

ESTTA Tracking number: **ESTTA47610**

Filing date: **10/06/2005**

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	LeMans Corporation
Granted to Date of previous extension	10/16/2005
Address	3501 Kennedy Road Janesville, WI 53547-5222 UNITED STATES

Attorney information	Edward E. Clair Fitch, Even, Tabin & Flannery 120 South LaSalle Street, Suite 1600 Chicago, IL 60603-3406 UNITED STATES eclair@fitcheven.com, trademark@fitcheven.com Phone:312.577.7000
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Applicant Information

Application No	76558081	Publication date	04/19/2005
Opposition Filing Date	10/06/2005	Opposition Period Ends	10/16/2005
Applicant	Excel Tire & Wheel Corp. P.O. Box 1044 Walnut, CA 91788		

UNITED STATES

Goods/Services Affected by Opposition

Class 012.

All goods and services in the class are opposed, namely: Tires especially designed for all terrain vehicles

Attachments	82559 RAT RADIAL ALL TERRAIN Notice of Opposition.pdf (8 pages)
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Signature	/Edward E. Clair/
Name	Edward E. Clair
Date	10/06/2005

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

LEMANS CORPORATION,)	OPPOSITION NO.
)	
Opposer,)	
)	
v.)	
)	
EXCEL TIRE & WHEEL CORP.,)	
)	
Applicant.)	
)	
)	
)	
Mark: RAT RADIAL ALL TERRAIN)	
Application No.: 76/558,081)	
Filed: November 7, 2003)	
Published: April 19, 2005)	

NOTICE OF OPPOSITION

LeMans Corporation, a Wisconsin corporation, having a place of business at 3501 Kennedy Road, Janesville, Wisconsin, 53547-5222 (hereinafter, "LeMans"), believes it will be damaged by the Registration on the Principal Register of the stylized RAT RADIAL ALL TERRAIN mark, Application No. 76/558,081 (hereinafter "RAT RADIAL ALL TERRAIN Stylized Mark"), which belongs to Excel Tire & Wheel Corp., a California corporation, located and doing business at P. O. Box 1044, Walnut, California, 91788 (hereinafter "Applicant" or "Excel Tire").

LeMans hereby opposes the Applicant's RAT RADIAL ALL TERRAIN Stylized Mark upon the following grounds:

FACTUAL ALLEGATIONS

1. Upon information and belief, Excel Tire is a subsidiary of, or otherwise owned and controlled by, Siamese Tyre Co., Ltd., a Thai company having a place of business at No. 86 Moo 3, Suwinthawong Rd., Sansab, Minburi, Bangkok 10510, Thailand, which is also known as Siamese Rubber Co. Ltd. (hereinafter collectively referred to as "SR").

2. In 2001, LeMans and SR reached an agreement in which SR would manufacture a new line of tires belonging to LeMans (hereinafter "the Agreement").

3. Later that year, LeMans gave SR various trademarks and designs that LeMans developed for its new AMS tire line, including the marks AMS, SWAMP FOX, BLACKWIDOW, FOX A/T, BLACKTAIL, SANDSNAKE MX, SIDEWINDER, AEROSPEED, ZIPPER, DIAMONDTRAK, WHIPSNAKE, RAT RADIAL ALL TERRAIN, V-TRAX, MUD FLY, PACTRAX, SAND SNAKE, and FREAK (hereinafter collectively referred to as "the AMS Tire Marks").

4. Pursuant to the Agreement, in June 2003, SR shipped the tires from Thailand to Excel Tire in California, which in turn shipped the tires to LeMans' various distribution facilities across the United States and Canada.

5. Months later, Excel Tire filed U.S. Trademark Application No. 76/558,081, for the RAT RADIAL ALL TERRAIN Stylized Mark.

6. From June 2003 until February 2004, LeMans built its inventory of tires with the AMS Tire Marks for a heavily promoted launch which took place in Indianapolis on February 14, 2004.

7. LeMans has been using the AMS Tire Marks throughout the United States and internationally since the February 14, 2004 launch and has expended significant effort and monies in promoting and developing the public's recognition of its AMS Tire Marks in

connection with its goods throughout the United States, such that the AMS Tire Marks are distinctive, uniquely associated with, and represent substantial goodwill to LeMans.

8. Any use of the AMS Tire Marks by Excel Tire or SR inures to the benefit of LeMans, as LeMans is the owner of the AMS Tire Marks, and SR/Excel Tire have only a limited license under LeMan's control.

9. By reason of LeMans' extensive development and promotion of the AMS Tire Marks, LeMans has enjoyed substantial sales of its goods in connection with the AMS Tire Marks.

10. LeMans filed Application No. 78/388,717 on March 22, 2004, for the word mark RAT RADIAL ALL TERRAIN (hereinafter "RAT RADIAL ALL TERRAIN Mark") covering goods described as "tires" based on its use and ownership of the mark in commerce in connection with its goods.

11. Excel Tire's RAT RADIAL ALL TERRAIN Stylized Mark set forth in Application No. 76/558,081 is confusingly similar to LeMans' RAT RADIAL ALL TERRAIN Mark based on appearance, sound, and meaning.

12. The goods recited in Excel Tire's Application No. 76/558,081 are identical or closely related to the goods that LeMans provides under its AMS Tire Marks and would likely be marketed, advertised, and otherwise promoted through the same channels of trade and would likely be directed to the identical or related classes of purchasers as the goods LeMans offers under its AMS Tire Marks.

13. Excel Tire filed the Application No. 76/558,081 for the RAT RADIAL ALL TERRAIN Stylized Mark without the consent or permission of LeMans.

LIKELIHOOD OF CONFUSION

14. LeMans hereby incorporates the allegations contained in Paragraph Nos. 1-13 by reference herein.

15. The grant of registration to the RAT RADIAL ALL TERRAIN Stylized Mark for the goods specified in U.S. Trademark Application No. 76/558,081 is likely to cause confusion, mistake or deception as to origin, sponsorship or association with LeMans and LeMans' copyrights and trademark rights in and to the AMS Tire Marks and tires.

16. Upon information and belief, before filing U.S. Trademark Application No. 76/558,081 for its RAT RADIAL ALL TERRAIN Stylized Mark, or otherwise adopting its mark, Excel Tire knew or should have known of LeMans' prior rights to and use of the RAT RADIAL ALL TERRAIN Mark in connection with its goods and, therefore, lacked good faith and lacked a bona fide intention to use its RAT RADIAL ALL TERRAIN Stylized Mark in commerce on its specified goods.

17. The registration of the RAT RADIAL ALL TERRAIN Stylized Mark in Application No. 76/558,081 would cause damage to LeMans and would violate Section 2(d) of the Trademark Act.

18. The registration of the RAT RADIAL ALL TERRAIN Stylized Mark by Excel Tire in connection with the goods specified in Application No. 76/558,081 would cause damage to LeMans and deprive LeMans of the value and use of its RAT RADIAL ALL TERRAIN Mark to which LeMans is entitled by its creation, development and use of the RAT RADIAL ALL TERRAIN Mark.

**APPLICANT IS NOT THE OWNER OF
THE RAT RADIAL ALL TERRAIN STYLIZED MARK**

19. LeMans hereby incorporates the allegations contained in Paragraph Nos. 1-18 by reference herein.

20. Long before Excel Tire filed its U.S. Trademark Application No. 76/558,081, LeMans expended substantial effort, time and money in the creation, development and promotion of its AMS Tire Marks for tires.

21. Excel Tire improperly claimed ownership of the RAT RADIAL ALL TERRAIN Stylized Mark when it filed U.S. Trademark Application No. 76/558,081.

22. Excel Tire is not the rightful owner of the RAT RADIAL ALL TERRAIN Stylized Mark and has interfered with LeMans' rightful ownership rights in its AMS Tire Marks.

23. The registration of the RAT RADIAL ALL TERRAIN Stylized Mark by Excel Tire in connection with the goods specified in U.S. Trademark Application No. 76/558,081 would cause damage to LeMans and deprive LeMans of the ownership in its AMS Tire Marks.

FRAUD ON THE OFFICE

24. LeMans hereby incorporates the allegations contained in Paragraph Nos. 1-23 by reference herein.

25. Upon information and belief, at a time prior to filing its application for the RAT RADIAL ALL TERRAIN Stylized Mark on November 7, 2003, Excel Tire knew, or should have known, of LeMans' ownership and prior superior rights in and to the RAT RADIAL ALL TERRAIN Mark.

26. Upon information and belief, Excel Tire knew, believed, or should have known, that its RAT RADIAL ALL TERRAIN Stylized Mark was likely to cause confusion, or to cause

mistake, or to deceive as to source, affiliation, connection, or association with LeMans and its AMS Tire Marks.

27. Upon information and belief, Excel Tire executed and submitted its application for the RAT RADIAL ALL TERRAIN Stylized Mark under a declaration stating that it is entitled to use the mark in commerce, and that the mark does not so resemble another entity's mark as to be likely to cause confusion, or to cause mistake, or to deceive.

28. Upon information and belief, Excel Tire knew, believed, or should have known, that the declaration submitted in the application for the RAT RADIAL ALL TERRAIN Stylized Mark contained false statements, that those false statements were material, and that the United States Patent and Trademark Office would rely upon those statements to approve the publication of the application for the RAT RADIAL ALL TERRAIN Stylized Mark.

29. Upon information and belief, by knowingly submitting the application for the RAT RADIAL ALL TERRAIN Stylized Mark containing material false statements, Excel Tire has committed fraud against the United States Patent and Trademark Office, and arising from that fraud, the application for the RAT RADIAL ALL TERRAIN Stylized Mark was published, the grant of registration to which would cause irreparable injury to LeMans.

CONVERSION

30. LeMans hereby incorporates the allegations contained in Paragraph Nos. 1-29 by reference herein.

31. Upon information and belief, by knowingly submitting the application for the RAT RADIAL ALL TERRAIN Stylized Mark and claiming ownership to the RAT RADIAL ALL TERRAIN Stylized Mark, Excel Tire has wrongfully taken and detained LeMans' RAT RADIAL ALL TERRAIN Mark and associated copyrights and the tangible objects embodying these

works, thereby causing damage to LeMans and creating a cause of action under common law conversion.

32. Upon information and belief, by knowingly submitting the application for the RAT RADIAL ALL TERRAIN Stylized Mark and claiming ownership to the RAT RADIAL ALL TERRAIN Stylized Mark, Excel Tire has made a wrongful assumption of ownership to LeMans' RAT RADIAL ALL TERRAIN Mark, thereby causing damage to LeMans and creating a cause of action under common law conversion.

WHEREFORE, Opposer, LeMans, respectfully requests that the Trademark Trial and Appeals Board sustain the opposition and deny registration to U.S. Trademark Application No. 76/558,081.

Respectfully submitted,

LEMANS CORPORATION

Dated: October 6, 2005

/Edward E. Clair/
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Attorneys for the Opposer

CERTIFICATE OF OPPOSER'S ATTORNEYS

We hereby certify that we are trademark attorneys for LeMans Corporation, Opposer herein, and that we have been instructed to file the foregoing Opposition. We are, therefore, filing this Opposition under Section 13 of the Trademark Act of 1946 and under Trademark Rule 101.

FITCH, EVEN, TABIN & FLANNERY

Dated: October 6, 2005

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