

ESTTA Tracking number: **ESTTA76182**

Filing date: **04/13/2006**

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

Proceeding	91167991
Party	Defendant Maidenform, Inc. Maidenform, Inc. 200 Madison Avenue New York, NY 10016
Correspondence Address	Jennifer A. Prioleau 154 Avenue E. Bayonne, NJ 07002 UNITED STATES jprioleau@maidenform.com
Submission	Answer
Filer's Name	Jennifer A. Prioleau
Filer's e-mail	jprioleau@maidenform.com
Signature	/jap1973/
Date	04/13/2006
Attachments	One Fabulous Fit.pdf (5 pages)

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

In the Matter of Serial No. 78/363,351)
For the Mark: ONE FABULOUS FIT)
)
The H.D. Lee Company, Inc., Opposer)
)
v.) Opposition No. 91167991
)
Maidenform, Inc., Applicant.)

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION
REGARDING APPLICATION SERIAL NO. 78/363,351**

Applicant Maidenform, Inc. (hereinafter “Applicant”), by and through its attorneys, hereby answers the Notice of Opposition filed by Opposer The H.D. Lee Company, Inc. (hereinafter “Opposer”) regarding Application Serial No. 78/363,351 for the mark ONE FABULOUS FIT.

The allegations of the Notice of Opposition are repeated in single space below, followed by Applicant’s response.

PARAGRAPH 1:

Applicant is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration on the Principal Register of the mark ONE FABULOUS FIT for “foundation garments, panties, and brassieres” in International Class 25.

ANSWER TO PARAGRAPH 1:

Applicant admits the allegations set forth in Paragraph 1 of the Notice of Opposition.

PARAGRAPH 2:

Applicant is not now, and never was, entitled to registration on the Principal Register of the mark ONE FABULOUS FIT either on February 5, 2004, the date of

Applicant's filing of the application, or on August 9, 2005, the date of publication in the Official Gazette.

ANSWER TO PARAGRAPH 2:

Applicant denies the allegations set forth in Paragraph 2 of the Notice of Opposition.

PARAGRAPH 3:

Opposer is the owner of numerous FIT marks in International Class 25 including THE BRAND THAT FITS (73/532,709) for "men's, women's and children's outer clothing—namely, jeans, jackets, vests, skirts, shirts, blouses, pants, slacks, trousers, shorts, sweatshirts, sweatpants, bib overalls, one-piece work suits, tee-shirts and men's and boys' undershirts, undershorts and socks."

ANSWER TO PARAGRAPH 3:

Applicant is without information sufficient to form a belief as to the allegations set forth in Paragraph 3 of the Notice of Opposition, and therefore denies those allegations.

PARAGRAPH 4:

Opposer has, since long prior to the filing date of Applicant's use-based application, sold in commerce in the United States its products under the trademark THE BRAND THAT FITS. Through usage by Opposer, THE BRAND THAT FITS has become well-known to customers and potential customers as a trademark of Opposer, and as an origin and source of the goods sold and provided by Opposer.

ANSWER TO PARAGRAPH 4:

Applicant is without information sufficient to form a belief as to the allegations set forth in Paragraph 4 of the Notice of Opposition, and therefore denies those allegations.

PARAGRAPH 5:

Because of the great similarity between the Opposer's mark and Applicant's mark, and the fact that some of the respective goods of the parties are closely related in the

clothing field, Applicant's mark is likely to cause confusion, mistake, or deception amongst the general and consuming public as to whether Applicant's goods are being offered by, or in affiliation with, Opposer causing damage to Opposer.

ANSWER TO PARAGRAPH 5:

Applicant denies the allegations set forth in Paragraph 5 of the Notice of Opposition.

PARAGRAPH 6:

Applicant's registration and use of ONE FABULOUS FIT also will dilute the distinctive quality of Opposer's mark, which became famous before the filing date of Applicant's use-based application and before its claimed date of first use in commerce, thereby lessening the ability of Opposer's famous mark to distinguish Opposer's goods and services and causing damage to Opposer.

ANSWER TO PARAGRAPH 6:

Applicant denies the allegations set forth in Paragraph 6 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

7. For its first affirmative defense, Applicant alleges that there is no likelihood of confusion, mistake, or deception amongst the general and consuming public between Applicant's ONE FABULOUS FIT mark and Opposer's THE BRAND THAT FITS mark.
8. For its second affirmative defense, Applicant alleges that Applicant's ONE FABULOUS FIT mark does not and will not dilute Opposer's THE BRAND THAT FITS mark.

Wherefore Applicant denies that Opposer is entitled to any relief and respectfully requests that this Opposition No. 91167991 be dismissed with prejudice.

Respectfully submitted,

MAIDENFORM, INC.

Dated April 13, 2006

By: 

Jennifer A. Prioleau
Assistant General Counsel
Maidenform, Inc.
154 Avenue E
Bayonne, NJ 07002
Telephone: (201) 243-2121
Facsimile: (201) 436-9506

Attorney for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION REGARDING APPLICATION SERIAL NO. 78/363,351** was served on Opposer on this 13th day of April, 2006, by first class mail, postage prepaid, addressed as follows:

Mr. Paul J. Kennedy, Esq.
Pepper Hamilton LLP
18th and Arch Streets
Philadelphia, PA 19103-2799



Jennifer A. Prioleau