ESTTA Tracking number:

ESTTA812167 04/07/2017

Filing date:

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

Proceeding	91201830
Party	Plaintiff The Corps Group
Correspondence Address	J KEVIN FEE MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVE NW WASHINGTON, DC 20004 UNITED STATES melkon@laborlawyers.com, jrubel@morganlewis.com, jkfee@morganlewis.com, trademark@morganlewis.com
Submission	Motion for Summary Judgment
Filer's Name	J. Kevin Fee
Filer's e-mail	kevin.fee@morganlewis.com, jordana.rubel@morganlewis.com
Signature	/jkf/
Date	04/07/2017
Attachments	Motion for Summary Judgment.pdf(39904 bytes) Borneman Declaration and Exhibits - part 1.pdf(5800197 bytes) Borneman Declaration and Exhibits - part 2.pdf(4109607 bytes) Borneman Declaration and Exhibits - part 3.pdf(2192492 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

OPPOSER THE CORPS GROUP'S MOTION FOR SUMMARY JUDGMENT

J. Kevin Fee
Jordana S. Rubel
Jane W. Wise
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel: (202) 739-3000

Attorneys for Opposer The Corps Group

Fax: (202) 739-3001

Applicant Afterburner, Inc. ("Afterburner") had its day in court. A Georgia court determined that the pilot flight suit design that is the subject of this proceeding is not protectable as a service mark. Afterburner never appealed that decision, and it is now final and non-appealable. As a result, the doctrine of collateral estoppel bars Afterburner from arguing here that the flight suit design is protectable as a service mark. The Board should therefore grant summary judgment in favor of Opposer The Corps Group and refuse registration of the flight suit design.

I. BACKGROUND FACTS

Afterburner provides consulting and training services for individuals, groups and organizations based on the experience of its employees, who are current and former fighter pilots from the U.S. military. Several former employees of Afterburner started their own business consulting and training company called The Corps Group in 2008. Afterburner filed a complaint in the Superior Court of Forsyth County, Georgia in October 2009. While the state court litigation was pending, on July 28, 2010, Afterburner filed Application Serial No. 85,094,889 (the "Application"), which seeks to register the design of a three-dimensional pilot flight suit in connection with "business management consultancy services; executive search and placement services; personnel placement and recruitment" in Class 35 and "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" in Class 41 (collectively, "Afterburner's Services"). See Declaration of John Borneman ("Borneman Decl."), attached as Exhibit A, ¶ 4, Ex. A-1.

Afterburner amended its complaint several times and ultimately filed the Third Amended Complaint on April 11, 2011. *See* Borneman Decl. ¶ 5, Ex. A-2. The Third Amended

Complaint asserted numerous claims against The Corps Group and its founders, including various employment-related claims and claims for trademark and trade dress infringement based on the defendants' use of certain phrases, wearing of military flight suits and use of jet imagery and other military props while they made presentations. The Third Amended Complaint defined the asserted trade dress to include the design of the pilot flight suit that is the subject of the Application (and this opposition proceeding) and explicitly mentioned, and included as an exhibit, Afterburner's Application. *See* Borneman Decl. ¶ 5, Ex. A-2 at ¶¶ 24-27 & Ex. B. The Corps Group and the individual defendants filed their Answer to Plaintiff's Third Amended Complaint and counterclaims on April 26, 2011. *See* Borneman Decl. ¶ 6, Ex. A-3.

After extensive discovery and summary judgment briefing, in April 2014, the Forsyth County Superior Court held a seven day jury trial in connection with the parties' claims. After Afterburner finished presenting its case-in-chief, The Corps Group and the other defendants moved for a directed verdict with respect to the claim for infringement of Afterburner's flight suit design on the basis that the design was generic and did not have secondary meaning. *See* Borneman Decl. ¶ 7, Ex. A-4 at 951:14-18; 952:8-13. In response, Afterburner's counsel argued that the flight suit was not generic and had secondary meaning. Borneman Decl. ¶ 7, Ex. A-4 at 955:2-18. Initially, the court denied the motion for directed verdict on the trade dress issues. Borneman Decl. ¶ 7, Ex. A-4 at 965:10-14.

At the close of all evidence, The Corps Group renewed its motion for directed verdict on the claim for infringement of Afterburner's flight suit design. *See* Borneman Decl. ¶ 8, Ex. A-5 at 1528:24-1529:11. During the argument on the renewed motion for a directed verdict, the judge asked Afterburner if its claim was for infringement of the flight suit design that is the subject of the Application (which the judge referred to as the "service mark") or for infringement

of Afterburner's overall trade dress. Borneman Decl. ¶ 8, Ex. A-5 at 1531:17-22 (defining the flight suit design that is the subject of the Application as the "service mark"); id. at 1532:6-8 (asking for clarification of Afterburner's claims). Afterburner indicated it claimed infringement of both the flight suit design on its own and of the overall trade dress, which Afterburner defined as the flight suit plus jet fighter pilot imagery. Borneman Decl. ¶ 8, Ex. A-5 at 1532:9-18; see also id. at 1539:7-10 ("I believe we have a service mark claim as well as [sic] trade dress claim. The service mark claim only relates to the flight suit. The trade dress claim is much broader."). The judge explicitly asked Afterburner if it was claiming it had the exclusive right to use the flight suit in connection with business consulting services and Afterburner indicated that it did claim to have that exclusive right, referring to the Application it had submitted for registration. Borneman Decl. ¶ 8, Ex. A-5 at 1532:21-1534:5. The judge then questioned whether there was any evidence of the protectability of the "service mark" of the flight suit design such that there could even be infringement of that mark when "[a]ll it is is a flight suit." Borneman Decl. ¶ 8, Ex. A-5 at 1536:6-22. In response, The Corps Group argued that Afterburner's alleged flight suit service mark was generic and unprotectable, citing evidence of third parties who wore flight suits when making presentations and the lack of evidence that anyone identified Afterburner as the source of a "generic" unmarked flight suit. Borneman Decl. ¶ 8, Ex. A-5 at 1539:13-1540:8.

The court took a recess to consider this issue and then made its ruling. The judge stated: "So what is it about a flight suit that itself, as a symbol, distinguishes the services of Afterburner from the services of anybody else?...A flight suit, a generic flight suit, is a flight suit...it is not a service mark..." Borneman Decl. ¶ 8, Ex. A-5 at 1541:14-24. The court then granted a directed

verdict as to the "service mark." *Id.* Afterburner did not move for reconsideration and did not appeal the judge's ruling. Borneman Decl. $\P 10.^1$

While the litigation was pending, the Application was published for opposition on August 30, 2011. The Corps Group filed timely a Notice of Opposition on September 28, 2011, in which it opposed registration of the flight suit design on the basis that it is not capable of distinguishing Afterburner's services from the services of others and has not acquired distinctiveness. *See* Borneman Decl. ¶ 9, Ex. A-6. This proceeding was stayed numerous times while the state court litigation was pending. Dkt. 6, 10, 15, 19. On July 16, 2016, the Board ordered that the proceeding was resumed and reset the discovery and trial dates. Dkt. 24.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the record evidence shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see 37 C.F.R. § 2.116(a) (stating that Federal Rules of Civil Procedure apply in opposition proceedings). A genuine issue as to a material fact exists if sufficient evidence is presented that a reasonable fact finder could decide the question in favor of the non-moving party. *Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 849-50 (Fed. Cir. 1992). The moving party has the initial burden of demonstrating there are no genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Once the moving party has carried its burden, the non-moving party must set forth specific facts showing a genuine issue for trial. *Id.*

¹ Although the judge separately denied the defendants' motion for directed verdict as to infringement of Afterburner's overall trade dress (one component of which was the flight suit design), the defendants appealed that decision and the Georgia Court of Appeals overturned the jury verdict on this claim, finding that Afterburner's overall trade dress was not protectable. *See The Corps Group v. Afterburner, Inc.*, 779 S.E.2d 383, 395-96 (Ga. App. 2015). Afterburner petitioned for a writ of certiorari from the Georgia Supreme Court, which was denied. *See Afterburner, Inc. v. The Corps Group*, 2016 Ga. LEXIS 374 (Ga. 2016).

III. ARGUMENT

A. Collateral Estoppel Requirements

Under the doctrine of collateral estoppel, or issue preclusion, if a court actually and necessarily decides an issue against a party, that determination is conclusive in a subsequent suit involving the same issue and party. *STMicroelectronics, Inc. v. Nartron Corp.*, 2005 TTAB LEXIS 202, at *9 (TTAB 2005). For collateral estoppel to apply, the following requirements must be met:

- (1) the issues must be identical to the issued involved in the prior action;
- (2) the issue must have been actually litigated in the prior action;
- (3) the determination of the issues must have been necessary to the resulting judgment; and
- (4) the party defending precluded must have had a full and fair opportunity to litigate the issue in the prior action.

Jet, Inc. v. Sewage Aeration Sys., 223 F.3d 1360, 1365-66 (Fed. Cir. 2000); *Larami Corp. v. Talk To Me Programs Inc.*, 36 U.S.P.Q.2d 1840, 1843-1844 (TTAB 1995). As discussed in detail below, all four requirements are met here and collateral estoppel applies. Thus, Afterburner is estopped from arguing that the mark that is the subject of the Application is protectable as a service mark.

B. Afterburner Should Be Collaterally Estopped From Arguing That Its Flight Suit Is Protectable as a Service Mark.

1. The Issue Here Is Identical to an Issue in the Civil Litigation.

A principal issue in the state court litigation was whether the flight suit that is the subject of the Application is protectable as a service mark. Throughout the Georgia case, Afterburner clearly and unambiguously asserted that it had trade dress or service mark rights in the use of a flight suit in connection with Afterburner's Services. For example, the Third (and final)

Amended Complaint referenced the pilot flight suit in connection with its trade dress claim and

explicitly mentioned, and included as an exhibit, Afterburner's Application. *See* Borneman Decl. ¶ 4, Ex. A-1 at ¶¶ 24-27 & Ex. B.

Moreover, during the trial, Afterburner stated multiple times that it was asserting a claim against The Corps Group for infringement of the flight suit service mark that is the subject of Afterburner's Application. Specifically, Afterburner's counsel stated very clearly: "I believe we have a service mark claim as well as [sic] trade dress claim. The service mark claim only relates to the flight suit. The trade dress claim is much broader." Borneman Decl. ¶ 8, Ex. A-5 at 1539:7-10. Elsewhere, the court asked Afterburner to clarify whether its infringement claims were for infringement of the flight suit, which the court referred to as the "service mark", or for the overall trade dress? Borneman Decl. ¶ 8, Ex. A-5 at 1532:6-8. Afterburner's counsel indicated that Afterburner claimed both infringement of the flight suit and the overall trade dress, which it defined as "the flight suit plus jet fighter pilot imagery." Borneman Decl. ¶ 8, Ex. A-5 at 1532:9-18.

Ultimately, the court granted a directed verdict in favor of The Corps Group on Afterburner's claim regarding infringement of the flight suit service mark but determined that there was enough evidence to go to the jury as to whether The Corps Group infringed Afterburner's overall trade dress.² With respect to the flight suit design, which the court identified as the subject of the U.S. trademark application filed in July of 2010, the court held that there was no evidence that the flight suit distinguished the services of Afterburner from others' services and that the flight suit was a "generic flight suit" and "not a service mark". Borneman Decl. ¶ 8, Ex. A-5 at 1531:17-1532:5; 1541:14-24.

² The trial court's conclusion that Afterburner presented sufficient evidence as to ownership of protectable trade dress comprised of the flight suit plus jet fighter pilot imagery was reversed by the Georgia Court of Appeals. *See The Corps Group v. Afterburner, Inc.*, 779 S.E.2d 383, 395-96 (Ga. App. 2015).

The issue in this opposition proceeding is identical to the issue presented in the state court litigation. The issue to be resolved in this proceeding is whether the flight suit design is protectable as a service mark in connection with Afterburner's Services. *See* Borneman Decl. ¶ 9, Ex. A-6 at ¶¶ 14-19. As discussed above, the identical issues were analyzed and decided by the Georgia court.

The fact that the Georgia court held that the flight suit design was not protectable as a service mark in the context of an infringement action and not in the context of a proceeding regarding registrability is not controlling. See, e.g. Int'l Order of Job's Daughters v. Lindeburg & Co., 727 F.2d 1087, 1091 (Fed. Cir. 1984) (affirming Board's application of collateral estoppel in cancellation proceeding after Ninth Circuit held mark was not protectable in infringement action); STMicroelectronics, 2005 TTAB LEXIS 202 at *11-13 (applying collateral estoppel in cancellation proceeding on issue of whether SMART-POWER was generic after district court held term was generic in infringement action); Kegan v. Michael Wolff & Co., 2000 TTAB LEXIS 137, *9-11 (TTAB 2000) (applying collateral estoppel in opposition proceeding on issue of whether GUIDE was generic after district court held term was generic in infringement action).

Thus, the identity of the issues requirement, the first part of the collateral estoppel inquiry, is satisfied here.

2. This Issue Was Actually Litigated in the Civil Litigation.

The requirement that the issue have been actually decided is satisfied if the parties disputed the issue and the trier of fact decided it. *In re Freeman*, 30 F.3d 1459, 1466 (Fed. Cir. 1994). The protectability of Afterburner's flight suit design was actually litigated in the Georgia state litigation. As discussed above, Afterburner asserted a claim against The Corps Group for infringement of the flight suit design in the state court litigation. *See* Borneman Decl. ¶ 5, Ex. A-

2 at ¶¶ 24-27 & Ex. B. The Corp Group's affirmative defenses included that Afterburner's asserted trademarks were not protectable and were generic. *See* Borneman Decl. ¶ 6, Ex. A-3 (defenses twenty eight and twenty nine).

After the close of evidence, The Corps Group moved for a directed verdict on the claim of infringement of the flight suit design based on evidence of third parties who wore flight suits when making presentations and the lack of evidence that anyone identified Afterburner as the source of a "generic" unmarked flight suit. *See* Borneman Decl. ¶ 8, Ex. A-5 at 1539:13-1540:8. After hearing this evidence, the court found that the flight suit design on its own was not protectable as a service mark and granted a directed verdict in favor of The Corps Group. *See* Borneman Decl. ¶ 8, Ex. A-5 at 1541:14-24.

Thus, the issue of the protectability of Afterburner's flight suit was disputed, litigated and decided in the prior litigation. *See STMicroelectronics*, 2005 TTAB LEXIS 202 at *12 (holding that issue was actually litigated in district court where court made findings as to issue of genericness based on the record presented by the parties).

3. The Determination of the Issue Was Necessary to the Judgment.

"In order to give preclusive effect to a particular finding in a prior case, that finding must have been necessary to the judgment rendered in the previous action." *In re Freeman*, 30 F.3d at 1466. As detailed above, the issue of the protectability of the flight suit design was actually decided by the Georgia court, which granted a directed verdict in favor of The Corps Group on this issue. *See* Borneman Decl. ¶ 8, Ex. A-5 at 1541:14-24. The court's determination that the flight suit design was not protectable as a service mark was the sole basis of the court's holding of non-infringement.

4. Afterburner Had a Full and Fair Opportunity to Litigate the Issue.

"To apply issue preclusion, the party against whom the estoppel is being asserted must

have been accorded a full and fair opportunity to litigate in the prior court proceeding the very

issue he now seeks to relitigate." In re Freeman, 30 F.3d at 1467. There is no question here

that Afterburner participated fully in the trial and made arguments regarding the protectability of

the flight suit design. See, e.g., Borneman Decl. ¶ 7, Ex. A-4 at 955:2-18.

While Afterburner may not be satisfied with the court's determination that the flight suit

design is not protectable, it had a full and fair opportunity to litigate this issue and took full

advantage of that opportunity. The Corps Group should not have to litigate the identical issue

again.

IV. **CONCLUSION**

As the foregoing discussion makes clear, collateral estoppel applies in this opposition

proceeding to prevent Afterburner from re-litigating the issue of the protectability of its flight

suit design as a service mark. Because a court determined that the flight suit design that is the

subject of Afterburner's Application is not protectable as a service mark, Afterburner should be

collaterally estopped from arguing that the flight suit design is protectable. Because the flight

suit design is not protectable, the Board should grant summary judgment in favor of The Corps

Group and deny registration for Afterburner's Application.

Dated: April 7, 2017

Respectfully submitted,

By: /s/ J. Kevin Fee_

J. Kevin Fee

Jordana S. Rubel

Jane W. Wise

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Ave., N.W.

Washington, D.C. 20004

9

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 Motion for Summary Judgment has been sent via email and first class mail, postage pre-paid, this 7th day of April, 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

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

THE CORPS GROUP,

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

v.

AFTERBURNER, INC.

Applicant.

Opposition No. 91201830

DECLARATION OF JOHN BORNEMAN

Pursuant to 28 U.S.C. § 1746, I, John Borneman, declare the following statements to be true under the penalties of perjury:

- I am over the age of 18 years and am fully competent to testify to the matters stated in this Declaration.
- This declaration is based on my personal knowledge. If called to do so, I would and could testify to the matters stated herein.
- I am the Chief Executive Officer of The Corps Group, which is the Opposer in this matter and which was one of the defendants in the Georgia state court litigation initiated by Afterburner, Inc. ("Afterburner") in 2009.
- Attached as Exhibit A-1 is a true and correct copy of Application Serial No.
 85,094,889 that was filed by Afterburner on July 28, 2010.
- Attached as Exhibit A-2 is a true and correct copy of the Third Amended
 Complaint filed by Afterburner in connection with the Georgia state court litigation on April 11,
 2011.

118

- Attached as Exhibit A-3 is a true and correct copy of the Answer to Plaintiff's Third Amended Complaint and counterclaims filed by The Corps Group and the individual defendants in connection with the Georgia state court litigation on April 26, 2011.
- 7. Attached as Exhibit A-4 is a true and correct copy of excerpts of Volume 6 of the trial transcript from the jury trial that took place in April 2014 in the Georgia state court litigation between Afterburner and The Corps Group.
- 8. Attached as Exhibit A-5 is a true and correct copy of excerpts of Volume 9 of the trial transcript from the jury trial that took place in April 2014 in the Georgia state court litigation between Afterburner and The Corps Group.
- 9. Attached as Exhibit A-6 is a true and correct copy of the Notice of Opposition filed by The Corps Group in this proceeding on September 28, 2011.
- 10. Afterburner did not move for reconsideration of the judge's directed verdict that the pilot flight suit is not proctectable as a service mark, nor did Afterburner appeal that ruling to the Georgia Court of Appeals.

Dated: March_, 2017

APRIL 7 2017

EXHIBIT A-1

Trademark/Service Mark Application, Principal Register

Serial Number: 85094889 Filing Date: 07/28/2010

The table below presents the data as entered.

Input Field	Entered			
SERIAL NUMBER	85094889			
MARK INFORMATION				
*MARK	\\TICRS\EXPORT11\IMAGEOUT 11\850\948\85094889\xm11\APP0002.JPG			
SPECIAL FORM	YES			
USPTO-GENERATED IMAGE	NO			
COLOR MARK	NO			
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a three-dimensional configuration of a pilot flight suit. The broken lines in the drawing are not part of the mark but are merely intended to show the position of the mark.			
PIXEL COUNT ACCEPTABLE	YES			
PIXEL COUNT	595 x 841			
REGISTER	Principal			
APPLICANT INFORMATION				
*OWNER OF MARK	AFTERBURNER, INC.			
*STREET	55 Ivan Allen Jr. Blvd.			
*CITY	Atlanta			
*STATE (Required for U.S. applicants)	Georgia			
*COUNTRY	United States			
*ZIP/POSTAL CODE (Required for U.S. applicants only)	30308			
PHONE	(404) 835-3500			
EMAIL ADDRESS	tfaxio@afterburner.com			
LEGAL ENTITY INFORMATION				
ТҮРЕ	corporation			
STATE/COUNTRY OF INCORPORATION	Georgia			
GOODS AND/OR SERVICES AND BASIS INFORMATION				
INTERNATIONAL CLASS	035			
*IDENTIFICATION	Business management consultancy services; executive search and placement services; personnel placement and recruitment			
FILING BASIS	SECTION 1(a)			

FIRST USE ANYWHERE DATE	At least as early as 01/31/1996			
FIRST USE IN COMMERCE DATE	At least as early as 01/31/1996			
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\850\948\85094889\xml1\APP0003.JPG			
SPECIMEN DESCRIPTION	web site photograph of pilot flight suits as worn as service marks			
INTERNATIONAL CLASS	041			
*IDENTIFICATION	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			
FILING BASIS	SECTION 1(a)			
FIRST USE ANYWHERE DATE	At least as early as 01/31/1996			
FIRST USE IN COMMERCE DATE	At least as early as 01/31/1996			
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\850\948\85094889\xml1\ APP0004.JPG			
SPECIMEN DESCRIPTION	web site photograph of pilot flight suits as worn as service marks			
ATTORNEY INFORMATION				
NAME	Michael C. Mason			
ATTORNEY DOCKET NUMBER	04-A01-1.1			
FIRM NAME	Essentia Legal, PC - Arrington, Oduola-Owoo & Mason			
INTERNAL ADDRESS	Suite 110			
STREET	3915 Cascade Road, SW			
CITY	Atlanta			
STATE	Georgia			
COUNTRY	United States			
ZIP/POSTAL CODE	30331-8522			
PHONE	404.549.6774			
FAX	404.549.6774			
EMAIL ADDRESS	michael@essentialegal.com			
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes			
OTHER APPOINTED ATTORNEY	Latif Odula-Owoo			
CORRESPONDENCE INFORMATION				
NAME	Michael C. Mason			
FIRM NAME	Essentia Legal, PC - Arrington, Oduola-Owoo & Mason			
INTERNAL ADDRESS	Suite 110			
STREET	3915 Cascade Road, SW			
CITY	Atlanta			
STATE	Georgia			

COUNTRY	United States		
ZIP/POSTAL CODE	30331-8522		
PHONE	404.549.6774		
FAX	404.549.6774		
EMAIL ADDRESS	michael@essentialegal.com		
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes		
FEE INFORMATION			
NUMBER OF CLASSES	2		
FEE PER CLASS	325		
*TOTAL FEE DUE	650		
*TOTAL FEE PAID	650		
SIGNATURE INFORMATION			
SIGNATURE	/James D. Murphy/		
SIGNATORY'S NAME	James D. Murphy		
SIGNATORY'S POSITION	CEO		
DATE SIGNED	07/28/2010		

Trademark/Service Mark Application, Principal Register

Serial Number: 85094889 Filing Date: 07/28/2010

To the Commissioner for Trademarks:

MARK: (Stylized and/or Design, see mark)

The mark consists of a three-dimensional configuration of a pilot flight suit. The broken lines in the drawing are not part of the mark but are merely intended to show the position of the mark.

The applicant, AFTERBURNER, INC., a corporation of Georgia, having an address of

55 Ivan Allen Jr. Blvd.

Atlanta, Georgia 30308

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: Business management consultancy services; executive search and placement services; personnel placement and recruitment

In International Class 035, the mark was first used at least as early as 01/31/1996, and first used in commerce at least as early as 01/31/1996, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) web site photograph of pilot flight suits as worn as service marks. Specimen File1

International Class 041: 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

In International Class 041, the mark was first used at least as early as 01/31/1996, and first used in commerce at least as early as 01/31/1996, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) web site photograph of pilot flight suits as worn as service marks. Specimen File1

The applicant's current Attorney Information:

Michael C. Mason and Latif Odula-Owoo of Essentia Legal, PC - Arrington, Oduola-Owoo & Mason

Suite 110 3915 Cascade Road, SW Atlanta, Georgia 30331-8522 United States

The attorney docket/reference number is 04-A01-1.1.

The applicant's current Correspondence Information:

Michael C. Mason
Essentia Legal, PC - Arrington, Oduola-Owoo & Mason
Suite 110
3915 Cascade Road, SW
Atlanta, Georgia 30331-8522
404.549.6774(phone)
404.549.6774(fax)
michael@essentialegal.com (authorized)

A fee payment in the amount of \$650 has been submitted with the application, representing payment for 2 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /James D. Murphy/ Date Signed: 07/28/2010

Signatory's Name: James D. Murphy

Signatory's Position: CEO

RAM Sale Number: 1166

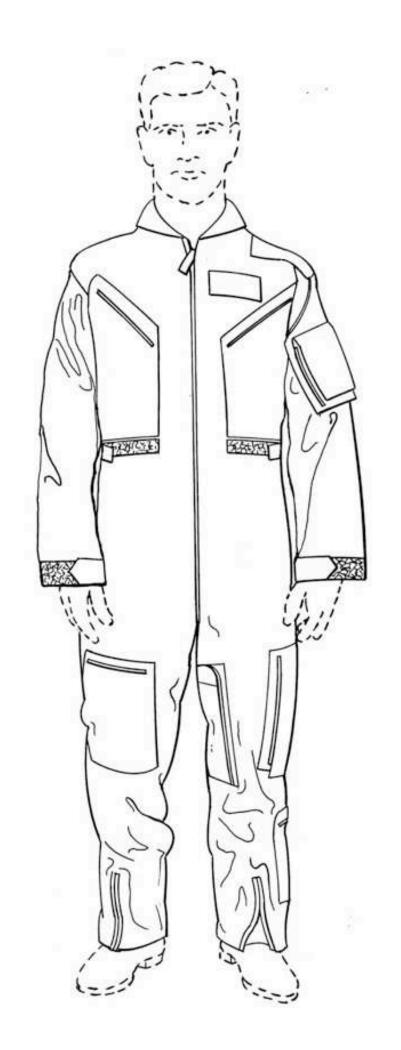
RAM Accounting Date: 07/29/2010

Serial Number: 85094889

Internet Transmission Date: Wed Jul 28 15:00:49 EDT 2010

TEAS Stamp: USPTO/BAS-XXX.XXX.XXX.XXX-201007281500495

40787-85094889-470fe516a5f5d70c8d342361e 95b581e-CC-1166-20100723165420639201



ABOUT US

EMPOWE FLAWLESS EXECUTION

with earthshaking teambuilding events and leadenship seminars >



Revolutionize Your Organization with Afterburner's Business Process Improvement Tools

Afterburner, the global leader in Flawless Execution**, offers three strategic quality management solutions – Equip, Embed, and Empower, a set of business process improvement principles inspired by elite military professionals and military fighter pilots that revolutionize the way you look at and do business in today's fast-paced environment.

Implement More Intuitive Strategic Quality Management Solutions

EMPOWER .

SEMINARS

Teambuilding Events - Keynote Addresses Sales Training - Customized Workshops Afterburner Day - Black Ops - Healthcare -

There are teambuilding events, and then there is the immersive action of an Afterburner event. The Afterburner team brings the 'zero tolerance for error' world of fighter pilots directly to your

EQUIP •

TRAINING & CONSULTING

Strategic Planning - Productivity Improvement Project Management - Leadership Training FLEX U - Flawless Execution - Software Healthcare - Safety

To win in the new economy, your organization needs to execute every aspect of your business with a high level of precision. But even a great strategic quality management team focused on

EMBED .

PLACEMENT

- Human Capital Placement Services
 Flawless Execution Cartification Training
 Transitioning Military to Business Training

Embed is a strategic human capital placement service for alte military professionals transitioning from military to civilian careers. Individual execution is one thing... organizational execution is everything! No organization in the world

ABOUT US

EMPOWE FLAWLESS EXECUTION

with earthshaking teambuilding events and leadenship seminars >



Revolutionize Your Organization with Afterburner's Business Process Improvement Tools

Afterburner, the global leader in Flawless Execution**, offers three strategic quality management solutions – Equip, Embed, and Empower, a set of business process improvement principles inspired by elite military professionals and military fighter pilots that revolutionize the way you look at and do business in today's fast-paced environment.

Implement More Intuitive Strategic Quality Management Solutions

EMPOWER .

SEMINARS

Teambuilding Events - Keynote Addresses Sales Training - Customized Workshops Afterburner Day - Black Ops - Healthcare -

There are teambuilding events, and then there is the immersive action of an Afterburner event. The Afterburner team brings the 'zero tolerance for error' world of fighter pilots directly to your

EQUIP •

TRAINING & CONSULTING

Strategic Planning - Productivity Improvement Project Management - Leadership Training FLEX U - Flawless Execution - Software Healthcare - Safety

To win in the new economy, your organization needs to execute every aspect of your business with a high level of precision. But even a great strategic quality management team focused on

EMBED .

PLACEMENT

- Human Capital Placement Services
 Flawless Execution Cartification Training
 Transitioning Military to Business Training

Embed is a strategic human capital placement service for alte military professionals transitioning from military to civilian careers. Individual execution is one thing... organizational execution is everything! No organization in the world

EXHIBIT A-2

IN THE SUPERIOR COURT OF FORSYTH COUNTY STATE OF GEORGIA

AFTERBURNER, INC.,

Plaintiff,

V.

THE CORPS GROUP, JOHN BORNEMAN, CAREY LOHRENZ, KYLE HOWLIN, and JOHN UNDERHILL, CIVIL ACTION FILE NO. 09cv-2844

Defendants.

PLAINTIFF'S THIRD AMENDED COMPLAINT

COMES NOW Plaintiff Afterburner, Inc. ("Afterburner" or "Plaintiff"), and, in accordance with O.C.G.A. § 9-11-15, files this <u>Third</u> Amended Complaint against Defendants The Corps Group ("TCG"), John Borneman ("Borneman"), Carey Lohrenz ("Lohrenz"), Kyle Howlin ("Howlin"), and John Underhill ("Underhill"), (collectively, "Defendants"), jointly and severally, showing the Court as follows:

PARTIES AND NATURE OF ACTION

1. This is an action for Trademark Infringement, Trade Dress Infringement and Unfair Competition arising under the Lanham Act, 15 U.S.C. §§

1114(1)(a) and 1125(a); Misappropriation of Trade Secrets under O.C.G.A. § 10-1-760 et seq.; violation of the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 et seq.; and Unfair Competition, Conspiracy, Tortious Interference with Business Relations and Breach of Contract arising under Georgia law.

- 2. Plaintiff Afterburner is a Georgia company with its principal place of business in Fulton County, Georgia. Afterburner is a small, veteran-owned management training and consulting firm that provides keynote addresses, corporate teambuilding events, executive leadership training, strategic business planning consulting and human capital placement services.
- Defendant TCG is a Pennsylvania company with its principal place of business in Quakertown, Pennsylvania. Like Afterburner, Defendant TCG provides keynote addresses, corporate team building events, executive leadership training and strategic business planning consulting services. Defendant TCG directly competes with Afterburner for clients. Defendant TCG is owned and operated by Defendant Borneman. Howlin, Lohrenz and Underhill are officers of Defendant TCG.
- 4. Defendant Borneman is an individual residing in Coopersburg, Pennsylvania. Afterburner employed Defendant Borneman as an independent

contractor in or around July of 1999. Defendant Borneman resigned in or around May of 2008. After representing that he was not going to work for a competitor, Defendant Borneman did so. After that relationship soured, Defendant Borneman founded and became the Chief Executive Officer of Defendant TCG.

- 5. Defendant Howlin is an individual residing in Forsyth County, Georgia. Afterburner employed Defendant Howlin as an independent contractor in or around May of 2001. Defendant Howlin resigned in or around January of 2009. Defendant Howlin currently works for Defendant TCG as the Chief Operating Officer and is a Partner of Defendant TCG.
- 6. Defendant Lohrenz is an individual residing in Germantown, Tennessee. Afterburner employed Defendant Lohrenz as an independent contractor on December 1, 2007. Defendant Lohrenz resigned at the end of December of 2008. Defendant Lohrenz currently works for Defendant TCG as the Vice President of Sales and Business Management.
- 7. Defendant Underhill is an individual residing in Massachusetts. Afterburner employed Defendant Underhill as an independent contractor on or about November 28, 2001. Defendant Underhill resigned on or about September 15, 2009. Defendant Underhill began working for Defendant TCG long before resigning from Plaintiff Afterburner.

JURISDICTION AND VENUE

- 8. This Court has subject matter jurisdiction pursuant to O.C.G.A. § 15-6-8.
- 9. This Court has personal jurisdiction over Defendant Howlin because he is a resident of Forsyth County, Georgia.
- 10. This Court has personal jurisdiction over Defendant TCG pursuant to O.C.G.A. § 9-10-91. Defendant TCG has engaged in activity that has caused and will continue to cause tortious injury to Afterburner in Georgia by acts outside of the state.
- Defendants Borneman, Lohrenz, and Underhill are each subject to personal jurisdiction in Georgia pursuant to O.C.G.A. § 9-10-91. Each of these Defendants has entered into and has breached contractual obligations to Afterburner in Georgia. These Defendants also have engaged in activity that has caused and will continue to cause tortious injury to Afterburner in Georgia by acts outside of the state.
 - 12. Venue is proper in this Court pursuant to O.C.G.A. § 9-10-93.

FACTUAL ALLEGATIONS

A. Afterburner's Business Model

- 13. As previously stated, Plaintiff Afterburner is a well known, veteranowned management training and consulting firm that provides keynote addresses, corporate teambuilding events, executive leadership training, strategic business planning consulting and human capital placement services. In this way, Afterburner helps businesses improve their operations.
- 14. Afterburner modifies and incorporates strategies and techniques utilized by fighter pilots into its business improvement services. Afterburner's consultants utilize Afterburner's unique fighter pilot related materials and method of doing business along with their military experience_in providing Afterburner's business improvement services to its clients.
- hundreds of clients, including nearly 100 of the Fortune 500 companies. Such customers have included American Express, Bank of America, Dell Computers, Eastman Kodak, General Motors, Home Depot, IBM, Johnson & Johnson, Sprint, UPS, and Wal-Mart.

- 16. Most relevant to this matter, Afterburner has also serviced clients such as Cisco Systems, Inc. ("Cisco"), Metal Treating Institute, Inc. ("MTI"), and RTI International Metals, Inc. ("RTI").
- 17. Afterburner has been recognized nationally and, in fact, worldwide. It has had a pervasive media presence, including being twice named to Inc. Magazine's "Inc. 500 List of America's Fastest Growing Companies," and being featured in well respected publications including The Wall Street Journal, Business Week, Financial Times, Newsweek, and Meetings and Conventions Magazine.
- 18. Afterburner has also appeared on CNN, CNBC, Fox News, and Bloomberg News.
- 19. Afterburner has and continues to promote itself heavily on the Internet.
- 20. Afterburner CEO Jim Murphy is also the author of Business Is Combat and Flawless Execution, both Harper Collins labels. Both books' covers advertise Afterburner.

B. Afterburner's Trademarks and Trade Dress.

21. Afterburner has, since its inception, used unique and distinctive trade dress, consisting of fighter pilot themed concepts and fighter pilot imagery, in connection with the marketing of and provision of its services.

- 22. Afterburner was the first corporate leadership training company to use fighter pilot theme related materials for business consulting, and clearly identifies itself heavily with this theme in its marketing materials, advertising and with the delivery of services.
- 23. Although Afterburner's trade dress is inherently distinctive, it also has acquired distinctiveness because of Afterburner's widespread marketing activities and extensive media appearances over the past fifteen years promoting its unique fighter pilot themed business solution services. This has caused business executives to recognize "fighter pilot themed" business solution services as proprietary trade dress originating from Afterburner.
- 24. Consistent with the fighter pilot imagery and concepts used by Afterburner in its presentation and marketing materials, Afterburner requires all of its presenters to wear fighter pilot flight suits during presentations.
- 25. Afterburner is the record holder of the U.S. Trademark Application Serial No. 85094889 for the "Pilot Flight Suit" as used in connection with "business management consultancy services; executive search and placement services; personnel placement and recruitment; 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."

An example of such use by Afterburner of its Pilot Flight Suit trade dress and a copy of the USPTO Trademark Application are attached hereto as "Exhibits A and B."

- 26. Afterburner has been using its Pilot Flight Suit trade dress since January 1996.
- 27. In addition to fighter pilot flight suits, Afterburner's trade dress includes, among other things: 1) fighter pilot themed audio-visual presentations; 2) fighter pilot themed tools and exercises to teach business consumers; 3) utilizing various strategic business planning and training models that feature the implementation of high performance fighter pilot themed processes (such as the FLAWLESS EXECUTION model featuring Afterburner's well-known "Plan-Brief-Execute-Debrief" cycle and "Nameless Rankless Debriefing"); 4) use of fighter pilot jargon like "Plan-Brief-Execute-Debrief," "Execution" and "S.T.E.A.L.T.H. Debrief"; 5) "Planning" and "Debrief" workshops that continue the fighter pilot mission overall impression; 6) a business solutions website that displays fighter pilot imagery, as well as Air Force, Navy and Marine Corps bios and pilot call signs of its employees; and 7) other imagery, terminology and

services evoking the overall feel of fighter pilot mission planning and execution techniques (collectively "Afterburner's Trade Dress").

- 28. Afterburner is also known for, and has extensively promoted, its FLAWLESS EXECUTION strategic business planning model, which consists of training clients to implement a process of planning, briefing, executing and debriefing in order to improve their business processes.
- 29. Afterburner has trained over 1 million managers and executives in the use of the FLAWLESS EXECUTION model in their businesses.
- 30. Afterburner owns the registered service mark FLAWLESS EXECUTION (Reg. No. 2932612) used in connection with seminars, motivational and management training, and distribution of course materials. An example of such use by Afterburner of its FLAWLESS EXECUTION mark, as well as a copy of its FLAWLESS EXECUTION registration are attached hereto as "Exhibits C and D."
- 31. Afterburner has been using the "FLAWLESS EXECUTION" mark since at least January 1998.
- 32. Afterburner has also registered the service mark TASK SATURATION (Reg. No. 2423661) for use in connection with seminars, motivational and management training, and distribution of course materials. An

example of such use by Afterburner of its TASK SATURATION mark as well as a copy of its registration are attached hereto as "Exhibit E and F."

- 33. Afterburner has been using the TASK SATURATION mark since at least January 1996.
- 34. In addition, Afterburner owns the common law service marks PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design which is the subject of U.S. Trademark Application Serial No. 83279648, and PLAN. BRIEF. EXECUTE. DEBRIEF. = WIN, both used in connection with Afterburner's "Flawless Execution Cycle."
- 35. Afterburner's PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design and PLAN. BRIEF. EXECUTE. DEBRIEF. = WIN marks are displayed on Afterburner's website as well as its marketing and training materials. Examples of such use by Afterburner of its PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design and PLAN. BRIEF. EXECUTE. DEBRIEF. = WIN marks are attached hereto as "Exhibit G."
- 36. Afterburner has been using some form of the PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design mark since at least 1999 and has been using the PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design mark since July of 2008.

- 37. Furthermore, Afterburner also owns and promotes the trademark PLAN-BRIEF-EXECUTE-DEBRIEF-WIN-LESSON LEARNED and Design, which it uses in connection with seminars, motivational and management training, and distribution of course materials. An example of such use of this mark by Afterburner is attached hereto as "Exhibit H."
- 38. Afterburner has been using the mark PLAN-BRIEF-EXECUTE-DEBRIEF-WIN-LESSON LEARNED and Design since at least 2007.
- 39. Afterburner also heavily promotes its services using the words PLAN-BRIEF-EXECUTE-DEBRIEF in connection with its seminars, motivational and management training, and distribution of course materials.
- 40. In addition, Afterburner owns the common law service mark EXECUTION RHYTHM, used in connection with its services and its business process management software that measures the implementation of the FLAWLESS EXECUTION process within an organization. Examples of such use by Afterburner of its EXECUTION RHYTHM mark are attached hereto as "Exhibit I."
- 41. Afterburner has been using the mark EXECUTION RHYTHM since May of 2008.

42. Over the last fifteen years, Afterburner has sold over 45 million dollars worth of services and products under its trade dress and trademarks. Afterburner has devoted substantial time, effort and resources to advertise, promote and otherwise market its business improvement services.

C. Afterburner's Trade Secrets.

- 43. In addition, Afterburner owns trade secrets and confidential information which it uses in the operation of its business, including its Standard Operating Procedures.
- 44. Afterburner's Standard Operating Procedures include proprietary processes for conducting seminars, sales and marketing, consulting, as well as teaching and implementing the Flawless Execution model.
- 45. Afterburner's trade secrets and confidential information also include its client contacts database, referred to as the Goldmine database, as well as all client contact information provided to its employees and independent contractors.

D. Defendant The Corps Group

Defendants, with specific and personal knowledge of the widespread recognition and fame of Afterburner and with the specific intent to exploit that recognition and fame, have marketed and offered for sale a copycat, infringing fighter pilot mission themed business solution service, namely Defendant TCG.

- 47. Defendant TCG is made up of former fighter pilots, all of whom formerly worked for Afterburner. Defendant TCG offers services that are very similar to, if not exactly the same as, Afterburner's services, including keynote addresses, corporate team building events, executive leadership training and strategic business planning consulting services for businesses.
- 48. Defendant TCG has deliberately employed trade dress and trademarks that are confusingly similar to the trade dress and trademarks of Afterburner.
- 49. For example, like Afterburner, Defendant TCG has adopted and heavily relies upon the use of fighter pilot themes, imagery and terminology in the marketing and provision of its goods and services.
- 50. Defendant TCG's website, thecorpsgroup.com, like Afterburner's website, features fighter pilot themes prevalently, including still images and video footage of its presenters wearing fighter pilot flight suits during actual presentations. Examples of such depictions from Defendant TCG's website are attached hereto as "Exhibit J."
- 51. In addition to Defendants' use of fighter pilot flight suits, Defendant TCG has also used 1) fighter pilot themed audio-visual presentations; 2) fighter pilot themed tools and exercises to teach business consumers; 3) various strategic business planning and training models that feature the implementation of high

performance fighter pilot themed processes (such as the "CORPS EXECUTION MODEL"); 4) fighter pilot methods, systems and jargon like "Debrief" and "Execution"; 5) "Planning" and "Debriefing" workshops; 6) a business solutions website that displays fighter pilot imagery, as well as Navy and Marine Corps bios and the pilot call signs of its employees; and 7) other graphics and imagery evoking the overall feel of being able to solve various business problems through fighter pilot techniques.

- 52. Similar to Afterburner's FLAWLESS EXECUTION MODEL, Defendant TCG has marketed the CORPS EXECUTION MODEL, a business planning model, which consists of training clients to implement the process of preparing, briefing, executing and debriefing in order to improve their businesses.
- 53. Defendant TCG uses the term CORPS EXECUTION MODEL in connection with seminars, motivational and management training, and distribution of course materials.
- 54. Defendant TCG also uses the term CORPS EXECUTION PROCESS in connection with seminars, motivational and management training, and distribution of course materials.

- 55. Defendant TCG uses the term PREPARE-EXECUTE-DEBRIEF with the "CORPS EXECUTION MODEL," in connection with seminars, motivational and management training, and distribution of course materials.
- 56. The term CORPS EXECUTION MODEL and the PREPARE-EXECUTE-DEBRIEF designation are shown together on Defendant TCG's website, and, on information and belief, Defendant TCG's consulting materials. An example of such use by Defendant TCG of the aforementioned terms is attached hereto as "Exhibit K."
- 57. Defendant TCG uses the designation PREPARE-EXECUTE-DEBRIEF-IMPROVE with the "CORPS EXECUTION PROCESS," in connection with seminars, motivational and management training, and distribution of course materials.
- 58. The terms CORPS EXECUTION PROCESS and PREPARE-EXECUTE-DEBRIEF-IMPROVE are shown together on Defendant TCG's website, and, on information and belief, Defendant TCG's consulting materials. An example of such use by Defendant TCG of the aforementioned terms is attached hereto as "Exhibit L."

- 59. Defendant TCG has also employed the terms EXECUTION RHYTHM, which, is confusingly similar to Afterburner's FLAWLESS EXECUTION and EXECUTION RHYTHM marks.
- 60. On information and belief, Defendant TCG also uses the term EXECUTION RHYTHM in connection with seminars, motivational and management training, and distribution of course materials.
- On information and belief, Defendant TCG also uses the term PLAN-DO-DEBRIEF-LESSONS LEARNED in connection with seminars, motivational and management training, and distribution of course materials. An example of such use by Defendant TCG of the EXECUTION RHYTHM and PLAN-DO-DEBRIEF-LESSONS LEARNED terms is attached hereto as "Exhibit M."
- 62. Furthermore, just like Afterburner, Defendant TCG uses the term TASK SATURATION in connection with seminars, motivational and management training, and distribution of course materials. Examples of such use by Defendant TCG of the term TASK SATURATION are attached hereto as "Exhibit N."
- 63. Defendant TCG is using the aforementioned terms, along with fighter pilot imagery and concepts, in a manner confusingly similar to Afterburner, namely in connection with the provision of keynote addresses, corporate teambuilding events, executive leadership training, and strategic business planning

consulting. It promotes these terms in the same advertising channels, and to the same types of customers and referred sources as Afterburner.

- 64. In fact, Defendant TCG has serviced clients such as Cisco, MTI, and RTI, all of which have been or are currently clients of Afterburner.
- 65. Defendants Borneman, Howlin, Lohrenz, and Underhill each of whom are currently executives for Defendant TCG, also had access to many or all of Afterburner's trade secrets, including but not limited to Afterburner's proprietary client contact information and Standard Operating Procedures.
- 66. Defendant TCG, by and through its employees and independent contractors, has used Afterburner's proprietary client contact information in order to solicit and divert Afterburner clients, including but not limited to MTI, RTI, and Cisco.
- 67. Defendant TCG, by and through its employees and independent contractors, has used Afterburner's proprietary Standard Operating Procedures in order to conduct its business in much the same way as Afterburner.
- 68. Defendant TCG, by and through its employees and independent contractors, has solicited and diverted Plaintiff Afterburner's employees and independent contractors.

69. Defendant TCG's actions have cost Afterburner hundreds of thousands of dollars in revenue and have caused substantial harm to its goodwill.

E. Defendant John Borneman

- 70. Defendant Borneman was first hired as an independent contractor by Plaintiff Afterburner in or around July of 1999.
- 71. During his engagement with Plaintiff Afterburner, Defendant Borneman worked with many Afterburner clients, including Pfizer, one of Afterburner's largest accounts during that time.
- 72. Sometime in 2004, Defendant Borneman abruptly left Afterburner to work for a competitor, Science Applications International Corporation, and took the Pfizer account with him.
- 73. Sometime in 2005, however, Defendant Borneman expressed an interest in returning to Afterburner.
- 74. After various discussions, Afterburner reconciled with Defendant Borneman and he returned as a full time employee of Afterburner in January of 2006 with a clear understanding that Afterburner considered its client relationships and intellectual property to be exclusive to Afterburner.
- 75. As a condition of his employment with Plaintiff Afterburner,
 Defendant Borneman signed an Employee Nonsolicitation, Trade Secret and

Intellectual Property Agreement ("IP Agreement") that includes explicit "Protection of Trade Secrets," "Company Ownership of Works," "Nonsolicitation of Customers," and "Nonsolicitation of Employees and Independent Contractors" clauses. A true and correct copy of Defendant Borneman's most recent IP Agreement is attached hereto as "Exhibit O."

- The Trade Secrets' clause, Defendant Borneman agreed that, during the term of his employment with Afterburner and after the termination thereof, he would not, unless authorized by Afterburner, use, copy, duplicate, transfer, transmit, disclose, or permit any unauthorized person access to, any trade secrets belonging to Afterburner, so long as they remain trade secrets.
- 77. Under the "Company Ownership of Works" clause, Defendant Borneman agreed that all "works," which include any and all works of authorship, code, inventions, discoveries, and work product, whether or not patentable or eligible for copyright, created, made or developed by Defendant Borneman in the course of employment with Afterburner, during business hours, using Afterburner's resources are the property of Afterburner.
- 78. Under the "Nonsolicitation of Customers" clause, Defendant Borneman agreed not to solicit or attempt to divert or appropriate to a competing business, any customer of Afterburner with whom Defendant Borneman dealt on

behalf of the company at any time during the twelve month period preceding the termination of employment. The duration of this restriction was for eighteen (18) months following the termination of his employment with Afterburner.

- 79. Under the "Nonsolicitation of Employees and Independent Contractors" clause, Defendant Borneman agreed not to solicit, divert or recruit any employee or independent contractor of Afterburner to leave employment or engagement with Afterburner. The duration of this restriction was eighteen (18) months following the termination of his employment with Afterburner.
- 80. Following his return to Afterburner Defendant Borneman worked as the Director of Strategic Planning, which made him responsible for developing training materials for Afterburner and for training Afterburner employees to teach clients how to implement Afterburner's FLAWLESS EXECUTION model.
- As a result, during the term of his employment, Defendant Borneman played a role in helping to develop materials relating to the FLAWLESS EXECUTION Model.
- 82. Defendant Borneman was also a member of Afterburner's Intellectual Property board, giving him intimate knowledge of all of Afterburner's intellectual property.

- 83. Defendant Borneman was one of Afterburner's lead strategic workshop providers, which made him responsible for overseeing corporate training seminars and workshops.
- 84. Defendant Borneman was also given access to Afterburner's trade secret Goldmine database.
- 85. Defendant Borneman also was responsible for developing client relationships, generating additional business from clients and developing strategic planning materials for clients.
- Afterburner clients, including Cisco, one of its largest clients.
- 87. Defendant Borneman also worked with RTI during his employment with Afterburner.
- 88. Defendant Borneman worked with both Cisco and RTI during the twelve month period immediately preceding the termination of his employment with Afterburner.
- 89. In May of 2008, Defendant Borneman resigned from his employment with Afterburner.

- 90. At the time of his resignation, Defendant Borneman told Afterburner's executives that he was leaving to become CEO of The Bison Group. He also represented that The Bison Group was not a competitor.
- 91. As a result, Defendant Borneman left Afterburner on good terms and Afterburner continued to use him as an independent contractor speaker.
- 92. Some time after Defendant Borneman's departure, however, Afterburner leadership reviewed The Bison Group's website and learned that The Bison Group was marketing programs with brand names that were originally developed by Afterburner and were very similar to such programs, including TeamEx, OrgEx and the FLEX model. The Bison Group clearly was a competitor.
- 93. Defendant Borneman provided The Bison Group with the information necessary to provide these Afterburner developed services.
- 94. In August of 2008, counsel for Afterburner sent Defendant Borneman a letter reminding him of his obligations to Afterburner under his Employment Agreement.
- 95. On or around October 22, 2008 on behalf of Defendant TCG, Defendant Borneman met with Lawrence Chase of Cisco, along with others, to perform a planning session without Afterburner's knowledge or consent.

- 96. Shortly following Defendant Borneman's departure from Afterburner, Cisco cancelled engagements with Afterburner that were scheduled for December 5 and December 12 of 2008, as well as eight other programs scheduled for 2009. Upon information and belief, one or more of these programs was conducted by Defendant Borneman and/or The Corps Group.
- On or around February 27, 2009, Defendant Borneman received a calendar invitation from Cisco for an "Afterburner" workshop, again without Afterburner's consent. A true and correct copy of this correspondence is attached hereto as "Exhibit P." Cisco later changed the word "Afterburner" to "Corps Group."
- 98. Defendant TCG has performed services for, and has received compensation from, both Cisco and RTI. The services provided to these two Afterburner clients were similar to, and competitive with, the services performed by Afterburner.
- 99. On information and belief, Defendant Borneman has used Afterburner's proprietary client contacts in order to solicit and divert Afterburner clients, including but not limited to Cisco and RTI, to Defendant TCG.

- 100. On information and belief, Defendant Borneman has used Afterburner's proprietary Standard Operating Procedures in order to conduct Defendant TCG's business in a manner similar to Afterburner.
- 101. Shortly following the incorporation of TCG, Defendants Howlin and Lohrenz each resigned from working with Afterburner and began working with Defendant TCG.
- 102. Defendant Underhill actually began working with Defendant TCG well before he resigned from Afterburner.
- 103. Defendant Borneman solicited, recruited and hired Defendants Howlin, Lohrenz and Underhill to work for Defendant TCG.
- 104. Under Defendant Borneman's Employment Agreement, all works Defendant Borneman created or contributed to while working with Afterburner, including the FLAWLESS EXECUTION Model, are solely owned by Afterburner.
- 105. Nevertheless, Defendant Borneman has incorporated much of the FLAWLESS EXECUTION Model, which he helped to develop while with Afterburner, into Defendant TCG's Corps Execution Process, Corps Execution Model and/or Execution Rhythm model.
- 106. Defendant Borneman, by using the Corps Execution Process, Corps Execution Model and the Execution Rhythm model as part of Defendant TCG's

business, is using, without Afterburner's consent, works that are owned by Afterburner.

F. Defendant Kyle Howlin

- 107. Afterburner originally hired Defendant Howlin as an independent contractor in or around May of 2001.
- 108. At this time, as a condition of his engagement, Defendant Howlin, doing business as Cruiser Group LLC, signed Afterburner's standard Independent Contractor Agreement that includes explicit "Ownership," "Trade Secrets and Confidential Information," "Employee Solicitation" and "Customer Non-Solicitation" clauses. A true and correct copy of Defendant Howlin's most recent Independent Contractor Agreement is attached hereto as "Exhibit Q." The parties performed under this Agreement for many months.
- 109. Under the "Ownership" clause, Defendant Howlin, agreed that all work product, including all data, materials, documentation, computer programs, inventions (whether or not patentable), pictures, audio, video, artistic works, and all works of authorship, including all worldwide rights therein under patent, copyright, trade secret, confidential information, or other source of property rights, created or developed in whole or in part by Defendant Howlin would be owned by Afterburner.

- Defendant Howlin, agreed that the use of Afterburner's trade secrets and confidential information would be solely for the benefit of Afterburner and that such trade secrets and confidential information would be held in confidence and not reproduced, distributed, transmitted, reverse engineered, decompiled, disassembled, or transferred, directly or indirectly, in any form, by any means, or for any purpose.
- 111. Under the "Customer Non-Solicitation" clause, Defendant Howlin, agreed not to solicit or attempt to divert or appropriate to a competing business any customer of Afterburner with whom he dealt on behalf of the company at any time during the twelve month period preceding the termination of his engagement with Afterburner. The duration of this restriction is eighteen (18) months following the termination of his engagement.
- not to hire any person who is or was employed by Afterburner during the term of the agreement nor to induce or influence any person to seek or accept employment with another person or entity. The duration of this restriction is eighteen (18) months following the termination of his engagement.

- 113. During the term of Defendant Howlin's employment and engagement with Afterburner, his role was to provide keynote addresses, teambuilding and strategic planning seminars as well as to develop training program materials for Afterburner for delivery to clients during seminars.
- 114. Defendant Howlin was one of Afterburner's lead corporate seminar speakers. In 2007-2008, he performed 96 seminars for Afterburner.
- 115. In his role as consultant, Defendant Howlin was responsible for developing client relationships, generating additional business from clients and developing strategic planning materials for clients.
- Division. In this position, Defendant Howlin helped develop training materials and programs for youth at Afterburner, including the Flight Plan For Life, a strategic life planning program.
- 117. Defendant TCG offers and has offered a program entitled "Y.E.S.," which stands for Youth Execution Strategies for Life. Defendant TCG's "Y.E.S." program is very similar to Afterburner's Flight Plan For Life youth program. Defendant Howlin developed and leads this program for Defendant TCG.

- 118. Defendant Howlin was also a member of Afterburner's Intellectual Property board and gained intimate knowledge of all of Afterburner's intellectual property.
- 119. Defendant Howlin was Afterburner's lead consultant on Afterburner's MTI account and gained intimate knowledge of MTI's personnel and business needs.
- 120. Defendant Howlin also worked with Cisco during his engagement with Afterburner.
- month period immediately preceding the termination of his engagement.
- Defendant Howlin resigned from his engagement with Plaintiff on January 13, 2009, stating that he needed to spend more time with his family and that he was going through some personal issues.
- 123. Unbeknown to Afterburner, at about this time Defendant Howlin began working for Defendant TCG.
- 124. Since Afterburner CEO, James Murphy, considered Defendant Howlin and his family to be personal friends, he spoke with Defendant Howlin after receiving the resignation letter and offered to help him through the difficult time.

- 125. After discussions with Mr. Murphy, Defendant Howlin decided to remain on Afterburner's 'reserve' speaker list.
- 126. In or around July of 2009, Defendant Howlin asked Afterburner leadership to remove his name from the speaker list.
- 127. Defendant Howlin is currently Defendant TCG's Chief Operating Officer.
- Afterburner, Defendant TCG obtained an engagement to perform a keynote address at MTI's 2009 Fall Meeting, which took place on October 8-10, 2009. A true and correct copy of MTI's 2009 Fall Meeting Agenda is attached hereto as "Exhibit R."
- 129. Defendant Howlin was a keynote speaker at MTI's 2009 Fall Meeting.
- 130. On information and belief, Defendant Howlin's keynote speech was substantially similar to keynote speeches he performed while working for Afterburner.
- 131. On information and belief, Defendant Howlin used Afterburner's proprietary Standard Operating Procedures in order to conduct this keynote speech and to conduct other business for Defendant TCG.

- 132. On information and belief, Defendant Howlin used Afterburner's proprietary client contacts and related information in order to solicit and divert Afterburner clients, including but not limited to MTI and Cisco.
- 133. Furthermore, on information and belief, Defendant Howlin has also engaged in the solicitation or inducement of Afterburner employees and independent contractors to leave Afterburner and accept employment with Defendant TCG.
- 134. Moreover, Defendant Howlin has incorporated much of the Flight Plan For Life, which Defendant Howlin helped to develop while with Afterburner, into Defendant TCG's "Y.E.S." program.
- 135. Under the Independent Contractor Agreement, signed by Defendant Howlin, all work product Defendant Howlin created or contributed to while working with Afterburner, including the Flight Plan For Life, are solely owned by Afterburner.
- 136. By using the "Y.E.S." program as part of Defendant TCG's business, Defendant Howlin is incorporating work product as defined by the Independent Contractor Agreement that is owned by Afterburner without Afterburner's consent.

G. Defendant Carey Lohrenz

- 137. Afterburner hired Defendant Lohrenz as an independent contractor on December 1, 2007.
- 138. As a condition of her engagement, Defendant Lohrenz signed Afterburner's standard Independent Contractor Agreement including the terms set forth above. Afterburner and Lohrenz performed under this Agreement for months.
- 139. Defendant Lohrenz worked for Afterburner as a Facilitator, teaching small groups of clients to implement Afterburner's business improvement strategies during corporate training seminars.
- 140. In her role, Defendant Lohrenz was responsible for developing client relationships, generating additional business from clients and developing strategic planning materials for clients.
- 141. Defendant Lohrenz had access to all of Afterburner's proprietary Standard Operating Procedures.
- 142. During the course of Defendant Lohrenz's employment, she had access to Afterburner's proprietary client contact information and worked with many of Afterburner's clients.

- 143. Defendant Lohrenz resigned from her engagement with Afterburner on December 15, 2008, a few days after attending Afterburner's annual internal strategy session.
- 144. In January of 2009, Defendant Lohrenz began working for Defendant TCG.
- 145. Defendant Lohrenz currently works for Defendant TCG as the Vice President of Sales and Business Management.
- 146. On information and belief, Defendant Lohrenz has used Afterburner's proprietary client contacts in order to solicit and divert Afterburner clients.
- 147. Furthermore, on information and belief, Defendant Lohrenz has also engaged in the solicitation or inducement of Afterburner employees and independent contractors to leave Afterburner and accept employment with Defendant TCG.
- 148. Moreover, on information and belief, Defendant Lohrenz has used Afterburner's proprietary Standard Operating Procedures in order to conduct business.

H. Defendant John Underhill

149. Afterburner originally hired Defendant Underhill as an independent contractor on or about November 28, 2001.

- Afterburner's standard Independent Contractor Agreement including the terms set forth above. A true and correct copy of Defendant Underhill's most recent Independent Contractor Agreement is attached hereto as "Exhibit "T" and attached hereto as Exhibit "U" is a copy of an agreement regarding copyrightable materials and trade secrets between Afterburner and Defendant Underhill.
- 151. Defendant Underhill worked for Afterburner as a speaker Facilitator, conducting seminars and teaching small groups of clients to implement Afterburner's business improvement strategies during corporate training seminars.
- 152. In his role, Defendant Underhill was responsible for developing client relationships, generating additional business from clients and developing strategic planning materials for clients.
- 153. Defendant Underhill assisted in development of Afterburner's Intellectual Property while employed with Afterburner.
- 154. Defendant Underhill had access to all of Afterburner's intellectual property proprietary Standard Operating Procedures and calendar of events.
- 155. During the course of Defendant Underhill's employment, he had access to Afterburner's proprietary client contact information and worked with many of Afterburner's clients.

- 156. Defendant Underhill resigned from his engagement with Afterburner on or about September 16, 2007.
- 157. Well prior to his resignation from Afterburner, however, Defendant Underhill began working for Defendant TCG.
- 158. Defendant Underhill has been employed with Defendant TCG as its Director of Training and IP Development.
- 159. On information and belief, Defendant Underhill has used Afterburner's proprietary client contacts in order to solicit and divert Afterburner clients.
- 160. Defendant Underhill has used Afterburner's proprietary Standard Operating Procedures in order to conduct business.
- 161. Moreover, Defendant Underhill has helped to incorporate much of the intellectual property of Afterburner, some of which he helped to develop while with Afterburner, into Defendant TCG's Corps Execution Model, Corps Execution Process and/or Execution Rhythm model.
- 162. Under Defendant Underhill's Independent Contractor Agreement, all work product Defendant Underhill created or contributed to while working with Afterburner, including the FLAWLESS EXECUTION Model, are solely owned by Afterburner.

- 163. Defendants Borneman, Howlin, Lohrenz and Underhill have committed for aforementioned acts within the eighteen (18) month non-solicitation restrictive period provided set forth in their employee and/or independent contractor agreements with Afterburner.
- 164. On information and belief, Defendants worked in concert to solicit and divert Afterburner's clients, employees and independent contracts, as well as to misuse and/infringe upon Afterburner's trademarks, trade dress, trade secrets and works.

COUNT I: TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1114(1)(a)

- 165. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 166. Afterburner owns trademark registrations for the marks TASK SATURATION and FLAWLESS EXECUTION.
- 167. Defendants have used the mark TASK SATURATION in commerce without Afterburner's consent.
- 168. Defendants have used the TASK SATURATION mark in a manner similar to Afterburner's TASK SATURATION mark.

- 169. Defendants' use of the TASK SATURATION mark is likely to cause confusion, mistake or to deceive consumers.
- 170. Furthermore, Defendants have used the marks EXECUTION RHYTHM, CORPS EXECUTION MODEL, and CORPS EXECUTION PROCESS in commerce without Afterburner's consent.
- 171. Defendants have used the marks EXECUTION RHYTHM, CORPS EXECUTION MODEL, and CORPS EXECUTION PROCESS in a manner similar to Afterburner's use of its FLAWLESS EXECUTION mark.
- 172. Defendants' use of the marks EXECUTION RHYTHM, CORPS EXECUTION MODEL, and CORPS EXECUTION PROCESS is confusingly similar to Afterburner's FLAWLESS EXECUTION mark, such that the use is likely to cause confusion, mistake or to deceive consumers.
- 173. Defendants' acts relating to Afterburner's TASK SATURATION and FLAWLESS EXECUTION marks constitute trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114(1)(a).
- 174. As a proximate result of Defendants' actions, Afterburner has suffered and will continue to suffer damage to its business, goodwill, reputation, profits and the strength of its trademarks.

175. Defendants' acts of infringement have been and continue to be deliberate and willful, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

176. The injury to Afterburner is and continues to be ongoing and irreparable. An award of monetary damages alone will not fully compensate Afterburner for its injuries and Afterburner lacks an adequate remedy at law. Afterburner is entitled to equitable relief restraining further infringement by Defendants, as well as all other relief available under the Lanham Act from Defendants jointly and severally.

COUNT II: TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1125(a)

177. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:

178. Afterburner's use of its common law marks EXECUTION RHYTHM, PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design, PLAN. BRIEF. EXECUTE. DEBRIEF. = WIN, and PLAN-BRIEF-EXECUTE-DEBRIEF-WIN-LESSON LEARNED and Design on its products and to identify its services has become distinctive over time and has come to indicate that those products and services originate from a single source, namely Afterburner.

- 179. Defendants have adopted the designation EXECUTION RHYTHM for use in a manner confusingly similar to Afterburner's EXECUTION RHYTHM mark.
- 180. Specifically, Defendants have used the EXECUTION RHYTHM mark in connection with the offering of products and services similar to Afterburner's products and services. The use of the EXECUTION RHYTHM mark by Defendants is likely to cause confusion among consumers.
- 181. Defendants have used the EXECUTION RHYTHM mark with full knowledge of Afterburner's prior and superior rights in and to its EXECUTION RHYTHM mark.
- 182. Furthermore, Defendants have adopted the designations PREPARE-EXECUTE-DEBRIEF, PREPARE-EXECUTE-DEBRIEF-IMPROVE and PLAN-DO-DEBRIEF-LESSONS LEARNED, which are confusingly similar to Afterburner's PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design, PLAN. BRIEF. EXECUTE. DEBRIEF. = WIN, and Afterburner's PLAN-BRIEF-EXECUTE-DEBRIEF-WIN-LESSON LEARNED and Design marks.
- 183. Defendants have adopted the marks PREPARE-EXECUTE-DEBRIEF, PREPARE-EXECUTE-DEBRIEF-IMPROVE and PLAN-DO-DEBRIEF-LESSONS LEARNED for use in a manner confusingly similar to

Afterburner's PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design, PLAN.

BRIEF. EXECUTE. DEBRIEF. = WIN, and PLAN-BRIEF-EXECUTE
DEBRIEF-WIN-LESSON LEARNED and Design marks.

184. Defendants have used the PREPARE-EXECUTE-DEBRIEF, PREPARE-EXECUTE-DEBRIEF-IMPROVE and PLAN-DO-DEBRIEF-LESSONS LEARNED marks in connection with the offering of products and services similar to Afterburner's products and services. The use of the PREPARE-EXECUTE-DEBRIEF, PREPARE-EXECUTE-DEBRIEF-IMPROVE and PLAN-DO-DEBRIEF-LESSONS LEARNED marks by Defendants is likely to cause confusion among consumers.

185. Defendants have used the PREPARE-EXECUTE-DEBRIEF, PREPARE-EXECUTE-DEBRIEF-IMPROVE and PLAN-DO-DEBRIEF-LESSONS LEARNED marks with full knowledge of Afterburner's prior and superior rights in and to its PLAN-BRIEF-EXECUTE-DEBRIEF-WIN and Design, PLAN. BRIEF. EXECUTE. DEBRIEF. = WIN, and PLAN-BRIEF-EXECUTE-DEBRIEF-WIN-LESSON LEARNED and Design marks.

186. Defendants have used the aforementioned marks in interstate commerce.

- 187. Defendants' acts constitute trademark infringement in violation of the Lanham Act, particularly 15 U.S.C. § 1125(a).
- and will continue to suffer damage to its business, goodwill, reputation, profits and the strength of its trademarks. The injury to Afterburner is and continues to be ongoing and irreparable. An award of monetary damages alone will not fully compensate Afterburner for its injuries and Afterburner lacks an adequate remedy at law.
- 189. Afterburner is entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as all other relief available under the Lanham Act from Defendants jointly and severally. The injury to Afterburner is and continues to be ongoing and irreparable. An award of monetary damages alone will not fully compensate Afterburner for its injuries and Afterburner lacks an adequate remedy at law.

COUNT III: TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1125(a)

- 190. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 191. Afterburner is the owner of the Afterburner Trade Dress as described above.

- 192. The Afterburner Trade Dress has acquired distinctiveness because it has come to be recognized as a source indicator by the consuming public, who exclusively associate that Trade Dress with Afterburner as the source of the business improvement services sold thereunder.
 - 193. The Afterburner Trade Dress is not functional.
- 194. Afterburner's ownership and use in commerce of the Afterburner Trade Dress predates any use by Defendants of their confusingly similar trade dress.
- 195. Defendants' conduct in imitating the Afterburner Trade Dress, was a willful and/or intentional attempt to misappropriate Afterburner's goodwill.
- 196. Defendants' have used the Afterburner Trade Dress in interstate commerce in connection with offering for sale, selling, distributing, and advertising of Defendants' services.
- 197. Defendants' unauthorized use in commerce of the Afterburner Trade Dress for their services as described above constitutes trade dress infringement in violation of 15 U.S.C. § 1125(a).
- 198. Defendants' acts have been willful and in conscious disregard of the trade dress rights of Plaintiff.

- and will continue to suffer damage to its business, goodwill, reputation, profits and the strength of its trademarks and trade dress. Plaintiff is entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as all other relief available under the Lanham Act from Defendants jointly and severally.
- 200. The injury to Plaintiff is and continues to be ongoing and irreparable. An award of monetary damages alone will not fully compensate Plaintiff for its injuries and Plaintiff lacks an adequate remedy at law. Plaintiff is entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as all other relief available under the Lanham Act from Defendants jointly and severally.

COUNT IV: UNFAIR COMPETITION UNDER THE LANHAM ACT, 15 U.S.C. § 1125(a)

- 201. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 202. Defendants' acts complained of herein constitute unfair competition in violation of the Lanham Act, particularly 15 U.S.C. § 1125(a).
- 203. As a proximate result of Defendants' actions, Afterburner has suffered and will continue to suffer damages to its business, goodwill, reputation, profits and the strength of its trademarks and trade dress. The injury to Afterburner is and

continues to be ongoing and irreparable. An award of monetary damages alone will not fully compensate Afterburner for its injuries and Afterburner lacks an adequate remedy at law.

204. Afterburner is entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as an award of damages all other relief available under the Lanham Act from Defendants jointly and severally.

COUNT V: VIOLATION OF THE GEORGIA TRADE SECRETS ACT

- 205. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 206. Afterburner's proprietary client contact information and internal Standard Operating Procedures constitute trade secrets under O.C.G.A. § 10-1-761(4).
- 207. On information and belief, Defendants have used Afterburner's proprietary client contact information in order to wrongfully solicit and divert Afterburner's clients.
- 208. On information and belief, Defendants have also used Afterburner's proprietary Standard Operating Procedures in order to conduct seminars, keynote addresses, business consulting and to generally incorporate a substantially similar business model to Afterburner's business model.

- 209. Defendants Borneman, Howlin, Lohrenz and Underhill each knew of their obligation to protect and maintain the secrecy and integrity of Afterburner's proprietary business information and trade secrets and to use that information solely for the benefit of Afterburner.
- 210. Defendant TCG knew that Afterburner's proprietary business information and trade secrets were obtained from Defendants Borneman, Howlin, Lohrenz and Underhill each of whom owed a duty to Afterburner to maintain the secrecy and integrity of Afterburner's proprietary business information and trade secrets.
- 211. Afterburner has made reasonable efforts to protect its proprietary business information and trade secrets.
- 212. Defendants, individually and acting in concert, have misappropriated Afterburner's proprietary business information and trade secrets in violation of the Georgia Trade Secrets Act, O.C.G.A. § 10-1-760 et seq.
- 213. As a direct result of Defendants' misappropriation of Afterburner's proprietary business information and trade secrets, Afterburner has suffered substantial damages. Afterburner has also suffered and will continue to suffer damage and irreparable harm to its goodwill and business reputation.

- 214. Afterburner is therefore entitled to recover both the actual loss caused by the misappropriation, as well as the unjust enrichment caused by the misappropriation, pursuant to the Georgia Trade Secrets Act, O.C.G.A. § 10-1-763.
- 215. Defendants' misappropriation of Afterburner's proprietary business information and trade secrets was done willfully and maliciously, so that Afterburner is entitled to an award of exemplary damages pursuant to the Georgia Trade Secrets Act, O.C.G.A. § 10-1-763.
- 216. Afterburner is also entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as an award of attorneys' fees and costs, from Defendants jointly and severally.

COUNT VI: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

- 217. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 218. Defendants improperly solicited and diverted certain of Afterburner's clients, including but not limited to Cisco, MTI, and RTI.
- 219. Furthermore, Defendants have wrongfully induced certain of Afterburner's clients to terminate or disrupt long-standing business relationships with Afterburner in order to shift business to Defendants.

- 220. Defendants engaged in this conduct without any legitimate financial interest in Afterburner's business relationships or contracts with any of Afterburner's clients, and thus, acted without privilege.
- 221. Defendants acted purposefully to divert clients from Afterburner and with intent to injure Afterburner.
- 222. Afterburner has suffered and will continue to suffer damages as a direct and proximate result of Defendants' actions and is therefore entitled to compensatory damages pursuant to O.C.G.A. § 51-12-1.
- 223. Furthermore, as Defendants' actions showed willful misconduct and malice, Afterburner is entitled to punitive damages pursuant to O.C.G.A. § 51-12-5.1.
- 224. Afterburner is also entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as an award of attorneys' fees and costs, from Defendants jointly and severally.

COUNT VII: VIOLATION OF THE GEORGIA DECEPTIVE TRADE PRACTICES ACT

- 225. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 226. Defendants' adoption and use of Afterburner's trademarks, trade dress and/or marks confusingly similar to Afterburner's trademarks and trade dress

constitutes deceptive trade practices in violation of the Georgia Deceptive Trade Practices Act, particularly O.C.G.A. § 10-1-372.

- 227. As a proximate result of Defendants' actions, Afterburner has suffered and will continue to suffer damage to its business, goodwill, reputation, profits and the strength of its trademarks and trade dress. The injury to Afterburner is and continues to be ongoing and irreparable. An award of monetary damages alone will not fully compensate Afterburner for its injuries and Afterburner lacks an adequate remedy at law.
- 228. Afterburner is entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as an award of attorneys' fees and costs, from Defendants jointly and severally.

COUNT VIII: COMMON LAW UNFAIR COMPETITION

- 229. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 230. Defendants' acts complained of herein constitute unfair competition under Georgia common law.
- 231. As a proximate result of Defendants' actions, Afterburner has suffered and will continue to suffer damage to its business, goodwill, reputation, profits and the strength of its trademarks and trade dress.

- 232. Thus, Afterburner is entitled to compensatory damages pursuant to O.C.G.A. § 51-12-1.
- 233. Furthermore, as Defendants' actions showed willful misconduct and malice, Afterburner is entitled to punitive damages pursuant to O.C.G.A. § 51-12-5.1.
- 234. The injury to Afterburner is and continues to be ongoing and irreparable. An award of monetary damages alone will not fully compensate Afterburner for its injuries and Afterburner lacks an adequate remedy at law.
- 235. Afterburner is also entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as an award of attorneys' fees and costs, from Defendants jointly and severally.

COUNT IX: CONSPIRACY

- 236. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 237. Defendants acted with a common design to accomplish unlawful acts against Afterburner, including the infringement of Afterburner's trademarks and trade dress, tortious interference with Afterburner's business relations, and misappropriation of Afterburner's trade secrets.

- 238. As a proximate result of Defendants' actions, Afterburner has suffered and will continue to suffer damage to its business, goodwill, reputation, profits and the strength of its trademarks and trade dress.
- 239. Thus, Afterburner is entitled to compensatory damages pursuant to O.C.G.A. § 51-12-1.
- 240. Furthermore, Defendants' actions showed willful misconduct and malice, so Afterburner is entitled to punitive damages pursuant to O.C.G.A. § 51-12-5.1.
- 241. The injury to Afterburner is and continues to be ongoing and irreparable. An award of monetary damages alone will not fully compensate Afterburner for its injuries and Afterburner lacks an adequate remedy at law.
- 242. Afterburner is also entitled to immediate equitable relief restraining further wrongful conduct by Defendants, as well as an award of attorneys' fees and costs, from Defendants jointly and severally.

COUNT X: BREACH OF CONTRACT AS TO DEFENDANT BORNEMAN

243. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:

244. By engaging in the conduct set forth above, Defendant Borneman has breached his IP Agreement with Afterburner and is liable to Afterburner for all damages resulting from the breach.

COUNT XI: BREACH OF CONTRACT AS TO DEFENDANT HOWLIN

- 245. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 246. By engaging in the conduct set forth above, Defendant Howlin has breached his Independent Contractor Agreement with Afterburner and is liable to Afterburner for all damages resulting from the breach.

COUNT XII: BREACH OF CONTRACT AS TO DEFENDANT LOHRENZ

- 247. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:
- 248. By engaging in the conduct set forth above, Defendant Lohrenz has breached her Independent Contractor Agreement with Afterburner and is liable to Afterburner for all damages resulting from the breach.

COUNT XIII: BREACH OF CONTRACT AS TO DEFENDANT UNDERHILL

249. Afterburner realleges as if specifically set forth herein all the preceding allegations and further alleges as follows:

250. By engaging in the conduct set forth above, Defendant Underhill has breached his Independent Contractor Agreement and Agreement Regarding Copyrightable Materials and Trade Secrets with Afterburner and is liable to Afterburner for all damages resulting from the breach.

PRAYER FOR RELIEF

Accordingly, Afterburner respectfully requests the following:

- 251. An award of equitable relief permanently enjoining any further wrongful conduct by Defendants;
- 252. An award of actual and exemplary damage against Defendants, jointly and severally, including relief available pursuant to federal and Georgia law;
- 253. An award of attorneys' fees and costs incurred in prosecuting this action;
 - 254. Trial by jury on all triable issues; and
- 255. All other relief to which Afterburner may be entitled by law and equity.

This 11th day of April, 2011.

ARNALL GOLDEN GREGORY LLP

Stephen M. Dorvee

Georgia Bar No. 226989

stephen.dorvee@agg.com
J. Tucker Barr
Georgia Bar No. 140868
tucker.barr@agg.com
171 17th Street NW, Suite 2100
Atlanta, Georgia 30363
Tel: (404) 873-8500

Fax: (404) 873-8501

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF FORSYTH COUNTY STATE OF GEORGIA

AFTERBURNER, INC.,

Plaintiff,

v.

THE CORPS GROUPJOHN BORNEMAN, CAREY LOHRENZ, KYLE HOWLIN, and JOHN UNDERHILL, CIVIL ACTION FILE NO. 09cv-2844

Defendants.

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the foregoing **PLAINTIFF'S THIRD AMENDED COMPLAINT** to Defendants by causing same to be delivered to Defendant Andrew Dingee, and to counsel for Defendants The Corps Group, John Borneman, Kyle Howlin and Carey Lohrenz via Electronic and United States Mail at the following addresses:

Tracy L. Moon, Jr. James M. Hux, Jr. Fisher & Phillips LLP 945 East Paces Ferry Road 1500 Resurgens Plaza Atlanta, Georgia 30326 Andrew Dingee 2518 W. Baneberry Lane Unit 207 Littleton, CO 80129

This 11th day of April, 2011.

Stephen M. Dorvee Georgia Bar No. 226989

Exhibit A



Get Started with Afterburner - Call us at 1.800.261.2912

ASCAU US

1

EMPOWER FLAWLESS EXECUTION

vynii aaraininahalking kaamingliing ayanis zirif ligizieligezirie ziehrilligire de



Revolutionize Your Organization with Afterburner's Business Process Improvement Tools

Afterburner, the global leader in Flawfess Execution**, offers three strategic quality management solutions - Equip, Embed, and Empower, a set of business process improvement pink pink pink by site military professionals and military lighter pitats that revolutionize the way you look at and do business in today's fast-paced environment.

Implement More intuitive Strategic Quality Management Solutions

EMPONALED -

SEMINARS

Teambulking Events * Keynote Addresses Sales Training * Costombred Workshops Afterburner Day • Black Ops • Healthstate • Satety

There are teambuilding events, and then there is the immersive action of an Afterburner overt. The Afterbaner team brings the 'zero tolerance for error' world of fighter pilots directly to your

TRAINING & CONSULTING

Scrategic Planning - Productivity Improvement Project Management - Leadership Training FLEX U - Flawless Execution** Software Restriction : Softing

To win in the new economy, your organization needs to execute every aspect of your business with a tagh level of precision. But even a great strategic quality management team focused on

DWRFN .

PLACEMENT

- Human Capital Placement Services
 Flawlese Execution[®] Certification Training
 Transitioning Military to Business Training

Embod is a circulate restrant papital placement service for mida midas, professionais transitioning from military to civilian caseas. Individual execution is one thing... organizational execution is everything! No organization in the world



Exhibit B

PTO Form 1478 (Rev 9/2006) OMB No. 0651-6009 (Exp 12/81/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85094889 Filing Date: 07/28/2010

The table below presents the data as entered.

Input Field	Entered	
SERIAL NUMBER	85094889	
MARK INFORMATION		
*MARK	\\TICRS\EXPORT11\IMAGEOUT 11\850\948\85094889\xml1\ APP0002.JPG	
SPECIAL FORM	YES	
USPTO-GENERATED IMAGE	NO	
COLOR MARK	NO	
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a three-dimensional configuration of a pilot flight suit. The broken lines in the drawing are not part of the mark but are merely intended to show the position of the mark.	
PIXEL COUNT ACCEPTABLE	YES	
PIXEL COUNT	595 x 841	
REGISTER	Principal	
APPLICANT INFORMATION		
*OWNER OF MARK	AFTERBURNER, INC.	
*STREET	55 Ivan Allen Jr. Blvd.	
*CITY	Atlanta	
*STATE (Required for U.S. applicants)	Georgia	
*COUNTRY	United States	
*ZIP/POSTAL CODE (Required for U.S. applicants only)	30308	
PHONE	(404) 835-3500	

EXHIBIT

B

B

EMAIL ADDRESS	tfaxio@afterburner.com
LEGAL ENTITY INFORMATION	
ТУРЕ	corporation
STATE/COUNTRY OF INCORPORATION	Georgia
GOODS AND/OR SERVICES AND BAS	SIS INFORMATION
INTERNATIONAL CLASS	035
*IDENTIFICATION	Business management consultancy service executive search and placement services; personnel placement and recruitment
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/31/1996
FIRST USE IN COMMERCE DATE	At least as early as 01/31/1996
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\850\948\85094889\xml1\ APP0003.JP0
SPECIMEN DESCRIPTION	web site photograph of pilot flight suits as worn as service marks
INTERNATIONAL CLASS	041
*IDENTIFICATION	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
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/31/1996
FIRST USE IN COMMERCE DATE	At least as early as 01/31/1996
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\850\948\85094889\xml1\ APP0004.JPC
SPECIMEN DESCRIPTION	web site photograph of pilot flight suits as worn as service marks
ATTORNEY INFORMATION	
NAME	Michael C. Mason

ATTORNEY DOCKET NUMBER	04-A01-1.1
FIRM NAME	Essentia Legal, PC - Arrington, Oduola- Owoo & Mason
INTERNAL ADDRESS	Suite 110
STREET	3915 Cascade Road, SW
CITY	Atlanta
STATE	Georgia
COUNTRY	United States
ZIP/POSTAL CODE	30331-8522
PHONE	404.549.6774
FAX	404.549.6774
EMAIL ADDRESS	michael@essentialegal.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Latif Odula-Owoo
CORRESPONDENCE INFORMATION	
NAME	Michael C. Mason
FIRM NAME	Essentia Legal, PC - Arrington, Oduola- Owoo & Mason
INTERNAL ADDRESS	Suite 110
STREET	3915 Cascade Road, SW
CITY	Atlanta
STATE	Georgia
COUNTRY	United States
ZIP/POSTAL CODE	30331-8522
PHONE	404.549.6774
FAX	404.549.6774
EMAIL ADDRESS	michael@essentialegal.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
	2

FEE PER CLASS	325	
*TOTAL FEE DUE	650	
*TOTAL FEE PAID	650	
SIGNATURE INFORMATION		
SIGNATURE	/James D. Murphy/	
SIGNATORY'S NAME	James D. Murphy	
SIGNATORY'S POSITION	CEO	
DATE SIGNED	07/28/2010	

PTO Form 1478 (Rev 9/2006) OMB No. 0651-0009 (Exp. 10/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85094889 Filing Date: 07/28/2010

To the Commissioner for Trademarks:

MARK: (Stylized and/or Design, see mark)

The mark consists of a three-dimensional configuration of a pilot flight suit. The broken lines in the drawing are not part of the mark but are merely intended to show the position of the mark. The applicant, AFTERBURNER, INC., a corporation of Georgia, having an address of

55 Ivan Allen Jr. Blvd. Atlanta, Georgia 30308

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: Business management consultancy services; executive search and placement services; personnel placement and recruitment

In International Class 035, the mark was first used at least as early as 01/31/1996, and first used in commerce at least as early as 01/31/1996, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) web site photograph of pilot flight suits as worn as service marks. Specimen File1

International Class 041: 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

In International Class 041, the mark was first used at least as early as 01/31/1996, and first used in commerce at least as early as 01/31/1996, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) web site photograph of pilot flight suits as worn as service marks.

Specimen File1

The applicant hereby appoints Michael C. Mason and Latif Odula-Owoo of Essentia Legal, PC - Arrington, Oduola-Owoo & Mason

Suite 110 3915 Cascade Road, SW Atlanta, Georgia 30331-8522 United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 04-A01-1.1.

Correspondence Information: Michael C. Mason

Essentia Legal, PC - Arrington, Oduola-Owoo & Mason

Suite 110

3915 Cascade Road, SW Atlanta, Georgia 30331-8522

404.549.6774(phone) 404.549.6774(fax)

michael@essentialegal.com (authorized)

A fee payment in the amount of \$650 has been submitted with the application, representing payment for 2 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce;

to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /James D. Murphy/ Date Signed: 07/28/2010

Signatory's Name: James D. Murphy

Signatory's Position: CEO

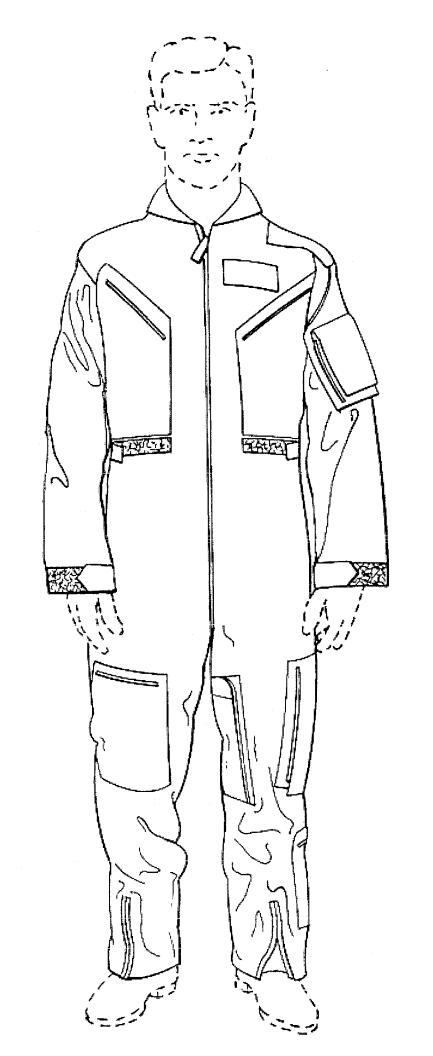
RAM Sale Number: 1166

RAM Accounting Date: 07/29/2010

Serial Number: 85094889

Internet Transmission Date: Wed Jul 28 15:00:49 EDT 2010 TEAS Stamp: USPTO/BAS-173.165.162.98-201007281500495

40787-85094889-470fe516a5f5d70c8d342361e 95b581e-CC-1166-20100723165420639201



Get Started with Afterburner - Call as at 1,800,261,2912

ascut is

EMPOWER FLAWLESS EXECUTION

ente lecteralio appointa d



Revolutionize Your Organization with Afterburner's Business Process Improvement Tools

Afterburner, the global leader in Flawless Execution**, offers three strategic quality management solutions - Equip, Embed, and Empower, a set of business process improvement price stars inspired by elite military professionals and military fighter pilots that revolutionize the way you look as and do business in today's fast-paced enveronment.

Implement More Intuitive Strategic Quality Management Solutions

TARMATE !

SEMINARS

Teambulding Events · Keynote Addresses Sales Training · Custombrad Workshops Afterburner Day · Black Ops · Hestingare ·

There are teambuilding events, and then there is the immessive action of en Affectumer event. The Afterburner team brings the 'zero tolerance for error' world of fighter pilots directly to your

TRAINING & CONSULTING

Strategic Planskag - Productivity Improvement Project Management - Leadership Training FLEX U - Flawless Execution^{er} Software Heathers : Sefety

To win in the new economy, your organization needs to execute every aspect of your business with a high level of precision. But even a great. strategic quality management team focused on

EVREDA

PLACEMENT

- Human Capital Piacement Services
 Flawless Execution^{as} Cortification Training
 Transitioning Military to Eusiness Training

Embod is a strategic human capital placement service for elite military professionals transitioning from military to civilian carpers. Individual execution is one thing... organizational execution is everything! No organization in the world

Get Started with Afterburner - Call us at 1.800.261.2912

Ţ.,

EMPOWE FLAWLESS EXECUTION

ctivation contrationality and a second contrational transfer contr zmi delitection sammers »



Revolutionize Your Organization with Afterburner's Business Process Improvement Tools

Afterburner, the global leader in Flawless Execution^{an}, offers three strategic quality management solutions - Equip, Embed, and Empower, a set of business procuse improvement principles inspired by elila military professionals and military fighter pilots that revolutionize the way you look as and do business to today's fast-posed environment.

Implement More intuitive Strategic Quality Management Solutions

EMBONATED.

SEMMARS

Teambuliding Events · Keynote Addresses Seles Training · Customized Workshops Afterburner Day · Black Ops · Heathboard · Samo

There are teambuilding events, and then there is the immersive action of an Aftertainer event. The Afterburier team brings the 'xero tolerence for error' world of fighter pilots directly to your

TRAINING & CONSULTING

Strategic Plansing · Productivity Improvement Project Management · Leadership Training FLEX U · Flawless Execution™ Software Realthoans Safety

To win in the new economy, your organization needs to execute every aspect of your business with a high level of precision. But even a great strategic quality management team focused on

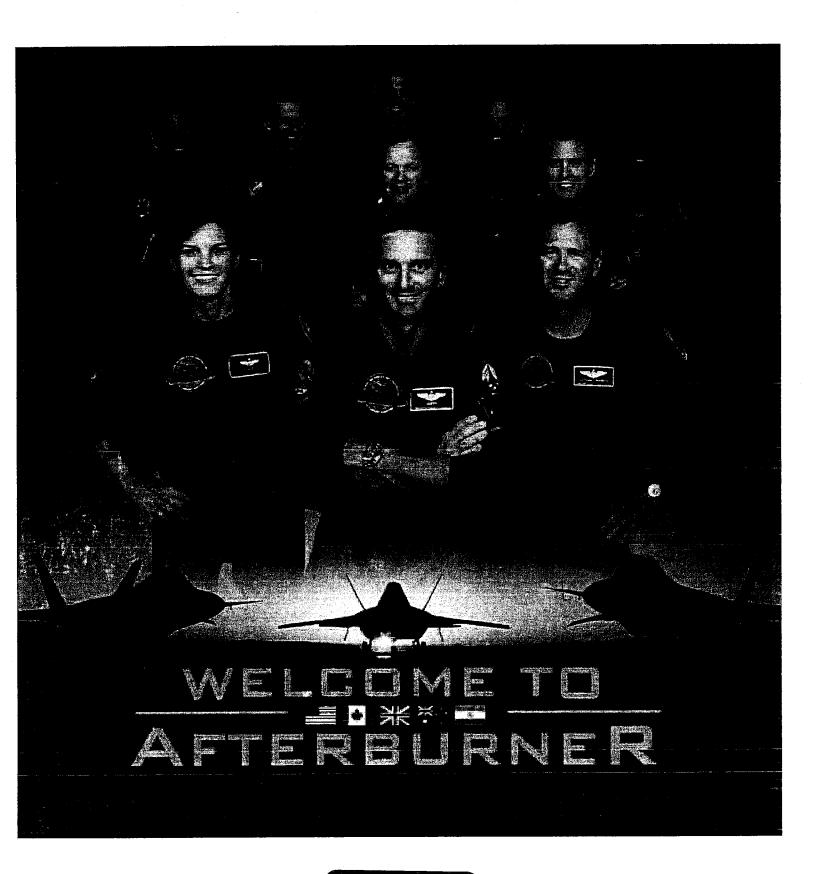
EMBED .

PLACEMENT

- Human Capital Piscement Services
 Fishers Execution* Contification Training
 Transitioning Milliary to Business Training

Embed is a strategy remark payabl physemest servicio for arta military professionale transitioning from military to civilian coreans. Individual execution is one thing... organizational execution is everything! No organization in the world

Exhibit C



EXHIBIT

See C

C

ELECTRIFY YOUR GORPORATE TEAM WITH THE HELP OF AFTERBURNER FIGHTER PILOTS!

Business is combat. You're fighting for market share. You're fighting to make your numbers. You need a team that works as one. You need a team that works for the same goals. You need a team that knows not only how to plan a mission — but how to execute that mission flawlessly from start to finish.

Enter Afterburner Flawless ExecutionSM skills.

Our team of real Fighter Pilots understands how critical it is to know how to handle your-self and your team in hostile, fast-changing environments every single day. An Afterburner program will not only charge your team with energy and know-how for one day — it will put them in full fighter form every day!

Fighter Pilots get the job done using the FLAWLESS EXECUTION MODELSM. This is a simple, yet effective process designed to help military aviators win in combat. Today, companies in all industries, from small to large, are using the Flawless Execution ModelSM to dramatically improve the way their teams perform. Everyone works together for a common goal and — IT WORKS!

Who are these EXECUTION experts?

Afterburner is a group of men and women Fighter Pilots who train leaders just like you to use Flawless ExecutionSM tools and techniques. Staying alive and prospering in today's hos-

tile business environment is a necessary skill — but most companies don't have it. YOU AND YOUR TEAM WILL HAVE IT AFTER AN AFTERBURNER PROGRAM!

Afterburner has been on the *INC*. 500 list of fastest growing companies twice. It is often featured in business media around the world, including *CNN*, *CNBC*. The Wall Street Journal, and Business Week. To date, we have trained over 100 of the Fortune 500 companies worldwide to do what makes a company and its people successful — EXECUTE THE WINNING PLAN. At Afterburner, "Leading the World's Top Corporations to Flawless ExecutionSM" is more than just a slogan — it's the foundation of our company.



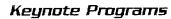
Turn your team into **Winners** with our gustomized keynote **programs**.

Imagine it — in just 60 action-packed minutes, you'll turn your group into mission-oriented, flawlessly-executing business people. The great part is they'll be working for the common goals set by you. They will execute your company strategy fast and effectively.

- When a team works as one unit, it can do anything. It can achieve any goal.
- * Afterburner Keynote Programs are customized for your group. We address YOUR needs. We provide your group with the skills to survive and to win in the rapidly-changing environment of YOUR business.
- * Afterburner teaches teamwork, NOT warfare. How does NATO, for example, execute perfectly coordinated missions with pilots from many nationalities? They do it using the same Flawless Execution Model^{MI} we teach at Afterburner the same model that can help your team execute flawlessly.
- Our programs are all it takes to give your team skills that last. Each member of your group will be prepared for anything — every day.
- Our Fighter Pilots are an ethnically diverse group of men and women perhaps like your own group. That means everyone feels a part of the event.

If you're tired of nonproductive speakers and programs that may motivate for an hour or a day but never long term, it's time you book an Afterburner Keynote. Do you want the best

equipped team possible? We will make it happen. Not temporarily, but on a lasting basis, Call us today and book the best keynote of your career!



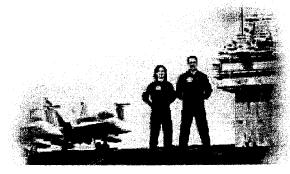
- * Plan. Brief. Execute. Debrief.=Win!: A Fighter Pilot's Secret to Business Success
- * Mach 2: High Impact Execution Skills for Busy Executives
- * The Power of Debriefing: Accelerating Your Team's Experience



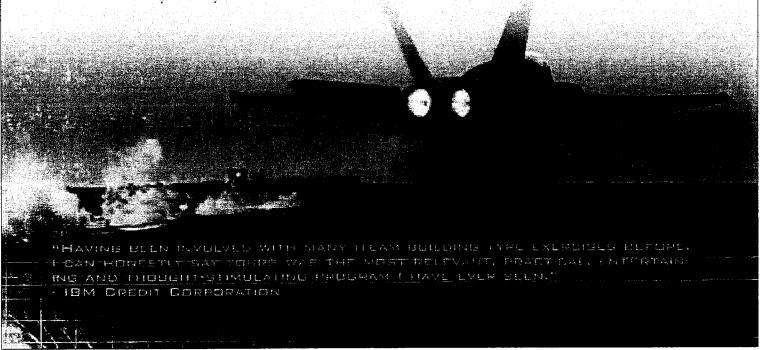


BREAK YOUR **PERFORMANCE BARRIERS** WITH AFTERBURNER TEAMBUILDING PROGRAMS. AUGN THEM. MOTIVATE THEM. EQUIP THEM.

IMAGINE YOUR NEXT
MEETING — JUST AS
YOU FINISH BREAKFAST,
FIVE MEN AND WOMEN
FIGHTER PILOTS BREAK
INTO THE ROOM!



They're looking for YOU — and your day has just changed! You and your team are ordered to the Main Briefing Room where you enter through a camouflage netting tunnel. Parachutes are hanging from the ceiling. Top Gun music is blaring, and jets are flying across a giant screen. This is NOT your typical meeting. In fact, it's only just beginning, and Afterburner has not only set the tone for your meeting, we have set the tone for your next month and your next year.



Learn to work as a team in the most CHALLENGING environment we can create.

Welcome to the Afterburner Day — where we give you our high-energy, motivational speakers, legendary multimedia graphics and rare video footage. And we are just getting started.

While you are still riveted by the first keynote session, your team breaks into "squadrons" of 15 and quickly moves to breakout rooms. Now you get to use the skills you just learned to plan a real military mission. During this Mission Planning Exercise, your team has to work together to overcome big challenges — changing weather, spies, jets running out of fuel and a special secret challenge known only to Afterburner alumni!

When you finish your Mission, you will report back to the Main Briefing Room to learn about the silent killer: Task Saturation. Have you ever had a meltdown? You'll learn what Task Saturation is, how Fighter Pilots manage it, and how you can too.

Finally, you will learn the power of a nameless, rankless Debrief. In fact, you won't just learn about it — you'll do it. With the help of an Afterburner Fighter Pilot, you will Debrief the Mission you planned earlier in the day.



Your team will be FLAWLESS, excelling in every task it undertakes — collectively and individually — when you use the methods you'll learn from Afterburner.

Take a three-year FLAWLESS EXECUTIONSM JOURNEY with Afterburner!

Performance improvement is a journey of learning experiences reinforced over time. There are no quick fixes. That's why we offer a three-year event curriculum, starting with the Afterburner Day and moving to progressively more advanced programs. If you think your team has what it takes to become flawless, schedule Afterburner for your next corporate meeting and begin the journey.

Corporate Events

- * Afterburner Day: Harness the Power of Flawless-Execution [Mail | Year 1]
- * Mach 2 Execution: High Impact Execution Skills [Year 2]
- Joint Force Ops: Achieving Breakthrough Teamwork | Year 3|

Exhibit D

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,932,612

United States Patent and Trademark Office

Registered Mar. 15, 2005

SERVICE MARK PRINCIPAL REGISTER

FLAWLESS EXECUTION

AFTERBURNER SEMINARS, INC. (GEORGIA CORPORATION)
1503 B. NORTHSIDE DRIVE
ATLANTA, GA 30318

FOR: SEMINARS IN MOTIVATIONAL AND MANAGEMENT TRAINING AND DISTRIBUTION OF COURSE MATERIALS IN CONNECTION THEREWITH, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 1-31-1998; IN COMMERCE 1-31-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 76-582,200, FILED 3-18-2004.

MICHAEL HALL, EXAMINING ATTORNEY

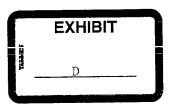
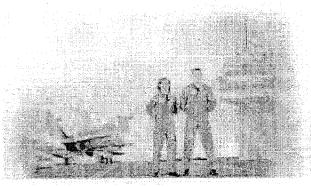


Exhibit E

BREAK YOUR *PERFORMANCE*SARCERS WITH AFTERBURNER TEAMBUILDING FROGRAMS. ALUN THEM METRATE THEM EQUIP THEM.

MAGINE YOUR NEXT
MEETING — JUST AS
YOU FINISH BREAKFAST,
FIVE MEN AND WOMEN
FIGHTER PLOTS BREAK
INTO THE ROOM!



They're looking for YOU — and your day has just changed! You and your team are ordered to the Main Briefing Room where you enter through a camouflage netting tunnel. Parachutes are hanging from the ceiling. Top Gun music is blaring, and jets are flying across a giant screen. This is NOT your typical meeting. In fact, it's only just beginning, and Afterburner has not only set the tone for your meeting, we have set the tone for your next month and your next year.



EXHIBIT

E

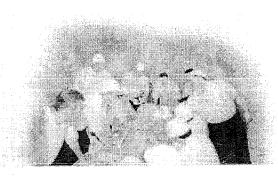
Learn to work as a team in the most CHALLENGING environment we can create.

Welcome to the Afterburner Day — where we give you our high-energy, motivational speakers, legendary multimedia graphics and rare video footage. And we are just getting started.

While you are still riveted by the first keynote session, your team breaks into "squadrons" of 15 and quickly moves to breakout rooms. Now you get to use the skills you just learned to plan a real military mission. During this Mission Planning Exercise, your team has to work together to overcome big challenges — changing weather, spies, jets running out of fuel and a special secret challenge known only to Afterburner alumnil

When you finish your Mission, you will report back to the Main Briefing Room to learn about the silent killer. Task Saturation. Have you ever had a meltdown? You'll learn what Task Saturation is, how Fighter Pilots manage it, and how you can too.

Finally, you will learn the power of a nameless, rankless Debrief. In fact, you won't just learn about it — you'll do it. With the help of an Afterburner Fighter Pilot, you will Debrief the Mission you planned earlier in the day.



Your team will be FLAWLESS, excelling in every task it undertakes — collectively and individually — when you use the methods you'll learn from Afterburner.

Take a three-year FLAWLESS EXECUTIONS ENLIGHTY with Afterburners

Performance improvement is a journey of learning experiences reinforced over time. There are no quick fixes. That's why we offer a three-year event curriculum, starting with the Afterburner Day and moving to progressively more advanced programs. If you think your team has what it takes to become flawless, schedule Afterburner for your next corporate meeting and begin the journey.

Corporate Eventa

- * Afterburner Day: Harness the Power of Flawless ExecutionSM [Year 1]
- * Mach 2 Execution: High Impact Execution Skills | Year 2]
- * Joint Force Ops: Achieving Breakthrough Teamwork | Year 3]

Exhibit F

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

Reg. No. 2,423,661

United States Patent and Trademark Office

Registered Jan. 23, 2001

SERVICE MARK PRINCIPAL REGISTER

TASK SATURATION

AFTERBURNER SEMINARS, INC. (GEORGIA COR-PORATION) 1265 TIMBERLAKE TRAIL CUMMING, GA 301318611

FOR: SEMINARS IN MOTIVATIONAL AND MANAGEMENT TRAINING AND DISTRIBUTION OF

COURSE MATERIALS IN CONNECTION THEREWITH, IN CLASS 41 (U.S. CLS. 100, 101 AND 107). FIRST USE 1-0-1996; IN COMMERCE 1-0-1996.

SN 75-379,397, FILED 10-27-1997.

GINA FINK, EXAMINING ATTORNEY

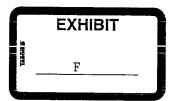
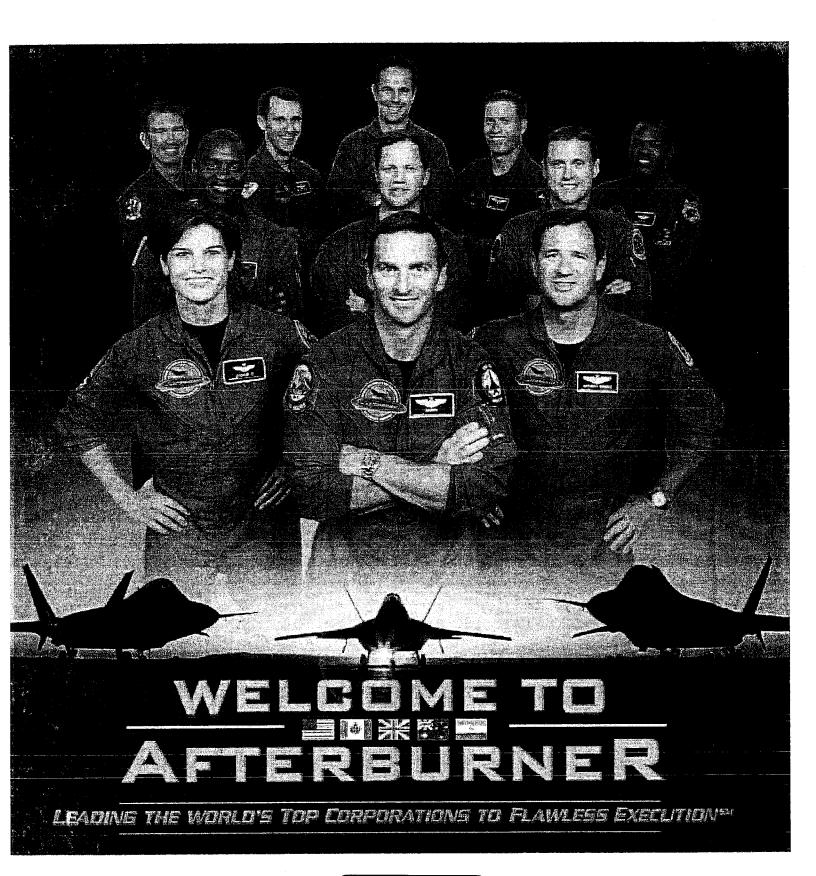


Exhibit G



EXHIBIT

G-1

ELECTRIFY YOUR GORPORATE TEAM WITH THE HELP OF AFTERBURNER FIGHTER PILOTS!

Business is combat. You're fighting for market share. You're fighting to make your numbers. You need a team that works as one. You need a team that works for the same goals. You need a team that knows not only how to plan a mission — but how to execute that mission flawlessly from start to finish.

Enter Afterburner Flawless ExecutionSM skills.

Our team of real Fighter Pilots understands how critical it is to know how to handle your-self and your team in hostile, fast-changing environments every single day. An Afterburner program will not only charge your team with energy and know-how for one day — it will put them in full fighter form every day!

Fighter Pilots get the job done using the FLAWLESS EXECUTION MODELSM. This is a simple, yet effective process designed to help military aviators win in combat. Today, companies in all industries, from small to large, are using the Flawless Execution ModelSM to dramatically improve the way their teams perform. Everyone works together for a common goal and — IT WORKS!

Who are these EXECUTION experts?

Afterburner is a group of men and women Fighter Pilots who train leaders just like you to use Flawless ExecutionSM tools and techniques. Staying alive and prospering in today's hos-

tile business environment is a necessary skill — but most companies don't have it. YOU AND YOUR TEAM WILL HAVE IT AFTER AN AFTERBURNER PROGRAM!

Afterburner has been on the *INC*. 500 list of fastest growing companies twice. It is often featured in business media around the world, including *CNN*, *CNBC*, *The Wall Street Journal*, and *Business Week*. To date, we have trained over 100 of the Fortune 500 companies worldwide to do what makes a company and its people successful — EXECUTE THE WINNING PLAN. At Afterburner, "Leading the World's Top Corporations to Flawless ExecutionSM" is more than just a slögan — it's the foundation of our company.



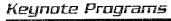
Turn your team into **Winners** with our gustomized keynote Programs.

Imagine it — in just 60 action-packed minutes, you'll turn your group into mission-oriented. flawlessly-executing business people. The great part is they'll be working for the common goals set by you. They will execute your company strategy fast and effectively.

- When a team works as one unit, it can do anything. It can achieve any goal.
- Afterburner Keynote Programs are customized for your group. We address YOUR
 needs. We provide your group with the skills to survive and to win in the rapidlychanging environment of YOUR business.
- Afterburner teaches teamwork, NOT warfare. How does NATO, for example, execute perfectly coordinated missions with pilots from many nationalities? They do it using the same Flawless Execution ModelSM we teach at Afterburner the same model that can help your team execute flawlessly.
- Our programs are all it takes to give your team skills that last. Each member of your group will be prepared for anything — every day.
- * Our Fighter Pilots are an ethnically diverse group of men and women perhaps like your own group. That means everyone feels a part of the event.

If you're tired of nonproductive speakers and programs that may motivate for an hour or a day but never long term, it's time you book an Afterburner Keynote. Do you want the best

equipped team possible? We will make it happen. Not temporarily, but on a lasting basis. Call us today and book the best keynote of your career!



- * Plan. Brief. Execute. Debrief.=Win!: A Fighter Pilot's Secret to Business Success:
- Mach 2: High Impact Execution Skills for Busy Executives
- The Power of Debriefing: Accelerating Your Team's Experience





PLAN BRIEF

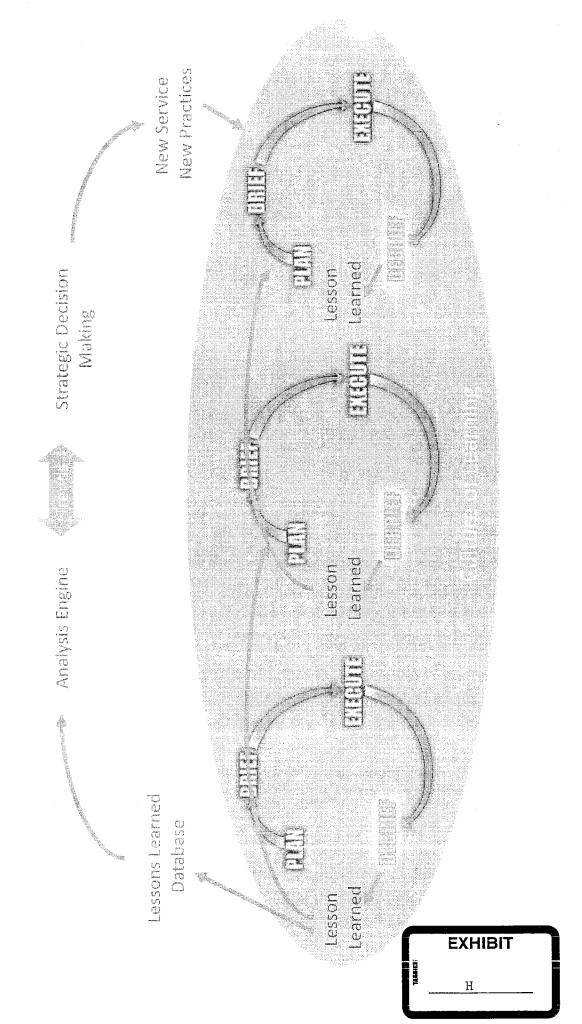
WUNT

EXHIBIT

G-2

Exhibit H

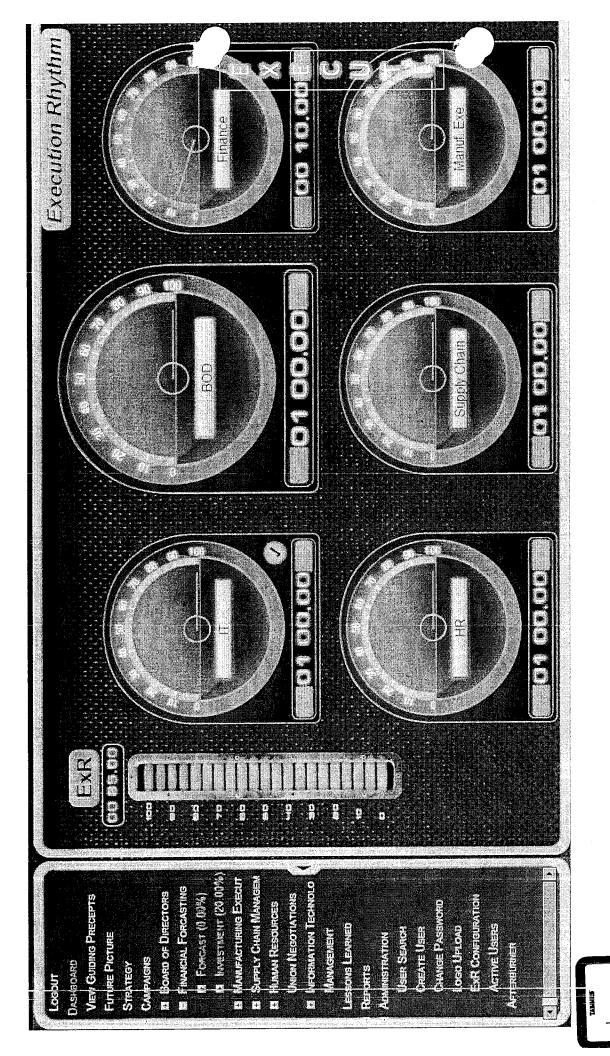
Culture of Learning



Confidential Afterburner 2007 All Rights Reserved

Exhibit I



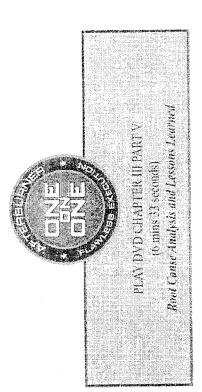


EXHIBIT

I-1

	Example Lesson Learned #1
	Aircraft crashed into the ground
	It ran out of fuei
Cause:	During mission planning, fuel needs not communication)
ESSON LEGINER.	Add fuel requirements review to mission checklist
	Ace Maily
	June 23, 2010

	Example Lesson Learned #2
	Customer Satisfaction scores fell 3% below annual goal
	Failed promised delivery dates to customers increased 5% over previous year
3.cci Cause:	Aging truck fleet resulted in increasing failure rate at 150,000 to 200,000 miles per vehicle. (planning)
Lesson Learned.	Devetop and implement plan to replace trucks prior to 150,000 miles
one confidence of the confiden	Max Gourocks, Regional Finance Manager
	February 1, 2011



Execution Rhythmen

Depending on the size and nature of your organization's operations, you must establish a consistent rhythm of execution. Execution Rhythm is the activity that aids in setting the tone and expectations of the organization towards executing goals. It embeds the Plan–Brief-Execute-Debrief cycle, the Flawless Execution Cycle, into the culture. Although the routine may vary from business to business, generally missions should be planned, briefed, executed and debriefed at least in 30 to 60 day intervals. Campaign Plans should be debriefed regularly according to phasing, typically at 60 to 90 day intervals, to summarize the debriefs of several completed missions. Missions are debriefed promptly upon their completion and any sub-missions that support those missions.

should meet with campaign leaders (typically the VP level) every three months or at the end of a phase to debrief campaign plaus, and plan and brief for the next phase of campaigns. Campaign Leaders should be meeting with their Mission Leaders throughout the phases, every 30 to 90 days, to plan, brief and debrief missions. Mission leaders may have leaders of sub-missions and their teams planning, briefing and debriefing those missions on a weekly basis while front line customer service supervisors may be planning, briefing and debriefing on a duly basis. All the while, every member of the organization is executing their part of a plan day after day in a persis-

Exhibit J

HIGH PERFORMING TEAM EX

THE POWER OF HIGH PERFORMING TEAMS

High-performing teams create value for organizations by achieving better results, in less time, using fewer resources.



The Corps
High Performing
Team EX is an
interactive,
powerful, corporate
teambuilding
program designed to

help organizations improve alignment and execution. You will learn, through lecture and immersion, how to improve discipline, teamwork and strategic execution.

The instructors of the program are all real U.S. military Fighter Pilots who know what it's like to execute complex strategies in high-risk, high-stress environments. Your team will learn the secrets of effects-based strategy and the Corps Execution Model- a proven, performance improvement model.



THE CORPS GROUP DIFFERENCE

The Corps Group is an elite team of former military fighter pilots and corporate executives who, through keynote addresses, corporate team building events and executive leadership training, help your business develop a high performing team culture that generates and maintains superior, measurable results. The team's aviation training separates them from other consultants, leadership coaches, and keynote speakers. Hand-picked to fly fighter jets for the military, they underwent many

years of training that qualified them to be responsible for millions of dollars worth of equipment and the lives of their colleagues.

HIGH PERFORMING TEAM EX - FULL DAY

A High Performing Team EX engagement includes a high energy, multi-media, interactive Keynote, and an experiential Team Building experience to equip your team members with the tools necessary to drive

High Performance! Your energized team members will be able to employ and utilize best practices for instant impact and a measurable ROI when returning to the workplace the next day!



Program Length: 4 to 8 hours for 10 to unlimited participants

Typical program timeline:

9:00 AM

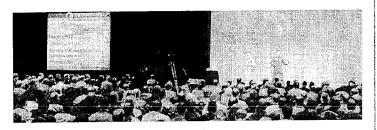
The program begins with a dynamic segment about the fundamentals of strategy and how strategic thinking is essential at ALL levels in a High Performing Organization. Your team will also be introduced to the Corps Execution Model- a powerful process improvement model, regardless of your industry.

10:30 AM

It's now time for your team to engage in a highly interactive exercise where team members will apply some of the principles just learned. Depending on your preferences and group size, the exercise can be military oriented or nonmilitary. In either scenario, team members must work together in an exciting, challenging scenario in order to be successful.



HIGH PERFORMING TEAM EX



12-15 PM

Team lunch with world class fighter pilots

1:00 PM

After a lunch break, your team will learn about human factors and the effects of task overload on team and individual performance. In a hard-hitting lecture, your team will gain tools to fight the effects of this performance-draining problem and learn how to effectively manage risk; something fighter pilots do on each and every mission!

People retain about 20% of what they read and hear, 40% of what they observe and 90% of what they experience...

2:30 PM

In the afternoon, your team will learn the fundamentals of debriefing — what it is and how to effectively lead a debrief. Your team will then participate in a debrief of the exercise it completed in the morning. This is a very engaging and empowering tool that gives everyone at the table a voice while Reducing Your Time to Insight, Every Time.

4:00 PM

The High Performing Team EX Wrap Up With a renewed focus, and a proven set of tools in their helmet bag, your team is now equipped to execute and accomplish your organizations' strategy and initiatives.

HIGH PERFORMING TEAM EX - HALF DAY

A Half Day High Performing Team EX program presented by World Class Fighter Pilots starts with an impactful, engaging Keynote followed by an experiential breakout and facilitated roundtable discussions. Program Length: 3.5 hours for 10 to unlimited participants

TAILOR YOUR TEAMBUILDING EVENT FOR YOUR ORGANIZATION'S NEEDS

The Corps Group offers three exercise options which allow you to put together the most meaningful TeamEX event for your participants. All of these programs are exciting, proven teambuilding programs that demand and teach superior collaboration.

- "Team Ex" Execution, Leadership & collaboration Exercise using a 'Military & or Non-Military Rescue Mission'
- "Lead Ex" a Leadership & Teamwork Exercise using a 'Large Wooden Puzzle'
- "Comm Ex" a Teamwork & Communication Exercise using a 'Bucket, Blindfolds and Rope'

In the sections that follow you will get a profile of each of the teambuilding programs to help you select the best program for your team.

"This is the best team building exercise I've seen or done. I've never had it miss."

.

-Boom Daniel
Ausley Associates Inc.

PAGE 2



HIGH PERFORMING TEAM EX PROGRAMS

THE CORPS GROUP TEAM EX

Minimum Time Required: Program run time 4 - 8 hours.

Purpose:

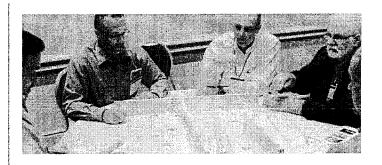
Demonstrate value of a High Performing Organization, leadership, communication, process planning skills, delegation, collaboration, execution, teamwork, organization skills, discipline, the situational factors affecting leadership and power of debriefing.

Summary:

In this powerful Team Building experience, your team will plan a military style rescue mission. The group is broken up into teams of 11-15 and they will have 75 minutes to come up with a completed plan. While they are planning 'real time', they will be interrupted by changing weather, an incoming cruise 'missile, lose assets, and talk on hand held radios to get updates from 'Command Center'. Your team members will learn through hands on experience, how to acquire the tools necessary to drive High Performance! Your team will then participate in a debrief of the exercise it completed. This is a very engaging and empowering tool that gives everyone at the table a voice while Reducing Your Time to Insight, Every Time!

Group size: 11 minimum, total group size unlimited





THE CORPS GROUP 'LEAD EX'

Winimum Time Required: Program run time 4 - 8 hours.

Purpose:

Demonstrate teamwork, leadership, trust, communication, and listening skills, delegation, visioning and the situational factors affecting leadership.

Summary:

We customize the program for your teams and provide a comprehensive and competitive interaction for them. Highlighting the need for a "Culture of Learning," this is a very dynamic, fulfilling, challenging and downright fun section in the engagement. LEAD EX provides a distinctive challenge that requires a blend of mental and physical skills to create a winning solution. With a limited set of directives, your team will have to connect different shaped boards into the correct formation. To succeed, they will need to make numerous connections and adjustments throughout the challenge. Clear communication, well-defined roles and responsibilities. organization, effective planning, and teamwork are factors needed to complete this problem. A group may discover a solution; but in order to repeat the solution in a "world class" time, the group must act as a High Performing Team. Especially effective for companies utilizing LEAN, LEAN SIX SIGMA or just SIX SIGMA.

Group size: 5 minimum; total group size unlimited

THEOREGOUS CO. 1065 CO. 248



HIGH PERFORMING TEAM EX PROGRAMS



THE CORPS GROUP COMM EX

Minimum Time Required: Program run time 4 - 8 hours.

Purpose:

Demonstrate trust, leadership, organization, open planning, communication, listening skills, delegation, visioning and the situational factors affecting leadership.

Summary:

Teams are divided into Leaders, Supervisors and Workers. Teams must work together to move a transportation device with precious cargo from one roped off containment area to another roped off customer service area. The challenge of the task is that Leaders and Supervisors cannot touch, and the Workers cannot see, the device or the cargo. To successfully solve the problem, the team must have a clear plan and constant communication. At the completion of the exercise, our facilitators Debrief with the team, helping to identify how they came up with and implemented solutions, how the situation and the followers affected the leadership, and how 'supervisors' and 'workers' communicated with and listened to each other. Together, the group discovers what role teamwork and trust played in the process, how real organizations have members who are blind to organizational goals and whether or not leaders micromanaged or the supervisors emerged as leaders.

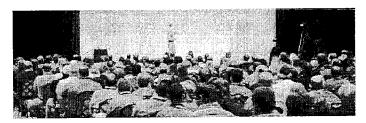
Group size: 8 minimum; total group size unlimited

THREE UNIQUE EXERCISE OPTIONS FOR ONE GREAT TEAMBUILDING EVENT.

This is a very engaging and empowering way to teach your team how to execute better and learn rapidly while Reducing Your Time to Insight, Every Time. With a renewed focus, and a proven set of tools in their helmet bag, your team is now equipped to execute and accomplish your organizations' strategy and initiatives.

Your team should walk away from the event with confidence in their ability to be an effective Leader, Manager, Supervisor or Team Leader while effectively communicating and navigating within their organization, enabling them to execute at optimal levels. Our goal is to make a leader or a team capable of using any of our tools on their own.

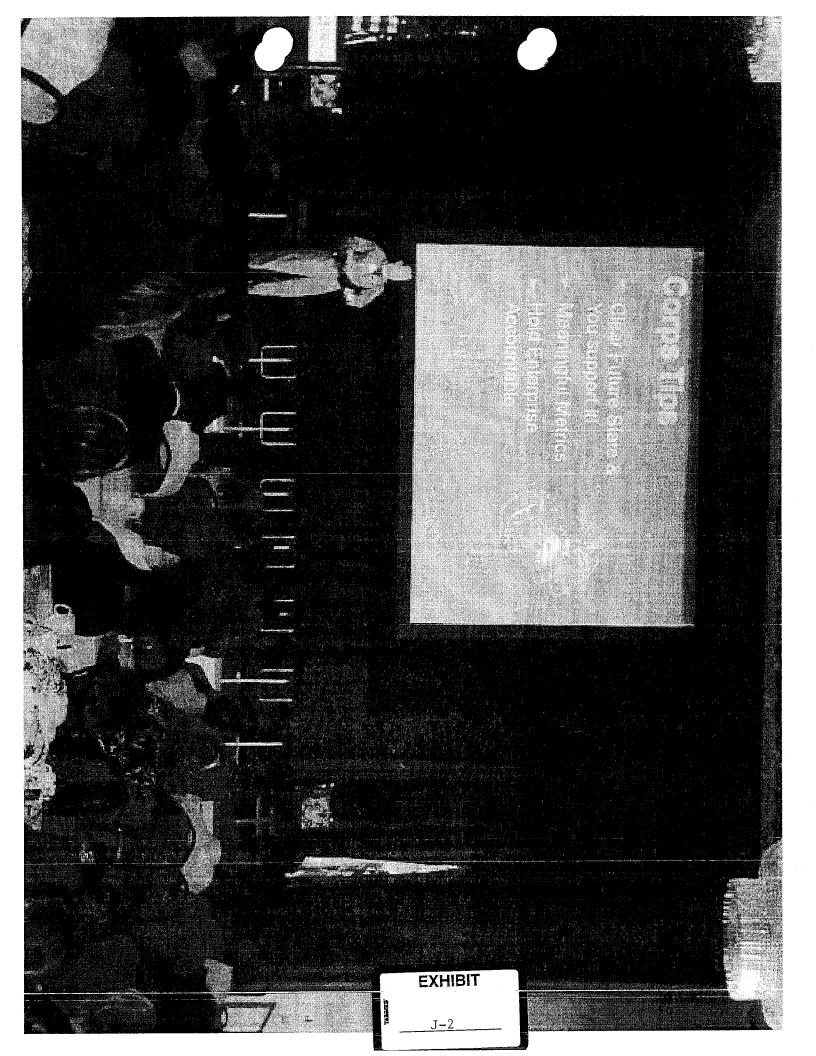
Our approach improves performance within your organization, by developing a common business platform that can be effectively utilized within all layers of the organization, thereby increasing the speed of your processes and producing benefits faster. This is achieved, while maintaining a commitment to quality in all products, services and relationships.



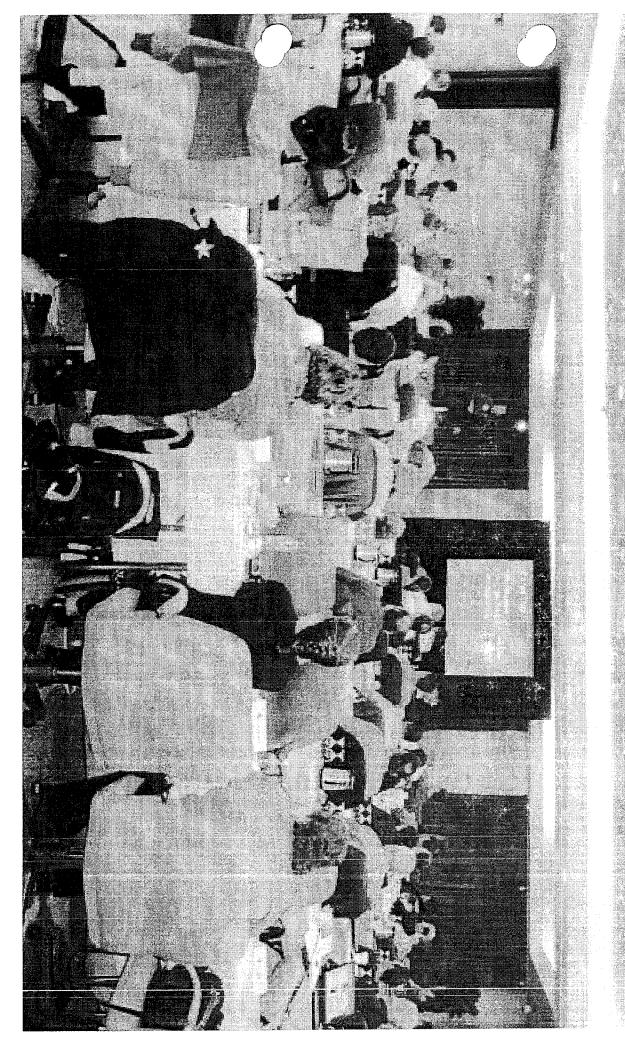
The Corps High Performing Team EX is the perfect teambuilding experience to supercharge your kickoff meeting, product launch, alignment event or even a merger. Your team will walk away empowered, motivated and armed with the tools necessary to drive improved execution in your organization!

So if you are ready to build your High Performing Team, Elevate your level of Execution and Dominate in the Marketplace - contact us at 866.960.9776.

PAGE 4







EXHIBIT

tabbles

T_4

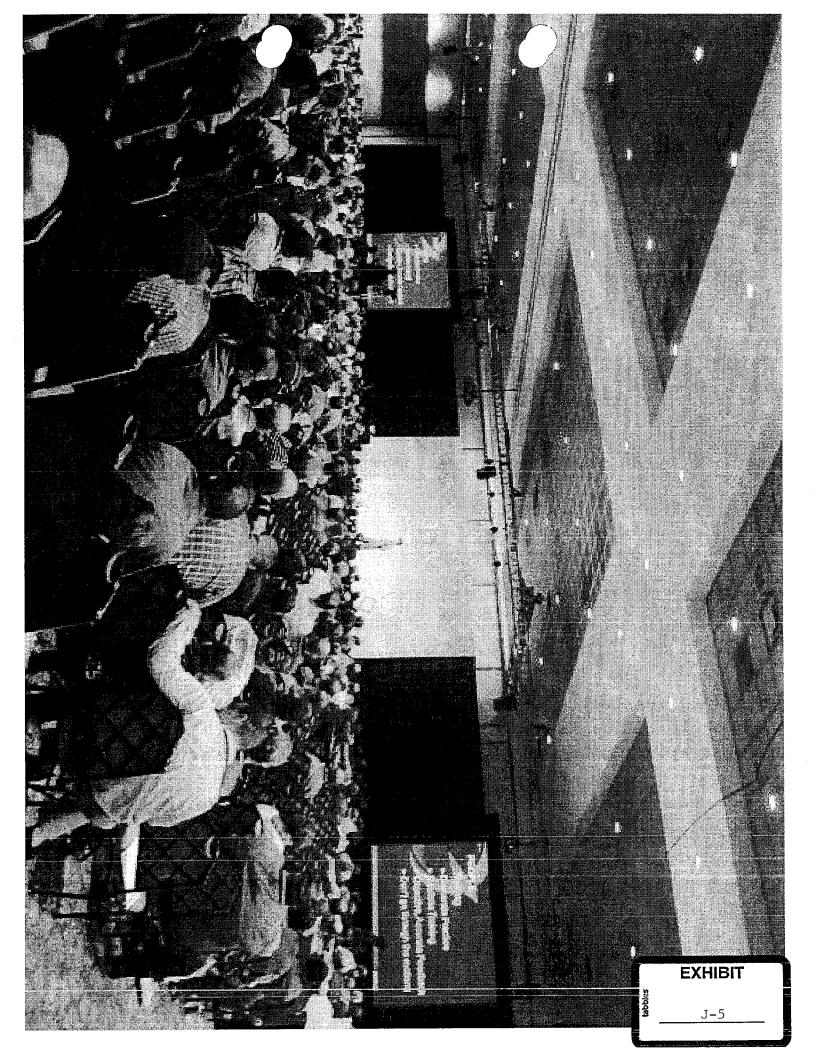
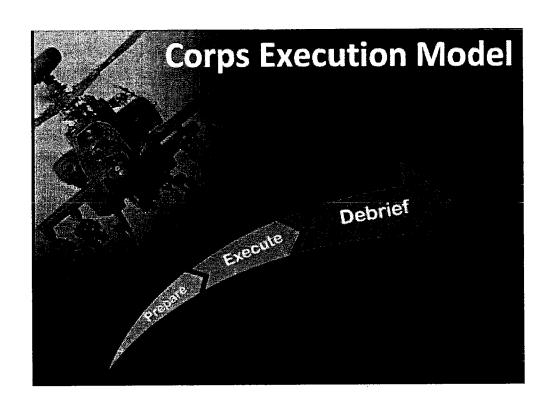


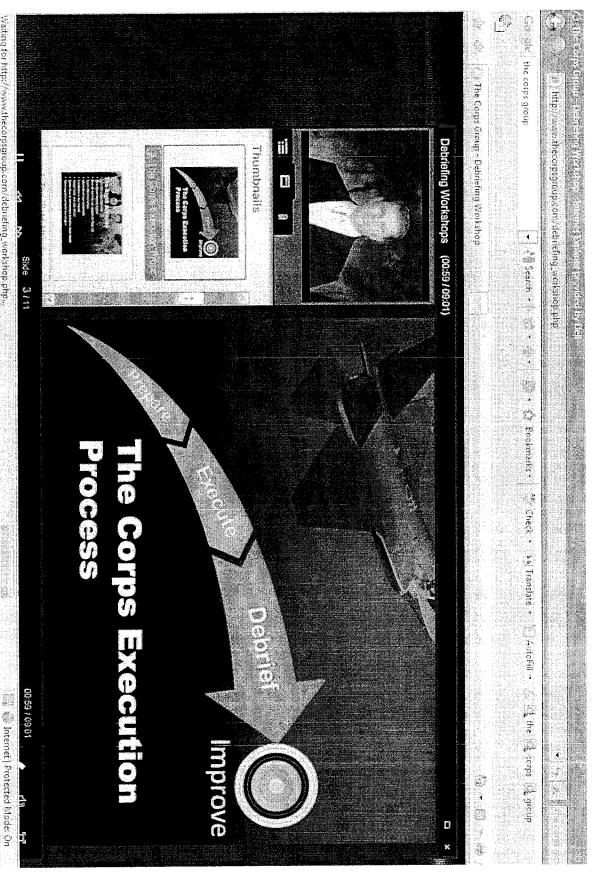
Exhibit K



EXHIBIT

K

Exhibit L



Waiting for http://www.thecorpsgroup.com/debriefing_workshop.php.,

Exhibit M

Reducing Time to Insight

Debriefing fits into a larger process we call *Execution Rhythm*. A team's execution rhythm is the continuous improvement process of planning, doing, and Debriefing projects, events, or initiatives. It is the process that ensures the team is constantly learning and improving as work is being accomplished.

In the planning phase, the team creates situational awareness about the environment and the activities they are trying to achieve. Another way to look at planning is that the team is *learning before doing*. During the *doing phase*, the team is still learning through periodic Debriefs at project milestones. In other words, the team is *learning while doing*. After the project is complete, the team holds a formal Debrief of the entire project or work period. They *learn after doing*.

Because doing and learning are so tightly linked, the team is able to rapidly improve performance and anticipate problems before they become a crisis. One of the key benefits of Debriefing throughout the execution rhythm is the ability to reduce the time it takes to get new insights and turn those insights into more effective actions during the next cycle of the execution rhythm.

In the fighter pilot community, these insights may relate to better targeting on tomorrow's mission from the insights captured on today's mission. In contrast, a marketing team may gain insights through a Google campaign that allows them to dramatically improve their response on the next one. The faster a team is able to complete a Plan-Do-Debrief cycle the more it will be able to reduce its time to insight and exploit those insights by tomorrow's actions

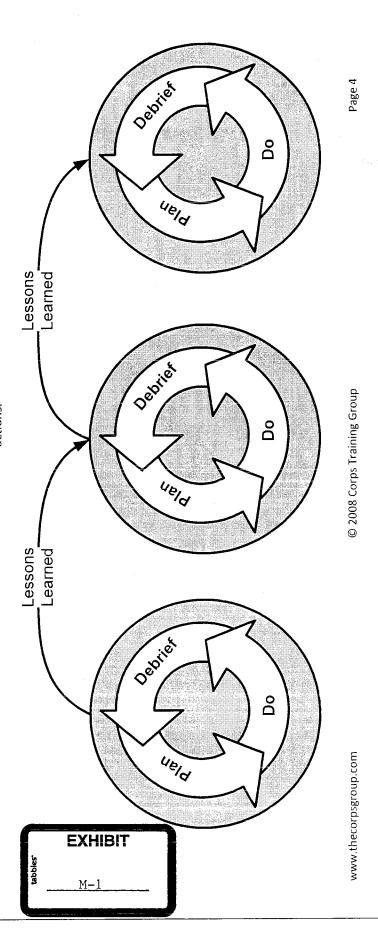
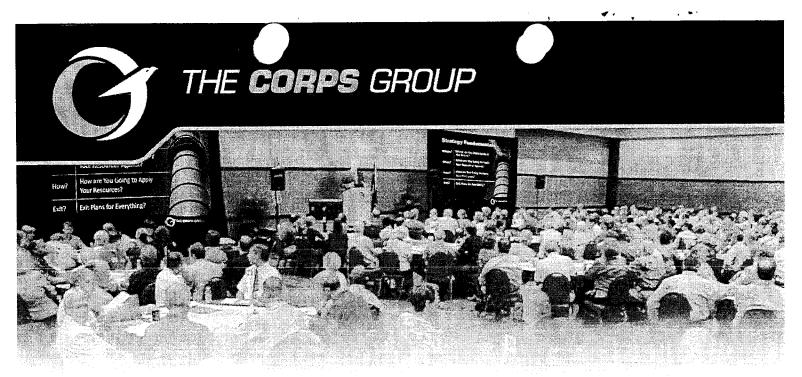


Exhibit N



EXHIBIT

N-1



Keynotes

The Effects-Based Strategy Revolution: Creating Winning Strategies in a Chaotic World

Strategy is not just for the chosen few at the top of the organization. In high-performing organizations, people at every level understand the strategy and where they fit in it. When people don't think strategically, they tend to execute in their own silos, and the organization fails to perform at its peak. In this keynote, your team will learn the four questions of strategy:

- Where do you want to be in the future?
- What are you going to apply your resources against?
- · How will you apply these resources?
- Exit-What will you do when you get to your desired future state?

Effects-based strategy is a leading-edge concept that had its genesis in the planning of fast-time 21st century warfare. Since its inception, it has been adopted at the highest levels by leading global corporations. The keynote will change the way you think about strategy and create alignment among your diverse teams.

Leveraging Diversity in High Performing Teams

As one of the first female U.S. Navy Fighter Pilots, Carey "Vixen" Lohrenz has operated in a highly-diverse workplace...a nuclear-powered aircraft carrier. On a carrier, the average age of a sailor is 20 years old, and he comes from all different backgrounds and walks of life. And, yet, through a rigorous training process that insists on personal accountability and adherence to specific standards, these people are able to form an exceptionally high-performing team — the best in the world. In this inspirational and informative keynote, Lohrenz talks about what it takes to lead diverse teams and create a climate of high performance in an organization. Your team will walk away informed, engaged and empowered from this unique keynote.

Corps Execution: Bringing Discipline to Today's Enterprise

Disciplined execution in the workforce is one of the greatest problems in today's enterprise. Smart people plan great strategies, only to see them unfold in misaligned, fragmented ways. People on the front lines want to do a good job, but silos, poor team dynamics and flawed processes keep them from performing at their peak. Using techniques learned from the high-reliability world of fighter aviation, your team will learn:

- How to plan more effectively as a team.
- How to fight the effects of task saturation in the workplace.
- How to improve communication and follow-through in your team.
- How to learn rapidly and improve performance through a process known as debriefing.
- · How to execute with discipline as a team.
- · How to establish a culture of learning.

Leading as a Woman, with Carey "Vixen" Lohrenz

As a Fighter Pilot in the U.S. Navy, Carey "Vixen" Lohrenz knows the unique challenges that accompany rising to the top of a male-dominated workplace. According to Lohrenz, "When I was going through my officer training, there were very few other females. But what is fascinating about our military training is that no matter what your specialty...whether you are training to be a pilot, a submarine driver or a lawyer...the basic leadership training is the same. All officers have to go through required Officer Training before breaking into our sub-specialties. Our training is about learning to inspire, the importance of exercising good judgment, being dependable, taking initiative and being decisive. All of this while maintaining our integrity." In this powerful keynote, Lohrenz taps into her unique experiences and empowers women to tackle the challenges of today's hyper-competitive business environment.

EXHIBIT
N-2

Leaders in Business Execution

Exhibit O

EMPLOYEE NONSOLICITATION, TRADE SECRET AND INTELLECTUAL PROPERTY AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of **Z9 JAN**, 2006 by and between Afterburner, Inc. ("Company") and the undersigned employee ("Employee").

WITNESSETH:

WHEREAS, in the course of Employee's employment by the Company, Employee may have access to the Company's trade secrets, the use, application or disclosure of which may cause substantial and possible irreparable damage to the business and asset value of the Company;

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, the employment or continued employment of Employee by the Company, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Trade Secrets.

Employee recognizes and acknowledges that the Company is engaged, has engaged or may engage in activities which involve, and continue to involve, the use of skilled experts and the expenditure of substantial amounts of time and money. As a result of such investments of skill, time, and money, the Company has developed or may develop certain Trade Secrets (as such term defined below) that give the Company significant advantages over its competitors. Due to the nature of Employee's employment by the Company, Employee may be presented with, have access to, or participate in the development of proprietary Trade Secrets. These constitute valuable, special and unique assets of the Company, and any use or disclosure thereof contrary to the terms of this Agreement may cause substantial loss of competitive advantage and other serious injury to the Company. For these reasons, Employee covenants and agrees to all of the following:

1.1 <u>Definition of Trade Secrets.</u> "<u>Trade Secrets</u>" shall mean any information of the Company, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers, which is not commonly known by or available to the public and which information (i) derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade Secrets also include any information described in this paragraph 1.1 which Company obtains from another party which the Company treats as proprietary or designates as trade secrets, whether or not owned or developed by the Company.

EXHIBIT

O

1595304 4

- 1.2 Excluded Information. The term "Trade Secrets" shall not include any materials or information of the types specified above to the extent that such materials or information (i) are or become publicly known or generally utilized by others engaged in the same business or activities in which the Company utilized, developed, or otherwise acquired such information; or (ii) are known to Employee prior to employment, having been lawfully received from parties other than Company; or (iii) are furnished to others by the Company with no restriction on disclosure. Failure to mark any of the Trade Secrets as confidential shall not affect their status as Trade Secrets under this Agreement.
- 1.3 Protection of Trade Secrets. During the term of employment by the Company and after the termination thereof, whether such termination is at the instance of Employee or the Company, Employee will not, except as expressly authorized or directed by Company, use, copy, duplicate, transfer, transmit, disclose, or permit any unauthorized person access to, any Trade Secrets belonging to the Company, any of the Company's customers, any of the customer's business partners or subcontractors, or any related third party so long as they remain Trade Secrets. Without limiting the foregoing, Employee will abide by the Company's policies and regulations, as established from time to time, for the protection of its Trade Secrets.
- 1.4 <u>Return of Records</u>. Upon request of the Company and in any event upon the termination of employment with Company, Employee will deliver to the Company all memoranda, notes, records, tapes, documentation, disks, manuals, files or other documents, and all copies thereof in any form, concerning or containing Trade Secrets or Works (as defined below) that are in Employee's possession, whether made or compiled by Employee, furnished to Employee or otherwise obtained by Employee.

2. Company Ownership of Works.

- 2.1 <u>Definition of Works</u>. "Works" shall mean any and all works of authorship, code, inventions, discoveries, and work product, whether or not patentable or eligible for copyright, and in whatever form or medium and all derivative works thereof, which are, have been or will be created, made, or developed by Employee in the course of employment with Company, during Employee's regular business hours with Company, on the Company's premises, or using the Company's resources or equipment. Employee agrees to fully and promptly disclose in writing to the Company any such Works as such Works from time to time may arise.
- 2.2 Company Ownership of Works. All Works shall be the property of Company. Employee shall execute and deliver such confirmatory assignments, instruments, or documents as Company deems necessary or desirable without requiring Company to provide any further consideration therefor. Employee agrees to and hereby does assign to Company all right, title, and interest in and to any and all Works, including all worldwide copyrights, patent rights, and all trade secret embodied therein. Employee waives any and all rights Employee may have in any Works, including but not limited to the right to acknowledgement as author. Employee agrees not to use or include in Works any copyrighted, restricted or protected code, specifications, concepts, trade secrets of any third party or any other information that Employee would be prohibited from using by any confidentiality, non-disclosure or other agreement with any third party.

2.3 <u>Further Assurances</u>. Employee shall, without charge to the Company other than reimbursement of Employee's reasonable out-of-pocket expenses, execute and deliver all such further documents, including applications for patents and copyrights, and perform such acts, at any time during or after the term of this Agreement as may be necessary, to obtain patents or copyrights in respect of the Works and to vest title such Works in the Company, its successors, assigns, or designees. Without limiting the generality of the foregoing, Employee further agrees to give all lawful testimony, during or after the term of Employee's employment, which may be required in connection with any proceedings involving any Works so assigned by Employee.

3. No Obligations to Third Parties.

Employee represents and warrants to the Company that Employee is not subject to any employment, non-disclosure, confidentiality, non-compete, or other agreement with any third party which would prevent or prohibit Employee from fulfilling Employee's duties for the Company. If Employee is the subject of any such agreement, and has any doubt as to its applicability to Employee's position with the Company, Employee will provide a copy of such agreement to the Company so that the Company can make a determination as to its effect on Employee's ability to work for the Company.

4. Nonsolicitation of Customers.

During Employee's employment by the Company and for a period of eighteen (18) months after the termination of such employment for any reason, whether by the Company or by Employee, Employee will not, without the prior written consent of the Company, directly or indirectly, on Employee's own behalf or in the service or on behalf of others, solicit or attempt to divert or appropriate to a Competing Business, any customer of the Company with whom Employee dealt on behalf of the Company at any time during the 12 month period immediately preceding the termination of employment. As used herein, "Competing Business" means any person or entity which engages in a business substantially the same as the Company Business. "Company Business" means inspirational and motivational seminars in a military mission planning format.

5. Nonsolicitation of Employees and Independent Contractors.

During Employee's employment by the Company and for a period of eighteen (18) months after the termination of such employment for any reason, whether by the Company or by Employee, Employee will not, without the prior consent of the Company, directly or indirectly, on Employee's own behalf or in the service or on behalf of others, solicit, divert or recruit any employee or independent contractor of the Company to leave such employment or engagement, whether such employment or engagement is by written contract or at will.

6. Remedies.

The restrictions contained in this Agreement are considered by the parties hereto to be fair and reasonable and necessary for the protection of the legitimate business interests of the Company. It is recognized that damages in the event of breach of the provisions of this Agreement by Employee would be difficult, if not impossible, to ascertain, and it is therefore agreed that the Company, in addition to and without limiting any other remedy or right it may have, shall have the right to an injunction or other equitable relief in any court of competent

jurisdiction, enjoining any such breach. The existence of this right shall not preclude any other rights and remedies at law or in equity which the Company may have. The intent of this Agreement is to provide the Company with all remedies afforded to it under applicable law, including but not limited to those remedies under the Georgia Trade Secrets Act, O.C.G.A. 10-1-760 et seq., as amended.

7. Severability.

If any provision or any part of any provision of this Agreement shall not be valid for any reason, such provision shall be entirely severable from, and shall have no effect upon, the remainder of this Agreement. Any such invalid provision shall be subject to partial enforcement to the extent necessary to protect the interests of the Company.

8. Binding Agreement.

This Agreement shall be binding upon the parties to this Agreement and their respective heirs, beneficiaries, administrators, executors, successors and assigns.

9. Governing Law: Jurisdiction.

This Agreement and the rights and obligations of the parties to the Agreement will be determined in accordance with the laws of the State of Georgia, excluding choice of law principles. The Company and Employee irrevocably consent to the exclusive jurisdiction and venue of the courts of any county in the State of Georgia and the district courts of Georgia, in any judicial proceeding brought to enforce this Agreement. The parties agree that any forum other than the State of Georgia is an inconvenient forum and that a lawsuit (or non-compulsory counterclaim) brought by one party against another party, in a court of any jurisdiction other than the State of Georgia should be forthwith dismissed or transferred to a court located in the State of Georgia.

10. Modification.

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in a writing signed by the Company and Employee.

11. Counterparts.

This Agreement may be executed in one or more counterparts, each of which will constitute an original but all of which together constitute a single document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth hereinabove.

III O
1/1/1/
Signature:
Name (print): TEHNE BOENEMAN II
Address
6312 Fox Cover
COPPERSBURG, PA 18036
AFTERBURNER, INC.:
$\mathcal{A}(\mathcal{C}_{+})$
Ву:
Title: ČEO

Exhibit P



T-Mobile Afterburner session - Hold the date

Michael Fitzgerald (micfitzg) [micfitzg@cisco.com]

Sent: Priday, February 27, 2009 1:50 AM

Required:

Patrick Wallace (pawallac) [pawallac@cisco.com]; FredHonold@aol.com; group.micfitzg@cisco.com; Stephanie Carullo (scarullo) [scarullo@cisco.com]; JP Van Steerteghem (jvanstee) [jvanstee@cisco.com]; Patrick Morrissey (pmorriss) [pmorriss@cisco.com]; Joe Duarte (joduarte@cisco.com]; Mike Pusich (mpusich) [mpusich@cisco.com]; Dan Streuber (dstreube) [dstreube@cisco.com]; Foster Tam (ftam) [ftam@cisco.com]; Gabe Young (gabyoung) [gabyoung@cisco.com]; Craig Conaway (crconawa) [crconawa@cisco.com]; Tom Redman (tredman) [tredman@cisco.com]; Timothy Ma (timoma) [timoma@cisco.com]; Chris Osika (cosika) [cosika@cisco.com]; Christopher Chartier (cchartie) [cchartie@cisco.com]; John Borneman

When:

Wednesday, March 25, 2009 10:30 AM-8:00 PM.

Location:

Cisco Bellevue Office

Show time as: Busy

Description:

When: Wednesday, March 25, 2009 7:30 AM-5:00 PM (GMT-08:00) Pacific Time (US & Canada).

Where: Cisco Bellevue Office

~~*~*~*~*~*

Team,

On the heels of our region review, we will be holding an Afterburner session focused on the Next Gen Core / LTE opportunity at T-Mobile. These two projects go hand and hand and will set the stage for our growth in this account over the next 3-5 years.

Please come prepared to roll up your sleeves and develop a winning a strategy.

A complete agenda will follow,

Michael

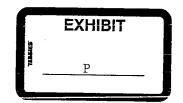


Exhibit Q

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is entered into this 1st day of Dec.	2007, / , , ,
by and between Afterburner, Inc., a Georgia corporation ("Company"), and Kyle House at	
an individual resident of the State of 6 ("Contractor") (referred to collectively	as the
"Parties.")	

For and in consideration of the mutual covenants described below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree:

- 1. **Services.** The Company retains Contractor and Contractor accepts this Agreement upon the terms and conditions set forth below. Contractor agrees to provide the services described in Exhibit A (the "Services").
- 2. Compensation. The Company shall pay Contractor upon the terms described in Exhibit A.
- 3. Term and Termination. This Agreement shall have the term set forth in, and will terminate in accordance with, Exhibit A, which is incorporated by reference as if set forth fully herein. Upon termination of this Agreement for any reason, Contractor shall return immediately to the Company all documents, property, and other records of the Company and of all clients of the Company, within Contractor's possession, custody or control, including, but not limited to, all: (i) materials containing any Trade Secrets or Confidential Information (as defined below); (ii) all other property, including, but not limited to, any and all files, records, credit cards, keys, identification cards/badges, computer access codes, computer programs, instruction manuals, and equipment (including computers) plans; and all documents, property and/or records which Contractor prepared or helped to prepare in connection with the Services provided under this Agreement.
- Ownership. For purposes of this Agreement, "Work Product" shall mean the data, materials, documentation, computer programs, inventions (whether or not patentable), pictures, audio, video, artistic works, and all works of authorship, including all worldwide rights therein under patent, copyright, trade secret, confidential information, or other source of property rights, created or developed in whole or in part by Contractor, whether prior to the date of this Agreement or in the future, while retained by the Company and that either (i) is created within the scope of the Services or (ii) has been or will be paid for by the Company. All Work Product shall be considered work made for hire by the Contractor and owned by the Company. If any of the Work Product may not, by operation of law, be considered work made for hire by Contractor for the Company, or if ownership of all right, title, and interest of the intellectual property rights therein shall not otherwise vest exclusively in the Company, Contractor hereby assigns to the Company, and upon the future creation thereof automatically assigns to the Company, without further consideration, the ownership of all Work Product. The Company shall have the right to obtain and hold in its own name copyrights, registrations, and any other protection available in the Work Product. Contractor agrees to perform, during or after Contractor's engagement, such further acts as may be necessary or desirable to transfer, perfect, and defend the Company's ownership of the Work Product that are reasonably requested by the Company.
- 5. License. To the extent that any preexisting Work Product is contained in the materials Contractor delivers to the Company or the Company's customers, Contractor grants to the Company an irrevocable, nonexclusive, worldwide, royalty-free license to: (i) use and distribute (internally or

EXHIBIT

Q

externally) copies of, and prepare derivative works based upon, such preexisting Work Product and derivative works thereof, and (ii) authorize others to do any of the foregoing.

6. Trade Secrets and Confidential Information.

- (a) The Company may disclose to Contractor certain Trade Secrets and Confidential Information (as defined below). Contractor acknowledges and agrees that the Trade Secrets and Confidential Information are the sole and exclusive property of the Company (or a third party providing such information to the Company) and that the Company or such third party owns all worldwide rights therein under patent, copyright, trade secret, confidential information, or other source of property rights. Contractor acknowledges and agrees that the disclosure of the Trade Secrets and Confidential Information to Contractor does not confer upon Contractor any license, interest or right of any kind in or to the Trade Secrets or Confidential Information. Contractor may use the Trade Secrets and Confidential Information solely for the benefit of the Company while Contractor is retained by the Company. Except in the performance of Services for the Company during the term of this Agreement, Contractor will hold in confidence and not reproduce, distribute, transmit, reverse engineer, decompile, disassemble, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Trade Secrets or the Company, upon request by the Company, the Trade Secrets and Confidential Information and all materials relating thereto.
- Contractor's obligations under this Agreement with regard to the Trade Secrets shall remain in effect for as long as such information shall remain a trade secret under applicable law. Contractor acknowledges that his obligations with regard to the Confidential Information shall remain in effect while Contractor is retained by the Company and for three (3) years thereafter. As used herein, "Trade Secrets" means information of the Company, its licensors, suppliers, customers, or prospective licensors or customers, without regard to form, including, but not limited to, technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers, which is not commonly known by or available to the public and which: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. As used herein, "Confidential Information" means information, other than Trade Secrets, or knowledge which: (i) is used, or is developed to be used, in the business of the Company, or results from the research or development activities of the Company or any of its customers or suppliers, (ii) is private or confidential in that it is not generally known or available to the public, and (iii) gives the Company or any of its customers or suppliers an opportunity to obtain an advantage over their respective competitors who do not know or use such information.
- 7. Compliance with Laws. Contractor shall use Contractor's best efforts and shall devote such time, attention, knowledge, and skills as shall be necessary to perform the Services to be provided to or for the Company under this Agreement. This Agreement is subject to, and Contractor hereby agrees to fully observe and comply with, all applicable local, state and federal laws and all regulations and orders of any government or governmental agency or department including, but not limited to, the Occupational Safety and Health Act, in the performance of the Services to be furnished.
- 8. No Right to Subcontract. This Agreement is not assignable or otherwise transferable by Contractor and Contractor does not have the right to subcontract without the Company's prior written consent. Contractor warrants that Contractor will provide all Services in a professional, responsible and capable manner. While providing Services hereunder, Contractor will comply with the reasonable rules

and regulations governing Contractor's conduct as established by the Company and communicated to Contractor from time to time.

- 9. Indemnification. Contractor shall indemnify, defend and hold harmless the Company and its officers, directors, agents, employees, successors and assigns from and against any and all actions, causes of action, claims, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees: (i) for any loss, damage, destruction of or damage to any tangible property: (ii) for bodily injury, sickness, disease or death sustained by any person (including employees of the Company), if such loss, damage, destruction, injury, sickness, disease or death was caused by Contractor's negligence or willful misconduct in providing Services under this Agreement, or (iii) which result from or arise out of any federal or state income tax withholding liability or taxes arising under the Federal Insurance Contributions Act or under the Federal Unemployment Tax Act, or any other federal or state tax, resulting from Contractor providing services under this Agreement. The duty to defend includes the duty to pay reasonable attorneys' fees incurred by the Company in defense of such claims, and the duty to indemnify includes the duty to pay any award imposed by an administrative agency, judgment or reached by way of settlement; provided, however, Contractor shall not be required to indemnify the Company with respect to any settlement entered into without the express prior written consent of Contractor, which consent shall not unreasonably be withheld by Contractor.
- 10. Customer Non-Solicitation. During Contractor's engagement by the Company and for a period of eighteen (18) months after the termination of such engagement for any reason, whether by the Company or by Contractor, Contractor will not, without the prior written consent of the Company, directly or indirectly, on Contractor's own behalf or in the service or on behalf of others, solicit or attempt to divert or appropriate to a Competing Business, any customer of the Company with whom Contractor dealt on behalf of the Company at any time during the twelve (12) month period immediately preceding the termination of engagement. As used herein, "Competing Business" means any person or entity which engages in a business substantially the same as the Company Business. "Company Business" means inspirational and motivational seminars in a military mission planning format, and related consulting services.
- 11. Employee Solicitation. During the term of this Agreement (including any renewals thereof) and for a period of eighteen (18) months after the termination of this Agreement or any renewals thereof, Contractor covenants and agrees that he will neither: (i) directly or indirectly hire as an employee or independent contractor, any person who is or was employed by the Company during the term of this Agreement and any renewals thereof; nor (ii) directly or indirectly induce or influence or attempt to induce or influence any such person to seek or accept employment with another person or entity.
- 12. Acknowledgments. The parties agree that: (i) the periods of restriction contained in this Agreement are fair and reasonable in that they are reasonably required for the protection of the legitimate business interests of the Company; (ii) by having access to information concerning employees and actual or prospective customers of the Company, Contractor shall obtain a competitive advantage as to such parties; (iii) the covenants and agreements of Contractor contained in this Agreement are reasonably necessary to protect the interests of the Company in whose favor said covenants and agreements are imposed in light of the nature of the Company's business and the involvement of Contractor in the Company; (iv) the restrictions imposed by this Agreement are not greater than are necessary for the protection of the Company in light of the substantial harm that the Company will suffer should Contractor breach any of the provisions of said covenants or agreements; (v) the covenants and agreements of Contractor contained in this Agreement form material consideration for this Agreement

and Contractor's engagement by the Company; and (vi) nothing in this Agreement prohibits Contractor from engaging in his business, trade or profession, or from becoming gainfully employed in such a way as to provide a standard of living for himself, the members of his family, and those dependent upon him, to which he and they have become accustomed and may expect.

- 13. Equitable Relief. Contractor agrees that the ascertainment of damages in the event of a breach of Paragraphs 6, 10 or 11 would be difficult, that the Company would suffer irreparable harm as a result of a breach, and that money damages alone would be an inadequate remedy for the injunes and damages which would be suffered by the Company from such breach. Contractor therefore agrees: (i) that, in the event of his breach of Paragraphs 6, 10 or 11, in addition to and without limiting any of the remedies or rights which the Company may have at law or in equity or pursuant to this Agreement, the Company shall have the right to injunctive relief or other similar remedy in order to specifically enforce the provisions of Paragraphs 6, 10 or 11; and (ii) to waive and not to (A) assert any defense to the effect that the Company has an adequate remedy at law with respect to any such breach, (B) require that the Company submit proof of the economic value of any Trade Secret, or (C) require that the Company post a bond or any other security. Nothing contained herein shall preclude the Company from seeking monetary damages of any kind, including reasonable fees and expenses of counsel and other expenses, in a court of law.
- Relationship of Parties. Contractor acknowledges that Contractor is an independent contractor and that Contractor is fully responsible for Contractor's own federal, state and local taxes and that, as an independent contractor, neither Contractor nor its employees is eligible to participate in any employee benefit program offered by the Company to its employees; provided, however, to the extent applicable law allows Contractor to maintain COBRA coverage for himself or his family, and Contractor elects to maintain any such coverage, the Company shall cooperate in order that such coverage may be provided, and Contractor shall be solely responsible for payment of all applicable premiums and related costs. Contractor further understands and agrees that Contractor is not covered under the Company's worker's compensation insurance or state unemployment insurance coverages. Contractor expressly represents that he is an independent contractor under the laws of the United States and the common law and acknowledges that the Company is relying upon this representation. It is understood that Contractor maintains an independent business and, subject to the provisions of this Agreement, may work on other projects during or after the term of this Agreement. However, Contractor will use his best efforts to insure the timely and proper completion of the Services. The Company and Contractor acknowledge and agree that this Agreement does not constitute or appoint Contractor as an agent of the Company for any purpose whatsoever. Contractor is prohibited from acting or holding itself out as agent of the Company.
- 15. Attorneys' Fees. Other than as specifically set forth in this Agreement, each party agrees to pay its own costs and expenses incurred in the collection and/or enforcement of this Agreement, whether or not suit is filed.
- 16. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Contractor with respect to the subject matter and it supersedes and replaces all discussions, communications, and understandings between them with respect to Contractor's engagement by the Company as an independent contractor. There are no promises, undertakings, commitments or representations that are not expressly set forth in writing in this Agreement.
- 17. Governing Law. This Agreement and all the terms and provisions herein, shall be governed by and enforced according to the laws of the State of Georgia without regard to conflict of laws principles.

- **18. Headings.** The headings of this Agreement are for the convenience of the Company and Contractor only and they do not have any interpretive significance.
- 19. Severability. If any provision or part of any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the enforceability of any other provision or part thereof, and all other provisions and parts thereof shall continue in full force and effect. Contractor acknowledges that the Company's rights under this Agreement are cumulative and not exclusive of one another and that Contractor's several agreements contained herein, including without limitation, the several covenants contained in Paragraphs 10 and 11 of this Agreement, are each severable covenants independent of one another or any other provisions or covenants of this Agreement.
- 20. Amendment; Assignment. This Agreement shall not be amended or modified except by a writing executed by both parties. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns. Due to the personal nature of this Agreement, Contractor shall not have the right to assign Contractor's rights or obligations under this Agreement without the prior written consent of the Company. All communications required or otherwise provided under this Agreement shall be in writing and shall be deemed given when delivered to the address provided below (as may be amended by notice from time to time), by hand, by courier or express mail, or by registered or certified United States mail, return receipt requested, postage prepaid.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

Contractor:	Afterburner, Inc
40. Con-	
Signature:	Signature:
Kile Haulin	
Printed Name:	Printed Name:
Date:	Date:
\$2 C.	State State Services &

EXHIBIT A

ATTACHED TO AND MADE A PART OF the Independent Contractor Agreement ("Agreement") between Afterburner, Inc. ("Company") and Kife House of Christer ("Contractor") dated as of Dec 1, 2007.

Term of Agreement:

The term of this Agreement shall begin on Dec 1, 2007 and end on Jan 1, 2009.

The Company may, however, terminate this Agreement, whether the Services are provided on a fixed fee project basis or otherwise, immediately upon Contractor's: (i) willful dishonesty toward or deliberate injury or attempted injury to the Company, (ii) criminal conduct, or (iii) violation or other failure of Contractor to perform the Services as requested by the Company. Any products and Services provided by Contractor to the Company after termination of this Agreement and paid for by the Company shall also be governed by the terms and conditions of this Agreement.

Services to Be Performed:

Corporate Wingman: As described in the standards manual.

Compensation:

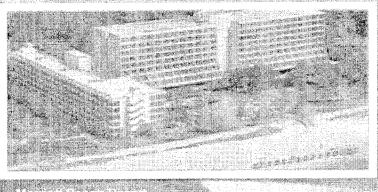
Corporate Wingman: As described in the pay standards manual.

The Company shall reimburse Contractor for authorized expenses incurred by Contractor in the performance of work and rendering of Services under this Agreement, provided that reimbursement of expenses is in accordance with the Company's policies and procedures in effect at the time that any such expense is incurred.

Exhibit R



GROWING your Business back to Record Profits



MEETING HIGHLIGHT

- earn the Keys to Growing Your
- Company Back to Record Profits Learn the Keys to Effective Proce Mapping to Tighten Your Operations
- Learn the Inside Story on Wind, Solar. Nuclear, Gas and Electric. ... WHERE IS energe congr
- lear the "Real Facts" on Where the
- oportunities sam What You Need to Do With proed Unionization, the Healthy Family
- eam What Cap & Trade Means to

Registration, Travel and Lodging Information Included With This Packet

Invite From the President

Dear MTI Members,

It is very typical for organizations to plan for a future they cannot predict. At the MTI Fall meeting, we are taking a more proactive approach, and providing an opportunity to create the future YOU WANT through innovation and information.

Since January of this year, we have seen sales from all of our districts all over the board. Some are down 60%, some 30%, some are even making a healthy profit. Times are certainly challenging and we are all having to call on our business savvy to make it through. One thing we must believe in is "Failure is NOT an Option." We must move forward as a team of members and work together to strengthen our companies. Two of the most important things we have are vital information from experts and our network of members to gain valuable insight from.



Both of those key elements to success will be very present at the MTI 2009 Fall General Meeting. During this meeting, you will learn from top experts key information including:

- · How to Grow Your Company Back to Record Profits
- Business Planning in a Challenging Economy
- Effective Use of Process Mapping for Leaner Operations
- How the Global Economy Affects Heat Treaters
- The Future of Natural Gas, Electricity and Alternative Energy Supplies
- · Going Green, and Cap & Trade
- The Future of Aerospace

On behalf of the Board of Trustees of MTI, I would like to personally invite you to attend the MTI Fall. Meeting. It is being hosted at one of the most beautiful resorts in Hilton Head, SC. There, you will have the opportunity to network with the best minds in heat treating and gain new ideas and new perspectives on how to approach growth and challenges in your business.

I can personally say that if it had not been for the MTI networking opportunities I've had over the last 20 years, our company would not be where it is today. I hope to personally meet you in Hilton Head to tell you my story.

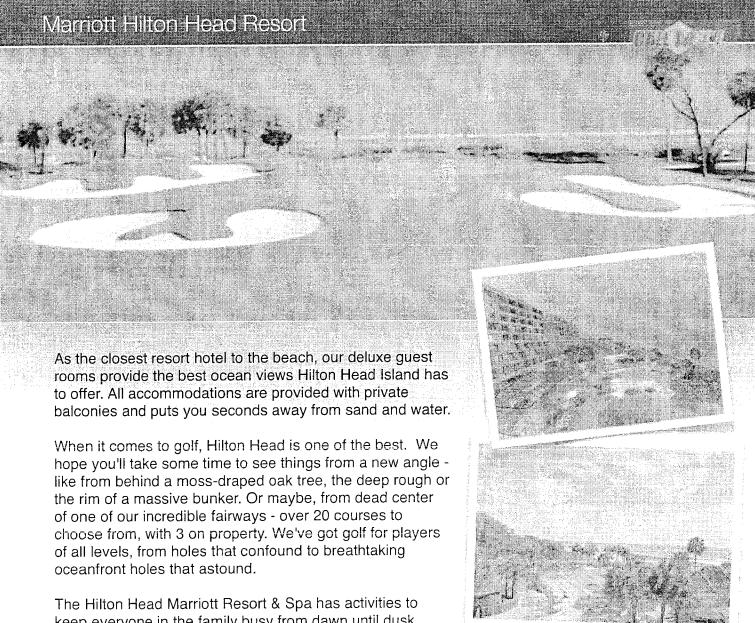
Everything you need to register and plan for your trip is included in this packet. If you have any questions, please don't hesitate to contact our corporate offices at 904-249-0448.

Sincerely,

Jeff Uhlenburg—2009 MTI President

My D. Ollet

Donovan Heat Treating



keep everyone in the family busy from dawn until dusk.

After spending a busy day playing golf, tennis or maneuvering through our winding lagoons in a kayak or canoe, make sure to find some relaxing time and lounge near the pool or on the beach, just a few steps from our door.

Hilton Head is rich in outdoor activities but also rich in culture and history.

Don't Miss This Incredible Experience...

General Meeting Schedule

Thursday, October 8

6:30 pm - 10:30 pm Tropical Welcome Reception

Make sure to arrive in Hilton Head in time for this reception. Enjoy up to 4 hours of networking with beverages, food, music and catching up with old friends and meeting new ones.

Friday, October 9

8:15 am — 9:15 am Embracing "Going Green" for Fun & Profit

Tim Roberts, an accomplished scientist and Senior Flight Project Manager for Bigelow aerospace, will provide you an insightful look into the scientific side of "Why Green". He will share the inside scoop on cap & trade and how it impacts the heat treating community. Tim will also deliver an inside view of the future of the aerospace industry.



9:15 am—10:15 am Employee Free Choice, Healthy Families, Fair Paycheck Act... Where is Labor Going?

Keith Smith, National Association of Manufacturer's Chief Director of Labor Policy will shake you up with the labor agenda being pushed by Congress. Employees make your plant run. Your control of work rules, wages and benefits are slowly disappearing. This session will provide you insight as to what you can do about it.



10:30 am — 11:30 am Wind, Nuclear, Solar, Gas, Electric... Where is it *all* Headed?

John Felmy, Director of Policy from American Petroleum Institute, will give a highly informative presentation on the worldwide energy picture through 2030 including demand, renewable, alternative, nuclear, coal and natural gas and the role each will play in our future energy policy.



1:00 pm — 6:00 pm MTI Golf Invitational

Players will enjoy 18 holes of breathtaking championship golf on the famed George Fazio designed course regarded by many golfers as the island's most challenging championship course. The Fazio course is ranked among America's top 100 courses and stands apart as the only par-70 course on the island with the 4-toughest finishing holes on the island. Teams will enjoy a fun filled afternoon of a competitive 4-man scramble. The fun part is this scramble will take as much brain as skill. Each team will be given creative ball options for shots that will bring team strategy into play. In this tournament, *any* handicap can be successful. *Duffers* and *Hackers* Welcomed!

6:30 pm-10:30 pm Back Nine Reception & Dinner

Friday night, we will make the turn to the back nine of our highly informative and exciting meeting. Make sure to arrive in time for this reception followed by a networking buffet. You will have the chance to connect with old and new friends, and as the night progresses, you will enjoy dancing to some of the best dance music today.

General Meeting Schedule

Saturday, October 10

8:15 am-9:15 am

The Global Economy... What Does a Third World Country Have to Do With Me?

There is so much misinformation being played out in the media regarding the current and future status of the global economy and how it trickles down to Local U.S. manufacturing companies. Cliff Waldman, Chief Economist for the Manufacturer's Alliance will provide an insightful presentation on the "real" facts regarding the economy and its impact on your company.



9:15 am - 10:15 am

Growing Your Company Back to Record Profits

When moving to the next level in a turning economy, having a plan to achieve success is a *must*. The Corps Group, one of the countries top strategic planning companies, will lead you through an interactive session that will help you answer some very key questions on planning, preparing, executing and evaluating your steps back to record profits.



10:30 am - 11:30 am

Cutting the Fat Through Effective Process Mapping

Every company assumes some fat in their operations in good times. In these challenging times, if its one lesson learned in business, its the philosophy of operating lean and efficient through planning and technology to minimize labor, productivity costs and mistakes to achieve maximum profits. This session will take you through effective process mapping to gain your productivity and profitability goals.

11:30 am—Noon

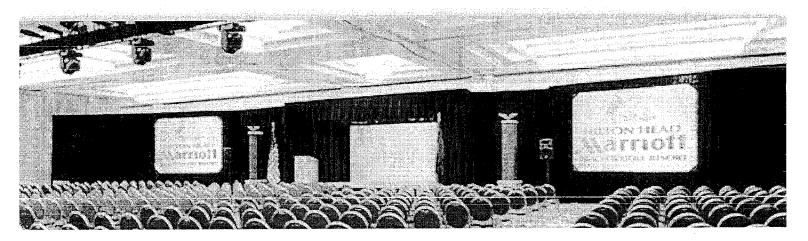
MTI Annual Business Meeting

MTI President Jeff Uhlenburg and CEO Tom Morrison will provide you an insightful and exciting view of the latest developments and projects from the Metal Treating Institute.

7:00 pm - 11:00 pm

Hole in One Rockin Reception & Dinner

MTI's final night is always full of excitement and entertainment. Share your stories and memories of the week's events with friends as we enjoy fine cuisine and beverages to the latest sounds of your favorite music.



Hotel Information

Marriott Beach Resort

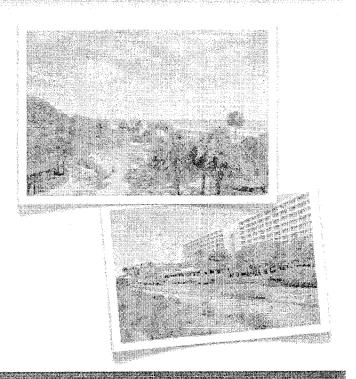
Hilton Head, South Carolina

One Hotel Circle Hilton Head Island, SC 29928 www.hiltonheadmarriott.com

Reservation Information

Special MTI Group Rates—\$179 sgl/dbl Reservation #: 888-511-5086 or 843-686-8400

Deadline for MTI Rate: September 7, 2009



Travel & Transportation

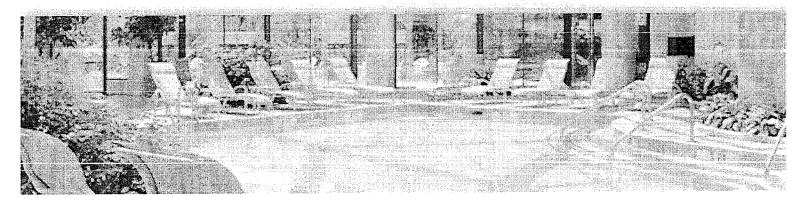
Local Airport

Savannah International Airport (SAV)
(47 miles to Marriott Hilton Head Resort)

Transportation Options To & From Airport

Car Rental Companies (Shuttle from Airport to Rental Car)

- Avis—www.avis.com
- Budget—www.budget.com
- Hertz—www.hertz.com
- Enterprise www.enterprise.com



Hilton Head, SC Travel Tips

Name Badges & Program Schedule

Upon your arrival and check-in at the Marriott Resort, the registration desk will provide you with an envelope that will include name badges, a mini-program/schedule and your drink tickets for evening functions. Please wear name badges for all events.

Dress Gode

Dress code for all events is resort casual. The Friday Night Dinner will be "business casual", sport coat optional.

Climate

Hilton Head Island's weather is ideal for those wanting to explore the outdoors and soak up the sunshine. The Hilton Head area features a balmy, subtropical climate year round.

Shopping

Whether you're hunting for a deal on your favorite brand of clothing or trying to find that unique souvenir of your Island vacation, you're sure to find a superb selection of Hilton Head shopping opportunities at more than 200 stores and outlets.

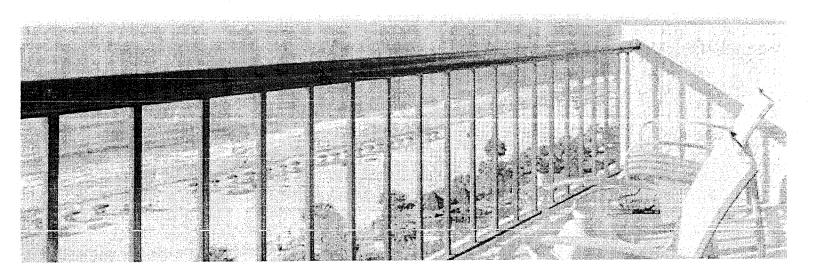
Beaches

Bask in over twelve miles of sparkling sand beaches on Hilton Head Island. Walk the flat sand banks of the Atlantic Ocean or wade in the surf. Hide in the rolling dunes and natural grasses of the beach or gaze towards the clouds to admire kite tricks and parasailing.

Other Activities

Hilton Head offers a great variety of family activities including tennis, golf, guided tours, the arts, museums, and water sports.

If you have any questions in any area of your trip planning, don't hesitate to contact the MTI offices at 904-249-0448 or info@callmti.com



Name of Company:

2009 MTI Fall Meeting Registration Form Send to: MTI • 504 Osceola Ave. • Jacksonville Beach. FL 32250 • Fax 904-249-0459

October 8-10, 2009 • Marriott Beach Resort • Hilton Head, SC

City:			St:	_	Zip:_		
Phone: ()		1	Linaii: Picase n	roeide can	dit par tasasse	meetine nodat	es & champes to saw title
The following people will atte • SPECIAL NOTE: If spec	end the 2009 MTI cial meal is requir	Fall Meeti red, please	ng (including	any fan	nily mem	bers)	
First & Last Name For badge	Nickname For Badge	Check if 1st Time At Nat'l Meeting	M = Member S = Spouse G = Guest	A = Adult C = Child	Golf Outing Mark "X"	Golf Rentals L=Left R=Right	MAKE NOTE ABOUT ANY SPECIAL DIETARY NEEDS
Member or Company Employ Spouse, Guest or Children Ag Children Under Age 12		\$595.00 \$395.00 \$ 55.00		\$625. \$425. \$75.	00	Qty: Qty: Qty:	
Optional Golf Outing (Includes green fees, cart, box lunch, transportation		\$ 95.00		\$125.	00	Qty:	
to/from course & prizes)				Tota	l to Proc	ess	=
ayment Information:	Send check to: Fax Credit Car					e Beach, F	L 32250
Credit Card Type: UV					Exp. I Securi	Date: ty Code:	
Address: City:			St:		Zip	•	
Authorized Signature: agree that MTI will process up			on form the to	tal amo	unt neces	sary for all	attendees noted on this

Exhibit S

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (" <u>Agreem</u>	nent") is entered into this 1st day of Dec, 2007,
by and between Afterburner, Inc., a Georgia corporation ("	Company"), and Locker D. Loker
an individual resident of the State of	("Contractor") (referred to)collectively as the
" <u>Parties</u> .")	

For and in consideration of the mutual covenants described below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree:

- 1. Services. The Company retains Contractor and Contractor accepts this Agreement upon the terms and conditions set forth below. Contractor agrees to provide the services described in Exhibit A (the "Services").
- Compensation. The Company shall pay Contractor upon the terms described in <u>Exhibit A</u>.
- 3. Term and Termination. This Agreement shall have the term set forth in, and will terminate in accordance with, Exhibit A, which is incorporated by reference as if set forth fully herein. Upon termination of this Agreement for any reason, Contractor shall return immediately to the Company all documents, property, and other records of the Company and of all clients of the Company, within Contractor's possession, custody or control, including, but not limited to, all: (i) materials containing any Trade Secrets or Confidential Information (as defined below); (ii) all other property, including, but not limited to, any and all files, records, credit cards, keys, identification cards/badges, computer access codes, computer programs, instruction manuals, and equipment (including computers) plans; and all documents, property and/or records which Contractor prepared or helped to prepare in connection with the Services provided under this Agreement.
- Ownership. For purposes of this Agreement, "Work Product" shall mean the data, materials, documentation, computer programs, inventions (whether or not patentable), pictures, audio, video, artistic works, and all works of authorship, including all worldwide rights therein under patent, copyright, trade secret, confidential information, or other source of property rights, created or developed in whole or in part by Contractor, whether prior to the date of this Agreement or in the future, while retained by the Company and that either (i) is created within the scope of the Services or (ii) has been or will be paid for by the Company. All Work Product shall be considered work made for hire by the Contractor and owned by the Company. If any of the Work Product may not, by operation of law, be considered work made for hire by Contractor for the Company, or if ownership of all right, title, and interest of the intellectual property rights therein shall not otherwise vest exclusively in the Company, Contractor hereby assigns to the Company, and upon the future creation thereof automatically assigns to the Company, without further consideration, the ownership of all Work Product. The Company shall have the right to obtain and hold in its own name copyrights, registrations, and any other protection available in the Work Product. Contractor agrees to perform, during or after Contractor's engagement, such further acts as may be necessary or desirable to transfer, perfect, and defend the Company's ownership of the Work Product that are reasonably requested by the Company.
- 5. License. To the extent that any preexisting Work Product is contained in the materials Contractor delivers to the Company or the Company's customers, Contractor grants to the Company an irrevocable, nonexclusive, worldwide, royalty-free license to: (i) use and distribute (internally or

EXHIBIT

S

Page 1 of 6

externally) copies of, and prepare derivative works based upon, such preexisting Work Product and derivative works thereof, and (ii) authorize others to do any of the foregoing.

6. Trade Secrets and Confidential Information.

- (a) The Company may disclose to Contractor certain Trade Secrets and Confidential Information (as defined below). Contractor acknowledges and agrees that the Trade Secrets and Confidential Information are the sole and exclusive property of the Company (or a third party providing such information to the Company) and that the Company or such third party owns all worldwide rights therein under patent, copyright, trade secret, confidential information, or other source of property rights. Contractor acknowledges and agrees that the disclosure of the Trade Secrets and Confidential Information to Contractor does not confer upon Contractor any license, interest or right of any kind in or to the Trade Secrets or Confidential Information. Contractor may use the Trade Secrets and Confidential Information solely for the benefit of the Company while Contractor is retained by the Company. Except in the performance of Services for the Company during the term of this Agreement, Contractor will hold in confidence and not reproduce, distribute, transmit, reverse engineer, decompile, disassemble, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Trade Secrets or the Company, upon request by the Company, the Trade Secrets and Confidential Information and all materials relating thereto.
- Contractor's obligations under this Agreement with regard to the Trade Secrets shall remain in effect for as long as such information shall remain a trade secret under applicable law. Contractor acknowledges that his obligations with regard to the Confidential Information shall remain in effect while Contractor is retained by the Company and for three (3) years thereafter. As used herein, "Trade Secrets" means information of the Company, its licensors, suppliers, customers, or prospective licensors or customers, without regard to form, including, but not limited to, technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers, which is not commonly known by or available to the public and which: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. As used herein, "Confidential Information" means information, other than Trade Secrets, or knowledge which: (i) is used, or is developed to be used, in the business of the Company, or results from the research or development activities of the Company or any of its customers or suppliers, (ii) is private or confidential in that it is not generally known or available to the public, and (iii) gives the Company or any of its customers or suppliers an apportunity to obtain an advantage over their respective competitors who do not know or use such information.
- 7. Compliance with Laws. Contractor shall use Contractor's best efforts and shall devote such time, attention, knowledge, and skills as shall be necessary to perform the Services to be provided to or for the Company under this Agreement. This Agreement is subject to, and Contractor hereby agrees to fully observe and comply with, all applicable local, state and federal laws and all regulations and orders of any government or governmental agency or department including, but not limited to, the Occupational Safety and Health Act, in the performance of the Services to be furnished.
- 8. No Right to Subcontract. This Agreement is not assignable or otherwise transferable by Contractor and Contractor does not have the right to subcontract without the Company's prior written consent. Contractor warrants that Contractor will provide all Services in a professional, responsible and capable manner. While providing Services hereunder, Contractor will comply with the reasonable rules

Page 2 of 6

and regulations governing Contractor's conduct as established by the Company and communicated to Contractor from time to time.

- 9. Indemnification. Contractor shall indemnify, defend and hold harmless the Company and its officers, directors, agents, employees, successors and assigns from and against any and all actions, causes of action, claims, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees: (i) for any loss, damage, destruction of or damage to any tangible property: (ii) for bodily injury, sickness, disease or death sustained by any person (including employees of the Company), if such loss, damage, destruction, injury, sickness, disease or death was caused by Contractor's negligence or willful misconduct in providing Services under this Agreement, or (iii) which result from or arise out of any federal or state income tax withholding liability or taxes arising under the Federal Insurance Contributions Act or under the Federal Unemployment Tax Act, or any other federal or state tax, resulting from Contractor providing services under this Agreement. The duty to defend includes the duty to pay reasonable attorneys' fees incurred by the Company in defense of such claims, and the duty to indemnify includes the duty to pay any award imposed by an administrative agency, judgment or reached by way of settlement; provided, however, Contractor shall not be required to indemnify the Company with respect to any settlement entered into without the express prior written consent of Contractor, which consent shall not unreasonably be withheld by Contractor.
- 10. Customer Non-Solicitation. During Contractor's engagement by the Company and for a period of eighteen (18) months after the termination of such engagement for any reason, whether by the Company or by Contractor, Contractor will not, without the prior written consent of the Company, directly or indirectly, on Contractor's own behalf or in the service or on behalf of others, solicit or attempt to divert or appropriate to a Competing Business, any customer of the Company with whom Contractor dealt on behalf of the Company at any time during the twelve (12) month period immediately preceding the termination of engagement. As used herein, "Competing Business" means any person or entity which engages in a business substantially the same as the Company Business. "Company Business" means inspirational and motivational seminars in a military mission planning format, and related consulting services.
- Employee Solicitation. During the term of this Agreement (including any renewals thereof) and for a period of eighteen (18) months after the termination of this Agreement or any renewals thereof, Contractor covenants and agrees that he will neither: (i) directly or indirectly hire as an employee or independent contractor, any person who is or was employed by the Company during the term of this Agreement and any renewals thereof; nor (ii) directly or indirectly induce or influence or attempt to induce or influence any such person to seek or accept employment with another person or entity.
- Acknowledgments. The parties agree that: (i) the periods of restriction contained in this Agreement are fair and reasonable in that they are reasonably required for the protection of the legitimate business interests of the Company; (ii) by having access to information concerning employees and actual or prospective customers of the Company, Contractor shall obtain a competitive advantage as to such parties; (iii) the covenants and agreements of Contractor contained in this Agreement are reasonably necessary to protect the interests of the Company in whose favor said covenants and agreements are imposed in light of the nature of the Company's business and the involvement of Contractor in the Company; (iv) the restrictions imposed by this Agreement are not greater than are necessary for the protection of the Company in light of the substantial harm that the Company will suffer should Contractor breach any of the provisions of said covenants or agreements; (v) the covenants and agreements of Contractor contained in this Agreement form material consideration for this Agreement

Page 3 of 6

and Contractor's engagement by the Company; and (vi) nothing in this Agreement prohibits Contractor from engaging in his business, trade or profession, or from becoming gainfully employed in such a way as to provide a standard of living for himself, the members of his family, and those dependent upon him, to which he and they have become accustomed and may expect.

- 13. Equitable Relief. Contractor agrees that the ascertainment of damages in the event of a breach of Paragraphs 6, 10 or 11 would be difficult, that the Company would suffer irreparable harm as a result of a breach, and that money damages alone would be an inadequate remedy for the injuries and damages which would be suffered by the Company from such breach. Contractor therefore agrees: (i) that, in the event of his breach of Paragraphs 6, 10 or 11, in addition to and without limiting any of the remedies or rights which the Company may have at law or in equity or pursuant to this Agreement, the Company shall have the right to injunctive relief or other similar remedy in order to specifically enforce the provisions of Paragraphs 6, 10 or 11; and (ii) to waive and not to (A) assert any defense to the effect that the Company has an adequate remedy at law with respect to any such breach, (B) require that the Company submit proof of the economic value of any Trade Secret, or (C) require that the Company post a bond or any other security. Nothing contained herein shall preclude the Company from seeking monetary damages of any kind, including reasonable fees and expenses of counsel and other expenses, in a court of law.
- Contractor acknowledges that Contractor is an independent Relationship of Parties. contractor and that Contractor is fully responsible for Contractor's own federal, state and local taxes and that, as an independent contractor, neither Contractor nor its employees is eligible to participate in any employee benefit program offered by the Company to its employees; provided, however, to the extent applicable law allows Contractor to maintain COBRA coverage for himself or his family, and Contractor elects to maintain any such coverage, the Company shall cooperate in order that such coverage may be provided, and Contractor shall be solely responsible for payment of all applicable premiums and related costs. Contractor further understands and agrees that Contractor is not covered under the Company's worker's compensation insurance or state unemployment insurance coverages. Contractor expressly represents that he is an independent contractor under the laws of the United States and the common law and acknowledges that the Company is relying upon this representation. It is understood that Contractor maintains an independent business and, subject to the provisions of this Agreement, may work on other projects during or after the term of this Agreement. However, Contractor will use his best efforts to insure the timely and proper completion of the Services. The Company and Contractor acknowledge and agree that this Agreement does not constitute or appoint Contractor as an agent of the Company for any purpose whatsoever. Contractor is prohibited from acting or holding itself out as agent of the Company.
- 15. Attorneys' Fees. Other than as specifically set forth in this Agreement, each party agrees to pay its own costs and expenses incurred in the collection and/or enforcement of this Agreement, whether or not suit is filed.
- 16. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Contractor with respect to the subject matter and it supersedes and replaces all discussions, communications, and understandings between them with respect to Contractor's engagement by the Company as an independent contractor. There are no promises, undertakings, commitments or representations that are not expressly set forth in writing in this Agreement.
- 17. Governing Law. This Agreement and all the terms and provisions herein, shall be governed by and enforced according to the laws of the State of Georgia without regard to conflict of laws principles.

Page 4 of 6/4

- **18. Headings.** The headings of this Agreement are for the convenience of the Company and Contractor only and they do not have any interpretive significance.
- 19. Severability. If any provision or part of any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the enforceability of any other provision or part thereof, and all other provisions and parts thereof shall continue in full force and effect. Contractor acknowledges that the Company's rights under this Agreement are cumulative and not exclusive of one another and that Contractor's several agreements contained herein, including without limitation, the several covenants contained in Paragraphs 10 and 11 of this Agreement, are each severable covenants independent of one another or any other provisions or covenants of this Agreement.
- 20. Amendment; Assignment. This Agreement shall not be amended or modified except by a writing executed by both parties. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns. Due to the personal nature of this Agreement, Contractor shall not have the right to assign Contractor's rights or obligations under this Agreement without the prior written consent of the Company. All communications required or otherwise provided under this Agreement shall be in writing and shall be deemed given when delivered to the address provided below (as may be amended by notice from time to time), by hand, by courier or express mail, or by registered or certified United States mail, return receipt requested, postage prepaid.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

Contractor:	Afterburner, Inc
Critica Rugary Bluens	Carth
Signaturer	Signature:
Carry Dun, Loncenz	Cot Pick
Printed Name:	Printed Name:
12-907	12.16.07
Date: 03/	Date:

EXHIBIT A

ATTACHED TO AND MADE A PART OF the Independent Contractor Agreement ("Agreement") between Afterburner, Inc. ("Company") and _______ ("Contractor") dated as of Dec 1, 2007.

Term of Agreement:

The term of this Agreement shall begin on Dec 1, 2007 and end on Jan 1, 2009.

The Company may, however, terminate this Agreement, whether the Services are provided on a fixed fee project basis or otherwise, immediately upon Contractor's: (i) willful dishonesty toward or deliberate injury or attempted injury to the Company, (ii) criminal conduct, or (iii) violation or other failure of Contractor to perform the Services as requested by the Company. Any products and Services provided by Contractor to the Company after termination of this Agreement and paid for by the Company shall also be governed by the terms and conditions of this Agreement.

Services to Be Performed:

Corporate Wingman: As described in the standards manual.

Compensation:

Corporate Wingman: As described in the pay standards manual.

The Company shall reimburse Contractor for authorized expenses incurred by Contractor in the performance of work and rendering of Services under this Agreement, provided that reimbursement of expenses is in accordance with the Company's policies and procedures in effect at the time that any such expense is incurred.

Exhibit T

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is entered into this 1st day of July, 2005, by and between Afterburner, Inc., a Georgia corporation ("Company"), and form R. University and individual resident of the State of Massacutives ("Contractor") (referred to collectively as the "Parties.")

For and in consideration of the mutual covenants described below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree:

- 1. Services. The Company retains Contractor and Contractor accepts this Agreement upon the terms and conditions set forth below. Contractor agrees to provide the services described in Exhibit A (the "Services").
- 2. Compensation. The Company shall pay Contractor upon the terms described in Exhibit A.
- 3. Term and Termination. This Agreement shall have the term set forth in. and will terminate in accordance with, Exhibit A, which is incorporated by reference as if set forth fully herein. Upon termination of this Agreement for any reason, Contractor shall return immediately to the Company all documents, property, and other records of the Company and of all clients of the Company, within Contractor's possession, custody or control, including, but not limited to, all: (i) materials containing any Trade Secrets or Confidential Information (as defined below); (ii) all other property, including, but not limited to, any and all files, records, credit cards, keys, identification cards/badges, computer access codes, computer programs, instruction manuals, and equipment (including computers) plans; and all documents, property and/or records which Contractor prepared or helped to prepare in connection with the Services provided under this Agreement.
- Ownership. For purposes of this Agreement, "Work Product" shall mean the data, 4. materials, documentation, computer programs, inventions (whether or not patentable), pictures, audio, video, artistic works, and all works of authorship, including all worldwide rights therein under patent, copyright, trade secret, confidential information, or other source of property rights. created or developed in whole or in part by Contractor, whether prior to the date of this Agreement or in the future, while retained by the Company and that either (i) is created within the scope of the Services or (ii) has been or will be paid for by the Company. All Work Product shall be considered work made for hire by the Contractor and owned by the Company. If any of the Work Product may not, by operation of law, be considered work made for hire by Contractor for the Company, or if ownership of all right, title, and interest of the intellectual property rights therein shall not otherwise vest exclusively in the Company, Contractor hereby assigns to the Company, and upon the future creation thereof automatically assigns to the Company, without further consideration, the ownership of all Work Product. The Company shall have the right to obtain and hold in its own name copyrights, registrations, and any other protection available in the Work Product. Contractor agrees to perform, during or after Contractor's engagement, such further acts as may be necessary or desirable to transfer, perfect, and defend the Company's ownership of the Work Product that are reasonably requested by the Company.
- 5. License. To the extent that any preexisting Work Product is contained in the materials Contractor delivers to the Company or the Company's customers, Contractor grants to the

including, but not limited to, the Occupational Safety and Health Act, in the performance of the Services to be furnished.

- 8. No Right to Subcontract. This Agreement is not assignable or otherwise transferable by Contractor and Contractor does not have the right to subcontract without the Company's prior written consent. Contractor warrants that Contractor will provide all Services in a professional, responsible and capable manner. While providing Services hereunder, Contractor will comply with the reasonable rules and regulations governing Contractor's conduct as established by the Company and communicated to Contractor from time to time.
- Indemnification. Contractor shall indemnify, defend and hold harmless the Company and its officers, directors, agents, employees, successors and assigns from and against any and all actions, causes of action, claims, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees: (i) for any loss, damage, destruction of or damage to any tangible property: (ii) for bodily injury, sickness, disease or death sustained by any person (including employees of the Company), if such loss, damage, destruction, injury, sickness, disease or death was caused by Contractor's negligence or willful misconduct in providing Services under this Agreement, or (iii) which result from or arise out of any federal or state income tax withholding liability or taxes arising under the Federal Insurance Contributions Act or under the Federal Unemployment Tax Act, or any other federal or state tax, resulting from Contractor providing services under this Agreement. The duty to defend includes the duty to pay reasonable attorneys' fees incurred by the Company in defense of such claims, and the duty to indemnify includes the duty to pay any award imposed by an administrative agency, judgment or reached by way of settlement, provided, however, Contractor shall not be required to indemnify the Company with respect to any settlement entered into without the express prior written consent of Contractor, which consent shall not unreasonably be withheld by Contractor.
- 10. Customer Non-Solicitation. During Contractor's engagement by the Company and for a period of eighteen (18) months after the termination of such engagement for any reason, whether by the Company or by Contractor, Contractor will not, without the prior written consent of the Company, directly or indirectly, on Contractor's own behalf or in the service or on behalf of others, solicit or attempt to divert or appropriate to a Competing Business, any customer of the Company with whom Contractor dealt on behalf of the Company at any time during the twelve (12) month period immediately preceding the termination of engagement. As used herein, "Competing Business" means any person or entity which engages in a business substantially the same as the Company Business. "Company Business" means inspirational and motivational seminars in a military mission planning format, and related consulting services.
- 11. Employee Solicitation. During the term of this Agreement (including any renewals thereof) and for a period of eighteen (18) months after the termination of this Agreement or any renewals thereof, Contractor covenants and agrees that he will neither. (i) directly or indirectly hire as an employee or independent contractor, any person who is or was employed by the Company during the term of this Agreement and any renewals thereof; nor (ii) directly or indirectly induce or influence or attempt to induce or influence any such person to seek or accept employment with another person or entity.
- 12. Acknowledgments. The parties agree that: (i) the periods of restriction contained in this Agreement are fair and reasonable in that they are reasonably required for the protection of the legitimate business interests of the Company; (ii) by having access to information concerning

- 15. Attorneys' Fees. Other than as specifically set forth in this Agreement, each party agrees to pay its own costs and expenses incurred in the collection and/or enforcement of this Agreement, whether or not suit is filed.
- 16. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Contractor with respect to the subject matter and it supersedes and replaces all discussions, communications, and understandings between them with respect to Contractor's engagement by the Company as an independent contractor. There are no promises, undertakings, commitments or representations that are not expressly set forth in writing in this Agreement.
- 17. Governing Law. This Agreement and all the terms and provisions herein, shall be governed by and enforced according to the laws of the State of Georgia without regard to conflict of laws principles.
- 18. Headings. The headings of this Agreement are for the convenience of the Company and Contractor only and they do not have any interpretive significance.
- 19. Severability. If any provision or part of any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the enforceability of any other provision or part thereof, and all other provisions and parts thereof shall continue in full force and effect. Contractor acknowledges that the Company's rights under this Agreement are cumulative and not exclusive of one another and that Contractor's several agreements contained herein, including without limitation, the several covenants contained in Paragraphs 10 and 11 of this Agreement, are each severable covenants independent of one another or any other provisions or covenants of this Agreement.
- 20. Amendment; Assignment. This Agreement shall not be amended or modified except by a writing executed by both parties. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns. Due to the personal nature of this Agreement, Contractor shall not have the right to assign Contractor's rights or obligations under this Agreement without the prior written consent of the Company. All communications required or otherwise provided under this Agreement shall be in writing and shall be deemed given when delivered to the address provided below (as may be amended by notice from time to time), by hand, by courier or express mail, or by registered or certified United States mail, return receipt requested, postage prepaid.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

Contractor:	Company:
A	Afterburner, Inc.
Jalulka-	By:
[Name]	Name:
6 speck Addition has between ma cille	A STATE OF THE PROPERTY OF THE
[Address]	Title.

Exhibit U

AGREEMENT REGARDING COPYRIGHTABLE MATERIALS AND TRADE SECRETS

THIS AGREEMENT is made this 18 day of November, 199 by and between Afterburner Seminars, Inc. ("Afterburner") and John R. Chockhill., ("Contractor").

WHEREAS, Afterburner desires to employ or has employed Contractor as an independent contractor to assist Afterburner in the preparation of materials for and the presentation of seminars on leadership, teamwork and related activities; and

WHEREAS, Contractor desires to be employed in such position; and

WHEREAS, Afterburner desires to retain and/obtain any and all rights in and to intellectual property created by or with the assistance of Contractor and also desires as well as to maintain its rights in its proprietary information; and

WHEREAS, Contractor desires to assign any right, title and interest as Contractor may have in and to materials prepared by Contractor for, or in cooperation with, Afterburner;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. <u>Assignment</u>. Contractor hereby irrevocably assigns and/or agrees to assign all right, title and interest in and to any and all work or works, including any and all copyrights therein, conceived, authored or otherwise prepared by Contractor, or by Contractor with the assistance of others, pursuant to or resulting from Contractor's employment by Afterburner.
- 2. Proprietary Information. In addition, Contractor understands that, during the course of his employment by Afterburner, he may be exposed to various confidential, secret and proprietary information of Afterburner including, but not limited to, know-how, inventions, software programs, source code, schematics, contracts, lists of actual or potential customers, financial data, financial plans, sales and marketing plans and ideas and concepts relating to seminar presentations, tools to be used in seminar presentations, games, exercises and so forth (hereafter "Proprietary Information"). Afterburner will, where practical, designate such information as CONFIDENTIAL or PROPRIETARY. Contractor agrees that, before disclosing any Afterburner information, he or she will contact Afterburner to be sure that the information is not Proprietary Information. Information shall not be considered Proprietary Information to the extent, but only to the extent, that such information: (a) is already known to the Contractor free of any confidentiality obligation or restriction at the time that it is exchanged; (b) is or becomes publicly known or available through no wrongful act or breach of this Agreement; (c) is independently and rightfully received from a third party without restriction or (d) has been

independently developed by the Contractor prior to its receipt by the Contractor from Afterburner.

- 3. <u>Nondisclosure</u>. Contractor agrees that he or she will use Proprietary Information solely pursuant to Contractor's employment by Afterburner. Contractor agrees that he or she shall not, without first obtaining prior written consent of Afterburner, disclose or make available to any person, firm or enterprise, or reproduce for his or her own benefit, any of Afterburner's Proprietary Information.
- 4. Additional Efforts. To the extent necessary, Contractor agrees that, upon Afterburner's written request, Contractor shall take any and all steps, and shall execute, acknowledge and deliver to Afterburner any and all further instruments necessary, to vest in Afterburner all right, title and interest in it to any and all works prepared by or with the assistance of Contractor. Afterburner shall bear all reasonable expenses of such efforts.
- 5. Remedies. Contractor acknowledges and agrees that, in the event of a breach or threatened breach by it of any of the provisions of this Agreement, Afterburner will have no adequate remedy at law and, accordingly, Afterburner shall be entitled to injunctive relief, provided, however, that no specification in this Agreement shall be construed as a waiver or prohibition against any other contractual, or equitable remedy which either party may have under this Agreement.
- 6. Governing Law. This Agreement shall be governed and construed in accordance of the laws of the United States and the State of Georgia. This Agreement shall be binding upon and enure to the benefit of the parties, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement this 28 day of

AFTERBURNER SEMINARS, INC.	CONTRACTOR
By:	Signature .
Its:	Printed Name

EXHIBIT A-3

IN THE SUPERIOR COURT OF FORSYTH COUNTY STATE OF GEORGIA

AFTERBURNER, INC.,)
Plaintiff,)) CIVIL ACTION FILE
v.) NO.: 09-CV-2844
THE CORPS GROUP, JOHN)
BORNEMAN, CAREY LOHRENZ,)
KYLE HOWLIN, and JOHN)
UNDERHILL,)
Defendants,)
v.)
AFTERBURNER, INC., and)
JAMES "MURPH" MURPHY,)
Counterclaim Defendants.) _)

DEFENDANTS' ANSWER & DEFENSES & COUNTERCLAIMS TO PLAINTIFF'S THIRD AMENDED COMPLAINT

COME NOW Defendants THE CORPS GROUP, JOHN BORNEMAN, CAREY LOHRENZ, KYLE HOWLIN, and JOHN UNDERHILL ("Defendants") by and through undersigned counsel, making this Answer denying each and every allegation raised in Plaintiff's Complaint and First Amended Complaint in their entirety and making Defendants' Answer to Plaintiff's Third Amended Complaint, and further, (in accordance with the Court's Order of March 11, 2011, on Defendants' Motion for Permission to Make Counterclaims and to Add Murphy as Counterclaim Defendant), adding JAMES "MURPH" MURPHY as a

Counterclaim Defendant and making Defendants' Counterclaims against Afterburner and Murphy, showing the Court as follows:

PARTIES AND NATURE OF ACTION

1.

Answering Paragraph 1 of the Third Amended Complaint, Defendants admit only that Plaintiff is bringing this action for Trademark Infringement, Trade Dress Infringement and Unfair Competition arising under the Lanham Act, 15 U.S.C. §§ 1114(1)(a) and 1125(a); Misappropriation of Trade Secrets under O.C.G.A. § 10-1-760 et seq.; violation of the Georgia Uniform Trade Practices Act, O.C.G.A. § 10-1-370 et seq.; and Unfair Competition, Conspiracy, Tortious Interference with Business Relations and Breach of Contract arising under Georgia law. Defendants deny they have violated any of these statutes or laws and deny all remaining allegations in Paragraph 1 of Plaintiff's Third Amended Complaint. Answering the introductory paragraph of Plaintiff's Third Amended Complaint, Defendants deny all allegations or claims contained therein.

2.

Answering Paragraph 2 of the Third Amended Complaint, upon information and belief, Defendants admit only that Plaintiff is a Georgia company with its principal place of business in Fulton County, Georgia. All remaining allegations in Paragraph 2 of the Third Amended Complaint are denied, denied for lack of

knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

3.

Answering Paragraph 3 of the Third Amended Complaint, Defendants admit only that The Corps Group ("TCG") is a Pennsylvania company with its principal place of business in Quakertown, Pennsylvania and that Borneman, Howlin, Lohrenz have performed services for TCG. All remaining allegations in Paragraph 3 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

4.

Answering Paragraph 4 of the Third Amended Complaint, Defendants admit only that Borneman resides in Pennsylvania, that he performed services for Afterburner, that he resigned from Afterburner, and that he founded TCG and serves as its Chief Executive Officer. All remaining allegations in Paragraph 4 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

5.

Answering Paragraph 5 of the Third Amended Complaint, Defendants admit

only that Howlin resides in Forsyth County, Georgia, that he performed services for Afterburner, and that he currently serves as the Chief Operating Officer for TCG. All remaining allegations in Paragraph 5 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

6.

Answering Paragraph 6 of the Third Amended Complaint, Defendants admit only that Lohrenz resides in Germantown, Tennessee, that she performed services for Afterburner, and that she currently serves as the Vice President of Sales and Business Management for TCG. All remaining allegations in Paragraph 6 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

7.

Answering Paragraph 7 of the Third Amended Complaint, Defendants admit only that Underhill resides in Massachusetts. All remaining allegations in Paragraph 7 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

JURISDICTION AND VENUE

8.

Answering Paragraph 8, Defendants admit only that this Court has subject matter jurisdiction. All remaining allegations in Paragraph 8 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

9.

Defendants admit the allegations in Paragraph 9 of the Third Amended Complaint.

10.

The allegations in Paragraph 10 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

11.

The allegations in Paragraph 11 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

12.

Answering Paragraph 12 of the Third Amended Complaint, Defendants admit only that venue is proper in this Court. All remaining allegations in Paragraph 12 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as

incomplete and self serving.

FACTUAL ALLEGATIONS

A. Afterburner's Business Model

13.

The allegations in Paragraph 13 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

14.

The allegations in Paragraph 14 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

15.

The allegations in Paragraph 15 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

16.

Answering Paragraph 16 of the Third Amended Complaint, Defendants admit only that Afterburner performed services for Cisco, MTI, and RTI. All remaining allegations in Paragraph 16 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth

thereof, and/or denied as incomplete and self serving.

17.

The allegations in Paragraph 17 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

18.

The allegations in Paragraph 18 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

19.

The allegations in Paragraph 19 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

20.

The allegations in Paragraph 20 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

B. Afterburner's Trademarks and Trade Dress

21.

The allegations in Paragraph 21 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

22.

The allegations in Paragraph 22 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

23.

The allegations in Paragraph 23 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

24.

The allegations in Paragraph 24 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

25.

Answering Paragraph 25 of the Third Amended Complaint, Defendants admit only that there are documents attached as Exhibits A and B. All remaining

allegations in Paragraph 25 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

26.

The allegations in Paragraph 26 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

27.

The allegations in Paragraph 27 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

28.

The allegations in Paragraph 28 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

29.

The allegations in Paragraph 29 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

Answering Paragraph 30 of the Third Amended Complaint, Defendants admit only that there are documents attached as Exhibits C and D. All remaining allegations in Paragraph 30 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

31.

The allegations in Paragraph 31 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

32.

Answering Paragraph 32 of the Third Amended Complaint, Defendants admit only that there are documents attached as Exhibits E and F. All remaining allegations in Paragraph 32 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

33.

The allegations in Paragraph 33 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 34 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

35.

Answering Paragraph 35 of the Third Amended Complaint, Defendants admit only that there are documents attached as Exhibit G. All remaining allegations in Paragraph 35 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

36.

The allegations in Paragraph 36 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

37.

Answering Paragraph 37 of the Third Amended Complaint, Defendants admit only that there are documents attached as Exhibit H. All remaining allegations in Paragraph 37 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 38 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

39.

The allegations in Paragraph 39 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

40.

Answering Paragraph 40 of the Third Amended Complaint, Defendants admit only that there are documents attached as Exhibit I. All remaining The allegations in Paragraph 40 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

41.

The allegations in Paragraph 41 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

42.

The allegations in Paragraph 42 of the Third Amended Complaint are

denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

C. Afterburner's Trade Secrets

43.

The allegations in Paragraph 43 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

44.

The allegations in Paragraph 44 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

45.

The allegations in Paragraph 45 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

D. Defendant The Corps Group

46.

The allegations in Paragraph 46 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

Defendants admit only that former fighter pilots perform services for TCG and that some employees of TCG formerly performed services for Afterburner. All remaining allegations in Paragraph 47 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

48.

The allegations in Paragraph 48 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

49.

The allegations in Paragraph 49 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

50.

The allegations in Paragraph 50 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 51 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

52.

The allegations in Paragraph 52 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

53.

The allegations in Paragraph 53 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

54.

The allegations in Paragraph 54 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

55.

The allegations in Paragraph 55 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 56 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

57.

The allegations in Paragraph 57 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

58.

The allegations in Paragraph 58 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

59.

The allegations in Paragraph 59 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

60.

The allegations in Paragraph 60 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 61 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

62.

The allegations in Paragraph 62 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

63.

The allegations in Paragraph 63 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

64.

Answering Paragraph 64, Defendant TCG admits only that it performed services for Cisco, MTI, and RTI. All remaining allegations in Paragraph 64 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

65.

Answering Paragraph 65, Defendants admit only that Borneman, Howlin, Lohrenz, and Underhill have performed services for TCG. All remaining

allegations in Paragraph 65 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

66.

The allegations in Paragraph 66 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

67.

The allegations in Paragraph 67 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

68.

The allegations in Paragraph 68 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

69.

The allegations in Paragraph 69 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

E. Defendant John Borneman

70.

Answering Paragraph 70, Defendants admit only that Borneman performed services for Afterburner. All remaining allegations in Paragraph 70 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

71.

Answering Paragraph 71 of the Third Amended Complaint, Defendants admit only that Borneman worked with Afterburner clients. All remaining allegations in Paragraph 71 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

72.

The allegations in Paragraph 72 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

73.

The allegations in Paragraph 73 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

Answering Paragraph 74 of the Third Amended Complaint, Defendants admit only that Borneman performed services for Afterburner in 2006 and at times thereafter. All remaining allegations in Paragraph 74 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

75.

Answering Paragraph 75 of the Third Amended Complaint, Defendants admit only that Borneman signed an Employment Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 75 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

76.

Answering Paragraph 76 of the Third Amended Complaint, Defendants admit only that Borneman signed an Employment Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 76 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

Answering Paragraph 77 of the Third Amended Complaint, Defendants admit only that Borneman signed an Employment Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 77 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

78.

Answering Paragraph 78 of the Third Amended Complaint, Defendants admit only that Borneman signed an Employment Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 78 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

79.

Answering Paragraph 79 of the Third Amended Complaint, Defendants admit only that Borneman signed an Employment Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 79 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to

the truth thereof, and/or denied as incomplete and self serving.

80.

Answering Paragraph 80 of the Third Amended Complaint, Defendants admit only that Borneman worked as the Director of Strategic Planning for Afterburner. All remaining allegations in Paragraph 80 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

81.

The allegations in Paragraph 81 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

82.

The allegations in Paragraph 82 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

83.

The allegations in Paragraph 83 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

Answering Paragraph 84 of the Third Amended Complaint, Defendants admit only that Borneman had access to some of Afterburner's client information. All remaining allegations in Paragraph 84 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

85.

Answering Paragraph 85 of the Third Amended Complaint, Defendants admit only that Borneman performed services on behalf of Afterburner. All remaining allegations in Paragraph 85 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

86.

Answering Paragraph 86 of the Third Amended Complaint, Defendants admit only that Borneman worked with some Afterburner clients, including Cisco. All remaining allegations in Paragraph 86 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

87.

Answering Paragraph 87 of the Third Amended Complaint, Defendants

admit only that Borneman worked with RTI. All remaining allegations in Paragraph 87 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

88.

Answering Paragraph 88 of the Third Amended Complaint, Defendants admit only that Borneman worked with Cisco and RTI. All remaining allegations in Paragraph 88 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

89.

Answering Paragraph 89 of the Third Amended Complaint, Defendants admit that Borneman resigned from Afterburner in or about May of 2008. All remaining allegations in Paragraph 89 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

90.

Answering Paragraph 90 of the Third Amended Complaint, Defendants admit only that Borneman worked for The Bison Group. All remaining allegations in Paragraph 90 of the Third Amended Complaint are denied, denied for lack of

knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

91.

The allegations in Paragraph 91 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

92.

The allegations in Paragraph 92 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

93.

The allegations in Paragraph 93 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

94.

Answering Paragraph 94 of the Third Amended Complaint, Defendants admit only that counsel for Afterburner sent Borneman a letter regarding his Employment Agreement. All remaining allegations in Paragraph 94 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

Answering Paragraph 95 of the Third Amended Complaint, Defendants admit only that Borneman provided services to Cisco on behalf of TCG. All remaining allegations in Paragraph 95 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

96.

The allegations in Paragraph 96 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

97.

Answering Paragraph 97 of the Third Amended Complaint, Defendants admit only that there are documents attached as Exhibit P. All remaining allegations in Paragraph 97 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. The attached correspondence speaks for itself and Defendants deny any inconsistent characterization of same.

98.

Answering Paragraph 98 of the Third Amended Complaint, Defendants admit only that TCG has performed services for, and received compensation from,

Cisco and RTI. All remaining allegations in Paragraph 98 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

99.

The allegations in Paragraph 99 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

100.

The allegations in Paragraph 100 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

101.

The allegations in Paragraph 101 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

102.

The allegations in Paragraph 102 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 103 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

104.

Answering Paragraph 104 of the Third Amended Complaint, Defendants admit only that Borneman signed an Employment Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 104 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

105.

The allegations in Paragraph 105 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

106.

The allegations in Paragraph 106 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

F. Defendant Kyle Howlin

107.

Answering Paragraph 107 of the Third Amended Complaint, Defendants admit only that Howlin performed services for Afterburner. All remaining allegations in Paragraph 107 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

108.

Answering Paragraph 108 of the Third Amended Complaint, Defendants admit only that Howlin signed an Independent Contractor Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 108 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

109.

Answering Paragraph 109 of the Third Amended Complaint, Defendants admit only that Howlin signed an Independent Contractor Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 109 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to

the truth thereof, and/or denied as incomplete and self serving.

110.

Answering Paragraph 110 of the Third Amended Complaint, Defendants admit only that Howlin signed an Independent Contractor Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 110 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

111.

Answering Paragraph 111, Defendants admit only that Howlin signed an Independent Contractor Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 111 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

112.

Answering Paragraph 112, Defendants admit only that Howlin signed an Independent Contractor Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 112 of the Third Amended Complaint are denied, denied for lack of

knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

113.

Answering Paragraph 113 of the Third Amended Complaint, Defendants admit only that Howlin performed services for Afterburner. All remaining allegations in Paragraph 113 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

114.

The allegations in Paragraph 114 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

115.

Answering Paragraph 115 of the Third Amended Complaint, Defendants admit only that Howlin performed services for Afterburner. All remaining allegations in Paragraph 115 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

116.

Answering Paragraph 116, Defendants admit only that Howlin helped

develop materials for a youth program. All remaining allegations in Paragraph 116 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

117.

The allegations in Paragraph 117 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

118.

The allegations in Paragraph 118 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

119.

The allegations in Paragraph 119 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

120.

Defendants admit the allegations in Paragraph 120 of the Third Amended Complaint.

Answering Paragraph 121 of the Third Amended Complaint, Defendants admit only that Howlin worked with Cisco and MTI. All remaining allegations in Paragraph 121 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

122.

Answering Paragraph 122 of the Third Amended Complaint, Defendants admit only that Howlin resigned from his engagement with Afterburner. All remaining allegations in Paragraph 122 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

123.

The allegations in Paragraph 123 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

124.

The allegations in Paragraph 124 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 125 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

126.

The allegations in Paragraph 126 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

127.

Defendants admit the allegations in Paragraph 127 of the Third Amended Complaint.

128.

Answering Paragraph 128 of the Third Amended Complaint, Defendants admit only that Howlin provided services to MTI on behalf of TCG in 2009. All remaining allegations in Paragraph 128 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

129.

Answering Paragraph 129 of the Third Amended Complaint, Defendants admit only that Howlin provided services to MTI on behalf of TCG in 2009. All

remaining allegations in Paragraph 129 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

130.

All allegations in Paragraph 130 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

131.

The allegations in Paragraph 131 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

132.

The allegations in Paragraph 132 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

133.

The allegations in Paragraph 133 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 134 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

135.

The allegations in Paragraph 135 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

136.

The allegations in Paragraph 136 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

G. Defendant Carey Lohrenz

137.

Answering Paragraph 137 of the Third Amended Complaint, Defendants admit only that Lohrenz performed services for Afterburner. All remaining allegations in Paragraph 137 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

Answering Paragraph 138 of the Third Amended Complaint, Defendants admit only that Lohrenz signed an Independent Contractor Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 138 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

139.

Answering Paragraph 139 of the Third Amended Complaint, Defendants admit only that Lohrenz performed services for Afterburner as a facilitator. All remaining allegations in Paragraph 139 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

140.

Answering Paragraph 140 of the Third Amended Complaint, Defendants admit only that Lohrenz performed services for Afterburner as a facilitator. All remaining allegations in Paragraph 140 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 141 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

142.

The allegations in Paragraph 142 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

143.

The allegations in Paragraph 143 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

144.

Answering Paragraph 144 of the Third Amended Complaint, Defendants admit only that Lohrenz began working with TCG in or about January of 2009. All remaining allegations in Paragraph 144 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

145.

Defendants admit the allegations in Paragraph 145 of the Third Amended

Complaint.

146.

The allegations in Paragraph 146 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

147.

The allegations in Paragraph 147 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

148.

The allegations in Paragraph 148 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

H. Defendant John Underhill

149.

Answering Paragraph 139 of the Third Amended Complaint, Defendants admit only that Underhill performed services for Afterburner. All remaining allegations in Paragraph 149 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

Answering Paragraph 150 of the Third Amended Complaint, Defendants admit only that Underhill signed an Independent Contractor Agreement and that the document speaks for itself. Any inconsistent characterization of the agreement is denied. All remaining allegations in Paragraph 150 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. It is specifically noted that the Document attached as Exhibit T is incomplete and apparently missing alternate pages.

151.

Answering Paragraph 151 of the Third Amended Complaint it is admitted only that Underhill provided services for Afterburner. All remaining allegations in Paragraph 151 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

152.

Answering Paragraph 152 of the Third Amended Complaint it is admitted only that Underhill provided services for Afterburner. All remaining allegations in Paragraph 152 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as

incomplete and self serving.

153.

Answering Paragraph 153 of the Third Amended Complaint it is admitted only that Underhill had access to certain clients and information while at Afterburner. All remaining allegations in Paragraph 153 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

154.

Answering Paragraph 154 of the Third Amended Complaint it is admitted only that Underhill had access to certain information while at Afterburner. All remaining allegations in Paragraph 154 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

155.

Answering Paragraph 155 of the Third Amended Complaint it is admitted only that Underhill had access to and provided services to certain clients while at Afterburner. All remaining allegations in Paragraph 155 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 156 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

157.

The allegations in Paragraph 157 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

158.

Defendants admit the allegations in Paragraph 158 of the Third Amended Complaint.

159.

The allegations in Paragraph 159 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

160.

The allegations in Paragraph 160 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

161.

The allegations in Paragraph 161 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

162.

The allegations in Paragraph 162 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

163.

The allegations in Paragraph 163 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

164.

The allegations in Paragraph 164 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

COUNT I: TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1114(1)(a)

165.

The allegations of Paragraph 165 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt their foregoing responses to the re-

allegations.

166.

The allegations in Paragraph 166 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

167.

The allegations in Paragraph 167 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

168.

The allegations in Paragraph 168 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

169.

The allegations in Paragraph 169 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

170.

The allegations in Paragraph 170 of the Third Amended Complaint are

denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

171.

The allegations in Paragraph 171 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

172.

The allegations in Paragraph 172 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

173.

The allegations in Paragraph 173 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

174.

The allegations in Paragraph 174 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

175.

The allegations in Paragraph 175 of the Third Amended Complaint are

denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

176.

The allegations in Paragraph 176 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT II: TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1125(a)

177.

The allegations of Paragraph 177 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt their foregoing responses to the reallegations.

178.

The allegations in Paragraph 178 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

179.

The allegations in Paragraph 179 of the Third Amended Complaint are

denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

180.

The allegations in Paragraph 180 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

181.

The allegations in Paragraph 181 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

182.

The allegations in Paragraph 182 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

183.

The allegations in Paragraph 183 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

184.

The allegations in Paragraph 184 of the Third Amended Complaint are

denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

185.

The allegations in Paragraph 185 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

186.

The allegations in Paragraph 186 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

187.

The allegations in Paragraph 187 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

188.

The allegations in Paragraph 188 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

The allegations in Paragraph 189 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT III: TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1125(a)

190.

The allegations of Paragraph 190 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt its foregoing responses to the reallegations.

191.

The allegations in Paragraph 191 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

192.

The allegations in Paragraph 192 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 193 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

194.

The allegations in Paragraph 194 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

195.

The allegations in Paragraph 195 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

196.

The allegations in Paragraph 196 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

197.

The allegations in Paragraph 197 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

198.

The allegations in Paragraph 198 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

199.

The allegations in Paragraph 199 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

200.

The allegations in Paragraph 200 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT IV: UNFAIR COMPETITION UNDER THE LANHAM ACT, 15 U.S.C. § 1125(a)

201.

The allegations of Paragraph 201 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in

response thereto simply restate and adopt their foregoing responses to the reallegations.

202.

The allegations in Paragraph 202 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

203.

The allegations in Paragraph 203 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

204.

The allegations in Paragraph 204 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT V: VIOLATION OF THE GEORGIA TRADE SECRETS ACT

205.

The allegations of Paragraph 205 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt their foregoing responses to the reallegations.

206.

The allegations in Paragraph 206 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

207.

The allegations in Paragraph 207 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

208.

The allegations in Paragraph 208 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

209.

The allegations in Paragraph 209 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

The allegations in Paragraph 210 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

211.

The allegations in Paragraph 211 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

212.

The allegations in Paragraph 212 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

213.

The allegations in Paragraph 213 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

214.

The allegations in Paragraph 214 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering,

Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

215.

The allegations in Paragraph 215 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

216.

The allegations in Paragraph 216 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT VI: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS 217.

The allegations of Paragraph 217 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt their foregoing responses to the reallegations.

The allegations in Paragraph 218 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

219.

The allegations in Paragraph 219 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

220.

The allegations in Paragraph 220 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

221.

The allegations in Paragraph 221 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

222.

The allegations in Paragraph 222 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering,

Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

223.

The allegations in Paragraph 223 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

224.

The allegations in Paragraph 224 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT VII: VIOLATION OF THE GEORGIA DECEPTIVE TRADE PRACTICES ACT

225.

The allegations of Paragraph 225 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt their foregoing responses to the reallegations.

226.

The allegations in Paragraph 226 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

227.

The allegations in Paragraph 227 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

228.

The allegations in Paragraph 228 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT VIII: COMMON LAW UNFAIR COMPETITION

229.

The allegations of Paragraph 229 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in

response thereto simply restate and adopt their foregoing responses to the reallegations.

230.

The allegations in Paragraph 230 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

231.

The allegations in Paragraph 231 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

232.

The allegations in Paragraph 232 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

233.

The allegations in Paragraph 233 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering,

Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

234.

The allegations in Paragraph 234 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

235.

The allegations in Paragraph 235 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT IX: CONSPIRACY

236.

The allegations of Paragraph 236 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt the foregoing responses to the reallegations.

The allegations in Paragraph 237 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

238.

The allegations in Paragraph 238 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving.

239.

The allegations in Paragraph 239 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

240.

The allegations in Paragraph 240 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

The allegations in Paragraph 241 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

242.

The allegations in Paragraph 242 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT X: BREACH OF CONTRACT AS TO DEFENDANT BORNEMAN 243.

The allegations of Paragraph 243 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt the foregoing responses to the reallegations.

244.

The allegations in Paragraph 244 of the Third Amended Complaint are

denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have breached any contract or violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT XI: BREACH OF CONTRACT AS TO DEFENDANT HOWLIN

245.

The allegations of Paragraph 245 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt the foregoing responses to the re-

246.

allegations.

The allegations in Paragraph 246 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have breached any contract or violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT XII: BREACH OF CONTRACT AS TO DEFENDANT LOHRENZ 247.

The allegations of Paragraph 247 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in

response thereto simply restate and adopt the foregoing responses to the reallegations.

248.

The allegations in Paragraph 248 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have breached any contract or violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

COUNT XIII: BREACH OF CONTRACT AS TO DEFENDANT UNDERHILL

249.

The allegations of Paragraph 249 of the Third Amended Complaint are simply a re-allegation of preceding paragraphs, and accordingly Defendants in response thereto simply restate and adopt the foregoing responses to the reallegations.

250.

The allegations in Paragraph 250 of the Third Amended Complaint are denied, denied for lack of knowledge sufficient to form a belief as to the truth thereof, and/or denied as incomplete and self serving. Further answering, Defendants deny that they have breached any contract or violated any laws or that Plaintiff is entitled to any relief under any federal or state law.

PRAYER FOR RELIEF

251.

Defendants deny that Plaintiff is entitled to any of the relief requested in the PRAYER FOR RELIEF, including any relief requested in Paragraph 251 of the Third Amended Complaint.

252.

Defendants deny that Plaintiff is entitled to any of the relief requested in the PRAYER FOR RELIEF, including any relief requested in Paragraph 252 of the Third Amended Complaint.

253.

Defendants deny that Plaintiff is entitled to any of the relief requested in the PRAYER FOR RELIEF, including any relief requested in Paragraph 253 of the Third Amended Complaint.

254.

Defendants deny that Plaintiff is entitled to any of the relief requested in the PRAYER FOR RELIEF, including any relief requested in Paragraph 254 of the Third Amended Complaint.

255.

Defendants deny that Plaintiff is entitled to any of the relief requested in the

PRAYER FOR RELIEF, including any relief requested in Paragraph 255 of the Third Amended Complaint.

DEFENDANTS' GENERAL DENIAL TO PLAINTIFF'S ALLEGATIONS IN THE THIRD AMENDED COMPLAINT

Each and every remaining allegation of the Third Amended Complaint not specifically herein before admitted or denied is hereby denied.

DEFENDANTS' GENERAL DENIAL TO PLAINTIFF'S ALLEGATIONS CONTAINED IN THE COMPLAINT AND THE FIRST AND SECOND AMENDED COMPLAINTS

In addition, each and every allegation asserted by Plaintiff in Plaintiff's Complaint and First and Second Amended Complaints is denied. Defendant denies the allegations asserted by Plaintiff in Plaintiff's Complaint and First and Second Amended Complaints in their entirety, including, but not limited to, each and every numbered paragraph contained therein, and the only remaining admissions to Plaintiff's allegations are contained herein in this Defendants' Answer and Defenses and Counterclaims to Plaintiff's Third Amended Complaint.

DEFENDANTS' DEFENSES AND AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Third Amended Complaint is barred because it fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's claims are barred to the extent they involve transactions or events

which are outside the applicable statute(s) of limitations.

THIRD DEFENSE

Plaintiff's claims are barred to the extent this court lacks personal jurisdiction over Defendants.

FOURTH DEFENSE

Personal jurisdiction is improper over the nonresident Defendants because the constitutional standards requiring minimum contacts, fairness and reasonableness are not satisfied.

FIFTH DEFENSE

Plaintiff's claims for relief are barred to the extent that it failed to mitigate its damages, if any.

SIXTH DEFENSE

Plaintiff is barred from pursuing claims for punitive, exemplary, or vindictive damages, because Defendants engaged in no acts or omissions which would either rise to the level required to sustain an award of punitive, exemplary, or vindictive damages, were not motivated by evil intent, do not evidence a malicious, knowing, oppressive, or fraudulent intent to deny Plaintiff its protected rights, and are not so wanton or willful so as to support an award of punitive, exemplary, or vindictive damages.

SEVENTH DEFENSE

Any award of punitive, exemplary, or vindictive damages to Plaintiff will violate the substantive and procedural safeguards guaranteed to Defendants by the United States and Georgia Constitutions; any award for such damages is therefore barred.

EIGHTH DEFENSE

Any award of punitive, exemplary, or vindictive damages must be limited in accordance with Georgia law. Any award of punitive, exemplary, or vindictive damages will violate the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States and similar provisions of the Georgia Constitution, in that standards for awards of punitive, exemplary, and vindictive damages in Georgia are vague and are not rationally related to legitimate government interests. Plaintiff's claims for punitive, exemplary, or vindictive damages are consequently barred. Any award of punitive, exemplary, or vindictive damages will likewise violate the procedural safeguards guaranteed to Defendants by the Fifth and Sixth Amendments of the United States Constitution, in that such damages are penal in nature. Consequently, Defendants are entitled to the same procedural safeguards afforded criminal defendants, including the protection from self incrimination and a burden of proof equivalent to the "beyond a reasonable Plaintiff's claims for punitive, exemplary, and vindictive doubt" standard.

damages are consequently barred.

NINTH DEFENSE

Any recovery on Plaintiff's Third Amended Complaint, or any purported cause of action alleged therein, is barred to the extent that any conduct on which it was based was privileged and/or justified.

TENTH DEFENSE

Plaintiff's tortious interference claim is barred because Defendants did not act maliciously or intend to injure Plaintiff.

ELEVENTH DEFENSE

Plaintiff has not suffered irreparable harm so as to be entitled to injunctive relief and has adequate remedies at law.

TWELFTH DEFENSE

To the extent that Plaintiff consented to or permitted any of the actions alleged, Plaintiff's claims are barred by the doctrine of consent.

THIRTEENTH DEFENSE

Plaintiff's claims are barred to the extent that Plaintiff engaged in fraudulent conduct relating to the matters underlying the allegations of the Complaint or the prosecution of its claims.

FOURTEENTH DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

FIFTEENTH DEFENSE

Plaintiff's claims are barred by the Statute of Frauds.

SIXTEENTH DEFENSE

Plaintiff's breach of contract claims are barred by a lack of mutuality.

SEVENTEENTH DEFENSE

If a breach of contract is found, Defendants are entitled to a common law right of set-off for any monies owed by Plaintiff.

EIGHTEENTH DEFENSE

Plaintiff's claims are barred on the ground that there is no valid contract under Georgia law.

NINETEENTH DEFENSE

Plaintiff's claims may be barred by the doctrine of accord and satisfaction.

TWENTIETH DEFENSE

Plaintiff's claims are barred to the extent Defendants had appropriate licenses.

TWENTY-FIRST DEFENSE

There is no underlying tort which supports a cause of action for conspiracy and therefore Plaintiff's conspiracy action is barred.

TWENTY-SECOND DEFENSE

Plaintiff's claims are barred to the extent they are brought against non-

existent persons or entities.

TWENTY-THIRD DEFENSE

Plaintiff's claims may be barred by the doctrines of estoppel, unclean hands, laches, and/or waiver.

TWENTY-FOURTH DEFENSE

Plaintiff's federal, state, and common law trademark claims, including claims for trademark infringement and unfair competition pursuant to the Lanham Act and 15 U.S.C. § 1114(a)(1) and 15 U.S.C. § 1125(a), are barred by the doctrine of fair use.

TWENTY-FIFTH DEFENSE

Plaintiff's federal, state, and common law trademark claims, including claims for trademark infringement and unfair competition pursuant to the Lanham Act and 15 U.S.C. § 1114(a)(1) and 15 U.S.C. § 1125(a), are barred by the doctrine of fair competition.

TWENTY-SIXTH DEFENSE

Plaintiff's federal, state, and common law trademark claims, including claims for trademark infringement and unfair competition pursuant to the Lanham Act and 15 U.S.C. § 1114(a)(1) and 15 U.S.C. § 1125(a), are barred to the extent that Defendants engaged in the first use of the trademarks.

TWENTY-SEVENTH DEFENSE

Plaintiff's federal, state, and common law trademark claims, including claims for trademark infringement and unfair competition pursuant to the Lanham Act and 15 U.S.C. § 1114(a)(1) and 15 U.S.C. § 1125(a), are barred to the extent that Plaintiff abandoned the trademarks.

TWENTY-EIGHTH DEFENSE

Plaintiff's federal, state, and common law trademark claims, including claims for trademark infringement and unfair competition pursuant to the Lanham Act and 15 U.S.C. § 1114(a)(1) and 15 U.S.C. § 1125(a), are barred to the extent that Plaintiff failed to register the trademarks and/or the trademarks do not otherwise qualify for legal protection.

TWENTY-NINTH DEFENSE

Plaintiff's federal, state, and common law trademark claims, including claims for trademark infringement and unfair competition pursuant to the Lanham Act and 15 U.S.C. § 1114(a)(1) and 15 U.S.C. § 1125(a), are barred to the extent that Plaintiff's trademarks are generic and/or otherwise not qualified for legal protection.

THIRTIETH DEFENSE

Plaintiff's federal, state, and common law trademark claims, including claims for trademark infringement and unfair competition pursuant to the Lanham

Act and 15 U.S.C. § 1114(a)(1) and 15 U.S.C. § 1125(a), are barred to the extent that Defendants' alleged use of any trademarks are not likely to cause or have not actually caused any confusion among consumers.

DEFENDANTS' RESERVATION OF THE RIGHT TO AMEND THEIR ANSWER AND DEFENSES

Defendants hereby expressly reserve the right to amend their Answer, Defenses, and Counterclaims to Plaintiff's Third Amended Complaint and assert any additional affirmative defenses, counterclaims, or third-party claims, as permitted under the applicable rules of procedure.

DEFENDANT BORNEMAN'S COUNTERCLAIMS AGAINST PLAINTIFF AFTERBURNER

Defendant John R. Borneman ("Borneman"), by and through counsel, states as follows in his Counterclaims against Plaintiff Afterburner, Inc. ("Afterburner"):

JURISDICTION AND VENUE

1.

Borneman does not admit or consent to personal jurisdiction against himself by including these Counterclaims, but asserts these counterclaims so that these claims will not be waived in the event that the Court determines that he is subject to personal jurisdiction.

2.

Afterburner has submitted itself to the jurisdiction and venue of this court by

3.

Pursuant to O.C.G.A. §9-11-13(a) these counterclaims are being brought against Afterburner in this action because they arose out of the employment relationship between Afterburner and Borneman and should be adjudicated along with Afterburner's claims.

FACTS

4.

On or about September 23, 2008, Afterburner and Borneman entered into a Work for Hire Agreement ("Work for Hire Agreement"). (Exhibit 1¹).

5.

The Work for Hire Agreement provided that Borneman was to perform certain services for Afterburner during September and October of 2008.

6.

Pursuant to the Work for Hire Agreement, Afterburner agreed to pay Borneman the amount of \$8,250 for Borneman's services, including preparing materials for customers, preparing and delivering a workshop to Afterburner personnel, and performing as an event lead and wingman at various workshops.

¹ Exhibits referenced in Borneman's Counterclaim refer to Exhibits previously filed as Exhibits to Defendants' Answer to Second Amended Complaint filed December 27, 2010.

Afterburner also agreed to compensate Borneman for expenses incurred in performance of the Work for Hire Agreement.

8.

In addition to the work provided for in the Work for Hire Agreement, Borneman further agreed to act as a "Co-Lead" for an event during October of 2008 instead of acting as an "event wingman" as originally provided in the Work for Hire Agreement.

9.

In consideration for the additional work Borneman performed as a "Co-Lead," Afterburner prepared an amended Work for Hire Agreement ("Amended Work for Hire Agreement") and asked Borneman to sign it. (Exhibit 2). Pursuant to the Amended Work for Hire Agreement, Afterburner agreed to pay Borneman the amount of \$9,125 for work performed.

10.

Borneman signed and executed the Amended Work for Hire Agreement dated October 21, 2008. (Exhibit 3).

11.

Borneman has performed all work and services provided for in the Amended Work for Hire Agreement and is due \$9,125 for work performed under the

Amended Work for Hire Agreement.

12.

To date, Afterburner has not paid Borneman for work performed under the Amended Work for Hire Agreement.

13.

Borneman submitted invoices, with receipts, after his trips dated September 26, 2008, October 2-3, 2008, and October 10, 2008, all of which Borneman undertook in performance of the Amended Work for Hire Agreement. (Exhibit 4).

14.

On November 21, 2008, Borneman emailed Afterburner inquiring about the payment he was to receive for performance of the Amended Work for Hire Agreement. (Exhibit 5).

15.

Borneman received an email from Catherine Peck at Afterburner stating that she would check on the status of the payment and let Borneman know when he could expect payment.

16.

Borneman received an email on November 25, 2008, from Catherine Peck stating that Borneman would not be paid until January of 2009. (Exhibit 5).

17.

To date, Borneman has not received any payments in satisfaction of the Amended Work for Hire Agreement and Afterburner's promise to compensate him for expenses incurred in the performance of the Amended Work for Hire Agreement.

18.

Further, in conjunction with the termination of his employment by and provision of services to Afterburner, Borneman has requested on numerous occasions that Afterburner as well as the administrator of Afterburner's 401K plan to provide a distribution and/or rollover of Borneman's funds in Borneman's account in Afterburner's 401K plan.

19.

Despite Borneman's aforesaid requests, Afterburner and its administrator have field and refused to provide Borneman the distribution and rollover of plan benefits to which Borneman is entitled.

20.

Borneman has suffered economic damages as a result of Afterburner's actions in breaching the Amended Work for Hire Agreement and its promises.

COUNT I:

BREACH OF CONTRACT

21.

Defendants reallege as if specifically set forth herein all the preceding allegations and further alleges as follows:

22.

Afterburner and Borneman entered into a valid, mutually binding contract.

23.

Borneman performed his obligations under the Amended Work for Hire Agreement.

24.

Borneman submitted his expense reports and receipts as required by the Amended Work for Hire Agreement and Afterburner's promise to pay expenses incurred in the performance of the Amended Work for Hire Agreement.

25.

Afterburner failed to pay Borneman the compensation owed under the Amended Work for Hire Agreement.

26.

Afterburner's failed to pay Borneman expenses incurred in the performance of the Amended Work for Hire Agreement pursuant to Afterburner's promise to do so.

27.

Afterburner's failure to pay Borneman for services rendered under the

Amended Work for Hire Agreement constitutes breach of contract.

28.

Afterburner's failure to perform on its promise to pay Borneman expenses incurred in the performance of the Amended Work for Hire Agreement constitutes breach of contract.

29.

Borneman was injured by the breaches and is entitled to damages.

30.

The aforementioned conduct by Afterburner constitutes intentional, willful, wanton, and fraudulent conduct and entitles Borneman to punitive and exemplary damages under O.C.G.A. §51-12-5.1.

31.

Afterburner has acted in bad faith and caused Borneman unnecessary trouble and expense and Borneman is therefore entitled to attorneys' fees and costs incurred in bringing this counterclaim.

COUNT II:

UNJUST ENRICHMENT

32.

Defendants reallege as if specifically set forth herein all the preceding allegations and further alleges as follows:

Afterburner benefited from Borneman's actions when he performed the work provided for in the Amended Work for Hire Agreement.

34.

Borneman paid all expenses related to his work performed under the Amended Work for Hire Agreement, including airfare, transportation, and lodging.

35.

Afterburner has unjustly benefited from Borneman's performance.

36.

Afterburner has not satisfied its part of the Amended Work for Hire Agreement and its promises to pay Borneman for expenses incurred in the performance of the Amended Work for Hire Agreement.

37.

Borneman was injured and is entitled to damages.

38.

The aforementioned conduct by Afterburner constitutes intentional, willful, wanton, and fraudulent conduct and entitles Borneman to punitive and exemplary damages under O.C.G.A. §51-12-5.

39.

Afterburner has acted in bad faith and caused Borneman unnecessary trouble

and expense and Borneman is therefore entitled to attorneys' fees and costs incurred in bringing this counterclaim.

COUNT III:

ERISA VIOLATIONS

40.

Defendants reallege as if specifically set forth herein all the preceding allegations and further alleges as follows:

41.

By the foregoing actions and misconduct, Afterburner has violated ERISA by arbitrarily and capriciously denying Borneman's request for benefits, specifically his request for distribution and/or rollover of the vested funds in Borneman's own account in the Afterburner 401K plan. 29 USC § 1132(a)(1)(B).

42.

By the foregoing actions and misconduct, Afterburner has violated its fiduciary and statutory duties and obligations, and or has caused its plan administrator to violate its fiduciary and statutory duties and obligations, owed to Borneman by arbitrarily and capriciously denying Borneman's request for benefits, specifically his request for distribution and/or rollover of the vested funds in Borneman's own account in the Afterburner 401K plan. 29 USC §§ 1104, 1105.

By virtue of the foregoing actions and misconduct of Afterburner, Borneman is entitled to an award of attorneys fees because of Afterburner's willful and intentional misconduct in derogation of Borneman's rights to his pension monies. 29 USC § 1132(g)(1).

DEFENDANTS' COUNTERCLAIMS AGAINST PLAINTIFF AFTERBURNER AND COUNTERCLAIM DEFENDANT MURPHY

Defendants above named, by and through counsel, states as follows in these Counterclaims against Plaintiff Afterburner, Inc. ("Afterburner") and Counterclaim Defendant Murphy ("Murphy"):

JURISDICTION AND VENUE

1.

No named Defendants either admit or consent to personal jurisdiction against them by including these Counterclaims, but asserts these counterclaims so that these claims will not be waived in the event that the Court determines that they are subject to personal jurisdiction.

2.

Afterburner has submitted itself to the jurisdiction and venue of this court by filing the instant action.

Murphy has likewise submitted himself to the jurisdiction and venue of this court by causing and directing the filing of this instant action, as well as by his commission of tortious acts in and causing harm and damages in this jurisdiction and venue.

4.

Pursuant to O.C.G.A. §9-11-13(a) and (h), §9-11-14(a), §9-11-19(a), and §9-11-20(a), these counterclaims are being brought against Afterburner and Murphy in this action because they arose out of the same transactions and relationships that are the subject of this action and have common questions of law and fact, such that these counterclaims against Afterburner and Murphy should be adjudicated along with Afterburner's claims.

FACTS

5.

Afterburner and Murphy are employers regularly engaged in interstate commerce and is an employer within the meaning of the FLSA, 29 USC §§ 203, 206, 207, and 215.

6.

Afterburner and Murphy employed the individual Defendants as well as many other similarly situated employees at various times over the course of the

three years prior to the institution of this action, such that the individual Defendants and other similarly situated individuals were their employees under 203(e)(1) of the FLSA.

7.

Afterburner and Murphy misclassified the individual Defendants as well as many other similarly situated employees as "independent contractors" during this time period solely in an effort to avoid their obligations and responsibilities under the FLSA and or other laws and regulations such as the unemployment compensation laws.

8.

Afterburner and Murphy caused the individual Defendants as well as many other similarly situated employees to perform work during this time period, but willfully and intentionally failed to keep proper records of time worked by these employees.

9.

Afterburner and Murphy willfully and intentionally failed to properly pay minimum wage and overtime for all hours worked during this time by these employees.

10.

For at least three years Afterburner and Murphy have been aware of the

requirements of the FLSA and their violations of the FLSA yet despite said knowledge knowingly and intentionally failed to properly compensate the individual Defendants as well as many other similarly situated employees in accordance with the requirements of the FLSA.

11.

Afterburner and Murphy made a series of representations and promises to the individual Defendants designed to entice and encourage the individual Defendants to undertake employment with Afterburner and Murphy as well as to entice and encourage the individual Defendants to remain in their employment with Afterburner and Murphy, which representations and promises included the representation and promise that in addition to the compensation in the form of certain fees and monies paid to the individual Defendants for their work, Afterburner and Murphy would also compensate the individual Defendants with equity ownership, in the form of stock or shares, in Afterburner.

12.

Afterburner and Murphy from time to time made such representations in the form of promised ESOP plan documents, in the form of promises to make loans against stock purchases, in the form of "credits," and otherwise.

13.

Afterburner and Murphy and other principals and officers of Afterburner

made the individual Defendants aware of such promises and representations on various occasions particularly at times when there was discontent among Afterburner employees such that Afterburner and Murphy felt themselves to be in some danger of losing the services of various employees including the individual Defendants.

14.

Afterburner and Murphy also made misrepresentations to the individual Defendants regarding their misclassification as independent contractors, knowing them to be false, with no intention of keeping such representations and promises, intending that the individual Defendants rely upon the false representations and promises, and upon which they did reasonably so rely, but to their detriment and harm.

15.

Afterburner and Murphy made such representations and promises knowing them to be false, with no intention of keeping such representations and promises, intending that the individual Defendants rely upon the false representations and promises, and upon which they did reasonably so rely, but to their detriment and harm. Specifically,

a) Afterburner and Murphy each made representations (or caused same to be made) to each Defendant in their respective Employment Agreements as attached to the Complaint herein to the effect that the Defendants were not employees but were instead independent

- contractors and thus not entitled to the protections of the FLSA such as and including overtime compensation;
- b) Afterburner and Murphy made promises of second-tier additional compensation pay per events performed greater than 20 per year, but failed to pay compensation as promised;
- c) Afterburner and Murphy each made representations (or caused same to be made) to each Defendant at various "summit" and other meetings that they would be made owners and would share in the equity of Afterburner instead of just being paid for their work;
- d) Afterburner and Murphy each made representations (or caused same to be made) to each Defendant that they would be issued shares and/or credits in an ESOP program permitting them to share in the profits of the company;
- e) Afterburner and Murphy each made such representations (or caused same to be made) to each Defendant at or around the various times that Defendants would have come to be unhappy with Afterburner and Murphy and their treatment of Defendants so that Defendants were contemplating leaving the employ of Afterburner and Murphy;

16.

Afterburner and Murphy thereby fraudulently harmed the individual Defendants.

17.

Afterburner and Murphy are aware that Afterburner has brought frivolous and unfounded claims against Defendants such as suing upon alleged trademarks not owned by Afterburner, claiming ownership of generic concepts and terms created by third parties and taught to Murphy as well as the individual Defendants by the United States military, making allegations unsupported by any evidence,

and seeking to prevent the individual Defendants from pursuing a livelihood using their own training, knowledge, and experience, and seeking to prevent the individual Defendants from engaging in free and fair competition in their business of corporate consulting and speaking.

18.

Afterburner and Murphy have joined in an arrangement among themselves designed to unreasonably restrain competition in the interstate commerce by initiating serial lawsuits against former employees such as the individual Defendants designed to force them to incur significant and substantial legal fees in an effort to dissuade them from pursuing their right to engage in free and fair competition in their business of corporate consulting and speaking.

19.

Afterburner and Murphy have joined in such arrangement which affects interstate commerce and has produced a *per se* violation and pernicious effect on competition, lacks any redeeming virtue, and tends to unduly and unreasonably restrict competition.

20.

Afterburner and Murphy have engaged in this action in particular, both in the initiation thereof and in the defense and resistance of the counterclaims asserted herein, with malice and without substantial justification as set forth in OCGA § 51-7-81, and have been stubbornly litigious and acted in bad faith as set forth in OCGA §13-6-11, and have asserted claims, defenses, and positions completely lacking in any justiciable issue of law and/or fact as set forth in OCGA §9-15-14.

21.

Afterburner and Murphy have maliciously and with no good reason other than to cause unnecessary distress withheld and converted personal property of at least one individual Defendant, specifically the helmet, G-suit, helmet bag, and flight suit of Defendant Howlin, which Howlin requested in writing more than a year ago to be returned to him because "These are items I would like to keep and pass on to kids."

22.

Afterburner and Murphy, however, despite numerous requests as early as July 19, 2009, has failed and refused to return Howlin's personal property, and instead deprived Howlin of the use of said personal property, and instead illegally converted Howlin's said personal property to their own use.

23.

Afterburner and Murphy have taken other actions with an intent to cause malicious harm to Defendants, such as failing and refusing to pay Defendant Howlin monies owed to him for services performed in connection with an MTI

follow on program in the amount of \$4,000, and in failing and refusing to pay Defendant Lohrenz travel expenses incurred in performance of services for Afterburner and Murphy in the amount of \$500.

24.

Afterburner and Murphy conspired to take the aforesaid actions so as to harm Defendants.

25.

Afterburner and Murphy conspired to take the aforesaid actions so as to harm Defendants.

26.

Afterburner and Murphy conspired to take the aforesaid actions so as to harm Defendants.

27.

Defendants have suffered economic damages as a result of Afterburner's and Murphy's aforesaid actions and misconduct.

COUNT I:

FLSA COMPENSATION, LIQUIDATED DAMAGES, ATTORNEYS FEES

28.

As a result of Afterburner's and Murphy's violations of the FLSA, the individual Defendants as well as many other similarly situated employees are

entitled to unpaid wages and benefits for the time worked by not properly compensated, for an additional equal amount of liquidated damages, and to attorneys fees pursuant to 29 USC §216(b).

COUNT II: [deleted]

29.

[This count and paragraph deleted per the Court's Order of March 11, 2011, on Defendants' Motion for Permission to make Counterclaims.]

COUNT III:

ABUSIVE LITIGATION, STUBBORNLY LITIGIOUS BAD FAITH CONDUCT, AND UNFOUNDED LITIGATION

30.

The aforesaid misconduct by Afterburner and Murphy entitle Defendants to an award of attorneys fees pursuant to OCGA § 9-15-14, 13-6-11, and 51-7-81.

COUNT IV:

FRAUD AND PROMISSORY ESTOPPEL

31.

The aforesaid actions and misconduct by Afterburner and Murphy constitute fraud and promissory estoppel entitling Defendants to relief as requested below.

COUNT V:

CONVERSION

32.

The aforesaid actions and misconduct by Afterburner and Murphy constitute conversion entitling Defendants to relief as requested below.

COUNT VI:

CIVIL CONSPIRACY

33.

The aforesaid actions and misconduct by Afterburner and Murphy constitute civil conspiracy entitling Defendants to relief as requested below.

COUNT IV:

ATTORNEYS FEES

34.

The aforesaid actions and misconduct by Afterburner and Murphy entitle Defendants to an award of attorneys fees pursuant to the Georgia Trade Secrets Act, OCGA § 10-1-760 et seq, and the Lanham Act 15 USC § 1117(a) et seq.

WHEREFORE, having fully answered Plaintiff's Third Amended Complaint and having asserted Counterclaims against Plaintiff Afterburner and Counterclaim Defendant Murphy, Defendants respectfully request the following:

1. The dismissal of Plaintiff's claims against Defendants with prejudice and the entry of judgment for Defendants;

- 2. The entry of judgment to Borneman on the Borneman counterclaims and the award of damages, punitive damages, and attorneys' fees to Borneman on the Borneman counterclaims;
- 3. The entry of judgment to all Defendants on the Defendants' counterclaims against Afterburner and Murphy including the award of damages, unpaid FLSA compensation, liquidated damages, punitive damages and attorneys' fees to Defendants from Afterburner and Murphy;
- 4. An award of punitive damages to Defendants pursuant to O.C.G.A. §51-12-5.1 to the extent Plaintiff has brought its claims in bad faith and with malice;
- 5. Orders requiring Afterburner and Murphy (a) to release Borneman's 401K funds per Borneman's instructions, and (b) to return Howlin's personal property forthwith;
- 6. An award to Defendants of their expenses and costs, including attorneys' fees; and
- 7. Such other relief that is just and proper.

Respectfully submitted on this 25th day of April, 2011.

By: USKnelly

Tracy L. Moon, Jr.

Georgia Bar No.: 518050

Walter J. Kruger III

Georgia Bar No. 429926

James M. Hux, Jr.

Georgia Bar No. 567320

FISHER & PHILLIPS LLP

1075 Peachtree Street, NE

Suite 3500

Atlanta, GA 30309

(404) 240-4246 (T)

(404) 240-4249 (F)

Attorneys for Defendants

IN THE SUPERIOR COURT OF FORSYTH COUNTY STATE OF GEORGIA

AFTERBURNER, INC.,)	
Plaintiff,	,	CIVIL ACTION FILE
•)	
THE CORPS GROUP, JOHN)	
BORNEMAN, CAREY LOHRENZ,)	
KYLE HOWLIN, and JOHN)	
UNDERHILL,)	
Defendants,)	
)	
v.)	
)	
AFTERBURNER, INC., and)	
JAMES "MURPH" MURPHY,)	
Counterclaim Defendants.)	
	_)	

EXHIBITS

Filed and served herewith as Exhibits pursuant to OCGA 9-11-14 (c) are copies of prior pleadings including:

- 1. Complaint
- 2. Amended Complaint
- 3. Answer to Amended Complaint
- 4. Second Amended Complaint
- 5. Answer & Counterclaims to Second Amended Complaint
- 6. Third Amended Complaint

Walter J. Kruger III

Tracy L. Moon, Jr.

IN THE SUPERIOR COURT OF FORSYTH COUNTY STATE OF GEORGIA

)
)) CIVIL ACTION FILE) NO.: 09-CV-2844
))))
))))

CERTIFICATE OF SERVICE

I certify that on April 25, 2011, I served a copy of the foregoing DEFENDANTS' ANSWER & DEFENSES TO PLAINTIFF'S THIRD AMENDED COMPLAINT & COUNTERCLAIMS on Plaintiff's counsel via U.S. First Class Mail, postage prepaid, addressed as follows:

Tomesha L. Faxio AFTERBURNER, INC. 55 Ivan Allen Jr. Blvd, Suite 525 Atlanta, Georgia 30308

Stephen M. Dorvee J. Tucker Barr

171 17th Street NW Suite 2100 Atlanta, GA 30363

By

Walter J. Kruger III Tracy L. Moon, Jr.

EXHIBIT A-4

1	28-March-2014 Afterburner Vol 6 final IN THE SUPERIOR COURT OF FORSYTH COUNTY STATE OF GEORGIA		
2	onite a dealan		
3	Afterburner, Inc.,)	
4	Pl ai nt i f f		
5	VS.)	
6	The Corps Group, John)) Case Number	
7 8	Borneman, Carey Lohrenz, Kyle Howlin, and John Underhill,) 09CV- 2844	
9	Def endant and	Jury Trial	
10	Counterclaim Plaintiffs,) Volume 6	
11	Afterburner, Inc.,		
12	and James Murphy,		
13	Count er cl ai m Def endant s.))	
14)	
15			
16			
17	, , ,		
18	For syth County Courthouse		
19	March 28, 2014		
20			
21			
22	TOSHA S. SEANEY, CSR 100 Courthouse Squar		
23	Suite 160 Cumming, Georgia 300		
24	770. 354. 1981		
25			
		859	
1	APPEARANCE OF COUNSEL	:	
2	ON DELINE OF THE BLANKE E	OLALAA DEEENDAA TO	
3	ON BEHALF OF THE PLAINTIFF and COUNTER	CLAIM DEFENDANTS:	
4	Stephen Melvin Dorvee, Esquire Arnall Golden Gregory LLP		
5	171 17th Street, N.W., Suite 2100 Atlanta, Georgia 30363-1031 404-873-8680		

28-March-2014 Afterburner Vol 6 final 15 we've got the screen here with the Power Point, and a screen here with the Power Point. And then 16 17 we've got a big screen right behind me that has 18 my picture like when you go to the concert. And when you're looking at her, anybody in a 19 flight suit, you can see that big patch, that big 20 21 Corps Group patch. And then we had two 22 demonstratives. Theirs say big Afterburner and ours say a big Corps Group patch. 23 24 And Mr. Murphy's testimony, and this is one 25 of the deposition things where we said to him 950 1 Now, if you're wearing a flight suit, and you got 2 a big Corps Group patch on you, that would be 3 a --MR. DORVEE: Your Honor, is he arguing a 4 5 deposition? 6 MR. KRUGER: That we impeached him with. 7 MR. DORVEE: I'm sorry. 8 MR. KRUGER: I'm sorry. That that -- so. anyway. So the testimony was if you had a big 9 patch on it that said Corps Group, then that 10 would be a, quote, clear indication that the 11 12 person didn't work for Afterburner. And he said clear indication. 13 14 So, aside from the fact that they don't have 15 a trademark on their generic, you know, green, no-marks flight suit. They've applied for one, 16 which seems ridiculous because it's clearly 17 generic. They don't have it yet. We've applied 18

for one to sort of protect ourselves, and say:

19

20	28-March-2014 Afterburner Vol 6 final Well, gee, certainly we should have a trademark
21	on our patch and our logo.
22	But the point is: Even if they want to claim
23	we shouldn't wear a flight suit because they want
24	to claimits their trade dress, or claim, well,
25	we've got an application pending, the fact is if
	951
1	you just go to the very basic well, is there
2	anything confusing about what we're doing?
3	Well, if they admit wearing a patch is a
4	clear indication you don't work for us, then I
5	don't see how there could be any confusion on
6	that. So, that's what I have to say about why
7	there shouldn't be a case on the flight suit.
8	Now I guess I have one more thing to say
9	about the flight suit is that it's certainly
10	I'm trying to think of what everybody's said so
11	far. What everybody has said so far is it is
12	certainly not unique for a pilot who presents to
13	businesses to wear a flight suit.
14	And that's another thing, it's not confusing
15	because it's a clear indication you work for
16	them And if it's not unique, it's pretty weak.
17	And so, I don't think there should be a trademark
18	case on the flight suit.
19	* * *
20	Motion for Directed Verdict Regarding
21	Borneman Contract Claim
22	* * *
23	MR. KRUCER: The last thing let me slow
24	down a little bit. The last thing is moving away

28-March-2014 Afterburner Vol 6 final 4 5 THE COURT: Motion for directed verdict 6 granted as to the counterclaim under contract for 7 the \$10,800, I believe it was. Granted. 8 MR. KRUGER: That you, sir. 9 MR. DORVEE: Okay. With regard to the trademarking and trade dress claims, the trade 10 dress has been used extensively. It's not just 11 12 the use of flight suits. Mr. Murphy testified its use of fighter pilot imagery and so on. 13 14 Fighter pilot imagery used in a business 15 consulting context. There is no question that Afterburner has 16 17 spent 18 years promoting that trade dress, 18 particularly the flight suits, jet fighter pilot 19 imagery. Just because they don't do the same 20 thing in terms of the way they present it doesn't 21 mean that there's not infringement. 22 Afterburner has been -- has been the 23 exclusive business consultant in this area. They've spent 18 years in this area. It's sent 24 millions of dollars promoting itself and its 25 954 1 trade dress. The trade dress is strong. He keeps talking about a generic flight suit. 2 3 If you're in the military, yeah, that's generic.

He keeps talking about a generic flight suit.

If you're in the military, yeah, that's generic.

But if you're in business consulting, that's not generic. That's what's called arbitrary.

There's no more reason for anyone to wear a flight suit while doing business consulting than there would be for someone to wear a clown suit Page 81

4

5

6

7

8

28-March-2014 Afterburner Vol 6 final when they're consulting, which is ridiculous.
Or, you know, a mechanic's suit, or a NASCAR racer's suit. Those are all arbitrary uses. All arbitrary use.

Therefore, Afterburner's trade dress -- and it also has a secondary. It has been widely promoted, as Michelle Lemmons said, the only one in town, the only one that anybody has talked about that does a similar thing is The Corps Group.

And when I say "similar thing," it was pretty clear, and that's why we had all of this evidence about what they did in the process. I'm sorry, not the process. The consulting processes they used. That's their product. Their product definitely competes with our product.

They acknowledged in their business plan that

their product, or that they were competing with us. And they mentioned the reason that set us apart is that we had a military planning format.

I think they said military planning format.

They went out, basically did a very, very similar product, and marketed it in an identical or similar way. It doesn't need to be identical. It needs to be confusingly similar. And you got that big patch.

First of all, you know, that's after the seminar's going on. Look at the videos. You can't tell what that patch says. You look at a lot of things. You can't tell what that patch Page 82

22	say that all of these things are very clear that they weren't palming off anything with	
	they weren't parming our anything with	
24	Afterburner because they say time and time again	
25		
25	that they are they are The Corps Group.	204
		964
1	But the last thing I we're talking about	
2	common words, and well, all I was going to say	
3	about that is the task saturation thing, it's	
4	common words that describe a human condition, and	
5	we could certainly talk about it.	
6	That's all I have. Thank you, sir.	
7	* * *	
8 F	Ruling of the Court Regarding Trademark Issues	
9	* * *	
10	THE COURT: I believe there are questions for	
11	a jury on these issues of trademark and trade	
12	dress issues. They're all questions of fact that	
13	a jury is going to have to decide. Motion for	
14	directed verdict is denied.	
15	MR. KRUGER: Thank you, sir.	
16	THE COURT: All right. So, that does it.	
17	All right. So are y'all ready to call your first	
18	witness?	
19	MR. ELKON: There's one issue that we wanted	
20	to revisit, Your Honor. And that's simple to the	
21	extent that your ruling on the motion to strike	
22	the expert witness's testimony yesterday was	
23	based on the fact that breach of contract claims	
24	were still around.	
25	THE COURT: I may have said that indicta, but	

IN THE SUPERIOR COURT OF FORSYTH COUNTY STATE OF GEORGIA

AFTERBURNER, INC.,

PLAINTIFF,

VS.

THE CORPS GROUP, CRUISER GROUP LLC,
DIRTMAN LLC, MACH 6 LLC, JOHN BORNEMAN,)
CAREY LOHRENZ, KYLE HOWLIN, and
ANDREW DINGEE,

DEFENDANTS.

)

VOLUME 9 OF 9

JURY TRIAL
HEARD BEFORE HONORABLE JEFFREY S. BAGLEY, JUDGE
ON APRIL 1, 2014
AT THE FORSYTH COUNTY COURTHOUSE, CUMMING, GEORGIA

APPEARANCES:

STEPHEN DORVEE, ESQUIRE THERESA KANANEN, ESQUIRE LAUREN GREGORY, ESQUIRE ATTORNEYS AT LAW ATLANTA, GEORGIA

FOR THE PLAINTIFF

WALTER KRUGER, III, ESQUIRE MICHAEL ELKON, ESQUIRE TRACY MOON, ESQUIRE ATTORNEYS AT LAW ATLANTA, GEORGIA

FOR THE DEFENDANTS

KAYLA PETERS, RPR, CCR APPALACHIAN COURT REPORTING POST OFFICE BOX 943 BLAIRSVILLE, GEORGIA 30514 (706) 745-4455 THE COURT: You may stand down, ma'am.

THE WITNESS: Thank you.

2.

1.3

2.4

THE COURT: Further rebuttal evidence, Mr. Dorvee?

MR. DORVEE: No, your Honor.

THE COURT: Ladies and gentlemen, the evidence in this case is now closed. That's all the evidence. The next step is for the Court to discuss with the parties and the lawyers the charge. And that's going to take us a little while to do that, probably at least 30 minutes or so or a little bit longer to do that. But we hope to get that done in short order so that we can then bring the closing arguments to you.

So within 30 to 45 minutes, I would hope that we could begin with closing arguments in the case. And after the closing arguments, I will charge you on the law. So there's going to be a little downtime for you now while we take some matters up outside your presence before the closing arguments. So if you'll just be at ease and as soon as we get ready, we'll have you back in and we'll start the closing arguments.

(The jury exited the courtroom.)

THE COURT: All right, Counsel. So, Counsel, whenever you're ready, I think you had another motion.

MR. KRUGER: Oh, thank you, sir. I'm sorry. That's why I asked to help me remember. Thank you, sir. Yes,

sir. We would renew to preserve our arguments about directed verdict so -- let me think. We talked about the trademark and the trade dress claims, which I think are primarily all the claims that are left. Conspiracy, that kind of thing, I think they all rely on trademark and trade dress claims.

And so I don't want to repeat the arguments, but if it's okay with the Court, I'll just say we would renew — based upon the arguments earlier that we made, that we'd ask for directed verdict on the remaining claims that the plaintiffs have against us, and that's all I want to say.

THE COURT: Counsel.

1.3

2.4

MR. DORVEE: Very briefly, your Honor. I don't know where this is an issue to go to the jury. Nothing's changed in terms of the evidence, therefore, we request that their motion be denied. While we're at it, we renew our motion for directed verdict as well just for purposes of the record.

THE COURT: Considering the defendants' motion for directed verdict, I believe there is sufficient evidence to send to the jury of the -- let's see. I believe there's -- I have to look at the evidence. There's a registered mark for Flawless Execution that's in the evidence. There's a registered mark for Task Saturation. That's in the evidence.

THE COURT: What about plan, dot, brief, dot, execute, dot, debrief equals win?

MR. DORVEE: We're not claiming that anymore. I don't believe it's in the documents.

I'm going to grant a directed verdict as to that particular one. All right. So what we have then are the registered — those three registered marks that are being sought or claimed that there was a claim of infringement on and the two common law marks that there's a claim of infringement on, the "plan, brief, execute, debrief, win lessons learned" and the "execution rhythm."

MR. DORVEE: Correct.

1.3

2.4

THE COURT: That's what I have. Is there any other for the marks?

MR. DORVEE: Yes, that's what I have.

THE COURT: All right. Now, what about the -- let's see. Going back to the pretrial order, you said there was also filed application for a service mark registration for its use of the flight suit with the U.S. Patent and Trademark Office in July of 2010. So you're claiming a service mark for its use of a flight suit?

MR. DORVEE: Correct, but it's really -- it's all part of the trade dress at this point.

THE COURT: Oh, it is? See, that's what I'm -- I've

been confused about service mark, trade dress.

MR. DORVEE: It's a service mark, your Honor. We claim that we would use it as a service mark, that's correct, but it is not a registered service mark yet, but it's also part of the trade dress.

THE COURT: So is your claim for infringement of a service mark or is your claim for infringement of trade dress?

MR. DORVEE: Both.

1.3

2.4

THE COURT: Okay. The trade dress claim is, I thought, the flight suit in conjunction with the --

MR. DORVEE: Imagery.

THE COURT: -- imagery of camouflage netting, of the bullhorns, the running on the stage in flight suits, etcetera. That's the trade dress.

MR. DORVEE: Mostly it is flight suit, plus jet fighter pilot imagery.

THE COURT: Plus jet fighter pilot imagery.

MR. DORVEE: The trade dress is the overall impression, it's not the specificity of the setting.

THE COURT: Okay. But how does that -- but how can you claim also a service mark for the flight suit? I thought you were saying anybody -- I thought you were saying this gentleman who's seated in the courtroom, he can wear his flight suit and he can talk about anything. The

flight suit is not something -- I thought you were saying the flight suit is not something that we're claiming we have exclusive right to use.

1.3

2.4

MR. DORVEE: No, that's not what we're saying, your Honor. What we're saying is we're not claiming, as defense would claim, we're not claiming nobody anywhere -- we're not saying, we've asserted our registration. Nobody anywhere can use a flight suit. The way the law works is you get a registration. We get our registration. And what you do is you go after people who are doing confusingly similar things. It doesn't just say, well, I got this mark and, therefore, you all can stop. There still has to be somebody doing something we believe is confusingly similar.

And, for example, the testimony of Vernice Armour and Waldman goes right to that point. Vernice shows up in a flight suit. She doesn't do what we do. I mean, she talks about diversity. Mr. Waldman admitted, I don't know what they do. I give keynotes, but I don't know what they do. I talk about trust.

And I don't think we need to go beyond the facts of this case. We're saying we have trademark rights in this flight suit for these consulting services and their infringement on it. The rest of the world, you know, that's left for the future. If we get a trademark registration, if there's likely a confusion, then they're

liable. That doesn't mean we automatically get to go out and send demand letters to people who want to march in Memorial Day parades. It has to be something confusingly similar, i.e., something that's competitive, before we can even get interested in it.

1.3

2.4

So the mere fact trademarks -- trademark rights are deemed for use, not for registration. And just because you got a registration, you don't necessarily -- doesn't mean you get the whole universe. You can't stop veterans from -- it has to go through likelihood of confusion analysis. And in this case they infringed that, and that's as far as we're going and that is the claim in the case.

So just to summarize, we did say we're not trying to sue everybody in the world. We did say there are people using these flight suits that don't compete with us. They don't do what we do. We're not interested in going around the world and stopping everybody from using the flight suit. That was never the intent.

THE COURT: What do you say, Mr. Kruger?

MR. KRUGER: Well, I wanted to bring up one point on the flight suit in particular because it's not registered. They did put in that application, but that application is on hold, for lack of a better word. So even though they — with the other three things that you got as registered marks, they've been granted. We can still argue about

trademark infringement claims of the "plan, brief, execute, debrief, win, lessons learned plus design" and "execution rhythm," so not granted. This was in the case, plan, dot, brief, dot, execute, dot, debrief equals win, they withdraw that. Directed verdict granted as to that.

2.4

Service mark fighter pilot flight suit, the question is, could the jury -- is there any evidence that there even could be infringement on a service mark of a fighter pilot suit? They got the trade dress claim which is -- and I'm going to deny motion for directed verdict as far as the trade dress claim.

That one they're claiming, you know, we got — we use a flight suit in conjunction with, you know, the fighter pilot theme music, the video displays, mimicking the fighter jet radar screen, the seminar material, mimicking fighter pilot mission planning documents, parachutes, camouflage, so I'm denying the motion for directed verdict as to the trade dress infringement claim. I think there's a question of fact as to whether the trade dress has been infringed, but I'm having trouble with this service mark. All it is is a flight suit. I'm having trouble with that one.

MR. KRUGER: I have one thing to cover on that.

THE COURT: Go ahead.

MR. KRUGER: Really, I don't think they can claim that

had forgotten. I didn't think he said he wasn't the first. Be that as it may, he was the first person to use it in this way, in this non-functional, arbitrary way.

1.3

2.4

THE COURT: Isn't that trade dress? Isn't that your trade dress claim?

MR. DORVEE: It's also a service mark claim. We're splitting hairs, to be honest with you, your Honor. I believe we have a service mark claim as well as trade dress claim. The service mark claim only relates to the flight suit. The trade dress claim is much broader.

MR. KRUGER: Your Honor, in addition to the timing of filing, they didn't even file for it until after the lawsuit. Two more things: There's been questions and answers about Chuck Yeager, and that's certainly in evidence that he did it. There's been questions and answers about the Sky Warriors and what they taught to who, whether it was business people and whether it wasn't business people, but it certainly included business people and they wore it.

And then the last thing, all these things -trademark, service mark, blah, blah, blah -- they're
supposed to be about identifying a particular
source. Well, this particular service mark application
that they don't file until two years past the lawsuit, it
doesn't identify anything because it is as generic as

anything you could imagine. It's this drawing of a flight suit, but it doesn't matter what color it is. It could be purple. It could be orange. That doesn't identify anybody. It doesn't have any markings on it. The truth is, there's no testimony that they ever tried to identify their business with a generic unmarked flight suit. All of their flight suits have a big Afterburner patch on it, so there should not be a claim on that.

1.3

2.4

MR. DORVEE: Very briefly, your Honor. Chuck Yeager has nothing to do with this. Chuck Yeager is a great guy, hero, he doesn't have the discretion of speaking in his flight suit. We're not talking about that. That's not what our service mark claims. We're not saying we can stop everybody, anywhere. And, once again, there's a likelihood of confusion. Does anybody confuse Chuck Yeager with us? The answer is no. Is anybody going to confuse Waldo with us? No, he doesn't do the same thing.

The fact of the matter is we're entitled for a service mark placed against those people that are doing something that's confusingly similar, and that's the defendants.

What they're trying to argue is there's third party use out there. That's an argument that goes to the weight of the evidence, not as to whether or not it goes to the jury. Third party use, yeah, they can claim for some reason it's not distinct because we got other people out

EXHIBIT A-5

there doing this. I think that evidence of third party use is weak, but it goes to the jury as a service mark claim and as a trade dress claim.

1.3

2.4

THE COURT: I'd like to take a few moments to review the law on this and this one issue, so I'll take about five minutes.

(After a recess, proceedings were continued as follows:)

THE COURT: I go back to the definition of service mark: "A service mark is in the word, name, symbol or device or combination used to identify and distinguish the services of one person, including a unique service, from the services of others."

So what is it about a flight suit that itself, the symbol, distinguishes the services of Afterburner from the services of anybody else? I'm talking about what kind of services, and your argument is, well, it's the kind -- no. The definition is the symbol itself. What is it about the symbol that distinguishes the services of one versus -- and there is nothing; nothing, zero. A flight suit, a generic flight suit, is a flight suit. It is about the symbol itself, it's not -- it is not a service mark and it is -- motion for directed verdict granted as to the service mark, not trade dress.

Now, I'm denying the motion for directed verdict as to

EXHIBIT A-6

ESTTA Tracking number:

ESTTA432866

Filing date:

09/28/2011

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	Michael Elkon	
information	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				
Rolated	Afterhumer Inc. v. The Come 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

Michael P. Elkon

Georgia Bar No. 243355

FISHER & PHILLIPS LLP

1075 Peachtree Street, NE

Suite 3500

Atlanta, GA 30309

(404) 240-4246 (T)

(404) 240-4249 (F)

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

EXHIBIT A





