

02-06-2001



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1-29-01

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID # \_\_\_\_\_
- Correction of PTO Error  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_
- Corrective Document  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

#### Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment
- Merger Effective Date  
Month Day Year  
11 06 00
- Change of Name
- Other \_\_\_\_\_

#### Conveying Party

Mark if additional names of conveying parties attached

Name Mattress Development Company LLC Execution Date  
Month Day Year  
11 06 00

Formerly \_\_\_\_\_

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other limited liability company
- Citizenship/State of Incorporation/Organization New Jersey

#### Receiving Party

Mark if additional names of receiving parties attached

Name Mattress Development Company of Delaware, LLC

DBA/AKA/TA \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) 1020 North Union Street

Address (line 2) Suite C

Address (line 3) Wilmington Delaware 19805  
City State/Country Zip Code

- Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- Corporation  Association
- Other limited liability company
- Citizenship/State of Incorporation/Organization Delaware

02/05/2001 DBYRNE 00000097 1855786  
01 FC:481 40.00 OP  
02 FC:482 925.00 OP

FOR OFFICE USE ONLY

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Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="see attached EXHIBIT."/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**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. Charges to deposit account are authorized, as indicated herein.

Linda D. Bayliss, paralegal for

Taft, Stettinius & Hollister LLP

Signature

*Linda D. Bayliss*

Jan. 25, 2001

Date Signed

**EXHIBIT I  
MARKS**

**I. REGISTERED MARKS**

Mark	Registration No.	Jurisdiction (State or Country)	Date of Issue	Expiration Date
ANDROMEDA	1,855,788	U.S.A.	09/27/94	09/27/2004
CAMEO	1,180,201	U.S.A.	12/01/81	12/01/2001
CAMEO SUPREME	870,479	U.S.A.	06/03/89	06/03/2009
CENTAURI	1,855,785	U.S.A.	09/27/94	09/27/2004
CHIRO-BRACER	1,269,242	U.S.A.	03/06/84	03/06/2004
CHIRO-REST	1,679,421	U.S.A.	03/17/92	03/17/2002
COLUMBIA	1,961,293	U.S.A.	03/12/96	03/12/2006
CONFORMATIC	736,401	U.S.A.	08/21/62	08/21/2002
CONSTELLATION	1,853,664	U.S.A.	09/13/94	09/13/2004
CROWN-O-PEDIC	871,288	U.S.A.	06/17/69	06/17/2009
DAN-DEE	0392468	U.S.A.	12/30/41	12/30/2001
ECLIPSE (AND DESIGN)	896,886	U.S.A.	08/18/70	08/18/2000
ECLIPSE (STYLE II)	612,538	U.S.A.	09/20/65	09/20/2005
ECLIPSE (STYLIZED)	257,977	U.S.A.	06/25/29	06/25/2009
FEATHER FIRM	1,011,026	U.S.A.	05/20/75	05/20/2005
KIMBERKIDZ	1,895,131	U.S.A.	05/23/95	05/23/2005
LEVELIZER	889,380	U.S.A.	04/14/70	04/14/2000
LIFEDGE	1,084,019	U.S.A.	01/31/78	01/31/2008
LIFETIME	442,206	U.S.A.	03/15/49	03/15/2009
LUMBAR LIGN	1,767,487	U.S.A.	04/27/93	04/27/2003
NAMACO	2,189,170	U.S.A.	09/15/98	09/15/2008
NATIONAL BEAUTY NI & DESIGN	409,694	U.S.A.	10/17/44	10/17/2004
1,187,695	U.S.A.	01/26/82	01/26/2002	
ORTHO-PRACTIC	1,081,068	U.S.A.	01/03/78	01/03/2008
PERFECTION REST	607,030	U.S.A.	06/07/55	06/07/2005
PILLOW CLOUD	1,758,383	U.S.A.	03/16/93	03/16/2003
PILLOW MAGIC	1,448,541	U.S.A.	07/21/87	07/21/2007
POSTURE	1,414,257	U.S.A.	10/21/86	10/21/2006
PROTECTOR				
SACRO-LIGN	1,286,049	U.S.A.	07/17/84	07/17/2004
SATURN	1,855,789	U.S.A.	09/27/94	09/27/2004
SILVER CLOUD	347,591	U.S.A.	06/29/37	06/29/2007
SLEEP-SOFA	800,677	U.S.A.	12/21/65	12/21/2005
SPINAL ZONE	1,759,917	U.S.A.	03/23/93	03/23/2003
THE SHENANDOAH	1,895,132	U.S.A.	05/23/95	05/23/2005
TIFFANY	1,759,925	U.S.A.	03/23/93	03/23/2003
VERTEBRACER	937,091	U.S.A.	07/04/72	07/04/2002
VICTORIA	1,758,391	U.S.A.	03/16/93	03/16/2003
VOYAGER	1,855,787	U.S.A.	09/27/94	09/27/2004

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12/20/00 WED 10:11 [TX/RX NO 8083]

**TRADEMARK  
REEL: 002232 FRAME: 0765**



Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"MATTRESS DEVELOPMENT COMPANY, LLC", A NEW JERSEY LIMITED LIABILITY COMPANY,

WITH AND INTO "MATTRESS DEVELOPMENT COMPANY OF DELAWARE, LLC" UNDER THE NAME OF "MATTRESS DEVELOPMENT COMPANY OF DELAWARE, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTEENTH DAY OF NOVEMBER, A.D. 2000, AT 9:01 O'CLOCK A.M.



*Edward J. Freel*

Edward J. Freel, Secretary of State

AUTHENTICATION: 0815005

DATE: 11-28-00

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**AGREEMENT AND PLAN OF MERGER**

**BY AND BETWEEN**

**MATTRESS DEVELOPMENT COMPANY, LLC.**  
**(a New Jersey Limited Liability company)**

**and**

**MATTRESS DEVELOPMENT COMPANY OF DELAWARE, LLC.**  
**(a Delaware Limited Liability company)**

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NOV-22-00 02:18PM FROM-

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12/20/00 WED 10:11 [TX/RX NO 80891

**TRADEMARK**  
**REEL: 002232 FRAME: 0767**

**EXHIBIT**

I

**Certificate of Merger**

2

~~What are the names of the companies that are merging? 103140.rtf~~

12/20/00 WED 10:11 [TX/RX NO 40441]

**TRADEMARK**  
**REEL: 002232 FRAME: 0768**

## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER is made as of November 10, 2000, by and between Mattress Development Company, LLC, a New Jersey limited liability company (the "Company") and Mattress Development Company of Delaware, LLC, a Delaware limited liability company (the "Acquirer") (the Acquirer, together with the Company, the "Parties"). Certain other terms are used herein as defined elsewhere in this Agreement.

### BACKGROUND

This Agreement sets forth the terms and conditions upon which the Company will be merged with and into the Acquirer (the "Merger").

NOW, THEREFORE, the Parties, intending to be legally bound hereby, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants contained herein, hereby agree as follows:

#### 1. Merger

##### 1.1 The Merger

(a) At the Effective Time (as hereinafter defined) the Company shall be merged with and into the Acquirer in accordance with the terms of this Agreement and pursuant to the Certificate of Merger attached hereto as Exhibit L, the separate existence of the Company shall cease and the Acquirer shall continue as the surviving limited liability company under the name "Mattress Development Company of Delaware, LLC" upon the terms and subject to the conditions provided for in this Agreement and pursuant to the New Jersey Limited Liability Company Act ("NJLLCA") and the Delaware Limited Liability Company Act ("DELLCA"). The Acquirer, as it exists from and after the Effective Time, is sometimes referred to as the "Survivor."

(b) The Merger shall have the effect provided therein by the NJLLCA and the DELLCA. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time (i) all the rights, privileges, powers and franchises, of a public as well as of a private nature, and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of or belonging to or due to the Company or the Acquirer shall be taken and deemed to be transferred to, and vested in, the Survivor without further act or deed; and all property, rights and privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Survivor, as they were of the Company and the Acquirer, and (ii) all debts, liabilities, duties and obligations of the Company and the Acquirer shall become the debts, liabilities, duties and obligations of the Survivor, and the Survivor shall thenceforth be responsible and liable for all the debts, liabilities, duties and obligations of the Company and the Acquirer and neither the rights of creditors nor

any liens upon the property of the Company or the Acquirer shall be impaired by the Merger, and may be enforced against the Survivor.

(c) The Merger shall become effective upon the later of the filing of a Certificate of Merger with the Secretary of State of the State of New Jersey and with the Secretary of State of the State of Delaware in accordance with the provisions of the NULLCA and the DELICA or November 10, 2000 (the "Effective Time").

1.2 **Certificates of Formation; Operating Agreement.** The Certificate of Formation of the Acquirer as in effect immediately prior to the Effective Time shall remain the governing Certificate of Formation of Survivor from and after the Effective Time, until thereafter amended in accordance with the provisions therein and as provided by the DELICA. The Operating Agreement of the Acquirer as in effect immediately prior to the Effective Time shall remain the governing Operating Agreement of Survivor from and after the Effective Time, until thereafter amended in accordance with its terms.

2. **Conversion and Exchange.** At the Effective Time, by virtue of the Merger and without any further action on the part of the Parties, the membership interests of the Company and the membership interests of the Acquirer shall be converted as follows:

(a) The issued and outstanding membership units of the Company that are issued and outstanding immediately prior to the Effective Time shall automatically be canceled and extinguished and converted, without any further action on the part of the holders thereof, into membership units in the Survivor in the same proportions as the membership units in the Company are owned by such holders immediately prior to the Effective Time.

(b) Each membership unit of Acquirer issued and outstanding immediately prior to the Effective Time shall remain an issued and outstanding interest of the Survivor and shall not be affected by the Merger.

### 3. **Conditions for Merger:**

3.1 **Company Members' Approval.** This Agreement shall be submitted for approval or disapproval by the members of the Company as provided by the NULLCA. There shall be required for the adoption of this Agreement by the Company, the consent of those members then entitled to vote holding more than fifty percent (50%) of the then current percentage or other interest in the profits of the Company owned by all of the members.

3.2 **Acquirer Members' Approval.** This Agreement shall be submitted for approval or disapproval by the members of the Acquirer as provided by the DELICA. There shall be required for the adoption of this Agreement by the Acquirer, the consent of those members then entitled to vote holding more than fifty percent (50%) of the then current percentage or other interest in the profits of the Acquirer owned by all of the members.

4. **Service of Process.** The Acquirer hereby agrees that it may be served with process in the State of New Jersey in any proceeding for enforcement of any obligation of the Company as well



as for enforcement of any obligation resulting from the Merger, and hereby irrevocably appoints the Secretary of State of the State of New Jersey as its agent to accept service of process in any such suit or proceeding. The address to which a copy of such process shall be mailed by the Secretary of State of the State of New Jersey is 1020 North Union Street, Suite C, Wilmington, DE 19801, until the Acquirer shall hereafter designate in writing to the said Secretary of State a different address for such purpose.

## 5. General Matters

5.1 Contents of Agreement. This Agreement, together with the other documents contemplated hereunder, sets forth the entire understanding of the Parties with respect to the transactions and supersedes all prior agreements or understandings among the parties regarding those matters.

5.2 Amendment. Parties in Interest. Assignment. Etc. This Agreement may be amended, modified or supplemented only by a written instrument duly executed by each of the Parties. If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, legal representatives, successors and permitted assigns of the Parties. Nothing in this Agreement shall confer any rights upon any person other than the Parties and their respective heirs, legal representatives, successors and permitted assigns, except as provided in this Section 5. No Party shall assign this Agreement or any right, benefit or obligation hereunder. Any term or provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof by a written instrument duly executed by such Party.

5.3 Further Assurances. At and after the execution of this Agreement, the Parties shall execute and deliver any and all documents and take any and all other actions that may be deemed reasonably necessary by their respective counsel to complete, ratify and confirm the transactions contemplated herein.

5.4 Interpretation. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) "including" has the inclusive meaning frequently identified with the phrase "but not limited to" and (d) references to "hereunder" or "herein" relate to this Agreement. Any determination as to whether a situation is material shall be made by taking into account the effect of all other provisions of this Agreement that contain a qualification with respect to materiality so that the determination is made after assessing the aggregate effect of all such situations. Section, subsection and Exhibit references are to this Agreement unless otherwise specified.

5.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such copy shall be deemed an original, and it shall not be

**EXHIBIT I**

**CERTIFICATE OF MERGER**

of

**MATTRESS DEVELOPMENT COMPANY, LLC,**  
a New Jersey Limited Liability Company

into

**MATTRESS DEVELOPMENT COMPANY OF DELAWARE, LLC,**  
a Delaware Limited Liability Company

Pursuant to  
Section 42-2B-20 of the New Jersey Limited Liability Company Act  
and Section 18-209 of the Delaware Limited Liability Company Act

Mattress Development Company, LLC, a New Jersey limited liability company, and  
Mattress Development Company of Delaware, LLC, a Delaware limited liability company, do  
heraby certify as follows:

**FIRST:** The name and jurisdiction of formation or organization of each of the limited  
liability companies which are to merge (the "Constituent Entities") are as follows:

<u>Name</u>	<u>Jurisdiction</u>
Mattress Development Company, LLC	New Jersey
Mattress Development Company of Delaware, LLC	Delaware

**SECOND:** An Agreement and Plan of Merger dated November 10, 2000 between the  
Constituent Entities (the "Agreement") to the merger has been approved, adopted, certified,  
executed and acknowledged by each of the Constituent Entities in accordance with Section  
42-2B-20 of the New Jersey Limited Liability Company Act and Section 18-209 of the Delaware  
Limited Liability Company Act.

**THIRD:** The name of the surviving Delaware limited liability company is Mattress  
Development Company of Delaware, LLC (the "Surviving Entity").

**FOURTH:** This Certificate of Merger shall be effective upon the later of the filing of a Certificate of Merger with the Secretary of State of the State of New Jersey and with the Secretary of State of the State of Delaware or November 10, 2000.

**FIFTH:** The executed Agreement is on file at a place of business of the Surviving Entity which is located at:

1020 North Union Street, Suite C  
Wilmington, DE 19801

**SIXTH:** A copy of the Agreement will be furnished by the Surviving Entity, on request and without cost, to any member of either Constituent Entity.

**SEVENTH:** Mattress Development Company of Delaware, LLC, as the Surviving Entity to the merger, may be served with process in the State of New Jersey in any action, suit or proceeding for the enforcement of any obligation of Mattress Development Company, LLC, as well as for the enforcement of any obligation of the Surviving Entity arising from the merger, and it does hereby irrevocably appoint the Secretary of State of the State of New Jersey as its agent to accept service of process in any such action, suit or proceeding. The address to which a copy of such process shall be mailed by the Secretary of State of the State of New Jersey is: 1020 North Union Street, Suite C, Wilmington, DE 19801 until the Surviving Entity shall hereafter designate in writing to the said Secretary of State a different address for such purpose.

IN WITNESS WHEREOF, the Constituent Entities have caused this Certificate of Merger to be executed in their names this 6<sup>TH</sup> day of November, 2000.

**MATTRESS DEVELOPMENT COMPANY, LLC**

By:   
Name: Stuart Carlitz  
Title: Member

**MATTRESS DEVELOPMENT COMPANY OF DELAWARE, LLC**

By:   
Name: Stuart Carlitz  
Title: Member

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12/20/00 WED 10:11 [TX/RX NO 3099]

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TAFT, STETTINIUS & HOLLISTER LLP

D \$

1800 FIRSTAR TOWER

425 WALNUT STREET

CINCINNATI, OHIO 45202-3957

513-381-2838

FAX: 513-381-0205

www.taftlaw.com



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859-331-2838  
513-381-2838  
FAX: 513-381-6613

CLEVELAND, OHIO OFFICE  
SIXTH FLOOR  
BOND COURT BUILDING  
1300 EAST NINTH STREET  
CLEVELAND, OHIO 44114-1503  
216-241-2838  
FAX: 216-241-2837

DIRECT LINE: (513) 357-9419  
E-MAIL: bayliss@taftlaw.com

January 24, 2001

FEDERAL EXPRESS

Commissioner of Patents and Trademarks  
Box Assignments  
Washington, DC 20231

Re: Mattress Development Company of Delaware, LLC

Dear Sir:

Enclosed for filing is a copy of a Merger between Mattress Development Company LLC and Mattress Development Company of Delaware, LLC. Also enclosed are the following:

1. Recordation cover sheet for trademarks;
2. Copy of merger with attachments;
3. Check in the amount of \$965.00; and
4. Return postcard acknowledging receipt of documents.

Please forward the original filed merger to my attention. Our firm maintains deposit account 20-0053 in the event you require additional fees.

Yours sincerely,

Linda D. Bayliss  
Paralegal

LDB/trg  
Enclosures  
cc: Dawn R. Landers, Esq.