

TTAB



03-27-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #64

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

In the Matter of Application Serial No. 78/124,003
Filing Date: April 25, 2002
Applicant: Enhanced Turbine Output Holding LLC
For the Mark: POWERCOOL
Published in the *Official Gazette* on February 4, 2003

CALDWELL ENERGY & ENVIRONMENTAL, INC.,)
)
Opposer,)
)
vs.)
)
ENHANCED TURBINE OUTPUT HOLDING LLC)
)
Applicant.)

OPPOSITION NO.

NOTICE OF OPPOSITION

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Opposer, CALDWELL ENERGY & ENVIRONMENTAL, INC., a Kentucky corporation with its principal place of business at 4020 Tower Road, Louisville, Kentucky 40219 (hereinafter "Caldwell" or "Opposer"), believes that it will be damaged by registration of the mark shown in the application bearing Serial No. 78/124,003 and hereby opposes such registration. As grounds for opposition, Caldwell submits the following:

04/08/2003 TSMITH 00000053 78124003

01 FC:6402

300.00 OP

1. Since as early as January, 1999, Caldwell has continuously used in commerce the mark POWERCHILL for industrial equipment, namely air cooling systems comprised primarily of air conditioning or refrigeration equipment, pumps, piping and electrical equipment for use in combustion engine turbine inlets ("Caldwell's Mark") and is the owner of a registration of same on the Principal Register, namely Registration Number 2,612,008. A true copy of said registration is attached hereto.

2. On April 25, 2002, the applicant, Enhanced Turbine Output Holding LLC (hereinafter "Applicant"), filed an intent-to-use application, Serial Number 78/124,003, seeking registration of the mark POWERCOOL for a "system comprising a supercharging fan and inlet air cooling system, and controls for improving capacity of gas-turbine power plants." That application was published in the *Official Gazette* on February 4, 2003. A true copy of said publication is attached hereto.

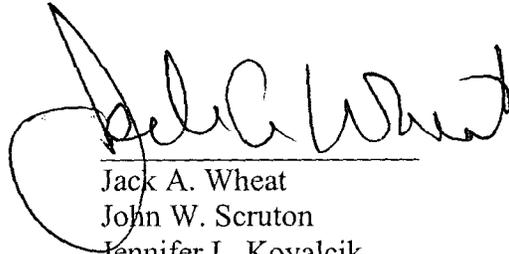
3. Caldwell's continued use the mark POWERCHILL predates the filing of the intent-to-use application that is the subject of this Opposition. Therefore, Caldwell has priority of use.

4. The mark sought to be registered, if used with Applicant's goods, is so similar to Caldwell's Mark as to create a likelihood of confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)), all to Caldwell's irreparable damage.

5. Caldwell will be damaged by registration of the mark sought to be registered in that, if registration issues, (a) consumers are likely to purchase Applicant's goods believing them to be Caldwell's goods, or to be sponsored by or associated with Caldwell; (b) any defects in Applicant's goods are likely to be attributed to Caldwell; and (c) registration of Applicant's mark

will give Applicant the presumptive right to use the mark with its goods. All of these effects of registration will cause injury to Caldwell .

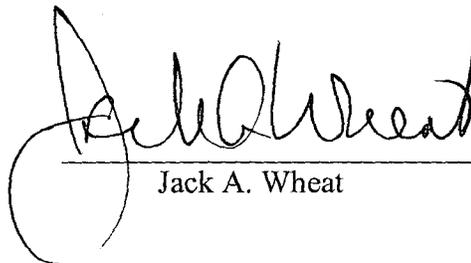
WHEREFORE, Opposer prays that Application Serial No. 78/124,003 be refused and that the registration sought therein be denied.



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Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to Box TTAB FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on this 25th day of March, 2003



Jack A. Wheat

CA245:000CA:297952:LOUISVILLE

Int. Cl.: 11

Prior U.S. Cls.: 13, 21, 23, 31 and 34

United States Patent and Trademark Office

Reg. No. 2,612,008

Registered Aug. 27, 2002

TRADEMARK
PRINCIPAL REGISTER

POWERCHILL

CALDWELL ENERGY & ENVIRONMENTAL,
INC. (KENTUCKY CORPORATION)
4020 TOWER ROAD
LOUISVILLE, KY 40219

FOR: INDUSTRIAL EQUIPMENT, NAMELY AIR
COOLING SYSTEMS COMPRISED PRIMARILY OF
AIR CONDITIONING OR REFRIGERATION
EQUIPMENT, PUMPS, PIPING AND ELECTRICAL
EQUIPMENT FOR USE IN COMBUSTION ENGINE

TURBINE INLETS, IN CLASS 11 (U.S. CLS. 13, 21, 23,
31 AND 34).

FIRST USE 1-0-1999; IN COMMERCE 1-0-1999.

SER. NO. 76-198,184, FILED 1-24-2001.

RICHARD ALVES, EXAMINING ATTORNEY

FEB 4, 2003

U.S. PATENT AND TRADEMARK OFFICE

TM 315

CLASS 11—(Continued).

SN 78-118,093. MOVILFRIT, S.A., BARCELONA, SPAIN.
FILED 3-28-2002.

MOVILFRIT

FOR ELECTRIC HEATING FANS, REFRIGERATORS,
ELECTRIC DRYING PANS, AND BARBECUES (U.S.
CLS. 13, 21, 23, 31 AND 34).

SN 78-124,003. ENHANCED TURBINE OUTPUT HOLDING
LLC, WASHINGTON, DC. FILED 4-25-2002.

POWERCOOL

FOR SYSTEM COMPRISING A SUPERCHARGING
FAN, AND INLET-AIR COOLING SYSTEM, AND CON-
TROLS FOR IMPROVING CAPACITY OF GAS-TURBINE
POWER PLANTS (U.S. CLS. 13, 21, 23, 31 AND 34).

SN 78-125,171. TECHNICAL CONSUMER PRODUCTS, INC.,
AURORA, OH. FILED 4-30-2002.

ESB

FOR ELECTRIC LAMPS, DISCHARGE LAMPS AND
COMPACT FLUORESCENT LAMPS (U.S. CLS. 13, 21, 23,
31 AND 34).

SN 78-129,975. HEARTLAND TANNING SUPPLIES, INC.,
LEE'S SUMMIT, MO. FILED 5-20-2002.

ENCORE

FOR SUNTANNING BEDS AND SUNTANNING
BOOTHS (U.S. CLS. 13, 21, 23, 31 AND 34).

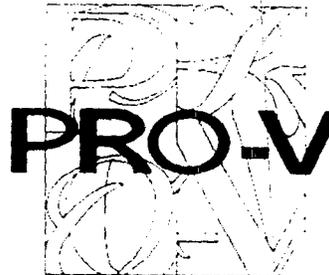
SN 78-138,953. TRAVIS INDUSTRIES, INC., KIRKLAND,
WA. FILED 6-26-2002.

BED & BREAKFAST

FOR WOOD AND GAS BURNING FIREPLACE IN-
SERTS IN THE NATURE OF HEAT EXCHANGERS AND
SOLID AND GAS FUEL BURNERS; WOOD AND GAS
BURNING FIREPLACES; AND WOOD AND GAS BURN-
ING STOVES; AND REPLACEMENT PARTS THEREFOR
(U.S. CLS. 13, 21, 23, 31 AND 34).

CLASS 11—(Continued).

SN 78-141,902. THE PROCTER & GAMBLE COMPANY,
CINCINNATI, OH. FILED 7-8-2002.



OWNER OF U.S. REG. NOS. 2,447,036 AND 2,447,037.
THE MARK CONSISTS OF STYLIZED LETTERS IN THE
WORD "PRO-V" EXISTING WITH THE NON-STYLIZED
WORD "PRO-V".

FOR HAND-HELD ELECTRIC HAIR DRYERS (U.S.
CLS. 13, 21, 23, 31 AND 34).

SN 78-146,109. HP INTELLECTUAL CORPORATION, WIL-
MINGTON, DE. FILED 7-22-2002.

CHROMFX

FOR ELECTRIC HAND-HELD HAIRDRYERS (U.S.
CLS. 13, 21, 23, 31 AND 34).

CLASS 12—VEHICLES

SN 75-584,951. MICRO COMPACT CAR AKTIENGE-
SELLSCHAFT, CH-2500 BIEL 4, CH, SWITZERLAND.
FILED 11-9-1998.

EPM

PRIORITY CLAIMED UNDER SEC. 44(D) ON FED REP.
GERMANY APPLICATION NO. 39825646.4, FILED 5-8-1998.
REG. NO. 39825646, DATED 10-23-1998, EXPIRES 5-31-2008.

FOR ELECTRICAL OR ELECTRONIC MEASURING,
CONTROLLING AND REGULATING SYSTEMS FOR
TRACTION CONTROL AND BRAKING CONTROL IN
AUTOMOBILES, COMPRISING SENSORS, MICROCOM-
PUTERS AND ACTUATORS, NAMELY, HYDRAULIC
VALVES, PRESSURE BOOSTERS AND CONTROL PIS-
TONS (U.S. CLS. 19, 21, 23, 31, 35 AND 44).

STITES & HARBISON PLLC

ATTORNEYS



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U.S. Patent & TMO/c/TM Mail Rcpt Dt. #64

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March 25, 2003

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RE: In the Matter of Application Serial No. 78/124,003
Filing Date: April 25, 2002
Applicant: Enhanced Turbine Output Holding LLC
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Dear TTAB:

Enclosed for filing are the following documents in connection with the Opposition
Caldwell Energy & Environmental, Inc. to the above-referenced application for registration:

1. Original and one copy of the Notice of Opposition;
2. Check in the amount of \$300, payable to your order, for the filing fee; and
3. Postcard acknowledging receipt.

Please contact me at the above address and telephone number if you need anything
further concerning this opposition.

Very truly yours,

Jack A. Wheat

JAW:ms

Enclosures

cc: John Kraft (w/encl.)
Robert M. Connolly (w/o encl.)

CA245:000CA:300526:LOUISVILLE

COMMUNICATIONS SECTION
MAR 27 2003 10:59:30