

ESTTA Tracking number: **ESTTA220882**

Filing date: **06/27/2008**

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	Toto U.S.A., Inc.
Granted to Date of previous extension	08/06/2008
Address	1155 Southern Road Morrow, GA 30260 UNITED STATES

Attorney information	Richard H. Zaitlen, Esq. Pillsbury Winthrop Shaw Pittman 725 S. Figueroa Street, Suite 2800 Los Angeles, CA 90017 UNITED STATES la-tmdocketing@pillsburylaw.com, jennifer.so@pillsburylaw.com
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**Applicant Information**

Application No	76677227	Publication date	04/08/2008
Opposition Filing Date	06/27/2008	Opposition Period Ends	08/06/2008
Applicant	NIAGARA CONSERVATION CORPORATION 45 Horsehill Road Cedar Knolls, NJ 07927 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 011. All goods and services in the class are opposed, namely: SANITARY WARE, AND WATER AND ENERGY CONSERVATION PRODUCTS, NAMELY, FAUCETS, SHOWER HEADS, TOILETS, SINKS, FAUCET AERATORS, AND FAUCET SPRAYERS
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**Grounds for Opposition**

The mark is merely descriptive	Trademark Act section 2(e)(1)
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Attachments	ECOHET Notice Opp.pdf ( 5 pages )(153225 bytes ) cert of service.pdf ( 1 page )(10029 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	/js/83847-0000033/
Name	Richard H. Zaitlen, Esq.
Date	06/27/2008

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

In the Matter of Application No. 76/677,227  
for the mark ECO HET in International Class 011;  
Published for Opposition in the Official Gazette of  
April 8, 2008.

TOTO U.S.A., INC.

Opposer,

vs.

NIAGARA CONSERVATION  
CORPORATION

Applicant.

Opposition No.

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

Opposer, Toto U.S.A., Inc. (“Opposer”), a Delaware corporation with a business address of 1155 Southern Road, Morrow, Georgia 30260, hereby opposes registration of the mark ECO HET that is the subject of Application Serial No. 76/677,227, published in the Official Gazette of April 8, 2008, and requests that registration to Applicant, Niagara Conservation Corporation (“Applicant”), be refused.

As grounds in support of its Opposition, Opposer asserts as follows:

1. Applicant has filed an intent-to-use application to register the mark ECO HET in International Class 011 for “sanitary ware, and water and energy conservation products, namely, faucets, shower heads, toilets, sinks, faucet aerators, and faucet sprayers.” That application was filed on May 21, 2007 and was assigned Application Serial No. 76/677,227.

2. Upon information and belief, Applicant is a corporation organized and existing under the laws of New Jersey with a business address of 45 Horsehill Road, Cedar Knolls, New Jersey 07927.

3. Opposer, together with its parent company Toto Ltd., is the world's largest plumbing products manufacturer, offering a complete line of commercial and decorative plumbing fixtures and fittings, faucets, accessories, shower and flush valves, as well as lavatories, toilets, Air Baths™ and urinals.

4. In its efforts to support water and energy conservation efforts, Opposer has and continues to develop and manufacture a variety of ecologically-friendly plumbing products including, but not limited to, toilets and faucets.

5. Upon information and belief, Applicant's goods are closely related to Opposer's goods.

6. Upon information and belief, Applicant's goods move in the same channels of trade and appeal to the same consumers as Opposer's goods.

7. The term "ECO" is a prefix used to indicate a reference to ecology and the environment. When applied to ecological products, the term "ECO" is merely descriptive, because it describes a desirable characteristic of the goods or services and the intended purpose, function or use of such goods and services.

8. The growing demand by consumers for products that use environmentally friendly and energy-efficient materials has spurred many industries to develop or adopt such products. As such, the term "ECO" is used pervasively across many industries to describe such products.

9. Because water is among the top resources to conserve, many companies in the plumbing industry have redesigned their plumbing products to support the mainstream green movement of economic and ecological conservation. As such, the term "ECO" is used pervasively in the plumbing industry to describe such products.

10. The letters "HET" are merely an abbreviation for high-efficiency toilets which have been defined by the plumbing industry and the Environmental Protection Agency as those

that use an average of 20 percent less water per flush than the industry standard. As such, “HET” is a descriptive term when applied to such toilets designed for water conservation.

11. Alternatively, the term “HET” is commonly used to refer to high-efficiency toilets and is thus generic.

12. High-efficiency toilets (HETs) are becoming a significant part of the marketplace as manufacturers recognize the compelling need for water-efficient products, and many water authorities and municipalities incorporate HETs into their toilet replacement and new construction programs.

13. Because the purpose of high-efficiency toilets (HETs) is to preserve water and energy in the environment, it is extremely likely that the term “ECO” would be used in conjunction with the descriptive term “HET.”

14. The phrase ECO HET is merely a composite of highly descriptive terms and is just as descriptive as its component parts.

15. The phrase ECO HET directly conveys an immediate idea of the ingredients, qualities and characteristics of Applicant’s goods, and the phrase is thus primarily merely descriptive.

16. Because there is widespread use of “ECO” in composite marks, purchasers have been conditioned to look to other elements of the mark as a means of distinguishing the source of goods or services in the marketplace. However, use of the descriptive term “HET” in the composite phrase ECO HET fails to distinguish the source of goods or services in the marketplace.

17. The field of “ECO” composite marks for plumbing products is crowded, and the use of the descriptive term “HET” next to “ECO” fails to distinguish the source of goods or services in the field.

18. Applicant’s use of the mark ECO HET has not commenced and thus has not been exclusive.

19. Applicant's use of the mark ECO HET has not commenced, and thus, Applicant has failed to establish any secondary meaning.

20. Consumers do not associate the mark ECO HET with a single source, and thus, the mark has no secondary meaning.

21. To grant trademark protection on a descriptive term where there has been no period of exclusive use, and where the mark ECO HET has acquired no secondary meaning would be contrary to public interest in promoting competition.

WHEREFORE, Opposer respectfully requests that the Trademark Trial and Appeal Board sustain the Opposition and refuse to register Applicant's ECO HET mark.

Respectfully submitted,

TOTO U.S.A., INC

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



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Dated: June 21, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing **NOTICE OF OPPOSITION** was served, via prepaid First Class Mail, on June 27, 2008 upon counsel for Applicant, Niagara Conservation Corporation, at the following address:

**Ezra Sutton, P.A.**  
**900 US HIGHWAY 9 N**  
**WOODBIDGE, NJ 07095-1025**  
**(732) 634-3520**

  
Inga De La Rosa

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