

ESTTA Tracking number: **ESTTA107883**

Filing date: **11/03/2006**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Mattress Firm Inc.		
Entity	Corporation	Citizenship	Delaware
Address	5815 Gulf Freeway Houston, TX 77023 UNITED STATES		

Attorney information	Anthony F. Matheny Bracewell & Giuliani LLP P.O. Box 61389 Houston, TX 77208-1389 UNITED STATES anthony.matheny@bgllp.com Phone:713-221-1120		
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Registration Subject to Cancellation

Registration No	3088627	Registration date	05/02/2006
Registrant	Living Spaces Furniture, LLC 12649 Foothill Blvd. Rancho Cucamonga, CA 91739 UNITED STATES		
Goods/Services Subject to Cancellation	Class 035. First Use: 2004/09/29 , First Use In Commerce: 2004/09/29 Goods/Services: Retail furniture stores		

Related Proceedings	Petitioner is the Applicant for registration of the mark BUY IT TODAY SLEEP ON IT TONIGHT, Application Serial No. 78/527,450		
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Attachments	Petition to Cancel.pdf (3 pages)(113238 bytes)		
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Signature	/Anthony F. Matheny/		
Name	Anthony F. Matheny		
Date	11/03/2006		

2. Petitioner has used the mark "BUY IT TODAY SLEEP ON IT TONIGHT " in commerce and in interstate commerce in connection with "retail store services featuring sleep products" since October 5, 2003, well before Registrant's filing date or date of first use.

3. Petitioner has applied for a Federal registration for the mark BUY IT TODAY SLEEP ON IT TONIGHT with the U.S. Patent and Trademark Office, Application Serial No. 78/527,450.

4. Registrant's mark has been cited against the Petitioner's application.

5. In light of the fact that Petitioner has used the mark BUY IT TODAY SLEEP ON IT TONIGHT since before Registrant's application for registration of the mark BUY IT TODAY, SLEEP ON IT TONIGHT, and before Registrant's date of first use of the mark BUY IT TODAY, SLEEP ON IT TONIGHT, Petitioner will continue to be damaged by Registrant's registration of a mark that is essentially the same as Petitioner's mark.

6. The continued existence of Registrant's registration, despite the Petitioner's prior use of essentially the same mark, casts a cloud upon Petitioner's own right to use the mark BUY IT TODAY SLEEP ON IT TONIGHT in the United States. Such registration would thus be a source of damage and injury to the Petitioner.

7. The Commissioner is authorized to charge the fee for this Petition to Cancel to Bracewell & Giuliani LLP Deposit Account No. 50-0259, Order No. 1821JB.029958.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Registration No. 3,088,627 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,



Anthony F. Matheny
Registration No. 43,778
James E. Bradley
Registration No. 27,536
Attorney for Petitioner

Date: NOVEMBER 3, 2006

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