

ESTTA Tracking number: **ESTTA5948**

Filing date: **02/24/2004**

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

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

Opposer Name	Sterling Power Boats, Inc.		
Opposer Entity	Corporation	Citizenship of Opposer	Florida
Opposer Address	8819 North Virginia Avenue Palm Beach Gardens, FL 33418 UNITED STATES		

Attorney information	Douglas W. Kenyon Hunton & Williams LLP Post Office Box 109 Raleigh, NC 27602 UNITED STATES hwratm@hunton.com Phone:919-899-3000
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Applicant Information

Application No	76431622	Publication date	01/27/2004
Opposition Filing Date	02/24/2004	Opposition Period Ends	02/26/2004
Applicant	Ackerbloom, Robert Nils		
Address	20150 Independence Boulevard Groveland, FL 34736 UNITED STATES		

Goods/Services Affected by Opposition

Class 012 First Use: 20020300 First Use In Commerce: 20020300

All goods and services in the class are opposed, namely: Boats

Attachments NoticeofOpposition(plus Attachments).pdf (46 pages)

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3514, ON FEBRUARY 24, 2004.

Bronwyn A. Tucker
(TYPED OR PRINTED NAME)


(SIGNATURE)

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

In the Matter of Application Serial No. 76/431,622

Published in the Official Gazette on January 27, 2004

_____)	
STERLING POWER BOATS, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
ROBERT NILS ACKERBLOOM,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, Sterling Power Boats, Inc. ("Sterling"), believes that it will be damaged by registration of the mark STERLING, as shown in Application Serial No. 76/431,622, and hereby opposes its registration. As grounds for its opposition, Sterling alleges as follows:

1. Sterling is a Florida corporation with its principal place of business at 8819 North Virginia Avenue, Palm Beach Gardens, Florida 33418.

2. Sterling has been engaged in the extensive advertising and sale of power boats and related goods and services in interstate commerce since well prior to March 2002.

3. Sterling has exercised great care, skill and diligence in the provision of all of its products and services in connection with the STERLING mark and, as a result, has earned substantial goodwill and an excellent reputation among consumers and the industry.

4. Upon information and belief, Applicant Robert Nils Ackerbloom (“Applicant”) is a Florida resident, domiciled at 20150 Independent Boulevard, Groveland, Florida 34736.

5. On or about July 17, 2002, well after Sterling’s first use of the STERLING mark, Applicant filed Application Serial No. 76/431,622, claiming use in commerce of the mark STERLING for “boats” since March 2002. The mark was published for opposition in the PTO’s *Official Gazette* on January 27, 2004.

6. Sterling believes that, due to the similar nature of the parties’ respective marks and goods and services, and the potential for common customers, among other factors, there is a likelihood of confusion between the two marks.

7. Sterling believes that it will be damaged by the registration of Applicant’s mark and therefore opposes same.

8. The parties, as well as other third parties, are currently involved in a federal action in the United States District Court for the Middle District of Florida involving rights to the STERLING trademark. Copies of the Complaint and the Answer and Counterclaim are attached hereto as Exhibit A.

9. As can be seen on Exhibit A, the plaintiffs in the federal lawsuit are Maritec Industries, Inc. and American Marine Sports, LLC. Thus, it appears that Applicant is not

actually using the STERLING the mark and therefore, is not the proper owner of the application at issue here.

10. Pursuant to T.B.M.P. § 510.02(a) and 37 C.F.R. § 2.117(a), Sterling requests that this Opposition be suspended pending the outcome of that action.

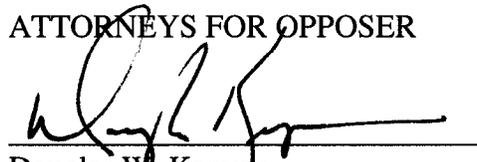
11. This Notice of Opposition is being filed in duplicate. The filing fee of \$300.00, and any other required charges, may be charged to Hunton & Williams LLP's deposit account 502533.

WHEREFORE, Sterling respectfully requests that the registration sought by Applicant be refused and that this opposition be sustained.

Dated: February 27, 2004

Respectfully submitted,

ATTORNEYS FOR OPPOSER



Douglas W. Kenyon

Robert C. Van Arnem

Katherine S. Chang

Hunton & Williams

Post Office Box 109

Raleigh, North Carolina 27602

(919) 899-3000

EXHIBIT A

AO 440 (Rev. 10/93) Summons in a Civil Action

COPY

UNITED STATES DISTRICT COURT

MIDDLE

District of

FLORIDA

(OCALA DIVISION)

MARITEC INDUSTRIES, INC., a Florida Corporation, and American Marine Sports, LLC, a Florida Limited Liability Company,

Plaintiffs,

v.

STERLING POWERBOATS, INC., a Florida corporation,

Defendant.

SUMMONS IN A CIVIL CASE

CASE NUMBER: *5:04-cv-25-0c-106B*

TO:

Officer, Director or Other Corporate Representative
Sterling Powerboats, Inc.
8819 North Virginia Ave.
Palm Beach Gardens, FL
33418

Served By
Debra A. Blain
Date *1-22-04* Time *7:15 PM*
Certified Process Server #915
In the 15th Judicial Circuit
Palm Beach County FL
Debra A Blain

YOU ARE HEREBY SUMMONED and required to served upon Plaintiff's Attorney (name and address)

Herbert L. Allen
Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.
255 South Orange Avenue, Suite 1401
Orlando, Florida 362801

an answer to the Complaint which is herewith served upon you, with twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK SHERYL L. LOESCH
[Signature]
(By) DEPUTY CLERK

DATE *1/20/04*

HALE INV/PROCESS INC.
P.O. BOX 720426
ORLANDO, FL 32872-0426
407-275-6969

205 210 1615

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

2004 JAN 20 AM 8:49

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA, FLORIDA

MARITEC INDUSTRIES, INC., a Florida corporation; and AMERICAN MARINE SPORTS, LLC, a Florida limited liability company,

Plaintiffs,

CASE NO. 5:04-cv-25-06-106RT

vs.

STERLING POWERBOATS, INC.
a Florida corporation,

COMPLAINT

Defendant.

**ACTION FOR TRADEMARK INFRINGEMENT, OR, IN THE
ALTERNATIVE, FOR DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF TRADEMARK.
JURY TRIAL AND INJUNCTIVE RELIEF REQUESTED**

COMES NOW Plaintiffs Maritec Industries, Inc. and American Marine Sports, LLC, (collectively "Plaintiffs") and for their complaint against Defendant Sterling Powerboats, Inc. ("Defendant") states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs have a regular and established place of business in Groveland, Florida.
2. Upon information and belief, Defendant is a Florida corporation with a regular and established place of business in Palm Beach Gardens, Florida.

3. Upon further information and belief, Defendant is engaged in offers to sell powerboats in interstate commerce through, *inter alia*, solicitations through the Internet and media advertising distributed in interstate commerce.

4. Counts One and Two of this action are brought by Plaintiffs against Defendant seeking damages and injunctive relief for infringement of Plaintiff's trademark **STERLING** as applied to boats.

5. Count Three of this action is brought by Plaintiffs against Defendant in the alternative under the declaratory judgment provisions of 28 U.S.C. §2201.

6. Count Three presents a clear and present controversy because Defendant's principal, Russell A. Erickson, has on several occasions threatened to sue Plaintiffs for trademark infringement in another forum if Plaintiffs refuse to discontinue use of Plaintiff's **STERLING** trademark.

7. This Court has jurisdiction over the subject matter of Counts One and Two under 28 U.S.C. §1338(a) and (b), and jurisdiction over the subject matter of Count Three under 28 U.S.C. §2201.

8. Venue properly lies in this judicial district and division pursuant to the provisions of 28 U.S.C. §1391(c).

STATEMENT OF FACTS AS TO ALL COUNTS

9. One of Plaintiffs' principals, T. Robert Ackerbloom, adopted and first used the trademark **STERLING** for boats during 1978 through a Florida corporation known as Sterling Marine, Inc.

10. As Sterling Marine, Inc., Mr. T. Robert Akerbloom used the trademark **STERLING** for boats through 1983, during which time the trademark **STERLING** became synonymous with boats built by Mr. T. Robert Akerbloom's company.
11. Sterling Marine, Inc. built hundreds of boats bearing the trademark **STERLING**, many of which are still in use today. Sterling Marine, Inc., now dissolved, enjoyed residual goodwill by virtue of the prior manufacturing of boats using the trademark **STERLING** in the continued use of those boats.
12. Sterling Marine, Inc. obtained federal trademark registration No. 1,128,964 for the mark **STERLING MARINE** for boats on January 8, 1980.
13. The trademarks **STERLING** and **STERLING MARINE** together with the residual goodwill owned by Sterling Marine, Inc. have been transferred to Plaintiff.
14. Prior to March 2002, Plaintiffs adopted the trademark **STERLING** for boats.
15. At least as early as March 2002, Plaintiffs began using the trademark **STERLING** in connection with the manufacture, sale and distribution of boats in interstate commerce.
16. On July 16, 2002, Plaintiffs, through one of its principals, Robert N. Akerbloom, filed Application Serial No. 76/431,622 in the United Patent and Trademark Office for the trademark **STERLING** as applied to boats. A true and correct copy of a printout from the United States Patent and Trademark Office's Trademark Electronic Search System (TESS) recording system identifying this trademark application is attached as Exhibit 1. This application has now been allowed.

17. The boats manufactured and sold by Plaintiffs under the trademark **STERLING** are on the order of 22 feet in length or less, and are commonly referred to as "flats boats" or "fishing skiffs," and are designed for fishing in shallow waters such as rivers, bays and estuaries.

18. Upon information and belief, Defendant has designed or is designing a 38 foot offshore fishing boat which Defendant is offering to sell under the trademark **STERLING**. A true and correct copy of Defendant's website illustrating this offer to sell is attached as Exhibit 2.

19. In connection with its offers to sell boats under the trademark **STERLING**, Defendant has, upon information and belief, placed advertisements in national or regional media and used the Internet, as shown in Exhibit 2.

20. Beginning during December, 2003 and on several occasions since, Defendant's principal, Russell A. Erickson, threatened to sue Plaintiff if Plaintiffs do not discontinue entirely their use of the mark **STERLING** for boats.

COUNT ONE

Action For Trademark Infringement In Violation of 28 U.S.C. §1125(a)

21. This Count One is an action by Plaintiffs against Defendant for trademark infringement in violation of 28 U.S.C. §1125(a).

22. Plaintiffs here restate and incorporate by reference into this Count One the allegations of ¶¶1-20 above.

23. Defendant's uses or intended uses of the trademark **STERLING** for boats is a false designation of origin, a false or misleading description of fact or a false or misleading representation of fact which is likely to cause confusion, or to cause mistake or to deceive others as to an affiliation, connection or association with Plaintiffs, or to suggest to others that Plaintiffs have sponsored or approved Defendant's boats.

24. Plaintiffs have not authorized Defendant to use the trademark **STERLING** for boats.

25. Plaintiffs have suffered damages by reason of Defendant's infringements and will be irreparably harmed unless Defendant's use or intended use of the trademark **STERLING** is preliminarily and then permanently enjoined.

COUNT TWO

Action For Common Law Trademark Infringement

26. This Count Two is an action by Plaintiffs against Defendant for trademark infringement in violation of the common law of Florida.

27. Plaintiffs here restate and incorporate by reference into this Count Two the allegations of ¶¶1-25 above.

28. The conduct of Defendant outlined in Count One above also constitutes trademark infringement under the common law of Florida.

29. Plaintiffs have suffered damages by reason of Defendant's infringements and will be irreparably harmed unless Defendant's actual or intended use of the trademark **STERLING** for boats is preliminarily and then permanently enjoined.

COUNT THREE

Action For Declaratory Judgment

30. This Count Three is an action by Plaintiffs against Defendant for declaratory judgment under 28 U.S.C. §2201.
31. Plaintiffs here restate and incorporate by reference into this Count Three the allegations of ¶¶1-29 above.
32. Plaintiffs verily believe and therefore asserted in Counts One and Two above that Plaintiffs have priority of use as to the trademark **STERLING** for boats. However, in the event that Defendant is able to establish priority, Plaintiffs assert that principles of equitable estoppel and/or laches precludes Defendant from enforcing any such priorities in a way which enjoins Plaintiffs from using the trademark **STERLING** for boats.
33. The threats of litigation made by Defendant through its principal, Russell A. Erickson, as outlined in ¶20 above demonstrates that there is a clear and present controversy regarding Plaintiffs' entitlement to use of the trademark **STERLING** for the boats Plaintiffs manufacture and sell.
34. Accordingly, in the alternative, if Defendant is able to establish priority of use, Plaintiffs are still entitled to a declaratory judgment that Defendant's use does not preclude Plaintiffs' use of the trademark **STERLING** for the boats manufactured and sold by Plaintiffs.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court enter such Orders and Judgments as are necessary to provide Plaintiffs with the following relief:

- a. Under Counts One and Two, a preliminary and then permanent injunction precluding Defendant's use of the trademark **STERLING** for boats.
- b. Under Counts One and Two, an award of compensatory damages.
- c. Under Count One, an award of attorneys' fees pursuant to 15 U.S.C. §1117.
- d. In the alternative, a declaratory judgment under 28 U.S.C. §2201 that Defendant is precluded from enjoining Plaintiffs' use of the mark **STERLING** for the boats manufactured and sold by Plaintiff.
- e. An award of taxable costs.
- f. Such other relief as the Court deems appropriate.

Date: January 19, 2004



HERBERT L. ALLEN
Florida Bar No. 114126
BRIAN R. GILCHRIST
Florida Bar No. 774065
ALLEN, DYER, DOPPELT, MILBRATH
& GILCHRIST, P.A.
255 So. Orange Ave., Suite 1401
Post Office Box 3791
Orlando, Florida 32802
Attorneys for Plaintiff
Tel: 407/841-2330
Fax: 407/841-2343



UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Electronic Search System(Tess)

TESS was last updated on Thu Jan 15 04:15:00 EST 2004

PTO HOME	TRADEMARK	TESS HOME	NEWUSER	STRUCTURED	FREE FORM	BROWSE DOC	BOTTOM	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

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[Check Status](#) (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark STERLING

Goods and Services IC 012. US 019 021 023 031 035 044. G & S: Boats. FIRST USE: 20020300. FIRST USE IN COMMERCE: 20020300

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76431622

Filing Date July 17, 2002

Current Filing Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) Ackerbloom, Robert Nils INDIVIDUAL UNITED STATES
20150 Independence Boulevard Groveland FLORIDA 34736

Attorney of Record David L. Sigalow

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEWUSER	STRUCTURED	FREE FORM	BROWSE DOC	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

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ree@sterlingpowerboats.net

Site designed and developed by **QuinnCom**



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STERLING
POWER BOATS, INC.

PALM BEACH GARDENS
FLORIDA 33418

561-625-6282
FAX 561-627-5405

Name:

Address:

Phone:

Fax:

E-mail:

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**STERLING 38
PRICE LIST**

Twin Engine (Merc 250)	\$189,000
Triple Engine (Merc 250)	\$209,000

STANDARD FEATURES:

- | | |
|--------------------------------|--------------------------------|
| Auto Bilge Pumps (2) | Sink with Fresh Water |
| Battery Switches | Queen Berth Sleeping Area |
| Custom Wiring Harness | Heavy Duty Bow Grab Rail |
| Fresh Water System | Anchor Locker with Deck Access |
| 6' Long Fish Boxes | 70 Gallon Live Well |
| Large Forward Dry Storage Area | 305 Gallon Fuel Tank |
| 8" Pull Up Cleats (7) | Port & Starboard Fuel Fills |
| Sea Star Hydraulic Steering | 50 Gallon Water Tank |
| Manual Head | |

2003 OPTIONS LIST

Boarding Ladder (three step)	\$450
Anchor w/200' 1/2" line (Fortress)	\$500
Custom Hull Color	\$2,500
Custom Hull Sides (white bottom)	\$3,500
Top Gun Outriggers	\$1,800
Eisen Glass (5 piece)	\$2,500
Extra Rod Holders (each)	\$150
Custom T-Top (small)	\$7,600
Custom T-Top (large)	\$9,850
Power Coat Option	\$1,100
Shore Power with Soft Cord	\$1,800
A/C (must add shore power)	\$3,800
5 KW Gas Generator with 10 gal Fuel Tank	\$7,500
Refrigerator	\$1,800
2 KW Inverter with Extra Battery	\$3,800
Custom Interior	\$ POR
Upgrade to Electric Head	\$1,150

Salt Water Washdown	\$700
Second Bait Pump	\$500
Extra Builge Pump 2000 gph	\$500
Fish Box Masarator Pump (each)	\$475

Winlass with S.S. Anchor and S.S. Bow Guard	\$3,500
Bow Thruster	\$6,500
VHF Radio Mounted in Cabin with Remote Mic	\$850
Ritchie S.S. 2000 Compass	\$850
Custom Stereo with CD	\$1,800

Hydraulic Power Steering	\$1,850
Marine Machine Front Mount Steering (Twin)	\$3,000
Marine Machine Front Mount Steering (Triple)	\$4,500
Kiehaefer 280 S Trim Tabs	\$2,800
Trim Indicators	\$1,250

ENGINE OPTIONS:

Four Strokes (per engine)	\$4,000
Merc 225 Optimax (per engine)	\$1,500
Merc 225 Optimax (DTS) (per engine, includes controllers)	\$2,800

Other engine options upon request

STERLING

CENTER
CONSOLE

PHOTO GALLERY

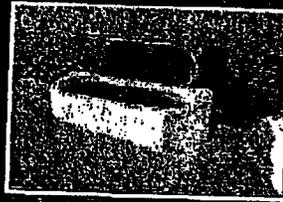
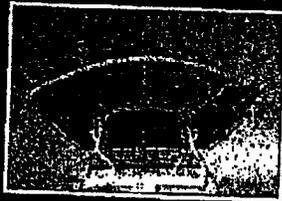
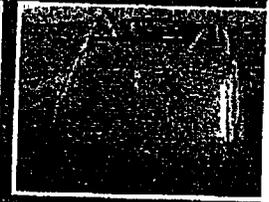
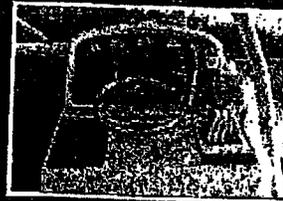
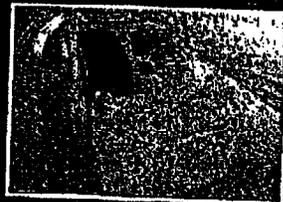
Click on a photo to view a larger image.

STERLING
POWER BOATS, INC.

PALM BEACH GARDENS
FLORIDA 33418

561-625-6282
FAX 561-627-5405

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

MARITEC INDUSTRIES, INC., a
Florida corporation; and AMERICAN
MARINE SPORTS LLC, a Florida
limited liability company,

Civil Action No. 5:04-CV-25-Oc-10GRJ

Plaintiffs,

v.

STERLING POWERBOATS, INC., a
Florida corporation,

Defendant/Counterplaintiff,

v.

MARITEC INDUSTRIES, INC., a
Florida corporation; AMERICAN
MARINE SPORTS LLC, a Florida
limited liability company; T. ROBERT
ACKERBLOOM, an individual and
ROBERT NILS ACKERBLOOM, an
individual,

Counterdefendants.

RECEIVED
JAN FEB 12 AM 10:05
CLERK US DISTRICT COURT
OCALA, FLORIDA

ANSWER AND COUNTERCLAIM

Defendant STERLING POWERBOATS, INC. ("Sterling") hereby responds to the
Complaint filed by Plaintiffs MARITEC INDUSTRIES, INC. and AMERICAN MARINE
SPORTS LLC ("Plaintiffs") and answers and files its Counterclaim as follows:

PARTIES, JURISDICTION AND VENUE

1. Sterling lacks sufficient information to admit or deny the allegations contained in
Paragraph 1 of the Complaint and on that basis denies them.

2. Sterling admits the allegations contained in Paragraph 2 of the Complaint.

3. Sterling admits the allegations contained in Paragraph 3 of the Complaint.

4. Sterling admits that Counts One and Two of the Complaint purports to set forth a claim for damages and injunctive relief allegedly for infringement of Plaintiff's alleged trademark STERLING as applied to boats. Sterling denies that Plaintiffs are entitled to relief as set forth in Counts One and Two, and on that basis denies the remaining allegations contained in Paragraph 4 of the Complaint.

5. Sterling admits that Count Three of the Complaint purports to set forth a claim for declaratory judgment against Sterling pursuant to 28 U.S.C. § 2201. Sterling denies that Plaintiffs are entitled to relief as set forth in Count Three, and on that basis denies the remaining allegations contained in Paragraph 5 of the Complaint.

6. Sterling denies the allegations contained in Paragraph 6 of the Complaint.

7. Sterling admits that the Court has jurisdiction over the subject matter alleged in Counts One and Two of the Complaint pursuant to 28 U.S.C. § 1338(a) and (b), and jurisdiction over the subject matter alleged in Count Three pursuant to 28 U.S.C. § 2201. Sterling denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. Sterling admits that venue is proper according to the allegations contained in the Complaint. Sterling denies the remaining allegations contained in Paragraph 8.

STATEMENT OF FACTS

9. Sterling lacks sufficient information to admit or deny the allegations contained in Paragraph 9 of the Complaint and on that basis denies them.

10. Sterling lacks sufficient information to admit or deny the allegations contained in Paragraph 10 of the Complaint and on that basis denies them.

11. Sterling lacks sufficient information to admit or deny the allegations that Sterling Marine, Inc. built hundreds of boats bearing the trademark **STERLING**, and that many are still in use today, and on that basis denies them. Sterling denies the remaining allegations contained in Paragraph 11 of the Complaint.

12. Sterling lacks sufficient information to admit or deny the allegations contained in Paragraph 12 of the Complaint and on that basis denies them.

13. Sterling lacks sufficient information to admit or deny the allegations contained in Paragraph 13 of the Complaint and on that basis denies them.

14. Sterling lacks sufficient information to admit or deny the allegations contained in Paragraph 14 of the Complaint and on that basis denies them.

15. Sterling lacks sufficient information to admit or deny the allegations contained in Paragraph 15 of the Complaint and on that basis denies them.

16. Sterling admits that the records of the United States Patent and Trademark Office indicate that Robert N. Ackerbloom filed Application Ser. No. 76/431,622 for the trademark **STERLING** as applied to boats, and that Exhibit 1 to the Complaint appears to be a true and correct copy of a printout from the United States Patent and Trademark Office's Trademark Electronic Search System (TESS) recording system identifying this trademark application as of January 15, 2004. Sterling denies the remaining allegations contained in Paragraph 16 of the Complaint.

17. Sterling lacks sufficient information to admit or deny the allegations contained in Paragraph 17 of the Complaint and on that basis denies them.

18. Sterling admits the allegations contained in Paragraph 18 of the Complaint but denies that Exhibit A is a complete copy of Sterling's website.

19. Sterling admits the allegations contained in Paragraph 19 of the Complaint but denies that that the placement of advertisements in national or regional media and through the Internet constitute the only means that Sterling has offered its services and products under the name “Sterling.”

20. Sterling denies the allegations contained in Paragraph 20 of the Complaint.

COUNT ONE

21. Sterling admits that Count One purports to state an action by Plaintiffs against Sterling for trademark violation under 28 U.S.C. § 1125(a). Sterling denies that 28 U.S.C. § 1125(a) provides a basis for the requested relief, and on that basis denies the remaining allegations contained in Paragraph 21 of the Complaint.

22. Sterling hereby restates the responses given in Paragraphs 1 through 20 above as if set forth fully herein.

23. Sterling denies the allegations contained in Paragraph 23 of the Complaint.

24. Sterling denies the allegations contained in Paragraph 24 of the Complaint.

25. Sterling denies the allegations contained in Paragraph 25 of the Complaint.

COUNT TWO

26. Sterling admits that Count Two purports to state an action by Plaintiffs against Sterling for trademark violation under the common law of Florida. Sterling denies that Plaintiffs are entitled to relief, and on that basis denies the remaining allegations contained in Paragraph 26 of the Complaint.

27. Sterling hereby restates the responses given in Paragraphs 1 through 25 above as if set forth fully herein.

28. Sterling denies the allegations contained in Paragraph 28 of the Complaint.

29. Sterling denies the allegations contained in Paragraph 29 of the Complaint.

COUNT THREE

30. Sterling admits that Count Three purports to state an action by Plaintiffs against Sterling for declaratory judgment under 28 U.S.C. § 2201. Sterling denies that Plaintiffs are entitled to relief, and on that basis denies the remaining allegations contained in Paragraph 30 of the Complaint.

31. Sterling hereby restates the responses given in Paragraphs 1 through 29 above as if set forth fully herein.

32. Sterling denies the allegations contained in Paragraph 32 of the Complaint.

33. Sterling denies the allegations contained in Paragraph 33 of the Complaint.

34. Sterling denies the allegations contained in Paragraph 34 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense - Failure to State a Claim

Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to state a claim upon which relief may be granted.

Second Affirmative Defense - Lack of Standing

Plaintiffs' claims are barred in whole or in part because Plaintiffs lack standing to bring this action in that there is no allegation that at least one of the Plaintiffs has an interest in the mark **STERLING** at issue.

Third Affirmative Defense - Laches

Plaintiffs' claims are barred in whole or in part because Plaintiffs unreasonably delayed in bringing this action, and Sterling will be materially harmed due to the delay.

Fourth Affirmative Defense - Abandonment

Plaintiffs' claims are barred in whole or in part because Plaintiffs abandoned the rights to use the mark **STERLING** in conjunction with boats in or around the mid 1980s.

COUNTERCLAIM

COMPLAINT AND DEMAND FOR JURY TRIAL

Counterplaintiff/Defendant STERLING POWERBOATS, INC. (“Sterling”) sues Counterdefendants/Plaintiffs MARITEC INDUSTRIES, INC. and AMERICAN MARINE SPORTS LLC, and Counterdefendants T. ROBERT ACKERBLOOM, an individual and ROBERT NILS ACKERBLOOM, an individual (“Counterdefendants”), and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for federal trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1051 *et. seq.*, trademark infringement under the common law of the State of Florida, deceptive and unfair trade practices under the Florida Deceptive And Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et. seq.* and a declaratory judgment that Sterling has prior rights than Counterdefendants to the mark “Sterling” for use in conjunction with boats and that trademark registration application Serial No. 76/431,622 is invalid for failure to meet the requirements of registration under the Lanham Act, 15 U.S.C. §§ 1501 *et. seq.*

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b) and 1367(a).

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. Counterplaintiff Sterling is a Florida corporation with its principal place of business in Palm Beach Gardens, Florida. Sterling is in the business of providing custom boat design and building services, and manufacturing and selling off-shore power boats.

5. Counterdefendant Maritec Industries, Inc. is, upon information and belief, a Florida corporation with its principal place of business in Groveland, Florida. Maritec Industries, Inc.,

upon information and belief, is in the business of manufacturing, selling and distributing “flats boats” or “fishing skiffs” in interstate commerce.

6. Counterdefendant American Marine Sports LLC is, upon information and belief, a Florida limited liability company with its principal place of business in Groveland, Florida. American Marine Sports LLC, upon information and belief, is in the business of manufacturing, selling and distributing “flats boats” or “fishing skiffs” in interstate commerce.

7. Upon information and belief, Counterdefendant T. Robert Ackerbloom is a resident of Windermere, Florida, and is a principal of Counterdefendants Maritec Industries, Inc. and American Marine Sports LLC.

8. Upon information and belief, Counterdefendant Robert Nils Ackerbloom is a resident of Orlando, Florida, and is a principal of Counterdefendants Maritec Industries, Inc. and American Marine Sports LLC.

9. Sterling has retained the law firm of Hunton & Williams to represent it in this action and has agreed to pay them reasonable fees for their services.

BACKGROUND AND FACTS

10. Sterling incorporated in September, 2000 in the State of Florida under the corporate name, “Sterling Powerboats, Inc.”

11. Sterling immediately began engaging in the business of offering services to custom design, manufacture and sell off-shore powerboats under the mark, “Sterling.”

12. Sterling distributed 5,000 sales brochures beginning in May, 2001 that fully describe its product and also advertise its services under the “Sterling” mark for the custom design and manufacture of off-shore power boats. A true and accurate brochure is attached as Exhibit A.

13. Sterling has been and is currently widely advertising at significant expense its services and boats under the “Sterling” mark. As a result of this investment, the “Sterling” mark has

become familiar to consumers for off-shore power boats as identifying the services and product offered by Sterling, and thus distinguishes the services and product offered by Sterling from others in the same or related fields.

Counterdefendants' Unlawful Use Of The Mark "Sterling"

14. Upon information and belief, one or all of Counterdefendants began manufacturing and selling boats under the mark "Sterling" in interstate commerce no earlier than March, 2002.

15. On or about July 16, 2002, Counterdefendant Robert Nils Ackerbloom filed or caused to be filed federal trademark registration application Serial No. 76/431,622 for the mark, "Sterling," for use in conjunction with boats. As a requirement for filing that application, Counterdefendant Robert Nils Ackerbloom declared that "no other person has the right to use [the] mark in commerce . . . as to be likely . . . to cause confusion, or to cause mistake, or to deceive . . ."

Upon information and belief, a true and correct copy of Counterdefendant Robert Nils Ackerbloom's Declaration and Application Serial No. 76/431,622 are attached as Exhibit B.

16. As part of application Serial No. 76/431,622, Counterdefendant Robert Nils Ackerbloom represented that he began selling "flats boats" under the mark "Sterling" in interstate commerce "at least as early as March, 2002."

17. On or about December 15, 2003, one of Counterdefendants T. Robert Ackerbloom or Robert Nils Ackerbloom contacted Russell A. Erickson, President and majority shareholder of Sterling, and told Mr. Erickson that he had been following Sterling "for a couple of years."

18. Counterdefendant Ackerbloom stated in that conversation that "we" have a problem" and that he had a trademark on "Sterling."

19. Upon information and belief, Counterdefendants knew at the time of filing the federal trademark application for registration on July 16, 2002 that Sterling had been in business since a

time prior to March, 2002 offering its services to custom design and build off-shore power boats under the "Sterling" mark.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT
15 U.S.C. § 1125 et. seq.

20. Sterling incorporates herein by reference the allegations in paragraphs 1 through 19 above.

21. Sterling has marketed, advertised, and promoted its services and products in interstate commerce under the mark "Sterling." "Sterling" is an arbitrary or fanciful mark for boats, and Sterling acquired senior rights to the mark "Sterling" from the time that it first began using "Sterling" to market, advertise and promote its products and services. Further, as a result of this marketing, advertising, and promotion, these products and services and the mark "Sterling" has come to mean and are understood to signify the services and products of Sterling, and are the means by which those services are distinguished from the services of others in the same and in related fields.

22. Counterdefendants' activities of providing services and selling boats using the mark and name "Sterling" are likely to cause confusion, mistake, or deceive as to the source or origin of such services, and thus infringe Sterling's rights to its mark under 15 U.S.C. § 1125(a).

23. The activities of Counterdefendants have caused and will cause irreparable harm to Sterling for which Sterling has no adequate remedy at law in that (i) if Counterdefendants' wrongful conduct continues, consumers are likely to become further confused as to the source of Sterling's services; (ii) Sterling's mark is a unique and valuable property which has no readily determinable market value; (iii) the infringement by Counterdefendants constitutes an

interference with Sterling 's goodwill and customer relationships and (iv) Counterdefendants' wrongful conduct, and the damages resulting to Sterling, is continuing.

24. Accordingly, Sterling is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a), and to an order under 15 U.S.C. § 1118 for the delivery and destruction of all labels, signs, prints, packages, wrappers, receptacles, and advertisements in Counterdefendants' possession bearing the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same.

25. Counterdefendants have committed the acts alleged above with previous knowledge of Sterling's prior use and superior rights to the mark "Sterling," and with previous knowledge of the reputation of Sterling 's mark in interstate commerce. Further, Counterdefendants' actions were for the willful and calculated purpose of trading upon Sterling's goodwill and for the willful and calculated purpose of selling its infringing services based upon the goodwill of Sterling's mark and business reputation, so as to mislead and deceive purchasers and the public.

26. As a result of the foregoing, Sterling has been damaged in an amount which is not precisely ascertainable. In addition, Sterling is entitled to treble damages pursuant to 15 U.S.C. § 1117(b).

27. Sterling is entitled to recover its attorneys' fees and costs pursuant to 15 U.S.C. § 1117(a).

WHEREFORE, Sterling demands judgment for damages against Counterdefendants, together with its reasonable attorneys fees incurred in this matter, interest, costs, injunctive relief as set forth in Sterling's Prayer for Relief, and such further relief as this Court deems just and

proper.

COUNT II

FEDERAL UNFAIR COMPETITION
15 U.S.C. § 1125 et seq.

28. Sterling incorporates herein by reference the allegations in paragraphs 1 through 19 above.

29. Counterdefendants' promotion, production, advertisement, and marketing of its services and products that are substantially similar to those of Sterling's under designations substantially similar to Sterling's mark is likely to cause the consuming public to believe mistakenly that Counterdefendants' services and boats originate from, are sponsored by, or are in some way associated with Sterling, constitute false designation of origin or false descriptions or representations, and are likely to cause Sterling's mark to lose its distinctiveness and significance as an originator of origin. Counterdefendants' actions therefore constitute unfair competition and violate Sterling's rights under 15 U.S.C. § 1125(a).

30. The activities of Counterdefendants have caused and will cause irreparable harm to Sterling for which Sterling has no adequate remedy at law in that (i) if Counterdefendants' wrongful conduct continues, consumers are likely to become further confused as to the source of Sterling's services and products; (ii) Sterling's mark is unique and valuable property which has no readily determinable market value; (iii) the infringement by Counterdefendants constitutes an interference with Sterling's goodwill and customer relationships and (iv) Counterdefendants' wrongful conduct, and the damages resulting to Sterling, is continuing.

31. Accordingly, Sterling is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a), and to an order under 15 U.S.C. § 1118 for the delivery and destruction of all labels, signs, prints, packages, wrappers, receptacles, and advertisements in

Counterdefendants' possession bearing the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same.

32. Counterdefendants have committed the acts alleged above with previous knowledge of Sterling's prior use and superior rights to the mark, and with previous knowledge of the reputation of Sterling's mark in interstate commerce. Further, Counterdefendants' actions were for the willful and calculated purpose of trading upon Sterling's goodwill and for the willful and calculated purpose of selling its infringing services based upon the goodwill of Sterling's mark and business reputation, so as to mislead and deceive purchasers and the public.

33. As a result of the foregoing, Sterling has been damaged in an amount which is not precisely ascertainable. In addition, Sterling is entitled to treble damages pursuant to 15 U.S.C. § 1117(b).

34. Sterling is entitled to recover its attorneys' fees and costs pursuant to 15 U.S.C. § 1117(a).

WHEREFORE, Sterling demands judgment for damages against Counterdefendants, together with its reasonable attorneys fees incurred in this matter, interest, costs, injunctive relief as set forth in Sterling's Prayer for Relief, and such further relief as this Court deems just and proper.

COUNT III

COMMON LAW UNFAIR COMPETITION AND SERVICE AND TRADEMARK INFRINGEMENT

35. Sterling incorporates herein by reference the allegations in paragraphs 1 through 19 above.

36. The acts and conduct of Counterdefendants alleged above constitute unfair competition at common law and constitute an infringement of Sterling's common law rights in its mark..

37. Counterdefendants' unauthorized commercial use of the mark "Sterling" and/or displays, logos, icons, and packaging displaying this mark causes a likelihood of confusion of Counterdefendants' services with the services and product provided by Sterling using the mark, and thus constitutes unfair competition and service mark and trademark infringement at common law.

38. Counterdefendants intended to damage Sterling through their unfair competition and service mark infringement.

39. The unfair competition and service mark and trademark infringement of the Counterdefendants have damaged and will continue to damage Sterling's goodwill and reputation and has resulted in a loss of customers and loss of profits to Sterling.

WHEREFORE, Sterling respectfully requests that the Court award it injunctive relief as described in Sterling's Prayer for Relief, actual damages, costs and such further relief as this Court deems just and proper.

COUNT IV

VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT Florida Statutes § 501.201 et seq.

40. Sterling incorporates herein by reference the allegations in paragraphs 1 through 19 above.

41. Sterling is a "consumer" as that term is defined and used under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat., §§ 501.201 *et seq.* ("FDUTPA).

42. Counterdefendants' unauthorized use of the mark "Sterling" and/or application of the mark "Sterling" to displays, logos, icons, and packaging is likely to confuse or deceive the

public, in that the public will mistakenly believe that Counterdefendants' business is affiliated with, sponsored, endorsed, or authorized by Sterling.

43. Counterdefendants' acts are willfully performed with knowledge of the unfair and deceptive nature of such acts, are likely to damage Sterling's business, reputation, and good will, and constitute unfair methods of competition, unconscionable acts or practices and unfair or deceptive trade practices under Fla. Stat. § 501.204.

44. As a direct and proximate result of Counterdefendants' unauthorized acts and violation of FDUTPA, Sterling has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

45. Pursuant to Fla. Stat. § 501.211(1), Florida Statutes, Sterling is entitled to injunctive relief against Counterdefendants.

46. Sterling is obligated to pay Hunton & Williams reasonable fees for the its services.

47. Pursuant to Fla. Stat. § 501.211(2), Sterling is entitled to its actual damages plus attorneys' fees and court costs.

WHEREFORE, Sterling demands judgment for damages against Counterdefendants, together with its reasonable attorneys fees incurred in this matter, interest, costs, injunctive relief as set forth in Sterling's Prayer for Relief, and such further relief as this Court deems just and proper.

COUNT V

DECLARATORY JUDGMENT 28 U.S.C. § 2201

48. Sterling incorporates herein by reference the allegations in paragraphs 1 through 19 above.

49. Counterdefendants have alleged that they have prior rights to the mark "Sterling" in conjunction with boats.

50. Sterling has prior rights to use of the mark in conjunction with the design, manufacture and sale of boats.

51. An actual controversy exists between Counterdefendants and Sterling as to which party has prior rights to use the mark "Sterling" in conjunction with boats.

52. Counterdefendants' federal trademark registration application Serial No. 76/431,622 is invalid for failure to satisfy the requirements for registration as set forth in 15 U.S.C. §§ 1501 *et seq.*

53. An actual controversy thus exists whether Counterdefendants' are entitled to a federal registration of the "Sterling" mark for use in conjunction with boats.

54. Sterling desires a judicial determination of the controversy and a declaration of the parties' respective rights with respect to all matters as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Sterling requests the following relief:

- a) That the Court enter judgment in Sterling's favor, and against Plaintiffs Maritec Industries, Inc. and American Marine Sports LLC on all counts in the Complaint;
- b) That the Court deny Plaintiffs' Maritec Industries, Inc. and American Marine Sports LLC request for injunctive relief;
- c) That the Court deny Plaintiffs' Maritec Industries, Inc. and American Marine Sports LLC's request for a judgment that Sterling's use of the mark "Sterling" does not preclude their use of the mark "Sterling" for boats manufactured and sold by Plaintiffs;
- d) That the Court enter an order that Plaintiffs take nothing by way of the Complaint;
- e) That the Court deny Plaintiffs' request for compensatory damages;

- f) That the Court deny Plaintiffs' request for attorney's fees;
- g) That the Court deny Plaintiffs' request for taxable costs;
- h) That Counterdefendants, any of their directors, officers, shareholders, agents, servants, employees, successors, assigns, affiliates, joint ventures, and any persons in active concert or participation with any of them, and/or persons acting for, with, by, through or under any of them, be temporarily restrained and permanently enjoined and restrained from:

(1) Providing, distributing, advertising, promoting, displaying, merchandising or offering for sale any goods or services bearing or associated with the mark "Sterling", alone or in combination with other words or symbols, or any goods or services bearing or associated with displays, logos, icons, and packaging that are similar to Sterling's displays, logos, icons, and packaging, or any other goods or services that are likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Counterdefendants or their services with Sterling;

(2) Using the mark "Sterling" in a manner which causes or is likely to cause confusion, mistake, or deception as to the affiliation, connection, association with, or endorsement by Sterling of Counterdefendants' goods or services, falsely designating the origin of Counterdefendants' goods or service services, and/or making any misleading description or representation of fact which causes or is likely to cause confusion, mistake or deception as to the affiliation, connection, association with or endorsement of Sterling's goods or services;

(3) Representing that Counterdefendants, their goods, or services as affiliated

with, sponsored or authorized by Sterling;

(4) That Counterdefendants be required to procure the immediate discontinuance of providing, distributing, advertising, promoting, displaying, merchandising or offering for sale any goods or services associated with the mark "Sterling," alone or in combination with other words or symbols.

i) That Counterdefendants provide Sterling with an accounting of all profits, and surrender all profits made pursuant to their unauthorized activities, including the providing or distributing of any goods or services associated with the mark "Sterling," alone or in combination with other words or symbols, any goods bearing or associated with displays, logos, icons, and packaging that are similar to Sterling's displays, logos, icons, and packaging, or any other goods that are likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Counterdefendants or its services with Sterling;

j) That Sterling be awarded general, special, statutory, and actual damages, including pre-judgment and post judgment interest, and that these amounts be trebled as permitted by law;

k) That the Court enter a declaratory judgment that Sterling has prior rights to Counterdefendants to the mark "Sterling" for use in conjunction with boats;

l) That the Court enter a declaratory judgment that U.S. trademark registration application Serial No. 76/431,622 is invalid;

m) That the Court enter an order directing the Commissioner for Trademarks of the United States Patent and Trademark Office to reject trademark application Serial No. 76/431,622 or to refuse any registration that may issue from that application;

- n) That Sterling be awarded its costs, expenses, and attorney's fees; and
- o) That Sterling be awarded such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Sterling demands trial by jury of all issues so triable.

DATED: February 11th, 2004.

Respectfully submitted,

HUNTON & WILLIAMS LLP
Attorneys for Defendant
1111 Brickell Avenue, Suite 2500
Miami, Florida 33322
Tel: 305 • 810 • 2500
Fax: 305 • 810 • 2460

By



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S ANSWER AND COUNTERCLAIM** was served via regular U.S. Mail this 11th day of February, 2004 to the following:

Herbert L. Allen (FBN 114126)
Brian R. Gilchrist (FBN 774065)
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.
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HUNTON & WILLIAMS

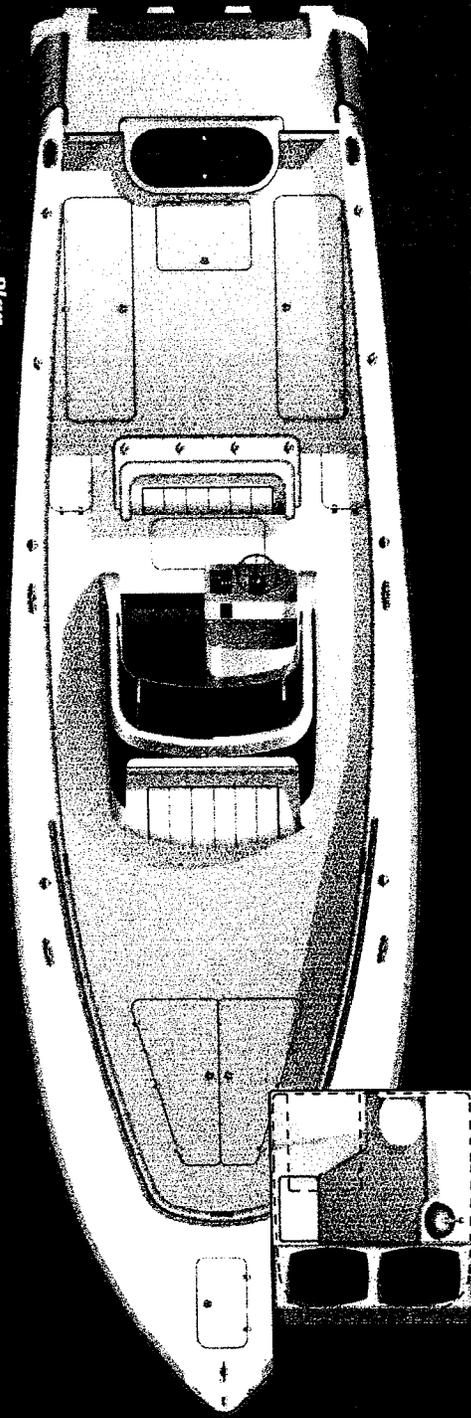
By:  FBN 3213070
Samuel A. Danon (FBN 0892671)

EXHIBIT A

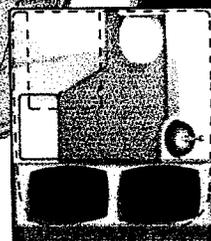
Center Console



Profile



Plan



Cabin

Twin Outboard Configuration
Speeds up to 52 mph*
shown in Vivid Red with Super Jet Black

Triple Outboard Configuration
Speeds up to 65 mph*
shown in Sea Foam with Royal Blue

Twin I/O Configuration (gas or diesel)
Speeds vary
shown in Aristo Blue with Federal Yellow

STERLING

Palm Beach Gardens, FL 33418

561-625-6282

www.sterlingpowerboats.net



380 Center Console

LENGTH

37' 6"

BEAM

11'

MAX HP RATING

750 (3 Outboards @250)
1000 (Gas or Diesel I/O)

DEADRISE

22"

DRAFT

25"

FUEL CAPACITY

375 Gal

Additional 125 Available

STANDARD FEATURES

Automatic Bilge Pumps (3)
Battery Switches
Pressurized Fresh Water System
Private Head Compartment
Cockpit Fish Boxes w/Myasator (2)
Forward Dry Storage Area (Insulated)
Shore Power w/Battery Charger
10" Deck Cleats (4)
Springline Cleats (2)
Hydraulic Steering
Electric Head w/Holding Tank
Sink w/Freshwater
Twin Berth Sleeping Area
Bow Rail Heavy Duty Stainless Steel

ANCHOR LOCKER w/Deck Access

Tinned Wiring
Self Bailing Cockpit
Water Separator Fuel Filters
Raw Water Washdown
Stainless Steel Hardware
Bennett Trim Tabs
Glass Windshield w/Aluminum Frame
Transom Doors (2)
Fiberglass Helmseats (2)
Swim Ladder
Recirculating Livewell (60 Gal)
Under Floor Rod Storage
Rodholders (4)

OPTIONAL EQUIPMENT

Kevlar Construction
Rocket Launcher w/Tackle Station
Shear Stripe (Iron)
Accent Pin Stripe (Iron)
Custom Hull Color
Kieftaefer 280S Trim Tabs
Towing Package
Cockpit Coaming Bolster
Forward Deck Cushion
Custom Rear Seat
Ritchie Compass (6")
Generator/Air Conditioner
Anchor Windlass



TM

*A full specification sheet and price list is available upon request. All prices are in US dollars and are subject to change without notice. © 2001 Sterling Power Boats, Inc. All Rights Reserved. All trademarks are the property of their respective owners.

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: **STERLING**

International Class: 12

APPLICATION FOR TRADEMARK REGISTRATION
(BASED ON USE)

To the Assistant Commissioner of Trademarks:

Robert Nils Ackerbloom, an individual and citizen of the United States, whose address is 20150 Independence Boulevard, Groveland, Florida 34736, has adopted and is using the above identified mark shown in the drawing in interstate commerce for the following goods:

Boats (International Class 12)

and requests registration in the United States Patent and Trademark Office on the Principal Register under 15 U.S.C. §1051(a), as amended.

As shown in the accompanying drawing, the mark sought to be registered is comprised of the word mark "STERLING."

The trademark sought to be registered was first used in connection with the foregoing goods at least as early as March 2002, and was first used in connection with the foregoing goods in interstate commerce at least as early as March 2002, and is now in use in such commerce.

The mark is used directly on the goods and on instructional materials for the goods, and one (1) specimen showing the mark as actually used is presented herewith.

DECLARATION AND POWER OF ATTORNEY

I, **ROBERT NILS ACKERBLOOM**, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declare that I am properly authorized to execute this application on behalf of the applicant; I believe I am the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), I believe I am entitled to use such mark in commerce; to the best of my knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the trademark of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true.

Applicant hereby appoints Ava K. Doppelt; Herbert L. Allen, Registration No. 25,322; David L. Sigalow, Registration No. 36,006; Christopher F. Regan, Registration No. 34,906; Henry Estévez, Ph.D., Registration No. 37,823; Paul J. Ditmyer, Reg. No. 40,455; John F. Woodson, II, Reg. No. 45,236 and Charles E. Wands, Reg. No. 25,649, all of the firm of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., 255 South Orange Avenue, Suite 1401, Post Office Box 3791, Orlando, Florida 32802, all members of the Bar of various States, as its attorneys to prosecute this application to register, to transact all business in connection therewith, and to receive the certificate of registration.