

ESTTA Tracking number: **ESTTA985710**

Filing date: **07/07/2019**

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	Never Summer Industries, Inc.
Granted to Date of previous extension	07/07/2019
Address	3838 Eudora Way Denver, CO 80207 UNITED STATES

Attorney information	BENJAMIN LIEB TALUS LAW GROUP LLC 2816 SOUTH ADAMS STREET DENVER, CO 80210 UNITED STATES ben@taluslaw.com 3032464767
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Applicant Information

Application No	79215008	Publication date	01/08/2019
Opposition Filing Date	07/07/2019	Opposition Period Ends	07/07/2019
International Registration No.	1362069	International Registration Date	03/02/2017
Applicant	Eintracht Frankfurt e.V. Gustav-Behringer-Str. 10 60386 Frankfurt am Main FED REP GERMANY		

Goods/Services Affected by Opposition

<p>Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pharmaceutical and veterinary preparations, namely, pharmaceutical preparations for treating musculo-skeletal disorders, pharmaceutical preparations for human skin care, veterinary preparations for pain relief; hygienic preparations and articles, namely, disinfectants for hygiene purposes, medicated soap; medical preparations, namely, bath preparations for medical use; dietary supplements and dietetic preparations in the nature of dietetic foods adapted for medical use; dietetic foodstuffs and beverages adapted for medical or veterinary purposes; infant formula; medical plasters for use as materials for dressings, adhesive plasters for medical use, bandages for dressings; material for stopping teeth, namely, dental wax; disinfectants; preparations for destroying vermin; fungicides; herbicides; medicated isotonic drinks for medical use</p>
<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Apparatus, instruments and equipment for</p>

telecommunications, namely, telephones, network routers, modems, computers, mobile phones, televisions, radios, fax devices, printer; optical image viewers, namely, optical encoder, optical scanner, optical transmitter, optical disc player with three-dimensional graphic representation; apparatus for receiving, recording, transmission, processing, transforming, output and reproduction of data, speech, text, signals, sound and images, including multimedia apparatus, namely, remote-photography apparatus, video telephones, compact disc players, television apparatus, cameras, cassette players, loudspeakers, cabinets for loudspeakers, luminous video screens, luminous projections screens, electronic entertainment goods, namely, radio and television receivers, sound and/or image recording and reproduction apparatus, including such goods in portable form and for digital image-sound signals; electronic apparatus for interactive television, namely, television sets; decoding apparatus for receiving and transforming encoded signals; apparatus, including multimedia apparatus, for connecting and controlling audio, video and telecommunications apparatus, including such apparatus with electronic program management and control for interactive television viewing and/or pay TV, namely, video and television decoder, television monitors, television and videoconverters; computers and printers; software for electronic program guides; accessories for computers, video and computer games and similar electronic and electrotechnical apparatus, namely, adapters, modules for expanding functions and extending memory capacity; voice synthesizers, light pens, electronic 3-D spectacles, programmed cassettes, floppy discs, discs, all featuring music and sports, namely, soccer, sporting events, sporting history, instruction in the field of sports; non-programmed blank cassettes, floppy discs, discs; boxes specifically adapted for storing cassettes, floppy disks and recording discs; program recorders, namely, video recorders; numerical keyboards, floppy disk stations principally comprising floppy disk drives, microprocessors and control electronics; electronic data processing apparatus, including monitors, input apparatus, output apparatus, printers, terminals and memories, including such apparatus being additional apparatus for a main piece of apparatus; computer programs for recording television, radio, mobile and online programs for later viewing recorded on data carriers of all kinds; electronic data carriers, namely, optical discs featuring video games and computer games in the form of computer programs recorded on data carriers; software featuring video games and computer games in the form of computer programs recorded on data carriers; computer and video game cassettes, floppy disks, disks and tapes; computer programs recorded on machine-readable data carriers, included in this class featuring music and sports, especially soccer, sporting events, sporting history, instruction in the field of sports; pre-recorded sound recording carriers, namely, recording discs, compact discs, sound tapes and sound cassettes featuring music and sports, especially soccer, sporting events, sporting history, instruction in the field of sports; blank sound recording carriers, namely, recording discs, compact discs, sound tapes and sound cassettes; recordable, blank image carriers, namely, video cassettes and DVDs; recorded image carriers, namely, video cassettes and DVDs featuring music and sports, especially soccer, sporting events, sporting history, instruction in the field of sports; video cassette cases; exposed photographic film, exposed camera films and exposed slide films; compact discs featuring photos of sports especially of soccer, sporting events; electronic agendas, pocket calculators, electronic diaries; pre-recorded magnetic, magnetic optical and optical carriers for sound and/or images featuring music and sports, especially soccer, sporting events, sporting history, instruction in the field of sports; encoded cards for use as electronic tickets and consumption cards for use in financial transactions for use in football/soccer stadiums; encoded magnetic cards with store value, namely, gift cards and cards for making purchases at retail stores; optical apparatus and instruments, namely, spectacles, glasses and spectacle frames; sunglasses; spectacle cases; cell phones; tablet computers; software applications for mobile telephones and tablet computers for enabling the transmission of photographs, sport videos and sport information to mobile phones and tablet computers; cases and covers for mobile telephones and computer tablets; mouse mats and pads; mechanical or digital egg timers; horns for signaling for use with bicycles; safety floats for swimming, safety swimming belts, safety swimming jackets; replacement parts included in this class for all the aforesaid goods

Class 011. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, namely, lighting installations, lamps; LED luminaires, ceiling lights; electric Christmas tree lights; bicycle lights; light bulbs; lanterns for lighting, electric pocket torches for lighting; water heaters; heating installations, namely, heating boilers, barbecues and cooking ovens; clothes dryers; heating, cooking and refrigerating apparatus, namely, electric hair driers, ice machines, ice chests, electric heaters for baby bottles, beverage cooling apparatus, electric coffee percolators, electric toasters; ventilating installations, namely, ventilating fans for commercial and household use; sanitary installations, namely, wa-

ter heaters, toilets, sinks, lavatories; lighting, namely, lighting apparatus for sports arenas; light reflectors; electric lamps; pocket searchlights; luminaires; hot water bags

Class 014. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Jewellery, precious stones; key rings being trinkets or fobs; horological and chronometric instruments; pins being jewellery; key rings, key chains; jewellery boxes and watch boxes; badges of precious metal; decorative charms for cellular phones in precious metals; pendants for watch chains; identification bracelets being jewellery; paste jewellery being costume jewelry; tie pins; cuff links; medals; collectible coins; alarm clocks, tie clips

Class 015. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Musical instruments; musical boxes, not-toys; musical instruments, namely, whistles; musical instruments, namely, horns for use in football stadia being musical instruments

Class 016. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Printed matter, namely, periodicals, books, magazines, newsletters, journals, yearbooks, informational flyers, autograph cards, art prints, handbooks and manuals in the field of soccer, sports, travel, education, entertainment; newspapers; printed periodicals in the field of soccer, sports, travel, education, entertainment; photographs, printed; posters, postcards, stationery, ball pens, pencils; flags and pennants of paper; paper banners and flags; rub down transfers; scrapbooks, advent calendars; stickers being stationery; storage containers made of paper or cardboard; autograph books; paper place mats for beer glasses; table napkins of paper; writing tablets; stickers being items of stationery; gift wrap paper; writing pads being stationery; event programmes, press folders being writing accessories, posters; note books, memo-boards, address books; envelopes for cards; printed tickets, entry tickets, participant tickets, printed invitation cards, calendars, postcards and greeting cards; iron-on transfers of paper; packaging bags of paper or plastic; photographs; artists' materials, namely, color pencils, modelling clay, easels and paint brushes; printed instructional and teaching material in the field of sports, travel, and entertainment; plastic films for packaging; art prints; leather pencil cases

Class 018. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Bags, namely, waist bags, shoulder bags, school bags, sports bags, leisure bags, namely, beach bags, reusable shopping bags, textile shopping bags, training bags, namely, gym bags, sports bags and traveling bags; backpacks; wash bags sold empty for carrying toiletries; purses; wallets; animal skins, hides; hipsacks; whips, harness and saddlery; trunks and travelling bags; umbrellas; hiking and walking sticks; credit-card holders; holders in the nature of cases for keys

Class 021. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Household or kitchen utensils, namely, kitchen tongs, strainers, spatulas, turners, beer pitchers and containers; combs and sponges for household purposes, namely, cleaning sponges; cosmetic, dusting, golf, hair, and lint brushes; brushes for footwear; brush-making materials; articles for cleaning purposes, namely, cleaning cloths, mops, brooms, and rags; steelwool; glassware, porcelain and earthenware, namely, cups, mugs, drinking glasses, beverage glassware, dishes, ornaments, coin banks and flower pots; beer glasses, beer jugs and beer mugs; mugs and plates of porcelain, plastic, cardboard and of enameled metal; bottle openers, electric and non-electric; statues, figurines, plaques and works of art, made of porcelain, ceramics, earthenware or glass; tableware, cookware and containers, namely, household and kitchen containers, not of metal, cutting boards for the kitchen, bread bins, bread baskets for household purposes, soap boxes, sugar bowls, ice buckets, ice cube molds, glass bowls, coffee pots, non-electric and not of metal, cooking pots, tie presses, cans, namely, watering cans, garbage cans and bowls, not of metal, disposable table plates, not of metal, plastic water bottles sold empty, egg cups, not of precious metal, butter dishes, coffee services, not of precious metal, candlesticks, not of precious metal, refrigerating bottles, sold empty and portable cool boxes, non-electric for household use, refrigerating containers, namely, thermal insulated containers for food or beverages; cups and plates made of paper or cardboard; piggy banks; lunch boxes; garden ornaments, namely, gnomes of porcelain, earthenware or glass

Class 024. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Textiles and textile goods, namely, bed-lankets, sheets, shams, throws and pillow cases, shower curtains of textile, tablecloth of textile, curtains of textile, handkerchiefs of textile; bed and plastic table covers, textile table covers; bed linen and table linen, not of paper; hand towels and bath towels of textile; plastic pennants, banners and

flags, textile pennants, banners and flags; labels of textile

Class 025. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Clothing, namely, shorts, shirts, pants, jackets, trousers, coats, pullovers, raincoats, aprons, sweatshirts, t-shirts, waistcoats, sweater vests, hosiery and sleepwear, slippers, overalls, pajamas, raincoats, skirts, nighties, dresses, suspenders, overalls, vests, suits, sweat suits, polo shirts, jerseys; sportswear and leisurewear, namely, soccer jerseys, soccer shorts, bath sandals, bathing shoes, golf trousers, golf pants, golf shirts, swimming costumes, gymnastic shoes, sports jerseys and breeches for sports, beachwear, beach shoes, training suits, nightdresses, sports uniforms; exercisesuits comprising track suits; gym shorts and shirts, football shorts and shirts, tennis shirts and shorts, bathing suits and beachwear, swimming trunks and swimsuits, including bikinis; underclothing, namely, corsets, underwear; children's clothing, namely, shorts, t-shirts, sports uniforms, sweatshirts; clothes for newborn babies, namely, one-piece play suits, shirts, shorts, pants, jackets, sweatshirts, dresses, rompers; clothing, namely, playsuits; shoes, footwear and boots including shoes and boots for sports and leisure; belts as clothing; stockings, tights, socks; neckties, ties, gloves as clothing; headgear, namely, headbands and sweatbands; gloves for cross-country skiing and cycling; neck scarfs, mufflers

Class 028. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Games and playthings, namely, board games, plaything cards, action figures, video games consoles, plush toys, cups for dice, baby rattles, toy building blocks, dominoes, parlor games, toy mobiles, stuffed toys, toy scooters, darts, flying discs, archery targets, dice, toys for domestic pets, toy cars; jigsaw and manipulative puzzles; masks for disguise for games, hobby and model kits with activity materials for games; toy figurines of plastic, wood, rubber, porcelain and other materials; toy cars and lorries; coin and/or token operated automatic gaming machines; inflatable swimming pools as playthings and swimming toys, namely, swimming floats, swimming kick boards, swimming rings, playground slides, soft and rag dolls and toy animals, and toy figurines of fabric, fur and other materials; dolls and doll clothing; inflatable balloons; gymnastic and sporting articles, namely, soccer goals, soccer ball knee pads, sports field training grids, chest expanders, stationery exercise bicycles, gymnastic apparatus in the nature of balance beams, springboards, aerobic step machines, gymnastic training stools, gymnastic vaulting horses, protective padding for playing soccer, chest expanders, snowboards; fitness apparatus, namely, fitness apparatus in the nature of balance beams, springboards, aerobic step machines, gymnastic training stools, gymnastic vaulting horses, fitness exercise machines; skiing, tennis and angling equipment, namely, ski sticks, ski covers, skicases, landing nets for anglers, fishing rods; skis, ski bindings, ski poles; skateboards, surfboards, roller skates, ice skates; balls, namely, sports and game balls, soccer balls, footballs; dumb-bells, shot putts, discus, javelins as sporting articles; tennis rackets and parts therefor, namely, grips, strings, grip bands and lead bands for tennis rackets; table tennis bats, badminton racquets, squash racquets, cricket bats, golf clubs and hockey sticks; tennis balls and shuttlecocks; tables for table tennis; clubs as gymnastic apparatus, sports hoops for target hoop games, nets for sporting purposes, namely, tennis nets, badminton nets, volleyball nets, goal sets comprising goal post and ball nets; sports gloves, namely, goalkeepers' gloves; knee, elbow, ankle and shin guards for sports purposes; golf bags, bags and covers for tennis racquets, table tennis bats, badminton racquets, squash racquets, cricket bats and hockey sticks; Christmas tree decorations, except confectionery and electric Christmas tree lights; card games; electronic education teaching games for children; computer game accessories, namely, disk memories sold as a unit with video game machines, manual controls and video game machines adapted for use with television receivers; computer game consoles for use with an external display screen or monitor; automatic gaming and entertainment machines adapted for use with external screens, namely, videogames and computer games namely hand-held electronic game units adapted for use with an external display screen or monitor; games and entertainment apparatus, adapted for use with an external screen, namely, video and computer game apparatus, namely computer game consoles for use with an external display screen or monitor; costume masks

Class 029. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Sausages and charcuterie; meat; fish, seafood and molluscs, not live; poultry and game; meat extracts; milk; dairy products, namely, milk beverages, milk predominating, dairy-based beverages, dairy-based dips, cream being dairy products and substitutes therefor, namely, milk substitutes, artificial cream being dairy products substitutes; eggs and egg product; edible oils and fats; processed fruits, fungi and vegetables including nuts and pulses; preserved, frozen, dried and cooked fruits and vegetables; ready to eat meals based predominantly on game, eggs, meat, chicken, seafood, bacon or vegetables; canned soups; broth, soup;

snack foods based on potatoes, nuts, vegetables, pulses; snacks based on tofu or meat; dairy based savory puddings; jellies, jams, compotes; potato chips, in particular potato chips; snack foods based on nuts; snack foods based on legumes; snacks based on vegetables or meat; spiced nuts; snack mixes consisting of dehydrated fruit and processed nuts

Class 030. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Coffee, tea, cocoa and artificial coffee; espresso; rice; tapioca and sago; flour and preparations made from cereals, namely, cereal bars, cereal-based snack foods, muesli, grain-based snack foods; bread, pastry and confectionery made of sugar; edible ices; sweet-products, namely, gum sweets, chocolate candies, ice candies, mint-based sweet, starch-based candies; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, condiments, namely, sauces; spices; edible ices; chocolate; sweets, in particular filled sweets; confectionery, namely, lollipops; savory biscuits; chocolate products, namely, chocolate confectionery, sweets and baked goods, namely, crumbles; sweets, namely, marshmallows; bubble gum; muesli bars; cereal-based energy bars; fruit gum candy other than for medical use

Class 031. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Unprocessed cereals; bulbs for agricultural and horticultural purposes; fresh fruits and vegetables; natural flowering plants and flowers; live animals; foodstuffs and fodder for animals; seeds for agricultural and horticultural purposes; malt for brewing and distilling

Class 033. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Alcoholic beverages, except beers

Class 038. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Transmission of radio and television broadcasts or programmes via wireless and cable networks; broadcasting of film, television, radio, teletext and videotext programmes or broadcasts; providing access to the internet for on-line forums in the nature of chat rooms for social networking; rental of telecommunication equipment; press agency services, namely, electronic transmission of messages, press reports and market research data via electronic means and/or by computer; sound, image and data transmission by cable, satellite, computer network, telephone and other lines, and all other electronic transmission media; electronic television broadcasting within the framework of subscription television services, including video-on-demand transmission services for others; providing access to an information database; transmission of information via wireless or cable networks; on-line services and transmissions, namely, electronic transmission of information and messages including e-mail; providing of access to communications networks, in particular for internet access, teleshopping and telebanking, including for use with television screens; providing user access to global computer networks; electronic transmission of data and computer programs on electronic networks, in particular on the internet and other electronic communications media; electronic transmission of sound, speech, images and/or data; telephone communications and services, communications by cellular phones; e-mail data transmission services, fax transmission services, SMS text messaging services; providing access to information stored on databases, including in particular by means of interactive computer systems; telephone services by means of information, complaints and emergency hotlines; providing access to, and transmission of, information, texts, drawings and images; providing access to information and entertainment programs on the internet; broadcasting of web-TV programmes, interactive programmes and internet TV programmes; electronic transmission of information, including sound, image and data; electronic transmission of fee data; providing access to data on the internet; data transmission services between networked computer systems; providing access to computer networks for the transmission of messages, images, text, speech, signals and data; electronic transmission of data

Class 041. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Production, screening and rental of films, video films and other television programmes, namely, production of films, video films and television programs, film distribution, video recording services, distribution of television programs for others, rental of films, rental of videotapes and motion picture, rental of facilities and equipment for the production of television programs; rental of video and/or audio cassettes, tapes and discs and video games and computer games; rental of television receivers and video decoders; education services, namely, providing classes, seminars and workshops in the field of sports, soccer, leadership, business and culture; providing of training, namely, sports training, namely, soccer training; entertainment in the nature of soccer exhibitions, soccer games, live music concerts, theater productions; sporting and cultural activities, namely, providing sports training camps, soccer games, gymnasiums for sports

training, sporting events in the nature of soccer tournaments, and physical fitness classes; provision of radio and television entertainment services, namely, providing ongoing radio and television programs in the field of sports especially soccer; organisation of sports events in the field of soccer; organisation of sporting competitions and community sporting in the field of soccer; entertainment in the nature of ongoing radio and television program in the field of soccer broadcast via television, radio, satellite, and the internet; entertainment in the nature of an ongoing radio and television program in the field of sports quizzes broadcast via television, radio, satellite, and the internet; organisation of competitions in the field of soccer; entertainment services, namely, organising and conducting live music concert and theatre performances, social entertainment events and sports competitions; publication and editing of books, magazines and other printed matter and associated electronic media, other than for advertising purposes; organisation of and conducting concert, theatre and entertainment events and sports competitions; production of film, television, radio and screen text, video text programmes or broadcasts, radio and television entertainment; production of films and video films and other image and sound programmes for educational, instructional and entertainment purposes, including for children and young people; rental and showing of sound and image recordings on video and/or audio cassettes, tapes and discs; arranging and conducting soccer tournaments, art exhibitions, concerts, theater performances, lectures in the field of soccer; arranging and conducting of cultural, entertainment and sporting events and congresses, seminars, lectures and multimedia presentations for cultural and entertainment purposes in the field of sports, soccer, leadership and business; publishing of electronic publications in the field of sports especially soccer, included in this class; production of web-TV programmes, interactive television programmes and internet TV programmes; providing training to athletes in the fields of public appearances and interview skills, training services in the field of sports promotion; entertainment ticket agency services; ticket and seat reservations for concerts, shows and other entertainment events; ticket booking and reservation services for cultural and sporting events; providing facilities for children, young people and adolescents for leisure purposes, in particular in the field of sports; providing information on entertainment events and sporting and leisure activities; rental of sports equipment except vehicles; editing of written texts in the field of sports especially soccer; sports agency services, namely, arranging of sporting activities, namely, arranging of sporting activities in the field of soccer; production of radio and television broadcasts/programmes via wireless or cable networks; arranging and conducting of cultural, entertainment and sporting events for charitable purposes, namely, live music concerts, soccer training camps, competitions and tournaments; production of prize game broadcasts via television, radio and online channels

Class 045. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Services of a sports association, namely, legal consultancy and representation to social and political decision-makers; chaperoning services, namely, personal body guarding; licensing, of intellectual property in the field of films, television and radio productions and other image and audio programmes, and print media and other publications, in particular relating to football events; legal administration and exploitation, through the issuing of licenses, of copyright and industrial property rights, for others, namely, legal services relating to the exploitation of copyright for printed matter; legal services relating to the exploitation of film, television and other ancillary copyright in the field of merchandising; legal services and consultancy; mediation; consultancy relating to management of intellectual property and copyrights, namely, intellectual property consultancy and copyright management consultancy; licensing and legal administration of television transmission rights, namely, rights to the transmission of sporting events; licensing and legal administration of intellectual property rights to press, radio, television and film articles for use on sound and image carriers; licensing and legal administration of rights to articles in newspapers and periodicals, namely, legal services relating to the exploitation of copyright for printed matter

Grounds for Opposition

Other	No bona fide intent to use mark in commerce for identified goods or services under Section 66(a) of the Trademark Act
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Attachments	Notice of Opposition.pdf(740799 bytes)
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Signature	/Benjamin B. Lieb/
Name	BENJAMIN LIEB

Date	07/07/2019
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NEVER SUMMER INDUSTRIES, INC.,

Opposer,

v.

EINTRACHT FRANKFURT E.V.

Applicant.

Opposition No. _____
Serial No. 79215008

NOTICE OF OPPOSITION

The Opposer, Never Summer Industries, Inc. (“Never Summer”), a corporation duly organized and existing under the laws of the State of Colorado, believes it would be damaged by the mark shown in Application Serial No. 79215008 (the “Application”), and hereby opposes same, pursuant to 15 U.S.C. § 1063.

As grounds for opposition, Opposer alleges:

1. Opposer is and has been engaged in the sale and marketing of goods under its EAGLE IN CIRCLE trademark since a time long prior to the date of first use alleged by Applicant in its application for registration:



2. Opposer is also the owner of U.S. Trademark Registration No. 4034836 for the EAGLE IN CIRCLE trademark, a true and correct copy of which is attached hereto as Exhibit A.

3. Opposer's U.S. Trademark Registration No. 4034836 is *prima facie* proof of its ownership and use of the mark from the original date of filing of the application, pursuant to 15 U.S.C. § 1057(b), and of its exclusive right to use the registered EAGLE IN CIRCLE trademark in commerce.

4. U.S. Trademark Registration No. 4034836 is incontestable, pursuant to Section 15 of the Trademark Act.

5. Opposer has used its EAGLE IN CIRCLE trademark in commerce extensively and has acquired a considerable and valuable goodwill and wide-scale recognition for its mark. The public has come to associate the EAGLE IN CIRCLE trademark with Opposer and Opposer's goods.

6. Applicant filed the Application under Section 66(a) of the Trademark Act, representing to the USPTO that Applicant had, at the time of filing, a bona fide intention to use the applied-for mark in commerce that the U.S. Congress can regulate on or in connection with the goods or services specified in the Application.

7. On information and belief, Applicant never intended to use the applied-for mark in commerce that the U.S. Congress can regulate on or in connection with at least one or more of the following goods specified in the Application:

infant formula; medical plasters for use as materials for dressings, adhesive plasters for medical use, bandages for dressings; material for stopping teeth, namely, dental wax; disinfectants; preparations for destroying vermin; fungicides; herbicides; Apparatus, instruments and equipment for telecommunications, namely, telephones, network routers, modems, computers, mobile phones, televisions, radios, fax devices, printer; optical image viewers, namely, optical encoder, optical scanner, optical transmitter, optical disc player with three-dimensional graphic representation; apparatus for receiving, recording, transmission, processing,

transforming, output and reproduction of data, speech, text, signals, sound and images, including multimedia apparatus, namely, remote-photography apparatus, video telephones, compact disc players, television apparatus, cameras, cassette players, loudspeakers, cabinets for loudspeakers, luminous video screens, luminous projections screens, electronic entertainment goods, namely, radio and television receivers, sound and/or image recording and reproduction apparatus, including such goods in portable form and for digital image-sound signals; electronic apparatus for interactive television, namely, television sets; decoding apparatus for receiving and transforming encoded signals; apparatus, including multimedia apparatus, for connecting and controlling audio, video and telecommunications apparatus, including such apparatus with electronic program management and control for interactive television viewing and/or pay TV, namely, video and television decoder, television monitors, television and video converters; computers and printers; software for electronic program guides; accessories for computers, video and computer games and similar electronic and electrotechnical apparatus, namely, adapters, modules for expanding functions and extending memory capacity; voice synthesizers, light pens, electronic 3-D spectacles; non-programmed blank cassettes, floppy discs, discs; boxes specifically adapted for storing cassettes, floppy disks and recording discs; program recorders, namely, video recorders; numerical keyboards, floppy disk stations principally comprising floppy disk drives, microprocessors and control electronics; electronic data processing apparatus, including monitors, input apparatus, output apparatus, printers, terminals and memories, including such apparatus being additional apparatus for a main piece of apparatus; blank sound recording carriers, namely, recording discs, compact discs, sound tapes and sound cassettes; recordable, blank image carriers, namely, video cassettes and DVDs; exposed photographic film, exposed camera films and exposed slide films; electronic agendas, pocket calculators, electronic diaries; cell phones; tablet computers; mechanical or digital egg timers; horns for signaling for use with bicycles; safety floats for swimming, safety swimming belts, safety swimming jackets; Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, namely, lighting installations, lamps; LED luminaires, ceiling lights; electric Christmas tree lights; bicycle lights; light bulbs; lanterns for lighting, electric pocket torches for lighting; water heaters; heating installations, namely, heating boilers, barbecues and cooking ovens; clothes dryers; heating, cooking and refrigerating apparatus, namely, electric hair driers, ice machines, ice chests, electric heaters for baby bottles, beverage cooling apparatus, electric coffee percolators, electric toasters; ventilating installations, namely, ventilating fans for commercial and household use; sanitary installations, namely, water heaters, toilets, sinks, lavatories; lighting, namely, lighting apparatus for sports arenas; light reflectors; electric lamps; pocket searchlights; luminaires; hot water bags; artists' materials, namely, color pencils, modelling clay, easels and paint brushes; printed instructional and teaching material in the field of sports, travel, and entertainment; plastic films for packaging; art prints; leather pencil cases; whips, harness and saddlery; hiking and walking sticks; combs and sponges for household purposes, namely, cleaning sponges; cosmetic, dusting, golf, hair, and lint brushes; brushes

for footwear; brush-making materials; articles for cleaning purposes, namely, cleaning cloths, mops, brooms, and rags; steelwool; gloves for cross-country skiing and cycling; jigsaw and manipulative puzzles; toy cars and lorries; coin and/or token operated automatic gaming machines; inflatable swimming pools as playthings and swimming toys, namely, swimming floats, swimming kick boards, swimming rings, playground slides; stationery exercise bicycles, gymnastic apparatus in the nature of balance beams, springboards, aerobic step machines, gymnastic training stools, gymnastic vaulting horses; snowboards; fitness apparatus, namely, fitness apparatus in the nature of balance beams, springboards, aerobic step machines, gymnastic training stools, gymnastic vaulting horses, fitness exercise machines; skiing, tennis and angling equipment, namely, ski sticks, ski covers, ski cases, landing nets for anglers, fishing rods; skis, ski bindings, ski poles; skate-boards, surfboards, roller skates, ice skates; dumb-bells, shot putts, discus, javelins as sporting articles; tennis rackets and parts therefor, namely, grips, strings, grip bands and lead bands for tennis rackets; table tennis bats, badminton racquets, squash racquets, cricket bats, golf clubs and hockey sticks; tennis balls and shuttlecocks; tables for table tennis; clubs as gymnastic apparatus, sports hoops for target hoop games, nets for sporting purposes, namely, tennis nets, badminton nets, volleyball nets; golf bags, bags and covers for tennis racquets, table tennis bats, badminton racquets, squash racquets, cricket bats and hockey sticks; computer game accessories, namely, disk memories sold as a unit with video game machines, manual controls and video game machines adapted for use with television receivers; computer game consoles for use with an external display screen or monitor; automatic gaming and entertainment machines adapted for use with external screens, namely, video games and computer games namely hand-held electronic game units adapted for use with an external display screen or monitor; games and entertainment apparatus, adapted for use with an external screen, namely, video and computer game apparatus, namely computer game consoles for use with an external display screen or monitor; costume masks; Sausages and charcuterie; meat; fish, seafood and molluscs, not live; poultry and game; meat extracts; milk; dairy products, namely, milk beverages, milk predominating, dairy-based beverages, dairy-based dips, cream being dairy products and substitutes therefor, namely, milk substitutes, artificial cream being dairy products substitutes; eggs and egg product; edible oils and fats; processed fruits, fungi and vegetables including nuts and pulses; preserved, frozen, dried and cooked fruits and vegetables; ready to eat meals based predominantly on game, eggs, meat, chicken, seafood, bacon or vegetables; canned soups; broth, soup; snack foods based on potatoes, nuts, vegetables, pulses; snacks based on tofu or meat; dairy based savory puddings; jellies, jams, compotes; potato chips, in particular potato chips; snack foods based on nuts; snack foods based on legumes; snacks based on vegetables or meat; spiced nuts; snack mixes consisting of dehydrated fruit and processed nuts; Coffee, tea, cocoa and artificial coffee; espresso; rice; tapioca and sago; flour and preparations made from cereals, namely, cereal bars, cereal-based snack foods, muesli, grain-based snack foods; bread, pastry and confectionery made of sugar; edible ices; sweet-products, namely, gum sweets, chocolate candies, ice candies, mint-based sweet, starch-based candies; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar,

condiments, namely, sauces; spices; edible ices; chocolate; sweets, in particular filled sweets; confectionery, namely, lollipops; savory biscuits; chocolate products, namely, chocolate confectionery, sweets and baked goods, namely, crumbles; sweets, namely, marshmallows; bubble gum; muesli bars; cereal-based energy bars; fruit gum candy other than for medical use; unprocessed cereals; bulbs for agricultural and horticultural purposes; fresh fruits and vegetables; natural flowering plants and flowers; live animals; foodstuffs and fodder for animals; seeds for agricultural and horticultural purposes; malt for brewing and distilling.

8. On information and belief, Applicant has taken no steps, and can produce no documentary evidence, that, viewed objectively, demonstrate Applicant's bona fide intent to use the applied-for mark on one or more of the foregoing goods at the time of filing of the Application.

9. Applicant's lack of any meaningful action or investment in the applied-for mark, suggest that Applicant intended only to reserve the mark and lacked the requisite bona fide intent to use the applied-for mark at the time of filing.

WHEREFORE, Opposer prays that Application Serial No. 79215008 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Dated: July 7, 2019

Respectfully Submitted,

/Benjamin B. Lieb/
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant by forwarding said copy on July 7, 2019, via email to: Lawrence E. Apolzon, Fross Zelnick Lehrman & Zissu, P.C., 4 Times Square, 17th Floor, New York, NEW YORK 10036.

/Benjamin B. Lieb/_____

EXHIBIT A

United States of America

United States Patent and Trademark Office



Reg. No. 4,034,836

Registered Oct. 4, 2011

Int. Cls.: 25 and 28

TRADEMARK

PRINCIPAL REGISTER

NEVER SUMMER INDUSTRIES, INC. (COLORADO CORPORATION)
5077 COLORADO BLVD.
DENVER, CO 80216

FOR: BEANIES; CAPS; HATS; HOODED PULLOVERS; HOODED SWEATSHIRTS; LONG-SLEEVED SHIRTS; PULLOVERS; SHIRTS; SWEATSHIRTS; T-SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 7-0-2005; IN COMMERCE 7-0-2005.

FOR: BAGS FOR SKATEBOARDS; BAGS SPECIALLY ADAPTED FOR SPORTS EQUIPMENT; LONGBOARD WHEELS; LONGBOARDS; SKATEBOARD DECKS; SKATEBOARD WHEELS; SKATEBOARDS; SNOWBOARD DECKS; SNOWBOARDS, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 7-0-2005; IN COMMERCE 7-0-2005.

THE MARK CONSISTS OF A STYLIZED DRAWING OF AN EAGLE SURROUNDED BY FOUR ARC SHAPES THAT CREATE A CIRCLE AROUND THE EAGLE.

SER. NO. 85-254,935, FILED 3-1-2011.

MICHELLE DUBOIS, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office