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

Proceeding no.	91287695
Party	Defendant Automotive Industries LLC
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Date	11/27/2023
Attachments	Answer and Affirmative Defenses.pdf(52463 bytes)

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

In the Matter of Application No. 97/608,194
Mark: SWIFT RECON
Filed: September 27, 2022
Published in the Official Gazette on August 22, 2023

CUMMINS ENGINE IP, INC.

Opposition No. 91287695

Opposer,

v.

AUTOMOTIVE INDUSTRIES LLC

Applicant.

APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES

Applicant, Automotive Industries LLC (“Applicant”), by and through its attorneys, Millikin Intellectual Property Law PLLC, in answer to the Notice of Opposition, responds as follows:

1. In response to the preamble in the Notice of Opposition filed by Cummins Engine IP, Inc. (“Opposer”), Applicant admits that it filed, on September 27, 2022, U.S. trademark application no. 97/608,194 (the “Application”) for the mark SWIFT RECON (“Applicant’s Mark”) in International Class 37 for the services described therein as “repair and maintenance of vehicles and parts thereof; vehicle collision repair services; vehicle repair services” under Section

1(b) of the Lanham Act. Applicant admits that Applicant's Mark was published for opposition on August 22, 2023 and that Opposer was granted a 30-day extension of time to oppose the Application. Applicant is without information and belief to admit or deny the remaining allegations set forth in the preamble of Opposer's Notice of Opposition regarding Opposer's address and, therefore, the same are denied. Applicant denies the allegations in the preamble of Opposer's Notice of Opposition regarding damages and justifications for opposing the registration of Applicant's Mark.

2. Applicant admits the allegations of Paragraph 1 of the Notice of Opposition.

3. Applicant is without information and belief to admit or deny the allegations set forth in Paragraph 2 of Opposer's Notice of Opposition and, therefore, the denies the same.

4. Paragraph 3 of Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 3 of the Opposer's Notice of Opposition and, therefore, denies the same.

5. Paragraph 4 of Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 4 of the Opposer's Notice of Opposition and, therefore, denies the same.

6. Paragraph 5 of Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5 of the Opposer's Notice of Opposition and, therefore, denies the same. To the extent that information is

publicly available respecting the allegations of Paragraph 5 of Opposer's Notice of Opposition, such publicly available information speaks for itself as to the matters contained therein.

7. Applicant is without information and belief to admit or deny the allegations set forth in Paragraph 6 of Opposer's Notice of Opposition and, therefore, denies the same.

8. Paragraph 7 of Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 of the Opposer's Notice of Opposition and, therefore, denies the same.

9. Paragraph 8 of Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 8 of the Opposer's Notice of Opposition and, therefore, denies the same.

10. Applicant is without information and belief to admit or deny the allegations set forth in Paragraph 9 of Opposer's Notice of Opposition and, therefore, denies the same.

11. Applicant is without information and belief to admit or deny the allegations set forth in Paragraph 10 of Opposer's Notice of Opposition and, therefore, denies the same.

12. Applicant is without information and belief to admit or deny the allegations set forth in Paragraph 11 of Opposer's Notice of Opposition and, therefore, denies the same.

13. Paragraph 12 of Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 12 of Opposer's Notice of Opposition and, therefore, denies the same.

FIRST COUNT: LIKELIHOOD OF CONFUSION

15 U.S.C. §1052(d)

14. Paragraph 13 of the Opposer's Notice of Opposition does not require a response from Applicant. To the extent a response is required, Applicant repeats and realleges its responses to Paragraphs 1 through 12 of Opposer's Notice of Opposition.

15. Paragraph 14 of Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 14 and, therefore, denies the same.

16. Paragraph 15 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

17. Paragraph 16 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

18. Paragraph 17 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

19. Paragraph 18 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

20. Paragraph 19 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the

same.

21. Paragraph 20 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

22. Paragraph 21 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

23. Applicant denies that Opposer is entitled to the relief requested in Opposer's prayer for relief.

AFFIRMATIVE DEFENSES

Applicant undertakes the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated below. Applicant expressly reserves the right to plead additional affirmative and other defenses, should any such defenses be revealed by discovery in this case. As and for its affirmative and other defenses, Applicant states as follows:

First Affirmative Defense

There is no likelihood of confusion, mistake, or deception between Applicant's Mark and Opposer's marks registered under U.S. Registration No. 0800956 and U.S. Registration No. 7145717.

Second Affirmative Defense

Opposer's marks registered under U.S. Registration No. 0800956 and U.S. Registration No. 7145717 are diluted and weak due to third party use of similar marks on similar goods and services and, to the extent Opposer's marks are entitled to protection, such scope of protection is narrow.

Third Affirmative Defense

Applicant alleges on information and belief that as a result of Opposer's own acts and/or omissions, the opposition is barred by the doctrine of laches.

Fourth Affirmative Defense

Applicant alleges on information and belief that the opposition is barred by the doctrine of estoppel.

Fifth Affirmative Defense

Applicant alleges on information and belief that as a result of Opposer's own acts and omissions, Opposer has waived any right to pursue its opposition.

Sixth Affirmative Defense

Applicant alleges on information and belief that the opposition is barred by the doctrine of acquiescence.

Seventh Affirmative Defense

Applicant alleges on information and belief that the opposition is barred by the doctrine of unclean hands.

Eighth Affirmative Defense

Any and all acts alleged to have been committed by Applicant were performed with lack of knowledge and lack of willful intent.

WHEREFORE, Applicant demands judgment denying the relief requested by Opposer and dismissing the Notice of Opposition.

Dated: November 27, 2023

Respectfully submitted,

/Margaret S. Millikin/

Margaret S. Millikin

OBA# 13736

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CERTIFICATE OF TRANSMISSION

I hereby certify that foregoing *APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES* is being electronically transmitted via ESTTA to the United States Patent and Trademark Office Trademark Trial and Appeal Board on this 27th day of November, 2023.

/Margaret S. Millikin/
Margaret S. Millikin

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES* has been duly served by sending such copy by email, the 27th day of November, 2023, to:

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