

ESTTA Tracking number: **ESTTA374228**

Filing date: **10/20/2010**

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	Marathon Engine Systems, Inc.
Granted to Date of previous extension	11/13/2010
Address	2050 Energy Drive East Troy, WI 53120 UNITED STATES
Party who filed Extension of time to oppose	Jansson Shupe & Munger Ltd.
Relationship to party who filed Extension of time to oppose	Jansson Shupe & Munger Ltd. is the law firm representing Marathon Engine Systems, Inc. in this Opposition proceeding.

Attorney information	Peter N. Jansson, Julie F. Kirby Jansson Shupe & Munger Ltd. 245 Main Street Racine, WI 53403 UNITED STATES kfinder@janlaw.com, jkirby@janlaw.com, dwolff@janlaw.com, emartinez@janlaw.com Phone:262-632-6900
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Applicant Information

Application No	77880891	Publication date	09/14/2010
Opposition Filing Date	10/20/2010	Opposition Period Ends	11/13/2010
Applicant	Helm Environmental Solutions, LLC Suite 1800 505 Sansome Street San Francisco, CA 94111 UNITED STATES		

Goods/Services Affected by Opposition

Class 007. All goods and services in the class are opposed, namely: Emission reduction units for locomotive motors and engines, namely, EGR valves; emission reduction units for locomotive motors and engines, namely, PCV valves; emission reduction units for locomotive motors and engines, namely, catalytic converters
Class 009. All goods and services in the class are opposed, namely: Computer hardware for use in controlling emissions from locomotives

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2971735	Application Date	02/10/2003
Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	ECOPOWER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Gaseous fuel-powered, engine-driven cogeneration units for use primarily in producing heat, and also for use in generating electrical power		

U.S. Registration No.	2967681	Application Date	02/10/2003
Registration Date	07/12/2005	Foreign Priority Date	NONE
Word Mark	ECOPOWER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 007. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Gaseous fuel-powered, engine driven cogeneration units for use primarily in generating electrical power, and also for use in producing heat		

Attachments	76489187#TMSN.gif (1 page)(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	/peter n jansson/ /julie f kirby/
Name	Peter N. Jansson, Julie F. Kirby
Date	10/20/2010

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

In re Trademark Application of:

Applicant: Helm Environmental Solutions, LLC
Serial No: 77/880,891
Filed: November 25, 2009
Mark: ECOPOWER

MARATHON ENGINE SYSTEMS, INC.)	
)	
Opposer,)	
)	
vs.)	Opposition No. _____
)	
HELM ENVIRONMENTAL)	
SOLUTIONS, LLC)	
)	
Applicant.)	

NOTICE OF OPPOSITION

On November 25, 2009, Helm Environmental Solutions, LLC ("Applicant"), filed a trademark application ("the Application") stating that it is a Delaware limited liability company having offices at Suite 1800, 505 Sansome Street, San Francisco, California 94111. The Application is for registration of the mark ECOPOWER ("Applicant's Mark") in the United States Patent & Trademark Office ("USPTO"), under 15 USC §1051(b), for the following goods:

emission reduction units for locomotive motors and engines, namely, EGR valves;
emission reduction units for locomotive motors and engines, namely, PCV valves;
emission reduction units for locomotive motors and engines, namely, catalytic converters, in International Class 007; and computer hardware for use in controlling emissions from locomotives, in International Class 009.

collectively referred to herein as "Applicant's Goods." The Application, which was assigned

Serial No. 77/880,891, was published for opposition in the USPTO *Official Gazette* on September 14, 2010.

Marathon Engine Systems, Inc. (“Opposer”), a Wisconsin corporation having offices at 2050 Energy Drive, East Troy, Wisconsin 53120, believes it will be damaged by registration of Applicant’s Mark and therefore hereby opposes registration of Applicant’s Mark. The grounds of this Opposition are as follows:

1. From dates well prior to November 25, 2009, Applicant’s filing date, Opposer has used in interstate commerce, and continues to use, the mark ECOPOWER as a trademark for various cogeneration units for generating electrical power and producing heat.

2. Opposer is owner of the ECOPOWER trademark, all related rights and goodwill, the registrations, and the related business.

Opposer’s ECOPOWER Registrations

3. From a date long prior to November 25, 2009, Applicant’s filing date, Registrant has used in interstate commerce, and continues to use, the mark ECOPOWER for various cogeneration units for generating electrical power and producing heat.

4. On February 10, 2003, Marathon Engine Systems, Inc. filed an application for registration of its trademark ECOPOWER with the USPTO, and a registration of the mark was issued on July 19, 2005, as United States Trademark Registration No. 2,971,735 (“Opposer’s First Registration”) for “gaseous fuel-powered, engine-driven cogeneration units for use primarily in producing heat, and also for use in generating electrical power.” A copy of United

States Registration No. 2,971,735, which is in full force and effect, is attached hereto as Exhibit A and incorporated herein by reference.

5. The ECOPOWER trademark of Opposer's First Registration was first used in commerce on gaseous fuel-powered, engine-driven cogeneration units for use primarily in producing heat, and also for use in generating electrical power at least as early as December 31, 2004 and continues to be used by Opposer.

6. Because of the high quality of goods provided by Opposer under the ECOPOWER trademark of Opposer's First Registration, and through Opposer's extensive advertising and promotion of such mark in connection with such goods, Opposer has developed substantial goodwill in such mark.

7. A declaration under 15 USC §1065 was filed by Opposer on October 8, 2010. The USPTO notified Opposer of the acceptance thereof on October 15, 2010. By reason of acceptance of such declaration, Opposer's First Registration has acquired incontestible status.

8. From a date long prior to November 25, 2009, Applicant's filing date, Opposer has used in interstate commerce, and continues to use, the mark ECOPOWER & Design for "gaseous fuel-powered, engine-driven cogeneration units for use primarily in producing heat, and also for use in generating electrical power."

9. On February 10, 2003, Marathon Engine Systems, Inc. filed an application for registration of its trademark ECOPOWER & Design for "gaseous fuel-powered, engine-driven cogeneration units for use primarily in generating electrical power, and also for use in producing heat" and a registration of the mark was issued on July 12, 2005 as United States Trademark

Registration No. 2,967,681 (“Opposer’s Second Registration”). A copy of United States Trademark Registration No. 2,967,681 which is in full force and effect, is attached hereto as Exhibit B and incorporated herein by reference.

10. The ECOPOWER & DESIGN trademark of Opposer’s Second Registration was first used in commerce on gaseous fuel-powered, engine-driven cogeneration units for use primarily in producing heat, and also for use in generating electrical power on December 31, 2004 and continues to be used by Opposer.

11. Because of the high quality of goods provided by Opposer under the ECOPOWER & Design trademark of Opposer’s second Registration, and through Opposer’s extensive advertising and promotion of such mark in connection with such goods, Opposer has developed substantial additional goodwill in such ECOPOWER & Design mark.

12. A declaration under 15 USC §1065 was filed by Opposer on October 8, 2010. The USPTO notified Opposer of the acceptance thereof on October 15, 2010. By reason of acceptance of such declaration, Opposer’s Second Registration has acquired incontestible status.

Applicant’s Confusingly-Similar Mark

13. Applicant’s Mark and Opposer’s two registrations for ECOPOWER have obvious similarities phonetically and visually. Applicant’s Goods which Applicant intends to provide under the ECOPOWER trademark are essentially identical to the goods sold by Opposer under Opposer’s ECOPOWER marks. Sales would be through the same or similar channels of trade.

14. Purchasers of Applicant’s Goods intended to be sold under Applicant’s Mark would be likely to believe that Applicant’s Goods originate from the same source as the goods sold by

Opposer under Opposer's ECOPOWER marks. Consequently, use and registration of Applicant's Mark is likely to cause public confusion with Opposer's ECOPOWER marks.

15. Use and registration of Applicant's Mark are likely to cause public confusion, mistake and deception not only as to source of the goods but also public confusion, mistake and deception as to whether the goods offered by Applicant under Applicant's Mark are at least endorsed by or in some way sponsored by or associated with Opposer.

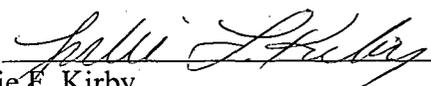
16. If Applicant succeeds in registering Applicant's Mark, statutory rights would be created which will be in violation of the earlier established rights of Opposer, all to the harm of Opposer's goodwill and with resultant diminution of Opposer's rights in its aforesaid registrations. Hence, registration of Applicant's Mark would result in damage and injury to Opposer and to the public. Therefore, registration of Applicant's Mark should be denied under Section 2(d) of the Lanham Act (15 USC § 1052(d)).

WHEREFORE, Opposer files this Notice of Opposition and prays that this Opposition be sustained and the Application rejected; and Opposer requests such other and further relief as may be deemed just and proper.

Dated: October 20, 2010

Respectfully submitted,

MARATHON ENGINE SYSTEMS, INC.

By 
Julie F. Kirby
Registration No. 58,048
One of the Attorneys for Registrant

In re Trademark Application of
Helm Environmental Solutions, LLC

Page 6 of 6

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Int. Cl.: 11

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

Reg. No. 2,971,735

United States Patent and Trademark Office

Registered July 19, 2005

**TRADEMARK
PRINCIPAL REGISTER**

ECOPOWER

MARATHON ENGINE SYSTEMS, INC. (WISCONSIN CORPORATION)

2050 ENERGY DRIVE
EAST TROY, WI 53120

FOR: GASEOUS FUEL-POWERED, ENGINE-DRIVEN COGENERATION UNITS FOR USE PRIMARILY IN PRODUCING HEAT, AND ALSO FOR USE

IN GENERATING ELECTRICAL POWER, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 12-31-2004; IN COMMERCE 12-31-2004.

SN 76-489,187, FILED 2-10-2003.

DAVID H. STINE, EXAMINING ATTORNEY



Int. Cl.: 7

Prior U.S. Cls.: 13, 19, 21, 23, 31, 34, and 35

Reg. No. 2,967,681

United States Patent and Trademark Office

Registered July 12, 2005

**TRADEMARK
PRINCIPAL REGISTER**



MARATHON ENGINE SYSTEMS, INC. (WISCONSIN CORPORATION)

2050 ENERGY DRIVE
EAST TROY, WI 53120

FOR: GASEOUS FUEL-POWERED, ENGINE DRIVEN COGENERATION UNITS FOR USE PRIMARILY IN GENERATING ELECTRICAL POWER, AND

ALSO FOR USE IN PRODUCING HEAT, IN CLASS 7 (U.S. CLS. 13, 19, 21, 23, 31, 34 AND 35).

FIRST USE 12-31-2004; IN COMMERCE 12-31-2004.

SN 76-489,188, FILED 2-10-2003.

DAVID H. STINE, EXAMINING ATTORNEY

