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F I L E D	FEDERAL COURT COUR FÉDÉRALE
	August 05, 2025 05 août 2025
Jacob Legault	
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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

NOTICE OF APPLICATION

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: August 4, 2025

Issued by: _____
(Registry Officer)

Address of local office: _____

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

c/o Dentons Canada LLP
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Toronto, ON M5K 0A1
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Counsel for the Respondent

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
(Served Via the Federal Court Registry
Pursuant to Rule 133 of the *Federal Courts
Rules*)

AND TO: ATTORNEY GENERAL OF CANADA
(Served Via the Federal Court Registry
Pursuant to Rule 133 of the *Federal Courts
Rules*)

APPLICATION

THE APPLICANT MAKES AN APPLICATION FOR:

1. An Order:
 - a. Allowing this appeal and setting aside the decision of the Trademarks Opposition Board for the Registrar of Trademarks, rendered on June 2, 2025, dispatched to the parties on June 3, 2025, refusing trademark application no. 1,855,788 for the trademark WINDOW WORLD;
 - b. That application no. 1,855,788 be allowed;
 - c. The costs of Window World International, LLC (the “**Applicant**”) of this appeal; and
 - d. Such further and other relief as this Honourable Court may deem 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. On September 5, 2017, the Applicant filed Application No. 1,855,788 (the “**Application**”) to register the trademark WINDOW WORLD (the “**Mark**”) for use in association with Class 20 goods “(1) Window blinds, window shades”, Class 35 services “(1) Retail store services featuring replacement windows”, and Class 37 services “(2) Installation of vinyl replacement and new construction windows; (3) Installation of replacement windows.” The Application was filed based on use of the Mark in Canada since at least as early as July 31, 2015 on goods, since at least as early as October 29, 2012 on services, and use and registration abroad on goods and services (1), (3).
4. The Application was advertised for opposition purposes in the Trademarks Journal on March 6, 2019, and opposed by Trademark Building Products Ltd. (the “**Respondent**”), which, on March 19, 2019, filed a Statement of Opposition. The grounds of opposition are based on non-compliance with

Section 38(2)(a) in conjunction with Sections 30(b) and 30(i) of the *Trademarks Act*, R.S.C. 1985, c. T-13, as amended (the “**Act**”), non-entitlement of the Applicant to register the Mark under Section 38(2)(c) pursuant to Sections 16(1)(a), 16(1)(c), 16(2)(a) and 16(12)(c) of the Act, and non-distinctiveness of the Mark under Section 38(2)(d) and Section 2 of the Act.

5. During the opposition proceeding, the Applicant filed two affidavits of Zach Luffman, Director of Franchising of Window World, Inc., a licensee of the Applicant, as well as certified copies of four trademark registrations. The Respondent filed the affidavit of Heather Bonnell, an articling student employed by its agent, the affidavit of Ian Franklin, a Director of the Opponent, and certified copies of three trademark registration files. Only Mr. Franklin was cross-examined on his affidavit.
6. In reaching its decision, the Registrar erred by:
 - a. Improperly appreciating the evidence before it; and
 - b. Erroneously attempting to distinguish the case law.
7. Notwithstanding the Registrar’s errors above, the Registrar’s decision would have been different had it been presented with additional evidence which the Applicant will file on this appeal pursuant to subsection 56(5) of the Act.
8. The Applicant will make representations on the above grounds and each ground of opposition for which the Respondent was successful.
9. This application will be supported by the following material:
 - a. The Record which was before the Registrar; and
 - b. Any further affidavit evidence and documentary exhibits as counsel may suggest and this Honourable Court permit.
 - c. 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. 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. The Applicant requests that this application be heard in Ottawa, Ontario.
11. *Trademarks Act*, R.S.C. 1985, c. T-13, sections 2, 4, 6, 16, 30, 38 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 1,855,788;
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 application No. **1,855,788** for the trademark **WINDOW WORLD**.

DATED at Ottawa, Ontario, this 4th day of August, 2025.



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