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ESTTA Tracking number: **ESTTA1205829**

Filing date: **04/28/2022**

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

Proceeding no.	91274399
Party	Plaintiff The Comphy Co.
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Signature	/Kasey L. Ewald/
Date	04/28/2022
Attachments	Opposers Motion to Strike Applicants Affirmatative defenses - GEECOMF Y.pdf(126232 bytes)

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

Opposition No:	91274399
US Application Serial No.:	90/637,364
Filed:	April 11, 2021
Published:	January 11, 2022
Mark:	GEECOMFY
Applicant:	Nanjing fanxiweisi Technology Co, Ltd.
Opposer:	The Comphy Co.

OPPOSER'S MOTION TO STRIKE APPLICANT'S AFFIRMATIVE DEFENSES

Opposer, The Comphy Co., ("Opposer") moves this Court pursuant to Fed. R. Civ. P. 12(f) to strike certain affirmative defenses. In support of its motion, Opposer states as follows.

INTRODUCTION

In Applicant's answer, Applicant included a boiler-plate, "bare bones" affirmative defense, "failure to state a claim upon which relief can be granted". This affirmative defense is not adequately pled and serves only to increase clutter and discovery expense in this case.

I. CERTAIN OF APPLICANT'S AFFIRMATIVE DEFENSES SHOULD BE STRICKEN.

Fed.R.Civ.P. 12(f) provides, in relevant part, for striking from a pleading any redundant, immaterial, impertinent or scandalous matter. See *FRA S.p.A. v. Surg-O-Flex of America, Inc.*, 194 USPQ 42, 46 (S.D.N.Y.1976); *Leon Shaffer Golnick Advertising, Inc. v. William G. Pendil Marketing Co., Inc.* 177 USPQ 401, 402 (TTAB 1977); and cases cited therein. *Harsco Corp. v. Elec. Scis. Inc.,* 9 U.S.P.Q.2d 1570 (TTAB 1988). Affirmative

defenses are subject to a motion to strike under Rule 12(f) when they are "nothing but bare bones conclusory allegations" that fail "to allege the necessary elements of the alleged claims." *Heller Fin. v. Midwhey Powder Co., Inc.*, 883 F.2d 1286, 1294 (7th Cir. 1989). While motions to strike are disfavored by courts due to the possibility of delay, the removal of unnecessary clutter from a case can help to expedite a case. *Id*. Accordingly, courts have found affirmative defenses that fail to set forth a short plain statement of the elements of the defense or are bare legal conclusions should be stricken from a defendant's answer. *Davis v. Elite Mortg. Servs.*, 592 F. Supp. 2d 1052, 1058 (N.D. Ill. 2009). *See also, e.g., Id.* at 1059 ("Both affirmative defenses fail to point to specific allegations in the pleadings that satisfy the essential elements of either defense")*; Manley v. Boat/U.S. Inc.,* 2016 U.S. Dist. LEXIS 41036, at *18 (N.D. Ill. March 29, 2016) (Affirmative defenses stricken when "[defendant] fail[ed] to connect the relevant facts to the applicable defenses."); *Bobbitt v. Victorian House, Inc.*, 532 F. Supp. 734, 738–39 (N.D. Ill. 1982) ("While an affirmative defense need only be a brief statement . . . it must provide [the plaintiff] with adequate notice of the relevant elements").

Applicant's "Failure to state a claim upon which relief can be granted" Affirmative Defense is conclusory, does not include any supporting factual allegations and does not provide sufficient notice to Opposer. None of the elements for this affirmative defense is adequately pled, and no supporting facts are readily discernable from the rest of Applicant's Answer. As such, Opposer respectfully requests that the Court strike this affirmative defense.

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that this Court strike certain of Applicant's affirmative defenses.

Dated this 28th day of April 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE ON APPLICANT

Kasey L. Ewald, an attorney for Opposer, hereby certifies that a true and complete copy of the foregoing OPPOSER'S MOTION TO STRIKE APPLICANT'S AFFIRMATIVE DEFENSES was served upon Applicant's counsel of record

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by email on this 28th Day of April 2022.

/Kasey L. Ewald/
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