

ESTTA Tracking number: **ESTTA567211**

Filing date: **10/25/2013**

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	King Koil Licensing Company, Inc.
Granted to Date of previous extension	10/26/2013
Address	7501 South Quincy Street, Suite 130 Willowbrook, IL 60527 UNITED STATES

Attorney information	Michael A. Carrillo Barnes & Thornburg LLP PO Box 2786 Chicago, IL 60690-2786 UNITED STATES mcarrillo@btlaw.com, enolan@btlaw.com
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Applicant Information

Application No	85739784	Publication date	08/27/2013
Opposition Filing Date	10/25/2013	Opposition Period Ends	10/26/2013
Applicant	Select Comfort Corporation 9800 - 59th Avenue North Plymouth, MN 55442 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2012/10/28 First Use In Commerce: 2012/10/28 All goods and services in the class are opposed, namely: Retail store services, on-line retail store services and telephone shop at home services, all featuring beds, mattresses, pillows, mattress pads, bed frames, adjustable bases, modular bases, headboards and accessories, namely, sheets, blankets and comforters

Grounds for Opposition

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

U.S. Registration No.	3006161	Application Date	12/14/2001
Registration Date	10/11/2005	Foreign Priority Date	NONE
Word Mark	COMFORT SOLUTIONS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 2003/09/00 First Use In Commerce: 2004/01/01 Furniture, including beds, mattresses and box springs; pillows

U.S. Registration No.	3986571	Application Date	01/12/2010
Registration Date	06/28/2011	Foreign Priority Date	NONE
Word Mark	INDIVIDUAL COMFORT SOLUTIONS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2009/11/30 First Use In Commerce: 2009/11/30 Beds; Box springs; Mattresses		

Attachments	Binder1.pdf(281914 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	/Michael A. Carrillo/
Name	Michael A. Carrillo
Date	10/25/2013

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

In the Matter of Application)	
Serial No.: 85/739,784 for the)	
mark COMFORT. INDIVIDUALIZED.)	
)	
Published in the Official Gazette)	
On August 27, 2013)	
)	
KING KOIL LICENSING COMPANY, INC.)	
)	
Opposer,)	Opposition No. _____
v.)	
)	
SELECT COMFORT CORPORATION)	
)	
Applicant.)	

NOTICE OF OPPOSITION

King Koil Licensing Company, Inc. (“Opposer”), a corporation organized under the laws of Delaware having a place of business at 7501 S. Quincy Street, Suite 130, Willowbrook, Illinois 60527, believes that it will be damaged by the registration of the COMFORT. INDIVIDUALIZED. Mark in International Class 35, as shown in Application Serial No. 85/739,784 filed by Applicant, Select Comfort Corporation (“Applicant”) and hereby opposes the same and requests that registration to Applicant be refused.

As grounds for its opposition, Opposer alleges that:

1. For more than 100 years, Opposer has provided high quality sleep products to consumers. Since its inception, Opposer has expanded its product line and distribution to reach consumers throughout the United States and abroad, and now provides approximately sixty countries with affordably priced, quality sleep products. Opposer has offered a line of sleep products under its INDIVIDUAL COMFORT SOLUTIONS

Mark since at least as early as November 30, 2009 and under its COMFORT SOLUTIONS Mark since at least as early as January 1, 2004 (collectively “Opposer’s Marks”).

2. Applicant seeks to register the mark COMFORT. INDIVIDUALIZED. for use in International Class 35 for retail store services, on-line retail store services and telephone shop at home services, all featuring beds, mattresses, pillows, mattress pads, bed frames, adjustable bases, modular bases, headboards and accessories, namely, sheets, blankets and comforters (hereinafter the “COMFORT. INDIVIDUALIZED. Mark”) under 15 U.S.C. § 1051(1)(a), with a first use in commerce date of October 28, 2012.

3. Opposer is the owner of U.S. Registration No. 3,986,571 for the INDIVIDUAL COMFORT SOLUTIONS Mark and U.S. Registration No. 3,006,161 for the COMFORT SOLUTIONS Mark, which were registered prior to Applicant’s September 27, 2012 filing date for the COMFORT. INDIVIDUALIZED. Mark, and cover goods that are either identical or closely related to the subject goods. Pursuant to 37 CFR § 2.122(d), printouts of current information from the electronic database records of the USPTO for these registrations are attached to this Notice of Opposition as Exhibit A. The printouts show the current status and title for each of the registrations.

4. Applicant’s advertising and intended use of the COMFORT. INDIVIDUALIZED. Mark will inevitably reach the same consumers that Opposer targets with the use of its Marks, INDIVIDUAL COMFORT SOLUTIONS and COMFORT SOLUTIONS.

5. Consumers, upon seeing the COMFORT. INDIVIDUALIZED. Mark used in connection with Applicant’s products are likely to mistakenly believe that such a term, and the goods provided in connection with it, originated or are connected with, sponsored

by, associated with, or licensed or approved by Opposer. Thus, the registration and use by Applicant of the COMFORT. INDIVIDUALIZED. Mark in connection with the recited services is likely to cause confusion, mistake, or deception in violation of 15 U.S.C. § 1052(d).

6. Opposer's filing dates and registration dates for the INDIVIDUAL COMFORT SOLUTIONS and COMFORT SOLUTIONS Marks are significantly earlier than the filing date and the alleged first date of use in commerce for the COMFORT. INDIVIDUALIZED. Mark.

7. In light of Opposer's advertising, promotion and use of its INDIVIDUAL COMFORT SOLUTIONS and COMFORT SOLUTIONS Marks, Applicant's selection of a term confusingly similar to Opposer's Marks suggests that Applicant intends to trade off the goodwill and recognition associated with Opposer's Marks.

8. If a registration is issued to Applicant for the COMFORT. INDIVIDUALIZED. Mark, the confusion with Opposer's Marks would result in damage and injury to Opposer and to the public.

WHEREFORE, Opposer respectfully requests that its Opposition be sustained and Application Serial No. 85/739,784 be refused registration.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted
King Koil Licensing Company, Inc.

Date: October 25, 2013

By: /Michael A. Carrillo /
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EXHIBIT A



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Record 1 out of 1[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)**INDIVIDUAL COMFORT SOLUTIONS**

Word Mark	INDIVIDUAL COMFORT SOLUTIONS
Goods and Services	IC 020. US 002 013 022 025 032 050. G & S: Beds; Box springs; Mattresses. FIRST USE: 20091130. FIRST USE IN COMMERCE: 20091130
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77910021
Filing Date	January 12, 2010
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	November 30, 2010
Registration Number	3986571
Registration Date	June 28, 2011
Owner	(REGISTRANT) King Koil Licensing Company, Inc. CORPORATION DELAWARE 7501 S. Quincy Street, Suite 130 Willowbrook ILLINOIS 605275574
Attorney of Record	Michael A. Carrillo
Prior Registrations	3006161;3490544
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INDIVIDUAL COMFORT" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Word Mark COMFORT SOLUTIONS

Goods and Services IC 020. US 002 013 022 025 032 050. G & S: Furniture, including beds, mattresses and box springs; pillows. FIRST USE: 20030900. FIRST USE IN COMMERCE: 20040101

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76349440

Filing Date December 14, 2001

Current Basis 1A

Original Filing Basis 1B

Published for Opposition August 20, 2002

Registration Number **3006161**

Registration Date October 11, 2005

Owner (REGISTRANT) King Koil Licensing Company, Inc. CORPORATION DELAWARE 7501 S. Quincy Street, Suite 130 Willowbrook ILLINOIS 605275574

Attorney of Record MICHAEL A. CARRILLO

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMFORT" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

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