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	2	The Honorable			
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	7	IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON WESTERN DISTRICT OF WASHINGTON DEPUTY			
	8	AT SEATTLE WESTERN DISTRICT OF WASHINGTON DEPUTY			
	9	THE TOTAL THE CORPORATION AND A TOTAL TOTA	CO7OO98		
		THE TOPLINE CORPORATION, a Washington Corporation, and REPORT FOOTWEAR, INC., a) Civil Action No		
Z.	10	Washington Corporation,)		
unn	11	Plaintiff,) COMPLAINT FOR TRADEMARK) INFRINGEMENT, FALSE		
	12	1 14) DESIGNATION OF ORIGIN,		
~ 1	13	v.) UNFAIR COMPETITION,		
	14	4273371 CANADA, INC., a Canadian Corporation,) UNFAIR BUSINESS PRACTICES,) DECLARATORY JUDGMENT OF		
	14	and MODEXTIL, INC., a Canadian Corporation,) NON-INFRINGEMENT, FALSE		
L,	15	jointly d/b/a REPORT COLLECTION,) TRADEMARK MARKING AND		
010/4	16	Defendants.) CANCELLATION		
	17) DEMAND FOR JURY TRIAL		
4	18	Plaintiff The Topline Corporation and its wholly o	owned subsidiary Report Footwear, Inc.		
W		(collectively "Topline") by and through its undersigned at	ttorneys, avers and states as follows for		
\(\bar{\gamma}\)	19	its Complaint:	, ,		
	20	ns complaint.			
	21	Statement of the C	ase		
	22	1. This is an action asserting claims for trader	mark infringement, unfair competition		
	23	and unfair business practices under the federal Lanham A			
	24		ct, the common law and the laws of the		
		State of Washington.			
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		COMPLAINT (C)1	SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVENUE, SUITE 5400 SEATTLE, WASHINGTON 98104-7092 (206) 622-4900		

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, Bellevuc, 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.
- 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

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

Plaintiff Topline's REPORT Mark for Women's Goods

- 11. Plaintiff Topline has been involved in the women's fashion industry since its incorporation in 1980.
- 12. Beginning as early as March 1993, Topline has used, and continues to use, the trade name and marks REPORT, REPORT: and REPORT SIGNATURE (collectively "REPORT Marks") in connection with the marketing and sale of women's footwear.
- 13. Topline is the owner of U.S. Trademark Registration No. 2,169,637 for the mark REPORT: for "women's shoes" in International Class 25. That registration is valid, subsisting and incontestable. A copy of the Registration Certificate is attached hereto as Exhibit 1.
- 14. Topline is the owner of U.S. Trademark Registration No. 3,246,085 for the mark REPORT for "women's footwear and girl's footwear" in International Class 25. A copy of the Registration Certificate is attached hereto as Exhibit 2.
- 15. Topline is the owner of U.S. Trademark Registration No. 2,377,891 for the mark ONE ON 1 BY REPORT for "women's and children's fashion shoes sold through shoe stores and shoe departments of department stores" in International Class 25. That registration is valid and subsisting. A copy of the Registration Certificate is attached hereto as Exhibit 3.
- 16. Topline is the owner of approved U.S. Trademark Application No. 78/430900 for the mark REPORT for "small leather goods, namely, women's and girls' handbags, purses, wallets, change purses, shoulder bags, beach bags, clutch bags, attaché cases, tote bags, traveling bags, credit card cases, document cases, passport cases, cosmetic cases sold empty, key cases, and

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

- 17. Topline is the owner of U.S. Trademark Application No. 78/796290 for the mark REPORT SEATTLE for "women's shoes" in International Class 25, with a priority date of January 20, 2006. A printout of a Patent and Trademark Electronic Search System Report for the Application is attached hereto as Exhibit 5.
- 18. Since 1993, Topline has conducted substantial business under and engaged in substantial promotion of its REPORT Marks.
- 19. Sales of goods under the Report trade name and REPORT Marks have a retail value of approximately \$150 million a year, and continue to grow.
- 20. Topline's REPORT Marks and goods are prominently featured in women's fashion and lifestyle magazines, such as *Lucky*, *Vibe*, *In Style*, *Teen*, *Seventeen*, *Life & Style*, *Redbook*, *Seattle Magazine*, and *Teen Vogue*. Attached hereto as Exhibit 6 are samples uses of Topline's REPORT goods in fashion magazines.
- 21. Topline's REPORT women's shoes are offered through major department stores, such as Nordstrom and Macy's, and other retail women's fashion outlets, such as Eilatan, Piperlime and Kitson. Attached hereto as Exhibit 7 are examples of retailer marketing materials featuring Topline's REPORT women's shoes.
- 22. Topline's REPORT women's shoes are offered through major on-line retailers, such as Zappos.com, which recently offered 180 styles of REPORT shoes and 61 styles of REPORT SIGNATURE shoes, Amazon.com, Shoes.com and VictoriasSecret.com. Attached hereto as Exhibit 8 are examples of on-line retailer web pages featuring Topline's REPORT women's shoes.

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- 23. Women's shoes, apparel and fashion accessories are complimentary goods that are marketed to the same customers through the same marketing channels. Women often buy shoes and apparel to match one another, sometimes during the same shopping trip.
- 24. Topline's REPORT women's shoes are sold to the same customers and through the same marketing channels as women's apparel, accessories and fashion items. Exhibit 9 is an excerpt from the February 2007 Nordstrom catalog that prominently advertises Topline's REPORT women's shoes together with various women's clothing and accessory items. Exhibit 10 is an excerpt from a March 2007 Macy's Spring Sale catalog showing Topline's REPORT shoes advertised in connection with women's dresses.
- 25. Topline intends to expand its REPORT Marks to other women's goods, including apparel, apparel accessories, purses, handbags and sunglasses.
- 26. As a result of Topline's extensive use and promotion, Topline's REPORT Marks have become known to and recognized by relevant consumers as identifying high-quality women's footwear. The REPORT Marks and the goodwill associated therewith are valuable assets of Topline.

Defendants' REPORT COLLECTION Mark for Men's Goods

- 27. Defendants own U.S. Trademark Registration No. 1,957,041 for the mark REPORT COLLECTION for "men's clothing and accessories, namely shirts, polos, T-shirts, sweatshirts, sweaters, cardigans, wind resistant jackets, coats, underwear, belts, socks" in international class 25.
- 28. Defendants' filed their application for REPORT COLLECTION *after* Topline's first use of REPORT for women's footwear.
- 29. On information and belief, Defendants made little or no use of their REPORT COLLECTION Mark in the U.S. prior to Fall 2002.
- 30. Until the recent acts of infringement complained of herein, Defendants used the REPORT COLLECTION mark exclusively for men's clothing and accessories.

31. Defendant's U.S. Trademark Registration No. 1,957,041 is for "REPORT COLLECTION" — a unitary mark with "REPORT" and "COLLECTION" appearing side-by-side and in the same size type.

<u>Defendants' Infringing Use of REPORT and</u> REPORT COLLECTION for Women's Goods

- 32. Defendants recently introduced a line of women's apparel that they are promoting under the marks REPORT and REPORT COLLECTION.
- 33. On information and belief, Defendants first introduced their women's apparel line in the United States at a trade show in September 2006, and have only manufactured and sold a limited number of women's goods in the U.S. under these marks. Attached hereto as Exhibit 11 is a copy of a press release from Defendants.
- 34. On information and belief, Defendants intend to expand their infringing women's REPORT COLLECTION and REPORT product lines in 2007, including launching a major marketing campaign.
- 35. On information and belief, Defendants are negotiating or have entered an agreement to sell their women' clothing using the REPORT and REPORT COLLECTION Marks to Macy's department stores in the Western United States, with goods expected to be on sale to consumers beginning in Fall 2007. Macy's is one of Topline's major customers and has sold REPORT women's shoes for several years, including at Macy's stores in this judicial district.
- 36. Without any basis in law or fact, Defendants have filed an opposition to Topline's U.S. Trademark Application No. 78/796290 for the mark REPORT SEATTLE for "women's shoes."

FIRST COUNT

<u>Trademark Infringement Under 15 U.S.C. § 1114 — Sale of Women's Goods Under REPORT and REPORT COLLECTION Marks</u>

- 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.

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.

COMPLAINT (C)8	Seed Intellectual Property Law Group PLLC 701 Fifth Avenue, Suite 5400
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- 50. Defendants' actions have damaged, and will continue to damage, Topline's market, reputation, and goodwill, and may discourage current and potential customers from dealing with Topline. Such irreparable harm will continue unless Defendants' acts are restrained and/or enjoined.
- 51. Topline has been damaged by Defendants' actions in an amount to be proven at trial.

THIRD COUNT

Common Law Trademark Infringement — Sale of Women's Goods Under REPORT and REPORT COLLECTION Marks

- 52. Topline realleges and incorporates by reference the allegations of Paragraphs 1 through 51 of the Complaint as though fully set forth herein.
- 53. Defendants' use of confusingly similar variations of Topline's REPORT marks in association with the sale of women's clothing and accessories is likely to cause confusion and mistake. Such use is likely to deceive others into believing that Defendants' products are sponsored by, approved by, or affiliated with Topline.
- 54. Defendants' acts, as above alleged, constitute infringement of Topline's trademark rights in violation of the common law.
- 55. Despite actual and/or constructive knowledge of Topline's rights, Defendants initiated and, on information and belief, are continuing their acts of infringement. Defendants have carried out their acts of infringement in conscious disregard of Topline's rights.
- 56. Topline has been and continues to be damaged by Defendants' infringement in a manner that cannot be fully measured or compensated in economic terms and for which there is no adequate remedy at law.
- 57. Defendants' actions have damaged, and will continue to damage, Topline's market, reputation, and goodwill, and may discourage current and potential customers from dealing with Topline. Such irreparable harm will continue unless Defendants' acts are restrained and/or enjoined.

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

FOURTH COUNT

<u>Unfair Competition Under RCW 19.86.020 — Sale of Women's Goods</u> Under REPORT and REPORT COLLECTION Marks

- 59. Topline realleges and incorporates by reference the allegations set forth in paragraphs 1 through 58 of this Complaint, as if set forth fully herein.
- 60. Defendants' use of the REPORT COLLECTION and REPORT marks in connection with the promotion and sale of women's clothing and accessories, which infringes Topline's REPORT Marks, constitutes an unfair method of competition in business and an unfair trade practice in business, which is damaging to the public interest in violation of the Washington Consumer Protection Act, RCW 19.86.020.
- 61. Defendants' use of marks that infringe Topline's REPORT Marks has been and is knowing, willful, and deliberate, and constitutes fraudulent representation.
- 62. Topline has been and will continue to be irreparably injured by reason of Defendants' unfair methods of competition and unfair trade practices in violation of the Washington Consumer Protection Act. Such irreparable damage will continue unless the acts of Defendants are enjoined.
- 63. Topline has been damaged by Defendants' actions in an amount to be proven at trial.

FIFTH COUNT

Declaratory Judgment of Noninfringement

- 64. Topline realleges and incorporates by reference the allegations set forth in paragraphs 1 through 63 of this Complaint, as if set forth fully herein.
- 65. In an email sent from an executive of Defendants to Topline in Bellevue, Washington, Defendants threatened Topline with legal action if Topline introduced a women's apparel line under Topline's REPORT mark.

- 66. An actual case or controversy exists between Topline and Defendants regarding whether Topline's planned expansion of its REPORT Marks to women's clothing and accessories. In particular, Defendants have falsely asserted that such expansion would conflict with Defendants' rights and threatened Topline with litigation if it proceeds with such expansion.
- 67. Topline, therefore, requests a declaratory judgment that Topline has priority of use for Topline's REPORT Marks in the market for women's clothing and accessories and that its planned expansion does not infringe any rights of Defendants.

SIXTH COUNT

False Trademark Marking

- 68. Topline realleges and incorporates by reference the allegations set forth in paragraphs 1 through 67 of this Complaint, as if set forth fully herein.
- 69. Defendants are falsely marking their women's goods with an "®" when they have no federal registration for women's goods, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
- 70. Defendants are falsely marking their REPORT COLLECTION goods with an "®" following REPORT and the REPORT portion of the mark exaggerated, giving the false impression that they own a federal registration for REPORT, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

SEVENTH COUNT

Cancellation of U.S. Registration No. 1,957,041

- 71. Topline realleges and incorporates by reference the allegations set forth in paragraphs 1 through 70 of this Complaint, as if set forth fully herein.
- 72. On information and belief, Defendants did not have continuous use of the mark REPORT COLLECTION in commerce for five years prior to filing the declaration under Section 15 alleging such use for some or all of the goods for which such use was claimed.

- 73. On information and belief, Defendants did not have use of the mark REPORT COLLECTION in commerce for some or all of the goods in its registration at the time it filed its Section 8 declaration.
- 74. Defendants' failure to properly file its Section 8 and 15 declarations is grounds to cancel its registration.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Topline respectfully prays for judgment against Defendants as follows:

- 1. That Defendants, and their affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them, be preliminarily and permanently enjoined and restrained from using the REPORT COLLECTION and REPORT marks or any abbreviation of such marks (e.g., "RC") or any other mark confusingly similar to Topline's REPORT Marks, in connection with women's clothing and accessories.
- 2. That Defendants, and their affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them, be preliminarily and permanently enjoined and restrained from all acts of false description and representation and false designation of origin, and all acts of unfair competition, including the use of the REPORT COLLECTION and REPORT marks or any abbreviation of such marks (e.g., "RC") or any other mark confusingly similar to Topline's REPORT Marks, in connection with women's clothing and accessories.
- 3. That Defendants, and their affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them, be preliminarily and permanently enjoined and restrained from all manufacture, purchase, promotion, sale, and use of any products, packaging, advertising, labels, or other sales or shipping material that infringe Topline's REPORT marks, including use on retail websites such as

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

- 4. That Defendants, and their affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them, be ordered to deliver to all products, packaging, advertising, labels, or other sales or shipping material in their possession or control to Topline that infringe Topline's REPORT Marks, including products, packaging, advertising, labels, or other sales or shipping material having the REPORT COLLECTION and REPORT marks or any abbreviation of such marks (e.g., "RC") or any other mark confusingly similar to Topline's REPORT Marks for women's goods.
- 5. That Defendants, and their affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them, be enjoined from further false marking and be required to destroy all labels, hangtags and other items bearing false trademark markings.
- 6. That Defendants be ordered to withdraw any trademark applications filed in the United States and cancel any registrations in the United States for marks containing REPORT, REPORT COLLECTION or abbreviations therefore for use in connection with any goods that would comprise women's or children's clothing or accessories, including U.S. Trademark Application Serial Nos. 78/812174 and 78/924799.
 - 7. That Defendants' U.S. Registration No. 1,957,041 be cancelled.
- 8. That Defendants be ordered to dismiss with prejudice the opposition proceeding Defendants' initiated against Topline's U.S. Trademark Application No. 78/796290 for the mark REPORT SEATTLE for "women's shoes," and not to file or pursue any other opposition or cancellation proceedings based on allegations that Topline's use of REPORT on women's goods would create a likelihood of confusion.

- 9. That Defendants be directed to file with this Court and serve on Topline within thirty (30) days after the service of an injunction a report in writing, under oath, setting forth in detail the manner and form in which Defendants and their affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them have complied with the injunction.
- 10. That Defendants be required to pay Topline such damages as Topline has sustained, or will sustain, in consequence of Defendants' false description and representation, false designation of origin, unfair competition and trademark infringement, and to account for all gains, profits, and advantages derived by Defendants that are attributable to such unlawful acts; and that such damages be trebled, as provided by 15 U.S.C. Section 1117 and R.C.W. 19.86.090, or as otherwise permitted by law.
- 11. That the Court adjudge this to be an exceptional case and require Defendants to pay over to Topline the costs of this action, including reasonable attorneys' fees and interest, and treble damages as provided by 15 U.S.C. Section 1117 and R.C.W. 19.86.090, or as otherwise permitted by law.
 - 12. That this Court grant prejudgment and post judgment interest to Plaintiff.
- 13. That this Court grant Plaintiff such other and further relief as the Court deems appropriate.

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2	DEMAND FOR JURY TRIAL
3	Plaintiff Topline demands a trial by jury as to all issues so triable.
4	DATED this(5\frac{1}{2}\) day of June, 2007, at Seattle, Washington.
5	Respectfully submitted,
6	SEED IP Law Group PLLC
7	au o Jan N
8	William O. Ferron, Jr., WSBA #11831
9	BillF@SeedIP.com Timothy L. Boller, WSBA #29079
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13	Attorneys for Plaintiffs THE TOPLINE CORPORATION
14	Report Footwear, Inc.
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