

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 3,626,300

United States Patent and Trademark Office

Registered May 26, 2009

SERVICE MARK
PRINCIPAL REGISTER

KILOWATTS ELECTRIC SUPPLY

KILOWATTS ELECTRIC SUPPLY, CORP. (FLOR-
IDA CORPORATION)
401 SW 71 AVENUE
MIAMI, FL 33144

OWNER OF U.S. REG. NO. 2,705,805.

FOR: WHOLESALE AND RETAIL DISTRIBUTORSHIPS IN THE FIELD OF ELECTRICAL PARTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ELECTRIC SUPPLY", APART FROM THE MARK AS SHOWN.

FIRST USE 10-31-1980; IN COMMERCE 10-31-1980.

SER. NO. 77-578,028, FILED 9-24-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

TRACY WHITTAKER-BROWN, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 3,626,301

United States Patent and Trademark Office

Registered May 26, 2009

SERVICE MARK
PRINCIPAL REGISTER

KILOWATTS

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IDA CORPORATION)
401 SW 71 AVENUE
MIAMI, FL 33144

FOR: WHOLESALE AND RETAIL DISTRIBUTORSHIPS IN THE FIELD OF ELECTRICAL PARTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-31-1980; IN COMMERCE 10-31-1980.

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OWNER OF U.S. REG. NO. 2,705,805.

SER. NO. 77-578,057, FILED 9-24-2008.

TRACY WHITTAKER-BROWN, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

REGISTRATION NO: 2705805 SERIAL NO: 75/916216 MAILING DATE: 06/05/2008
REGISTRATION DATE: 04/15/2003
MARK: KILOWATTS ELECTRIC SUPPLY, CORP AND DESI
REGISTRATION OWNER: Kilowatts Electric Supply, Corp.

CORRESPONDENCE ADDRESS:

Jesus Sanchelima, Esq.
SANCHELIMA & ASSOCIATES, P.A.
235 S.W. LE JEUNE ROAD
MIAMI FL 33134

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(1)

THE COMBINED AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

NOTICE OF ACKNOWLEDGEMENT

15 U.S.C. Sec. 1065

THE AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 15 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1065.

ACCORDINGLY, THE SECTION 15 AFFIDAVIT IS ACKNOWLEDGED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
035.

EVERETT, PATRICIA
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

**PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION**
ORIGINAL

P-000036

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,705,805

United States Patent and Trademark Office

Registered Apr. 15, 2003

**SERVICE MARK
PRINCIPAL REGISTER**



**Kilowatts
Electric Supply, Corp**

KILOWATTS ELECTRIC SUPPLY, CORP. (FLOR-
IDA CORPORATION)
401 S.W. 71 AVENUE
MIAMI, FL 33144

FOR WHOLESALE AND RETAIL DISTRIBUTORSHIP SERVICES FEATURING ELECTRICAL PARTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-0-1999; IN COMMERCE 11-0-1999.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ELECTRIC SUPPLY, CORP.", APART FROM THE MARK AS SHOWN.

SER. NO. 75-916,216, FILED 2-11-2000.

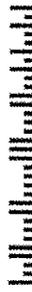
MICHAEL KEATING, EXAMINING ATTORNEY

SENDER: COMPLETE THIS SECTION

PS Form 3811, February 2004

- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:


 Kilowatt Depot Corp.
 Mr. Carlos Andres Abad
 9737 NW 41 ST SUITE 204
 MIAMI FL 33178

COMPLETE THIS SECTION ON DELIVERY

PS Form 3811, February 2004

- Agent
- Addressee
- B. Received by (Printed Name) CARLOS A. ABAD
- C. Date of Delivery 10/25/12

D. Is delivery address different from item 1? Yes No

3. Service Type

- Certified Mail
- Registered
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- Express Mail
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4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number
(Transfer from service label)

P-000038

PS Form 3811, February 2004

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102595-02-M-1540

Sanchelima & Associates, P.A.
Attorneys at Law

Patent, Trademark & Copyright Law

J. Sanchelima, Reg. Patent Attorney
Christian J. Sanchelima, Patent Agent

Tel: 305-447-1617
Fax: 305-445-8484
jesus@sanchelima.com
www.sanchelima.com

October 17, 2012

Kilowatt Depot Corp.
Mr. Gilberto Luis Leon
7753 NW 113th Path
Miami, Florida 33178

Via: US Certified Mail

Re: Your use of the KILOWATT designation
Trade name and service mark infringement

Dear Mr. Leon,

Please be advised that we represent Kilowatts Electric Supply, Corp., a Florida corporation, in connection with its intellectual property matters. Our client has been using its trade name for many years and built a valuable goodwill associated with its trade name and its service marks using the distinctive word **KILOWATTS** for *wholesale and retail distribution services for electrical parts*.

It has come to our client's attention that your company is selling products with a similar trade name and using designations that utilize the word **KILOWATT** infringing our client's federally registered service mark and trade name rights, as well as violating Section 43a of the Lanham Act. The likelihood of confusion is quite apparent. See copies of our client's federally and state registered registrations, attached.

In view of the serious irreparable damage which will result by continuing to sell your products using our client's mark we demand the following:

1. That you remove all offending inventory, signs and/or advertising/promotional material from the market immediately.
2. That you provide us prompt written assurance that you will cease using the infringing trade name after said date and that the corporate records with the Florida's Division of Corporation will be amended accordingly.
3. That you deliver to us or destroy all offending labels, brochures, or other promotional items, which bear the designation **KILOWATT** in your possession, custody or control.

You may or may not know that the Trademark and Unfair Competition Laws of the United States provide for remedies which enable a trademark to obtain three times the profits of an infringer, immediate injunctions, destruction of infringing goods and in cases of willful infringement, attorney's fees and other penalties.

P-000039

Mr. Gilberto Luis Leon
Kilowatt Depot Corp.
October 17, 2012
Page Two

Unless a reply is received within **ten (10)** days from the day you receive this letter, we will assume that you are not interested in settling this controversy amicably leaving us no other option but to seek the judicial route for the pertinent relief.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesus Sanchelima". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke.

Jesus Sanchelima, Esq.

JS/cd
File
Encl copies of SM Reg.

United States of America

United States Patent and Trademark Office

KILOWATTS ELECTRIC & LIGHTING SUPPLY

Reg. No. 3,960,938

Registered May 17, 2011

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

KILOWATTS ELECTRIC SUPPLY, CORP. (FLORIDA CORPORATION)
401 SW 71ST AVENUE
MIAMI, FL 33144

FOR: WHOLESALE AND RETAIL DISTRIBUTORSHIP SERVICES FOR ELECTRICAL PARTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 5-16-2000; IN COMMERCE 5-16-2000.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,705,805, 3,626,300, AND 3,626,301.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ELECTRIC & LIGHTING SUPPLY", APART FROM THE MARK AS SHOWN.

SER. NO. 85-039,170, FILED 5-14-2010.

NELSON SNYDER, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

P-000041



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Events No Name History

Detail by Document Number

Trademark

KILOWATTS ELECTRIC SUPPLY, CORP. AND DESIGN OF CARTOON FIGURE, BODY ARMS AND LEGS ARE LIGHTNING BOLTS, LIGHT BULB NOSE, LIGHTNING BOLT IN ONE HAND

Filing Information

Document Number T00000000574
 Date Filed 05/22/2000
 Expiration Date 05/22/2015
 Last Event RENEWAL
 Event Date Filed 03/15/2010
 Event Effective Date NONE
 First Used in Florida 10/31/1980
 First Used Anywhere 10/31/1980
 Status ACTIVE

Mark Used in Connection With
 USED IN WHOLESALE AND RETAIL DISTRIBUTION SERVICES OF ELECTRICAL PARTS

Disclaimer For
 ELECTRIC SUPPLY CORP.

Owners

Name & Address

KILOWATTS ELECTRIC SUPPLY, CORP.
 401 S.W. 71 AVE.
 MIAMI FL 33144

Type/Class

SM-0035 0000000000 0000000000 0000000000 0000000000
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Cross Reference

Cross Reference Names

Document Images

03/15/2010 -- Trademark/Renewal

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Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 3,626,300

United States Patent and Trademark Office

Registered May 26, 2009

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Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 3,626,301

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Registered May 26, 2009

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SER. NO. 77-578,057, FILED 9-24-2008.

TRACY WHITTAKER-BROWN, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

REGISTRATION NO: 2705805 SERIAL NO: 75/916216 MAILING DATE: 06/05/2008
REGISTRATION DATE: 04/15/2003
MARK: KILOWATTS ELECTRIC SUPPLY, CORP AND DESI
REGISTRATION OWNER: Kilowatts Electric Supply, Corp.

CORRESPONDENCE ADDRESS:

Jesus Sanchelima, Esq.
SANCHELIMA & ASSOCIATES, P.A.
235 S.W. LE JEUNE ROAD
MIAMI FL 33134

NOTICE OF ACCEPTANCE

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THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
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571-272-9500

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Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,705,805

United States Patent and Trademark Office

Registered Apr. 15, 2003

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PRINCIPAL REGISTER**



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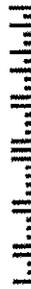
SER. NO. 75-916,216, FILED 2-11-2000.

MICHAEL KEATING, EXAMINING ATTORNEY

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1. Article Addressed to:


 Kilowatt Depot Corp.
 Mr. Gilberto Luis Leon
 7753 NW 113TH PATH
 MIAMI FL 33178

2. Article Number
(Transfer from service label)

P-000048

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 Addressee

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- Express Mail
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4. Restricted Delivery? (Extra Fee) Yes

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-24244-CIV-TORRES

CONSENT CASE¹

KILOWATTS ELECTRIC SUPPLY, CORP.

Plaintiff,

vs.

KILOWATT DEPOT CORP.,
and CARLOS A. ABAD,

Defendants.

ORDER SETTING CIVIL TRIAL DATE, PRETRIAL
SCHEDULE, AND REQUIRING MEDIATION

A jury trial in this case is hereby scheduled and shall be specially set to commence on December 16, 2013 at 9:00 a.m. before Edwin G. Torres, United States Magistrate Judge, in the James Lawrence King Federal Justice Building, 99 Northeast 4th Street, Tenth Floor, Courtroom 5, Miami, Florida 33132.

Accordingly, it is ORDERED AND ADJUDGED as follows:

1. A Pretrial Conference shall be held in this action on December 5, 2013, at 10:30 a.m. No calendar call will be necessary.

2. Every motion filed in this case shall attach one proposed original order granting the motion. The order shall contain the up-to-date service list (names and

¹ The parties have stipulated to the full exercise of jurisdiction by the undersigned Magistrate Judge to conduct any and all further proceedings in this case, including trial.

addresses) of all attorneys in the case. In light of the district court's new computerized filing program CM/ECF, the proposed order should be attached as an exhibit to the motion and docketed on the system.

3. Counsel must meet no later than thirty days before the start of trial to confer on the preparation of a Pretrial Stipulation. The original and one copy of a Joint Pretrial Stipulation must be filed on or before the date set forth below. The stipulation shall conform to Local Rule 16.1(e) and include a joint, neutral summary of the claims and defenses in the case, not to exceed one short paragraph per litigant claim, to be read as an introduction for voir dire examination. The Court will not accept unilateral Pretrial Stipulations, and will strike sua sponte any such submissions. Should any of the parties fail to cooperate in the preparation of the Joint Pretrial Stipulation, all other parties shall file a certification with the Court stating the circumstances. Upon receipt of such certification, the Court shall issue an order requiring the non-cooperating party or parties to show cause why such party or parties (and their respective attorneys) have failed to comply with the Court's order.

4. For a jury trial, the parties shall submit joint proposed jury instructions on or before the first day of trial. The Court does not require the filing of proposed voir dire questions, although either party may file such a request before the date of the pretrial conference if they choose. For specific directions regarding the Court's voir dire /jury selection process and the preparation of jury instructions, the Court refers the parties to the provisions of the Court's Order on Trial Instructions entered contemporaneously with this Order.

5. For a bench trial, each party shall file Proposed Findings of Fact and Conclusions of Law on or before the first date of the trial. Proposed Findings of Fact shall be supported by citations to the documentary evidence, if applicable. Conclusions of Law shall be supported by citations of authority. Paper copies shall be delivered to Chambers at the time of filing, together with an electronic version in Corel WordPerfect format (version 10.0 or greater), addressed to the Court's CM/ECF mailbox, torres@flsd.uscourts.gov.

6. If deposition transcripts will be used at trial, the parties shall comply with the following guidelines:

a. Ten business days prior to the date of the pretrial conference Plaintiff shall serve designations of any deposition transcripts it intends to use at trial. Three business days later, Defendant shall serve its counter-designations, together with any objections to Plaintiff's designations. Three business days later Plaintiff shall serve any rebuttal designations, together with any objections to Defendant's counter-designations. By the time of the pretrial conference, Defendant shall serve any objections to Plaintiff's rebuttal designations. The Court may entertain arguments on any objections to the designations at the pretrial conference.

b. By the date of the pretrial conference, the parties shall prepare and jointly file one transcript for each deposition to be used during trial. The parties shall edit the transcript, using a mini-transcript preferably, to remove all irrelevant, extraneous and unnecessary pages. Each portion of the testimony designated shall be bracketed to indicate beginning and end. A notice of filing setting forth each party's designated testimony by line and page, and setting forth all objections, shall be filed

with the transcript. In addition to listing objections in the notice of filing, the objections shall also be indicated in the margin of the transcript. The parties may either write their objections in the margins, or use logical abbreviations that will be apparent to the Court and other parties (for example "H" for hearsay). If the parties use abbreviations, the notice of filing must include a key for the Court's reference.

7. A Motion for Continuance shall not stay the requirement for the filing of a Pretrial Stipulation and, unless an emergency situation arises, a motion for continuance will not be considered unless it is filed at least twenty (20) days prior to the date on which trial is scheduled to commence. A continuance of the trial date will be granted only on a showing of compelling circumstances and, most likely, only if there is agreement of the parties as the trial date in this Order is specially set at the parties' request.

8. The following timetable shall govern the remaining pretrial procedures in this case. This pretrial schedule shall also not be modified absent agreement of the parties or, if no agreement, compelling circumstances. All motions for an enlargement of time for discovery and relating to dispositive motions must include a statement as to whether the requested extension will affect the trial date or any other deadline set forth in this timetable. Failure to include such a statement may be grounds for denial of the motion.

Pretrial Deadlines and Trial Date

June 19, 2013	All motions to amend pleadings or join parties are filed.
July 5, 2013	Parties exchange expert witness summaries and reports required by Local Rule 16.1.K.

August 5, 2013	Parties exchange rebuttal expert witness summaries and reports required by Local Rule 16.1.K.
July 22, 2013	Deadline for supplementation of discovery under Rule 26(e).
August 19, 2013	All discovery, including expert discovery, is completed.
September 19, 2013	Parties to have completed mediation.
September 16, 2013	All pre-trial motions other than motions in limine are filed.
November 4, 2013	Pre-trial motions in limine shall be filed.
December 2, 2013	Joint Pretrial Stipulation shall be filed.
December 5, 2013	Pretrial Conference (and completion of deposition designation process outlined above).
December 16, 2013	Beginning of Trial (and filing of proposed jury instructions/findings of fact and conclusions of law).

9. In order to facilitate the accurate transcription of the trial proceeding, the parties shall provide to Maedon Clark, the Court's Courtroom Deputy, at 301 North Miami Avenue, Third Floor, Room 392, Miami, Florida 33128, a copy of a) the witness and exhibit lists, b) a designation of unique proper nouns/names which may be used at trial, and c) a list of the names of all attorneys who will participate in the trial, to be received no later than the first day of trial.

10. If the case is settled, counsel are directed to inform the Court promptly at (305) 523-5750 and to submit a stipulation for dismissal signed by all parties together with an appropriate Order of Dismissal, pursuant to Fed. R. Civ. P. 41(a)(1).

Such stipulation and order must be filed within twenty (20) days of notification of settlement to the Court.

11. The parties may stipulate to extend the time to answer interrogatories, produce documents, and answer requests for admissions. The parties shall not file with the Court notices or motions memorializing any such stipulation unless the stipulation interferes with the time set for completing discovery, hearing a motion, or trial. See Fed. R. Civ. P. 29. Stipulations that would so interfere may be made only with the Court's approval. The parties shall not file any discovery materials unless necessary to support a discovery motion, as required by Local Rule 26.1(b)-(c).

12. The parties are referred to mediation in accordance with Local Rule 16.2, but the parties shall complete mediation by the date set forth herein. The parties shall notify the Court of the results of the mediation (settled, impasse or adjourned to continue discussions) within five (5) days of the conclusion of the mediation.

13. This Order is intended to supplant the requirements of Fed. R. Civ. P. 26(a)(3), and any Local Rule inconsistent with the schedule set forth herein. Any private agreement, suggested or proposed Rule 16 scheduling conference agreements between counsel, Rule 16 scheduling order, or orders of the court attempting to set dates contrary to this order are hereby STRICKEN and VOID.

IT IS FURTHER ORDERED that failure to comply with this or any Order of this Court, the Local Rules, or any other applicable rule may result in sanctions or other appropriate actions. It is the duty of all counsel to enforce the timetable set forth herein in order to ensure an expeditious resolution of this cause.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of May,
2013.

/s/ Edwin G. Torres
EDWIN G. TORRES
United States Magistrate Judge

Case No. 12-CV-2424 of 2013

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF
FLORIDA

BETWEEN

KILOWATTS ELECTRIC SUPPLY, CORP

Plaintiff

AND

CARLOS A. ABAD, individually

Defendant

REPLY

I Carlos A. Abad, I am representing my self because I cannot afford to pay a lawyer to represent me on this case.

I request that all the complaints against me personally get removed from the lawsuit because I am not the registered agent for the company.

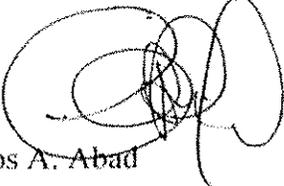
PARTIES, JURISDICTION AND VENUE

1. KILOWATTS is corporation of Florida doing business in the county of Miami Dade, Florida and was incorporated on April 17, 1985.
2. KILOWATT DEPOT was a corporation that exercise business in the in the County of Miami Dade, Florida and was incorporated on April 29, 2011.

3. Carlos A. Abad Does reside in the State of Florida and its doing business in the State of Florida.
4. When Carlos A. Abad registered KILOWATT DEPOT, he did the research and found no problem using the common name of KILOWATT and not KILOWATTS. It was never the intention to go against the infringing acts.
5. Defendants agree to change the name from KILOWATT DEPOT to KW DEPOT to separate from any confusion from any of KILOWATTS trade marks.
6. Defendant has removed everything with the word KILOWATT DEPOT from the operation to avoid any confusion with the name.
7. Defendant does not operate anymore under the name of KILOWATT DEPOT and doesn't use any literature, product or advertisement under the name of KILOWATT DEPOT.

Dated the 20 day of JUNE, 2013.

Respectfully submitted,


Carlos A. Abad

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Kilowatts Electric Supply, Corp.

Plaintiff,

v.

CASE NO. 12-CV-24244 – TORRES

Kilowatt Depot Corp.,
a Florida corporation, and,
Carlos A. Abad, individually

Defendants,

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND
MEMORANDUM OF LAW IN SUPPORT THEREOF**

Plaintiff, **Kilowatts Electric Supply, Corp.**, by and through its undersigned attorney, moves this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Court for the Southern District of Florida, for the entry of summary judgment if its favor and against Defendant Carlos A. Abad on all counts in Plaintiff’s Amended Complaint.

STATEMENT OF UNDISPUTED MATERIAL FACTS

The following material facts are undisputed and supported by evidence in the record:¹

1. Plaintiff, Kilowatts Electric Supply, Corp., is a corporation of Florida doing business in the county of Miami-Dade Florida and was incorporated on April 17, 1985. *Exhibit 1 ¶ 1, Declaration of Alberto Santiago. [D.E. 41-9]*

¹ In the Southern District of Florida, a party moving for summary judgment must submit a statement of undisputed facts supported by specific evidence in the record. S.D. Fla. L.R. 56.1(a). “All material facts set forth in the movant’s statement filed and supported as required above will be deemed admitted unless controverted by the opposing party’s statement, provided that the Court finds that the movant’s statement is supported by evidence in the record.” S.D. Fla. L.R. 56.1(b).

2. At present, Plaintiff operates three physical retail establishments for selling and distributing electrical parts including lighting fixtures. Over the years Plaintiff has increased the product lines it offers to its customers, including those involved with the electrical trade. *Exhibit 1 ¶ 2.* [D.E. 41-9]

3. Plaintiff has advertised using different media including store signs, printed counter displays, web page advertising, promotional materials (t-shirts, caps, pencils, etc.) and by participating in local events. Plaintiff is well known in South Florida for its electrical supplies outlets. *Exhibit 1 ¶ 8.* [D.E. 41-9]

4. Plaintiff has continuously used the following registered marks:

Register	Reg. No.	Reg. date	First Use	Service Mark
Federal	2,705,805	04/15/2003	11/1999	<u>KILOWATTS ELECTRIC SUPPLY, CORP and design</u> (INCONTESTABLE REGISTRATION)
Federal	3,626,300	05/26/2009	10/31/1980	KILOWATTS ELECTRIC SUPPLY
Federal	3,626,301	05/26/2009	10/31/1980	KILOWATTS
Federal	3,960,938	05/17/2011	05/16/2000	KILOWATTS ELECTRIC & LIGHTING SUPPLY
Florida	T000000-00574	05/22/2000	10/31/1980	KILOWATTS ELECTRIC SUPPLY, CORP. and design

Exhibit 1 ¶ 9 [D.E. 41-9]

5. Plaintiff has spent substantial amount of money advertising and promoting its trade name and service marks, including KILOWATTS by itself. The sales and advertising expenditures of Plaintiff for the past three years are as follows:

Year	Sales	Advertising Expense
2010	\$14,317,437.00	\$61,546.00
2011	\$14,580,111.00	\$58,208.00
2012	\$14,697,984.00	\$68,239.00

Exhibit 1 ¶ 7 [D.E. 41-9]

6. Corporate Defendant is a Florida corporation doing business in the county of Miami-Dade, Florida and was incorporated on April 29, 2011. *Exhibit 2* ¶ 2, Plaintiff's Amended Complaint. [D.E. 32]
7. On or after this date, Defendant started using the trade name KILOWATT DEPOT CORP in South Florida when it opened a store in Miami-Dade County. Recently, Defendant has started using an equivalent trade name replacing the word "KILOWATT" with its abbreviation "KW." *Exhibit 1* ¶ 4. [D.E. 41-9]
8. The electrical products Individual Defendant Carlos A. Abad and Corporate Defendant sell include cables and lighting fixtures such as LED lights, which corresponds to those Plaintiff sells and distributes. *Exhibit 1* ¶ 3, "AS-1," and "AS-2." [D.E. 41-9, D.E. 41-10, D.E. 41-11]
9. Corporate Defendant purchased electrical supplies from Plaintiff and obtained a sales tax certificate. *Exhibit 1* ¶ 9 and "AS-6." [D.E. 41-9, D.E. 41-15]
10. Defendant Carlos A. Abad resides in the State of Florida and is doing business in the State of Florida. *Exhibit 3* ¶ 3, Answer to Plaintiff's Amended Complaint by Carlos A. Abad. [D.E. 59]
11. Defendant Carlos A. Abad is president of corporate defendant Kilowatt Depot, Corp. *Exhibit 1* "AS-5". [D.E. 41-14]
12. Defendant is directly responsible for selecting and using the name KILOWATT DEPOT in connection with the sale of electrical products and supplies. *Exhibit 3* ¶ 4 [D.E. 59]
13. Defendant also appears as the administrative contact for the registered domain name "kilowattdepot.com." *Exhibit 4* ¶ 6, and "ER-5," Declaration of Eric Rosaler. [D.E. 41-3, D.E.41-8]
14. Currently the domain name "kilowattdepot.com" directs users to "kwdepot.com" and appears in search engines as the domain name for "KW DEPOT." *Exhibit 4* ¶ 6 and "ER-4." [D.E. 41-3, D.E.41-7]
15. On October 17, 2012, Corporate Defendant was served with multiple cease and desist letters at all ascertainable addresses of Defendant, including a letter addressed

specifically to Defendant Carlos A. Abad. *Exhibit 1* ¶ 11 and “AS-9.” [D.E. 41-9, D.E. 41-18]

16. On October 31, 2012, Corporate Defendant filed a registration application for “KW DEPOT” disclaiming the non-distinctive word “depot.” *Exhibit 1* ¶ 5 and “AS-3.” [D.E. 41-9, D.E. 41-12]

17. Customers and potential customers of electrical parts know that KW is an abbreviation for KILOWATT since the abbreviation is commonly and regularly used in the trade. *Exhibit 1* ¶ 4. [D.E. 41-9]

18. The trademark examining attorney at the U.S. Patent and Trademark Office has recently rejected Defendant’s registration application for KW DEPOT finding it to be likely to cause confusion with Plaintiff’s mark registration for KILOWATTS. *Exhibit 1* ¶ 5 and “AS-4.” [D.E. 41-9, D.E. 41-13]

19. Defendant Carlos A. Abad, as president of Kilowatt Depot, Corp, continues to do business using the marks KILOWATT and KW. *Exhibit 4* ¶ 6 and “ER-4.” [D.E. 41-3, D.E. 41-7]

20. By failure to answer Plaintiff’s Requests for Admissions (attached as *Exhibit 5*), corporate Defendant, presided over by Defendant Carlos A. Abad, has admitted *inter alia* the following:

- The abbreviation for “kilowatt” is “kw.” *Exhibit 5* ¶ 44.
- Corporate Defendant uses, or has used, KILOWAT DEPOT and KW in its stationary, advertising, promotional materials, web page, catalog, brochures, signs, on television or radio, and on bus benches. *Exhibit 5* ¶ 11-29.
- Corporate Defendant sells electrical products. *Exhibit 5* ¶ 38.
- Corporate Defendant sells and/or distributes electrical inverters. *Exhibit 5* ¶ 39.
- Corporate Defendant sells and/or distributes generators. *Exhibit 5* ¶ 40.
- Corporate Defendant sells and/or distributes LED lighting products. *Exhibit 5* ¶ 41.
- Corporate Defendant sells and/or distributes electrical accessories. *Exhibit 5* ¶ 42.

- Corporate Defendant sells and/or distributes lamps. *Exhibit 5* ¶ 43.

21. By virtue of default, Corporate Defendant Kilowatt Depot, Corp., which is presided over by Defendant Carlos A. Abad as president, has admitted all the allegations in Plaintiff's Amended Complaint, including *inter alia* the following:

- Defendant Carlos A. Abad is a moving, conscious, and active force behind Corporate Defendant's actions and actively participates in and approves its infringing acts. *Exhibit 1* ¶ 4. [D.E. 32]
- Both Defendant Carlos A. Abad and Corporate Defendant Kilowatt Depot, Corp. willfully infringed Plaintiff's Marks. *Exhibit 1* ¶ 15. D.E. 32]
- Defendants' use of the words KILOWATT, KW DEPOT, KW, and other terms for services similar to those used by Plaintiff are likely to cause confusion with Plaintiff's marks and trade name. *Exhibit 1* ¶ 13. [D.E. 32]

MEMORANDUM OF LAW

Plaintiff, **Kilowatts Electric Supply, Corp.**, by and through its undersigned attorney, hereby submits this Memorandum of Law in support of Plaintiff's Motion for Summary Judgment.

I. Summary of Arguments

Summary Judgment against Defendant Carlos A. Abad is appropriate in this case because there are no genuine issues of material fact, which require resolution at trial, as to the following:

- 1) Plaintiff, Kilowatts Electric Supply, Corp. has validly enforceable rights in the trade name and service marks claimed in the complaint;
- 2) The use of KILOWATT and KW by Individual Defendant, Carlos Abad, is likely to cause consumer confusion with Plaintiff's marks and trade name; and

- 3) Defendant Carlos A. Abad is liable for Corporate Defendant's infringing activities because he is a corporate officer that directs, controls, ratifies, and participates in Corporate Defendant's infringing activities.

II. Facts

A. Plaintiff's Business, Marks, and Trade Name

Plaintiff was incorporated in Florida on April 17, 1985 and has maintained business offices in South Florida since its formation. *Exhibit 1* ¶ 1. At present, Plaintiff operates three physical retail establishments for selling and distributing electrical parts including lighting fixtures. *Exhibit 1* ¶ 2. Over the years Plaintiff has increased the product lines it offers to its customers, including those involved with the electrical trade. *Id.* Plaintiff has advertised using different media including store signs, printed counter displays, web page advertising, promotional materials (t-shirts, caps, pencils, etc.) and by participating in local events. *Exhibit 1* ¶ 8. Plaintiff is well known in South Florida for its electrical supplies outlets. *Id.*

On May 22, 2000, Plaintiff registered its service mark **KILOWATTS ELECTRIC SUPPLY, CORP. and design** with the Secretary of State of Florida. *Exhibit 1* ¶ 8, and "AS-8." Subsequently, in 2003, Plaintiff registered the same service mark with the U.S. Patent and Trademark Office. *Id.* As it continued to expand its business, Plaintiff registered shortened versions of its trade name and service mark in 2009 and 2011. *Id.* Among these, Plaintiff registered **KILOWATTS ELECTRIC SUPPLY**, and **KILOWATTS** by itself, in order to protect the goodwill associated with the recognition of its service marks with its customers and potential customers. *Id.* Lastly, in 2011 Plaintiff registered yet another variation of its mark, **KILOWATTS ELECTRIC & LIGHTING SUPPLY**, reflecting its expansion and emphasis in the related electric lighting field. *Id.* The chart below identifies said registrations:

Register	Reg. No.	Reg. date	First Use	Service Mark
Federal	2,705,805	04/15/2003	11/1999	<u>KILOWATTS ELECTRIC SUPPLY, CORP and design</u> (INCONTESTABLE REGISTRATION)
Federal	3,626,300	05/26/2009	10/31/1980	KILOWATTS ELECTRIC SUPPLY
Federal	3,626,301	05/26/2009	10/31/1980	KILOWATTS
Federal	3,960,938	05/17/2011	05/16/2000	KILOWATTS ELECTRIC & LIGHTING SUPPLY
Florida	T000000-00574	05/22/2000	10/31/1980	KILOWATTS ELECTRIC SUPPLY, CORP. and design

Exhibit 1 ¶ 9.

Plaintiff has spent substantial amount of money advertising and promoting its trade name and service marks, including KILOWATTS by itself. The sales and advertising expenditures of Plaintiff for the past three years are as follows:

Year	Sales	Advertising Expense
2010	\$14,317,437.00	\$61, 546.00
2011	\$14,580,111.00	\$58,208.00
2012	\$14,697,984.00	\$68,239.00

Exhibit 1 ¶ 7.

B. Corporate Defendant's Business, Marks, and Trade Name

Corporate Defendant, Kilowatt Depot, Corp., is a Florida corporation doing business in the county of Miami-Dade and incorporated on April 29, 2011. *Exhibit 1 ¶ 9* and "AS-5." On or after this date, Defendant started using the trade name KILOWATT DEPOT CORP in South Florida when it opened a store in Miami-Dade County. Recently, Defendant has started using an equivalent trade name replacing the word "KILOWATT" with its abbreviation "KW." *Exhibit 1 ¶ 4.*

Corporate Defendant is in the electrical products retail business. The electrical products Corporate Defendant sells includes cables and lighting fixtures such as LED lights, which corresponds to those Plaintiff sells and distributes. *Exhibit 1* ¶ 3, “AS-1,” and “AS-2.” Corporate Defendant purchased electrical supplies from Plaintiff and obtained a sales tax certificate. *Exhibit 1* ¶ 9 and “AS-6.”

C. Defendant Carlos A. Abad’s Infringing Activities

Defendant Carlos A. Abad resides in the State of Florida and is doing business in the State of Florida. *Exhibit 3* ¶ 3. Currently, Carlos A. Abad is president of corporate Defendant Kilowatt Depot, Corp. *Exhibit 1* “AS-5.” Individual Defendant Abad has admitted to being directly responsible for selecting and using the name KILOWATT DEPOT in connection with the sale of electrical products and supplies. *Exhibit 3* ¶ 4. Defendant Abad is also the administrative contact for the domain name “kilowattdepot.com,” which directs users to “kw.com” and appears in search engines as the domain name for KW DEPOT. See *Exhibit 4* ¶ 6, “ER-4,” and “ER-5.”

D. Defendant Carlos Abad’s Willful Infringement

On October 17, 2012, Corporate Defendant was served with multiple cease and desist letters at all ascertainable addresses of Defendant, including a letter addressed specifically to Defendant Carlos A. Abad. *Exhibit 1* ¶ 11 and “AS-9.” On October 31, 2012, Corporate Defendant, controlled by Defendant Abad, filed a registration application for “KW DEPOT” disclaiming the non-distinctive word “depot.” *Exhibit 1* ¶ 5 and “AS-3.” The letters “KW” correspond to the abbreviation of the word “Kilowatt” and this is generally known in the trade, especially for customers and potential customers seeking electrical products. *Exhibit 1* ¶ 4.

The trademark examining attorney at the U.S. Patent and Trademark Office has recently rejected Defendant’s registration application for “KW Depot” finding it to be likely to cause confusion with Plaintiff’s mark registration for KILOWATTS. *Exhibit 1* ¶ 5 and “AS-4.” Defendants continue to do business under KW DEPOT and, as explained

above, under KILOWATT DEPOT through the use of the domain name “kilowattdepot.com.” *Exhibit 4* ¶ 6 and “ER-4.”

E. Admissions by Corporate Defendant and Individual Defendant

Individual Defendant Carlos A. Abad presides over Corporate Defendant as its president. By virtue of default, Corporate Defendant has admitted all of the allegations in Plaintiff’s Amended Complaint. *Exhibit 1*. Such allegations include that Carlos A. Abad is a moving, conscious, and active force behind Corporate Defendant’s infringing acts, that Carlos A. Abad actively participates and approves Corporate Defendant’s infringing acts, that the actions of both Defendants constitute willful infringement, and that the use of KILOWATT and KW by both Defendants is likely to cause confusion with Plaintiff’s marks and trade name. *Id.* at ¶’s 4, 15, and 13.

Additionally, by failure to respond to Plaintiff’s Requests for Admissions, Corporate Defendant, presided over by Carlos A. Abad, has admitted that the abbreviation for “kilowatt” is “kw,” that Corporate Defendant has used KILOWATT and KW in advertisements, and that Defendants sell electrical products. *Exhibit 5* at ¶’s 44, 11-29, and 38-43.

III. Arguments

A. Standard for Summary Judgment

The Supreme Court set a trend in 1986 liberalizing and encouraging the use of motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 106 S. Ct. 1348 (1986), *Celotex Corp. v. Cattret*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). The Supreme Court’s holdings reflect the concern of meritless litigation and awareness of the potential of summary judgment to fulfill the just, speedy, and inexpensive determination of every action. These holdings have been extended to trademark cases. *Lang v. Retirement Living Publishing Co.*, 21 U.S.P.Q. 1041 (2nd Cir. 1991).

Generally, summary judgment is appropriate in cases where the moving party establishes that there are no genuine issues of material fact which require resolution at trial and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is material when its resolution would affect the outcome of the proceeding under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986); and *Octocom Systems Inc. v. Houston Computers Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1786 (Fed. Cir. 1990).

A fact is genuinely in dispute if the evidence of record is such that a reasonable fact finder could return a verdict in favor of the nonmoving party. *Anderson*, 477 U.S. at 248. In deciding a motion for summary judgment, the Court may not resolve an issue of fact; it may only determine whether a genuine issue of material fact exists. See *Meyers v. Brooks Shoe Inc.*, 912 F. 2d 1459, 16 U.S.P.Q. 2d 1055 (Fed. Cir. 1990).

The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. See *Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 23 U.S.P.Q. 2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 U.S.P.Q. 2d 1542 (Fed. Cir. 1992).

In certain cases, however, even though disputes remain with respect to certain facts, summary judgment may be granted so long as all factual disputes are resolved in favor of the non-moving party and inferences drawn from the undisputed facts are viewed in the light most favorable to the non-moving party. See *Anderson*, 477 U.S. at 255 (1986) ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor"); *Bishop v. Wood*, 426 U.S. 341, (1976); and *Larry Harmon Pictures Corp. v. The William's Restaurant Corp.*, 929 F.2d 662, 18 USPQ2d 1292, 1293 (Fed. Cir. 1991).

B. Summary Judgment in a Trademark Infringement Case

To establish a trademark infringement claim under the Lanham Act or the common law, a plaintiff must show 1) that plaintiff has enforceable rights in the mark or name, and 2) that the defendant made unauthorized use of it such that consumers were

likely to confuse the two. *SunAmerica Corp. v. Sun Life Assurance Co. of Canada*, 77 F.3d 1325,1334 (11th Cir. 1996). Evidence of actual confusion between trademarks is not necessary to finding a likelihood of confusion, although it is the best evidence. *E.Remy Martin & Co., S.A. v. Shaw-Ross Intern. Imports, Inc.*, 756 F.2d 1525, 1529 (11th Cir. 1985). Although likelihood of confusion is a question of fact, it may be decided as a matter of law. *Welding Services, Inc. v. Forman*, 509 F.3d 1351, 1361 (11th Cir. 2007).

1. Plaintiff has enforceable rights for its marks and trade name against Defendant Carlos A. Abad.

Plaintiff has sufficiently established enforceable rights in the marks and trade name set out in Plaintiff's Amended Complaint. Plaintiff has been continuously using its trade name and marks since as early as October 31, 1980. Plaintiff has registered its marks with the United States Patent and Trademark Office, with such registration constituting *prima facie* evidence of the marks' validity, Plaintiff's ownership, and Plaintiff's right to the exclusive use of the federally registered marks. 15 U.S.C. 115(a). Registration No. 2,705,805 is incontestable and constitutes conclusive evidence of the validity and registration of the mark, Plaintiff's ownership, and Plaintiff's exclusive right to use the mark in commerce. 15 U.S.C. 1115(b).

Nothing in the record controverts Plaintiff's rights in its marks and trade name. Furthermore, Defendant Carlos A. Abad did not deny Plaintiff's rights to its marks and trade name in his answer to the Amended Complaint. Therefore, there is no issue of material fact as to whether Plaintiff's has enforceable rights in its mark or trade name.

2. There is no issue of material fact as to whether Defendant's use of the infringing designations are likely to cause confusion with Plaintiff's.

To determine whether a likelihood of confusion exists, the Court considers seven factors:

- 1) The type of mark, whether the relationship between the name and the service or good is such that the chosen name qualifies as generic, descriptive, suggestive, or arbitrary;

- 2) The similarity of the marks, based in the overall impressions that the marks create;
- 3) The similarity of the goods or services;
- 4) The similarity of the parties' retail outlets, trade channels, and customers;
- 5) The similarity of advertising to determine whether there is likely to be significant overlap in the respective target audiences such that a possibility of confusion could result;
- 6) The defendant's intent, determining whether the defendant had a conscious intent to capitalize on the plaintiff's business reputation, was intentionally blind, or otherwise manifested improper intent; and
- 7) The existence of actual confusion.

Freedom Savings & Loan v. Way, 757 F.2d 1176, 1182,224 U.S.P.Q. 123 (11th Cir. 1985). A court must consider the circumstances of each particular case, and evaluate the weight to be accorded to individual subsidiary facts, in order to make its ultimate factual decision. *Jellibeans, Inc. v. Skating Clubs of Ga.*, 716 F.2d 833, 840 n. 17 (11th Cir. 1983).

In this case, the uncontroverted evidence weighs heavily in favor of the Plaintiff in six out of the seven factors. Accordingly, a finding of likelihood of confusion as a matter of law is appropriate.

a. Plaintiff's marks and trade name are strong and should be classified as arbitrary.

Service marks and trade names have been judicially classified in accordance with their distinctiveness. The four categories used to classify the marks are generic, descriptive, suggestive, and arbitrary. The spectrum of protection extended to these types of marks varies from no protection at all for generic denominations to the maximum protection for arbitrary marks. *Dieter v. B.H. Industries of Southwest Florida*, 880 F.2d 322, 327, 11 U.S.P.Q. 2d 1721 (11th Cir. 1989).

The KILOWATTS marks and trade name are arbitrary marks entitled to maximum protection. Plaintiff's marks include the distinctive work "KILOWATTS," which when coupled with the extended use of the marks for over thirty years, should

entitle Plaintiff to maximum protection. Extensive expenditures in advertising in a relatively small territory has enhanced the distinctiveness of the marks and trade name as an indicator of the sponsor of the sales and distribution services of electrical parts in Florida. Additionally, Plaintiff's mark KILOWATT ELECTRIC SUPPLY (Registration No. 2,705,805) has achieved incontestable status.

b. The parties' trade names and marks are strikingly similar.

Corporate Defendant's trade name, chosen by Individual Defendant Carlos A. Abad, KILOWATT DEPOT, CORP, and its marks KILOWATT DEPOT and KW DEPOT are strikingly similar to those of Plaintiff's when used in advertising or promotional materials in the electrical supplies trade. The obvious distinctive element in both trade name and marks used by both parties is the word "KILOWATT." "DEPOT" is generic and highly descriptive of the services provided, which is why the word "DEPOT" was disclaimed in Corporate Defendant's service mark application for KW DEPOT.

With regards to KW DEPOT, Corporate Defendant's service mark application was denied by the trademark examining attorney because it was likely to cause confusion with Plaintiff's marks. A United States Patent and Trademark Office examining attorney's opinion is due serious consideration by the courts due to the expertise the examining attorneys have acquired. *National Customer Eng'g, Inc. v. Lockheed Martin Corp.*, 43 U.S.P.Q. 1036, 139-40 (C.D. Cal. 199). In this case an examining attorney has determined that KW DEPOT is too similar to Plaintiff's marks to the extent that it would likely cause confusion with Plaintiff's marks and services. Additionally, Corporate Defendant has admitted that "KW" is the abbreviation of kilowatt by not answering Plaintiff's Requests for Admissions.

The evidence on the record therefore supports the conclusion that Corporate Defendant's trade name and marks, chosen by Individual Defendant Carlos A, Abad, are strikingly similar to those of the Plaintiff to the point that they are likely to cause confusion among the relevant consuming public.

c. The parties render similar services for similar product lines.

The fact that both parties render similar services for similar product lines contributes substantially to likelihood of confusion. *Citibank, N.A. v. Citibanc Group, Inc.*, 724 F.2d 1540, 1548, 222 USPQ 292 (11th Cir. 1984). In this case both parties sell similar products, which include *inter alia* the following: 1) electrical generators; 2) electrical inverters; 3) LED lighting products; 4) electrical fixtures; and 5) and lamps. Therefore, the likelihood of confusion is substantially increased by the similarity of the products being sold by the parties.

As mentioned above, with regards to KW DEPOT, Defendants' service mark application was denied by the USPTO trademark examining attorney because the services were so related that there was a likelihood of confusion. The examining attorney's conclusion that Defendants' and Plaintiff's services are related is due serious considerations by the courts due to the examiner's acquired expertise.

The evidence on the record therefore supports the conclusion that Defendants' services are so related to Plaintiff's that they are likely to cause confusion among the relevant public when promoted with the marks KILOWATT DEPOT, KW DEPOT, and other infringing designations.

d. The identity of the parties' customers and the style of the parties' retail outlets are identical.

The customers and potential customers of both parties are identical. Corporate Defendant and Plaintiff both target customers with the same need for electrical products. Additionally, both Corporate Defendant and Plaintiff employ warehouse style facilities for their retail establishments.

e. Defendants and Plaintiff share similarities in advertising campaigns.

Both Corporate Defendant and Plaintiff advertise by displaying billboards and signs, and by use of printed materials such as business cards and stationary. Both parties also promote their businesses by use of web pages. It is therefore undisputed that both parties use the same media for advertising.

f. Defendants' actions demonstrate willful infringement.

The infringement in this case is willful. The Defendants could have chosen any number of words for their trade name and service marks. Instead, Defendants chose the distinctive portion of Plaintiff's trade name and service marks. Corporate Defendant knew of Plaintiff, Plaintiff's trade name, and Plaintiff's marks prior to adopting the infringing designations. This is supported by the fact that Corporate Defendant had made purchases from Plaintiff.

On October 17, 2012 Plaintiff sent two letters to officers of the Corporate Defendant requesting that Defendant cease and desist from using the Offending Designations. Defendant ignored these letters and continued infringement after having received notice from Plaintiff. Additionally, after receiving notice of the infringement, the Defendants applied for registration of a service mark for "KW DEPOT" with the United States Patent and Trademark Office.

By virtue of default, Corporate Defendant has already admitted that its use of "KW" (which is the well known standard abbreviation for kilowatt) is likely to cause confusion with Plaintiff's marks and trade name. This was also the opinion of the trademark examiner of the United States Patent and Trademark Office who rejected Defendants' application for the registration of "KW DEPOT." The examiner's opinion is significant in this matter because it warrants serious consideration when analyzing the willfulness of an infringement. *National Customer* at 139-40.

To date Corporate Defendant, presided over by Defendant Carlos A. Abad, continues to use KW DEPOT despite the examiner's finding of a likelihood of confusion with Plaintiff's trade name and service marks. Additionally, the Defendants continues to use the domain name "kilowattdepot.com" to forward users to its "kwdepot.com" website. The domain name "kilowattdepot.com" also appears in search engines as the domain name for KW DEPOT.

In light of this evidence, it is clear that Defendants' past and continued infringement is willful and that there is no evidence in the record to contradict this finding.

g. Although there is no evidence of actual confusion, actual confusion is not required for a finding of likelihood of confusion.

Evidence of actual consumer confusion is probative of likelihood of confusion, but such evidence is not necessary. “Plaintiff is not required to provide evidence of actual confusion in order to prove likelihood of confusion. Instead, actual confusion is merely one of several factors that may be relevant in analyzing whether there is a likelihood of confusion between the two marks.” *Montgomery v. Noga*, 168 F.3d 1282, 1302 (11th Cir. 1999).

In this case, Defendants’ recent adoption of KILOWATT DEPOT, CORP. and the subsequent use of KW DEPOT, has taken place for a relatively short period of time. However, the likelihood that such instances of actual confusion will occur increases as Defendants continue their infringing activities.

C. There is no issue of material fact disputing that Defendant Carlos A. Abad is a corporate officer who directs, controls, ratifies, participates in, and is a moving force behind Corporate Defendant’s infringing activities.

It has been held that “a corporate officer who directs, controls, ratifies, participates in, or is the moving force behind the infringing activity, is personally liable for such infringement without regard to piercing the corporate veil.” *Selchow & Righter Co. v. Goldex Corp.*, 612 F.Supp. 19 (S.D. Fla. 1985). In this case, Defendant Carlos A. Abad is Corporate Defendant’s president. Mr. Abad has also admitted to personally selecting and registering the name KILOWATT DEPOT. Additionally, Mr. Abad is the administrative contact for the domain name “kilowattdepot.com,” which directs users to “kwdepot.com” and appears in search engines as the domain name for KW DEPOT.

This evidence clearly demonstrates that Defendant Carlos A. Abad is an officer of Corporate Defendant who directs, controls, ratifies, and participates in Corporate Defendant’s infringing activities. Accordingly, there is no issue of material fact as to Defendant Carlos A. Abad’s liability in this matter.

IV. CONCLUSION

The granting of Plaintiff's Motion for Summary Judgment against Defendant Carlos A. Abad is appropriate in this case. The record and undisputed evidence demonstrates that there are no issues of material fact as to Plaintiff's enforceable rights in its trade name and service marks. The record and undisputed evidence also demonstrate that there is no issue of material fact as to the likelihood of confusion caused by Defendants' use of KILOWATT DEPOT, KILOWATT, and KW DEPOT. Further, the record and undisputed evidence leave no issue of material fact that Defendant Carlos A. Abad is liable for Corporate Defendant's infringing activities because Mr. Abad is a corporate officer who directs, controls, ratifies, and participates in Corporate Defendant's infringing activities.

Respectfully submitted,

SANCHELIMA & ASSOCIATES, P.A.
Attorneys for **Plaintiff**
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Miami, Florida 33134
Telephone: (305) 447-1617
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By: *s/ Jesus Sanchelima, Esq.*
Jesus Sanchelima, Esq.
FBN 231207

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 06, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro-se parties identified in the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Jesus Sanchelima, Esq.

SERVICE LIST

Via U.S. Mail

Kilowatt Depot Corp.
9450 NW 58th Street, Suite 101
Doral, Florida 33178

Via U.S. Mail

Carlos A. Abad
9450 NW 58th Street, Suite 101
Doral, Florida 33178

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Kilowatts Electric Supply, Corp.

Plaintiff,

v.

CASE NO. 12-CV-24244 – TORRES

Kilowatt Depot Corp.,
a Florida corporation, and,
Carlos A. Abad, individually

Defendants,

_____ /

**MOTION ON CONSENT FOR EXTENSION OF
TIME TO COMPLETE MEDIATION**

Plaintiff, Kilowatts Electric Supply, Corp. (hereinafter “Plaintiff”), by and through its undersigned attorneys, and with the consent of Individual Defendant Carlos A. Abad (hereinafter “Defendant”), respectfully moves this Court for entry of an order extending the time for the parties to complete mediation by thirty days. As grounds Plaintiff states as follows:

1. Plaintiff and Defendant conferred regarding the date for mediation and Defendant consents to an extension of 30 days from September 19, 2013 to complete mediation.
2. Defendant has expressed to Plaintiff that he is seeking advise, from an undisclosed party, and desires time to decide on how to proceed with mediation and the costs associated therewith.
3. Plaintiff’s Motion for Summary Judgment against Defendant was filed on September 6, 2013, which may make mediation and the associated expenses unnecessary for conclusion of this case.

WHEREFORE, Plaintiff, Kilowatts Electric Supplies, Corp., respectfully requests that this Court enter an Order extending time for the parties to complete mediation, and for such other and further relief as is just and proper.

Respectfully submitted,

SANCHELIMA & ASSOCIATES, P.A.
Attorneys for **Plaintiff**
235 S.W. Le Jeune Rd.
Miami, Florida 33134
Telephone: (305) 447-1617
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By: *s/ Jesus Sanchelima, Esq.*
Jesus Sanchelima, Esq.
FBN 231207

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 09, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro-se parties identified in the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Jesus Sanchelima, Esq.

SERVICE LIST

Via U.S. Mail

Kilowatt Depot Corp.
9450 NW 58th Street, Suite 101
Doral, Florida 33178

Via U.S. Mail

Carlos A. Abad
9450 NW 58th Street, Suite 101
Doral, Florida 33178

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Kilowatts Electric Supply, Corp.

Plaintiff,

v.

CASE NO. 12-CV-24244 – TORRES

Kilowatt Depot Corp.,
a Florida corporation, and,
Carlos A. Abad, individually

Defendants,

_____ /

**[PROPOSED] ORDER FOR Motion ON CONSENT FOR
EXTENSION OF TIME TO COMPLETE MEDIATION**

The Court, having considered Plaintiff's Motion on Consent for Extension of Time to Complete Mediation,

HEREBY ORDERES that Plaintiff's Motion on Consent for Extension of Time to Complete Mediation is _____.

DATED this ____ day of _____, 2013.

Edwin G. Torres
United States Magistrate Judge