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

Proceeding	92055770
Party	Defendant Poly Performance, Inc.
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Date	08/17/2012
Attachments	Answer to Petition for Cancellation for S SYNERGY SUSPENSION SYNERGYSUSPENSION.COM (plus design).pdf (8 pages)(6779731 bytes)

TRADEMARK
3302-2

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

<p>THE BUNKER CORPORATION, dba ENERGY SUSPENSION, Petitioner/Plaintiff, vs. POLY PERFORMANCE, INC., Registrant/Respondent.</p>	<p>Cancellation No. 92055770 ANSWER OF REGISTRANT/RESPONDENT POLY PERFORMANCE, INC. TO AMENDED PETITION FOR CANCELLATION OF PETITIONER/PLAINTIFF THE BUNKER CORPORATION, dba ENERGY SUSPENSION Registration: S SYNERGY SUSPENSION SYNERGYSUSPENSION.COM (PLUS DESIGN) Registration No.: 4,083,019 Serial No.: 85/317,364 Filed: May 10, 2011 Registered: January 10, 2012</p>
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Registrant/Respondent Poly Performance, Inc. (“Respondent”), a California corporation having its principal place of business at 870 Industrial Way, San Luis Obispo, California 93401, submits its Answer to Petitioner/Plaintiff The Bunker Corporation, dba Energy Suspension’s (“Petitioner”) Amended Petition for Cancellation in the above-identified cancellation proceeding. The numbers of the following paragraphs correspond to the paragraph numbers of the Amended Petition for Cancellation:

[First Unnumbered Paragraph:] With regard to the first unnumbered paragraph of the Amended Petition for Cancellation, Respondent admits that, on January 10, 2012, its design mark for S SYNERGY SUSPENSION SYNERGYSUSPENSION.COM (plus design),

Registration No. 4,083,019, Serial No. 85/317,364 (the “Registration”), registered on the Principal Register in International Class 12 in connection with “suspension systems for land vehicles.” Respondent further admits that Petitioner has filed a Petition for Cancellation and an Amended Petition for Cancellation to cancel the registration of Respondent’s trademark, Registration No. 4,083,019, for S SYNERGY SUSPENSION SYNERGYSUSPENSION.COM (plus design). Respondent denies any and all other allegations contained in the first unnumbered paragraph that are not expressly admitted.

1. With regard to paragraph 1 of the Amended Petition for Cancellation, Respondent is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 1 of the Amended Petition for Cancellation, and, therefore, denies the allegations.

2. With regard to paragraph 2 of the Amended Petition for Cancellation, Respondent is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 2 of the Amended Petition for Cancellation, and, therefore, denies the allegations.

3. With regard to paragraph 3 of the Amended Petition for Cancellation, Respondent is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 3 of the Amended Petition for Cancellation, and, therefore, denies the allegations.

4. With regard to paragraph 4 of the Amended Petition for Cancellation, Respondent is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 4 of the Amended Petition for Cancellation, and, therefore, denies the allegations.

5. With regard to paragraph 5 of the Amended Petition for Cancellation, Respondent admits that the exhibit attached to the Amended Petition for Cancellation appears to be a copy of a U.S. trademark registration, but Respondent is without knowledge or sufficient information to form a belief as to the validity of that exhibit. Respondent further admits that, according to the

records of the U.S. Patent and Trademark Office (and to the exhibit attached to the Amended Petition for Cancellation), Petitioner appears to have a U.S. registration for the mark ENERGY SUSPENSION, Reg. No. 2,227,843, but Respondent is without knowledge or sufficient information to form a belief as to the validity and/or status of such trademark registration. As for any specific allegations about that trademark registration or the meaning or interpretation of the attached exhibit alleged to reflect that registration, Respondent states that the document speaks for itself, as do the records of the U.S. Patent and Trademark Office. Respondent denies any and all other allegations not expressly admitted that are contained in paragraph 5 of the Amended Petition for Cancellation.

6. With regard to paragraph 6 of the Amended Petition for Cancellation, Respondent is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 6 of the Amended Petition for Cancellation, and, therefore, denies the allegations.

7. With regard to paragraph 7 of the Amended Petition for Cancellation, Respondent denies any and all allegations contained in paragraph 7 of the Amended Petition for Cancellation, including specific denials that Respondent's Registration is "confusingly similar" to Petitioner's trademark and that the Respondent's Registration is "likely to cause confusion, deception and mistake."

8. With regard to paragraph 8 of the Amended Petition for Cancellation, Respondent is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 8 of the Amended Petition for Cancellation, and, therefore, denies the allegations. Respondent further denies that there could be any "confusion between the company of Petitioner and that of Respondent."

9. With regard to paragraph 9 of the Amended Petition for Cancellation, Respondent denies any and all allegations contained in paragraph 9 of the Amended Petition for Cancellation, including specific denials that Respondent's Registration "interferes with Petitioner's use of its

[trademark]” in any way, “dilute[s] the strength of Petitioner’s [trademark],” and/or has or will damage in any way Petitioner or its business.

10. With regard to paragraph 10 of the Amended Petition for Cancellation, Respondent denies any and all allegations contained in paragraph 10 of the Amended Petition for Cancellation, and Respondent specifically denies that Petitioner has suffered or will suffer “irreparable harm and damage” as a result of the continued use and registration by Respondent of the Registration.

11. With regard to paragraph 11 of the Amended Petition for Cancellation, Respondent denies any and all allegations contained in paragraph 11 of the Amended Petition for Cancellation, and Respondent specifically denies that Petitioner has suffered or will suffer any damages whatsoever as a result of the use and continued registration of Respondent’s Registration.

12. With regard to the two unnumbered paragraph following paragraph 11 of the Amended Petition for Cancellation, Respondent admits that Petitioner purports to request relief in the form of requested cancellation of Respondent’s Registration. Respondent denies any and all other allegations not expressly admitted that are contained in those unnumbered paragraphs of the Amended Petition for Cancellation.

AFFIRMATIVE DEFENSES

In further answer to the Amended Petition for Cancellation, Respondent asserts that:

FIRST AFFIRMATIVE DEFENSE

13. Petitioner’s Amended Petition for Cancellation fails to state a claim upon which relief can be granted, and, in particular, fails to state legally sufficient grounds for cancelling Respondent’s Registration.

SECOND AFFIRMATIVE DEFENSE

14. In light of, among other things, the use by Respondent of the term SYNERGY SUSPENSION on trademarks (registered and unregistered) on and in connection with its goods and services for more than five years, of Petitioner’s knowledge and acquiescence of such uses

(as stated here on Respondent's information and belief), of Petitioner's failure and delay to assert its purported rights, and of resulting prejudice to Respondent, Petitioner is barred from the relief it seeks by the doctrines of estoppel, laches, waiver and/or acquiescence.

THIRD AFFIRMATIVE DEFENSE

15. Due to other trademarks (registered and unregistered) used in commerce by Respondent in which the textual portions are comprised in whole or in part by the term SYNERGY SUSPENSION, and to Petitioner's knowledge of such uses and registrations (as stated here upon Respondent's information and belief), Petitioner cannot be further injured by the continued registration of Respondent's Registration, because, among other reasons, there is no added damage that could or would result.

FOURTH AFFIRMATIVE DEFENSE

16. Even if Petitioner's mark was in use in commerce before Respondent's Registration, Petitioner's mark and Respondent's Registration are not used in the same markets for the same goods or services, such that there could be no likelihood of confusion. Respondent and its licensees primarily make and/or sell, and are known for and use the Registration for, assemblies and other steel products for the off-road vehicle market, and, specifically, for Jeep Wrangler and Dodge trucks. In contrast, Petitioner is a polyurethane part manufacturer of "original equipment manufacturer" (OEM) replacement parts for a wide range of vehicles. Accordingly, Petitioner and Respondent are not direct competitors as to the goods and services upon which or in connection with which the respective marks are used. Therefore, in the market in which Respondent markets, advertises and sells its goods and services, Respondent has rights in its Registration that are superior to those of Petitioner in its trademark.

FIFTH AFFIRMATIVE DEFENSE

17. To the extent Petitioner has proprietary rights in and to the purported mark it cites as its trademark, those rights, if any, are of a narrow or limited scope because, among other reasons, its purported mark is weak. The concurrent use and/or registration of Respondent's

trademark and Petitioner's trademark has caused, and would cause, no added injury or any injury at all to Petitioner's purported mark.

SIXTH AFFIRMATIVE DEFENSE

18. To the extent Petitioner has proprietary rights in and to the purported mark it cites as its trademark, those rights, if any, are of a narrow or limited scope because, among other reasons, of the numerous third party uses and registrations of similar marks in International Class 12, in other International Classes, and otherwise, including, without limitation, uses and registrations of marks that are comprised, in whole or in part, by the word ENERGY. The concurrent use and/or registration of Respondent's Registration and Petitioner's trademark has caused, and would cause, no added injury or any injury at all to Petitioner's purported mark.

SEVENTH AFFIRMATIVE DEFENSE

19. Respondent's Registration and Petitioner's purported mark are sufficiently different in terms of overall appearance, connotation, and commercial impression so as not to cause likelihood of confusion by consumers.

EIGHTH AFFIRMATIVE DEFENSE

20. Respondent's Registration and Petitioner's purported mark are sufficiently different in terms of sound so as not to cause likelihood of confusion by consumers.

NINTH AFFIRMATIVE DEFENSE

21. Respondent's use of its Registration has not – and will not – mistakenly be thought by the public to derive from the same source as Petitioner's goods or services, nor has – or will – such use be thought by the public to be a use by Petitioner or with Petitioner's authorization or approval.

TENTH AFFIRMATIVE DEFENSE

22. Respondent's Registration, when used in connection with Respondent's goods and services, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Respondent with Petitioner, or as to the origin, sponsorship, or approval of Respondent's goods by Petitioner, because Petitioner's mark and

Respondent's Registrations are not used in the same markets for the same goods or services. Respondent and its licensees primarily make and/or sell, and are known for and use the Registrations for, assemblies and other steel products for the off-road vehicle market, and, specifically, for Jeep Wrangler and Dodge trucks. In contrast, Petitioner is a polyurethane part manufacturer of "original equipment manufacturer" (OEM) replacement parts for a wide range of vehicles. Therefore, Respondent is informed and believes, and, on that basis, alleges that the respective goods are in different markets, confront different consumers and travel in different trade channels.

ELEVENTH AFFIRMATIVE DEFENSE

23. Petitioner's mark is neither famous nor sufficiently distinctive. Respondent's Registration is not likely to cause -- nor can it cause -- dilution by blurring, dilution by tarnishment or dilution in any other way or manner of Petitioner's purported mark.

RELIEF REQUESTED

WHEREFORE, Respondent respectfully requests that this Amended Petition for Cancellation be dismissed with prejudice.

Dated: August 17, 2012

Respectfully submitted,

Sharon R. Gold
TroyGould PC

By: 

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CERTIFICATE OF MAILING AND SERVICE

I certify that on August 17, 2012, the foregoing document described as **ANSWER OF REGISTRANT/RESPONDENT POLY PERFORMANCE, INC. TO AMENDED PETITION FOR CANCELLATION OF PETITIONER/PLAINTIFF THE BUNKER CORPORATION, dba ENERGY SUSPENSION** was filed electronically with the United States Patent and Trademark Office, Trademark Trial and Appeal Board.

It is further certified that, on August 17, 2012, the foregoing document described as **ANSWER OF REGISTRANT/RESPONDENT POLY PERFORMANCE, INC. TO AMENDED PETITION FOR CANCELLATION OF PETITIONER/PLAINTIFF THE BUNKER CORPORATION, dba ENERGY SUSPENSION** is being served by mailing a copy thereof by first-class mail addressed to:

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