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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FLEXI-MAT CORPORATION,
an Illinois corporation,

Plaintiff,

v.

NEW ENGLAND SERUM COMPANY, INC.
d/b/a PETEDGE,
a Massachusetts corporation,

Defendant.

Civil Action No.

03 000 489

JURY DEMANDED

JUDGE PALLMEYER

**MAGISTRATE JUDGE LEVIN
MAGISTRATE JUDGE LEV**

COMPLAINT

Plaintiff, Flexi-Mat Corporation ("Flexi-Mat"), by its undersigned attorneys, complains against defendant New England Serum Company, Inc. d/b/a PetEdge ("New England Serum") as follows:

Nature and Statutory Basis of Action

1. This civil action arises under: (1) the Federal Patent Act, as provided for by 35 U.S.C. §§ 100, *et seq.*; (2) the Federal Trademark Act, also known as the Lanham Act, as provided for by 15 U.S.C. §§ 1051-1127; (3) federal unfair competition under § 43(a) of the Lanham Act, as provided for by 15 U.S.C. § 1125(a); (4) unfair competition under the common law of the State of Illinois; (5) deceptive trade practices under the laws of the State of Illinois, as provided for by 815 ILCS §§ 510/1, *et seq.*; and (6) consumer fraud under the laws of the State of Illinois, as provided for by 815 ILCS §§ 505/1, *et seq.*

1-1

The Parties

2. Plaintiff Flexi-Mat is a corporation duly organized and existing under the laws of the State of Illinois, having its principal place of business at 2244 South Western Ave., Chicago, Illinois 60608. Flexi-Mat makes and sells pet beds and other products.

3. Upon information and belief, defendant New England Serum is a corporation duly organized and existing under the laws of the State of Massachusetts, having its principal place of business at 239 Newburyport Turnpike, Topsfield, Massachusetts 01983. New England Serum sells pet beds and other pet products. New England Serum was and still is a customer of Flexi-Mat and, in the past, has purchased Flexi-Mat's patented pet beds and its CUDDLER brand products, which are the subject of this action.

4. Upon information and belief, defendant New England Serum is doing business as "PetEdge" in connection with the sale of pet beds and other pet products.

Jurisdiction and Venue

5. Jurisdiction over Count I is expressly conferred on this Court under 35 U.S.C. §§ 271 and 281 and 28 U.S.C. §§ 1331 and 1338(a). Jurisdiction over Counts II and III is expressly conferred on this Court under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b). Jurisdiction over Counts IV-VI is conferred on this Court under 28 U.S.C. § 1338(b), as these claims are joined with substantial and related claims under the Patent and Trademark Laws of the United States, and the pendent jurisdiction of this Court.

6. Personal jurisdiction over defendant New England Serum is vested in this Court since, upon information and belief, defendant has committed one or more of the acts complained herein within the United States and within this state and district pursuant to 735 ILCS §§ 5/2-201, *et seq.* In particular, New England Serum has offered to sell and has sold in this district

products that infringe the asserted patent and bear the infringing trademark.

7. Venue is proper in the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. 1391(b) and (c) and 1400(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this district and defendant New England Serum has committed acts of infringement in this district.

Factual Background

8. United States Letters Patent No. 5,765,502 (“the ‘502 patent”), entitled “Pet Bed With Removable Bolster,” was duly and legally issued by the United States Patent and Trademark Office on June 16, 1998. A true and correct copy of the ‘502 patent is attached as **Exhibit A**.

9. The inventor of the ‘502 patent, Scott Haugh, assigned to plaintiff Flexi-Mat his entire right, title and interest to this patent, including the right to pursue infringers and recover for infringement of the ‘502 patent. Flexi-Mat owns the entire right, title and interest in and to the ‘502 patent, including the right to sue and recover damages for infringement.

10. Upon information and belief, defendant New England Serum d/b/a PetEdge has caused to be published an advertisement in its catalogs for pet beds under the name “Slumber Pet™ Bolster Bed” which beds are made substantially as described in the ‘502 patent. See **Exhibit B**. This advertisement constitutes an offer for sale.

11. Defendant New England Serum has advertised and continues to advertise the “Slumber Pet™ Bolster Bed” via the Internet at the URL www.PetEdge.com. See **Group Exhibit C**. This advertisement, published on New England Serum’s web page, constitutes an offer for sale.

12. Plaintiff Flexi-Mat adopted and owns the trademark CUDDLER and is the owner

of U.S. Registration No. 1,078,928 for the trademark CUDDLER, registered on December 6, 1977 for pet beds. A true and correct copy of the registration is attached as **Exhibit D**. This Registration is in full force and effect on the U.S. Trademark Principal Register and constitutes conclusive evidence of the validity of the CUDDLER mark and of Flexi-Mat's exclusive right to use the CUDDLER mark in commerce in connection with pet beds (15 U.S.C. § 1115(b)).

13. Plaintiff Flexi-Mat has used its CUDDLER trademark in interstate commerce.

14. In the past, New England Serum purchased CUDDLER pet beds from Flexi-Mat. Notwithstanding plaintiff Flexi-Mat's well-known and prior use of its CUDDLER trademark, and without the authorization of Flexi-Mat, defendant New England Serum has used the CUDDLER trademark in commerce in connection with the advertisement and sale of pet beds in this district and elsewhere. See **Group Exhibit E**.

15. Defendant New England Serum has used the trademark CUDDLER and continues to use the mark CUDDLER in connection with the sale of pet beds via the Internet at the URL www.PetEdge.com. See **Group Exhibit E**.

COUNT I
Infringement of U.S. Patent No. 5,765,502

16. Plaintiff Flexi-Mat hereby incorporates the allegations of paragraphs 1-15 as if fully set forth herein.

17. New England Serum has infringed and/or has induced others to infringe and/or has committed acts of contributory infringement of one or more claims of the '502 patent. New England Serum's infringing activities include, but are not limited to, offering for sale and selling pet beds under the name "Slumber Pet™ Bolster Beds." See **Exhibits B and C**.

18. Upon information and belief, defendant New England Serum's infringement of

the '502 patent has been willful and deliberate.

19. The availability of New England Serum's infringing product has damaged Flexi-Mat in several ways. For example, the patented product sold by Flexi-Mat is no longer exclusively available from Flexi-Mat and instead appears to be a commodity product also offered by New England Serum. Therefore, Flexi-Mat's patented product is less desirable to customers. The commodity image is emphasized by the fact that New England Serum is offering the infringing product at a substantially lower price than Flexi-Mat, and consequently, on information and belief, diverting sales from Flexi-Mat to New England Serum. See **Exhibits B and C**.

20. As a consequence of the infringing activities of defendant New England Serum regarding the '502 patent, plaintiff Flexi-Mat has suffered monetary damages and is entitled to monetary damages pursuant to 35 U.S.C. § 284 in an amount yet to be determined.

21. As a consequence of the infringing activities of defendant New England Serum regarding the '502 patent, plaintiff Flexi-Mat has suffered and will continue to suffer irreparable harm unless New England Serum is enjoined by this Court.

COUNT II
Infringement of U.S. Trademark Registration No. 1,078,928

22. Plaintiff Flexi-Mat hereby incorporates the allegations of paragraphs 1-15 as if fully set forth herein.

23. Defendant New England Serum uses the CUDDLER mark in commerce, in connection with the advertisement and sale of pet beds. See **Group Exhibit E**.

24. Defendant New England Serum's use of the trademark CUDDLER is likely to cause confusion and mistake, as well as to deceive the public. The foregoing conduct by New

England Serum infringes Flexi-Mat's trademark rights in its registered CUDDLER mark in violation of 15 U.S.C. § 1114.

25. Defendant New England Serum's infringement of the CUDDLER mark is, upon information and belief, in willful disregard of Flexi-Mat's trademark rights and is detrimental to the good will and business reputation symbolized by the registered mark.

26. Upon information and belief, defendant New England Serum will continue to infringe plaintiff Flexi-Mat's CUDDLER mark, unless enjoined by the Court. These acts of infringement have caused and will continue to cause further irreparable injury to plaintiff if New England Serum is not restrained by the Court from further violation of plaintiff's rights, for which Flexi-Mat has no adequate remedy at law, as monetary damages are not adequate or readily calculable.

COUNT III Federal Unfair Competition

27. Plaintiff Flexi-Mat hereby incorporates the allegations of paragraphs 1-15 as if fully set forth herein.

28. Defendant New England Serum's advertising and promotion of goods of the type identical to plaintiff Flexi-Mat's goods, sold under the same or a confusingly similar mark, constitutes a violation of § 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) in that New England Serum is using a false designation of origin, false or misleading description of fact, or false or misleading representation of fact which is likely to cause confusion, mistake or deception as to the source, sponsorship or approval of the parties' goods and as to New England Serum's affiliation, connection or association with or certification by plaintiff Flexi-Mat. See **Group Exhibit E**.

29. Upon information and belief, New England Serum's actions described in this Count are willful.

30. Defendant New England Serum has damaged and will likely continue to damage plaintiff Flexi-Mat by diversion of sales to New England Serum that would have been made by Flexi-Mat but for New England Serum's acts. New England Serum has further damaged Flexi-Mat by diminishing Flexi-Mat's reputation with the public and its retail customers, and the goodwill in Flexi-Mat's CUDDLER trademark.

31. Upon information and belief, defendant New England will continue to do the acts complained of, all to Flexi-Mat's irreparable damage, unless enjoined by the Court. It will be difficult to ascertain the amount of compensation which would fully compensate Flexi-Mat for these acts. Flexi-Mat has no adequate remedy at law.

COUNT IV
Illinois Common Law Unfair Competition

32. Plaintiff Flexi-Mat hereby incorporates the allegations of paragraphs 1-15 as if fully set forth herein.

33. Defendant New England Serum's use of plaintiff Flexi-Mat's distinctive CUDDLER trademark in conjunction with the sale and promotion of goods substantially identical to the goods offered by Flexi-Mat under its CUDDLER trademark, is likely to cause confusion, mistake or deception and constitutes unfair competition under Illinois common law. See **Group Exhibit E**.

34. Unless defendant New England Serum's conduct is enjoined, it will cause irreparable harm to plaintiff Flexi-Mat and the public, for which Flexi-Mat has no adequate remedy at law.

COUNT V
Deceptive Trade Practices

35. Plaintiff Flexi-Mat hereby incorporates the allegations of paragraphs 1-15 as if fully set forth herein.

36. Defendant New England Serum has used plaintiff Flexi-Mat's CUDDLER trademark in connection with the sale of pet beds, and: (a) is thereby causing a likelihood of confusion, mistake or deception as to the source, sponsorship or approval of the parties' goods and as to New England Serum's affiliation, connection or association with Flexi-Mat; (b) has passed off its goods as those of Flexi-Mat; (c) has represented that its goods are of the same quality or standard as Flexi-Mat's when they are not; and/or (d) has engaged in other conduct which similarly creates a likelihood of confusion or misunderstanding. See **Group Exhibit E**.

37. Defendant New England Serum's actions constitute deceptive trade practices in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §§ 510/1-510/7.

38. Defendant New England Serum's unlawful conduct has caused plaintiff Flexi-Mat to suffer serious economic hardship, has resulted in unjust enrichment to New England Serum, and has caused and will continue to cause, unless enjoined by this Court, substantial and irreparable damage and injury to Flexi-Mat and the public, for which damage and injury Flexi-Mat has no adequate remedy at law.

COUNT VI
Consumer Fraud

39. Plaintiff Flexi-Mat hereby incorporates the allegations of paragraphs 1-15 as if fully set forth herein.

40. Defendant New England Serum's aforesaid use of the CUDDLER trademark in connection with the advertisement and sale of household pet beds is an unfair method of competition and an unfair or deceptive act or practice in that New England Serum is using and has used deception and misrepresentation in the conduct of trade or commerce. See **Group Exhibit E**.

41. Defendant New England Serum's actions constitute consumer fraud and deceptive business practices, in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1, *et seq.*

42. Defendant New England Serum's unlawful conduct is willful and has caused plaintiff Flexi-Mat to suffer serious economic damage, has resulted in unjust enrichment to New England Serum, and has caused and will continue to cause, unless enjoined by this Court, substantial and irreparable damage and injury to Flexi-Mat and the public, for which damage and injury Flexi-Mat has no adequate remedy at law.

JURY DEMAND

Plaintiff Flexi-Mat demands a trial by jury on all matters and issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, Flexi-Mat Corporation, prays for the following relief:

A. That defendant New England Serum d/b/a PetEdge, and their officers, agents,

servants, employees, successors, assigns, parent, subsidiaries, affiliated or related companies, attorneys and all persons in active concert and/or participation with it who receive notice be preliminarily and permanently enjoined and restrained from:

- i) Making, using, selling, offering to sell, or importing pet beds that infringe the '502 patent, or otherwise engaging in acts of infringement, inducing others to infringe, and/or contributing to the infringement of the '502 patent;
- ii) Using, advertising or promoting the CUDDLER trademark or any similar mark or name or colorable imitation thereof in its catalogs, website, packaging, advertising and promotional literature, order forms, invoices or otherwise in a manner which is likely to cause confusion, mistake or deception;
- iii) Unfairly competing with plaintiff Flexi-Mat or injuring Flexi-Mat's goodwill in its CUDDLER trademark; and
- iv) Causing a likelihood of confusion or misunderstanding as to source, sponsorship, association, affiliation, approval or certification with or by plaintiff Flexi-Mat, or engaging in conduct tending to create a false representation or commercial impression of New England Serum's products.

B. That this Court order defendant New England Serum d/b/a PetEdge to:

- i) Communicate to all persons requesting the "Slumber Pet™ Bolster Bed" that New England Serum d/b/a PetEdge is prohibited from further advertisement or sale of the "Slumber Pet™ Bolster Bed" per Court order;

- ii) Notify in writing all recipients of each catalog in which New England Serum d/b/a PetEdge advertised or offered for sale the “Slumber Pet™ Bolster Bed,” all prospective purchasers of that product, and all persons inquiring about that product, whether orally, in writing, or via the Internet, that New England Serum d/b/a PetEdge is prohibited from further advertisement or sale of the “Slumber Pet™ Bolster Bed”;
- iii) Notify all recipients of each catalog in which New England Serum d/b/a PetEdge caused to be published the mark CUDDLER in connection with the sale of pet beds, and all prospective purchasers of that product, that New England Serum d/b/a PetEdge is prohibited from further sale of CUDDLER pet beds; and
- iv) Provide to Flexi-Mat all past and future customer purchase orders received by New England Serum relating to the sale of the “Slumber Pet™ Bolster Bed” and all pet beds advertised and/or sold in connection with the CUDDLER trademark.

C. That defendant New England Serum d/b/a PetEdge be directed to file in Court, and to serve on plaintiff Flexi-Mat, within thirty (30) days after entry of the above injunction and order, a report in writing, under oath, setting forth in detail the manner and form in which it has complied with the above injunction and order.

D. That this Court award to Flexi-Mat damages adequate to compensate Flexi-Mat for the infringement of the ‘502 patent by New England Serum d/b/a PetEdge.

E. That this Court award increased damages against New England Serum d/b/a PctEdge up to three times the actual damages pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117.

F. That this Court enter an order declaring this is an exceptional case pursuant to 35 U.S.C. § 285 and award to Flexi-Mat its attorneys' fees, costs and expenses.

G. That New England Serum be required to account to Flexi-Mat for any and all profits derived by New England Serum from the sale of CUDDLER pet beds and for all damages sustained by Flexi-Mat by reason of the acts of infringement and unfair competition described herein.

H. That this Court award to Flexi-Mat treble damages and punitive damages, attorneys' fees and taxable costs as a result of defendant New England Serum's use of the CUDDLER trademark.

I. That defendant New England Serum d/b/a PetEdge be directed to deliver up to this Court for destruction, pursuant to 15 U.S.C. § 1118, all signs, prints, advertisements, publications, promotions or other articles in its possession bearing the CUDDLER trademark, or any reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices, screens or other means of making the same.

J. That this Court award to Flexi-Mat such other and further relief as may be just and appropriate.

FLEXI-MAT CORPORATION

Dated: January 22, 2003

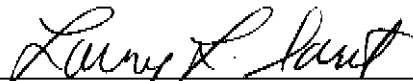
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Exhibit A

United States Patent [19]

[11] **Patent Number:** 5,765,502

Haugh

[45] **Date of Patent:** Jun. 16, 1998

- [54] **PET BED WITH REMOVABLE BOLSTER**
- [75] **Inventor:** Scott Haugh, Lockport, Ill.
- [73] **Assignee:** Flexi-Mat Corporation, Chicago, Ill.
- [21] **Appl. No.:** 634,374
- [22] **Filed:** Apr. 18, 1996
- [51] **Int. CL⁶** A01K 1/035
- [52] **U.S. Cl.** 119/28.5; 5/722
- [58] **Field of Search** 119/28.5, 526; 5/402, 691, 694, 722, 723, 737, 738, 740

'Cuddler' Bed from 1994 Brochure of Flexi-Mat Corporation entitled *Flexi-Mat's Country Quilt Collection*.
 'Flip Chair', 'Wing Chair', and 'Flip Couch' from 1995 Brochure Of Flexi-Mat Corporation entitled *Flexi-Mat's Cuddle-Up* 'Cuddler' from 1996 Brochure of Flexi-Mat Corporation entitled *Flexi-Mat's Poly/Cedar Cuddler*.
 'Rainbow Cuddler' from 1991 Brochure of Flexi-Mat Corporation entitled *There's Gold At The End Of Our Rainbow*.
 'Kozy Kup' from 1996 Brochure of Flexi-Mat Corporation entitled *Flexi-Mat's Kozy Kup*.
 'Kitty Kup' from 1996 Brochure of Flexi-Mat Corporation entitled *Flexi-Mat's Kitty Kup*.

[56] **References Cited**

U.S. PATENT DOCUMENTS

984,324	2/1911	Von Below	5/722
1,469,523	10/1923	McGarvey	5/402 X
1,569,710	1/1926	Burt	119/28.5
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3,989,008	11/1976	Neumann	119/28.5
4,860,689	8/1989	Stewart	119/28.5
5,010,843	4/1991	Henry	119/28.5
5,109,559	5/1992	West	5/691 X
5,197,411	3/1993	Scharzenbart	119/28.5

OTHER PUBLICATIONS

'Braided "Jacobean" Bed' from p. 14 of Spring 1996 catalog entitled *In The Company Of Dogs*.
 'Pucker Bed' from back page of Spring 1996 catalog entitled *In The Company Of Dogs*.

Primary Examiner—Robert P. Swiatek
Assistant Examiner—Elizabeth Shaw
Attorney, Agent, or Firm—Laff, Whitesel, Conte & Saret, Ltd.

[57] **ABSTRACT**

A pet bed comprising an outer covering, a removable cushion disposed within the outer covering to form a cushioned bottom portion, and a bolster removably affixed to the interior of the outer covering and disposed about at least a portion of the perimeter of the bottom portion. The outer covering further includes a reclosable access opening permitting both the bottom cushion and bolster to be removed as needed.

11 Claims, 2 Drawing Sheets

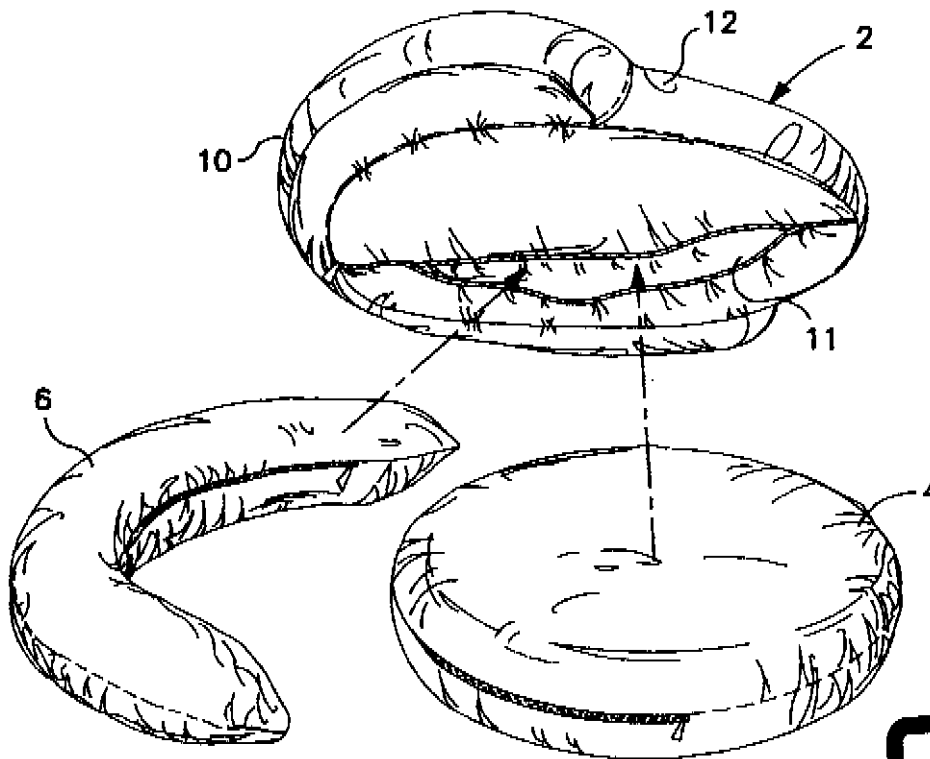
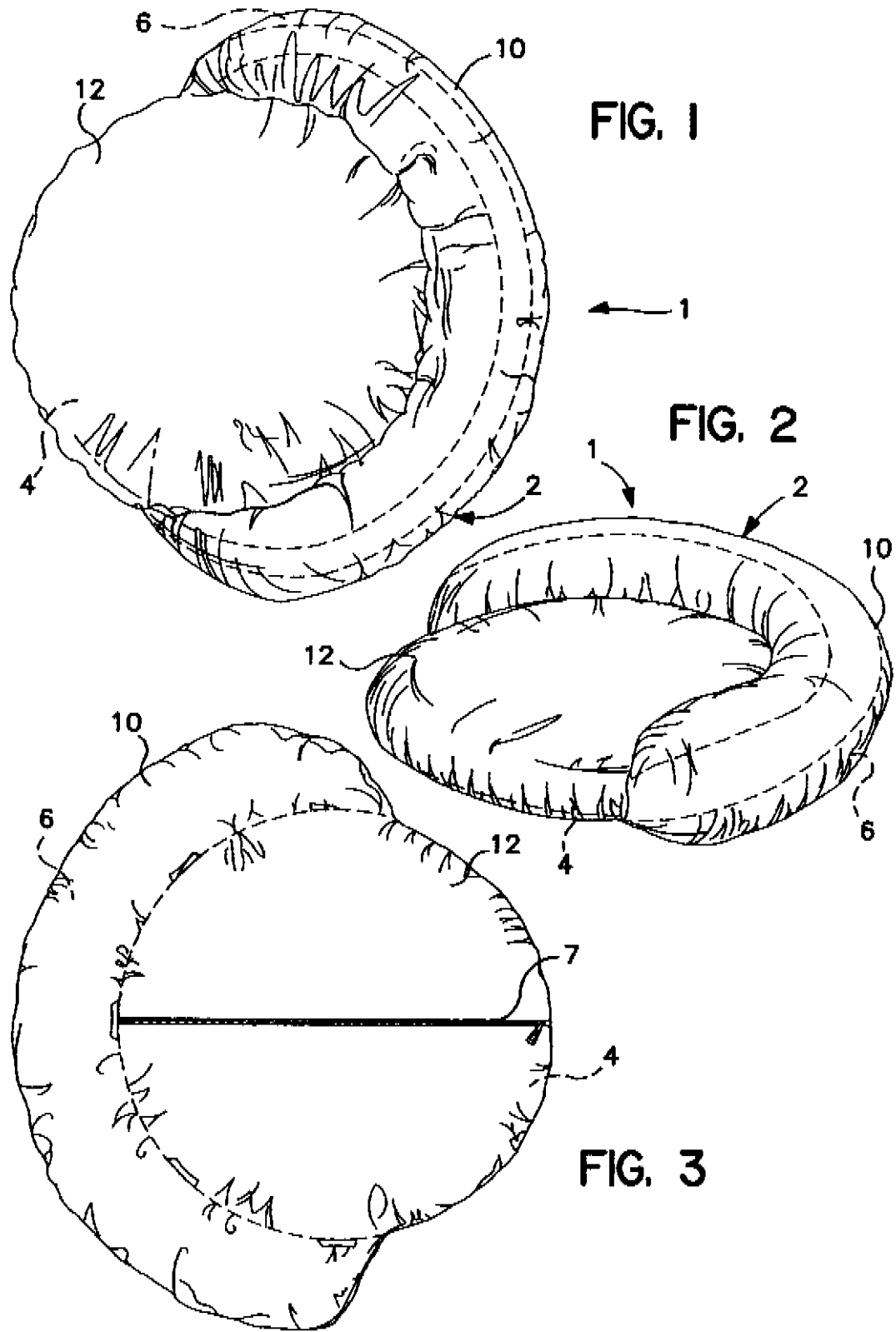


EXHIBIT
A



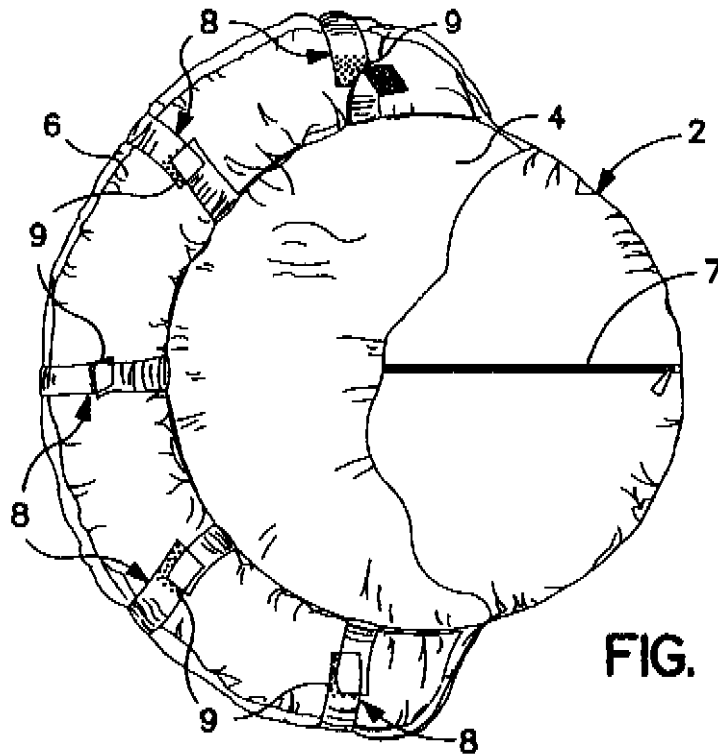


FIG. 4

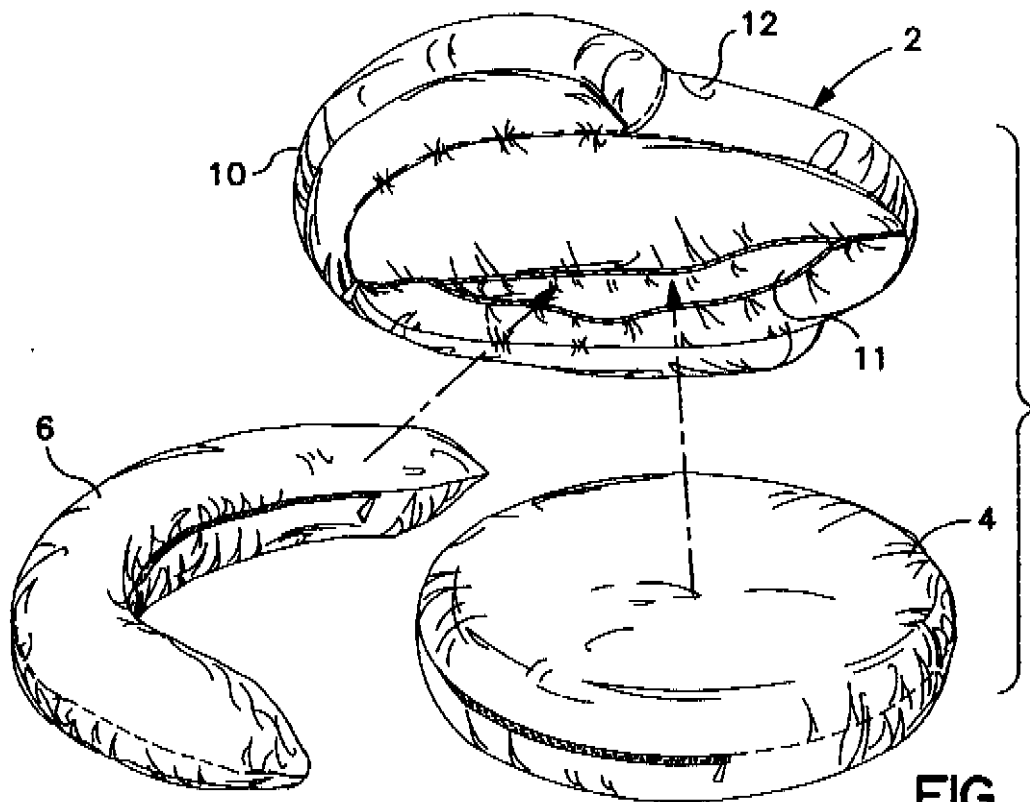


FIG. 5

PET BED WITH REMOVABLE BOLSTER**FIELD OF THE INVENTION**

This invention relates generally to a pet bed and in particular to a pet bed having a removable bolster.

BACKGROUND OF THE INVENTION

Pet beds were originally devised both for the comfort of animal pets and to keep the animals from commandeering household furnishings. Although a simple cushion is often used as a pet bed, many animals would rather occupy a favorite couch or human bed than sleep on a mere cushion.

Much of the animal's reluctance to quit the family sofa is traceable to the animal's need to feel secure. Thus, pet beds having surrounding wall portions are more popular with pets. These wall portions extend upwardly from the periphery of the pet bed, leaving an opening through which the animal can enter and leave, and allowing the animal to see out even while in a supine position.

The wall portion can also be used as a headrest by animals who feel safer with a better view of their surroundings, but the wall does not provide support for the heavier breeds of animals. The wall tends to collapse under the weight of heavier animals unless it is made of material so rigid that it is uncomfortable for lighter animals.

In one popular method for pet bed fabrication, the base and wall portions are formed from two glued pieces of fairly firm material, such as foam. The pet bed is then provided with a single removable cover, which is generally a washable fabric. The foam material from which the pet bed is constructed is not easily washable, due to the bulk of the two glued foam pieces.

In another popular pet bed style, the wall portion is formed from a single piece of foam, often attached to a vinyl sheet bottom portion, and only the wall portion is then covered with fabric. The fabric is generally sewn around the wall and is therefore not removable for washing. In order to make this type of pet bed more comfortable, a separate bottom cushion with its own fabric cover is provided for insertion over the bottom portion. This requires two separate fabric covers, one for the wall and one for the bottom cushion, and this adds to the cost of manufacture. Pet beds are also known in which the bottom cushion is stuffed with replaceable foam pieces or other stuffing material, treated with an odor retarding agent, because odor and washability are of major concern to the pet's owner.

Yet another pet bed has a bottom cushion encased in fabric with an upstanding wall extending partially around the periphery of the bottom cushion. The wall is formed from multiple pockets sewn in the encasing fabric, and each pocket is stuffed with polyester fill. Because the pockets are permanently sewn into the encasing fabric, the fill is not accessible and cannot be replaced without replacing the entire fabric. This creates a major odor problem when, for example, the pet urinates on the wall.

Accordingly, a need arises for a structurally sound pet bed that is designed for the pet's comfort, regardless of whether the animal is light or heavy. The pet bed should be relatively inexpensive to manufacture, and should be equipped with a one-piece cover and separately removable bolster and bottom cushion for ease of cleaning.

SUMMARY OF THE INVENTION

These needs and others are satisfied by the present invention, comprising a pet bed having an outer covering, a

removable cushion disposed within the outer covering to form a cushioned bottom portion, and a bolster removably affixed to the interior of the outer covering and disposed about at least a portion of the perimeter of the bottom portion. The outer covering includes a reclosable access opening that may be opened and closed with a zipper.

In one form of the invention, the bolster may be removably affixed to the interior of the outer covering by a plurality of hook-and-loop fastener straps. The outer covering may include a bolster pocket sized to accommodate the bolster, where the plurality of straps removably affixes the bolster within the bolster pocket. The bottom cushion rests within a bottom pocket which communicates with the bolster pocket. The removable cushion and the bolster are separately removable from the outer covering through the reclosable access opening.

Further objects, features, and advantages of the present invention will become apparent from the following description and drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a top plan view of a pet bed in accordance with the present invention;

FIG. 2 is a perspective view of the pet bed of FIG. 1;

FIG. 3 is a bottom plan view of the pet bed of FIG. 1;

FIG. 4 is a bottom view of the pet bed of FIG. 1, with a portion of the outer covering cut away to illustrate the bolster removably affixed within the bolster pocket; and

FIG. 5 is an exploded view of the pet bed of FIG. 1.

DETAILED DESCRIPTION OF THE INVENTION

In accordance with the present invention, a pet bed is described that provides distinct advantages when compared to those of the prior art. The invention can best be understood with reference to accompanying drawing FIGS. 1 through 5.

The pet bed 1 of the present invention includes an outer covering 2, preferably fabricated from a durable material, such as a fabric that is easily cleaned. The cover material can be furnished with colors and/or designs to suit the needs of the pet owner.

The pet bed 1 includes a removable cushion 4 disposed within a bottom pocket 12 formed in the outer covering 2 to form a cushioned bottom portion of the pet bed 1. The cushion may be fabricated from any soft, durable material, but is preferably designed to be replaced at intervals by the user as it becomes soiled or worn.

Within a bolster pocket 10 provided in the outer covering 2, a bolster 6 is removably affixed. The bolster is disposed about at least a portion of the perimeter of the cushioned bottom portion of the pet bed 1. The bolster 6 is also formed from a soft, durable material, and is designed to be replaced as needed. Since the bolster 6 is more cylindrical or banana-shaped than flat, and more like a pillow than a wall, the bolster 6 tends to retain its shape even when used as a pillow by the pet, and does not easily collapse from the weight of the pet as in some prior art products.

The bolster is held in place by a plurality of fasteners or straps 8. The straps 8 are preferably the well-known hook-and-loop fasteners, such as Velcro®, although other fasteners, such as ties or straps with snaps or buckles, would perform adequately in this application. The fasteners are sewn or otherwise secured to the interior of bolster pocket 10 in the outer covering 2.

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Removably affixing the bolster 6 within the bolster pocket 10 of the outer covering 2 has the advantage of lending structural integrity to the pet bed 1. Since the bolster 6 is much like a long, slender pillow, holding the bolster 6 in the bolster pocket 10 keeps the bolster relatively fixed in position with respect to the perimeter of the bottom portion of the pet bed 1.

Access to the interior of the outer covering 2 is preferably provided by a zipper 7. Thus, the bolster 6 is easily removable by the simple expedient of unzipping the zipper 7 on the bottom of the pet bed 1, disengaging the straps 8, and withdrawing the bolster through the reclosable access opening 11 that is sealed by the zipper 7. The bottom cushion 4 can also be withdrawn in the same way. The outer covering 2 can then be cleaned, and the bolster 6 and cushion 4 can be washed and replaced within the outer covering 2. Of course, a new bolster 6 or a new cushion 4 could also be replaced by the user as part of this removal operation.

Instead of a zipper, access to the interior of the bed could be provided through a slit in the covering 2. The slit could be concealed by merely overlapping flaps of the fabric. The flaps could be manually parted when necessary to remove the cushion or bolster.

It is also possible to combine other features with those just described. For example, the cushion 4 and bolster 6 could be cushions filled with foam pieces, polyester, styrofoam beads, a mixture of polyester and cotton, and other suitable materials, and be treated with an odor retarding agent such as cedar.

There has been described herein a pet bed that avoids the shortcomings of the prior art. It will be apparent to those skilled in the art that modifications may be made without departing from the spirit and scope of the invention. Accordingly, it is not intended that the invention be limited except as may be necessary in view of the appended claims.

What is claimed is:

1. A pet bed comprising:
an outer covering;
a removable cushion disposed within the outer covering to form a cushioned bottom portion; and
a bolster removably disposed within the interior of the outer covering and substantially all of said bolster disposed exteriorly about at least a portion of the perimeter of the bottom portion without being secured to the removable cushion.
2. The pet bed of claim 1, wherein the outer covering further includes a reclosable access opening.
3. The pet bed of claim 2, wherein the reclosable access opening further includes a zipper.
4. A pet bed comprising:
an outer covering;
a removable cushion disposed within the outer covering to form a cushioned bottom portion; and
a bolster removably affixed within the interior of the outer covering and disposed about at least a portion of the

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perimeter of the bottom portion, wherein the bolster is removably affixed within the interior of the outer covering by a plurality of straps secured to the outer covering.

5. The pet bed of claim 4, wherein the straps are hook-and-loop fasteners.

6. The pet bed of claim 4, wherein the outer covering includes a bolster pocket sized to accommodate the bolster, and the plurality of straps removably affixes the bolster within the bolster pocket.

7. A pet bed comprising:

an outer covering including a reclosable access opening;
a removable cushion disposed within the outer covering to form a cushioned bottom portion;

a bolster removably secured to the interior of the outer covering and disposed about at least a portion of the perimeter of the bottom portion;

such that the removable cushion and bolster are separately removable from the outer covering interior through the reclosable access opening.

8. The pet bed of claim 7, and means for closing the reclosable access opening.

9. A pet bed comprising:

an outer covering including a bolster pocket and a reclosable access opening;

a removable cushion disposed within the outer covering to form a cushioned bottom portion;

a bolster removably affixed within the bolster pocket and disposed about at least a portion of the perimeter of the bottom portion;

such that the removably cushion and bolster are separately removable from the outer covering interior through the reclosable access opening;

wherein the bolster is removably affixed within the bolster pocket by a plurality of straps.

10. The pet bed of claim 9, wherein the straps are hook-and-loop fasteners.

11. A pet bed comprising:

an outer covering including a bolster pocket and a reclosable access opening through a bottom portion of the outer covering;

means for closing the reclosable access opening;

a removable cushion disposed within the outer covering to form a cushioned bottom portion;

a bolster removably affixed within the bolster pocket by a plurality of straps that are secured about the bolster, the bolster disposed about at least a portion of the perimeter of the bottom portion;

such that the removable cushion and the bolster are separately removable from the outer covering interior through the reclosable access opening.

* * * * *

Exhibit B

NEW
Case 1:03-cv-00489 Document
Comfy Slumber Pet™ Bolster F
makes pets feel more secure.

Billowy bolster back gives dogs a comfortable headrest, creating a cozy groove in which to snuggle and nestle and forms a protective barrier against drafty walls. Great classic Blue Plaid print bolster surrounds an ultra warm and soft cream berber center that molds to pet's shape. Removable zippered cover is made of 100% polyester that is machine washable. Liner is filled with thick, soft polyfill for added comfort.

Item #	Dimensions	Price Each		Sugg. Retail
		1-2	3+	
ZW35535	35" Diameter x 6"H	\$39.99	\$32.99	\$67.99
ZW35542	42" Diameter x 6"H	69.99	44.99	101.99
ZW35550	50" Diameter x 6"H	69.99	49.99	118.99
ZW35557	57" Diameter x 6"H	74.99	54.99	126.99



Slumber Pet™

NEW! Cozy Slumber Pet™
Sleeping Bag converts
to travel blanket.

Versatile Sleeping Bag is the perfect style pet bed to take along on the road. Zipped up, it forms a soft, warm spot for pets to snuggle in and feel more secure when away from home. Unzipped, it converts into a comfy pet blanket. Ideal for use in cars, on furniture, floors or anywhere dogs like to rest. Made of 100% machine washable cotton with polyfill. Features attractive blue denim cover with printed

flannel liner for extra warmth and comfort. Measures 26" x 32" when zipped closed, 52" x 72" when opened.

ZW52032
Sugg. Retail \$39.99 **\$23.99**
3 or more **\$19.99**

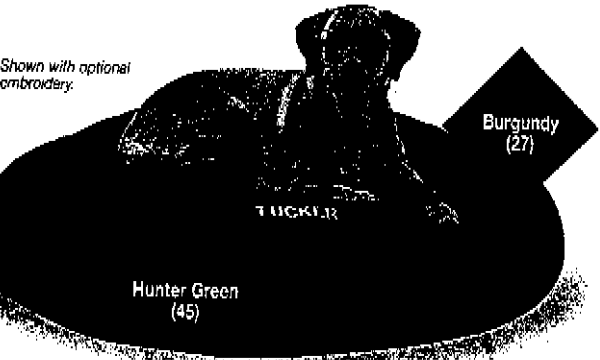


Unzips to a large comfy blanket.



Slumber Pet™

AS LOW AS
\$19.99



Shown with optional embroidery.

Burgundy (27)

Hunter Green (45)

Ultimate Canine Cushion provides blissful comfort.

This top-of-the-line, round bed is overstuffed for comfort. Features a brass zipper and X gusset. Contains shape-retaining cedar/poly that repels fleas and odors. Cover is constructed of heavy-duty, machine washable poly/cotton mix. Inner lining easily unzips for refilling. Made in the USA. For an additional \$7.00, bed can be embroidered with pet's name (up to 12 letters/spaces). Please specify size, color and name to be embroidered when ordering.

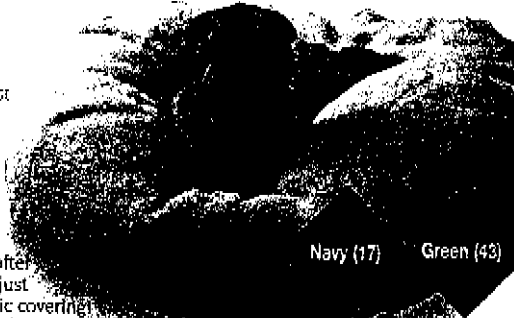
Item #	Dimensions	Price Each	
		1-2	3+
CN100*	36" Diameter x 8"H	\$36.99	\$32.99
CN100*	45" Diameter x 8"H	49.99	44.99
CN100*	54" Diameter x 8"H	59.99	53.99

*UPS oversized item. Additional shipping charges apply. See page 76 for details.

Our best-selling and softest bed!

Our Sherpa Nuzzle Nest Bed is the softest, cushiest beds we've ever offered! Pets can snuggle in deep without ever hitting bottom! Fill is a higher-quality foam, which keeps its shape—won't bunch up or lump, and stays soft and fluffy wash after wash. Both dogs and cats just love the plush Sherpa fabric covering!

Deluxe Nuzzle Nest is similar to our Sherpa Nuzzle Nest, with an elegant cotton/polyester Berber covering. Bed molds around pet for superior comfort that's soft and lush. The Deluxe Nuzzle Nest is available in two colors: Navy (17) and Green (43). Made in the USA. Machine washable. Please specify size and color when ordering.



Navy (17) Green (43)

Item #	Description	Dimensions	Price Each	
			1-2	3+
CA11018	Sherpa Nuzzle Nest (White Only)	18" Diameter	\$21.49	\$16.97
CA11024	Sherpa Nuzzle Nest (White Only)	24" Diameter	26.99	22.99
CA11030	Sherpa Nuzzle Nest (White Only)	30" Diameter	32.49	27.49
CA11040*	Sherpa Nuzzle Nest (White Only)	40" Diameter	56.49	47.99
CA116	Deluxe Nuzzle Nest (Green or Navy)	18" Diameter	\$30.99	\$24.99
CA116	Deluxe Nuzzle Nest (Green or Navy)	24" Diameter	34.99	29.99
CA116	Deluxe Nuzzle Nest (Green or Navy)	30" Diameter	47.99	39.99
CA116*	Deluxe Nuzzle Nest (Green or Navy)	40" Diameter	79.99	67.99

*UPS oversized item. Additional shipping charges apply. See page 76 for details.

800-Pet-Edge (800-738-3343)

PetEdge

Formerly New England Serum Company

www.PetEdge.com

129



Exhibit C



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Bolster Beds

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[Deluxe Beasley Couches CA117](#)
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[Flexi-Mat Oval Bolster Beds FM135](#)
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Slumber Pet Round Plaid Bolster Beds

Comfy Slumber Pet Bolster Bed makes pets feel more secure.

Billowy bolster back gives dogs a comfortable headrest, creates a cozy groove in which to snuggle and nestle and forms a protective barrier against drafty walls. Great classic Blue Plaid print bolster surrounds an ultra warm and soft cream berber center that molds to pet's shape. Removable zippered cover is made of 100% polyester that is machine washable. Liner is filled with thick, soft polyfill for added comfort. Available in the sizes listed in the drop down menu below.



[View Larger](#)



Selecting the Proper Bolster/Cuddler Style Bed
When dog is lying down, measure body length from base of tail to tip of nose, and add 5-7 inches.

Item#	Description	Option(s)	Qty
ZW355	Slumber Pet Round Plaid Bolster Beds	Select an Option	0

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Exhibit D

Int. Cl.: 18

Prior U.S. Cl.: 3

Reg. No. 1,078,928

United States Patent and Trademark Office

Registered Dec. 6, 1977

10 Year Renewal

Renewal Term Begins Dec. 6, 1997

**TRADEMARK
PRINCIPAL REGISTER**

CUDDLER

**FLEXI-MAT CORPORATION (ILLINOIS
CORPORATION)
2244 SOUTH WESTERN AVENUE
CHICAGO, IL 60608**

**FOR: BED FOR HOUSEHOLD PETS,
IN CLASS 18 (U.S. CL. 3).
FIRST USE 7-20-1973; IN COMMERCE
7-20-1973.**

SER. NO. 73-120,316, FILED 3-24-1977.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Apr. 14, 1998.*



COMMISSIONER OF PATENTS AND TRADEMARKS

EXHIBIT E



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Cuddler Style

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Slumber Pet Square Beds
ZW555

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Nuzzle Nest Beds
CA110

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As low as \$16.97



Bage! Beds
CA115

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- Best Buys
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOCKETED

JAN 24 2003

Eastern Division

In the Matter of

FLEXI-MAT CORPORATION, an Illinois corporation

v.

NEW ENGLAND SERUM COMPANY, INC. d/b/a PETEDGE, a
Massachusetts corporation

Case Number:

03 000 489

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

FLEXI-MAT CORPORATION

JUDGE FALLMEYER
CLERK JUDITH LEVIN

(A)		(B)	
SIGNATURE	<i>Larry L. Saret</i>	SIGNATURE	<i>Kevin C. Trock</i>
NAME	Larry L. Saret	NAME	Kevin C. Trock
FIRM	Michael Best & Friedrich, LLC	FIRM	Michael Best & Friedrich, LLC
STREET ADDRESS	401 N. Michigan Avenue, Suite 1900	STREET ADDRESS	401 N. Michigan Avenue, Suite 1900
CITY/STATE/ZIP	Chicago, Illinois 60611	CITY/STATE/ZIP	Chicago, Illinois 60611
TELEPHONE NUMBER	(312) 222-0800	TELEPHONE NUMBER	(312) 222-0800
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	2,459,337	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	6,209,206
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TRIAL ATTORNEY?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
		DESIGNATED AS LOCAL COUNSEL?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(C)		(D)	
SIGNATURE	<i>Michael K. Nutter</i>	SIGNATURE	
NAME	Michael K. Nutter	NAME	
FIRM	Michael Best & Friedrich, LLC	FIRM	
STREET ADDRESS	401 N. Michigan Avenue, Suite 1900	STREET ADDRESS	
CITY/STATE/ZIP	Chicago, Illinois 60611	CITY/STATE/ZIP	
TELEPHONE NUMBER	(312) 222-0800	TELEPHONE NUMBER	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	6,243,586	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
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TRIAL ATTORNEY?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY?	YES <input type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL?	YES <input type="checkbox"/> NO <input type="checkbox"/>

1-3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOCKETED

JAN 24 2003

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

03C00489

**Plaintiff(s): FLEXI-MAT CORPORATION,
an Illinois corporation**

**Defendant(s): NEW ENGLAND SERUM
COMPANY, INC. d/b/a PETEDGE, a
Massachusetts corporation**

County of Residence: Cook County

County of Residence:

JUDGE PALLMEYER

Plaintiff's Atty: Larry L. Saret
Michael Best & Friedrich, LLC
401 N. Michigan Ave., Suite
1900 Chicago, Illinois 60611
(312) 222-0800

Defendant's Atty:

MAGISTRATE JUDGE LEVIN

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff: - N/A
Defendant: - N/A

[Handwritten signature]
JAN 24 2003

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **830 Patent**

VI. Cause of Action: **35 U.S.C. 100, et seq. - U.S. Patent Infringement**

VII. Requested in Complaint

Class Action: No
Dollar Demand:
Jury Demand: Yes

VIII. This case IS NOT a refiling of a previously dismissed case.

Signature: *Larry Saret*

Date: Jan. 21, 2003

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it.

1-2