

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP

TEMPUR-PEDIC MANAGEMENT, INC.

and TEMPUR-PEDIC NORTH AMERICA,

LLC,

Plaintiffs,

v.

SEALY CORP. and PACIFIC COAST

FEATHER COMPANY,

Defendants.

CIVIL ACTION NO. 09-cv-13-jpj-pms

FIRST AMENDED COMPLAINT AND JURY DEMAND

Now come Plaintiffs Tempur-Pedic Management, Inc. and Tempur-Pedic North America, LLC (collectively, "Plaintiffs") and for their First Amended Complaint allege as follows:

THE PARTIES

1. Plaintiff Tempur-Pedic Management, Inc. ("TPMI") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Lexington, Kentucky. TPMI's East Coast manufacturing facility is located in Duffield, Virginia.

2. Plaintiff Tempur-Pedic North America, LLC ("TPNA") is a Delaware limited liability corporation with its principal place of business located in Lexington, Kentucky. Tempur-Pedic Sales, Inc., a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Lexington, Kentucky, is the sole member of TPNA.

3. Defendant Sealy Corp. ("Sealy") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Trinity, North Carolina.

4. Defendant Pacific Coast Feather Company ("Pacific Coast") is a corporation organized and existing under the laws of the State of Washington with its principal place of business located in Seattle, Washington. As relevant to this case, Pacific Coast does business as National Sleep Products and sealybedding.com.

JURISDICTION AND VENUE

5. Jurisdiction of this Court is founded upon 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), as this action arises under the patent laws of the United States.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

FACTUAL BACKGROUND

7. TPMI and TPNA are in the business of selling mattresses, cushions, pillows and other products incorporating viscoelastic foam materials.

8. TPMI is the owner by assignment of United States Letters Patent No. 7,051,389 (the "'389 patent"), entitled "Comfort Pillow," which was duly and legally issued by the United States Patent and Trademark Office on May 30, 2006. A copy of the '389 patent is attached hereto as Exhibit A.

9. TPMI is the owner by assignment of United States Letters Patent No. 7,415,742 (the "'742 patent"), entitled "Comfort Pillow," which was duly and legally issued by the United States Patent and Trademark Office on August 26, 2008. A copy of the '742 patent is attached hereto as Exhibit B. The '389 and '742 patents are collectively referred to as the "Tempur Patents."

10. The Tempur Patents grant TPMI the exclusive right to make, use, offer for sale, sell and import products incorporating the inventions claimed therein.

11. TPMI has granted TPNA a license to sell in the United States products incorporating the inventions claimed in the Tempur Patents.

12. TPNA's commercial pillows incorporating the teachings of the Tempur Patents have become the gold standard in the market and, therefore, are in high demand.

13. Sealy manufactures and/or sells mattresses, cushions, pillows and other products incorporating viscoelastic foam materials. Pacific Coast manufactures pillows incorporating viscoelastic materials which are sold employing the Sealy trademark.

14. Upon information and belief, Sealy and Pacific Coast were aware of TPNA's commercial products made in accordance with the Tempur Patents as well as the tremendous success and reputation that TPNA products enjoy in the market place.

15. Upon information and belief, Sealy and Pacific Coast sought to exploit the success and reputation enjoyed by TPNA's products that incorporate the inventions claimed in the Tempur Patents.

16. Upon information and belief, Sealy and Pacific Coast regularly transact business in the Commonwealth of Virginia and in this judicial district by, among other things, the demonstration, offer for sale and sale of products meeting the limitations set forth in the claims of the Tempur Patents.

COUNT ONE - INFRINGEMENT OF THE '389 PATENT

17. Plaintiffs hereby reallege and incorporate the allegations contained in paragraphs 1 through 16, *supra*, as though fully set forth herein.

18. Sealy and Pacific Coast have each infringed and continue to infringe, both directly and indirectly, one or more claims of the '389 patent by making, using, offering for sale,

selling, and/or importing products that infringe one or more claims of the '389 patent, as well as inducing others to infringe one or more claims of the '389 patent, and/or contributing to infringement of one or more claims of the '389 patent by others.

19. Plaintiffs have been, and will continue to be, damaged by the infringement of the '389 patent and will be irreparably damaged unless such infringement is enjoined.

COUNT TWO - INFRINGEMENT OF THE '742 PATENT

20. Plaintiffs hereby reallege and incorporate the allegations contained in paragraphs 1 through 16, *supra*, as though fully set forth herein.

21. Sealy and Pacific Coast have infringed and continue to infringe, both directly and indirectly, one or more claims of the '742 patent by making, using, offering for sale, selling, and/or importing products that infringe one or more claims of the '742 patent, as well as inducing others to infringe one or more claims of the '742 patent, and/or contributing to infringement of one or more claims of the '742 patent by others.

22. Plaintiffs have been, and will continue to be, damaged by the infringement of the '742 patent and will be irreparably damaged unless such infringement is enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment against Sealy and Pacific Coast as follows:

- A. That this Court find that Sealy and Pacific Coast have infringed one or more claims of the '389 patent;
- B. That this Court find that Sealy and Pacific Coast have infringed one or more claims of the '742 patent;
- C. That this Court preliminarily and permanently enjoin, pursuant to 35 U.S.C. § 283, Sealy and Pacific Coast, their officers, agents, attorneys and employees, as well as those acting in privity or concert with any of the foregoing, from further infringement of the '389 patent and the '742 patent for the full term of each of those patents, respectively;

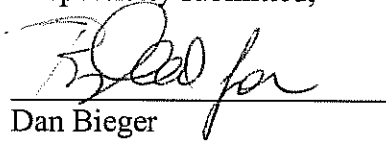
- D. That this Court award damages to Plaintiffs, including pre-judgment and post-judgment interest, in an amount adequate to compensate Plaintiffs for Sealy and Pacific Coast's infringement of one or more claims of each of the '389 and '742 patents; and
- E. That this Court award Plaintiffs their respective costs, expenses, attorneys' fees and such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all matters and issues triable by a jury.

Dated: March 30, 2009

Respectfully submitted,



Dan Bieger
Virginia Bar No. 18456
Copeland & Bieger, P.C.
P.O. Box 1296
Abingdon, VA 24212
Phone: (276) 628-9525
Fax: (276) 628-5901

Victor H. Polk, Jr. BBO#546099
(*pro hac vice* application to be filed)
Greenberg Traurig, LLP
One International Place
Boston, MA 02110
Phone: (617) 310-6000
Fax: (617) 310-6001

Kevin J. O'Shea
(*pro hac vice* application to be filed)
Greenberg Traurig, LLP
77 West Wacker Drive
Chicago, IL 60601
Phone: (312) 456-8400
Fax: (312) 456-8435

Attorneys for Plaintiffs Tempur-Pedic
Management, Inc. and Tempur-Pedic North
America, LLC