

**This Opinion is Not a
Precedent of the TTAB**

Mailed: May 15, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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John W. Hill, III
v.
Jamat, LLC d/b/a Mattress Source
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Concurrent Use No. 94002566
—————

John W. Hill, III
v.
The Mattress Source, Inc.
—————

Concurrent Use No. 94002567
—————

Karl S. Sawyer Jr. of K & L Gates LLP for John W. Hill, III

Drew Cooley of Capes Sokol Goodman & Sarachan PC for Jamat, LLC d/b/a
Mattress Source

Sheila Kathleen McCoy of McCoy Law PLLC for The Mattress Source, Inc.

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Before Kuhlke, Wellington and Hightower,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

John W. Hill III, Applicant, has applied for a concurrent use registration for the
mark MATTRESS SOURCE in standard characters for “retail stores featuring

mattresses, box springs, bedding foundations, and bedding products; online retail stores featuring mattresses, box springs, bedding foundations, and bedding products; mail order retail services featuring mattresses, box springs, bedding foundations, and bedding products,” in International Class 35. The application includes a disclaimer of the word “MATTRESS” and a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), for the mark “in whole.” The application recites Applicant’s area of use as comprising the United States with the exception of the states of Missouri, Illinois and Michigan.

Applicant cites Mattress Source, Inc. (MSI) and its application Serial No. 85622222 for the mark shown below for “Bed frames; Bed headboards; Bed pillows; Beds; Beds, mattresses, pillows and bolsters; Bunk beds,” in International Class 20, as an exception to its exclusive right to use its MATTRESS SOURCE mark and recites Michigan as MSI’s area of use.



Application Serial No. 85622222 includes a disclaimer of the word “THE MATTRESS” and contains the following description of the mark and color claim:

The mark consists of "THE MATTRESS SOURCE" inside a rectangle design comprised of two quadrilaterals; the top quadrilateral is RED and outlined in BLACK and contains the term "THE" in YELLOW and the term "MATTRESS" in WHITE; the lower quadrilateral is BLACK and contains the term "SOURCE" in YELLOW.

The color(s) BLACK, WHITE, RED and YELLOW is/are claimed as a feature of the mark.

In addition, Applicant cites Jamat, LLC d/b/a Mattress Source (Jamat) as an exception to its use and recites Missouri and Illinois as Jamat's area of use.¹

On November 25, 2013, the Board accepted the parties' settlement agreement and determined that the measures set forth therein are sufficient to ensure that such concurrent use by the parties will not, in fact, be likely to cause confusion. The Board noted that the agreement included a provision to bring MSI's application into this proceeding once Application Serial No. 85622222 cleared the publication period.

Application Serial No. 85622222 having been added to the proceeding the Board orders as follows.

Decision:

We find that the Agreement entered into between the parties is adequate evidence that confusion is unlikely and supports Applicant's and MSI's right to register their marks with appropriate geographical restrictions. *See In re Four Seasons Hotels Ltd.*, 987 F.2d 1565, 26 USPQ2d 1071 (Fed. Cir. 1993).

Accordingly, Applicant's concurrent use application Serial No. 85352473 is entitled to proceed to registration of the mark MATTRESS SOURCE for "retail stores featuring mattresses, box springs, bedding foundations, and bedding products; online retail stores featuring mattresses, box springs, bedding foundations, and bedding products; mail order retail services featuring mattresses, box springs, bedding foundations, and bedding products" as geographically

¹ Jamat's application Serial No. 85620807 abandoned on April 5, 2013 and is not part of this proceeding.

restricted to the United States with the exception of the states of Missouri, Illinois, and Michigan.

MSI's application Serial No. 85622222 is entitled to proceed to registration of the mark  for "Bed frames; Bed headboards; Bed pillows; Beds; Beds, mattresses, pillows and bolsters; Bunk beds" as geographically restricted to the state of Michigan.

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