

ESTTA Tracking number: **ESTTA520175**

Filing date: **02/06/2013**

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	Spiraledge, Inc.
Granted to Date of previous extension	02/06/2013
Address	110 Rio Robles San Jose, CA 95134 UNITED STATES

Attorney information	Kathleen A. Skinner Beeson Skinner Beverly, LLP One Kaiser Plaza Suite 750 Oakland, CA 94612 UNITED STATES bsb@bsbllp.com,kskinner@bsbllp.com Phone:510-832-8700
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**Applicant Information**

Application No	85616734	Publication date	10/09/2012
Opposition Filing Date	02/06/2013	Opposition Period Ends	02/06/2013
Applicant	Premium Sales Network, LLC 6101 45th Street North St. Petersburg, FL 33714 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 007. All goods and services in the class are opposed, namely: Counter-current swimming machines for use in swimming pools to enable swimming in place against an adjustable counter-current, featuring pumps, motor, and adjustable current director outlets
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**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. Registration No.	4077618	Application Date	02/08/2005
Registration Date	12/27/2011	Foreign Priority Date	NONE
Word Mark	AQUATICA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2008/09/25 First Use In Commerce: 2008/09/25 On-line retail store and wholesale store services featuring swimwear, clothing, and accessories; on-line directories featuring information relating to water-related activities

Attachments	78563172#TMSN.jpeg ( 1 page )( bytes ) 2013-02-06 Notice of opposition-bw.pdf ( 7 pages )(694828 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	/Kathleen A. Skinner/
Name	Kathleen A. Skinner
Date	02/06/2013

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

Atty Docket: K3041-201.OP2	)	
	)	
Spiraledge, Inc.	)	OPPOSITION NO. _____
	)	
Opposer,	)	Appln. Serial No. 85/616,734
	)	
v.	)	MARK: AQUATICA
	)	
Premium Sales Network, LLC	)	Publication Date: 10/9/2012
	)	
Applicant.	)	Ext. to Oppose Granted to 2/6/2013
_____	)	

NOTICE OF OPPOSITION

Opposer, Spiraledge, Inc., a corporation of Delaware (hereinafter “Opposer”), with a business address at 110 Rio Robles, San Jose, CA 95134, hereby opposes registration of the mark AQUATICA in class 7 that is the subject of Application Serial No. 85/616,734 filed by Premium Sales Network, LLC, a limited liability company of Florida (hereinafter “Applicant”), located at 6101 45<sup>th</sup> Street North, St. Petersburg, FL 33714, and requests that registration to Applicant be refused.

As grounds for this opposition, Opposer alleges:

1. Opposer is the owner of the service mark AQUATICA and Reg. No. 4,077,618 therefor, issued December 27, 2011 for “on-line retail store and wholesale store services featuring swimwear, clothing, and accessories; on-line directories featuring information relating to water-related activities” in class 35. Exhibit A attached hereto is a printout of the USPTO TESS record showing Opposer’s ownership of this registration for AQUATICA. Opposer’s AQUATICA mark is used in its on-line store, on the goods it sells and on its searchable directory of water-related activities, such as swimming pools, for all 50 states. Opposer’s mark

AQUATICA is known throughout the United States for its association with swimming-related goods and services, and the mark has acquired substantial goodwill and value for Opposer since long prior to the filing date of the opposed application and prior to any use of the mark AQUATICA by Applicant.

2. Opposer's Registration No. 4,077,618 is valid, subsisting, and in full force and effect. The registration is based on a filing date of February 8, 2005, according it nationwide priority as of that date.

3. Applicant has filed an intent to use application to register AQUATICA as a trademark on the following goods in class 7: "Counter-current swimming machines for use in swimming pools to enable swimming in place against an adjustable counter-current, featuring pumps, motor and adjustable current director outlets", which application was assigned number 85/616,734. This application was filed on May 4, 2012, well after Opposer's filing date for Registration No. 4,077,618 for AQUATICA.

4. On information and belief, Applicant made no use of the AQUATICA mark in commerce prior to February 8, 2005 and Opposer thus has priority over Applicant.

5. Applicant's mark AQUATICA is identical in sound, appearance and overall commercial impression to Opposer's previously used and registered mark AQUATICA and is likely, when applied to the goods set forth in Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act. Both marks and their products and services are advertised and sold on the internet to parties interested in swimming and in view of the identical nature of the marks, any use of the mark AQUATICA by Applicant is likely to cause confusion or to cause mistake or to deceive the public as to the source of Applicant's goods or to cause the public to believe that the goods sold by Applicant emanate from or are otherwise sponsored or endorsed by Opposer, in violation of Section 2(d) of

the Lanham Act.

6. By reason of the foregoing, Opposer will be seriously damaged by the registration of the mark AQUATICA to Applicant.

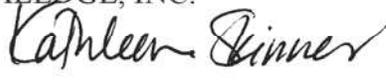
WHEREFORE, Opposer prays that this opposition be sustained in favor of the Opposer, and that registration of application Serial No. 85/616,734 be refused.

Respectfully submitted,

SPIRALEDGE, INC.

Dated: February 6, 2013

By



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[kskinner@bsbllp.com](mailto:kskinner@bsbllp.com)

**CERTIFICATE OF MAILING**

I hereby certify that a copy of this Notice of Opposition was served on counsel for Applicant on the date below by mailing the same via first class mail, postage prepaid, to:

Anton J. Hopen  
Smith & Hopen, P.A.  
180 Pine Ave. N.  
Oldsmar, Florida 34677-4629

and by emailing the same to:  
[trademarks@smithhopen.com](mailto:trademarks@smithhopen.com)

DATED: February 6, 2013

\_\_\_\_\_/Kathleen A. Skinner/\_\_\_\_\_

# Exhibit A

**Trademarks > Trademark Electronic Search System (TESS)**

TESS was last updated on Tue Feb 5 05:04:00 EST 2013

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**Word Mark** AQUATICA

**Goods and Services** IC 035. US 100 101 102. G & S: On-line retail store and wholesale store services featuring swimwear, clothing, and accessories; on-line directories featuring information relating to water-related activities. FIRST USE: 20080925. FIRST USE IN COMMERCE: 20080925

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 78563172

**Filing Date** February 8, 2005

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** January 24, 2006

**Registration Number** 4077618

**Registration Date** December 27, 2011

**Owner** (REGISTRANT) SPIRALEDGE, INC. CORPORATION DELAWARE 110 RIO ROBLES SAN JOSE CALIFORNIA 95134

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Kathleen A. Skinner

**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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