

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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adh

September 16, 2022

Cancellation No. 92079334

Vincent A. Scavo

v.

Comfort Research, LLC

Ashley D. Hayes, Interlocutory Attorney:

Petitioner's motion (filed May 27, 2022) to strike certain of Respondent's affirmative defenses, 5 TTABVUE, is **GRANTED** as conceded to the extent set forth below. *See* Trademark Rule 2.127(a). Accordingly, Respondent's defenses of laches, waiver, estoppel, unclean hands, and unfair competition, 4 TTABVUE 11 (¶ 2); acquiescence, *id.* (¶ 3); "lack of entitlement to injunctive or equitable relief," *id.* (¶ 5); and failure to "set forth a claim of likelihood of confusion, infringement, and/or willful infringement," *id.* (¶ 6), are hereby **STRICKEN** from the record and will receive no further consideration: *See* Trademark Rule 2.127(a); *see also* Fed. R. Civ. P. 12(f).¹

¹ Although Petitioner included "paragraph 4" of Respondent's defenses as among those at issue in the motion to strike, 5 TTABVUE 2, 9, Petitioner did not include any argument or reference to the purported defense set forth in paragraph 4, 4 TTABVUE 11 (¶ 4), in its brief. Accordingly, to the extent Petitioner seeks to have paragraph 4 of Respondent's purported defenses stricken, the motion is **denied**.

This proceeding is **RESUMED**. Dates for conferencing, disclosures, discovery and trial are reset as set forth below.

Deadline for Discovery Conference	9/27/2022
Discovery Opens	9/27/2022
Initial Disclosures Due	10/27/2022
Expert Disclosures Due	2/24/2023
Discovery Closes	3/26/2023
Plaintiff's Pretrial Disclosures Due	5/10/2023
Plaintiff's 30-day Trial Period Ends	6/24/2023
Defendant's Pretrial Disclosures Due	7/9/2023
Defendant's 30-day Trial Period Ends	8/23/2023
Plaintiff's Rebuttal Disclosures Due	9/7/2023
Plaintiff's 15-day Rebuttal Period Ends	10/7/2023
Plaintiff's Opening Brief Due	12/6/2023
Defendant's Brief Due	1/5/2024
Plaintiff's Reply Brief Due	1/20/2024
Request for Oral Hearing (optional) Due	1/30/2024

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125, 37 C.F.R. §§ 2.121-2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence,

including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a), 37 C.F.R. § 2.129(a).