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September 15, 2005

VIA EXPRESS MAIL /EI439464345US

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

Re: Petitioner: Top Tobacco, L.P.
Trademark: Petition to Cancel Registration No. 2,989,935
Our File No.: 016471-0702

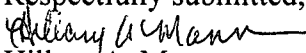
76357525

Dear Sir or Madam::

Please find enclosed for filing in connection with the above-referenced application:

1. Petition to Cancel in the matter of Registration No. 2,989,935;
2. the original document and two copies of the Petition to Cancel in the matter of Registration No. 2,989,935;
3. a return addressed, postage paid postcard to evidence the receipt of the forgoing;
4. check number 229146 in the amount of \$300.00;
5. a duplicate copy of this letter.

Any fees necessary for filing this Statement of Use/Amendment to Allege Use may be taken from **Deposit Account No. 50-2261**. Likewise, if any overpayment has been submitted, please credit that amount to the same account.

Respectfully submitted,

Hillary A. Mann

HAM:amf
Enclosures

I hereby certify that this application and enclosures are being sent via Express Mail label number EI439464345US, addressed to the Commissioner for Trademarks, PO Box 1451, Alexandria, Virginia, VA 22313-1451 on September 15, 2005.


Ann M. Faust



09-15-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

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

In the Matter of)
Registration No. 2,989,935)

TOP TOBACCO, L.P.,)

Petitioner,)

v.)

NORTH ATLANTIC OPERATING CO., INC.)

Respondent.)

PETITION TO CANCEL

09/20/2005 SHILSON1 00000061 76357525

01 FC:6401

300.00 DP

This Petition to Cancel is submitted in the matter of Registration No. 2,989,935, which is owned by North Atlantic Operating Co., Inc., located at 257 Park Avenue South, 7th Floor, New York, New York 10010 ("Respondent"). On August 30, 2005, Registration No. 2,989,935 issued for the trademark CLASSIC AMERICAN BLEND for use in connection with cigarettes in International Class 34. Top Tobacco, L.P., a Delaware Limited Partnership having a place of business at 2301 Ravine Way, Glenview, Illinois 60025 ("Top Tobacco"), believes that it will be injured by the continued registration of Registration No. 2,989,935 and, therefore, petitions to cancel the same on the following grounds:

Petitioner's Rights In Its Incontestable CLASSIC CANADIAN Mark

1. For many years, and long prior to the acts of Respondent alleged herein, Top Tobacco and its affiliates have been engaged in, inter alia, the distribution and sale of smoker's articles, including tobacco and related products such as cigarette papers. Top Tobacco and its affiliates distribute such goods to consumers across the United States through tobacco shops, novelty, convenience and other retail stores, as well as through select restaurants and clubs.

Void date: 09/20/2005 SHILSON1

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2. Top Tobacco and its affiliates have for many years used the mark CLASSIC CANADIAN in connection with the distribution and sale of smoking tobacco. Top Tobacco and its affiliates, including Republic Tobacco, L.P., have devoted significant resources, time, and effort to marketing and distributing smoking tobacco under the mark CLASSIC CANADIAN. As a result, Top Tobacco's CLASSIC CANADIAN mark has acquired a distinctiveness and secondary meaning signifying Top Tobacco and its goods.

3. Top Tobacco's CLASSIC CANADIAN mark, which has been in use in commerce since at least as early as September 30, 1992, has been registered in the United States Patent & Trademark Office ("PTO") for use in connection with tobacco, Registration No. 1,922,338, and is now incontestable pursuant to 15 U.S.C. § 1065. As a result of the considerable consumer recognition and goodwill that Top Tobacco now owns and that is symbolized by its mark, Top Tobacco's CLASSIC CANADIAN mark and its corresponding registration are among its most valuable assets.

4. On August 30, 2005, Registration No. 2,989,935 issued for cigarettes in International Class 34. For the reasons set forth more fully below, Top Tobacco believes it will be injured by the continued registration of Registration No. 2,989,935, and therefore petitions to cancel the same on the grounds that (i) Respondent has not used the mark in connection with the goods for which it obtained registration, and (ii) the continued registration of Respondent's mark is likely to cause confusion or mistake, or to deceive prospective purchasers.

Respondent Has Not Used the Mark in Connection with the Goods for Which it Registered

5. Section 1 of the Lanham Act, 15 U.S.C. § 1051, requires that the mark sought to be registered be used in commerce in order to obtain a federal registration. Non-use of a term for which a registration is obtained is proper grounds for cancellation.

6. As demonstrated by the specimen submitted in support of Respondent's registration attached hereto as Exhibit A, Respondent uses the mark in connection with a cigarette making kit, which purportedly includes a cigarette making machine, tobacco, cigarette tubes and a cigarette box. However, Respondent obtained registration for the mark CLASSIC AMERICAN BLEND for use with "cigarettes." See copy of Registration No. 2,989,935 attached hereto as Exhibit B. Because, upon information and belief, Respondent is not using the mark in connection with the goods for which it sought registration, Registration No. 2,989,935 should be cancelled on the grounds of non-use.

Respondent's Mark Is Confusingly Similar to Top Tobacco's CLASSIC CANADIAN Mark

7. In addition to being cancelled on the grounds of non-use, Registration No. 2,989,935 should also be canceled because Respondent's mark is confusingly similar to Top Tobacco's federally-registered CLASSIC CANADIAN mark.

8. Respondent began its use of its CLASSIC AMERICAN BLEND designation long after Top Tobacco acquired rights in its CLASSIC CANADIAN mark. Accordingly, Top Tobacco and its CLASSIC CANADIAN mark have priority of use over Respondent.

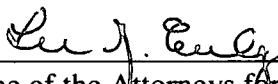
9. Therefore, as a result of, among other things, the similarity of the parties' marks, the similarity of goods with which the marks are actually being used, the similarity in the channels of trade of their respective products, and the strength of Top Tobacco's CLASSIC CANADIAN mark, Respondent's continued registration of CLASSIC AMERICAN BLEND is likely to cause confusion or mistake, or to deceive purchasers, in that purchasers would be likely to believe that Respondent's goods are Top Tobacco's goods, or are in some way legitimately connected with, sponsored by, or approved by Top Tobacco in violation of 15 U.S.C. § 1052(d).

10. Respondent's continued registration of its mark, therefore, will result in damage to Top Tobacco, and on that basis as well, Top Tobacco respectfully requests cancellation of Registration No. 2,989,935.

WHEREFORE, Top Tobacco requests that Registration No. 2,989,935 be cancelled and that this Petition for Cancellation be sustained.

Respectfully submitted,

Date: September 15, 2005

By: 
One of the Attorneys for Top Tobacco, L.P.

Antony J. McShane
Lee J. Eulgen
Hillary A. Mann
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 2300
Chicago, Illinois 60602-3801
(312) 269-8000

CERTIFICATE OF MAILING

U.S. Express Mail Number:

Date of Deposit: September 15, 2005

Matter: Top Tobacco, L.P. v. North Atlantic Operating Co., Inc.

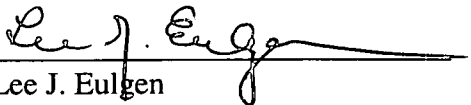
Petition to Cancel Registration No.: 2,989,935

Mark: CLASSIC AMERICAN BLEND

I hereby certify that the above-referenced Petition to Cancel has been deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Date: September 15, 2005

By: 
Lee J. Eulgen

Petition to Cancel
In the Matter of
Registration No. 2,989,935
Petitioner's Exhibit A

STARTER KIT



ZIG-ZAG

COMPLETE CIGARETTE MAKING KIT INCLUDES:

ZIG-ZAG FILTER CIGARETTE MAKING MACHINE
ZIG-ZAG CLASSIC AMERICAN BLEND TOBACCO (TWO .75 oz. POUCHES)

ZIG-ZAG 100 FILTERED CIGARETTE TUBES
ZIG-ZAG POP-TOP™ CIGARETTE BOX

MAKE YOUR OWN FILTERED CIGARETTES



Petition to Cancel
In the Matter of
Registration No. 2,989,935
Petitioner's Exhibit B

Int. Cl.: 34

Prior U.S. Cls.: 2, 8, 9, and 17

United States Patent and Trademark Office

Reg. No. 2,989,935

Registered Aug. 30, 2005

**TRADEMARK
PRINCIPAL REGISTER**

CLASSIC AMERICAN BLEND

**NORTH ATLANTIC OPERATING CO., INC. (DE-
LAWARE CORPORATION)
C/O JAMES W. DOBBINS, ESQ.
257 PARK AVENUE SOUTH
NEW YORK, NY 10010**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "AMERICAN BLEND", APART
FROM THE MARK AS SHOWN.**

**FOR: CIGARETTES, IN CLASS 34 (U.S. CLS. 2, 8, 9
AND 17).**

SN 76-357,525, FILED 1-11-2002.

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

TONI HICKEY, EXAMINING ATTORNEY