

ESTTA Tracking number: **ESTTA760562**

Filing date: **07/26/2016**

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

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| Name | Casper Sleep, Inc. |
| Granted to Date of previous extension | 07/27/2016 |
| Address | 230 Park Avenue South, 13th Floor New York, NY 10003 UNITED STATES |

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| Attorney information | Aaron Hendelman Wilson Sonsini Goodrich & Rosati 650 Page Mill Rd Palo Alto, CA 94304 UNITED STATES trademarks@wsgr.com, ahendelman@wsgr.com Phone:6504939300 |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 86842977 | Publication date | 03/29/2016 |
| Opposition Filing Date | 07/26/2016 | Opposition Period Ends | 07/27/2016 |
| Applicant | Werner Media Partners, LLC 7143 West Broward Blvd. Plantation, FL 333172215 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 020. First Use: 2015/11/15 First Use In Commerce: 2015/11/15 All goods and services in the class are opposed, namely: Mattress foundations; Mattresses |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 86842937 | Publication date | 03/29/2016 |
| Opposition Filing Date | 07/26/2016 | Opposition Period Ends | |
| Applicant | Werner Media Partners, LLC 7143 West Broward Blvd. Plantation, FL 333172215 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 020. First Use: 2015/11/15 First Use In Commerce: 2015/11/15 All goods and services in the class are opposed, namely: Mattress foundations; Mattresses |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 86795799 | Publication date | 03/29/2016 |
| Opposition Filing Date | 07/26/2016 | Opposition Period Ends | |
| Applicant | Werner Media Partners, LLC 7143 W. Broward Blvd. Plantation, FL 333172215 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 020. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Beds; Mattress foundations; Mattress top-pers; Mattresses; Wood bedsteads

Grounds for Opposition

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

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|----------------------|--|-----------------------|------------|
| U.S. Application No. | 86233812 | Application Date | 03/27/2014 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | CASPER | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 020. First use: First Use: 0 First Use In Commerce: 0 beds and bolsters; feather beds; futon mattresses; mattress cushions; mattress foundations; box springs Class 035. First use: First Use: 0 First Use In Commerce: 0 retail store services featuring beds, bolsters, feather beds, futon mattresses, mattress cushions, mattress foundations and box springs | | |

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 4762027 | Application Date | 03/27/2014 |
| Registration Date | 06/23/2015 | Foreign Priority Date | NONE |
| Word Mark | CASPER | | |

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| Design Mark | <h1>CASPER</h1> | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 020. First use: First Use: 2014/04/22 First Use In Commerce: 2014/04/22 mattresses; mattress toppers Class 035. First use: First Use: 2014/04/22 First Use In Commerce: 2014/04/22 retail store services featuring mattresses and mattress toppers | | |

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|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 86915350 | Application Date | 02/22/2016 |
| Registration Date | NONE | Foreign Priority Date | NONE |

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| Word Mark | CASPER |
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| Design Mark | <h1>CASPER</h1> | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 024. First use: First Use: 2015/11/17 First Use In Commerce: 2015/11/17 Bed sheets, fitted bed sheet covers, bed flat sheets, duvet covers and pillow cases used in the bedding Class 035. First use: First Use: 2015/11/17 First Use In Commerce: 2015/11/17 Online retail store services featuring bed sheets, fitted bed sheet covers, bedflat sheets, duvet covers and pillow cases used in the bedding | | |

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| U.S. Registration No. | 4961680 | Application Date | 03/27/2014 |
| Registration Date | 05/17/2016 | Foreign Priority Date | NONE |

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| Word Mark | CASPER |
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| Design Mark | <h1>CASPER</h1> | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 020. First use: First Use: 2015/11/17 First Use In Commerce: 2015/11/17 pillows Class 035. First use: First Use: 2015/11/17 First Use In Commerce: 2015/11/17 retail store services featuring pillows | | |

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|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 86783983 | Application Date | 10/09/2015 |
| Registration Date | NONE | Foreign Priority Date | NONE |

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| Word Mark | CASPER |
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| Design Mark | <h1>CASPER</h1> | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 024. First use: First Use: 0 First Use In Commerce: 0 Bed sheets and linens; duvet covers; pillow cases used in the bedding; blankets; mattress covers; mattress pads; Baby bedding, namely, bundle bags, swaddling blankets, crib bumpers, fitted crib sheets, crib skirts and crib blankets | | |

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|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 86783967 | Application Date | 10/09/2015 |
| Registration Date | NONE | Foreign Priority Date | NONE |

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| Word Mark | CASPER ONE PERFECT MATTRESS |
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| Design Mark | CASPER ONE PERFECT MATTRESS |
| Description of Mark | NONE |
| Goods/Services | Class 024. First use: First Use: 0 First Use In Commerce: 0 Bed sheets and linens; duvet covers; pillow cases used in the bedding; blankets; mattress covers; mattress pads; Baby bedding, namely, bundle bags, swaddling blankets, crib bumpers, fitted crib sheets, crib skirts and crib blankets |

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| Attachments | 86233812#TMSN.png(bytes) 86976148#TMSN.png(bytes) 86915350#TMSN.png(bytes) 86978583#TMSN.png(bytes) 86783983#TMSN.png(bytes) 86783967#TMSN.png(bytes) Consolidated Notice of Opposition.pdf(293841 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 | /Aaron Hendelman/ |
| Name | Aaron Hendelman |
| Date | 07/26/2016 |

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

Casper Sleep Inc.,)
)
 Opposer,)
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 v.)
)
 Werner Media Partners, LLC DBA Nature's Sleep,)
 LLC,)
)
 Applicant.)
)
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Opposition No.

CONSOLIDATED NOTICE OF OPPOSITION

Re: Mark: 
Ser. No.: 86,842/977
Filed: December 8, 2015

Mark: GHOSTBED
Reg. No.: 86,842/937
Filed: December 8, 2015

Mark: GHOST
Reg. No.: 86,795/799
Filed: October 22, 2015

Opposer Casper Sleep, Inc. (“Opposer”), a corporation organized and existing under the laws of Delaware, located at 230 Park Avenue South, 13th Floor, New York, New York 10003, believes that it will be damaged by the use of the marks with US Application Ser. Nos. 86,842/977, 86,842/937 and 86,795/799 (collectively, the “GHOST Applications” covering the “GHOST Marks”), and hereby files this Consolidated Opposition to Applicant’s registration of the GHOST Marks.

As grounds for cancellation, Opposer alleges that:

1. Opposer timely files this Consolidated Notice of Opposition.

2. Opposer is the innovative and market-leading provider of direct-to-consumer bedding products which include mattresses, pillows and bed linens (the “CASPER products”).

3. Opposer owns the following U.S. trademark registrations and pending applications related to its CASPER-branded products (the “CASPER Registrations” and “CASPER Applications” covering the “CASPER Marks”):

| TRADEMARK | DATE FILED | APP. NO. | REG. NO. | GOODS & SERVICES |
|-----------------------------|------------|----------|----------|--|
| CASPER | 27-Mar-14 | 86233812 | | Class 20: Beds and bolsters; feather beds; futon mattresses; mattress cushions; mattress foundations; box springs Class 35: Retail store services featuring beds, bolsters, feather beds, futon mattresses, mattress cushions, mattress foundations and box springs |
| CASPER | 27-Mar-14 | 86976148 | 4762027 | Class 20: mattresses; mattress toppers Class 35: retail store services featuring mattresses and mattress toppers |
| CASPER | 22-Feb-16 | 86915350 | | Class 24: Bed sheets, fitted bed sheet covers, bed flat sheets, duvet covers and pillow cases used in the bedding Class 35: Online retail of bed sheets, fitted bed sheet covers, bed flat sheets, duvet covers and pillow cases used in the bedding |
| CASPER | 27-Mar-14 | 86978583 | 4961680 | Class 20: pillows Class 35: retail store services featuring pillows |
| CASPER | 9-Oct-15 | 86783983 | | Class 24: Bed sheets and linens; duvet covers; pillow cases used in the bedding; blankets; mattress covers; mattress pads; Baby bedding, namely, bundle bags, swaddling blankets, crib bumpers, fitted crib sheets, crib skirts and crib blankets |
| CASPER ONE PERFECT MATTRESS | 9-Oct-15 | 86783967 | | Class 24: Bed sheets and linens; duvet covers; pillow cases used in the bedding; blankets; mattress covers; mattress pads; Baby bedding, namely, bundle bags, swaddling blankets, crib bumpers, fitted crib sheets, crib skirts and crib blankets |

4. Opposer has used the CASPER Marks to promote its revolutionary direct-to-consumer bedding business and mattress products since at least as early as April 2014 when Opposer launched to much fanfare. As background, Opposer is known for radicalizing the

mattress retail industry by developing a single-mattress business model where the mattress is sold directly to consumers online. Mattresses are delivered directly to one's door and with a risk-free trial period of 100 nights. Each mattress arrives in a box that is clearly branded with the CASPER mark. Last year, Casper introduced a line of pillows and bed linens that are also sold under the CASPER name.

5. Casper's new business model struck an immediate chord with consumers and Casper generated more than \$1 million in sales in just its first month of operation. Perhaps even more impressively, Casper generated more than \$100 million of revenue in 2015 making CASPER one of the fastest growing consumer brands of all time.

6. In addition to offering an exceptional consumer experience and critically acclaimed products, Casper's innovative—and award-winning—use of social media established Casper as a unique contrast to traditional mattress companies. As described by Market Watch, Casper implemented a “fun, tailored social-media strategy that includes posts of sleep-related articles, responding directly to customers . . . and highlighting the appearances of its mattresses in shows like ‘the Real World.’” Indeed, real Casper team members engage directly with customers and the public at large on social media platforms like Twitter and Facebook. As a result, Casper's unique brand voice and social media presence has gone viral, resonating with consumers of all demographics.

7. Not only does Casper reach out to consumers using social media channels, Casper consumers answer back. The Casper customers do not just associate the CASPER name with quality bedding products but also with an innovative and fun unpacking process. The mattress comes in an easily-shipped box in which the mattress is compressed and then, once the box is opened, the mattress slowly emerges and expands into its full size. Many Casper customers enjoy

this unique process so much that unboxing videos—where consumers record themselves opening the CASPER box and narrate their experience—have become quite popular. A search for “Casper unboxing” on YouTube reveals thousands of videos where Casper enthusiasts have documented their unboxing and reviewed the mattress favorably.

8. Opposer also actively advertises its CASPER brand and its related offerings in traditional media. Print media campaigns include extensive billboards and signage in major markets such as New York City, the San Francisco Bay Area, Chicago, Boston, Los Angeles, Washington D.C., Houston, Toronto, Vancouver and others. Video commercials for CASPER have been broadcast online and on national television broadcasts since 2015. Casper has also aired audio commercials on radio station, podcasts, and music-streaming services such as Pandora. Since its inception, Opposer has spent millions of dollars on promotion of the CASPER name and products.

9. As a result of substantial consumer enthusiasm for Casper products, Opposer has garnered a great deal of positive publicity and earned numerous awards—including the CASPER mattress being named one of TIME Magazine’s top 25 inventions of 2015. Opposer has also been favorably mentioned in *The New York Times*, *The Wall Street Journal*, *Gawker*, *The Huffington Post*, *Bloomberg*, *Slate*, *Dwell*, *The Washington Post*, *InStyle Magazine*, *Forbes*, *PopSugar, Inc.*, and *Vogue*, amongst other national and international publications. On television, Opposer and its mattresses have been featured in extended television segments on *CBS This Morning*, *CNBC Mad Money*, *ABC World News Now* and *Fox Business News*.

10. As a result of the tremendous popularity of the CASPER-branded bedding products and Casper’s dynamic sales model, customers have come to associate the CASPER Marks exclusively with Opposer. In short, Opposer has gained for its CASPER Marks a

valuable reputation and has created in the minds of the public a strong association between the CASPER Marks and Opposer's mattresses, sheets and pillows.

11. Sheets are often thought of in connection with ghosts (for use in Halloween costumes if not horror movies) and the most famous Casper persona is likely the iconic children's cartoon. Unsurprisingly, Casper media reviewers and Casper customers playfully invoke Casper the Friendly Ghost to make puns regarding Opposer and its products (even though Casper itself has never promoted an association with the cartoon character). Examples include the following:

- *Casper: A Friendly Mattress Startup Worth Millions* (http://www.slate.com/blogs/moneybox/2014/08/07/foam_mattress_startup_casper_h_as_one_density_option_and_delivers_in_a_box.html)
- “*My friends are calling it [the Casper mattress] the friendly ghost bed, and I wouldn't necessarily disagree with that moniker.*” (<https://casper.com/mattresses/reviews>)
- “*Casper's worth the money. . . feels a lot like cuddling up to a friendly ghost.*” (<http://thenextweb.com/insider/2014/06/05/2-weeks-casper-mattress-bedtime-never-felt-good/#gref>)
- “*Casper The Friendly Mattress. . . . Every Hip Daddy likes a friendly ghost (i.e Casper)...obviously. But how about a mattress?*” (<http://hipdaddy.com/casper-the-friendly-mattress/>)
- “*Casper is the friendly mattress that arrives in a box.*” (<http://www.cultofmac.com/308270/casper-friendly-mattress-arrives-box/>)

12. On information and belief, Werner Media Partners, LLC DBA Nature's Sleep, LLC (“Applicant”) is a limited liability company organized and existing under the laws of Illinois, located at 7143 W. Broward Blvd., Plantation, Florida 33317.

13. On information and belief, on December 8, 2015 Applicant applied, on an-intent-to-use basis, to register a standard character version and a design version of the GHOST BED mark—*see*, US Application Ser. Nos. 86/842,977 and 86,842,937—with the United States Patent

and Trademark Office (“USPTO”) in connection the following goods in International Class 20: “mattress foundations; mattresses.”

14. On information and belief, on October 22, 2015, Applicant applied, on an-intent-to-use basis, to register a standard character version of the GHOST mark—*see*, US Application Ser. No. 86,795/799—with the USPTO in connection the following goods in International Class 20: “beds; mattress foundations; mattress toppers; mattresses; wood bedsteads.”

15. On information and belief, Applicant did not use any of the GHOST Marks in the United States prior to October 22, 2015.

16. Opposer has not authorized any use or application for registration of the GHOST Marks by Applicant. Applicant is not affiliated or connected with Opposer and has not been endorsed or sponsored by Opposer, nor has Opposer approved any of the goods or services offered or sold or intended to be sold by Applicant under its mark.

17. Applicant’s marks GHOST, GHOST BED and  shown in US Application Ser. Nos. 86,795/799; 86,842/937 and 86,842/977, respectively, are so closely similar to Opposer’s CASPER Marks in sight, sound and meaning that Applicant’s use is likely to cause consumer confusion, mistake and/or deception as to the source or origin of Applicant’s goods and services, and will injure and damage Opposer and the goodwill symbolized by the CASPER Marks. Opposer has clearly applied to register—and has begun to use—GHOST-formative marks to capitalize on the consumer association between Opposer and Casper the Friendly Ghost and to confuse consumers into believing a relationship exists between Opposer and Applicant’s GHOST-branded mattresses. Applicant’s GHOST-logo even includes a cartoony ghost. Applicant’s intentions are undeniable as it has gone so far as to advertise its

GHOST mattresses as coming from “The Friendly Mattress People,” just as the cartoon character is known as “the friendly ghost.” Consider the below:



Ghost Mattress - From the Friendly Mattress People
www.ghostbed.com/ ▼
12-Mos at 0% Financing & Ships Free
Wake Up to a New You · Luxury, Meet Value. · Losing Sleep? Find Relief
7143 W Broward Blvd · (877) 557-5337 · Open today · 10:00 AM – 6:00 PM ·
GhostBed Reviews The Design
Shop Now

18. The goods named in the GHOST Applications—as well as the goods Opposer offers in interstate commerce under the GHOST Marks—are sufficiently related to the CASPER goods so that consumer confusion is likely. The nature of each party’s offerings is such that Applicant’s use of its GHOST Marks is likely to confuse the public to be deceived or to assume erroneously that Applicant’s mattresses are those offered by Opposer, or that Applicant is in some way connected with, sponsored by or affiliated with Opposer—all to the detriment of Opposer.

19. The relatedness of the parties’ respective mattresses and sleep products are patent from a comparison of the identification of goods in the respective parties’ trademark filings. The potential for a likelihood of confusion, however, is compounded here because Applicant’s mimicry of Casper’s business extends to Casper’s trade dress of the mattress, methods of advertising and channels of trade. Applicant has traditionally sold mattresses via a brick-and-mortar business model but offers its sale of GHOST-branded mattresses via a business model that slavishly copies Opposer’s business. The GHOST mattresses, like the CASPER mattresses, are sold online and delivered in a small box featuring a compressed mattress that expands once released. The mattress employs Casper’s two-toned mattress design (both mattresses are pictured below) and is advertised with a 101-day trial (Casper advertises a 100-day trial). These similarities between the parties’ businesses and products all but ensure that Applicant will

successfully confuse consumers into a mistaken belief that Applicant's GHOST products are related to, or are the same as, Applicant's CASPER products.

20. WHEREFORE, Opposer prays that Application Serial Nos. 86,842/977, 86,842/937 and 86,795/799 be denied registration and this Notice of Opposition be sustained in favor of Opposer.

21. Please address all USPTO communications regarding this Consolidated Notice of Opposition to:

Aaron Hendelman
Hillary I. Schroeder
Alyssa Worsham
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
Tel: (650) 493-9300
trademarks@wsgr.com

Date: July 26, 2016

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
A Professional Corporation

By: 

Aaron Hendelman
Hillary I. Schroeder

Attorneys for Opposer
Casper Sleep, Inc.

CERTIFICATE OF SERVICE BY U.S. MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served the **CONSOLIDATED NOTICE OF OPPOSITION** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Werner Media Partners, LLC DBA Nature's Sleep, LLC
7143 West Broward Blvd.
Plantation, FL 33317-2215

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Palo Alto, California on July 26, 2016.


