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

Proceeding	92054095
Party	Defendant Drifire, LLC
Correspondence Address	DRIFIRE LLC c/o STERLING CAPITAL PARTNERS LP 1033 SKOKIE BLVD STE 600 NORTHBROOK, IL 60062 UNITED STATES
Submission	Answer
Filer's Name	Charlie C. Lyu
Filer's e-mail	clyu@woodcock.com, dmroz@woodcock.com, trademarks@woodcock.com
Signature	/Charlie C. Lyu/
Date	07/22/2011
Attachments	Answer to Petition for Cancellation.PDF ( 5 pages )(82988 bytes )

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

SOUTHERN MILLS, INC.  
DBA TENCATE PROTECTIVE FABRICS  
USA

Petitioner,

v.

DRIFIRE, LLC

Registrant.

Cancellation No. 92054095

U.S. Trademark Registration No. 3,915,295

Trademark: COMFORTABLE FR WEAR

Registration Date: February 1, 2011

**ANSWER TO PETITION FOR CANCELLATION**

In response to the Petition for Cancellation filed on June 10, 2011, Registrant, Drifire, LLC (“Registrant”), with a principal place of business at 10 S. Riverside Plaza, Suite 2200, Chicago, IL 60606, responds as follows:

Regarding the first unnumbered paragraph of the Petition for Cancellation, Registrant is without sufficient knowledge as to the state of incorporation of the Petitioner, Southern Mills (“Petitioner”), or its principal place of business, and as such, it denies the same. Registrant denies the remaining allegations of the first unnumbered paragraph of the Petition for Cancellation.

Registrant admits the allegations contained in the second and third unnumbered paragraphs of the Petition for Cancellation.

Allegation: Paragraph 1. Petitioner is and has since prior to the filing date of Respondent’s registration been engaged in the manufacture, sale, and distribution of protective fabrics products (Petitioner’s Goods) including what is commonly referred to in various forms as “FR apparel” or “flame resistant work wear” (Exhibit A; “FR Garment[s],” “FR Clothing,” and “comfortable FR” (Exhibit B); “FR coverall” and “comfortable FR cotton lining” (exhibit C); “comfortable FR fleece layer” (Exhibit D); and “FR gear,” “FR pant[s],” and “FR briefs for comfort and protection” (Exhibit E).

ANSWER: Registrant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations in Paragraph 1 and, accordingly, denies each and every allegation contained therein. Registrant further answers that none of Petitioner's Exhibits A through E show the use of the Registrant's mark "COMFORTABLE FR WEAR" by third parties, and none of the Petitioner's exhibits appear to predate Registrant's registration.

Allegation: Paragraph 2. The terms "comfortable" "FR" and "wear" have commonly accepted meanings in the protective fabrics industry. Since a date long prior to the filing date of Respondent's registration and any date of first use alleged in Respondent's registration, Petitioner and various third parties have used the terms "comfortable", "FR", and "wear" or variations thereof alone and in combination with each other to identify protective fabric products.

ANSWER: Registrant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations in Paragraph 2 of the Petition and, accordingly, denies each and every allegation contained therein.

Allegation: Paragraph 3. The terms "comfortable" "FR" and "wear" and the composite terms "comfortable wear," "comfortable FR," "FR wear," and "comfortable FR wear," when used in connection with protective fabrics, are incapable of distinguishing Respondent's goods as demonstrated by, among other things, the various exemplary exhibits included herein including advertising from multiple different competitors of Respondent and end retailers of protective fabrics.

ANSWER: Registrant denies the allegations in Paragraph 3 that the terms "comfortable" "FR" and "wear" and the composite terms "comfortable wear," "comfortable FR," "FR wear," and "comfortable FR wear," when used in connection with protective fabrics, are incapable of distinguishing Registrant's goods. Registrant further answers that none of Petitioner's Exhibits A through E show the use of Registrant's mark "COMFORTABLE FR WEAR" by any third parties. As to the remaining allegations in Paragraph 3, Registrant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and, accordingly, denies each and every allegation contained therein.

Allegation: Paragraph 4. Respondent's alleged registered mark is the common descriptive name of Petitioner's Goods and operates as a generic name for all such goods produced and sold by virtually every competitor and associated retailers engaged in the business of Respondent, including Petitioner. Petitioner therefore respectfully asserts that Respondent's alleged registered mark does not function to identify Respondent's goods and distinguish them from goods offered by others.

ANSWER: Registrant denies each and every allegation contained in Paragraph 4.

Allegation: Paragraph 5. Petitioner and others who make or sell protective fabrics or related goods will be damaged by the continued existence of Respondent's alleged mark on the trademark register because such generic terminology impairs Petitioner's (and other competitors of Respondent's) right to legal use of such terminology. Petitioner and other competitors of Respondent have a valid and legal right to refer to their respective products by their common descriptive name.

ANSWER: Registrant denies each and every allegation contained in Paragraph 5.

### **AFFIRMATIVE DEFENSES**

#### First Affirmative Defense

Petitioner fails to state a claim upon which relief may be granted.

#### Second Affirmative Defense

Petitioner's claims are barred by the doctrine of waiver, laches, and/or estoppel.

#### Third Affirmative Defense

Petitioner has acquiesced in Registrant's activities.

#### Fourth Affirmative Defense

On information and belief, Registrant has priority to and is the exclusive user of the terms "COMFORTABLE FR WEAR" for clothing for protection against fire; protective clothing; specialized protective clothing, namely, fire retardant and moisture wicking clothing ("Registrant's Products").

#### Fifth Affirmative Defense

On information and belief, the relevant public perceives Registrant's mark,

COMFORTABLE FR WEAR as relating to Registrant's Products.

WHEREFORE, Registrant respectfully requests that Cancellation No. 92054095 be dismissed with prejudice in its entirety, and that Registrant receive any other relief the Board deems appropriate.

Dated: July 22, 2011

Respectfully submitted,

**WOODCOCK WASHBURN LLP**

/s/Charlie C. Lyu

Denise I. Mroz

Charlie C. Lyu

Cira Centre, 12<sup>th</sup> Floor

2929 Arch Street

Philadelphia, PA 19104

Telephone: (215) 568-3100

Facsimile: (215) 568-3439

*Counsel for Registrant.*

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**CERTIFICATE OF SERVICE**

I, Charlie Lyu, hereby certify that on July 22, 2011, I caused a true and correct copy of the within ANSWER TO PETITION FOR CANCELLATION be served by means of Federal Express and Electronic mail on the following counsel:

Michael E. Robinson, Esq.  
Ludeka, Neely & Graham, P.C.  
P.O. Box 1871  
Knoxville, TN 37901  
RRobinson@LNG-Patent.com

Dated: July 22, 2011

By:     /s/Charlie C. Lyu      
Charlie C. Lyu