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Filing date: **04/25/2014**

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

Proceeding	92058861
Party	Defendant GlucksteinHome Inc.
Correspondence Address	SUSAN B FLOHR BLANK ROME LLP 600 NEW HAMPSHIRE AVENUE NW WASHINGTON, DC 20037 UNITED STATES Flohr@BlankRome.com, trademarks@blankrom.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Susan B. Flohr
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Signature	/sbf/
Date	04/25/2014
Attachments	Gluckstein Motion for Suspension.pdf(2053011 bytes)

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

In the matter of Registration No. 4294114)



For the mark)

Registered February 26, 2013)

BRIAN STEVEN GLUCKSTEIN, an individual,)

Petitioner,)

Cancellation No. 92058861

vs.)

GLUCKSTEINHOME INC.,)

a Canadian corporation,)

Respondent.)

RESPONDENT’S MOTION FOR SUSPENSION

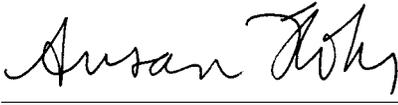
Respondent, GlucksteinHome Inc., herewith moves for suspension of this proceeding under 37 C.F.R. § 2.117(a), pending a final determination of the proceedings between the parties now pending in the Ontario Superior Court of Justice (“Ontario Proceeding”) and in the Federal Court of Canada (“Federal Court Proceeding”). Copies of the Notice of Application and two Counter-Applications in the Ontario Proceeding and the Notice of Application in the Federal Court Proceeding are appended hereto as Exhibits 1 through 4. A final determination of the referenced court proceedings may have a bearing on the issues involved in the instant cancellation proceeding and thus suspension is proper.

WHEREFORE, Respondent respectfully requests its motion be granted.

Respectfully submitted,

GLUCKSTEINHOME INC.

Date: April 25, 2014

By: 
Susan B. Flohr, Esq.
BLANK ROME LLP
600 New Hampshire Ave., NW
Washington D.C. 20037
(202) 772 5870
Attorneys for Respondent

CERTIFICATE OF SERVICE

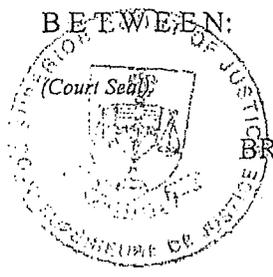
I hereby certify that a copy of the foregoing Respondent's Motion to Suspend was served on April 25, 2014, by first class mail, postage prepaid upon counsel for Opposer Brian Gluckstein, Susan Heller and Candice E. Kim and Greenberg Traurig, LLP, 1840 Century Park East, Suite 1900, Los Angeles, California 90067, by first-class U.S. Mail, postage prepaid.

By: 
Susan B. Flohr, Esq.
BLANK ROME LLP
600 New Hampshire Ave., NW
Washington D.C. 20037
(202) 772 5870
Attorneys for Respondent

EXHIBIT 1

Court File No. CV 13-10172-ODCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



BETWEEN:

BRIAN GLUCKSTEIN and GLUCKSTEIN HOLDINGS INC.

Applicants

and

CHECKMATE CAPITAL PARTNERS INC., HARVEY WISE HOLDINGS
INC., HARVEY WISE, DANIEL CHITIZ, PAUL PATHAK, RISA SOKOLOFF,
CHITIZPATHAK LLP, and GLUCKSTEINHOME INC.

Respondents

**APPLICATION UNDER sections 207 and 241 of the Ontario *Business Corporations Act*,
R.S.O. 1990, c. B. 16, as amended**

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The Claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing at 10:00 a.m. on a date to be set by a Judge presiding over the Commercial List at 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE

APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date June 28, 2013 Issued by 
Local Registrar
Address of court office: 330 University Avenue, 7th Floor Registrar
Toronto, ON M5G 1R7

TO **CHECKMATE CAPITAL PARTNERS INC.**
c/o Chitiz Pathak LLP
320 Bay Street
Suite 1600
Toronto, ON M5H 4A6

Tel: 416-368-6200
Fax: 416-368-0300

AND TO **CHITIZPATHAK LLP**
320 Bay Street
Suite 1600
Toronto, ON M5H 4A6

Tel: 416-368-6200
Fax: 416-368-0300

AND TO **DANIEL CHITIZ**
c/o Chitiz Pathak LLP
320 Bay Street
Suite 1600
Toronto, ON M5H 4A6

Tel: 416-368-6200
Fax: 416-368-0300

AND TO **HARVEY WISE**
c/o Harvey Wise Design Inc.
186 Dupont Street
2nd Floor
Toronto, ON M5R 2E6

AND TO **HARVEY WISE HOLDINGS INC.**
c/o Harvey Wise Design Inc.
186 Dupont Street
2nd Floor
Toronto, ON M5R 2E6

AND TO **PAUL PATHAK**
c/o Chitiz Pathak LLP
320 Bay Street
Suite 1600
Toronto, ON M5H 4A6

Tel: 416-368-6200
Fax: 416-368-0300

AND TO **RISA SOKOLOFF**
c/o Chitiz Pathak LLP
320 Bay Street
Suite 1600
Toronto, ON M5H 4A6

Tel: 416-368-6200
Fax: 416-368-0300

AND TO: **GLUCKSTEINHOME INC.**
234 Davenport Road
Toronto, ON M5R 1J6

Tel: 416-923-6262

APPLICATION

1. The Applicants make application for:
 - (a) Interim and final relief by way of a declaration that a Licence Agreement dated April 7, 2000 is terminated as of April 7, 2010;
 - (b) Interim and final relief by way of a declaration that GlucksteinHome Inc. holds any and all trade-marks, trade-mark registrations or applications to register trade-marks in trust for Mr. Gluckstein;
 - (c) an Order that any and all trade-marks, trade-mark registrations or applications to register trade-marks used by, held by or in the name of GlucksteinHome Inc. in trust for Mr. Gluckstein be promptly assigned to Mr. Gluckstein;
 - (d) Interim and final relief by way of a declaration that GlucksteinHome Inc. has no rights under the Licence Agreement for any new agreements with the Hudson's Bay Company or related entities;
 - (e) A declaration that ChitizPathak LLP is in breach of its fiduciary duties owed to the Applicants, both as directors and officers of and as lawyers for GlucksteinHome Inc.;
 - (f) An accounting, and judgment pursuant thereto, of all legal services provided to GlucksteinHome Inc. as a result of ChitizPathak LLP's breaches of its fiduciary duties and negligence;

- (g) An accounting, and judgment pursuant thereto, of all remuneration paid to each of Daniel Chitiz, Paul Pathak and Risa Sokoloff as a result of their and of ChitizPathak LLP's breaches of its fiduciary duties and negligence;
- (h) A declaration that ChitizPathak LLP is in a conflict of interest in respect of its respondent partners' roles as directors and officers of GlucksteinHome Inc. and the firm's role as lawyers for GlucksteinHome Inc.;
- (i) An Order winding up GlucksteinHome Inc. with such terms as are appropriate in light of existing corporate obligations on the basis that it is just and equitable to do so as a result of the breakdown of the relationship of the shareholders and the conduct of ChitizPathak LLP and its partners pursuant to Sections 207 and 241 of the *Business Corporations Act*, R.S.O. 1990, c. B.16;
- (j) Costs of this proceeding, as well as all applicable taxes; and
- (k) Such further and other relief as this Honourable Court may deem just;

2. The grounds for the application are:

Overview

- (a) The Applicant Brian Gluckstein ("Mr. Gluckstein") is a resident of Toronto and a prominent designer and interior decorator. He is a founder and the CEO of GlucksteinHome Inc. ("GlucksteinHome" or the "Company");
- (b) GlucksteinHome is a corporation registered under the laws of Ontario that carries on business as a designer, manufacturer and distributor of a broad range of home, office and garden furnishings designed by Mr. Gluckstein or on his behalf and

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marketed under his name. GlucksteinHome is added as a respondent to this proceeding only so that it be bound by the result;

- (c) The GlucksteinHome business is entirely dependent upon Mr. Gluckstein's name, reputation and participation and all of the goodwill that is embodied in same;
- (d) The head office of GlucksteinHome is located at the offices of another of Mr. Gluckstein's businesses, Gluckstein Design Planning Inc., with which the Respondents have no involvement;
- (e) GlucksteinHome was originally conceived as a joint venture under a Letter of Agreement of May 29, 1999. While it is now a corporation, it has all of the features of a closely held entity dependent upon the mutual trust and confidence amongst its shareholders, officers and directors;
- (f) The legal affairs of GlucksteinHome have been handled by the Respondent ChitizPathak LLP ("ChitizPathak"). Three of the partners of ChitizPathak are also beneficial shareholders, directors, and officers of GlucksteinHome. This has created a conflict of interest between ChitizPathak's ability to independently advise the Company and act in its best interest and in the protection of the interests of all of its shareholders;
- (g) Mr. Gluckstein has learned that the Respondent Harvey Wise has directed the affairs of his corporate entity, the Respondent Harvey Wise Holdings Inc. ("HWH"), which is a shareholder of GlucksteinHome, in a manner that has caused Mr. Gluckstein to lose all trust and confidence in Mr. Wise;

- (h) The License Agreement between Mr. Gluckstein and GlucksteinHome, which formed the basis of GlucksteinHome's business and its essential asset, has expired. No steps have been taken to renew the Licence Agreement. Mr. Gluckstein is not willing to renew it;
- (i) As a result of the foregoing, the business relationship between GlucksteinHome's shareholders, officers and directors has broken down irreparably;

GlucksteinHome Inc.

- (j) During the mid-1990s, Mr. Gluckstein became a well-known and well-regarded interior designer with a reputation throughout Canada and other parts of the world;
- (k) In or about 1998, Mr. Gluckstein decided to establish a business for the merchandising of designer home furnishings under his name;
- (l) Toward that end, in early 1999, the Respondent Harvey Wise introduced Mr. Gluckstein to the Respondents Dan Chitiz, Paul Pathak and Risa Sokoloff (collectively, the "ChitizPathak Partners"). Mr. Chitiz, Mr. Pathak and Mr. Sokoloff are partners at ChitizPathak (formerly, Chitiz Pundit Pathak & Sokoloff LLP);
- (m) ChitizPathak advised Mr. Gluckstein that the incorporation and operation of his proposed business would require a great deal of legal advice and services with respect to, *inter alia*, organizing and financing the new company, securing and protecting the company's intellectual property, marketing and distributing its

products, negotiating and preparing all commercial agreements, as well as taking the company public as was contemplated at the time;

- (n) ChitizPathak estimated that the cost of the necessary legal services for Mr. Gluckstein's proposed business would be significant;
- (o) As a means of avoiding these costs, the ChitizPathak Partners recommended to Mr. Gluckstein that, in exchange for providing all necessary legal services, the ChitizPathak Partners receive a 25 percent interest in the new company. This interest was subsequently increased to 28.75 percent;
- (p) Based on these representations, Mr. Gluckstein agreed to establish a joint venture with the ChitizPathak Partners and Mr. Wise;
- (q) On February 2, 1999, the ChitizPathak Partners incorporated the Respondent Checkmate Capital Partners Inc. ("CCP") to participate in the joint venture;
- (r) On or about May 20, 1999, CCP delivered a "Letter of Agreement" to Mr. Gluckstein and Mr. Wise "to confirm their mutual understanding and agreement regarding the formation of a new corporation, GlucksteinHome Inc." GlucksteinHome was to be a joint venture between Mr. Gluckstein, Mr. Wise and CCP;

- (s) The Letter of Agreement included, *inter alia*, the following terms:
 - (i) Mr. Gluckstein will enter into a License Agreement with GlucksteinHome for the use of the names "Gluckstein" and "Brian Gluckstein" in connection with GlucksteinHome's business. It was understood and agreed that the right of GlucksteinHome to use the names "Gluckstein" and "Brian Gluckstein" would be limited to the terms of the Licence Agreement;
 - (ii) Mr. Wise and Mr. Gluckstein would each subscribe for 375 shares of GlucksteinHome at an aggregate subscription price of \$3.75;
 - (iii) CCP would subscribe for 250 shares of GlucksteinHome at an aggregate subscription price of \$2.50; and
 - (iv) the shareholders of GlucksteinHome will enter into a unanimous shareholders' agreement providing for normal and usual rights and protections, which should have included an appropriate exit mechanism;
- (t) Pursuant to this Letter of Agreement, GlucksteinHome was incorporated;
- (u) Both Mr. Gluckstein and his wholly-owned corporation, the Respondent Gluckstein Holdings Inc., are shareholders of the Company;
- (v) On or about March 16, 2000, Mr. Pathak, who was the sole director of the Company upon incorporation, appointed Ms. Sokoloff as President, himself as Secretary, and Mr. Gluckstein as Non-Executive Chairman of GlucksteinHome;

- (w) Mr. Pathak confirmed ChitizPathak as solicitors of GlucksteinHome;

Licence Agreement

- (x) In accordance with the Letter of Agreement, on or about April 7, 2000, GlucksteinHome and Mr. Gluckstein entered into a license agreement for the use of Mr. Gluckstein's name and trade-marks containing Mr. Gluckstein's name (the "Licence Agreement");
- (y) ChitizPathak acted for GlucksteinHome in respect of the negotiation and execution of the License Agreement, and Mr. Pathak signed the License Agreement on behalf of GlucksteinHome;
- (z) The Licence Agreement provides that its term shall be 10 years unless earlier terminated or renewed in accordance with its provisions (the "Term");
- (aa) The Term expired on April 7, 2010. Written notice, as provided in the Licence Agreement was not delivered by the Company. The Licence Agreement has not been renewed;
- (bb) Despite being legal counsel to GlucksteinHome, ChitizPathak never made any mention of any need to provide notice of termination of the Licence Agreement or discuss its renewal;
- (cc) Instead, the ChitizPathak Partners denied that the License Agreement ever existed, despite ChitizPathak having acted on behalf of GlucksteinHome in its execution, and Mr. Pathak having signed the Licence Agreement on behalf of GlucksteinHome.

- (dd) The Respondents have attempted to force Mr. Gluckstein into continuing to operate the Company for their benefit, when he is the sole source of business for the Company and notwithstanding the termination of the Licence Agreement;

Trade-marks Registered in Trust

- (ee) GlucksteinHome has registered or applied to register 4 trade-marks in Canada and 3 trade-marks in the United States involving Mr. Gluckstein's name;
- (ff) GlucksteinHome has never had any authority to use, register or apply to register any trade-marks involving Mr. Gluckstein's name for its own use and benefit outside of the rights granted under the Licence Agreement;
- (gg) In accordance with the intentions of the parties, as reflected by the terms of the Licence Agreement, any and all trade-marks, trade-mark registrations or applications to register trade-marks filed by, used by or in the name of GlucksteinHome and involving Mr. Gluckstein's name were each used, registered or applied for in trust for Mr. Gluckstein, and are each held by GlucksteinHome for this purpose;

Operation of the Company

- (hh) The success of GlucksteinHome has been the result of Mr. Gluckstein's own efforts and personal reputation;
- (ii) GlucksteinHome's business is largely based on a business relationship that it has with the Hudson's Bay Company ("HBC"), which Mr. Gluckstein established in or about 2000;

- (jj) HBC has recently requested a renewal of that Agreement, which requires Mr. Gluckstein's personal participation and acknowledges that Mr. Gluckstein is integral to the success of the arrangement;
- (kk) By contrast, ChitizPathak and the ChitizPathak Partners have provided little benefit to the Company;
- (ll) Contrary to the representations made by ChitizPathak to Mr. Gluckstein in 1999, which formed the basis for Mr. Gluckstein agreeing to enter into a joint venture with CCP, ChitizPathak failed to provide appropriate or valuable legal services to GlucksteinHome;
- (mm) Specifically, ChitizPathak has:
 - (i) failed to provide even the most basic shareholder and corporate governance documents;
 - (ii) failed to draft a unanimous shareholders' agreement containing normal and usual rights and protections, including an appropriate exit mechanism, as was required by the terms of the Letter of Agreement;
 - (iii) failed to prepare and execute employment contracts for the officers and directors of GlucksteinHome;
 - (iv) failed to prepare and execute a retainer with GlucksteinHome; and
 - (v) failed to provide any accounts or itemized bills for legal services charged to GlucksteinHome;

- (nn) These failures not only constitute negligence, they are serious breaches of ChitizPathak's fiduciary obligations to GlucksteinHome;
- (oo) In addition:
 - (i) Mr. Gluckstein was not advised by ChitizPathak that it and its partners were in a conflict of interest in structuring GlucksteinHome, and in continuing to provide services to it;
 - (ii) Mr. Gluckstein was not advised to obtain independent legal advice with respect to the formation of GlucksteinHome or any subsequent commercial arrangements between Mr. Gluckstein and the other shareholders of GlucksteinHome and the ChitizPathak Partners, including the use of trade-marks, the registration of trade-marks and the filing of applications to register trade-marks each involving Mr. Gluckstein's name; and
 - (iii) ChitizPathak did not require a written consent from Mr. Gluckstein in respect of the conflict arising from their investment with Mr. Gluckstein in GlucksteinHome and their representation of GlucksteinHome as counsel;
 - (iv) ChitizPathak never complied with its professional obligations of disclosure to its multiple clients.
- (pp) ChitizPathak has been compensated in an amount that grossly exceeds the value of any services that it has provided to GlucksteinHome;

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- (qq) Contrary to the representations made by ChitizPathak, GlucksteinHome has not established an internet business, did not raise the \$750,000.00 contemplated by the parties, and did not complete a public offering;
- (rr) ChitizPathak and the ChitizPathak Partners have allowed their personal interests as shareholders to take precedence over the interests of GlucksteinHome, in conflict with their fiduciary obligations to the Company and to Mr. Gluckstein;
- (ss) As a result of the conduct of ChitizPathak and the ChitizPathak Partners, there has been an irreparable breakdown in the business relationship between Mr. Gluckstein and the ChitizPathak Partners;
- (tt) In 2012, it came to Mr. Gluckstein's attention that, at the direction of Mr. Wise, HWH had not properly accounted for and distributed to its shareholders their proportionate share of dividends paid by GlucksteinHome;
- (uu) When confronted by Mr. Gluckstein, Mr. Wise denied this conduct, which was untrue. Subsequently, and with the threat of litigation, HWH apparently began to pay its shareholders, or some of them, amounts to which they are entitled;
- (vv) As a result of this conduct and the lack of tangible contribution by Mr. Wise or HWH to the business and affairs of GlucksteinHome, the Applicants have lost all faith and trust in their fellow shareholders;
- (ww) In light of the Respondents' unlawful conduct, the expiry of the Licence Agreement, and the breakdown of the business relationship between the shareholders, the Company should be wound up;

HBC Contract

- (xx) On or about February 1, 2010, GlucksteinHome entered into an agreement with the Hudson's Bay Company ("HBC") for the exclusive sale of GlucksteinHome branded products (the "HBC Contract");
- (yy) By its terms, the HBC Contract will terminate on January 31, 2015;
- (zz) An essential component of the HBC Contract is that it requires Mr. Gluckstein's extensive personal involvement and time commitment until January 31, 2015, after which he has no obligations in this regard;
- (aaa) In order to fulfill the HBC Contract, GlucksteinHome subsequently entered into contracts with Lenox Corporation, Broyhill Furniture Industries Inc., and Surya Inc. (the "Related Contracts");
- (bbb) Despite the expiry of the Licence Agreement, Mr. Gluckstein permitted the limited use of his name by GlucksteinHome for the exclusive and sole purpose of the HBC Contract and the Related Contracts,;
- (ccc) While Mr. Gluckstein is prepared to permit the Company to continue to use his name in order to comply with the HBC Contract and the Related Contracts, he is not willing to allow the Company to enter into any new agreements using his name;
- (ddd) On or about June 7, 2013, the Applicants delivered a letter to the Respondents, with prejudice, proposing a plan to preserve the business arrangements with HBC and to

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submit to arbitration to resolve the parties' intellectual property rights with respect to the Gluckstein names;

(eee) On or about June 14, 2013, the Respondents responded. They rejected that proposal;

(fff) The parties have experienced a breakdown in their business relationship and are no longer able to continue operating GlucksteinHome together;

(ggg) There is urgency associated with requests of Hudson's Bay Company to enter into a new contractual relationship. Until the issues surrounding the Licence Agreement are resolved, that uncertainty prevents a resolution to any commitments sought by Hudson's Bay Company;

(hhh) Rule 14 of the *Rules of Civil Procedure*;

(iii) Sections 207 and 241 of the Ontario *Business Corporations Act*;

(jjj) Rule 2 of the *Rules of Professional Conduct* of the Law Society of Upper Canada;
and

(kkk) Such further and other grounds as may be advised.

3. The following documentary evidence will be used at the hearing of the application:

(a) Affidavit of Brian Gluckstein; and

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- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 28, 2013

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

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Brendan F. Morrison (61635B)

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Lawyers for the Applicants

RCP-E 14E (March 31, 2010)

BRIAN GLUCKSTEIN et al.
Applicants

-and-

CHECKMATE CAPITAL PARTNERS INC. et al.
Respondents

W 13 - 10172 - 0006
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

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Lawyers for the Applicants

EXHIBIT 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BRIAN GLUCKSTEIN and GLUCKSTEIN HOLDINGS INC.

Applicants

- and -

CHECKMATE CAPITAL PARTNERS INC., HARVEY WISE HOLDINGS INC.,
HARVEY WISE, DANIEL CHITIZ, PAUL PATHAK, RISA SOKOLOFF,
CHITIZPATHAK LLP and GLUCKSTEINHOME INC.

Respondents

AND BETWEEN:

GLUCKSTEINHOME INC.

Counter-Applicant

- and -

BRIAN GLUCKSTEIN and GLUCKSTEIN HOLDINGS INC.

Counter-Respondents

NOTICE OF COUNTER-APPLICATION

COUNTER-APPLICATION UNDER Rules 14.05(3) (d), (g) and (h) of the Rules
of Civil Procedure.

TO THE COUNTER-RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED BY THE Counter-Applicant.
The claim made by the Counter-Applicant appears on the following page.

THIS COUNTER-APPLICATION will come on for a hearing before a Judge at the
same time and in the same place as the Application referred to herein, on a date and time to be
fixed by the Court.

IF YOU WISH TO OPPOSE THIS COUNTER-APPLICATION, you or an Ontario
Lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by

the Rules of Civil Procedure, serve it on the Counter-Applicant's lawyer or, where the Counter-Applicant does not have a lawyer, serve it on the Counter-Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR COUNTER-EXAMINE WITNESSES ON THE COUNTER-APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Counter-Applicant's lawyer or, where the Counter-Applicant does not have a lawyer, serve it on the Counter-Applicant, and file it, with proof of service, in the court office where the Counter-Application is to be heard as soon as possible, but no later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU, IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 15, 2014

Issued by:

Local registrar
Address of the court office 393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

A. Anissimova
Registrar

TO: **LENZNER SLAGHT ROYCE SMITH GRIFFIN LLP**
Suite 2600
120 Adelaide Street West
Toronto, ON M5H 3P5

Peter H. Griffin
Brendan F. Morrison

Tel.: 416.865.9500
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Lawyers for the Counter-Respondents

**SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
BANKRUPTCY / COMMERCIAL
COURTS
330 UNIVERSITY AVENUE
7TH FLOOR
TORONTO, ONTARIO M5G 1R7**

COUNTER-APPLICATION

1. The Counter-Applicant, GlucksteinHome Inc. ("GH"), makes application for:
 - (a) A declaration that GH owns the registered trade-marks and trade-mark applications at issue in this proceeding, including those described herein, and that GH owns and has the right to use any and all trade-marks and trade-names, whether registered or not, and whether currently in use or not, that contain the word "GlucksteinHome" (collectively, the "GlucksteinHome Trade-marks");
 - (b) A declaration that GH has the right to use and to grant licences to use the names "Gluckstein" and "Brian Gluckstein" (the "Gluckstein Name Trade-marks") on and in connection with any products produced, marketed and sold by Lenox Corporation in accordance with GH's designs for dinnerware, flatware, glassware, barware and giftware (collectively, the "GH Lenox Products");
 - (c) A declaration that GH is entitled to continue to use "GlucksteinHome" as its trade-name and to continue to use "GlucksteinHome Inc." as its corporate name;
 - (d) A declaration that GH is entitled to continue to use and to grant licenses to use Brian Gluckstein's name, likeness and endorsement in association with the promotion and sale of all products and services of GH;

- (e) A declaration that at or prior to the stated expiry date of the initial term of the agreement dated April 7, 2000 between GH and Brian Gluckstein ("Mr. Gluckstein") (the "Name Use Agreement"), the parties by their words, deeds and conduct entered into a new agreement providing for the perpetual ownership and continued use by GH of the various Trade-Marks, Name Marks, Design Marks and other intellectual property described herein, including the GlucksteinHome Trade-marks, the Gluckstein Name Trade-marks and the Company's name (the "New Agreement");

- (f) In the alternative to (a) through (e) above, a declaration that:
 - (i) the Name Use Agreement was extended beyond the stated expiry date of its initial term at least until January 31, 2015, being the expiry date of the initial term of the Renewal Agreement between GH and the Hudson's Bay Company ("HBC");

 - (ii) to the extent necessary, the Name Use Agreement was varied to include all of the design services that GH has provided to the residential home developer, Remington Homes, and that GH may provide to other residential home developers;

 - (iii) the Name Use Agreement has now been renewed by notice dated March 21, 2014 for a period of ten years, until January 31, 2025 or at least until April 7, 2020;

- (iv) during the extended and renewed term and for 12 months following the expiration of the Name Use Agreement on either April 7, 2020 or January 31, 2025, Mr. Gluckstein may not, either individually or in partnership or with any person as principal, agent, employee, shareholder or in any other manner use his name or likeness or any confusingly similar name or likeness in association with any business competitive with GH.

- (g) In addition to the declarations sought in (a) through (f) above, a declaration that GH's use of the GlucksteinHome Trade-marks and the Gluckstein Name Trade-Marks is not prohibited by any potentially applicable provision of the *Trade-marks Act, R.S.C., 1985, c. T-13* (the "*TMA*"), and is not an infringement of any trade-marks rights owned by Mr. Gluckstein, including his rights under the *TMA* and at law;

- (h) A declaration that Mr. Gluckstein has breached his contractual, common law and statutory duties to GH;

- (i) To the extent necessary, interim, interlocutory and permanent injunctive relief restraining or prohibiting Mr. Gluckstein from taking any steps, directly or indirectly, to:
 - (i) initiate or pursue administrative, legal, judicial or other proceedings in other courts or in other jurisdictions, including without limitation the Federal Court of Canada and the United States of America, seeking to expunge, strike out, withdraw, abandon, challenge in

- any way or reverse any registered trade-mark or trade-mark application belonging, registered to or filed by GH, or to register in the name of or assign to Mr. Gluckstein any such trade-marks or trade-mark applications;
- (ii) initiate or pursue applications to register any GlucksteinHome Trade-marks, Gluckstein Name Trade-Marks or other trade-marks that are similar to or may be confusing with the Trade-Marks of GlucksteinHome, anywhere in the world;
 - (iii) use the GlucksteinHome Trade-marks in association with any wares or services that do not originate with GH;
 - (iv) misuse or take advantage of in any way, either directly or indirectly, the information, business relationships or business opportunities of GH;
 - (v) interfere with GH's customers, suppliers, business or business opportunities in any way, either directly or indirectly;
 - (vi) solicit or in any way interfere with GH's employees; and
 - (vii) otherwise breach or further breach Mr. Gluckstein's contractual, common law or statutory duties to GH in any respect;
- (j) Compensatory, exemplary and punitive damages in an amount of \$20,000,000, or such greater amount as the Court may assess, arising

from Mr. Gluckstein's breaches of his contractual, common law or statutory duties to GH, as well as full compensation or reimbursement for all costs and expenses incurred by GH that would not otherwise have arisen but for Mr. Gluckstein's conduct, demands and positions taken in the period since his Application was commenced, including without limitation all costs and expenses incurred in respect of the retainer of Osier Hoskin & Harcourt LLP and counsel required to deal with trademarks related proceedings commenced or initiated by Mr. Gluckstein in Canada and the United States;

- (k) To the extent necessary, an accounting for and disgorgement of all amounts received by Mr. Gluckstein or Gluckstein Holdings Inc. as a result of the breach by Mr. Gluckstein of his contractual, common law or statutory duties;
- (l) to the extent necessary, an Order pursuant to Rule 39.03(4) permitting the parties to adduce evidence in this proceeding by way of *viva voce* evidence from witnesses testifying during the hearing of the matter, or directing pursuant to Rule 38.10(1)(b) that particular issues proceed to trial;
- (m) GH's costs of these proceedings, on a substantial indemnity basis;
- (n) To the extent necessary, an Order that this Counter-Application be heard together with the Application in Court File No. CV-13-10172-OOCL;

- (o) To the extent necessary, an Order that portions of the evidence filed in this proceeding be treated as confidential, sealed and not form part of the public record; and
- (p) Such further and other relief as this Honourable Court may deem just.

2. The Grounds for this Counter-Application are:

Background

- (a) GH was incorporated on March 16, 2000 under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA");
- (b) Mr. Gluckstein is now, and at all material times has been, a shareholder, officer and director of GH. Since in or around late 2002, Mr. Gluckstein and his holding company, Gluckstein Holdings Inc., have jointly held 39.26% of the issued and outstanding shares of GH;
- (c) On April 7, 2000, GH and Mr. Gluckstein entered into the Name Use Agreement in which Mr. Gluckstein granted to GH the exclusive right throughout the world to use his name, likeness and endorsement in association with the advertisement, promotion and sale of all products and services of GH authorized thereunder;
- (d) The products and services of GH that were authorized by the Name Use Agreement were: (i) the retail distribution of home, office and garden furnishings, (ii) the wholesale distribution of home, office and garden furnishings, and (iii) the manufacture of those furnishings;

- (e) The original term of the Name Use Agreement was ten years, renewable at the option of GH for an additional ten years. It was an express or implied term of the Name Use Agreement that its term could be extended by the assent of the parties. The Name Use Agreement further provided that during its original, extended or renewed term, and for one year thereafter, Mr. Gluckstein would not use his name, likeness or anything confusingly similar in any business competitive with GH;

GH's Trade-marks

- (f) Mr. Gluckstein does not own registered trade-marks for "Brian Gluckstein" or "Gluckstein". Nor has he personally used the names "Brian Gluckstein" or "Gluckstein" as trade-marks;
- (g) At all times material to this Counter-Application, Mr. Gluckstein has carried on a separate business as an interior designer in association with the trade-mark and trade-name "Gluckstein Design";
- (h) As part of the GlucksteinHome Trade-marks, GH owns a number of registered trade-marks and applications to register trade-marks in Canada, including the following:

Trade-mark	Design	Application & Registration No.	Date Filed & Registered
GLUCKSTEINHOME & GH Design	 The logo consists of the words "GLUCKSTEINHOME" in a bold, sans-serif font, with "GLUCKSTEIN" on the top line and "HOME" on the bottom line. The text is centered within a rectangular border.	Application No. 1,162,893 Registration: TMA664,252	Filed: 19-Dec-2002 Registered: 15-May-2006

GLUCKSTEINHOME & Design		Application No. 1,492,095	Filed: 12-Aug-2010
		Registration: TMA822,816	Registered: 24-Apr-2012
GLUCKSTEINHOME & Design		Application No. 1,572,085	Filed: 5-Apr-12
GLUCKSTEINHOME	N/A	Application No. 1,495,990	Registered: 15-Sep-10

(i) As part of the GlucksteinHome Trade-marks, GH owns a number of registered trade-marks and applications to register trade-marks in the United States of America, including the following:

Trade-mark	Design	Serial & Registration No.	Date Filed & Registered
GLUCKSTEINHOME & Design		Serial No. 85/127,291	Filed: 10-Sep-2010
		Registration 4,294,114	Registered: 26-Feb-2013
GLUCKSTEINHOME & Design		Serial No. 85/771,814	Filed: 5-Nov-2012
			Abandoned
GLUCKSTEINHOME	N/A	Serial No. 85/157,773	Filed: 21-Oct-2010

(j) As a further part of the GlucksteinHome Trade-marks, GH has also used and owns unregistered trade-marks that include, among other things:

- (i) word and design marks that are being used by GH in association with its wares and services in Canada and the United States of America, and that GH proposes to use throughout the world, including the following:

A.	GLUCKSTEINHOME
B.	
C.	glucksteinhome.com
D.	
E.	GLUCKSTEINHOME OUTDOOR
H.	
I.	

- (ii) trade-marks that have been registered or applied for in Canada or the United States of America that GH has used, or that GH proposes to use, either directly or through a licensee, anywhere in the world; and

- (iii) additional variations of the design marks have been registered or applied for in Canada or the United States of America that GH has used, or that GH proposes to use, either directly or through a licensee, anywhere in the world, including in Canada and the United States of America;

- (k) GH also owns, both in Canada and the United States, the Gluckstein Name Trade-marks, being "Gluckstein" and "Brian Gluckstein" for use in association with the GH Lenox Products;

- (l) GH, not Mr. Gluckstein, is the owner of the GlucksteinHome Trade-marks and of the Gluckstein Name Trade-marks. Mr. Gluckstein has no legal or beneficial ownership of the GlucksteinHome Trade-marks or the Gluckstein Name Trade-marks;

GH Continues to Own its Trade-marks and Related Rights

- (m) GH's continued use of the GlucksteinHome Trade-marks and of the Gluckstein Name Trade-marks is entirely lawful and appropriate, and is neither false, confusing nor misleading;

- (n) The initial term of the Name Use Agreement was for 10 years commencing April 7, 2000, but was subject to extension by the assent of the parties as well as to renewal for a further period of 10 years, at the option of GH. Moreover, the duration of the Name Use Agreement could be extended by the mutual agreement, consent or acquiescence of the parties;

- (o) Mr. Gluckstein was to have the right to require GH to "cease any and all further use of the Gluckstein name and likeness, change its corporate name and assign to [Mr.] Gluckstein for nominal consideration any trade mark or similar registration owned or held by the Company containing the name "Gluckstein" or any element thereof" only if the Name Use Agreement came to an end and was not replaced or superseded by another agreement, and only then if he exercised his rights in a timely way.

- (p) The Name Use Agreement has not come to an end in a manner which gave rise to any rights of Mr. Gluckstein. Instead, it has been replaced and superseded by the New Agreement, or extended by the mutual agreement, consent or acquiescence of the parties and renewed by GH. In that regard, GH has exercised its right to renew the Name Use Agreement for a further term of 10 years. In any event, Mr. Gluckstein failed to exercise on a timely basis any rights that allegedly arose at the end of the Name Use Agreement, with the result that even if that Agreement somehow came to an end in April, 2010, those rights are statute barred and he is otherwise estopped from asserting them;

- (q) Mr. Gluckstein did not take steps or positions or make representations consistent with his belated, alleged view that the Name Use Agreement ended in April 2010, including to require GH to cease using his name or likeness, to change its corporate name or to assign to him any trade-mark or similar registrations. Instead, Mr. Gluckstein continued to be involved in

and benefited from the continuation of the business of GH under its corporate name as well as the continued use by GH of its Trade-marks and:

(i) consented to, approved of and endorsed GH's application for, and registration of, additional trade-marks that contain the name "Gluckstein" in combination with other elements, which specifically include:

- (A) Canadian Application No. 1,492,095 on August 12, 2010 for GLUCKSTEINHOME & Design, which was subsequently registered as TMA822,816;
- (B) United States of America Application Serial No. 85/127,291 on September 10, 2010 for GLUCKSTEINHOME & Design, which was subsequently registered as 4,294,114;
- (C) Canadian Application No. 1,495,990 on September 15, 2010 for the word mark GLUCKSTEINHOME;
- (D) United States of America Application Serial No. 85/157,773 for the work mark GLUCKSTEINHOME;
- (E) Canadian Application No. 1,572,085 on April 5, 2012 for GLUCKSTEINHOME & Design; and

- (F) United States of America Application Serial No. 85/771,814 on November 5, 2012 for GLUCKSTEINHOME & Design, which was subsequently abandoned;

- (ii) consented to, approved of and endorsed GH's use of, and GH's licensing to Lenox Corporation of, the Gluckstein Name Trade-marks and his personal endorsement. With Mr. Gluckstein's knowledge, consent and approval, Lenox identifies and promotes the GH Lenox Products as being designed by "Gluckstein" or "Brian Gluckstein" and HBC and GH identify and promote the GH Lenox Products as "Brian Gluckstein by Lenox";

- (iii) consented to, approved of and endorsed GH using and licensing the GlucksteinHome Trade-marks and Gluckstein Name Trade-Marks, contracting to provide Mr. Gluckstein's personal likeness and endorsement and, in certain circumstances, agreeing to personal time commitments for Mr. Gluckstein, as terms of several contracts that are material to GH's business, which include, but are not limited to, the following:
 - (A) a Renewal Agreement between GH and HBC that was executed in August 2010 and continues until at least January 31, 2015 (the "HBC Renewal Agreement");

- (B) a Brand and Service Agreement between GH and Remington Group Inc. that was executed on October 30, 2012 and continues until at least December 31, 2017; and
 - (C) the License Agreement between GH and Lenox Corporation that was effective as of April 2012 and continues until at least April 2015;
- (r) At all material times, Mr. Gluckstein has been compensated by GH for the use of his name and endorsement in accordance with the express or implied terms of the Name Use Agreement and/or the New Agreement, as applicable. Among other things, Mr. Gluckstein and his holding company, Gluckstein Holdings Inc. were paid, and continue to be paid, distributions in the form of dividends, consulting fees and bonuses;
- (s) In May 2011, the Directors of GH (including Mr. Gluckstein) and Daniel Chitiz entered into an agreement or arrangement concerning the shareholders' respective responsibilities and compensation. Among other things, they accepted and agreed that GH owned the GlucksteinHome Trade-marks and the Gluckstein Name Trade-marks and that GH could continue to use the name, likeness and endorsement of Mr. Gluckstein in association with its products and services;

Name Use Agreement was Replaced or Superseded

- (t) By virtue of the facts referred to above, and other aspects of their words, deeds and conduct, GH and Mr. Gluckstein entered into a **New Agreement** that replaced or superseded the **Name Use Agreement** as follows:
- (i) GH owns the GlucksteinHome Trade-marks and the Gluckstein Name Trade-marks, whether used and adopted by GH before or after April 7, 2010;
 - (ii) GH has the exclusive right throughout Canada and outside Canada to use the name, likeness and endorsement of Mr. Gluckstein in association with the advertisement, promotion, sale, wholesale distribution and manufacture of home, office and garden furnishings;
 - (iii) GH has the non-exclusive right throughout Canada and outside Canada to use the name, likeness and endorsement of Mr. Gluckstein in association with the advertisement, promotion, and provision of the Company's interior design services to residential home developers; and
 - (iv) Mr. Gluckstein and Gluckstein Holdings Inc. have received, and will continue to receive, per diem payments and distributions from GH.

Extension and Renewal of the Name Use Agreement

- (u) In the alternative, by their words, deeds and conduct the parties agreed to extend and did in fact extend the initial term of the Name Use Agreement, at a minimum, until January 31, 2015, being the expiry date of the initial term of the HBC Renewal Agreement;
- (v) To the extent necessary, Mr. Gluckstein and GH also varied the terms of the Name Use Agreement to permit GH to use the GH Trade-marks and to use Mr. Gluckstein's name, likeness, and endorsement in association with the provision of design services to residential home developers, such as those provided to Remington Homes;
- (w) On March 21, 2014, GH served Mr. Gluckstein with written notice that it was exercising its right to renew the Name Use Agreement for an additional term of ten years to either April 7, 2020 or January 31, 2025, and the Name Use Agreement has now been so renewed with a 7.5% royalty payable to Mr. Gluckstein on the Company's gross revenues during the renewal term in the event Mr. Gluckstein confirms or the Court finds that the Name Use Agreement has been renewed;

In Any Event Mr. Gluckstein's Rights Are Barred

- (x) In any event, if the Name Use Agreement expired in April 2010 as Mr. Gluckstein now alleges, he is barred by the Ontario Limitations Act, 2002, S.O. 2002, c. 24, Sched. B, by his duties to GH and by the principles of estoppel from:

- (i) claiming either in his Application or otherwise that GH is not the owner of the GlucksteinHome Trade-marks and the Gluckstein Name Trade-marks;
- (ii) claiming or demanding either in his Application or otherwise that GH change its corporate name and cease using his name and likeness in connection with its business, or that GH transfer its registered trade-marks to him; and
- (iii) invoking either in his application or otherwise the provisions of the Name Use Agreement to challenge or defeat any rights of GH including to extend the duration of or renew that Agreement;

Gluckstein Sues to Invalidate GH's Trade-Mark Registrations

- (y) Without any basis or prior notice, on March 13, 2014, Mr. Gluckstein caused to be issued a Notice of Application against GH in the Federal Court of Canada, Court File No. T-651-14 (the "Trade-Mark Expungement Action");
- (z) The Trade-Mark Expungement Action seeks to:
 - (i) expunge or strike out the Canadian trade-marks TMA 664,252 and TMA 822,816, or in the alternative to require their assignment to Mr. Gluckstein; and
 - (ii) strike out, withdraw or abandon Canadian trade-mark applications No. 1,495,990 and 1,572,085, or in the alternative to require their

assignment to Mr. Gluckstein, or to reverse the decision of the Registrar of Trade-Marks to allow them;

- (aa) Without any basis or prior notice, on March 12, 2014, Mr. Gluckstein caused to be issued a Petition for Cancellation in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board (the "U.S. Trademark Petition");
- (bb) The U.S. Trademark Petition seeks to cancel the registration in the United States of the GlucksteinHome & Design mark, Registration No. 4,294,114;
- (cc) In the U.S. Trade-mark Petition, Mr. Gluckstein admits that there was an "implied license" between Mr. Gluckstein and GH in the period after the stated expiry date of the initial term of the Name Use Agreement;
- (dd) The Trade-Mark Expungement Action and U.S. Trade-mark Petition were commenced by Mr. Gluckstein in breach of his duties to GH;

Gluckstein Applies for his Own GlucksteinHome Trade-marks

- (ee) Without prior notice, in or around March 7, 2014, Mr. Gluckstein filed an application to register in his own name the word mark GLUCKSTEINHOME as a trade-mark in Canada (the "Canadian Gluckstein Application") relying on use, or proposed use, by GH for various wares and services.
- (ff) In or around March 12, 2014, Mr. Gluckstein also filed several applications to register in his own name the word mark GLUCKSTEINHOME as a

trade-mark in the United States (collectively, the "U.S. Gluckstein Applications") relying on use, or proposed use, by GH for various classes of goods or services.

- (gg) Mr. Gluckstein is not entitled to register the word mark GLUCKSTEINHOME or any of the other GlucksteinHome Trade-marks or Gluckstein Name Trade-marks in Canada or the United States;
- (hh) Mr. Gluckstein is attempting to create confusion in the marketplace as to the source of the wares and services of GH;
- (ii) Mr. Gluckstein is falsely relying on GH's use of the GlucksteinHome word mark in the United States as use by him, in his personal capacity;
- (jj) Mr. Gluckstein is in breach of his obligations to GH, both at law and under the New Agreement and/or implied license, or in the alternative, he is in breach of his obligations to GH under the extension and/or renewal of the Name Use Agreement. In any event, Mr. Gluckstein is estopped, barred and not entitled to claim ownership of the word mark GLUCKSTEINHOME or any of the GlucksteinHome Trade-marks or Gluckstein Name Trade-marks;

Mr. Gluckstein's Breaches of His Common Law and Statutory Duties

- (kk) As an Officer and Director of GH, Mr. Gluckstein has at all material times owed statutory, common law and contractual duties to GH. His Holding Company is not entitled to benefit from the breach by Mr. Gluckstein of his duties to GH;

- (II) In breach of his contractual, common law and statutory duties, Mr. Gluckstein has preferred his personal interests to those of GH by:
- (i) attempting to misappropriate for himself the business of GH and business opportunities belonging to GH;
 - (ii) attempting to misappropriate for himself the trade-marks and trade-mark applications of GH, including pursuant to the Trade-Mark Expungement Action and U.S. Trademark Petition;
 - (iii) making the Canadian Gluckstein Application and the U.S. Gluckstein Applications to register the word mark GLUCKSTEINHOME in his own name in Canada and the United States;
 - (iv) attempting to interfere with or hire the employees of GH; and
 - (v) otherwise interfering with or attempting to take for his own benefit the relationships, customers, intellectual property and goodwill earned by GH in the course of its business;

Damages Suffered by GH

- (mm) As a result of Mr. Gluckstein's conduct, GH has incurred significant damages, which will be elaborated upon prior to the hearing of this Counter-Application;

Statutory Provisions, Rules, and other Grounds Relied Upon

- (nn) Rules 14, 38.03(4), 38.10 and 39.03 of the Rules of Civil Procedure;

(oo) Sections 132 and 134 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16;

(pp) Sections 4 and 5 of the Ontario *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B;

(qq) Sections 7, 9 and 12 of the *Trade-Marks Act*, R.S.C. 1985, c. T-13; and

(rr) Such further and other grounds as counsel may advise.

3. The following documentary evidence will be relied upon at the hearing of the Application and Counter-Application:

(a) The affidavits of Harvey Wise, Paul Pathak, Risa Sokoloff and Daniel Chitiz, as well as other Affidavits; and

(b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

April 15, 2014

DAVIES WARD PHILLIPS & VINEBERG LLP
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Of Counsel to the Counter-Applicant

GLUCKSTEINHOME INC.
(Counter-Applicant)

and

BRIAN GLUCKSTEIN et al.
(Counter-Respondents)

Court File No: CV-13-10172-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

NOTICE OF COUNTER-APPLICATION

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Lawyers for the Counter-Applicant,
GlucksteinHome Inc.

EXHIBIT 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BRIAN GLUCKSTEIN and GLUCKSTEIN HOLDINGS INC.

Applicants

- and -

CHECKMATE CAPITAL PARTNERS INC., HARVEY WISE HOLDINGS INC.,
HARVEY WISE, DANIEL CHITIZ, PAUL PATHAK, RISA SOKOLOFF,
CHITIZPATHAK LLP and GLUCKSTEINHOME INC.

Respondents

AND BETWEEN:

CHECKMATE CAPITAL PARTNERS INC., HARVEY WISE HOLDINGS INC., HARVEY
WISE, DANIEL CHITIZ, PAUL PATHAK and RISA SOKOLOFF

Counter-Applicants

- and -

BRIAN GLUCKSTEIN, GLUCKSTEIN HOLDINGS INC. and STEVEN GOLDHAR

Counter-Respondents

NOTICE OF COUNTER-APPLICATION

COUNTER-APPLICATION UNDER Rules 14.05(3)(d), (g) and (h) of the *Rules of Civil Procedure* and Section 248 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, as amended.

TO THE COUNTER-RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Counter-Applicant. The claim made by the Counter-Applicant appears on the following pages.

THIS COUNTER-APPLICATION will come on for a hearing before a Judge at the same time and in the same place as the Application referred to herein, on a date and time to be fixed by the Court.

IF YOU WISH TO OPPOSE THIS COUNTER-APPLICATION, to receive notice of any step in the Counter-Application or to be served with any documents in the Counter-Application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Counter-Applicant's lawyer or, where the Counter-Applicant does not have a lawyer, serve it on the Counter-Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE COUNTER-APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Counter-Applicant's lawyer or, where the Counter-Applicant does not have a lawyer, serve it on the Counter-Applicant, and file it, with proof of service, in the court office where the Counter-Application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS COUNTER-APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Apr 15, 2014 Issued by 
Local Registrar **A. Anissimova**
Registrar
Address of court office: 330 University Avenue
Toronto, Ontario
M5G 1R7

TO: LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
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AND TO: STEVEN GOLDHAR
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COUNTER-APPLICATION

1. The Counter-Applicants, Checkmate Capital Partners Inc. (“Checkmate”), Harvey Wise Holdings Inc. (“HWHI”), Harvey Wise (“Wise”), Daniel Chitiz (“Chitiz”), Paul Pathak (“Pathak”) and Risa Sokoloff (“Sokoloff”) claim:
 - (a) A declaration that the conduct of the Applicant Brian Gluckstein (“Gluckstein”) in refusing, without a reasonable basis, to attend at directors’ meetings of the Respondent GlucksteinHome Inc. (the “Corporation”) or to grant approvals of matters requiring directors’ approval is, or threatens a result that is, oppressive to, unfairly prejudicial to, and/or unfairly disregards the interests of the Counter-Applicants.
 - (b) An order rectifying the oppression by:
 - (i) restraining Gluckstein from engaging in the conduct complained of;
 - (ii) an order setting aside or terminating the Shareholders’ Agreement dated as of March 16, 2000 among Gluckstein, Wise and Checkmate (the “Shareholders’ Agreement”), or declaring same to be of no further force or effect;
 - (iii) deeming Gluckstein to have approved any matter which is approved by the other directors of the Corporation;
 - (iv) declaring that Gluckstein’s approval as a director is not required on any matter where his interests conflict with the interests of the Corporation, or

where he has failed, despite proper notice in accordance with the Corporation's by-laws, to attend a directors' meeting;

(v) requiring Gluckstein to pay compensation to the Counter-Applicants; and/or

(vi) any other interim or final order the Court thinks fit.

(c) To the extent necessary, leave to make further submissions at or after the hearing of the within Application and Counter-Applications regarding further relief to be granted to the Counter-Applicants, depending on this Court's determination of the issues raised in the within Application, this Counter-Application and the Counter-Application of the Corporation.

(d) The costs of this Counter-Application as against Gluckstein and Gluckstein Holdings Inc. ("Holdings Inc."), plus all applicable taxes, on a full indemnity basis.

(e) Such further and other relief as to this Honourable Court may seem just.

2. The grounds for the Counter-Application are:

(a) The Corporation was incorporated on March 16, 2000 under the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA").

(b) The board of directors of the Corporation consists, and has always consisted, of Pathak, Sokoloff, Wise, and Gluckstein.

- (c) The original shareholders of the Corporation were Gluckstein, Wise, and Checkmate. Checkmate holds its shares for Pathak, Sokoloff, Chitiz and others.
- (d) On or about December 31, 2001, the Corporation issued additional shares to Steven Goldhar ("Goldhar"). Goldhar remains a shareholder in the Corporation; he was not originally made a party to the Application but has been added as a party to the Counter-Application so that he has notice thereof and will be bound to the result.
- (e) On or about June 20, 2008, the Corporation changed its share structure, creating two different classes of shares. As a result, each of the then-shareholders, namely Checkmate, Goldhar, Wise and Gluckstein, transferred all of their shareholdings to the Corporation's Treasury. On or about the same date, the Corporation issued from Treasury shares from each of the two new classes to Gluckstein, the Applicant Holdings Inc. (a corporation solely owned by Gluckstein), Checkmate, Wise, HWHI (a corporation owned and controlled by Wise) and Goldhar. On or about December 7, 2009, the Corporation again changed its share structure to create four additional classes of shares. On or about the same date, the Corporation issued from Treasury 10 shares from the first new class to the Applicant Holdings Inc., 10 shares from the second new class to Checkmate, 10 shares from the third new class to HWHI and 10 shares from the fourth new class to Goldhar.
- (f) Each of the within Counter-Applicants is a complainant for the purposes of sections 245 and 248 of the *OBCA*.

- (g) The Shareholders' Agreement was made on the date that the Corporation was incorporated.
- (h) Section 1.02 of the Shareholders' Agreement stated: "Subject to applicable law, and unless otherwise specifically provided herein, no matter requiring approval of the board of directors of [the Corporation] shall be undertaken or effected by [the Corporation] without the prior unanimous approval of the board of directors".
- (i) Section 2.01 of the Shareholders' Agreement, under the heading "Duration of Agreement", stated in part: "The rights and obligations of each Shareholder under this Agreement shall terminate as to such Shareholder when it or he has transferred all shares owned by it or him...".
- (j) The Shareholders' Agreement has never been amended. Goldhar, Holdings Inc. and HWHI were never asked to, nor did they, sign or otherwise become party to the Shareholders' Agreement.
- (k) At no time have the parties to the Shareholders' Agreement ever explicitly referred to or relied upon it from the time of its execution until after the commencement of the within Application by Gluckstein and Holdings Inc.
- (l) Since February 2013, Gluckstein has acted in a manner contrary to the best interests of, and in breach of his duties to, the Corporation, including by:
 - (i) intentionally failing to attend the Corporation's board of directors' meetings and approve matters which are in the best interests of the

Corporation, and consistent with its past practices, in order to advance his own interests;

- (ii) asserting positions contrary to the interests of the Corporation;
- (iii) commencing the Application against the Corporation, in which he seeks to wind-up same on account of the parties' alleged inability to continue operating the Corporation together, and to take certain of its intellectual property rights for himself;
- (iv) attempting to prevent the Corporation from taking steps in its best interests by asserting veto rights under the Shareholders' Agreement, even when he has an irremediable conflict of interest, and in an attempt to advance his position in preference to that of the Corporation;
- (v) commencing an Application against the Corporation in the Federal Court of Canada, Court File No. T-651-14, seeking to:
 - (1) expunge or strike out, or in the alternative assign to Gluckstein, certain Canadian trade-marks currently owned by the Corporation;
and
 - (2) strike out, withdraw or abandon certain Canadian trade-mark applications currently owned by the Corporation, or to reverse the decision to allow them;

- (vi) causing to be issued a Petition for Cancellation in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board seeking to cancel the registration of a certain U.S. trade-mark registration owned by the Corporation;
 - (vii) filing an application to register in his own name the word mark GLUCKSTEINHOME as a trade-mark in Canada relying on use, or proposed use, by the Corporation; and
 - (viii) filing several applications to register in his own name the word mark GLUCKSTEINHOME as a trade-mark in the United States relying on use, or proposed use, by the Corporation.
- (m) By acting as aforesaid, Gluckstein has harmed, and continues to harm, the Counter-Applicants as legal and beneficial shareholders of the Corporation.
- (n) Gluckstein threatens to continue such conduct.
- (o) In light of the facts above, and in light of Gluckstein's actions contrary to the best interests of, and in breach of his duties to, the Corporation, all as aforesaid, it is oppressive and unfairly prejudicial to, and would unfairly disregard the interests of, the Counter-Applicants, if the Shareholders' Agreement were to have any force or effect, or alternatively, a force or effect that would allow Gluckstein to use it to advance his interests and disregard his duties.
- (p) Further, given the variety of issues raised by the Applicants, the within Counter-Applicants, and the Corporation as Counter-Applicant, the outcome of the within

Application and Counter-Applications is subject to innumerable permutations and combinations. Accordingly, the within Counter-Applicants ought to be permitted to make further submissions at or after the hearing of the within Application and Counter-Applications as to the appropriate relief to be granted depending upon the Court's determinations with respect to the issues raised by the parties.

- (q) Rules 1.04, 1.05, 14 and 38 of the *Rules of Civil Procedure*.
- (r) Sections 108, 132, 134, 245 and 248 of the *OBCA*.
- (s) Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the Application:

- (a) The affidavits of Wise, Pathak, Chitiz and Sokoloff.
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 15, 2014

Goodmans LLP

Barristers & Solicitors
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Lawyers for the Respondents (Counter-Applicants) Checkmate Capital Partners Inc., Harvey Wise Holdings Inc., Harvey Wise, Daniel Chitiz, Paul Pathak and Risa Sokoloff

BRIAN GLUCKSTEIN et al. -and-

CHECKMATE CAPITAL PARTNERS INC. et al.

Court File No: CV-13-10172-001

Applicants (Counter-Respondents)

Respondents (Counter-Applicants)

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF COUNTER-APPLICATION

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Lawyers for the Respondents (Counter-Applicants)
Checkmate Capital Partners Inc., Harvey Wise Holdings Inc.
Harvey Wise, Daniel Chitiz, Paul Pathak and Risa Sokoloff

EXHIBIT 4

FEDERAL COURT



BRIAN GLUCKSTEIN

Applicant

- and -

GLUCKSTEINHOME INC.

Respondent

APPLICATION UNDER Sections 56 and 57(1) of the *Trade-Marks Act*, R.S.C. 1985, c. T-13, as amended, and Rules 300(b), 301 and 317 of the *Federal Court Rules*, as amended.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: MAR 13 2014

Issued by:

MARY SANSONE
REGISTRY OFFICER

Registry Officer:

Address of local office:

180 Queen Street West

Suite 200

Toronto, Ontario

M5V 3L6

TO: GlucksteinHome Inc.
234 Davenport Road
Toronto, Ontario
M5R 1J8

AND TO: The Registrar of Trade-Marks
Canadian Intellectual Property Office
50 Victoria Street
Phase I, Place du Portage, 4th Floor
Gatineau, Quebec
K1A 0C9

APPLICATION

This is an application under Sections 56 and 57(1) of the *Trade-Marks Act*, R.S.C. 1985, c. T-13, as amended, and Rules 300(b), 301 and 317 of the *Federal Courts Rules*, as amended.

RELIEF SOUGHT

1. The applicant makes an application for an Order:
 - (a) that Canadian Trade-mark Registration No. TMA822,816 for the trade-mark GLUCKSTEINHOME & Design and Canadian Trade-mark Registration No. TMA664,252 for the trade-mark GLUCKSTEINHOME & GH Design each be expunged or struck out from the Trade-marks Register (the “**Register**”);
 - (b) that allowed Canadian Trade-mark Application No. 1,495,990 for the trade-mark GLUCKSTEINHOME and allowed Canadian Trade-mark Application No. 1,572,085 for the trade-mark GLUCKSTEINHOME & Design each be struck out from the Register, withdrawn or formally abandoned in writing by the respondent;
 - (c) in the alternative to (a) above, that Canadian Trade-mark Registration No. TMA822,816 for the trade-mark GLUCKSTEINHOME & Design and Canadian Trade-mark Registration No. TMA664,252 for the trade-mark GLUCKSTEINHOME & GH Design each be assigned to the applicant, who is the rightful owner of these trade-marks;
 - (d) in the alternative to (b) above, that the allowed Canadian Trade-mark Application No. 1,495,990 for the trade-mark GLUCKSTEINHOME and the allowed Canadian Trade-mark Application No. 1,572,085 for the trade-mark GLUCKSTEINHOME & Design each be assigned to the applicant, who is the rightful owner of these trade-marks;
 - (e) in the alternative to (b) and (d) above, reversing the decision of the Registrar of Trade-marks (the “**Registrar**”) to allow Canadian Trade-mark Application No. 1,495,990 for the trade-mark GLUCKSTEINHOME and Canadian Trade-mark Application No. 1,572,085 for the trade-mark GLUCKSTEINHOME & Design, on the basis that the respondent is not entitled to registration of these trade-marks;
 - (f) awarding the applicant its costs of this proceeding on a solicitor-client scale; and
 - (g) such further and other relief as counsel may request and this Honourable Court may permit.

GROUND INTENDED TO BE ARGUED

2. The grounds for this application are:
 - (a) The applicant is an internationally recognized and award-winning commercial and residential designer and decorator throughout Canada and the United States.

- (b) Since at least as early as 1998, the applicant has provided decorating and design services, including home furniture and furnishings design services in association with trade names and trade-marks that include the surname Gluckstein (the “**GLUCKSTEIN Marks**”).
- (c) On or about April 7, 2000, the applicant and the respondent entered into a licence agreement (the “**Licence**”), pursuant to which the applicant granted the respondent the exclusive right to use the name, likeness and endorsement of Gluckstein in association with home furniture and furnishings and as part of the respondent’s corporate name “GlucksteinHome Inc.”, during the term thereof.
- (d) On or about December 19, 2002, contrary to the provisions of the Licence, the respondent filed for the trade-mark **GLUCKSTEINHOME & GH Design** (TMA664,252) in its own name, which was registered on or about May 15, 2006 in association with home furniture and furnishings, and notwithstanding that the Licence did not make reference to such services, in association with decorating services and entertainment services relating to design and decorating, the particulars of which are shown in the attached Schedule “A”.
- (e) Following the expiry of the term of the Licence, the applicant learned that the respondent had filed applications to register or had registered the following trade-marks in its own name, without authorization or permission from the applicant and contrary to express provisions of the Licence: **GLUCKSTEINHOME & Design** (TMA822,816), **GLUCKSTEINHOME** (No. 1,495,990) and **GLUCKSTEINHOME & Design** (No. 1,572,085), the particulars of which are shown in the attached Schedule “A”. The trade-marks shown in Schedule “A” are collectively referred to herein as the “**GLUCKSTEINHOME Marks**”.
- (f) The Licence stated that upon termination, the respondent would immediately cease any and all further use of the **GLUCKSTEIN Marks**, change its corporate name and assign to the applicant for nominal consideration, any trade-mark or similar registration owned or held by the respondent and containing the **GLUCKSTEIN Marks**.
- (g) The Licence has expired but the respondent has refused to cease use of the **GLUCKSTEIN Marks**, including as part of the respondent’s corporate name and has refused to assign the trade-marks and registrations held by the respondent and containing the **GLUCKSTEIN Marks**.
- (h) The respondent has never had any right to the **GLUCKSTEINHOME Marks** except pursuant to a grant of a right of use from the applicant. Any use of the **GLUCKSTEINHOME Marks** enures to the exclusive benefit of the applicant, who is the rightful owner of these marks.
- (i) As the respondent was not and is not the owner of the **GLUCKSTEINHOME Marks**, the trade-mark registrations and applications referred to in paragraph (d) and (e) are void *ab initio*. The respondent was never entitled to apply for

registration of any of the GLUCKSTEINHOME Marks during the term of the Licence or following expiry thereof. Therefore, the registered GLUCKSTEINHOME Marks do not accurately express or define the existing rights of the rightful owner and must be expunged or struck out from the Register or alternatively assigned to the applicant.

- (j) Furthermore, the allowed applications for the GLUCKSTEINHOME Marks, must be struck out, withdrawn or formally abandoned in writing by the respondent or in the alternative, assigned to the applicant, to reflect that the applicant is the rightful owner of these trade-marks. Alternatively, the decision of the Registrar to allow Canadian Trade-mark Applications for GLUCKSTEINHOME (No. 1,495,990) and GLUCKSTEINHOME & Design (No. 1,572,085) must be reversed since the applicant is not entitled to registration of these trade-marks.

DOCUMENTARY EVIDENCE TO BE RELIED UPON

3. This application will be supported by the following material:

- (a) certified copies of Canadian Trade-mark Registration No. TMA822,816 for the mark GLUCKSTEINHOME & Design, Registration No. TMA664,252 for the trade-mark GLUCKSTEINHOME & GH Design, Application No. 1,495,990 for the trade-mark GLUCKSTEINHOME and Application No. 1,572,085 for the trade-mark GLUCKSTEINHOME & Design, maintained by the Registrar of Trade-marks;
- (b) such supporting affidavits and documentary exhibits as the applicant may serve and file under Rule 306 of the *Federal Courts Rules*; and
- (c) such further and other materials as counsel may request and this Honourable Court may permit.

MATERIAL IN POSSESSION OF THE REGISTRAR OF TRADE-MARKS

4. The applicant requests that the Registrar send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Registrar, to the applicant and to the Registry Office:

- (a) prosecution history for Trade-mark Registration No. TMA822,816 for the trade-mark GLUCKSTEINHOME & Design, maintained by the Registrar;
- (b) prosecution history for Trade-mark Registration No. TMA664,252 for the trade-mark GLUCKSTEINHOME & GH Design, maintained by the Registrar;
- (c) prosecution history for Trade-mark Application No. 1,495,990 for the trade-mark GLUCKSTEINHOME, filed with the Registrar; and
- (d) prosecution history for Trade-mark Application No. 1,572,085 for the trade-mark GLUCKSTEINHOME & Design, filed with the Registrar.

March 13th, 2014



FASKEN MARTINEAU DuMOULIN LLP
Barristers and Solicitors
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Solicitors for the applicant

Schedule "A"

Trade-mark	Application / Registration No.	Application Filing Date	Status
GLUCKSTEINHOME & Design 	No. 1,492,095 TMA822,816	Filed August 12, 2010	Registered April 24, 2012

Declaration of use filed April 24, 2012 in respect of wares (1) and in respect of services (1)

Wares: (1) Furniture, namely, sofas, love-seats, occasional chairs, coffee tables, side tables, dining tables, dining chairs, chairs, ottomans, tables, cabinets, kitchen cabinetry, side boards, night stands, beds, headboards, armoires, dressers, shelves; tabletop items, namely, dinnerware, flatware, wooden salad bowls and serving pieces, placemats, tablecloths, napkins, napkin rings, ice buckets and punch bowls; linens and other bathroom and bedroom accessories, namely, bed linens and towels, soap dishes, tumblers, lotion pumps, tissue holders, waste baskets, towel bars, toothbrush holders, bathrobes, candles, bath salts, room spray, bath rugs, sea sponges, body brushes, duvets and duvet covers, shams, bedskirts, decorative pillows, quilts, blankets, matelasse, pillows, featherbeds; window and floor coverings; home decorating products, namely, candle sticks, vases, decorative boxes, candles, decorative bowls, baskets, hurricane lamps, picture frames, sculptures, magazine holders, pen and pencil holders, in/out boxes, desk blotters; home furnishings, namely, accent and area rugs, lamp and lights, framed artwork and mirrors; and garden products, namely, patio tables, chairs, ottomans, benches, umbrellas, umbrella stands, lounge chairs, garden stakes, garden lanterns, outdoor fountains, melamine dishes, glassware, pitchers, napkin holders, chip and dip bowls, picnic baskets, beach bags, beach towels.

Services: (1) Decorating services; kitchen design services; entertainment services, namely a television show or segment thereof on the subject of home design and decoration, food preparation, gardening and home entertaining

GLUCKSTEINHOME	No. 1,495,990	Filed September 15, 2010	Allowed March 2, 2012
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Used in Canada since at least as early as November 2000 in respect of wares (1)

Used in Canada since at least as early as 2004 in respect of wares (2)

Proposed use in Canada in respect of services (1)

Wares: (1) Furniture, namely, chairs, ottomans, tables, cabinets, side boards, night stands, beds, armoires, dressers, shelves, sofas, love-seats, occasional chairs, coffee tables, side tables, dining tables, dining chairs and headboards; tabletop items, namely, dinnerware, flatware, wooden salad bowls and serving pieces, placemats, tablecloths, napkins, napkin rings, ice buckets and punch bowls; linens and other bathroom and bedroom accessories, namely, soap dishes, tumblers, lotion pumps, tissue holders, waste baskets, towel bars, toothbrush holders, bed linens and towels; bathrobes, candles, bath bombs, bath salts, linen water, room spray, bath rugs, sea sponges, body brushes; duvets and duvet covers, shams, bedskirts, decorative pillows, quilts, blankets, matelasse, pillows, featherbeds; window and floor coverings; home decorating products, namely, candle sticks, vases, decorative boxes, candles, decorative bowls, baskets, hurricane lamps, picture frames, sculptures, magazine holders, pen and pencil holders, in/out boxes, desk blotters; home furnishings, namely, accent and area rugs, lamp and lights, framed artwork and mirrors.

Wares: (2) Garden products, namely, patio tables, chairs, ottomans, benches, umbrellas, umbrella stands, lounge chairs, garden stakes, garden lanterns, outdoor fountains, melamine dishes, glassware, pitchers, napkin holders, chip and dip bowls, picnic baskets, beach bags, beach towels.

Services: (1) Decorating services, namely, interior and exterior decorating services; kitchen design services.

GLUCKSTEINHOME & Design  GLUCKSTEINHOME	No. 1,572,085	Filed April 5, 2012	Allowed January 24, 2014
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Used in Canada since at least as early as January 2007 in respect of wares (1)

Proposed use in Canada in respect of wares (2)

Wares: (1) Furniture, namely, occasional chairs, coffee tables, side tables, dining chairs, chairs, ottomans, tables, shelves; tabletop items, namely, dinnerware, flatware, wooden salad bowls and serving pieces, namely, serving platters, serving dishes, serving trays, serving forks, serving ladles, serving spoons, serving tongs, serving bowls, serving boards, cake stands, cheese domes, cheese knives, barware, placemats, tablecloths, napkins, napkin rings, ice buckets and punch bowls; linens and other bathroom and bedroom accessories, namely, bed linens and towels, soap dishes, tumblers, lotion pumps, tissue holders, waste baskets, towel bars, toothbrush holders, bathrobes, candles, bath bombs, bath salts, linen water, fragrant room spray, bath rugs, sea sponges, body brushes, duvets and duvet covers, shams, bedskirts, decorative pillows, quilts, blankets, mattelasse, pillows, featherbeds; window coverings; home decorating products, namely, candle sticks, vases, candles, decorative bowls, baskets, hurricane lamps, picture frames, magazine holders; home furnishings, namely, lamp and lights, framed artwork and mirrors; and garden products, namely, patio tables, chairs, ottomans, benches, umbrellas, umbrella stands, lounge chairs, garden stakes, garden lanterns, outdoor fountains, melamine dishes, glassware, namely, beverage glasses, glass bowls, vases, glass ornaments, glass plates, pitchers, napkin holders, chip and dip bowls, picnic baskets, beach bags, beach towels.

Wares: (2) Furniture, namely, sofas, love-seats, dining tables, cabinets, kitchen cabinetry, side boards, night stands, beds, headboards, armoires, dressers; floor coverings; home furnishings, namely, accent and area rugs; decorative boxes, pen and pencil holders, in/out boxes, desk blotters, sculptures, lawn bowling games, bocce ball games, golf putter games.

GLUCKSTEINHOME & GH Design  GLUCKSTEINHOME	No. 1,162,893 TMA664,252	Filed December 19, 2002	Registered May 15, 2006
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Used in Canada since at least as early as December 1, 2000 in respect of wares (2)

Declaration of use filed April 7, 2006 in respect of wares (1) and in respect of services (1)

Wares: (1) Furniture, namely, chairs, ottomans, tables, cabinets, side boards, night stands, beds, armoires, dressers, shelves; tabletop items, namely, dinnerware, flatware, wooden salad bowls and serving pieces, placemats, tablecloths, napkins, napkin rings, ice buckets and punch bowls; linens and other bathroom and bedroom accessories, namely, soap dishes, tumblers, lotion pumps, tissue holders, waste baskets, towel bars, toothbrush holders, bathrobes, candles, bath bombs, bath salts, linen water, room spray, bath rugs, sea sponges, body brushes, duvets and duvet covers, shams, bedskirts, decorative pillows, quilts, blankets, mattelasse, pillows, featherbeds; window and floor coverings; home decorating products, namely, candle sticks, vases, decorative boxes, candles, decorative bowls, baskets, hurricane lamps, picture frames, sculptures, magazine holders, pen and pencil holders, in/out boxes, desk blotters; home furnishings, namely, accent and area rugs, lamp and lights, framed artwork and mirrors; and garden products, namely, patio tables, chairs, ottomans, benches, umbrellas, umbrella stands, lounge chairs, garden stakes, garden lanterns, outdoor fountains, melamine dishes, glassware, pitchers, napkin holders, chip and dip bowls, picnic baskets, beach bags, beach towels, lawn bowling games, bocci ball games, golf putter games.

Wares: (2) Furniture, namely sofas, love-seats, occasional chairs, coffee tables, side tables, dining tables, dining chairs and headboards; linens, namely bed linens and towels.

Services: (1) Decorating services; entertainment services, namely a television show or segment thereof on the subject of home design and decoration, food preparation, gardening and home entertaining.

Court File No.

FEDERAL COURT

BETWEEN:

BRIAN GLUCKSTEIN

Applicant

- and -

GLUCKSTEINHOME INC.

Respondent

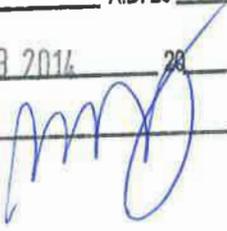
APPLICATION UNDER Sections 56 and 57(1) of the Trade-Marks Act, R.S.C. 1985, c. T-13, as amended, and Rules 300(b), 301 and 317 of the Federal Court Rules, as amended.

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the _____

day of MAR 13 2014 A.D. 20_____

Dated this MAR 13 2014 day of _____ 20_____

NOTICE OF APPLICATION


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Toronto, ON M5H 2T6

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