

ESTTA Tracking number: **ESTTA443145**

Filing date: **11/28/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201493
Party	Defendant Kathleen Mchugh
Correspondence Address	KATHLEEN MCHUGH 217 LUMBEE CT UNIT 41 PAWLEYS ISLAND, SC 29585-4391 UNITED STATES kathleen@rowallanusa.com
Submission	Other Motions/Papers
Filer's Name	Thomas L. Moses
Filer's e-mail	tom.moses@momolaw.com
Signature	/Thomas L. Moses/
Date	11/28/2011
Attachments	2011 11 28 Motion to show cause and consolidate_Final.pdf ( 4 pages )(39683 bytes ) 2011 11 28 McHugh Affidavit.pdf ( 2 pages )(21900 bytes ) 2011 10 07 Motion to Dismiss 12b6.pdf ( 26 pages )(762495 bytes )



Applicant's word mark ROWALLAN, U.S. Serial No. 85281663, and Opposition No. 91201493 is directed to Applicant's stylized mark ROWALLAN OF SCOTLAND, U.S. Serial No. 85206192.

2. Applicant did not realize that two separate oppositions had been filed by Opposer.

3. On October 7, 2011, Applicant filed a Motion to Dismiss with the Trademark Trial and Appeal Board for Opposition No. 91201492.

4. On or about November 4, 2011, Applicant received notice from the USPTO TTAB indicating that no answer had been filed for Opposition No. 91201493, and that notice of default was entered against Applicant in that case. The notice also states that Applicant is allowed 30 days from the mailing date of the order to show cause why judgment by default should not be entered against Applicant in accordance with Fed. R. Civ. P. 55(b).

#### ARGUMENT

5. In accordance with Fed. R. Civ. P. 60(b), Applicant hereby requests that the Board set aside the default judgment in Opposition No. 91201493 due to mistake and inadvertence. Applicant simply did not realize that two separate oppositions had been filed, and Applicant intends to vigorously challenge both Opposition actions filed by Opposer.

6. Applicant is providing herewith an affidavit in support of this motion, wherein the affidavit sets forth the fact that the failure to answer the instant Notice of Opposition was due to a mistake and inadvertence.

7. Applicant is also requesting that Opposition Nos. 91201492 and 91201493 be consolidated into a single action, as each of these actions arises out of the same nucleus of facts, includes the same grounds for opposition, and both causes of action involve the same questions

of law and fact. This Motion to Consolidate is filed in accordance with Fed. R. Civ. P. 42(a), which states that actions involving a common question of law or fact may be consolidated into a single action.

8. Applicant also requests that its Motion to Dismiss, filed on October 7, 2011 in Opposition No. 91201492, serve as a Motion to Dismiss for both Opposition actions. A copy of the Motion to Dismiss is provided herewith, and the grounds, arguments and legal authority set forth in that Motion to Dismiss are equally applicable to Opposition No. 91201493. Alternatively, if the TTAB would prefer that Applicant file a separate Motion to Dismiss relating to Opposition No. 91201493, then Applicant will certainly do so.

Respectfully Submitted,

Date: November 28 2011

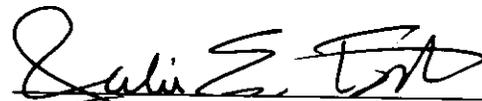


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*Attorney for the Defendant/Applicant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S MOTION TO SHOW CAUSE AND MOTION TO CONSOLIDATE** was served by First Class Mail this 28<sup>th</sup> day of November, 2011 to counsel for Opposer as follows:

Joshua M. Gerben  
GERBEN LAW FIRM, PLLC  
1155 Connecticut Ave NW, Suite 500  
Washington, DC 20001  
*Counsel for Opposer*



Julie E. Tate  
Legal Assistant to Thomas L. Moses  
MONAHAN & MOSES, LLC  
13-B West Washington Street  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>Checker Leather Limited,</p> <p style="text-align: right;">Opposer,</p> <p style="text-align: center;">- against -</p> <p>Kathleen McHugh,</p> <p style="text-align: right;">Applicant.</p>	<p style="text-align: center;">Opposition No. 91201493</p> <p style="text-align: center;"><b>AFFIDAVIT OF KATHLEEN McHUGH</b></p>
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**AFFIDAVIT**

I, Kathleen McHugh, being first duly sworn, hereby say:

1. I am an individual, of 217 Lumbee Circle, Unit 41, Pawleys Island, South Carolina 29585.

2. I am the owner of trademark application nos. 85/206,192 and 85/281,663.

3. I received from the USPTO Notices of Opposition relating to Opposition Nos. 91201492 and 91201493, but due to the similarity of the Notices, I did not realize that there was more than one action pending.

4. Both Notices of Opposition are nearly identical. The only difference between the two Notices of Opposition were the fact that Opposition No. 91201492 is directed to Applicant's word mark ROWALLAN, U.S. Serial No. 85281663, and Opposition No. 91201493 is directed to Applicant's stylized mark ROWALLAN OF SCOTLAND, U.S. Serial No. 85206192.

Otherwise, the two Notices of Opposition appear to be identical.

5. I retained the law firm of Monahan & Moses to represent me in Opposition No. 91201492, and we timely filed a Motion to Dismiss in that case.

6. If I had realized that two Opposition actions were pending, we would have responded to each one.

7. The failure to file an answer to Opposition No. 91201493 was due to a mistake and inadvertence.

Kathleen McHugh  
NAME

Sworn to and subscribed before me this 22nd day of November 2011.

Nila R. Abbott

A Notary Public of the State of South Carolina

My commission expires: 7-10-2019



Agreement (entitled “Heads of Terms”), the Bill of Sale, a Demand Note dated October 2, 2008, an executed Security Agreement dated October 2, 2008, and an unexecuted Security Agreement dated February 12, 2009. These documents are attached hereto as Exhibit A. It should be noted that the Security Agreements and the Demand Note are between Applicant and a third party, C.S. Hutter Company, who is the secured party, and who is not a party to this action.

Opposer has further alleged that 1) Applicant breached its contract with Opposer by failing to render payment of the balance due under the Agreement, 2) due to this breach, rights in the United States ROWALLAN trademark revert back to Opposer, and 3) that Applicant’s application is fraudulent because she induced the Opposer into letting its previous registration lapse by entering into the Contract and promising to pay Opposer for the rights to the ROWALLAN trademark in the United States. Opposer further alleges that the registration of the ROWALLAN mark would “be a source of damage and injury to Opposer.”

Opposer is attempting to litigate a breach of contract claim under the guise of a trademark opposition.

## **II. LEGAL AUTHORITY AND ARGUMENTS**

In reviewing a pleading for purposes of a motion to dismiss for failure to state a claim upon which relief can be granted, the Board must assume that all of opposer's well pleaded allegations are true and construe the notice of opposition in a light most favorable to opposer. Dismissal will be granted only if it appears that opposer is entitled to no relief under any set of facts which could be proved in support of its claim. See Fed. R. Civ. P. 8(f) and *Stanspeck Co. v. American Chain & Cable Co., Inc.*, 531 F.2d 563, 189 USPQ 420 (CCPA 1976). Under Trademark Rule 2.104 (a), the pleadings in an opposition proceeding must set forth “a short and

plain statement showing why the opposer believes it would be damaged by the registration of the opposed mark and state the grounds for the opposition.” Therefore, to survive a motion to dismiss, opposer need only have alleged such facts as would, if proved, show 1) that petitioner has standing to oppose registration of applicant's mark and 2) that a statutory ground for opposing such registration exists. *See Lipton Industries, Inc., v. Ralston Purina Co.*, 670 F.2d 1029, 213 USPQ 185 (CCPA 1982).

In this case, Opposer is simply alleging that Applicant breached a contract between the parties, and as a result, the ownership of the trademark reverts back to Opposer. However, the Trademark Trial and Appeal Board is not the proper forum for resolving a claim for breach of contract, particularly where, as here, the Agreement specifically states that the Agreement “will be governed by the law of Scotland, where the Seller is based,” and wherein “[b]oth parties confirm that they submit to the exclusive jurisdiction for the Court of Session, Edinburgh. As this board has stated on previous occasions, “If opposer is pleading a breach of contract claim, we agree with applicant, and we are unaware of any authority we have to decide such claims and applicant's motion for judgment on the breach of contact claim would be well taken.” The Pennsylvania State Univ., OPPOSITION NO. 112,7, 2001 WL 630654 (Trademark Tr. & App. Bd. June 6, 2001). The Board has no jurisdiction to consider a breach of contract claim, per se. Wallyball Int'l, Inc., OPPOSITION 120,198, 2003 WL 22273100 (Trademark Tr. & App. Bd. Sept. 26, 2003). Duramax Marind, L.L.C. v. R.W. Fernstrum & Co., 119,899, 2001 WL 431506 (Trademark Tr. & App. Bd. Apr. 26, 2001).

Furthermore, even if the Board were to undertake an interpretation of the Agreement under Scottish law, there is no provision in the Agreement stating that in the event of a breach, the trademark rights in the ROWALLAN mark revert back to Opposer. See Exhibit A.

Presumably, under Scottish law, as in the U.S., the only remedy or relief available to Opposer would be for specific performance, ie. payment of the balance due under the contract. Clearly, the U.S. Patent and Trademark Office has no authority to force one party to pay money to another party in an action for breach of contract. Additionally, to further complicate matters, the Assignment documents from the prior registration, including the Security Agreements wherein C. S. Hutter is the secured party, may arguably provide a superior claim of ownership of the instant mark and ultimate registration in comparison to any ownership claims potentially made by Opposer in this case.

Opposer has also alleged fraud in its notice of opposition, stating that “Applicant’s application is fraudulent because she induced the Opposer into letting its previous registration lapse by entering into the Contract and promising to pay Opposer for the rights to the ROWALLAN trademark in the United States.” First, the previous registration was cancelled on March 18, 2011, nearly two and a half years after Applicant had been assigned ownership of the previous registration, so it is difficult to understand how Applicant could have induced the Opposer into letting the registration (which it no longer owned) lapse. This argument is ludicrous.

Fraud in obtaining a trademark registration occurs “when an applicant knowingly makes false, material representations of fact in connection with his application.” *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ2d 1483, 1484 (Fed. Cir. 1986); *Mister Leonard Inc. v. Jacques Leonard Couture Inc.*, 23 USPQ2d 1064, 1065 (TTAB 1992) (“Thus, according to *Torres*, to constitute fraud on the PTO, the statement must be (1) false, (2) a material representation and (3) made knowingly.”). *See also Medinol Ltd. v. Neuro Vasx Inc.*, 67 USPQ2d 1205 (TTAB 2003) (“A Trademark applicant commits fraud in procuring a registration when it

makes material representations of fact in its declaration which it knows or should know to be false.”). Fraud must be proven with clear and convincing evidence, and any doubt must be resolved against a finding of fraud. *See Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 USPQ 955, 962 (TTAB 1986) and cases cited therein. Furthermore, fraud will not lie if it can be proven that the statement, though false, was made with a reasonable and honest belief that it was true. *See Woodstock's Enterprises Inc. (California) v. Woodstock's Enterprises Inc. (Oregon)*, 43 USPQ2d 1440 (TTAB 1997). *Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 77 USPQ2d 1917, 1926 (TTAB 2006).

In support of its fraud allegation, Opposer has not alleged that Applicant made any false, material representations of fact to the USPTO in connection with her Application. Indeed, when the previous registration was cancelled, Applicant was the owner of the registration. Allowing one's own trademark registration to lapse simply does not constitute fraud, and that preposterous position is wholly unsupported by any legal authority.

Additionally, Opposer has not established that it has standing to oppose Applicant's registration, nor has it alleged any statutory grounds for opposing the same. Opposer is based in Scotland, and has not alleged that it conducts any business, whatsoever, in the United States. Thus, other than for purposes of harassment, Opposer has no real interest in the proceedings, nor does Opposer have any reasonable basis for the belief that it would be damaged by the registration of Applicant's mark. On this point, the Board has stated: “All that is necessary . . . is that the ‘person’ bringing the opposition establish conditions and circumstances from which damage to it from the opposed mark can be assumed.” *FBI v. Societe: “M. Bril & Co.”*, 172 U.S.P.Q. 310 (T.T.A.B. 1971). Here, Opposer has established no conditions or circumstances from which damage to it from the opposed mark can be assumed, or even perceived.

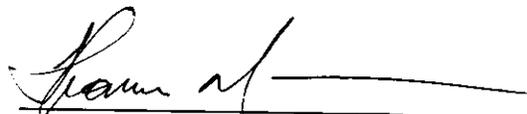
Opposer has stated no statutory grounds for opposing Applicant's mark. Such grounds typically allegations of a likelihood of confusion with another mark, prior and continued use as a trade name, priority and continued use of a trademark, ownership of prior registration in conflict with opposed mark, descriptiveness, that the mark is generic or deceptively misdescriptive, deceptive, dilution, misuse, or fraud on the USPTO. Opposer has not alleged facts that support any valid grounds to support this opposition.

Viewed in the light most favorable to Opposer, even if the Board interpreted the Agreement under Scottish law and found that Applicant had breached said Agreement, there is simply no legal authority to support a refusal by this Board to register Applicant's mark under such circumstances.

Applicant requests, therefore, that the TTAB dismiss this action forthwith.

Respectfully Submitted,

Date: October 7, 2011

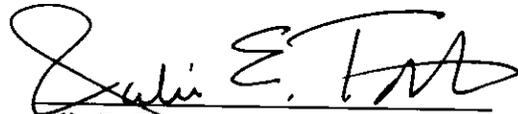


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[tom.moses@momolaw.com](mailto:tom.moses@momolaw.com)  
*Attorney for the Defendant/Applicant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S MOTION TO DISMISS** was served by First Class Mail this 7th day of October, 2011 to counsel for Opposer as follows:

Joshua M. Gerben  
GERBEN LAW FIRM, PLLC  
1155 Connecticut Ave NW, Suite 500  
Washington, DC 20001  
*Counsel for Opposer*



Julie E. Tate

Legal Assistant to Thomas L. Moses  
MONAHAN & MOSES, LLC  
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[tom.moses@momolaw.com](mailto:tom.moses@momolaw.com)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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Checker Leather Limited,  Opposer,  - against -  Kathleen McHugh,  Applicant.	Opposition No. 91201492
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**EXHIBIT A**

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>		NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>		ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL	
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Checker Leather Limited		10/02/2008	CORPORATION: UNITED KINGDOM
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Kathleen McHugh		
<b>Street Address:</b>	214 Lumbee Circle		
<b>Internal Address:</b>	No. 41		
<b>City:</b>	Pawleys Island		
<b>State/Country:</b>	SOUTH CAROLINA		
<b>Postal Code:</b>	29585		
<b>Entity Type:</b>	INDIVIDUAL: UNITED STATES		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	78236029	ROWALLAN	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(843)408-0108		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	8432786068		
<b>Email:</b>	kathleen@rowallanusa.com		
<b>Correspondent Name:</b>	Kathleen McHugh		
<b>Address Line 1:</b>	28 Allegheny Avenue		
<b>Address Line 4:</b>	Towson, SOUTH CAROLINA 21204		
<b>NAME OF SUBMITTER:</b>	Kathleen McHugh		
<b>Signature:</b>	/Kathleen McHugh/		
<b>Date:</b>	05/01/2009		

CH \$40.00 78236029

**Total Attachments: 16**

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04/21/2009 10:21 FAX 4345288868

CS HUTTER CO

**Bill of Sale**

L. Scott Forsyth Latimer, a director of Checker Leather Ltd., in the County of Ayrshire, Scotland, United Kingdom, in consideration of an amount equal to approximately Seven Hundred Eighteen Thousand Eight Hundred and Forty Six Dollars (718,846) USD inclusive of interest, to be paid by Checker Leather USA LLC in the payment schedule agreed to in the Heads of Terms, paragraphs 8 and 9, signed and witnessed on October 3, 2008 by both Checker Leather Ltd, the seller and Checker Leather USA LLC, the purchaser hereby acknowledged, do hereby grant, sell, transfer and deliver unto Checker Leather USA LLC represented by Kathleen McHugh, the following:

1. Inventory with an approximate landed cost value of \$400,000 USD and located in the warehouse of C.S. Hutter Co. at 1320 Stephenson Avenue, Lynchburg Virginia, USA
2. Goodwill
3. Intellectual Property and other intangibles
4. The Rowallan trademark for the U.S.A
5. All exhibition booths, computer equipment, shelving and other miscellaneous assets of the US business located in the warehouse in Lynchburg, Virginia.
6. Stock currently on order with suppliers and anticipated to be delivered in October and November 2008, valued at \$19,672.50 plus freight and duty.
7. Stock currently on order with suppliers and anticipated to be delivered in December 2008 and January 2009 with an approximate value of \$100,000 plus freight and duty.

To have and to hold the same to Checker Leather USA LLC and administrators, successors and assigns, to their use forever.

And I hereby covenant with the grantee that I represent the lawful owner of said goods. That they are free from all encumbrances. That I have good right to sell the same as aforesaid. And that I will warrant and defend the same against the lawful claims and demands of all persons.

In witness whereof, L. Scott Forsyth Latimer, hereunto set my hand, this 3<sup>rd</sup> day of October 2008.

 3/10/08

## HEADS OF TERMS

between

Checker Leather Limited, incorporated under the Companies Acts and having their registered office at The Station, Crosshouse Road, Kilmaurs, Ayrshire KA3 2TU United Kingdom (the Seller)

and

Checker Leather USA LLC, 5341 Highway 17, Unit G Murrells Inlet, South Carolina 29576, United States of America (the Purchaser).

1. The purpose of this document is to provide an initial record of the terms agreed between the Seller and the Purchaser in relation to that part of the Seller's business conducted in the U.S.A.
2. It is intended that further detailed records will be produced in due course but pressure of time dictates that in the best interest of the ongoing conduct of business there will be steps taken in accordance with these Heads of Terms before other documents may be available.
3. For the avoidance of any doubt it is recorded that the relationship between the parties is and will be governed by the law of Scotland, where the Seller is based. Both parties confirm that they submit to the exclusive jurisdiction of the Court of Session, Edinburgh.
4. The employment of Kathleen McHugh, residing at 112 Harbor Club Drive, Pawley's Island, South Carolina 29585, United States of America by the Seller is terminated as at 30th September, 2008. One month's salary will be paid in lieu of notice.
5. A new stock order is to be placed with the suppliers. This will be carried out by the Seller, who will accept responsibility to the suppliers *inter se* for payment. The Purchaser will reimburse the Seller the cost of this order, and this will apply regardless of any other developments in relation to the business. The same will also apply to any trade fair deposits or other advance payments and expenses paid by the Seller for the benefit of the Purchaser before and after the handover date. Confirmation of the terms will bind the Purchaser immediately. This obligation of the Purchaser is guaranteed by said Kathleen McHugh (the Guarantor). The anticipated sum to be paid to the suppliers as the cost of the new stock order is \$100,000 approximately. This figure is illustrative and will not be regarded as binding. When the true cost becomes known the actual figure will be used for payment. Although an amount in U.S. Dollars is mentioned above, the payment to the suppliers and the reimbursement by the Purchaser to the Seller will be denominated in Pounds Sterling. The U.S. import duty and freight costs for the new stock order are to be met by the Purchaser when they become due.
6. The Purchaser is purchasing the existing stock in warehouse in Virginia, the stock currently on order and due to be delivered, and the other assets of the U.S. business including the exhibition booths, computer equipment, shelving at the warehouse, Rowallan registered trademark for the U.S.A. (but not the U.K.) and goodwill. All expenses involved in the procedures to transfer ownership will be the responsibility of the Purchaser.
7. The stock currently on order with suppliers and anticipated to be delivered during October and November 2008 is covered by:-

Purchase order 142 value \$9197.50 plus freight and duty

Purchase order 143 value \$5290.00 plus freight and duty

Purchase order 144 value \$5185.00 plus freight and duty

The suppliers will be paid by the Seller who will also pay the freight and duty for these orders. Their landed cost is included within the calculations shown below.

8. In respect that title to goods is being transferred by the Seller to the Purchaser before the whole price is paid, there will be security granted by the Purchaser in favour of the Seller over the whole property and undertaking of the Purchaser. All necessary steps will be taken to complete this procedure. As from 1st October, 2008 the Purchaser will be responsible for arranging and paying the premiums on insurance of all stock and equipment against fire and other usual perils, and also will be liable for any defect in any product supplied, and consequential losses and damages. To facilitate the arrangements regarding security over goods the Purchaser appoints the Seller as having the Purchaser's power of attorney and in terms thereof entitled to sign any relevant document on behalf of the Purchaser.

9. The schedule of payment is:-

(a) on agreement of the terms of this document	\$ 50,000
(b) 31st December, 2008, estimated	\$100,000
(c) 31st March, 2009	\$ 50,000
(d) 31st March, 2009 – 31st December, 2009, 10 payments of \$12,47 per month, including interest	\$120,470
(e) 31st January, 2010 – 31st December, 2011, 24 payment of \$10,974 per month, including interest	\$263,376
(f) 31st December, 2011 payment to complete, estimate including interest	<u>\$135,000</u>
Total, estimated, including interest	<u>\$718,846</u>

The breakdown of that total sum is \$150,000 for goodwill, trade fittings and fixtures and intellectual property, \$400,000 estimated for existing stock in warehouse and currently on order, \$100,000 estimated for new stock, and the balance representing an allowance estimated for interest on the payments taking place after the handover date. The existing stock in warehouse will be subject to a stocktaking and valuation on the handover date at cost price. As with the new stock order the amounts are quoted in U.S. Dollars for illustrative purposes only. The element referring to goodwill etc is agreed at a rate of conversion of 1.8 U.S. Dollars to 1 Pound Sterling making £83,333.33. The stocktaking and valuation will be conducted in Pounds Sterling and at that point an amount will be established as the sum due for existing stock in warehouse and currently on order. The interest on sums due by the Purchaser to the Seller will commence payment from 31st March, 2009 and has been calculated at a rate of 7.5% per annum flat fixed rate. Payments by the Purchaser to the Seller will be applied firstly against goodwill etc, secondly against stock existing and currently on order, thirdly against the new stock order and lastly against

the interest provision. In the event that the Guarantor should at any time cease to own the majority interest in the Purchaser then the whole balance of principal due in accordance with the Heads of Terms shall become immediately payable, with corresponding reduction in interest due thereon.

- 10. It is envisaged that control of the Rowallan website will be passed to the Purchaser subject to (a) an unconditional licence in perpetuity to the Seller for a nominal fee of \$1 and (b) a redesign enabling the Seller to simply slot in their product offerings for the U.K. at no cost to the Seller.
- 11. There will be a transitional period of three months during which the Seller will provide advice and assistance as appropriate to the Purchaser free of charge with the aim of achieving a seamless handover and continuation of the U.S. business. All necessary data will be provided on the handover date or as soon as reasonably possible thereafter. Sales order processing and invoicing will be taken over by the Purchaser right away. Emails received/ customer service issues during the transitional period will be handled by the Seller or passed on to the Purchaser if relevant. Any returns of defective goods will be allocated according to when supplied. Existing debts owed by customers of the business as at the handover date will continue to be owned by the Seller, new invoices will be the Purchaser's. The same will apply to expenses except where dealt with in detail above. Assistance with future product development is a possibility and a standalone contract on that topic is under discussion.

A print of these Heads of Terms is signed on behalf of the Seller and witnessed as noted below. Another print is signed on behalf of the Purchaser and witnessed as noted below:-

Date: 1-10-2008 Place: KILMARNOCK

Signature of Scott Forsyth Lafimer for Checker Leather Limited

*[Handwritten signature]*  
.....  
Iain M. Sandison

Signature of witness

Name of witness: IAIN McLEOD SANDISON  
Address of witness: 23 THE FOREGATE, KILMARNOCK.

Date: Place:

Signature of Kathleen McHugh for Checker Leather USA LLC

*[Handwritten signature]*  
.....  
BRIAN LYADE, J.D.  
10-02-08

Signature of witness:

Name of witness:

Address of witness:

**SECURITY AGREEMENT**

This SECURITY AGREEMENT is made on this 17th day of Feb, 2009 between Checker Leather U SA, LLC. ("Debtor"), and Checker Leather Limited, ("Secured Party").

**1. SECURITY INTEREST.** Debtor grants to Secured Party a floating inventory security interest in the following property:

All inventory, equipment, stock, leather goods, accounts and accounts receivable now owned or hereafter owned by the Debtor, which shall include but is not limited to all stock and inventory purchased from Checker Leather Limited, together with all proceeds, products, and accessions of and to the property listed in this paragraph, including any money, property, or insurance proceeds Debtor receives from the loss, sale, transfer, or damage of or to the listed property.

The Debtor is granting this security interest to secure performance of Debtor's promise to make the installment payments to the Secured Party as listed in the Heads of Terms contract between Debtor and Secured Party dated October 1<sup>st</sup>, 2008. (see attached)

**2. COVENANTS.** Debtor hereby warrants and covenants:

(a) The collateral will be kept in good order and that the collateral will be kept at a warehouse facility, currently that of C.S. Hutter Co., located at 1320 Stephenson Avenue, Lynchburg, Virginia. The secured party will be notified if there is any change or discontinuance of warehouse facility.

(b) The Debtor's place of business is 217 Lumbee Circle, Pawleys Island, SC 29585. Debtor will immediately notify Secured Party in writing of any change in or discontinuance of Debtor's place of business.

(c) The Debtor will not sell, dispose, or otherwise transfer the collateral or any interest therein without the prior written consent of Secured Party, and the Debtor shall keep the collateral free from unpaid charges (including rent), taxes, and liens.

(d) The Debtor shall execute alone or with Secured Party any Financing Statement or other document or procure any document, and pay the cost of filing the same in all public offices wherever filing is deemed by Secured Party to be necessary.

(e) The Debtor shall maintain and preserve the goods, described in paragraph one above, in good condition and free from liens and other security interests, will pay promptly all taxes and assessments upon them or with respect to their use, will not use the goods illegally or dispose of or encumber them. At its option, Secured Party may discharge taxes, liens, or other encumbrances at any time levied or placed on the collateral, may pay rent or insurance due on the collateral and may pay for the maintenance and preservation of the collateral. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization.

(f) The Debtor shall provide the Secured Party, in writing, quarterly valuation of all inventory, products, stock and leather goods sold, distributed or otherwise transferred by

Checker Leather USA, LLC as well as an accounting and valuation of the inventory, products, stock and leather goods remaining in the Debtors possession. The quarterly accounting and valuation shall include, but is not limited to, inventory, products, stock, and leather goods purchased from Checker Leather Limited, Inc. The quarterly valuation shall be provided to the Secured Party on or before the fifteenth of the month following the quarter.

3. **DEFAULT.** The Debtor shall be in default under this Agreement upon the happening of any of the following:

- (a) misrepresentation in connection with this Agreement on the part of the Debtor.
- (b) noncompliance with or nonperformance of the Debtor's obligations under the Heads of Terms contract or this Agreement.
- (c) if Debtor is involved in any financial difficulty as evidenced by (i) an assignment for the benefit of creditors, or (ii) an attachment or receivership of assets not dissolved within thirty (30) days, or (iii) the institution of Bankruptcy proceedings, whether voluntary or involuntary, which is not dismissed within thirty (30) days from the date on which it is filed. Upon default and at any time thereafter, Secured Party may declare all obligations secured hereby immediately due and payable and shall have the remedies of a Secured Party under the Uniform Commercial Code. Secured Party may require the Debtor to make it available to Secured Party at a place which is mutually convenient. No waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion. This Agreement shall inure to the benefit up and bind the heirs, executors, administrators, successors, and assigns of the parties. This Agreement shall have the effect of an instrument under seal.

4. **SUCCESSORS AND ASSIGNESS.** This agreement binds and benefits the heirs, successors, and assignees of the parties.

5. **MODIFICATION.** This agreement may be modified only by a written agreement signed by all the parties.

6. **ENTIRE AGREEMENT.** This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings.

By:

\_\_\_\_\_  
Authorized Signature of Debtor

\_\_\_\_\_  
Authorized Signature of Secured Party

Kathleen McHugh

\_\_\_\_\_  
Print Name and Title

Date 2/1/2009

Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**DEMAND NOTE**

\$200,000.00

October, 2, 2008  
Lynchburg, Virginia

FOR VALUE RECEIVED, the undersigned promises to pay in lawful currency of the United States to the order of C. S. HUTTER COMPANY, c/o Chris Hutter, at 1320 Stephenson Avenue, Lynchburg, Virginia, the principal sum of \$200,000.00 and 00/100 Dollars (\$200,000.00), with interest at the rate of Twelve Percent (12%) per annum on the unpaid balance until paid, and payable ON DEMAND. Amounts paid hereunder shall be paid first in payment of interest which has accrued on the unpaid principal balance and the residue shall be applied to the payment of the principal.

This Demand Note is secured by a Security Agreement of even date from the undersigned Checker Leather USA, LLC. This Demand Note constitutes collateral for obligations now outstanding by the undersigned, Checker Leather USA, LLC to C. S. HUTTER COMPANY, and for advances from time to time made by said C. S. HUTTER COMPANY to the undersigned, Checker Leather USA, LLC against the security described in the aforementioned Security Agreement; provided, however, the maximum aggregate amount of principal to be secured at any one time shall not exceed the principal sum hereinabove set forth.

The holder of this Demand Note may, at its option, without notice, declare the entire outstanding principal balance, and the interest accrued thereon, immediately due and payable, and all rights and remedies for enforcing the payment or collection shall be cumulative and may be exercised at the same or different times according to the option of the holder hereof. Failure to exercise said option for any one or more of such defaults shall not constitute a waiver of the rights to exercise the same in the event of any subsequent default.

The makers, sureties, guarantors and endorsers of this Demand Note waive the benefit of the homestead exemption and all other exemptions or insolvency laws as to this debt, waive demand, protest, presentment and notice of dishonor, and agree to pay all costs of collection in the event of default including, but not limited to, an attorney's fee of 25% of any sum collected with the aid of an attorney.

The right is reserved by the maker hereof to prepay at any time all or any part of the unpaid principal amount evidenced by this Demand Note and to stop interest on the principal so paid.

The repayment of this Demand Note on the terms as set forth herein is personally guaranteed by the undersigned, Kathleen McHugh.

This Demand Note is to be construed according to the laws of the Commonwealth of Virginia.

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IN WITNESS WHEREOF, the maker hereof has, pursuant to due company's authority, caused this Demand Note to be executed in its name and on its behalf by its duly authorized member, all as of the day and year first above written.

Checker Leather USA, LLC

By: Kathleen McHugh (SEAL)  
Kathleen McHugh, Its Member

GUARANTEE BY KATHLEEN MCHUGH

For good and valuable consideration the undersigned absolutely and unconditionally guarantees to the holder of this Demand Note full and punctual payment and discharge of all of Checker Leather USA, LLC's obligation under this Demand Note and all related documents. This is a guarantee of payment and performance and not of collateral. This is a continuing guarantee. Guarantor will perform the obligations of Checker Leather USA, LLC under this Demand Note and related documents without setoff or counterclaim.

Kathleen McHugh  
Kathleen McHugh

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THIS SECURITY AGREEMENT, made as of the 21 day Oct, 2008, by and between CHECKER LEATHER USA, LLC, d/b/a Rowallan and/or Rowallan of Scotland, a South Carolina Limited Liability Company, (hereinafter "Debtor") party of the first part, and C.S. HUTTER COMPANY, a Virginia Partnership, (hereinafter "Secured Party") party of the second part;

WITNESSETH:

1. **Grant of Security Interest and Priority.** Debtor hereby grants to Secured Party a security interest in the collateral hereinafter described to insure the performance by Debtor of all its obligations to Secured Party, whether or not evidenced by any note or other instrument, direct or indirect, absolute or contingent, due or to become due, and including without limitation all interest, fees, charges, expenses and attorney's fees relating to the obligation hereby secured, all of which are secured equally and ratably, and including without limitation the Demand Note of even date herewith in the amount of Two Hundred Thousand Dollars (\$200,000.00) together with interest as provided thereon executed by the Debtor payable to the Secured Party, a copy of which is attached hereto; and any and all obligations whatsoever of the Debtor in favor of the Secured Party.

2. **Collateral Description.** The collateral shall consist of all now owned and hereafter acquired and wherever located personal property of Debtor identified below, each capitalized term is defined in Article 9 of the Virginia Uniform Commercial Code ("UCC"):

(a) All Inventory of Debtor, including without limitation, supplies, stock in trade, raw materials, work in process and all items of personal property held or to be held for sale, and further including items repossessed, in transit, or hereafter acquired (the "inventory");

(b) All Accounts, including all contract rights,

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(c) All furniture, fixtures, machinery, and Equipment, together with all warranties, parts and tools thereof, and all substitutions, additions, accessions and replacements thereto now owned or hereafter acquired,

(d) All Deposit Accounts at any financial institution maintained by Secured Party;

(e) All Chattel Paper (whether tangible or electronic);

(f) All Goods (including but not limited to all fixtures),

(g) All General Intangibles, including but not limited to all Payment Intangibles, copyrights trademarks now existing or hereinafter acquired, including but not limited to the Rowallan trademark, patents, tradenames including but not limited to Rowallan and/or Rowallan of Scotland, tax refunds, rights under equipment leases, warranties, software licenses, all capital contributions now or hereafter due or to become due to Debtor from its members, returned and unearned insurance premiums, tax refunds, contract rights and causes of action of any kind and nature;

(h) All Supporting Obligations;

(i) All credits for state and federal taxes;

(j) All Investment Property;

(k) All Letters of Credit Rights or Letters of Credit;

(l) All Commercial Tort Claims,

(m) The trade name Rowallan and/or Rowallan of Scotland;

(n) To the extent not listed above as original collateral, all Proceeds (cash and non-cash) and Products of the foregoing.

3. **Obligations.** This Security Agreement secures the following (collectively, the "Obligations"):

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(i) Debtor's obligations to the Secured Party under the Demand Note and any and all obligations whatsoever of the Debtor in favor of the Secured Party,

(ii) all default costs as defined in paragraph 11 of this Security Agreement;

(iii) all of Debtor's present and future indebtedness and obligations to Secured Party;

(iv) the repayment of any amounts that Secured Party may advance or spend for the maintenance or preservation of the Collateral, and any and all other expenditures that Secured Party may make under the provisions of this Security Agreement or the UCC for the benefit of Secured Party or for the benefit of Debtor.

3. **Priority of Security Interest.** The security interest granted hereby is a first priority security interest.

4. **Debtor Authority, Debtor Warranties, and Notice.** Debtor and its representatives executing this Agreement, warrant and represent that Debtor has the authority to enter into this Agreement and that it has good title to the collateral, free and clear of all encumbrances and that each account constituting a part of the collateral is a bona fide, enforceable obligation for goods sold or delivered or services rendered in the ordinary course of business without defense or offset and that it will promptly give Secured Party notice in writing of any exception to the foregoing. Debtor covenants, warrants and represents that all of the inventory, equipment, furniture and fixtures are to be located at 1320 Stephenson Avenue, Lynchburg, Virginia. Debtor covenants, warrants and represents that Debtor's principal place of business is located at 217 Lumbee Circle, #41, Pawley's Island, South Carolina, 29585 Debtor covenants, warrants and represents that it has the risk of loss of the Collateral. To the extent

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Debtor uses the borrowing from the Secured Party to purchase Collateral, the security interest described in this Security Agreement constitutes a purchase money security interest. This Agreement shall terminate only upon written notice to such effect from Debtor to Secured Party and satisfaction of all obligations hereby secured. The parties agree that any notice required to be given hereunder if mailed five (5) days in advance of the act for which notice is given, shall constitute reasonable notice.

5. **Perfection of Security Interest.** Debtor authorizes Secured Party to execute on the Debtor's behalf and to file any financing statement or statements in the name of Checker Leather USA, LLC, Rowallan and/or Rowallan of Scotland, describing the Collateral in any location deemed necessary and appropriate by Secured Party. Debtor shall have possession of the Collateral, except where expressly otherwise provided in this Security Agreement or where Secured Party chooses to perfect its security interest by possession in addition to the filing of a financing statement; and where Collateral is in the possession of a third party, Debtor will join with Secured Party in notifying the third party of Secured Party's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Secured Party.

6. **Secured Party Communications with Other Parties.** Secured Party may, in its discretion, require Debtor to notify, or itself to notify, either in its own name or in the name of Debtor, all or any of the account Debtors or any person obligated to Debtor for any amounts, of Secured Party's interest in all or any part of the Collateral and obtain confirmation of accounts outstanding or other matters relating to the Collateral and further to demand, collect or compromise any account or other obligation constituting a part of the collateral, but shall have no

obligation to do so. Debtor appoints Secured Party its attorney in fact to perform all actions necessary or desirable to carry out the intent hereof and ratifies all acts of such attorney in fact.

7 **Debtor Record Keeping and Examination.** Debtor will maintain accurate and complete records relating to the Collateral and will, as reasonably required by Secured Party, provide copies of all records and documents related thereto and permit at all reasonable times examination of such records by Secured Party and its agents.

8 **Transactions Involving Collateral.** Debtor agrees, except with prior written consent of Secured Party, not to sell or otherwise dispose of any item of Collateral except in the ordinary course of business.

9 **Insurance.** Debtor agrees to insure the Collateral against such risks as may be customary and reasonably required by Secured Party in an amount not less than the total of the secured debts herein mentioned and to maintain such insurance so long as any part of the indebtedness hereby secured remains unpaid and further to provide Debtor, evidence of such insurance showing Debtor's interest as a lien holder with respect to the same.

10 **Debtor's Ownership.** Debtor represents that the sole member and owner of Debtor is Kathleen McHugh and that except with secured parties written consent there will be no change in membership or ownership of Debtor.

11 **Events of Default.** The occurrence of any default hereunder, including but not limited to the events outlined herein, shall, at the option of Secured Party, be considered an event of default under this Security Agreement:

- (i) Any default or Event of Default by Debtor under the Demand Note;

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(ii) Debtor's failure to comply with any of the provisions of, or the incorrectness of any representation or warranty contained in, this Security Agreement, the Demand Note, or in any other document relating to the borrowing of the Debtor from the Secured Party;

(iii) Transfer or disposition of any of the Collateral, except as expressly permitted by this Security Agreement;

(iv) Attachment, execution or levy on any of the Collateral;

(v) Debtor voluntarily or involuntarily becoming subject to any proceeding under the Bankruptcy Code or any similar remedy under state law;

(vi) Debtor shall have failed to comply with any administrative or judicial proceeding under any federal, state or local laws or ordinances; or

(vii) Secured Party shall receive at any time following the closing of the loan contemplated in the Loan Agreement a UCC filing report indicating that Secured Party's security interest is not a first lien security interest.

(viii) Any change of ownership or membership in Debtor.

12. **Remedies upon Default.** In the event of an Event of Default, Secured Party, at its option, may declare all obligations of Debtor to Secured Party to be immediately due and payable, and Secured Party shall have all rights accorded a secured party under the Uniform Commercial Code then in effect in the Commonwealth of Virginia. Upon an Event of Default, Secured Party shall also have the right to pursue any other remedies legally applicable to it, including, without exception, file suit and obtain judgment, take possession of the Collateral, or sell, lease or otherwise dispose of the Collateral at public or private sale in accordance with the

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terms and provisions of the UCC. In such event, Secured Party shall recover of the Debtor as a part of the obligations hereby secured, all expenses and costs of recovery, including without limitation legal expenses and attorney's fees incurred in the protection and enforcement of its rights.

13. **Non-waiver.** No delay or omission by Secured Party to exercise any right or remedy accruing upon any Event of Default shall impair any right or remedy of the Secured Party, waive any default or operate as an acquiescence to the Event of Default, or affect any subsequent default of the same or of a different nature.

14. **Miscellaneous.** Any notices required by this Security Agreement shall be deemed to be delivered when deposited in the United States mail postage prepaid or when personally delivered.

15. **Governing Law.** This Security Agreement is being executed and delivered and is intended to be performed in the Commonwealth of Virginia and shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

16. **Further Assurances.** Debtor agrees to execute any further documents, and to take any further actions, reasonably requested by Secured Party to evidence or perfect the security interest granted herein or to effectuate the rights granted to Secured Party herein.

17. **Assignment.** Debtor agrees that Secured Party has the right in its sole discretion to assign this Security Agreement and all other related documents to any other person or entity.

18. **Reimbursement of Expenses.** Debtor agrees to reimburse the Secured Party for any and all attorney's fees, filing fees and other costs associated with the preparation of the documents with respect to this transaction and the closing thereof.

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IN WITNESS WHEREOF, Debtor and Secured Party have, pursuant to due authority, caused this Security Agreement to be executed in their names and on their behalves by its duly authorized officers, all as of this day and year first above written.

DEBTOR:  
CHECKER LEATHER USA, LLC

By: Kathleen McHugh (SEAL)  
Name: Kathleen McHugh  
Title: Member

SECURED PARTY:  
C. S. HUTTER COMPANY

By: C. S. Hutter (SEAL)  
Its Partner

Revised 10/2/2008

*Handwritten initials/signature*