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Filing date: **09/23/2019**

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

Proceeding	91250202
Party	Defendant Stockdale Investment Group, Inc.
Correspondence Address	CATHRYN A. BERRYMAN WINSTEAD, P.C. 2728 N. HARWOOD STREET, SUITE 500 DALLAS, TX 75201 tmdocket@winstead.com, cberryman@winstead.com, ngraham@winstead.com no phone number provided
Submission	Motion to Dismiss - Rule 12(b)
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Signature	/Cathryn Berryman/
Date	09/23/2019
Attachments	FILED_Applicant_Motion_and_Brief_to_Dismiss_Opposer_Stockdale_Capital_N otice_of_opposition_of_th.pdf(179213 bytes) EXHIBIT_C_-_ttabvue-88006185-EXT-5_TTAB_Order.pdf(65683 bytes) EXHIBIT_A_-_FEDERAL_FILING_NOTICE.pdf(148730 bytes) EXHIBIT_E_-_Opposer_Answer.pdf(141102 bytes) EXHIBIT_F_-_Opposer_Brief.pdf(4050085 bytes) EXHIB- IT_D_-_Applicant_s_First_Amended_Complaint_and_Application_for_TRO_an d_Preliminary_and_Per.pdf(5018943 bytes) EXHIBIT_G_-_Expert_Report.pdf(1596768 bytes) exhibit_B_ttabvue-88006185-EXT-7.pdf(114482 bytes)

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

In the Matter of Serial No. 88/006185
Mark: STOCKDALE
Application Filing Date: 06/19/2018

Stockdale Capital Partners, LLC

Opposer,

v.

Stockdale Investment Group, Inc.

Applicant

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Opposition No. 91250202

Box TTAB
Commission for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION AND BRIEF TO DISMISS

Applicant Stockdale Investment Group, Inc., a Texas corporation, having an address of 150 Turtle Creek Boulevard, Suite 209A, Dallas, Texas 75207, (“Applicant”) is the applicant for the above-referenced application Serial No. 88/006185 for the mark STOCKDALE (the “Application”). Opposer Stockdale Capital Partners, LLC, a Delaware corporation having an address of 10850 Wilshire Blvd., Suite 1050, Los Angeles, California 90024 (“Opposer”) has filed a notice of opposition. Applicant believes that there are sufficient grounds for dismissal of this opposition, and respectfully files this motion and brief to dismiss, as follows:

I. LACK OF JURISDICTION

1. Applicant is dissatisfied with the Board’s granting of a 90-day extension of time to oppose the Application for good cause. The Board denied Applicant’s request for reconsideration based on Opposer’s false statements on settlement discussions, and, as a direct result, Opposer filed its notice of opposition. Pursuant to TBMP Section 211.02, Applicant hereby files this motion to dismiss on grounds that Opposer improperly obtained an extension of the opposition period and therefore the notice of opposition should not be considered timely filed.

2. Applicant is the owner of common law rights in and to the mark STOCKDALE used in interstate commerce on or in connection with *real estate services, namely, acquisition and management of commercial real estate; real estate brokerage services; real estate leasing services; real estate investment asset and property management services* in Class 036, and *real estate development services in the commercial real estate field* in Class 037, since as early as 1989, and related pending Application.

3. On or about August 24, 2018, Applicant filed a trademark infringement lawsuit in the United States District Court for the Southern District of Texas (Houston Division) against Opposer and its affiliates, claiming priority and likelihood of confusion arising from its unauthorized use of the mark STOCKDALE in connection with its own real estate investment asset and property management services and real estate development services. This case is titled *Stockdale Investment Group, Inc. d/b/a Stockdale vs. Stockdale Capital Partners, LLC; Stockdale Capital Partners RE Fund I GP, LLC; Stockdale Capital Partners Real Estate Fund, LP; Stockdale Capital RE Investments, LLC; Stockdale Capital RE, LLC; and Stockdale Capital RE, LLC; and Stockdale Capital Services, LLC (Case No. 4:18-cv-02949)* (the “Texas Lawsuit”). Proper notice of the Texas Lawsuit and the Application was provided to the Director of the U.S. Patent and Trademark Office in a Report Of The Filing Or Determination Of An Action Regarding A Patent Or Trademark issued by the Clerk of the Court on or about August 27, 2018, a copy of which is attached as Exhibit A.

4. Discovery in the Texas Case has been completed. Following the close of discovery, Opposer filed a motion for summary judgement and reply, and Applicant filed a response, all of which are pending before the District Court. While Applicant and Opposer attempted to set up settlement discussions related to the mark STOCKDALE in the Texas Lawsuit, their settlement discussions were limited to a brief telephone conference on or about April 8, 2019, and were concluded without mutual agreement or other resolution.

5. The Application published for opposition on or about April 16, 2019. Opposer waited to file its first 90-Day request for extension of time to oppose for good cause the Application until May 6, 2019 (the “First Extension Request”). Opposer explicitly stated that “good cause is established for this request by: The potential opposer is engaged in settlement discussions with applicant” in the First Extension Request. The Board issued an order granting a 90-day extension to Opposer based upon this statement of good cause on or about May 7, 2019 (the “Extension Order”) and Applicant received notice of the Extension Order by email.

6. According to TBMP Sections 207.01 and 207.02, good cause or consent is required to obtain the first 90-day extension of time to oppose. Circumstances that may support a finding of good cause include the potential opposer’s need to investigate the claim or the potential opposer’s need to confer with or obtain counsel. See TMBP Section 207.02. This ground for good cause does not apply since Opposer retained trademark counsel in the Texas Action in 2018 and it is well aware of Applicant’s claim of priority and likelihood of confusion made in the Texas Action. Other circumstances for good cause include an applicant’s consent to the extension. However, no consent was sought from Applicant prior to Opposer’s filing of the First Extension Request. See TMBP Section 207.02. Circumstances for good cause further include settlement negotiations between the parties, which is the exact basis cited by Opposer in its First Extension Request.

7. To be engaged in settlement discussions requires the on-going participation of Applicant. However, contrary to Opposer’s representations to the Board, as of the date of the filing of the First Extension Request, Applicant was not engaged in settlement discussions with Opposer. In fact, Opposer had prior actual knowledge of the cessation of settlement discussions in April, and misrepresented the status of those discussions to the Board in order to obtain a longer extension of time from 30-days to 90-days, which caused unnecessary delay and cost to Applicant. Accordingly, the First Extension Request for 90-days should never have been accepted and the Board should have denied any such request for extension of time.

8. Opposer is well-aware of its misleading statements made in the First Extension Request. In an attempt to cover itself, its trial counsel reintroduced an offer of settlement 8 days after filing the First Extension Request and the Board's issuance of its order granting the First Extension Request. That offer was rejected by Applicant, and no further settlement discussions were planned or anticipated in lieu of completing discovery and depositions. This post-filing action cannot establish "good cause" for Opposer's false statements made to the Board to obtain a longer extension of time.

9. According to 37 CFR Section 11.18, the party presenting any filing to the Board is certifying that the statements made in such filing are believed to be true, and such party shall be subject to the penalties of perjury for knowingly and willfully making false, fictitious or fraudulent statements or representations, and violations of this section may "jeopardize the probative value of the paper." Such filing party also is certifying that to the best of his/her knowledge, information and belief, the paper is not being presented for an improper purpose, including harassment or unnecessary delay.

10. Opposer repeated its misleading statements as to on-going settlement discussions with Applicant in Opposer's response dated July 3, 2019, to the Board's denial of the request for reconsideration. See Exhibit B. Contrary to Opposer's statements to the Board, the parties' settlement conference on April 8, 2019, ended with Applicant's rejection of Opposer's offer of co-existence and a firm statement from Applicant that it would proceed with discovery and depositions in preparation for trial.

11. Despite Opposer's claims made to the Board, the possibility of a future settlement offer being made is not a basis for reasonable belief and grounds for good cause. Opposer stated unequivocally to the Board that "the parties are engaged in settlement discussions." Engagement requires knowledge and participation of Applicant, and Applicant's belief was that settlement discussions concluded without resolution on April 8, 2019.

12. Applicant further relied upon the Board's subsequent order to vacate its order, granting the 90-day extension dated July 8, 2019, and termination of the extension proceeding. See Exhibit C. Applicant is dissatisfied with the Board's subsequent reinstatement of the extension proceeding after the entry of an order of termination, primarily based upon Opposer's post-filing settlement offer of May 14, 2019. It is clear from Opponent's own statements that Applicant rejected that settlement offer for co-existence. This post-filing offer was essentially the same settlement offer presented to and likewise rejected by Applicant during the parties' conference call on April 8, 2019. This post-filing settlement offer was the only evidence considered by the Board, and only Opposer's unilateral and incorrect belief that settlement discussions were on-going were found by the Board to be the basis for good cause in support of the extension of time to oppose. Opposer knew or should have known that this co-existence settlement offer would likewise be rejected by Applicant before its 90-day extension was filed on May 6, 2019, and its second settlement offer was made post-filing (8 days later) on May 14, 2019. These self-serving statements are material misrepresentations made to the Board to support the 90-day extension request, and, as such, cannot support a finding of reasonableness in Opposer's stated belief.

13. Applicant respectfully requests that the Board follow its own precedent to find notice of opposition untimely where the parties were not engaged in bilateral settlement negotiations at the time of filing of the extension request by an opposer, and the open-ended invitations for a party to propose future settlement were insufficient. In Central Mfg. Inc. v. Third Millenium Technology, Inc., 61 U.S.P.Q. 2d (BNA) 1210, this Board ruled that:

“[i]nasmuch as applicant has shown that it was not discussing settlement with opposer and did not agree to the proposed extensions, applicant has refuted the representations of fact made by the opposer in its third and fourth requests to extend the opposition period. Thus, it is clear that the two extension requests were based on untruths and were filed in bad faith for the improper purpose of

obtaining a benefit from the Board to which opposer was not entitled.” Id. at 1212.

For the same reasons stated in Central Manufacturing, Applicant’s statements refuting Opposer’s claims of on-going settlement at the time of its filing of the extension requests should have been given due weight by the Board. Applicant respectfully requests that its refuting statements should be given due and proper consideration by the Board under this motion and brief to dismiss.

14. The First Extension Request for the longer 90-day period was filed by Opposer without good cause in an attempt to harass and cause unnecessary delay or needless increase in the cost of the Application. Applicant’s legal rights to obtain and use trademark registration for the mark STOCKDALE are highly likely to be impaired or delayed unnecessarily and additional costs incurred by both parties (including litigating two different actions over the same mark STOCKDALE in two different judicial forums). Opposer has made misleading representations of fact to the Board in order to obtain the benefit of extensions of time to oppose to which Opposer was not entitled at the time of filing. Based on the foregoing, Applicant respectfully claims that Opposer’s current notice of opposition is untimely and should be dismissed.

II. LACK OF STANDING

15. Applicant further contends that Opposer does not have standing to file an opposition and thus, the filing of this notice of opposition is merely a ruse to delay the prosecution of the Application and is made without merit.

16. As previously stated, on or about August 24, 2018, Applicant filed a trademark infringement lawsuit in the United States District Court for the Southern District of Texas (Houston Division) against Opposer and its affiliates, claiming priority and likelihood of confusion arising from its unauthorized use of the mark STOCKDALE in connection with its own real estate investment asset and property management services and real estate development

services. Copies of Applicant's First Amended Complaint and Application for Temporary Restraining Order and Preliminary and Permanent Injunctive Relief filed December 14, 2018 ("Complaint"), and Opposer's Answer filed December 28, 2018 ("Answer"), Brief in Opposition to Applicant's Application For Preliminary Injunctive Relief filed January 4, 2019 ("Brief"), and Expert Report of Nevium Intellectual Property Consultants dated July 25, 2019 ("Expert Report") in the Texas Lawsuit are attached hereto as Exhibits D, E, F and G, respectively.

17. Applicant claims a likelihood of confusion between Opposer's use of the mark STOCKDALE in connection with real estate investment and property management services based on priority of use under Applicant's common law trademark rights, and damages resulting therefrom. See Complaint Paragraphs 36, 39, 51, 60, and 63. However, Opposer denies any likelihood of confusion or damages. See Answer 36, 39, 51, 60 and 63. Opposer further states in its Brief that "based on the nature of [Applicant's] business, the sophistication of the parties involved, and the value of the real estate projects at issue, it is virtually impossible for any alleged confusion to every result in harm to [Opposer] or [Applicant]." (emphasis added)

18. To have standing to oppose a Federal trademark application, Opposer must show a reasonable basis for its belief that it will suffer damage if the mark is registered and a real interest (or direct and personal stake) in the outcome of the proceeding. TMEP Section 309.03(a) and (c) and 1503.01. A "real interest" can be proven by a claim of a likelihood of confusion that is not wholly without merit, including claims of prior use of a confusingly similar mark. Standing also can be pled if Opposer has asserted a likelihood of confusion in another proceeding involving the same marks, which is not present in this case. TMEP Section 309.03(c). Lastly, standing also can be based upon a Section 2(f) refusal of a pending application filed by Opposer citing Applicant's mark (TMEP Section 309.03(c)), but, to Applicant's knowledge, there is no such Section 2(f) refusal because there is no pending application for a mark containing STOCKDALE filed in the name of Opposer before the USPTO.

19. Discovery has now been concluded in the Texas Lawsuit. To Applicant's knowledge, after extensive discovery and expert reports over the last 10 months, Opposer has not changed its resolute position espoused in its Answer and Brief that there is no likelihood of confusion and there is no harm from Opposer's use of the mark STOCKDALE. Significantly, Opposer's own expert witness opined that "the term "STOCKDALE" does not provide a benefit or contribution to [Opposer's] business or operations" and Opposer relies on its personal customer business relationships in order to solicit and provide property investment services rather than the name or mark STOCKDALE. *See* Expert Report at page 5.

20. According to 37 CFR Section 11.18, the party presenting any filing to the Board is certifying that the statements made in such filing are believed to be true, and such party shall be subject to the penalties of perjury for knowingly and willfully making false, fictitious or fraudulent statements or representations, and violations of this section may jeopardize the probative value of the filing. Such filing party also is certifying that to the best of his/her knowledge, information and belief, the paper is not being presented for an improper purpose, including harassment or unnecessary delay.

21. Opposer's pleadings under oath in the Texas Lawsuit unequivocally contradict any reasonable basis for any belief that it will suffer damages and that there is a likelihood of confusion arising from Opposer's use of the mark STOCKDALE. Opposer's Expert Report likewise has been submitted in support of its pleadings in the Texas Lawsuit. These pleadings were known to, and made under oath, by Opposer prior to its filing of the first extension of time citing good cause, and its response to Applicant's request for reconsideration of extension of time to oppose, and this resulting notice of opposition.

22. However, in its notice of opposition, Opposer now makes wholly contradictory statements in order to claim a "real" interest and legal standing to oppose the Application and bring this opposition action. Opposer claims, as statutory grounds to oppose, two general statements that Applicant's demands in the Texas Lawsuit are interfering with Opposer's use of

and right to use Opposer's names, causing harm to Opposer, which harm is unspecified and unknown, and that the registration of the mark at issue would further interfere with the Opposer's current business plans, which plans likewise are unspecified and unknown. See Section 7 of Opposer's notice of opposition. To prevail, however, Opposer must prove these unknown claims of damages and harm. See TMEP Section 309.03(c)(1).

23. TMEP Section 303.03 further specifies that the term "damage" as used in Trademark Act Section 13 and 14, 15 U.S.C. Sections 1063 and 1064, concerns a party's standing to file an opposition, which standing must be rooted in a "reasonable basis for its belief in damage." The allegations in support of Opposer's belief of damage also must have a "reasonable basis in fact." See TMEP Section 303.03; see also Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023, 1027 (Fed. Cir. 1999) (citing Universal Oil Products v. Rexall Drug & Chemical Co., 463 F.2d 1122, 174 USPQ 458, 459-60 (CCPA 1972) and stating that the belief of damage alleged by plaintiff must be more than a subjective belief); McDermott v. San Francisco Women's Motorcycle Contingent, 81 USPQ2d 1212, 1215 (TTAB 2006), aff'd unpub'd, 240 Fed. Appx. 865 (Fed. Cir. July 11, 2007), cert. denied, 552 U.S. 1109 (2008). Otherwise, there is no proper standing for Opposer to file this notice of opposition.

24. While Opposer has asserted claims that the mark at issue is primarily merely a surname, is not inherently distinctive, and has not acquired distinctiveness in the Texas Lawsuit and this notice of opposition, Opposer's notice pleading fails to show in any way how these two grounds alone cause damage or harm to Opposer. Again, there are merely two general assertions of damages in Section 7 of Opposer's notice of opposition, but there is no correlation in its remaining statements (albeit incomplete and out-of-context representations to the Texas Lawsuit pleadings, orders and discovery to date) to support (or even identify) its claims for damages. Upon information and belief, Applicant believes that Opposer's "real" interest is not damage or harm, but instead to delay this process by raising facts in disparaging manner and unsupported claims such that a mark registration will not issue before trial in the Texas Lawsuit.

25. Even if Opposer could prove the selective, partial facts set forth in its notice of opposition to show a surname refusal or a lack of inherent or acquired distinctiveness, taking Opposer at its word, then Opposer by its own admissions is neither being harmed or damaged by, nor causing harm or damage to, Applicant's use of the mark STOCKDALE. Thus, absent such harm or damage, Opposer does not have standing to file this opposition or even the statutorily-required reasonable basis in fact for its belief that it will be damaged by the registration of the Application.

26. Opposer further has filed this notice of opposition on grounds of fraud on the USPTO citing In re Bose Corp., 580 F. 3d 1240, 91 USPQ2d (BNA) 1938 (Fed. Cir. 2009) based on unsubstantiated allegations that Applicant's president and attorney of record have made willfully false statements in filing the Application and other responses, including a Section 2(f) declaration of acquired distinctiveness, with prior knowledge of Opposer. However, Opposer's allegations are wildly off-base, and are insufficient to support a claim of fraud under In re Bose Corp. and other legal precedent of the Board and Federal courts in trademark appeals and oppositions.

27. In the In re Bose Corp. case, the court clearly stated that a party seeking to cancel a trademark registration for fraudulent procurement bears a heavy burden of proof and "indeed the very nature of the charge of fraud requires that it be proven 'to the hilt' with clear and convincing evidence – [t]here is no room for speculation, inference, or surmise, and any doubt must be resolved against the charging party." Id. at 1243; see also San Juan Prods., Inc. v. San Juan Pools of Kan., Inc., 849 F. 2d 468, 472 (10th Cir. 1988) (stating that in determining whether a statement is fraudulent, courts must focus on the declarant's subjective, honestly held, good faith belief). For Opposer to prevail on its fraud claim under In re Bose Corp., Opposer can only prove that the Application for the mark at issue has been obtain fraudulently if Applicant knowingly makes a false, material representation with the intent to deceive the USPTO, and

“inferences drawn from less than clear and convincing evidence cannot satisfy the deceptive intent requirement.” Id. at 1245.

28. Applicant has not misled this Board as to fraud being committed based on its knowledge of Opposer prior to filing the Federal application for the mark at issue and the Section 2(f) declaration in the prosecution thereof. As the Federal courts have repeatedly held, a senior user of a mark is entitled to claim exclusive rights and seek a Federal registration even though there may exist and it knows of a junior user of the mark. See Citibank, N.A. v. Citibanc Group, Inc., 724 F.2d 1540 (11th Cir. 1988), citing 4 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 31.21[3][d][ii] (3rd ed. 1996) (“If an applicant has a good faith belief that it is the senior user, then the oath cannot be fraudulent. Any alleged failure to disclose use by junior users is irrelevant and could not be material to the grant of a federal registration.”); see also Pebble Beach Co. v. Tour 18 I, Ltd., 942 F. Supp. 1513, 1538 (SD Texas 1996); aff’d as modified, 155 F. 3d 526 (5th Cir. 1998) (finding that a senior user’s knowledge of a junior user’s use of the same mark is irrelevant where the senior user had a good faith belief that it was the senior user of the mark, and the senior user’s registration of the mark without mentioning the junior user’s use of the mark does not constitute fraud on the USPTO.”). As clearly shown in the Texas Lawsuit and other pleadings to date in the extension of time to oppose, Applicant (and any of its declarants and trademark counsel of record) have a reasonable good faith belief that Applicant is a senior trademark user trying to enforce its trademark rights against a junior user. Awareness of Opposer and its alleged defenses prior to filing the Application or any Section 2(f) declaration does not negate such good faith belief.

29. Neither does Opposer’s belief that its investment services are “substantially bigger” negate Applicant’s good faith belief in its substantially exclusive use of the mark at issue. Federal courts have held when comparing marks in use that the overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the senior user from adverse commercial impact due to use of a similar mark by a newcomer. See In re

Shell Oil Co., 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the senior user. See Hewlett-Packard Co. v. Packard Press, Inc., 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988). The In re Shell Oil court enumerated that bigger size does not matter over priority of time in use, as follows:

“Even if the overlap between consumers of registrant's RIGHT-A-WAY services and Shell's RIGHT-A-WAY services were small in relation to the total number of Shell customers, it is not de minimis in relation to the registrant's customers. A newcomer does not gain the right to register a substantially identical mark simply because the number of persons exposed to the registrant's mark may be small in relation to the newcomer's volume of use. The registrant/senior user is safeguarded by the trademark law, as is the consuming public, from likelihood of confusion caused by the entry of a junior user of a confusingly similar mark. Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 198, 105 S. Ct. 658, 663-64, 83 L. Ed. 2d 582, 224 USPQ 327, 331 (1985). The trademark law not only protects the consumer from likelihood of confusion as to commercial sources and relationships, but also protects the registrant and senior user from adverse commercial impact due to use of a similar mark by a newcomer. Id. at 1208.

Preservation of senior rights and priority in use is exactly the reason why Applicant filed the Application and the 2(f) declaration for the mark at issue in the first place – that is, to protect its senior trademark rights from Opposer’s junior use in the same commercial real estate market. Based on the foregoing, Opposer has not met its high burden of proof for fraud, and thus, its notice of opposition based on such fraud claim should be dismissed.

30. While Opposer has made other misleading statements of fact in its petition to oppose, including without limitation, Applicant’s arguments of inherent distinctiveness and/or

acquired distinctiveness made in the alternative during prosecution and the mark at issue being primarily merely a surname and not inherently distinctive and/or acquired distinctiveness, Applicant reserves its right to redress such unsubstantiated claims and assert defenses in its answer, should the Board not grant this motion and brief to dismiss.

Based on the foregoing, Applicant hereby prays that the Board grant its motion and brief to dismiss Opposer's notice of opposition and terminate this proceeding, place the Application in line for registration, and any such other relief as the Board may see fit to award.

Dated on September 23, 2019.

Respectfully submitted,

Stockdale Investment Group, Inc.

/S/ Cathryn A. Berryman

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Tom Van Arsdel
Attorneys for Applicant

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ELECTRONIC MAIL FILING CERTIFICATE

I hereby certify that this motion and brief to dismiss is being submitted to the USPTO TTAB by electronic filing in ESTTA on September 23, 2019.

Signed: /S/ Cathryn A. Berryman

Date: September 23, 2019

CERTIFICATE OF SERVICE

I certify that a true copy of this motion and brief to dismiss has been served by email to Opposer's attorney of record on September 23, 2019, at the following email addresses:

Collin A. Rose
Chamberlain, Hrdlicka, White, Williams & Aughtry, P.C.
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/S/ Cathryn A. Berryman

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

DELGIZZI

July 8, 2019

Applicant: *Stockdale Investment Group, Inc.*
Serial No.: 88006185

By the Trademark Trial and Appeal Board:

No response to the Board's order dated June 17, 2019 having been received, the Board's order dated May 7, 2019 is vacated and the extension of time process is terminated. The application will be forwarded for issuance of a registration in due course.

Please do not hesitate to contact the Trademark Trial and Appeal Board for any questions relating to order.

Applicant's Correspondence Address:

CATHRYN A BERRYMAN
WINSTEAD PC
2728 N HARWOOD STREET, SUITE 500
DALLAS, TX 75201 UNITED STATES

Potential Opposer's Correspondence Address:

COLLIN A ROSE
CHAMBERLAIN HRDLICKA WHITE WILLIAMS & AUGHTRY PC
1200 SMITH ST, 14TH FLOOR
HOUSTON, TX 77002 UNITED STATES

EXHIBIT A

TO: <p style="text-align: center;">Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450</p>	<p>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</p>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court for the Southern District of Texas on the following Trademarks or Patents.

Docket No. 4:18-cv-02949	Date Filed: 8/24/2018	U.S District Court SOUTHERN DISTRICT OF TEXAS
Plaintiff(s) Stockdale Investment Group, Inc. d/b/a Stockdale		Defendant(s) Stockdale Capital Partners Re Fund I GP, LLC, et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
A copy of the complaint is being mailed with this form.		
1.		
2.		
3.		
4.		
5.		
In the above-entitled case, the following patent(s)/trademark(s) have been included:		
DATE INCLUDED	INCLUDED BY	Amendment Answer Cross Bill Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1.		
2.		
3.		
4.		
5.		
In the above-entitled case, the following decision has been rendered or judgment issued:		
DECISION/JUDGMENT		
Clerk: David J. Bradley, Clerk	By Deputy Clerk: C Krus	Date: 8/27/2018

3. Defendants admit the allegations in paragraph 3.

4. Defendants admit the allegations in paragraph 4.

5. Defendants admit the allegations in paragraph 5.

6. Defendants admit the allegations in paragraph 6.

7. Defendants admit the allegations in paragraph 7.

8. Defendants admit the allegations in paragraph 8 with the exception of any legal conclusions and assertions regarding effectuating service to which no response is required.

9. Defendants admit the allegations in paragraph 9 with the exception of any legal conclusions and assertions regarding effectuating service to which no response is required.

10. Defendants admit the allegations in paragraph 10 with the exception of any legal conclusions and assertions regarding effectuating service to which no response is required.

11. With regard to paragraph 11, Defendants admit that Plaintiff and Defendants are diverse in citizenship. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegation with respect to the amount in controversy in this lawsuit. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 11. To the extent necessary, Defendants deny the allegations in paragraph 11.

12. With regard to paragraph 12, Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 12. To the extent necessary, Defendants deny the allegations in paragraph 12.

13. Paragraph 13 expresses legal conclusions and assertions regarding the Court's authority to issue injunctive relief to which no response is required. To the extent necessary, Defendants deny the allegations and claim for relief in paragraph 13.

14. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 14, and therefore, deny same.

15. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 15, and therefore, deny same.

16. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 16, and therefore, deny same. To the extent paragraph 16 references documents, Defendants respond that those documents speak for themselves.

17. Defendants deny that Plaintiff has established common-law trademark rights in the Stockdale name as associated with real estate design, construction, and property management. Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations in paragraph 17, and therefore, deny same.

18. Defendants deny that Stockdale is an arbitrary mark. Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations in paragraph 18, and therefore, deny same. Except as expressly admitted, Defendants deny the allegations in paragraph 18.

19. Defendants deny that Stockdale has acquired a secondary meaning through Stockdale's use of the alleged mark. Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations in paragraph 19, and therefore, deny same. To the extent that paragraph 19 includes legal conclusions and assertions, no response is required. To the extent a response is required, Defendants deny all allegations in paragraph 19.

20. Defendants admit that they are a series of companies that operate collectively as a real estate services group. Defendants admit that Stockdale Capital RE, LLC was incorporated on March 26, 2013. Defendants admit that Stockdale Capital Services, LLC was formed on May

16, 2016. Defendants admit that Stockdale Capital Partners Real Estate Fund, LP was formed on May 26, 2015. Defendants admit that Stockdale Capital Partners RE Fund I GP, LLC was formed on May 26, 2015. Defendants admit that Stockdale Capital RE Investments, LLC was formed on May 16, 2015. Defendants admit that Stockdale Capital Partners, LLC was formed on February 26, 2013. Defendants admit that Stockdale Management LLC was formed on December 6, 2013. Defendants admit that Stockdale Acquisitions, LLC was formed on January 8, 2016. Defendants admit that Stockdale/SG, LLC was formed on December 16, 2015. Defendants admit that they are operating in the State of Texas. Except as expressly admitted, Defendants deny the allegations in paragraph 20.

21. To the extent paragraph 21 attributes any statements to a website, Defendants respond that the document speaks for itself and otherwise deny the allegations in paragraph 21.

22. Defendants admit that the logo depicted in paragraph 22 is their logo. Defendants deny the remaining allegations in paragraph 22, including but not limited to the allegation that Defendants took unfair advantage of Stockdale's trade goodwill as well as the alleged similarities between the "marks" as well the websites, which are denied. To the extent paragraph 22 attributes any statements to a website, Defendants respond that the document speaks for itself and otherwise deny the allegations. Except as expressly admitted, Defendants deny the remaining allegations in paragraph 22.

23. Defendants deny the allegations in paragraph 23.

24. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 24, and therefore, deny same. To the extent that paragraph 24 includes legal conclusions and assertions, no response is required. To extent a response is required, Defendants deny all allegations in paragraph 24.

25. Defendants admit that they have become involved with the redevelopment of a shopping mall in downtown San Diego called Horton Plaza Mall. To the extent paragraph 25 references documents, Defendants respond that those documents speak for themselves. Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations in paragraph 25, and therefore, deny same. Except as expressly admitted, Defendants deny all allegations in paragraph 25.

26. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 26. To the extent necessary, Defendants deny the allegations in paragraph 26.

27. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 27, and therefore, deny same.

28. With regard to paragraph 28, Defendants admit that Plaintiff served a letter on June 26, 2018, which documents speaks for itself. Defendants admit that they are currently conducting a capital raise. Defendants deny the remaining allegations in paragraph 28.

29. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 29. To the extent necessary, Defendants deny the allegations in paragraph 29.

30. Defendants deny the allegations in paragraph 30.

31. Defendants deny the allegations in paragraph 31.

32. Defendants incorporate their responses above by reference in response to paragraph 32.

33. Defendants deny the allegations in paragraph 33.

34. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 34. To the extent necessary, Defendants deny the allegations in paragraph 34.

35. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 35. To the extent necessary, Defendants deny the allegations in paragraph 35.

36. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 36. To the extent necessary, Defendants deny the allegations in paragraph 36.

37. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 37. To the extent necessary, Defendants deny the allegations in paragraph 37.

38. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 38. To the extent necessary, Defendants deny the allegations in paragraph 38.

39. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 39. To the extent necessary, Defendants deny the allegations in paragraph 36 and deny Plaintiff is entitled to the relief requested in paragraph 39.

40. Defendants incorporate their responses above by reference in response to paragraph 40. Except as expressly admitted, Defendants deny Plaintiff's allegations in the preceding paragraphs.

41. Defendants deny the allegations in paragraph 41.

42. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 42. To the extent necessary, Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in paragraph 43.

44. Defendants deny the allegations in paragraph 44.

45. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 45. To the extent necessary, Defendants deny the allegations in paragraph 45.

46. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 46. To the extent necessary, Defendants deny the allegations in paragraph 46 and deny Plaintiff is entitled to the relief requested in paragraph 46.

47. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 47. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 47.

48. Defendants incorporate their responses above by reference in response to paragraph 48. Except as expressly admitted, Defendants deny Plaintiff's allegations in the preceding paragraphs.

49. Defendants deny the allegations in paragraph 49.

50. Defendants deny the allegations in paragraph 50.

51. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 51. To the extent necessary, Defendants deny the allegations in paragraph 51.

52. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 52. To the extent necessary, Defendants deny the allegations in paragraph 52.

53. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 53. To the extent necessary, Defendants deny the allegations in paragraph 54.

54. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 54. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 54.

55. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 55. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 55.

56. Defendants incorporate their responses above by reference in response to paragraph 56. Except as expressly admitted, Defendants deny Plaintiff's allegations in the preceding paragraphs.

57. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 57. To the extent necessary, Defendants deny the allegations in paragraph 57.

58. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 58. To the extent necessary, Defendants deny the allegations in paragraph 58.

59. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 59. To the extent necessary, Defendants deny the allegations in paragraph 59.

60. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 60. To the extent necessary, Defendants deny the allegations in paragraph 60.

61. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 61. To the extent necessary, Defendants deny the allegations in paragraph 61.

62. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 62. To the extent necessary, Defendants deny the allegations in paragraph 62.

63. Defendants deny the allegations in paragraph 63.

64. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 64. To the extent necessary, Defendants deny the allegations in paragraph 64.

65. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 65. To the extent necessary, Defendants deny the allegations in paragraph 65.

66. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 66. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 66.

67. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 67. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 67.

68. Defendants incorporate their responses above by reference in response to paragraph 68. Except as expressly admitted, Defendants deny Plaintiff's allegations in the preceding paragraphs.

69. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 69. To the extent necessary, Defendants deny the allegations in paragraph 69.

70. Defendants incorporate their responses above by reference in response to paragraph 70. Except as expressly admitted, Defendants deny Plaintiff's allegations in the preceding paragraphs.

71. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 71. To the extent necessary, Defendants deny the allegations in paragraph 71.

72. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 72. To the extent necessary, Defendants deny the allegations in paragraph 72.

73. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 73. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 73.

74. Defendants incorporate their responses above by reference in response to paragraph 74. Except as expressly admitted, Defendants deny Plaintiff's allegations in the preceding paragraphs.

75. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 75. To the extent necessary, Defendants deny the allegations in paragraph 75.

76. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 76. To the extent necessary, Defendants deny the allegations in paragraph 76.

77. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 77. To the extent necessary, Defendants deny the allegations in paragraph 77.

78. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 78. To the extent necessary, Defendants deny the allegations in paragraph 78.

79. Defendants incorporate their responses above by reference in response to paragraph 79. Except as expressly admitted, Defendants deny Plaintiff's allegations in the preceding paragraphs.

80. The statute referenced in paragraph 80 speaks for itself and Defendants need not admit or deny the allegations in paragraph 80.

81. Defendants deny the allegations in paragraph 81.

82. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 82. To the extent necessary, Defendants deny the allegations in paragraph 82.

83. Defendants deny the allegations in paragraph 83.

84. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 84. To the extent necessary, Defendants deny the allegations in paragraph 84 and deny Plaintiff is entitled to the relief requested in paragraph 84.

85. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 85. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 85.

86. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 86. To the extent necessary, Defendants deny the allegations in paragraph 86.

87. Defendants incorporate their responses above by reference in response to paragraph 87. Except as expressly admitted, Defendants deny Plaintiff's allegations in the preceding paragraphs.

88. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 88. To the extent necessary, Defendants deny the allegations in paragraph 88 and deny Plaintiff is entitled to the relief requested in paragraph 88.

89. Defendants incorporate their responses above by reference in response to paragraph 89.

90. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 90. To the extent necessary, Defendants deny the allegations in paragraph 90.

91. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 91. To the extent necessary, Defendants deny the allegations in paragraph 91.

92. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 92. To the extent necessary, Defendants deny the allegations in paragraph 92.

93. Defendants deny the allegations in paragraph 93.

94. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 94. To the extent necessary, Defendants deny the allegations in paragraph 94 and deny Plaintiff is entitled to the relief requested in paragraph 94.

95. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 95 and therefore, deny same.

96. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 96. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 96.

97. Defendants incorporate their responses above by reference in response to paragraph 97.

98. Defendants need not admit or deny the conclusory statements and legal conclusions in paragraph 98. To the extent necessary, Defendants deny Plaintiff is entitled to the relief requested in paragraph 98.

99. Defendants need not admit or deny the statement in paragraph 99 in which Plaintiff demands a jury.

100. Defendants deny all allegations not expressly admitted in their Answer and to which the Court deems a response necessary.

AFFIRMATIVE DEFENSES

101. Defendants assert that Plaintiff's claims are barred by the applicable statute of limitations and laches.

102. Defendants assert that certain of Plaintiff's claims fail to state a claim upon which relief can be granted.

103. Defendants assert that Plaintiff has suffered no damages.

104. Defendants assert the affirmative defense of fair use with respect to the name Stockdale.

105. Defendants also assert that Plaintiff's request for injunctive relief is without merit, groundless, and frivolous and accordingly, Defendants are entitled to their attorney's fees and costs in responding to the request for injunctive relief.

REQUEST FOR RELIEF

For the foregoing reasons, Defendants Stockdale Capital Partners, LLC, Stockdale Capital Partners Fund I GP, LLC, Stockdale Capital Partners Real Estate Fund, LP, Stockdale Capital Investments, LLC, Stockdale Capital RE, LLC, Stockdale Capital Services, LLC, Defendant Stockdale Management, LLC, Defendant Stockdale/SG, LLC, and Defendant Stockdale Acquisitions, LLC request the Court render a take nothing judgment against Plaintiff Stockdale Investment Group, Inc. d/b/a Stockdale, request that the Court award Defendants their

attorney's fees and costs based on the groundless request for injunctive relief, and for such other and further relief, in law and equity, to which Defendants may be justly entitled in to this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record in accordance with the District's ECF service rules and the Federal Rules of Civil Procedure on this 28th day of December, 2018.

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SUMMARY OF ARGUMENT¹

1. Plaintiff's claims have only become more tenuous since this issue was last before the Court. Since the status conference on September 20, 2018 where the Court noted that it did not believe the record supported injunctive relief, but permitted the parties to engage in limited discovery in advance of the preliminary injunction hearing, Plaintiff's claim for injunctive relief has only become more tenuous and non-existent.² **Most specifically, the limited discovery has revealed that Plaintiff was aware of Defendants and their businesses in 2016, and admittedly by early 2017 at the very latest, but yet waited almost 2 years to improperly seek injunctive relief.** This fact alone militates against a finding of irreparable harm requires a denial of the request for injunctive relief in accordance with well settled Fifth Circuit precedent.³

2. Plaintiff seeks injunctive relief from this Court and claims that it will suffer immediate and irreparable injury should an injunction not issue.⁴ The apparent urgency of Plaintiff's request is wholly inconsistent with Plaintiff's conduct and the evidence before this Court. Around the middle of 2016, Plaintiff first became aware that another entity using the name Stockdale existed.⁵ After becoming aware of Defendants, Plaintiff went to its attorneys at Winstead.⁶ On the advice of counsel and after becoming aware of the existence of Defendants, on February 10, 2017, Plaintiff registered the company Stockdale Capital LLC with the Texas Secretary of State.⁷ At the very least, Plaintiff was aware of Defendants at this time, approximately one and a half years prior to the request for injunctive relief. Despite this obvious

¹ Defendants incorporate the "Statement of the Issues and Standard of Review" and "Nature and Stage of the Proceeding" sections from Plaintiff's Brief. (Doc. 20).

² (Minute Entry on September 20, 2018).

³ See *AMID, Inc. v. Medic Alert Found. United States, Inc.*, 241 F. Supp. 3d 788, 821 (S.D. Tex. 2017).

⁴ (Doc. 17, ¶¶ 89–96); (Doc. 20, at 20).

⁵ Ex. A, Deposition of Plaintiff Corporate Representative, Kenneth Pratt, 112:12–15; 114:5–12

⁶ Ex. A, 112:12–25.

⁷ Ex. B, STOCKDALE 000233–000234; Ex. A, 128:11–23.

awareness, Plaintiff did not contact or file suit against Defendants.⁸ Instead, Plaintiff waited and waited for almost two years to seek this apparently urgent relief. This fact alone counsels strongly against entering injunctive relief against Defendants and demonstrates the lack of merit and borderline frivolity of Plaintiff's request.

3. Besides the delay in seeking this injunctive relief, Plaintiff also has no evidence that it has suffered any harm, let alone irreparable harm. Namely, Plaintiff admits it has no evidence that any of the real estate acquisitions by Defendants were based on whether they were, in fact, Plaintiffs.⁹ In other words, Plaintiff has no evidence that it has lost out on business opportunities to Defendants. When asked in interrogatories what projects have been marketed to Defendants instead of it, Plaintiff identified a singular instance, “[a] project in San Diego, California.”¹⁰ Plaintiff admits, however, that it has no evidence that this project, the Horton Plaza project, was obtained based on any alleged confusion or misunderstanding as to affiliation between Defendants and Plaintiff.¹¹ In fact, based on the nature of Defendants' business, the sophistication of the parties involved, and the value of the real estate projects at issue, it is virtually impossibility for any alleged confusion to ever result in harm to Plaintiff or Defendants. Indeed, in the 6 years the parties have both been in business, there is no evidence of any damage or harm resulting from the existence of the other. Accordingly, it is more evident now than it was four months ago that injunctive relief would not preserve the status quo; instead, it would alter the status quo to the substantial detriment of Defendants.

4. In addition, at the outset of this case, Plaintiff noted that it had filed a federal

⁸ (Doc. 1) (filed on August 24, 2018).

⁹ Ex. A, 128:6–10; 133:8–14; 152:24–153:9.

¹⁰ Ex. C, Plaintiff's Interrogatory Answers, at No. 4.

¹¹ Ex. A, 152:24–153:9. Indeed, Plaintiff admits it has no knowledge of the seller of the Horton Plaza project or the investors in the project, and thus has no evidence that this deal was acquired based on any confusion. Ex. A, 148:20–25.

service mark application.¹² Since the Status Conference on September 20, 2018, the United States Patent and Trademark Office (“USPTO”) denied Plaintiff’s trademark application on October 7, 2018 “because the applied-for mark is primarily merely a surname.”¹³ Curiously, Plaintiff continues to make this assertion in its First Amended Complaint. The USPTO’s decision further cuts against Plaintiff’s request for injunctive relief.¹⁴

FACTUAL BACKGROUND

5. Defendants are a family of real estate investment, development, and management companies headquartered in Los Angeles, California and with offices in California, Arizona, Texas, and Oregon.¹⁵ Defendants are associated with properties in California, Arizona, Texas, Oregon, and Tennessee.¹⁶ They are focused on the acquisition and development of real estate for commercial uses and are also involved in leasing and property management operations, but only as it relates to themselves for their own or their affiliates’ properties.¹⁷ Unlike Plaintiffs, Defendants do not provide real estate services on properties Defendants or an affiliate does not own.¹⁸

6. The total value of the real estate holdings of Defendants is approximately \$1 billion with approximately 85% to 90% of the equity coming from outside investor capital.¹⁹ Defendants typically target investment, acquisitions, and developments in the \$50 million to

¹² (Doc. 1, ¶ 25).

¹³ Ex. D, USPTO Denial of Trademark Application; Ex. A, 20:19–22:5

¹⁴ The USPTO’s decision is in line with previous decisions it has made regarding trademark applications bearing the name “Stockdale.” Ex. E, United States Patent and Trademark Office, Office Action about Applicant’s Trademark Application for STOCKDALE MEDICAL, LLC; Ex. F, United States Patent and Trademark Office, Office Action about Applicant’s Trademark Application for THE STOCKDALE CENTRE.

¹⁵ Ex. G, Declaration of Steven Yari, ¶ 4.

¹⁶ Ex. G, ¶ 4.

¹⁷ Ex. G, ¶ 7:–.

¹⁸ Ex. A, 38:2–12.

¹⁹ Ex. H, Deposition of Defendants’ Corporate Representative, Daniel Michaels, 42:25–43:13.

\$200 million range and sometimes up to \$400 million.²⁰ As indicated below, the value of these real estate projects involves only the most sophisticated consumers that decide to do business with Defendants not based on a word, but instead based on numerous factors such as location of the property, future profit projections, and the background and qualifications of Defendants and their principals.

7. Defendants target and interact with ultrahigh net worth individuals as investors for their real estate projects, such as Mayor Michael Bloomberg and the Duke of Westminster, and have investors all over the world, including in Geneva, New York, London, and San Francisco.²¹ Currently, Defendants are raising money for a closed and commingled fund with a minimum investment of \$10 million locked up for ten years and are targeting large institutions who can invest tens of millions of dollars for an extended period of time.²² They have been in this capital raise for about a year.²³ In Texas specifically, Defendants have pitched their business to large institutions such as Texas Teachers, managing teacher pension funds, the University of Texas Investments Systems, managing all endowments for Texas universities, Texas Permanent, Texas County Retirement, Houston Fire and Police, Memorial Hermann, and the Museum of Fine Arts.²⁴

8. Defendants identify potential investors, whom they consider their clients, through personal relationships and Lazard, a global advisor hired to make capital introductions.²⁵ Apart from Lazard, Defendants do not receive referrals of potential investors from other third parties.²⁶

²⁰ Ex. G, ¶ 8.

²¹ Ex. H, 36:10–18; 92:9–19.

²² Ex. H, 91:18–23.

²³ Ex. H, 76:19–25.

²⁴ Ex. H, 48:9–49:11.

²⁵ Ex. H, 35:4–36:22; Ex. G, ¶ 9.

²⁶ Ex. H, 90:21–91:17.

In addition, Defendants return to their current investor base for additional capital.²⁷ In seeking investors, Defendants have direct one-to-one conversations with some of the largest institutions in the world facilitated through Lazard.²⁸ They do not publish their marketing materials or investor presentations that they present at these meetings.²⁹ Defendants do not engage in advertising or marketing or sponsor events.³⁰ They do not actively market or do any type of traditional advertising.³¹

9. Defendants consider their “consumers” to be investors and, to a limited extent, tenants, although the term “consumer” is not a term typically used in the business.³² A more apt and comfortable term would be “clients.”³³ Based on the location and the asset class, Defendants recruit tenants through personal relationships.³⁴

10. Defendants’ use of the name “Stockdale” as part of Stockdale Capital Partners originates from a concept referred to as the “Stockdale Paradox,” which is a coping strategy, often referred to in investment strategy, to maintain resilience and optimism while also confronting current realities.³⁵ The paradox is named after a United States Navy Officer and prisoner of war in the Hanoi Hilton during the Vietnam War.³⁶ Defendants’ Managing Director, Dan Michaels, suggested the name after becoming familiar with the paradox from the book *Good to Great* by James C. Collins, a book that he read several times since college.³⁷ It was Mr.

²⁷ Ex. H, 47:22–48:8.

²⁸ Ex. H, 77:13–23; Ex. G, ¶ 9.

²⁹ Ex. H, 77:13–23; Ex. G, ¶ 9.

³⁰ Ex. H, 73:18–74:8; Ex. G, ¶ 9.

³¹ Ex. H, 74:12–19.

³² Ex. H, 34:10–35:3.

³³ Ex. H, 94:24–95:7.

³⁴ Ex. H, 39:19–40:7.

³⁵ Ex. G, ¶ 5.

³⁶ Ex. G, ¶ 5.

³⁷ Ex. H, 53:2–54:17.

Michael's choice to use the name Stockdale.³⁸ The inclusion of the word "Capital" in the name is important to signifying that the companies manage capital for outside investors.³⁹ Defendants' use of the name is not related to a place.

11. Defendants hold themselves out to consumers and potential investors as Stockdale Capital Partners, not simply Stockdale.⁴⁰ A receptionist answering the phone at the company greets the caller with "Stockdale Capital" or "Stockdale Capital Partners."⁴¹ Plaintiffs admittedly do not claim a mark in the phrases "Stockdale Capital" or "Stockdale Capital Partners." Defendants have approximately 65 employees located in Los Angeles, Stockdale, Houston, Portland, and San Diego.⁴² Defendants worked with a design company to design the present logo around 2013, and the company presented several options for the ultimate logo.⁴³ The company website was designed and developed by a third-party web designer.⁴⁴

12. The first time Defendants ever heard of Plaintiff is in connection with this lawsuit, specifically by way of the demand letter sent in June 2018.⁴⁵ No one has ever asked Defendants if they are affiliated with Plaintiff, which underscores the lack of any practical confusion in Defendants' business.⁴⁶ Defendants have no understanding of how Plaintiff functions or operates

³⁸ Ex. H, 54:13–17.

³⁹ Ex. H, 57:23–58:10.

⁴⁰ Ex. G, ¶ 6. Plaintiff argues in its brief that "Indeed, in its investor presentation, presented after this lawsuit was filed, Defendants drop the use of 'Stockdale Capital' and simply use 'Stockdale' throughout." (Doc. 20, at 11). In support, Plaintiff points to an investor presentation. Such a claim is disingenuous. When presented this document in his deposition, Dan Michaels, Defendants' corporate representative, and counsel both noted that the use of simply "Stockdale" is a matter of definition in the document. Ex. H, 64:9–66:25. Besides being a defined term in the document for "Stockdale Capital Partners," the Court will note that the document is full of references to Stockdale Capital Partners. It is disingenuous and inaccurate for Plaintiff to cite this document as evidence that Defendants "have decided to 'double down' on their infringement of the Stockdale Mark." (Doc. 20, at 11).

⁴¹ Ex. H, 63:13–18.

⁴² Ex. H, 20:23–21:4.

⁴³ Ex. H, 59:5–60:7; 71:2–7.

⁴⁴ Ex. H, 71:8–72:12.

⁴⁵ Ex. H, 56:17–57:11.

⁴⁶ Ex. H, 72:13–16.

in the real estate space.⁴⁷ Defendants have not received any information from investors or tenants about Plaintiff, nor have they received any indication that an investor or tenant has approached them under the impression they were Plaintiff.⁴⁸ This is not surprising considering Defendants have never owned or been affiliated with a property in any location where Plaintiff has owned a property.⁴⁹

13. Injunctive relief would result in substantial interruption to Defendants' business, particularly in the form of lost business opportunities.⁵⁰ An interruption in the continuity of the companies' naming conventions during the pendency in this litigation would have a profound effect on Defendants, particularly in an industry where investor relations and name recognition are important.⁵¹

ARGUMENT AND AUTHORITIES

14. The following factors must be established by a preponderance of the evidence: “(1) there is a substantial likelihood of success on the merits; (2) there is a substantial threat that irreparable injury will result if the injunction is not granted; (3) the threatened injury outweighs the threatened harm to the defendant; and (4) granting the preliminary injunction will not disserve the public interest.” *Id.*; see also *Ridgely v. Fed. Emergency Mgmt. Agency*, 512 F.3d 727, 734 (5th Cir. 2008).⁵²

⁴⁷ Ex. H, 49:20–23.

⁴⁸ Ex. G, ¶ 10–12.

⁴⁹ Ex. C, at No. 10; Ex. A, 127:16–22.

⁵⁰ Ex. G, ¶ 13.

⁵¹ Ex. H, 95:8–96:6.

⁵² A temporary restraining order is an “extra ordinary remedy and should only be granted if the plaintiff carries the burden of persuasion on each factor.” *Khan v. Fort Bend Indep. Sch. Dist.*, 561 F. Supp. 2d 760, 763 (S.D. Tex. 2008). The purpose of a temporary restraining order, or any preliminary injunction, “is merely to *preserve the relative positions of the parties* until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). This purpose is served, in part, by preserving the “status quo” between the parties. *Texas First Nat. Bank v. Wu*, 347 F. Supp. 2d 389, 397 (S.D. Tex. 2004). Due to the extraordinary nature of the remedy, “a preliminary injunction is to be treated as the exception rather than the rule.” *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 622 (5th Cir. 1985).

A. Plaintiff limits its request for injunctive relief to its Lanham Act trademark infringement claim and, as such, cannot show a likelihood of success on the merits on any other of its numerous claims.

15. In its lawsuit, Plaintiff asserts eight causes of action against Defendants.⁵³ In its Brief, Plaintiff only makes reference to its Lanham Act claims, specifically trademark infringement.⁵⁴ To that end, Plaintiff argues that it has a protectable mark, that it is the senior user, and that Defendants' mark causes confusion.⁵⁵ Accordingly, Defendants understand Plaintiff to be moving for preliminary injunction only on the trademark infringement claim. To the extent Plaintiff argues it is entitled to injunctive relief based on these other claims (i.e., any claim other than trademark infringement), Plaintiff has not briefed, and therefore cannot prove, that it has a substantial likelihood of success on the merits of those claims.

B. Plaintiff cannot carry its evidentiary burden to show that there is a substantial likelihood of success on the merits because there is insufficient evidence to show (1) that Plaintiff owns a protectable trademark; and (2) there is a likelihood of confusion.

16. Plaintiff contends that it has an arbitrary mark, or alternatively a descriptive mark with a secondary meaning, that is protectable and that it can demonstrate a likelihood of confusion and actual confusion.

1. Plaintiff cannot demonstrate a substantial likelihood of success on the merits that it owns a protectable trademark because the mark is not arbitrary, its application has been denied by the USPTO, the alleged mark is merely a surname, and Plaintiff has presented insufficient evidence to show that it has established a secondary meaning.

17. A “mark is protectable if it is ‘distinctive, either inherently or by achieving a secondary meaning in the mind of the public.’” *Jones v. Am. Council on Exercise*, 245 F. Supp. 3d 853, 859 (S.D. Tex. 2017) (quoting *Am. Rice, Inc. v. Producers Rice Mill, Inc.*, 518 F.3d 321, 329 (5th Cir. 2008)). Primarily, Plaintiff claims that its alleged mark is inherently distinctive as

⁵³ (Doc. 17).

⁵⁴ (Doc. 20, at 11–12).

⁵⁵ (Doc. 20, 11–23).

an “arbitrary mark.” *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992) (noting arbitrary marks are inherently distinctive). In addition, Plaintiff alternatively asserts that its alleged mark is a distinctive “descriptive mark” because it has acquired a “secondary meaning” through Plaintiff’s use of the alleged mark. *Id.*

18. At the outset, the United States Patent and Trademark Office denied Plaintiff’s trademark application on October 7, 2018 “because the applied-for mark is primarily merely a surname.”⁵⁶ The USPTO’s decision classifying the mark as primarily merely a surname cuts against Plaintiff’s contention that the mark is arbitrary. Specifically, “[a] surname is classified as a descriptive word mark.” *Vais Arms, Inc. v. Vais*, 383 F.3d 287, 292 n.6 (5th Cir. 2004); *see Amy’s Ice Creams, Inc. v. Amy’s Kitchen, Inc.*, 60 F. Supp. 3d 738, 747 (W.D. Tex. 2014). Plaintiff admits that it is aware that the name Stockdale is a surname.⁵⁷

19. Plaintiff contends that instead of a surname, Stockdale is a geographically descriptive mark that has acquired a secondary meaning.⁵⁸ In the alternative, Plaintiff contends that if Stockdale is primarily merely a surname, then it also has acquired a secondary meaning.⁵⁹ In any event, if the alleged mark is not arbitrary (it is not), then it is at best descriptive and Plaintiff recognizes it must establish a secondary meaning. It cannot do so based on the evidence presented.

20. Thus, STOCKDALE is a descriptive mark and therefore is not protectable unless proof of secondary meaning is established. *Two Pesos*, 505 U.S. at 768. This occurs “when, in the minds of the public, the primary significance of a product feature or term is to identify the source of the product rather than the product itself.” *Sugar Busters LLC v. Brennan*, 177 F.3d

⁵⁶ Ex. D.

⁵⁷ Ex. A, 20:8–11.

⁵⁸ (Doc. 20, at 14).

⁵⁹ (Doc. 20, at 16).

258, 268 (5th Cir. 1999) (internal quotations omitted) (citing *Two Pesos*, 505 U.S. at 766 n.4). This determination is made by considering a number of factors. *Bulbs 4 E. Side, Inc. v. Ricks*, 199 F. Supp. 3d 1151, 1159 (S.D. Tex. 2016).⁶⁰

21. Plaintiff only makes self-serving statements in support of its establishment of a secondary meaning. Plaintiff cannot identify how much it has spent on marketing or advertising.⁶¹ Plaintiff's corporate representative admitted that Plaintiff has no evidence of any specific market share that it has in the United States real estate market generally and in Texas specifically.⁶² Plaintiff does not introduce any evidence regarding consumer-surveys or direct consumer testimony. Moreover, it is undisputed that Defendants were not aware of Plaintiff when it created the name Stockdale Capital Partners and thus, the intent element is wholly non-existent.

2. Plaintiff cannot demonstrate a substantial likelihood of success on the merits that there is a likelihood of confusion because Plaintiff cannot establish any actual confusion by competent evidence.

22. Plaintiff contends that it can show that it “can show that Defendants’ Mark is not only likely to cause confusion with Stockdale’s protectable mark, but can show the Court actual examples of confusion.”⁶³ To determine the likelihood of confusion, courts in the Fifth Circuit consider a non-exhaustive list of “digits,” which include “(1) strength of the mark; (2) mark similarity; (3) product or service similarity; (4) outlet and purchaser identity; (5) advertising media identity; (6) defendant’s intent; (7) actual confusion; and (8) care exercised by potential purchasers.” *All. for Good Gov't v. Coal. for Better Gov't*, 901 F.3d 498, 508 (5th Cir. 2018). The

⁶⁰ These factors include: “(1) length and manner of use of the mark or trade dress, (2) volume of sales, (3) amount and manner of advertising, (4) nature of use of the mark or trade dress in newspapers and magazines, (5) consumer-survey evidence, (6) direct consumer testimony, and (7) the defendant's intent in copying the trademark.” *Bulbs 4 E. Side, Inc. v. Ricks*, 199 F. Supp. 3d 1151, 1159 (S.D. Tex. 2016) (internal quotations omitted).

⁶¹ Ex. A, 109:10–12.

⁶² Ex. A, 96:20–97:1; 97:15–18.

⁶³ (Doc. 20, at 17).

showing required is a “probability” rather than a “mere possibility” of confusion. *Xtreme Lashes, LLC v. Xtended Beauty, Inc.*, 576 F.3d 221, 226 (5th Cir. 2009).

(a) Strength of the Mark. This digit holds that “[t]he more distinctive the mark, the stronger the mark.” *Viacom Int'l v. IJR Capital Investments, L.L.C.*, 891 F.3d 178, 193 (5th Cir. 2018). The strength of a mark is determined by its classification on the distinctiveness spectrum—generic, descriptive, suggestive, arbitrary, or fanciful—and the mark’s standing in the marketplace. *All. for Good Gov't v. Coal. for Better Gov't*, 901 F.3d 498, 509 (5th Cir. 2018).

23. For the reasons described above, Plaintiff’s alleged mark is at best descriptive and is, accordingly, weak. *See Helpful Hound, L.L.C. v. New Orleans Bldg. Corp.*, 331 F. Supp. 3d 581, 601 (E.D. La. 2018). Even if the alleged mark was arbitrary, its status as “the surname of a good number of people” means it is not accorded the same degree of protection. *Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 260 (5th Cir. 1980). Plaintiff’s corporate representative conceded that Plaintiff has no evidence of any specific market share that it has in the United States real estate market generally and in Texas specifically.⁶⁴ More importantly, Plaintiff admits that its market share in the locations where Defendants owns and has acquired properties is zero.⁶⁵ Since 2013, Plaintiff has acquired approximately \$75 million in real estate, which is a drastically amount than Defendants.⁶⁶ This digit weighs against a finding of a likelihood of confusion.

(b) Mark Similarity. This digit “requires consideration of the marks’ appearance, sound, and meaning.” *Viacom Int'l v. IJR Capital Investments, L.L.C.*, 891 F.3d 178, 193 (5th Cir. 2018) (internal quotations omitted). “Similarity of appearance is determined on the basis of the total effect of the designation, rather than on a comparison of individual features.” *Xtreme Lashes,*

⁶⁴ Ex. A, 96:20–97:1; 97:15–18.

⁶⁵ Ex. A, 97:25–98:20.

⁶⁶ Ex. A, 42:9–15.; Ex. H, 42:25–43:13.

LLC v. Xtended Beauty, Inc., 576 F.3d 221, 228 (5th Cir. 2009) (internal quotations omitted). Courts look to “the context of use, such as labels, packaging, and advertising.” *Id.*

24. Plaintiff contends that it is evident that marks are similar noting that the logos are “in all-caps, block lettering, of the same color scheme . . . and also bear[] an abstract emblem on the left side of the mark.”⁶⁷ Plaintiff presents the following examples of the two logos:



25. While Plaintiff’s argument is belied by even a cursory look at the two logos, Plaintiff nonetheless improperly focuses on a comparison of individual features instead of comparing the effect of the entire designation. *Xtreme Lashes*, 576 F.3d at 228. The Court will no doubt note the obvious differences between the logos. The alleged similarities in color scheme and abstract logos are negligible at best. Most importantly, however, Defendants logo clearly distinguishes itself as “Stockdale Capital Partners.” This is entirely in line with the way in which Defendants hold themselves out to the public—Stockdale Capital Partners instead of just Stockdale.⁶⁸ A receptionist answering the phone at the company greets the caller with “Stockdale Capital” or “Stockdale Capital Partners.”⁶⁹ In direct contrast, Plaintiff markets itself merely as “Stockdale.”⁷⁰ “Stockdale Capital” or “Stockdale Capital Partners” does not appear on Plaintiff’s website.⁷¹

26. Plaintiff also points to the websites of both Defendants and Plaintiff, contending that “Defendants’ website contains substantially similar information in a substantially similar

⁶⁷ (Doc. 20, at 7, 20).

⁶⁸ Ex. G, ¶ 6.

⁶⁹ Ex. H, 63:13–18.

⁷⁰ Ex. A, 116:22–117:1

⁷¹ Ex. A, 128:22–129:1.

format as the format of the real Stockdale website. And in fact, Defendants’ website (stockdalecapital.com) largely has the same design, color palette, and feel as that of the real Stockdale’s (stockdale.com).”⁷² Again, in contrast to Plaintiff’s self-serving and unsubstantiated opinion, a comparison of the two websites shows that they are indeed markedly different.⁷³ Moreover, the very information contained on the websites, including the properties and a listing of the team members easily distinguishes the two companies, a fact that Plaintiff admits.⁷⁴ For example, a comparison of the websites reveals clearly that the entities are separate as the office locations are different, the properties are different, and the principals/team members for each company are entirely different. More importantly though, Plaintiff admits it has no evidence that any consumer has chosen to do business with Defendants over Plaintiff based on the website.⁷⁵ Plaintiff also contends disingenuously that “in its investor presentation, presented after this lawsuit was filed, Defendants drop the use of ‘Stockdale Capital’ and simply use ‘Stockdale’ throughout.”⁷⁶ Such a claim is disingenuous and wholly inaccurate. When presented this document in his deposition, Dan Michaels, Defendants’ corporate representative, and Plaintiff’s counsel both noted that the use of simply “Stockdale” is a matter of definition in a portion of the document (i.e., Stockdale Capital Partners is defined as “Stockdale” in the opening words).⁷⁷ Besides being a defined term in a portion of the document for “Stockdale Capital Partners,” the document is replete with references to Stockdale Capital Partners. It is disingenuous for Plaintiff to cite this document as evidence that Defendants “have decided to ‘double down’ on their infringement of the Stockdale Mark.”⁷⁸ Additionally, it is undisputed that Defendants do not hold

⁷² (Doc. 20, at 7).

⁷³ Compare (Doc. 20-6) with (Doc. 20-13).

⁷⁴ Ex. A, 136:16–137:22.

⁷⁵ Ex. A, 138:10–14; 138:20–139:11.

⁷⁶ (Doc. 20, at 11).

⁷⁷ Ex. H, 64:9–66:25.

⁷⁸ (Doc. 20, at 11).

themselves as Stockdale, but instead as Stockdale Capital or Stockdale Capital Partners. Further, the suggestion that highly sophisticated potential investors including Mayor Michael Bloomberg and the Duke of Westminster or large institutional investors such as Texas Investment Systems would be influenced at all by a defined term in part of an investor presentation is absurd.

(c) Product or Service Similarity. The size of the acquisitions and properties offered by Defendants are substantially different. Since 2013, Plaintiff has acquired approximately \$75 million in real estate.⁷⁹ In contrast, Defendants have total real estate holdings of approximately \$1 billion with approximately 85% to 90% of the equity coming from outside investor capital.⁸⁰ In contrast, Plaintiff does not seek outside investor capital for its acquisitions.⁸¹ Defendants typically target investment, acquisitions, and developments in the \$50 million to \$200 million range and sometimes up to \$400 million.⁸² Plaintiff admits that it does not target comparably sized acquisitions.⁸³ Further, Plaintiff and Defendants have never, in their respective company histories, owned a property in the same location.⁸⁴ In addition, Plaintiff assists tenants in finding properties in which Plaintiff does not have an interest, acting as a broker.⁸⁵ Defendants do not operate similarly.⁸⁶

(d) Outlet and Purchaser Identity. Plaintiff's headquarters are located in Dallas, Texas, having moved there in 2011.⁸⁷ Plaintiff does not have any other offices besides the one located in Dallas.⁸⁸ In contrast, Defendants are headquartered in Los Angeles, California and

⁷⁹ Ex. A, 42:9–15.

⁸⁰ Ex. H, 42:25–43:13.

⁸¹ Ex. A, 73:9–18.

⁸² Ex. G, ¶ 8.

⁸³ Ex. A, 121:18–122:4.

⁸⁴ Ex. C, at No. 10; Ex. A, 127:16–22.

⁸⁵ Ex. A, 38:2–12.

⁸⁶ Ex. G, ¶ 7.

⁸⁷ Ex. A, 32:4–6.

⁸⁸ Ex. A, 33:8–10.

have offices in California, Arizona, Texas, and Oregon.⁸⁹ The parties are simply not involved in similar acquisitions, including by type, size, or location. As an example, Defendants have acquired hotels, parking garages, and senior living or assisted living residential properties as a part of their property portfolio, and Plaintiff admits that it has never owned any of these types of properties.⁹⁰ Plaintiff identified the transactions and properties it has been involved with in response to Defendants' interrogatories.⁹¹ Plaintiff admits that none of the properties ever owned by Plaintiff are in the same locations as any of the properties owned by Defendants.⁹² With the exception of a residential property owned by Plaintiff in North Carolina (an area and type of property that Defendants have not targeted), all properties acquired by Plaintiff since 2012 have been exclusively in Dallas.⁹³ Since 2013, Plaintiff has not acquired, managed, or leased any properties in Defendants' areas of operation.⁹⁴ Plaintiff similarly concedes that Defendants have never owned or acquired property in its areas of operation, including its primary area, Dallas.⁹⁵

27. Plaintiff contends that "the intended audience of both parties is exactly the same in the exact same industry."⁹⁶ This statement is simply erroneous. Defendants consider their "consumers" or "clients" to be investors and tenants, although the term "consumer" is not a term typically used in the business.⁹⁷ As to investors, Plaintiff admits that it does not seek outside investors to fund the acquisition of properties.⁹⁸ Accordingly, there can be no argument that the parties share investors as purchasers or consumers. Plaintiff considers its consumers to be

⁸⁹ Ex. G, ¶ 4.

⁹⁰ Ex. G, ¶ 7; Ex. H, 43:14–44:9; 81:14–25; Ex. A, 95:16–21; 96:7–8.

⁹¹ Ex. C, at No. 10. Plaintiff's corporate representative confirmed that the answer to Interrogatory No. 10 lists the real estate transactions of Plaintiff.

⁹² Ex. A, 127:16–22.

⁹³ Ex. A, 66:4–10.

⁹⁴ Ex. A, 86:7–87:21. This includes Los Angeles, California; Beverly Hills, California; Sugar Land, Texas; Oregon, San Francisco, California; Santa Monica, California; Scottsdale, Arizona; Silicon Valley; El Paso, Texas; Riverside, California; and Memphis, Tennessee.

⁹⁵ Ex. A, 124:13–125:3.

⁹⁶ (Doc. 20, at 21).

⁹⁷ Ex. H, 34:10–35:3.

⁹⁸ Ex. A, 73:9–18.

tenants.⁹⁹ Curiously, in its discussion of this factor, Plaintiff points to property owners and brokers.¹⁰⁰ Plaintiff's allegation in this regard appears to simply be that Defendants operate in the real estate market given that CBRE is a top three large brokerage house with thousands of brokerages housed under the firm's name across different asset classes and geographies.¹⁰¹ Even to the extent there is shared use between the parties with respect to a broker, their respective properties are admittedly not geographically overlapping.¹⁰² Moreover, a broker is not a client or consumer of Defendants and never will be based on their business structure.

(e) Advertising Media Identity. Plaintiff does not address this digit in its briefing. For good reason. Defendants do not engage in advertising or marketing or sponsor events.¹⁰³ They do not actively market or do any type of traditional advertising.¹⁰⁴ In contrast, although Plaintiff allegedly advertises in “[e]very way [it] can think of,” Plaintiff cannot identify how much it has spent on marketing.¹⁰⁵ Notwithstanding, Plaintiff's leasing ads do not list any particular service because admittedly their ads are to “encourage people to do more research, see who we are and find who we are.”¹⁰⁶ Because Defendants do not advertise or market, this factor cannot weigh in favor of confusion.

(f) Defendant's Intent. Again, Plaintiff does not address this digit apart from noting that intent is not necessary to a finding of likelihood of confusion.¹⁰⁷ However, it is a factor to be considered by the Court in making its determination. The Court's “inquiry focuses on whether the defendant intended to derive benefits from the reputation of the plaintiff.” *Streamline Prod.*

⁹⁹ Ex. A, 51:7–11.

¹⁰⁰ (Doc. 20, at 21).

¹⁰¹ Ex. H, 50:8–19.

¹⁰² Ex. A, 86:7–87:21; 124:13–125:3.

¹⁰³ Ex. H, 73:18–74:8; Ex. G, ¶ 9.

¹⁰⁴ Ex. H, 74:12–19.

¹⁰⁵ Ex. A, 109:10–12; Ex. A, 98:21–25; 99:14–20.

¹⁰⁶ Ex. A, 106:20–108:7.

¹⁰⁷ (Doc. 20, at 18).

Sys., Inc. v. Streamline Mfg., Inc., 851 F.3d 440, 455 (5th Cir. 2017). There is no evidence that Defendants had any intent in selecting their name. In fact, as detailed above, Defendants had entirely independent reasons for choosing the name Stockdale, the “Stockdale Paradox.”¹⁰⁸ Moreover, Defendants were not even aware of the existence of Plaintiff until they received the demand letter that initiated the present dispute.¹⁰⁹ *See Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll. v. Smack Apparel Co.*, 550 F.3d 465, 481 (5th Cir. 2008) (finding intent to confuse when evidence indicated defendant, in choosing its mark, knew about plaintiff’s mark and intended to capitalize on the plaintiff’s popularity). In addition, Plaintiff admits that it has no evidence of how Defendants came up with their name or of intent.¹¹⁰ This digit undoubtedly weighs against a finding of likelihood of confusion.

(g) Actual Confusion. With this digit the focus is on the extent to which defendant’s use of the alleged mark “creates a likelihood of confusion in the minds of potential *customers* as to source, affiliation, or sponsorship.” *All. for Good Gov't v. Coal. for Better Gov't*, 901 F.3d 498, 508 (5th Cir. 2018) (emphasis added) (internal quotations omitted). The focus is on confusion among *consumers*. “The absence of actual confusion over an extended period of time of concurrent sales weighs against a likelihood of confusion.” *S. Snow Mfg. Co. v. Sno Wizard Holdings, Inc.*, 829 F. Supp. 2d 431, 436 (E.D. La. 2011).

28. Defendants “consumers” or “clients” are high net worth investors and tenants.¹¹¹ And there is zero evidence before this Court of any alleged confusion in these types of consumers. Unlike Defendants, Plaintiff admits that it does not seek outside investors to fund the

¹⁰⁸ See Notes 35 to 39.

¹⁰⁹ See Notes 45 to 49.

¹¹⁰ Ex. A, 139:12–18.; 140:6–9.

¹¹¹ Ex. H, 34:10–35:3.

acquisition of properties.¹¹² There is, accordingly, no overlap in consumers in the investor class. The only conceivable area for overlap in consumers is tenants and Plaintiff has presented no competent evidence that any tenant consumers have been confused. To the extent Plaintiff claims brokers are consumers, Plaintiff admits that it has no evidence that brokers have ever paid Defendants money to qualify them as a consumer of Defendants.¹¹³

29. Plaintiff contends that “[h]ere, Stockdale has detailed actual confusion.”¹¹⁴

Plaintiff states:

Defendants’ continued use of Stockdale’s name and mark has confused Stockdale’s relevant consumers and caused the would-be Stockdale consumers and business affiliates to mistakenly believe that they are dealing with the real Stockdale when they are actually dealing with Defendants.¹¹⁵

As an initial matter, such a statement is unsupported by competent evidence in the record. While Plaintiff can only cite to self-serving hearsay regarding alleged confusion by Lincoln Property Company, Arch Capital, and Townsend & Associates, none of these entities or individuals are consumers (i.e., tenants). Moreover, each of these alleged entities purportedly have an existing relationship with Plaintiff such that they personally know the principals of Plaintiff’s company which would remove any fear of practical confusion. Notwithstanding, once again, Plaintiff’s allegations of confusion are not supported by any competent evidence. Namely, the alleged instances of confusion among these companies are only supported by the self-serving, unsubstantiated statement of Plaintiff’s corporate representative.¹¹⁶ Most importantly, these statements are plainly inadmissible hearsay. FED. R. EVID. 801, 802. Plaintiff uses these alleged out-of-court statements of third parties to prove that the third parties were confused (i.e., to prove

¹¹² Ex. A, 73:9–18.

¹¹³ Ex. A, 123:16–18.

¹¹⁴ (Doc. 20, at 22).

¹¹⁵ (Doc. 20, at 8).

¹¹⁶ (Doc. 20 at 22 n.76–77).

the truth of the matter asserted). Plaintiff's testimony with respect to these instances of confusion is simply not admissible and, besides, not credible because it is unsubstantiated by any other documentary or testimonial evidence. Plaintiff's testimony lacks any indicia of reliability.

30. In any event, and subject to and without waiving the foregoing hearsay objections,¹¹⁷ consider the cited example to Tom Short of Arch Capital. Plaintiff's corporate representative testified that he had a two minute conversation with Tom Short.¹¹⁸ Mr. Short did not state that he marketed any property to Defendants because he thought them to be Plaintiff.¹¹⁹ Plaintiff does not know how Tom Short identified Defendants as an entity to which to market the property.¹²⁰ Moreover, Plaintiff had a pre-existing relationship with Mr. Short that removes any potential for actual confusion amongst the companies. As to the alleged confusion by Lincoln Property Group, Plaintiff admits that it has no evidence that the meeting with Lincoln Property Group was based on the name Stockdale as opposed to the location of the property.¹²¹

31. Plaintiff also details an alleged instance of confusion by Michael Townsend at Townsend & Associates Inc., a broker, that is supposed to show confusion about a project of Defendants.¹²² Plaintiff, however, admits that it has no evidence that Townsend brought any deal to Defendants based on the belief that Defendants are somehow affiliated with Plaintiff.¹²³ Townsend is a broker, which are indisputably not a consumer or client of Defendants.¹²⁴ In addition, once again, Townsend had a preexisting relationship with Plaintiff and thus, has

¹¹⁷ Defendants expressly incorporate their Objections to Plaintiff's Evidence in Support of its Application for Preliminary Injunctive Relief, filed contemporaneously with this brief. The argument presented herein is intended to be subject to those objections and nothing in the argument presented herein is intended to be a waiver of those objections.

¹¹⁸ Ex. A, 140:20–142:23.

¹¹⁹ Ex. A, 140:20–142:23.

¹²⁰ Ex. A, 140:20–142:23.

¹²¹ Ex. A, 145:25–146:8.

¹²² (Doc. 20, at 9).

¹²³ Ex. A, 148:7–12.

¹²⁴ Ex. A, 146:13–18.

knowledge of Plaintiff and its principals, which eliminates any practical confusion.¹²⁵

32. Plaintiff also insists that one news media outlet has accidentally confused the parties.¹²⁶ However, Plaintiff provides no evidence that the media is a consumer of the products or services offered by the parties. Plaintiff also provides no evidence that a common consumer in the same marketplace was confused by the article or relied upon the news article, which was corrected within 24 hours.¹²⁷ In addition, Plaintiff claims that Defendants have created confusion among prospective talent in employee recruiting.¹²⁸ This undefined class of individuals is admittedly not a consumer of the products or services offered by Plaintiff or Defendants, and Plaintiff offers no evidence to the contrary.

33. In short, Plaintiff presents no competent evidence of actual confusion among consumers. Instead, Plaintiff presents what amount to allegations—self-serving, unspecific, unsubstantiated, hearsay statements of alleged confusion by entities and individuals that are not consumers. In this way, despite the allowance for discovery, Plaintiff’s position with respect to proving actual confusion since the Status Conference on September 20, 2018 has not changed. Accordingly, this digit weighs against a finding of likelihood of confusion.

(h) Care Exercised by Potential Purchasers. Tellingly, Plaintiff again does not address this digit of confusion. This is likely because Plaintiff recognizes that in the real estate industry the very nature of the parties eliminates the likelihood of confusion. Plaintiff admits that knowledge and due diligence are critical in the real estate industry.¹²⁹ In fact, according to Plaintiff, a team is typically required to conduct due diligence.¹³⁰ It is important to have an

¹²⁵ Ex. A, 146:13–25.

¹²⁶ (Doc. 20, at 9). Plaintiff cites “several news media outlets” but only provides evidence of one article from one news outlet.

¹²⁷ Ex. A, 149:17–21.

¹²⁸ (Doc. 20, at 10–11).

¹²⁹ Ex. A, 38:17–23.

¹³⁰ Ex. A, 40:15–17.

understanding of location, surrounding areas, and financial history, among other information.¹³¹ Plaintiff admits that engaging in a real estate transaction involves a large amount of research.¹³² Plaintiff further admits that its clients and customers are *major sophisticated players* in the United States real estate market.¹³³ Moreover, Plaintiff acknowledges that as a part of the acquisition process, investors are going to know the principals and it will be a transparent process with extensive paperwork.¹³⁴ Plainly put, this digit weighs strongly against a finding of a likelihood of confusion, particularly in the real estate industry. A fact that Plaintiff tacitly acknowledges by not addressing the digit.

C. Plaintiff cannot carry its evidentiary burden to show that there is a substantial threat that irreparable injury will result if the injunction is not granted.

34. For this factor, “the harm considered by the district court is necessarily confined to that which might occur in the interval between the ruling on the preliminary injunction and trial on the merits.” *Aquifer Guardians in Urban Areas v. Fed. Highway Admin.*, 779 F. Supp. 2d 542, 573 (W.D. Tex. 2011) (quoting *United States v. Lambert*, 695 F.2d 536, 540 (11th Cir.1983)). The party seeking the injunction must show that the threatened harm is more than *mere speculation*, which requires “more than an unfounded fear on the part of the applicant.” *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001) (internal quotations omitted); *see also Janvey v. Alguire*, 647 F.3d 585, 601 (5th Cir. 2011). “[C]ourts will not issue a preliminary injunction ‘simply to prevent the possibility of some remote future injury.’” *Texas v. United States*, 86 F. Supp. 3d 591, 672 (S.D. Tex. 2015) (quoting Wright & Miller § 2948.1). To the contrary, the applicant must show a “‘presently existing actual threat.’” *Id*; *see also ADT, LLC v.*

¹³¹ Ex. A, 38:17–40:14.

¹³² Ex. A, 41:7–42:1.

¹³³ Ex. A, 83:16–19.

¹³⁴ Ex. A, 123:25–124:9.

Capital Connect, Inc., 145 F. Supp. 3d 671, 694 (N.D. Tex. 2015) (“[T]he injury in question must be imminent and cannot be speculative.”).

35. Plaintiff appears to contend that the only irreparable injury it will suffer “a complete lack of control over the quality of Defendants’ conduct” and that its “time, effort, and expense exerted to create and define its brand have been unfairly exploited, which monetary damages cannot compensate.”¹³⁵ Plaintiff has not presented any evidence of injury, whether in the past, the present, or the possibility in the future. Indeed, in the approximately 6 years the companies have co-existed, Plaintiff has zero evidence of any harm or damages.¹³⁶ None. Plaintiff concedes it has no evidence that it has lost any deal or opportunity based on the existence of Defendants.¹³⁷ Instead of actual evidence, Plaintiff merely contends that the alleged irreparable injury it will suffer is the continued existence of Defendants. This bare allegation and speculation of potential harm is insufficient.

36. Most importantly, Plaintiff’s substantial delay in seeking injunctive relief despite being clearly aware of Defendants’ existence militates strongly against enjoining Defendants. The Southern District of Texas has held previously:

Delay is an important factor bearing on the need for a preliminary injunction. Absent a good explanation, a substantial period of delay militates against the issuance of a preliminary injunction by demonstrating that there is no apparent urgency to the request for injunctive relief. *Evidence of an undue delay in bringing suit may be sufficient to rebut the presumption of irreparable harm.*

AMID, Inc. v. Medic Alert Found. United States, Inc., 241 F. Supp. 3d 788, 821 (S.D. Tex. 2017) (emphasis added) (quoting *Wireless Agents, L.L.C. v. T-Mobile USA, Inc.*, Civ. No. 3:05-cv-0094, 2006 WL 1540587, at *4 (N.D. Tex. June 6, 2006)). In that case, the court found that a

¹³⁵ (Doc. 20, at 24) (internal quotations omitted).

¹³⁶ Ex. A, 133:8–14; 152:9–153:9.

¹³⁷ Ex. A, 133:8–14; 152:9–153:9.

delay of approximately ten months undermined the assertion of irreparable injury. *Id.* at 823 (collecting example of undue delay, including ten weeks, three months, and four months).

37. As set forth above, Plaintiff first became aware of another entity using the name Stockdale around the middle of 2016 and at the very latest became aware of Defendants in early 2017.¹³⁸ After this discovery, Plaintiff sought advice of counsel, and on the basis of that advice, on February 10, 2017 Plaintiff registered the company Stockdale Capital LLC with the Texas Secretary of State.¹³⁹ Therefore, at the very least, Plaintiff knew of Defendants in February 2017, yet Plaintiff delayed at least eighteen months and filed suit in August 2018. This fact is particularly egregious considering that Plaintiff was apparently posturing for the present dispute by registering the name Stockdale Capital LLC in February 2017, almost 2 years ago.

38. There can be no dispute that Plaintiff engaged in undue delay in seeking injunctive relief, a period of time that is far longer than other courts have found as undue delays. Plaintiff offers no good explanation for its dilatory tactics and could not offer a reasonable explanation for a delay of such an extended period of time. Accordingly, this delay militates strongly against the requested relief because Plaintiff's delay undermines any urgency for the request. Plaintiff's delay in seek injunctive relief along with Plaintiff's inability to introduce any evidence of actual injury or a presently existing actual threat weigh strongly against a finding that there is a substantial threat of irreparable injury. Accordingly, this factor weighs strongly against injunctive relief.

D. Plaintiff cannot carry its evidentiary burden to show that the threatened injury outweighs the threatened harm to the Defendants.

39. Plaintiff must carry its evidentiary burden to show that the threatened injury outweighs the threatened harm to Defendants. *Khan v. Fort Bend Indep. Sch. Dist.*, 561 F. Supp.

¹³⁸ Ex. A, 112:12–15; 114:5–12.

¹³⁹ Ex. A, 112:12–25; 128:11–23; Ex. B.

2d 760, 763 (S.D. Tex. 2008). Courts are required to “balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *Texas First Nat. Bank v. Wu*, 347 F. Supp. 2d 389, 399 (S.D. Tex. 2004).

40. As set forth above, Plaintiff has no evidence of injury. Contrary to Plaintiff’s vague and unsubstantiated allegations of injury, the threatened harm to Defendants is substantial and tangible. Injunctive relief would result in substantial interruption to Defendants’ business, particularly in the form of lost business opportunities.¹⁴⁰ An interruption in the continuity of the companies’ naming conventions during the pendency in this litigation would have a profound effect on the Defendants, particularly in an industry where investor relations and name recognition are important.¹⁴¹

41. Plaintiff disputes that Defendants would suffer any harm should injunctive relief be granted.¹⁴² This contention is illogical, however, because, of course, the harm will only occur should the injunction actually issue. No injunctive relief has been issued to date. If the Court were to enter the order requested by Plaintiff in its lawsuit,¹⁴³ the immediate effect would be as described by Defendants’ testimony as cited above. Injunctive relief would interrupt the business operations of a company that has unknowingly co-existed alongside Plaintiff for more than 6 years. Such a result would work to the pure benefit of Plaintiff at the complete expense of Defendants and would be without regard to the lack of evidentiary proof of injury. In effect, Plaintiff’s requested relief would prevent Defendants from engaging in their normal business

¹⁴⁰ Ex. G, ¶ 13.

¹⁴¹ Ex. H, 95:8–96:6.

¹⁴² (Doc. 20, at 25).

¹⁴³ (Doc. 17, ¶ 96).

operations.¹⁴⁴ *See Snelling Employment L.L.C. v. MB Indus., LLC*, 2011 WL 13130075, at *2 (N.D. Tex. Sept. 28, 2011) (denying injunctive relief where court found harm to defendant would outweigh any harm to the plaintiff by, in part, preventing the defendant from proceeding with a transaction closing and preventing the defendant from engaging in its normal business operations).

42. The extraordinary relief requested by Plaintiff at this stage would not serve to maintain the status quo between the parties which have been operating in parallel for years without knowledge of the other and without issue. *See Texas First Nat. Bank v. Wu*, 347 F. Supp. 2d 389, 397 (S.D. Tex. 2004) (noting purpose of preliminary injunction is, in part, to preserve the status quo).

E. Plaintiff cannot carry its evidentiary burden to show that granting the preliminary injunction will not disserve the public interest.

43. Courts will consider this public interest factor and the balance of hardships factor together because they “overlap considerably.” *Franciscan All., Inc. v. Burwell*, 227 F. Supp. 3d 660, 694 n.36 (N.D. Tex. 2016) (citing *Texas v. United States*, 809 F.3d 134, 187 (5th Cir. 2015)). For the reasons stated in the preceding section, Plaintiff cannot carry its evidentiary burden with respect to this factor. Plaintiff appears to contend that this factor is always satisfied in a Lanham Act case.¹⁴⁵ However, a multitude of innocent third party investors and other persons and entities would be affected by injunctive relief as a consequence of Defendants’ business operations being interrupted.

CONCLUSION

Defendants request the Court deny Plaintiff’s Application for Preliminary Injunctive Relief and for all other and further relief to which they may show themselves justly entitled.

¹⁴⁴ (Doc. 17, ¶ 96).

¹⁴⁵ (Doc. 20, at 25).

Respectfully submitted,

CHAMBERLAIN, HRDLICKA, WHITE,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record in accordance with the District's ECF service rules and the Federal Rules of Civil Procedure on this 4th day of January, 2019.

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Justin E. VandenBout

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STOCKDALE INVESTMENT GROUP,)
INC. D/B/A STOCKDALE)
)
Plaintiff,)

VS.) CIVIL ACTION NO. 4:18-cv-02949
)

STOCKDALE CAPITAL PARTNERS,)
LLC, STOCKDALE CAPITAL PARTNERS))
RE FUND I GP, LLC, STOCKDALE)
CAPITAL PARTNERS REAL ESTATE)
FUND, LP, STOCKDALE CAPITAL)
RE INVESTMENTS, LLC, STOCKDALE)
CAPITAL RE, LLC, and STOCKDALE)
CAPITAL SERVICES, LLC)
)
Defendants.)

ORAL DEPOSITION OF
KENNETH PRATT
NOVEMBER 20, 2018

ORAL DEPOSITION OF KENNETH PRATT, produced as a witness at the instance of the Defendants, and duly sworn, was taken in the above-styled and -numbered cause on the 20th day of November, 2018, from 9:28 a.m. to 1:43 p.m., before Chrissa K. Hollingsworth, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Winstead, PC, located at 2728 North Harwood Street, Suite 500, Dallas, Texas, pursuant to the Texas Rules of Civil Procedure.

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Q. (By Mr. VandenBout) Well, you -- you submitted --
Stockdale Investment Group submitted an application with the
Trademark Office for the mark Stockdale, correct?

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A. Yes.

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Q. And you've now received a response from that office,
correct?

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A. Yes.

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EXHIBIT A

1 Q. -- under the title Section 2(e)(4) Surname Refusal,
2 can you read the sentence right underneath it.

3 A. "Registration is refused because the applied-for mark
4 is primarily merely a surname. Trademark Act Section 2(e)(4),
5 15 U.S.C., 1052(e)(4); see TMEP 1211."
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Q. When did the headquarters for Stockdale Investment Group change to Dallas?

A. I believe it was early 2011.

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8 Q. Okay. Does Stockdale Investment Group currently have
9 any offices other than the one in Dallas?

10 A. No, sir.

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EXHIBIT A

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Q. But this could also involve placing a tenant at a property that you don't have an interest in?

A. For Alex more so than Joe.

Q. Okay. And so a third party comes to you and says, "Look, we really need to find a space that's going to help our business." And Alex could say, "Okay. I'm going to look around town and I'm going to do some research. And based on this research, here are some options for you?"

A. Uh-huh.

Q. Fair?

A. Fair.

Q. In the real estate industry, based on your experience, due diligence is very important?

A. Knowledge is very important.

Q. Knowledge is very important?

A. Yeah.

Q. Correct?

A. Yeah.

Q. You want to have an understanding of the location, the surrounding areas, maybe past history in finances. All

1 important information?

2 A. It's part of the important information.

3 Q. Yeah.

4 A. Correct.

5 Q. What other important information do you believe
6 should be considered when, let's talk about, identifying a
7 property for acquisition?

8 A. How much time you got?

9 Q. Well, I think technically we have four hours, but I
10 don't want to spend that much time. Give me the -- give me the
11 five-minute-or-less version.

12 A. Okay. All right. So if you go in and you look at a
13 deal, you'd look at, okay, one, you know, does the location
14 fit? Okay. Two, then you look at, okay, does the -- you know,
15 the financial aspect of it. Does the tenant mix work for you?
16 Is that a type of real estate that you'd invest in? Then you
17 look at market rents. Okay. Well, what are the rents
18 surrounding the property? You know, can I generate upside?
19 What -- am I -- can I see something in this property that is
20 not necessarily being seen by the current owner?

21 Q. Uh-huh.

22 A. You know, where can I generate value out of this
23 asset? Is there anything that may -- you know, looking for the
24 positives on that side. You know, do these -- you know, are --
25 what tenants are in there? Are these tenants good tenants? Do

1 they have credit? Are they going to stick around or are they
2 just going to be gone in a year? Is it likely that they'll
3 renew? Is it likely that they'll leave? If they are going to
4 leave, does that hurt you or does that create value? Then if
5 you look at downside, you could go from everything from
6 environmental. You know, is there a gas station next door? Is
7 there a dry cleaner? Is there something that could come back
8 to, you know, be bad for the environment that will hurt you as
9 an owner? Are they going to build a high-rise on both sides of
10 you to where you're going to be boxed in? You know, what's the
11 future growth of the area? Whose -- you know, is the area
12 getting regentrified? Is it on the way up or on the way down?

13 Q. A lot of information.

14 A. Yeah.

15 Q. So much information that, fair to say, it typically
16 requires a team to do this due diligence?

17 A. Yes.

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Q. Because that's a lot of money to most people. And before you're going to invest that amount of money, you want to make sure that you've done your homework.

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A. Absolutely.

11

Q. And that includes doing your homework on the companies or entities that you're going to go into business with. Fair?

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A. Fair.

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Q. I mean, it's not --

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A. Are you saying real estate or are you saying businesses?

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Q. I'm talking about real estate.

19

A. Okay. Yes.

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Q. Fair?

21

A. Yeah.

22

Q. We're not talking about someone making a decision where to go eat on a particular night when you can just go to Yelp. I mean, this is a transaction and decision that involves a lot of money and requires some research.

25

1 A. Yeah.

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9 Q. Since 2013, do you have an approximate idea of how
10 much real estate your company has acquired?

11 A. Are you asking me to estimate a number of real estate
12 in value?

13 Q. Sure.

14 A. I'd probably say over \$75 million since 2013, for a
15 real rough estimate.

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Q. Okay. Other than the acquisition of additional tracts of land at this one site in California, fair to say that all other real estate acquisitions have been in the Dallas area since 2012?

A. I believe so. Maybe some land in North Carolina.

Q. Yeah. I saw that.

A. Yeah.

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Q. I believe you previously testified that you would identify your customers as any tenant under the sun. Does that apply today with Stockdale Investment Group? Is that who you would generally consider to be your customers today?

A. Yes.

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Q. And in looking at -- beginning with 2633 McKinney, Dallas, Texas, acquired February 22nd, 2012 to the bottom of the list ending in 5001 West Lovers Lane, Dallas, Texas, all those properties are located in Dallas, Texas with the exception being Landing At Mill Creek, Stump Sound, North Carolina. Fair?

A. Yes, sir.

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Q. The funding of the acquisition of these properties, is that all done internally or is that partly done through outside investors?

A. It's Stockdale Capital money or Stockdale Investment Group money. Now, we will get loans on some of our properties.

Q. Sure. But you're not having to go out and solicit investors to help you finance a property to acquire, fair?

A. We do not have a need at this time. And we've been approached by several people to do this, but we want to place all of our money first.

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Q. Sure. There's an allegation that was made that your clients and customers are major sophisticated players in the U.S. real estate market. Is that a fair statement?

A. Yes. It includes them, yeah.

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Q. Okay. Let me make sure my question's clear. Is it a correct statement that since 2013, your company has not acquired, leased, managed any commercial properties in Los Angeles, California?

A. Not in Los Angeles, no.

Q. Okay. So my statement would have been correct?

A. Yes.

Q. All right. That's a little exercise. Same would be true for Beverly Hills, California?

A. No, we have not.

Q. You have not acquired, leased, managed any commercial properties in Beverly Hills, California?

A. No.

Q. Same -- same true for Sugar Land, Texas?

A. Not in Sugar Land, no, we have not.

Q. Okay. Same is true for the state of Oregon?

A. Same is true for the state of Oregon.

Q. Same is true for San Francisco, California?

A. Yes.

1 Q. Same is true for Santa Monica, California?

2 A. Yes.

3 Q. Same is true for Scottsdale, Arizona?

4 A. Yes.

5 Q. Same is true for Silicon Valley?

6 A. Yes.

7 Q. Same is true for El Paso, Texas?

8 A. Yes.

9 Q. Same is true for Riverside, California?

10 A. In the city of Riverside?

11 Q. Correct.

12 A. Because isn't -- is Rubidoux in the same county?

13 Q. I'm not sure.

14 A. I'll say -- I'll say correct unless Rubidoux's in the
15 same county.

16 Q. That's fair.

17 A. Yeah.

18 Q. How about in Memphis, Tennessee?

19 A. No.

20 Q. The state of Tennessee?

21 A. We've looked at deals in Tennessee, but, no.

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Q. Not my question. My question is: Have you ever owned a hotel, Stockdale Investment Group?

A. No.

Q. Have you ever owned a senior living or assisted living residential property?

A. Not that I know of.

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Q. How about multi-level parking garages?

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A. No.

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Q. Okay. Let's -- let's go with dollar value. Do you

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have an idea of the dollar value market share that Stockdale

22

Investment Group has in commercial real estate in the United

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States?

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A. Are you looking for a percentage?

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Q. If possible.

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EXHIBIT A

1 A. No.

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15 Q. Do you have any estimation as to what Stockdale
16 Investment Group's market share is, and let's go with a dollar
17 value, in the Texas commercial real estate market?

18 A. I'd have to get the financials in front of me.

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25 Q. Sure. Would you agree that Stockdale Investment

1 Group's market share in Los Angeles, California; Beverly Hills,
2 California; Sugar Land, Texas; Oregon, San Francisco, Santa
3 Monica, Scottsdale, Silicon Valley; El Paso, Texas; Riverside,
4 California and Memphis, Tennessee would be zero?

5 A. What are you referring to as market share?

6 Q. Let's go dollar value.

7 A. I would say no, because we do know people and we do
8 have a network in there. So if you're saying dollar value of
9 tangible real estate currently owned --

10 Q. Yes.

11 A. Is that what you're looking for?

12 Q. Yes.

13 A. That's zero. Market share on networking and brokers
14 and all that, there is value to that.

15 Q. But you've never done a deal in any of those cities?
16 It's not a trick question.

17 A. A little bit.

18 Q. Okay.

19 A. No. We've never -- I have never purchased an asset
20 in those cities.

21 Q. In which ways does Stockdale Investment Group market
22 or advertise its business?

23 A. Every way we can think of.

24 Q. Okay. Give me some examples. Website?

25 A. Website, fliers, marketing events, ICSC.

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Q. All right. I didn't think you did. All right.
Website, fliers, marketing materials.

A. Charity events, you know, local events, online
websites, leasing ads, going around and word of mouth, going to
brokers, meeting with brokers.

Q. Yeah.

A. The list goes on.

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Q. Yeah. I want to know -- I know -- I want to know the
specific example that you've identified for a property that's
been developed. What are you advertising for in those
situations?

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A. Everything. So when you're advertising -- if it's
for a property, you're advertising the property as a whole.

25

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EXHIBIT A

1 So, for instance, you know, we were advertising 2633 and didn't
2 go to market. And because, you know, there was market
3 knowledge of this center, that's where, you know, Trammell Crow
4 comes into play, "Hey, what would you guys -- you know, and
5 then they'd come with a -- come forth with an offer. So
6 whether it's with that. You know, on the website, it's our
7 brand, you know, who we are as a whole, what we do just to
8 familiarize other people with us.

9 Q. Uh-huh. What services were marketed by your company
10 in these publications?

11 A. It was our brand as a whole.

12 Q. So it wouldn't list a specific service, for example,
13 leasing or property management or acquisition? It would be --
14 what would it say?

15 A. It would vary case by case and it would say, you
16 know, "Hey, Stockdale." You know, sometimes it would, you
17 know, have a property. It really does vary, because you can't
18 just publish one ad nonstop.

19 Q. Would someone who is looking at --

20 A. You can, but...

21 Q. -- one of these ads, would they be able to identify
22 based on review of the ad what the service is that you are
23 providing just based on the review of the ad?

24 A. On some of them.

25 Q. Okay. And on these some that you're referring to,

1 what service would be listed?

2 A. Typically, the property as a whole, our brand as a
3 whole. Does it list each -- each individual thing? No, it
4 does not.

5 Q. Okay.

6 A. Because it's to encourage people to do more research,
7 see who we are and find who we are.

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Q. But as to a dollar amount, is that something that you-all track as a company?

A. Not specifically, no.

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Q. Okay. When did you first become aware of my client Stockdale Capital and affiliated companies?

A. Pretty much right when -- it actually was right before -- I believe it was 2017. So Tom Short with Arch Capital had, like, brought up, "Hey, are we marketing a deal to you? And we've got Stockdale on the list." This was, I think, the year before. And I go, "No, I don't think so," and then I always just thought it was error, you know. The -- because I would never fathom that there would be another Stockdale in the real estate industry, especially with this focus. So I just always thought it was error, and then it got brought up to us again. And then in 2017, the second I find out -- found out, I went and I go, "Wow. There actually is another Stockdale." I went to Winstead and started going down that road.

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5 Q. Okay. And then that was in 2017. After Tom Short --

6 A. I believe that was the year before --

7 Q. Two thousand --

8 A. -- the very first time he had brought that up.

9 Q. Yeah. Two thousand -- I thought you said 2017 or was
10 it 2016?

11 A. The first time he brought it up, I believe, was
12 either -- like the middle of '16 or something.

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22 Q. And just to be clear, Stockdale Investment Group does
23 not market itself as Stockdale Capital, correct?

24 A. We own Stockdale Capital, LLC.

25 Q. Okay. How --

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EXHIBIT A

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A. We market ourselves as Stockdale.

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Q. Has Stockdale Investment Group since 2013 had an acquisition with a value in excess of \$200 million?

A. No.

Q. Since 2013, has Stockdale Investment Group had an acquisition in excess of \$50 million?

A. No.

Q. What is the largest dollar value acquisition that Stockdale Investment Group has had since 2013?

1 A. Multiple acquisitions in excess of \$30 million.

2 Q. But what is the most single acquisition?

3 A. I would say, like, \$36 million, I believe, is the
4 price, a \$36 million purchase price.

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Q. What money are you aware of that brokers have paid my client?

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A. I'm not aware of any money.

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Q. As part of the acquisition process, which you are

1 familiar with, in acquiring a property, do you have an
2 understanding that typically paperwork and transparency is
3 involved?

4 A. Yes. I would -- for your client, I would assume so.

5 Q. Okay. They're going to know who the principals are
6 of my client, fair?

7 A. The investors?

8 Q. Yeah.

9 A. I would hope so.

10 Q. Yeah. Do you know whether my client has ever owned
11 or acquired a property in Dallas, Texas?

12 A. No.

13 Q. To your knowledge, has my client ever acquired or
14 owned a property in Dallas, Texas?

15 A. No.

16 Q. To your knowledge, has my client ever owned or
17 acquired a property in North Carolina?

18 A. No.

19 Q. To your knowledge, has my client ever owned or
20 acquired a property in Pittsburg, California or Bakersfield,
21 California?

22 A. Probably in the region.

23 Q. That's not my question. My question is: Are you
24 aware of whether my client -- or do you know whether my client
25 has ever acquired or owned a property in Pittsburg, California;

1 Bakersfield, California; San Dimas, California; or Rubidoux,
2 California?

3 A. No, I don't know the answer to that, if they do.
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Q. Okay. Let's go back and look at Page 9, Exhibit 3. In the 23 properties that are listed on here, based -- based on your knowledge, as you sit here today, as the corporate representative for Stockdale Investment Group, Inc., has my client ever owned or acquired a property in any of the cities listed on Page 9?

A. Not to my knowledge, no.

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Q. Do you have any evidence that any of those real estate acquisitions they've been involved with was based on someone's confusion as to whether they were Stockdale Investment Group located in Dallas, Texas?

A. I don't know that. What I can -- I don't know that.

Q. 2017, you meet with -- talked with Tom Short in 2016 and he tells you, "Oh, there's this other Stockdale." Then in 2017, is it correct Stockdale Investment Group registers the name Stockdale Capital with the Texas Secretary of State?

MR. VAN ARSDEL: Objection, mischaracterizes evidence. You can go ahead and answer.

A. I seeked legal counsel at that point. I did what my attorneys --

Q. (By Mr. VandenBout) Oh, okay. That's fair. And I'm not looking to find out what your attorneys advised you. That's not my goal here today. As to -- okay. Strike that. Is the word Stockdale Capital listed on your website anywhere?

A. To my knowledge, no.

Q. Is the phrase Stockdale Capital Partners listed on your website?

1 A. To my knowledge, no.

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Gwendolyn Parker & Associates, Inc.

214-747-8007

EXHIBIT A

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Q. Have you lost any deal or opportunity, to your knowledge, based on this one employee review?

A. I could have potentially lost candidates working for me and the way people think of my company.

Q. I'm not asking you to speculate. I'm asking: Do you know of any deal or opportunity that you've lost?

A. Not as I sit here today.

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Q. That's not my question. My question is: If someone wanted to find out more about each company, there is a -- there are additional tabs and information on each of these websites to do so?

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A. Yeah. For instance, Team, that's also on both websites, yes.

22

Q. Okay.

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A. Properties, on both websites.

24

Q. Okay. And then you can click on Team, for example.

25

And would any of the team members on Stockdale Investment Group

1 be the same as the team members on Stockdale Capital Partners?

2 A. No, sir, not to my knowledge.

3 Q. And if you click on Properties -- I see on my
4 client's website, Exhibit 6, they have a tab for Properties,
5 and then I believe you have a tab that says Available
6 Properties. Now, if you were to click on the word Properties
7 for my client and compare those to the Available Properties of
8 your client, would any of those overlap?

9 A. The property types would overlap, yes.

10 Q. That's not my question. Would the specific
11 properties overlap?

12 A. No, they are not the same addresses.

13 Q. And if you looked at the office address for my client
14 on its website and the office address listed on your website,
15 those would be different as well?

16 A. I believe so. I would hope so.

17 Q. And the contact information listed for my client
18 would be dissimilar and different than the contact information
19 listed on your website. Fair?

20 A. As far as the actual information?

21 Q. Yes.

22 A. The actual phone number and address and stuff, yes.

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Q. As you sit here today, are you aware of any of Stockdale Capital's customers replying that they've chosen to do business with my client based solely on the word Stockdale on their website?

A. No.

Q. So -- absolutely. So is a high net worth investor, based on your experience, going to go to my client's website, see the word Stockdale and say, "I've seen enough. This is a nice website. I like the logo. I like the word Stockdale. Sign me up."

A. Possibly with other factors, but not solely based on

1 the website alone.

2 Q. Sure. Other factors being, well, who's behind this
3 company, who's a part of it?

4 A. Or people knowing Stockdale's track record --

5 Q. Okay. And --

6 A. -- and hearing about performance and what deals have
7 been done and so forth.

8 Q. And that would require, likely, a conversation with
9 someone at Stockdale Capital or with your company about what
10 your history is?

11 A. Anyone in real estate.

12 Q. Do you know how my client selected the name Stockdale
13 Capital Partners?

14 A. I do not.

15 Q. You don't have any evidence that the decision to use
16 Stockdale Capital Partners by some guys in California, Los
17 Angeles was based on Stockdale Investment Group in Dallas?

18 A. Not concrete, no.

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Q. Do you have any direct evidence that in conducting my client's business, they have ever held themselves out as being affiliated with Stockdale Investment Group?

A. No.

Q. Okay. And so Interrogatory Number 3, we're asking you to identify any communications wherein in customers, potential customers, or any other parties have reported confusion, right?

A. Yes, sir.

Q. And so your response is to identify Tom Short from

1 Arch Investment Group, right?

2 A. Yes.

3 Q. The Lincoln Property Company, right?

4 A. Yes.

5 Q. Jeff Courtwright and Hunter Brous?

6 A. Brous (pronouncing).

7 Q. Brous?

8 A. Yes.

9 Q. And then Michael Townsend sent an e-mail about the
10 Horton Plaza news article, right?

11 A. Yes.

12 Q. So those are the instances. All right. Let's talk
13 about them.

14 A. Okay.

15 Q. When you -- when you spoke to Tom Short, how long was
16 that conversation?

17 A. Very brief.

18 Q. Yeah. Less than five minutes?

19 A. Yes.

20 Q. Less than two minutes?

21 A. Probably around two minutes.

22 Q. Okay. Did Tom ever tell you that he marketed this
23 property that you're not aware of which one it is, to Stockdale
24 Capital based on his belief it was Stockdale Investment Group?

25 A. No.

1 Q. Would --

2 A. He asked if it was us --

3 Q. Yeah.

4 A. -- and if we'd like to take a look once I said, "No,
5 it wasn't."

6 Q. Okay. And then you said, "Yeah, I'd like to take a
7 look," --

8 A. Yeah.

9 Q. -- but he never followed up or you never followed up?

10 A. Yeah.

11 Q. Do you still do business with Tom Short?

12 A. Yes.

13 Q. Okay. Is Tom a pretty diligent person?

14 A. In some aspects.

15 Q. Okay. Do you know the extent of Tom Short's
16 relationship with my client?

17 A. Not fully.

18 Q. Okay. Do you know how long he's known my clients
19 and/or their principals?

20 A. No.

21 Q. Do you know how Tom found out and identified
22 Stockdale Capital as an entity to market this project to?

23 A. No.

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Q. Okay. So your meeting with Jeff and Hunter and

1 Lincoln Property Company, when it comes down to it, had nothing
2 with your name or their prior relationship with Stockdale
3 Capital Partners; it was the site?

4 A. No. It was a combination of things.

5 Q. So yes or no, in your -- based on what you know
6 today, was the meeting with Jeff and Hunter based on the name
7 Stockdale, just the word Stockdale?

8 A. No.

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13 Q. (By Mr. VandenBout) I've marked as Exhibit 7 to your
14 deposition an e-mail from Michael Townsend to Joe Pastora dated
15 June 22nd, 2018. And who is Michael Townsend?

16 A. A broker.

17 Q. With Townsend & Associates?

18 A. Uh-huh.

19 Q. And where are they located?

20 A. I don't know the answer to that.

21 Q. Have you done business with Townsend & Associates
22 before?

23 A. Joe would if -- Joe handles the brokerages and the
24 leasing and all that more than I do. So it looks like Joe had
25 done business with them for the guy to have Joe's e-mail.

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Q. Okay. So as you sit here today, there's no information or evidence that Michael Townsend brought the Horton Plaza deal to Stockdale Capital Partners based on the belief that Stockdale Capital Partners was somehow affiliated with Stockdale Investment Group?

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A. Not to my knowledge, no.

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Q. Yeah. Do you know who the seller was of the Horton Plaza project?

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A. No, sir.

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Q. Do you know who the investors were along with my client in the Horton Plaza project?

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A. No, sir. I was never presented the deal.

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Q. Okay. And so if you -- if you look at the timeline here, the original article that presumably referenced Stockdale Investment Group was changed within 24 hours to correctly reflect Stockdale Capital Partners.

A. Correct.

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Q. -- make sure I ask it. Are you aware of any opportunity or deal that you have lost to my client as a result of your belief that the names are similar?

A. I would tell you, once again, Horton Plaza, we would be interested in that. Definitely the school because we have owned assets similar to the school in LA County. Both of those do meet our parameters and pass what I would call the sniff test. Now, we weren't presented that opportunity, so we didn't get the chance to underwrite them. So did we 100 percent miss out on that? Yes, we did, because we didn't even have a shot.

Q. But my question is: Do you have any evidence that my client was presented those two opportunities based solely on the name Stockdale and the belief that they were affiliated with Stockdale Investment Group?

A. I believe that's two separate questions.

Q. Sure. Let me -- let me separate them out. Thank you. With respect to Horton Plaza, do you have any evidence

1 that my client was presented with that opportunity based on
2 someone's alleged confusion between Stockdale Capital Partners
3 and Stockdale Investment Group?

4 A. No, I don't have evidence.

5 Q. With respect to the school, do you have any direct
6 evidence that my client was presented with that opportunity
7 based on alleged confusion between Stockdale Capital Partners
8 and Stockdale Investment Group?

9 A. No, I don't believe so.

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FILED
In the Office of the
Secretary of State of Texas

FEB 10 2017

Corporations Section

CERTIFICATE OF FORMATION
OF
STOCKDALE CAPITAL LLC

The undersigned individual, acting as organizer of a limited liability company (the "Company") under the Texas Business Organizations Code, as from time to time amended (the "TBOC"), does hereby adopt the following Certificate of Formation for such Company:

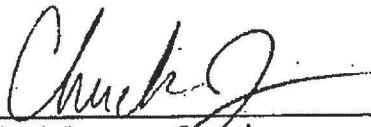
1. Name. The name of the Company is Stockdale Capital LLC.
2. Purpose. The purpose for which the Company is organized is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the TBOC.
3. Initial Registered Office; Initial Registered Agent. The address of the initial registered office of the Company is 206 E. 9th Street, Suite 1300, Austin, Texas 78701, and the name of the initial registered agent at such address is Capitol Corporate Services, Inc.
4. Manager-Managed. The Company shall have one or more managers and shall be governed by its managers. The name and address of the initial manager of the Company is as follows:

<u>Name</u>	<u>Address</u>
Kenneth Pratt	2100 McKinney Avenue Suite 1550 Dallas, Texas 75201

5. Organizer. The name and address of the organizer of the Company are:

Chuck Jacaman
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

The undersigned, being the organizer designated herein, executes this Certificate of Formation this 10th day of February, 2017.



Chuck Jacaman, Organizer

RECEIVED

FEB 10 2017

Secretary of State

EXHIBIT B

STOCKDALE 000233

Form 401-A
(Revised 12/09)



**Acceptance of Appointment
and
Consent to Serve as Registered Agent
§5.201(b) Business Organizations Code**

The following form may be used when the person designated as registered agent in a registered agent filing is an individual.

<u>Acceptance of Appointment and Consent to Serve as Registered Agent</u>		
I acknowledge, accept and consent to my designation or appointment as registered agent in Texas for		
<i>Name of represented entity</i>		
I am a resident of the state and understand that it will be my responsibility to receive any process, notice, or demand that is served on me as the registered agent of the represented entity; to forward such to the represented entity; and to immediately notify the represented entity and submit a statement of resignation to the Secretary of State if I resign.		
X:	<i>Signature of registered agent</i>	<i>Printed name of registered agent</i>
		<i>Date (mm/dd/yyyy)</i>

The following form may be used when the person designated as registered agent in a registered agent filing is an organization.

<u>Acceptance of Appointment and Consent to Serve as Registered Agent</u>		
I am authorized to act on behalf of Capitol Corporate Services, Inc.		
<i>Name of organization designated as registered agent</i>		
The organization is registered or otherwise authorized to do business in Texas. The organization acknowledges, accepts and consents to its appointment or designation as registered agent in Texas for:		
Stockdale Capital LLC		
<i>Name of represented entity</i>		
The organization takes responsibility to receive any process, notice, or demand that is served on the organization as the registered agent of the represented entity; to forward such to the represented entity; and to immediately notify the represented entity and submit a statement of resignation to the Secretary of State if the organization resigns.		
X:	<i>Signature of person authorized to act on behalf of organization</i>	<i>Printed name of authorized person</i>
		<i>Date (mm/dd/yyyy)</i>

Respectfully submitted,

WINSTEAD PC

By: /s/ Tom Van Arsdel

Tom Van Arsdel – Attorney in Charge

State Bar No. 24008196

Federal ID 23492

Katie M. Banks

State Bar No. 24092114

Federal ID 2516169

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Facsimile: (713) 650-2400

**ATTORNEYS FOR PLAINTIFF STOCKDALE
INVESTMENT GROUP, INC. D/B/A
STOCKDALE**

CERTIFICATE OF SERVICE

I certify that on the 2nd day of November, 2018, a true and correct copy of the foregoing document was served on the following in accordance with the Federal Rules of Civil Procedure:

Collin A. Rose

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Justin E. VandenBout

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Kevin C. Navetta

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Houston, Texas 77002

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713.658.2553—Fax

**ATTORNEY FOR DEFENDANTS
STOCKDALE CAPITAL PARTNERS,
LLC, STOCKDALE CAPITAL
PARTNERS RE FUND I GP, LLC,
STOCKDALE CAPITAL PARTNERS
REAL ESTATE FUND, LP,
STOCKDALE CAPITAL RE
INVESTMENTS, LLC, STOCKDALE
CAPITAL RE, LLC, AND
STOCKDALE CAPITAL SERVICES,
LLC**

/s/ Tom Van Arsdel

Tom Van Arsdel

ANSWERS TO FIRST SET OF INTERROGATORIES**INTERROGATORY NO. 1:**

Please identify all parties you have entered into a real estate transaction with since inception in 1989 including such information as a general description of the transaction, the date of the transaction, and the nature of the transaction.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is overbroad, not properly limited in scope, and seeks private, confidential information of nonparties to this suit. Plaintiff objects to the foregoing interrogatory because it is an improper request for a narrative and seeks to have Plaintiff marshal its evidence and available proof. Plaintiff objects that the requested information is not proportional to the needs of the case. Specifically, the information is of low importance to resolving the issues, the requested discovery places a burden and expense on the responding party that outweighs the likely benefit, and the issues at stake in the action are not sufficient to justify the discovery of the requested information. Furthermore, the interrogatory seeks information that is neither relevant nor reasonably like to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Stockdale responds as follows:

Since 1989, Stockdale has purchased and/or sold residential and commercial properties, including but not limited to the following properties:

<u>Property</u>	<u>Acq Date</u>
1875 Loveridge, Pittsburg, CA	1991
3500 Pegasus, Bakersfield, CA	2002
3600 Bowman, Bakersfield, CA	12/2/2003
Vineyard Drive & East 18th St, Antioch, CA	4/2/2004
180 E Arrow Hwy, San Dimas, CA	11/7/2006
2813 Shaver, Pasadena, TX	6/20/2007
Tehachapi land, CA	11/1/2007
5510 28th St, Rubidoux, CA	2008
9 NW Dolores St & 9th Ave., Carmel, CA	2/8/2008
2726 Westside, Pasadena, TX	6/10/2009
507 Marigold, Newport Beach, CA	9/15/2009
217 North Marie, Fullerton, CA	2/8/2010
2633 McKinney, Dallas, TX	2/22/2012
5840 W NW Hwy, Dallas, TX	6/14/2012
4433 McKinney, Dallas, TX	8/20/2012
4444 McKinney, Dallas, TX	12/5/2012
3111 Armstrong, Dallas, TX	5/31/2013
4200 Oaklawn, Dallas, TX	7/17/2013
Landing at Mill Creek, Stump Sound,	8/9/2013

NC	
7835 & 7839 Park Ln, Dallas, TX	12/18/2014
150 Turtle Creek, Dallas, TX	2/24/2016
1824 & 1904 Abrams, Dallas, TX	4/24/2017
5001 Lovers, Dallas, TX	6/6/2018

INTERROGATORY NO. 2:

Please describe the amount, category, and method of calculation of damages you have allegedly sustained in connection with the claims you have made against Defendants in the litigation.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is an improper request that seeks to have Plaintiff marshal its evidence and available proof. Subject to and without waiving the foregoing objections, Stockdale responds as follows:

Plaintiff seeks damages for all opportunities, sales, or investments that were intended for Plaintiff and wrongly went to Defendants; lost profits; lost goodwill and brand equity; all profits Defendants' derived from the use of Stockdale; an accounting of Defendants' profits with the burden on Defendants to prove any deductions or apportionment; Plaintiff's costs for corrective advertising; treble damages; disgorgement; and Plaintiff's attorney's fees and costs.

INTERROGATORY NO. 3:

Please identify any communications wherein customers, potential customers, or any other parties have reported confusion between Plaintiff and Defendants and whether you contend that these customers, potential customers, or other parties have entered into real estate transactions with Defendants and, if yes, describe the real estate transactions.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is an improper request that seeks to have Plaintiff marshal its evidence and available proof. Plaintiff objects to the foregoing interrogatory because it is overbroad, not properly limited in scope, and seeks information that is neither relevant nor reasonably like to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Stockdale responds as follows:

Tom Short from Arch Investment Group stated to Plaintiff that he believed Plaintiff and Defendant were the same entity. The Lincoln Property Company reported confusion to Plaintiff as to whether Plaintiff and Defendant are the same entity. Jeff Courtwright and Hunter Brous reported confusion and stated that they believed Plaintiff and Defendants were the same company. Michael Townsend sent an email to Plaintiff believing a news article published about Defendants was referring to Plaintiff.

INTERROGATORY NO. 4:

Please provide the factual basis for the allegation in paragraph 23 of Plaintiff's Original Complaint that the alleged confusion between Plaintiff and Defendants has "led to projects that were intended for the real Stockdale to be marketed to Stockdale Capital . . . and has caused Stockdale Capital to earn illicit profits at the expense of the real Stockdale." This interrogatory includes a request for the identification of the projects referenced in the allegation, the parties or individuals at issue, as well as the "illicit profits" earned by Defendants.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is an improper request for a narrative and seeks to have Plaintiff marshal its evidence and available proof. Plaintiff objects to the foregoing interrogatory because it is overbroad, not properly limited in scope and seeks information that is neither relevant nor reasonably like to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

A project in San Diego, California was marketed to Defendants instead of Plaintiff. Plaintiff specifically identifies all profits earned by Defendants while using Plaintiff's name.

INTERROGATORY NO. 5:

Please identify the "investors," and contact information of the investors, that you contend Defendants are allegedly improperly recruiting to participate in Defendants' business model and whether any of the "investors" are customers of or investors in Plaintiff.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is overbroad, not properly limited in scope, and seeks private, confidential information of nonparties to this suit. Plaintiff objects that this information would necessarily be known to and accessible by Defendants rather than Plaintiff. Furthermore, the interrogatory seeks information that is neither relevant nor reasonably like to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

As discovery has just commenced, Plaintiff does not have the identity of Defendants' investors. Given Plaintiff's long-standing use of the term Stockdale, it is believed that any potential investor in Defendants' real estate ventures may likely be confused about the affiliation of the venture they are considering for investment. As an example, Defendants are currently doing business with several of Plaintiff's customers, brokers, referral sources, or industry contacts, including Lincoln Property Company, CBRE Group, Inc., and Holliday Fenoglio Fowler, L.P.

INTERROGATORY NO. 6:

Please describe the nature, dates, and details, including a specific listing of services offered and date those services began being offered, of all of Plaintiff's commercial activity in California, and separately in Texas.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is overbroad, not properly limited in scope and seeks information that is neither relevant nor reasonably like to lead to the discovery of admissible evidence. Plaintiff objects to the foregoing interrogatory because it is an improper request for a narrative. Plaintiff objects that the requested information is not proportional to the needs of the case. Specifically, the information is of low importance to resolving the issues, the requested discovery places a burden and expense on the responding party that outweighs the likely benefit, and the issues at stake in the action are not sufficient to justify the discovery of the requested information. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

Stockdale is a real estate services company operating in Texas, California, and North Carolina in the real estate design, construction, and property management space. Starting as a small, family business in 1989, Stockdale began its operations in Stockdale, California, expanded to Texas in 2007, and later began operating in North Carolina in 2010. Stockdale has operated continuously under the Stockdale name since the company's inception in 1989. In early 2012, Stockdale moved its headquarters to Texas. Plaintiff is involved with development, leasing, sales, acquisition, and property management throughout California and Texas since at least 2007. Plaintiff has several property development projects ongoing. Plaintiff personally leases numerous properties and retail spaces in its current portfolio. Leasing is largely handled in-house. Plaintiff has represented itself in regards to multiple transactions acquiring new property. Plaintiff has managed its own properties since inception.

INTERROGATORY NO. 7:

Please identify all owners and investors, past or present, in Plaintiff's California entity and Texas entity, including the date each became an owner and investor and any consideration provided to become an owner or investor.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is overbroad, not properly limited in scope, and seeks private, confidential information of nonparties to this suit. Plaintiff objects that the requested information is not proportional to the needs of the case. Specifically, the information is of low importance to resolving the issues, the requested discovery places a burden and expense on the responding party that outweighs the likely benefit, and the issues at stake in the action are not sufficient to justify the discovery of the requested information. Plaintiff objects that the terms "California entity" and "Texas entity" are undefined and are vague and confusing. Furthermore, the interrogatory seeks information that is neither relevant nor reasonably like to lead to the discovery of admissible evidence, specifically information on former owners or investors. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

The current owners or investors in Stockdale include Kenneth Pratt, Jodi Pratt, Melissa Pastora, Barbara Pratt, Joe Pastora, and the Pratt Children's Irrevocable Trust.

INTERROGATORY NO. 8:

Please identify all known third parties, past or present, using the word Stockdale that are in the business of real estate, including information on how and when you became aware of such third parties and any relationships with the third parties or their principals.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is overbroad, not properly limited in scope and seeks information that is neither relevant nor reasonably like to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

Plaintiff does not know of any other entities in the real estate field using the word Stockdale other than Defendants.

INTERROGATORY NO. 9:

Please provide the factual basis for the allegation in Plaintiff's Original Complaint that Defendants' actions were intentional, willful, malicious, wanton, fraudulent, or in bad faith.

ANSWER: Plaintiff objects to the foregoing interrogatory because it is an improper request for a narrative and seeks to have Plaintiff marshal its evidence and available proof. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

Defendant chose a mark with a high degree of similarity to Plaintiff's mark. Like Plaintiff's mark, Defendants' mark is in all-caps, block lettering, of the same color scheme as Plaintiff's, and also bears an abstract emblem on the left side of the mark. Moreover, Defendants' website contains substantially similar information in a substantially similar format as the format of the real Stockdale website. Defendants' website (stockdalecapital.com) largely has the same design, color palette, and feel as that of the real Stockdale's (stockdale.com). Accordingly, in using its website to conduct business in the real estate development and property management spaces in the same regions as Plaintiff, Defendants are unfairly and illegally taking advantage of the Stockdale name, the Stockdale mark, and Stockdale's goodwill that Stockdale has developed over the last 29 years.

INTERROGATORY NO. 10:

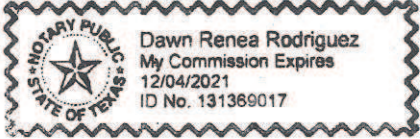
Please identify all properties owned or managed by Plaintiff, including the date Plaintiff became involved with the property, the location of the property, and the commercial activity of the property (e.g., residential, retail, medical offices, etc.).

ANSWER: Plaintiff objects to the foregoing interrogatory because it is overbroad, not properly limited in scope, and seeks private, confidential information of nonparties to this suit. Plaintiff objects that the requested information is not proportional to the needs of

the case. Specifically, the information is of low importance to resolving the issues, the requested discovery places a burden and expense on the responding party that outweighs the likely benefit, and the issues at stake in the action are not sufficient to justify the discovery of the requested information. Furthermore, the interrogatory seeks information that is neither relevant nor reasonably like to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff responds as follows:

<u>Property</u>	<u>Acq Date</u>	<u>Type</u>
1875 Loveridge, Pittsburg, CA	1991	Commercial
3500 Pegasus, Bakersfield, CA	2002	Commercial
3600 Bowman, Bakersfield, CA	12/2/2003	Commercial
Vineyard Drive & East 18th St, Antioch, CA	4/2/2004	Commercial
180 E Arrow Hwy, San Dimas, CA	11/7/2006	Commercial
2813 Shaver, Pasadena, TX	6/20/2007	Commercial
Tehachapi land, CA	11/1/2007	
5510 28th St, Rubidoux, CA	2008	
9 NW Dolores St & 9th Ave., Carmel, CA	2/8/2008	Residential
2726 Westside, Pasadena, TX	6/10/2009	
507 Marigold, Newport Beach, CA	9/15/2009	Residential
217 North Marie, Fullerton, CA	2/8/2010	Residential
2633 McKinney, Dallas, TX	2/22/2012	Commercial
5840 W NW Hwy, Dallas, TX	6/14/2012	Commercial
4433 McKinney, Dallas, TX	8/20/2012	Commercial
4444 McKinney, Dallas, TX	12/5/2012	Commercial
3111 Armstrong, Dallas, TX	5/31/2013	Commercial
4200 Oaklawn, Dallas, TX	7/17/2013	Commercial
Landing at Mill Creek, Stump Sound, NC	8/9/2013	Multi-use Development
7835 & 7839 Park Ln, Dallas, TX	12/18/2014	Commercial
150 Turtle Creek, Dallas, TX	2/24/2016	Commercial
1824 & 1904 Abrams, Dallas, TX	4/24/2017	Commercial
5001 W. Lovers Ln, Dallas, TX	6/6/2018	Commercial

SWORN TO and SUBSCRIBED before me on this 2nd day of November, 2018.



Dawn Renea Rodriguez
Notary Public in and for the
State of Texas

To: Stockdale Investment Group, Inc. (tmddocket@winstead.com)
Subject: U.S. TRADEMARK APPLICATION NO. 88006185 - STOCKDALE - 56331-143
Sent: 10/7/2018 12:57:56 PM
Sent As: ECOM101@USPTO.GOV
Attachments: Attachment - 1

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION
SERIAL NO. 88006185

MARK: STOCKDALE

88006185

CORRESPONDENT
ADDRESS:
CATHRYN A.
BERRYMAN

CLICK HERE TO RESPOND TO THIS
LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

WINSTEAD, P.C.
2728 N. HARWOOD
STREET, SUITE 500
DALLAS, TX 75201

VIEW YOUR APPLICATION FILE

APPLICANT: Stockdale
Investment Group, Inc.

CORRESPONDENT'S
REFERENCE/DOCKET
NO:

56331-143

CORRESPONDENT
E-MAIL ADDRESS:

tmddocket@winstead.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT EASTERN TIME OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 10/7/2018



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EXHIBIT D

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$125 per class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Office Search

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; see 15 U.S.C. §1052(d).

Section 2(e)(4) Surname Refusal

Registration is refused because the applied-for mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); see TMEP §1211.

An applicant's mark is primarily merely a surname if the surname "is the primary significance of the mark as a whole to the purchasing public." *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 1377, 123 USPQ2d 1411, 1413 (Fed. Cir. 2017) (quoting *In re Hutchinson Tech. Inc.*, 852 F.2d 552, 554, 7 USPQ2d 1490, 1492 (Fed. Cir. 1988)); TMEP §1211.01.

The following five inquiries are often used to determine the public's perception of a term's primary significance:

- (1) Whether the surname is rare, (not rare, 6013 entries in Lexis database);
- (2) Whether anyone connected with applicant uses the term as a surname, (unknown);
- (3) Whether the term has any recognized meaning other than as a surname, (no other known meaning);
- (4) Whether the term has the structure and pronunciation of a surname, (has structure and pronunciation of surname); and
- (5) Whether the term is sufficiently stylized to remove its primary significance from that of a surname, (no stylization associated with mark).

In re Eximius Coffee, LLC, 120 USPQ2d 1276, 1278 & n.2, 1282-83 (TTAB 2016) (citing *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTAB 1995) for the *Benthin* inquiries/factors); TMEP §1211.01; see also *In re Etablissements Darty et Fils*, 759 F.2d 15, 16-18, 225 USPQ 652, 653 (Fed. Cir. 1985).

These inquiries are not exclusive, and any of these circumstances – singly or in combination – and any other relevant circumstances may be considered when making this determination. *In re Eximius Coffee, LLC*, 120 USPQ2d at 1277-78; TMEP §1211.01. For example, when the applied-for mark is not stylized, it is unnecessary to consider the fifth inquiry. *In re Yeley*, 85 USPQ2d 1150, 1151 (TTAB 2007); TMEP §1211.01.

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EXHIBIT D

Please see the attached evidence from the Lexis surname database, establishing the surname significance of STOCKDALE. This evidence shows the applied-for mark appearing 6013 times as a surname in the LEXISNEXIS® surname database, which is a weekly updated directory of cell phone and other phone numbers (such as voice over IP) from various data providers. (entries 91-100 printed and attached)

Response Options

A mark deemed primarily merely a surname may be registered on the Principal Register under Trademark Act Section 2(f) based on a claim of acquired distinctiveness. See 15 U.S.C. §1052(f); 37 C.F.R. §2.41(a); TMEP §§1211, 1212. Applicant may respond by asserting a claim of acquired distinctiveness based on one or more of the following:

- (1) **Prior Registrations:** Applicant may claim ownership of one or more active prior registrations on the Principal Register of the same mark for goods and/or services that are sufficiently similar to those named in the pending application. 37 C.F.R. §2.41(a)(1); TMEP §§1212, 1212.04. Applicant may do so by submitting the following statement, if accurate: **“The mark has become distinctive of the goods and/or services as evidenced by the ownership of active U.S. Registration No(s). (specify Reg. No. if applicable) on the Principal Register for the same mark for sufficiently similar goods and/or services.”** TMEP §1212.04(e).
- (2) **Five Years’ Use:** Applicant may submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“The mark has become distinctive of the goods and/or services through the applicant’s substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.”** 37 C.F.R. §2.41(a)(2); TMEP §1212.05(d); see 37 C.F.R. §2.193(e)(1).
- (3) **Other Evidence:** Applicant may submit other evidence of acquired distinctiveness, with the following statement, if accurate: **“The evidence shows that the mark has become distinctive of the goods and/or services.”** 37 C.F.R. §2.41(a)(3); TMEP §1212.06. Such additional evidence may include “advertising expenditures, sales success, length and exclusivity of use, unsolicited media coverage, and consumer studies (linking the name to a source).” *In re Change Wind Corp.*, 123 USPQ2d 1453, 1467 (TTAB 2017) (quoting *In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005)).

If applicant cannot satisfy one of the above, applicant may respond by amending the application to seek registration on the Supplemental Register. See 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a).

Identification of Services

The identification of services is indefinite for both classification and publication purposes and must be clarified. See 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend the identification to specify the common commercial or generic name of the services and accurately classify all services listed. See TMEP §1402.01. Applicant may adopt the following wording, if accurate:

Class 36: Real estate services, namely, acquisition and management of commercial real estate; real estate brokerage services; real estate leasing services; real estate investment asset and property management services

Class 37: Real estate development services in the commercial real estate field

Multiple Class Applications

The application references goods and/or services based on use in commerce in more than one international class; therefore, applicant must satisfy all the requirements below for each international class:

- (1) **List the goods and/or services by their international class number in consecutive numerical order, starting with the lowest numbered class (for example, International Class 3: perfume; International Class 18: cosmetic bags sold empty).**

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EXHIBIT D

- (2) **Submit a filing fee for each international class** not covered by the fee already paid (view the USPTO's current fee schedule). Specifically, the application identifies services based on use in commerce that are classified in at least two classes; however, applicant submitted a fee sufficient for only one class. Applicant must either (a) submit the filing fees for the classes not covered by the submitted fees or (b) restrict the application to the number of classes covered by the fees already paid.
- (3) **Submit verified dates of first use of the mark** anywhere and in commerce for each international class. See more information about verified dates of use.
- (4) **Submit a specimen for each international class**. The current specimen is acceptable for classes 36 and 37. No additional specimens are required.

See 15 U.S.C. §§1051(a), 1112; 37 C.F.R. §§2.32(a)(6)-(7), 2.34(a)(1), 2.86(a); TMEP §§904, 1403.01, 1403.02(c).

See an overview of the requirements for a Section 1(a) multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form.

Scope Advisory

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably amended. See TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

Questions Regarding Office Action

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

/Russ Herman/
Trademark Examining Attorney
Law Office 101
(571)272-9172
russ.herman@USPTO.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.

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EXHIBIT D

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

https://echeck.com/firstline?code=24662016-8ap0-4c09-8377-2997e434358a 10/07/2018 12:31:04 PM

Public Records

View: Worksheet 1/14
 Public Records - Worksheet - Search Results
 From: https://echeck.com/firstline?code=24662016-8ap0-4c09-8377-2997e434358a
 0 of 100 of 200 of

Select for Delivery of

ID	Name	Address	Phone
91.	STOCKDALE, ANDRE	2109 CENTRAL HOUSTON, TX 77071-3943	405-412-5836
92.	STOCKDALE, ANDRE	335 LORELLY LEXINGTON, KY 40514-4986	859-725-3303
93.	STOCKDALE, ANDRE	646 HENRI COHNEY COLUMBUS, OH 43210-1025	703-395-1185
94.	STOCKDALE, ANDRE	3123 ROYAL NEW ORLEANS, LA 70317-8742	505-610-3148
95.	STOCKDALE, ANDRE	3421 W ZOO AVE 4 WRENTHAM, KS 67583-4879	316-648-0117
96.	STOCKDALE, ANDRE	GARDEN CITY PARK, NY 12040 HOPE, NY 40334	347-401-3981 859-398-3237
97.	STOCKDALE, ANDRE	RICHMOND, NY 40475	859-398-3237
98.	STOCKDALE, ANDRE	WINCHESTER, NY 40391	859-398-3237
99.	STOCKDALE, ANDREA	0457 ROCHELLE STOCKTON, CA 95209-2260	916-302-7444

Public Records - Worksheet - Search Results
 From: https://echeck.com/firstline?code=24662016-8ap0-4c09-8377-2997e434358a
 0 of 100 of 200 of

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 ... 30

EXHIBIT D

STOCKDALE 000240

To: Stockdale Investment Group, Inc. (imdocket@winstead.com)
Subject: U.S. TRADEMARK APPLICATION NO. 88006185 - STOCKDALE - 56331-143
Sent: 10/7/2018 12:57:59 PM
Sent As: ECOM101@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON 10/7/2018 FOR U.S. APPLICATION SERIAL NO. 88006185

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this link or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from 10/7/2018 (or sooner if specified in the Office action). A response transmitted through the Trademark Electronic Application System (TEAS) must be received before midnight Eastern Time of the last day of the response period. For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the TEAS response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For technical assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies not associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that

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EXHIBIT D

closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

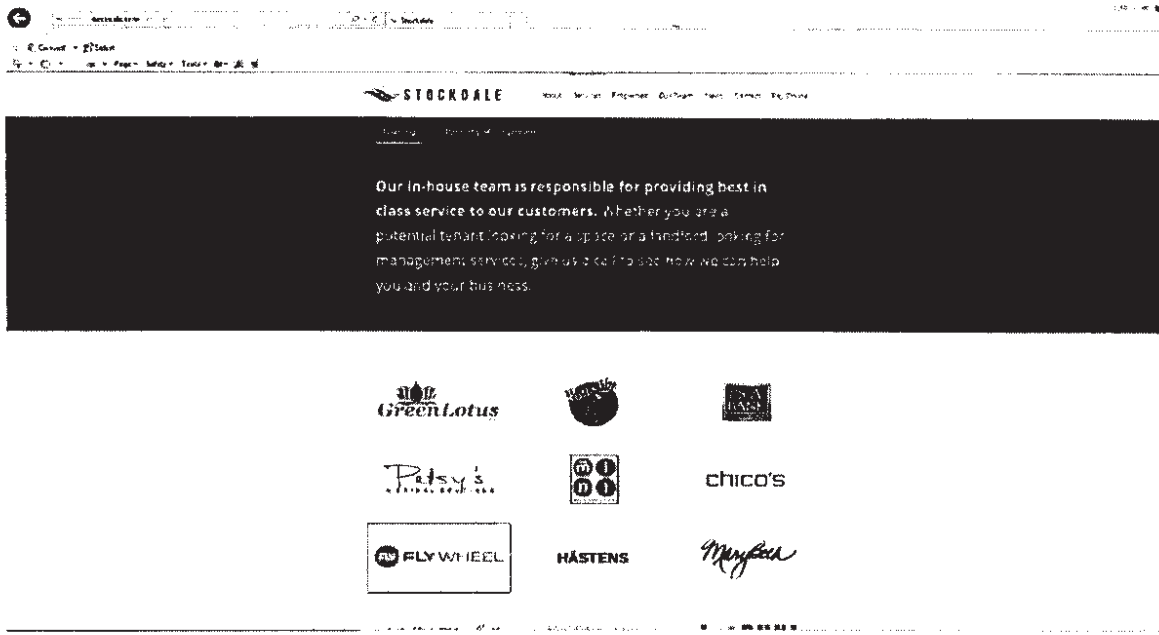
Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

SPECIMEN:



specializes in investing, developing, and managing real estate assets that are well located, but are either underperforming or functionally obsolete.







Stockdale Investment Group is proud to offer full service property management for retail and industrial properties in excess of \$100 million dollars. Our goal is to fill your building with tenants that will best serve both the property owner and the needs of the surrounding neighborhood.



The Process
Having a clear picture of your current needs is the first step in the process. We will conduct a thorough assessment of your current situation and provide you with a clear picture of the process and the steps involved. We will then work with you to develop a plan that meets your needs and budget.

Contact us today to learn more about our services.



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Born out of the Pratt family of companies in 1989, Stockdale Investment Group was founded to serve the commercial real estate industry nationwide. With a focus most recently on the Texas market, Stockdale is dedicated to the acquisition, development and management of diverse real estate opportunities.



A Wide Network of Resources

Thanks to the family of companies from which we began, Stockdale has a built-in network of key relationships with over 7,000 employees all over the United States. With in the real estate industry, our resources have appearances in design, construction and property management. This far-reaching network of relationships collectively own, operate, and maintains a fleet of construction and support equipment. Access to this equipment reduces costs and enhances reliability, flexibility, and operational control. Through private funding, our vast resources, and creative responsiveness, our talented team of brokers are able to apply their vision to realize a stock opportunity.

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
 PTO Form 1476 (Rev. 03/2005)
 OMB No. 1651-0009 (EPA 0279-2021)

Trademark/Service Mark Application, Principal Register

Serial Number: 88006185

Filing Date: 06/19/2018

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88006185
MARK INFORMATION	
*MARK	<u>STOCKDALE</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	STOCKDALE
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Stockdale Investment Group, Inc.
*STREET	2100 McKinney Avenue, Suite 1550
*CITY	Dallas
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	75201
PHONE	214-220-3423
FAX	214-965-9090
EMAIL ADDRESS	kpratt@stockdale.com
WEBSITE ADDRESS	www.stockdale.com
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF	Texas

EXHIBIT D

STOCKDALE 000249

INCORPORATION	
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	036
* IDENTIFICATION	Real estate services, namely, acquisition, development and management of commercial real estate; real estate brokerage services; real estate leasing services; real estate asset and property management services
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/31/1989
FIRST USE IN COMMERCE DATE	At least as early as 12/31/1989
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	<u>SPE0-21611746135-20180619154541390721 . Specimen of Use - STOCKDALE.pdf</u>
CONVERTED PDF FILE(S) (6 pages)	<u>\\TICRS\EXPORT17\IMAGEOUT17\880\061\88006185\xml\1\RFA0003.JPG</u>
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SPECIMEN DESCRIPTION	Website screenshots
ATTORNEY INFORMATION	
NAME	Cathryn A. Berryman
ATTORNEY DOCKET NUMBER	56331-143
FIRM NAME	Winstead, P.C.
STREET	2728 N. Harwood Street, Suite 500
CITY	Dallas
STATE	Texas
COUNTRY	United States
ZIP/POSTAL CODE	75201
PHONE	214-745-5172
FAX	214-745-5390
EMAIL ADDRESS	tmdocket@winstead.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	David Odom, Ross Robinson, Stanley R. Moore, Lekha Gopalakrishnan, Robert C. Shaddox, Henry L. Ehrlich and all attorneys of Winstead, P.C.

EXHIBIT D

STOCKDALE 000250

CORRESPONDENCE INFORMATION

NAME	Cathryn A. Berryman
FIRM NAME	Winstead, P.C.
STREET	2728 N. Harwood Street, Suite 500
CITY	Dallas
STATE	Texas
COUNTRY	United States
ZIP/POSTAL CODE	75201
PHONE	214-745-5172
FAX	214-745-5390
*EMAIL ADDRESS	tmockett@winstead.com; cberryman@winstead.com; jmuennink@winstead.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

FEE INFORMATION

APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEE DUE	275
*TOTAL FEE PAID	275

SIGNATURE INFORMATION

ORIGINAL PDF FILE	<u>hw 21611746135-154541390 . for handwritten signature STOCKDALE 4816-1147-3770 v.1 483.pdf</u>
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	<u>\\TICRS\EXPORT\17\IMAGEOUT\17\880\061\88006185\xml\1\RFA0010.JPG</u>
	<u>\\TICRS\EXPORT\17\IMAGEOUT\17\880\061\88006185\xml\1\RFA0011.JPG</u>
SIGNATORY'S NAME	Kenneth Pratt
SIGNATORY'S POSITION	President
SIGNATORY'S PHONE NUMBER	214-220-3423

EXHIBIT D

STOCKDALE 000251

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1-278 (Rev. 04/2016)
OMB No. 0651-0003 (Exp. 02/29/2021)

Trademark/Service Mark Application, Principal Register

Serial Number: 88006185

Filing Date: 06/19/2018

To the Commissioner for Trademarks:

MARK: STOCKDALE (Standard Characters, see below)

The literal element of the mark consists of STOCKDALE.

The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, Stockdale Investment Group, Inc., a corporation of Texas, having an address of
2100 McKinney Avenue, Suite 1550
Dallas, Texas 75201
United States
214-220-3423(phone)
214-965-9090(fax)
kpratt@stockdale.com (not authorized)

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 036: Real estate services, namely, acquisition, development and management of commercial real estate; real estate brokerage services; real estate leasing services; real estate asset and property management services

In International Class 036, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 12/31/1989, and first used in commerce at least as early as 12/31/1989, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) Website screenshots.

Original PDF file:

[SPE0-21611746135-20180619154541390721 - Specimen of Use - STOCKDALE.pdf](#)

Converted PDF file(s) (6 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

[Specimen File5](#)

[Specimen File6](#)

For informational purposes only, applicant's website address is: www.stockdale.com

The applicant's current Attorney Information:

Cathryn A. Berryman and David Odom, Ross Robinson, Stanley R. Moore, Lekha Gopalakrishnan, Robert C. Shaddox, Henry L. Ehrlich and all attorneys of Winstead, P.C. of Winstead, P.C. 2728 N. Harwood Street, Suite 500

Dallas, Texas 75201

United States

214-745-5172(phone)

214-745-5390(fax)

tm_docket@winstead.com (authorized)

The attorney docket/reference number is 56331-143.

The applicant's current Correspondence Information:

Cathryn A. Berryman

EXHIBIT D

STOCKDALE 000252

Winstead, P.C.
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201
214-745-5172(phone)
214-745-5390(fax)

tmddocket@winstead.com; cberryman@winstead.com; jmuennink@winstead.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant, the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

Declaration Signature

The attached signature image file:

\\TICRS\EXPORT17\IMAGEOUT17\880\061\88006185\xml1\RFA0009.JPG

Signatory's Name: Kenneth Pratt
Signatory's Position: President
Payment Sale Number: 88006185
Payment Accounting Date: 06/20/2018

Serial Number: 88006185
Internet Transmission Date: Tue Jun 19 15:57:05 EDT 2018
TEAS Stamp: USPTO/BAS-XXX.XXX.XX.XXX-201806191557059
65703-88006185-6103227e19bcf6133a22b2f9e
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-DA-4100-20180619154541390721

STOCKDALE

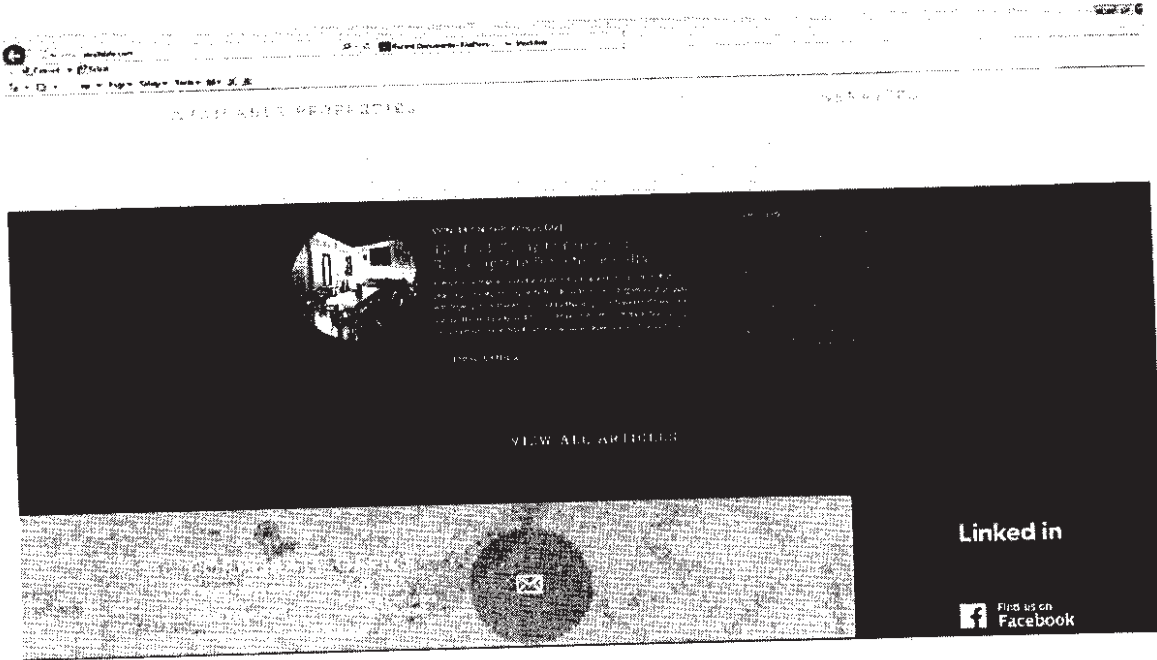
SPECIMEN:



Stockdale Real Estate Group specializes in investing, developing, and managing real estate assets that are well located, but are either underperforming or functionally obsolete.

STOCKDALE 000255

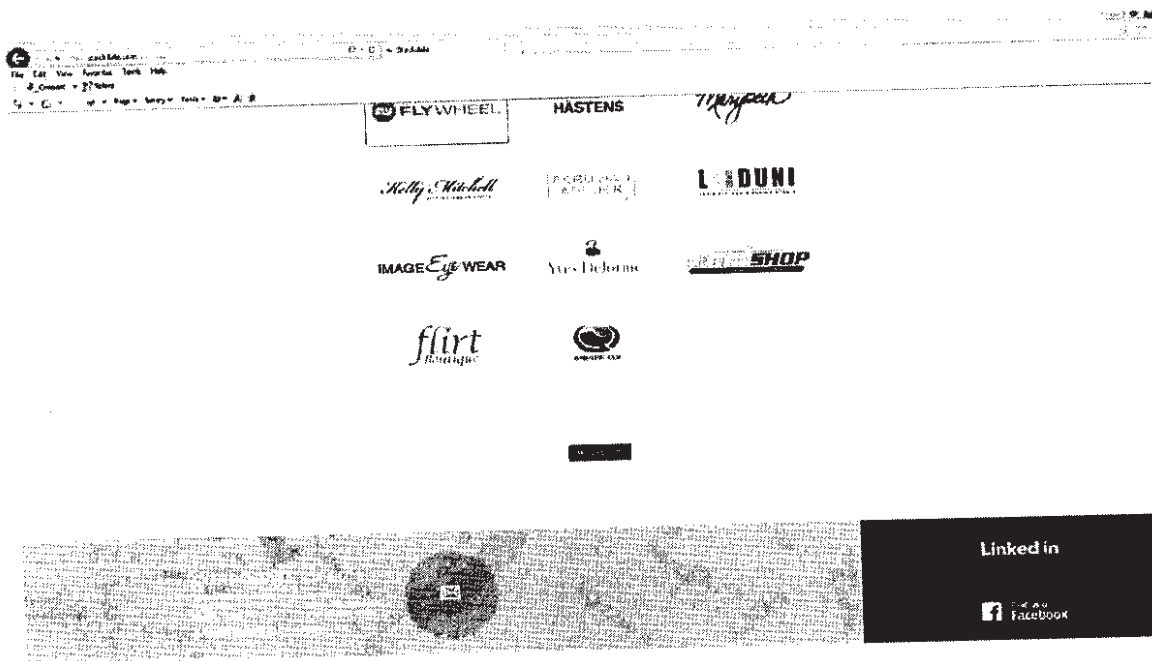
EXHIBIT D



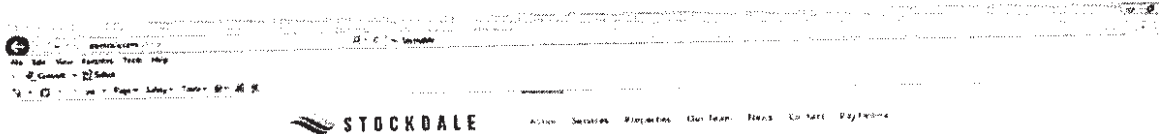


STOCKDALE 000257

EXHIBIT D



The screenshot shows the Stockdale website interface. At the top, there is a navigation menu with the Stockdale logo and links for Home, Services, Properties, Contact Us, and About Us. Below the navigation, a search bar is visible with the text 'Primary Residence' entered. The main content area features a large black banner with white text that reads: 'Stockdale Investment Group is proud to offer to provide property management for residential and commercial properties in excess of \$10 million dollars. Our goal is to find you a building with tenants that will best serve both the property owner and the needs of the surrounding neighborhood.' Below this banner, there is a circular image of a building and a section titled 'Our Process' which describes the company's approach to property management. At the bottom of the page, there are social media links for LinkedIn and Facebook.



Born out of the Pratt family of companies in 1989, Stockdale Investment Group was founded to serve the commercial real estate industry nationwide. With a focus most recently on the Texas market, Stockdale is dedicated to the acquisition, development and management of diverse real estate opportunities.



A Wide Network of Resources

Thanks to the family of companies from which we began, Stockdale has a built-in network of key relationships with over 7,000 employees all over the United States. Within the real estate industry, our resources have experience in design, construction and property management. This far-reaching network of relationships collectively owns, operates, and maintains a fleet of construction and support equipment. Access to this equipment reduces costs and enhances reliability, flexibility, and operational control. Through private funding, best-in-class resources, and creative repositioning, our talented team of brokers are able to apply their vision to realize unique opportunities.

**Trademark/Service Mark Application, Principal Register
Handwritten Signature**

To the Commissioner for Trademarks:

MARK: STOCKDALE

The applicant, Stockdale Investment Group, Inc., a Texas corporation, having an address of:

2100 McKinney Avenue, Suite 1550
Dallas, Texas 75201
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 036: Real estate services, namely, acquisition, development and management of commercial real estate; real estate brokerage services; real estate leasing services; real estate asset and property management services

In International Class 036, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 12/31/1989 and first used in commerce at least as early as 12/31/1989 and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) web page print-outs displaying the mark in advertising for the services.

Specimen-1 [website screenshots]

The applicant's current Attorney Information:

Cathryn A. Berryman, David Odom, Ross Robinson, Stanley R. Moore, Lekha Gopalakrishnan,
Robert C. Shaddox, Henry L. Ehrlich of:

Winstead PC
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201
United States

The attorney docket/reference number is 56331-143 K003US

The applicant's current Correspondence Information:

Cathryn A. Berryman
Winstead PC
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201
214-745-5172 (phone)
214-745-5390 (fax)


cberryman@winstead.com (not authorized)

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature Section:

Signature: 

Signatory's Name: Kenneth Pratt
Signatory's Position: President

Date Signed: 6.19.18

U.S. APPLICATION
SERIAL NO. 87726522

MARK: STOCKDALE
MEDICAL

87726522

CORRESPONDENT
ADDRESS:
CHRISTOPHER A.
PROSKEY
BROWNWINICK
LAW FIRM
666 GRAND AVE.,
SUITE 2000
DES MOINES, IA
50309

CLICK HERE TO RESPOND TO THIS
LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

[VIEW YOUR APPLICATION FILE](#)

APPLICANT:
STOCKDALE
MEDICAL, LLC

CORRESPONDENT'S
REFERENCE/DOCKET
NO:

25488.0004

CORRESPONDENT
E-MAIL ADDRESS:
ip@brownwinick.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 4/2/2018

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

SUMMARY OF ISSUES:

- SECTION 2(e)(4) REFUSAL – PRIMARILY MERELY A SURNAME
- *ADVISORY: SUPPLEMENTAL REGISTER AND SECTION 2(f)*
- IDENTIFICATION OF SERVICES
- MULTIPLE-CLASS REQUIREMENTS
- DISCLAIMER REQUIRED

SECTION 2(e)(4) REFUSAL – PRIMARILY MERELY A SURNAME

Registration is refused because the applied-for mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); *see* TMEP §1211.

EXHIBIT E

An applicant's mark is primarily merely a surname if the surname "is the primary significance of the mark as a whole to the purchasing public." *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 1377, 123 USPQ2d 1411, 1413 (Fed. Cir. 2017) (quoting *In re Hutchinson Tech. Inc.*, 852 F.2d 552, 554, 7 USPQ2d 1490, 1492 (Fed. Cir. 1988)); TMEP §1211.01.

The following five inquiries are often used to determine the public's perception of a term's primary significance:

- (1) Whether the surname is rare;
- (2) Whether anyone connected with applicant uses the term as a surname;
- (3) Whether the term has any recognized meaning other than as a surname;
- (4) Whether the term has the structure and pronunciation of a surname; and
- (5) Whether the term is sufficiently stylized to remove its primary significance from that of a surname.

In re Eximius Coffee, LLC, 120 USPQ2d 1276, 1278 & n.2, 1282-83 (TTAB 2016) (citing *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTAB 1995) for the *Benthin* inquiries/factors); TMEP §1211.01; *see also In re Etablissements Darty et Fils*, 759 F.2d 15, 16-18, 225 USPQ 652, 653 (Fed. Cir. 1985).

These inquiries are not exclusive, and any of these circumstances – singly or in combination – and any other relevant circumstances may be considered when making this determination. *In re Eximius Coffee, LLC*, 120 USPQ2d at 1277-78; TMEP §1211.01. For example, when the applied-for mark is not stylized, it is unnecessary to consider the fifth inquiry. *In re Yeley*, 85 USPQ2d 1150, 1151 (TTAB 2007); TMEP §1211.01.

Please see the attached evidence from LEXISNEXIS®, establishing the surname significance of "STOCKDALE". This evidence shows the applied-for mark appearing 6004 times as a surname in the LEXISNEXIS® surname database, which is a weekly updated directory of cell phone and other phone numbers (such as voice over IP) from various data providers. Therefore, the surname is not rare.

The specimen of record demonstrates that Matt Stockdale is a "distributor principal" with the applicant company. The attached evidence from LinkedIn also demonstrates the Matt Stockdale is connected with applicant and uses the term "STOCKDALE" as a surname.

Concerning the third factor of the test, the attached internet evidence from the American Heritage Dictionary demonstrates that there is no recognized meaning or significance of the terms "STOCKDALE" other than that of a surname. Evidence that a term has no recognized meaning or significance other than as a surname is relevant to determining whether the term would be perceived as primarily merely a surname. *See In re Weiss Watch Co.*, 123 USPQ2d 1200, 1203 (TTAB 2017); *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1280 (TTAB 2016); TMEP §1211.02(b)(vi). The attached evidence from the American Heritage Dictionary shows that "STOCKDALE" does not appear in the dictionary. Thus, this term appears to have no recognized meaning or significance other than as a surname.

Evidence that a term has the structure and pronunciation of a surname may contribute to a finding that the primary significance of the term is that of a surname. *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1280 (TTAB 2016); *see In re Giger*, 78 USPQ2d 1405, 1409 (TTAB 2006); *In re Gregory*, 70 USPQ2d 1792, 1796 (TTAB 2004); TMEP §1211.01(a)(vi). In the present case, the attached evidence from Forebears lists surnames that are similar to that of "STOCKDALE", which demonstrates that "STOCKDALE" has a similar look and feel as other surnames. The additional internet evidence from Douglas Stockdale, Stanford Medicine, Susan Stockdale, and the University of North Texas demonstrates that "STOCKDALE" is commonly used as a surname.

Regarding the fifth factor, the applied-for mark is in standard character form, therefore, it is not sufficiently stylized to remove its primary significance from that of a surname.

The addition of the word "MEDICINE" does not obviate the primary surname significance of the mark. Combining a surname with a term that is merely descriptive, primarily geographically descriptive or deceptively misdescriptive, or generic of an applicant's services typically does not "detract from the primary surname significance" of the mark. *Azeka Bldg. Corp. v. Azeka*, 122 USPQ2d 1477, 1481-82, 1481 n.9 (TTAB 2017) (construing *In re Hutchinson Tech. Inc.*, 852 F.2d 552, 554, 7 USPQ2d 1490, 1492-93 (Fed. Cir. 1988)); *see* TMEP §1211.01(b)(vi).

Specifically, the attached evidence from the American Heritage Dictionary defines "MEDICAL" as "of or relating to the study or practice of medicine." Applicant uses the word "MEDICAL" in the definition of services to describe the services that are offered. Because applicant offers "MEDICAL" services, the addition of the word "MEDICAL" to the surname does not obviate the primary surname significance of the mark because "MEDICAL" does not have any source-indicating significance.

A mark deemed primarily merely a surname may be registered on the Principal Register under Trademark Act Section 2(f) based on a claim of

acquired distinctiveness. *See* 15 U.S.C. §1052(f); 37 C.F.R. §2.41(a); TMEP §§1211, 1212. Applicant may respond by asserting a claim of acquired distinctiveness based on one or more of the following:

- (1) **Prior Registrations:** Applicant may claim ownership of one or more active prior registrations on the Principal Register of the same mark for services that are sufficiently similar to those named in the pending application. 37 C.F.R. §2.41(a)(1); TMEP §§1212, 1212.04. Applicant may do so by submitting the following statement, if accurate: **“The mark has become distinctive of the services as evidenced by the ownership of active U.S. Registration No(s). _____ on the Principal Register for the same mark for sufficiently similar services.”** TMEP §1212.04(e).
- (2) **Five Years’ Use :** Applicant may submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“The mark has become distinctive of the services through the applicant’s substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.”** 37 C.F.R. §2.41(a)(2); TMEP §1212.05(d); *see* 37 C.F.R. §2.193(e)(1).
- (3) **Other Evidence:** Applicant may submit other evidence of acquired distinctiveness, with the following statement, if accurate: **“The evidence shows that the mark has become distinctive of the services.”** 37 C.F.R. §2.41(a)(3); TMEP §1212.06. Such additional evidence may include “advertising expenditures, sales success, length and exclusivity of use, unsolicited media coverage, and consumer studies (linking the name to a source).” *In re Change Wind Corp.*, 123 USPQ2d 1453, 1467 (TTAB 2017) (quoting *In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005)).

If applicant cannot satisfy one of the above, applicant may respond by amending the application to seek registration on the Supplemental Register. *See* 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a).

Accordingly, applicant’s mark is primarily a surname and registration must be refused under Trademark Act Section 2(e)(4).

Although applicant’s mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal, applicant must also respond to the requirements set forth below.

ADVISORY: SUPPLEMENTAL REGISTER AND SECTION 2(f)

The applied-for mark has been refused registration on the Principal Register. Applicant may respond by submitting evidence and arguments against the refusal. In addition, applicant may respond by doing one of the following: (1) amending the application to seek registration under Trademark Act Section 2(f), or (2) amending the application to seek registration on the Supplemental Register. *See* 15 U.S.C. §§1052(f), 1091.

To seek registration on the Principal Register based on a claim of acquired distinctiveness under Section 2(f), applicant generally may (1) submit actual evidence that the mark has acquired distinctiveness of the services, (2) claim ownership of an active prior U.S. registration for the same mark for sufficiently similar services, or (3) provide the following verified statement of five years’ use: **“The mark has become distinctive of the services through the applicant’s substantially exclusive and continuous use of the mark in commerce that the U.S. Congress may lawfully regulate for at least five years immediately before the date of this statement.”** *See* 15 U.S.C. §1052(f); 37 C.F.R. §2.41(a); TMEP §§1212.03-.06 *et seq.*

To amend the application to the Supplemental Register, applicant must provide a written statement requesting that the application be amended to the Supplemental Register. TMEP §816.01; *see* 15 U.S.C. §1091; 37 C.F.R. §2.47.

Applicant is advised that, if the application is amended to seek registration on the Principal Register under Trademark Act Section 2(f) or on the Supplemental Register, applicant will be required to disclaim “MEDICAL” because such wording appears to be generic in the context of applicant’s services. *See* 15 U.S.C. §1056(a); *In re Wella Corp.*, 565 F.2d 143, 144, 196 USPQ 7, 8 (C.C.P.A. 1977); *In re Creative Goldsmiths of Wash., Inc.*, 229 USPQ 766, 768 (TTAB 1986); TMEP §1213.03(b).

The following is the standardized format for a disclaimer:

No claim is made to the exclusive right to use “MEDICAL” apart from the mark as shown.

TMEP §1213.08(a)(i).

IDENTIFICATION OF SERVICES

Applicant has classified the following services in International Class 042: “health care services; medical supply services; medical device supply services; delivery of medical supplies and equipment.” However, the proper classification for each item is as follows in the table below.

Additionally, applicant has provided the application fee(s) for only 1 international class. Thus, not all international classes in the application are covered by the application fee(s). Because of this disparity, applicant must clarify the number of classes for which registration is sought. *See* 37 C.F.R. §§2.32(d), 2.86.

Applicant may respond by (1) adding one or more international class(es) to the application, and reclassifying the above services accordingly; or (2) deleting from the application the services for all but the number of international class(es) for which the application fee was submitted. *See* 37 C.F.R. §§2.86(a), 6.1; TMEP §§1403.02 *et seq.* If applicant adds one or more international classes to the application, applicant must comply with the multiple-class application requirements specified in this Office action.

Certain wording in the identification of services is indefinite and must be clarified because applicant must further specify the nature of the services. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01.

Certain wording in the identification of services for International Class 042 must be clarified because it is too broad and could include services in other international classes. *See* 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03. In particular, this wording could encompass services in the classes noted below in the table.

The table below outlines specific issues and provides suggestions.

International Class 042

Original Language	Issue	Suggestion
Health care services	Misclassified	International Class 044: Health care services
medical supply services	Indefinite Misclassified	International Class 035: Retail store services for medical supplies
medical device supply services	Indefinite Misclassified	International Class 035: Medical device supply services, namely, retail store services for medical devices
medical equipment services	Overbroad	International Class 042: Technical support services, namely, troubleshooting in the nature of diagnosing problems with medical equipment International Class 044: rental of medical equipment
delivery of medical supplies and equipment	Misclassified	International Class 039: delivery of medical supplies and equipment
providing information related to medical equipment and medical devices	Overbroad	International Class 042: Providing technology information in the field of medical equipment and medical devices International Class 044: providing medical information related to medical equipment and medical devices
consulting services related to medical equipment and medical devices	Overbroad	International Class 035: business marketing consulting services in the

EXHIBIT E

		<p><i>field of</i> medical equipment and medical devices</p> <p>International Class 042: Consulting services <i>in the field of mechanical engineering</i> related to medical equipment and medical devices</p> <p>International Class 044: consulting services <i>in the field of medical care</i> related to medical equipment and medical devices</p>
--	--	--

Applicant may substitute the following wording, if accurate:

International Class 035: *Retail store services for* medical supplies; medical device supply services, *namely, retail store services for* medical devices; *business marketing* consulting services *in the field of* medical equipment and medical devices

International Class 039: Delivery of medical supplies and equipment

International Class 042: *Technical support services, namely, troubleshooting in the nature of diagnosing problems with* medical equipment; providing *technology* information *in the field of* medical equipment and medical devices; consulting services *in the field of mechanical engineering* related to medical equipment and medical devices

International Class 044: Health care services; *rental of* medical equipment; providing *medical* information related to medical equipment and medical devices; consulting services *in the field of medical care* related to medical equipment and medical devices

Applicant's services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different services or add services not found or encompassed by those in the original application or as acceptably amended. See TMEP §1402.06(a)-(b). The scope of the services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the services will further limit scope, and once services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). See TMEP §1402.04.

MULTIPLE-CLASS REQUIREMENTS

The application identifies services that are classified in at least 4 classes; however, applicant submitted a fee sufficient for only 1 class. In a multiple-class application, a fee for each class is required. 37 C.F.R. §2.86(a)(2), (b)(2); TMEP §§810.01, 1403.01.

Therefore, applicant must either (1) restrict the application to the number of classes covered by the fees already paid, or (2) submit the fees for each additional class.

The application references services based on use in commerce in more than one international class; therefore, applicant must satisfy all the requirements below for each international class:

- (1) [List the services by their international class number](#) in consecutive numerical order, starting with the lowest numbered class (for example, International Class 3: perfume; International Class 18: cosmetic bags sold empty).
- (2) [Submit a filing fee for each international class](#) not covered by the fee already paid (view the [USPTO's current fee schedule](#)).

EXHIBIT E

Specifically, the application identifies services based on use in commerce that are classified in at least 4 classes; however, applicant submitted a fee(s) sufficient for only 1 class. Applicant must either (a) submit the filing fees for the classes not covered by the submitted fees or (b) restrict the application to the number of classes covered by the fees already paid.

- (3) **Submit verified dates of first use of the mark** anywhere and in commerce **for each international class**. [See more information about verified dates of use](#).
- (4) **Submit a specimen for each international class**. The current specimen is acceptable for class 039; and applicant needs a specimen for classes 035, 042, and 044. [See more information about specimens](#).

Examples of specimens for goods include tags, labels, instruction manuals, containers, and photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods.

Examples of specimens for services include advertising and marketing materials, brochures, photographs of business signage and billboards, and website printouts that show the mark used in the actual sale, rendering, or advertising of the services.

- (5) **Submit a verified statement** that “**The specimen was in use in commerce on or in connection with the services listed in the application at least as early as the filing date of the application.**” [See more information about verification](#).

See 15 U.S.C. §§1051(a), 1112; 37 C.F.R. §§2.32(a)(6)-(7), 2.34(a)(1), 2.86(a); TMEP §§904, 1403.01, 1403.02(c).

See [an overview](#) of the requirements for a Section 1(a) multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form.

The fee for adding classes to a TEAS Reduced Fee (RF) application is \$275 per class. See 37 C.F.R. §§2.6(a)(1)(iii), 2.23(a). See [more information](#) regarding the requirements for maintaining the lower TEAS RF fee and, if these requirements are not satisfied, for adding classes at a higher fee using regular TEAS.

DISCLAIMER REQUIRED

Applicant must disclaim the wording “MEDICAL” because it merely describes a characteristic, feature, purpose, or use of applicant’s services, and thus is an unregistrable component of the mark. See 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a).

The attached evidence from the American Heritage Dictionary defines “MEDICAL” as “of or relating to the study or practice of medicine.” The attached internet evidence from Beauregard Medical Center, Nova Primary & Urgent Care, Supreme Medical, and First Choice Medical Supply demonstrates that the word “MEDICAL” is used with similar services to describe health care and medical device and equipment supply services. Therefore, the wording merely describes applicant’s services in the “MEDICAL” field and related to “MEDICAL” goods.

An applicant may not claim exclusive rights to terms that others may need to use to describe their services in the marketplace. See *Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. See *Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. See *In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use “MEDICAL” apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

RESPONSE GUIDELINES

For this application to proceed further, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options specified in this Office action for responding to a refusal and should consider those options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements. For more information and general tips on responding to USPTO Office actions, response options, and how to file a response online, see “[Responding to Office Actions](#)” on the USPTO’s website.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end and the trademark will fail to register. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a); TMEP §§718.01, 718.02. Additionally, the USPTO will not refund the application filing fee, which is a required processing fee. *See* 37 C.F.R. §§2.6(a)(1)(i)-(iv), 2.209(a); TMEP §405.04.

When an application has abandoned for failure to respond to an Office action, an applicant may timely file a petition to revive the application, which, if granted, would allow the application to return to active status. *See* 37 C.F.R. §2.66; TMEP §1714. The petition must be filed within two months of the date of issuance of the notice of abandonment and [may be filed online via the Trademark Electronic Application System \(TEAS\)](#) with a \$100 fee. *See* 37 C.F.R. §§2.6(a)(15)(ii), 2.66(a)(1), (b)(1).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

Please note that foreign attorneys, other than authorized Canadian attorneys, are not permitted to represent applicants before the USPTO (e.g., file written communications, authorize an amendment to an application, or submit legal arguments in response to a requirement or refusal). *See* 37 C.F.R. §§2.17(e), 11.14(c), (e); TMEP §602.03-.03(c).

The only attorneys who may practice before the USPTO in trademark matters are as follows:

- (1) **Attorneys in good standing with a bar of the highest court of any U.S. state**, the District of Columbia, Puerto Rico, and other U.S. commonwealths or U.S. territories; and
- (2) **Canadian agents/attorneys** who represent applicants located in Canada and (a) are registered with the USPTO and in good standing as patent agents or (b) have been granted reciprocal recognition by the USPTO.

See 37 C.F.R. §§2.17(a), (e), 11.1, 11.14(a), (c); TMEP §602.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$125 per class of services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner’s amendment by telephone or e-mail without incurring this additional fee.

/Tricia L. Brown/
Examining Attorney
Law Office 121
(571) 270-7892
tricia.brown@uspto.gov

EXHIBIT E

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

To: GC Investments (trademarks@legalforce.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86091274 - THE STOCKDALE CENTRE - 71774
Sent: 1/30/2014 3:01:51 PM
Sent As: ECOM105@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86091274

MARK: THE STOCKDALE CENTRE

86091274

CORRESPONDENT ADDRESS:

RAJ ABHYANKER
RAJ ABHYANKER, P.C.
1580 W EL CAMINO REAL STE 8
MOUNTAIN VIEW, CA 94040-2462

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: GC Investments

CORRESPONDENT'S REFERENCE/DOCKET

NO:

71774

CORRESPONDENT E-MAIL ADDRESS:

trademarks@legalforce.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 1/30/2014

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH OF OFFICE'S DATABASE OF MARKS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; see 15 U.S.C. §1052(d).

SECTION 2(e)(4) REFUSAL – PRIMARILY MERELY A SURNAME

EXHIBIT F

Registration is refused because the applied-for mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); see TMEP §1211. The primary significance of the mark to the purchasing public determines whether a term is primarily merely a surname. *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 832, 184 USPQ 421, 422 (C.C.P.A. 1975); *In re Binion*, 93 USPQ2d 1531, 1537 (TTAB 2009) see TMEP §§1211, 1211.01.

Please see the attached evidence from the Public Records Surname database of LexisNexis, establishing the surname significance of the surname Stockdale. This evidence shows the applied-for mark appearing 1182 times as a surname in a nationwide telephone directory of names.

Combining a surname with the generic name for the goods and/or services does not overcome a mark's surname significance. See *Mitchell Miller, P.C. v. Miller*, 105 USPQ2d 1615, 1622 (TTAB 2013) (holding MILLER LAW GROUP primarily merely a surname for legal services, noting that LAW GROUP is a generic designation for a law firm); *In re Hamilton Pharms. Ltd.*, 27 USPQ2d 1939, 1944 (TTAB 1993) (holding HAMILTON PHARMACEUTICALS primarily merely a surname for pharmaceutical products); *In re Cazes*, 21 USPQ2d 1796, 1797 (TTAB 1991) (holding BRASSERIE LIPP primarily merely a surname for restaurant services); TMEP §1211.01(b)(vi).

Here, applicant has combined the Stockdale surname with, as discussed further below, the generic wording "Centre" and the non-distinctive wording "the." As discussed above, the addition generic wording to a surname does not overcome a mark's overall surname significance.

In light of the foregoing, the applied-for mark is primarily merely a surname. Registration is refused under Trademark Act Section 2(e)(4).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Applicant must respond to the requirement(s) set forth below.

SUPPLEMENTAL REGISTER

The applied-for mark has been refused registration on the Principal Register. Applicant may respond to the refusal by submitting evidence and arguments in support of registration and/or by amending the application to seek registration on the Supplemental Register. See 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816. Amending to the Supplemental Register does not preclude applicant from submitting evidence and arguments against the refusal(s). TMEP §816.04.

Applicant is advised that, if an acceptable allegation of use and an amendment to the Supplemental Register are filed, applicant must disclaim "Centre" because such wording appears to be generic in the context of applicant's goods and/or services. See 15 U.S.C. §1056(a); *In re Wella Corp.*, 565 F.2d 143, 196 USPQ 7 (C.C.P.A. 1977); *In re Creative Goldsmiths of Wash., Inc.*, 229 USPQ 766 (TTAB 1986); TMEP §1213.03(b).

Specifically, the attached evidence from the Collins dictionary website shows this wording means "a place at which some specified activity is concentrated." Applicant uses the applied-for mark with the rental of office space in an office development; therefore, the wording merely describes a feature of the subject services which entail the rental of office space at a place at which business activities are concentrated.

The following is the standardized format for a disclaimer:

No claim is made to the exclusive right to use "Centre" apart from the mark as shown.

TMEP §1213.08(a)(i).

RESPONSE GUIDELINES

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and email technical questions to TEAS@uspto.gov.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

/Christopher Law/
Trademark Examining Attorney
Law Office 105
Telephone: (571) 272-2913
Email: christopher.law@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

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WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

4. The Stockdale Capital Companies are a family of real estate investment, development, and management companies headquartered in Los Angeles, California. The Stockdale Capital Companies have offices in California, Arizona, Texas, and Oregon and are associated with properties in California, Arizona, Texas, Oregon, and Tennessee. The first Stockdale Capital Company, Stockdale Capital Partners, LLC, was formed on February 26, 2013 and the Stockdale Capital Companies have been continuously involved in real estate investment and development in California and Texas since that date.
5. The name “Stockdale” in Stockdale Capital originates from Admiral James Bond Stockdale, a United States Navy Officer and prisoner of war (“POW”) in the famous “Hanoi Hilton” during the Vietnam War. The idea for the name Stockdale came from the so-called “Stockdale Paradox.” The Stockdale Paradox originates from a business book by James C. Collins called *Good to Great*, in which Collins writes about a conversation he had with Admiral Stockdale regarding his coping strategy during his period in the Vietnamese POW camp. Admiral Stockdale’s coping strategy was to remain faithful that he would survive and prevail while at the same time maintaining the discipline to confront the current reality so as to not set artificially optimistic expectations.
6. The name has been in continuous use by the Stockdale Capital Companies since the date of the incorporation of Stockdale Capital Partners, LLC on February 26, 2013. The Stockdale Capital Companies hold themselves out to consumers as “Stockdale Capital Partners,” not simply “Stockdale.”
7. The Stockdale Capital Companies are primarily focused on the acquisition and development of real estate for commercial uses. They are also involved in leasing and property management operations, but only as it relates to themselves for their own or their affiliates’ properties. The Stockdale Capital Companies have invested in, developed, owned, or managed multi-family residential and commercial properties that serve the retail, office, medical, medical office, parking, residential, and hospitality industries, among others.
8. The Stockdale Capital Companies typically target investments, acquisitions, and developments that are in the \$50 MM to \$200 MM range, but up to \$400 MM. To date, the Stockdale Capital Companies have done over approximately \$500 MM in real estate investment and development deals since their inception over five years ago.
9. The Stockdale Capital Companies’ consumers are investors with the Stockdale Capital Companies. Typically, the Stockdale Capital Companies target institutional investors or ultra-high net worth individuals to invest in or alongside the Stockdale Capital Companies’ real estate projects through limited partnerships and joint ventures. Typically, Stockdale solicits investments through capital raises by arranging direct meetings with potential investors. These meetings are either set up directly or through an intermediary service. Stockdale Capital does not market or advertise to the general public as the investments are typically in \$50 MM increments with sophisticated investors. Such an investment involves intense scrutiny and due diligence in the Stockdale Capital

Companies for months, including individual background checks on the principals. Stockdale Management is an affiliate of Stockdale Capital Partners, LLC that provides property management services only to the Stockdale Capital Companies and its affiliates and has no other customers.

10. The Stockdale Capital Companies first became aware of Plaintiff Stockdale Investment Group, Inc. in connection with the dispute underlying this lawsuit. Prior to this claim, the Stockdale Capital Companies were unfamiliar with the Plaintiff and its business and did not and still do not view the Plaintiff as a competitor in the same marketplace. Moreover, the Stockdale Capital Companies' names, website, logo, and marketing materials were not formed based on any knowledge of Plaintiff. Further, the Stockdale Capital Companies never had anyone ever inquire to them about Stockdale Investment Group. The Stockdale Capital Companies do not and have never intended to trade off Stockdale Investment Group's name or interfere with their business.
11. The Stockdale Capital Companies are not aware of any common client with Plaintiff nor do the Stockdale Capital Companies have any evidence that a customer has approached the Stockdale Capital Companies confused about the two entities or a customer that contacted the Stockdale Capital Companies seeking to do business with Plaintiff instead.
12. The Stockdale Capital Companies have not received information from investors, tenants, or customers about Plaintiff. Plaintiff's Complaint includes an email from Michael Townsend of Townsend & Associates, Inc. regarding an article about the Horton Plaza. The Stockdale Capital Companies have never done business with Townsend & Associates and do not view them as a customer or prospective client of the Stockdale Capital Companies. Instead, Townsend & Associates appears to be a staffing/recruiting firm, which is unrelated to our business. Moreover, Plaintiff references in paragraph 21 companies such as Lincoln Property Company, CBRE Group, Inc., Holliday Fenoglio Fowler, L.P., and Arch Capital of reporting confusion, but we are not aware of any such confusion and do not view these companies as clients or customers of the Stockdale Capital Companies. In fact, just the opposite, for some of these companies, we are their customers. For example, we have been customers of CBRE Group, Inc. and Holliday Fenoglio Fowler, L.P.
13. At the time this lawsuit was filed, the Stockdale Capital Companies were, and are currently, raising investment capital for future real estate investment and development deals. This raise is ongoing and is expected to continue through 2019. Plaintiff's lawsuit and the relief requested therein represent a substantial threat of irreparable injury to the Stockdale Capital Companies' continued business efforts. Should Plaintiff be granted injunctive relief against the Stockdale Capital Companies, they will suffer harm in the form of loss of business opportunities.

14. I declare under the penalty of perjury that all of the foregoing is within my personal knowledge and that it is true and correct.

Signed this the 7th day of September, 2018



Steven Yari
Managing Director, Stockdale Capital
Partners, LLC

DANIEL MICHAELS
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STOCKDALE INVESTMENT)
GROUP, INC. D/B/A)
STOCKDALE)

Plaintiff)

) C.A. NO.:
) 4:18-cv-02949

VS.

STOCKDALE CAPITAL)
PARTNERS, LLC; STOCKDALE)
CAPITAL PARTNERS RE FUND)
I GP, LLC;)
STOCKDALE CAPITAL)
PARTNERS REAL ESTATE)
FUND, LP;)
STOCKDALE CAPITAL RE)
INVESTMENTS, LLC;)
STOCKDALE CAPITAL RE,)
LLC;)
STOCKDALE CAPITAL)
SERVICES, LLC)

Defendants)

ORAL DEPOSITION OF
DANIEL MICHAELS
December 6, 2018
Volume 1

JOB NO. 151015

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Q. How many employees does Stockdale Capital have?

A. Stockdale Capital and its affiliates, Stockdale Management, has 65 employees.

DANIEL MICHAELS

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Q. Where are those employees located?

A. Los Angeles, Stockdale, Houston, Portland, San Diego.

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Who you would consider to be the consumers that Stockdale Capital has in its business?

A. Consumer?

Q. Uh-huh.

A. It's not a term we use. We have investors, and we have tenants. So, I guess -- I guess, maybe our tenants would be. I don't know. That's not a term we use in our business.

Q. Okay.

A. I mean, we -- I guess, by nature of owning real estate, folks that consume that real estate are tenants.

Q. Right.

A. Yeah.

Q. So you have tenant customers?

A. Yeah.

Q. And you also have investors?

1 DANIEL MICHAELS

2 A. Yeah.

3 I wouldn't call those customers; but, yeah.

4 Q. Okay. How do you identify potential investors
5 for Stockdale Capital?

6 A. So when we created Stockdale Capital Partners,
7 it was in an effort to bring on third-party
8 institutional investors and various joint ventures,
9 separate accounts, or fund vehicles. And we have
10 hired -- well, some of those relationships are personal
11 to me. And we have hired an advisor, a global advisor,
12 to make certain capital introductions.

13 Q. Who's that global advisor?

14 A. Lazard.

15 Q. So, of the ones that have not been referred by
16 Lazar {sic}, you say some are personal connections of
17 yours?

18 A. Yeah.

19 Q. Just in the business world?

20 A. Yeah.

21 Q. In your personal life?

22 A. Yeah. I went to Wharton, and I worked at
23 Carlyle --

24 Q. Sure.

25 A. -- and I know everybody in that world.

DANIEL MICHAELS

1
2 Q. Right.

3 And how about the Yaris? They have their
4 own --

5 A. Yeah.

6 Q. -- people?

7 A. Them as well.

8 And some of the deals they did were
9 personal to them as well.

10 Q. Okay. Are these investors located in one
11 region of the country or all over the country?

12 A. We have investors in Geneva, in New York,
13 London, San Francisco.

14 Q. Any other location you can think of?

15 A. Well, we have investors. We have multiple
16 investors. I mean, those were examples.

17 Q. Those were examples?

18 A. Yeah.

19 Q. Okay. And, certainly, you've had potential
20 investors that you've pitched to who have passed; is
21 that fair to say?

22 A. Yes.
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Q. How do you identify tenants that you want to place in your properties?

A. Depends on the asset class.

But we either have relationships with various companies that we know want space, or we have brokerage relationships that we engage the lease space on a third-party basis.

DANIEL MICHAELS

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2 Q. For each of your properties where you're
3 seeking to place tenants, do you have separate brokers
4 for each of those?

5 A. Yeah. Every asset's individual.

6 Q. Based on the location?

7 A. Based on location and geography, yeah.
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Q. Okay. Do you have an estimate as to what the

1 DANIEL MICHAELS

2 total value of the real estate holdings of the Stockdale
3 Capital group is currently?

4 A. It's about a billion dollars.

5 Q. And how much of that value is outside investor
6 value versus coming from within Stockdale Capital?

7 A. Dollar amount or percentage?

8 Q. Dollar amount. Or percentage. Sure.

9 A. Well, that billion dollars has debt and equity,
10 but --

11 Q. Of the equity.

12 A. I would say relatively 90 percent of it is
13 outside investor capital. Maybe 85. 85 to 90.

14 Q. Okay. Stockdale Capital, or an entity under
15 Stockdale Capital, has a project in Riverside,
16 California; is that right?

17 A. No.

18 Q. No?

19 A. We owned a multifamily development at one
20 point. We don't anymore.

21 Q. Okay. Tell me about that project. When was it
22 acquired? What was it?

23 A. Is that what you're referring to?

24 Q. Yes.

25 A. It was an age-restricted multifamily

DANIEL MICHAELS

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2 development. We purchased it in, boy, 2012, I believe.
3 It's been so many deals, my brain gets a little
4 scattered. I apologize.

5 It was a developer that had run out of
6 money to complete it, and we stepped in to, I believe,
7 pay off the mezzanine loan and take over the asset and
8 lease it up stabilization to people that are 55 and
9 older.

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Q. Okay. In terms of soliciting investors, do you typically go back to some of the same investors for different projects that you've worked with?

A. We go back to our current limited partner

DANIEL MICHAELS

investor base.

Q. Okay. And then when you seek to increase the scope of the number of investors you're talking to, do you typically go through Lazar for that?

A. Lazard.

Q. I'm sorry.

A. We do.

Q. And have you worked with any or pitched any deals to any potential investors in Texas?

A. Well, we're raising money for our investment fund. And when you raise money at the level that we're doing it, you're talking to large institutions like Texas Teachers that manage all of the teacher pension fund; the University of Texas Investments Systems manages all of the endowments for all of the universities. These are \$100 billion dollar-type organizations.

Q. Sure.

A. So you don't pitch them on a deal per se so much as you issue -- you describe your firm, your history, your history basis, your track record, and you try to garner investments from them that are locked up over a decade.

Q. And you've done that with those particular

DANIEL MICHAELS

entities, had meetings with them?

A. Amongst others.

Q. Amongst others.

Can you name any other entities or individuals based in Texas that you've had meetings with for soliciting investment?

A. Texas Permanent, Texas County Retirement System, Houston Fire and Police, Memorial Hermann, Museum of Fine Arts. Not on a deal-by-deal, per se, but on a fund basis.

Q. Okay. Do you have any understanding in your own mind of how Stocksdale Investment Group functions in the real estate industry?

A. No.

1
2 Okay. All right. Let's talk about the
3 choice of the name, Stockdale, for your company. What
4 was the process by which you selected your company name?

5 A. I read Jim Collins' good book, "Good to Great."
6 There was something referenced in there called the
7 "Stockdale paradox," which really meant something to me,
8 and I thought it was a great name to use in the context
9 of what we do, which is largely to, you know, buy and
10 turn around distressed properties.

11 Q. So you were the one who suggested the name --

12 A. Yes.

13 Q. -- to the rest of the team?

14 A. Yes.

15 Q. Do you remember what point you read Good to
16 Great? Was it around the time --

17 A. I've read it a few times since I was in
18 college.

19 Q. Okay. Is that when you first became aware of
20 the Stockdale paradox?

21 A. I don't recall -- yeah. Yeah, it was in that
22 book --

23 Q. Okay.

24 A. -- whenever I read it. I can't recall the
25 exact year of the first time I read it.

DANIEL MICHAELS

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Q. Okay.

A. But it's always been in the back of my mind.

Q. Were there any other suggested names of the company back then?

A. Yes. I just don't recall the names.

Q. Were they ones that Steven and Shawn Yari were suggesting, or did you have any other alternate suggestions --

A. We all had different names. I just -- that was the name we chose, and I don't recall the names at the time.

Q. Do you have an understanding as to why Stockdale was ultimately the name that was chosen?

A. They gave me the choice.

Q. They let you decide?

A. Yeah.

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Q. Okay. When did you first learn about Stocksdale Investment Group?

A. Through this litigation.

Q. So when you received a demand letter?

A. Yeah.

Q. In June?

A. CFO called me and mentioned it.

Q. And that was the first time you personally had heard of Stockdale Management Group?

1 DANIEL MICHAELS

2 A. It was the first time any of us had heard of
3 them.

4 Q. Okay. That's my next question, is are you
5 aware of anyone else at Stockdale Capital who had, prior
6 to that receipt of that letter, heard of Stockdale
7 Investment Group?

8 A. I'm not aware of anybody being aware.

9 Q. Okay.

10 A. And I certainly wasn't aware.

11 Q. Right.

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23 Q. Okay. Who's idea was it to include capital in
24 the company name?

25 A. Me.

1 DANIEL MICHAELS

2 Q. And why did you insist that?

3 A. Because we were managing capital for outside
4 partners.

5 Q. Okay. Did you consider any other term to go
6 along with Stockdale for your company name?

7 A. No.

8 Q. Okay. Is it very common to have capital in the
9 name of a group that manages capital?

10 A. Yeah.

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Q. And was he in charge of also working with a third party to develop the logo and look of Stockdale Capital Partners?

A. I believe I may have done the logo.

Q. Did you do it personally, or did you contact a company?

A. No. I think we had somebody provide some options for us.

Q. Do you know who that was?

A. I don't know.

Q. But it was an outside company that does design?

A. It was a logo design company.

Q. Okay. And what do you recall about that process?

A. Nothing.

Q. Did they provide you a selection of choices and you made one?

A. Yeah.

Q. Okay.

A. Yeah.

I mean, I think they gave us a few options,

DANIEL MICHAELS

and honestly it was -- I just picked one and moved on.

Q. Okay. And did you share your choice or the various choices with the other founders in the company, or did you just really make the choice yourself?

A. I think I may have. I'm sure I shared what it would look like, and they said fine, let's go.

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Q. When someone answers the phone at your company like a receptionist --

A. Yeah.

Q. -- what's the greeting?

A. Stockdale Capital or Stockdale Capital Partners.

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Q. (BY MR. VAN ARSDEL) Mr. Michaels, I'm going to hand you what's been marked as Exhibit 5 to your deposition and ask you to take a look at that.

A. I'm familiar with it.

Q. You're familiar.

Okay. Can you tell me what it is?

A. It's our marketing package for future investors.

Q. And it says here on the first cover page that it's October 2018; is that right?

A. Yes.

Q. And October 2018 would be a period of time after the lawsuit in this case was filed; is that right?

A. Yeah.

Q. Okay. What is the purpose of this document? Why is it produced?

A. When we set with institutional investors, we

1 DANIEL MICHAELS

2 use it as a tool to discuss our firm in a summary
3 fashion.

4 Q. And who at Stockdale Capital was in charge of
5 generating the content for this particular document?

6 A. It was a combination of different employees
7 including me.

8 Q. Okay. Let's turn to the Page 1 in lower-left
9 corner. In the lower right, it will say SP001306.

10 A. Yep.

11 Q. So this says it's an executive summary; is that
12 right?

13 A. Yes.

14 Q. And that first bullet point at the top says (as
15 read): "Founded in 2010. Stockdale Capital Partners,"
16 and then ("Stockdale"), and then it goes onto talk about
17 the investment that's made in transactions.

18 Is that what you're were referring to?
19 Occasionally they'll be a reference to just Stockdale, a
20 reference to your company?

21 A. Yeah. In relation to Stockdale Partners.

22 Q. Okay. Let me ask you about the first part of
23 the sentence. It says (as read): "Founded in 2010."

24 A. Yep.

25 Q. I just want to understand when you believe the

1 DANIEL MICHAELS

2 company was founded because I think we've talked
3 about --

4 A. Well, it bears discussions.

5 I met them in 2010. We started working on
6 deals together, and we picked the Stockdale Capital
7 moniker in '13. It doesn't means we weren't doing deals
8 together.

9 Q. I understand.

10 Okay. So this refers to the entire history
11 of all of you working together --

12 A. Correct.

13 Q. -- in real estate?

14 A. Yeah.

15 Not, hey, we picked a name, Stockdale
16 Capital Partners in 2013. It was really when did our
17 team start working together.

18 Q. Okay. And then you'll agree with me that there
19 are a lot of -- now that the term Stockdale Capital
20 Partners is defined as Stockdale, there are lots of
21 individual references to Stockdale on this page?

22 A. Correct.

23 Q. I'm counting at least three, maybe four?

24 A. Stockdale and SCP.

25 Q. That's right.

1 DANIEL MICHAELS

2 And do you have an understanding as to when
3 this particular logo was designed?

4 A. It was in around that time. I don't know the
5 exact date.

6 Q. 2013?

7 A. Yeah.

8 Q. How about the website? Who was in charge of
9 developing the content and look and feel of the website
10 when it first started?

11 A. Me.

12 We had a web designer, third-party web
13 designer, but I provided the content.

14 Q. Do you remember who that third-party web
15 designer was?

16 A. I do not.

17 Q. And you helped design the look and feel and --

18 A. I gave suggestions and said, you know, we'd
19 like to show these pictures, you know, put this
20 language.

21 Q. Okay. And has the -- has the website been
22 updated on a regular basis since it was first published?

23 A. I think we updated it maybe three or four times
24 since it started, you know, various improvements.

25 Q. You updated it with new information about

DANIEL MICHAELS

various properties?

A. Yeah. New properties that we acquired, new members of the team that we add.

Q. Okay.

A. Things like that.

Q. But in your mind, to your understanding, the Stockdale Capital Partners logo has been a part of the website since the beginning?

A. Yeah.

Q. Okay.

A. Yes.

Q. Has anyone ever asked you if you're affiliated -- if Stockdale Capital is affiliated with Stocksdale Investment Group?

A. No.

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Q. All right. Does Stockdale Capital engage in advertising?

A. No.

Q. Does it engage in what we broadly called marketing?

A. I don't know.

Q. Do you sponsor events? Do you send out promotional materials?

1 DANIEL MICHAELS

2 A. No. The most we do is a press release.

3 Q. Okay. Do you have --

4 A. I think we hosted a dinner once, but that's
5 largely it.

6 Q. Okay. Do you sponsor any events in the real
7 estate industry or capital investment industry?

8 A. No.

9 I mean, we may give -- like, again, there's
10 a chamber of commerce in San Diego. You know, we may
11 contribute to that, but it's not for marketing purposes.

12 Q. Okay. Are you aware if that gift to the San
13 Diego Chamber of Commerce results in your name being
14 listed?

15 A. Yeah. Maybe being put in a pamphlet or
16 something. We hosted the Mayor recently on behalf of
17 Brook Plaza {phonetic}. We had a sponsorship for an
18 award ceremony. But we don't actively market or do any
19 type of traditional advertising.

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Q. Okay. So back to this Exhibit 5. It was represented by your company that right about the time the lawsuit was filed that you were in the midst of planning a new capital raise?

A. We're in the middle of -- we've been in the middle raising a closed-and-commingled fund for about a year now.

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Q. Okay. When you -- who do you publish this to typically when you go on a capital raise?

A. We don't publish it. We have direct one-on-one conversations as introduced by Lazard for some of the largest institutions in the world.

Q. And so you will show up face to face and have a meeting?

A. Correct.

Q. And you will bring a copy of this for everyone --

A. Correct.

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Q. And who is Ace Parking Management?

A. They're the largest independent parking operator. It's a partnership to buy parking assets.

Q. And how many assets have been identified and acquired?

A. Two so far.

Q. And where are they located?

A. San Francisco.

Q. And you're looking all over the Southwest?

A. Correct.

Q. For opportunities?

A. Correct.

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Q. Apart from Lazard, do you get any referrals of potential investors to you from third parties?

A. No. Just not really the way it works; but, no.

Q. So someone that you might know as a colleague or in your personal life might say, Hey, I know this guy

1 DANIEL MICHAELS

2 is sitting on a ton of money with a big fund. You guys
3 should really talk to him. I'll introduce you.

4 Does that ever happen?

5 A. Yeah. I mean, no, it doesn't work that day.

6 Q. It doesn't work that way?

7 A. No.

8 Q. Okay. So, again, all of your potential
9 investors are either people you've made contact with
10 yourself?

11 A. Yeah.

12 Q. Or Yaris have?

13 A. Yeah. Well --

14 Q. Or have come through Lazard.

15 A. -- at this point, it's just Lazard.

16 Q. Just Lazard?

17 A. Yeah.

18 We're raising money for a commingled fund.
19 Minimum investment is \$10 million locked up for 10
20 years. Those aren't doctors and dentists or friends of
21 families. Those are generally large institutions who
22 want to put minimum of 15-, 25-, \$50 million for a
23 period of time.

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Q. When your document says you -- do some of your documents refer to marketing to ultrahigh net worth individuals?

A. Yep.

Q. Are those people who have based their wealth based on a fund that they invest with?

A. Well, it's like Mayor Bloomberg, who's worth \$55 billion.

Q. Right.

A. That's -- or the Duke of Westminster with a \$35 million-pound marginalization.

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24 Q. Mr. Michaels, the word "consumer" was used
25 previously in your deposition, and it seemed to be, kind

1 DANIEL MICHAELS

2 of, an abnormal and awkward word to use in connection
3 with your business. With respect to your investors,
4 would a more appropriate word to use, would that be
5 "clients"?

6 A. Yeah. Clients, I guess, the term that was
7 used.

8 Q. Regarding the relief requested by Stocksdale
9 Investment Group, which is to essentially force your
10 company to change its name, if that relieve was
11 ultimately granted by the court, would the changing of
12 your name have an impact on your business?

13 MR. VAN ARSDEL: Objection. Calls for
14 speculation.

15 A. Yes, it would.

16 Q. (BY MR. VANDENBOUT) Can you state how so?

17 A. The effort that I've undertook over the past
18 couple of years to build investor relationships globally
19 around Stockdale Capital Partners is very much about our
20 firm and our history and who we are and our deals, but
21 it start with Stockdale Capital Partners. And in an
22 environment where these are large and sophisticated
23 institutions, albeit ones with lots of option, being
24 able to have a name stay the same is important.

25 Said differently, if we changed our name

DANIEL MICHAELS

multiple times, it honestly just causes confusion. And with those investors in terms of building those relationships, really just having continuity is important, whether it's team, a name, a location, investments, et cetera.

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STOCKDALE INVESTMENT §
GROUP, INC. D/B/A §
STOCKDALE §
Plaintiff, §

v. §

CIVIL ACTION NO. 4:18-cv-02949

STOCKDALE CAPITAL PARTNERS, §
LLC; STOCKDALE CAPITAL §
PARTNERS RE FUND I GP, LLC; §
STOCKDALE CAPITAL PARTNERS §
REAL ESTATE FUND, LP; §
STOCKDALE CAPITAL RE §
INVESTMENTS, LLC; STOCKDALE §
CAPITAL RE, LLC; and STOCKDALE §
CAPITAL SERVICES, LLC §
Defendants. §

**PLAINTIFF’S FIRST AMENDED COMPLAINT AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

Plaintiff Stockdale Investment Group, Inc. d/b/a Stockdale (“Stockdale”) files this First Amended Complaint and Application for Temporary Restraining Order and Preliminary and Permanent Injunctive Relief against Defendants Stockdale Capital Partners, LLC; Stockdale Capital Partners RE Fund I GP, LLC; Stockdale Capital Partners Real Estate Fund, LP; Stockdale Capital Partners RE Investments, LLC; Stockdale Capital RE, LLC; Stockdale Capital Services, LLC; Stockdale Management, LLC; Stockdale/SG, LLC and Stockdale Acquisitions, LLC (collectively, “Stockdale Capital”). In support of the foregoing, Plaintiff respectfully shows the Court as follows:

I. PARTIES AND PROCESS

1. Plaintiff Stockdale Investment Group, Inc. d/b/a Stockdale is a corporation organized under the laws of the State of Texas, with its corporate office located in Dallas, Texas.

2. Defendant Stockdale Capital Partners, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal office and place of business located in Los Angeles, California. Stockdale Capital Partners, LLC has been served and answered in this matter and may be served through its attorney of record.

3. Defendant Stockdale Capital Partners RE Fund I GP, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal office and place of business, upon information and belief, located in Los Angeles, California. Stockdale Capital Partners RE Fund I GP, LLC has been served and answered in this matter and may be served through its attorney of record.

4. Defendant Stockdale Capital Partners Real Estate Fund, LP is a limited partnership organized under the laws of the State of Delaware, with its principal office and place of business, upon information and belief, located in Los Angeles, California. Stockdale Capital Partners Real Estate Fund, LP has been served and answered in this matter and may be served through its attorney of record.

5. Defendant Stockdale Capital Services, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal office and place of business, upon information and belief, located in Los Angeles, California. Stockdale

Capital Services, LLC has been served and answered in this matter and may be served through its attorney of record.

6. Defendant Stockdale Capital RE Investments, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal office and place of business, upon information and belief, located in Los Angeles, California. Stockdale Capital RE Investments, LLC has been served and answered in this matter and may be served through its attorney of record.

7. Defendant Stockdale Capital Partners RE, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal office and place of business, upon information and belief, located in Los Angeles, California. Stockdale Capital Partners RE, LLC has been served and answered in this matter and may be served through its attorney of record.

8. Defendant Stockdale Management, LLC is a limited liability company organized under the laws of the State of Arizona, with its principal office and place of business located in Scottsdale, Arizona. Pursuant to Rule 4(h) of the Federal Rules of Civil Procedure, Stockdale Management, LLC may be served with citation through its registered agent, CT Services, 1021 Main Street Suite 1150 Houston, Texas 77002; through the Texas Secretary of State pursuant to § 5.251(2)(B) of the Texas Business Organizations Code; or wherever else it may be found.

9. Defendant Stockdale/SG, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal office and place of business, upon information and belief, located in Los Angeles, California. Pursuant to Rule 4(h) of

the Federal Rules of Civil Procedure, Stockdale/SG, LLC may be served with citation through its registered agent, The Corporation Trust Company, Corporation Trust Center 1209 Orange St. Wilmington, DE 19801; through the Texas Secretary of State pursuant to § 5.251(2)(B) of the Texas Business Organizations Code; or wherever else it may be found.

10. Defendant Stockdale Acquisitions, LLC is a limited liability company organized under the laws of the State of California, with its principal office and place of business located in Los Angeles, California. Pursuant to Rule 4(h) of the Federal Rules of Civil Procedure, Stockdale Acquisitions, LLC may be served with citation through its registered agent, CT Corporation System, 10850 Wilshire Blvd., Ste 1050, Los Angeles, CA 90024; through the Texas Secretary of State pursuant to § 5.251(2)(B) of the Texas Business Organizations Code; or wherever else it may be found.

II. JURISDICTION AND VENUE

11. This Court has original jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332 and 1338 because this action arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.*; there is diversity of citizenship among the parties (Plaintiff being a Texas corporation and the Stockdale Capital entities being organized pursuant to the laws of Delaware), with more than \$75,000 in controversy; and under principles of pendent and ancillary jurisdiction.

12. This Court has personal jurisdiction over Stockdale Capital because Stockdale's claims arise in whole or in part out of Stockdale Capital's contacts with Texas, and Stockdale Capital regularly transacts business in the State of Texas at its

office located at 13131 Dairy Ashford, Suite #390, Sugar Land, Texas, 77478 such that Stockdale Capital has purposefully availed itself of the benefits of the laws of the state of Texas.

13. This Court has authority to issue injunctive relief under Rule 65 of the Federal Rules of Civil Procedure, 15 U.S.C. §§ 1114, 1116, and 1125, and its inherent equitable powers.

14. Venue is proper in this district because a substantial part of the events or omissions giving rise to the claims occurred within this district or arise out of the same transactions or occurrences or series of transactions or occurrences forming all or part of causes of action arising out of Sugar Land, Texas. 28 U.S.C. § 1391(b)(2).

III. FACTUAL BACKGROUND

A. STOCKDALE'S BUSINESS

15. Stockdale is a real estate services company operating in Texas, California, and North Carolina in the real estate design, construction, and property management space. Starting as a small, family business in 1989, Stockdale began its operations in Stockdale, California, expanded to Texas in 2007, and later began operating in North Carolina in 2010. Stockdale has operated continuously under the Stockdale name since the company's inception in 1989.¹

¹ A true and correct copy of Stockdale's website (<http://stockdale.com/>) is attached hereto as **Exhibit 1**.



16. Shortly after Stockdale relocated its headquarters to Texas, in early 2012, Stockdale filed a certificate of merger with the Texas Secretary of State to merge Stockdale with “Stockdale Investment Group, Inc.” which had been previously registered and operating in California.² At that time, Stockdale registered the combined entity to do business in Texas.³ In an effort to further protect its brand, in early 2014, Stockdale also registered the name “Stockdale, LLC”, and in early 2017, Stockdale then registered the name “Stockdale Capital” with the Texas Secretary of State.

17. By operating for almost 30 years under its name in real estate development and management in California, North Carolina, and Texas, Stockdale has established coast-to-coast, common-law trademark rights in the Stockdale name as associated with real estate design, construction, and property management. Since 1989, Stockdale has devoted substantial time, effort, and expense in the development of goodwill under its name. Specifically, Stockdale has spent years and hundreds of thousands of dollars in marketing, advertising, and providing products and services as “Stockdale.” As a result of its substantial, continuous marketing efforts, Stockdale has come to be recognized as a premier provider of real estate development and property management services in California, Texas, and North Carolina.

² A true and correct copy of Stockdale’s Certificate of Merger is attached as **Exhibit 2**.

³ A true and correct copy of Stockdale’s Certificate of Formation is attached as **Exhibit 3**.

18. The Stockdale mark enjoys a high level of protection as an arbitrary mark. Although Stockdale was originally named for its initial base of operations in Stockdale, California (for no other reason than that is where the family business was started), Stockdale began moving its base of operations to Texas in 2011 and formally merged its California company with the Texas “Stockdale” in early 2012. Aside from the meaning Stockdale has developed for the name and mark of “Stockdale” over the years, neither the “Stockdale” name nor the “Stockdale” mark bears any relationship to the real estate services offered by Stockdale. Further, “Stockdale” does not indicate the specific location of Stockdale’s operations or business reach, and the public does not associate the original, largely unknown locale with Stockdale’s brand or services.

19. Moreover, over the last 29 years, “Stockdale” has acquired a secondary meaning through Stockdale’s use of its mark. Over the years, Stockdale has spent thousands of dollars on advertising its services using the Stockdale mark, and the Stockdale mark has remained the same or substantially similar throughout the time Stockdale has been in business. In addition to the Stockdale mark regularly appearing in Stockdale’s promotional materials and being ever-present on Stockdale’s website for over a decade, the Stockdale mark is regularly used to identify Stockdale’s services in newspapers and real estate magazines—sometimes unsolicited. The Stockdale mark is further used to identify Stockdale’s services in industry groups such as Urban Land Institute and the International Council of Shopping Centers. Stockdale’s customers and partners have come to associate the Stockdale mark with Stockdale’s services, and over

the last 5 years alone, Stockdale has marketed in excess of \$125,000,000.00 in real estate using the Stockdale mark.

B. STOCKDALE CAPITAL'S BUSINESS

20. Stockdale Capital is a series of companies operating as one collective unit that also holds itself out as a real estate services group. While two of the Stockdale Capital entities were formed in 2013 operating in California, the balance of the Stockdale Capital entities were formed in 2015 and 2016.⁴ And while Stockdale Capital is operating in the State of Texas, none of the entities composing Stockdale Capital other than Stockdale Management, LLC have registered with the Texas Secretary of State to do business in Texas.

21. Per Stockdale Capital's website, Stockdale Capital is associated with properties in California, Arizona, and more recently, Texas. Specifically as to Stockdale Capital's Texas operations, Stockdale Capital purports to manage a property in El Paso, Texas (a property called "9009 Railroad"), to manage two office buildings in Sugar Land, Texas (called "Sugar Creek I & II"),⁵ and has an operations office in Sugar Land, Texas.

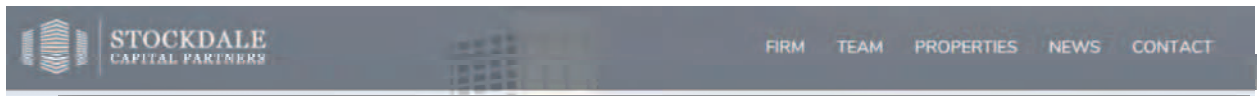
22. In an effort to take unfair advantage of Stockdale's trade goodwill in the real services space, Stockdale operates under the following mark:

⁴ True and correct copies of the filings of all Stockdale Capital entities with the Delaware Secretary of State, Texas Secretary of State and the California Secretary of State are attached as **Exhibits 4A -4I**.

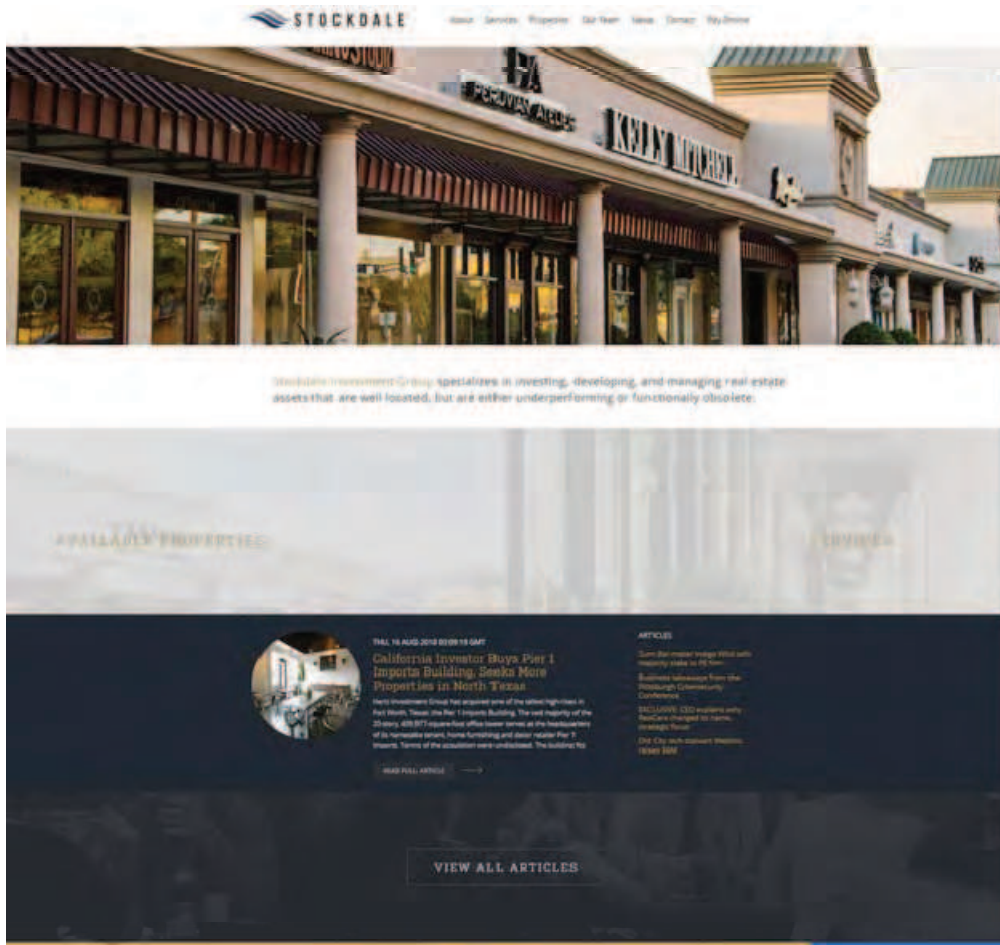
⁵ A true and correct copy of pages from Stockdale Capital's website (<https://stockdalecapital.com/>) is attached hereto as **Exhibit 5**.



The marks are strikingly similar. Like the real Stockdale's mark, the Stockdale Capital mark is in all-caps, block lettering, of the same color scheme as Stockdale's, and also bears an abstract emblem on the left side of the mark. Moreover, Stockdale Capital's website contains substantially similar information in a substantially similar format as the format of the real Stockdale website:



And in fact, Stockdale Capital's website (stockdalecapital.com) largely has the same design, color palette, and feel as that of the real Stockdale's (stockdale.com):





Accordingly, in using its website to conduct business in the real estate development and property management spaces in the same regions as Stockdale, Stockdale Capital is unfairly and illegally taking advantage of the Stockdale name, the Stockdale mark, and Stockdale’s goodwill that Stockdale has developed over the last 29 years.

C. CONFUSION AS TO SOURCE, AFFILIATION, AND SPONSORSHIP

23. Stockdale Capital’s unfair use of the Stockdale name has resulted in significant market confusion as to the source, affiliation, and sponsorship of Stockdale Capital and its services. As an initial matter, Stockdale Capital’s improper parroting of Stockdale is especially egregious in the real estate services industry. In the real estate services industry, it is not unusual for operators and owners of real estate to form several, similarly named entities to hold each asset owned and/or managed by the company (known in the industry as “single-purpose entities”). This wide-spread, industry practice

makes Stockdale Capital's scheme all the more effective at confusing the public. While it is typical for real estate developers and managers to operate their businesses through a family of similarly named entities while advertising their services under the trade name common to the family of entities, the similarly named entities typically have common ownership stemming from the same business source. As between Stockdale and Stockdale Capital, this is not the case. Indeed, in Texas, Stockdale Capital has abandoned the term "Capital" altogether and has only registered the entity Stockdale Management, LLC with the Texas Secretary of State.

24. Here, Stockdale Capital's continued use of Stockdale's name and mark has confused clients and potential clients of Stockdale's and caused the would-be Stockdale clients and business affiliates to mistakenly believe that they are dealing with the real Stockdale when they are dealing with Stockdale Capital. By way of example, Lincoln Property Company, CBRE Group, Inc., Holliday Fenoglio Fowler, L.P., and Arch Capital have all reported instances of confusion between the two companies. These entities are major, sophisticated players in the United States real estate market. The fact that they each have confused Stockdale and Stockdale Capital is telling and highly problematic for the maintenance of the legacy, Stockdale brand.

25. By way of further example, news media outlets confuse the two companies. Recently, Stockdale Capital has become involved with the redevelopment of a shopping mall in downtown San Diego called the Horton Plaza Mall. Since early June of this year,

several news media outlets including 10 News, an ABC affiliate, incorrectly associated the real Stockdale with the project:⁶

SAN DIEGO (KGTV) - The Horton Plaza mall, a downtown San Diego icon since 1985 that has fallen into hard times, appears to be close to being sold.
Multiple sources confirmed to 10News that [Stockdale Capital Partners](#) is now in escrow to buy the mall.

(Correction - An earlier version of this story incorrectly referred to the company buying Horton Plaza as Stockdale Investment Group. However, Stockdale Capital Partners is in escrow to buy the property)

And outside the media, the real Stockdale began receiving communications such as these commenting on Stockdale's involvement in the Horton Plaza Mall project:⁷

From: Michael Townsend <michael@townsendassociates.com>
Sent: Friday, June 22, 2018 2:59 PM
To: Joe Pastora <jpastora@stockdale.com>
Subject: Fwd: New owner to convert iconic Horton Plaza to mixed-use | ICSC: International Council of Shopping Centers

Is this you guys?!

May have fun anchor for you is so....

Michael Townsend
Townsend & Associates, Inc.
tel: (310) 286-9945
www.townsendassociates.com
www.summerhillatl.com

Since Stockdale Capital started operating under the "Stockdale" name, the confusion between the real Stockdale and Stockdale Capital has been pervasive. In fact, a simple Google search of "Stockdale" and "real estate" also illustrates the problem. While the

⁶ Attached as **Exhibit 6** is true and correct copies of this incorrect report.

⁷ A true and correct copy of this correspondence is attached as **Exhibit 7**.

subject line of these sample articles suggests news will be reported about the real Stockdale, these article are, in fact, reporting Stockdale Capital’s alleged activities:

Stockdale Puts Parking Garage in San Francisco Under Contract for ...
<https://news.theregistrysf.com> · Commercial
Aug 17, 2017 - Stockdale Capital Partners, 350 Beach Street, San Francisco, Grosvenor Group, Ace Parking, San Francisco, Newmark Grubb Knight Frank, ...

CoStar News - Stockdale Quietly Shops Repurposing of San Diego ...
<product.costar.com/home/news/shared/192770>
Jun 29, 2018 - Stockdale Capital Partners of Los Angeles has shown local business and civic leaders its plans to convert downtown San Diego's Westfield ...

Stockdale Targets Parking Structures with New JV | GlobeSt
<https://www.globest.com/sites/.../09/.../stockdale-targets-parking-structures-with-new-jv...>
Sep 9, 2016 - LOS ANGELES—Stockdale Capital Partners forms a joint venture with Grosvenor Group and Ace Parking Management to acquire ...

Quilvest, Stockdale establish US medical office JV, buy first asset in ...
<https://realassets.ipe.com/news/markets-and...stockdale...us.../10017757.article>
Feb 28, 2017 - Quilvest, through its private equity arm, has created a joint venture with Stockdale Capital Partners to buy medical office buildings in the west ...

26. Upon information and belief, the confusion between Stockdale and Stockdale Capital has led to projects that were intended for the real Stockdale to be marketed to Stockdale Capital, and upon further information and belief, Stockdale Capital’s infringement of the Stockdale name and mark has caused Stockdale Capital to earn illicit profits at the expense of the real Stockdale.

27. Aside from the fact that Stockdale Capital is confusing Stockdale’s customers and the media, Stockdale Capital has also created significant confusion

between the two companies as to prospective talent in employee recruiting. While the real Stockdale was voted a “Best Places to Work” by the Dallas Business Journal last year, Stockdale Capital routinely receives negative reviews from former employees further besmirching the Stockdale brand.

28. Accordingly, by letter dated June 26, 2018, Stockdale’s counsel demanded that Stockdale Capital cease and desist the use of the Stockdale capital name and trademark.⁸ In this correspondence, Stockdale further advised Stockdale Capital that Stockdale had filed a federal service mark application (bearing Serial No. 88/006185). Even so, Stockdale Capital persists in parading as Stockdale. Even now, upon information and belief, Stockdale Capital is using the Stockdale name in a capital raise improperly recruiting investors to participate in Stockdale Capital’s business model based on infringing upon the Stockdale trade name.

29. Stockdale Capital’s use of the Stockdale name and trademark infringes on Stockdale’s trademark rights.

IV. CONDITIONS PRECEDENT

30. All conditions precedent to Stockdale’s recovery on the claims made the subject of this suit have been performed, have occurred, or have been waived or excused.

V. CAUSES OF ACTION

31. The acts or omissions of Stockdale Capital, as set forth herein, give rise to the following claims and causes of action:

⁸ A true and correct copy of the June 26, 2018 demand letter is attached as **Exhibit 8**.

A. COUNT I – TRADEMARK INFRINGEMENT (15 U.S.C. § 1125(a))

32. All preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

33. Stockdale owns a legally protectable mark. The “Stockdale” mark is an arbitrary mark and/or is otherwise inherently distinctive. In the alternative, the “Stockdale” mark is protectable as it has developed a secondary meaning over its years of use by Stockdale.

34. Stockdale Capital’s false representations, false descriptions, and false designations of origin of its goods violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Stockdale Capital’s unauthorized use of the Stockdale mark constitutes infringement of an unregistered trademark, and is, therefore, actionable under Section 43(a) of the Lanham Act.

35. Stockdale Capital has infringed on the unregistered Stockdale trademark. Each of these infringements stands on its own and is a distinctive violation of the Lanham Act.

36. Stockdale Capital’s actions have caused confusion, deception, and mistake and unless enjoined by this Court, will continue to cause of a likelihood of confusion, deception, and mistake by creating the false and misleading impression that Stockdale Capital’s goods and services are affiliated, connected, or associated with Stockdale, or have the sponsorship, endorsement, or approval of Stockdale.

37. Stockdale Capital’s conduct is intentional, willful, malicious, wanton, and designed to trade on the goodwill associated with Stockdale’s marks, and such conduct

causes irreparable injury to Stockdale, for which Stockdale has no adequate remedy at law.

38. Stockdale Capital's use of the Stockdale's trademark in its marketing and selling of real estate development and property management services infringes on Stockdale's exclusive rights in those marks.

39. Stockdale Capital's conduct has caused, and is likely to continue causing, substantial injury to the public and to Stockdale, and Stockdale is entitled to preliminary and permanent injunctive relief, and to recover Stockdale Capital's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1125(a), 1116, and 117. Specifically, Stockdale seeks to have the Court enforce an injunction prohibiting Stockdale Capital, and anyone acting in concert with them, from marketing and selling real estate development and property management services bearing Stockdale's mark, name, and descriptions to protect Stockdale's trademark, goodwill, and to prevent further infringement by Stockdale Capital.

B. COUNT II – TRADEMARK DILUTION (15 U.S.C. § 1125(C)(1))

40. All preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

41. Stockdale's trademark and name have acquired distinctiveness and are famous in the real estate design, construction, and property management space particularly among consumers of real estate development and property management services. In the alternative, the Stockdale mark has a secondary meaning.

42. Stockdale Capital has unlawfully marketed and sold products bearing Stockdale's mark.

43. Stockdale Capital began using the Stockdale's trademark after Stockdale had already made the marks famous.

44. By offering and selling to consumers of real estate development and property management services with a derivative of Stockdale's trademark, Stockdale Capital are passing off Stockdale's services as their own and diluting Stockdale's trademark by blurring and causing confusion in the marketplace.

45. Stockdale Capital's ongoing use of Stockdale's trademark is likely to continue to cause dilution by blurring.

46. Through Stockdale Capital's complained of acts, Stockdale Capital willfully intended to trade on consumer recognition of Stockdale's trademark and name and to cause dilution of the Stockdale's trademark. Consequently, Stockdale is entitled to damages.

47. Stockdale is also entitled to injunctive relief pursuant to 15 U.S.C. § 1125(c)(1) to stop Stockdale Capital from diluting the distinctive quality of the Stockdale's trademark.

C. COUNT III – COMMON LAW PASSING OFF (TEX. BUS. & COMM. CODE ANN. § 16.103)

48. All preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

49. Plaintiff is the owner of famous and distinctive marks, the Stockdale trademark, which has acquired distinctiveness in the real estate design, construction, and property management industry, particularly among buyers and users of real estate development and property management services.

50. Stockdale Capital has been unlawfully marketing and selling products bearing Stockdale's trademark, name and descriptions, and traded on such information.

51. Stockdale Capital's acts of marketing and selling products bearing Stockdale's trademark, name, and descriptions as their own constitute acts of passing off such products as their own, causing confusion in the marketplace for real estate development and property management services.

52. Stockdale Capital's on-going use of Stockdale's mark, name, and descriptions is likely to cause and continue to cause dilution by blurring.

53. Through Stockdale Capital's willful and complained of acts, Stockdale Capital are willfully and in bad faith trading on consumer recognition of Stockdale's trademark and name, and creating a false association with its marketing and sale of its own real estate services.

54. Stockdale is entitled to injunctive relief pursuant to section 16.103(c) of the Texas Business and Commerce Code, as well as an award of all Stockdale Capital's ill-gotten profits, and damages.

55. Further, Stockdale is entitled to enhanced profits and damages, as well as reasonable attorneys' fees pursuant to §§ 16.103(c) and 16.104(c) of the Texas Business and Commerce Code.

D. COUNT IV – FEDERAL UNFAIR COMPETITION (15 U.S.C. § 1125(A))

56. All preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

57. This claim is for violations of Section 43(a) of the Lanham Act, codified at 15 U.S.C. § 1125(a), *et seq.*

58. Stockdale Capital's advertising, promotion, and sale of real estate services using the Stockdale's trademark and/or other names, marks, or branding scheme confusingly similar to those marks and the Stockdale branding scheme, constitutes unfair competition, false designation of origin, and false or misleading representations of fact.

59. Stockdale Capital's actions, namely wrongfully and falsely designating their services as originating from, or connected with, sponsored by or authorized by Stockdale, constitute utilization of false descriptions or representations in interstate commerce, in violation of the Lanham Act, 15 U.S.C. §1125(a).

60. By using the Stockdale's trademark, Stockdale Capital misrepresents and falsely describe to the general public and trade the origin and source of their infringing real estate services and creates a likelihood of confusion as to both the source and sponsorship of such real estate services.

61. Moreover, Stockdale has no control over the quality of the infringing real estate services offered by Stockdale Capital, and therefore, the sale thereof damages Stockdale, dilutes the goodwill of the Stockdale's trademark, and damages the reputation that Stockdale has developed in connection with the quality real estate services offered under the Stockdale's trademark.

62. Stockdale Capital's use of the Stockdale's trademark was, and remains, without the authorization or consent of Stockdale.

63. The real estate services sold and offered by Stockdale Capital are of the same general nature and type as the real estate services using the Stockdale's trademark, and as such Stockdale Capital's use is likely to, and upon information and belief, is certainly intended to, cause confusion among the trade and the purchasing public.

64. Stockdale Capital's use of the Stockdale's trademark in connection with the advertising and sale of their real estate services also is likely to cause and has caused irreparable harm to Stockdale, including, but not limited to, detriment and diminution in value of Stockdale's trademark.

65. Stockdale Capital's unlawful and unauthorized offer for sale and distribution of real estate services confusingly similar to those offered by Stockdale creates express and implied misrepresentations that such services were created, authorized, or approved by Stockdale and/or through Stockdale's business associates and potential clients, and are of the same quality and source as Stockdale's services.

66. As a result of the acts described above, Stockdale is entitled to preliminary and permanent injunctive relief to enjoin Stockdale Capital's acts infringing the Stockdale's trademark, to recover its damages and Stockdale Capital's gains, profits, and advantages obtained as a result of the acts alleged above and to recover treble damages and enhanced profits in an amount to be determined.

67. Stockdale Capital knew or had reason to know of Stockdale's use of the Stockdale mark and deliberately adopted a confusingly similar mark. Given that

Stockdale Capital's actions were willful, deliberate, and fraudulent, this is an exceptional case, and Stockdale is entitled to damages and an award of reasonable attorneys' fees against Stockdale Capital.

E. COUNT V – TEXAS COMMON LAW UNFAIR COMPETITION

68. All preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

69. Stockdale Capital's unlawful acts have illegally interfered with Stockdale's ability to conduct its business.

F. COUNT VI – TEXAS COMMON LAW UNJUST ENRICHMENT

70. All preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

71. By marketing and selling real estate services bearing Stockdale's trademark, Stockdale Capital has been unjustly enriched and has garnered profits that rightfully belong to Stockdale.

72. Stockdale Capital's profits are directly related to Stockdale Capital's wrongful acts pertaining to Stockdale's mark and interference with Stockdale's customers and potential customers.

73. Stockdale Capital should be disgorged of their ill-gotten gains.

G. COUNT VII – TEXAS COMMON LAW TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONSHIPS

74. All preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

75. Stockdale Capital has tortiously interfered with Stockdale's prospective contracts with consumers of real estate services.

76. Stockdale Capital had no legal justification for its acts of interference with these prospective contractual relations of Stockdale.

77. Stockdale Capital's acts of tortious interference with prospective contractual relations have proximately caused damages to Stockdale.

78. Stockdale Capital's acts of tortious interference with prospective contractual relations have been intentional, willful, and malicious.

H. COUNT VIII - TEXAS TRADEMARK DILUTION STATUTE

79. All preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

80. The Texas Trademark Dilution Statute provides that:

The owner of a mark that is famous and distinctive, inherently or through acquired distinctiveness, in this state is entitled to enjoin another person's commercial use of a mark or trade name that begins after the mark has become famous if use of the mark or trade name is likely to cause the dilution of the famous mark.

TEX. BUS. & COM. CODE ANN. § 16.103.

81. Despite Stockdale's well-known and prior established rights in the Stockdale mark, Stockdale Capital engaged in the advertising, promotion, and sale of its real estate investment and management services, in a confusingly similar manner, within the State of Texas.

82. Stockdale Capital's use of the Stockdale mark in the identification, and advertising of its real estate services within the State of Texas is likely to blur the

distinctive qualities of the Stockdale's mark, to cause dilution and to cause injury to the Stockdale's business reputation in violation of the Texas Business and Commerce Code, Title 2, Chapter 16, Section 16.103.

83. Upon information and belief, Stockdale Capital's dilution of Stockdale's mark was done intentionally, with knowledge of Stockdale's senior rights, in a bad faith, willful, and deliberate attempt to trade on the goodwill and reputation of Stockdale. Further, Stockdale Capital failed, despite demand, to cease and desist from further acts of dilution.

84. Such wrongful acts of Stockdale Capital constitute dilution of a famous mark for which Stockdale brings this action to enjoin the use, display, or sale of any counterfeits or imitations of Stockdale's mark and payment of all profits derived from or damages resulting from the wrongful acts.

85. In view of the willfulness of Stockdale Capital's acts, this is an exceptional case deserving an award of three times the amount of profits and damages and attorneys' fee under the Texas Business and Commerce Code, Title 2, Chapter 16, Section 16.104.

86. Unless enjoined by this Court, Stockdale Capital will continue its acts of dilution, thereby causing Stockdale immediate and irreparable damage for which the real Stockdale has no adequate remedy at law.

I. ATTORNEYS' FEES AND EXPENSES

87. Stockdale reasserts and incorporates by reference all preceding paragraphs as if set forth herein.

88. Stockdale Capital's conduct has required Stockdale to retain the undersigned attorneys. Stockdale Capital has agreed to pay their legal counsel reasonable and necessary attorneys' fees and expenses. Accordingly, Stockdale is entitled to recover reasonable and necessary attorneys' fees and expenses from Stockdale Capital under (i) 15 U.S.C. § 1117, and (ii) Texas Business and Commerce Code §§ 16.103(c) and 16.104(c). Moreover, Stockdale may recover its reasonable attorneys' fees and expenses as a part of any exemplary or punitive damages that might be awarded to Stockdale.

VI. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

89. Stockdale reasserts and incorporates by reference all preceding paragraphs as if set forth fully herein.

90. This claim is for injunctive relief pursuant to 15 U.S.C. §§ 1114, 1116, and 1125 as well as § 16.103 of the Texas Business and Commerce Code.

91. Stockdale Capital's use of the Stockdale's trademark has confused and misled consumers of real estate development and property management services, and is likely to continue to confuse and mislead consumers of real estate development and property management services, and constitutes a false designation of origin and false description and representation in commerce, in violation of 15 U.S.C. §§ 1114 and 1125(a).

92. Unless a temporary restraining order and/or a preliminary injunction and a permanent injunction are entered prohibiting Stockdale Capital from unlawfully marketing and selling real estate development and property management services bearing

Stockdale's trademark, name and descriptions, Stockdale will suffer immediate and irreparable harm, loss and damages in the form of dilution, lost revenues, lost goodwill, and significant loss in prospective business.

93. There is a strong probability that Stockdale will succeed on the merits of its case given the facts outlined above and considering the intentional acts of Stockdale Capital. Although the facts are not fully developed, the risk to Stockdale is substantial enough to warrant seeking the Court's immediate relief.

94. Due to the difficulty in measuring damages incurred, there is no adequate remedy at law and injunctive relief is required to preserve the status quo, potentially limit Stockdale's damages, and prevent future injury.

95. Stockdale is willing and able to post bond, as ordered by the Court, in support of any injunctive order issued by the Court.

96. Accordingly, pursuant to Rule 65 of the Federal Rules of Civil Procedure, Stockdale also seeks temporary, preliminary, and permanent injunctive relief prohibiting Stockdale Capital, together with their agents, representatives and all others in active concert or participation with them, from:

- a. Using and/or infringing on the legally owned property of Stockdale, including the use of the Stockdale mark and/or any name or mark confusing similar to the Stockdale mark;
- b. Using, reproducing, displaying, distributing, and/or registering the Stockdale mark and any trade names and trademarks containing Stockdale (or any variations thereof), or any name, mark, or branding scheme confusingly similar to the Stockdale mark within the State of Texas and in interstate commerce (including the internet) and in any and all advertising (including, without limitation, print advertising and property signage) and national

media (including, without limitation, any social media accounts and websites owned and operated by Stockdale Capital or any social media accounts and websites from which Stockdale Capital may advertise its products or services) targeting customers within the State of Texas or elsewhere;

- c. Holding itself out as affiliated with Stockdale in any way;
- d. Posting of signage containing the Stockdale mark at any place of business located within the State of Texas or elsewhere; and/or;
- e. Otherwise engaging in any conduct or course of conduct likely to enable Stockdale Capital to benefit from the valuable goodwill and hard-earned reputation established by Stockdale.

VII. DAMAGES

97. All preceding paragraphs are incorporated herein by reference for all purposes.

98. In addition to the injunctive relief prayed for above, Stockdale brings this suit for recovery of all actual damages suffered, or to be suffered, by it as a result of the wrongful acts of Stockdale Capital. Stockdale also brings this suit for recovery of an award of treble or exemplary damages against Stockdale Capital and the recovery of Stockdale's reasonable and necessary attorneys' fees.

VIII. JURY DEMAND

99. Stockdale demands a trial by jury.

IX. PRAYER

WHEREFORE PREMISES CONSIDERED, Stockdale Investment Group, Inc. d/b/a Stockdale prays that the Court grant Stockdale's application for temporary restraining order and preliminary injunctive relief against Defendants Stockdale Capital Partners, LLC; Stockdale Capital Partners Re Fund I GP, LLC; Stockdale Capital

Partners Real Estate Fund, LP; Stockdale Capital Partners Re Investments, LLC; Stockdale Capital Re, LLC; Stockdale Capital Services, LLC, Stockdale Management, LLC; Stockdale Acquisitions, LLC and Stockdale/SG, LLC and that upon final hearing or trial hereof, Stockdale have judgment against Stockdale Capital for Stockdale's actual and exemplary damages, enhanced profits and damages, and requests for a permanent injunction, reasonable and necessary attorneys' fees and expenses, and costs of suit, prejudgment and post-judgment interest, equitable relief including unjust enrichment and disgorgement of profits, and such other and further relief, general or special, at law or in equity to which Stockdale may be justly entitled.

Respectfully submitted,

WINSTEAD PC

By: /s/ Tom Van Arsdel

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**ATTORNEYS FOR PLAINTIFF
STOCKDALE INVESTMENT GROUP,
INC. D/B/A STOCKDALE**

CERTIFICATE OF CONFERENCE

I hereby certify that on December 13, 2018, I conferred with opposing counsel as to whether Defendants were opposed to Plaintiff filing this First Amended Complaint and opposing counsel stated in writing that Defendants were unopposed.

/s/ Tom Van Arsdel
Tom Van Arsdel

CERTIFICATE OF SERVICE

I hereby certify that in compliance with Rule 5 of the Federal Rules of Civil Procedure, a copy of the foregoing Certificate of Interested Parties was filed electronically with the Clerk of Court using the CM/ECF system on December 14, 2018. Notice of this filing will be sent to opposing counsel, by operation of the Court's electronic filing system:

Collin A. Rose
collin.rose@chamberlainlaw.com
Justin E. VandenBout
justin.vandenbout@chamberlainlaw.com
Kevin C. Navetta
kevin.navetta@chamberlainlaw.com
1200 Smith Street, Suite 1400
Houston, Texas 77002
713.658.1818—Telephone
713.658.2553—Fax

Via Electronic Service

/s/ Tom Van Arsdel
Tom Van Arsdel

Exhibit 1



Stockdale Investment Group specializes in investing, developing, and managing real estate assets that are well located, but are either underperforming or functionally obsolete.

AVAILABLE
PROPERTIES

SERVICES



MON, 20 AUG 2018 01:00:00 GMT

Chicago REIT Begins Construction on New Business Park in North Texas

First Industrial Realty Trust Inc., a Chicago-based real estate investment trust specializing in the ownership, development and operations of industrial real estate, has begun construction on the initial phase of an 84-acre

industrial park in North Texas. The two-building, \$27.5 million initial phase of the industrial park, called First Park 12 has begun at 2150 Midway Road near Midway Road and FM 444 in Lewisville. The two rear-load buildings...

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CORPORATE OFFICE

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Suite 1550
Dallas, Texas 75201

PHONE
Office: 214.220.3423

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Exhibit 2

**CERTIFICATE OF MERGER
OF**

**Stockdale Investment Group, Inc.
(a California corporation)**

WITH AND INTO

**Stockdale Investment Group, Inc.
(a Texas corporation)**

FILED
In the Office of the
Secretary of State of Texas
APR 10 2012
Corporations Section

Pursuant to the provisions of Section 10.152 and 10.151(b) of the Texas Business Organizations Code (the "**Code**"), Stockdale Investment Group, Inc. a California corporation ("**Parent**"), adopts the following Certificate of Merger for the purpose of effecting a merger with and into its wholly-owned subsidiary, Stockdale Investment Group, Inc., a Texas corporation ("**Surviving Corporation**"), in accordance with the provisions of Section 10.006 of the Code.

- 1. Each of the parties to the merger is a corporation. The name and jurisdiction of incorporation of each of the corporations that are parties to the merger are:

<u>Name</u>	<u>Jurisdiction of Incorporation</u>
Stockdale Investment Group, Inc.	California
Stockdale Investment Group, Inc.	Texas

- 2. No new entity is to be created by the Plan of Merger by Parent ("**Plan of Merger**"), and no new certificate of formation is being filed with this Certificate of Merger. Surviving Corporation shall be the surviving entity in the merger.
- 3. Parent owns 100 shares of common stock of Surviving Corporation, which represents 100% of the issued and outstanding shares of common stock of Surviving Corporation.
- 4. No amendments to the Certificate of Formation of Surviving Corporation are affected by the merger.
- 5. A signed Plan of Merger is on file at the principal place of business of Surviving Corporation, and the address thereof is 2100 McKinney Avenue, Suite 1550, Dallas, Texas 75201.
- 6. A copy of the Agreement and Plan of Merger will be on written request furnished without cost by Surviving Corporation to any owner or member of any domestic entity that is a party to or created by the Plan of Merger.
- 7. Approval of the Plan of Merger by the shareholders of Surviving Corporation is not required pursuant to Section 10.006(c) of the Code.

RECEIVED

APR 10 2012

Secretary of State

8. The Plan of Merger has been approved as required by the laws of the State of Texas and the State of California and by the governing documents of Parent. The Parent adopted the resolutions attached as Exhibit A approving the Merger and Plan of Merger on March 27, 2012.
9. In lieu of providing the tax certificate, Surviving Corporation will be liable for the payment of the required franchise taxes.

IN WITNESS WHEREOF, the undersigned have caused this certificate to be signed by their authorized officers on the 10th day of April, 2012.

**STOCKDALE INVESTMENT GROUP, INC., a
California corporation**

By:  _____

Name: Kenneth Pratt

Title: Vice President

EXHIBIT A

Resolutions Adopted by the Board of Directors of Parent:

WHEREAS, the Board desires to merge the Corporation with and into Stockdale Texas, with Stockdale Texas being the surviving entity in such merger (the “**Merger**”), pursuant to the terms and subject to the conditions set forth in that form of Plan of Merger attached hereto as Exhibit A (the “**Plan of Merger**”);

WHEREAS, pursuant to the Plan of Merger, (i) each issued and outstanding share of common stock in the Corporation is to be exchanged for, and converted into, one share of common stock of Stockdale Texas, and (ii) all of the issued and outstanding shares of common stock in Stockdale Texas are to be automatically cancelled and extinguished, without any conversion thereof and no payment of any consideration therefor;

WHEREAS, the Board, after due consideration, deems the Merger to be in the best interest of the Corporation and its shareholders (the “**Shareholders**”);

NOW, THEREFORE, BE IT RESOLVED, that the form, terms and provisions of the Plan of Merger are hereby approved and adopted in all respects.

RESOLVED FURTHER, that Board recommends that the Plan of Merger be submitted to the shareholders of the Corporation for their approval.

RESOLVED FURTHER, that, subject to the approval of the Plan of Merger by the Shareholders, the proper officers of the Corporation be, and each hereby is, authorized, empowered and directed for and in behalf of the Corporation, to execute and deliver the Plan of Merger substantially in the same form as Exhibit A with such changes or revisions as such officer may in his or her sole and absolute discretion approve, such approval to be conclusively evidenced by the execution and delivery of the Plan of Merger, as so changed or revised.

RESOLVED FURTHER, that, subject to the approval of the Plan of Merger by the Shareholders, the proper officers of the Corporation be, and each hereby is, authorized, empowered and directed to (i) prepare, execute and deliver a Certificate of Merger evidencing the Merger (the “**Certificate of Merger**”), (ii) cause the same to be filed with the Secretary of State of the State of Texas, and (iii) upon filing with the Secretary of State of the State of Texas, deliver and file a certified copy of the Certificate of Merger with the Secretary of State of the State of California.

Resolutions Adopted by Shareholders of Parent:

WHEREAS, the Corporation is the sole shareholder of Stockdale Investment Group, Inc., a Texas corporation ("**Stockdale Texas**");

WHEREAS, the Board of Directors of the Corporation (the "**Board**") has proposed that the Corporation merge with and into Stockdale Texas, with Stockdale Texas being the surviving entity in such merger (the "**Merger**"), pursuant to the terms and subject to the conditions set forth in that form of Plan of Merger attached hereto as Exhibit A (the "**Plan of Merger**");

WHEREAS, pursuant to the Plan of Merger, each share of capital stock of the Corporation issued and outstanding immediately prior to the Merger is to be exchanged for, and converted into, one share of common stock of Stockdale Texas;

WHEREAS, each of the Shareholders has reviewed the Plan of Merger, including Exhibit A thereto;

WHEREAS, the Board of Directors of the Corporation has recommended the Plan of Merger to the Shareholders for their approval;

NOW, THEREFORE, BE IT RESOLVED, that the Shareholders hereby authorize and approve the Merger and the exchange and conversion of each of their respective shares of capital stock in the Corporation for a corresponding number of shares of capital stock in Stockdale Texas, pursuant to the terms of the Plan of Merger.

RESOLVED FURTHER, that the form, terms and conditions of the Plan of Merger are hereby approved and adopted in all respects.

Exhibit 3

CERTIFICATE OF FORMATION
OF
STOCKDALE INVESTMENT GROUP, INC.

FILED
In the Office of the
Secretary of State of Texas
MAR 28 2012
CORPORATIONS SECTION

In accordance with the Texas Business Organizations Code (together with any successor statute, the "TBOC"), the undersigned party (the "Organizer"), qualified under Section 3.004 of the TBOC, adopts this Certificate of Formation and states as follows:

ARTICLE I

Name

The name of the corporation is Stockdale Investment Group, Inc. (the "Corporation").

ARTICLE II

Corporation

The Corporation is a corporation formed pursuant to the TBOC.

ARTICLE III

Purpose

The purpose for which the Corporation is formed is to transact any and all lawful business of every kind and character for which a for-profit corporation may be organized under the TBOC.

ARTICLE IV

Duration

The period of duration of the Corporation is perpetual.

ARTICLE V

Initial Registered Office and Agent

The street address of the initial registered office of the Corporation is 800 Brazos, Suite 400, Austin, Texas 78701, and the name of the initial registered agent of the Corporation at such address is Capitol Corporate Services, Inc.

ARTICLE VI

Organizer

The name of the Organizer of the Corporation is Jeremiah Mayfield, and the address of the Organizer is One Arts Plaza, 1722 Routh Street, Suite 1500, Dallas, Texas 75201.

ARTICLE VII

Capital Stock

The aggregate number of shares which the Corporation shall have authority to issue is 100,000, with no par value per share. The shares are designated as "Common Stock" and have identical rights and privileges in every respect.

ARTICLE VIII

Board of Directors

The number of the directors of the Corporation shall be fixed from time to time in the manner provided in the bylaws of the Corporation, but no decrease will have the effect of shortening the term of any incumbent director. The number constituting the initial board of directors is nine, and the names and addresses of the initial directors who are to serve until the first annual meeting of shareholders, or until his or her respective successor is elected and qualified, is as follows:

Brian Pratt	2100 McKinney Avenue #1550 Dallas, TX 75201]
Ken Pratt	2100 McKinney Avenue #1550 Dallas, TX 75201
Melissa Pratt	2100 McKinney Avenue #1550 Dallas, TX 75201
John Perisich	26000 Commercentre Dr. Lake Forest, CA 92630
Joe Pastora	2100 McKinney Avenue #1550 Dallas, TX 75201
Scott Summers	2100 McKinney Avenue #1550 Dallas, TX 75201
John Schauerman	26851 Eastvale Road Palos Verdes, CA 90274

Ken Teague

3724 Herschel Avenue
Dallas TX 75219

Travis Teague

3724 Herschel Avenue
Dallas TX 75219

ARTICLE IX

Cumulative Voting

Pursuant to Section 21.361(a)(2) of the TBOC, each shareholder entitled to vote at any election of directors may cumulate votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of shares held by the shareholder, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit. A shareholder may only cumulate votes in an election of directors if such shareholder gives written notice of that intention to the secretary of the Corporation on or before the day preceding the date of the election at which such shareholder intends to cumulate votes. All shareholders may cumulate their votes if a shareholder provides the notice described in the preceding sentence.

ARTICLE X

Action without Meeting

Any action required by the TBOC to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted. Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action. Such action shall be taken in accordance with Sections 6.201-6.205 of the TBOC, as amended.

ARTICLE XI

Indemnification

To the fullest extent allowed by law, the Corporation shall indemnify every director or officer, his or her heirs, executors and administrators against expenses actually and reasonably incurred by him or her, as well as any amount paid upon a judgment or settlement, in connection with any action, suit or proceeding, civil or criminal to which he or she may be made a party by reason of his or her being or having been a director or officer of the Corporation, or at the request of the Corporation, having been a director or officer of any other corporation from which he or she is not entitled to be indemnified.

The foregoing right of indemnification shall not be exclusive of other rights to which he or she may be entitled.

ARTICLE XII

Limitation of Liability

To the fullest extent permitted by applicable law, no director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for an act or omission in the person's capacity as a director, except that this Certificate of Formation does not eliminate or limit the liability of a director for: (1) a breach of such director's duty of loyalty to the Corporation or its shareholders; (2) an act or omission not in good faith that involves intentional misconduct or a knowing violation of the law; (3) a transaction from which such director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of such director's duties; or (4) an act or omission for which the liability of a director is expressly provided by statute.

Any repeal or amendment of this Certificate of Formation, or the adoption of any other provision of this Certificate of Formation inconsistent with this Certificate of Formation, by the shareholders of the Company shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal, amendment or adoption of an inconsistent provision.

[Signature Page to Follow]

IN WITNESS WHEREOF, I have executed this Certificate of Formation on this
27th day of March, 2012.

/s/ Jeremiah Mayfield
Jeremiah Mayfield, Organizer

Exhibit 4

Exhibit 4-A



Department of State: Division of Corporations

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	5310018	Incorporation Date / Formation Date:	3/26/2013 (mm/dd/yyyy)
Entity Name:	STOCKDALE CAPITAL RE, LLC		
Entity Kind:	Limited Liability Company	Entity Type:	General
Residency:	Domestic	State:	DELAWARE

REGISTERED AGENT INFORMATION

Name:	THE CORPORATION TRUST COMPANY		
Address:	CORPORATION TRUST CENTER 1209 ORANGE ST		
City:	WILMINGTON	County:	New Castle
State:	DE	Postal Code:	19801
Phone:	302-658-7581		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

Would you like Status Status, Tax & History Information

For help on a particular field click on the Field Tag to take you to the help area.

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Exhibit 4-B

Exhibit 4-C



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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	5754015	Incorporation Date / Formation Date:	5/26/2015 (mm/dd/yyyy)
Entity Name:	STOCKDALE CAPITAL PARTNERS REAL ESTATE FUND, LP		
Entity Kind:	Limited Partnership	Entity Type:	General
Residency:	Domestic	State:	DELAWARE

REGISTERED AGENT INFORMATION

Name:	THE CORPORATION TRUST COMPANY		
Address:	CORPORATION TRUST CENTER 1209 ORANGE ST		
City:	WILMINGTON	County:	New Castle
State:	DE	Postal Code:	19801
Phone:	302-658-7581		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	5754013	Incorporation Date / Formation Date:	5/26/2015 (mm/dd/yyyy)
Entity Name:	STOCKDALE CAPITAL PARTNERS RE FUND I GP, LLC		
Entity Kind:	Limited Liability Company	Entity Type:	General
Residency:	Domestic	State:	DELAWARE

REGISTERED AGENT INFORMATION

Name:	THE CORPORATION TRUST COMPANY		
Address:	CORPORATION TRUST CENTER 1209 ORANGE ST		
City:	WILMINGTON	County:	New Castle
State:	DE	Postal Code:	19801
Phone:	302-658-7581		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	6043878	Incorporation Date / Formation Date:	5/16/2016 (mm/dd/yyyy)
Entity Name:	STOCKDALE CAPITAL RE INVESTMENTS, LLC		
Entity Kind:	Limited Liability Company	Entity Type:	General
Residency:	Domestic	State:	DELAWARE

REGISTERED AGENT INFORMATION

Name:	THE CORPORATION TRUST COMPANY		
Address:	CORPORATION TRUST CENTER 1209 ORANGE ST		
City:	WILMINGTON	County:	New Castle
State:	DE	Postal Code:	19801
Phone:	302-658-7581		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number: 5294659 **Incorporation Date /** 2/26/2013
Formation Date: (mm/dd/yyyy)

Entity Name: STOCKDALE CAPITAL PARTNERS, LLC

Entity Kind: Limited Liability Company **Entity Type:** General

Residency: Domestic State: DELAWARE

REGISTERED AGENT INFORMATION

Name: THE CORPORATION TRUST COMPANY
Address: CORPORATION TRUST CENTER 1209 ORANGE ST
City: WILMINGTON County: New Castle
State: DE Postal Code: 19801
Phone: 302-658-7581

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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Exhibit 4G

Form 304



**Application for
Registration of
a Foreign Limited Liability
Company**

Filed in the Office of the
Secretary of State of Texas
Filing #: 801963157 04/01/2014
Document #: 536985340002
Image Generated Electronically
for Web Filing

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709

Filing Fee: \$750

1. The entity is a foreign limited liability company. The name of the entity is :

Stockdale Management LLC

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation which it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

3. Its federal employer identification number is:

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: **ARIZONA, USA**
and the date of its formation in that jurisdiction is: **12/6/2013**

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below. The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

Management company

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: **04/01/2014**

8. The principal office address of the limited liability company is:
4501 N. Scottsdale Road, Suite 201, Scottsdale, AZ, USA 85251

9A. The initial registered agent is an organization by the name of:

National Corporate Research, Ltd.

9B. The initial registered agent is an individual resident of the state whose name is:

9C. The business address of the registered agent and the registered office address is:

800 Brazos, Suite 400 Austin TX 78701

Consent of Registered Agent

A. A copy of the consent of Registered Agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each governing person is:

NAME OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both):
IF INDIVIDUAL
OR
IF ORGANIZATION
SY Equities LLC
ADDRESS OF GOVERNING PERSON :
4501 N. Scottsdale Road, Suite 201 Scottsdale AZ, USA 85251
NAME OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both):
IF INDIVIDUAL
OR
IF ORGANIZATION
SHY Equities LLC
ADDRESS OF GOVERNING PERSON :
4501 N. Scottsdale Road, Suite 201 Scottsdale AZ, USA 85251

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing

A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: **April 1, 2014**

Steven Yari, Authorized Person

Signature and title of authorized person on behalf of the foreign entity

Exhibit 4H

201601910317

LLC-1 **Articles of Organization of a Limited Liability Company (LLC)**

To form a limited liability company in California, you can fill out this form, and submit for filing along with:

- A \$70 filing fee.
- A separate, non-refundable \$15 service fee also must be included, if you drop off the completed form.

Important! LLCs in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

LLCs may not provide "professional services," as defined by California Corporations Code sections 13401(a) and 13401.3.

Note: Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs.

FILED
Secretary of State
State of California

JAN 08 2016

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

LLC Name (List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State.)

① Stockdale Acquisitions, LLC

Proposed LLC Name

The name must include: LLC, L.L.C., Limited Liability Company, Limited Liability Co., Ltd. Liability Co. or Ltd. Liability Company; and may not include: bank, trust, trustee, Incorporated, Inc., corporation, or corp., insurer, or insurance company. For general entity name requirements and restrictions, go to www.sos.ca.gov/business/be/name-availability.htm.

Purpose

② The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

LLC Addresses

③ a. 10850 Wilshire Boulevard, Suite 1050, Los Angeles CA 90024
Initial Street Address of Designated Office in CA - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

b. _____
Initial Mailing Address of LLC, if different from 3a *City (no abbreviations)* *State* *Zip*

Service of Process (List a California resident or a California registered corporate agent that agrees to be your initial agent to accept service of process in case your LLC is sued. You may list any adult who lives in California. You may not list an LLC as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

④ a. C T Corporation System

Agent's Name

b. _____ CA
Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box *City (no abbreviations)* *State* *Zip*

Management (Check only one.)

- ⑤ The LLC will be managed by:
- One Manager More Than One Manager All Limited Liability Company Member(s)

This form must be signed by each organizer. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are made part of these articles of organization.


Organizer - Sign here

Steven Yari

Print your name here

Make check/money order payable to: **Secretary of State**
Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street, 3rd Floor
Sacramento, CA 95814

Exhibit 4I

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number: 5909980 **Incorporation Date /** 12/16/2015
Formation Date: (mm/dd/yyyy)

Entity Name: STOCKDALE/SG, LLC

Entity Kind: Limited Liability Company **Entity Type:** General

Residency: Domestic State: DELAWARE

REGISTERED AGENT INFORMATION

Name: THE CORPORATION TRUST COMPANY
Address: CORPORATION TRUST CENTER 1209 ORANGE ST
City: WILMINGTON County: New Castle
State: DE Postal Code: 19801
Phone: 302-658-7581

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

Would you like Status Status, Tax & History Information

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Exhibit 5



STOCKDALE
CAPITAL PARTNERS

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Firm Overview

Stockdale Capital Partners has 4 offices and 60 employees with 30 years of ownership and investing experience across the Southwest

Investment Strategy

Stockdale's acquisitions are based on a consistent and repeatable investment approach:

- Generating alpha through property level operations
- Flexibility across asset classes
- Vertical integration with a strict control over property management
- Capital preservation

News

Stockdale Capital Closes Second Parking Purchase in San Francisco

Scottsdale Galleria Continues To Attract Job Creating Tenants

Stockdale Capital Partners and Jasper Ridge Partners have formed an institutional joint venture to recapitalize \$142.5M Galleria Corporate Center in Scottsdale, AZ

Stockdale Capital Partners Closes Purchase Of Metro-Portland Medical Office Building For New Medical Office Joint Venture

Quilvest partners with Stockdale Capital to invest up to \$100m for US medical RE

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Exhibit 6

10News

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Sources: Horton Plaza now in escrow

BY: [Jonathan Horn](#)**POSTED:** 11:40 AM, Jun 12, 2018**UPDATED:** 9:34 AM, Jun 13, 2018

Share Article

SAN DIEGO (KGTV) - The Horton Plaza mall, a downtown San Diego icon since 1985 that has fallen into hard times, appears to be close to being sold.

Multiple sources confirmed to 10News that [Stockdale Capital Partners](#) is now in escrow to buy the mall.

The mall's current owner, Unibail-Rodamco-Westfield, which acquired the five-level mall in December, said it doesn't comment on market speculation or rumors.

Stockdale did not immediately return a call seeking comment.

Recent city memos allude to efforts by Unibail-Rodamco-Westfield to sell the five-level mall.

The potential sale came to light because the city is restructuring how it financed the Horton Plaza Park. A City Council memo and Civic San Diego staff report related to the move say there is a future proposed purchase and sale of Horton Plaza shopping center to a new entity.

close

A report released Monday by the city's Independent Budget Analyst says this is a key time for the city to redo the agreement given the current efforts by the owner to sell the property - and improve negotiating power if there is redevelopment.

RELATED: [Grocery chain suing Horton Plaza over millions in sales losses](#)

City Independent Budget Analyst Andrea Tevlin called the potential sale the million dollar question at City Hall.

Gary London, a San Diego commercial real-estate consultant, who may be involved with the deal, said the mall is definitely in play.

"It was down two suitors, and my understanding is that one has it tied up, pending some deal points," he said. "It is my understanding that details will be announced soon."

Jason Hughes, CEO of Hughes Marino, who is not involved in the deal, said Stockdale went non-refundable with its deposit about a week ago. It is considering turning the old Nordstrom building into creative office space.

Horton Plaza has recently seen longtime shops close, including Nordstrom, which hindered foot traffic on the southern wing of the mall.

RELATED: [Jessop's Jewelry closing after 125 years in San Diego](#)

Plus, Jimbo's grocery store recently filed suit against the mall alleging it is not being maintained adequately, costing it business.

(Correction - An earlier version of this story incorrectly referred to the company buying Horton Plaza as Stockdale Investment Group. However, Stockdale Capital Partners is in escrow to buy the property)

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Exhibit 7

From: Michael Townsend <michael@townsendassociates.com>

Sent: Friday, June 22, 2018 2:59 PM

To: Joe Pastora <jpastora@stockdale.com>

Subject: Fwd: New owner to convert iconic Horton Plaza to mixed-use | ICSC: International Council of Shopping Centers

Is this you guys?!

May have fun anchor for you is so....

Michael Townsend
Townsend & Associates, Inc.
tel: (310) 286-9945
www.townsendassociates.com
www.summerhillatl.com

----- Original message -----

From: Lanne Bennett <lanne.bennett@urw.com>

Date: 6/22/18 12:24 PM (GMT-08:00)

To: Michael Townsend <michael@townsendassociates.com>

Subject: New owner to convert iconic Horton Plaza to mixed-use | ICSC: International Council of Shopping Centers

https://www.icsc.org/news-and-views/icsc-exchange/new-owner-to-convert-iconic-horton-plaza-to-mixed-use?utm_source=sctweek&utm_medium=newsletter&utm_campaign=SCT%20Week

New owner to convert iconic Horton Plaza to mixed-use

Future owner Stockdale Capital Partners, which currently is in escrow on the Westfield-owned property, is set to convert the 900,000-square-foot center into a work-play destination for thousands of office workers and nearby residents, reports [The San Diego Union-Tribune](#).

Hahn envisaged the mall as a rebuke to charges that all shopping centers looked the same, notes Nancy E. Cohen, in her book *America's Marketplace: The History of Shopping Centers*. It “combines disparate elements to create surprise, excitement and a sense of discovery: enclosed and open spaces; promenades that are alternatively narrow and wide; staggered levels of varying heights, as in a terraced European hill town; a whimsical pastiche of dozens of colors; and architectural references to scores of other buildings,” Cohen wrote.

Make it a GREAT day!

Lanne Bennett / Vice President – Leasing

[2049 Century Park East, 41st Floor / Century City, CA 90067](#)

T [310.689.3992](tel:310.689.3992) / C [614.940.6795](tel:614.940.6795) / lanne.bennett@urw.com



Exhibit 8



2728 N. Harwood Street 214.745.5400 OFFICE
Suite 500 214.745.5390 FAX
Dallas, Texas 75201 winstead.com

June 26, 2018

Cathryn A. Berryman
direct dial: 214-745-5172
cberryman@winstead.com

BY FEDERAL EXPRESS

Steven Yari
Managing Partner
Stockdale Capital RE, LLC
10850 Wilshire Blvd., Suite 1050
Los Angeles, CA 90024

Aaron Brady
Director of Accounting
Stockdale Capital Partners, LLC
10850 Wilshire Blvd., Suite 1050
Los Angeles, CA 90024

Dennis Harris
CFO
Stockdale Capital Services, LLC
10850 Wilshire Blvd., Suite 1050
Los Angeles, CA 90024

Registered Agent
CT Corporation System (C0168406)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Registered Agent
The Corporation Trust Company
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

Re: Notice of Senior Trade Name and Service Marks Rights and Registration for the Marks
STOCKDALE

Stockdale Capital
June 26, 2018
Page 2

Dear Sirs:

Our firm represents Stockdale Investment Group, Inc., d/b/a Stockdale ("Stockdale") with respect to their real estate investment, leasing and asset and property management business and related trademark matters. We are writing in response to your corporate adoption and use of the infringing trade names and service marks containing STOCKDALE CAPITAL and STOCKDALE CAPITAL PARTNERS in conjunction with your own real estate investment, leasing and property management businesses operating in the United States, including the State of Texas (the "Infringing Marks"). Attached are screenshots of your prominent advertisements from your companies' primary website www.stockdalecapital.com showing such infringing uses as of June 25, 2018 (see Attachment A).

As you may be aware, Stockdale has been offering to the public real estate investment, leasing and asset and property management-related services across the State of Texas and in interstate commerce within the United States using the trade names and service marks STOCKDALE and STOCKDALE INVESTMENT GROUP since as early as 1989 (collectively, the "Marks"). Stockdale has extensively promoted and advertised its real estate business and related services using the Marks among consumers and the trade in the State of Texas and elsewhere across the United States. By virtue of this prior use, Stockdale has acquired common law and statutory rights in and to the Marks in conjunction with its real estate-related services throughout the United States and particularly in the State of Texas. In order to protect its interests in these Marks, Stockdale has filed Federal service mark application (Serial No. 88/006185) on the Principal Register in Classes 036 for real estate services.

Stockdale rightfully considers the Marks to be among its most valuable assets. Stockdale has invested substantial time, money, and effort in promoting and establishing the Marks among consumers, retail customers, and members of the real estate trade. By continuous use and an enormous amount of resources expended developing and marketing its real estate services under the Marks, Stockdale has created valuable goodwill and recognition throughout the United States. By virtue of its exclusive and continuous long-standing use of the Marks for almost 30 years, there is a strong consumer and trade association between the Marks and the real estate services provided by Stockdale.

As such, we would like to discuss your corporate adoptions of the trade names and marks containing STOCKDALE and your expansions from California across the United States and, most concerning, in the State of Texas. The addition of CAPITAL to STOCKDALE is insufficient to distinguish your Infringing Mark from the Marks. Since CAPITAL is a commonly used generic term related to investments, the addition of this term likewise does not distinguish your Infringing Mark from the Marks.

In order to preserve the high quality and value associated with the Marks, Stockdale's real estate investment, leasing and asset and property management services are only offered by authorized corporate and real estate brokers associated with and licensed directly from Stockdale. Stockdale is concerned that the use of an identical trade names and service marks for identical services offered to the exact same channels of trade and customers in the same geographic locations is likely to cause confusion among the public as to the origin or source of these services.

Stockdale is (and has since 1989) actively sought expansion of its real estate services across the country and its plans have included expansion in California and Texas, among other states. Stockdale also is

Stockdale Capital
June 26, 2018
Page 3

concerned, and they are certain that your companies would share their concern, that consumers in the State of Texas and elsewhere are highly likely to become confused by different properties being operated with different property managers, pricing, and leasing terms within the exact same marketplace. Indeed, consumers are highly likely to believe that there is some relationship between your companies and Stockdale.

By your actions, consumers are being misled into believing that your real estate services are the same services as Stockdale's real estate services or otherwise originating from Stockdale. Confusion likewise can arise from consumers believing that your companies are authorized real estate brokers or associates of Stockdale and its real estate investment, leasing and asset and property management services. This is highly probable since Stockdale's leasing services for available investment properties will be offered for sale within the same states and geographic areas from where your investment properties for lease are located. Stockdale's priority of use of the Marks and the likelihood of confusion between these nearly identical marks for the same services sold in the same channels of trade are well-recognized grounds for asserting its senior rights. To Stockdale's knowledge, your companies' adoption and marketing of these services under the Infringing Marks began decades after the first use of the Marks for the same services in 1989 by Stockdale.

As you should be aware, Stockdale is not associated or affiliated with your companies or their respective real estate services. Neither has Stockdale authorized your companies to use the Marks (or any variant or confusingly similar marks including the Infringing Marks) in conjunction with real estate-related services in the United States. Stockdale rightfully believes that any use of the Marks by your companies or others at your direction for real estate investment, leasing and asset and property management services is likely to cause confusion in the marketplace. As operator and property owners, your companies are personally liable and responsible for any acts of trade name and trademark infringement and unfair competition arising from any unauthorized use of the Marks and any false or misleading representations made to the public. Such actions, if found by a court to be trade name and trademark infringement and/or unfair competition, would entitle Stockdale to injunctive relief and monetary damages, including an accounting of your profits and possibly attorneys' fees.

In order to protect the reputation and integrity of the Marks and its real estate business, Stockdale hereby demands that, under the circumstances, your companies immediately take action to cease and desist all use, reproduction, public display and distribution, if any, of the Infringing Marks (or any other name or marks variant or confusingly similar to the Marks) and any false or misleading representations with respect to any real estate-related goods and services within the State of Texas, and anywhere else within the United States of America or on the Internet with respect to any websites or social media targeting sales and distribution of such services to customers and trade located in the State of Texas and elsewhere in the United States of America. This includes removal of all property signage displaying the Infringing Marks, cancelling your registration of the domain name www.stockdalecapital.com and halting any sale and offering for sale of your companies' real estate services using the Infringing Marks to customers and the trade in the State of Texas and across the United States. Failure to do so will result in Stockdale aggressively enforcing its rights by any necessary legal means against your businesses.

Stockdale is currently willing to negotiate an amicable resolution of this matter; provided that your companies first immediately halt all of your false and infringing activities using the Infringing Mark. We

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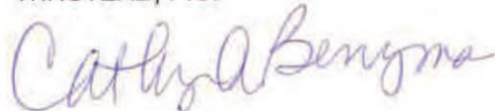
expect to receive your assurances of compliance with these demands no later than July 15, 2018. All correspondence and discussions are subject to Federal Rules of Evidence 408. If you have any questions, we can be reached at the direct dial number listed above. If we do not hear from you by that date, we will assume that no response will be forthcoming and Stockdale will be forced to take the appropriate steps to protect its senior trade name and service mark rights in the Marks in the United States.

To the extent not already apparent to you, this letter puts you on notice that any continued use by your businesses of the Infringing Marks within the United States of America will violate Stockdale's senior trademark rights. Stockdale will consider any continued use of the Infringing Marks by your companies in this continued misleading and false manner to promote your own real estate investment, leasing and asset and property management services to be an act of deliberate and willful infringement.

This letter is not intended to be a complete recitation of the rights and remedies of Stockdale in this matter, all of which are reserved in their entirety, and nothing contained herein constitutes an express or implied waiver of any rights, remedies, or defenses of Stockdale, in connection with this or any other matter, all of which are hereby expressly reserved.

Very truly yours,

WINSTEAD, P.C.



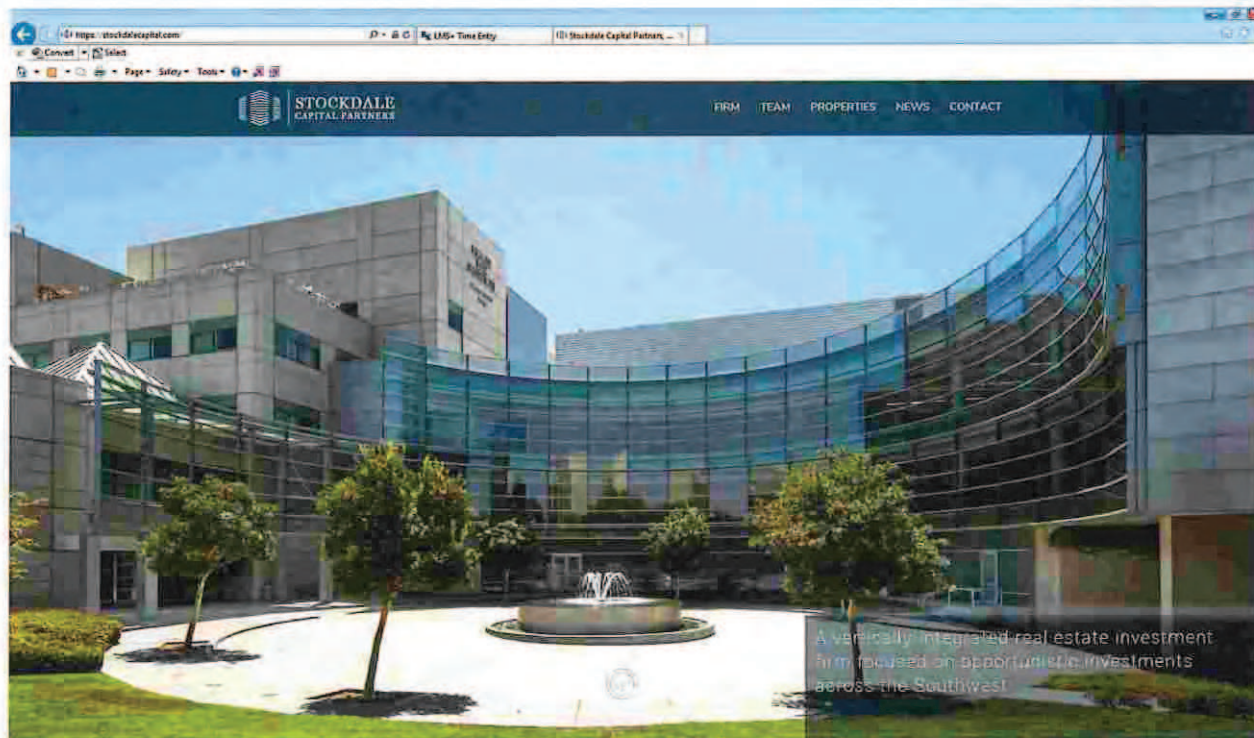
Cathryn A. Berryman

Attachments

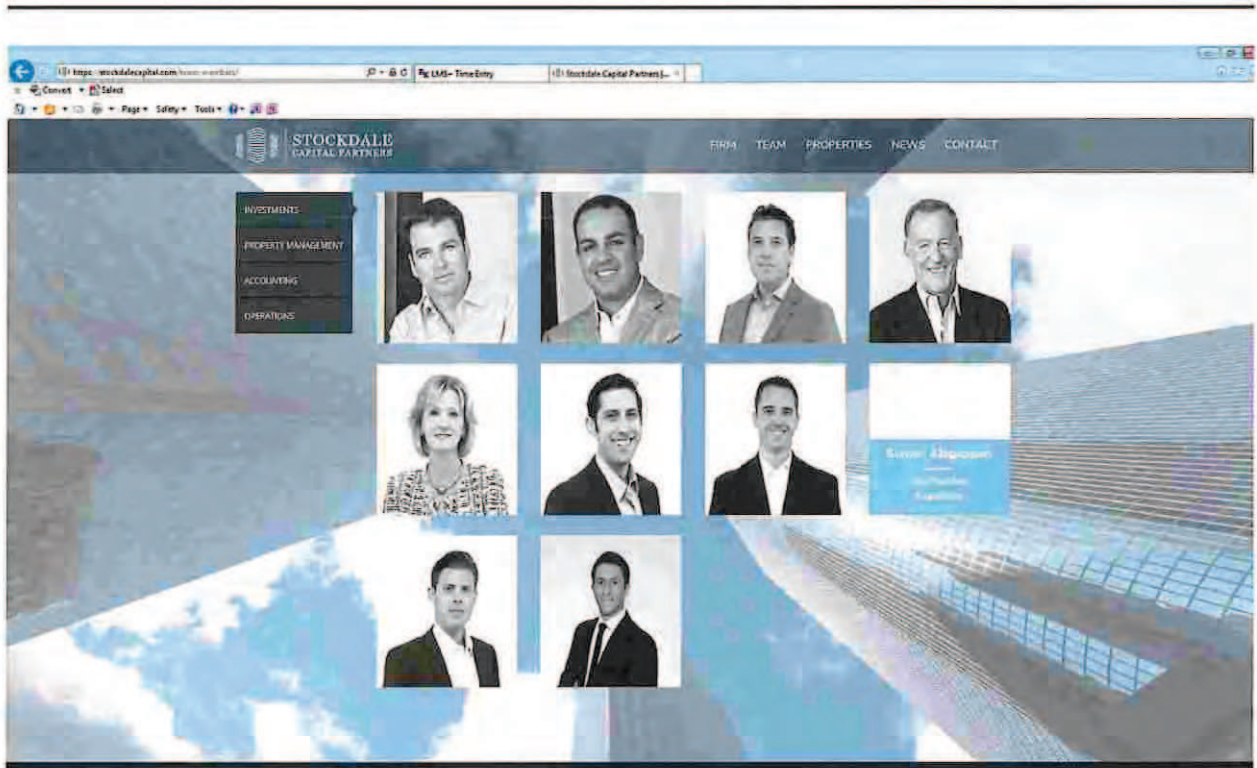
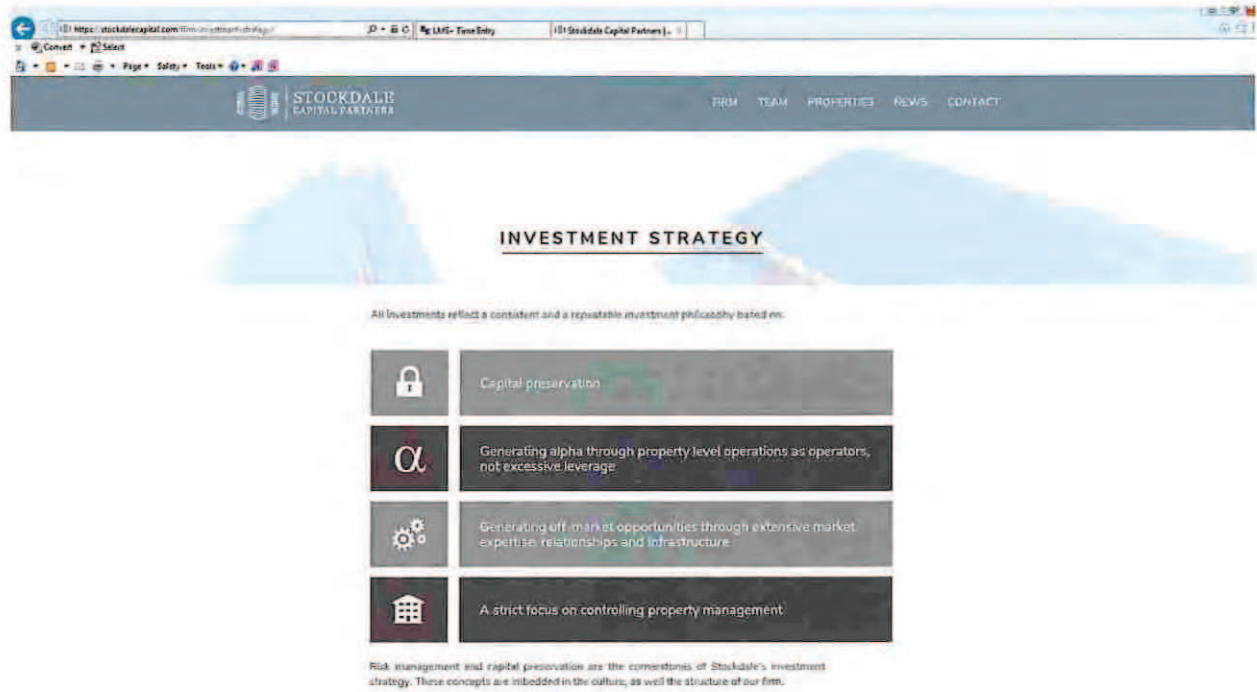
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ATTACHMENT A

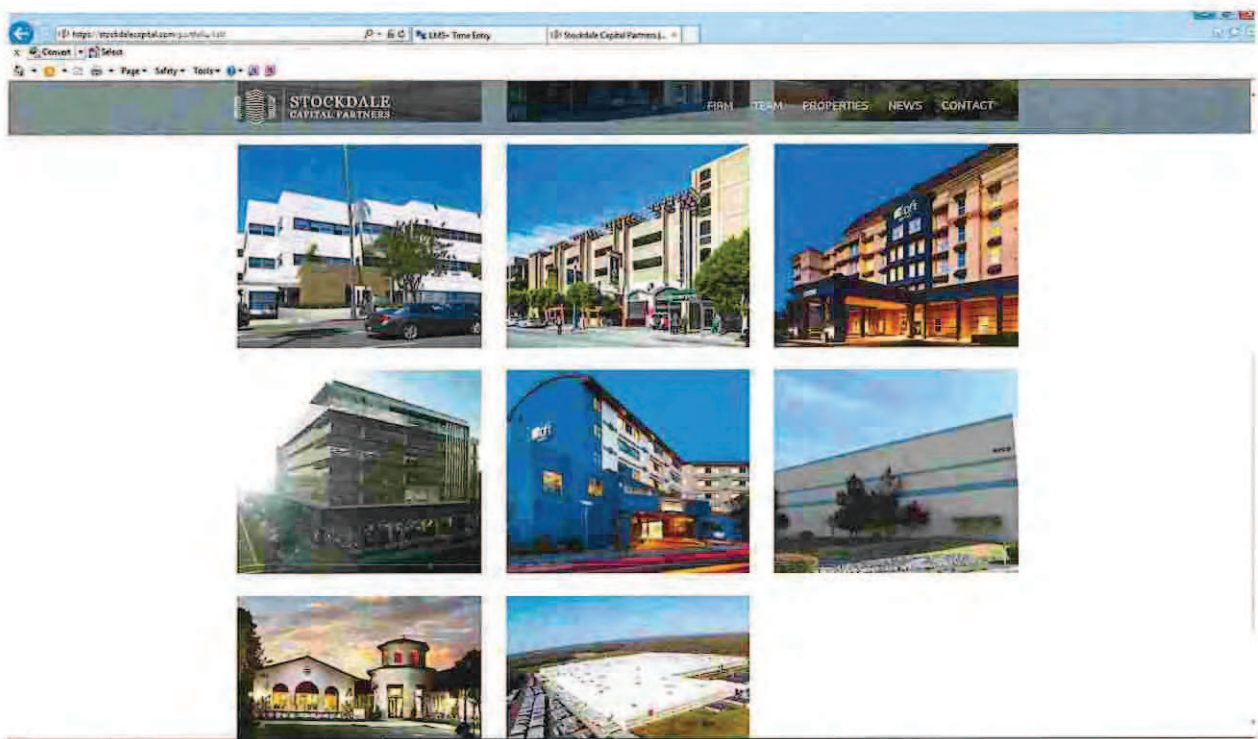
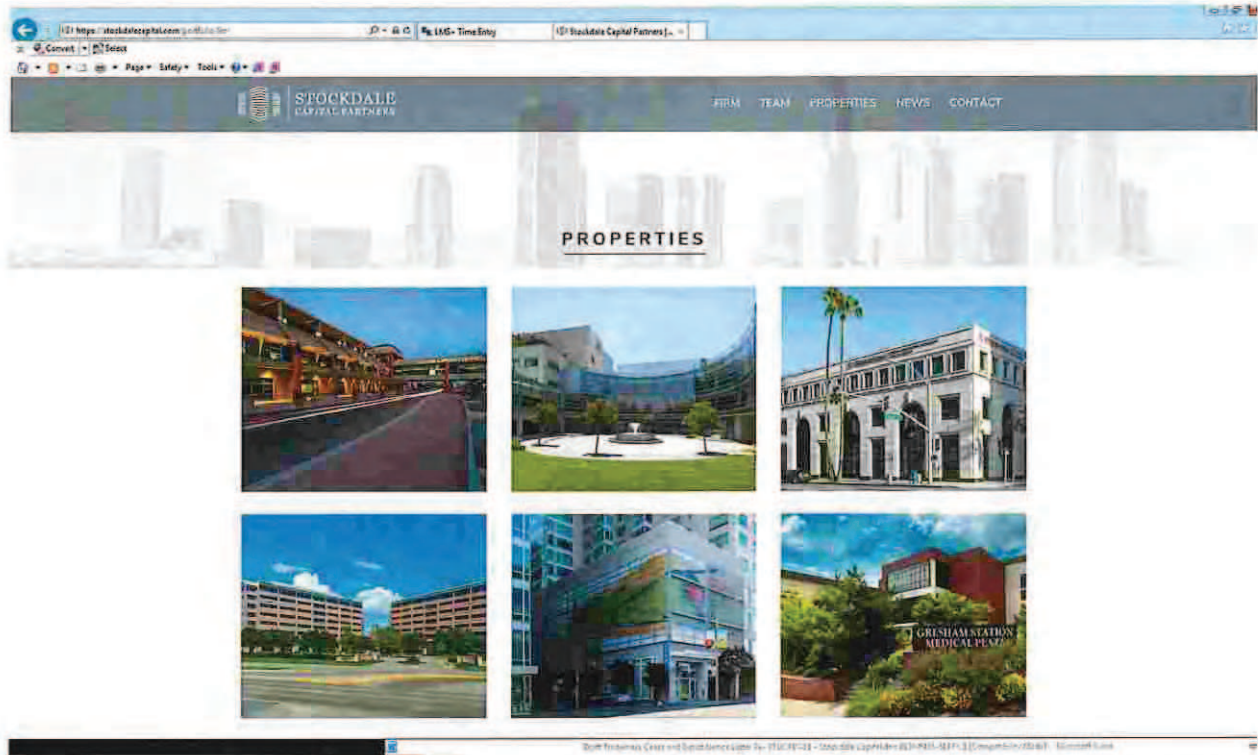
WEBSITE



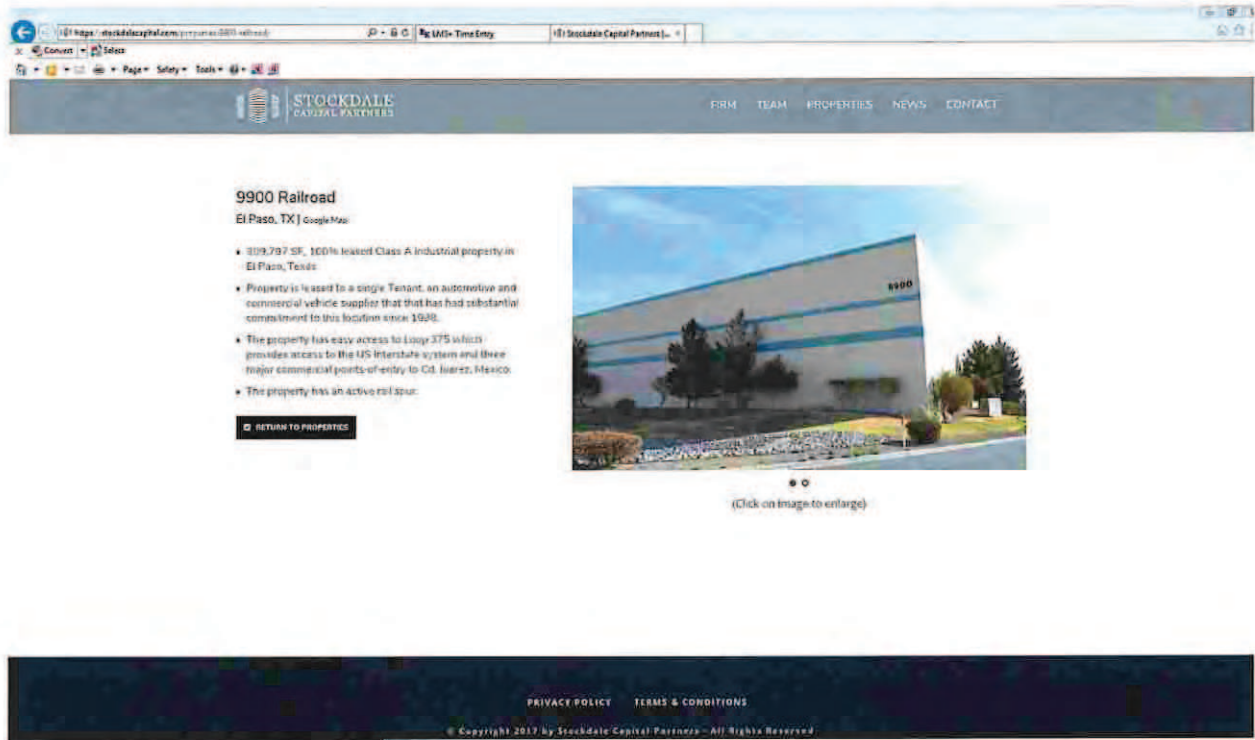
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The screenshot shows a web browser displaying the Stockdale Capital Partners website. The browser's address bar shows the URL 'https://stockdalecapital.com/properties/9900-railroad/'. The website header includes the company logo and navigation links for 'FIRM', 'TEAM', 'PROPERTIES', 'NEWS', and 'CONTACT'. The main content area features a property listing for '9900 Railroad' in El Paso, TX. The listing includes a bulleted list of features: 309,797 SF, 100% leased Class A industrial property; leased to a single tenant since 1998; easy access to I-375 and major commercial ports; and an active rail spur. A 'RETURN TO PROPERTIES' button is located below the text. To the right is a photograph of the industrial building with '9900' on its side. Below the photo is a '(Click on image to enlarge)' prompt. A dark footer bar at the bottom contains links for 'PRIVACY POLICY' and 'TERMS & CONDITIONS', and a copyright notice for 2017.

9900 Railroad
El Paso, TX | Google Maps

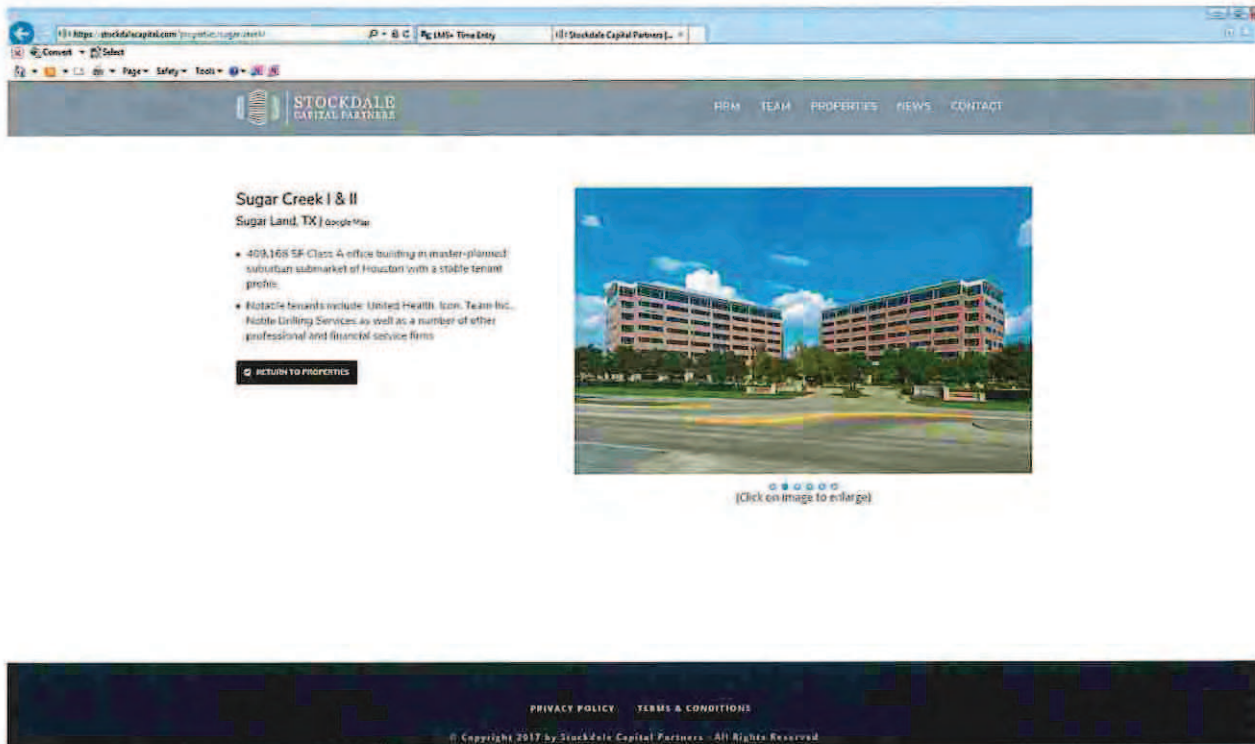
- 309,797 SF, 100% leased Class A industrial property in El Paso, Texas
- Property is leased to a single Tenant, an automotive and commercial vehicle supplier that has had substantial commitment to this location since 1998.
- The property has easy access to Loop 375 which provides access to the I-35 Interstate system and three major commercial ports-of-entry to Cd. Juarez, Mexico.
- The property has an active rail spur.

[RETURN TO PROPERTIES](#)



(Click on image to enlarge)

PRIVACY POLICY TERMS & CONDITIONS
© Copyright 2017 by Stockdale Capital Partners - All Rights Reserved




The screenshot shows the same Stockdale Capital Partners website, but with a different property listing for 'Sugar Creek I & II' in Sugar Land, TX. The browser's address bar shows the URL 'https://stockdalecapital.com/properties/sugar-creek/'. The website header and navigation are identical to the previous screenshot. The main content area features a property listing for 'Sugar Creek I & II'. The listing includes a bulleted list of features: 409,168 SF Class A office building in a master-planned suburban market; and notable tenants including United Health, Icon, Team Inc., Huddle Learning Services, and other professional and financial service firms. A 'RETURN TO PROPERTIES' button is located below the text. To the right is a photograph of the multi-story office building. Below the photo is a '(Click on image to enlarge)' prompt. A dark footer bar at the bottom contains links for 'PRIVACY POLICY' and 'TERMS & CONDITIONS', and a copyright notice for 2017.

Sugar Creek I & II
Sugar Land, TX | Google Maps

- 409,168 SF Class A office building in master-planned suburban submarket of Houston with a stable tenant profile.
- Notable tenants include United Health, Icon, Team Inc., Huddle Learning Services as well as a number of other professional and financial service firms.

[RETURN TO PROPERTIES](#)



(Click on image to enlarge)

PRIVACY POLICY TERMS & CONDITIONS
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The screenshot shows the contact page for Stockdale Capital Partners. The browser address bar displays 'http://stockdalecapital.com/contact/'. The website header includes the company logo and navigation links for 'FIRM', 'TEAM', 'PROPERTIES', 'NEWS', and 'CONTACT'. A large banner image of a city skyline is positioned below the header. The main content area is divided into three columns. The left column lists office locations for California (Headquarters), Arizona, Texas, and Oregon, each with a full address, phone number, and fax number. The middle column features four small map thumbnails, each with a red location pin and a title: 'VILLAGES' (Newport Beach), 'TERFRONT' (Scottsdale, AZ), 'WILLY' (Sugar Land, TX), and 'WEST' (Gresham, OR). The right column is titled 'General Inquiries' and contains a contact form with fields for 'Name', 'Company', 'Email', and 'Message'. Below the form is a 'SEND' button and a checkbox labeled 'Email a robot'.

California (Headquarters)
10850 Wilshire Blvd.
Suite #1050
Los Angeles, CA 90024
Phone: 310.693.4400
Fax: 310.474.0540

Arizona
4543 North Scottsdale Road
Suite #190
Scottsdale, AZ 85251
Phone: 480.940.3200
Fax: 480.974.4729

Texas
13121 Dairy Ashford
Suite #300
Sugar Land, TX 77478
Phone: 281.201.3232
Fax: 281.494.8292

Oregon
831 NW Counsel Dr.
Suite #201
Gresham, OR 97030
Phone: 503.912.6020

General Inquiries

Name	Company
<input type="text"/>	<input type="text"/>
<input type="text"/>	
<input type="text"/>	

Email a robot

Nevium LLC

Expert Report for:

Stockdale Investment Group, Inc. v. Stockdale Capital
Partners LLC, et al
25 July 2019

Expert Report Information

Brian Buss and Doug Bania of Nevium LLC (“Nevium”), have been engaged by Chamberlain, Hrdlicka, White, Williams and Aughtry (“Counsel”) in the case, Stockdale Investment Group, Inc. v. Stockdale Capital Partners, LLC, Stockdale Capital Partners RE Fund I GP, LLC, Stockdale Capital Partners Real Estate Fund, LP, Stockdale Capital RE Investments, LLC, Stockdale Capital RE, LLC, and Stockdale Capital Services, LLC; civil action No. 4:18-cv-02949, filed in the United States District Court, Southern District of Texas Houston Division (the “Case”). The date of this report is July 25, 2019 (the “Report Date”). The analysis and opinions presented in this report are based on the information and documents received as of the Report Date, as well as our experience and training as set forth below. The documents relied upon in completing this report are listed at Exhibit A.

The qualifications of Mr. Buss and Mr. Bania, including a list of publications and expert testimony experience pursuant to information required by Federal Rule of Civil Procedure 26(a)(2)(B), are provided at Exhibit B.

Mr. Buss is a founding Principal of Nevium LLC, is a CFA® charterholder and holds a Master’s in Business Administration degree (MBA) from San Diego State University; and a Bachelor’s Degree in Biology and Economics from Claremont McKenna College. Mr. Buss has over 25 years of experience valuing and analyzing businesses, business interests and intellectual properties.

Mr. Bania is a founding principal of Nevium Intellectual Property Consultants. Mr. Bania is a Certified Licensing Professional (CLP), a Google Analytics Certified Individual (GAIQ) and is a committee member for the International Trademark Association (INTA) Internet Committee, the ICANN Compliance and Domain Name Industry Subcommittee and the American Bar Association (ABA), Copyright & Social Media Committee.

The Assignment

For this Report, Mr. Buss and Mr. Bania were asked to review, analyze and evaluate different aspects of claims made in the Plaintiff’s First Amended Complaint and Application for Temporary Restraining Order and Preliminary and Permanent Injunctive Relief.¹

Mr. Buss was asked to provide an analysis and opinions regarding:

- Likelihood of confusion based on a review of court-accepted trademark confusion factors, including analysis of the business operations of SCP and the impact, if any, that the term “Stockdale” contributes to those operations as relevant to the likelihood of confusion between Plaintiff and Defendants; and
- Review of the opinions offered in the Expert Report of Robert Frank dated May 24, 2019 (the “Frank Report”) regarding likelihood of confusion.

¹ Document 1a, First Amended Complaint filed December 14, 2018

Mr. Bania was asked to review the analysis labelled “Internet Research” in the “Frank Report”. Dr. Frank was reportedly retained by Plaintiff to conduct research and render opinions relating to some of the claims alleged by the Plaintiff. More specifically, Dr. Frank was retained to “obtain reliable information as to whether the Defendants’ use of Stockdale as part of their corporate names infringed on the trademark rights of the Plaintiff.”

Mr. Buss and Mr. Bania have each been asked to review specific sections of the Frank Report. That other sections of the Frank Report have not been addressed is not an indication that either Mr. Buss or Mr. Bania agree with analysis and conclusions presented in the Frank Report.

Neither Mr. Buss nor Mr. Bania have been asked to confirm the accuracy of any information provided to them; or provide an analysis or valuation opinion of any businesses, intellectual properties or intangible assets owned by the Plaintiff or the Defendants.

Nevium is being compensated for preparation of this report at a rate of \$350 per hour. Mr. Buss and Mr. Bania understand either or both may be asked to provide testimony at deposition or in court proceedings regarding this report. Time at deposition will be billed at \$350 per hour and time testifying in any court proceedings will be billed at \$350 per hour.

The Parties

Stockdale Investment Group (“SIG” or the “Plaintiff”) is a corporation organized under the laws of Texas, with its corporate office located in Dallas, Texas.² According to its website, SIG “specializes in investing, developing, and managing real estate assets that are well located, but are either underperforming or functionally obsolete.” The “Our Team” page of the website lists four Directors: Joe Pastora, Kenneth Pratt, Melissa Pratt Pastora and Jodi Pratt; three Brokers: Kenneth Pratt, Joe Pastora, and Alex Johnson; and two Managers: Dan Winters and Adriana Pate; for a total of seven persons. Currently the website lists 10 properties in Texas, California and North Carolina.³

Stockdale Capital Partners, LLC (“SCP”) is a “vertically-integrated real estate investment firm focused on opportunistic investments across the Southwest.”⁴ The other parties named as Defendants in the Case are business entities related to SCP.⁵

Founded in 2010, SCP has invested approximately \$789 million of capital across 18 transactions with nine different institutional partners. SCP has approximately 60 employees in five office locations. As of October 2018, SCP had raised over \$325 million of equity indirect and programmatic joint ventures since 2015, and is currently seeking to raise \$300 million of capital for the SCP Real Estate Opportunities Fund I.⁶

² Document 1a, paragraph 1

³ Information about SIG from Document 6a, stockdale.com, as at 19 July 2019

⁴ Document 6b, stockdalecapital.com, as at 19 July 2019

⁵ Document 2a, page 3

⁶ Information about SCP from Document 4a, Executive Summary, Page 1, SCP 001316

The Case, Claims and Subject IP

Per the First Amended Complaint, Plaintiff seeks a temporary restraining order and preliminary and permanent injunctive relief related to the Defendants' alleged use of the term "Stockdale" in operation of Defendants' business activities. We understand to date, the request for injunctive relief has been denied. A summary of events related to the Case is presented at Schedule 1.

For the purpose of this Report, the Subject IP" is defined as the term "Stockdale" as used by either SIG or SCP.

Information Relied Upon

The documents relied upon in completing this Report are listed at Exhibit A. As of the Report Date, Nevium has not received:

- Financial reports or accounting records indicating the amount of revenue, advertising & marketing expenses, asset or investment portfolio values, capital available for investment, or capital raised from outside sources from either SIG or SCP;
- A statement of SIG's investment criteria or investment processes; and
- Information providing transaction details for SIG's investments, property purchases, or property divestitures.

This report does not include an analysis or calculation of economic damages, nor does it provide a valuation of any intellectual properties or intangible asset owned by SIG or SCP. As of the Report Date, the Plaintiff has not provided an analysis of any economic damages.

The analysis and conclusions in this report are based upon the documents and information reviewed as of the Report Date, as well as our experience, education, training, knowledge and backgrounds in the analysis of intellectual properties. Both Mr. Buss and Mr. Bania reserve the right to revisit their analyses and amend their conclusions and opinions should additional information and/or documents become available for review. Both Mr. Buss and Mr. Bania further reserve the right to respond to opinions and issues presented by any other experts in the Case. Also, each reserve the right to use demonstratives and other exhibits to present the opinions expressed in this report or any supplemental, amended or rebuttal report.

Brian Buss' Analysis of Likelihood of Confusion

In evaluating the likelihood of confusion related to the Subject IP, Mr. Buss employed his experience, training and background as an expert in the analysis of intellectual properties and intangible assets to review the business and operations of SCP, employ the likelihood of confusion factors used in the Fifth Circuit and review the analysis and conclusions presented in the Frank Report.

Review of Business and Operations of SCP and Impact on Likelihood of Confusion

SCP, through affiliated business entities, manages real estate investments. SCP generates income and investment returns for its investor partners through management of real estate investments.

Like most businesses, SCP utilizes several types of assets and resources to generate income from its real estate investment activities. Based on review of SCP's operations and discussion with SCP Managing Director Dennis Harris,⁷ SCP utilizes the following assets and resources in its business operations:

- Tangible assets, including working capital, cash for investments and its existing portfolio of real estate investments;
- The trade name "Stockdale Capital Partners," which is used to identify the entity managing all of the affiliated business entities;
- Relationships with intermediaries, notably, Lazard Ltd. ("Lazard") to identify and screen potential investors and investment partners;
- Relationships with intermediaries such as brokers and tenant advisors to locate tenants for owned properties;
- Relationships with professional services firms, including legal counsel, financial advisors, consultants and public accounting firms to manage transaction due diligence;⁸
- SCP's investment history and track record;⁹ and
- SCP's assembled workforce of over 60 employees and their collected experience.

The relative contribution of the Subject IP, which is the term "Stockdale" as a component of SCP's tradename, was assessed using a question list focused on evaluating how intellectual property and intangible assets may contribute to operation of the business. For each question the contribution to business operations made by the Subject IP was considered relative to other assets and resources utilized by SCP. This analysis is presented at Schedule 2. Key observations include:

- SCP has not attempted to obtain a trademark registration for the term "Stockdale" or the trade name Stockdale Capital Partners;¹⁰
- SCP relies upon its relationship with Lazard to identify and screen potential investors;¹¹
- SCP has achieved measurable success in real estate investment and leverages its past success to secure additional capital and source additional investments;¹²
- SCP maintains relationships with a broad range of contacts in the real estate industry; and

⁷ Meeting occurred with Brian Buss of Nevium on July 10, 2019 at SCP's offices in Los Angeles

⁸ Document 4b, SCP 000006

⁹ Document 4a, SCP 001311

¹⁰ Meeting with Dennis Harris on July 10, 2019

¹¹ Document 4a

¹² Document 4a, SCP 001311

- SCP's assembled workforce has "an average of ~23 years and a combined 203 years of experience investing in the Southwest."¹³

These observations indicate the term "Stockdale" is not a factor in SCP's ability to operate as a real estate investment firm. Rather than the term "Stockdale," SCP's existing investment portfolio, key relationships and the assembled workforce are the key assets used in operation of its business. Therefore, the term "Stockdale" does not provide a benefit or contribution to SCP's business or operations.

The analysis set forth above and at Schedule 2 impacts the likelihood of confusion analysis in at least the following ways:

- As SCP has not used the term "Stockdale" to differentiate its products or services or used its name and brand to achieve price premiums or cost savings, there is no likelihood of confusion related to product or service similarity due to the Subject IP;
- As SCP relies on its relationships, its investment portfolio and its investment track record to attract and retain investors, there is no likelihood of confusion related to who purchases SIG or SCP's services due to the Subject IP; and
- Due to the high degree of care, research and due diligence exercised by SCP's potential investors, it is unlikely any other party would transact with SIG or SCP due to confusion related to the Subject IP.

Based my review of SCP's business and operations, the term "Stockdale" is not a factor in SCP's business or operations which decreases the likelihood of confusion between SIG and SCP.

Likelihood of Confusion Analysis

The Fifth Circuit uses a list of eight factors to consider in evaluating the likelihood of confusion between two marks or trade name. From: *All. for Good Gov't v. Coal. for Better Gov't*, 901 F.3d 498, 508 (5th Cir. 2018):

This Circuit considers the following eight nonexhaustive "digits" to assess likelihood of confusion:

1. *Strength of the mark;*
2. *Mark similarity;*
3. *Product or service similarity;*
4. *Outlet and purchaser identity;*
5. *Advertising media identity;*
6. *Defendant's intent;*
7. *Actual confusion; and*

¹³ Document 4a, SCP 001308

8. *Care exercised by potential purchasers.*

These eight factors are similar to factors used in other jurisdictions of which Mr. Buss is familiar. The analytical framework for evaluating each of the factors is presented at Schedule 4. Court guidance in evaluating likelihood of confusion factors typically indicates that no one factor is more or less important than any other factor and that case by case circumstances should govern the relative importance of any one factor.

A review of the claims made in this case and the information provided to Nevium as of the Report date relevant to each of the eight factors is presented at Schedule 4. The Subject IP, the term “Stockdale,” was used as the focus of this evaluation. In other words, the evaluation was not conducted for the full trade names of either the SIG or SCP. At Schedule 4, the source documents used in each evaluation are listed. The key findings from evaluation of the eight factors are presented at the last page of Schedule 4.

In summary:

- SIG has applied to register the word mark “Stockdale,” the application was initially rejected and as of the Report Date no trademark has been registered for the word “Stockdale” as related to SIG’s business;
- While SIG claims to have spent “hundreds of thousands” of dollars in advertising and promotion using the Subject IP; SIG has not provided any documents or information to support this claim, SIG has not optimized its own website for the Subject IP, and SIG has not established a strong presence on the Internet for the term “Stockdale;”
- The logos used by SIG and SCP contain differentiating design elements;
- While both parties operate in the commercial real estate market, SCP manages investments for investors, an activity that SIG does not undertake;
- SCP’s management selected the name Stockdale based on the Stockdale Paradox and there is no evidence of intent to refer to, or benefit from an association with SIG in their selection of the term “Stockdale”;
- There is little support for any relevant confusion and there is no evidence that confusion has led anyone to transact with the wrong party; and
- Commercial real estate transactions involve a high degree of care, research and diligence by the parties involved and use of the term “Stockdale” is unlikely to result in a transaction shifting from SIG to SCP.

Considering all eight of the likelihood of confusion factors, no factor indicates a likelihood of confusion. SIG has made unsupported claims related to strength of its claimed, but not registered, mark; its past advertising activities; and evidence of actual confusion. Also, there exist differences between the party’s target “customers” and business activities that would prevent confusion. Most importantly, the high level of care exercised in conducting commercial real estate transactions and the lack of evidence of confusion leading to any transactions indicates

that the parties are unlikely to have been confused, and unlikely to be confused, based on use of the Subject IP.

Review of the Frank Report’s Likelihood of Confusion Analysis

In the Frank Report, Dr. Frank states:

when the facts obtained from my research are applied to the Fifth Circuit’s Likelihood of Confusion Factors, the scales tip strongly in the Plaintiff’s favor supporting a presumption of likelihood of confusion cause (sic) by the Defendants use of the Plaintiff’s STOCKDALE trademark.¹⁴

Using the same eight factors, the analysis set forth above yields a different conclusion. The likelihood of confusion analysis presented in the Frank Report is described at pages 38 through 54¹⁵ and summarized at Schedule 5. Some of the key differences between Mr. Buss’ analysis and the analysis presented in the Frank Report are described in the following paragraphs.

At page 40, in the analysis for Factor 1 “Strength of Mark”, the Frank Report states, “it is my belief that STOCKDALE is an arbitrary trademark, and therefore has substantial strength.” However, the Plaintiffs have not successfully registered the term “Stockdale” as a trademark. The Frank Report’s incorrect assumption that SIG is the owner of a registered trademark for the term “Stockdale” is repeated in the analysis of the other factors.

Beginning at page 41, in the analysis for Factor 3 “Similarity of Services” the Frank Report relies on a broad market description of “commercial real estate” to imply SIG and SCP operate in the same market space. However, as set forth above and at Schedule 4, important differences exist between the business operations of SIG and SPC. The Frank Report appears to overlook these differences in concluding that the services are identical. The conclusion that a broad definition of commercial real estate is sufficient to label the parties services as identical is re-used in the analysis of Factor 4 “Identify of Retail Outlets / Purchases” to support the same conclusion.

Beginning at page 44, in the analysis for Factor 5 “Identify of Advertising Media” the Frank Report references only verbal testimony regarding the Plaintiff’s advertising expenditures and fails to verify the claimed expenditures. However, as set forth above and at Schedule 4, important differences exist between the advertising, marketing and promotional activities of SIG and SPC. The Frank Report appears to overlook these differences in concluding that the parties advertising activities would result in a likelihood of confusion.

Beginning at page 45, in the analysis for Factor 6 “Intent to Confuse” the Frank Report addresses the Intent factor by implying that SCP management was negligent in not searching the USPTO¹⁶ for record of a trademark registration. However, as set forth above and at Schedule 4, there is no evidence of any intent to refer to, or benefit from an association with, SIG in the Defendants’ selection of the term “Stockdale.” Further, SCP began using the term “Stockdale” in 2013, several

¹⁴ Document 3a, page 3

¹⁵ Document 3a

¹⁶ USPTO is the United States Patent and Trademark Office

years before SIG applied for a trademark with the USPTO.¹⁷ Thus, the Frank Report is inconsistent with the information available in this case.

Beginning at page 46, in the analysis for Factor 7 “Actual Confusion” the Frank Report accepts the Plaintiff’s claims of actual confusion without any indication the Plaintiff has lost any business opportunities or actual transactions due to any possible confusion. However, as set forth above and at Schedule 4, there is little support for any actual confusion and no evidence of a lost business opportunity or transaction.

Beginning at page 48, in the analysis for Factor 8 “Degree of Care Exercised by Purchasers” the Frank Report cites testimony regarding the definition of ‘customers’ and other terms to address the Degree of Care Exercised by Purchasers factor. The Frank Report provides no analysis of the level or scope of research and due diligence performed in completing commercial real estate transactions and provides no evidence that use of the term “Stockdale” would result in confusion that could not be resolved before completing a transaction. As set forth above and at Schedule 4, due to the high degree of care, research and diligence in commercial real estate transactions use of the term “Stockdale” is unlikely to result in a transaction shifting from SIG to SCP.

As described, much of the likelihood of confusion analysis in the Frank Report relies on incorrect or unsupported claims and the conclusions reached appear to be unrelated to the information available in this case. For these reasons, the conclusion of a likelihood of confusion reached in the Frank Report should not be relied upon.

Conclusion: Likelihood of Confusion

From the analysis set forth above SCP does not rely on the term Stockdale in its business operations. The eight factors considered for likelihood of confusion do not indicate that confusion exists between SIG and SCP. Further, based on the incorrect or unsupported claims relied upon in the Frank Report, the conclusion of a likelihood of confusion reached in the Frank Report should not be relied upon. Therefore, nothing indicates a likelihood of confusion between SIG and SCP based on the Subject IP.

Doug Bania’s Review of the Frank Report

Based on review of the Frank Report, as well Mr. Bania’s background, education, and experience, Mr. Bania identified flaws in Dr. Frank’s Google search results research and that his opinions cannot be relied on.

Dr. Frank’s Google Search Process is Flawed.

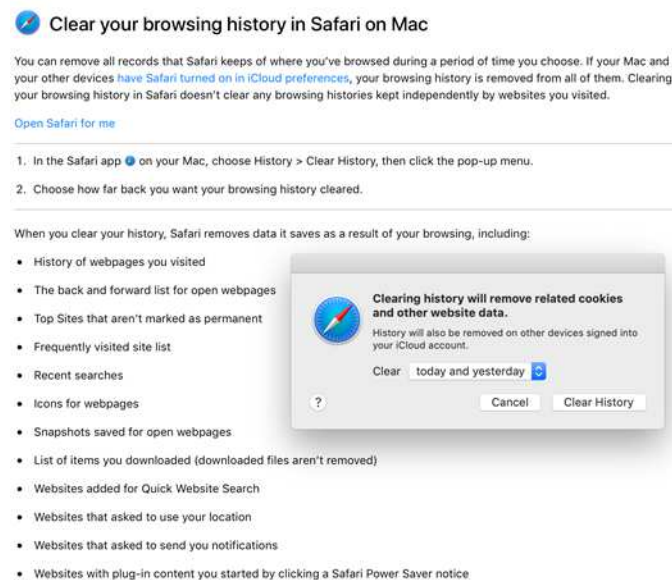
It appears Dr. Frank did not clear his browser history and cookies prior to his internet research. Search engines, such as Google, want to provide the most appropriate search results for internet users. To accomplish this, Google can base a user’s search results on the user’s past search history by reading cookies that have been saved in their web browser. A cookie is a small piece of text

¹⁷ See Schedule 1

that is stored in a web browser after an internet user visits a website. The cookie typically contains personal information such as passwords, language preference, amongst other personalized data.

When conducting Google search results research on the internet, the researcher must clear their recent history, including cookies, to best eliminate user biases from search results. Performing this process provides the closest to unbiased search results as possible. Failure to perform this process likely renders the results unreliable. Figure 1 shows the process for clearing browsing history in Safari on a Mac. The process is similar on a PC and in other browsers.

Figure 1



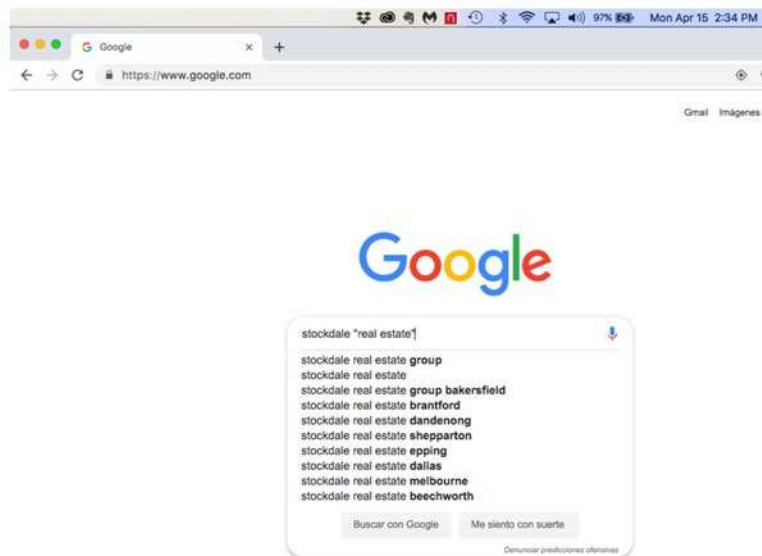
Dr. Frank has not shown that he has cleared past web browser data, therefore; his search results are most likely based on his past search history, stored cookies and other personalized website data.

Dr. Frank's Google Preference was set to Spanish in Internet #1: Query 1

Dr. Frank appears to have had his Google search set to Spanish. As shown in Figure 2, the term "images" shown at the top right of the Google screenshot is in Spanish and is displayed as "Imagenes." The "Google Search" button shown underneath the search phrase predictions is displayed as "Buscar con Google". The "I'm Feeling Lucky" button underneath the search phrase predictions is displayed as "Me siento con suerte" and the phrase "Report Inappropriate Predictions" is displayed as "Denunciar predicciones ofensivas."

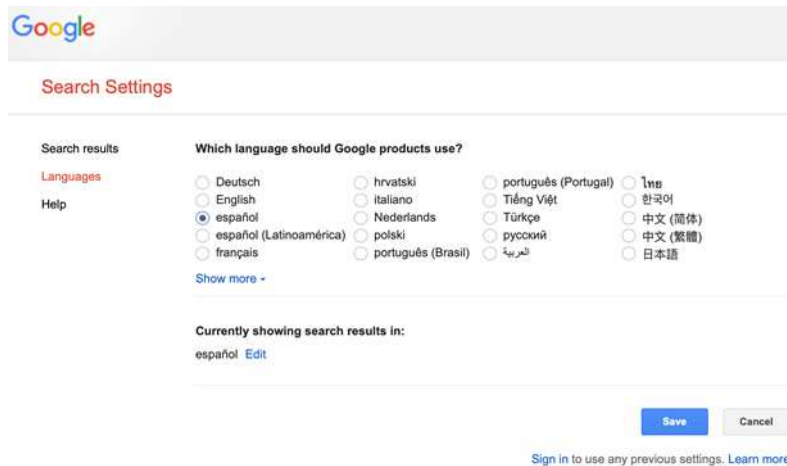
Figure 2

Internet # 1: Query 1



The Spanish words shown in Figure 2 clearly show that Dr. Frank had his Google search settings set to Spanish. As both SIG and SCP operate primarily in English, there is no reason for Dr. Frank to conduct his Internet Research in Spanish. The results of the remainder of his analysis are presented with the Google settings set to English. The Spanish setting at this stage of Dr. Frank’s process indicates the later English settings are not related to the first step of the process. To change your language settings in Google, the Google user must change the language selection as shown in Figure 3.

Figure 3



Dr. Frank’s Search Phrase Does Not Match the Phrase Shown in His Search Results.

Dr. Frank shows his Google search screenshot for the phrase stockdale “real estate” titled as Internet #1: Query 1 shown at Figure 4.

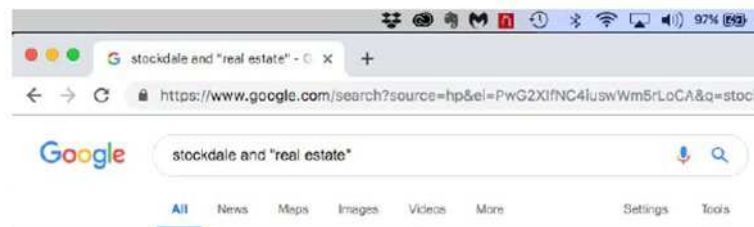
Figure 4



Dr. Frank then shows the results of this search in the screenshot titled Internet #2: Query 1 Search Results Page 1 as shown in Figure 5.

Figure 5

Internet # 2: Query 1 Search Results Page 1



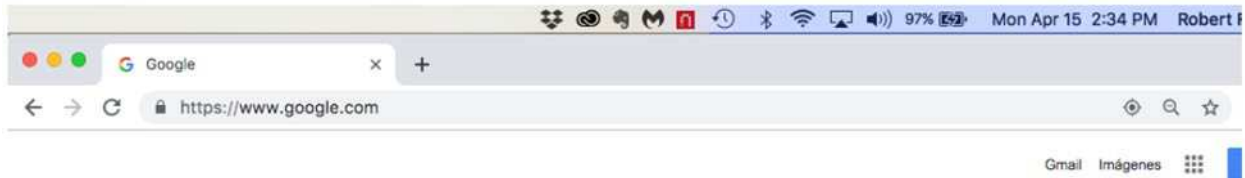
The search phrases in Figure 4 and Figure 5 do not match. The results of Dr. Frank’s search as shown in Figure 5 uses the search phrase stockdale and “real estate” which is different from the search phrase stockdale “real estate” shown in Figure 4. The two different search phrases clearly show that Dr. Frank made a mistake performing the Google search portion of his Internet research. Moreover, this issue is compounded by the flaws set forth above where Dr. Frank likely did not clear his search history and had his search set to Spanish, which can impact the reliability of the results and opinions.

Dr. Frank’s Internet #2: Query 1 Search Results Page 1 Are Not Related to Internet # 1: Query 1.

As shown in Figure 6, Dr. Frank’s Internet # 1: Query 1 screenshot was taken on Monday, April 15th at 2:34 PM.

Figure 6

Internet # 1: Query 1



As shown in Figure 7, Dr. Frank's Internet # 2: Query 1 Search Results Page 1 screenshot was on Tuesday, April 16th at 11:23 AM.

Figure 7

Internet # 2: Query 1 Search Results Page 1



Based on the time differences, it appears that Dr. Frank's search results may not be related to his Query 1 search. Based on my experience there is no reason for this research to have been conducted at different dates. If Dr. Frank's intent was to show each step in his research, the dates and times presented in the Frank Report should match. The time lapse between the search screenshot and the search results screenshot indicates the search results presented may not be related to the search terms. This additional inconsistency in the Frank Report makes the analysis and opinions unreliable.

Conclusion – Review of Dr. Frank's Internet Research

Dr. Frank made several errors in his Google search results research. Due to these errors, Dr. Frank's analysis and opinions cannot be relied upon. In summary his errors are:

1. Dr. Frank did not clear his browser history and cookies prior to his internet research; therefore, his search results appear to be biased;
2. Dr. Frank's Google preference was set to Spanish in Internet #1: Query 1;
3. Dr. Frank's search phrase does not match the phrase shown in his search results; and
4. Dr. Frank's Internet #2: Query 1 search results page 1 have a different time stamp compared to his internet # 1: Query 1.

Due to these errors, the analysis and opinions in the Frank Report cannot be relied upon.

Conclusions

After reviewing the documentation listed at Exhibit A and performing research and analysis supported by his experience in intellectual property analysis, Mr. Buss arrived at the following conclusions in this Case:

- The term “Stockdale” does not provide a benefit or contribution to SCP’s business or operations, which decreases the likelihood of confusion between SIG and SCP;
- The eight factors considered for likelihood of confusion do not indicate that confusion exists between SIG and SCP;
- The likelihood of confusion analysis presented in the Frank Report should not be relied upon; and
- Nothing indicates a likelihood of confusion between SIG and SCP based on the term “Stockdale.”

After reviewing the documentation listed at Exhibit A and performing research and analysis supported by his experience in intellectual property analysis, Mr. Bania arrived at the following conclusions in this Case:

- The Internet Research section of the Frank Report contains several errors; and
- Due to these errors, Dr. Frank’s analysis and opinions cannot be relied upon.

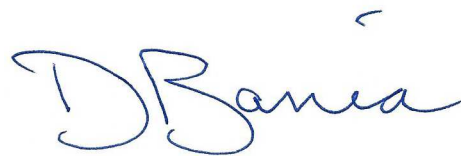
These opinions are based upon the documents and information reviewed as of the Report Date. Should additional information and/or documents become available for review, we each reserve the right to update this analysis, and if necessary, update any opinions offered here.

Further, we each reserve the right to respond to opinions and issues raised by any opposing experts. Finally, we each reserve the right to use demonstratives and other exhibits to present the opinions expressed in this report and/or any supplemental, amended and/or rebuttal reports.

Submitted by:



Brian Buss



Doug Bania

Exhibit A

Documents Relied Upon

Doc #	Document	Case Document # / Bates #s	Document Date
1a	Plaintiffs 1st Amended Complaint	NA	4/3/2017
1b	Evidentiary Hearing Transcript, Honorable Keith P. Ellison, Judge Presiding	NA	1/10/2019
2a	Defendants' Response to Plaintiff's Motion for Temporary Restraining Order	Document 6	9/7/2018
2b	Plaintiff's Brief in Support of Application for Preliminary Injunctive Relief	Document 20	12/28/2019
2c	Response Brief for Preliminary Injunction	Document 23	1/4/2019
2d	Plaintiff's Reply to Defendants' Brief in Opposition to Plaintiff's Application for Preliminary Injunctive Relief	Document 25	1/8/2019
3a	Plaintiff's Expert Designation	NA	6/14/2019
3b	Expert Report of Robert M. Frank (Attached as Exhibit A to Doc 3a)	NA	5/24/2019
4a	Presentation: SCP Real Estate Opportunities Fund I, Lazard	SCP 001302	October 2018
4b	Due Diligence Questionnaire, SCP Real Estate Opportunities Fund I, L.P., September 2018	SCP 000001	September 2018
5a	Declaration of Steven Yari	NA	9/7/2018
5b	Affidavit of Kenneth Pratt	Document 20-2	12/28/2018
5c	Oral Deposition of Kenneth Pratt	NA	11/20/2018
5d	Oral Deposition of Daniel Michaels	NA	12/6/2018
5e	Deposition of Tom Short	NA	July 2019
5f	Deposition of Hunter Brouse	NA	July 2020
6a	Stockdale Investment Group website as of 21 July 2019	NA	7/21/2019
6b	Stockdale Capital Partners website as of 21 July 2019	NA	7/21/2019
7a	USPTO, TESS, Word Mark Stockdale, 88006185	NA	6/19/2018
8a	Screen shot: Google Search	NA	7/22/2019
8b	Screen shot: Google search results	NA	7/22/2019
9a	Chapter 30, The Comprehensive Guide to Economic Damages, Business Valuation Resources, 2018	NA	
9b	Chapter 31, The Comprehensive Guide to Economic Damages, Business Valuation Resources, 2018	NA	

Exhibit B**Qualifications for Brian Buss**

Mr. Buss is a founding principal of Nevium Intellectual Property Consultants. A Chartered Financial Analyst (CFA) with 25 years of experience in valuations, financial analysis and corporate finance both in the US and overseas; Mr. Buss provides strategic advice for intellectual asset owners, guidance in determining economic damages in civil litigation, and performs valuations of trademarks, patents, brand assets, copyrights and other intangible assets.

Expert Witness Experience

Christopher Knowles v. Spin Master, Inc., Spin Master Studios, et al.; Expert report regarding economic damages due to copyright infringement; Case 2:18-cv-05827; 2019

GearSource Holdings, LLC v. Google, LLC; Expert report regarding economic damages and profit apportionment due to trademark infringement; Case 3:18-cv-03812; 2019

Teeter-Totter, LLC v. Palm Bay International, Inc. et al.; Expert report regarding economic damages and profit apportionment due to trademark and copyright infringement in the wine industry; Case 5:17-cv-06609-LHK; 2019

Platinum Logistics WY, Inc. v. Platinum Cargo Logistics, Inc.; Expert rebuttal report regarding trademark valuation and economic damages due to trademark infringement; Case 3:13-cv-01819-CAB-KSC; 2019

KB International, LLC v. Acacia Research Group, LLC; Arbitration testimony, Deposition and Expert Report regarding economic damages due to breach of contract and patent infringement; American Arbitration Association; 2019

Mission Healthcare Services, Inc. v. Bridge Home Health & Hospice, et al.; Deposition testimony regarding economic damages due to trade secret misappropriation, unfair competition, breach of contract and defamation; Case 37-2016-00044574-CU-BT-CTL; Superior Court of California; 2018

Netflix, Inc. v. Commissioner of Revenue; Expert consulting regarding intellectual property and intangible asset valuation; Docket # 329923; Commonwealth of Massachusetts Appellate Tax Board; 2018

Eagle Rock Resort Co. vs. Janet A Carlin, et al.; Expert Report regarding impact of disparaging and defamatory statements and economic damages at a resort property development; Case 2013-CV-13756; Court of Common Pleas of Luzerne County, Pennsylvania; 2018

Rentokil North America, Inc. v. John K Whitley as the Stockholders Representative, et al.; Expert Report and Rebuttal Report regarding economic damages in indemnification claims pursuant to a stock purchase agreement, Case 01-16-0004-3260; American Arbitration Association; 2018

Grumpy Cat Limited v. Grumpy Beverage LLC et al.; Testimony in Federal Court and Expert Report regarding economic damages due to copyright infringement, trademark infringement and breach of contract; Case 8:15-cv-02063-DOC-DFM; Central District of California; 2018

Anthony California, Inc. v. Fire Power Co. Ltd.; New Bright Jet Lighting Co. Ltd. et al.; Testimony in Federal Court and Expert Report regarding economic damages due to copyright infringement and trade secret misappropriation; Case 5:15-cv-00876-JGB-SP; Central District of California; 2018

Aardwolf Industries, LLC v. Abaco Machines USA, Inc. Ausavina Co. LTD, et. al., Expert Report and Deposition Testimony regarding economic damages due to trademark and copyright infringement; Case 2:16-cv-01968-GW-JEM; Central District of California; 2017

Rosebank Road Medical Services Ltd., and Geeta Murali Ganesh v. Ramji Govindarajan; Testimony in California State Court, Deposition Testimony and Expert Report regarding impact of defamatory statements; Case CGC-16-549755; Superior Court of California; 2017

Intellicheck Mobilisa, Inc. v. Wizz Systems LLC; Expert Report and Deposition Testimony regarding economic damages in a utility patent infringement claim; Case 2:15-cv-00366-JLR; Western District of Washington; 2017

Boiling Point Group, Inc. v. Fong Ware Co. Ltd., et al.; Expert Report regarding economic damages in a design patent infringement claim; Case 2:16-cv-01672-RGK-JEM; Central District of California; 2017

Gold Value International Textile, Inc. v. Sanctuary Clothing LLC, Amazon.com, Bloomingdale's, Inc., Dillard's Inc., Macy's, Inc., Nordstom, Inc., and Zappos IP, Inc.; Expert Report regarding economic damages in copyright infringement claim; Case 2:16-cv-00339-JAK-FFM; Central District of California; 2017

Blue Gentian LLC and National Express, Inc. v. Tristar Products, Inc. and Wal-Mart Stores, Inc.; Expert Rebuttal Report regarding economic damages in patent infringement claim; Civil Action No. 13-cv-1758 (D.N.J.); District of New Jersey; 2017

EDI International, P.C. v. Crestwood Station Plaza LLC, et. Al.; Expert Report regarding Economic Damages in copyright infringement claim involving architectural design plans; Case No. 15-cv-07281-KBF,USDC, Southern District of New York; 2016

James Ellis as Stockholders Agent for Gablit Holdings, Inc., v. Events.com, Inc.; Expert Report and Arbitration testimony regarding M&A due diligence, unpaid compensation and economic damages; Case No. 01-15-0004-5736, American Arbitration Association; 2016

Solar Sun Rings, Inc., v. Secard Pools et al.; Deposition Testimony and Expert Report regarding economic damages in a Lanham Act Claim; Case No. 5:14-cv-02417, USDC, Central District of California; 2015

Markwins Beauty Supply, Inc. v. Krystal Ball Productions, Inc., et al.; Expert Report in Arbitration proceedings regarding business valuation of Markwins Beauty Supply, Inc.; 2015

Yucaipa Corporate Initiatives Fund vs. Hawaiian Airlines; Expert Consulting regarding value of Airline brands and trademarks and use of trademarks in Internet Search and e-commerce; Case No. CV13-09060, USDC, Central District of California; 2015

Block Developers, LLC et al. v. Commissioner of Internal Revenue; Expert Report and Testimony for US Tax Court regarding reasonable royalty rate for use of patents by potential franchisees and valuation of construction materials patents; Docket No. 3198-10; 2014

Azco Biotech, Inc. v. Intelligent Bio-Systems, Inc.; Expert Report and Deposition Testimony regarding value of molecular diagnostics patents and early-stage businesses; Case No. 12CV2599 BEN DHB, USDC, Southern District of California; 2014

Amini Innovation Corporation vs. McFerran Home Furnishings, Inc., Expert Report regarding trade dress and copyright infringement damages. Case No. CV13-06496-RSWL(SSx), USDC, Central District of California; 2014

Star Fabrics v. Joyce Leslie, Inc. et al., Expert Report regarding economic impact of fabric design copyright infringement and incremental profits achieved by defendants; United States District Court, Central District of California; 2014

G-Unit Brands, Inc. v. Sleek Audio, Inc.; Expert Report, Deposition Testimony, and Arbitration Hearing Testimony regarding value of celebrity promotional and marketing activities; JAMS Ref. No 1425010166; 2014

Cengage Learning, Inc., et al.; United States Bankruptcy Court Eastern District of New York; Expert Opinion and Rebuttal Opinion regarding valuation of higher education textbook copyrights on behalf of the Second Lien Indenture Trustee in Chapter 11 bankruptcy; 2013-2014

United Fabrics International v. G-III Apparel Group, Ltd; and McKlein Company, LLC; Export Report regarding economic impact of Copyrights. Case No. CV13-00803-SH, United States District Court, Central District of California; 2013

David Wolfe v. Sunfood LLC et al; Deposition Testimony regarding lost profit damages. Case No. 37-2011-00066729-CU-CTL, Superior Court of the State of California for the County of San Diego; 2013

Syngenta Seeds, Inc. v. Bunge North America, Inc.; Deposition Testimony and Expert Report regarding lost profit damages. Case No 5:11-cv-4074, United States District Court, Northern District of Iowa Western Division; 2012

VolumeCocomo Apparel, Inc. v. Guess?, Inc.; Dillard's, Inc., Bloomingdale's, Inc. and Macy's, Inc.; Deposition Testimony and Expert Report. Case No CV11-06694-RGK (RZx), United States District Court, Central District of California; 2012

David Dick, et al v. First Citizens Bank and Trust Company, Inc., et al.; Deposition Testimony and Expert Report. Case No. 2011CV201581, Superior Court of Fulton County, State of Georgia; 2012

United Fabrics International, Inc. v. Pat Rego, Inc., Lane Bryant, Inc, et al.; Expert Report. Case No. CV10-5888-PSG (RZx), United States District Court, Central District of California; 2011

L.A. Printex Industries, Inc. v. Macy's Retail Holdings, Inc., et al.; Expert Report. CV09-3978 DSF (AJWx), United States District Court, Central District of California; 2011

Lilyan Hassaine and Salim Salahi v. Home Depot, U.S.A., Inc. et al.; Expert Report. Case No 09-CV-2215 MMA, United States District Court; 2010

Benjamin Gurfinkel v. Mike Riley, et al.; Deposition Testimony. Case No 37-2008-00079217-CU-PO-CTL, Superior Court of California, County of San Diego, Central Division; 2009

Education and Certification

San Diego State University; MBA; 2011

Claremont McKenna College; Bachelor of Arts, Biology & Economics; 1993

Certified Patent Valuation Analyst (CPVA); 2017

Chartered Financial Analyst (CFA); 1997

Employment Experience

Neium Intellectual Property Solutions; San Diego CA, 2012 – present

Founding Principal: provide IP valuation, analysis and expert witness services

CONSOR Intellectual Asset Management; San Diego CA, 2011 - 2012

Director: supervised all client engagements for IP valuation and litigation services firm

Brodshatzer, Wallace, Spoon & Yip LLP; San Diego CA; 2007 - 2010

Director: expert witness, litigation services and business valuation consulting

Tech M3, Inc.; San Diego CA; 2006 - 2007

Co-founder and financial officer for a technology start-up

Westpac Institutional Bank; Auckland New Zealand; 2003 – 2005

Commercial and Investment Banking

Deloitte & Touche; Auckland New Zealand and San Francisco CA; 1998 – 2003

Business valuation, purchase price allocation analyses and strategic consulting

Princeton Venture Research; San Diego CA; 1993 – 1997

Shareholder class-action litigation and business valuation consulting

Publications and Presentations

“Internet Tools for Intellectual Property Analysis” webinar for Certified Patent Valuation Analyst program and the Business Development Academy, 2019

“Investigating Online IP Infringement and Calculating Damages for Internet Related Disputes” presentation at University of San Diego School of Law, 2019

“Calculating the Value of Influencer Marketing and Impact of Infringement” in Attorney at Law Magazine, February 2019

“Valuing the Misuse of Intellectual Property Online” Webinar hosted by Business Valuation Resources, December 2018

Chapter titled “Profit Apportionment in Intellectual Property Infringement Damages Calculations” published in The Comprehensive Guide to Economic Damages, 5th Edition published by Business Valuation Resources (BVR), 2018

“Apportionment Models: Valuing the Contribution of Intangible Property and Assets in Disputes”, Webinar hosted by Business Valuation Resources, October 2018

Profit Apportionment – Determining the Contribution of Intellectual Properties in Valuations and Damages Calculations” presentation at NACVA Annual Consultants Conference, Las Vegas, June 2018 “Brand Contribution” Moderated a panel presentation and discussion on building, leveraging and valuing brand assets for Licensing Executives Society International (LES) 2018 Annual Conference in San Diego, 2018

“Brand Valuation – Valuing brands that aren’t exchanged” Presentation to Provisors’ Brand Licensing and Intellectual Property Affinity Group, Los Angeles, 2018

“The Economics of Patent Litigation & Damages” Presentation at the IIPLA Annual Meeting in Silicon Valley, October 2017

“Calculating Financial Damages and Valuations in U.S. Litigation: A 2017 Outlook” Panellist in a Webinar produced by The Knowledge Group, July 2017

“Non-Traditional Marks and the Traditional Practice” Luncheon Table Topic for the International Trademark Association (INTA), San Diego, CA, February 2017

“Brand Valuations: Identifying Opportunities and Challenges” published in The Value Examiner, Special Issue, September/October 2016

“Misuses of IP Over the Internet: Searching for Value” webinar presentation for Business Valuation Resources (BVR), July 2016

“The Use of Analytic Tools for Valuation and Damages Calculations in Internet IP Infringement and Defamation Cases” published as a chapter in The Comprehensive Guide to Lost Profits and Other Commercial Damages book by Business Valuation Resources (BVR), 2016

“Employing Internet and Social Media Analytical Tools in Valuation and Damages Calculations” Featured Presenters at the NACVA and the CTI’s 2016 Annual Conference, San Diego, June 2016

“Brand Due Diligence” Tools and Techniques for Supporting Successful Brand Driven Transactions” Luncheon Table Topic at the International Trademark Association (INTA) Annual Meeting, Orlando, FL, May 2016

“Brand Valuation” presentation at the University of New Hampshire School of Law Conference on Brand Valuation, Concord, NH, April 2016

“Valuing IP Using an Apportionment Model” webinar presentation for Business Valuation Resources (BVR), part of BVR’s “Special Series on Intellectual Property”, October 2015

“Valuation and Damages Calculations in Cases Involving Internet IP Infringement and Defamation” presented at the NACVA and the CTI’s 2015 Annual Conference, June 2015

“Internet Analytic Tools for Brand Valuation, Damages and Defamation” Table Topic discussion at INTA 2015 Annual Meeting, May 2015

“IP Valuation & Damages” panel presentation for Provisors Corporate Deal Professionals of San Diego, January 2015

“How to Calculate Damages for Internet and Social Media Infringement” presented to the 36th Annual Brand Activation Association Marketing Law Conference, November 2014

“Damages and Valuation for Internet IP Infringement and Defamation” presented to Internet Law Leadership Summit, May 2014

“Increase the Value of Your IP Through Licensing” presented to the San Diego Chapter of the Licensing Executives Society, March 2014

“Estimating and Managing the Economic Impact of Brand Disparagement” published in *World Trademark Review*, Issue 47, February 2014

“SFIA Legal Task Force Series: Intellectual Property Litigation & Valuation” presented to the Sports & Fitness Industry Association members, March 2013

“Key Concepts in Intellectual Property Valuation” Continuing Legal Education presentation for San Diego-area Law Firm, March 2013

“Copyright Valuation and Damages” Continuing Legal Education webinar for State Bar of California, Intellectual Property Law Section, March 2013

“Simplicity in Global IP Valuation” published in *Les Nouvelles* and *China Intellectual Property*, August 2012

“IP Valuation” continuing legal education seminars presented at multiple law firms, 2011-2012

“Financing Transport and Transport Infrastructure”, paper and presentation at the New Zealand Freight Transport Summit, 2004

“Cash Flow Forecasting” presentation to New Zealand Institute of Chartered Accountants, 2002

“Intangible Asset Valuation”, presentation to the New Zealand Licensing Executives Society, 2002

Exhibit C

Qualifications for Doug Bania

Doug Bania is a founding principal of Nevium Intellectual Property Consultants. Nevium is an intellectual property consulting firm specializing in developing IP strategies, IP valuation and monetization of IP as well as providing expert testimony related to IP damages and licensing customs and practices.

Mr. Bania has been the named expert for approximately 57 cases, deposed 14 times and has provided mediation testimony 3 times and trial testimony 4 times. Mr. Bania is a Certified Licensing Professional (CLP), a Google Analytics Certified Individual (GAIQ) and is a committee member for the International Trademark Association (INTA) Internet Committee, the ICANN Compliance and Domain Name Industry Subcommittee and the American Bar Association (ABA), Copyright & Social Media Committee.

Mr. Bania specializes in analyses for copyright, trade dress, trade secrets and trademark infringement, publicity rights, social media and Internet infringement, defamation, marketing strategy analyses, royalty rate determinations and other intangible assets. Mr. Bania also provides valuation and monetization strategies for trademarks, trade secrets, publicity rights, domain names, Internet and social media assets, brands, copyrights and other intangible assets for financial reporting, bankruptcy and transactional due diligence.

Expert Witness History

Chad Marlow v. Business Financial Services, Inc. and Adquadrant, Inc., Superior Court of the State of California, County of Orange; Case No. 30-2017-00923885-CU-NP-CJC. **Right of Publicity Damages**, Expert Consulting, 2019

Merck & Co., Inc. and Merck Sharp & Dohme Corp. v. Merck KGAA, USDC District of New Jersey; Case No. 16-cv-00266. **Google Ads Investigation**, Expert Report, Deposition, 2019.

Platinum Logistics WY, Inc. vs. Platinum Cargo Logistics, Inc. DBA Platinum Cargo; et al., USDC Southern District of California; Case No. 13-cv-1819. **Trademark Damages**, Expert Report, 2019.

Thelonious Sphere Monk, Jr. as Administrator of and on behalf of the Estate of Thelonious Sphere Monk vs. North Coast Brewing Co., Inc., USDC Northern District of California; Case No. 17-cv-05015. **Trademark and Right of Publicity Damages**, Expert Report, Deposition, 2018.

GOLO, LLC v. Zoco Productions; Mehmet Oz, M.D.; and Keri Glassman, USDC for the Eastern District of Pennsylvania; Case No. 1:17-cv-08461-KBF. **Unfair Competition and False Advertising**, Expert Report, 2018.

Lauren Mountain v. Mehron, Inc.; Martin Melik; Michael Costello and Stephanie Costello, USDC Central District of California Western Division; Case No. 2:18-cv-00080-JAK-MRW. **Copyright Damages**, Expert Consulting, 2018

Big League Analysis, LLC vs. The Office of the Commissioner of Baseball, The United States Baseball Federation, Inc., and Noah Garden; Supreme Court of the State of New York County of New York; Case No. 152702/2017. **Website, SEO Analysis, Internet Impressions, Visits and Damages**, Expert Report, Mediation Testimony, 2018

PS1, Inc., vs. TTL Automotive Enterprises, Inc., American Arbitration Association, Case No.: 01-17-0005-3284. **Trade Dress Investigation**, Expert report, 2018

North Carolina, Craven County, Jones County v. Beer Army, LLC, Dustin J. Canestorp, Beer Army Productions, LLC, and Ribeyes Steak House of New Bern 2, LLC and Bad Boy Foods, LLC. The General Court of Justice Superior Court Division; File No.: 15-CVS-1236. **Trademark Damages**, Expert report, 2018

Leandro Sorice vs. Trendy Butler, Inc. and Ali Najafian; Superior Court for the State of California County of Los Angeles; Case No. BC635770. **Copyright Damages**, Expert report, 2018

Colonel David Randolph Scott vs. Citizen Watch Company of America, Inc. (successor to Bulova Corporation); Sterling Jewelers, Inc., dba Kay Jewelers; USDC Northern District of California San Jose Division; Case No. 17-cv-00436-NC. **Right of Publicity**, Expert report, Deposition, 2018

Ghostbed, Inc.; and Werner Media Partners, LLC d/b/a/ Nature's Sleep, LLC v. Casper Sleep, Inc.; Philip Krim; Red Antler, LLC; and ICS Inc.; Case No. 0:15-cv-62571. **Google Ads, SEO Analysis, Internet Website Traffic Investigation**, Expert Reports, Deposition, 2018

Heron Development Corporation vs. Vacation Tours, Inc. d/b/a Vacation Store of Miami, Media Insight Group, Inc., d/b/a Media Insight Group, Rosanna M. Mendez and George A. Alvarez; USDC Southern District of Florida Miami Division; Case No. 1:16-cv-20683-Moreno/O'Sullivan. **Website, SEO Analysis, Internet Impressions, Visits and Damages**, Expert Report, 2017

Entrepreneur Media, Inc. v. Scott Smith; Domains by Proxy, LLC; GoDaddy.com, LLC and Karen Mix; Case No. CGC 13 530730. **Domain Name Value**, Expert Report, 2017

Jukin Media, Inc. v. QWorldstar, Inc. d/b/a Worldstar, Worldstar Hip Hop, Worldstar Candy; Case No. 2:16-cv-6800-JFW; USDC Central District of California. **Copyright & Trademark Damages**, Expert Report, 2017

Aardwolf Industries, LLC v. Abaco Machines USA, Inc. Ausavina Co. LTD, et. al.; Case No. 2:16-cv-01968-GW-JEM; Central District of California. **Domain Name and SEO Analysis Investigation**, Expert Report & Deposition, 2017

Winston Smith v. Chapter 4 Corp., "Supreme"; Blackrock Creative Management Company and DEAD KENNEDYS; USDC Central District of California, Case No. 2:16-cv-03910-GW-AS. **Copyright Apportionment Damages**, Expert Report & Deposition, 2017.

Andre Khazraei vs. Christopher Brown, CBE Merchandising LLC, CBE Apparel LLC, Konfuzed LLC, Maxima Operating X LLC; USDC Central District of California, Case No. 2:16-cv-02341 SJO (JCx). **Trademark, Licensing & Social Media Analysis**, Expert Report & Mediation Testimony, 2017

IDX System Technology, Inc. vs. Timothy Arasheben dba Cinoflex; TM Camera Solutions, LLC; Superior Court of the State of California for the County of Los Angeles, Case No. BC610537. **Defamation Damages**, Expert Consulting, 2017

Uncommon, LLC vs. Spigen, Inc.; USDC Northern District of Illinois Eastern Division, Case No. 15-cv-10897. **Trademark Damages, Website Analysis**, Expert Report & deposition, 2016

The Julia Child Foundation for Gastronomy and the Culinary Arts v. Airbnb, Inc., Superior Court of the State of California for the County of Santa Barbara, Case No. 16CV02626. **Right of Publicity & SEO Analysis**, Expert Report & Mediation Testimony, 2016

Pines International, Inc. v. Suja Life, LLC, USDC Southern District of California, Case No. 3:16-cv-00985-GPC-WVG. **Trademark Damages**, Settlement Brief Testimony, 2016

Unicolors, Inc. v. Kohl's Department Stores, Inc.; Fashion Life Inc.; Jes Apparel, L.L.C., USDC Central District of California, Case No. 2:16-cv-00393-RGK-SS. **Copyright Damages**, Expert Report, 2016

Timed Out, Inc. vs. Crazy Horse, Inc., Superior Court of the State of California, County of San Francisco – Civic Center Courthouse, Case No. CGC-15-547904. **Right of Publicity & SEO Analysis**, Expert Report, 2016

Adobe Systems Incorporated v. A&S Electronics, Inc., dba Trustprice; Alan Z. Lin; et. al., USDC Northern District of California Oakland Courthouse, Case No. 4:15-cv-02288-SBA. **Trademark & Copyright Damages**, Expert Report, 2016

Ronald Greenspan, D.D.S. v. Mary Polomares, Randolph F. Alexander, D.D.S., M.S. and Leslie Alexander, Superior Court of the State of California County of San Diego – Central Division, Case No. 37-2014-00029393-CU-DF-CTL. **Defamation & SEO Analysis**, Expert Report & Deposition, 2016

Nina Pham v. Texas Health Resources, Inc., District Court of Dallas County, Texas 68th Judicial District, Cause No. DC-15-02252. **Right of Publicity Damages & SEO Analysis**, Expert Report & Deposition, 2016

Christopher Gordon v. Drape Creative, Inc.; Papyrus-Recycled Greetings, Inc. USDC Central District of California, Case No. CV 15-04905 JFW (PLAx). **Trademark Damages**, Expert Report, 2016

Adobe Systems Incorporated v. David Far, aka Davit Far, doing business as AllMacDirect, USDC Central District of California, Case No. CV15-06192 AB AJW. **Trademark & Copyright Damages**, Expert Report, Deposition, 2016

Mark Spitz v. New Vitality LLC, NAC Marketing Company, Superior Court of California County of Los Angeles, Case No. SC121977. **Right of Publicity Damages & SEO Analysis**, Expert Consulting, 2016

Global Tobacco, LLC vs. R.K. Co., dba Cigar Cartel, USDC Central District of California Western Division, Case No. 2:15-CV-05227. **Trade Dress Damages**, Expert Report, 2016

Ryoo Dental, Inc. v. Thomas D. Han DMD, dba Beach Dental Care, USDC Central District of California, Southern Division, Case No. 8:15-cv-00308-JLS-RNB. **Copyright Damages & SEO Analysis**, Expert Report, 2016

Joel Zimmerman p/k/a "deadmau5" and Ronica Holdings Limited vs. Play Records, Inc., Ontario Superior Court of Justice, Court file No. CV-15-539129. **Trademark & Copyright Damages**, Expert consulting, 2016.

Reese Witherspoon v. Sears Holdings Management and Sears Brands LLC, et al., Case No. SC120883, Superior Court of the State of California, County of Los Angeles, West District. **Right of Publicity Damages & SEO Analysis**, Expert Report, 2016

Reese Witherspoon v. LNT Acquisition LLC, et al., Case No. SC120883, Superior Court of the State of California, County of Los Angeles, West District. **Right of Publicity Damages**, Expert Report, 2016

Pharrell Williams, et al. v. Bridgeport Music, Inc., et al., Case No. CV13-06004-JAK (AGRx), USDC, Central District of California, Western Division. **Copyright Damages & Social Media Analysis**, Expert Report, Deposition and **Trial Testimony**, 2015

Cynara Busch v. Jakov Dulcich and Sons, LLC, Sunlight International Sales, Inc., Case No. CIV 1404125, Superior Court of the State of California, County of Marin, **Right of Publicity Damages**, Expert Consulting, 2015

Markwins Beauty Products, Inc. v. Krystal Ball Productions, Inc. and Fergie Duhamel, Arbitration, Pasadena, CA. **Right of Publicity Damages**, Expert Report, 2015

Stone Creek, Inc. vs. Omnia Italian Design, Inc., Case No. CV-13-00688-PHX-DLR, USDC, District of Arizona, **Trademark Damages & SEO Analysis**, Expert Report, Deposition and **Trial Testimony**, 2015

Unicolors, Inc. v. Urban Outfitters, Inc., dba Free People; Century 21 Department Stores, LLC, Case No. CV14-1029 SJO (VBK) USDC, Central District of California, **Copyright Damages**, Expert Report and **Trial Testimony**, 2015

Matthew C. Morin v. Cindy Marabito, Case No. RG14747850, California Superior Court, Alameda County. **Defamation Damages**, Expert Consulting, 2015

Richard Guthrie v. Hobby Lobby Stores, Inc., Case No. 1:15-cv-00195-WDQ, United States District Court, District of Maryland. **Copyright Damages**, Expert Consulting, 2015

Scott Ehredt vs. Medieval Knights, LLC, Case No. BC530275, Superior Court for the State of California, County of Los Angeles, **Right of Publicity Damages**, Expert Report, 2015

Radix Textile, Inc. v. Anthropologie, Inc., Case No. CV14-04272-BRO (EX), USDC, Central District of California, **Copyright Damages**, Expert Report, 2015

Unicolors, Inc. v. Urban Outfitters, Inc., dba, Free People, Case No. 2:14-cv-03217-R-AGR, USDC, Central District of California, **Copyright Damages**, Expert Report, 2014

The Pond Guy, Inc. et al. v. Aquascape Designs, Inc., et al., Case No. 2:13-cv-13229-NGE-DRG, USDC, Eastern District of Michigan. **Trademark & SEO Analysis Investigation**, Expert Report, Deposition and **Trial Testimony** 2014

Bruce L. Lamb, dba Lamb Productions U-Tile It Videos v. Floor and Decor Outlets of America, Inc., Case No. 3:13-cv-00390-JAH-BLM, USDC, Southern District of California. **Copyright Damages**, Expert Consulting, 2014

Reese Witherspoon v. Marketing Advantages International, Inc., et al., Case No. SC120883, Superior Court of the State of California, County of Los Angeles, West District. **Right of Publicity Damages & SEO Analysis**, Expert Report, 2014

Jason Olive vs. General Nutrition Centers, Inc., Case No. BC482686, Superior Court for the State of California, County of Los Angeles. **Right of Publicity Damages**; Expert Consulting, 2014

Amini Innovation Corporation vs. McFerran Home Furnishings, Inc., Case No. CV13-06496-RSWL(SSx), USDC, Central District of California. **Trade Dress and Copyright Damages**, Expert Report, 2014

One Beacon Insurance Company v. National Casualty Company, Case No. CV 06342-550-JC, USDC, Central District of California. **Copyright Damages**; Expert Opinion, 2014

Star Fabrics, Inc. vs. Joyce Leslie, Inc., N.Y. Invasion Inc., Myletex International, Inc., Case No. 13-CV-02771-CAS, USDC, Central District of California – Western Division. **Copyright Damages**; Expert Report, 2014

Cengage Learning, Inc., et al., United States Bankruptcy Court Eastern District of New York. **Copyright Damages**; Expert Opinion and Rebuttal Opinion regarding valuation of higher education textbook copyrights on behalf of the Second Lien Indenture Trustee in Chapter 11 bankruptcy cases, 2014

The Julia Child Foundation for Gastronomy and the Culinary Arts v. DGWB Advertising and Communications, Case No. 8:12-CV-1402SJO, USDC, Central District of California. **Right of Publicity Damages & SEO Analysis**; Expert Report and Deposition, 2013

United Fabrics International, Inc. vs. G-III Apparel Group, LTD; dba Wilsons Leather; Mcklein Company, LLC, USDC, Central District of California. **Copyright Damages**; Expert Report, 2013

David Wolfe, v. Sunfood, LLC, et al.; Case No. 37-2011-00066729-CU-CO-CTL, Superior Court of the State of California for the County of San Diego. **Right of Publicity Damages**; Deposition, 2013

Brady Industries, LLC v. Waxie's Enterprises, Inc., 2:12-cv-00777-PMP-VCF, USDC, District of Nevada. **Copyright Damages and SEO Analysis**; Expert Report and Deposition, 2013

Rawlings Sporting Goods Company, Inc., v. Wilson Sporting Goods, 4:12-cv-01204-01204, USDC, Eastern District of Missouri. **Trademark Damages**; Expert Opinion, 2013

Rebel Media, No Good Entertainment v. Jay Vir, No Good Digital; CV12-04602-R-JC, USDC, Central District of California, Western Division. **Trademark Damages & YouTube SEO Analysis Investigation**; Expert Opinion, 2013

Marona Photography, Inc. v. Los Altos Boots, Wild West Boots. 12-CV-00163-WYD-MJW, USDC, District of Colorado. **Copyright Damages**; Expert Report, 2012

Ricky D. Ross v. William Leonard Roberts, II; CV10-4528-PA (RZx), The USDC, Central District of California, Western Division – Los Angeles. **Right of Publicity Damages**; Rebuttal Opinion, 2012

L.A. Printex Industries, Inc. v. Macy's Retail Holdings, Inc., et al.; CV09-3978 DSF (AJWx), USDC, Central District of California. **Copyright Damages**; Expert Report, 2011

John Frederick Dryer, et al. v. National Football League; 0:09-cv-02182-PAM-AJB, USDC, District of Minnesota. **Right of Publicity Damages**; Expert Opinion, 2009

Education and Certification

Google Analytics Individual Qualification (GAIQ); 2017

Certified Licensing Professional (CLP); 2011

San Diego State University; Masters, Television, Film, New Media Production; 2000

San Francisco State University; Bachelor of Arts, Cinema; 1997

Employment Experience

Nevium Intellectual Property Solutions; San Diego, CA; 2012 – present

Founding Principal: Provide IP strategy, licensing, valuation and expert services

CONSOR Intellectual Asset Management; La Jolla, CA; 2002 – 2012

Principal: Managed client & firm relations and provided expert witness services

Independent Film Producer; Los Angeles, CA; 2000 – 2003

Producer for two award winning short films: Boundaries and Passing Through.

Associations and Memberships

Licensing Executives Society (LES)

International Trademark Association (INTA)

International Trademark Association (INTA) Internet Committee (2016 -2019 terms)
ICANN Compliance and Domain Name Industry Subcommittee (2016 -2019 terms)
American Bar Association (ABA), Section of Intellectual Property Law
American Bar Association (ABA), Copyright & Social Media Committee

Publications and Presentations

“Internet Tools for Intellectual Property Analysis” presented as a webinar for the Certified Patent Valuation Analyst certification, 2019

“Investigating Online IP Infringement and Calculating Damages for Internet Related Disputes” presented at the University of San Diego School of Law, 2019

“Nevium: Influencer Marketing Meets Intellectual Property” Forbes, 2019

“Calculating the Value of Influencer Marketing and Impact of Infringement” Attorney at Law Magazine, 2019

“Building Cannabis IP Includes Both Your Brand and Your Technology” Entrepreneur, 2019

“Can Trademark Infringement Be a Victimless Crime? The Stone Creek v. Omnia Case” International Journal of Law and Public Administration, Redfame Publishing Inc., 2018

“Apportionment Models: Valuing the Contribution of Intangible Property and Assets in Disputes” A Special Series Webinar on New Economic Damages Guide. Business Valuation Resources (BVR), 2018

“Using Internet Analytic Tools for Valuation and Damages Calculations in Internet IP Infringement and Defamation Cases” published as a chapter in The Comprehensive Guide to Economic Damages book by Business Valuation Resources (BVR), 2018

“Profit Apportionment in Intellectual Property Infringement Damages Calculations” published as a chapter in The Comprehensive Guide to Economic Damages book by Business Valuation Resources (BVR), 2018

The Florida Bar Business Law Section, 9th Annual Intellectual Property Symposium. Panel on the Blurred Lines trial – Speaking as the copyright damages and apportionment expert. St. Pete Beach, FL, April 2018

“Proving Infringement in Online Trademark Disputes” Luncheon Table Topic at the 140th Annual International Trademark Association (INTA) Meeting, Seattle, WA May 2018

“Building Brands and Maximizing Value” Workshop Session presented at the Licensing Executive Society (LES) 2017 Spring Meeting entitled Stronger Economies Through Licensing, Washington, DC, May 2017

“Blurred Lines – Music Industry Damage Calculations” Panel Session presented at SXSW, Austin, TX, March 2017

“Non-Traditional Marks and the Traditional Practice” Luncheon Table Topic for the International Trademark Association (INTA), San Diego, CA, February 2017

The Use of Analytic Tools for Valuation and Damages Calculations in Internet IP Infringement and Defamation Cases” published as a chapter in Calculating Economic Damages in Intellectual Property Infringement Cases book by Business Valuation Resources (BVR), October 2016

“Misuses of IP Over the Internet: Searching for Value.” Business Valuation Resources (BVR) Special Series Webinar: The Comprehensive Guide to Economic Damages, July 2016

“The Use of Analytic Tools for Valuation and Damages Calculations in Internet IP Infringement and Defamation Cases” published as a chapter in The Comprehensive Guide to Lost Profits and Other Commercial Damages book by Business Valuation Resources (BVR), May 2016

“Brand Valuation and Techniques” presented at the Conference on Brand Valuation; University of New Hampshire School of Law and The Franklin Pierce Center for Intellectual Property. Concord, New Hampshire, April 2016

“Valuation and Damages Calculations in Cases Involving Internet IP Infringement and Defamation.” NACVA Webinar Series, April 2016

“Brand Due Diligence: Tools and Techniques for Supporting Successful Brand Driven Transactions” Luncheon Table Topic at the International Trademark Association (INTA) Annual Meeting, Orlando, FL, May 2016

“Employing Internet and Social Media Analytical Tools in Valuation and Damages Calculations” Featured Presenter at the NACVA and the CTI’s 2016 Annual Conference. San Diego, CA, June 2016

“Apportioning Copyright Damages: The Case of Blurred Lines” published in the Journal of Intellectual Property Law and Practice, Vol. 10, No. 12, November 2015

“Intellectual Property Valuation: Methodologies and Case Studies” presented at the American Society of Appraisers (ASA), San Diego Chapter monthly meeting, San Diego, 2015

“Blurred Lines or Fuzzy Math: How Did They Come Up with \$7.3 Million or was it \$5.3 Million? – Damage Calculations in the Music Industry, New York State Bar – Entertainment Business Law Seminar in Association with CMJ Music Marathon, New York, 2015

“Internet Analytic Tools for Brand Valuation, Damages and Defamation” Luncheon Table Topic at the International Trademark Association (INTA) 2015 Annual Meeting, San Diego, CA

“Valuation and Damages Calculations in Cases Involving Internet IP Infringement and Defamation” presented at the NACVA and the CTI’s 2015 Annual Conference, June 2015

“How to Calculate Damages for Internet and Social Media Infringement” presented at the 36th Annual BAA/PMA Marketing Law Conference, 2014

“Calculating Damages from Internet IP Infringement and Defamation” presented at the Internet Law Leadership Summit, 2014

“Estimating and Managing the Economic Impact of Brand Disparagement” published in the World Trademark Review, 2014

“SFIA Legal Task Force Series: Intellectual Property Litigation & Valuation” presented to the Sports & Fitness Industry Association members, 2013

“Copyright Valuation and Damages: Different Tools for Different Challenges” presented to The State Bar of California, Intellectual Property Law Section, 2013

“Key Concepts in Intellectual Property Valuation” presented to various law firms, 2012

“Intellectual Property Valuation,” presented to various law firms, 2011

“Valuing Your Brand for Sale or Securitization”, presented to LIMA members, 2011

“Valuing the Intangible: Where to Start? The Full Family of Intellectual Property and Other Intangibles,”
CLE presented to various law firms, 2010

“Valuation, Licensing, Damages and Expert Witnesses,” CLE presented to various law firms, 2009

“Brand Leverage and Valuation” presented to various corporations, 2008

“Deceptive Product Endorsement: Unauthorized Use of a Celebrity’s Name and Likeness,” published in
Total Licensing Magazine, 2006

Relevant Events

Timeline		
Date	Event	Source
1989	Plaintiff's business started as a "small, family business"	Document 17 (Doc 1a), pgh 15
2007	Plaintiff's business expanded to Texas	Document 17 (Doc 1a), pgh 15
10-Apr-12	Plaintiff merged Stockale Investment Group, Inc., with Stockdale Investment Group, Inc., registered the combined entity to do business in Texas	Document 17 (Doc 1a), pgh 16. (Date filed at Exhibit 2)
2013	Stockdale Capital entities formed in California	Document 17 (Doc 1a), pgh 20
26-Feb-13	Incorporation Date for Stockdale Capital Partners, LLC	Document 17 (Doc 1a), Exhibit 4F
26-Mar-13	Incorporation Date for Stockdale Capital Re, LLC.	Document 17 (Doc 1a), Exhibit 4a
1-Apr-14	Filing Date: Application for Registration of a Foreign Limited Liability Company, Stockdale Management LLC	Document 17 (Doc 1a), Exhibit 4g
26-May-15	Incorporation Date for Stockdale Capital Partners Real Estate Fund LP	Document 17 (Doc 1a), Exhibits 4c
26-May-15	Incorporation Date for Stockdale Capital Partners RE Fund I GP, LLC	Document 17 (Doc 1a), Exhibit 4d
16-Dec-15	Incorporation Date for Stockdale/SG, LLC	Document 17 (Doc 1a), Exhibit 4i
8-Jan-16	Filing Date: Articles of Organization for Stockdale Acquisitions, LLC	Document 17 (Doc 1a), Exhibit 4H
16-May-16	Incorporation Date for Stockdale Capital Services, LLC	Document 17 (Doc 1a), Exhibit 4b
16-May-16	Incorporation Date for Stockdale Capital RE Investments	Document 17 (Doc 1a), Exhibit 4e
10-Feb-17	Plaintiff registered the company Stockdate Capital LLC with TX Secretary of State	Document 23, (Doc 2a) pgh 2
12-Jun-18	Date of www.10news.com article: "Sources confirmed to 10News that Stockdale Capital Partners is now in escrow to buy the mall (Horton Plaza). (Corrected Jun 13, 2018)	Document 17 (Doc 1a), Exhibit 6
19-Jun-18	Filing date for USPTO trademark application 88006185 for work mark "Stockdale" by SIG	Document 7a
22-Jun-18	Date of email from Michael Townsend to Joe Pastora inquiring if Horton Plaza acquisition in San Diego is the Plaintiff	Document 17 (Doc 1a), pgh 25, Exhibit 7
26-Jun-18	Date of Cease and Desist letter from Plaintiff's counsel to SCP	Document 17 (Doc 1a), pgh 28
24-Aug-18	Date Plaintiff filed lawsuit	Document 6 (Doc 2a), pgh 7
7-Sep-18	Filed Date: Defendants' Response to Plaintiff's Motion for Temporary Restraining Order	Document 6 (Doc 2a)
7-Oct-18	USPTO denied Plaintiff's trademark application	Document 23, (Doc 2a), pgh 4
20-Nov-18	Date of Deposition of Kenneth Pratt	Document 20, Exhibit 1 (Doc 5c)
6-Dec-18	Deposition of Daniel Michaels	Do
14-Dec-18	Filed Date: Plaintiff's First Amended Complaint	Document 17 (Doc 1a)
28-Dec-18	Date of Kenneth Pratt Affidavit	Document 20, Exhibit 3, (Doc 2b)
4-Jan-19	Filed Date: Defendants Brief in Opposition to Plaintiff's Application for Preliminary Injunctive Relief	Document 23 (Doc 2a)
10-Jan-19	Date of Evidentiary Hearing	Document 1b
24-May-19	Date fo Robert Frank's Report	Document 3b, page 56
14-Jun-19	Date of Plaintiff's Expert Designation	Document 3a

The Subject Asset: **The term "Stockdale" as an Identifier of the Defendants' Operations**

Apportionment Analysis								
Considerations	Apportionment Dimension	The Analysis		Findings at the Subject Company		Contribution of the Subject Asset		
		How to Analyze	Why Analyze	At the Subject Company	What Other Assets Contribute?	Greater Apportionment %	Lower Apportionment %	Reference
Where are the product(s) purchased?	Demand	Store visits, Sales by channel / distributor / retailer data,	Can indicate contribution of other factors such as retailer's brands, location, etc.	SCP's investment opportunities are introduced to potential investors through exiting investor relationships and through an intermediary (Lazard)	Investor and Supplier Relationships	While the Stockdale term is used with SCP's full name, the name does not drive awareness at a point of sale	Due to sophistication of the existing and potential investors, Subject Asset provides no identifiable benefit	Doc 4a and 4b
How and where are the products shelved? What displays or in-store advertising are used? Is it an impulse purchase?	Demand	Store visits, retailer interviews, customer surveys, marketing department materials	What factors contributed to the sale of products to end users?	SCP uses Lazard as intermediary to identify and screen investors. SCP uses network of brokers and real estate firms to market vacancies to tenants and acquire properties.	Investor and Supplier Relationships. Assembled Workforce.	SCP's name used in Lazard presentations	SCP relies on relationships to source investors, acquire properties and find tenants, not the term "Stockdale"	Doc 4a and 4b
How are customers finding the product? What search terms connect customers to the point of sale?	Demand	Internet Analytics, Customer Surveys, Customer feedback, Review and comparison of marketing materials	What assets allow customers to find the product: brand, features, innovation, solving a problem, etc.?	SCP has not optimized their site for term "stockdale." Customers find SCP through intermediaries.	Investor and Supplier Relationships. Assembled Workforce.	SCP's name used in Lazard presentations	SCP relies on relationships to source investors, acquire properties and find tenants, not the term "Stockdale"	Schedule 3-1
Was the product sold in conjunction with other products?	Demand	Discussions with marketing and management teams, Review of retailers sales practices, Review of Company's data for other products, Review marketing and promotional materials	Understand if the subject product is the key driver in customer decisions	SCP manages real estate investments through partnerships and a fund	Track record, existing portfolio and capital. Investor and Supplier Relationships.	No use of term "Stockdale" to sell convoyed products.	Due to sophistication of the existing and potential investors, Subject Asset provides no identifiable benefit	Doc 4a and 4b
Key Product Features: What features are promoted? What features are emphasized? What features were explained?	Marketing	Review and comparison of marketing materials. Customer surveys (what features drove their interest)	Is the IP related to the product features that received the most attention in marketing?	SCP uses Lazard to build interest in its investments	Investor and Supplier Relationships. Existing Portfolio. Trackrecord.	Features promoted are Team's experience, trackrecord and property portfolio	Term "Stockdale" not used to describe features. Cannot invest or transaction directly through SCP's website.	Doc 4a and 4b
What price breaks, discounts, rebates or promotional pricing was used?	Marketing	Compare gross sales to net sales, compare pricing over time, discussions with marketing and management teams	How much did price or favorable sales terms impact the ability to sell. Consider both customer discounts and B2B sales terms.	No price breaks or discounts.	Capital	Investment terms are unrelated to the term "Stockdale"	SCP invested \$30M to seed Fund I	Doc 4a and 4b
What products compete for consumer attention and unit sales?	Comparables	Internet Analytics, Customer Surveys, Customer feedback, Discussion with Management, Comparable Company research	What other products appear in searches for key product features? What competing and substitute products exist?	SCP competes with other real estate investment firms and private equity groups	Workforce, Portfolio, Track Record	Currently no contribution from name recognition.	At the present time, the term "Stockdale" does not differentiate SCP from its competition - workforce, portfolio and track record do differentiate	Management meeting
What products and services provide similar benefits?	Comparables	Product comparisons, customer surveys, retail placement (what is sold in the same area), Internet search for features, problems, Products reviews and ratings	How else could the consumer meet their needs? Are there workarounds, substitutes or non-infringing alternatives?	Many other real estate investment opportunities and funds		Currently no contribution from name recognition.	At the present time, the term "Stockdale" does not differentiate SCP from its competition - workforce, portfolio and track record do differentiate	Management meeting
What other products did consumers consider?	Comparables	Customer Surveys, interviews & focus groups	What customer need is driving demand? Were customers loyal to a brand, looking for certain features, drawn to a design or influenced by marketing (or a friends referral)?	Many other real estate investment opportunities and funds			Investment and transaction counterparties conduct due diligence before completing a transaction	Doc 4b, Management Meeting
Did the product with IP achieve a price premium?	Financial	Product price comparisons. Use of discounts, rebates, coupons, etc.	Was the IP providing a benefit to the user? If neither the owner or the infringer are performing better, did the IP matter? What other factors are contributing to product pricing?	No evidence of a price benefit related to term "Stockdale"			SCP raising its first fund (Fund I). No evidence of any premiums achieved by SCP	Need to get pricing for other PB wines
Is the IP driving greater unit volumes?	Financial	Market share data	Was the IP providing a benefit to the user? If neither the owner or the infringer are performing better, did the IP matter? What other factors are impacting sales volumes?	SCP contributed \$30M or 10% of Fund I	Existing Capital		SCP contributed its own capital to seed Fund I	Doc 4a

The Subject Asset: **The term "Stockdale" as an Identifier of the Defendants' Operations**

Apportionment Analysis								
Considerations	Apportionment Dimension	The Analysis		Findings at the Subject Company		Contribution of the Subject Asset		
		How to Analyze	Why Analyze	At the Subject Company	What Other Assets Contribute?	Greater Apportionment %	Lower Apportionment %	Reference
Reduced Costs: Does the IP allow lower-cost production? More efficient use of assets? Lower Marketing & Advertising? Easier distribution or customer conversion?	Financial	CompCo margin comparisons, Industry performance metrics/studies,	Was the IP providing a benefit to the user? If neither the owner or the infringer are performing better, did the IP matter?	Name unrelated to cost of doing business. SCP relies upon Lazard to investor relationships	Investor relationships		No evidence of the Subject IP reducing costs at SCP	Management meeting
What is the Company's competitive advantage (innovation, location, service, low-cost, etc)?	Other Assets	Company Language Analysis	What factors does the Company cite as key factors for its success? How does the Company differentiate itself from comparables?	Trackrecord, Executive and management team	Track record, Assembled Workforce.	Currently no contribution from name recognition.	Name is not a competitive advantage	Management meeting
What other IP does the business own or use? What is the overall IP strategy?	Other Assets	SWOT, Management Discussions, USPTO and USCO filings, existence of Trade Secrets?	Understanding each party's IP portfolios can provide insight into the relative importance of the claimed IP.	No effort to register the trade name with USPTO			Name or trademark is not an IP strategy employed by SCP	Management meeting
How does the business develop new products? Have their been acquisitions?	Other Assets	M&A Research, R&D Activities, Management Discussions	How the IP was acquired, or the amount of investment to launch the product, can provide an indicate of its relative worth to the owner	SCP has not acquired other firms. Develops new products internally.	Assembled workforce	SCP plans to use term "Stockdale Capital Partners" with future partnerships and funds	Term "Stockdale" unrelated to development of new services.	Management meeting
How does the business protect its proprietary assets? How much is spent protecting assets?	Other Assets	Financial analysis, comparable company data,	If protection is selective, it may indicate the Plaintiff is only claiming infringement against certain infringers	No effort to register the trade name with USPTO			No effort to protect any IP related to "Stockdale"	Management meeting

Schedule 3

Search Engine Optimization and Internet Search

Stockdale Investment Group

v.

Stockdale Capital Partners, et al.

Google SEO Best Practices Comparison & Website Optimization

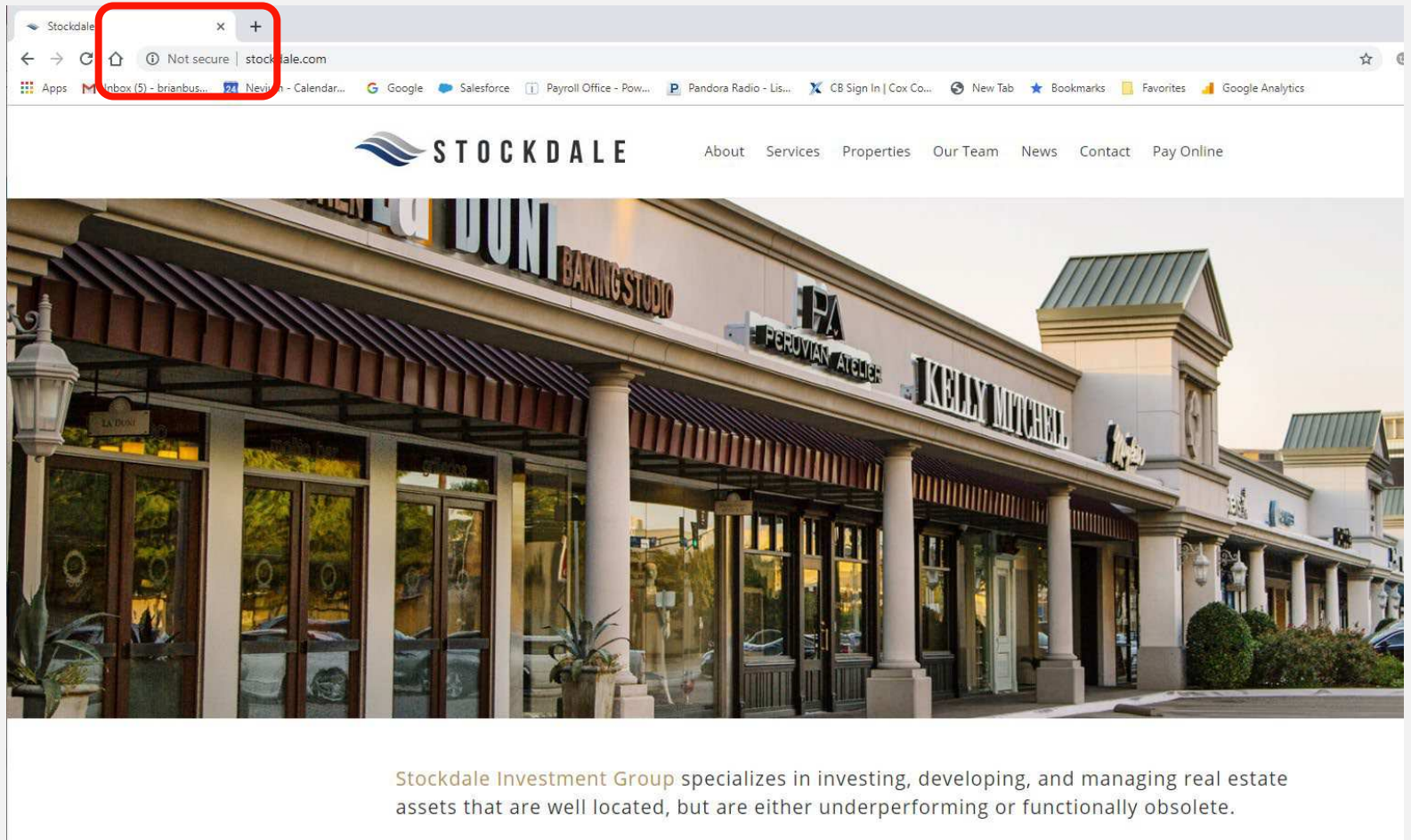
SEO Best Practices	Stockdale Investment Group (SIG) Stockdale.com	Stockdale Capital Partners (SCP) Stockdalecapital.com
<i>Title Tag</i>	Stockdale	Stockdale Capital Partners, LLC
<i>URL</i>	Stockdale.com*	Stockdalecapital.com
<i>Description</i>	Stockdale Investment - Commercial Real Estate	Stockdale Capital Partners is a vertically-integrated real estate investment firm focused on opportunistic investments across the Southwest
<i>Keywords</i>	None	None
<i>Headings</i>	No use of “stockdale”	No use of “stockdale”
<i>Images</i>	No use of “stockdale”	No use of “stockdale”

As shown on the next page, SIG’s website Stockdale.com, showed a “Not Secure” message in the URL because they have not purchased a Secure Sockets Layer (SSL) certificate to keep user information private. Google penalizes websites for not having an SSL certificate and may limit a website’s search results.

(From <https://security.googleblog.com/2017/04/next-steps-toward-more-connection.html>.)

As neither party is following Google’s best practices for SEO, neither party has attempted to optimize its site for the term “Stockdale”

Not Secure Message in URL



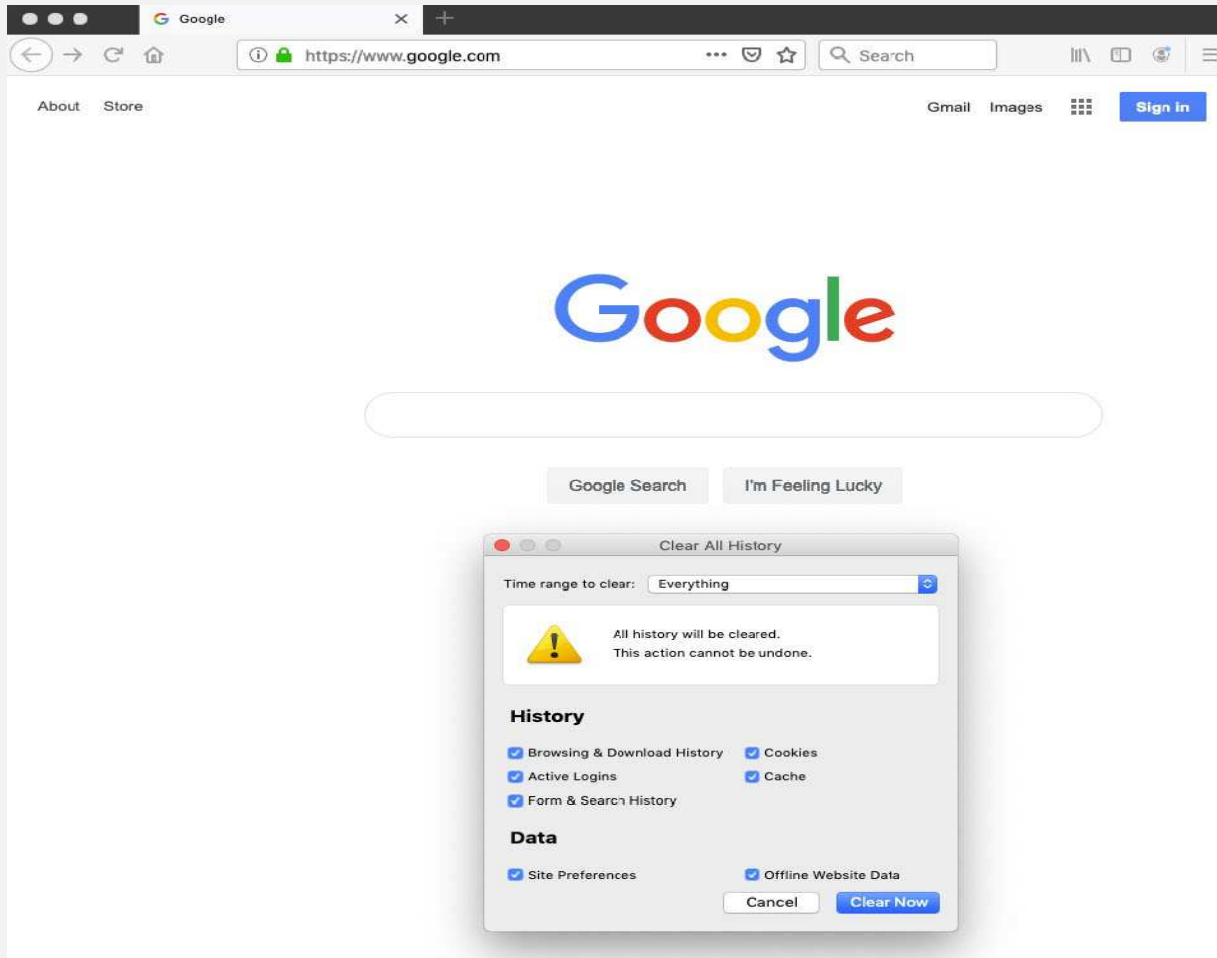
The screenshot shows a web browser window with the address bar displaying "Not secure | stockdale.com". A red box highlights the "Not secure" warning. The browser's taskbar shows several open tabs, including "New Tab - Calendar...". The website header features the "STOCKDALE" logo and navigation links: "About", "Services", "Properties", "Our Team", "News", "Contact", and "Pay Online". Below the header is a large photograph of a commercial building with signs for "BAKING STUDIO", "PERUVIAN ALCOVES", and "KEVIN MURPHY".

Stockdale Investment Group specializes in investing, developing, and managing real estate assets that are well located, but are either underperforming or functionally obsolete.

Documents 6a and 8c

Google Search Results for “Stockdale”

After clearing the browser search history and cookies



Document 8a

Google Search Results for "Stockdale"

The screenshot shows the first page of Google search results for the query "stockdale". The search bar at the top contains the word "stockdale" and shows "About 10,100,000 results (0.90 seconds)".

The first result is a Wikipedia entry for James Stockdale, including a brief biography and a link to the article. Below this is a map showing the location of Stockdale High School and Stockdale Country Club in California. To the right of the map is a detailed profile for James Stockdale, an aviator, with a photo and a summary of his military service, including his time as a prisoner of war in North Vietnam. Below the profile are sections for "Books" and "People also search for", each with small thumbnail images and titles. At the bottom of the search results, there is a section titled "See results about" with a link to a website about the Stockdale Award for Inspirational Leadership.

1st Page Search results include

- James Stockdale
- Stockdale High School
- The Stockdale Paradox
- . . . *and more*

1st Page Search results do not include

- SIG's website
- SCP's website

Full search 1st page search results at Document 8b

Schedule 4

Likelihood of Confusion Factors

Stockdale Investment Group

v.

Stockdale Capital Partners, et al.

Fifth Circuit Factors for Likelihood of Confusion

This Circuit considers the following eight nonexhaustive “digits” to assess likelihood of confusion:

- (1) Strength of the mark;
- (2) Mark similarity;
- (3) Product or service similarity;
- (4) Outlet and purchaser identity;
- (5) Advertising media identity;
- (6) Defendant’s intent;
- (7) Actual confusion; and
- (8) Care exercised by potential purchasers.

From: All. for Good Gov't v. Coal. for Better Gov't, 901 F.3d 498, 508 (5th Cir. 2018).

Fifth Circuit Factors for Likelihood of Confusion

Analytical Framework for Each Factor

Factors		Framework: analytical questions addressed
1	Strength of the Mark	Fanciful marks considered the strongest. Arbitrary is next strongest. Suggestive and Descriptive are weakest. Any evidence marks are "widely recognizable." Amount spent by Plaintiff to establish the mark. Consistency of use with all products/services.
2	Mark Similarity	Commonality or differences in font, logo and placement of mark. Use of other descriptive terms with the disputed term can mitigate any likelihood of confusion.
3	Product or Service Similarity	Commonality or differences in features and benefits of the goods/services.
4	Outlet and Purchaser Identity	Where the goods/services are purchased. Would the location of purchase be "visited" by similar customers?
5	Advertising Media Identity	Location and frequency of where the goods/services are advertised. Do parties advertise, market and promote in similar media?
6	Defendant's Intent	Any evidence the Defendant intended to confuse likely customers or partners. Any evidence Defendant chose the name with knowledge of Plaintiff's marks.
7	Actual Confusion	Any evidence or testimony indicating a target customer has confused the Parties? Any evidence the confusion resulting in a transaction shifting from one party to the other?
8	Care Exercised by Potential Purchasers	Sophistication of purchasers. Timing and depth of research and investigation (due diligence) conducted prior to purchase.

Factor 1: Strength of the Marks

Analysis for term “Stockdale”

Information Reviewed

<i>Claims / Statements</i>		<i>Source Material</i>	<i>Analysis</i>
1	Plaintiff claims the mark is arbitrary	<ul style="list-style-type: none">• Case Document 20• USPTO application 88006185 (Doc 7a)• US Census Report (Document 6-3, Exhibit C)• Frank Report (Doc 3a, p40)	<p>USPTO rejected the Plaintiff’s application for “Stockdale” work mark (Document 23, Ex D)</p> <p>Stockdale is a common surname</p> <p>Other entities that operate in real estate use “Stockdale” in their names (Frank Report, section on Internet Research)</p>
2	Plaintiff claims “hundreds of thousands” spent in advertising	<ul style="list-style-type: none">• Document 20, Exhibits 1 and 2	<p>Plaintiff has not provided an accounting of advertising spend or financial reports indicating marketing and promotional activities</p>

Factor 1 continued on next page

Factor 1: Strength of the Marks

Analysis for term “Stockdale”

Information Reviewed		
<i>Claims / Statements</i>	<i>Source Material</i>	<i>Analysis</i>
3	Some of Plaintiff’s marketing materials use logo with descriptive text, ie “Stockdale Investment Group”	<ul style="list-style-type: none">Pratt Deposition, Exhibit 4 <p>Plaintiff has used descriptive text with the term “Stockdale” in its logos – use of “Stockdale” alone is not consistent</p>
4	Use of term “Stockdale” on the Internet	<ul style="list-style-type: none">Schedule 3Frank Report <p>In Internet search, the term “Stockdale” refers to multiple geographies, many businesses, a common surname and more</p> <p>SCP does not optimize its website for the term “Stockdale”</p> <p>Cannot invest or transact directly at SCP’s website</p> <p>Frank Report: “Neither the Plaintiff nor the Defendant have a strong presence on the Internet unless the researcher is searching primarily for one entity or the other” (p29)</p>

Each of Plaintiff’s claims is not supported by documents provided to date; Internet analytics indicates term “Stockdale” is not associated with SIG alone

Factor 2: Mark Similarity

Analysis for term “Stockdale”

Stockdale Investment Group (SIG)



McKinney Ave
Dallas, Texas



R

Stockdale Capital Partners (SCP)



10850 Wilshire Blvd., Suite 1050
Los Angeles, CA 90024
(310) 693-4400 | stockdalecapital.com

Logos taken from websites at July 22, 2019

McKinney Ave flyer logo from Exhibit 4 to Deposition of Kenneth Pratt (Doc 5c)

Stockdale Capital Partners logo with contact information from Lazard presentation for SCP Real Estate Opportunities Fund I (Doc 4a)

Both include the term “Stockdale,” but font and logo design are different. SCP only uses the term with additional descriptive text.

Factor 3: Product or Service Similarity

Analysis for term “Stockdale”

Stockdale Investment Group (SIG)

Ownership and management of commercial and residential properties in California, Texas and North Carolina (SIG Website)

To date, investments made via own capital (Pratt Depo, p73)

Identifies its customers as tenants (Pratt Deposition, p51)

Owns real estate portfolio estimated at \$125 (Pratt Affidavit, Document 20 Ex2, #6); \$150 million, or \$200 million (Pratt Deposition, p97)

8 employees (Doc 1b, p14)

Stockdale Capital Partners (SCP)

Real estate investment firm that owns and manages commercial property investments across the Southwest (SCP website)

Joint venture and investment fund management: management of real estate investments on behalf of selected investors. Launching \$300 million fund with \$30 million of own capital. (Doc 4a)

Serves investors (Yari Declaration, Doc 5a) (Daniels Deposition, Doc 5d)

Invested ~\$789M of capital across 18 transactions with nine different institutional partners. Raised over \$325M of equity . . . Since 2015. The “Fund” is seeking \$300 million.” (Document 4a, SCP 0013106)

Over 60 employees (Doc 4a)

While both parties operate in commercial real estate, management of investments and size of the investment portfolio differentiates SCP’s services

Factor 4: Outlet and Purchaser Identity

Analysis for term “Stockdale”

Stockdale Investment Group (SIG)

Identifies its customers as tenants (Pratt Deposition, p51)

Lists vacant properties via network of brokers

To date, investments made via own capital (Pratt Deposition, p73)

Important information for consideration when identifying a property for acquisition: location fit, financial aspect, tenant mix, type of real estate, market rents, opportunity not seen by current OWNER (from Pratt Deposition, p39)

Stockdale Capital Partners (SCP)

Serves investors (Yari Declaration, Doc 5a) (Daniels Deposition, Doc 5d)

Manages owned properties, lists vacancies through brokers and tenant agencies

Works with Lazard as an intermediary to identify and screen prospective institutional investors (Doc 4a and Doc 4b)

Prospective commercial, industrial and residential tenants typically chose properties based on many of the factors listed by Kenneth Pratt in his deposition: location, business fit, financial, etc. In many transactions, tenants interact with brokers or other intermediaries in addition to the property owner. The name or term used to identify the property owner is likely an unimportant factor for tenants when selecting a property for their business or residence.

While both interact with brokers and tenants, real estate investments and owner-tenant transactions are driven by factors other than names or terms used to describe the property owner

Factor 5: Advertising Media Identify

Analysis for term “Stockdale”

Stockdale Investment Group (SIG)

Claims “hundreds of thousands” spent on marketing and promotions. (Pratt Declaration, #9, Doc 5b) *No accounting or financial records provided.*

SIG has appeared in articles in Dallas-area newspapers

Provided samples of property flyers

CEO unable to name the magazines in which SIG advertises (from Pratt Deposition, p104)

Stockdale Capital Partners (SCP)

No product or service offerings on the Website

Manages owned properties, lists vacancies through brokers and tenant agencies

Works with Lazard as an intermediary to identify and screen prospective institutional investors (Doc 4a and Doc 4b)

Advertising, marketing and media activities do not appear to overlap. SIG does not undertake any activities equivalent to SCP’s use of Lazard to identify and screen investors.

Factor 6: Defendants' Intent

Analysis for term "Stockdale"

Information Reviewed

- A. Plaintiff selected the term "Stockdale" based on its location of origin. (First Amended Complaint, Doc 1a, p5) (Evidentiary Hearing transcript, p7)
- B. Defendants selected the term "Stockdale" as a reference to the Stockdale Paradox. (Daniels deposition and Doc 4a)
- C. None of the documents and information provided indicate SCP selected the term "Stockdale" attempting to refer to, or imply association with, SIG
- D. SIG's CEO is not aware of any evidence that SCP was aware of SIG when SCP was formed (Pratt deposition, p140)
- E. Plaintiff's designated expert, Robert Frank, implies that SCP management was negligent in not searching the USPTO trademark database when selecting the term "Stockdale" in 2013. (Frank Report, p45) However, SCP selected "Stockdale" in 2013, five years prior to the June 19, 2018 Filing Date of SIG's trademark application. While failure to search the USPTO does not indicate an intent to refer to SIG, the logic and conclusion in the Frank Report should not be used as evidence that SCP intended to refer to SIG or any other entity using the term "Stockdale."

No evidence of intent has been provided

Factor 7: Actual Confusion

Analysis for term “Stockdale”

Information Reviewed		
Claims / Statements	Source Material	Analysis
<p>1</p> <p>Email from Michael Townsend regarding Horton Plaza in San Diego</p> <p>Tom Short mentioned an entity with the name “stockdale” to SIG’s CEO in 2017</p> <p>SIG’s CEO testified that other parties expressed confusion during in-person meetings</p>	<ul style="list-style-type: none">• June 2018 email from Michael Townsend (Document 20-17)• Pratt Deposition (Doc 5c, pages 112 – 114)• Evidentiary Hearing transcript (Doc 1b, pages 32 and 49)	<p>Evidence of only 1 inquiry that did not impact a transaction for either party</p> <p>Tom Short & Hunter Brouse, personal friends of SIG Principals, admitted no confusion about SIG’s business, operations or personnel and affiliations (Deposition Testimony)</p> <p>Pratt testified that Tom Short continues to do business with SIG (Pratt Deposition, p142)</p>
<p>2</p> <p>SCP is not aware of any instances of confusion</p> <p>SCP offered to redirect any inquiries received to SIG, but none received to date</p>	<ul style="list-style-type: none">• Steven Yari Declaration, paragraph 12• Dennis Harris meeting, July 10, 2019	<p>Defendant does not appear to have benefited from any confusion and has offered to rectify any future confusion</p>

No evidence any of any relevant confusion that impacts the selling or purchasing of goods or services in question

Factor 8: Care Exercised by Potential Purchasers

Analysis for term “Stockdale”

Information Reviewed

- A. Investors conduct extensive due diligence before investing with SCP. Due diligence requires SCP to maintain a large staff and network of professional services firms. Potential investors often engage their own advisors and professional services firms for due diligence prior to investing. (Docs 4a and 4b, interview with Dennis Harris on July 10, 2019)
- B. SIG’s CEO testified about important information for consideration when identifying a property for acquisition, including: location, fit, financial aspect, tenant mix, type of real estate, market rents, opportunities not seen by current owner. (Pratt deposition, p39)
- C. SCP has a stated investment policy and all investment decisions are reviewed and approved by the firm’s Investment Committee (Docs 4a and 4b)
- D. SIG’s CEO testified: “its really easy to check our references” to see if SIG performs (Doc 1b, p19)
- E. Court stated: “in a real estate deal at some point if the parties use sufficient due diligence, that they would not be confused about whom they're dealing with. If somebody enters a real estate deal without even ascertaining whom they're dealing with, I think they deserve whatever mischief results.” (Doc 1b, p64)

Real estate transactions and investments are not impulse purchases. Research and due diligence are conducted such that a term used in the name of any party involved would not confuse the potential purchaser, investor or partner.

Fifth Circuit Factors for Likelihood of Confusion

Summary of Findings for Each Factor

Factors		Findings
1	Strength of the Mark	Each of Plaintiff's claims is not supported by documents provided to date; Internet analytics indicates term "Stockdale" is not associated with SIG alone
2	Mark Similarity	Both include the term "Stockdale," but font and logo design are different. SCP only uses the term with additional descriptive text.
3	Product or Service Similarity	While both parties operate in commercial real estate, management of investments and size of the investment portfolio differentiates SCP's services
4	Outlet and Purchaser Identity	While both interact with brokers and tenants, real estate investments and owner-tenant transactions are driven by factors other than names or terms used to describe the property owner.
5	Advertising Media Identity	Advertising, marketing and media activities do not appear to overlap. SIG does not undertake any activities equivalent to SCP's use of Lazard to identify and screen investors.
6	Defendant's Intent	No evidence of intent has been provided
7	Actual Confusion	No evidence any of any relevant confusion that impacts the selling or purchasing of goods or services in question
8	Care Exercised by Potential Purchasers	Real estate transactions and investments are not impulse purchases. Research and due diligence are conducted such that a term used in the name of any party involved would not confuse the potential purchaser, investor or partner.

Schedule 5

Review of the Likelihood of Confusion Analysis in the Frank Report

Stockdale Investment Group

v.

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Likelihood of Confusion Analysis from the Frank Report

Summary of Statements in the Frank Report

Factors	Page	Frank Report Statements
1 Strength of the Mark	40	Frank Report states STOCKDALE is an arbitrary trademark
2 Mark Similarity	41	Word Stockdale is used by both parties. Descriptive terms following the first term are given substantially less weight.
3 Product or Service Similarity	41-44	Both parties are involved in commercial real estate projects
4 Outlet and Purchaser Identity	44	Based on conclusion that the goods and services offered are nearly identical, presumes customers for the properties offered are the same
5 Advertising Media Identity	44	Cites Pratt's deposition testimony regarding advertising activities. When the goods/services are identical it is presumed that the channels of trade are the same and that marketing and advertising efforts are similar.
6 Defendant's Intent	45-46	Mr. Michaels of SCP neglected to search for existence Stockdale trademarks
7 Actual Confusion	46	References Plaintiff's testimony regarding instances of confusion
8 Care Exercised by Potential Purchasers	48-53	References Mr. Michaels testimony and Mr. Yari's declaration regarding definition of customers, investors and tenants

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: **ESTTA985874**

Filing date: **07/08/2019**

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

Applicants	Stockdale Investment Group, Inc.
Application Serial Number	88006185
Application Filing Date	06/19/2018
Mark	STOCKDALE
Date of Publication	04/16/2019
Extension Granted to	Stockdale Capital Partners, LLC
Extension Granted Until	08/14/2019
Attachments	Response to Request for Reconsideration.pdf(88767 bytes)
Potential Opposer's Correspondence Information	COLLIN A ROSE CHAMBERLAIN HRDLICKA WHITE WILLIAMS & AUGHTRY PC 1200 SMITH ST, 14TH FLOOR HOUSTON, TX 77002 UNITED STATES collin.rose@chamberlainlaw.com, trade- marks@chamberlainlaw.com 713- 658-1818

Response to Board Inquiry or Order

Potential Opposer, Stockdale Capital Partners, LLC, files the attached response to an order or inquiry of the Board.

The undersigned represents that this submission is being made by Potential Opposer or someone authorized to represent Potential Opposer before the United States Patent and Trademark Office, and with Potential Opposer's consent.

Respectfully submitted,

/Collin A. Rose/

Collin A. Rose

collin.rose@chamberlainlaw.com, trademarks@chamberlainlaw.com

07/08/2019

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

In the Matter of Serial No. 88/006,185
Mark: STOCKDALE
Application Filing Date: June 19, 2018

Stockdale Capital Partners, LLC	:	
Opposer,	:	
	:	
v.	:	Opposition No. 88/006,185
	:	
Stockdale Investment Group, Inc.	:	
Applicant	:	

Box TTAB
Commission for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

**POTENTIAL OPPOSER’S RESPONSE TO REQUEST FOR
RECONSIDERATION**

Applicant seeks reconsideration of the First Extension Order granted by the Trademark Trial and Appeal Board (“TTAB”) on May 7, 2019 (the “Request for Reconsideration”). Please note this is a duplicate filing of a physical mail copy filed by Priority Express Mail on July 3, 2019. This electronic filing is being made to expedite the process of consideration by the Trademark Trial and Appeal Board.

The Application (Serial No. 88/006,185) (“185 Application”) published for opposition on April 16, 2019. Any opposition was due by May 16, 2019. On May 6, 2019, Stockdale Capital Partners, LLC (“Potential Opposer”) sought a request for

extension of time to oppose the registration of the '185 Application, citing ongoing settlement negotiations between the parties. The TTAB granted the request for extension on May 7, 2019 and set the deadline for opposition as August 14, 2019.

Applicant argues that Potential Opposer made false statements in seeking the extension of time because Potential Opposer and Applicant were, in fact, not engaged in settlement discussions. Applicant contends that the request for extension was made without good cause under TMBP Section 207.02 and, as a result, the extension should be cancelled. The TTAB denied Applicant's Request for Reconsideration on June 17, 2019 with respect to one unfounded ground, but allowed Potential Opposer the opportunity to respond to the allegation "that Potential Opposer was not engaged in settlement discussions with Applicant when the May 7, 2019 extension of time to oppose was filed." Potential Opposer now responds as follows:

1. At the outset of the litigation in the United States District Court for the Southern District of Texas (defined by Applicant as the "Texas Lawsuit"), Applicant conveyed a verbal offer of settlement. Potential Opposer rejected the settlement offer, but, as litigants often do, Potential Opposer remained hopeful that the parties could reach an early resolution of the lawsuit. Clearly, an early resolution of the Texas Lawsuit would potentially obviate the need for Potential Opposer to file an opposition, thus saving the parties time, money, and resources.

2. Following pleading, discovery and evidentiary hearings in connection with Applicant's injunction requests in the Texas Lawsuit, which were both denied

by the Court, the parties again convened with respect to a potential resolution. To that end, counsel spent considerable time and effort working to schedule a settlement conference between the parties. A settlement conference occurred by telephone on April 8, 2019 between counsel and party representatives. The intent of the call from Potential Opposer's perspective was not to convey any settlement offers, but instead to discuss the potential parameters of an early resolution.

3. Applicant is correct to note that the call "concluded without mutual agreement or other resolution;" however, in no way did the call conclude settlement negotiations between the parties. To the contrary, Applicant's counsel invited Potential Opposer to extend an offer of settlement for consideration. The conference did not conclude settlement discussions between the parties, but instead the settlement discussions were kept alive and ongoing from Potential Opposer's perspective.

4. Consistent with this understanding, following the settlement conference on April 8, 2019, Potential Opposer considered potential settlement parameters in an effort to craft an offer of settlement. Likewise, Potential Opposer decided to request an extension of time to oppose the Application in order to continue settlement discussions with the hope that early resolution of the Texas Lawsuit would save unnecessary time and expense in filing and litigating an opposition before the TTAB.

5. With that backdrop, on May 6, 2019, ten days before any opposition was due, Potential Opposer filed its request for extension of time to oppose in

accordance with the TTAB Manual of Procedure, specifically stating good cause under Section 207.02 for settlement negotiations between the parties. At the time the request was filed, Potential Opposer had not made an offer of settlement as contemplated by the parties and, as such, settlement negotiations were ongoing.

6. On May 14, 2019, Potential Opposer transmitted an offer of settlement to Applicant and also conveyed the offer by telephone. Potential Opposer will not disclose the terms of the offer of settlement, but Applicant rejected the offer. Applicant alleges that Potential Opposer only made the offer “[i]n an attempt to cover itself,” but such an allegation, besides being inflammatory, is mere conjecture unsupported by any evidence. In any event, the TTBA had already granted the extension by the time the offer of settlement was made.

7. Applicant cites *NFL v. DNH Mgmt., LLC* for the proposition that denial of the request to extend would be proper under the circumstances presented here, but *NFL* is inapposite to the present situation. *Nat'l Football League, NFL Properties LLC v. Dnh Mgmt., LLC*, 85 U.S.P.Q.2d 1852, 2008 WL 258323 (TTAB. 2008). There, the opposers sought an extension of the discovery period because they delayed discovery due to ongoing settlement discussions. *Id.* at *2. The opposers waited more than two months from the open of discovery to even attempt settlement negotiations. *Id.* However, the opposers’ attempts at settlement negotiations were wholesale rejected by the applicant who did not engage or encourage settlement negotiations. *Id.* Moreover, having received no engagement from the applicant on settlement negotiations, the opposers waited more than three months to request an

extension and did not engage in discovery, an amount of time the TTAB found to be “ample time” to serve discovery. *Id.* The TTAB found that:

In light of their numerous unsuccessful attempts to reach applicant through various forms of communication as well applicant’s lack of interest in discussing resolution, opposers knew or should have known that settlement or even legitimate talk of settlement was highly unlikely.

Id. The TTAB concluded that the opposers’ need for an extension was “the product solely of opposers’ unwarranted delay in initiating discovery.” *Id.*

8. As an initial matter, the situation presented here arises in the context of an initial request for extension to even oppose the ’185 Application, not in the discovery context following institution of an opposition. Notwithstanding the obvious procedural and factual differences, at the time Potential Opposer filed its request for extension of time to oppose, it had received an invitation from Applicant to make an offer of settlement. Most importantly, unlike *NFL*, Applicant engaged in the settlement discussions and expressed interest in discussing resolution. Based on this engagement, Potential Opposer filed its request for extension and made an offer of settlement. Potential Opposer did not delay in doing either.

9. Based on the foregoing, Potential Opposer’s request for extension of time to oppose was supported by good cause under TTAB Manual of Procedure Section 207.02 because settlement negotiations were ongoing between the parties.

For the foregoing reasons, Potential Opposer respectfully requests that Applicant’s Request for Reconsideration be denied and that, accordingly, Potential

Opposer's deadline to file an opposition remain August 14, 2019 per the TTAB's grant of the request to extend time to oppose.

Dated: July 8, 2019


Respectfully submitted,
Stockdale Capital Partners, LLC



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Certificate of Filing

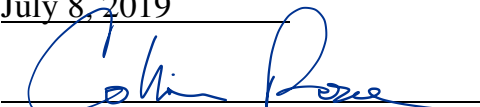
I hereby certify that this correspondence is being transmitted to the Trademark Trial and Appeal Board via ESTTA.

Date: July 8, 2019
Signed: 
Collin A. Rose

Certificate of Service

I hereby certify that a true copy of this paper is being served upon the Applicant's attorney of record on July 8, 2019 by email at the following addresses:

Cathryn A. Berryman
Winstead, P.C.
cberryman@winstead.com

Date: July 8, 2019
Signed: 
Collin A. Rose