

ESTTA Tracking number: **ESTTA724230**

Filing date: **02/02/2016**

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		

Attorney information	Mary M. Lee MARY M LEE PC 1300 E 9TH STREET, #4 EDMOND, OK 73034 UNITED STATES MAIL@MARYMLEE.COM, GP@GARYPETERSON.COM Phone:405-285-4490		
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Applicant Information

Application No	86723209	Publication date	01/05/2016
Opposition Filing Date	02/02/2016	Opposition Period Ends	02/04/2016
Applicant	SingTech Inc. 1568 Gailes Avenue San Diego, CA 92154 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bottled drinking water; Drinking water; Drinking water with vitamins; Energy drinks; Fruit drinks; Fruit drinks and juices; Fruit flavoured drinks; Fruit juices and fruit drinks; Isotonic drinks; Non-alcoholic drinks, namely, energy shots; Prepared entrees consisting of fruit drinks and fruit juices, fruit-based beverages, non-alcoholic beverages containing fruit juices, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, vegetable juices, vegetable-fruit juices and smoothies; Soft drinks; Sports drinks

Grounds for Opposition

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

U.S. Registration No.	1462647	Application Date	04/03/1987
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

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		

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		

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

Related Proceedings	Pending oppositions #91224524 and #91225295
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Attachments	74502866#TMSN.png(bytes) 85070876#TMSN.png(bytes) 85070915#TMSN.png(bytes) 7560-233 Notice of Opposition.pdf(18800 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	02/02/2016

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

*In the matter of Application Serial No. 86/723,209
For the Mark KICKPOWER (& Design)
Published in the Official Gazette on January 5, 2016*

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 shown in Application No. 86/588,862 (“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. Stillwater Designs has used the Stillwater Marks in co-marketing arrangements with well-known sports and energy drink manufacturers, including Monster and Rockstar. Also, from time to time, Stillwater sponsors extreme sports events using the Stillwater Marks.

13. 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, Stillwater Designs has acquired strong common law rights in the Stillwater Marks nationwide.

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

15. On August 12, 2015, Applicant filed U.S. Trademark Application No. 86/723,209 for the mark KICKPOWER (& Design) for products in International Class 32, including accessories for bottled drinking water; drinking water; drinking water with vitamins; energy drinks; fruit drinks; fruit drinks and juices; fruit flavoured [sic] drinks; fruit juices and fruit drinks; isotonic drinks; non-alcoholic drinks, namely, energy shots; prepared entrees consisting of fruit drinks and fruit juices, fruit-based beverages, non-alcoholic beverages containing fruit juices, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, vegetable juices, vegetable-fruit juices and smoothies; soft drinks; sports drinks.

16. Applicant's Application was filed based on an intention to use the mark.

17. Applicant's Application was published for opposition in the Official Gazette on January 5, 2016.

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 or services marketed or sponsored under one or more of Stillwater Designs' Marks.

20. Applicant's KICKPOWER 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 KICKPOWER mark.

21. Purchasers recognize the Stillwater Marks as indicators of a product's origin in or sponsorship by Stillwater Design. Consequently, purchasers seeing Applicant's KICKPOWER 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 KICKPOWER mark and prior to the filing of the Applicant's Application. Thus, Applicant's has acquired no valid rights

in the KICKPOWER 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 KICKPOWER 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 KICKPOWER 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 KICKPOWER mark shown in U.S. Trademark Application No. 86/723,209.

WHEREFORE, Stillwater prays that U.S. Trademark Application No. 86/723,209 for the mark KICKPOWER be rejected and that registration for the mark therein sought be denied and refused.

Respectfully Submitted,

/Mary M. Lee/

Mary M. Lee, Reg. No. 31,976

1300 E. 9th Street, No. 4

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Attorney 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 February 2, 2016.

/Mary M. Lee/