

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

In the matter of trademark application **Serial No. 78/164,721**  
For the mark **THE BAREFOOT COMPANY** and Barefoot Design  
Published in the Trademark *Official Gazette* on March 9, 2004 (the term for opposition having  
been extended to July 7, 2004)

Fitz-Wright Company Ltd.,  Opposer,  v.  MartConn Inc. DBA Lake Elmo Sports,  Applicant.
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Opposition No.

NOTICE OF OPPOSITION

**I hereby certify that this correspondence is being deposited with the  
U.S. Postal Service as first class mail in an envelope addressed to:  
Commissioner for Trademarks, 2500 Crystal Drive, Arlington, VA  
22202-3513 em  
7-7-04  
(Date of Deposit)**

Fitz-Wright Company Ltd., a corporation of Canada, having its principal place of  
business at 5760 Production Way, Langley BC, V3A 4N4, Canada, believes that it will be  
damaged by registration of the mark **THE BAREFOOT COMPANY** and Barefoot Design shown  
in Application Serial No. 78/164,721 in International Class 25 and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Opposer and its related companies are engaged in the manufacture and sale of,  
*inter alia*, apparel, particularly apparel for water sports.

2. Since long prior to Applicant's priority date, Opposer and its related companies  
have continuously and extensively used in commerce the mark **BARE**, alone and in conjunction  
with designs of bare feet (hereinafter the "**BARE Marks**"), in connection with the sale of apparel,  
particularly apparel for water sports, including wetsuits and water sport boots.

3. Opposer is the owner of Registration No. 2,156,234 of the mark **BARE** issued  
May 12, 1998 on the Principal Register Said registration is valid and subsisting.

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4. Through the widespread use and advertisement of its BARE Marks over a long period of time and by virtue of the quality of the goods sold under the mark, Opposer has built up a valuable goodwill and reputation in connection with said marks, which would be jeopardized by Applicant's use and registration of the mark THE BAREFOOT COMPANY and Barefoot Design shown in Serial No. 78/164,721.

5. The goods for which Applicant seeks to register the mark THE BAREFOOT COMPANY and Barefoot Design, namely, clothing for barefoot water skiing, namely, wet suits, padded shorts, training shoes, t-shirts and heater shirts, are identical or closely related to Opposer's apparel, particularly apparel for water sports, previously sold under or in connection with Opposer's BARE Marks.

6. Applicant's mark THE BAREFOOT COMPANY and Barefoot Design so resembles Opposer's BARE Marks, previously used in commerce and/or registered with the United States Patent and Trademark Office, and not abandoned, as to be likely, when applied to the goods of Applicant, to cause confusion, or to cause mistake or to deceive.

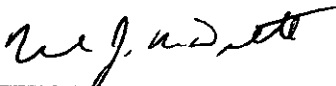
7. Opposer is informed and believes that Applicant did not use the mark THE BAREFOOT COMPANY and Barefoot Design of Serial No. 78/164,721, in commerce prior to its alleged first use date of May 12, 1994.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of Application Serial No. 78/164,721 be refused.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date July 7, 2004


By   
Michael J. MacDermott  
Attorneys for Opposer  
P.O. Box 7068  
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TTAB

TRADEMARK  
Docket No. 110.2\*1/MM/C951

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF OPPOSITION TRANSMITTAL**

*I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on July 7, 2004.*

  
Elise D. Bray

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

July 7, 2004

Commissioner:

Enclosed for filing are the following:

1. Notice of Opposition filed by Fitz-Wright Company Ltd. relating to the following registration application:  

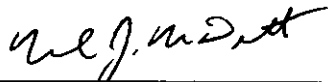
<b>Mark</b>	:	<b>THE BAREFOOT COMPANY AND BAREFOOT DESIGN</b>
Serial No.	:	78/164,721
Filed	:	September 17, 2002
Class(es)	:	25
Applicant	:	MartConn Inc. dba Lake Elmo Sports
2. Our check for \$300.00 for the opposition filing fee.

The Commissioner is authorized upon filing or during prosecution of this opposition to charge any additional fees which may be required or credit any overpayment of fees to Deposit Account No. 03-1728. Please show our docket number with any Deposit Account transaction. **A copy of this letter is enclosed.**

Please address all correspondence to **CHRISTIE, PARKER & HALE, LLP, P.O. Box 7068, Pasadena, California 91109-7068.**

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By   
Michael J. MacDermott  
626/795-9900

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