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

Proceeding	91196650
Party	Defendant Kilim Furniture International LLC
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Attachments	APPLICANT KILIM'S ANSWER TO AMENDED NOTICE OF OPPOSITION.pdf (12 pages)(2896298 bytes)

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

In the Matter of:
Application Serial No. 77808819
Published in the Official Gazette
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KILIM MOBILYA KANEPE SANAYI VE TICARET A.S. **Opposer,** **vs.** **KILIM FURNITURE INTERNATIONAL LLC,** **Applicant.**	**Opposition No. 91196650** **App. No. 77808819**

APPLICANT'S ANSWER TO AMENDED NOTICE OF OPPOSITION

The Applicant, Kilim Furniture International LLC, by its attorneys, in response and in answer to the Amended Notice of Opposition filed by Kilim Mobilya Kanepe Sanayive in the above-captioned proceeding, states as follows:

Applicant, Kilim Furniture International LLC, denies each and every allegation and averment of the Notice of Opposition, except as expressly admitted or otherwise denied as set forth hereinbelow; and regarding the preamble paragraph of the Notice of Opposition, Applicant is without knowledge or information as to the allegations

contained therein, but specifically denies that Opposer will be damaged by registration of Applicant's Application Serial No. 77808819.

1. Answering paragraph 1 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.
2. Answering paragraph 2 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.
3. Answering paragraph 3 of the Amended Notice of Opposition, Applicant admits the allegations thereof.
4. Answering paragraph 4 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.
5. Answering paragraph 5 of the Amended Notice of Opposition, Applicant denies that the abandoned application mark is owned by Opposer.
6. Answering paragraph 6 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.
7. Answering paragraph 7 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.
8. Answering paragraph 8 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

9. Answering paragraph 9 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

10. Answering paragraph 10 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

11. Answering paragraph 11 of the Amended Notice of Opposition, Applicant admits the allegations thereof.

12. Answering paragraph 12 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

13. Answering paragraph 13 of the Amended Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. By way of further answer, the Agreement attached as Exhibit "2" is a written document which speaks for itself.

14. Answering paragraph 14 of the Amended Notice of Opposition, Applicant admits the allegations thereof. By way of further answer, the Agreement attached as Exhibit "2" is a written document which speaks for itself.

15. Answering paragraph 15 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

16. Answering paragraph 16 of the Amended Notice of Opposition, Applicant denies as stated. It is admitted tough that Paragraph 2.4 of the Agreement states that the business purpose of the Applicant, Kilim Furniture International LLC, was/is *inter alia*, to manage and operate wholesale furniture and distributorship. It is denied that such purpose was on behalf of the Opposer.

17. Answering paragraph 17 of the Amended Notice of Opposition, Applicant admits the allegation thereof.

18. Answering paragraph 18 of the Amended Notice of Opposition, Applicant admits the allegations thereof.

19. Answering paragraph 19 of the Amended Notice of Opposition, Applicant admits the allegations thereof.

20. Answering paragraph 20 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

21. Answering paragraph 21 of the Amended Notice of Opposition, this averment constitutes a legal conclusion to which no response is required. To the extent that it is judicially determined that said averment is not a legal conclusion, then Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

22. Answering paragraph 22 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

23. Answering paragraph 23 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

24. Answering paragraph 24 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

25. Answering paragraph 25 of the Amended Notice of Opposition, Applicant admits the allegations thereof.

26. Answering paragraph 26 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

27. Answering paragraph 27 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

28. Answering paragraph 28 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

29. Answering paragraph 29 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

30. Answering paragraph 30 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

31. Answering paragraph 31 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

32. Answering paragraph 32 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

33. Answering paragraph 33 of the Amended Notice of Opposition, Applicant is without knowledge or information as to the allegations contained therein and accordingly denies the allegations.

34. Answering paragraph 34 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

35. Answering paragraph 35 of the Amended Notice of Opposition, Applicant denies as stated. Applicant claims a date of first use at least as early as June 16, 2006.

36. Answering paragraph 36 of the Amended Notice of Opposition, Applicant denies as stated. Applicant claims a date of first use at least as early as June 16, 2006.

37. Answering paragraph 37 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

38. Answering paragraph 38 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

39. Answering paragraph 39 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

40. Answering paragraph 40 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

41. Answering paragraph 41 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

42. Answering paragraph 42 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

43. Answering paragraph 43 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

44. Answering paragraph 44 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

45. Answering paragraph 45 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

46. Answering paragraph 46 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

47. Answering paragraph 47 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

48. Answering paragraph 48 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

49. Answering paragraph 49 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

50. Answering paragraph 50 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

51. Answering paragraph 51 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

52. Answering paragraph 52 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

53. Answering paragraph 53 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

54. Answering paragraph 54 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

55. Answering paragraph 55 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

56. Answering paragraph 56 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

57. Answering paragraph 57 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

58. Answering paragraph 58 of the Amended Notice of Opposition, Applicant admits the allegations thereof.

59. Answering paragraph 59 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

60. Answering paragraph 60 of the Amended Notice of Opposition, Applicant admits the allegations thereof.

61. Answering paragraph 61 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

62. Answering paragraph 62 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein. Pursuant to FRE 408 "evidence of an offer-to compromise a claim is not receivable in evidence as an admission of, as the case may be, the validity or invalidity of the claim."

63. Answering paragraph 63 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein. Pursuant to FRE 408 "evidence of an offer-to compromise a claim is not receivable in evidence as an admission of, as the case may be, the validity or invalidity of the claim."

64. Answering paragraph 64 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein. This averment constitutes a legal conclusion to which no response is required. To the extent that it is judicially determined that said averment is not a legal conclusion, then Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies each and every allegation contained therein.

65. Answering paragraph 65 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

66. Answering paragraph 66 of the Amended Notice of Opposition, Applicant admits the allegations thereof.

67. Answering paragraph 67 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein. This averment constitutes a legal conclusion to which no response is required. To the extent that it is judicially determined that said averment is not a legal conclusion, then Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies each and every allegation contained therein.

68. Answering paragraph 68 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein. This averment constitutes a legal conclusion to which no response is required. To the extent that it is judicially determined that said averment is not a legal conclusion, then Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies each and every allegation contained therein.

69. Answering paragraph 69 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

70. Answering paragraph 70 of the Amended Notice of Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Opposer's claims are precluded because it relies on a cited application number 79/011360 which it abandoned.

SECOND DEFENSE

Opposer's claims are precluded by the Doctrine of Estoppel as Applicant was induced to select its mark because of the conduct of Opposer.

THIRD DEFENSE

Applicant has been using its mark and developing consumer recognition and goodwill in its mark for over 4 years and Opposer has done nothing to object to such usage, and is consequently barred by laches, acquiescence and estoppel from opposing Applicant's application.

FOURTH DEFENSE

Pursuant to the parties' Operating Agreement, Omer Kartal was designated, and accepted such designation, as the "Manager" of the Applicant. The Manager is responsible for the operation of Applicant's business in the ordinary course and shall have the authority to do

all things that he determines, in his sole discretion, to be in the furtherance of the purpose of the Applicant. The Manager shall have the right to enter into and execute all contracts, documents, and other agreements on behalf of the Applicant, including the filing of the instant application, and shall thereby fully bind the Applicant.

FIFTH DEFENSE

Opposer's alleged use of the mark "KILIM FURNITURE" does not constitute trademark use.

SIXTH DEFENSE

Pursuant to TBMP Section 514.03, Applicant requests the restriction by deletion of the following identified goods in its pending Application Ser. No. 77808819:

[**goods to be deleted**] Baby walkers; Bassinets; Bone carvings; Clothes hangers; Coat hangers; Coat stands; Corks; Cupboards; Curtain rails; Curtain rods; Free-standing drawer unit for organizing items used in braiding shops, barber shops, and styling shops; Furniture frames; Furniture moldings; Furniture partitions; picture frames; office furniture

Pursuant to TBMP Section 514.03, Applicant's amended identified goods would be as follows:

[**proposed amended identification of goods**] Bedroom furniture; Beds, mattresses, pillows and bolsters; Cabinets; Chair beds; Chests of drawers; Computer furniture; Dining chairs; Dining room tables; Divans; Entertainment centers; Furniture; Furniture chests; High chairs; Living room furniture; Mirrors; Shelves; Stools; Tables; Television stands – in International Class 20

Respectfully submitted,

Ingber & Gelber, LLP

Dated: January 25, 2011

By_____

Mark J. Ingber
Attorney for Applicant
181 Millburn Avenue, Suite 202
Millburn, NJ 07041

CERTIFICATE OF SERVICE

Pursuant to the Board's December 3, 2010 Order, the undersigned hereby certifies that on January 25, 2011 on behalf of Applicant, he electronically served the foregoing Applicant's Answer to Amended Notice of Opposition on the Opposer by email to counsel for Opposer as follows:

bkara@karalaw.com

Mark J. Ingber
Attorney for Applicant