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Filing date: **09/24/2010**

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

Proceeding	91191601
Party	Plaintiff The Laryngeal Mask Company Limited
Correspondence Address	JAMES E. GRIFFITH FOLEY & LARDNER LLP 90 PARK AVENUE NEW YORK, NY 10016-1314 UNITED STATES jgreene@foley.com, jgriffith@foley.com, kbargmann@foley.com, eschmalz@foley.com, newyorkipdocketing@foley.com
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Signature	/Eric M. Schmalz/
Date	09/24/2010
Attachments	Opposers Motion to Deem Admitted.PDF ( 21 pages )(261814 bytes )

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

In the Matter of App. Serial No.: 78/448,067  
Mark: C-LMA

THE LARYNGEAL MASK COMPANY LTD. <p style="text-align: center;">Opposer,</p>	)	
v.	)	Opposition No. 91191601
ANIBAL DE OLIVEIRA FORTUNA <p style="text-align: center;">Applicant.</p>	)	

**OPPOSER’S MOTION TO DEEM ADMITTED OPPOSER’S SECOND AND THIRD  
REQUESTS FOR ADMISSIONS**

The Laryngeal Mask Company Ltd. (“Opposer”) hereby moves for an order deeming admitted Opposer’s Second Request for Admissions (see attached Ex. A) and Opposer’s Third Request for Admissions (see attached Ex. B). Opposer also requests that this proceeding be suspended pending the issuance of the Trademark Trial and Appeal Board’s (the “Board”) order on this motion under 37 C.F.R. § 2.117(c). This motion is submitted on the grounds identified below to narrow the matters that must be tried in this proceeding and to allow Opposer, going forward, to rely on facts admitted by Applicant through operation of law.

1. Discovery for this case was set for the period between October 30, 2009, and April 28, 2010, and was extended through August 11, 2010, by an order of the Board dated May 20, 2010.
2. Opposer timely issued its initial disclosures on November 29, 2009, timely served its Second Request for Admissions on Applicant on April 28, 2010 (see attached Ex. A and the included certificate of service), and timely served its Third Request for Admissions on Applicant on August 11, 2010 (see attached Ex. B and the included certificate of service). Pursuant to a

March 7, 2010 agreement between the parties permitting service of case documents by e-mail, Opposer's Second and Third Requests for Admissions were served on Applicant via e-mail, with courtesy copies sent by mail.

3. Under 37 C.F.R. § 2.120(a)(3) and Federal Rule of Civil Procedure 36(a)(3), responses to requests for admission must be served within 30 days from the date of service of such requests, or the matter contained therein will be admitted.

4. Applicant never requested any extension of time to respond to Opposer's Second or Third Request for Admissions. Nor did Applicant file a motion seeking to extend his deadline for responding to these requests with the Board, and the Board did not issue any order extending Applicant's time to respond to these Requests.

5. Therefore, Applicant was required to serve his responses to Opposer's Second Request for Admissions no later than May 28, 2010, and to serve his responses to Opposer's Third Request for Admissions no later than September 10, 2010.

6. To date, Opposer has not received any response to its Second Request for Admissions. On September 13, 2010, Opposer received an untimely response to its Third Request for Admissions (see Ex. C).

7. Applicant's failure to timely respond to Opposer's Requests for Admissions are symptomatic of Applicant's approach to this proceeding. Applicant never provided initial disclosures under Rule 26 to Opposer. Moreover, Applicant never served a single timely discovery request on Opposer. His only request, a set of Requests for Admissions, was issued weeks after the close of discovery on September 1, 2010. Finally, in response to an interrogatory, Applicant even stated that he "presently finds no need to call any witness in this matter," a position that he has maintained through the close of discovery which reflects his intent

to have Opposer incur the expense of prosecuting its opposition, while Applicant declines to actively establish a case in defense of his application.

8. Applicant's failure to timely respond to Opposer's Requests for Admissions or to pursue his own case during the discovery period is not caused by Applicant's lack of familiarity with the rules governing practice before the Board. Opposer served its first set of discovery requests on Applicant on January 28, 2010. On March 3, 2010, Applicant filed with the Board a timely motion for an extension of time to extend by ten days the time period for his responses to Opposer's first set of discovery requests.<sup>1</sup> Opposer did not oppose Applicant's motion. (See Opposer's Response dated March 5, 2010.) Applicant's familiarity with the Rules is also reflected by his initial discovery responses, his untimely response to Opposer's Third Request for Admissions, and his untimely discovery requests on Opposer. Rather than reflecting an unfamiliarity with the rules, Applicant's pattern of failing to take required actions in this proceeding, such as failing to submit initial disclosures or responses to Applicant's Second Request for Admissions, and of serving other documents after deadlines imposed by the Board or by rule are the consequence of Applicant' choosing not to avail himself of the rules and procedures of which he is well aware.

9. Applicant's neglect is inexcusable. His lack of diligence in failing to respond to the Second Request for Admissions or to timely respond to the Third Request for Admissions should result in the matter contained in the Requests to be deemed conclusively admitted for the purposes of this proceeding.

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<sup>1</sup> The parties did not agree to service by e-mail until March 7, 2010. Therefore, Applicant was afforded an additional five days to respond to Opposer's first sets of discovery requests pursuant to Board Rule 113.05.

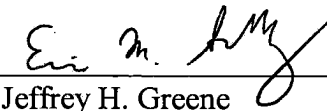
10. Due to Applicant's failure to timely respond to Opposer's Second and Third Requests for Admissions, these Requests are admitted through operation of law and are conclusively established. See *Fram Trak Industries Inc. v. WireTracks LLC*, 77 USPQ2d 2000, 2005 (T.T.A.B. 2006).

11. Accordingly, Opposer moves that the matter contained in its Second and Third Requests for Admissions be deemed admitted by Applicant for the purposes of this proceeding.

12. Opposer requests that all matters and dates in this proceeding not germane to this motion be immediately suspended pending the Board's order on this motion under 37 C.F.R. § 2.117(c) to narrow the matters that must be tried in this proceeding and to allow Opposer, going forward, to rely on facts admitted by Applicant through operation of law.

Respectfully submitted,

FOLEY & LARDNER LLP

By:  \_\_\_\_\_

Jeffrey H. Greene  
James E. Griffith  
Kelly M. Weiner  
Eric M. Schmalz  
Foley & Lardner LLP  
90 Park Avenue  
New York, NY 10016-1314

*Attorneys for Opposer*

Dated: New York, New York  
September 24, 2010

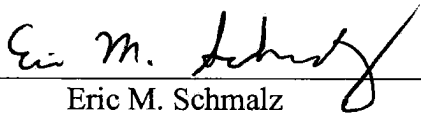
**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION TO DEEM ADMITTED OPPOSER'S SECOND AND THIRD REQUESTS FOR ADMISSIONS** was deposited with the United States Postal Service as first class airmail, postage prepaid, in an envelope addressed to Applicant:

Dr. Anibal de Oliveira Fortuna  
Av. Alm. Cochrane, 83 apto. 161  
11040-001 Santos, SP Brazil

and sent to him via electronic mail at the address "anibal.fortuna@uol.com.br."

Dated: September 24, 2010

  
Eric M. Schmalz

# Exhibit A

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

In the Matter of App. Serial No.: 78/448,067  
Mark: C-LMA  
Published: April 28, 2009

_____	)	
THE LARYNGEAL MASK	)	
COMPANY LTD.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91191601
	)	
ANIBAL DE OLIVEIRA FORTUNA	)	
	)	
Applicant.	)	
_____	)	

### **OPPOSER THE LARYNGEAL MASK COMPANY LTD.'S SECOND REQUEST FOR ADMISSIONS TO APPLICANT ANIBAL DE OLIVEIRA FORTUNA**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Opposer The Laryngeal Mask Company Ltd. ("Opposer"), hereby requests that Applicant Anibal De Oliveira Fortuna ("Applicant") admit that the statements listed below are true within 30 days of the date of service.

#### **INSTRUCTIONS**

1. In answering these Requests, Applicant is required to furnish all information that is available to Applicant or subject to Applicant's reasonable inquiry, including information in the possession of Applicant's employees, attorneys, accountants, advisors, agents, or other persons directly or indirectly employed by or connected with Applicant, and anyone else otherwise subject to Applicant's control.

## Exhibit A

2. These Requests shall be deemed continuing so as to require supplemental answers if Applicant or his counsel obtains further information responsive to these Requests between the time of his response and the time of trial.
3. Whenever Applicant's Answer to a Request is based on information that is not within his personal knowledge, Applicant shall identify the source of the information.

### DEFINITIONS

1. The term "document" shall mean any writing or recording, including, but not limited to, the original and any copy of electronic mail (a.k.a. email), books, records, reports, tape recordings, transcripts of tape recordings, data cards, memoranda or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, logs, graphs, charts, contracts, releases, studies, drawings, canceled checks, summaries, booklets, circulars, bulletins, instructions, minutes, bills, questionnaires, invoices, disks, correspondence, financial statements, and drafts of any of the foregoing, computer data, however stored, as well as any other tangible thing on which information is recorded in writing, sound, or through other means.
2. The term "thing" shall mean all tangible objects, other than documents, of any type, composition, construction, or nature.
3. The terms "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.
4. The term "Applicant" shall mean the applicant in this Opposition, Anibal De Oliveira Fortuna.
5. The term "Opposer" shall mean The Laryngeal Mask Company Ltd., its predecessors in interest, its subsidiaries and related organizations, and the officers, employees, directors, officials, agents and representatives thereof.



## Exhibit A

6. The term “LMA Marks” shall refer to Opposer’s registered marks comprising or containing the element “LMA” for laryngeal masks on the Principal Register:

<b>Mark</b>	<b>Registration Number</b>	<b>Filing Date</b>	<b>Registration Date</b>	<b>First Use Date</b>	<b>Status</b>
LMA	2,506,914	February 7, 2001	November 13, 2001	December 11, 1992	Incontestable
LMA & Design	1,854,088	September 15, 1992	September 13, 1994	December 11, 1992	Incontestable
LMA-UNIQUE	2,133,294	June 12, 1996	January 27, 1998	June 27, 1997	Incontestable
LMA-FASTRACH	2,173,557	June 12, 1996	July 14, 1998	March 5, 1998	Incontestable
LMA-CLASSIC	2,220,745	June 12, 1996	January 26, 1999	February 23, 1998	Incontestable
LMA-PROSEAL	2,518,267	August 20, 1999	December 11, 2001	August 15, 2000	Incontestable
LMA CTRACH	3,234,339	June 29, 2004	April 24, 2007	November 29, 2004	Registered

7. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of each Request all documents or things that might otherwise be construed to be outside its scope.

### REQUESTS FOR ADMISSION

1. All documents and things that Applicant has produced under Rule 34 of the Federal Rules of Civil Procedure in this proceeding are authentic and may be relied upon by Opposer as evidence.
2. Medtech distributed laryngeal masks under the trademark “LMA” in Brazil prior to September 2004, when its distribution agreement with Intavent-Cyprus, Opposer’s predecessor in interest, terminated.
3. Medtech distributed laryngeal masks under the LMA Marks in Brazil prior to September 2004, when its distribution agreement with Intavent-Cyprus, Opposer’s predecessor in interest, terminated.

## Exhibit A

4. Based on Applicant's understanding of Opposer's reputation, Opposer has a worldwide reputation for producing and selling quality laryngeal masks under its LMA Marks.
5. Based on Applicant's understanding of Opposer's reputation, Opposer has a reputation in the United States for producing and selling quality laryngeal masks under its LMA Marks.
6. Applicant did not consult with or use the services of a third party to conduct an availability search or investigation with respect to its proposed C-LMA mark.
7. In making his decision to apply for the C-LMA mark, Applicant considered no other alternative marks.

Respectfully submitted,

FOLEY & LARDNER LLP

Dated: April 28, 2010

By: 

Jeffrey H. Greene  
James E. Griffith  
Eric M. Schmalz  
Foley & Lardner LLP  
90 Park Avenue  
New York, NY 10016-1314

*Attorneys for Opposer*

# Exhibit A

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER THE LARYNGEAL MASK COMPANY LTD.'S SECOND REQUEST FOR ADMISSIONS TO APPLICANT ANIBAL DE OLIVEIRA FORTUNA** was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Applicant:

Dr. Anibal de Oliveira Fortuna  
Av. Alm. Cochrane, 83 apto. 161  
11040-001 Santos, SP Brazil

and sent to him via electronic mail at the address "anibal.fortuna@uol.com.br."

Dated: April 28, 2010

  
James E. Griffith

## Exhibit B

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

In the Matter of App. Serial No.: 78/448,067  
Mark: C-LMA  
Published: April 28, 2009

_____	)	
THE LARYNGEAL MASK	)	
COMPANY LTD.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91191601
	)	
ANIBAL DE OLIVEIRA FORTUNA	)	
	)	
Applicant.	)	
	)	
_____	)	

#### **OPPOSER THE LARYNGEAL MASK COMPANY LTD.'S THIRD REQUEST FOR ADMISSIONS TO APPLICANT ANIBAL DE OLIVEIRA FORTUNA**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Opposer The Laryngeal Mask Company Ltd. ("Opposer"), hereby requests that Applicant Anibal De Oliveira Fortuna ("Applicant") admit that the statements listed below are true within 30 days of the date of service.

#### **INSTRUCTIONS**

1. In answering these Requests, Applicant is required to furnish all information that is available to Applicant or subject to Applicant's reasonable inquiry, including information in the possession of Applicant's employees, attorneys, accountants, advisors, agents, or other persons directly or indirectly employed by or connected with Applicant, and anyone else otherwise subject to Applicant's control.

## Exhibit B

2. These Requests shall be deemed continuing so as to require supplemental answers if Applicant or his counsel obtains further information responsive to these Requests between the time of his response and the time of trial.

3. Whenever Applicant's Answer to a Request is based on information that is not within his personal knowledge, Applicant shall identify the source of the information.

### DEFINITIONS

1. The term "document" shall mean any writing or recording, including, but not limited to, the original and any copy of electronic mail (a.k.a. email), books, records, reports, tape recordings, transcripts of tape recordings, data cards, memoranda or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, logs, graphs, charts, contracts, releases, studies, drawings, canceled checks, summaries, booklets, circulars, bulletins, instructions, minutes, bills, questionnaires, invoices, disks, correspondence, financial statements, and drafts of any of the foregoing, computer data, however stored, as well as any other tangible thing on which information is recorded in writing, sound, or through other means.

2. The term "thing" shall mean all tangible objects, other than documents, of any type, composition, construction, or nature.

3. The terms "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

4. The term "Applicant" shall mean the applicant in this Opposition, Anibal De Oliveira Fortuna.

5. The term "Opposer" shall mean The Laryngeal Mask Company Ltd., its predecessors in interest, its subsidiaries and related organizations, and the officers, employees, directors, officials, agents and representatives thereof.

## Exhibit B

6. The term “LMA Marks” shall refer to Opposer’s registered marks comprising or containing the element “LMA” for laryngeal masks on the Principal Register:

<b>Mark</b>	<b>Registration Number</b>	<b>Filing Date</b>	<b>Registration Date</b>	<b>First Use Date</b>	<b>Status</b>
LMA	2,506,914	February 7, 2001	November 13, 2001	December 11, 1992	Incontestable
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LMA CTRACH	3,234,339	June 29, 2004	April 24, 2007	November 29, 2004	Registered

7. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of each Request all documents or things that might otherwise be construed to be outside its scope.

### REQUESTS FOR ADMISSION

1. Both the products that Applicant plans to offer under the C-LMA mark and Opposer’s laryngeal mask products are devices for airway management.
2. Both the products that Applicant plans to offer under the C-LMA mark and Opposer’s laryngeal mask products are used for identical purposes in the medical field.
3. The typical users of airway management devices, namely physicians and medical professionals who use the devices during surgery, are commonly not the persons responsible for making the purchasing decisions for medical devices at hospitals and clinics.
4. The persons at hospitals and clinics who exercise decision-making authority over purchasing decisions for medical devices are often administrators who do not have the

## Exhibit B

sophistication and expertise to understand the functional differences between the different devices for airway management which are on the market.

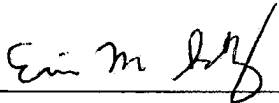
5. The persons at hospitals and clinics who exercise decision-making authority over purchasing decisions for medical devices are likely to rely on product trademarks to distinguish between products and their sources.

6. In light of the distinctiveness and recognition of the LMA Marks in the medical field, the persons at hospitals and clinics who exercise decision-making authority over purchasing decisions for medical devices are likely to be confused as to the source of Opposer's goods, if they are offered under the C-LMA mark.

7. The use of the C-LMA mark on Applicant's Goods will cause actual confusion among purchasers and potential purchasers of both Opposer's Goods and Applicant's Goods.

Respectfully submitted,

FOLEY & LARDNER LLP

By:  \_\_\_\_\_

Dated: August 11, 2010

Jeffrey H. Greene  
James E. Griffith  
Eric M. Schmalz  
Foley & Lardner LLP  
90 Park Avenue  
New York, NY 10016-1314

*Attorneys for Opposer*

## Exhibit B

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER THE LARYNGEAL MASK COMPANY LTD.'S THIRD REQUEST FOR ADMISSIONS TO APPLICANT ANIBAL DE OLIVEIRA FORTUNA** was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Applicant:

Dr. Anibal de Oliveira Fortuna  
Av. Alm. Cochrane, 83 apto. 161  
11040-001 Santos, SP Brazil

and sent to him via electronic mail at the address "anibal.fortuna@uol.com.br."

Dated: August 11, 2010

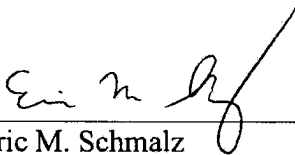
  
Eric M. Schmalz



Exhibit C

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

In the Matter of App. Serial No.:     **78/448,067**  
Mark:                                     **C-LMA**  
Published:                               **April 28, 2009**

<b>THE LARYNGEAL MASK COMPANY LTD.</b>	)	
	)	Opposition No. <b>91191601</b>
	)	
v.                     Opposer,	)	
	)	
<b>ANIBAL DE OLIVEIRA FORTUNA</b>	)	
	)	
Applicant.	)	

**ANSWER TO OPPOSER'S, THE LARYNGEAL MASK COMPANY LTD.,  
THIRD REQUEST FOR ADMISSIONS TO APPLICANT ANIBAL DE  
OLIVEIRA FORTUNA**

The following is the ANSWER from the Applicant to OPPOSER'S THIRD REQUEST FOR ADMISSIONS made by Anibal de Oliveira Fortuna ("Applicant"), a physician resident in Brazil, who has applied for the registration in the US of the "C-LMA" word mark as shown in Application Serial No. 78/448,067 (the "Application"), filed July 8, 2004 and now is respectfully defending his proposed trademark within this Trademark and Appeal Board, against Opposition made by The Laryngeal Mask Company, LTD ("Opposer"), a company established in the Seychelles.

Applicant hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in this **THIRD REQUEST FOR ADMISSIONS** as follows:

## Exhibit C

1. Both the products that Applicant plans to offer under the C-LMA mark and Opposer's laryngeal mask products are devices for airway management.

Applicant admits the allegations of paragraph 1

2. Both the products that Applicant plans to offer under the C-LMA mark and Opposer's laryngeal mask products are used for identical purposes in the medical field.

Applicant denies the allegations of paragraph 2

Despite having the same basic purpose on the medical field, i.e: *to ventilate a patient*, Applicant affirmatively alleges that the Applicant's patented airway device (US patent 7,040,322 B2) which is intended to be offered to the market by its already registered trademark, known as "**COMBIMASK**" (**COMBINATION** Artificial Airway Device and Esophageal Obturator) and also by its acronym, the proposed short name **C-LMA**, is a *supraglottic airway device combined with an esophageal obturator*. A more complex device, with its own distinct particular design and functional characteristics which cannot be simply classified within the general and common description of a "laryngeal mask airway" device, nor less can be considered as "identical" to the Opposer device for airway management.

3. The typical users of airway management devices, namely physicians and medical professionals who use the devices during surgery, are commonly not the persons responsible for making the purchasing decisions for medical devices at hospitals and clinics.

Applicant denies the allegations of paragraph 3;

On the contrary of the Opposer's allegations on paragraph 3, the end users of any airway management devices, in the same way as with any other medical product, are physicians

## Exhibit C

and well trained medical professionals with sufficient knowledge to select and distinguish between the different device presentations and brands, the ones which are more appropriate for their patient in a particular medical situation. Furthermore, the attending physicians or the medical professionals, by being not only medically but also legally responsible for their acts, are certainly aware of the differences among available medical equipment, airway management devices included. They will only use, or recommend for purchasing, the ones which they know, and are confident with.

Despite not being directly responsible for dealing with the purchase bureaucracy, physicians and medical professionals who are, utmost the end users of airway management devices in their patients during surgery, will have their opinion always highly considerate on any purchasing decision.

4. The persons at hospitals and clinics who exercise decision-making authority over purchasing decisions for medical devices are often administrators who do not have the sophistication and expertise to understand the functional differences between the different devices for airway management which are on the market.

Applicant denies the allegations of paragraph 4;

The administrators or persons at hospitals and clinics who exercise decision-making authority over purchasing decisions for medical devices, by their position requirements, must be responsible and knowledge people, with expertise and usually long experience on dealing with the multitude of different medical products and brands. Furthermore, they will be primary following the requests of their medical personal on making purchase decisions. In any eventual misunderstanding or uncertainty between different device brands and product specifications, they would formally consult for assistance the medical department which have requested the product. The same goes with the airway management equipment.

## Exhibit C

5. The persons at hospitals and clinics who exercise decision-making authority over purchasing decisions for medical devices are likely to rely on product trademarks to distinguish between products and their sources.

Applicant denies the allegations of paragraph 5;

The decision-making authority over purchasing decisions for medical devices by their position requirements are responsible and knowledgeable people, which are not likely to rely just on product trademarks on their purchase decision, particularly when there are significant design and functional differences among these products. Furthermore the decision-making authority over purchasing decisions for medical devices, usually have long experience and expertise on dealing with the multitude of different medical products and brands, besides being always assisted by their medical staff when needed for their purchase decisions.

6. In light of the distinctiveness and recognition of the LMA Marks in the medical field, the persons at hospitals and clinics who exercise decision-making authority over purchasing decisions for medical devices are likely to be confused as to the source of Opposer's goods, if they are offered under the C-LMA mark.

Applicant denies the allegations of paragraph 6

Applicant affirmatively alleges that Opposer's marks and Applicant's proposed trademark are not nearly identical in overall commercial impression, appearance, sound and spelling, and therefore it is highly unlikely to occur any confusion mistake and/or deception between the Opposer's "LMA" mark and the Applicant's proposed mark.

These products are directed to distinguish, selected and highly specialized public, that can certainly differentiate and choose among different airway devices, and aren't likely, as a

## Exhibit C

matter of logic, to be confused. So, following this same line of thought is also highly unlikely to occur any confusion between the Opposer's marks and the Applicant's proposed mark.

7. The use of the C-LMA mark on Applicant's Goods will cause actual confusion among purchasers and potential purchasers of both Opposer's Goods and Applicant's Goods.

Applicant denies the allegations of paragraph 7.

As Applicant has already affirmatively alleged in preceding paragraphs, due to distinct functional characteristics between Applicant's and Opposer's goods, it is highly unlikely to occur confusion among sophisticated and well informed purchasers and consumers, regarding goods provided by one or another supplier.

Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception among purchasers and consumers to mistakenly believe, simply by the use of anatomical and device acronyms, that might be any common source between Applicant's and Opposer's to provide these goods.

Due the sophisticated and educated nature of target public for those devices, it will be highly unlikely for prospective purchasers of Applicant's products, to eventually associate Applicant's and Opposer's marks.

Respectfully submitted,

/aofortuna/

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Anibal de Oliveira Fortuna  
Applicant

Date: September 12, 2010.

# Exhibit C

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Answer to OPPOSER'S, THE LARYNGEAL MASK COMPANY LTD., FIRST REQUEST FOR ADMISSIONS TO APPLICANT ANIBAL DE OLIVEIRA FORTUNA was deposited on September 13, 2010 within the Brazilian Postal Office, via First Class Certified Mail, postage prepaid, addressed to Counsel for Opposer at the following address:

Kelly M. Bargmann  
Foley & Lardner LLP  
90 Park Avenue  
New York, NY 10016-1314  
USA

/aofortuna/

---

Anibal de Oliveira Fortuna  
Applicant

Sign electronically and sent to the Opposer legal representatives at the same time, via electronic mail to the following addresses: "bedwards@foley.com; jgriffith@foley.com; eschmalz@foley.com";

September 13, 2010