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Name of Person Signing Certificate: Thomas P. Philbrick

Signature: Thomas P. Philbrick

Date of Signing: 02/05/04

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

In the matter of application Serial No. 78/207,394
For the Trademark NX RACING in International Class 27
Published in the Official Gazette on January 6, 2004

02-10-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #76

Nitrous Express, Inc.

Opposer,

v.

Elegant USA, LLC

Applicant.

Opposition No. _____
Application No.: 78/207,394

BOX-TTAB - FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

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NOTICE OF OPPOSITION

Nitrous Express, Inc., a Texas corporation, located and doing business at 5411 Seymour Hwy, Wichita Falls, Texas. 76310 and owner of a family of "NX" marks, hereby believes that it will be damaged by registration of the intent to use application for NX RACING ("Applicant's

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Mark”), as applied for in Application Serial No. 78/207,394 filed on January 27, 2003 by Applicant Elegant USA, LLC (“Applicant”).

As grounds for opposition, Nitrous Express, Inc. alleges:

1. Opposer develops, manufactures, and sells goods in the automotive industry, including goods for the sale of specialized equipment known as nitrous systems which may be added to the internal combustion engines of cars, trucks and motorcycles, and in particular to specialized racing vehicles of many kinds and related services. Opposer is widely recognized as a leader in the automotive industry for its creation of safe, reliable nitrous systems. As a result of the notoriety of such systems, the NX mark, associated with Opposer, has become a popular “symbol” with which racing fans seek to associate all kinds of automobile products and accessories in connection with their automobiles. Accordingly, Opposer licenses its NX mark to a very select group of third parties, including but not limited to certain wholesalers of automotive seat covers, steering wheel covers, and floor mats whose quality and reputation in the manufacture and sale of automotive, truck and motorcycle related products is well known. Opposer has expanded and developed its reputation, goodwill and brand association through careful, calculated and managed license arrangements.

2. For more than seven years, Opposer alone, and through its licensees, has used NX brand as a trademark and service mark throughout the United States and the world to identify an entire line of automotive products and services. Opposer and its licensees have spent millions of dollars advertising their NX marks, and Opposer has extensively promoted and featured its NX marks with automobile products and services. As a result of such efforts, the NX mark is recognized as a designation of high quality goods and related services offered by Opposer, and Opposer has developed considerable goodwill in the mark. Opposer’s NX marks are valuable

and respected and have quickly become famous amongst automotive professionals, racing enthusiasts/fans and the automobile industry as a whole.

3. Opposer's mark has achieved such a high degree of notoriety as to establish its brand as a symbol sold to enthusiasts in the form of "vehicle floor mats," in interstate commerce since at least as early as November 1, 2002.

4. Opposer's interest and brand identity is evidenced by the filing of its NX (word mark) application in Class 27 (Serial No. 78/273,149, filed on July 11, 2003.) In addition, Opposer's interest and brand identity is further evidenced by the filing of its NX (words & design mark) application in Class 27 (Serial No. 78/273,197, filed on July 11, 2003)

5. Based on Opposer's substantial interstate use of its mark in commerce and the resulting goodwill, Opposer believes that it will be damaged by the registration of Serial No. 78/207,394 as it is confusingly similar in sight, sound, meaning and overall commercial impression and as it is to be used in connection with related, if not, identical goods namely, "AUTOMOBILE FLOOR MATS," in International Class 27.

6. Upon information and belief, Opposer alleges that Applicant filed an intent-to-use application on January 27, 2003 for the mark NX RACING (and design) which seeks registration of Opposer's mark in connection with "AUTOMOBILE FLOOR MATS," in International Class 27.

7. Upon information and belief, Opposer alleges that Applicant is well aware of Opposer's fame within the relevant industry and filed its application in an attempt to ride on and profit from Opposer's established goodwill.

8. Applicant's Mark is likely to be confused with and mistaken for Opposer's NX mark as Applicant's Mark is, as filed, virtually identical to Opposer's NX mark. In addition,

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since the term "RACING" is disclaimed in Applicant's application, the claimed elements of Applicant's mark and Opposer's mark are identical and thus confusingly similar.

9. If Applicant is permitted to register Applicant's Mark for the goods specified in the Application herein opposed, continued confusion resulting in damage and injury to Opposer will occur. Persons familiar with Opposer's marks would be likely to perceive Applicant's goods as associated or affiliated with or sponsored by Opposer. Such confusion inevitably would result in damage to Opposer.

10. Registration of Applicant's Mark would give Applicant prima facie evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use Applicant's Mark, all to the detriment of Opposer.

11. As a result of Applicant's infringing activities, Opposer and Applicant are currently involved in trademark infringement litigation in the United States Federal District Court in the Northern District of Texas. The aforementioned case is entitled Nitrous Express, Inc. v. Elegant USA, LLC, Civil Action #: 7:03-cv-00109. The ownership of the mark that is the subject of this Opposition is one of the issues to be decided by the federal district court litigation.

12. Wherefore, Opposer prays that this Opposition be sustained and that Application Serial No. 78/207,394 be denied and refused.

A duplicate copy of this Notice of Opposition is enclosed.

The filing fee of \$300 for this opposition is covered by the enclosed check # 1304.

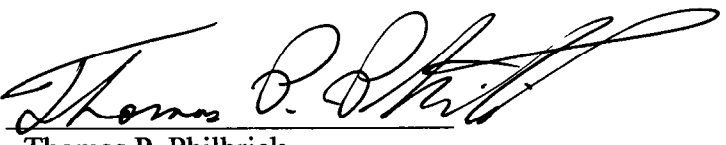
DATED this 5th day of February, 2004.

Respectfully submitted,

Nitrous Express, Inc.

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By:



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