

ESTTA Tracking number: **ESTTA482672**

Filing date: **07/11/2012**

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 party opposes registration of the indicated application.

### Opposer Information

Name	SHEEX, Inc.
Granted to Date of previous extension	07/11/2012
Address	109 Oak Park Dr. Irmo, SC 29063 UNITED STATES

Attorney information	Michael D. Hobbs, Jr. Troutman Sanders LLP 600 Peachtree St., Suite 5200 Atlanta, GA 30308 UNITED STATES trademarks@troutmansanders.com Phone:404-885-3330
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### Applicant Information

Application No	85493012	Publication date	03/13/2012
Opposition Filing Date	07/11/2012	Opposition Period Ends	07/11/2012
Applicant	Factory Direct, Inc. 219 S. Portland Oklahoma City, OK 73108 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. First Use: 2009/08/00 First Use In Commerce: 2009/08/00  
All goods and services in the class are opposed, namely: Retail store services featuring mattresses, spring mattresses, box springs, and mattress foundations

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3765386	Application Date	06/16/2009
Registration Date	03/23/2010	Foreign Priority Date	NONE
Word Mark	SLEEP BETTER. PLAY BETTER.		
Design Mark	SLEEP BETTER. PLAY BETTER.		

Description of Mark	NONE
Goods/Services	Class 024. First use: First Use: 2008/10/07 First Use In Commerce: 2009/04/01 Bed linen; Bed sheets; Pillow cases; Pillow covers

Attachments	77760844#TMSN.jpeg ( 1 page )( bytes ) SLEEP BETTER, LIVE BETTER - Notice of Opposition.pdf ( 11 pages )(194973 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 First Class Mail on this date.

Signature	/mdh/
Name	Michael D. Hobbs, Jr.
Date	07/11/2012

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

SHEEX, INC.	)	
	)	
Opposer,	)	Application Serial No. 85/493,012
	)	
v.	)	Mark: SLEEP BETTER, LIVE BETTER
	)	
FACTORY DIRECT, INC.	)	Opposition No. _____
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

The Opposer, Sheex, Inc. (“Opposer”), for its Notice of Opposition against Application Serial No. 85/493,012 for the mark SLEEP BETTER, LIVE BETTER believes that it will be damaged by and thus opposes registration of the mark that is the subject matter of Application Serial No.85/493,012. As grounds for opposition, the Opposer alleges as follows:

1. The Opposer is a Delaware corporation with a principal place of business located at 109 Oak Park Drive, Irmo, South Carolina 29063.
2. The Applicant is a, Oklahoma corporation with a correspondence address of 219 S. Portland, Oklahoma City, Oklahoma 73108.
3. Application No. 85/493,012 was published in the U.S. Patent and Trademark Office (“PTO”) *Official Gazette* on March 13, 2012.
4. The Opposer has timely extended time to oppose the application through and including July 11, 2012. This Notice of Opposition is timely filed.
5. The Opposer provides active lifestyle consumers with a superior bedding alternative to traditional cotton bed sheets. Its next-generation bedding products and sleepwear

are designed to offer the finest in sleep performance and comfort. Its products offer a unique fusion of maximum comfort found only in the finest bedding and sleepwear and the performance benefits consumers have come to appreciate from premium athletic performance fabrics.

6. The Opposer is the owner of U.S. Registration No. 3,765,386 for the mark SLEEP BETTER. PLAY BETTER for the following bedding products: “bed linen; bed sheets; pillow cases; pillow covers” (the “SHEEX Registration”). Opposer first used the mark SLEEP BETTER. PLAY BETTER for its bedding products since at least as early as October 7, 2008 and in interstate commerce since at least as early as April 1, 2009. The Opposer filed its application to register the mark SLEEP BETTER. PLAY BETTER on June 16, 2009. A true and correct copy of a printout from the U.S. Patent and Trademark Office TARR database for Registration No. 3,765,386 is attached to the Notice of Opposition as **Exhibit A**.

7. The Opposer is currently using and has continuously used the SHEEX Mark to uniquely identify its bedding products in the United States.

8. The Applicant is the owner of Application Serial No. 85/493,012 for the mark SLEEP BETTER, LIVE BETTER for “Retail store services featuring mattresses, spring mattresses, box springs and mattress foundations” filed with the PTO on December 12, 2011 (the “Applicant’s Mark”).

9. The Applicant filed the application for the Applicant’s Mark on a use basis pursuant to Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a) on December 12, 2011 claiming a date of first use anywhere of August 2009 and of first use in interstate commerce of August 2009.

10. The Opposer’s rights in the SHEEX Registration are superior to any rights the Applicant may own in the Applicant’s Mark.

11. The Applicant's Mark is virtually the same in sight, sound and meaning as the SHEEX Registration.

12. The SHEEX Registration identifies bedding products and the Applicant's Mark identifies services related to bedding products.

13. The use and registration of the Applicant's Mark is likely to cause confusion in the minds of the purchasing public and to cause the purchasing public to assume that the services identified by such mark are offered by Opposer or that such services originate with or are in some way connected to Opposer, which they are not, in violation of 15 U.S.C. §§ 1052(d) and 1125(a).

14. Use and registration of the Applicant's Mark will be injurious to the Opposer in violation of Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a).

15. The Opposer has paid the requisite fees to the United States Patent and Trademark Office contemporaneous with the filing of this opposition action. If such fees are deficient or any other fees are required, the USPTO is authorized to charge counsel's deposit account no. 20-1507 for the required amount.

WHEREFORE, the Opposer believes that it will be damaged by the registration of the Applicant's Mark and prays that said Application Serial No.85/493,012 be refused, that no registration be issued thereon, and that this Opposition be sustained in favor of Opposer.

This 11th day of July, 2012.

Respectfully submitted,

TROUTMAN SANDERS LLP

A handwritten signature in black ink, appearing to read "Michael D. Hobbs, Jr.", written over a horizontal line.

Michael D. Hobbs, Jr.

Georgia Bar No. 358160

F. Richard Rimer

Georgia Bar No. 140819

Attorneys for Opposer

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(404) 885-3000

[trademarks@troutmansanders.com](mailto:trademarks@troutmansanders.com)

## **EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2012-07-11 10:16:30 ET**

**Serial Number: 77760844 Assignment Information Trademark Document Retrieval**

**Registration Number: 3765386**

**Mark**

**SLEEP BETTER. PLAY BETTER.**

**(words only): SLEEP BETTER. PLAY BETTER.**

**Standard Character claim: Yes**

**Current Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** 2010-03-23

**Filing Date:** 2009-06-16

**Filed as TEAS Plus Application: Yes**

**Currently TEAS Plus Application: Yes**

**Transformed into a National Application: No**

**Registration Date:** 2010-03-23

**Register:** Principal



**Law Office Assigned:** LAW OFFICE 111

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 450 -Petitions Office

**Date In Location:** 2010-03-10

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. SHEEX, INC.

**Address:**

SHEEX, INC.  
109 Oak Park Dr.  
Irmo, SC 29063  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

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**GOODS AND/OR SERVICES**

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**International Class:** 024

**Class Status:** Active

Bed linen; Bed sheets; Pillow cases; Pillow covers

**Basis:** 1(a)

**First Use Date:** 2008-10-07

**First Use in Commerce Date:** 2009-04-01

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2012-04-26 - Applicant/Correspondence Changes (Non-Responsive)  
Entered

2012-04-26 - TEAS Change Of Owner Address Received

2010-12-03 - Automatic Update Of Assignment Of Ownership

2010-09-01 - Automatic Update Of Assignment Of Ownership

2010-03-23 - Registered - Principal Register

2010-03-10 - Review Of Correspondence Complete

2010-03-04 - Assigned To Petition Staff

2010-02-23 - Review Of Correspondence Complete

2010-02-18 - Law Office Registration Review Completed

2010-02-18 - Allowed for Registration - Principal Register (SOU accepted)

2010-02-18 - Assigned To Examiner

2010-02-17 - Data Modification Completed

2010-02-16 - Assigned To Petition Staff

2010-02-07 - Statement Of Use Processing Complete

2010-02-04 - Use Amendment Filed

2010-02-04 - TEAS Statement of Use Received

2010-02-04 - TEAS Post Publication Amendment Received

2010-01-07 - Amendment After NOA Not Entered

2010-01-28 - Case Assigned To Intent To Use Paralegal

2010-01-07 - TEAS Post Publication Amendment Received

2009-12-15 - NOA Mailed - SOU Required From Applicant

2009-09-22 - Published for opposition

2009-09-02 - Notice of publication

2009-08-20 - Law Office Publication Review Completed

2009-08-20 - Assigned To LIE

2009-08-17 - Approved For Pub - Principal Register

2009-08-17 - Assigned To Examiner

2009-06-19 - New Application Office Supplied Data Entered In Tram

2009-06-19 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Michael D. Hobbs, Jr. Esq.

**Correspondent**

MICHAEL D. HOBBS, JR. ESQ.  
TROUTMAN SANDERS LLP  
600 PEACHTREE ST NE STE 5200  
ATLANTA, GA 30308-2216  
Phone Number: 404-885-3330  
Fax Number: 404-962-6588

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Opposer,	)	Application Serial No. 85/493,012
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FACTORY DIRECT, INC.	)	Opposition No. _____
	)	
Applicant.	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice of Opposition was sent by first-class mail, postage prepaid to the Applicant, as follows:

Mary M. Lee, Esq.  
Mary M. Lee, P.C1300 E 9<sup>th</sup> St., Suite 4  
Edmond, Oklahoma 73034-5760

This 11th day of July, 2012.

  
\_\_\_\_\_  
F. Richard Rimer