

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



11-08-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

INVACARE CORPORATION)
)
 Opposer,)
 v.)
)
 BANYAN LICENSING, L.L.C.,)
)
 Applicant.)

Opposition No. 91150883

In the Matter of Trademark Application Serial No. 76001555
for the mark CONTOUR SEAT CUSHION

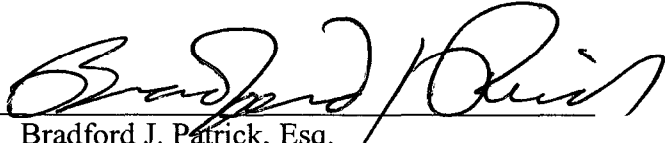
**OPPOSER'S MOTION FOR SANCTIONS
AND FOR ENTRY OF JUDGMENT**

NOW COMES Opposer Invacare Corporation, by and through counsel, and pursuant to Trademark Rule 2.120 (g) (1) and Fed. R. Civ. P. 37 (b) (2), moves this Board for an Order of Sanctions as defined under said rules against Applicant Banyan Licensing LLC and for an Entry of Judgment in favor of Opposer in this Opposition Proceeding. By this Board's Entry made and mailed September 4, 2002, Opposer's Motion to Compel Applicant to Respond to Opposer's Discovery Requests filed on August 1, 2002 was granted as conceded. This Board allowed Applicant twenty (20) days from the mailing date of the Order to respond to Opposer's discovery, with said date being on or before September 24, 2002. As of November 5, 2002,

Opposer has not received answers to its discovery as set forth in this Board's September 4, 2002 Order.

For the foregoing reasons, Opposer moves this Board for appropriate sanctions against Applicant and for an Entry of Judgment in favor of Opposer in this Opposition Proceeding. An affidavit of Opposer's counsel in support is attached hereto and incorporated herein as *Exhibit 1*.

Respectfully submitted,

By:  Date: November 6, 2002
Bradford J. Patrick, Esq.
Mansour Gavin Gerlack & Manos Co. LPA
55 Public Square, Suite 2150
Cleveland, OH 44113
Phone: 216-523-1500
Fax: 216-523-1705
Email: bpatrick@mggmlpa.com

Attorney for Opposer Invacare Corporation

CERTIFICATE OF SERVICE

I hereby certify that the a copy of the foregoing Opposer's Motion for Sanctions and for Entry of Judgment was deposited with the United States Postal Service as first class mail with proper postage affixed, this 6th day of November, 2002 in an envelope addressed to:

Larry C. Jones, Esq.
Jason M. Sneed, Esq.
ALSTON & BIRD LLP
Bank of America Plaza
101 S. Tryon Street
Suite 4000
Charlotte, NC 28280-4000

***COUNSEL FOR APPLICANT
BANYAN LICENSING, L.L.C.***

A handwritten signature in black ink, appearing to read "Bradford J. Patrick", is written over a horizontal line. The signature is cursive and somewhat stylized.

Bradford J. Patrick

Date of Signature: November 6, 2002

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

AFFIDAVIT OF BRADFORD J. PATRICK

SS:

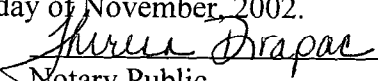
BRADFORD J. PATRICK, being duly cautioned and sworn, deposes and says that to the best of his knowledge:

1. I am and have been at all times mentioned herein an attorney employed with the law firm of Mansour, Gavin, Gerlack & Manos Co., LPA, 55 Public Square, Suite 2150, Cleveland, Ohio 44113.
2. My Supreme Court of Ohio Attorney Registration Number is 070588.
3. I am and have been at all times mentioned herein the attorney of record for Opposer Invacare Corporation, One Invacare Way, Elyria, Ohio 44036 (hereinafter "Opposer"), in the matter of Opposition Proceeding No.91150883, Invacare Corporation vs. Banyan Licensing LLC, against Applicant Banyan Licensing LLC ("Applicant").
4. Since the Board's Order mailed on September 4, 2002 granting Applicant twenty (20) days from said date to respond without objection to Opposer's First Set of Interrogatories and First Set of Requests for Production of Documents, I have not received Applicant's responses nor has my client the Opposer.
5. Through the date of this Affidavit, I have provided legal services in the amount of \$2,987.50 for Opposer in this opposition proceeding.

FURTHER AFFIANT SAYETH NAUGHT.


BRADFORD J. PATRICK

Before me, personally appeared **BRADFORD J. PATRICK** who, upon being first duly sworn and advised, states the above to be true and to the best of his information and belief, and who did subscribe thereto as his own free act and deed in his capacity as attorney of record for Opposer Invacare Corporation, on this 6th day of November, 2002.


Notary Public

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

**In the matter of Trademark Application Serial No. 76-001,555
For the mark "CONTOUR SEAT CUSHION" in International Class 10 (U.S. 26, 39 & 44)
Published in the Official Gazette on December 18, 2001**

**Invacare Corporation
One Invacare Way
Elyria, Ohio 44036**

Opposer,

v.

**Banyan Licensing, L.L.C.
1040 Bayview Drive, Suite 322
Fort Lauderdale, FL 33304**

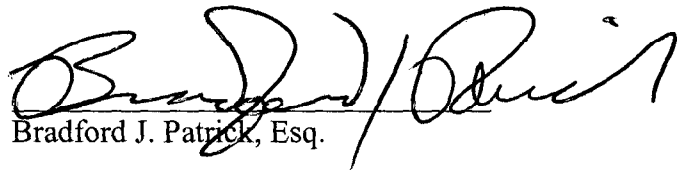
Applicant.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

Box TTAB
FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

on Tuesday, November 6, 2002.


Bradford J. Patrick, Esq.

TTAB

MANSOUR, GAVIN, GERLACK & MANOS Co., L.P.A.

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November 6, 2002



11-08-2002

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COPYRIGHT BOARD

**Re: Enclosed Motion For Sanctions and For Entry of Judgment (with Affidavit)
Opposition No. 91150883
In the matter of Trademark Application Serial No. 76-001,555
For the mark "CONTOUR SEAT CUSHION" in International Class 10**

Dear Assistant Commissioner for Trademarks:

Enclosed is the original and one (1) copy of Opposer's Motion for Sanctions and for Entry of Judgment (with Affidavit) against Applicant Banyan Licensing, L.L.C. in the matter of Opposition No. 91150883. Also attached to said Motion is the original and one (1) copy of the Certificate of Mailing for this correspondence.

If you have any questions regarding this filing, please contact the undersigned, attorney for the Opposer in this proceeding.

Very truly yours,


Bradford J. Patrick

BJP:td

Enclosures

cc: Larry C. Jones, Esq. (w/encl)
Bridget Miller, Esq., Invacare Corporation (w/encl.)

