

# **EXHIBIT**

**1**

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February 5, 2207

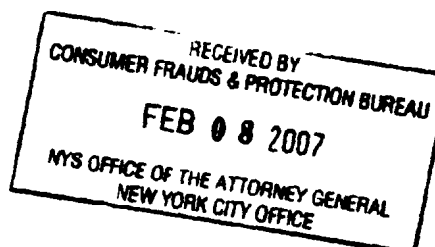
Re Price Fixing

Dear FTC and Attorney General:

Re  
I have been shopping for a Tempur-Pedic mattress. I have shopped at a number of places in New York and have been told by every place selling the mattresses that I visited that Tempur-Pedic dictates prices of resellers and will not allow discounts. This sounds like illegal price fixing to me.

I would like to keep my identity confidential but feel free to contact me if you have any questions.

Thank you.  
C  
[REDACTED]



# **EXHIBIT**

**2**

**RESPONSES OF TEMPUR-PEDIC INTERNATIONAL, INC.  
TO INTERROGATORIES AND DOCUMENT REQUESTS FROM THE OFFICE OF  
THE NEW YORK ATTORNEY GENERAL DATED FEBRUARY 7, 2008**

Pursuant to Articles 23 and 31 of the New York Civil Practice Law and Rules, Tempur-Pedic International, Inc. ("Tempur-Pedic" or the "Company"), by its attorneys, Bingham McCutchen LLP, hereby responds to the Interrogatories attached as Schedule A (the "Interrogatories") and the Document Requests attached as Schedule B (the "Document Requests") to the Subpoena Duces Tecum (the "Subpoena") issued by the Office of the Attorney General of the State of New York dated February 7, 2008 as modified by letter agreement dated February 25, 2008 from Bingham McCutchen to the Office of the Attorney General.

**GENERAL RESPONSES AND OBJECTIONS**

The responses to these Interrogatories and Document Requests are made subject to each of the following general responses and objections:

1. Tempur-Pedic objects to providing information and documents protected from disclosure by the attorney-client privilege, work product doctrine or other applicable privileges. In responding to the Subpoena, Tempur-Pedic shall limit the scope of its responses and production of documents as agreed to and memorialized in the February 25, 2008 letter from Bingham McCutchen to the Office of the Attorney General.

2. Tempur-Pedic objects to providing sensitive commercial, financial, or trade secret information without a protective order. In responding, certain documents may be designated CONFIDENTIAL pursuant to a Non-Disclosure Agreement between the Office of the Attorney General and Bingham McCutchen dated April 25, 2008.

3. Tempur-Pedic objects to the scope, geographic and otherwise, of the Interrogatories and Document Requests to the extent that such scope falls outside of the jurisdiction of the Attorney General of the State of New York. In responding to the Subpoena, Tempur-Pedic shall limit the scope of its responses and production of documents as agreed to and memorialized in the February 25, 2008 letter from Bingham McCutchen to the Office of the Attorney General.

4. All responses set forth below should be understood to be made to the best of Tempur-Pedic's knowledge, information and belief, based upon reasonable investigation. Tempur-Pedic reserves the right to modify or amend any and all such responses in the future to the extent new or different information is discovered in the course of investigation.

5. Neither these responses nor the actual production of documents in response to the Interrogatories and Document Requests is to be construed as an admission regarding the admissibility of any information or document or the truth or accuracy of any statement or characterization contained in the Interrogatories. Neither these responses nor the actual production of documents is to be construed as an agreement or concession that the subject matter contained in these responses or reflected in any documents is relevant to this matter. Tempur-Pedic makes these responses without intending to waive any objection as to relevance, privilege, admissibility or otherwise.

6. Tempur-Pedic incorporates its General Responses and Objections in each response to the Interrogatories and document Requests as if set forth fully therein.

### **INTERROGATORY RESPONSES**

#### **INTERROGATORY NO. 1:**

State the following:

- (a) Your name;
- (b) Your date and place of incorporation;
- (c) The address of your principal place of business or main office
- (d) All names under which you do business in the United States;
- (e) The names, addresses, job titles, and tenure of office of all officers and directors currently serving as such on your behalf; and
- (f) The identities of all your parent companies, subsidiaries, affiliates, and other related companies.

**RESPONSE TO INTERROGATORY NO. 1:**

- (a) Tempur-Pedic International, Inc.
- (b) September 2002; Delaware.
- (c) 1713 Jaggie Fox Way, Lexington, Kentucky 40511
- (d) Tempur-Pedic International, Inc. and its wholly-owned subsidiaries, Tempur-Pedic North America, Inc. and Tempur Production USA, Inc. do business in the United States under the trade name "Tempur-Pedic."
- (e) **Officers.**

H. Thomas Bryant, President, Chief Executive Officer, and member of the Board of Directors, April 2006; President, December 2004 until April 2006.

Matthew D. Clift, Executive Vice President of Global Operations, December 2004.

David Montgomery, Executive Vice President and President of International Operations, February 2003.

Richard W. Anderson, Executive Vice President and President, North America, July 2006.

Dale E. Williams, Executive Vice President, Chief Financial Officer and Secretary, July 2003.

Bhaskar Rao, Chief Accounting Officer and Vice President of Strategic Planning, May 2006; Vice President of Strategic Planning, October 2005; Director of Financial Planning and Analysis, January 2004.

**Board of Directors.**

Francis A. Doyle, member of Board of Directors, March 2003.

John A. Heil, member of Board of Directors, March 2008.

Peter K. Hoffman, member of Board of Directors, October 2006.

Sir Paul Judge, member of Board of Directors, July 2004.

Nancy F. Koehn, member of Board of Directors, March 2004.

Christopher A. Mastro, member of Board of Directors, November 2002.

P. Andrews McLane, Chairman of Board of Directors, November 2002.

Robert B. Trussell, Jr., Vice Chairman of Board of Directors, April 2006; Chief Executive Officer and member of Board of Directors, September 2002.

Additional information responsive to this Interrogatory may be found in the Annual Reports (TPXNY-0000759-0001104) for the Relevant Period produced by the Company in connection with this matter.

- (1) Tempur-Pedic International, Inc. has two wholly-owned North American subsidiaries, Tempur-Pedic North America, Inc. and Tempur Production USA, Inc. Tempur-Pedic International, Inc. has additional international subsidiaries not relevant to the present inquiry. Additional information concerning those subsidiaries may be provided upon request.

**INTERROGATORY NO. 2:**

For each year during the Relevant Period:

- (a) Identify your New York Customers that sold Tempur-Pedic Products;
- (b) Provide the dollar unit and unit volume of annual sales to each of your New York Customers, stated separately for each Tempur-Pedic Product sold; and
- (c) Provide the minimum and maximum retail sales prices for each model of every Tempur-Pedic Product that you sell to Customers and direct to consumers, and provide the dates when each such price was in effect.

**RESPONSE TO INTERROGATORY NO. 2:**

- (a) Tempur-Pedic has produced a list of New York Customers that sold Tempur-Pedic Products during the Relevant Period (TPXNY-0000001-0000044);
- (b) Tempur-Pedic has produced documents reflecting total sales of Tempur-Pedic Products to New York Customers, broken down by product category (TPXNY-0017010-0017015);
- (c) Tempur-Pedic has produced the price lists it provided to New York Customers during the Relevant Period (TPXNY-0009588-0009715).

**INTERROGATORY NO. 3:**

Have you communicated with any New York Customer concerning that Customer's failure to sell Tempur-Pedic Products at retail prices suggested, recommended or mandated by Tempur-Pedic?

**RESPONSE TO INTERROGATORY NO. 3:**

Yes.

**INTERROGATORY NO. 4:**

If your response to Interrogatory 3 is anything other than an unqualified no, for each such communication identify: (a) when, (b) where, (c) the means by which that communication took place; (d) all persons involved in the communications, and (e) the substance of the communication.

#### **RESPONSE TO INTERROGATORY NO. 4:**

Tempur-Pedic has produced documents from which the requested information may be derived. (See e.g., TPXNY-0002013-0002015; TPXNY-0002112-0002114; TPXNY-0002121; TPXNY-0002267-0002267). On occasion, Tempur-Pedic has sent letters to certain New York Customers concerning Tempur-Pedic's unilateral policy. (See, e.g., TPXNY-0016597-0016631; TPXNY-0016659-0016799). Tempur-Pedic has produced documents showing which New York Customers were sent such letters. (See Native Oracle Database File). In addition, representatives of Tempur-Pedic had the following verbal communications with New York Customers during the Relevant Period:

- Thomas Rehwinkel has been the Regional Vice President, Northeast for approximately two years. Some time in mid-2006, Mr. Rehwinkel met with John O'Connell, Executive Vice President of Dial-A-Mattress, concerning the practice of the former Tempur-Pedic regional personnel, who without authority had allowed retailers to depart from list price up to 10%. Mr. Rehwinkel told Mr. O'Connell that the Company would enforce its unilateral pricing policy going forward. Mr. Rehwinkel also has spoken to Michael Bookbinder, Executive Vice President of Sales and Marketing for Sleepy's, on four or five occasions during the past two years concerning apparent departures from list price.
- David Michelangelo, a Territory Sales Manager for Manhattan, Long Island, Poughkeepsie, and Northern New Jersey since June 2006, spoke verbally with Mr. O'Connell of Dial-A-Mattress on approximately three occasions in 2006 concerning departures from list price.
- Paul Cowie, a Territory Sales Manager with responsibility for the Raymour & Flanigan account since January 2004, spoke verbally with David Shiroff, President and Chief Executive Officer of Metro Mattress Corp., concerning the practice of the previous Tempur-Pedic regional personnel, who without



authority had allowed retailers to depart from list price up to 10%. Mr. Cowie told Mr. Shirolf that the Company would follow its unilateral pricing policy going forward.

- David Plumridge, a Territory Sales Manager with responsibility for the Sleepy's account, spoke to Dino Safelli, a Sleepy's representative, during a home show in White Plains, New York in the fall of 2007, concerning a Sleepy's sales representative who was offering to back out the sales tax on Tempur-Pedic Products.

**INTERROGATORY NO. 5:**

Do you have a policy concerning the prices at which your Customers can sell Tempur-Pedic Products?

**RESPONSE TO INTERROGATORY NO. 5:**

On or about April 15, 2002, Tempur-Pedic announced that the Company was adopting a unilateral policy to "suspend doing business with any retailer who does not adhere substantially to our suggested retail price ranges." (TPXNY-0001107). Tempur-Pedic has continuously maintained that unilateral policy since April 2002. In December 2003, Tempur-Pedic sent a letter to retailers concerning the policy. (TPXNY-0001106). In August 2007, Tempur-Pedic sent another letter to retailers concerning the policy. (TPXNY-0001105). See also Response No. 4.

**INTERROGATORY NO. 6:**

If the response to Interrogatory 5 is yes, is it part of that policy to prevent your Customers from selling Tempur-Pedic Products at retail prices less than the prices suggested, recommended, or mandated by Tempur-Pedic?

**RESPONSE TO INTERROGATORY NO. 6:**

See Response No. 5.

**INTERROGATORY NO. 7:**

Has your company ever: (a) Ceased Doing Business with a New York Customer, based, in whole or in part, on that Customer's refusal or failure to sell Tempur-Pedic Products at retail prices suggested, recommended, or mandated by Tempur-Pedic; (b) communicated your intent to Cease Doing Business with a New York Customer, based, in whole or in part, on that Customer's refusal or failure to sell Tempur-Pedic Products at retail prices suggested, recommended, or mandated by Tempur-Pedic; or (c) after Ceasing Doing Business with a New York Customer, resumed sales of Tempur-Pedic Products based, in whole or in part, on that Customer's willingness to sell Tempur-Pedic Products at retail prices suggested, recommended, or mandated by Tempur-Pedic?

**RESPONSE TO INTERROGATORY NO. 7:**

No.

**INTERROGATORY NO. 8:**

If your response to Interrogatory 7 is anything other than an unqualified no:

- (a) Identify the New York Customer(s) with whom you Ceased Doing Business, and state whether you ever resumed doing business with that Customer;
- (b) Identify the New York Customer(s) to whom you communicated your intent to Cease Doing Business, and state whether you ever resumed doing business with that Customer;
- (c) For each Customer identified in response to subparts (a) and (b), state whether Tempur-Pedic requested the Customer to take any action whatsoever and, if so, describe the request;
- (d) State what actions the Customer took in response to the request;
- (e) State the date or time period when the actions transpired;
- (f) Identify: (1) your employee(s) who communicated the decision to Cease Doing Business to the New York Customer; (2) the Customer's employee(s) to whom it was communicated or who otherwise received the communication; and (3) your employee(s) who approved or authorized the communication.
- (g) State the date and time period of any resumption of doing business;
- (h) State the reason, if any, given by Tempur-Pedic for Ceasing Doing Business, and identify your employee who gave the reason and the Customer's employee to whom it was communicated;
- (i) State whether the communicated reason given in subpart (h) was in fact the reason that Tempur-Pedic took such action. If the answer is other than an unqualified yes, state the true reason and why the true reason was not communicated to the New York Customer; and

- (j) Identify all documents concerning your Ceasing Doing Business and the resumption of doing business.

**RESPONSE TO INTERROGATORY NO. 8:**

See Response No. 7.

**INTERROGATORY NO. 9:**

Have you communicated to any New York Customer that it is not permitted to give away Tempur-Pedic pillows or any other Tempur-Pedic products with a purchase of a Tempur-Pedic mattress?

**RESPONSE TO INTERROGATORY NO. 9:**

Tempur-Pedic states that on or about October 1, 2007, it issued a new Retail Partners Obligations & Advertising Policies, pursuant to which retailers are permitted to offer free pillows to purchasers, but are not permitted to make such an offer "in any advertising media such as Advo, ROP Newspaper, Radio, TV, etc. . . ." (TPXNY-0009750-0009758).

**INTERROGATORY NO. 10:**

If your response to Interrogatory 9 is other than an unqualified no, for each such communication identify: (a) when, (b) where, (c) the means by which that communication took place, (d) all persons involved in the communication, and (e) the substance of the communication.

**RESPONSE TO INTERROGATORY NO. 10:**

See Response No. 9. Tempur-Pedic has produced copies of advertising policies in effect during the Relevant Period. (TPXNY-0009716-0009773).

**INTERROGATORY NO. 11:**

Have you communicated with any New York Customer about the retail pricing or advertised pricing practices of any other Tempur-Pedic Customer?

**RESPONSE TO INTERROGATORY NO. 11:**

No. Tempur-Pedic on occasion acknowledges receipt of complaints from New York Customers concerning the sale of Tempur-Pedic Products by other New York Customers at prices less than the suggested retail price, but does not communicate further with those

complaining New York Customers about those sales. (See, e.g., TPXNY-0014465-0014466; TPXNY-0016590; TPXNY-0016654-0016655).

**INTERROGATORY NO. 12:**

If your response to Interrogatory 11 is other than an unqualified no, for each such communication identify: (a) when, (b) where, (c) the means by which that communication took place, (d) all persons involved in the communication, and (e) the substance of that communication.

**RESPONSE TO INTERROGATORY NO. 12:**

See Response No. 11.

**INTERROGATORY NO. 13:**

Has any New York Customer ever communicated with you concerning any other Tempur-Pedic Customer's retail pricing or advertised pricing practices?

**RESPONSE TO INTERROGATORY NO. 13:**

Yes.

**INTERROGATORY NO. 14:**

If your response to Interrogatory 13 is other than an unqualified no, for each such communication identify: (a) when, (b) where, (c) the means by which that communication took place, (d) all persons involved in the communication, and (e) the substance of that communication.

**RESPONSE TO INTERROGATORY NO. 14:**

Tempur-Pedic has produced documents from which the requested information may be derived. (See, e.g., TPXNY-0001906; TPXNY-0002019-0002020; TPXNY-0002022-0002024; TPXNY-0002026; TPXNY-0002101-0002103; TPXNY-0002104-0002105; TPXNY-0002106-0002110; TPXNY-0002115-0002116; TPXNY-0002124; TPXNY-0002264; TPXNY-0002417; TPXNY-0002638; TPXNY-0003129). New York Customers also have made the following verbal communications with representatives of Tempur-Pedic during the Relevant Period:

- Thomas Rehwinkel has been the Regional Vice President, Northeast for approximately two years. Mr. Rehwinkel receives approximately ten complaints per year from dealers throughout his territory, but does not have any specific recollection of complaints from New York Customers. See also Response No. 4.
- Robert McCarthy, the Regional Sales Manager responsible for New York since April 2007, and a Territory Sales Manager in upstate New York for roughly three years prior to that, receives approximately one or two complaints per month about alleged violations of Tempur-Pedic advertising policies.
- Paul Messerschmitt, a Territory Sales Manager responsible for the Macy's account since May 2007, has received complaints on less than six occasions from Gary Kornblath in Macy's buying department about other New York Customers departing from list price.
- David Michelangelo, a Territory Sales Manager for Manhattan, Long Island, Poughkeepsie, and Northern New Jersey since June 2006, frequently receives complaints from New York Customers, but has received documentation that another New York Customer has departed from list price on fewer than ten occasions. See also Response No. 4.
- David Plumridge, a Territory Sales Manager with responsibility for the Sleepy's account, receives approximately four complaints per month from Sleepy's sales representatives. See also Response No. 4.

**INTERROGATORY NO. 15:**

Has any New York Customer ever communicated with you concerning your Ceasing Doing Business with any other Tempur-Pedic Customer?

**RESPONSE TO INTERROGATORY NO. 15:**

No.

**INTERROGATORY NO. 16:**

If your response to Interrogatory 15 is other than an unqualified no:

- (a) Identify the Customer who communicated with you;
- (b) Identify the Customer about whom the communication concerned; and
- (c) Identify all documents concerning those communications.

**RESPONSE TO INTERROGATORY NO. 16:**

See Response No. 15.

**INTERROGATORY NO. 17:**

During the Relevant Period, did it come to your attention that any New York Customer was selling Tempur-Pedic Products at retail prices below your suggested retail price?

**RESPONSE TO INTERROGATORY NO. 17:**

Yes.

**INTERROGATORY NO. 18:**

If your response to Interrogatory 17 is other than an unqualified no, identify each such Customer.

**RESPONSE TO INTERROGATORY NO. 18:**

Tempur-Pedic has produced documents from which the requested information may be derived. (See, e.g., TPXNY-0001906; TPXNY-0002019-0002020; TPXNY-0002022-0002024; TPXNY-0002026; TPXNY-0002101-0002103; TPXNY-0002104-0002105; TPXNY-0002106-0002110; TPXNY-0002115-0002116; TPXNY-0002124; TPXNY-0002264; TPXNY-0002417; TPXNY-0002638; TPXNY-0003129).

**INTERROGATORY NO. 19:**

For each Customer identified in response to Interrogatory 18, state:

- (a) Whether you Ceased Doing Business with or communicated your intention to Cease Doing Business with that Customer;
- (b) If so, the reason why you Ceased Doing Business with or communicated your intention to Cease Doing Business with that Customer; and
- (c) If not, the reason why you did not.

**RESPONSE TO INTERROGATORY NO. 19:**

Tempur-Pedic's unilateral policy is to "suspend doing business with any retailer who does not adhere substantially to our suggested retail price ranges." (TPXNY-0001107). Tempur-Pedic interprets "adhere substantially," in this context to include both a persistent and intentional deviation from suggested retail price ranges. Tempur-Pedic has not become aware of any New York Customer who has chosen not to "adhere substantially" to the Company's suggested retail price ranges, as so interpreted. Indeed, when Tempur-Pedic has inquired as to the reasons that a New York Customer has sold a Tempur-Pedic Product at a price less than the prices suggested by Tempur-Pedic, it often finds that the New York Customer was unaware that an individual salesperson had made such a sale, or that the New York Customer had been inadvertently using an outdated price list. (See, e.g., TPXNY-0002014; TPXNY-0002113-0002114).

**INTERROGATORY NO. 20:**

Identify all documents responsive to the above interrogatories.

**RESPONSE TO INTERROGATORY NO. 20:**

Tempur-Pedic has produced the following categories of documents responsive to the above Interrogatories:

<b><u>Bates Range</u></b>	<b><u>Description</u></b>
TPXNY-0000001-0000044	List of New York Retailers
TPXNY-0000045-0000758	New York Dealer Agreements
TPXNY-0000759-0000855	2004 10-K
TPXNY-0000856-0000941	2005 10-K
TPXNY-0000942-0001024	2006 10-K
TPXNY-0001025-0001104	2007 10-K
TPXNY-0001105-0001109	Price Policies
TPXNY-0001110-0001182	New Dealer Kit
TPXNY-0001183-0001380	Advertising Program
TPXNY-0001381-0001381	Termination Files
TPXNY-0001382-0001384	Termination Files
TPXNY-0001385-0001386	Termination Files
TPXNY-0001387-0001391	Advertising Files
TPXNY-0001392-0001402	Termination Files
TPXNY-0001403-0001422	Advertising Files
TPXNY-0001423-0001427	Price List

<u>Bates Range</u>	<u>Description</u>
TPXNY-0001428-0001428	Price Policy
TPXNY-0001429-0001640	Advertising Files
TPXNY-0001641-0001657	Document Retention Policy
TPXNY-0001658-0001671	Termination Files
TPXNY-0001672-0001673	Document Retention Policy
TPXNY-0001674-0001674	Price List
TPXNY-0001675-0001677	Price Policy
TPXNY-0001678-0001679	Price List
TPXNY-0001680-0001699	Termination Files
TPXNY-0001700-0001700	New Dealer Kit
TPXNY-0001701-0001844	Termination Files
TPXNY-0001845-0001869	Email - David Michaelangelo
TPXNY-0001870-0002124	Email - Paul Cowie
TPXNY-0002125-0002241	Email - S. Dryer
TPXNY-0002242-0002323	Email - Joe Ginsburgh
TPXNY-0002324-0003688	Email - Bob McCarthy
TPXNY-0003689-0003861	Email - Bob McMetro
TPXNY-0003862-0003866	Email - David Plumridge
TPXNY-0003867-0003909	Email - Paul Messerschmidt
TPXNY-0003910-0009388	Email - Bob McCarthy
TPXNY-0009389-0009399	2004 Org Charts
TPXNY-0009400-0009421	2005 Org Charts
TPXNY-0009422-0009521	2006 Org Charts
TPXNY-0009522-0009587	2007 Org Charts
TPXNY-0009588-0009715	Comprehensive Price Lists
TPXNY-0009716-0009773	Comprehensive Advertising Policies
TPXNY-0009774-0010177	Email - Paula Barnes
TPXNY-0010178-0010366	Email - Bob Trussel
TPXNY-0010367-0011002	Email - Tom Bryant
TPXNY-0011003-0011424	Email - Matt Clift
TPXNY-0011425-0012837	Email - Lewis Grounds
TPXNY-0012838-0013281	Email - Kent Hampton
TPXNY-0013282-0013324	Email - Bob Edwards
TPXNY-0013325-0013366	Email - Jolinda Rowe
TPXNY-0013367-0014168	Email - Rick Anderson
TPXNY-0014169-0014169	Email - Eddie Cooper
TPXNY-0014170-0015107	Email - Caroline Erley
TPXNY-0015108-0015125	Email - Bob McCarthy
TPXNY-0015126-0015128	Email - David Wachendorfer
TPXNY-0015129-0015172	Email - Mike Mason
TPXNY-0015173-0015173	Email - Caroline Erley
TPXNY-0015174-0015800	Email - David Wachendorfer
TPXNY-0015801-0015801	Email - Lewis Grounds
TPXNY-0015802-0015813	Email - Rick Anderson
TPXNY-0015814-0016177	Email - Tom Miller



<u>Bates Range</u>	<u>Description</u>
TPXNY-0016178-0016187	Email - Bob Edwards
TPXNY-0016188-0016589	Email - Tom Bryant
TPXNY-0016590-0016803	Email - Caroline Erley
TPXNY-0016804-0016889	Email - Mike Mason
TPXNY-0016890-0016925	Email - Dany Sfeir
TPXNY-0016926-0016926	Email - Lee White
TPXNY-0016927-0017000	Email - Matt Clift
TPXNY-0017001-0017002	Termination Report
TPXNY-0017003-0017015	Sales Reports
TPXNY-0017016-0017016	CD-ROM:

<u>Native Files</u>	<u>Description</u>
001	NY Customer List.xls
002	ORACLE Customer Notes NY 04-08.xls
003	Gross Sales - US by Category by Month 010104 - 020408.xls
004	Gross Sales - NY by Category by Month 010104 - 020408.xls
005	Termination Letters NY.xls
006	Termination Report NY.xls

## **DOCUMENT RESPONSES**

### **DOCUMENT REQUEST NO. 1:**

Documents sufficient to show or, alternatively, a verified statement that identifies the locations of all of your New York Customers.

### **RESPONSE TO DOCUMENT REQUEST NO. 1:**

Tempur-Pedic has produced a list of New York Customers that sold Tempur-Pedic Products during the Relevant Period and their locations. (TPXNY-0000001-0000044).

### **DOCUMENT REQUEST NO. 2:**

Documents sufficient to show or, alternatively, a verified statement that identifies each of your salespersons or sales representatives who sells or sold Tempur-Pedic Products to New York Customers during the Relevant Period; their position or title; and the accounts or territories assigned that to them.

### **RESPONSE TO DOCUMENT REQUEST NO. 2:**

Tempur-Pedic has produced organizational charts that include regional and territorial personnel responsible for accounts and territories in New York during the Relevant Period. (TPXNY-0009389-0009587).

### **DOCUMENT REQUEST NO. 3:**

Documents concerning Tempur-Pedic's market share in the United States market.

### **RESPONSE TO DOCUMENT REQUEST NO. 3:**

Tempur-Pedic has produced Annual Reports for the Relevant Period which reflect Tempur-Pedic's market share in the United States. (TPXNY-0000759-0001104).

### **DOCUMENT REQUEST NO. 4:**

All Documents concerning any Tempur-Pedic policy as to retail prices suggested, recommended, or mandated to any customer.

### **RESPONSE TO DOCUMENT REQUEST NO. 4:**

Tempur-Pedic has produced documents concerning the unilateral pricing policy implemented in April 2002. (TPXNY-0001105-0001109).

**DOCUMENT REQUEST NO. 5:**

All Documents concerning any Tempur-Pedic pricing policy, including the exclusion of Tempur-Pedic Products from sales programs or coupons offered by any customer.

**RESPONSE TO DOCUMENT REQUEST NO. 5:**

Tempur-Pedic has produced documents concerning the unilateral pricing policy implemented in April 2002 (TPXNY-0001105-0001109), copies of advertising policies in effect during the Relevant Period (TPXNY-0009716-0009773); and communications regarding Company policies and New York Customers (TPXNY-TPXNY-0001845-0009388; TPXNY-0009774-0017002).

**DOCUMENT REQUEST NO. 6:**

All Documents concerning any Tempur-Pedic policy as to the applicability of "gift with purchase" promotions to Tempur-Pedic Products.

**RESPONSE TO DOCUMENT REQUEST NO. 6:**

See Response No. 5.

**DOCUMENT REQUEST NO. 7:**

All Documents concerning the advertising of the retail price, or a minimum advertised price, of any Tempur-Pedic Products.

**RESPONSE TO DOCUMENT REQUEST NO. 7:**

See Response No. 5.

**DOCUMENT REQUEST NO. 8:**

All Documents concerning Tempur-Pedic's policy as to the pricing of Tempur-Pedic Products offered for sale on the Internet.

**RESPONSE TO DOCUMENT REQUEST NO. 8:**

See Response No. 5.

**DOCUMENT REQUEST NO. 9:**

All Documents concerning Tempur-Pedic's program or policy as to providing funds to Tempur-Pedic customers for advertising.

**RESPONSE TO DOCUMENT REQUEST NO. 9:**

See Response No. 5.

**DOCUMENT REQUEST NO. 10:**

All Documents concerning your withholding of, or failure to accrue, cooperative advertising funds based, in whole or in part, on the price at which a Tempur-Pedic Customer sold or intended to sell Tempur-Pedic Products.

**RESPONSE TO DOCUMENT REQUEST NO. 10:**

No documents exist responsive to this Request. Tempur-Pedic has produced cooperative advertising programs for the Relevant Period (TPXNY-000183-0001379).

**DOCUMENT REQUEST NO. 11:**

Documents, provided in electronic form if possible, sufficient to show:

- (a) The prices at which you sold Tempur-Pedic Products to New York Customers;
- (b) The retail and/or minimum prices or advertised prices of Tempur-Pedic Products that you suggest, recommend or mandate to New York Customers;
- (c) The manner in which you communicate suggested, recommended or mandated retail prices, and or minimum prices or advertised prices, of Tempur-Pedic Products to Customers; and
- (d) The dates of changes in suggested, recommended or mandated retail and/or minimum prices, or advertised prices, of Tempur-Pedic Products and the resulting new prices.

**RESPONSE TO DOCUMENT REQUEST NO. 11:**

Tempur-Pedic has produced the price lists it provided to New York Customers during the Relevant Period (TPXNY-0009588-0009715).

**DOCUMENT REQUEST NO. 12:**

Documents concerning any monitoring, policing, or other surveillance of the prices at which New York Customers sell, sold or advertised Tempur-Pedic Products.

**RESPONSE TO DOCUMENT REQUEST NO. 12:**

Tempur-Pedic has produced documents concerning New York Customers. (See, eg., TPXNY-0001906; TPXNY-0002019-0002020; TPXNY-0002022-0002024; TPXNY-0002026; TPXNY-0002101-0002103; TPXNY-0002104-0002105; TPXNY-0002106-0002110; TPXNY-0002115-0002116; TPXNY-0002124; TPXNY-0002264; TPXNY-0002417; TPXNY-0002638; TPXNY-0003129; TPXNY-0014465-0014466; TPXNY-0016590; TPXNY-0016654-0016655; Native Oracle Database File).

**DOCUMENT REQUEST NO. 13:**

All Documents concerning:

- (a) Tempur-Pedic Ceasing Doing Business or communicating the intent to Cease Doing Business with a New York Customer based, in whole or in part, on the price at which to that customer sold, offered to sell, or advertised Tempur-Pedic Products;
- (b) Tempur-Pedic's resumption or possible resumption of doing business with any New York Customer after Ceasing Doing Business; and
- (c) Any actions taken by Tempur-Pedic or requested of a New York Customer by Tempur-Pedic based, in whole or in part, on the price at which a New York Customer sold, offer to sell, or advertised Tempur-Pedic Products.

**RESPONSE TO DOCUMENT REQUEST NO. 13:**

No documents exist responsive to this Request. Tempur-Pedic has produced documents concerning its unilateral policy to "suspend doing business with any retailer who does not adhere substantially to our suggested retail price ranges." (TPXNY-0001105-0001109).

**DOCUMENT REQUEST NO. 14:**

Documents concerning any complaints you communicated to any New York Customer about its retail pricing or advertised pricing practices.

**RESPONSE TO DOCUMENT REQUEST NO. 14:**

Tempur-Pedic has produced communication with New York Customers concerning retail pricing and advertised pricing practices. (See e.g., TPXNY-0002013-0002015; TPXNY-0002112-0002114; TPXNY-0002121; TPXNY-0002267-0002267).

**DOCUMENT REQUEST NO. 15:**

All contracts, agreements, or understandings or proposed contracts, agreements or understandings between Tempur-Pedic and any Customer concerning retail prices or any cooperative advertising or minimum advertised price program or policy.

**RESPONSE TO DOCUMENT REQUEST NO. 15:**

Tempur-Pedic has produced contracts, agreements, or understandings or proposed contracts, agreements or understandings between Tempur-Pedic and New York Customers. (TPXNY-0000045-0000758; TPXNY-0001387-0001391). No documents exist concerning contract, agreements, or understandings concerning retail prices, as Tempur-Pedic maintains a unilateral retail price policy.

**DOCUMENT REQUEST NO. 16:**

To the extent not provided in response to any preceding request, all other documents concerning the prices at which any New York Customers sold, offered to sell, or advertised Tempur-Pedic Products.

**RESPONSE TO DOCUMENT REQUEST NO. 16:**

No documents exist responsive to this Request.

**DOCUMENT REQUEST NO. 17:**

Documents in the form of electronically stored data compilations, as specified in Instruction 9, sufficient to show:

- (a) Total sales of Tempur-Pedic Products in the United States, broken down by product category;
- (b) Total sales of Tempur-Pedic Products to New York customers, broken down by product category; and
- (c) Each category, model and price point of Tempur-Pedic Products you sell in the United States.

**RESPONSE TO DOCUMENT REQUEST NO. 17:**

Tempur-Pedic has produced documents sufficient to show total sales of Tempur-Pedic Products in the United States, broken down by product category (TPXNY-0017004-0017009); total sales of Tempur-Pedic Products to New York Customers, broken down by product category (TPXNY-0017010-0017015); and the price lists it provided to New York Customers during the Relevant Period (TPXNY-0009588-0009715).

**DOCUMENT REQUEST NO. 18:**

Documents sufficient to describe or show your document retention policy.

**RESPONSE TO DOCUMENT REQUEST NO. 18:**

Tempur-Pedic has produced a copy of its document retention policy (TPXNY-0001641-0001657; TPXNY-0001672-0001673).

**DOCUMENT REQUEST NO. 19:**

Documents sufficient to illustrate your organizational structure.

**RESPONSE TO DOCUMENT REQUEST NO. 19:**

Tempur-Pedic has produced organizational charts in place during the Relevant Period.  
(TPXNY-0009389-0009587).

**DOCUMENT REQUEST NO. 20:**

Documents identified in any response to any interrogatories set forth on Schedule A, or otherwise used in responding to this subpoena.

**RESPONSE TO DOCUMENT REQUEST NO. 19:**

Tempur-Pedic has produced documents responsive to this Request as follows:

<b><u>Bates Range</u></b>	<b><u>Description</u></b>
TPXNY-0000001-0000044	List of New York Retailers
TPXNY-0000045-0000758	New York Dealer Agreements
TPXNY-0000759-0000855	2004 10-K
TPXNY-0000856-0000941	2005 10-K
TPXNY-0000942-0001024	2006 10-K
TPXNY-0001025-0001104	2007 10-K
TPXNY-0001105-0001109	Price Policies
TPXNY-0001110-0001182	New Dealer Kit
TPXNY-0001183-0001380	Advertising Program
TPXNY-0001381-0001381	Termination Files
TPXNY-0001382-0001384	Termination Files
TPXNY-0001385-0001386	Termination Files
TPXNY-0001387-0001391	Advertising Files
TPXNY-0001392-0001402	Termination Files
TPXNY-0001403-0001422	Advertising Files
TPXNY-0001423-0001427	Price List
TPXNY-0001428-0001428	Price Policy
TPXNY-0001429-0001640	Advertising Files
TPXNY-0001641-0001657	Document Retention Policy
TPXNY-0001658-0001671	Termination Files
TPXNY-0001672-0001673	Document Retention Policy
TPXNY-0001674-0001674	Price List
TPXNY-0001675-0001677	Price Policy
TPXNY-0001678-0001679	Price List
TPXNY-0001680-0001699	Termination Files
TPXNY-0001700-0001700	New Dealer Kit
TPXNY-0001701-0001844	Termination Files
TPXNY-0001845-0001869	Email - David Michaelangelo
TPXNY-0001870-0002124	Email - Paul Cowie
TPXNY-0002125-0002241	Email - S. Dryer
TPXNY-0002242-0002323	Email - Joe Ginsburgh
TPXNY-0002324-0003688	Email - Bob McCarthy

**Bates Range****Description**

TPXNY-0003689-0003861	Email - Bob McMetro
TPXNY-0003862-0003866	Email - David Plumridge
TPXNY-0003867-0003909	Email - Paul Messersmidt
TPXNY-0003910-0009388	Email - Bob McCarthy
TPXNY-0009389-0009399	2004 Org Charts
TPXNY-0009400-0009421	2005 Org Charts
TPXNY-0009422-0009521	2006 Org Charts
TPXNY-0009522-0009587	2007 Org Charts
TPXNY-0009588-0009715	Comprehensive Price Lists
TPXNY-0009716-0009773	Comprehensive Advertising Policies
TPXNY-0009774-0010177	Email - Paula Barnes
TPXNY-0010178-0010366	Email - Bob Trussel
TPXNY-0010367-0011002	Email - Tom Bryant
TPXNY-0011003-0011424	Email - Matt Clift
TPXNY-0011425-0012837	Email - Lewis Grounds
TPXNY-0012838-0013281	Email - Kent Hampton
TPXNY-0013282-0013324	Email - Bob Edwards
TPXNY-0013325-0013366	Email - Jolinda Rowe
TPXNY-0013367-0014168	Email - Rick Anderson
TPXNY-0014169-0014169	Email - Eddie Cooper
TPXNY-0014170-0015107	Email - Caroline Erley
TPXNY-0015108-0015125	Email - Bob McCarthy
TPXNY-0015126-0015128	Email - David Wachendorfer
TPXNY-0015129-0015172	Email - Mike Mason
TPXNY-0015173-0015173	Email - Caroline Erley
TPXNY-0015174-0015800	Email - David Wachendorfer
TPXNY-0015801-0015801	Email - Lewis Grounds
TPXNY-0015802-0015813	Email - Rick Anderson
TPXNY-0015814-0016177	Email - Tom Miller
TPXNY-0016178-0016187	Email - Bob Edwards
TPXNY-0016188-0016589	Email - Tom Bryant
TPXNY-0016590-0016803	Email - Caroline Erley
TPXNY-0016804-0016889	Email - Mike Mason
TPXNY-0016890-0016925	Email - Dany Sfeir
TPXNY-0016926-0016926	Email - Lee White
TPXNY-0016927-0017000	Email - Matt Clift
TPXNY-0017001-0017002	Termination Report
TPXNY-0017003-0017015	Sales Reports
TPXNY-0017016-0017016	CD-ROM:



**Native Files**

**Description**

001	NY Customer List.xls
002	ORACLE Customer Notes NY 04-08.xls
003	Gross Sales - US by Category by Month 010104 - 020408.xls
004	Gross Sales - NY by Category by Month 010104 - 020408.xls
005	Termination Letters NY.xls
006	Termination Report NY.xls

Dated: April 28, 2008

Respectfully submitted,

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*Attorneys for Tempur-Pedic International, Inc.*

# **EXHIBIT**

**3**

**AMENDED RESPONSES OF TEMPUR-PEDIC INTERNATIONAL INC.  
TO INTERROGATORIES FROM THE OFFICE OF THE NEW YORK  
ATTORNEY GENERAL DATED FEBRUARY 7, 2008**

Pursuant to Articles 23 and 31 of the New York Civil Practice Law and Rules, Tempur-Pedic International Inc. ("Tempur-Pedic" or the "Company"), by its attorneys, Bingham McCutchen LLP, hereby amends its responses to the Interrogatories attached as Schedule A (the "Interrogatories") to the Subpoena Duces Tecum (the "Subpoena") issued by the Office of the Attorney General of the State of New York dated February 7, 2008 as modified by letter agreement dated February 25, 2008 from Bingham McCutchen to the Office of the Attorney General.

**GENERAL RESPONSES AND OBJECTIONS**

The amended responses to these Interrogatories are made subject to each of the following general responses and objections:

1. Tempur-Pedic objects to providing information protected from disclosure by the attorney-client privilege, work product doctrine or other applicable privileges.
2. Tempur-Pedic objects to the scope, geographic and otherwise, of the Interrogatories to the extent that such scope falls outside of the jurisdiction of the Attorney General of the State of New York. In responding to the Subpoena, Tempur-Pedic shall limit the scope of its responses and production of documents to New York Customers as agreed to and memorialized in the February 25, 2008 letter from Bingham McCutchen to the Office of the Attorney General.
3. All responses set forth below should be understood to be made to the best of Tempur-Pedic's knowledge, information and belief, based upon reasonable investigation. Tempur-Pedic reserves the right to modify or amend any and all such responses in the future to the extent new or different information is discovered in the course of investigation.
4. These responses should not be construed as an admission regarding the admissibility of any information or the truth or accuracy of any statement or characterization contained in the Interrogatories. These responses should not be construed as an agreement or

concession that the subject matter contained in these responses is relevant to this matter. Tempur-Pedic makes these responses without intending to waive any objection as to relevance, privilege, admissibility or otherwise.

5. Tempur-Pedic incorporates its General Responses and Objections in each response to the Interrogatories as if set forth fully therein.

### **INTERROGATORY RESPONSES**

#### **INTERROGATORY NO. 1:**

State the following:

- (a) Your name;
- (b) Your date and place of incorporation;
- (c) The address of your principal place of business or main office
- (d) All names under which you do business in the United States;
- (e) The names, addresses, job titles, and tenure of office of all officers and directors currently serving as such on your behalf; and
- (f) The identities of all your parent companies, subsidiaries, affiliates, and other related companies.

#### **RESPONSE TO INTERROGATORY NO. 1:**

- (a) Tempur-Pedic International, Inc.
- (b) September 2002; Delaware.
- (c) 1713 Jaggie Fox Way, Lexington, Kentucky 40511
- (d) Tempur-Pedic Management, Inc. is a wholly-owned subsidiary of Tempur World, LLC, which is not a publicly held corporation. Tempur-Pedic North America, LLC is a wholly-owned subsidiary of Tempur-Pedic Sales, Inc., which is not a publicly held corporation. Tempur Production USA, LLC is a wholly-owned subsidiary of Tempur-Pedic Manufacturing, Inc., which is not a publicly held corporation. The three companies and their respective parents are ultimately owned by Tempur-Pedic International Inc., which is a publicly held corporation. All of these companies do business in the United States under the trade name "Tempur-Pedic."

(e) **Officers.**

Mark A. Sarvary, Chief Executive Officer and President, August 2008.

Richard W. Anderson, Executive Vice President and President, North America, July 2006.

Matthew D. Clift, Executive Vice President of Global Operations, December 2004.

Lou H. Jones, Executive Vice President and General Counsel, June 2009.

David Montgomery, Executive Vice President and President of International Operations, February 2003.

Dale E. Williams, Executive Vice President, Chief Financial Officer and Secretary, July 2003.

Bhaskar Rao, Chief Accounting Officer and Vice President of Strategic Planning, May 2006; Vice President of Strategic Planning, October 2005; Director of Financial Planning and Analysis, January 2004.

**Board of Directors.**

H. Thomas Bryant, member of Board of Directors, April 2006.

Francis A. Doyle, member of Board of Directors, March 2003.

John A. Heil, member of Board of Directors, March 2008.

Peter K. Hoffman, member of Board of Directors, October 2006.

Sir Paul Judge, member of Board of Directors, July 2004.

Nancy F. Koehn, member of Board of Directors, March 2004.

Christopher A. Masto, member of Board of Directors, November 2002.

P. Andrews McLane, Chairman of Board of Directors, November 2002.

Mark A. Sarvary, member of Board of Directors, August 2008.

Robert B. Trussell, Jr., Vice Chairman of Board of Directors, April 2006; Chief Executive Officer and member of Board of Directors, September 2002.

Additional information responsive to this Interrogatory may be found in the Annual Reports (TPXNY-0000759-0001104) produced by the Company through April 2008, as well as in the supplemental production of Annual Reports for the Relevant Period.

- (f) Tempur-Pedic Management, Inc. is a wholly-owned subsidiary of Tempur World, LLC, which is not a publicly held corporation. Tempur-Pedic North America, LLC is a wholly-owned subsidiary of Tempur-Pedic Sales, Inc., which is not a publicly held corporation. Tempur Production USA, LLC is a wholly-owned subsidiary of Tempur-Pedic Manufacturing, Inc., which is not a publicly held corporation. The three companies and their respective parents are ultimately owned by Tempur-Pedic International Inc., which is a publicly held corporation. All of these companies do business in the United States under the trade name "Tempur-Pedic."

**INTERROGATORY NO. 2:**

For each year during the Relevant Period:

- (a) Identify your New York Customers that sold Tempur-Pedic Products;
- (b) Provide the dollar unit and unit volume of annual sales to each of your New York Customers, stated separately for each Tempur-Pedic Product sold; and
- (c) Provide the minimum and maximum retail sales prices for each model of every Tempur-Pedic Product that you sell to Customers and direct to consumers, and provide the dates when each such price was in effect.

**RESPONSE TO INTERROGATORY NO. 2:**

- (a) Tempur-Pedic has produced a list of New York Customers that sold Tempur-Pedic Products through April 2008 (TPXNY-0000001-0000044), as well as in the supplemental production for the Relevant Period;
- (b) Tempur-Pedic has produced documents reflecting total sales of Tempur-Pedic Products to New York Customers, broken down by product category through April 2008 (TPXNY-0017010-0017015), as well as in the supplemental production for the Relevant Period;
- (c) Tempur-Pedic has produced the price lists it provided to New York Customers through April 2008 (TPXNY-0009588-0009715), as well as in the supplemental production for the Relevant Period.

**INTERROGATORY NO. 3:**

Have you communicated with any New York Customer concerning that Customer's failure to sell Tempur-Pedic Products at retail prices suggested, recommended or mandated by Tempur-Pedic?

**RESPONSE TO INTERROGATORY NO. 3:**

Yes.

**INTERROGATORY NO. 4:**

If your response to Interrogatory 3 is anything other than an unqualified no, for each such communication identify: (a) when, (b) where, (c) the means by which that communication took place; (d) all persons involved in the communications, and (e) the substance of the communication.

**RESPONSE TO INTERROGATORY NO. 4:**

Tempur-Pedic has produced documents from which the requested information may be derived (*See e.g.*, TPXNY-0002013-0002015; TPXNY-0002112-0002114; TPXNY-0002121; TPXNY-0002267-0002267). On occasion, Tempur-Pedic has sent letters to certain New York Customers concerning Tempur-Pedic's unilateral policy. (*See, e.g.*, TPXNY-0016597-0016631; TPXNY-0016659-0016799). Tempur-Pedic has produced documents showing which New York Customers were sent such letters (*See* Native Oracle Database File dated April 2008), and will supplement its production of documents. In addition, representatives of Tempur-Pedic had the following verbal communications with New York Customers during the Relevant Period:

- Thomas Rehwinkel has been the Regional Vice President, Northeast since 2006. Mr. Rehwinkel testified about his communications with New York Customers during a deposition conducted by the New York Attorney General on April 27, 2009, and Tempur-Pedic incorporates Mr. Rehwinkel's testimony by reference in this response.
- David Michelangelo, a Territory Sales Manager for Manhattan, Long Island, Poughkeepsie, and Northern New Jersey since June 2006, spoke verbally with John O'Connell, Executive Vice President of Dial-A-Mattress, on approximately three occasions in 2006 concerning departures from list price.
- Paul Cowie has been an Account Executive or Territory Sales Manager since January 2004. Mr. Cowie testified about his communications with New York Customers during a deposition conducted by the New York Attorney General on April 20, 2009, and Tempur-Pedic incorporates Mr. Cowie's testimony by reference in this response.

- David Plumridge, a National Account Manager and prior to that Territory Sales Manager with responsibility for the Sleepy's account, spoke to Dino Safelli, a Sleepy's representative, during a home show in White Plains, New York in the fall of 2007, concerning a Sleepy's sales representative who was offering to back out the sales tax on Tempur-Pedic Products.

**INTERROGATORY NO. 5:**

Do you have a policy concerning the prices at which your Customers can sell Tempur-Pedic Products?

**RESPONSE TO INTERROGATORY NO. 5:**

On or about April 15, 2002, Tempur-Pedic announced that the Company was adopting a unilateral policy to "suspend doing business with any retailer who does not adhere substantially to our suggested retail price ranges." (TPXNY-0001107). Tempur-Pedic has continuously maintained that unilateral policy since April 2002. In December 2003, Tempur-Pedic sent a letter to retailers concerning the policy. (TPXNY-0001106). In August 2007, Tempur-Pedic sent another letter to retailers concerning the policy. (TPXNY-0001105). In May 2009, Tempur-Pedic sent a letter to retailers concerning sales tax and the Company's unilateral policy. A copy of that letter will be produced. See also Response No. 4.

**INTERROGATORY NO. 6:**

If the response to Interrogatory 5 is yes, is it part of that policy to prevent your Customers from selling Tempur-Pedic Products at retail prices less than the prices suggested, recommended, or mandated by Tempur-Pedic?

**RESPONSE TO INTERROGATORY NO. 6:**

See Response No. 5.



**INTERROGATORY NO. 7:**

Has your company ever: (a) Ceased Doing Business with a New York Customer, based, in whole or in part, on that Customer's refusal or failure to sell Tempur-Pedic Products at retail prices suggested, recommended, or mandated by Tempur-Pedic; (b) communicated your intent to Cease Doing Business with a New York Customer, based, in whole or in part, on that Customer's refusal or failure to sell Tempur-Pedic Products at retail prices suggested, recommended, or mandated by Tempur-Pedic; or (c) after Ceasing Doing Business with a New York Customer, resumed sales of Tempur-Pedic Products based, in whole or in part, on that Customer's willingness to sell Tempur-Pedic Products at retail prices suggested, recommended, or mandated by Tempur-Pedic?

**RESPONSE TO INTERROGATORY NO. 7:**

No.

**INTERROGATORY NO. 8:**

If your response to Interrogatory 7 is anything other than an unqualified no:

- (a) Identify the New York Customer(s) with whom you Ceased Doing Business, and state whether you ever resumed doing business with that Customer;
- (b) Identify the New York Customer(s) to whom you communicated your intent to Cease Doing Business, and state whether you ever resumed doing business with that Customer;
- (c) For each Customer identified in response to subparts (a) and (b), state whether Tempur-Pedic requested the Customer to take any action whatsoever and, if so, describe the request;
- (d) State what actions the Customer took in response to the request;
- (e) State the date or time period when the actions transpired;
- (f) Identify: (1) your employee(s) who communicated the decision to Cease Doing Business to the New York Customer; (2) the Customer's employee(s) to whom it was communicated or who otherwise received the communication; and (3) your employee(s) who approved or authorized the communication.
- (g) State the date and time period of any resumption of doing business;
- (h) State the reason, if any, given by Tempur-Pedic for Ceasing Doing Business, and identify your employee who gave the reason and the Customer's employee to whom it was communicated;
- (i) State whether the communicated reason given in subpart (h) was in fact the reason that Tempur-Pedic took such action. If the answer is other than an unqualified yes, state the true reason and why the true reason was not communicated to the New York Customer; and

- (j) Identify all documents concerning your Ceasing Doing Business and the resumption of doing business.

**RESPONSE TO INTERROGATORY NO. 8:**

See Response No. 7.

**INTERROGATORY NO. 9:**

Have you communicated to any New York Customer that it is not permitted to give away Tempur-Pedic pillows or any other Tempur-Pedic products with a purchase of a Tempur-Pedic mattress?

**RESPONSE TO INTERROGATORY NO. 9:**

Tempur-Pedic states that on or about October 1, 2007, it issued a new Retail Partners Obligations & Advertising Policies, pursuant to which retailers are permitted to offer free pillows to purchasers, but are not permitted to make such an offer "in any advertising media such as Advo, ROP Newspaper, Radio, TV, etc. . . ." (TPXNY-0009750-0009758). On or about December 1, 2008 and again on or about June 8, 2009, Tempur-Pedic issued revised Retail Partners Obligations & Advertising Policies, copies of which will be produced.

**INTERROGATORY NO. 10:**

If your response to Interrogatory 9 is other than an unqualified no, for each such communication identify: (a) when, (b) where, (c) the means by which that communication took place, (d) all persons involved in the communication, and (e) the substance of the communication.

**RESPONSE TO INTERROGATORY NO. 10:**

See Response No. 9. Tempur-Pedic has produced copies of advertising policies in effect through April 2008 (TPXNY-0009716-0009773), and will produce copies of all other policies in effect during the Relevant Period.

**INTERROGATORY NO. 11:**

Have you communicated with any New York Customer about the retail pricing or advertised pricing practices of any other Tempur-Pedic Customer?

**RESPONSE TO INTERROGATORY NO. 11:**

Tempur-Pedic has not initiated such communications, but has on occasion received complaints from New York Customers concerning the pricing of Tempur-Pedic Products by other New York Customers. (*See, e.g.*, TPXNY-0014465-0014466; TPXNY-0016590; TPXNY-0016654-0016655).

**INTERROGATORY NO. 12:**

If your response to Interrogatory 11 is other than an unqualified no, for each such communication identify: (a) when, (b) where, (c) the means by which that communication took place, (d) all persons involved in the communication, and (e) the substance of that communication.

**RESPONSE TO INTERROGATORY NO. 12:**

See Response No. 14.

**INTERROGATORY NO. 13:**

Has any New York Customer ever communicated with you concerning any other Tempur-Pedic Customer's retail pricing or advertised pricing practices?

**RESPONSE TO INTERROGATORY NO. 13:**

Yes.

**INTERROGATORY NO. 14:**

If your response to Interrogatory 13 is other than an unqualified no, for each such communication identify: (a) when, (b) where, (c) the means by which that communication took place, (d) all persons involved in the communication, and (e) the substance of that communication.

**RESPONSE TO INTERROGATORY NO. 14:**

Tempur-Pedic has produced documents from which the requested information may be derived. (*See, e.g.*, TPXNY-0001906; TPXNY-0002019-0002020; TPXNY-0002022-0002024; TPXNY-0002026; TPXNY-0002101-0002103; TPXNY-0002104-0002105; TPXNY-0002106-0002110; TPXNY-0002115-0002116; TPXNY-0002124; TPXNY-0002264; TPXNY-0002417; TPXNY-0002638; TPXNY-0003129). New York Customers also have had the following verbal communications with representatives of Tempur-Pedic during the Relevant Period:

- Richard Anderson, Executive Vice President and President, North America, received three or four telephone calls from Harry Acker and Michael Bookbinder from Sleepy's in the summer/fall 2008 timeframe complaining about other New York Customers selling Tempur-Pedic Products for prices less than those suggested by Tempur-Pedic. Mr. Anderson also met with Steven Goldberg, Neil Goldberg, and Michael Goldberg, all from Raymour & Flanagan, and that company's general counsel, on or about November 17, 2008. During the meeting, Raymour & Flanagan complained that Sleepy's was selling Tempur-Pedic Products for prices less than those suggested by Tempur-Pedic. Mr. Anderson had a telephone conversation with Steven Goldberg, President of Raymour & Flanagan, in January 2009. Mr. Goldberg complained about the price at which Sleepy's sold Tempur-Pedic Products.
- Thomas Rehwinkel has been the Regional Vice President, Northeast since 2006. Mr. Rehwinkel testified about his communications with New York Customers during a deposition conducted by the New York Attorney General on April 27, 2009, and Tempur-Pedic incorporates Mr. Rehwinkel's testimony by reference in this response.
- Robert McCarthy, the Regional Sales Manager responsible for New York since April 2007, and a Territory Sales Manager in upstate New York for roughly three years prior to that, receives approximately one or two complaints per month about alleged violations of Tempur-Pedic advertising policies.
- Paul Cowie has been an Account Executive or Territory Sales Manager since January 2004. Mr. Cowie testified about his communications with New York Customers during a deposition conducted by the New York Attorney General on April 20, 2009, and Tempur-Pedic incorporates Mr. Cowie's testimony by reference in this response.

- Paul Messerschmitt, a Territory Sales Manager responsible for the Macy's account since May 2007, has received complaints on less than six occasions from Gary Comblath in Macy's buying department about other New York Customers departing from list price.
- David Michelangelo, a Territory Sales Manager for Manhattan, Long Island, Poughkeepsie, and Northern New Jersey since June 2006, frequently receives complaints from New York Customers, but has received documentation that another New York Customer has departed from list price on approximately only ten occasions. See also Response No. 4.
- David Plumridge has been a National Account Manager since June 2008, and prior to that was a Territory Sales Manager. In both positions he had responsibility for the Sleepy's account. While he was a Territory Sales Manager, he received approximately four complaints per month from Sleepy's sales representatives. Since his promotion to National Account Manager in June 2008, which brings him into Sleepy's store locations on fewer occasions than his prior role as Territory Sales Manager, he has received a total of perhaps three or four complaints from Sleepy's sales representatives when he visited store locations. See also Response No. 4.
- Joseph Ginsburgh, a Territory Sales Manager for upstate New York, occasionally receives verbal complaints from New York Customers.

**INTERROGATORY NO. 15:**

Has any New York Customer ever communicated with you concerning your Ceasing Doing Business with any other Tempur-Pedic Customer?

**RESPONSE TO INTERROGATORY NO. 15:**

No.

**INTERROGATORY NO. 16:**

If your response to Interrogatory 15 is other than an unqualified no:

- (a) Identify the Customer who communicated with you;
- (b) Identify the Customer about whom the communication concerned; and
- (c) Identify all documents concerning those communications.

**RESPONSE TO INTERROGATORY NO. 16:**

See Response No. 15.

**INTERROGATORY NO. 17:**

During the Relevant Period, did it come to your attention that any New York Customer was selling Tempur-Pedic Products at retail prices below your suggested retail price?

**RESPONSE TO INTERROGATORY NO. 17:**

Yes.

**INTERROGATORY NO. 18:**

If your response to Interrogatory 17 is other than an unqualified no, identify each such Customer.

**RESPONSE TO INTERROGATORY NO. 18:**

Tempur-Pedic has produced documents from which the requested information may be derived. (See, e.g., TPXNY-0001906; TPXNY-0002019-0002020; TPXNY-0002022-0002024; TPXNY-0002026; TPXNY-0002101-0002103; TPXNY-0002104-0002105; TPXNY-0002106-0002110; TPXNY-0002115-0002116; TPXNY-0002124; TPXNY-0002264; TPXNY-0002417; TPXNY-0002638; TPXNY-0003129). See also Response to Interrogatory No. 14. Tempur-Pedic will supplement its production of documents.

**INTERROGATORY NO. 19:**

For each Customer identified in response to Interrogatory 18, state:

- (a) Whether you Ceased Doing Business with or communicated your intention to Cease Doing Business with that Customer;
- (b) If so, the reason why you Ceased Doing Business with or communicated your intention to Cease Doing Business with that Customer; and

(c) If not, the reason why you did not.

**RESPONSE TO INTERROGATORY NO. 19:**

Tempur-Pedic's unilateral policy is to "suspend doing business with any retailer who does not adhere substantially to our suggested retail price ranges." (TPXNY-0001107). Tempur-Pedic interprets "adhere substantially," in this context to include both a persistent and intentional deviation from suggested retail price ranges. Tempur-Pedic has not become aware of any New York Customer who has chosen not to "adhere substantially" to the Company's suggested retail price ranges, as so interpreted. Indeed, when Tempur-Pedic has inquired as to the reasons that a New York Customer has sold a Tempur-Pedic Product at a price less than the prices suggested by Tempur-Pedic, it often finds that the New York Customer was unaware that an individual salesperson had made such a sale, or that the New York Customer had been inadvertently using an outdated price list. (See, e.g., TPXNY-0002014; TPXNY-0002113-0002114).

**INTERROGATORY NO. 20:**

Identify all documents responsive to the above interrogatories.

**RESPONSE TO INTERROGATORY NO. 20:**

Tempur-Pedic has produced the following categories of documents responsive to the above Interrogatories:

<b><u>Bates Range</u></b>	<b><u>Description</u></b>
TPXNY-0000001-0000044	List of New York Retailers
TPXNY-0000045-0000758	New York Dealer Agreements
TPXNY-0000759-0000855	2004 10-K
TPXNY-0000856-0000941	2005 10-K
TPXNY-0000942-0001024	2006 10-K
TPXNY-0001025-0001104	2007 10-K
TPXNY-0001105-0001109	Price Policies
TPXNY-0001110-0001182	New Dealer Kit
TPXNY-0001183-0001380	Advertising Program
TPXNY-0001381-0001381	Termination Files
TPXNY-0001382-0001384	Termination Files
TPXNY-0001385-0001386	Termination Files
TPXNY-0001387-0001391	Advertising Files
TPXNY-0001392-0001402	Termination Files

<b><u>Bates Range</u></b>	<b><u>Description</u></b>
TPXNY-0001403-0001422	Advertising Files
TPXNY-0001423-0001427	Price List
TPXNY-0001428-0001428	Price Policy
TPXNY-0001429-0001640	Advertising Files
TPXNY-0001641-0001657	Document Retention Policy
TPXNY-0001658-0001671	Termination Files
TPXNY-0001672-0001673	Document Retention Policy
TPXNY-0001674-0001674	Price List
TPXNY-0001675-0001677	Price Policy
TPXNY-0001678-0001679	Price List
TPXNY-0001680-0001699	Termination Files
TPXNY-0001700-0001700	New Dealer Kit
TPXNY-0001701-0001844	Termination Files
TPXNY-0001845-0001869	Email - David Michaelangelo
TPXNY-0001870-0002124	Email - Paul Cowie
TPXNY-0002125-0002241	Email - S. Dryer
TPXNY-0002242-0002323	Email - Joe Ginsburgh
TPXNY-0002324-0003688	Email - Bob McCarthy
TPXNY-0003689-0003861	Email - Bob McMetro
TPXNY-0003862-0003866	Email - David Plumridge
TPXNY-0003867-0003909	Email - Paul Messerschmidt
TPXNY-0003910-0009388	Email - Bob McCarthy
TPXNY-0009389-0009399	2004 Org Charts
TPXNY-0009400-0009421	2005 Org Charts
TPXNY-0009422-0009521	2006 Org Charts
TPXNY-0009522-0009587	2007 Org Charts
TPXNY-0009588-0009715	Comprehensive Price Lists
TPXNY-0009716-0009773	Comprehensive Advertising Policies
TPXNY-0009774-0010177	Email - Paula Barnes
TPXNY-0010178-0010366	Email - Bob Trussel
TPXNY-0010367-0011002	Email - Tom Bryant
TPXNY-0011003-0011424	Email - Matt Clift
TPXNY-0011425-0012837	Email - Lewis Grounds
TPXNY-0012838-0013281	Email - Kent Hampton
TPXNY-0013282-0013324	Email - Bob Edwards
TPXNY-0013325-0013366	Email - Jolinda Rowe
TPXNY-0013367-0014168	Email - Rick Anderson
TPXNY-0014169-0014169	Email - Eddie Cooper
TPXNY-0014170-0015107	Email - Caroline Erley
TPXNY-0015108-0015125	Email - Bob McCarthy
TPXNY-0015126-0015128	Email - David Wachendorfer
TPXNY-0015129-0015172	Email - Mike Mason
TPXNY-0015173-0015173	Email - Caroline Erley
TPXNY-0015174-0015800	Email - David Wachendorfer
TPXNY-0015801-0015801	Email - Lewis Grounds

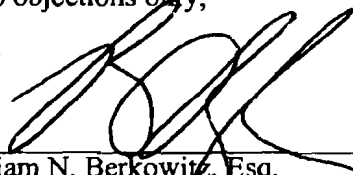


<u>Bates Range</u>	<u>Description</u>
TPXNY-0015802-0015813	Email - Rick Anderson
TPXNY-0015814-0016177	Email - Tom Miller
TPXNY-0016178-0016187	Email - Bob Edwards
TPXNY-0016188-0016589	Email - Tom Bryant
TPXNY-0016590-0016803	Email - Caroline Erley
TPXNY-0016804-0016889	Email - Mike Mason
TPXNY-0016890-0016925	Email - Dany Sfeir
TPXNY-0016926-0016926	Email - Lee White
TPXNY-0016927-0017000	Email - Matt Clift
TPXNY-0017001-0017002	Termination Report
TPXNY-0017003-0017015	Sales Reports
TPXNY-0017016-0017016	CD-ROM:

<u>Native Files</u>	<u>Description</u>
001	NY Customer List.xls
002	ORACLE Customer Notes NY 04-08.xls
003	Gross Sales - US by Category by Month 010104 - 020408.xls
004	Gross Sales - NY by Category by Month 010104 - 020408.xls
005	Termination Letters NY.xls
006	Termination Report NY.xls

Dated: July 20, 2009

As to objections only,



William N. Berkowitz, Esq.

Brandon L. Bigelow, Esq.

David M. Magee, Esq.

**BINGHAM McCUTCHEN LLP**

One Federal Street

Boston, MA 02110

Tel. (617) 951-8000

*Attorneys for Tempur-Pedic International Inc.*

### **VERIFICATION OF INTERROGATORY RESPONSES**

I, Richard Anderson, hereby depose and state that I am Executive Vice President of North America for Tempur-Pedic International Inc. and President of Tempur-Pedic North America, LLC. I have authority to make this response on behalf of Tempur-Pedic International, Inc. and Tempur-Pedic North America, LLC. (together, "Tempur-Pedic"). The following individuals provided information contained in these Amended Responses of Tempur-Pedic International, Inc. to Interrogatories from the Office of the New York Attorney General Dated February 7, 2008:

(1) Tracy Cooke, 1713 Jaggie Fox Way, Lexington, KY, (859) 514-4615, Senior Legal Assistant. On information and belief, Ms. Cooke provided assistance in gathering documents and information requested by counsel in order to respond to all interrogatories.

(2) Katherine Leigh, 1713 Jaggie Fox Way, Lexington, KY, (859) 514-4743, Senior Project Manager, Corporate. On information and belief, Ms. Leigh gathered data concerning customers and annual sales used in Response Nos. 2 and 20.

(3) Richard Anderson, 1713 Jaggie Fox Way, Lexington, KY, (859) 514-4855, Executive Vice President and President, North America. Mr. Anderson provided information used in Response Nos. 3, 4, 7, 9, 11, 13, 14, 15, and 17.

(4) Todd Miller, 1713 Jaggie Fox Way, Lexington, KY, (925) 200-2885, Vice President, Retail. On information and belief, Mr. Anderson provided information used in Response Nos. 3, 4, 7, 9, 11, 13, 14, 15, and 17.

(5) Thomas Rehwinkel, 8 Penrose Lane, Princeton Jct., NJ 08550, (859) 913-1799, Regional Vice President, Northeast. On information and belief, Mr. Rehwinkel provided information used in Response Nos. 3, 4, 7, 9, 11, 13, 14, 15, and 17.

(6) Robert McCarthy, 29 Flying Rock Road, Hudson, NH 03051, (859) 221-8018, Regional Sales Manager, New England, New York, New Jersey, Ohio. On information and belief, Mr. McCarthy provided information used in Response Nos. 3, 7, 9, 11, 13, 14, 15, and 17.

(7) Paul Messerschmitt, 7300 Contessa Way, Waynesville, OH 45068, (513) 238-5007, Territory Sales Manager. On information and belief, Mr. Messerschmitt provided information used in Response Nos. 3, 7, 9, 11, 13, 14, 15, and 17.

(8) David Michelangelo, 119 Ripelye Street Garden, Brooklyn, NY 11231, (412) 580-0334, Territory Sales Manager. On information and belief, Mr. Michelangelo provided information used in Response Nos. 3, 4, 7, 9, 11, 13, 14, 15, and 17.

(9) David Plumridge, 2305 Carriage Lane, Limerick, PA 19468, (859) 321-6223, Territory Sales Manager. On information and belief, Mr. Plumridge provided information used in Response Nos. 3, 4, 7, 9, 11, 13, 14, 15, and 17.

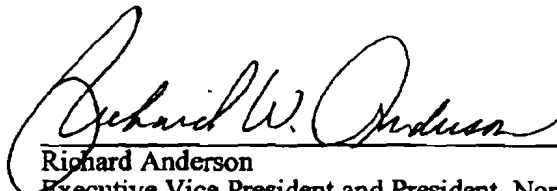
(10) Suzette Dryer, last known address 59 Flaxfield Road, Dudley, MA 01571, former Territory Sales Manager. On information and belief, Ms. Dryer provided information used in Response Nos. 3, 7, 9, 11, 13, 15, and 17.

(11) Paul Cowie, 140 Shaker Road, Longmeadow, MA 01106, (859) 221-3674, Territory Sales Manager. On information and belief, Mr. Cowie provided information used in Response Nos. 3, 4, 7, 9, 11, 13, 15, and 17.

(12) Joseph Ginsburgh, 3 Apple Blossom Lane, Albany, NY 12205, (859) 321-6327, Territory Sales Manager. On information and belief, Mr. Ginsburgh provided information used in Response Nos. 3, 7, 9, 11, 13, 15, and 17.

(13) Counsel for Tempur-Pedic, Bingham McCutchen LLP, including attorneys William Berkowitz, Brandon Bigelow, and David Magee, One Federal Street, Boston, MA 02110, (617) 951-8000. On information and belief, Bingham McCutchen assisted with gathering information and provided information used in Response Nos. 1-20.

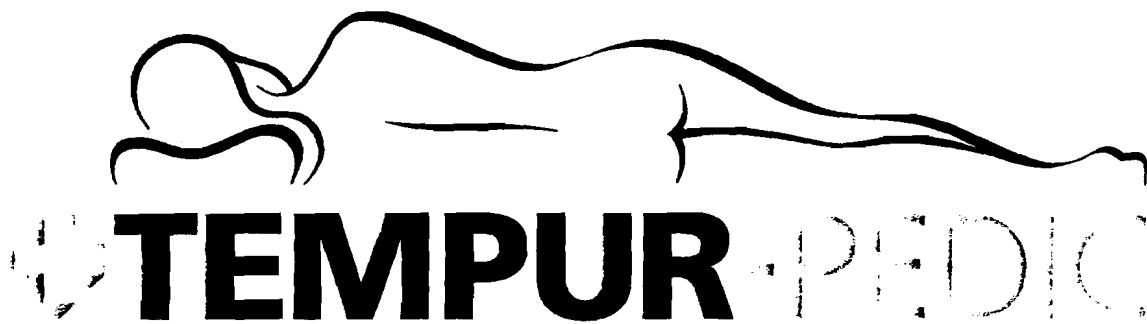
I have read the Amended Responses of Tempur-Pedic International Inc. to Interrogatories from the Office of the New York Attorney General Dated February 7, 2008, know its contents, and, to the best of my knowledge, based on information and belief, formed after a reasonable inquiry, I believe those responses to be true and accurate. The source of my information and belief are privileged communications with counsel, including a privileged communication on or about July 20, 2009. I hereby aver under penalties of perjury that the foregoing is true to my knowledge, except as to those matters stated to be on the basis of information and belief, which matters I believe to be true.

A handwritten signature in cursive script, reading "Richard W. Anderson", is written over a horizontal line.

Richard Anderson  
Executive Vice President and President, North America  
Tempur-Pedic International Inc.

# **EXHIBIT**

**4**



## Retail Partner Obligations & Advertising Policies

VERSION 4.0

Effective: June 8, 2009

1713 Jaggie Fox Way  
Lexington, KY 40511

(859) 259-0754

(800) 878-8889

Fax: (859) 514-4423



## Acknowledgement

By signing below I acknowledge that I have received the attached *Retail Partner Obligations & Advertising Policies* and *Brandmark Manual* and agree to abide by them. I understand it is important to follow these policies and brand usage guidelines to maintain and protect the Tempur-Pedic® brand and its associated registration and trademarks. Failure to comply with these guidelines could result in termination of my account with Tempur-Pedic North America, LCC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tempur-Pedic Account Number

\_\_\_\_\_  
Company/Office

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

**Please sign this form and fax to: 859-514-5713.**





## Retail Partner Obligations

**As a Tempur-Pedic North America, LLC Retail Partner you agree to...**

### **Follow Advertising Policies and Brandmark Usage Guidelines**

If you purchase Tempur-Pedic® products and/or offer them for sale, you agree to abide by the requirements of the *Retail Partner Obligations & Advertising Policies* and the *Brandmark Manual*. Following these requirements supports Tempur-Pedic branding efforts and protects Tempur-Pedic intellectual property. Any reseller who misrepresents or misuses Tempur-Pedic trademarks, logos or other materials will be notified in writing and will be given 5 business days to implement corrections. Failure to do so may result in termination of product shipments, cancellation of authorized reseller status, or any other action deemed necessary.

### **Include Adequate Coverage of Tempur-Pedic Products**

Tempur-Pedic recommends that our Retail Partners place at least five (5) mattress sets on their floor to give consumers the opportunity to see and feel the differences between our models. Further recommendations for coverage of Tempur-Pedic products at your individual location(s) will be determined by your Tempur-Pedic Sales Representative. Our warranties and performance guarantees are based on tests conducted on "sets" that consist of our branded mattresses and foundations, flat or adjustable. To ensure consumer satisfaction, warranty coverage, and consistent brand image, Tempur-Pedic mattresses shall not be displayed or sold with other manufacturers' foundations and/or adjustable bed bases.

### **Ship Only to Authorized Locations**

As an Authorized Tempur-Pedic Retail Partner, you are required to sell and/or ship Tempur-Pedic products to those consumers within your immediate geographic area only. Conducting commerce outside of your physical location's immediate geographic area is prohibited. Tempur-Pedic products provided to Retail Partners for the purpose of resale are to be sold to retail customers only. Selling our products to any party other than a retail customer is prohibited.

### **Accept Tempur-Pedic Retail Partner Termination Policies**

Tempur-Pedic has the right to terminate its relationship with you at any time. If Tempur-Pedic decides to do so, you will be given an initial notification by phone, email or in person by your Tempur-Pedic Sales Representative. Following initial notification, you should expect two (2) letters providing official written notification: one from the Retail Division and one from the Legal Department, further explaining the process of termination.

You will have 90 days from the date of written notice from Tempur-Pedic's Legal Department to sell any remaining product on hand and pay all outstanding invoices. At the end of the 90 day period a final inventory will be taken with you. A release agreement stating the amount to be given for the final inventory count will be sent to you to be signed. After we receive the executed release agreement from you, the final pick up of all remaining Tempur-Pedic items will be scheduled. Once Tempur-Pedic has received and processed all items from the final pick up, a credit will be issued to all remaining balances on your account or a check will be issued if no balances are outstanding. You will have no right to seek compensation for lost profits or other damages as a result of termination.

### **Refrain from Using "Agent" or "Franchise" of Tempur-Pedic**

As a Tempur-Pedic Retail Partner you are authorized to resell and/or purchase Tempur-Pedic products. You should never refer to your company as an agent or franchise of Tempur-Pedic and agree that you have not received or paid any fee for the right to become an Authorized Tempur-Pedic Retail Partner. Although we may refer to you as our "Retail Partner," you acknowledge there is no legal partnership or fiduciary relationship between you and Tempur-Pedic.

### **Understand Tempur-Pedic Warranties**

Tempur-Pedic products are sold only with Tempur-Pedic's own, limited warranties. As an Authorized Tempur-Pedic Retail Partner you should become familiar with these warranties. TEMPUR-PEDIC WILL NOT HONOR ANY OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES.

These requirements are the only agreement between you and Tempur-Pedic and supersede and/or replace any other agreements you may have. These requirements cannot be changed orally, but only through writing. Any and all disputes between you and Tempur-Pedic will be resolved out of the courts through binding arbitration by the American Arbitration Association in Boston.



## Advertising Policies

Tempur-Pedic® reserves the right to change policies, regulations, and procedures here in. All are subject to change without prior notice, if necessary, to keep Tempur-Pedic North America, Inc. policies in compliance with State and Federal laws and/or with rules and regulations of the United States Patent and Trademark Office.

**Questions or Advertising Materials for review and approval should be directed to Tempur-Pedic's Marketing Department. Contact us via email: [marketing@tempurpedic.com](mailto:marketing@tempurpedic.com), phone: 800-878-8889, fax: 859-514-4423, or mail: Attention Marketing Department, Tempur-Pedic North America, LLC 1713 Jaggie Fox Way, Lexington KY 40511.**

### 1. Required Physical Location

Any Retail Partner wishing to use the Tempur-Pedic name and associated materials and logos for the purpose of advertising the sale of Tempur-Pedic products must maintain an actual physical retail location in which Tempur-Pedic products are clearly displayed and sold.

### 2. Nationwide Shipping

Advertising the ability to ship nationwide via any and all media sources and routinely conducting commerce outside your physical store's immediate geographic area is PROHIBITED.

### 3. Internet Restrictions

Tempur-Pedic supports all authorized Retail Partners' use of the Internet as a means of communicating with, informing and attracting prospective customers to their physical locations.

#### ACCEPTABLE:

- Advertising via the internet that Tempur-Pedic products are available at your physical retail location(s) for sale
- Providing images and information on your website about the Tempur-Pedic products you carry
- Listing Tempur-Pedic ONCE in search engine titles, meta keywords or meta descriptions along with your company name and the disclaimer "Unofficial Site"
- Displaying the Tempur-Pedic logo and other trademarks with YOUR company logo displayed more prominently
- Purchasing 2nd position or lower pay-per-click Internet Adwords that use Tempur-Pedic or our other trademarks

#### UNACCEPTABLE:

- Advertising pricing on the Internet or in any "shopping cart" format
- Selling Tempur-Pedic products via your website or any other website including eBay, Amazon, Yahoo Shopping, Froogle, Craig's List, etc.
- Taking internet orders by phone or email
- Providing Tempur-Pedic product price lists via email or encouraging customers to "call for pricing" or to "call to order"
- Selling Tempur-Pedic products to anyone other than retail customers
- Purchasing and/or using Tempur-Pedic or our other trademarks as part of your URL/domain
- Displaying Tempur-Pedic or our other trademarks more prominently than your company or any other company name
- Using images, logos or videos on your website that have not been supplied and/or authorized by Tempur-Pedic
- Promoting the ability to ship nationwide
- Misusing Tempur-Pedic's trademarks and brand on online advertising sources such as MySpace and Craig's List

## Advertising Policies (continued)

### 4. Coupons, Rebates & Promotional Items

Below are lists of acceptable and unacceptable coupons, rebates & promotional items that may or may not be advertised with Tempur-Pedic® products during non-promotional periods. These guidelines relate to advertising only and variations of these guidelines may apply during authorized national promotions as announced by Tempur-Pedic. Please contact your Tempur-Pedic Sales Representative or visit [www.tempurpedicpartners.com](http://www.tempurpedicpartners.com) for additional details and calendars of planned event periods.

No more than **two (2)** promotional items or non-common offers may be combined, or "stacked" in advertising.

#### ACCEPTABLE:

- Free gifts with purchase or "purchase with purchase" offers (retail value **up to \$100**) with the sale of Tempur-Pedic® Mattresses or Sleep Systems
- Gift Cards or Gift Certificates (retail value up to \$100) for use outside of a Retail Partner location and for goods or services from a specific merchant, i.e. Shell Gas Card, Target Gift Card, Starbucks Gift Card or (specific local restaurant) etc.
- Free Tempur-Pedic authorized promotional item, i.e. My Tempur-Pedic Teddy Bear™
- Free Bed Frame

#### UNACCEPTABLE:

- Free gifts with purchase or "purchase with purchase" offers (retail value **over \$100**) with the sale of Tempur-Pedic products
- No Sales Tax or any phrasing such as "We Pay Sales Tax"
- Gift cards, rebates, coupons or other "in-store credits" that can or can not be applied to Tempur-Pedic products at a Retail Partner location as a cash equivalent
- Offering money back for the return of the consumer's old bedding with a new purchase, i.e. "Trade-in Sale"
- Free Foundation

### 5. Offering Free Pillows in Advertising

You may advertise FREE Tempur-Pedic pillow(s) during specified, authorized promotional periods ONLY.

During non-promotional periods, the offering of FREE Tempur-Pedic pillows is allowed in Direct/Private Mailers from internally generated customer lists ONLY. You may offer 2 FREE Pillows up to a value of \$99 for each pillow through private mailers.

Offering this promotion in any advertising media such as ADVO, ROP Newspaper, Radio, TV, etc. is prohibited outside of authorized national promotional periods.

Please contact your Tempur-Pedic Sales Representative or visit [www.tempurpedicpartners.com](http://www.tempurpedicpartners.com) for additional details and calendars of planned event periods.

### 6. Common Offers Acceptable in Industry & Tempur-Pedic

The following are types of offers that are seen as standard/common offers advertised in the industry and are acceptable to advertise with Tempur-Pedic products. These offers are not counted/included within Tempur-Pedic's policy of stacking offers.

- Special Financing Offers
- Free Financing
- Free Delivery
- Free Information
- Free Set-Up
- Free Try-Out

## Advertising Policies (continued)

### 7. "Largest Tempur-Pedic Dealer"

Any phrase indicating superiority due to sales volume in a particular city, state or region is prohibited. Such phrasing may not be Tempur-Pedic specific.

#### ACCEPTABLE:

- Proudly Carrying Tempur-Pedic since \_\_\_\_\_
- See our Complete Selection of Tempur-Pedic Sleep Systems
- We Carry the Full Line of Tempur-Pedic Sleep Systems
- Full Service Tempur-Pedic Dealer
- Full Line Tempur-Pedic Dealer
- \_\_\_\_\_'s Largest Mattress (or Furniture) Dealer (not Tempur-Pedic specific)
- Tempur-Pedic Headquarters

#### UNACCEPTABLE:

- Largest Tempur-Pedic Dealer
- Biggest Tempur-Pedic Dealer

### 8. Floor Model Sales

Sales of Tempur-Pedic floor models may only be advertised in mass media when included as part of a "Floor Model Sales Event" including other brands. It is not acceptable to advertise the sale of a specific Tempur-Pedic floor model. The offer of a specific Tempur-Pedic floor model for a lower price may be promoted in-store ONLY.

### 9. Tempur-Pedic Product Pricing in Advertising

To ensure uniformity in advertising the following policies must be followed.

#### ACCEPTABLE:

- Advertising "Starting at" pricing of Tempur-Pedic products while specifying which product it is based on
- Advertising the SRP of a specific Tempur-Pedic product with notation of everything that is included within that price
- Advertising a monthly payment price for special financing terms
- Using phrases such as "Everyday Prices," "Same Price Promise" or "No Haggle Pricing"

#### UNACCEPTABLE:

- Advertising complete price lists of products
- Advertising "On Sale Now," "Best Prices," "Lowest Prices," "Guaranteed Lowest Prices," "Sale Price" etc. with Tempur-Pedic products

### 10. Corporate Logo & Trademark Integrity

The Tempur-Pedic logo must NOT be recreated or altered in any way. Altering the logo can have a negative effect on the valuable brand image created by Tempur-Pedic. Please refer to the *Brandmark Manual* for the proper usage of the Tempur-Pedic logo(s).



The Tempur-Pedic trademarks must be used in their entirety and are registered as such with the United States Patent and Trademark Office. Please refer to the Tempur-Pedic Trademarks section of the *Brandmark Manual* for proper usage of all Tempur-Pedic trademarks.

### 11. NASA Recognition and Space Foundation Certification

Tempur-Pedic has been given the rights to use the "Certified Space Technology" logo on marketing materials and packaging. All competitors, including those claiming to be derived from NASA technology, absolutely can NOT use the "Certified Space Technology" logo. This logo is only approved for use in Tempur-Pedic produced advertising materials.



THE ONLY MATTRESS  
RECOGNIZED BY NASA  
AND CERTIFIED BY THE  
SPACE FOUNDATION



THE ONLY PILLOW  
RECOGNIZED BY NASA  
AND CERTIFIED BY THE  
SPACE FOUNDATION



RECOGNIZED BY NASA  
AND CERTIFIED BY THE  
SPACE FOUNDATION



TEMPUR-PEDIC'S EXCLUSIVE  
SPACE TECHNOLOGY  
IS RECOGNIZED BY NASA  
AND CERTIFIED BY THE  
SPACE FOUNDATION

## Advertising Policies (continued)

### 12. Use of the word "Swedish"

The word "Swedish," when used to characterize mattresses and pillows, is a Tempur-Pedic trademark and can only be used with the Tempur-Pedic brand name. Using this to describe any other comparable product is a violation of Tempur-Pedic's trademark rights.

# Swedish

### 13. Use of the phrase "As Seen on TV"

The phrase "As Seen on TV" and logo is a registered trademark and should NOT be used in any advertising.



### 14. Use of the words "Foam", "Viscoelastic", "Visco" & "Memory Foam"

Tempur-Pedic's proprietary formula is a trade secret known only to a handful of individuals. Authentic TEMPUR® material is only made in Tempur-Pedic production facilities using our proprietary formula and manufacturing process and is used exclusively in Tempur-Pedic® branded products.

TEMPUR material conforms to body shape relieving the pressure and pain that causes tossing and turning. TEMPUR pressure-relieving material should NOT be referred to as "foam," "viscoelastic," "visco," "memory foam" or any other descriptive term relating to "foam" products. Tempur-Pedic products should never be grouped with "memory foam" products in any advertising.



### 15. TEMPUR® Advanced Ergo System™

Tempur-Pedic now offers an exclusive, premium adjustable or "power" base to our dealers.

We are supporting this product with national advertising and a brand positioning we believe includes powerful reasons for consumers to upgrade their sleep systems. The product name, TEMPUR Advanced Ergo System, is an integral part of this positioning and should be used when referring to the product in advertising or in-store materials. The terms adjustable, moveable, motion, lifestyle etc. should only be used to refer to the Ergo System's features. The TEMPUR Advanced Ergo System may be advertised in all media.



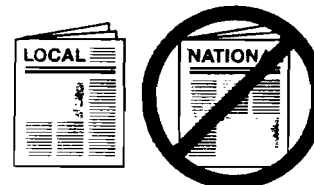
### 16. Ad Placement

#### ACCEPTABLE:

- Featuring Tempur-Pedic in local media, including radio, TV and print

#### UNACCEPTABLE:

- Featuring Tempur-Pedic in national daily, weekly or monthly publications
- Featuring Tempur-Pedic in national media, including radio, TV and print



### 17. Corporate Ad Campaign Integrity

To maintain the integrity of the overall marketing and media investments for Tempur-Pedic corporate advertising programs, Retail Partners producing TV, radio, satellite radio, podcast, etc. spots featuring Tempur-Pedic products are limited to 50% of the duration of the total ad to feature the Tempur-Pedic brand and/or products.

- 30 second spot – 15 seconds for Tempur-Pedic
- 60 second spot – 30 seconds for Tempur-Pedic

B-roll footage and pre-produced promotional segments featuring Tempur-Pedic products for inclusion in your TV commercials are available for download at [www.tempurpedicpartners.com](http://www.tempurpedicpartners.com).

If you wish to create advertising for TV or radio that features ONLY Tempur-Pedic, it should emphasize your physical location featuring Tempur-Pedic products. All spots featuring only Tempur-Pedic products must be submitted to Tempur-Pedic's Marketing Department for review and approval.

## Advertising Policies (continued)

### 18. Billboards, Outdoor Signage & Truck Graphics (Permanent & Temporary)

The following requirements **MUST** be followed when incorporating the Tempur-Pedic® logo and/or trademarks into permanent and temporary signage.

All signage including the Tempur-Pedic logo or trademarks must have prior approval.

- The Tempur-Pedic logo or name must be no more than 25% of the overall sign size
- The words "authorized dealer," "featuring" or similar verbiage must be present
- The logo cannot be altered in any way
- Tempur-Pedic proprietary images can be used **ONLY** if Tempur-Pedic is the **ONLY** brand mentioned. For truck graphics, that is per panel; i.e. Tempur-Pedic on one panel, another brand on the other. If combined with other brands on one panel, there must be a visual separation between Tempur-Pedic logos/products and other brands.
- All signage featuring the Tempur-Pedic brand must be kept in good condition.



### 19. Promotional Items

Promotional items such as business cards, letterhead, pens, etc. that include the Tempur-Pedic logo and/or trademarks, must have prior approval from Tempur-Pedic Marketing.

### 20. Home Shows

As a Tempur-Pedic Retail Partner, you may participate in home shows to advertise your company and the products you feature, including Tempur-Pedic. If you wish to feature Tempur-Pedic products at a home show, you must apply and receive prior approval and authorization from Tempur-Pedic. Retail Partners will be seen as having a "Temporary Authorized Location" at the home show. Applications should be sent to your Tempur-Pedic Sales Representative, who will review with regional management for final approval.

Full details and specific guidelines are available upon request from your Tempur-Pedic Sales Representative.

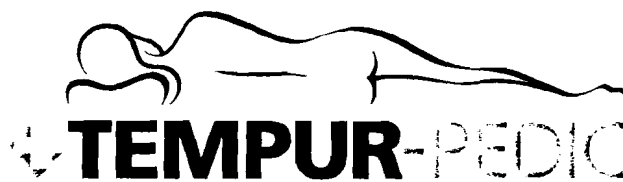
#### **FREE On-line Advertising Support available at [www.tempurpedicpartners.com](http://www.tempurpedicpartners.com)**

We've recently launched this exciting new communication portal to not only improve our ability to deliver advertising support, but also grow our partnership with you.

You'll instantly gain access to our most current advertising support and other useful information including product and lifestyle images, our logos in a variety of formats, customizable ad slicks and lots more!

Simply register using your account number and contact information. You'll be able to create your own username and password during the registration process.

We'll be updating this site and adding functionality regularly so be sure to visit often. We welcome your feedback! Please send comments and suggestions via email to [support@tempurpedicpartners.com](mailto:support@tempurpedicpartners.com).



1713 Jaggie Fox Way  
Lexington, KY 40511

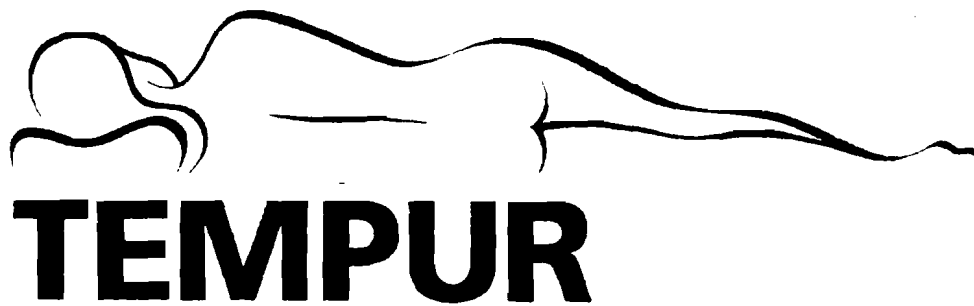
(859) 259-0754  
(800) 878-8889  
Fax: (859) 514-4423

---

# **EXHIBIT**

## **5**





## Retail Partner Obligations & Advertising Policies

VERSION 2.0

Effective: October 1, 2007

1713 Jaggie Fox Way  
Lexington, KY 40511

(859) 259-0754  
(800) 878-8889  
Fax (859) 514-4423

TPXNY-0001115



## Acknowledgement

By signing below, I acknowledge that I have received the attached *Retail Partner Obligations & Advertising Policies and Brandmark Manual* and agree to abide by them. I understand it is important to follow these policies and brand usage guidelines to maintain and protect the Tempur-Pedic® brand and its associated registration and trademarks. Failure to comply with these guidelines could result in termination of my account with Tempur-Pedic North America, Inc.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

Tempur-Pedic Account Number \_\_\_\_\_

Company/Title \_\_\_\_\_

Street Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

**Please sign this form and fax to: 859-514-4731**

TPXNY-0001116

**TPXNY-0001116**



## Retail Partner Obligations

### As a Tempur-Pedic North America, Inc. Retail Partner you agree to...

#### Follow Advertising Policies and Brandmark Usage Guidelines

If you purchase Tempur-Pedic® products and/or offer them for sale, you agree to abide by the requirements of the *Retail Partner Obligations & Advertising Policies* and the *Brandmark Manual*. Following these requirements supports Tempur-Pedic branding efforts and protects Tempur-Pedic's intellectual property. Any retailer who misrepresents or misuses Tempur-Pedic trademarks, logos or other materials will be notified in writing and will be given 5 Business days to implement corrections. Failure to do so may result in termination of product shipments, cancellation of authorized reseller status, or any other action deemed necessary.

#### Include Adequate Coverage of Tempur-Pedic Products

Tempur-Pedic recommends that our Retail Partners place at least four (4) mattresses on their floor to give consumers the opportunity to see and feel the difference between our models. Our warranties and performance guarantees are based on tests conducted on "sets" that consist of our mattresses and foundations. To ensure consumer satisfaction and warranty coverage, Tempur-Pedic mattresses should not be displayed or sold with other manufacturers' foundations and/or adjustable bed bases. Further recommendations for coverage of Tempur-Pedic products at your individual location(s) will be determined by your Tempur-Pedic Sales Representative.

#### Ship Only to Authorized Locations

As an Authorized Tempur-Pedic Retail Partner, you are required to sell and/or ship Tempur-Pedic products to those consumers within your immediate geographic area only. Conducting commerce outside of your physical location's immediate geographic area is prohibited. Tempur-Pedic products provided to Retail Partners for the purpose of resale are to be sold to retail customers only. Selling our products to any party other than a retail customer is prohibited.

#### Accept Tempur-Pedic Retail Partner Termination Policies

Tempur-Pedic has the right to terminate its relationship with you at any time. If Tempur-Pedic decides to do so, you will be given an initial notification by phone, email or in person by your Tempur-Pedic Sales Representative. Following initial notification, you should expect two (2) letters providing official written notification: one from the Retail Division and one from the Legal Department, further explaining the process of termination.

You will have 30 days from the date of written notice from Tempur-Pedic's Legal Department to sell any remaining product on hand and pay all outstanding invoices. At the end of the 30 day period a final inventory will be taken with you. A release agreement stating the amount to be given for the final inventory count will be sent to you to be signed. After we receive the executed release agreement from you, the final pick up of all remaining Tempur-Pedic items will be scheduled. Once Tempur-Pedic has received and processed all items from the final pick up, a credit will be issued to all remaining balances on your account or a check will be issued if no balances are outstanding. You will have no right to seek compensation for lost profits or other damages as a result of termination.

#### Refrain from Using "Agent" or "Franchise" of Tempur-Pedic

As a Tempur-Pedic Retail Partner you are authorized to resell and/or purchase Tempur-Pedic products. You should never refer to yourself publicly as an agent or franchise of Tempur-Pedic and agree that you have not received or paid any fee for the right to become an Authorized Tempur-Pedic Retail Partner. Although we may refer to you as our "Retail Partner," you acknowledge there is no legal partnership or fiduciary relationship between you and Tempur-Pedic.

#### Understand Tempur-Pedic Warranties

Tempur-Pedic products are sold only with Tempur-Pedic's own limited warranties. As an Authorized Tempur-Pedic Retail Partner you should become familiar with these warranties. **TEMPUR-PEDIC WILL NOT HONOR ANY OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES.**

There is no warranty or other liability relationship between you and Tempur-Pedic and supersede and replace any other agreements you may have. These terms and conditions are hereby acknowledged through writing. Any and all disputes between you and Tempur-Pedic will be resolved not in the courts of your state of jurisdiction, but in the American Arbitration Association's forum.



## Advertising Policies

Tempur-Pedic reserves the right to change policies, regulations, and procedures here in. All are subject to change without prior notice. Tempur-Pedic North America, Inc. reserves the right to enforce compliance with state and federal laws and/or with rules and regulations of the United States Patent and Trademark Office.

**Questions or Advertising Materials for review and approval should be directed to Tempur-Pedic's Marketing Department. Contact us via email: [marketing@tempurpedic.com](mailto:marketing@tempurpedic.com), phone: 800-878-8889, fax: 859-514-4423, or mail: Attention Marketing Department, Tempur-Pedic North America, Inc., 1713 Jaggie Fox Way, Lexington KY 40511.**

### 1. Required Physical Location

Any Retail Partner wishing to use the Tempur-Pedic name and associated materials and logos for the purpose of advertising the sale of Tempur-Pedic products must maintain an actual physical retail location in which Tempur-Pedic products are clearly displayed and sold.

### 2. Nationwide Shipping

While Tempur-Pedic is able to ship out orders via air and all order sources, and routinely conducting commerce outside your physical store's immediate geographic area is PROHIBITED.

### 3. Internet Restrictions

Tempur-Pedic supports all authorized Retail Partners' use of the Internet as a means of communicating with, informing and attracting prospective customers to their physical locations.

#### ACCEPTABLE:

- Advertising via the Internet that Tempur-Pedic products are available at your physical retail location(s) for sale.
- Providing images and information on your website about the Tempur-Pedic products you carry.
- Listing Tempur-Pedic, UNICEF, search engine sites, meta keywords or meta descriptions along with your company name and a disclaimer: Unofficial Site.
- Displaying the Tempur-Pedic logo and other trademarks with YOUR company logo displayed more prominently.
- Purchasing and/or placing or lower pay per click Internet Adwords that use Tempur-Pedic or our other trademarks.

#### UNACCEPTABLE:

- Advertising online on the Internet.
- Listing Tempur-Pedic products via your website or any other website including eBay, Amazon, Yahoo Shopping, Froogle, Craigslist, etc.
- Taking Internet orders by phone or email.
- Providing Tempur-Pedic product price lists via email.
- Selling Tempur-Pedic products to anyone other than retail customers.
- Purchasing and/or using Tempur-Pedic or our other trademarks as part of your URL/domain.
- Displaying Tempur-Pedic or our other trademarks more prominently than your company or any other company name.
- Using images, logos or videos on your website that have not been supplied and/or authorized by Tempur-Pedic.
- Promoting the ability to ship nationwide.
- Misusing Tempur-Pedic trademarks and brand on online advertising sources such as Myspace and Friendster.

## Advertising Policies

### 4. Coupons, Rebates & Promotional Items

Below are lists of acceptable and unacceptable coupons, rebates & promotional items that may or may not be advertised with Tempur-Pedic® products.

No more than **two (2)** promotional items or promotional offers may be combined or "stacked."

#### ACCEPTABLE IN-STORE & IN ADVERTISING:

- Free Tempur-Pedic authorized promotional item, i.e. "My Tempur-Pedic Teddy Bear"
- Free Bed Frame

#### UNACCEPTABLE IN-STORE & IN ADVERTISING:

- No Sales Tax or any phrasing such as "We Pay Sales Tax"
- Rebates, in-store credits or coupons that can or can not be applied to Tempur-Pedic products
- Offering money back for the return of the consumer's old bedding with a new purchase, i.e. "Trade-In Sale"
- Offering free gifts with purchase or "purchase with purchase" offers with the sale of Tempur-Pedic products
- Free Foundation
- My Tempur-Pedic Teddy Bear for sale

### 5. Offering Free Pillows in Store or in Advertising

The offering of FREE Tempur-Pedic pillows is allowed in Direct/Private Mailers from internally generated customer lists ONLY. In store and through private mailers, you may offer 2 FREE Pillows up to a value of \$99 for each pillow.

Offering this promotion in any advertising media such as Advo, ROP Newspaper, Radio, TV, etc. is prohibited.

### 6. Common Offers Acceptable in Industry & Tempur-Pedic

The following are types of offers that are seen as standard/common offers advertised in the industry and are acceptable to advertise with Tempur-Pedic® products. These offers are not automatically included within Tempur-Pedic's policy of stacking offers.

- Special Financing Offers
- Free Financing
- Free Delivery
- Free Information
- Free Set-Up
- Free Try-Out

### 7. "Largest Tempur-Pedic Dealer"

Phrasing such as "Largest Tempur-Pedic Dealer" or "Biggest Tempur-Pedic Dealer" for a particular city, state or in general is prohibited. Such phrasing may further Tempur-Pedic's position.

### 8. Floor Model Sales

Sales of Tempur-Pedic floor models may not be advertised in any mass media. The offer of a Tempur-Pedic floor model must always and may be advertised in store ONLY and only in connection with the sale of a specific unit for sale.

## Advertising Policies

### 9. Tempur-Pedic Product Pricing in Advertising

To ensure uniformity in advertising the following policies must be followed:

#### ACCEPTABLE:

- Advertising "Starting at" or "as low as" Tempur-Pedic® products with a disclaimer stating which product it is based on.
- Advertising the SRP of a specific Tempur-Pedic product with notation of everything that is included within that price.
- Advertising a monthly payment price or special financing terms.

#### UNACCEPTABLE:

- Advertising complete price lists of products.
- Advertising "On Sale Now", "Best Prices", "Lowest Prices", "Guaranteed Lowest Prices", etc. with Tempur-Pedic products.

### 10. Corporate Logo & Trademark Integrity

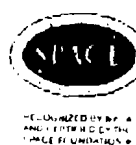
The Tempur-Pedic logo must NOT be recreated or altered in any way. Misusing the logo can have a negative effect on the valuable brand image created by Tempur-Pedic. Please refer to the *Brandmark Manual* for the proper usage of the Tempur-Pedic logo(s).

The Tempur-Pedic trademarks must be used in their entirety and are registered as such with the United States Patent and Trademark Office. Please refer to the Tempur-Pedic Trademarks section of the *Brandmark Manual* for proper usage of all Tempur-Pedic trademarks.



### 11. NASA Recognition and Space Foundation Certification

Tempur-Pedic has been given the rights to use the "Certified Space Technology" logo on marketing materials and packaging. All corporations, including those claiming to be derived from NASA technology, absolutely can NOT use the "Certified Space Technology" logo. This logo is only approved for use in Tempur-Pedic produced advertising materials.



### 12. Use of the word "Swedish"

The word "Swedish" when used to characterize mattresses and pillows, is a Tempur-Pedic trademark and can only be used with the Tempur-Pedic brand name. Using this to describe any other comparable product is a violation of Tempur-Pedic's trademark rights.

# Swedish

### 13. Use of the phrase "As Seen on TV"

The phrase "As Seen on TV" and logo is a registered trademark and should NOT be used in any advertising.



© 2006 Tempur-Pedic, Inc.

## Advertising Policies

### 14. Use of the words "Foam", "Viscoelastic", "Visco" & "Memory Foam"

Tempur-Pedic's proprietary formula is a trade secret known only to a handful of individuals. Authentic TEMPUR® material is only made in Tempur-Pedic production facilities using our proprietary formula and manufacturing process and is used exclusively in Tempur-Pedic® branded products.

TEMPUR material conforms to body shape relieving the pressure and pain that causes tossing and turning. TEMPUR pressure-relieving material should NOT be referred to as "foam", "viscoelastic", "visco", "memory foam" or any other descriptive term related to "foam" products. Tempur-Pedic products should never be grouped with "memory foam" products in any advertising.



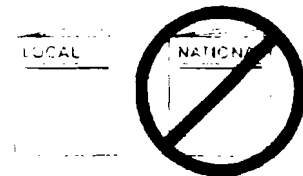
### 15. Ad Placement

#### ACCEPTABLE:

- Featuring Tempur-Pedic in local media, including radio, TV, and print.

#### UNACCEPTABLE:

- Featuring Tempur-Pedic in national, daily, weekly, or monthly publications.
- Featuring Tempur-Pedic in national media, including radio, TV, and print.



### 16. Adjustable Swedish Sleep System® and Tempur-Pedic Full-Motion System

The Tempur-Pedic Adjustable Swedish Sleep System and the Tempur-Pedic Full-Motion System may be advertised as "adjustable" and/or "full-motion" as an inset or "feature" to "support" the foundation. If you advertise the adjustable system or Tempur-Pedic Full-Motion system they must be shown with the flat system and at no larger than 25% of the flat system image.



### 17. Corporate Ad Campaign Integrity

To maintain the integrity of the overall marketing and media investments for Tempur-Pedic corporate advertising programs, Retail Partners producing TV, radio, satellite radio, podcast, etc. spots featuring Tempur-Pedic products are limited to 1/5 the duration of the total ad to feature Tempur-Pedic.

- 30 second spot = 6 seconds for Tempur-Pedic
- 60 second spot = 12 seconds for Tempur-Pedic

Stock footage of Tempur-Pedic mattresses for inclusion in your TV commercials is available upon request please note this is product footage ONLY (not a pre-produced commercial). Using footage of corporate commercials for your own company advertising is prohibited.

If you wish to create advertising for TV or radio that features ONLY Tempur-Pedic, it should showcase your physical location featuring Tempur-Pedic products. All full feature Tempur-Pedic spots require prior approval from Tempur-Pedic Marketing.



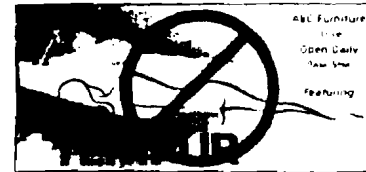
## Advertising Policies

### 18. Billboards, Outdoor Signage & Truck Graphics (Permanent & Temporary)

The following requirements MUST be followed when incorporating the Tempur-Pedic logo and/or trademarks into permanent and temporary signage:

All signage including the Tempur-Pedic logo and trademarks must have prior Tempur-Pedic approval.

- The Tempur-Pedic logo of name must be no more than 25% of the overall sign size.
- The words "Authorized Dealer," "Featuring," or similar verbiage must be present.
- The logo cannot be altered in any way.
- Tempur-Pedic proprietary images can be used ONLY if Tempur-Pedic is the ONLY brand mentioned. For truck graphics, that is per panel, i.e. Tempur-Pedic on one panel, another brand on the other. If combined with other brands on one panel, there must be a visual separation between Tempur-Pedic logo/products and other brands.
- All signage featuring the Tempur-Pedic brand must be kept in good condition.



### 19. Promotional Items

Promotional items such as business cards, letterhead, pens, etc. that include the Tempur-Pedic logo and/or trademarks must have prior approval from Tempur-Pedic Marketing.

### 20. Home Shows

As a Tempur-Pedic Retail Partner, you may participate in home shows to advertise your company and the products you feature, including Tempur-Pedic. If you wish to feature Tempur-Pedic products at a home show, you must apply and receive prior approval and authorization from Tempur-Pedic. Retail Partners will be seen as having a "Temporary Authorized Location" at the home show. Applications should be sent to your Tempur-Pedic Sales Representative, who will review with regional management for final approval.

Full details and specific guidelines are available upon request from your Tempur-Pedic Sales Representative.





1713 Jaggie Fox Way  
Lexington, KY 40511

(859) 259-0754  
(800) 878-8889  
Fax (859) 514-4423

TPXNY-0001123

# **EXHIBIT**

**6**



Dear Tempur-Pedic Retail Partners:

We are very pleased with the high level of consumer acceptance of our Tempur-Pedic® branded products. That success can be maintained through our efforts to preserve the highest technological levels of comfort and quality, good service, a fair price to our consumers and a reasonable markup for our retailers.

We believe that a fair price to the consumers and a reasonable markup for our retailers are necessary cornerstones of continued success. We adopted the policy because discounting and unstable pricing threatens that success. Such activity will diminish our brand image, distort our perceived value in the mind of the consumer, encourage free-riding on the promotional efforts of others, and impair the ability to provide quality service.

In light of the foregoing, it remains the policy of Tempur-Pedic North America, Inc. not to do business with any retailer who chooses to charge retail prices which are different than our suggested retail prices on all Tempur-Pedic products including mattresses, foundations, adjustable bed bases, pillows and accessories. A copy of our most up to date Dealer Price List may be obtained from your Tempur-Pedic sales representative or our account service center.

If we discover that an account has chosen to charge prices lower than our suggested retail prices, and it is more than an isolated incident, promotional item, or a liquidation sale of discontinued Tempur-Pedic merchandise, we will cease doing business with that account.

Because the policy is our unilateral decision and is not negotiable, we neither seek nor will accept your agreement with it. You are, of course, free to set retail selling prices at whatever level you believe to be in your best interest.

We believe, however, that our retail pricing policy is in the long-term best interests of Tempur-Pedic, its customers and retailers. We thank you for your business and look forward to continued profitable growth in the future.

Sincerely,

Rick Anderson

President

Tempur-Pedic North America, Inc.

*Changing the way the world sleeps!*

173 Ludlow Fox Way, Lexington, KY 40511 Phone 859-259-0754 Fax 859-259-9843 [www.tempurpedic.com](http://www.tempurpedic.com)

# **EXHIBIT**

**7**



International Inc.

May 1, 2009

Dear Tempur-Pedic Retailers:

As we have explained in the past, we are very pleased with the high level of consumer acceptance of our Tempur-Pedic® branded products. That success can be maintained through our efforts to preserve the highest technological levels of comfort and quality; to provide good service, attractive displays, and a fair price for our consumers; and also to ensure a reasonable markup and return for our retailers.

For all of these reasons, it remains the unilateral policy of Tempur-Pedic North America, LLC not to do business with any retailer who chooses to charge retail prices which are different than our suggested retail prices on all Tempur-Pedic products, including mattresses, foundations, adjustable bed bases, pillows, and accessories. If we discover that an account has chosen to charge prices lower than our suggested retail prices, and it is more than an isolated incident, promotional item, or a liquidation sale of discontinued Tempur-Pedic merchandise, we will cease doing business with that account.

In making a determination as to whether an account has departed from our suggested retail prices, we view any sales tax "rebate," discount, or other offer to charge a customer less than the full amount of sales tax that a retailer is required to collect under state law as a deviation from our suggested retail prices, except as part of state sanctioned sales tax giveaways/holidays.

We continue to believe that our unilateral retail pricing policy is in the long-term best interest of Tempur-Pedic, its customers, and retailers. We thank you for your business and look forward to a speedy economic recovery and continued growth with you in the future.

Sincerely,

Rick Anderson  
President, Tempur-Pedic North America, LLC

*Changing the way the world sleeps!*

# **EXHIBIT**

## **8**

**INTERROGATORY RESPONSE  
RAYMOUR & FLANIGAN**

## SCHEDULE A: INTERROGATORIES

1. State the following:
  - a. Your name;  
**Raymours Furniture Company, Inc.**
  - b. Your date and place of incorporation;  
**April 1, 1953. New York**
  - c. The address of your principal place of business or main office; and  
**7248 Morgan Road  
Liverpool, New York 13088**
  - d. All names under which you do business in New York;  
**Raymour & Flanigan**
  - e. The names and locations of all retail stores operated by your company in New York that sell or have sold Tempur-Pedic Products;  
**SEE ATTACHMENT A**
  - f. The names, addresses, job titles, and tenure of office of all officers and directors currently serving as such on your behalf; and  
**SEE ATTACHMENT B**
  - g. The identities of all your parent companies, subsidiaries, affiliates, and other related companies.  
**SEE ATTACHMENT C**
2. For the Relevant Period (from 1/1/04 through today), state on a monthly basis:
  - a. The number of units of each SKU of every Tempur-Pedic Products that your company sold;  
**SEE ATTACHMENT D (Column H).**  
  
**Note: Information on Attachment D is through February 13, 2008.**  
**Further Note: Raymour & Flanigan only commenced selling  
Tempur-Pedic Products in August, 2007.**
  - b. The revenues from sales of each SKU of every Tempur-Pedic Product that your company sold;  
and  
**SEE ATTACHMENT D (Column I)**
  - c. Tempur-Pedic's suggested retail price or minimum advertised price for each SKU and the actual retail price at which the product was sold by you.  
**SEE ATTACHMENT D (Column D & E)**

**Note: Although we adhere to the SRP, Column E of Attachment D suggests actual selling prices for Tempur-Pedic items different from their SRPs. This is a result of the way our computer system reports individual item prices where the item is part of a group sale. Where an item is included as part of a group sale (for which a single, group price is reflected on a sales ticket instead of an individual sale price for each item in the group), our computer system ascribes a sale price for each**



**individual item in the group equal to (i) the aggregate sales price for the group as reflected on the sales ticket, multiplied by (ii) the ratio that the company's cost for the individual item in the group bears to the aggregate cost of all the items in the group.**

3. Do you sell Tempur-Pedic Products at the manufacturer's suggested retail price?

**Yes**

4. During the Relevant Period, did you sell any Tempur-Pedic Product at a price other than the manufacturer's suggested retail price? If your answer is other than an unqualified "no," state the prices at which you made those sales and the time period during which you made such sales.

**No**

5. For each sale identified in response to Interrogatory 4, state fully all bases for your decision to sell at that price.

**N/A**

6. For any product, or any time period during which, you sold Tempur-Pedic Products at the manufacture's suggested retail price, state fully all bases for your decision to sell at that price.

**The basis was strictly the SRP provided by Tempur-Pedic.**

7. Has Tempur-Pedic ever Ceased Doing Business with you or communicated an intent to Cease Doing Business with you based in whole or in part on your company's refusal or failure to sell Tempur-Pedic Products at retail prices suggested, recommended, or mandated by Tempur-Pedic?

**No**

8. If your response to Interrogatory 7 is other than an unqualified "no":

**N/A**

- a. State the date on which Tempur-Pedic Ceased Doing Business or communicated its intent to Cease Doing Business with you;

**N/A**

- b. State fully the circumstances in which Tempur-Pedic took such action;

**N/A**

- c. State whether, in connection with Tempur-Pedic's action, Tempur-Pedic requested that you take any form of action; and the date or time period when it did so.

**N/A**

- d. Identify the Tempur-Pedic Products involved;

**N/A**

- e. Identify the person who communicated Tempur-Pedic's action to you and the person to whom the action was communicated;

**N/A**

f. State fully the substance of the communication, including the reason given for Tempur-Pedic's action;

N/A

g. State whether the communication was oral or in writing; and

N/A

h. Identify all documents concerning Tempur-Pedic's action.

N/A

9. After the action taken by Tempur-Pedic, as described in your responses to Interrogatories 6 and 7, did you subsequently purchase Tempur-Pedic Products from Tempur-Pedic?

N/A

10. If your response to Interrogatory 8 is other than an unqualified "no":

**(We assume this question intended to say "If your response to Interrogatory 9 is other than an unqualified "no".) N/A**

a. State fully the circumstances in which you resumed purchases of Tempur-Pedic Products.

N/A

b. State whether, in connection with your resumed purchase, Tempur-Pedic requested that you take any form of action, and the date or time period when it did so.

N/A

c. Identify the Tempur-Pedic products that you purchased;

N/A

d. Identify (i) the person who communicated Tempur-Pedic's willingness to resume sales to you, (ii) the reason, if any, given by Tempur-Pedic for doing so, (iii) the name of the person to whom the communication was made, or who otherwise received the communication, (iv) whether the communication was in writing or verbal, and (v) the substance of communication; and

N/A

e. Identify all documents concerning your resumed purchases.

N/A

11. Identify all employees of your company who have communicated with Tempur-Pedic concerning the pricing policies, suggested, recommended or mandated by Tempur-Pedic for the resale of Tempur-Pedic Products.

**Patrick Judd**

**Neil Rosenbaum**

12. For each employee identified in response to Interrogatory 10, state his or her position during the Relevant Period, whether he or she is currently employed by your company, and state fully the substance of all such communications.

**(We assume this question intended to say "For each employee identified in response to Interrogatory 11, state his or her position during the Relevant Period, whether he**

or she is currently employed by your company, and state fully the substance of all such communications.”)

**Mr. Judd is Director of Bedding.**

**Mr. Rosenbaum is Senior Vice President, Merchandising,  
and is Mr. Judd's direct superior.**

13. Identify any communication with Tempur-Pedic concerning any actual or proposed offer or sales promotion by your company that included the giveaway of Tempur-Pedic pillows or any other Tempur-Pedic Products with the purchase of a Tempur-Pedic mattress.  
**N/A - No offers discussed**
14. Identify any communication with Tempur-Pedic concerning complaints regarding the pricing, selling or advertising practices of other retailers of Tempur-Pedic Products.  
**SEE ATTACHMENT G**
15. Identify any communication with Tempur-Pedic concerning the selling or advertising of Tempur-Pedic Products on the Internet at prices less than the retail prices suggested, recommended, or mandated by Tempur-Pedic.  
**SEE ATTACHMENT G**
16. Did you, during the relevant period, make any agreement with Tempur-Pedic on your retail price for Tempur-Pedic Products? If your answer is other than an unqualified “no”:  
**No**
  - a. State fully the substance of the agreement made, the dates that it was in effect, the persons employed by you and by Tempur-Pedic who made the agreement, and  
**N/A**
  - b. Identify all documents concerning the agreement.  
**N/A**
17. Identify:
  - a. Any communication with Tempur-Pedic on the retail price you charge for Tempur-Pedic Products:  
**No communication necessary, we utilize the Tempur-Pedic SRP**
  - b. All persons who have communicated with Tempur-Pedic on the retail price you charge for Tempur-Pedic Products; and  
**Patrick Judd**
  - c. The persons at Tempur-Pedic with whom you have communicated on the retail price you charge for Tempur-Pedic Products.  
**Paul Cowie**

Has Tempur-Pedic's suggested retail price affected the price at which you sell or sold Tempur-Pedic Products? If your response is other than an unqualified "no," state fully the effect that Tempur-Pedic's suggested retail price has had.

**Yes. If not subject to SRP policy, we would evaluate the pricing for Tempur-Pedic Products as for other products – by market conditions and internal profitability criteria.**

19. Do you sell Tempur-Pedic Products on an Internet website, and if so, may a website customer negotiate with you over the prices you display? If the prices are negotiable, identify the frequency of those negotiations and the prices or price levels at which those sales took place.

**No**

20. Do you sell Tempur-Pedic Products through a catalog, and if so, may a catalog customer negotiate with you over the prices you list? If the prices are negotiable, identify the frequency of those negotiations and the prices or price levels at which those sales took place.

**No**

21. Do you sell Tempur-Pedic Products through a physical store location, and if so, may a store customer negotiate with you over the prices displayed at the store location? If the prices are negotiable, identify the frequency of those negotiations and the prices or price levels at which those sales took place.

**Yes, we sell through a physical store location. No, customers may not negotiate prices on Tempur-Pedic Products. Sometimes, however, Tempur-Pedic Products are included in a package price which, in the aggregate, is sold for less than the sum of the price tag amounts of the combined merchandise.**

22. Identify any changes to catalogs, Internet websites, brochures, mailings, and/or advertisements that you have made in response to communications with Tempur-Pedic.

**N/A – No communication had**

23. Identify any communications you have had with other retailers of Tempur-Pedic Products concerning the pricing, selling or advertising of Tempur-Pedic Products.

**No communication had**

## **SCHEDULE B: DOCUMENT REQUESTS**

1. Documents sufficient to show or, alternatively, a verified statement that identifies locations of all retail stores operated by you in New York.  
**SEE ATTACHMENT A**
2. Documents sufficient to show, or alternatively, a verified statement, that identifies:
  - a. Every salesperson of Tempur-Pedic Products employed by you in New York during the relevant period;  
**SEE ATTACHMENT F**
  - b. Every person who supervised or managed those salespersons; and  
**SEE ATTACHMENT F**
  - c. The store at which each identified person was employed.  
**SEE ATTACHMENT F**
3. All documents concerning any Tempur-Pedic pricing, advertising or selling policy, including:
  - a. Any Tempur-Pedic policy concerning the prices at which retailers resell Tempur-Pedic Products.  
**SEE ATTACHMENT E**
  - b. Any Tempur-Pedic policy concerning the discounting of Tempur-Pedic Products in a physical store location, catalog or on the Internet; and  
**SEE ATTACHMENT E**
  - c. Any Tempur-Pedic policy concerning the advertising of the retail price or the minimum advertised price for Tempur-Pedic Products.  
**SEE ATTACHMENT E**
4. All documents concerning the exclusion of Tempur-Pedic Products from any sale programs or discount coupons offered by your company.  
**SEE ATTACHMENT E**
5. All documents concerning any Tempur-Pedic policy as to the giveaway of Tempur-Pedic pillows or any other Tempur-Pedic Products with the purchase of a Tempur-Pedic mattress.  
**SEE ATTACHMENT E**
6. All documents concerning your company's selling or advertising of Tempur-Pedic Products at prices below the price suggested, recommended, or mandated by Tempur-Pedic.  
**SEE ATTACHMENT E**
7. Documents, provided in electronic form if reasonably practicable, sufficient to show the prices during the Relevant Period at which you sold each SKU of each Tempur-Pedic Products to retail customers.  
**SEE ATTACHMENT E**

8. Documents concerning any monitoring, policing, or other surveillance by Tempur-Pedic of your retail prices for Tempur-Pedic Products.

**N/A – No knowledge of surveillance taking place.**

9. All actual or proposed agreements between your company and Tempur-Pedic concerning retail prices and any cooperative advertising or minimum advertised price program or policy.

**SEE ATTACHMENT E**

10. All documents concerning:

- a. Tempur-Pedic's Ceasing Doing Business with you;

**N/A**

- b. The circumstances under which you resumed purchasing Tempur-Pedic Products from Tempur-Pedic after it Ceased Doing Business with you; and

**N/A**

- c. Any other action taken by Tempur-Pedic based, in whole or in part, on the price at which your company sold, offered to sell, advertised, or offered to advertise Tempur-Pedic Products.

**N/A**

11. All documents concerning meetings, telephone calls, emails, or other communications or conferences between your company and Tempur-Pedic concerning the pricing or advertising of Tempur-Pedic Products or the strategies for sale of Tempur-Pedic Products.

**SEE ATTACHMENT E.**

12. All documents identified in response to the Interrogatories in Schedule A.

**SEE ATTACHMENT A-G.**

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# **EXHIBIT**

**9**

Neil Rosenbaum, being duly sworn deposes and says:

1. I have been employed by Raymour & Flanigan ("Raymour") for the approximately nine years. I am currently the Senior Vice-President of Merchandising at Raymour, a position I have held for the past five years.

2. As the Senior Vice-President of Merchandising, I am responsible for developing and maintaining relationships with all the vendors with whom Raymour does business. I am involved in the selection of merchandise to be sold by Raymour and in the negotiations with all of Raymour's vendors. My responsibilities as Senior Vice-President of Merchandising include oversight of Raymour's bedding department. Patrick Judd, Raymour's Director of Bedding, reports to me with regard to all major decisions relating to the purchase or sale of products manufactured by Tempur-Pedic Inc. ("Tempur-Pedic"), and other bedding products.

3. To the best of my knowledge, Raymour began selling Tempur-Pedic products in August of 2007. While Patrick Judd was primarily responsible for negotiating with Tempur-Pedic with respect to Raymour becoming a Tempur-Pedic account, I also participated in several initial meetings with Tempur-Pedic representatives.


4. During one of Raymour's initial meetings with Tempur-Pedic, Tempur-Pedic provided Raymour with a copy of its Retail Partner Obligations and Advertising Policies, which set out its retail price policy and its prohibition on discounting.

5. As a result of Tempur-Pedic's pricing policy, Raymour sells all Tempur-Pedic products at the suggested retail price ("SRP") set by Tempur-Pedic. Any deviation from SRP for a Tempur-Pedic product, to meet a competitive situation, must be authorized by Raymour sales management.

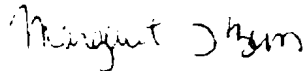


6. If not subject to the SRP policy, Raymour would evaluate the pricing for Tempur-Pedic products as for other products, by market conditions and internal profitability criteria.

7. On occasion Raymour advises Tempur-Pedic of instances of pricing below the SRP by Raymour's competitors. Raymour reports these instances to Tempur-Pedic because it believes that if it is required to adhere to the SRP, everyone should be held to the same standard.

  
Neil Rosenbaum

Sworn to before me this 7<sup>th</sup> day July 2009

  
Notary Public

MARGARET F. BASS  
Notary Public, State of New York  
No. 4904699  
Qualified in Onondaga County  
Commission Expires Sept. 8, 2011

# **EXHIBIT**

## **10**

**From:** Williams, Lori (TPUSA)

**Sent:** Monday, August 20, 2007 10:48 AM

**To:** Cowie Jr, Paul (TPUSA); Evanetz, John (TPUSA); Fedele, John (TPUSA); Frites, Melissa (TPUSA); Koerner, Ron (TPUSA); McCarthy, Bob (TPUSA); Nawrocki, Victor (TPUSA); Wahler, Christa (TPUSA); Wenzel, Daniel (TPUSA)

**Cc:** Cowie Jr, Paul (TPUSA); McCarthy, Bob (TPUSA); Rehwinkel, Tom (TPUSA)

**Subject:** Raymour & Flannigan

**Importance:** High

Dear Team-

Our training meetings have started out very strong with Raymour & Flannigan. A couple of things came up with the R & J leadership team and I wanted to make sure you all make the following adjustments in your presentations, **effective immediately**.

**Reminder for Tempur-Pedic Trainers:**

1. Raymour does not sell pillows so please make sure that pillows **DO NOT** come up during the trainings. If asked by an associate about pillows the response should be that Raymour has chosen not to sell them at this time.
2. Raymour does not give 90 days. Returns will fall under the current Raymour policy. The trainers can confirm the Raymour Policy with the Bedding Specialists. I think it is 45 days but I am not positive.
3. A question on discounting came up. When asked if you can discount our products the answer should be simply **NO**. If more questions on pricing persist please direct them to the TSM, Paul Cowie or Bob McCarthy.

Regards,

Lori Williams

*Lori Williams  
National Retail Sales Training Director  
Tempur-Pedic North America, Inc.*

*Direct# 888-800-2040 Ext. 4361*

*Cell# 859-321-4439*

*Fax# 407-277-2551*

*lori.williams@tempurpedicretail.com*

*"Changing the way the world sleeps!"®*



\*\*\*\*\*  
The information contained in this communication may be confidential, is intended only for the use of the recipient(s) named above, and may be legally privileged. If the reader of this message is not the intended recipient, you are

**Confidential**

**TPXNY-0002023**

hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please return it to the sender immediately and delete the original message and any copy of it from your computer system. If you have any questions concerning this message, please contact the sender.

# **EXHIBIT**

**11**

**INTERROGATORY RESPONSE  
SLEEPY'S**

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
ANITRUST BUREAU

**SLEEPY'S RESPONSE TO SUBPOENA DUCES TECUM**

Sleepy's, LLC hereby responds to the Subpoena Duces Tecum dated February 7, 2008 (the "Subpoena") as follows. For purposes of this Response, the definitions set forth at pages 16 through 19 of the Subpoena are incorporated herein by reference:

**SCHEDULE A: INTERROGATORIES**

1. State the following:

(a) Your name;

Response: Sleepy's, LLC

(b) Your date and place of incorporation;

Response: Sleepy's, LLC was formed on or about April 2, 2007 in  
Delaware

(c) The address of your principal place of business or main office; and

Response: 175 Central Avenue South  
Bethpage, New York 11714

(d) All names under which you do business in New York;

Response: "Sleepy's," "New & Almost New"

(e) The names and locations of all retail stores operated by your company in New York that sell or have sold Tempur-Pedic Products;

Response: the names and locations of all retail stores operated by  
Sleepy's, LLC in New York during the Relevant

Period that sell or have sold Tempur-Pedic Products  
are listed in Schedule A.1(c) attached hereto.

- (f) The names, addresses, job titles, and tenure of office of all officers and directors currently serving as such on your behalf; and

Response: David Acker, President, 175 Central Avenue South,  
Bethpage, New York 11714

Adam Blank, Executive Vice President, 175 Central  
Avenue South, Bethpage, New York 11714

Joseph Graci, Chief Financial Officer, 175 Central  
Avenue South, Bethpage, New York 11714

- (g) The identities of all your parent companies, subsidiaries, affiliates, and other related companies.

Response: Sleepy's Holdings, LLC

Sleepy's Reorganization, Inc.

SINT, Inc.

SINT, LLC

Acker Realty Holdings

2. For the Relevant Period, state on a monthly basis:

- (a) The number of units of each SKU of every Tempur-Pedic Product that your company sold; and

Response: Responsive information is contained in Schedule  
A.2(a) attached hereto. See also documents produced  
herewith numbered SP 399 through SP 418.

- (b) The revenues from sales of each SKU of every Tempur-Pedic Product that your company sold; and



Response: Responsive information is contained in Schedule A.2(b) attached hereto. See also documents produced herewith numbered SP 399 through SP 418

With respect to (a) and (b) above, Sleepy's does not maintain the information separately by SKU. The information supplied is for Tempur-Pedic products in the aggregate.

- (c) Tempur-Pedic's suggested retail price or minimum advertised price for each SKU and the actual retail price at which the product was sold by you.

Response: (i) Tempur-Pedic's suggested retail price or minimum advertised price for each SKU is contained in documents produced herewith numbered SP 3 through SP 82 and SP 90 through SP 129.

(ii) As agreed with the Antitrust Bureau, Sleepy's is responding to the request for "the actual retail price at which the product was sold by you" by producing 200 randomly selected (except to the extent necessary to reasonably reflect sales at locations both inside and outside the City of New York) invoices for sales of Tempur-Pedic Products for each of the months of October 2006, February 2007, October 2007 and February 2008. Such invoices are produced herewith numbered SP 419 through SP 2611.

3. Do you sell Tempur-Pedic Products at the manufacturer's suggested retail price?

Response: In general, Sleepy's sells Tempur-Pedic Products at the manufacturer's suggested retail price, provided, however that Sleepy's sells Tempur-Pedic Products at less than the manufacturer's suggested retail price to match or beat the price offered for a Tempur-Pedic Product to a customer by a competitor.

4. During the Relevant Period, did you sell any Tempur-Pedic Product at a price other than the manufacturer's suggested retail price? If your answer is other than an unqualified "no," state the prices at which you made those sales and the time period during which you made such sales.

Response: Yes. See Response to 2(c).

5. For each sale identified in response to Interrogatory 4, state fully all bases for your decision to sell at that price.

Response: Decisions to sell Tempur-Pedic Products at less than the manufacturer's suggested retail price were made to match or beat the price offered by a competitor for the same, or a similar, product in order to make the sale.

6. For any product, or any time period during which, you sold Tempur-Pedic Products at the manufacturer's suggested retail price, state fully all bases for your decision to sell at that price.

Response: Sleepy's decision to sell Tempur-Pedic Products at the manufacturer's suggested retail price as a general matter, as set forth in response to Interrogatory 3, is based on Tempur-Pedic's stated unilateral policy.

communicated to Sleepy's in writing, of declining to do business with any retailer who chooses to charge retail prices which are different than Tempur-Pedic's suggested retail prices.

7. Has Tempur-Pedic ever Ceased Doing Business with you or communicated an intent to Cease Doing Business with you based in whole or in part on your company's refusal or failure to sell Tempur-Pedic Products at retail prices suggested, recommended, or mandated by Tempur-Pedic?

Response: No.

8. If your response to Interrogatory 6 [7] is other than an unqualified "no":

- (a) State the date on which Tempur-Pedic Ceased Doing Business or communicated its intent to Cease Doing Business with you;
- (b) State fully the circumstances in which Tempur-Pedic took such action;
- (c) State whether, in connection with Tempur-Pedic's action, Tempur-Pedic requested that you take any form of action; and the date or time period when it did so.
- (d) Identify the Tempur-Pedic Products involved;
- (e) Identify the person who communicated Tempur-Pedic's action to you, and the person to whom the action was communicated;
- (f) State fully the substance of the communication, including the reason given for Tempur-Pedic's action;
- (g) State whether the communication was oral or in writing; and
- (h) Identify all documents concerning Tempur-Pedic's actions.

Response: Not Applicable.

9. After the action taken by Tempur-Pedic, as described in your responses to Interrogatories 6 [7] and 7 [8], did you subsequently purchase Tempur-Pedic Products from Tempur-Pedic?

Response: Not Applicable.

10. If your response to Interrogatory 8 [9] is other than an unqualified "no":

- (a) State fully the circumstances in which you resumed purchases of Tempur-Pedic Products.
- (b) State whether, in connection with your resumed purchases, Tempur-Pedic requested that you take any form of action, and the date or time period when it did so.
- (c) Identify the Tempur-Pedic products that you purchased;
- (d) Identify:
  - (i) The person who communicated Tempur-Pedic's willingness to resume sales to you,
  - (ii) The reason, if any, given by Tempur-Pedic for doing so,
  - (iii) The name of the person to whom the communication was made, or who otherwise received the communication,
  - (iv) Whether the communication was in writing or verbal, and
  - (v) The substance of the communication; and
- (e) Identify all documents concerning your resumed purchases.

Response: Not Applicable.

11. Identify all employees of your company who have communicated with Tempur-Pedic concerning the pricing policies, suggested, recommended or mandated by Tempur-Pedic for the resale of Tempur-Pedic Products.

Response: To the best of Sleepy's knowledge and belief the employees who have communicated with Tempur-Pedic concerning the pricing policies, suggested, recommended or mandated by Tempur-Pedic for the resale of Tempur-Pedic Products are Michael Bookbinder, Ira Fishman and Adam Blank.

12. For each employee identified in response to Interrogatory 10 [11], state his or her position during the Relevant Period, whether he or she is currently employed by your company, and state fully the substance of all such communications.

Response: Michael Bookbinder, Executive Vice President of Sales, currently employed: The substance of certain such communications is reflected in copies of emails produced herewith. Mr. Bookbinder does not recall the substance of any other such communications, if any. See also response to Interrogatory 14 below.

Ira Fishman, Vice President, Merchandising, currently employed: The substance of certain such communications is reflected in copies of emails produced herewith. Mr. Fishman recalls that on a few occasions he faxed to Tempur-Pedic competitors' invoices showing prices below Tempur-Pedic's suggested retail prices for informational purposes.

Adam Blank, Executive Vice President & General Counsel, currently employed: At the outset of the relationship, Mr. Blank had discussions with Tempur-Pedic concerning the terms of a proposed written dealer agreement between Sleepy's and Tempur-Pedic.

13. Identify any communication with Tempur-Pedic concerning any actual or proposed offer or sales promotion by your company that included the giveaway of

---

Tempur-Pedic pillows or any other Tempur-Pedic Products with the purchase of a Tempur-Pedic mattress.

Response: None, other than written communications from and with Tempur-Pedic reflected in documents produced herewith.

14. Identify any communication with Tempur-Pedic concerning complaints regarding the pricing, selling or advertising practices of other retailers of Tempur-Pedic Products.

Response: On occasions when corporate was advised by an employee in the field that a competitor was selling below manufacturer's suggested retail price, that employee would get evidence (usually in the form of an invoice) and typically Mike Bookbinder would forward the invoice and any other relevant information to Tom Rehwinkle. This was usually done through emails, which are included with relevant invoices. Documents produced herewith numbered SP 260 through SP 398 are responsive to this request.

15. Identify any communication with Tempur-Pedic concerning the selling or advertising of Tempur-Pedic Products on the Internet at prices less than the retail prices suggested, recommended, or mandated by Tempur-Pedic.

Response: None.

16. Did you, during the relevant period, make any agreement with Tempur-Pedic on your retail price for Tempur-Pedic Products?

Response: No.

If your answer is other than an unqualified "no":

- (a) State fully the substance of the agreement made, the dates that it was in effect, the persons employed by you and by Tempur-Pedic who made the agreement, and
- (b) Identify all documents concerning the agreement.

Response: Not Applicable.

17. Identify:

- (a) Any communication with Tempur-Pedic on the retail price you charge for Tempur-Pedic Products;

Response: Tempur-Pedic provided price lists and price tags; from time to time Tempur-Pedic sent Sleepy's letters setting forth its unilateral policy concerning retail price maintenance; see also response to Interrogatory 12.

- (b) All persons who have communicated with Tempur-Pedic on the retail price you charge for Tempur-Pedic Products; and

Response: Michael Bookbinder; Ira Fishman

- (c) The persons at Tempur-Pedic with whom you have communicated on the retail price you charge for Tempur-Pedic Products.

Response: Tom Rehwinkle

18. Has Tempur-Pedic's suggested retail price affected the price at which you sell or sold Tempur-Pedic's Products? If your response is other than an unqualified "no," state fully the effect that Tempur-Pedic's suggested retail price has had.

Response: Tempur-Pedic's suggested retail prices, in combination with Tempur-Pedic's announced unilateral written policy not to do business with any retailer who chooses to charge retail prices which are different than Tempur-Pedic's suggested retail prices, has affected the price at which Sleepy's sells and has sold Tempur-

Pedic Products. As explained in response to Interrogatories 3 and 6 above, that effect has been that in general Sleepy's sells Tempur-Pedic Products at Tempur-Pedic's suggested retail prices, provided, however, that Sleepy's has departed from Tempur-Pedic's suggested retail prices to meet or beat prices for such products offered to a customer by a competitor.

19. Do you sell Tempur-Pedic Products on an Internet website, and if so, may a website customer negotiate with you over the prices you display? If the prices are negotiable, identify the frequency of those negotiations and the prices or price levels at which those sales took place.

Response: No.

20. Do you sell Tempur-Pedic Products through a catalog, and if so, may a catalog customer negotiate with you over the prices you list? If the prices are negotiable, identify the frequency of those negotiations and the prices or price levels at which those sales took place.

Response: No.

21. Do you sell Tempur-Pedic Products through a physical store location, and if so, may a store customer negotiate with you over the prices displayed at the store location? If the prices are negotiable, identify the frequency of those negotiations and the prices or price levels at which those sales took place.

Response: Sleepy's sells Tempur-Pedic Products through physical store locations. Although a store customer is always free to attempt to negotiate over the prices for Tempur-Pedic Products displayed at the store, as explained in response to Interrogatories 3 and 6 above, attempted negotiation will, in general, not result in a



sale at other than Tempur-Pedic's suggested retail price for the product involved except where a departure from such price is made to meet or beat the price at which a competitor offers to sell such product to the customer.

22. Identify any changes to catalogs, Internet websites, brochures, mailings, and/or advertisements that you have made in response to communications with Tempur-Pedic.

Response: There were some advertisements regarding a promotion where free pillows were given away with the purchase of a mattress; Tempur-Pedic advised that they did not want Sleepy's advertising free pillows. This promotion was not run again. Another instance was when Sleepy's changed the color of the Tempur-Pedic logo from green to red in one of its advertisements; Tom Rehwinkle sent an email saying that the color change was unacceptable and advised Sleepy's to stop. Going forward, Sleepy's did not change the color of the logo in any ads where it may appear.

23. Identify any communications you have had with other retailers of Tempur-Pedic Products concerning the pricing, selling or advertising of Tempur-Pedic Products.

Response: None

## SCHEDULE B: DOCUMENT REQUESTS

1. Documents sufficient to show or, alternatively, a verified statement that identifies locations of all retail stores operated by you in New York.

Response: See response to Interrogatory 1(c). See also documents produced herewith numbered SP 256 through SP 259.

2. Documents sufficient to show, or alternatively, a verified statement, that identifies:

- (a) Every salesperson of Tempur-Pedic Products employed by you in New York during the relevant period;
- (b) Every person who supervised or managed those salespersons; and
- (c) The store at which each identified person was employed.

Response: As agreed with the Antitrust Bureau, Sleepy's is responding to this Request by identifying Sleepy's Regional Vice Presidents, Regional Managers and District Managers whose area of responsibility at any time during the Relevant Period included any part of the State of New York, in whole or in part. Documents produced herewith numbered SP 253 through SP 255 contain the responsive information.

3. All documents concerning any Tempur-Pedic pricing, advertising or selling policy, including:

- (a) Any Tempur-Pedic policy concerning the prices at which retailers resell Tempur-Pedic Products.
- (b) Any Tempur-Pedic policy concerning the discounting of Tempur-Pedic Products in a physical store location, catalog or on the Internet; and
- (c) Any Tempur-Pedic policy concerning the advertising of the retail price or the minimum advertised price for Tempur-Pedic Products.

Response: Responsive documents are produced herewith numbered SP 1 through SP 129 and SP 194 through SP 251.

4. All documents concerning the exclusion of Tempur-Pedic Products from any sale programs or discount coupons offered by your company.

Response: As agreed with the Antitrust Bureau, Sleepy's is responding to this Request by producing five (5) representative advertisements published during the Relevant Period that refer to the exclusion of Tempur-Pedic Products from a sale and/or discount coupon. Responsive documents are produced herewith numbered SP 252 and SP 2612 through SP2617.

5. All documents concerning any Tempur-Pedic policy as to the giveaway of Tempur-Pedic pillows or any other Tempur-Pedic Products with the purchase of a Tempur-Pedic mattress.

Response: Responsive documents are produced herewith numbered SP 146 through SP 193.

6. All documents concerning your company's selling or advertising of Tempur-Pedic Products at prices below the price suggested, recommended, or mandated by Tempur-Pedic.

Response: Responsive documents are produced herewith numbered SP 1 through SP 251.

7. Documents, provided in electronic form if reasonable practicable, sufficient to show the prices during the Relevant Period at which you sold each SKU of each Tempur-Pedic Product to retail customers.

Response: See Response to Interrogatory 2(c)(ii) and documents produced in response thereto.

8. Documents concerning any monitoring, policing, or other surveillance by Tempur-Pedic of your retail prices for Tempur-Pedic Products.

Response: None

9. All actual or proposed agreements between your company and Tempur-Pedic concerning retail prices and any cooperative advertising or minimum advertised price program or policy.

Response: None

10. All documents concerning:

(a) Tempur-Pedic's Ceasing Doing Business with you;

Response: None.

(b) The circumstances under which you resumed purchasing Tempur-Pedic Products from Tempur-Pedic after it Ceased Doing Business with you; and

Response: None.

(c) Any other action taken by Tempur-Pedic based, in whole or in part, on the price at which your company sold, offered to sell, advertised, or offered to advertise Tempur-Pedic Products.

Response: None

11. All documents concerning meetings, telephone calls, emails, or other communications or conferences between your company and Tempur-Pedic concerning the pricing or advertising of Tempur-Pedic Products or the strategies for sale of Tempur-Pedic Products.

Response: None

12. All documents identified in response to the Interrogatories in Schedule A.

Response: Responsive documents are produced herewith numbered SP 130 through SP 145.

## VERIFICATION AND AFFIDAVIT OF COMPLIANCE

STATE OF NEW YORK        )  
  ) ss:  
COUNTY OF NASSAU        )

Amy Biel, being duly sworn, deposes and says:

I am corporate attorney of Sleepy's, LLC. I have read the foregoing response to subpoena duces tecum and know the contents thereof. To the best of my knowledge, information and belief, formed after a reasonable inquiry, the response is true, complete and correct as of the date of this Affidavit, except as to such matters stated upon information and belief and as to such matters I believe them to be true based upon reasonable inquiry.

The following persons provided information contained in the foregoing response:

Adam Blank, Executive Vice President & General Counsel

Michael Bookbinder, Executive Vice President of Sales

Ira Fishman, Vice President, Merchandising

Amy Biel, Corporate Attorney

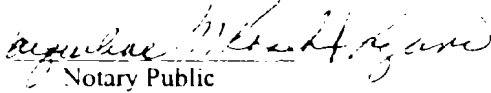
The address and telephone number of all of the above is Sleepy's, LLC, 175 Central Avenue South Bethpage, New York 11714, (516) 501-7880.

With respect to documents produced in response to this Subpoena, to the best of my knowledge and belief, after a reasonable inquiry, a complete and comprehensive search was made for such documents, all documents responsive to the subpoena as modified by agreement with the Antitrust Bureau are included in the production, except such documents, if any, as to which a privilege is claimed, and the documents submitted are authentic and genuine.

The following person made the search of Sleepy's files for the documents called  
for in Schedule B: provided information contained in the foregoing response:

Amy Biel, Corporate Attorney, Sleepy's, LLC, 175 Central Avenue South  
Bethpage, New York 11714, (516) 501-7880.

Subscribed to and Sworn  
before me this, 3<sup>rd</sup> day of  
May, 2008

  
Notary Public

JACQUELINE M. KOSCH PAGANO  
Notary Public, State of New York  
No. 01PA1690670  
Qualified in Nassau County  
Commission Expires October 31, 2009

# **EXHIBIT**

**12**

Michael Bookbinder, being duly sworn deposes and says:

1. I have been employed at Sleepy's since 1999. I was initially hired as Vice President of Sales and was subsequently promoted to Executive Vice President of Sales. In this position I oversee all aspects of Sleepy's sales operation. I am also a member of Sleepy's five member Executive Team whose members oversee all Sleepy's daily operations.

2. Tempur-Pedic International, Inc., ("Tempur-Pedic") is one of several bedding manufacturers that does business with Sleepy's. As Sleepy's Executive Vice President of Sales I interact with representatives of Tempur-Pedic on a regular basis.

3. Sleepy's sells Tempur-Pedic products at the manufacturer's suggested retail price ("SRP") because Tempur-Pedic declines to do business with retailers who charge less than the retail prices set by Tempur-Pedic, as enunciated in the letter sent to all Tempur-Pedic Retailers, along with Tempur-Pedic's Retail Partner Obligations and Advertising Policies ("Retail Partner Agreement").  
Exh. 1.

4. An exception to Sleepy's sale of Tempur-Pedic products at the SRP occurs when a customer presents Sleepy's with an invoice, written price quotation, or competitor's advertisement showing that a Tempur-Pedic product is being offered for sale by a competitor at less than the SRP. In those instances, to meet Sleepy's guarantee of always offering the best price, Sleepy's allows the salesperson to deviate from the SRP after obtaining the required approvals from Sleepy's management.

5. When Sleepy's deviates from Tempur-Pedic's SRP to meet our price guarantee, it is our general practice to provide Tempur-Pedic with copies of the competitor's invoice or ad for which we are meeting the price. These invoices or ad copies are provided to Tempur-Pedic to make it aware that Sleepy's pricing below SRP is in response to below SRP pricing by a Sleepy's competitor.



6. Sleepy's understands that Tempur-Pedic makes charging SRPs a condition for being a Tempur-Pedic account and maintaining that status. Sleepy's understanding that it must maintain the SRP to continue as an account stems from information conveyed to Sleepy's by Tempur-Pedic in the letter attached hereto as Exh. 1. Absent Tempur-Pedic's condition, Sleepy's would, on occasion, be willing to sell Tempur-Pedic products at less than the SRP prices established by Tempur-Pedic.

7. Sleepy's understood the terms of the Retail Partner Agreement. Specifically, it was and still is Sleepy's understanding that to remain in good standing, we must operate our business in accordance with the terms required by the Tempur-Pedic Retail Partner Agreement and the letter that accompanied it.

8. To satisfy Tempur-Pedic, when Sleepy's advertises a coupon for \$200 off certain merchandise, Tempur-Pedic is excluded from that offer and the coupon amount cannot be deducted from the Tempur-Pedic SRP.


9. Although Sleepy's adheres to the SRPs set by Tempur-Pedic except when competing in the marketplace as described in paragraph 4 above, there have been instances when Tempur-Pedic contacted Sleepy's to inquire about possible violations of Tempur-Pedic's advertising or pricing requirements. In one such instance, Tempur-Pedic's Tom Rehwinkel contacted me by email, dated October 15, 2007, and stated that the 20% off and free pillow offer on Sleepy's website was a problem. I responded to this inquiry by advising Rehwinkel that Tempur-Pedic is already excluded from the offer of 20% off and that Sleepy's will remove the free pillow offer on the Tempur-Pedic page of Sleepy's website.

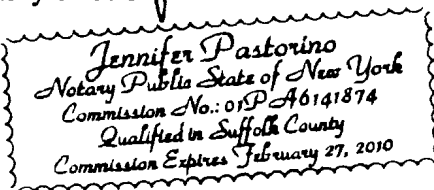
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10. Tempur-Pedic allows a retailer to provide free delivery of Tempur-Pedic products. However, Sleepy's computer system "hardwires" a delivery charge on every Sleepy's invoice. To provide free delivery, the Sleepy's sales force routinely deducts the amount of the delivery charge from Tempur-Pedic's SRP. However, in net effect, Sleepy's is charging Tempur-Pedic's SRP but providing free delivery. Shortly after it started purchasing Tempur-Pedic products, Tempur-Pedic representatives contacted Sleepy's to complain about Sleepy's sales at what appeared to be less than SRP. Sleepy's explained to Tempur-Pedic that what appeared to be discounting was only the way that Sleepy's provided free shipping. This explanation satisfied Tempur-Pedic that Sleepy's was charging Tempur-Pedic's SRPs.

  
Michael Bookbinder

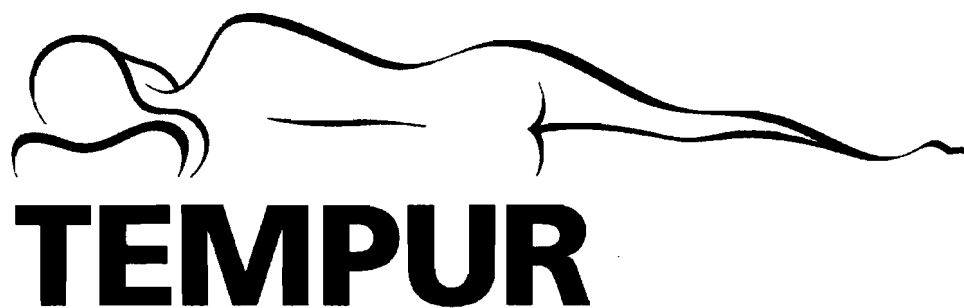
Sworn to before me this 9<sup>th</sup> day July 2009

  
Notary Public



# **EXHIBIT 1**

**Affidavit of  
Michael Bookbinder  
Dated July 9, 2009**



## Retail Partner Obligations & Advertising Policies

VERSION 2.0

Effective: October 1, 2007

1713 Jaggie Fox Way  
Lexington, KY 40511

(859) 259-0754  
(800) 878-8889  
Fax: (859) 514-4423

TPXNY-0001115



## Acknowledgement

By signing below I acknowledge that I have received the attached *Retail Partner Obligations & Advertising Policies* and *Brandmark Manual* and agree to abide by them. I understand it is important to follow these policies and brand usage guidelines to maintain and protect the Tempur-Pedic® brand and its associated registration and trademarks. Failure to comply with these guidelines could result in termination of my account with Tempur-Pedic North America, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tempur-Pedic Account Number

\_\_\_\_\_  
Company/Office

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

**Please sign this form and fax to: 859-514-4731**

Acknowledgement

**TPXNY-0001116**



## Retail Partner Obligations

### As a Tempur-Pedic North America, Inc. Retail Partner you agree to...

#### Follow Advertising Policies and Brandmark Usage Guidelines

If you purchase Tempur-Pedic® products and/or offer them for sale, you agree to abide by the requirements of the *Retail Partner Obligations & Advertising Policies* and the *Brandmark Manual*. Following these requirements supports Tempur-Pedic branding efforts and protects Tempur-Pedic intellectual property. Any reseller who misrepresents or misuses Tempur-Pedic trademarks, logos or other materials will be notified in writing and will be given 5 business days to implement corrections. Failure to do so may result in termination of product shipments, cancellation of authorized reseller status, or any other action deemed necessary.

#### Include Adequate Coverage of Tempur-Pedic Products

Tempur-Pedic recommends that our Retail Partners place at least four (4) mattress sets on their floor to give consumers the opportunity to see and feel the differences between our models. Our warranties and performance guarantees are based on tests conducted on "sets" that consist of our mattresses and foundations. To ensure consumer satisfaction and warranty coverage, Tempur-Pedic mattresses should not be displayed or sold with other manufacturers' foundations and/or adjustable bed bases. Further recommendations for coverage of Tempur-Pedic products at your individual location(s) will be determined by your Tempur-Pedic Sales Representative.

#### Ship Only to Authorized Locations

As an Authorized Tempur-Pedic Retail Partner, you are required to sell and/or ship Tempur-Pedic products to those consumers within your immediate geographic area only. Conducting commerce outside of your physical location's immediate geographic area is prohibited. Tempur-Pedic products provided to Retail Partners for the purpose of resell are to be sold to retail customers only. Selling our products to any party other than a retail customer is prohibited.

#### Accept Tempur-Pedic Retail Partner Termination Policies

Tempur-Pedic has the right to terminate its relationship with you at any time. If Tempur-Pedic decides to do so, you will be given an initial notification by phone, email or in person by your Tempur-Pedic Sales Representative. Following initial notification, you should expect two (2) letters providing official written notification: one from the Retail Division and one from the Legal Department, further explaining the process of termination.

You will have 90 days from the date of written notice from Tempur-Pedic's Legal Department to sell any remaining product on hand and pay all outstanding invoices. At the end of the 90 day period a final inventory will be taken with you. A release agreement stating the amount to be given for the final inventory count will be sent to you to be signed. After we receive the executed release agreement from you, the final pick up of all remaining Tempur-Pedic items will be scheduled. Once Tempur-Pedic has received and processed all items from the final pick up, a credit will be issued to all remaining balances on your account or a check will be issued if no balances are outstanding. You will have no right to seek compensation for lost profits or other damages as a result of termination.

#### Refrain from Using "Agent" or "Franchise" of Tempur-Pedic

As a Tempur-Pedic Retail Partner you are authorized to resell and/or purchase Tempur-Pedic products. You should never refer to your company as an agent or franchise of Tempur-Pedic and agree that you have not received or paid any fee for the right to become an Authorized Tempur-Pedic Retail Partner. Although we may refer to you as our "Retail Partner," you acknowledge there is no legal partnership or fiduciary relationship between you and Tempur-Pedic.

#### Understand Tempur-Pedic Warranties

Tempur-Pedic products are sold only with Tempur-Pedic's own, limited warranties. As an Authorized Tempur-Pedic Retail Partner you should become familiar with these warranties. TEMPUR-PEDIC WILL NOT HONOR ANY OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES.

These requirements are the only agreement between you and Tempur-Pedic and supersede and/or replace any other agreements you may have. These requirements cannot be changed orally, but only through writing. Any and all disputes between you and Tempur-Pedic will be resolved out of the courts through binding arbitration by the American Arbitration Association in Boston.



## Advertising Policies

Tempur-Pedic® reserves the right to change policies, regulations, and procedures here in. All are subject to change without prior notice, if necessary, to keep Tempur-Pedic North America, Inc. policies in compliance with State and Federal laws and/or with rules and regulations of the United States Patent and Trademark Office.

**Questions or Advertising Materials for review and approval should be directed to Tempur-Pedic's Marketing Department. Contact us via email: [marketing@tempurpedic.com](mailto:marketing@tempurpedic.com), phone: 800-878-8889, fax: 859-514-4423, or mail: Attention Marketing Department, Tempur-Pedic North America, Inc., 1713 Jaggie Fox Way, Lexington KY 40511.**

### 1. Required Physical Location

Any Retail Partner wishing to use the Tempur-Pedic name and associated materials and logos for the purpose of advertising the sale of Tempur-Pedic products must maintain an actual physical retail location in which Tempur-Pedic products are clearly displayed and sold.

### 2. Nationwide Shipping

Advertising the ability to ship nationwide via any and all media sources and routinely conducting commerce outside your physical store's immediate geographic area is PROHIBITED.

### 3. Internet Restrictions

Tempur-Pedic supports all authorized Retail Partners' use of the Internet as a means of communicating with, informing and attracting prospective customers to their physical locations.

#### ACCEPTABLE:

- Advertising via the internet that Tempur-Pedic products are available at your physical retail location(s) for sale
- Providing images and information on your website about the Tempur-Pedic products you carry
- Listing Tempur-Pedic ONCE in search engine titles, meta keywords or meta descriptions along with your company name and the disclaimer "Unofficial Site"
- Displaying the Tempur-Pedic logo and other trademarks with YOUR company logo displayed more prominently
- Purchasing 2nd position or lower pay-per-click Internet Adwords that use Tempur-Pedic or our other trademarks

#### UNACCEPTABLE:

- Advertising pricing on the Internet
- Selling Tempur-Pedic products via your website or any other website including eBay, Amazon, Yahoo Shopping, Froogle, Craig's List, etc.
- Taking internet orders by phone or email
- Providing Tempur-Pedic product price lists via email
- Selling Tempur-Pedic products to anyone other than retail customers
- Purchasing and/or using Tempur-Pedic or our other trademarks as part of your URL/domain
- Displaying Tempur-Pedic or our other trademarks more prominently than your company or any other company name
- Using images, logos or videos on your website that have not been supplied and/or authorized by Tempur-Pedic
- Promoting the ability to ship nationwide
- Misusing Tempur-Pedic's trademarks and brand on online advertising sources such as MySpace and Craig's List

## Advertising Policies

### 4. Coupons, Rebates & Promotional Items

Below are lists of acceptable and unacceptable coupons, rebates & promotional items that may or may not be advertised with Tempur-Pedic® products

No more than **two (2)** promotional items or non-common offers may be combined, or “stacked”

#### ACCEPTABLE IN-STORE & IN ADVERTISING:

- Free Tempur-Pedic authorized promotional item, i.e. My Tempur-Pedic Teddy Bear™
- Free Bed Frame

#### UNACCEPTABLE IN-STORE & IN ADVERTISING:

- No Sales Tax or any phrasing such as “We Pay Sales Tax”
- Rebates, in-store credits or coupons that can or can not be applied to Tempur-Pedic products
- Offering money back for the return of the consumer's old bedding with a new purchase, i.e. “Trade-in Sale”
- Offering free gifts with purchase or “purchase with purchase” offers with the sale of Tempur-Pedic products
- Free Foundation
- My Tempur-Pedic Teddy Bear™ for sale

### 5. Offering Free Pillows in Store or in Advertising

The offering of FREE Tempur-Pedic pillows is allowed in Direct/Private Mailers from internally generated customer lists ONLY. In-store and through private mailers, you may offer 2 FREE Pillows up to a value of \$99 for each pillow.

Offering this promotion in any advertising media such as Advo, ROP Newspaper, Radio, TV, etc. is prohibited.

### 6. Common Offers Acceptable in Industry & Tempur-Pedic

The following are types of offers that are seen as standard/common offers advertised in the industry and are acceptable to advertise with Tempur-Pedic products. These offers are not counted/included within Tempur-Pedic's policy of stacking offers.

- Special Financing Offers
- Free Financing
- Free Delivery
- Free Information
- Free Set-Up
- Free Try-Out

### 7. “Largest Tempur-Pedic Dealer”

Phrasing such as “Largest Tempur-Pedic Dealer” or “Biggest Tempur-Pedic Dealer” for a particular city, state or in general is prohibited. Such phrasing may not be Tempur-Pedic specific.

### 8. Floor Model Sales

Sales of Tempur-Pedic floor models may not be advertised in any mass media. The offer of a Tempur-Pedic floor model for a lower price may be promoted in store ONLY and only in connection with the sale of a specific unit for sale.



## Advertising Policies

### 9. Tempur-Pedic Product Pricing in Advertising

To ensure uniformity in advertising the following policies must be followed

#### ACCEPTABLE:

- Advertising “Starting at” pricing of Tempur-Pedic® products with a disclaimer stating which product it is based on
- Advertising the SRP of a specific Tempur-Pedic product with notation of everything that is included within that price
- Advertising a monthly payment price for special financing terms

#### UNACCEPTABLE:

- Advertising complete price lists of products
- Advertising “On Sale Now”, “Best Prices”, “Lowest Prices”, “Guaranteed Lowest Prices”, etc. with Tempur-Pedic products

### 10. Corporate Logo & Trademark Integrity

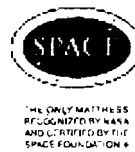
The Tempur-Pedic logo must NOT be recreated or altered in any way. Altering the logo can have a negative effect on the valuable brand image created by Tempur-Pedic. Please refer to the *Brandmark Manual* for the proper usage of the Tempur-Pedic logo(s).

The Tempur-Pedic trademarks must be used in their entirety and are registered as such with the United States Patent and Trademark Office. Please refer to the Tempur-Pedic Trademarks section of the *Brandmark Manual* for proper usage of all Tempur-Pedic trademarks.



### 11. NASA Recognition and Space Foundation Certification

Tempur-Pedic has been given the rights to use the “Certified Space Technology” logo on marketing materials and packaging. All competitors, including those claiming to be derived from NASA technology, absolutely can NOT use the “Certified Space Technology” logo. This logo is only approved for use in Tempur-Pedic produced advertising materials.



### 12. Use of the word “Swedish”

The word “Swedish,” when used to characterize mattresses and pillows, is a Tempur-Pedic trademark and can only be used with the Tempur-Pedic brand name. Using this to describe any other comparable product is a violation of Tempur-Pedic’s trademark rights.

# Swedish

### 13. Use of the phrase “As Seen on TV”

The phrase “As Seen on TV” and logo is a registered trademark and should NOT be used in any advertising.



## Advertising Policies

### 14. Use of the words "Foam", "Viscoelastic", "Visco" & "Memory Foam"

Tempur-Pedic's proprietary formula is a trade secret known only to a handful of individuals. Authentic TEMPUR® material is only made in Tempur-Pedic production facilities using our proprietary formula and manufacturing process and is used exclusively in Tempur-Pedic® branded products.

TEMPUR material conforms to body shape relieving the pressure and pain that causes tossing and turning. TEMPUR pressure-relieving material should NOT be referred to as "foam," "viscoelastic," "visco," "memory foam" or any other descriptive term relating to "foam" products. Tempur-Pedic products should never be grouped with "memory foam" products in any advertising.



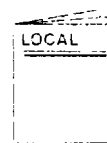
### 15. Ad Placement

#### ACCEPTABLE:

- Featuring Tempur-Pedic in local media, including radio, TV and print

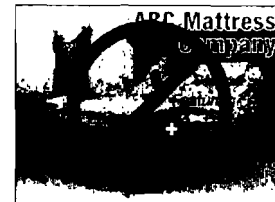
#### UNACCEPTABLE:

- Featuring Tempur-Pedic in national daily, weekly or monthly publications
- Featuring Tempur-Pedic in national media, including radio, TV and print



### 16. Adjustable Swedish Sleep System® and Tempur-Pedic Full-Motion System

The Tempur-Pedic Adjustable Swedish Sleep System® and the Tempur-Pedic Full-Motion System may be advertised in all media as long as it is featured as an inset or option to "upgrade" the foundation. If you advertise the adjustable system or Tempur-Pedic Full-Motion System they must be shown with the flat system and at no larger than 25% of the flat system image.



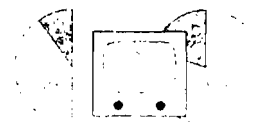
### 17. Corporate Ad Campaign Integrity

To maintain the integrity of the overall marketing and media investments for Tempur-Pedic corporate advertising programs, Retail Partners producing TV, radio, satellite radio, podcast, etc. spots featuring Tempur-Pedic products are limited to 1/5 the duration of the total ad to feature Tempur-Pedic.

- 30 second spot – 5-6 seconds for Tempur-Pedic
- 60 second spot – 10-12 seconds for Tempur-Pedic

B-roll footage of Tempur-Pedic mattresses for inclusion in your TV commercials is available upon request (please note this is product footage ONLY, not a pre-produced commercial). Using footage of corporate commercials for your own company advertising is prohibited.

If you wish to create advertising for TV or radio that features ONLY Tempur-Pedic, it should emphasize your physical location featuring Tempur-Pedic products. All full feature Tempur-Pedic spots require prior approval from Tempur-Pedic Marketing.



## Advertising Policies Tempur-Pedic®

### 18. Billboards, Outdoor Signage & Truck Graphics (Permanent & Temporary)

The following requirements **MUST** be followed when incorporating the Tempur-Pedic® logo and/or trademarks into permanent and temporary signage:

All signage including the Tempur-Pedic logo or trademarks must have prior approval.

- The Tempur-Pedic logo or name must be no more than 25% of the overall sign size.
- The words “authorized dealer,” “featuring” or similar verbiage must be present.
- The logo cannot be altered in any way.
- Tempur-Pedic proprietary images can be used **ONLY** if Tempur-Pedic is the **ONLY** brand mentioned. For truck graphics, that is per panel, i.e. Tempur-Pedic on one panel, another brand on the other. If combined with other brands on one panel, there must be a visual separation between Tempur-Pedic logos/products and other brands.
- All signage featuring the Tempur-Pedic brand must be kept in good condition.



### 19. Promotional Items

Promotional items such as business cards, letterhead, pens, etc. that include the Tempur-Pedic logo and/or trademarks, must have prior approval from Tempur-Pedic Marketing.

### 20. Home Shows

As a Tempur-Pedic Retail Partner, you may participate in home shows to advertise your company and the products you feature, including Tempur-Pedic. If you wish to feature Tempur-Pedic products at a home show, you must apply and receive prior approval and authorization from Tempur-Pedic. Retail Partners will be seen as having a “Temporary Authorized Location” at the home show. Applications should be sent to your Tempur-Pedic Sales Representative, who will review with regional management for final approval.

Full details and specific guidelines are available upon request from your Tempur-Pedic Sales Representative.



1713 Jaggie Fox Way  
Lexington, KY 40511

(859) 259-0754  
(800) 878-8889  
Fax: (859) 514-4423

**TPXNY-0001123**

# **EXHIBIT**

**13**

**From:** Rehwinkel, Tom (TPUSA) <tom.rehwinkel@tempurpedicretail.com>  
**Sent:** Monday, June 18, 2007 7:49 AM  
**To:** Messerschmitt, Paul (TPUSA) <paul.messerschmitt@tempurworld.com>  
**Cc:** McCarthy, Bob (TPUSA) <bob.mccarthy@tempurworld.com>  
**Subject:** FW: Discounts

---

fyi

-----Original Message-----

**From:** Gary Cornblath [mailto:Gary.Cornblath@macys.com]  
**Sent:** Thursday, May 10, 2007 9:07 AM  
**To:** Rehwinkel, Tom (TPUSA)  
**Cc:** Michael J King  
**Subject:** Re: Discounts

Tom,

I have requested that Tempurpedic be excluded from all storewide discounts where mattresses gives a discount, which is about 4 times a year. As far as the opening charge discount, we do not give 10% to the customer. What the customer gets is a \$100 deduction off of their charge. It never appears on the receipt and if the customer does a lot of shopping it is one lump sum that they get. It is never directed at reducing the price of the mattress.

Gary

---

Gary Cornblath | Buyer - Mattresses | Macy's Home Store

( 646.429.4580 | Tie-Line : 8.11.1 429.4580 | 7 646.429.4501 | \*  
Gary.Cornblath@macys.com

"Rehwinkel, Tom  
(TPUSA)"  
mpurpedicretail c "Michael J King"  
om < > "Gary  
Cornblath"  
05/10/2007 08:38  
AM cc

Subject  
Discounts

Confidential

TPXNY-0009387

Guys,

I need to reiterate our Corporate Policy pertaining to discounts. We don't sanction/support them. If you have a Storewide discount we aren't part of it. If Macy's has a 10% discount for opening a new charge account we are not part of it. If you check other retailers such as Sleepy's, Tempurpedic is in their disclaimer box with S&F and Dormo. You can offer one free pillow or our Tempurpedic "teddy bear" but not additional discounts. There is no wiggle room on this point. Thanks!

Tom

Thomas A. Rehwinkel  
Vice President  
Eastern Sales Division  
Cell - 859-913-1799  
Office - 609-936-0776  
Fax - 609-936-1401

# **EXHIBIT**

## **14**



**From:** Cowie Jr, Paul (TPUSA)  
**Sent:** Wednesday, August 8, 2007 9:22 PM  
**To:** McCarthy, Bob (TPUSA) <bob.mccarthy@tempurworld.com>  
**Subject:** FW: Tempur-Pedic Pricing

---

Bob-  
FYI

Sincerely,  
**Paul Cowie**  
**Tempur-Pedic**  
Cell: 859-221-3674  
Fax: 413-567-2927

**From:** Glick, Lynn [mailto:lglick@rotmans.com]  
**Sent:** Wed 8/8/2007 11:20 AM  
**To:** Cowie Jr, Paul (TPUSA)  
**Cc:** Carron, Marvin  
**Subject:** RE: Tempur-Pedic Pricing

Paul,

Sorry for the confusion on the extra 5% off – the salespeople were told that Tempurpedic & Ekornes were excluded from the promotion but not everyone understood. I left everyone a voicemail this morning so it will be very clear to them!

Thanks,

Lynn

Lynn Glick  
Casegoods Buyer  
Rotmans Furniture  
(508) 438-4257

-----Original Message-----

**From:** Cowie Jr, Paul (TPUSA) [mailto:paul.cowie@tempurpedicretail.com]  
**Sent:** Tuesday, August 07, 2007 6:08 PM  
**To:** Glick, Lynn  
**Cc:** Carron, Marvin  
**Subject:** Tempur-Pedic Pricing

Lynn-

It has been brought to my attention that Rotman's is selling Tempur-Pedic for 5% off in addition to 5% tax free. This is a violation of our SRP policy. Please stop this practice. Thank you.

Sincerely,  
**Paul Cowie**  
**Tempur-Pedic**  
Cell: 859-221-3674  
Fax: 413-567-2927

# **EXHIBIT**

## **15**

---

**From:** Cowie Jr, Paul (TPUSA) [mailto:paul.cowie@tempurpedicretail.com]

**Sent:** Friday, November 30, 2007 5:30 PM

**To:** Judd, Patrick

**Subject:** Pricing Violation

Pat-

It has been brought to my attention that one of your sales associates sold a Tempur Pedic Deluxe full set for \$2,018.00. This price is \$381.00 below our SRP of \$2,399.00. Would you please investigate and let me know? Thanks.

The Sales Order Ticket number is 112570ABHBL. The customer's name & address is Michael Quinn, 170 Steers Road, Amsterdam, NY 12010.

Sincerely,

**Paul Cowie**

***Tempur-Pedic***

Cell: 859-221-3674

Fax: 413-567-2927

# **EXHIBIT**

**16**

**Bova, Lauren**

**From:** Rube, Neil

**Sent:** Monday, September 22, 2008 3:35 PM

**To:** Bova, Lauren

**Subject:** FW: Tempur-Pedic SRP Violations

Please print this with the attachments

~~From: Lauren Bova (lbova) [mailto:lbova@tempurpedic.com] Sent: Thursday, July 03, 2008 10:15 AM~~

**Sent:** Thursday, July 03, 2008 10:15 AM

**To:** Judd, Patrick

**Cc:** McCarthy, Bob (TPUSA)

**Subject:** Tempur-Pedic SRP Violations

Pat-

This email is a follow up to the voicemail message that I left you this morning. It has been brought to my attention that on 3 occasions Raymours RSA's have sold Tempur-Pedic products for less than SRP. I have attached copies of the 2 of the sales slips

- King of Prussia - \$200 off 6/6 Rhapsody set
- Bronx Customer - \$199 off 5/0 Deluxe with split foundations
- Carle Place - 10% off Celebrity (I do not have documentation on this sale)

I would appreciate you following up on these matters. Thank you.

Sincerely,

**Paul Cowie**

**Tempur-Pedic**

Cell: 859-221-3674

Fax: 413-567-2927

H. AMOUR

*Chaque*

*10/12*  
*10/12*

# **EXHIBIT**

**17**

Bova, Lauren

**From:** Rube, Neil  
**Sent:** Monday, September 22, 2008 3:29 PM  
**To:** Bova, Lauren  
**Subject:** FW: Danbury SRP Violation  
**Importance:** High

Please print this with the attachment.

**From:** Cowie Jr, Paul (TPUSA) [mailto:paul.cowie@tempurpedic.com]  
**Sent:** Wednesday, September 10, 2008 8:10 PM  
**To:** Judd, Patrick  
**Subject:** Danbury SRP Violation  
**Importance:** High

The attached file from the Danbury store is very clear that Tempur-Pedic is being offered at 10% below SRP at the Bed & Breakfast event this Sunday, 9/14 which is in violation of our pricing policies. Please instruct Danbury to exclude Tempur-Pedic from this event. Would you also please send out an email to remind all stores to exclude Tempur-Pedic from future similar events. Thank you.

Sincerely,  
Paul Cowie  
**Tempur-Pedic**  
859-221-3674  
413-567-2927



963-22-771-1

# Raymour & Flanigan

FURNITURE

## Bed & Breakfast Event

Save 10% on ALL Mattresses & Bedroom Sets

September 14th, 2008

10 am - 6 pm

Fairfield, NJ Location Only

APPOINTMENT TIME

CALL 963-22-771-1

9/14/08

ONE DAY  
ONLY  
9/14/08

Raymour & Flanigan

FURNITURE

**SAVE 10%**

TEEN & TWEEN BEDS, BUNKERS & FORTS, ADULT & BABY BATHS  
MATTRESS SETS

**SAVE 10%**

ANY BEDROOM SET

SAVE AN ADDITIONAL 5% IN HOUSEHOLD CREDIT

REFERRED ACCOUNT

Approved Credit Required

Raymour & Flanigan Furniture Company, Inc. is an Equal Opportunity Employer. All persons applying for employment should send resume and references to: Raymour & Flanigan Furniture Company, Inc., 1000 Route 100, Fairfield, NJ 07004. No phone calls or e-mail inquiries. All offers of employment are subject to background check and drug testing. Raymour & Flanigan Furniture Company, Inc. is an Equal Opportunity Employer. All persons applying for employment should send resume and references to: Raymour & Flanigan Furniture Company, Inc., 1000 Route 100, Fairfield, NJ 07004. No phone calls or e-mail inquiries. All offers of employment are subject to background check and drug testing.

Fairfield, NJ Location Only

# **EXHIBIT**

## **18**

Patrick Judd, being duly sworn deposes and says:

1. I have been an employee of Raymours Furniture Company, Inc. d/b/a Raymour & Flanigan Furniture ("Raymour") for the past eighteen and a half years. I currently hold the position of Director of Bedding for Raymour, a position I have held for approximately two and a half years. As Director of Bedding, I am responsible for purchasing mattresses and bedframes to be sold by Raymour stores.


2. Raymour purchases mattresses from manufacturer Tempur-Pedic, Inc. ("Tempur-Pedic") for resale in its stores. Raymour has purchased mattresses from Tempur-Pedic since August 2007. Neil Rosenbaum, Senior Vice-President of Merchandising and I are the Raymour employees who have the most day to day contact with representatives of Tempur-Pedic. The individuals employed by Tempur-Pedic with whom I have most interaction are Paul Cowie and Bob McCarthy.

3. On the date hereof, Raymour carries four of ten models of the Tempur-Pedic line of mattresses and boxsprings. With few exceptions, Raymour sells all Tempur-Pedic products at the suggested retail price ("SRP") specified by Tempur-Pedic. Raymour's adherence to Tempur-Pedic's SRP's is attributable to Tempur-Pedic's price policy as communicated to retailers by letter dated October 2007. The letter states that it is the policy of Tempur-Pedic not to do business with any retailer who chooses to charge retail prices which are different than suggested retail prices specified by Tempur-Pedic. In addition, Raymour was advised of Tempur-Pedic's SRP policy during its initial negotiations with Tempur-Pedic prior to taking on this product line. Tempur-Pedic advised Raymour about its SRP policy and ascertained that Raymour understood and would adhere to the pricing policy before it agreed to supply Raymour.

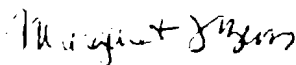
4. As a result of Tempur-Pedic's price policy, Raymour excludes Tempur-Pedic products from all sales events. Raymour understands that it must follow Tempur-Pedic's price

policy as a condition of maintaining the Tempur-Pedic line of products. Accordingly, all members of Raymour's sales team are advised by management that Raymour does not negotiate pricing on Tempur-Pedic products. Raymour will however match a competitor's price for a Tempur-Pedic product when a customer provides proof that a competitor is offering a discounted price for a Tempur-Pedic product. On the relatively few occasions when a salesperson is matching a competitor's price, the price reduction must be approved by Raymour sales management.

5. Anytime that it is brought to Raymour's attention that another retailer is selling Tempur-Pedic products at less than SRP, that information is forwarded to Tempur-Pedic and the company is asked to respond. It is Raymour's practice to report to Tempur-Pedic all instances of less than SRP pricing by competitors, because it is Raymour's understanding that a retailer must adhere to SRP pricing in order to maintain the Tempur-Pedic line of products.

  
Patrick Judd

Sworn to before me this 27<sup>th</sup> day July 2009

  
Notary Public

MARGARET F. BASS  
Notary Public, State of New York  
No. 4904699  
Qualified in Onondaga County  
Commission Expires Sept. 8, 2009

# **EXHIBIT**

## **19**

**From:** Ginsburgh, Joe (TPUSA) <joe.ginsburgh@tempurpedicretail.com>  
**Sent:** Thursday, August 9, 2007 8:59 AM  
**To:** McCarthy, Bob (TPUSA) <bob.mccarthy@tempurworld.com>  
**Subject:** RE: REPLY: Travel Days/Ginsburgh

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I agree. You know Dave well, he could not resist the opportunity.

*Joe Ginsburgh*  
**Territory Sales Manager.**  
**(Upstate N.Y. & Eastern VT.)**  
**Cell (859) 321-6327**  
**Fax (518) 456-6325**

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**From:** McCarthy, Bob (TPUSA)  
**Sent:** Thursday, August 09, 2007 8:26 AM  
**To:** Ginsburgh, Joe (TPUSA)  
**Cc:** Cowie Jr, Paul (TPUSA)  
**Subject:** RE: REPLY: Travel Days/Ginsburgh

I would be happy to travel with you however there is one thing to think about. I am trying to distance myself with Metro. Dave needs to be more comfortable with Paul and let go of simply calling me with a problem. Prancing 3 people in to review the new add policy will simply be a stage for Dave to create a scene. If you need my assistance on the others that is fine but I think you and Paul should handle Metro and I will be available for a second meeting if there is a problem. Let me know your thoughts.

**Bob McCarthy**  
**Regional Sales Manager-Eastern Division**  
**859-221-8018 Cell**  
**603-889-4033 Fax**



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**From:** Ginsburgh, Joe (TPUSA)  
**Sent:** Thursday, August 09, 2007 8:18 AM  
**To:** McCarthy, Bob (TPUSA)  
**Cc:** Cowie Jr, Paul (TPUSA)  
**Subject:** REPLY: Travel Days/Ginsburgh

Bob,  
Now that we have the official new dealer agreement, I would like you to attend the meetings with Metro Matt, Dunk & Bright, (Syracuse), N.Y. and Mattress Firm, (Buffalo), N.Y. The presences of your position will give weight to our absolute compliance to SRP pricing without exceptions. These are the trouble makers and once they conform to the SRP issue, the regional problems will resolve it for the other dealers, with Raymours coming on, the sooner the better for these meeting.

*Joe Ginsburgh*  
**Territory Sales Manager**  
**(Upstate N.Y. & Eastern VT.)**  
**Cell (859) 321-6327**  
**Fax (518) 456-6325**

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**From:** McCarthy, Bob (TPUSA)  
**Sent:** Wednesday, August 08, 2007 12:36 PM  
**To:** Howard, Ronda (TPUSA); Christmas, Lisa (TPUSA); Miller, Heather (TPUSA); Ginsburgh, Joe (TPUSA); Mason, Philip

(TPUSA); Messerschmitt, Paul (TPUSA); Michelangelo, David (TPUSA)

**Subject:** Travel Days

I am booking my travel days for the week of August 26 and Sept 4,5,6. Please e-mail me back any meetings you may have with key prospects or dealers during that time frame.

Thanks,

***Bob McCarthy***

***Regional Sales Manager-Eastern Division***

***859-221-8018 Cell***

***603-889-4033 Fax***



# **EXHIBIT**

## **20**



**From:** David A Shiroff <dshiroff@metromattress.com>  
**Sent:** Thursday, September 13, 2007 9:57 AM  
**To:** Ginsburgh, Joe (TPUSA) <joe.ginsburgh@tempurpedicretail.com>  
**Subject:** FW: Tempur-Pedic Price changes!!!PLEASE READ

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Joe,

FYI, we sent this to our team this morning.

Dave

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**From:** Mark I. Bell, Jr. [mailto:mbell@metromattress.com]  
**Sent:** Thursday, September 13, 2007 9:11 AM  
**To:** Amherst; 'Auburn'; 'Canandaigua'; 'Colonie'; 'Cortland'; 'East'; 'Geneseo'; Glenmont; 'Greece'; Hamburg; 'Henrietta'; Horseheads; 'Irondequoit'; 'Ithaca'; latham@stores.metromattress.com; 'Liverpool'; Lockport; 'New Hartford'; Niagara Falls; 'Niskayuna'; 'North'; 'Oswego'; 'Penfield'; 'Pittsford'; 'Utica'; Victor; 'Watertown'; webster@stores.metromattress.com; 'West'  
**Cc:** dshiroff@metromattress.com; lrechani@metromattress.com; ameilutis@metromattress.com; JMehl@metromattress.com; rpuente@metromattress.com; Wahl, Mika; mkhammar@metromattress.com; Koepfel, Cynthia  
**Subject:** Tempur-Pedic Price changes!!!PLEASE READ

#### MEMORANDA

**TO:** METRO MATTRESS SALES TEAM  
**FROM:** MIB  
**DATE:** September 13, 2007  
**TEMPUR-PEDIC PRICING UPDATE**

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Effective TODAY, there are a few changes made to the Tempur-Pedic pricing. The CLASSIC BED & DELUXE BED prices have been increased. This increase is a national price update, and all Tempur-Pedic retailers are affected. I have faxed revised pricing and price tags to all stores.

Second, effective TODAY there is no longer any price drop on the Tempur-Pedic product.

## ASSOCIATES CAN NO LONGER DROP 10%!!!

This guideline MUST be followed to ensure Metro Mattress can retain the Tempur-Pedic lineup. Any Associate found breaking this rule will automatically face disciplinary action!

Feel free to call me with any questions you have on this policy.

-MIB

# **EXHIBIT**

## **21**

**From:** Tarter, Andrew  
**Sent:** Wednesday, February 13, 2008 4:10 PM  
**To:** Setlak, Dan (TPUSA)  
**Subject:** Retail Stores

FYI, we are getting a lot of customers calling in saying stores are giving free shipping and NO TAX.  
Sleepy's and Raymor Flannigan in particular.

**Andrew Tarter**  
General Manager, Direct to Consumer Sales  
Tempur-Pedic North America, Inc.  
1713 Jaggie Fox Way  
Lexington, KY 40511  
Office: (859) 514-4811  
Fax: (859) 514-5811  
[andrew.tarter@tempurpedic.com](mailto:andrew.tarter@tempurpedic.com)

3/28/2008

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