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

Proceeding	91207440
Party	Plaintiff Champion Window Manufacturing and Supply Company, LLC
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Submission	Answer to Counterclaim
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Date	04/16/2013
Attachments	Champion v Comfort Window CW Answer to Counterclaim.pdf (4 pages) (151761 bytes)

**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,

Opposer,

v.

Comfort Window Co., Inc.,

Applicant.

OPPOSITION NO. 91207440

**OPPOSER'S ANSWER TO APPLICANT'S
COUNTERCLAIM**

OPPOSER'S ANSWER TO APPLICANT'S COUNTERCLAIM

Champion Window Manufacturing and Supply co., LLC (“Opposer” or “Champion”), by
and through counsel, for its Answer to the Counterclaim of Comfort Window Co., Inc.,
 (“Applicant” or “CWI”) states as follows:

First Answer

1. Champion admits that the allegation in paragraph 22 that it is the owner of the trademarks with the Registration Nos. 3373431 and 3373432. The balance of the paragraph does not require a response.
2. Champion admits the allegations of paragraph 23.
3. Champion admits the allegations of paragraph 24.

4. Champion denies the allegation in paragraph 25 that CWI's COMFORT mark has been used in interstate commerce, but is without knowledge to admit or deny the balance of the paragraph.
5. Champion denies the allegation in paragraph 26 that CWI's COMFORT mark has developed a secondary meaning, but is without knowledge to admit or deny the balance of the paragraph.
6. In paragraph 27, Champion neither admits nor denies the allegations as the attachment speaks for itself.
7. Champion admits the allegations in paragraph 28, but denies any allegation that Champion's marks were the only marks cited by the Examining Attorney in the refusal to register.
8. Champion admits the allegations in paragraph 29, but denies any allegation that Champion's marks were the only marks cited by the Examining Attorney in maintaining the refusal to register.
9. Champion admits the allegation in paragraph 30.
10. Champion answers the allegations in the multipart paragraph 31 as follows:
 - a. Champion denies CWI has standing to bring this Counterclaim.
 - b. Champion denies that the findings by the Attorney Examiner are binding on the Trademark Trial and Appeal Board ("TTAB").
 - c. Champion denies that CWI's COMFORT and design mark has obtained acquired distinctiveness.
 - d. Champion denies that CWI's COMFORT and design mark has obtained acquired a secondary meaning.

- e. Champion admits there is a similarity between Champion's marks and CWI's marks.
 - f. No response is required to the recitation of the dates of filing the Opposition and the cancellation counterclaim.
 - g. Champion denies any other allegations in paragraph 31.
11. Champion denies the allegations in paragraph 32 for the reasons that
- a. CWI has not set forth any basis in its Counterclaim for any claim for damages; and
 - b. Champion denies that CWI would suffer any damages for which CWI may be awarded damages from Champion.
12. Champion denies any allegations not otherwise responded to herein.

Second Defense

1. CWI's amended counterclaim fails to state a cause of action for which the TTAB may grant relief.

AFFIRMATIVE DEFENSES

1. CWI's amended counterclaim fails to set forth any claims that would permit the TTAB to have jurisdiction to hear the Counterclaim.
2. CWI's COMFORT mark is not in use in commerce which Congress may regulate.
3. CWI's amended counterclaim is barred by contractual estoppel.
4. CWI's amended counterclaim is barred by equitable estoppel.
5. The literal element of CWI's COMFORT mark, standing alone, is generic.
6. CWI's amended counterclaim is barred by the doctrines of laches and acquiescence.
7. CWI's amended counterclaim is barred by the doctrine of accord and satisfaction.

8. Champion says nothing further.

Respectfully submitted,

/william s. wyler/
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Supply Co., LLC

CERTIFICATE OF SERVICE

The forgoing Pleading was duly served on CWI counsel:

Philip I. Frankel, Esq.
Bond, Schoeneck, & King
One Lincoln Center
Syracuse, NY, 13202-1355

by regular US Mail and by electronic service at frankelp@bsk.com on the 16th day of
April, 2013.

/william s. wyler/
William S. Wyler
Hallie S. Borellis