

ESTTA Tracking number: **ESTTA609241**

Filing date: **06/11/2014**

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	Mag Instrument, Inc.
Granted to Date of previous extension	06/11/2014
Address	2001 S. Hellman Avenue Ontario, CA 91761 UNITED STATES
Attorney information	Alexis A. Houle 555 S Flower Street 50th Floor Los Angeles, CA 90071 UNITED STATES ahoule@jonesday.com, aeraimer@jonesday.com, laprosecution@jonesday.com Phone:213-243-2653

Applicant Information

Application No	86020680	Publication date	02/11/2014
Opposition Filing Date	06/11/2014	Opposition Period Ends	06/11/2014
Applicant	Multistack, LLC 1065 Maple Ave. Sparta, WI 54656 UNITED STATES		

Goods/Services Affected by Opposition

Class 011. First Use: 2005/12/02 First Use In Commerce: 2005/12/02 All goods and services in the class are opposed, namely: Air-Conditioning refrigeration units; air-conditioning modular refrigeration units; air-conditioning systems primarily comprising motor and compressor units, chillers, evaporators, heat-exchangers, and control systems

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.	1154816	Application Date	11/13/1979
Registration Date	05/19/1981	Foreign Priority Date	NONE
Word Mark	MAG-LITE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 1979/02/22 First Use In Commerce: 1979/02/22 Flashlight

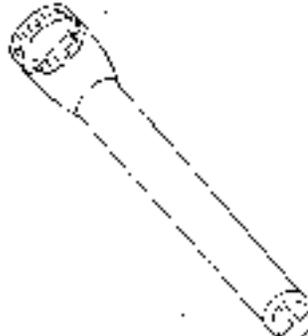
U.S. Registration No.	1389804	Application Date	08/26/1985
Registration Date	04/15/1986	Foreign Priority Date	NONE
Word Mark	MINI MAGLITE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1984/01/00 First Use In Commerce: 1984/01/00 FLASHLIGHTS		

U.S. Registration No.	1245187	Application Date	06/30/1982
Registration Date	07/12/1983	Foreign Priority Date	NONE
Word Mark	MAG-NUM STAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1980/01/19 First Use In Commerce: 1980/01/19 Flashlight Bulbs		

U.S. Registration No.	1611960	Application Date	06/30/1987
Registration Date	09/04/1990	Foreign Priority Date	NONE
Word Mark	MINI MAGLITE AAA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1987/01/08 First Use In Commerce: 1987/01/08 FLASHLIGHTS AND FLASHLIGHT ACCESSORIES, NAMELY, LAMPS AND BULBS Class 013. First use: First Use: 1987/01/08 First Use In Commerce: 1987/01/08 FLASHLIGHT HOLSTERS		

U.S. Registration No.	1655486	Application Date	07/25/1988
Registration Date	09/03/1991	Foreign Priority Date	NONE
Word Mark	MAG-LITE		

Design Mark	
Description of Mark	THE MARK CONSISTS OF A CIRCUMFERENTIAL INSCRIPTION EXTENDING SUBSTANTIALLY AROUND THE HEAD OF A FLASHLIGHT AND BEARING THE WORDS "MAG-LITE". THE DOTTED LINES ARE NOT PART OF THE MARK AND SERVE ONLY TO SHOW THE POSITION OF THE MARK ON THE GOODS.
Goods/Services	Class 011. First use: First Use: 1979/02/22 First Use In Commerce: 1979/02/22 FLASHLIGHTS

U.S. Registration No.	1667539	Application Date	07/25/1988
Registration Date	12/10/1991	Foreign Priority Date	NONE
Word Mark	MINI-MAGLITE		
Design Mark			
Description of Mark	THE MARK CONSISTS OF A CIRCUMFERENTIAL INSCRIPTION EXTENDING SUBSTANTIALLY AROUND THE HEAD OF A FLASHLIGHT AND BEARING THE WORDS "MINI-MAGLITE". THE DOTTED LINES ARE NOT PART OF THE MARK AND SERVE ONLY TO SHOW THE POSITION OF THE MARK ON THE GOODS.		
Goods/Services	Class 011. First use: First Use: 1984/01/00 First Use In Commerce: 1984/01/00 FLASHLIGHTS		

U.S. Registration No.	1715086	Application Date	10/10/1989
Registration Date	09/15/1992	Foreign Priority Date	NONE
Word Mark	MAG INSTRUMENT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1979/02/22 First Use In Commerce: 1979/02/22		

	BATTERIES, CHARGERS, ELECTRICAL CONVERTERS AND POWER CORDS Class 011. First use: First Use: 1979/02/22 First Use In Commerce: 1979/02/22 FLASHLIGHTS, FLASHLIGHT PARTS, AND FLASHLIGHT ACCESSORIES; NAMELY, BULBS, CLAMPS, HOLSTERS, TRAFFIC WANDS, LANYARDS, KEYRINGS, BATTERY SPRINGS, BULB PROTECTORS, POCKET CLIPS AND LENSES		
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U.S. Registration No.	1975632	Application Date	11/19/1993
Registration Date	05/28/1996	Foreign Priority Date	NONE
Word Mark	MAG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1992/01/09 First Use In Commerce: 1992/01/09 electric flashlight accessories sold together or separately, namely rechargeable batteries, battery chargers, electrical converters, power cords, charger cradles, flashlight recharger adapters for use with vehicle cigarette lighters, battery packs for flashlights, voltage converters, foreign plug adapters, hardwiring harnesses for adapting flashlight rechargers to land vehicles, boats and airplanes Class 011. First use: First Use: 1992/01/09 First Use In Commerce: 1992/01/09 flashlights and related parts, component parts and accessories therefor, name-lyreplacement flashlight lamps, combination lens holder/anti-roll units adapted to fit the heads of flashlights, flashlight mounting brackets, rubber gripper sleeves adapted to fit on the barrels of flashlights and leather and nylon carryingholsters and belt holders		

U.S. Registration No.	2485515	Application Date	11/05/1997
Registration Date	09/04/2001	Foreign Priority Date	NONE
Word Mark	MAGLITE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1984/05/17 First Use In Commerce: 1984/07/00 flashlights and flashlight accessories, namely, lamps, bulbs, flashlight accessory kits comprising holsters, lens holders, lenses, pocket clips, wrist lanyards and key rings		

U.S. Registration No.	2575768	Application Date	02/05/2001
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Registration Date	06/04/2002	Foreign Priority Date	NONE
Word Mark	MAG-LITE		
Design Mark	MAG-LITE		
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: First Use: 1998/11/00 First Use In Commerce: 1998/11/00 [Clocks]</p> <p>Class 016. First use: First Use: 1998/11/00 First Use In Commerce: 1998/11/00 Decals, pens, and note pads</p> <p>Class 021. First use: First Use: 1998/11/00 First Use In Commerce: 1998/11/00 Coffee mugs and insulated containers for beverages</p> <p>Class 025. First use: First Use: 1986/00/00 First Use In Commerce: 1986/00/00 Clothing, namely, caps, shirts, T-shirts, sweatshirts, and jackets</p>		

U.S. Registration No.	2622179	Application Date	03/12/2001
Registration Date	09/17/2002	Foreign Priority Date	NONE
Word Mark	MAGLITE		
Design Mark	MAGLITE		
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 electric flashlight accessories sold together or separately, namely rechargeable batteries, battery chargers, electrical converters, power cords, charger cradles, flashlight recharger adapters for use with vehicle cigarette lighters, battery packs for flashlights, voltage converters, foreign plug adapters, hardwiring harnesses for adapting flashlight rechargers to land vehicles, boats and airplanes</p> <p>Class 011. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 flashlights and related parts, component parts and accessories therefor, namely replacement flashlight lamps, combination lens holder/anti-roll units adapted to fit the heads of flashlights, flashlight mounting brackets, rubber gripper sleeves adapted to fit on the barrels of flashlights and leather and nylon carryingholsters and belt holders</p>		

U.S. Registration	2999097	Application Date	12/12/2003
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No.			
Registration Date	09/20/2005	Foreign Priority Date	NONE
Word Mark	MAG CHARGER		
Design Mark	 <p style="text-align: center; font-size: 2em; font-weight: bold;">MAG CHARGER</p>		
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1982/09/00 First Use In Commerce: 1982/09/00 Electric flashlight accessories sold together or separately, namely, rechargeable batteries, charger cradles, electrical converters, power cords, flashlight recharger adapters for use with vehicle cigarette lighters, foreign plug adapters</p> <p>Class 011. First use: First Use: 1982/09/00 First Use In Commerce: 1982/09/00 Flashlights and related parts, component parts and accessories therefor, name-lyreplacement flashlight lamps, flashlight mounting brackets</p>		

U.S. Registration No.	3104551	Application Date	04/29/2002
Registration Date	06/13/2006	Foreign Priority Date	NONE
Word Mark	MAG-LED		
Design Mark	 <p style="text-align: center; font-size: 3em; font-weight: bold;">MAG-LED</p>		
Description of Mark	NONE		
Goods/Services	<p>Class 011. First use: First Use: 2006/02/09 First Use In Commerce: 2006/02/09 Flashlights, LED flashlights, and related parts, component parts and accessories therefor, namely, replacement flashlight lamps, LED lamps and nylon carrying holster and belt holder</p>		

U.S. Registration No.	3105299	Application Date	02/25/2004
Registration Date	06/13/2006	Foreign Priority Date	NONE

Word Mark	MAG
Design Mark	
Description of Mark	The mark consists of the word "MAG" and the stylized design of a Panther head.
Goods/Services	<p>Class 009. First use: First Use: 2006/01/11 First Use In Commerce: 2006/01/11 Electric flashlight accessories sold together or separately, namely rechargeable batteries, battery chargers, electrical converters, power cords, charger cradles, flashlight recharger adapters for use with vehicle cigarette lighters, battery packs for flashlights, voltage converters, foreign plug adapters</p> <p>Class 011. First use: First Use: 2006/01/11 First Use In Commerce: 2006/01/11 Flashlights and related parts, component parts and accessories therefor, namely, replacement flashlight lamps, combination lens holder/anti-roll units adapted to fit the heads of flashlights, flashlight mounting brackets, rubber gripper sleeves adapted to fit on the barrels of flashlights and leather and nylon carrying holsters and belt holders</p> <p>Class 025. First use: First Use: 2006/01/11 First Use In Commerce: 2006/01/11 Clothing, namely, shirts, and caps</p>

U.S. Registration No.	3265427	Application Date	04/29/2002
Registration Date	07/17/2007	Foreign Priority Date	NONE

Word Mark	MAG-LED
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 011. First use: First Use: 2006/02/09 First Use In Commerce: 2006/05/23 Flashlight accessories, namely, combination lens holder/anti-roll units adapted to fit the heads of flashlights, flashlight mounting brackets, and leather carrying holsters and belt holders</p>

U.S. Registration	4179888	Application Date	04/16/2010
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No.			
Registration Date	07/24/2012	Foreign Priority Date	NONE
Word Mark	MAG-TAC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2011/08/30 First Use In Commerce: 2011/08/30 Flashlights, flashlight accessories, namely, replacement flashlight lamps, combination lens holder/anti-roll units adapted to fit the heads of flashlights, holsters and belt holders, pocket clips		

U.S. Registration No.	4291385	Application Date	04/20/2012
Registration Date	02/19/2013	Foreign Priority Date	NONE
Word Mark	MINI MAGLITE PRO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2011/01/18 First Use In Commerce: 2011/01/18 Flashlights		

U.S. Registration No.	4291386	Application Date	04/20/2012
Registration Date	02/19/2013	Foreign Priority Date	NONE
Word Mark	MINI MAGLITE PRO+		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 2011/08/04 First Use In Commerce: 2011/08/04 Flashlights

Attachments	73741896#TMSN.gif(bytes) 73741897#TMSN.gif(bytes) 75385568#TMSN.gif(bytes) 76205030#TMSN.gif(bytes) 76223778#TMSN.gif(bytes) 78340422#TMSN.jpeg(bytes) 76978030#TMSN.gif(bytes) 78976964#TMSN.jpeg(bytes) 76401349#TMSN.gif(bytes) 85016170#TMSN.jpeg(bytes) 85604332#TMSN.jpeg(bytes) 85604362#TMSN.jpeg(bytes) Notice of Opposition MAGLEV.pdf(221182 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	/Alexis A. Houle/
Name	Alexis A. Houle
Date	06/11/2014

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

MAG INSTRUMENT, INC.,)	Opposition No. _____
)	
Opposer,)	Application Serial No.: 86/020,680
)	Filing Date: July 26, 2013
v.)	Publication Date: February 11, 2014
)	Trademark: MAGLEV
MULTISTACK, LLC,)	International Class: 11
)	
Applicant.)	
)	
)	
)	
_____)	

NOTICE OF OPPOSITION

Box TTAB FEE
Commissioner for Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

Dear Sir or Madam:

Mag Instrument, Inc. (“Mag Instrument”), a California corporation located and doing business at 2001 S. Hellman Avenue, Ontario, California 91761, believes that it will be damaged by registration of the alleged mark shown in Serial No. 86/020,680 and, through its attorneys, hereby opposes the same. Mag Instrument opposes registration of this alleged mark in all classes for which Applicant has applied, which, upon information and belief, is only International Class 11.

On information and belief, Application Serial No. 86/020,680 (for “MAGLEV” for Air-Conditioning refrigeration units; air-conditioning modular refrigeration units; air-conditioning systems primarily comprising motor and compressor units, chillers, evaporators, heat-exchangers, and control systems, in International Class 11) was filed on July 26, 2013, by

Multistack, LLC (“Applicant”), a Minnesota limited liability company with an address at 1065 Maple Ave., Sparta, Wisconsin 54656. It was published for Opposition in the Official Gazette on February 11, 2014.

As grounds of opposition, it is alleged that:

1. Since at least as early as February 22, 1979, Mag Instrument has been using the trademark MAG-LITE® in connection with its manufacture, advertising, and sale of flashlights and/or related products. Mag Instrument is the owner of United States Trademark Registration No. 1,154,816 for MAG-LITE®, which is in full force and effect, and which has become incontestable. Mag Instrument is also the owner of United States Trademark Registration No. 1,389,804 for MINI MAGLITE®.

2. In addition to the aforementioned MAG-LITE® and MINI MAGLITE® trademarks, Mag Instrument has obtained registrations on the following marks:

	TRADEMARK	UNITED STATES REG. NO.
1.	MAG-NUM STAR	1,245,187
2.	MINI MAGLITE AAA	1,611,960
3.	MAG-LITE and circumferential inscription	1,655,486
4.	MINI MAGLITE and circumferential inscription	1,667,539
5.	MAG INSTRUMENT	1,715,086
6.	MAG	1,975,632
7.	MAGLITE	2,485,515
8.	MAG-LITE	2,575,768

TRADEMARK		UNITED STATES REG. NO.
9.	MAGLITE	2,622,179
10.	MAG CHARGER	2,999,097
11.	MAG-LED	3,104,551
12.	MAG and panther design	3,105,299
13.	MAG-LED	3,265,427
14.	MAG-TAC	4,179,888
15.	MINI MAGLITE PRO	4,291,385
16.	MINI MAGLITE PRO+	4,291,386

These marks are collectively referred to as the “MAG Family of Marks.” Of these marks, numbers 1-13 have become incontestable.

3. Mag Instrument has also obtained trademark registrations on marks in its MAG Family of Marks in the State of California, starting in 1979, and currently has the following marks, among others, registered:

TRADEMARK		STATE OF CALIFORNIA REG. NO.
1.	MAG-LITE	60569
2.	MINI MAGLITE	78422
3.	MAG-LITE AND DESIGN	084986
4.	MINI MAGLITE AAA	086000

4. Mag Instrument has manufactured, marketed, and advertised its flashlights and related products so that the public associates them with the idea of extraordinary design, materials, workmanship, and reliability. In furtherance of that goal, Mag Instrument usually

displays its products and the associated trademarks in its advertising and promotional presentations. At frequent trade shows, Mag Instrument prominently displays many of the MAG Family Marks, including the MAG-LITE[®] and MINI MAGLITE[®] trademarks, in conjunction with the “Mag Instrument” trade name on a booth where its products are exhibited. Mag Instrument distributes full-color brochures that depict and describe its entire line of flashlights and related accessories. In addition, many of the MAG Family Marks, including the MAG-LITE[®] and MINI MAGLITE[®] trademarks, appear on the packaging and containers for the flashlights and/or related accessories and/or on the flashlights themselves. Mag Instrument has spent millions of dollars in advertising and promoting its flashlights and related products.

5. As a result of Mag Instrument’s continuous use and promotion of the MAG Family Marks, including the MAG-LITE[®] and MINI MAGLITE[®] trademarks, as well as the distinctiveness of the marks, the purchasing public has come to associate the MAG Family Marks, including the MAG-LITE[®] and MINI MAGLITE[®] trademarks, with Mag Instrument as the source and sponsor thereof.

6. Mag Instrument’s MAG-LITE[®] and MINI MAGLITE[®] flashlights and other flashlights and accessories bearing the MAG Family Marks have developed a reputation of high quality. For example, Mag Instrument’s MAG-LITE[®] flashlight and other flashlights have earned a superb reputation among police officers, firemen, and other emergency response professionals, as well as among mountaineers, explorers, sportsmen, campers, and others who require the finest flashlights available. Mag Instrument’s flashlight products are sold in quantity to police and fire departments and other civil-defense agencies. They are also advertised on television, in sports/outdoor magazines, and by high-quality catalog houses. They are sold at

retail through various stores, including sporting goods stores, police equipment stores, hardware stores, and mass merchandisers.

7. The Applicant has applied to register “MAGLEV” for Air-Conditioning refrigeration units; air-conditioning modular refrigeration units; air-conditioning systems primarily comprising motor and compressor units, chillers, evaporators, heat-exchangers, and control systems, in International Class 11.

8. Mag Instrument has used its MAG-LITE[®] and MINI MAGLITE[®] trademarks, as well as many of its other MAG Family Marks, on flashlights and/or related accessories well before July 26, 2013 -- the date the Applicant filed its application for “MAGLEV” for Air-Conditioning refrigeration units; air-conditioning modular refrigeration units; air-conditioning systems primarily comprising motor and compressor units, chillers, evaporators, heat-exchangers, and control systems, in International Class 11.

9. The MAG Family Marks are distinctive and are famous marks. Applicant’s use of “MAGLEV” (if any), as well as its filing of a trademark application for “MAGLEV,” occurred subsequent to the MAG Family Marks becoming famous. Registration and/or use of Applicant’s alleged mark have caused and/or will cause dilution of the distinctive quality of the MAG Family Marks. If Applicant is permitted to use and register its alleged mark, Mag Instrument will suffer injury to the value of the MAG Family Marks, its product identity, control over its goodwill and reputation, and ability to move into new markets.

In view of the above, Applicant is not entitled to federal registration of its alleged mark in that Applicant’s proposed use is likely to cause confusion, or to cause mistake, or to deceive. Further, Applicant’s alleged mark dilutes the distinctive quality of the famous MAG Family Marks.

WHEREFORE, Mag Instrument prays that said Application Serial No. 86/020,680 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Mag Instrument.

The appropriate fee under 37 C.F.R. §2.6 is also submitted herewith. Please direct all future correspondence to the undersigned.

Respectfully submitted,

JONES DAY

Dated: June 11, 2014

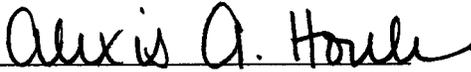
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ahoule@jonesday.com

Attorneys for Opposer
MAG INSTRUMENT, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing document entitled Notice of Opposition has been served upon Applicant by mailing said copy on June 11, 2014, via First Class Mail, postage prepaid at the correspondence address of record in the Patent and Trademark Office:

KEITH H. ORUM
ORUM & ROTH, LLC
53 W JACKSON BLVD
CHICAGO, ILLINOIS 60604



Alexis A. Houle