ESTTA Tracking number: **ESTTA442244**
Filing date: **11/21/2011**

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

| | |
|---|---|
| Proceeding | 91202290 |
| Party | Defendant<br>New York Couch Doctor Inc. |
| Correspondence Address | MARTIN I. SAPERSTEIN<br>GOODMAN & SAPERSTEIN<br>100 GARDEN CITY PLZ STE 412B<br>GARDEN CITY, NY 11530-3209<br><br>gsesq600@aol.com |
| Submission | Answer |
| Filer's Name | Martin I. Saperstein |
| Filer's e-mail | gsesq600@aol.com |
| Signature | /Martin I. Saperstein/ |
| Date | 11/21/2011 |
| Attachments | CO ANS.pdf ( 5 pages )(99499 bytes ) |

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

----------X

THE SOFA DOCTOR, INC. d/b/a DR. SOFA,

Opposer,

- against -

NEW YORK COUCH DOCTOR, INC.,

Applicant.

----------X

**Opposition No. 91202290**

**ANSWER**

New York Couch Doctor, Inc. ("Applicant"), by its attorneys, Goodman & Saperstein, as and for its Answer to the Sofa Doctor, Inc. d/b/a Dr. Sofa's ("Opposer") Notice of Opposition ("Opposition"), hereby alleges as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph "1" of the Opposition.

2. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph "2" of the Opposition.

3. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph "3" of the Opposition.

4. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph "4" and of the Opposition.

5. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph "5" of the Opposition.

6. Denies each and every allegation contained in Paragraph "6" of the Opposition.

7. Admits each and every allegation contained in Paragraph "7" of the Opposition.

8. Admits each and every allegation contained in Paragraph "8" of the Opposition.

9. Denies each and every allegation contained in Paragraph "9" of the Opposition.

10. Admits the allegations contained in Paragraph "10" of the Opposition to the extent that both Applicant and Opposer offer disassembling and reassembling of furniture services, but, otherwise, denies the remaining allegations contained in Paragraph "10" of the Opposition.

11. Admits the allegations in Paragraph "11" of the Opposition that it is located in New York and advertises in New York, but, otherwise, denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph "11" of the Opposition.

12. Denies each and every allegation contained in Paragraph "12" of the Opposition.

13. Denies each and every allegation contained in Paragraph "13" of the Opposition.

14. Denies each and every allegation contained in Paragraph "14" of the Opposition.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

15. Applicant repeats and realleges Paragraphs "1" through "14" as though more fully set forth herein.

16. The Opposition fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

17. Applicant repeats and realleges Paragraphs "1" through "16" as though more fully set forth herein.

18. That by reason of Applicant's continuous use of its mark since January, 2005, the dissimilarity in words and appearance between Applicant's mark and Opposer's mark, the absence of actual confusion, and that Opposer utilizes its mark in connection with numerous services which Applicant does not perform, there is no substantial likelihood of confusion

between the two marks.

19. That by reason of the foregoing, it is also not likely that Applicant's mark will lead to dilution of Opposer's mark, if registered.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**
**AS TO THE CLAIM OF DILUTION**

20. Applicant repeats and realleges Paragraphs "1" through "19" as though more fully set forth herein.

21. Applicant has continuously used its mark in commerce as early as January, 2005.

22. Applicant has owned the domain name, www.nycouchdoctor.com, since February 12, 2007.

23. Notwithstanding Applicant's open and notorious use of its mark since January, 2005 and its domain name since February, 2007, Opposer has not made demand upon Applicant to cease and desist from using both its mark and domain name in commerce, during the aforesaid period.

24. That by reason of the foregoing, Opposer has acquiesced regarding Applicant's use of its mark and domain name and has, therefore, waived its right to claim dilution of its mark, should Applicant's mark be registered.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**
**AS TO THE CLAIM OF DILUTION**

25. Applicant repeats and realleges Paragraphs "1" through "24" as though more fully set forth herein.

26. That by reason of the foregoing, Opposer is guilty of laches with regard to its claim of dilution of its mark if Applicant's mark is registered and, therefore, has waived its right to assert a claim of dilution.

**WHEREFORE**, Applicant requests the Opposition be overruled and that registration of Application Serial No. 85173818 be granted.

Dated: Garden City, New York
November 21, 2011

GOODMAN & SAPERSTEIN

By: /Martin I. Saperstein/

Martin I. Saperstein
*Attorneys for Applicant*
100 Garden City Plaza, Suite 412B
Garden City, New York 11530
Tel: (516) 227-2100
Fax: (516) 227-2108
Email: gsesq600@aol.com

TO:
E. David Smith, Esq.
Smith & Associates
*Attorneys for Opposer*
P.O. Box 5242
Passaic Park, NJ 07055

C:\WORK-2008\WORK\COUCH DR (3053)\Court-Sofa Dr\2011\Answer.wpd

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

----------X

THE SOFA DOCTOR, INC. d/b/a DR. SOFA,

**Opposition No. 91202290**

Opposer,

- against -

NEW YORK COUCH DOCTOR, INC.,

Applicant.

----------X

## CERTIFICATE OF SERVICE

I, Patricia Beers, being a resident of Lynbrook, New York, over the age of 18 years, and not a party to this action, do hereby certify that the foregoing ANSWER dated November 21, 2011 was this day served by mailing same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to each of the following person(s) at the last known address set forth after each name:

E. David Smith, Esq.
Smith & Associates
*Attorneys for Opposer*
P.O. Box 5242
Passaic Park, NJ 07055

Dated: Garden City, New York
November 21, 2011

Patricia Beers

PATRICIA BEERS

C:\WORK-2008\WORK\COUCH DR (3053)\Court-Sofa Dr\2011\COS-Answer.wpd