

ESTTA Tracking number: **ESTTA484641**

Filing date: **07/20/2012**

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	Circuit Breaker Sales Co., Inc.		
Entity	Corporation	Citizenship	Texas
Address	PO Box 1098 Gainesville, TX 76241 UNITED STATES		

Attorney information	Terrell R. Miller Gardner Wynne Sewell LLP 1601 Elm Street, Suite 3000 Dallas, TX 75201 UNITED STATES ip@gardere.com Phone:214.999.3000
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Applicant Information

Application No	85228245	Publication date	07/17/2012
Opposition Filing Date	07/20/2012	Opposition Period Ends	08/16/2012
Applicant	Capital Enterprises Inc. 37 West 6th Avenue Mesa, AZ 85210 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 035. First Use: 2004/07/00 First Use In Commerce: 2004/07/00 All goods and services in the class are opposed, namely: Wholesale and retail electrical apparatus store services; Wholesale and retail services through direct solicitation by salespersons directed to end-users, contractors, and distributors featuring electrical apparatus; Wholesale and retail store services and on-line wholesale and on-line retail store services featuring circuit breakers, electric fuses, breaker mounting kits, circuit breaker panel boards, panelmount switches, transformers, trip units for circuit breakers, electric bus plugs, switch mounting kits, electrical safety switches, remote circuit breaker control switch operators, control units for regulating start-up electrical motors, and parts thereof</p>
<p>Class 037. First Use: 2004/07/00 First Use In Commerce: 2004/07/00 All goods and services in the class are opposed, namely: Providing technical support, namely, providing technical information concerning the installation, repair and maintenance of electrical apparatus, equipment and devices used for residential, commercial, and industrial operations; Repair or maintenance of electrical apparatus, equipment, or devices</p>

Grounds for Opposition

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

U.S. Registration No.	4148058	Application Date	06/13/2011
Registration Date	05/22/2012	Foreign Priority Date	NONE
Word Mark	CIRCUIT BREAKER SALES		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1984/07/17 First Use In Commerce: 1984/07/17 On-line wholesale and retail store services, wholesale and retail store services, and wholesale and retail services through direct solicitation by salespersons to end-users, featuring circuit breakers, fuses, switchgear, unit substations, transformers, load break switches, motor controls, and protective relays</p> <p>Class 037. First use: First Use: 1984/07/17 First Use In Commerce: 1984/07/17 Repair, maintenance, and remanufacturing to the order and specification of others, of electrical apparatus, equipment, or devices used for residential, commercial and industrial operations; On-site installation, modification of electrical apparatus, equipment, or devices used for residential, commercial and industrial operations; Providing technical information used for installation, repair, and replacement of electrical apparatus, equipment, or devices used for residential, commercial and industrial operations</p>		

Attachments	85344321#TMSN.jpeg (1 page)(bytes) Notice of Opposition - CIRCUIT BREAKER SUPERSTORE.pdf (4 pages) (219940 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	/Terrell R. Miller/
Name	Terrell R. Miller
Date	07/20/2012

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

CIRCUIT BREAKER SALES CO., INC.	§	
	§	
Opposer,	§	OPPOSITION NO. _____
	§	
vs.	§	In the matter of:
	§	U.S. Application Serial No. 85/228,245
	§	for CIRCUIT BREAKER SUPERSTORE
CAPITAL ENTERPRISES INC.	§	
	§	
Applicant.	§	Published July 17, 2012

Commissioner of Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Sir:

This matter relates to an application for service mark registration, Serial No. 85/228,245, filed January 27, 2011 by Capital Enterprises Inc. ("Applicant") in connection with services in Classes 35 and 37, which application ("Opposed Application") was published in the Official Gazette of the United States Patent and Trademark Office on July 17, 2012. Circuit Breaker Sales Co., Inc. ("Opposer"), a Texas corporation, having its principal place of business at PO Box 1098, Gainesville, Texas 76241, believes that it would be damaged by the grant of registration on such application, and hereby opposes the registration of the mark of such application.

As grounds for such opposition, it is alleged that:

1. Beginning from a date long prior to any priority date by which, upon information and belief, Applicant can rely, and continuing to the present time, Opposer has used, since at least as early as July 17, 1984, the mark CIRCUIT BREAKER SALES, and has used the mark in

Attorney Docket: 134091-9000

connection with on-line wholesale and retail store services, wholesale and retail store services, and wholesale and retail services through direct solicitation by salespersons to end-users, featuring circuit breakers, fuses, switchgear, unit substations, transformers, load break switches, motor controls, and protective relays; repair, maintenance, and remanufacturing to the order and specification of others, of electrical apparatus, equipment, or devices used for residential, commercial and industrial operations; on-site installation, modification of electrical apparatus, equipment, or devices used for residential, commercial and industrial operations; providing technical information used for installation, repair, and replacement of electrical apparatus, equipment, or devices used for residential, commercial and industrial operations, throughout the United States and elsewhere. Opposer's above-stated mark shall hereinafter be referred to as "Opposer's Mark."

2. Opposer's Mark has been so extensively used and advertised by Opposer that it has come to indicate, to the relevant trade and consumers, having its source of origin or being connected with the Opposer.

3. Opposer is the owner of, inter alia, United States Registration No. 4148058, and such registration is valid and subsisting. A copy of this registration is attached hereto as Exhibit A.

4. Opposer's Mark has not now nor has it ever been abandoned.

5. Upon information and belief, Applicant has not made any use of the mark sought to be registered in Opposed Application, and is not otherwise entitled to a priority date, prior to July 2004, the date of first use of Opposed Application.

6. Upon information and belief, the trademark sought to be registered by Applicant in application Serial No. 85/228,245 consists of a mark which so resembles Opposer's Mark, identified above and previously used and registered by Opposer, and not abandoned, as to be likely, when associated with the services of Applicant, to cause confusion or to cause mistake or to deceive, thereby to Opposer's damage.

Attorney Docket: 134091-9000

WHEREFORE, Opposer prays that Applicant be required to answer this Notice of Opposition; that upon hearing, said application Serial No. 85/228,245 be ordered withdrawn; that registration of the mark therein disclosed be refused, and that Opposer have such other and further relief as may be deemed to be just and proper.

Respectfully submitted,

Date: July 20, 2012

/Terrell R. Miller/
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition was served by facsimile, email, and First Class Mail on this 20th day of July, 2012, upon Applicant's attorney of record, at the correspondence address of record:

ANDREW LAHSER
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/Terrell R. Miller/
Terrell R. Miller

United States of America

United States Patent and Trademark Office

Circuit Breaker Sales

Reg. No. 4,148,058

Registered May 22, 2012

Int. Cls.: 35 and 37

SERVICE MARK

SUPPLEMENTAL REGISTER

CIRCUIT BREAKER SALES CO., INC. (TEXAS CORPORATION)
PO BOX 1098
GAINESVILLE, TX 76241

FOR: ON-LINE WHOLESALE AND RETAIL STORE SERVICES, WHOLESALE AND RETAIL STORE SERVICES, AND WHOLESALE AND RETAIL SERVICES THROUGH DIRECT SOLICITATION BY SALESPERSONS TO END-USERS, FEATURING CIRCUIT BREAKERS, FUSES, SWITCHGEAR, UNIT SUBSTATIONS, TRANSFORMERS, LOAD BREAK SWITCHES, MOTOR CONTROLS, AND PROTECTIVE RELAYS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-17-1984; IN COMMERCE 7-17-1984.

FOR: REPAIR, MAINTENANCE, AND REMANUFACTURING TO THE ORDER AND SPECIFICATION OF OTHERS, OF ELECTRICAL APPARATUS, EQUIPMENT, OR DEVICES USED FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL OPERATIONS; ON-SITE INSTALLATION, MODIFICATION OF ELECTRICAL APPARATUS, EQUIPMENT, OR DEVICES USED FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL OPERATIONS; PROVIDING TECHNICAL INFORMATION USED FOR INSTALLATION, REPAIR, AND REPLACEMENT OF ELECTRICAL APPARATUS, EQUIPMENT, OR DEVICES USED FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL OPERATIONS, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 7-17-1984; IN COMMERCE 7-17-1984.

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 "SALES", APART FROM THE MARK AS SHOWN.

SER. NO. 85-344,321, FILED P.R. 6-13-2011; AM. S.R. 3-21-2012.

MARTHA SANTOMARTINO, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT

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