

ESTTA Tracking number: **ESTTA219954**

Filing date: **06/24/2008**

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	Splash Superpools LLC
Granted to Date of previous extension	06/25/2008
Address	3912 East Progress North Little Rock, AR 72114 UNITED STATES

Attorney information	Julie A. Greenberg Gifford, Krass, Sprinkle, Anderson & Citkowski 2701 Troy Center Drive, Ste. 330 , P.O. Box 7021 Troy, MI 48007 UNITED STATES docket@patlaw.com
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### Applicant Information

Application No	79035200	Publication date	02/26/2008
Opposition Filing Date	06/24/2008	Opposition Period Ends	06/25/2008
International Registration No.	0915433	International Registration Date	01/05/2006
Applicant	Ningbo Splash Pool Appliance Ltd. Zhangjiatan Village, Gulin Town Yinzhou District, Ningbo City; ZHEJIANGPROVINCE 315176  CHINA		

### Goods/Services Affected by Opposition

Class 011. All goods and services in the class are opposed, namely: Water purifying apparatus, purification installations for sewage, aquarium filtration apparatus, swimming pool chlorinating units, solar collectors
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2381428	Application Date	10/13/1999
Registration Date	08/29/2000	Foreign Priority	NONE

		Date	
Word Mark	SPLASH SUPERPOOLS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 019. First use: First Use: 1989/00/00 First Use In Commerce: 1989/00/00 NON-METAL SWIMMING POOLS		

U.S. Registration No.	2374610	Application Date	02/03/1999
Registration Date	08/08/2000	Foreign Priority Date	NONE
Word Mark	SPLASH OMEGA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 019. First use: First Use: 1997/11/00 First Use In Commerce: 1997/11/00 non-metal swimming pools		

U.S. Registration No.	2434056	Application Date	02/03/1999
Registration Date	03/06/2001	Foreign Priority Date	NONE
Word Mark	SPLASHTUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1999/01/30 First Use In Commerce: 1999/01/30 Hot tubs		

U.S. Registration No.	3184610	Application Date	12/08/2004
Registration Date	12/12/2006	Foreign Priority Date	NONE
Word Mark	SPLASH FENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 019. First use: First Use: 2004/07/00 First Use In Commerce: 2004/07/00 Swimming pool fences made primarily of plastic		

U.S. Registration No.	3172103	Application Date	05/11/2004
Registration Date	11/14/2006	Foreign Priority Date	NONE
Word Mark	SPLASHFENCE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 019. First use: First Use: 2004/07/00 First Use In Commerce: 2004/07/00 Fence made primarily of plastic for an above ground swimming pool
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Attachments	75821618#TMSN.gif ( 1 page )( bytes ) 75634794#TMSN.gif ( 1 page )( bytes ) 78529383#TMSN.jpeg ( 1 page )( bytes ) 78416582#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 19 pages )(272003 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	/s/Julie A. Greenberg
Name	Julie A. Greenberg
Date	06/24/2008

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

In re Serial No. 79035200  
Filed: January 5, 2006

SPLASH SUPERPOOLS LLC,

Opposer,

Opposition No.

vs.

NINGBO SPLASH POOL APPLIANCE LTD.,

Applicant.

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**NOTICE OF OPPOSITION**

Splash Superpools LLC, having a principal place of business in North Little Rock, Arkansas, believes that it will be damaged by registration of the mark shown in Serial No. 79/035,200, in International Classes 007 and 011, and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. The Applicant, Ningbo Splash Pool Appliance, Ltd., seeks to register the mark SPLASH, together with a drawing of a swimmer (“Applicant’s Splash Mark”) for goods which include swimming pool products, namely, water purifying apparatus, purification installations for sewage, aquarium filtration apparatus, swimming pool chlorinating units, solar collectors International Class 11, as evidenced by the attached page from the Trademark Electronic Search System (TESS) (Exhibit A). Applicant’s trademark application was filed on January 5, 2006, based on § 66, for extension of protection to the United States of an international registration.

2. The Opposer has extensively used the identical or closely similar trademark SPLASH for swimming pools for nearly twenty years, preceding Applicant’s filing date by this

many years. Applicant has also extensively used a number of related "SPLASH" marks for various swimming pool related goods, including but not limited to "SPLASH OMEGA"; "SPLASH VAC"; "SPLASHTUB"; and "SPLASH FENCE" (the "Splash Marks").

3. In connection with its ownership of the "SPLASH" Mark, Opposer owns the following registrations:

- a. U.S. Reg. No. 2,381,428 for the mark SPLASH SUPERPOOLS (incontestable) , a copy of which is attached hereto as Exhibit B;
- b. U.S. Reg. No. 2,374,610, for the mark "SPLASH OMEGA" (incontestable);
- c. U.S. Reg. No. 2,434,056 for the mark "SPLASHTUB" (incontestable); and,
- d. U.S. Reg. Nos. 3,184,610 and 3,172,103 for the mark "SPLASH FENCE."

These are attached as Exhibits C-F.

4. As a result of its substantial investment in developing, promoting and selling products related to the SPLASH Marks, Opposer has developed exceedingly valuable goodwill and consumer recognition in connection with the SPLASH Marks.

5. The Applicant's SPLASH Mark which is the subject of this Opposition is so closely similar to Opposer's SPLASH Marks, in particular the mark SPLASH SUPERPOOLS (with a drawing of a swimmer), in appearance, meaning, and commercial impression, and is used for identical or closely related goods, so as to cause confusion and lead to deception as to the origin of Applicant's goods identified with the Applicant's Splash Mark opposed herein. This similarity and likelihood of confusion are heightened by the nearly identical drawing of a swimmer incorporated into Applicant's mark. In particular, Applicant's goods are likely to be confused with Opposer's goods and mistaken therefore.

6. If the Applicant is permitted to use and register the pending mark for the goods of the Applicant listed in the Application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of use of the nearly identical mark on identical or closely related goods by both Applicant and Opposer. Persons familiar with Opposer's use of the term and mark would be likely to buy Applicant's goods as and for goods offered by the Opposer. Any such confusion in trade inevitably would result in loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its goods and services merchandised under its SPLASH Marks.

7. If the Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark, in direct conflict with Opposer's rights deriving from its own common law and statutory rights for the SPLASH marks, for identical or closely related goods – swimming pools and related accessories. Such a conflicting registration would be a source of damage and injury to the Opposer.

WHEREFORE, the Opposer prays that the application Serial No. 79/035,200 be rejected, that no notice of allowance or registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposer. Opposer hereby gives notice that after hearing and in any appeal on this opposition proceeding, it will rely on its exhibits annexed to this notice of opposition as evidence in support of this notice of opposition.

The filing fee of this opposition in the amount of \$300.00 is enclosed.

Opposer hereby appoints the attorneys of Gifford, Krass, Sprinkle, Anderson & Citkowski, P.C., a law firm having a place of business at 2701 Troy Center Drive, Ste. 330, P.O.

Box 7021, Troy, Michigan 48007 to act as attorneys for Opposer herein, with full power to prosecute said opposition, to transact all relative business in the United States Patent and Trademark Office and in the United States courts, and to receive all official communications in connection with this opposition.

Respectfully submitted,

GIFFORD, KRASS, SPRINKLE,  
ANDERSON & CITKOWSKI PC

By: /s/Julie A. Greenberg  
Julie A. Greenberg  
GIFFORD, KRASS, SPRINKLE,  
ANDERSON & CITKOWSKI, P.C.  
2701 Troy Center Drive, Ste. 330  
P.O. Box 7021  
Troy, MI 48007  
(248) 647-6000  
(248) 647-5210 – Facsimile  
docket@patlaw.com

*Attorney for Opposer*

Dated: June 24, 2008

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **NOTICE OF OPPOSITION** was sent via DHL Express:

Ningbo Splash Pool Appliance LTD  
Zhangjiatan Village, Gulin Town  
Yinzhou District, Ningbo City  
Zhejiang Province 315176 CHINA

on this 24<sup>th</sup> day of June, 2008.

/s/Julie A. Greenberg  
Julie A. Greenberg  
GIFFORD KRASS, SPRINKLE,  
ANDERSON & CITKOWSKI, P.C.  
2701 Troy Center Drive, Ste. 330  
P.O. Box 7021  
Troy, Michigan 48007-7021  
(248) 647-6000  
(248) 647-5210 – Facsimile

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that the foregoing **NOTICE OF OPPOSITION** was electronically filed with the TTAB on this 24<sup>th</sup> day of June, 2008.

/s/Julie A. Greenberg  
Julie A. Greenberg  
GIFFORD KRASS, SPRINKLE,  
ANDERSON & CITKOWSKI, P.C.  
2701 Troy Center Drive, Ste. 330  
P.O. Box 7021  
Troy, Michigan 48007-7021  
(248) 647-6000  
(248) 647-5210 – Facsimile

# **Exhibit A**



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**SPLASH**  
斯普濶

<b>Word Mark</b>	SPLASH
<b>Translations</b>	The non-Latin characters in the mark transliterate to "SIPULAN" and this means "SPLASH" in English.
<b>Goods and Services</b>	IC 007. US 013 019 021 023 031 034 035. G & S: Mufflers for motors and engines, cartridges for filtering machines  IC 011. US 013 021 023 031 034. G & S: Water purifying apparatus, purification installations for sewage, aquarium filtration apparatus, swimming pool chlorinating units, solar collectors
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	01.15.08 - Raindrop (a single drop); Single drop (rain, tear, etc.); Teardrop (a single drop) 02.01.19 - Athletes (men); Golfer; Men, athletes, strongmen; Strongmen 02.01.33 - Grotesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures 06.03.03 - Ocean; Ripples (multiple waves); Waves, open sea (multiple waves) 26.11.02 - Plain single line rectangles; Rectangles (single line) 26.11.12 - Rectangles with bars, bands and lines 26.11.25 - Rectangles with one or more curved sides 27.03.05 - Objects forming letters or numerals 28.01.03 - Asian characters; Chinese characters; Japanese characters
<b>Serial Number</b>	79035200
<b>Filing Date</b>	January 5, 2006

**Current Filing Basis** 66A  
**Original Filing Basis** 66A  
**Published for Opposition** February 26, 2008  
**International Registration Number** 0915433  
**Owner** (APPLICANT) Ningbo Splash Pool Appliance Ltd. CORPORATION CHINA  
Zhangjiatan Village, Gulin Town Yinzhou District, Ningbo City; ZHEJIANG  
PROVINCE 315176 CHINA  
**Description of Mark** Color is not claimed as a feature of the mark.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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# **Exhibit B**



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<b>Word Mark</b>	<b>SPLASH SUPERPOOLS</b>
<b>Goods and Services</b>	IC 019. US 001 012 033 050. G & S: NON-METAL SWIMMING POOLS. FIRST USE: 19890000. FIRST USE IN COMMERCE: 19890000
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	01.05.25 - Sun, other representations of the sun 02.01.02 - Men depicted as shadows or silhouettes of men; Silhouettes of men 02.09.18 - Humans, including men, women and children, depicted swimming; Swimming, humans
<b>Serial Number</b>	75821618
<b>Filing Date</b>	October 13, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	June 6, 2000
<b>Registration Number</b>	2381428
<b>Registration Date</b>	August 29, 2000

**Owner** (REGISTRANT) Splash Superpools LLC CORPORATION ARKANSAS 3912 East Progress North Little Rock ARKANSAS 72114  
**Attorney of Record** Douglas W. Sprinkle  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SUPERPOOLS" APART FROM THE MARK AS SHOWN  
**Description of Mark** The lining is a feature of the mark and does not indicate color.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR).  
**Live/Dead Indicator** LIVE

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# **Exhibit C**

**Int. Cl.: 19**

**Prior U.S. Cls.: 1, 12, 33 and 50**

**Reg. No. 2,374,610**

**United States Patent and Trademark Office**

**Registered Aug. 8, 2000**

**TRADEMARK  
PRINCIPAL REGISTER**

**SPLASH OMEGA**

**SPLASH SUPERPOOLS, LLC (ARKANSAS CORPORATION)  
3912 EAST PROGRESS  
NORTH LITTLE ROCK, AR 72114**

**FIRST USE 11-0-1997; IN COMMERCE 11-0-1997.**

**SER. NO. 75-634,794, FILED 2-3-1999.**

**FOR: NON-METAL SWIMMING POOLS, IN CLASS  
19 (U.S. CLS. 1, 12, 33 AND 50).**

**RICHARD A. STRASER, EXAMINING ATTORNEY**

# **Exhibit D**

**Int. Cl.: 11**

**Prior U.S. Cls.: 13, 21, 23, 31, and 34**

**United States Patent and Trademark Office**

**Reg. No. 2,434,056**

**Registered Mar. 6, 2001**

**TRADEMARK  
PRINCIPAL REGISTER**

**SPLASHTUB**

**SPLASH SUPERPOOLS LLC (ARKANSAS COR-  
PORATION)  
3912 EAST PROGRESS  
NORTH LITTLE ROCK, AR 72114**

**FIRST USE 1-30-1999; IN COMMERCE 1-30-1999.**

**SN 75-634,792, FILED 2-3-1999.**

**FOR: HOT TUBS, IN CLASS 11 (U.S. CLS. 13, 21, 23,  
31 AND 34).**

**RICHARD A. STRASER, EXAMINING ATTORNEY**

# **Exhibit E**

Int. Cl.: 19

Prior U.S. Cls.: 1, 12, 33, and 50

**United States Patent and Trademark Office**

Reg. No. 3,172,103

Registered Nov. 14, 2006

**TRADEMARK  
PRINCIPAL REGISTER**

**SPLASHFENCE**

SPLASH SUPERPOOLS LLC (ARKANSAS CORPORATION)  
3912 EAST PROGRESS  
NORTH LITTLE ROCK, AR 72114

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: FENCE MADE PRIMARILY OF PLASTIC FOR AN ABOVE GROUND SWIMMING POOL, IN CLASS 19 (U.S. CLS. 1, 12, 33 AND 50).

SN 78-416,582, FILED 5-11-2004.

FIRST USE 7-0-2004; IN COMMERCE 7-0-2004.

TIMOTHY FINNEGAN, EXAMINING ATTORNEY

# **Exhibit F**

Int. Cl.: 19

Prior U.S. Cls.: 1, 12, 33, and 50

United States Patent and Trademark Office

Reg. No. 3,184,610

Registered Dec. 12, 2006

TRADEMARK  
PRINCIPAL REGISTER



SPLASH SUPERPOOLS LLC (ARKANSAS CORPORATION)

3912 EAST PROGRESS

NORTH LITTLE ROCK, AR 72114

FOR: SWIMMING POOL FENCES MADE PRIMARILY OF PLASTIC, IN CLASS 19 (U.S. CLS. 1, 12, 33 AND 50).

FIRST USE 7-0-2004; IN COMMERCE 7-0-2004.

OWNER OF U.S. REG. NOS. 2,331,947, 2,374,610, AND 2,381,428.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FENCE", APART FROM THE MARK AS SHOWN.

SN 78-529,383, FILED 12-8-2004.

LA TONIA FISHER, EXAMINING ATTORNEY