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

Proceeding no.	91275024
Party	Plaintiff The Comphy Co.
Correspondence address	GREGORY K NELSON WEEKS NELSON PO BOX 675963 RANCHO SANTA FE, CA 92067 UNITED STATES Primary email: nelson@weeksnelson.com Secondary email(s): ip@weeksnelson.com 858-794-2140
Submission	Motion to Compel Discovery or Disclosure
Filer's name	Gregory K. Nelson
Filer's email	nelson@weeksnelson.com, ip@weeksnelson.com
Signature	/Gregory K. Nelson/
Date	01/11/2023
Attachments	Motion to Compel COMFIKNIT 91275024.pdf(167201 bytes ) Declaration of Gregory K. Nelson COMFIKNIT 91275024.pdf(520126 bytes )

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

In re Application Serial No. 90/700,327  
For Mar: COMFIKNIT (stylized)

THE COMPHY CO.

Opposer,

v.

TRI-KNIT TEXTILE COMPANY  
LIMITED

Applicant.

Opposition No.: **91275024**

**OPPOSER THE COMPHY CO.'S  
NOTICE OF MOTION AND MOTION  
TO COMPEL APPLICANT THE TRI-  
KNIT TEXTILE COMPANY LIMITED  
TO ANSWER INTERROGATORIES,  
REQUEST FOR ADMISSIONS AND  
DOCUMENTS RESPONSIVE TO  
REQUEST FOR PRODUCTION**

**OPPOSER'S MOTION TO COMPEL**

COMES NOW, Opposer and pursuant to TBMP §§408.01 and 523 and Rule 37 of the Federal Rules of Civil Procedure, moves to compel petitioner to comply with its discovery obligations, in support of this motion, opposer states as follows:

**FACTUAL BACKGROUND**

Opposer served its first interrogatories, requests for admissions and requests for production on October 26, 2022 (see Exhibits A, B and C attached to the Declaration of Gregory K. Nelson filed concurrently herewith). As of the date of this filing, Opposer has received no response to its first interrogatories, requests for admissions nor requests for production.

## ARGUMENT

Opposer cannot reasonably conduct depositions, issue follow up discovery requests, or prepare for trial until the Applicant has complied with its outstanding discovery obligations. Applicant has ignored Opposer's requests for discovery and now requires the Board's intervention.

Applicant has a duty to cooperate with opposing counsel and make a good faith effort to satisfy the discovery needs of its adversary. *Panda Travel Inc. v Resort Option Enterprises, Inc.*, 94 USPQ2d 1789, 1791 (TTAB 2009) ("Each party has a duty to make a good faith effort to satisfy the reasonable and appropriate discovery needs of its adversary.")  
*See also Hot Tamale Mama...and More, LLC v. SF Investments, Inc.*, 110 USPQ2d 1080, 1081 n.1 (TTAB 2014) (simply ignoring deadlines to serve discovery responses or seek an extension of time to do so is inconsistent with the Board's expectation that the parties and their attorneys cooperate in the discovery process);

It is clear that where the Applicant has provided no response to discovery requests, it should not be allowed to present any evidence at trial. *See Panda Travel, Inc. v. Resort Option Enterprises, Inc.*, 94 USPQ2d 1789, 1791-92 (TTAB 2009); *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718, 1720 (TTAB 1987).

The duty to supplement discovery responses in a timely manner and failure to withhold documents or responses proceedings before the Board is governed by Fed. R. Civ. P. 26(e). A party who does so may be subject to the preclusion sanction set forth in Fed. R. Civ. P. 37(c)(1) *Andersen Corp. v. Therm-O-Shield International, Inc.*, 226 USPQ 431, 434 n.8 (TTAB 1985); *JSB International, Inc. v. Auto Sound North, Inc.*, 215 USPQ 60, 62 (TTAB 1982); *P.A.B.*

*Produits et Appareils de Beaute v. Satinine Societa In Nome Collettivo di S.A. e.M. Usellini*, 570 F.2d 328, 196 USPQ 801, 805 (CCPA 1978).

### **REQUEST FOR RELIEF**

Opposer moves this Board for an Order compelling Applicant, within ten (10) days from the date of the Order, to fully and completely respond to all of Opposer's October 26, 2022, Interrogatories, Request for Admissions and Request for Production of Documents, including each interrogatory, request for admissions and Request for Production of Documents, without objections regarding burden, vagueness, confidentiality, or relevance.

Opposer moves this Board to direct Applicant to serve within ten (10) days from the date of the Order, to fully and completely respond to all of Opposer's June 28, 2021 Interrogatories, Request for Admissions and Request for Production with a scope time covering at least five (5) years.

Opposer moves this Board to direct Applicant to serve, within ten (10) days from the date of the Order, hard or electronic copies of all responsive documents and things to counsel for the Opposer at the expense of Applicant, or be prevented from introducing any evidence.

Opposer respectfully moves this Board to resume proceedings and reset the close of discovery and subsequent deadline to allow Opposer time to conduct follow-up discovery after the time allocated for Opposer to provide complete and full responses to the discovery detailed herein.

Opposer further moves this Board for any other relief it deems appropriate.

WHEREFORE, Opposer respectfully requests that the Trademark Trial and Appeal Board grant its Motion to Compel and grant all other appropriate relief.

Dated this 11<sup>th</sup> day of January, 2023.

*/s/ Gregory K. Nelson*\_\_\_\_\_

Gregory K. Nelson

Weeks Nelson

P.O. Box 675963

Rancho Santa Fe, CA 92067

Tel: (858) 794-2140

Attorney for Opposer, The Comphy Co.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of OPPOSER THE COMPHY CO.'S NOTICE OF MOTION AND MOTION TO COMPEL APPLICANT TRI-KNIT TEXTILE COMPANY LIMITED TO ANSWER INTERROGATORIES, REQUEST FOR ADMISSIONS AND DOCUMENTS RESPONSIVE TO REQUEST FOR PRODUCTION has been served upon Applicant via email by sending the document to Max Moskowitz, attorney of record for Tri-Knit Textile Company Limited at Ostrolenk Faber LLP via email at [mmoskowitz@ostrolenk.com](mailto:mmoskowitz@ostrolenk.com) on January 11, 2023.

By: /s/ Gregory K. Nelson  
Gregory K. Nelson

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

In re Application Serial No. 90/700,327  
For Mark: COMFIKNIT (stylized)

THE COMPHY CO.

Opposer,

v.

TRI-KNIT TEXTILE COMPANY  
LIMITED

Applicant.

Opposition No.: **91275024**

**DECLARATION OF GREGORY K.  
NELSON IN SUPPORT OF THE  
COMPHY CO.'S MOTION TO  
COMPEL**

I, Gregory K. Nelson, declare as follows:

1. I represent The Company Co. in this matter, having recently substituted in for previous counsel, Steven P. Fallon of Greer Burns & Crain.
2. I have knowledge of the facts set forth herein and in Opposer's Motion to Compel.
3. Opposer's First Set of Interrogatories, First Set of Requests for Admissions and First Set of Request for Production of Documents were served on October 26, 2022, and are attached hereto as Exhibits A, B and C.
4. On January 4, 2023, previous counsel, Mr. Fallon, I emailed counsel for Applicant, attached as Exhibit D, regarding an extension to allow the parties to continue discussing an amendment that would resolve this matter. Such communications had been ongoing for a couple months with apparently little response from Applicant.

5. As of the date of this declaration, the Applicant has not responded to Opposer's First Set of Interrogatories, First Set of Requests for Admissions and First Set of Request for Production of Documents or to the specific issues raised in counsel's October 15, 2021 email.
6. Pursuant to 37 C.F.R §2.120 and TBMP §523.02, I have made a good faith effort to resolve the issues presented by Applicant's objections and lack of responses to First Set of Interrogatories, First Set of Requests for Admissions and First Set of Request for Production of Documents.

I declare under the penalty of perjury that the foregoing is true and correct.

EXECUTED this 11<sup>th</sup> day of January 2023 at Rancho Santa Fe, California.

/s/ Gregory K. Nelson  
Gregory K. Nelson



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy DECLARATION OF GREGORY K. NELSON IN SUPPORT OF THE COMPHY CO.'S MOTION TO COMPEL has been served upon Applicant via email by sending the document to Max Moskowitz, attorney of record for Tri-Knit Textile Company Limited at Ostrolenk Faber LLP via email at [mmoskowitz@ostrolenk.com](mailto:mmoskowitz@ostrolenk.com) on January 11, 2023.

By: /s/ Gregory K. Nelson  
Gregory K. Nelson

**EXHIBIT A**

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

Opposition No:	91275024
US Application Serial Nos.:	90/700,327
Filed:	May 10, 2021
Published:	February 15, 2022
Mark(s):	COMFYKNIT
Applicant:	Tri-Knit Textile Company Limited

**OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT**

Pursuant to the applicable Federal Rules of Civil Procedure and Trademark Rules of Practice, Opposer The Comphy Co. (“Opposer”) requests that Applicant Tri-Knit Textile Company Limited (“Applicant”) answer each of the Interrogatories set forth below, subject to the following instructions and definitions, under oath, within thirty (30) days following service hereof.

## **DEFINITIONS AND INSTRUCTIONS**

- A. “Applicant” refers to Applicant Tri-Knit Textile Company Limited and any employees, licensees, agents, representatives or affiliates.
- B. “Applicant’s Mark” means and refers to the COMFIKNIT mark as identified in United States Trademark Serial No. 90/700,327, which is the subject of this Opposition proceeding.
- C. “Opposer” means and refers to Opposer the Comphy Co.
- D. “Person” means and refers to natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (e.g., as a committee or board of directors), corporations, partnerships, joint ventures and any other incorporated or unincorporated business or social entity.
- E. As used herein, when referring to a natural person, “to identify” means to give, to the extent known, the person’s full name; current or last known business and residence addresses, including telephone numbers; present employer, occupation, and position; and a brief description of the job responsibilities of such person.
- F. When referring to persons other than a natural person, “to identify” means to give, to the extent known, its full name or designation; the legal classification of the entity (e.g., corporation, partnership, etc.) giving the state of organization where appropriate; the principal place of business; the current or last known address and telephone number of the entity; and any other information reasonably necessary to permit efficient contact with the entity.
- G. As used herein, the term “date” means the exact day, month and year.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1**

Describe the nature of the business and the channels of trade in connection with Applicant's Mark which Applicant

- a) currently operates and the first date of activities related to such current operation;
- and
- b) intends to operate.

### **INTERROGATORY NO. 2**

Describe in detail each of Applicant's business plans to use Applicant's Mark in connection with each of the goods listed in United States Trademark Serial No. 90/700,327.

### **INTERROGATORY NO. 3**

Describe dates of first use by Applicant of Applicant's Mark in the United States and for each first use identify the purchaser, the product name or number, the number of units sold, and the dollar amount in connection with each of the goods listed in United States Trademark Serial No. 90/700,327.

### **INTERROGATORY NO. 4**

Describe all advertising and planned advertising using Applicant's Mark.

**INTERROGATORY NO. 5**

Identify and describe each place of business maintained by Applicant.

**INTERROGATORY NO. 6**

Identify all persons having knowledge or information relating to the nature and dates of use by Applicant of Applicant's Mark.

**INTERROGATORY NO. 7**

Identify and describe the target consumers in connection with Applicant's Mark for each of the goods listed in United States Trademark Serial No. 90/700,327.

**INTERROGATORY NO. 8**

Identify the states of the United States where Applicant has sold goods under Applicant's Mark for each of the goods listed in United States Trademark Serial No. 90/700,327.

**INTERROGATORY NO. 9**

Identify all license arrangements involving Applicant's Mark and identify the name, location and business of the licensee(s).

**INTERROGATORY NO. 10**

State whether Applicant is aware of any instances of actual confusion between Applicant's use of Applicant's mark or any other mark:

- a) that includes “COMFY” or “COMFI” or phonetic equivalents as an element and
- b) Opposer's family of "COMPHY" marks, including, for example, COMPHY, COMPHY BED AND BATH, COMPHY BABY, COMPHY FOR HOME, COMPHY FOR PROFESSIONALS, or COMPHY TOUCH.

**INTERROGATORY NO. 11**

Describe when and how Applicant became aware of

- a) Opposer
- b) Opposer's Marks.

**INTERROGATORY NO. 12**

Identify all opinions received by Applicant concerning a likelihood of confusion concerning Applicant's mark.

**INTERROGATORY NO. 13**

Describe the process that led to the selection of Applicant’s marks, identify all alternative marks that were considered, and identify the persons involved in the selection process.

**INTERROGATORY NO. 14**

Describe in detail any and all efforts Applicant undertook to check whether Applicant's Mark was available for Applicant's use or registration, including without limitation any trademark search or clearance work or analyses.

**INTERROGATORY NO. 15**

Identify all trade shows, exhibitions, or other related events that Applicant has either exhibited at or attended in each of the last three (3) years and all trade shows, exhibitions, or other related events that Applicant has plans to attend in 2022 and 2023.

**INTERROGATORY NO. 16**

Indicate and identify all websites that market or offer to sell goods under Applicant's Marks for each of the goods listed in United States Trademark Serial No. 90/700,327.

**INTERROGATORY NO. 17:**

Identify each state, federal or international trademark application or registration by Applicant of any mark that includes "COMPHY" or "COMFY" or "COMFI" or phonetic equivalents, other than Applicant's marks.

**INTERROGATORY NO. 18:**

Describe the process used to select COMFIKNIT as a mark.



**INTERROGATORY NO. 19:**

Describe all of Applicant's uses subsequent to May 10, 2021 of COMFIKNIT.

**INTERROGATORY NO. 20:**

Identify all bedding or linen products manufactured or sold by Applicant.

**INTERROGATORY NO. 21:**

Identify all bedding or linen products planned for manufacture or sale by Applicant.

Dated: October 26, 2022

**THE COMPHY CO**

By: /Steven P. Fallon/  
Steven P. Fallon  
GREER BURNS & CRAIN, LTD.  
300 S. Wacker Drive, Suite 2500  
Chicago, IL 60606  
(312) 360-0080

*Attorneys for Opposer*

**CERTIFICATE OF SERVICE ON APPLICANT**

Steven P. Fallon, an attorney for Opposer, hereby certifies that a true and complete copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served upon Applicant

Max Moskowitz  
Ostrolenk Faber LLP  
845 Third Avenue, 8<sup>th</sup> floor  
New York, New York 10022  
212-382-0700

bbrenner@ostrolenk.com  
mmoskowitz@ostrolenk.com  
ckupferberg@ostrolenk.com

by email on this 26th day of October 2022.

/Steven P. Fallon/ \_\_\_\_\_  
Steven P. Fallon  
One of the Attorneys for Opposer

**EXHIBIT B**

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

Opposition No:	91275024
US Application Serial Nos.:	90/700,327
Filed:	May 10, 2021
Published:	February 15, 2022
Mark(s):	COMFYKNIT
Applicant:	Tri-Knit Textile Company Limited

**OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT**

Pursuant to the applicable Federal Rules of Civil Procedure and Trademark Rules of Practice, The Comphy Co. (“Opposer”) requests that Applicant, Tri-Knit Textile Company Limited (hereinafter, “Applicant”) furnish responses to the following Requests for Admissions within thirty (30) days following service hereof.

## **DEFINITIONS AND INSTRUCTIONS**

- A. “You,” “Your” and “Applicant” mean Applicant, Tri-Knit Textile Company Limited, and any employees, licensees, agents, representatives or affiliates of Applicant.
- B. The term “Application” or “Applicant’s Mark” mean Applicant’s United States Trademark Application Serial No. 90/700,327 for the mark “COMFIKNIT”.
- C. “Opposer” means Opposer The Comphy Co.
- D. “Opposer’s Marks” mean any trademark used, applied for or registered by Opposer that include the term COMPHY by itself or in combination with other words, terms, characters or design elements, and in any form of stylization, including the following: COMPHY, COMPHY COMPANY, C COMPHY (stylized), COMPHY BED AND BATH, COMPHY BABY, COMPHY ACCENTS, COMPHY FOR HOME, COMPHY FOR PROFESSIONALS, COMPHY TOUCH, and COMPHY COLLECTION.

## **REQUESTS FOR ADMISSION**

### **REQUEST NO. 1.**

Admit that the term COMFI in Your Application is the first and predominant part of Applicant's Mark.

### **REQUEST NO. 2.**

Admit that COMPHY and COMFI are phonetically equivalent.

### **REQUEST NO. 3.**

Admit that You knew of Opposer when You adopted Applicant's Mark.

### **REQUEST NO. 4.**

Admit that You knew of one or more of Opposer's Marks when You adopted Applicant's Mark.

### **REQUEST NO. 5.**

Admit that You knew of Opposer when You filed United States Trademark Application Serial No. 90/700,327.

### **REQUEST NO. 6.**

Admit that You knew of one or more of Opposer's Marks when You filed United States Trademark Application Serial No. 90/700,327.

### **REQUEST NO. 7.**

Admit that the term COMPHY in each of Opposer's COMPHY Marks is the first and predominant part of Opposer's Marks.

### **REQUEST NO. 8.**

Admit that the term COMPHY is the first and predominant part of Opposer's COMPHY mark.

### **REQUEST NO. 9.**

Admit that the term COMPHY is the first and predominant part of Opposer's COMPHY

COMPANY mark.

**REQUEST NO. 10.**

Admit that the term COMPHY is the predominant part of Opposer's C COMPHY (stylized) mark.

**REQUEST NO. 11.**

Admit that Opposer's Marks and Applicant's Mark are similar in sound.

**REQUEST NO. 12.**

Admit that Opposer's Marks and Applicant's Mark are similar in connotation.

**REQUEST NO. 13.**

Admit that Opposer's Marks and Applicant's Mark are similar in commercial impression.

**REQUEST NO. 14.**

Admit that You cannot claim priority in Applicant's Mark prior to May 10, 2021, the filing date of United States Trademark Application Serial No. 90/700,327.

**REQUEST NO. 15.**

Admit that the documents and electronically stored information produced in response to Opposer's First Set of Document Requests are true and authentic copies of the genuine original documents and electronically stored information.

**REQUEST NO. 16.**

Admit that the documents and electronically stored information produced in response to Opposer's First Set of Document Requests are the business records of Applicant kept in the ordinary course of Applicant's business.

**REQUEST NO. 17.**

Admit that "knit" is commonly used with bedding products.

**REQUEST NO. 18.**

Admit that "knit" is commonly used with linen products.

Dated: October 26, 2022

**THE COMPHY CO**

By: /Steven P. Fallon/

Steven P. Fallon  
GREER BURNS & CRAIN, LTD.  
300 S. Wacker Drive, Suite 2500  
Chicago, IL 60606  
(312) 360-0080

*Attorneys for Opposer*



**CERTIFICATE OF SERVICE ON APPLICANT**

Steven P. Fallon, an attorney for Opposer, hereby certifies that a true and complete copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT was served upon Applicant

Max Moskowitz  
Ostrolenk Faber LLP  
845 Third Avenue, 8<sup>th</sup> floor  
New York, New York 10022  
212-382-0700

bbrenner@ostrolenk.com  
mmoskowitz@ostrolenk.com  
ckupferberg@ostrolenk.com

by email on this 26th day of October 2022.

/Steven P. Fallon/ \_\_\_\_\_  
Steven P. Fallon  
One of the Attorneys for Opposer

**EXHIBIT C**

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

Opposition No:	91275024
US Application Serial Nos.:	90/700,327
Filed:	May 10, 2021
Published:	February 15, 2022
Mark(s):	COMFYKNIT
Applicant:	Tri-Knit Textile Company Limited

**OPPOSER’S FIRST SET OF REQUESTS  
FOR PRODUCTION TO APPLICANT**

Pursuant to the applicable Federal Rules of Civil Procedure and Trademark Rules of Practice, Opposer The Comphy Co. (“Opposer”) requests that Applicant Tri-Knit Textile Company Limited (“Applicant”) produce the documents and things described below within thirty (30) days following service hereof.

**DEFINITIONS AND INSTRUCTIONS**

- A. “Applicant” refers to Applicant Tri-Knit Textile Company Limited and any employees, licensees, agents, representatives or affiliates.
- B. “Applicant’s Mark” means and refers to the COMFYKNIT mark as identified in United States Trademark Serial No. 90/700,327, which is the subject of this Opposition proceeding.
- C. “Opposer” means and refers to The Comphy Co.

- D. “Opposer’s Marks” mean any trademark used, applied for or registered by Opposer that include the term COMPHY by itself or in combination with other words, terms, characters or design elements, and in any form of stylization, including the following: COMPHY, COMPHY COMPANY, C COMPHY (stylized), COMPHY BED AND BATH, COMPHY BABY, COMPHY ACCENTS, COMPHY FOR HOME, COMPHY FOR PROFESSIONALS, COMPHY TOUCH, and COMPHY COLLECTION.
- E. “Documents or electronically stored information” has the same meaning as used in Federal Rules of Civil Procedure 34.
- F. As to each responsive document or electronically stored information withheld from production on any grounds, provide a log which states or describes the following:
- i. The author of same, their employer and job title;
  - ii. The recipient, their employer and job title;
  - iii. The name of each person to whom a copy was sent, their employer and job title;
  - iv. The date of the document or electronically stored information;
  - v. The substance of the document or electronically stored information;
  - vi. The current custodian of the document or electronically stored information;
  - vii. The ground(s) on which the document or electronically stored information is being withheld from production and inspection; and
  - viii. The request to which the document or electronically stored information is responsive.
- G. As used herein, the term “date” means the exact day, month and year.

## **REQUESTS FOR PRODUCTION**

1. All documents and electronically stored information and things which were consulted or relied upon in formulating Applicant's Responses to Opposer's First Set of Interrogatories to Opposer.

2. Representative documents or electronically stored information showing Applicant's first use of Applicant's Mark on each of the goods listed in United States Trademark Serial No. 90/700,327.

3. Representative documents or electronically stored information related to the advertising of Applicant's Mark in the U.S for each of the goods listed in United States Trademark Serial No. 90/700,327.

4. Sample labels, packaging, products, invoices, advertisements, promotions or web pages made in connection with Applicant's Mark for the U.S. market for each of the goods listed in United States Trademark Serial No. 90/700,327.

5. Representative documents or electronically stored information referring or relating to any current or planned license arrangements involving Applicant's Mark.

6. Representative documents or electronically stored information created or used for the purposes of advertising or promoting Applicant's goods under Applicant's Mark in the U.S.

including, but not limited to, website printouts, television, radio, online and printed advertisements and promotions, and documents relating to the development thereof.

7. Documents or electronically stored information sufficient to show Applicant's annual expenditures on advertising and promotion of the goods sold under Applicant's Mark in the U.S.

8. Documents or electronically stored information sufficient to show Applicant's annual sales of each of the goods listed under Applicant's Serial No. 90/700,327, in the U.S.

9. Representative documents or electronically stored information evidencing Applicant's intent to use Applicant's Mark in commerce for each of the goods listed in United States Trademark Serial No. 90/700,327.

10. All documents or electronically stored information referring or relating to any plans Applicant has undertaken to have any of the goods identified in Applicant's Serial No. 90/700,327 manufactured or offered to consumers under Applicant's Mark on or before May 10, 2021.

11. All documents or electronically stored information that refer to Opposer.

12. All documents or electronically stored information that refer to Opposer's Marks.

13. All marketing plans related to Applicant's Mark.
14. All magazine or newspaper articles related to Applicant or Applicant's Mark.
15. All documents and electronically stored information and things referenced in or used to prepare Initial Disclosures.
16. All documents and electronically stored information concerning Internet searches conducted prior to May 10, 2021 by Applicant including "comphy", "comfi", or "comfy".
17. All documents and electronically stored information and things concerning returns of Opposer products or third-party products to the Applicant.
18. All documents and electronically stored information concerning questions, complaints or inquiries about Opposer or third-party products to the Applicant.

19. All documents and electronically stored information concerning the usage of products sold under Applicant's Mark by Applicant's customers for each of the goods listed in United States Trademark Serial No. 90/700,327.

20. Documents and electronically stored information sufficient to show Applicant's sale of bedding or linens under any mark or brand.

21. Documents and electronically stored information sufficient to show Applicant's plans to sell bedding or linens under any mark or brand

Dated: October 26, 2022

**THE COMPHY CO**

By: /Steven P. Fallon/  
Steven P. Fallon  
GREER BURNS & CRAIN, LTD.  
300 S. Wacker Drive, Suite 2500  
Chicago, IL 60606  
(312) 360-0080

*Attorneys for Opposer*



**CERTIFICATE OF SERVICE ON APPLICANT**

Steven P. Fallon, an attorney for Opposer, hereby certifies that a true and complete copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION TO APPLICANT was served upon Applicant

Max Moskowitz  
Ostrolenk Faber LLP  
845 Third Avenue, 8<sup>th</sup> floor  
New York, New York 10022  
212-382-0700

bbrenner@ostrolenk.com  
mmoskowitz@ostrolenk.com  
ckupferberg@ostrolenk.com

by email on this 26th day of October 2022.

/Steven P. Fallon/ \_\_\_\_\_  
Steven P. Fallon  
One of the Attorneys for Opposer

**EXHIBIT D**

**Subject:** Agree Motion to Suspend for Settlement Discussions? FRE 408 Settlement Communication Opposition No. 91275024 GBC 6466\*148512 7/3987-180  
**Date:** Wednesday, January 4, 2023 at 11:04:14 AM Pacific Standard Time  
**From:** Steven Fallon  
**To:** Max Moskowitz, Carol Kupferberg, Ariel Peikes  
**CC:** TMDocket, Jennifer Ramos, Katelin Sokolowski  
**Attachments:** image006.png, image005.png, image004.png, image003.png, image002.png, image001.png

Hi Max –

Sorry for the delay. Can we agree to a motion to extend to try to work out an amendment? Please let me know.

Best regards,  
Steve

Steven P. Fallon | SHAREHOLDER



300 S. Wacker Dr. Suite 2500 | Chicago, IL 60606 | Direct: (312) 987.4004 | Main: (312) 360.0080 | Fax: (312) 360.9315  
| [WWW.GBC.LAW](http://WWW.GBC.LAW)

**CONFIDENTIALITY NOTE** This electronic mail may contain information which is confidential or privileged and exempt from disclosure under applicable law. The information is intended to be for the use of the recipients named in this mail. If you are not an intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is without authorization and is prohibited. If you receive this electronic mail in error, please notify us by return electronic mail and destroy this mail immediately. Thank you for your cooperation.

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**From:** Max Moskowitz <mmoskowitz@ostrolenk.com>  
**Date:** Monday, November 21, 2022 at 9:08 AM  
**To:** Steven Fallon <sfallon@gbc.law>, Carol Kupferberg <ckupferberg@ostrolenk.com>, Ariel Peikes <apeikes@ostrolenk.com>  
**Cc:** TMDocket <tmdocket@gbc.law>, Jennifer Ramos <jramos@gbc.law>, Katelin Sokolowski <ksokolowski@gbc.law>  
**Subject:** RE: FRE 408 Settlement Communication Opposition No. 91275024 GBC 6466\*148512 7/3987-180

Hi Steve,

My client responded to me with:



*Please advise on an alternative way to settle this matter in the most cost effective way under US law and practice.*

Do you have any suggestions? Is this settleable?

I am leaving to the airport in about two hours on a vacation. Where are we, schedule-wise.