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

Proceeding	91186348
Party	Plaintiff Dry Force, Inc.
Correspondence Address	Alan L. Edwards Kunzler & McKenzie 8 East Broadway, Suite 600 Salt Lake City, UT 84111 UNITED STATES doCKET@kmiplaw.com,aedwards@kmiplaw.com,tyler@kmiplaw.com
Submission	Answer to Counterclaim
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Date	12/03/2008
Attachments	Answer_to_CC.pdf (4 pages)(80348 bytes)

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

In the matter of trademark application Serial No. 77/399,957
For the mark MOBILE DRY FORCE
Published in the Official Gazette on August 26, 2008

DRY FORCE, INC.;)	
)	
Opposer,)	Opposition No. 91186348
vs.)	
)	
MOBILE AIR, INC.;)	
)	
Applicant.)	
)	

ANSWER TO COUNTERCLAIM

Dry Force, Inc. (“Opposer”), an Arizona Corporation with a business address of 1819 North Rosemont Dr., Suite 103, Mesa Arizona 85205, by and through its attorneys, hereby answers the allegations set forth in Applicant’s Answer to Opposition and Counterclaim as follows:

1. Admitted.
2. Denied.
3. Denied.
4. Denied.
5. Denied.
6. Denied.

First Defense

(No Disclaimer Needed for a Unitary Mark)

Opposer/Registrant's mark DRY FORCE is a unitary mark and does not require a disclaimer for the work DRY.

Second Defense

(Failure to Sufficiently Plead Fraud)

The counterclaim dealing with fraud should be dismissed and/or denied, in that the allegations in these counts are legally insufficient because they fail to satisfy the particularity requirements of FRCP 9(b) with respect to claims that Opposer violated and committed fraud. Thus, such fraud-based claims should be dismissed and/or denied.

Third Defense

(Failure to Disclaim a Descriptive Term Cannot be the Basis for Fraud)

Even if Opposer were required to disclaim the word "dry" as descriptive, such a failure to do so would not amount to a fraudulent misrepresentation. Failure to disclaim a descriptive term cannot be the basis for a claim of fraud on the USPTO.

Fourth Defense

(Unclean hands)

The Applicant/Counterclaimant is barred under the doctrine of unclean hands.

WHEREFORE, Opposer/Registrant prays that the Applicant/Counterclaimant's Counterclaim be dismissed and that the mark MOBILE DRY FORCE be refused registration.

RESPECTFULLY SUBMITTED this 3rd day of December 2008.

/Alan L. Edwards/

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December 2008, a true and correct copy of the foregoing ANSWER TO COUNTERCLAIM was served by the following method(s) on the person(s) indicated below:

DOUGLAS W. SPRINKLE GIFFORD KRASS ET AL. PO BOX 7021 TROY, MI 48007-7021	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Federal Express
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DATED and SIGNED this 3rd day of December 2008.

/Lindsey Livingston/

Lindsey Livingston
Assistant to Alan Edwards