

TTAB



BOX TTAB - NO FEE
TRADEMARK
4030-0162L

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

IN THE TRADEMARK APPLICATION OF
Green Energy Inc.

Application No.: 78/336,956
Filed: December 5, 2003
Mark: SUNWAVE
Class: Int'l. Class 11

Published in the Official
Gazette dated September 14, 2004

SMARTPOOL, INC.)
 Opposer,)
 v.)
GREEN ENERGY INC.)
 Applicant or Registrant)

Opposition No.
(Serial No. 78/336,956)

ATTN: BOX TTAB

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

January 10, 2004

Dear Sir:

Enclosed herewith is an original and duplicate copy of a Notice of Opposition for the above-identified application. Also enclosed is a check in the amount of \$300.00.

BIRCH, STEWART, KOLASCH & BIRCH, LLP.

By James M. Slattery
James M. Slattery
Attorney for Opposer
P.O. Box 747
Falls Church, Virginia 22040-0747
Telephone: 703-205-8000



01-10-2005

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NOTICE OF OPPOSITION

SMARTPOOL INC. (hereinafter, "Opposer"), a corporation of Delaware, with an address at 575 Prospect Street, Lakewood, New Jersey 08701, who is the owner of the registered trademark "SUNHEATER" under U.S. Registration No. 2,731,607 registered on July 1, 2003, and the mark "SUNSMART and Design" under Application No. 78/208,202 filed on January 29, 2003, hereby opposes registration of the mark "SunWave" by Green Energy Inc. (hereinafter

"Applicant"). The Opposer believes that it will be damaged by registration of the mark shown in the above-identified application Serial No. 78/336,956 (hereinafter the "Opposed application") and hereby opposes the same.

The Opposer alleges solely for the purpose of this proceeding, as the grounds for opposition, the following:

1. Prior to the filing date of the opposed application, Opposer adopted and used, and is still using in commerce which may be lawfully regulated by Congress, among several states, and has not abandoned its mark "SUNHEATER and Design" as a trademark in connection with the following goods:

--swimming pool heating systems comprised of solar and naturally heated panels, sensors, valves, switches, transmitters, and electrical connectors --.

The goods of the Opposer are identical and/or closely related to the goods described in the opposed application.

2. Opposer is the owner of U.S. Registration No. 2,731,607 for the mark "SUNHEATER and Design" used in connection with --swimming pool heating systems comprised of solar and naturally heated panels, sensors, valves, switches, transmitters, and electrical connectors, in International Class 11 -- The mark was registered on July 1, 2003.

3. Opposer has been engaged for several years, and is presently engaged, in providing swimming pool heating system and parts and accessories thereof, and has come to be recognized by the general public as the source of origin of the goods which bear the mark "SUNHEATER and Design."

4. Opposer has for a considerable period of time used the mark "SUNHEATER and Design" with respect to swimming pool heating systems and parts and accessories. Opposer uses the mark "SUNHEATER and Design" by applying the mark to the goods, cartons and containers for the goods, labels, stickers and tags affixed to the goods.

5. Before the filing date of the Opposed mark, Opposer filed a trademark application for the mark "SUNSMART" under Application No. 78/208,202 to be used in connection with plastic collectors through which swimming pool water is circulated and heated by the sun and returned to the swimming pool through existing plumbing systems, in International Class 11.

6. Opposer alleges, upon information and belief, that the goods of Applicant and the goods of Opposer are or are likely to be offered to the same perspective customers and are likely to be confused, mistaken, or deceived into the belief, contrary to the fact that Applicant's goods originate with and/or are in some way sponsored or approved by Opposer, all to Opposer's irreparable damage and loss and/or dilution of its valuable trademark.

7. Long prior to the filing date of December 5, 2003, Opposer has sold goods under the mark "SUNHEATER and Design" in commerce which may be lawfully regulated by Congress, and continues to sell the goods under the mark, whereby Opposer's mark has come to be known and recognized as trademarks which identify to the general public that the goods originate from the Opposer. Opposer has continuously used its mark "SUNHEATER and Design" and will use the mark "SUNSMART and Design" in interstate commerce throughout the United States.

8. Opposer has expended considerable effort, time and money in selling, promoting and commercializing the goods provided by the Opposer in commerce throughout the United States under the mark "SUNHEATER and Design" and such goods have become widely known and have come to be known to members of the general public as emanating from the Opposer.

9. By virtue of Opposer's long and continuous use of its mark in interstate commerce with the United States, the general public has come to recognize and presently does recognize the mark "SUNHEATER and Design" identifying the goods originating exclusively with Opposer.

10. Because of the aforesaid adoption and use by Opposer of its marks "SUNHEATER and Design" and "SUNSMART and Design" in connection with the aforementioned goods, the general public utilizing Applicant's goods, said to be swimming pool and spa heat pumps, and parts therefor, in the opposed

mark, are likely to be confused, be mistaken, or to be deceived into the belief contrary to the fact, that such goods of Applicant emanate from, or are sponsored by Opposer, all to Opposer's irreparable damage.

11. Opposer's marks "SUNHEATER and Design" and "SUNSMART and Design" are substantially identical in appearance to the opposed mark "SunWave" for which Applicant seeks registration; this identity in appearance between the Applicant's mark and the Opposer's marks is a resemblance so close as to be likely to cause confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Trademark Act of 1946, all to Opposer's irreparable damage and loss and/or dilution of the goodwill symbolized by Opposer's valuable marks.

12. Applicant did not allege use of the mark "SunWave" in interstate commerce within the United States of the mark in connection with the goods described in the opposed application as a trademark in commerce which may be lawfully regulated by Congress. The opposed application is based upon a bona fide intention to use the mark in commerce in the United States.

13. Any use by Applicant of "SunWave" in connection with the goods described in the opposed application is without the Opposer's consent or permission.

14. Applicant is not entitled to the registration sought in the opposed application for the reason that Applicant is not the owner of the mark sought to

be registered within the meaning of Section 1 of the Trademark Act of 1946 and is not entitled to the exclusive use of the mark "SunWave" in commerce which may be lawfully regulated by Congress among the several states, because of the prior use of confusingly similar marks by Opposer.

15. Opposer further alleges that Applicant was not entitled to the exclusive use of the alleged mark sought to be registered herein, either at or since the date of Applicant's application for registration thereof or at any other time since Opposer adopted and continuously uses its trademarks.

16. Opposer further believes, and therefore avers, that the registration of the alleged mark sought to be registered by Applicant herein for swimming pool and spa heat pumps, and parts therefore, recited in the opposed application, would not only work an injustice to Opposer, since the mark and goodwill are intimately associated with the Opposer, but would place in the hands of the Applicant the means for securing trade for its goods unjustly and unfairly, as respecting the rights of the Opposer, and therefore registration of the alleged mark should be denied and refused.

17. By reason of the aforesaid, the Opposer would be damaged within the meaning of Section 13 of the Trademark Act of 1946.

WHEREFORE, the Opposer prays that this Notice of Opposition be referred to the Trademark Trial and Appeal Board for the purposes of determining the question of right of registration of its alleged mark above

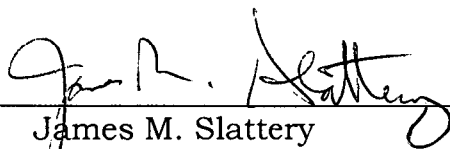
identified that the Notice of Opposition be sustained and the Applicant adjudged not entitled to the registration for which it has made application; and that Opposer be granted such further relief as the circumstances of the case may warrant and require.

Opposer submits herewith the required filing fee in the amount of \$300.00.

This Notice of Opposition is filed with a copy of the Certificate of Registration under Reg. No. 2,731,607.

Please address all further communications to James M. Slattery, Esquire, of Birch, Stewart, Kolasch and Birch, LLP, P.O. Box 747, Falls Church, Virginia 22040-0747.

BIRCH, STEWART, KOLASCH & BIRCH, LLP.

By 
James M. Slattery
Attorney for Opposer

Date: January 10, 2005

BIRCH, STEWART, KOLASCH & BIRCH, LLP.
P.O. Box 747
Falls Church, Virginia 22040-0747
Telephone: 703-205-8000

Int. Cl.: 11

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

United States Patent and Trademark Office

Reg. No. 2,731,607

Registered July 1, 2003

**TRADEMARK
PRINCIPAL REGISTER**

SUNHEATER

SMARTPOOL INC. (DELAWARE CORPORATION)
575 PROSPECT STREET
LAKEWOOD, NJ 08701

TRANSMITTERS, AND ELECTRICAL CONNECTORS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 10-0-1998; IN COMMERCE 10-0-1998.

FOR: SWIMMING POOL HEATING SYSTEMS
COMPRISED OF SOLAR AND NATURALLY HEATED
PANELS, SENSORS, VALVES, SWITCHES,

SER. NO. 76-396,463, FILED 4-16-2002.

WON TEAK OH, EXAMINING ATTORNEY