

ESTTA Tracking number: **ESTTA28758**

Filing date: **03/21/2005**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	StudioCanal Image S.A.
Granted to Date of previous extension	03/20/2005
Address	1 Place du Spectacle Issy les Moulineaux, 92863 FRANCE

Attorney information	LISA W. ROSAYA COUDERT BROTHERS LLP 1627 I STREET, NW - SUITE 1200 WASHINGTON, DC 20006-4007 UNITED STATES newmand@coudert.com, frym@coudert.com Phone:(202) 775-5100
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Applicant Information

Application No	76558757	Publication date	09/21/2004
Opposition Filing Date	03/21/2005	Opposition Period Ends	03/20/2005
Applicant	Eastman Outdoors, Inc 3475 Eastman Drive Flushing, MI 48433		

UNITED STATES

Goods/Services Affected by Opposition

Class 028.

All goods and services in the class are opposed, namely: archery arrows

Attachments	EOD TERMINATOR NOO.PDF (6 pages)
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Signature	/dkn/
Name	Diane K. Newman
Date	03/21/2005

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

StudioCanal Image S.A,)	
Opposer,)	Opposition No.: _____
)	
v.)	Serial No.: 76/558,757
)	
Eastman Outdoors, Inc.,)	Mark: TERMINATOR
Applicant.)	
)	

BOX TTAB – FEE
Commissioner for Trademarks
600 Dulany Street
Alexandria, Virginia 22314

NOTICE OF OPPOSITION

StudioCanal Image S.A., a joint stock company organized under the laws of France, located and doing business at 1, Place du Spectacle, 92863 Issy les Moulineaux, France (hereinafter "Opposer") believes it would be damaged and injured by registration of the mark TERMINATOR for "archery arrows" in International Class 28, as shown in Application Serial No. 76/558,757, filed on November 7, 2003 by Eastman Outdoors, Inc. (hereinafter "Applicant"), and published on September 21, 2004 at page TM 745 of the *Official Gazette for Trademarks*.

Opposer alleges, solely for the purpose of this proceeding, as grounds for opposition, the following:

1. Opposer is the owner of the following U.S. trademark registrations and pending applications containing the mark **TERMINATOR**:

Mark	Registration or Application Number	International Class
TERMINATOR	2,249,579	9
TERMINATOR 2	2,309,253	9
TERMINATOR 2	2,254,731	9
TERMINATOR 3	76/536,853	9
TERMINATOR (Stylized)	1,408,396	12
TERMINATOR	1,705,820	14
TERMINATOR	1,682,394	16
T2-3D TERMINATOR 2 (Stylized)	2,533,609	16
TERMINATOR	76/535,748	16
TERMINATOR	1,687,143	18
T2-3D TERMINATOR 2 (Stylized)	2,737,341	18
TERMINATOR	1,690,819	21
T2-3D TERMINATOR 2 (Stylized)	2,678,650	21
TERMINATOR	1,670,838	25
TERMINATOR	1,783,506	28
TERMINATOR	76/546,851	34
TERMINATOR	76/535,749	41
T2 TERMINATOR 2 3-D (Stylized)	2,306,304	41
TERMINATOR 2:3-D BATTLE ACROSS TIME	2,292,508	41
T2-3D TERMINATOR 2 (Stylized)	2,638,096	41

2. Opposer is also the owner of the common law rights in the marks listed above in Paragraph 1. All of the marks listed in Paragraph 1 and the corresponding common law rights in this Paragraph 2 are hereinafter collectively referred to as the "**TERMINATOR** Marks." Opposer and/or its predecessors-in-interest have used some or all of the **TERMINATOR** Marks in interstate commerce for over nineteen (19) years.

3. Opposer additionally owns numerous registrations for the **TERMINATOR** Marks throughout the world.

4. Opposer is also the owner of the trademark rights associated with the motion pictures entitled **TERMINATOR**, **TERMINATOR 2: JUDGMENT DAY**, and **TERMINATOR 3: RISE OF THE MACHINES**. These films have been shown in movie theaters throughout the United States and the world and have been translated into numerous foreign languages. **TERMINATOR**, **TERMINATOR 2** and **TERMINATOR 3** are regularly shown or offered for view on cable television stations and are currently available on videotape and DVD. They are among the most popular movie properties for rental in the world.

5. Based on the colossal success and popularity of the motion pictures recited in Paragraph 4, Opposer has developed a tremendously successful merchandising program for the goods and services recited in the registrations and applications listed in Paragraph 1.

6. Opposer, and/or its predecessors-in-interest, and through its licensees, has/have advertised, promoted and marketed the goods and services sold under its **TERMINATOR** Marks throughout the United States and the world.

7. By virtue of this extensive use, promotional activities and advertising, Opposer's **TERMINATOR** Marks have become and are famous.

8. Applicant filed Application Serial No. 76/558,757 to register TERMINATOR for "archery arrows" in International Class 28 on November 7, 2003, based on intent to use the mark in commerce under Section 1(b) of the Lanham Act, as evidenced by publication of said mark on September 21, 2004 at page TM 745 of the *Official Gazette for Trademarks*.

9. Opposer's first use predates Applicant's filing date.

10. Applicant's alleged mark is identical or confusingly similar to Opposer's **TERMINATOR** Marks.

11. As noted in Paragraph 8, Applicant's alleged mark TERMINATOR is used in connection with archery arrows. As such, consumers will undoubtedly associate these goods with the multitude of Opposer's goods and services offered under the **TERMINATOR** Marks.

12. Applicant's use of its alleged mark is calculated to trade off Opposer's goodwill in its **TERMINATOR** Marks.

13. Upon information and belief, Opposer's goods and services and Applicant's goods are likely to be offered, sold and used by the same class of consumers.

14. Opposer believes and alleges that Applicant's alleged mark, when applied to the Class 28 goods listed in Application Serial No. 76/558,757, is likely to cause confusion or mistake or to deceive and mislead the trade and purchasing public into believing that Opposer is the source of Applicant's goods, that Opposer sponsors, approves or endorses Applicant's goods, that Applicant is authorized, licensed, to controlled by Opposer, or that Applicant is a division or subsidiary of, or in some way related to Opposer.

15. Applicant's alleged mark "so resembles a mark registered in the Patent and Trademark Office, or a mark . . . previously used in the United States and not abandoned, as to be

likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d).

16. If Applicant is permitted to register its alleged mark captioned above, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the identical nature of Applicant's alleged mark captioned above and Opposer's **TERMINATOR** Marks. Furthermore, any defect, misrepresentation, objection or fault found with Applicant's goods promoted under its alleged mark captioned above would necessarily reflect on and seriously injure the reputation that Opposer has established through use of its **TERMINATOR** Marks.

17. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register its alleged mark and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

18. As noted in Paragraph 7, Opposer's **TERMINATOR** Marks are famous and became famous well prior to November 7, 2003, the filing date of Applicant's application. Opposer's famous **TERMINATOR** Marks are therefore entitled to a high degree and wide zone of protection. If Applicant's alleged mark is allowed to register, such registration will dilute the distinctive quality of Opposer's famous **TERMINATOR** Marks.


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

WHEREFORE, Opposer prays that Application Serial No. 76/558,757 be rejected, and that registration of Applicant's alleged mark shown and specified therein be refused and denied, and that this Opposition be sustained in favor of Opposer.

Opposer hereby gives notice under Rule 2.122(d) of the Trademark Rules of Practice that at hearing and in any appeal on this opposition proceeding, it will rely on Opposer's United States registrations and applications as referenced above as evidence in support of this Notice of Opposition.

This Notice of Opposition is being filed online through ESTTA; the \$300 requisite government filing fee can be taken from Deposit Account 03-3370.

Respectfully submitted,

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Date: March 21, 2005