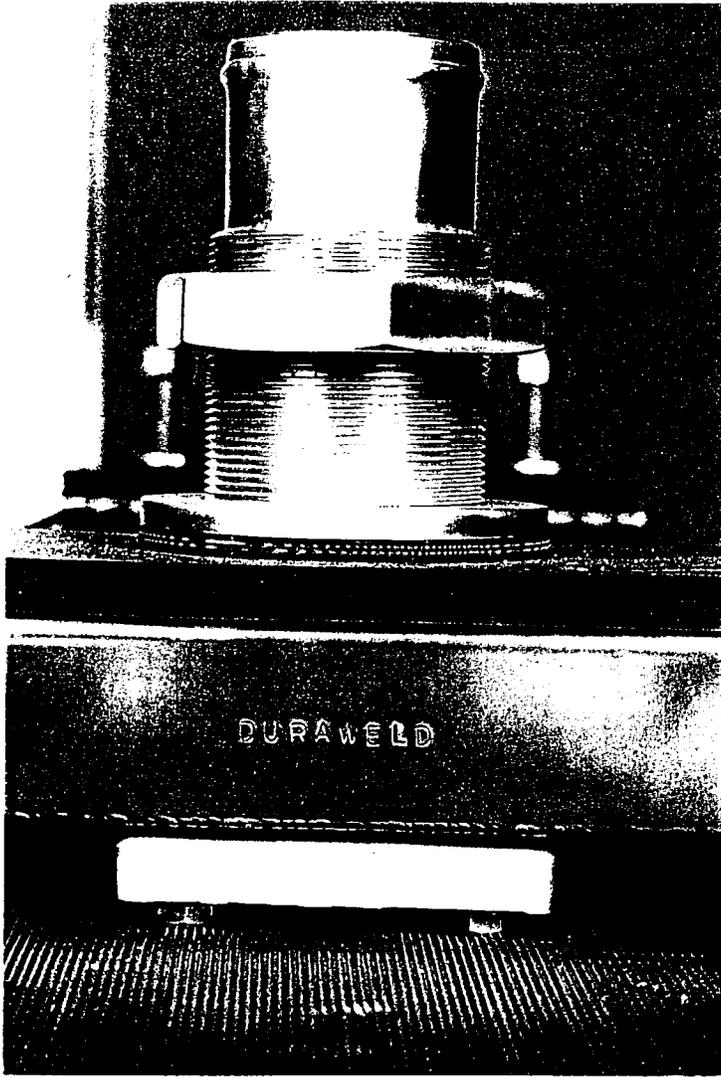
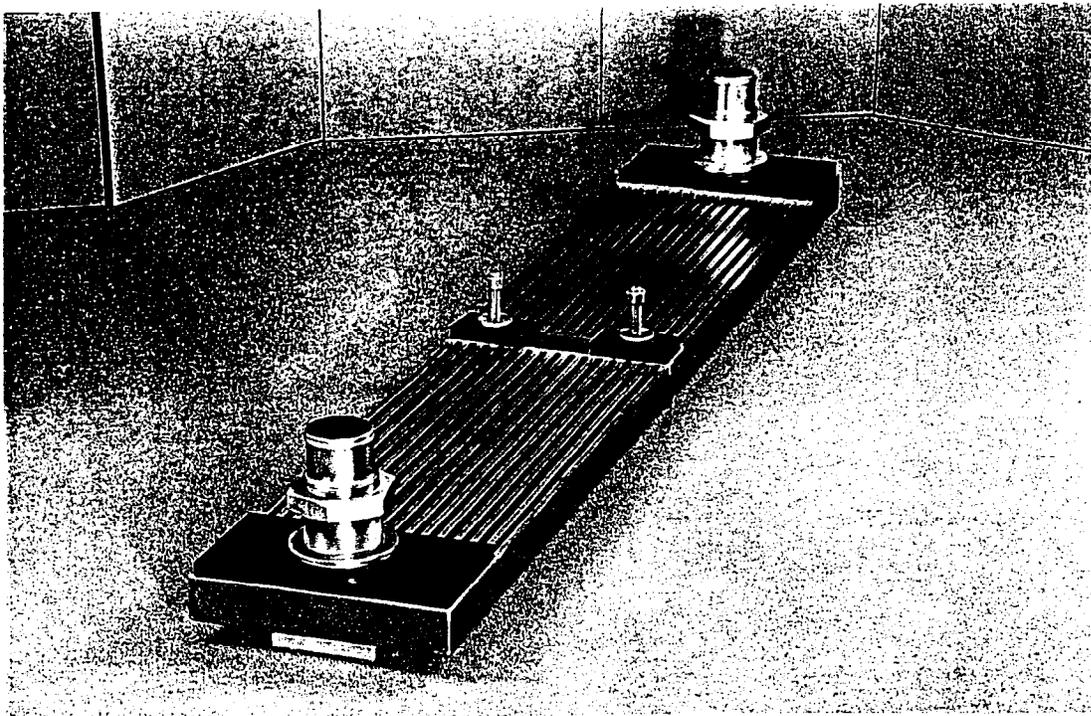
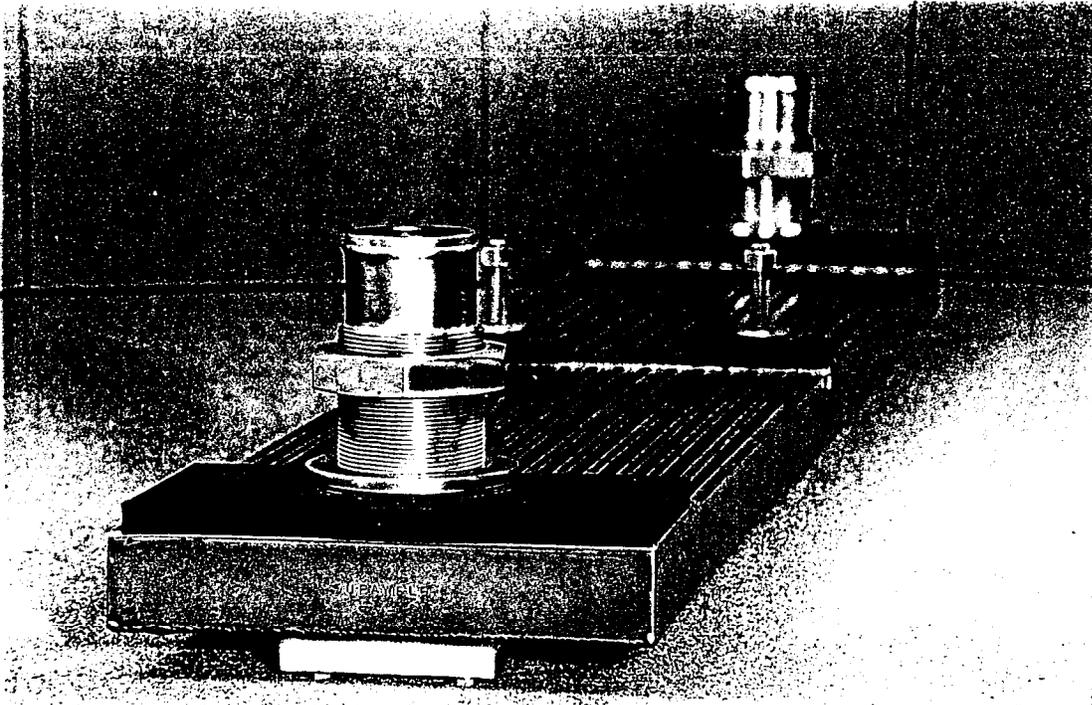


Exhibit 6





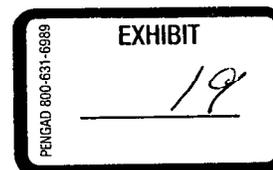




**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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

Opposition No. 91119899

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**OPPOSER'S NOTICE OF TESTIMONY DEPOSITION**

Please take notice that, pursuant to Trademark Rule 2.123(c), Opposer Duramax Marine, LLC, by its attorney, will take the testimony deposition upon oral examination of Paul Boudreaux, the owner of Ashton Marine Shipyard, of 425 Avenue I, Marrero, Louisiana 70058, on May 12, 2004 at 10:00 a.m. at the Office of David M. Culpepper, L.L.C., 400 Poydras Street, Suite 1710, New Orleans, Louisiana, 70114.

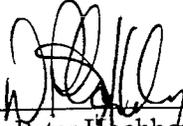
The deposition shall take place before a certified court reporter and shall continue until completed. The deposition shall seek background information about the deponent, the deponent's identification of documents, the deponent's testimony regarding the proposed trademark of Application Serial No. 75/701,707, the proposed trademark of Application Serial No. 75/701,707's relationship to keel coolers, and the deponent's testimony on the keel cooler industry.

You are invited to attend and cross-examine.

Date: April 28, 2004

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

Respectfully submitted,

By:   
D. Peter Hochberg  
Counsel for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the OPPOSER'S NOTICE OF TESTIMONY DEPOSITION is being served by regular U.S. Mail, postage prepaid, to counsel for Applicant, Samuel D. Littlepage, Dickinson Wright PLLC, 1901 L Street, N.W. – Suite 800, Washington, D.C. 20036-3506, on the date shown below.

Date: April 28, 2004



\_\_\_\_\_  
Sean Mellino



# Alaska Fisherman's NEWSPAPER

EXHIBIT  
20  
PENCAD 800-631-6989



ferry operators know...  
the Navy knows...  
the owners of  
TEMPEST know...  
it's time you knew...

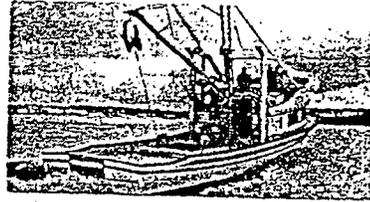
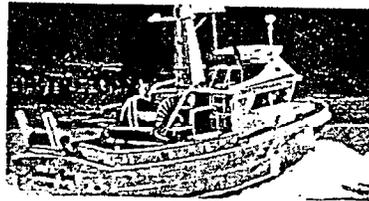
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KEEL COOLING**

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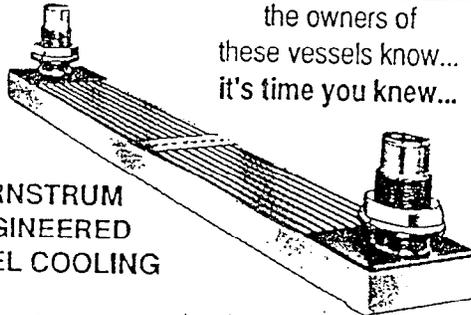




the owners of  
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available."

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Call us... we'll let you know which of our over  
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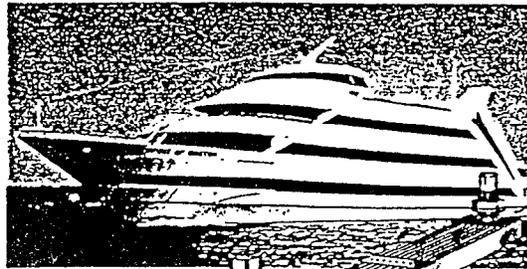
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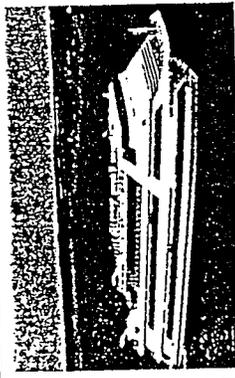


# Maritime Reporter 6 w x 3 H MAGAZINE



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Rodney E. Lay Associates  
Built by  
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Keel Cooled by  
R. W. Fernstrum  
& Company



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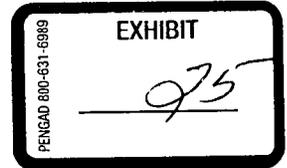
PSGA 3 W x 1 5/8 H MAGAZINE



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

Opposition No. 91119899

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**OPPOSER'S NOTICE OF TESTIMONY DEPOSITION**

Please take notice that, pursuant to Trademark Rule 2.123(c), Opposer Duramax Marine, LLC, by its attorney, will take the testimony deposition upon oral examination of David M. Culpepper, Esq., of 2417 State Street, New Orleans, Louisiana 70118, on May 12, 2004 at 10:00 a.m. at the Office of David M. Culpepper, L.L.C., 400 Poydras Street, Suite 1710, New Orleans, Louisiana, 70114.

The deposition shall take place before a certified court reporter and shall continue until completed. The deposition shall seek background information about the deponent, the deponent's identification of documents, the proposed trademark of Application Serial No. 75/701,707's relationship to keel coolers, information regarding a prior proceeding involving the current parties and a third party and the settlement thereof.

You are invited to attend and cross-examine.

Respectfully submitted,

Date: April 28, 2004

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the OPPOSER'S NOTICE OF TESTIMONY DEPOSITION is being served by regular U.S. Mail, postage prepaid, to counsel for Applicant, Samuel D. Littlepage, Dickinson Wright PLLC, 1901 L Street, N.W. – Suite 800, Washington, D.C. 20036-3506, on the date shown below.

Date: April 28, 2004

*Sean Mellino*  
Sean Mellino



RECEIVED  
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EAST DISTRICT OF LOUISIANA  
APR MAY 11 P 2:25  
MICHELLE G. MYRTE  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

EAST PARK RADIATOR	*	CIVIL ACTION
	*	
VERSUS	*	NO. 97-3598 c/w 97-3974
	*	
R.W. FERNSTRUM & COMPANY	*	SECTION "S"
	*	
		MAG. DIV. "1"

EXHIBIT  
26  
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$\Delta$   $\pi$  EXHIBIT 9  
Deponent Brakey  
Date 4-22-04 Rptr. LK  
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## TERMSHEET

This Term Sheet (the "Agreement") is effective as of May 5, 1999, between R.W. Fernstrum & Company, a Michigan corporation, having a principal place of business at Menominee, Michigan (hereinafter "Fernstrum") and East Park Radiator & Battery Shop, Inc., a Louisiana corporation having a principal place of business at Odette Street, Houma, Louisiana; Donovan Marine, Inc., a Louisiana corporation, having its principal place of business at 400 N. Carrollton Avenue, New Orleans, Louisiana, 70119; (sometimes hereinafter referred to collectively as "Donovan, et al").

## PREAMBLE

WHEREAS, there are now pending in the United States District Court for the Eastern District of Louisiana those lawsuits between Donovan, et al and Fernstrum under Civil Action Nos. 97-3974, 97-3598 and 97-3657 (the "litigation");

WHEREAS, Fernstrum and Donovan, et al agreed to settle the above litigation during a conference with United States District Judge Mary Anne Vial Lemmon on May 5, 1999;

WHEREAS, subject to the execution of a mutually acceptable settlement agreement, this Agreement is intended to set forth in principle the terms of that settlement; and

WHEREAS, Duramax, Inc. (hereinafter "Duramax"), an Ohio corporation, having a principal place of business at 16025 Johnson Street, Middlefield, Ohio, does hereby intervene in this Agreement to the extent, and for the purposes set forth below;

## CONSIDERATION

NOW, THEREFORE, in consideration of the terms set forth below and with the intention of being legally bound the parties hereby agree as follows:

## TERMS

1. The parties agree that all claims and counterclaims asserted in the litigation shall be dismissed with prejudice through the filing of a Stipulated Order of Dismissal in the form attached as Exhibit I.

2. Without restriction, Donovan Marine, East Park and Duramax may sell their existing stock of one-piece keel coolers, and in addition Donovan Marine, East Park and Duramax shall have an additional 90 days to sell and/or manufacture keel coolers to fill existing and new orders received during those 90 days. Donovan Marine and East Park recognize and stipulate that the presently existing stock of one-piece coolers shall consist of those coolers whose respective serial numbers are set forth on written notice thereof provided to counsel for Fernstrum within ten (10) days of date of entry of the Stipulated Order of Dismissal.

3. At the conclusion of the time periods set forth in paragraph 2, Duramax and East Park Radiator agree to modify design of the keel cooler to incorporate beveled fore and aft portions as generally shown on Exhibit 2. However, if Fernstrum in the future no longer only uses a vertical edge at the aft and fore of the headers on its keel cooler, then at such time Donovan et al shall not be required to comply with the first sentence of this section and shall at that time be under no restrictions pursuant to this Agreement.

4. The Agreement is binding on all subsidiaries, affiliates, successors, assigns, and/or related companies controlled by the executing parties, including Progressive Allied Industries, Inc. and shall serve to protect and be for the benefit of all customers and agents of the parties.

5. All parties agree to permanently affix, or permanently imprint, their respective word marks (e.g. GRIDCOOLER, DuraCooler, and Duraweld) on their respective one-piece keel cooler products.

6. Fernstrum will promptly withdraw its trademark application with prejudice.

7. Donovan Marine will dismiss with prejudice its breach of contract and false patent marking claims against Fernstrum (Civil Action No. 97-3974). Donovan Marine will also release any and all claims that it had, has, or may have against Fernstrum by reason of Fernstrum's termination of business relationships with Donovan Marine.

8. Fernstrum will dismiss with prejudice its Counterclaim, as amended and supplemented, against Donovan Marine in Civil Action No. 97-3974.

9. East Park will dismiss with prejudice its Declaratory Judgment Complaint against Fernstrum (Civil Action No. 97-3598).

10. Fernstrum will dismiss with prejudice its Complaint for Trademark Infringement, Trade Dress Infringement, Trade Dress Dilution, and Unfair Competition against East Park (Civil Action No. 97-3657).

11. Fernstrum and Duramax will release any and all claims that either party has or had against the other arising out of the sales and manufacture of a one-piece keel cooler.

12. All advertising placed 90 days hereafter by Duramax and East Park that depicts each one-piece keel cooler will clearly display the beveled end(s) of the header(s); Donovan Marine, Duramax and East Park may exhaust their respective advertising materials depicting their keel coolers as presently configured.

13. Donovan, et al agree not to use the word or term "Grid" in any advertisements or promotional materials relating to their respective one-piece keel cooler products.

14. All parties will bear their own costs and attorney fees in connection with the civil actions and trademark proceedings.

15. Within sixty days after the entry of the Stipulated Order of Dismissal in the litigation,

objects, and other materials produced or designated as Confidential Information and all reproductions thereof shall be returned to the producing party, except documents filed with the Court or presented to the Court as evidence in connection with these actions.

16. In the event Duramax files a trademark application(s) including the design of its beveled keel cooler, Fernstrum agrees not to oppose or otherwise contest said application or file a petition to cancel any registration issuing from said application.

17. The parties will request the Court to retain jurisdiction over the parties to enforce the terms of the Agreement.

IN WITNESS WHEREOF and with the intention of being legally bound, the parties and Duramax, Inc. have signed this Agreement on the date listed below.

R.W. FERNSTRUM & COMPANY

DONOVAN MARINE, INC.

By: Paul W. Fernstrum  
Paul W. Fernstrum, President

By: J. Benton Smallpage, Jr.  
J. Benton Smallpage, Jr., President

Date: MAY 5, 1999

Date: 5/6/99

DURAMAX, INC.

EAST PARK RADIATOR & BATTERY SHOP, INC.

By: S. B. Miller

By: Todd P. Boudreaux  
Todd Boudreaux, President

Date: 10 MAY 1999

Date: 5-6-99

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

EAST PARK RADIATOR	*	CIVIL ACTION
	*	NO. 97-3598 c/w 97-3974
VERSUS	*	SECTION "S"
R.W. FERNSTRUM & COMPANY	*	MAG. DIV. "1"

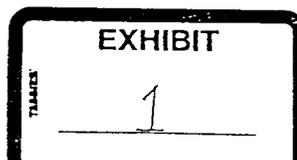
STIPULATED ORDER OF DISMISSAL

The Court having been advised that the parties have agreed to settle this action, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over the parties and the subject matter of this suit.
2. All claims and counterclaims in each of the cases consolidated hereunder are hereby dismissed with prejudice.
3. Each party shall bear its own costs and attorney fees.
4. This Court retains jurisdiction to enforce the Settlement Agreement.

Entered at New Orleans, Louisiana this \_\_\_\_\_ day of May, 1999.

\_\_\_\_\_  
MARY ANNE VIAL LEMMON  
UNITED STATES DISTRICT JUDGE



APPROVED AND CONSENTED TO:

ATTORNEY FOR PLAINTIFF EAST PARK RADIATOR & BATTERY SHOP:

Garvey, Smith, Nehrbass & Doody, L.L.C.  
3 Lakeway Center, Suite 3290  
3838 N. Causeway Boulevard  
Metairie, Louisiana 70002-1767

By: \_\_\_\_\_  
Gregory C. Smith

ATTORNEY FOR PLAINTIFF DONOVAN MARINE, INC.:

Deutsch, Kerrigan & Stiles, L.L.C.  
755 Magazine Street  
New Orleans, Louisiana 70130

By: \_\_\_\_\_  
David M. Culpepper

ATTORNEY FOR DEFENDANT:

Dickinson Wright PLLC  
1901 L Street, N.W.  
Washington, D.C. 20036-3506

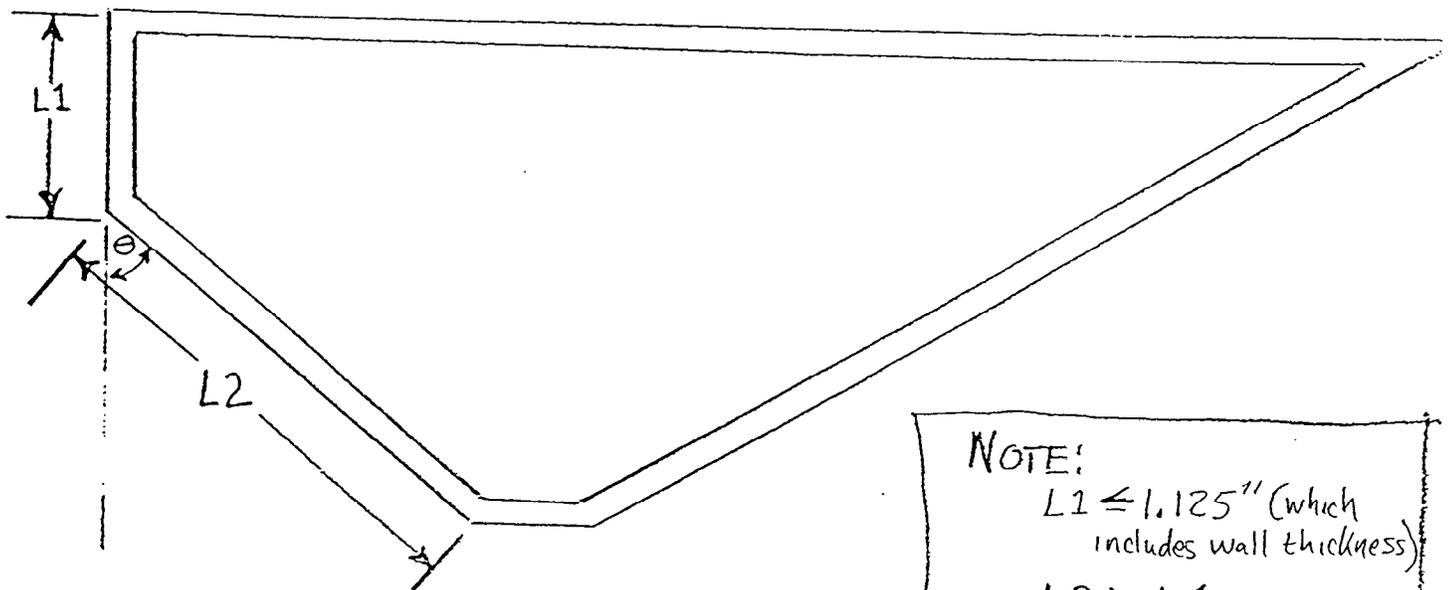
By: \_\_\_\_\_  
Samuel D. Littlepage

CONFIDENTIAL  
MIKE BRAKEY

5/5/99

Illustration of proposed header chamfer configuration for 2.5" tall rectangular tube.

Michael W. Brakey



NOTE:

$L1 \leq 1.125''$  (which includes wall thickness)

$L2 > L1$

$\theta \geq 40^\circ$

Applies to all B, C, D Models

EXHIBIT

2

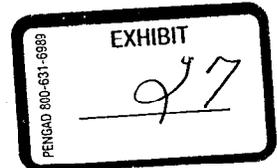


**SETTLEMENT AND MUTUAL RELEASE AGREEMENT**

This Settlement and Mutual Release Agreement (the "Agreement") is made and entered into

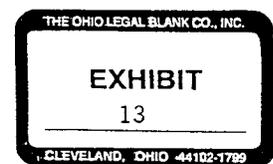
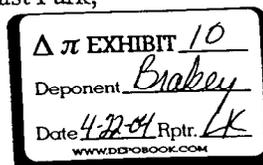
by, between and among:

- (a) R.W. Fernstrum & Company ("Fernstrum"), a corporation organized and existing under the laws of the State of Michigan, represented herein by Paul W. Fernstrum, its duly authorized president;
- (b) East Park Radiator & Battery Shop, Inc. ("East Park"), a corporation organized and existing under the laws of the State of Louisiana, represented herein by Todd Boudreaux, its duly authorized president;
- (c) Donovan Marine, Inc. ("DMI"), a corporation organized and existing under the laws of the State of Louisiana, represented herein by James A. Dicks, its duly authorized executive vice-president; and
- (d) Duramax, Inc. ("Duramax"), a corporation organized and existing under the laws of the State of Ohio, represented herein by P.C. Miller, Jr., its duly authorized president;



who recite that:

WHEREAS, East Park has filed that certain civil action entitled "East Park Radiator & Battery Shop, Inc. versus R.W. Fernstrum & Company," bearing number 97-3598 on the docket of Section "S" of the United States District Court for the Eastern District of Louisiana, wherein East Park seeks a declaratory judgment that: (1) the configuration of the one piece keel cooler product sold by Fernstrum under the GRIDCOOLER trademark is totally functional and not susceptible of trade dress protection; (2) the original East Park keel cooler product, sold under the DURAWELD trademark, does not infringe any trade dress accorded to the GRIDCOOLER product; (3) the redesigned keel cooler product of East Park does not infringe the trade dress asserted by Fernstrum; and (4) East Park is not engaging in unfair competition by employing and/or selling the original or redesigned DURAWELD keel cooler manufactured by East Park;



WHEREAS, Fernstrum has filed that certain civil action entitled "R.W. Fernstrum & Company versus East Park Radiator & Battery Shop, Inc.," bearing number 97-3657 on the docket of Section "S" of the United States District Court for the Eastern District of Louisiana, wherein Fernstrum alleges that: (1) East Park's use of "GRID COOLER" in connection with its business infringes the exclusive rights owned by Fernstrum in its federally-registered trademark (U.S. Reg. No. 941,382) in violation of 15 U.S.C. § 1114(1); (2) East Park's copying of the distinctive appearance of Fernstrum's GRIDCOOLER keel cooler has caused, and is likely to cause, confusion on the part of the relevant trade and purchasing public; (3) East Park's use of Fernstrum's model numbers in connection with its business operations is likely to cause confusion on the part of the relevant trade and purchasing public in violation of 15 U.S.C. § 1125(a); (4) East Park's use of the GRIDCOOLER mark and the GRIDCOOLER trade dress is likely to dilute the distinctive qualities of the trademark and trade dress in violation of 15 U.S.C. § 1125(c); and (5) East Park's unlawful misappropriation of Fernstrum's trademark, trade dress, and methods of doing business are likely to cause confusion or mistake on the part of the relevant trade and consuming public constituting unfair competition;

WHEREAS, DMI has filed that certain civil action entitled "Donovan Marine, Inc. versus R.W. Fernstrum & Company," bearing number 97-3974 on the docket of Section "S" of the United States District Court for the Eastern District of Louisiana, wherein DMI seeks monetary damages against Fernstrum for breach of contract for the termination of DMI's distributorship relationship with Fernstrum and recovery of fines and penalties for violations by Fernstrum of 35 U.S.C. § 292;

WHEREAS, in the above civil action number 97-3974, Fernstrum has counterclaimed against DMI alleging that: (1) Donovan Marine actively assisted a manufacturing competitor of Fernstrum

(later shown to be Duramax) to design, develop, test, and sell a keel cooler replicating the grid-like appearance of the Fernstrum product in violation of 15 U.S.C. § 1125(a); (2) The sale of the Duramax DuraCooler keel cooler by Donovan Marine has caused, and is likely to cause, confusion on the part of the relevant trade and purchasing public; (3) The sale of the Duramax DuraCooler keel cooler by Donovan Marine constitutes the unlawful misappropriation of Fernstrum's trade dress and is likely to cause confusion or mistake on the part of the relevant trade and consuming public constituting unfair competition; (4) Donovan Marine's use of "GRID COOLER" in connection with its business and the promotion of non-Fernstrum keel coolers infringes the exclusive rights owned by Fernstrum in its federally-registered GRIDCOOLER trademark (U.S. Reg. No. 941,382) in violation of 15 U.S.C. § 1114(1); (5) Donovan Marine's use of the GRID COOLER mark is likely to dilute the distinctive qualities of Fernstrum's GRIDCOOLER the trademark in violation of 15 U.S.C. § 1125(c); and (6) Donovan Marine's unlawful misappropriation of Fernstrum's trademark and trade dress have caused, and are likely to cause, confusion or mistake on the part of the relevant trade and consuming public constituting unfair competition in violation of 15 U.S.C. § 1125(a) and Louisiana common law and that state's Unfair Trade Practices and Consumer Protection Law;

WHEREAS, the above-described civil actions numbers 97-3598, 97-3657 and 97-3974 (hereinafter referred to collectively as the "Litigation") were consolidated for purposes of trial;

WHEREAS, trial in the above Litigation commenced on May 3, 1999 before United States District Judge Mary Ann Vial Lemmon (the "Court");

WHEREAS, Fernstrum, East Park and DMI agreed to settle the claims asserted in the above Litigation during a conference with the Court on May 5, 1999;

WHEREAS, in order to settle and adjust their differences, Fernstrum, East Park and DMI entered into that certain Term Sheet, effective as of May 5, 1999, which set forth in general the terms and provisions for the settlement and compromise of the Litigation, upon the terms and conditions set forth below, which each of the parties prefers to the hope of gaining balanced against the danger of losing;

WHEREAS, although not a party to the Litigation, Duramax appeared and intervened in the Term Sheet to the extent and for the purposes set forth therein and does now so appear and enter into this Agreement; and

WHEREAS, pursuant to the directive of the Court, the Term Sheet, as executed by Fernstrum, East Park, DMI and Duramax, was filed in the record of the Litigation on May 11, 1999;

NOW THEREFORE, in consideration of the premises and in order to implement the transactions contemplated by the Term Sheet and to settle and compromise the differences between Fernstrum, East Park, DMI and Duramax, it is agreed by and among the parties hereto that:

1. Fernstrum does hereby release, waive and forever discharge DMI, together with its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, of and from any and all damages, attorneys' fees, punitive damages, injunctive and/or equitable relief, demands, liability and rights, claims or causes of action of whatsoever kind, whether presently asserted in the Litigation or which could have been asserted by Fernstrum in the Litigation.

2. DMI does hereby release, waive and forever discharge Fernstrum, together with its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, of and from any and all damages, attorneys' fees, punitive damages, injunctive and/or equitable

relief, demands, liability and rights, claims of causes of action of whatsoever kind, whether presently asserted in the Litigation or which could have been asserted by DMI in the Litigation.

3. Fernstrum does hereby release, waive and forever discharge East Park, together with its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, of and from any and all damages, attorneys' fees, punitive damages, injunctive and/or equitable relief, demands liability and rights, claims or causes of action of whatsoever kind, whether presently asserted in the Litigation or which could have been asserted by Fernstrum in the Litigation.

4. East Park does hereby release, waive and forever discharge Fernstrum, together with its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, of and from any and all damages, attorneys' fees, punitive damages, injunctive and/or equitable relief, demands, liability and rights, claims of causes of action of whatsoever kind, whether presently asserted in the Litigation or which could have been asserted by East Park in the Litigation.

5. Fernstrum agrees to indemnify and hold harmless DMI and its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, from and against any and all damages, attorneys' fees, punitive damages, injunctive and/or equitable relief, demands, liability and rights, claims or causes of action of whatsoever kind, whether presently asserted by Fernstrum against DMI in the Litigation of which could have been asserted by Fernstrum against DMI in the Litigation.

6. DMI hereby agrees to indemnify and hold harmless Fernstrum and its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, from and against any and all damages, attorneys' fees, punitive damages, injunctive and/or equitable relief, demands, liability and rights, claims or causes of action of whatsoever kind, whether presently

asserted by DMI against Fernstrum in the Litigation of which could have been asserted by DMI against Fernstrum in the Litigation.

7. Fernstrum hereby agrees to indemnify and hold harmless East Park and its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, from and against any and all damages, attorneys' fees, punitive damages, injunctive and/or equitable relief, demands, liability and rights, claims or causes of action of whatsoever kind, whether presently asserted by Fernstrum against East Park in the Litigation of which could have been asserted by Fernstrum against DMI in the Litigation.

8. East Park hereby agrees to indemnify and hold harmless Fernstrum and its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, from and against any and all damages, attorneys' fees, punitive damages, injunctive and/or equitable relief, demands, liability and rights, claims or causes of action of whatsoever kind, whether presently asserted by East Park against Fernstrum in the Litigation of which could have been asserted by East Park against Fernstrum in the Litigation.

9. Fernstrum, East Park and DMI hereby agree that all claims and counterclaims asserted in the Litigation shall be dismissed with prejudice through the filing and entry in the Litigation of a Stipulated Order of Dismissal substantially in the form of Exhibit 1 attached to the said Term Sheet.

10. Fernstrum hereby stipulates and agrees that DMI, East Park and Duramax may, without restriction, sell their existing stock of one-piece keel coolers, and additionally, Fernstrum further agrees that DMI, East Park and Duramax shall have a period of ninety (90) days from and after May 5, 1999 within which to sell and/or manufacture additional keel coolers (over and above

their existing stock) to fill existing orders and new orders received during the said 90 day period. DMI and East Park hereby agree that the existing stock of one-piece keel coolers shall consist of those keel coolers whose respective serial numbers are set forth on written notice thereof provided by counsel for DMI and East Park to counsel for Fernstrum within ten (10) days of the date of entry of the above Stipulated Order of Dismissal.

11. As of the expiration of the ninety (90) day period set forth above, Duramax and East Park agree to modify the design and configuration of their respective one-piece keel coolers so as to incorporate beveled fore and aft header portions as generally set forth on Exhibit 1. The parties hereto acknowledge and agree that Exhibit 1 is a drawing which was negotiated and agreed upon during a recess from the trial in Civil Action Nos. 97-3974 and 97-3598 in the Eastern District of Louisiana (in New Orleans) on or about May 5, 1999, and is not made to scale. Exhibit 1 does show in general terms a side view of one end of a header for a beveled keel cooler having rectangular coolant flow tubes. Exhibit 1 does show that L1 shall be no greater than 1.125 inches, L2 shall be greater than L1 and that  $\theta$  shall be greater than, or equal to,  $40^\circ$ . It is also agreed that Exhibit 1 shows that any beveled keel cooler according to this Agreement does not have a rectangular configuration where L2 is perpendicular to L1 as in Fernstrum's GRIDCOOLER keel cooler. It is further stipulated by the parties that in the event that Fernstrum no longer uses a header configuration consisting of a vertical edge at the aft and fore of the headers on its GRIDCOOLER keel cooler, then at such time Duramax and East Park shall not be required to use the header design modification as illustrated on Exhibit 1 and shall at that time be free to adopt and use the vertical edge header configuration previously utilized on Fernstrum's GRIDCOOLER keel cooler.

12. Upon the expiration of the ninety (90) day period set forth above, all parties hereto agree to permanently mark, affix or imprint their respective word marks (*e.g.*, GRIDCOOLER, DuraCooler, and DURAWELD) on their respective one-piece keel cooler products.

13. Upon the expiration of the ninety (90) day period set forth above, all advertising thereafter placed by Duramax and East Park that depicts their respective one-piece keel coolers will clearly display the beveled end(s) of the header(s) configured in accordance with the provisions of paragraph 11 of this Agreement; provided, however, without limitation or restriction, DMI, Duramax and East Park may exhaust their respective existing advertising materials depicting their respective keel coolers as presently configured. Fernstrum further stipulates and agrees that upon the expiration of the ninety (90) day period set forth above, DMI, Duramax and East Park shall not be required to recall, destroy or issue any disclaimers in connection therewith, any catalogs, promotional materials or other advertising materials depicting their respective one-piece keel coolers as presently configured.

14. DMI, East Park and Duramax each agree that their respective advertisements and/or promotional materials relating or featuring their respective one-piece keel coolers will not hereafter use the word or term "Grid."

15. Within ten (10) days of the entry of the Stipulated Order of Dismissal in the Litigation, Fernstrum shall take such action as may be necessary to effect the withdrawal, with prejudice, of its application (application Serial No. 75/382,250) to federally register the configuration of its one-piece keel cooler product as a trademark now pending before the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office (the "trademark proceedings"). Nothing

herein shall preclude Fernstrum from seeking to register, in two dimensional design format, its trademark logo featuring its one-piece keel cooler as part of said design.

16. In consideration of the foregoing, Fernstrum expressly covenants not to sue and does hereby release, waive and forever discharge Duramax and East Park, together with their successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, of and from any and all damages, attorneys' fees, punitive damages, equitable and injunctive relief, costs, demands, liability, rights, claims or causes of action of whatsoever kind, whether now known or hereafter discovered, arising in any way out of the facts and/or claims asserted by Fernstrum in the Litigation or which could have been asserted by Fernstrum in the Litigation.

17. In consideration of the foregoing release by Fernstrum, Duramax and East Park expressly covenant not to sue and do hereby release, waive and forever discharge Fernstrum, together with its successors, assigns, subsidiary and affiliated corporations, officers, directors, employees and agents, of and from any and all damages, attorneys' fees, punitive damages, equitable and injunctive relief, costs, demands, liability, rights, claims or causes of action of whatsoever kind, whether now known or hereafter discovered, arising in any way out of the facts and/or claims asserted (or which could have been asserted) by DMI, Fernstrum and East Park in the Litigation or arising in any way from the facts asserted in said Litigation.

18. Fernstrum stipulates and agrees that in the event Duramax or East Park files a trademark application(s) with the U.S. Patent and Trademark Office, which includes the two-dimensional design of their beveled one-piece keel cooler, Fernstrum will not oppose or otherwise contest said application and Fernstrum will not file a petition or other proceeding to cancel any registration issuing from said trademark application.

19. All parties to this Agreement agree that a copy of this Agreement shall be filed in the record of the Litigation, and that the Court in the Litigation shall retain jurisdiction over the parties hereto in order to effectuate and enforce the terms and provisions of this Agreement.

20. Within sixty (60) days after entry of the Stipulated Order of Dismissal in the Litigation, those objects, documents and other materials produced or designated as Confidential Information, and all reproductions thereof, shall be returned to the producing party, less and except those documents filed with the Court or presented to the Court as evidence in connection with the Litigation.

21. This Agreement is entered into without any admission of liability on the part of any party hereto (which said liability is expressly denied), and is entered into by Fernstrum, DMI, East Park and Duramax solely and only for the purposes of effecting the releases and settlements set forth herein and carrying out the provisions of the Term Sheet without the necessity of further legal action.

22. Each of the parties hereto hereby represents that said party has entered into this Agreement of its own free will, after reading same and conferring with its respective counsel, and has not been induced to execute this Agreement as a result of any action, promise or representation other than those which are expressly set forth in this Agreement.

23. Each of the parties to this Agreement shall bear their own costs, expenses and attorneys' fees incurred in connection with the Litigation and the trademark proceedings.

24. The terms and provisions of this Agreement shall inure to the benefit of, and shall be binding upon, all subsidiaries, affiliates, successors, assigns and/or related companies or entities controlled by the parties hereto (including but not limited to Progressive Allied Industries, Inc.) and

shall serve to protect and be for the express benefit of all customers, agents and other persons ac  
for the benefit of the parties with respect to the transactions and occurrences dealt with herein.  
THUS DONE AND EXECUTED, in multiple originals on the dates hereinafter set forth b  
all as of May 5, 1999, which is the effective date hereof.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

R. W. Fernstrum & Company  
By: Paul W. Fernstrum  
Paul W. Fernstrum, President  
Date: 7/21/99

Donovan Marine, Inc.  
By: James A. Dicks  
James A. Dicks, Executive Vice-President  
Date: 7-16-99

East Park Radiator & Battery Shop, Inc.  
By: \_\_\_\_\_  
Todd Boudreaux, President  
Date: \_\_\_\_\_

Duramax, Inc.  
By: P.C. Miller, Jr.  
P.C. Miller, Jr., President  
Date: 29 July 1999

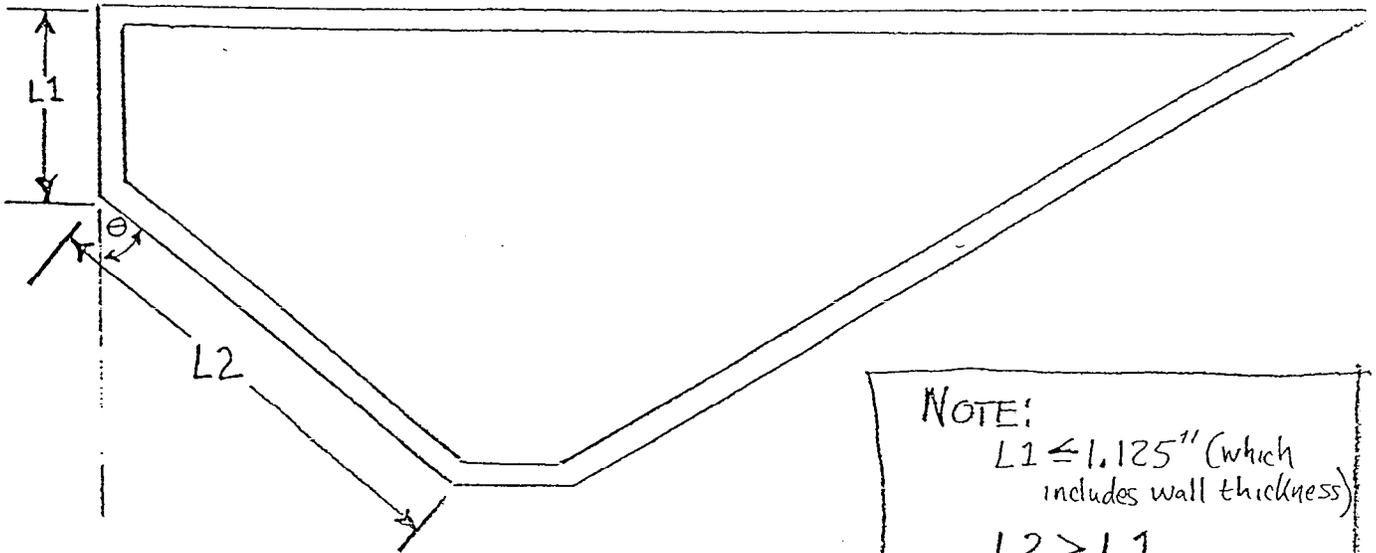
CONFIDENTIAL

MIKE BRAKEY

5/5/99

Illustration of proposed header chamfer configuration for 2.5" tall rectangular tube.

Michael W. Brakey



NOTE:

$L1 \leq 1.125''$  (which includes wall thickness)

$L2 > L1$

$\theta \geq 40^\circ$

Applies to all B, C, D Models

EXHIBIT

"1"