

ESTTA Tracking number: **ESTTA830180**

Filing date: **06/29/2017**

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

Proceeding	91234433
Party	Defendant All Weather Architectural Aluminum
Correspondence Address	ALL WEATHER ARCHITECTURAL ALUMINUM 777 ALDRIDGE ROAD VACAVILLE, CA 95688 Email: scott@allweathersweb.com
Submission	Other Motions/Papers
Filer's Name	Stephen L. Davis
Filer's email	sdavis@davisandleonard.com
Signature	/Stephen L. Davis/
Date	06/29/2017
Attachments	all weather response to OSC.pdf(93212 bytes)

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

ANDERSEN CORPORATION, Opposer, v. ALL WEATHER ARCHITECTURAL ALUMINUM, Applicant.	Opposition No.: 91234433 Application No.: 87/071439 Mark: AW stylized Filing Date: June 14, 2016 Publication Date: November 8, 2016
---	---

RESPONSE TO ORDER TO SHOW CAUSE

I, Stephen L. Davis, declare as follows:

1. I am an attorney licensed to practice in the State of California, State Bar No. 149817. I represent the Applicant in this matter. I make this declaration in response to the notice of default issued in this matter on June 27, 2017. I have personal knowledge of the facts stated in this declaration and response, and if called as a witness could and would testify to them.

2. Following the notice of publication of the Applicant's mark on or about November 8, 2016, the Applicant received a letter from the Opposer's counsel, Scott Johnson, advising Applicant of Opposer's beliefs that a likelihood of confusion arose between Applicant's and Opposer's marks. I became involved in the case after that initial letter and replied in writing to Mr. Johnson.

3. Since that time, Mr. Johnson and I have been involved in discussions to attempt to reach a settlement of this matter that would resolve the parties' rights in their marks. Ultimately, the parties were successful in reaching the essential terms of an agreement, and a written settlement agreement was prepared by Mr. Johnson. The parties were unable to complete the review and drafting of the written agreement before the deadline for filing an opposition, so Opposer filed its opposition on or about May 8.

4. Negotiations continued, with the parties sending the written draft back and forth, and I believed, and still believe, the parties will reach a resolution of the dispute by a written settlement agreement. As of the date for a response to the opposition action, however, the agreement had not been signed. I inadvertently allowed the date to respond to pass without filing a response to the court. I did so without any intent to cause delay.

5. Good cause exists to allow the Applicant to file its answer to the opposition: (1) The failure to file an answer was solely the result of an inadvertent error by me, and was not the result of willful conduct or gross neglect. (2) The delay is a short one and will not cause any prejudice to Opposer, since the parties already have been involved in discussions to resolve this matter. (3) The defendant/Applicant has meritorious defenses to the opposition. Defendant denies the allegations that the marks are confusingly similar, and it intends to introduce evidence of the differences in the types of windows that are sold in the markets for the windows. Defendant/Applicant's mark is highly stylized, and it believes there would not be a likelihood of confusion.

6. Accordingly, Applicant/Defendant requests that the Trademark Trial and Appeal Board permit the filing of the answer to the notice of opposition.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and this this declaration was executed on June 29, 2017 in Sacramento, California.

By: /Stephen L. Davis/
Stephen L. Davis

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing response to the notice of default to Notice of Opposition has been served on Applicant by emailing said copy to Applicant's counsel, Scott W. Johnston,,MERCHANT & GOULD P.C., P.O. Box 2910, Minneapolis, MN 55402-0910J at his email sjohnston@merchantgould.com on June 29, 2017 at his email sjohnston@merchantgould.com.

/Stephen L. Davis/
Stephen L. Davis