

ESTTA Tracking number: **ESTTA77696**

Filing date: **04/24/2006**

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	Yamaha Motor Corporation, U.S.A.
Granted to Date of previous extension	04/23/2006
Address	6555 Katella Avenue Cypress, CA 90630 UNITED STATES

Attorney information	Catherine J. Holland Knobbe, Martens, Olson & Bear LLP 2040 Main Street 14th Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com Phone:949-760-0404
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### Applicant Information

Application No	76625787	Publication date	10/25/2005
Opposition Filing Date	04/24/2006	Opposition Period Ends	04/23/2006
Applicant	Pro Aluminum, Inc. 640 Bercut Drive, Suite A Sacramento, CA 95814 UNITED STATES		

### Goods/Services Affected by Opposition

Class 012. All goods and services in the class are opposed, namely: all-terrain vehicle parts, namely, bumpers
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Attachments	YAMAU1042M.PDF ( 7 pages )(751974 bytes )
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Signature	/CJH/
Name	Catherine J. Holland
Date	04/24/2006

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

Yamaha Motor Corporation, U.S.A.,

Opposer,

v.

Pro Aluminum, Inc.,

Applicant.

Application No. 76/625,787

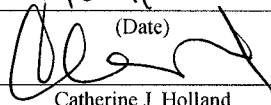
Mark: PRO-Y

Opposition No. \_\_\_\_\_

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website located at <http://esta.uspto.gov/> on:

4/24/06

(Date)



Catherine J. Holland

**NOTICE OF OPPOSITION**

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

Dear Sir:

Opposer Yamaha Motor Corporation, U.S.A., a California corporation, located and doing business at 6555 Katella Ave, Cypress, California 90630 (hereinafter "Opposer") believes that it will be, and has been, damaged by the mark shown in Serial No. 76/625,787 filed on December 22, 2004 by Pro Aluminum, Inc. (hereinafter "Applicant"), and hereby opposes registration of the same.

A description of Applicant's application is as follows:

Mark:	PRO-Y (hereinafter "Applicant's Mark")
Serial No.:	76/625,787
Filed:	December 22, 2004
Published:	October 25, 2005
Class:	12
Goods:	All terrain vehicles and motorcycle parts

As grounds of opposition, it is alleged that:

1. For many years, and long prior to the filing date of the subject application, Opposer, its parent and related corporations (hereinafter collectively referred to as "Yamaha") have designed, developed, manufactured, marketed, promoted and sold motor vehicles and related parts and accessories, including all terrain vehicles and motorcycles and their related parts and accessories (hereinafter "Yamaha's Goods"), in the United States and throughout the world.

2. Yamaha owns and uses numerous marks in connection with Yamaha's Goods in the United States, including marks which begin with the letter "Y", including the marks YAMAHA, YAMALUBE, YAMACOOLER, Y'S GEAR, YPVS, YBT, YEMS, YFZ, YZ, YZ450, YZ250, YZ250F, YZ125, YZ85, YZF, YZF450, YZF-R1, YZF-R1 LE, YZF-R6, YZF-R6S YZF600R (hereinafter "Yamaha's Marks"). In the motor vehicle industry, the letter "Y" refers to Yamaha, and vehicles and parts designated with a mark which prominently features the letter "Y" are known to originate from Yamaha.

3. Yamaha's use of Yamaha's Marks has been valid and continuous since at least as early as the dates identified in the succeeding paragraphs, and has not been abandoned. Yamaha's Marks are symbolic of extensive goodwill and consumer recognition built up by Yamaha through time, effort and great expense in sales, advertising and promotion. Yamaha's

Marks, by virtue of substantial use, have acquired great value as identifiers of Yamaha and of Yamaha's Goods, and distinguish Yamaha and Yamaha's Goods from the goods and services of others.

4. Yamaha relies on its common law trademark rights in Yamaha's Marks acquired in the United States and not abandoned.

5. Yamaha is the owner of incontestable United States Trademark Registration No. 2,017,999 for the mark YAMAHA for "structural parts for motorcycles; motorcycle frames, motorcycle engines, motorcycle suspensions; motor scooters and structural parts therefor; snowmobiles and structural parts therefor; personal watercraft, jet-propelled water vehicles, water scooters and structural parts therefor; all-terrain vehicles and structural parts therefor; golf carts and structural parts therefor in International Class 12" which was filed on February 20, 1996, and registered on the Principal Register on November 19, 1996, with a date of first use anywhere as early as February 11, 1955, and first use in commerce as early as April 28, 1958.

6. Yamaha is the owner of incontestable United States Trademark Registration No. 688,208 for the mark YAMAHA for "motorcycles in International Class 12" which was filed on March 31, 1959 and registered on the Principal Register on November 17, 1959, with a date of first use anywhere as early as February 11, 1955 and first use in commerce as early as April 28, 1958.

7. Yamaha is the owner of incontestable United States Trademark Registration No. 1,150,112 for the mark YAMAHA for "tire sealers, surface protectants and sealants and bonding agents in International Class 1," "mud and grease releaser, electric contact and spark plug cleaner, plastic cleaner and plastic polish in International Class 3," and "lubricating oils for motorized vehicles and parts thereof in International Class 4," which was filed on December 11,

1978 and registered on the Principal Register on April 7, 1981, with dates of first use anywhere and first use in commerce as early as August 1971 for Class 1, 1975 for Class 3, and October 1966 for Class 4.

8. Yamaha is the owner of incontestable United States Trademark Registration No. 1,131,588 for the mark YAMALUBE for “lubricating oils for motorized vehicles in International Class 4” which was filed on December 11, 1978, and registered on the Principal Register on March 11, 1980, with a date of first use anywhere and first use in commerce as early as October 1966.

9. Yamaha is the owner of United States Trademark Registration No. 2,488,645 for the mark YAMACOOLER for “insulated containers for food and beverages in International Class 21” which was filed on July 1, 1999, and registered on the Principal Register on September 11, 2001, with a date of first use anywhere and first use in commerce as early as September 1999.

10. Yamaha is the owner of United States Trademark Registration No. 2,931,681 for the mark YPVS for “snowmobiles, snowmobile engines and structural parts therefor; motorcycles, motorcycle engines and structural parts therefor in International Class 12” which was filed on December 2, 2002, and registered on the Principal Register on March 8, 2005, with a date of first use anywhere and first use in commerce as early as August 1997.

11. Yamaha is the owner of United States Trademark Registration No. 2,924,131 for the mark YBT for “engine generators and parts and accessories therefor in International Class 7” which was filed on October 16, 2002, and registered on the Principal Register on February 1, 2005, with a date of first use anywhere as early as October 2002 and first use in commerce as early as December 2002.

12. Yamaha is the owner of United States Trademark Registration No. 3,002,516 for the mark YEMS for “engine control systems for personal watercraft comprising engine control modules, central processing units, pickup cows, sensors for throttle position, intake air temperature and pressure, cam position, and engine temperature; switches for engine stop, oil pressure, slant detection and steering; thermo switches for engine and exhaust; fuel injectors, ignition cows, diagnostic systems, multifunction meters, fuel pump and main relays, stepping motor in International Class 9” which was filed on October 11, 2002, and registered on the Principal Register on September 27, 2005, with a date of first use anywhere and first use in commerce as early as February 2003.

13. Yamaha is the owner of United States Trademark Registration No. 2,843,959 for the mark YFZ for “all terrain vehicles and structural parts therefor in International Class 12” which was filed on October 9, 2002, and registered on the Principal Register on May 18, 2004, with a date of first use anywhere as early as June 4, 2003 and first use in commerce as early as July 2003.

14. Yamaha is the owner of United States Trademark Registration No. 2,740,519 for the mark YZ for “motorcycles and structural parts therefor in International Class 12” which was filed on August 29, 2002, and registered on the Principal Register on July 22, 2003, with a date of first use anywhere and first use in commerce as early as April 1973.

15. Yamaha is the owner of United States Trademark Registration No. 2,406,307 for the mark YZF for “motorcycles, motor scooters and structural parts therefor in International Class 12” which was filed on December 30, 1999, and registered on the Principal Register on

November 21, 2000, with a date of first use anywhere as early as December 1992 and first use in commerce as early as December 1994.

16. Yamaha is the owner of United States Trademark Application 76/445,566 for the mark Y'S GEAR for "motorcycles, scooters and structural parts therefor; accessories for motorcycles, scooters and related structural parts, namely, luggage carriers, windshields, front baskets, rear boxes, saddle bags, backrests, seat covers and fitted body covers in International Class 12," which was filed on August 30, 2002.

17. Yamaha relies on the registrations identified in Paragraphs 5-16 above, which are valid, subsisting, unrevoked and uncancelled. As such, the registrations constitute *prima facie* evidence of the validity of Yamaha's Marks and of the registration thereof, and of Yamaha's ownership of the marks shown therein, and of Yamaha's exclusive rights to use Yamaha's Marks in commerce in connection with the goods identified therein, without condition or limitation. Such registrations also constitute use of Yamaha's Marks, conferring right of priority, nationwide in effect, as of the filing dates thereof, as well as notice to Applicant of Yamaha's claim of ownership of Yamaha's Marks shown therein.

18. Yamaha's registrations derive from applications filed in the United States Patent and Trademark Office on dates significantly prior to the filing date of Applicant's subject application. In addition, Yamaha's first use of Yamaha's Marks significantly predates the filing date of Applicant's subject application.

19. In view of the similarity of Yamaha's Marks and Applicant's Mark and the similar and related nature of the goods of the respective parties, it is alleged that Applicant's Mark so resembles Yamaha's Marks as to be likely to cause confusion, mistake or deception.

20. Based on the foregoing, if Applicant is permitted to register Applicant's Mark, Applicant's corresponding *prima facie* exclusive right to use its mark in nationwide commerce will conflict with Yamaha's lawful, prior and *prima facie* exclusive rights to use Yamaha's Marks nationwide.

21. In view of Yamaha's prior rights in Yamaha's Marks, Applicant is not entitled to registration of Applicant's Mark pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d).

WHEREFORE, Opposers pray that Application Serial No. 76/625,787 be rejected and stricken, that no registration issue thereon to Applicant, and that this opposition be sustained in favor of Opposer.

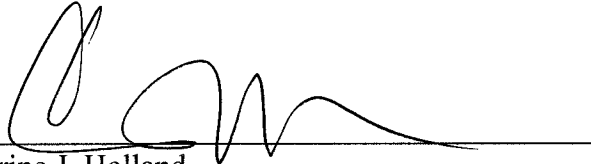
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: \_\_\_\_\_

4/24/06

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

  
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