

ESTTA Tracking number: **ESTTA669385**

Filing date: **04/29/2015**

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	Speck Pumpen Verkaufsgesellschaft GmbH		
Entity	Corporation	Citizenship	Germany
Address	Hauptstrasse 1-3 Neunkirchen, D-91233 GERMANY		

Attorney information	Charles E. Baxley Hart Baxley Daniels & Holton 90 John Street - Suite 403 New York, NY 10038-3242 UNITED STATES ceb@hartbaxley.com, jtm@hartbaxley.com Phone:2127917200		
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**Applicant Information**

Application No	79138830	Publication date	04/28/2015
Opposition Filing Date	04/29/2015	Opposition Period Ends	05/28/2015
International Registration No.	1182641	International Registration Date	05/14/2013
Applicant	Winter.pumpen GmbH An der Autobahn L2  GERMANY		

**Goods/Services Affected by Opposition**

<p>Class 007. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: pumps and pumping apparatus, namely, ACvariable frequency drives that are used to control small and medium-sized motors in applications such as manufacturing processes, Aerating pumps for aquaria, Air distribution units for pneumatically driven pumps, Aquarium pumps, Axial flowpumps, Beer pumps, Bilge pumps, Biodiesel-generation machines, namely, mixing equipment in the nature of pumps, Centrifugal pumps, Circulating pumps, Electric pumps, Electric pumps for swimming pool and aquarium, Electrical water pumps for swimming pools, spas, baths, and whirlpools, Fluid power component kit for machine control comprising pumps and valves, Fuel pumps for land vehicles, Fuel pumps for service stations, Water pumps for spas, baths, whirlpools, swimming pools, water filtering units, Water pumps for land vehicles, Water pumps for use in motors and engines, Water treatment equipment, namely, pumps for use in irrigation systems, Rotary pumps, Screw pumps, Sewage pumps, Shaft bearings for vacuum pumps, Shafts for pumps, Silt pumps, Sludgepumps, Spray paint systems comprised of pumps, pump controllers, nozzles, tubing and valves, Submersible pumps, Suctionpumps, Sump pumps, Positive displacement pumps, Pump control valves, Pump diaphragms, Pump impellers, Pumps for the beverage industry, Pumps and compressors as parts of machines, motors and engines, Pumps as parts of machines, motors and engines, Pumps for cooling engines, Pumps for machines, High-pressure pumps for use in oil or gas well hydraulic fracturing operations, High-pressure pumps for washing appliances and in-</p>
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stallations, Hydraulic pumps, Hydraulic pumps and motors for hydrostatic systems, comprised of pumps, motors, valves, switches, sensors and electronic controls, for hydraulic drives and force transmission in machines, machine tools, grinding and food processing machines and in off-road-vehicles, Lubricating pumps, Macerator pumps, Motors and pumps for refrigerators and freezers, Multi-phase screw pumps, Oil drain pumps, Oil pumps for land vehicles, Oil pumps for use in motors and engines

Class 009. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Electric and electronic apparatus and equipment for transmission and distribution of electric energy, namely, electrical power distribution boxes, panels, and electricity distribution consoles, electrical wires and transmitters of electrical signals, control systems for machines as well as systems comprising these components; electronic data processing equipment, namely, couplers; computer programs for data processing; electric cables and lines; electronic bus systems, namely, USB hardware, host bus adapters; magnets, transformers, electric switches, residual current apparatus, namely, circuit breakers; automatic cut out, namely, circuit breakers; electric switches, namely, motor protecting switches, fusible cut-outs; low tension condensers, electric installation distributors in the nature of power distributing boxes, electric meter cabinets in the nature of cabinets specifically adapted for electric meters, electric energy consumption meters, electronic control gears for light control device, electric control panels, control cabinets, namely, cabinets specifically adapted for electric control panels, semiconductor switching devices, electric switching devices and switching stations as well as devices comprising these components for high-voltage and medium voltage, electric gate operator, namely, sliding lock gates, electric relays, electric pressure switches, electric connectors and electrical outlets, electric bushings comprised of electric socket, electric outlet and electric plug, electric measuring equipment, namely, laser measuring system, control and protection devices for electrical networks, namely, electric controllers

Class 042. First Use: 0 First Use In Commerce: 0


All goods and services in the class are opposed, namely: Engineering services in the field of pumps and pumping apparatus; technical consulting services, namely, drawing up of expert technical opinions in the field of pumps and pumping apparatus

### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	998142	Application Date	03/02/1973
Registration Date	11/12/1974	Foreign Priority Date	NONE
Word Mark	SPECK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 007. First use: First Use: 0 First Use In Commerce: 0 CIRCULATION PUMPS FOR SWIMMING POOLS, CENTRIFUGAL PUMPS, TRACTOR MOUNTED PUMPS, IRRIGATION PUMPS AND TWIN PUMP UNITS

U.S. Registration No.	4509385	Application Date	04/02/2013
Registration Date	04/08/2014	Foreign Priority Date	NONE

Word Mark	SPECK PUMPS
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Design Mark	
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Description of Mark	The mark consists of "Speck" written above "Pumps" to the left of a stylized gear-wheel-man on a square background, with "SPECK" written below.
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Goods/Services	Class 007. First use: First Use: 1989/12/01 First Use In Commerce: 1996/11/01 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; Electrical water pumps for swimming pools, spas; Water pumps for swimming pools, spas
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	OppnNot-Speck-WinterPumpen.pdf(98840 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	/CharlesEBaxley/
Name	Charles E. Baxley
Date	04/29/2015

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

*In the Matter of Application No. 79/138,830 WINTER and Design  
published in an Official Gazette on April 28, 2015*

Speck Pumpen Verkaufsgesellschaft GmbH,

Opposer,

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

v.

Winter.pumpen GmbH,

Applicant.

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Speck Pumpen Verkaufsgesellschaft GmbH, a German corporation with its principal office at Hauptstrasse 1-3, D-91233 Neunkirchen, Germany, organized under laws of Germany, believes it will be damaged by registration of the mark WINTER and Design as shown in the above-identified application for trademark registration and hereby opposes same in its entirety. Said application was published in an Official Gazette of the United States Patent and Trademark Office on April 28, 2015.

The grounds for opposition are as follows:

1. Applicant seeks to register a mark WINTER and Design



for various types of pumps, motors, electronics components, engineering and consultant services and other goods and services related to pumps in International Classes 007, 009 and 042.

2. Opposer is owner of United States Trademark Registration No. 998,142 SPECK and Design for various types of pumps in International Class 007 as depicted immediately below:



3. Opposer also is the owner of United States Trademark Registration No 4,509,385 SPECK and Design for counter-current swimming machines used in swimming pools which feature components such as pumps and motors as well as for water pumps operated by electric motors in International Class 007 as depicted immediately below:



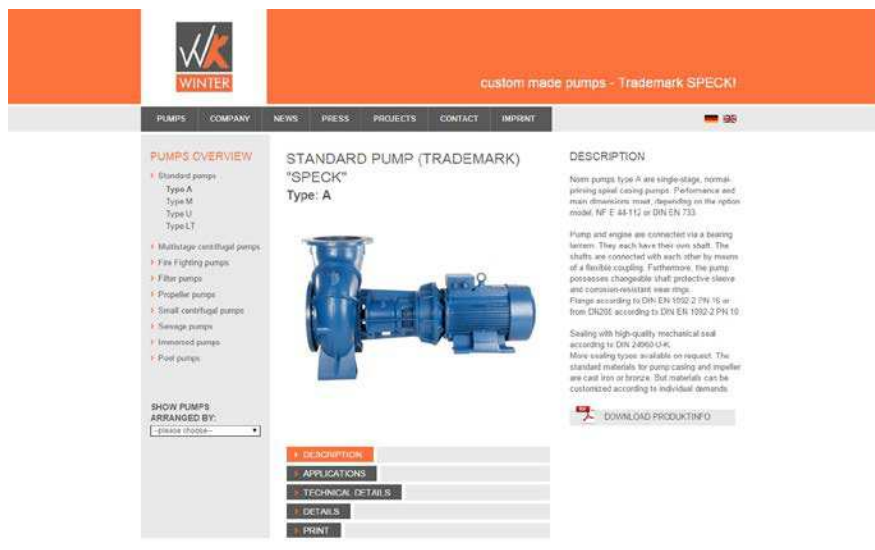
4. Both the '142 Registration and the '385 Registration of Opposer prominently feature Opposer's "Gear Man" design mark which has long been used by Opposer and its predecessors-in-interest as a trademark and service mark for their goods and services. Opposer's use of its "Gear Man" mark commenced several decades prior to use of Applicant's imitation design.

5. As a result of continuous and extensive use by Opposer of its "Gear Man" mark, the design mark has become and continues to function as a valuable business and marketing asset of Opposer and serves to indicate to the trade and consuming public products and services originating exclusively from Opposer.

6. Applicant's mark WINTER and Design is confusingly similar to Opposer's mark "Gear Man" design mark and use thereof by Applicant is likely to cause confusion, deception and mistake as to the source of Applicant's and Opposer's respective goods. Therefore, Applicant's Mark should be denied registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

7. Applicant also is using the mark shown in its '830 Application in a manner which falsely suggests a connection between the respective parties and therefore Applicant's Mark should be denied registration under Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

8. For example, Applicant's internet web site, as depicted below, displays a substantial portion of Opposer's "Gear Man" mark in close proximity to Opposer's "SPECK" word mark.



As a consequence, the consuming public mistakenly would believe that there is a connection between the parties or that Applicant's goods and services are somehow sponsored or endorsed by Registrant.

9. Opposer believes it will be damaged by registration of Applicant's Mark.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that Applicant's mark WINTER and Design be denied registration.

Respectfully submitted,

Dated: April 29, 2015

HART, BAXLEY DANIELS & HOLTON  
*Attorneys for Opposer*

By:           /CharlesEBaxley/            
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2015 that a true and exact copy of the foregoing NOTICE OF OPPOSITION was served on Applicant by first-class mail, postage prepaid, in an envelope addressed as follows:

Leslye B. Davidson, Esq.  
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New York, NY 10018

/CharlesEBaxley/  
Charles E. Baxley