

PTO Form 1957 (Rev 9/98)

OMB Control #0651-0009 (Exp. 08/31/2004)

**Response to Office Action****To the Commissioner for Trademarks:**

Please amend application serial no. **78050509** as follows: ?

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**Arguments**

In response to the substantive refusal(s), please note the following:

*MEY* Amendment and Response Under 37 C.F.R. Section 2.62 Madam: In response to the Office Action dated March 24, 2003, Applicant respectfully submits the following response. Please substitute the attached specimens for the rejected specimens. Argument The Examiner has determined that the Amendment to Allege Use is unacceptable due to unacceptable specimens. In response, the Applicant submits the following: A review of Applicant's website shows that he has been selling retail products in the alarm industry and has provided a variety of information (including news) which supports its claims of use in International Classes 035 and 042. There are links to news regarding associations (see attached image), and to products and services which can be bought or sold through the website. Unfortunately, many areas of the site are being mothballed for the time being due to a contract dispute, and some of those features are disabled now. But each was up and running at the time of the filing of the Amendment to Allege Use. However, Applicant is still selling, at retail, through its website, educational products and providing information related thereto, thus meeting the requirements for use in International Classes 035 and 042. Attached to this Office Action Response are new specimens that were in use at the time the Allegation of Use was filed. Note that Applicant is not providing educational services, but merely selling, at retail, online, educational products produced by another. Attached hereto are printouts from Applicant's website and supporting documents from the company which provides the educational materials showing that Applicant is indeed using, and has been using since the filing of the Allegation of Use, the mark in conjunction with provision of retail services and information services. A prospective customer is able to log in to Applicant's website and register and pay for the course they wish to take. Thus, there is a retail sale that takes place at the Security Ecommerce website. The Applicant's trademark is clearly displayed in conjunction with the offer to sell. See attached image. The specimens specifically show the courses, prices, and there are links to log in and purchase the courses. Therefore the requirements stated in the TMEP, Section 1301.04 are met, and the substitute specimens are acceptable for International Class 035. In addition, information is being provided on the website regarding the educational material (see description on attached images). The information is provided directly below Applicants trademark, which is displayed prominently at the top of the page. Again, this meets the requirements stated in TMEP Section 1301.04, and the substitute specimens are acceptable for International Class 042. Supporting Documents Applicant has also attached supporting documents (see attached images) showing that that it is indeed providing information and retail sales regarding the educational material (see Heads Of Commercial Agreement), and that the mark is used on another's website to identify its sales of the education material (NBFAA site printout). See TMEP Section 1301. Declaration The substitute specimens were in use in commerce at least as early as the filing date of the Amendment to Allege use. The undersigned, being hereby warned that willful false statements and the like so made are punishable by a fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or an resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the servicemark sought to be registered, or, if the application is being filed under

15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his 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 own knowledge are true and all statements made on information and belief are believed to be true. CONCLUSION In view of the foregoing remarks, Applicant respectfully asserts that all defects have been cured and this application is in condition for allowance.

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#### **Evidence**

Evidence in the nature of Page 1 of Heads of Commercial Agreement showing authorization to sell educational material. has been attached.

Image: [6319340130-24202717468-security\\_commerce\\_0001.jpg](#)

Evidence in the nature of Page 2 of Heads of Commercial Agreement. has been attached.

Image: [6319340130-24202718530-security\\_commerce\\_0002.jpg](#)

Evidence in the nature of Applicant's webpage referencing offerings for sale and information (e.g., news). has been attached.

Image: [6319340130-24202719588-specimen1wherego.jpg](#)

Evidence in the nature of NBFFA website printout referencing Security eCommerce sales of educational programs. has been attached.

Image: [6319340130-24202721736-security\\_commerceref1.jpg](#)

#### **Specimens**

Applicant hereby submits a specimen for Class 035.

The specimen(s) submitted consists of Entry page to sale of educational programs..

For an application based on 1(b), Intent-to-Use, "The substitute specimen(s) was in use in commerce prior to the filing of the Amendment to Allege Use (AAU)."

Image: [6319340130-24202723865-specimen2eduenter.jpg](#)

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Applicant hereby submits a specimen for Class 035.

The specimen(s) submitted consists of Webpage showing courses offered and pricing..

For an application based on 1(b), Intent-to-Use, "The substitute specimen(s) was in use in commerce prior to the filing of the Amendment to Allege Use (AAU)."

Image: [6319340130-24202725962-specimen2educourseprice.jpg](#)

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Applicant hereby submits a specimen for Class 042.

The specimen(s) submitted consists of Webpage showing course information provided..

For an application based on 1(b), Intent-to-Use, "The substitute specimen(s) was in use in commerce prior to the filing of the Amendment to Allege Use (AAU)."

Image: [6319340130-24202727018-specimen2educourseinfo1.jpg](#)

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#### **Declaration**

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#### **Declaration Signature**

Signature: /Michael J. Hoisington/ ???Date: 09/24/2003

Signatory's Name: Michael J. Hoisington, Esq.

Signatory's Position: Attorney for Applicant

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**Response Signature**

Signature: /Michael J. Hoisington/ ???Date: 09/24/2003

Signatory's Name: Michael J. Hoisington, Esq.

Signatory's Position: Attorney for Applicant

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NPS CORP

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Security eCommerce  
635 East Main Street  
Bridgewater, NJ 08807

### HEADS OF COMMERCIAL AGREEMENT

This agreement is made between National Training Center, 4107 West Cheyenne Avenue, North Las Vegas, NV 89032, USA hereafter called NTC in this agreement and the Security eCommerce, 635 East Main St, Bridgewater, NJ 08807 hereafter called 'Distributor' in this agreement made on 8-22-2002.

NTC has designed and produced a CCTV training course for the security industry; Titled: CCTV which along with the course notes including subsequent versions, adaptations, variations etc is hereafter called 'Product'.

It is hereby agreed that:

1. NTC is the owner of the Product and has complete copyright ownership of the intellectual property therein. By entering into this Agreement, the Distributor does not acquire any rights other than stated herein.
2. The Distributor is responsible for:
  - Including NTC in the annual marketing plan which would include displaying the Product in trade fairs, trade rights or show rooms, obtaining press coverage, direct mailing & telemarketing, advertising etc.
  - Generating, handling and closing enquiries initiated at the distributor website.
  - Collecting orders and informing NTC by email of each order received.
  - The Distributor will develop the infrastructure to execute these orders.
3. The Distributor will be responsible for paying third parties, who may be involved with the Distributor such as the NBFAA and State Associations. Fees for credit card transactions will be deducted from NTC's disbursement.
4. The Distributor can use NTC's trademarks, logos, promotional material etc. and can make alterations with NTC's written permission.

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To: HIGGS FLETCHER INCK Fax: 201

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- 6. The Distributor will provide sales records and marketing information as and when required by NTC.
- 8. The price structure will be as per NTC's published price list (Currently as per attached schedule 1). NTC has the right to vary the price list at its sole discretion with a notice period of 60 days. Price structure is to be effective the 1<sup>st</sup> of the month following receipt of change and must be sent via certified mail. NTC agrees to provide distributor lowest available price on product.
- 7. The Distributor will collect the payment from its customers against each order. At the beginning of each quarter the Distributor will send a check to NTC for the previous quarter by adding up the total orders received for the quarter and subtracting the discount as in the price list (schedule 1) and all applicable credit card fees.  
Distribution will reflect any service fees and non-collected fees either current or prior.
- 8. If required, NTC or its nominated person has a right to review the Distributors accounts, at its own expense, to ensure the quarterly payments sent to NTC are correct. Distributor will remedy if any errors are found.
- 9. This Agreement is valid for a period of one year from date and can be Renewed thereafter on mutually agreeable terms. Early termination by either party requires a written notice of 45 days.
- 10. The laws of the New Jersey, USA, govern this Agreement

Executed as an Agreement by the parties on ... 8.22.03 .....

1. Signed for and on behalf of National Training Center

By

Name: Charles Paul

Title: President

2. Signed for and on behalf of the Distributor ... Security eCommerce

By

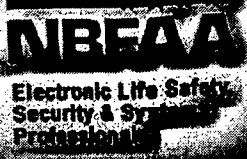
Name: Elizabeth A. Turner

Title: Director of Marketing



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www.nbfaa.com September 24, 2003

**Member Services**

"More Knowledge - More Contacts - More Profit"

**What are the Member Benefit Programs at NBFAA?**

- Teach me!
- Who do you know?
- How much can I save?

**EDUCATION**

**National Training School (NTS) - 866-636-1687** - Established in 1985 to promote professionalism and provide training to the electronic security and life safety industry. The National Burglar & Fire Alarm Association (NBFAA) sponsors the school. Local Chartered State Associations (CSA) throughout the United States sponsor classes including: Apprentice, Certified Service Technician, Certified Alarm Technician (Level 1), Advanced Burglar Alarm Technician, Electronics & Space Detection (Level 2A), Controls, Communications & Fire Systems (Level 2B), Fire Alarm Installation Methods, Life Safety Code Course, Essential Sales Training, Understanding Alarm Systems, Central Station, Understanding Access Control Systems, Continuing Education Program (CEU). NBFAA Members get discounts on courses and materials.

**Security eCommerce - 866-732-2677** - TRAINING ON DEMAND! ON-LINE TRAINING direct to you from the Security Industry's leading sources of new technologies, processes and standards. An exclusive offering of the NBFAA NTS certification courses is available on-line. Please visit [www.securityecommerce.com](http://www.securityecommerce.com) to view our training program as well as a host of other services for both dealers and installers. For the education area mouse over to "Security Dealer/Installer" and select "On-Line Training".

**Security Press Training Manuals - 301-585-1855** - Security Press offers the most complete selection of educational materials in the security industry. Each manual contains comprehensive how-tos, often times with samples that you can put to use immediately.

**Butterworth-Heinemann - 800-366-2665** - Members get a 10% discount off the list price of all published books.

Microsoft Internet Explorer status bar: Home, Stop, Back, Forward, Stop, Refresh, Home, NBFAA