

# BELL, BOYD & LLOYD LLC

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# TTAB

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December 6, 2004

## VIA FIRST CLASS MAIL

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

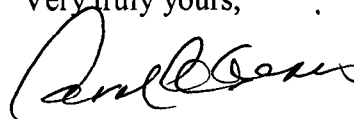
Dear Commissioner:

Enclosed on behalf of our client, Topco Holdings, Inc., please find the following:

1. An Answer to Notice of Opposition for OXY CLENZ, Opposition No. 91162682; and
2. A postcard which we ask that you date stamp and return.

Please reference attorney docket No. 0114481-657 on all correspondence.

Very truly yours,



Carol A. Genis

CAG:mcf  
Enclosures



12-09-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

c h i c a g o • w a s h i n g t o n

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

In the Matter of Application Serial No. 78/253,738  
Filed: May 23, 2003  
For the Mark: OXY CLENZ  
Published in the Official Gazette on October 5, 2004  
Applicant: Topco Holdings, Inc.

ORANGE GLO INTERNATIONAL, INC.	)	
	)	
Opposer,	)	Opposition No. 91162682
	)	
	)	
v.	)	
	)	
	)	
TOPCO HOLDINGS, INC.	)	
	)	
Applicant	)	
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Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Topco Holdings, Inc. ("Applicant") by its undersigned counsel, Bell, Boyd & Lloyd LLC, hereby files its Answer to the Notice of Opposition filed by Orange Glo International, Inc. ("Opposer"), as follows:

**ANSWER TO NOTICE OF OPPOSITION**

1. Orange Glo is the owner of U.S. Trademark Registration No. 2,430,077 (the "077" Registration) for the mark OXICLEAN, which was registered on the Principal Register on February 20, 2001.

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1, and therefore denies the same.

2. Orange Glo's registration for OXICLEAN was in, *inter alia*, International Class 003 for "[a]ll purpose cleaning preparations, toilet bowl cleaning preparations and stain removing preparations."

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2, and therefore denies the same.

3. A true and correct copy of the '077 Registration is attached hereto as Exhibit A.

**ANSWER:** Applicant admits only that a copy of the '077 Registration is attached as Exhibit A to Opposer's Notice of Opposition and states that the document speaks for itself. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3, and therefore denies the same.

4. Orange Glo's Registration was based on an application filed with the U.S. Patent and Trademark Office on April 14, 2000.

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4, and therefore denies the same.

5. Orange Glo's application for the OXICLEAN mark contains a first use date of August 1992.

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5, and therefore denies the same.

6. Orange Glo first began using the OXICLEAN mark in interstate commerce in August 1992.

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6, and therefore denies the same.

7. Orange Glo's '077 Registration for OXICLEAN is valid and subsisting.

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7, and therefore denies the same.

8. Orange Glo's '077 Registration is *prima facie* evidence of Orange Glo's exclusive right to use the mark in commerce on the goods specified in the '077 Registration.

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8, and therefore denies the same.

9. On May 23, 2003, Applicant filed an Application, Serial No. 78253738 (the "Application") for the mark OXY CLENZ for use in connection with the following goods:

International Class 003. All purpose cleaning and stain removing preparations.

**ANSWER:** Applicant admits only that it filed an intent-to-use application to register the mark OXY CLENZ for use in connection with "All purpose cleaning and stain removing preparations" in International Class 3. Except as so admitted, Applicant denies the remaining allegations contained in Paragraph 9.

10. Applicant filed the Application on an intent-to-use basis pursuant to §1(b) of the Lanham Act. Upon information and belief, Applicant was not using the mark OXY CLENZ prior to May 23, 2003.

**ANSWER:** Applicant admits only that it filed an intent-to-use application to register the mark OXY CLENZ for use in connection with "All purpose cleaning and stain removing preparations" in International Class 3. Except as so admitted, Applicant denies the remaining allegations contained in Paragraph 10.

11. On October 5, 2004, the Application for OXY CLENZ was published for opposition in the Official Gazette.

**ANSWER:** Applicant admits the allegations contained in Paragraph 11.

12. Applicant's Application was filed after the date that Orange Glo filed its trademark application for the OXICLEAN mark and after the OXICLEAN mark was registered.

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12, and therefore denies the same.

13. Applicant's Application was filed after the first use date in commerce date for Orange Glo's OXICLEAN mark.

**ANSWER:** Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 13, and therefore denies the same.

14. In view of the similarity of Applicant's OXY CLENZ mark with Orange Glo's registered OXICLEAN mark, and in view of the related or identical nature of the goods of the respective parties, Applicant's mark OXY CLENZ so resembles Orange Glo's registered OXICLEAN mark as to be likely to cause confusion, to cause mistake, or to deceive.

**ANSWER:** Applicant denies the allegations contained in Paragraph 14.

15. In view of the similarity of Applicant's OXY CLENZ mark with Orange Glo's registered OXICLEAN mark, and in view of the related or identical nature of the goods of the respective parties, it is alleged that Applicant's OXY CLENZ mark consists of or comprises matter that may falsely suggest a connection with Orange Glo.

**ANSWER:** Applicant denies the allegations contained in Paragraph 15.

16. Based upon the foregoing averments, registration of Applicant's mark will cause injury and damage to Orange Glo.

**ANSWER:** Applicant denies the allegations contained in Paragraph 16.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice in its entirety.

Dated: December 6, 2004.

Respectfully submitted,

TOPCO HOLDINGS, INC., Applicant



By: One of Its Attorneys

Carol A. Genis, Esq.  
Christopher I. Cedillo, Esq.  
BELL, BOYD & LLOYD LLC  
P.O. Box 1135  
Chicago, Illinois 60690-1135  
(312) 372-1121

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that she caused a copy of Applicant's Answer to Notice of Opposition to be served upon counsel for Opposer at the following address:

Salvador K. Karotki  
Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd.  
55 East Monroe Street  
Suite 3700  
Chicago, IL 60603

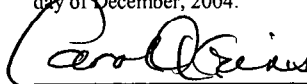
by first class mail, proper postage prepaid, this 6th day of December, 2004.



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**CERTIFICATE OF MAILING**

I, Carol A. Genis, do hereby certify that the foregoing document is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria Virginia, 22313-1451 on this 6th day of December, 2004.



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Signature