To: Beyer Industries LLC(128422Lc3XkUuHDD@relay.trademarkengine.com)

Subject: U.S. Trademark Application Serial No. 97120463 - PRO MOTION

Sent: August 25, 2022 12:43:50 PM EDT

Sent As: tmng.notices@uspto.gov

Attachments

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3090706
SNAG-0013 8-25-2022 12.25.54 PM.jpg
SNAG-0014 8-25-2022 12.26.17 PM.jpg
SNAG-0015 8-25-2022 12.27.58 PM.jpg
SNAG-0015-1 8-25-2022 12.31.21 PM.jpg
SNAG-0016 8-25-2022 12.30.15 PM.jpg
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SNAG-0020 8-25-2022 12.33.20 PM.jpg
SNAG-0021 8-25-2022 12.33.27 PM.jpg
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SNAG-0024-11 8-25-2022 12.20.06 PM.jpg
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SNAG-0030 8-25-2022 12.40.57 PM.jpg
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SNAG-0032 8-25-2022 12.41.10 PM.jpg
SNAG-0033 8-25-2022 12.41.17 PM.jpg
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United States Patent and Trademark Office (USPTO) Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 97120463

Mark: PRO MOTION

Correspondence Address:
BEYER INDUSTRIES LLC
580 FW HARTFORD DRIVE
PORTSMOUTH NH 03801 UNITED STATES

Applicant: Beyer Industries LLC

Reference/Docket No. N/A

Correspondence Email Address: 128422Lc3XkUuHDD@relay.trademarkengine.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within <u>six months</u> of the issue date below or the application will be <u>abandoned</u>. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 25, 2022

INTRODUCTION

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §\$2.62(a), 2.65(a); TMEP §\$711, 718.03.

SUMMARY OF ISSUES:

- REFUSAL SECTION 2(d) LIKELIHOOD OF CONFUSION
- REQUIREMENT IDENTIFICATION OF GOODS

REFUSAL - SECTION 2(d) - LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark(s) in the following U.S. Registration(s):

• Reg. No. 3090706 ("PRO-MOTION" in standard character form for "adjustable beds")

Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. See the attached registration(s).

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. Citigroup Inc. v. Capital City Bank Grp., Inc., 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing On-Line Careline, Inc. v. Am. Online, Inc., 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the du Pont factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of

record. Citigroup Inc. v. Capital City Bank Grp., Inc., 637 F.3d at 1355, 98 USPQ2d at 1260; In re Majestic Distilling Co., 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see In re E. I. du Pont de Nemours & Co., 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq*.

Comparison of the Marks

Applicant's applied-for mark is "PRO MOTION" in standard character form. The mark in the registration is indicated above.

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

The compared marks are identical except for a slight difference in appearance between applicant's mark, which appears as a compound word with a hyphen separating the words, that is, "PRO-MOTION"; and applicant's mark, which appears as multiple words with space separating the words, that is, "PRO MOTION". As such, the marks are identical in sound and virtually identical in appearance, and are thus confusingly similar for the purposes of determining likelihood of confusion. See, e.g., Seaguard Corp. v. Seaward Int'l, Inc., 223 USPQ 48, 51 (TTAB 1984); In re Best W. Family Steak House, Inc., 222 USPQ 827, 827 (TTAB 1984); Stock Pot, Inc., v. Stockpot Rest., Inc., 220 USPQ 52, 52 (TTAB 1983), aff'd 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984). Furthermore, the presence of the hyphen, or its absence, has virtually no impact on the comparison of the two marks since punctuation, such as hyphens, generally does not significantly alter the commercial impression of the mark. See, In re Litehouse, Inc., 82 USPQ2d 1471, 1474 (TTAB 2007); TMEP §807.14(c).

As such, viewed as a whole, applicant's mark is confusingly similar to the registered mark.

Comparison of the Goods

Applicant's goods are "Stationary and Reclining Furniture parts and components sold to be used with customer's new or existing furniture and to enhance its use or be used as a repair part." The goods from the registration are listed further above.

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods."); TMEP §1207.01(a)(i).

The respective goods and/or services need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting 7-Eleven Inc. v. Wechsler, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

In this case the marks are virtually identical and where the marks of the respective parties are identical or virtually identical, the degree of similarity or relatedness between the goods and/or services needed to support a finding of likelihood of confusion declines. *See In re Country Oven, Inc.*, 2019 USPQ2d 443903, at *5 (TTAB 2019) (citing *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff'd*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017)); TMEP §1207.01(a); *see also In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993).

The attached Internet evidence consists of screenshots of products from *Sven & Son*, *Malouf* and *Leggett & Platt*. Each of these companies manufactures both adjustable beds and types of furniture parts and components. The additional attached evidence consists of screenshots from the websites of *Mor*, *Raymour & Flanigan*, and *Great Furniture Deal.com*, each of these specialty stores offers both adjustable beds and furniture batteries for sale.

This evidence establishes that the same entity commonly manufactures adjustable beds and furniture accessories and markets these goods under the same mark and also that the adjustable beds and furniture batteries are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use. Therefore, applicant's and registrant's goods and/or services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

REQUIREMENT - IDENTIFICATION OF GOODS

The identification of goods is indefinite and must be clarified because the specific furniture parts and components must be indicated, for example, replacement furniture legs or replacement cushions. See 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Based on applicant's submitted specimen, the suggested amendment below identifies the goods as batteries specially adapted for stationary and reclining furniture. However, as noted above, other substitute language is also possible to resolve this definiteness issue and for further assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable U.S. Acceptable Identification of Goods and Services Manual. See TMEP §1402.04.

Applicant should note that any wording in **bold**, in *italics*, <u>underlined</u> and/or in ALL CAPS below offers guidance and/or shows the changes being proposed for the identification of goods and/or services. If there is wording in the applicant's version of the identification of goods and/or services which should be removed, it will be shown with a line through it such as this: <u>strikethrough</u>. When making its amendments, applicant should enter them in standard font, not in **bold**, in *italics*, <u>underlined</u> or in ALL CAPS.

Applicant may substitute the following wording, if accurate:

<u>Class 20</u>: Stationary and Reclining Furniture parts and components sold to be used with customer's new or existing furniture and to enhance its use or be used as a repair part, **namely**, **batteries specially adapted for stationary and reclining furniture**

See TMEP §§1402.01, 1402.03.

An applicant may only amend an identification to clarify or limit the goods, but not to add to or broaden the scope of the goods. 37 C.F.R. §2.71(a); see TMEP §\$1402.06 et seq., 1402.07. Generally, any deleted goods may not later be reinserted. See TMEP §1402.07(e).

CONCLUSION

Response guidelines. For this application to proceed, applicant must explicitly address each refusal and/or requirement in this Office action. For a refusal, applicant may provide written arguments and evidence against the refusal, and may have other response options if specified above. For a requirement, applicant should set forth the changes or statements. Please see "Responding to Office Actions" and the informational video "Response to Office Action" for more information and tips on responding.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

How to respond. Click to file a response to this nonfinal Office action.

/Stefan Oehrlein/ Trademark Examining Attorney Law Office 115 (571) 272-1308 stefan.oehrlein@uspto.gov

RESPONSE GUIDANCE

• Missing the response deadline to this letter will cause the application to <u>abandon</u>. The response must be received by the USPTO before midnight **Eastern Time** of the last day of the

response period. TEAS maintenance or <u>unforeseen circumstances</u> could affect an applicant's ability to timely respond.

- Responses signed by an unauthorized party are not accepted and can cause the application to abandon. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find contact information for the supervisor** of the office or unit listed in the signature block.

Print: Thu Aug 25 2022 76568436

(4) STANDARD CHARACTER MARK

PRO-MOTION

Mark Punctuated

PRO-MOTION

Translation

Goods/Services

 IC 020. US 002 013 022 025 032 050.G & S: adjustable beds. FIRST USE: 20040401. FIRST USE IN COMMERCE: 20040401

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Design Code

Serial Number

76568436

Filing Date

20031224

Current Filing Basis

1 A

Original Filing Basis

ΙB

Publication for Opposition Date

20041012

Registration Number

3090706

Date Registered

20060509

Owner

(REGISTRANT) L&P PROPERTY MANAGEMENT COMPANY CORPORATION DELAWARE 4095 Firestone Boulevard South Gate CALIFORNIA 90280

Priority Date

Disclaimer Statement

Description of Mark

Type of Mark

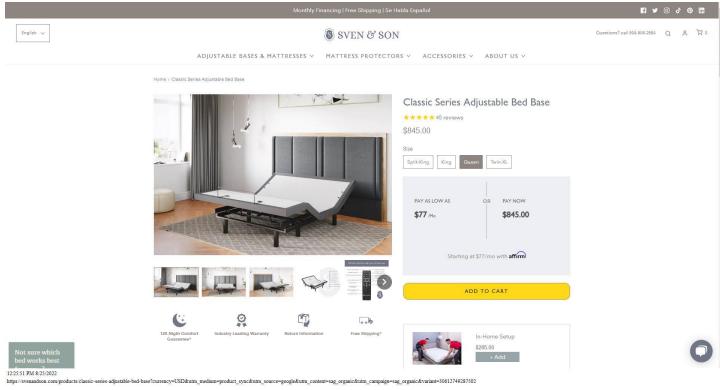
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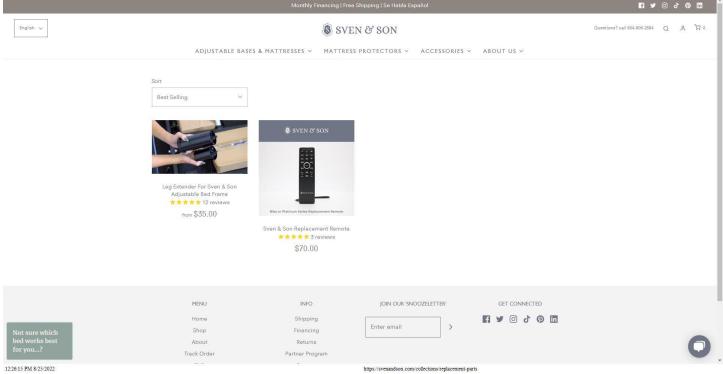
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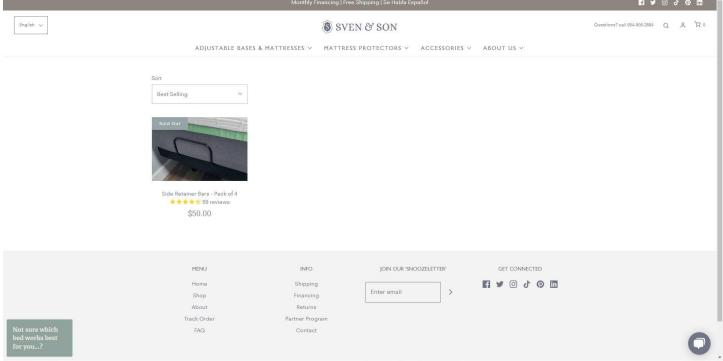
PRINCIPAL

Live Dead Indicator LIVE

Attorney of Record Clinton G. Newton







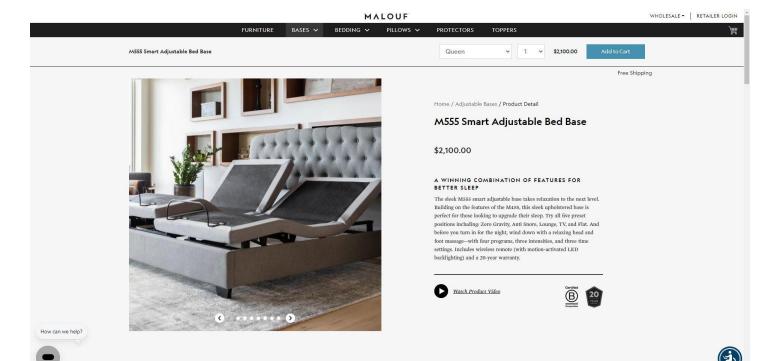
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4.8 ***** *****

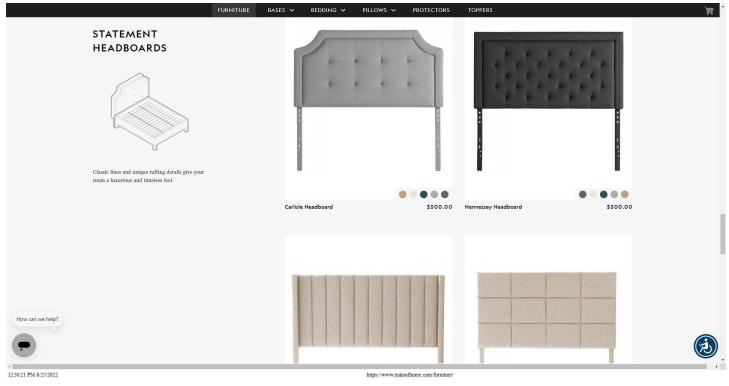
https://sleepgeekz.com/products/sven-son%C2%AE-headboard-brackets

☑ Write a Review



12:30:13 PM 8/25/2022

https://www.maloufhome.com/bases/adjustables/stm555abparent/?size=queen



https://www.maloufhome.com/furniture/



12:30:29 PM 8/25/2022 https://www.maloufhome.com/furniture/



Value without compromise*

Adjustable Bed Models 💙

Product Support 💙

Frequently Asked Questions

Register Your Bed

Retailer Login

Become a Dealer



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https://lpadjustablebeds.com/premium-models



Value without compromise*

Adjustable Bed Models 💙

Product Support 💙

Frequently Asked Questions

Become a Dealer

Register Your Bed

Retailer Login



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https://lpadjustablebeds.com/value-models



Value without compromise*

Adjustable Bed Models 💙

Product Support 💙

Frequently Asked Questions

Become a Dealer

Register Your Bed

Warranty Services

Warranty Services, Replacement Parts, or Repairs

Leggett & Platt Adjustable Beds is here to help. Call us to speak to a representative.

1-800-888-3078

Warranty Call Center Hours

Monday — Friday 8:00 am to 8:00 pm Eastern time

Saturday 10:00 am to 3:00 pm Eastern time

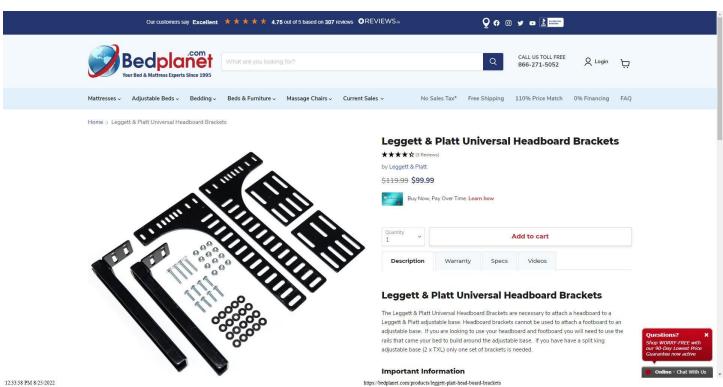
Note: We receive higher call volumes on Mondays and Tuesdays. To reduce your wait time, please call later in the

Product Support

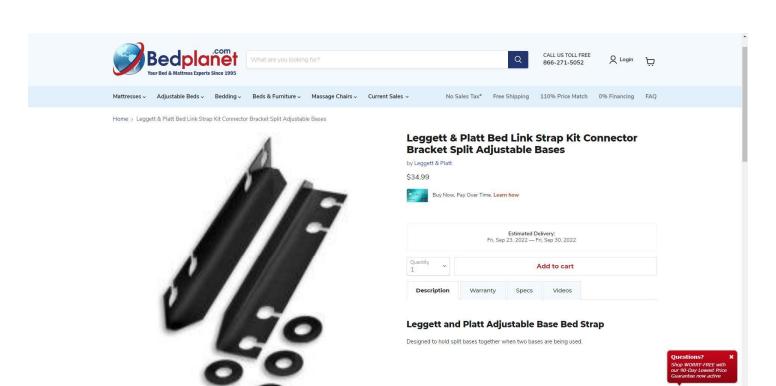
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Adjustable Rad Raco? Charle out https://lpadjustablebeds.com/customer-service

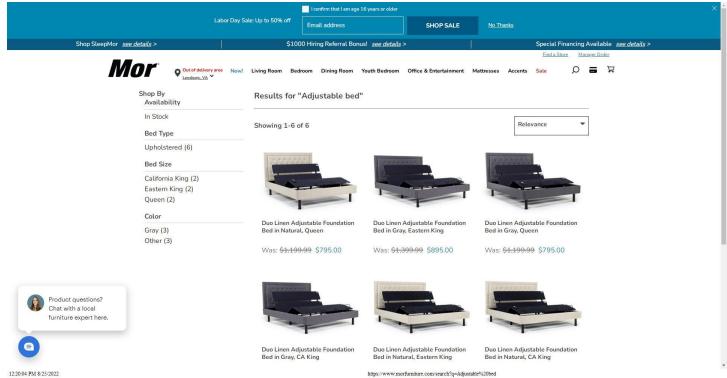


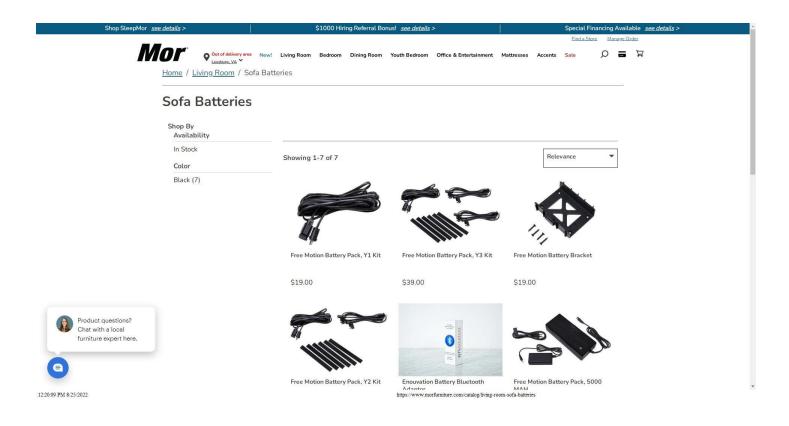
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https://bedplanet.com/products/leggett-and-platt-adjustable-base-bed-strap









\$230.00



Free Motion Battery Pack, 7500 MAH

\$350.00

\$29.00





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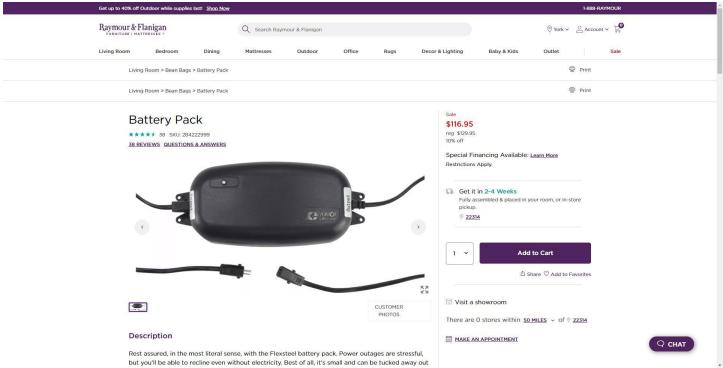
In today's day and age, couches and sectionals often come with technology-centered features and upgrades that may require sofa batteries. Batteries for sofas can be challenging to find, but this is never the case at Mor Furniture for Less. We make it easy to shop for the sofa batteries your living room furniture needs to provide your family with all of the bells and whistles you love.

\$99.99

Many individuals and families love the idea of power-enabled furniture, however, you may think that the floorplan of your home limits your options. It can be difficult to conveniently position powered sofas and couches close to outlets, and running extension cords through your living space can be unsightly and dangerous to children and pets. That's why Mor Furniture for Less offers a selection of sofa batteries, giving you the freedom to arrange your furniture as you wish without the confines of having to remain near an outlet. Use all your power sofa functions without worry or hassle when you purchase the right battery pack.

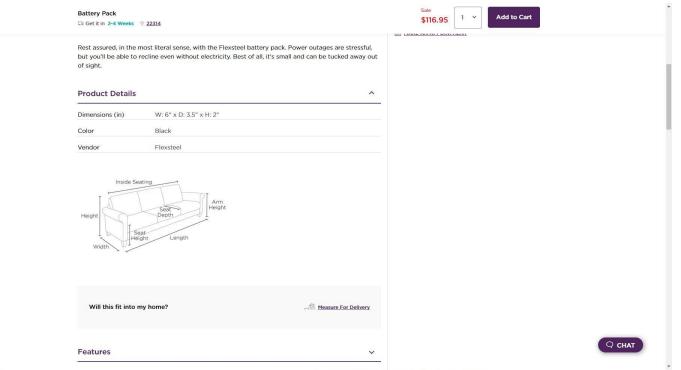
Ratteries for Sofas and Accessories

https://www.morfurniture.com/catalog/living-room-sofa-batteries



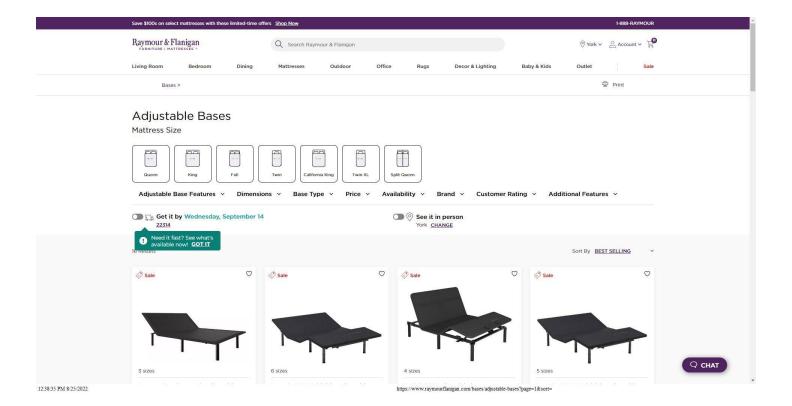
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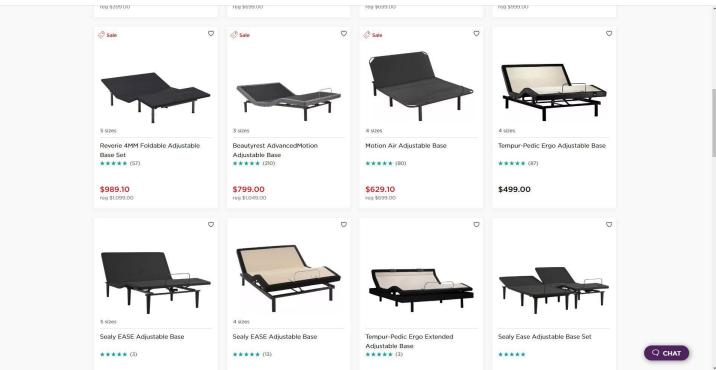
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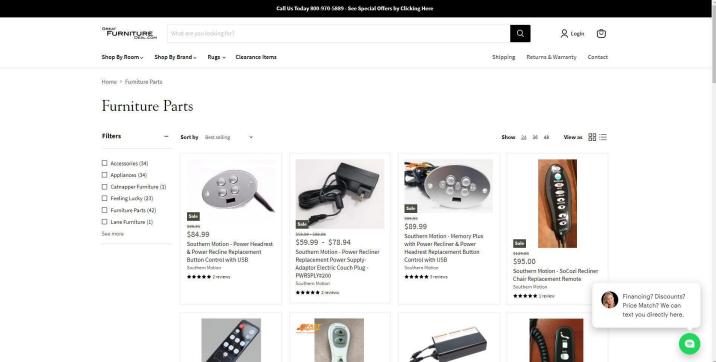
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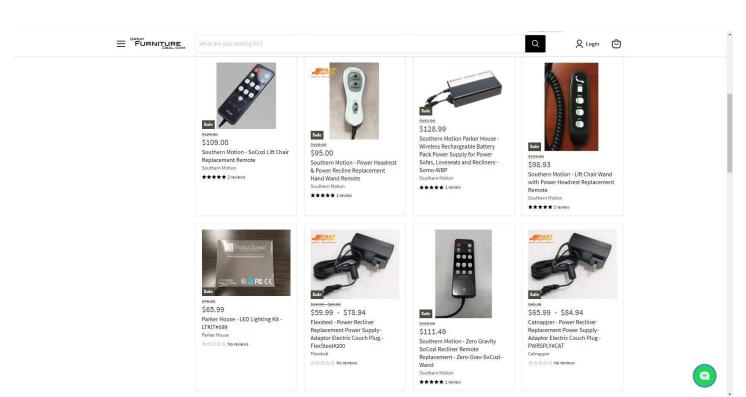


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https://www.raymourflanigan.com/bases/adjustable-bases?page=1&sort=



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https://greatfurnituredeal.com/collections/furniture-parts







\$59.39 - \$78.34 Ashley Furniture - Power Recliner Replacement Power Supply-Adaptor Electric Couch Plug Ashley Furniture 合合合合合 No reviews



\$83.99 & Power Headrest & Power Headrest & Power Recline Replacement Button Control with USB Ashley Furniture

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\$29.95 Southern Motion - Power Recliner Replacement Button Control Southern Motion ជាជាជាជា No reviews

Sale

\$116.00 Parker Living - Wireless
Rechargeable Battery Pack Power
Supply for Power Sofas, Loveseats
and Recliners - RPS#1800
Parker House

Q

Q Login ⊕



\$129.00 \$95.00 S95.00
Southern Motion - Lift Chair
Replacement Remote with Power
Control & Home Button
Southern Motion
★★★★ 1 review



\$69.99 Southern Motion - Power Recliner Replacement Power Supply-Adaptor with Battery Backup Electric Recliner Plug Southern Motion



\$18.95 Southern Motion - Ashley Furniture - Catnapper - Flexsteel - Power Y Cable - Y-Cable Riverside Furniture

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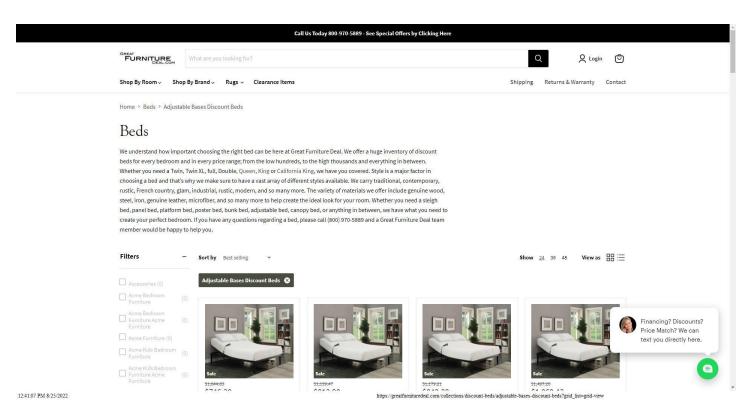


\$215.99 Southern Motion - SoCozi Air Pump Control Box Replacement - PT-604 Southern Motion

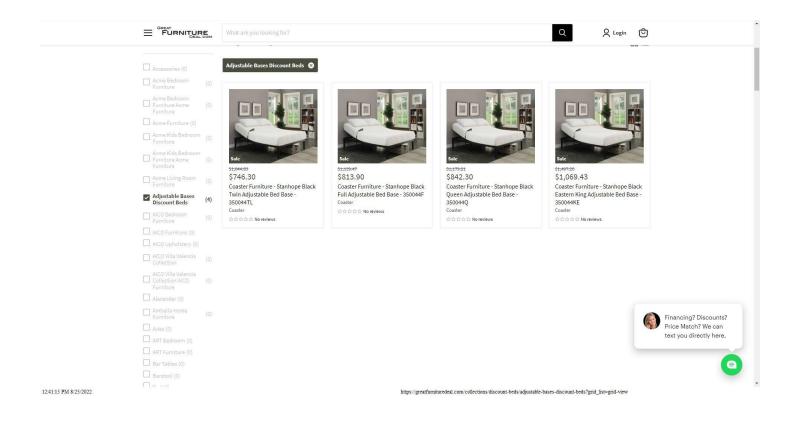
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https://greatfurnituredeal.com/collections/furniture-parts



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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued on August 25, 2022 for U.S. Trademark Application Serial No. 97120463

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action in order to avoid your application abandoning. Follow the steps below.

- (1) Read the Office action. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be <u>abandoned</u>. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO <u>website</u>, the application process, the status of your application, and whether there are outstanding deadlines to the <u>Trademark Assistance Center (TAC)</u>.

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- <u>Check the status</u> of your application periodically in the <u>Trademark Status & Document Retrieval (TSDR)</u> database to avoid missing critical deadlines.
- <u>Update your correspondence email address</u> to ensure you receive important USPTO notices about your application.
- Beware of trademark-related scams. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. And all official USPTO correspondence will only be emailed from the domain "@uspto.gov." Verify the correspondence originated from us by using your Serial Number in our database, TSDR, to confirm that it appears under the "Documents" tab, or contact the Trademark Assistance Center.

• Hiring a U.S.-licensed attorney. If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.

*** User:soehrlein ***

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17	7 6	0	6	6	0:01	16 and 4
18	3 23	0	23	23	0:01	16 and 5
19	138	0	22	138	0:01	(4 and 13) not (7 15)
20	687	0	13	687	0:01	(5 and 13) not (7 15 19)
2	681	N/A	0	0	0:02	(3 and 13) not (7 15 19 20)
22	2 306	0	8	306	0:01	(6 and 13) not (7 15 19 20)

Session started 8/25/2022 11:39:34 AM
Session finished 8/25/2022 12:13:20 PM
Total search duration 0 minutes 29 seconds
Session duration 33 minutes 46 seconds
Defaut NEAR limit=1ADJ limit=1

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