

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

GTFM, INC.	§	
	§	Opposition No. 91157907
Opposer,	§	
	§	
v.	§	Application Serial
	§	No. 76/340,802
THE NORTH FACE APPAREL CORP.	§	
	§	
Applicant.	§	Published: August 19, 2003
	§	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Box TTAB- No Fee
Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



11-05-2003

U.S. Patent & TMOtc:TM Mail Ropt Dt. #22

Dear Sir:

Applicant The North Face Apparel Corp. ("Applicant") responds to the Notice of Opposition filed by GTFM, Inc. ("Opposer") as follows:

Applicant admits that it filed application Serial No. 76/340,802 as set forth in Opposer's introductory paragraph to its Notice of Opposition. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining statements in Opposer's introductory paragraph and on that basis denies these remaining statements.

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of Opposer's Notice of Opposition, and on that basis, denies those allegations.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of Opposer's Notice of Opposition and, on that basis, denies those allegations.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of Opposer's Notice of Opposition and, on that basis, denies those allegations.
4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of Opposer's Notice of Opposition and, on that basis, denies those allegations.
5. Applicant admits that it filed an application to register the mark set forth in Serial No. 76/340,802 and that said mark contains the number "5". Other than such admission, Applicant denies the allegations in paragraph 5 of Opposer's Notice of Opposition.
6. No response is required as no paragraph 6 is included in Opposer's Notice of Opposition.
7. No response is required as no paragraph 7 is included in Opposer's Notice of Opposition.

8. Applicant denies the allegations in paragraph 8 of Opposer's Notice of Opposition.
9. Applicant denies the allegations in paragraph 9 of Opposer's Notice of Opposition.

AFFIRMATIVE DEFENSES

As affirmative defenses to the Notice of Opposition, Applicant alleges as follows:

1. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.
2. Opposer's claims in Opposer's Notice of Opposition are barred under the doctrine of estoppel.
3. Opposer's claims in Opposer's Notice of Opposition are barred under the doctrine of laches.
4. Opposer's claims in Opposer's Notice of Opposition are barred by waiver.
5. There is no likelihood of confusion between FUBU 05 and/or 05 and A5 for use on the goods identified in Application Serial No. 76/340,802.
6. Opposer does not own trademark rights in the term 05 as Opposer's use of 05 has been merely decorative.
7. There is no likelihood of confusion between FUBU 05 and/or 05 and A5 because many third party marks contain the number "5".

Wherefore, Applicant requests that the Notice of Opposition be dismissed in its entirety,
and that the subject application proceed to registration.

Respectfully submitted,

THE NORTH FACE APPAREL CORP.

Date: November 5, 2003

By: Katherine M Basile
Susan M. Kayser
Katherine M. Basile
HOWREY SIMON ARNOLD & WHITE, LLP
1299 Pennsylvania Ave., N.W.
Washington, DC 20004

Attorneys for Applicant
THE NORTH FACE APPAREL CORP.

CERTIFICATE OF EXPRESS MAIL

NUMBER: EL910464158US

DATE OF DEPOSIT: November 5, 2003

I hereby certify that this paper is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to: Box TTAB - No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Rhoda C. Lin
Rhoda C. Lin

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Applicant's Answer to Notice of Opposition" was served on William H. Cox, counsel for Opposer at GTFM, Inc, 355 Lexington Avenue, New York, New York, 10017, by First Class mail, postage prepaid, this 5th day of November, 2003.

Rhoda C. Lin
Rhoda C. Lin

TTAB



301 RAVENSWOOD AVENUE
MENLO PARK, CA 94025-3434
PHONE 650.463.8100
FAX 650.463.8400
A LIMITED LIABILITY PARTNERSHIP

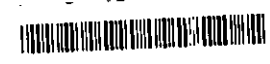
KATHERINE M. BASILE
PARTNER
650.463.8286
basilek@howrey.com

File: 07578.0039.000000

November 5, 2003

Via Express Mail No.: EL910464158US

Commissioner for Trademarks
Box TTAB FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513



11-05-2003
U.S. Patent & TMO/TM Mail Rpt Dt #22

RE: *Applicant's Answer to Notice of Opposition*
Mark: A5
Opposition No.: 91157907
Serial No.: 76/340,802
Applicant: The North Face Apparel Corp.
Opposer: GTFM, Inc.

Dear Sir/Madam:

Enclosed for filing are:

1. This letter (in duplicate),
2. Applicant's Answer to Notice of Opposition,
3. A self-addressed stamped postcard to evidence receipt of this Answer to Notice of Opposition.

The Commissioner for Trademarks is hereby authorized to draw on the deposit account of Howrey Simon Arnold & White, LLP, Account No. 08-3038, Order No. 07578.0039.000000/K. Basile for any necessary fees.

Please return the enclosed postcard to evidence receipt of the Answer to Notice of Opposition.

Very truly yours,

Katherine M. Basile
Katherine M. Basile

Enclosures