

ESTTA Tracking number: **ESTTA583199**

Filing date: **01/22/2014**

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	Eveready Battery Company, Inc.
Granted to Date of previous extension	02/05/2014
Address	533 Maryville University Drive St. Louis, MO 63141 UNITED STATES

Attorney information	Thomas A. Polcyn Thompson Coburn LLP One US Bank Plaza St. Louis, MO 63101 UNITED STATES ipdocket@thompsoncoburn.com, hal-shathir@thompsoncoburn.com, tpolcyn@thompsoncoburn.com, mnoelke@thompsoncoburn.com
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Applicant Information

Application No	85915447	Publication date	10/08/2013
Opposition Filing Date	01/22/2014	Opposition Period Ends	02/05/2014
Applicant	Bay Eagleeyes International Trade Co. 10305 Tula In Cupertino, CA 95014 CANADA		

Goods/Services Affected by Opposition

Class 009. First Use: 2011/05/17 First Use In Commerce: 2011/05/17 All goods and services in the class are opposed, namely: Anode batteries; Batteries and battery chargers; Battery cables; Battery packs; Battery cases; Solar batteries

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2950233	Application Date	09/12/2003
Registration Date	05/10/2005	Foreign Priority Date	NONE
Word Mark	KEEP GOING		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2004/07/23 First Use In Commerce: 2004/07/23 Batteries

U.S. Registration No.	2670000	Application Date	02/16/2001
Registration Date	12/31/2002	Foreign Priority Date	NONE
Word Mark	THE POWER TO KEEP YOU GOING... AND GOING...		
Design Mark	THE POWER TO KEEP YOU GOING... AND GOING...		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2001/06/18 First Use In Commerce: 2001/06/18 Batteries		

U.S. Registration No.	1968456	Application Date	05/11/1995
Registration Date	04/16/1996	Foreign Priority Date	NONE
Word Mark	THEY KEEP GOING...AND GOING...AND GOING...		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1995/04/00 First Use In Commerce: 1995/04/00 batteries		

Attachments	76211839#TMSN.gif(bytes) notice of opposition.pdf(112270 bytes) TESS Sheets (56772 - 127741).pdf(586702 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	/s/ Thomas A. Polcyn
Name	Thomas A. Polcyn
Date	01/22/2014

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

EVEREADY BATTERY COMPANY,)	
INC.,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	Directed to U.S. Serial No. 85/915,447
BAY EAGLEEYES INTERNATIONAL)	
TRADE CO.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer Eveready Battery Company, Inc. (“Opposer” or “Eveready”), a Delaware corporation with offices at 533 Maryville University Drive, St. Louis, Missouri 63141, believes it will be damaged by registration of the mark GOINGPOWER in International Class 009, as shown in U.S. Serial No. 85/915,447 filed by Bay Eagleeyes International Trade Co., (“Applicant”), a sole proprietorship with offices at 10305 Tula Ln., Cupertino, California 95014. Accordingly, Eveready opposes registration of the mark GOINGPOWER.

BACKGROUND

(1) Opposer is a global company and leading marketer of household consumer products and personal care products, with many internationally-recognized brands, including battery brands. Since a time prior to the filing date of U.S. Serial No. 85/915,447 (the “Application”) and any use of the GOINGPOWER mark, Opposer has continuously used in interstate commerce a family of GOING marks, wherein the term GOING is the family indicator, in connection with batteries and other products. These marks include: (1) KEEP GOING, (2) THE POWER TO KEEP YOU GOING . . . AND GOING . . . and (3) THEY KEEP GOING . . . AND GOING . . . AND GOING . . . (“GOING Marks”).

(2) In addition to its common law rights in the GOING Marks, Opposer owns the following U.S. trademark registrations for the marks:

Trademark	Status	App./Reg. No.	Goods
KEEP GOING	Registered	2,950,233	Batteries
THE POWER TO KEEP YOU GOING . . . AND GOING . . .	Registered	2,670,000	Batteries
THEY KEEP GOING . . . AND GOING . . . AND GOING . . .	Registered	1,968,456	Batteries

TESS excerpts for the above-identified registrations are attached to this notice of opposition and incorporated by reference.

(3) As a result of substantial and extensive sales and promotion, the GOING Marks have become well known to the trade and public and therefore acquired significant goodwill and fame.

(4) On information and belief, Applicant is the owner of U.S. Serial No. 85/915,447 for the mark GOINGPOWER for *anode batteries; batteries and battery chargers; battery cables; battery packs; battery cases; solar batteries* in International Class 009.

COUNT I
(Likelihood of Confusion)

(5) Opposer incorporates the above allegations by reference.

(6) Applicant's GOINGPOWER mark so resembles Opposer's GOING Marks, previously used in the United States by Opposer and not abandoned, as to be likely, when used in connection with the applied-for goods in International Class 009, to cause confusion or to cause mistake or to deceive, thus causing damage to Opposer.

**COUNT II
(Dilution)**

(7) Opposer incorporates the above allegations by reference.

(8) Prior to the filing date of the Application or any use of the GOINGPOWER mark, Opposer's GOING Marks became "famous" within the meaning of 15 U.S.C. §1125(c).

(9) Registration and use of the GOINGPOWER mark will cause and/or is likely to cause dilution of the distinctive quality of Opposer's GOING Marks, thus causing damage to Opposer.

ACCORDINGLY, Opposer requests that this notice of opposition be sustained and that registration of the GOINGPOWER mark be denied.

Respectfully submitted,

/s/ Thomas A. Polcyn

Thomas A. Polcyn

Matthew A. Braunel

Hadi S. Al-Shathir

THOMPSON COBURN LLP

One US Bank Plaza

St. Louis, Missouri 63101

(314) 552-6000

(314) 552-7000 (fax)

tpolcyn@thompsoncoburn.com

mbraunel@thompsoncoburn.com

hal-shathir@thompsoncoburn.com

Attorneys for Opposer Eveready Battery Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following via first-class mail, postage prepaid, on January 22, 2014 to:

Raj Abhyanker
Raj Abhyanker, P.C.
1580 W El Camino Real, Suite 8
Mountain View, California 94040-2462

Bay Eagleeyes International Trade Co.
10305 Tula Ln.,
Cupertino, California 95014

/s/ Thomas A. Polcyn



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Record 1 out of 1[TSDR](#)[Word History](#)[TAB Status](#)*(Use the "Back" button of the Internet Browser to return to TESS)***Typed Drawing**

Word Mark KEEP GOING

Goods and Services IC 009. US 021 023 026 036 038. G & S: Batteries. FIRST USE: 20040723. FIRST USE IN COMMERCE: 20040723

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78299744

Filing Date September 12, 2003

Current Basis 1A

Original Filing Basis 1B

Published for Opposition August 17, 2004

Registration Number **2950233**

Registration Date May 10, 2005

Owner (REGISTRANT) Eveready Battery Company, Inc. CORPORATION DELAWARE 533 Maryville University Drive St. Louis MISSOURI 63141

Attorney of Record Thomas A. Polcyn

Prior Registrations 1968456;2670000

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

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TSDR Available Drawings TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark THE POWER TO KEEP YOU GOING... AND GOING...

Goods and Services IC 009. US 021 023 026 036 038. G & S: Batteries. FIRST USE: 20010618. FIRST USE IN COMMERCE: 20010618

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76211839

Filing Date February 16, 2001

Current Basis 1A

Original Filing Basis 1B

Published for Opposition August 28, 2001

Registration Number **2670000**

Registration Date December 31, 2002

Owner (REGISTRANT) Eveready Battery Company, Inc. CORPORATION DELAWARE 533 Maryville University Drive St. Louis MISSOURI 63141

Attorney of Record Thomas A. Polcyn

Prior Registrations 1968456

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 8 (6-YR). SECTION 8(10-YR) 20120802.

Renewal 1ST RENEWAL 20120802

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Word Mark THEY KEEP GOING...AND GOING...AND GOING...

Goods and Services IC 009. US 021 023 026 036 038. G & S: batteries. FIRST USE: 19950400. FIRST USE IN COMMERCE: 19950400

Mark Drawing Code (1) TYPED DRAWING

Serial Number 74673222

Filing Date May 11, 1995

Current Basis 1A

Original Filing Basis 1A

Published for Opposition January 23, 1996

Registration Number **1968456**

Registration Date April 16, 1996

Owner (REGISTRANT) Eveready Battery Company, Inc. CORPORATION DELAWARE 533 Maryville University Drive St. Louis MISSOURI 63141

Attorney of Record Thomas A. Polcyn

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060627.

Renewal 1ST RENEWAL 20060627

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