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

Proceeding	91201830
Party	Plaintiff The Corps Group
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Date	03/02/2017
Attachments	Opposition to Motion to Extend Discovery with Ex A.pdf(985515 bytes )

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

THE CORPS GROUP,

Opposer,

v.

AFTERBURNER, INC.

Applicant.

In re Application Serial No. 85/094,889  
Mark: Pilot Flight Suit Design



Published: August 30, 2011  
Opposition No. 91201830

**OPPOSITION TO MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Opposer The Corps Group (“Opposer”) hereby opposes the Motion to Extend Discovery and Trial Dates that was filed by Applicant Afterburner, Inc. (“Afterburner”). Afterburner failed to demonstrate good cause for an extension of the discovery period. Instead, it is clear that Afterburner’s motion is a belated effort to seek an extension after it unjustifiably delayed in serving any discovery until after its deadline to do so had passed.

This proceeding was initiated in September 2011 and has been pending for over five years. Dkt. 1. The proceeding was suspended several times pending disposition of a civil litigation. Dkt. 5, 10, 15, 19. The civil litigation took place in Georgia state court and involved allegations of infringement of several trademarks, including the trademark that is the subject of this opposition proceeding. The parties each took extensive discovery in connection with the civil litigation and ultimately had a seven day jury trial in April 2015. Prior to the submission of the case to the jury, the trial court granted a directed verdict in favor of Opposer with respect to Afterburner’s claim that Opposer infringed Afterburner’s rights in the flight suit that is the subject of this opposition proceeding and held that the claimed flight suit was generic and not

protectable as a service mark. Afterburner did not appeal this ruling, and it is now final and binding on the parties.

On July 16, 2016, the Board removed this proceeding from suspension and issued a new scheduling order. Dkt. 24. The scheduling order provided that the discovery period would open on August 26, 2016 and would close on February 22, 2017. *Id.* On September 15, 2016, the parties exchanged initial disclosures. In the almost five month period between September 15, 2016 and February 8, 2017, Afterburner did not serve any discovery requests on Opposer or indicate to Opposer that it believed any additional discovery was necessary beyond the extensive discovery it had already taken in connection with the civil litigation. On February 9, 2017, Afterburner for the first time indicated that it believed additional discovery was appropriate, and on February 12, 2017, Afterburner filed its motion for an extension of the discovery period and sent Opposer extensive requests for production, interrogatories, and requests for admissions, which are attached hereto as Exhibit A.

The party moving for an extension of the discovery period has the burden of persuading the Board that it was diligent in meeting its responsibilities and that there is good cause for receiving additional time. *NFL v. DNH Mgmt., LLC*, 85 U.S.P.Q.2d 1852, 1854 (TTAB 2008). “Mere delay in initiating discovery does not constitute good cause for an extension of the discovery period.” TBMP § 403.04; *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303, 1305 (TTAB 1987).

The TTAB rules require that all discovery requests be served and all responses and objections be served on or before the close of the discovery period. 37 CFR § 2.120(a)(3). The opposing party has 30 days from the date of service to respond to discovery requests. *Id.* Thus, all discovery requests must be served at least 30 days prior to the date of the close of discovery.

TBMP 403.05(a) (“interrogatories, requests for production of documents and things and requests for admission must be served early enough in the discovery period...so that responses will be due no later than the close of discovery.”). Here, Opposer filed its motion for an extension of time on February 12, 2017, merely 10 days before the close of the discovery period and 20 days after it would have had to serve any discovery requests for them to have been timely. In such a situation, the Board ordinarily denies a motion to extend discovery. *See NFL*, 85 U.S.P.Q.2d at 1854-55 (motion for extension of discovery denied where opposer did not serve initial discovery requests until two days after schedule closing of discovery); *Luemme, Inc. v. D.B. Plus*, 53 U.S.P.Q.2d (BNA) 1758, 1760 (TTAB 1999) (denying motion for extension of time where petitioner served discovery requests on last day of original discovery period).

The crux of Afterburner’s argument in support of its motion is that an extension of the discovery period is warranted because the U.S. Air Force filed a motion for leave to file an amicus brief during the discovery period. It is true that the U.S. Air Force filed a motion for leave to file an amicus brief. However, this motion was filed on December 14, 2016, almost four months after the discovery period opened and the Board denied the motion in late January. Dkt. 25-26. Afterburner provides no explanation for its failure to serve any discovery prior to December 14, 2016. Critically, Afterburner also does not explain why a potential amicus brief prevented Afterburner from drafting and serving discovery requests on Opposer. Although Afterburner’s counsel claims it was engaged in “intense discussions” with its client around the holiday period regarding the potential amicus brief, Motion at 2, Afterburner never filed an opposition to the motion for leave to file an amicus brief. Nor did Afterburner move to extend the discovery deadline in December or January, while the motion for leave to file an amicus brief was pending.

In summary, Afterburner failed to demonstrate that the U.S. Air Force's motion for leave to file an amicus brief constitutes good cause for extending the discovery period. Instead, it is clear based on the circumstances that the U.S. Air Force's filing is merely a pretext for Afterburner's delay in initiating discovery.

Additionally, Afterburner's belated discovery requests seek information from Opposer that is entirely unrelated to Opposer's grounds for opposition or Afterburner's defenses. Opposer's bases for opposing Afterburner's application are that the claimed mark is not capable of serving as a trademark and has not acquired distinctiveness. As seen in the discovery requests attached as Exhibit A, Afterburner's proposed discovery requests include requests regarding the business relationship between Afterburner and employees of Opposer, communications between Afterburner and Opposer, Opposer's development and use of a pilot flight suit for use in its business, and evidence of confusion between Opposer and Afterburner. *See* Interrogatories 2-12; Document Requests 1-6; and Requests for Admission 1-10. These issues are not germane to the determination of whether Afterburner's claimed mark is protectable, which is the only relevant issue in this proceeding. Instead, Afterburner improperly seeks to rehash issues that were litigated and resolved in the civil litigation. Opposer should not be required to spend any further time and resources responding to these discovery requests.

This case has been pending for over five years. The parties engaged in extensive discovery in connection with the civil litigation going back to 2009 and no additional discovery is necessary. Until recently, Afterburner appeared to agree that no discovery was necessary, so it elected not to timely serve any discovery requests. In an inexplicable change of heart, Afterburner now asks the Board to extend the discovery period even though it offers no credible explanation for its delay or good cause for an extension of the discovery period. Moreover, the

substance of the requests makes it clear that not only are Afterburner's discovery requests late, but they are a tactical attempt to force Opposer to waste time and resources on issues that are irrelevant to this proceeding. Therefore, the Board should deny Afterburner's request for an extension of the discovery period.

Dated: March 2, 2017

Respectfully submitted,

By: /s/ J. Kevin Fee

J. Kevin Fee

Jordana S. Rubel

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Tel: (202) 739-3000

Fax: (202) 739-3001

Attorneys for Opposer

The Corps Group

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Opposition to Motion to Extend Discovery and Trial Dates has been sent via email and first class mail, postage pre-paid, this 2nd day of March, 2017 to:

Michael C. Mason  
The Law Office of Michael C. Mason  
1960 Rosecliff Drive, NE  
Atlanta, GA 30329  
mmtmlaw@gmail.com

/s/ Jordana S. Rubel

\_\_\_\_\_  
Jordana S. Rubel

# EXHIBIT A



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

THE CORPS GROUP,

Opposer,

v.

AFTERBURNER, INC.,

Applicant.

Opposition No. 91201830

Application No. 85094889



Mark:

**APPLICANT’S FIRST SET OF INTERROGATORIES TO OPPOSER THE  
CORPS GROUP**

Pursuant to Trademark Rule of Practice 2.120 (37 U.S.C. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 406, and Federal Rule of Civil Procedure 33, Applicant Afterburner, Inc. (“Applicant” or “Afterburner”) hereby requests that Opposer The Corps Group (“TCG”) answer the following Interrogatories separately and fully, in writing, under oath within thirty (30) days after date of service.

For the purpose of these Interrogatories, the following definitions and instructions shall apply:

**DEFINITIONS**

1. "You," "Your," and/or "Opposer" means The Corps Group (“TCG”) and its agents, attorneys, employees, and those acting or purporting to act on its behalf. These terms also shall mean any company name under which The Corps Group is doing business and its predecessors, parents, subsidiaries, divisions, affiliates, committees, boards or other related business entities, and each partnership or joint venture to which any of them is a party, as well as present and former directors, officers, partners, employees, agents, attorneys, distributors,

contractors, consultants, salespersons, sales representatives, employees of such entities, and representatives of the foregoing, and any other persons acting or purporting to act on behalf of any of the foregoing.

2. "Applicant" or "Afterburner" means Afterburner, Inc. and all persons or entities purporting to act on its behalf, including attorneys, officers, directors, employees, principals, partners, agents, licensees, corporate parents, subsidiaries, or affiliates.

3. "PILOT FLIGHT SUIT MARK" means the mark, trade dress or design used in connection with Applicant's services as described in Applicant's U.S. Trademark Application No. 85094889 with an effective filing date of July 28, 2010.

4. "Applicant's Application" means U.S. Trademark Application No. 85094889.

5. The terms "goods" and/or "services" means any and all goods and/or services provided by Opposer, including but not limited to keynote addresses, corporate team building events, executive leadership training and strategic business planning consulting services.

6. "Person" means an individual, firm, partnership, corporation, proprietorship, association, institution, or any other organization or entity.

7. To "identify" or "describe," means in connection with:

a) natural persons, to state their full names, phone numbers, titles and job descriptions, if applicable, and their present or last known business and home addresses;

b) firms, partnerships, corporations, proprietorships, associations, educational institutions, or other entities, to state their names, each of their present or last known addresses, and each of their officers or managing partners;

c) documents (which includes both documents in your possession, custody, and control, and all other documents of which you have knowledge), to describe the documents,

setting forth their dates, titles, authors, addressees, parties thereto, and the substance thereof, with reasonable particularity; and

d) oral statements and communications, to (i) state when and where they were made; (ii) identify each of the makers and recipients thereof, in addition to all others present; (iii) indicate the medium of communication; and (iv) state their substance.

e) product, means to provide a description of the item which is offered for sale, and the intended customer groups, channels of trade, approximate price, and market for the product; and

f) service, means to describe the service and the intended customer groups, channels of trade, approximate price, and market for the service.

8. "Document" means without limitation, any kind of written, typewritten, printed, graphic, or recorded material whatsoever, including without limitation notes, memoranda, letters, reports, studies, electronic mail messages, telegrams, publications, contracts, manuals, business plans, proposals, licenses, drawings, designs, data sheets, diaries, logs, specifications, brochures, product or service descriptions, periodicals, schematics, blueprints, recordings, summaries, pamphlets, books, prospectuses, interoffice and intra office communications, offers, notations of any sort of conversations, working papers, applications, permits, surveys, indices, telephone calls, meeting minutes, databases, electronic files, software, transcriptions of recordings, computer tapes, diskettes, or other magnetic media, bank checks, vouchers, charge slips, invoices, expense account reports, hotel charges, receipts, freight bills, agreements, corporate resolutions, minutes, books, binders, accounts, photographs, and business records. This shall include all non-identical copies, no matter how prepared; all drafts prepared in connection with such documents, whether used or not; and any deleted or erased documents that may be retrieved from hard drives, floppy disks, electronic back-up files, or any other

back-up systems, regardless of location, together with all attachments thereto or enclosures therewith, in the possession, custody or control of Opposer.

9. The term "concerning" shall be construed in the broadest sense to mean relating to, referring to, describing, reflecting, alluding to, responding to, connected with, commenting on, in respect of, about, regarding, discussing, showing, analyzing, constituting, supporting, contradicting, and/or evidencing, in any manner, whether directly or indirectly, the subject matter of the request.

10. The terms "and" and "or" shall mean "and/or."

11. "Any" means any and all.

#### INSTRUCTIONS

1. Opposer must answer each of the following interrogatories separately and fully.
2. Each interrogatory shall be construed independently and not with reference to any other interrogatory for the purpose of limitation.
3. In each instance where an interrogatory is answered on information and belief, Opposer shall set forth the basis for such information and belief.
4. In each instance where Opposer denies knowledge or information sufficient to answer the Interrogatory, Opposer shall set forth the name and address of each person, if any, known to have such knowledge or information.
5. In each instance where the existence of a document is disclosed, Opposer is requested to attach a copy of such document to its response. If such document is not in Opposer's possession, custody or control, Opposer shall state the name and address of each person known to Opposer to have such possession, custody or control, and identify which documents are in such person's possession, custody or control.

6. In any instance in which an interrogatory is objected to for any reason, including privilege, Opposer shall state all of the grounds for such objection in detail and provide the following:

a) for documents, state: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other;

b) for oral communications; state (i) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (ii) the date and place of communications; and (iii) the general subject matter of the communication.

To the extent the claim of attorney-client privilege or work product immunity is not being asserted as to the entirety of a document, produce a copy of the document showing a portion of the document not covered by such claim of privilege or immunity.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify all persons, including but not limited to any witnesses, with knowledge relating to the allegations in the Notice of Opposition and summarize for each such person or witness the relevant information known by the person or witness.

### **INTERROGATORY NO. 2:**

Identify each officer of Opposer's company, including each officer's name, title,

address, and job duties.

**INTERROGATORY NO. 3:**

Describe all business relationships between Applicant and the employees, independent contractors, principals and agents of Opposer before, during and after the formation of TCG.

**INTERROGATORY NO. 4:**

Set forth the date and details of Opposer's first awareness of Applicant's use of pilot flight suits in connection with its services, including the identity of all persons involved and all documents referring or relating to the usage.

**INTERROGATORY NO. 5:**

Identify any and all communications between any current or former officer, principal, employee or independent contractor of Opposer and Applicant relating to the use of a pilot flight suit as a mark. For each such communication, identify all persons involved in such communication, all documents sent or received among any such persons, the dates of all conversations or meetings among any such persons, and the substance of the discussions during any such conversations or meetings.

**INTERROGATORY NO. 6:**

Identify any and all agreements between any current or former officer, principal, employee or independent contractor of Opposer and Applicant relating to the use of a pilot flight suit as a mark. For each such agreement, identify the substance of the agreement, the date of such agreement, all persons involved in the negotiations of the agreement, all persons who signed the agreement, and the location where the agreement was executed.

**INTERROGATORY NO. 7:**

Identify all persons involved in Opposer's development of a pilot flight suit in connection with Opposer's services including the date when it was developed, the date on which it was first used, the date on which it was first used in commerce and all forms of media

in which it is used.

**INTERROGATORY NO. 8:**

Identify every opinion, legal or otherwise, requested or received by you, regarding the right to use pilot flight suits to identify Opposer's services including the identity of the persons requesting the opinion, the date and substance of the opinion, and the persons receiving the opinion.

**INTERROGATORY NO.9:**

Identify each person who participated in a decision to file U.S. Trademark Office Application Serial No. 85331417, for a design mark Opposer described as "a sage green pilot flight suit."

**INTERROGATORY NO. 10:**

Describe the reason for filing U.S. Trademark Office Application Serial No. 85331417, for a design mark Opposer described as "a sage green pilot flight suit."

**INTERROGATORY NO. 11:**

Describe all of Opposer's uses in commerce of pilot flight suits in connection with any goods or services.

**INTERROGATORY NO. 12:**

Describe any and all standard operating procedures regarding pilot flight suits Opposer uses to govern the rendering of its services to any person or entity. For each standard operating procedure, state the substance of the standard, the date when such standard was developed, how the standard was developed, and the persons who participated in the development of the standard.

**INTERROGATORY NO. 13:**

Identify any and all trademark and copyright registrations and applications in which you are the record holder.

**INTERROGATORY NO. 14:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that “[t]he Corps Group has used flight suits in the course of advertising and making corporate team building presentations for an extended period of time” (Notice of Opposition ¶ 6), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 15:**

Identify all facts, documents, or other information that Opposer “is not unique in using flight suits to make presentations to business clients” and/or “[v]arious entities, including famous military heroes, have been doing so for decades” (Notice of Opposition ¶ 7), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 16:**

Identify each third-party named in Notice of Opposition ¶ 7 that has used pilot flight suits as a mark or trade dress for its services, identify the services rendered under said mark or trade dress, and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 17:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that “[p]ractically 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,” including the support for Opposer’s implication that there exists a “fighter pilot team building business seminar arena” (Notice of Opposition ¶ 9), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 18:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that “the alleged mark is not distinctive in any way” (Notice of Opposition ¶ 10), and identify all persons having knowledge of such alleged facts.



**INTERROGATORY NO. 19:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that Applicant's mark "represents the use of a common, well-known uniform" (Notice of Opposition ¶ 10) (emphasis added), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 20:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that other entities "have been using flight suit motifs in advertising and making team building seminars for years" (Notice of Opposition ¶ 11), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 21:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that Opposer and numerous other veterans would "likely be damaged by the registration of the alleged mark in that the prima facie effect on such registration would impair [their] right to have its key employees – all whom are former fighter pilots – make presentations in flight suits" (Notice of Opposition ¶ 12), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 22:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that "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" (Notice of Opposition ¶ 13), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 23:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that Applicant's mark "is not inherently distinctive" (Notice of Opposition ¶ 16), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 24:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that "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" (Notice of Opposition ¶ 17), and identify all persons having knowledge of such alleged facts."

**INTERROGATORY NO. 25:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that "[t]he 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" (Notice of Opposition ¶ 18), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 26:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that it "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" (Notice of Opposition ¶ 20), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 27:**

Identify all facts, documents, or other information that Opposer relies on to support the contention that “[o]ne or more entities have been using advertising and making corporate team-building presentations using flight suits in geographic areas where Afterburner has a limited presence and therefor has not acquired secondary meaning” (Notice of Opposition ¶ 23), and identify all persons having knowledge of such alleged facts.

**INTERROGATORY NO. 28:**

Identify all third-parties, including those named in Notice of Opposition ¶ 7, that have used pilot flight suits for the specific purpose of rendering business management consulting or business management training.

**INTERROGATORY NO. 29:**

Describe the subject matter and type of presentations given by each third-party named in Notice of Opposition ¶ 7 while wearing pilot flight suits.

**INTERROGATORY NO. 30:**

Describe any instances, of which Opposer or its employees are aware, when anyone has inquired about whether there is an association or other connection between your services and Applicant’s services rendered in connection with pilot flight suits.

**INTERROGATORY NO. 31:**

If Opposer knows of any instance when a person has been confused, mistaken, or deceived as to the source of Opposer’s or Applicant’s services, identify each person involved, the dates and reasons for the confusion, the goods or services confused, and any notice received or record made of the confusion.

**INTERROGATORY NO. 32:**

Identify all persons who Opposer consulted or who provided information in connection with the preparation of your answers to the foregoing interrogatories, and for each such person,

state the interrogatory or interrogatories in connection with which he or she provided information or was consulted.

This 12th day of February, 2017.

Respectfully submitted,

By: /s/ Michael C. Mason  
**Michael C. Mason**  
Georgia Bar No. 475663  
mmtmlaw@gmail.com  
THE LAW OFFICE OF MICHAEL C. MASON  
1960 Rosecliff Drive, NE  
Atlanta, GA 30329  
Phone: (678) 829-2444  
  
Attorney for Applicant  
AFTERBURNER, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this correspondence, APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER THE CORPS GROUP, has been sent via email, with consent to:

J. Kevin Fee  
Jordana S. Rubel  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

This 12th day of February, 2017.

/s/ Michael C. Mason

Michael C. Mason

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

THE CORPS GROUP,

Opposer,

v.

AFTERBURNER, INC.,

Applicant.

Opposition No. 91201830

Application No. 85094889



Mark:

**APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO  
OPPOSER THE CORPS GROUP**

Pursuant to Trademark Rule of Practice 2.120 (37 U.S.C. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 408, and Federal Rule of Civil Procedure 34, Applicant Afterburner, Inc. ("Applicant" or "Afterburner") hereby requests that Opposer The Corps Group ("TCG") produce at The Law Office of Michael C. Mason, 1960 Rosecliff Drive, NE, Atlanta, Georgia 30329 or such other place as counsel may agree and permit Applicant to inspect and copy documents and things listed below in each of the categories, subject to the following definitions.

**DEFINITIONS**

1. "You," "Your," and/or "Opposer" means The Corps Group ("TCG") and its agents, attorneys, employees, and those acting or purporting to act on its behalf. These terms also shall mean any company name under which The Corps Group is doing business and its predecessors, parents, subsidiaries, divisions, affiliates, committees, boards or other related business entities, and each partnership or joint venture to which any of them is a party, as well

as present and former directors, officers, partners, employees, agents, attorneys, distributors, contractors, consultants, salespersons, sales representatives, employees of such entities, and representatives of the foregoing, and any other persons acting or purporting to act on behalf of any of the foregoing.

2. "Applicant" or "Afterburner" means Afterburner, Inc. and all persons or entities purporting to act on its behalf, including attorneys, officers, directors, employees, principals, partners, agents, licensees, corporate parents, subsidiaries, or affiliates.

3. "PILOT FLIGHT SUIT MARK" means the mark, trade dress or design used in connection with Applicant's services as described in Applicant's U.S. Trademark Application No. 85094889 with an effective filing date of July 28, 2010.

4. "Applicant's Application" means U.S. Trademark Application No. 85094889.

5. The terms "goods" and/or "services" means any and all goods and/or services provided by Opposer The Corps Group, including but not limited to keynote addresses, corporate team building events, executive leadership training and strategic business planning consulting services.

6. "Person" means an individual, firm, partnership, corporation, proprietorship, association, institution, or any other organization or entity.

7. To "identify" or "describe," means in connection with:

a) natural persons, to state their full names, phone numbers, titles and job descriptions, if applicable, and their present or last known business and home addresses;

b) firms, partnerships, corporations, proprietorships, associations, educational institutions, or other entities, to state their names, each of their present or last known addresses, and each of their officers or managing partners;

c) documents (which includes both documents in your possession, custody, and control, and all other documents of which you have knowledge), to describe the documents, setting forth their dates, titles, authors, addressees, parties thereto, and the substance thereof, with reasonable particularity; and

d) oral statements and communications, to (i) state when and where they were made; (ii) identify each of the makers and recipients thereof, in addition to all others present; (iii) indicate the medium of communication; and (iv) state their substance.

e) product, means to provide a description of the item which is offered for sale, and the intended customer groups, channels of trade, approximate price, and market for the product; and

f) service, means to describe the service and the intended customer groups, channels of trade, approximate price, and market for the service.

8. "Document" means without limitation, any kind of written, typewritten, printed, graphic, or recorded material whatsoever, including without limitation notes, memoranda, letters, reports, studies, electronic mail messages, telegrams, publications, contracts, manuals, business plans, proposals, licenses, drawings, designs, data sheets, diaries, logs, specifications, brochures, product or service descriptions, periodicals, schematics, blueprints, recordings, summaries, pamphlets, books, prospectuses, interoffice and intra office communications, offers, notations of any sort of conversations, working papers, applications, permits, surveys, indices, telephone calls, meeting minutes, databases, electronic files, software, transcriptions of recordings, computer tapes, diskettes, or other magnetic media, bank checks, vouchers, charge slips, invoices, expense account reports, hotel charges, receipts, freight bills, agreements, corporate resolutions, minutes, books, binders, accounts, photographs, and business records.



This shall include all non-identical copies, no matter how prepared; all drafts prepared in connection with such documents, whether used or not; and any deleted or erased documents that may be retrieved from hard drives, floppy disks, electronic back-up files, or any other back-up systems, regardless of location, together with all attachments thereto or enclosures therewith, in the possession, custody or control of Opposer.

9. The term "concerning" shall be construed in the broadest sense to mean relating to, referring to, describing, reflecting, alluding to, responding to, connected with, commenting on, in respect of, about, regarding, discussing, showing, analyzing, constituting, supporting, contradicting, and/or evidencing, in any manner, whether directly or indirectly, the subject matter of the request.

10. The terms "and" and "or" shall mean "and/or."

11. "Any" means any and all.

### INSTRUCTIONS

1. You are requested to produce for inspection and copying all responsive documents and things in your possession, custody or control, including all documents and things in the custody of your attorneys, consultants, agents, other representatives, and other persons or entities subject to your control.

2. You are to produce the documents and things as they are kept in the ordinary course of business, with appropriate markings or designations so that it may be determined to which request they are responsive.

3. You are to produce the original and all non-identical copies of each requested document or thing, including all copies which bear any additional file stamps, marginal notes or other additional markings or writings that do not appear on the original. The production shall

include the file, envelope, folder, binder, or other container in which the responsive documents and things are kept. If, for any reason, the container cannot be produced, you are to produce copies of all labels or other identifying markings.

4. Documents that exist in digital format and constitute or comprise databases or other tabulations or collections of data or information should be produced in a machine-readable format to be mutually agreed upon by the parties. Documents that exist in digital format and constitute or comprise written communications between natural persons (e.g., e-mail messages, internal memos, letters, etc.) should be produced both in a machine-readable format to be mutually agreed upon by the parties and in hard-copy form.

5. If you cannot fully respond to any request after a diligent attempt, respond to the request to the extent possible and specify the portion of the request to which you are unable to respond.

6. If you claim that any request, definition or instruction is ambiguous, state the language you claim is ambiguous and the interpretation you have used to respond to the request.

7. If you contend that any document or thing has been lost or destroyed, set forth the contents of the document or thing, the location of any copies, the date of loss or destruction, the name of the person who ordered or authorized the destruction, if any, and the authority and reasons for such destruction.

8. If you decline to produce any information, document, or thing on this basis of the attorney-client, work product, or other privilege, respond to so much of the discovery request as is not subject to the claimed objection, and for each document or thing, provide the following information:

- a. the type and title of the document or thing;
- b. the general subject matter of the document or description of the thing;
- c. the date of its creation;
- d. the identity of the document's author(s), addressee(s) and recipient(s);
- e. the nature of the privilege being claimed; and
- f. in detail, all facts upon which you base your claim of privilege.

9. With respect to any document stored on a machine-readable medium, please make available both a hard copy printout of the document and a copy of the computer or electronic tape, disc or other electronic medium on which the document is stored.

10. Complete production is to be made on the date and at the time indicated above.

11. You have a duty to supplement your responses from now until the time of hearing or trial, as provided by Federal Rule of Procedure 26(e).

#### DOCUMENTS AND THINGS REQUESTED

##### DOCUMENT REQUEST NO. 1:

All documents relating to all business relationships between Applicant and the employees, independent contractors, principals and agents of Opposer before, during and after the formation of TCG.

##### DOCUMENT REQUEST NO. 2:

All documents relating to communications between any current or former officer, principal, employee or independent contractor of Opposer and Applicant relating to the use of a pilot flight suit as a mark.

##### DOCUMENT REQUEST NO. 3:

All documents relating to communications with third parties, other than your counsel,

concerning the use of a pilot flight suit as a mark.

DOCUMENT REQUEST NO. 4:

All documents relating to actual confusion between you or any of your goods and services, and Applicant or any of its goods or services.

DOCUMENT REQUEST NO. 5:

All documents relating to Opposer's selection, development and adoption of a pilot flight suit in connection with Opposer's services.

DOCUMENT REQUEST NO. 6:

All documents relating to Opposer's uses in commerce of pilot flight suits in connection with any goods or services.

DOCUMENT REQUEST NO. 7:

All documents relating to each third-party named in Notice of Opposition ¶ 7 that has used pilot flight suits as a mark or trade dress for its services.

DOCUMENT REQUEST NO. 8:

All documents relating to communications with the US Air Force or its counsel concerning the use of a pilot flight suit as a mark.

DOCUMENT REQUEST NO. 9:

All documents relating to your decision to file U.S. Trademark Office Application Serial No. 85331417, for a design mark Opposer described as "a sage green pilot flight suit."

DOCUMENT REQUEST NO. 10:

All documents relating to your contention that "the alleged mark is not distinctive in any way" (Notice of Opposition ¶ 10).

DOCUMENT REQUEST NO. 11:

All documents relating to your contention that Applicant's mark "represents the use of a common, well-known uniform" (Notice of Opposition ¶ 10) (emphasis added).

DOCUMENT REQUEST NO. 12:

All documents relating to your contention that Opposer and numerous other veterans would "likely be damaged by the registration of the alleged mark in that the prima facie effect on such registration would impair [their] right to have its key employees – all whom are former fighter pilots – make presentations in flight suits" (Notice of Opposition ¶ 12).

DOCUMENT REQUEST NO. 13:

All documents relating to your contention that Applicant's 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" (Notice of Opposition ¶ 13).

DOCUMENT REQUEST NO. 14:

All documents relating to your implication that there exists a "fighter pilot team building business seminar arena" (Notice of Opposition ¶ 9).

DOCUMENT REQUEST NO. 15:

All documents relating to any investigation, trademark search, and/or other inquiry conducted by you, and/or on your behalf, in connection with assessing the availability, registrability, or use of pilot flight suits as a mark or trade dress.

DOCUMENT REQUEST NO. 16:

All documents relating to studies and/or surveys in connection with the use of the pilot flight suits as a mark or trade dress.

DOCUMENT REQUEST NO. 17:

All documents relating to your contention that “[t]he 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” (Notice of Opposition ¶ 18).

DOCUMENT REQUEST NO. 18:

All documents relating to your contention that Opposer “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” (Notice of Opposition ¶ 20).

DOCUMENT REQUEST NO. 19:

All documents relating to your contention that Applicant’s 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” (Notice of Opposition ¶ 13).

DOCUMENT REQUEST NO. 20:

All documents relating the subject matter and type of presentations given by each third-party named in Notice of Opposition ¶ 7 while wearing pilot flight suits.

DOCUMENT REQUEST NO. 21:

All documents relating to your contention that Applicant’s mark “is not inherently distinctive” (Notice of Opposition ¶ 16).

DOCUMENT REQUEST NO. 22:

All documents relating to instances, of which Opposer or its employees are aware, when anyone has inquired about whether there is an association or other connection between your

services and Applicant's services rendered in connection with pilot fight suits.

DOCUMENT REQUEST NO. 23:

All documents relating to any license agreements, or consents to use, that you have granted to third parties for marks or trade dress involving pilot fight suits.

DOCUMENT REQUEST NO. 24:

All documents relating to any and all trademark and copyright registrations and applications in which you are the record holder.

This 12th day of February, 2017.

Respectfully submitted,

By: /s/ Michael C. Mason  
**Michael C. Mason**  
Georgia Bar No. 475663  
mmtmlaw@gmail.com  
THE LAW OFFICE OF MICHAEL C. MASON  
1960 Rosecliff Drive, NE  
Atlanta, GA 30329  
Phone: (678) 829-2444

Attorney for Applicant  
AFTERBURNER, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this correspondence, APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO OPPOSER THE CORPS GROUP, has been sent via email, with consent to:

J. Kevin Fee  
Jordana S. Rubel  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

This 12th day of February, 2017.

/s/ Michael C. Mason  
Michael C. Mason



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

THE CORPS GROUP,

Opposer,

v.

AFTERBURNER, INC.,

Applicant.

Opposition No. 91201830

Application No. 85094889



Mark:

**APPLICANT'S FIRST REQUEST FOR ADMISSIONS TO OPPOSER  
THE CORPS GROUP**

Pursuant to Trademark Rule of Practice 2.120 (37 U.S.C. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 410, and Federal Rule of Civil Procedure 36, Applicant Afterburner, Inc. ("Applicant" or "Afterburner") hereby requests that Opposer The Corps Group ("TCG") admit the truth of the Requests for Admissions set forth below within thirty (30) days after service of this Request.

For the purpose of these Request, the following definitions and instructions shall apply:

**DEFINITIONS**

1. "You," "Your," and/or "Opposer" means The Corps Group ("TCG") and its agents, attorneys, employees, and those acting or purporting to act on its behalf. These terms also shall mean any company name under which The Corps Group is doing business and its predecessors, parents, subsidiaries, divisions, affiliates, committees, boards or other related business entities, and each partnership or joint venture to which

any of them is a party, as well as present and former directors, officers, partners, employees, agents, attorneys, distributors, contractors, consultants, salespersons, sales representatives, employees of such entities, and representatives of the foregoing, and any other persons acting or purporting to act on behalf of any of the foregoing.

2. "Applicant" or "Afterburner" means Afterburner, Inc. and all persons or entities purporting to act on its behalf, including attorneys, officers, directors, employees, principals, partners, agents, licensees, corporate parents, subsidiaries, or affiliates.

3. "PILOT FLIGHT SUIT MARK" means the mark, trade dress or design used in connection with Applicant's services as described in Applicant's U.S. Trademark Application No. 85094889 with an effective filing date of July 28, 2010.

4. "Applicant's Application" means U.S. Trademark Application No. 85094889.

5. The terms "goods and services" means any and all goods and/or services provided by Opposer.

6. The use of the singular form of any word also includes the plural and vice versa.

7. The terms "and" and "or" shall mean "and/or."

8. "Any" means any and all.

### INSTRUCTIONS

1. Your written response to this request must comply with Rule 36 of the Federal Rule of Civil Procedure, in that if you do not admit each matter, you must separately respond under oath to each request within thirty (30) days of the service of this request by:

(a) admitting so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by you;

(b) by denying so much of the matter involved in the request as is untrue; and

(c) specifying so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge.

2. If your response to a particular request is that you lack information or knowledge as a reason for failure to admit all or part of a request for admission, then you shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable you to admit that matter.

3. If your response is that only part of a request for admission is objectionable, the remainder of the request shall be answered.

4. If an objection is made to a request or to a part of a request, the specific ground for the objection shall be set forth clearly in the response.

5. These requests for admission are continuing and require further answer and supplementation, as provided by Federal Rule of Civil Procedure 26(e).

### REQUESTS FOR ADMISSIONS

#### REQUEST FOR ADMISSION NO. 1:

Admit that you have officers, directors, principals or employees that were formerly affiliated with Applicant.

REQUEST FOR ADMISSION NO. 2:

Admit that during their affiliation with Applicant, you have officers, directors, principals or employees that had knowledge of Applicant's use of pilot flight suits in connection with business management training services.

REQUEST FOR ADMISSION NO. 3:

Admit that prior to your affiliation with Applicant, you never used pilot flight suits as a source indicator in connection with business management training services.

REQUEST FOR ADMISSION NO. 4:

Admit that after your affiliation with Applicant, you decided that you would use "flight suits in the course of advertising and making corporate team building presentations."

REQUEST FOR ADMISSION NO. 5:

Admit that you had knowledge of Applicant's Application when you filed U.S. Trademark Office Application Serial No. 85331417.

REQUEST FOR ADMISSION NO. 6:

Admit that when you filed U.S. Trademark Office Application Serial No. 85331417, you described the design mark as "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."

REQUEST FOR ADMISSION NO. 7:

Admit that Application Serial No. 85331417 shows that you claim that you first used the alleged mark in commerce on September 1, 2008.

REQUEST FOR ADMISSION NO. 8:

Admit that you did not use pilot flight suits in the rendering of business management training prior to January 1996.

REQUEST FOR ADMISSION NO. 9:

Admit that your use of pilot flight suits for rendering business management training services was subsequent to Applicant's use of pilot flight suits for similar services.

REQUEST FOR ADMISSION NO. 10:

Admit that you have knowledge of actual confusion regarding the use of pilot flight suits by you and Applicant in rendering similar business management training services.

REQUEST FOR ADMISSION NO. 11:

Admit that you do not claim that generic or plain pilot flight suits are "uniforms" of any US military branch.

REQUEST FOR ADMISSION NO. 12:

Admit that the pilot flight suits as worn by you in rendering business management training services are not "uniforms" of any US military branch.

REQUEST FOR ADMISSION NO. 13:

Admit that you do not claim that the PILOT FLIGHT SUIT MARK as worn by Applicant in rendering business management training services are "uniforms" of any US military branch.

REQUEST FOR ADMISSION NO. 14:

Admit that the Pilot Flight Suit is not a common basic shape or design when used in the context of the business management training services.

REQUEST FOR ADMISSION NO. 15:

Admit that none of the third-parties that you listed in the Notice of Opposition #7 used the Pilot Flight Suit in the rendering of business management training prior to January 1996.

REQUEST FOR ADMISSION NO. 16:

Admit that some, if not most, of the third-parties that you listed in the Notice of Opposition #7 do not render business management training.

REQUEST FOR ADMISSION NO. 17:

Admit that wearing generic or plain pilot flight suits is uncommon among business management training professionals while rendering business management training services.

REQUEST FOR ADMISSION NO. 18:

Admit that a generic or plain pilot flight suit is not a mere refinement of a commonly adopted and well-known form of ornamentation for business management training services viewed by the public as a dress or ornamentation for said services.

REQUEST FOR ADMISSION NO. 19:

Admit that the mark in Applicant's Application has been approved for publication with a claim of acquired distinctiveness.

REQUEST FOR ADMISSION NO. 20:

Admit that you have not obtained any evidence of the relevant public's understanding of the PILOT FLIGHT SUIT MARK as used in connection with business management training services.

REQUEST FOR ADMISSION NO. 21:

Admit that if you have obtained any evidence of the relevant public's understanding of the PILOT FLIGHT SUIT MARK as used in connection with business management training services, the evidence contains some third-party recognition of Applicant as the source of the services.

REQUEST FOR ADMISSION NO. 22:

Admit that the use of pilot flight suits in the rendering of business management training related services causes consumers to think of Applicant.

This 12th day of February, 2017.

Respectfully submitted,

By: /s/ Michael C. Mason  
**Michael C. Mason**  
Georgia Bar No. 475663  
mmtmlaw@gmail.com  
THE LAW OFFICE OF MICHAEL C. MASON  
1960 Rosecliff Drive, NE  
Atlanta, GA 30329  
Phone: (678) 829-2444  
  
Attorney for Applicant  
AFTERBURNER, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this correspondence, APPLICANT'S FIRST  
REQUEST FOR ADMISSIONS TO OPPOSER THE CORPS GROUP, has been sent via  
email, with consent to:

J. Kevin Fee  
Jordana S. Rubel  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

This 12th day of February, 2017.

/s/ Michael C. Mason  
Michael C. Mason