

ESTTA Tracking number: **ESTTA713848**

Filing date: **12/10/2015**

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 | Stillwater Designs and Audio, Inc. | | |
| Entity | Corporation | Citizenship | OKLAHOMA |
| Address | 3100 N. Husband Stillwater, OK 74075 UNITED STATES | | |

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| Attorney information | Gary Peterson 211 N. Robinson Ave., Ste. 450 South Two Leadership Square Oklahoma City, OK 73102 UNITED STATES gp@garypeterson.com, mail@marymlee.com Phone:405-606-3367 | | |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 86478284 | Publication date | 11/24/2015 |
| Opposition Filing Date | 12/10/2015 | Opposition Period Ends | 12/24/2015 |
| Applicant | SingTech, Inc. 1658 Gailles Avenue San Diego, CA 92154 UNITED STATES | | |

Goods/Services Affected by Opposition

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| <p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cellular telephones; Tablets; Cellular telephone accessories, namely, battery chargers, ac adaptors, and ac chargers; car chargers that plug into a cigarette lighter adapter; travel battery chargers,rapid battery chargers; USB flash drives sold blank; USB chargers for mobile devices, namely, smart phones and tablets;hands-free cellular telephone kits comprised of an earphone type audio speaker,a microphone and an electric jack to plug into the phone; cell phone cradle units; adaptor plugs that plug into a car cigarette lighter; batteries; electric cables; 3.5 auxiliary audio cables; cases for cellular telephones, tablet computers, pagers, and GPS navigation devices; headphones; earphones; earbuds; wireless speakers; laptop protective cases; laptop and tablet protective covers and sleeves; computer styluses, video cameras, audio recorders; back packs especially adapted for holding laptops and tablets; messenger bags especially adapted for holding laptops and tablets, sports helmets,namely, bmx helmets, ski helmets, and moto-cross helmets</p> |
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Grounds for Opposition

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

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|-------------------|---------|------------------|------------|
| U.S. Registration | 1462647 | Application Date | 04/03/1987 |
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| No. | | | |
| Registration Date | 10/27/1987 | Foreign Priority Date | NONE |
| Word Mark | KICKER | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 009. First use: First Use: 1983/04/11 First Use In Commerce: 1983/04/13 STEREO SPEAKERS | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 1888305 | Application Date | 03/21/1994 |
| Registration Date | 04/11/1995 | Foreign Priority Date | NONE |
| Word Mark | K KICKER | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 009. First use: First Use: 1993/02/00 First Use In Commerce: 1993/02/00 speakers | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3975934 | Application Date | 06/24/2010 |
| Registration Date | 06/07/2011 | Foreign Priority Date | NONE |
| Word Mark | IKICK | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 009. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 speaker docks for MP3 players and handheld mobile digital electronic devices; remote controls for speaker docks; battery packs | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3975935 | Application Date | 06/24/2010 |
| Registration Date | 06/07/2011 | Foreign Priority Date | NONE |
| Word Mark | ZKICK | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 009. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 speaker docks for MP3 players and handheld mobile digital electronic devices; remote controls for speaker docks; battery packs | | |

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| Related Proceedings | Opposition No. 91224524 |
|---------------------|-------------------------|

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| Attachments | 74502866#TMSN.png(bytes) 85070876#TMSN.png(bytes) 85070915#TMSN.png(bytes) 7560-233 Notice of Opposition.pdf(19380 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 | /Mary M. Lee/ |
| Name | Mary M. Lee |
| Date | 12/10/2015 |

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

*In the matter of Application Serial No. 86/478,284
For the Mark KICK POWER
Published in the Official Gazette on November 24, 2015*

Stillwater Designs and Audio, Inc.,
Opposer

v.

SingTech, Inc.

Applicant

Opposition No. _____

COMMISSIONER FOR TRADEMARKS
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Commissioner:

Opposer, Stillwater Designs and Audio, Inc. (“Stillwater Designs”), a corporation organized and existing under the laws of the State of Oklahoma, having a business address at 3100 N. Husband, Stillwater, Oklahoma 74075, hereby opposes registration of the mark KICK POWER shown in Application No. 86/478,284 (“Applicant’s Application”) and, as grounds for the opposition, alleges as follows:

1. Stillwater Designs is a manufacturer of a wide range of audio products for automotive, home, and marine applications.
2. In 1983, Stillwater began using the name KICKER for stereo speakers.
3. Stillwater Designs is the owner of U.S. Trademark Registration No. 1,462,647 for KICKER for stereo speakers.

4. Stillwater Designs is the owner of U.S. Trademark Registration No. 1,888,305 for KICKER (& Design) for speakers.

5. Since 1983, Stillwater Designs has expanded its business to include a wide range of products in the home, car, and marine audio industries, including speakers, enclosures, signal processors, amplifiers, signal cables, fuses, speaker and power wires, grills, headphones, earbuds, in-ear monitors, remote controls, power supplies, and the KICKER mark is used on all these products.

6. In 2008, Stillwater Designs began using the mark IKICK for speaker docks for MP3 players and handheld mobile digital electronic devices, for remote controls for speaker docks, and for battery packs.

7. Stillwater Designs is the owner of U.S. Trademark Registration No. 3,975,934 for IKICK for speaker docks for MP3 players and handheld mobile digital electronic devices, remote controls for speaker docks, and battery packs.

8. In 2008, Stillwater Designs began using the mark ZKICK for speaker docks for MP3 players and handheld mobile digital electronic devices, for remote controls for speaker docks, and for battery packs.

9. Stillwater Designs is the owner of U.S. Trademark Registration No. 3,975,935 for ZKICK for speaker docks for MP3 players and handheld mobile digital electronic devices, remote controls for speaker docks, and battery packs.

10. Stillwater Designs product catalogs are distributed nationwide through a network of about 1500 dealers.

11. Stillwater Designs' products bearing one or more of the Stillwater Marks are currently sold by approximately 1,500 authorized dealers throughout the United States.

12. As a result of the continuous, uninterrupted, and nationwide use of the marks KICKER, KICKER (& Design), IKICK, and ZKICK, referred to herein collectively as “the Stillwater Marks,” from a time preceding the filing of Applicant’s Application and preceding the dates of first used alleged in Applicant’s Application, Stillwater Designs has acquired strong common law rights in the Stillwater Marks nationwide.

13. Upon information and belief, Applicant is a California corporation having a business address at 1658 Gailes Ave., San Diego, California 92154.

14. On December 11, 2014, Applicant filed U.S. Trademark Application No. 86/478,284 for the mark KICK POWER for products in International Class 9, including the following: cellular telephones; tablets; cellular telephone accessories, namely, battery chargers, ac adaptors, and ac chargers; car chargers that plug into a cigarette lighter adapter; travel battery chargers, rapid battery chargers; USB flash drives sold blank; USB chargers for mobile devices, namely, smart phones and tablets; hands-free cellular telephone kits comprised of an earphone type audio speaker, a microphone and an electric jack to plug into the phone; cell phone cradle units; adaptor plugs that plug into a car cigarette lighter; batteries; electric cables; 3.5 auxiliary audio cables; cases for cellular telephones, tablet computers, pagers, and GPS navigation devices; headphones; earphones; earbuds; wireless speakers; laptop protective cases; laptop and tablet protective covers and sleeves; computer styluses, video cameras, audio recorders; back packs especially adapted for holding laptops and tablets; messenger bags especially adapted for holding laptops and tablets, sports helmets, namely, bmx helmets, ski helmets, and motocross helmets.

15. Applicant’s Application was filed based on an intention to use the mark.

16. The term “power” has been disclaimed by Applicant as descriptive.

17. Applicant's Application was published for opposition in the Official Gazette on November 24, 2015.

18. Stillwater Designs' use of all the Stillwater Marks precedes the filing date of Applicant's Application.

19. Many of the products identified in Applicant's Application are the same as or closely related to products marketed under one or more of Stillwater Designs' Marks.

20. Applicant's KICK POWER Mark so nearly resembles one or more of Stillwater's Marks as to be likely, if and when used in connection with the goods recited in Applicant's Application, to cause confusion, to cause mistake, and to deceive. Applicant's mark is deceptively similar to Stillwater Designs' Marks so as to cause confusion and lead to deception as to the origin of the Applicant's goods bearing the KICK POWER mark.

21. Purchasers recognize the Stillwater Marks as indicators of a product's origin in Stillwater Design. Consequently, purchasers seeing Applicant's KICK POWER mark on the same or related goods are likely believe that such goods also emanate from Stillwater Designs, causing confusion and mistake.

22. Upon information and belief, Stillwater Designs had established common law rights in the marks IKICK, JKICK, KICKER, and the KICKER "K" LOGO in Applicant's trade area prior to any actual use of the KICK POWER mark and prior to the filing of the Applicant's Application. Thus, Applicant's has acquired no valid rights in the KICK POWER mark by filing Applicant's Application or by virtue of its use of the mark.

23. Based on the foregoing, registration and use of the mark KICK POWER by Applicant, as specified in Applicant's Application herein opposed, will result in damage and injury to Stillwater Designs.

24. If a registration were issued on Applicant's KICK POWER mark, Applicant would thereby gain at least a prima facie exclusive right to the use thereof and, therefore, such registration would do damage and injury to Stillwater Designs.

25. Accordingly, Stillwater Designs believes that it will be damaged by registration of the KICK mark shown in U.S. Trademark Application No. 86/588,862.

WHEREFORE, Stillwater prays that U.S. Trademark Application No. 86/588,862 for the mark KICK POWER be rejected and that registration for the mark therein sought be denied and refused.

Respectfully Submitted,

/Mary M. Lee/

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Attorneys for Opposer,
Stillwater Designs and Audio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served upon Applicant, SingTech, Inc. by mailing the same by First Class Mail, postage prepaid, to Applicant's attorney of record:

Tawnya Wojciechowski, Esq.
TRW Law Group
19900 MacArthur Blvd Ste 1150
Irvine, CA 92612-8433

on December 10, 2015.

/Mary M. Lee/