

ESTTA Tracking number: **ESTTA103912**

Filing date: **10/12/2006**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Dreamwell, Ltd.
Granted to Date of previous extension	11/29/2006
Address	2215-B Renaissance Drive Suite 12 Las Vegas, NV 89119 UNITED STATES
Attorney information	Peter M. Brody, Esq. ROPES & GRAY LLP One Metro Center 700 12th Street, NW, Suite 900 Washington, DC 20005-3948 UNITED STATES peter.brody@ropesgray.com, erin.dugan@ropesgray.com Phone:(202) 508-4612

Applicant Information

Application No	78738245	Publication date	08/01/2006
Opposition Filing Date	10/12/2006	Opposition Period Ends	11/29/2006
Applicant	FKA DISTRIBUTING CO. d/b/a HOMEDICS, INC. 3000 Pontiac Trail Commerce Township, MI 48390 UNITED STATES		

Goods/Services Affected by Opposition

Class 020. All goods and services in the class are opposed, namely: PILLOWS AND CUSHIONS; MATTRESSES; MATTRESS TOPPERS; MATTRESS CUSHIONS
Class 024. All goods and services in the class are opposed, namely: PILLOW ACCESSORIES, NAMELY, CASES, COVERS, SLIPS; MATTRESS PADS; MATTRESS COVERS

Attachments	SMCY-TOP-011 N. OPP.pdf (5 pages)(172266 bytes)
-------------	--

Signature	/peter brody/
Name	Peter M. Brody, Esq.
Date	10/12/2006

manufacturers of mattresses and other bedding and related products in the world. Opposer was formed in 2001 for the purpose of holding and protecting certain of Simmons' intellectual property assets, including the trademarks referred to in paragraph 1 above, for the benefit of Simmons, which in turn is licensed by Dreamwell to use these trademarks.

2. The trademarks owned by Opposer and used by Simmons pursuant to license include the following marks registered in the United States Patent and Trademark Office, each of which registrations is valid, subsisting, and in force, and many of which registrations are incontestable:

Reg. No.	Mark	Goods (Int. Cl.)	Reg. Date
1198771	BEAUTY SLEEP	mattresses and box springs (20)	06/22/82
2791028	BEAUTYREST	mattresses and box springs (20)	12/09/03
2010820	BEAUTYREST	textile pillow protectors (24)	10/22/96
0512535	BEAUTYREST (stylized)	mattresses, studio couches, lounges and box springs (20)	07/19/49
0207821	BEAUTYREST (stylized)	mattresses (20)	01/12/96
1788183	BEAUTYREST (stylized)	mattresses and box springs (20)	08/17/93
2585251	BEAUTYREST (stylized)	pillows (20); bed clothes and coverings, namely, mattress pads, dust ruffles, comforters and pillow cases (24)	06/25/02
0621296	BEAUTYREST (stylized)	seat cushions (20)	02/14/56
2360532	BEAUTYLOFT	pillows (20)	06/20/00
1378122	BEAUTY CLOUD	mattresses (20)	01/14/86
0420150	BABY BEAUTY	crib mattresses (20)	03/26/46

1833346	BEAUTY-EDGE	mattresses, and mattress interior components; namely, an edge portion having a higher firmness (20)	04/26/94
1710062	BEAUTYLOFT	mattress quilting panel components (20)	08/25/92
1404977	BEAUTYREST CONTINENTAL	mattresses and box springs (20)	08/12/86
2146996	BEAUTYREST POCKETED COIL	mattresses and box springs (20)	03/31/98
1324572	BABY BEAUTYREST BACK CARE IV	mattresses (20)	03/12/85
2716091	DEEP SLEEP BY BEAUTYREST	bed linens and coverings, namely, dust ruffles, comforters and pillow cases (24)	05/13/03

3. The foregoing registered trademarks ("the Registered BEAUTY Marks") constitute a family of marks, the common element of which is the word BEAUTY. This family of marks is well-known to consumers.

4. The mark BEAUTY SLEEP is, and for many years prior to the date of the filing of the Application has been, a famous and distinctive mark within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), having been first adopted and used in commerce by Simmons in 1977 and having been in use continuously since that time.

5. The mark BEAUTYREST is, and for many years prior to the date of the filing of the Application has been, a famous and distinctive mark within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), having been first adopted and used in commerce by Simmons in 1925 and having been in use continuously since that time.

6. The marks BEAUTY SLEEP, BEAUTYREST, and the other Registered BEAUTY Marks are valuable assets, representing considerable customer goodwill built up through substantial use on products and in advertising and promotion.

7. On August 3, 2006, Opposer requested and received an extension of time until November 29, 2006, in which to oppose Applicant's application for the subject mark.

8. Applicant's intended mark "THE BEAUTY OF SLEEPING WELL" so resembles Opposer's marks BEAUTY SLEEP, BEAUTYREST, and the other Registered BEAUTY Marks as to be likely, when used on or in connection with the products of Applicant, to cause confusion, or to cause mistake, or to deceive as to the source, sponsorship, or affiliation of Applicant's goods, within the meaning of Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).

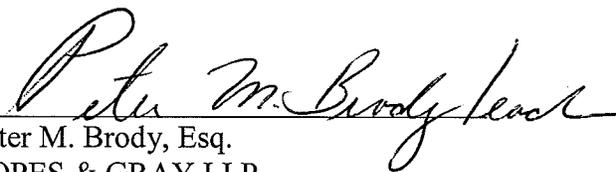
9. Applicant's intended mark "THE BEAUTY OF SLEEPING WELL," if used by Applicant in commerce on or after the date of the filing of the Application, will cause dilution of the distinctive quality of the marks BEAUTY SLEEP and BEAUTYREST within the meaning of Sections 13(a) and 43(c) of the Trademark Act of 1946, 15 U.S.C. §§ 1063, 1125(c).

10. For all the foregoing reasons, Applicant's mark is not entitled to registration on the Principal Register under Section 2 of the Lanham Act, 15 U.S.C. § 1052 and Section 2.69 of the Trademark Rules of Practice, 37 C.F.R. § 2.69.

WHEREFORE, Opposer prays that application Serial No. 78738245 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer hereby appoints Ropes & Gray LLP to act as its attorneys with full power to prosecute this opposition, to transact all relevant business with the Patent and Trademark Office, and to receive all official communications with respect to this opposition.

Respectfully submitted,

A handwritten signature in cursive script, reading "Peter M. Brody Esq.", written over a horizontal line.

Peter M. Brody, Esq.
ROPES & GRAY LLP
One Metro Center
700 12th Street, NW, Suite 900
Washington, D.C. 20005-3948

Attorneys for Opposer Dreamwell, Ltd.

Dated: October 12, 2006