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Filing date: **08/11/2011**

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

Proceeding	92054201
Party	Defendant Sleep Innovations, Inc.
Correspondence Address	SLEEP INNOVATIONS INC 187 ROUTE 36, SUITE 101 WEST LONG BRANCH, NJ 07764 UNITED STATES
Submission	Answer
Filer's Name	Robert W. Smith
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Signature	/Robert W. Smith/
Date	08/11/2011
Attachments	Dan Foam v SI - Answer.pdf (4 pages)(97138 bytes)

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

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DAN FOAM APS, :
 : Cancellation No. 92054201
 :
 : Petitioner, :
 :
 :
 : -against- :
 : Registration No.: 3,916,902
 :
 : SLEEP INNOVATIONS, INC., :
 :
 : Registrant. :
-----X

ANSWER TO PETITION FOR CANCELLATION

Registrant Sleep Innovations, Inc. ("SI"), by way of Answer to the Petition for Cancellation filed herein, responds as follows:

1. Answering Paragraph 1, SI is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.
2. Answering Paragraph 2, SI states that it is a New Jersey Corporation with offices at 187 Route 36, Suite 101, West Long Branch, New Jersey 07764.
3. Answering Paragraph 3, SI is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.
4. Answering Paragraph 4, SI is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.
5. Answering Paragraph 5, SI states that on June 24, 2010, SI filed U.S. Application No. 85/070,859 with the United States Patent and Trademark Office (the "PTO") to register the mark BODIPEDIC & Design in connection with mattress toppers,

pillows, and mattresses in Class 20 (the "Application"). SI further states that the Application proceeded to registration on February 8, 2011, and was assigned U.S. Registration No. 3,916,902 (the "Registration"). SI denies the remaining allegations contained in Paragraph 5 of the Petition.

COUNT I: LIKELIHOOD OF CONFUSION

6. Answering the paragraph incorrectly labeled as Paragraph 10 of the Petition, SI is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein..

7. SI denies the allegations contained in the paragraph incorrectly labeled as Paragraph 11 of the Petition.

8. SI denies the allegations contained in the paragraph incorrectly labeled as Paragraph 12 of the Petition.

9. SI denies the allegations contained in the paragraph incorrectly labeled as Paragraph 13 of the Petition.

FIRST AFFIRMATIVE DEFENSE

The Petition to Cancel fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Petitioner lacks standing to bring a cause of action for cancellation of SI's Registration.

THIRD AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake or deception of the public between the Petitioner's mark and the mark that is the subject of the Registration.

FOURTH AFFIRMATIVE DEFENSE

Laches bars Petitioner's claims and Petitioner is estopped from seeking cancellation of SI's Registration.

WHEREFORE, SI requests that the Petition for Cancellation be dismissed with prejudice and with costs awarded in favor of SI.

Dated: August 11, 2011

McCARTER & ENGLISH, LLP

By: _____

Robert W. Smith

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100 Mulberry Street
Newark, NJ 07102
(973) 622-4444

Attorneys for Sleep Innovations, Inc.

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the original foregoing Answer to Petition for Cancellation has been served on the attorney for Petitioner by First Class Mail at the following address:

Amy Sullivan Cahill
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352

Dated: August 11, 2011


Mary Ann Boyce