

ESTTA Tracking number: **ESTTA840574**

Filing date: **08/18/2017**

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

Proceeding	92066439
Party	Defendant ATCO Ltd.
Correspondence Address	DANA BRODY-BROWN HOGE FENTON JONES & APPEL INC 60 S MARKET ST STE 1400 SAN JOSE, CA 95113 UNITED STATES Email: uspto@hogefenton.com
Submission	Answer
Filer's Name	Eric Ball, Fenwick & West LLP
Filer's email	eball@fenwick.com, cellerbach@fenwick.com, mfrancis@bhfs.com, jbreannanjolliffe@fenwick.com, trademark@fenwick.com
Signature	/Eric Ball/
Date	08/18/2017
Attachments	Cancellation No. 92066439 - Answer.pdf(166453 bytes)

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

In the matter of
Trademark Registration Nos. 4,693,704, 4,693,705, 4,693,706
4,980,524, 4,980,525, 4,934,767
Marks: ATCO STRUCTURES & LOGISTICS
ATCO EMISSIONS MANAGEMENT

Attco Trucking Company, Inc. Petitioner)	
)	
vs.)	
)	Cancellation No.: 92066439
ATCO Ltd.)	
Registrant.)	
)	

ATCO LTD.’S ANSWER TO PETITIONER’S CANCELLATION PETITION

Registrant ATCO Ltd. answers Petitioner Attco Trucking Company, Inc.’s Cancellation Petition as follows.

In response to the unnumbered paragraph at the start of Petitioner’s Cancellation Petition, ATCO denies that Petitioner will be damaged by the continued registration in International Class 039 of the registrations at issue in this action for the ATCO STRUCTURES & LOGISTICS and ATCO EMISSIONS MANAGEMENT marks. ATCO further denies the allegations in the unnumbered paragraph at the start of Petitioner’s Cancellation Petition to the extent they seek to support a claim for cancellation of the registrations at issue in this action for the ATCO STRUCTURES & LOGISTICS and ATCO EMISSIONS MANAGEMENT marks in International Class 039.

1. ATCO lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Cancellation Petition and therefore denies them.

2. ATCO lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Cancellation Petition and therefore denies them.

3. ATCO lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Cancellation Petition and therefore denies them.

4. ATCO admits the allegations in paragraph 4 of the Cancellation Petition.

5. ATCO admits the allegations in the first sentence of paragraph 5 of the Cancellation Petition. ATCO denies the remaining allegations of paragraph 5 of the Cancellation Petition.

6. ATCO admits the allegations in the first sentence of paragraph 6 of the Cancellation Petition. ATCO denies the remaining allegations of paragraph 6 of the Cancellation Petition.

7. ATCO denies the allegations in paragraph 7 of the Cancellation Petition, in particular because Petitioner will not be damaged by the continued registration in International Class 039 of the registrations at issue in this action for the ATCO STRUCTURES & LOGISTICS and ATCO EMISSIONS MANAGEMENT marks. ATCO further denies the allegations in paragraph 7 to the extent they seek to support a claim for cancellation of the registrations at issue in this action for the ATCO STRUCTURES & LOGISTICS and ATCO EMISSIONS MANAGEMENT marks in International Class 039.

All allegations in the Cancellation Petition, whether explicit or implicit and including averments, which require an answer are denied to the extent that those allegations are not expressly and specifically admitted herein. Moreover, pursuant to Rule 8(b)(6) of the Federal Rules of Civil Procedure, allegations in the Cancellation Petition, to which no responsive pleading is required shall be deemed denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Cancellation Petition fails to plead facts sufficient to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Ownership of Prior Federal Registration)

Petitioner's claims are barred against ATCO due to ATCO's ownership of incontestable federal trademark registrations for ATCO-formative marks, which predate Petitioner's alleged mark.

THIRD AFFIRMATIVE DEFENSE

(Trademark Priority)

Petitioner's claims are barred by as it does not have priority in the alleged mark over ATCO.

FOURTH AFFIRMATIVE DEFENSE

(Abandonment)

Petitioner's claims are barred by the doctrine of trademark abandonment.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

Petitioner's claims are barred, in whole or in part, by the doctrine of laches. Specifically, on information and belief, Petitioner has unreasonably delayed in asserting any claimed rights against ATCO causing material prejudice due to that delay.

SIXTH AFFIRMATIVE DEFENSE

(Acquiescence)

Petitioner's claims are barred, in whole or in part, by the doctrine of acquiescence. Specifically, on information and belief, Petitioner's actions establish its assent to ATCO's continued registration of the ATCO STRUCTURES & LOGISTICS and ATCO EMISSIONS MANAGEMENT registrations at issue in these proceedings.

These answers and affirmative defenses are based on the knowledge and information currently available to ATCO, and ATCO reserves the right to seek amendment of these answers or affirmative defenses pursuant to Federal Rule of Civil Procedure 15 and any other applicable rule, statute or case law, based on facts later discovered, pled, or offered.

WHEREFORE, ATCO Ltd prays that Petitioner's Cancellation Petition be denied and that judgment be entered in favor of Registrant, ATCO Ltd.

Respectfully submitted,

Dated: August 18, 2017

/Eric Ball/
Eric Ball
Connie L. Ellerbach
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel: (650) 988-8500
Fax: (650) 938-5200
eball@fenwick.com
cellerbach@fenwick.com
Attorneys for Registrant, ATCO Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2017, a true and complete copy of the accompanying ANSWER TO PETITION FOR CANCELLATION was served by **email** upon the following:

Matthew D. Francis
BROWNSTEIN HYATT FARBER SCHRECK, LLP
5371 Kietzke Lane
Reno, NV 89511
mfrancis@bhfs.com

By: /Eric Ball/
Eric Ball