

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Select Comfort Corporation,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

John Baxter; and

JURY TRIAL DEMANDED

Dires, LLC d/b/a Personal Touch Beds and
Personal Comfort Beds;

Defendants.

Plaintiff, Select Comfort Corporation (“Select Comfort”), for its Complaint against Defendants John Baxter and Dires, LLC (“Dires”) d/b/a Personal Touch Beds (“Personal Touch”), and Personal Comfort Beds (“Personal Comfort”) (collectively “Defendants”), states:

NATURE OF THIS ACTION

1. This is an action for damages and injunctive relief arising out of Defendants’ infringing, unauthorized, false and misleading use of several of Select Comfort’s trademarks, and false and deceptive statements made to Minnesota consumers on Defendants’ websites.

PARTIES

2. Select Comfort is a Minnesota corporation with its principal place of business in Minnesota.

3. Defendant John Baxter is a Florida resident and a director of Dires. On information and belief, John Baxter is a member of Dires.

4. Dires is a Delaware limited liability company with its principal place of business in Florida. Dires does business as Personal Touch and Personal Comfort, which are both registered in Florida as entities wholly owned by Dires.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338 and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Venue lies in this District under 28 U.S.C. § 1391(b) and (c).

6. This Court has personal jurisdiction over Defendants. Defendants have purposefully, continuously and systematically conducted business in Minnesota by, *inter alia*, advertising, promoting and selling their air bed mattress products in Minnesota. Defendants' advertising, promotion and selling is conducted primarily through highly interactive websites accessible at the domain names personaltouchbed.com and personalcomfortbed.com, through which Defendants offer for sale and sell products to Minnesota residents by making deceptive and misleading statements and by infringing Select Comfort's trademarks. Defendants thus transact business over the internet with Minnesota residents, enter into contracts with Minnesota residents via the internet, and collect payment for products from Minnesota residents via the internet. Defendants have willfully engaged in unauthorized, false and misleading uses of Select Comfort's trademarks, which has caused and continues to cause harm to Select Comfort, a Minnesota resident. Defendants continue to engage in unauthorized, false and misleading

use of Select Comfort's trademarks even after the nature of these uses have been brought to Defendants' attention by Select Comfort.

FACTS

7. Select Comfort designs, manufactures and markets unique air bed products, many features of which are either proprietary or protected by the patent laws of the United States. Select Comfort's Sleep Number[®] bed uses uniquely designed air chambers to provide a gentle cushion of support which can be easily adjusted to an individual's preference, comfort and firmness. Studies show that the Sleep Number[®] bed relieves back pain and improves sleep quality.

8. Select Comfort is the owner of all rights in the trademark Sleep Number[®], including United States Trademark Registration Nos. 2,753,633, 2,618,999 and 2,641,045 which registrations are incontestable. True and correct copies of these registrations are attached as Exhibit A.

9. Select Comfort is the owner of all rights in the trademark Select Comfort[®], including United States Trademark Registration Nos. 1,581,562, 1,590,557 1,976,214, 2,702,763, 2,801,405, and 2,803,623, which registrations are incontestable. True and correct copies of these registrations are attached as Exhibit B.

10. Select Comfort is the owner of all rights in the trademark What's Your Sleep Number[®], including United States Trademark Registration No. 2,702,762, which registration is incontestable. A true and correct copy of this registration is attached as Exhibit C.

11. The trademarks described above are collectively referred to as “Select Comfort’s Trademarks” or “the Trademarks-At-Issue.”

12. Select Comfort has an excellent reputation for both its unique product line and superior quality of its products and services. Select Comfort was ranked the number one bedding retailer in the United States by *Furniture/Today* for nine consecutive years.

13. Sleep Number[®] beds and accessories are available nationwide at Select Comfort retail stores in major shopping malls and other locations, through the company’s national direct marketing operations, as well as through Select Comfort’s website at sleepnumber.com.

14. Select Comfort markets its Sleep Number[®] beds and related goods through extensive advertising in, *inter alia*, newspapers, national circulation magazines, direct mailings, radio advertisements and television commercials and infomercials.

15. As a result of the innovation and quality of its products, together with the widespread advertising and promotion thereof, Select Comfort has acquired a reputation for quality, integrity and innovation, and it is well-known as the leading seller of premium air-supported sleep products.

16. As a result of widespread use in connection with the advertising and promotion of its Sleep Number[®] beds and related products, Select Comfort has developed substantial good will and national recognition in the Trademarks-At-Issue as a source of high-quality mattresses and bedding products.

17. Indeed, the Sleep Number[®] and Select Comfort[®] marks, as well as the What's Your Sleep Number[®] mark, are among the most widely recognized trademarks in the bedding industry.

DEFENDANTS

18. On information and belief, Dires was incorporated to control and conduct business as Personal Touch and Personal Comfort.

19. On information and belief, at the time Dires was incorporated, Baxter intended to engage in the illegal, infringing, misleading, and deceptive acts alleged herein.

20. Baxter was formerly employed by Comfortaire Direct LLC and/or Comfortaire Corporation (collectively "Comfortaire").

21. Comfortaire manufactures and sells a line of adjustable airbeds that compete with Select Comfort's products.

22. When employed by Comfortaire, Baxter had responsibilities related to and developed Comfortaire's online advertising of its adjustable airbeds.

23. At Baxter's direction, Comfortaire's online advertising through internet search engines, such as Google, was nearly identical to the tactics now used by Defendants as described herein.

24. For example Comfortaire, at Baxter's direction, purchased Select Comfort's Trademarks as search terms in Google's Adwords program and paid to have an ad displayed when a consumer searched for "Sleep Number" that stated "Sleep 55% Off Number Bed."

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