

# **EXHIBIT E**

# Holland & Knight

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Nicole Murray, Esq.  
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300 N. LaSalle Street  
Suite 400  
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Re: Bob's Discount Furniture

Dear Nicole,

I am in receipt of your letter dated May 16, 2017 and have reviewed it with my client. I have also reviewed the ad you complain about which contains information about both BDF's Black Label Gel Euro Top mattress and the Simmons Beautyrest Black Mariela mattress.

Your letter states that the ad "incorrectly claims" that: "BDF's Black Label Gel Euro Top Mattress is equivalent to Simmons' Beautyrest Black Mariela mattresses." The ad states no such thing. The ad states that both have "gel infused memory foam, supportive latex foam, individually wrapped innerspring coils and luxurious stretch knit fabric." Is it your contention that the Beautyrest Black Mariela does not have gel infused memory foam, supportive latex foam, individually wrapped innerspring coils and luxurious stretch knit fabric? It's my understanding that these are generic mattress component terms used by countless mattress manufacturers whose products might otherwise contain specific differences. Do you contend that the Variform Advanced Pocketed Coil is not an innerspring coil that is individually wrapped?

You state that the ad claims that the "BDF mattress has the *same* 'gel-infused memory foam, supportive latex foam, individually wrapped innerspring coils, and luxurious stretch-knit fabric' as Beautyrest Black mattresses. (*Emphasis added*)" The ad plainly does NOT claim that those component features are the "same," but merely states that each product contains those elementary mattress components. Since I indicated to you that I took an extended long weekend to play golf, let me use the following analogy. It's like an ad by a golf club manufacturer comparing its club to a competitor's club which states that each club has a steel shaft, an

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adjustable hosel, a rubber grip and blade iron club heads. Such a statement hardly implies that the clubs are the "same." Many variations remain.

Finally, you write that "any claim to have the 'same springs' is false and misleading." Your use of quotation marks is curious in a letter that complains of "False and Deceptive Advertising." Nowhere in the ad does BDF claim to have the "same springs" as the Simmons Beautyrest Black Mariela mattresses.

As I mentioned in our brief phone conversation, I am happy to discuss this further to better understand the nature of your client's concern and to see if there's some way to give your client some comfort that we are not claiming to be selling the "same" product. Please call me at your convenience.

Yours truly,

HOLLAND & KNIGHT LLP

  
Brian G. Leary

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