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

Proceeding	86382828
Applicant	Abbyson Living Corporation
Applied for Mark	BELMONT
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Abbyson Living Corporation  
Mark: BELMONT  
Serial No.: 86/382,828  
Filed: September 2, 2014  
Examining Attorney: Snapp, Tina Louise  
Law Office: 116  
Attorney Docket No.: 1027-47-005

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**APPLICANT'S REPLY BRIEF**

Applicant submits the Reply Brief in response to the Examining Attorney's Appeal Brief dated September 1, 2016.

**I. THE EXAMINING ATTORNEY ERRED IN DETERMINING THAT APPLICANT'S GOODS AND THE '425 AND '490 REGISTRATIONS' GOODS ARE CLOSELY RELATED.**

There is no likelihood of confusion as to the source or sponsorship of the goods at issue, as Applicant's goods and the '425 and '490 Registrations' goods are completely different. Indeed, in contrast to the Examining Attorney's claim, Applicant's luxury entertainment consoles, cabinets, drawers, and storage units are not related to mattresses and box springs. These goods are used in the living room and the bedroom, respectively, which are completely separate rooms of the home. Merely because two different items are used in the home does not mean that they originate from the same source, as consumers are well aware that a wide variety of items are used in the home environment.

Furthermore, entertainment consoles, cabinets, drawers, and storage units are designed to hold and support other items, such as televisions or other entertainment products. In contrast, mattresses and box springs are designed to actually hold and support people, e.g. the consumers themselves. As such, mattresses and box springs are primarily marketed based on comfort, while appearance is often a non-factor. Discordantly, appearance is a major factor when marketing high-end living room furniture, such as entertainment consoles, cabinets, drawers, and storage units, as it is displayed in an extremely public room of the home.

Additionally, the Examining Attorney repeatedly mentions that Applicant's mark and the '425 and '490 Registrations are both listed under International Class 20. Regardless, "[t]he classification of goods and services has no bearing on the question of likelihood of confusion. Rather, it is the manner in which the applicant and/or registrant have identified their goods or services that is controlling." TMEP § 1207.01(d)(v). Accordingly, it is only relevant to compare the identification of the goods, not the specific international class. Because luxury or high-end

entertainment consoles, cabinets, drawers, and storage units are sufficiently distinct from mattresses and box springs, there is no likelihood of confusion as to the source or sponsorship of Applicant's goods and the '425 and '490 Registrations' goods.

## **II. THE EXAMINING ATTORNEY IS OVERLOOKING THE OBVIOUS SOPHISTICATED NATURE OF CONSUMERS OF APPLICANT'S GOODS.**

The Examining Attorney barely addresses the sophisticated nature of consumers of Applicant's goods, alleging that if purchasers are sophisticated or knowledgeable in a particular field it does not necessarily mean that they are immune to source confusion. *See* Examining Attorney's Appeal Brief: Page 6. However, it is well established that "circumstances suggesting care in purchasing may tend to minimize the likelihood of confusion" and likelihood of confusion is reduced if "only sophisticated purchasers exercising great care would purchase the relevant goods." *See* TMEP § 1207.01(d)(vii).

Consumers of luxury or high-end entertainment consoles, cabinets, drawers, and storage units are extremely sophisticated and discriminating because the goods are displayed in one of the most public rooms of the home. Additionally, consumers pay extremely close attention during the purchasing process, as they are well aware that these products are noticed by people entering their home. Furthermore, entertainment consoles, cabinets, drawers, and storage units are designed to hold and support other attention-grabbing items, such as televisions, which draws even more focus onto these products. Consumers of Applicant's goods are aware of this increased product attention, so they are exceedingly brand-conscious.

In addition, "confusion is less likely where the goods are expensive and are purchased after careful consideration." *PC Club v. Primex Tech., Inc.*, 32 Fed. Appx 576, 579 (Fed Cir. 2002). Applicant's goods are expensive, luxury living room furniture, so consumers will

extensively research these products and exercise great care during the purchasing process. Therefore, consumers of Applicant's goods are extremely sophisticated in nature.

**III. THE EXAMINING ATTORNEY ERRED IN DETERMINING THAT APPLICANT'S GOODS AND THE '425 AND '490 REGISTRATIONS' GOODS TRAVEL THROUGH THE SAME CHANNELS OF TRADE.**

The Examining Attorney also states that Applicant's goods and the '425 and '490 Registrations' goods are marketed in the same channels of trade. However, luxury living room furniture is marketed to high-end consumers that are concerned with the appearance of the product. Indeed, Applicant's target consumer is extremely brand-conscious and the goods are sold and marketed in environments conducive to displaying the quality and craftsmanship of the product. Further, entertainment consoles are frequently bought in conjunction with other expensive products, such as televisions, so Applicant's goods are sold and marketed to a very specific type of purchaser overly concerned with product appearance. In contrast, mattresses and box springs are marketed to consumers concerned primarily with comfort, while appearance is essentially a non-factor.

Finally, mattresses and box springs are frequently sold and marketed in stores that focus only on mattresses and box springs and sell little to no additional products. Likewise, stores selling luxury living room furniture do not sell mattresses and box springs. As the stores containing Applicant's goods and the '425 and '490 Registrations' goods are not selling or marketing similar products, the trade channels of these goods do not overlap or cross-over into one another. Consumers would readily identify that these two types of goods are sold and marketed in separate and distinct markets, so consumers would not believe that the sources of the goods are related.

The Examining Attorney has erred in determining that Applicant's goods and the '425 and '490 Registrations' goods travel through the same channels of trade, so there is no likelihood of confusion between Applicant's mark and the '425 and '490 Registrations.

For at least the aforementioned reasons, it is respectfully requested that the Examining Attorney's refusal be withdrawn and the appeal be determined in favor of the Applicant.

Respectfully submitted,

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