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

Proceeding	92057941
Party	Plaintiff Clockwork IP, LLC
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Date	07/24/2015
Attachments	Clockwork - Reply in Supp of SJ and Response to Mot for Sanctions.pdf(39414 bytes) #69364642, v1 _Active_ - Clockwork - Supplemental Declaration of R. Yohn - E-Signed with Exhibit A.pdf(4690860 bytes) Part 2 of Ex A to Yohn.pdf(4506061 bytes) Part 3 of Ex A to Yohn.pdf(4538290 bytes) Clockwork - Newberg Decl with Exhibit.pdf(444724 bytes)

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

CLOCKWORK IP, LLC)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92057941
)	Reg. No. 3,618,331
BARNABY HEATING & AIR, and)	
McAFEE HEATING AND AIR)	
CONDITIONING CO., INC.)	
)	
Respondents.)	

**PETITIONER’S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND
RESPONSE TO RESPONDENT’S EVIDENTIARY OBJECTIONS AND MOTION TO STRIKE**

Petitioner Clockwork IP, LLC (“Clockwork”) states the following as its Reply in Support of its Motion for Summary Judgment and in response to the Evidentiary Objections and Motion to Strike:¹

INTRODUCTION

Barnaby’s evidentiary objections and motion to strike are meritless and should be denied. Clockwork was not required to disclose the declarants before relying on them in support of its motion, and even if it was, the failure to disclose is harmless. Moreover, Clockwork has established that it is entitled to judgment as a matter of law with respect to Barnaby’s fraud. Not only did Barnaby fail to answer and therefore admit several Requests for Admission (“RFAs”) that conclusively establish that fraud, it also failed to raise a genuine issue of material fact with respect to its fraud, which is clearly and convincingly established by the record before the Board. Summary judgment is therefore appropriate.

ARGUMENT

I. Respondent’s evidentiary objections and motion to strike are meritless and should therefore be denied.

Barnaby objects to, and moves to strike, the declarations of Rick Yohn, Robin Faust, and Chelsea Crews that Clockwork submitted in support of its motion for summary judgment, arguing that Mr. Yohn,

¹ As Barnaby’s cross motion for summary judgment raises issues not previously raised in Clockwork’s motion for summary judgment, Clockwork will file a separate brief in opposition to the cross motion. Additionally, given that Barnaby filed a separate motion to reopen or withdraw and amend its responses to Requests for Admission Nos. 36 to 45, Clockwork will also oppose that motion in a separate brief.

Ms. Faust, and Ms. Crews were not identified in Clockwork’s initial disclosures until two days after Clockwork filed the motion for summary judgment. (See [Dkt. # 30] Resp’t Mem. at 4–5.) But Barnaby fails to establish any facts that show that Clockwork did anything wrong or to justify imposition of any sanction or other remedy.

To start, Barnaby befuddles precedent governing exclusion of a witness at trial for failure to identify the witness in initial disclosures, see *Spier Wines (PTY) Ltd. v. Shepher*, 105 U.S.P.Q.2d (BNA) 1239 (T.T.A.B. 2012); *Great Seats, Inc. v. Great Seats, Ltd.*, 100 U.S.P.Q.2d (BNA) 1323 (T.T.A.B. 2011), with precedent governing when to strike declarations and/or accompanying documents submitted in support of a motion for summary judgment, see *Warner Bros. Entm’t, Inc. v. The Kaplan Trust*, 2007 WL 8304081 (T.T.A.B. Nov. 26, 2007); *Vignette Corp. v. Marino*, 77 U.S.P.Q.2d (BNA) 1408 (T.T.A.B. 2005); *Milliken & Co. v. Image Indus., Inc.*, 39 U.S.P.Q.2d (BNA) 1192 (T.T.A.B. 1996). The former is not applicable here, and application of the latter shows that Barnaby’s motion fails.²

The Board has consistently declined to impose an estoppel sanction and to strike declarations and/or evidence submitted in support of a motion for summary judgment where the non-moving party did “not unequivocally refuse to provide the requested information” during discovery. *Vignette Corp.*, 77 U.S.P.Q.2d (BNA) at 1411; see also *Warner Bros.*, 2007 WL 8304081, at *2 n.3 (noting that, where the “[p]etitioner did not outright refuse to furnish [the declarant’s] identity during discovery” and that the “[d]eclaration does not contain any previously undisclosed facts,” it would be inappropriate and “unduly harsh to impose the preclusion sanction under Fed. R. Civ. P. 37(c)(1)”; *Milliken & Co.*, 39 U.S.P.Q.2d (BNA) at 1197 (denying a motion to strike “the declaration by the retail carpet store owner” because “respondent’s complaint that this witness was not identified during discovery is not supported by an

² Even if *Spier* and *Great Seats* applied here, which they do not, Barnaby makes no attempt to show that the five factors specified weigh in favor of striking the three declarations. Those five (inapplicable) factors actually weigh against striking the declarations for at least the reasons that, as demonstrated below, there is no surprise to Barnaby because almost all of the information contained in the declarations and accompanying exhibits was already known to, in the possession of, and sometimes obtained from, Barnaby, and to the extent it is not, Barnaby would have been able to cure the surprise by submitting counter-declarations and evidence if it chose to do so. (See *infra* at 3.)

identification of any specific discovery request asking for his identification”). Here, Barnaby propounded **no** discovery requests. Barnaby’s objections and motion are therefore legally unsupportable.

Moreover, even if Clockwork had been required to disclose Mr. Yohn, Ms. Faust, and Ms. Crews in order to rely on them for purposes of the summary judgment motion – which it was not – the estoppel sanction is nevertheless improper because the lack of disclosure is harmless. *See* Fed. R. Civ. P. 37(c)(1). The information contained in, and exhibits attached to, Ms. Faust’s declaration *come straight from documents Barnaby produced to Clockwork in this case*, ([Dkt. # 22] Ex. A–C to Faust Decl. (displaying Bates stamps)), and Barnaby itself relies on Ms. Faust’s declaration in its cross motion, ([Dkt. # 30] Resp’t Mem. at 16–17). Similarly, the information contained in, and exhibits attached to, Mr. Yohn’s declaration was included in and attached to the Petition, which Barnaby has had for over a year, (*see* [Dkt. # 1] Petition.) And finally, the exhibit attached to Ms. Crews’ declaration *was produced by Barnaby in this case*, ([Dkt. # 22] Ex. 1 to Crew Decl. (displaying Bates stamps)), and most of the information in her declaration is admitted by Barnaby, and Barnaby is free to dispute what is not. Thus, the Board should overrule the evidentiary objections and deny the motion to strike.

II. Clockwork is entitled to judgment as a matter of law on its fraud claim.

Clockwork’s opening brief in support of its motion for summary judgment irrefutably establishes that Clockwork is entitled to judgment as a matter of law on its fraud claim. To start, Barnaby failed to respond to Requests for Admission (“RFAs”) Nos. 36 to 45, which – among other things – conclusively establishes that Barnaby procured U.S. Reg. No. 3,618,331 for COMFORTCLUB by committing fraud on the USPTO. (*See* [Dkt. # 22] Pet.’s Mem.) As explained more fully in Clockwork’s opposition to Barnaby’s motion to reopen the time to respond to, or withdraw and amend, those RFAs, which is filed simultaneously with this reply, (*see* [Dkt. # 33] Pet.’s Opp.), the Board should not permit Barnaby to reopen its response time or to withdraw and amend those admissions because Clockwork properly served RFA Nos. 36 to 45 on Barnaby’s counsel prior to the close of discovery, Barnaby’s failure to respond to those RFAs is not the product of excusable neglect, and the facts of this case – including but not limited to all of Barnaby’s conduct that gave rise to the pending motion for sanctions and entry of judgment, (*see*

[Dkt. # 21] Pet.’s Sanction Mem.; [Dkt. # 27] Pet.’s Sanction Reply), its deliberate misrepresentation of the allegations in the Petition, (*see infra* at 4–5), and the most recent fantastical story it paints in the motion to reopen or withdraw or amend, (*see* [Dkt. # 33] Pet.’s Opp.) –demonstrate that the Board is justified in declining to exercise its discretion under Rule 36(b) and to instead find the matters in RFA Nos. 36 to 45 have been conclusively established.

Although the RFAs alone are enough to warrant judgment in favor of Clockwork on its fraud claims, Clockwork additionally established in its opening brief that it is entitled to judgment as a matter of law because there is no genuine dispute of material fact that Barnaby knowingly made four false, material representations to the Board with the intent to deceive the Board and to procure a trademark registration to which Barnaby was not entitled. ([Dkt. # 22] Pet.’s Mem. at 11–14.) Barnaby makes two feeble attempts to refute that conclusion and to avoid summary judgment: first, it claims – **years later** – that the Petition to Cancel does not satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b) and therefore summary judgment must be denied as moot, and second, it tries to create an issues of fact that clearly do not withstand scrutiny.

To support its deficient pleading argument, Barnaby blatantly misrepresents the allegations in the *actual* Petition.³ Recognizing that “allegations based on ‘information and belief’” satisfy Rule 9(b) when “accompanied by a statement of facts upon which the belief is founded,” (Resp’t Mem. at 13), Barnaby quotes the “upon information and belief” language from the Petition and then **deliberately excises the accompanying facts, by using ellipses, to give the false impression that the Petition is deficient:**

Petitioner also alleges that on March 13, 2008, in Respondent’s original application and again on August 27, 2008, in support of Respondent’s amended specimen, that “Respondent’s Owner and Principal, Mr. Charles Barnaby, signed a declaration in support of its application for the Registration that stated, inter alia, that he believes the applicant to be the owner of the trademark/service mark sought to be registered, . . . believes applicant to be entitled to use such mark in commerce, and to the best of his knowledge, he believes that no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near

³ Barnaby limits its deficiency contention to its manufactured belief that Clockwork failed to plead facts in support of the allegations based upon information and belief; it does not allege other deficiencies. Clockwork easily pleaded all elements of its fraud claim sufficiently to satisfy Rule 9(b). Should the Board disagree, however, Clockwork respectfully requests that it be allowed to file an amended Petition.

resemblance thereto as to be likely to cause confusion. Upon information and belief, these statements, which were made under oath, were false. Upon information and belief, Mr. Barnaby made these statements with an intent to deceive the U.S. Patent and Trademark Office (“USPTO”) into granting registration . . .”

([Dkt. # 30] Resp’t Mem. at 11 (alterations in original).) But the unaltered versions of both Paragraphs 32 and 34 contain the following facts (italicized for ease of reference) in support of Clockwork’s fraud claim: “Upon information and belief, Mr. Barnaby made those statements with an intent to deceive the U.S. Patent and Trademark Office (“USPTO”) into granting registration *because he was aware at the time of the declaration that Petitioner owned Petitioner’s Mark, that Respondent was a licensee of Petitioner, and that Respondent’s Mark was virtually identical to Petitioner’s Mark, and that up to seven (7) of Petitioner’s franchisees were authorized to use Petitioner’s Mark in Respondent’s geographic area,*” (Petition ¶ 32), and “*because he, as Respondent’s owner, was aware at the time of the declaration that Petitioner owned Petitioner’s Mark, that Respondent was a licensee of Petitioner, and that Respondent’s Mark was virtually identical to Petitioner’s Mark,*” (*id.* ¶ 34; *see also id.* ¶¶ 9, 13, 15 (listing additional facts).) Thus, like the vast majority of arguments that Barnaby has submitted in an attempt to show it did not commit fraud (and its obviously false excuses regarding its failure to answer RFA Nos. 36 to 45), its pleading deficiency argument is intentionally misleading and devoid of merit.

Similarly, Barnaby’s attempt to create a genuine issue of material fact is unavailing. “Fraud in procuring a trademark registration . . . occurs when an applicant knowingly makes false, material representations of fact in connection with his application.” *In re Bose*, 580 F.3d at 1243. As set forth more fully in Clockwork’s opening brief, the record establishes that Barnaby knowingly made two false, material representations (one regarding its ownership of COMFORTCLUB and one regarding the non-existence of another person, firm, or organization with right to use the mark in commerce (collectively, the “Barnaby Statements”)) to the Board both at the time it filed its application to register COMFORTCLUB in March 2008 as well as when it filed a response to an office action in August 2008. (*See generally* [Dkt. # 22] Pet.’s Mem.) Barnaby does not contest, and therefore concedes, that the Barnaby Statements are “material representations” for purposes of the fraud claim. (*See* [Dkt. # 30]

Resp't Mem.) Barnaby also does not contest, and therefore concedes, that the Barnaby Statements are false and that Barnaby knew they were false both times it made them. (*See id.*)

In fact, Barnaby's opposition skirts around the issue of its knowledge, never addressing the crux of Clockwork's fraud claim: that Barnaby knew that Clockwork owned and used the COMFORTCLUB Mark in connection with heating and air conditioning services prior to when Barnaby filed the application in March 2008 and/or prior to when it filed its response to the office action in August 2008, such that Barnaby – who was a non-exclusive licensee of Clockwork's COMFORTCLUB Mark by March 2008 and signed the Nighthawk Agreement acknowledging it possessed no ownership rights in that mark – could not believe itself the rightful owner of COMFORTCLUB, **or** regardless of whether it could honestly believe it owned the mark, Barnaby could not truthfully declare that it knew of no other person, firm, entity, or association with a right to use the COMFORTCLUB Mark on identical or related goods.

Instead, Barnaby attempts to avoid summary judgment by claiming that: (1) "Respondent began using the COMFORTCLUB Mark in January 2008, prior to attending the March 2008 AirTime500 meeting in St. Louis;" (2) "Respondent filed its application for the registration of its Mark at the USPTO" prior to attending the March 2008 AirTime500 meeting; (3) "Petitioner has failed to show that the COMFORTCLUB Mark was adopted by Petitioner, or that it was in use at the March 17-19, 2008 meeting;" and (4) "The materials submitted by Petitioner fail to establish . . . that Petitioner has rights to the COMFORTCLUB Mark that are superior to that of Respondent's." ([Dkt. # 30] Resp't Mem. at 13–14.) But none of these points carry the day.

The only "facts" Barnaby raises in an attempt to avoid summary judgment all focus on the March 2008 Senior Tech course that Barnaby attended, which has no bearing on Barnaby's knowledge when it made the August 2008 statements. Moreover, the facts regarding the timing of Barnaby's first use and application, even if accepted as true, do not refute that Barnaby knew of Clockwork's COMFORTCLUB Mark – or that he was a licensee of that mark – when it filed the application in March 2008. Thus, instead of raising a triable issue, Barnaby's facts tend to show that summary judgment for Clockwork is proper.

Similarly, whether COMFORTCLUB was used during the March 2008 meeting cannot preclude summary judgment because it is not a material fact; the Board can find Barnaby's knowledge and intent to deceive the USPTO without it. Throughout this entire proceeding, Barnaby has refused to specify when it learned of Clockwork's ownership and use of the COMFORTCLUB Mark in connection with heating and air conditioning services. Its discovery responses on the topic are evasive and improper, (*see, e.g.*, [Dkt. # 22] Ex. 5 to DeFord Decl. (Barnaby responding to an RFP asking for documents relating to when it first learned of Clockwork's COMFORTCLUB Mark with "Respondent is not aware that Petitioner owns any mark" despite producing a cease and desist letter it sent Clockwork in 2011 (*see* Ex. 1 to Decl. of Brad R. Newberg))), and neither its opposition nor the declaration of Charles Barnaby ever states that Barnaby did not know of Clockwork's superior rights at the time it made the Barnaby Statements, (*see* [Dkt. # 30] Resp't Mem.; [Dkt. # 30] Barnaby Decl.)

In fact, by honing in on the March 2008 conference, Barnaby ignores – and again concedes – the following points that demonstrate its knowledge of Clockwork's superior rights at the time it made the Barnaby Statements in March 2008 and/or August 2008: (1) in 2007, Barnaby was surrounded by seven (7) Clockwork franchisees that were using the COMFORTCLUB Mark in connection with heating and air conditioning services; (2) as of August 2007, Barnaby was a member of AirTime500; (3) by March 2008, Barnaby was a non-exclusive licensee of Clockwork's COMFORTCLUB Mark; (4) by Barnaby's own admission, it was during this time frame that Barnaby supposedly conceived of a COMFORTCLUB Mark out of wholecloth and began using it in commerce; (5) despite rushing to register the mark and allegedly spending hundreds of thousands of dollars on it, Barnaby inexplicably cannot recall *any* details regarding how it came up with the mark or find *any* physical evidence related to its creation; and (6) Barnaby was in close contact with its SGI personal coach, asking for her opinion on an advertisement containing the COMFORTCLUB Mark less than two weeks before it filed the registration application.⁴ (*See* [Dkt. # 22]

⁴ In its opening motion, Clockwork indicated that Ms. Faust approved of Barnaby's ad using COMFORTCLUB the same day as Barnaby's first sale of a COMFORTCLUB membership. But upon reviewing the exhibits while preparing its reply, Clockwork realized that Ms. Faust's email was sent on March 3, 2008, not February 29. That correspondence and the fact that Barnaby requested Ms. Faust's

Pet.'s Mem. at 11–15. *See generally* [Dkt. # 30] Resp't Mem.) These facts, coupled with Barnaby's continued evasiveness – both in discovery responses and its opposition – as to when it first learned of Clockwork's use and ownership of COMFORTCLUB lead to one escapable conclusion: Barnaby knew of Clockwork's superior rights to COMFORTCLUB at both of the times it made the Barnaby Statements. Barnaby's knowledge is therefore not dependent on a finding that COMFORTCLUB was discussed during the March 2008 Senior Tech course and conference, making that factual dispute immaterial for purposes of deciding the summary judgment motion.

In light of Barnaby's knowledge of Clockwork's superior (or at least clearly established) rights in and use of the COMFORTCLUB Mark in connection with heating and air conditioning services, which is established and unrefuted by Barnaby in its opposition, there is little question that Barnaby intended to deceive the USPTO when it made the Barnaby Statements with full knowledge of their falsity. As noted above, Barnaby expressly acknowledged that it possessed no ownership rights in any of the intellectual property to which it was exposed through its membership in AirTime500 when it signed the Nighthawk Agreement. Thus, Barnaby could not reasonably or honestly believe that it owned COMFORTCLUB at either time it made the Barnaby Statements, leading to the sole conclusion that it intended to deceive the USPTO by claiming otherwise.

Moreover – and independent from whether Barnaby could honestly believe it owned COMFORTCLUB – Barnaby's knowledge of Clockwork's use of the identical COMFORTCLUB Mark on identical or virtually identical services (such as heating and air conditioning services) as those sought to be registered by Barnaby demonstrates that it could not honestly or reasonably believe that no other person, firm, corporation, or association had the right to use the COMFORTCLUB mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely to cause confusion. *See, e.g., Intellimedia Sports Inc. v. Intellimedia Corp.*, 43 U.S.P.Q. 2d (BNA) 1203, 1205–06 (T.T.A.B. 1997). It therefore intentionally withheld information that could have affected its right to a registration,

approval of the ad remains significant evidence of Barnaby's fraud in this case, but Clockwork withdraws any suggestion that the showing of fraud is further strengthened by Barnaby's first sale date.

revealing that it intended to deceive the USPTO. *See Scoa Indust., Inc. v. Kennedy & Cohen, Inc.*, 188 U.S.P.Q. (BNA) 411, 414 (T.T.A.B. 1975) (noting that fraud is the “willful withholding from [the USPTO] . . . material information or facts which, if transmitted and disclosed to the Examiner, would have resulted in the disallowance of the registration sought”).

Faced with this uncontested evidence, Barnaby makes no attempt to explain that its false statements were unintentional or made as the result of mistake, inadvertence, misunderstanding, or even negligence; it simply states that intent is *usually* a factual issue unsuited for resolution on summary judgment. But this is not the usual case; as shown above, the undisputed facts before the Board clearly and convincingly show that Barnaby knowingly made four, false representations with the intent to deceive the Board into issuing a registration to which Barnaby is not entitled. *See In re Bose*, 580 F.3d at 1245 (“[B]ecause direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence” that is clear and convincing).

Barnaby also cannot avoid the consequences of its fraud by claiming that Clockwork failed to submit sufficient evidence of its superior rights to COMFORTCLUB or that it owns and uses COMFORTCLUB. Again, Barnaby has conceded that Clockwork has rights in COMFORTCLUB dating to at least 2007, which are therefore superior to Barnaby who claims first use in 2008, because Barnaby does not contest that it was surrounded by seven (7) OHAC franchisees that were using COMFORTCLUB in 2007–2008. *Cf. L & J.G. Sticklely, Inc.*, 81 U.S.P.Q.2d (BNA) 1956, 1965 (T.T.A.B. 2007) (accepting a priority of use date based in part on the petitioner’s admission of “seeing respondent’s use of the mark” during that time frame). Additionally, Clockwork’s rights and use are further shown because Clockwork is the owner of Application Ser. No. 85/880,911, and Barnaby sent a cease and desist letter to Clockwork regarding Clockwork’s use of the mark in 2011. (Ex. 1 to Newberg Decl.) Perhaps most importantly, Clockwork submitted evidence of its superior rights. In addition to the details regarding Clockwork’s licensing of COMFORTCLUB to OHAC franchisees, Rick Yohn declared that Exhibit 1, which contains a dated 2006 copyrighted StraightForward Pricing Guide, is evidence of Clockwork’s use of COMFORTCLUB in commerce. ([Dkt. # 22] Yohn Decl. ¶ 7.) Specifically, the

2006 StraightForward Pricing Guide (and its current versions) was purchased by OHAC franchisees in 2006, who then used that Pricing Guide in commerce by displaying it to customers during home visits in order to sell COMFORTCLUB memberships. (Suppl. Yohn Decl. ¶¶ 3–5; Ex. A to Suppl. Yohn Decl.) Thus, Clockwork has demonstrated that it was using (and still is using) COMFORTCLUB at least two years before Barnaby’s claimed first use date.

Barnaby tries to question Clockwork’s evidence through the declaration of Mr. Barnaby. ([Dkt. # 30] Barnaby Decl. ¶ 24.) But Mr. Yohn’s declaration demonstrates that Mr. Barnaby’s “analysis” is wrong, and in any event, Barnaby’s “analysis” should be struck because it is either an improper lay opinion, given that Barnaby was never an OHAC franchisee and therefore lacks foundation, (*id.* ¶ 22), or is an improper expert opinion, as Mr. Barnaby was never identified as an expert and there is no indication that he would otherwise meet the expert standard.

Finally, Barnaby cannot avoid summary judgment by absurdly pointing to a forum-selection clause in the Nighthawk Agreement. As explained more fully in Clockwork’s opposition to Barnaby’s cross motion for summary judgment, that clause is inapplicable here. (*See* [Dkt. # 34].)

In sum, Clockwork has demonstrated that it is entitled to judgment as a matter of law on its fraud claims because Barnaby failed to respond to several operative RFAs, which should stand as admitted, and because Barnaby failed to raise a genuine dispute of material fact with respect to its knowledge of the falsity of the Barnaby statements, its intent to deceive the Board, or Clockwork’s superior rights, which are all clearly and convincingly established by the record currently before the Board.

CONCLUSION

For the reasons stated above and those contained in Clockwork’s opening brief, Clockwork requests that the Board grant its Motion for Summary Judgment, enter judgment against Barnaby on Clockwork’s fraud claim, and cancel U.S. Reg. No. 3,618,331. Additionally, Clockwork requests that the Board deny Barnaby’s motion to strike. Finally, Clockwork respectfully requests that the Board strike paragraph 24 from the declaration of Charles Barnaby.

Respectfully submitted,

CLOCKWORK IP, LLC

Filed via ESTTA: July 24, 2015

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CERTIFICATE OF SERVICE

On July 24, 2015, this document was sent by first class mail to the following counsel of record:

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/Amanda L. DeFord/
Amanda L. DeFord

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CONDITIONING CO., INC.)	
)	
Respondents.)	

SUPPLEMENTAL DECLARATION OF RICK YOHN

I, Rick Yohn, being duly sworn, state:

1. My name is Rick Yohn. I am over the age of 18. I make the statements in this declaration based on my own personal knowledge and the official records of my employer, Clockwork Home Services (“CHS”), related the facts discussed herein. I certify under oath that the statements made in this declaration are true to the best of my knowledge, information and belief.

2. I am currently employed by CHS, and I am the Vice President of Franchise Operations at CHS, an entity that operates several widely known franchise brands. I have held the position of Vice President of Franchise Operations at CHS since January 2014 and am well aware of the records and materials that existed in the years preceding the date when I assumed that position.

3. I previously made a declaration in support of Clockwork’s Motion for Summary Judgment in the above-captioned case. In that declaration, I declared, among other things, that between 2003 and 2008, Clockwork licensed the COMFORTCLUB Mark to at least 100 OHAC

franchisees. I also declared that Exhibit 1, which is attached to my prior declaration, contains true and accurate copies of documents showing use of the COMFORTCLUB Mark.

4. The documents contained in Exhibit 1 to my prior declaration are part of the 2006 StraightForward Pricing Guide that OHAC franchisees purchase from Clockwork.

5. The OHAC franchisees then use the 2006 StraightForward pricing guide in commerce, by presenting it to customers while on home visits to inform them about, and explain the benefits of, the COMFORTCLUB membership program. **Exhibit A** to this declaration contains true and accurate copies of an OHAC franchisee's use of this form (slightly altered to contain the OHAC franchisee's contact information) that date to at least as early as 2007. Any redactions appearing on the form were made by Clockwork's counsel to protect clients' personal information, such as addresses and credit card numbers.

6. After reviewing this declaration personally and due to travel, I have authorized Clockwork's undersigned counsel to sign this declaration for me electronically. I will replace this declaration with a declaration containing my handwritten signature upon my return next week.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 24th day of July 2015.

/Rick Yohn/
Rick Yohn
Vice President of Franchise Services
Clockwork Home Services

**EXHIBIT A TO
SUPPLEMENTAL
DECLARATION OF RICK
YOHN**



Club membership card number: CH8900832



COMFORT CLUB™

As a One Hour Comfort Club member, you will receive:

- A. One precision tune-up, professional cleaning, and rejuvenation of your air conditioner PLUS, one Safety Check annually (early spring to summer).
- B. One precision tune-up, professional cleaning, and rejuvenation of your furnace PLUS one Safety Check annually (early fall to winter).

BENEFITS

- 1. LIFESPAN.** Your system can last up to twice as long. It's like getting TWO air conditioners and TWO furnaces for the price of one. The annual service you receive as part of your Comfort Club membership can double the remaining life of your air conditioner and furnace.
- 2. SAVE \$ and SAVE THE EARTH.** Your savings on utility bills can easily pay for annual service. It's the closest thing to a guaranteed profit investment. "Residential cooling & heating systems are the #1 users of electricity and gas in America. What if everyone used less energy without sacrificing comfort? Shouldn't we do it?" Darren Dixon
- 3. BREAKDOWN-FREE GUARANTEE.** One Hour annual service reduces breakdowns so much, we guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is FREE.
- 4. PREMIER CLIENT REWARDS.** As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

NAME Hale K. Harding E-MAIL _____
 MAILING ADDRESS [REDACTED] LOCATION OF EQUIPMENT closet/ground
 ADDRESS [REDACTED]
 PHONE _____ PHONE _____

EQUIPMENT	MAKE	WARRANTY DATE	MODEL NO.	SERIAL NO.

TERMS **OPTION A.** Monthly Investment \$ _____ Automatic Credit Card Debit. I understand that the monthly fee will continue until a written notice of termination is received at the local office. Allow up to two weeks for termination processing.

Method of payment: (Please complete and sign) [REDACTED]
 Account # [REDACTED] Card Expiration date: mo. [REDACTED] yr. [REDACTED]
 Representative Hale K. Harding Date _____
 Client Signature _____ Date _____

OPTION B. Invest in advance and save: 1 YEAR 2 YEARS _____ 3 YEARS _____
 Visa Mastercard Amex Discover Investment \$ 199
 Representative Rich Garner Date 9.18.07
 Client Signature X Harding Date 9.18.07

Risk Free
 If you're not satisfied, for any reason, your prior six months membership investment will be refunded.
You Can't Lose

3845 Atherton Road • Suite 4 • Rocklin, California 95765
 Sacramento: (916) 442-5542 • Roseville: (916) 920-5320 • Auburn: (530) 823-2282

100% REFUNDABLE / TRANSFERABLE / PRO-RATE
James Bond



Club membership card number: _____



COMFORT CLUB™

As a One Hour Comfort Club member, you will receive:

- A. One precision tune-up, professional cleaning, and rejuvenation of your air conditioner PLUS, one Safety Check annually (early spring to summer).
- B. One precision tune-up, professional cleaning, and rejuvenation of your furnace PLUS one Safety Check annually (early fall to winter).

BENEFITS

- 1. LIFESPAN.** Your system can last up to twice as long. It's like getting TWO air conditioners and TWO furnaces for the price of one. The annual service you receive as part of your Comfort Club membership can double the remaining life of your air conditioner and furnace.
- 2. SAVE \$ and SAVE THE EARTH.** Your savings on utility bills can easily pay for annual service. It's the closest thing to a guaranteed profit investment. "Residential cooling & heating systems are the #1 users of electricity and gas in America. What if everyone used less energy without sacrificing comfort? Shouldn't we do it?" Darren Dixon
- 3. BREAKDOWN-FREE GUARANTEE.** One Hour annual service reduces breakdowns so much, we guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is FREE.
- 4. PREMIER CLIENT REWARDS.** As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

NAME *Doris Bond* E-MAIL _____
 MAILING ADDRESS [REDACTED] LOCATION OF EQUIPMENT _____
 PHONE _____ PHONE _____

EQUIPMENT	MAKE	WARRANTY DATE	MODEL NO.	SERIAL NO.
	<i>3 ton</i>	<i>Ø</i>	<i>036/80%</i>	<i>1988</i>

TERMS

OPTION A. Monthly Investment \$ _____ Automatic Credit Card Debit. I understand that the monthly fee will continue until a written notice of termination is received at the local office. Allow up to two weeks for termination processing.

Method of payment: (Please complete and sign) Visa MasterCard Amex Discover
 Account # [REDACTED] Card Expiration date: mo. _____ yr. _____
 Representative _____ Date _____
 Client Signature _____ Date *2008-11*

OPTION B. Invest in advance and save: 1 YEAR _____ 2 YEARS _____ *3 YEARS*
 Visa Mastercard Amex Discover Investment \$ *250.00*
 Representative *James Stewart* Date _____
 Client Signature *Doris & Bond* Date *9/27/07*

Risk Free
 If you're not satisfied, for any reason, your prior six months membership investment will be refunded.
You Can't Lose

3845 Atherton Road • Suite 4 • Rocklin, California 95765
Sacramento: (916) 442-5542 • Roseville: (916) 920-5320 • Auburn: (530) 823-2282



Club membership card number: _____



COMFORT CLUB™

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- A. One precision tune-up, professional cleaning, and rejuvenation of your air conditioner PLUS, one Safety Check annually (early spring to summer).
- B. One precision tune-up, professional cleaning, and rejuvenation of your furnace PLUS one Safety Check annually (early fall to winter).

BENEFITS

- 1. LIFESPAN.** Your system can last up to twice as long. It's like getting TWO air conditioners and TWO furnaces for the price of one. The annual service you receive as part of your Comfort Club membership can double the remaining life of your air conditioner and furnace.
- 2. SAVE \$ and SAVE THE EARTH.** Your savings on utility bills can easily pay for annual service. It's the closest thing to a guaranteed profit investment. "Residential cooling & heating systems are the #1 users of electricity and gas in America. What if everyone used less energy without sacrificing comfort? Shouldn't we do it?" Darren Dixon
- 3. BREAKDOWN-FREE GUARANTEE.** One Hour annual service reduces breakdowns so much, we guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is FREE.
- 4. PREMIER CLIENT REWARDS.** As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

NAME Morgan McDonald E-MAIL _____
 MAILING ADDRESS _____ LOCATION OF EQUIPMENT _____
 ADDRESS _____
 PHONE _____ PHONE _____

EQUIPMENT	MAKE	WARRANTY DATE	MODEL NO.	SERIAL NO.
Condenser	Goodman		CK36-1B	970603723

TERMS **OPTION A.** Monthly Investment \$ _____ Automatic Credit Card Debit. I understand that the monthly fee will continue until a written notice of termination is received at the local office. Allow up to two weeks for termination processing.

Method of payment: (Please complete and sign) _____
 Account # _____ Card Expiration date: mo 09 yr. 07
 Representative _____ Date _____
 Client Signature _____ Date _____

OPTION B. Invest in advance and save: 1 YEAR _____ 2 YEARS _____ 3 YEARS _____
 Visa Mastercard Amex Discover Investment \$ 199.00
 Representative Brian Fleiss Date _____
 Client Signature Morgan McDonald Date _____

Risk Free
 If you're not satisfied, for any reason, your prior six months membership investment will be refunded.
You Can't Lose

3845 Atherton Road • Suite 4 • Rocklin, California 95765
Sacramento: (916) 442-5542 • Roseville: (916) 920-5320 • Auburn: (530) 823-2282



Club membership card number: CHS900833



COMFORT CLUB™

As a One Hour Comfort Club member, you will receive:

- A. One precision tune-up, professional cleaning, and rejuvenation of your air conditioner PLUS, one Safety Check annually (early spring to summer).
- B. One precision tune-up, professional cleaning, and rejuvenation of your furnace PLUS one Safety Check annually (early fall to winter).

BENEFITS

- 1. LIFESPAN.** Your system can last up to twice as long. It's like getting TWO air conditioners and TWO furnaces for the price of one. The annual service you receive as part of your Comfort Club membership can double the remaining life of your air conditioner and furnace.
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- 3. BREAKDOWN-FREE GUARANTEE.** One Hour annual service reduces breakdowns so much, we guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is FREE.
- 4. PREMIER CLIENT REWARDS.** As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

NAME Jacky/michael E-MAIL _____
 MAILING ADDRESS [REDACTED] LOCATION OF EQUIPMENT closet / ground
 [REDACTED]

PHONE _____ PHONE _____

EQUIPMENT	MAKE	WARRANTY DATE	MODEL NO.	SERIAL NO.
<u>split/gas</u>	<u>Coleman</u>		<u>UCAB100B4H</u>	<u>WOK6A12574</u>

Financed on ao # 42301

TERMS

OPTION A. Monthly Investment \$ _____ Automatic Credit Card Debit. I understand that the monthly fee will continue until a written notice of termination is received at the local office. Allow up to two weeks for termination processing.

Method of payment: (Please complete and sign) Visa MasterCard Amex Discover

Account # _____ Card Expiration date: mo. _____ yr. _____

Representative _____ Date _____

Client Signature _____ Date _____

OPTION B. Invest in advance and save: 1 YEAR _____ 2 YEARS _____ 5 YEARS 900

Visa Mastercard Amex Discover Investment \$ 900.00

Representative Richard Gurner Date 9/18/07

Client Signature Jackie Cress Date 9/18/07

Risk Free
 If you're not satisfied, for any reason, your prior six months membership investment will be refunded.
You Can't Lose

3845 Atherton Road • Suite 4 • Rocklin, California 95765
 Sacramento: (916) 442-5542 • Roseville: (916) 920-5320 • Auburn: (530) 823-2282



Club membership card number: CH5896413



COMFORT CLUB™

As a One Hour Comfort Club member, you will receive:

- A. One precision tune-up, professional cleaning, and rejuvenation of your air conditioner PLUS, one Safety Check annually (early spring to summer).
- B. One precision tune-up, professional cleaning, and rejuvenation of your furnace PLUS one Safety Check annually (early fall to winter).

BENEFITS

- 1. LIFESPAN.** Your system can last up to twice as long. It's like getting TWO air conditioners and TWO furnaces for the price of one. The annual service you receive as part of your Comfort Club membership can double the remaining life of your air conditioner and furnace.
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- 3. BREAKDOWN-FREE GUARANTEE.** One Hour annual service reduces breakdowns so much, we guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is FREE.
- 4. PREMIER CLIENT REWARDS.** As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

NAME LYLE-YVONNE BOSHMAN E-MAIL _____
 MAILING ADDRESS _____ LOCATION OF EQUIPMENT _____
 PHONE _____ PHONE _____

EQUIPMENT	MAKE	WARRANTY DATE	MODEL NO.	SERIAL NO.
<u>GAS PCT</u>	<u>AMANA</u>	<u>3-6-2016</u>	<u>RCE42C2D</u>	<u>0572041153</u>

TERMS

OPTION A. Monthly Investment \$ _____ Automatic Credit Card Debit. I understand that the monthly fee will continue until a written notice of termination is received at the local office. Allow up to two weeks for termination processing.

Method of payment: (Please complete and sign) Visa MasterCard Amex Discover

Account # _____ Card Expiration date: mo. _____ yr. _____

Representative _____ Date _____

Client Signature _____ Date _____

OPTION B. Invest in advance and save: 1 YEAR _____ 2 YEARS _____ 3 YEARS _____

Visa Mastercard Amex Discover Investment \$ 199⁰⁰

Representative [Signature] Date 10-05-07

Client Signature [Signature] Date _____

Risk Free
If you're not satisfied, for any reason, your prior six months membership investment will be refunded.
You Can't Lose

3845 Atherton Road • Suite 4 • Rocklin, California 95765
Sacramento: (916) 442-5542 • Roseville: (916) 920-5320 • Auburn: (530) 823-2282



Club membership card number: CHS896423



COMFORT CLUB™

As a One Hour Comfort Club member, you will receive:

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- 3. BREAKDOWN-FREE GUARANTEE.** One Hour annual service reduces breakdowns so much, we guarantee that if your furnace or air conditioner needs repairs while you are a Comfort Club member, the next six months membership is FREE.
- 4. PREMIER CLIENT REWARDS.** As a Comfort Club member, you enjoy special privileges. If you ever need service, you immediately go to the front of the line when setting your appointment.

NAME Jack Frost E-MAIL root
 MAILING ADDRESS [REDACTED] LOCATION OF EQUIPMENT gas/PACK elect.
 ADDRESS [REDACTED]

PHONE _____ PHONE _____

EQUIPMENT	MAKE	WARRANTY DATE	MODEL NO.	SERIAL NO.
<u>Amana</u>	<u>gas/PACK</u>		<u>PE048C0902G</u>	<u>0408781695</u>

Paid on WO # 42710

TERMS **OPTION A.** Monthly Investment \$ _____ Automatic Credit Card Debit. I understand that the monthly fee will continue until a written notice of termination is received at the local office. Allow up to two weeks for termination processing.

Method of payment: (Please complete and sign) Visa MasterCard Amex Discover
 Account # _____ Card Expiration date: mo. _____ yr. _____
 Representative _____ Date _____
 Client Signature _____ Date _____

OPTION B. Invest in advance and save: 1 YEAR 199 2 YEARS _____ 3 YEARS _____

Visa Mastercard Amex Discover Investment \$ 199
 Representative Richard Garner Date 10.8.07
 Client Signature Jack Frost Date _____

Risk Free
 If you're not satisfied, for any reason, your prior six months membership investment will be refunded.
You Can't Lose

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

CLOCKWORK IP, LLC)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92057941
)	Reg. No. 3,618,331
BARNABY HEATING & AIR, and)	
McAFEE HEATING AND AIR)	
CONDITIONING CO., INC.)	
)	
Respondents.)	

DECLARATION OF BRAD R. NEWBERG

I, Brad R. Newberg, declare and state as follows:

1. I am a partner in the law firm of McGuireWoods LLP, counsel for Petitioner Clockwork IP, LLC (“Clockwork”). I make this declaration in support of Clockwork’s Motion for Summary Judgment. The following facts are within my knowledge and, if called and sworn as a witness, I could and would testify competently thereto. The matters referred to in this declaration are based upon my personal knowledge, and/or when referencing documents, such documents were reviewed by me and where applicable, were obtained and compiled at my instruction by others attorneys employed by McGuireWoods LLP, and if called as a witness I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** are true and accurate copies of documents produced by Respondent Barnaby Heating and Air to Clockwork in response to discovery requests propounded by Clockwork in the above-captioned case.

3. Mr. Rick Yohn is traveling and unable to sign by hand his supplemental declaration before Clockwork’s deadline to file its reply in support of the motion for summary judgment. Mr. Yohn reviewed the supplemental declaration and sent written authorization that it may be electronically signed on his behalf. Upon Mr. Yohn’s return next week, he will sign by hand the supplemental declaration, which will subsequently be filed with the Board.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 23rd day of July 2015 at Tysons Corner, Virginia.



Brad R. Newberg, Esq.
McGuireWoods LLP

**EXHIBIT 1 TO NEWBERG
DECLARATION**

391 Sandhill Drive
Richardson, TX 75080
Tel: 972 918-9312 Fax: 214 291-5991



THRASHER ASSOCIATES
www.thrasherassociates.com

Steven Thrasher
steven.thrasher@thrasherassociates.c

One Hour Air Conditioning & Heating Birmingham
618 Dogwood Terrace
Leeds, Alabama 35094
May 9, 2011

To Whom It May Concern:

We represent Barnaby Heating and Air, LLC ("Barnaby"), owner of the Trademark COMFORTCLUB ("the Mark," enclosed). It was recently brought to our attention that One Hour Air Conditioning & Heating Birmingham ("you") began using the mark around December 16, 2010 (based on the enclosed printout of your webpage). Clearly the mark "Comfort Club" is confusingly similar to "ComfortClub" in both sound and appearance.

Barnaby seeks a mutually beneficial business resolution to this situation. Accordingly, Barnaby is happy to provide you the opportunity to license the Mark at a favorable rate. Alternatively, You may "wind-down" use of the mark so long as that use ends in ninety (90) days.

Please contact me at 214-502-5923 so that we may discuss these options, or other options that you may envision.

Sincerely,

Steven Thrasher

CC: Client

enclosures

/leb

BARNABY-000030

DAVID F. VEDRAL
ATTORNEY & COUNSELOR AT LAW
PO BOX 1509
CEDAR HILL, TEXAS 75106-1509
TEL: 972-723-6353
vedralatty@aol.com

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Dear Mr. Scott Boose, Pres:

The undersigned attorney has been retained by the owner and holder of the above patent, Barnaby Heating & Air LLC (Texas Limited Liability Company) (ie., "Barnaby"), to protect and enforce all rights associated therewith.

It is "Barnaby" understanding that (1) Clockwork Home Services, Inc. (ie., "Clockwork") is the parent company of One Hour Heating and Air Conditioning (ie., "One Hour"); and that "One Hour", without "Barnaby" permission or authorization, has been and continues to infringe on "Barnaby" ComfortClub patent by (ie., soliciting, promoting, advertising, etc.) through various communication channels (internet, print, electronic, etc.) by using the advertisement "Comfort Club" (only separated by a space) and directly receiving benefits from said infringement causing damages to "Barnaby". A print out off the internet of the promotional use by "One Hour" of Comfort Club is enclosed for your perusal.

BARNABY-000031

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Page-2

"Clockwork" use of Comfort Club vs. ComfortClub is deceptively similar creating obvious confusion to the public and as such an infringement on the Barnaby Patent.

Note: See [Clockwork internet home page]

Superior Business Ethics:

"our business actions must always be conducted in the most honorable, honest and ethical manner.

Therefore, "Barnaby" herein Demand that "Clockwork" [including but not limited to all "Clockwork" employee's, officers, shareholders, representatives, agents, subsidiaries, etc] immediately CEASE & DESIST from infringing on the "Barnaby" patent as outlined above and further that "Clockwork"

1. Immediately (within 30 days) forward, at your cost, to the undersigned a complete list of all entities (ie., web servers, suppliers, advertising, vendors, licenses, or other business's and/or individuals,) you have already contacted or contracts with in writing or orally regarding or using ComfortClub or Comfort Club, since May 12, 2009. ("Barnaby Patent origin); and

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3521

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Page-3

2. Remove the name Comfort Club or ComfortClub from all communication by "Clockwork"; and
3. Reimbursing "Barnaby" attorney's fee's incurred to date, which total \$750.00 (Seven Hundred Fifty Dollars), for having to make this demand to protect the "Barnaby" patent; and
4. "Clockwork" compensating "Barnaby" for the damages caused by the patent infringement thus far in an amount of not less than \$50,000.00; and
5. Scott Boose or another authorized corporate officer of "Clockwork" sign an affidavit before a notary public, stating that "Clockwork" will immediately cease and refrain and comply with this Demand Letter, and timely forward the original notarized affidavit to the undersigned attorney within 30 days.

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Page-4

The failure to timely (30 days) and completely comply with all five (5) of the above reasonable demands, will be treated as an intentional act of continued infringement by "Clockwork" continuing irreparable injury and damages to "Barnaby" and the public which will necessitate appropriate legal action to protect the "Barnaby" patent, "Barnaby" business, and the public at large, from the continued intentional interference with the "Barnaby" patent & business, plus suit for any and all other relief at law or equity, and for all any exemplary damages as allowed by law, including but not limited to; all costs of court and reasonable attorney fee's.

However, if "Clockwork" is truly desirous [within 30 days] of resolving these past & future issues by complying with all five (5) reasonable demands referenced above for the past infringement and also negotiating a written licensing agreement with "Barnaby" for future permitted use of the "Barnaby" Patent by "Clockwork"; then you are encouraged to contact the undersigned attorney immediately to resolve these issues.

All questions or responses must be immediately forwarded to the undersigned attorney and you are encouraged to resolve this matter amicably and timely.

BARNABY-000034

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Page-5

The terms and amounts contained herein to resolve this matter are for settlement purposes only and are not to be inferred by you as any voluntary limitation of rights or actions to be taken by "Barnaby" if a mutually agreeable resolution is not timely forthcoming.

GOVERN YOURSELF ACCORDINGLY.

Sincerely,

David F. Vedral
Enclosures:

cc: Mr. Charles Barnaby, Pres.
Barnaby Heating & Air LLC
4620 Industrial Street, Suite C
Rowlett, Texas 75088

BARNABY-000035

DAVID F. VEDRAL
ATTORNEY & COUNSELOR AT LAW
PO BOX 1509
CEDAR HILL, TEXAS 75106-1509
TEL: 972-723-6353
vedralatty@aol.com

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Dear Mr. Scott Boose, Pres:

The undersigned attorney has been retained by the owner and holder of the above patent, Barnaby Heating & Air LLC (Texas Limited Liability Company) (ie., "Barnaby"), to protect and enforce all rights associated therewith.

It is "Barnaby" understanding that (1) Clockwork Home Services, Inc. (ie., "Clockwork") is the parent company of One Hour Heating and Air Conditioning (ie., "One Hour"); and that "One Hour", without "Barnaby" permission or authorization, has been and continues to infringe on "Barnaby" ComfortClub patent by (ie., soliciting, promoting, advertising, etc.) through various communication channels (internet, print, electronic, etc.) by using the advertisement "Comfort Club" (only separated by a space) and directly receiving benefits from said infringement causing damages to "Barnaby". A print out off the internet of the promotional use by "One Hour" of Comfort Club is enclosed for your perusal.

BARNABY-000036

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Page-2

"Clockwork" use of Comfort Club vs. ComfortClub is deceptively similar creating obvious confusion to the public and as such an infringement on the Barnaby Patent.

Note: See [Clockwork internet home page]
Superior Business Ethics:

"our business actions must always be conducted in the most honorable, honest and ethical manner.

Therefore, "Barnaby" herein Demand that "Clockwork" [including but not limited to all "Clockwork" employee's, officers, shareholders, representatives, agents, subsidiaries, etc] immediately CEASE & DESIST from infringing on the "Barnaby" patent as outlined above and further that "Clockwork"

1. Immediately (within 30 days) forward, at your cost, to the undersigned a complete list of all entities (ie., web servers, suppliers, advertising, vendors, licenses, or other business's and/or individuals,) you have already contacted or contracts with in writing or orally regarding or using ComfortClub or Comfort Club, since May 12, 2009 ("Barnaby Patent origin); and

BARNABY-000037

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Page-3

2. Remove the name Comfort Club or ComfortClub from all communication by "Clockwork"; and
3. Reimbursing "Barnaby" attorney's fee's incurred to date, which total \$750.00 (Seven Hundred Fifty Dollars), for having to make this demand to protect the "Barnaby" patent; and
4. "Clockwork" compensating "Barnaby" for the damages caused by the patent infringement thus far in an amount of not less than \$50,000.00; and
5. Scott Boose or another authorized corporate officer of "Clockwork" sign an affidavit before a notary public, stating that "Clockwork" will immediately cease and refrain and comply with this Demand Letter, and timely forward the original notarized affidavit to the undersigned attorney within 30 days.

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Page-4

The failure to timely (30 days) and completely comply with all five (5) of the above reasonable demands, will be treated as an intentional act of continued infringement by "Clockwork" continuing irreparable injury and damages to "Barnaby" and the public which will necessitate appropriate legal action to protect the "Barnaby" patent, "Barnaby" business, and the public at large, from the continued intentional interference with the "Barnaby" patent & business, plus suit for any and all other relief at law or equity, and for all any exemplary damages as allowed by law, including but not limited to; all costs of court and reasonable attorney fee's.

However, if "Clockwork" is truly desirous [within 30 days] of resolving these past & future issues by complying with all five (5) reasonable demands referenced above for the past infringement and also negotiating a written licensing agreement with "Barnaby" for future permitted use of the "Barnaby" Patent by "Clockwork"; then you are encouraged to contact the undersigned attorney immediately to resolve these issues.

All questions or responses must be immediately forwarded to the undersigned attorney and you are encouraged to resolve this matter amicably and timely.

BARNABY-000039

October 7, 2011

Certified Mail Return Receipt Requested:
#7010 1870 0000 7599 3621

Mr. Scott Boose, President
Clockwork Home Services, Inc.
Plaza Five Points
Suite #920
50 Central Avenue
Sarasota, Florida 34236

Re: ComfortClub
US Pat & Trademark Office
Reg. No. 3,618,331
Date Reg. May 12, 2009

Page-5

The terms and amounts contained herein to resolve this matter are for settlement purposes only and are not to be inferred by you as any voluntary limitation of rights or actions to be taken by "Barnaby" if a mutually agreeable resolution is not timely forthcoming.

GOVERN YOURSELF ACCORDINGLY.

Sincerely,

David F. Vedral
Enclosures:

cc: Mr. Charles Barnaby, Pres.
Barnaby Heating & Air LLC
4620 Industrial Street, Suite C
Rowlett, Texas 75088

BARNABY-000040