

ESTTA Tracking number: **ESTTA561895**

Filing date: **09/27/2013**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Clockwork IP, LLC		
Entity	LLC	Citizenship	Delaware
Address	50 Central Ave. Suite 920 Sarasota, FL 34236 UNITED STATES		

Attorney information	John Pare 50 Central Avenue Suite 920 Sarasota, FL 34236 UNITED STATES jpare@clockworkhomeservices.com Phone:941-366-9692
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Registration Subject to Cancellation

Registration No	3618331	Registration date	05/12/2009
Registrant	Barnaby Heating & Air 4620 Industrial ST, STE C Rowlett, TX 75088 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2008/01/22 First Use In Commerce: 2008/01/22 All goods and services in the class are cancelled, namely: Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85880911	Application Date	03/20/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COMFORTCLUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use:		

	Prepaid service plans for heating, ventilating and air conditioning systems Class 037. First use: Repair, maintenance, and installation services in the field of plumbing, heating, ventilation, and air conditioning
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Attachments	ComfortClub Cancellation Action.pdf(4475333 bytes)
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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	/John Pare/
Name	John Pare
Date	09/27/2013

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

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

CLOCKWORK IP, LLC,

Petitioner

v.

BARNABY HEATING & AIR.

Respondent.

)
)
)
)
)
)
)

Cancellation No. _____

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION TO CANCEL

Petitioner Clockwork IP, LLC, a Delaware limited liability company, having offices at 50 Central Avenue, Suite 920, Sarasota, Florida 34236 (hereinafter, "Petitioner" or "Clockwork"), believes that it will be damaged by the continued registration of the mark shown in U.S. Registration No. 3,618,331 (the "Registration"), and hereby petitions for cancellation of same pursuant to Section 14 of the Lanham Trademark Act of 1946, 15 U.S.C. § 1064.

To the best of Petitioner's knowledge, the name and address of the current owner of the Registration are Barnaby Heating & Air, a Texas limited liability company, with a mailing address of 4620 Industrial Street, Suite C, Rowlett, Texas 75088.

As grounds for cancellation, Petitioner alleges the following:

Petitioner and Its Mark

1. Petitioner owns a mark containing the formative "COMFORTCLUB" for electrical services, plumbing, and heating and air conditioning services in Class 37, including without limitation, common law uses of the mark on Petitioner's copyright noticed works and enjoys prior and superior rights in such mark in "COMFORTCLUB" for such services (Petitioner's "COMFORTCLUB" Mark).

2. Petitioner owns U.S. Trademark Application Serial No.85880911, which was filed on March 20, 2013 for registration of the COMFORTCLUB mark ("Petitioner's Mark") for "prepaid service plans for heating, ventilating and air conditioning systems" in International Class 36 and for "repair, maintenance, and installation services in the field of plumbing, heating, ventilation, and air conditioning" in International Class 37 (the "Application").

3. Petitioner's mark has been in use since at least as early as 2006. Evidence of Petitioner's use of the mark is attached hereto as Exhibit A.

4. Petitioner intends to amend its application to indicate use based and to reflect its date of first use.

5. Petitioner is a home services business offering, through its franchise and membership organizations, contracting and installation services in the fields of electrical, plumbing, roofing, and HVAC/air conditioning residential and commercial services. One of

Petitioner's membership organizations is AirTime 500, LLC, ("AirTime"), nationally servicing HVAC home contractors.

6. Petitioner through its related One Hour Air Conditioning Franchising, LLC and Success Group International ("SGI") entities comprising, respectively, One Hour Air Conditioning & Heating and AirTime500, and its franchisees and affinity members, and other licensees, have established hundreds of Petitioner's licensed contractors which have provided HVAC, plumbing, and electrical services associated with the COMFORTCLUB mark. SGI's membership and One Hour Air Conditioning & Heating franchise is nationwide with contractors in forty-five (45) states.

7. Between 2003 and 2008, Petitioner has up to seven (7) franchisees operating in the state of Texas who were authorized to use, and were using, Petitioner's COMFORTCLUB mark. A map of the locations of these franchisees in respect to the location of Respondent (indicated by a red thumbtack on the map) is attached hereto as Exhibit B.

8. Respondent, Barnaby Heating and Air, has been an AirTime member and licensee of Petitioner since August 21, 2007.

9. Respondent's registration has been relied upon by the Examining Attorney to refuse registration of Petitioner's Mark in the Application as a possible bar to registration under § 2(d) on the contended grounds that the mark COMFORTCLUB, when applied to Petitioner's services, so resembles Respondent's Mark as to be likely to cause confusion, to cause mistake, or to deceive. At all relevant times, Respondent's use of the COMFORTCLUB mark was only as a licensee of Petitioner and never as an owner of the COMFORTCLUB mark. Therefore, Respondent's application for the mark COMFORTCLUB was filed both by mistake of fact and

fraudulently, in breach of their license agreement with Petitioner or as a Constructive Trustee of Petitioner. At no time was Respondent the owner of the mark at issue.

Respondent and Its Mark

10. On May 12, 2009, Respondent Barnaby Heating & Air, LLC was issued U.S. Trademark Registration No. 3618331 for the COMFORT CLUB mark for “prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems” in International Class 36 (“Respondent’s Mark”). In the application, Respondent alleged that January 22, 2008 was the date it first used Respondent’s Mark, including first use in commerce. A copy of the Certificate of Registration and underlying application is attached herein as Exhibit C.

11. On August 21, 2007, Respondent signed a Member Agreement with AirTime, LLC. Mr. Charles Barnaby signed the Member Agreement on behalf of Respondent as its co-owner. The agreement was also signed by Debbie Barnaby, co-owner partner. A copy of the Barnaby Heating & Air Member Agreement is attached herein at Exhibit D.

12. In the Member Agreement, Respondent agreed that “following any termination of the Participation Term, you will not to use for your benefit or for the benefit of any other person or entity, any Copyrighted Materials....”

13. In the Member Agreement, Respondent agreed that “AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether (a) the legal protection derives from being confidential , proprietary, or trade secret information of AirTime, (b) the AirTime Resources are subject to copyright, trademark, tradename, and/or patent rights of AirTime, and/or (c) the AirTime Resources are otherwise protected by law or by the terms of this Agreement.”

14. In the Member Agreement, Respondent agreed “[n]ot to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program, not to sell, market or disclose any AirTime Resources to any third person, firm corporation, or association for any purpose; not to make any copies of the AirTime Resources without AirTime’s prior written authorization; not to use any AirTime Resources to directly or indirectly compete with AirTime; not to create derivative works from any AirTime Resources (but if you do so with or without first receiving AirTime’s permission, you agree that you shall have no rights in any such derivative works and they shall be considered to be solely and exclusively owned by AirTime). . . .”

15. “[N]othing in this Agreement shall be construed as conveying to you (i) any right, title, or interest or copyright in or to any AirTime Resources or (ii) any license to use, sell, exploit, copy or further develop any such AirTime Resources.”

16. Respondent separately signed Confidentiality Agreement with Petitioner’s related entity Clockwork Home Service, Inc., now Clockwork Inc. (“CHS”). A copy of the signed Confidentiality Agreement is attached herein as Exhibit E.

17. In the confidentiality agreement, Respondent confirmed “that CHS owns and/or has legal rights to the Protected Information whether (b) the Protected Information is subject to copyright, trademark, tradename, and/or patent rights of CHS, and (c) the Protected Information is otherwise protected by law.”

18. Petitioner licensed Petitioner’s Mark to Respondent for use in the performance and delivery of home heating, air conditioning and ventilation contracting services.

19. Respondent remains in good standing as an AirTime member, except for the present issue, and in accordance with Petitioner's original Member Agreement on August 21, 2007.

20. Respondent's authorization to use Petitioner's Mark has continued in accordance with the terms of the Member Agreement.

Likelihood of Confusion

21. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1 through 20 above.

22. Petitioner has offered its services under Petitioner's "COMFORTCLUB" Mark continuously in interstate commerce in the United States since at least as early as 2006 and prior to any use or application by Respondent of or for Respondent's Mark. Petitioner introduced its COMFORTCLUB mark at CONGRESS™ in 2006, one of Petitioner's national franchise events. The mark was further promoted at the SGI EXPO and Brand Dominance™ events. It has come to be associated with the maintenance plans offered by franchisees and member affiliates for the performance and delivery of home heating, air conditioning and ventilation contracting services.

23. Petitioner has priority based upon its prior use and contractual ownership of Petitioner's "COMFORTCLUB" Mark.

24. Respondent's Mark is virtually identical to Petitioner's Mark in sound, appearance, connotation, and form.

25. Respondent's services are the same as Petitioner's services.

26. Respondent's services are sold through the same channels of trade as Petitioner's services.

27. Respondent's services are directed to the same consumers as Petitioner's services.

28. The Registration should be cancelled because Respondent's Mark so closely resembles Petitioner's Mark such as to be likely, when used in connection with the parties' services, as to cause confusion, mistake, or deception, and/or to cause the consuming public to believe that Respondent's services marketed or sold in connection with Respondent's Mark originate with or are sponsored, endorsed, licensed, authorized and/or affiliated or connected with Petitioner and/or Petitioner's services in violation of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

29. Petitioner is and will be damaged by the Registration under the provisions of 15 U.S.C. §1064, in that the Registration impairs and is inconsistent with Petitioner's rights to use and register Petitioner's Mark. The continued registration of Respondent's Mark will result in damage to Petitioner pursuant to the allegations stated above, and will result in irreparable harm to Petitioner's business and reputation, all to the detriment of Petitioner.

30. If the Registration that is the subject of this proceeding is allowed to continue, it would presumptively entitle Applicant to prima facie exclusive ownership of, and rights to, Respondent's Mark in the United States.

Fraud

31. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1 through 30 above.

32. On March 13, 2008, Respondent's Owner and Principle Partner, Mr. Charles Barnaby, signed a declaration in support of its application for the Registration that stated, inter

alia, that he “believes the applicant to be the owner of the trademark/service mark sought to be registered;” he “believes applicant to be entitled to use such mark in commerce,” and to the best of his knowledge, he believes that “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 to cause confusion. Upon information and belief, these statements, which were made under oath, were false. Upon information and belief, Mr. Barnaby made these statements with an intent to deceive the U.S. Patent and Trademark Office (“USPTO”) into granting a registration because he was aware at the time of the declaration that Petitioner owned Petitioner’s Mark, that Respondent was a licensee of Petitioner, and that Respondent’s Mark was virtually identical to Petitioner’s Mark, and that up to seven (7) of Petitioner’s franchisees were authorized to use Petitioner’s Mark in Respondent’s geographic area.

33. The USPTO reasonably relied on the truth of Mr. Barnaby’s statements on behalf of Respondent in granting the Registration.

34. On August 27, 2008, Respondent, Charles Barnaby, signed a declaration in support of Respondent’s specimen for the Registration that stated, inter alia, that he “believes the applicant to be the owner of the trademark/service mark sought to be registered;” he “believes applicant to be entitled to use such mark in commerce,” and to the best of his knowledge, he believes that “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 to cause confusion. Upon information and belief, these statements, which were made under oath, were false. Upon information and belief, Mr. Barnaby made these statements with an intent to deceive the USPTO into granting a registration because he, as

Respondent's owner, was aware at the time of the declaration that Petitioner owned Petitioner's Mark, that Respondent was a licensee of Petitioner, and that Respondent's Mark was virtually identical to Petitioner's Mark.

35. The USPTO reasonably relied on the truth of Mr. Barnaby's statements on behalf of Respondent in granting the Registration.

36. On information and belief, Respondent was not, at the time it filed an application for the Registration, the rightful owner of Respondent's Mark.

37. On information and belief, Respondent is not currently the rightful owner of Respondent's Mark.

38. In its application for the Registration, Respondent demonstrated its intent to use Respondent's Mark so as to misrepresent the source of its services.

39. By reason of Respondent's acts and practices set forth herein, the Registration should be cancelled because Respondent perpetrated fraud on the USPTO.

40. WHEREFORE, Petitioner hereby respectfully requests that this Petition for Cancellation be granted and that U.S. Trademark Registration No. 3,618,331 be cancelled in its entirety.

Correspondent Information

Please direct all notices, pleadings and process regarding this matter to:

John Pare, Esq.
CLOCKWORK, INC.
50 Central Avenue, Suite 920
Telephone: (941) 366-9692
Facsimile: (941) 366-9592
Email: jpore@clockworkhomeservices.com

Respectfully submitted,

CLOCKWORK IP, LLC.

Dated: September 20, 2013



John Pare, Senior Legal Counsel
Attorney for Petitioner

50 Central Avenue, Suite 920
Telephone: (941) 366-9692
Facsimile: (941) 366-9592
Email: jpore@clockworkhomeservices.com

PROOF OF MAILING

I hereby certify that on September 27, 2013, I served a copy of the foregoing document entitled **PETITION TO CANCEL** by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

Charles H. Barnaby
C/O Julie Celum Garrigue
1319 Crampton Street
Dallas, Texas 75207

Dated: September 27, 2013

A handwritten signature in cursive script that reads "Meredith Cheney". The signature is written in black ink and is positioned to the right of the date.

Remove Symbol
(SGI Mark)



ONE  HOUR

National Retail ~~Remove~~
Straightforward
Pricing Guide™

Join the
One Hour...

“Every air conditioner and furnace needs annual service!”

Rebecca Cassel

COMFORT CLUB™

You Benefit 5 ways ...

1. LIFESPAN. Your system can last up to twice as long. It's like getting **TWO** air conditioners and **TWO** furnaces for the price of one. The annual service you receive as part of your Comfort Club membership can double the remaining life of your air conditioner and furnace.

2. SAVE \$ and SAVE THE EARTH. Your savings on utility bills can easily more than pay for annual service. It's the closest thing to a guaranteed profit investment. “Residential cooling & heating systems are the #1 users of electricity and gas in America. What if everyone used 20% less energy without sacrificing comfort? Shouldn't we do it?” Darren Dixon

3. BREAKDOWN-FREE GUARANTEE. One Hour annual service reduces breakdowns so much, we

guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is **FREE**.

4. PREMIER CLIENT REWARDS. As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

Your low monthly investment is only

\$19⁹⁵

Per month, per system

**RISK FREE...
YOU CAN'T
LOSE!**

5. Inflation protection when you pay in advance:

1 year	\$199
2 years	\$389
3 years	\$579

PLUS! You become part of our Comfort Club Rewards program...

As a One Hour Comfort Club member, you will receive:

- One precision tune-up, professional cleaning, and rejuvenation of your air conditioner PLUS, one Safety Check annually (early spring to summer).
- One precision tune-up, professional cleaning, and rejuvenation of your furnace PLUS one Safety Check annually (early fall to winter).

When you join the **One Hour COMFORT CLUB**, you become part of our **COMFORT CLUB REWARDS** program!

Dine, shop, travel and save thousands of dollars on products and services you already use every day!

Your **COMFORT CLUB REWARDS** book of coupons is packed with discounts at name brand businesses in your area. You can save up to 50% or get 2-for-1 deals at restaurants, shops, hotels and more!

You'll also receive a complimentary membership card. Simply present your **privately coded card** at restaurants, hotels and more to receive 20% savings.

You'll even find member **online deals with printable coupons** right from your computer for shopping discounts from top retailers.

You'll enjoy unlimited movie ticket discounts, dining coupons, travel discounts and much, much more!

Enjoy it all with our compliments!

Here's just a sample of some of the top brands at your fingertips!



AVIS

We try harder.

avis.com

BED BATH & BEYOND



Harry and David.

TARGET



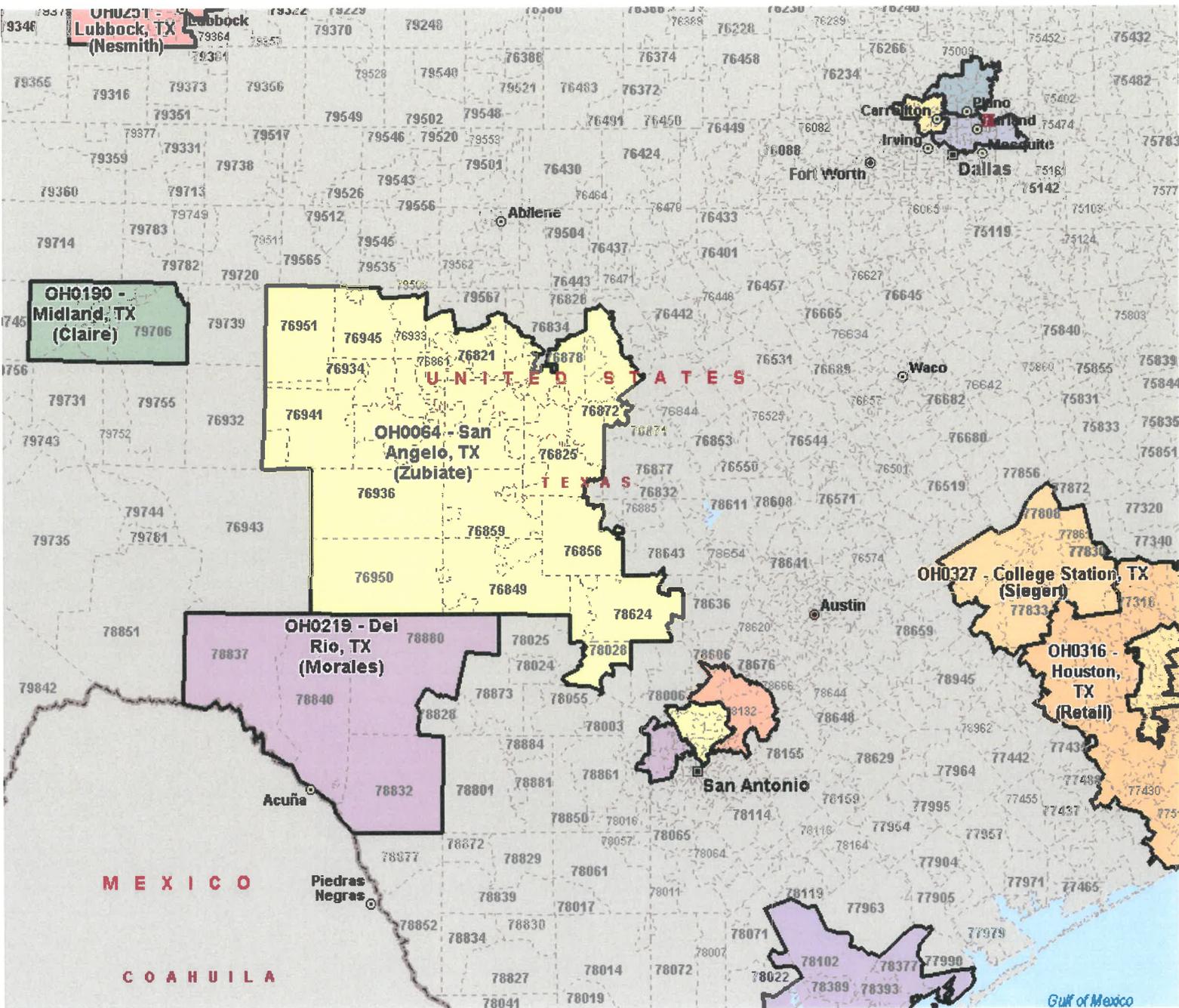
RadioShack.

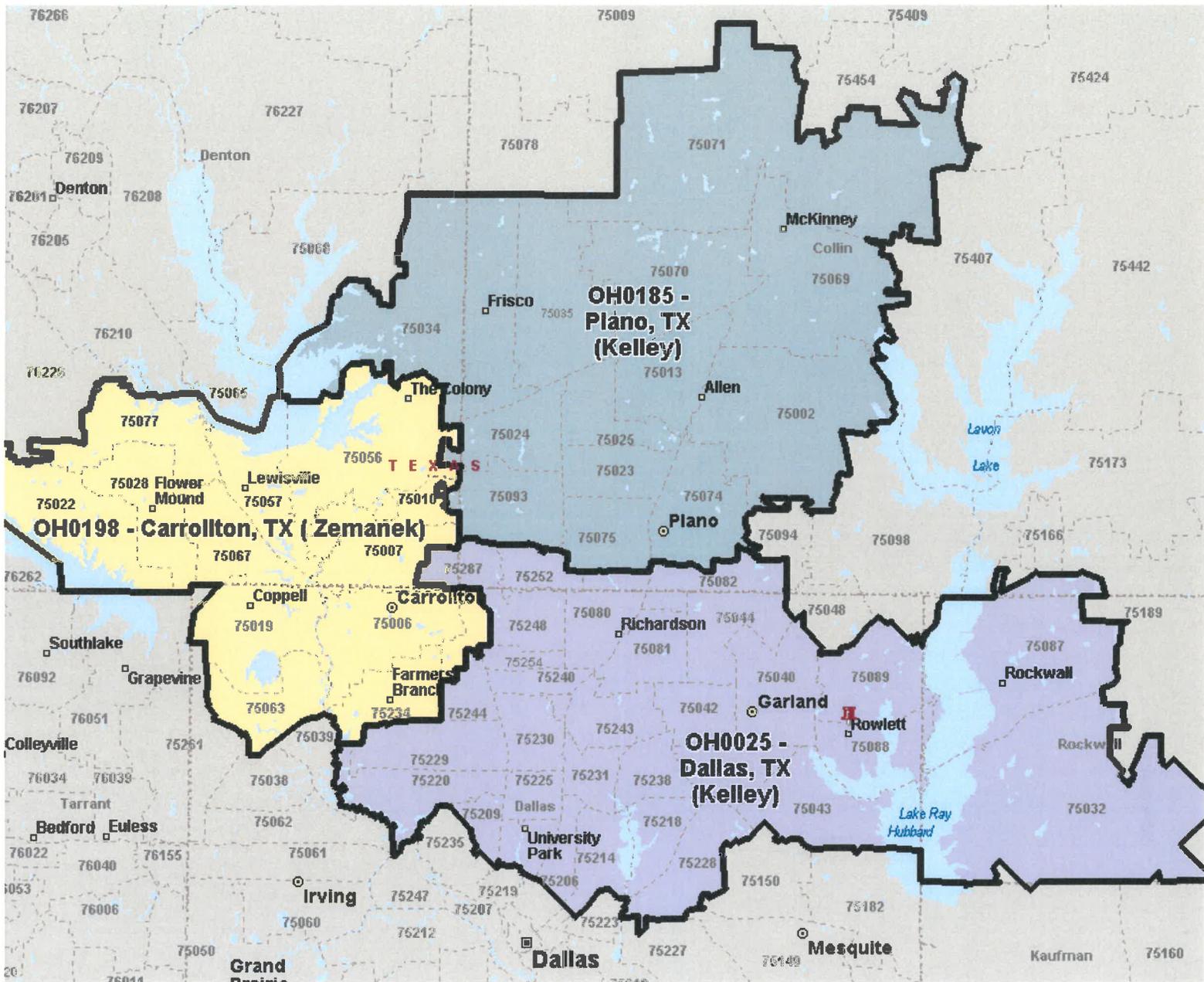


CINEMARK
The Best Seat in Town

ProFlowers
The Art of Fresher Flowers

Exhibit B





**OH0185 -
Plano, TX
(Kelley)**

OH0198 - Carrollton, TX (Zemanek)

**OH0025 -
Dallas, TX
(Kelley)**

Exhibit C

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,618,331

Registered May 12, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

ComfortClub

BARNABY HEATING & AIR (TEXAS LIMITED
LIABILITY COMPANY)
4620 INDUSTRIAL ST, STE C
ROWLETT, TX 75088

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

FOR: PREPAID PREVENTIVE MAINTENANCE
SERVICE PLANS FOR HEATING, VENTILATING
AND AIR CONDITIONING SYSTEMS, IN CLASS 36
(U.S. CLS. 100, 101 AND 102).

SER. NO. 77-420,784, FILED 3-13-2008.

FIRST USE 1-22-2008; IN COMMERCE 1-22-2008.

DANNEAN HETZEL, EXAMINING ATTORNEY

Trademark/Service Mark Application, Principal Register

Serial Number: 77420784

Filing Date: 03/13/2008

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77420784
MARK INFORMATION	
*MARK	ComfortClub
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	ComfortClub
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Barnaby Heating & Air
*STREET	4620 Industrial ST, STE C
*CITY	Rowlett
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	75088
PHONE	972-412-0150
FAX	972-475-6815
EMAIL ADDRESS	info@barnabyheatingandair.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	limited liability company

STATE/COUNTRY WHERE LEGALLY ORGANIZED	Texas
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	036
FIRST USE ANYWHERE DATE	At least as early as 01/22/2008
FIRST USE IN COMMERCE DATE	At least as early as 01/22/2008
*IDENTIFICATION	Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/22/2008
FIRST USE IN COMMERCE DATE	At least as early as 01/22/2008
CORRESPONDENCE INFORMATION	
NAME	Barnaby Heating & Air
FIRM NAME	Barnaby Heating & Air
STREET	4620 Industrial ST, STE C
CITY	Rowlett
STATE	Texas
COUNTRY	United States
ZIP/POSTAL CODE	75088
PHONE	972-412-0150
FAX	972-475-6815
EMAIL ADDRESS	info@barnabyheatingandair.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Charles Barnaby/

SIGNATORY'S NAME	Charles Barnaby
SIGNATORY'S POSITION	Principal Partner
DATE SIGNED	03/13/2008

Trademark/Service Mark Application, Principal Register

Serial Number: 77420784

Filing Date: 03/13/2008

To the Commissioner for Trademarks:

MARK: ComfortClub (Standard Characters, see [mark](#))

The literal element of the mark consists of ComfortClub.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Barnaby Heating & Air, a limited liability company legally organized under the laws of Texas, having an address of

4620 Industrial ST, STE C

Rowlett, Texas 75088

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 specific filing basis information for each item, you must view the display within the Input Table.

International Class 036: Prepaid preventive maintenance service plans for heating, ventilating and air conditioning systems

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 036, the mark was first used at least as early as 01/22/2008, and first used in commerce at least as early as 01/22/2008, 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) direct mail piece.

[Specimen File1](#)

Correspondence Information: Barnaby Heating & Air

4620 Industrial ST, STE C

Rowlett, Texas 75088

972-412-0150(phone)

972-475-6815(fax)

info@barnabyheatingandair.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 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: /Charles Barnaby/ Date Signed: 03/13/2008

Signatory's Name: Charles Barnaby

Signatory's Position: Principal Partner

RAM Sale Number: 9157

RAM Accounting Date: 03/13/2008

Serial Number: 77420784

Internet Transmission Date: Thu Mar 13 11:34:48 EDT 2008

TEAS Stamp: USPTO/BAS-71.96.1.66-2008031311344828293

3-77420784-40030574bb9cde1113f4fe217ddac

a3212f-CC-9157-20080313113219201855

ComfortClub

No Image Attached



NEW!...

Comfort Club™ Memberships

Platinum Membership - \$29.95 per month*

Guaranteed same-day appointments
FREE service on system rejuvenation twice per year
FREE repairs up to Level 5
FREE diagnostic service, and...
100% of your unused balance may be applied to a new home comfort system.

Gold Membership - \$19.95 per month*

Guaranteed appointments within 24 hours
20% off major services
FREE Level 1 repairs... no exclusions
FREE system rejuvenation twice per year,
FREE diagnostic service, and...
100% of your unused balance may be applied to a new heating or cooling system.

Silver Membership - \$11.95 per month

Guaranteed appointments within 48 hours
10% off all repair services,
FREE system rejuvenation twice per year (filters extra)
\$29.95 diagnostic service.

Make your best choice for: Savings, response, reliability, care and safety.

SERVICE, not selling. These plans offer the BEST and most AFFORDABLE options to avoid costly repair, replacement, loss of comfort, inconvenience or loss of safety. These plans are like SMOKE ALARMS, helping to prevent major problems or putting the fire out before it becomes a catastrophe.

Call today for more information on New! ComfortClub™ Memberships!

All Systems must pass an Initial Diagnostics Check and deemed in proper working order. *Covers repairs listed in the FixedRight Pricing™ guide. Free repairs up to Level 5 for Platinum or Level 1 for Gold. ©2008 Barnaby Heating & Air, LLC. All Rights Reserved.



10% Off* Any Service

Present this card and save 10% on your next service.

Call Today!

972.412.0150

*One time offer not valid in conjunction with other offers.

BARNABY Heating & Air

TACLA 14319E

Introducing
Our **NEW!**...



Make your best choice for: Savings, response, reliability, care and safety.

SERVICE, not selling. These plans offer the **BEST** and most **AFFORDABLE** options to avoid costly repair, replacement, loss of comfort, inconvenience or loss of safety. These plans are like **SMOKE ALARMS**, helping to prevent major problems or putting the fire out before it becomes a catastrophe.

Call **TODAY** to learn how you could save up to **\$890** on your next comfort system failure.

All Systems must pass an initial Diagnostics Check and deemed in proper working order. *Covers repairs listed in the FixedRight Pricing™ guide. Free repairs up to Level 5 for Platinum or Level 1 for Gold.



Call Today For More Info!
972.412.0150

Platinum Membership - \$29.95 per month*

Guaranteed same-day appointments
FREE service on system rejuvenation twice per year
FREE repairs up to Level 5
FREE diagnostic service, and...
100% of your unused balance may be applied to a new home comfort system.

Gold Membership - \$19.95 per month*

Guaranteed appointments within 24 hours
20% off major services
FREE! Level 1 repairs... no exclusions
FREE! system rejuvenation twice per year,
FREE! diagnostic service, and...
100% of your unused balance may be applied to a new home comfort system.

Silver Membership - \$11.95 per month

Guaranteed appointments within 48 hours
10% off all repair services,
FREE! system rejuvenation twice per year (filters extra)
\$29.95 diagnostic service.

©2008 Barnaby Heating & Air, LLC. All Rights Reserved.

Exhibit D

NIGHTHAWK
AIRTIME MEMBER AGREEMENT 7247

This AirTime Member Agreement ("Agreement") is entered into as of the date indicated below, by and between AirTime, LLC, a Missouri limited liability company, also known as AirTime 500 ("AirTime," "we," "our," or "us"), and the undersigned business entity and/or individual(s) (jointly and severally referred to as the "member," "your," or "you").

We are in the business of helping heating, ventilation and air conditioning contractors to learn and utilize appropriate methods and techniques of the heating, ventilation and air conditioning contracting business by providing the right to participate as a member in our proprietary program (the "AirTime Program"), which includes but is not limited to having the right to access and use certain information and materials relating to training, advertising, marketing, contracts and forms, operational techniques and methods, and other subjects ("AirTime Resources"). You desire to participate as a member of the AirTime Program and we desire that you participate as a member of the AirTime Program, in accordance with the terms of this Agreement.

AirTime Program. Subject to all of the terms of this Agreement, AirTime grants to you the non-exclusive right and license to participate as a member of the AirTime Program during the term provided for in this Agreement (the "Participation Term"). You agree that you will not use any AirTime Resources outside of your designated geographic service area in addition to abiding by all other terms and conditions regarding use and disclosure of AirTime Resources. A service area is defined as your licensed zip codes listed on attached Schedule C. *To be determined by both parties*

Guarantee. See attached Schedule A

Fees. The attached Schedule B sets forth the membership fees applicable to your participation as a member of the AirTime Program as well as the terms of payment.

Participation Term. The Participation Term commences on the date of this Agreement and will continue until terminated upon thirty (30) days written notice by either party to the other party, or until otherwise terminated as provided in this Agreement.

YOUR SIGNATURE ON BEHALF OF MEMBER INDICATES THAT ALL TERMS OF THIS AGREEMENT, INCLUDING THE ADDITIONAL TERMS ON THE REVERSE SIDE AND ALL SCHEDULES ATTACHED, WHICH ARE HEREBY INCORPORATED BY REFERENCE, HAVE BEEN READ AND ARE AGREED TO BY THE MEMBER.

Dallas, TX

"MEMBER"
Barnaby Heating & Air
 Print Full Name of Corporation or Limited Liability Company, if applicable

Signature Of Authorized Officer of Corporation or Limited Liability Company
[Signature]
 Authorized Signature Of Owner Of Business

Authorized Signature Of Co-Owner Of Business

Address - P.O. Box for mailing
7510 Pennwise Circle Rowlett, TX 75088
 Address - Physical street for shipping (Please check one of the boxes below)
 Residential or Commercial

Phone (Vendor Line):
 Phone (Service Line): *972-412-0150*
 Facsimile: *972-415-6813*
 Email: *BarnabyHeatingandAir.com*
 Mobile#: *972-816-2109*
 Website:

DATE OF AGREEMENT: *8-21-07.*

"AirTime"
 AirTime, LLC
 By *[Signature]*
 Authorized Signature

Address:
 7777 Bonhomme, Suite 1800
 St. Louis, Missouri 63105
 Attn: Patty Myers
 Phone: 877-862-8181
 Facsimile: 314-862-2314

(Leave this area blank)

Rev 08/06

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ADDITIONAL TERMS AND CONDITIONS OF THIS AGREEMENT

Termination. In addition to other methods of termination noted in this Agreement, either party may terminate this Agreement and terminate the Participation Term upon five business days' notice following any event of default by the other party. An event of default includes (1) the failure of the member to timely pay any amounts due to AirTime or any of AirTime's affiliates under this Agreement or pursuant to any other agreement or contract between the member and AirTime or any of AirTime's affiliates, (2) the failure by a party to cure the breach of any other obligation of such party under this Agreement or any other agreement between the parties within fifteen days following notice from the other party specifying such breach, or (3) a voluntary or involuntary filing of a bankruptcy petition by or with respect to a party. Following termination of the Participation Term (for any reason and/or by either party), certain terms, conditions and obligations of this Agreement including, without limitation, the confidentiality obligations, indemnification obligations, limitations, payment obligations incurred by you during the Participation Term or by your use of any Yellow Pages Materials, any obligations to be performed upon or following any termination of the Participation Term pursuant to any express provision of this Agreement, and any miscellaneous provisions that are relevant to any such obligations, as set forth in this Agreement, will nevertheless survive and continue in full force and effect.

Money Back Guarantee For New Members

If you, as a new member, wish to cancel your AirTime membership and receive a full refund of the monies that you have already paid to AirTime you must: (a) deliver to the President of AirTime or his designated agent no later than 9:00 PM CST of the third day of the AirTime EXPO all AirTime Resources that had been given to you (whether by mail or in person) and any notes you had taken during the EXPO or based on the AirTime Resources; (b) tell the President or his agent that you wish to cancel your membership; and (c) upon request, sign a termination of membership form. If you timely complete these steps, your AirTime membership will be cancelled, the Down Payment portion of your Initial Membership Fee will be refunded by the same method of payment used for making the Down Payment and you will no longer be obligated to pay the remaining balance of the Initial Membership Fee or to pay the Continuing Membership Fee. The Money Back Guarantee is a one-time offer for new AirTime members only.

Confidentiality & Use Of AirTime Resources.

1. By entering into this Agreement, you agree that you have continuing obligations to AirTime and/or AirTime's affiliates (for purposes of this section only, collectively referred to as "AirTime") in regard to the use and/or disclosure of the AirTime Resources whether the AirTime Resources are in oral, electronic or tangible form. You further agree that AirTime wholly owns and/or has protectable legal rights in and to the AirTime Resources whether (a) the legal protection derives from being confidential, proprietary, or trade secret information of AirTime, (b) the AirTime Resources are subject to copyright, trademark, tradename, and/or patent rights of AirTime, and/or (c) the AirTime Resources are otherwise protected by law or by the terms of this Agreement. You agree that your obligations regarding the AirTime Resources are a continuing one and include any and all AirTime Resources that you currently have access to and/or will or may have access to in the future.

2. You further agree: not to disclose and to keep strictly confidential all AirTime Resources; not to use any or all of the AirTime Resources for any purpose other than your valid participation in the AirTime Program; not to sell, market or disclose any AirTime Resources to any third person, firm, corporation, or association for any purpose; not to make any copies of the AirTime Resources without AirTime's prior written authorization; not to use any AirTime Resources to directly or indirectly compete with AirTime; not to create derivative works from any AirTime Resources (but if you do so with or without first receiving AirTime's permission, you agree that you shall have no rights in any such derivative works and they shall be considered to be solely and exclusively owned by AirTime); and, upon receipt of an oral or written request from AirTime, you shall immediately return all originals and copies (in whatever manner or technology stored, developed or copied) of any and all AirTime Resources.

3. In the event that you have previously entered into an agreement (written or otherwise) requiring you to protect and preserve any or all of the AirTime Resources, such agreement shall continue in full force and effect except to the extent that the terms and conditions of such agreement are contrary to the terms and conditions of this Agreement, in which event the terms and conditions of this Agreement shall govern and the previous agreement shall be deemed to be so amended.

4. If you use any Yellow Pages advertising materials that are included in the AirTime Resources ("Yellow Pages Materials"), you also agree to pay to AirTime the following fees (as noted in Schedule B) regardless of when the Participation Term terminates: (1) any remaining balance of your Initial Membership Fee, and (2) your Continuing Membership Fees for the entire period of time of your Yellow Pages advertising contract(s) that use any Yellow Page Materials. At the

expiration of your Yellow Pages advertising contract(s), you agree not to further use for your benefit, or the benefit of any other person or entity, any Yellow Pages Materials.

5. You specifically agree that the remedy at law for any breach of your obligations relating to confidentiality and/or use of the AirTime Resources as indicated in this Agreement may be inadequate and that AirTime, in addition to any other legal or equitable relief available, will be entitled to temporary and permanent injunctive relief without the necessity of proving any actual damages.

Indemnification. We agree to indemnify, hold harmless and defend you, and your directors, officers, employees and agents, from and against any claims, damages, liabilities and reasonable costs (including reasonable attorneys' fees) arising out of any failure by us to fulfill our obligations under this Agreement. You agree to indemnify, hold harmless and defend us, and our members, managers, directors, officers, employees, agents and other representatives, from and against any claims, damages, liabilities and reasonable costs (including reasonable attorneys' fees and other legal costs) arising out of any failure by you to fulfill your obligations under this Agreement or otherwise arising out of the conduct of your business. Neither party will in any event be liable to the other party for any consequential, incidental, indirect or special damages, including, without limitation, damages from loss of profits or business goodwill. If either party to this Agreement breaches any of the terms hereof, that party shall pay to the non-defaulting party upon written demand or as part of a judgment all of the non-defaulting party's costs and expenses, including reasonable attorneys' fees, incurred by that party in enforcing the terms of this Agreement, whether or not litigation is commenced.

AirTime Program and Resources. The precise nature, scope, and format of the AirTime Program and AirTime Resources are subject to change from time to time by AirTime in AirTime's reasonable discretion upon notice to you. While a member in the AirTime Program, you agree to abide by any and all terms and conditions, policies and procedures, and rules and regulations that may be published by AirTime from time to time (whether or not specifically contained in this Agreement or published elsewhere) subject to change by AirTime in AirTime's reasonable discretion upon notice to you.

Other Understandings

1. You reserve the right to conduct your business using your own means, methods, policies and procedures. AirTime is an independent contractor and no partnership, limited liability company, joint venture, or franchise relationship is created between you and AirTime pursuant to this Agreement or otherwise.

2. Without limiting any and all express obligations of each party in this Agreement, you acknowledge and agree that AirTime makes no representations, warranties, or guarantees as to any revenues or other benefits to be derived by you from participation as a member of the AirTime Program or by use of the AirTime Resources.

3. Your license to be a member of the AirTime Program does not entitle you to any interest in or ownership rights to AirTime and you do not have any right or license to use any present or future AirTime Resources in the promotion or conduct of your business except as authorized in this Agreement. Nothing in this Agreement shall be construed as conveying to you (i) any right, title or interests or copyright in or to any AirTime Resources or (ii) any license to use, sell, exploit, copy or further develop any such AirTime Resources.

4. You agree not to issue any press release, or otherwise publicly or privately disclose any information concerning this Agreement, your participation in the AirTime Program and/or the AirTime Resources without our prior written consent.

5. During the Participation Term and for a period of six months thereafter, you (and/or you on behalf of any other person or company) will not, directly or indirectly, solicit for employment or for any other working relationship any employee or employees of AirTime or any of its affiliated companies.

6. During the Participation Term, you must have in force such insurance policies with such coverages and minimum policy limits as may be required by AirTime from time to time upon reasonable notice. In any such policy or policies, AirTime and its affiliates shall be added as additional named insureds and you shall provide, as and when requested, a certificate of insurance confirming the existence of such insurance coverage.

Miscellaneous Provisions.

1. Unless otherwise provided herein, any notice, request, consent or other communication under this Agreement will be effective only if it is in writing and sent by a nationally-recognized overnight delivery service to the address indicated in this Agreement or as otherwise indicated by a party in a notice given by such party to the other party, and will be deemed given or made the next business day after delivery to an overnight delivery service properly addressed.

2. This Agreement embodies the entire agreement of the parties with respect to the subject matters hereof and supersedes all other prior agreements, written or oral, with respect to the subject matters hereof.

3. Except as otherwise permitted in this Agreement, this Agreement may not be amended or supplemented, unless set forth in a writing signed by each party, and the terms of this Agreement may not be waived unless set forth in a writing signed by the party entitled to the benefits thereof, and no such waiver will be deemed or will constitute a waiver of such provision at any time in the future or of any other provision hereof. The rights and remedies of the parties are cumulative and not alternative. Except as otherwise provided in this Agreement, neither the failure nor any delay by any party in fully exercising any right, power or privilege under this Agreement will operate as a waiver thereof.

4. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or transferred, in whole or in part, by you without the prior written consent of us. We may assign or transfer this Agreement or any rights hereunder to any third party without notice to or the consent of you.

5. The Membership Fees are payable in accordance with Schedule (B) attached hereto. The amount of the Continuing Membership Fee (i) is calculated on an annual or yearly basis but is payable weekly as indicated in Schedule (B) and (ii) is subject to increase after the first year at AirTime's option but in no event will the rate of increase exceed 5% per annual year. Your annual year begins with the date of the first payment of the Membership Fee noted in Schedule (B). Written notice of any increase in the Continuing Membership Fee will be provided 30 days in advance.

6. If any term of this Agreement or application thereof is, in any jurisdiction and to any extent, finally held invalid or unenforceable, such term will only be ineffective as to such jurisdiction, and only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable any other terms of this Agreement. This Agreement may be executed in one or more counterparts.

7. This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict of laws principles. Any action arising out of or relating to this Agreement will be brought by the parties only in a Missouri state court or a federal court sitting within Missouri, which will be the exclusive venue of any such action. Each party waives any objection to the laying of venue of any such action, and irrevocably consents and submits to the jurisdiction of any such designated court (and the appropriate appellate courts) in any such action. Service of process and any other notice in any such action will be effective against such party when transmitted in accordance with the notice requirements set forth above. Nothing contained herein will be deemed to affect the right of a party to serve process in any manner permitted by law.

8. WAIVER OF JURY TRIAL - EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.

SCHEDULE A
Guarantee

AirTime, LLC
New Member's
IRON CLAD MONEY BACK GUARANTEE

The concepts, strategies and techniques you are about to discover are powerful and amazing. So powerful that we are sure you'll see the exact step-by-step methods you must use to skyrocket profits and really get your business going.

All we need is three days of your time to reveal it. That's all – THREE DAYS.

Here's our Iron Clad Money Back Guarantee for new members: In the unlikely event, after attending the first three days of the AirTime, LLC (AirTime) EXPO you don't feel that our program is going to change your life, and you are not completely convinced that AirTime is everything we told you it was, then by the end of the third day of the EXPO, return all of the AirTime Resources and notes you have taken and you may cancel your AirTime membership and get your money back. For additional details about our Iron Clad Money Back Guarantee for new members, see the Additional Terms & Conditions section of your Member Agreement.

No questions asked. No strings attached. And no expectations on our part. It's that simple. Give us three days to plant the beginning skills and knowledge into your heart and soul. We're so sure you'll love the entire program that we offer our Iron Clad Money Back Guarantee to new members to prove it to yourself.

SCHEDULE B MEMBERSHIP FEES

Member Name Barnaby Heating & Air
(Print Member Name)

(A) Initial Membership Fee

Member agrees to pay to AirTime, LLC ("AirTime") an Initial Membership Fee of \$20,950.00. Not less than \$2,550.00 of such Initial Membership Fee ("Down Payment") is due and payable to AirTime upon the signing and/or authorization of this Agreement.

Member authorizes payment of the \$2,550 Down Payment on the following credit card (VISA/MC/AMEX):

Card Number 4339-9300-0205-8743
Name On Card Charles Barnaby
Exp. Date 02/08
Authorized Signature Of Card Holder *[Signature]*

\$2550 CC 8/31/07

Member authorizes payment of the remaining balance of the Initial Membership Fee by selecting one of the indicated Options below:

Option 1 Check One \$18,400.00 due at conclusion of EXPO

- Please place the remaining balance of the Initial Membership Fee of \$18,400 on the above credit card on October 1, 2007; or
- The Member wishes to have the Initial Membership Fee balance automatically debited ACH on October 1, 2007. (please complete the attached ACH Debit Authorization)

OR
Option 2

Check One
Delivery of Member's promissory note ("Note"), in a form supplied by AirTime, for purposes of financing \$18,400 of the Initial Membership Fee on the following terms: (Note payments will begin on October 1, 2007).

- Equal consecutive monthly investment of \$3,174.89 over a period not to exceed six (6) months, with interest at the rate of one percent (1%) per month; or
- Equal consecutive monthly investment of \$1,147.88 over a period not to exceed eighteen (18) months, with interest at the rate of one percent (1.25%) per month; or
- Equal consecutive monthly investment of \$865.70 over a period not to exceed thirty-six (36) months, with interest at the rate of one and one-half percent (1.5%) per month

(B) Continuing Membership Fee

Member also agrees to pay to AirTime, during the Participation Term, a Continuing Membership Fee of \$229 per week. Such Continuing Membership Fee is payable weekly in advance by means of automatic debit or withdrawal from Member's bank account, or by an automatic charge to a credit card acceptable to AirTime (VISA/MC/AMEX). Payment of such Continuing Membership Fee is to begin September 24, 2007. The option chosen below will apply to your weekly membership and note payment (if applicable).

- Option One: Member authorizes the credit card noted in Section A above to be charged automatically
- Option Two: _____ Member authorizes its business account to be debited automatically (Please complete the attached ACH Debit Authorization)
- Option Three: _____ Member authorizes the credit card listed below to be charged automatically

Card Number _____
Name On Card _____
Exp. Date _____
Authorized Signature Of Card Holder *[Signature]*

Rev 09/06

5

**MEMBER AUTHORIZATION AGREEMENT FOR PAYMENT
OF REMAINING BALANCE OF INITIAL MEMBERSHIP FEE
AND/OR WEEKLY CONTINUING MEMBERSHIP FEE
(ACH DEBIT AUTHORIZATION)**

MEMBER/COMPANY NAME

MEMBER/COMPANY ID NUMBER

(AirTime office use)

ADDRESS

PHONE

CONTACT

Member (through its authorized representative) hereby authorizes AirTime, LLC ("AirTime") to initiate debit entries and/or correction entries to our: **Checking** **Savings account** (select one) indicated below at the depository named below, hereinafter called DEPOSITORY, to debit the same to such account.

DEPOSITORY NAME

BRANCH

CITY

STATE

DEPOSITORY TRANSIT/ABA NUMBER

ACCOUNT NUMBER

This ACH Debit Authorization is to remain in full force until AirTime has received written notification from Member of its termination in such time and in such manner as to afford AirTime and DEPOSITORY reasonable opportunity to act upon it.

MEMBER'S NAME(S)

MEMBER'S TAX ID NUMBER

SIGNATURE OF AUTHORIZED
REPRESENTATIVE OF MEMBER

DATE

AirTime, LLC
7777 Bonhomme Avenue #1800
St. Louis, MO 63105
(877) 862-8181
Fax (314) 862-2314

SCHEDULE C
GEOGRAPHIC AREA

There will be no more than two Airtime 500 members per 500,000 in population.

Your service area for the purpose of using the AirTime Resources is limited to the non-exclusive zip codes noted below or on the attached zip code selection form. If using the zip code selection form, please list zip codes in contiguous order up to a total of 250,000 in population but not to exceed a 40 mile radius of your office location.

Exhibit E

CONFIDENTIALITY AGREEMENT

This Confirmation is executed as of the date indicated by the undersigned business entity and/or individual(s) (jointly and severally referred to as "Member") for the benefit of Clockwork Home Services, Inc., formerly known as Venvest, Incorporated and its affiliated companies (collectively, "CHS"). Member acknowledges and confirms the following:

Member has previously entered into one or more agreements with CHS ("Agreements").

By entering into the Agreements, Member has continuing obligations to CHS in regard to the use and disclosure of certain materials or information (whether such materials or information are in oral, electronic or tangible form) owned by CHS that CHS and Member have agreed are legally protected materials or information of CHS ("Protected Information").

Member confirms that CHS owns and/or has legal rights to the Protected Information whether (a) the legal protection derives from being confidential, proprietary, or trade secret information of CHS, (b) the Protected Information is subject to copyright, trademark, tradename, and/or patent rights of CHS, and/or (c) the Protected Information is otherwise protected by law.

Member's obligations regarding the Protected Information is a continuing one and includes any and all Protected Information that Member already has access to and/or will validly have access to in the future.

All of the terms and conditions of the Agreements including those dealing with Member's obligations regarding Protected Information are and will continue to be in full force and effect.

This Confirmation is only a statement by Member confirming the existence and validity of the Agreements and Member's continuing obligations thereunder and does not constitute a modification of, an amendment to or a novation of the Agreements.

Barnaby Heating & Air allows Clockwork Home Services, Inc., THE SUCCESSFUL CONTRACTOR™, and any of Clockwork Home Services Inc.'s portfolio companies permission to use my name, picture/photograph, statements (oral, written, or recorded) and/or my likeness, for the purpose of using these photographs and statements in oral, written, and recorded communication created for Clockwork Home Services Inc. and any of its portfolio companies. By signing this form, I am allowing Clockwork Home Services Inc. and any of its portfolio company's permission to use my name, photographs, statements or likeness in any promotional or informational material. I will not and did not receive financial compensation for use of any photographs, oral, written, and recorded statements or my likeness.

"MEMBER"

Barnaby Heating & Air

Print Full Name of Corporation or Limited Liability Company, if applicable

Rowlett, TX

City, State

Signature of Authorized Officer of Corporation or Limited Liability Company

DATE: _____

Signature of Owner of Member

Signature of Co-Owner of Member

Signature of Employee of Member

Signature of Employee of Member

Signature of Employee of Member

Exhibit A