

ESTTA Tracking number: **ESTTA602409**

Filing date: **05/05/2014**

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

Proceeding	92056574
Party	Defendant EI Group, LLC
Correspondence Address	JAMES C DUDA BULKEY RICHARDSON & GELINAS LLP 1500 MAIN STREET, SUITE 2700 SPRINGFIELD, MA 01115 5060 UNITED STATES jduda@bulkley.com, tm@bulkley.com, rfederici@bulkley.com
Submission	Other Motions/Papers
Filer's Name	James C. Duda
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Signature	/James C. Duda/
Date	05/05/2014
Attachments	Registrant EL Group, LLC's Opposition to Petitioner's Motion to Suspend Proceeding for Civil Action and Its Cross-Motion to Dismiss Cancellation Proceeding.pdf(1231768 bytes)

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

In re Registration of EL GROUP, LLC d/b/a Lotuff & Clegg
Registration No. : 3,872,561
Registration Date : November 9, 2010
Mark : LOTUFF & CLEGG
Cancellation No. : 92056574

FRANK CLEGG LEATHERWORKS, LLC,)
 Petitioner,)
 v.)
EL GROUP, LLC d/b/a LOTUFF & CLEGG,)
 Registrant.)
_____)

**REGISTRANT EL GROUP, LLC'S OPPOSITION TO PETITIONER'S MOTION TO
SUSPEND PROCEEDING FOR CIVIL ACTION AND ITS CROSS-MOTION TO DISMISS
CANCELLATION PROCEEDING**

Registrant EL Group, LLC ("Registrant"), by its attorneys, submits the following
Opposition to Petitioner's Motion to Suspend Proceedings for Civil Action ("Motion to
Suspend") and Its Cross-Motion to Dismiss Cancellation Proceeding.

I. INTRODUCTION

In its Motion to Suspend, Petitioner is asking the Trademark Trial and Appeal Board
(the "Board") to put this cancellation proceeding – which has been pending for nearly
18 months – on hold while the Parties litigate claims in a recently-filed state court action.
Petitioner concedes, however, that this cancellation proceeding will be rendered moot by the
state court action, in which all of the issues in this proceeding will be finally and preclusively
decided. For this reason, this proceeding should not be suspended but, rather, it should be

dismissed, and the parties should litigate their claims in state court. This cancellation proceeding should be dismissed for the additional reason that Petitioner has failed to prosecute its claims and to comply with its discovery obligations in this case.

In the event that the Board determines that dismissal of this proceeding is not warranted at this time, however, Registrant respectfully requests that the Board suspend these proceedings while the issues before it are determined in the civil action pending in state court.

II. STATEMENT OF FACTS

Petitioner Frank Clegg Leatherworks, LLC (“Petitioner”), commenced this cancellation proceeding on December 12, 2012, when it filed a Petition for Cancellation before the Board. (Docket No. 1.) On December 17, 2012, the Board issued a case schedule, pursuant to which discovery was set to close eight months later on August 24, 2013. (Docket No. 2.) On January 24, 2013, Registrant timely filed its Answer to the Petition. (Docket No. 4.) The Parties then participated in a mandatory discovery conference on February 28, 2013. (Declaration of James C. Duda (“Duda Decl.”) ¶ 2.) Shortly thereafter, on March 13, 2013, the Parties participated in a telephone conversation regarding potential resolution of the matter, during which Registrant’s counsel proposed settlement terms and Petitioner’s counsel stated that he would discuss the proposal with Petitioner. (Id. ¶ 3.) On March 29, 2013, and April 1, 2013, Petitioner and Registrant, respectively, served mandatory disclosures. (Id. ¶¶ 5-6.) Petitioner’s counsel never responded to Registrant’s counsel regarding the settlement proposal. (Id. ¶ 4.)

Petitioner failed to take any further action in the case until August 19, 2013 – five days before the close of the discovery period – when it filed a Substitution of Counsel. (Docket

No. 2.) Two days later, on August 21, 2013, Petitioner served Registrant with its First Set of Requests for Admission and First Set of Requests for the Production of Documents and Things to Respondent El Group, LLC. (Duda Decl. ¶ 7.) On August 23, 2013 – just one day prior to the close of discovery – Petitioner filed a Motion to Extend Discovery Period and Trial Dates (Docket No. 7), which Registrant opposed, in part because of Petitioner’s failure to prosecute its claims until days prior to the close of the discovery period. (Docket No. 8.) On November 29, 2013, the Board found that Petitioner “narrowly establishe[d] good cause” for an extension and granted a 60-day extension of the discovery period, despite its “misgivings regarding the efficacy of granting” the motion because it was filed in the waning days of discovery. (Docket No. 13.)

Petitioner had previously filed a Motion for Summary Judgment on October 22, 2013. (Docket No. 10.) In addition, on November 22, 2013, the day that Petitioner’s testimony period was scheduled to close pursuant to the Board’s original schedule (see Docket No. 2), Petitioner filed a Motion to Suspend the Testimony Period. (Docket No. 11.) On November 25, 2013, Registrant filed an opposition to Petitioner’s Motion for Summary Judgment, and a cross-motion on Petitioner’s claim that Registrant had abandoned the LOTUFF & CLEGG mark at issue in this case. (Docket No. 12.) In its November 29, 2013 decision, the Board suspended proceedings pending disposition of the Petitioner’s Motion for Summary Judgment. (Docket No. 13.)

On February 26, 2014, the Board denied Petitioner’s Motion for Summary Judgment. (Docket No. 16.) The Board held that the allegations set forth in the Petition for Cancellation

were insufficient to state a claim for relief, but the Board allowed Petitioner to file an amended petition. The Board also set forth a tentative new case schedule, under which discovery would close on April 28, 2014, and Petitioner's testimony period would close on July 27, 2014, if Petitioner filed a sufficient amended petition. (Docket No. 16.)

On March 13, 2014, Petitioner filed an Amended Petition for Cancellation. (Docket No. 17.) On March 20, 2014, Petitioner served Registrant with interrogatories and additional document requests and requests for admission. (Duda Decl. ¶ 8.) On March 27, 2014, Registrant served Petitioner with a deposition notice of Frank Clegg and a Rule 30(b)(6) deposition notice. (Id. ¶ 9.) Days later, Petitioner served a deposition notice on Joseph Lotuff, one of Registrant's principals. (Id. ¶ 10.) On April 11, 2014, Registrant served a Notice of Deposition on Andrew Clegg. (Id. ¶ 11.) Also on April 11, 2014, Registrant served Subpoenas to Testify at a Deposition on Stuart Douglas, a third party who was identified in Petitioner's Supplemental Pretrial Disclosures, and Peter Harriss, another third party who submitted a declaration in support of Petitioner's Motion for Summary Judgment. (Id. ¶ 12.)¹ All of the depositions were scheduled to occur prior to the April 28, 2014 discovery deadline. (Id. ¶ 15.)

On March 28, 2014, Registrant and Joseph Lotuff filed a lawsuit in Massachusetts state court (the "State Court Action") against Petitioner, Frank Clegg, and Frank Clegg's two sons, Andrew Clegg and Ian Clegg, alleging among other things that Frank Clegg and his sons have (1) usurped the value that Respondent created in the Lotuff & Clegg brand for their own

¹ Copies of the third-party subpoenas are attached to the Duda Declaration at **Exhibit 1** and **Exhibit 2**. Registrant incurred fees for the service of these third-party subpoenas. (Duda Decl. ¶ 14.)

personal gain by creating an intentionally confusing similar brand to market the same goods to the same customers at lower prices, and (2) engaged in a campaign to disparage the Lotuff & Clegg name, the name of El Group's Lotuff Leather brand, and Joseph Lotuff personally, by falsely representing that Lotuff & Clegg designs and Lotuff Leather designs were "stolen from" or "knockoffs" of Frank Clegg's designs. (See, e.g., State Court Action Complaint, attached to Declaration of Michael J. Salvatore in Support of Petitioner's Motion to Suspend Proceedings ("Salvatore Decl.") (Docket No. 19) at Ex. C.) The State Court Action asserts, among other things, a claim for violation of the Lanham Act (15 U.S.C. § 1114), and seeks, among other things, a remedy of injunctive relief restraining Frank Clegg and Petitioner from using the Frank Clegg and F. Clegg names in connection with the manufacturing and selling of leather goods. (Id.)

On April 14, 2014, Petitioner's counsel wrote a letter to Registrant's counsel stating that, in light of the filing of the State Court Action, Petitioner would be filing a Motion to Suspend the proceedings before the Board. (Salvatore Decl. (Docket No. 19) Ex. D.) In the April 14, 2014 letter, Petitioner's counsel maintained that "*all of the issues in this cancellation proceeding will be decided*" in the State Court Action. (Id. (emphasis added).) Petitioner's counsel further stated he would instruct Frank Clegg, Andrew Clegg and the third party witnesses not to attend depositions for which they had received notice or subpoena. (Id.) By letter dated April 15, 2014, counsel for Registrant confirmed his understanding that Petitioner's counsel was, in fact, instructing the witnesses not to attend their depositions. (Salvatore Decl. (Docket No. 19) Ex. E.) At that time, Registrant's counsel informed Petitioner's counsel that Registrant did not consent

to Petitioner's motion to stay, but that it would consent to the withdrawal with prejudice of Petitioner's Amended Petition for Cancellation. (Id.)

That same day, Petitioner filed its Motion to Suspend. (Docket No. 19.) In its Motion to Suspend, Petitioner indicated that, in the State Court Action, Petitioner and the other defendants would be filing a counterclaim against the Plaintiffs for infringement and would be seeking cancellation of the LOTUFF & CLEGG registration as a remedy. (Id. at 2.) Most fundamentally, Petitioner asserts that, in the State Court Action:

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, [T]here can be no doubt that the resolution of the Superior Court lawsuit . . . will have preclusive effect on the issues that are being litigated in this Cancellation proceeding, namely priority, abandonment and likelihood of confusion.

(Id. at 4-5).

III. ARGUMENT

A. Dismissal Is Warranted Because The State Court Civil Action Will Decide All Of The Issues In The Instant Proceeding

Petitioner concedes that all of the issues in this cancellation proceeding will be preclusively and finally decided in the State Court Action. For this reason, this proceeding should not be suspended; it should be dismissed.

This is not the type of situation envisioned by 37 C.F.R. § 2.117(a), which provides that, when the Board becomes aware that parties to a pending case are engaged in a civil action "which may have a bearing on the case," it may suspend the proceedings until termination of the civil action. In this case, Petitioner freely admits that the State Court Action will not merely "have a bearing" on this cancellation proceeding, but it will completely decide it. Petitioner

further expressly concedes that the State Court Action will finally determine and have a preclusive effect on all of the issues in this proceeding. (Motion to Suspend (Docket No. 19) at 4-5.) Simply, both parties to this proceeding will be litigating in the State Court Action all of the issues that are currently pending before the Board.

There is no basis for suspending and keeping open this proceeding – which has already been pending for nearly 18 months – when it will be rendered moot by the outcome of the State Court Action. Rather, the Board should dismiss this cancellation proceeding, and the parties should move forward with litigating their claims to finality in the State Court Action.²

B. Petitioner’s Amended Petition Should Be Dismissed Based Upon Petitioner’s Failure To Prosecute Its Claims And To Comply With Its Discovery Obligations

Petitioner’s Amended Petition should be dismissed for the additional reason that Petitioner has failed to prosecute its cancellation claims and to meet its discovery obligations.

Under 37 C.F.R. § 2.120(g)(2), “[i]f a party . . . fails to attend the party’s . . . discovery deposition, after being served with proper notice, . . . the Board may make any appropriate order, as specified in paragraph (g)(1) of this section.” Section 2.120(g)(1) authorizes the Board to issue any of the sanctions provided in Federal Rule of Civil Procedure 37(b)(2), which

² By contrast, in those cases where the Board has suspended proceedings in favor of a civil action, it was not certain – as is the case here – that the civil action would finally and preclusively resolve all of the issues pending before the Board. See The Toro Co. v. Hardigg Indus., Inc., 187 U.S.P.Q. 689 (T.T.A.B. 1977) (“final resolution of the civil action *may* be dispositive of the issue” before the Board) (emphasis added); The Other Tel. Co. v. Conn. Nat. Tel. Co., Inc., 181 U.S.P.Q. 125 (T.T.A.B. 1974) (final determination of the civil suit will “*affect*” the resolution of the issue involved in the proceedings before the T.T.A.B.) (emphasis added); Whopper-Burger, Inc. v. Burger King Corp., 171 U.S.P.Q. 805 (T.T.A.B. 1971) (outcome of the civil action will have a “*bearing*” on the question of the rights of the parties and “*may*” resolve all the issues) (emphasis added).

includes “dismissing the action or proceeding in whole or in part.” 37 C.F.R. § 2.120(g)(1); Fed. R. Civ. P. 37(b)(2)(A)(v). Cf. Benedict v. Super Bakery, Inc., 665 F.3d 1263 (2011) (entering default judgment for repeated failure to comply with discovery orders).

The record in this case is clear that Petitioner has not only failed to actively prosecute its claim for cancellation and to comply with its discovery and litigation obligations, it has instructed third-party witnesses not to attend their depositions. Petitioner has repeatedly asked the Board for last-minute extensions of time or suspensions. In August 2013, just days shy of the close of discovery and after months of its inaction, Petitioner sought an extension of time to conduct discovery. Again in November 2013, on the day its testimony period was to close, Petitioner sought to suspend proceedings due to its summary judgment filing. Most recently, Petitioner instructed Frank Clegg, Andrew Clegg and other third party witnesses not to attend their depositions on the times and dates noticed or subpoenaed, all of which were prior to the close of discovery on April 28, 2014. The discovery period has since expired. Petitioner has clearly violated the discovery schedule set by the Board (Docket No. 16), which is still in place.

Petitioner’s failure to comply with its discovery obligations and consistent pattern of inaction and delay warrant dismissal of this case.

C. Registrant Agrees That Litigation Of Issues Between The Parties Should Occur Only In The State Court Action

For the reasons stated above, Petitioner’s Motion to Suspend should be denied and Petitioner’s Amended Petition should be dismissed. However, in the event the Board determines that dismissal is not currently appropriate, Registrant agrees that the issues between the Parties should be litigated in the State Court Action, and not simultaneously in this forum.

IV. CONCLUSION

For the reasons set forth above, Registrant El Group, LLC, respectfully requests that the Trademark Trial and Appeal Board grant Registrant's Motion to Dismiss Petitioner's Amended Petition for Cancellation and dismiss Petitioner's Amended Petition for Cancellation. In the event that the Board determines that dismissal of the Amended Petition for Cancellation is unwarranted, Registrant respectfully requests that the Board suspend these proceedings until the issues before it are determined in the State Court Action.

EL GROUP, LLC,
By its Attorneys,

/s/ James C. Duda

James C. Duda, Esq.
BULKLEY, RICHARDSON AND GELINAS, LLP
1500 Main Street, Suite 2700
Springfield, MA 01115
Tel.: (413) 781-2820
Fax: (413) 272-6806
Email: jduda@bulkley.com

Dated: May 5, 2014

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was served upon counsel for Petitioner by First Class Mail, postage prepaid, on the 5th day of May, 2014.

/s/ James C. Duda
James C. Duda

1755532v1

3. On March 13, 2013, I participated in a telephone conversation with Petitioner's counsel regarding potential resolution of this matter. During that telephone call, I proposed settlement terms, and Petitioner's counsel stated that he would discuss the proposal with Petitioner.

4. I never heard back from Petitioner's counsel regarding my settlement proposal.

5. On March 29, 2013, Petitioner served its mandatory disclosures in this case on Registrant.

6. On April 1, 2013, Registrant served its mandatory disclosures in this case on Petitioner.

7. On August 21, 2013, Petitioner served Registrant with its First Set of Requests for Admission and First Set of Requests for the Production of Documents and Things to Respondent El Group, LLC, in this case.

8. On March 20, 2014, Petitioner served Registrant with its First Set of Interrogatories, Second Set of Requests for Admission, and Second Set of Requests for Production of Documents and Things.

9. On March 27, 2014, Registrant served Petitioner with a subpoena *duces tecum* for Frank Clegg and a Rule 30(b)(6) deposition notice.

10. On March 31, 2014, Petitioner served a deposition notice on Joseph Lotuff, one of Registrant's principals.

11. On April 11, 2014, Registrant served a Notice of Deposition on Andrew Clegg.

12. Also on April 11, 2014, Registrant served Subpoenas to Testify at a Deposition on Stuart Douglas, a third party who was identified in Petitioner's Supplemental Pretrial Disclosures, and Peter Harriss, another third party who submitted a declaration in support of Petitioner's Motion for Summary Judgment.

13. Copies of the third-party subpoenas to Mr. Douglas and Mr. Harriss are attached hereto at **Exhibit 1** and **Exhibit 2**.

14. Registrant incurred fees for the services of these third-party subpoenas.

15. All of the noticed and subpoenaed depositions were scheduled to occur prior to the close of the discovery period on April 28, 2014.

/s/ James C. Duda
James C. Duda

1759572

EXHIBIT 1

60

DAVID D. AYLES, PROCESS SERVER
AND DISINTERESTED PERSON
A TRUE COPY ATTEST

UNITED STATES DISTRICT COURT

for the
District of Massachusetts

FRANK CLEGG LEATHERWORKS, LLC
Plaintiff
v.
EL GROUP, LLC d/b/a LOTUFF & CLEGG
Defendant

Cancellation No.
Civil Action No. 92056574
(Before the Trademark Trial and Appeal
Board of the U.S. Patent and
Trademark Office)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Stuart Douglas
79 Rumstick Road, Barrington, RI 02806
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Blish Cavanagh Commerce Center, 30 Exchange Terrace Providence, RI 02903	Date and Time: 04/25/2014 10:00 am
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The deposition will be recorded by this method: stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/11/2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) EL Group, LLC, who issues or requests this subpoena, are: James C. Duda, Bulkley, Richardson and Gelinias, LLP, 1500 Main St, Ste 2700, Springfield, MA 01115, iduda@bulkley.com (413) 272-6284

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 92056574

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

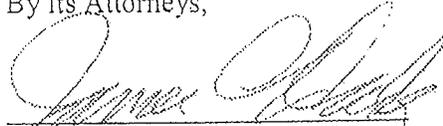
(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where production is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

EL GROUP, LLC,
By its Attorneys,



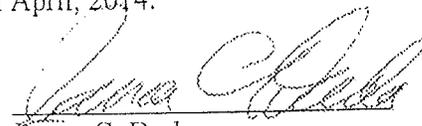
James C. Duda, Esq.
BULKLEY, RICHARDSON AND GELINAS, LLP
1500 Main Street, Suite 2700
Springfield, MA 01115
Tel.: (413) 781-2820
Fax: (413) 272-6806

Dated: April 11, 2014

Email: jduda@bulkley.com

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was served upon counsel for Petitioner by First Class Mail, postage prepaid, on the 11th day of April, 2014.



James C. Duda

APRIL 14, 2014

RETURN OF SERVICE

I this day summoned the within named STUART DOUGLAS

to appear as within directed by delivering to STUART DOUGLAS, 7:05 AM

X *in hand*
leaving at last and usual place of abode, to wit:

No. 79 RUMSTICK RD
in the city/town of BARRINGTON, RI, *an attested copy of the subpoena together with \$ 60 fees for attendance and travel*

Service and travel \$ 112

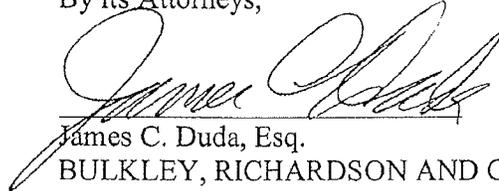
Paid Witness \$ 60

Charles C. Balboni

Process Server/CB

The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

EL GROUP, LLC,
By its Attorneys,



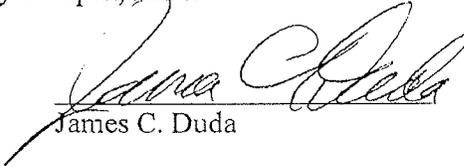
James C. Duda, Esq.
BULKLEY, RICHARDSON AND GELINAS, LLP
1500 Main Street, Suite 2700
Springfield, MA 01115
Tel.: (413) 781-2820
Fax: (413) 272-6806

Dated: April 11, 2014

Email: jduda@bulkley.com

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was served upon counsel for Petitioner by First Class Mail, postage prepaid, on the 11th day of April, 2014.



James C. Duda

EXHIBIT 2

80

A TRUE COPY ATTEST
DAVID D. AYLES, PROCESS SERVER
AND DISINTERESTED PERSON

UNITED STATES DISTRICT COURT

for the
District of Massachusetts

FRANK CLEGG LEATHERWORKS, LLC)	
<i>Plaintiff</i>)	Cancellation No.
v.)	Civil Action No. 92056574
EL GROUP, LLC d/b/a LOTUFF & CLEGG)	(Before the Trademark Trial and Appeal
<i>Defendant</i>)	Board of the U.S. Patent and Trademark
)	Office)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Peter Harriss
c/o International Advisory Service Limited, 426C Boston St., Topsfield, MA 01983
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Bulkley, Richardson and Gelinias, LLP 125 High Street, Oliver Street Tower, 16th Floor Boston, MA 02110	Date and Time: 04/23/1014 10:00 am
--	------------------------------------

The deposition will be recorded by this method: stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

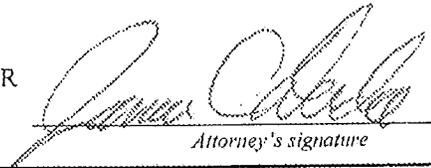
The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/11/2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* EL Group, LLC, who issues or requests this subpoena, are: James C. Duda, Bulkley, Richardson and Gelinias, LLP, 1500 Main St, Ste 2700, Springfield, MA 01115, juda@bulkley.com (413) 272-6284

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 92056574

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

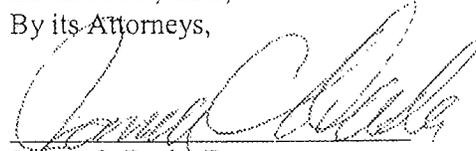
(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

EL GROUP, LLC,
By its Attorneys,



James C. Duda, Esq.

BULKLEY, RICHARDSON AND GELINAS, LLP

1500 Main Street, Suite 2700

Springfield, MA 01115

Tel.: (413) 781-2820

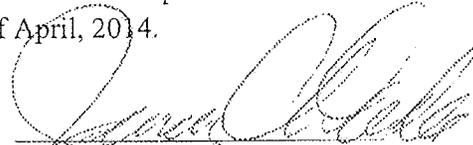
Fax: (413) 272-6806

Dated: April 11, 2014

Email: jduda@bulkley.com

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was served upon counsel for Petitioner by First Class Mail, postage prepaid, on the 11th day of April, 2014.



James C. Duda

APRIL 14, 2014

RETURN OF SERVICE

I this day summoned the within named PETER HARRISS
C/O INTERNATIONAL ADVISORY SERVICE LIMITED

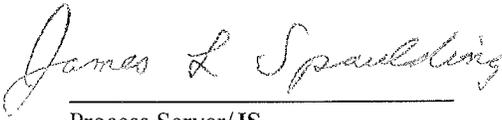
to appear as within directed by delivering to PETER HARRISS, 8:40 AM

in hand
leaving at last and usual place of abode, to wit:

No. 426C BOSTON ST
in the city/town of TOPSFIELD, *an attested copy of the subpoena together with \$ 80 fees for*
attendance and travel

Service and travel \$ 112

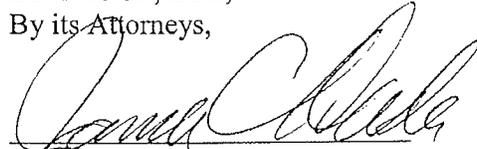
Paid Witness \$ 80



Process Server/JS

The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

EL GROUP, LLC,
By its Attorneys,



James C. Duda, Esq.
BULKLEY, RICHARDSON AND GELINAS, LLP
1500 Main Street, Suite 2700
Springfield, MA 01115
Tel.: (413) 781-2820
Fax: (413) 272-6806

Dated: April 11, 2014

Email: jduda@bulkley.com

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was served upon counsel for Petitioner by First Class Mail, postage prepaid, on the 11th day of April, 2014.



James C. Duda