IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FLEXI-MAT CORPORATION,
an Illinois corporation,

Plaintiff,

v.

DALLAS MANUFACTURING COMPANY, INC., a Texas corporation, **BJ'S WHOLESALE CLUB, INC.**, a Delaware corporation, and **DOSKOCIL MANUFACTURING COMPANY, INC.**, a Texas corporation,

Defendants.

Civil Action No. 04 10162 DPW

PLAINTIFF'S MOTION TO FILE AMENDED COMPLAINT

Plaintiff Flexi-Mat Corporation ("Flexi-Mat"), by its attorneys, hereby moves the Court for an order pursuant to Fed. R. Civ. P. 15(a) permitting Flexi-Mat to amend its complaint. A copy of Flexi-Mat's First Amended Complaint is attached as Exhibit A.

The bases for Flexi-Mat's motion are as follows:

1. Flexi-Mat seeks to add an additional defendant, Doskocil Manufacturing, Inc. ("Doskocil"), to this case and a Count II to the Complaint. Flexi-Mat recently learned that Doskocil manufactures, offers to sell and sells pet beds which are made substantially as claimed and described in Flexi-Mat's United States Patent No. 5,765,502 (the "'502 patent"). These pet beds are sold to defendant BJ's Wholesale Club ("BJWC"), which in turn offers for sale and sells the pet beds to purchasers in the United States under the name "Berkley & Jensen Premium Quality Bolster Pet Bed." Flexi-Mat believes that Doskocil has infringed and/or has induced

others to infringe and/or has committed acts of contributory infringement of one or more claims of the '502 patent.

2. The facts underlying the claim against Doskocil are related to the facts underlying Flexi-Mat's claim, as alleged in its original complaint, against defendants Dallas Manufacturing Co., Inc. ("Dallas Mfg.") and BJWC. Defendant Dallas Mfg. imports, offers to sell and sells pet beds which are made substantially as claimed and described in the '502 patent and these pet beds are also sold to BJWC, which in turn offers for sale and sells the pet beds to purchasers in the United States under the name "Berkley & Jensen Premium Quality Bolster Pet Bed."

3. Fed. R. Civ. P. Rule 15 states that leave to amend "shall be freely given when justice so requires." Further, the U.S. Supreme Court has held that in the absence of undue delay, undue prejudice to the party opposing the motion, or futility of the amendment, leave to amend should be freely given. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962).

4. Flexi-Mat has not unduly delayed the amendment of its complaint, defendants will not face undue prejudice by allowance of the amendment, and the amendment is not futile. Flexi-Mat has only recently learned of Doskocil's infringing pet bed. Moreover, the amendment supports judicial economy, since the same patent will be litigated against all the defendants.

5. This case was filed on January 23, 2004, and the parties have only recently begun their discovery, so there would be no prejudice due to the date of filing the Amended Complaint. A copy of Flexi-Mat's Certification of Compliance with Local Rule 15.1 is attached as Exhibit B.

For the foregoing reasons, plaintiff Flexi-Mat Corporation respectfully requests that it be granted leave to file a First Amended Complaint naming Doskocil Manufacturing, Inc. as a party defendant.

Respectfully submitted,

FLEXI-MAT CORPORATION

By: _____

Dated: July 14, 2004

John J. Cotter (BBO #554524)
William Meunier
Testa, Hurwitz & Thibeault, LLP
125 High Street
Boston, MA 02110
Telephone: (617) 248-7000
Facsimile: (617) 248-7100

Larry L. Saret (*pro hac vice*)
Manotti L. Jenkins (*pro hac vice*)
MICHAEL BEST & FRIEDRICH LLP
401 N. Michigan Avenue, Suite 1900
Chicago, Illinois 60611-4274
Telephone: (312) 222-0800
Facsimile: (312) 222-0818

Attorneys for Plaintiff, Flexi-Mat Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand) on July 14, 2004

_____