

# **EXHIBIT**

**22**

## **Fishman, Ira**

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**From:** Fishman, Ira  
**Sent:** Wednesday, December 05, 2007 9:25 AM  
**To:** Dryer, Suzette; Longmuir, Greg  
**Subject:** Re: Tempur-Pedic Website Advertising

Greg,

Suzette is right. We need to take the verbiage about Sleepy's Guaranteed low prices and largest selection off the Tempur-pedic page. Have Vlada add our No-No-No program.

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

**From:** Dryer, Suzette (TPUSA) <suzette.dryer@tempurpedic.com>  
**To:** Fishman, Ira  
**Sent:** Wed Dec 05 08:46:38 2007  
**Subject:** Tempur-Pedic Website Advertising

Ira

Looks like Sleepys finalized correcting the bed names on the Sleepys website to reflect the correct verbiage for Tempur-Pedic. Thank You.

I was notified that now there is another small issue, on the description page for Tempur-Pedic the first box contains the following message:

"Sleepy's has guaranteed low prices and the largest display of Tempur-Pedic samples in the country."

According to the Tempur-Pedic advertising guidelines under the sections below this phrase is in violation.

Section 7 page 5:

### 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.

Section 9 page 6:

### 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

Thanks for looking into this,

Suzette

# **EXHIBIT**

**23**

**From:** Ginsburgh, Joe (TPUSA) <joe.ginsburgh@tempurpedicretail.com>  
**Sent:** Tuesday, October 30, 2007 8:17 AM  
**To:** David A Shiroff <dshiroff@metromattress.com>  
**Cc:** McCarthy, Bob (TPUSA) <bob.mccarthy@tempurworld.com>; Cowie Jr, Paul (TPUSA) <paul.cowie@tempurworld.com>  
**Subject:** REPLY: Dave Hayes Appliance Center

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Dave,  
The correct SRP is \$1,699. for the Classic set>(as of Sept. 12th.) This will be addressed today with Dave Hayes.  
If you still have a copy of that AD I would like a copy. I will be in Syracuse on Friday, Nov. 2nd.  
Thanks,

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

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

**From:** David A Shiroff [mailto:dshiroff@metromattress.com]  
**Sent:** Monday, October 29, 2007 6:23 PM  
**To:** McCarthy, Bob (TPUSA); Ginsburgh, Joe (TPUSA); Cowie Jr, Paul (TPUSA)  
**Cc:** 'Luis Rechani'  
**Subject:** Dave Hayes Appliance Center

Gentleman,

I have, in my possession, a copy of an ad that Dave Hayes Appliance Center in the Utica area ran last Friday. In it, they list the their prices on the ClassicBed and the queen mattress is listed for \$1599 (1699.99 is your MAAP).

Dave Shiroff

# **EXHIBIT**

**24**

**From:** Ginsburgh, Joe (TPUSA) <joe.ginsburgh@tempurpedicretail.com>  
**Sent:** Tuesday, October 30, 2007 8:24 AM  
**To:** McCarthy, Bob (TPUSA) <bob.mccarthy@tempurworld.com>  
**Cc:** Cowie Jr, Paul (TPUSA) <paul.cowie@tempurworld.com>  
**Subject:** RE: REPLY: Dave Hayes Appliance Center

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Paul & I have already agreed on closing him. I will get the necessary paperwork started. This gives us one more concrete issue to point to.

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

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

**From:** McCarthy, Bob (TPUSA)  
**Sent:** Tuesday, October 30, 2007 8:18 AM  
**To:** Ginsburgh, Joe (TPUSA)  
**Cc:** Cowie Jr, Paul (TPUSA)  
**Subject:** RE: REPLY: Dave Hayes Appliance Center

We have had many issues with Dave Hayes. I think we should consider closing him.

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

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

**From:** Ginsburgh, Joe (TPUSA)  
**Sent:** Tuesday, October 30, 2007 8:17 AM  
**To:** David A Shiroff  
**Cc:** McCarthy, Bob (TPUSA); Cowie Jr, Paul (TPUSA)  
**Subject:** REPLY: Dave Hayes Appliance Center

Dave,  
The correct SRP is \$1,699. for the Classic set>(as of Sept. 12th.) This will be addressed today with Dave Hayes.  
If you still have a copy of that AD I would like a copy. I will be in Syracuse on Friday, Nov. 2nd.  
Thanks,

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

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

**From:** David A Shiroff [mailto:dshiroff@metromattress.com]

# **EXHIBIT**

**25**

**From:** Howard, Ronda (TPUSA)  
**Sent:** 2/17/2007 3:14:04 PM  
**To:** Grounds, Lewis (TPUSA)  
**Cc:**  
**Bcc:**  
**Subject:** RE: relax the back in NJ  
**Attachments:**

Lewis,  
Yes, this is my store. I will have a conversation with David Austin when I return from vacation. I'm sorry to here that they are not following our pricing policy. I will let you know what I find out after I have a conversation with him.  
Thanks,

***Ronda Howard***  
***Tempur-Pedic***  
***Territory Sales Manager***  
***cell- 859-321-7069***  
***fax -856-642-2129***

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**From:** Grounds, Lewis (TPUSA)  
**Sent:** Friday, February 16, 2007 1:45 PM  
**To:** Howard, Ronda (TPUSA)  
**Subject:** FW: relax the back in NJ

Ronda,

See below. If this is not your franchise please let me know and I will address. FYI, I sent Tom a message letting him know that this is a 2 way street and that Sleepy's doesn't get a pass.

Please let me know what you learn.

Lewis

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**From:** Rehwinkel, Tom (TPUSA)  
**Sent:** Friday, February 16, 2007 12:35 PM  
**To:** Grounds, Lewis (TPUSA)  
**Subject:** FW: relax the back in NJ

Lewis,

This guy has been a consistent problem since I started. Will someone please remind him of our pricing policies again. Thanks!

Tom

---

**From:** Fishman, Ira [mailto:ifishman@sleepys.com]  
**Sent:** Friday, February 16, 2007 11:59 AM  
**To:** Dryer, Suzette (TPUSA); Rehwinkel, Tom (TPUSA)  
**Subject:** relax the back in NJ

Tom/Suzette,

This relax the back is a continuing problem.  
We have reported this many times.

Hello Ira,

I was out today doing competitive shops in my area, and I came across this

little store called "Relax The Back". I saw a lot of tempurpedic signs in the windows, so I decided to stop in and check it out. This store carries the complete line of tempurpedic beds and pillows, back supports, recliners, massage chairs ect....As I engaged into conversation with the salesperson, I come to find out that he is the owner of the store. I act like I'm a shopper looking for the memory foam beds, and he goes through his whole presentation

=====**Page 2**=====

with me. When we get down to pricing, he gives me a tempurpedic pamphlet with all the prices written down next to each bed. I am forwarding you the prices because they are much cheaper than what we sell them for and I thought you would like to know. If you have any questions, please let me know!

Thanks for your time,  
Randy Weible K57  
DM Western NJ

CLASSIC BED QUEEN SET \$1599.99  
DELUXE BED QUEEN SET \$2099.99

=====**Page 3**=====

RHAPSODY BED QUEEN SET \$2399.99  
CELEBRITY BED QUEEN SET \$3099.99  
GRAND BED QUEEN SET \$5400.99

\*\*\*\* ALL SET PURCHASES INCLUDE 2 FREE TEMPURPEDIC PILLOWS AND NEXT DAY FREE DELIVERY WITH A 1 HOUR TIME WINDOW !!!!!!!!!!!!!

# **EXHIBIT**

**26**

**From:** Cowie Jr, Paul (TPUSA)  
**Sent:** Wednesday, September 5, 2007 9:37 AM  
**To:** Judd, Patrick <PJudd@raymourflanigan.com>; McCarthy, Bob (TPUSA) <bob.mccarthy@tempurpedicretail.com>  
**Cc:** Rosenbaum, Neil <NRosenbaum@raymourflanigan.com>; Rehwinkel, Tom (TPUSA) <thomas.rehwinkel@tempurworld.com>  
**Subject:** RE: Tempur-pedic Price match from Metro Mattress

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Pat-  
This situation has been addressed. We have assurances that it will end no later than Friday, 9/7.

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

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**From:** Judd, Patrick [mailto:PJudd@raymourflanigan.com]  
**Sent:** Wednesday, September 05, 2007 8:51 AM  
**To:** Cowie Jr, Paul (TPUSA); McCarthy, Bob (TPUSA)  
**Cc:** Rosenbaum, Neil  
**Subject:** FW: Tempur-pedic Price match from Metro Mattress

Bob/ Paul,

As we discussed, discounting by our competitors has becoming a growing concern. As stated in our agreement their is no discounting but we continue to have issues with specific examples of our competitors violating the policy. You have committed to us that this would be taken care of. I would like to resolve as quickly as possible, please respond.

**Pat Judd**  
Director of Bedding  
315-657-4710  
[pjudd@raymourflanigan.com](mailto:pjudd@raymourflanigan.com)

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**From:** Trombley, Bernie  
**Sent:** Saturday, September 01, 2007 6:27 PM  
**To:** Judd, Patrick  
**Subject:** FW: Tempur-pedic Price match from Metro Mattress

Another one to share with Tempur-pedic Pat ...  
Thanks

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**From:** Whipple, Brandon  
**Sent:** Sat 9/1/2007 6:11 PM  
**To:** Trombley, Bernie; French, Kyle; Poulton, Thomas  
**Subject:** Tempur-pedic Price match from Metro Mattress

Bernie,

Customer Clifford Kunes SO # 090170GICCI was recently shopping at Metro Mattress and discovered the Tempur-pedic line of mattresses. Apparently they carry the same line of mattress that we offer here at Raymour and Flanigan. The customer states Metro Mattress was willing to make him a deal on his purchase including 10% off the Rhapsody 2,999 a free bed frame and new bedding sheets. When we called Metro Mattress they gave the politically correct answer over the phone, " we don't normally discount, but come on in and we'll see what we can do." He came to us as a loyal Raymour and Flanigan shopper and asked if we could do something similar. He wanted the Rhapsody at 10% off and free memory foam pillows \$139 per set from Sealy. With the approval of higher management we made this customer a lifetime shopper with Raymour and Flanigan.

inspired and driven by you...

**Brandon Whipple**

Showroom Manager

Ridge Road 585-225-9455 RF 201

[bwhipple@raymourflanigan.com](mailto:bwhipple@raymourflanigan.com)

**Raymour & Flanigan Furniture, visit us at [www.raymourflanigan.com](http://www.raymourflanigan.com) or 888-RAYMOUR**

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# **EXHIBIT**

**27**

**From:** Cowie Jr, Paul (TPUSA)  
**Sent:** Saturday, August 25, 2007 3:15 PM  
**To:** 'William Paladini' <wpaladini@nymattressfactory.com>  
**Cc:** Jeff Bonham <jbonham@nymattressfactory.com>  
**Subject:** RE: TEMPERPEDIC SALES

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Bill-  
Thank you for bringing it to my attention. I will address it.

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

**From:** William Paladini [mailto:wpaladini@nymattressfactory.com]  
**Sent:** Saturday, August 25, 2007 3:01 PM  
**To:** Cowie Jr, Paul (TPUSA)  
**Cc:** Jeff Bonham  
**Subject:** FW: TEMPERPEDIC SALES

Paul; FYI Raymour is screwing around already

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**From:** Jason Spraker  
**Sent:** Saturday, August 25, 2007 2:35 PM  
**To:** William Paladini; RMD Administration  
**Subject:** TEMPERPEDIC SALES

Today, Aug. 25<sup>th</sup>, Jason went over to Raymoore & Flannigan to check out the Temper products, and pricing. Though they have the same price listings as we do, they are offering discounts, by way of applying for a Raymoore and Flannigan club card.

Once you are approved for this "card" you immediately save \$150.00 on a Tempur set. Depending on what you are buying, the savings could be even more. My question is, how do we combat that? Also, is this acceptable with the selling contract agreed upon with Tempur?

Sincerely,  
Randy Drewniak

# **EXHIBIT**

**28**

**From:** Mason, Philip (TPUSA)  
**Sent:** Monday, July 2, 2007 9:10 PM  
**To:** 'Justin Gannon' <jgannon@mattressdiscounters.com>  
**Subject:** RE: Boscov's

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Justin,

Yes it does. I have spoken to TSM in charge of Boscov's and she will discuss this with the buyer tomorrow. If you have any invoices or other evidence; can you please forward them to me?

Thanks,

Philip Mason  
Tempur-Pedic North America, Inc.  
Territory Sales Manager  
(859) 321-0287 cell  
(202) 652-1331 fax  
philip.mason@tempurpedicretail.com

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

From: Justin Gannon [mailto:jgannon@mattressdiscounters.com]  
Sent: Monday, July 02, 2007 5:55 PM  
To: Mason, Philip (TPUSA)  
Subject: Boscov's

Boscov's salespeople are stating if you purchase a Tempur-pedic and sign up for their credit card you get \$100 off plus free pillows and delivery. Does that violate the Tempur-Pedic pricing policy?

Thanks

Justin Gannon  
Vice President of Merchandising & Marketing  
Mattress Discounters  
Ph: 301.856.6755 ext. 235  
Fax: 301.877.2813

# **EXHIBIT**

**29**

**Fishman, Ira**

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**From:** Fishman, Ira  
**Sent:** Saturday, November 17, 2007 8:54 PM  
**To:** 'tom.rehwinkel@tempurpedicretail.com'; 'todd.miller@tempurpedic.com'  
**Cc:** Dryer, Suzette  
**Subject:** Emailing 07.matt.Temp.sets

Todd / Tom,

I find it interesting that MD is still claiming that it is "The areas largest dealer" on Tempur-pedic. In addition, there 5% price beat Does not specifically exclude Tempur-pedic. I gathered from our previous meeting, That these were against the new Tempur-pedic brand image policy.

Please correct me if I'm wrong.

Thank you.  
Ira Fishman

The message is ready to be sent with the following file or link attachments:

Shortcut to: <http://www.mattressdiscounters.com/07.matt.Temp.sets.html>

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

# **EXHIBIT**

**30**

**From:** Benoit, Peter (TPUSA) <peter.benoit@tempurpedicretail.com>  
**Sent:** Monday, August 27, 2007 10:05 AM  
**To:** McCarthy, Bob (TPUSA) <bob.mccarthy@tempurworld.com>  
**Subject:** Cardi's Meeting recap

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Bob,

Here's a recap of the early morning meeting at Cardi's this morning.

I received a call last week from Joe Casey asking if I could meet with Nick Cardi this morning at 8:00 AM. When I agreed and asked for the purpose, I was told that Nick wanted to discuss adjustable bed bases and returns and that he was meeting with all of the vendors.

I ran a business review and saw that we had had 1 return this year with 156 bases sold and that we didn't have any returns to us last year at all.

When we sat down with Nick, I was told by Nick that our adjustable base returns to Cardi's from their customers was 46%. Shocked, I explained to Nick that this was the first that I was made aware of the issue and that I was aware of only 1 return for warranty reasons in 2007. He told me that he was unaware of the issue himself until last week. I asked if Leggett and Platt had had the opportunity to try and correct the issues and he told me that "Leggett and Platt were a joke." I explained that we occasionally have an issue with a base, but that any issues were isolated and that 46% was a number that wasn't even imaginable. From Nick's comments, it seems that any base that made it to a customer's house and didn't work was taken back. I believe that many of these issues would have been correctable by programming the base or by a call to Leggett's Service Center. When I said this, I was again told that Leggett was a joke. I talked about the upcoming addition of another vendor of adjustable bases in January. However, Nick said that he was making a decision today on adjustable bed bases and that either we took back all of the units for credit or he was dropping the adjustable bed base SKU. When I offered to work with them and Leggett on getting the units fixed, I was told that it wasn't an option now since the units had been damaged or soiled with the returns and trips to their clearance store. At that point, he told me that he had every other vendor coming in for the same meeting and that they had the same option. However, Nick already has plans to buy power bases directly from China and mentioned that there were 20 other retailers in a group to do the same.

After the discussion on bases, Nick hit me with another Sleepy's discount issue. (Joe also handed me two more that Nick wasn't aware of). Nick said that the issue with Sleepy's was constant and that they were tired of our position to do nothing on it. I explained that every issue was passed onto management and handled at that level. I assured him that this issue does not go unaddressed and that we approach every pricing issue with any account seriously. His comment was that it was obvious that we don't and that our policy "was for shit, since the issues continue constantly with Sleepy's." His belief is that Sleepy's is so big and generates so much volume, that we close an eye towards them. Because of this, Nick said that they "planned on dropping our prices to be competitive and that they would advertise it." At this point, I reviewed our policies on selling to accounts that discount from our suggested retail prices. I explained that he was welcome to sell our product for whatever prices he wanted to, but that if those prices were below our suggested retail prices and it was not an isolated incident, that Tempur-Pedic would decline to continue selling to Cardi's. Nick said that Sleepy's was a constant issue and not an isolated one and that he was willing to go to court over the issue and that he would bring every account and issue into it." I again assured him that any pricing policy issue is handled the same and every one is addressed. I asked him to refrain from altering his policies and pricing. I stated that he was a very important retailer to us and that we have had a good partnership up until this point. He again commented on the ineffectiveness of us policing our pricing policy and continued issues. I offered to do everything I can to keep their service consistent and good. I also offered to have senior management call him to discuss our policies further. Nick's comment was that "he would give the call to the equivalent level in his store as he received the call from. If a call comes from Rick or maybe Todd, I think Nick would take it. If Tom or Bob calls, I doubt that he would take the call. I do think that a phone call is warranted on the pricing policy and what we do to monitor participation and handle non-compliance.

I think the frustration over finding out about a storewide breakdown that could lead to the adjustable bed issues from every vendor going unaddressed led to Nick's overreaction of the Sleepy's pricing issues. Nick understands that the issues not being addressed immediately created a situation where Cardi's would have to take financial responsibility for the returns. That being said, I have received 5 quotes/sales slips and two separate calls on pricing policy deviations at Sleepy's in the past 5 days. The pricing issues seem to be coming with more regularity recently. Also, Raymour & Flanagan's was mentioned and Nick was not excited about our decision to open them coupled with their proximity to their stores. This is another major retailer opening in their area and will take sales from their stores without question.

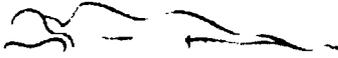
My conversation with Joe following the meeting was that they would not be changing the pricing and that he would be

addressing it with Nick when the vendor meetings were over.

## **Pete Benoit**

Territory Sales Manager  
Tempur-Pedic North America, Inc.

859-221-2978 Cell



**TEMPUR**

*"Changing the way the world sleeps!"<sup>®</sup>*

# **EXHIBIT**

**31**

**From:** Ginsburgh, Joe (TPUSA) - joe.ginsburgh@tempurpedicretail.com  
**Sent:** Monday, March 10, 2008 6:44 AM  
**To:** 'Jason @OurCountryHearts.com'  
**Cc:** McCarthy, Bob (TPUSA) - bob.mccarthy@tempurworld.com; Cowie Jr, Paul (TPUSA) - paul.cowie@tempurworld.com  
**Subject:** FW: Raymore & Flannigan Breaks Trust  
**Attach:** Raymore and Flannigan Coupon.jpg

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This we be looked into and addressed.

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

 Right click on the image to save it to your computer.

**From:** Jason Shaw [mailto:Jason@OurCountryHearts.com]  
**Sent:** Sunday, March 09, 2008 11:24 AM  
**To:** Ginsburgh, Joe (TPUSA)  
**Cc:** ebs@OurCountryHearts.com  
**Subject:** Raymore & Flannigan Breaks Trust

Joe,

We just had a customer come in here this morning who had gone to **Raymore & Flannigan** to look at Tempurpedic mattresses. They told him that he's lucky because they're having a **"10% Off Sale on Tempurpedic today only."** He was then handed a coupon (not mailed).

I've scanned that coupon and attached it. Of course it does not mention Tempurpedic however this customer was told specifically that they'd honor it if he came back "today and today only."

**He was here to ask us match this price because he'd rather buy it from us. Of course we declined!**

**We cannot have this happening! This is exactly what all your legal documentation is meant to avert and yet here we go! The small guys like us stick to it and then the big guy comes in and takes over – using predatory**

**pricing and cheapening the good! I'm not happy about this!**

Jason

**From:** Ginsburgh, Joe (TPUSA) [mailto:joe.ginsburgh@tempurpedicretail.com]  
**Sent:** Monday, March 03, 2008 11:17 PM  
**To:** Ginsburgh, Joe (TPUSA)  
**Subject:** FW: Important Tempur-Pedic Dealer Update & March . Newsletter(Open immediately). Joe Ginsburgh

**Important Updates**

**March 3, 2008.**

**Tempur-pedic Dealers:**

**Tempur-Pedic's Direct Marketing makes major change in Policy on 90 day in home trial period.**

**The change essentially requires a customer to give the mattress a min. of 30 nights before it can be considered for comfort return or satisfaction return.**

**The actual verbiage being used is:**

**"We will give you 90 days to try our mattress in your bedroom at our risk, and all we ask is that you give it at least 30 days to transition from your old bedding to this break through technology so you can see the results for yourself!"**

**Tempur-Pedic does not require its dealers to offer such a policy however; we do strongly encourage dealers who offer a comfort return policies to adopt this concept. Currently, many of the most successful retailers have already build restrictions of this nature in their policies.**

**Open March. Newsletter.**

**Open information on new AlluraBed, act now to get a 50 % floor model mattress discount. (Available April.'08)**

**Ergo Adjustable bases:**

**There have been no price changes, just the sku numbers.**

Dealer should be selling off your existing adjustable base floor models and replacing it with your new Ergo system Base. 20% floor model discount are available but must be approved by your Territory Sales Manager. Please email or call cell. (Joe Ginsburgh).

If you are not in receipt of the new dealer price list with the new Ergo base numbers; please contact customer service: (888)-298-4123 or my cell: (859)321-6327. (See printable copy above).

You will be receiving the new Bed end insert pages for your foot protectors. See complete printable copy above.

For those dealers that are enrolled in (B2B), ordering direct on line program, that system has already been updated to accept Ergo system bases only.

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Tempur-Pedic management announced at market a new policy for, ( B2B), ordering direct on line program.

For dealers that are enrolled in that program; the minimum dollar order required, changes to \$4,000 from \$5,000 to qualify for free freight.

Any order not received thru B 2 B will still be subject to the 5K minimum.

If you are not a dealer currently enrolled in this program;

Please take a few moments to open and review the (b2B) ordering direct on line information see above attachments.

If you have problems opening the two word doc. Registration forms, once you open the doc. go to view on the tool bar and click normal.

You can chose to fax in the enrollment information or use the on line attachment above.

***Ability to Place Orders Directly into the System.... No More Faxing!***

***Receive Orders Faster... Improves Service To Customers!***

***Track Your Own Orders... Reduces Phone Calls to You and Customer Service!***

***Quick Order Forms... Streamlines Entry Process!***

***Easy To Use and User Friendly...***

I want to thank you for your business and as always appreciate your support for Tempur-Pedic products.

Sincerely,

*Joe Ginzburg*  
**Territory Sales Manager**  
**(Upstate, N.Y.)**  
**Cell (859) 321-6327**  
**Fax (518) 456-6325**

# **EXHIBIT**

**32**

**Audio Transcript Pages  
Sleepy's**

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FEMALE: Smells like a new bed.

Hello.

MALE: (Unintelligible.)

FEMALE: Thank you.

MALE: Welcome to Sleepy's. How  
can I help you?

FEMALE: Looking for some  
discounts on --

FEMALE 2: Tempur-Pedic.

FEMALE: -- Tempur-Pedic.

MALE: Tempur-pedic.

FEMALE: Yeah.

MALE: Wrong bed to pick a  
discount on.

FEMALE: What? Wrong bed?

MALE: Yeah.

FEMALE 2: Why is that?

MALE: They never have a  
discount on the Tempur-pedic.

FEMALE: Never?

MALE: Never.

FEMALE: That's a strong word.

MALE: Yeah. They actually tell  
us how much to sell it for. All we

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VOICE TWO: Ronnie.

MALE: Ronnie?

VOICE TWO: Yes. That's my name.

MALE: So, which mattress are  
you looking for today.

VOICE ONE: Well, I definitely  
want the Tempur-Pedic.

MALE: Okay.

VOICE ONE: And I'm assuming --  
what do you have, king, queen.

MALE: Well, it comes in any  
different size.

VOICE ONE: Okay.

MALE: (Mumbled) Tempur-Pedic.

VOICE ONE: Okay.

MALE: One, uh, Tempur-Pedic is  
a price-control company, which means  
that everywhere you go, the price  
stays the same. As of today is  
(unintelligible), in the next eight  
their beds by 100, 200 dollars extra  
and it's gonna be, wherever you go,  
it's gonna actually be consistent with  
these prices.

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VOICE ONE: Really?

MALE: Yeah.

VOICE ONE: Really? Why is that?

MALE: I'm not too sure why the price increases, but one of the -- whoever deals with Tempur-Pedic, whatever they do, it's uniform with everywhere --

VOICE ONE: Really?

MALE: -- you go. Um, we do have a lot of different Tempur-Pedics and that bed, if you come to Sleepy's and actually shopping at Sleepy's, then you get a chance to actually lie on the bed, see what it feels, as opposed to the little sample that everyone show you.

VOICE ONE: Right.

MALE: So what I will do is, to (unintelligible) --

VOICE ONE: Okay.

MALE: -- give it a shot, lie in it, see how it feels, because's

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they would tell you.

VOICE ONE: Okay.

MALE: These are all the  
different beds that -- Sleepy's  
carries the most selections as far as,  
um --

VOICE ONE: All right.

MALE: Okay?

VOICE ONE: Um-hm.

MALE: Um, this one here is  
called the Celebrity. If you look  
right here --

VOICE ONE: Um-hm.

MALE: -- the price of the  
Celebrity queen, this is the queen --

VOICE ONE: Um-hm.

MALE: -- the set, which is the  
mattress and box spring, is --

VOICE ONE: 3499?

MALE: -- the queen set, it's  
price-controlled.

VOICE ONE: Um-hm.

MALE: Um, the thing with --  
Tempur-Pedic is -- I was just

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I -- what vendor -- what vendor I go to, it's gonna be that much?

MALE: No. Tempur-Pedic.

VOICE ONE: Oh, Tempur-Pedic?

Oh, I see. Okay.

MALE: We -- our shipping price is 69.99.

VOICE ONE: Uh-huh.

MALE: So the concept is, Tempur-Pedic, no matter where you go, the price stays the same. When they increase the price everyone has to price-increase with them. Um, what we can do, uh, with Tempur-Pedic, whereas the price can't be flexible, we can actually -- we have a promotion going on where they give you a free teddy bear.

VOICE ONE: Um-hm.

MALE: We can actually throw in two pillows, which goes for like \$175 apiece, and we give you a \$250 value of gifts with the purchase.

FEMALE ONE: Okay.

1  
2 MALE: I was hoping that -- is  
3 there any discounts that you guys can  
4 give me on that?

5 PHONE VOICE: We don't discount  
6 the price of the mattress.

7 (Unintelligible) raise the prices  
8 (unintelligible), but we don't  
9 discount the prices.

10 MALE: So what if I go to a  
11 different, um, store or something like  
12 that?

13 PHONE VOICE: They'll give the  
14 exact same price. No matter where you  
15 go, it would be the same price. If  
16 it's not, then it's not a Tempur-Pedic  
17 or it's a returned Tempur-Pedic. But  
18 it's a fixed price.

19 MALE: Okay. All right. No  
20 problem. I thank you so much.

21 VOICE ONE: Thank you, Matt?  
22 What's his name?

23 MALE: What's your name?

24 (No response.)

25 VOICE ONE: He hung up.

1

MALE: No matter where you go --

2

3

VOICE ONE: I guess he was the

4

boss, huh?

5

MALE: Well, I don't know. It's

6

just Tempur-Pedic.

7

VOICE ONE: Oh, Tempur-Pedic.

8

MALE: Instead of us going down,

9

it actually increases. No matter

10

where you go, the price is fixed.

11

VOICE ONE: If I wanted to call

12

and ask him, I could also --

13

MALE: You can call on your cell

14

phone right now -- call Tempur-Pedic.

15

VOICE ONE: Uh-huh. It's just

16

that my husband might want to call and

17

verify.

18

MALE: No problem.

19

VOICE ONE: I think so.

20

MALE: So how soon would you

21

need to get this Tempur-Pedic?

22

VOICE ONE: Well, within the

23

next, huh, couple of weeks.

24

MALE: Well, here's the thing --

25

here's the thing we can do.

1  
2 explaining to you before the price  
3 increase --

4 VOICE ONE: Right.

5 MALE: -- that's happening. Um,  
6 when you get the mattress from  
7 Sleepy's, our advantage of shopping at  
8 Sleepy's is that, one, you come in and  
9 lie and you try the beds.

10 VOICE ONE: Right, right.

11 MALE: Two, we can get it, a day  
12 to two days. It takes about three  
13 weeks with Tempur-Pedic.

14 VOICE ONE: Um-hm.

15 MALE: Their shipping fee is 175  
16 to 200 dollars.

17 VOICE ONE: Okay.

18 MALE: Ours is 69.99. And the  
19 price stays the same, no matter where  
20 you go.

21 VOICE ONE: Okay. You mean the  
22 shipping price also?

23 MALE: Yes. Their shipping  
24 price is 175 to 199 dollars --

25 VOICE ONE: No matter where

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I -- what vendor -- what vendor I go to, it's gonna be that much?

MALE: No. Tempur-Pedic.

VOICE ONE: Oh, Tempur-Pedic?

Oh, I see. Okay.

MALE: We -- our shipping price is 69.99.

VOICE ONE: Uh-huh.

MALE: So the concept is, Tempur-Pedic, no matter where you go, the price stays the same. When they increase the price everyone has to price-increase with them. Um, what we can do, uh, with Tempur-Pedic, whereas the price can't be flexible, we can actually -- we have a promotion going on where they give you a free teddy bear.

VOICE ONE: Um-hm.

MALE: We can actually throw in two pillows, which goes for like \$175 apiece, and we give you a \$250 value of gifts with the purchase.

FEMALE ONE: Okay.

# **EXHIBIT**

**33**

**AUDIO TRANSCRIPT PAGES  
1-800 MATTRESS**

1  
2 VOICE ONE: I'm now in front of  
3 1-800-Mattress, 136 Montague Street,  
4 1-800-Mattress. I'm about to enter to  
5 inquire about their Tempur-Pedic  
6 mattress prices.

7 Hello.

8 MALE: Hello.

9 FEMALE VOICE: You have  
10 Tempur-Pedic mattresses?

11 MALE: Yes, we do.

12 (Unintelligible.)

13 FEMALE VOICE: Um-hm.

14 (Static.)

15 FEMALE VOICE: (Unintelligible)  
16 the small ones.

17 MALE: (Unintelligible) the  
18 little ones?

19 FEMALE VOICE: Yeah. The little  
20 ones. Uh, I guess I could get one for  
21 my son's room, huh? That's, uh --  
22 that would be small one.

23 MALE: I have all sizes -

24 FEMALE VOICE: Yeah. You think  
25 so -- yeah.

1

MALE: (Unintelligible.)

2

3

(Static.)

4

MALE: (Unintelligible.)

5

FEMALE: Symphony classic.

6

MALE: (Unintelligible.)

7

FEMALE: Hm?

8

MALE: (Unintelligible.)

9

FEMALE VOICE: Oh, you only have

10

these two? Um, that would be good.

11

I'm just looking for my son. He's

12

just eleven. This should be good for

13

an eleven-year-old.

14

MALE: Queen-size.

15

(Unintelligible.)

16

FEMALE VOICE: Okay. How much

17

are they?

18

MALE: This one in the

19

queen-size, is 11 -- 1,200.

20

FEMALE VOICE: Um-hm.

21

MALE: Queen-size. And this one

22

is 1,100 in the queen-size.

23

FEMALE VOICE: And do you have

24

sales today?

25

MALE: This Tempur-Pedic, they

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don't run sales.

FEMALE VOICE: No?

MALE: No.

FEMALE VOICE: Not at all?

MALE: Not at all.

FEMALE VOICE: Why?

MALE: Because it's like the  
Tempur-Pedic brand and the -- they  
don't negotiate price and we cannot  
touch their price. Is one price  
everywhere you go.

FEMALE VOICE: It's crazy.

MALE: Yeah.

FEMALE VOICE: I mean, that's  
like a written policy or something or  
something with them?

MALE: Yeah. For the  
Tempur-Pedic it is.

FEMALE VOICE: Yeah? They send  
you a form and say you can't do it?

MALE: That's our price, that's  
it.

FEMALE VOICE: Wow.

MALE: Nobody gets -- I mean, if

1  
2 you go through Sleepy, Macy's, same  
3 price.

4 FEMALE VOICE: Same price.

5 SECOND VOICE: So what benefit  
6 does she have for selling it?

7 FEMALE VOICE: Yeah, why would  
8 you sell it?

9 MALE: Well, I don't know the  
10 benefit that the company gets.

11 FEMALE VOICE: Um-hm.

12 SECOND VOICE: Yeah, you have no  
13 markup --

14 MALE: I believe -- no, they  
15 didn't (unintelligible) different  
16 sales, like -- whatever. Same flat  
17 price.

18 FEMALE VOICE: Same flat price?

19 MALE: Yes.

20 FEMALE VOICE: Wow, that's  
21 really something.

22 Says Tempur-Pedic  
23 pressure-relieving Swedish mattresses  
24 and pillows. Swedish.

25 SECOND VOICE: Swedish.

# **EXHIBIT**

**34**

**AUDIO TRANSCRIPT PAGES  
LEVITZ FURNITURE STORE**

1  
2 FEMALE VOICE: The address is, I  
3 think it's 486.

4 (Noise, static.)

5 VOICE ONE: Okay. The time is  
6 now 3:00 p.m., I'm about to enter 486  
7 Fulton Street, a Levitz furniture  
8 store.

9 SECOND VOICE: I'm going  
10 downstairs and see what they have.

11 VOICE ONE: Lower level, bed and  
12 mattresses. Main floor, bed and  
13 mattress. Okay.

14 (Background noise, static.)

15 VOICE ONE: Thank you. More  
16 living furniture up here. They've got  
17 it all mixed up.

18 (Unintelligible.)

19 VOICE ONE: Don't you just love  
20 the smell of new furniture?

21 (Unintelligible.)

22 VOICE ONE: (Unintelligible.)  
23 Okay. Seems like really spread out.

24 (Unintelligible.)

25 VOICE ONE: Right. Right. And

1  
2 Labor Day sales, I mean, did I miss  
3 any?

4 MALE: Well, nothing.  
5 Tempur-Pedic sells itself. It -- it's  
6 something that they don't normally run  
7 on sale. It's like Sterns & Foster  
8 mattress. They don't them on sale  
9 either because they normally sell it,  
10 just the comfort of it. Anything else  
11 has the same kind of comfort but they  
12 -- they promote them different. Those  
13 things they get -- they do for  
14 themselves.

15 VOICE ONE: Uh-huh. Any store  
16 discounts? I mean, do you --

17 MALE: How do you mean store  
18 discount?

19 VOICE ONE: You don't bring them  
20 down for certain sales or anything?

21 MALE: Not really.

22 VOICE ONE: No? Hm. I'm just  
23 trying -- I was hoping I could get a  
24 decent, you know, some kind of sale,  
25 holiday sale or something on it. They

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don't come down at all, you're saying?

MALE: Not normally.

(Unintelligible) not normally. See,  
like us, we got Serta that goes on  
sale, we got Sealy that goes on sale.  
But Tempur-Pedic and Sterns &  
Foster --

VOICE ONE: Um-hm.

MALE: -- it's firm.

VOICE ONE: Hm. Well -- so  
1899.

SECOND VOICE: You got full  
(unintelligible), right?

MALE: These -- all these are  
fulls on this whole floor, they  
(unintelligible).

SECOND VOICE: Oh.

MALE: Queens are that size,  
they be -- queens are six inches  
bigger than the full. So, it's not  
that much bigger.

VOICE ONE: Um. And they're  
what -- and the price difference?

MALE: What?

# **EXHIBIT**

**35**

**AUDIO TRANSCRIPT PAGES  
RAYMOUR & FLANIGAN**

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INVESTIGATOR: This is  
Investigator Peter Eiss of the New  
York State Attorney General's office,  
Buffalo. Today is September 17, 2007.  
It is 2:38 p.m. I am about to enter  
Raymour & Flanagan Furniture at 1359  
Niagra Falls Boulevard, Amherst, New  
York.

(Entering store.)

SALESMAN: How you doing today?

INVESTIGATOR: Good. How are  
you?

SALESMAN: Oh, not bad.

INVESTIGATOR: I'm looking for a  
mattress.

SALESMAN: Oh --

INVESTIGATOR: Actually, two  
twins and a queen.

SALESMAN: Sure.

INVESTIGATOR: My wife's got me  
out here and she's interested in the  
Tempur-Pedics.

SALESMAN: Right.

INVESTIGATOR: It's supposed to

1

SALESMAN 2: Okay.

2

3

INVESTIGATOR: And the  
foundation is the box springs?

4

5

SALESMAN 2: It's not a box  
spring.

6

7

INVESTIGATOR: Okay.

8

SALESMAN 2: It's a foundation.

9

INVESTIGATOR: Oh, all right.

10

SALESMAN 2: Okay?

11

INVESTIGATOR: Okay.

12

SALESMAN 2: It's a rigid

13

platform, okay? You don't put this on  
a box spring.

14

15

INVESTIGATOR: Okay. Am I

16

better to wait for these to go on

17

sale? I know mattresses go on sale

18

all the time.

19

SALESMAN 2: Actually, this is

20

what we have to sell them for. This

21

is -- Tempur-Pedic has the most --

22

everybody sells them at the same

23

price.

24

INVESTIGATOR: Oh, they do?

25

SALESMAN 2: Yeah. They will

1  
2 take away your -- the product if they  
3 catch you selling it at a discount.  
4 Whether you buy it on line -- no  
5 matter where you buy it from, this --  
6 these mattresses -- this is what these  
7 mattresses are supposed to sell for.

8 INVESTIGATOR: No matter where I  
9 go or who --

10 SALESMAN 2: Same price, yeah.  
11 They have the same price.

12 INVESTIGATOR: Okay.

13 SALESMAN 2: There have been a  
14 few retailers busted on it.

15 INVESTIGATOR: Yeah?

16 SALESMAN 2: Tempur-Pedic will  
17 take it away. Okay? This is what you  
18 -- this is what you sell.

19 INVESTIGATOR: Okay.

20 SALESMAN 2: Now, I got similar  
21 products that are less expensive.

22 INVESTIGATOR: No, my wife  
23 specifically -- she specifically --

24 SALESMAN 2: Like Sealy, over  
25 there. So the Sealy product is very

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SALESMAN 2: Yeah.

INVESTIGATOR: And the Sealy will go on sale, but this won't? Okay.

SALESMAN 2: We're not supposed to do any discounting on these. They are very strict -- we gotta be -- 'cause we're really pushing, because we are catching other vendors, and reporting them to Tempur-Pedic.

INVESTIGATOR: Oh, really?

SALESMAN 2: Tempur-Pedic is cracking down on -- I mean, if you go on line with Tempur-Pedic, you will see these price points. Okay?

INVESTIGATOR: Okay.

SALESMAN 2: And we -- and most vendors now are -- are really back -- sticking to it, because Tempur-Pedic is just extremely --

INVESTIGATOR: So if you sell it for less than this, they'll take the product away?

SALESMAN 2: If you get caught,

1  
2 yeah. They can pull the line. You  
3 want to know something? We have 70  
4 (intelligible) in six days.

5 INVESTIGATOR: Okay.

6 SALESMAN 2: And where you're  
7 here or our showroom in Manhattan, the  
8 prices are the same.

9 INVESTIGATOR: Exactly the same.  
10 Okay.

11 SALESMAN 2: And it goes for  
12 anything. Everything here is the same  
13 price --

14 INVESTIGATOR: We've bought  
15 quite a bit from -- uh, from the  
16 store here, and I prefer to buy  
17 here --

18 SALESMAN 2: Okay.

19 INVESTIGATOR: -- as long as the  
20 price guaranteed.

21 SALESMAN 2: The price is  
22 guaranteed, number one, because we do  
23 have that right on our tags here.  
24 It's right on our tags, that we  
25 guarantee it. We give you the lowest

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are standardized across the board.

INVESTIGATOR: Okay.

SALESMAN 2: So if you do find it for less, that's fine. Then we'll honor that.

INVESTIGATOR: Can I just write down --

SALESMAN 2: Yeah.

INVESTIGATOR: This is the delux bed here?

SALESMAN 2: Delux.

INVESTIGATOR: Okay.

SALESMAN 2: And if you can find it for less, let me know. I would be -- I would report it to Tempur-Pedic. Okay? This is the rhapsody.

INVESTIGATOR: Okay.

SALESMAN 2: This is one of the best sellers. But they do have, like 12 models.

INVESTIGATOR: The rhapsody, now, that's 20 --

SALESMAN 2: 2,999.

INVESTIGATOR: 2,999.

# **EXHIBIT**

**36**

**Audio Transcript Pages**  
**Bon-Ton**

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FEMALE: That's the 9-inch foam.

MALE: 9-inch foam.

FEMALE: And the queen is -- in the 11-inch is 2,399.

MALE: 2,399. Okay. And that comes with the box springs?

FEMALE: Yeah, um-hm. A set.

MALE: Okay. Right. Am I better to wait for them to go on sale?

FEMALE: They're always at this price and there's no extra discounts off of them.

MALE: So you don't put these on sale like you do the other ones?

FEMALE: No, they're always at this price here.

MALE: They're never on sale?

FEMALE: Uh-uh.

MALE: You always have anything one sale?

FEMALE: Well, it's the manufacturer's request that we sell them at this -- this is the everyday price.

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MALE: They meant to do this?

FEMALE: Yeah, this is the agreement with the manufacturer.

MALE: Okay. All right.

FEMALE: Yeah.

MALE: So I buy them, I come back here in a month, it's not gonna be sale, is it?

FEMALE: It might be higher. It depends. You know, if there's a price increase.

MALE: Okay. Right. But you can't give a sale price or anything like -- (unintelligible).

FEMALE: Actually, no. We're out of them. We're waiting for the company to send us some more. But, yeah, I'm out of them.

MALE: Do you sell them pretty good?

FEMALE: We have some people like how it feels, a lot of people don't. You know, it depends.

MALE: Seems like a lot of

1  
2 money, if I should buy one and not  
3 like it -- am I stuck with it?

4 FEMALE: Pretty much.

5 MALE: My wife's heard about  
6 them. I don't know what she actually  
7 knows. They're foam, right?

8 FEMALE: They're foam, yeah.

9 MALE: Yeah.

10 FEMALE: The thing is, like I  
11 said, a lot of people like how they  
12 feel, some people don't. So, you  
13 know, did she (unintelligible).

14 MALE: Yeah, her friends have  
15 been talking about it. No, she  
16 hasn't.

17 FEMALE: She should really come  
18 in and lay on it, because it's a whole  
19 different feel than a regular bed.

20 MALE: Right. The price of this  
21 is set from the manufacturer, if I go  
22 to another store shopping --

23 FEMALE: They may be. I don't  
24 know. I don't know. These are the  
25 prices that we're set at. And there's

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no extra discounts --

MALE: Are there any coupons in  
the paper?

FEMALE: No extra discounts.  
No.

MALE: No discounts.

FEMALE: That's always excluded.

MALE: Even if I had my charge  
card, something set up --

FEMALE: There is no extra  
discount. Believe me. It states it  
right on the coupons.

MALE: Okay. Okay.

FEMALE: Yeah.

MALE: And you don't have any  
brochures then?

FEMALE: No. We're waiting for  
some more to come in.

MALE: So I'm not gonna like  
find this someplace else cheaper and  
they won't be on sale here.

FEMALE: It won't be on sale  
here. If you find it someplace else  
cheaper, I can't tell you that. I

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don't know.

MALE: Okay.

FEMALE: I don't know.

MALE: But you'll get it from the manufacturer, not (unintelligible).

FEMALE: This is what the name says here on the bottom, come up with the price on.

MALE: You won't do it, you won't --

FEMALE: I won't.

MALE: Okay.

FEMALE: Because I could get fired for doing that.

MALE: We don't want you to get fired.

FEMALE: No, I kids want to eat.

MALE: Yeah, mine do, too. Everything goes on sale. It's funny those do not.

FEMALE: Well, you know, some consistency on this is good (unintelligible) bring in them in at a certain price and that's what they

# **EXHIBIT**

**37**

**AUDIO TRANSCRIPT PAGES  
MATTRESS GLEN**

1  
2 INVESTIGATOR: This is  
3 Investigator Peter Eiss of the New  
4 York State Attorney General's office,  
5 Buffalo. Today is September 17, 2007.  
6 It is approximately 4 p.m. I'm about  
7 to enter the Mattress Glen located at  
8 7660 Transit Road, Williamsville, New  
9 York.

10 \* \* \*

11 SALESMAN: Hi, there.

12 INVESTIGATOR: Hiya, how you  
13 doing?

14 SALESMAN: Good, thanks.

15 INVESTIGATOR: Okay. I'm on a  
16 mission for my wife. She wants to look  
17 at the -- I think it's the  
18 Tempur-Pedic there.

19 SALESMAN: You're on a very  
20 common mission.

21 INVESTIGATOR: Am I really?

22 SALESMAN: Many men are sent on  
23 that mission.

24 INVESTIGATOR: Queen-size. Um,  
25 what've you got, you know? Take a

1  
2 Relieve pressure points, keep you  
3 sleeping in the same spot so you don't  
4 toss and turn.

5 INVESTIGATOR: Right.

6 SALESMAN: Some people just like  
7 the feel of the other --

8 INVESTIGATOR: Now, the  
9 rhapsody, that's how much more than  
10 this one?

11 SALESMAN: That's 2,999.

12 INVESTIGATOR: That's a thousand  
13 dollars more.

14 SALESMAN Yeah.

15 INVESTIGATOR: What are the  
16 bells and whistles on there?

17 SALESMAN: Higher density foam.  
18 The other foam is measured by its  
19 weight per cubic foot.

20 INVESTIGATOR: Okay.

21 SALESMAN: This is 5-pound foam.  
22 That's the 5-pound foam as well. The  
23 other, the rhapsody, is 7-pound. So  
24 more density, more cells per square  
25 inch, more support and comfort.

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INVESTIGATOR: Okay.

SALESMAN: (Unintelligible).

INVESTIGATOR: Expensive, yeah.

Um --

SALESMAN: Good stuff is.

INVESTIGATOR: Okay. Um, do you have sales on an of them?

SALESMAN: They set price. Manufacturer sets the price.

INVESTIGATOR: Manufacturer sets the price.

SALESMAN: In fact, I just ordered a bunch, these went up. They went up by \$200 last Thursday or Friday. Thursday. And I still -- I bought some stock for the old price, so --

INVESTIGATOR: Oh, okay.

SALESMAN: It's a smart buy.

INVESTIGATOR: So this is \$200 less than it's gonna be?

SALESMAN: Yeah, that's going up. (Unintelligible) by the new ones.

1  
2 SALESMAN: Tons of them. Don't  
3 make that mistake.

4 INVESTIGATOR: It's a mistake,  
5 huh?

6 SALESMAN: (Unintelligible)

7 INVESTIGATOR: Great, the  
8 queens, huh?

9 SALESMAN: Yeah.

10 INVESTIGATOR: Okay. Sounds  
11 good. This is good though. She can  
12 try it out and it's not her cup of  
13 tea --

14 SALESMAN: That's why you do  
15 business with us.

16 INVESTIGATOR: And the price  
17 will be the same no matter where I go?

18 SALESMAN: No matter. It can be  
19 higher, but this the lowest price  
20 allowed. So they can sell them for  
21 more.

22 INVESTIGATOR: Oh, is that right?  
23 They just put a base on how --

24 SALESMAN: Can't sell them for  
25 less.

# **EXHIBIT**

**38**

**AUDIO TRANSCRIPT PAGES  
NEW YORK MATTRESS FACTORY**

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STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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In Re: Tempur-Pedic Investigation

No. IEN-07-028

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AUDIO TAPE TRANSCRIPT  
NEW YORK MATTRESS FACTORY

10-4-07

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about, uh, the price? Are they -- is this the price that's listed or --

SALESPERSON: (Unintelligible).

SUSAN WHITE: -- discounted at all or on sale at all?

SALESPERSON: It's actually a fixed pricing system. So -- do you know what size you're looking for?

SUSAN WHITE: Queen.

SALESPERSON: Queen?

SUSAN WHITE: Queen size.

SALESPERSON: The regular queen set would be 1,999 for this model. And that's would be the mattress and box, and we throw in a free frame, we could throw in two free pillows, which are usually \$150 each. But Tempur-Pedic has a fixed pricing system, so no matter where you go, it's exactly the same price and there's never any sales on them.

SUSAN WHITE: There's never any sales?

SALESPERSON: No. They never

1  
2 have sales. They're the same no  
3 matter where you go.

4 SUSAN WHITE: Oh.

5 SALESPERSON: Kind of like --  
6 there's certain car dealers -- car  
7 companies that (unintelligible) you  
8 know, the base number and then  
9 whatever else you want to add to it,  
10 goes up from there.

11 SUSAN WHITE: So there's never a  
12 sale, never a discount, even at  
13 another store?

14 SALESPERSON: No, they don't --  
15 they don't allow us to.

16 SUSAN WHITE: They don't allow  
17 you go?

18 SALESPERSON: No, unless the  
19 store wants to risk losing -- losing  
20 their -- dealing with Tempur-Pedic --

21 SUSAN WHITE: Oh. Okay. What  
22 about on-line, are they the same price  
23 on-line?

24 SALESPERSON: Same price, that's  
25 not (unintelligible) something else

1  
2 they get, but yeah, on-line it would  
3 be the same. (Unintelligible) you can  
4 look up any Tempur-Pedic. Look up any  
5 Tempur-Pedic web site, and they should  
6 have all the same thing.

7 SUSAN WHITE: Oh. Okay. I just  
8 wondered. I know you guys take the  
9 lowest possible prices, so whatever  
10 you're selling, if I went to another  
11 store, it would be the same?

12 SALESPERSON: Yeah, it should  
13 be, but -- unless -- unless they're  
14 selling them under, they should be.

15 SUSAN WHITE: What would happen  
16 if you sold them --

17 SALESPERSON: Uh, well, they  
18 probably wouldn't -- everybody's  
19 keeping everybody else honest, so  
20 usually if we were to drop the price,  
21 we would have (unintelligible) in a  
22 couple days. But, uh --

23 SUSAN WHITE: They would do  
24 what?

25 SALESPERSON: Probably call

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Tempur-Pedic on us.

SUSAN WHITE: Oh, okay.

SALESPERSON: Since we're not allowed to go down and somebody else does have down and (unintelligible) want to take a gamble.

SUSAN WHITE: Right. So it's a written policy to you, that --

SALESPERSON: Yes. It's a fixed price and we're not allowed to (unintelligible) the prices.

SUSAN WHITE: Um-hm. All right. Okay. So let's get this paperwork and --

SALESPERSON: There's two beds that we don't have here in there store but we can order, if you like them, you know.

SUSAN WHITE: Okay. Do you have a business card or anything that --

(Noise.)

SALESPERSON: (Unintelligible) up here in the north, so you can call any other stores, if you'd like to.

# **EXHIBIT**

**39**

**AUDIO TRANSCRIPT PAGES  
MOORADIAN'S INC.**

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STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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In Re: Tempur-Pedic Investigation

No. IEN-07-028

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AUDIO TAPE TRANSCRIPT

MOORADIAN'S, INC.

10-4-07

1  
2 that surrounds you, has just a little  
3 more memory foam in it. Probably just  
4 a little bit softer than this one.

5 SUSAN WHITE: Okay.

6 SALESPERSON: I would definitely  
7 say firm. One of these is, you know  
8 (unintelligible).

9 SUSAN WHITE: Okay. Now, are  
10 they -- are they on sale, did you say?

11 SALESPERSON: The Tempur-Pedics,  
12 they are what they call  
13 price-protected. So Tempur-Pedic says  
14 you have to sell them at this price,  
15 not below it. A lot of people jack  
16 them up and then lower them down to  
17 the retail, the lowest retail -- we  
18 sell the lowest --

19 SUSAN WHITE: Oh.

20 SALESPERSON: We just sell them  
21 at the lowest retail already. A lot  
22 of companies -- like this one here,  
23 the queen is 1,899. A lot of  
24 companies say 2,499 and they'll sell  
25 it to you for 1,999. (Unintelligible)

1  
2 here is on sale. Everything else is,  
3 the Tempur-Pedic -- we're not allowed  
4 to sell it below this.

5 SUSAN WHITE: What would happen  
6 if you did?

7 SALESPERSON: They might pull  
8 our license.

9 (Unintelligible.)

10 SUSAN WHITE: So all the stores  
11 have the same price and --

12 SALESPERSON: Um, all the stores  
13 can't sell it below this price.

14 SUSAN WHITE: Okay.

15 SALESPERSON: Most stores don't  
16 advertise it at that price. Most of  
17 them try to (unintelligible) it and  
18 say okay, we'll give you a sale price.

19 SUSAN WHITE: Okay.

20 SALESPERSON: It will never be  
21 lower than that. Okay? And we'll  
22 give you two free neck pillows.

23 SUSAN WHITE: Two free neck  
24 pillows?

25 SALESPERSON: Um-hm.

# **EXHIBIT**

**40**

**AUDIO TRANSCRIPT PAGES  
BOSCOV'S**

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1  
2           SUSAN WHITE: Today is October  
3 11, 2007. This is Investigator Susan  
4 White. This recording is being made  
5 for Tempur-Pedic case number  
6 IEN-07-028. I will be going into the  
7 Boscov's Department Store in Crescent  
8 Park, New York.

9           (Pause.)

10          SW: It is 4:15 and I am  
11 entering the Boscov's Department  
12 Store.

13          (Noise.)

14          (Static.)

15          (Unintelligible voices.)

16          (Noise.)

17          (Unintelligible voices.)

18          (Sounds on PA system.)

19          (Noise.)

20          (Unintelligible voices.)

21          SW: Can you help me with some  
22 mattresses, please?

23          SP: Why, sure.

24          SW: I'm okay.

25          SP: Yup. (Unintelligible).

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SW: Tempur-Pedic.

SP: Have you laid on one  
before?

SW: Yeah, I have. And I  
(unintelligible).

(Laughter.)

SP: This one (unintelligible)  
another style, so you can get a  
(unintelligible).

(Unintelligible).

SP: Were you here  
(unintelligible) before or how --

SW: Uh, I looked a them in  
another store. I just -- um -- like a  
clearance model. That wasn't --  
um --

(Unintelligible).

SW: Are they on sale at all?

SP: They're not -- Tempur-Pedic  
will not allow for sales. And at one  
point they allowed us to give two  
pillows with a mattress away. That  
stopped and -- they put a stop to it.  
So now, um, we're offering a

1  
2 three-year payment plan with no  
3 interest. You just make your minimum  
4 payment but you have three years to  
5 pay it off. And that's all we can  
6 offer other than the wonderful  
7 (unintelligible)

8 (Voices talking over each  
9 other.)

10 (Unintelligible.)

11 SP: Now it's all on the  
12 (unintelligible.)

13 (Voices talking over each  
14 other.)

15 SP: So I'll (unintelligible)  
16 this memory foam in the mattress,  
17 which it just doesn't feel the same.  
18 I know -- I mean, we have all foam  
19 mattresses with Visco in them, but  
20 they just don't feel the same. So I  
21 guess that's pretty much what you're  
22 paying for (unintelligible). That may  
23 be a good thing if you  
24 (unintelligible) sell on the open  
25 market (laughter) black market

# **EXHIBIT**

**41**

**AUDIO TRANSCRIPT PAGES  
TEMPUR-PEDIC MATTRESS.COM**

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Today is Tuesday, September 25, 2007. The time is now 1200 hours. I am Investigator Karen Richardson, assigned to the New York State Attorney General's office. I am assisting in an investigation in the Anti-Trust Bureau involving Tempur-Pedic Mattress, also known as Investigation Bureau Number 07-028.

I am about to call Tempur-Pedic Mattress at 1-888-811-5053, and attempt to get a discount on their mattress. I will stop the recording device in order to deactivate it and then I will reactivate it again.

(Dialing phone.)

TEMPUR-PEDIC: Thank you for calling Tempur-Pedic. This is Casandra. How may I help you?

KAREN RICHARDSON: Yes, I'm calling regarding purchasing a mattress.

TEMPUR-PEDIC: Uh-huh.

KAREN RICHARDSON: Um, I think

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it's called celebrity.

TEMPUR-PEDIC: Okay.

KAREN RICHARDSON: And I want to know how much the price is.

TEMPUR-PEDIC: Um, what size, ma'am?

KAREN RICHARDSON: Queen size.

TO VOICE: And do you need the mattress and foundation or the mattress only?

KAREN RICHARDSON: Um, I would like the mattress and foundation.

TEMPUR-PEDIC: Okay. It'd be 3,499.

KAREN RICHARDSON: 3,499. Now, I have been to some of your stores, and, um, they don't have any sales or discounts. I was wondering, do you offer discounts?

TEMPUR-PEDIC: No, ma'am. The prices are the same, regardless of where you go. It's just the trial periods that are different.

KAREN RICHARDSON: The trial

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periods?

TEMPUR-PEDIC: Yes.

KAREN RICHARDSON: Uh, could you explain that?

TEMPUR-PEDIC: Well, when you order directly through Tempur-Pedic, it's a money-back guarantee. If you're not satisfied you're just responsible for the one-time shipping fee. On the celebrity model it's 199, but you've got three months to test it out to make sure you're completely satisfied. If you wanted to exchange it, you could. There's wouldn't be a trial period on the second mattress.

KAREN RICHARDSON: Um-hm.

TEMPUR-PEDIC: Or you could just return it to us. If you go to the stores, not all stores extend a trial period. That's just something you would need to speak to them about.

KAREN RICHARDSON: Oh, I see. But the prices are gonna be the same in all the stores?

1  
2 TP VOICES: The prices are the  
3 same.

4 KAREN RICHARDSON: Okay. Now, I  
5 know this is not true with other  
6 mattresses. Is there any specific  
7 reason why you don't give any  
8 discounts?

9 TEMPUR-PEDIC: Nobody gives a  
10 discount on a Tempur-Pedic, ma'am.  
11 The prices are always the same.

12 KAREN RICHARDSON: I see. Okay.  
13 Um, and they're not -- and there's no  
14 place, no sales or anything?

15 TEMPUR-PEDIC: We never have a  
16 discount on the products. The prices  
17 are always the same.

18 KAREN RICHARDSON: Wow, they're  
19 always the same. Okay. Um -- all  
20 right. What is -- you have something  
21 called a low-profile foundation. Is  
22 that like a box spring?

23 TEMPUR-PEDIC: It replaces a box  
24 spring. Yes, ma'am, it's five inches  
25 compared to the high, that's nine and

# **EXHIBIT**

**42**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

PEOPLE OF THE STATE OF NEW YORK by :  
ANDREW M. CUOMO, Attorney General of the :  
State of New York, :

Petitioner, :

-against- :

TEMPUR-PEDIC INTERNATIONAL, INC. :  
Respondent. :

-----X

Index No.  
RJI No.  
Date filed:

**Affidavit of Arlene Leventhal**

Arlene Leventhal, being duly sworn deposes and says:

1. I am a paralegal in the Antitrust Bureau of the New York State Department of Law. I have assisted in the Bureau's investigation of Tempur-Pedic International and have personal knowledge of the facts set forth below.
2. On November 23, 2009, I telephoned Sleepy's, 140 Church Street, New York, New York and asked for the price of the Tempur-Pedic Classic Queen size mattress. I was quoted a price of \$1,699 for the mattress and \$2,099 for the mattress and box spring.
3. On November 23, 2009, I also telephoned and spoke to Arthur at the Sleepy's located at 268 Livingston Street, Brooklyn, New York, to request the price of the Classic Queen size mattress. Arthur said the price of the Classic Queen size mattress is \$1,699.

4. On November 23, 2009, I contacted Raymour & Flanigan, 2544 Flatbush Avenue, Brooklyn, New York and spoke to Brian who quoted me a price of \$1,699 for the Classic Queen mattress and \$2,099 for the Classic Queen mattress and box spring. When I asked about possible discounting of this Tempur-Pedic mattress, Brian said the Tempur-Pedic mattresses are price controlled.

5. On November 23, 2009, I visited the Macy's flagship store at 34<sup>th</sup> Street and 7<sup>th</sup> Avenue in Manhattan. I spoke to a salesperson, Cynthia, who quoted me a price of \$1,699 for the Tempur-Pedic Classic Queen size mattress. When I asked if it is ever discounted, Cynthia said Tempur-Pedic does not discount.

6. On March 2, 2010, I telephoned Sleepy's at 140 Church Street in Manhattan. I spoke to the store manager, who quoted me a price of \$6,299 for the Tempur-Pedic GrandBed Queen size mattress and \$6,799 for the mattress and box spring. When I asked about a discount, Ms. James said the "price is fixed by the manufacturer."

7. On March, 2, 2010, I telephoned the Raymour & Flanigan store at 66<sup>th</sup> Street and Broadway in Manhattan. I spoke to Chuck who quoted me a price of \$6,299 for the Tempur-Pedic GrandBed Queen size mattress; he also said that the price is "all the same wherever you go." When I asked about a discount, Chuck said, "Tempur-Pedic has never discounted."

8. On March 2, 2010, I contacted Macy's Flagship store at 34<sup>th</sup> Street and 7<sup>th</sup> Avenue in Manhattan. I spoke to a salesperson, Ramon, who quoted me a price of \$6,299 for the GrandBed Queen size mattress and \$6,799 for the mattress and box spring. When I asked about a discount, Ramon said "it is not allowed."

*Arlene Leventhal*

Arlene Leventhal

Sworn to before me this 24 day March 2010

*[Handwritten Signature]*

Notary Public

JAMES YOUNG  
Notary Public, State of New York  
No. 0240844-1  
New York County  
Commission Expires on Feb. 5, 2011