

ESTTA Tracking number: **ESTTA482089**

Filing date: **07/06/2012**

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

Proceeding	92055795
Party	Plaintiff Terrence Hastings
Correspondence Address	JESS M COLLEN COLLEN IP, INTELLECTUAL PROPERTY LAW PC THE HOLYOKE-MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE OSSINING, NY 10562 UNITED STATES jcollen@collenip.com, docket@collenip.com, pmulhern@collenip.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Jess M. Collen
Filer's e-mail	jcollen@collenip.com, docket@collenip.com, pmulhern@collenip.com
Signature	/Jess M. Collen/
Date	07/06/2012
Attachments	N1407_AMENDED CONSOLIDATED PETITION TO CANCEL_120706.PDF ( 20 pages )(742003 bytes )



The above-identified petitioner believes that he will be damaged by U.S. Registration No. 4122970 of E.F. HUTTON and U.S. Registration No. 4126754 of EF HUTTON and Design and hereby petitions to cancel same. Petitioner respectfully submits that consolidation is proper as the underlying subject matter for the petitions involves common questions of law and fact.

The grounds for this consolidated petition for cancellation are as follows:

1. Upon information and belief, Respondent is the alleged owner by assignment dated April 20, 2012 of the following United States trademark registrations namely:
  - a. U.S. Registration No. 4122970, E.F. HUTTON, for “financial services, namely, investment analysis and advice, investment brokerage, planning and management, investment fund transfer and transaction services, and financial consultation services relating to stocks, bonds, securities, commodities, options, real estate, fixed income products, precious metals, mutual funds and retirement plans; financial services, namely money lending” in International Class 36; and
  - b. U.S. Registration No. 4126754, EF HUTTON and Design, for “financial services, namely, investment analysis and advice, investment brokerage, planning and management, investment fund transfer and transaction services, and financial consultation services relating to stocks, bonds, securities, commodities, options, real estate, fixed income products, precious metals, mutual funds and retirement plans; financial services, namely money lending” in International Class 36.  
(hereinafter the “Subject Registrations”).
2. The Assignment instrument which purports to convey all right, title and interest to the Respondent in and to the Subject Registrations is entitled “Assignment of Service Marks” and dated April 20, 2012.

3. The assignment is recorded on Reel 4762 Frame 0364 with the Assignment Branch of the United States Patent and Trademark Office, and dated April 23, 2012 (“the Assignment”).
4. The alleged assignor of the Subject Registrations to Respondent is Dominant Brands LLC, a New York Limited Liability Company with a principal place of business at 28-42 210th Street, Bayside, New York (hereinafter “the Applicant”).
5. Upon information and belief, Respondent and the Applicant have at least one common officer, namely Christopher Daniels, a New York resident with an address of 28-42 210<sup>th</sup> Street, Bayside, New York (hereinafter “Mr. Daniels”).
6. Upon information and belief, at the time of the Assignment, Mr. Daniels was the sole officer and/or member of both Applicant and Respondent and caused the Subject Registrations to be assigned from one entity controlled by him, namely, Applicant, to another, namely, Respondent.
7. In addition to the trademarks E.F. HUTTON and EF HUTTON and Design, Mr. Daniels, on Applicant’s behalf, has caused to be filed numerous other intent-to-use trademark applications in the United States Patent and Trademark Office over the past few years for various well-known consumer brands such as TWA, BANK OF BOSTON, SALOMON BROTHERS, and FIRST BOSTON.
8. On or about March 18, 2011, Petitioner filed U.S. Application No. 85/271,401 for EF HUTTON for “mortgage brokerage; real estate brokerage services” in International Class 36 and continues to have a *bona fide* intent to use the trademark in commerce.
9. On or about June 16, 2011, a Notice of Suspension letter was issued with regard to Petitioner’s U.S. Application No 85/271,401 for EF HUTTON, with the suspension

pending disposition of Applicant's Application No. 85/268,115 of E.F. HUTTON and 85/268,140 of EF HUTTON and Design, filed two days prior to Petitioner's Application.

**Prosecution History of the Subject Registrations**

10. On or about March 16, 2011, Mr. Daniels, on behalf of Applicant, caused to be filed intent-to-use Application No. 85/268,115 pursuant to Section 1(b) of the Trademark Act to register the trademark E.F. HUTTON for:

“financial services, namely, investment analysis and advice, investment brokerage, planning and management, investment fund transfer and transaction services, and financial consultation services relating to stocks, bonds, securities, commodities, options, real estate, fixed income products, precious metals, mutual funds and retirement plans; financial services, namely money lending” in International Class 36.

11. On or about March 16, 2011, Mr. Daniels, on behalf of Applicant, caused to be filed intent-to-use Application No. 85/268,140 pursuant to Section 1(b) of the Trademark Act to register the trademark EF HUTTON and Design for:

“financial services, namely, investment analysis and advice, investment brokerage, planning and management, investment fund transfer and transaction services, and financial consultation services relating to stocks, bonds, securities, commodities, options, real estate, fixed income products, precious metals, mutual funds and retirement plans; financial services, namely money lending” in International Class 36.

12. On September 27, 2011, Notices of Allowance issued with regard to U.S.

Application No. 85/268,115 for E.F. HUTTON and Application No. 85/268,140 for EF HUTTON and Design.

13. On September 8, 2011, prior to the Notices of Allowance being issued, Mr. Daniels e-mailed Petitioner requesting to speak to Petitioner about the E.F. HUTTON trademark.

14. The Petitioner and Mr. Daniels had a telephone conversation on the afternoon of September 8, 2011. During the telephone conversation, Mr. Daniels represented to Petitioner that Mr. Daniels was the owner of all rights to the EF HUTTON trademark and wished to license the trademark to Petitioner. Petitioner declined the offer.

**The Fraudulent Specimens and Statements of Use**

15. On January 18, 2012, Applicant filed Statements of Use pursuant to 15 U.S.C. Section 1051(d) with regard to U.S. Application Nos. 85/268,115 and 85/268,140 (hereinafter collectively the “Statements of Use”).

16. The purported specimens of use that Applicant submitted in connection with U.S. Application Nos. 85/268,115 and 85/268,140 were copies of a free internet classified listed at the URL [www.backpage.com](http://www.backpage.com) on January 18, 2012 (hereinafter the “Internet Classified”).

17. The applicant submitted The Internet Classified as a specimen of use for both U.S. Application No. 85/268,115 and U.S. Application No. 85/268,140 (a copy of the Internet Classified is annexed hereto and incorporated herein as Exhibit A).

18. Applicant alleged that it commenced first use of the E.F. HUTTON and EF HUTTON and Design marks in commerce on the same day that that it filed its Statements of Use namely, January 18, 2012.

19. The sponsoring company of the Internet Classified is listed as “E.F. Hutton & Company, Inc.,” listing an address of 295 Greenwich Street #211, New York, New York 10007.

20. Upon information and belief, as of the date that the Internet Classified ran on January 18, 2012, there was not any corporate entity organized under the laws of any state in the United States named “E.F. Hutton & Company, Inc.”

21. In fact, "E.F. Hutton & Company, Inc.," with an address of 295 Greenwich Street #211, New York, New York 10007, was not incorporated until April 18, 2012, three months after Applicant filed its Statement of Use on January 18, 2012 (a copy of the Wyoming Secretary of State records showing incorporation of E.F. Hutton & Company, Inc. on April 18, 2012 is annexed hereto and incorporated herein as Exhibit B).
22. Upon information and belief, any use of the marks by E.F. Hutton & Company, Inc. did not inure to the benefit of the applicant, as the purported user, E.F. Hutton & Company, Inc., did not exist as of alleged date of first use date, and neither its specimen nor the Statement of Use actually prove lawful use in commerce.
23. Upon information and belief, there is no valid license between E.F. Hutton Company, Inc. and the applicant.
24. Upon information and belief, "E.F. Hutton & Company, Inc." the company listed in the Internet Classified was not registered with the United States Securities and Exchange Commission and/or any state regulatory authority as a broker-dealer as of the date of purported first use of the marks E.F. HUTTON and EF HUTTON and Design on January 18, 2012.
25. Upon information and belief, "E.F. Hutton & Company, Inc.," the company listed in the specimen, was not registered as an investment advisor firm with the United States Securities and Exchange Commission and/or any state regulatory agency as of the date of purported first use of the marks E.F. HUTTON and/or EF HUTTON and Design, namely, January 18, 2012.
26. Offering of securities and financial advice to the public without being registered with the U.S. Securities and Exchange Commission and/or applicable state regulatory agencies is not lawful.

27. Any alleged use of the E.F. HUTTON and/or EF HUTTON and Design marks by “E.F. Hutton & Company, Inc.” as evidenced by the Internet Classified, was not lawful use in association with the services for which the registrations were being sought.
28. Further, notwithstanding the Applicant’s status as a registered broker-dealer and/or investment advisor as of the date of purported first use of the E.F. HUTTON and EF HUTTON and Design marks, the Internet Classified does not constitute evidence of use of the subject trademarks in commerce in connection with the services for which registration was sought.
29. Upon information and belief, “E.F. Hutton & Company, Inc.” was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce as of the date of purported first use of the marks in the Statement of Use for investment analysis and advice.
30. Upon information and belief, “E.F. Hutton & Company, Inc.” was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce as of the date of purported first use of the marks in the Statement of Use for investment brokerage.
31. Upon information and belief, “E.F. Hutton & Company, Inc.” was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce as of the date of purported first use of the marks in the Statement of Use for planning and management.
32. Upon information and belief, “E.F. Hutton & Company, Inc.” was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce as of the date of purported first use of the marks in the Statement of Use for investment fund transfer and transaction services.
33. Upon information and belief, “E.F. Hutton & Company, Inc.” was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce as of the date of purported first use of the marks in the Statement of Use for financial consultation services relating

to stocks, bonds, securities, commodities, options, real estate, fixed income products, precious metals, mutual funds and retirement plans.

34. Upon information and belief, "E.F. Hutton & Company, Inc." was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce as of the date of purported first use of the marks in the Statement of Use for financial services, namely money lending.

35. Upon information and belief, Applicant was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce in the Statement of Use as of the date of purported first use of the marks for investment analysis and advice.

36. Upon information and belief, Applicant was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce in the Statement of Use as of the date of purported first use of the marks for investment brokerage.

37. Upon information and belief, Applicant was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce in the Statement of Use as of the date of purported first use of the marks for planning and management.

38. Upon information and belief, Applicant was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce in the Statement of Use as of the date of purported first use of the marks for investment fund transfer and transaction services.

39. Upon information and belief, Applicant was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce in the Statement of Use as of the date of purported first use of the marks for financial consultation services relating to stocks, bonds, securities, commodities, options, real estate, fixed income products, precious metals, mutual funds and retirement plans.

40. Upon information and belief, Applicant was not using the E.F. HUTTON and EF HUTTON and Design marks in commerce in the Statement of Use as of the date of purported first use of the marks for financial services, namely money lending.

41. Applicant knowingly and willfully used the ® symbol in connection with the term EF HUTTON in an attempt to deceive or mislead consumers or others in the trade into believing that the mark was registered.

42. Upon information and belief, the entity listed in the copyright legend of the Internet Classified, namely, "EF Hutton Partners," was a fictitious corporation not active in any state in the United States at the time of the filing of the Statements of Use.

43. By submitting the Statements of Use, Applicant verified that each and every service identified in the Notices of Allowance was being used in commerce as of the date of purported first use, namely, January 18, 2012.

44. By submitting the Statements of Use, Applicant verified that the information contained in its Statements of Use at the time they were filed in connection with Application Nos. 85268115 and 85268140 were truthful and accurate, including but not limited to the information contained in its Specimens of Use.

45. Applicant's statements contained in its Statements of Use filed in connection with Application Nos. 85268115 and 85268140 were material statements of fact.

46. Upon information and belief, Applicant had knowledge that the statements submitted in connection with its Statements of Use in connection with Application Nos. 85268115 and 85268140 were false, and submitted such statements with an intent to deceive the Trademark Office into issuing the resulting trademark registrations.

47. Applicant intended that the information submitted in connection with its Statements of Use for Application Nos. 85268115 and 85268140 were to be relied on by the

Trademark Office in determining whether Application Nos. 85268115 and 85268140 would issue.

48. The information submitted by Applicant in connection with Applicant's Statement of Use for Application Nos. 85/268,115 and 85/268,140 was material to the decision to issue U.S. Registration No. 4122970 and U.S. Registration No. 4126754.

49. Applicant's attempts to assign its purported rights in and to U.S. Application Nos. 85/268,115 and Application No. 85/268,140 prior to having actual, lawful use in commerce for each and every service listed in the identification of services is an invalid assignment, prohibited by Section 10 of the Trademark Act, 15 USC Section 1060 (a)(1). Because Applicant has acquired no valid rights in Registrations 4,122,970 and 4,126,754, it possessed no legal rights which it could transfer to any subsequent assignee.

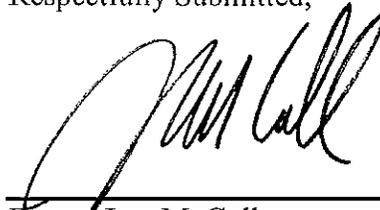
50. Based on the foregoing deliberate acts of Applicant, the purported assignment of U.S. Registration No. 4,122,970 of E.F. HUTTON and U.S. Registration No. 4,126,754 of EF HUTTON and Design to Respondent is void *ab initio*.

Wherefore, Petitioner respectfully submits that this Consolidated Petition be granted in its entirety, and specifically that:

- (a) Registration No. 4122970 of E.F. HUTTON be cancelled;
- (b) Registration No. 4126754 of EF HUTTON and Design be cancelled;
- (c) The assignments of U.S. Application Nos. 85/268,115 of E.F. HUTTON and Application No. 85/268,140 of EF HUTTON and Design be declared invalid pursuant to Section 10 of the Trademark Act;
- (d) The assignments of U.S. Registration No. 4122970 of E.F. HUTTON and U.S. Registration No. 4126754 of EF HUTTON and Design be held void *ab initio* based on underlying fraud;

- (e) Petitioner's Application No. 85/271,401 of E.F. HUTTON for "mortgage brokerage; real estate brokerage services" in International Class 36 be reinstated and approved for publication; and
- (f) Any additional relief that the Board deem just and proper.

Respectfully Submitted,



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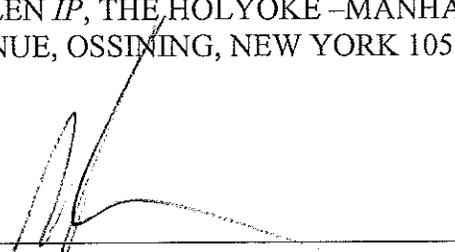
By: Jess M. Collen  
Collen IP, Intellectual Property Law P.C.  
The Holyoke-Manhattan Building  
Ossining, New York 10562  
(914) 941-5688 Tel.  
(914) 941-6091 Fax  
*Attorney for Petitioner, Terrence Hastings*

JMC/JRH:pm  
Dated: July 6, 2012  
Enclosures: Exhibits A and B

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED ELECTRONICALLY WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE.

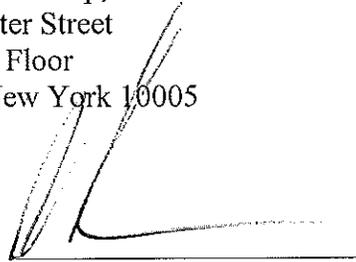
COLLEN IP, THE HOLYOKE -MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE, OSSINING, NEW YORK 10562

By:  Dated: July 6, 2012  
Peter Mulhern

**CERTIFICATE OF SERVICE**

I, Peter Mulhern, hereby certify that I caused a true and correct copy of the Amended Consolidated Petition to Cancel to be served upon the following, via first class mail, postage prepaid this 6<sup>th</sup> Day of July 2012.

E.F. Hutton Group, Inc.  
77 Water Street  
7th Floor  
New York, New York 10005

A handwritten signature in black ink, appearing to read 'Peter Mulhern', is written over a horizontal line.

Peter Mulhern

# EXHIBIT A



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- Corporate Governance
- Acquisition & Divestiture

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- Commercial & Residential Real Estate
- Illiquid and Intangible Assets

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**E.F. Hutton & Company, Inc.**

295 Greenwich Street, #211

New York, NY 10007

info @ efhuttonfinance.com

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New York, NY 10007  
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# **EXHIBIT B**

STATE OF WYOMING \* SECRETARY OF STATE  
MAX MAXFIELD  
BUSINESS DIVISION

200 West 24th Street, Cheyenne, WY 82002-0200  
Phone 307-777-7311 · Fax 307-777-5339  
Website: <http://soswy.state.wy.us> · Email: [business@wyo.gov](mailto:business@wyo.gov)

Filing Information



Please note that this form CANNOT be submitted in place of your Annual Report.

Name E.F. Hutton & Company, Inc.  
Filing Type Profit Corporation  
Status Active

General Information

Fictitious Name		ID	2012-000620811
Old Name		Standing - Tax	Good
Sub Status	Current	Standing - RA	Good
Sub Type		Standing - Other	Good
Formation Locale	Wyoming	Name Consent	N
Filing Date	04/18/2012 3:13 PM	Term of Duration	Perpetual
Delayed Effective Date		Expiration Date	
Inactive Date			

Share Information

Common Shares	100,000	Preferred Shares		Additional Stock	N
Par Value	0.0000	Par Value	0.0000		

Registered Agent Address

Pioneer Corporate Services  
214 W Lincolnway Ste 23  
PO Box 1453  
Cheyenne, WY 82001

Mailing Address

295 Greenwich St #211  
New York, NY 10007

Parties

Type	Name / Organization / Address
Incorporator	Christopher Daniels

Notes

Date	Recorded By	Note
4/18/2012 3:14 PM	MBOWMA	100,000 Common Shares

## Filing Information



Please note that this form CANNOT be submitted in place of your Annual Report.

Name **E.F. Hutton & Company, Inc.**  
Filing Type Profit Corporation  
Status Active

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### Amendment History

Num	Type	Date	Delayed Date	Status
See Filing ID	Initial Filing	04/18/2012		Active



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Assignments on the Web > Trademark Query

## Trademark Assignment Abstract of Title

**Total Assignments: 1**

Serial #: 85268115 Filing Dt: 03/16/2011 Reg #: 4122970 Reg. Dt: 04/03/2012

Registrant: Dominant Brands LLC

Mark: E. F. HUTTON

**Assignment: 1**

Reel/Frame: 4762/0364 Received: 04/23/2012 Recorded: 04/23/2012 Pages: 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: DOMINANT BRANDS LLC

Exec Dt: 04/20/2012

Entity Type: LIMITED  
LIABILITY  
COMPANY

Citizenship: NEW YORK

Assignee: E.F. HUTTON GROUP, INC.

Entity Type: CORPORATION

77 WATER STREET  
7TH FLOOR  
NEW YORK, NEW YORK 10005

Citizenship: WYOMING

Correspondent: ERIC J. VON VORYS  
12505 PARK POTOMAC AVENUE  
SIXTH FLOOR  
POTOMAC, MD 20854

Search Results as of: 06/22/2012 01:47 PM

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Web interface last modified: Jan 26, 2012 v.2.3.1

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Assignments on the Web > Trademark Query**Trademark Assignment Abstract of Title****Total Assignments: 1**

Serial #: 85268140 Filing Dt: 03/16/2011 Reg #: 4126754 Reg. Dt: 04/10/2012

Registrant: Dominant Brands LLC

Mark: EF HUTTON

**Assignment: 1**

Reel/Frame: 4762/0364 Received: 04/23/2012 Recorded: 04/23/2012 Pages: 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: DOMINANT BRANDS LLC

Exec Dt: 04/20/2012

Entity Type: LIMITED  
LIABILITY  
COMPANY

Citizenship: NEW YORK

Assignee: E.F. HUTTON GROUP, INC.

77 WATER STREET  
7TH FLOOR  
NEW YORK, NEW YORK 10005

Entity Type: CORPORATION

Citizenship: WYOMING

Correspondent: ERIC J. VON VORYS  
12505 PARK POTOMAC AVENUE  
SIXTH FLOOR  
POTOMAC, MD 20854

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