

ESTTA Tracking number: **ESTTA510392**

Filing date: **12/12/2012**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Frank Clegg Leatherworks LLC		
Entity	limited liability company	Citizenship	Massachusetts
Address	1 Ace Street Fall River, MA 02720 UNITED STATES		

Attorney information	Matthew A. Homyk Blank Rome LLP One Logan Square, 8th Floor Philiadelphia, PA 19103 UNITED STATES mhomyk@blankrome.com Phone:215-569-5360
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Registration Subject to Cancellation

Registration No	3872561	Registration date	11/09/2010
Registrant	EI Group, LLC Carriage House 44 East Main Street Ware, MA 01082 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 018. First Use: 2009/11/01 First Use In Commerce: 2009/11/25 All goods and services in the class are cancelled, namely: All purpose sport bags; All-purpose athletic bags; All-purpose carrying bags; All-purpose reusable carrying bags; Amenity bags sold empty; Athletic bags; Backpacks, book bags, sports bags, bum bags, wallets and handbags; Bags and holdalls for sports clothing; Beach bags; Book bags; Briefcase-type leather business folders; Briefcases; Canvas shopping bags; Carry-all bags; Carry-on bags; Clutch bags; Cosmetic bags sold empty; Duffel bags; Duffel bags for travel; Duffel bags; Flexible bags for garments; Flight bags; Garment bags for travel; Garment bags for travel made of leather; General purpose bags for holding dance equipment; Gym bags; Hiking bags; Hobo bags; Key cases; Key-cases of leather and skins; Leather and imitation leather bags; Leather and imitation leather sport bags and general purpose trolley bags; Leather bags and wallets; Leather bags, suitcases and wallets; Leather briefcases; Leather cases; Leather cases for keys; Leather credit card cases; Leather credit card holder; Leather credit card wallets; Leather handbags; Leather key cases; Leather key chains; Leather pouches; Leather purses; Leather shopping bags; Luggage; Luggage and trunks; Luggage label holders; Luggage tags; Make-up bags sold empty; Men's clutch bags; Messenger bags; Military duffel bags, garment bags for travel, tote bags, shoulder bags and backpacks; Overnight bags; School bags; School book bags; Shaving bags sold empty; Shoe bags for travel; Shopping bags made of skin; Shoulder bags; Sling bags; Small bags for men; Sport bags; Sports bags; Suit bags; Toiletry bags sold empty; Travel bags; Traveling bags; Travelling bags; Travelling cases of leather; Trunks; Trunks and suitcases; Waist bags; Wallets made of leather or other materials; Wash bags for carrying toiletries; Wheeled bags; Wheeled duffel bags; Wheeled messenger bags; Wheeled shopping bags; Wheeled tote bags</p>
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Grounds for Cancellation

Consists of or comprises a name, portrait, or signature of a living individual without written consent, or the name, portrait, or signature of a deceased president without the written consent of the surviving spouse	Trademark Act section 2(c)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85677529	Application Date	07/16/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FRANK CLEGG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1976/00/00 First Use In Commerce: 1976/00/00 Backpacks; Briefcases; Business card cases; Coin purses; Document cases; Duffle bags; Handbags; Leather bags and wallets; Leather purses; Luggage tags; Messenger bags; Tote bags; Wallets		

U.S. Application No.	85677632	Application Date	07/16/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	F. CLEGG		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 1976/00/00 First Use In Commerce: 1976/00/00 Backpacks; Briefcases; Business card cases; Coin purses; Document cases; Duffle bags; Handbags; Leather bags and wallets; Leather purses; Luggage tags; Messenger bags; Tote bags; Wallets

Attachments	85677529#TMSN.jpeg (1 page)(bytes) 85677632#TMSN.jpeg (1 page)(bytes) clegg cancel.pdf (4 pages)(25387 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matthew A. Homyk/
Name	Matthew A. Homyk
Date	12/12/2012

that it is or will be damaged by Registration No. 3,872,561 and hereby petitions to cancel the same under the provision of Section 14 of the Trademark Act of July 5, 1946, as amended, 15 U.S.C. § 1064.

As grounds of this Petition, it is alleged that:

PETITIONER'S EXCLUSIVE RIGHTS

1. Petitioner, Frank Clegg Leatherworks LLC, and its sole member, Francis A. Clegg, have been selling briefcases and other leather goods under the FRANK CLEGG and F. CLEGG marks since at least as early as 1976.

PETITIONER'S MARKS

2. Petitioner is the owner of Application No. 85/677,529 for the mark FRANK CLEGG and Application No. 85/677,632 for the mark F. CLEGG, both filed on July 16, 2012.

3. The Examining Attorney responsible for Petitioner's pending Applications has cited Registrant's mark as a basis for refusing to register Petitioner's mark under Section 2(d) of the Trademark Act.

Count One

REGISTRANT HAS ABANDONED ITS MARK

4. Upon information and belief, Registrant no longer uses its mark in commerce in the United States and therefore its Registration is subject to cancellation.

5. Upon information and belief, Registrant no longer uses its mark in connection with the services recited in U.S. Registration No. 3,872,561 in the United States and therefore its Registration is subject to cancellation.

6. Upon information and belief, Registrant has "abandoned" U.S. Registration No. 3,872,561 pursuant to 15 U.S.C. § 1127.

Counts Two & Three
FAILURE TO OBTAIN WRITTEN CONSENT OF PETITIONER
TO REGISTER HIS NAME; PRIORITY & LIKELIHOOD OF CONFUSION

7. Without Petitioner's written permission, authorization or consent, Registrant registered the mark LOTUFF & CLEGG, which is confusingly similar to Petitioner's marks F. CLEGG and FRANK CLEGG.

8. Accordingly, Registrant's mark "[c]onsists of or comprises a name . . . identifying a particular living individual" without Petitioner's written consent within the meaning of Section 2(c) of the Trademark Act, 15 U.S.C. § 1052(c).

9. The Registration of Registrant's mark is inconsistent with and in derogation of Petitioner's prior rights and, therefore, is causing damage and injury to Petitioner and deception of and confusion to the public.

For the reasons set forth above, Petitioner believes that

it is or will be damaged by the continued registration of Registrant's Mark, and thus Registrant's registration should be canceled.

WHEREFORE, Petitioner prays that Registration No. 3,872,561 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

FRANK CLEGG LEATHERWORKS LLC



Dated: December 12, 2012

By:

David M. Perry
Matthew A. Homyk
Its Attorneys

BLANK ROME LLP
One Logan Square
Philadelphia, PA 19103-6998
(215) 569-5360