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

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

In re Application No. 75/780,741 for the mark Buffalo and design filed on August 20, 1999, and published on October 15, 2002

3681441 CANADA INC.,	:	
	:	
Opposer	:	
	:	
v.	:	Opp. No. _____
	:	
BUFFALO-EASTCANTRA INC.,	:	
	:	
Applicant	:	

NOTICE OF OPPOSITION

3681441 CANADA INC. believes that it will be damaged by the registration of the above identified mark and hereby opposes registration of the mark under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Opposer alleges that:

1. Opposer is the owner of all rights, title and interest in and to the mark BUFFALO, for a wide variety of goods including sunglasses, watches, bracelets, earrings, anklet charms, necklaces, luggage, knapsacks, bed sheets, pillow cases, comforters, towels, handbags, men's and women's underwear and pants, socks, hosiery, neckties, bow ties, bathrobes, bathing suits, shoes, boots, slippers.
2. Opposer has obtained federal registrations for its BUFFALO mark, including Registration Nos. 2,155,119 and 1,185,897.
3. Opposer's registrations are valid and subsisting. Accordingly, these registrations provide prima facie evidence of Opposer's ownership of the BUFFALO mark and of its exclusive right to use the marks in commerce.
4. Opposer's BUFFALO mark is immediately identifiable as source of products originating with Opposer.
5. Notwithstanding Opposer's prior rights in its BUFFALO Marks, Applicant filed the above referenced application for registration of the mark Buffalo and design, for "Metal padlocks, metal combination padlocks in class 6; Scissors, in class 8; Graduated rulers; reflective armbands used for safety purposes or to easily identify people or objects; computer peripherals, diskette holders, and CD holders; magnifying glasses, in class 9; Coloring pencils, lead pencils, mechanical pencils; staplers, staples; mathematical drafting and drawing sets containing protractors, drawing and drafting compasses, drawing, drafting and ungraduated rulers, drawing

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and drafting triangles; protractors, pencil boxes, cases or pouches; pencil sharpeners; artist brushes; paper fasteners, paper clips, letters clips, clipboards; coil notebooks, address books, telephone books, diaries, autograph books, binder books; stencils; paper hole punchers; thumbtacks, push pins; writing paper and envelopes; erasers; rubber bands; adhesive paper supports, blank gum labels and blank self adhesive labels; lunch bags; pencil grips; desk top organizers; stationery gift sets, namely, gift sets containing different combinations of staplers and/or writing instruments and/or rulers and/or writing stationery and/or erasers and/or pencil sharpeners, each sold as a unit; paper name identification tags; student's personal planners, in class 16; Reflective tape used for safety purposes or to easily identify people or objects, in class 17; Business card holders; briefcases, briefcase-type portfolios, document cases; school bags, in class 18; and, Mirrors, in class 20".

6. Upon information and belief, Applicant has made no use of its alleged mark in commerce to date.

7. Upon information and belief, Applicant was aware of Opposer's BUFFALO mark as used in the United States of America, before Applicant adopted its alleged mark.

8. Upon information and belief, Applicant adopted their alleged mark with intent to trade on the fame, popularity and goodwill associated with Opposer's BUFFALO mark in the United States of America.

Count I- Likelihood of Confusion - §2(d)

9. The mark which Applicant seeks to register so closely resembles Opposer's mark that the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Applicant's goods and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's mark.

10. The goods of Applicant are so closely related to the goods of Opposer that the public is likely to be confused, to be deceived and to assume erroneously that Applicant's goods are those of Opposer or that Applicant is in some way connected with or sponsored by or affiliated with Opposer, all of which may cause Opposer irreparable damage.

11. Likelihood of confusion in this case is enhanced by the popularity of Opposer's mark and by the fact that consumers associate these marks with goods sold, approved or endorsed by Opposer; moreover, purchasers of Applicant's goods are prospective purchasers of Opposer's products.

Count II-Deception/False Suggestion of Connection - §2(a)

12. Applicant's mark so closely resembles Opposer's mark that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that the mark misdescribes the nature or origin of the goods, and purchasers are likely to believe that the misdescription actually describes the nature or origin of the goods, and this is likely to materially alter purchasers' decisions to acquire Applicant's products.

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13. Applicant's alleged mark so closely resembles Opposer's mark that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's alleged mark points uniquely to Opposer, and purchasers will assume that goods offered under Applicant's alleged mark are connected with Opposer.

14. Applicant's mark is deceptive in that it falsely suggests a connection with or approval by the Opposer.

Count III - Dilution - §43(d)

15. Opposer's Mark has been widely used and extensively publicized in the United States and, therefore, Opposer's Mark has become well known and famous as a distinctive symbol of Opposer's goodwill.

16. On information and belief, Applicant intends to use its alleged mark in commerce with the willful intent to trade on Opposer's reputation or to cause dilution of Opposer's famous Mark.

17. On information and belief, Opposer's Mark became well known and famous before Applicant made any use of its alleged mark in the United States of America.

18. Applicant's alleged mark will cause dilution of the distinctive quality of Opposer's Mark.

19. Use or registration of Applicant's alleged mark will lessen the capacity of Opposer's famous mark to identify and distinguish Opposer's goods.

20. Use and registration of the mark Buffalo and design by Applicant will deprive Opposer of the ability to protect its reputation, persona and goodwill.

21. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's alleged mark and registration should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

4/10/03

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Attorney's Reference: 108220.00011

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PROPERTY DIVISION

Transmittal of Notice of Opposition

Enclosed is a Notice of Opposition to the registration of the mark in above referenced application. Also enclosed are a check in the amount of \$2100.00 in payment of the filing fee and a duplicate copy of the Notice of Opposition.

The Commissioner is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. 01-2300.

Please address all correspondence regarding this matter to

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Respectfully submitted,

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Date: April 10, 2003

WEM/djc