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Filing date: **01/18/2013**

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

Proceeding	91207440
Party	Defendant Comfort Window Co., Inc.
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Signature	/Philip I. Frankel/
Date	01/18/2013
Attachments	Answer .pdf (7 pages)(277346 bytes)

Registrations Subject to the filing

Registration No	3373432	Registration date	01/22/2008
Registrant	Champion Window Manufacturing and Supply Co. 12121 Champion Way CINCINNATI, OH 45241 UNITED STATES		

Goods/Services Subject to the filing

Class 019. First Use: 2007/08/01 First Use In Commerce: 2007/08/01
All goods and services in the class are requested, namely: Goods, namely, non-metal pre-made doors, containing insulated glass

Registration No	3373431	Registration date	01/22/2008
Registrant	Champion Window Manufacturing and Supply Co. 12121 Champion Way CINCINNATI, OH 45241 UNITED STATES		

Goods/Services Subject to the filing

Class 019. First Use: 2007/08/01 First Use In Commerce: 2007/08/01
All goods and services in the class are requested, namely: Goods, namely, non-metal pre-made windows, containing insulated glass

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

In the proceeding 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 proceeding 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

ANSWER

In the above-referenced Opposition to Application Serial Nos. 85429267 and 85429563, Applicant Comfort Window Co., Inc. (“Applicant”), by and through its attorneys, Bond, Schoeneck & King, PLLC, hereby answers the allegations by Champion Window Manufacturing and Supply Co., LLC (“Opposer”) in the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of Opposition, and therefore denies the same.
2. Applicant admits the allegations contained in Paragraph 2 of the Notice of Opposition.

3. Applicant admits insofar as the allegations in Paragraph 3 of the Notice of Opposition accurately reflect information recorded with the United States Patent and Trademark Office, but has insufficient knowledge to confirm or deny whether Opposer does in fact own the federal registrations listed therein, and therefore Applicant denies the allegation to this extent contained in Paragraph 3.

4. Applicant admits insofar as the allegations in Paragraph 4 of the Notice of Opposition state that Applicant owns Federal Trademark Application Serial Nos. 85429267 (“the ‘267 Application”) and 85429563 (“the ‘563 Application”) (collectively “Applicant’s Trademark Applications”), but denies that the marks in these applications have not been used in commerce.

5. Applicant admits the allegations contained in Paragraph 5 of the Notice of Opposition.

6. Applicant admits the allegations contained in Paragraph 6 of the Notice of Opposition.

7. Applicant admits insofar as the allegations in Paragraph 7 of the Notice of Opposition provide the publication date for the ‘563 Application, but has insufficient knowledge to confirm or deny whether Opposer obtained an extension of time extending the date by which to file an Opposition to October 21, 2012, and therefore Applicant denies the allegation to this extent contained in Paragraph 7.

8. Applicant admits the allegations contained in Paragraph 8 of the Notice of Opposition.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Notice of Opposition, and therefore denies the same.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant admits insofar as the allegation in Paragraph 11 of the Notice of Opposition states that the first word in the literal element in Applicant's '267 Application, but denies the remaining allegations in Paragraph 11.

12. Applicant admits insofar as the allegation in Paragraph 12 of the Notice of Opposition states that the first word in the literal element in Applicant's '563 Application, but denies the remaining allegations in Paragraph 12.

13. Applicant admits the allegations contained in Paragraph 13 of the Notice of Opposition.

14. Applicant admits the allegations contained in Paragraph 14 of the Notice of Opposition.

15. Applicant admits the allegations contained in Paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations contained in Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations contained in Paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations contained in Paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations contained in Paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegations contained in Paragraph 20 of the Notice of Opposition.

AFFIRMATIVE DEFENSE

21. Opposer cannot claim exclusive rights in the literal element “COMFORT” alone, to the extent it is attempting to do so, as this term by itself is descriptive, or at best generic, as applied to the goods corresponding to Opposer’s registrations at issue in this Opposition.

COUNTERCLAIM FOR CANCELLATION

22. Applicant hereby counterclaims for cancellation of Opposer’s Registration Nos. 3,373,431 for COMFORT 365 WINDOWS and 3,373,432 for COMFORT 365 DOORS (collectively “Opposer’s Registrations”). Each of these registrations has been asserted by Opposer against Applicant as part of this Opposition. For purposes of this counterclaim only, Applicant assumes ownership of Registration Nos. 3,373,431, and 3,373,432 by Opposer.

23. According to the Opposition, Opposer registered the mark COMFORT 365 WINDOWS (Reg. No. 3,373,431) on January 22, 2008 in class 019 for: Goods, namely, non-metal pre-made windows, containing insulated glass. The earliest listed first use date is August 1, 2007.

24. According to the Opposition, Opposer registered the mark COMFORT 365 DOORS (Reg. No. 3,373,432) on January 22, 2008 for in class 019 for: Goods, namely, non-metal pre-made doors, containing insulated glass. The earliest listed first use date is August 1, 2007.

25. Applicant has been using the following COMFORT & Design mark since at least 1985 in conjunction with the following goods:



- Non-metal door units; Non-metal storm windows; Non-metal window frames; Non-metal windows and doors; Vinyl doors; Vinyl patio doors; Vinyl siding; Vinyl sliding doors; Vinyl windows; Window glass; Window panes.

26. Applicant has developed immeasurable good will and secondary meaning in its COMFORT & Design mark due to its (1) widespread and continuous use of this mark in conjunction with the above-referenced goods since at least 1985, (2) advertising and promotion of the above referenced goods in conjunction with its COMFORT & Design mark in a variety of mediums including print advertising, TV, and video advertising on the internet, (3) sizeable expenditure on such advertising and promotion, and (4) receipt of numerous awards, recognitions, and affiliations.

27. Applicant filed a federal trademark application (Application No. 85/402,235 – “the ‘235 Application”) for its COMFORT & Design mark on August 19, 2011 in conjunction with the following goods in International Class 019 - Non-metal door units; Non-metal storm windows; Non-metal window frames; Non-metal windows and doors; Vinyl doors; Vinyl patio doors; Vinyl siding; Vinyl sliding doors; Vinyl windows; Window glass; Window panes.

28. An office action is currently pending in the ‘235 Application, where the Examining Attorney refused registration of the ‘235 Application in view of Opposer’s Registrations.

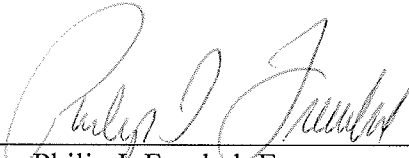
29. Opposer has opposed Applicant’s Trademark Applications.

30. Accordingly, Applicant has been and will continue to be damaged by Opposer’s Registrations.

WHEREFORE, Applicant prays that (1) this Opposition be dismissed and that registrations of its COMFORT QUADSHIELD GLASS mark as shown in Application Serial No. 85429267, and its COMFORT QUAD SHIELD GLASS and Design mark as shown in Application Serial No. 85429563 be issued, and (2) Registration Nos. 3,373,431 for COMFORT 365 WINDOWS and 3,373,432 for COMFORT 365 DOORS be cancelled.

Respectfully submitted,

Dated: January 17, 2013

By: 
Philip I. Frankel, Esq.
Fred Price, Esq.


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Attorneys for Applicant,
Comfort Window Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER has been served upon counsel for Opposer, Champion Window Manufacturing and Supply Co., LLC on January 18, 2013, via First Class U.S. Mail, postage prepaid, at the following address:

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Philip I. Frankel
Attorney for Applicant