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Filing date: **06/18/2015**

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

Proceeding	91222134
Party	Defendant E & E Co., Ltd.
Correspondence Address	JUDE ANTHONY E & E CO LTD 45875 NORTHPORT LOOP E FREMONT, CA 94538-6414 UNITED STATES jude.anthony@jlahome.com;nancy.hattersl
Submission	Answer
Filer's Name	JUDE ANTHONY
Filer's e-mail	jude.anthony@jlahome.com
Signature	//Jude Anthony//
Date	06/18/2015
Attachments	E&E Co., Ltd. Answer to InterDesign Notice of Opposition.pdf(4865469 bytes) Trademark Coexistence Agmt.pdf(3585510 bytes)

CERTIFICATE OF ELECTRONIC TRANSMISSION

I certify that this paper and any identified as being enclosed or attached is being transmitted via the Electronic System for Trademark Trials and Appeals (ESTTA) on the date shown below:

Date: 6-18-2015

By: 
Jude Anthony

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

InterDesign, Inc.)	
Opposer,)	Opposition No. 91222134
v.)	Serial No. 86262516
E & E Co., Ltd.)	Mark: ID INTELLIGENT DESIGN
Applicant.)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, E & E Co., Ltd. ("Applicant" or "E&E"), answers the Notice of Opposition filed by InterDesign, Inc. ("Opposer" or "InterDesign") against E&E's application to extend its registered mark, ID INTELLIGENT DESIGN, from International Class 20 and 24 to International Classes 16 and 21 via Application Serial No. 86/262,516, filed April 25, 2014 and published in *Official Gazette* April 28, 2015 ("Application"), replies to Notice of Opposition as follows:

1. Applicant is without sufficient knowledge and information to form a belief as to the truth of the allegations in ¶1 of the Notice of Opposition.

2. Applicant is without sufficient knowledge and information to form a belief as to the truth of the allegations in ¶2 of the Notice of Opposition.

3. Applicant is without sufficient knowledge and information to form a belief as to the truth of the allegations in ¶3 of the Notice of Opposition.

4. Applicant is without sufficient knowledge and information to form a belief as to the truth of the allegations in ¶4 of the Notice of Opposition.

5. Applicant is without sufficient knowledge and information to form a belief as to the truth of the allegations in ¶5 of the Notice of Opposition.

6. Applicant denies the Opposer's allegations in ¶6 of the Notice of Opposition.

7. Applicant denies the Opposer's allegations in ¶7 of the Notice of Opposition.

8. Applicant denies the Opposer's allegations in ¶8 of the Notice of Opposition.

9. Applicant denies that Opposer's allegations in ¶9 of the Notice of Opposition are free from inaccuracy.

10. Applicant denies Opposer's allegations in ¶10 of the Notice of Opposition.

11. Applicant denies Opposer's allegations in ¶11 of the Notice of Opposition.

12. Applicant denies Opposer's allegations in ¶12 of the Notice of Opposition.

13. Applicant denies Opposer's allegations in ¶13 of its Notice of Opposition.

14. Applicant denies Opposer's allegations in ¶14 of its Notice of Opposition.

15. Applicant denies Opposer's allegations in ¶15 of the Notice of Opposition.

16. Applicant is without sufficient knowledge and information to form a belief as to the veracity of Opposer's allegations in ¶16 of the Notice of Opposition.

17. Applicant denies Opposer's allegations in ¶17 of the Notice of Opposition.

18. Applicant denies Opposer's allegations in ¶18 of the Notice of Opposition.

19. Applicant denies Opposer's allegation in ¶19. The Notice of Opposition is so laden with false premises and misstatements of fact that any conclusion drawn from it can only be suspect as truth rarely conduces from falsehood.

Additional and Affirmative Defenses

First Affirmative Defense [Failure to State a Claim]

Opposer fails to state a claim upon which relief can be granted.

Second Affirmative Defense [No Damage to Opposer]

Under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), there is no potential likelihood of confusion between Applicant's mark, ID INTELLIGENT DESIGN, and the Opposer's marks, IDESIGN and ID IDESIGN, in connection with Opposer's and Applicant's goods. Opposer is unable to cite a single instance of confusion between Applicant's and Opposer's branded goods.

Third Affirmative Defense
[Failure to State a Sustainable Cause of Action]

There is no likelihood of confusion between Applicant's and Opposer's goods. Applicant wholesales home furnishing products, primarily bedding, furniture, window treatments and bathroom accessories, such as towels, shower curtains, bath rugs and ceramic toiletry vessels. Whereas, Opposer's products are predominantly kitchen articles and closet & storage products of which Applicant does not trade. Opposer does peddle some bathroom products that are, however, so significantly divergent and distinct from Applicant's as to forestall the possibility of confusion among customers.

Fourth Affirmative Defense including Additional Defense
[No Breach by Applicant]

As a result of E&E's continuous substantial use of its mark, ID INTELLIGENT DESIGN, that mark has become a valuable asset to Applicant and carries considerable goodwill. This is confirmed from the mark's widespread usage in the International Classes: 16, 20, 21, 24, and 27. The ID INTELLIGENT DESIGN mark enjoys ever-increasing acceptance among transcontinental customers. The mark is distinctive and closely associated with Applicant and Applicant's business enterprise. Seemingly, because of success this brand enjoys, Opposer invidiously brings this action that intends to supplant Applicant by extra-market means. Notwithstanding Opposer's notions to the contrary, Applicant is not competing in the same channels of trade, nor is Applicant selling the same products or chasing the same consumers. Applicant has honored its Co-Existence Agreement with Opposer, See, Exhibit D of Notice of Opposition.

**Fifth Affirmative Defense
[Unclean Hands]**

Opposer's alleged IDESIGN mark does not comply with Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1), *inter alia*, because the mark's predominant element, "DESIGN" is merely descriptive as all InterDesign products require design. Moreover, the marks' other element, "ID", is an ubiquitous mark in itself – with over 70 live "ID" trademarks and/or "ID" applications – such that the combined elements auto-dilute ... leaving one to ponder just how IDESIGN and (its iteration) ID IDESIGN, ever attained trademark status in the first place.

**Sixth Affirmative Defense
[Unjust Enrichment]**

By means of this Opposition, Opposer attempts to unduly enrich itself at Applicant's and consumers' expense.

**Seventh Affirmative Defense
[Anticipatory Repudiation & Impossibility]**

Not long after parties entered into a "Trademark Co-Existence Agreement", See, Exhibit D of Opposition dated 1/2/2013, the Opposer abandon its Application 77/941,691 that it had filed seeking to extend its mark in International Class 20. This same application that Opposer abandoned on 9/23/2013, had incurred early disapprobation from the PTO on grounds under the Trademark Act Section 2(d) likelihood of confusion with the trademark "IDESIGN" owned by a previous registrant, See, "IDESIGN" mark under Registration No. 77,378,203. At any rate, Applicant is no longer subject to the terms of its Trademark Co-Existence Agreement with Opposer in respect to goods exclusively listed under Opposer's abandoned Application Serial No.

77/941,691.

It is impossible that Applicant can be held subject to terms and conditions that no longer exist; for, the terms and conditions to which parties agreed in the Co-Existence Agreement were so intrinsically bound to the underlying abandoned application that when Opposer abandoned that application it also invalidated any binding aspects unique to that application in the Co-Existence Agreement.

**Eighth Affirmative Defense
[Waiver]**

Opposer has through representations and/or actions waived its right to bring this Opposition and therefore cannot sustain it.

**Ninth Affirmative Defense
[Breach of Contract by Opposer]**

By bringing this Opposition against Applicant, Opposer breaches the Co-Existence Agreement that parties covenanted in professed good faith.

**Tenth Affirmative Defense
[Estoppel]**

Opposer is on record (Exhibit D, *Idem*), asserting that it is unaware of any instances of confusion between itself and Applicant's marks and goods. Based on the doctrine of estoppel, Opposer is barred from taking this now contradictory and inconsistent position.

**Eleventh Affirmative Defense
[Reservation to Amend Answer]**

There may be additional affirmative defenses to Opposer's Notice of Opposition that are currently unknown to the Applicant. Applicant therefore reserves the right to amend this answer and allege additional defenses in the event discovery or other information indicates they are appropriate.

WHEREFORE, Applicant requests that the Trademark Trial and Appeal Board deny this Opposition, and dismiss it in all respects, to allow the Application to move forward to registration.

Respectfully submitted,
E & E Co., Ltd. [Applicant]
By: //Jude Anthony//

Jude Anthony
E & E Co., Ltd.
Director of Legal Affairs
45875 Northport Loop E
Fremont, CA 94538
510-490-9788 x163
jude.anthony@jlahome.com

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2015, a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served upon the correspondent of record for Opposer via First Class mail with postage prepaid to:

D. Peter Hochberg, Esq.
D. Peter Hochberg Co., L.P.A.
1940 East 6th Street, 6th Floor
Cleveland, OH 44114

I further certify that the foregoing paper is being filed electronically via the Electronic System for Trademark Trials and Appeals (ESTTA).

Dated: June 18, 2015

//Jude Anthony//
Jude Anthony
E & E Co., Ltd.
510-490-9788
jude.anthony@jlahome.com

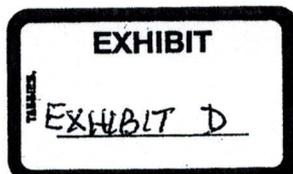
TRADEMARK COEXISTENCE AGREEMENT

This Agreement ("Agreement"), effective as of the 2nd day of January, 2013, by and between InterDesign, Inc., a corporation organized and existing under the laws of Ohio, located and having its principal place of business at 30725 Solon Industrial Parkway, Solon, Ohio 44139 (hereinafter "InterDesign"), and E&E Co., Ltd., a company organized and existing under the laws of California, having a principal place of business at 45875 Northport Loop E, Fremont, California 94538, dba JLA Home (hereinafter "JLA") (collectively referred to as "Parties").

WHEREAS, InterDesign is engaged in the business of, *inter alia*, metal baskets, boxes, shelves, plastic tissue box covers, drinking glasses, brushes, soap pumps, wastebaskets, various household metal goods, various non-metal housewares, household accessories, housewares, bath accessories, electrical goods, kitchen goods, shower curtains, bath/accnt rugs, baskets & containers, and closet hooks & racks (hereinafter "InterDesign Goods");

WHEREAS, InterDesign is the owner of U.S. Trademark Registration No. 3,667,542 in International Classes 6, 20 and 21 for the mark "ID IDESIGN (logo)," registered on August 11, 2009; U.S. Trademark Registration No. 3,711,540 in International Classes 6, 20 and 21 for the mark "IDESIGN," registered on November 17, 2009; U.S. Trademark Registration No. 3,711,538 in International Classes 6, 20 and 21 for the mark "ID IDESIGN (logo)," registered on November 17, 2009; and U.S. Trademark Application No. 77/941,691 in International Classes 9, 11, 14, 20 and 21 for the mark "IDESIGN," filed on February 22, 2010 (hereinafter collectively referred to as "the InterDesign Marks");

WHEREAS, JLA is the owner of U.S. Trademark Application No. 85/415,509 (hereinafter the "'509 Application") for the mark "ID INTELLIGENT DESIGN (logo)" in International Class 20 for the following goods: accent pillows; pillows, and International Class



24 for the following goods: bed skirts; comforters; pillow cases; pillow shams;

WHEREAS, on March 21, 2012, InterDesign filed an extension of time to oppose the '509 Application until April 21, 2012;

WHEREAS, the Parties now wish to resolve and settle this matter, and to avoid a formal opposition proceeding, and the Parties have particularly determined that it would be in their mutual best interest to cooperate with each other in regard to the respective current and future uses of the respective marks, so as to continue to avoid any potential confusion or other conflict, and

WHEREAS, the Parties are familiar with one another and with the marketplace, and during their period of coexistence in the marketplace, the Parties have not become aware of any instances of confusion between themselves and their respective goods, and they wish to continue peacefully co-existing in the marketplace and working together to avoid confusion under the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The foregoing recitals are incorporated herein and made a part of this Agreement.
2. Each party is confident that no likelihood of confusion will result from the Parties' continued use and registration of the marks comprising of or which include "ID DESIGN (logo)," "IDESIGN," "I-DESIGN COLLECTION" and "I-DESIGN COLLECTION (& design)," respectively, on or in connection with their respective goods as identified and/or amended in this Agreement. Each party agrees not to take any steps to associate its marks and goods as identified in this Agreement with the other party's marks and goods.
3. InterDesign consents to JLA's use and registration of the mark covered in the '509

Application and will not bring any legal action to prevent use and registration of the mark associated with the '509 Application. Specifically, InterDesign will not oppose or attempt to cancel any trademark registration maturing from the foregoing '509 application so long as the terms of this Agreement are met.

4. JLA consents to the use and registration of the marks "IDESIGN" and "ID IDESIGN (logo)" by InterDesign for all of the goods listed in U.S. Trademark Registration Nos. 3,667,542, 3,711,540 and 3,711,538 and U.S. Trademark Application Serial No. 77/941,691, and will not bring any legal action to prevent use and registration of the marks associated with the foregoing registrations and application. Specifically, JLA will not oppose or petition to cancel the foregoing registrations and application.

5. JLA covenants to exclude from the goods with which it uses the mark "ID INTELLIGENT DESIGN (logo)" any of the goods listed in U.S. Trademark Registration Nos. 3,667,542, 3,711,540 and 3,711,538 and U.S. Trademark Application Serial No. 77/941,691.

6. JLA consents to and agrees not to interfere with InterDesign's continued use and further registration of marks comprising, or which include, "IDESIGN" or "ID IDESIGN (logo)" on or in connection with the InterDesign Goods.

7. JLA further agrees not to file any trademark application for the terms "IDESIGN" or "ID DESIGN (logo)" on or in connection with any of InterDesign Goods.

8. Both Parties consent to and agree not to interfere with the other party's continued use and further registration of marks comprising, or which include, "IDESIGN," "ID DESIGN (logo)," "ID INTELLIGENT DESIGN (logo)," respectively, on or in connection with their respective goods as identified in this Agreement. Both Parties agree that they will fully cooperate with each other in executing and delivering any such further documentation and

performing any act which as may be reasonably necessary to permit any use and registration, including without limitation, the execution of additional letter(s) of consent as may be required for registration of various respective "IDESIGN," "ID IDESIGN (logo)" and "ID INTELLIGENT DESIGN (logo)" marks.

9. The Parties agree that the use and registration of their respective marks in accordance with the terms of this Agreement are not likely to cause confusion, mistake or deception in the marketplace. In the unlikely event that any instance of confusion, mistake or deception occurs, the Parties agree to work together in good faith to take all reasonable steps necessary to eliminate such confusion, mistake or deception, and to use their best efforts to avoid any future such instances. In the event that either party learns of any instance of actual confusion or mistake by a consumer or customer as to the source or origin of their respective goods, that party shall promptly notify the other party of such confusion or mistake, and shall take all reasonable steps to correct such misunderstanding, and to promptly notify the other party of such steps.

10. The Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors, assigns, agents and licensees, and any corporation and entity which owns or controls, or which is owned or controlled by either party, or with which either party has common ownership or control.

11. This instrument embodies the entire Agreement of the Parties hereto with respect to the subject matter hereof. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto, with respect to the subject matter hereof.

12. This Agreement, and the rights, duties and obligations of the Parties hereunder shall apply throughout the world.

13. Any notice or communication permitted or required to be made hereunder shall be made by reputable overnight courier, with delivery fees prepaid, with a copy transmitted at the same time by email. All notices and communications shall be addressed as follows until further notice:

(a) If to JLA:

Ms. Nancy Hattersley
E & E Co., Ltd.
45875 Northport Loop E
Fremont, CA 94538-6414
Telephone: 510-490-9788
Email: nancy.hattersley@jlahome.com

(b) If to InterDesign:

D. Peter Hochberg, Esq.
D. Peter Hochberg Co., L.P.A.
1940 East 6th Street – 6th Floor
Cleveland, OH 44114
Telephone: 216-771-3800
Email: dphochberg@dpeterhochberg.com

14. The parties agree that it is the intention of neither party to violate any public policy, statutory or common law, or governmental regulation; that if any sentence, paragraph, clause or combination or the same is, or becomes, in violation of any applicable law or regulation, or is unenforceable or void for any reason, such sentence, paragraph, clause or combination thereof shall be inoperative, and the balance of this Agreement shall remain binding upon the Parties.

15. This Agreement has been entered into after negotiation and review of its terms and conditions by the Parties with substantially equal bargaining power and under no compulsion to execute and deliver a disadvantageous agreement. This Agreement incorporates provisions,

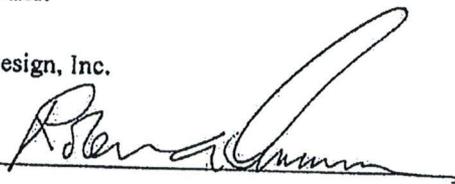
comments and suggestions proposed by both Parties. No ambiguity or omission in this Agreement shall be construed or resolved against either party on the ground that the Agreement or any of its provisions was drafted or proposed by that party.

16. Each party agrees to execute and deliver all documents, and to perform such acts, as are reasonably requested by the other party, to confirm, memorialize, effectuate and carry out the terms and provisions of this Agreement.

17. This Agreement shall be executed in duplicate originals, each party to retain one (1) original.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective as of the date and year above first written, regardless of the actual date of signature of either of the Parties.

InterDesign, Inc.

By: 

Robert A. Immerman

Printed Name

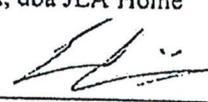
President

Title

2/20/2013

Date Signed

E&E Co., Ltd., dba JLA Home

By: 

Edmund Jin

Printed Name

CEO

Title

02/03/2013

Date Signed