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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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Submission	Motion to Suspend for Civil Action
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Signature	/MJSalvatore/
Date	04/15/2014
Attachments	Motion to Suspend w Dec and Exhibits_for filing.pdf(1774954 bytes)

**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 TO SUSPEND PROCEEDING FOR CIVIL ACTION

Petitioner Frank Clegg Leatherworks LLC (“Petitioner”) respectfully moves the Board, pursuant to TMBP § 510.02, 37 CFR § 2.117(a), for an order suspending the proceedings herein beginning on April 15, 2014, based on the filing by Respondent El Group, LLC (“Respondent”) of a civil lawsuit in Massachusetts Superior Court, arising in part under the Lanham Act, 15 U.S.C. §1114, and pertaining to the trademark LOTUFF & CLEGG, which is the subject of this proceeding.

FACTUAL BACKGROUND

In this proceeding Petitioner seeks to cancel Respondent’s registration of the mark LOTUFF & CLEGG on the grounds that Petitioner has prior rights in the CLEGG portion of that mark and that Respondent’s mark is likely to cause confusion with Petitioner’s mark; that Respondent has failed to obtain Petitioner’s written consent to register a mark with its principal, Frank Clegg’s surname, and that Petitioner has abandoned any rights in the registered mark.

Thus, this proceeding involves the parties' respective rights in the LOTUFF & CLEGG and CLEGG marks.

Petitioner has just become aware of a lawsuit that Respondent and Respondent's principal Joseph Lotuff, filed against Petitioner and its principal Frank Clegg in Massachusetts Superior Court. Declaration of Michael J. Salvatore ("Salvatore Dec.") ¶ 5, Ex. C ("Complaint"). The Massachusetts Superior Court lawsuit asserts, *inter alia*, a claim under the Lanham Act, 15 U.S.C § 1114, that the FRANK CLEGG and CLEGG marks as used by Petitioner/Defendants infringe Respondent/Plaintiffs alleged rights in the LOTUFF & CLEGG registered mark. Complaint, Count VI ("Federal Trademark Infringement – Violation of 15 U.S.C. § 1114"). Petitioner/Defendants will be filing a counterclaim for infringement seeking as a remedy, in addition to others, cancellation of the LOTUFF & CLEGG registration.

To date, no depositions have taken place in this proceeding. Prior to Petitioner's learning of the civil action, Petitioner and Respondent noticed depositions of the parties' two principals for April 17 and 18, 2014, respectively. Salvatore Dec. ¶ 3. The depositions were noticed for Springfield, MA. *Id.* In an April 2 email regarding the scheduling of these depositions, counsel for Petitioner told counsel for Respondent that Petitioner's counsel would be travelling cross country to attend the depositions, and that he wished to avoid his client having to incur this expense more than once. Salvatore Dec., ¶ 3, Ex. B. Counsel for Respondent then noticed on April 14, 2014 three additional depositions of Petitioner's witnesses, including third parties, for April 23-25, in Boston, MA, Springfield, MA, and Providence, RI, respectively. Salvatore Dec., ¶ 4. This was quite surprising, not only because counsel had never mentioned these other depositions when depositions were being scheduled, *id.*, and he knew that Petitioner's counsel was trying to avoid the expense of having to travel extensively, but also, and significantly,

because Respondent earlier had refused to agree to an extension of the discovery period on the ground that “too many resources have already been expended on this matter.” Salvatore Dec., ¶ 2, Ex. A.

Accordingly, since the issues that will be decided in the Massachusetts Superior Court lawsuit will have a bearing on the Board’s determination in the present matter, and indeed will finally decide the very same issues, Petitioner requests a suspension of this Cancellation proceeding so that it can avoid the duplicitous efforts and very significant expense of taking discovery and litigating the same issues in both cases. Petitioner has sought Respondent’s consent to the filing of this Motion, but Respondent, through its counsel, has declined to give its consent without providing any specific reason for its refusal. Salvatore Dec., ¶¶ 6-7, Ex. D-E.

LEGAL ARGUMENT

37 CFR § 2.117(a) provides that: “whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action...which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action.” See *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933, 1936-37 (TTAB 1992); *Toro Co. v. Hardigg Industries, Inc.*, 187 USPQ 689, 692 (TTAB 1975), *rev’d on other grounds*, 549 F.2d 785, 193 USPQ 149 (CCPA 1977); *Other Telephone Co. v. Connecticut National Telephone Co.*, 181 USPQ 125, 126-27 (TTAB 1974); *petition denied*, 181 USPQ 779 (Comm’r 1974); *Tokaido v. Honda Associates Inc.*, 179 USPQ 861, 862 (TTAB 1973); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805, 806-07 (TTAB 1971). Ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board. *New*

Orleans Louisiana Saints LLC v. Who Dat? Inc., 99 USPQ2d 1550, 1552 (TTAB 2011) (“The civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board.”). Further, the Board may suspend a proceeding pending the final determination of a civil action pending between the parties in a state court. See *Mother's Restaurant Inc. v. Mama's Pizza, Inc.*, 723 F.2d 1566, 221 USPQ 394, 395 (Fed. Cir. 1983) (holding that state court findings of prior use and confusing similarity of service marks were preclusive in TTAB cancellation proceeding); *Professional Economics Incorporated v. Professional Economic Services, Inc.*, 205 USPQ 368, 376 (TTAB 1979) (decision of Massachusetts state court, although not binding on the Board, was considered persuasive on the question of likelihood of confusion; however, in light of later decided *Mother's Restaurant* case, would be binding).

Respondent and its principal, Joseph Lotuff, have filed a civil action in Massachusetts Superior Court against Petitioner and its principal, Frank Clegg, in which the issues in this Cancellation proceeding will be actually litigated and finally determined under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114, since that claim pertains to Respondent's LOTUFF & CLEGG registration as well as Petitioner's trademarks FRANK CLEGG and F. CLEGG. See Complaint Count VI. Further, Respondent seeks an injunction preventing Petitioner's use of the marks FRANK CLEGG and F. CLEGG in connection with its leather goods business. Complaint at ¶ 19. Thus, there can be no doubt that the resolution of the Superior Court lawsuit will have a bearing on and in fact will have preclusive effect on the issues that are being litigated in this Cancellation proceeding, namely priority, abandonment and likelihood of confusion. Accordingly, this proceeding should be suspended pending disposition of the Superior Court

civil action filed by Respondent, so that neither party has to incur the prejudicial costs of duplicating its efforts during discovery or otherwise in connection with these litigations.

Respondent will not be prejudiced by a suspension of these proceedings pending determination of the Superior Court lawsuit that it has filed. In filing that civil action, Respondent no doubt foresaw that a stay of this proceeding would be sought to avoid additional and unnecessary expense; indeed, as Respondent's counsel stated on August 21, 2013: "My clients believe that too many resources have already been expended on this matter." Salvatore Dec., ¶2, Ex. A.

This proceeding is still in the discovery stage, and neither of the parties has yet incurred the costs of taking or defending any depositions or presenting any trial testimony. Additionally, Respondent's business is located in Ware, MA, which is only 26 miles from Springfield, MA, where the scheduled depositions were set to occur on April 17 and 18, so there are no long-range travel arrangements that Respondent would need to cancel. Petitioner, on the other hand, would be highly prejudiced if it had to engage in duplicative litigation since its resources are limited and its income depends primarily on Mr. Clegg's being at work and not tied up in litigation. Salvatore Dec., Dec., ¶8.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests the Board to suspend the proceedings herein until the civil lawsuit filed by Respondent in Massachusetts Superior Court is resolved.

Dated: April 15, 2014

Respectfully submitted,

HOLMES WEINBERG, PC

/Michael J. Salvatore/

Michael J. Salvatore
30765 Pacific Coast Highway, Suite 411
Malibu, CA 90265
Tel: 310.457.6100
Fax: 310.457.9555
Email: msalvatore@holmesweinberg.com

Attorneys for Petitioner, Frank Clegg
Leatherworks LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2014, a true and correct copy of this PETITIONER'S MOTION TO SUSPEND PROCEEDING FOR CIVIL ACTION was served by USPS Priority Mail to Respondent's counsel at the below address:

James C. Duda
Bulkley, Richardson and Gelinas, LLP
1500 Main Street, Suite 2700
P.O. Box 15507
Springfield, MA 01115-5507

/Nelda Piper/
Nelda Piper

**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

DECLARATION OF MICHAEL J. SALVATORE

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

1. I am a counsel of record for Petitioner Frank Clegg Leatherworks LLC (“Petitioner”). I submit this declaration in support of Petitioner’s Motion to Suspend Proceeding for Civil Action. 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 August 19, 2013, I sent an email to respondent’s counsel requesting Respondent’s consent for an extension of the discovery period on the ground that my law firm had just substituted into the proceeding five days before the close of discovery and no discovery had yet been conducted. Respondent’s counsel responded two days later with a denial of my request, stating as its reason for the denial that: “My clients believe that too many resources have already been expended on this matter.” Ultimately, the Board granted Petitioner’s Motion to Extend Discovery, which Respondent opposed. Attached hereto as **Exhibit A** is a true and correct copy of the email I sent on April 19, 2013 and the April 21, 2014 response.

3. Attached hereto as **Exhibit B** is a true and correct copy of an email I sent to Respondent’s counsel on April 2, 2014, regarding the scheduling of depositions in this matter.

Since the depositions were noticed for Respondent's counsel's offices in Springfield, MA, and our firm is located in California, I stated in the email that: "the dates of the two depositions will need to be together so that we are not travelling cross country twice." I offered to make our client available on an alternative date in order to accommodate Respondent's principal, Joseph Lotuff's religious holiday. Ultimately, the parties agreed to hold the depositions on April 17, 2014, and April 18, 2014, in Springfield, MA, at Respondent's counsel's office.

4. On April 14, 2014, Respondent's counsel sent me copies of three additional deposition notices via email, each pertaining to Petitioner's witnesses, including third party witnesses. These depositions were noticed for April 23, 24 and 25, in Providence, RI, Springfield, MA, and Boston, MA, respectively. Respondent's counsel had never mentioned these other depositions when depositions were being scheduled.

5. In the interim, Petitioner became aware of a civil action that was filed against it by Respondent and Respondent's principal, Joseph Lotuff, in Massachusetts Superior Court, Civil Action No. BRCV2014-0354C. This action arises under the Lanham Act, 15 U.S.C. § 1114, and related state claims. A true and correct copy of the Complaint in this action is attached hereto as **Exhibit C**. The Lanham Act claim involves the same marks and ownership issues in this Cancellation proceeding.

6. On April 14, 2014, I sent a letter to Respondent's counsel requesting Respondent's consent to file a motion to stay this Cancellation proceeding in light of the filing of the Massachusetts lawsuit, which includes a Lanham Act claim in which all of the issues in this Cancellation proceeding will be decided, and in order to avoid duplication of efforts and costs in these matters. A true and correct copy of my letter is attached hereto as **Exhibit D**.

7. On April 15, 2014, Respondent's counsel replied to my letter stating that Respondent would not consent to the filing of the motion to suspend this proceeding. A true and correct copy of this letter is attached hereto as **Exhibit E**.

8. Petitioner would be highly prejudiced if it had to engage in duplicative litigation since its resources are limited and its income depends primarily on Mr. Clegg's being at work and not tied up in litigation

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed this 15th day of April, 2014, at Malibu, California.

/Michael J. Salvatore/

Michael J. Salvatore

Exhibit A

From: [Duda, James](#)
To: [Michael J Salvatore](#)
Subject: RE: Cancellation No. 92056574 / Frank Clegg v. El Group, LLC / Request to Extend Discovery
Date: Wednesday, August 21, 2013 7:12:20 AM

Dear Mike,

My clients believe that too many resources have already been expended on this matter, they are frustrated with its progression, and they would like to bring it to a resolution at the earliest possible date. In light of (1) the little chance that extending discovery would lead to the production of additional evidence that would substantially impact the resolution of this matter; (2) the significant costs that the parties likely would incur as a result of any extension; and (3) the more than ample time that has been available for discovery during the past eight months, we see no value to extending the discovery period at this time.

Please note that we also remain concerned by the absence of a good faith response to our offer in February to resolve this matter efficiently through a properly crafted Consent Letter, which we believe should remove the root cause of this litigation by likely removing the LOTUFF & CLEGG registration as an obstacle to your client's efforts to register the FRANK CLEGG and F. CLEGG marks with the U.S. Patent and Trademark Office.

Please call me if you would like to discuss any aspect of this matter.

Thank you.

Jim

James C. Duda, Partner

Bulkley, Richardson and Gelinias, LLP
1500 Main Street, Suite 2700 | P.O. Box 15507 | Springfield, MA 01115-5507
Direct: 413-272-6284 | Fax: 413-272-6806
jduda@bulkley.com | www.bulkley.com

From: Michael J Salvatore [mailto:MSalvatore@holmesweinberg.com]
Sent: Monday, August 19, 2013 3:55 PM
To: Duda, James
Cc: Steven M. Weinberg; Nelda Piper
Subject: Cancellation No. 92056574 / Frank Clegg v. El Group, LLC / Substitution of Attorney

Dear James:

Our firm has just substituted into the above-referenced cancellation proceeding. The attached is being sent to you today via US Mail. We are writing to request a 4-month extension of all pending dates, since no discovery has yet been conducted in this proceeding.

Please let us know if you will agree to the 4-month extension by close of business tomorrow, August 20, 2013.

Thank you very much,

Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
t: 310.457.6100 x 201 | c. 914.263.1001 | f: 310.457.9555
msalvatore@holmesweinberg.com | www.holmesweinberg.com | [Bio](#)

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Exhibit B

From: Michael J Salvatore
To: ["Duda, James"](#)
Cc: [Steven M. Weinberg](#); [Nelda Piper](#); [Vincent, Carol](#)
Subject: RE: Frank Clegg Leatherworks LLC v. El Group LLC: Notice of Deposition
Date: Wednesday, April 02, 2014 10:48:18 AM

Hi Jim,

We will need to pick a day for Mr. Lotuff's deposition for which he is available the full 7 hours. Additionally, the dates of the two depositions will need to be together so that we are not travelling cross country twice. If it works for you, we could take Mr. Lotuff's deposition on the 17th, and Mr. Clegg could be available on the 16th. It may be easier to discuss this scheduling over the phone, so please let me know if you would like to set up a time for that.

Thank you,

Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
t: 310.457.6100 x 201 | c. 914.263.1001 | f: 310.457.9555
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From: Duda, James [mailto:jduda@bulkley.com]
Sent: Wednesday, April 02, 2014 10:14 AM
To: Michael J Salvatore
Cc: Steven M. Weinberg; Nelda Piper; Vincent, Carol
Subject: Frank Clegg Leatherworks LLC v. El Group LLC: Notice of Deposition

Hello Mike,

Mr. Lotuff can be available from 9 a.m. to 2 p.m. on Friday, April 18 at our offices for his deposition regarding your client's efforts to cancel the LOTUFF & CLEGG mark in the above captioned matter. That day is the beginning of a religious holiday, and Mr. Lotuff will need to leave by 2 p.m. Please confirm at your earliest convenience that the time frame will work, and also that Mr. Clegg will be available at our offices for his deposition in this matter the day before (that is, April 17) beginning at 10 a.m.

Thank you.

Jim

James C. Duda, Partner

Exhibit C

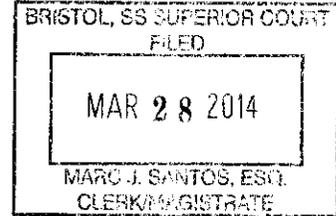
COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT
CIVIL ACTION NO.

BRCV2014-0354C

_____)
 EL GROUP, LLC and JOSEPH LOTUFF)
)
 Plaintiffs,)
)
 v.)
)
 FRANK CLEGG, FRANK CLEGG)
 LEATHERWORKS, LLC, ANDREW)
 CLEGG and IAN CLEGG)
)
 Defendants.)
 _____)



COMPLAINT

INTRODUCTION

1. In this action, EL Group, LLC, which has done business as Lotuff & Clegg and now does business as Lotuff Leather, (the "EL Group"), and Joseph Lotuff (member of EL Group, partner of Lotuff & Clegg, and principal of Lotuff Leather) seek damages and injunctive relief from its former partner, Frank Clegg ("Clegg"), his new company, Frank Clegg Leatherworks, LLC ("FCL"), and Clegg's two sons (and employees), Andrew and Ian Clegg (collectively the "Clegg Defendants"). EL Group's claims arise out of its investment in and development of high-end leather goods, which it actively marketed and sold under the trademark "Lotuff & Clegg." After a significant investment and a two-year commitment to marketing and developing the Lotuff & Clegg name, web-based and retail sales of Lotuff & Clegg products increased substantially. In an effort to usurp the value EL Group created in the Lotuff & Clegg name, Clegg attempted to use the existing good will associated with Lotuff & Clegg for his own

benefit by creating an intentionally confusing, similar brand to market the same goods to the same customers at lower prices. To secure an unfair advantage in the marketplace, Clegg and his sons engaged in a campaign to disparage the Lotuff & Clegg name, and the new Lotuff Leather name, as well as Joseph Lotuff personally, falsely representing to the marketplace and specific retailers that Lotuff & Clegg designs and Lotuff Leather designs were either “stolen” from or “knockoffs” of Clegg’s designs. The EL Group and Joseph Lotuff seek to recover their damages, and a permanent injunction to prevent the immediate and irreparable harm that will result from defendants’ further defamatory statements about Lotuff Leather.

JURISDICTION AND VENUE

2. This action arises under the Lanham Act, 15 U.S.C. §1114, and under Massachusetts statutory and common law. The Massachusetts Superior Court has jurisdiction over this action pursuant to G.L. c. 223A, §3 and G.L. c. 214, §1. The amount in controversy exceeds \$25,000, exclusive of interest and costs. This Court has concurrent jurisdiction over the Plaintiff’s federal law claims.

3. Bristol County is the proper venue for this action pursuant to G.L. c. 223, §1 because all defendants reside in and have a usual place of business in Bristol County.

PARTIES

4. EL Group LLC (“EL Group”) is a Massachusetts limited liability company with a principal place of business at 44 East Main Street, Carriage House, Ware, Massachusetts. EL Group is an investment company specializing in the identification, funding and operation of manufactured consumer products. EL Group uses sophisticated and unique web-based marketing to create and develop a brand.

5. Joseph Lotuff (“Lotuff”) is a Massachusetts resident with a place of business at 44 East Main Street, Ware, MA 01082. Lotuff is a member of EL Group.

6. Frank Clegg (“Clegg”) is, on information and belief, a Massachusetts resident at 999 Hortonville Road, Swansea, Massachusetts 02777-3615, and with a place of business at 1 Ace Street, Fall River, Massachusetts. Clegg is a former partner of EL Group and the managing member of Frank Clegg Leatherworks, LLC.

7. Frank Clegg Leatherworks, LLC (“FCL”) is a Massachusetts limited liability company with a principal place of business at 1 Ace Street, Fall River, Massachusetts.

8. Andrew Clegg is, on information and belief, a Massachusetts resident at 999 Hortonville Road, Swansea, Massachusetts 02777-3615, and with a place of business at 1 Ace Street, Fall River, Massachusetts. Andrew Clegg is the son of Frank Clegg, and is on information and belief, employed by FCL.

9. Ian Clegg is, on information and belief, a Massachusetts resident at 999 Hortonville Road, Swansea, Massachusetts 02777-3615, and with a place of business at 1 Ace Street, Fall River, Massachusetts. Ian Clegg is the son of Frank Clegg, and is, on information and belief, employed by FCL.

FACTS AND GENERAL ALLEGATIONS

10. In 2007, Joseph Lotuff, his brother Rick Lotuff (collectively, the “Lotuffs”), and Alden Edmonds (“Edmonds”), all of whom had significant success in textiles, formed EL Group with the intent of identifying potential investment opportunities to manufacture leather goods.

11. Together the Lotuffs and Edmonds developed a concept for a new venture built around a brand identified with a classic, high-quality, durable line of leather products

manufactured in the United States and marketed and distributed worldwide primarily via the Internet and social media.

12. To implement the new concept, EL Group identified at least four individuals who had worked with leather, including Clegg, and contacted Clegg in early 2009 regarding a joint venture.

13. While Clegg had previously manufactured and sold leather products out of various workshops in Massachusetts, at the time EL Group contacted Clegg to share the idea that was to become Lotuff & Clegg, he was not producing leather goods and was designing guitars.

14. Although Clegg had no experience marketing or selling products over the Internet, EL Group agreed to partner with Clegg because of his workmanship.

15. With Clegg's competence in leather goods and the EL Group's funding, textile experience, and industry contacts, the partnership was formed. Consistent with the intent to work as a partnership, the Lotuffs and Clegg agreed to combine their two as-yet-unknown names and develop a trademark known as "Lotuff & Clegg."

16. Based upon Lotuffs' industry knowledge and skill and Clegg's craftsmanship, the parties engaged in a series of meetings and collaboratively developed designs and patterns consistent with EL Group's original concept which was targeted for a high-end demographic. These designs and the associated brand-name, Lotuff & Clegg, were developed for and used exclusively by EL Group.

17. To manufacture these newly-designed products, all of which were branded with the distinct mark of "Lotuff & Clegg," the EL Group leased and paid for industrial space, purchased materials, hired labor and consultants, paid for marketing and a website, and paid Clegg for his efforts.

18. Because Clegg was unknown to the public and those in the men's fashion and leather industries, Clegg and EL Group agreed to create a public image of Clegg as a craftsman. To that end, in collaboration with Clegg, EL Group created and drafted promotional materials designed to build Clegg's presence in the industries, including *inter alia* brochures, videos and other advertising materials designed to characterize Clegg as a well-known craftsman of high-quality leather products (in order that one day he would become so).

19. To create brand-recognition and value associated with the name "Lotuff & Clegg," the EL Group also invested approximately \$600,000 in web-based marketing and purchased space at and attended trade shows.

20. To protect the Lotuff & Clegg mark, on February 18, 2010, EL Group filed for registration of the Lotuff & Clegg mark with the United States Patent and Trademark Office ("USPTO"). Clegg was aware of and consented to the filing of the application for registration, and no information was withheld from him.

21. On November 9, 2010, the USPTO approved the registration.

22. EL Group specifically targeted and developed a network of high-end retail store distributors both domestically and world-wide to sell its products. These retail stores included Shreve, Crump & Low (Massachusetts), Barney's New York (New York), Steven Alan (New York, Connecticut, Boston, Oregon, Illinois, Georgia, Texas and California), and Scoop (California, Florida, and New York).

23. With an established retail distribution network, the EL Group created, paid for and maintained a web-based platform to allow it to sell products directly through the internet.

24. In connection with its marketing and sales efforts, EL Group maintained customer lists. These lists included, *inter alia*, names and contact information for consumer purchasers

and buyers for retailers, and information concerning pricing and orders (the “Confidential Information”). This information is not publicly available.

25. By creating an on-line and retail distribution network, developing unique leather goods for a targeted demographic and aggressively advertising the trademark “Lotuff & Clegg,” EL Group was able to increase demand and sales of its products significantly.

26. After EL Group expended considerable resources in developing the Lotuff & Clegg brand and products, and Clegg became known in men’s fashion and leather industries, Clegg attempted to eliminate his partners and use existing good will associated with the trademark Lotuff & Clegg for his own personal gain by creating a nearly identical brand.

27. Initially, Clegg impacted EL Group’s production of leather goods by failing to fill a backlog of orders timely with the specific intent of interfering with EL Group’s ability to meet existing demand from clients.

28. Subsequently, in October 2011, Clegg precluded other partners from accessing the manufacturing facility effectively locking them out, stole the Confidential Information, then formed Frank Clegg Leatherworks, LLC, adopted an intentionally similar brand name (Frank Clegg and F. Clegg) and logo, attempted to register those names as trademarks with the U.S. Patent and Trademark Office, and began manufacturing and selling virtually identical leather products.

29. To create additional product confusion, Clegg and FCL created a web-based platform, using the same or similar graphics, pictures, fonts, text descriptions and products, with the specific intent of confusing the public and attempting to divert the existing good will associated with the Lotuff & Clegg trademark to FCL.

30. After launching a website for Frank Clegg Leatherworks, in or around December of 2011, Frank Clegg unfairly and deceptively opened a Twitter account @lotuffandclegg, falsely representing that he was still affiliated with Lotuff & Clegg, and misdirecting customers and the public to his own website, www.frankcleggleatherworks.com. Among other things, Clegg tweeted the false and misleading statement, “LotuffandClegg is now Frank Clegg Leatherworks frankcleggleatherworks.com.”

31. Clegg and FCL systematically engaged in an effort to disparage the Lotuff & Clegg name and products, Joseph Lotuff’s reputation, and interfered with EL Group’s existing and potential business relationships.

32. In particular, the Clegg Defendants:

- used the Confidential Information stolen from EL Group, targeted almost all of the existing retailers that sold Lotuff & Clegg products, and offered to sell virtually identical goods for a reduced price;
- engaged in a campaign to publicly and privately disparage EL Group, Joseph Lotuff, Lotuff & Clegg, and Lotuff Leather;
- made false, public and private, statements about Joseph Lotuff, Lotuff & Clegg, and/or Lotuff Leather, including, but not limited to, the following:
 - stating that Joseph Lotuff, Lotuff & Clegg, and/or Lotuff Leather stole Clegg’s designs;
 - posting a false statement on Twitter representing that a LOTUFF bag for sale at Barneys NEW YORK was a “knock off of Frank Clegg. My dad designed this bag 36 year ago and made this an iconic piece for Cole Haan. This is more like selling fake Kelly or Birkin at your store”

- retweeting a false statement that “its [sic] a shame all their designs are stolen” referring to “@LotuffLeather.”
- tweeting a false statement, “did you know the Lotuff Collection that you sell was designed by my father?”
- tweeting a false statement, “I @ Frank_Clegg . . . designed and made all the bags for Lotuff and Clegg.”
- publishing a false statement that “Lotuff and Clegg is now Frank Clegg Leatherworks.”
- commenting on Facebook, “I just wanted to let you know Lotuffs are copying our bags.”
- tweeting “35 years ago Frank Clegg designed this briefcase. It is now being copied by another company [Lotuff].”
- commenting online, “All Lotuff and Clegg products were made by my team in my workshop.”
- posting on Instagram about a photo of a Lotuff bag, “that one is just a rip off . . . its like buying a fake Rolex might look the same but not even close in quality.”
- commenting on a purseblog.com post about the Lotuff Leather Travel Duffel Bag (on or about March 24, 2014), “I work with Frank and know they didn't Mutually decide to separate. Lotuff was able to work with Frank Clegg, but they used him for all his expertise and designs and went to another factory to steal all designs. You should have done a post on Frank not the bad guys! Never coming on this website again.”

33. By making these false statements accusing Joseph Lotuff, Lotuff & Clegg and Lotuff Leather of dishonesty and theft, the defendants damaged the EL Group's reputation, damaged Joseph Lotuff's reputation, damaged Lotuff & Clegg's brand, damaged Lotuff Leather's brand, and caused members of the public to believe EL Group and Joseph Lotuff had stolen designs from Frank Clegg. See, e.g., comment online @ FlyerTalk Forums, September 4, 2013. ("The rumor mill says the Lotuffs 'stole' the designs from Clegg."). See also, tweet from FECastleberry, September 16, 2013, ("You ARE aware they stole every single one of their designs from @Frank_Clegg, right?"); Online Comment by Ray Gagnon, February 19, 2012, ("I heard the reasons why clegg broke off from the lotuff is because they took his bags to another manufacturing company to be produced and continue to use his designs some people have no Dignity! Shame on them . . ."); and Comment on Facebook dated January 12, 2013, "For those who thrive on copying it and other Clegg's products . . . SHAME ON YOU!"

34. In making these false statements, the Clegg Defendants knew them to be untrue and made such statements to harm EL Group, its products and Joseph Lotuff for their benefit.

35. In recognition of the similarity between the mark used by Clegg and that registered and owned by Lotuff & Clegg, the USPTO rejected Clegg's application to register his marks (Frank Clegg and F. Clegg) claiming that there was a "likelihood of confusion with . . . [Lotuff & Clegg]." Indeed, Clegg concedes that there is confusion between the marks.

36. EL Group continues to maintain the registration of Lotuff & Clegg and to use it in connection with its marketing efforts. Indeed, EL Group has continued to employ the Lotuff & Clegg trademark to identify a single source of high-quality leather products.

37. Despite the USPTO's rejection of the application and the confusion caused, Clegg and FCL continue to use the names Frank Clegg and F. Clegg to sell leather products.

38. The design of leather bags is not capable of intellectual property protection.

39. The design of leather bags is not capable of patent protection because it is not "novel".

40. The design of leather bags is not capable of copyright protection.

41. The design of leather bags is not a trade secret, insofar as the design is open and obvious.

42. Therefore, no one can own the design of a leather bag, or steal such a design.

43. On January 25, 2012, EL Group's lawyers sent a cease and desist letter to Frank Clegg.

44. The letter stated:

"We represent EL Group, LLC ("EL Group"). On behalf of EL Group, we demand that you to cease and desist from using EL Group confidential and proprietary information that you apparently stole from computers or other databases of EL Group, that you initiate no further communication with customers of EL Group, and that you delete all EL Group information, including customer information, from physical or electronic storage.

EL Group has received complaints that you are using EL Group email lists. You were never granted permission to use that confidential data for your own purposes.

... Please respond to this letter with assurances that your tortious conduct will cease."

45. Clegg and his sons however, did not cease and desist from such tortious conduct.

CAUSES OF ACTION

COUNT I – UNJUST ENRICHMENT

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

46. EL Group and Joseph Lotuff repeat and reallege the allegations contained in paragraphs 1 to 45 of this Complaint as if fully set forth herein.

47. Clegg and FCL has been and will be unjustly enriched by *inter alia* its obtaining of sales, contracts, arrangements, revenues and profits as a result of EL Group's substantial investment in the development and marketing of the Lotuff & Clegg brand and Clegg, individually, and from its use of the Confidential Information.

48. In fact, Clegg did not become known in men's fashion and leather industries until *after* EL Group provided him with significant media exposure and registered the Lotuff & Clegg mark.

49. On information and belief, without EL Group's investment of significant resources to promote the Lotuff & Clegg trademark and marketing of Clegg as a master craftsman, and without Clegg and FCL's use of the Confidential Information, Clegg and FCL would not have a profitable leather goods business or viable international brand.

50. EL Group and Joseph Lotuff have been unjustly injured by Clegg and FCL's wrongful conduct and unjust enrichment in substantial amounts.

51. EL Group is entitled to a complete and accurate accounting from Clegg and FCL so that the total amount of unjust enrichment may be determined and awarded to EL Group at trial.

COUNT II - CONVERSION
(Against Frank Clegg, Frank Clegg Leatherworks LLC)

52. EL Group and Joseph Lotuff repeat and reallege the allegations contained in paragraphs 1 to 51 of this Complaint as if fully set forth herein.

53. EL Group is the owner of the Confidential Information and is entitled to the exclusive possession and use thereof.

54. Clegg and FCL obtained the Confidential Information by unlawful means and have asserted ownership control and rights over the Confidential Information in a manner in consistent with EL Group's exclusive ownership.

55. Clegg and FCL's conduct constitute conversion of the Confidential Information.

56. EL Group has been damaged by Clegg and FCL's conversion of the Confidential Information and is entitled to damages.

**COUNT III – MISAPPROPRIATION OF CONFIDENTIAL AND
PROPRIETARY INFORMATION**
(Against Clegg and Frank Clegg Leatherworks LLC)

57. EL Group and Joseph Lotuff repeat and reallege the allegations contained in paragraphs 1 to 56 of this Complaint as if fully set forth herein.

58. EL Group took reasonable steps to protect the Confidential Information from disclosure, such as maintaining the information electronically with password protection, and keeping its computers within a locked warehouse.

59. Clegg and FCL stole the Confidential Information.

60. Clegg and FCL have actively used and disclosed this Confidential Information without EL Group's express or implied consent.

61. At the time of Clegg and FCL's unauthorized retention, conversion, disclosure and/or use of the Confidential Information, they knew that it was acquired under circumstances giving rise to legal and fiduciary duties to maintain its secrecy and use solely in furtherance of the interests of EL Group, of which Clegg was (or had been) a partner.

62. Clegg and FCL have improperly used the Confidential Information for their economic benefit causing EL Group damage.

**COUNT IV – VIOLATION OF CHAPTER 93, SECTIONS 42 and 42A AND COMMON
LAW MISUSES OF TRADE SECRETS**

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

63. EL Group and Joseph Lotuff repeat and reallege the allegations contained in paragraphs 1 to 62 of this Complaint as if fully set forth herein.

64. The Confidential Information is comprised of and/or contained trade secrets, such as pricing structure, profit and loss information, customer information, etc., which EL Group took reasonable steps to protect from disclosure,

65. Clegg and FCL have improperly obtained and used and continue to improperly keep and use such trade secrets causing EL Group damage.

66. The use of such information by the defendants constitutes a misappropriation of trade secrets and confidential information in violation of common law and G.L. c. 93, §§42 and 42A.

67. EL Group has and will suffer substantial immediate, and irreparable harm and damages unless the defendants are enjoined from using such trade secrets and confidential business information.

68. EL Group is entitled to recover double its damages from Clegg and FCL including costs, interest and attorney's fees.

COUNT V – BREACH OF FIDUCIARY DUTY

(Against Frank Clegg)

69. EL Group and Joseph Lotuff incorporate paragraphs 1 to 68 of the Complaint as if fully set forth herein.

70. Clegg, based upon his position with EL Group, owed a fiduciary to maintain the confidentiality of the Confidential Information.

71. Clegg breached this duty by stealing the Confidential Information and actively using the Confidential Information to compete with EL Group.

72. As a result of the breach of fiduciary duty, EL Group has incurred and continues to incur damages.

COUNT VI- FEDERAL TRADE MARK INFRINGEMENT
(VIOLATION OF 15 U.S.C. § 1114)

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

73. EL Group and Joseph Lotuff incorporate paragraphs 1 to 72 of the Complaint as if fully set forth herein.

74. EL Group has registered the Lotuff & Clegg mark with the U.S. Patent and Trademark Office, and owns and uses the mark in commerce.

75. Clegg and FCL use similar marks – Frank Clegg and F. Clegg.

76. Clegg and FCL's use of these marks is likely to confuse the public, thereby harming EL Group.

COUNT VII- DEFAMATION

(Against Frank Clegg, Frank Clegg Leatherworks LLC, Andrew Clegg and Ian Clegg)

77. EL Group and Joseph Lotuff incorporate paragraphs 1 to 76 of the Complaint as if fully set forth herein.

78. As detailed above, the Clegg Defendants have published and spoken false and defamatory statements concerning EL Group, Joseph Lotuff, Lotuff & Clegg and Lotuff Leather with knowledge of the falsity of the statements or with reckless disregard for their truth or falsity.

79. By publishing the statements on the worldwide web wide, defendants published defamatory statements to a wide range of persons in the public.

80. The Clegg Defendants' false and defamatory statements prejudiced EL Group in the conduct of its business and deterred others from dealing with it. The Clegg Defendants' statements have a direct tendency to alienate customers and injure EL Group in its business and profession.

81. The Clegg Defendants' false and defamatory statements have caused EL Group damage to its business reputation, economic damage and irreparable harm.

82. The Clegg Defendants' false and defamatory statements, including allegations of dishonesty, about Joseph Lotuff have harmed his personal and business reputation, lost him business opportunities, and caused him personal injury, including but not limited to mental anguish, embarrassment and humiliation.

COUNT VIII – COMMERCIAL AND PERSONAL DISPARAGEMENT

(Against Frank Clegg, Frank Clegg Leatherworks LLC, Andrew Clegg and Ian Clegg)

83. EL Group and Joseph Lotuff incorporate paragraphs 1 to 82 of the Complaint as if fully set forth herein.

84. As detailed above, the Clegg Defendants published false statements harmful to EL Group's and Joseph Lotuff's reputations and interests, and disparaging of ELG's leather products.

85. The Clegg Defendants intended for publication of the statements to result in harm to the reputations and the interests of EL Group and Joseph Lotuff, having a pecuniary value, or the Clegg Defendants recognized or should have recognized that the statements were likely to do so. The Clegg Defendants knew that the statements were false or acted in reckless disregard of their truth or falsity.

86. The Clegg Defendants' false and injurious statements have caused EL Group and Joseph Lotuff pecuniary damage, harm to its reputation and irreparable harm.

COUNT IX- INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

87. EL Group and Joseph Lotuff incorporate paragraphs 1 to 86 of the Complaint as if fully set forth herein.

88. EL Group had a contemplated business relationship for economic advantage with Phoenix Leather, and Niche Manufacturing pursuant to which Phoenix Leather, and Niche Manufacturing were to provide EL Group with certain leather goods.

89. Clegg and FCL knew of EL Group's relationship with Phoenix Leather, and Niche Manufacturing.

90. Clegg and FCL interfered with EL Group's prospective economic advantage by convincing Phoenix Leather to stop shipping leather goods to Lotuff Leather upon Frank Clegg's split from Lotuff & Clegg in 2011, and communicated with Niche Manufacturing in February of 2014 that Joseph Lotuff and Lotuff Leather had stolen designs from Clegg and he should not work with Lotuff Leather going forward.

91. EL Group had a contemplated business relationship for economic advantage with IAS Brass Buckles pursuant to which IAS Brass Buckles was to provide EL Group with certain leather goods.

92. Clegg and FCL knew of EL Group's relationship with IAS Brass Buckles.

93. Clegg and FCL interfered with EL Group's prospective economic advantage by convincing IAS Brass Buckles to stop shipping leather goods to Lotuff Leather upon Frank Clegg's split from Lotuff & Clegg in 2011, and communicated with IAS Brass Buckles in

February of 2014 that Joseph Lotuff and Lotuff Leather had stolen designs from Clegg and he should not work with Lotuff Leather going forward.

94. Clegg and FCL's interference with EL Group's business relationship was improper in motive or means.

95. As a result, EL Group has incurred and continues to incur damages.

COUNT X - VIOLATION OF M.G.L. C. 93A, §§ 2, 11

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

96. EL Group and Joseph Lotuff incorporate paragraphs 1 to 95 of the Complaint as if fully set forth herein.

97. At all material times relevant hereto, Clegg and FCL were engaged in the conduct of trade or commerce as defined in M.G.L. c. 93A, §§ 2 and 11.

98. Clegg and FCL have committed unfair and deceptive acts and practices declared unlawful under the provisions of M.G.L. c. 93A, §§ 2 and 11 and the interpretive regulations and case law related thereto. The actions of Clegg and FCL which constitute violations of M.G.L. c. 93A, §§ 2, 11 include, without limitation:

- stealing EL Group's Confidential Information and using such information for their benefit;
- unjustly benefiting from EL Group's substantial investment in developing and marketing the Lotuff & Clegg brand and Clegg, individually, without payment;
- attempting to divert the existing good will associated with Lotuff & Clegg and intentionally infringing on the Lotuff & Clegg trademark for their own benefit by creating an intentionally confusing, similar brand to market the same goods to the same customers at lower prices; and

- intentionally making false and defamatory statements to the public and to those in the leather industry in order to disparage Joseph Lotuff, Lotuff & Clegg products and Lotuff Leather products, interfere with EL Group's contractual relations and prospective economic advantage, and otherwise harm EL Group and Joseph Lotuff.

99. Clegg and FCL's unfair and deceptive conduct occurred primarily and substantially in Massachusetts.

100. As a result of Clegg and FCL's unfair and deceptive conduct, EL Group and Joseph Lotuff have incurred and continue to incur damages.

COUNT XI – PRELIMINARY AND PERMANENT INJUNCTION

(Against Frank Clegg, Frank Clegg Leatherworks LLC, Andrew Clegg and Ian Clegg)

101. EL Group and Joseph Lotuff incorporate paragraphs 1 to 97 of the Complaint as if fully set forth herein.

102. EL Group and Joseph Lotuff are likely to succeed on the merits of its claims.

103. EL Group and Joseph Lotuff have suffered and will continue to suffer irreparable harm if Clegg and FCL (a) are not restrained from using the Frank Clegg and F. Clegg names in connection with the manufacturing and selling of leather goods; (b) are not restrained from using Confidential Information; and (c) are not requested to cease and desist from any disparagement of EL Group or interference of any kind with its customers; vendors, retailers, or potential customers, vendors, or retailers.

104. The harm EL Group will incur if the injunctive relief is not granted substantially outweighs the harm, if any, that the defendants will incur.

RELIEF REQUESTED

WHEREFORE, for the above reasons, EL Group requests the Court:

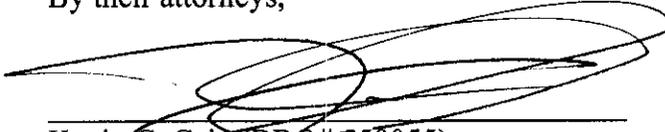
- (a) Pursuant to Count I, enter an order that Clegg and FCL provide an accounting to EL Group and that all of Clegg and FCL's profits since October 2011 be disgorged and paid to EL Group;
- (b) Pursuant to Count II and III, enter judgment against Clegg and FCL in favor of EL Group for the amount of its damages;
- (c) Pursuant to Count IV, enter judgment against Clegg and FCL in favor of EL Group for double the amount of its damages;
- (d) Pursuant to Count V, enter judgment against Clegg in favor of EL Group for the amount of its damages;
- (e) Pursuant to Count VI, enter judgment against Clegg and FCL in favor EL Group for the amount of its damages;
- (f) Pursuant to Count VII and VIII, enter judgment against all Clegg Defendants in favor of EL Group and Joseph Lotuff for the amount of their damages;
- (g) Pursuant to Count IX enter judgment against Clegg and FCL in favor of EL Group for the amount of its damages;
- (h) Pursuant to Count X, enter judgment against Clegg and FCL in an amount no less than double and no more than treble EL Group's and Joseph Lotuff 's actual damages, together with attorneys' fees and costs;
- (i) Pursuant to Count XI, issue an injunction:
- restraining Clegg and FCL, and each of their agents, servants, successors, assigns, employees, attorneys, all persons acting or purporting to act on its behalf, and all persons having actual notice of any order issued hereunder, from using the Frank Clegg and F. Clegg names in connection with the

manufacturing and selling of leather goods and using the Confidential Information;

- ordering Clegg and FCL to return the Confidential Information; and
 - ordering the Clegg Defendants and each of their agents, servants, successors, assigns, employees, attorneys, all persons acting or purporting to act on its behalf, and all persons having actual notice of any order issued hereunder, to cease and desist from any disparagement of EL Group and Joseph Lotuff or interference of any kind with their customers, vendors, retailers or potential customers, vendors or retailers.
- (j) Award EL Group and Joseph Lotuff their reasonable costs and expenses incurred in this action including, without limitation, their attorneys' fees; and
- (k) Award such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,
The plaintiffs,
EL Group, LLC and JOSEPH LOTUFF,
By their attorneys,



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Dated: March 26, 2014

Exhibit D

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April 14, 2014

Sent via USPS Priority Mail and Email

James C. Duda, Esq.
BULKLEY, RICHARDSON AND GELINAS, LLP
1500 Main Street, Suite 2700
Springfield, MA 01115
jduda@bulkley.com

Re: Frank Clegg Leatherworks LLC v. El Group, LLC, Cancellation No. 92056574

Dear James,

Our firm just became aware of a Massachusetts Superior Court lawsuit that was filed by El Group, LLC and Joseph Lotuff against Frank Clegg Leatherworks LLC, *et al.*, Docket No. BRCV2014-0354C.

In light of the filing of this lawsuit, which includes a Lanham Act claim in which all of the issues in this cancellation proceeding will be decided, as well as the costs attendant to the lawsuit and the need to avoid duplication of efforts and costs, we plan to file a motion to stay this TTAB proceeding. We of course prefer that your client consent to the stay. Please let us know by Noon tomorrow if your client will consent to the stay; if not, we will file the motion.

Given the foregoing, as well as our client's desire to avoid the duplication of costs and time away from its business, and the likelihood that the TTAB will grant the stay, we will avoid the time and expense attendant to the scheduled depositions in this cancellation proceeding. Accordingly, we will not be taking Joe Lotuff's deposition on April 18, nor will we be making Frank Clegg or any of the other witnesses that have been noticed or subpoenaed available at this time. Should the TTAB not grant the motion, we will stipulate to rescheduling the depositions for a later date.

We look forward to your response by Noon tomorrow.

Sincerely yours,

A handwritten signature in black ink, appearing to read "mjs", with a stylized flourish at the end.

Michael J. Salvatore

Cc: Steven M. Weinberg

Exhibit E

April 15, 2014

VIA ELECTRONIC AND 1st CLASS MAIL

Michael J. Salvatore, Esq.
Holmes Weinberg, PC
30765 Pacific Coast Highway, Suite 411
Malibu, CA 90265

**RE: *Frank Clegg Leatherworks LLC v. EL Group, LLC*; No. 92056574
Petitioner's Intent to Move to Stay Proceedings**

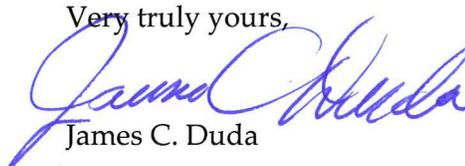
Dear Mr. Salvatore:

We have reviewed your letter of yesterday, April 14, 2014, stating your intent to file a motion to stay the above captioned proceeding, pending before the Trademark Trial and Appeal Board. We do not agree with either the analysis or observations presented in your letter, and we decline to consent at this time to your anticipated motion.

We also understand from your letter that the Petitioner, Frank Clegg, will not appear for his deposition that we have scheduled, with your prior agreement, for this Friday, April 18, and that you are cancelling the deposition of Joseph Lotuff that you had scheduled for Thursday, April 17. We further understand that you will be directing the three third party witnesses – Peter Harriss, Andrew Clegg, and Stuart Douglas -- upon whom we have served deposition subpoenas to not appear for their depositions as we have scheduled and as stated in their respective subpoenas. We request that you confirm as soon as possible that each of these witnesses will not, in fact, be appearing for their depositions as scheduled. We understand that you are taking these actions because of a proceeding that was initiated against Frank Clegg and other parties in Massachusetts Superior Court in which, you believe, all of the issues in the cancellation proceeding will be decided.

Respondent will consent to the withdrawal with prejudice of Petitioner's Amended Petition for Cancellation in the *Frank Clegg Leatherworks LLC v. EL Group, LLC* matter.

Very truly yours,


James C. Duda

JCD/cmrv