

BOX TTAB
TRADEMARK
5008-0101L

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

Applicant: KIRISUN USA LLC
Serial No.: 78/311,404
Mark: KIRISUN & DESIGN
Filed: October 9, 2003
Goods: Handheld two-way radios; vehicle mounted mobile two-way
radios; data-transmitting two-way radios; radio relaying
equipment, namely, VHF and UHF radio repeaters; radio
scanning receivers
Class: International Class 9
Date of Use
In Commerce: January 1, 2000

Published in Official Gazette on September 7, 2004

KIRISUN ELECTRONICS (SHENZHEN) CO., LTD.

Potential Opposer)

v.)

KIRISUN USA LLC)

Applicant)

) Opposition No.
(Serial No. 78/311,404)

01/14/2005 ZCLIFT01 00000038 78311404

01 FC:6402 300.00 DP

NOTICE OF OPPOSITION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

January 5, 2005

Sir:

KIRISUN ELECTRONICS (SHENZHEN) CO., LTD. (Opposer), a Chinese corporation located and doing business at H-2 East Industrial Zone of Overseas Chinese Town, Nanshan District, Shenzhen, China believes it will be damaged

by registration of the mark shown in application Serial No. 78/311,404 and opposes the same.

The grounds for the opposition are as follows:

1. Opposer created the mark "KIRISUN & Design" in April 2001 when the Opposer's company was registered in China. The Opposer's mark is displayed as follows:

KIRISUN

2. Opposer filed a trademark application for the mark, "KIRISUN and Design" in China on April 22, 2002. The Opposer's Chinese trademark application was registered on June 14, 2003 and will be expired on June 13, 2013. The registration included goods such as internal communication equipment, wireless phones, optical communication equipment, visual telephone, carrier wave equipment, portable wireless phones, telephone sets, sound wave petitioning equipment, telecommunication transmitters, and antenna.

3. On November 20, 2002, Mr. Tony Vega, the president of American Radio, Inc., a division of Pay PCS Corporation, now KIRISUN USA LLC, located at Suite No. 1, 7255 NW 68th Street, Miami, Florida 33166, introduced himself to Opposer through an email. Opposer sent the first sample of its product to Mr.

Vega, the Applicant, who was a customer of the Opposer. Thus, making Opposer the first user of the mark in commerce with the U.S. Opposer has been selling handheld two-way radios, vehicle mounted mobile two-way radios, data-transmitting two-way radios, radio relaying equipment, namely VHF and UHF radio repeaters; radio scanning receivers under the mark "KIRISUN and Design" to customers, but not limited to, Mr. Vega or the Applicant in the United States.

4. Opposer has sold millions of dollars worth of products under the mark "KIRISUN & Design" throughout the United States and spends tremendous amounts of money annually in advertising and promoting products under the mark in the United States.

5. By virtue of the extensive use and sales, advertising and promotion, Opposer now owns valuable goodwill symbolized by its trademark "KIRISUN & Design."

6. On October 9, 2003, Applicant filed a trademark application under Application No. 78/711,404, to register the mark "KIRISUN and Design," depicted below, for "handheld two-way radios; vehicle mounted mobile two-way radios; data-transmitting two-way radios; radio relaying equipment, namely, VHF and UHF radio repeaters; radio scanning receivers" in the United States Patent and Trademark Office. See Exhibit A.

7. On May 10, 2004, Applicant fraudulently advised the Trademark Examining Attorney in a response filed on May 17, 2004 to an Office Action of May 10, 2004, that the wording "KIRISUN" means "fireworks," in the Mandarin Chinese language, and "no other relevant meaning is attributable."

8. On October 9, 2003, Applicant fraudulently claimed that it used the mark "KIRISUN & Design" in conjunction with the goods as set forth in the opposed application on January 1, 2000.

9. On October 9, 2003, Applicant fraudulently alleged that it was the owner of the opposed mark in the opposed application and fraudulently stated that "no other person, firm, corporation, or association has the right to use the mark in commerce," knowing full well that the Opposer was the owner of the mark "KIRISUN and Design."

10. Upon information and belief, neither Applicant or any predecessor or related company of Applicant has any basis for claiming rights in the mark "KIRISUN and Design" and the opposed application was filed by Applicant without Opposer's consent or permission.

11. Applicant is not entitled to the registration sought in the opposed application for the reason that Applicant is not the owner of the mark sought to be registered within the meaning of Section 1 of the Trademark Act of 1946 and Section 1201.06(a) of the Trademark Manual of Examining Procedure.

12. By reason of the aforesaid, the Opposer would be damaged within the meaning of Section 13 of the Trademark Act of 1946.

13. Wherefore, the Opposer prays that this Notice of Opposition be referred to the Trademark Trial and Appeal Board for the purposes of determining the question of right of registration of Applicant of its alleged mark above identified; that the Notice of Opposition be sustained and the Applicant judged not entitled to the registration for which it has made application; and that Opposer has granted such further relief as the circumstances of the case may warrant and require.

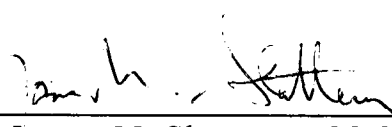
Opposer submits herewith the required fee in the amount of \$300.00.

Please address all communications to James M. Slattery, Esq. of Birch, Stewart, Kolasch & Birch, LLP, P.O. Box 747, Falls Church, VA 22040-0747.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: _____


James M. Slattery, #28,380
Attorney for Opposer

JMS/BG/gf
(703) 205-8000
5008-0101L

P.O. Box 747
Falls Church, VA 22040-0747

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Motion to Extend Time Period in which to File an Opposition has been served upon the Applicant:

KIRISUN USA LLC
7255 NW 68th Street
Suite 1
Miami, FL 33166

Via first-class mail, postage prepaid, on this 5th day of January, 2005.

By Gail L. Frohnert
Gail L. Frohnert

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-09-05 21:15:31 ET

Serial Number: 78311404

Registration Number: (NOT AVAILABLE)

Mark

KIRISUN

(words only): KIRISUN

Standard Character claim: No

Current Status: Final review prior to publication has been completed, application will be published for opposition.

Date of Status: 2004-07-27

Filing Date: 2003-10-09

The Information will be/was published in the Official Gazette on 2004-09-07

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 103

Attorney Assigned:
STIGLITZ SUSAN R Employee Location

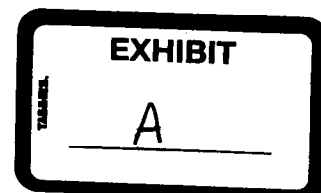
Current Location: 650 -Publication And Issue Section

Date In Location: 2004-07-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. KIRISUN USA LLC

Address:
KIRISUN USA LLC



SUITE # 1 7255 NW 68 ST
MIAMI, FL 33166
United States
Legal Entity Type: LIMITED LIABILITY CORPORATION
State or Country Where Organized: Florida
Phone Number: 866-805-7279
Fax Number: 305-805-7280

GOODS AND/OR SERVICES

International Class: 009
Hand Held Two-Way Radios; Vehicle Mounted Mobile Two-Way Radios; Data
Transmitting Two-Way Radios; Radio Relaying Equipment, namely VHF and UHF
radio repeaters; Radio Scanning Receivers
First Use Date: 2000-01-01
First Use in Commerce Date: 2000-01-01

Basis: 1(a)

ADDITIONAL INFORMATION

Translation: The English translation of the Mandarin Chinese word "KIRISUN" in
the mark is "FIREWORKS".

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-08-18 - Notice of publication
2004-06-04 - Approved for Pub - Principal Register (Initial exam)
2004-05-17 - Correspondence Received In Law Office
2004-05-17 - PAPER RECEIVED
2004-05-10 - Non-final action e-mailed
2004-05-07 - Case file assigned to examining attorney
2004-05-03 - Correspondence Received In Law Office
2004-05-03 - TEAS Preliminary Amendment Received

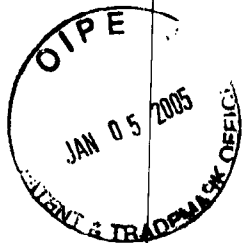
CONTACT INFORMATION

Correspondent
KIRISUN USA LLC
SUITE # 1
7255 NW 68 ST
MIAMI, FL 33166

Phone Number: 866-805-7279
Fax Number: 305-805-7280

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BOX: TTAB – FEE
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Potential Opposer,)
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vs.)
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KIRISUN USA LLC)
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Applicant.)

LETTER

Commissioner of Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

January 5, 2005

Sir:

Enclosed herewith are an original and one (1) copy of a Notice of Opposition in
connection with the above-identified application.

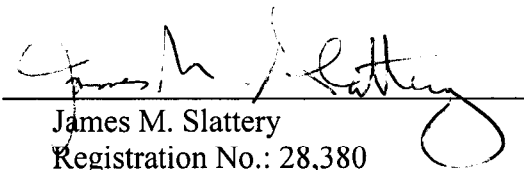


The undersigned's check in the amount of \$300.00 for the government fee is attached.

Please charge any additional fees or credit any overpayment pursuant to 37 C.F.R. § 2.6
to Deposit Account No. 02-2448.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: 
James M. Slattery
Registration No.: 28,380

P.O. Box 747
Falls Church, Virginia 22040-0747
Telephone: (703) 205-8000

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