

ESTTA Tracking number: **ESTTA138365**

Filing date: **05/01/2007**

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	Englander Sleep Products, L.L.C.		
Entity	Limited Liability Company	Citizenship	Delaware
Address	301 Main Street, One American Place, 22nd Floor, c/o Kean Miller Baton Rouge, LA 70801 UNITED STATES		

Attorney information	William L. Caughman III Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, LLP 301 Main Street, One American Place 22nd Floor Baton Rouge, LA 70801 UNITED STATES bill.caughman@keanmiller.com Phone:1-225-387-0999
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Applicant Information

Application No	78961824	Publication date	04/17/2007
Opposition Filing Date	05/01/2007	Opposition Period Ends	05/17/2007
Applicant	Seam-craft, Inc. 1501 Potts Road High Point, NC 27263 UNITED STATES		

Goods/Services Affected by Opposition

Class 020. All goods and services in the class are opposed, namely: Sleep products, namely, mattresses, spring mattresses, box springs and mattress foundations
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77098348	Application Date	02/02/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FUSION		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 020. First use: First Use: 2005/09/09 First Use In Commerce: 2005/09/09 mattresses and box springs
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Related Proceedings	TTAB Opposition No. 91175824
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Attachments	77098348#TMSN.jpeg (1 page)(bytes) Fusion3.PDF (3 pages)(64668 bytes)
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Signature	/williamlcaughmaniii/
Name	William L. Caughman III
Date	05/01/2007

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

RE: SERIAL NO.: 78961824

ENGLANDER SLEEP PRODUCTS, L.L.C. V. SEAM-CRAFT, INC.

OPPOSITION NO. _____

NOTICE OF OPPOSITION

BY PLAINTIFF:
ENGLANDER SLEEP PRODUCTS, L.L.C.
A DELAWARE LIMITED LIABILITY COMPANY
22nd Floor, One American Place
c/o Kean Miller
301 Main Street
Baton Rouge, Louisiana 70801

1.

Plaintiff, and its predecessor in interest, have been continually using the trademark FUSION, in association with the advertising and sale of mattresses in interstate commerce throughout the United States of America, since at least September 9, 2005.

2.

On August 28, 2006, Defendant filed a trademark application indicating its intention to use the trademark SLEEP FUSION A LIFE LONG IMPRESSION, seeking registration of the trademark. Defendant has yet to allege actual use of the trademark in commerce. Defendant has indicated that it intends to use the trademark in association with the sale of mattresses in International Class 20.

3.

On February 2, 2007, Plaintiff filed a trademark application seeking registration of the mark FUSION in association with mattresses and box springs in International Class 20. In the application, Plaintiff alleged its first use of the mark in commerce by at least September 9, 2005.

4.

Granting registration to Defendant of the mark SLEEP FUSION A LIFE LONG IMPRESSION would result in a likelihood of confusion between Plaintiff's and Defendant's products, as the marks of Plaintiff and Defendant are so similar that use by the Defendant would cause confusion, mistake or deception to consumers.

5.

Defendant's use of its mark will result in economic loss to Plaintiff due to the confusion of Defendant's products with Plaintiff's products. The marks are both used (or to be used) in association with mattresses, and both contain the central word "Fusion". Plaintiff may also be damaged by refusal of the Trademark Office to grant its trademark application for FUSION if the application of Defendant is granted.

6.

Plaintiff claims priority of use of the mark FUSION in association with mattresses and box springs, pursuant to Section 2(d) of the Act, 15 U.S.C. §1052(d).

Respectfully submitted:

/S. William L. Caughman III
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