

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-6375
Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF HOME FURNISHINGS AND THERMAL INSULATION**
STATE OF CALIFORNIA

10 In the Matter of the Accusation/Petition to
11 Revoke Probation Against:

12 **UNIVERSAL MATTRESS INC.,**
DENNIS CONSTANTI, PRESIDENT
13 15020 S. Figueroa Street
Gardena, CA 90248

14 License No. MFG 87030

15 Respondent.

Case No.

**ACCUSATION/PETITION
TO REVOKE PROBATION**

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Rick Fong (Complainant) brings this Accusation/Petition to Revoke
21 Probation solely in his official capacity as the Acting Chief of the Bureau of Home Furnishings
22 and Thermal Insulation (Bureau), Department of Consumer Affairs.

23 2. On or about March 5, 1999, the Bureau issued License Number MFG
24 87030 to Universal Mattress Inc., with Dennis Constanti and Leslie Constanti as Principals
25 (Respondent). The License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on May 31, 2010, unless renewed.

27 ///

28 ///

1 **DISCIPLINARY HISTORY**

2 3. On or about October 1, 2003, Accusation No. N2003120053 was filed
3 against Respondent's license. Following an administrative hearing, the Director of the
4 Department of Consumer Affairs (Director) revoked Respondent's license, effective May 7,
5 2004. A copy of that Decision and Order is attached as Exhibit 1, and incorporated herein by
6 reference.

7 4. On or about November 2, 2005, Respondent filed a petition for
8 reinstatement of his license. Effective May 25, 2006, the Director granted Respondent's petition
9 and reinstated its license. Respondent's license, however, was immediately revoked, stayed and
10 placed on probation for four (4) years, under certain terms and conditions. A copy of that
11 Decision and Order is attached as Exhibit 2, and incorporated herein by reference.

12 **JURISDICTION**

13 5. This Accusation is brought before the Director for the Bureau, under the
14 authority of the following laws. All section references are to the Business and Professions Code
15 (Code) unless otherwise indicated.

16 6. Code section 19034 states:
17 "With the approval of the director, the chief may adopt rules and regulations
18 necessary for the administration of this chapter and declaring the policy of the bureau, and shall
19 determine when any article, not otherwise clearly defined, is 'upholstered furniture' or 'bedding'
20 or 'insulation' under the provisions of this chapter."

21 7. Code section 19208 states:
22 "The chief or his or her authorized designee may cite any person licensed under
23 and subject to the provisions of this chapter [Chapter 3 (commencing with section 19000)] to
24 participate in an office conference before the chief to show cause why he or she should not be
25 subject to any or a range of disciplinary actions or to prosecution for any violation of this
26 chapter."

27 ///

28 ///

1 “(b) Label Material. Law labels shall be constructed of material approved by the
2 Bureau and shall not be easily torn or defaced.

3 “(c) Color of Label and Color of Ink:

4 “(1) A white law label printed in black ink shall be used for new materials.

5 “(2) A red law label printed in black ink shall be used for materials which are in
6 whole or in part secondhand (used).

7 “(3) A green label printed in black ink shall be used for ‘Owner's Material.’

8 “(d) Statements and Headings to be Shown on Law Labels:

9 “(1) ‘UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED
10 EXCEPT BY THE CONSUME’ shall appear at the top of the label.

11 “(2) Headings shall read ‘All New Material’ when the material is wholly new;
12 ‘Secondhand (Used) Material’ when the material is in whole or in part secondhand.

13 “(3) Description of filling material as provided in the applicable regulations.

14 “(4) For owner's own materials the heading shall state: ‘THIS ARTICLE NOT
15 FOR SALE’–‘OWNER'S MATERIAL.’

16 “(5) The registry number assigned or approved by the Bureau.

17 “(6) ‘Certification is made by the manufacturer that the materials in this article
18 are described in accordance with law.’

19 “(7) For owner's own materials the certification portion of the label shall state:
20 ‘CERTIFICATION IS MADE THAT THIS ARTICLE CONTAINS THE SAME MATERIAL
21 IT DID WHEN RECEIVED FROM THE OWNER AND THAT ADDED MATERIALS ARE
22 DESCRIBED IN ACCORDANCE WITH LAW AND CONSIST OF THE
23 FOLLOWING.’

24 “(8) For owner's own materials the name and address of the owner.

25 “(9) The finished size of articles of bedding such as sleeping bags, mattresses,
26 comforters, mattress pads, pads, box springs, pillows, and similar articles, showing the width and
27 length expressed in inches. Decorator pillows need not show size.

28 ///

1 “(10) The net weight of filling materials in articles of bedding such as sleeping
2 bags, mattresses, box springs, pads and similar items, stated in pounds and ounces.

3 “(11) All bulk filling materials which meet the requirements of Bureau of Home
4 Furnishings Technical Bulletin No. 117, dated March 2000 shall have imprinted on the law label
5 immediately following the requirements as set forth in subsection (c) of this section the
6 statement: ‘THIS PRODUCT MEETS THE REQUIREMENTS OF BUREAU OF HOME
7 FURNISHINGS TECHNICAL BULLETIN NO. 117.’

8 “(12) In addition to the requirements set forth in subsection (11) of this section all
9 invoices for products meeting the requirements of Bureau of Home Furnishings Technical
10 Bulletin No. 117, dated March 2000 shall have stated on such invoices the identification of the
11 product meeting the requirement and the statement that such identified products meet the
12 requirements of Bureau of Home Furnishings Technical Bulletin No. 117.

13 “(e) Size of Law Labels and Type of Printing:

14 “(1) The minimum size of labels shall be 2 x 3 inches. Labels shall be larger when
15 the required size of type and statements make it necessary.

16 “(2) The minimum size of type shall be one-eighth inch in height, in capital letters.

17 “(3) All printing shall be in English.

18 “(f) Forms of Law Labels.

19 Type No. 1

20 For articles of upholstered furniture without loose cushions, also for decorator
21 pillows, chair cushions, quilted bedspreads, headboards, hassocks, and similar items.

22 [See Illustration In Original]

23 Type No. 2

24 For articles of furniture with loose cushions.

25 [See Illustration In Original]

26 Type No. 3

27 For owner's own materials.

28 [See Illustration In Original]

1 “(1) Name of the manufacturer, or for imported mattress sets, the name of the
2 foreign manufacturer and importer;

3 “(2)(i) For mattress sets produced in the United States, the complete physical
4 address of the manufacturer.

5 “(ii) For imported mattress sets, the complete address of the foreign manufacturer,
6 including country, and the complete physical address of the importer or the United States
7 location where the required records are maintained if different from the importer;

8 “(3) Month and year of manufacture;

9 “(4) Model identification;

10 “(5) Prototype identification number for the mattress set;

11 “(6) A certification that the mattress complies with this standard.

12 “(i) For mattresses intended to be sold without a foundation, a certification stating
13 ‘This mattress meets the requirements of 16 CFR part 1633 (federal flammability (open flame)
14 standard for mattresses) when used without a foundation’; or

15 “(ii) For mattresses intended to be sold with a foundation, a certification stating
16 ‘This mattress meets the requirements of 16 CFR part 1633 (federal flammability (open flame)
17 standard for mattresses) when used with foundation <ID<ls-thn-eq>.’ Such foundation(s) shall
18 be clearly identified by a simple and distinct name and/or number on the mattress label; or

19 “(iii) For mattresses intended to be sold both alone and with a foundation, a
20 certification stating ‘This mattress meets the requirements of 16 CFR part 1633 (federal
21 flammability (open flame) standard for mattresses) when used without a foundation or with
22 foundation(s) <ID<ls-thn-eq>.’; and

23 “(7) A statement identifying whether the manufacturer intends the mattress to be
24 sold alone or with a foundation.

25 “(i) For mattresses intended to be sold without a foundation, the label shall state
26 ‘THIS MATTRESS IS INTENDED TO BE USED WITHOUT A FOUNDATION.’ See Figures
27 16 and 17 of this part; or

28 ///

1 “(ii) For mattresses intended to be sold with a foundation, the label shall state
2 ‘THIS MATTRESS IS INTENDED TO BE USED WITH FOUNDATION(S): <Foundation
3 ID<ls-thn-eq>.’ See Figures 12 and 13 of this part; or

4 “(iii) For mattresses intended to be sold both alone and with a foundation, the
5 label shall state ‘THIS MATTRESS IS INTENDED TO BE USED WITHOUT A
6 FOUNDATION OR WITH FOUNDATION(S): <Foundation ID<ls-thn-eq>.’ See Figures 14
7 and 15 of this part.

8 “(b) The mattress label required in paragraph (a) of this section must measure
9 $2\frac{3}{4}$ <gr-thn-eq> in width and the length can increase as needed for varying information. The
10 label must be white with black text. The label text shall comply with the following format
11 requirements:

12 “(1) All information specified in paragraphs (a)(1) through (6) of this section
13 must be in 6-point font or larger with mixed uppercase and lowercase letters. The text must be
14 left justified and begin $\frac{1}{4}$ <gr-thn-eq> from left edge of label. See Figure 12-17 of this part.

15 “(2) The statement specified in paragraph (a)(7)(i) of this section must be in 10-
16 point Arial/Helvetica font or larger, uppercase letters with the words ‘WITHOUT A
17 FOUNDATION’ bolded and the word ‘WITHOUT’ in italics. The text shall be centered in a text
18 box with the width measuring $2\frac{1}{2}$ <gr-thn-eq> and the length increasing as needed. See
19 Figures 16 and 17 of this part.

20 “(3) The statement specified in paragraph (a)(7)(ii) of this section must be in 10-
21 point Arial/Helvetica font or larger in uppercase letters. The foundation identifier should be in
22 12-point font or larger, bolded, and underlined. The text shall be centered in a text box with the
23 width measuring $2\frac{1}{2}$ <gr-thn-eq> and the length increasing as needed. See Figures 12 and 13
24 of this part.

25 “(4) The statement specified in paragraph (a)(7)(iii) of this section must be in 10-
26 point or larger Arial/Helvetica font, uppercase letters with the words ‘WITHOUT A
27 FOUNDATION OR’ bolded and the word ‘WITHOUT’ in italics. The foundation identifier
28 should be in 12-point font or larger, bolded, and underlined. The text shall be centered in a text

1 box with the width measuring $2\frac{1}{2}$ and the length increasing as needed. See
2 Figures 14 and 15 of this part.

3 “(c) The foundation label required in paragraph (a) of this section must measure
4 $2\frac{3}{4}$ in width and the length can increase as needed for varying information. The
5 label must be white with black text. The label shall contain the following:

6 “(1) The information specified in paragraphs (a)(1) through (5) of this section;
7 and (2) The words ‘Foundation ID:’ followed by a distinct name and/or number that corresponds
8 to the name and/or number used on the mattress. This text must be in 10-point or larger bold
9 Arial/Helvetica font, and the foundation identifier must be underlined. See Figures 12 through 15
10 of this part.

11 “(d) The statements specified in paragraphs (a)(7)(i) and (a)(7)(ii), and (a)(7)(iii)
12 of this section may be translated into any other language and printed on the reverse (blank) side
13 of the label.

14 “(e) No person, other than the ultimate consumer, shall remove or mutilate, or
15 cause or participate in the removal or mutilation of, any label required by this section to be
16 affixed to any item.”

17 **COST RECOVERY PROVISION**

18 13. Code section 125.3, subdivision (a), states, in pertinent part:

19 "Except as otherwise provided by law, in any order issued in resolution of a
20 disciplinary proceeding before any board within the department . . . the board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations
22 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case."

24 **CHRONOLOGY OF EVENTS**

25 14. On or about October 17, 2007, pursuant to a probation audit inspection,
26 Bureau inspectors found the following violations with Respondent’s labels:

27 (a) The labels were blurred;

28 ///

1 (b) Information including, but not limited to, the manufacturer, date of
2 manufacture, model identification, prototype identification, foundation identification and Code
3 of Federal Regulations, title 16, section 1633 statement was missing from the labels;

4 (c) The print on the labels was less than the minimum size required under
5 California regulations.

6 15. On or about February 6, 2008, the Bureau issued Notice of Violation No.
7 31279 to Respondent and directed Respondent to revise the labels.

8 16. On or about March 24, 2008, the Bureau sent Respondent a request to
9 correct the following violations on its labels:

10 (a) Information including, but not limited to, the net weight of filling
11 materials and finished size was missing from the law labels;

12 (b) The words "MADE IN USA" were printed in the same box as the Registry
13 No. on the law labels;

14 (c) The format of the Federal labels was incorrect.

15 17. On or about April 23, 2008, the Bureau e-mailed Respondent the label
16 corrections that needed to be made.

17 18. On or about April 29, 2008, during the first telephonic Probation
18 Conference, Bureau representatives again reminded Respondent to correct the labels. The
19 written reminder of the corrections was faxed to Respondent on or about that day.

20 19. On or about May 30, 2008, the Bureau sent a letter to Respondent
21 requesting the Quarterly Report (February 2008 - May 2008) and label corrections.

22 20. On or about July 7, 2008, pursuant to another probation audit inspection,
23 Bureau inspectors confiscated all non-conforming and unauthorized labels from Respondent.
24 The Bureau found the following violations with Respondent's labels:

25 (a) Information including, but not limited to, the net weight of filling
26 materials and finished size was missing from the law labels;

27 (b) The words "MADE IN USA" were printed in the same box as the Registry
28 No. on the law labels;

1 (c) The format of the Federal labels was incorrect.

2 21. On or about July 15, 2008, the Bureau sent Respondent a request for the
3 Quarterly Report (February 2008 - May 2008) and to correct the following violations on its
4 labels:

5 Label No. 1

6 (a) Information including, but not limited to, the percentage of textile fiber
7 pad, the percentage of PU form, net weight of filling materials and finished size was either
8 missing or incorrectly labeled on the law label;

9 (b) The words "MADE IN USA" were printed in the same box as the Registry
10 No. on the law label.

11 Label No. 2

12 (a) Information including, but not limited to, the percentage of textile fiber
13 pad, the percentage of PU form, net weight of filling materials and finished size was either
14 missing or incorrectly labeled on the law label;

15 (b) The words "MADE IN USA" were printed in the same box as the Registry
16 No. on the law label;

17 (c) Information including, but not limited to, foundation identification and
18 Code of Federal Regulations, title 16, section 1633 statement was missing from the Federal label.

19 22. To date, Respondent has failed to provide the Bureau the requested
20 quarterly reports and the revised labels for approval as described above.

21 ***ACCUSATION***

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Missing, Illegible and/or Incorrect Information on Labels)**

24 23. Respondent's license is subject to discipline under Code sections 19080,
25 19081 Code of Federal Regulations, title 16, section 1633.12, and California Code of
26 Regulations, title 4, section 1126, in that Respondent offered to sell mattresses which are not
27 plainly and indelibly labeled, and/or which contain missing and/or incorrect information on the

28 ///

1 labels. The circumstances are as described above in paragraphs 14-22, and are incorporated
2 herein by reference as if fully stated.

3 **PETITION TO REVOKE PROBATION**

4 24. Grounds exist to revoke the probation and reimposing the order of
5 revocation of Respondent's license in that Respondent has violated the terms and conditions of
6 its probation as follows:

7 **Condition 1. Obey All Laws.** During the period of probation, Petitioner shall
8 comply with all statutes, regulations and rules governing home furnishing and thermal insulation.

9 **Condition 2. Probation Monitoring Program.** During the period of probation,
10 Petitioner shall fully comply with the probation program established by the Bureau and shall
11 cooperate with the representatives of the Bureau.

12 **Condition 3. Quarterly Reports.** During the period of probation, Petitioner
13 shall submit quarterly reports under penalty of perjury, in a form required by the Bureau. The
14 reports shall certify and document compliance with all the conditions of probation.

15 **Condition 8. Labeling Violations.** Petitioner shall submit originals of all labels
16 to be used on their products to the Bureau at the start of probation. Petitioner shall not use any
17 label until it is approved by the Bureau.

18 If Petitioner makes any change in label structure, format, or content he or she
19 shall submit the new original labels to the Bureau for review at the time changes are made and
20 before products containing these labels can be offered for sale. Petitioner shall not use any label
21 until it is approved by the Bureau.

22 Petitioner shall attempt to recall, temporarily withhold-from-sale and re-label, all
23 products which are in violation of labeling law but otherwise comply, by notifying all accounts
24 of violations and providing complying labels.

25 If non-complying labels are subsequently found on Petitioner's products being
26 offered for sale in California, this will be considered a violation of the terms of probation.

27 All costs, including but not limited to, field, laboratory, and administrative costs
28 associated with the probation of Petitioner's license shall be paid by Petitioner to the Bureau.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

25. Respondent’s probation is subject to revocation under Probation Condition 1, in that it failed to comply with all statutes, regulations and rules governing home furnishings and thermal insulation. The circumstances are as set forth above in paragraphs 14-23 and below in paragraph 28. These paragraphs are incorporated herein by reference as if fully stated.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Comply with Probation Monitoring Program)

26. Respondent’s probation is subject to revocation under Probation Condition 2, in that it failed to fully comply with the probation program and failed to cooperate with the representatives of the Bureau. The circumstances are as set forth above in paragraphs 14-23 and below in paragraphs 27-28. These paragraphs are incorporated herein by reference as if fully stated.

THIRD CAUSE TO REVOKE PROBATION

(Failure to File Quarterly Reports)

27. Respondent’s probation is subject to revocation under Probation Condition 3, in that it failed to submit quarterly reports for the following periods:

- February 2008 - May 2008
- June 2008 - September 2008
- October 2008 - present

FOURTH CAUSE TO REVOKE PROBATION

(Labeling Violations)

28. Respondent’s probation is subject to revocation under Probation Condition 8, in that it committed labeling violations as set forth above in paragraphs 14-23, which are incorporated herein by reference as if fully stated.

///
///
///
///

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending License Number MFG 87030, issued to Universal
5 Mattress Inc., with Dennis Constanti and Leslie Constanti as Principals;

6 2. Revoking the probation that was granted by the Director and imposing the
7 disciplinary order that was stayed, thereby revoking License Number MFG 87030, issued to
8 Universal Mattress Inc., Dennis Constanti and Leslie Constanti, Principals;

9 3. Ordering Dennis Constanti and Leslie Constanti to pay the Bureau of
10 Home Furnishings and Thermal Insulation the reasonable costs of the investigation and
11 enforcement of this case, pursuant to Business and Professions Code section 125.3;

12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: _____

15
16
17 _____
18 RICK FONG
19 Acting Chief
20 Bureau of Home Furnishings and Thermal Insulation
21 Department of Consumer Affairs
22 State of California
23 Complainant

24
25
26
27
28
LA2008504387
Universal Acc.wpd