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

SCHLAGE LOCK COMPANY,

Opposer,

v.

Opposition No. _____

ALTO PRODUCTS, CORP.,

Applicant.

NOTICE OF OPPOSITION

In the matter of Trademark Application Serial No. 76/493,797 in the name of Alto Products, Corp., an Alabama corporation at, upon information and belief, P.O. Box 1088, Altmore, California 36504 ("Applicant"), on the Principal Register, filed on February 24, 2003, and published for opposition in the Trademark Official Gazette of February 10, 2004, for the mark KRYPTONITE ("Applicant's Mark"), Schlage Lock Company, a California corporation, doing business at 1915 Jamboree Drive, Colorado Springs, Colorado 80920 believes that it is, or will be, damaged by registration of the mark shown therein and hereby opposes the same.

The grounds for this opposition are as follows:

1. Opposer has used the trademark and trade name KRYPTONITE in connection with the manufacturing, marketing, sale and distribution of branded locks, various security devices and various accessories for the bicycle, motorcycle, motorsport, automobile, computer, and sporting goods markets since long prior to Applicant's filing date.
2. Since as early as May, 1972, Opposer has used KRYPTONITE as a trademark and trade name, and such use has been ongoing and continuous.

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3. Opposer owns the following marks and United States trademark registrations, among others, for the KRYPTONITE mark:

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
*KRYPTONITE	1,002,571	January 28, 1975
*BIKELOCK KRYPTONITE	1,253,568	October 11, 1983
*KRYPTONITE-5	1,352,416	August 6, 1985
*KRYPTONITE	2,244,791	May 11, 1992
KRYPTONITE	2,269,238	August 10, 1999
KRYPTONITE	2,350,478	May 16, 2000

Opposer also owns a number of marks and United States trademark registrations, among others, for "KRYPTO" marks:

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
*KRYPTO LOK	1,416,395	November 11, 1986
*KRYPTO-CABLE	1,464,275	November 10, 1987
*KRYPTOFLEX	2,003,582	September 24, 1996
KRYPTOKOIL	2,247,281	May 25, 1999
KRYPTOVAULT	2,254,953	June 22, 1999
KRYPTO DISCO	2,330,279	March 14, 2000
KRYPTO	2,332,840	March 21, 2000

4. Opposer's above-listed asterisked registrations constitute conclusive evidence, and the remainder constitute *prima facie* evidence, of the validity of the registered marks and of the registrations thereof, Opposer's ownership of the marks shown in said registrations and Opposer's exclusive right to use the marks in commerce in connection with the goods and services recited therein and related goods and services. Said registrations also constitute notice to Applicant of Opposer's claim of ownership of the marks shown in such registrations.

5. For over twenty-five (25) years, Opposer has been manufacturing and selling widely-publicized consumer products under the KRYPTONITE brand name.

6. Opposer's original design for the U-Lock revolutionized the bicycle security industry. Upon information and belief, virtually every lock of the U-shaped variety on the

market today was inspired by Opposer's original design, and approximately 1 out of every 2 bicycle locks sold in the United States are KRYPTONITE brand locks.

7. KRYPTONITE branded products have received considerable attention in the national media, including publications having a national circulation such as *People*, *The New York Times*, *Playboy* and *USA Today*. The high quality of Opposer's products and the KRYPTONITE success story have been featured or mentioned on television shows such as *CNBC's Money Tonight*, *CBS This Morning*, *60 Minute* and *Dateline NBC*, which had a viewing audience of approximately 13.4 million households on the date the KRYPTONITE segment aired (September 30, 1997). Such media coverage has heightened consumer awareness about bicycle security and brought attention to an otherwise non-glamorous consumer products category.

8. In 1984, a KRYPTONITE brand lock was added to the permanent design collection of the Museum of Modern Art in New York City. In 1986, The National Academy of Television Arts & Sciences awarded Opposer its "Outstanding Commercial Announcement" Award. A 1987 *Cycles Peugeot* study named KRYPTONITE the foremost bicycle accessory brand name among consumers worldwide. In 1988, Opposer was the only bicycle accessory company in history to win Japan's coveted "Good Design" Prize for a KRYPTONITE brand lock design, which also captured Germany's Museum of Utilitarian Art Award that same year. The U.S. Secretary for Commerce issued Opposer the President's "E" Award in 1992 in recognition of the company's outstanding contribution to the United States export expansion program. Opposer also received Ernst & Young's "1999 Entrepreneur of the Year" Award for Consumer Products.

9. Opposer has sold its branded locks, various security devices and accessories for the bicycle, motorcycle, motorsports, automobile, sporting goods, hardware, computer and mass

markets throughout the United States under the KRYPTONITE trademark or in connection with the same trade name. Opposer is well and favorably known throughout the United States and has built up a valuable reputation and goodwill in the KRYPTONITE trademark and trade name with consumers and the trade, including the automotive trade.

10. The widespread recognition, fame and goodwill associated with the name and mark KRYPTONITE are the result of Opposer's continuous marketing efforts, the expenditure of considerable amounts of money for advertising and promotional activities and the high quality of Opposer's products.

11. There is no issue as to priority and Applicant filed its application after Opposer's mark acquired fame.

12. KRYPTONITE is a strong, arbitrary, famous trademark of Opposer.

13. Applicant seeks to register KRYPTONITE for "automotive parts, namely anti-friction materials used on clutch plates sold through wholesalers to automotive professionals for their use in automotive repair, where the mark is not seen by the ultimate consumer" in International Class 12. Application Serial No. 76/493,797 was filed by Applicant on February 24, 2003, under Section 1(a) of the Trademark Act, with an alleged first use date of September 1, 2001.

14. Applicant's mark KRYPTONITE and Opposer's KRYPTONITE marks and name are identical in appearance and sound and create the same commercial impression. Applicant's KRYPTONITE mark generates a mental impression of strength, which is the very impression created by Opposer's marks as used in connection with Opposer's locks and other products.

15. Applicant's mark KRYPTONITE is confusingly similar to Opposer's KRYPTONITE marks and name. Use and/or registration of Applicant's mark will be likely to cause confusion, to cause mistake and to deceive as to the source of goods and services on and in

connection with which Applicant uses the mark and to induce purchasers to believe that the goods and services of Applicant emanate from Opposer or are endorsed by the Opposer or are in some way connected with Opposer.

16. Applicant's registration of the mark KRYPTONITE, if granted, will lessen the capacity of KRYPTONITE to identify and distinguish Opposer's goods and therefore will dilute Opposer's famous KRYPTONITE marks and name, and the presence of Applicant's application on the register actually dilutes Opposer's rights in Opposer's marks. Additionally, said registration, if granted, will be considered at least *prima facie* evidence of Applicant's exclusive right to use the KRYPTONITE mark, a further source of damage to Opposer.

17. Applicant does not have Opposer's consent to use or register Applicant's Mark.

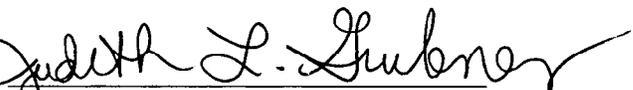
WHEREFORE, Opposer requests that the opposition be sustained and that the registration sought by Applicant be refused.

Enclosed herewith is a check in the amount of \$300.00 in payment of the requisite fee. Please charge any underpayment or credit any overpayment to Deposit Account No. 13-3080.

This document is being submitted in triplicate.

Dated this 10th day of March, 2004.

Respectfully submitted,
SCHLAGE LOCK COMPANY

By: 

Dyann L. Kostello
Judith L. Grubner
Michael Best & Friedrich LLP
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202
Phone: (414) 271-6560
Fax: (414) 277-0656

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, Attention: Box TTAB NO FEE on March 10, 2004.



Catherine Case

Date: March 10, 2004

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