

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

PURPLE INNOVATION, LLC,

Plaintiff,

v.

TEMPUR SEALY INTERNATIONAL,
INC., SEALY TECHNOLOGY LLC,
SEALY MATTRESS
MANUFACTURING CO., LLC,

Defendants.

CASE NO. 1:23-CV-00257-CCE-LPA

JURY TRIAL DEMANDED

**PURPLE INNOVATION, LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO
TEMPUR SEALY INTERNATIONAL, INC., SEALY TECHNOLOGY LLC, AND
SEALY MATTRESS MANUFACTURING CO., LLC'S COUNTERCLAIMS**

Plaintiff Purple Innovation, LLC (“Purple”) respectfully submits its Answer and Affirmative Defenses in response to the counterclaims of Defendants Tempur Sealy International, Inc., Sealy Technology LLC, and Sealy Mattress Manufacturing Co., LLC (collectively, “Sealy” or “Defendants”). Purple denies that Sealy is entitled to the relief requested. Purple denies all allegations in the counterclaims unless specifically admitted herein. For ease of reading, Purple repeats the section headings in the counterclaims; to the extent such headings include or imply allegations, Purple denies them.

NATURE OF THE ACTION

1. Purple admits that Sealy’s counterclaims purport to be an action for declaratory judgment under the cited statutory provisions. Purple denies that Sealy is entitled to such relief.

PARTIES

1. Admitted.¹
2. Admitted.
3. Admitted.
4. Admitted.

JURISDICTION AND VENUE

5. Purple admits that Sealy’s counterclaims purport to arise under the cited statutory provisions.

¹ Sealy’s counterclaims include two duplicative paragraphs both numbered as Paragraph 1. Purple has repeated this formatting error for ease of reference here.

6. Purple admits that this Court has original subject matter jurisdiction over the allegations contained in Sealy's counterclaims related to the infringement, validity, and enforceability of the asserted claims of the '733 Patent.

7. Admitted that, for the purposes of this specific case only, Purple consents to the personal jurisdiction of this Court.

8. Admitted.

THE '733 PATENT

9. Admitted.

10. Admitted.

11. Purple admits that the quoted language without added emphasis appears in claim 1 of the '733 Patent; otherwise denied.

12. Admitted.

BACKGROUND

13. Admitted.

14. Denied.

15. Purple admits that Sealy purports to seek such relief but denies that Sealy is entitled to such relief. The remaining allegations in this paragraph are denied.

(ALLEGED) FACTS

16. Denied.

17. Denied.

18. Denied.

19. Purple admits that, on July 8, 2021, the examiner of the '733 Patent issued a rejection of the then-proposed claims, citing 35 U.S.C. § 103. Purple denies the relevance of this fact to Sealy's counterclaims. The remaining allegations in this paragraph are denied.

20. Purple admits that the examiner referenced U.S. Patent Nos. 10,357,113, 9,032,571, 7,757,322, U.S. Pat. App. Pub. No. 2014/037281, and JP S6134951. Purple denies the relevance of this fact to Sealy's counterclaims. The remaining allegations in this paragraph are denied.

21. Purple admits that Exhibit B appears to be an excerpt of the File History of the '733 Patent. The remaining allegations in this paragraph are denied.

22. Purple admits that claim 1 from the May 3, 2021 amendments was not further amended in the final, issued '733 Patent. Purple admits that the quoted text appears in the File History of the '733 Patent. Purple denies the relevance of this fact to Sealy's counterclaims. The remaining allegations in this paragraph are denied.

23. Purple admits that the quoted text appears in the File History of the '733 Patent. Purple denies the relevance of this fact to Sealy's counterclaims. The remaining allegations in this paragraph are denied.

24. Purple admits that Exhibit C appears to be an excerpt of the File History of the '733 Patent. The remaining allegations in this paragraph are denied.

25. Denied.

26. Denied.

27. Purple admits that the September 8, 2021 response includes that “[i]t is respectfully submitted that none of Gladney, Rancourt, or Mossbeck teaches or suggests an elastomeric material that seeps through a stabilization layer to define a reduced-slip surface or a non-slip surface on a lower surface of the stabilization layer.” Purple denies that Sealy’s pin citation to Exhibit C is accurate. The remaining allegations in this paragraph are denied.

28. Purple admits that the prosecuting attorney stated that “Claims 2-9 are allowable, among other reasons, for depending from independent claim 1, which is allowable.” The remaining allegations in this paragraph are denied.

29. Purple admits that Exhibit D appears to be an excerpt of the File History of the ’733 Patent. Purple admits that the examiner allowed claims 1–20 of the ’733 Patent. The remaining allegations in this paragraph are denied.

30. Purple admits that the quoted text appears in the File History of the ’733 Patent. The remaining allegations in this paragraph are denied.

31. Purple admits that the examiner stated “[t]his argument is found persuasive” in the File History of the ’733 Patent. Purple admits that the examiner stated that “the prior art does not teach the elastomeric material seeping from the upper surface of the stabilization layer to the lower layer where the elastomeric material defines a reduced slip or non slip surface on the bottom of the stabilization layer positioned against another layer of the mattress, in conjunction with the additional claimed structure” in the File History of the ’733 Patent. The remaining allegations in this paragraph are denied.

32. Purple admits that Exhibit E appears to be an excerpt of the File History of the '733 Patent. Purple admits that the following text appears in the File History of the '733 Patent: "It is acknowledged that the allowed independent claims are allowable for the reasons specified in the statement of Reasons for Allowance. It is also acknowledged that the statement of Reasons for Allowance includes a discussion of specific limitations in the claims. It is respectfully submitted, however, that the claims may recite allowable subject matter other than the specific limitations identified in the statement of Reasons for Allowance." The remaining allegations in this paragraph are denied.

33. Denied.

34. Denied.

35. Purple admits that the Purple Original Mattress was advertised starting in September 2015; otherwise denied.

36. Purple admits that the Purple Original Mattress was advertised starting in September 2015; otherwise denied.

37. Denied.

38. Purple admits that the Purple Original Mattress was known to the inventors of the '733 Patent; otherwise denied.

39. Denied.

40. Purple admits that Tony Pearce co-founded Purple and that he is one of three inventors of the '733 Patent. Purple denies the remaining allegations of this paragraph.

41. Purple admits that the Purple Hybrid Mattress practices at least one claim of the '733 Patent; otherwise denied.

42. Purple admits that the Purple Hybrid Mattress practices at least one claim of the '733 Patent; otherwise denied.

43. Admitted.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Purple admits that Exhibit F appears to be U.S. Pat. App. Pub. No. 2017/0251838. Purple admits that U.S. Pat. App. Pub. No. 2017/0251838 and its issued patent U.S. Patent No. 10,807,811 are assigned to Purple. The remaining allegations in this paragraph are denied.

50. Purple admits that the quoted text without added emphasis appears within U.S. Pat. App. Pub. No. 2017/0251838; otherwise denied.

51. Admitted.

52. Admitted.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. The allegations in Paragraph 59 call for information protected by the attorney–client privilege and/or work product doctrine, and Purple therefore denies those allegations.

60. The allegations in Paragraph 60 call for information protected by the attorney–client privilege and/or work product doctrine, and Purple therefore denies those allegations.

61. The allegations in Paragraph 61 call for information protected by the attorney–client privilege and/or work product doctrine, and Purple therefore denies those allegations.

62. Denied.

63. Denied.

64. Purple admits that Tony Pearce had a duty of candor to the Patent Office during prosecution of the '733 Patent; otherwise denied.

65. The allegations in Paragraph 65 call for information protected by the attorney–client privilege and/or work product doctrine, and Purple therefore denies those allegations.

66. The allegations in Paragraph 66 call for information protected by the attorney–client privilege and/or work product doctrine, and Purple therefore denies those allegations.

67. Denied.

68. Admitted.

69. Purple admits that the Purple Hybrid Mattress practices at least one claim of the '733 Patent; otherwise denied.

70. Denied.

71. Purple admits that it began selling the Purple Hybrid Mattress during the prosecution of the '733 Patent; otherwise denied.

72. The allegations in Paragraph 72 call for information protected by the attorney–client privilege and/or work product doctrine, and Purple therefore denies those allegations.

73. Admitted.

74. Denied.

75. Purple admits that Mr. Power is listed as a prosecuting attorney for U.S. Patent Nos. 10,661,492 and 11,179,873; otherwise denied.

76. Admitted.

77. Denied.

78. Denied.

79. Purple admits that Mr. Power had a duty of candor to the Patent Office during prosecution of the '733 Patent; otherwise denied.

80. Purple admits that Mr. Power acted as a prosecuting attorney for multiple Purple patents. Purple admits that the quoted text without alteration appears within the '733 Patent. Purple denies the remaining allegations of this paragraph.

81. Purple admits that Exhibit G appears to be an excerpt from the File History of the '811 Patent. Purple denies the remaining allegations of this paragraph.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

EXISTENCE OF AN ACTUAL CONTROVERSY

87. Purple admits that Sealy's counterclaims for declaratory judgments of non-infringement and invalidity of the asserted claims of the '733 Patent and unenforceability of the '733 Patent due to alleged inequitable conduct are within the subject matter jurisdiction of this Court; otherwise denied.

88. Admitted.

89. Purple admits that Sealy denies that the claims of the '733 Patent are valid, that it infringes the '733 Patent, and that the '733 Patent's claims are enforceable. Purple denies the remaining allegations of this paragraph.

COUNT I (DECLARATORY JUDGMENT OF NON-INFRINGEMENT)

90. Purple restates and incorporates by reference each of the above responses to the allegations in paragraphs 1–89 of Sealy’s counterclaims.

91. Denied.

92. Denied.

93. Denied.

COUNT II (DECLARATORY JUDGMENT OF INVALIDITY)

94. Purple restates and incorporates by reference each of the above responses to the allegations in paragraphs 1–89 of Sealy’s counterclaims.

95. Denied.

96. Denied.

97. Denied.

COUNT III (DECLARATORY JUDGMENT OF UNENFORCEABILITY)

98. Purple restates and incorporates by reference each of the above responses to the allegations in paragraphs 1–89 of Sealy’s counterclaims.

99. Denied.

100. Denied.

101. Denied.

RESPONSE TO SEALY’S PRAYER FOR RELIEF

Purple denies that Sealy is entitled to any of the relief requested in its Prayer for Relief.

GENERAL DENIAL

Purple further denies each and every allegation to which Purple has not specifically admitted, denied, or otherwise responded to herein.

RESERVATION OF RIGHTS

Sealy makes numerous allegations in its Counterclaims regarding alleged inequitable conduct based on what Purple's prosecution counsel supposedly knew or did. By responding to Sealy's Counterclaims, as Purple is required to do under the Federal Rules of Civil Procedure, Purple does not, and does not intend to, waive its attorney-client privilege, the work product doctrine, or any other applicable privilege.

DEMAND FOR JURY TRIAL

Purple hereby demands a trial by jury on all issues raised on Sealy's Counterclaims and in this Answer that are so triable.

PURPLE'S AFFIRMATIVE DEFENSES

Subject to the responses above, and fully incorporating by reference the statements in Purple's First Amended Complaint and Sealy's Counterclaims, Purple asserts the following defenses in response to the Counterclaims. Purple undertakes the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. Purple specifically reserves all rights to assert additional defenses that become known through the course of discovery or otherwise.

FIRST AFFIRMATIVE DEFENSE (FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED)

Sealy's counterclaims fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE (EQUITABLE ESTOPPEL AND UNCLEAN HANDS)

Sealy's claims for equitable relief in its counterclaims are barred in whole or in part by the equitable doctrines of estoppel and unclean hands arising from, *inter alia*, Sealy's intentional copying of Purple's products and patented inventions, including as more fully alleged in Purple's First Amended Complaint (Dkt. 22).

THIRD AFFIRMATIVE DEFENSE (NO EXCEPTIONAL CASE)

Purple has not engaged in any conduct that would make this an exceptional case or would entitle Sealy to an award of costs, expenses, or attorneys' fees under 35 U.S.C. § 285.

PURPLE'S PRAYER FOR RELIEF

WHEREFORE, Purple requests judgment on Sealy's Counterclaims and against Sealy as follows:

- a. Dismissal of all counterclaims in Sealy's Counterclaims against Purple with prejudice and a complete denial of Sealy's requests for damages, interests, costs, and any other form of relief;
- b. That this Court find and declare that each of the claims of the '733 Patent are enforceable;

- c. That this Court find and declare that each of the claims of the '733 Patent are not invalid;
- d. That this Court find and award the relief requested in Purple's First Amended Complaint (Dkt. 22 at ¶¶ 72–79);
- e. For such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

Dated: August 21, 2023

Respectfully submitted,

/s/ Alan M. Ruley

Alan M. Ruley (Bar No. 16407)
Bell, Davis & Pitt, P.A.
100 N. Cherry St.
Winston-Salem, NC 27101
Telephone: (336) 714-4147
Facsimile: (336) 722-8153
Email: aruley@belldavispitt.com

Gregg F. LoCascio, P.C.
Kirkland & Ellis LLP
1301 Pennsylvania Ave. N.W.
Washington, D.C. 20004
Telephone: (202) 879-5000
Email: gregg.locascio@kirkland.com

Dale Cendali, P.C.
Joseph A. Loy, P.C.
Shanti Sadtler Conway
Brandon R. Weber
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800

Email: dale.cendali@kirkland.com
Email: joseph.loy@kirkland.com
Email: shanti.conway@kirkland.com
Email: brandon.weber@kirkland.com

Attorneys for Purple Innovation, LLC

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served on August 21, 2023 with a copy of this document via the Court's CM/ECF system.

/s/ Alan M. Ruley

Alan M. Ruley