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Filing date: **01/15/2016**

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	Aerospace Communicatons Holdings Co., Ltd.		
Entity	Corporation	Citizenship	China
Address	2 AeroCom Building No. 138 Jiefang Road Hangzhou, 310009 CHINA		

Attorney information	Lionel Lavenue Finnegan Henderson Farabow Garrett & Dunner, LLP 901 New York Avenue, NW Washington, DC 20001 UNITED STATES docketing@finnegan.com, lionel.lavenue@finnegan.com, bri-an.westley@finnegan.com, TTAB-Legal-Assistants@finnegan.com Phone:202-408-4000
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Registration Subject to Cancellation

Registration No	4244354	Registration date	11/20/2012
Registrant	IDQ OPERATING, INC. 2901 West Kingsley Road Garland, TX 75041 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2011/05/01 First Use In Commerce: 2011/05/01 All goods and services in the class are cancelled, namely: Vehicle air conditioning technological consultation services in connection withthe maintenance of vehicle air conditioners; vehicle air conditioning technological consultation services in connectionwith the repair of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the maintenance of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the repair of vehicle air conditioners

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23
The mark is merely descriptive	Trademark Act section 2(e)(1)

Attachments	ASK THE PRO Petition for Cancellation - Reg 4244354.pdf(937644 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	/Lionel Lavenue/
Name	Lionel Lavenue
Date	01/15/2016

Aerospace Communications Holdings Co., Ltd.

1. ACH is a Chinese corporation with a business address of No. 2 AeroCom Building, No. 138 Jiefang Road, Hangzhou, China 310009.
2. ACH is a leading supplier of air conditioner refrigerant for vehicle air conditioners. ACH's products are distributed and sold in the United States through Walmart stores.
3. ACH operates the website www.aerocousa.com, which includes a feature that allows consumers to ask professionals for advice about their vehicle's air conditioning refrigerant. Until recently, this webpage stated: "Do you have an A/C related question? Feel free to 'Ask the Pro' for expert advice about your vehicle's A/C. Thanks for your question."
4. ACH used the phrase "ask the pro" not as a trademark, but rather in its generic or primarily descriptive meaning to invite customers to ask or submit questions to pros or professionals.
5. Despite ACH's generic or descriptive use of the phrase "ask the pro," Respondent has asserted in the Eastern District of Texas case that ACH is infringing Respondent's rights in its ASK THE PRO registration.

Respondent and its Registrations

6. Respondent is a New York corporation with its principal place of business at 2901 West Kingsley Road, Garland, Texas 75041.
7. On August 2, 2011, Respondent filed Application Serial No. 85386984 for registration of the phrase "ask the pro" on the Principal Register for "vehicle services in connection with vehicle air conditioners; consultation services in connection with vehicle air conditioners; web site consultation for vehicles in connection with vehicle air conditioners;

educational services in connection with vehicle air conditioners” in International Class 37, alleging a first-use date and first-use-in-commerce date of May 1, 2011.

8. On December 1, 2011, the U.S. Patent and Trademark Office (“PTO”) issued an Office Action refusing registration of Application Serial No. 85386984 on multiple grounds, including that the applied-for mark “appears to be generic in connection with the identified services” and is “merely descriptive.”

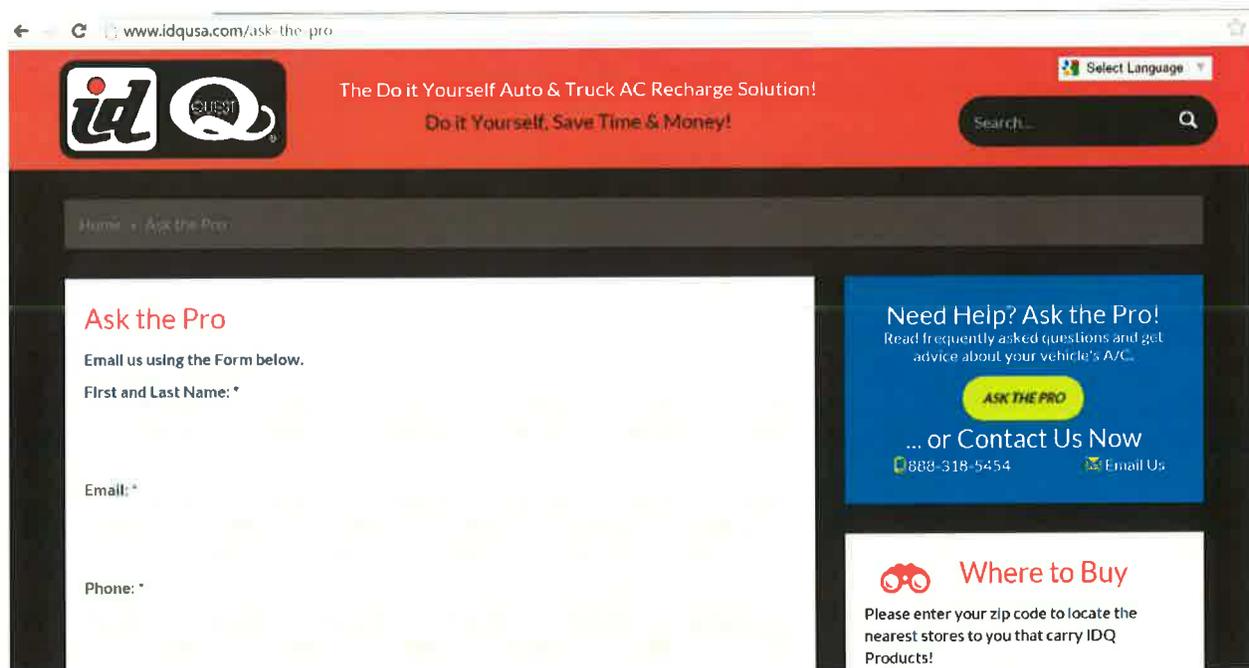
9. In support of the refusal, the Examining Attorney correctly noted that Respondent’s mark consisted of a combination of descriptive terms identifying the feature, purpose, and/or nature of applicant’s services. The Examining Attorney also noted that an important reason for not registering descriptive terms like Respondent’s application for the phrase “ask the pro” was “to avoid the possibility of costly infringement suits brought by the trademark or service mark owner.”

10. On June 1, 2012, Respondent submitted a response to the Office Action contesting the Examining Attorney’s contentions that the mark was generic or descriptive.

11. Respondent’s application matured into Registration No. 4244354 on November 20, 2012, for “Vehicle air conditioning technological consultation services in connection with the maintenance of vehicle air conditioners; vehicle air conditioning technological consultation services in connection with the repair of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the maintenance of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the repair of vehicle air conditioners” in International Class 37.

12. At the time of registration (and currently), the phrase “ask the pro” was not suggestive of Respondent’s services as Respondent alleged in its Response to Office Action, but

rather generic or merely descriptive and devoid of secondary meaning. Indeed, Respondent's own website uses the phrase "ask the pro" in a generic manner (or, at best, merely descriptively) to refer to the services covered by Respondent's registration: "Need Help? Ask the Pro! Read frequently asked questions and get advice about your vehicle's A/C ... or Contact Us Now."



13. On August 17, 2015, Respondent filed a complaint in the Eastern District of Texas case asserting, among other things, that ACH was infringing its alleged rights in the phrase "ask the pro."

14. ACH and other third parties have the right to use the phrase "ask the pro" in connection with inviting consumers to ask or submit questions to pros or professionals.

15. Consumers understand that the phrase "ask the pro" is generic or merely descriptive when used in connection with asking or submitting questions to pros or professionals in a given field, including those services covered by or relating to Respondent's registration. Indeed, numerous third-parties use the phrase "ask the pro," "ask a pro," or "ask the professional" in connection with asking or submitting questions to professionals for advice about

air conditioning maintenance and repairs or vehicle-related maintenance and repairs that include air conditioning services, including for example:

- a. <http://www.automechanicinfairoaks.com/radiator-flush-repair/>



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Q: Does running my air conditioner in the summer keep my engine from overheating? ^

A: Nope. In fact, your engine works harder to keep cool when the car's A/C is on.

- b. <http://www.santaclaraautoland.com/ac-service-and-repairs/>

Our professional mechanics look forward to serving your vehicle's AC system. Conveniently located off of El Camino Real, the address for Autoland of Santa Clara is 2275 De La Cruz Blvd, Suite A Santa Clara, CA 95050.

If you have questions about AC services here at our auto center, you can email us for an [appointment](#) **Ask A Pro** or call us at 408-868-5845.

c. <http://www.autotechservice.com/ask-a-pro/>

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ASK A PRO

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Car troubles or just general car questions? **Ask a Pro!** Use this form to ask any one of our pros questions you have about cars or car repair. If your questions requires forms to download we will direct you on this process once we make contact with you. Please include as much relevant information about your problem as possible.

Example, " This problem occurs worse on first start up on cold morning. Seems ok after the vehicle warms up. Has been going on for two weeks, since my long road trip of 1000 miles".

Under The Hood - Recent Blogs

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AC Repair
Summer months in Kentucky are hot and humid. Losing your car's AC is miserable. In this week's b...

d. <http://www.detailedimage.com/Ask-a-Pro/smelly-ac-system-einszett-1z-klima-cleaner-ac-odor-remover/>

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Smelly AC System? Einszett 1Z Klima Cleaner AC Odor Remover
by Greg Nichols

Early this summer I had a musty smell in my car, wasn't horrid just foul and unpleasant. I read on some of the F150 forums that people were having a similar issue and various causes were shared. Still to this date I don't think there is a perfect explanation as to what is happening and at that point I didn't care, I simply looked at it as a test for the Einszett Klima Cleaner for AC odor remover. I was leaving for a trip to California to help with the Meguiar's and Kevin Brown at the NXTI detailers training during the first of June. If you are a detailer and don't know about this training, FIND OUT. The plan was to clean the vents two days before leaving and since the AC would be used for many many miles on this trip, it would give me a good idea on it's durability of taking care of the issue. I ran the AC for 1700 miles total.

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e. <http://realpages.com/sites/drileyheatandair/page3.html>

☑

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f. <http://www.stcloudtoyota.com/section/car-service/ask-the-pro/>

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g. <http://protechair.com/category/ask-the-pros/>



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Air Filters, Air Filters, Air Filters...

Posted on September 27, 2014 by Ed • 0 Comments

I can't emphasize enough on how important it is to replace your Air filter every month.

The Air filter blocks the dust, dirt and debris from entering the air handler which in turn keep the evaporator coil from becoming clogged and restricted. An Air Conditioner system is designed for a certain amount of air to pass across the evaporator coil. If this amount is lessened by some kind of restriction, may it be boxes, bags, or other things that get stored in the A/C closet hint hint, or if the air filter is clogged, the coil is not able to remove the heat and moisture that is in the air which will cause the coil to become cold and start to form ice. This will restrict the coil more and stop any air from coming out the vents. The ice will melt and a flood will begin.

A clean Air filter lets the system circulate air more freely, remove the heat and moisture more efficiently and bottom line save you money on your electric bill.

They make many different types of air filters. From the less expensive, paper fiber and hogs hair, to the higher quality electric static.

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Filed Under: [Ask the Pro's](#)



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h. <http://www.mensershvac.com/ask-the-professional/>

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16. Moreover, according to an archived copy of the Auto Tech Services site (see item c), located at <http://web.archive.org/web/20101011094237/http://www.autotechservice.com/ask-a-pro>, and dated May 21, 2010, it is undisputed that other parties were using the phrase “Ask a Pro” well before Respondent’s alleged first-use date and first-use-in-commerce date of May 1, 2011.



COUNT I: Genericness Under Section 14(3), 15 U.S.C. § 1064(3)

17. ACH repeats and realleges each and every allegation set forth herein.

18. The phrase “ask the pro,” as shown in Registration No. 4244354, is generic when used in connection with describing services in which professionals offer expert advice and is incapable of functioning as a mark.

19. If Respondent is allowed to maintain its registration for the generic phrase “ask the pro,” it will effectively misappropriate a generic phrase for its exclusive use, and cause injury and damage to ACH and others through its enforcement efforts.

20. Accordingly, Registration No. 4244354 for ASK THE PRO should be canceled under Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), on the ground that “ask the pro” is a generic phrase in connection with describing services in which professionals offer expert advice, and is incapable of functioning as a mark.

COUNT II: Mere Descriptiveness Under Section 2(e)(1), 15 U.S.C. § 1052(e)(1)

21. ACH repeats and realleges each and every allegation set forth in herein.

22. The phrase “ask the pro,” as shown in Registration No. 4244354 is merely descriptive of the services identified in that registration.

23. If Respondent is allowed to continue to maintain its registration for ASK THE PRO, Respondent will be able to continue to improperly impede ACH’s (as well as other third parties’) descriptive use of the phrase.

24. Because the phrase “ask the pro” is at best merely descriptive and has not acquired secondary meaning it is not entitled to registration on the Principal Register under Section 2(e) of the Lanham Act, as amended, 15 U.S.C. § 1052. Accordingly, the registration should be canceled because the phrase “ask the pro” is merely descriptive.

COUNT III: Fraud Under Section 14(3), 15 U.S.C. § 1064(3)

25. ACH repeats and realleges each and every allegation set forth herein.

26. At the time Respondent filed Application No. 85386984, Respondent knew or acted in reckless disregard for the truth that other organizations were using “ask the pro” in connection with describing services in which professionals offer expert advice and knew or acted in reckless disregard for the truth that those organizations had a right to use “ask the pro” in commerce.

27. At the time Respondent signed and executed the supporting declaration for Application No. 85386984, Respondent knew or acted in reckless disregard of the truth that its claim that “no other person, firm, corporation, or association has the right to use the mark in commerce” was false and misleading.

28. At the time Respondent filed Application No. 85386984, Respondent made a material false representation, with the intent to deceive the PTO, regarding its claim that “no other person, firm, corporation, or association has the right to use the mark in commerce.”

29. The PTO accepted and relied upon the declaration of Respondent in approving Application No. 85386984 for publication.

30. Respondent, in failing to disclose the use by others of the phrase “ask the pro” for services covered by Application No. 85386984, intended to procure a registration to which it was not entitled, and thus committed fraud on the PTO.

WHEREFORE, ACH is being and will be damaged by the continued registration of the phrase ASK THE PRO, and respectfully requests that the Petition for Cancellation be sustained and that Registration No. 4244354 be cancelled.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Aerospace Communications Holdings Co. Ltd. PETITION FOR CANCELLATION was served on this 15th day of January, 2016 by first class mail, postage prepaid, on Registrant and counsel for Registrant at the following addresses of record:

IDQ Operating, Inc.
2901 West Kingsley Road
Garland, Texas 75041

Eric B. Meyertons
Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.
1120 S. Capital of Texas Hwy. Bldg. 2
Austin, Texas 78746-6464