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F I L E D	FEDERAL COURT COUR FÉDÉRALE
	May 20, 2025 20 mai 2025
	Steve Tremblay
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Court File No.:

**FEDERAL COURT**

BETWEEN:

**WINDOW WORLD INTERNATIONAL, LLC**

Applicant

- and -

**TRADEMARK BUILDING PRODUCTS LTD.**

Respondent

APPLICATION UNDER Rule 300(d) of the *Federal Courts Rules* and Section 56 of the *Trademarks Act*, RSC 1985, c T-13, as amended

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**NOTICE OF APPLICATION**

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**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED** by the applicant. The relief claimed by the applicant appears on the following pages.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Dated: May 20, 2025

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office: \_\_\_\_\_

TO: Trademark Building Products Ltd.  
120 Halifax St.  
Moncton, NB E1C 9S1

AND TO: THE REGISTRAR OF TRADEMARKS  
Canadian Intellectual Property Office  
Phase I, Place du Portage I  
50 Victoria Street, Room C-114  
Gatineau, Québec K1A 0C9  
Attention: I.C. Legal Services  
Tel: 819-953-0544  
Fax: 819-953-6742  
(Registrar of Trademarks to be served pursuant  
to Rule 133 of the *Federal Courts Rules*)

## APPLICATION

The Applicant makes application for:

1. An Order:
  - a. setting aside that part of the decision of the Registrar of Trademarks (the “**Registrar**”), dated March 17, 2025 and dispatched by the Registrar on March 17, 2025, that amends registration No. TMA947806 for the trademark WINDOW WORLD (the “**WINDOW WORLD Registration**”) to delete therefrom the services “Installation of replacement windows”, pursuant to section 45 of the *Trademarks Act*, R.S.C. 1985, c. T-13, as amended (the “**Act**”);
  - b. directing the Registrar to maintain the services “Installation of replacement windows” in the WINDOW WORLD Registration pursuant to section 39(1) of the Act;
  - c. granting the Applicant its costs in this application, on a solicitor-client basis; and
  - d. granting such further and other relief as counsel may request and this Honourable Court may see just.

The grounds for the application are:

2. The Applicant is a United States corporation having a principal place of business at 118 Shaver Street, North Wilkesboro, North Carolina 28659, United States of America.
3. The Applicant is the owner of the WINDOW WORLD Registration, which is registered for use in association with, *inter alia*, the following services: “Installation of replacement windows” (the “**Appealed Services**”)
4. On August 28, 2023, the Registrar issued a notice pursuant to section 45 of the Act in respect of the trademark registration, requiring the Applicant to produce evidence that the trademark WINDOW WORLD has been used in

Canada during the three-year period ending on said date (the “**Relevant Period**”).

5. The Applicant submitted evidence of use and circumstances excusing non-use of the trademark WINDOW WORLD in Canada on April 9, 2024.
  6. On March 17, 2025, the Registrar issued a decision (the “**Registrar’s Decision**”) finding in part that the WINDOW WORLD Registration should be amended to delete therefrom the Appealed Services.
  7. The Registrar’s Decision noted several deficiencies in the Applicant’s evidence in respect of the Appealed Services and found that the evidence did not demonstrate use or circumstances excusing non-use of the trademark WINDOW WORLD in association with the Appealed Services in Canada during the Relevant Period.
  8. The Applicant intends to request the Court’s leave pursuant to section 56(5) of the Act to adduce evidence in addition to that adduced before the Registrar that, in conjunction with the evidence that was before the Registrar, will demonstrate that the Applicant’s trademark WINDOW WORLD was in Canada by the Applicant, in association with the Appealed Services during the Relevant Period.
  9. The additional evidence of the Applicant would have materially affected the Registrar’s Decision, if it had been before the Registrar at the time of its decision.
  10. Since the trademark WINDOW WORLD was used by the Applicant in Canada in association with the Appealed Services during the Relevant Period, or there are special circumstances that excuse the absence of non-use in association with the Appealed Services during the Relevant Period, the WINDOW WORLD Registration ought to be maintained in its entirety inclusive of the Appealed Services pursuant to section 45 of the Act.
  11. *Trademarks Act*, R.S.C. 1985, c. T-13, sections 4, 45 and 56, as amended.
  12. *Federal Courts Rules*, SOR/98-106, sections 300(d), 306 and 317.
- This application will be supported by the following material:
13. The file maintained by the Registrar of Trademarks in respect of trademark

registration TMA947806;

14. The applicant's evidence served in accordance with section 306 of the *Federal Courts Rules*, and to which the Court grants leave pursuant to section 56(5) of the Act.

15. Such further and other material as the Applicant may indicate and that this Honourable Court may permit.

**THE APPLICANT REQUESTS** the Registrar of Trademarks to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Registrar, to the Applicant and to the Registry of the Court:

- The file maintained by the Registrar of Trademarks in respect of trademark registration No. **TMA947806** for the trademark **WINDOW WORLD**.

DATED at Ottawa, Ontario, this 20<sup>th</sup> day of May, 2025.



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