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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

May 25, 2005

PHOENIX, ARIZONA

TUCSON, ARIZONA

IRVINE, CALIFORNIA

SALT LAKE CITY, UTAH

DENVER, COLORADO

LAS VEGAS, NEVADA

Re: **Apogee USA, LLC, d/b/a E5**—Notice of Opposition
Applicant: Writing Tech Labs
Serial No.: 78/259,109

Mark: _____
Published: April 26, 2005
Attorney Ref. No.: 45501.0001

Honorable Sir:

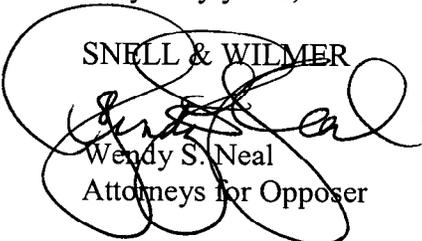
Enclosed is the Notice of Opposition, original and duplicate copy, of Apogee USA, LLC, d/b/a E5 with respect to the captioned application of Writing Tech Labs for a mark in International Class 25.

Also enclosed is Snell & Wilmer's Check No. 617821 in the amount of \$300.00 to cover the filing fee of \$300.00 per class. Should there be a deficiency in the fee enclosed, please charge our deposit account (19-2814) for the difference, **for which purpose a duplicate copy of this sheet is enclosed.**

Please stamp and date the enclosed blue postcard to acknowledge receipt of the above materials, and return it to us.

Very truly yours,

SNELL & WILMER


Wendy S. Neal
Attorneys for Opposer

1673650

05-31-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #64

TTAB

CERTIFICATE OF MAILING PURSUANT TO 37 C.F.R. § 1.8

I hereby certify that the below-identified Notice of Opposition and attached documents are being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on:

Date: May 25, 2005 By: Deane M. Richardson

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

In the matter of Application Serial No. 78/259,109

Published in the *Official Gazette* of April 26, 2005

APOGEE USA, LLC, d/b/a E5 USA
Opposer,
vs.
WRITING TECHS LAB,
Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

APOGEE USA, LLC, d/b/a E5 USA, a company organized and existing under the laws of the State of Arizona, with a mailing address at 400 South Clark Drive, Suite 101, Tempe, AZ, 85281 ("Apogee" or "Opposer"), believes that it will be damaged by registration of the mark shown in Serial No. 78/259,109 in International Class 25, and hereby opposes the same.

As grounds for this opposition, including grounds under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063, as amended, Opposer alleges the following:

1. WRITING TECHS LAB (hereinafter referred to as "Applicant") seeks to register the mark "e5 & Design" depicted in its intent-to-use Trademark Application, U.S. Serial No. 78/259,109, filed June 6, 2003, and published in the *Official Gazette* on April 26, 2005, as a

trademark for apparel, namely, T-shirts, jeans, sweat suits, sweaters and jackets in International Class 25.

2. Opposer is the owner of the mark E5, which is the subject of a pending federal trademark registration application having Serial No. 78/392,598 for clothing design services, namely, designing wearing apparel, and graphic illustration services, namely, designing graphics for wearing apparel for others in International Class 42. Opposer has used and promoted its E5 mark in commerce in connection with designing wearing apparel and designing graphics for wearing apparel since at least as early as September 30, 1998.

3. Opposer is also the owner of the mark E5 & Design, which is the subject of a pending federal trademark registration application having Serial No. 78/392,608 for designing wearing apparel and designing graphics for wearing apparel for others in International Class 42. Opposer has used and promoted its E5 & Design mark in commerce in connection with designing wearing apparel and designing graphics for wearing apparel for others since at least as early as September 30, 1998.

4. Applicant filed its intent-to-use Trademark Application Serial No. 78/259,109 on June 6, 2003. Thus, Opposer's use in commerce of its E5 and E5 & Design marks began nearly five years prior to Applicant's filing date of its intent-to-use application.

5. Opposer has established valuable goodwill in its E5 and E5 & Design marks and Opposer's use and promotion of its E5 and E5 & Design marks in connection with its clothing and graphic design services has led to the public's identification of the E5 mark—both stylized and non-stylized—with Opposer's products and services.

6. The trademark proposed for registration by Applicant, namely the stylized "e5" mark, is confusingly similar in sound, appearance, and connotation to Opposer's E5 and E5 & Design marks.

7. The goods that are identified in Applicant's Application Serial No. 78/259,109 are closely related in nature to Opposer's services listed in United States federal trademark registration application Serial No. 78/392,598 and to Opposer's services listed in United States federal trademark registration application Serial No. 78/392,608, and on information and belief, will or may be marketed through the same or similar channels of trade to the same class of consumers.

8. Applicant's use of its mark as specified in Application Serial No. 78/259,109 is likely to cause confusion, mistake, or deception with respect to Opposer's E5 and E5 & Design marks, and is likely to damage the goodwill represented and symbolized by said trademarks.

9. Upon information and belief, Applicant developed its mark in order to unfairly capitalize on the goodwill associated with Opposer's E5 and E5 & Design marks and to confuse consumers as to the source of Applicant's goods and services.

10. Allowing registration of Applicant's mark would allow Applicant to unfairly trade upon Opposer's substantial goodwill developed in the aforesaid trademarks. Registration of Applicant's mark would run counter to the public interest with respect to the ability of the relevant purchasing public to accurately ascertain the source of goods and services in the marketplace.

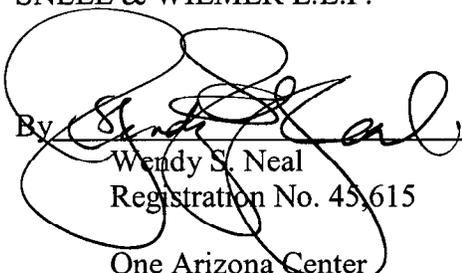
WHEREFORE, the Opposer prays that Application Serial No. 78/259,109 be refused, that no registration be issued thereon, and that this opposition be sustained in favor of Opposer.

This Notice of Opposition is timely filed within the time granted by the Trademark Trial and Appeal Board.

A duplicate copy of this Notice of Opposition and Snell & Wilmer's Check No. 617821 in the amount of \$300.00 to cover the filing fee of \$300.00 per class required under Section 2.6(a)(17) are enclosed herewith.

Respectfully submitted,

SNELL & WILMER L.L.P.

By 

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