

ESTTA Tracking number: **ESTTA799948**

Filing date: **02/07/2017**

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	Slumberland, Inc.
Granted to Date of previous extension	02/08/2017
Address	3060 Centerville Road Little Canada, MN 55117 UNITED STATES
Attorney information	Leah Leyendecker Gray Plant Mooty 500 IDS Center, 80 South 8th Street Minneapolis, MN 55402 UNITED STATES trademark@gpmlaw.com, leah.leyendecker@gpmlaw.com, ashley.ewald@gpmlaw.com Phone:612-632-3259

Applicant Information

Application No	87019761	Publication date	10/11/2016
Opposition Filing Date	02/07/2017	Opposition Period Ends	02/08/2017
Applicant	Mattress Firm, Inc. 5815 Gulf Freeway Houston, TX 77023 UNITED STATES		

Goods/Services Affected by Opposition


Class 043. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Charitable services, namely, providing mattresses to those in need

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86865812	Application Date	01/05/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DREAMTEAM		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2010/02/00 First Use In Commerce: 2010/02/00 On-line retail store services featuring mattresses and furniture; Retail store services featuring mattresses and furniture

Attachments	86865812#TMSN.png(bytes) DREAM TEAM DELIVERY - Notice of Opposition.pdf(12847 bytes)
Signature	/Leah Leyendecker/
Name	Leah Leyendecker
Date	02/07/2017

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

Slumberland, Inc.,)	Opposition No. _____
)	Application Ser. No. 87/019761
Opposer,)	
)	
vs.)	Mark: DREAM TEAM DELIVERY
)	
Mattress Firm, Inc.,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

In the matter of pending application Serial No. 87/019761, filed on April 29, 2016, by Mattress Firm, Inc., for the mark DREAM TEAM DELIVERY in International Class 43, published in the *Official Gazette* of October 11, 2016, Opposer Slumberland, Inc. believes that it will be damaged, within the meaning of Section 13 of the Lanham Trademark Act, 15 U.S.C. §1063, by the registration of the mark and hereby gives notice of its intention to oppose the above-referenced application.

The grounds for opposition are as follows:

1. Opposer Slumberland, Inc. is a corporation duly organized and existing under the laws of the State of Minnesota, with its principal place of business at 3060 Centerville Rd, Little Canada, Minnesota 55117.
2. Opposer is a furniture retailer that specializes in mattresses, bedroom furniture, recliners, and other home furniture. Slumberland operates 127 stores in the following 12 states

throughout the Midwest: Iowa, Illinois, Kansas, Michigan, Minnesota, Missouri, Montana, North Dakota, Nebraska, South Dakota, Wisconsin, and Wyoming.

3. Since at least as early as February 2010, Opposer has used the mark DREAMTEAM in television, print, and in-store advertising in connection with its online and retail store sales of mattresses and furniture and its sales representative teams with specialized knowledge of such products.

4. Opposer has exclusive rights at common law to use the mark DREAMTEAM in connection with its services dating back to at least February 2010 in the geographic areas in which Opposer has used the DREAMTEAM mark.

5. Petitioner has spent substantial amounts of time and money to advertise and promote its DREAMTEAM mark in all manner of media, including print advertisements, television commercials, as well as on Petitioner's website and other internet sites

6. As a result of Opposer's widespread use of the mark DREAMTEAM, as well as its efforts and expenditures related to its use of the mark DREAMTEAM, Opposer's mark has become associated in the minds of the consuming public with its online and retail stores sales of mattresses and furniture and with Opposer's sales representative teams with specialized knowledge of such products.

7. On January 5, 2016, Opposer filed Application Serial No. 86/865812 with the United States Patent and Trademark Office ("USPTO") to register the mark DREAMTEAM in connection with "On-line retail store services featuring mattresses and furniture; Retail store services featuring mattresses and furniture." Opposer's application is currently pending with the USPTO.

8. On April 29, 2016, Applicant filed Application No. 87/019761 with the USPTO to register the mark DREAM TEAM DELIVERY in connection with “Charitable services, namely, providing mattresses to those in need.” The application is based on Section 1(b) of the Trademark Act, and alleges an intent to use the mark with the stated services.

9. Applicant’s mark DREAM TEAM DELIVERY is highly similar to Opposer’s mark DREAMTEAM.

10. The services recited in Applicant’s application are closely related to the services promoted and offered by Opposer under Opposer’s mark DREAMTEAM.

11. Applicant’s intended use of the DREAM TEAM DELIVERY mark, and its filing of Application Serial No. 87/019761, are without Opposer’s consent.

12. Registration of Applicant’s mark is likely to cause confusion or mistake among members of the consuming public as to the source of Applicant’s services within the meaning of Section 2(d) of the Lanham Trademark Act, 15 U.S.C. §1052(d).

13. Opposer is separately filing a Petition to Cancel Applicant’s Registration No. 4,973,816 for the mark DREAM TEAM DELIVERY for use with “Retail store services featuring beds, mattresses, mattress frames, mattress foundations, box springs, mattress covers, mattress pads, mattress toppers, pillows, pillow covers and sleep-related products” in International Class 35 and “Delivery services, namely, delivery of sleep products, beds and mattresses by truck” in International Class 39. Opposer is filing a Motion to Consolidate this Opposition with its Petition for Cancellation.

14. By reason of all of the foregoing, Opposer Slumberland, Inc. will be damaged by the registration of Applicant’s purported mark.

WHEREFORE, Opposer Slumberland, Inc. by its undersigned attorney, respectfully requests that its Notice of Opposition be sustained and that registration of DREAM TEAM DELIVERY, Application Serial No. 87/019761, be refused.

Dated: February 7, 2017

Respectfully submitted,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By /s/ Ashley M. Bennett Ewald
Ashley M. Bennett Ewald
Leah D. Leyendecker
500 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 632-3000
Email: trademark@gpmlaw.com
ashley.ewald@gpmlaw.com

Attorneys for Opposer Slumberland, Inc.