

**FILED**

**08 AUG 28 PM 3:24**

**CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

*CX*  
**DEPUTY**

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11 Attorneys for Plaintiffs,  
12 **SUNTECH POWER HOLDINGS CO., LTD.,**  
13 **WUXI SUNTECH POWER CO., LTD., and**  
14 **SUNTECH AMERICA, INC.**

15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **SUNTECH POWER HOLDINGS CO.,**  
18 **LTD., a corporation of the Cayman**  
19 **Islands, WUXI SUNTECH POWER**  
20 **CO., LTD., a corporation of the**  
21 **People's Republic of China; and**  
22 **SUNTECH AMERICA, INC., a**  
23 **Delaware corporation,**

24 Plaintiffs,

25 vs.

26 **SHENZHEN XINTIAN SOLAR**  
27 **TECHNOLOGY CO., LTD., a**  
28 **corporation of the People's Republic of**  
**China, and SUN TECH SOLAR CO.,**  
**LTD., a Hong Kong corporation**

Defendants.

Case No. **'08 CV 1582 H NLS**

**COMPLAINT FOR:**  
**(1) INFRINGEMENT OF A**  
**FEDERALLY REGISTERED**  
**TRADEMARK;**  
**(2) INFRINGEMENT OF AN**  
**UNREGISTERED TRADEMARK;**  
**AND**  
**(3) UNFAIR COMPETITION**

**DEMAND FOR JURY TRIAL**

**I. JURISDICTION**

1. This is an action for infringement of a federally registered trademark pursuant to 15 U.S.C. §1114, infringement of an unregistered trademark pursuant to 15 U.S.C. §1125(a), and unfair competition under California Business &

1 Professions Code §17200, *et seq.*, and under California common law. This Court  
2 has jurisdiction under 15 U.S.C. §1121 and 28 U.S.C. §1338(a). This Court has  
3 supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C.  
4 §§133(a) and 1367(a).

5 2. This Court also has diversity jurisdiction under 28 U.S.C. §1332.  
6 There exists diversity of citizenship of the parties, and the amount in controversy,  
7 exclusive of interest and costs, exceeds the sum or value of \$75,000.

8 3. Venue is proper under 28 U.S.C. §1391(a) because a substantial part  
9 of the events giving rise to Plaintiffs' claims arose in this District. Specifically, as  
10 explained in detail below, Defendants currently are engaged in the activity giving  
11 rise to this action in San Diego, California.

## 12 **II. PARTIES**

13 4. Plaintiff Suntech Power Holdings Co., Ltd., ("Suntech Power") is a  
14 corporation of the Cayman Islands, with its principal place of business at 17-6  
15 Changjiang South Road, New District, Wuxi, Jiangsu Province 214028, People's  
16 Republic of China.

17 5. Plaintiff Wuxi Suntech Power Co., Ltd., ("Wuxi Suntech") is a  
18 corporation of the People's Republic of China, with its principal place of business  
19 at 17-6 Changjiang South Road, New District, Wuxi, Jiangsu Province 214028,  
20 People's Republic of China.

21 6. Plaintiff Suntech America, Inc. ("Suntech America") is a Delaware  
22 corporation doing business in California as Suntech Power, and has a place of  
23 business in California located at 188 The Embarcadero, Suite 800, San Francisco,  
24 California, 14501-1231.

25 7. Suntech America and Wuxi Suntech are wholly-owned indirect  
26 subsidiaries of Suntech Power.

27 8. Plaintiffs (collectively "Suntech") allege on information and belief  
28 that Defendant Shenzhen Xintian Solar Technology Co, Ltd. is a Chinese

1 company of unknown legal status, with its principal place of business at Flat F,  
2 6/F, Block A, Guo Du Golf Garden, Xin Sha Road, Fu Tian District, Shen Zhen  
3 City, People's Republic of China.

4 9. Suntech alleges on information and belief that Defendant Sun Tech  
5 Solar Co., Ltd. is a Hong Kong company of unknown legal status with its  
6 principal place of business at Flat B 2/F, Lung Wa Building, 22 Fuk Wa Street,  
7 Sham Shui Po, Kowloon, Hong Kong, 00852.

8 10. Plaintiffs allege further on information and belief that Defendants  
9 (collectively "Sun Tech Solar") do business in the United States, including this  
10 District, and advertise and market products and services within the United States,  
11 including this District.

12 **III. FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

13 11. Plaintiff Suntech is one of the largest solar module providers in the  
14 world. It is a leader in the design and manufacture of solar energy solutions for a  
15 wide variety of customers, including commercial and residential. Suntech's solar  
16 module products include monocrystalline products, polycrystalline products and  
17 building integrated photovoltaic (BIPV) MSK solar design products. Suntech's  
18 products have had outstanding commercial success for over five years. Suntech's  
19 products are distributed nationwide and Suntech has sales offices and installation  
20 partners throughout the United States, including in California. Suntech advertises  
21 and promotes its products under its Suntech mark on its website,  
22 <http://www.suntech-power.com/>.

23 12. Suntech is the owner of United States Trademark Registration No.  
24 3,111,705 for "Suntech" and design ("the '705 Registration") shown below:



27 The '705 registration issued on July 4, 2006 and is valid and existing on the  
28 Principal Register of the United States Patent and Trademark Office (the "PTO").

1 A true copy of the '705 registration is attached as Exhibit A.

2 13. Suntech has been careful, skillful and diligent in its conduct of its  
3 business and has maintained uniform standards of high quality in its goods. As a  
4 result of these efforts, Suntech's "Suntech" mark has acquired public acceptance  
5 and is recognized by the public as being associated with high quality solar energy  
6 products, thereby creating goodwill which inures to Suntech's benefit.

7 14. Suntech is the owner of the unregistered mark "Suntech" used in  
8 conjunction with the marketing and sale of solar module products. Suntech's  
9 products bearing the mark "Suntech" are sold throughout the United States,  
10 including California.

11 15. Upon information and belief, Defendant Sun Tech Solar has used the  
12 trademarks "Sun Tech" and "Sun Tech Solar" in connection with the sale of solar  
13 modules that are strikingly similar to the solar module products marketed and  
14 sold by Suntech.

15 16. Defendant Sun Tech Solar utilizes a website to market, promote and  
16 sell its solar products, [www.solarsuntech.com](http://www.solarsuntech.com). This website is confusingly  
17 similar to Suntech's website and even uses Suntech's registered mark in the  
18 domain name. Sun Tech Solar's website can be accessed and viewed in the  
19 United States, including this District. Sun Tech Solar promotes its products and  
20 services on its website and provides customers and potential customers with  
21 contact information for the company, including phone, facsimile and email  
22 information. Sun Tech Solar's website provides a web link to email addresses in  
23 a China office, a Hong Kong office, and the factory, as well as an on-line form for  
24 submitting inquiries via the web. In addition, upon information and belief, the  
25 website has a link where one may register a username and password in order to  
26 post on the company's electronic bulletin board.

27 17. Upon information and belief, Sun Tech Solar has used its "Sun  
28 Tech" and/or "Sun Tech Solar" marks in the United States.



1 sponsorship of such goods.

2 23. Plaintiff Suntech has been damaged by Sun Tech Solar's trademark  
3 infringement by reason of the likelihood that customers and potential customers  
4 have been confused as to the source or affiliation, sponsorship or approval of Sun  
5 Tech Solar's goods and the relationship of such goods to Plaintiff Suntech.

6 24. Upon information and belief, Sun Tech Solar has profited from its  
7 actions of trademark infringement alleged herein.

8 25. By reason of Sun Tech Solar's actions alleged herein, Plaintiff  
9 Suntech is likely to suffer irreparable injury to its goodwill.

10 26. On information and belief, Sun Tech Solar's acts of infringement  
11 have been willful and taken without regard to the established rights of Plaintiff  
12 Suntech.

13 **SECOND CLAIM FOR RELIEF**

14 **(Infringement of an Unregistered Trademark)**

15 27. Plaintiff Suntech repeats and incorporates herein the allegations  
16 contained in paragraphs 1 through 26 above.

17 28. Suntech's "Suntech" mark is inherently distinctive and further has  
18 acquired distinctiveness as a result of its long exclusive use by Suntech.,

19 29. The above-cited acts by Sun Tech Solar constitute infringement of an  
20 unregistered trademark in violation of 15 U.S.C. § 1125(a) in that Sun Tech Solar  
21 has used a mark which is confusingly similar to Suntech's unregistered "Suntech"  
22 trademark in promoting and selling its goods, thereby falsely designating the  
23 source of origin of such goods or whether Sun Tech Solar's goods are affiliated  
24 with or sponsored or approved by Suntech.

25 30. Suntech has been damaged by Sun Tech Solar's trademark  
26 infringement by reason of the likelihood that potential customers have been  
27 confused as to the source of Sun Tech Solar's goods and the relationship of such  
28 goods to Suntech.



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products which are likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Sun Tech Solar and Suntech, or as to the origin, sponsorship or approval of Sun Tech Solar's products by Suntech;

B. Compensatory damages and disgorgement of Sun Tech Solar's profits from the sale of goods in connection with which Sun Tech Solar has used the "Sun Tech" or "Sun Tech Solar" marks under 15 U.S.C. § 1117;

C. Treble damages pursuant to 15 U.S.C. § 1117;

D. Punitive damages;

E. Prejudgment interest, costs, expenses, and reasonable attorney's fees for this suit;

F. Such other and further relief as this court may deem just and proper.

DATED: August 28, 2008

Respectfully submitted,  
CHRISTIE, PARKER & HALE, LLP

By   
David A. Dillard  
G. Warren Bleeker

Attorneys for Plaintiffs,  
SUNTECH POWER HOLDINGS CO.,  
LTD., WUXI SUNTECH POWER CO.,  
LTD., and SUNTECH AMERICA, INC.


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**DEMAND FOR TRIAL BY JURY**

Plaintiffs Suntech Power Holdings Co., Wuxi Suntech Power Co., Ltd., and Suntech America, Inc. demand a trial by jury to decide all issues so triable in this case.

DATED: August 28, 2008

Respectfully submitted,  
CHRISTIE, PARKER & HALE, LLP

By   
David A. Dillard  
G. Warren Bleeker

Attorneys for Plaintiffs,  
SUNTECH POWER HOLDINGS CO.,  
LTD., WUXI SUNTECH POWER CO.,  
LTD., and SUNTECH AMERICA, INC.

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Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 3,111,705

Registered July 4, 2006

**TRADEMARK  
PRINCIPAL REGISTER**

 Suntech

WUXI SUNTECH POWER CO., LTD. (CHINA CORPORATION)  
ROOM 1218, SECTION 1  
SCIENTIFIC-TECHNICAL DEVELOPMENT GARDENNATIONAL HI-TEC EXPLOIT DISTRICT OF WUXI  
JIANGSU PROVINCE, CHINA

FOR: SOLAR BATTERIES; ELECTRIC ACCUMULATORS FOR VEHICLES; ACCUMULATOR BOXES; BATTERY BOXES; PLATES FOR BATTERIES; BATTERIES FOR LIGHTING; BATTERIES; BATTERY CHARGERS; GALVANIC BATTERIES; ELECTRIC

BATTERIES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-25-2004; IN COMMERCE 9-25-2004.

THE MARK CONSISTS OF THE WORD SUNTECH IN SPECIAL FORM WITH AN ARBITRARY DESIGN.

SER. NO. 78-644,467, FILED 6-6-2005.

ANDREA EVANS, EXAMINING ATTORNEY

CIVIL COVER SHEET

ORIGINAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

I. (a) PLAINTIFFS (SEE ATTACHMENT A)

DEFENDANTS (SEE ATTACHMENT A)

08 AUG 28 PM 3:24

(b) County of Residence of First Listed Plaintiff CAYMAN ISLANDS (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant CHINA COUNTY OF CALIFORNIA (IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 1582 H NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. Section 1114, 15 U.S.C. Section 1125 (a)

Brief description of cause: Trademark infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 8/28/08

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT # 15/527 AMOUNT \$350.00 APPLYING IFP JUDGE MAG. JUDGE

08/28/08

**Civil Cover Sheet - Attachment A**

**Attorney's (Firm Name, Address, and Telephone Number**

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Facsimile: (626) 577-8800

**Plaintiffs**

SUNTECH POWER HOLDINGS CO., LTD., a corporation of the Cayman Islands, WUXI  
SUNTECH POWER CO., LTD., a corporation of the People's Republic of China; and  
SUNTECH AMERICA, INC., a Delaware corporation,

**Defendants**

SHENZHEN XINTIAN SOLAR TECHNOLOGY CO., LTD., a corporation of the People's  
Republic of China, and SUN TECH SOLAR CO., LTD., a Hong Kong corporation

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 154527 - MB**

**August 28, 2008  
15:29:16**

**Civ Fil Non-Pris**

USAO #: 08CV1582 CIVIL FILING  
Judge.: MARILYN L HUFF  
Amount.: \$350.00 CK  
Check#: BC7120

**Total-> \$350.00**

FROM: SUNTECH POWER HOLDINGS, ET AL  
VS SHENZHEN XINTIAN SOLAR  
TECHNOLOGY CO, LTD, ET AL