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

Proceeding	91201830
Party	Defendant Afterburner, Inc.
Correspondence Address	MICHAEL C MASON THE LAW OFFICE OF MICHAEL C MASON 1960 ROSECLIFF DRIVE NE ATLANTA, GA 30329 UNITED STATES Email: mmtmlaw@gmail.com
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Michael C. Mason
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Date	02/02/2018
Attachments	MOTION TO COMPEL.pdf(441690 bytes) EXHIBIT A - Motion to Compel.pdf(473399 bytes) EXHIBIT B - Motion to Compel.pdf(323975 bytes) EXHIBIT C - Motion to Compel.pdf(255367 bytes)

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

THE CORPS GROUP,

Opposer,

v.

AFTERBURNER, INC.,

Applicant.

Opposition No. 91201830

Application No. 85094889



Mark:

**APPLICANT’S MOTION TO COMPEL DISCOVERY AND TO EXTEND
DISCOVERY PERIOD FOR APPLICANT ONLY**

Pursuant to TBMP §523 and 37 C.F.R. §2.120(e), Applicant, Afterburner, Inc. (“Applicant”), by its attorney, Michael C. Mason, respectfully moves the Board to compel Opposer, The Corp Group (“Opposer”), to respond to written discovery demands, and produce responsive, non-privileged documents. Applicant also moves the Board to extend the discovery period for Applicant only since Opposer has wrongfully refused to answer, and has prejudiced and unfairly deprived Applicant of its right to take follow-up discovery.

In support of these motions, Applicant states as follows:

BACKGROUND

The subject Opposition was filed on September 28, 2011. Applicant and Opposer participated in a discovery conference on August 25, 2016 and exchanged initial disclosures on September 15, 2016. On August 1, 2017, the Board denied Opposer’s

Motion for Summary Judgment. The Board also denied Opposer's Motion for Reconsideration on December 1, 2017 and reset the trial dates with discovery closing on February 5, 2018. Later on the same day, i.e. December 1, 2017, Applicant served on Opposer a First Set of Interrogatories, a First Set of Requests for the Production of Documents and Things, and a First Request for Admissions (collectively "Applicant's Discovery Requests" or "Applicant's Discovery Demands"). *See Exhibit A.*

The deadline for responding to Applicant's Discovery Requests was on December 31, 2017. On December 20, 2017, Applicant and Opposer, via email exchange, engaged in settlement discussions that were unsuccessful in resolving this case. During this exchange, Opposer gave no indication that responding to Applicant's discovery requests may be delayed or at all problematic. On January 2, 2018, Opposer sent an email message requesting Applicant's consent to an extension of time until January 12, 2018 for Opposer to respond to Applicant's Discovery Requests. Opposer did not give any reason for the requested extension and Applicant denied its consent the next day via email. *See Exhibit B.*

Opposer did not respond to any of Applicant's Discovery Demands. In an email message on January 24, 2018, Applicant notified both Opposer's attorneys of record in this case that Opposer had failed to serve any response to Applicant's Discovery Requests. Applicant inquired when, and if, such responses could be expected from Opposer, and also, most importantly, asked specifically why no responses had been received from Opposer. Applicant also reminded Opposer of the approaching close of discovery date, February 5, 2008. *See Exhibit C.* After receiving no response, Applicant sent a second similarly worded email message on January 29, 2018. *See Id.* Finally, on

January 31, 2018, Applicant made a telephone call to Opposer, left a message containing the same inquiries, and requested a return telephone call to ascertain the reason for Opposer's failure to respond to discovery. *See Declaration of Michael C. Mason* ¶ 8 pg.

2. As of February 2, 2018, Applicant has still not received from either of Opposer's attorneys any reply to Applicant's email messages and/or telephone call. Opposer has not raised any objections to Applicant's Discovery Demands¹ and a month has passed since Opposer's responses to Applicant's Discovery Requests were due.

MOTION TO COMPEL DISCOVERY

"In inter partes proceedings before the Board, a motion to compel discovery procedure is available in the event of a failure to provide discovery requested by means of discovery depositions, interrogatories, and requests for production of documents and things." See TBMP §523.01 and *Jain v. Ramparts Inc.*, 49 USPQ2d 1429 (TTAB 1998). Further, "[i]f any party fails to answer any interrogatory, the party seeking discovery may file a motion with the Board for an order to compel an answer. Similarly, if any party fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion for an order to compel production and an opportunity to inspect and copy." See TBMP §411.01 and 37 CFR §2.120(e).

In the instant proceeding, Opposer has failed to provide any response to Applicant's Discovery Requests, which are a month overdue. Opposer's failure to provide responses to Applicant's Discovery Demands is in direct violation of its obligations under TBMP §523 and 37 CFR §2.120(e). Applicant has been prejudiced by

¹ It is noteworthy that Opposer has also failed to serve any of its own discovery requests on Applicant.

Opposer's failure to respond to Applicant's Discovery Demands, because Applicant is unable to obtain proof to refute or verify Opposer's claims in the Opposition. As the discovery period closes on February 5, 2018, Applicant has been further precluded from conducting follow-up discovery which may be necessitated by Opposer's responses to the outstanding discovery.

Applicant has made good faith efforts to resolve with Opposer the issues presented in the motion. Applicant timely served its initial disclosures and served Discovery Requests very early in the discovery period. The parties engaged in settlement communications, but they have been unable to reach agreement. Applicant made two written attempts and one telephone call to determine the reason for Opposer's failure to respond to Applicant's Discovery Requests. Case law indicates that such good faith efforts are sufficient to satisfy this motion. *See Hot Tamale Mama...and More, LLC v. SF Investments, Inc.*, 110 USPQ2d 1080, 1081-82 (TTAB 2014) (discussing generally good faith effort requirement; finding single email exchange between the parties insufficient to establish good faith effort as it was incumbent upon applicant to make at least one additional inquiry); *Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448, 450 (TTAB 1979) (good faith effort is required where there has been a complete failure to respond to discovery; telephone call to counsel sufficient). In view of Applicant's good faith efforts -- and Opposer's failure to state any objection to Applicant's Discovery Requests -- Applicant believes its Motion to Compel is warranted and proper.

MOTION FOR EXTENSION OF DISCOVERY

Applicant moves for an order extending discovery solely for the benefit of Applicant since Opposer has wrongfully refused to answer, and has prejudiced and unfairly deprived Applicant of its right to take follow-up discovery. It is the practice of the Board when a party's delay in responding has deprived its opponent of follow-up discovery, to reset the discovery period, at the request of the moving party, so as to restore (for the moving party) that amount of time which would have remained in the discovery period had the discovery responses been made in a proper fashion. *See Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 1214 TMOG 145, 149-50 (September 29, 1998). Also, "the Board will, upon motion, reopen or extend discovery solely for the benefit of a party whose opponent, by ... delaying its responses to [d]iscovery, has unfairly deprived the propounding party of the right to take follow-up." *Miss America Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067, 1070 (TTAB 1990). It is obvious that, as a result of Opposer's conduct, Applicant's efforts to obtain timely and substantive discovery responses have been greatly hindered. Applicant served his discovery requests very early, and under the circumstances of this case, an extension of the discovery period for Applicant only is also warranted.

CONCLUSION

Opposer has failed to cooperate with Applicant in the discovery process so that this matter can be resolved in a fair and efficient manner. As Applicant is entitled to responses to Applicant's Discovery Demands, which are vital to the case at hand, Applicant respectfully requests that the Board issue an Order compelling Opposer to respond to Applicant's Discovery Demands and serve such responses in accordance

with the requirements in 37 CFR § 2.119. Applicant also respectfully requests that the Board extend the discovery period for Applicant only since Opposer has wrongfully refused to answer, and has prejudiced and unfairly deprived Applicant of its right to take follow-up discovery.

This 2nd day of February, 2018.

Respectfully submitted,

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

Attorney for Applicant
AFTERBURNER, INC.

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

THE CORPS GROUP,

Opposer,

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Applicant.

Opposition No. 91201830

Application No. 85094889



Mark:

DECLARATION OF MICHAEL C. MASON

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

1. I am the attorney of record for Application Serial Number 85094889. All statements set forth below are known to me personally to be true, unless stated to be on information and belief, and if called upon to do so, I could and would testify to them under oath.
2. On December 1, 2017, I caused a First Set of Interrogatories, a First Set of Requests for the Production of Documents and Things, and a First Request for Admissions (collectively “Applicant’s Discovery Requests”) to be served on Opposer. True and correct copies of Applicant’s Discovery Requests are attached herewith as Exhibit A.

3. I have made several good faith efforts to resolve this discovery dispute on an amicable basis. Despite my best efforts, the parties were unable to resolve their differences.

4. On December 20, 2017, Opposer' attorney, Kevin Fee, and I, via email exchange, engaged in settlement discussions that were unsuccessful in resolving this case. During this exchange, Mr. Fee gave no indication that responding to Applicant's discovery requests may be delayed or at all problematic.

5. On January 2, 2018, Opposer' attorney, Jordana Rubel, sent an email message to me requesting Applicant's consent to an extension of time until January 12, 2018 to respond to Applicant's Discovery Requests. Ms. Rubel did not give any reason for the requested extension. After conferring with Applicant, I sent to Ms. Rubel and Mr. Fee an email message the next day stating that Applicant did not consent to the extension. A true and correct copy of the email messages are attached herewith as Exhibit B.

6. January 24, 2018, I notified both Opposer's attorneys that Opposer had failed to serve any response to Applicant's Discovery Requests. I inquired when, and if, such responses could be expected from Opposer, and also, most importantly, asked specifically why no responses had been received from Opposer. I also reminded both attorneys of the approaching close of discovery date, February 5, 2008. A true and correct copy of the email message is attached herewith as Exhibit C.

7. After receiving no response from either attorney, I sent a second similarly worded email message on January 29, 2018 to the same attorneys. A true and correct copy of the email message is attached herewith and included within Exhibit C.

8. Finally, on January 31, 2018, after again receiving no response from either attorney, I made a telephone call to Ms. Rubel, left a message containing the same inquiries with her assistant, Mariela Edwards, and requested a return telephone call to ascertain the reason for Opposer's failure to respond to discovery.

9. As of today's date, I have received no response from Opposer or Opposer's attorneys regarding Opposer's failure to respond to discovery.

This 2nd day of February, 2018.

Respectfully submitted,

By: /s/ Michael C. Mason
Michael C. Mason
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THE LAW OFFICE OF MICHAEL C. MASON
1960 Rosecliff Drive, NE
Atlanta, GA 30329
Phone: (678) 829-2444

Attorney for Applicant
AFTERBURNER, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this correspondence, APPLICANT’S MOTION TO COMPEL DISCOVERY AND TO EXTEND DISCOVERY PERIOD FOR APPLICANT ONLY, has been sent via email, with consent to:

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

This 2nd day of February, 2018.

/s/ Michael C. Mason
Michael C. Mason

EXHIBIT A

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

THE CORPS GROUP,

Opposer,

v.

AFTERBURNER, INC.,

Applicant.

Opposition No. 91201830

Application No. 85094889



Mark:

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. "Any" means any and all.

INSTRUCTIONS

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

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

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

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

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

INTERROGATORIES

INTERROGATORY NO. 1:

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

INTERROGATORY NO. 2:

Identify each officer of Opposer's company, including each officer's name, title, address, and job duties.

INTERROGATORY NO. 3:

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

INTERROGATORY NO. 4:

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

INTERROGATORY NO. 5:

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

INTERROGATORY NO. 6:

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

INTERROGATORY NO. 7:

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

INTERROGATORY NO. 8:

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

INTERROGATORY NO.9:

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

INTERROGATORY NO. 10:

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

INTERROGATORY NO. 11:

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

INTERROGATORY NO. 12:

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

INTERROGATORY NO. 13:

Identify any and all trademarks, trade dress and copyrights – including common law – in which you claim to be the owner.

INTERROGATORY NO. 14:

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

INTERROGATORY NO. 15:

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

INTERROGATORY NO. 16:

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

INTERROGATORY NO. 17:

Identify all facts, documents, or other information that Opposer relies on to support the contention that “[p]ractically all of the other entities in the fighter pilot team building business seminar arena utilize flight suits in advertising their services and/or making presentations,” including the specific support for Opposer’s implication that there exists a “fighter pilot team building business seminar arena” (Notice of Opposition ¶ 9) and any relevant market evidence in that regard, and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 18:

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

INTERROGATORY NO. 19:

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

INTERROGATORY NO. 20:

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

INTERROGATORY NO. 21:

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

INTERROGATORY NO. 22:

Identify all facts, documents, or other information that Opposer relies on to support the contention that "if the alleged mark is registered, then the Corps Group is even faced with the prospect of its employees and contractors not being able to appear in pictures on the company's web site wearing the flight suits that they wore when they served in the armed forces. The alleged mark is so generic and broad that it would arguably prevent even that basic form of commercial expression on the part of the Corps Group and many other veterans" (Notice of Opposition ¶ 13), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 23:

Identify all facts, documents, or other information that Opposer relies on to support the contention that “the alleged mark is not entitled to protection as a matter of law because it is not capable of distinguishing Afterburner’s services” (Notice of Opposition ¶ 18), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 24:

Identify all facts, documents, or other information that Opposer relies on to support the contention that Opposer “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” (Notice of Opposition ¶ 19), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 25:

Identify all facts, documents, or other information that Opposer relies on to support the contention that Applicant’s mark “is not inherently distinctive” (Notice of Opposition ¶ 20), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 26:

Identify all facts, documents, or other information that Opposer relies on to support the contention that “Afterburner cannot meet its substantial burden of showing that the use of unmarked flight suits in corporate team building presentations has acquired distinctiveness as a symbol of Afterburner’s services in commerce” (Notice of Opposition ¶ 21), and identify all persons having knowledge of such alleged facts.”

INTERROGATORY NO. 27:

Identify all facts, documents, or other information that Opposer relies on to support the contention that “[t]he alleged mark does not function to identify Afterburner’s services and

distinguish them from identical, similar, or related services offered by The Corps Group or numerous other entities in the business of making corporate team building presentations” (Notice of Opposition ¶ 22), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 28:

Identify all facts, documents, or other information that Opposer relies on to support the contention that “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” (Notice of Opposition ¶ 23), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 29:

Identify all facts, documents, or other information that Opposer relies on to support the contention that it “denies that Afterburner’s alleged mark has acquired secondary meaning. However, to the extent that it has done so, it acquired secondary meaning after numerous other entities had started advertising and making corporate team building presentations using flight suits” (Notice of Opposition ¶ 24), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 30:

Identify all facts, documents, or other information that Opposer relies on to support the contention that it “denies that Afterburner’s alleged mark has acquired secondary meaning elsewhere. However, to the extent that it has done so, it has not acquired secondary meaning throughout the United States” (Notice of Opposition ¶ 26), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 31:

Identify all facts, documents, or other information that Opposer relies on to support the contention that “[o]ne or more entities have been using advertising and making corporate team-

building presentations using flight suits in geographic areas where Afterburner has a limited presence and therefor has not acquired secondary meaning” (Notice of Opposition ¶ 27), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 32:

Identify all facts, documents, or other information that Opposer relies on to support the contention that “[t]he identical issue of whether the purported mark that is the subject of Application Serial No. 85-094,889 is protectable as a trademark was involved in the civil action in Forsyth County Superior Court.” (Notice of Opposition ¶ 28), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 33:

Identify all facts, documents, or other information that Opposer relies on to support the contention that “Afterburner is estopped from arguing that the purported mark that is the subject of Application Serial No. 85-094,889 is protectable as a trademark.” (Notice of Opposition ¶ 32), and identify all persons having knowledge of such alleged facts.

INTERROGATORY NO. 34:

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

INTERROGATORY NO. 35:

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

INTERROGATORY NO. 36:

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

INTERROGATORY NO. 37:

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

INTERROGATORY NO. 38:

Identify all persons who Opposer consulted or who provided information in connection with the preparation of your answers to the foregoing interrogatories, and for each such person, state the interrogatory or interrogatories in connection with which he or she provided information or was consulted.

This 1st day of December, 2017.

Respectfully submitted,

By: /s/ Michael C. Mason

Michael C. Mason

Georgia Bar No. 475663

mmtmlaw@gmail.com

THE LAW OFFICE OF MICHAEL C. MASON

1960 Rosecliff Drive, NE

Atlanta, GA 30329

Phone: (678) 829-2444

Attorney for Applicant
AFTERBURNER, INC.

CERTIFICATE OF SERVICE

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

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

This 1st day of December, 2017.

/s/ Michael C. Mason

Michael C. Mason

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

THE CORPS GROUP,

Opposer,

v.

AFTERBURNER, INC.,

Applicant.

Opposition No. 91201830

Application No. 85094889



Mark:

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. "Any" means any and all.

INSTRUCTIONS

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

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

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

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

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

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

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

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

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

- a. the type and title of the document or thing;
 - b. the general subject matter of the document or description of the thing;
 - c. the date of its creation;
 - d. the identity of the document's author(s), addressee(s) and recipient(s);
 - e. the nature of the privilege being claimed; and
 - f. in detail, all facts upon which you base your claim of privilege.
9. With respect to any document stored on a machine-readable medium, please make available both a hard copy printout of the document and a copy of the computer or electronic tape, disc or other electronic medium on which the document is stored.
10. Complete production is to be made on the date and at the time indicated above.
11. You have a duty to supplement your responses from now until the time of hearing or trial, as provided by Federal Rule of Procedure 26(e).

DOCUMENTS AND THINGS REQUESTED

DOCUMENT REQUEST NO. 1:

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

DOCUMENT REQUEST NO. 2:

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

DOCUMENT REQUEST NO. 3:

All documents relating to communications with third parties, other than your counsel, concerning the use of a pilot flight suit as a mark.

DOCUMENT REQUEST NO. 4:

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

DOCUMENT REQUEST NO. 5:

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

DOCUMENT REQUEST NO. 6:

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

DOCUMENT REQUEST NO. 7:

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

DOCUMENT REQUEST NO. 8:

All documents relating to communications with the US Air Force or its counsel

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

DOCUMENT REQUEST NO. 9:

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

DOCUMENT REQUEST NO. 10:

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

DOCUMENT REQUEST NO. 11:

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

DOCUMENT REQUEST NO. 12:

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

DOCUMENT REQUEST NO. 13:

All documents relating to your contention that Opposer “denies that Afterburner’s alleged mark has acquired secondary meaning elsewhere. However, to the extent that it has

done so, it has not acquired secondary meaning throughout the United States” (Notice of Opposition ¶ 26).

DOCUMENT REQUEST NO. 14:

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

DOCUMENT REQUEST NO. 15:

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

DOCUMENT REQUEST NO. 16:

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

DOCUMENT REQUEST NO. 17:

All documents relating to your contention that “[t]he alleged mark does not function to identify Afterburner’s services and distinguish them from identical, similar, or related services offered by The Corps Group or numerous other entities in the business of making corporate team building presentations” (Notice of Opposition ¶ 22).

DOCUMENT REQUEST NO. 18:

All documents relating to your contention that Opposer “denies that Afterburner’s alleged mark has acquired secondary meaning. However, to the extent that it has done so, it acquired secondary meaning after numerous other entities had started advertising and making corporate team building presentations using flight suits” (Notice of Opposition ¶ 24).

DOCUMENT REQUEST NO. 19:

All documents relating to your contention that Applicant’s mark “is so generic and broad that it would arguably prevent even that basic form of commercial expression on the part of the Corps Group and many other veterans” (Notice of Opposition ¶ 13).

DOCUMENT REQUEST NO. 20:

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

DOCUMENT REQUEST NO. 21:

All documents relating to your contention that Applicant’s mark “is not distinctive” (Notice of Opposition ¶ 23).

DOCUMENT REQUEST NO. 22:

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

DOCUMENT REQUEST NO. 23:

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

DOCUMENT REQUEST NO. 24:

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

DOCUMENT REQUEST NO. 25:

All documents relating to your contention that “Afterburner is estopped from arguing that the purported mark that is the subject of Application Serial No. 85-094,889 is protectable as a trademark” (Notice of Opposition ¶ 32).

DOCUMENT REQUEST NO. 26:

All documents relating to any allegations that Afterburner may be preventing veterans, who wear pilot flight suits, their basic form of commercial expression.

DOCUMENT REQUEST NO. 27:

All documents relating to your contention that Applicant’s mark “is not entitled to protection as a matter of law because it is not capable of distinguishing Afterburner’s services” (Notice of Opposition ¶ 18).

This 1st day of December, 2017.

Respectfully submitted,

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

Attorney for Applicant
AFTERBURNER, INC.

CERTIFICATE OF SERVICE

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

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

This 1st day of December, 2017.

/s/ Michael C. Mason

Michael C. Mason

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

THE CORPS GROUP,

Opposer,

v.

AFTERBURNER, INC.,

Applicant.

Opposition No. 91201830

Application No. 85094889



Mark:

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

8. "Any" means any and all.

INSTRUCTIONS

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

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

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

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

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

information known or readily obtainable is insufficient to enable you to admit that matter.

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

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

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

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

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

REQUEST FOR ADMISSION NO. 2:

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

REQUEST FOR ADMISSION NO. 3:

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

REQUEST FOR ADMISSION NO. 4:

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

REQUEST FOR ADMISSION NO. 5:

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

REQUEST FOR ADMISSION NO. 6:

Admit that when you filed U.S. Trademark Office Application Serial No. 85331417, you described the design mark as “a sage green pilot flight suit with a 2 inch by four inch black and white nametag on left breast with a 4.5 inch circular white, black, grey and red logo patch on the right breast.”

REQUEST FOR ADMISSION NO. 7:

Admit that Application Serial No. 85331417 shows that you claim first use of the TCG pilot flight suit as a mark in commerce on September 1, 2008.

REQUEST FOR ADMISSION NO. 8:

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

REQUEST FOR ADMISSION NO. 9:

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

REQUEST FOR ADMISSION NO. 10:

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

REQUEST FOR ADMISSION NO. 11:

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

REQUEST FOR ADMISSION NO. 12:

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

REQUEST FOR ADMISSION NO. 13:

Admit that you do not claim that the Applicant's Pilot Flight Suit as worn by Applicant in rendering business management training services are "uniforms" of any US military branch.

REQUEST FOR ADMISSION NO. 14:

Admit that a plain pilot flight suit is not a common basic shape or design when used in the context of the business management training services.

REQUEST FOR ADMISSION NO. 15:

Admit that you have not obtained any evidence showing that any of the third-parties that you listed in the Notice of Opposition ¶ 7 used pilot flight suits in the rendering of business management training prior to January 1996.

REQUEST FOR ADMISSION NO. 16:

Admit that you have not obtained any evidence showing that most, if not all, of the third-parties that you listed in the Notice of Opposition ¶ 7 render business management training.

REQUEST FOR ADMISSION NO. 17:

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

REQUEST FOR ADMISSION NO. 18:

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

REQUEST FOR ADMISSION NO. 19:

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

REQUEST FOR ADMISSION NO. 20:

Admit that you have not obtained any evidence of the relevant public's understanding of the Applicant's Pilot Flight Suit as used in connection with business management training services.

REQUEST FOR ADMISSION NO. 21:

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

REQUEST FOR ADMISSION NO. 22:

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

REQUEST FOR ADMISSION NO. 23:

Admit that TCG has opposed registration of Applicant's mark on the grounds that the mark is not capable of distinguishing Applicant's services and has not acquired distinctiveness.

REQUEST FOR ADMISSION NO. 24:

Admit that within the court's decision in Afterburner, Inc. v. The Corps Group, et al. Civil Action File No. 09cv-2844, Superior Court of Forsyth County, State of Georgia ("Afterburner v. TCG"), it was not specifically addressed whether or not Applicant's Pilot Flight Suit is capable of distinguishing Applicant's services.

REQUEST FOR ADMISSION NO. 25:

Admit that within the court's decision in Afterburner v. TCG, it was not specifically addressed whether or not Applicant's Pilot Flight Suit has acquired distinctiveness.

REQUEST FOR ADMISSION NO. 26:

Admit that within the court's decision in Afterburner v. TCG, it was not specifically addressed whether or not Applicant's Pilot Flight Suit is capable of functioning as a source identifier.

REQUEST FOR ADMISSION NO. 27:

Admit that TCG does not claim to own any trademark rights for a pilot flight suit.

REQUEST FOR ADMISSION NO. 28:

Admit that you have not obtained any evidence that the third-parties listed in the Notice of Opposition ¶ 7 claim to own any trademark rights for a pilot flight suit.

REQUEST FOR ADMISSION NO. 29:

Admit that you have communicated to some, if not all, of the third-parties listed in the Notice of Opposition ¶ 7 that Afterburner may be preventing veterans, who wear pilot flight suits, their basic form of commercial expression.

REQUEST FOR ADMISSION NO. 30:

Admit that you have not obtained any evidence that Afterburner tried to prevent veterans, who wear pilot flight suits, their basic form of commercial expression.

This 1st day of December, 2017.

Respectfully submitted,

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

Attorney for Applicant
AFTERBURNER, INC.

CERTIFICATE OF SERVICE

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

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

This 1st day of December, 2017.

/s/ Michael C. Mason
Michael C. Mason

EXHIBIT B

Rubel, Jordana S.

Jan
2

to me, Kevin

Michael,

Will you consent to an extension of time until January 12 for The Corps Group to respond to Afterburner's discovery requests?

Thanks,
Jordana

Jordana S. Rubel

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW | Washington, DC 20004

Direct: [+1.202.739.5118](tel:+12027395118) | Main: [+1.202.739.3000](tel:+12027393000) | Fax: [+1.202.739.3001](tel:+12027393001)

jordana.rubel@morganlewis.com | www.morganlewis.com

Assistant: Margaret C. Young | [+1.202.739.5493](tel:+12027395493) | margaret.young@morganlewis.com

Michael Mason <mmtmlaw@gmail.com>

Jan
3

to Jordana, Kevin

FYI - Earlier this morning, I left a voicemail message for the CEO. Also his assistant is not answering the phone. The office may still be closed. I will inform you of the answer to your request when I hear from either one. In the interim, you should work with the understanding that my client does not consent to the extension.

Michael

On Tue, Jan 2, 2018 at 9:36 PM, Michael Mason <mmtmlaw@gmail.com> wrote:
Just getting in from the holidays and checking messages. I will try to confer with my client tomorrow but I believe the CEO may be in Brazil.

Michael

On Tue, Jan 2, 2018 at 10:02 AM, Rubel, Jordana S. <jordana.rubel@morganlewis.com> wrote:
Michael,

Will you consent to an extension of time until January 12 for The Corps Group to respond to Afterburner's discovery requests?

Thanks,
Jordana

Michael Mason <mmtmlaw@gmail.com>

Jan
3

to Jordana, Kevin

I have received from my client an email reply to your request. It will not consent to an extension of time for TCG's responses to discovery.

MICHAEL C. MASON
THE LAW OFFICE OF MICHAEL C. MASON
1960 ROSECLIFF DR NE
ATLANTA, GA 30329-2756
[\(678\) 829-2444](tel:(678)829-2444)

Confidentiality Notice. This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to whom or which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message. Thank you.

On Wed, Jan 3, 2018 at 12:04 PM, Michael Mason <mmtmlaw@gmail.com> wrote:
FYI - Earlier this morning, I left a voicemail message for the CEO. Also his assistant is not answering the phone. The office may still be closed. I will inform you of the answer to your request when I hear from either one. In the interim, you should work with the understanding that my client does not consent to the extension.

Michael

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Michael,

Will you consent to an extension of time until January 12 for The Corps Group to respond to Afterburner's discovery requests?

Thanks,
Jordana

Jordana S. Rubel
Morgan, Lewis & Bockius LLP
[1111 Pennsylvania Avenue, NW | Washington, DC 20004](https://www.morganlewis.com)
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jordana.rubel@morganlewis.com | www.morganlewis.com
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EXHIBIT C

Michael Mason <mmtmlaw@gmail.com>

Jan 24 (9
days ago)

to Jordana, Kevin

Jordana,

You requested an extension of time until January 12, 2018 for The Corps Group to respond to Afterburner's discovery requests. My client denied this request and did not receive timely, or any, responses to discovery. It has been almost two weeks since your extension request of January 12, 2018, and, as you are probably aware, the TTAB set the close of discovery for February 5, 2018. Will The Corps Group will be responding to any of the outstanding discovery? If so, when? Also, please provide an explanation regarding The Corps Group's failure to serve timely responses.

Sincerely,

MICHAEL C. MASON
THE LAW OFFICE OF MICHAEL C. MASON
1960 ROSECLIFF DR NE
ATLANTA, GA 30329-2756
[\(678\) 829-2444](tel:(678)829-2444)

Confidentiality Notice. This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to whom or which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message. Thank you.

Michael Mason <mmtmlaw@gmail.com>

Jan 29 (4
days ago)

to Jordana, Kevin

Jordana,

Last Wednesday, January 24, 2018, I emailed to you and Kevin a message inquiring about The Corps Group's non-response to Afterburner's discovery requests. I still haven't received a reply from either of you. Discovery in this case is now set to close one week from today, February 5, 2018. Once again I ask: Will The Corps Group will be responding to any of the outstanding discovery? If so, when? Also, please provide an explanation regarding The Corps Group's failure to serve timely responses.

Thanks,

--
MICHAEL C. MASON
THE LAW OFFICE OF MICHAEL C. MASON

1960 ROSECLIFF DR NE
ATLANTA, GA 30329-2756
[\(678\) 829-2444](tel:(678)829-2444)