

ESTTA Tracking number: **ESTTA1367547**

Filing date: **06/26/2024**

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

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|------------------------|---|
| Proceeding no. | 91290937 |
| Party | Defendant Affordable Handyman of Austin LLC |
| Correspondence address | AFFORDABLE HANDYMAN OF AUSTIN LLC 369 LOWER RED ROCK ROAD BASTROP, TX 78602 UNITED STATES Primary email: affordablehandymanofaustin@yahoo.com Secondary email(s): zenithtrek@yahoo.com 512-775-1854 |
| Submission | Motion to Extend |
| Filer's name | Michael Muniz |
| Filer's email | affordablehandymanofaustin@yahoo.com |
| Signature | /Michael Muniz/ |
| Date | 06/26/2024 |
| Attachments | MOTION FOR EXTENSION OF TIME TO ANSWER WITHOUT CON- SENT.pdf(33245 bytes) Answer to Opposition.pdf(102091 bytes) |

MOTION FOR EXTENSION OF TIME TO ANSWER WITHOUT CONSENT

Answer in the above captioned opposition was due on May 25, 2024. Applicant hereby moves the Board to set aside Petitioner's Motion for Default Judgment for the reasons that follow. Applicant's untimely answer was inadvertent, and though Applicant received the initial pleading, Applicant did not clearly understand the procedure. As a result, Applicant first realized this inadvertent error when Applicant saw Notice of Default dated June 5, 2024. In support of Applicant's Motion to extend time to answer, please understand that the delay in filing an answer was not the result of willful conduct or gross neglect on the part of Applicant; Opposer will not be substantially prejudiced by the delay; and Applicant feels strongly that Applicant has a meritorious defense to the action. Furthermore, Applicant has not requested any other extension of time in this or any other matter before the TTAB. Though Applicant understands the showing of a meritorious defense does not require an evaluation of the merits of the case, Applicant believes there is good cause for the Board to grant consent of an extension of time. A number of the DuPont Factors support Applicant's claim of a meritorious defense. Applicant's answer is enclosed.

WHEREFORE, Applicant, for good cause as shown herein, respectfully prays the Board grant consent to set aside Petitioner's Motion for Default Judgment, and agrees it can accept Applicant's late-filed answer enclosed.

DATED : June 25, 2024

Respectfully submitted,

Affordable Handyman of Austin LLC

/Michael Muniz/

Miguel Muniz

President

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

COZY COMFORT COMPANY LLC,
Opposer,

v.

AFFORDABLE HANDYMAN OF AUSTIN
LLC
Applicant.

Opposition No. 91290937

Serial No. 97/536,349

Mark: COMFY FEET SLEEPING BAG

ANSWER

COMES NOW Michael Muniz (“Applicant”), answers the Notice of Opposition filed by COZY COMFORT COMPANY LLC (hereinafter “Opposer”), and assigned Opposition No. 91290937. Applicant hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

1. Applicant is without information sufficient as to the information in paragraph 1 of the Notice of Opposition, and therefore denies same.
2. Applicant is without information sufficient as to the information in paragraph 2 of the Notice of Opposition, and therefore denies same.
3. Requires no response.
4. Admitted to the extent the records of the USPTO are accurate and corroborate the facts alleged.
5. Applicant denies paragraph 5 of the Notice of Opposition.
6. Applicant denies paragraph 6 of the Notice of Opposition.
7. Applicant denies paragraph 7 of the Notice of Opposition.

8. Applicant denies paragraph 8 of the Notice of Opposition.
9. Applicant denies paragraph 9 of the Notice of Opposition.
10. Applicant is without information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Notice of Opposition, and therefore denies same.
11. Applicant denies paragraph 11 of the Notice of Opposition.
12. Applicant denies paragraph 12 of the Notice of Opposition.
13. Admitted to the extent the records of the USPTO are accurate and corroborate the facts alleged.
14. Admitted to the extent the records of the USPTO are accurate and corroborate the facts alleged.
15. Applicant denies paragraph 15 of the Notice of Opposition.
16. Applicant denies paragraph 16 of the Notice of Opposition.
17. Requires no response.
18. Applicant denies paragraph 18 of the Notice of Opposition.
19. Applicant denies paragraph 19 of the Notice of Opposition.
20. Applicant denies paragraph 20 of the Notice of Opposition.
21. Applicant denies paragraph 21 of the Notice of Opposition.
22. Applicant denies paragraph 22 of the Notice of Opposition.
23. Applicant denies paragraph 23 of the Notice of Opposition.
24. Applicant denies paragraph 24 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

FURTHERMORE, Applicant sets forth the following in support of its defense:

25. The dominant feature of Applicant's mark is "COMFY FEET."
26. Upon information and belief, consumers of Applicant's goods exercise a high degree of care deciding whether to purchase them.
27. Upon information and belief, consumers of Opposer's goods exercise a high degree of care deciding whether to purchase them.
28. Upon information and belief, Applicant's customers are sophisticated purchasers.
29. Upon information and belief, Opposer's customers are sophisticated purchasers.
30. Applicant's mark is not the same as or confusingly similar to any of Opposer's marks.
31. Applicant's marks and each of Opposer's pleaded marks have different appearances.
32. Applicant's mark and each of Opposer's pleaded marks have different meanings.
33. Applicant's mark and each of Opposer's pleaded marks have different sounds.
34. Applicant's mark and each of Opposer's pleaded marks have different commercial impressions.
35. Applicant's mark and the pleaded marks of Opposer are not likely to cause confusion, mistake or deception among purchasers as to the source of Opposer's and Applicant's respective goods and services.
36. Opposer's pleaded marks are not likely to be damaged by continued registration and use of Applicant's mark.
37. Applicant is a small business that is harmed by Opposer's litigation tactics wherein Opposer has attempted to enforce its alleged trademark rights beyond a reasonable interpretation of the scope of Opposer's rights in Opposer's pleaded marks.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board deny the Notice of Opposition.

Dated: June 25, 2024

Respectfully submitted,
By: /MICHAEL MUNIZ/
MICHAEL MUNIZ

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 26, 2024, the foregoing ANSWER was served via email on Opposer and Opposer's attorney at:

Thomas W. Galvani, P.C.
3519 E. Shea Blvd. Suite 129
Phoenix, Arizona 85028
(602) 281-6481
trademark@galvanilegal.com

By: /MICHAEL MUNIZ/

MICHAEL MUNIZ

June 26, 2024