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

Proceeding	91208005
Party	Defendant Ty-Float, Inc.
Correspondence Address	ROBERT R. DELEAULT MESMER & DELEAULT, PLLC 41 BROOK ST MANCHESTER, NH 03104-3599 bob@biz-patlaw.com
Submission	Answer
Filer's Name	/s/ Frank B. Mesmer, Jr., Esq.
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Date	12/17/2012
Attachments	Answer to Opposition (3).pdf (4 pages)(88759 bytes)

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

Alphasource, Inc.)	
)	Opposition No.: 91208005
)	Serial No.: 85/219800
Opposer)	Mark: "THINK FME!" [and Design]
v.)	
)	
Ty-Flot, Inc.)	
)	
Applicant)	

ANSWER TO OPPOSITION

NOW COMES Ty-Flot, Inc. ("Applicant"), by and through its attorneys, and answers the Notice of Opposition ("Opposition") filed by Alphasource, Inc. ("Opposer") seeking to oppose the registration of the mark shown in Application Serial No. 85/219800 as follows:

1. Applicant admits the allegations contained in paragraph 1 of the Opposition but, by way of clarification, states that its proper name is Ty-Flot, Inc., not Ty-Float, Inc.
2. Applicant denies the allegations contained in paragraph 2 of the Opposition.
3. Applicant admits the allegations contained in paragraph 3 of the Opposition.
4. Applicant denies that "FME" is a generic term and has insufficient information to admit or deny the remaining allegations contained in paragraph 4 of the Opposition.
5. Applicant admits the allegations contained in paragraph 5 of the Opposition.
6. Applicant admits that it intends to advertise through the use of its Mark on promotional materials, but denies the remaining allegations contained in paragraph 6 of the Opposition.
7. Applicant denies the allegations contained in paragraph 7 of the Opposition.

8. Applicant denies the allegations contained in paragraph 8 of the Opposition.
9. Applicant denies the allegations contained in paragraph 9 of the Opposition.
10. Applicant admits that its design incorporates an atomic symbol and it intends to advertise through the use of the Mark on promotional materials, but denies the remaining allegations contained in paragraph 10 of the Opposition.
11. Applicant denies the allegations contained in paragraph 11 of the Opposition and by way of further answer states that its Mark is not merely descriptive but is a unique and distinctive combination of words and design.
12. Applicant denies the allegations contained in paragraph 12. Applicant further states that it has looked at Opposer's website, but has not seen the "atomic man" mark depicted in Exhibit A used in association with "FME" products.
13. Applicant denies the allegations contained in paragraph 13.
14. Applicant denies the allegations contained in paragraph 14 of the Opposition regarding priority, but admits the Serial Number and date of its application.
15. Applicant admits that its Mark is "THINK FME!" with an atomic design, but denies all other allegations contained in paragraph 15 of the Opposition. Applicant further states that the two marks are notably different. Applicant's Mark has acquired distinctiveness through the combination of the word phrase "THINK FME!" superimposed over an atomic symbol. Opposer's mark is an atomic symbol with what appears to be an eye and stick legs. The designs do not create the same commercial impression. Applicant's Mark sends a message - "Think FME!", while Opposer's mark is more of a cartoon-like mascot.

16. Applicant denies the allegations contained in paragraph 16 of the Opposition and further states that Opposer's mark does not include any words and Applicant's Mark does not alter the atomic symbol in any way. The marks are not easily confused.
17. Applicant has no knowledge of Opposer's goods and services and customers, but admits that it intends to use its Mark on the listed promotional goods.
18. Applicant denies the allegations contained in paragraph 18 of the Opposition and further states that its customers and potential customers in the atomic energy industry are sophisticated enough to differentiate between the two marks and the two companies so as to not be confused, mistaken or deceived.
19. Applicant denies the allegations contained in paragraph 19 of the Opposition.
20. Applicant admits that Opposer has no control over Applicant's goods. Applicant denies the remaining allegations contained in paragraph 20 of the Opposition.
21. Applicant admits that if its Mark is registered it will acquire the exclusive right to use its Mark on the goods set forth in the application. Applicant denies the remaining allegations contained in paragraph 21 of the Opposition.
22. Applicant admits the allegations contained in paragraph 22 of the Opposition.
23. Applicant denies the allegations contained in paragraph 23 of the Opposition.

Respectfully submitted,
Ty-Flot, Inc.
by its attorney,

Dated: December 17, 2012

/s/ Frank B. Mesmer, Jr., Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer has been served by mailing said copy on this date, via First Class Mail, postage prepaid, to Tristram R. Fall, III, Esq., Fox Rothschild LLP, 2000 Market Street 20th Floor, Philadelphia, PA 19103.

/s/ Frank B. Mesmer, Jr., Esq.
Frank B. Mesmer, Jr., Esq.