

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

THE ORIGINAL MATTRESS
FACTORY, INC.,

Plaintiff,

v.

U.S. MATTRESS FACTORY, INC.,
d/b/a THE MATTRESS FACTORY,
d/b/a WWW.THEMATTRESS
FACTORY.COM,

Defendant.

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C.A. No. _____

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff The Original Mattress Factory, Inc. files this Original Complaint against defendant U.S. Mattress Factory, Inc., and states as follows:

I.
Parties

1. Plaintiff The Original Mattress Factory, Inc. (“The Original Mattress Factory”) is an Ohio corporation with its principal place of business in Cleveland, Ohio.

2. Defendant U.S. Mattress Factory, Inc., d/b/a The Mattress Factory, d/b/a www.themattressfactory.com (“U.S. Mattress”), is a Texas corporation with its principal place of business in Fort Worth, Texas.

II.
Jurisdiction And Venue

3. This Court has subject matter jurisdiction over The Original Mattress Factory's claims under 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds \$75,000.

4. This Court also has subject matter jurisdiction over The Original Mattress Factory's Lanham Act claims under 28 U.S.C. § 1331 and § 1338 because those claims arise under federal law.

5. This Court also has supplemental subject matter jurisdiction over The Original Mattress Factory's state law claims under 28 U.S.C. § 1367 and 15 U.S.C. § 1121 because those claims are so related to its Lanham Act claims that together the claims are part of the same case or controversy under Article III.

6. This Court has personal jurisdiction over U.S. Mattress because it is a Texas corporation and has its principal place of business in Texas.

7. Venue is proper under 28 U.S.C. § 1391 because U.S. Mattress is subject to personal jurisdiction in the Northern District of Texas and therefore "resides" in this District according to federal law.

III.
Relevant Facts

A. Original Mattress Builds A Superior Reputation For Service And Quality

8. Ron Trzcinski is the President and Founder of The Original Mattress Factory.

9. Forty years ago, Mr. Trzcinski began his career in the mattress business by working for Ohio Sealy, now Sealy, Inc., where he worked for 18 years.

10. Mr. Trzcinski became president and Chief Executive Officer of Sealy in 1982, and was instrumental in making it the nation's largest mattress company.

11. In 1989, Mr. Trzcinski decided to leave Sealy and start his own company.

12. Mr. Trzcinski named his new business "The Original Mattress Factory, Inc.," and the company has used that name continuously since its founding.

13. The Original Mattress Factory owns the following federal trademark registrations: Registration No. 2,896,751 for THE ORIGINAL MATTRESS FACTORY and Design, and Registration No. 3,054,570 for THE ORIGINAL MATTRESS FACTORY.

14. From the start, Mr. Trzcinski sought to sell the best mattress at a fair price and to provide the best customer service.

15. Mr. Trzcinski built the business upon certain bedrock principles: to produce the highest quality mattress in its own factories and sell them direct to consumers, thus eliminating the middleman and providing real value; to provide the best customer service by being courteous to customers and educating them about the product; and to strive for a win-win solution when dealing with customers, fellow employees, and suppliers.

16. For years, The Original Mattress Factory has advertised on television, on radio, and in newspapers, and it advertises nationally on its internet website: www.originalmattress.com.

17. The Original Mattress Factory's television and radio ads feature Mr. Trzcinski describing The Original Mattress Factory's novel approach to selling mattresses, including its no middleman approach, and explaining why customers should choose The Original Mattress Factory over others.

18. Because of those ads, consumers associate Mr. Trzcinski's name, voice, and image with The Original Mattress Factory.

19. Over the last 20 years, by staying true to its principles, The Original Mattress Factory has flourished.

20. The Original Mattress Factory now has 11 factory locations and over 100 showrooms in Ohio, Pennsylvania, Kentucky, Minnesota, Virginia, North Carolina, South Carolina, Georgia, and Florida.

21. The Original Mattress Factory has sold hundreds of thousands of mattresses to customers throughout the United States.

22. The Original Mattress Factory has become nationally recognized in the trade and by the consuming public as a market leader in the manufacture and sale of quality mattresses.

23. Consumer Reports, the gold-standard for product reviews and rankings, recently ranked The Original Mattress Factory's retail stores number one in the nation and ranked its mattresses the number two brand.

24. The Original Mattress Factory's fair business practices, quality products, customer service, advertising, and sales have earned it valuable goodwill associated with its mattresses, its stores, and its name.

25. The Original Mattress Factory's success has not gone unnoticed by consumers or by its competitors.

26. One particular competitor, U.S. Mattress, took notice and has tried to confuse people into thinking that it is "The Original Mattress Factory" featured in Consumer Reports that Ron Trzcinski founded.

B. U.S. Mattress Deceives Customers Into Thinking It Is "The Original Mattress Factory" Featured In Consumer Reports

27. U.S. Mattress appears to have only one mattress showroom, in Fort Worth, Texas, but it advertises that it is a "leader in the industry" and will "ship anywhere in the USA."

28. Upon information and belief, U.S. Mattress advertises nationally on a website at www.themattressfactory.com.

29. The U.S. Mattress website advertises various sizes and styles of mattresses and accessories, states price ranges for the products, and advises that it will "ship anywhere in the USA."

30. U.S. Mattress and The Original Mattress Factory are not in anyway related. U.S. Mattress is not part of The Original Mattress Factory; it is not affiliated with The Original Mattress Factory; it does not sell mattresses manufactured by The Original Mattress Factory; and it has no business dealings with The Original Mattress Factory.

31. Recently, U.S. Mattress has been trying to deceive the public into thinking that it is the same The Original Mattress Factory that Ron Trzcinski founded in Cleveland, Ohio, and

that Consumer Reports recently featured. For example, among other things, U.S. Mattress has done the following:

(a) U.S. Mattress has used its website to create confusion with The Original Mattress Factory by, among other things, calling itself “the Original Mattress Factory” without mentioning its real name: “U.S. Mattress Factory, Inc.”; using distinctive images of mattresses identical to images displayed first on The Original Mattress Factory’s website; using the same distinctive names of mattress components coined and first used by The Original Mattress Factory, such as “FR Innerliner” and “Ultra Plush Foam”; claiming it is a “leader in the industry,” which The Original Mattress Factory is but U.S. Mattress is not; and touting a “no middleman” approach, which is the distinct mattress sales philosophy consumers associate with The Original Mattress Factory.

(b) Upon information and belief, U.S. Mattress used a service called “Google AdWords” or other online means to cause misleading links to U.S. Mattress’s website to appear when customers used Google’s search engine to find The Original Mattress Factory.

(c) U.S. Mattress has been telling actual and potential customers by phone and in-person that U.S. Mattress is the same as, affiliated with, or a part of The Original Mattress Factory founded by Ron Trzcinski and featured in Consumer Reports.

(d) In July 2010, Lisette Rothwell of Dallas, Texas, decided to buy a mattress from The Original Mattress Factory after reading the Consumer Review rankings. A Google search for “The Original Mattress Factory” led her to the U.S. Mattress website. When she called and visited U.S. Mattress, its owner, Peter Duncan, told her that his company was the same one featured in Consumer Reports, and he even gave her a copy

of the Consumer Reports' review of The Original Mattress Factory to reassure her. (*See* Rothwell Affidavit, attached as **Exhibit A**.)

(e) Also in 2010, an employee of The Original Mattress Factory, David Phillips, called U.S. Mattress's Fort Worth store to find out if U.S. Mattress really was telling people it was affiliated with The Original Mattress Factory. A U.S. Mattress employee answered the phone and told Mr. Phillips that its store was the same "Original Mattress Factory" in the ads with Ron Trzcinski and that "his boss talks to Ron Trzcinski all the time." (*See* Phillips Affidavit, attached as **Exhibit B**.)

32. U.S. Mattress's deception has worked and has caused consumers to mistakenly think U.S. Mattress's business is part of, or affiliated, with The Original Mattress Factory. Evidence of actual confusion includes, but is not limited to, Ms. Rothwell's affidavit testimony that she bought a mattress from U.S. Mattress because she thought it was affiliated with The Original Mattress Factory, (Rothwell Aff. ¶ 3-6), and customers trying to redeem coupons from U.S. Mattress's website at The Original Mattress Factory stores, (Phillips Aff. ¶ 2).

33. Upon information and belief, U.S. Mattress falsely has told other potential mattress buyers in Texas and in other states that it is "The Original Mattress Factory" featured in Consumer Reports, that it sells mattresses manufactured by The Original Mattress Factory, that it is part of or affiliated with The Original Mattress Factory, and that it is associated with Ron Trzcinski.

34. As a direct and proximate result of U.S. Mattress's deception, actual and potential customers have been, and will continue to be, confused as to the origin, source, sponsorship, approval, or association of U.S. Mattress's products and services.

35. U.S. Mattress specifically intended to mislead customers into thinking that U.S. Mattress is part of or related to The Original Mattress Factory.

36. U.S. Mattress's deception has caused actual consumer confusion, has improperly obtained sales for U.S. Mattress that it otherwise would not have obtained, has deprived The Original Mattress Factory of sales, and has stolen and traded upon The Original Mattress Factory's goodwill thereby diminishing that goodwill and depriving The Original Mattress Factory of control over it.

37. All conditions precedent to The Original Mattress Factory's causes of action have been performed or have occurred.

IV.
Causes Of Action

Count One

Unfair Competition Under The Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

38. The Original Mattress Factory incorporates by reference all allegations in all preceding paragraphs of this Complaint as if fully rewritten herein.

39. In promoting the sale of its products on the internet, by telephone, and in-person, U.S. Mattress has used words, terms, names, images, false designations of origin, false or misleading descriptions of fact, and false or misleading representations of fact that have caused, and are likely to cause, confusion, mistake, or deception as to U.S. Mattress's affiliation, connection, or association with The Original Mattress Factory.

40. In promoting the sale of its products on the internet, by telephone, and in-person, U.S. Mattress has used words, terms, names, images, false designations of origin, false or misleading descriptions of fact, and false or misleading representations of fact that have deceived or confused, and are likely to deceive and confuse, consumers into believing that U.S. Mattress's

products and services originated with, are sponsored by, or are approved by The Original Mattress Factory.

41. U.S. Mattress performed its deceptive acts in interstate commerce by, among other things, using the internet and interstate telephone calls to facilitate those acts.

42. U.S. Mattress's deceptive acts are material and have influenced, and tend to influence, consumer purchasing decisions.

43. U.S. Mattress has performed, and continues to perform, its deceptive acts willfully and in bad faith knowing or expecting they would be material to actual or potential buyers of mattresses and would likely deceive those customers.

44. As a direct and proximate result of U.S. Mattress's deception, The Original Mattress Factory has suffered damages in an amount exceeding \$75,000.

45. As a direct and proximate result of U.S. Mattress's deception, The Original Mattress Factory will continue to suffer, irreparable harm for which The Original Mattress Factory has no adequate remedy at law. Such harm will continue unless enjoined by this Court.

Count Two

False Advertising Under The Lanham Act, 15 U.S.C. § 1125(a)(1)(B)

46. The Original Mattress Factory incorporates by reference all allegations in all preceding paragraphs of this Complaint as if fully rewritten herein.

47. In commercial advertising and promotion, U.S. Mattress has used words, terms, names, images, false designations of origin, false or misleading descriptions of fact, and false or misleading representations of fact that misrepresent the nature, characteristics, qualities, or geographic origin of its and The Original Mattress Factory's goods, services, or commercial activities.

48. By deceiving and confusing the public into thinking that U.S. Mattress is part of, or affiliated with, The Original Mattress Factory, U.S. Mattress has misrepresented to the purchasing public that the nature, characteristics, and qualities of U.S. Mattress's products, services, and commercial activities are the same as The Original Mattress Factory's products, services, and commercial activities, which is not true.

49. By falsely equating the two businesses, their products, and their services, U.S. Mattress misrepresents the nature, characteristics, and qualities of U.S. Mattress's products, services, and commercial activities because they are not the same as The Original Mattress Factory's products, services, and commercial activities.

50. Conversely, by falsely equating the two businesses, their products, and their services, U.S. Mattress misrepresents the nature, characteristics, and qualities of The Original Mattress Factory's products, services, and commercial activities because they are not the same as, but are superior to, U.S. Mattress's products, services, and commercial activities.

51. U.S. Mattress's false advertising and sales promotions are "in commercial advertising and promotion" under the Lanham Act because, among other things, it communicated its false advertising to potential customers through the internet, over the telephone, and in-person at U.S. Mattress's Fort Worth store.

52. U.S. Mattress placed its false advertising and sales promotions in interstate commerce by, among other things, using the internet and interstate telephone calls to facilitate its deceptive efforts.

53. U.S. Mattress's false advertising and sales promotions are material and have influenced, and tend to influence, consumer purchasing decisions.

54. U.S. Mattress has performed, and continues to perform, its false advertising and sales promotions willfully and in bad faith knowing or expecting they would be material to actual or potential buyers of mattresses and would likely deceive those customers.

55. As a direct and proximate result of U.S. Mattress's false advertising and sales promotions, The Original Mattress Factory has suffered damages in an amount exceeding \$75,000.

56. As a direct and proximate result of U.S. Mattress's false advertising and sales promotions, The Original Mattress Factory will continue to suffer, irreparable harm. Such harm will continue unless enjoined by this Court.

Count Three
Unfair Competition

57. The Original Mattress Factory incorporates by reference all allegations in all preceding paragraphs of this Complaint as if fully rewritten herein.

58. U.S. Mattress's confusing and deceptive acts are intentional efforts to pass off U.S. Mattress's goods and services as those of The Original Mattress Factory, thereby causing confusion in the minds of consumers and diluting the goodwill that The Original Mattress Factory has established in its business and products.

59. U.S. Mattress's confusing and deceptive conduct is unfair competition in violation of the common law of Texas.

60. As a direct and proximate result of U.S. Mattress's unfair competition under Texas common law, The Original Mattress Factory has suffered damages in an amount exceeding \$75,000.

61. As a direct and proximate result of U.S. Mattress's unfair competition, The Original Mattress Factory has suffered, and will continue to suffer, irreparable harm. Such harm will continue unless enjoined by this Court.

Count Four
Unjust Enrichment

62. The Original Mattress Factory incorporates by reference all allegations in all preceding paragraphs of this Complaint as if fully rewritten herein.

63. By wrongfully and intentionally engaging in confusing and deceptive conduct, U.S. Mattress has obtained benefits, including sales and goodwill, that rightfully belong to The Original Mattress Factory.

64. U.S. Mattress has not compensated The Original Mattress Factory for the benefits that it wrongfully obtained, despite justice and equity requiring it to do so.

65. U.S. Mattress has unjustly enriched itself by obtaining and retaining the ill-gotten gains from its confusing, deceptive, and wrongful conduct.

66. As a direct and proximate result of U.S. Mattress's unjust enrichment, The Original Mattress Factory has suffered damages in an amount exceeding \$75,000.

67. As a direct and proximate result of U.S. Mattress's unjust enrichment, USG has suffered, and will continue to suffer, irreparable harm for which The Original Mattress Factory has no adequate remedy at law. Such harm will continue unless enjoined by this Court.

68. The Original Mattress also seeks to enjoin any and all other related acts this Court deems appropriate for injunctive relief, either temporary or permanent in nature.

Count Five
Accounting

69. The Original Mattress Factory incorporates by reference all allegations in all preceding paragraphs of this Complaint as if fully rewritten herein.

70. The Original Mattress Factory respectfully requests this Court to order U.S. Mattress to account to The Original Mattress Factory for any profits derived by it because of the acts complained of herein.

V.
Prayer for Relief

WHEREFORE, The Original Mattress Factory prays for judgment against U.S. Mattress as follows:

1. Compensatory damages in excess of \$75,000, with the exact amount to be determined at trial, plus interest.
2. Attorneys' fees.
3. Punitive or treble damages.
4. Costs of the action.
5. Preliminary and permanent injunctive relief enjoining U.S. Mattress from:
 - A. Implying or stating in substance that U.S. Mattress or any related entity is "The Original Mattress Factory";
 - B. Implying or stating in substance that U.S. Mattress or any related entity is affiliated, connected, or associated with "The Original Mattress Factory" or with Ron Trzcinski.
 - C. Implying or stating in substance that any product or service offered by U.S. Mattress or by any related entity originates from, is sponsored by, or is approved by "The Original Mattress Factory" or Ron Trzcinski.
 - D. Implying or stating in substance that the nature, characteristics, or quality of U.S. Mattress's or any related entity's goods or services are equal to the nature, characteristics, or quality of the goods or services offered by "The Original Mattress Factory."

- E. Using Google AdWords, hidden HTML source code, or other online means to cause links to U.S. Mattress's website to appear in response to internet searches for "The Original Mattress Factory."
 - F. Engaging in any deceptive or confusing conduct that creates a likelihood of confusion between U.S. Mattress and The Original Mattress Factory; or
 - G. Otherwise unfairly competing with The Original Mattress Factory.
6. An order that U.S. Mattress immediately remove from any internet site that it controls and from any other advertising or promotional materials all references to "The Original Mattress Factory," "Original Mattress Factory," or "Original Mattress." But Original Mattress Factory does not seek to have U.S. Mattress remove the blue logo that contains the words "The Original" in small, inconspicuous, cursive print above the larger words "Mattress Factory" that presently appears on the front page of U.S. Mattress's website.
7. An order that U.S. Mattress account to The Original Mattress Factory for any and all profits derived by either defendant by reason of the acts complained of herein;
8. Such other and further relief as allowed at law or in equity that the Court deems to be appropriate.

Respectfully submitted,

By: s/ David A. Walton

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Plaintiff's Original Complaint** will be served on the following party by hand delivery.

U.S. Mattress Factory, Inc.,
d/b/a The Mattress Factory,
d/b/a www.themattressfactory.com
c/o Peter J. Duncan, Jr., as Registered Agent
912 East Vickery
Fort Worth, Texas 76104

Via Hand Delivery

s/ David A. Walton _____

David A. Walton