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101715103

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

The Mattress Firm, Inc.

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: November 30, 2000

2. Name and address of receiving party(ies)

Name: Malachi Mattress America, Inc.

Internal Address: MAY - 7 2001

Street Address: 5815 Gulf Freeway

City: Houston State: TX ZIP: 77023

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Texas
- 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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

(1915716)

Additional numbers attached? Yes No

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

Name: James E. Bradley

Internal Address: Bracewell & Patterson, L.L.P.

Street Address: 711 Louisiana, Suite 2900

City: Houston State: Texas ZIP: 77002

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

Enclosed

Additional fees authorized to be charged to deposit account

8. Deposit account number:

50-0259 (1821JB.029956)

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

05/11/2001 DBYRNE 00000099 1915716

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40.00 OP

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

Signature

May 6, 2001
Date

Total number of pages including cover sheet, attachments, and document:

9

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

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
THE MATTRESS FIRM, INC.

FILED
In the Office of the
Secretary of State of Texas
JUN 11 1998
Corporations Section

ARTICLE ONE

Pursuant to the provisions of article 4.07 of the Texas Business Corporation Act, the undersigned corporation adopts restated articles of incorporation which accurately copy the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restate articles of incorporation as hereinafter set forth and which contain no other change in any provision thereof.

ARTICLE TWO

The articles of incorporation of the corporation are amended by the restated articles of incorporation. The following amendments alter articles one, six, seven, eight and twelve of the original articles of incorporation and the full text of each provision altered is as follows:

ARTICLE I

The name of the corporation is Malachi Retail, Inc.

ARTICLE VI

The address of its principal office is 4665 Sweetwater Blvd., Suite 105, Sugar Land, Texas 77479.

ARTICLE VII

The street address of the registered office of the corporation is 4665 Sweetwater Boulevard, Suite 105, Sugar Land, Fort Bend County, Texas 77479, and the name of its registered agent at such address is S. Christopher Herndon.

ARTICLE VIII

The number of directors constituting the Board of Directors shall be three (3) which number may be changed from time to time as provided by the bylaws of the corporation, and the names and addresses of the persons who are to serve as directors until the next annual meeting of the shareholders, or until the successors are elected and qualified are:

S. Christopher Herndon 4665 Sweetwater Blvd., Suite 105
 Sugar Land, Texas 77479

Gregory L. Feste 4665 Sweetwater Blvd., Suite 105
 Sugar Land, Texas 77479

Mark D. Snelling 4665 Sweetwater Blvd., Suite 105
 Sugar Land, Texas 77479

ARTICLE XII

The following acts of the Corporation must receive the approval of in excess of two-thirds vote of the shareholders of the Corporation:

- a. the dissolution or sale of the Corporation;
- b. the filing of any bankruptcy proceeding;
- c. any change or amendment to the bylaws;
- d. the issuance of additional shares of the Corporation;
- e. the incurring of any long term debt in excess of one year that accumulatively adds up to an excess of \$200,000.

Notwithstanding the foregoing, however, the Corporation shall have the right to incur debt from existing shareholders in any amount upon the majority vote of the Board of Directors so long as any such shareholder indebtedness is subordinate to any secured debt existing at the time of the proposed shareholder loan and further provided that any payments under the shareholder loan shall be suspended when there is any default under any secured indebtedness of the Corporation.

ARTICLE THREE

Each such amendment made by the restated articles of incorporation has been effected in conformity with the provisions of the Texas Business Corporation Act and such restated articles of incorporation and each such amendment made by the restated articles of incorporation were duly adopted by the shareholders of the corporation on the 11th day of June, 1998.

ARTICLE FOUR

The number of shares of the corporation outstanding at the time of such adoption was 16; and the number of shares entitled to vote on the restated articles of incorporation so amended was 16.

The holders of all of the shares outstanding and entitled to vote on said amendment have signed a consent in writing pursuant to Article 9.10 adopting said amendment and any written notice required by Article 9.10 has been given.

ARTICLE FIVE

The articles of incorporation and all amendments and supplements thereto are hereby superseded by the following restated articles of incorporation which accurately copy the entire text thereof and as amended as above set forth:

ARTICLE I

The name of the corporation is Malachi Retail, Inc.

ARTICLE II

The period of its duration is perpetual.

ARTICLE III

The purpose for which the corporation is organized is to transact any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act, and to act as a retailer of mattresses and box springs and related accessories.

ARTICLE IV

The aggregate number of shares which the corporation shall have authority to issue is 100,000 shares of common stock with a par value of \$1.00.

ARTICLE V

The corporation will not commence business until it has received for the issuance of its shares consideration of the value of at least \$1,000.00 consisting of money, labor done or property actually received.

ARTICLE VI

The address of its principal office is 4665 Sweetwater Blvd., Suite 105, Sugar Land, Texas 77479.

ARTICLE VII

The street address of the registered office of the corporation

is 4665 Sweetwater Boulevard, Suite 105, Sugar Land, Fort Bend County, Texas 77479, and the name of its registered agent at such address is S. Christopher Herndon.

ARTICLE VIII

The number of directors constituting the Board of Directors shall be three (3) which number may be changed from time to time as provided by the bylaws of the corporation, and the names and addresses of the persons who are to serve as directors until the next annual meeting of the shareholders, or until the successors are elected and qualified are:

| | |
|------------------------|---|
| S. Christopher Herndon | 4665 Sweetwater Blvd., Suite 105 Sugar Land, Texas 77479 |
| Gregory L. Feste | 4665 Sweetwater Blvd., Suite 105 Sugar Land, Texas 77479 |
| Mark D. Snelling | 4665 Sweetwater Blvd., Suite 105 Sugar Land, Texas 77479 |

ARTICLE IX

The names and addresses of the incorporators are:

| | |
|---------------------|---|
| Stephen G. Fendrich | 2301 Hayes Road, #6608 Houston, Texas 77077 |
| Harry D. Roberts | 3000 Woodland Park Drive, #2606 Houston, Texas 77082 |
| Paul F. Stork | 4406 Waterfall Way Sugar Land, Texas 77478 |

ARTICLE X

Cumulative voting is expressly prohibited.

ARTICLE XI

The shareholders of this corporation shall have no preemptive right to acquire additional, unissued or treasury shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, such right being hereby expressly denied.

ARTICLE XII

The following acts of the Corporation must receive the approval of in excess of two-thirds vote of the shareholders of the Corporation:

- f. the dissolution or sale of the Corporation;
- g. the filing of any bankruptcy proceeding;
- h. any change or amendment to the bylaws;
- i. the issuance of additional shares of the Corporation;
- j. the incurring of any long term debt in excess of one year that accumulatively adds up to an excess of \$200,000.

Notwithstanding the foregoing, however, the Corporation shall have the right to incur debt from existing shareholders in any amount upon the majority vote of the Board of Directors so long as any such shareholder indebtedness is subordinate to any secured debt existing at the time of the proposed shareholder loan and further provided that any payments under the shareholder loan shall be suspended when there is any default under any secured indebtedness of the Corporation.

Dated June 11, 1998.

THE MATTRESS FIRM, INC.

By: 
Name: Paul F. Stork
Its: President



The State of Texas

SECRETARY OF STATE

CERTIFICATE OF MERGER

The undersigned, as Secretary of State of Texas, hereby certifies that the attached Articles of Merger of

MALACHI INTERESTS, INC.
MALACHI RETAIL, INC.
MALACHI CAPITAL, INC.
CENTEX MATTRESS CORPORATION
All Texas Corporations
with
MALACHI MATTRESS AMERICA, INC.
A Delaware Corporation

have been received in this office and are found to conform to law. ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Merger.

Filed NOVEMBER 30, 2000

Effective NOVEMBER 30, 2000



Elton Bomer
Secretary of State

NOV 30 2000

ARTICLES OF MERGER - Texas

Pursuant to the provisions of Article 5.16 of the Texas Business Corporation Act, the undersigned parent corporation, Malachi Mattress America, Inc., (Parent) who owns 100% of the other subsidiary corporations listed herein, does hereby file the following Articles of Merger.

1. The name of the parent entity, the name of each subsidiary entity, the type of entity and respective jurisdiction under which subsidiary entity is organized is as follows:

| | <u>NAME OF CORPORATION</u> | <u>TYPE OF ENTITY</u> | <u>STATE</u> |
|--------------|--------------------------------|-----------------------|--------------|
| (Parent) | Malachi Mattress America, Inc. | Corporation | Delaware |
| (Subsidiary) | Malachi Capital, Inc. | Corporation | Texas |
| (Subsidiary) | Malachi Interests, Inc. | Corporation | Texas |
| (Subsidiary) | Malachi Retail, Inc. | Corporation | Texas |
| (Subsidiary) | Centex Mattress Corporation | Corporation | Texas |

2. As to each of the undersigned corporations, the number of shares outstanding and the designation and number of shares outstanding of each class entitled to vote in each class are as follows:

| <u>NAME OF CORPORATION</u> | <u>NUMBER OF SHARES OUTSTANDING</u> | <u>DESIGNATION OF CLASS</u> | <u>AMOUNT OF SHARES OWNED BY PARENT</u> |
|--------------------------------|-------------------------------------|-----------------------------|---|
| Malachi Mattress America, Inc. | 9,803,922 | Common | 9,803,922 |
| Malachi Interests, Inc. | 1,000 | Common | 1,000 |
| Malachi Capital, Inc. | 1,000 | Common | 1,000 |
| Malachi Retail, Inc. | 1,000 | Common | 1,000 |
| Centex Mattress Corporation | 1,000 | Common | 1,000 |

3. Attached hereto is a copy of the resolution adopted by the Board of Directors of Malachi Mattress America, Inc., the Parent entity, in accordance with the laws of the state of Delaware. The resolution was adopted on August 31, 2000. The Parent owns all of the outstanding shares of each class or all of the membership interests of each subsidiary entity that is a party to the Merger.

4. The address of the registered office of Malachi Mattress America, Inc. in the state of Delaware is as follows:

Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

The name of its registered agent at such address is the Corporation Trust Company.

5. No amendments to the Articles of Incorporation of any of the Parent or any subsidiaries are to be affected by the merger.

6. The resolution of the Board of Directors and the performance of its terms has been duly authorized by all actions required by the laws under which each corporation that is a party to the Merger was incorporated or organized and by its constituent documents.

7. The Parent, Malachi Mattress America, Inc., shall be the surviving entity and shall be responsible for the payment of all fees and franchise taxes of all the named Subsidiaries herein and will be obligated to pay such fees and franchise taxes of all such Subsidiaries if they are not timely paid.

MALACHI MATTRESS AMERICA, INC.

By: _____


S. Chris Herndon
President