

UNITED STATES PATENT AND TRADEMARK
OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: February 24, 2003

Applicant: HYPERSTEALTH BIOTECHNOLOGY CORP.
Serial No.: 75731216
Filed: 06/17/1999
Mark: HYPERSTEALTH

LEO STOLLER
TRADEMARK AND LICENSING DEPARTMENT
P.O. BOX 35189
CHICAGO, IL 60707

Kimberly Linton, Legal Assistant:

The request for extension of time to oppose, filed under Trademark Rule 2.102 on behalf of **LEO STOLLER** (copy attached), was timely filed but is just now being acted on. The Board regrets the delay and any resulting inconvenience caused to the potential opposer or to applicant.

The request for extension of time to oppose is granted. If any further request for extension of time to oppose or any notice of opposition was filed on or before **11/1/02**, it will be considered as having been timely filed.

IN THE UNITED PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Leo Stoller
CENTRAL MFG. CO.
P.O. Box 35189
Chicago, IL 60707-0189

Potential Opposer,

vs.

HYPERSTEALTH
BIOTECHNOLOGY CORP.
(a British Columbia Corp.)
6441 Lougheed Highway Burnaby
British Columbia, Canada V5B 3A1

Applicant.

Trademark: HYPERSTEALTH

Application SN: 75-731,216

Int. Class Nos: 05 & 10

Filed: June 17, 1999

Published: July 2, 2002

Box TTAB/NO FEE

REQUEST FOR A NINETY DAY EXTENSION

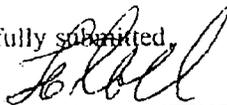
OF OPPOSITION PERIOD

NOW COMES the Potential Opposer and requests a extension of ninety (90) days from the present close of the opposition period, up to and including November 1, 2002 within which to consider the filing of an Opposition to the above identified application for trademark registration.

Opposer invites the Applicant to call the Opposer to resolve this controversy at 773-283-3880. Applicant is well aware that the Opposer is the senior user for the mark STEALTH.

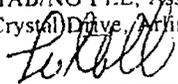
This extension is requested to investigate facts, obtain documentation, and to enable the Potential Opposer to consider its position with regard to potential opposition of this application.

Respectfully submitted,


By: Leo Stoller, individually and as President
Central Mfg. Co., Potential Opposer
Trademark and Licensing Department
P.O. Box 35189
Chicago, Illinois 60707-0189
773 283-3880 FAX 708 453-0083

Certification of Mailing

I hereby certify that this document is being deposited with the US Postal Service as first class mail in an envelope addressed to:
Box TTAB/NO FEE, Asst. Commissioner of Patents and Trademarks,
2900 Crystal Drive, Arlington, Virginia 22202-3513


Leo Stoller

Dated: 07-05-02

C:\MARKS27\HYPER.EXT

IN THE UNITED PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Leo Stoller
CENTRAL MFG. CO.
P.O. Box 35189
Chicago, IL 60707-0189

Trademark: HYPERSTEALTH

Opposer,
vs.

Application SN: 75-731,216

Int. Class No: 10

HYPERSTEALTH
BIOTECHNOLOGY CORP.
(a British Columbia Corp.)
6441 Lougheed Highway
Burnaby, BC CANADA V5B 3A1

Filed: June 17, 1999

Published: July 2, 2002

Applicant.

Box TTAB/FEE
(IN TRIPLICATE)

STEALTH vs. HYPERSTEALTH

03/17/2003 GTHOMAS2 00000043 75731216

01 FC:6402

300.00 OP

NOTICE OF OPPOSITION

1. In the matter of Intent to Use Application SN 75-731,216, for the mark **HYPERSTEALTH**, in Int. Class 10 for therapeutic compound which is taken orally in either liquid or solid form and releases oxygen after consumption.

2. The Opposer, or it's predecessor in title, has priority of use of the mark **STEALTH**, in Common Law, on a broad range of goods and services which are listed in the Federal Registrations and Applications, and on similar goods, related goods, and competitive goods, namely, specialized hand tools for use in the fabrication and assembly of prosthetic limbs and prosthetic limb components; namely, thermoplastic tooling, thermostat tooling and foam extraction tooling, prosthetic limb components; namely, shuttle locks, pyramids, pyramid receivers, sach foot adaptors, pytons, tube clamps, suction seals, adaptor plates, attachment plates, prosthetic knee systems, prosthetic knee chassals, prosthetic feet; and orthodontic appliances, namely, orthodontic brackets, arch wires, lingual holding arches and hooks. (See the goods in the attached Federal Registrations and Applications, sold to the identical customers, through similar channels of trade that Applicant's goods are sold in, and/or are to be sold. The Opposer, or it's predecessor in title, has priority of use of the mark

STEALTH on similar and/or related goods as early as 1986. See the goods listed in Opposer's attached list of *STEALTH* Federal Trademark Registrations and Applications.

3. The Opposer has priority of use of the mark *STEALTH* in numerous classes of goods and services. The Opposer holds rights to a family of *STEALTH* marks, promoted together in concert, as are well known to the Applicant, which goods and services are sold in the same channels of trade and to similar customers as Applicant's since at least as early as 1986 and hereby opposes registration of the confusingly similar mark **HYPERSTEALTH**, Application Serial No. 75-731,216.

4. There is no issue as to priority. The Applicant's intent to use date is subsequent to the issuance date of Opposer's said Registrations and it's listed first use date(s).

5. Opposer has sold its goods and services listed in the aforesaid registrations under the aforesaid *STEALTH* marks, as herein before referred to, throughout the United States. Opposer has developed an exceedingly valuable goodwill in respect to the *STEALTH* marks covered by the aforesaid registrations.

6. By virtue of its efforts, and the expenditure of considerable sums for promotional activities and by virtue of the excellence of its products, the Opposer has gained for its listed marks a most valuable and famous reputation.

7. The Opposer licenses the *STEALTH* mark for a wide variety of collateral merchandise and expends substantial sums of money on policing¹ the use of Opposer popular and famous trademark on a broad range of goods and services.

8. The Opposer holds rights² directly in the following well-known *STEALTH* trade-

1. See attached list of over 60 victories wherein the Opposer has successfully opposed and/or canceled over 60 *STEALTH* and/or *STEALTH* formative marks at the PTO.

2. **§16.13 McCARTHY ON TRADEMARKS, II. Ownership. Who Is Owner Of Trademark, [1] Introduction**, Trademarks have often been held to be a kind of "property." In discussing "ownership of a trademark, we must recognize that we are dealing with intangible, intellectual property. "Ownership" means that one possesses a right which will be recognized and upheld in the courts: To say one has a "trademark" implies ownership and ownership implies the right to exclude others. If the law will not protect one's claim of right to exclude others from using an alleged trademark, then he does not own a "trademark", for that which all are free to use cannot be a trademark. Application of Deister Concentrator Co., 48 CCPA 952, 289 F.2d 496, 129 USPQ 314 (1961). Trademark ownership inures to the legal entity who is in fact using the mark as a symbol of origin. The Federal Trademark Register can be rectified in order to correct the ownership of a registered mark or a pending application. Chapman v. Mill Valley Cotton, 17 USPQ2d 1414 (TTAB 1990) (Opposer Alpha alleged that she, not applicant, owned the mark. Applicant was a joint venture composed of parties Alpha and Beta. After some litigation in state court, the parties filed an assignment from party Beta to party

Pending Applications:

THE STEALTH FAMOUS BRAND

OUR FAMILY OF STEALTH FEDERAL TRADEMARKS¹ AND

PENDING APPLICATIONS

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>INT. CLASS</u>	<u>FIRST USE</u>
STEALTH	1,332,378	04-23-85	28	01-15-81
STEALTH	1,434,642	03-31-87	12	01-00-82
STEALTH	1,717,010	09-15-92	2	05-26-92
STEALTH	1,766,806	04-20-93	28	07-10-92
STEALTH	1,846,182	07-19-94	12	12-21-93
STEALTH	1,867,087	12-13-94	28	11-17-86
STEALTH TECHNOLOGY	1,947,145	01-09-96	9	01-01-93
STEALTH SQUAD	2,007,348	10-15-96	16	07-02-93
THE STEALTH	2,024,889	12-24-96	21	01-25-95
STEALTH	2,025,156	12-24-96	6	04-01-88
STEALTH	2,074,780	07-01-97	9	10-31-90
STEALTH	2,227,069	03-02-99	36	10-00-86
STEALTH ASSAULT	2,269,113	08-19-99	28	08-04-98
STEALTH	2,272,891	08-24-99	14	10-31-98
STEALTH 9MM	2,325,053	03-07-00	40	08-01-95
STEALTH 9MM SHADOW	2,325,054	03-07-00	40	08-01-95
STEALTH	2,330,467	03-21-00	18	01-00-85
STEALTH	2,403,775	11-14-00	8	06-00-81
STEALTH	2,439,735	04-03-01	9	01-00-86
STEALTH	2,433,330	03-06-01	8&10	12-29-97
STEALTH	2,478,742	08-21-01	9	01-00-85
STEALTH SPRAY	2,497,857	10-16-01	28	02-01-99
STEALTH SOAP	2,497,858	10-16-01	28	02-01-99
STEALTH	2,505,698	11-13-01	11	07-15-95
STEALTH	2,523,745	01-01-02	26	08-25-96
STEALTH	2,551,385	03-26-02	9	01-00-86
STEALTH	2,636,049	10/15/02	10	03-28-02

...Continued...

Alpha amounting to a concession that Alpha was indeed the owner of the mark. The Board viewed the TLRA 1989 amended version of §18, which permits rectifying the "register" as broad enough to include changing the name of the owner of an application, as well as of an issued registration.

1. Opposer has invested a fortune and over 20 years building the STEALTH Brand into one of the premiere Brands in the country.

APPLICATIONS¹

<u>TRADEMARK</u>	<u>SERIAL NO.</u>	<u>FILING DATE</u>	<u>INT. CLASS</u>	<u>FIRST USE</u>
STEALTH	74-327,774	11-02-92	16	Jan. 1986
STEALTH	74-343,994	12-22-92	28	Jan. 1985
STEALTH	75-019,143	11-13-95	9	Jan. 1985
STEALTH	75-016,560	11-08-95	11	Jan. 1885
STEALTH	75-036,382	12-08-95	7	Oct. 1993
STEALTH	75-185,379	10-22-96	9	Jan. 1994
STEALTH	76-071,233	06-05-00	11	Jan. 1986
STEALTH	76-215,703	02-09-01	28	Jan. 2001
STEALTH	78-070,511	06-22-01	9	Jan. 1995
STEALTH	75-565,743	10-07-98	12	Aug. 1992
STEALTH VISOR	75-829,875	10-22-99	9	Sep. 1999
STEALTH	75-849,316	11-16-99	7	Feb. 1999
BP STEALTH	78-114,518	03-13-02	20	Jan. 1999

9. Since 1997 the Opposer has forcefully extended its well-known trademark into the Applicant's market and today is a model for other in the trademark marketing and licensing industry in handling successfully brand extension as well known to the Applicant.

10. The Opposer sent a cease and desist letter to the President of HYPERSTEALTH BIOTECHNOLOGY CORP. on *June 26, 2002*, a true and correct copy is attached hereto and made a part hereof.

11. The Opposer sent correspondence to Applicant's counsel, *Mark Pospisilik*, on *July 23, 2002*; a true and correct copies are attached hereto and made a part hereof.

12. The trademark proposed for registration by the Applicant, namely **HYPERSTEALTH**, is substantially incorporated in its entirety in Opposer's mark *STEALTH* and **HYPERSTEALTH** is applied to similar goods and services as those sold by Opposer and so nearly resemble the Opposer's mark as to be likely to confuse therewith and mistake therefore.

13. The Applicant's mark **HYPERSTEALTH** is deceptively similar to Opposer's *STEALTH* mark so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing the Applicant's mark.

14. If the Applicant is permitted to use and register **HYPERSTEALTH** for its goods,

1. Notices hereby served on the Applicant, that the Opposer is entitled to rely on each one of its applications listed herein when they mature into Federal Trademarks in support of this Opposition. Opposer is serving notice on the Applicant that each and every time one or more of Opposer's pending *STEALTH* applications matures into a Federal Trademark registration, the Opposer will seek to amend its pleadings in order to rely on all of Opposer's *STEALTH* Federal Trademark registrations in support of this Opposition.

as specified in the application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of the similarity between the Applicant's mark and the Opposer's mark. Persons familiar with Opposer's mark *STEALTH* would be likely to buy Applicant's goods as and for a service sold by the Opposer. Any such confusion in trade inevitably would result in loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under its **HYPERSTEALTH** mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its products merchandised under its *STEALTH* marks for over 20 years.

15. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

16. Opposer asserts that there is a likelihood of confusion between the Applicant's mark **HYPERSTEALTH** and the Opposer's registered family of *STEALTH* and *STEALTH* formative marks under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

17. Opposer asserts that its mark *STEALTH* is well known and/or famous and that the Applicant seeking registration of the confusingly similar mark **HYPERSTEALTH**, which when used, would cause dilution under section 43(c).

18. If Applicant's mark **HYPERSTEALTH** is allowed to register it will lessen the capacity of Opposer's famous mark *STEALTH* to identify and distinguish its goods or services and to license its well known *STEALTH* BRAND NAME.

19. The Opposer uses its famous *STEALTH* mark as a trade name, corporate name, service mark and trademark since at least as early as 1981 and is engaged in an aggressive *STEALTH* licensing and marketing program, as well known to the Applicant.

20. The Opposer, located in Chicago, Illinois, believes that it will be damaged by registration of the mark **HYPERSTEALTH** shown in Application SN 75-731,216 and hereby opposes same. The Opposer uses its *STEALTH* mark as a trade name, corporate name, service mark and trademark and engages in an aggressive licensing program for over 20 years, as well known to the Applicant.

21. The Opposer has used the trademark *STEALTH* as a trade name, service mark and house mark in interstate commerce, since at least as early as 1981, long prior to Applicant's submission of its Application for Federal Registration of the mark **HYPERSTEALTH**.

22. The Opposer is the exclusive worldwide Licensor of the mark *STEALTH* as listed in the 1999 Licensing Resource Directory, as well known to the Applicant.

23. The Opposer has priority of use, as early as 1986, on the same and/or related goods, as previously stated, and on the goods listed in Federal trademark registrations and applications.

24. The use of the Applicant's mark **HYPERSTEALTH** sought to be registered in the aforesaid application is likely to blur the distinctiveness of the Opposer's famous¹ *STEALTH* trademark(s).

25. The use of the Applicant's mark **HYPERSTEALTH** sought to be registered in the aforesaid application is likely to cause confusion, mistake or deception in the buying public or cause the public to believe that there is a connection between the parties, or a sponsorship of Applicant's goods by Opposer.

26. The Opposer licensed its *STEALTH* mark on a wide variety of collateral merchandise.

27. The Opposer expends substantial sums of money on policing the use of its famous *STEALTH* trademark. See a true and correct copy of the attached list of victories.

28. The Opposer has forcefully extended its famous trademark and today is a model for others in handling successfully such a brand extension.

29. The Applicant's mark **HYPERSTEALTH** is confusingly similar to Opposer's mark *STEALTH* mark(s).

30. Since at least as early as 1981, the Opposer has been, and is now, using the mark *STEALTH* in connection with the sale of goods and services in numerous classes. Said use has been valid and continuous since said date of first use and has not been abandoned.

31. If the Applicant is permitted to register the mark, and thereby, the *prima facie* exclusive right to use in commerce the mark **HYPERSTEALTH** on the goods and goods licensed and sold by the Opposer, confusion is likely to result from any concurrent use of Opposer's mark *STEALTH* and that of the Applicant's alleged mark **HYPERSTEALTH**, all to the great detriment of Opposer, who has expended its lifetime and considerable sums and effort in promoting its well known mark.

32. Purchasers are likely to consider the goods of the Applicant sold under the mark **HYPERSTEALTH** as emanating from the Opposer, and purchase such products as those of

1. On January 14, 1997, District Court Judge Charles P. Kocoras, from the Northern District of Illinois, issued a decision in a *STEALTH* trademark infringement case brought by the Opposer's predecessor in title, Judge Kocoras ruled that "the mark *STEALTH* has also created a distinctive designation of the origin of products on which it has place and is widely recognized by the public". See Case No. 96 C 2037, decision dated January 14, 1997.

the Opposer, resulting in loss of sales to Opposer.

33. Applicant's mark **HYPERSTEALTH**, when used on or in connection with the goods of the Applicant, are merely descriptive or deceptively misdescriptive of the goods.

34. Applicant uses its alleged mark as a model designation.

35. Opposer's famous family of *STEALTH* marks are marketed in concert.

36. The Applicant's goods, defined in it's application, **therapeutic compound which is taken orally in either liquid or solid form and releases oxygen after consumption**, does not identify with reasonable certainty what goods are to be covered under the mark **HYPERSTEALTH**.

37. Upon information and belief, said application was obtained fraudulently in that the formal application papers filed by Applicant, under notice of §1001 of Title 18 of the United States Code stated that Applicant had a valid intent to use. Said statement was false. Said false statement was made with the knowledge and belief that it was false, with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration in that the Applicant, at the time it filed it's said *intent to use* application and declaration were in fact already using it's said mark in commerce.

38. Upon information and belief, said Applicant was using the mark **HYPERSTEALTH** as a service mark prior to *June 17, 1999*.

39. Upon information and belief, said Applicant was using the mark **HYPERSTEALTH** as a tradename prior to *June 17, 1999*.

40. Upon information and belief, said Applicant was using the mark **HYPERSTEALTH** on the goods listed in it's application prior to *June 17, 1999*.

41. Applicant's mark **HYPERSTEALTH** is identical to Opposer's mark **STEALTH**, with the word **HYPER** preceding the word **STEALTH**.

42. Upon information and belief, said application was obtained *fraudulently* in that the formal application papers filed by Applicant, under notice of §1001 of Title 18 of the United States Code stated that Applicant had a valid intent to use when Applicant filed it's Trademark application on *June 17, 1999*.

43. Applicant's said statement was false. Applicant had been using the said mark on all or some of the goods listed in it's application long prior to the filing of it's application on *June 17, 1999*.

44. Applicant's intent to use application was a fraud in that Applicant had use on some or all of the said goods listed therein bearing the mark **HYPERSTEALTH** long prior to the filing date of *June 17, 1999*.

45. Applicant's said intent to use statement was a false statement and was made with the knowledge and belief that it was *false*, with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration.

46. Upon information and belief, said statement of *intent to use* of the mark **HYPERSTEALTH** on the goods in question, was made by an authorized agent of Applicant with the knowledge and belief that said statements was false. Said false statements were made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration.

47. Applicant's mark **HYPERSTEALTH** was not applied for according to it's correct type¹, as shown in it's said application.

48. Upon information and belief, the Applicant was not the owner of the mark for which the registration is requested².

49. Upon information and belief, Applicant's intent to use application was signed with the knowledge that another party had a right to use the mark in commerce on the same or similar goods.

50. Concurrent use of the mark **HYPERSTEALTH** by the Applicant and *STEALTH* by the Opposer may result in irreparable damage to Opposer's Marketing and/or Trademark Licensing Program, reputation and goodwill.

51. If the Applicant is permitted to obtain a registration of the mark **HYPERSTEALTH**, a cloud will be placed on Opposer's title in and to its trademark, *STEALTH*, and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods and/or services, and on its Trademark Licensing Program, all to the great injury of the Opposer.

52. Applicant's should be denied registration of it's mark because the identification of its goods, **therapeutic compound which is taken orally in either liquid or solid form and releases oxygen after consumption**, is too indefinite to qualify for Federal trademark registration.

1. See §108 of the TMEP, page 100-5, Registration As Correct Type of Mark - It is important that a mark be registered according to its correct type, if it is not, the registration may be subject to cancellation. See *National Trailways Bus System v. Trailway Van Lines, Inc.*, 222 F. Supp 143, 139 USPQ 54 (E.D.N.Y. 1963), and 269 F. Supp. 352, 155 USPQ 507 (E.D.N.Y. 1965).

2. See *Huang v. Tzu Wei Chen Food Co. Ltd.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988). See TMEP §§706.01 and 802.06 §1 of the Trademark Act 15 U.S.C. §1051.

53. Upon information and belief, Applicant's Intent to Use Application was signed with the knowledge that another party had a right to use the mark in commerce.

54. The registration to Applicant of the mark **HYPERSTEALTH** shown in the afore-said application is likely to and will result in financial and other injury and damage to the Opposer in its business and in its enjoyment of its established rights in and to its said mark **STEALTH**.

55. As is well known to Applicant, the Opposer has been very successful and has previously prevailed against numerous other Applicants and/or Registrants for the unauthorized use of their similar **STEALTH** marks (see attached true and correct copy).

WHEREFORE, Opposer prays that the said Application for the trademark **HYPERSTEALTH** be denied, that no registration be issued thereon to Applicant, and that this Notice of Opposition be sustained in favor of the Opposer and that Opposer is entitled to judgment.

Opposer hereby gives notice under Rule of Practice that after hearing and in any appeal on this opposition proceeding, it will rely on its large family of **STEALTH** registrations and applications incorporated herein and all of the goods and services listed and covered thereunder, in support of this Notice of Opposition.

The Opposer prays for such other and further relief as may be deemed by the Director of Patents and Trademarks to be just and proper.

\$300.00 fee enclosed.

Respectfully submitted,



Leo Stoller, Individually and
as President,
CENTRAL MFG. CO., Opposer
Trademark & Licensing Dept.
P.O. Box 35189
Chicago, Illinois 60707-0189
773 283-3880 FAX 708 453-0083

Dated: October 19, 2002

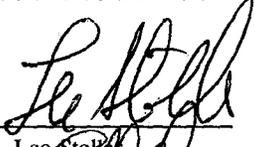
DECLARATION

The undersigned, Leo Stoller, declares: that he is Director of Leo Stoller dba Central Mfg. and the President, of CENTRAL MFG. CO., a closely related company, both founded and operated by Leo Stoller as such, is authorized to execute this document on its behalf, that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

The Opposer submits true and accurate certified copies of the Registrations of its STEALTH marks jointly owned by Leo Stoller dba Central Mfg. Co. and Central Mfg. Inc., herein relied upon in support of its Opposition, and one (1) copy each, of registrations prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the following registrations in support of its Notice of Opposition. All documents that are hereto attached are verified as copies of original certified documents. Notice of Reliance is hereby given that these registrations (1 each) are offered into evidence and given in support of Opposer's Notice of Opposition. Registration No. 1,947,145 has been assigned to CENTRAL MFG. CO.; Registration No. 2,074,780 has been assigned to CENTRAL MFG. CO.; Registration No. 2,227,069 has also been assigned to CENTRAL MFG. CO.; notwithstanding what the said records show to be the current registrant of record.

Dated: October 19, 2002

By: _____


Leo Stoller

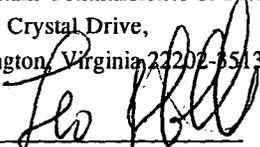
By: _____


Leo Stoller, President
CENTRAL MFG. CO.

Certificate of Mailing

I hereby certify that the foregoing document is being sent with the United States Postal Service in an express mail envelope addressed to:

Box TTAB/FEE
Assistant Commissioner of Patents and Trademarks,
2900 Crystal Drive,
Arlington, Virginia 22202-4351


Leo Stoller
October 19, 2002

D:\MARKS28\HYPER.O

STEALTH

LICENSING STEALTH BRAND PRODUCTS & SERVICES SINCE 1985

P.O. Box 35189, Chicago, IL 60707-0189

VOICE 773/283-3880 * FAX 708/453-0083 * WEB PAGE: www.rentamark.com

June 26, 2002
PRESIDENT
HYPERSTEALTH BIOTECHNOLOGY CORP.
2300-1066 W. Hastings, Street
Vancouver, British Columbia
V6E 3X2

Dear President:

Re: **INFRINGEMENT OF THE "STEALTH" TRADEMARK REGISTRATION**

Please be advised that we are the owner of all right, title and interest in and to the mark *STEALTH*. These *STEALTH* mark(s) are registered with the United States Patent and Trademark Office in numerous classes of goods and services. We are also the exclusive worldwide Licensor of the mark *STEALTH* as contained in the Who's Who in the Licensing Industry.

We have just learned that your company is using the *STEALTH* mark as a trademark, tradename, domain name, corporate name and/or service mark. It is our opinion that the unauthorized use of our well-known *STEALTH* mark constitutes an infringement of our common law rights in and to the mark *STEALTH* and/or our registered trademarks, if not actual counterfeiting. If your mark were ever to publish for opposition we will oppose it and/or file a petition to cancel it.

In arguendo, if the said products or services are different, both federal and state laws protect the owner of a famous and distinctive trademark from "dilution" of its mark. The FTDA provides, in pertinent part, that

the owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark.

15 U.S.C. §1125(c)(1). The FTDA defines "dilution" to mean:

the lessening of the capacity of a well known mark to identify and distinguish goods or services,

- (1) competition between the owner of the famous mark and other parties, or
- (2) likelihood of confusion, mistake, or deception.

15 U.S.C. §1127:

likelihood of injury to business reputation of dilution of the distinctive quality of a mark or trade name shall be a ground for injunctive relief in cases of infringement of a mark registered or not registered or in cases of unfair competition, notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

N.Y. Gen. Bus. Law §360-(McKinney Supp. 1999) (emphasis added) (formerly §368-d).

The type of dilution pertinent to the present case is "blurring," a process that may occur "where the defendant uses or modifies the Plaintiff's trademark to identify the defendant's goods or services, raising the possibility that the mark will lose its ability to serve as a unique identifier of the plaintiff's product." *Hornel*, 73 F. 3d at 506 (quoting *Deere & Co. v. MTD Products, Inc.*, 41 F. 3d 39, 43 (2d Cir. 1994) (emphases in original)). "Injury to the mark selling power need not involve any confusion as to source or sponsorship. The legislative history of §368-d underscores this understanding by giving examples of hypothetical violations: DuPont shoes, Buick aspirin tablets, Schiltz varnish, Kodak pianos, Bulova gowns, and so forth." *Hornel*, 73 F. 3d at 506 (quoting 1954 N.Y. Legis. Ann. 49-50).

In sum, in order to prevail on a dilution claim we are not required to prove likelihood of confusion. Trademark dilution statutes are designed to:

cover those situations where the public knows that the defendant is not connected to or sponsored by the Plaintiff, but the ability of the Plaintiff's mark to serve as a unique identifier of the Plaintiff's goods or services is weakened because the relevant public now also associates that designation with a new and different source... Thus, where the classic likelihood of confusion test leaves off, the dilution theory begins.

We will be substantially and irreparably damaged should this infringement and counterfeiting continue. We, therefore, request that HYPERSTEALTH BIOTECHNOLOGY CORP. immediately cease and desist from the use of STEALTH as a trademark. In order to mitigate further damages, the following actions on your part are required:

- immediate discontinuance of all use of the subject trademark;
 - turning over to us all materials in your possession which bear the subject trademark;
- and
- an accounting of all sales made to date of the bearing of such mark

Please understand that should you not immediately take the above actions and should litigation become necessary, we will also demand:

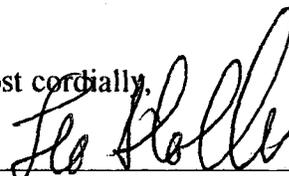
- an award of damages for all lost sales and profits; and
- an award of attorneys' fees

We strongly recommend that you present this letter to your attorney and have him or yourselves call us as soon as possible on or by July 20, 2002, to resolve this matter amicably.

If we do not hear from you by that time, we will presume that you do not intend to voluntarily take the necessary actions outlined above.

We await your response.

Most cordially,



Leo Stoller
STEALTH
P O Box 35189
Chicago, IL 60707
Tel: 773/283-3880
FAX: 708/453-0083

enclosures

CAWSIMARKS26/BIOTECH.C&D

STEALTH

STEALTH BRAND PRODUCTS AND SERVICES SINCE 1981

Post Office Box 35189

Chicago, Illinois 60707-0189

VOICE 773/283-3880 * FAX 708/453-0083 * WEB PAGE: www.rentamark.com

FOR SETTLEMENT PURPOSES ONLY HAVING NO EVIDENTIARY VALUE

July 23, 2002

Mr. Mark Pospisilik
VERMETTE & CO.
Box 40, Granville Street
CANADA V6C 1S4

Dear Mark:

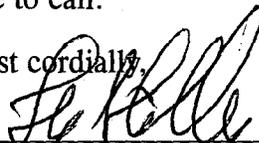
In Re: Trademark: STEALTH, App. SN: 75-731,216

Thank you for your letter of July 19, 2002.

We apologize for referring to our registrations and failing to enclose them with our last correspondence. Please find copies of all of our registrations and pending applications, a copy of our victory list, and a copy of information about the benefits of licensing the STEALTH mark. Please review the enclosed documents and get bak to us as soon as possible.

Thank you. If you have any further questions, please feel free to call.

Most cordially,



Leo Stoller, President

Attachments

C:\WS\MARKS26\HYPERST.LTR

THE STEALTH FAMOUS BRAND FEDERAL TRADEMARKS

REGISTRATION NUMBER	MARK	GOODS/SERVICES/CLASS	LISTED OWNER
1,332,378	Stealth	<i>Int. Class 28:</i> Sporting goods, specifically, tennis rackets, golf clubs, tennis balls, basketballs, baseballs, soccer balls, golf balls, cross bows, tennis racket strings and shuttlecocks.	Central Mfg. Co.
1,434,642	Stealth	<i>Int. Class 12:</i> Bicycles, motorcycles and boats.	Central Mfg. Co.
1,717,010	Stealth	<i>Int. Class 2:</i> Microwave absorbing automobile paint.	Central Mfg. Co.
1,766,806	Stealth	<i>Int. Class 28:</i> Fishing tackle floats (bobbers).	Central Mfg. Co.
1,846,182	Stealth	<i>Int. Class 12:</i> Automotive tires.	Central Mfg. Co.
1,867,087	Stealth	<i>Int. Class 28:</i> Pool Cue, pool tables, darts, billiard balls, cue cases, cue racks, billiard gloves.	Central Mfg. Co.
1,947,145	Stealth Technology	<i>Int. Class 9:</i> Computer hardware and computer utility software and operating manuals.	Central Mfg. Co.
2,007,348	Stealth Squad	<i>Int. Class 16:</i> Comic books	Central Mfg. Co.
2,024,889	The Stealth	<i>Int. Class 21:</i> Lawn sprinklers.	Central Mfg. Co.
2,025,156	Stealth	<i>Int. Class 6:</i> Metal alloys for use in sporting goods and transportation and window locks.	Central Mfg. Co.
2,074,780	Stealth	<i>Int. Class 9:</i> Automobile-mounted radar detectors.	Central Mfg. Co.
2,227,069	Stealth	<i>Int. Class 36:</i> Financial planning, investment management; insurance consultation.	Central Mfg. Co.
2,269,113	Stealth Assault	<i>Int. Class 28:</i> Hand-held units for playing electronic games.	Central Mfg. Co.
2,272,891	Stealth	<i>Int. Class 14:</i> Tie fasteners.	Central Mfg. Co.
2,325,053	Stealth 9MM	<i>Int. Class 40:</i> Manufacture and assembly of firearms to the order and the specification of others.	Central Mfg. Co.
	Stealth 9MM	<i>Int. Class 40:</i> Manufacture and assembly of firearms to	

2,330,467	Stealth	<i>Int. Class 18:</i> Leather wallets, leather handbags and leather attaché cases.	Central Mfg. Co.
2,403,775	Stealth	<i>Int. Class 8:</i> Pocket knives, non-electric can openers, cutlery, namely, forks, knives, and spoons; nail clippers, tweezers, scissors; and eyelash curlers.	Central Mfg. Co.
2,439,735	Stealth	<i>Int. Class 9:</i> Radios and speakers for automobiles, stereo speaker boxes, tape recorders, tape players and portable stereos.	Central Mfg. Co.
2,433,330	Stealth	<i>Int. Classes 8 & 10:</i> Specialized hand tools for use in the fabrication and assembly of prosthetic limbs and prosthetic limb components; namely, thermoplastic tooling, thermoset tooling and foam extraction tooling. Prosthetic limb components; namely, shuttle locks, pyramids, pyramid receivers, sach foot adaptors, pylons, tube clamps, suction seals, adaptor plates, attachment plates, prosthetic knee systems, prosthetic knee chassis and prosthetic feet.	Central Mfg. Co.
2,478,742	Stealth	<i>Int. Class 9:</i> Computer application software for creating databases, blank video film and video tapes, safety goggles, radios, photographic and video cameras.	Central Mfg. Co.
2,497,857	Stealth Spray	<i>Int. Class 28:</i> Hunters' scent camouflage.	Central Mfg. Co.
2,497,858	Stealth Soap	<i>Int. Class 28:</i> Hunters' scent camouflage.	Central Mfg. Co.
2,505,698	Stealth	<i>Int. Class 11:</i> Motion activated electric lighting fixtures.	Central Mfg. Co.
2,523,745	Stealth	<i>Int. Class 26:</i> Plastic buckles and fasteners for use in connection with backpacks, tote bags, sporting goods and foul weather gear and apparel and other similar articles.	Central Mfg. Co.
2,551,385	Stealth	<i>Int. Class 9:</i> Electric locks for garage doors.	Central Mfg. Co.
2,636,049	Stealth	<i>Int. Class 10:</i> Orthodontic appliances, namely, orthodontic brackets, arch wires, lingual holding arches and hooks.	Central Mfg. Co.
<p>Central Mfg. Co. (Inc.) is the rights holder in the above STEALTH Federal Trademark Registrations, notwithstanding what the Principal Register may indicate, nor what the Assignment Division records may indicate.</p>			

**THE STEALTH FAMOUS BRAND
PENDING APPLICATIONS**

APPLICATION NUMBER	MARK	GOODS/SERVICES	FILING DATE	FIRST USE
74-327,774	Stealth	Paper goods and printed matter, namely, pens, pencils, drawing rulers, paper clips, rubberbands, memo pads, adhesive tape for stationery or household use, non-electric erasers, snap-off blade cutter for cutting paper, pencil sharpener, fountain pens, ballpoint pens, stationery, namely, writing paper and envelopes, playing cards and comic books.	2-Nov-92	January, 1986
74-343,994	Stealth	Toys and sporting goods, namely, model airplane kits, toy boats, toy guns, toy robots, and toy soldiers.	22-Dec-92	January, 1985
75-019,143	Stealth	Computers, dot matrix printers; computer disc drives, fax modem cards; computer monitors, computer keyboards, computer diskette storage containers, computer software for computer setup and data base files, blank video films and video tapes; safety goggles, radios; photographic and video cameras; compressed air cylinders for use with breathing apparatus.	13-Nov-95	January, 1985
75-016,560	Stealth	Flashlights, pen lights, electric lamps, floor fans, wall fans, desk fans, portable fans.	8-Nov-95	January, 1985
75-036,382	Stealth	Bowling alley cleaning machines and marine propellers.	8-Dec-95	October, 1993
75-185,379	Stealth	Automobile-mounted radar detectors.	22-Oct-96	January, 1994
76-071,233	Stealth	Households air cleaners, household air cleaners with ionizer, domestic and commercial air purifiers, air conditioners.	25-Oct-95	July, 1995

APPLICATION NUMBER	MARK	GOODS/SERVICES - INTERNATIONAL CLASS	FILING DATE	FIRST USE
76-215,703	Stealth	Baseball, softball, t-ball bats.	9-Feb-01	January, 2001
78-070,511	Stealth II.HF Mobile Antennas	Manufacturing the Stealth II.series HF (High Frequency) Mobile antennas. It provides long range communication in the 3-60 MHZ frequency range from vehicular or stationery positions. Unique in form: Center loaded, red or other color of loading coil, with base section for the tuning motor and whip section for radiation/receiving of signal; Antenna, Stealth II.Series for HF (High Frequency) communication, long distance, world wide from vehicular or stationery position, in the 3-60 MHZ frequency range.	22-Jun-01	January, 1995
75-565,743	Stealth	Racing automobiles and structional parts therefor.	7-Oct-98	August, 1992
75-829,875	Stealth Visor	Anti-glare visor stops glare caused by sunlight or back lighting on computer monitors, laptops and other electrical displays.	22-Oct-99	September, 1999
75-849,316	Stealth	Bailing machines for use in recycling and waste material disposal.	16-Nov-99	February, 1999
78-114,518	BP Stealth	Bicycle parts.	13-Mar-02	January, 1999
76-053,720	Igloo Stealth	Insulated Food Transport and Dispensing Containers.	14-Oct-99	October, 1999

At the Patent and Trademark Office we have engaged in a diligent policing effort and have succeeded in successfully canceling or opposing the following STEALTH registrations and/or registrations:

WE SUCCESSFULLY POLICE OUR STEALTH PROPERTY

We have prevailed in opposing the following *STEALTH* marks:

Adamilk Corporation, App. SN 76-141,681 for *STEALTH VINE*, Int. Cl. 28
Aluminum Company of America for *STEALTH*/Int. Cl. 6
American International Marketing App. SN 75-874,282 *STEALTH* Int. Cl. 28
Applied Sewing Resources, App. SN 74-468,963 for *STEALTH*
Alta Mere Industries, Inc. App. SN 75-334,172 for *STEALTH*
(Art) N for *STEALTH* Negative Phscologram/Int. Cl. 9
Brentwood TV Funnies, App. 74-713,194 for *STEALTH* Warriors
British Telecommunications, App. 75-711,176 for *STEALTHGUARD*
Burros, David, App. SN 75-175,570 for *STEALTH* Trust
Changing By Design, Inc. App. SN 78-074,650 for *STEALTH ROCKET* Int. Cl. 12
Condor Mfg Co., App. SN 75-753,820 for *STEALTH* Framer
Crown Intern'l Inc., App. SN 74-643,872 for *STEALTH*
D'Arcangelo & Co., App. SN 75-541,914 for *STEALTH AUDUT*
DBNA Trademark Holdings, Inc., SN 75-691,003 *STEALTH*
Deer, Richard A., App. SN. 76-332,352 for *STEALTH BOMBERS* Int. Cl. 030
Dees Creations, Inc., App. SN 75-318,512 for *STEALTH*
Delaware Capitol Formation, Inc., SN 75-480,414 for *STEALTH*
Dennis Braid, App. SN: 76-236,749 for *STEALTH BELT*
Diversey Lever. Inc., App. SN 75-752,455 for *STEALTHDRY* Cl 3
Diversified Specialists, Inc., 74-205,517 for *STEALTH* Force/Int. Cl. 28
Doc's Deer Farm and Scents. 75-932,731, 75-932,736 *STEALTH*
Dow Agro Sciences LLC, App. 76-070,055 for *STEALTH* Cl. 5
Dynascan Corp., Opp. No. 88,906 for *STEALTH*
Fantom Technologies, App. SN 78-014,040 for *FANTOM STEALTH* Int. CL. 07
Ferro Corporation, App. SN 78-164,150 for *STEALTHMARK* Int. Cl. 2.
Flexible Mining Co. App. SN 75-762,791 for *LASER-CAST STEALTH* Int. Cl. 013
Halliburton Energy Services, Inc., App. SN 76-117,194 for *STEALTH* Int. Cl. 013
Heritage Mfg. Co., 74-735,867 *STEALTH* 9MM and 74-735,868 for *STEALTH* 9MM Shadow
(assigned to us)
Intelligence Quotient Intern'l, 74-493,718 for *STEALTH* Backup/Int. Cl. 9
74-475,481 FOR *STEALTH* Incription & 74-340,300 for *STEALTH* Technology
(assigned to us)

Kom Networks Inc 76-165,811 *STEALTHWORX*
Lane, Philip C., 74-476,028 for *STEALTH* Squad/Int. Cl. 16 (assigned to us)
Marathon Equipment Co., Reg. No. 2,486,860, for *STEALTH*
Mattel, Inc., 78-009,784 for *STEALTH X-17* Cl. 28 for electric toy airplanes
Mensaha Corp., 76-207,877 *STEALTH GOLD* in Int. Cl. 016
Miotto International Company, 75-519,919 for *STEALTH* in Int. Cl. 20
Mitek Surgical Products, Inc., 74-662,565 for *STEALTH* Anchor/Int. Cl. 10
Murray Canada, Inc., 74-204,943 for *GT STEALTH*, Int. Cl. 28
Naan Sprinklers, 74-630,176 for *STEALTH* (assigned to us)
National Molding, 74-734,680 for *STEALTH* (assigned to us)
Northrop Crumman Corp 74-064,158 *STEALTH BOMBER*
Northrop Crumman Corp 74-064,160 *STEALTH BOMBER*
P. Audio America, Inc., 78-092,036 *STEALTH AUDIO SYSTEMS*
Parker Athletic Ltd, 75-645,961 for *STEALTH* Int. Cl 28
Patmont Motor Werks, 75-106,684 for *STEALTH* Go-Ped
Pharmacia Corporation 76-16763 for *CAVERJECT STEALTH*
Prosthetic Design, Inc. App. SN 75-885,658 for *STEALTH* Int. Cl. 008, & 010
Rab Electric Manufacturing, Inc. Opp. No. 105,396 for *STEALTH* Int. Cl. 11
Reading Technologies of Delaware App. SN 76-310,026 for *STEALTH* Int. Cl. 007
Republic Entertainment, 75-027,006; 74-733,576; 74-733,577; 74-733,578 *STEALTH* Force;
Richmond Technology, 74-518,885 for *STEALTH* Wind
Ri-Power, Inc., 74-617,716 for *STEALTH/Int. Cl. 7*
Saulsbury Fire Rescue, Opp. No. 124,726, *STEALTH*
Southern Thread, Inc., 78-081,330 for *STEALTH THREAD* Cl. 23
Space Age Synthetics, Inc. 75-497,200 *STEALTH BOARD* 75-497,2000 Cl. 19
Star Lock Systems, Inc. 76-012,327 for *STEALTH /Int. Cl. 009*
Stealth Air Courier, Inc. 76-237,432 for *STEALTH AIR COURIER* Cl. 39
Stealth Energy Co., 78-048,408 for *STEALTH ENERGY COMPANY* Cl. 37
Stealth Hunter, Inc., 74-534,766 for *STEALTH* Hunter (assigned to us)
Stealth Propulsion, 74-570,909 for *STEALTH* Propulsion
Stevens Aviation Inc., 74-550,338 for *STEALTH/Int. Cl. 42*, et al.
Sullivan, Michael R., 75-677,695 for *STEALTH ACCESS/* Int. Cl. 042
Swain Techniques Opp. No. 120,912, for *STEALTHCOAT* Int. Cl. 040
Tenryu America, Inc. Opp. No. 119,206 for *STEALTH*
The Dow Chemical Corporation, 74-455,644 for *STEALTH* Port/Int. Cl. 9
Thomas Belts Intern'l, Inc., 75-494,772 for *STEALTH-TY /* Int. Cl. 22
Top of the Line, Inc., 75-561,926 for *STEALTHWING* Int. Cl. 28
Underwood, Lowell A., 76-118,593 for *STEALTH HAMMER* Int. Cl. 12
Union Special Corporation, 74-630,790 for Project *STEALTH/Int. Cl. 7*
Universal Cellular, 74-101,729 for *STEALTH*
Vermont Special Corp., 74-560,405 for *STEALTH* Cache

Vestal, Jeffery Scott, 76-190,730 for *STEALTH*/ Int. Cl. 015
Wellington Leisure Products, 74-581,134 for Wave *STEALTH*
Whitlock, Scott, 78-044,062 for *STEALTH TRAX* Cl. 25
Williams, Jeff, 74-638,906 for *STEALTH* Reflective System
Zebco, 74-430,395 for *STEALTH*
Zero Group, 74-556,690 for *STEALTH*
et al

We have canceled the following *STEALTH* registrations:

American Promo Events, Reg. No. 1,734,007 for the mark *STEALTH*
Biederman, Kelly & Shaffer, Inc., Reg. No. 1,694,788 for *STEALTH* Marketing/Int. Cl. 35
Blue Boy Toys, Reg. No. 1,521,952 for *STEALTH*
Cassidy & Associates, Reg. No. 1,846,141 for *STEALTH*
Charles Hayes, Reg. 1,717,010 for *STEALTH* assigned to us
Gustafson, Inc. Reg. No. 1,586,483 for *STEALTH*
Hobbico, Inc., Reg. 1,766,806 *STEALTH* (assigned to us)
Mitsubishi, Reg. 1,650,227 for *STEALTH X100*
Murray Canada, Inc., Reg. 1,793,751 for *GT STEALTH*
Sirchie Fingerprint Labs, Reg. 1,538,007 for Nite *STEALTH*
Turboair, Inc., Reg. No. 1,722,911 for *STEALTH 12*/Int. Cl. 7
Radica China, Ltd., Reg. No. 2,269,113 for *STEALTH ASSAULT*/Cl. 28 (assigned to us)

We have also prevailed in the District Court in the Northern District of Illinois in over 40 cases including some the following *STEALTH* trademark infringement actions:

Stealth Industries, Inc. v. Victor Stanzel Co. and Target Stores / Case No. 95 C 1634

Stealth Industries, Inc. v. Graco Children's Products, Inc., and Toys "R" Us, Inc./Case No. 95 C 2650

Stealth Industries, Inc. v. Zebco, Inc., d/b/a Motor Guide, Wal-Mart Stores, Inc., K-Mart Corp., Sportmart, Inc. & Dogwood Canyon Nature Park Co., d/b/a Bass Pro Shops / Case No. 95 C 2651

Stealth Industries, Inc. v. All American Products, Inc., The Sports Authority, Inc. and Sportmart, Inc. / Case No. 95 C 4509

Stealth Industries, Inc. v. Oceanic (USA) / Case No. 95 C 5788 et al.

Leo D. Stoller v. Stan Ramirex, Louis Spartin, Specialty Materials & Manufacturing, Inc., The Stealth Corporation, John E. Carbaugh Jr. / Case No. 4-93CV-023-A

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

APPLICANT: **HYPERSTEALTH BIOTECHNOLOGY CORP.**
(a British Columbia Corporation)

OPPOSER: **LEO STOLLER**
CENTRAL MFG. CO.

APPLICATION SN: **75-731,216**

TRADEMARK: **HYPERSTEALTH**

INT. CL. NOS: **10**

FILED: **June 17, 1999**



03-05-2003

U.S. Patent & TMOrc/TM Mail Rcpt Dt. #01

Ms. Jean Brown
Board Administrator Attorney,
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513
703 308-9300

Dear Ms. Jean Brown:

Enclosed please find a copy of a previously filed Opposition in the above case, along with a replacement check in the amount of \$300.00.

A copy of the Board Order granting Opposer's Request for a Ninety Day Extension of Opposition Period is attached.

This Notice of Opposition was sent by mail with the U.S. Postal Service.

Most Cordially,

Leo Stoller, Individually and
as President
CENTRAL MFG. CO., Opposer
Email - Leo@rentamark.com
Trademark & Licensing Dept.
P.O. Box 35189
Chicago, Illinois 60707-0189
773-283-3880 Fax 708/283-0083

Dated: February 28, 2003

UNITED STATES PATENT AND TRADEMARK
OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: February 24, 2003

Applicant: HYPERSTEALTH BIOTECHNOLOGY CORP.
Serial No.: 75731216
Filed: 06/17/1999
Mark: HYPERSTEALTH

LEO STOLLER
TRADEMARK AND LICENSING DEPARTMENT
P.O. BOX 35189
CHICAGO, IL 60707

Kimberly Linton, Legal Assistant:

The request for extension of time to oppose, filed under Trademark Rule 2.102 on behalf of **LEO STOLLER** (copy attached), was timely filed but is just now being acted on. The Board regrets the delay and any resulting inconvenience caused to the potential opposer or to applicant.

The request for extension of time to oppose is granted. If any further request for extension of time to oppose or any notice of opposition was filed on or before **11/1/02**, it will be considered as having been timely filed.

IN THE UNITED PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Leo Stoller
CENTRAL MFG. CO.
P.O. Box 35189
Chicago, IL 60707-0189

Potential Opposer,
vs.

HYPERSTEALTH
BIOTECHNOLOGY CORP.
(a British Columbia Corp.)
6441 Lougheed Highway Burnaby
British Columbia, Canada V5B 3A1

Applicant.

Trademark: HYPERSTEALTH
Application SN: 75-731,216
Int. Class Nos: 05 & 10
Filed: June 17, 1999
Published: July 2, 2002

Box TTAB/NO FEE

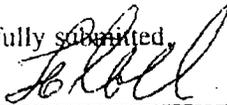
REQUEST FOR A NINETY DAY EXTENSION
OF OPPOSITION PERIOD

NOW COMES the Potential Opposer and requests a extension of ninety (90) days from the present close of the opposition period, up to and including November 1, 2002 within which to consider the filing of an Opposition to the above identified application for trademark registration.

Opposer invites the Applicant to call the Opposer to resolve this controversy at 773-283-3880. Applicant is well aware that the Opposer is the senior user for the mark STEALTH.

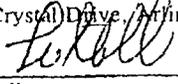
This extension is requested to investigate facts, obtain documentation, and to enable the Potential Opposer to consider its position with regard to potential opposition of this application.

Respectfully submitted,


By: Leo Stoller, individually and as President
Central Mfg. Co., Potential Opposer
Trademark and Licensing Department
P.O. Box 35189
Chicago, Illinois 60707-0189
773 283-3880 FAX 708 453-0083

Certification of Mailing

I hereby certify that this document is being deposited with the US Postal Service as first class mail in an envelope addressed to:
Box TTAB/NO FEE, Asst. Commissioner of Patents and Trademarks,
2900 Crystal Drive, Arlington, Virginia 22202-3513


Leo Stoller

Dated: 07-05-02

C:\MARKS27\HYPER.EXT

Notice of Opposition 75-731,216 \$300 Fee

U.S. Patent & Trademark Office
1406 IIM Mail Rept. 01 #57



10-22-2002



P.O. Box 35189
Chicago, IL 60707-0189

**IN THE UNITED PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

Leo Stoller
CENTRAL MFG. CO.
P.O. Box 35189
Chicago, IL 60707-0189

Trademark: HYPERSTEALTH

Opposer,

Application SN: 75-731,216

vs.

Int. Class No: 10

HYPERSTEALTH
BIOTECHNOLOGY CORP.
(a British Columbia Corp.)
6441 Lougheed Highway
Burnaby, BC CANADA V5B 3A1

Filed: June 17, 1999

Published: July 2, 2002

Applicant.

Box TTAB/FEE
(IN TRIPLICATE)

STEALTH vs. HYPERSTEALTH

NOTICE OF OPPOSITION

1. In the matter of Intent to Use Application SN 75-731,216, for the mark **HYPERSTEALTH**, in Int. Class 10 for therapeutic compound which is taken orally in either liquid or solid form and releases oxygen after consumption.

2. The Opposer, or it's predecessor in title, has priority of use of the mark **STEALTH**, in Common Law, on a broad range of goods and services which are listed in the Federal Registrations and Applications, and on similar goods, related goods, and competitive goods, namely, **specialized hand tools for use in the fabrication and assembly of prosthetic limbs and prosthetic limb components; namely, thermoplastic tooling, thermostat tooling and foam extraction tooling, prosthetic limb components; namely, shuttle locks, pyramids, pyramid receivers, sach foot adaptors, pytons, tube clamps, suction seals, adaptor plates, attachment plates, prosthetic knee systems, prosthetic knee chassals, prosthetic feet; and orthodontic appliances, namely, orthodontic brackets, arch wires, lingual holding arches and hooks.** (See the goods in the attached Federal Registrations and Applications, sold to the identical customers, through similar channels of trade that Applicant's goods are sold in, and/or are to be sold. The Opposer, or it's predecessor in title, has priority of use of the mark

STEALTH on similar and/or related goods as early as 1986. See the goods listed in Opposer's attached list of *STEALTH* Federal Trademark Registrations and Applications.

3. The Opposer has priority of use of the mark *STEALTH* in numerous classes of goods and services. The Opposer holds rights to a family of *STEALTH* marks, promoted together in concert, as are well known to the Applicant, which goods and services are sold in the same channels of trade and to similar customers as Applicant's since at least as early as 1986 and hereby opposes registration of the confusingly similar mark *HYPERSTEALTH*, Application Serial No. 75-731,216.

4. There is no issue as to priority. The Applicant's intent to use date is subsequent to the issuance date of Opposer's said Registrations and it's listed first use date(s).

5. Opposer has sold its goods and services listed in the aforesaid registrations under the aforesaid *STEALTH* marks, as herein before referred to, throughout the United States. Opposer has developed an exceedingly valuable goodwill in respect to the *STEALTH* marks covered by the aforesaid registrations.

6. By virtue of its efforts, and the expenditure of considerable sums for promotional activities and by virtue of the excellence of its products, the Opposer has gained for its listed marks a most valuable and famous reputation.

7. The Opposer licenses the *STEALTH* mark for a wide variety of collateral merchandise and expends substantial sums of money on policing¹ the use of Opposer popular and famous trademark on a broad range of goods and services.

8. The Opposer holds rights ² directly in the following well-known *STEALTH* trade-

1. See attached list of over 60 victories wherein the Opposer has successfully opposed and/or canceled over 60 *STEALTH* and/or *STEALTH* formative marks at the PTO.

2. §16.13 **McCARTHY ON TRADEMARKS, II. Ownership. Who Is Owner Of Trademark, [I] Introduction**, Trademarks have often been held to be a kind of "property." In discussing "ownership of a trademark, we must recognize that we are dealing with intangible, intellectual property. "Ownership" means that one possesses a right which will be recognized and upheld in the courts: To say one has a "trademark" implies ownership and ownership implies the right to exclude others. If the law will not protect one's claim of right to exclude others from using an alleged trademark, then he does not own a "trademark", for that which all are free to use cannot be a trademark. Application of Deister Concentrator Co., 48 CCPA 952, 289 F.2d 496, 129 USPQ 314 (1961). Trademark ownership inures to the legal entity who is in fact using the mark as a symbol of origin. The Federal Trademark Register can be rectified in order to correct the ownership of a registered mark or a pending application. Chapman v. Mill Valley Cotton, 17 USPQ2d 1414 (TTAB 1990) (Opposer Alpha alleged that she, not applicant, owned the mark. Applicant was a joint venture composed of parties Alpha and Beta. After some litigation in state court, the parties filed an assignment from party Beta to party

Pending Applications:

THE STEALTH FAMOUS BRAND

OUR FAMILY OF STEALTH FEDERAL TRADEMARKS¹ AND

PENDING APPLICATIONS

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>INT. CLASS</u>	<u>FIRST USE</u>
STEALTH	1,332,378	04-23-85	28	01-15-81
STEALTH	1,434,642	03-31-87	12	01-00-82
STEALTH	1,717,010	09-15-92	2	05-26-92
STEALTH	1,766,806	04-20-93	28	07-10-92
STEALTH	1,846,182	07-19-94	12	12-21-93
STEALTH	1,867,087	12-13-94	28	11-17-86
STEALTH TECHNOLOGY	1,947,145	01-09-96	9	01-01-93
STEALTH SQUAD	2,007,348	10-15-96	16	07-02-93
THE STEALTH	2,024,889	12-24-96	21	01-25-95
STEALTH	2,025,156	12-24-96	6	04-01-88
STEALTH	2,074,780	07-01-97	9	10-31-90
STEALTH	2,227,069	03-02-99	36	10-00-86
STEALTH ASSAULT	2,269,113	08-19-99	28	08-04-98
STEALTH	2,272,891	08-24-99	14	10-31-98
STEALTH 9MM	2,325,053	03-07-00	40	08-01-95
STEALTH 9MM SHADOW	2,325,054	03-07-00	40	08-01-95
STEALTH	2,330,467	03-21-00	18	01-00-85
STEALTH	2,403,775	11-14-00	8	06-00-81
STEALTH	2,439,735	04-03-01	9	01-00-86
STEALTH	2,433,330	03-06-01	8&10	12-29-97
STEALTH	2,478,742	08-21-01	9	01-00-85
STEALTH SPRAY	2,497,857	10-16-01	28	02-01-99
STEALTH SOAP	2,497,858	10-16-01	28	02-01-99
STEALTH	2,505,698	11-13-01	11	07-15-95
STEALTH	2,523,745	01-01-02	26	08-25-96
STEALTH	2,551,385	03-26-02	9	01-00-86
STEALTH	2,636,049	10/15/02	10	03-28-02

...Continued...

Alpha amounting to a concession that Alpha was indeed the owner of the mark. The Board viewed the TLRA 1989 amended version of §18, which permits rectifying the "register" as broad enough to include changing the name of the owner of an application, as well as of an issued registration.

1. Opposer has invested a fortune and over 20 years building the STEALTH Brand into one of the premiere Brands in the country.

APPLICATIONS¹

<u>TRADEMARK</u>	<u>SERIAL NO.</u>	<u>FILING DATE</u>	<u>INT. CLASS</u>	<u>FIRST USE</u>
STEALTH	74-327,774	11-02-92	16	Jan. 1986
STEALTH	74-343,994	12-22-92	28	Jan. 1985
STEALTH	75-019,143	11-13-95	9	Jan. 1985
STEALTH	75-016,560	11-08-95	11	Jan. 1885
STEALTH	75-036,382	12-08-95	7	Oct. 1993
STEALTH	75-185,379	10-22-96	9	Jan. 1994
STEALTH	76-071,233	06-05-00	11	Jan. 1986
STEALTH	76-215,703	02-09-01	28	Jan. 2001
STEALTH	78-070,511	06-22-01	9	Jan. 1995
STEALTH	75-565,743	10-07-98	12	Aug. 1992
STEALTH VISOR	75-829,875	10-22-99	9	Sep. 1999
STEALTH	75-849,316	11-16-99	7	Feb. 1999
BP STEALTH	78-114,518	03-13-02	20	Jan. 1999

9. Since 1997 the Opposer has forcefully extended its well-known trademark into the Applicant's market and today is a model for other in the trademark marketing and licensing industry in handling successfully brand extension as well known to the Applicant.

10. The Opposer sent a cease and desist letter to the President of HYPERSTEALTH BIOTECHNOLOGY CORP. on *June 26, 2002*, a true and correct copy is attached hereto and made a part hereof.

11. The Opposer sent correspondence to Applicant's counsel, *Mark Pospisilik*, on *July 23, 2002*; a true and correct copies are attached hereto and made a part hereof.

12. The trademark proposed for registration by the Applicant, namely **HYPERSTEALTH**, is substantially incorporated in its entirety in Opposer's mark *STEALTH* and **HYPERSTEALTH** is applied to similar goods and services as those sold by Opposer and so nearly resemble the Opposer's mark as to be likely to confuse therewith and mistake therefore.

13. The Applicant's mark **HYPERSTEALTH** is deceptively similar to Opposer's *STEALTH* mark so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing the Applicant's mark.

14. If the Applicant is permitted to use and register **HYPERSTEALTH** for its goods,

1. Notices hereby served on the Applicant, that the Opposer is entitled to rely on each one of its applications listed herein when they mature into Federal Trademarks in support of this Opposition. Opposer is serving notice on the Applicant that each and every time one or more of Opposer's pending *STEALTH* applications matures into a Federal Trademark registration, the Opposer will seek to amend its pleadings in order to rely on all of Opposer's *STEALTH* Federal Trademark registrations in support of this Opposition.

as specified in the application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of the similarity between the Applicant's mark and the Opposer's mark. Persons familiar with Opposer's mark *STEALTH* would be likely to buy Applicant's goods as and for a service sold by the Opposer. Any such confusion in trade inevitably would result in loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under its **HYPERSTEALTH** mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its products merchandised under its *STEALTH* marks for over 20 years.

15. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

16. Opposer asserts that there is a likelihood of confusion between the Applicant's mark **HYPERSTEALTH** and the Opposer's registered family of *STEALTH* and *STEALTH* formative marks under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

17. Opposer asserts that its mark *STEALTH* is well known and/or famous and that the Applicant seeking registration of the confusingly similar mark **HYPERSTEALTH**, which when used, would cause dilution under section 43(c).

18. If Applicant's mark **HYPERSTEALTH** is allowed to register it will lessen the capacity of Opposer's famous mark *STEALTH* to identify and distinguish its goods or services and to license its well known *STEALTH* BRAND NAME.

19. The Opposer uses its famous *STEALTH* mark as a trade name, corporate name, service mark and trademark since at least as early as 1981 and is engaged in an aggressive *STEALTH* licensing and marketing program, as well known to the Applicant.

20. The Opposer, located in Chicago, Illinois, believes that it will be damaged by registration of the mark **HYPERSTEALTH** shown in Application SN 75-731,216 and hereby opposes same. The Opposer uses its *STEALTH* mark as a trade name, corporate name, service mark and trademark and engages in an aggressive licensing program for over 20 years, as well known to the Applicant.

21. The Opposer has used the trademark *STEALTH* as a trade name, service mark and house mark in interstate commerce, since at least as early as 1981, long prior to Applicant's submission of its Application for Federal Registration of the mark **HYPERSTEALTH**.

22. The Opposer is the exclusive worldwide Licensor of the mark *STEALTH* as listed in the 1999 Licensing Resource Directory, as well known to the Applicant.

23. The Opposer has priority of use, as early as 1986, on the same and/or related goods, as previously stated and on the goods listed in Federal trademark registrations and applications.

24. The use of the Applicant's mark **HYPERSTEALTH** sought to be registered in the aforesaid application is likely to blur the distinctiveness of the Opposer's famous¹ *STEALTH* trademark(s).

25. The use of the Applicant's mark **HYPERSTEALTH** sought to be registered in the aforesaid application is likely to cause confusion, mistake or deception in the buying public or cause the public to believe that there is a connection between the parties, or a sponsorship of Applicant's goods by Opposer.

26. The Opposer licensed its *STEALTH* mark on a wide variety of collateral merchandise.

27. The Opposer expends substantial sums of money on policing the use of its famous *STEALTH* trademark. See a true and correct copy of the attached list of victories.

28. The Opposer has forcefully extended its famous trademark and today is a model for others in handling successfully such a brand extension.

29. The Applicant's mark **HYPERSTEALTH** is confusingly similar to Opposer's mark *STEALTH* mark(s).

30. Since at least as early as 1981, the Opposer has been, and is now, using the mark *STEALTH* in connection with the sale of goods and services in numerous classes. Said use has been valid and continuous since said date of first use and has not been abandoned.

31. If the Applicant is permitted to register the mark, and thereby, the *prima facie* exclusive right to use in commerce the mark **HYPERSTEALTH** on the goods and goods licensed and sold by the Opposer, confusion is likely to result from any concurrent use of Opposer's mark *STEALTH* and that of the Applicant's alleged mark **HYPERSTEALTH**, all to the great detriment of Opposer, who has expended it's lifetime and considerable sums and effort in promoting its well known mark.

32. Purchasers are likely to consider the goods of the Applicant sold under the mark **HYPERSTEALTH** as emanating from the Opposer, and purchase such products as those of

1. On January 14, 1997, District Court Judge Charles P. Kocoras, from the Northern District of Illinois, issued a decision in a *STEALTH* trademark infringement case brought by the Opposer's predecessor in title, Judge Kocoras ruled that "the mark *STEALTH* has also created a distinctive designation of the origin of products on which it has place and is widely recognized by the public". See Case No. 96 C 2037, decision dated January 14, 1997.

the Opposer, resulting in loss of sales to Opposer.

33. Applicant's mark **HYPERSTEALTH**, when used on or in connection with the goods of the Applicant, are merely descriptive or deceptively misdescriptive of the goods.

34. Applicant uses its alleged mark as a model designation.

35. Opposer's famous family of *STEALTH* marks are marketed in concert.

36. The Applicant's goods, defined in it's application, **therapeutic compound which is taken orally in either liquid or solid form and releases oxygen after consumption**, does not identify with reasonable certainty what goods are to be covered under the mark **HYPERSTEALTH**.

37. Upon information and belief, said application was obtained fraudulently in that the formal application papers filed by Applicant, under notice of §1001 of Title 18 of the United States Code stated that Applicant had a valid intent to use. Said statement was false. Said false statement was made with the knowledge and belief that it was false, with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration in that the Applicant, at the time it filed it's said *intent to use* application and declaration were in fact already using it's said mark in commerce.

38. Upon information and belief, said Applicant was using the mark **HYPERSTEALTH** as a service mark prior to *June 17, 1999*.

39. Upon information and belief, said Applicant was using the mark **HYPERSTEALTH** as a tradename prior to *June 17, 1999*.

40. Upon information and belief, said Applicant was using the mark **HYPERSTEALTH** on the goods listed in it's application prior to *June 17, 1999*.

41. Applicant's mark **HYPERSTEALTH** is identical to Opposer's mark **STEALTH**, with the word **HYPER** preceding the word **STEALTH**.

42. Upon information and belief, said application was obtained *fraudulently* in that the formal application papers filed by Applicant, under notice of §1001 of Title 18 of the United States Code stated that Applicant had a valid intent to use when Applicant filed it's Trademark application on *June 17, 1999*.

43. Applicant's said statement was false. Applicant had been using the said mark on all or some of the goods listed in it's application long prior to the filing of it's application on *June 17, 1999*.

44. Applicant's intent to use application was a fraud in that Applicant had use on some or all of the said goods listed therein bearing the mark **HYPERSTEALTH** long prior to the filing date of *June 17, 1999*.

45. Applicant's said intent to use statement was a false statement and was made with the knowledge and belief that it was *false*, with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration.

46. Upon information and belief, said statement of *intent to use* of the mark **HYPERSTEALTH** on the goods in question, was made by an authorized agent of Applicant with the knowledge and belief that said statements was false. Said false statements were made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration.

47. Applicant's mark **HYPERSTEALTH** was not applied for according to it's correct type¹, as shown in it's said application.

48. Upon information and belief, the Applicant was not the owner of the mark for which the registration is requested².

49. Upon information and belief, Applicant's intent to use application was signed with the knowledge that another party had a right to use the mark in commerce on the same or similar goods.

50. Concurrent use of the mark **HYPERSTEALTH** by the Applicant and *STEALTH* by the Opposer may result in irreparable damage to Opposer's Marketing and/or Trademark Licensing Program, reputation and goodwill.

51. If the Applicant is permitted to obtain a registration of the mark **HYPERSTEALTH**, a cloud will be placed on Opposer's title in and to its trademark, *STEALTH*, and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods and/or services, and on its Trademark Licensing Program, all to the great injury of the Opposer.

52. Applicant's should be denied registration of it's mark because the identification of its goods, **therapeutic compound which is taken orally in either liquid or solid form and releases oxygen after consumption**, is too indefinite to qualify for Federal trademark registration.

1. See §108 of the TMEP, page 100-5, Registration As Correct Type of Mark - It is important that a mark be registered according to its correct type, if it is not, the registration may be subject to cancellation. See *National Trailways Bus System v. Trailway Van Lines, Inc.*, 222 F. Supp 143, 139 USPQ 54 (E.D.N.Y. 1963), and 269 F. Supp. 352, 155 USPQ 507 (E.D.N.Y. 1965).

2. See *Huang v. Tzu Wei Chen Food Co. Ltd.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988). See TMEP §§706.01 and 802.06 §1 of the Trademark Act 15 U.S.C. §1051.

53. Upon information and belief, Applicant's Intent to Use Application was signed with the knowledge that another party had a right to use the mark in commerce.

54. The registration to Applicant of the mark **HYPERSTEALTH** shown in the afore-said application is likely to and will result in financial and other injury and damage to the Opposer in its business and in its enjoyment of its established rights in and to its said mark **STEALTH**.

55. As is well known to Applicant, the Opposer has been very successful and has previously prevailed against numerous other Applicants and/or Registrants for the unauthorized use of their similar **STEALTH** marks (see attached true and correct copy).

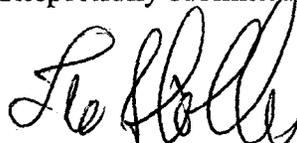
WHEREFORE, Opposer prays that the said Application for the trademark **HYPERSTEALTH** be denied, that no registration be issued thereon to Applicant, and that this Notice of Opposition be sustained in favor of the Opposer and that Opposer is entitled to judgment.

Opposer hereby gives notice under Rule of Practice that after hearing and in any appeal on this opposition proceeding, it will rely on its large family of **STEALTH** registrations and applications incorporated herein and all of the goods and services listed and covered thereunder, in support of this Notice of Opposition.

The Opposer prays for such other and further relief as may be deemed by the Director of Patents and Trademarks to be just and proper.

\$300.00 fee enclosed.

Respectfully submitted,



Leo Stoller, Individually and
as President,
CENTRAL MFG. CO., Opposer
Trademark & Licensing Dept.
P.O. Box 35189
Chicago, Illinois 60707-0189
773 283-3880 FAX 708 453-0083

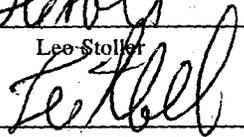
Dated: October 19, 2002

DECLARATION

The undersigned, Leo Stoller, declares: that he is Director of Leo Stoller dba Central Mfg. and the President, of CENTRAL MFG. CO., a closely related company, both founded and operated by Leo Stoller as such, is authorized to execute this document on its behalf, that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

The Opposer submits true and accurate certified copies of the Registrations of its STEALTH marks jointly owned by Leo Stoller dba Central Mfg. Co. and Central Mfg. Inc., herein relied upon in support of its Opposition, and one (1) copy each, of registrations prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the following registrations in support of its Notice of Opposition. All documents that are hereto attached are verified as copies of original certified documents. Notice of Reliance is hereby given that these registrations (1 each) are offered into evidence and given in support of Opposer's Notice of Opposition. Registration No. 1,947,145 has been assigned to CENTRAL MFG. CO.; Registration No. 2,074,780 has been assigned to CENTRAL MFG. CO.; Registration No. 2,227,069 has also been assigned to CENTRAL MFG. CO.; notwithstanding what the said records show to be the current registrant of record.

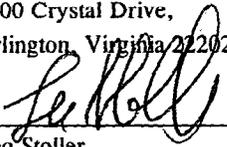
Dated: October 19, 2002

By: 
Leo Stoller
By: 
Leo Stoller, President
CENTRAL MFG. CO.

Certificate of Mailing

I hereby certify that the foregoing document is being sent with the United States Postal Service in an express mail envelope addressed to:

Box TTAB/FEE
Assistant Commissioner of Patents and Trademarks,
2900 Crystal Drive,
Arlington, Virginia 22202-3513


Leo Stoller
October 19, 2002

STEALTH

LICENSING STEALTH BRAND PRODUCTS & SERVICES SINCE 1985
P.O. Box 35189, Chicago, IL 60707-0189
VOICE 773/283-3880 * FAX 708/453-0083 * WEB PAGE: www.rentamark.com

June 26, 2002
PRESIDENT
HYPERSTEALTH BIOTECHNOLOGY CORP.
2300-1066 W. Hastings, Street
Vancouver, British Columbia
V6E 3X2

Dear President:

Re: **INFRINGEMENT OF THE "STEALTH" TRADEMARK REGISTRATION**

Please be advised that we are the owner of all right, title and interest in and to the mark *STEALTH*. These *STEALTH* mark(s) are registered with the United States Patent and Trademark Office in numerous classes of goods and services. We are also the exclusive worldwide Licensor of the mark *STEALTH* as contained in the Who's Who in the Licensing Industry.

We have just learned that your company is using the *STEALTH* mark as a trademark, tradename, domain name, corporate name and/or service mark. It is our opinion that the unauthorized use of our well-known *STEALTH* mark constitutes an infringement of our common law rights in and to the mark *STEALTH* and/or our registered trademarks, if not actual counterfeiting. If your mark were ever to publish for opposition we will oppose it and/or file a petition to cancel it.

In arguendo, if the said products or services are different, both federal and state laws protect the owner of a famous and distinctive trademark from "dilution" of its mark. The FTDA provides, in pertinent part, that

the owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark.

15 U.S.C. §1125(c)(1). The FTDA defines "dilution" to mean:

the lessening of the capacity of a well known mark to identify and distinguish goods or services,

- (1) competition between the owner of the famous mark and other parties, or
- (2) likelihood of confusion, mistake, or deception.

15 U.S.C. §1127:

likelihood of injury to business reputation or dilution of the distinctive quality of a mark or trade name shall be a ground for injunctive relief in cases of infringement of a mark registered or not registered or in cases of unfair competition, notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

N.Y. Gen. Bus. Law §360-(McKinney Supp. 1999) (emphasis added) (formerly §368-d).

The type of dilution pertinent to the present case is "blurring," a process that may occur "where the defendant uses or modifies the Plaintiff's trademark to identify the defendant's goods or services, raising the possibility that the mark will lose its ability to serve as a unique identifier of the plaintiff's product." *Hornel*, 73 F. 3d at 506 (quoting *Deere & Co. v. MTD Products, Inc.*, 41 F. 3d 39, 43 (2d Cir. 1994) (emphases in original)). "Injury to the mark selling power need not involve any confusion as to source or sponsorship. The legislative history of §368-d underscores this understanding by giving examples of hypothetical violations: DuPont shoes, Buick aspirin tablets, Schiltz varnish, Kodak pianos, Bulova gowns, and so forth." *Hornel*, 73 F. 3d at 506 (quoting 1954 N.Y. Legis. Ann. 49-50).

In sum, in order to prevail on a dilution claim we are not required to prove likelihood of confusion. Trademark dilution statutes are designed to:

cover those situations where the public knows that the defendant is not connected to or sponsored by the Plaintiff, but the ability of the Plaintiff's mark to serve as a unique identifier of the Plaintiff's goods or services is weakened because the relevant public now also associates that designation with a new and different source... Thus, where the classic likelihood of confusion test leaves off, the dilution theory begins.

We will be substantially and irreparably damaged should this infringement and counterfeiting continue. We, therefore, request that HYPERSTEALTH BIOTECHNOLOGY CORP. immediately cease and desist from the use of STEALTH as a trademark. In order to mitigate further damages, the following actions on your part are required:

- immediate discontinuance of all use of the subject trademark;
 - turning over to us all materials in your possession which bear the subject trademark;
- and
- an accounting of all sales made to date of the bearing of such mark

Please understand that should you not immediately take the above actions and should litigation become necessary, we will also demand:

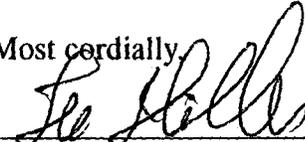
- an award of damages for all lost sales and profits; and
- an award of attorneys' fees

We strongly recommend that you present this letter to your attorney and have him or yourselves call us as soon as possible on or by July 20, 2002, to resolve this matter amicably.

If we do not hear from you by that time, we will presume that you do not intend to voluntarily take the necessary actions outlined above.

We await your response.

Most cordially,



Leo Stoller
STEALTH
P O Box 35189
Chicago, IL 60707
Tel: 773/283-3880
FAX: 708/453-0083

enclosures

C:\WS\MARKS26\BIOTECH\C&D

STEALTH

STEALTH BRAND PRODUCTS AND SERVICES SINCE 1981

Post Office Box 35189

Chicago, Illinois 60707-0189

VOICE 773/283-3880 * FAX 708/453-0083 * WEB PAGE: www.rentamark.com

FOR SETTLEMENT PURPOSES ONLY HAVING NO EVIDENTIARY VALUE

July 23, 2002

Mr. Mark Pospisilik
VERMETTE & CO.
Box 40, Granville Street
CANADA V6C 1S4

Dear Mark:

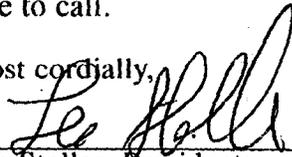
In Re: Trademark: STEALTH, App. SN: 75-731,216

Thank you for your letter of July 19, 2002.

We apologize for referring to our registrations and failing to enclose them with our last correspondence. Please find copies of all of our registrations and pending applications, a copy of our victory list, and a copy of information about the benefits of licensing the STEALTH mark. Please review the enclosed documents and get bak to us as soon as possible.

Thank you. If you have any further questions, please feel free to call.

Most cordially,


Leo Stoller, President

Attachments

C:\WS\MARKS26\HYPERST.LTR

THE STEALTH FAMOUS BRAND FEDERAL TRADEMARKS

REGISTRATION NUMBER	MARK	GOODS/SERVICES/CLASS	LISTED OWNER
1,332,378	Stealth	<i>Int. Class 28:</i> Sporting goods, specifically, tennis rackets, golf clubs, tennis balls, basketballs, baseballs, soccer balls, golf balls, cross bows, tennis racket strings and shuttlecocks.	Central Mfg. Co.
1,434,642	Stealth	<i>Int. Class 12:</i> Bicycles, motorcycles and boats.	Central Mfg. Co.
1,717,010	Stealth	<i>Int. Class 2:</i> Microwave absorbing automobile paint.	Central Mfg. Co.
1,766,806	Stealth	<i>Int. Class 28:</i> Fishing tackle floats (bobbers).	Central Mfg. Co.
1,846,182	Stealth	<i>Int. Class 12:</i> Automotive tires.	Central Mfg. Co.
1,867,087	Stealth	<i>Int. Class 28:</i> Pool Cue, pool tables, darts, billiard balls, cue cases, cue racks, billiard gloves.	Central Mfg. Co.
1,947,145	Stealth Technology	<i>Int. Class 9:</i> Computer hardware and computer utility software and operating manuals.	Central Mfg. Co.
2,007,348	Stealth Squad	<i>Int. Class 16:</i> Comic books	Central Mfg. Co.
2,024,889	The Stealth	<i>Int. Class 21:</i> Lawn sprinklers.	Central Mfg. Co.
2,025,156	Stealth	<i>Int. Class 6:</i> Metal alloys for use in sporting goods and transportation and window locks.	Central Mfg. Co.
2,074,780	Stealth	<i>Int. Class 9:</i> Automobile-mounted radar detectors.	Central Mfg. Co.
2,227,069	Stealth	<i>Int. Class 36:</i> Financial planning, investment management; insurance consultation.	Central Mfg. Co.
2,269,113	Stealth Assault	<i>Int. Class 28:</i> Hand-held units for playing electronic games.	Central Mfg. Co.
2,272,891	Stealth	<i>Int. Class 14:</i> Tie fasteners.	Central Mfg. Co.
2,325,053	Stealth 9MM	<i>Int. Class 40:</i> Manufacture and assembly of firearms to the order and the specification of others.	Central Mfg. Co.
	Stealth 9MM	<i>Int. Class 40:</i> Manufacture and assembly of firearms to	

2,330,467	Stealth	<i>Int. Class 18:</i> Leather wallets, leather handbags and leather attaché cases.	Central Mfg. Co.
2,403,775	Stealth	<i>Int. Class 8:</i> Pocket knives, non-electric can openers, cutlery, namely, forks, knives, and spoons; nail clippers, tweezers, scissors; and eyelash curlers.	Central Mfg. Co.
2,439,735	Stealth	<i>Int. Class 9:</i> Radios and speakers for automobiles, stereo speaker boxes, tape recorders, tape players and portable stereos.	Central Mfg. Co.
2,433,330	Stealth	<i>Int. Classes 8 & 10:</i> Specialized hand tools for use in the fabrication and assembly of prosthetic limbs and prosthetic limb components; namely, thermoplastic tooling, thermoset tooling and foam extraction tooling. Prosthetic limb components; namely, shuttle locks, pyramids, pyramid receivers, sach foot adaptors, pylons, tube clamps, suction seals, adaptor plates, attachment plates, prosthetic knee systems, prosthetic knee chassis and prosthetic feet.	Central Mfg. Co.
2,478,742	Stealth	<i>Int. Class 9:</i> Computer application software for creating databases, blank video film and video tapes, safety goggles, radios, photographic and video cameras.	Central Mfg. Co.
2,497,857	Stealth Spray	<i>Int. Class 28:</i> Hunters' scent camouflage.	Central Mfg. Co.
2,497,858	Stealth Soap	<i>Int. Class 28:</i> Hunters' scent camouflage.	Central Mfg. Co.
2,505,698	Stealth	<i>Int. Class 11:</i> Motion activated electric lighting fixtures.	Central Mfg. Co.
2,523,745	Stealth	<i>Int. Class 26:</i> Plastic buckles and fasteners for use in connection with backpacks, tote bags, sporting goods and foul weather gear and apparel and other similar articles.	Central Mfg. Co.
2,551,385	Stealth	<i>Int. Class 9:</i> Electric locks for garage doors.	Central Mfg. Co.
2,636,049	Stealth	<i>Int. Class 10:</i> Orthodontic appliances, namely, orthodontic brackets, arch wires, lingual holding arches and hooks.	Central Mfg. Co.
<p>Central Mfg. Co. (Inc.) is the rights holder in the above STEALTH Federal Trademark Registrations, notwithstanding what the Principal Register may indicate, nor what the Assignment Division records may indicate.</p>			

**THE STEALTH FAMOUS BRAND
PENDING APPLICATIONS**

APPLICATION NUMBER	MARK	GOODS/SERVICES	FILING DATE	FIRST USE
74-327,774	Stealth	Paper goods and printed matter, namely, pens, pencils, drawing rulers, paper clips, rubberbands, memo pads, adhesive tape for stationery or household use, non-electric erasers, snap-off blade cutter for cutting paper, pencil sharpener, fountain pens, ballpoint pens, stationery, namely, writing paper and envelopes, playing cards and comic books.	2-Nov-92	January, 1986
74-343,994	Stealth	Toys and sporting goods, namely, model airplane kits, toy boats, toy guns, toy robots, and toy soldiers.	22-Dec-92	January, 1985
75-019,143	Stealth	Computers, dot matrix printers; computer disc drives, fax modem cards; computer monitors, computer keyboards, computer diskette storage containers, computer software for computer setup and data base files, blank video films and video tapes; safety goggles, radios; photographic and video cameras; compressed air cylinders for use with breathing apparatus.	13-Nov-95	January, 1985
75-016,560	Stealth	Flashlights, pen lights, electric lamps, floor fans, wall fans, desk fans; portable fans.	8-Nov-95	January, 1985
75-036,382	Stealth	Bowling alley cleaning machines and marine propellers.	8-Dec-95	October, 1993
75-185,379	Stealth	Automobile-mounted radar detectors.	22-Oct-96	January, 1994
76-071,233	Stealth	Households air cleaners, household air cleaners with ionizer, domestic and commercial air purifiers, air conditioners.	25-Oct-95	July, 1995

APPLICATION NUMBER	MARK	GOODS/SERVICES - INTERNATIONAL CLASS	FILING DATE	FIRST USE
76-215,703	Stealth	Baseball, softball, t-ball bats.	9-Feb-01	January, 2001
78-070,511	Stealth II.HF Mobile Antennas	Manufacturing the Stealth II.series HF (High Frequency) Mobile antennas. It provides long range communication in the 3-60 MHZ frequency range from vehicular or stationery positions. Unique in form: Center loaded, red or other color of loading coil, with base section for the tuning motor and whip section for radiation/receiving of signal; Antenna, Stealth II.Series for HF (High Frequency) communication, long distance, world wide from vehicular or stationery position, in the 3-60 MHZ frequency range.	22-Jun-01	January, 1995
75-565,743	Stealth	Racing automobiles and structional parts therefor.	7-Oct-98	August, 1992
75-829,875	Stealth Visor	Anti-glare visor stops glare caused by sunlight or back lighting on computer monitors, laptops and other electrical displays.	22-Oct-99	September, 1999
75-849,316	Stealth	Bailing machines for use in recycling and waste material disposal.	16-Nov-99	February, 1999
78-114,518	BP Stealth	Bicycle parts.	13-Mar-02	January, 1999
76-053,720	Igloo Stealth	Insulated Food Transport and Dispensing Containers.	14-Oct-99	October, 1999

At the Patent and Trademark Office we have engaged in a diligent policing effort and have succeeded in successfully canceling or opposing the following STEALTH registrations and/or registrations:

WE SUCCESSFULLY POLICE OUR STEALTH PROPERTY

We have prevailed in opposing the following *STEALTH* marks:

Adamilk Corporation, App. SN 76-141,681 for *STEALTH VINE*, Int. Cl. 28
Aluminum Company of America for *STEALTH*/Int. Cl. 6
American International Marketing App. SN 75-874,282 *STEALTH* Int. Cl. 28
Applied Sewing Resources, App. SN 74-468,963 for *STEALTH*
Alta Mere Industries, Inc. App. SN 75-334,172 for *STEALTH*
(Art) N for *STEALTH* Negative Phscologram/Int. Cl. 9
Brentwood TV Funnies, App. 74-713,194 for *STEALTH* Warriors
British Telecommunications, App. 75-711,176 for *STEALTHGUARD*
Burros, David, App. SN 75-175,570 for *STEALTH* Trust
Changing By Design, Inc. App. SN 78-074,650 for *STEALTH ROCKET* Int. Cl. 12
Condor Mfg Co., App. SN 75-753,820 for *STEALTH* Framer
Crown Intern'l Inc., App. SN 74-643,872 for *STEALTH*
D'Arcangelo & Co., App. SN 75-541,914 for *STEALTH AUDUT*
DBNA Trademark Holdings, Inc., SN 75-691,003 *STEALTH*
Deer, Richard A., App. SN: 76-332,352 for *STEALTH BOMBERS* Int. Cl. 030
Dees Creations, Inc., App. SN 75-318,512 for *STEALTH*
Delaware Capitol Formation, Inc., SN 75-480,414 for *STEALTH*
Dennis Braid, App. SN: 76-236,749 for *STEALTH BELT*
Diversey Lever. Inc., App. SN 75-752,455 for *STEALTHDRY* Cl 3
Diversified Specialists, Inc., 74-205,517 for *STEALTH* Force/Int. Cl. 28
Doc's Deer Farm and Scents. 75-932,731, 75-932,736 *STEALTH*
Dow Agro Sciences LLC, App. 76-070,055 for *STEALTH* Cl. 5
Dynascan Corp., Opp. No. 88,906 for *STEALTH*
Fantom Technologies, App. SN 78-014,040 for *FANTOM STEALTH* Int. CL. 07
Ferro Corporation, App. SN 78-164,150 for *STEALTHMARK* Int. Cl. 2.
Flexible Mining Co. App. SN 75-762,791 for *LASER-CAST STEALTH* Int. Cl. 013
Halliburton Energy Services, Inc., App. SN 76-117,194 for *STEALTH* Int. Cl. 013
Heritage Mfg. Co., 74-735,867 *STEALTH* 9MM and 74-735,868 for *STEALTH* 9MM Shadow
(assigned to us)
Intelligence Quotient Intern'l, 74-493,718 for *STEALTH* Backup/Int. Cl. 9
74-475,481 FOR *STEALTH* Incription & 74-340,300 for *STEALTH* Technology
(assigned to us)

Kom Networks Inc 76-165,811 *STEALTHWORX*
 Lane, Philip C., 74-476,028 for *STEALTH* Squad/Int. Cl. 16 (assigned to us)
 Marathon Equipment Co., Reg. No. 2,486,860, for *STEALTH*
 Mattel, Inc., 78-009,784 for *STEALTH X-17* Cl. 28 for electric toy airplanes
 Mensaha Corp., 76-207,877 *STEALTH GOLD* in Int. Cl. 016
 Miotto International Company, 75-519,919 for *STEALTH* in Int. Cl. 20
 Mitek Surgical Products, Inc., 74-662,565 for *STEALTH* Anchor/Int. Cl. 10
 Murray Canada, Inc., 74-204,943 for *GT STEALTH*, Int. Cl. 28
 Naan Sprinklers, 74-630,176 for *STEALTH* (assigned to us)
 National Molding, 74-734,680 for *STEALTH* (assigned to us)
 Northrop Crumman Corp 74-064,158 *STEALTH BOMBER*
 Northrop Crumman Corp 74-064,160 *STEALTH BOMBER*
 P. Audio America, Inc., 78-092,036 *STEALTH AUDIO SYSTEMS*
 Parker Athletic Ltd, 75-645,961 for *STEALTH* Int. Cl 28
 Patmont Motor Werks, 75-106,684 for *STEALTH* Go-Ped
 Pharmacia Corporation 76-16763 for *CAVERJECT STEALTH*
 Prosthetic Design, Inc. App. SN 75-885,658 for *STEALTH* Int. Cl. 008, & 010
 Rab Electric Manufacturing, Inc. Opp. No. 105,396 for *STEALTH* Int. Cl. 11
 Reading Technologies of Delaware App. SN 76-310,026 for *STEALTH* Int. Cl. 007
 Republic Entertainment, 75-027,006; 74-733,576; 74-733,577; 74-733,578 *STEALTH* Force;
 Richmond Technology, 74-518,885 for *STEALTH* Wind
 Ri-Power, Inc., 74-617,716 for *STEALTH/Int. Cl. 7*
 Saulsbury Fire Rescue, Opp. No. 124,726, *STEALTH*
 Southern Thread, Inc., 78-081,330 for *STEALTH THREAD* Cl. 23
 Space Age Synthetics. Inc. 75-497,200 *STEALTH BOARD* 75-497,2000 Cl. 19
 Star Lock Systems, Inc. 76-012,327 for *STEALTH /Int. Cl. 009*
 Stealth Air Courier, Inc. 76-237,432 for *STEALTH AIR COURIER* Cl. 39
 Stealth Energy Co., 78-048,408 for *STEALTH ENERGY COMPANY* Cl. 37
 Stealth Hunter, Inc., 74-534,766 for *STEALTH* Hunter (assigned to us)
 Stealth Propulsion, 74-570,909 for *STEALTH* Propulsion
 Stevens Aviation Inc., 74-550,338 for *STEALTH/Int. Cl. 42, et al.*
 Sullivan, Michael R., 75-677,695 for *STEALTH ACCESS/* Int. Cl. 042
 Swain Techniques Opp. No. 120,912, for *STEALTHCOAT* Int. Cl. 040
 Tenryu America, Inc. Opp. No. 119,206 for *STEALTH*
 The Dow Chemical Corporation, 74-455,644 for *STEALTH* Port/Int. Cl. 9
 Thomas Belts Intern'l, Inc., 75-494,772 for *STEALTH-TY /* Int. Cl. 22
 Top of the Line, Inc., 75-561,926 for *STEALTHWING* Int. Cl. 28
 Underwood, Lowell A., 76-118,593 for *STEALTH HAMMER* Int. Cl. 12
 Union Special Corporation, 74-630,790 for Project *STEALTH/Int. Cl. 7*
 Universal Cellular, 74-101,729 for *STEALTH*
 Vermont Special Corp., 74-560,405 for *STEALTH* Cache

Vestal, Jeffery Scott, 76-190,730 for *STEALTH*/ Int. Cl. 015
Wellington Leisure Products, 74-581,134 for Wave *STEALTH*
Whitlock, Scott, 78-044,062 for *STEALTH TRAX* Cl. 25
Williams, Jeff, 74-638,906 for *STEALTH* Reflective System
Zebco, 74-430,395 for *STEALTH*
Zero Group, 74-556,690 for *STEALTH*
et al

We have canceled the following *STEALTH* registrations:

American Promo Events, Reg. No. 1,734,007 for the mark *STEALTH*
Biederman, Kelly & Shaffer, Inc., Reg. No. 1,694,788 for *STEALTH* Marketing/Int. Cl. 35
Blue Boy Toys, Reg. No. 1,521,952 for *STEALTH*
Cassidy & Associates, Reg. No. 1,846,141 for *STEALTH*
Charles Hayes, Reg. 1,717,010 for *STEALTH* assigned to us
Gustafson, Inc. Reg. No. 1,586,483 for *STEALTH*
Hobbico, Inc., Reg. 1,766,806 *STEALTH* (assigned to us)
Mitsubishi, Reg. 1,650,227 for *STEALTH X100*
Murray Canada, Inc., Reg. 1,793,751 for *GT STEALTH*
Sirchie Fingerprint Labs, Reg. 1,538,007 for Nite *STEALTH*
Turboair, Inc., Reg. No. 1,722,911 for *STEALTH 12*/Int. Cl. 7
Radica China, Ltd., Reg. No. 2,269,113 for *STEALTH ASSAULT*/Cl. 28 (assigned to us)

We have also prevailed in the District Court in the Northern District of Illinois in over 40 cases including some the following *STEALTH* trademark infringement actions:

Stealth Industries, Inc. v. Victor Stanzel Co. and Target Stores / Case No. 95 C 1634

Stealth Industries, Inc. v. Graco Children's Products, Inc., and Toys "R" Us, Inc./Case No. 95 C 2650

Stealth Industries, Inc. v. Zebco, Inc., d/b/a Motor Guide, Wal-Mart Stores, Inc., K-Mart Corp., Sportmart, Inc. & Dogwood Canyon Nature Park Co., d/b/a Bass Pro Shops / Case No. 95 C 2651

Stealth Industries, Inc. v. All American Products, Inc., The Sports Authority, Inc. and Sportmart, Inc. / Case No. 95 C 4509

Stealth Industries, Inc. v. Oceanic (USA) / Case No. 95 C 5788 et al.
Leo D. Stoller v. Stan Ramirex, Louis Spartin, Specialty Materials & Manufacturing, Inc., The Stealth Corporation, John E. Carbaugh Jr. / Case No. 4-93CV-023-A

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

APPLICANT: **HYPERSTEALTH BIOTECHNOLOGY CORP.**
(a British Columbia Corporation)

OPPOSER: **LEO STOLLER**
CENTRAL MFG. CO.

APPLICATION SN: **75-731,216**

TRADEMARK: **HYPERSTEALTH[✓]**

INT. CL. NOS: **10**

FILED: **June 17, 1999**

RECEIVED
JAN 19 9 30 AM
TRADEMARK TRIAL AND
APPEAL BOARD

Ms. Jean Brown
Board Administrator Attorney,
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513
703 308-9300

Dear Ms. Jean Brown:

Enclosed please find a copy of a previously filed Opposition in the above case, along with a replacement check in the amount of \$300.00.

A copy of the Board Order granting Opposer's Request for a Ninety Day Extension of Opposition Period is attached.

This Notice of Opposition was sent by mail with the U.S. Postal Service.

Most Cordially,



Leo Stoller, Individually and
as President
CENTRAL MFG. CO., Opposer
Email - Leo@rentamark.com
Trademark & Licensing Dept.
P.O. Box 35189
Chicago, Illinois 60707-0189
773-283-3880 Fax 708/283-0083

Dated: February 28, 2003