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

Proceeding	92056574
Party	Plaintiff Frank Clegg Leatherworks LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Reg. No. 3872561

Frank Clegg Leatherworks LLC,

Petitioner,

v.

El Group, LLC,

Respondent

Cancellation No. 92056574

PETITIONER’S MOTION FOR SUMMARY JUDGMENT

Petitioner Frank Clegg Leatherworks LLC (“Clegg” or “Petitioner”) respectfully moves the Board, pursuant to 37 C.F.R. § 2.127(e) and Rule 56 of the Federal Rules of Civil Procedure, for an order granting summary judgment in its favor on grounds that no genuine issue as to any material fact exists with respect to the facts that (1) the name CLEGG in Respondent’s mark LOTUFF & CLEGG, which is the subject of Reg. No. 3872561, refers to Frank Clegg, Petitioner’s sole member, (2) Petitioner has the sole and exclusive right to use and register the CLEGG name for leather bags and related products under an exclusive license from Mr. Clegg, (3) the mark LOTUFF & CLEGG was registered without Petitioner’s written consent within the meaning of Section 2(c) of the Trademark Act, 15 U.S.C. § 1052(c), and (4) the mark LOTUFF & CLEGG is likely to cause confusion, mistake or deception as to source, sponsorship or affiliation with Petitioner’s marks FRANK CLEGG and F. CLEGG, App. Serial Nos. 85/677,529 and 85/677,632.

I. INTRODUCTION

This is a straight-forward case for which summary judgment is appropriate. Petitioner has the exclusive right to use and register trademarks containing the names FRANK CLEGG and CLEGG for leather bags, briefcases and related products pursuant to an agreement with Frank Clegg, a well-known designer of leather briefcases, bags and other leather goods. Declaration of Frank Clegg (“Clegg Decl.”), ¶ 1. Mr. Clegg is the sole owner of Petitioner. *Id.* ¶ 1. Petitioner has designed, manufactured, produced and sold briefcases, bags and other leather goods in commerce under the marks FRANK CLEGG (USPTO App. Serial No. 85/677,529), F. CLEGG (USPTO App. Serial No. 85/677,632) and FRANK CLEGG LEATHERWORKS (collectively, the “FRANK CLEGG Marks”) continuously since at least as early as 1976. *Id.* ¶ 2.

In 2009, Petitioner began selling leather goods created by Petitioner to Respondent as part of what was to become a “partnership” between Mr. Clegg and/or Petitioner and the two principals of Respondent. Clegg Decl., ¶ 3. However, this business relationship was never formalized, and was terminated by Mr. Clegg upon his realization that Respondent was engaged in a concerted conspiracy to steal Petitioner’s well-known Frank Clegg name and goodwill, as well as Petitioner’s patterns and designs. Clegg Decl., ¶ 3, 7; Ex. D. Without Clegg’s knowledge or consent, Respondent applied for and attained registration of the mark LOTUFF & CLEGG (USPTO Reg. No. 3872561, the “LOTUFF & CLEGG Mark”) on November 9, 2010. Clegg Decl., ¶ 4. Because the LOTUFF & CLEGG Mark consists of Frank Clegg’s surname, a particular living individual whose written consent is not of record, and because the LOTUFF & CLEGG Mark is likely to cause confusion, mistake or deception as to source, sponsorship or affiliation with Petitioner’s FRANK CLEGG Marks for identical goods, the LOTUFF & CLEGG registration should be cancelled.

II. STATEMENT OF FACTS

A. Respondent El Group, LLC's LOTUFF & CLEGG Mark

On February 18, 2010, Respondent filed App. Serial No. 77/938,595 with the U.S. Patent and Trademark Office (“USPTO”) seeking registration of the LOTUFF & CLEGG Mark for “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.” The LOTUFF & CLEGG Mark attained registration on the USPTO’s Principal Register on November 9, 2010. The CLEGG name in the LOTUFF & CLEGG Mark refers to Frank Clegg. Clegg Decl., ¶¶ 6, 9; Ex. A-C, J; Declaration of Michael J. Salvatore (“Salvatore Decl.”), ¶ 6; Ex. D. Respondent is a direct competitor of Petitioner. Clegg Decl., ¶ 6. Mr. Clegg never gave his consent to Respondent to register a mark with his surname. Clegg Decl. ¶¶ 4, 7; Ex. D. Nor has he given Respondent the right to use his name. Id. ¶¶ 6-7; Ex. D. Further, neither Petitioner nor Mr. Clegg became aware of the registration of the LOTUFF & CLEGG Mark until November 2012, when that registration was cited in office actions by the USPTO against registration of Petitioner’s FRANK CLEGG Marks. Clegg Decl., ¶ 4. This Cancellation proceeding was filed shortly thereafter on December 12, 2012. (Dkt. No. 1)

B. Petitioner’s FRANK CLEGG Marks

As set out in Petitioner’s Petition for Cancellation, Petitioner is the owner of the FRANK CLEGG Marks. Clegg Decl., ¶¶ 1-2, 4. USPTO Application Serial Nos. 85/677,529 for the mark FRANK CLEGG, and 85/677,632 for the mark F. CLEGG were both filed on July 16, 2012. Petitioner owns the FRANK CLEGG Marks under the common law in connection with briefcases, bags and other leather goods dating back to at least as early as 1976, and such use has been continuous. Clegg Decl., ¶¶ 2, 8; Ex. E-I. Thus, Petitioner has used the FRANK CLEGG Marks in commerce continuously for over thirty years and therefore has priority over Respondent’s claimed first use date of the LOTUFF & CLEGG Mark of November 1, 2009.

III. ARGUMENT

A. The Summary Judgment Standard

Summary judgment is required where the pleadings, discovery responses, and admissions on file, together with any affidavits, demonstrate that there “is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. Proc. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). Further, entry of summary judgment serves the purpose of judicial economy by disposing of cases where there is no additional evidence that could “reasonably be expected to change the result in the case.” TBMP § 528.01.

Once the moving party demonstrates that it is entitled to judgment as a matter of law, the burden shifts to the opposing party to show that a genuine dispute as to a material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S. Ct. 1348 (1986); *Delanoy v. Aerotek, Inc.*, 614 F. Supp. 2d 200, 205 (D. Puerto Rico 2009) (“after the moving party has satisfied this burden, the onus shifts to the resisting party to show that there still exists ‘a trial worthy issue as to some material fact.’”); *Crown Operations Int’l, Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 U.S.P.Q.2d 1917, 1923 (Fed. Cir. 2002) (“the non-moving party must affirmatively demonstrate by specific factual allegations that a genuine issue of material fact exists for trial.”). The opposing party may not rest on mere denials or conclusory assertions. Fed. R. Civ. Proc. 56(e); *Matsushita*, 475 U.S. at 587; *see also Copeland’s Enterprises Inc. v. CNV, Inc.*, 945 F.2d 1563, 20 U.S.P.Q.2d 1295 (Fed. Cir. 1991).

B. Petitioner is Entitled to Summary Judgment on the Basis that Registrant Failed to Obtain Frank Clegg’s Written Consent to Register the LOTUFF & CLEGG Mark, Which Consists of Mr. Clegg’s Name

Section 2(c) of the Trademark Act is clear that no trademark shall be registered if it “[c]onsists of or comprises a name...identifying a particular living individual except by his

written consent.” 15 U.S.C. § 1052(c). The USPTO and the Board consistently have upheld this principal by denying registration to marks that consist of the name of a particular living individual whose consent is not of record with the USPTO. *See Krause v. Krause Publications Inc.*, 76 USPQ2d 1904, 1912, 1914 (TTAB 2005) (granting cancellation petition because there is no evidence that petitioner expressly stated that the mark is the property of respondent, and because the mark consisted of the name of a particular living individual, whose written consent was not of record); *see also Ross v. Analytical Technology Inc.*, 51 USPQ2d 1269 (TTAB 1999) (denying registration because opposer, whose written consent was not of record, was publicly connected with the type of goods for which registration was sought, which would lead to the assumption that opposer was in some way associated with the goods).

There can be no dispute that the CLEGG portion of the LOTUFF & CLEGG Mark refers to Frank Clegg. Respondent has admitted this fact multiple times on its website, in brochures and in communications sent from one of its members, Joe Lotuff. For example, Respondent’s website, www.lotuffclegg.com, states: “**Frank Clegg is the master craftsman behind Lotuff & Clegg.**” Clegg Decl., ¶ 6; Ex. A. The www.lotuffclegg.com website further states that: “The vegetable tanned leather you see here has been developed by Frank Clegg particularly for the leather bags, briefcases and accessories in our collection.” Clegg Decl., ¶ 6; Ex. B. Additionally, a brochure produced and distributed by Respondent states: “**The Lotuff brothers, And legendary artist Frank Clegg Are proud to introduce to you the craft studio of Lotuff & Clegg Leatherworks.**” Clegg Decl., ¶ 6; Ex. C.

Respondent also acknowledges that the “Clegg” portion of the LOTUFF & CLEGG Mark refers to Petitioner’s Frank Clegg. In an email to Mr. Clegg sent on October 26, 2011, Joe Lotuff of Respondent says: “**you are the products [sic] face,**” and on November 9, 2011, after Mr.

Clegg demanded that Respondent cease using his name, Joe Lotuff offered Mr. Clegg complete removal of his “personal reference” and likeness in connection with Respondent’s website and business. Clegg Decl., ¶¶ 7, 9; Ex. J. There can be no dispute that the removal of one’s “personal reference” includes the cessation of use of that person’s name. Mr. Clegg, himself, sent an email to Alden Edmonds of Respondent on January 11, 2012, in which he explicitly stated that: “I contacted you about having my domain names turned over to me and **all uses of my name removed from the website** and links so we could go in our own directions... **You cannot continue to let people believe that you have been responsible for these designs and products** for the last two years.” Clegg Decl., ¶ 7; Ex. D. In fact, Mr. Edmonds sent Mr. Clegg a response to this email in which Mr. Edmonds stated: “Over the last two months we have removed your name and images from the website, changed the brand name on our product, and redesigned the products.” Unfortunately, this email and many others were subsequently destroyed when Mr. Clegg’s computer was hacked shortly thereafter. Clegg Decl., ¶ 7.

And to add insult to injury, the specimen of use submitted by Respondent during its application process for the LOTUFF & CLEGG Mark actually depicts Mr. Clegg in a screenshot of Respondent’s www.lotuffclegg.com website. Salvatore Decl., ¶ 6; Ex. D. Despite these admissions, Respondent attained registration of the LOTUFF & CLEGG Mark, which consists of Frank Clegg’s name, without Mr. Clegg’s knowledge or written consent. Clegg Decl., ¶ 4. Accordingly, registration of the LOTUFF & CLEGG Mark should be cancelled for failing to comply with Section 2(c) of the Trademark Act.

C. Petitioner is Also Entitled to Summary Judgment on the Basis of Likelihood of Confusion

There is no genuine dispute as to any material fact that: (1) Petitioner has prior valid trademark rights in the use and registration of the CLEGG name, and (2) Respondent’s LOTUFF

& CLEGG Mark is likely to cause confusion, mistake or deception as to the source of Respondent's goods, or as to Respondent's affiliation, connection, or association with Petitioner and/or Frank Clegg, or as to the sponsorship or approval of Respondent's products by Petitioner and/or Frank Clegg. 15 U.S.C. § 1052. Likelihood of confusion is not limited to confusion of consumers as to the source of the goods, but also includes confusion as to sponsorship or affiliation. *In re Save Venice New York, Inc.*, 259 F.3d 1346, 59 U.S.P.Q.2d 1778 (Fed. Cir. 2001).

1. Clegg has Priority of Use

A petition to cancel a registration of a mark may be granted to “any person who believes that he is or will be damaged...by the registration of a mark on the principal register,” including on grounds of likelihood of confusion with “a mark previously used in the United States and not abandoned.” 15 U.S.C. §§ 1064, 1052(d). Here, Petitioner, which is the owner of the FRANK CLEGG Marks for leather briefcases, bags and related goods, has continuously produced and sold its bags and other leather goods under one or more of the FRANK CLEGG Marks in commerce in the United States since at least as early as 1976, which predates both Registrant's application filing date and claimed date of first use by over thirty years. Clegg Decl., ¶ 2. In fact, Respondent has acknowledged Petitioner's priority of use in its FRANK CLEGG Marks multiple times. Respondent's www.lotuffclegg.com website states that: “Frank Clegg is the master craftsman behind Lotuff & Clegg...He takes pride in the fact that bags he made 30 years ago still serve the original owners today. In a marketplace where cutting corners is more the rule than the exception, Frank stands apart for his commitment to authentic quality.” Clegg Decl., ¶ 6; Ex. A. A quote from Joe Lotuff of Respondent in one of Respondent's catalogs attests to the

fact that: “A bag Frank made 30 years ago is serving one of our friends today...and Frank has gotten even better since.” Clegg Decl., ¶ 6; Ex. C.

The fact of Petitioner’s priority is supported by additional evidence. For example, attached to the Clegg Declaration is a copy of a catalog cover displaying the mark FRANK CLEGG LEATHERWORKS mark for Clegg’s leather goods that dates back approximately twenty-five years, evidenced by the fact that the catalog contains Mr. Clegg’s home address rather than his current shop address, the former being an address that has not been associated with Petitioner’s business for over twenty-five years. Clegg Decl., ¶ 8; Ex. E. Also attached to Mr. Clegg’s Declaration is a photograph of the original hang tag depicting the FRANK CLEGG mark on a bag created by Mr. Clegg over twenty-five years ago, which bag recently was submitted to Petitioner’s shop for restoration. Clegg Decl., ¶ 8; Ex. F. Mr. Clegg’s declaration also identifies a photograph depicting heat stamp dies used to impress the FRANK CLEGG Marks on Petitioner’s goods, including several heat stamp dies that have been used to impress the FRANK CLEGG Marks onto leather goods since 1973. Clegg Decl., ¶ 8; Ex. G. Mr. Clegg also attaches an etsy.com listing depicting a leather bag sold by Clegg in the 1970s, and still bearing the F. CLEGG mark embossed in the leather. Clegg Decl., ¶ 8; Ex. H. Finally, several additional screenshots from various websites depict the FRANK CLEGG Marks as they are still used today, and have been used continuously by Clegg for the past thirty plus years. Clegg Decl., ¶ 10; Salvatore Decl., ¶¶ 3-5; Ex. A-C. It is therefore undisputed that Petitioner has used its FRANK CLEGG Marks in commerce long before Respondent’s claimed first use date of November 1, 2009, or its application filing date of February 18, 2010, and such use has been continuous. Thus, Petitioner has priority of use.

2. The Marks are Confusingly Similar as a Matter of Law

Section 2(d) of the Trademark Act provides that registration shall be refused for a trademark that “consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the respondent, to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1052(d).

To determine whether a party’s use of a mark will result in a likelihood of confusion, the Board considers a number of relevant factors, enumerated in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563, 566–67 (CCPA 1973) (the “*DuPont* Factors”). While each of the factors is evaluated, the following factors are key considerations in determining likelihood of confusion: (1) the similarity of the marks as to appearance, sound, meaning and commercial impression, (2) the similarity of the goods as described in the application and registration, and (3) the conditions under which, and the buyers to whom, sales are made. *Id.* at 156; TMEP § 1207.01. Any doubts as to likelihood of confusion are to be resolved in favor of the senior user of a mark. *See Id.*; *Kenner Parker Toys Inc. v. Rose Art Indus. Inc.*, 963 F.2d 350, 22 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1992) (“In the event of doubts about the likelihood of confusion, the Board and this court should resolve those doubts against the newcomer”); *Am. Home Prods. Corp. v. Johnson Chemical Co., Inc.*, 589 F.2d 103, 200 U.S.P.Q. 417, 421 (2d Cir. 1978) (“One who adopts the mark of another for similar goods acts at his own peril and any doubt concerning the similarity of the marks must be resolved against him.”); *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 U.S.P.Q.2d 1001, 1003 (Fed. Cir. 2002).

In the instant case, there are no material facts in dispute as to any of the relevant *DuPont* Factors, which strongly supports a finding of likelihood of confusion as a matter of law. As the undisputed evidence shows, the only reason that Respondent has included the CLEGG name in

the LOTUFF & CLEGG Mark is because of how well-known the FRANK CLEGG name is in the relevant industry. Therefore the continued unauthorized use and registration of the LOTUFF & CLEGG Mark creates the likelihood that the relevant public will mistakenly believe that Mr. Clegg and/or his company, Petitioner, is in some manner connected to or affiliated with Respondent.

a. Clegg's FRANK CLEGG Marks are Well Known in the Relevant Industry

Clegg has sold briefcases, bags and other leather goods under its FRANK CLEGG Marks for nearly forty years. Clegg Decl., ¶ 2, 8; Ex. E-I. Clegg's marks have gained widespread recognition and notoriety throughout the fashion and leather industries. Clegg Decl., ¶ 10; Salvatore Decl., ¶¶ 3-5; Ex. A-C. Of course, the fact that Respondent promoted Mr. Clegg's name and reputation in furtherance of its business, and the admissions made by it in such advertising and promotion, as well as its decision to use Mr. Clegg's name in the LOTUFF & CLEGG Mark is undisputed evidence of the fact that Mr. Clegg's name is well-known and respected by the relevant purchasing public. After all, why would Respondent refer to Mr. Clegg as "legendary artist Frank Clegg" in its marketing if the CLEGG name was not well-known to the relevant purchasing public? Clegg Decl., ¶ 6; Ex. C.

b. The Marks are Highly Similar in Sound, Appearance, Connotation, and Overall Commercial Impression

Similarity of the marks is based on an examination of the marks as a whole "in terms of appearance, sound, and connotation, [and] their overall commercial impressions." *Time Warner Entm't Co. v. Jones*, 65 U.S.P.Q.2d 1650, 1659–60 (TTAB 2002). Similarity as to one element (i.e., sight, sound, or connotation) may be sufficient for a finding of similarity. *See Interstate Brands Corp. v. McKee Foods Corp.*, 53 U.S.P.Q.2d 1910, 1914 (TTAB 2000).

There is only one Frank Clegg who has produced and sold leather goods for over thirty years: Petitioner's sole member, Frank Clegg. Clegg Decl. ¶¶ 1-2. As shown above, the name CLEGG in Respondent's mark indisputably refers to Petitioner's sole member, Frank Clegg, and has been used by Respondent to promote its competitive business. In light of the admitted importance of the CLEGG name to Respondent's business, the relevant consuming public will rely on the CLEGG portion of Respondent's LOTUFF & CLEGG Mark in making its purchasing decisions – especially given the fact that a number of the products being sold under that mark are classic Frank Clegg designs. Clegg Decl., ¶¶ 6, 10; Ex. C; Salvatore Decl., ¶¶ 3-5; Ex. A-C.

Additionally, the USPTO Office Action issued with respect to Petitioner's FRANK CLEGG mark (USPTO App. Serial No. 85/677,529) on November 14, 2012, and the USPTO Office Action issued with respect to Petitioner's F. CLEGG mark (USPTO App. Serial No. 85/677,632) on November 16, 2012, both state that: "Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3872561. Trademark Act Section 2(d), 15 U.S.C. §1052(d)." Thus, it is evident that the USPTO is also of the opinion that the LOTUFF & CLEGG Mark is similar to and likely to cause confusion with the FRANK CLEGG Marks.

c. The Goods Are Not Only Closely Related, But Completely Identical

Similarity of the parties' goods must be evaluated based on the goods identified in the respective applications and registrations. *Octocom Sys.,* 16 U.S.P.Q.2d at 1788. The goods do not need to be "identical or even competitive in order to support a finding of likelihood of confusion." *Time Warner Entm't,* 65 U.S.P.Q.2d at 1661. Rather, they need only be sufficiently related in the minds of the consuming public to find confusion. *Recot, Inc.,* 54 U.S.P.Q.2d at

1898. Moreover, when the goods at issue are the same, as they are here, “the degree of similarity to support a conclusion of likelihood of confusion declines.” *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 U.S.P.Q.2d 1698, 1700 (Fed. Cir. 1992).

Here, Petitioner’s and Respondent’s goods are not only similar; they are completely *identical*. Indeed, after the termination of Petitioner and Respondent’s purported business relationship, Respondent continued to market and sell leather products designed by Mr. Clegg under the LOTUFF & CLEGG Mark, including some of his most classic designs. Clegg Decl., ¶¶ 6-7, 10; Ex. C, D; Salvatore Decl., ¶¶ 3-5; Ex. A-C. Because the LOTUFF & CLEGG Mark primarily consists of Frank Clegg’s surname, any consumer familiar with the FRANK CLEGG Marks would be confused into thinking that these identical, Clegg-designed goods sold under the LOTUFF & CLEGG Mark are somehow affiliated with or sponsored by Clegg. Accordingly, this *DuPont* Factor weighs heavily in favor of Petitioner in finding a likelihood of confusion.

d. There Are No Third-Party Uses of Marks Similar to the FRANK CLEGG Marks for Similar Goods

To the best of Petitioner’s knowledge, there are no similar marks in use on similar goods in the United States, thereby further increasing the likelihood of confusion between Petitioner’s and Respondent’s marks on identical products.

e. The Channels of Trade are Identical

The channels of trade for Petitioner’s and Respondent’s leather products are identical. Neither party has limited its identification of goods in their respective applications or registration. Thus, because Petitioner’s and Respondent’s goods are in fact identical, the Board “must presume that at such time as respondent were to use his mark on the identified goods . . . the parties’ respective goods . . . will be traveling through the same channels of trade to the same

classes of consumers.” *Starbucks U.S. Brands LLC v. Ruben*, 78 U.S.P.Q.2d 1741, 1751 (TTAB 2006); *Hewlett-Packard Co.*, 62 U.S.P.Q.2d at 1005 (“[A]bsent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers”); *Kangol Ltd. v. KangaRoos U.S.A.*, 974 F.2d 161, 23 U.S.P.Q.2d 1945, 1946 (Fed. Cir. 1992) (if the channels of trade in both respondent’s application and petitioner’s registrations are unrestricted, “[t]he issue of likelihood of confusion is resolved by considering the normal and usual channels of trade and method of distribution”) (internal citations omitted); *Centraz Indus. Inc. v. Spartan Chem. Co., Inc.*, 77 U.S.P.Q.2d 1698, 1700 (TTAB 2006).

Because the Board must presume that the goods will travel through the same channels of trade to the same class of consumers, any attempt by Respondent to distinguish its prospective channels of trade is without merit. This presumption, however, need not even be relied on given that Petitioner and Respondent are direct competitors. Clegg Decl., ¶ 6. This factor thus undoubtedly favors Petitioner.

f. There is Evidence of Actual Consumer Confusion

It is unnecessary to show actual confusion in order to establish likelihood of confusion. *Royal Appliance Mfg. Co. v. Minuteman Intern., Inc.*, 30 Fed.Appx. 964, 970 (Fed. Cir. 2002). *See also Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1571 (Fed. Cir. 1983). Here, however, there is evidence of actual confusion. On a fairly regular basis, potential customers and people in the trade express confusion to Mr. Clegg in conversation. Clegg Decl., ¶ 5.

g. Respondent Clearly Intended to Use Petitioner’s Name “Clegg” In Its Mark
for Purposes of Causing Confusion

Proof of intent to trade on another's goodwill, while persuasive evidence of likelihood of confusion, is not, in any event, a requirement under Section 2(d) of the Trademark Act. *Jewelers Vigilance Committee, Inc. v. Ullenberg Corp.*, 853 F.2d 888, 891 (Fed. Cir. 1988) (holding that dispute over whether wrongful intent is established is not a material issue when opposer is, in any event, entitled to summary judgment on the ground of likelihood of confusion without considering that evidence). Here, it is undisputed that Respondent knew of Petitioner's FRANK CLEGG Marks, as Clegg and Respondent were exploring entering into a business relationship with one another before Respondent filed its USPTO application for the LOTUFF & CLEGG Mark. One of Respondent's principals, Joe Lotuff, is quoted in one of Respondent's ads saying that: "A bag Frank made 30 years ago is serving one of our friends today... and Frank has gotten even better since." Clegg Decl., ¶ 6; Ex. C. Clearly, Respondent's selection of the mark LOTUFF & CLEGG, which contains the well-known CLEGG surname, was meant to suggest to consumers an affiliation with Clegg and the thirty plus years of goodwill it had established under its FRANK CLEGG Marks. Respondent's continued use of the LOTUFF & CLEGG Mark after Mr. Clegg's explicit request that "all uses" of his name be discontinued demonstrates Respondent's bad faith intent in registering and continuing to use that mark on identical leather goods to those sold under Clegg's FRANK CLEGG Marks. Clegg Decl., ¶ 7; Ex. D.

IV. CONCLUSION

The material facts of this case are not in dispute; indeed, each has been admitted by Respondent through its website, advertisements or other party admissions. Respondent has improperly attained registration of the LOTUFF & CLEGG Mark, which consists of Frank Clegg's name, without Mr. Clegg's written consent, in violation of Section 2(c) of the Trademark Act. Further, in light of the significance of the CLEGG name in Respondent's

marketing, and its recognition by the relevant consuming public, there is a likelihood that such consumers will mistakenly believe that Mr. Clegg and/or his company, Petitioner Frank Clegg Leatherworks LLC, is in some manner connected to or associated with or is endorsing Respondent – a likelihood of confusion compounded by the undisputed fact that many of the products sold be respondent under the LOTUFF & CLEGG Mark were designed by Mr. Clegg and for many years, including currently, are sold by Petitioner. On these undisputed facts, summary judgment should be granted.

Dated: October 22, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2013, a true and correct copy of the following documents were served by First Class Mail to Respondent's counsel at the below address: (1) PETITIONER'S MOTION FOR SUMMARY JUDGMENT, (2) DECLARATION OF FRANK CLEGG IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT; and (3) DECLARATION OF MICHAEL J. SALVATORE IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT.

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**DECLARATION OF FRANK CLEGG IN SUPPORT OF PETITIONER'S MOTION
FOR SUMMARY JUDGMENT**

I, Frank Clegg, hereby declare as follows:

1. I am the founder and sole member of Petitioner Frank Clegg Leatherworks LLC ("Petitioner"). Frank Clegg Leatherworks LLC is the only entity that has exclusive rights to use and register my name in connection with briefcases, bags and other leather products. I submit this declaration in support of Petitioner's Motion for Summary Judgment. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would testify competently thereto.

2. I have been continuously designing, manufacturing, producing and selling briefcases, bags and other leather goods under the marks FRANK CLEGG, F. CLEGG and FRANK CLEGG LEATHERWORKS since at least as early as 1976. I have sold thousands of bags and other leather goods under these marks over the course of the past thirty-five years.

3. In 2009, I was asked by Joe Lotuff of Respondent to produce leather goods for a purported “partnership” he and his brother Rick Lotuff wanted to form with me (the Lotuff brothers are the principals of Respondent). The purpose of this “partnership” was to do a web-based business, the purpose of which was to market and sell original FRANK CLEGG leather products. When I discovered in or around September 2010, that the Lotuffs and a new “partner” named Alden Edmonds were engaged in a concerted conspiracy to steal my well-known Frank Clegg name and goodwill as well as my patterns, and to go into competition with me using the Clegg name and leather patterns for which I am well-known, I ceased doing any business with them and Respondent and terminated the relationship.

4. On July 16, 2012, my company Frank Clegg Leatherworks LLC applied to register the marks FRANK CLEGG and F. CLEGG with the USPTO (App. Serial Nos. 85/677,529 and 85/677,632). During the application process for these trademarks, I learned for the first time of the LOTUFF & CLEGG registration, when it was cited against these applications in November 2012. I have never given my consent to Respondent or any of its representatives to register a trademark consisting of my name for use on any goods or services and I have made it clear to Respondents that they cannot use my name for any purpose.

5. Since Respondent has continued to use the LOTUFF & CLEGG name without my consent, I have been informed in conversations on a fairly regular basis by customers, potential customers and other people in the industry that they are confused as to whether products sold under the LOTUFF & CLEGG mark are mine.

6. Petitioner and Respondent are direct competitors, selling to the same type of customers in the same channels of trade. The Respondent clearly has used my name for the purpose of confusing consumers and retail customers that I am associated with their company.

Respondent is a direct competitor of my company. As shown by the following, Respondent knowingly has used my well-known name in marketing its products, many of which are some of my classic bag designs. None of these uses are being made with my permission or that of Petitioner.

- a. Attached hereto as **Exhibit A** is a true and correct copy of a screenshot my son, Ian Clegg, took under my direct supervision of the Lotuff & Clegg website, containing the words: “Frank Clegg, is the master craftsman behind, Lotuff & Clegg...He takes pride in the fact that bags he made 30 years ago still serve the original owners today. In a marketplace where cutting corners is more the rule than the exception, Frank stands apart for his commitment to authentic quality,” found at <http://web.archive.org/web/20110224002613/http://www.lotuffclegg.com/pages/The-Lotuffs-&-Frank-Clegg.html>.
- b. Attached hereto as **Exhibit B** is a true and correct copy of a screenshot my son, Ian Clegg, took under my direct supervision of the Lotuff & Clegg website, containing the words: “The vegetable tanned leather you see here has been developed by Frank Clegg particularly for the leather bags, briefcases and accessories in our collection,” found at: <http://web.archive.org/web/20110201000000/http://www.lotuffclegg.com/>.
- c. Attached hereto as **Exhibit C** is a true and correct copy of one of Respondent’s Lotuff & Clegg catalogs, containing the quotes: “The Lotuff brothers, And legendary leather artist Frank Clegg Are proud to introduce you to the craft studio of Lotuff & Clegg Leatherworks,” and ““A bag Frank made

30 years ago is serving one of our friends today... and Frank has gotten even better since.” Joe [Lotuff].” Page CLEGG 079 of this Exhibit C depicts my classic messenger bag design, page CLEGG 081 shows my classic tote bag design, and CLEGG 082 features both my signature duffle and popular English briefcase designs. These represent designs that I and my company (Petitioner) have sold under the FRANK CLEGG marks for years, and continue to sell today, as evidenced by images from Petitioner’s website, shown as Exhibit A attached to the Declaration of Michael J. Salvatore in support of Petitioner’s Motion for Summary Judgment in this matter.

7. As evidenced by the following, Respondent was well aware that I was not interested in continuing a business relationship with it, and that I did not authorize Respondent to use my name in connection with its business or products. For example, following my protest to Respondent about the use of my name, Joe Lotuff of Respondent stated in an email to me on November 9, 2011, that there would be complete removal of all references to me in connection with Respondent’s business. The removal of my name in connection with Respondent’s business was confirmed in an email sent to me by Alden Edmonds of Respondent in January of 2013, which stated: “Over the last two months we have removed your name and images from the website, changed the brand name on our product, and redesigned the products. We have moved as quickly as possible to create the separation you requested.” This email was subsequently destroyed when my computer was hacked shortly thereafter. And notwithstanding these statements, Respondent maintains the registration of the LOTUFF & CLEGG Mark and continues to use it and my name.

- a. Attached hereto as **Exhibit D** is a true and correct copy of an email I sent to Alden Edmonds of Respondent on January 11, 2012, which says: “At the end of October, I contacted you about having my domain names turned over to me and all uses of my name removed from the website and links so we could go in our own directions. Also, I requested that you discontinue to produce my product line as your own. Lotuff and Clegg was supposed to purchase its products from Frank Clegg Leatherworks, and all products on the Lotuff and Clegg website were Frank Clegg Leatherworks originals... You cannot continue to let people believe that you have been responsible for these designs and products for the last two years.”

8. As evidenced by the following, I have manufactured and sold leather goods under the marks FRANK CLEGG, F. CLEGG and FRANK CLEGG LEATHERWORKS in commerce for over thirty years.

- a. Attached hereto as **Exhibit E** is a true and correct copy of a catalog for my products that is over twenty-five years old. I am sure that this catalog is over twenty-five years old because it contains my home address, which I have not associated with my business for over twenty-five years.
- b. Attached hereto as **Exhibit F** is a true and correct copy of a photo I took of a hang tag featuring the FRANK CLEGG mark that was affixed to a bag I made for a customer over twenty-five years ago. The customer recently brought this bag back into my shop for restoration with the original hang tag that is depicted still in place.

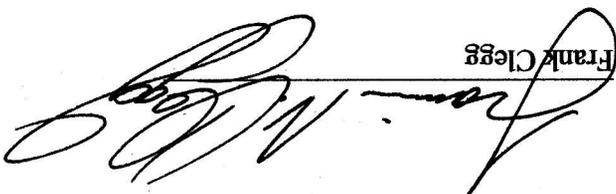
- c. Attached hereto as **Exhibit G** is a true and correct copy of a photo I took of several of the heat stamp dies that I use to emboss the FRANK CLEGG and F. CLEGG marks onto the leather products that I produce. These heat stamp dies have been in use for many years in my shop. The depicted heat stamp dies that feature the F. CLEGG mark with holes at the corners are for use with a hand-held heat stamp machine that dates back to 1973.
- d. Attached hereto as **Exhibit H** is a true and correct copy of a screenshot my son, Ian Clegg, took under my direct supervision of the etsy.com website, featuring a listing for a “Vintage 1970s F CLEGG brown leather handbag purse” which I designed and made for a customer in the 1970s, found at: www.etsy.com/listing/19898180/vintage-1970s-f-clegg-brown-leather.
- e. Attached hereto as **Exhibit I** is a true and correct copy of two photographs I took of the marks F. CLEGG and FRANK CLEGG LEATHERWORKS heat stamped onto two leather bags I made in the 1970s, both of which were recently in my shop for repairs.

9. As evidenced by the following, and in addition to the Exhibits attached to Paragraph 6 of this Declaration, Respondent, through its representative Joe Lotuff, has acknowledged that my well-known name is the CLEGG in the mark LOTUFF & CLEGG. Attached hereto as **Exhibit J** is a true and correct copy of an email sent to me by Joe Lotuff of Respondent on October 26, 2011, in which he was discussing the role I was purportedly to play in the “partnership.” The email states: “As co-founder and owner of Lotuff & Clegg: you collaborate on and execute all design; you are the products [sic] face and are directly responsible

for design, construction, quality, materials, costing, machinery, and labor necessary to reliably produce and expand the Company's offerings of best quality leather goods.”

10. I have reviewed the Declaration of Michael J. Salvatore, also being submitted in support of Petitioner's Motion for Summary Judgment in this matter, as well as the attached exhibits thereto, and I am familiar with its contents.

- a. I confirm that Exhibit A to the Declaration of Michael J. Salvatore is a true and correct copy of my website homepage and Men's product listings page as they currently appear at www.frankclegg leatherworks.com, and <https://frankclegg leatherworks.com/index.php/product/Mens>, respectively. Many of the images of the bags seen here are my designs which the Respondent sells under its LOTUFF & CLEGG mark, including the tote bags, signature duffle and English Briefcase designs as seen on page CLEGG 143, and the Messenger Bag as depicted at the top of page CLEGG 144.
- b. I confirm that Exhibit B to the Declaration of Michael J. Salvatore is a true and correct copy of a feature that appeared on the GQ.com website, depicting several of my bag designs.
- c. I confirm that Exhibit C to the Declaration of Michael J. Salvatore is a true and correct copy of an article about my business and bag designs that appeared on the Boston Magazine website. This article contains accurate depictions of several of my bag designs at CLEGG 130 and 134, several of my heat stamp dies bearing the FRANK CLEGG marks on CLEGG 136-37, and other images of my shop.


Frank Clegg

Executed this 22 day of October, 2013, at Fall River, Massachusetts.

the foregoing is true and correct.

I declare under penalty of perjury, under the laws of the United States of America, that

Exhibit A



LEATHER BAGS	BRIEFCASES	TRAVEL LUGGAGE	PORTFOLIOS	ACCESSORIES	ABOUT US
------------------------------	----------------------------	--------------------------------	----------------------------	-----------------------------	--------------------------

Our Story

- [Guarantee](#)
- [The Lotuffs & Frank Clegg](#)
- [The Factory](#)
 - [Classic Design](#)
 - [Master Craftsmanship](#)
 - [Natural Leather](#)
- [Testimonials](#)
- [Lookbook](#)
 - [Men's Lookbook](#)
- [Press](#)
- ["American Craftsman"](#)
- [{BLOG}](#)



The Lotuffs & Frank Clegg

The Lotuffs:

Since their first job sweeping their father's apparel factory at age 8, Joe and Rick Lotuff learned the love of producing product you can be proud of. Their father always said, "Work hard because a business is like a wheelbarrow – if you do not push it, it will not move."



Joe Lotuff

When given the opportunity to start their own business, they took advantage of the hands on experience they learned growing up in a textile factory. They went out on their own in 1993 and founded Berkshire Blanket Inc. Originally a Massachusetts manufacturing company based out of their family's historic factory in Ware, they eventually moved production off shore in order to compete with direct imports. Tired with overseas travel, and the influence of low cost products in a competitive market they decided to sell the business in 2006.

The Lotuff's wanted to build product again in the USA and provide the seeker in all of us with the opportunity to find product made right



Rick Lotuff

The First step was finding a true Craftsman, one who was not influenced by mass production. That's when they met Frank Clegg, the man who takes twice the time to bind the seams, all for pride in his work. Joe says, "It's rare to find someone like Frank in the rag business. We all value character and integrity. Usually when this happens, you end up with something great because this relationship is quite hard to find."



Frank Clegg

Frank Clegg:

Frank Clegg is the master craftsman behind Lotuff & Clegg. There is a saying "you will never be as good a banker, as a man whose father was a banker." This rings true, because Frank is a 3rd generation American Leather Craftsman. Frank's ancestors were master tanners in London, and now Frank patiently teaches his sons how to work with leather. Frank takes pride in the fact that bags he made 30 years ago still serve the original owners today. In a marketplace where cutting corners is more the rule than the exception, Frank stands apart for his commitment to authentic quality.

Frank says, "The most amazing thing, if you love what you do, you will never work again."

For a master craftsman, his creation is constantly evolving and is fueled by a desire for perfection. He will embrace new techniques and processes to achieve a better leather bag. Commitment to construction encompasses everything from the way an edge is polished to how a handle is built. Fanatically, the craftsman will take twice the time to cut and finish round corners and bind the seams that no one will see, all for pride in his work.

In Fall River Massachusetts, an area with a rich history in quality manufacturing, Lotuff & Clegg resides and ensures that master craftsmanship remains both alive and well. The whole Lotuff & Clegg team, continuously maintain a sense of pride in the products we generate. "We are trying to get back to the idea of the consumer having a real relationship with the craftsman. It's real art; it's not a factory process. It takes skill and passion to achieve quality. You can't mass produce this."

Whatever industry, if you're lucky enough to learn through your parents, you have a lot more experience. We are really motivated by having something to share with our kids. Having them identify with prideful craftsman is an association they will carry on forever in any endeavor.

Exhibit B

Call 1.888.763.2247

LOTUFF & CLEGG

CRAFTED IN MASSACHUSETTS

[Log in](#)
[My Account](#)
[Register Bag](#)



[Shopping Bag](#)

- [LEATHER BAGS](#)
- [BRIEFCASES](#)
- [TRAVEL LUGGAGE](#)
- [PORTFOLIOS](#)
- [ACCESSORIES](#)
- [ABOUT US](#)

VEGETABLE TANNED LEATHER

The vegetable tanned leather you see here has been developed by Frank Clegg particularly for the leather bags, briefcases and accessories in our collection. "There is just something about the supple feel and intoxicating smell of vegetable tanned leather". The process goes back to ancient times, and uses natural plants and other organic materials to color and soften the leather we use. The result is leather that is supple and durable, with the beautiful natural graining of a fine piece of wood. Ours is the same leather that goes into fine saddles, bridles and holsters. Lots of time, skill and dedication go into producing our outstanding leatherbags, briefcases and accessories. As Frank says, "The result is worth any effort that goes into it."



Fine Leather Bags, MADE IN AMERICA. Guaranteed for Life.



into producing our outstanding leatherbags, briefcases and accessories. As Frank says, "The result is worth any effort that goes into it."



Fine Leather Bags, MADE IN AMERICA. Guaranteed for Life.



The Lotuff & Clegg collection of handmade leather bags, briefcases, portfolios and accessories originates from the desire to restore the American manufacturing tradition.



Read about Joe's favorite American manufacturers and see every day people make use of their favorite Lotuff & Clegg products.



We are humbled by your response to our team's passion, artistry and talent. Checkout Lotuff & Clegg in the media.

What would happen if three people offended by the mundane joined to produce the extraordinary? Lotuff & Clegg is a collaboration of prideful craftsmen making fine quality leather bags, briefcases and accessories for you, exactly the way we would make them for ourselves. In our Massachusetts workshop we embrace a localized approach to production, design and service which gives us the utmost control over the entire process and ultimately provides the best quality leather goods that carry our Family names. We make our leather bags the way we really want to, the way leather products should be made – premium quality handmade bags, using our exclusive vegetable tanned leather. The men's leather bags and women's leather bags in our American made collection include custom made bags and bespoke leather products made to unique individual specifications.

Frank has some strong opinions about how fine quality leather goods should be made; whether it's the temper of our vegetable tanned leather, the six layer handle of our briefcases or the extra wide strap and the way it is attached to our top of class messenger bag, we do what it takes to do it right, no compromises. We are working in Massachusetts the way it was once done by the likes of Hermes, Louis Vuitton and Goyard when these great luxury houses started out many years ago. That is: in-house workshops, carefully specified raw materials, hand assembled by prideful, passionate craftsmen, making a direct appeal to the connoisseur looking to invest in fine quality leather accessories, designed and guaranteed to last a lifetime.

~~All leather bags we offer are made from vegetable tanned leather developed by us specifically for the briefcases, tote bag, wallets and travel bags featured in this collection. Working with a master tanner we have known for over 30 years, we created over time, a special formulation of tanning extracts and emollients that, when combined with careful hand processing, results in leather that is durable, double and nearly 100% less than most of leather produced to meet the same requirements.~~

The vegetable tanning and dyeing process we use was first developed in ancient times when none other than natural tree bark, with other plant and animal extracts, were available to the early local tanneries. For months at a time our hides are left to soak with a specially prepared mixture of organic elements. The best of these resulting stiff, dried out, and uncolored hides are not inside for our leather collection. From this so called "crust leather", we re-select and grade the skins as to thickness and character. At this point the hides are placed in drums with our exclusive blend of bark extracts, fat liquors and organic dyes. The drums rotate slowly and are carefully monitored for many hours until the color is struck through the entire thickness, and the moisture level is balanced through out the hide.

Copyright © 2010 Lotuff & Clegg Leatherworks. All Rights Reserved. Lotuff & Clegg is UpFront

This is a slow process dependant on the skill and artistry of passionate and committed tanners. It is the careful attention of our dedicated tanners and their refusal to compromise on materials and the time necessary to achieve the desired result that differentiates our vegetable-tanned leather from all other leathers available in this specialized market.

Our leather has the distinctive temper and sound of the highest quality vegetable-tanned leather, and the beautiful natural graining of a fine piece of wood. Instead of peeling and cracking as painted chromium tanned leathers do, Lotuff & Clegg leather develops its own patina, changing gradually in appearance and taking on the character of its user over time. The scars, scratches, veins and wrinkles that give each luggage piece in our collection its unique character have not been sanded down or buffed. We specifically chose not to cover minor imperfections with paint

Exhibit C



The Messenger



“Finally I’m at the point in my life where I can, with Frank, craft items we are both proud to show our friends.” Joe

Leather Origins

The Lotuff brothers,
And legendary leather artist Frank Clegg
Are proud to introduce to you the craft studio of
Lotuff & Clegg Leatherworks.



Leather Like No Other

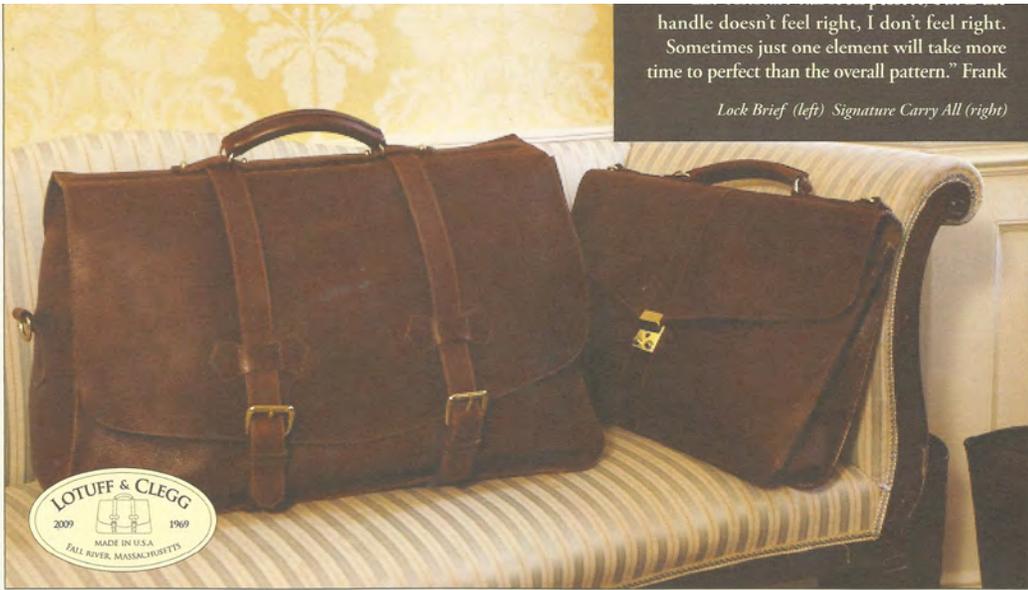
"The full grain, tumbled, vegetable tanned leather you see here is distinctly ours, perfectly suited to its intended purpose. What you end up with is worth any effort that goes into it." Frank



lcleatherworks.com
888.763.2247

handle doesn't feel right, I don't feel right.
Sometimes just one element will take more
time to perfect than the overall pattern." Frank

Lock Brief (left) Signature Carry All (right)



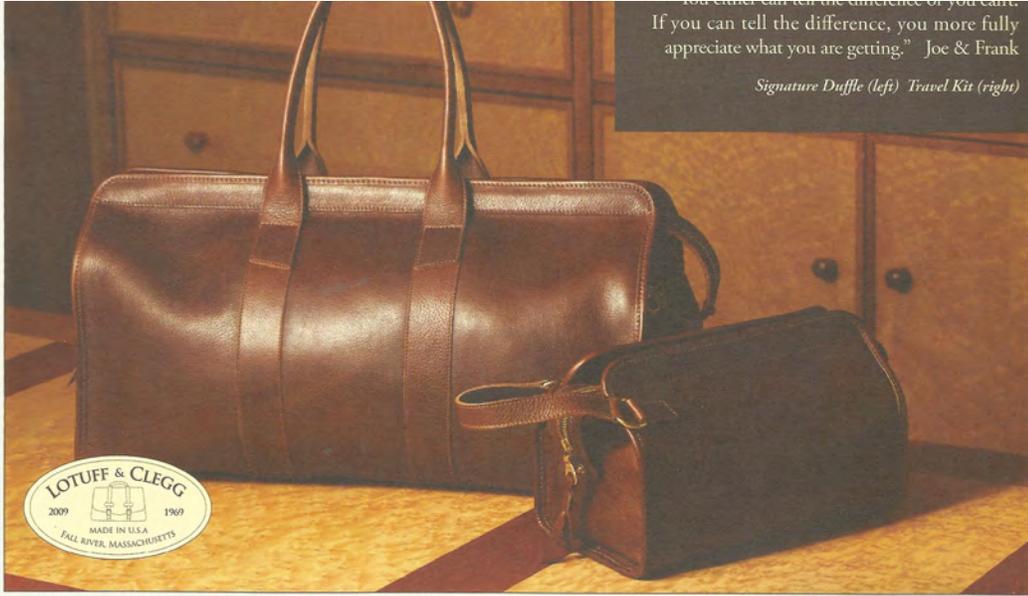
"I've always designed things as individual items.
For whatever reason, certain techniques work
for different bags...my motto is whatever
works best." Frank

Working Tote



...you either can tell the difference or you can't.
If you can tell the difference, you more fully
appreciate what you are getting." Joe & Frank

Signature Duffle (left) Travel Kit (right)



"A bag Frank made 30 years ago is serving one
of our friends today... and Frank has gotten
even better since." Joe

English Brief



Exhibit D

From: Frank Clegg [mailto:saltbox999@comcast.net]
Sent: Friday, January 13, 2012 2:05 PM
To: Jason Parent
Subject: Re: email for lotuffs

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

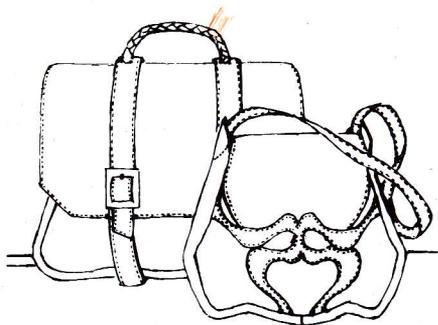
[REDACTED]

On Wed, Jan 11, 2012 at 9:26 PM, Frank Clegg <saltbox999@comcast.net> wrote:
Dear Alden,

At the end of October, I contacted you about having my domain names turned over to me and all uses of my name removed from the website and links so we could go in our own directions. Also, I requested that you discontinue to produce my product line as your own. Lotuff and Clegg was supposed to purchase its products from Frank Clegg Leatherworks, and all products on the Lotuff and Clegg website were Frank Clegg Leatherworks originals. It was agreed by you and the Lotuffs that Frank Clegg Leatherworks would always retain ownership in these designs. That is why Frank Clegg Leatherworks continued to be a separate company and why design and prototypes were never billed to Lotuff and Clegg. Lotuff or Lotuff Leather should be the result of your own designs, and the collection should be whatever you put together with your own team. You cannot continue to let people believe that you have been responsible for these designs and products for the last two years. As you know, this has been my life work for the last 40 years, and it is what I depend on to support my family. The look and feel of these items has always been what Frank Clegg represents. These past months have been very difficult for me and my family, for I have been working around the clock to reorganize my work life. You might not understand how I feel about what has happened with the company. I devoted two years of my time and nearly two years of income, and that is going to be a challenge for me as it is like starting over. It was unfortunate that I was never treated like a true partner, considering what I brought to the company Lotuff Leather is only a few months old, and that is what you have to keep in mind. You cannot continue this facade, as it will become uncomfortable for us all. Let us just end this as gentlemen.

Sincerely,

Exhibit E



frank clegg leatherworks

378 WALTER ST.
FALL RIVER, MA 02724
U.S.A.

(508) 672-4574

CLEGG 125

Exhibit F



Exhibit G



Exhibit H

Vintage 1970s F Clegg brown leather handbag by BetsyOldAndNew

www.etsy.com/listing/19898180/vintage-1970s-f-clegg-brown-leather

(no subject) - ian@frankleggleather... Vintage 1970s F Clegg brown leather... MBTA > Schedules & Maps > Commut... bestbuy seekonk ma - Google Search

Favorite Like this item? Add it to your favorites to revisit it later.



Sold

Overview Ask a Question

- Materials: leather, thread
- Feedback: 143 reviews
- Only ships within United States.

Favorite 4 Add to

Tweet Pin It Like 0

BetsyOldAndNew
in United States

80s black, white and gold... \$4.00 USD

60s Crouch and Fitzgerald... \$20.00 USD

Item Details ★★★★★ (143) Shipping & Policies

This early 1970s vintage leather shoulder bag appears to be handmade. On the inner flap it is very lightly embossed with an oval, at the top of which it says "designer," followed by "F Clegg" in the middle of the oval, with "craftsman" at the bottom.

<http://www.etsy.com/listing/19898180/vintage-1970s-f-clegg-brown-leather>

Exhibit I



Exhibit J

Jason Parent

From: Frank <saltbox999@comcast.net>
Sent: Wednesday, November 16, 2011 7:19 PM
To: Jason Parent
Subject: Re: Lotuff & Clegg

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: "Joe Lotuff" <joe@lotuff.com>
To: "Frank Clegg" <saltbox999@comcast.net>
Sent: Wednesday, October 26, 2011 3:17:27 PM
Subject: Lotuff & Clegg

Dear Frank,

Alden said you reached out to him so I wanted to share my thoughts with you. First: I think you are the best there is and I want nothing more in life than to work with you and Carlos to build the best leather manufacture in America. Between us we have the talent to achieve that goal. All of our competitors would prefer to see us fail.

My belief is no different from the day we met to discuss the vision for our company and partnership. At that time I stated we would like to join forces with you to build a true "house" that would directly own and control all assets necessary to design, produce, finance, market and distribute our leather items, primarily selling on the internet.

The deal I presented was as follows: ELGroup build the brand, sell the products, market and provide start up capital for the internet based company. Capital: in addition to brand, sales, marketing and administrative investment; could include: payment of shop overhead; salary to you; and investing, with your direction, in machinery necessary to meet quality and production goals. As co-founder and owner of Lotuff & Clegg: you collaborate on and execute all design; you are the products face and are directly responsible for design, construction, quality, materials, costing, machinery, and labor necessary to reliably produce and expand the Company's offerings of best quality leather goods. The company will pay true cost for product as it is paying production, material and overhead costs. The resulting company is owned 30% by Clegg interests and 70% by ELGroup.

The structure is contemplated to achieve shared company goals, and to provide you with the personal cash flow necessary to sustain your family living expenses. This agreement provides you with some current income, reduced operational expense and the largest individual share of K1 income. The only contemplated income for other owners is the proportionate share of K1 income from the resulting company.

We have in good faith taken some steps necessary to fill our part of the proposed agreement. We have been trying since April to finalize the financial and operating agreements, we await a more formal response from you, and we remain willing to stand by my word as outlined above (expecting to achieve the functional equivalent of ownership, responsibility and financial contribution). I was shocked when Rick told me you were no longer producing for us. The last time we spoke prior to Monday, you were going to hire a cutter and get on with production and design. We have all put a lot of capital and reputation on the line with this company and no one wants to see it fail. In fact, I feel an obligation to protect our company and live up to the commitments we have made to hard won customers.

Please lets get together once and for all, to iron out the details that will restore the dream, vision and sanity we all desire. All of our mutual concerns can be easily addressed and we can work together happily with the above structure in place. You know I believe in the magic of this partnership and I love the thought of it so much I could just burst, it's what I want to do, and selling our product is fun. Please help me create with you something we are both proud to be part of. We will work through this discussion in a gentlemanly way, and continue to protect our brand, reputation and families. Time is of the essence as I have a meeting related to this tomorrow and it would be good to know in broad strokes, where you stand and when we can meet to fill in the blanks.

Yours truly,
Joe

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

Frank Clegg Leatherworks LLC,

Petitioner,

v.

El Group, LLC,

Respondent.

Cancellation No. 92056574

**DECLARATION OF MICHAEL J. SALVATORE IN SUPPORT OF PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

I, Michael J. Salvatore, hereby declare as follows:

1. I am counsel of record for Petitioner Frank Clegg Leatherworks LLC (“Petitioner”). I submit this declaration in support of Petitioner’s Motion for Summary Judgment. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would testify competently thereto.

2. On September 20, 2013, October 19, 2013, and October 21, 2013, I conducted internet research pertaining to Petitioner’s leather goods. I found numerous articles and websites discussing Petitioner’s leather goods. I have taken screenshots of representative examples of my findings, and attached those screenshots as Exhibits to this declaration. A computer “screenshot” is a depiction of a computer’s screen at any given time. In making a screenshot, the user essentially captures the contents of its computer screen in a picture format for fidelity.

3. Attached hereto as **Exhibit A** are true and correct copies of two screenshots I took of Petitioner's website homepage and Men's product listing page, found at:

www.frankclegg-leatherworks.com, and

<https://frankclegg-leatherworks.com/index.php/product/Mens>, respectively.

4. Attached hereto as **Exhibit B** is a true and correct copy of a screenshot I took of an article discussing Petitioner's leather bags on the GQ website, found at:

<http://www.gq.com/style/blogs/the-gq-eye/2012/07/stuff-we-like-frank-clegg-leatherworks.html>.

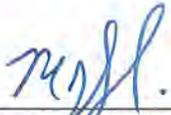
5. Attached hereto as **Exhibit C** is a true and correct copy of a screenshot I took of an article discussing Petitioner's business and leather goods on the Boston Magazine website,

found at: <http://www.bostonmagazine.com/home-design/article/2013/06/04/frank-clegg-leatherworks/>.

6. Attached hereto as **Exhibit D** is a true and correct copy of Document 6 from the USPTO TSDR Case Viewer website pertaining to the USPTO file for the mark LOTUFF & CLEGG, USPTO Reg. No. 3872561, which contains an image of Petitioner's sole member, Frank Clegg, on page 5 of the document.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed this 22nd day of October, 2013, at Malibu, California.



Michael J. Salvatore

Exhibit A



Welcome to Frank Clegg Leatherworks. Here you will find some of the finest leather goods produced in America. Everything is made by hand, one piece at a time, in our Fall River, Massachusetts workshop. All of the products you see here are original; Conceived, designed, and made by Frank Clegg and his team of craftspeople.

Please explore our online shop, learn about how our bags are made, and discover what makes our leather special. If you seek only the finest leather goods to last a lifetime, start with the originals, which are branded with the Frank Clegg name to ensure authenticity.

[SHOP NOW](#)



Handbag Tote - Large
 Vegetable Tanned Leather
 \$710



Courier Messenger Bag
 Shrunken Leather
 \$875



Signature Satchel
 Vegetable Tanned Leather
 \$790



English Briefcase
 Harness Belting Leather
 \$910

Made in the USA



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Frank Clegg Leatherworks
 1 Ace Street
 Fall River, MA
 02720
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MEN'S

In Hollywood we acquire the finest novels in order to smell the leather bindings. - Ernst Lubitsch

Products

- ▶ All

- ▶ Bags
 - ▶ Messenger Bags
 - ▶ Tote Bags

- ▶ Travel Luggage
 - ▶ Overnight Bags
 - ▶ Weekender Bags

- ▶ Business
 - ▶ Briefcases
 - ▶ Portfolios
 - ▶ Travel Accessories

- ▶ Exotic Leather
 - ▶ American Alligator

- ▶ Accessories
 - ▶ Wallets
 - ▶ iPad
 - ▶ Gifts



A PHP Error was encountered

Severity: Notice

Message: MemcachePool::get(): Server localhost (tcp 11211, udp 0) failed with: Connection refused (111)

Filename: libraries/Memcached.php

Line Number: 147



Rustic Alligator Card Case
American Alligator
\$350



Executive Alligator Satchel
American Alligator
\$1150



iPhone 5/5s Case
Vegetable Tanned Leather
\$78



Rustic Alligator English Briefcase
American Alligator
\$7500



Rustic Alligator Bifold Wallet
American Alligator
\$590



Rustic Alligator Carpetbag
American Alligator
\$6000



CLEGG 142



Pencil Case Clutch - Large
Vegetable Tanned Leather
\$125



Pencil Case Clutch - Small
Vegetable Tanned Leather
\$95



iPad Sleeve
Vegetable Tanned Leather
\$140



Luggage ID Tag
Vegetable Tanned Leather
\$50



Gentleman's Tie Case
Vegetable Tanned Leather
\$265



American Briefcase
Harness Belting Leather
\$910



Large Working Tote
Vegetable Tanned Leather
\$680



Medium Working Tote
Vegetable Tanned Leather
\$660



The Captain's Briefcase - Triple Gusset
Harness Belting Leather
\$965



Lawyer's Briefcase
Harness Belting Leather
\$1200



Signature Travel Duffel
Vegetable Tanned Leather
\$865



Zip Top Briefcase - Triple Gusset
\$1070



iPad Briefcase
Harness Belting Leather
\$565



English Briefcase
Harness Belting Leather
\$910



Leather iPad Case
Vegetable Tanned Leather
\$165



Messenger Bag
Vegetable Tanned Leather
\$850



Bifold Wallet
\$195



Travel Duffle
Harness Belting Leather
\$885



iPad Bag
Harness Belting Leather
\$450



Private Jet
Harness Belting Leather
\$1250



Travel Duffle
Shrunken Leather
\$950



Courier Messenger Bag
Shrunken Leather
\$875



Shrunken Leather Passport Wallet
\$325



The Wall Street
Harness Belting Leather
\$910



Signature Travel Kit
Vegetable Tanned Leather
\$350



Document Case
Vegetable Tanned Leather
\$395



Travel Kit - Small
Vegetable Tanned Leather
\$320



The Captain's Briefcase - Double Gusset
Harness Belting Leather
\$910



The Captain's Briefcase - Single Gusset
Harness Belting Leather
\$870



Zip Top Briefcase - Double Gusset
\$890



Zip Top Briefcase - Single Gusset
\$870



Document Case - Small
Vegetable Tanned Leather
\$350



Zip Top Single Gusset Briefcase - Bound Edge
Vegetable Tanned Leather
\$770



American Alligator Signature Duffle
American Alligator Duffel
\$8800



Travel Duffle - Small
Shrunken Leather
\$850



Aiden Duffel
Shrunken Leather
\$990



English Briefcase
Vegetable Tanned Leather
\$810



Aiden Duffel
Vegetable Tanned Leather
\$890



Crossroads Duffel
Vegetable Tanned Leather
\$925



Signature Duffel - Small
Vegetable Tanned Leather
\$765



Monsieur Troy Duffel
Vegetable Tanned Leather
\$990



Mini Card Wallet
Vegetable Tanned Leather
\$100



Folding Card Case
Vegetable Tanned Leather
\$85



Serpentine iPad Case
Vegetable Tanned Leather
\$180



Signature Working Tote
\$700



iPhone sleeve 4/4S
Vegetable Tanned Leather
\$75



Pen Case
\$40



Card Wallet
Vegetable Tanned Leather
\$70



Coin Wallet
\$50



Pocket Magnifying Glass
Vegetable Tanned Leather
\$65

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Exhibit B



THE GQ EYE



Stuff We Like

On July 10, 2012 at 10:30 AM

Stuff We Like: Frank Clegg Leatherworks

By *Matthew Hranek*



Signature Travel Duffel, \$850



Large Working Tote, \$660



Private Jet, \$1,250

There are a lot of new school leather crafters out there making some terrific stuff but I have recently become acquainted with Frank Clegg Leatherworks which is, in my opinion, ahead of the pack. Frank is an old school crafter that has been making beautiful things since the 70's in Fall River, Massachusetts and has worked with a long list of great American companies including Alden. His designs are simple, masculine, and timeless and the skill of his manufacturing is obvious in the details and finishes of his bags. I covet the leather tote, which comes in small, medium and large sizes, as well as his travel duffel. If I hit the lottery and begin flying privately, his Private Jet bag is high on my list of first purchases - after the Gulfstream.

For more information and to buy, visit frankcleggleatherworks.com.

Matthew Hranek is a longtime GQ contributor. He splits his time between Brooklyn and Upstate N.Y. with his wife and daughter. Read Matthew's blog, [The William Brown Project](#), here.

Photo: Frank Clegg Leatherworks

Tags:

Bags,
Frank Clegg,
Leatherworks,
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Stuff We Like main

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Exhibit C

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Innovators, Mass. Made

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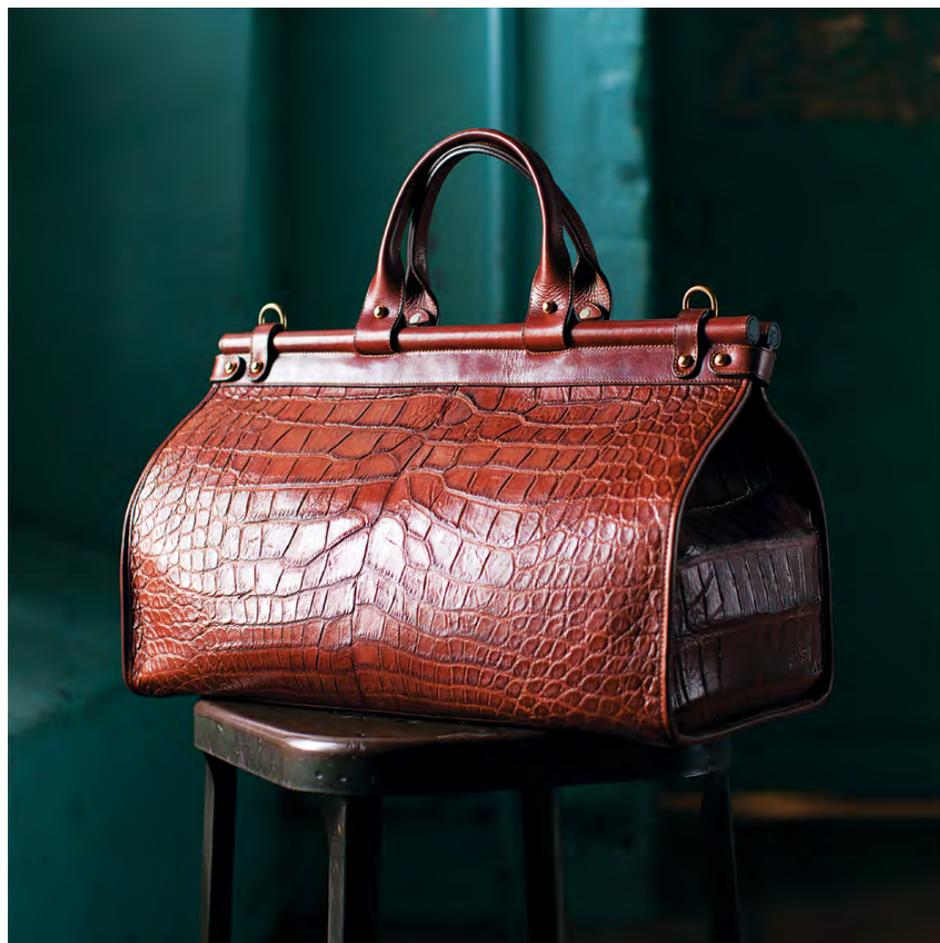
Frank Clegg crafts luxurious leather goods in his Fall River workshop.

By Lindsay Tucker | Boston Home | Summer 2013

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11



A HANDSTAINED WILD ALLIGATOR BAG SHOWCASES FRANK CLEGG'S SKILLS. (PHOTOS BY JARROD MCCABE)

Situated in Fall River's 19th-century Granite Mills, Frank Clegg's 5,000-square-foot workshop is cluttered with textile swatches, old sewing machines, leather scraps, patterns, and, of course, his signature duffel bags, totes, and briefcases. Judging by the lack of 21st-century technology, the space could easily be set in 1974—the year that Clegg, after earning an MBA from Babson College

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and vying for corporate jobs, threw out his suit and launched his eponymous leather-goods line. “[In the interviews] I was saying things I didn’t like,” Clegg says, “things I knew they wanted to hear. And I can only tolerate so much BS.”

“That was the heyday of leather shops,” Clegg says. “Everyone was obsessed with making a good product. There wasn’t room for compromise. You did the best you could with what you knew, and what you had.” That year, Clegg serendipitously met a Boston couple looking to outfit their boutique in St. Croix. When they placed a \$3,500 order (roughly equivalent to \$20,000 today) on the spot, Clegg knew he had a viable business.

In his partially unbuttoned, plaid Carhartt shirt and jeans, Clegg seems like an unlikely style expert, but over the years he and his handful of employees have made bags, belts, wallets, and more for big-name fashion brands like Cole Haan. “They would call and say, ‘We need five different ladies’ bags that look like they go with the collection,’ and that was easy for me to do,” he says. Even as he worked with major designers, Clegg continued to focus on his brand, eventually parting ways with Cole Haan after Nike took over the company in 1988.

The process Clegg uses to create his signature pieces hasn’t changed much since the ‘70s. He first cuts the basic parts out of chemical-free, vegetable-tanned leather. When an order comes in, those pieces are run through a leather splitter to achieve the desired thickness, then beveled on a tapering machine if binding or pockets are required. After the raw leather edges are sanded and polished, they’re either bound by a thin piece of leather that’s folded over the end and stitched, or polished and dyed with Italian edge paint. Though it’s four times the price, Frank says good edging is the key to a top-quality piece. “When everything’s finished nicely, the whole effect of the bag is better,” he says. Workers then use hammers and other hand tools to add hardware to the item before it’s stitched together on a sewing machine. Shiny shell cordovan and speckled stingray skin are just a few of the exotic leathers Clegg sources for his goods.

Today, website orders come in from as far away as Asia and Europe. From the 1,000-plus patterns Clegg has made, bestsellers include satchels, duffel bags, weekenders, totes, and, of course, briefcases. He offers a classic English brief, a more-modern captain’s brief, and an oversize lawyer’s brief.

With prices ranging from \$200 to \$9,000, Clegg says each piece should be considered an investment: In fact, many of his customers have needed only one briefcase for the entirety of their careers. “Sometimes it’s beat to hell,” Clegg concedes, showing off one of the first English briefcases he made—peach fuzz now where the shiny leather once was. “It looks like suede now,” he says, “but they love it and wouldn’t change it for anything.”



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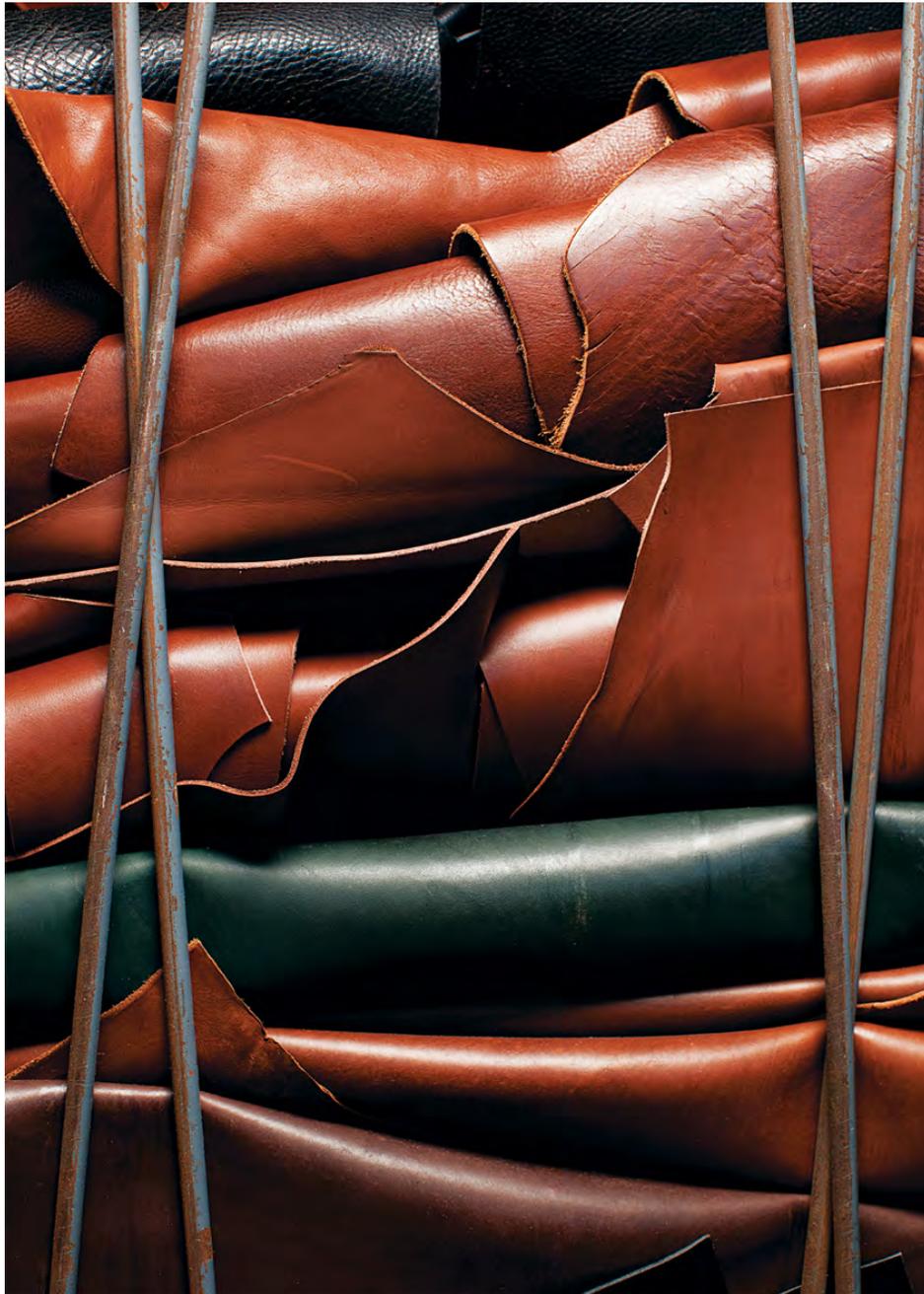


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Leather pieces await incoming orders.

A craftsman uses a spindle sander to polish the leather.

Various stains are used to finish the wares before they're sent to customers.

Clegg shows off an English briefcase in his workshop.

Clegg uses solid brass rivets and heavy Swiss-made zippers on his bags to increase their longevity.

Each piece is adorned with Clegg's signature and a serial number.

A craftsman carefully stitches a piece together.

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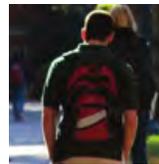
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Metal stamps engraved with Clegg's logo and signature are used to mark all of his original designs.

An American flag proudly hangs above Clegg's workshop.

Clegg recently purchased a computer-guided cutting machine, though many of his patterns are still cut by hand.

Right, an employee carefully hammers metal rivets into a piece of leather.















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Exhibit D

LOTUFF & CLEGG

CRAFTED IN MASSACHUSETTS

To the
Commissioner for Trademarks
Attn. Frank J. Lattuca, Law Office 109
P.O. Box 1451
Alexandria, VA 22313-1451

June 29, 2010

Re: Trademark Serial No 77938595 Office Action Response

Dear Mr. Lattuca,

Attached please find substitute specimen for our trademark application from 02/18/2010.

- A print out from our website www.lotuffclegg.com showing our logo on the top right.
- A keychain with leather samples for our bags with Lotuff & Clegg stamped on it.
- Photos of logos on our actual bags

Best Regards,

Katharina Lanner

Market Research Analyst
EL Group LLC d/b/a Lotuff & Clegg
phone (413) 725 4226
cell (917) 743 4548
e-mail Katharina@elgroupnyc.com



07-06-2010

U.S. Patent & TM Office Mail Rept 01 #72

Attached:

- Notarized Affidavit

44 East Main Street · Carriage House · Ware, MA 01082
p (413) 725 4226 · f (413) 725 4227 · sales@lotuffclegg.com · www.lotuffclegg.com

GENERAL AFFIDAVIT

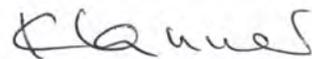
STATE OF Massachusetts

COUNTY OF Hampshire

PERSONALLY came and appeared before me, the undersigned Notary, the within named Katharina Lanner, who is a resident of New York County, State of New York, and makes this her statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

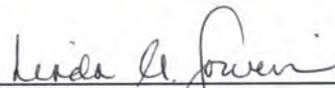
The submitted substitute specimen for trademark application with the serial number 77938595 was in use in commerce at least as early as the filing date of the application.

DATED this the 29th day of June, 2010



Signature of Affiant

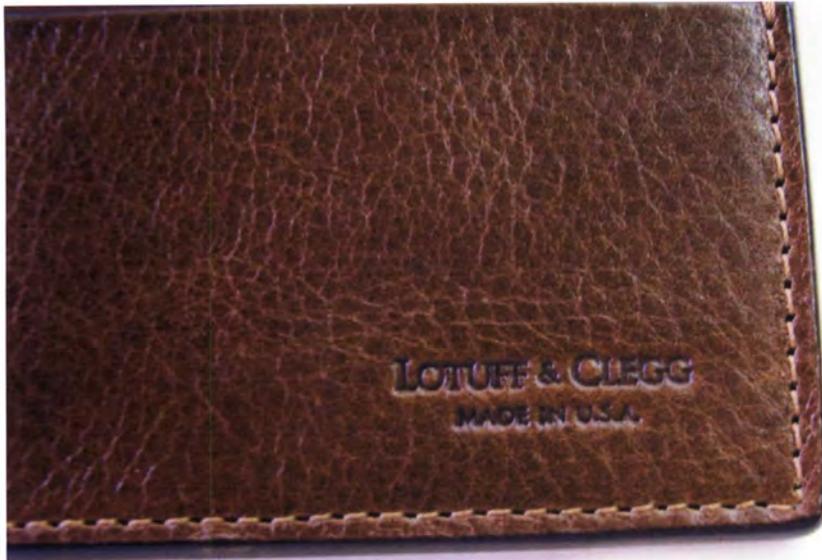
SWORN to subscribed before me, this 29th day of June, 2010



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My Commission Expires: 10-24-2014







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An artist sees his canvas.

TIME HONORED TRADITIONS PURE, BALANCED THE SIGNATURE CARRY ALL

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LOTUFF & CLEGG

CLEGG NAME / DESCRIPTION	JAN 2010 DIRECT PRICE
Signature Carry-All	\$1,200
Signature Duffle	\$880
Trunk Duffle	\$1,200
Working Tote	\$575
Lock Brief / English Brief	\$690
Flapover Document Case	\$325
The Messenger	\$690
Letter Padfolio	\$250
Travel Kit	\$225
Bifold Wallet	\$125
Men's Dress Belt	\$160

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