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

Proceeding	91212784
Party	Defendant totes Isotoner Corporation
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD

APPLICATION SERIAL NO. 85/875750

Opposition No. 91212784

THE TRAVELERS INDEMNITY COMPANY
Opposer,
v.
totes ISOTONER CORPORATION
Applicant.

ANSWER TO NOTICE OF OPPOSITION

totes Isotoner Corporation (“Applicant”), through its undersigned attorney, hereby answers the Notice of Opposition (the “Notice”) of The Travelers Indemnity Company (“Opposer”) as follows:

In answer to the opening paragraph of the Notice, Applicant admits that it filed the trademark application assigned Serial No. 85/75750 (the “Application”) with the United States Patent and Trademark Office. Applicant is without sufficient knowledge or information to form a belief as to the address of Opposer listed in the opening paragraph, and on that basis denies the same. It is denies the balance of the allegations of the opening paragraph.

1. Applicant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 1 of the Notice, and on that basis denies such allegations.

2. Applicant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the Notice, and on that basis denies such allegations.

3. Applicant admits that Opposer uses a red umbrella similar to that depicted in Paragraph 3 of the Notice in connection with insurance products. It lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 3 of the Notice, and on that basis denies such allegations.

4. Applicant denies that Opposer used, or uses, the red umbrella mark as depicted in Paragraph 3 of the Notice and defined by Opposer in the Notice as the “Travelers Umbrella Mark” in connection with any on-line sales, but rather that it uses a mark that prominently displays its company name, Travelers, in conjunction with a red umbrella (the “Travelers Combined Mark”), as shown below:



Applicant lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 4 of the Notice and on that basis denies such allegations.

5. Applicant admits that Opposer uses the Travelers Combined Mark in connection with on-line retail services, but denies the balance of the allegations contained in Paragraph 5 of the Notice, and specifically denies that Travelers is using the Travelers Umbrella Mark in connection with on-line retail services.

6. Applicant denies that all of the products depicted in Paragraph 6 of the Opposition bear the Travelers Umbrella Mark, but rather many bear the Travelers Combined Mark. Applicant lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 6 of the Notice, and on that basis denies such allegations.

7. Applicant denies that all of the products described in Paragraph 7 of the Opposition bear the Travelers Umbrella Mark, but rather many bear the Travelers Combined

Mark. Applicant lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 7 of the Notice, and on that basis denies such allegations.

8. Applicant denies the allegations contained in Paragraph 8 of the Notice to the extent they relate to on-line retail store services featuring footwear, clothing and clothing accessories. It lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 8 of the Notice, and on that basis denies such allegations.

9. Applicant lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 9 of the Notice, and on that basis denies such allegations.

10. Applicant admits that Opposer has proffered a listing of publications that refer to Opposer's insurance services. Responding further, Applicant lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 10 of the Notice, and on that basis denies such allegations.

11. Applicant admits that Opposer has identified United States trademark registrations for the Travelers Umbrella Mark in Class 36 and that it has identified United States trademark registrations for the Travelers Combined Mark in Class 35, but it lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 11 of the Notice, and on that basis denies such allegations. Responding further, the records of the United States Patent and Trademark Office are public records and can speak for themselves.

12. Applicant admits that federal trademark registrations constitute certain *prima facie* evidence of an owner's rights in connection with the services recited in such registrations. It denies that the registrations identified in Paragraph 11 of the Notice provide any evidence of Opposer's rights to use the Travelers Umbrella Mark in Class 35 or in connection with the offering or sale of footwear, clothing, or clothing accessories. Furthermore, Applicant lacks sufficient knowledge to

admit or deny the balance of the allegations contained in Paragraph 12 of the Notice, and on that basis denies such allegations.

13. Applicant denies that Opposer is using, or has used, the Travelers Umbrella Mark in connection with on-line retail store services featuring footwear, clothing and clothing accessories, or that the Travelers Umbrella Mark possesses a high degree of distinctiveness, is well-known or famous in the United States for many years for such services, including prior to Applicant's filing date and dates of first use of its red umbrella mark, as defined by Application Serial No. 85/875750.

14. Applicant admits the allegations of Paragraph 14 of the Notice.

15. Applicant admits the allegations of Paragraph 15 of the Notice.

COUNT I

16. In response to Paragraph 16 of the Notice, Applicant repeats its responses in Paragraphs 1-15 above.

17. Applicant denies the allegations of Paragraph 17 of the Notice.

18. Applicant denies the allegations of Paragraph 18 of the Notice.

19. Applicant denies the allegations of Paragraph 19 of the Notice.

COUNT II

20. In response to Paragraph 20 of the Notice, Applicant repeats its responses in Paragraphs 1-19 above.

21. Applicant denies the allegations of Paragraph 21 of the Notice to the extent they are directed to use of the Travelers Umbrella Mark in connection with services in Class 35, and particularly on-line retail store services featuring footwear, clothing and clothing accessories. Applicant lacks sufficient knowledge to admit or deny the balance of the allegations contained in Paragraph 21 of the Notice, and on that basis denies such allegations.

22. Applicant denies the allegations contained in Paragraph 22 of the Notice.
23. Applicant denies the allegations of Paragraph 23 of the Notice.

DEFENSES

To further answer the Notice, Applicant alleges and asserts the following defenses, without assuming any burden of proof or persuasion that would otherwise vest in or rest with Opposer:

1. Applicant's mark is sufficiently different from Opposer's marks as used in connection with any on-line retail store services as to preclude a likelihood of confusion.
2. Opposer has failed to state a claim upon which relief could be granted as to Count II as there is no right to relief for a claim of a likelihood of dilution.
3. There is no likelihood of confusion between the marks cited in Opposer's Notice of Opposition and Applicant's mark (or a likelihood of dilution of such marks).
4. Despite years of use of Applicant's mark in connection with on-line retail sales there has been no actual confusion with any of Opposer's marks, and there is unlikely to be any confusion or dilution in the future.
5. Applicant has priority over Opposer as its use of its mark in connection with footwear, clothing, and clothing accessories predates any use of a red umbrella mark in connection with on-line retail services by Opposer.
6. Applicant's services are sufficiently different from any of Opposer's services for which it is known so as to preclude a likelihood of confusion and a likelihood of dilution.
7. The channels of trade used by Applicant and Opposer are sufficiently different so as to preclude a likelihood of confusion and a likelihood of dilution.
8. The consumers of Opposer's services are careful and sophisticated such that neither a likelihood of confusion nor a likelihood of dilution exists.

9. Opposer will not be damaged or injured by the registration of Applicant's mark.
10. Opposer fails to state a claim on which relief may be granted.
11. Opposer's claims are barred by laches and equitable estoppel.
12. Applicant reserves the right to plead additional defenses as may be discovered during these proceedings.

Applicant requests that the Notice be dismissed with prejudice and that Applicant's mark proceed towards allowance and registration.

Respectfully submitted,

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/s/ Ann G. Schoen

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CERTIFICATE OF SERVICE

I, Ann G. Schoen, hereby certify that a true and complete a copy of the foregoing was served on the below-listed persons by mailing said copies on November 25, 2013 via United States Postal Service, First Class Mail, with proper postage thereon.

David M. Kelly
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/s/ Ann G. Schoen _____

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