

ESTTA Tracking number: **ESTTA220006**

Filing date: **06/24/2008**

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

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Dan-Foam ApS		
Entity	Corporation	Citizenship	Denmark
Address	Holmelund 43 Aarup, DK-5560 DENMARK		

Name	Tempur World, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	1713 Jaggie Fox Way Lexington, KY 40511 UNITED STATES		

Name	Tempur-Pedic International Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1713 Jaggie Fox Way Lexington, KY 40511 UNITED STATES		

Correspondence information	Tracy cooke Tempur-Pedic International Inc. 1713 Jaggie Fox Way Lexington, KY 40511 UNITED STATES legal@tempurpedic.com		
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Applicant Information

Application No	77334213	Publication date	06/03/2008
Opposition Filing Date	06/24/2008	Opposition Period Ends	07/03/2008
Applicant	Tao Trading Corp 1420 W Howard St., Suite 201 Chicago, IL 60626 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Massage oils
Class 010. All goods and services in the class are opposed, namely: Massage chairs; Massage tables

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2495299	Application Date	11/13/1998
Registration Date	10/09/2001	Foreign Priority Date	NONE
Word Mark	TEMPUR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 mattresses, cushions and pillows made of elastic viscous foam		

U.S. Application No.	77180017	Application Date	05/14/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TEMPUR-PEDIC		
Design Mark			
Description of Mark	The mark consists of a female figure on a pillow reclining on top of a cross and the words "TEMPUR-PEDIC".		
Goods/Services	Class 010. First use: 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: Seating and couching mats in the nature of a pillow or seat liner, pillows, cushions, mattresses, top mattresses, bolsters and chair pads		

Attachments	75588182#TMSN.gif (1 page)(bytes) 77180017#TMSN.jpeg (1 page)(bytes) Notice of Opposition - BODYCHOICE - FINAL.pdf (6 pages)(35456 bytes)
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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 Overnight Courier on this date.

Signature	/Tracy Cooke/
Name	Tracy cooke
Date	06/24/2008

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

Application Serial No.: 77/334213
Filed: November 20, 2007
Published for opposition: June 3, 2008
Mark: BODYCHOICE & Design

TEMPUR WORLD LLC,
TEMPUR-PEDIC INTERNATIONAL INC., and
DAN FOAM APS

Opposers,

Opposition No. _____

v.

TAO TRADING CORP

Applicant.

NOTICE OF OPPOSITION


Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

In the matter of the application for registration of the trademark BODYCHOICE & Design for “Massage Oils” in International Class 3 and “Massage chairs; Massage tables” in International Class 10, Application Serial No. 77334213, filed November 20, 2007, by Tao Trading Corp, an Illinois Corporation located at 1420 W Howard St., Suite 201 Chicago, Illinois 60626 (hereinafter “Applicant”) and published for opposition in the Trademark Official Gazette of June 3, 2008, Tempur World LLC, a Delaware limited liability company of Lexington, Kentucky; Tempur-Pedic International Inc. a Delaware corporation of Lexington, Kentucky; and Dan-Foam ApS, a Danish Anpartsselskab or limited liability company (hereinafter collectively

referred to as “Opposers”), believe they will be damaged by registration of said mark and hereby oppose same. The grounds for this opposition are as follows:

1. Prior to November 20, 2007, the filing date of the application for Applicant’s alleged mark, Opposers adopted and used in commerce the distinctive marks for TEMPUR and TEMPUR-PEDIC consisting of a Reclining Woman depicted above the word portion of the mark, including but not limited to Reg. No. 2,495,299 and App. No. 77/180017 (the “Reclining Woman marks”). These Reclining Woman marks are used in connection with the manufacturing, marketing, sale and distribution of mattresses, cushions and pillows in the furniture and medical industries.

2. Opposers own the following mark and United States trademark registration therefor, among others:

<u>Mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>
	2,495,299	October 9, 2001

3. The above registration is valid and subsisting and constitutes *prima facie* evidence of the validity of the registered mark and of the registration thereof; Opposers’ ownership of the mark shown in said registration; and Opposers’ exclusive right to control the use of the mark on and in connection with the goods recited in the registration certificate and related goods. Said registration also constitutes notice to Applicant of Opposers’ claim of ownership of the mark shown therein.

4. Opposers filed the application for the following mark with the United States trademark office:

<u>Mark</u>	<u>App. No.</u>	<u>Application Date</u>
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77/180017

May 14, 2007

5. The above application constitutes notice to Applicant of Opposers' claim of ownership of the mark shown therein. Opposers have been using the mark depicted in Application No. 77/180017 (the '017 Application) since at least May 14, 2007. Opposers also use a distinct color scheme in connection with the '017 Application, namely, the figure of the reclining woman is displayed in a dark blue color (Pantone No. 653C) as is the "TEMPUR" element, and the "PEDIC" element along with the picture of the cross are displayed in an olive green color (Pantone No. 577C) (collectively the "Tempur-Pedic Colors"). Opposers have been using this distinctive color scheme since at least May 14, 2007.

6. For nearly ten (10) years, Opposers have been marketing and selling mattresses, cushions, pillows, pads and related furniture items in the United States under the Reclining Woman marks and have sold such goods under the Reclining Woman marks for many years. Opposers have also been marketing and selling mattresses, cushions, pillows, pads, and related furniture items for medical use in the United States under the Reclining Woman marks and have sold such goods under the Reclining Woman marks for many years.

7. Opposers have expended tremendous time, effort, and money in advertising and promoting their products made with proprietary TEMPUR material under the TEMPUR and TEMPUR-PEDIC name and Reclining Woman marks, and have also spent time, effort and money in advertising and promoting their products under the Tempur-Pedic Colors.

6. Opposers have websites where they advertise their products and services and also display information about the company and its products and services. These websites are

accessible through the domain names www.tempur.com and www.tempurpedic.com, where the Reclining Woman marks and the Tempur-Pedic Colors are used prominently on these sites.

9. Opposers market their goods under the TEMPUR and TEMPUR-PEDIC name, Reclining Woman marks, and the Tempur-Pedic Colors through extensive advertising in trade publications and magazines of general circulation, as well as through authorized retailers, sales associates and employees throughout the United States and in over 70 countries internationally. The products marketed under the TEMPUR and TEMPUR-PEDIC name and Reclining Woman marks have been featured on The Montel Williams Show in a segment entitled “Rewards for Living Well,” on The Martha Stewart Show in a segment entitled “Healthy Living Sleep,” and on NBC’s The Today Show in a segment entitled “Pain in America, Ease Your Aching Back.” This media coverage has heightened consumer awareness about Opposers’ products and marks and has brought attention to Opposers such that customers rely on them to provide products of extremely high quality.

10. Opposers have sold products made of proprietary TEMPUR material throughout the United States under the Reclining Woman marks and TEMPUR-PEDIC name. Opposers are well and favorably known throughout the United States and have built up valuable good will and reputation in the TEMPUR-PEDIC, TEMPUR, and Reclining Woman marks and well as in the Tempur-Pedic Colors.

11. As a result of the widespread and continuous use and promotion of the Reclining Woman marks, the marks have achieved tremendous fame and distinctiveness and are widely known and recognized as source identifiers for a variety of goods, made with TEMPUR material, originating with Opposers and serving to distinguish those goods from those of others. Said

marks represent and embody Opposers' enviable reputation and very valuable goodwill among members of the trade and the purchasing public.

12. Opposers' distinctive Reclining Woman marks are famous and identify Opposers as the source of Opposers' goods. Opposers' Reclining Woman marks achieved fame long prior to Applicant's filing date.

13. Applicant's application for BODYCHOICE was filed on November 20, 2007. The goods listed in the application are "Massage Oils" in International Class 3 and "Massage chairs; Massage tables" in International Class 10 and claims the colors blue and green, with the word "BODY" in blue and the word "CHOICE" in green.

14. The alleged mark BODYCHOICE sought to be registered by Applicant is confusingly similar in appearance to Opposers' Reclining Woman marks, and the colors used in Applicant's mark are identical to the Tempur-Pedic Colors. .

16. Use and/or registration of Applicant's mark on its goods will be likely to cause confusion, to cause mistake, and to deceive as to the source of Applicant's goods and to induce purchasers to believe that the goods of Applicant emanate from Opposers, are endorsed or licensed by Opposers, or are in some other way connected with Opposers.

17. Applicant's registration of the mark BODYCHOICE, if granted, will lessen the capacity of Opposer to identify and distinguish Opposers' goods and therefore will dilute Opposers' famous Reclining Woman marks, and the presence of Applicant's application on the register actually dilutes Opposers' rights in Opposers' marks. Additionally, said registration, if granted, will be considered at least *prima facie* evidence of Applicant's exclusive right to use the BODYCHOICE mark, a further source of damage to Opposers.

18. Due to Opposers' priority as to their use of Opposers' marks and the likelihood of confusion alleged above, Applicant is not entitled to the registration sought, and said registration, if allowed, would be a source of injury and damage to Opposers.

19. Applicant does not have permission from Opposers to use or register its mark.

WHEREFORE, Opposers request that the opposition be sustained and that the registration sought by Applicant be refused.

Dated this 24th day of June, 2008

Respectfully submitted,

By: /s/ Anita Nesser
Anita Nesser
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Lexington, KY 40511
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