

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


General Motors Corporation, )  
 )  
 ) Opposer, )  
 )  
 ) v. )  
 )  
 ) California Motors LLC )  
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 ) Applicant. )  
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Opposition No. 91186206

77/362,098

Express Mailing Certification

I hereby certify that the following correspondence is being deposited with the United States Postal Service as "Express Mail" in an envelope addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451 on October 14, 2008 by

  
Mike Kasaba

Answer to Notice of Opposition

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

General Motors Corporation,	)	
	)	
Opposer,	)	Opposition No. 91186206
	)	
	)	Serial No.: 77/362098
v.	)	
	)	
California Motors LLC,	)	
	)	
Applicant.	)	
_____	)	

**ANSWER TO NOTICE OF OPPOSITION**

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

Sir:

The Applicant/Defendant herein, doing business as California Motors LLC, with a principal place of business at 3991 Camino Ranchero, Camarillo, California 93012, by way of its Answer to Opposer's/Plaintiff's Notice of Opposition, states as follows:

1. Defendant admits the allegations set forth in Paragraph 1.
2. Defendant admits the allegations set forth in Paragraph 2.
3. Defendant admits the allegations set forth in Paragraph 3.
4. Defendant is without knowledge or sufficient information to admit or deny the allegations set forth in Paragraph 4.
5. Defendant is without knowledge or sufficient information to admit or deny the

allegations set forth in Paragraph 5.

6. While Defendant, General Motors LLC, admits that “Opposer has not distributed or leased an EVI vehicle in the United States since in or about 2003“, Defendant strongly denies Opposer’s allegation that “it has not abandoned its interest in using the EVI mark”. (See Paragraph 7 hereinbelow). Defendant further denies Opposer’s allegation that it has “continued to actively use the EVI mark in its marketing and promotional activities.” Lastly, Defendant is without knowledge or sufficient information to admit or deny Opposer’s averment that it is “actively engaged in the design of an electric hybrid vehicle for manufacture, distribution and sale in the United States by the end of 2010.”

7. Defendant denies the allegation that “There is no issue as to priority”. While it is true that Opposer commenced use of the EVI mark in 1996, Opposer nevertheless ceased use of its EVI mark in connection with “motor vehicles, namely, automobiles, engines therefor and structural parts thereof” in 2003, when it ceased distributing and/or leasing its EVI vehicle in the United States in 2003.

Opposer was the owner of Trademark Registration No. 2,154,236 for the mark EVI. Opposer applied for registration of the EVI mark on July 29, 1996, claiming December 5, 1996 as the date of first use. A Registration Certificate for EVI issued on April 28, 1998. The Registration was canceled on January 29, 2005 due to Opposer’s failure to file the required Section 8 Affidavit or Declaration of Use or Excusable Non-Use by the due date of April 28, 2004, or before the end of the grace period of October 28, 2004. It appears obvious that Opposer’s failure to file the required Section 8 Affidavit of Use or Excusable Nonuse was intentional. Opposer had not been distributing or leasing its EVI vehicle in connection with which it used its EVI Trademark Registration No. 2,154,236 and therefore chose to abandon the

registration. Defendant maintains that, along with the cancellation of Opposer's federally registered trademark EVI on January 29, 2005, Opposer lost priority to its use of the EVI mark.

8. Defendant denies in their entirety all of the allegations set forth in Paragraph 8. Opposer ceased its use of the EVI mark in connection with its EVI vehicle in 2003 when General Motors stopped distributing or leasing EVI vehicles in 2003. Opposer's failure to file the Section 8 Affidavit of Excusable Nonuse demonstrating that the nonuse was due to special circumstances that excuse the nonuse, and setting forth the approximate date when use is expected to resume, suggests that it was in fact Opposer's intention to abandon the mark. An abandoned mark cannot be cited under Section 2(d) of the Lanham Act as a bar to the registration of an application for a similar mark.


Defendant denies that Opposer's EVI mark is famous, and that by virtue of its alleged fame, it is protected from trademark dilution under Section 43(c) of the Lanham Act.

9. Defendant denies the allegations set forth in Paragraph 9.

10. Defendant denies Opposer's allegation that it has prior and established rights to the EVI mark "for goods and services closely related to those recited in Application Serial No. 77/362,098.

WHEREFORE, Defendant California Motors LLC respectfully requests that this opposition be denied and its Application Serial No. 77/362,098 for "EVI" proceed to issuance of a Registration Certificate.

Respectfully submitted,

California Motors LLC  
By:   
Mike Kasaba, President

Dated: October 14, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Answer to Notice of Opposition has been served on Thomas W. Cunningham, Esq., by mailing said copy on October 14, 2008, via First Class Mail, postage prepaid to:

Thomas W. Cunningham, Esq.  
Brooks Kushman P.C.  
1000 Town Center, 22<sup>nd</sup> Floor  
Southfield, MI 48075-1238



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**Mike Kasaba**