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Court File No. T-

FEDERAL COURT

BETWEEN:

NORDIC GROUP OF COMPANIES, LTD.

Applicant

- and -

**PAPA'S TOY CO. LTD. and
THE REGISTRAR OF TRADEMARKS**

Respondents

APPLICATION UNDER SECTION 57 OF THE *TRADEMARKS ACT*

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the applicant appears below.

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 file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the Applicant's solicitor.

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 at Ottawa, Canada, this 20th day of December, 2024.

Issued by: _____
(Registry Officer)
90 Sparks Street, Main Floor
Ottawa, Ontario
K1A 0H9

TO: PAPA'S TOY CO. LTD.
430 Signet Drive, Suite E
Toronto, Ontario
M9L 2T6

RICHES, MCKENZIE & HERBERT LLP
SUITE 1800
2 BLOOR STREET EAST
TORONTO
ONTARIO M4W3J5
(Agent of Record in respect of UCA24465)

AND TO: THE REGISTRAR OF TRADEMARKS
Canadian Intellectual Property Office
Place du Portage I
50 Victoria Street, room C-229
Gatineau, Quebec
K1A 0C9

Tel: 866-997-1936
Fax: 819-953-2476

APPLICATION

THE APPLICANT MAKES APPLICATION FOR:

- a) a declaration that Canadian Trademark Registration No. UCA24465 (the “**YO-YO Registration**”) for the trademark YO-YO (the “**Trademark**”) is invalid pursuant to Section 18 of the Trademarks Act (the “**Act**”);
- b) an Order pursuant to Section 57 of the Act striking out the YO-YO Registration;
- c) costs of this Application; and
- d) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THIS APPLICATION ARE:

A. The Parties

1. The Applicant, Nordic Group of Companies, Ltd. (“**Applicant**”), is a corporation incorporated pursuant to the laws of Wisconsin having a principal office or place of business at 715 Lynn Avenue, Suite 100, Baraboo, Wisconsin, United States of America, 53913. The Applicant is the parent to various subsidiary operating companies, including Duncan Toys Company and Flambeau, Inc.

2. The Respondent, Papa’s Toy Co. Ltd. (“**Respondent**”), is a corporation incorporated pursuant to the laws of Ontario having a principal office or place of business at 430 Signet Drive, Suite E, Toronto, Ontario, M9L 2T6. The Respondent is the owner of the YO-YO Registration, registered in association with the goods: “toys and games”.

3. The Registrar of Trademarks is responsible for maintaining, supervising, and amending the register of trademarks in Canada.

B. Invalidity of the YO-YO Registration

4. The YO-YO Registration is invalid because it is not distinctive as of the date this Application was commenced pursuant to paragraph 18(1)(b) of the Act.

5. The word yo-yo is clearly descriptive of toys and games, being the ordinary word in common use for yo-yos (i.e. a toy comprising two disks with a central groove in which a string is attached). As such, the Trademark does not serve to distinguish the goods of any particular trader because it is the generic name used to describe and identify a particular type of toy.

6. The word yo-yo is not inherently distinctive, by definition, because it is clearly descriptive of the goods associated with the Trademark. The Trademark was either never distinctive, or has lost its distinctiveness since the 1946 registration date and has become non-distinctive.

7. The word yo-yo does not enjoy acquired distinctiveness in relation to toys and games because it does not distinguish, nor is it adapted to distinguish, the Respondent's goods from the goods of others trading in toys and games. Indeed, the word yo-yo is used by traders and consumers in Canada, making it impossible for the term to carry any distinctiveness in the marketplace. It is further impossible for the Respondent to exercise control over the character and quality of the goods associated with the Trademark because it is descriptive and generic.

8. The YO-YO Registration improperly prohibits other traders from describing their goods in terms that may be understood by the public.

9. The Trademark as it appears on the register is invalid and does not accurately express or define the rights of the Respondent at the date of this Application.

10. The Federal Court of Canada has an exclusive original jurisdiction to order the expungement of any entry in the register at the request of any interested person.

11. The Applicant is an interested person, being the parent company of one of the world's leading manufacturers and retailers of yo-yo products, and therefore has standing pursuant to s. 57 of the Act. The Trademark affects the Applicant's commercial interest in accurately describing their goods sold in Canada (both in

advertising, on packaging and in its trademark registrations). Absent expungement, the Applicant's ability to freely trade in Canada is lessened.

12. The Applicant relies upon sections 2, 12, 18(b) and 57 of the Act, the [Federal Courts Act](#) and [Federal Courts Rules](#), and such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. Such supporting affidavits and documentary exhibits as may be served and filed on behalf of the Applicant pursuant to Rule 306 of the [Federal Court Rules](#); and
2. Such further and other materials as counsel may advise and this Honourable Court may permit.

DATED at Ottawa, Canada, this 20th day of December, 2024.

 for
SMART & BIGGAR

55 Metcalfe Street, Suite 900
Ottawa, Ontario
K1P 5Y6

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Solicitors for the Applicant