

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Simmons Bedding Company, LLC,
Serta Simmons Bedding, LLC,

Plaintiffs

v.

Bob's Discount Furniture, LLC,

Defendant.

Civil Case No. 1:17-cv-6768

TRIAL BY JURY DEMANDED

COMPLAINT

Simmons Bedding Company, LLC (“Simmons”) and Serta Simmons Bedding, LLC (“SSB”), for their complaint against Defendant Bob’s Discount Furniture, LLC (“Bob’s”), allege as follows:

NATURE OF THE ACTION

1. This is an action for false advertising and unfair business practices in violation of federal and Illinois law.

THE PARTIES

2. Plaintiff SSB is a Delaware limited liability company with its principal place of business in Atlanta, Georgia.

3. Plaintiff Simmons is a Delaware limited liability company with its principal place of business in Atlanta, Georgia.

4. Upon information and belief, Defendant Bob’s is a Connecticut limited liability company with its principal place of business in Manchester, Connecticut.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the complaint involves a federal question under Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). This Court also has supplemental jurisdiction over the state law claims.

6. This Court has personal jurisdiction over Bob's because Bob's continuously and systematically transacts business in Illinois, including and through its website, www.mybobs.com, and its stores in Aurora, Burbank, Calumet City, Chicago, Joliet, Orland Park, Schaumburg, Skokie, Vernon Hills, and Villa Park. Also, upon information and belief, Bob's offers to sell its Black Label Gel Euro-Top Mattress to customers in Illinois, and its commercials giving rise to claims in this Complaint are available in Illinois on local television stations, through Bob's website, www.mybobs.com/, and YouTube, <https://www.youtube.com/watch?v=ntddcqPu-Zg>.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as Simmons and SSB maintain a significant presence in the district, including the headquarters of Serta, Inc. ("Serta"), an SSB majority owned company, and the events giving rise to the claims are causing harm to Simmons and SSB in this district.

FACTS

8. Paragraphs 1-7 are incorporated by reference as if set forth here in full.

9. For over one hundred years, Simmons has been a leading mattress manufacturer and an innovator of mattress technologies. For example, Simmons developed its Pocketed Coil® spring machine in the early 1900s and was the first mattress company to offer king and queen sized mattresses in the United States. In 2008, Simmons raced ahead of its industry and invented

a hybrid fusion of memory foam and Pocketed Coil® springs. To date, as a result of its extensive efforts and innovation, Simmons has obtained well over 100 U.S. patents.

10. Simmons' Beautyrest® line of mattresses and, in particular, its Beautyrest Black® mattresses, exemplify Simmons' tradition of innovation. Simmons Beautyrest Black® mattresses include proprietary Micro Diamond™ Memory Foam, Simmons' patented Advanced Pocketed Coil™ Technology, and luxurious fabrics.

11. Simmons' Beautyrest Black® mattresses are sold at prices between \$1,999 and \$4,999.

12. Bob's advertises and sells a mattress called "Black Label Gel Euro-Top Mattress," in stores and on its website, <https://www.mybobs.com/>.

13. Upon information and belief, Bob's sells the queen sized Black Label Gel Euro-Top Mattress for \$999.

14. Attached hereto as Exhibit A is a true and correct printed copy of the Black Label Gel Euro-Top Mattress web page on Bob's website, available at <https://www.mybobs.com/black-label-gel-mattress-set> (last visited September 6, 2017).

15. Upon information and belief, Bob's Black Label Gel Euro-Top Mattress includes an encased coil innerspring support system, gel infused memory foam, and a stretch knit cover.

16. Upon information and belief, Bob's Black Label Gel Euro-Top Mattress does not employ any of Simmons' proprietary Micro Diamond™ Memory Foam, Simmons' patented Advanced Pocketed Coil™ Technology, or the luxurious fabrics used in Simmons' Beautyrest Black® mattress.

17. In the past, Bob's has been forced to cease dissemination of false and misleading commercials about its mattresses. In 2013, Serta, Simmons' sister company, wrote Bob's and

demanded that it discontinue TV commercials that falsely claimed Bob's mattresses contained "twice the gel-infused memory foam at half the price" of Serta's mattress. Attached hereto as Exhibit B is a true and correct copy of the cease and desist letter sent by Serta to Bob's.

18. Shortly thereafter, Bob's responded in writing to Serta that "we have taken the ad off the air and it will not run again." Attached hereto as Exhibit C is a true and correct copy of the letter sent by Bob's to Serta.

Bob's False and Misleading Comparisons

19. Recently, Bob's ran a television advertisement and posted a commercial on its website comparing Simmons' Beautyrest Black® Mattress to Bob's Black Label Gel Euro-Top Mattress, which falsely and misleadingly imply that both mattresses use the same materials and components.

20. The commercial is retrievable at <https://www.mybobs.com/black-label-gel-mattress-set> and <https://www.mybobs.com/videos> (last visited September 6, 2017). Below is a screenshot of the commercial showing Simmons' Beautyrest Black® mattress ("Simmons' Mattress") side-by-side with Bob's Black Label Gel Euro-Top Mattress ("Bob's Mattress"):



21. While showing the mattresses side-by-side, the commercial compares the Black Label Gel Euro-Top queen mattress set by Bob's Discount Furniture and the Simmons' Beautyrest Black Mariela queen mattress set.

22. Then, even though Bob's Mattress and Simmons' Mattress use different foams and coils, the commercial shows the image below of one type of innerspring coil, one type of latex foam, and one type of memory foam and represents that "Both have comfy gel-infused memory foams, supportive latex foam, individually wrapped innerspring coils, and luxurious stretched thin fabric."



23. The video then concludes by stating "So, besides the fancy logo, what's another big difference? Well, theirs is priced at a whopping \$2799, while ours is priced at only \$999. Plus, you get the satisfaction of knowing you didn't just spend \$1800 on a fancy logo."

24. Such statements and imagery deceive or are likely to deceive customers about the true nature, characteristics, and quality of its Mattress and Simmons' Mattress, namely by implying that Bob's Mattress and Simmons' Mattress contain the same components and/or materials depicted in the commercial when, in fact, they do not.

25. Accordingly, on May 16, 2017, Simmons' counsel sent Bob's a cease and desist letter, demanding that Bob remove its commercial unless it can substantiate the claims in the commercial. Attached hereto as Exhibit D is a true and correct copy of the cease and desist letter.

26. On June 1, 2017, counsel for Bob's responded to the cease and desist letter, but did not indicate that it would remove its commercial in its entirety. Attached hereto as Exhibit E is a true and correct copy of Bob's responsive letter.

27. Then, despite being warned of the deceptive nature of its comparative advertising, on June 14, 2017, Bob's published another commercial comparing Bob's Mattress to Simmons' Mattress. That commercial was distributed on local television and published on YouTube and is available at <https://www.youtube.com/watch?v=ntddcqPu-Zg> (last visited September 6, 2017).

28. Like the commercial on Bob's website, the commercial begins by showing Simmons' and Bob's mattresses side-by-side while comparing the Black Label Gel Euro-Top queen mattress set by Bob's Discount Furniture and the Simmons' Beautyrest Black Mariela queen set.

29. The commercial then shows the image below, which appears to be the tops of the respective mattresses, and states "Both have comfy gel-infused memory foams, supportive latex foam, individually wrapped innerspring coils, and luxurious stretched thin fabric."



30. The commercial concludes by stating “Sure, they’re not exactly the same, but you be the judge. Theirs is priced at a whopping \$2799, while ours is priced at only \$999. Dare to compare at Bob’s Discount furniture, in store or at mybobs.com.”

31. Again, such statements and imagery deceive or are likely to deceive customers about the true nature, characteristics, and quality of Bob’s Mattress and Simmons’ Mattress, namely by implying that Bob’s Mattress and Simmons’ Mattress contain the same components and/or materials when, in fact, they do not.

32. Despite the commercials’ implications, Bob’s Black Label Gel Euro-Top Mattress does not employ any of Simmons’ proprietary Micro Diamond™ Memory Foam, Simmons’ patented Advanced Pocketed Coil™ Technology, or the luxurious fabrics used in Simmons’ Beautyrest Black® mattress.

COUNT I

False Advertising and Unfair Competition under Section 43(a) of the Lanham Act, 15 US.C. § 1125(a)

33. Simmons and SSB re-allege and incorporate by reference paragraphs 1-32 of this Complaint.

34. Bob's has made false and misleading statements in commercial advertisements regarding both Bob's Mattress and Simmons' Mattress.

35. Bob's statements are literally false and/or likely to deceive customers about the true nature, characteristics, and quality of Bob's Mattress and Simmons' Mattress.

36. Both Bob's Mattress and Simmons' Mattress are offered, advertised, and sold to consumers throughout the United States. Accordingly, Bob's false and deceptive statements affect interstate commerce.

37. Bob's false and misleading statements are material because they concern aspects of Bob's Mattress and Simmons' Mattress that affect their comfort, quality, and pricing. Such claims are likely to influence consumers' purchasing decisions.

38. Bob's has willfully engaged in the false advertising and unfair competition complained of herein.

39. Simmons has been, is now, and will continue to be irreparably harmed by Bob's false advertising and unfair competition because Bob's deceptive commercials remain widely available online.

40. Unless enjoined by this Court, Simmons will suffer harm to its name, business, reputation, and goodwill. This harm constitutes an injury for which there is no adequate remedy at law.

41. As a direct and proximate result of Bob's conduct, Simmons has and continues to incur actual damages.

COUNT II

Deceptive Trade Practices under 815 ILCS 505/1 *et seq.* and 815 ILCS 510/1 *et seq.*

42. Simmons and SSB re-allege and incorporate by reference paragraphs 1-41 of this Complaint.

43. Bob's has made false and misleading statements in commercial advertisements regarding both Bob's Mattress and Simmons' Mattress.

44. Bob's statements are literally false and/or likely to deceive customers in Illinois about the true nature, characteristics, and quality of Bob's Mattress and Simmons' Mattress.

45. Upon information and belief, Bob's intended that Illinois consumers rely the deceptive statements so that the Illinois consumers purchase Bob's Mattress instead of Simmons' Mattress.

46. Bob's commercials are trade practices directed to the Illinois market generally via local Chicago area television advertising and the internet. In particular, Bob's commercials on Bob's website and YouTube are directed towards Illinois mattress consumers directly through those websites and via internet search engines such as Google.

47. Bob's commercials are trade practices that implicate consumer protection concerns because the false and/or misleading statements in the commercials are likely to mislead or confuse mattress consumers in Illinois.

48. As a result of these aforesaid acts, Bob's has been and is engaged in deceptive trade practices within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, and the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.*

49. On information and belief, Bob's has willfully engaged in the above describes acts in Illinois and in this judicial district.

50. Because of Bob's aforesaid acts, both Simmons and SSP have suffered actual damage in its business such as lost sales and harm to Simmons' and SSP's reputation.

PRAYER FOR RELIEF

WHEREFORE, Simmons and SSP request that judgment be entered in its favor, and prays that the Court grant the following relief:

1. A judgment that Bob's engaged in false advertising under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B)
2. A judgment that Bob's engaged in deceptive trade practices under 815 ILCS 505/1 et seq. and 815 ILCS 510/1 et seq.
3. An order directing Bob's to permanently remove the commercials described in Paragraphs 16-28 from its website, YouTube, or any other website.
4. Permanent injunctive relief enjoining and restraining Bob's, its subsidiaries, affiliates, officers, directors, agents, servants, employees, owners, and representatives, and all other persons or entities in active concert or participation with it, from claiming, directly or by implication, in any advertising or promotional communication, that Bob's mattresses and Simmons' mattresses have the same components or materials.
5. An order directing Bob's to disseminate, in a form to be approved by this Court, advertising designed to correct the false or misleading claims made by Bob's in its advertising.
6. An order pursuant to 15 U.S.C. § 1116(a) directing Bob's to file with the Court and serve on Simmons, within 30 days after entry of the injunction, a report, in writing and under

oath, setting forth in detail the manner and form in which Bob's has complied with the injunction.

7. An award of Simmons' damage attributable to Bob's false advertising and deceptive trade practices, in an amount to be determined at trial.

8. A declaration that this is an "exceptional case" due to the willful nature of Bob' false advertising, and an award of attorneys' fees and costs to Simmons pursuant to 15 U.S.C. § 1117, 815 ILCS 505/10a, and 815 ILCS 510/3.

9. An award of all fees, costs, and expenses associated with this action; and

10. Such other and further relief as this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs Simmons and SSB hereby demand a trial by jury in this action on all claims and issues triable before a jury.

Dated this 19th day of September, 2017.

Respectfully submitted,

/s/ Nicole M. Murray

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