

ESTTA Tracking number: **ESTTA674535**

Filing date: **05/27/2015**

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	Nautilus, Inc.
Granted to Date of previous extension	07/22/2015
Address	17750 SE 6th Way Vancouver, WA 98683 UNITED STATES
Correspondence information	Michael Heilbronner IdeaLegal, PC 1631 NE BROADWAY; No. 443 Portland, OR 97232 UNITED STATES mheilbronner@idealegal.com Phone:503 449 9084

Applicant Information

Application No	86430397	Publication date	03/24/2015
Opposition Filing Date	05/27/2015	Opposition Period Ends	07/22/2015
Applicant	Bang, Ingue 125 Broad Ave #18 North Bergen, NJ 07047 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 028. First Use: 2014/10/10 First Use In Commerce: 2014/10/10 All goods and services in the class are opposed, namely: Golf accessories, namely, carriers and dispensers for golf balls; Golf accessories, namely, holders specially adapted for holding golf ball markers; Golf accessory pouches; Golf accessory, namely, support for holding a golf club; Golf bag covers; Golf bag pegs; Golf bag straps; Golf bag tags; Golf bags; Golf bags with or without wheels; Golf ball dispensers; Golf ball markers; Golf ball retrievers; Golf ball sleeves; Golf club bags; Golf club covers; Golf gloves; Golf tee bags; Golf tees; Golf towel clips for attachment to golf bags; Golf training apparatus, namely, golf practice platforms; Golf training equipment, namely, a golf training cage; Lacrosse ball bags; Non-motorized golf trolleys</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Mark not used in commerce in connection with all or some of the goods as of the filing date of the application

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	991897	Application Date	01/29/1973
Registration Date	08/27/1974	Foreign Priority Date	NONE
Word Mark	NAUTILUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1972/12/11 First Use In Commerce: 1972/12/11 MANUALLY ACTIVATED EXERCISE MACHINES FOR PHYSICALLY EXERCISING PARTS OF THE HUMAN BODY		

U.S. Registration No.	1084853	Application Date	04/07/1975
Registration Date	02/07/1978	Foreign Priority Date	NONE
Word Mark	NAUTILUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1974/05/21 First Use In Commerce: 1974/06/01 T-SHIRTS AND SPORTS SHIRTS		

U.S. Registration No.	1061003	Application Date	05/20/1976
Registration Date	03/08/1977	Foreign Priority Date	NONE
Word Mark	NAUTILUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1972/12/11 First Use In Commerce: 1972/12/11 EXERCISING, PHYSICAL TRAINING, OPERATION OF EXERCISING AND PHYSICAL TRAINING MACHINES, ARRANGING FOR AND PROVIDING FACILITIES AND PROCEDURES FOR EXERCISING ANDPHYSICAL TRAINING		


U.S. Registration No.	1086063	Application Date	07/28/1977
Registration Date	02/21/1978	Foreign Priority Date	NONE
Word Mark	NAUTILUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1977/06/15 First Use In Commerce: 1977/06/16 HATS		


U.S. Registration	1172257	Application Date	11/22/1977
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No.			
Registration Date	10/06/1981	Foreign Priority Date	NONE
Word Mark	NAUTILUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1975/12/31 First Use In Commerce: 1975/12/31 Gym Bags for Gym Use Class 024. First use: First Use: 1975/12/31 First Use In Commerce: 1975/12/31 Towels		


U.S. Registration No.	1391673	Application Date	08/26/1985
Registration Date	04/29/1986	Foreign Priority Date	NONE
Word Mark	NAUTILUS		
Design Mark	NAUTILUS		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1985/07/29 First Use In Commerce: 1985/07/29 SHOES AND ATHLETIC FOOTWEAR		

U.S. Registration No.	2970870	Application Date	09/24/1999
Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	NAUTILUS		
Design Mark	NAUTILUS		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/12/26 First Use In Commerce: 2003/12/26 Apparel, namely, [men's and women's] [underwear and][under garments;] [man's * men's * and women's jogging and gym shorts, pull-on pants, sweat and warm-upsuits,] crew neck shirts;tops, jersey's, T-shirts; [jackets; women's leotards and tights, short and long sleeved French T-shirts;] men's, women's wearing apparel namely, [pants,] shirts, [shorts,] T-shirts, [jackets and Jog wear, namely; sweat shirts, sweat pants]		

U.S. Registration No.	3308387	Application Date	02/14/2005
Registration Date	10/09/2007	Foreign Priority Date	NONE
Word Mark	NAUTILUS INSTITUTE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 2005/03/00 First Use In Commerce: 2005/03/00 Educational and training services, namely, conducting seminars, classes, and workshops relating to health, fitness, exercise routines, exercise equipment, fitness consultation; physical fitness consulting for health, exercise and fitness facilities and clubs; fitness instruction; providing information about fitness, exercise routines, and exercise equipment</p> <p>Class 044. First use: First Use: 2005/03/00 First Use In Commerce: 2005/03/00 Health consultation; providing information about health</p>		

U.S. Registration No.	4667760	Application Date	08/08/2014
Registration Date	01/06/2015	Foreign Priority Date	NONE
Word Mark	NAUTILUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2002/12/01 First Use In Commerce: 2002/12/01 Heart rate monitors		

U.S. Registration No.	3432235	Application Date	02/20/2007
Registration Date	05/20/2008	Foreign Priority Date	NONE

Word Mark	NAUTILUS ONE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2006/10/00 First Use In Commerce: 2007/10/00 Exercise machines; Manually-operated exercise equipment

Attachments	73555481#TMSN.png(bytes) 75806511#TMSN.png(bytes) 78567130#TMSN.png(bytes) 86361322#TMSN.png(bytes) 77111067#TMSN.png(bytes) Final Nautilus Notice of Opposition v Ingue Bang Wellzher NAUTILUS for golf equip .pdf(118405 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	/Michael Heilbronner/
Name	Michael Heilbronner
Date	05/27/2015

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

In the Matter of Application Serial No. 86/430,397
Mark: NAUTILUS

<p>Nautilus, Inc. (Opposer)</p> <p>v.</p> <p>Ingue Bang dba Wellzher Corp (Applicant)</p>

Opposition No. _____

Notice of Opposition

Opposer, Nautilus, Inc., a corporation organized under the laws of the State of Washington, having its principal place of business at 17750 SE 6th Way, Vancouver, Washington 98683, believes that it will be damaged by the registration of Application Serial No. 86/430,397 for the NAUTILUS mark in stylized/design format (the "Pending Application") and opposes the same.

The grounds for opposition are as follows:

1. Nautilus is one of the world's largest producers of exercise equipment.
2. Nautilus, Inc. and its predecessors (collectively, "Nautilus") have used the NAUTILUS mark continuously in commerce in the United States and elsewhere since at least as early as 1974. The NAUTILUS mark is inherently distinctive and enjoys strong recognition

and secondary meaning as a result of Nautilus's longstanding successful advertising and sales of exercise equipment and related goods and services in connection with the mark.

3. As a result of Nautilus's longstanding use of the NAUTILUS mark, Nautilus owns valid common law rights in the NAUTILUS mark and other marks that include the term NAUTILUS in connection with exercise machines, apparel, footwear, and a variety of other goods and services relating to fitness, exercise, and sports.

4. In addition to Nautilus's common law rights in the NAUTILUS mark, Nautilus owns various United States federal registrations for the NAUTILUS mark and other marks that include the term NAUTILUS, including

- Registration No. 0991897 for "manually activated exercise machines for physically exercising parts of the human body" in International Class 28 (registered on August 27, 1974)
- Registration No. 1084853 for "t-shirts and sports shirts" in International Class 25 (registered on February 7, 1978)
- Registration No. 1061003 for "exercising, physical training, operation of exercising and physical training machines, arranging for and providing facilities and procedures for exercising and physical training" (registered on March 8, 1977)
- Registration No. 1086063 for "hats" in International Class 25 (registered on February 21, 1978)
- Registration No. 1172257 for "gym bags for gym use" in International Class 18 and "towels" in International Class 24 (registered on October 6, 1981)

- Registration No. 1391673 for “shoes and athletic footwear” in International Class 25 (registered on April 29, 1986)
- Registration No. 2970870 for “apparel, namely, crew neck shirts; tops, jersey’s, T-shirts; men’s, women’s wearing apparel namely, shirts, T-shirts” in International Class 25 (registered on July 19, 2005)
- Registration No. 3122558 for “fly fishing reels” in International Class 28 (registered on August 1, 2006)
- Registration No. 4667760 for “heart rate monitors” in International Class 10 (registered on January 6, 2015)
- Registration No. 3308387 for “educational and training services, namely, conducting seminars, classes, and workshops relating to health, fitness, exercise routines, exercise equipment, fitness consultation; physical fitness consulting for health, exercise and fitness facilities and clubs; fitness instruction; providing information about fitness, exercise routines, and exercise equipment” in International Class 41 and for “health consultation; providing information about health” in International Class 44 (registered on October 9, 2007)
- In Registration No. 3432235 for “exercise machines; manually-operated exercise equipment” in International Class 28 (registered on May 20, 2008)

5. The federal registrations for the NAUTILUS mark and other marks that include the term NAUTILUS (e.g., NAUTILUS ONE and NAUTILUS INSTITUTE) (collectively, the “NAUTILUS Marks and Registrations”) are valid and subsisting, and Nautilus is the lawful owner of them.

6. As a result of Nautilus's longstanding and extensive use of the NAUTILUS Marks and Registrations and Nautilus's longstanding development, marketing, advertising, distribution, and sale of various goods and services in connection with them, the NAUTILUS Marks and Registrations reflect the extensive goodwill and consumer recognition established by Nautilus in them.

7. On information and belief, Applicant, Ingue Bang dba Wellzher Corp ("Applicant") is an individual with a country of citizenship of South Korea, whose principal address is in North Bergen, New Jersey.

8. Applicant filed the Pending Application on October 21, 2014. The mark in the Pending Application is a stylized form of the NAUTILUS mark (the Pending NAUTILUS Mark).

9. Applicant claims use of the Pending NAUTILUS Mark in connection with golf accessories, namely, carriers and dispensers for golf balls; golf accessories, holders specially adapted for holding golf ball markers; golf accessory pouches; golf accessory, namely, support for holding a golf club; golf bag covers; golf bag pegs; golf bag straps; golf bag tags; golf bags; golf bags with or without wheels; golf ball dispensers; golf ball markers; golf ball retrievers; golf ball sleeves; golf club bags; golf club covers; golf gloves; golf tee bags; golf tees; golf towel clips for attachment to golf bags; golf training apparatus, namely, golf practice platforms; golf training equipment, namely, a golf training cage; lacrosse ball bags; non-motorized golf trolleys" (collectively, the "Claimed Goods").

10. Applicant claims it first made use of the Pending NAUTILUS Mark on the Claimed Goods before October 10, 2014.

11. Nautilus's common law and registered rights in the NAUTILUS Marks and Registrations are senior to rights Applicant owns in the Pending NAUTILUS Mark. On information and belief, Applicant has not used the Pending NAUTILUS Mark in connection with at least some of the Claimed Goods and, if Applicant did make such use, any rights arising from such use were abandoned or otherwise not acquired validly.

12. The Pending Application was published for opposition on March 4, 2015, and Nautilus timely filed extensions of time to oppose the Pending Application.

13. On information and belief, the goods covered by the Pending Application compete with and are related to the goods and services offered and rendered in connection with and covered by the NAUTILUS Marks and Registrations. The parties' respective goods and services also have overlapping and similar channels of trade and consumers.

14. Nautilus will be damaged by registration of the Pending NAUTILUS Mark because the mark and its associated Claimed Goods are likely to cause confusion, mistake and deception with the NAUTILUS Marks and Registrations.

15. As of October 21, 2014, the filing date of the Pending Application, Applicant had not used the Pending NAUTILUS Mark in commerce in connection with all of the goods set forth in the Pending Application. Accordingly, the Pending Application is void *ab initio* or the goods with which the Pending NAUTILUS Mark had not been used in commerce should be deleted from the Pending Application.

Prayer for Relief

WHEREFORE, Nautilus prays that the Pending NAUTILUS Mark shown by the Pending Application be refused registration pursuant to the Lanham Act (including Section

2(d), 15 USC § 1052(d)) and because the Pending Application is invalid for the reasons set forth above, and that this Notice of Opposition be sustained in favor of Nautilus.

Respectfully submitted,

May 27, 2015



Michael K. Heilbronner

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Facsimile: (503) 914-0301

Attorney for Opposer

CERTIFICATE OF SERVICE

There being no attorney of record for Applicant, I certify that I served the foregoing Notice of Opposition on Applicant Ingue Banque dba Wellzher Corp, to the **correspondence address of record with the USPTO** as follows:

Ingue Bang
125 Broad Ave Ste 18
North Bergen, New Jersey 07047-1430

by causing a full, true, and correct copy thereof to be sent by mailing in a sealed, first-class postage-prepaid envelope and deposited with the United States Postal Service at Portland, Oregon.

As a courtesy, I certify that I also sent the foregoing Notice of Opposition to Applicant at his current correspondence email addresses as follows:

info@wellzher.com
wellzher@gmail.com

DATED: May 27, 2015



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Attorney for Opposer