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

Proceeding	91169502
Party	Defendant Loveland Products, Inc. Loveland Products, Inc. 7251 W. 4th Street Greeley, CO 80634
Correspondence Address	Eunice P. de Carvalho Faegre & Benson LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402-3901
Submission	Opposition/Response to Motion
Filer's Name	Elizabeth McGoogan Magnuson
Filer's e-mail	trademarkmpls@faegre.com, bmagnuson@faegre.com
Signature	/Beth Magnuson/
Date	05/22/2006
Attachments	Loveland's Response to Stoller's Motion to Strike.pdf (22 pages)(930956 bytes)

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

In the Matter of Application Serial No. 78/544,163
Trademark: STEALTH
Date of Publication: June 7, 2005

LEO STOLLER CENTRAL MFG. CO.,

Opposition No. 91169502

Opposer,

v.

**RESPONSE IN OPPOSITION TO
OPPOSER'S MOTION TO
STRIKE**

LOVELAND PRODUCTS, INC.,

Applicant.

Loveland Products, Inc. ("Loveland"), hereby submits this Response in Opposition to the Motion to Strike ("Motion") filed by Opposer Leo Stoller Central Mfg. Co. ("Stoller"), and in support thereof states as follows:

I. INTRODUCTION

Stoller's Motion to Strike Loveland's defense of failure to state a claim upon which relief may be granted should be denied, since questions surrounding Stoller's standing to bring this Opposition proceeding clearly warrant Loveland's alleged defense.

II. LEGAL ARGUMENT

Motions to strike are not favored, and matter will not be stricken "unless it clearly has no bearing upon the issues in the case." TBMP § 506.01; *Ohio State Univ. v. Ohio Univ.*, 51 U.S.P.Q.2d 1289, 1292 (TTAB 1999). Fed. R. Civ. P. 12(b)(6) allows a defendant to assert a defense for failure to state a claim in the answer. *See Order Sons of Italy in America v. Profumi Fratelli Nostra Ag*, 36 U.S.P.Q.2d 1220, 1222 (TTAB 1995). Thus, Loveland's affirmative defense is procedurally correct. Moreover, Loveland's defense should stand so long as Loveland

can point to at least one basis for alleging that Stoller has failed to state a claim. Here, there can be no question that Lovland's affirmative defense for failure to state a claim is substantively sufficient, as Stoller lacks standing to maintain this proceeding.

Lovland's defense of failure to state a claim is appropriate if it appears that Stoller would not be entitled to relief under the set of facts alleged in the Notice of Opposition. *See Stanspec Co. v. Am. Chain & Cable Co., Inc.*, 531 F.2d 563, 566 (CCPA 1976). To state a claim upon which relief can be granted, Stoller must allege such facts as would, if proved, establish that (1) Opposer has standing to maintain the proceeding, and (2) a valid ground exists for opposing registration. *See Order Sons of Italy*, 36 U.S.P.Q.2d at 1222; *Litpon Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1026 (CCPA 1982). Taking the well-pleaded allegations in Stoller's Notice of Opposition as true, it is clear that Stoller is not entitled to relief because Stoller lacks standing to maintain this opposition proceeding.

The Notice of Opposition caption lists "Leo Stoller Central Mfg. Co. (a Delaware corporation)" as the Opposer and party in interest in this proceeding. (Ex. 1, Notice of Opposition, without exhibits.) The Notice of Opposition does not define "Opposer" anyplace other than the caption. *Id.* The Lanham Act's standing provision, provides that:

Any person who believes that he would be damaged by the registration of a mark upon the principal register, including as a result of dilution under section 43(c), may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 12 of this Act of the mark sought to be registered.

15 U.S.C. § 1603(a). A "person" can be a corporate entity, but "if a corporation is not itself incorporated or is not otherwise a legal entity which can sue or be sued, it lacks legal standing to own a mark or to file an opposition." *See TBMP* § 303.02; *In re Cambridge Dig. Sys.*, 1 U.S.P.Q.2d 1659, 1660 n.1 (TTAB 1986).

The entity listed as the Opposer in this matter does not qualify as a “person” within the meaning of 15 U.S.C. § 1603(a), as “Leo Stoller Central Mfg. Co.” does not exist as a legal entity in Delaware. As demonstrated in the search of the Delaware Secretary of State records, attached as Exhibit 2, there is no Delaware corporation registered to do business as “Leo Stoller Central Mfg. Co.” *See* Ex. 2. Nor does Delaware have any information on an entity by the name of “Central Mfg. Co.” *Id.*

Additionally, Stoller alleges that Opposer, “Leo Stoller Central Mfg. Co. (a Delaware corporation),” holds rights in some 35 federal registrations and 16 federal applications relating to the mark STEALTH. *See* Notice of Opp. at pp. 2-4. However, a search of the Patent & Trademark Office Records reveals that “Leo Stoller Central Mfg. Co. (a Delaware corporation)” does not own any federal trademark registrations or applications. *See* Ex. 3. “[A]llegations alone do not establish standing.” *See Lipton Indus.*, 670 F.2d at 1028. Even accepting the well-pleaded allegations in the Notice of Opposition as true, it is clear that Stoller lacks standing to maintain this proceeding.

Opposer appears to quote from a Board decision in *S. Indus., Inc. & Central Mfg. Co. v. JL Audio, Inc.*, Opp. No. 110,672 (TTAB Apr. 24, 2001) to support the notion that Opposer has set forth sufficient allegations to survive a motion to dismiss in this case. However, only “decisions that are designated by the Board ‘citable as precedent’ or ‘for publication in full’ are citable as precedent. Decisions which are not so designated, or which are designated for publication only in digest form, are not citable authority.” *See* TBMP § 101.03; *In re Polo International, Inc.*, 51 U.S.P.Q.2d 1061, 1063 n.3 (TTAB 1999) (disregarding non-precedential

case)¹. Moreover, Stoller' fails to suggest why that case, which lists a different entity as the opposer, is relevant to the present Motion to Strike. As Loveland has supported its alleged defense for failure to state a claim with sufficient evidence to raise questions surrounding Stoller's standing, Stoller's Motion to Strike must fail.

Other grounds exist to support Loveland's affirmative defense of failure to state a claim. But because Stoller lacks standing to sue, and does not appear to be the actual owner of the pleaded registrations/applications, Loveland's affirmative defense of failure to state a claim upon which relief may be granted is legally sufficient and should proceed. Stoller's Motion should therefore be denied.

III. CONCLUSION

For each of the above reasons, Applicant Loveland Products, Inc. respectfully requests that Stoller's Motion to Strike be denied.

Dated: May 22nd, 2006

Respectfully submitted,

By: Beth Magnuson
Elizabeth McGoogan Magnuson
Faegre & Benson LLP
1900 Fifteenth Street
Boulder, Colorado 80302

Attorneys for Applicant
Loveland Products, Inc.

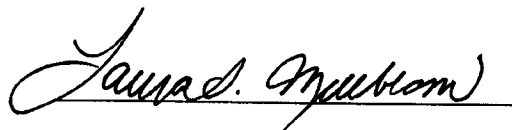
Filed Electronically via ESTTA.

¹ Loveland also notes that Stoller failed to include a copy of that decision with his motion. The Board may disregard the case for that reason alone. See TBMP § 101.03; *General Mills Inc. v. Health Valley Foods*, 24 U.S.P.Q.2d 1270, 1275 n.9 (TTAB 1992).

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **RESPONSE IN OPPOSITION TO OPPOSER'S MOTION TO STRIKE** was served on counsel for Opposer, this 22nd day of May, 2006, by sending same via facsimile and first class mail, postage prepaid:

Leo Stoller
Central Mfg. Co.
Trademark & Licensing Dept.
7115 W. North Ave. #272
Oak Park, IL 60302
(773) 598-0340
FAX (773) 589-0915



Laura D. Myklebom

EXHIBIT 1

**LOVELAND'S RESPONSE IN OPPOSITION
TO STOLLER'S MOTION TO STRIKE**

Opposition No. 91169502

**Opposer's Notice of Opposition, Without
Exhibits**

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

LEO STOLLER
CENTRAL MFG. CO.
(a Delaware Corporation)
P.O. Box 35189
Chicago, Illinois 60707-0189

Opposer,

v.

LOVELAND PRODUCTS, INC.
(a Colorado corporation)
7251 W. 4th Street
Greeley, Colorado 80634

Applicant.

Trademark: **STEALTH**
Application SN: 78-544,163
Int. Class: 05
Filed: January 7, 2005
Published: June 7, 2005

TTAB/FEE
(IN TRIPLICATE)

NOTICE OF OPPOSITION

1. In the matter of Intent to Use Application SN 78-544,163, for the mark **STEALTH**, in International Class 05 for **herbicides for agricultural use**, the Opposer states as follows:

2. The Opposer, or its 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 **herbicides and bug spray**, and all the goods and services listed in the applications and registrations, 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 its predecessor in title, has priority of use of the mark **STEALTH** on similar goods and services at least as early as 1994. See the goods and services listed in Opposer's attached list of **STEALTH Federal Trademark Registrations and Applications**.

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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 1994 and hereby opposes registration of the confusingly similar mark **STEALTH**, Application Serial No. 78-544,163.

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 its listed intent to 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*

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
STEALTH	2,641,546	10-29-02	07	02-05-99
STEALTH	2,657,452	12-10-02	28	01-00-85
STEALTH BELT	2,737,991	07-15-03	28	02-15-03
STEALTH DUST	2,744,536	07-29-03	28	01-01-03
STEALTH POD	2,761,682	09-09-03	09	07-00-01
STEALTH LITERACY	2,784,049	11-18-03	16	10-10-02
BP STEALTH	2,859,897	07-06-04	12	01-01-99
STEALTH	2,892,249	10-12-04	28	01-03-01

...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	75-019,143	11-13-95	09	Jan. 1985
STEALTH	75-016,560	11-08-95	11	Jan. 1885
STEALTH	75-036,382	12-08-95	07	Oct. 1993
STEALTH	75-185,379	10-22-96	09	Jan. 1994
STEALTH	76-071,233	06-05-00	11	Jan. 1986
STEALTH	76-215,703	02-09-01	28	Jan. 2001
STEALTH	75-565,743	10-07-98	12	Aug. 1992
STEALTH VISOR	75-829,875	10-22-99	09	Sep. 1999
STEALTH	76-625,764	12-21-04	11	Aug. 2003
STEALTH ANTENNAS	78-070,511	06-22-01	09	Jan. 1986
NET-STEALTH	78-276-411	07-19-03	42	Jul. 2003
STEALTH	78-286,127	08-12-03	41	Aug. 2003
STEALTH BLINDS	78-427,427	05-29-04	28	May. 2004
STEALTH FEEDERS	78-427,432	05-29-04	20	May. 2004
STEALTH	79-002,422	03-26-04	12	Mar. 2004

9. Since 1985, the Opposer has forcefully extended its well-known trademark and today is a model for others in the trademark marketing and licensing industry in handling successfully brand extension as well known to the Applicant.

10. The Opposer on *January 25, 2005, August 17, 2005, September 8, 2005* sent cease and desist letters to the President of the Applicant; true and correct copies are attached hereto and made a part hereof.

11. The trademark proposed for registration by the Applicant, namely **STEALTH**, is applied to similar goods as those sold by Opposer and so nearly resemble the Opposer's mark as to be likely to confuse therewith and mistake therefore.

12. The Applicant's mark **STEALTH** is identical 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.

13. If the Applicant is permitted to use and register **STEALTH** for its goods, as specified in the application herein opposed, confusion in trade resulting in damage and injury

1. Notices hereby served on the Applicant, that the Opposer is entitled to rely on each one of it's 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 it's pleadings in order to rely on all of Opposer's **STEALTH** Federal Trademark registrations in support of this Opposition.

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 *STEALTH* 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.

14. 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.

15. Opposer asserts that there is a likelihood of confusion between the Applicant's mark *STEALTH* 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).

16. Opposer asserts that its mark *STEALTH* is well known and/or famous and that the Applicant seeking registration of the confusingly similar mark *STEALTH*, which when used would cause dilution under section 43(c). Opposer's mark became famous on January 14, 1997.

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

18. 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.

19. The Opposer, located in Chicago, Illinois, believes that it will be damaged by registration of the mark *STEALTH* shown in Application SN 78-544,163 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.

20. 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 **STEALTH**.

21. 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.

22. The Opposer has priority of use, as early as 1985, on the same and/or similar goods, as previously stated and on the goods and services listed in Federal trademark registrations and applications.

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

24. The use of the Applicant's mark **STEALTH** 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.

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

26. 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.**

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

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

29. 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 intent to use and has **not** been abandoned.

30. If the Applicant is permitted to register the mark, and thereby, the *prima facie* exclusive right to use in commerce the mark **STEALTH** on the goods licensed and sold by the Opposer, confusion is likely to result from any concurrent use of Opposer's mark *STEALTH*

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.

and that of the Applicant's alleged mark **STEALTH**, all to the great detriment of Opposer, who has expended its lifetime and considerable sums and effort in promoting its well known mark.

31. Purchasers are likely to consider the goods of the Applicant sold under the mark **STEALTH** as emanating from the Opposer, and purchase such goods as those of the Opposer, resulting in loss of sales to Opposer.

32. Applicant's mark **STEALTH**, when used on or in connection with the goods of the Applicant, is merely descriptive or deceptively misdescriptive of the goods.

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

34. 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 date. 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 its said application and declaration were in fact an invalid intent to use date.

35. 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 use in commerce when Applicant filed its Trademark application on *January 7, 2005*. Applicant had no valid intent to use in commerce.

36. Upon information and belief, the Applicant has no evidence to establish a valid intent to use in commerce.

37. Upon information and belief, the Applicant has no evidence to establish a valid "intent to use" date in commerce.

38. Applicant's intent to use application was a fraud in that Applicant had no evidence to establish a valid intend to use in commerce.

39. 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 as well known to the Applicant.

40. Upon information and belief, said statement of *Intent To Use* of the mark **STEALTH** on the services 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.

41. Applicant's mark **STEALTH** was not applied for according to its correct type¹, as shown in its said application.

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

43. 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.

44. Concurrent use of the mark **STEALTH** 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.

45. If the Applicant is permitted to obtain a registration of the mark **STEALTH**, 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.

46. 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.

47. Upon information and belief, the Applicant has abandoned the mark **STEALTH**.

48. The registration to Applicant of the mark **STEALTH** shown in the aforesaid 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*.

49. 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

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.

use of their similar STEALTH marks (see attached true and correct copy).

50. The Opposer has experienced a substantial amount of media attention regarding its famous STEALTH mark and the strict enforcement of the Opposer's rights against third party infringers. See attached newspaper articles.

WHEREFORE, Opposer prays that the said Application for the trademark STEALTH 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.

Enclosed is \$300.00.

Respectfully submitted,



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

Dated: February 1, 2006

DECLARATION

The undersigned, Leo Stoller, declares that he is an individual and Director and President of CENTRAL MFG. CO., a Service Mark Application SN 78/782,064 and trademark and d/b/a for Central Mfg. Inc., A/K/A Central Manufacturing Inc., a Delaware Corporation registered to do business as Central Mfg Co., of Illinois A/K/A Central Manufacturing Co., 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. Central Mfg. Co. hold rights and relies upon the attached Federal Trademark Registration numbers herein in support of this Notice of Opposition.

Dated: February 1, 2006

By: Leo Stoller
Leo Stoller

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

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Date: February 1, 2006

D:\MARKS40\LOVELAND.OPP

EXHIBIT 2

**LOVELAND'S RESPONSE IN OPPOSITION
TO STOLLER'S MOTION TO STRIKE**

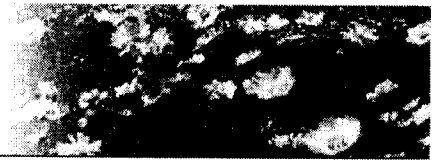
Opposition No. 91169502

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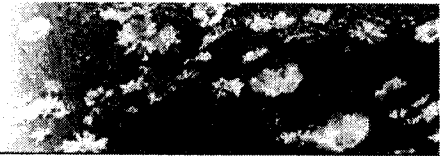


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Opposition No. 91169502

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This **New User (Basic)** search form allows for searching of the most commonly searched fields: word marks, serial or registration numbers, and owners.

The **Combined Word Mark** is the default search field and includes the **word mark and translation**.

Use the \$ for truncation in any field. For **Combined Word Mark** searches, the * is a more efficient truncation operator for left and/or right truncation. For example, the search term ***DOG*** with the **Combined Word Mark** will retrieve marks with common variations of the word DOG in the word mark or translation statements. Use of the \$ truncation operator sometimes results in a truncated hit list.

For serial number or registration number searches, enter the 8-digit serial number (e.g. 75123456) or 7-digit registration number (e.g., 1234567) and select **Serial or Registration Number** as the **Field** for the search. If multiple serial or registration numbers are searched, separate the numbers by spaces and change the **Results Must Contain** value to Any Search Terms (OR). (Alternatively, separate the number by the Boolean OR operator without adjusting the **Result Must Contain** value.)

Do **NOT** include the apostrophe for contractions. For example, search for the word **DON'T** by searching **DON T**. Including Boolean operators (e.g., AND, OR, NOT) or proximity operators (e.g., ADJ, NEAR, SAME, WITH) in your search will override the **Result Must Contain** setting for the search. To actually search for these Boolean or proximity operators, include quotes around the operator.

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