

ESTTA Tracking number: **ESTTA391915**

Filing date: **02/07/2011**

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	XKL, LLC
Granted to Date of previous extension	02/19/2011
Address	12020 113th Avenue, NE, Suite 100 Kirkland, WA 98034 UNITED STATES
Attorney information	WILLIAM E. ESHELMAN 3130 PANHANDLE ROAD FRONT ROYAL, VA 22630 UNITED STATES bill@eshelman.biz Phone:540-636-6064

Applicant Information

Application No	79083167	Publication date	12/21/2010
Opposition Filing Date	02/07/2011	Opposition Period Ends	02/19/2011
International Registration No.	1040411	International Registration Date	04/07/2010
Applicant	SHENZHEN SUCCESS TECHNOLOGY INC., LTD. Room 1921, F19, Huaneng Building Shennan Middle Road,; Futian District,;Shenzhen; 518031 Guangdong CHINA		

Goods/Services Affected by Opposition

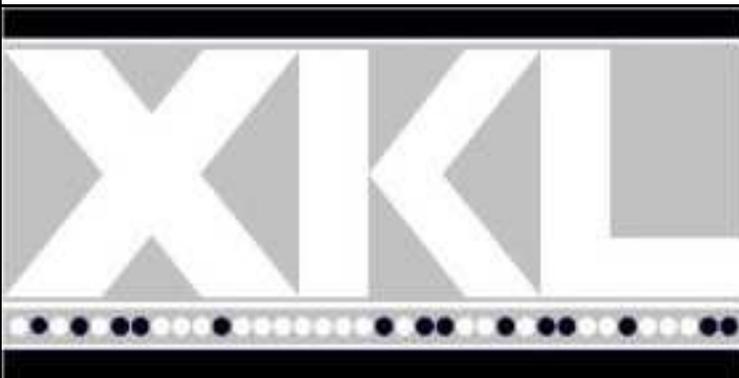
Class 009. All goods and services in the class are opposed, namely: Notebook Computers; electric navigational instruments; telephone apparatus, video telephones; navigation apparatus for vehicles; portable telephones; satellite navigational system, namely, a global positioning system; walkie-talkies; electronic and optical communications instruments and components, namely, optical transmitters; automatic telephone exchange apparatus; audio receivers and video receivers; video cameras; cameras for photography
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85044821	Application Date	05/21/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	XKL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2009/12/01 First Use In Commerce: 2009/12/01 Equipment, instruments, and passive and active components for optical and electrical network technology, namely, wavelength division multiplexers and demultiplexers, optical fiber amplifiers, optical communication lasers, laser diodes and light-emitting diodes, optical receivers; computer software for controlling and surveying data transmission networks, namely, data transmission network management software; computer software for controlling and surveying or remote-controlling and remote-surveying wavelength division multiplexers and demultiplexers, optical fiber amplifiers, lasers, laser diodes, light emitting diodes, and optical receivers; computer hardware, router hardware, and computer software for use in operating, animating and managing the aforementioned optical transmission system hardware</p>		

U.S. Application No.	85044853	Application Date	05/21/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	XKL		
Design Mark			
Description of Mark	<p>The mark consists of the letters XKL between upper and lower bands and a series of dots or circles between the letters XKL and the lower band.</p>		
Goods/Services	<p>Class 009. First use: First Use: 2009/12/01 First Use In Commerce: 2009/12/01 Equipment, instruments, and passive and active components for optical and electrical network technology, namely, wavelength division multiplexers and demultiplexers, optical fiber amplifiers, optical communication lasers, laser</p>		

	diodes and light-emitting diodes, optical receivers; computer software for controlling and surveying data transmission networks, namely, data transmission network management software; computer software for controlling and surveying or remote-controlling and remote-surveying wavelength division multiplexers and demultiplexers, optical fiber amplifiers, lasers, laser diodes, light emitting diodes, and optical receivers; computer hardware, router hardware, and computer software for use in operating, animating and managing the aforementioned optical transmission system hardware
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Attachments	85044821#TMSN.jpeg (1 page)(bytes) 85044853#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (4 pages)(69598 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 Overnight Courier on this date.

Signature	/William E. Eshelman/
Name	WILLIAM E. ESHELMAN
Date	02/07/2011

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

In re: Serial No. 79/083,167 for the mark XKL (and design) filed on April 7, 2010 and published on December 21, 2010.

XKL, LLC v. Shenzhen Success Technology Inc. Ltd.

Opposition No.: _____

Notice of Opposition

XKL, LLC believes it will be damaged by the registration of the above-identified mark and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

1) Plaintiff, XKL, LLC, is a corporation organized under the laws of the state of Delaware. The address of XKL, LLC is 12020 113th Avenue, N.E., Suite 100, Kirkland, WA 98034.

2) Plaintiff has been advised that it will be refused registration of its application Serial No. 85/044,821 for its word mark XKL, when defendant's application matures into a registration.

3) Plaintiff has been advised that it will be refused registration of its application Serial No. 85/044,853 for its composite mark XKL (and design), when defendant's application matures into a registration.

4) A first ground for opposition is Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d): That defendant's mark so resembles a mark registered in the Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the defendant, to cause confusion, or to cause mistake, or to deceive.

5) Prior to April 7, 2010, the filing date of defendant's Section 66(a) application opposed herein, or, prior to any date of first use on which defendant can rely, plaintiff has used each of: (1) its trade name, XKL, LLC; (2) its domain name, www.xkl.com; (3) its word mark XKL (Serial No. 85/044,821); and (4) its composite mark XKL (and design) (Serial No. 85/044,853) in connection with equipment, instruments, and passive and active components for optical and electrical network technology, namely, wavelength division multiplexers and demultiplexers, optical fiber amplifiers, optical communication lasers, laser diodes and light-emitting diodes, optical receivers; computer software for controlling and surveying data transmission networks, namely, data transmission network management software; computer software for controlling and surveying or remote-controlling and remote-surveying wavelength division multiplexers and demultiplexers, optical fiber amplifiers, lasers, laser diodes, light emitting diodes, and optical receivers; computer hardware, router hardware, and computer software for use in operating, animating and managing the aforementioned optical transmission system hardware.

6) If, as the trademark examining attorney contends, plaintiff's marks so resemble defendant's mark as to be likely, when applied to the goods of the plaintiff, to cause confusion, then the registration sought by defendant should be refused because plaintiff has priority of use.

7) A second ground for opposition is Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), that defendant's mark falsely suggests a connection with plaintiff's name or identity.

8) Prior to April 7, 2010, the filing date of defendant's Section 66(a) application opposed herein, or, prior to any date of first use on which defendant can rely, plaintiff adopted and used the trade name "XKL, LLC" and registered and used the domain name www.xkl.com.

9) Defendant's mark consists of the letters "XKL" with two-curved bands around the letters.

10) Defendant's mark points uniquely and unmistakably to the identity of plaintiff, thereby suggesting a false connection with plaintiff.

Because plaintiff will be damaged by registration of defendant's application, plaintiff requests that its opposition be sustained and that defendant's registration be refused.

Respectfully submitted,



William E. Eshelman

Attorney for plaintiff

Date: February 7, 2011

William E. Eshelman

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Front Royal, VA 22630

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