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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

07-27-1999

IMERCE
ark Office



To the Assistant Commissioner for Trademarks: Please record the attached original documents or copies.

101102241

Name of conveying party(ies):
Malachi Mattress America, Inc.
Mattress Venture, L.P.
 Individual(s) Association
 General Partnership Texas Limited Partnership
 Corporation-Delaware
 Other _____

2. Name and address of receiving party(ies).
Name: Paul F. Stork, Harry D. Roberts, and Stephen G. Fendrich
Internal Address: c/o Crady, Jewett & McCulley, L.L.P.
Street Address: 909 Fannin, Suite 1400

City: Houston State: Texas Zip: 77010

Additional name(s) of conveying party(ies) attached? Yes No

X Individual(s) citizenship U.S. Citizens

Association _____

General Partnership _____

Limited Partnership _____

Corporation-State _____

Other _____

3. Nature of conveyance:

Assignment Merger

X Security Agreement Change of Name

Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from Assignment)
Additional name(s) & address(es) attached? Yes No

Execution Date: June 28, 1999

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)
74/729,878

B. Trademark registration No.(s)
1,915,716
2,064,202

Additional numbers attached? Yes X No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: JAMES E. BRADLEY
Internal Address: FELSMAN, BRADLEY, VADEN, GUNTER & DILLON, LLP
One Riverway, Suite 1100
Houston, Texas 77027

Street Address: Same

City: _____ State: _____ ZIP: _____

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 1.21(h)).....\$ 90.00

Enclosed
X Authorized to charge any additional fees due to deposit account

8. Deposit Account Number: Felsman Bradley Gunter & Dillon, LLP
06-0580 (1821JB-29766)

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

JAMES E. BRADLEY
Name of Person Signing

James E. Bradley
Signature

July 16, 1999
Date

Total number of pages including cover sheet, attachments, and documents: 10

OMB No. 0651-0011 (exp. 4/94)
07/26/1999 MIBUTEN 00000275 1915716

01 FC:481
02 FC:482

40.00 DP
50.00 DP

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Assistant Commissioner for Trademarks
Box Assignments
2900 Crystal Drive
Arlington, Virginia 22202-3513

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C.

**TRADE NAME AND TRADEMARK
SECURITY AGREEMENT**

(Malachi Mattress America, Inc. and The Mattress Venture, L.P. as "Debtor")

This Trade Name and Trademark Security Agreement ("Agreement"), effective as of June 28, 1999, is made by Malachi Mattress America, Inc., a Delaware corporation, whose address is 5815 Gulf Freeway, Houston, Texas 77023 ("MMA") and the Mattress Venture, L.P., a Texas limited partnership ("Venture") whose address is 5815 Gulf Freeway, Houston, Texas 77023. MMA and Venture shall be collectively referred to as "Debtor" throughout this Agreement, and is given to Paul F. Stork, Harry D. Roberts and Stephen G. Fendrich individuals whose address is c/o Crady, Jewett & McCulley, L.L.P., 909 Fannin, Suite 1400, Houston, Texas 77010 (collectively "Secured Party").

W I T N E S S E T H :

A. Debtor desires to grant and Secured Party desires to obtain a lien on and security interest in the trade names and trademarks hereinafter defined, as security for the payment of that certain Promissory Note dated June 28, 1999, in the original principal amount of \$2,500,000.00 (the "Principal Note") of MMA payable to Secured Party. Venture is a wholly owned subsidiary of MMA. The Principal Note and all obligations pertaining thereto, executed by MMA for the benefit of Secured Party, shall hereinafter be referred to as the "Obligations."

B. Secured Party desires to have its lien and security interest in the trade names and trademarks confirmed by a document identifying that security interest and in such form as may be recorded in the Office of the Secretary of State of each state in which the Trade Names and Trademarks are used and in the United States Patent and Trademark Office.

C. For purposes of this Agreement "Debtor" shall include any Affiliate of the Debtor. Affiliate shall have the same definition as set forth in the Security Agreement between Secured Party and MMA dated June 28, 1999 with MMA as Borrower thereunder.

NOW, THEREFORE, with the foregoing deemed incorporated herein by reference and made a part of this Agreement, and in consideration of the mutual promises herein contained, the parties to this Agreement, intending to be legally bound, agree as follows:

1. Description of Collateral. For good, valuable, and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations, Debtor does hereby grant, assign, and convey to Secured Party a lien and security interest in the following (collectively, the "Collateral"):

(a) all of Debtor's right, title, and interest in and to the following (collectively, the "Trademark and Service Mark Rights"):

(i) the name "The Mattress Firm" along with all similar and related trademarks, service marks, trade names and trade dress bearing the word or related to "The Mattress Firm," including without limitation, those trademarks, service marks and trade names set forth on Exhibit "A" attached hereto (collectively, the "The Mattress Firm");

Name"), which are used by Debtor or any licensee or franchisee of Debtor, and certain of which are registered as set forth on Exhibit "A" attached hereto;

- (ii) any present or future applications to register The Mattress Firm Name or any other trademarks, service marks, trade names or trade dress by the Debtor under Federal or State laws (collectively, the "Applications");
 - (iii) any reissue, extension, or continuation of the registrations or the Applications;
 - (iv) all license fees or other fees paid to Debtor in connection with The Mattress Firm Name;
 - (v) proceeds of any and all of the foregoing; and
 - (vi) any future trademarks, service marks, trade names and trade dress used by the Debtor, including without limitation, "Sealy Mattress Firm".
- (b) all rights, interests, claims, and demands that Debtor has or may have in existing and future damages for past and future infringements of the Trademark and Service Mark Rights (collectively, the "Claims"); and
- (c) the good will of the business to which The Mattress Firm Name relates ("Goodwill").

This Agreement is subject to the terms of the subordination agreement executed June 28, 1999 between MMA, Secured Party and NationsBank, N.A. d/b/a Bank of America ("Subordination Agreement").

2. Further Covenants. Debtor further covenants that until all of the Obligations have been satisfied in full, it will (i) not enter into any agreement, including without limitation, license agreements, which are inconsistent with Debtor's undertakings and covenants under this Security Agreement or which restrict or impair Secured Party's rights hereunder, and (ii) maintain the Collateral in full force and effect. Notwithstanding anything to the contrary contained herein, the Debtor may license the Collateral to any franchisee of Debtor.

3. Use of Collateral. So long as this Agreement is in effect and so long as there has not been an event of default as hereinafter defined, Debtor shall continue to have the exclusive right to use the Collateral.

4. Assignment. Debtor agrees not to sell, assign, or further encumber (except as set forth in the Subordination Agreement) its rights and interests in the Collateral without prior written consent of Secured Party.

5. Events of Default. Debtor shall be in default under this Agreement upon Default by MMA in the performance of any Obligation or agreement pertaining thereto or by any maker, endorser, guarantor or surety of any Obligation of MMA.

6. Remedies

In the event of default in the payment of principal, interest or other amount due under any Obligation, or upon the happening of any of the events of default specified above, and at any time thereafter when such an event of default has not been cured, at the option of the holder thereof, the Obligations shall become immediately due and payable. Each maker, surety, guarantor and endorser of any Obligations hereby expressly waives all notices, including, but not limited to, all demands for payment, presentations for payment, notice of opportunity to cure defaults, notice of intention to accelerate the maturity of the Obligations, protest, notice of protest, and notice of the acceleration of the maturity of the Obligations. Secured Party shall have and may exercise with reference to the Collateral and Obligation any or all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State of Texas, and as otherwise granted herein or under any other applicable law or under any other agreement executed by Debtor, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner authorized or permitted under such Commercial Code after default by a Debtor, and to apply the proceeds thereof toward payment of any reasonable costs, expenses, attorney's fees and other legal expenses thereby incurred by Secured Party and toward payment of the Obligations in order or manner as Secured Party may elect.

Among the rights of Secured Party in the event of default, and without limitation, Secured Party shall have the right to take possession of the Collateral and to enter upon any premises where same may be situated for such purpose, without being deemed guilty of trespass and without liability for damages thereby occasioned, and to take any action deemed necessary, appropriate or desirable by Secured Party, at its option and in its discretion, to prepare the Collateral for sale or other use or disposition as herein authorized.

To the extent permitted by law, Debtor expressly waives any notice of sale or other disposition of the Collateral and any other rights or remedies of Debtor or formalities prescribed by law relating to the sale or disposition of the Collateral or exercise of any other right or remedy of Secured Party existing after default hereunder; and to the extent any such notice is required and cannot be waived, Debtor agrees that if such notice is mailed, postage prepaid, to Debtor at the address shown herein at least ten days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving such notice.

All recitals in any instrument of assignment or in any other instrument executed by Secured Party incident to the sale, transfer, assignment or other disposition or utilization of the Collateral, or any part thereof, shall be full proof of the matters stated therein and no other proof shall be required to establish full legal propriety of the sale or other action taken by Secured Party or of any fact, condition or thing incident thereto. All prerequisites of such sale or other action or of any fact, condition or thing incident thereto, shall be presumed conclusively to have been performed or to have occurred.

Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties. All reasonable expenses of retaking, holding, preparing for sale or other use or disposition, selling or otherwise using or disposing of the Collateral, which are incurred or paid by Secured Party as authorized or permitted hereunder, including all reasonable attorneys' fees, other reasonable legal expenses and costs, shall be added to the Obligations of Debtor, and Debtor shall be liable therefor.

All rights and remedies of the Secured Party, whether provided for herein or in the instruments or documents evidencing any Obligation, or conferred by law, are cumulative, alternative and may be enforced successively or concurrently. The repossession, sale or retention of Collateral shall not bar an action for the recovery of any of the indebtedness of Debtor to Secured Party nor shall the bringing of such an action bar Secured Party's right to repossess. No single or partial exercise by Secured Party or delay by Secured Party in the exercise of any rights or remedies hereunder will be deemed to waive or exhaust any other rights or remedies hereunder. To be binding on Secured Party, any waiver, modification, or change of any terms hereof must be made in writing and signed by Secured Party's duly authorized officer.

Notwithstanding anything to the contrary contained herein, all of Secured Party's rights herein shall be subject to the Subordination Agreement.

7. Use and Abandonment of The Mattress Firm Name

(a) In the event Debtor shall use The Mattress Firm Name in any foreign country other than as listed in Section 1 above, Debtor shall, at its own expense, to the extent Secured Party deems it necessary and through counsel acceptable to Secured Party, diligently file and prosecute all applications relating to the registration of The Mattress Firm Name in any or foreign country, file and prosecute opposition and cancellation proceedings, and do any and all acts which are necessary or desirable to preserve or maintain all rights in The Mattress Firm Name in such foreign country. Debtor shall pay or cause to be paid in its customary fashion all fees and disbursements in connection with the foregoing actions, and shall not abandon any such applications, opposition or cancellation proceedings before the exhaustion of all administrative and judicial remedies or disclaim or dedicate The Mattress Firm Name or any part thereof without the prior written consent of Secured Party.

(b) Debtor shall not abandon The Mattress Firm Name or any part thereof without the prior written consent of Secured Party.

8. Modification and Waiver. No modification or waiver of any provisions set forth herein shall be effective unless the same shall be in writing and signed by the party against whom enforcement is being sought.

9. Federal Affidavits and Renewals. Debtor agrees to file all affidavits and applications for renewal required under 15 U.S.C. § 1051 et seq., as it may be amended from time to time, to extend the registration of The Mattress Firm Name during the period Secured Party's security interest hereunder is in effect. Specifically, Debtor shall file with the United States Patent and Trademark Office (i) the affidavit described in 15 U.S.C. § 1058 within one (1) year next preceding the expiration of 6 years from the date The Mattress Firm Name was registered with such office, and (ii) the application for renewal described in 15 U.S.C. § 1059 within six (6) months before the expiration of the period for which the registration of The Mattress Firm Name with such office was issued or renewed. Debtor's failure to file such affidavit and renewal application or otherwise comply with 15 U.S.C. § 1051 et seq. shall constitute an Event of Default under this Agreement.

10. Enforcement by Secured Party. If Debtor fails to comply with any of its understandings and covenants hereunder, Secured Party may at its sole option do so in its name, but at Debtor's expense, and

Debtor agrees to reimburse Secured Party in full for all expenses, including reasonable attorneys' fees, incurred by Secured Party in protecting, defending, enforcing, and maintaining the Collateral, and interest shall accrue on such expenses at the highest lawful rate from the date they are incurred by Secured Party until they are paid.

11. Financing Statements. Debtor agrees to immediately notify Secured Party if The Mattress Firm Name is used in any foreign country and Debtor shall execute all documents deemed necessary by Secured Party to perfect in any foreign country Secured Party's security interest in the Collateral.

12. Termination of Security Interest. Upon payment in full of all MMA's Obligations to Secured Party, Secured Party shall execute and deliver to Debtor all documents reasonably necessary to terminate Secured Party's interests in the Collateral.

13. Recording. Debtor hereby acknowledges and agrees that this Agreement may be recorded at Secured Party's option, in the United States Patent and Trademark Office.

14. No Waiver. No course of dealing between Debtor and Secured Party, nor any failure to exercise, nor any delay in exercising, on the part of Secured Party any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege.

15. Remedies Cumulative. All of Secured Party's rights and remedies with respect to the Collateral, whether established hereby or by the Principal Note and the documents securing same, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

16. Personal Liability. This Security Agreement shall not be construed as relieving Debtor from full personal liability on the Principal Note for any deficiency thereon.

17. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

18. Notices. Any notice provided or permitted to be given under this agreement must be in writing and shall be served and effective as follows: (a) by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, in which case such notice shall be effective on the earlier of the date received or three days (excluding Sundays and legal holidays) after the same is deposited in the mail as aforesaid, or (b) by delivering the same in person to such party, in which case such notice shall be effective on the date received, or (c) by depositing the same with a courier service guaranteeing overnight delivery, in which case such notice shall be effective on the day after the same is deposited with such courier service (excluding Sundays and legal holidays). For purposes of notice, the address of the parties as set forth in the first paragraph of this Agreement.

19. Binding on Successors. This Agreement shall be binding upon Debtor, its successors, and assigns, and shall inure to the benefit of Secured Party, its successors, and assigns.

THIS AGREEMENT IS EXECUTED AND DELIVERED AS AN INCIDENT TO A LENDING TRANSACTION NEGOTIATED, CONSUMMATED, AND PERFORMABLE IN HARRIS COUNTY, TEXAS, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. COURTS WITHIN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN DEBTOR AND SECURED PARTY, WHETHER IN LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT; AND VENUE IN ANY SUCH DISPUTE, WHETHER IN FEDERAL OR STATE COURT, SHALL LIE IN HARRIS COUNTY, TEXAS.

In witness whereof, Debtor has executed this Agreement, to be effective as of the day and year indicated above.


“Debtor”

The Mattress Venture, L.P.

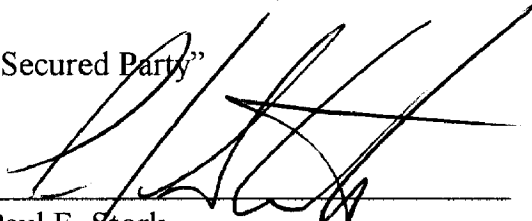
By: Festro, Inc., its general partner

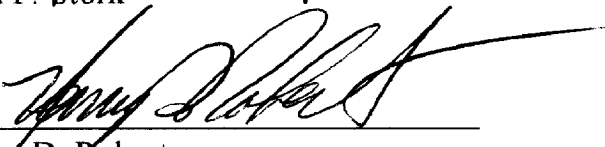
By: 
Stephen G. Fendrich, Vice President

Malachi Mattress America, Inc.

By: 
S. Chris Herndon, President

“Secured Party”


Paul F. Stork

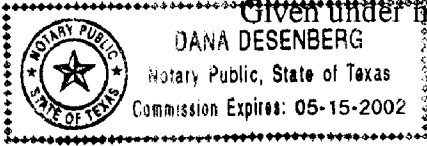

Harry D. Roberts

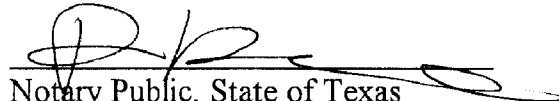

Stephen G. Fendrich

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, on this day personally appeared Stephen G. Fendrich, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Vice President of Festro, Inc., which corporation is the general partner of The Mattress Venture, L.P., a Texas limited partnership, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act of the corporation for the partnership.

Given under my hand and seal of office this 22nd day of June, 1999.




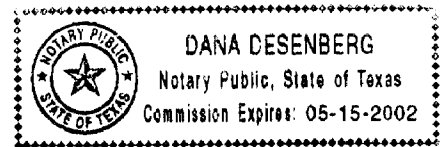

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, on this day personally appeared S. Chris Herndon, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the President of Malachi Mattress America, Inc., a Delaware corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act of the corporation.

Given under my hand and seal of office this 24th day of June, 1999.


Notary Public, State of Texas



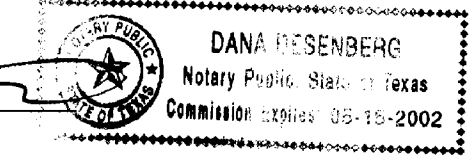
STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, on this day personally appeared Paul F. Stork, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 24 day of June, 1999.



Notary Public, State of Texas



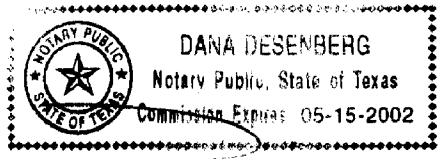
STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, on this day personally appeared Harry D. Roberts, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 24th day of June, 1999.



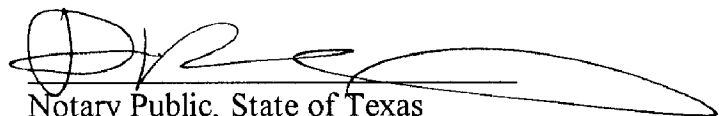
Notary Public, State of Texas



STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, on this day personally appeared Stephen G. Fendrich, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 24th day of June, 1999.



Notary Public, State of Texas

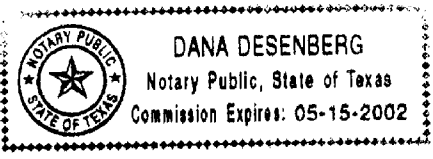


Exhibit A

1. THE MATTRESS FIRM (Reg. No. 1,915,716 U.S. Patent and Trademark Office)
2. Nobody Sells Bedding for Less, Nobody! (Texas Reg. No. 55, 468)
3. Nobody Sells Mattresses for Less, Nobody! (Texas Reg. No. 55, 402, U.S. Reg. No 2,064,202)
4. Nobody Sells For Less, Nobody! (Texas Reg. No. 55, 348). Pending application in the U.S. Patent office and trademark Office number 74/729878.
5. Warranty Plus and Design, Texas Reg. No. 52,063