


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



New England Motor Freight, Inc., :
Opposer
v. : Opposition No. 91165684
A Plus Express Co., : Serial No. 76/495,882
Applicant :
:

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Mail Stop TTAB
Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451


07-28-2005
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #39

Sir:

Applicant, A Plus Express Co., by the undersigned attorney hereby answers each of the allegations filed in the Notice of Opposition brought by the Opposer:

(1) Applicant is without knowledge or information to form a belief as to the allegation of the Opposer in paragraph 1 of the Notice of Opposition and therefore denies same.

(2) Applicant is without knowledge or information to form a belief as to the allegation of the Opposer in paragraph 2 of the Notice of Opposition and therefore denies same.

(3) Applicant admits in part and denies in part the allegations made in paragraph 3 of the Notice of Opposition. Applicant admits that the mark "APEX A PLUS EXPRESS" & Design is owned by Applicant and is the subject of Trademark Application Serial No. 76/495,882, filed on 7 March 2003. Applicant

is without knowledge or information to form a belief as to the allegation that the Opposer is the owner of U.S. Application Serial No. 78/225,602 for the mark "APEX LOGISTICS " for freight transportation services by truck. Applicant admits that the website of the U.S. Patent and Trademark Office shows that Serial No. 78/225,602 was filed on 14 March 2003. Applicant is without knowledge or information with regard to Opposer's examination of Serial No. 78/225,602, before the USPTO and therefore denies Opposer's allegation.

(4) Applicant admits in part and denies in part the allegations made in paragraph 4 of the Notice of Opposition. Applicant admits that the word "EXPRESS " has been disclaimed from Applicant's mark, Serial No. 76/495,882, now pending before the USPTO. Applicant denies the allegation in paragraph 4 as to the dominant portion of Applicant's mark and Opposer's mark being the term "APEX ". Applicant denies that Applicant's mark is confusingly and deceptively similar to Opposer's mark.

(5) Applicant admits in part and denies in part the allegations made in paragraph 5 of the Notice of Opposition. Applicant admits that Applicant's services are directed to courier services for messages; courier services for merchandise, courier service for cargo. Applicant admits that a search of the website of the U.S. Patent and Trademark Office discloses that at the present time, Opposer's services are directed to freight transportation services by truck. However, it is not known what services will be added or clarified during the prosecution of Opposer's application and therefore Applicant denies the services

MR2723-257/OPP

of freight transportation by truck for Opposer's mark. Applicant denies the allegation that there is sufficient relationship between the services of Opposer and Applicant such that the services rendered under Applicant's mark and Opposer's mark would be confusingly similar and Applicant contends no likelihood of confusion would exist.

(6) Applicant denies the allegations of the Opposer in paragraph 6 of the Notice of Opposition.

(7) Applicant is without knowledge or information to form a belief as to the allegation of the Opposer in paragraph 7 of the Notice of Opposition and therefore denies same.

(8) Applicant denies the allegation made by Opposer in paragraph 8 of the Notice of Opposition.

FURTHER DEFENSES

(9) Applicant in the following paragraph, provides to the TTAB, some defenses which respond to Opposer's allegations made in the Notice of Opposition. Applicant reserves the right to develop further defenses during the Discovery Phase of the Opposition.

(10) Applicant filed the subject Trademark Application, Serial No. 76/495,882 at the U.S. Patent and Trademark Office on 7 March 2003 (Exhibit A, attached). Applicant's mark consist of the letters "APEX A PLUS EXPRESS " and Chinese characters which translate to "A Plus Express."

(11) Opposer has apparently filed Serial No. 78/225,602 on 14 March 2003 for the mark "APEX LOGISTICS " (Exhibit B, attached).

(12) It is presumed by Applicant that the bases for Opposer's Opposition is directed to Opposer's word "APEX " when taken with respect to Applicant's "APEX ". In Opposition to Opposer's contention, the third character of Applicant's mark is a " Σ " (Sigma). The Sigma character was chosen by Applicant since it has the meaning of "summing up" which is the main idea that Applicant is trying to bring out in the usage of its mark that the services of Applicant are complete or sum up the courier services of Applicant.

(13) Arguendo, even if Opposer takes the position that the character "Σ " has the appearance of the English character "E " (which Applicant forcefully argues are not the same or even similar), it is noted that the term "APEX " is diluted at the USPTO, even in International Class 39. The mark "APEX " is

clearly used in Registration No. 2,618,063 (Exhibit C, attached) for general transportation services. Additionally, Registration 2,784,537 (Exhibit D, attached) for the mark "APEX AVIATION" is in effect in International Class 39 for airplane chartering services.

(14) Registration No. 2,784,537 (Exhibit D) in itself was published for opposition while Registration No. 1,917,455 (Exhibit E, attached) which although being canceled at the present time was in effect at the time that Registration No. 2,784,537 (Exhibit D) was published for opposition. Both of these Registrations were issued in International Class 39.

(15) A brief search of the Trademark Office Records shows that over fifty (50) Registrations have been issued by the U.S. Patent and Trademark Office in service classes using the term "APEX."

(16) In the Notice of Opposition, the Opposer has specifically stated that the term "EXPRESS" has been disclaimed from Applicant's mark "APEX A PLUS EXPRESS" and that the word "LOGISTICS" has been disclaimed from Opposer's mark "APEX LOGISTICS" and then has come to the erroneous conclusion that the dominant portion of both mark is the term "APEX." The overall commercial impression of Applicant's mark "APEX A PLUS EXPRESS" is completely different than Opposer's "APEX LOGISTICS." Additionally, Applicant's mark clearly shows the "APEX" over a an oval contour background with the words "A PLUS EXPRESS" beneath the oval contour. Additionally, the Chinese characters being translated to "A PLUS EXPRESS" is significantly

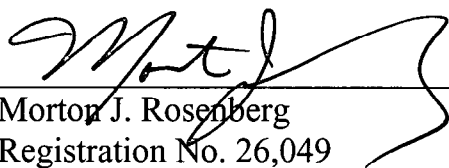
shown next to the characters "APEX." The Opposer has come to the further erroneous conclusion that the "dominant portion " of both marks is the term "APEX." In fact, the term "APEX " does not appear in Applicant's mark and the remaining portion of Applicant's mark are at least as dominant as Applicant's "APEX."

(17) Opposer has argued in the Notice of Opposition that Applicant's courier services for message; courier services for merchandise; courier services for cargo is confusingly and deceptively similar to Opposer's mark "APEX LOGISTICS " for freight transportation services by truck. The channels of trade for "courier services " of Applicant and the "freight transportation services by truck " of Opposer are completely different and do not overlap.

Wherefore, having made full answer to the Notice of Opposition, Applicant prays that the Opposition be dismissed.

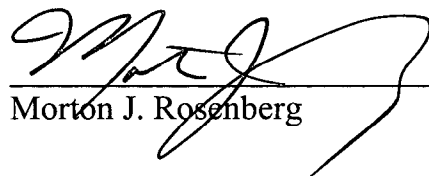
FOR: ROSENBERG, KLEIN & LEE

27 July 2005
Date


Morton J. Rosenberg
Registration No. 26,049
Attorney for Applicant
3458 Ellicott Center Drive
Ellicott City, MD 21043
Tel: 410-465-6678

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Applicant's Answer to Notice of Opposition was served on the Opposer by mailing a true copy thereof by First Class Mail, postage prepaid to: Martin J. Beran, Esq., at Ostrolenk, Faber, Gerb & Soffen, LLP, 1180 Avenue of the Americas, New York, New York 10036-8403 on this 27th day of July 2005.



Morton J. Rosenberg



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

Trademark Electronic Search System(Tess)

TESS was last updated on Sat Jul 23 04:12:44 EDT 2005

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT BOTTOM HELP

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

TARR Status ASSIGN Status TDR Status TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark	APEX A PLUS EXPRESS
Translations	The Chinese characters in the mark transliterate to "Quan Yi Kuai Di" and this means "A Plus Express" in English.
Goods and Services	IC 039. US 100 105. G & S: COURIER SERVICES FOR MESSAGES; COURIER SERVICES FOR MERCHANDISE; COURIER SERVICES FOR CARGO. FIRST USE: 20000301. FIRST USE IN COMMERCE: 20021001
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	260321 280103
Serial Number	76495882
Filing Date	March 7, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	March 8, 2005
Owner	(APPLICANT) A PLUS EXPRESS CO. CORPORATION TAIWAN 1F, No.179, Tayou Rd. Sungshan Chiu, Taipei TAIWAN
Attorney of Record	Morton J. Rosenberg, Esq.
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EXPRESS" APART FROM THE MARK AS SHOWN



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

Trademark Electronic Search System(Tess)

TESS was last updated on Sat Jul 23 04:12:44 EDT 2005

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [BOTTOM](#) | [HELP](#)

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TARR Status](#) | [ASSIGN Status](#) | [TDR Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	APEX LOGISTICS
Goods and Services	IC 039. US 100 105. G & S: freight transportation services by truck. FIRST USE: 19860000. FIRST USE IN COMMERCE: 19860000
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78225602
Filing Date	March 14, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) New England Motor Freight, Inc. CORPORATION NEW JERSEY 1-71 North Avenue East Elizabeth NEW JERSEY 07201
Attorney of Record	Martin J. Beran
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LOGISTICS" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [TOP](#) | [HELP](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

Trademark Electronic Search System(Tess)

TESS was last updated on Sat Jul 23 04:12:44 EDT 2005

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [BOTTOM](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#) | [NEXT LIST](#)
[FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 6 out of 12**

[TARR Status](#) | [ASSIGN Status](#) | [TDR Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark	APEX
Goods and Services	<p>IC 035. US 100 101 102. G & S: convention services, namely organizing and arranging conventions, meetings and exhibitions. FIRST USE: 19971200. FIRST USE IN COMMERCE: 19971200</p> <p>IC 043. US 100 101. G & S: travel services, namely making reservations and booking for temporary lodging. FIRST USE: 19971200. FIRST USE IN COMMERCE: 19971200</p> <p>IC 039. US 100 105. G & S: transportation services, namely providing transportation of passengers by bus, van and car, and travel services, namely making reservations and bookings for transportation; making travel arrangements; and arranging and conducting sightseeing tours for others. FIRST USE: 19971200. FIRST USE IN COMMERCE: 19971200</p>
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	260503 260521
Serial Number	76336648
Filing Date	November 13, 2001
Current Filing Basis	1A
Original Filing Basis	1A
Published for	June 18, 2002

Opposition

Registration Number 2618063

Registration Date September 10, 2002

Owner (REGISTRANT) Apex Transportation Services, LLC LIMITED LIABILITY COMPANY NEW YORK
3999 Genesee Street Buffalo NEW YORK 14225

Attorney of Record Peter K. Sommer

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP	PREV LIST	CURR LIST	NEXT LIST
FIRST DOC	PREV DOC	NEXT DOC	LAST DOC						

[| HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

[Trademarks](#) > Trademark Electronic Search System (TESS)

Trademark Electronic Search System(Tess)

TESS was last updated on Sat Jul 23 04:12:44 EDT 2005

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSER DICT](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)
[NEXT LIST](#)
[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 8 out of 12**

[TARR Status](#)
[ASSIGN Status](#)
[TDR Status](#)
[TTAB Status](#)
 (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	APEX AVIATION
Goods and Services	IC 035. US 100 101 102. G & S: INDEPENDENT SALES REPRESENTATIVE IN THE FIELD OF AIRCRAFT. FIRST USE: 20020101. FIRST USE IN COMMERCE: 20020101
	IC 039. US 100 105. G & S: AIRPLANE CHARTERING. FIRST USE: 20010601. FIRST USE IN COMMERCE: 20010601
	IC 042. US 100 101. G & S: TECHNICAL CONSULTING IN THE FIELD OF AVIATION. FIRST USE: 20020101. FIRST USE IN COMMERCE: 20020101
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75863383
Filing Date	December 3, 1999
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	January 2, 2001
Registration Number	2784537
Registration Date	November 18, 2003
Owner	(REGISTRANT) Apex Aviation Corporation CORPORATION CALIFORNIA 477 Devlin Road Suite 101 Napa CALIFORNIA 94558
Attorney of Record	Mark S. Anderson
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AVIATION" APART FROM THE



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

Trademark Electronic Search System(Tess)

TESS was last updated on Sat Jul 23 04:12:44 EDT 2005

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [BOTTOM](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 11 out of 12**

[TARR Status](#) [ASSIGN Status](#) [TDR Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark APEX EXPRESS
Goods and Services (CANCELLED) IC 039. US 100 105. G & S: transportation of freight by truck. FIRST USE: 19860700. FIRST USE IN COMMERCE: 19950100
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74427154
Filing Date August 23, 1993
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition March 29, 1994
Registration Number 1917445
Registration Date September 5, 1995
Owner (REGISTRANT) Transfirst International Inc. CORPORATION CANADA 1011 Wilson Avenue Downsview, Ontario M3K 1G4 CANADA
Attorney of Record Daniel P. Joyce
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EXPRESS" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Cancellation Date March 1, 2002

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [TOP](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)