

ESTTA Tracking number: **ESTTA134030**

Filing date: **04/05/2007**

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	K&N Engineering, Inc.		
Entity	Corporation	Citizenship	California
Address	1455 Citrus Avenue Riverside, CA 92507 UNITED STATES		

Attorney information	Theresa W. Middlebrook Holland & Knight LLP 633 West 5th Street 21st Floor Los Angeles, CA 90071-2040 UNITED STATES ptdocketing@hklaw.com, theresa.middlebrook@hklaw.com Phone:213-896-2586
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Applicant Information

Application No	78942569	Publication date	03/20/2007
Opposition Filing Date	04/05/2007	Opposition Period Ends	04/19/2007
Applicant	GCA Industries LLC 21602 N. 2nd Avenue, Suite 1 Phoenix, AZ 85027 UNITED STATES		

Goods/Services Affected by Opposition

Class 007. All goods and services in the class are opposed, namely: Air-intake tubes and filters for after-market installation of automotive engines

Attachments	78942569.pdf (3 pages)(141012 bytes)
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Signature	//TheresaWMiddlebrook//
Name	Theresa W. Middlebrook
Date	04/05/2007

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

K&N ENGINEERING, INC.,)	
)	
Opposer)	
)	
v.)	Opp. No. _____
)	
GCA INDUSTRIES, LLC,)	(Serial No. 78/942,569)
)	
Applicant)	
)	

NOTICE OF OPPOSITION

K&N ENGINEERING, INC. ("Opposer"), a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1455 Citrus Avenue, Riverside, California 92507, believes that it will be damaged by the registration of the EXTREME DUTY INTAKE Mark in Class 007 claimed in Application Serial No. 78/942,569 (the "569 Application") filed by GCA INDUSTRIES LLC, a limited liability company, organized under the laws of Arizona, located at 21602 North 2nd Avenue, Suite 1, Phoenix, Arizona 85027 on August 1, 2006, and published in the Official Gazette of March 27, 2007.

Opposer, therefore, opposes registration of the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for opposition, Opposer alleges the following:

1. Opposer is the owner of all right, title, and interest in and to the mark XSTREAM, and variants thereof, which Opposer has used in connection with air filters, air cleaner assemblies and air filter assemblies for automotive engines automotive induction systems, and related products. Opposer has used the XSTREAM mark since at least as early as 1997.

2. Opposer's rights in the XSTREAM marks, and its variants (hereafter "Opposer's Mark") have been recognized by the Patent and Trademark Office, which has issued the following registrations:

XSTREAM AIR FLOW TOP (& Design) in use since 1997, US Registration No. 2,225,500 issued on February 23, 1999;

XSTREAM in use since 1997, US Registration No. 2,777,762 issued on October 14, 2003; and

XSTREAM (stylized) in use since 1997, US Registration No. 2,843,026, issued on May 18, 2004.

In addition to the foregoing, Opposer has used and registered Opposer's Mark in Australia, Canada, Japan, and with the European Union, which covers the following 25 countries: Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

3. Opposer has used, advertised and promoted Opposer's Mark in interstate commerce from a date long prior to the filing date of Applicant's application for EXTREME DUTY INTAKE, which is based upon an intent-to-use application filed on August 1, 2006. Therefore, Opposer clearly holds priority.

4. Notwithstanding Opposer's prior rights in Opposer's Mark, on August 1, 2006, and with direct prior knowledge of Opposer's rights as well as Opposer's probable objection to Applicant adoption of a confusingly similar mark, and therefore infringement of its rights, Applicant filed an intent-to-use application with the United States Patent and Trademark Office to register the mark EXTREME DUTY INTAKE for air-intake tubes and filters for aftermarket installation of automobile engines, in International Class 007. On information and belief, Applicant has commenced use of such mark, which is confusingly similar to Opposer's Mark as it looks the same, is identical in sound and meaning, and is used on the same and/or related goods upon which Opposer places and uses Opposer's Mark.

COUNT I

Likelihood of Confusion - §2(d)

5. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 4, above, as if set forth in their entirety herein.

6. The mark which Applicant seeks to register incorporates the distinctive portion of Opposer's Mark, namely XSTREAM, and therefore so closely resembles Opposer's Mark in appearance, sound and/or meaning that the use and registration thereof by Applicant is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's goods and will injure and damage Opposer and the goodwill and reputation symbolized by the Opposer's Mark.

7. Applicant's goods identified in the '569 application are identical in nature or are so closely related to Opposer's goods that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer or that

Applicant is in some way connected with or sponsored by or affiliated with Opposer, all to Opposer's irreparable damage and injury.

8. Likelihood of confusion and deception is enhanced by the fact that the parties' goods are sold or intended for sale through the same trade channels to the same classes of prospective purchasers.

9. Under the circumstances, registration and use of Applicant's EXTREME DUTY INTAKE Mark is likely to cause Opposer to lose control over the good and valuable reputation represented by and derived from Opposer's Mark.

10. Registration of Applicant's EXTREME DUTY INTAKE Mark in light of the prior rights of Opposer in Opposer's Mark is therefore likely to cause confusion, mistake and/or deception among members of the relevant purchasing public resulting in damage and injury to Opposer in violation of the provisions of Section 2(d) of the Trademark Act. 15 U.S.C. §1052(d).

The required fee of \$300.00, as well any additional charges, should be made to the Deposit Account of Holland & Knight LLP, Account No. 50-2481.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied to the 78/942,569 Application.

K&N ENGINEERING, INC.

By: 

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