

ESTTA Tracking number: **ESTTA54614**

Filing date: **11/22/2005**

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

Proceeding	91166936
Party	Defendant Topco Holdings, Inc. Topco Holdings, Inc. 7711 Gross Point Road Skokie, IL 60077
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Date	11/22/2005
Attachments	Answer to PAWS PREMIUM Opposition.pdf (7 pages)

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

In the Matter of Application Serial No. 78/284,921
For the Mark: PAWS PREMIUM
Published in the *Official Gazette* on September 13, 2005
Applicant: TOPCO HOLDINGS, INC.

CONTINUUM COMMERCE, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91166936
)	
TOPCO HOLDINGS, INC.)	
)	
Applicant.)	

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**ANSWER AND AFFIRMATIVE
DEFENSES TO NOTICE OF OPPOSITION**

Topco Holdings, Inc. (“Applicant”) by its undersigned counsel, Bell, Boyd & Lloyd, LLC, hereby files its Answer to the Notice of Opposition filed herein by Continuum Commerce, LLC (“Opposer”), as follows:

1. On August 8, 2003, Topco Holdings, Inc. (“Applicant”) filed Application Serial No. 78/284,921 (the “Opposed Application”), to register the mark PAWS PREMIUM (the “Proposed Mark”) for use in connection with pet vitamins, in International Class 5.

ANSWER: Applicant admits the allegations in Paragraph 1.

2. The Opposed Application was published for opposition in the Official Gazette on September 13, 2005.

ANSWER: Applicant admits the allegations in Paragraph 2.

3. This Notice of Opposition is timely filed.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 3, and therefore denies the same.

4. The Opposed Application was filed on August 8, 2003 on the basis of Applicant's claimed bona fide intent to use the Proposed Mark in commerce with pet vitamins, the goods listed in the Opposed Application ("Applicant's Goods").

ANSWER: Applicant admits the allegations in Paragraph 4.

5. Opposer is the owner of federal trademark registration No. 2,861,193, registered as of July 6, 2004, for the mark PAAWS for veterinary pharmaceutical preparations for canines and pet foods.

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

6. Opposer is the owner of federal trademark registration No. 2,922,099, registered as of February 1, 2005, for the mark PAAWS PET ANTI-AGING WELLNESS SYSTEM for veterinary pharmaceutical preparations for canines, namely veterinary food supplements, vitamins, antioxidants, minerals, phyto-nutrients, nutraceuticals, immune system stimulants and dietary supplements. Opposer has used the trademarks PAAWS and PAAWS PET ANTI-AGING WELLNESS SYSTEM since at least as early as March 2002 in connection with health, nutritional and pharmaceutical preparations for pets, including pet vitamins ("Opposer's Goods"). Opposer has used its PAAWS Marks in connection with Opposer's Goods continuously since that time.

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

7. On September 1, 2004, Opposer filed Application Serial No. 78/477,335 to register the mark PAAWS THE PET WELLNESS SYSTEM for health and nutritional products for dogs and cats; food supplements, vitamins, anti-oxidants, minerals, phyto-nutrients, immune

system stimulants and dietary supplements, claiming use as of at least as early as December 29, 2003.

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

8. On October 1, 2004, Opposer filed Application Serial No. 78/493,477 to register the mark PAAWS THE PET WELLNESS SYSTEM and Design for health and nutritional products for dogs and cats; food supplements, vitamins, anti-oxidants, minerals, phyto-nutrients, immune system stimulants and dietary supplements, claiming use as of at least as early as December 29, 2003. Application Serial No. 78/477,335 and Application Serial No 78/493,477 are, collectively, "Opposer's Applications."

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

9. Opposer's PAAWS mark in Registration No. 2,861,193, its PAAWS PET ANTI-AGING WELLNESS SYSTEM mark in Registration No. 2,922,099, and its PAAWS THE PET WELLNESS SYSTEM mark in Opposer's Applications are, collectively, "Opposer's PAAWS Marks."

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies the same.

10. Opposer has superior rights in and to the PAAWS mark in connection with health, nutritional and pharmaceutical preparations for pets, including pet vitamins, because its use of Opposer's PAAWS Marks, which has been continuous since at least as early as March 2002, precedes Applicant's application filing date for the Proposed Mark.

ANSWER: Applicant denies the allegations in Paragraph 10.

11. Opposer is damaged by the Opposed Application, as it was noted by the Examining Attorney in Office Actions dated April 13, 2005 as a potential obstacle to registration of the PAAWS Marks in Opposer's Applications, should it proceed to registration.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore denies the same.

12. In addition, Applicant's registration and use of PAWS for pet vitamins would create a likelihood of consumer, mistake or deception in the minds of prospective consumers as to the origin, source or sponsorship of Applicant's goods.

ANSWER: Applicant denies the allegations in Paragraph 12.

13. Opposer has developed extremely valuable goodwill in respect of Opposer's PAAWS Marks by virtue of its efforts and use of its PAAWS Marks and the excellence of its Goods.

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

14. On information and belief, Opposer alleges that Opposer's Goods and Applicant's Goods are similar and are offered in similar channels of commerce and to similar consumers.

ANSWER: Applicant denies the allegations in Paragraph 14.

15. The distinctive PAWS portion of Applicant's mark is essentially identical to the distinctive PAAWS portion of Opposer's PAAWS Marks. Because of Opposer's use and recognition of its PAAWS Marks, consumers familiar with Opposer's PAAWS Marks are likely to believe that Applicant's Goods are sponsored, authorized or otherwise approved by Opposer. Deficiencies or faults in the quality of Applicant's Goods will reflect negatively upon and tarnish the reputation of Opposer and cause Opposer loss of revenues and damage to its reputation.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies the same.

16. On information and belief, Applicant intends to adopt and use the Proposed Mark in commerce with knowledge of Opposer's prior rights, and with the intention of trading unfairly upon the goodwill associated with Opposer's PAAWS Marks.

ANSWER: Applicant denies the allegations in Paragraph 16.

17. If the Proposed Mark registers, the Proposed Mark is likely to dilute the strength and value of Opposer's PAAWS Marks by affecting the ability of Opposer's PAAWS Marks to serve as unique identifiers of Opposer's Goods, thereby causing serious injury to the reputation and goodwill that Opposer has established in its PAAWS Marks.

ANSWER: Applicant denies the allegations in Paragraph 17.

AFFIRMATIVE DEFENSES

1. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark is not confusingly similar to Opposer's mark.

2. There is no likelihood of confusion, mistake or deception because, *inter alia*, the goods offered under Applicant's mark will be sold in different channels of trade from the goods sold under Opposer's marks.

3. There is no likelihood of confusion, mistake or deception because, *inter alia*, the goods offered and/or sold under Applicant's mark and Opposer's marks are not related.

4. There is no likelihood of confusion, mistake or deception because, *inter alia*, the goods offered under Applicant's mark are recognizable due to Applicant's existing PAWS PROFESSIONAL® and PAWS™ product lines.

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

DATED this 22nd day of November, 2005.

Respectfully submitted,
TOPCO HOLDINGS, INC.,
Applicant

By: 

One of Its Attorneys

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Certificate

I, Kathryn Starshak, hereby certify that the foregoing Answer and Affirmative Defenses to Notice of Opposition is being filed through the Electronic System for Trademark Trials and Appeals ("ESTTA") on this 22nd day of November 2005.



(Signature)

CERTIFICATE OF SERVICE

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

Karen S. Frank
Jeffrey E. Faucette
Howard, Rice, Nemerovski, Canady, Falk & Rabkin
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San Francisco, CA 94111
Telephone: (415) 434-1600

by first class mail, proper postage prepaid, this 22nd day of November, 2005.


Kathryn Starshak, Esq.