

ESTTA Tracking number: **ESTTA530571**

Filing date: **04/04/2013**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	Creative Innovations, LLC
Granted to Date of previous extension	04/06/2013
Address	865 Tahoe Boulevard, Suite 214 Incline Village, NV 89451 UNITED STATES

Name	Cal-X Fun Spas, Inc.
Granted to Date of previous extension	04/06/2013
Address	1050 Melody Lane, Suite 101 Roseville, CA 95678 UNITED STATES

Correspondence information	Maxwell S. Felsheim Attorney Hellmuth & Johnson, PLLC 8050 West 78th Street Edina, MN 55439 UNITED STATES mfelsheim@hjlawfirm.com, mspence@hjlawfirm.com Phone: 9527462144
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**Applicant Information**

Application No	85626569	Publication date	02/05/2013
Opposition Filing Date	04/04/2013	Opposition Period Ends	04/06/2013
Applicant	William R. Jaworski 7909 Penn Avenue North Brooklyn Park, MN 55444 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 011. First Use: 1980/05/31 First Use In Commerce: 1980/05/31  
All goods and services in the class are opposed, namely: fitted spa covers; fitted swim spa covers; fitted hot tub covers; fitted whirlpool bath covers

**Grounds for Opposition**

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23

Related Proceedings	William Jaworski d/b/a Great Northern Engineering v. RollupSpaCovers et. al.; United States District Court District of Minnesota; Civil Case No. 11-1816 (DSD/JSM)
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Attachments	Notice of Opposition.pdf ( 3 pages )(126633 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/MSF/
Name	Maxwell S. Felsheim
Date	04/04/2013

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

In the Matter of Application Serial No. 85626569  
Published in the Official Gazette on February 5, 2013  
Mark: ROLL-UP COVER

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Creative Innovations, LLC; and  
Cal-X Fun Spas, Inc.

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

Opposers,

v.

William R. Jaworski  
d/b/a Great Northern Engineering,

Applicant.

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**NOTICE OF OPPOSITION**

Opposer, Creative Innovations, LLC, is a limited liability company registered in the State of Nevada, with a registered address of 865 Tahoe Blvd., Suite 214, Incline Village, NV 89451. Opposer, Cal-X Fun Spas, Inc., is a California corporation, with a registered address of 1050 Melody Lane, Suite 101, Roseville, CA 95678. Applicant, William R. Jaworski d/b/a Great Northern Engineering, is an individual and sole proprietor with a business address of 7909 Penn Avenue North, Brooklyn Park, MN 55444.

The above-identified Opposers believe that they will be damaged by registration of the mark ROLL-UP COVERS, as shown in the above-identified application, and hereby oppose the same.

The grounds for opposition are as follows:

## **STANDING TO BRING THIS OPPOSITION**

1. Opposers, Creative Innovations, LLC and Cal-X Fun Spas, Inc. use and have used the term “Roll-Up Covers” in connection with the sale, marketing and promotion of its products, namely spa and pool covers which the user can roll up when not in use.

2. If Applicant’s registration is granted, Opposers will be unable to describe their products by using the commonly recognized name of the product which they are selling.

### **COUNT 1: DESCRIPTIVENESS**

3. Opposers restate and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

4. Applicant manufactures and sells hot tub covers, which can be rolled up by the consumer when the cover is not in use.

5. “Roll Up Covers,” is merely descriptive of Applicant’s, as well as Opposers’ and numerous other manufacturer’s, spa and pool covers which can be rolled up when not in use.

6. The mark, ROLL-UP COVERS, is therefore merely descriptive of Applicant’s product, and therefore may not be registered as set forth in 15 U.S.C. § 1052(e)(1).

### **COUNT 2: GENERICNESS**

7. Opposers restate and reallege the allegations set forth in the above paragraphs as if fully set forth herein.

8. The mark ROLL-UP COVERS, is a commonly used term in many industries, including the spa and pool cover industry, to describe various types of covers which may be rolled up.

9. The term and/or mark “Roll-Up Covers” is incapable of distinguishing Applicant’s goods and is therefore generic under Section 23 of the Lanham Act, 15 U.S.C. § 1091.

10. Further, Applicant’s mark “Roll-Up Covers” has not acquired secondary meaning and is

not entitled to registration under Section 2(f), 15 U.S.C. § 1052 (f).

**REQUEST FOR RELIEF**

For the above reasons, Opposers respectfully request that application serial number 85626569 be denied registration.

Dated: April 4, 2013

HELLMUTH & JOHNSON, PLLC

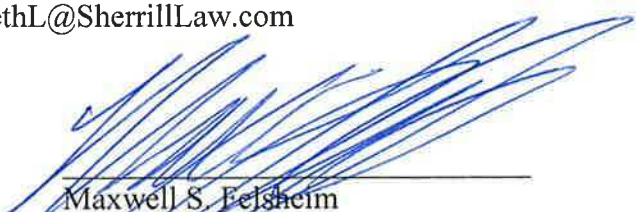
By: 

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**ATTORNEYS FOR OPPOSER**

**CERTIFICATE OF SERVICE**

I hereby certify that this Notice of Opposition was serve on the attorney of record for the Applicant, Elizabeth D. Lewen, Sherrill Law Offices, PLLC, 4756 Banning Avenue, Suite 212, White Bear Lake, MN 55110 by United States Mail. A courtesy copy was also sent by electronic mail to [docketing@sherrilllaw.com](mailto:docketing@sherrilllaw.com) and [ElizabethL@SherrillLaw.com](mailto:ElizabethL@SherrillLaw.com)

  
Maxwell S. Felsheim  
Attorney for Opposer