

ESTTA Tracking number: **ESTTA677430**

Filing date: **06/10/2015**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Select Comfort Corporation		
Entity	Corporation	Citizenship	Minnesota
Address	9800 59th Avenue North Minneapolis, MN 55442 UNITED STATES		

Attorney information	Barbara J. Grahn OPPENHEIMER WOLFF & DONNELLY LLP 222 South Ninth Street Suite 2000 Minneapolis, MN 55402 UNITED STATES bgrahn@oppenheimer.com, dhansen@oppenheimer.com, ipdock- et@oppenheimer.com Phone:612-607-7325		
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Registration Subject to Cancellation

Registration No	3803995	Registration date	06/15/2010
Registrant	ERGOMOTION, INC. 55 Castilian, Suite 148 Goleta, CA 93117 UNITED STATES		

Goods/Services Subject to Cancellation

Class 020. First Use: 2009/10/20 First Use In Commerce: 2009/10/20 All goods and services in the class are cancelled, namely: Beds

Grounds for Cancellation

Genericness	Trademark Act section 23
The mark is merely descriptive	Trademark Act section 2(e)(1)

Attachments	ZERO G Petition to Cancel.pdf(1133718 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	/bjg/
Name	Barbara J. Grahn

Date	06/10/2015
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 3803995
For the Mark: ZERO G
Registered: June 15, 2010

Select Comfort Corporation)
)
Petitioner) Cancellation No. _____
)
v.)
)
Ergomotion, Inc.)
)
Respondent)

PETITION TO CANCEL

Select Comfort Corporation, a Minnesota corporation located and doing business at 9800 59th Avenue North, Minneapolis, MN 55442 (“Petitioner”) believes it is damaged and will continue to be damaged by U. S. Registration No. 3803995 for the mark ZERO G, registered on June 15, 2010, by Ergomotion, Inc., believed to be a California corporation located and doing business at 55 Castilian, Suite 148, Goleta, California 93117 (“Respondent”), and hereby petitions to cancel this registration, pursuant to 15 U.S.C. § 1064. The grounds for cancellation are as follows:

1. Petitioner is in the business of designing, manufacturing and marketing adjustable air beds, adjustable foundations for air beds, and related products and accessories. Petitioner is the leading seller of premium adjustable air beds in the U. S., and advertises its products extensively throughout the United States.

2. On information and belief, Respondent sells adjustable foundations for beds and related accessories, as advertised on Respondent's website at <http://www.ergomotion.com> and <http://www.ergomotion.com/products>.

3. Respondent obtained registration of the mark ZERO G on June 15, 2010, as Registration No. 3803995, for "beds" in Class 20.

4. Respondent's goods compete with Petitioner's adjustable foundations for beds and related accessories.

5. Petitioner has for some time used the phrase "zero g" to describe a feature of some of its adjustable foundations, specifically, a pre-set position of the adjustable foundation where both the head and the feet are in a raised position. This position is commonly known as the "zero g" or "zero gravity" position. The term "zero g" means and is used interchangeably with "zero gravity."

6. The term "zero g" or "zero gravity" is commonly understood by consumers and widely used in the furniture industry, specifically with respect to beds and recliners, to refer to a bed or recliner that positions a user in the "zero g" or "zero gravity" position.

7. On February 11, 2015, Respondent sent Petitioner a cease and desist letter claiming that Petitioner's use of the phrase "zero g" infringes Respondent's asserted trademark ZERO G. A copy of this letter is attached as Exhibit A.

8. Respondent's asserted mark was merely descriptive of Respondent's goods and devoid of secondary meaning at the time of issuance of Registration No. 3803995.

9. Respondent's asserted mark is currently merely descriptive of Respondent's goods and lacks secondary meaning.

10. On information and belief, Respondent's use of "zero g" has not been substantially exclusive at any time prior to or subsequent to the filing of Respondent's

application or the issuance of Registration No. 38039905. Accordingly, Respondent's use of "zero g" has not been substantially exclusive, and Respondent cannot claim to have acquired distinctiveness in the term "zero g."

11. Respondent's mark is generic with respect to Respondent's goods and cannot function as a trademark for these goods.

12. Petitioner is damaged and will be damaged by Registrant's continued registration of the term ZERO G in that Petitioner will not be able to accurately describe its beds and foundations, and has been threatened with a lawsuit by Registrant on the basis of the subject mark.

WHEREFORE, Petitioner asks that its Petition to Cancel be granted, that judgment be entered against Respondent, and that United States Trademark Registration No. 3803995 be canceled in its entirety.

Please direct all correspondence to:

Barbara J. Grahn
OPPENHEIMER WOLFF & DONNELLY, LLP
222 South Ninth Street, Suite 2000
Minneapolis, MN 55402

Petitioner hereby appoints Barbara Grahn, Samuel Hellfeld, Dennis Hansen, Andrew Hansen, Elizabeth Patton, Erika Koster, Barbara Wrigley, Ed Laine and all other attorneys of

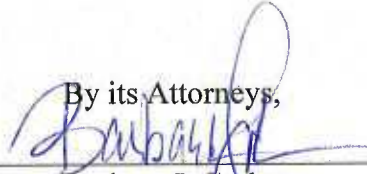
Oppenheimer Wolff & Donnelly, LLP, its attorneys to transact all business in the U. S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

SELECT COMFORT CORPORATION

Date: June 10, 2015

By its Attorneys,



Barbara J. Grahn

Dennis Hansen

OPPENHEIMER WOLFF & DONNELLY, LLP

222 South Ninth Street, Suite 2000

Minneapolis, MN 55402

612-607-7325

bgrahn@Oppenheimer.com,

dhansen@Oppenheimer.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Cancel was served upon the Respondent and Respondent's attorneys by First Class Mail, postage prepaid, at the following addresses on the 10th day of June, 2015:

Ergomotion, Inc.
55 Castilian, Suite 148
Goleta, CA 93117

Ms. Djamila V. Demangeat
Mr. Matthew I. Berger
Matthew I. Berger Law Group
957 Maple Ave.
Carpenteria, CA 93013


Barbara J. Grahn

EXHIBIT A

MATTHEW I. BERGER LAW GROUP
A PROFESSIONAL CORPORATION

February 11, 2015

Select Comfort Corporation
6105 Trenton Ln. N #100
Minneapolis, MN 55442-3240

Re: Infringement of "Zero G" Trademark

To Whom It May Concern:

Our firm represents Ergomotion, Inc. Our client is the owner of the U.S. Federal Trademark Registration No. 3803995, relating to the trademark "Zero G" (the "Trademark"). Our client uses the Trademark in the United States and around the world in conjunction with bed products. The Trademark has been in continuous use since October 2009, and its use is visible on our client's website at <http://www.ergomotion.com>. A copy of the federal registration data is attached for your reference.

We have discovered that your company, Select Comfort Corporation, is intentionally trading on our client's goodwill by using a trademark, namely "Zero G" (the "Infringing Trademark"), that is confusingly similar to the Trademark. Your website, at <http://www.sleepnumber.com/flexfit-adjustable-bed> and elsewhere on your website generally at <http://www.sleepnumber.com>, prominently features the Infringing Trademark in connection with a variety of goods, including the FlexFit™ 2, the FlexFit™ 3, and perhaps others, which are similar to our client's own goods. Additionally, the remote control to your client's goods, including the FlexFit™ 2, the FlexFit™ 3, and perhaps others, pronouncedly features the Infringing Trademark among its available "Custom Bed Positions." Two photographs taken at a retail outlet on February 6, 2015, of your client's remote control featuring the Infringing Trademark are attached for your reference.

It is clear that your use of the Infringing Trademark is intended to (and actually does) confuse and misdirect customers seeking our client's goods. This activity is actionable under federal law and causes you to be liable to our client in every state in which you have made sales. Your activities are unlawful and constitute unfair competition, intentional trademark infringement, trademark dilution, and false designation of origin.

Federal trademark law provides numerous remedies for trademark infringement and dilution, including, but not limited to, preliminary and permanent injunctive relief, money damages, disgorgement of a defendant's profits, provisions for the destruction or confiscation of infringing products and promotional materials, and where intentional infringement is shown, attorney's fees and treble money damages.

Our client can file a lawsuit against you seeking (i) preliminary and permanent injunctions, (ii) money damages, (iii) compensation equal to your profits, including profits derived from sales, as well as profits derived from goods that have been given away for promotional purposes in order

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Re: Infringement of "Zero G" Trademark
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to increase brand awareness which have thus increased profits as a whole, (iv) reimbursement for our client's attorney's fees, and (v) a court order that you compensate us for damage to our client's goodwill.

Our client prefers to resolve this matter without taking legal action, but is prepared to file a lawsuit if necessary to protect its rights and business. You may avoid legal action by immediately ceasing and desisting from all infringing activity including infringing use of the Infringing Mark, and by having an authorized representative of your company execute and send to our offices a copy of the attached letter and an accounting of profits derived from the infringing use of the Infringing Trademark on or before February 20, 2015.

Please direct communications regarding this matter to our firm. We can be contacted at the above mailing address, by telephone at (805) 566-4944, by facsimile at (805) 684-4064, and by email at djamila@mbergerlaw.com. If we do not receive a written response on or before February 20, 2015, you will leave our client with no choice but to promptly commence legal action. This letter is sent without prejudice to our client's rights and claims, all of which are expressly reserved. We recommend you consult with an attorney before taking any action, and look forward to your prompt response.

Very truly yours,

MATTHEW I. BERGER LAW GROUP



Djamila V. Demangeat

DVD:id

Enclosures

Select Comfort Corporation
Re: Infringement of "Zero G" Trademark
February 11, 2015

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AGREEMENT TO CEASE AND DESIST

I, _____, personally and on behalf of Select Comfort Corporation, agree to immediately cease and desist from any and all further use of the "Zero G" trademark in connection with bed products and to destroy all infringing goods currently in existence.

In the event this agreement is breached by me or Select Comfort Corporation, Ergomotion, Inc. shall be entitled to costs, attorney's fees, and collection costs related to any claims and/or action brought to enforce this agreement and shall be free to pursue all rights it had as of the date of this letter as if this letter had never been signed. I certify that I have the authority to enter into this agreement and on behalf of Select Comfort Corporation.

Dated:

By:

Both individually and on behalf of Select Comfort Corporation.



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ZERO G

Word Mark ZERO G
Goods and Services IC 020. US 002 013 022 025 032 050. G & S: Beds. FIRST USE: 20091020. FIRST USE IN COMMERCE: 20091020
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code LETS-1 G A single letter, multiples of a single letter or in combination with a design NUM-0-ZERO Marks containing "0" or the word Zero
Serial Number 77581354
Filing Date September 29, 2008
Current Basis 1A
Original Filing Basis 1B
Published for Opposition February 17, 2009
Registration Number 3803995
International Registration Number 1076084

Registration Date June 15, 2010
Owner (REGISTRANT) ERGOMOTION, INC. CORPORATION CALIFORNIA 55 Castilian, Suite 148 Goleta CALIFORNIA 93117
Attorney of Record Felix L. Fischer
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Head

Zero G

Head
Foot



Enter

Custom Bed 
Positions



Favorite

Zero G

Snore

