

ESTTA Tracking number: **ESTTA386272**

Filing date: **12/31/2010**

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

Proceeding	91196650
Party	Plaintiff Kilim Mobilya Kanepe Sanayi Ve Ticaret A.S.
Correspondence Address	BARBAROS KARAAHMET KARAAHME LUZ & GREENBERG LLP 370 LEXINGTON AVE FL 24 NEW YORK, NY 10017 UNITED STATES bkara@karalaw.com,rsbroder@optonline.net
Submission	Other Motions/Papers
Filer's Name	Robert S. Broder
Filer's e-mail	rsbroder@optonline.net,bkara@karalaw.com
Signature	/rsb/
Date	12/31/2010
Attachments	Kilim Amended Notice of Opposition3A.pdf ( 44 pages )(4165554 bytes )



4. Opposer KMKS, is the owner of the mark KILIM FURNITURE and KILIM FURNITURE and Design (collectively opposer's "Kilim Furniture" marks). Opposer's Kilim Furniture design mark appears as follows:



5. Opposer owns abandoned application, Serial Number 79011360, for the KILIM and Design mark with a filing date of February 8, 2005 prior to any date of first use on which defendant can rely. As filed, that mark appears as follows:



6. Opposer owns Turkish Registration No.: 2003 19002 for the mark KILIM and design.

7. Opposer has been using the KILIM FURNITURE marks in Interstate commerce within the United States, in connection with the sale of furniture, since at least as early as February 22, 2006.

8. Opposer has extensively advertised and sold its goods under the KILIM FURNITURE marks throughout the United States since at least as early as February 22, 2006.

9. February 21, 2006 and February 22, 2006 invoices for the sale of Opposer's furniture goods under the KILIM FURNITURE marks within the United States are attached hereto as (Exhibit 1 and made part of the record hereof).

10. As a result of its extensive sales and marketing efforts and advertising and promotion and use of the KILIM FURNITURE marks, Opposer's KILIM FURNITURE marks have become a valuable asset of Opposer and the trade and purchasing public have come to recognize Opposer's marks as signifying Opposer and as identifying Opposer as the source of the goods bearing the KILIM FURNITURE marks.

### **THE PARTIES' BUSINESS RELATIONSHIP**

11. In or around June 16, 2006, the parties entered into an Operating Agreement ("the June 16, 2006 Operating Agreement") for the Applicant, Kilim Furniture International LLC, (Exhibit 2 hereto and made part of the record hereof).

12. Opposer's KILIM FURNITURE and Design mark appears on the top of every page of the parties' June 16, 2006 Operating Agreement.

13. Pursuant to the June 16, 2006 Operating Agreement, Opposer established Applicant's business as a United States subsidiary of Opposer's business.

14. Pursuant to Paragraph 7.1 of the parties' June 16, 2006 Operating Agreement Opposer owns 80% of equity of Applicant's business.

15. By virtue of Opposer 80% ownership interest in Applicant, as set forth in the parties' June 16, 2006 Operating Agreement, Opposer is the rightful owner of the KILIM FURNITURE marks and the Application opposed in this proceeding.

9. February 21, 2006 and February 22, 2006 invoices for the sale of Opposer's furniture goods under the KILIM FURNITURE marks within the United States are attached hereto as (Exhibit 1 and made part of the record hereof).

10. As a result of its extensive sales and marketing efforts and advertising and promotion and use of the KILIM FURNITURE marks, Opposer's KILIM FURNITURE marks have become a valuable asset of Opposer and the trade and purchasing public have come to recognize Opposer's marks as signifying Opposer and as identifying Opposer as the source of the goods bearing the KILIM FURNITURE marks.

### **THE PARTIES' BUSINESS RELATIONSHIP**

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12. Opposer's KILIM FURNITURE and Design mark appears on the top of every page of the parties' June 16, 2006 Operating Agreement.

13. Pursuant to the June 16, 2006 Operating Agreement, Opposer established Applicant's business as a United States subsidiary of Opposer's business.

14. Pursuant to Paragraph 7.1 of the parties' June 16, 2006 Operating Agreement Opposer owns 80% of equity of Applicant's business.

15. By virtue of Opposer 80% ownership interest in Applicant, as set forth in the parties' June 16, 2006 Operating Agreement, Opposer is the rightful owner of the KILIM FURNITURE marks and the Application opposed in this proceeding.

16. Pursuant to Paragraph 2.4 of the parties' June 16, 2006 Operating Agreement, the business purpose of the Applicant, Kilim Furniture International LLC, was/is, *inter alia*, to manage and operate wholesale furniture and distributorship on behalf of Opposer.

17. Applicant has never manufactured furniture.

18. Applicant has never manufactured furniture under or bearing the KILIM FURNITURE marks.

19. Applicant is a furniture distributor and/or wholesaler.

20. Applicant is a furniture distributor and/or wholesaler on behalf of Opposer.

21. Applicant is not a licensee of Opposer.

22. The furniture Applicant sells and/or distributes under the KILIM FURNITURE marks is manufactured exclusively by or on behalf of Opposer.

23. The furniture Applicant sells and/or distributes under the KILIM FURNITURE marks is supplied to Applicant solely by or through Opposer.

24. Since 2006 Opposer has sold and/or distributed between \$1,800,000 and \$2,000,000.00 worth of furniture to Applicant bearing the KILIM FURNITURE marks.

### **BACKGROUND OF APPLICANT'S APPLICATION**

25. On August 20, 2009, Applicant filed an application to register the mark KILIM FURNITURE and Design.



26. As set forth in the file history of Applicant's application, as originally filed the drawing of the mark in Applicant's application was KILIM and design (without "Furniture") and had an "R" in a circle marking. As originally filed, the mark appeared as follows:

9. February 21, 2006 and February 22, 2006 invoices for the sale of Opposer's furniture goods under the KILIM FURNITURE marks within the United States are attached hereto as (Exhibit 1 and made part of the record hereof).

10. As a result of its extensive sales and marketing efforts and advertising and promotion and use of the KILIM FURNITURE marks, Opposer's KILIM FURNITURE marks have become a valuable asset of Opposer and the trade and purchasing public have come to recognize Opposer's marks as signifying Opposer and as identifying Opposer as the source of the goods bearing the KILIM FURNITURE marks.

### **THE PARTIES' BUSINESS RELATIONSHIP**

11. In or around June 16, 2006, the parties entered into an Operating Agreement ("the June 16, 2006 Operating Agreement") for the Applicant, Kilim Furniture International LLC, (Exhibit 2 hereto and made part of the record hereof).

12. Opposer's KILIM FURNITURE and Design mark appears on the top of every page of the parties' June 16, 2006 Operating Agreement.

13. Pursuant to the June 16, 2006 Operating Agreement, Opposer established Applicant's business as a United States subsidiary of Opposer's business.

14. Pursuant to Paragraph 7.1 of the parties' June 16, 2006 Operating Agreement Opposer owns 80% of equity of Applicant's business.

15. By virtue of Opposer 80% ownership interest in Applicant, as set forth in the parties' June 16, 2006 Operating Agreement, Opposer is the rightful owner of the KILIM FURNITURE marks and the Application opposed in this proceeding.



27. As originally filed, the mark is substantially identical to Opposer's mark in its abandoned application identified in paragraph 5 hereto.

28. As set forth in the file history of Applicant's application, Applicant subsequently amended the drawing of the mark in Applicant's to include the word furniture. As amended, the mark appeared as follows:



29. The amended iteration of the mark in Applicant's application is substantially identical to Opposer's KILIM FURNITURE and Design mark as shown on the top of every page of the parties' June 16, 2006 Operating Agreement.

30. As set forth in the file history of Applicant's Application herein, Applicant once again amended it's drawing to remove the "r" in circle registration symbol.

31. In its final amended form, Applicant's KILIM FURNITURE and Design mark is virtually identical to Opposer's KILIM FURNITURE and Design mark, as shown in Paragraph 4 above.

32. Applicant's application was filed without Opposer's knowledge, consent or permission.

33. The specimen of use submitted by Applicant in support of its application, identified by Applicant as "Advertisement for Inventory Clearance Sale" cites, *inter alia*, Opposer's website, [www.kilimmobilya.com.tr](http://www.kilimmobilya.com.tr) (Exhibit 3 hereto and made part of the record hereof).

34. Said specimen of use identifies Opposer as the source/origin of the goods sold/distributed under the KILIM FURNITURE marks.

**APPLICANT COMMITTED FRAUD IN FILING ITS APPLICATION**

35. Applicant's Application claims first use of the KILIM FURNITURE and Design mark in the United States from June 16, 2006.

36. The first use date cited in Applicant's Application, June 16, 2006, is the exact date of the parties' Operating Agreement attached hereto as Exhibit 2.

37. Opposer's first use of the KILIM FURNITURE marks in Interstate commerce within the United States, since at least as early as February 22, 2006, is senior to Applicant's claimed date of first use June 16, 2006.

38. By virtue of their business relationship, Applicant was fully aware that Opposer was using a similar, if not identical, mark at the time it signed its declaration or oath for the subject application.

39. By virtue of the parties' June 16, 2006 Operating Agreement bearing the KILIM FURNITURE and Design mark, Applicant's Application was fraudulently filed as Applicant was aware of Opposer's senior rights in and to Opposer's KILIM FURNITURE marks.

40. Applicant knowingly and willfully failed to disclose Opposer's ownership and prior use to the Trademark Office with the intent of obtaining a registration to which it otherwise is not entitled.

41. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact in its declaration or oath with the intent of obtaining a registration to which it otherwise is not entitled.

42. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact in its declaration or oath with the intent of obtaining a registration to which it otherwise is not entitled, namely, that Applicant knew that Opposer created the KILIM FURNITURE marks and failed to disclose the same.

43. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact in its declaration or oath with the intent of obtaining a registration to which it otherwise is not entitled, namely, that Applicant knew that Opposer is the rightful owner of the KILIM FURNITURE marks.

44. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact in its declaration or oath with the intent of obtaining a registration to which it otherwise is not entitled, namely, that Applicant undeniably knew, by virtue of the parties' June 16, 2006 Operating Agreement, that Opposer was using the KILIM FURNITURE marks prior to the filing date of its application.

45. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact in its declaration or oath with the intent of obtaining a registration to which it otherwise is not entitled, namely, that Applicant was aware at the time it signed its application that, as a wholesaler/distributor of Opposer's goods bearing the KILIM FURNITURE marks, it was not (and is not) the rightful owner of the KILIM FURNITURE marks.

46. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact in its declaration or oath with the intent of obtaining a registration to which it otherwise is not entitled, namely, that Applicant knew at the time it signed its application that, pursuant to the parties' Operating Agreement wherein Opposer is the 80% owner of Applicant, it was not (and is not) the rightful owner of the KILIM FURNITURE marks.

47. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact in its declaration or oath with the intent of obtaining a registration to which it otherwise is not entitled, namely, that Applicant was aware at the time it signed its application that, as a wholesaler/distributor of Opposer's goods bearing the KILIM FURNITURE marks, it was not (and is not) entitled to exclusive use of either of the KILIM FURNITURE marks.

48. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact in its declaration or oath with the intent of obtaining a registration to which it otherwise is not entitled, namely, that Applicant was aware at the time it signed its application that, as a wholesaler/distributor of Opposer's goods

bearing the KILIM FURNITURE marks, it was not (and is not) entitled to register the KILIM FURNITURE and Design mark.

49. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact with the intent of obtaining a registration to which it otherwise is not entitled, namely, submitting a specimen of use that identifies Opposer as the source of the KILIM FURNITURE marks.

50. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact with the intent of obtaining a registration to which it otherwise is not entitled, namely, submitting a specimen of use that identifies Opposer as the source of the KILIM FURNITURE marks and knowing that a likelihood of confusion would result from it's use and registration of the KILIM FURNITURE and Design mark.

51. Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact with the intent of obtaining a registration to which it otherwise is not entitled, namely, submitting a specimen of use that identifies Opposer as the source of the KILIM FURNITURE marks with no reasonable basis for believing that likelihood of confusion would not result from it's use and registration of the KILIM FURNITURE and Design mark.

52. In failing to disclose Opposer's ownership and prior use of the KILIM FURNITURE and Design mark to the Patent and Trademark Office, Applicant willfully and in bad faith intended to procure a registration to which it was not entitled.

**APPLICANT CLAIM OF USE WAS FRAUDULENT**

53. Applicant's application was accorded Serial Number 77808819, and was published for opposition in the Official Gazette of August 3, 2010 at page TM 734, identifying the goods as follows:

Baby walkers; Bassinets; Bedroom furniture; Beds, mattresses, pillows and bolsters; Bone carvings; Cabinets; Chair beds; Chests of drawers; Clothes hangers; Coat hangers; Coat stands; Computer furniture; Corks; Cupboards; Curtain rails; Curtain rods; Dining chairs; Dining room tables; Divans; Entertainment centers; Free-standing drawer unit for organizing items used in braiding shops, barber shops, and styling shops; Furniture; Furniture chests; Furniture frames; Furniture moldings; Furniture partitions; picture frames; High chairs; Living room furniture; Mirrors; Office furniture; Shelves; Stools; Tables; Television stands – in International Class 20.

54. Applicant has never and does not now sell or otherwise distribute any of the following goods, as recited in its identification of services, under the KILIM FURNITURE and design marks, Baby walkers; Bassinets; pillows and bolsters; Bone carvings; Cabinets; Clothes hangers; Coat hangers; Corks; Curtain rails; Curtain rods; Entertainment centers; Free-standing drawer unit for organizing items used in braiding shops, barber shops, and styling shops; Furniture moldings; picture frames; High chairs; Mirrors; Shelves; Stools; Tables.

55. Applicant has never used the KILIM FURNITURE and Design mark as set forth in its application in connection with 19 of the 39 goods recited in the subject application as identified in Paragraph 54 above.

56. Applicant committed fraud by knowingly swearing under penalty of perjury, with the intent of obtaining a registration to which it is otherwise not entitled, that the KILIM FURNITURE and design mark has been used, since at least as early as June 16, 2006, on all of the goods recited in its application, including all of those recited above in Paragraph 52, when that was if fact not the truth.

57. By virtue of the foregoing, Applicant committed fraud in filing the subject application by knowingly and willfully making specific false, material representations of fact as to its use of the KILIM FURNITURE and Design mark for all of the recited goods with the intent of obtaining a registration to which it otherwise is not entitled.

**STIPULATED SIMILARITY OF PARTIES' MARKS**

58. Pursuant to the Board's December 3, 2010 Discovery Conference Order, the parties have stipulated that, Opposer's pleaded marks and Applicant's subject mark are deemed similar for likelihood of confusion purposes.

59. The KILIM FURNITURE and design mark, as set forth in the opposed application, is likely to cause confusion, mistake, and/or deceive as to the origin, sponsorship, and/or association of Applicant's goods sought to be registered by Applicant to the damage and detriment of Opposer.

**STIPULATED RELATEDNESS OF PARTIES' GOODS**

60. Pursuant to the Board's December 3, 2010 Discovery Conference Order, the parties have stipulated that the alleged goods used in association with Opposer's pleaded marks are related to the goods identified in Applicant's subject application for likelihood of confusion purposes.

61. The goods set forth in the opposed application are sold through the same and/or similar channels of trade, and/or to the same general class of purchasers, in and to which Opposer's goods under the KILIM FURNITURE marks are and/or will be marketed and/or sold.

**APPLICANT'S OFFER TO SELL THE KILIM FURNITURE MARK TO OPPOSER**

62. On or about November 25, 2009, after the Applicant file the subject application, Applicant sent Opposer a "Transfer Agreement" relating to the sale and transfer of Applicant to Opposer.

63. In the November 25, 2009 Transfer Agreement, Applicant, by its Manager Omer Kartal, sought to sell the KILIM FURNITURE and design mark to Opposer for \$500,000.00.

**NO LACHES, ESTOPPEL OR AQUIESCENCE BY OPPOSER**

64. In an Opposition proceeding, laches cannot begin to run until a mark is published for opposition.

65. Opposer was not aware of Applicant's claim of ownership of the KILIM FURNITURE and Design mark set forth in its Application until the mark was published for Opposition in the Official Gazette.

66. Applicant does not own a prior registration for the same or substantially identical mark as the KILIM FURNITURE and Design.

67. Applicant does not own a prior registration for the same or substantially identical mark upon which the affirmative defense of acquiescence can be based.

68. There is no duty to seek federal registration of a mark and Applicant cannot assert the affirmative defense of estoppel as a bar to Opposer's claim.

**DEMAND FOR RELIEF**

69. By virtue of the foregoing, Opposer KMKS believes it will be damaged by the registration by Applicant of the KILIM FURNITURE and design mark, as set forth in the application therefore, Serial Number 77808819.

70. If Applicant is granted the registration opposed herein, and Applicant obtains such rights as conferred under the Principal Register of the Trademark Act, Applicant will obtain unlawful gain and advantage to which it is not entitled under the Trademark Act, to the detriment of Opposer.

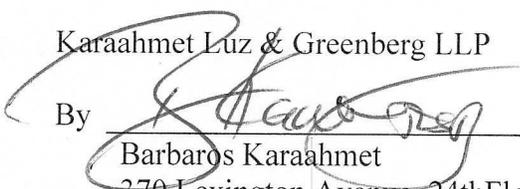
WHEREFORE, Opposer, Kilim Mobilya Kanepe Sanayi ve Ticaret A.S., believes and alleges that it will be damaged by registration of Applicant's KILIM FURNITURE and design mark of Application Serial Number 77808819, as aforesaid, and prays that:

- A. judgment in the present opposition be entered in favor of Opposer;
- B. the present opposition be sustained;
- C. registration of Application Serial Number 77808819 be rejected and refused.

Respectfully submitted,

December 31, 2010

Karaahmet Luz & Greenberg LLP

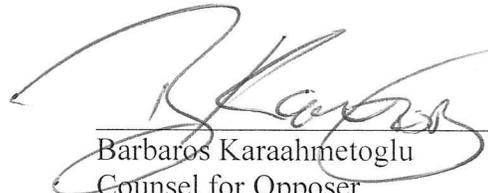
By 

Barbaros Karaahmet  
370 Lexington Avenue, 24th Floor  
New York, NY 10017  
Phone: 212.681.8313

Attorneys for Opposer, Kilim Mobilya  
Kanepe Sanayi ve Ticaret A.S.

## CERTIFICATE OF SERVICE

Pursuant to the Board's December 3, 2010 Order, the undersigned hereby certifies that on December 31, 2010 on behalf of Opposer, he electronically served the foregoing Amended Notice of Opposition on the Applicant by email to counsel for Applicant as follows:  
Ingber.law@verizon.net



Barbaros Karaahmetoglu  
Counsel for Opposer

**EXHIBIT 1**



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# INVOICE

EXPORT NR :

12007

DATE

21.02.2006

CONT

APHU 635054-8

SENDER

KILIM MOBILYA KANEPE SAN. VE TIC. A.Ş.  
1. ORGANIZE SAN. BOL. 43. CAD. NO:27  
KAYSERİ/TURKEY VAT. 5630466519

CUSTOMER

EMPIRE FURNITURE USA,INC.  
33 STATE RT. 17 SOUTH E.RUTHERFORD,NJ 07073  
USA

NO	PRODUCT NAME	TYPE NAME	FABRIC	UNIT	PRICE	T.PRICE	M.UNIT
1	OHIO	SOFABED	0563/0720	60	79	4740	\$
2	FULTON	SOFABED	A.KUM	17	145	2465	\$
3	FULTON	ARMCHAIR	A.KUM	10	95	950	\$
4	LONG ISLAND ARMCHAIR	ARMCHAIR	BEIGE	10	95	950	\$
5	NEWARK ARMCHAIR	ARMCHAIR	BEIGE	10	95	950	\$
6	SUNRISE ARMCHAIR	ARMCHAIR	D.BROWN	4	95	380	\$
						TOTAL	10435

PAKET 145  
WEIGHT 6251

DELIVERY TERM EXW FACTORY KAYSERİ

PAYMENT 120 DAYS AFTER INVOICE

BANK : KOÇBANK KAYSERİ CENTRAL BRANCH ACCOUNT NO:28225422 \$ SWIFTCODE:KABATRIS975

EMPIRE FURNITURE USA,INC.  
33 STATE RT. 17 SOUTH E.RUTHERFORD,  
NJ 07073  
USA



# INVOICE

EXPORT NR : 12010

DATE 22.02.2006

CONT. APHU 634396-0

## SENDER

KİLİM MOBİLYA KANEPE SAN. VE TİC. A.Ş.  
1. ORGANİZE SAN. BÖL. 43. CAD. NO:27  
KAYSERİ / TÜRKİYE VAT. 5630466519

## CUSTOMER

EMPIRE FURNITURE USA, INC.  
33 STATE RT. 17 SOUTH E. RUTHERFORD, NJ 07073  
USA

NO	PRODUCT NAME	TYPE NAME	FABRIC	UNIT	PRICE	T.PRICE	M.UNIT
1	ARIZONA	SOFABED	05/140	15	175	2625	\$
2	ALABAMA	SOFABED	24/85	15	175	2625	\$
3	ARIZONA	DOUBLE	05/140	7	150	1050	\$
4	ALABAMA	DOUBLE	24/85	7	150	1050	\$
5	ARIZONA	ARMCHAIR	05/140	5	107	535	\$
6	ALABAMA	ARMCHAIR	24/85	5	107	535	\$
7	NEWARK	SOFABED	BEIGE	18	145	2610	\$
8	DETROIT	SOFABED	0363/0120	3	79	237	\$
						<b>TOTAL</b>	<b>11267</b>

PAKET 89  
WEIGHT 4704

DELIVERY TERM EXW FACTORY KAYSERİ

PAYMENT 120 DAYS AFTER INVOICE

BANK : KOCBANK KAYSERİ CENTRAL BRANCH ACCOUNT NO:28225422 \$ SWIFTCODE:KABATRIS975

EMPIRE FURNITURE USA, INC.  
33 STATE RT. 17 SOUTH E. RUTHERFORD,  
NJ 07073  
USA

MADE IN TURKEY



# INVOICE

(+)

EXPORT NR : 12009

DATE 22.02.2006

CONT. APHU 605824-3

SENDER  
KILIM MOBILYA KANEPE SAN. VE TIC. A.Ş.  
ORGANIZE SAN. BOL. 43. CAD. NO.27  
KAYSERI / TURKEY VAT. 5630466519

CUSTOMER  
EMPIRE FURNITURE USA,INC.  
33 STATE RT. 17 SOUTH E.RUTHERFORD,NJ 07073  
USA

NO	PRODUCT NAME	TYPE NAME	FABRIC	UNIT	PRICE	T.PRICE	M.UNIT
1	LONG ISLAND	SOFABED	BEIGE	20	145	2900	\$
2	LONG ISLAND	DOUBLE	BEIGE	20	125	2500	\$
3	DETROIT	SOFABED	0363/0120	3	79	237	\$
4	FULTON DOUBLE SOFABED	DOUBLE	L.BROWN	10	125	1250	\$
5	NEWARK DOUBLE SOFABED	DOUBLE	BEIGE	15	125	1875	\$
6	SUNRISE DOUBLE SOFABED	DOUBLE	D.BROWN	15	125	1875	\$
<b>TOTAL</b>						<b>10637</b>	

PAKET 143  
WEIGHT 5254

DELIVERY TERM EXW FACTORY KAYSERI

PAYMENT 120 DAYS AFTER INVOICE

BANK : KOCBANK KAYSERI CENTRAL BRANCH ACCOUNT NO:28225422 \$ SWIFTCODE:KABATRIS975

EMPIRE FURNITURE USA,INC.  
33 STATE RT. 17 SOUTH E.RUTHERFORD,  
NJ 07073  
USA

**EXHIBIT 2**



## KILIM FURNITURE INTERNATIONAL LLC

### OPERATING AGREEMENT

This OPERATING AGREEMENT is entered into as of 16 day of June, 2006 by and between OMER KARTAL residing at 179 Second Street Clifton, NJ 07011 and KILIM MOBILYA KANEPE SAN VE TIC A.S. Hacilar Organize Sanayi Bolgesi 1. Cd. No: 29 Hacilar – Kayseri / Turkey referred to collectively as the “Members” and individually as a “Member”.

WHEREAS, Kilim Furniture International LLC is a Limited Liability Company formed under the laws of the State of New Jersey; and

WHEREAS the Members desire to set forth their respective rights and obligations with respect to such limited liability company, as provided in this agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants stated herein, the parties agree as follow:

#### ARTICLE I DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

- 1.1 “Accountant” shall mean the firm of independent public accountants designated by the Manager from time to time to serve as the accountants for the LLC.
- 1.2 “Act” shall mean the New Jersey Limited Liability Company Act.
- 1.3 “Affiliate” shall mean (i) any Person directly or indirectly controlling, controlled by, or under common control with, the referenced Person, (ii) any Person which has 10% or more beneficial, or voting, interest in the



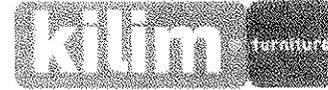
referenced Person has a 10% or more beneficial or voting interest; (iii) any officer or director of or partner or member in either the referenced Person or any Person described in (i) or (ii) above, and (iv) any Person who would be a related taxpayer to the referenced Person under Code Section 267. For purpose of above, the term "control" (including "controlling" and "controlled" shall mean the possession, direct or indirect, of the power to direct or to cause the direction of the management and policies of Person, whether through the ownership of voting interests, by contract, or otherwise.

**1.4 "Agreement"** shall this Operating Agreement.

**1.5 "Bankruptcy"** shall be deemed to have occurred as to a Person when (i) such person shall have commenced a voluntary case under the federal bankruptcy laws, as now constituted or hereinafter amended or replaced, or under any other applicable federal or state bankruptcy or insolvency law, or (ii) a decree or order for relief under any such laws shall have been entered by any court having jurisdiction in the premises in respect of such person, or receiver, liquidator, assignee, custodian, trustee or similar official shall have been ordered, and in connection with the foregoing provisions of this clause (ii) either such Person shall have applied for or consented to such decree, order or appointment shall have continued unstayed and in effect for a period of 90 days (whether or not consecutive), or (iii) such Person shall have made an assignment for the benefit of creditors, or (iv) such Person shall have made generally admitted in writing the inability to pay its, his or their debts as such debts become due.

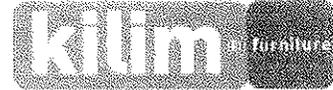
**1.6 "Capital Account"** shall have the meaning provided in Section 6.6

**1.7 "Cash Flow"** shall mean the gross cash proceeds received by the LLC from operations, sales, other dispositions, financings and refinancing or any other source plus any reduction in Reserved previously established, less all cash used to pay, LLC expenses, debt payments, capital improvements, replacements, distributions and contingencies all as determined by the



Manager. Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances.

- 1.8 “Code” shall mean the Internal Revenue Code of 1986, as may be amended or replaced from time to time.
- 1.9 “Defaulting Member” shall have the meaning provided in Sections 4.5, 9.1, 9.2, 10.4
- 1.10 “Effective Date” shall mean the date that the certificate of formation for the LLC has been accepted for filing by the Secretary of State of New Jersey.
- 1.11 “Event of Default” shall have the meaning provided in Section 10.4
- 1.12 “Events of Dissolution” shall have the meaning provided in Section 10.1.
- 1.13 “Excess Cash Flow” shall mean an amount determined for each taxable year of the LLC equal to the excess of the taxable income of the LLC for such year.
- 1.14 “Indemnified Party” shall have the meaning provided in section 4.9.
- 1.15 “Indemnified Party” shall have the meaning provided in section 4.9.
- 1.16 “LLC” shall mean the limited liability company formed pursuant to this Agreement.
- 1.17 “LLC Interest” shall refer to a Member’s entire right, title and interest in the LLC and including a Member’s share in the Profits and Losses and the right to receive distributions of LLC assets and do participate in the management and affairs of the LLC.
- 1.18 “Liquidating Trustee” shall have the meaning provided in Section 10.2
- 1.19 “Manager” shall have the meaning provided in Section 4.1
- 1.20 “Member Loans” shall mean any financing provided by a Member pursuant to Section 3.4
- 1.21 “Member Nonrecourse Debts” shall have the meaning set forth in Section 8.2(c)
- 1.22 “Minimum Gain” shall mean the amount of gain that would be recognized by the LLC if property encumbered by a Nonrecourse Debt was transferred in full satisfaction of such debt



**1.23 "Nonrecourse Debt"** shall have the meaning provided in Regulation Section 1.704-2(b) (3).

**1.24 "Percentage Interests"** shall have the meaning set forth in Section 7.1

**1.25 "Person"** shall mean any person, firm, corporation, partnership, limited liability company, association, company, trust, estate custodian, nominee or other individual or entity.

**1.26 "Profits" and "Losses"** shall mean amounts equal to the corresponding items of income, gain, deductions and losses computed for federal income tax purposes; except that (i) such items of income gain, deductions and losses with respect to assets contributed by a Member to the LLC or owned by the LLC if and when Members' Capital Accounts are revalued, shall be computed by reference to such assets' fair market value, determined by the Members, at the time of such contribution or revaluation, all as provided in the regulations under Section 704 (b) of the Code; (ii) Profits shall also include tax exempt income of LLC under Code Section 705 (a) (1) (B); and (iii) Losses shall include expenditures of the LLC described in the Code Section 705 (a) (2) (B) and expenditures which are characterized as Section 705 (a) (2) (B) expenditures pursuant to Regulation Section 1.704-1 (b) or any successor thereto. The manager shall determine such Profits and Losses with the assistance of the Accountants.

**1.27 "Pro Forma"** shall have the meaning provided in Section 6.3.

**1.28 "Regulations"** shall mean the final or temporary regulations promulgated by the Treasury Department under the Code and as then in effect.

**1.29 "Regulatory Allocations"** shall have the meaning provided in Section 8.3.

**1.30 "Reserves"** shall have the meaning provided in Section 7.3.

**1.31 "Transfer"** shall mean any sale, assignment, hypothecation, mortgage, pledge, encumbrance or other transfer or disposition.



## ARTICLE II FORMATION

2.1 **Formation.** The Members join together pursuant to this Agreement as a "limited liability company" as of the date set forth above. The manager has caused to be filled a certificate of formation, in accordance with the Act. The LLC shall conduct business as a limited liability company pursuant to the terms of this Agreement and provisions of all applicable law.

2.2 **Name.** The business and affairs of the LLC shall be conducted under the name KILIM FURNITURE INTERNATIONAL, L.L.C. and such name shall be used at all times in connection with the business and affairs of the LLC.

2.3 **Office.** The LLC shall maintain its principal office at such location as may be designated by the Manager

2.4 **Purpose.** The purpose of the LLC shall be to operate and manage a wholesale furniture and distributorship and such other purposes as may otherwise be agreed to from time to time by the members. The LLC may do anything in furtherance of such purpose. The LLC shall not enter into any business or activity other than as expressly permitted in this Agreement.

2.5 **Other Businesses.** This agreement shall not prohibit any Member from conducting other businesses or activities not related to the LLC without accounting to the LLC or the other Member, unless such other businesses or activities, directly or indirectly, compete with the business of the LLC.

2.6 **Title of Property** All tangible and intangible, real and personal property owned by the LLC shall be owned by the LLC as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in such property in its individual name or right, and each Member's interest in the LLC shall be personal property for all purposes.

2.7 **Term.** The term of the LLC shall commence on the date of formation and shall continue until the winding up and liquidation of the LLC in accordance with Section 10.1.



### ARTICLE III

#### CAPITAL CONTRIBUTIONS

3.1 **Initial Contributions.** Upon the execution of this Agreement, the Members shall make the following initial capital contributions to the LLC, either in cash or in kind:

Kartal ..... \$200,000.00

Kilim ..... \$800,000.00

3.2 **Additional Contributions.** From time to time after the Effective Date, the Manager may request the Members to make additional contributions and the Members shall make all such contributions within ten (10) days after such request.

3.3 **No Other Contributions.** No Member shall be required to make any additional capital contributions to the LLC not specifically required by Sections 3.1 and 3.2 and shall not be obligated or required under any circumstances to restore the negative balance in the member's Capital Account.

3.4 **No Interest.** The Members shall not receive interest on any capital contribution at any time made to the LLC or on the balance of their respective Capital Accounts.

### ARTICLE IV

#### MANAGEMENT AND OPERATIONS

4.1 **Manager.** OMER KARTAL(the "Manager") is hereby designated, and accepts such designation, as the "manager" of the LLC. Except as otherwise provided in this Agreement, the Manager shall be responsible for the operation of the LLC's business in the ordinary course and shall have the authority to do all things, without the consent of the other Member, that he determines, in his sole discretion, to be in furtherance of the purpose of the LLC and shall have all rights, powers and privileges available to a "manager" under the Act. The Manager shall



have the right to enter into and execute all contracts, documents and other agreements on behalf of the LLC and shall thereby fully bind the LLC.

**4.2 Management Fee.** For the first year of the term of this agreement, the Manager shall be entitled to receive compensation for his management services in an amount sufficient to pay to him the sum of \$7,000.00 per month, after deduction of taxes and other withholding.

**4.3 Payment of Expenses.** At all times prior to the termination or dissolution of the LLC, the cash proceeds of the LLC, together with any net reduction in the reserves of the LLC, shall be applied first to the Payment of all taxes, debts and other obligations and liabilities (including the interest on and the principal of any loan owing to any Member thereof) of the LLC which are then due and owing, and the establishment of reasonable reserves for Contingent and future liabilities and distributions of the LLC, as determined by the Manager.

**4.4 Employees.** The Manager may from time to time cause the LLC to employ Persons, including any Affiliate of the Manager, to operate the business of the LLC, including Performing any function that the Manger would otherwise perform, and to pay such Person any fee that the Manager determines to be reasonable; provided, however, that no fee shall be paid to an Affiliate of a Member, except as otherwise provided in Section 4.4.

**4.5 Other Compensation.** No Member except Managing Member shall be entitled to any fees commissions or other compensation from the LLC for any services rendered to or per formed for the LLC, except as specifically provided in this Agreement or as approved by the Members in accordance with Section 5.2.

**4.6 Members Indemnification.** Each Member and the manager (the "Indemnifying Party") shall indemnify the LLC and each other Member and the Manager (the "Indemnified Party") for, and shall hold the Indemnified Party harmless from and against, any and all liability to any Person incurred by the Indemnified Party by reason of any fraudulent, criminal, or grossly negligent act or omission of or breach of this Agreement by such Indemnifying Party or any of the shareholders officers, agents, employees or Affiliates of such Indemnifying



Party, and for, from and against all cost, expense and loss incurred by the Indemnified Party in connection therewith.

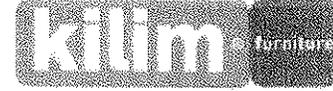
**4.7 LLC Indemnification.** The LLC shall indemnify the Manager and the Members for, and shall hold the Manager and the Members harmless from and against, any liability of the Manager or the Members to any Person arising or incurred in connection with the good faith discharge of the Manager's or the Member's obligations under this Agreement except for liability imposed on the Manager or the Members as a result of any fraudulent, criminal, or grossly negligent act or omission of or breach of this Agreement by the Manager or the Members or any of the shareholders officers, agents or employees of the Manager or the Members.

#### ARTICLE V MEMBER'S RIGHTS

**5.1 General.** Except in the capacity as the Manager, or as specifically provided in writing by the Manager the Members shall not act in the name of or a the representative of the LLC and shall not deal with the LLC'S assets in any way, and shall not incur any obligation for which the LLC or the other Member will or may be liable, and the Members shall not otherwise bind the LLC or the Other Member, and any violation of this sentence shall be deemed to constitute willful misconduct

**5.2 Approval.** The Manager and the Members shall not do any of the following without the express written consent of the Members (other than the Defaulting Members):

- (i) obtain financing from an Affiliate of a Member except as otherwise provided in Section 3.5;
- (ii) payees, commissions or other compensation to a Member, or an Affiliate of a Member, except as otherwise provided in Section 4;



- (iii) Increase the Reserves in an amount greater than the increase permitted by Section 7.3;
- (iv) dissolve or wind up the LLC; (v) amend this Agreement;
- (vi) admit any other Members to the LLC;
- (vii) sell, assign or otherwise transfer or dispose of any of the assets of the LLC, other than in the ordinary course of the LLC's business;
- (viii) transfer an LLC Interest, except as provided in Section 9.1; and
- (ix) resign, dissolve or otherwise withdraw from the LLC, except as provided in Section 9.2

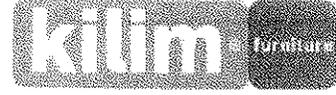
**5.3 Kilim Representative.** Kilim shall appoint a representative or representatives to exercise its rights as a member of the company in the United States.

#### ARTICLE VI ACCOUNTING AND TAX MATTERS

**6.1 Fiscal Year.** The fiscal year of the LLC shall be the calendar year.

**6.2 Accounting Method.** The books and records of the LLC shall be maintained on the method of accounting chosen by the Manager and otherwise in accordance with generally accepted accounting principles consistently applied and shall show all items of income and expense. The Manager shall maintain at the principal office full and accurate books and records of the LLC's business.

**6.3 Reports.** The Manager shall provide the Members with a quarterly report of the LLC's operations, which shall include income statements of the LLC for such quarter and for the year to date, by no later than the end of the month succeeding such calendar quarter. All such reports provided by the Manager shall be at the expense of the LLC. Each Member and his respective attorneys, accountants and other advisors, shall have the right at all times during usual business hours and upon reasonable notice, to examine, review, audit and make copies of the books and records of the LLC. Each Member shall maintain all information relating to the LLC contained in such reports and books and records

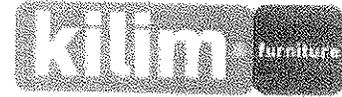


in strict confidence. Each Member making such examination, review, audit or copying shall bear all of the expenses incurred by such Member, the Manager and the LLC in any such examination, review, audit and copying.

**6.4 Tax Status.** Each of the Members hereby recognizes that the LLC will be recognized as a partnership for Federal and New Jersey tax purposes and will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code. The Manager shall use all reasonable efforts to cause the Accountants to prepare and make timely filings of all tax returns and statements which the Accountants determine must be filed on behalf of the LLC with any taxing authority. The Manager shall use all reasonable efforts to provide a copy of such returns and statements to each Member prior to thirty (30) days before the due date (computed without regard to any extensions thereof) and actual filing of such return.

**6.5 Tax Matters Member.** The Managing Member shall be the "tax matters partner" for purposes of the Code and shall notify the other Member of any audit or other matters of which the managing Member is notified or becomes aware.

**6.6 Capital Accounts.** An account (a "Capital Account") shall be established and maintained for each Member in accordance with Regulations Section 1.704-1(b) of the Code. Accordingly, each Member's Capital Account shall be increased by (i) the amount of money contributed by such member to the LLC, (ii) the fair market value (as determined by both Members) of property contributed by such member to the LLC (net of the liabilities secured by such contributed property that the LLC is considered to assume or take subject to under Code Section 752), and (iii) allocations to such Member of Profits; and shall be decreased by (iv) the amount of money distributed to such Member by the LLC, (v) the fair market value (as determined by both members) of the property distributed to such Member by the LLC (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752), and (vi) allocations to such Member of Losses.



## ARTICLE VII DISTRIBUTIONS

**7.1 Percentage Interests.** The Members shall have the following Percentage Interests:

Kartal ..... 20%

Kilim ..... 80%

**7.2 Distributions of Cash Flow.** From time to time, but no less frequently than once a year, the Manager shall cause the LLC to distribute the Cash Flow of the LLC to the Members, which distributions shall be made in proportion to the Members' respective positive Capital Account balances, determined immediately prior to such distribution. Notwithstanding the foregoing of this Section 7.2 distributions made upon the termination or dissolution of the LLC shall be made in accordance with Section 10.2 of this Agreement.

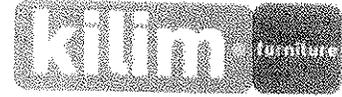
**7.3 Reserves.** Notwithstanding anything to the contrary contained in Section 7.2, the Manager may defer the distribution of the Excess Cash Flow and use such Excess Cash Flow to establish reserves (the "Reserves") for the payment of LLC expenses, debt payments, capital improvements, replacements, distribution, Contingencies and all other purposes all as determined by the Manager.

## ARTICLE VIII ALLOCATIONS

**8.1 Allocations.** Except as otherwise provided in Sections 8.2, 8.3 and 8.4, all items of Profits and Losses shall be allocated to the Members in proportion to their Percentage Interests

**8.2 Regulatory Allocations.** The following special allocations shall be made in the following order:

(a) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Article VIII, if there is a net decrease in the Minimum Gain during any LLC



fiscal year, each Member who would otherwise have a Capital Account deficit in excess of the amount of such deficit that such Member would be obligated to restore shall be specially allocated items of Profit for such year (and, if necessary, subsequent years) in an amount and manner sufficient to eliminate such excess deficit as quickly as possible.

(b) **Gross Income Allocation.** In the event a Member has a deficit Capital Account at the end of any LLC fiscal year which is in excess of the sum of the amount of such deficit that such Member is obligated to restore, then such Member shall be specially allocated items of Profits in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 8.2(b) shall be made only if and to the extent that such Member would have such an excess deficit after all other allocations provided for in Article VIII have been made as if this Section 8.2(b) were not in the Agreement.

(c) **Member Loan Nonrecourse Deductions.** Any Losses attributable to a Member Loan or any other loan for which one Member (or a Person related, within the meaning of Regulations Section 1.752-4 (b), to such Member), but not the other Member, bears the economic risk of loss ("Member Nonrecourse Debts") shall be allocated to the Member that bears the economic risk of loss with respect to such Member Nonrecourse Debt shall be allocated to the Member who bears such risk of loss in accordance with Regulations Section 1.704-2(i).

(d) **Reallocation of Losses.** In the event that the allocations of Losses required by this Article VIII would create or increase a deficit in a Member's Capital Account as of the end of the taxable year in excess of the amount of such deficit that such member is obligated to restore, then an amount of Losses equal to such excess deficit shall be reallocated from such Member to the other Member to the extent of, but not in excess of, such other Member's positive Capital Account Balance. In the event that neither Member has a positive Capital Account Balance, then Losses that will create or increase a deficit balance in either Member's Capital account shall be allocated to the Members in proportion to their Percentage Interest.

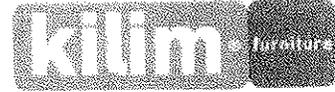


(e) **Capital Account Deficit.** For the purpose of this Section 8.2, a Member shall be considered to be obligated to restore a deficit in its Capital Account by: (i) the amount that such Member is required to restore pursuant to this Agreement; (ii) the amount such Member is deemed to be obligated to restore pursuant to the minimum gain chargeback provisions set forth in Regulations Section 1.704-2(g); and (iii) the amount such Member would be deemed obligated to restore if deductions relating to Member Nonrecourse Debts and the minimum Gain was computed with respect to such Member Nonrecourse Debts.

**8.3 Curative Allocations.** The allocations set forth in Section 8.2 (the "Regulatory Allocations") are intended to comply with the requirements of Regulations under Code Section 704(b) and shall be interpreted consistently with such Regulations. Notwithstanding any other provision of this Article VIII, other items of Profits and Losses shall be allocated among the members so that, to the extent possible without violating the purpose of Regulatory Allocations, the net amount of Profits and Losses allocated to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not been made.

**8.4 Tax Allocations** All items of income, gains, losses and deductions computed for federal income tax purposes shall be allocated to the Members in accordance with the allocation of the Corresponding item of Profits or Losses and all other allocations shall be made in proportion to the Members' Percentage Interests. In the event that property with a fair market value that differs from its adjusted tax basis is contributed to the LLC by a Member or owned by the LLC if and when the Members' Capital Accounts are revalued, then the items of income, gain, loss and deduction with respect to such Property shall be allocated in accordance with Section 704 (e) of the Code and the Regulations thereunder. All other allocations shall be made in proportion to the Members' Percentage Interests.

**8.5 Binding Effect.** The Members are aware of the income tax consequences of the allocations made by this Article viii and hereby agree to be bound by the



provisions of this Article VIII in reporting their shares of LLC income, gain, loss and deduction for federal income tax purposes.

**8.6 Amendment.** The Members shall consent to any amendment this Article VIII proposed by the Manager which the Manager reasonably determines to be in the best interests of the Members and to be necessary or advisable to comply with the requirements of the Code or the Regulations regarding the allocation of Profits and Losses and all tax items including items of income, gain, deduction, loss or credit.

**8.7 Election.** The Manager shall make all elections for federal income tax purposes that the Manager reasonably determines to be in the best interest of the Members and to be advisable.

#### ARTICLE IX TRANSFERS OF LLC INTERESTS

**9.1 Transfers of LLC Interests.** No Member may Transfer all or any part of its LLC Interest (including without limitation any Transfer between Members) unless and until such Transfer has been approved in writing by all of the Members (other than Defaulting Members) or unless and until such transfer has been approved in writing by all of the Members (other than Defaulting Members), or unless done in accordance with any Buy-Sell Agreement between the Members. Any purported Transfer made in violation of this Section 9.1 shall be void and inchoate and without effect. Any Member who purports to Transfer all or any part of its LLC Interest in violation of this Section 9.01 shall be deemed to be a "Defaulting Member."

**9.2 Withdrawals.** No Member may resign, dissolve or otherwise withdraw from the LLC for the first three years of the term of this agreement. After such time, a member may resign, dissolve or otherwise withdraw from the LLC upon one year's notice to the other member. Should a member elect to withdraw, the company shall be dissolved in accordance with the provisions of Article X. The





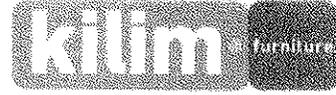
withdrawing member shall relinquish all of its rights in and to the company, including, but not limited to the right to use the name "Kilim Furniture International, LLC". This provision shall survive the dissolution of the company.

## ARTICLE X DISSOLUTION

**10.1 Events of Dissolution.** The LLC shall continue until dissolved upon the earliest to occur of the following events (the "Events of Dissolution")

- (i) thirty-five years from the effective date;
- (ii) the sale, exchange, or other disposition by the LLC of all or substantially all of the LLC's assets; or
- (iii) the agreement of all of the Members (other than Defaulting Members) to terminate and dissolve the LLC; or
- (iv) upon the Bankruptcy of the Managing Member, or of the other Member if the Managing Member so elects; or

**10.2 Liquidating Distributions.** Upon an Event of Dissolution, a Person designated by the Member or, if there is no Manager, a Person designated by the Managing Member (the "Liquidating Trustee") shall take full account of the assets and liabilities of the LLC as of the date of such Event of Dissolution and shall proceed with reasonable promptness to liquidate the LLC's assets and terminate its business. The cash proceeds from such liquidation, together with any other net assets of the LLC, shall be applied first to the payment of items described in Section 4.5, including all items relating to such liquidation and all reserves that the Liquidating Trustee determines, in its discretion, to be appropriate. Amounts remaining after such payments have been made, shall be distributed to the Members in proportion to their respective positive Capital Account balances determined after giving effect to all allocations of Profits and Losses of the LLC (including Profits and Losses from the sale or other disposition of the assets of the LLC in connection with such liquidation)



**10.3 Tax Termination.** In the event of a termination of the for federal income tax purposes under Section 708 of the Code resulting from the transfer of an interest in the LLC, the LLC shall nevertheless remain in full force and effect hereunder and the Capital Accounts shall govern the constructive liquidation for federal income tax purposes and new Capital Accounts shall be redetermined in accordance with Section 6.6.

**10.4 Default.** If a Member fails to perform any of its obligations under this Agreement or violates any of the terms of this Agreement (an "Event of Default") the other Member, shall have the right (in addition to all of its other rights and remedies under this Agreement, at law or in equity) to give the Member written notice of such default at any time prior to the curing of such default. Unless the Member cures such default within ten (10) days after receipt of such notice, then the Member shall be a "Defaulting Member" hereunder. Notwithstanding the foregoing of this Section 10.4, in the event that a Member violates the terms of this Agreement and such violation constitutes gross negligence or willful misconduct then such Member shall immediately be deemed to be a "Defaulting Member" and shall not be entitled to receive notice of such default or an opportunity to cure such default. If a Member is a Defaulting Member as that term is defined in this Section 10.4, or elsewhere in this Agreement, the other Member may do one or more of the following, at the same or different times, in addition to all of its or their other rights and remedies:

(i) bring any proceeding in the nature of specific performance, injunction or other equitable remedy it being acknowledged by each of the Members that damages at law may be an inadequate remedy for an Event of Default under this Agreement and the Defaulting Member may be compelled to cure such default;

(ii) bring any action at law by or on behalf of the Member or the LLC, individually or collectively, as may be permitted in order to recover damages and the Defaulting Member shall be liable for all damages suffered by the LLC and the other Member as a result of such default; and require, by written notice from

such other Member to the LLC, that any amount otherwise payable from the LLC to the Defaulting Member shall be paid to the other Member or the Manager in an amount equal to the amount (including damages) owing from the Defaulting Member to the other Member, the Manager or to the LLC.

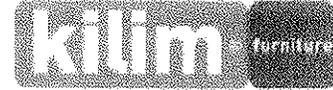
**10.5 Purchase of Member's Interest.** In the event of the death of Kartal, his interest in the company shall pass in accordance with the provisions of his Last Will and Testament, or in accordance with the intestate laws of the State of New Jersey. Kartal's heirs at law shall have the option of continuing his ownership interest in the company, and his appointment as manager of the company. If Kartal's heirs elect not to exercise the above right to continue Kartal's membership, the surviving Member agrees to purchase the interest of Kartal in accordance with the following provisions.

(i) at the option of Kartal's estate, the purchase price of the deceased member's interest shall be equal to the book value of said member's interest at the date of death or the market value at the date of death. The book value shall be adjusted to reflect accrued receivable liabilities and expenses at the date of death of the deceased member. Kartal's estate elects to have Kartal's interest purchased at market value, the remaining member shall have the option of selling Kartal's interest to a third party, in which case Kartal's estate would be entitled to the proceeds of said sale.

(ii) the value of any real estate owned by the LLC at the date of death of the deceased member's death shall additionally be adjusted the percent of market value. Market value shall be determined by avera the values established by two separate, real estate appraisers. ten per cent (10%) discount referred to above is intended to cover closing fees, including, but not limited to, Realtors commissions attorneys fees, transfer taxes, recording fees, etc.

(iii) If Kartal's interest is less than \$2,000,000.00, then the remaining member shall purchase Kartal's interest as follows: fifty percent (50%) of the value as calculated above shall be due and payable in no more than 60 equal monthly installments at the prime rate of interest, plus the percentage increase in





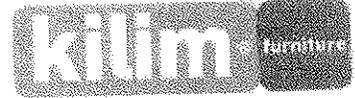
the Consumer Price Index, with the first installment due and payable commencing 90 days from the date of death of the deceased Member. The balance shall be payable in cash within 90 days from the date of the death of the deceased Member. The remaining Member shall present the Estate of the deceased Member with an appropriate form of Promissory Note confirming the terms of the above buy-out of the deceased Member's interest.

(iv) if Kartal's interest is more than \$2,000,000.00, then the remaining member shall purchase Kartal's interest as follows: eighty (80%) of the value as calculated above shall be due and payable in no more than 60 equal monthly installments at the prime rate of interest, plus the percentage increase in the Consumer Price Index, with the first installment due and payable commencing 90 days from the date of death of the deceased Member. The balance shall be payable in cash within 90 days from the date of the death of the deceased Member. The remaining Member shall present the Estate of the deceased Member with an appropriate form of Promissory Note confirming the terms of the above buy-out of the deceased Member's interest.

#### ARTICLE XI GENERAL

**11.1 Notices.** Unless otherwise provided in this Agreement, notices shall be deemed given if in writing and either delivered personally (with receipt acknowledged) or mailed certified mail, return receipt requested, postage prepaid, to the Member to whom the notice is to be given at such Member's address as set forth in the preamble to this Agreement or such other address designated by such Member to the Manager by notice hereunder.

**11.2 Waiver.** No consent or waiver, express or implied, by any Member to or of any breach or default by any other Member in the performance by any other Member of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other

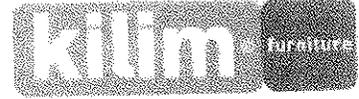


Member of the same or any other obligation of such Member hereunder. Failure on the part of a Member to complain of any act or failure to act of any other Member or to declare such other Member in default, irrespective of how long such failure continues, shall not constitute a waiver by such Member of its rights hereunder.

**11.3 Severability.** If any of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**11.4 Binding Agreement.** Subject to the restrictions on Transfers set forth herein, this Agreement shall inure to the benefit of and be binding upon the Members and their respective heirs, executors, legal representatives successors and assigns. None of the provisions of this Agreement is intended to be, nor shall the provisions be construed to be, for the benefit of any third party. Whenever, in this Agreement, a reference to any party or Member is made, such reference shall be deemed to include a reference to the permitted heirs, executors, legal representatives, successors and assigns of such party or Member.

**11.5 Additional Remedies.** The rights and remedies of any Member hereunder shall not be mutually exclusive, i.e., the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is intended to, nor shall it, limit or affect any other rights in equity or any rights at law or by statute or otherwise of any party aggrieved as against the other for breach or threatened breach of any provision hereof, it being the intention of this Section 11.5 to make clear the agreement of the Members that the respective rights and obligations of the Members hereunder shall be enforceable in equity as well as at law or otherwise.



**11.6 Further Actions.** Each of the Members hereby agrees to hereafter execute and deliver such further instruments and do such further acts and things as may be required or appropriate to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof.

**11.7 Prohibition Against Partition.** Each of the Members hereby permanently waives and relinquishes any and all rights it may have to cause all or any part of the Property, or any other property or assets of the LLC, to be partitioned, it being the intention of the Members to prohibit any Member from bringing a suit for partition against the other Members, or any of them.

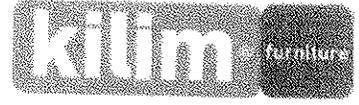
**11.8 Incorporation of Exhibits.** The terms of the Exhibits to this Agreement are hereby incorporated in this Agreement by reference as though such Exhibits were fully set forth in this Agreement.

**11.9 Use of Certain Terms.** The definitions in Article I apply equally to both the singular and the plural; any pronoun shall include the corresponding masculine, feminine and neuter; and the words "include" and "including" shall be deemed to be followed by the phrase "without limitation"; and the terms "hereof" and "herein" shall refer to the particular agreement or document in which such term appears.

**11.10 Counterparts.** This Agreement may be executed in one or more counterparts with each such Counterpart deemed to be an original hereof and all of such counterparts deemed to be one and the same Agreement.

**11.11 Entire Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the LLC. No variations, modifications, or changes herein nor any waiver of any provision hereof shall be binding unless set forth in a document duly executed by or on behalf of each of the Members.

**11.12 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey (other than its rules as to conflicts of law to the extent that such rules would result in the application of the laws of some other jurisdiction



IN THE WITNESS WHEREOF, the parties hereto executed this Agreement effective as of the date set forth below.

KILIM FURNITURE INTERNATIONAL LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Omer Kartal, Managing Member

KILIM MOBILYA KANEPE SAN VE TIC A.S

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Sükür Yanglar  
member

**EXHIBIT 3**



Bi'kilim yeter sevgilim!

# İNANILMAZ FİYATLAR

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Fax: 973 928 27 26

KANEPELER

MAKSİ TAKIMLAR

KOLTUK TAKIMLARI

OTURMA GRUPLARI

KÖŞE TAKIMLARI

YATAK ODASI TAKIMLARI

YEMEK ODASI TAKIMLARI

GENÇ ODASI TAKIMLARI

TEKİL ÜRÜNLER

YATAKLAR

BAZALAR

BAŞLIKLAR

EV TEKSTİLİ



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## INVENTORY CLEARANCE SALE