

ESTTA Tracking number: **ESTTA270654**

Filing date: **03/06/2009**

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

Proceeding	91188573
Party	Defendant Downwind, Inc.
Correspondence Address	J.B. FROST COLEMAN FROST LLP 501 COLORADO SUITE 208 SANTA MONICA, CA 90401  jb@colemanfrost.com
Submission	Answer
Filer's Name	J.B. Frost
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Signature	/J.B. Frost/
Date	03/06/2009
Attachments	Downwind Answer (BARK).pdf ( 4 pages )(140632 bytes )

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

Applicant's Mark: BARK  
Serial No. 77/420437  
Filed: March 12, 2008  
Published: July 29, 2008

FITZ-WRIGHT COMPANY LTD.,

Opposer,

vs.

DOWNWIND, INC.,

Applicant.

**APPLICANT'S ANSWER**

Opposition No. 91188573

Downwind, Inc. ("Applicant") responds as follows to the allegations set forth in Fitz-Wright Company Ltd.'s ("Opposer") notice of opposition:

1. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph 1 of the notice of opposition and on that basis denies the allegations.
2. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph 2 of the notice of opposition and on that basis denies the allegations.
3. Applicant admits that the TARR database lists Fitz-Wright Company Ltd. as the owner of Registration No. 2156234. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph 3 of the notice of opposition and on that basis denies the allegations.
4. Applicant admits that it is the owner of Application Serial No. 77/420,437 for the BARK trademark. Applicant denies that the use and registration of the BARK trademark

would harm or jeopardize Opposer in any way. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph 4 of the notice of opposition and on that basis denies the allegations.

5. Applicant admits that it is the owner of Application Serial No. 77/420,437 for the BARK trademark. Applicant admits that the TARR database lists Fitz-Wright Company Ltd. as the owner of Registration No. 2156234. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph 5 of the notice of opposition and on that basis denies the allegations.

6. Applicant admits that the TARR database lists Fitz-Wright Company Ltd. as the owner of Registration No. 2156234. Applicant also admits that it is the owner of Application Serial No. 77/420,437 for the BARK trademark. All other allegations in Paragraph 6 of the notice of opposition are denied.

7. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of Opposer's allegations regarding Opposer's information and belief and on that basis denies the allegations in Paragraph 7 of the notice of opposition.

#### **AFFIRMATIVE DEFENSES**

Applicant's BARK trademark has independent significance and meaning and in its entirety is sufficiently distinctively different from Opposer's mark in terms of appearance, sound, connotation and commercial impression to avoid confusion, mistake or deception as to the source, sponsorship or association of Applicant's goods. Bark is also the surname of one of Applicant's principals and has been used in connection with a variety of sports related goods and services for many years, including various uses predating Opposer's alleged first use dates of its claimed trademark, and Applicant is not aware of any consumer confusion

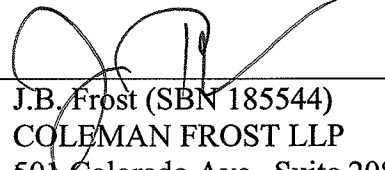
during this extended period of simultaneous use of the Bark name and Opposer's claimed mark."

WHEREFORE, Applicant requests that the notice of opposition be dismissed.

Dated: March 6, 2009

By

COLEMAN FROST LLP

  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA        )  
  ) ss.  
COUNTY OF LOS ANGELES    )

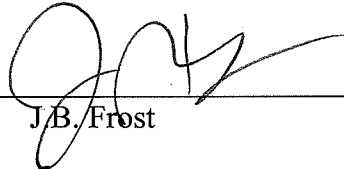
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 501 Colorado Avenue, Suite 208, Santa Monica, California 90401.

On March 6, 2009, I served the foregoing document described as **ANSWER TO OPPOSITION, OPPOSITION NO. 91188573** on the interested parties in this action as follows:

X **By Mail:** I caused such envelope to be deposited in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Person or Persons served:  
  
Michael J. MacDermott  
Christie, Parker & Hale, LLP  
P.O. Box 7068  
Pasadena, CA 91109-7068

I declare under penalty of perjury under the laws of the State of California that I am a member of the bar of this court and that this declaration was executed on March 6, 2009, at Santa Monica, California.

  
\_\_\_\_\_  
J.B. Frost