

ESTTA Tracking number: **ESTTA179212**

Filing date: **12/06/2007**

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

## Notice of Opposition

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

### Opposer Information

Name	Marine Concepts, LLC		
Entity	Limited Liability Company	Citizenship	Missouri
Address	1685 Woodland Shores Drive Lee's Summit, MO 64086 UNITED STATES		

Attorney information	Adam L. Brookman Boyle Fredrickson, S.C. 840 N. Plankinton Avenue Milwaukee, WI 53203 UNITED STATES abrookman@boylefred.com, ekf@boylefred.com, docketing@boylefred.com, cdy@boylefred.com Phone: 414 225 9755		
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### Applicant Information

Application No	77199282	Publication date	11/06/2007
Opposition Filing Date	12/06/2007	Opposition Period Ends	12/06/2007
Applicant	Timothy A. Kramer 2800 SE 1st Street Blue Springs, MO 64014 UNITED STATES		

### Goods/Services Affected by Opposition

Class 012. First Use: 2003/07/31 First Use In Commerce: 2005/04/05  
All goods and services in the class are opposed, namely: fitted covers for boats and marine vehicles

### Applicant Information

Application No	77173220	Publication date	11/06/2007
Opposition Filing Date	12/06/2007	Opposition Period Ends	12/06/2007
Applicant	Kramer, Timothy A. 2800 SE 1st Street Blue Springs, MO 64014 UNITED STATES		

### Goods/Services Affected by Opposition

Class 012. First Use: 2003/07/31 First Use In Commerce: 2005/04/05  
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## Grounds for Opposition

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Ownership by Opposer

Related Proceedings	The parties are involved in a Federal District Court Action in the Western District of Missouri - Case No. 07-0661-CV-W-FTG
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Attachments	Notice of Opposition.pdf ( 4 pages )(237190 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Adam L. Brookman/
Name	Adam L. Brookman
Date	12/06/2007

1. The Applicant, Timothy A. Kramer (“Applicant”), is upon information and belief, an individual residing at 2800 SE 1<sup>st</sup> Street, Blue Springs, MO 64014.

2. Opposer is a Missouri limited liability company with a place of business located at 1685 Woodland Shores Drive, Lee’s Summit, Missouri.

3. Opposer was formed by Applicant and Mr. Randy Kent on May 23, 2005, wherein Applicant assigned to Opposer any rights he had to the marks, “NAUTICAL GUARD” and “NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT.”

4. Opposer asserts that it is the owner of the trademarks “NAUTICAL GUARD” and “NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT.”

5. Opposer owns all right, title, and interest in the “NAUTICAL GUARD” and “NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT” trademarks for use in connection with boat covers.

6. Opposer, since at least as early as May 2005, has distributed and sold boat covers bearing the distinctive trademarks “NAUTICAL GUARD” and “NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT.”

7. Mr. Kramer, upon his withdrawal from Opposer, lost any license or authority to manufacture, market, distribute, sell, offer for sale any boat covers bearing Opposer’s “NAUTICAL GUARD” and “NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT” marks.

8. Therefore, Applicant is not the proper owner of the marks “NAUTICAL GUARD” and “NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT.”

9. On or about May 4, 2007, Applicant filed the above-referenced trademark application to register the mark NAUTICAL GUARD for “Fitted covers for boats and marine vehicles” in International Class 12, under Section 1(a).

10. On or about June 6, 2007, Applicant filed the above-referenced trademark application to register the mark NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT for “Fitted covers for boats and marine vehicles” in International Class 12, under Section 1(a).

11. Applicant has committed fraud on the U.S. Patent and Trademark Office for applying for marks “NAUTICAL GUARD” and “NAUTICAL GUARD PROTECTING YOUR INVESTMENT” claiming ownership of the marks knowing that he was not the proper owner.

12. Applicant has committed fraud on the U.S. Patent and Trademark Office by listing a Date of First Use as July 31, 2003 because if the terms “NAUTICAL GUARD” and “NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT” were used, at all, such use was not trademark use.

13. Applicant has committed fraud on the U.S. Patent and Trademark Office by listing a Date of First Use in Commerce as April 5, 2005 because he knew that any use of the marks was not proper trademark use nor use in interstate commerce.

14. The first use in commerce of the marks occurred after May 2005, when Opposer had already been formed, owned the marks and such use inured to Opposer's benefit.

15. Opposer has invested substantial time, effort and money in using and promoting its "NAUTICAL GUARD" and "NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT" marks and the goods bearing them. Through such prior use, promotion and advertising, Opposer has built up a valuable and protectable goodwill associated therewith. By virtue of Opposer's continuous, exclusive and widespread use of its "NAUTICAL GUARD" and "NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT" marks, they have become well-known by the relevant purchasing public as trademarks of Opposer.

16. Registration of Applicant's marks is likely to cause the public to be confused, misled or deceived, and to falsely believe that Applicant's goods are affiliated, associated, approved, sponsored, licensed or authorized by Opposer or others authorized or licensed by Opposer to use the "NAUTICAL GUARD" and "NAUTICAL GUARD PROTECTING YOUR MARINE INVESTMENT" marks. Persons familiar with Opposer's marks are likely to purchase Applicant's goods believing they are marketed by, affiliated with or endorsed by Opposer, when in fact they are not.

17. Registration of Applicant's marks is likely to cause harm and damage to Opposer and its mark by causing confusion, mistake and/or deception as to the respective rights of the parties and as to the source of the goods marketed and provided under the Applicant's marks, and by constituting a cloud on Opposer's prior established rights in its "NAUTICAL GUARD" and "NAUTICAL GUARD PROTECTING

YOUR MARINE INVESTMENT” marks. Such registration would give Applicant at least a *prima facie* right to use Applicant’s marks, thereby causing continuing serious and irreparable harm to Opposer’s rights in its marks, its business and to the goodwill of such business symbolized by Opposer’s mark. Registration of Applicant’s mark will also tend to reduce the distinctiveness, value and goodwill of Opposer’s marks.

WHEREFORE, Opposer believes that it will be damaged by registration of the Applicant’s marks in Class 12, Application Serial Nos. 77/199,282 and 77/173,220 and opposes registration thereof on the grounds set forth above. Opposer further prays that Application Serial Nos. 77/199,282 and 77/173,220 be rejected, and that registration of Applicant’s marks therein sought for the goods specified therein in Class 12 be denied and refused.