RESPONSE TO TRADEMARK OFFICE ACTION

Dear Ms. Chang:

Air Innovations, Inc. ("Applicant") herein responds to the Office Action dated December 19, 2019, with regard to Application Serial No. 88/103,808 for the mark MYZONE ("Applicant's Mark").

I. Likelihood of Confusion

The Office Action noted a possible likelihood of confusion with U.S. Registration No. 4,764,456 (see Exhibit A),[1] for  ("Cited Mark"). Applicant respectfully submits that there is no evidence of actual commercial use in the U.S. of the Cited Mark. Applicant has continuously attempted to contact the Cited Mark's correspondent, Guo Kai, which has been unsuccessful. Attached is a Google Search for Guo Kai, Trademark Attorney (see Exhibit B),[2] but in any event submits there is no likelihood of confusion between the Cited and Applicant's Mark.

A. Dissimilarity of the Marks

There are significant differences between the marks. This is not based upon a side-by-side comparison of the marks. Rather, the differences discussed below, which would be apparent to consumers upon seeing and hearing or pronouncing the marks, create a different commercial impression such that confusion as to the source of the goods offered under the respective marks is not likely to result. The words used and pronunciations of the two marks are very different. The Applicant's Mark is a single word comprised of two syllables, is spelled differently, and phonetically sounds very much different than the Cited Mark – "MYZONE" versus "My

[1] U.S. Registration No. 4,764,456 (*See* Exhibit A.)

[2] Applicant's counsel has made repeated attempts to contact the Cited Mark's correspondent, Guo Kai, to discuss a consent agreement, but such efforts have not been successful. (*See* attached Google Search - Exhibit B.)

Dryzone" (). Conversely, the Cited Mark is two separate words, is spelled differently, is comprised of at least three syllables, and sounds much different than the Applicant's Mark.

Similarly, the font and case of the Cited Mark, which are claimed stylized features of the Cited Mark – "*My Dryzone*" are very much different from the Applicant's Mark -- "MYZONE". In particular, the Cited Mark claims that the "Y" in "MY" is superimposed or overlying the "M," which can easily be read by the average consumer as "M Dryzone" "or "YM Dryzone" both of which look and are pronounced very much differently than the Applicant's Mark. And, there is no font or stylized features to the Applicant's Mark, but each are key characteristics of the Cited Mark.

In addition, the Cited Mark also requires the word "dry." The Cited Mark specifically describes and claims that word "*Dryzone*" and, as such, did not disclaim the term "dry." Therefore, it is a required term and it would be improper to read-out the term "dry" from the Cited Mark because marks should be evaluated as a whole and the general public would not be familiar with the concept of disclaimers. Further, the Cited Mark claims the colors black and red -- the majority of the mark is red. In contrast, the Applied Mark claims no specific style or the color red. The two marks look and sound very much different from the other. As such, the entirety of Applicant's Mark gives a very much different commercial impression given its look and pronunciation when compared with the Cited Mark. These differences in look, sound and pronunciation alone are significant enough, especially after taking into account the differences in goods discussed in Section B below, to obviate any likelihood of confusion.

Furthermore, even assuming *arguendo* as stated in the TMEP, "[e]ven marks that are identical in sound and/or appearance may create sufficiently different commercial impressions

when applied to the respective parties' goods or services so that there is no likelihood of confusion." TMEP 1207.01(b)(v); *see also, e.g., In re British Bulldog, Ltd*., 224 USPQ 854, 856 (TTAB 1984) (holding PLAYERS for men's underwear and PLAYERS for shoes not likely to cause confusion, agreeing with applicant's argument that the term "PLAYERS" implies a fit, style, color, and durability suitable for outdoor activities when applied to shoes, but "'implies something else, primarily indoors in nature" when applied to men's underwear); *In re Sydel Lingerie Co.*, 197 USPQ 629, 630 (TTAB 1977) (holding BOTTOMS UP for ladies' and children's underwear and BOTTOMS UP for men's clothing not likely to cause confusion, noting that the wording connotes the drinking phrase "Drink Up" when applied to men's clothing, but does not have this connotation when applied to ladies' and children's underwear). Here, the marks are not identical (MYZONE vs. *My Dryzone*) or are not aurally similar whatsoever. Therefore, there is a real difference in commercial impression between the two marks. *In re Istituto Sieroterapico E Vaccinogeno, Toscano "SCLAVO" S.p.A.*, 226 USPQ 1035 (TTAB 1985) (finding no likelihood of confusion between ASO QUANTUM for diagnostic laboratory reagents and QUANTUM I for laboratory instruments for analyzing body fluids.) This difference in commercial impression and meaning is also sufficient to avoid a likelihood of confusion.

B. Dissimilarity of the Goods

"If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, *even if the marks are identical, confusion is not likely*." TMEP 1207.01(a)(i) (emphasis added). Here, the marks are not identical and the goods associated with the Cited Mark and Applicant's Mark are too disparate to

engender a likelihood of confusion. The goods associated with the Cited Mark are rather random goods: "Baths, bathtubs, …desiccating units for producing dried fruits, Disinfectant dispensers for toilets, Electric hairdryers, Electric radiators, Electric roasters, Germicidal lamps for purifying air, Heating elements, Heating installations, Hot-air space heating apparatus, Lamps, Lava rock for use in barbeque grills, Nuclear reactors, Refrigerating appliances and installations, Utility lighters for lighting grills, fireplaces, and candles, Watering machines for agricultural purposes." In addition, the specimen provided with the Cited Mark's file history is a light bulb and packaging for a light bulb. Conversely, the goods associated with Applicant's Mark are more limited to, as shown below in Section II regarding the Applicant's amended class of goods, regulating personal space at a desk or personal workstation at a workplace, such as "[i]nterior environment control system for commercial buildings, namely, heaters, ventilators, humidifiers all sold as a unit," and "electric air sanitizing unit," "dehumidifiers," or "ionization apparatus for the treatment of air." None of these amended categories have to do with or include "heating elements" or "heating installations," "lava rocks, or "refrigerating appliances" as covered by the Cited Mark. This fact, in conjunction with the significant differences between the marks described above in Section A, renders confusion unlikely.

The Federal Circuit and the TTAB frequently find no likelihood of confusion between even identical marks when the goods are sufficiently distinct. For example, in *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004), the Federal Circuit reversed TTAB's holding that the use of RITZ for cooking and wine selection classes and RITZ for kitchen textiles was likely to cause confusion because the relatedness of the respective goods and services was not supported by substantial evidence. In *In re Thor Tech, Inc.*, the TTAB found identical marks not confusable given that one applied to towable trailers and the

other applied to trucks. 113 USPQ2d 1546, 1551 (TTAB 2015). Similarly, in *Quartz Radiation Corp. v. Comm/Scope Co.*, the TTAB held that QR for coaxial cable and QR for various apparatus used in connection with photocopying, drafting, and blueprint machines not likely to cause confusion because of the differences between the parties' respective goods in terms of their nature and purpose, how they are promoted, and who purchased them. 1 USPQ2d 1668, 1669 (TTAB 1986)). In the cited examples above no likelihood of confusion was found despite the two marks being virtually identical. Here, in contrast, there is a far greater difference between Applicant's Mark and the Cited Mark, and the commercial impressions and meanings of the two marks are quite different. If the marks referenced above in the cited cases were sufficiently distinct to avoid likelihood of confusion, then Applicant's Mark should also be capable of registration.

Applicant further notes that at least some of the evidence attached to the Office Action actually supports Applicant's position. Namely, the attached website evidence from the Cited Mark's owner, Ace Dragon Corp., demonstrates that the subject cabinets are large (approximately 4 feet by 6 feet), commercial grade, utilize steam and heat features, and is designed for the manufacture of chip boards (PCB) or similar components. *See* Exhibit C[3]. There is nothing personal or individualized about the Ace Dragon products. In addition, a search of the Ace Dragon Corp.'s website and product lines fails to yield anything for "my dryzone" or "mydryzone." *Id*. As such, it is evident that the channels of goods offered by the owner of the Cited Mark – were it even to use the mark "My *Dryzone*" – are dramatically different from the Applicant.

[3] Ace Dragon Corp website. (*See* Exhibit C.)

II. Identification of Goods

The Examiner identified an additional Class for potential registration, Class 9. As discussed on a teleconference with the Examiner, counsel for the Applicant would confirm with Applicant if it did manufacture and/or sell the controls or sensor devices themselves, which would fall under Class 9. Applicant does (or intends to) manufacture and/or sell the individual components under the Applicant's Mark and, therefore, adopts the Class 9 amendment proposed by the Examiner, namely:

Class 9: A desk mounted personal environment control system providing for a fully personalized work zone and environment, consisting primarily of temperature controls for heating and cooling, and also consisting of controllers for white noise volume, light levels, desk height, battery chargers for component charging.

Similarly, Applicant adopts the Examiner's proposed amendment to the description of identification of goods for Class 11 to remove the term "including" and that reads as follows (~~strikethrough~~ text is deleted and underline text is added):

Class 11: A desk mounted personal environment system ~~product~~ providing for a fully personalized work zone and environment, consisting primarily of apparatus ~~including controls~~ for air heating and[] cooling, and also consisting of white noise machines, light with varying illumination levels, desk with adjustable height, and component battery charger ~~charging~~.

With regard to Class 11, Applicant enters the following amendment to limit the description of goods to the following within Class 11:

Class 11: lighting fixtures with motion detection, electric lighting fixtures, electric devices to be plugged into wall outlets having a heating element and that dispenses white noise or noise cancelling frequencies, and power for charging personal devices, electric air sanitizing unit, dehumidifiers, fans for air conditioning apparatus, lighting apparatus, namely lighting installations, ionisation apparatus for the treatment of air, air sterilizers, portable electric air dryer, interior environment control system for commercial buildings, namely heaters, ventilators, and humidifiers all sold as one unit, heating panels used for indoor heating purposes, air conditioning apparatus and installations, air conditioning apparatus, air purifying apparatus and machines, air purifying apparatus, air filtering installations, air cooling apparatus, air conditioning installations, air conditioning apparatus and installations, air conditioning apparatus, electric space heaters, HVAC units, evaporative air coolers, portable electric heaters,

air purification units, electronic generator for use in controlling the amount of humidity in the air, air sterlising apparatus, air exchangers for cleaning and purifying air, personal air filtering units for purifying air, portable evaporative air coolers, USB-powered humidifiers for household use, air conditioning, air cooling and ventilation apparatus and instruments, air conditioning units for personal environment, USB-powered desktop fans.

As an additional class is being added, we are submitting herewith an additional filing fee in the amount of $275.00.

As can be seen above, Applicant's services are personal units that individuals can use at their desk or workstation to customize their personal environment (temperature, light, humidity, air quality, noise, etc.). The goods claimed by the Cited Mark, on the other hand, relate to goods such as heat cabinets for use in, typically in making PCB boards, or for other wholly unrelated products, such as lava lamps or nuclear reactor. The two marks are not in the same classes of goods – especially now with Applicant's narrowing of the goods within Class 11. These differences, when considered in conjunction with the differences between the marks themselves discussed above, render confusion unlikely.

Given the arguments and amendments above, Applicant respectfully requests that the application proceed to publication.

Date: June 18, 2019

Respectfully submitted,

HARRIS BEACH PLLC

By: /s/ *Brian J. Gerling*

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United States of America
United States Patent and Trademark Office

M Dryzone

Reg. No. 4,764,456

Registered June 30, 2015

Int. Cl.: 11

TRADEMARK

PRINCIPAL REGISTER

ACE DRAGON CORP. (TAIWAN CORPORATION)
FIRST FLOOR, NO.182 ZHONG XIAO ROAD
EASTERN GUANG FU LI
XIN ZHU CITY, TAIWAN

FOR: BATHS, BATHTUBS, WHIRLPOOL BATHS AND BATH INSTALLATIONS; DESICCATING UNITS FOR PRODUCING DRIED FRUITS; DISINFECTANT DISPENSERS FOR TOILETS; DISPOSABLE STERILIZATION POUCHES, NOT FOR MEDICAL USE; ELECTRIC HAIR DRYERS; ELECTRIC RADIATORS; ELECTRIC ROASTERS; GERMICIDAL LAMPS FOR PURIFYING AIR; HEATING ELEMENTS; HEATING INSTALLATIONS; HOT-AIR SPACE HEATING APPARATUS; LAMPS; LAVA ROCK FOR USE IN BARBECUE GRILLS; NUCLEAR REACTORS; REFRIGERATING APPLIANCES AND INSTALLATIONS; UTILITY LIGHTERS FOR LIGHTING GRILLS, FIREPLACES AND CANDLES; WATERING MACHINES FOR AGRICULTURAL PURPOSES, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 7-26-2011; IN COMMERCE 7-26-2011.

THE MARK CONSISTS OF STYLIZED WORDING MY DRYZONE. THE LETTER "M" AND WORD DRYZONE ARE IN RED AND LETTER"Y" IS IN BLACK. THE LETTER "Y" IS OVERLYING ON THE LETTER "M".

THE COLOR(S) RED AND BLACK IS/ARE CLAIMED AS A FEATURE OF THE MARK.

SER. NO. 86-451,608, FILED 11-12-2014.

KAMAL PREET, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

Michelle K. Lee

Director of the United States
Patent and Trademark Office

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Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

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You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

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The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

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Ace Dragon Corp. has a team of knowledgeable people and a wide range of great quality performance **Dr. Storage Ultra Low Humidity Dry Cabinet / Dry Box** products. We not only provide professional **Dry Cabinet**, but also offer high quality Dr. Storage Ultra Low Humidity Dry Cabinet / Dry Box.

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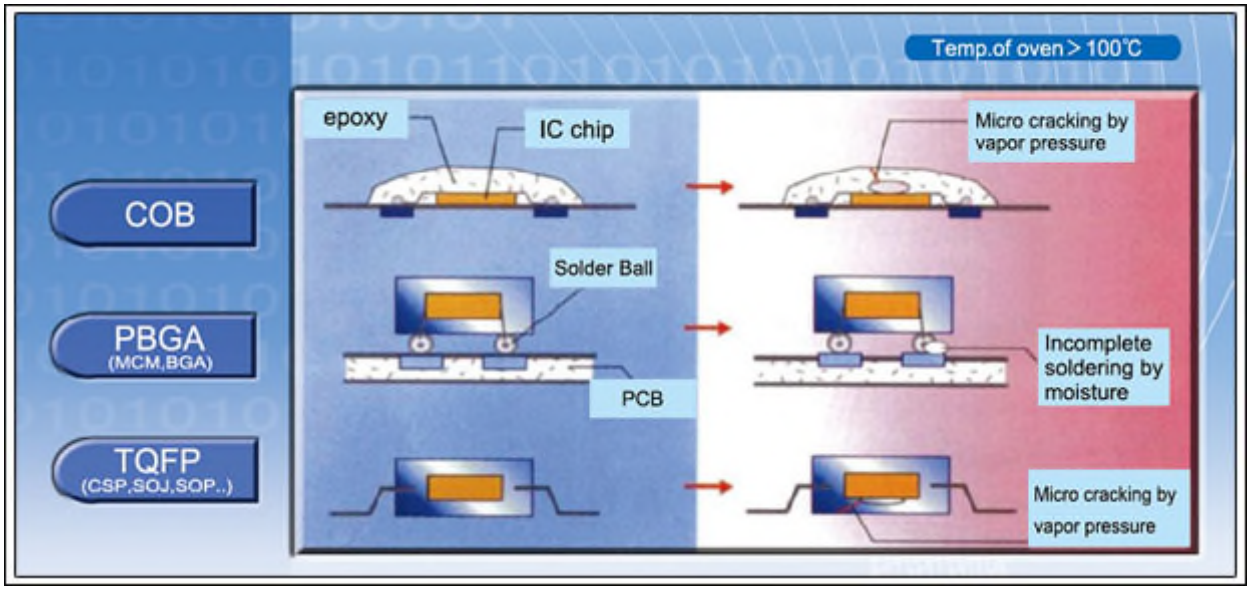
Following crack problems are caused by being lack of precise humidity control in manufacturing process.



Dr. Storage provides dry cabinets with no nitrogen needed, no vacuum needed and low power consumption. Customers can even upgrade their existing cabinets in the future. This provides the customer with a better cost effective and environmental friendly solution.

F1 <1% RH Dry Cabinet | **X2B<5% RH Dry Cabinet** | **A1B 1~50% RH Dry Cabinet**

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- F1-600 <1%RH Dry Cabinet (624L Ultra Low Dry Cabinet <1%RH)
- X2B-1200-6 <5%RH Dry Cabinet (1250L Ultra Low Dry Cabinet <5%RH)
- X2B-600 <5%RH Dry Cabinet (624L Ultra Low Dry Cabinet <5%RH)
- X2B-400 <5%RH Dry Cabinet (411L Ultra Low Dry Cabinet <5%RH)
- X2B-200 <5%RH Dry Cabinet (202L Ultra Low Dry Cabinet <5%RH)
- A1B-1200-6 1~50%RH Dry Cabinet (adjustable) (1250L Dry Cabinet 1~50%RH)
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