

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

SHERWOOD SERVICES AG,)	
)	
Opposer,)	
)	Opposition No.
v.)	Serial No. 78/152,771
)	Mark: FORCEDAPC
ERBE ELEKTROMEDIZIN GmbH)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer Sherwood Services AG believes that it will be harmed and damaged by the FORCEDAPC mark identified in Application Serial No. 78/152,771 filed by Applicant Erbe Elektromedizin GmbH, and Opposer therefore opposes that application. Opposer alleges the following for its Notice of Opposition against Applicant:

1. On August 9, 2002, Applicant applied to register the mark FORCEDAPC. Applicant's mark was published in the *Official Gazette* on June 15, 2004. As published, Applicant's application covers "high frequency system consisting of high frequency device for cutting, coagulating, vaporizing and devitalizing of tissue for medical and surgical purposes" in International Class 10.
2. Through its predecessors and licensees, Opposer has used a family of FORCE marks as trademarks in connection with surgical appliances and instruments in the United States since at least as early as November 1, 1984 (the "FORCE Marks").
3. Opposer owns the following federal registrations of its FORCE Marks:

- a. FORCE FX (Reg. No. 2,101,509) for “electrosurgical generator” in International Class 10; and
- b. FORCE EZ (Reg. No. 2,157,692) for “electrosurgical generator” in International Class 10.

4. Registration No. 2,157,692 is incontestable and constitutes conclusive evidence of Opposer’s exclusive right to use the registered mark in commerce in connection with the goods specified in that registration. Registration No. 2,101,509 constitutes *prima facie* evidence of Opposer’s exclusive right to use the registered mark in commerce in connection with the goods specified in that registration.

5. Through its predecessors and licensees, Opposer has used the mark FORCE in the United States in connection with “electrosurgical generators” since at least as early as November 1, 1984.

6. Opposer owns a recently cancelled federal registration of the mark FORCE GSU (Reg. No. 1,735,652) for “argon gas enhanced cutting and coagulating surgical unit, comprising a console, generator, hand piece and gas containers,” evidencing a date of first use in the United States of May 31, 1991. Opposer continues to use the FORCE GSU mark in the United States in connection with “argon gas enhanced cutting and coagulating surgical unit, comprising a console, generator, hand piece and gas containers.”

7. By virtue of continuous use of the FORCE Marks by Opposer and its predecessors and licensees since at least as early as November 1, 1984, and the fame associated with the FORCE Marks, Opposer is also the owner of extensive common law rights in and to the FORCE Marks.

8. Opposer's FORCE Marks are symbolic of the extensive goodwill and recognition established and developed by Opposer and its predecessors and licensees as a result of the use of the FORCE Marks in connection with surgical appliances and instruments since at least as early as November 1, 1984, and through Opposer's and its licensees' expenditure of substantial amounts of time, money, and effort in advertising and promoting its products.

9. Opposer's FORCE Marks have acquired a high degree of recognition, fame, and distinctiveness throughout the United States as a symbol of the quality of the products associated with Opposer. The relevant public is uniquely aware of and identifies Opposer's FORCE Marks with Opposer and its licensees, and the relevant public understands the products sold under Opposer's FORCE Marks to be uniquely those of Opposer and its licensees.

10. Applicant's mark FORCEDAPC is confusingly similar to Opposer's FORCE Marks. Both parties' marks begin with the term FORCE, and several of Opposer's FORCE Marks and Applicant's mark follow the FORCE portion of the mark with a short letter string.

11. The goods identified in Applicant's application and the goods sold under Opposer's FORCE Marks are identical or closely related for at least the following reasons: (1) the parties' respective goods both fall in International Class 10; (2) the parties' respective goods both encompass surgical devices or instruments; (3) the parties' respective goods are intended for use in connection with cutting and coagulating of tissue; and (4) the parties' respective goods are both sold to medical professionals.

12. Persons familiar with Opposer's FORCE Marks or the products sold under those marks would be likely to believe erroneously that Applicant's FORCEDAPC products are provided by Opposer or are authorized, licensed, endorsed, or sponsored by Opposer, and the regis-

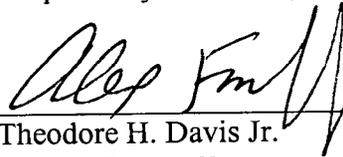
tration of Applicant's mark on the Principal Register would be inconsistent with Opposer's rights in Opposer's FORCE Marks.

13. Opposer will be damaged by registration of the mark FORCEDAPC by Applicant because the mark so resembles each of Opposer's FORCE Marks as to be likely to cause confusion, mistake, and deception.

14. A duplicate copy of this Notice of Opposition and the required fee of \$300 are enclosed. The Commissioner is authorized to debit Kilpatrick Stockton LLP's deposit Account No. 11-0860 if there is any deficiency in the required fee.

Opposer therefore requests that the Board refuse registration to the mark underlying application Serial No. 78/152,771 and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

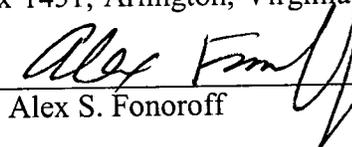


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CERTIFICATE OF MAILING

This is to certify that this correspondence is being deposited with the United States Postal Service as prepaid First Class Mail addressed as follows: Commissioner for Trademarks, Trademark Trial and Appeal Board, P.O. Box 1451, Arlington, Virginia 22313-1451 on this the 11th day of October 2004.



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October 11, 2004

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

Re: Sherwood Services AG v. Erbe Elektromedizin GmbH
Mark: FORCEDAPC
Serial No. 78/152,771
Our Ref.: 12507/303011

Ladies/Gentlemen:

Enclosed please find an original and two copies of a *Notice of Opposition* to be filed in connection with the above-referenced matter, together with the required filing fee.

The Commissioner is authorized to charge Kilpatrick Stockton LLP's Deposit Account No. 11-0860 if there is a deficiency in the enclosed filing fee.

Please acknowledge receipt of the enclosures by initialing and dating the enclosed postcard and returning it to me.

Thank you for your assistance.

Sincerely,

Alex S. Fonoroff

ASF/mcb
Enclosures

cc: Susan N. McFee, Esq. (w/enc.)
Ms. Kathleen M. Tracy (w/enc.)
Lisa J. Moyles, Esq. (w/enc.)
Theodore H. Davis, Jr., Esq. (w/o enc.)



10-13-2004

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #74