

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:12-cv-02814-RBJ

DENVER MATTRESS CO., LLC,

Plaintiff,

v.

MATTRESS & FURNITURE OUTLET, LLC,

Defendant.

**ORDER RE FINAL JUDGMENT UPON CONSENT
AND PERMANENT INJUNCTION**

Plaintiff Denver Mattress Co., LLC (“Denver Mattress”) filed a Complaint alleging trademark infringement and unfair competition under federal and Colorado law against Defendant Mattress & Furniture Outlet, LLC (“MFO”). Denver Mattress alleges that MFO deliberately used the phrase “Denver Mattress” in connection with its sale of mattresses and furniture in order to trade on Denver Mattress’s established goodwill in the relevant market, which allegation MFO denies. The Court now enters final judgment based upon the following stipulated facts.

I. STIPULATED FACTS AND CONCLUSIONS OF LAW

A. The Court has subject matter jurisdiction over this lawsuit pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the claims that arise under Colorado common law pursuant to 28 U.S.C. § 1367 because the state

law claims are so related to the federal claims that they form part of the same case or controversy, and they are derived from a common nucleus of operative facts.

B. The Court has personal jurisdiction over MFO because MFO is a Colorado limited liability company.

C. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because MFO is a Colorado limited liability company and its principal place of business is in Lakewood, Colorado.

D. Denver Mattress owns a federal trademark registration for DENVER MATTRESS CO. (Registration No. 2,248,632; registered on June 1, 1999) for use in connection with “retail store services featuring mattresses and bedding.” Denver Mattress has used this mark in commerce since at least July 1993. In addition, Denver Mattress owns a federal trademark registration for DENVER MATTRESS (Registration No. 2,380,833; registered on August 29, 2000) for use in connection with “retail store services featuring mattresses and bedding” (collectively, the “Denver Mattress Marks”). Denver Mattress has used this mark in commerce since at least January 1998.

E. MFO has promoted and advertised its store – “Mattress & Furniture Outlet Denver” or “Mattress & Furniture Outlet of Denver” – using the Denver Mattress Marks. Specifically, MFO has used the phrase “Denver Mattress” in its domain name and email address as well as on its website and social media sites, such as Facebook, Twitter, and YouTube in connection with the promotion and sale of mattresses and furniture. For example, MFO’s Twitter page contained the profile “Denver Mattress,” the name “Denver Mattress and Furniture Outlet,” and the domain www.denvermattressandfurniture.com. In addition, MFO’s website contained the following two (2) links to its Facebook page: /Denver-Mattress-Furniture-Outlet

and “Denver Mattress and Furniture Outlet on Facebook.” Furthermore, the content of MFO’s webpage contained a number of uses, such as “email us at info@denvermattressandfurniture.com,” “Denver Mattress & Furniture Outlet” and “Denver Mattress and Furniture Outlet proudly carries this brand.” Additionally, MFO posted a YouTube video on its website and on www.YouTube.com, that contained the title “Virtual Tour of Denver Mattress & Furniture Outlet” along with the following description:

Your place to Save on Mattress & Furniture new and used best deals in town. Why pay high prices at chain stores when you can save with Denver Mattress & Furniture Outlet.

Finally, MFO incorporated the phrase “Denver Mattress” in its domain, www.denvermattressandfurniture.com.

F. Denver Mattress alleged that the conduct described in the foregoing paragraph E constitutes infringement by MFO of the Denver Mattress Marks under 15 U.S.C. § 1114(a), 15 U.S.C. § 1125(a), and Colorado common law, which allegation MFO denies. Without conceding any allegation of infringement, MFO is willing to agree to the entry of the following Order.

II. ORDER AND INJUNCTION

It is hereby ordered and adjudged as follows:

(1) MFO, its principals, agents, employees, officers, directors, servants, successors, and assigns, and all persons acting in concert or participating with it or under its control, are hereby permanently enjoined and restrained, directly or indirectly, from doing, authorizing, or procuring any persons to do any of the following:

a. engaging in the conduct described in the foregoing paragraph I.E;

- b. otherwise infringing the Denver Mattress Marks, or any imitations thereof, by way of offering for sale, selling and marketing products and services using the Denver Mattress Marks;
- c. from operating or assisting in the use of, or facilitating in any manner the use of the domain name www.denvermattressandfurniture.com for any purpose, including in any connection with the sending or receiving of email, redirection services, or the hosting of a website; and
- d. unfairly competing with Denver Mattress by otherwise engaging in conduct that is likely to cause consumer confusion or misapprehension about any relationship, affiliation, sponsorship, or other connection between MFO and Denver Mattress, including but not limited to, the conduct stated above in paragraphs (a) – (c).

(2) MFO is directed to destroy, within five (5) days of this order, any and all infringing materials, including but not limited to marketing, advertising, educational, and/or promotional material used by MFO that displays the phrase “Denver Mattress.”

(3) Each party is to bear its own costs and fees incurred to date.

(4) This Court shall retain jurisdiction for the purpose of making any further orders necessary or proper for the construction, modification, or enforcement of this Judgment and Permanent Injunction, and for the punishment for any violations.

IT IS SO ORDERED AND ADJUDGED.

DATED: this 28th day of November, 2012.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", written in a cursive style.

R. Brooke Jackson
United States District Judge