

ESTTA Tracking number: **ESTTA427788**

Filing date: **08/30/2011**

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	Elevation Bed Limited Liability Company		
Entity	Limited Liability Company	Citizenship	Delaware
Address	4 Denny Road Wilmington, DE 19809 UNITED STATES		

Attorney information	William H. Eilberg William H. Eilberg, Esq. 316 California Ave. No. 785 Reno, NV 89509 UNITED STATES whe@eilberg.com Phone:215-885-4600		
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Applicant Information

Application No	85293771	Publication date	08/23/2011
Opposition Filing Date	08/30/2011	Opposition Period Ends	09/22/2011
Applicant	Boyd Flotation, Inc. 2440 Adie Road Maryland Heights, MO 63043 UNITED STATES		

Goods/Services Affected by Opposition

Class 020. All goods and services in the class are opposed, namely: Air mattresses for use when camping; Beds, mattresses, pillows and bolsters; Inflatable mattresses for use when camping; Mattress foundations; Mattress toppers; Mattresses; Mattresses and pillows; Sleep products, namely, mattresses, spring mattresses, box springs and mattress foundations

Grounds for Opposition

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

U.S. Registration No.	1184796	Application Date	09/14/1979
Registration Date	01/05/1982	Foreign Priority Date	NONE
Word Mark	CONTOUR		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 020. First use: First Use: 1978/09/00 First Use In Commerce: 1978/09/00 Beds

U.S. Registration No.	2173279	Application Date	03/21/1995
Registration Date	07/14/1998	Foreign Priority Date	NONE

Word Mark	CONTOUR
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 020. First use: First Use: 1997/11/20 First Use In Commerce: 1997/11/20 [chairs and] beds
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Attachments	74649644#TMSN.gif (1 page)(bytes) Notice of Opposition 08-30-11.pdf (4 pages)(136044 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William H. Eilberg/
Name	William H. Eilberg
Date	08/30/2011

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

Elevation Bed LLC,	:	
Opposer	:	Serial No. 85/293,771
v.	:	
Boyd Flotation, Inc.,	:	Published: August 23, 2011
Applicant	:	Mark: Contour Sense

NOTICE OF OPPOSITION

Elevation Bed Limited Liability Company, a limited liability company of Delaware, having an address at 4 Denny Road, Wilmington, Delaware 19809, hereby opposes the application of Boyd Flotation, Inc., Serial No. 85/293,771, filed April 13, 2011, for registration of Contour Sense, for "air mattresses for use when camping; beds, mattresses, pillows and bolsters; inflatable mattresses for use when camping; mattress foundations; mattress toppers; mattresses; mattresses and pillows; sleep products, namely, mattresses, spring mattresses, box springs and mattress foundations", published on page TM 649 in the Official Gazette of August 23, 2011.

Opposer states the following grounds in support of its opposition:

1. Opposer is the owner of the following U.S. trademark registrations, both of which include the word CONTOUR, and both of which pertain to beds:

<u>No.</u>	<u>Mark</u>	<u>Goods</u>
1,184,796	CONTOUR	Beds
2,173,279	CONTOUR and Design	Chairs and Beds

2. Opposer and its predecessors have used the above marks, for many years, and, in particular, first used the name CONTOUR many years before the filing date of the above application. Opposer has developed, and currently possesses, substantial good will in these marks.

3. CONTOUR is the dominant portion of the marks in the above-cited registrations.

4. CONTOUR is the dominant portion of the mark sought to be registered by Applicant.

5. Applicant's goods, which include beds and mattresses, are closely related to the goods in the above-mentioned registrations of Opposer.

6. Consumers seeing Applicant's goods, bearing the mark Contour Sense, are likely to be confused into believing that Applicant's products originated with Opposer.

7. Opposer will be damaged by the registration of Applicant's mark, because such registration will cause confusion for the reason given above, and may interfere with Opposer's ability to conduct and/or expand its business under the above-identified registered marks.

WHEREFORE, Opposer prays that registration of Applicant's proposed mark be refused.

Respectfully submitted,

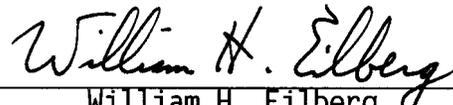
William H. Eilberg

William H. Eilberg, Esq.
316 California Ave. #785
Reno, NV 89509
215-885-4600

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document entitled NOTICE OF OPPOSITION was served upon the Applicant, Boyd Flotation, Inc., Attention: Greg Wind, 2440 Adie Road, Maryland Heights, MO 63043-3504, by mailing a copy to said Applicant, first class postage prepaid, on August 30, 2011.



William H. Eilberg