

ESTTA Tracking number: **ESTTA411713**

Filing date: **05/27/2011**

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	Schneider Electric Services International Sprl
Granted to Date of previous extension	07/06/2011
Address	PLACE DU CHAMPS DE MARS, 5 TOUR BASTION - 14EME ETAGE BRUSSELS, 1050 BELGIUM

Attorney information	Marc M. Gorelnik, Esq. Kilpatrick Townsend & Stockton LLP Two Embarcadero Center, 8th Floor San Francisco, CA 94111 UNITED STATES mgorelnik@kilpatricktownsend.com, dvargas@kilpatricktownsend.com Phone:415-576-0200
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**Applicant Information**

Application No	85004563	Publication date	03/08/2011
Opposition Filing Date	05/27/2011	Opposition Period Ends	07/06/2011
Applicant	Foshan Naibao Daily Commodity Co., Ltd. Shangen Ind., Xiqiao Town, Nanhai Foshan Guangdong, 528211 CHINA		

**Goods/Services Affected by Opposition**

Class 011. First Use: 2010/04/00 First Use In Commerce: 2010/04/00 All goods and services in the class are opposed, namely: dehumidifiers; humidifiers for household purposes; swimming pool water cleaning and filtering units; electric fans; portable electric fans; hot air blowers; electric fans for household purposes; electric clothes drying machines for household purposes; hair dryers for household purposes; electric hand drying apparatus for washrooms; hand-held electric hair dryers; electric hot air hand dryers; electric heating fans; portable electric heaters; heat pumps; air cleaning units; household air cleaners; electric dehydrators; ventilating fans for commercial and industrial use
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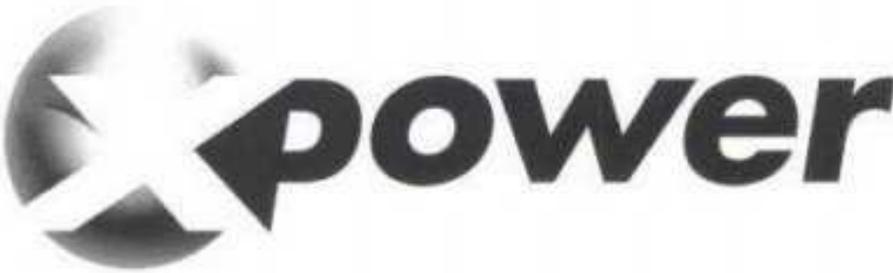
**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration	2623069	Application Date	06/20/2000
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No.			
Registration Date	09/24/2002	Foreign Priority Date	NONE
Word Mark	XPOWER		
Design Mark	<b>XPOWER</b>		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2000/06/00 First Use In Commerce: 2000/06/00 Electrical power products, namely, portable power supplies, backup power supplies, uninterruptible power supplies, batteries, battery chargers, power inverters and power converters		

U.S. Registration No.	3652641	Application Date	03/23/2005
Registration Date	07/07/2009	Foreign Priority Date	02/07/2005
Word Mark	XPOWER		
Design Mark			
Description of Mark	The mark consists of the term "XPOWER" with sphere design.		
Goods/Services	Class 009. First use: First Use: 2002/03/00 First Use In Commerce: 2002/03/00 Electrical power products, namely, power inverters and power converters; portable power supplies and backup power supplies; and battery chargers; Electrical power products, namely, uninterruptible power supplies		

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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	/Marc M. Gorelnik/
Name	Marc M. Gorelnik
Date	05/27/2011

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

*In re:* Application Ser. No. 85/004,563  
Published: March 8, 2011  
Applicant: Foshan Naibao Daily Commodity Co., Ltd  
Mark: **XPOWER (stylized)**

SCHNEIDER ELECTRIC SERVICES  
INTERNATIONAL SPRL,

Opposer,

v.

FOSHAN NAIBAO DAILY COMMODITY  
CO., LTD,

Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
P. O. Box 1451  
Alexandria, Virginia 22313-1451

Commissioner:

SCHNEIDER ELECTRIC SERVICES INTERNATIONAL SPRL, (“Opposer”), a Belgium corporation, having a business address at Place du Champs de Mars, 5 Tour Bastion, 14 Eme Etage, Brussels, Belgium 1050, believes it will be damaged by the registration of the mark XPOWER (stylized) (“the Mark”) shown in Application Serial No. 85/004,563, owned by Foshan Naibao Daily Commodity Co., Ltd (“Applicant”), with an address of Shangen Ind.,

Xiqiao Town, Nanhai Foshan, Guangdong 528211, China, and published in the *Official Gazette* on March 8, 2011, and hereby opposes registration thereof.

As grounds for opposition, Opposer alleges:

1. Opposer owns Registration No. 2,623,069 for XPOWER for "electrical power products, namely, portable power supplies, backup power supplies, uninterruptible power supplies, batteries, battery chargers, power inverters and power converters" in International Class 9. Opposer's application for said registration was filed on June 20, 2000, and matured to registration on September 24, 2002. Opposer has used the mark on and in connection with the sale of the aforementioned goods since at least as early as June, 2000.

2. Opposer owns Registration No. 3,652,641 for XPOWER & DESIGN for "electrical power products, namely, power inverters and power converters; portable power supplies and backup power supplies; and battery chargers; electrical power products, namely, uninterruptible power supplies" in International Class 9. Opposer's application for said registration was filed on March 23, 2005, and matured to registration on July 7, 2009. Opposer has used the mark on and in connection with the sale of the aforementioned goods since at least as early as March, 2002.

3. By virtue of Opposer's extensive use and promotion of the XPOWER and XPOWER & DESIGN marks ("Opposer's Marks), Opposer has established valuable goodwill in the marks, and the public has come to associate the marks with Opposer. As such, the public has come to know Opposer's marks as indications of products originated from Opposer.

4. On April 1, 2010, Applicant submitted an application under Section 1(a) to register the Mark on the Principal Register in connection with the "dehumidifiers; humidifiers

for household purposes; swimming pool water cleaning and filtering units; electric fans; portable electric fans; hot air blowers; electric fans for household purposes; electric clothes drying machines for household purposes; hair dryers for household purposes; electric hand drying apparatus for washrooms; hand-held electric hair dryers; electric hot air hand dryers; electric heating fans; portable electric heaters; heat pumps; air cleaning units; household air cleaners; electric dehydrators; ventilating fans for commercial and industrial use” (“Applicant’s Goods”). The Applicant stated a date of first use of April, 2010. Applicant made these representations to induce the PTO to issue a registration for the Mark for the Goods.

5. Applicant’s Goods, as described in the Application, are highly related to the goods identified in the registrations for Opposer’s Marks.

6. As a result of the similarity between Opposer’s Marks and Applicant’s mark and the highly related nature of the goods associated with each party’s respective marks, Applicant’s mark is likely to cause confusion, mistake or deception in the trade and among purchasers as to the source, origin or sponsorship of the parties’ respective goods.

7. As of the application filing date, Applicant, in fact, never offered, advertised, or sold the Goods under the Mark.

8. Applicant has never used the Mark in commerce in connection with the Goods.

9. The representations Applicant made to the PTO on April 1, 2010 were each false.

10. Applicant knew that the representations were false.

11. The representations Applicant made were material.

12. Applicant knowingly made these material misrepresentations to the PTO with an intent to deceive.

13. The PTO relied on the misrepresentations in examining the application.

14. But for the Applicant's misrepresentations, the PTO would have refused the application.

15. Applicant's actions in the filing and prosecution of the application constitute fraud.

16. Registration of Applicant's mark shown in the opposed Application will result in damage to Opposer under the provisions of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) (likelihood of confusion), and § 14 of the Lanham Act, 15 U.S.C. § 1064 (fraud in the procurement), pursuant to the allegations stated above.

17. If the Application is permitted to register, the registration would presumptively entitle Applicant to prima facie exclusive ownership and rights to the XPOWER mark. Such registration would cause confusion among consumers as to the separate and distinct sources of Applicant's goods and Opposer's goods and the relationship of Opposer to Applicant, thereby damaging Opposer's goodwill in Opposer's Marks, diluting the value thereof, and resulting in irreparable harm to Opposer's business and reputation, all to the detriment of Opposer who has expended considerable sums and effort in promoting the XPOWER and XPOWER & DESIGN marks.

WHEREFORE, Opposer prays that this Opposition be sustained and that registration of U.S. Trademark Application Serial No. 85/004,563 be denied.

Please direct all notices, pleadings and process regarding this matter to the undersigned.

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Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By:  \_\_\_\_\_

Marc M. Gorelnik  
*Attorneys for Opposer*  
SCHNEIDER ELECTRIC SERVICES  
INTERNATIONAL SPRL

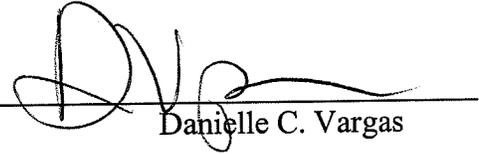
Dated: May 27, 2011

**PROOF OF SERVICE**

I hereby certify that on May 27, 2011, I served a copy of the foregoing document entitled **NOTICE OF OPPOSITION** by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

WENDY A. GREENSEICH  
THE FARRELL LAW FIRM, LLP  
290 BROADHOLLOW RD STE 210E  
MELVILLE, NY 11747-4834

Dated: May 27, 2011

  
Danielle C. Vargas