Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA223863**

Filing date: **07/14/2008**

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	STRETCHLINE INTELLECTUAL PROPERTIES LIMITED
Granted to Date of previous extension	07/23/2008
Address	Offshore Incorporation Centre Road Town Tortola, VIRGIN ISLANDS, BRITISH

Attorney information	Gene K. Park Morgan, Lewis & Bockius LLP 1111 Pennsylvania Avenue, N.W. Attention: TMSU Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, apolott@morganlewis.com, gene.park@morganlewis.com, ateixeira@morganlewis.com Phone:202-739-5253

Applicant Information

Application No	77295997	Publication date	03/25/2008
Opposition Filing Date	07/14/2008	Opposition Period Ends	07/23/2008
Applicant	Wellman, Inc. 1040 Broad Street, Suite 302 Shrewsbury, NJ 07702 UNITED STATES		

Goods/Services Affected by Opposition

Class 022. First Use: 2007/08/27 First Use In Commerce: 2007/08/27 All goods and services in the class are opposed, namely: SYNTHETIC TEXTILE FIBERS

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Trademark Act section 13

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3363250	Application Date	05/18/2005
Registration Date	01/01/2008	Foreign Priority Date	NONE
Word Mark	FORTITUBE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2005/06/30 First Use In Commerce: 2005/06/30 Elastic fabrics sold as an integral part of bras and other undergarments

Attachments	78632377#TMSN.jpeg (1 page)(bytes) Stretchline - Wellman Notice of Opposition.pdf (4 pages)(187910 bytes)

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	/Gene K. Park/
Name	Gene K. Park
Date	07/14/2008

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

STRETCHLINE INTELLECTUAL PROPERTIES LIMITED Opposer, v. WELLMAN, INC., Applicant.	In re Application Serial No. 77/295,997 Published: March 25, 2008 Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Stretchline Intellectual Properties Limited, a corporation organized and existing under the laws of the British Virgin Islands, having its registered address at Offshore Incorporation Centre Road Town, Tortola, British Virgin Islands ("Opposer"), believes that it will be damaged by registration of the mark FORTITUDE, covering "synthetic textile fibers," shown in Application Serial No. 77/295,997, and owned by Wellman, Inc. ("Applicant"). Opposer hereby opposes the same under the provisions of Sections 2(d) and 13 of the Trademark Act of July 5, 1946 (the "Lanham Act"), 15 U.S.C. §§ 1052(d), 1063 and 1125(c).

As grounds for opposition, Opposer alleges that:

1. Opposer is the owner, by assignment, of all right, title and interest in and to the FORTITUBE trademark and the registration therefor (U.S. Trademark Registration No. 3363250), issued by the United States Patent and Trademark Office to Opposer's affiliate, Stretchline Holdings Limited.

2. Opposer's FORTITUBE registration is valid and subsisting, in full force and effect, and constitutes *prima facie* evidence of Opposer's exclusive right to use the mark in commerce in connection with the goods specified in the registration.

3. Opposer and its predecessor-in-interest, Stretchline Holdings Limited have used the FORTITUBE mark since at least as early as 2005 in connection with synthetic fabrics used as an integral component of clothing, including, but not limited to, undergarments, body wear, shape wear and athletic and active wear.

4. Opposer's FORTITUBE mark is symbolic of the goodwill and consumer recognition that Opposer has established through expenditures of time, effort and other resources in the advertising and promotion of the products that are sold bearing the FORTITUBE mark.

5. On October 4, 2007, Applicant filed an application for federal registration of the mark FORTITUDE, Application Serial No. 77/295,997, for "synthetic textile fibers," claiming a first use date of August 27, 2007. Applicant's mark was published for opposition in the *Official Gazette* on March 25, 2008.

6. The Trademark Trial and Appeal Board extended the opposition period for Applicant's FORTITUDE application by granting Opposer's timely request for an extension. The opposition period is currently set to expire on July 23, 2008. Opposer, therefore, timely files this opposition.

7. Applicant's mark differs from Opposer's mark by only a single character (FORTITUDE vs. FORTITUBE) that are themselves quite similar in sight and sound, and the "synthetic textile fibers" listed in Applicant's FORTITUDE application are closely related to the goods identified by Opposer's FORTITUBE mark.

8. Through its continuous use of the FORTITUBE mark since at least as early as 2005,

Opposer has acquired exclusive rights in the FORTITUBE mark that, upon information and belief, predate any rights upon which Applicant may rely (*i.e.*, Applicant's August 2007 first use date or October 2007 filing date). Opposer's rights to the FORTITUBE mark are superior to those of Applicant.

9. Opposer believes it will be damaged by registration of Applicant's FORTITUDE mark under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because consumers, familiar with Opposer's FORTITUBE mark identifying synthetic fabrics used in a wide variety of clothing and apparel, are likely to believe, mistakenly, that Applicant or its products emanate from, are sponsored or authorized by, or are otherwise associated or affiliated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer believes it will be damaged by registration of the FORTITUDE mark shown in Application Serial No. 77/295,997 and respectfully requests that the registration sought by Applicant be refused.

Dated: July 14, 2008

Respectfully submitted,

By: _____

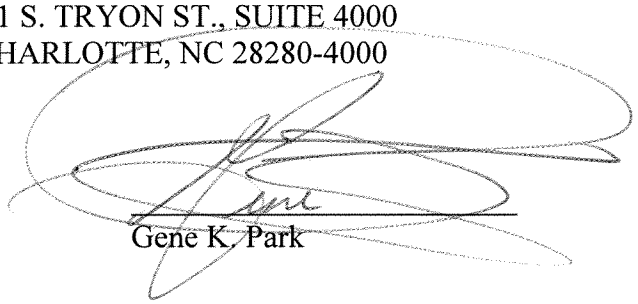
Anita B. Polott
Gene K. Park
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel: (202) 739-3000
Fax: (202) 739-3001

Attorneys for Opposer
STRETCHLINE INTELLECTUAL
PROPERTIES LIMITED

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition has been sent via first class mail, postage pre-paid on this 14th day of July 2008 to:

JOHN L. SULLIVAN JR.
ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 S. TRYON ST., SUITE 4000
CHARLOTTE, NC 28280-4000



Gene K. Park