

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

## PROOF OF CLAIM



Schedule/Claim ID s361

re:  
**Barcalounger Corporation**Case Number:  
**10-11637**

NOTE: See Reverse for List of Debtors/Case Numbers/ important details. Other than claims under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for administrative expenses arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503(a).

**Name of Creditor and Address:** the person or other entity to whom the debtor owes money or property

24838953001315

SERTA, INC  
2600 FORBS  
ATTN: ROBERT E MALIN  
HOFFMAN ESTATES, IL 60192

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

**THIS SPACE IS FOR COURT USE ONLY**

Editor Telephone Number (847) 645.0200

Name and address where payment should be sent (if different from above):

RECEIVED

JUL 16 2010

BMC GROUP

☐ Check this box to indicate that this claim amends a previously filed claim.

Claim Number (if known):

Filed on: \_\_\_\_\_

Payment Telephone Number (847) 645.0200

**AMOUNT OF CLAIM AS OF DATE CASE FILED** \$ 60,000.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

**BASIS FOR CLAIM:** Royalties payable per a signed contract

(See instructions #2 and #3a on reverse side.)

**3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:**3a. Debtor may have scheduled account as: National Bedding Co.**SECURED CLAIM** (See instruction #4 on reverse side.)

N/A

Secured Claim Amount: \$ \_\_\_\_\_

**DO NOT** include the priority portion of your claim here.

Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information

**Nature of property or right of setoff:**

Unsecured Claim Amount: \$ \_\_\_\_\_

☐ Real Estate ☐ Motor Vehicle ☐ Other \_\_\_\_\_

Value of Property: \$ \_\_\_\_\_ Annual Interest Rate: \_\_\_\_\_ % if any: \$ \_\_\_\_\_ Basis for Perfection: \_\_\_\_\_

Amount of arrearage and other charges as of time case fi included in secured claim,

**PRIORITY CLAIM**

N/A

Unsecured Priority Claim Amount: \$ \_\_\_\_\_

Include **ONLY** the priority portion of your unsecured claim here.

Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

**You MUST specify the priority of the claim:**

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries, or commissions (up to \$11,725\*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

☐ Up to \$2,600\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a) ( \_\_\_\_\_ ).

\* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

**SECTION 503(b)(9) CLAIM**

\$ \_\_\_\_\_

☐ Check this box if your claim is for the value of goods received by the debtor within 20 days before the date of commencement of the case (11 U.S.C. § 503(b)(9)). Include the amount of such claim in the space for "Amount entitled to priority" above.

**CREDITS:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

**SUPPORTING DOCUMENTS:** Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See instruction 7 and definition of "redacted" on reverse side.) If the documents are not available, please explain.

**DATE-STAMPED COPY** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 4:00 pm, prevailing Eastern Time on August 6, 2010 for Non-Governmental Claimants OR on or before November 15, 2010 for Governmental Units.

**THIS SPACE FOR COURT USE ONLY**

BY MAIL TO:  
BMC Group, Inc  
Attn: Barcalounger Corporation Claims Processing  
PO Box 3020  
Chanhassen, MN 55317-3020

BY HAND OR OVERNIGHT DELIVERY TO:  
BMC Group, Inc  
Attn: Barcalounger Corporation Claims Processing  
18750 Lake Drive East  
Chanhassen, MN 55317

Barcalounger



00050

DATE

July 14, 2010

**SIGNATURE:** The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

*Ken M. [Signature]* Director of Accounting

# INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

## ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

### Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.

Debtor Name	Case No
American of Martinsville, Inc.	10-11638
Barcalounger Corporation	10-11637

### Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

#### 1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete item 4. Check the box if interest or other charges are included in the claim.

#### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

#### 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

#### 3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

#### 4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

### 5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority. Claims entitled to administrative priority under 11 U.S.C. § 503(b)(9) should be asserted by filling in the appropriate information on this Proof of Claim form. All other administrative claims must be asserted by an appropriate "request" under 11 U.S.C. § 503(a) and should not be asserted on this Proof of Claim form.

### 6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

### 7. Supporting Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d).

Do not send original documents, as attachments may be destroyed after scanning.

#### Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

#### Date-Stamped Copy

Return claim form and attachments, if any. If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.

*Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true.*

Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."

## DEFINITIONS

### DEBTOR

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

### CREDITOR

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

### CLAIM

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

### PROOF OF CLAIM

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page

### SECURED CLAIM Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors.

The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

### UNSECURED NONPRIORITY CLAIM

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

### UNSECURED PRIORITY CLAIM Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

### Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other

## INFORMATION

document showing that the lien has been filed or recorded.

### Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

### Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING [www.bmcgroup.com](http://www.bmcgroup.com)

## **TRADEMARK LICENSE AGREEMENT**

**THIS AGREEMENT** made and entered into on or around the 16<sup>th</sup> day of February 2009 and is effective as of the 1<sup>st</sup> day of January, 2009 ("Effective Date") between Serta, Inc., a Delaware corporation located at 2600 Forbs Avenue, Hoffman Estates, Illinois 60192-3411 ("Serta"), and Barcalounger Home, a Delaware Company, located at 1450 Atlantic Ave., Rocky Mount, North Carolina 27802 ("Licensee").

**WHEREAS**, Serta is the owner of all right, title, and interest in and to the trademarks listed on the attached Exhibit A (the "Marks");

**WHEREAS**, Licensee desires to acquire a license to use the Marks in connection with the products listed in Exhibit B (the "Licensed Goods"), throughout the territories set forth in Exhibit C (the "Licensed Territory");

**NOW THEREFORE**, in consideration of the mutual promises and obligations in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. Grant**

- 1.1 Serta grants to Licensee, subject to the terms of this Agreement, an exclusive, non-transferable license to use the Marks on and in association with the Licensed Goods distributed, offered for sale and sold in the Licensed Territory.
- 1.2 Licensee shall not distribute, offer for sale or sell the Licensed Goods other than to the distribution channels, mass market and club retailers set forth in Exhibit D.
- 1.3 During the Term neither Licensee nor any of its affiliated or related persons or entities shall directly or indirectly design, develop, manufacture, sell, distribute, license, advertise, market, promote, service or otherwise exploit any products that (a) are advertised, marketed or promoted under trademarks or brands with similar associations or images as the Serta brand; and/or (b) are otherwise competitive with the Licensed Goods (as reasonably determined by Serta).

### **2. Term of Agreement**

- 2.1 This Agreement will commence on the Effective Date and terminate on June 30, 2012 (the "Initial Term") unless sooner terminated by operation of law or in accordance with the provisions of this Agreement, or extended as set forth in Section 2.2 below. Notwithstanding the foregoing, either party may terminate this Agreement at the end of the first year (ending June 30, 2010) by providing the other party with written notice of termination by March 30, 2010.
- 2.2 Upon expiration of the Initial Term, this Agreement shall be automatically renewed for additional two (2) year terms, if Licensee meets or exceeds a mutually agreed upon sales level in the final year of the then-current term. Provided, however, that either

party shall have the right to terminate this Agreement effective at the end of the then-current term by giving the other party written notice of such termination not less than ninety (90) days before the expiration of the then-current term.

### **3. Quality Control, Advertising**

#### **3.1 Licensee represents, warrants, and covenants as follows:**

3.1.1 The Licensed Goods shall conform to the specifications attached hereto as Exhibit E (as they may be revised or modified in writing by the parties from time to time), and shall otherwise be substantially similar to and of no lesser quality than products manufactured and sold at similar price points by Licensee as of the relevant periods during the Initial Term or successive renewal term;

3.1.2 Licensee shall not offer for sale, advertise, promote, distribute, or use for any purpose any Licensed Goods that are damaged, defective, or of "second" quality; and;

3.1.3 In its performance of its duties and obligations pursuant to this Agreement, Licensee shall operate its business in material compliance with all applicable federal, state, and local laws and regulations.

3.2 Pursuant to Section 3.1.1, the parties, upon written agreement, may modify or supplement the quality standards applicable hereunder, and Serta shall have the right to inspect Licensee's manufacturing facilities during normal business hours, with reasonable prior notice, to insure Licensee's compliance with such quality standards.

3.3 Licensee shall provide to Serta for review and approval or disapproval representative samples of all Licensed Goods, labels or packaging used on or in connection with the Licensed Goods, and all uses of the Marks by Licensee, and all Licensee produced or created advertising, marketing, or other promotional materials relating to the Licensed Goods at least thirty (30) days prior to any adoption of or change in such Licensed Goods, labels, packaging, or uses of the marks, or any publication or distribution of such materials. Serta shall review all Licensed Goods, labels, packaging, advertising, marketing and other promotional materials submitted to Serta and provide approval or a clear and detailed written explanation of the basis for any disapproval within fifteen (15) business days after submission by Licensee. Said approval shall not be unreasonably withheld. Licensee shall have the option to alter and resubmit any materials previously rejected by Serta until Serta provides final approval in writing.

3.4 Licensee shall not distribute, sell, or offer for sale Licensed Goods to any customer or in any channel of trade that would be inconsistent with the reputation of Serta and the goodwill that Serta has established in the Marks. Serta agrees that the channels of trade listed in Exhibit D are consistent with the reputation of Serta and the goodwill that Serta has established in the Marks. Serta shall have the right to designate or restrict the channels of trade and customers to whom Licensee may distribute, sell, or offer for sale the Licensed Goods to protect Serta's name, the Marks, and the

goodwill therein. Upon the reasonable request of Serta, and to the extent practicable, Licensee shall make the Licensed Goods available for sale to any retailer of Serta brand mattress and foundation products on financial, delivery and other terms as mutually agreed upon by the parties.

3.5 In the event that Serta notifies Licensee in writing of specific quality concerns or identifies that the quality of specific Licensed Goods falls below the level of quality warranted by Licensee under this Agreement ("Nonconforming Goods"), Serta shall have the right, upon written notice to Licensee, to withdraw approval of such Nonconforming Goods, and to demand that Licensee immediately cease all distribution, sale, and offering for sale of any or all of the Nonconforming Goods and take any action reasonably requested by Serta to rectify the situation or to limit the potential damage to persons, property, the Marks, or Serta's reputation. Licensee shall have not less than sixty (60) days to rectify or cure the specific quality concerns identified in Serta's written notice. Licensee shall not resume the distribution, sale, or offering for sale of any Licensed Goods of a type once found to be Nonconforming Goods without the prior written approval of Serta. Serta will determine, in its reasonable discretion, whether the cause that resulted in such goods being Nonconforming Goods has been rectified and will not recur, and may withhold approval to resume the distribution, sale, and offering for sale of such Goods until it has so determined. If Serta reasonably determines that such cause cannot or will not be rectified or cured, and such cause affects more than 5% of the Licensed Goods produced hereunder, it may terminate this Agreement pursuant to Section 8.

#### 4. Royalties

4.1 In consideration for the license granted hereunder, Licensee agrees to pay Serta royalties as follows:

<u>Licensed Good</u>	<u>Royalty per cushion</u>
<u>Recliners</u>	
Standard Comfort Quilt Seat	\$3.00
Standard Comfort Quilt with Blended Down	\$5.00
Bonnell Comfort Quilt with Feathers	\$7.00
<u>Sleepers (per cushion, where applicable)</u>	
Mattress	\$5.00
Standard Comfort Quilt Seat	\$5.00
Standard Comfort Quilt with Blended Down	\$7.00
Bonnell Comfort Quilt with Feathers	\$9.00
<u>Stationary (per cushion)</u>	
Standard Comfort Quilt Cushion	\$5.00
Standard Comfort Quilt with Blended Down	\$7.00
Bonnell Comfort Quilt with Feathers	\$9.00

Licensed Goods shall be deemed sold when title passes to the customer. The ultimate obligation for payment of all royalties and fees under the Agreement is solely that of Licensee.

4.2 In consideration for the license granted hereunder, Licensee agrees to pay Serta a Preferred Vendor selling fee of five percent (5%) of all sales, based on Net Wholesale Prices, by Licensee of Licensed Goods sold under the Marks to America's Mattress. This selling fee shall be in addition to any royalties due under Section 4.1. "Net Wholesale Prices" shall mean the total gross invoice price of all Licensed Goods sold or disposed of by Licensee in normal, bona fide, commercial transactions, less returns received by Licensee, price allowances by Licensee, shipping charges and any sales or use taxes paid.

4.3 For each Contract Year during the Initial Term and, if applicable, the Renewal Term, Licensee shall pay Serta the non-refundable guaranteed royalty amount set forth below for such Contract Year (the "Guaranteed Minimum Royalty"):

4.3.1 For each Contract Year during the Initial Term, the Guaranteed Minimum Royalty shall be the amount set forth below for each such Contract Year:

**INITIAL TERM**

<b><u>Contract Year</u></b>	<b><u>Guaranteed Minimum Royalty</u></b>
Effective Date through 06/30/10	\$120,000
07/01/10 through 06/30/11	\$200,000
07/01/11 through 06/30/12	\$275,000
<b>TOTAL</b>	<b>\$595,000</b>

4.3.2 Licensee shall pay Serta the applicable Guaranteed Minimum Royalty for each Contract Year during the Term in equal calendar monthly installments within thirty (30) days after each calendar month end.

4.3.3 The Guaranteed Minimum Royalties for the First and Second Renewal Terms (if any) shall be subject to the mutual agreement of the parties.

4.4 The Guaranteed Minimum Royalty applicable to each Contract Year may be recouped by Licensee solely by crediting such Guaranteed Minimum Royalty against Royalties that actually accrue to Serta during the same Contract Year until such time (if ever) as such Guaranteed Minimum Royalty is fully recouped. No unrecouped portion of the Guaranteed Minimum Royalty for any Contract Year shall be carried over or otherwise credited or offset against Royalties that accrue during any prior or subsequent Contract Year. The Royalties that actually accrue to Serta during each Contract Year that exceed the Guaranteed Minimum Royalty for such Contract Year shall not be credited or otherwise offset against any Guaranteed Minimum Royalty for any prior or subsequent Contract Year.

4.5 No later than thirty (30) days after the end of each calendar month that this Agreement is in effect, and of the calendar month immediately following the expiration or termination of this Agreement, Licensee shall furnish to Serta complete and accurate statements certified to be accurate by Licensee showing: (i) the number, description,

and Net Wholesale Price of all Licensed Goods distributed or sold by Licensee during the preceding calendar month; and (ii) the identity of all customers to whom, and channels of trade in which Licensee has sold, offered for sale, marketed, or promoted the Licensed Goods during the preceding calendar month. Such statements shall be furnished to Serta whether or not any Licensed Goods have been sold during the preceding calendar month.

4.6 Royalties and fees shall be due monthly, no later than thirty (30) days after the end of the calendar month in which they are earned. Payment shall be made by check payable to Serta, Inc. The receipt or acceptance by Serta of any of the statements furnished pursuant to this Agreement or of any royalties or fees paid under this Section 4 (or the negotiation of any royalty checks paid hereunder) shall not preclude Serta from questioning the correctness thereof at any time, and in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payment made by Licensee or Serta. Payment shall be in U.S. funds. All taxes payable in the Licensed Territory in respect of the manufacture, distribution or sale of Licensed Goods shall be payable by Licensee, excluding any income taxes owed by Serta. Serta shall have the right at its expense, through an independent, certified public accountant and during business hours, to inspect the books and records of Licensee to the extent reasonably necessary to determine the accuracy and correctness of Licensee's royalty and fee payments. In the event such audit discloses an underpayment to Serta of more than five percent (5%), Licensee shall pay the audit costs.

4.7 If any royalties or fees due are not timely paid, such royalties or fees shall bear the maximum rate of interest permitted under applicable law, not to exceed two percent (2%) per month, until paid. If it becomes necessary for Serta to undertake legal action to collect any such royalties or fees, Licensee shall, if the legal action undertaken by Serta results in a determination that royalties or fees were due, pay Serta's legal fees and costs of the action and related negotiations, if any. If such action results in a determination that no additional royalties or fees were due, Serta shall pay Licensee's legal fees and costs of the action and related negotiations, if any.

## **5. Use of the Marks**

5.1 Licensee and Serta agree that this Agreement does not constitute a partnership or joint venture. Licensee agrees not to use the Marks or the name of Serta other than as provided by this Agreement.

5.2 Licensee agrees that it will not alter, modify, dilute, or otherwise misuse the Marks, or use the Marks on or in connection with any products or services or in any manner, or make any statements or claims, or distribute, sell, or offer for sale Licensed Goods to any customer or in any channel of trade, that, to Licensee's knowledge, would or would be likely to damage or demean the name or reputation of the Marks or Serta.

5.3 Licensee agrees not to use any other trademark, service mark, logo, symbol, or device in combination with the Marks without the prior written consent of Serta.

5.4 At the direction of Serta, Licensee shall cause to appear in association with the Marks such copyright, trademark or other notices as Serta may from time to time designate.

## **6. Ownership and Protection of Rights**

6.1 Licensee recognizes the value of the goodwill associated with the Marks and acknowledges that such goodwill belongs exclusively to Serta. Licensee acknowledges the exclusive right, title and interest of Serta in and to the Marks, and agrees that it will not claim or represent that it owns any right, title, or interest in or to any of the Marks.

6.2 Licensee agrees that its use of the Marks inures to the benefit of Serta and agrees not to register, attempt to register, or attempt to obtain ownership, on its own behalf or through a third party, in any jurisdiction, of any of the Marks. Licensee further agrees not to contest Serta's ownership of the Marks.

6.3 At the request and expense of Serta, Licensee shall perform any reasonable acts necessary to preserve and protect, and to vest in Serta, ownership of and title to the Marks, including, without limitation, the execution and delivery of necessary documents.

6.4 Licensee agrees not to use or authorize use of, either during or after the term of this Agreement, any configuration, mark, name, design, logo or other designation confusingly similar to any of the Marks.

6.5 Licensee agrees to notify Serta promptly in writing of any merchandise or services advertised, promoted or sold that may constitute an infringement or improper use of the Marks, of which Licensee has knowledge. Licensee further agrees to assist Serta in obtaining, defending and enforcing its rights in or registration of the Marks by providing evidence, testimony, and documents concerning, among other things, Licensee's use of the Marks, and by taking any other action reasonably requested by Serta, including but not limited to joining in any such enforcement action, all of the foregoing at the request and expense of Serta.

6.6 As between Serta and Licensee, Serta shall have the sole right to determine whether or not any action shall be taken on account of any infringement or improper use of the Marks. Licensee agrees not to contact any third party, not to make any demands or claims, not to institute any suit, and not to take any other action on account of such infringements or uses without first obtaining the prior written permission of Serta. All costs and expenses, including attorneys' fees, incurred in connection with any suit instituted by Licensee without the consent of Serta shall be borne solely by Licensee. All costs and expenses, including attorneys' fees, incurred in connection with any suit instituted with the consent of Serta shall be borne solely by Serta.



6.7 With respect to all claims and suits for infringement of any of the Marks, including suits in which Licensee is joined as a party, Serta shall have the sole right to employ counsel of its choosing and to direct the handling of the litigation and any settlement thereof at its sole expense. Serta shall be entitled to receive and retain all amounts awarded to Serta as damages, profits or otherwise in connection with such suits.

## **7. Indemnification and Insurance**

7.1 Serta assumes no liability to Licensee or any third parties with respect to the performance, use or disposal of the Licensed Goods manufactured, sold, offered for sale or distributed by Licensee. Licensee agrees to hold harmless, defend and indemnify Serta and its governing board, officers, shareholders, affiliates, employees and agents against third party claims, liabilities, demands, judgments or causes of action, and costs and expenses related thereto (including but not limited to reasonable attorneys' fees and costs), arising out of the manufacture, distribution, advertising, use, sale or marketing of the Licensed Goods, and any breach of this Agreement, including, but not limited to, unauthorized use of the Marks, provided that: (a) prompt written notice is given to Licensee of any such suit or claim; (b) Licensee shall have the option and right to undertake and conduct the defense of any such suits or claims brought against Serta; and (c) no settlement of any suit or claim is made or entered into without the prior express written consent of Licensee.

7.2 Serta agrees to hold harmless, defend and indemnify Licensee, its officers, shareholders, employees and agents against third party claims, liabilities, demands, judgments, or causes of action and costs and expenses related thereto (including but not limited to the reasonable attorneys' fees and costs) of trademark, trade dress or copyright infringement, or unfair competition, or damages relating thereto, related to Licensee's use of the Marks in the identified Licensed Territory, on or in connection with the Licensed Goods as expressly authorized by this Agreement or arising out of any acts, whether of omission or commission consistent with the terms of this Agreement, provided that (a) prompt written notice is given to Serta of any such suit or claim; (b) Serta shall have the option and right to undertake and conduct the defense of any such suits or claims brought against Licensee; and (c) no settlement of any suit or claim is made or entered into without the prior express written consent of Serta. This indemnification shall not apply to actions arising out of the use of the marks in territories where such Marks are not registered.

7.3 Licensee shall maintain in effect, throughout the term of this Agreement, at its own cost, from a qualified insurance company with a Best's rating of at least A/X, an insurance policy for bodily injury and property damage, including product liability, in at least the minimum amount of one million dollars (\$1,000,000) per incident until the first Licensed Good is shipped. As of the date the first Licensed Good is shipped, the insurance policy for bodily injury and property damage, including product liability, shall increase to a minimum amount of four million dollars (\$4,000,000) per incident. The foregoing insurance policy shall expressly provide that such insurance policy shall respond as primary insurance to any insurance carried by Serta and that Serta shall be given thirty (30) days' prior written notice of cancellation or nonrenewal of

such policies, other than for non-payment of premium, and shall be given ten (10) days' prior written notice in the event of cancellation for non-payment of premium. Such insurance policy shall include as additional insureds Serta, its agents and employees. Licensee shall furnish to Serta a certificate of insurance evidencing the aforementioned coverage on or before the Effective Date, at policy renewal and upon reasonable request by Serta. Such insurance coverage shall be provided with respect to all claims for damages arising out of the manufacture, distribution, advertising, use, sale or offering for sale of the Licensed Goods or Licensee's use of the Marks, regardless of when such claims are made or when the underlying injuries occur or manifest themselves.

## **8. Termination**

8.1 Serta and Licensee each shall have the right to terminate this Agreement immediately by giving written notice to the other party if:

- 8.1.1 Either party fails to observe or perform any material covenant or obligation herein and if such default is not cured within sixty (60) days after the party receives written notice specifying such default;
- 8.1.2 Either party files a petition in bankruptcy or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law, or if a receiver is appointed for a party or for a party's business;
- 8.1.3 Either party is unable to pay its debts as and when they become due and payable;
- 8.1.4 There is a change in the ownership or control of a party's business except where such change has been approved by the other party;
- 8.1.5 Either party discontinues its business; or
- 8.1.6 Any of the rights granted by this Agreement is the subject or object of an attachment, sequestration, mortgage, lien, or pledge, or is about to be assigned or transferred to a third party.

8.2 In the event of a termination of this Agreement under Section 8.1, Licensee shall be entitled to no refund of previously paid royalties.

## **9. Licensee's Duties upon Termination**

9.1 Upon termination of this Agreement for any reason, Licensee shall (a) immediately discontinue manufacturing all Licensed Goods; and (b) except as provided in Section 9.2: (i) immediately discontinue distributing, selling, and offering for sale all Licensed Goods, (ii) immediately discontinue all uses of the Marks, and (iii) promptly destroy all materials in its possession incorporating the Marks and provide to Serta a description of the materials destroyed.

9.2 Notwithstanding the provisions of Section 9.1 and the other provisions of this Agreement, in the event that this Agreement expires or is terminated for any reason other than a breach or other failure of Licensee to meet the quality standards warranted herein or otherwise to perform its material obligations under this Agreement, Licensee shall have a period of one hundred twenty (120) days following the date of termination or expiration in which to distribute, sell, and offer for sale Licensee's inventory of Licensed Goods on hand at the date of termination or expiration, at such price and terms to be determined in the sole discretion of Licensee (the "Sell-Off Period"). At the conclusion of the Sell-Off Period, Licensee shall immediately discontinue all uses of the Marks and promptly destroy all materials in its possession incorporating the Marks and provide to Serta a description of the materials destroyed.

## **10. Survival of Rights and Obligations**

10.1 Termination of this Agreement shall not impair any rights of Serta or Licensee, nor shall it relieve Serta or Licensee of any of its rights or obligations that have accrued prior to termination of this Agreement.

## **11. Remedies**

11.1 The parties hereto acknowledge that any material breach of this Agreement will result in immediate and irreparable damage, and that money damages alone will be inadequate to compensate the nonbreaching party. Therefore, in the event of a material breach or threatened material breach of any provision of this Agreement the nonbreaching party may, in addition to all other remedies, obtain immediate injunctive relief prohibiting the breach or compelling specific performance.

## **12. Severability**

12.1 If any provision of this Agreement is held to be unenforceable, such provision shall be limited and construed so as to make it enforceable consistent with the parties' manifest intentions or, if such limitation or construction is not possible or would be inconsistent with the parties' manifest intentions, such provision will be deemed stricken from this Agreement. In any such event, all other provisions of this Agreement will remain in full force and effect, unless such enforcement would result in an injustice or be inconsistent with the purposes of this Agreement.

## **13. Waiver**

13.1 No waiver of any term of this Agreement shall be valid unless in a writing signed by the party against which the waiver is sought to be enforced. No waiver by either party of any breach of or failure of performance under this Agreement shall be deemed a continuing waiver or a waiver as to any subsequent or similar breach.

**14. No Assignment**

- 14.1 Neither this Agreement nor any right, license or privilege granted hereunder shall be assignable by a party, by operation of law or otherwise, without the other party's prior written consent to such assignment, which shall not be unreasonably withheld.

**15. Notice**

- 15.1 All notices, demands, and other communications required by this Agreement and all payments to be made pursuant to this Agreement, shall be sent to the addresses set forth below unless and until a notification of a change of address is given in writing. All notices, demands, payments and other communications shall be deemed to have been duly given or made (i) when delivered personally, (ii) when sent by telefax to the telefax number on the address shown below, (iii) the second day following the day of delivery prepaid to a national air courier service, or (iv) three business days after deposit in the U.S. mails certified or registered, postage prepaid, in each case addressed to the party to whom notice is being given at the addresses set forth below.

Licensor  
Serta, Inc.  
2600 Forbs  
Hoffman Estates, IL 60192  
Attn: Robert E. Malin  
Fax: (847) 747-0507

Licensee  
Barcalounger Home  
1450 Atlantic Ave.  
Rocky Mount, NC 27802  
Attn: Larry Smith  
Fax: (252) 977-2864

And Copy To: Global Licensing, Inc  
263 Commerce Drive  
Suite 102  
Pawleys Island, SC 29585  
Attn: Robert Skotnicki

**16. Governing Law**

- 16.1 This Agreement is made in the State of Illinois, and shall be governed and construed by the internal laws of the State of Illinois. Serta and Licensee agree that exclusive jurisdiction over any legal action arising out of or in connection with this Agreement will be in state or federal courts located in Chicago, Illinois, and Licensee hereby agrees to such jurisdiction and venue.

**17. Entire Agreement**

- 17.1 This Agreement contains the entire agreement between the parties with regard to its subject matter and supersedes all prior agreements between them pertaining to its subject matter. This Agreement may be altered or amended only in a duly executed writing.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives on the dates set forth below.

SERTA, INC.

By: Robert E. Malin

Name: Robert E. MALIN

Title: VP - LICENSING

Date: 3/10/09

BARCALOUNGER Corporation

By: Larry L. Smith

Name: Larry L Smith

Title: Executive VP / Sales & Marketing

Date: 3-9-09

**EXHIBIT A**

**Marks**

SERTA

SERTA with Swirl logo

SERTA "COUNTING SHEEP"

SERTA WE MAKE THE WORLD'S BEST MATTRESS

PERFECT SLEEPER

PERFECT DAY

SERTAPEDIC

## **EXHIBIT B**

### **Licensed Goods**

Fully assembled upholstery, including sleepers, sofas, loveseats, chairs and recliners. Such Licensed Goods include both stationary and motion, except specialty recliners distributed through channels controlled by Serta's office chair licensee.

## **EXHIBIT C**

### **Licensed Territories**

United States, its territories and possessions

Canada

Mexico

The Caribbean

Asia

United Kingdom



## **EXHIBIT D**

### **Distribution Channels**

- 1) Furniture Stores and Chains
- 2) Home Accessory Stores
- 3) Sleep Shops
- 4) Department Stores
- 5) Sam's Club and Big Lots
- 6) Mass Merchant Channel: Sears, JC Penney, Kohls, Bed Bath and Beyond, Home Goods
- 7) Direct Mail Cataloguers
- 8) America's Mattress Stores: (Sales to this channel carry a 5% Preferred Vendor Fee, in addition to any royalties owed under the Agreement. The Preferred Vendor Fee is payable to Serta, Inc. pursuant to Section 4 of this Agreement.)
- 9) Military Exchange
- 10) Hospitality and Contract

**EXHIBIT E**

**Specifications**

Quality and Construction Specifications to be mutually agreed upon, committed to writing, signed by an appropriate employee of each party, and attached hereto.

CH01/25298867.3

# STATEMENT

Page 1



## SERTA MATTRESS COMPANY

DIV. OF NATIONAL BEDDING COMPANY LLC  
2600 Forbs Avenue  
Hoffman Estates, IL 60192  
847-645-0200

REMIT TO: National Bedding Company LLC  
2600 Forbs Ave.  
Hoffman Estates, IL 60192

Customer # C-116  
BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

Statement Date: 07-14-10  
Payment Terms: DUE ON RECEIPT

Last Payment Date: 12-22-09  
Last Payment Amount: \$10,000.00

Attention: LARRY SMITH

Invoice Number	Invoice Date	Due Date	Purchase Order	Invoice Amount	Balance Due	Last Pay Date	#Days Out
D8916HOF	12-22-09	12-23-09		10000.00	10000.00		204
D8967HOF	01-22-10	01-23-10		10000.00	10000.00		173
D8997HOF	02-19-10	02-20-10		10000.00	10000.00		145
D9025HOF	03-18-10	03-19-10		10000.00	10000.00		118
D9075HOF	04-23-10	04-24-10		10000.00	10000.00		82
D9095HOF	05-21-10	05-22-10		10000.00	10000.00		54

\*\*\*\*\*  
\*\*\*\*REMIT TO - PAYMENTS ONLY\*\*\*\*  
\*\*\*\*\*

National Bedding Company LLC  
2600 Forbs Ave.  
Hoffman Estates, IL 60192

TOTAL ACCOUNT BALANCE 60,000.00

Current	1 - 30 days	30 - 60 days	60 - 90 days	Future
		10,000.00	50,000.00	

# INVOICE

## SERTA MATTRESS COMPANY (DIVISION OF NATIONAL BEDDING COMPANY LLC)

INVOICE NO.

D8916HOF

Page: 1

SOLD TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

SHIP TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

INVOICE DATE	ORDER NUMBER	CUSTOMER P/O	TERMS		
12-22-09			DUE ON RECEIPT		
PRODUCT NUMBER	DESCRIPTION		QTY	UNIT PRICE	AMOUNT

GUARANTEED MINIMUM ROYALTY 2009-12	1.0	10,000.00	10,000.00
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NOTES:

Sub Total: 10,000.00  
Sales Tax: 0.00  
Grand Total: 10,000.00

REMIT TO:

NATIONAL BEDDING COMPANY LLC  
2600 Forbs Ave  
Hoffman Estates, IL 60192  
Phone (847)645-0200 Fax (847)645-0205

# INVOICE

## SERTA MATTRESS COMPANY (DIVISION OF NATIONAL BEDDING COMPANY LLC)

INVOICE NO.

D8967HOF

Page: 1

SOLD TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

SHIP TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

INVOICE DATE	ORDER NUMBER	CUSTOMER P/O	TERMS		
01-22-10			DUE ON RECEIPT		
PRODUCT NUMBER	DESCRIPTION		QTY	UNIT PRICE	AMOUNT

GUARANTEED MINIMUM ROYALTY 2010-01	1.0	10,000.00	10,000.00
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NOTES:

Sub Total:	10,000.00
Sales Tax:	0.00
Grand Total:	10,000.00

REMIT TO: NATIONAL BEDDING COMPANY LLC  
2600 Forbs Ave  
Hoffman Estates, IL 60192  
Phone (847)645-0200 Fax (847)645-0205

# INVOICE

## SERTA MATTRESS COMPANY (DIVISION OF NATIONAL BEDDING COMPANY LLC)

INVOICE NO.

D8997HOF

Page: 1

SOLD TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

SHIP TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

INVOICE DATE	ORDER NUMBER	CUSTOMER P/O	TERMS		
02-19-10			DUE ON RECEIPT		
PRODUCT NUMBER	DESCRIPTION		QTY	UNIT PRICE	AMOUNT
	GUARANTEED MINIMUM ROYALTY 2010-02		1.0	10,000.00	10,000.00

NOTES:

Sub Total: 10,000.00  
Sales Tax: 0.00  
Grand Total: 10,000.00

REMIT TO:

NATIONAL BEDDING COMPANY LLC  
2600 Forbs Ave  
Hoffman Estates, IL 60192  
Phone (847)645-0200 Fax (847)645-0205

# INVOICE

## SERTA MATTRESS COMPANY

(DIVISION OF NATIONAL BEDDING COMPANY LLC)

INVOICE NO.

D9025HOF

Page: 1

SOLD TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

SHIP TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

INVOICE DATE	ORDER NUMBER	CUSTOMER P/O	TERMS		
03-18-10			DUE ON RECEIPT		
PRODUCT NUMBER	DESCRIPTION		QTY	UNIT PRICE	AMOUNT

GUARANTEED MINIMUM ROYALTY 2010-03	1.0	10,000.00	10,000.00
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NOTES:

Sub Total: 10,000.00  
Sales Tax: 0.00  
Grand Total: 10,000.00

REMIT TO: NATIONAL BEDDING COMPANY LLC  
2600 Forbs Ave  
Hoffman Estates, IL 60192  
Phone (847)645-0200 Fax (847)645-0205

# INVOICE

**INVOICE NO.**

D9075HOF

**SERTA MATTRESS COMPANY***(DIVISION OF NATIONAL BEDDING COMPANY LLC)*

Page: 1

SOLD TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

SHIP TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

INVOICE DATE	ORDER NUMBER	CUSTOMER P/O	TERMS		
04-23-10			DUE ON RECEIPT		
PRODUCT NUMBER	DESCRIPTION		QTY	UNIT PRICE	AMOUNT

GUARANTEED MINIMUM ROYALTY 2010-04	1.0	10,000.00	10,000.00
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NOTES:

Sub Total:	10,000.00
Sales Tax:	0.00
Grand Total:	10,000.00

**REMIT TO:**

**NATIONAL BEDDING COMPANY LLC**  
2600 Forbs Ave  
Hoffman Estates, IL 60192  
Phone (847)645-0200 Fax (847)645-0205



# INVOICE

## SERTA MATTRESS COMPANY (DIVISION OF NATIONAL BEDDING COMPANY LLC)

INVOICE NO.

D9095HOF

Page: 1

SOLD TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

SHIP TO: BARCALOUNGER  
128 EAST CHURCH STREET  
MARTINSVILLE, VA 24112

INVOICE DATE	ORDER NUMBER	CUSTOMER P/O	TERMS		
05-21-10			DUE ON RECEIPT		
PRODUCT NUMBER	DESCRIPTION		QTY	UNIT PRICE	AMOUNT

GUARANTEED MINIMUM ROYALTY 2010-05	1.0	10,000.00	10,000.00
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NOTES:

Sub Total: 10,000.00  
Sales Tax: 0.00  
Grand Total: 10,000.00

REMIT TO: NATIONAL BEDDING COMPANY LLC  
2600 Forbs Ave  
Hoffman Estates, IL 60192  
Phone (847)645-0200 Fax (847)645-0205