

ESTTA Tracking number: **ESTTA499170**

Filing date: **10/10/2012**

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

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

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| Name | Champion Window Manufacturing and Supply Co., LLC | | |
| Entity | limited liability company | Citizenship | Delaware |
| Address | 12121 Champion Way Cincinnati, OH 45241 UNITED STATES | | |

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| Name | Champion Windows Manufacturing and Suppl | | |
| Granted to Date of previous extension | 10/20/2012 | | |
| Address | 12121 Champion Way Cincinnati, OH 45241 UNITED STATES | | |
| Party who filed Extension of time to oppose | Champion Manufacturing and Supply Co., LLC | | |
| Relationship to party who filed Extension of time to oppose | The Company is the same at the same address. There was a typo in which the word "Windows" was mistakenly left out of the company name on the extension request. | | |

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| Attorney information | William S. Wyler Schwartz Manes Ruby & Slovin 2900 Carew Tower 441 Vine St. Cincinnati, OH 45202 UNITED STATES wwyler@smrslaw.com Phone:513-579-1414 | | |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 85429267 | Publication date | 10/09/2012 |
| Opposition Filing Date | 10/10/2012 | Opposition Period Ends | 11/08/2012 |
| Applicant | Comfort Window Co., Inc. 60 John Glenn Blvd. Syracuse, NY 132091868 UNITED STATES | | |

Goods/Services Affected by Opposition

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|---|
| Class 019. All goods and services in the class are opposed, namely: Insulating glass for windows for building purposes; Window glass |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 85429563 | Publication date | 08/21/2012 |
| Opposition Filing Date | 10/10/2012 | Opposition Period Ends | 10/20/2012 |
| Applicant | Comfort Window Co., Inc. 60 John Glenn Blvd. Syracuse, NY 132091868 UNITED STATES | | |

Goods/Services Affected by Opposition

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|---|
| Class 019. All goods and services in the class are opposed, namely: Insulating glass for windows for building purposes; Window glass |
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Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3373431 | Application Date | 07/21/2005 |
| Registration Date | 01/22/2008 | Foreign Priority Date | NONE |
| Word Mark | COMFORT 365 WINDOWS | | |
| Design Mark | COMFORT 365 WINDOWS | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 019. First use: First Use: 2007/08/01 First Use In Commerce: 2007/08/01 Goods, namely, non-metal pre-made windows, containing insulated glass | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3373432 | Application Date | 07/21/2005 |
| Registration Date | 01/22/2008 | Foreign Priority Date | NONE |
| Word Mark | COMFORT 365 DOORS | | |
| Design Mark | COMFORT 365 DOORS | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 019. First use: First Use: 2007/08/01 First Use In Commerce: 2007/08/01 Goods, namely, non-metal pre-made doors, containing insulated glass | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3039140 | Application Date | 04/05/2004 |
| Registration Date | 01/10/2006 | Foreign Priority Date | NONE |
| Word Mark | COMFORT 365 | | |
| Design Mark | COMFORT 365 | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 019. First use: First Use: 2004/02/23 First Use In Commerce: 2004/02/23 Insulated glass sold as an integral component of non-metal doors, windows and patio enclosures | | |

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| Attachments | 76643331#TMSN.gif (1 page)(bytes) 76643332#TMSN.gif (1 page)(bytes) 76585595#TMSN.gif (1 page)(bytes) Champion vs Comfort Windows Opposition.pdf (6 pages)(105687 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

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| Signature | /william s. wyler/ |
| Name | William S. Wyler |
| Date | 10/10/2012 |

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

In the matter of the Application Serial No. 85429267
Filed on the 22nd day of September, 2011
For the mark: COMFORT QUADSHIELD GLASS.
Published in the Official Gazette on October 09, 2012

In the matter of the Application Serial No. 85429563
Filed on the 22nd day of September, 2011
For the mark COMFORT QUAD SHIELD GLASS and design
Published in the Official Gazette on August 21, 2012

Champion Window Manufacturing
and Supply Co., LLC
12121 Champion Way
Cincinnati, Ohio 45241

Opposer

v.

Comfort Window Co., Inc.
60 John Glenn Blvd.
Syracuse, NEW YORK 132091868

Applicant

Opposition No.

CONSOLIDATED OPPOSITION

To The Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF CONSOLIDATED OPPOSITION

To the Commissioner:

1. The Opposer in this matter is Champion Window Manufacturing and Supply Company, LLC, a Delaware limited liability company (“Opposer” or “Champion”), with its principle place of business being 12121 Champion Way, Cincinnati, Ohio 45241.

2. The Applicant in both opposed applications is identified as Comfort Window Co., Inc., a New York corporation (“Applicant” or “Comfort Windows”), with a principle place of business being 60 John Glenn Blvd, Syracuse, New York 13209-1868.

3. Champion is the owner of three relevant federally registered marks, namely:

1) COMFORT 365 WINDOWS (Registration No. 3373431), for which the goods are described as, “non-metal pre-made windows, containing insulated glass,” in International Class 019, for which the date of first use in commerce is shown as 08/01/2007 (the “WINDOWS mark”).

2) COMFORT 365 DOORS (Registration No 3373432), for which the goods are described as, “non-metal pre-made doors, containing insulated glass,” in International Class 019, for which the date of first use in commerce is shown as 08/01/2007 (the “DOORS mark”);

3) COMFORT 365 (Registration No 3039140), for which the goods are described as, “Insulated glass sold as an integral component of non-metal doors, windows and patio enclosures,” in International Class 019, for which the date of first use in commerce is shown as 02/23/2004 (Champion’s “365 mark”).

4. Applicant claims ownership of two relevant marks for which applications are pending:

1) COMFORT QUADSHIELD GLASS (Serial No. 85429267) for which the goods are described as, “Insulating glass for windows for building purposes; Window glass,” in International Class 019, for which there is not yet a date of first use in commerce (the ‘267 mark), and

- 2) COMFORT QUAD SHIELD GLASS and design (Serial No. 85429563) for which the goods are described as, “Insulating glass for windows for building purposes; Window glass,” in International Class 019, for which there is not yet a date of first use in commerce (the ‘563 mark). The ‘563 mark is a composite mark shown in its entirety below:



5. Applicant has disclaimed the word “GLASS” in both of its application, leaving the literal element of the ‘267 mark as COMFORT QUADSHIELD and of the ‘563 mark as COMFORT QUAD SHIELD.
6. The Applicant’s ‘267 mark was published for opposition in the Official Gazette on October 9, 2012.
7. The Applicant’s ‘563 mark was published for opposition in the Official Gazette on August 21, 2012. An extension of time was obtained by Champion extending the date by which to file an Opposition to October 21, 2012.
8. Champion opposes both applications.
9. Champion believes that it will be damaged by the registration of the marks in the above-identified applications and hereby opposes same.
10. Applicant’s goods and the marks identifying those goods are confusingly similar to Champion’s goods and the marks identifying Champion’s goods creating a likelihood of

confusion or mistake in the minds of consumers as to the source of Applicant's goods, (15 USC 1052(d)).

11. The first word in the literal element in Applicant's, 267 mark is COMFORT which is identical to the prominent literal element of Champion's marks, namely the word COMFORT
12. The first word in the literal element in Applicant's '563 mark is COMFORT which is identical with the most prominent literal element of Champion's marks, namely, the word COMFORT.
13. Both of Applicant's applications are for goods in IC 019.
14. Champion's three registrations are for goods in IC 019.
15. Both of Applicant's applications are for goods described as "**Insulating glass for windows for building purposes; Window glass,**" while Champion's 365 mark registration is for goods identified as "**Insulated glass sold as an integral component of non-metal doors, windows and patio enclosures**" and Champion's DOORS and WINDOWS marks identified as, "**non-metal pre-made [doors] [windows], containing insulated glass.**"
16. The most prominent literal element of both Applicant's marks and Champion's marks is identical, namely the word COMFORT, the use of which by Applicant will create a likelihood of confusion in the minds of consumers.
17. Applicant will market its goods trade channels similar to Champion.
18. Applicant's goods will appeal to the same consumer base as Champion's goods, namely private homeowners.

19. The consumer base for Champion's and Applicant's goods and services is not a consumer base requiring special skills, education, knowledge or capability that would be expected to aid consumers in distinguishing the marks.
20. Based on the similarities between the marks; the similarity of the goods, the similarity of the consumer groups targeted and the similarity of the channels of trade, Applicant's marks will create a real and substantial likelihood of confusion as to the source of the goods in the minds of consumers.

Wherefore, Champion asks that Applicant's applications be denied registration for the marks COMFORT QUADSHIELD GLASS (Serial Nos. 85429267) and COMFORT QUAD SHIELD GLASS and design (Serial No. 85429563) and that Applicant pay such costs as may be accrued in the within action.

Respectfully submitted,

/s/William S. Wyler

William S. Wyler (Ohio reg. No. 0006441)
Hallie S. Borellis (Ohio reg. No. 0076510)

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Attorneys for Champion

CERTIFICATE OF SERVICE

This pleading was duly served upon Applicant's counsel, Philip I Frankel, Bond Schoeneck & King, PLLC, 1 Lincoln Center Plaza, Suite 1800, Syracuse, New York, 13202-1355 by regular U.S. Mail and at bskpto@bsk.com by electronic mail, on the 10th day of October, 2012.

/s/ William S. Wyler

William S. Wyler (Ohio reg. No. 0006441)

Hallie Schneider Borellis (Ohio reg. No. 0076510)