

MS. J. SGM.
SEA 10/105

The Honorable _____



07-CV-00938-CMP

FILED ENTERED
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JUN 18 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

THE TOPLINE CORPORATION, a Washington Corporation, and REPORT FOOTWEAR, INC., a Washington Corporation,

Plaintiff,

v.

4273371 CANADA, INC., a Canadian Corporation, and MODEXTIL, INC., a Canadian Corporation, jointly d/b/a REPORT COLLECTION,

Defendants.

C 07-0938-152
Civil Action No. _____

-) COMPLAINT FOR TRADEMARK
-) INFRINGEMENT, FALSE
-) DESIGNATION OF ORIGIN,
-) UNFAIR COMPETITION,
-) UNFAIR BUSINESS PRACTICES,
-) DECLARATORY JUDGMENT OF
-) NON-INFRINGEMENT, FALSE
-) TRADEMARK MARKING AND
-) CANCELLATION
-) DEMAND FOR JURY TRIAL

Plaintiff The Topline Corporation and its wholly owned subsidiary Report Footwear, Inc. (collectively "Topline") by and through its undersigned attorneys, avers and states as follows for its Complaint:

Statement of the Case

1. This is an action asserting claims for trademark infringement, unfair competition and unfair business practices under the federal Lanham Act, the common law and the laws of the State of Washington.

The Parties

2. Plaintiff The Topline Corporation is a Washington corporation, with a principal place of business at 13150 SE 32nd Street, Bellevue, Washington 98005.

3. Plaintiff Report Footwear, Inc. is a Washington Corporation and wholly owned subsidiary of The Topline Corporation, with a principal place of business at 13150 SE 32nd Street, Bellevue, Washington 98005.

4. Topline was founded in 1980 and has grown to be a major supplier of women's footwear including under the REPORT brand. Topline's REPORT shoes are sold by major retailers such as Nordstrom, Macy's, Victoria's Secret and Kohl's, as well as small fashion boutiques.

5. On information and belief, Defendant 4273371 Canada, Inc., is a Canadian Company having a place of business at 5525 Pare Street, Montreal, Quebec H4P 1P7, Canada.

6. On information and belief, Defendant Modextil, Inc., is a Canadian Company having a place of business at 5525 Pare Street, Montreal, Quebec H4P 1P7, Canada.

7. On information and belief, Defendants 4273371 Canada, Inc., and Modextil, Inc. (collectively "Defendants") jointly do business as Report Collection in the United States, and jointly control Defendants' activities complained of herein.

Jurisdiction and Venue

8. This action is brought under the federal Lanham Act, 15 U.S.C. § 1051 *et seq.*, and the common law and statutory law of the State of Washington.

9. This Court has subject matter jurisdiction pursuant to 15 U.S.C. Section 1121 and 28 U.S.C. Section 1331, as well as 28 U.S.C. Section 1367(a), which provides for supplemental jurisdiction over related state-law claims.

10. Venue is proper in this district pursuant to 28 U.S.C. Section 1391(a) and (e), in that (i) a substantial part of the events or omissions giving rise to the claims at issue herein occurred within this judicial district, (ii) a substantial part of the injury to the property and rights

1 of Topline that is the subject of these claims occurred in this judicial district, (iii) the Defendants
2 do business in this judicial district by actively promoting their goods for sale through retailers in
3 this judicial district and offering for sale and selling infringing goods in this district via
4 Defendants' online retail store, (iv) the Defendants have engaged in acts of trademark
5 infringement and unfair competition in this judicial district including offering to sell and selling
6 infringing apparel in this judicial district, and (v) the Defendants are foreign corporations.
7

8 **Plaintiff Topline's REPORT Mark for Women's Goods**

9 11. Plaintiff Topline has been involved in the women's fashion industry since its
10 incorporation in 1980.

11 12. Beginning as early as March 1993, Topline has used, and continues to use, the
12 trade name and marks REPORT, REPORT: and REPORT SIGNATURE (collectively "REPORT
13 Marks") in connection with the marketing and sale of women's footwear.

14 13. Topline is the owner of U.S. Trademark Registration No. 2,169,637 for the mark
15 REPORT: for "women's shoes" in International Class 25. That registration is valid, subsisting
16 and incontestable. A copy of the Registration Certificate is attached hereto as Exhibit 1.

17 14. Topline is the owner of U.S. Trademark Registration No. 3,246,085 for the mark
18 REPORT for "women's footwear and girl's footwear" in International Class 25. A copy of the
19 Registration Certificate is attached hereto as Exhibit 2.

20 15. Topline is the owner of U.S. Trademark Registration No. 2,377,891 for the mark
21 ONE ON 1 BY REPORT for "women's and children's fashion shoes sold through shoe stores and
22 shoe departments of department stores" in International Class 25. That registration is valid and
23 subsisting. A copy of the Registration Certificate is attached hereto as Exhibit 3.

24 16. Topline is the owner of approved U.S. Trademark Application No. 78/430900 for
25 the mark REPORT for "small leather goods, namely, women's and girls' handbags, purses,
26 wallets, change purses, shoulder bags, beach bags, clutch bags, attaché cases, tote bags, traveling
27 bags, credit card cases, document cases, passport cases, cosmetic cases sold empty, key cases, and

1 briefcases, school bags, all purpose sports bags, luggage, namely, suitcases and traveling trunks,
2 and umbrellas” in International Class 18, with a priority date of June 7, 2004. A printout of a
3 Patent and Trademark Electronic Search System Report for the Application is attached hereto as
4 Exhibit 4.

5 17. Topline is the owner of U.S. Trademark Application No. 78/796290 for the mark
6 REPORT SEATTLE for “women’s shoes” in International Class 25, with a priority date of
7 January 20, 2006. A printout of a Patent and Trademark Electronic Search System Report for the
8 Application is attached hereto as Exhibit 5.

9 18. Since 1993, Topline has conducted substantial business under and engaged in
10 substantial promotion of its REPORT Marks.

11 19. Sales of goods under the Report trade name and REPORT Marks have a retail
12 value of approximately \$150 million a year, and continue to grow.

13 20. Topline’s REPORT Marks and goods are prominently featured in women’s
14 fashion and lifestyle magazines, such as *Lucky*, *Vibe*, *In Style*, *Teen*, *Seventeen*, *Life & Style*,
15 *Redbook*, *Seattle Magazine*, and *Teen Vogue*. Attached hereto as Exhibit 6 are samples uses of
16 Topline’s REPORT goods in fashion magazines.

17 21. Topline’s REPORT women’s shoes are offered through major department stores,
18 such as Nordstrom and Macy’s, and other retail women’s fashion outlets, such as Eilatan,
19 Piperlime and Kitson. Attached hereto as Exhibit 7 are examples of retailer marketing materials
20 featuring Topline’s REPORT women’s shoes.

21 22. Topline’s REPORT women’s shoes are offered through major on-line retailers,
22 such as Zappos.com, which recently offered 180 styles of REPORT shoes and 61 styles of
23 REPORT SIGNATURE shoes, Amazon.com, Shoes.com and VictoriasSecret.com. Attached
24 hereto as Exhibit 8 are examples of on-line retailer web pages featuring Topline’s REPORT
25 women’s shoes.
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FIRST COUNT

**Trademark Infringement Under 15 U.S.C. § 1114 — Sale of Women’s Goods
Under REPORT and REPORT COLLECTION Marks**

37. Topline realleges and incorporates by reference the allegations of Paragraphs 1 through 36 of the Complaint as though fully set forth herein.

38. Defendants’ use of the REPORT COLLECTION and REPORT marks in connection with the sale and marketing of women’s clothing and accessories is likely to cause confusion and mistake and to deceive others into believing that Defendants’ women’s clothing and accessories are sponsored by, approved by, or affiliated with Topline, when they are not.

39. Defendants’ acts, as herein alleged, constitute infringement of Topline’s U.S. Trademark Registration Nos. 2,169,637, 3,246,085 and 2,377,891 in violation of 15 U.S.C. Section 1114.

40. Defendants have carried out these acts with knowledge of and in conscious disregard of Topline’s rights, making this an exceptional case within the meaning of 15 U.S.C. Section 1117.

41. Topline has been, and will continue to be, damaged by Defendants’ willful infringement of Topline’s registered trademarks in a manner and amount that cannot be fully measured or compensated in economic terms, for which there is no adequate remedy at law.

42. The actions of Defendants have damaged and will continue to damage Topline’s business, market, reputation, and goodwill, and may discourage current and potential customers from dealing with Topline. Such irreparable damage will continue unless the acts of Defendants are enjoined.

43. Topline has been damaged by Defendants’ actions in an amount to be proven at trial.

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SECOND COUNT

False Designation of Origin and Unfair Competition Under 15 U.S.C. § 1125 — Sale of Women's Goods Under REPORT and REPORT COLLECTION Marks

44. Topline realleges and incorporates by reference the allegations of Paragraphs 1 through 43 of the Complaint as though fully set forth herein.

45. Topline's REPORT Marks are designations of origin that identify Topline as the exclusive source of its goods, and distinguish Topline's goods from the goods of others in the marketplace.

46. Defendants' use of REPORT COLLECTION and REPORT marks in connection with women's clothing and accessories constitutes false designation of origin, false or misleading description, and/or false or misleading representation. Defendants' use of confusingly similar variations of Topline's REPORT Marks on women's goods is likely to cause confusion, mistake, or deception of others as to the affiliation, connection, or association of Defendants with Topline and vice versa. It is also likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendants' women's clothing and accessories having the Defendants' infringing marks.

47. Such false designation, description, and/or representation constitutes unfair competition and is an infringement of Topline's common rights in its REPORT Marks in violation of Sections 43(a) and (d) of the Lanham Act, 15 U.S.C. § 1125(a) and (d).

48. Defendants had actual knowledge of Topline's rights in its REPORT Marks when Defendants began use of the REPORT COLLECTION and REPORT marks in connection with women's clothing and accessories. Defendants' false description, false representation, and false designation of origin were knowing, willful, and deliberate, making this an exceptional case within the meaning of 15 U.S.C. Section 1117.

49. Topline has been, and will continue to be, damaged by Defendants' false description, false representation, false designation of origin, and other acts of unfair competition in a manner and amount that cannot be fully measured or compensated in economic terms.

1 58. Topline has been damaged by Defendants' actions in an amount to be proven at
2 trial.

3 **FOURTH COUNT**

4 **Unfair Competition Under RCW 19.86.020 — Sale of Women's Goods**
5 **Under REPORT and REPORT COLLECTION Marks**

6 59. Topline realleges and incorporates by reference the allegations set forth in
7 paragraphs 1 through 58 of this Complaint, as if set forth fully herein.

8 60. Defendants' use of the REPORT COLLECTION and REPORT marks in
9 connection with the promotion and sale of women's clothing and accessories, which infringes
10 Topline's REPORT Marks, constitutes an unfair method of competition in business and an unfair
11 trade practice in business, which is damaging to the public interest in violation of the Washington
12 Consumer Protection Act, RCW 19.86.020.

13 61. Defendants' use of marks that infringe Topline's REPORT Marks has been and is
14 knowing, willful, and deliberate, and constitutes fraudulent representation.

15 62. Topline has been and will continue to be irreparably injured by reason of
16 Defendants' unfair methods of competition and unfair trade practices in violation of the
17 Washington Consumer Protection Act. Such irreparable damage will continue unless the acts of
18 Defendants are enjoined.

19 63. Topline has been damaged by Defendants' actions in an amount to be proven at
20 trial.

21 **FIFTH COUNT**

22 **Declaratory Judgment of Noninfringement**

23 64. Topline realleges and incorporates by reference the allegations set forth in
24 paragraphs 1 through 63 of this Complaint, as if set forth fully herein.

25 65. In an email sent from an executive of Defendants to Topline in Bellevue,
26 Washington, Defendants threatened Topline with legal action if Topline introduced a women's
27 apparel line under Topline's REPORT mark.

1 www.shop.reportcollection.com, and products, packaging, advertising, labels, or other sales or
2 shipping material having the REPORT COLLECTION and REPORT marks or any abbreviation
3 of such marks (e.g., "RC") or any other mark confusingly similar to Topline's REPORT Marks
4 for women's goods.

5 4. That Defendants, and their affiliates, officers, agents, servants, employees,
6 attorneys and all other persons in active concert or participation with any of them, be ordered to
7 deliver to all products, packaging, advertising, labels, or other sales or shipping material in their
8 possession or control to Topline that infringe Topline's REPORT Marks, including products,
9 packaging, advertising, labels, or other sales or shipping material having the REPORT
10 COLLECTION and REPORT marks or any abbreviation of such marks (e.g., "RC") or any other
11 mark confusingly similar to Topline's REPORT Marks for women's goods.

12 5. That Defendants, and their affiliates, officers, agents, servants, employees,
13 attorneys and all other persons in active concert or participation with any of them, be enjoined
14 from further false marking and be required to destroy all labels, hangtags and other items bearing
15 false trademark markings.

16 6. That Defendants be ordered to withdraw any trademark applications filed in the
17 United States and cancel any registrations in the United States for marks containing REPORT,
18 REPORT COLLECTION or abbreviations therefore for use in connection with any goods that
19 would comprise women's or children's clothing or accessories, including U.S. Trademark
20 Application Serial Nos. 78/812174 and 78/924799.

21 7. That Defendants' U.S. Registration No. 1,957,041 be cancelled.

22 8. That Defendants be ordered to dismiss with prejudice the opposition proceeding
23 Defendants' initiated against Topline's U.S. Trademark Application No. 78/796290 for the mark
24 REPORT SEATTLE for "women's shoes," and not to file or pursue any other opposition or
25 cancellation proceedings based on allegations that Topline's use of REPORT on women's goods
26 would create a likelihood of confusion.
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DEMAND FOR JURY TRIAL

Plaintiff Topline demands a trial by jury as to all issues so triable.

DATED this 15th day of June, 2007, at Seattle, Washington.

Respectfully submitted,

SEED IP Law Group PLLC



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