ESTTA Tracking number:

ESTTA432866 09/28/2011

Filing date:

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	The Corps Group			
Entity	Corporation Citizenship Pennsylvania			
Address	258 N. West End Boulevard, #318 Quakertown, PA 18951 UNITED STATES			

Attorney information	Michael Elkon Fisher & Phillips LLP 1075 Peachtree Street Suite 3500 Atlanta, GA 30309
	UNITED STATES
	melkon@laborlawyers.com Phone:(404) 240-5849

Applicant Information

Application No	85094889	Publication date	08/30/2011
Opposition Filing Date	09/28/2011	Opposition Period Ends	09/29/2011
Applicant	AFTERBURNER, INC. 55 Ivan Allen Jr. Blvd. Atlanta, GA 30308 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 1996/01/31 First Use In Commerce: 1996/01/31

All goods and services in the class are opposed, namely: Business management consultancy services; executive search and placement services; personnel placement and recruitment

Class 041. First Use: 1996/01/31 First Use In Commerce: 1996/01/31

All goods and services in the class are opposed, namely: Providing seminars in motivational and management training; educational and entertainment services, namely, providing keynote motivational and educational speakers and providing personal and group coaching and learning forums in the field of leadership development

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)	
Genericness	Trademark Act section 23	

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85331417	Application Date	05/26/2011
Registration Date	NONE	Foreign Priority	NONE

	Date		
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a sage green pilot flight suit with a 2 inch by four inch black and white nametag on left breast with a 4.5 inch circular white, black, grey and red logo patch on the right breast.		
Goods/Services	Class 035. First use: First Use: 2008/09/01 First Use In Commerce: 2008/09/01		
	Business management consultancy services; Business management consultation in the field of executive and leadership development; Business management planning; Business organizational consultation; Business planning; Business risk management consultation		
	Class 041. First use: First Use: 2008/09/01 First Use In Commerce: 2008/09/01		
	Business education and training services, namely, developing, and facilitating customized in-company leadership and executive development programs, providing executive coaching services, and providing public and in-company keynote presentations to business leaders		
Related	Afterhumer Inc. v. The Corps Group, et al. Civil Action File No. 09cv-2844		

Related Proceedings	Afterburner, Inc. v. The Corps Group, et al. Civil Action File No. 09cv-2844 Superior Court of Forsyth County, State of Georgia
Attachments	85331417#TMSN.jpeg (1 page)(bytes) Notice of Opposition with Exhibit.pdf (19 pages)(4017518 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael Elkon/
Name	Michael Elkon
Date	09/28/2011

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

In re: Serial No. 85-094,889

Mark: A three-dimensional depiction of an entire pilot flight suit as worn by Applicant's

employees and contractors in rendering Applicant's services.

Filed: July 28, 2010

The Corps Group,)	
1 17	Opposer,)	
VS.)	Opposition No
Afterburner, Inc.)	
	Applicant.)	

NOTICE OF OPPOSITION

Opposer The Corps Group, a Pennsylvania company with a principal place of business located at 258 N. West End Boulevard, #318, Quakertown, Pennsylvania 18951, believes that it will be damaged by Serial No. 85-094,889 and hereby opposes same under 15 U.S.C. § 1063.

The name and address of the Applicant for Serial No. 85-094,889 is Afterburner, Inc., a Georgia company with a principal place of business located at 55 Ivan Allen Jr. Boulevard, Suite 525, Atlanta, Georgia 30308.

As grounds for cancellation, The Corps Group alleges as follows:

- 1. Afterburner has applied for a registration of a mark consisting of a three-dimensional depiction of an entire pilot flight suit (the "alleged mark") as worn by Afterburner's employees and contractors in rendering Applicant's services. The alleged mark does not contain any distinctive designs or patterns on the flight suit. Rather, the alleged mark is simply a generic flight suit.
- 2. Afterburner defines its claimed use of the mark as being in connection with the provision of "business management consultancy services, executive search and placement services, [and] personnel placement and recruitment," as well as "providing seminars in motivational and management training, educational and entertainment services, namely providing keynote motivational and educational speakers and providing personal and group coaching and learning forums in the field of leadership development."
- 3. In the application, Afterburner alleges that it first used the alleged mark in commerce on January 31, 1996.
- 4. The application is based on a claim that the alleged mark has acquired distinctiveness for use in association with Afterburner's services in commerce under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).
- 5. Like Afterburner, The Corps Group is in the business of "corporate team building" and is comprised of former U.S. military fighter pilots who draw on their military training and experience to perform at speaking engagements and conduct training for business clients. The Corps Group describes on its web site that "through keynote addresses, corporate team building events and executive leadership training, [it] can help your business

develop a high performing team culture that generates and maintains superior, measurable results."

- 6. The Corps Group has used flight suits in the course of advertising and making corporate team building presentations for an extended period of time. When making presentations, the individual employees of the Corps Group display logos, titles and headings making it clear that they are with The Corps Group. The Corps Group employees make this point clear whether they are wearing a flight suit or business attire.
- 7. The Corps Group is not unique in using flight suits to make presentations to business clients. Various entities, including numerous famous military heroes, have been doing so for decades. The following is a non-exclusive list of individuals and entities who have implemented the same basic idea: Mach 2 Consulting, Bright Consulting Group, Mission Excellence, Check Six, Fighter Pilots USA, Top Gun Teambuilding, Target Leadership, Christian Fighter Pilots, Brian Shul Presentations, Rob "Waldo" Waldman, Ed Rush, John Foley, Vernice Armour, Eileen Collins, Jon McBride, Jeff Espenship, Dan Clark, Bob Shaw, Pete Ross, Mike Heavey, Bill Simmons, Justin Hughes, Martin Richard, Rick White, and Scott O'Grady. Screenshots of some of the web sites for the individuals and entities in the business are attached hereto as Exhibit A.
- 8. In fact, the principal of Mach 2 Consulting Anthony "AB" Bourke is a former partner of Afterburner. Espenship, Waldman, White, and the founders of Check Six were also formerly affiliated with Afterburner.
 - 9. Practically all of the other entities in the fighter pilot team building business

seminar arena utilize flight suits in advertising their services and/or making presentations in which they reference their histories as fighter pilots and use call-signs and military jargon to lead team building seminars for business clients.

- 10. As such, the alleged mark is not distinctive in any way. Rather, it represents the use of a common, well-known uniform by a fraternity of fighter pilots working for themselves and numerous entities.
- 11. The other entities listed above have been using flight suit motifs in advertising and making team building seminars for years. Additionally, one or more other entities have been making such presentations in geographic areas that Afterburner has not penetrated.
- 12. The Corps Group is likely to be damaged by the registration of the alleged mark in that the prima facie effect of such registration would impair The Corps Group's right to have its key employees all of whom are former fighter pilots make presentations in flight suits. Likewise, numerous other veterans a number of whom attained a significant degree of notoriety by virtue of their service would face the prospect of similar damage if the alleged mark were registered.
- 13. In fact, if the alleged mark is registered, then the Corps Group is even faced with the prospect of its employees and contractors not being able to appear in pictures on the company's web site wearing the flight suits that they wore when they served in the armed forces. The alleged mark is so generic and broad that it would arguably prevent even that basic form of commercial expression on the part of the Corps Group and many other veterans.

Grounds for Opposition - The Alleged Mark Is Not Capable of Distinguishing Afterburner's Services

- 14. As a matter of law, the alleged mark is not entitled to protection as a matter of law because it is not capable of distinguishing Afterburner's services.
- 15. The Corps Group and numerous other entities use motifs similar to that of the alleged mark and have done so for years. There is nothing unique or distinctive about the basic use of a non-descript flight suit in advertising and making a presentation to a business client. The concept should not be exclusively appropriated by any company.

Grounds for Opposition - The Alleged Mark Has Not Acquired Distinctiveness

- 16. As a matter of law, the alleged mark is not inherently distinctive and therefore is not registrable in the absence of proof of acquired distinctiveness.
- 17. Afterburner does not and indeed cannot submit evidence in support of its application that the alleged mark the simple use of an unmarked flight suit in corporate team building presentations has acquired distinctiveness as a trademark. Specifically, Afterburner cannot meet its substantial burden of showing that the use of unmarked flight suits in corporate team building presentations has acquired distinctiveness as a symbol of Afterburner's services in commerce.
- 18. Afterburner is not the sole and exclusive user of the alleged mark for use in association with corporate team building presentations. The alleged mark does not function to identify Afterburner's services and distinguish them from identical, similar, or related services offered by The Corps Group or numerous other entities in the business of making corporate team building presentations.

19. Afterburner is not entitled to register the alleged mark because the alleged mark is not distinctive. Therefore, Afterburner is not entitled to exclusive use of the alleged mark in commerce.

<u>Grounds for Opposition - Others Have Used The Alleged Mark Before It Acquired</u> Distinctiveness

- 20. The Corps Group denies that Afterburner's alleged mark has acquired secondary meaning. However, to the extent that it has done so, it acquired secondary meaning after numerous other entities had started advertising and making corporate team building presentations using flight suits.
- 21. Many other entities have been advertising and making corporate team-building presentations using flight suits for years.

<u>Grounds for Opposition – Others Have Used The Alleged Mark In Geographic</u> <u>Areas Where Afterburner Has Not Acquired Distinctiveness</u>

- 22. The Corps Group denies that Afterburner's alleged mark has acquired secondary meaning anywhere. However, to the extent that it has done so, it has not acquired secondary meaning throughout the United States.
- 23. One or more entities have been advertising and making corporate team-building presentations using flight suits in geographic areas where Afterburner has a limited presence and therefore has not acquired secondary meaning.

WHEREFORE, Opposer The Corps Group requests that its Opposition to Serial No. 85-094,889 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to The Corps Group that the Board finds necessary and just under the circumstances.

Respectfully submitted on this 28th day of September, 2011.

By: ______ Tracy L. Moon, Jr.

Georgia Bar No.: 518050

Michael Elle

Walter J. Kruger III

Georgia Bar No. 429926

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Attorneys for Opposer

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

	ensional depiction of tractors in rendering		re pilot flight suit as worn by Applicant's ant's services.
The Corps Group,	Opposer,)	
VS.) Opposition No:	
Afterburner, Inc.)	
	Applicant.)	

CERTIFICATE OF SERVICE

I certify that on September 28th, 2011, I served a copy of the foregoing NOTICE OF OPPOSITION on Applicant's counsel via U.S. First Class Mail, postage prepaid, addressed as follows:

Michael C. Mason ESSENTIA LEGAL, PC 3915 Cascade Road SW, Suite 110 Atlanta, Georgia 30331-8519

Counsel for Opposer



























