

ESTTA Tracking number: **ESTTA783389**

Filing date: **11/16/2016**

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	Energy Battery Group, Inc.
Granted to Date of previous extension	11/16/2016
Address	1800 Roswell Road, Suite 2200 Marietta, GA 30062 UNITED STATES

Attorney information	Barry Kramer Locke Lord, LLP One Canterbury Green, 201 Broad Street Stamford, CT 06901 UNITED STATES trademark@lockelord.com, barry.kramer@lockelord.com, daniel.fiorello@lockelord.com, straat.tenney@lockelord.com Phone:203-353-6818
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Applicant Information

Application No	86183728	Publication date	07/19/2016
Opposition Filing Date	11/16/2016	Opposition Period Ends	11/16/2016
Applicant	Energy Power Systems, LLC 711 Stephenson Highway Troy, MI 48083 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Lead-acid batteries and battery components, namely, electric wires, electrodes, plates for batteries, electrical cells, all sold as Original Equipment Manufacturer (OEM) components to manufacturers of automobiles and stationary power equipment; batteries, modules, namely, battery packs, all sold as Original Equipment Manufacturer (OEM) components to manufacturers of automobiles and stationary power equipment
Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Engineering services in the field of battery and power technologies

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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. Application No.	86563401	Application Date	03/13/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ENERGY POWER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1998/11/06 First Use In Commerce: 2003/01/23 Electric storage batteries		

Related Proceedings	Energy Battery Grup, Inc. v. Energy Power Sys., LLC, No. 2:16-cv-12906-MFL-DRG (E.D. Mich. filed Aug. 9, 2016).
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Attachments	86563401#TMSN.png(bytes) Consolidated Notice of Opposition.pdf(132561 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	/H. Straat Tenney/
Name	H. Straat Tenney
Date	11/16/2016

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

In the Matter of Application Serial No. 86/183,728

Mark: ENERGOPOWER SYSTEMS & Design

-and-

In the Matter of Application Serial No. 86/183,765

Mark: ENERGOPOWER SYSTEMS & Design (color)

ENERGY BATTERY GROUP, INC.,

Opposer,

-v-

ENERGY POWER SYSTEMS, LLC,

Applicant.

Opposition No. : _____

CONSOLIDATED NOTICE OF OPPOSITION

Energy Battery Group, Inc. (“Opposer”), a corporation organized and existing under the laws of Texas, believes that it will be damaged by the issuance to applicant, Energy Power Systems, LLC (“Applicant”), of registrations for the trademarks ENERGOPOWER SYSTEMS & Design, as applied for in Application Serial No. 86/183,728, and ENERGOPOWER SYSTEMS & Design (color), as applied for in Application Serial No. 86/183,765, both for identical goods in International Class 9 and services in International Class 42 (collectively, “Applicant’s Marks”), and therefore opposes the same. As grounds for its consolidated opposition, Opposer, by its attorneys Locke Lord, LLP, alleges on knowledge as to itself and otherwise upon information and belief, as follows:

OPPOSER AND THE ENERGY POWER MARKS

1. Opposer has, since 2003, been selling batteries, jump boxes, and related products and providing engineering services throughout the United States under its common law trademarks for ENERGY POWER (collectively, the “Energy Power Marks”). Over this period, Opposer has become renowned for providing high-quality goods and services under the Energy Power Marks to meet its customers’ personalized needs.

2. Opposer is the owner of U.S. Trademark Application Serial No. 86/563,401 for ENERGY POWER in connection with “electric storage batteries.”

3. Opposer has advertised and promoted the goods and services offered under the Energy Power Marks throughout the United States. Opposer also relies on customer referrals, memberships to industry groups, and Internet advertising. As a result of its efforts, and due to its longstanding exclusive use of its marks, the Energy Power Marks are widely-recognized and possess strong secondary meaning in the eyes of the public and the trade. The Energy Power Marks immediately identify Opposer as the exclusive source of the products sold and services rendered in connection with those marks. Consequently, the Energy Power Marks are an invaluable asset to Opposer

4. Over many years, Opposer has realized enormous success in its sales of goods and services offered under the Energy Power Marks, and has millions of dollars in sales in the United States.

5. Opposer always endeavors to maintain the reputation for quality associated with the Energy Power Marks. Strict quality control standards are imposed in the design, manufacture and sale of products and the rendering of services under the Energy Power Marks. Opposer’s

painstaking adherence to only the highest quality standards has resulted in widespread and favorable public acceptance among consumers for all goods and services offered under the Energy Power Marks.



6. As a result of Opposer’s advertising and promotion, adherence to the highest quality standards, and sales success, the Energy Power Marks are widely-recognized, immediately identifying Opposer as the exclusive source of the goods and services they are sold in connection with, and those marks signify goodwill of incalculable value to Opposer.

APPLICANT AND ITS MARKS

7. Applicant is a Michigan limited liability company doing business at 711 Stephenson Highway, Troy, Michigan 48083.

8. Applicant sells batteries and offers engineering services to businesses and the general public under the trademarks ENERGYPOWER SYSTEMS & Design and ENERGYPOWER SYSTEMS & Design (color).

9. On February 4, 2016, Applicant filed the following U.S. Trademark Applications on an intent to use basis covering identical goods International Class 9 and services in International Class 42:

Trademark	App. No.	Goods / Services
	86/183,728	Class 9: Lead-acid batteries and battery components, namely, electric wires, electrodes, plates for batteries, electrical cells, all sold as Original Equipment Manufacturer (OEM) components to manufacturers of automobiles and stationary power equipment; batteries, modules, namely, battery packs, all sold as Original Equipment Manufacturer (OEM) components to manufacturers of
	86/183,765	

Trademark	App. No.	Goods / Services
		automobiles and stationary power equipment. Class 42: Engineering services in the field of battery and power technologies.

10. The trademarks under Application Serial No. 86/183,728 and Application Serial No. 86/183,765 are virtually identical, consisting of the term ENERGYPOWER in large letters above the word SYSTEMS in a smaller font. A circular stylized “swirl” device is shown to the left of the wording. The only difference in the respective applied-for marks is that Application Serial No. 86/183,765 claims color protection, namely, the words “ENERGY” in green, “POWER” and “SYSTEMS” in grey, and the device is comprised of green and gray swirls.

11. Applicant’s filing dates for the two marks opposed herein are long after Opposer first began using and acquired distinctiveness of the Energy Power Marks.

12. Given that Applicant is in the same business as Opposer and provides the same goods and services as Opposer, Applicant was on actual notice of Opposer’s Energy Power Marks before adopting the opposed marks.

13. The goods and services identified in Applicant’s Marks cover the very goods and services that Opposer offers under the Energy Power Marks.

14. Applicant’s goods and services will be, or are, offered to the same consumers of Opposer’s identical or otherwise closely-related goods and services and through the same channels of trade as Opposer’s goods and services.

COUNT 1: LIKELIHOOD OF CONFUSION

15. Opposer repeats and incorporates by reference the allegations contained in Paragraphs 1 through 14, as if fully set forth herein.

16. Opposer has used the Energy Power Marks continually throughout the United States since a date prior to any date on which Applicant may rely.

17. The Energy Power Marks are associated exclusively with Opposer and have been prior to any date on which Applicant may rely.

18. Applicant's Marks are substantially similar to Opposer's Energy Power Marks and incorporate the identical term ENERGYPOWER, thereby giving Applicant's Marks a similar sound, meaning, appearance and commercial impression as the Energy Power Marks.

19. Opposer's goods and services and Applicant's goods and services covered under the opposed applications are identical or otherwise closely-related, travel in and are promoted through the same channels of trade for sale to, and use by, the same class of consumer.

20. Accordingly, the Applicant's Marks are likely to cause consumer confusion, mistake, or to deceive the public into believing that Applicant's goods and services are somehow affiliated or associated with, connected to or sponsored by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C.A. § 1052(d).

21. If Applicant is permitted to register or use the marks opposed herein, there would be likely confusion as to the sponsorship of the goods, resulting in damage and injury to Opposer by reason of the similarity between the Energy Power Marks and Applicant's Marks. Persons familiar with the Energy Power Marks will be likely to purchase Applicant's goods or services, believing them to be affiliated or associated with, connected to or sponsored by Opposer.

Likewise, persons exposed to Applicant's Marks who subsequently become acquainted with the Energy Power Marks are likely to conclude that the goods and services offered by Opposer under its Energy Power Marks are in some manner affiliated or associated with, connected to or sponsored by Applicant. Any such confusion as to sponsorship inevitably would result in damage and injury to Opposer.

22. Opposer will be damaged by registration of Applicant's Marks because such registration will support and assist Applicant in the confusing and misleading use of Applicant's Marks, will give color of rights to Applicant in violation of Opposer's prior and superior rights in the Energy Power Marks.

WHEREFORE, Opposer prays that this consolidated opposition be sustained and that the applications for registration for Applicant's Marks be in all respects denied.

Respectfully submitted,

LOCKE LORD, LLP

Dated: November 16, 2016
New York, NY

By: /Barry Kramer/
Barry Kramer

Locke Lord, LLP
One Canterbury Green
201 Broad Street
Stamford, CT 06901
trademark@lockelord.com

*Attorney for Opposer Energy Battery
Group, Inc.*

CERTIFICATE OF ELECTRONIC MAILING

I hereby certify that the foregoing Notice of Opposition is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this 16th day of November, 2016.

Dated: New York, NY
November 16, 2016

By: /H. Straat Tenney/
H. Straat Tenney

CERTIFICATE OF SERVICE

I hereby certify that I am over the age of 18 years, not a party to this action, and that on the 16th day of November, 2016, I caused to be served a true and correct copy of the foregoing NOTICE OF OPPOSITION by first class mail to the following attorney for the Applicant:

Hope V. Shovein
Brooks Kushman P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238

Dated: New York, NY
November 16, 2016

By: /H. Straat Tenney/
H. Straat Tenney