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

Proceeding	91162527
Party	Defendant CarMax Auto Superstores West Coast, Inc. CarMax Auto Superstores West Coast, Inc. 680 South Lemon Avenue, Suite 10A Walnut, CA 91789
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Date	11/24/2004
Attachments	Answer filed with TTAB.pdf (4 pages)

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

NORTH CAROLINA AUTOMOBILE)
DEALERS ASSOCIATION, INC.,)
)
Opposer,)
)
v.)
)
CARMAX AUTO SUPERSTORES)
WEST COAST, INC.)
)
Applicant.)
)

Opposition No. 91162527

Serial No.: 78/313196
Mark: WE'LL BUY YOUR CAR EVEN IF YOU DON'T BUY OURS!
Goods & Services: Retail store services featuring automobiles and trucks.
Class: 35
Filed: October 14, 2003
Published for Opposition: August 10, 2004

ANSWER

CarMax Auto Superstores West Coast, Inc., (“Applicant” or “CarMax”) by counsel, pursuant to 37 C.F.R. § 2.106 and Rule 8 of the Federal Rules of Civil Procedure, hereby answers the Opposition filed by Opposer North Carolina Automobile Dealers Association, Inc. (“Opposer” or “NCADA”):

CarMax denies each allegation of the Opposition not expressly admitted herein.

The following numbered paragraphs correspond to the numbered paragraphs of the Opposition.

1. CarMax is without information or knowledge sufficient either to admit or deny the allegations of paragraph 1 of the Opposition, and therefore denies them.

2. CarMax is without information or knowledge sufficient either to admit or deny the allegations of paragraph 2 of the Opposition, and therefore denies them.

3. CarMax is without information or knowledge sufficient either to admit or deny the allegations of paragraph 3 of the Opposition, and therefore denies them.

4. CarMax denies that its proposed registration will impinge upon any legitimate rights of Opposer's constituents. CarMax is without information or knowledge sufficient either to admit or deny the remainder of the allegations of paragraph 4 of the Opposition, and therefore denies them.

5. The allegations of paragraph 5 of the Opposition state a legal conclusion, to which no response is required. To the extent that a response is required, CarMax denies that the proposed mark WE'LL BUY YOUR CAR EVEN IF YOU DON'T BUY OURS! is descriptive. CarMax is without information or knowledge sufficient either to admit or deny the remainder of the allegations of paragraph 5 of the Opposition, and therefore denies them.

6. The allegations of paragraph 6 of the Opposition state legal conclusions, to which no response is required. To the extent that a response is required, CarMax denies that the proposed mark is descriptive. CarMax further denies that the proposed mark lacks secondary meaning. CarMax is without information or knowledge sufficient either to admit or deny the remainder of the allegations of paragraph 6 of the Opposition, and therefore denies them.

7. The allegations of paragraph 7 of the Opposition state a legal conclusion, to which no response is required. To the extent that a response is required, CarMax denies that the proposed mark is generic. CarMax is without information or knowledge sufficient either to admit or deny the remainder of the allegations of paragraph 7 of the Opposition, and therefore denies them.

AFFIRMATIVE DEFENSES

8. CarMax will rely on any and all properly provable affirmative defenses developed from discovery and further investigation, including but not limited to unclean hands, laches, estoppel, acquiescence, abandonment, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. CarMax reserves the right to amend this pleading to conform thereto.

- 9. The proposed mark is not generic.
- 10. The proposed mark is not descriptive.
- 11. The proposed mark is inherently distinctive.
- 12. The proposed mark has acquired secondary meaning.

WHEREFORE, CarMax prays that the Opposition be dismissed.

Respectfully submitted,

CARMAX AUTO SUPERSTORES WEST
COAST, INC.

By:  _____

Dated: November 24, 2004

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2004, a true copy of the foregoing ANSWER was mailed via first-class mail to Shawn D. Mercer, Esq., JOHNSON, HEARN, VINEGAR, GEE & MERCER, PLLC, Two Hannover Square, Suite 2200, Post Office Box 1776, Raleigh, North Carolina 27602, Attorney for Opposer.



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