

4-1-04

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

Nextel Communications, Inc.

Opposer

v.

Aspen Electronics Corporation

Applicant

) Certificate of Mailing:

) I hereby certify that this document  
) is being deposited with the United States  
) Postal Service as first class mail, postage  
) pre-paid addressed to: Commissioner for  
) Trademarks, 2900 Crystal Drive, Arlington,  
) VA. 22202-3415, on this 18<sup>th</sup> day of February,  
) 2004

  
\_\_\_\_\_  
) Attorney for Potential Opposer

Mark: NEXUS  
Serial No.: 76/503,153  
Filed: February 14, 2003

Published in Official Gazette of  
September 30, 2003

**NOTICE OF OPPOSITION**

Nextel Communications, Inc., a Delaware Corporation, having its place of business at 2001 Edmund Halley Drive, Reston, VA 20191 (hereinafter "Opposer"), believes it will be damaged by the Registration on the Principal Register of the mark NEXUS, Application Serial No. 76/503,153 owned by Aspen Electronics Corporation (hereinafter "Applicant"), and hereby opposes the same upon the following grounds:

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

1. Applicant seeks to obtain Registration on the Principal Register for the mark, NEXUS for use in connection with "batteries and battery chargers" in Class 9.
2. Upon information and belief, Application Serial No. 76/503,153 was filed on March 25, 2003 on an Intent to Use basis.

3. Applicant's use of the NEXUS mark is without the consent or permission of Opposer.

4. Opposer has used the mark NEXTEL in connection with telecommunications services and telecommunications goods, including batteries and battery chargers used therewith since at least as early as 1988.

5. Opposer is the owner of the following related Federal Trademark Registrations, each of which is for telecommunication goods and/or services in Classes 9 and/or 38, or closely related services in Class 39 (hereinafter collectively referred to as "NEXTEL marks"):

<u>Marks</u>	<u>Registration Number</u>	<u>Registration Date</u>
NEXTEL (cls. 38)	Reg. No. 2,358,982	June 20, 2000
NEXTEL (cls. 9)	Reg. No. 1,884,244	March 14, 1995
NEXTEL (cls. 38)	Reg. No. 1,637,139	March 5, 1991
NEXTEL (cls. 9 & 38)	Reg. No. 2,391,504	October 3, 2000

6. Opposer used the NEXTEL marks in commerce before March 25, 2003, the date Applicant filed its application for the mark NEXUS.

7. Opposer has expended substantial monies in marketing, advertising, and promoting the NEXTEL marks in connection with its telecommunications goods and services in interstate commerce throughout the United States.

8. Opposer has enjoyed substantial revenue derived from the sale of said telecommunications goods and services in connection with the NEXTEL marks in the United States.

9. By reason of its extensive marketing, advertising and promotion, the

NEXTEL marks are uniquely associated with Opposer.

10. By reason of the extensive marketing, advertising and promotion of said telecommunications goods and services in connection with the NEXTEL marks since at least as early as 1988, the NEXTEL marks have become famous and distinctive and represent an extremely valuable goodwill associated with Opposer.

COUNT I- LIKELIHOOD OF CONFUSION

11. Opposer hereby incorporates and realleges the allegations contained in paragraph numbers 1 through 10 by reference herein.

12. On information and belief, the batteries and battery chargers offered in connection with the NEXUS mark for which Applicant is seeking registration are closely related to the goods and services sold by Opposer under its NEXTEL marks.

13. On information and belief, the batteries and battery chargers offered in connection with the NEXUS mark for which Applicant is seeking registration are offered to the same customers to whom Opposer offers its goods and services in connection with its NEXTEL marks.

14. On information and belief, the batteries and battery chargers offered in connection with the NEXUS mark for which Applicant is seeking registration are offered through the same channels of trade through which Opposer offers its goods and services in connection with its NEXTEL marks.

15. On information and belief, the NEXUS mark for which Applicant is seeking registration is substantially similar to the Opposers NEXTEL marks.

16. On information and belief, Applicant's NEXUS mark is confusingly similar

to the NEXTEL marks and Applicant's use of NEXUS in connection with the goods specified in Application Serial No. 76/503,153 is likely to cause confusion, mistake or deception that Applicant's goods are those of Opposer or are otherwise endorsed, sponsored, or approved by Opposer, whereby Opposer will be damaged by the registration of the NEXUS mark on the Principal Register of the United States Patent and Trademark Office.

17. If Applicant is granted registration of its NEXUS mark as shown in Application Serial No. 76/503,153, Applicant will thereby obtain *prima facie* exclusive right to use such mark in the United States and such registration will impair and diminish Opposer's goodwill and rights in its NEXTEL marks thereby causing irreparable damage and injury to Opposer. Therefore, Opposer opposes the registration of Applicant's NEXUS mark pursuant to 15 U.S.C. §§ 1052 and 1063(a), as amended by the Trademark Act of 1999.

#### COUNT II-DILUTION

18. Opposer hereby incorporates and realleges the allegations contained in paragraph numbers 1 through 17 by reference herein.

19. Opposer's NEXTEL marks are distinctive and famous marks within the meaning of the Lanham Act and are entitled to the protection of the anti-dilution provisions of the Lanham Act, including 15 U.S.C. Section 1125(c).

20. On information and belief, Applicant sells batteries and battery chargers offered in connection with the NEXUS mark to the same customers and through the same channels of trade that Opposer sells its telecommunications goods and services in connection with the NEXTEL marks.

21. Applicant's NEXUS mark is confusingly similar to Opposer's NEXTEL

marks.

22. Opposer's NEXTEL marks became famous and distinctive prior to Applicant's first commercial use of its mark in commerce.

23. If Applicant is granted registration of its NEXUS mark as shown in Application Serial No. 76/503,153, Applicant will thereby obtain the *prima facie* exclusive right to use such mark, and such registration will impair, diminish and dilute Opposer's goodwill and rights in its NEXTEL marks thereby causing irreparable injury to Opposer. Therefore, Opposer opposes registration of Applicant's NEXUS mark pursuant to 15 U.S.C. Section 1052 and 1063(a), as amended by the Trademark Amendments Act of 1999.

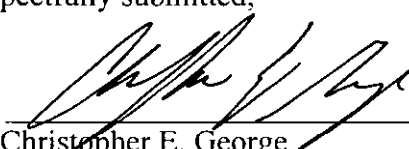
#### PRAYER FOR RELIEF

WHEREFORE, Opposer prays that Application Serial No. 76/503,153 be rejected and that Registration of the NEXUS mark for the goods specified therein be refused and that Opposer be awarded such further relief as this Board deems just and proper.

Respectfully submitted,

February 18, 2004

By:

  
\_\_\_\_\_  
Christopher E. George

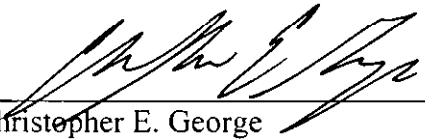
Morrison & Foerster  
2000 Pennsylvania Avenue, NW  
Suite 5500  
Washington, DC 20006-1888  
(202) 887-1500

**CERTIFICATE OF OPPOSER'S ATTORNEYS**

We hereby certify that we are trademark attorneys for Nextel Communications, Inc., Opposer herein, and that we have been instructed to file the foregoing Notice of Opposition. We are, therefore, filing this Notice of Opposition under Section 14 of the Trademark Act of 1946 and under Trademark Rule 2.111.

Morrison & Foerster LLP

February 18, 2004

By:   
Christopher E. George

Attorney for Opposer

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TAB

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February 18, 2004

**VIA FIRST CLASS MAIL**

Assistant Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Re: Notice of Opposition by Nextel Communications, Inc.  
Applicant: Aspen Electronics Corporation  
Mark: NEXUS  
Serial No.: 76/503,153



02-20-2004  
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

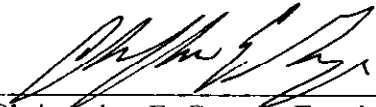
Sir:

We enclose the Notice of Opposition by Nextel Communications, Inc. of the mark NEXUS Serial No.: 76/503,153.

The Commissioner is hereby authorized to charge the \$300.00 filing fee and any additional fees which may be required in this Opposition, or otherwise during the pendency of this Opposition, or credit any overpayment, to Deposit Account No. 03-1952.

Sincerely,

MORRISON & FOERSTER LLP

By:   
Christopher E. George, Esquire

Enclosure