

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: August 22, 2008

Opposition No. 91173267

4273371 Canada Inc.

v.

Topline Corporation, The

**Robert H. Coggins,
Interlocutory Attorney:**

On July 22, 2008, opposer submitted a consented motion to suspend proceedings pending settlement negotiations. Although that motion was granted automatically the same day by ESTTA (the Board's Electronic System for Trademark Trials and Appeals), the Board herein sets aside that automatic suspension order and addresses the parties' earlier-filed outstanding motions to (1) divide application Serial No. 78679485 and (2) suspend proceedings pending disposition of a civil action between the parties, or, in the alternative, amend the notice of opposition.

Civil Action

Applicant filed Civil Case No. CV-07-00938TSZ, styled *The Topline Corp. et al. v. 4273371 Canada, Inc. et al.*, in

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the United States District Court for the Western District of Washington at Seattle, on June 18, 2007, eight months after opposer filed the instant opposition proceeding. A review of the pleadings for the civil action indicates that applicant and opposer have asked the district court to determine issues which will have a direct bearing on the opposition proceeding. Moreover, the parties to the instant opposition proceeding are parties to the civil action and the issues before the court in the civil action include issues in common with those in the opposition proceeding. In view thereof, opposer's motion to suspend proceedings pending final determination of the civil action between the parties is hereby **granted** as well taken. It is the policy of the Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. See Trademark Rule 2.117(a).

Because applicant filed the civil action and filed it before filing its motion to divide, the civil action may be dispositive of the opposition proceeding, and proceedings are suspended herein, applicant's motion to divide is **denied** without prejudice.

Proceedings are suspended pending final disposition of the civil action between the parties. Within twenty days after the final determination of the civil action, the parties shall so notify the Board so this case may be called up for any appropriate action. During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys.¹

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

¹ Opposer's May 23, 2008 change of correspondence address is noted and entered.