

ESTTA Tracking number: **ESTTA417476**

Filing date: **07/01/2011**

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	Dan Foam ApS		
Entity	Company	Citizenship	Denmark
Address	43 Aarup Homelund, 5560 DENMARK		

Correspondence information	Amy Sullivan Cahill U.S. Attorney STITES & HARBISON PLLC 400 West Market Street Suite 1800 Louisville, KY 40202 UNITED STATES acahill@stites.com Phone:5026810597
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Registration Subject to Cancellation

Registration No	3916902	Registration date	02/08/2011
Registrant	Sleep Innovations, Inc. 187 Route 36, Suite 101 West Long Branch, NJ 07764 UNITED STATES		

Goods/Services Subject to Cancellation

Class 020. First Use: 2008/04/02 First Use In Commerce: 2008/04/02
All goods and services in the class are cancelled, namely: Mattress toppers, pillows, mattresses

Grounds for Cancellation

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

U.S. Registration No.	3900919	Application Date	05/14/2007
Registration Date	01/04/2011	Foreign Priority Date	NONE
Word Mark	TEMPUR-PEDIC		

Design Mark	
Description of Mark	<p>The mark consists of a female figure on a pillow reclining on top of a cross and the words "TEMPUR-PEDIC". The portion of the mark comprised of a cross design is not displayed in the color red or a colorable imitation thereof; and is not used and will not be used in the color red or a colorable imitation thereof.</p>
Goods/Services	<p>Class 010. First use: First Use: 2007/05/31 First Use In Commerce: 2007/05/31 Seating and couching mats in the nature of a pillow or seat liner, pillows, cushions, mattresses, top mattresses, bolsters and chair pads for medical uses Class 020. First use: First Use: 2007/05/31 First Use In Commerce: 2007/05/31 Seating and couching mats in the nature of a pillow or seat liner, pillows, cushions, mattresses, top mattresses, bolsters and chair pads</p>

Attachments	<p>77180017#TMSN.jpeg (1 page)(bytes) LOUISVILLE-#830904-v1-Petition_for_Cancellation_-_BODIPEDIC.pdf (5 pages)(36096 bytes)</p>
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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	/Amy S. Cahill/
Name	Amy Sullivan Cahill
Date	07/01/2011

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

In the Matter of Registration No. 3,916,902
For the Mark: BODIPEDIC (& Design)
Registration Date: February 8, 2011

DAN FOAM APS,)	
)	
Petitioner,)	
)	
v.)	Cancellation Proceeding _____
)	
SLEEP INNOVATIONS, INC.,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioner Dan Foam ApS and its related companies, believing that it is or will be damaged by continued registration of the mark shown in Registration No. 3,916,902, hereby petitions to cancel same. As grounds in support of cancellation, Petitioner asserts as follows:

1. Petitioner Dan Foam ApS (“Dan Foam” or “Petitioner”) is a Danish corporation with its principal offices located at 43 Aarup Homelund Denmark 5560.

2. Upon information and belief, Registrant Sleep Innovations, Inc. (“Sleep Innovations” or “Registrant”) is a New Jersey Corporation with a record address with the United States Patent & Trademark Office (“USPTO”) of 187 Route 36, Suite 101, West Long Branch, New Jersey 07764.

3. Dan-Foam is a domestic and international provider of mattresses and related products, and advertises and promotes its products nationwide under the TEMPUR-PEDIC word mark, including in combination with Tempur-Pedic’s “reclining figure” design mark, among

others (“TEMPUR-PEDIC (& Reclining Figure Design) Mark”). Petitioner’s TEMPUR-PEDIC (& Reclining Figure Design) Mark appears below:



4. Continuously since at least as early as May 2007, Dan Foam has itself, or through related companies, used its TEMPUR-PEDIC (& Reclining Figure Design) Mark in connection with cushions, mattresses, and pillows, among other goods, and is the record owner of Registration No. 3,900,919 for TEMPUR-PEDIC (& Reclining Figure Design) Mark for use in connection with:

International Class 10	Seating and couching mats in the nature of a pillow or seat liner, pillows, cushions, mattresses, top mattresses, bolsters and chair pads for medical uses.
International Class 20	Seating and couching mats in the nature of a pillow or seat liner, pillows, cushions, mattresses, top mattresses, bolsters and chair pads.

5. On or about October 7, 2010, Registrant filed with the USPTO an application to register the mark BODIPEDIC (& Reclining Figure Design) for “mattress toppers, pillows, mattresses” in International Class 20, which application was assigned U.S. Application Serial No. 85/070,859, and issued as Registration No. 3916902 on February 8, 2011 (the “Challenged Registration”). The alleged mark of Registrant’s Challenged Registration appears below:



COUNT I: LIKELIHOOD OF CONFUSION

10. Petitioner's continuous use of its TEMPUR-PEDIC (& Reclining Figure Design) Mark throughout the United States predates the priority date of the Challenged Registration as well as the date of first use of the mark which is the subject of the Challenged Registration and, thus, Petitioner has priority of use.

11. The mark which is the subject of the Challenged Registration is so similar to Petitioner's TEMPUR-PEDIC (& Reclining Figure Design) Mark as to create a likelihood of confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), all to Petitioner's irreparable damage.

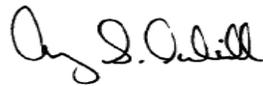
12. Accordingly, Petitioner requests that the Challenged Registration be cancelled under Section 14 of the Lanham Act, 15 U.S.C. §1064, on the ground that the mark which is the subject of the Challenged Registration was and remains ineligible for registration pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

13. Petitioner believes that it will be damaged by continued registration of the mark which is the subject of the Challenged Registration because (a) there is an appreciable likelihood that consumers will believe that Petitioner is the source of any goods produced or marketed by Registrant in association with the registered mark; (b) there is an appreciable likelihood that consumers will believe there is an affiliation, connection, association, sponsorship or other such relationship between the parties; (c) there is an appreciable risk that any defects or other quality

concerns associated with Registrant's goods may be attributed to the Petitioner; and (d) the continued registration of the mark which is the subject of the Challenged Registration will give Registrant the presumptive right to use said mark with its goods. All of these effects of continued registration of the mark of the Challenged Registration will cause injury to Petitioner.

WHEREFORE, Petitioner respectfully prays that its Petition for Cancellation be sustained and that Registration No. 3916902 be CANCELLED.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and complete copy of the foregoing PETITION FOR CANCELLATION has been served upon the Registrant by mailing said copy on this 1st day of July, 2011, via First Class Mail, postage prepaid to the Registrant's attorney of record, namely:

ROBERT W. SMITH
MCCARTER & ENGLISH LLP
100 MULBERRY ST
NEWARK, NJ 07102-4056
Phone Number: 973 622 4444
Fax Number: 973 624 7070

s/Amy Sullivan Cahill
Amy Sullivan Cahill

830904:1:LOUISVILLE