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06-04-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

8
9 **IN THE UNITED STATES AND TRADEMARK OFFICE**
10 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

11 **Leo Stoller d/b/a,**
12 **CENTRAL MFG**
13 **P.O. Box 35189**
14 **Chicago, IL 60707-0789**
15 **Opposer,**

16 vs.

17 **AIRFRAME BUSINESS SOFTWARE, INC.**
18 **800 Southwood Blvd., Suite 105**
19 **Incline Village, Nevada 89451**
20 **Applicant. ,**

Trademark:
AIRFRAME BUSINESS SOFTWARE,
INC.

Opposition No.: 91160234
Application SN: 78-233,204
Int. Class No: 09

ANSWER TO NOTICE OF OPPOSITION
AND COUNTERCLAIM

21 **AIRFRAME V. AIRFRAME**

22 **ANSWER TO NOTICE OF OPPOSITION**

23 COMES NOW Applicant, AIRFRAME BUSINESS SOFTWARE, INC., by and through
24 undersigned counsel, and submits this Answer to Notice of Opposition as follows in compliance with
25 the direction of the Trademark Trial and Appeal Board by Notice dated April 22, 2004. Opposer's
26 "Notice of Opposition" is herein referred to as "Opposition." Paragraphs set forth in the Opposition are
27 herein referred to as "Opp. Para." with the designated corresponding number of such paragraph as set
28 forth in the Opposition.

ANSWER TO NOTICE OF OPPOSITION

1. **Opp. Para. 1:** This paragraph fails to set forth a claim or averment. Applicant therefore is without knowledge sufficient to admit or deny the contents of this paragraph and therefore, denies the claims in their entirety.

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- 1 2. **Opp. Para. 2:** Applicant denies that Registration Numbers 2,137,218, 2,128,940,
2 2,138,609, 2,137,059 and 2,138,806 are for the mark AIRFRAME. Applicant is
3 without sufficient knowledge to admit or deny the remaining claims set forth in this
4 paragraph and therefore, denies the remaining claims in their entirety.
- 5 3. **Opp. Para. 3.** Applicant denies that Registration Numbers 2,137,218, 2,128,940,
6 2,138,609, 2,137,059 and 2,138,806 are for the mark AIRFRAME. Applicant is
7 without sufficient knowledge to admit or deny the remaining claims set forth in this
8 paragraph and therefore, denies the remaining claims in their entirety.
- 9 4. **Opp. Para. 4.** Applicant denies the claims in this paragraph in their entirety.
- 10 5. **Opp. Para. 5.** Applicant is without sufficient knowledge to admit or deny the claims
11 set forth in this paragraph and therefore, denies the claims in their entirety.
- 12 6. **Opp. Para. 6.** Applicant is without sufficient knowledge to admit or deny the claims
13 set forth in this paragraph and therefore, denies the claims in their entirety.
- 14 7. **Opp. Para. 7.** Applicant is without sufficient knowledge to admit or deny the claims
15 set forth in this paragraph and therefore, denies the claims in their entirety.
- 16 8. **Opp. Para. 8.** Applicant denies that Registration Numbers 2,137,218, 2,128,940,
17 2,138,609, 2,137,059 and 2,138,806 are for the mark AIRFRAME. Applicant is
18 without sufficient knowledge to admit or deny the remaining claims set forth in this
19 paragraph and therefore, denies the remaining claims in their entirety.
- 20 9. **Opp. Para. 9.** Applicant is without sufficient knowledge to admit or deny the claims
21 set forth in this paragraph and therefore, denies the claims in their entirety.
- 22 10. **Opp. Para. 10.** Applicant denies the claims in this paragraph in their entirety.
- 23 11. **Opp. Para. 11.** Applicant admits that it received correspondence from Opposer but
24 is without sufficient knowledge to admit or deny the remaining claims set forth in this
25 paragraph and therefore, denies the remaining claims in their entirety.
- 26 12. **Opp. Para. 12.** Applicant denies the claims in this paragraph in their entirety.
- 27 13. **Opp. Para. 13.** Applicant denies the claims in this paragraph in their entirety.
- 28 14. **Opp. Para. 14.** Applicant admits the claims set forth in the first sentence of this
 paragraph. Applicant denies in full the claims set forth in the remainder of this
 paragraph.

- 1 15. **Opp. Para. 15.** Applicant denies the claims in this paragraph in their entirety.
- 2 16. **Opp. Para. 16.** Applicant denies the claims set forth in this paragraph in their
- 3 entirety.
- 4 17. **Opp. Para. 17.** Applicant denies the claims in this paragraph in their entirety.
- 5 18. **Opp. Para. 18.** Applicant is without sufficient knowledge to admit or deny the
- 6 claims set forth in this paragraph and therefore, denies the claims in their entirety.
- 7 19. **Opp. Para. 19.** Applicant is without sufficient knowledge to admit or deny the
- 8 claims set forth in this paragraph and therefore, denies the claims in their entirety.
- 9 20. **Opp. Para. 20.** Applicant is without sufficient knowledge to admit or deny the
- 10 claims set forth in this paragraph and therefore, denies the claims in their entirety.
- 11 21. **Opp. Para. 21.** Applicant is without sufficient knowledge to admit or deny the
- 12 claims set forth in this paragraph and therefore, denies the claims in their entirety.
- 13 22. **Opp. Para. 22.** Applicant is without sufficient knowledge to admit or deny the
- 14 claims set forth in this paragraph and therefore, denies the claims in their entirety.
- 15 23. **Opp. Para. 23.** Applicant denies the claims in this paragraph in their entirety.
- 16 24. **Opp. Para. 24.** Applicant denies the claims in this paragraph in their entirety.
- 17 25. **Opp. Para. 25.** Applicant denies the claims in this paragraph in their entirety.
- 18 26. **Opp. Para. 26.** Applicant is without sufficient knowledge to admit or deny the
- 19 claims set forth in this paragraph and therefore, denies the claims in their entirety.
- 20 27. **Opp. Para. 27.** Applicant denies the claims in this paragraph in their entirety.
- 21 28. **Opp. Para. 28.** Applicant denies the claims in this paragraph in their entirety.
- 22 29. **Opp. Para. 29.** Applicant denies that Opposer owns a family of AIRFRAME marks
- 23 and further denies that such marks are famous. Applicant is without sufficient
- 24 knowledge to admit or deny the remaining claims set forth in this paragraph and
- 25 therefore, denies the remaining claims in their entirety.
- 26 30. **Opp. Para. 30.** Applicant denies in the claims in this paragraph in their entirety.
- 27 31. **Opp. Para. 31.** Applicant denies the claims in this paragraph in their entirety.
- 28 32. **Opp. Para. 32.** Applicant denies the claims in this paragraph in their entirety.
33. **Opp. Para. 33.** Admitted.
34. **Opp. Para. 34.** Admitted.

1 services meeting the description set forth in the preceding paragraph.

2 4. Opposer is frivolously and abusively forwarding this opposition action without a good faith
3 argument that Applicant's application should be denied pursuant to 15 USC S. 1052 or any other
4 applicable law.

5 5. Opposer's opposition should be denied in its entirety due to Opposer's promulgation of bad
6 faith litigation in this opposition action.

7
8 **THIRD AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION**
9 **(Unclean Hands)**

10 Opposer's opposition is barred by the equitable doctrine and affirmative defense of unclean
11 hands and should be denied in its entirety.

12 **FOURTH AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION**
13 **(Estoppel)**

14 Opposer's opposition is barred by the equitable doctrine and affirmative defense of
15 estoppel and should be denied in its entirety.

16 **COUNTERCLAIMS FOR CANCELLATION**

17 1. Applicant hereby presents counterclaims for cancellation of Registration Nos.
18 2,137,218, 2,128,940, 2,138,609, 2,137,059 and 2,138,806 (the "AIR FRAME Registrations") registered
19 to Opposer Central Mfg. Co.

20 2. Upon information and belief, Opposer Leo Stoller doing business as Central Mfg.
21 with an address at P.O. Box 35189, Chicago, IL 60707, is the current owner of the AIR FRAME
22 Registrations.
23

24 3. Opposer Central Mfg. Co. is the current listed registrant for the AIR FRAME
25 Registrations, which include the following: Registration No. 2,137,218 in class 25 for "athletic shoes;
26 cloth baby bibs; bandannas; baseball caps; baseball shirts; blouses; baby buntings; caps; casual pants;
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1 casual shoes; children's wear, namely, pants, shirts, pajamas, stockings, underwear, hats, shoes; collars
2 cover-alls; dress shirts; dresses; garter belts; gloves; golf shirts; gym shirts; hats; hosiery; jackets; jeans;
3 jumpers; knit shirts; leg warmers; lingerie; mittens; neckties; negligees; painter's caps; pajamas; parkas;
4 polo-type shirts; ponchos; robes; running shoes; running shorts; scarves; shirts; shawls; shoes; shorts; ski
5 jackets; skirts; slacks; sleepwear; slippers; non-protective snowmobile suits; socks; sport shoes; sunsuits;
6 sun visors; suspenders; sweatbands; sweat pants; sweat shirts; sweat shorts; sweaters; swimwear;
7 swimsuits; T-shirts; tank tops; tennis shirts; ties; tights; tracksuits; underwear; vests; walking shorts;
8 wind resistant jackets; workpants; wrist bands"; Registration No. 2,128,940 in class 12 for "motorcycles,
9 bicycles, boats, tires"; Registration No. 2,138,609 in class 9 for "audio cassettes, audio tapes, audio discs,
10 and phonograph records all featuring science fiction matter; video discs, motion picture films, and
11 prerecorded videotapes, all featuring animated works about science fiction matter; binoculars,
12 calculators; blank audio cassettes; blank video cassettes; air tanks for use in scuba diving; electric irons;
13 electronic flying insect light traps, electronic garage door locks; eyeglasses and sunglasses and frames
14 there for; cases for eyeglasses and sunglasses; life jackets; life belts; life nets; decorative refrigerator
15 magnets; slide projectors; photographic slide transparencies; photographic video cameras and lenses
16 there for; radios; safety goggles; telephones; telescopes; electronic calendars, namely, handheld personal
17 electronic devices for scheduling appointments"; Registration No. 2,137,059 in class 41 for "series of
18 television and radio programs about science fiction; musical entertainment services in the nature of live
19 performances by a vocal group; arcade service for video amusement games; organizing and conducting
20 sporting events for tennis and golf; amusement park services in the nature of children's bouncing ride;
21 conducting aerobic competitions; educational services, namely, providing workshops, lectures, courses
22 and group instruction in trademark licensing"; and Registration No. 2,138,806 in class 28 for "toys and
23 sporting goods, namely, tennis rackets, golf clubs, tennis balls, basketballs, baseballs, soccer balls, golf
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1 balls, cross bows, tennis racket strings and badminton shuttlecocks, toy airplanes, hobby craft kits for
2 building toy airplanes, toy building structures, and toy bicycles not intended for riding, pool cues, pool
3 tables, darts, billiard balls, billiard cue cases, billiard cue racks, billiard gloves, fishing rods, hockey
4 sticks, hockey pucks, ping pong paddles, ping pong balls".

6
7 4. The AIR FRAME Registrations are a source of damage and injury to Applicant.

8 **FIRST COUNTERCLAIM**

9
10 5. Applicant incorporates by reference the allegations of paragraphs 1 through 4 as
11 though fully set forth herein.

12
13 6. Upon information and belief, the AIR FRAME mark has not been used in commerce with
14 all of the goods and services listed in the AIR FRAME Registrations as required under the Lanham
15 Act. Because there has not been bona fide use in commerce of the AIR FRAME mark on all of the
16 goods and services listed in the AIR FRAME Registrations, the AIR FRAME Registrations are invalid
17 and should be canceled.

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20 **SECOND COUNTERCLAIM**

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22 7. Applicant incorporates by reference the allegations of paragraphs 1 through 6 as
23 though fully set forth herein.

24
25 8. Upon information and belief, the AIR FRAME Registrations were procured by fraud,
26 because Opposer was aware, or should have been aware, that there was no bona fide use of the AIR
27 FRAME mark in commerce on all of the listed goods and services when the statements of use and
28

1 Section 8 declarations for the AIR FRAME Registrations were filed. The statements of use and Section
2 8 declarations, therefore, falsely represented to the Patent and Trademark Office ("PTO") that the AIR
3 FRAME mark had been used in commerce on all of the listed goods and services. This was a material
4 misrepresentation, since use in commerce on all of the listed goods and services is a prerequisite under
5 the Lanham Act to obtaining federal registration of a trademark for those goods and services. Opposer
6 knew, or should have known, that the allegation of use in commerce on all of the listed goods and
7 services was false, and Opposer intended by this false representation to induce reliance by the PTO on
8 the misrepresentation so that the AIR FRAME mark would be registered. The PTO did in fact rely on
9 Opposer's material misrepresentation and the AIR FRAME Registrations were therefore issued as a
10 result of Opposer's fraud on the PTO. Because the AIR FRAME Registrations were fraudulently
11 obtained, they should be canceled.
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14

15 WHEREFORE, Applicant respectfully requests that (1) the opposition against Application No.
16 78/233,204 be dismissed with prejudice, and (2) Applicant's counterclaims for cancellation be sustained
17 and Opposer's AIR FRAME Registrations be canceled.
18

19 Dated this 31st day of May, 2004.
20

21 **WALSH, BAKER & ROSEVEAR P.C.**

22 By:



23 ANN ROSEVEAR, ESQ.
24 Attorney for Applicant
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7 Attorney for Applicant



06-04-2004

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #78

8 **IN THE UNITED STATES AND TRADEMARK OFFICE**
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10 **Leo Stoller d/b/a,**
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12 **P.O. Box 35189**
13 **Chicago, IL 60707-0789**

14 **Opposer,**

15 **vs.**

16 **AIRFRAME BUSINESS SOFTWARE, INC.**
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19 **Applicant. ,**

Trademark:

AIRFRAME BUSINESS SOFTWARE,
INC.

Opposition No.: 91160234
Application SN: 78-233,204
Int. Class No: 09

AFFIDAVIT OF MAILING

20 STATE OF NEVADA)
21) ss.
22 COUNTY OF WASHOE)

23 I, Veronica Lopez, do hereby swear, under penalty of perjury, that the assertions of this Affidavit
24 are true.

25 That Affiant is, and was when the herein-described mailing took place, a citizen of the United
26 States, over 18 years of age, and not a party to, nor interested in, the within action, that on June 1, 2004,
27 Affiant deposited in the United States Post Office at Reno, Nevada, a copy of the following document:

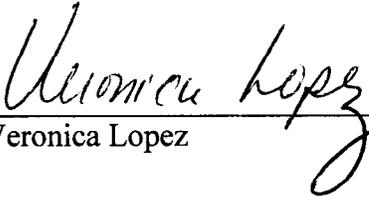
28 **ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM**

The above-described documents were enclose in a sealed envelope upon which first-class
postage was fully prepaid, addressed to:

1 United States Department of Commerce
2 Patent and Trademark Office
3 Trademark Trial and Appeal Board
4 2900 Crystal Drive
5 Arlington, Virginia 22202.3513

Leo Stoller
Central Mfg., Trademark and Licensing
Post Office Box 35189
Chicago, IL 60707-0189

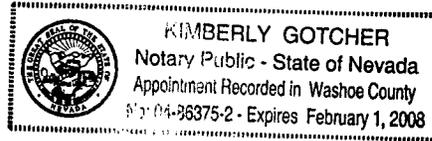
6 DATED this 1st day of June, 2004.

7
8 
9
10 Veronica Lopez

11 Subscribed and Sworn before me
12 This 1st day of June, 2004

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Notary Public



T TAD

WALSH, BAKER & ROSEVEAR

JAMES M. WALSH *
WILLIAM A. BAKER
ANN SETTY-ROSEVEAR**

PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
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**Admitted in Nevada, Washington and Oregon



May 31, 2004

06-04-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

Commissioner of Trademarks
United States Patent and Trademark Office
2900 Crystal Drive
Arlington VA 22202-3514

RE: Application SN: 78-233,204
Applicant: Airframe Business Software, Inc.
Opposer: Leo Stoller dba Central Mfg.

Dear Sir or Madame:

Please find enclosed herein for filing the Answer to Opposition and Counterclaim of Applicant Airframe Business Software, Inc. Please also find enclosed payment in the amount of \$1,500.00 representing the fee for counterclaim for cancellation in five (5) classes.

If you have any questions regarding this issue, please do not hesitate to contact me.

Sincerely,

Ann Rosevear, Esq.
For Airframe Business Software, Inc.

Cc Answer to Opposition and Counterclaim To:
Leo Stoller dba Central Mfg., P.O. Box 35189, Chicago, IL 60707-0189
Airframe Business Software, Inc. 800 Southwood Blvd. Suite 105,
Incline Village, NV 89451

~~06/21/2004 SWILSON1 00000140 78233204~~

~~01 FC:6402~~

1500.00 DP