

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86283892
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION	
MARK	http://tsdr.uspto.gov/img/86283892/large
LITERAL ELEMENT	BETTER SNOOZE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_701095314-135313163_._Better_Snooze_86283892_-OA_Response.pdf
CONVERTED PDF FILE(S) (9 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\838\86283892\xml4\ROA0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\838\86283892\xml4\ROA0003.JPG
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DESCRIPTION OF EVIDENCE FILE	Office Action Response for Section 2(d)
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	020
DESCRIPTION	Mattresses and pillows; Air mattresses
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/28/2011
FIRST USE IN COMMERCE DATE	At least as early as 06/01/2012
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	020
TRACKED TEXT DESCRIPTION	

Mattresses and pillows; ~~Air mattresses~~; [Air mattresses, namely, inflatable mattresses for indoor use, not for medical or recreational use](#)

FINAL DESCRIPTION

Mattresses and pillows; Air mattresses, namely, inflatable mattresses for indoor use, not for medical or recreational use

FILING BASIS

Section 1(a)

FIRST USE ANYWHERE DATE

At least as early as 08/28/2011

FIRST USE IN COMMERCE DATE

At least as early as 06/01/2012

NEW ATTORNEY SECTION**NAME**

Tom Dunlap

FIRM NAME

DunlapWeaver PLLC

STREET

211 Church St., SE

CITY

Leesburg

STATE

Virginia

ZIP/POSTAL CODE

20175

COUNTRY

United States

PHONE

7037777319

EMAIL

ip@dunlapweaver.com

AUTHORIZED EMAIL COMMUNICATION

Yes

NEW CORRESPONDENCE SECTION**NAME**

Tom Dunlap

FIRM NAME

DunlapWeaver PLLC

STREET

211 Church St., SE

CITY

Leesburg

STATE

Virginia

ZIP/POSTAL CODE

20175

COUNTRY

United States

PHONE

7037777319

EMAIL

ip@dunlapweaver.com

AUTHORIZED EMAIL COMMUNICATION

Yes

SIGNATURE SECTION**RESPONSE SIGNATURE**

/Seth Willig Chadab/

SIGNATORY'S NAME

Seth Willig Chadab

SIGNATORY'S POSITION

Associate Attorney, DunlapWeaver PLLC, Maryland Bar Member

SIGNATORY'S PHONE NUMBER

7037777319

DATE SIGNED

07/25/2014

AUTHORIZED SIGNATORY

YES

FILING INFORMATION SECTION**SUBMIT DATE**

Fri Jul 25 14:00:11 EDT 2014

USPTO/ROA-XX XXX XX XX-20

TEAS STAMP

140725140011047394-862838
92-5007a7b87a3a4eeb8238c4
38de2368dc7734e6a9ef1ee83
0cd9766a72516275bab-N/A-N
/A-20140725135313163433

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **86283892** BETTER SNOOZE(Standard Characters, see <http://tsdr.uspto.gov/img/86283892/large>) has been amended as follows:

EVIDENCE

Evidence in the nature of Office Action Response for Section 2(d) has been attached.

Original PDF file:

[evi_701095314-135313163_-_Better_Snooze_86283892_-_OA_Response.pdf](#)

Converted PDF file(s) (9 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 020 for Mattresses and pillows; Air mattresses

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/28/2011 and first used in commerce at least as early as 06/01/2012 , and is now in use in such commerce.

Proposed:

Tracked Text Description: Mattresses and pillows; ~~Air mattresses~~; [Air mattresses, namely, inflatable mattresses for indoor use, not for medical or recreational use](#)

Class 020 for Mattresses and pillows; Air mattresses, namely, inflatable mattresses for indoor use, not for medical or recreational use

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/28/2011 and first used in commerce at least as early as 06/01/2012 , and is now in use in such commerce.

ATTORNEY ADDRESS

Applicant proposes to amend the following:

Proposed:

Tom Dunlap of DunlapWeaver PLLC, having an address of
211 Church St., SE Leesburg, Virginia 20175
United States
ip@dunlapweaver.com
703777319

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Proposed:

Tom Dunlap of DunlapWeaver PLLC, having an address of
211 Church St., SE Leesburg, Virginia 20175
United States
ip@dunlapweaver.com
7037777319

SIGNATURE(S)

Response Signature

Signature: /Seth Willig Chadab/ Date: 07/25/2014

Signatory's Name: Seth Willig Chadab

Signatory's Position: Associate Attorney, DunlapWeaver PLLC, Maryland Bar Member

Signatory's Phone Number: 7037777319

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Mailing Address: Tom Dunlap
DunlapWeaver PLLC
211 Church St., SE
Leesburg, Virginia 20175

Serial Number: 86283892

Internet Transmission Date: Fri Jul 25 14:00:11 EDT 2014

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XX-20140725140011047

394-86283892-5007a7b87a3a4eeb8238c438de2

368dc7734e6a9ef1ee830cd9766a72516275bab-

N/A-N/A-20140725135313163433

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 86283892
Mark: BETTER SNOOZE
Applicant: Global Bedding Solutions
Office Action Date: July 12, 2014

RESPONSE TO July 12, 2014 OFFICE ACTION

This Response is filed in reply to the Office Action e-mailed on July 12, 2014. The Applicant respectfully submits the following response. Applicant submits that the above-identified trademark application for BETTER SNOOZE is in condition for allowance to publication.

Potential Section 2(d) Refusal: Likelihood of Confusion

Applicant submits a preliminary response to the potential section 2(d) refusal; however, Applicant reserves all rights to provide a detailed and more descriptive response if Examining Attorney Ronald E. DelGizzi raises a Section 2(d) refusal in a subsequent Office Action.

Preliminary Response with Reservation of Rights

The USPTO suggests that it will refuse registration of the Applicant's mark, BETTER SNOOZE, "because of a likelihood of confusion with the mark in U.S. Registration No. 3612545." "[T]he question of confusion is related not to the nature of the mark but to its effect 'when applied to the applicant.'" *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1360-61 (C.C.P.A. 1973). The United States Court of Customs and Patent Appeals listed thirteen factors to weigh in the likelihood of confusion analysis and stated that all of the factors must be considered "when of record." *Id.* at 1361. The Examining Attorney has indicated that similarity of the marks, similarity of the goods and/or services, and similarity of the trade channels of the goods and/or services weigh against the Applicant's mark. However, Applicant respectfully asserts that when all factors are weighed, the majority weighs against the existence of a likelihood of confusion.

(1) Similarity of Conflicting Designations

The first factor is the similarity of the conflicting designations, including in their appearance, sound, meaning or connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). A similar phrase found in two marks is not dispositive of a confusing similarity between the marks when the marks give off different commercial expressions. *See Kellogg Co. v. Pack'em Enterprises, Inc.*, 951 F.2d 330 (Fed. Cir. 1991). When Applicant's mark BETTER SNOOZE, and Registrant's mark SNOOZE are compared, the appearance is similar but not identical.

Importantly, courts across the country have long held that the addition of different terms to a

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