

ESTTA Tracking number: **ESTTA931307**

Filing date: **10/26/2018**

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	AEROSLEEP, naamloze vennootschap
Granted to Date of previous extension	10/27/2018
Address	Waterkeringstraat 21 Erembodegem, B-9320 BELGIUM

Attorney information	Clifford D. Hyra Symbus Law Group, LLC 11710 PLAZA AMERICA DR STE 2000 RESTON, VA 20190 UNITED STATES docketing@symbus.com, chyra@symbus.com 8669133499
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Applicant Information

Application No	87857523	Publication date	08/28/2018
Opposition Filing Date	10/26/2018	Opposition Period Ends	10/27/2018
Applicant	Eurosleeep USA, LLC PO Box 159 Sanderson, TX 79848 UNITED STATES		

Goods/Services Affected by Opposition

Class 020. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bed frames; Bedroom furniture; Mattresses
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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.	5383021	Application Date	12/14/2016
Registration Date	01/23/2018	Foreign Priority Date	06/14/2016
Word Mark	AEROSLEEP		

Design Mark	AeroSleep
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 0 First Use In Commerce: 0 Mattresses, seats, seating furniture, cushions, pillows, baby changing mats, head boards for beds, bumper pads for beds, seating supports and back rests for seats, sleeping bags, sleeping mats, children's beds

Attachments	79209658#TMSN.png(bytes) Not. Opp. 201810 AEROSLEEP-EUROSLEEP BAP.pdf(99828 bytes)
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Signature	/Cliff Hyra/
Name	Clifford D. Hyra
Date	10/26/2018

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Aerosleep, naamloze vennootschap)	
)	
Opposer,)	Opposition No.: _____
)	Ser. Nos.: 87857523
v.)	
)	
Eurosleep USA, LLC)	
)	
Applicant)	
)	

NOTICE OF OPPOSITION

Aerosleep, naamloze vennootschap, a company organized under the laws of Belgium, having its principal place of business at Waterkeringstraat 21, B-9320 Erembodegem, BELGIUM (“Aerosleep”), hereby opposes registration of the following application owned, according to the records of the U.S. Patent and Trademark Office, by Eurosleep USA, LLC (“Applicant”) and referred to herein as “Applicant's Mark”:

App. Ser. No. 87/857,523– EUROSLEEP for “Bed frames; Bedroom furniture; Mattresses,” in International class 20, filed March 30, 2018 and published for opposition August 28, 2018.

Aerosleep would be damaged by registration of Applicant's Mark and hereby opposes the same on the following grounds:

1. Applicant, Eurosleep USA, LLC, is a Texas limited liability company having a mailing address of PO Box 159, Sanderson, TEXAS 79848.

2. On March 30, 2018, Applicant filed an Application, namely Serial No. 87/857,523 for the mark EUROSLEEP, as a trademark for “Bed frames; Bedroom furniture; Mattresses,” in International class 20, which was published in the Official Gazette on August 28, 2018.

3. Aerosleep is the owner of the following registration on the Principal Register of the U.S. Patent and Trademark Office (the “AEROSLEEP Mark”):

- Reg. No. 5,383,021– AEROSLEEP for “Mattresses, seats, seating furniture, cushions, pillows, baby changing mats, head boards for beds, bumper pads for beds, seating supports and back rests for seats, sleeping bags, sleeping mats, children's beds,” in International Class 20 (hereinafter, referred to collectively as the “AEROSLEEP Goods”) filed December 14, 2016 under section 66A with priority dating to June 14, 2016, published for opposition November 7, 2017 and registered January 23, 2018.

4. Applicant's Mark was filed on the basis of an intent to use on March 30, 2018.

5. The priority date for Aerosleep's AEROSLEEP Mark precedes the filing date of Applicant's Mark by more than 21 months.

6. Aerosleep's trademark rights in the AEROSLEEP Mark are superior in time to Applicant's rights in Applicant's Mark.

7. Applicant's Mark so resembles the AEROSLEEP Mark in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Applicant's goods, to cause confusion and mistake and to deceive.

8. If Applicant's Mark is allowed to register, a likelihood of confusion will be created for consumers of mattresses, bedroom furniture and related products and services. The

AEROSLEEP Goods are overlapping with Applicant's listed goods. Applicant's Mark is therefore used in connection with products that overlap with Aerosleep's products marketed and sold under its AEROSLEEP Mark.

9. Applicant's targeted customer base overlaps with the customers who purchase Aerosleep's AEROSLEEP Goods.

10. As Applicant's goods description contains no restrictions or limitations as to Applicant's channels of trade, Aerosleep may assume that Applicant's Mark will be used in all accepted channels of trade. Therefore, in addition to overlapping customer bases, Applicant's intended channels of trade for its goods overlap with the channels of trade used by Aerosleep in marketing, selling, or otherwise distributing its goods under its AEROSLEEP Mark.

11. Applicant's Mark is confusingly similar to the AEROSLEEP Mark so that registration of Applicant's Mark would be inconsistent with and damaging to Aerosleep. Persons familiar with Aerosleep's AEROSLEEP Mark would likely perceive Applicant's products as associated or affiliated with or sponsored by Aerosleep. Such confusion would inevitably result in damage to Aerosleep.

12. Any defect, objection to or fault found with Applicant's goods marketed under Applicant's Mark would necessarily reflect on and seriously injure the reputation that Aerosleep has established for its products.

13. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use Applicant's Mark, all to the detriment of Aerosleep.


WHEREFORE, Aerosleep prays that Applicant's Mark be refused registration and that this Opposition be sustained.

This Notice of Opposition is being filed by the undersigned attorneys at law, duly authorized to represent Opposer in this proceeding, pursuant to Trademark Rule 2.111(b).

RESPECTFULLY SUBMITTED

Aerosleep, naamloze vennootschap

Dated: October 26, 2018

By: 
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Attorney for Opposer
Aerosleep, naamloze vennootschap