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

Proceeding	91228032
Party	Defendant MIDWAY RENT A CAR, INC.
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Date	06/30/2016
Attachments	Answer to Notice of Opposition - CAR HARMONY.pdf(115841 bytes )


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

<p>eHarmony, Inc.</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>Midway Rent A Car, Inc. DBA Car Harmony</p> <p style="text-align:center">Applicant</p>	<p>Opposition No. 91228032</p> <p>Serial No. 86750545</p> <p>Filed: September 8, 2015</p> <p>Published: February 2, 2016</p> <p>Mark:  CAR HARMONY</p>
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**APPLICANT’S ANSWER TO THE NOTICE OF OPPOSITION**

Applicant, Midway Rent A Car, Inc. DBA Car Harmony (“Applicant”), by its undersigned counsel of record, hereby answers the Notice of Opposition (“Opposition”) as follows:

1. Applicant admits that Opposer obtained an extension of time in which to oppose Applicant’s trademark following publication of the mark on February 2, 2016 in the *Official Gazette*.

2. Applicant admits that it filed an application for the mark  CAR HARMONY in the name of Midway Rent A Car, Inc. DBA Car Harmony to cover the services “online automobile dealership services,” in Class 35. Applicant admits that it is a California corporation with a principal place of business at 4751 Wilshire Boulevard, Suite 120, Los Angeles, California 90010. Applicant admits that the application was filed based on Applicant’s actual use of the mark in commerce. Applicant denies that it seeks to register and “online automobile dealership services,” in Class 36.

3. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 3 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

4. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 4 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

5. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 5 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

6. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 6 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

7. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 7 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

8. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 8 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

9. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 9 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

10. Applicant admits that it owns the *carharmony.com* domain name and website. Applicant denies all remaining allegations made in Paragraph 10 of the Opposition.

11. Applicant admits that the Proposed Mark is used on *carharmony.com*. Applicant denies all remaining allegations made in Paragraph 11 of the Opposition.

12. Applicant admits that it uses the wording “We’re the relationship managers,” “See how it feels and if it’s a good fit for you,” “Love it? Buy it!,” “Not the right fit?” on its website.

13. Applicant denies the allegations set forth in Paragraph 13 of the Opposition.

14. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 14 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

15. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 15 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

16. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 16 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

17. Applicant denies the allegations set forth in Paragraph 17 of the Opposition.

18. Applicant denies the allegations set forth in Paragraph 18 of the Opposition.

19. Applicant denies the allegations set forth in Paragraph 19 of the Opposition.

20. Applicant denies the allegations set forth in Paragraph 20 of the Opposition.

21. Applicant denies the allegations set forth in Paragraph 21 of the Opposition.

22. Applicant denies the allegations set forth in Paragraph 22 of the Opposition.

23. Applicant admits that Applicant is aware of Opposer. Applicant did not and does not believe that there is any likelihood of confusion concerning the parties' respective marks.

24. Applicant admits that it was aware of Opposer's mark. Applicant did not and does not believe that there is any likelihood of confusion concerning the parties' respective marks.

25. Applicant admits that no consent to registration was sought because no consent to registration was necessary.

26. Applicant denies the allegations set forth in Paragraph 26 of the Opposition.

27. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 27 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.

28. With respect to Paragraph 28, Applicant neither admits nor denies any statement as no allegations are being made. However, Applicant affirmatively alleges that its application is entitled to Registration.

29. With respect to Paragraph 29, Applicant neither admits nor denies any statement as no allegations are being made. However, Applicant affirmatively alleges that its application is entitled to Registration.

#### AFFIRMATIVE DEFENSES

30. Opposer has failed to state a claim upon which relief can be granted

31. There is no likelihood of confusion, mistake or deception between Applicant's mark and the pleaded marks of Opposer as the respective parties' marks are not confusingly similar, including, but not limited to, the following reasons:

(a) The marks themselves are not confusingly similar as they differ in sound/pronunciation, appearance, connotation and commercial impression;

(b) The respective services are completely different, noncompetitive and unrelated;

(c) There is no evidence of threatened or actual confusion.

32. Opposer does not have exclusive rights to utilize the term HARMONY to the exclusion of all other third parties and should not be permitted to monopolize marks that are not confusingly similar to Opposer's mark, especially where Opposer's services are unrelated and distinguishable from the goods and services of others.

33. Opposer's rights in the mark are limited based on the substantial number of third party uses of marks which are similar to those of Opposer and some of which are used in

connection with goods and services which are more closely related to the services of Opposer than those of Applicant. Applicant notes that in Class 45 alone, there are 19 co-existing published and registered marks (which are not owned by Opposer) which all feature the wording HARMONY. Likewise, there are 38 co-existing published and registered marks (not owned by Opposer) in Class 42 which feature the wording HARMONY. The Trademark Office has determined that given the differences between the services covered by these marks and the services as identified by eHarmony, the marks are distinguishable such that there is no likelihood of confusion and coexistence is possible.

34. The claims alleged by Opposer in the Notice of Opposition are frivolous, alleged with the knowledge that there is no likelihood of confusion between the marks of the respective parties and are alleged in bad faith, evidenced by the statements as set forth in Paragraph 33 above.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed in its entirety, with prejudice, and Applicant's mark be allowed to proceed towards registration.

Dated: June 30, 2016

Respectfully Submitted,

**Midway Rent A Car, Inc.**

By:           /fbhatti/          

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