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

Proceeding	91173267
Party	Defendant Topline Corporation, The Topline Corporation, The 13150 Southeast 32nd Street Bellevue, WA 980054436
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Date	11/15/2006
Attachments	ToplineAnswer.pdf ( 5 pages )(102563 bytes )

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

4273371 CANADA INC.,	)	
	)	Opposition No. 91/173267
	)	
Opposer,	)	Serial No. 78/679485
	)	Serial No. 78/679482
v.	)	
	)	
THE TOPLINE CORPORATION,	)	
	)	
Applicant.	)	
_____	)	Docket No. 910009.838

**APPLICANT’S ANSWER TO NOTICES OF OPPOSITION**

Applicant The Topline Corporation (“Applicant”), by and through its attorneys, hereby answers the Notices of Opposition filed by 4273371 Canada Inc. (“Opposer” or “Canada”). Opposer has filed a single pleading incorporating a separate Notice of Opposition as to U.S. Trademark Application Serial No. 78/679485 and 78/679483, the two applications at issue in this proceeding. Applicant is answering both Notices of Opposition in this Answer, as follows.

**Opposition to Serial No. 78/679485**

1. Applicant denies that Opposer’s rights in its alleged REPORT COLLECTION mark pre-date Applicant’s rights. Applicant lacks sufficient information to enable it to form a belief as to the truth of the remaining allegations of Paragraph 1 of the Notice of Opposition as to Serial No. 78/679485 (“the ’485 Notice”), and on that basis denies them.

2. Applicant admits that it has been in the business of manufacturing and distributing footwear and that the goods described in its application include clothing and accessories. Applicant lacks sufficient information to enable it to form a belief as to the truth of Opposer's allegations as to Opposer's goods, and on that basis denies them. Applicant denies the remaining allegations of Paragraph 2 of the '485 Notice.

3. Applicant admits that the term REPORT is the dominant term of its applied-for REPORT SIGNATURE mark. Applicant lacks sufficient information to enable it to form a belief as to the truth of Opposer's allegations concerning the recollection of the average purchaser respecting the commercial impression created by the parties' respective marks, and on that basis denies them. Applicant denies the remaining allegations of Paragraph 3 of the '485 Notice except as to those allegations which consist of legal argument or conclusions and require no answer.

4. Applicant admits that it has been using the mark REPORT for women's footwear and lacks sufficient information to enable it to form a belief as to the truth of Opposer's allegations concerning Opposer's use of Opposer's mark, and on that basis denies them. Applicant denies the remaining allegations of Paragraph 4 of the '485 Notice.

5. Applicant denies the allegations of Paragraph 5 of the '485 Notice.

Opposition to Serial No. 78/679482

6. Applicant denies that Opposer's rights in its alleged REPORT COLLECTION mark pre-date Applicant's rights. Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 1 of the Notice of Opposition as to Serial No. 78/679482 ("the '482 Notice"), and on that basis denies them.

7. Applicant admits that it has been in the business of manufacturing and distributing footwear and that the goods described in its application include clothing and accessories. Applicant lacks sufficient information to enable it to form a belief as to the truth of Opposer's allegations as to Opposer's goods, and on that basis denies them. Applicant denies the remaining allegations of Paragraph 2 of the '482 Notice.

8. Applicant admits that the term REPORT is the dominant term of its applied-for REPORT SIGNATURE mark. Applicant lacks sufficient information to enable it to form a belief as to the truth of Opposer's allegations concerning the recollection of the average purchaser respecting the commercial impression created by the parties' respective marks, and on that basis denies them. Applicant denies the remaining allegations of Paragraph 3 of the '482 Notice except as to those allegations which consist of legal argument or conclusions and require no answer.

9. Applicant admits that it has been using the mark REPORT for women's footwear and lacks sufficient information to enable it to form a belief as to the truth of Opposer's allegations concerning Opposer's use of Opposer's mark, and on that basis denies them. Applicant denies the remaining allegations of Paragraph 4 of the '482 Notice.

10. Applicant denies the allegations of Paragraph 5 of the '482 Notice.

#### **AFFIRMATIVE DEFENSES**

1. Opposer has failed to state a claim upon which relief can be granted.

2. On information and belief, Applicant has priority of the use of the term REPORT used as a trademark in the United States in connection with footwear and related class 25 goods including goods described in Applicant's application. Applicant used its registered REPORT mark in the United States as early as March, 1993, prior to the earliest date on which Opposer can rely to show priority of use of its mark REPORT COLLECTION.

3. On information and belief, Opposer has had substantial periods of non-use of its alleged REPORT COLLECTION mark on some or all of the goods claimed in its registrations.

4. On information and belief, Opposer has abandoned its rights as to some or all of the goods claimed in its registrations.

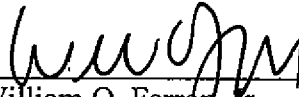
5. Opposer has been aware of Applicant's use of REPORT for women's goods in class 25 and has never objected to such use.

**PRAYER FOR RELIEF**

WHEREFORE, Applicant requests judgment dismissing Opposer's Notice of Opposition and this proceeding in its entirety.

DATED this 15<sup>th</sup> day of November, 2006.

SEED IP Law Group PLLC



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Attorneys for Applicant  
THE TOPLINE CORPORATION

**CERTIFICATE OF SERVICE**

I, Annette Baca, hereby certify that the above **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** was served on Opposer's counsel by depositing same with the U.S. Postal Service, first-class postage prepaid, on November 15, 2006, addressed as follows:

Paul Fields, Esq.  
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Annette Baca