

ESTTA Tracking number: **ESTTA459524**

Filing date: **03/01/2012**

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	Fluidmaster, Inc.		
Entity	Corporation	Citizenship	California
Address	30800 Ranch Viejo Road San Juan Capistrano, CA 92675 UNITED STATES		

Attorney information	Richard P. Sybert; Susan B. Meyer Gordon & Rees LLP 101 West Broadway Suite 1600 San Diego, CA 92101 UNITED STATES rsybert@gordonrees.com, smeyer@gordonrees.com, mmims@gordonrees.com Phone:619-696-6700		
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### Applicant Information

Application No	85430931	Publication date	02/28/2012
Opposition Filing Date	03/01/2012	Opposition Period Ends	03/29/2012
Applicant	Lavelle Industries, Inc. 665 McHenry Street Burlington, WI 53105 UNITED STATES		

### Goods/Services Affected by Opposition

Class 011. First Use: 2011/01/00 First Use In Commerce: 2011/03/00  
All goods and services in the class are opposed, namely: toilet tank fill valves

### Grounds for Opposition

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

U.S. Application No.	85471431	Application Date	11/14/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PERFORMAX		

Design Mark	<b>PERFORMAX</b>
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 2011/10/03 First Use In Commerce: 2011/10/03 toilet fill valves

Attachments	85471431#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition Lavelle.pdf ( 12 pages )(120729 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 Overnight Courier on this date.

Signature	/Susan B. Meyer/
Name	Richard P. Sybert; Susan B. Meyer
Date	03/01/2012

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

In the Matter of Trademark Application )  
Serial No. 85430931 )  
Filed: September 23, 2011 )  
Published: February 28, 2012 )  
By: Lavelle Industries, Inc. )  
For the Trademark: MAXPERFORMANCE )  
\_\_\_\_\_) Opposition No. \_\_\_\_\_  
FLUIDMASTER, INC., )  
a California corporation )  
Opposer, )  
v. )  
LAVELLE INDUSTRIES, INC. )  
a Delaware corporation )  
Applicant. )  
\_\_\_\_\_)

NOTICE OF OPPOSITION

Fluidmaster, Inc., having a place of business at 30800 Ranch Viejo Road, San Juan Capistrano, California 92675 (hereinafter “Opposer”) believes that it will be damaged by registration of the mark MAXPERFORMANCE shown in Application Serial No. 85430931 as published in the Official Gazette on February 28, 2012, and hereby opposes said application. As grounds for opposition, it is alleged that:

1. In 2009, Opposer began using the mark “MAX” as part of its “MAX Professional Series” of innovative toilet valve products.
2. Opposer developed its PERFORMAX mark and line of products in connection with its MAX Professional Series of toilet products and has continuously used the PERFORMAX mark since at least October 3, 2011.
3. Thus, Opposer is the owner of the marks PERFORMAX, designating toilet fill valves, and MAX, designating its Professional Series of toilet products.

4. Opposer has filed an application for the mark PERFORMAX with the United States Patent and Trademark Office, Application Serial No. 85471431. A print-out from the USPTO TARR database reflecting this application is attached as EXHIBIT A.

5. Opposer's PERFORMAX and MAX marks have been conspicuously applied to Opposer's goods, which have been extensively advertised, promoted, distributed and sold in interstate commerce in the United States such that the public recognizes that products bearing the PERFORMAX and MAX mark emanate from one source, namely Fluidmaster, Inc.

6. By virtue of Opposer's extensive advertising, distribution, promotion and sales of its goods bearing the PERFORMAX and MAX marks, the public has come to rely upon the marks to identify and distinguish Opposer's superior goods from the goods of others. The goodwill and reputation associated with the PERFORMAX and MAX marks are therefore extremely valuable assets belonging exclusively to Opposer.

7. By the application herein opposed, Lavelle Industries, Inc. (hereinafter "Applicant") seeks to register the mark MAXPERFORMANCE in International Class 011 for toilet tank fill valves. A print-out from the USPTO TARR database reflecting this application is attached as EXHIBIT B.

8. Applicant's proposed mark MAXPERFORMANCE so resembles Opposer's registered trademarks PERFORMAX and MAX that, when used on or in connection with the goods recited in the application herein opposed, it is likely to cause confusion, or to cause mistake, or to deceive as to the source, sponsorship or approval of said goods.

9. On information and belief, Applicant's first use of its MAXPERFORMANCE mark was later than Opposer's first use of its PERFORMAX and MAX marks.

10. Opposer will be damaged by registration and use of the mark MAXPERFORMANCE because such registration and use is likely to confuse consumers

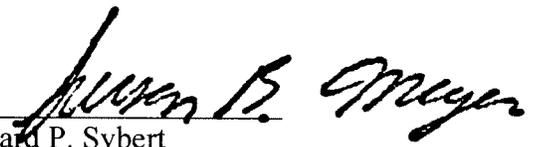
and damage Opposer's goodwill and reputation associated with its PERFORMAX and MAX marks.

Wherefore, because Opposer avers and believes that it will be damaged by registration of Applicant's mark, Opposer prays that Application Serial No. 85430931 be denied.

This Notice of Opposition is being submitted electronically. The required fee is Authorized to be charged against the Deposit Account No. 501990 of the Attorney for Opposer.

Respectfully submitted,

DATE: March 1, 2012

By:   
Richard P. Sybert  
Susan B. Meyer  
Attorneys for Opposer

GORDON & REES LLP  
101 West Broadway, Suite 1600  
San Diego, California 92101-8217  
Telephone: (619) 696-6700  
Facsimile: (619) 696-7124

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

In the Matter of Trademark Application )  
Serial No. 85430931 )  
Filed: September 23, 2011 )  
Published: February 28, 2012 )  
By: Lavelle Industries, Inc. )  
For the Trademark: MAXPERFORMANCE )  
\_\_\_\_\_) Opposition No. \_\_\_\_\_)  
FLUIDMASTER, INC., )  
a California corporation )  
Opposer, )  
v. )  
LAVELLE INDUSTRIES, INC. )  
a Delaware corporation )  
Applicant. )  
\_\_\_\_\_)

**CERTIFICATE OF SERVICE**

I hereby certify that **NOTICE OF OPPOSITION** is being served by FEDERAL EXPRESS Mail, to Addressee on March 1, 2012, as follows:

**Federal Express No. 793287631547**  
Rhonda Sullivan, Agent for Service of Process  
Lavelle Industries, Inc.  
665 McHenry Street  
Burlington, Wisconsin 53105

Date of Mailing: March 1, 2012

  
Monica L. Mims

# **EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-02-29 19:26:05 ET**

**Serial Number:** 85471431 Assignment Information      Trademark Document Retrieval

**Registration Number:** (NOT AVAILABLE)

**Mark**

**PERFORMAX**

**(words only):** PERFORMAX

**Standard Character claim:** Yes

**Current Status:** New application will be assigned to an examining attorney approximately 3 months after filing date.

**Date of Status:** 2011-11-18

**Filing Date:** 2011-11-14

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** (NOT AVAILABLE)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 042 -New Application Processing

**Date In Location:** 2011-11-18

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Fluidmaster, Inc.

**Address:**

Fluidmaster, Inc.

30800 Rancho Viejo Road  
San Juan Capistrano, CA 92675  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** California  
**Phone Number:** 619-696-6700

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**GOODS AND/OR SERVICES**

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**International Class:** 011  
**Class Status:** Active  
toilet fill valves  
**Basis:** 1(a)  
**First Use Date:** 2011-10-03  
**First Use in Commerce Date:** 2011-10-03

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

- 2011-11-18 - Notice Of Pseudo Mark Mailed
- 2011-11-17 - New Application Office Supplied Data Entered In Tram
- 2011-11-17 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**  
Susan B. Meyer

**Correspondent**  
SUSAN B. MEYER  
GORDON & REES, LLP  
101 W BROADWAY STE 1600  
SAN DIEGO, CA 92101-8217  
Phone Number: 619-696-6700



# **EXHIBIT B**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-02-29 19:26:59 ET**

**Serial Number:** 85430931 Assignment Information      Trademark Document Retrieval

**Registration Number:** (NOT AVAILABLE)

**Mark**

**MAXPERFORMANCE**

**(words only):** MAXPERFORMANCE

**Standard Character claim:** Yes

**Current Status:** Application has been published for opposition. The opposition period begins on the date of publication.

**Date of Status:** 2012-02-28

**Filing Date:** 2011-09-23

**The Information will be/was published in the Official Gazette on 2012-02-28**

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 110

**Attorney Assigned:**  
MIZELLE HOWARD DEZMONA JULYE

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2012-01-25

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Lavelle Industries, Inc.

**Address:**

Lavelle Industries, Inc.  
665 McHenry Street  
Burlington, WI 53105  
United States

**Legal Entity Type:** Corporation**State or Country of Incorporation:** Delaware

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**GOODS AND/OR SERVICES**

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**International Class:** 011**Class Status:** Active

toilet tank fill valves

**Basis:** 1(a)**First Use Date:** 2011-01-00**First Use in Commerce Date:** 2011-03-00

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2012-02-28 - Official Gazette Publication Confirmation E-Mailed

2012-02-28 - Published for opposition

2012-02-08 - Notification Of Notice Of Publication E-Mailed

2012-01-18 - Approved for Pub - Principal Register (Initial exam)

2012-01-11 - Assigned To Examiner

2011-09-30 - Notice Of Pseudo Mark Mailed

2011-09-29 - New Application Office Supplied Data Entered In Tram

2011-09-27 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Patrick M. Bergin

**Correspondent**

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DAVIS & KUELTHAU, S.C.  
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