

ESTTA Tracking number: **ESTTA468934**

Filing date: **04/24/2012**

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	Calpine Corporation
Granted to Date of previous extension	04/25/2012
Address	717 Texas Avenue, Suite 1000 Houston, TX 77002 UNITED STATES

Attorney information	Charles F. Hauff, Jr. SNELL & WILMER L.L.P. 400 East Van Buren Phoenix, AZ 85004-2202 UNITED STATES ipdocket@swlaw.com,mwwilliams@swlaw.com, pdemello@swlaw.com, chauff@swlaw.com Phone:602 382-6000
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Applicant Information

Application No	85362201	Publication date	12/27/2011
Opposition Filing Date	04/24/2012	Opposition Period Ends	04/25/2012
Applicant	Greenleaf Investment Holdings II LLC Suite 430 2600 Capitol Avenue Sacramento, CA 95816 UNITED STATES		

Goods/Services Affected by Opposition

Class 040. First Use: 2010/09/30 First Use In Commerce: 2010/09/30 All goods and services in the class are opposed, namely: Generation of biomass fueled power through operation of power generation equipment and facilities

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GREENLEAF POWER		

Goods/Services	power generation services
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Attachments	NtcOpp.85362201.pdf (6 pages)(293785 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	/Charles F. Hauff, Jr./
Name	Charles F. Hauff, Jr.
Date	04/24/2012

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

In the matter of application Serial No. 85/362,201
Published in the *Official Gazette* of December 27, 2011 at page TM 656.

CALPINE CORPORATION, a Delaware
corporation,

Opposer,

vs.

GREENLEAF INVESTMENT HOLDINGS
II LLC, a Delaware limited liability
company,

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

Calpine Corporation, a Delaware corporation with its principal place of business at 717 Texas Avenue, Suite 1000, Houston, TX, 77002 ("Opposer"), believes that it will be damaged by the registration of Trademark Application Serial No. 85/362,201 for the logo mark "GREENLEAF POWER and Design" with an alleged use in connection with "[g]eneration of biomass fueled power through operation of power generation equipment and facilities" in International Class 40, and hereby opposes the same.

As grounds for opposition, including grounds under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063, as amended, Opposer hereby alleges the following:

1. Since at least as early as 1994, nearly seventeen (17) years prior to the filing date of Applicant's application that is the subject of this Notice of Opposition, the Opposer, Calpine Corporation, has owned and operated two power generation facilities in Northern California under the GREENLEAF POWER trademark. Opposer has continuously used GREENLEAF POWER in connection with power generation services since that time.

2. Opposer notified Greenleaf Investment Holdings II LLC, a Delaware limited liability company ("Applicant") of its rights in GREENLEAF POWER for its power generation facilities in Northern California in a letter dated June 14, 2011 to Hugh Smith, President of Greenleaf Power, LLC. Applicant acknowledged this notice in a letter from its counsel dated June 24, 2011. Thereafter, Applicant filed its Application Serial No. 85/362,201 on July 1, 2011 with clear knowledge of Opposer's rights.

3. Upon information and belief, Trademark Application Serial No. 85/362,201 is owned by Applicant, and Applicant filed that trademark application seeking to register the mark "GREENLEAF POWER and Design" based on its alleged use of the mark with "[g]eneration of biomass fueled power through operation of power generation equipment and facilities" in International Class 40, as evidenced by the publication of the mark in the December 27, 2011 *Official Gazette* on page TM 656. A copy of the Publication is attached hereto as Exhibit A.

4. There is no issue of priority in the present case, as Opposer has been continuously using its GREENLEAF POWER trade name for nearly seventeen (17) years prior to Applicant's filing of the subject GREENLEAF POWER application and long prior to the alleged use date of September 30, 2010 as set forth in Applicant's application.

5. Applicant's GREENLEAF POWER mark, if used and registered in conjunction with the aforementioned services identified in Applicant's Trademark Application Serial No. 85/362,201, is confusingly similar in sight, sound, meaning and manner of use to Opposer's GREENLEAF POWER trade name, and is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's services by Opposer.

6. If Trademark Application Serial No. 85/362,201 is permitted to be registered on the Principal Register, Opposer will suffer great injury. Allowing registration of Applicant's mark would run counter to the public interest with respect to the ability to accurately ascertain the source of goods and services in the marketplace. For example, for more than seventeen (17) years, Opposer has operated its GREENLEAF POWER power generation facility and sold power in Northern California. Applicant has begun to use its mark in the same geographic region, opening its corporate headquarters approximately 50 miles from Opposer's

GREENLEAF POWER facilities. Applicant's use of the mark in this geographic region and registration of the mark would cause Opposer's customers and the public to believe that Applicant is in some way associated with, sponsored by, or authorized by Opposer, and any faults or deficiencies in Applicant's services would reflect adversely on Opposer unless this opposition is sustained.

7. Upon information and belief, allowing registration of Applicant's mark would allow Applicant to unfairly trade upon Opposer's good will developed as a result of its long standing and continuous use of GREENLEAF POWER in conjunction with power generation facilities.

8. Upon information and belief, the Declaration submitted in connection with Application Serial No. 85/362,201 is defective and false, because Applicant had notice of Opposer's rights in GREENLEAF POWER prior to filing the subject application.

9. Upon information and belief, the Declaration submitted in connection with Application Serial No. 85/362,201 is defective and false because Applicant was not using the mark in connection with the recited services as of the alleged use date.

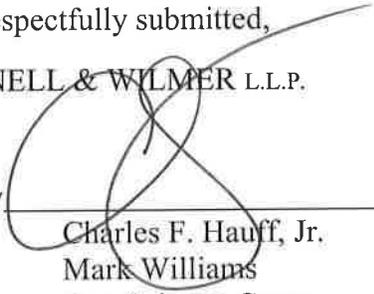
WHEREFORE, the Opposer prays that Application Serial No. 85/362,201 be rejected, that no registration be issued thereon, and that this opposition be sustained in favor of Opposer.

This Notice of Opposition is timely filed within an extension of time granted to Opposer by the Trademark Trial and Appeal Board. As noted in the electronic filing to which the document is attached, the undersigned has authorized payment by deposit account of the filing fee of \$300.00 for opposing an application in one class in accordance with 37 C.F.R. §2.6(a)(17).

Respectfully submitted,

SNELL & WILMER L.L.P.

By


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Attorneys for Opposer Calpine Corporation

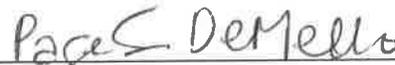
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition is being deposited in the United States mail, first-class postage prepaid, to Applicant at the address and on the date indicated below:

Rebecca E. McDougall
ROBERTS MLOTKOWSKI SAFRAN & COLE P.C.
7918 Jones Branch Drive, Suite 500
McLean Virginia 22102

Date: April 24, 2012

By



Page S. DeMello

Exhibit A

CLASS 40—(Continued).

SN 85-362,201. GREENLEAF INVESTMENT HOLDINGS II LLC, SACRAMENTO, CA. FILED 7-1-2011.



NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POWER", APART FROM THE MARK AS SHOWN. THE MARK CONSISTS OF A LEAF DESIGN ABOVE AN INCOMPLETE CIRCLE. TO THE LEFT ARE THE WORDS "GREENLEAF POWER".

FOR GENERATION OF BIOMASS FUELED POWER THROUGH OPERATION OF POWER GENERATION EQUIPMENT AND FACILITIES (U.S. CLS. 100, 103 AND 106).

FIRST USE 9-30-2010; IN COMMERCE 9-30-2010. EMILY CARLSEN, EXAMINING ATTORNEY

SN 85-362,621 AUGEN OPTICOS, S.A. DE C.V., SAN DIEGO, CA. FILED 7-4-2011.

AUGEN HDRx

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,423,635, 3,708,092 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HDRx", APART FROM THE MARK AS SHOWN.

FOR CUSTOMIZED PROCESSING OF PROGRESSIVE LENSES (U.S. CLS. 100, 103 AND 106).

FIRST USE 3-1-2011; IN COMMERCE 3-1-2011. JENNY PARK, EXAMINING ATTORNEY

CLASS 40—(Continued).

SN 85-364,231. MACARENO BROTHERS INC., KINGSVILLE, TX. FILED 7-6-2011.

MACARENO SIGNS AND GRAPHICS

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SIGNS AND GRAPHICS", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

FOR SIGN LETTERING; CUSTOM FABRICATION OF SIGNS; CUSTOMIZED IMPRINTING OF COMPANY NAMES AND LOGOS ON THE GOODS OF OTHERS, NAMELY, ON PROMOTIONAL MERCHANDISE, APPAREL AND CORPORATE GIFTS; EMBROIDERY SERVICES; CUSTOM FABRICATION OF 3D FOAM SIGNS AND LETTERS; VEHICLE LETTERING; CUSTOM FABRICATION OF MAGNETIC SIGNS FOR VEHICLES (U.S. CLS. 100, 103 AND 106).

FIRST USE 5-1-1989; IN COMMERCE 5-1-1989.

TARAH HARDY, EXAMINING ATTORNEY

SN 85-364,273. MACARENO BROTHERS INC., KINGSVILLE, TX. FILED 7-6-2011.



NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SIGNS AND GRAPHICS", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE OUTLINED WORDING "MACARENO" OVER A RECTANGULAR BOX. BENEATH "MACARENO" IS THE WORD "SIGNS" IN LARGER SCRIPT WHICH IS PARTIALLY OUTLINED. UNDERNEATH "SIGNS" IS THE SMALLER SCRIPT WORDING "AND GRAPHICS".

SEC. 2(F).

FOR SIGN LETTERING; CUSTOM FABRICATION OF SIGNS; CUSTOMIZED IMPRINTING OF COMPANY NAMES AND LOGOS ON THE GOODS OF OTHERS, NAMELY, ON PROMOTIONAL MERCHANDISE, APPAREL AND CORPORATE GIFTS; EMBROIDERY SERVICES; CUSTOM FABRICATION OF 3D FOAM SIGNS AND LETTERS; VEHICLE LETTERING; CUSTOM FABRICATION OF MAGNETIC SIGNS FOR VEHICLES (U.S. CLS. 100, 103 AND 106).

FIRST USE 5-1-1989; IN COMMERCE 5-1-1989.

TARAH HARDY, EXAMINING ATTORNEY