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

Proceeding	91210176
Party	Defendant North Atlantic Operating Company, Inc.
Correspondence Address	ARLANA S COHEN COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036-6799 UNITED STATES asc@cll.com, rje@cll.com, trademark@cll.com, jaj@cll.com, sbi@cll.com
Submission	Answer
Filer's Name	Robert J. English
Filer's e-mail	asc@cll.com, rje@cll.com, trademark@cll.com, jaj@cll.com
Signature	/Robert J. English/
Date	04/24/2014
Attachments	ZIG-ZAG and Design - Answer.pdf(366305 bytes)

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

In re Application Serial No. 85/414,445
Filed: April 10, 2013
For Mark: ZIG-ZAG and Design

TOP TOBACCO, L.P. Opposer, v. NORTH ATLANTIC OPERATING COMPANY, INC. Applicant.	:	**OPPOSITION NO. 91210176** **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

Applicant, North Atlantic Operating Company, Inc. ("Applicant"), by its undersigned counsel hereby Answers the Notice of Opposition ("Notice") filed by Opposer, Top Tobacco, L.P. ("Top"), as follows:

In response to the introductory unnumbered paragraph of the Notice, Applicant denies that Opposer is damaged herein.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 1 of the Notice and therefore denies the same.

2. Applicant admits that it is engaged in the manufacture, distribution and sale of smokers' articles, but is without sufficient knowledge to form a belief as to the truth of the remaining allegations of this paragraph 2.

3. Applicant admits the allegations in paragraph 3 of the Notice.

4. Applicant denies the allegations of paragraph 4 of the Notice.

5. Regarding paragraph 5 of the Notice, Applicant is unable to comprehend the basis for assertion with regard to marks other than the mark herein opposed and in any event, such

other marks were abandoned. (Registration No. 3,713,169 for the mark PURPLE THUNDER, Registration No. 3,710,226 for the mark MELON BURST, and Registration No. 3,710,225 for the mark CHERRY RUSH were voluntarily surrendered by Applicant on October 25, 2012, based on Applicant's non-use of the marks at that time with no intention to resume use of the marks in connection with the goods covered by the registrations. Applicant also notes that Application No. 77/795,626 for the mark APPLE BLITZ and Application No. 77/830,953 for the mark STRAWBERRY BASH were voluntarily withdrawn by Applicant on October 25, 2012, based on Applicant's non-use of the marks at that time with no intention to resume use of the marks in connection with the goods covered by the applications. The application to register the mark PEACH FRENZY 77/923,770 was expressly abandoned by Applicant on June 24, 2010.) Applicant otherwise denies the allegations in paragraph 5 of the Notice including any intended implication avered by placing cigar wraps in quotation marks.

6. Applicant denies the allegations of paragraph 6 of the Notice and incorporates its response in paragraph 5 herein with regard to the other marks not subject of this Opposition.

7. Applicant is without sufficient knowledge of what Opposer "believes" to confirm the truth of the allegations in paragraph 7 of the Notice, and therefore, denies the same.

8. Applicant admits the allegations in paragraph 8 of the Notice.

9. Applicant is without sufficient knowledge of what Opposer "believes" to confirm the truth of the allegations in paragraph 9 of the Notice, and therefore, denies the same.

10. Applicant denies the allegations in paragraph 10 of the Notice except admits the motions referred to therein were denied.

11. Applicant is without sufficient knowledge to confirm the truth of the allegations in paragraph 11 of the Notice and therefore denies the same, except admits that Exhibits 5 and 6 represent true copies of Orders inferred by this Board.

12. Applicant admits the allegations in paragraph 12 of the Notice.

13. Applicant is without sufficient knowledge to confirm the truth of the allegations in paragraph 13 of the Notice and therefore denies the same.

14. Applicant admits the allegations in paragraph 14 of the Notice but denies that Applicant's goods, cigar wraps, are cigarettes or a component part thereof.

15. Applicant admits the Acts set forth in paragraph 15 of the Notice contain the definition of "cigarette" set forth therein.

16. Applicant admits the Food and Drug Administration has issued non-binding guidelines as shown in Exhibit 7 attached to paragraph 16 of the Notice.

17. Applicant is without sufficient knowledge of whether Opposer ceased selling flavored cigarette papers and why it did so, as set forth in paragraph 17 of the Notice, and therefore, denies the same.

18. Applicant denies of the allegations in paragraph 18 of the Notice

19. Applicant admits the Act referred to in paragraph 19 of the Notice prohibits the sale of drug paraphernalia as defined in the Act.

20. Applicant denies the allegations in paragraph 20 of the Notice.

21. Applicant is unable to comprehend the express or implied allegations, if any, set forth in paragraph 21 of the Notice and therefore denies the same.

22. Applicant is unable to comprehend the express or implied allegations, if any, set forth in paragraph 22 of the Notice, and therefore denies the same.

23. Applicant denies the allegations set forth in paragraph 23 of the Notice.

24. Applicant denies the allegations set forth in paragraph 24 of the Notice.

25. Applicant admits that 37 C.F.R. § 2.69 contains the quoted language as set forth in paragraph 25 of the Notice.

26. Applicant denies the allegations set forth in paragraph 26 of the Notice.

27. Applicant repeats and realleges its responses to paragraphs 1 though 26 as set forth above.

28. Applicant admits the Lanham Act requires an Applicant to set forth with particularity the goods with which Applicant uses or intends to use a mark, which Applicant has done.

29. Applicant denies the allegations set forth in paragraph 29 of the Notice.

30. Applicant admits the allegations set forth in paragraph 30 of the Notice.

31. Applicant is without sufficient information to form a belief of the allegations set forth Paragraph 31 of the Notice.

32. Applicant denies the allegations set forth in paragraph 32 of the Notice.

33. Applicant denies the allegations set forth in paragraph 33 of the Notice.

34. Applicant is without sufficient information to form a belief as to the thoughts of the Trademark Office as set forth in paragraph 34 of the Notice but denies any false statements were made on which it could rely.

35. Applicant denies the allegations set forth in paragraph 35 of the Notice.

AFFIRMATIVE DEFENSES

1. Opposer lacks standing to assert the claims in the Notice.

2. Opposer fails to state a valid claim in its Notice.

3. The Opposition is barred by unclean hands.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed in its entirety.

Dated: New York, New York
April 24, 2014

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By: /Arlana S. Cohen/
Arlana S. Cohen
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9237
Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 24, 2014, I caused a true copy of **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** to be served by mailing a true and correct copy thereof to Opposer's attorneys to: Antony J. McShane, NEAL, GERBER & EISENBERG, Two North LaSalle Street, Suite 1700, Chicago, Illinois 60602-3801.

Jean A. Jensen