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

Proceeding	92048118
Party	Defendant Select Export Corp. dba Trident
Correspondence Address	Cheryl Meide Meide Law Firm, P.A. Corners at Deerwood, 7545 Centurion Parkway, Suite 201 Jacksonville, FL 32256 UNITED STATES cmeide@meidelaw.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Cheryl Meide
Filer's e-mail	Cmeide@meidelaw.com
Signature	/Cheryl Meide/
Date	06/05/2010
Attachments	SEC.026 Motion to Suspend Pending Civil Action.pdf (5 pages)(28803 bytes) SEC.026 Exhibit A Complaint.pdf (17 pages)(587780 bytes) SEC.026 Exhibit B Richeson Answer B.pdf (17 pages)(177931 bytes)

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

Jack Richeson & Co., Inc.,
Petitioner

v.

Select Export Corp. D/B/A Trident
Registrant

In the matter of
Trademark Registration No. 2,619,642
For the mark: TRIDENT (and design)
International Classes 9, 16, and 20

Cancellation No.: 92,048,118

REGISTRANT'S MOTION
TO SUSPEND PROCEEDINGS
PENDING CIVIL ACTION

SEC.0504

REGISTRANT'S MOTION TO SUSPEND PROCEEDINGS PENDING CIVIL ACTION

Pursuant to TBMP §510, 37 CFR § 2.117, Registrant, Select Export Corp. ("Registrant"), by its attorneys, hereby moves to suspend the above-captioned proceeding pending disposition of Registrant's Civil Action against Petitioner that will determine, among other things, whether Registrant has superior and valid rights to the mark and whether Registrant is entitled to maintain its registration. Registrant has filed civil action Case 9:10-cv-80526-WPD against, among other parties, Petitioner in the United States District Court for the Southern District of Florida, Miami Division.

Registrant has obtained Federal registration for its trademark TRIDENT® for various goods, including surveying, measuring, and teaching apparatus and instruments; drafting materials; and artists' materials, (Registration No. 2,619,642 in Classes 9, 16, and 20). Petitioner has filed with the Trademark Trial and Appeal Board an Amended Petition to Cancel against Registration No. 2,619,642, claiming fraud, abandonment, and non-ownership of the registered mark TRIDENT®. Believing itself to be the true and valid owner, registrant, and first user of the mark TRIDENT® throughout the United States, Registrant has filed a civil action charging Petitioner with infringement of Registrant's trademark rights, false advertising, trademark dilution, defamation, and tortious interference with contract, all in connection with Registrant's TRIDENT® mark. The pleadings in this Civil Action are attached hereto as Exhibit A.

SEC.026

Petitioner's Answer to Registrant's Civil Action, including Petitioner's formal request that the civil court take jurisdiction over the validity of Registrant's Registration at issue in this proceeding is attached as Exhibit B.

Disposition of the civil action will determine, among other things, whether Registrant has superior and valid rights to the mark and whether Registrant is entitled to maintain its registration. Accordingly, it is respectfully submitted that all further proceedings in Cancellation No.: 92,048,118 be suspended pending disposition of Civil Action 9:10-cv-80526-WPD.

Respectfully submitted,



June 5, 2010

Date

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Motion to Suspend Proceedings Pending Civil Action was provided via first class mail, postage prepaid, in an envelope addressed to Paul W. Kruse, Esq., Bone McAllester Norton PLLC, 511 Union Street, Suite 1600, Nashville, Tennessee, 37219 on the date set forth below.



June 5, 2010

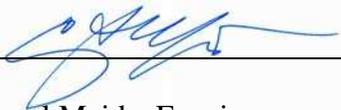
Date

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CERTIFICATE OF ESTTA SUBMISSION

Date of Deposit June 5, 2010

Signature  _____

Name: Cheryl Meide, Esquire

I hereby certify that this correspondence to the Trademark Trial and Appeal board is being submitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") on the dated noted above.

Exhibit A
PLEADINGS IN CIVIL ACTION

Exhibit B

Petitioner's Answer to Registrant's Civil Action, including Petitioner's formal request that the civil court take jurisdiction over the validity of Registrant's Registration

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. _____

SELECT EXPORT CORP.,
a Florida Corporation,

Plaintiffs,

v.

JACK RICHESON, individually,
JACK RICHESON & CO.,
a Wisconsin corporation,
TRIDENT INDUSTRIA DE PRECISAO LTD.,
a foreign corporation,
JERRY'S ARTARAMA N.C., INC.,
a North Carolina corporation,
UTRECHT MANUFACTURING CORP.,
a New Jersey corporation,
DAVID SCHWARTZ, individually,
PLEIN AIR INC.,
a California corporation,

Defendants.

_____ /

COMPLAINT

Plaintiff SELECT EXPORT CORP., a Florida corporation, complains against Defendants, JACK RICHESON, individually, JACK RICHESON & CO., a Wisconsin corporation, TRIDENT INDUSTRIA DE PRECISAO LTD., a foreign corporation, JERRY'S ARTARAMA N.C., INC., a North Carolina corporation, UTRECHT MANUFACTURING CORP., a New Jersey corporation, DAVID SCHWARTZ, individually, and PLEIN AIR INC., a California corporation (collectively, the "DEFENDANTS"), and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement, false designation of origin, false representations, and trademark dilution under the United States Trademark Act, Title 15 U.S.C. §§ 1051, *et seq.* (“Lanham Act”), for trademark infringement, unfair competition and trademark dilution under Florida common law and the Florida Trademark Act, Fla. Stat. § 495.161, and for violation of Florida’s Deceptive and Unfair Trade Practices Act.

2. This Court has original jurisdiction over claims arising under the Lanham Act pursuant to 28 U.S.C. § 1338(a), 28 U.S.C. § 1331 and 15 U.S.C. § 1121, in that they arise under the laws of the United States. This Court has jurisdiction of the state law claims asserted herein pursuant to 28 U.S.C. § 1367(a).

3. This Court has jurisdiction over DEFENDANTS pursuant to § 48.193(2), Florida Statutes, because DEFENDANTS are engaged in substantial and not isolated activity within this state. Alternatively, this Court has jurisdiction over DEFENDANTS pursuant to § 48.193(1), Florida Statutes, because this cause of action arises from DEFENDANTS’ acts of operating, conducting, engaging in, or carrying on its business in this state.

4. Venue is proper under 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to the claim occurred in this district.

THE PARTIES

5. Plaintiff SELECT EXPORT CORP. is a Florida corporation with its principal place of business at 7395 Pioneer Rd., West Palm Beach, Florida 33413.

6. Upon information and belief, Defendant JACK RICHESON is an individual with a principal residence in Wisconsin. JACK RICHESON is the principal of JACK RICHESON & CO. and runs its day to day operations.

7. Upon information and belief, Defendant JACK RICHESON & CO. is a Wisconsin Corporation with its principal place of business at 557 Marcella Street, Kimberly, WI 54136.

8. Upon information and belief, Defendant TRIDENT INDUSTRIA DE PRECISAO LTD. is a foreign corporation of the state of Brazil, with its principal place of business at Caixa Postal: 29, Itapuí, SP 17230, Brazil.

9. Upon information and belief, Defendant JERRY'S ARTARAMA N.C., INC. is a North Carolina corporation with its principal place of business at 6104 Maddry Oaks Ct., Raleigh, NC 27616.

10. Upon information and belief. Defendant UTRECHT MANUFACTURING CORP. is a New Jersey corporation with its principal place of business at 6 Corporate Dr., Cranbury, NJ 08512.

11. Upon information and belief, Defendant DAVID SCHWARTZ is an individual with a principal residence in California. DAVID SCHWARTZ is the principal of PLEIN AIR INC. and runs its day to day operations.

12. Upon information and belief, Defendant PLEIN AIR INC. is a California corporation with its principal place of business at 1107 Brighton Dr., Oceanside, CA 92056.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Plaintiff's Trademark

13. Starting in about 1988, Plaintiff SELECT EXPORT CORP. began using its Trident Mark in interstate commerce in association with a line of art supplies, including surveying and measuring equipment, easels, drafting equipment, rulers, drafting tables and

stools, among other things. The Trident Mark consists of a circle encompassing a trident and the word "TRIDENT."

14. Starting in 1988, Mr. Herbert Moebius, the owner of Plaintiff SELECT EXPORT CORP., began heavily marketing and advertising his line of art supplies bearing the Trident Mark in the marketplace. The art supply line quickly became popular and Mr. Moebius' art supply business quickly became profitable.

15. The Trident Mark is fanciful and inherently distinctive. Plaintiff has trademark rights in the Trident Mark in connection with art supplies, including surveying and measuring equipment, easels, drafting equipment, rulers, drafting tables and stools, among other things.

16. The U.S. Patent and Trademark Office ("USPTO") recognizes the Trident Mark associated with art supplies as being first used in commerce in March 1988.

17. Mr. Moebius duly and legally registered the Trident Mark for goods in the USPTO on the Principal Register on September 17, 2002, as Registration Number 2619642 and used the Trident Mark continuously until the present. A true and correct record of the registration of the Trident Mark is attached hereto as Exhibit A. Plaintiff renewed that registration with the USPTO in 2007. Plaintiff's right to use the Trident Mark is incontestable under 15 U.S.C. §1065.

18. Since 1988, via its advertisements, commercial catalogs, in-person sales force and, more currently, its web site, Plaintiff has continuously been marketing and selling art supplies bearing the Trident Mark in interstate commerce. Plaintiff has spent more than one million dollars (\$1,000,000) on direct mail, advertising in trade journals, publication of catalogs, electronic mail, and Internet advertising for Plaintiff's products, and has aggressively marketed and sold Plaintiff's products under the Trident Mark.

19. Since the registration of the Trident Mark in the USPTO, Plaintiff has used the registered notice symbol ® or “Registered in the U.S. Patent and Trademark Office” in association with Plaintiff’s art supplies, as prescribed in 15 U.S.C. §1111.

20. Since long prior to the acts of DEFENDANTS complained of herein, Plaintiff has expended much money, time, and effort in promoting its art supplies under the Trident Mark. As a result of Plaintiff’s efforts, the Trident Mark has become famous and distinctive throughout the United States and in this District, and is identified in the minds of the consumers and others exclusively with Plaintiff’s high-quality art supply products.

21. By virtue of long and continuous use, and since long prior to the acts of DEFENDANTS complained of herein, the Trident Mark has developed a goodwill and significance exclusively related to Plaintiff, has been readily recognizable by the public and the trade as a designation associated exclusively with Plaintiff’s products.

22. Plaintiff has an intent to expand its product line bearing the Trident Mark and to expand its sales territories.

DEFENDANTS’ Use of Plaintiff’s Trident Mark

23. Long subsequent to Plaintiff’s adoption and use of the Trident Mark in commerce, DEFENDANTS commenced the use of an identical or confusingly similar mark (hereinafter the “Infringing Mark”) in U.S. commerce, and within the United States, including the Southern District of Florida, in connection with easels bearing the Infringing Mark, which easels were advertised and promoted, among other things, to provide the identical product as that offered under Plaintiff’s Trident Mark to the same class of consumer. By selling and marketing the same

product and to many of the same class of consumers as Plaintiff's under the Infringing Mark, DEFENDANTS have further sought to unlawfully profit from use of Plaintiff's Trident Mark.

24. Upon information and belief, DEFENDANTS are well aware and, since long prior to the acts of DEFENDANTS complained of herein, have been well aware of the vast goodwill represented and symbolized by Plaintiff's Trident Mark. Upon information and belief, DEFENDANTS have been well aware that Plaintiff's Trident Mark is widely recognized and relied upon by the public and the trade as identifying Plaintiff's art supplies.

25. Notwithstanding that knowledge, DEFENDANTS have engaged in, and will continue to engage in, a deliberate and willful scheme to trade upon and to misappropriate for itself the vast goodwill represented and symbolized by Plaintiff's Trident Mark. The acts of DEFENDANTS complained of herein constitute willful and intentional infringement of Plaintiff's Trident Mark in total disregard of Plaintiff's rights.

26. DEFENDANTS' use of the Infringing Mark is without the consent, license, or permission of Plaintiff.

27. DEFENDANTS' use of the Infringing Mark is designed to, calculated to and has and/or is likely to, cause confusion and mistake, and to deceive customers and prospective customers as to the origin or sponsorship of DEFENDANTS' products. DEFENDANTS' use of the Infringing Mark has and/or is likely to cause the same class of customers and prospective customers to believe that DEFENDANTS' easels are Plaintiff's, or is sponsored, licensed, authorized, or approved by Plaintiff, all to the detriment of Plaintiff, the trade, and the public.

28. All conditions precedent to the maintenance of this action have occurred, been performed, or are otherwise excused.

29. Plaintiff has been required to retain the undersigned counsel to enforce its rights through this action and has agreed to pay its counsel a reasonable fee for those services.

COUNT I
TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT: 15 U.S.C. § 1114

30. Plaintiff incorporates herein each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

31. DEFENDANTS' unlawful use in commerce of the Infringing Mark infringes upon Plaintiff's rights in its federally registered and protected Trident Mark.

32. DEFENDANTS' unlawful use in commerce of the Infringing Mark in DEFENDANTS' sales and advertising is likely to cause consumers, distributors, retailers and others to mistakenly believe that Plaintiff has sponsored or approved DEFENDANTS' conduct, or that Plaintiff is affiliated with DEFENDANTS, or that DEFENDANTS' have obtained permission to engage in the sales and advertising activities. By using the Infringing Mark, DEFENDANTS further create confusion as to the source of the products that DEFENDANTS sell, and/or whether Plaintiff has endorsed DEFENDANTS or the products that DEFENDANTS sell.

33. DEFENDANTS' use of the Trident Mark in its sales, marketing and advertising activities are dilutive of the Trident Mark.

34. DEFENDANTS are believed to have engaged in the above conduct negligently.

35. Plaintiff has demanded that DEFENDANTS cease and desist from its acts of trademark infringement and has given DEFENDANTS actual notice of Plaintiff's registration of the Trident Mark, but DEFENDANTS have refused to cease the above described conduct. By

this conduct, DEFENDANTS have made substantial profits to which DEFENDANTS are not in equity or good conscience entitled.

36. As a direct and proximate result of DEFENDANTS' conduct, Plaintiff has incurred damages in an amount to be determined, and unless restrained by this Court, Plaintiff has no adequate remedy at law.

37. In the alternative, DEFENDANTS' have willfully and deliberately violated Plaintiff's rights in the Trident Mark by using a spurious Infringing Mark with the purpose and intent of causing confusion such that Plaintiff is entitled to the remedies set forth in c, in addition to injunctive relief. DEFENDANTS' willful and deliberate acts involve such circumstances that treble damages and reasonable attorneys' fees and costs should be assessed against DEFENDANTS pursuant to 15 U.S.C. §1117.

COUNT II
FALSE ADVERTISING UNDER THE LANHAM ACT: 15 U.S.C. § 1125

38. Plaintiff incorporates herein each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

39. Plaintiff's registration and use of the Trident Mark by DEFENDANTS in the course of selling and marketing art supplies is a use in interstate commerce of words and/or symbols that give a false designation of origin, and/or a false description or representation regarding these products to the consuming public.

40. DEFENDANTS are believed to have engaged in the above conduct negligently. In the alternative, DEFENDANTS have engaged in the above activities willfully, or with reckless disregard for whether DEFENDANTS' activities would cause injury to Plaintiff.

41. Such use has misled and deceived, and will continue to mislead and deceive, the public into believing that DEFENDANTS' products originate from Plaintiff, are manufactured by Plaintiff, are licensed by Plaintiff, or are in some way sanctioned by, or otherwise affiliated with, Plaintiff.

42. DEFENDANTS' unauthorized association of its products and merchandise - through its use in interstate commerce of the Trident Mark in promotion, marketing, advertising distribution and sales - has resulted in profits to DEFENDANTS and has thereby deprived Plaintiff of revenue to which it is entitled.

43. DEFENDANTS have used and continue to use the Trident Mark in connection with its promotion, marketing, advertising distribution and sales in commerce of its products, with actual or constructive knowledge of Plaintiff's long and extensive prior use of the Trident Mark.

44. Furthermore, DEFENDANTS have promoted, advertised, marketed, distributed and sold, in interstate commerce, its competing products by using the Trident Mark in such a manner so as to falsely designate origin or association with Plaintiff's famous name and Trident Mark, and so as to inevitably cause confusion or mistake among purchasers and potential purchasers as to the true origin, source, sponsorship, or affiliation of DEFENDANTS' products, all to DEFENDANTS' profit, and to Plaintiff's injury.

45. By so infringing on the Trident Mark in interstate commerce, DEFENDANTS violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

46. As a direct and proximate result of DEFENDANTS' conduct, Plaintiff has incurred damages in an amount to be determined, and is entitled to the remedies provided for in 15 U.S.C. §§1116, *et seq.*

COUNT III
TRADEMARK DILUTION UNDER THE LANHAM ACT: 15 U.S.C. § 1125

47. Plaintiff incorporates herein each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

48. The Trident Mark has been famous and distinctive from at least as early as March 1988.

49. Long after the Trident Mark became famous, DEFENDANTS commenced use of the Trident Mark in interstate commerce for their own commercial gain.

50. DEFENDANTS' use of the Trident Mark in connection with the promotion, marketing, advertising, distribution and sale of its competing products and merchandise has diluted and will continue to dilute the distinctive quality of, and tarnish the public image of, the Trident Mark, and harm the reputation of Plaintiff and its products.

51. DEFENDANTS' actions described above were negligent. In the alternative, DEFENDANTS willfully and intentionally used the Trident Mark in the promotion, marketing, advertising, distribution and sales activities, and is thereby trading upon, diluting, and tarnishing the Trident Mark, and the reputation of Plaintiff and its products such that Plaintiff is entitled to injunctive relief, treble damages and reasonable attorneys' fees and costs provided in 15 U.S.C. § 1117.

52. By so diluting and tarnishing the Trident Mark, DEFENDANTS have violated Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

53. As a direct, proximate and consequential result of DEFENDANTS' conduct, Plaintiff has been injured in an amount not yet ascertained, and is entitled to the remedies provided for in Title 15, U.S.C. §§ 1117(a), 1118, and 1125(c).

COUNT IV

TRADEMARK INFRINGEMENT UNDER FLORIDA COMMON LAW

54. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 29, as if fully set forth herein.

55. Long before DEFENDANTS' activities complained of herein, the Plaintiff acquired trademark rights in the inherently distinctive Trident Mark under Florida common law.

56. DEFENDANTS have unlawfully and without Plaintiff's consent used the Trident Mark in commerce in the State of Florida in connection with art supplies, to the benefit of DEFENDANTS and to the detriment of Plaintiff.

57. DEFENDANTS' aforesaid acts constitute infringement, misappropriation, and misuse of Plaintiff's Trident Mark in violation of Plaintiff's rights under the common law of the State of Florida.

58. DEFENDANTS' unlawful use in commerce of the Infringing Mark in DEFENDANTS' sales and advertising is likely to cause consumers, distributors, retailers and others to mistakenly believe that Plaintiff has sponsored or approved DEFENDANTS' conduct, or that Plaintiff is affiliated with DEFENDANTS, or that DEFENDANTS' have obtained permission to engage in the sales and advertising activities. By using the Infringing Mark, DEFENDANTS further create confusion as to the source of the products that DEFENDANTS sell, and/or whether Plaintiff has endorsed DEFENDANTS or the products that DEFENDANTS sell.

59. DEFENDANTS' aforesaid acts have caused and/or will cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will continue to harm Plaintiff. Plaintiff has no adequate remedy at law.

COUNT V

DEFAMATION

(SELECT EXPORT CORP. v. JACK RICHESON, individually, and JACK RICHESON & CO.

60. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 29, as if fully set forth herein.

61. Defendant JACK RICHESON, the individual, intentionally made false statements to individuals and business entities in the art supply industry indicating that Defendant JACK RICHESON & CO. was the owner or current licensee of Plaintiff's Trident Mark.

62. Defendant JACK RICHESON'S aforesaid statements were false in that Plaintiff had not at any time sold, licensed or authorized Defendant JACK RICHESON & CO. to use Plaintiff's Trident Mark.

63. Plaintiff suffered damage from Defendant JACK RICHESON'S aforesaid statements in that art supply buyers consequently purchased counterfeit supplies bearing the Infringing Mark from Defendant JACK RICHESON & CO., incorrectly believing the purchased supplies were Plaintiff's.

64. Defendants JACK RICHESON and JACK RICHESON & CO. unjustly benefitted from Defendant JACK RICHESON'S aforesaid statements.

65. Defendant JACK RICHESON'S aforesaid acts have caused and will continue to cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will continue to harm Plaintiff. Plaintiff has no adequate remedy at law.

COUNT VI

TORTIOUS INTERFERENCE WITH CONTRACT

(SELECT EXPORT CORP. v. JACK RICHESON, individually, and JACK RICHESON & CO.)

66. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 29, as if fully set forth herein.

67. A contractual relationship existed between Plaintiff and at least one buyer of art supplies (hereinafter the "Buyer"), wherein the contractual relationship consisted of Plaintiff selling art supplies bearing Plaintiff's Trident Mark to the Buyer.

68. Defendants JACK RICHESON, the individual, and JACK RICHESON & CO. were aware of the existing contractual relationship between the Plaintiff and the Buyer.

69. Defendants JACK RICHESON, the individual, and JACK RICHESON & CO. intentionally and unlawfully induced the Buyer to breach the existing contractual relationship between the Plaintiff and the Buyer.

70. Defendants JACK RICHESON, the individual, and JACK RICHESON & CO. lacked any privilege to induce the Buyer to breach the existing contractual relationship between the Plaintiff and the Buyer.

71. Plaintiff suffered damage from Defendant's JACK RICHESON'S, the individual, and JACK RICHESON & CO.'S aforesaid acts in that the Buyer breached the existing relationship with Plaintiff and consequently purchased art supplies from Defendant JACK RICHESON & CO.

72. Defendants JACK RICHESON and JACK RICHESON & CO. unjustly benefitted from their interference with the contractual relationship between the Plaintiff and the Buyer.

73. Defendant's JACK RICHESON'S and JACK RICHESON & CO.'S aforesaid acts have caused and will continue to cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will continue to harm Plaintiff. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SELECT EXPORT CORP. prays for:

A. Judgment that DEFENDANTS have competed unfairly with Plaintiff in violation of Plaintiff's rights under the Lanham Act, 15 U.S.C. § 1125, Florida common law, and Florida Statute § 495.161;

B. An injunction, pursuant to 15 U.S.C. §1116, prohibiting DEFENDANTS and all officers, directors, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation therewith, from:

- 1) using Plaintiff's Trident Mark, the Infringing Mark and any formative variations or phonetic equivalents thereof, or any term, name or mark which incorporates any of the foregoing, or any trademarks similar thereto or likely to be confused therewith, in connection with the sale of any unauthorized goods or the rendering of any unauthorized services;
- 2) using any logo, trade name, or trademark which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of DEFENDANTS, or of any third parties, are sponsored by, authorized by, or in any way associated with Plaintiff;
- 3) infringing Plaintiff's Trident Mark;

- 4) falsely representing themselves as being connected with Plaintiff, or sponsored by or associated with Plaintiff, or engaging in any act which is likely to falsely cause the trade, retailers, and/or members of the purchasing public to believe that DEFENDANTS are associated with Plaintiff; and
- 5) affixing, applying, annexing, or using in connection with the sale of any goods or services sold by DEFENDANTS including, without limitation, art supplies and easels, a false description or representation including words tending to falsely describe or represent such goods as being those of Plaintiff and from offering such goods in commerce.

C. An injunction requiring DEFENDANTS and all officers, directors, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation therewith, Judgment to:

- 1) recall all art supplies, easels, packaging, online ads, printed advertisements, and other written or printed material in the possession or control of DEFENDANTS which bear the Infringing Mark or any variation thereof, including but not limited to the Trident Mark and any formative variations or phonetic equivalents thereof, or any term, name or mark which incorporates any of the foregoing, or any trademarks similar thereto or likely to be confused therewith, alone or in combination with any other word or element, and all plates, molds, matrices, and other means from making the aforesaid items; and
- 2) file a written report with this Court that details, under oath, the manner of compliance with paragraph C(1) and to serve the same upon Plaintiff within thirty (30) days after service of the injunction issued in this action.

D. An award of damages of Plaintiff arising from DEFENDANTS' acts of trademark infringement and unfair competition, as well as DEFENDANTS' profits, pursuant to 15 U.S.C. §1117;

E. An award of actual damages for Plaintiff, to be determined at trial, pursuant to 15 U.S.C. §1117, and trebled upon a determination that Defendant's infringement has been and is willful, pursuant to 15 U.S.C. §1117, together with prejudgment interest and costs;

F. An award of attorney fees for Plaintiff pursuant to 15 U.S.C. §1117.

G. Judgment that Defendants JACK RICHESON, individually, and JACK RICHESON & CO. have defamed Plaintiff, injured its business reputation and tortiously interfered with Plaintiff's existing business relationship(s);

H. An injunction prohibiting Defendants JACK RICHESON, individually, and JACK RICHESON & CO. from further defaming Plaintiff or tortiously interfering with Plaintiff's existing business relationship(s);

I. An award of damages of Plaintiff arising from Defendant's JACK RICHESON'S and JACK RICHESON & CO.'S acts of defamation and tortuous interference with business relationship;

J. An award of Plaintiff's taxable costs, post-judgment interest, and such other and further relief as the Court may deem just and proper.

April 21, 2010

s/ Mark Terry
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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO. 10-80526-DIMITROULEAS

SELECT EXPORT CORP.,

Plaintiff,

v.

JACK RICHESON, individually,
JACK RICHESON & CO.,INC.,
a Wisconsin corporation, et al.,

Defendants.

JACK RICHESON & CO. INC.,

Counter-Plaintiff,

v.

SELECT EXPORT CORP.,

Counter-Defendant.

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM OF
JACK RICHESON, JACK RICHESON & CO., INC., JERRY'S ARTARAMA N.C.,
INC., AND UTRECHT MANUFACTURING CORP.**

Defendants Jack Richeson ("Mr. Richeson"), Jack Richeson & Co., Inc. ("Jack Richeson"), Jerry's Artarama N.C., Inc. ("Jerry's") and Utrecht Manufacturing Corp. ("Utrecht") (collectively, the "Defendants"), by and through their undersigned counsel and pursuant to Rule 12 of the Federal Rules of Civil Procedure, submit this Answer, Affirmative Defenses, and Counterclaim to the Complaint filed by the Plaintiff, Select Export Corp., in this Action:

1. Defendants, being without sufficient knowledge to either admit or deny the allegations contained in Paragraph 1 of the Complaint, deny the allegations contained in Paragraph 1 of the Complaint.

2. The allegations contained in Paragraph 2 of the Complaint are admitted.

3. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in Paragraph 3 of the Complaint.

4. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in Paragraph 4 of the Complaint.

THE PARTIES

5. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit the allegations contained in the first sentence of Paragraph 6 of the Complaint and deny the remaining allegations contained in Paragraph 6 of the Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 8 of the Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of the Complaint.

10. Defendants admit the allegations contained in Paragraph 10 of the Complaint.

11. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in Paragraph 11 of the Complaint.

12. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in Paragraph 12 of the Complaint.

13. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in paragraph 13.

14. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in Paragraph 14 of the Complaint..

15. Defendants admit the allegations in the first sentence of Paragraph 15 of the Complaint and deny the remaining allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in Paragraph 18 of the Complaint.

19. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

DEFENDANT'S USE OF PLAINTIFF'S TRIDENT MARK

23. Defendants lack knowledge or information to form a belief about the truth of the allegations contained in Paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

COUNT I

TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT: U.S.C. § 1114

30. Defendants repeat and reallege their answers to paragraph 1 through 29, as if fully set forth herein.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants admit that Plaintiff has made demands related to the purported mark with a copy of a trademark bearing the registration number 2,619,642. Defendants deny the remaining allegations contained in Paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

COUNT II

FALSE ADVERTISING UNDER THE LANHAM ACT: 15 U.S.C. § 1125

38. Defendants repeat and reallege their answers to paragraphs 1 through 29 as if fully set forth herein.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

COUNT III

TRADEMARK DILUTION UNDER THE LANHAM ACT: 15 U.S.C. § 1125

47. Defendants repeat and reallege their answers to paragraphs 1 through 29 as if fully set forth herein.

48. Defendants admit the mark depicted as Reg. No. 2,619,642 is distinctive but deny the remaining allegations contained in Paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

COUNT IV

TRADEMARK INFRINGEMENT UNDER FLORIDA COMMON LAW

54. The Defendants incorporate and reallege their answers to paragraphs 1 through 29 as if set forth herein in full.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

COUNT V
DEFAMATION AGAINST
(JACK RICHESON AND JACK RICHESON & CO. INC.)

60. The Defendants incorporate and reallege their answers to paragraphs 1 through 29 as if set forth herein in full.

61. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 61 of the Complaint.

62. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 63.

64. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 65 of the Complaint.

COUNT VI
TORTIOUS INTERFERENCE WITH CONTRACT

66. The Defendants incorporate and reallege their answers to paragraphs 1 through 29, as if set forth herein in full.

67. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegation of paragraph 67.

68. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 68 of the Complaint.

69. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 69 of the Complaint.

70. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 70 of the Complaint.

71. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 71 of the Complaint.

72. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 72 of the Complaint.

73. Defendants Mr. Richeson and Jack Richeson deny the allegations contained in Paragraph 73 of the Complaint.

AFFIRMATIVE DEFENSES

As separate defenses to the allegations of the Complaint, Defendants assert the following affirmative defenses:

First Affirmative Defense

Plaintiff fails to state a claim on which relief can be granted.

Second Affirmative Defense

Plaintiff lacks personal jurisdiction as to all claims filed against Mr. Jack Richeson, individually.

Third Affirmative Defense

Plaintiff's claims are barred by the Plaintiff's fraudulent or otherwise improper acts, including fraud in prosecuting and obtaining a registration of the mark, which does not belong to the Plaintiff.

Fourth Affirmative Defense

Plaintiff is estopped from asserting some or all of the claims alleged in the Complaint due to its own contributory actions, omissions, misrepresentations and/or wrongdoing.

Fifth Affirmative Defense

Plaintiff's claims for defamation and tortious interference are barred by the statute of limitations.

Sixth Affirmative Defense

Plaintiff's claims and remedies (including its request for injunctive relief) are barred by the equitable doctrine of laches.

Seventh Affirmative Defense

Plaintiff's claims are barred by the equitable doctrine of unclean hands.

Eighth Affirmative Defense

Plaintiff's claims are barred because Plaintiff is not the true owner of the mark. Plaintiff cannot claim priority use of the mark. The Plaintiff was not the one to place goods bearing the mark into commerce.

Ninth Affirmative Defense

Defendant Jack Richeson & Co. is the assignee of the mark in the United States, and is the rightful owner of the mark in the United States.

WHEREFORE, the Defendants Jack Richeson, Jack Richeson & Co., Inc., Jerry's Artarama N.C., Inc., and Utrecht Manufacturing Corp. respectfully request that this action against the Defendants Jack Richeson, Jack Richeson & Co., Inc., Jerry's Artarama N.C., Inc. and Utrecht Manufacturing Corp. be dismissed with prejudice; that attorneys' fees and costs be assessed against the Plaintiff; and that the Court grant such other relief as the Court deems just, appropriate, and equitable.

COUNTER-CLAIMS AND THIRD-PARTY COMPLAINT

Defendant Jack Richeson & Co., Inc. (“Jack Richeson”), by and through its undersigned counsel, brings the following counterclaims against Plaintiff and Counter-Defendant Select Export Corp. (“Select Export”), and states as follows:

PARTIES, JURISDICTION AND VENUE

1. Counter-Plaintiff Jack Richeson & Co., Inc. (“Jack Richeson”), is a Wisconsin corporation. Its principal place of business is located at 557 Marcella Street, Kimberly, Wisconsin 54136.

2. Counter-Defendant and Plaintiff Select Export Corp. (“Select Export”) is a Florida corporation with a principal office located at 401 North Military Trail, #532, West Palm Beach, Florida 33415.

3. Herbert E. Moebius (“Moebius”) is a resident of the State of Florida, and the principal of Select Export.

4. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1331, as it presents federal questions under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and under 28 U.S.C. §§ 1338(a) and (b).

5. This Court has both general and specific personal jurisdiction over Select Export, as Select Export has its principal place of business in this district and as Select Export has commenced the underlying action in this Court.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Select Export, a substantial part of the events giving rise to the claims occurred in this district, and because Select Export filed its Complaint in this Court.

7. These counterclaims arise from an actual and justiciable controversy between the

parties regarding the ownership of the Trident Mark.

FACTS

8. Trident Industria de Precisão Ltd. (“Trident”) is a Brazilian company founded in 1965 in Itapui, São Paulo, Brazil.

9. Since at least 1972, Trident has manufactured and sold its goods worldwide using the mark depicted below (the “Trident Mark”):



10. The Trident Mark was designed by Trident’s President, based upon a three (3) pronged clip commonly used on drawing boards.

11. Trident has registered or applied to register the Trident Mark in Brazil and other countries around the world.

12. Since 1981, Trident has been a member of the National Art Materials Trade Association (“NAMTA”), the leading United States based industry organization for art equipment manufacturers and sellers. During its entire membership, NAMTA has recognized Trident’s use of the Trident Mark.

13. Sometime in the early 1980s, a Peruvian company owned by the father of Select Export’s principal, Mr. Moebius, began to purchase goods from Trident.

14. In 1989, Mr. Moebius began to import into and resell in the United States goods manufactured by Trident and bearing the Trident Mark.

15. Select Export never manufactured goods bearing the Trident Mark.

16. Although Mr. Moebius distributed goods manufactured by Trident under the name "Trident North America," Trident never assigned or otherwise conferred rights in the Trident Mark to Mr. Moebius, Select Export, their successors, employees, agents or assigns.

17. In 1999, Trident and Jack Richeson entered into a business relationship.

18. In 2001, Select Export requested an exclusive relationship with Trident whereby Select Export would serve as the sole importer and distributor of Trident-branded modular office furniture in the United States.

19. Trident refused Select Export's offer of the exclusive relationship.

20. In March 2003, Trident discontinued its relationship with Select Export.

21. At the time that it discontinued the relationship, Trident was unaware that on June 8, 2000, Select Export had filed an application for trademark registration with the USPTO to register the Trident Mark in the United States.

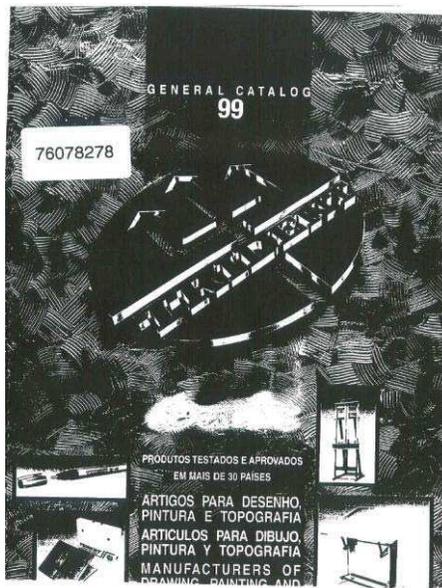
22. Mr. Moebius and/or Select Export have claimed to have created in the Trident Mark in 1988 based on personal knowledge or the mythic legends of Poseidon and Neptune and also asserted that a trident is a symbol of pride, honor, and ability, and to have made first use of the Trident Mark in the United States in 1988. The claims were false and fraudulent because Mr. Moebius and/or Select Export knew that the mark belonged to Trident.

23. Select Export's trademark application matured into Reg. No. 2,619,642.

24. In addition to representing ownership rights in and to the Trident Mark and the origin of the mark, Select Export also misstated in the Section 1(a) application, Section 7 amendment and Section 8 declaration concerning Reg. No. 2,619,642 that the mark was in use on all of the extensive list of goods. In fact, Plaintiff did not sell the goods listed in the original application and registration.

25. When Mr. Moebius and/or Select Export filed a trademark application for Reg. No. 2,619,642, Mr. Moebius and/or Select Export knew that the Trident Mark was not in use on all goods set forth in the application and related documents.

26. In support of the application and documents submitted to the USPTO in support of Reg. No. 2,619,642 and in furtherance of their fraud, Mr. Moebius and/or Select Export submitted specimens of goods that included: the cover of Trident's 1999 catalogue, a photograph of Trident's technical pen set, and Trident's patented computer desk bearing the Trident model number TRITUB-R4. For example, the catalogue cover that Select Export used to support its application to register the Trident Mark is set forth directly below:



27. In documents submitted to the USPTO in support of Reg. No. 2,619,632, Mr. Moebius and/or Select Export included information purportedly relating to its business, which in fact information was actually facts and illustrations about Trident, including a depiction of Trident's factory located in Brazil and described Trident's president's "years in the business" as Select Export's own experience.

28. Trident was unaware that Select Export used Trident's catalogue and goods as specimens in support of its trademark registration application.

29. By submitting these specimens, assertions, and other documents with the USPTO application and declaration of use, Mr. Moebius and/or Select Export represented that these goods were Select Export's goods and that Select Export manufactured them, when, in fact, Trident manufactured these goods, and the goods bore no relationship to Mr. Moebius and/or Select.

30. By submitting these specimens and documents and by making false assertions to the USPTO, Mr. Moebius and/or Select Export fraudulently obtained Reg. No. 2,619,642 and is continuing to assert ownership of the mark.

31. Select Export never manufactured goods bearing the Trident Mark, nor served as anything more than a reseller of Trident's goods bearing the mark.

32. Select Export has only forty-nine (49) stock keeping unit ("sku") numbered goods on its website. Ten (10) of those skus are goods manufactured by Trident that Select Export obtained prior to 2003.

33. Select's number of skus represents a token use.

34. 49 skus is not common for the art supply manufacturers and sales industry in which the typical number of skus is in the thousands

35. Select Export pursued Reg. No. 2,619,642 merely to attempt to reserve the mark for itself, although Select Export could claim no ownership of the mark, and to attempt to keep the true owner of the mark out of the U.S. marketplace.

36. Jack Richeson has retained the undersigned law firm to prosecute this action on its behalf and has agreed to pay the firm a reasonable fee, plus costs and out of pocket expenses.

COUNT I
DECLARATORY JUDGMENT

37. Jack Richeson incorporates the factual allegations set forth in the preceding paragraphs 1 through 36 as if the same were fully written herein.

38. Based on Select's Complaint, filed on April 21, 2010, an actual controversy exists within the meaning of 28 U.S.C. §§ 2201, justifying the declaratory judgment relief sought by Jack Richeson.

39. Accordingly, Jack Richeson is entitled to a declaratory judgment that Select Export has no right in the Trident Mark whatsoever, that Select Export filed Reg. No. 2,619,642 in violation of 15 U.S.C. § 1051 and in contravention of the rule set forth in TMEP § 1201.06(a), and that Reg. No. 2,619,642 is void *ab initio*.

WHEREFORE, Jack Richeson respectfully requests that the Court take jurisdiction of this Count I, and declare that the Plaintiff is not the owner of and has no rights in and to the Trident Mark, and render such other relief as it deems just and equitable.

COUNT II
CANCELLATION OF REGISTRATION

40. Jack Richeson incorporates the factual allegations set forth in the preceding paragraphs 1 through 36, inclusive, as if the same were fully written herein.

41. Plaintiff is not the owner of the Trident trademark, and was not the owner of the mark when it applied to register the mark. Through fraud, Plaintiff prosecuted its application before the U.S. Patent and Trademark Office and subsequently obtained a registration of the Trident Mark.

42. Section 37 of the Trademark Act of 1946, 15 U.S.C. § 1119, provides in relevant part:

In any action involving a registered mark the court may determine the right to registration, order the cancellation of registrations, in whole or in part, ... and otherwise rectify the register with respect to the registrations of any party in the action.

43. Accordingly, the Court should order cancellation of the Counter-Defendant's registration of the Trident Mark (Reg. No. 2,619,642).

WHEREFORE, Jack Richeson respectfully requests that the Court take jurisdiction over this Count II, and order cancelation of the Counterclaim-Defendants registration of the Trident Mark (Reg. No. 2,619,642), and award such other relief as the Court deems just and equitable.

COUNT III
DAMAGES

44. Jack Richeson repeats and realleges the allegations in paragraphs 1 through 36, inclusive, as if set forth herein in full.

45. 15 U.S.C. § 1120 provides that “[a]ny person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by and false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.”

46. Counter-Defendant procured the registration of the Trident Mark by fraud, fraudulent representation, and/or fraudulent means, has caused damages to the Counter-Plaintiff.

WHEREFORE, Jack Richeson respectfully requests that the Court take jurisdiction over this Count III and award damages Jack Richeson in an amount to be determined at trial, and award such other relief as the Court deems just and equitable.

JURY TRIAL DEMAND

Defendant and Counter-Plaintiff Jack Richeson & Co., Inc. hereby demand a trial by Jury on all issues triable by a jury as of right, including all such issues raised in the Plaintiff's

CASE NO. 10-80526-DIMITROULEAS

Complaint, the Defendant's Answer and Affirmative Defenses, and Jack Richeson & Co., Inc.'s Counterclaims.

Respectfully submitted,

BURSTEIN & ASSOCIATES, P.A.

Attorney for Jack Richeson, Jack Richeson & Co., Jerry's Artarama N.C., Inc. and Utrecht Manufacturing Corp.

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By: s/ Bernardo Burstein
Bernardo Burstein
Florida Bar No.: 972207

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 26, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties indentified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Bernardo Burstein
Bernardo Burstein

SERVICE LIST

Case No. 10-80526-CIV-DIMITROULEAS

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