

ESTTA Tracking number: **ESTTA696318**

Filing date: **09/16/2015**

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	Elemental LED, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	1195 Park Ave., Suite 211 Emeryville, CA 94608 UNITED STATES		

Attorney information	Matthew D. Francis Brownstein Hyatt Farber Schreck, LLP 5371 Kietzke Lane Reno, NV 89511 UNITED STATES mfrancis@bhfs.com Phone:(775) 324-4100		
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Applicant Information

Application No	86367798	Publication date	08/25/2015
Opposition Filing Date	09/16/2015	Opposition Period Ends	09/24/2015
Applicant	JESCO Lighting Group, LLC 15 HARBOR PARK DRIVE PORT WASHINGTON, NY 11050 UNITED STATES		

Goods/Services Affected by Opposition


<p>Class 011. First Use: 2014/04/01 First Use In Commerce: 2014/04/01 All goods and services in the class are opposed, namely: Electric lighting fixtures; Landscape lighting installations; LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED landscape lights; LED light bulbs; LED light engines; LED light strips for decorative purposes; LED lighting assemblies for illuminated signs; LED lighting fixtures for indoor and outdoor lighting applications; LED lighting systems, namely, LED modules, power supplies, and wiring; LED mood lights; LED underwater lights; Lighting fixtures; Lights for illuminating stairs, doors and other portions of buildings; Lights for use in illuminating signs and displays; Outdoor lighted Christmas-themed ornaments; Sconce lighting fixtures; Strip lighting for indoor use; Theatrical stage lighting apparatus; Wall lights</p>
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Grounds for Opposition

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

U.S. Registration No.	4707983	Application Date	08/07/2014
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Registration Date	03/24/2015	Foreign Priority Date	NONE
Word Mark	INFINILINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2014/04/15 First Use In Commerce: 2014/04/15 LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED and HID light fixtures; LED landscape lights; LED light strips for decorative purposes		

Attachments	86360810#TMSN.png(bytes) Notice of Opposition.pdf(314583 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	/Matthew D. Francis/
Name	Matthew D. Francis
Date	09/16/2015

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

In the Matter of Application Serial No.: 86/367,798
Mark: INFINA DESIGNED FOR CREATIVITY, BUILT FOR SOLUTIONS
Filed on: August 15, 2014
Published in the Official Gazette on August 25, 2015

ELEMENTAL LED, INC., a Nevada corporation, Opposer, v. JESCO LIGHTING GROUP, LLC, a Delaware corporation, Applicant.	Opposition No. <u>NOTICE OF OPPOSITION</u>
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Opposer Elemental LED, Inc. (“Opposer”) will be damaged by the registration of the “INFINA DESIGNED FOR CREATIVITY, BUILT FOR SOLUTIONS” trademark (the “INFINA Mark”) that is the subject of Application Serial Number 86/367,798 (“’798 App.”) filed by Jesco Lighting Group, LLC (“Applicant”), and states the following grounds under 15 U.S.C. §§ 1052, 1063 and 37 C.F.R. §§ 2.101, 2.104 for its opposition to the registration of the ‘798 App.:

1. Opposer is a Nevada corporation with its principal place of business located at 1195 Park Ave., Suite 211 Emeryville, California 94608.
2. Opposer is engaged in the business of designing, manufacturing, and selling LED (light emitting diodes) and HID (high intensity discharge) lighting fixtures and related goods under various trademarks. One of Opposer’s trademarks is “INFINILINE” (the “INFINILINE Mark”).
3. Opposer is the owner of all common law rights to the INFINILINE Mark and the owner of U.S. Registration No. 4,707,983 (“’983 Reg.”) for that Mark. The ‘983 Reg. protects the INFINILINE Mark in International Class 11 for the following goods: “LED (light emitting

diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED and HID light fixtures; LED landscape lights; LED light strips for decorative purposes.” Opposer commenced using the INFINILINE Mark in commerce at least as early as April 15, 2014. Opposer commenced substantial pre-sales activities and publicity of the INFINILINE Mark at least as early as March of 2014. These pre-sales activities and publicity were aimed at companies, sales representatives, potential purchasers and other individuals in the lighting industry and were of a nature and extent as to create an association in the mind of the consuming public between the INFINILINE Mark and the goods to be sold under that Mark.

4. Applicant is a Delaware corporation with an address of 15 Harbor Park Drive, Port Washington, New York 11050.

5. Applicant filed the ‘798 App. on August 15, 2014 for the INFINA Mark in International Class 11 for the following goods: “Electric lighting fixtures; Landscape lighting installations; LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED landscape lights; LED light bulbs; LED light engines; LED light strips for decorative purposes; LED lighting assemblies for illuminated signs; LED lighting fixtures for indoor and outdoor lighting applications; LED lighting systems, namely, LED modules, power supplies, and wiring; LED mood lights; LED underwater lights; Lighting fixtures; Lights for illuminating stairs, doors and other portions of buildings; Lights for use in illuminating signs and displays; Outdoor lighted Christmas-themed ornaments; Sconce lighting fixtures; Strip lighting for indoor use; Theatrical stage lighting apparatus; Wall lights.” The ‘798 App. was filed as an in use application under Section 1(a). The ‘798 App. was published for opposition in the Official Gazette on August 25, 2015.

6. Opposer’s rights in the INFINILINE Mark are superior to Applicant’s purported rights in its INFINA Mark. Prior to the filing of the ‘798 App. by Applicant, the INFINILINE Mark had become recognized and relied upon by consumers as identifying the quality goods of

Opposer and distinguishing those goods from the goods of others. The INFINILINE Mark therefore represents the goodwill belonging exclusively to Opposer.

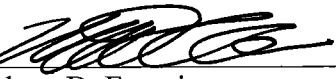
7. Opposer will be damaged by the registration of Applicant's INFINA Mark shown in the '798 App. because the Mark so resembles Opposer's INFINILINE Mark as to be likely to cause consumer confusion, mistake, and/or deception in the minds of the purchasing public. The purchasing public is likely to assume that the goods identified by Applicant's INFINA Mark are sold or offered for sale by Opposer, or that such goods originate with, or are authorized or approved by, or in some way connected to, Opposer, in violation of 15 U.S.C. § 1052(d), *et seq.* As a result, Applicant's INFINA Mark is unregistrable under 15 U.S.C. § 1052(d), *et seq.*

8. Opposer will also be damaged by registration of the INFINA Mark shown in the '798 App. because registration of the mark would give Applicant prima facie evidence of ownership of, and exclusive right to use in commerce, a mark that is confusingly similar to Opposer's INFINILINE Mark.

WHEREFORE, Opposer prays for the entry of judgment sustaining this Opposition and refusing registration to Applicant of the INFINA Mark shown in Application Serial Number 86/367,798.

Dated: September 16, 2015

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 
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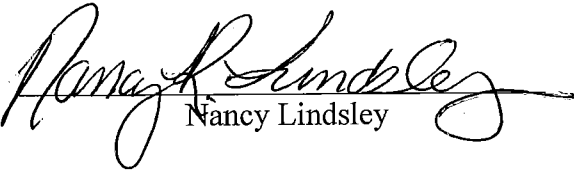
Attorneys for Opposer
Elemental LED, Inc.

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Brownstein Hyatt Farber Schreck, LLP, and on this date the document entitled **Notice of Opposition**, is being served by first class mail to:

JESCO Lighting Group, LLC
Attn: Legal Department
15 Harbor Park Drive
Port Washington, New York 11050.

Dated: September 16, 2015


Nancy Lindsley