

ESTTA Tracking number: **ESTTA1041585**

Filing date: **03/11/2020**

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

Proceeding No.	91254547
Filing Party	Plaintiff Clark Capital Management Group, Inc.
Other Party	Defendant Capital One Financial Corporation
Pending Motion	There is no motion currently pending and no other motion is being filed concurrent with this consent motion.
Attachments	Capital One - Suspension of Notices of Opposition with Consent.pdf(24120 bytes) Exhibit A.pdf(166554 bytes)

Consent Motion for Suspension in View of Civil Proceeding

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Clark Capital Management Group, Inc. hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Clark Capital Management Group, Inc. has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Certificate of Service

The undersigned hereby certifies that a copy of this filing has been served upon all parties, at their address of record by Email on this date.

Respectfully submitted,

/Camille M. Miller/

Camille M. Miller

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03/11/2020

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

Clark Capital Management Group, Inc.,	:	Proceeding Nos.: 91254547, 91254551, 91254553, 91254554, 91254552, 91254555
	:	:
Opposer,	:	Serial Nos.: 88307857, 88307841, 88307681, 88307765, 88307792, 88307818
	:	:
v.	:	Marks: FUNDING NAVIGATOR, FINANCING NAVIGATOR, PREAPPROVAL NAVIGATOR, PREQUAL NAVIGATOR, LEADS NAVIGATOR, DESKING NAVIGATOR
Capital One Financial Corporation,	:	:
	:	:
Applicant.	:	:
	:	:

**MOTION ON CONSENT TO SUSPEND PROCEEDINGS PENDING
DISPOSITION OF RELATED FEDERAL LAWSUIT**

Opposer, Clark Capital Management Group, Inc., (“Clark Capital” or “Opposer”), pursuant to 37 C.F.R. §2.117, by and through its undersigned counsel, hereby moves, with Applicant’s consent, to suspend the above-referenced Opposition proceedings (the “Proceedings”) pending the disposition of a pending Federal lawsuit concerning the same marks and involving the same parties. The federal lawsuit is currently being litigated in the United States District Court, Eastern District of Pennsylvania, under the caption *Clark Capital Management Group, Inc. v. Capital One Financial Corporation* (Case No. 2:20-cv-01302-CDJ), before the Honorable C. Darnell Jones II, U.S. District Judge for the Eastern District of Pennsylvania (the “Federal Action”).

Counsel for Applicant, Robson D. Bassett of Capital One, has consented to this Motion in an email to counsel for Opposer, Cozen O’Connor, on March 11, 2020.

In the Federal Action filed on March 6, 2020, Opposer seeks a finding, among other

things, that Applicant's application for its FUNDING NAVIGATOR, FINANCING NAVIGATOR, PREAPPROVAL NAVIGATOR, PREQUAL NAVIGATOR, LEADS NAVIGATOR, and DESKING NAVIGATOR marks (the "Applicant's NAVIGATOR Applications") in connection with financial services are likely to cause confusion as to the source or origin with Opposer's federally registered NAVIGATOR® marks. A true and correct copy of Opposer's Federal Complaint ("Complaint") filed against Applicant is attached hereto and marked as **Exhibit A**. Opposer believes that the Federal Action will have a substantial bearing, if not dispositive impact, on these Proceedings. The proceedings in the Federal Action are underway.

The parties will suffer no prejudice if this matter is stayed. These Opposition Proceedings have only recently been initiated as Opposer's Notices of Opposition have just been filed on record. No discovery has yet to be issued or sought in these Proceedings.

Opposer expects the relief sought in the Federal Action to be granted. A finding of infringement by the Applicant in the Federal Action will establish and result in findings, as set forth in the Opposer's Complaint, that Applicant's NAVIGATOR Applications are confusingly similar to Opposer's federally registered NAVIGATOR® marks.

The above findings will directly address Opposer's claims in its Opposition Proceedings that Applicant's FUNDING NAVIGATOR, FINANCING NAVIGATOR, PREAPPROVAL NAVIGATOR, PREQUAL NAVIGATOR, LEADS NAVIGATOR, and DESKING NAVIGATOR marks in connection with financial services are confusingly similar to Opposer's NAVIGATOR® marks within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). As a result, if Clark Capital is successful, the Federal Action should render and establish that the marks in Applicant's NAVIGATOR Applications and that are the subject of

these Proceedings should not be allowed to register due to a likelihood of confusion with Opposer's NAVIGATOR® marks.

In accordance with Rule 510.02(a) of the Trademark Trial and Appeal Board rules, the suspension of these Proceedings is proper. *See* 37 CFR § 2.117(a); *Other Telephone Co. v. Connecticut National Telephone Co.*, 181 USPQ 125 (TTAB 1974), *petition denied*, 181 UPSQ 779 (Comm'r 1974); *Tokaido v. Honda Associates Inc.*, 179 USPQ 861 (TTAB 1973); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805 (TTAB 1971).

WHEREFORE, good cause having been shown, Opposer, with Applicant's consent, requests that the above-captioned Proceedings be suspended.

Dated: March 11, 2020

Respectfully submitted by:

/s/ Camille M. Miller
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Attorneys for Plaintiff,
Clark Capital Management Group, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that on this 11th day of March, 2020, a true and correct copy of the foregoing Motion to Suspend Notices of Opposition was sent to counsel for Applicant at the address set forth below, via email and US mail.

ROBSON D. BASSETT
Robson.bassett@capitalone.com
CAPITAL ONE FINANCIAL CORPORATION
15000 CAPITAL ONE DRIVE
12077-0470 / TRADEMARKS
RICHMOND, VIRGINIA UNITED STATES 23238

/s/ Camille M. Miller
Camille M. Miller

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Clark Capital Management Group, Inc.,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.: _____
v.	:	
	:	
Capital One Financial Corporation,	:	JURY TRIAL DEMANDED
	:	
Defendant.	:	
	:	

COMPLAINT

Plaintiff, Clark Capital Management Group, Inc. (“Plaintiff” or “Clark Capital”), by and through its undersigned attorneys bring this complaint against Defendant, Capital One Financial Corporation (“Defendant” or “Capital One”), for trademark infringement and unfair competition, in violation of federal and state law, and alleges as follows:

PARTIES

1. Plaintiff, Clark Capital Management Group, Inc., is a Pennsylvania corporation with a place of business at One Liberty Place, 1650 Market Street, 53rd Floor, Philadelphia, PA 19103.

2. Defendant, Capital One, is a Delaware corporation with a place of business at 15000 Capital One Drive, Richmond, VA 23238.

JURISDICTION AND VENUE

3. This action arises under the Acts of Congress under the Lanham Act, Title 15 U.S.C. § 1051, *et seq.*, Pennsylvania Unfair Trade Practices and Consumer Protection Law, and common law. As such, this Court has subject matter jurisdiction under the provisions of Title 28 U.S.C. §§ 1331 and 1338 because this action involves federal questions of law.

4. This court has original jurisdiction over the claims brought under federal law pursuant to 28 U.S.C. §§ 1331 and 1338(b) and 15 U.S.C. § 1121.

5. This court has supplemental jurisdiction over the claims brought under the common law pursuant to 28 U.S.C. § 1338(b) and § 1367(a).

6. This Court may exercise personal jurisdiction over Capital One because a substantial part of the events giving rise to this action have occurred and continue to occur in this judicial district. Moreover, Capital One regularly solicits business from, does business with, and derives revenue from goods and/or services provided to customers in this district. Capital One has willfully and personally availed itself of the privileges of conducting business in the Commonwealth of Pennsylvania and in the Eastern District of Pennsylvania and Capital One has sought protection and benefit from the laws of the Commonwealth of Pennsylvania. As such, Capital One should reasonably expect that its activities might have consequences herein.

7. Venue is proper in this judicial district pursuant to Title 28 U.S.C. §§ 1391(b)(2). Capital One has locations throughout the United States, including numerous locations within this judicial district where a substantial part of the events or omissions giving rise to this claim occurred.

**BACKGROUND AS TO CLARK CAPITAL'S BUSINESS
AND ITS INTELLECTUAL PROPERTY**

8. Clark Capital is an independent asset management firm that provides financial counseling and planning services, including, but not limited to, investment advisory services, investment counseling, wealth management, asset allocation, and retirement planning services to its customers, such as individuals, corporations, and institutions throughout the United States. Clark Capital's financial and investment products and services described in this paragraph are collectively referred to herein as the "Clark Capital Financial Services."

9. Clark Capital has adopted and used numerous marks comprising “NAVIGATOR” and/or owns numerous U.S. trademark registrations comprising “NAVIGATOR” for use in connection with the Clark Capital Financial Services (collectively, the “NAVIGATOR® Marks”), including, but not limited to, its NAVIGATOR®, NAVIGATOR FUND®, and NAVIGATOR FUNDS® registrations.

10. On September 21, 1990, Clark Capital filed an application for registration of the mark NAVIGATOR® in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. (the “NAVIGATOR® Mark”). This application was assigned Serial No. 74/099,288 and covers the use of this mark in connection with “investment advisory services in the field of stocks and mutual funds” in Class 36. The date of first use of the NAVIGATOR® Mark is at least as early as March 10, 1987. This application was allowed by the Patent and Trademark Office and issued as Registration No. 1,662,756 on October 29, 1991. The registration has acquired incontestable status with the approval of its Section 15 Declaration. This registration is active and valid.

11. On June 10, 1998, Clark Capital filed an application for registration of the mark NAVIGATOR FUND® in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. (the “NAVIGATOR FUND® Mark”). This application was assigned Serial No. 75/499,466 and covers the use of this mark in connection with “investment advisory services in the field of stocks and mutual funds” in Class 36. The date of first use of the NAVIGATOR FUND® Mark is at least as early as April 1, 2002. This application was allowed by the Patent and Trademark Office and issued as Registration No. 2,639,961 on October 22, 2002. The registration has acquired incontestable status with the approval of its Section 15 Declaration. This registration is active and valid.

12. On April 12, 2012, Clark Capital filed an application for registration of the mark NAVIGATOR FUNDS® in the United States Patent and Trademark Office on the Principal Register under the Lanham Act, 15 U.S.C. § 1051 et seq. (the “NAVIGATOR FUNDS® Mark”). This application was assigned Serial No. 85/596,252 and covers the use of this mark in connection with “mutual fund brokerage, distribution, investment; mutual fund services, namely, mutual fund brokerage, mutual fund distribution and the administration and management of mutual funds, financial portfolio solutions, and investments; investment advisory services in the field of stocks, bonds, annuities and mutual funds; investment consultation; asset allocation services; stock brokerage services; fund investment consultation; funds investment” in Class 36. The date of first use of the NAVIGATOR FUNDS® Mark is at least as early as April 1, 2002. This application was allowed by the Patent and Trademark Office and issued as Registration No. 4,453,183 on December 24, 2013. The registration has acquired incontestable status with the approval of its Section 15 Declaration. This registration is active and valid.

13. Clark Capital’s NAVIGATOR® Marks are strong and inherently distinctive. Since 1987, Clark Capital has expanded its use of and registrations for marks comprising “NAVIGATOR” and the NAVIGATOR® Marks have developed invaluable goodwill and reputation within the financial industry as a designator of source of the Clark Capital Financial Services.

14. Clark Capital’s NAVIGATOR® Marks have become well-known throughout the financial industry. Through its widespread, continuous, and substantially exclusive use of the NAVIGATOR® Marks to identify the Clark Capital Financial Services and Clark Capital as its source, Clark Capital owns valid and subsisting federal statutory and common law rights in the NAVIGATOR® Marks.

15. Clark Capital has expended substantial time, money, and resources marketing, advertising, and promoting its financial services under the NAVIGATOR® Marks.

16. The market success of the Clark Capital Financial Services offered under the NAVIGATOR® Marks has been extraordinary, and the relevant public has come to rely upon and recognize the Clark Capital Financial Services by Clark Capital's NAVIGATOR® Marks.

17. Clark Capital has vigorously defended its NAVIGATOR® Marks, including the Incontestable NAVIGATOR Registrations, against infringers and potential infringers. Clark Capital has filed many Opposition proceedings in the United States Patent and Trademark Office to prevent the registration of conflicting marks. Clark Capital has also filed lawsuits in federal district court on many occasions in order to protect its NAVIGATOR® Marks.

18. Clark Capital has notified Defendant of Clark Capital's NAVIGATOR® Marks and requested that Defendant withdraw, amend, and/or cease use of the Capital One NAVIGATOR Designations (defined below) and/or any additional designations that are confusingly similar to Clark Capital's NAVIGATOR® Marks.

BACKGROUND AS TO DEFENDANT'S UNLAWFUL CONDUCT

19. Defendant is using the term NAVIGATOR, either alone or in connection with other terms, in United States commerce in connection with installment loans.

20. Defendant, in a recent attempt to expand its scope of use and registrations of marks comprising NAVIGATOR, filed for additional U.S. trademark applications in connection with services similar to the Clark Capital Financial Services for marks comprising "NAVIGATOR" (collectively, the "Capital One NAVIGATOR Applications") including, DESKING NAVIGATOR, FINANCING NAVIGATOR, FUNDING NAVIGATOR, LEAD NAVIGATOR, LEADS NAVIGATOR, LENDING NAVIGATOR, PREAPPROVAL

NAVIGATOR, PRE-APPROVAL NAVIGATOR, PREQUAL NAVIGATOR, and SERVICING NAVIGATOR.

21. On November 12, 2018, Defendant applied for U.S. Trademark Application Serial No. 88190599 for NAVIGATOR for mobile application software for use in obtaining automobile loans; mobile application software for use in purchasing automobiles and automobile financing in Class 9, automobile lending services, namely, installment loans; refinancing of automobile loans; servicing of automobile loans; providing information about automobile financing; providing an Internet website portal used by automobile dealers to assist customers in obtaining automobile loans and for generating leads; providing an Internet website portal featuring promotion and advertising of automobile loan services in Class 36, and providing an Internet website portal for use in obtaining automobile loans; providing an Internet website portal featuring technology for use in purchasing automobiles and automobile financing in Class 42.

22. Defendant subsequently abandoned the NAVIGATOR application on January 14, 2020.

23. Upon information and belief, Defendant is using the marks that are the subject of the Capital One NAVIGATOR Applications in connection with financial-related services. The Capital One NAVIGATOR Applications and its AUTO NAVIGATOR and DEALER NAVIGATOR registrations are together referred to herein as the “Capital One NAVIGATOR Designations.”

24. On February 19, 2019, Defendant filed an application with the USPTO (Serial No. 88307841) for FINANCING NAVIGATOR (disclaimed FINANCING) for downloadable mobile application software for use in obtaining automobile loans; mobile application software for use in purchasing automobiles and automobile financing; downloadable mobile application

software generating information for use by automobile dealers to assist customers in obtaining automobile loans in Class 9 and automobile lending services, namely, installment loans; providing information about automobile financing; providing an internet website portal for use in obtaining automobile loans; providing an internet website portal for use in automobile lease financing; providing an internet website portal for use by automobile dealers to assist customers in obtaining automobile loans in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on November 12, 2019. On November 18, 2019, Clark Capital filed and was granted its first ninety-day request for an extension of time to oppose.

25. On February 19, 2019, Defendant filed an application with the USPTO (Serial No. 88307857) for FUNDING NAVIGATOR (disclaimed FUNDING) for downloadable mobile application software for use in obtaining automobile loans; mobile application software for use in purchasing automobiles and automobile financing; downloadable mobile application software generating information for use by automobile dealers to assist customers in obtaining automobile loans in Class 9 and automobile lending services, namely, installment loans; providing information about automobile financing; providing an internet website portal for use in obtaining automobile loans; providing an internet website portal for use in automobile lease financing; providing an internet website portal for use by automobile dealers to assist customers in obtaining automobile loans in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on November 12, 2019. On November 18, 2019, Clark Capital filed and was granted its first ninety-day request for an extension of time to oppose.

26. On February 19, 2019, Defendant filed an application with the USPTO (Serial No. 88307818) for DESKING NAVIGATOR (disclaimed DESKING) for downloadable mobile application software for use in obtaining automobile loans; mobile application software for use in purchasing automobiles and automobile financing; downloadable mobile application software generating information for use by automobile dealers to assist customers in obtaining automobile loans in Class 9 and automobile lending services, namely, installment loans; providing information about automobile financing; providing an internet website portal for use in obtaining automobile loans; providing an internet website portal for use in automobile lease financing; providing an internet website portal for use by automobile dealers to assist customers in obtaining automobile loans in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on November 12, 2019. On November 18, 2019, Clark Capital filed and was granted its first ninety-day request for an extension of time to oppose.

27. On February 19, 2019, Defendant filed an application with the USPTO (Serial No. 88307792) for LEADS NAVIGATOR (disclaimed LEADS) for downloadable mobile application software for use in obtaining automobile loans; mobile application software for use in purchasing automobiles and automobile financing; downloadable mobile application software generating information for use by automobile dealers to assist customers in obtaining automobile loans in Class 9, providing an internet website portal for use by automobile dealers to identify, aggregate and convert customer sales leads into financing in Class 35, and automobile lending services, namely, installment loans; providing information about automobile financing; providing an internet website portal for use in obtaining automobile loans; providing an internet website portal for use in automobile lease financing; providing an internet website portal for use

by automobile dealers to assist customers in obtaining automobile loans in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on November 12, 2019. On November 18, 2019, Clark Capital filed and was granted its first ninety-day request for an extension of time to oppose.

28. On February 19, 2019, Defendant filed an application with the USPTO (Serial No. 88307681) for PREAPPROVAL NAVIGATOR (disclaimed PREAPPROVAL) for downloadable mobile application software for use in obtaining automobile loans; mobile application software for use in purchasing automobiles and automobile financing; downloadable mobile application software generating information for use by automobile dealers to assist customers in obtaining automobile loans in Class 9, automobile lending services, namely, installment loans; providing information about automobile financing; providing an internet website portal for use in obtaining automobile loans; providing an internet website portal for use in automobile financing; providing an internet website portal for use by automobile dealers to assist customers in obtaining automobile loans and for generating financial leads in Class 36, and providing an internet website portal featuring technology that enables users to purchase automobiles in Class 42, collectively referred to herein as the “Capital One Financial Services.” This application published on November 12, 2019. On November 18, 2019, Clark Capital filed and was granted its first ninety-day request for an extension of time to oppose.

29. On February 19, 2019, Defendant filed an application with the USPTO (Serial No. 88307765) for PREQUAL NAVIGATOR (disclaimed PREQUAL) for downloadable mobile application software for use in obtaining automobile loans; mobile application software for use in purchasing automobiles and automobile financing; downloadable mobile application software generating information for use by automobile dealers to assist customers in obtaining automobile

loans in Class 9, Automobile lending services, namely, installment loans; providing information about automobile financing; providing an internet website portal for use in obtaining automobile loans; providing an internet website portal for use in automobile financing; providing an internet website portal for use by automobile dealers to assist customers in obtaining automobile loans and for generating financial leads in Class 36, and providing an internet website portal featuring technology that enables users to purchase automobiles in Class 42, collectively referred to herein as the “Capital One Financial Services.” This application published on November 12, 2019. On November 18, 2019, Clark Capital filed and was granted its first 90-day request for an extension of time to oppose.

30. On May 19, 2016, Defendant filed an application with the USPTO (Serial No. 87043394) for LEAD NAVIGATOR (disclaimed LEAD) for financial services, namely, providing prospective customers information about auto lending, specifically excluding any good or service used for investment advisory, investment consulting, asset allocation, wealth management, or financial planning services, including annuities, stocks, bonds, and mutual funds and mutual fund distribution in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on October 11, 2016 and was allowed on April 11, 2017, but has yet to register as of the date of filing this complaint.

31. On May 19, 2016, Defendant filed an application with the USPTO (Serial No. 87043416) for LENDING NAVIGATOR (disclaimed LENDING) for financial services, namely, financial services, namely, mortgage lending; providing home equity lines of credit (heloc); auto lending services, namely, installment loans, all the foregoing specifically excluding any good or service used for investment advisory, investment consulting, asset allocation, wealth management, or financial planning services, including annuities, stocks, bonds, and mutual funds

and mutual fund distribution in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on October 11, 2016 and was allowed on April 11, 2017, but has yet to register as of the date of filing this complaint.

32. On May 19, 2016, Defendant filed an application with the USPTO (Serial No. 87043432) for LENDING NAVIGATOR (disclaimed LENDING) for financial services, namely, auto lending services, specifically excluding any good or service used for investment advisory, investment consulting, asset allocation, wealth management, or financial planning services, including annuities, stocks, bonds, and mutual funds and mutual fund distribution in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on October 11, 2016 and was allowed on April 11, 2017, but has yet to register as of the date of filing this complaint.

33. On May 19, 2016, Defendant filed an application with the USPTO (Serial No. 87043514) for PRE-APPROVAL NAVIGATOR (disclaimed PRE-APPROVAL) for financial services, namely, pre-approval of installment loans, specifically excluding any good or service used for investment advisory, investment consulting, asset allocation, wealth management, or financial planning services, including annuities, stocks, bonds, and mutual funds and mutual fund distribution in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on October 11, 2016 and was allowed on April 11, 2017, but has yet to register as of the date of filing this complaint.

34. On May 19, 2016, Defendant filed an application with the USPTO (Serial No. 87043610) for SERVICING NAVIGATOR (disclaimed SERVICING) for financial services, namely, providing information to customers about their auto loans, specifically excluding any good or service used for investment advisory, investment consulting, asset allocation, wealth

management, or financial planning services, including annuities, stocks, bonds, and mutual funds and mutual fund distribution in Class 36, collectively referred to herein as the “Capital One Financial Services.” This application published on October 11, 2016 and was allowed on April 11, 2017, but has yet to register as of the date of filing this complaint.

35. In light of Clark Capital’s use of the NAVIGATOR® Mark dating back to at least as early as 1987 and the filing date in 1990 for Registration No. 1,662,756 of its NAVIGATOR® Mark, Clark Capital has priority over the Capital One NAVIGATOR Designations.

36. Clark Capital, through its counsel, on multiple occasions as early as March 2019, communicated with Defendant’s trademark counsel notifying him of Clark Capital’s NAVIGATOR® Marks and requesting the withdrawal, amendment, and/or cessation of use of the Capital One NAVIGATOR Designations on the basis that these marks are likely to be confused with Clark Capital’s NAVIGATOR® Marks when used in connection with Capital One’s lending and financial-related services.

37. On March 9, 2020, Clark Capital, through its counsel, filed Notices of Opposition against the published Capital One NAVIGATOR Applications for DESKING NAVIGATOR, FINANCING NAVIGATOR, FUNDING NAVIGATOR, LEADS NAVIGATOR, PREAPPROVAL NAVIGATOR, and PREQUAL NAVIGATOR on the basis of a likelihood of confusion with Clark Capital’s NAVIGATOR® Marks.

38. Despite notice of Clark Capital’s intellectual property rights in the NAVIGATOR® Marks, Capital One has yet to discontinue its use, amend its applications, or withdrawal its applications for the Capital One NAVIGATOR Designations as requested by Clark Capital.

COUNT 1 - FEDERAL TRADEMARK INFRINGEMENT

39. Clark Capital repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though they were fully set forth at length herein.

40. Clark Capital's NAVIGATOR® Marks are federally registered and, as such, the corresponding registrations are evidence of Clark Capital's exclusive right to use the NAVIGATOR® Marks in connection with the Clark Capital Financial Services. 15 U.S.C. § 1115.

41. Clark Capital's U.S. Registration No. 1,662,756 for NAVIGATOR®, Reg. No. 2,639,961 for NAVIGATOR FUND®, and Reg. No. 4,453,183 for NAVIGATOR FUNDS® have all acquired incontestable status, collectively referred to herein as the "Incontestable NAVIGATOR Registrations." Thus, the Incontestable NAVIGATOR Registrations for the NAVIGATOR® Marks shall be conclusive evidence of the validity of the registered marks, of Clark Capital's ownership of the marks, and of Clark Capital's exclusive right to use the registered marks in commerce in connection with the financial services specified in the affidavits filed under the provisions of §1065 or the renewal applications filed under the provisions of § 1059. 15 U.S.C. §1115.

42. The NAVIGATOR® Marks are inherently distinctive to both the consuming public and within Clark Capital's industry for the Clark Capital Financial Services.

43. Clark Capital's well-known NAVIGATOR® Marks and Capital One's NAVIGATOR Designations are similar with respect to sound, appearance, meaning, and create the same commercial impression.

44. All of the Capital One NAVIGATOR Designations wholly encompass Clark Capital's NAVIGATOR® Mark.

45. All of the Capital One NAVIGATOR Designations disclaim the term other than “NAVIGATOR.”

46. The installment loan services offered by Capital One under the NAVIGATOR Designations are related to the Clark Capital Financial Services offered by Clark Capital under its NAVIGATOR® Marks.

47. The Capital One Financial Services offered by Capital One under the NAVIGATOR Designations are related to the Clark Capital Financial Services offered by Clark Capital under its NAVIGATOR® Marks.

48. Use of the Capital One NAVIGATOR Designations for installment loans will likely lead to confusion, mistake, or deception of the public within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) and would otherwise cause injury and damage to Clark Capital’s NAVIGATOR® Marks, as well as its good will and reputation.

49. Use of the Capital One NAVIGATOR Designations for the Capital One Financial Services would likely lead to confusion, mistake, or deception of the public within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) and would otherwise cause injury and damage to Clark Capital’s NAVIGATOR® Marks, as well as its good will and reputation.

50. Defendant has infringed Clark Capital’s NAVIGATOR® Marks in interstate commerce by various acts, including using the Capital One NAVIGATOR Designations in association with financial-related services similar to the Clark Capital Financial Services. This unauthorized use by Defendant constitutes infringement of Clark Capital’s existing NAVIGATOR® Marks, as described above, in violation of the Lanham Act, 15 U.S. C. § 1051 et seq., to the substantial and irreparable injury of the public and of Clark Capital’s NAVIGATOR® Marks, business reputation, and goodwill.

51. Clark Capital has not given consent directly or indirectly to Defendant to use the NAVIGATOR® Marks, or any mark similar thereto, in the manner in which Defendant is using the Capital One NAVIGATOR Designations.

52. Defendant's conduct has caused and, if not enjoined, will continue to cause irreparable damage to the rights of Clark Capital in its NAVIGATOR® Marks and in its business, reputation, and goodwill. Clark Capital's damages from the aforesaid unlawful actions of Defendant, to the extent ascertainable, have not yet been determined.

53. By the forgoing actions, Defendant has clearly engaged in willful trademark infringement in violation of 15 U.S.C. § 1117.

54. Clark Capital seeks attorney's fees and costs given the willful conduct of Defendant.

55. Clark Capital seeks treble damages given the willful conduct of Defendant.

COUNT 2 - FEDERAL UNFAIR COMPETITION

56. Clark Capital repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though they were fully set forth at length herein.

57. Clark Capital and Capital One are competitors and both offer financial services.

58. Clark Capital's Incontestable NAVIGATOR Registrations are strong and inherently distinctive. Since 1987, Clark Capital has expanded its use of "NAVIGATOR" and the NAVIGATOR® Marks have developed invaluable goodwill and reputation within the financial industry as a designator of source of the Clark Capital Financial Services.

59. After Clark Capital's adoption and use of its NAVIGATOR® Marks in connection with the Clark Capital Financial Services, Defendant adopted and used the Capital One NAVIGATOR Designations in connection with related financial services, including but not limited to, loan financing services.

60. Defendant's activities are likely to cause confusion, or to cause mistake, or to deceive, causing great harm to Clark Capital's reputation and goodwill.

61. Defendant has unfairly competed with Clark Capital's NAVIGATOR® Marks in interstate commerce by various acts, including using the Capital One NAVIGATOR Designations in connection with related financial services, including but not limited to, loan financing services. This unauthorized use by Defendant constitutes unfair competition to the substantial and irreparable injury of the public and of Clark Capital's NAVIGATOR® Marks, business reputation, and goodwill in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

62. The activities of Defendant complained of herein constitute willful and intentional tort, in derogation of Clark Capital's rights. Acts of unfair competition commenced and have continued in spite of Defendant's knowledge that the use, registration, and application of the Capital One NAVIGATOR Designations in connection with its financial services was and is in contravention of Clark Capital's rights.

63. Clark Capital has not given consent directly or indirectly to Defendant to use the Capital One NAVIGATOR Designations, or any mark similar thereto, in the manner in which Defendant is using such marks.

64. Defendant's conduct has caused and, if not enjoined, will continue to cause irreparable damage to the rights of Clark Capital in its NAVIGATOR® Marks and in its business, reputation, and goodwill. Clark Capital's damages from the aforesaid unlawful actions of Defendant, to the extent ascertainable, have not yet been determined.

65. Clark Capital seeks attorney's fees and costs given the willful conduct of Defendant.

66. Clark Capital seeks punitive damages given the willful conduct of Defendant.

COUNT 3 - UNFAIR COMPETITION AND TRADE PRACTICES IN VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (73 P.S. §§ 201-1 et seq.)

67. Clark Capital repeats and re-alleges, and incorporates by reference, the foregoing paragraphs as though they were fully set forth at length herein.

68. Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 *et seq.* (the "UTPCPL"), prohibits "unfair methods of competition" and "unfair or deceptive acts or practices."

69. Defendant's actions complained of herein are unlawful, unfair, and/or fraudulent business acts or practices, constituting unfair competition in violation of UTPCPL, namely, knowingly and willfully trading off of the goodwill of Clark Capital's NAVIGATOR® Marks with the confusingly similar Capital One NAVIGATOR Designations without direct or indirect authorization from Clark Capital.

70. Defendant's conduct has caused and, if not enjoined, will continue to cause irreparable damage to the rights of Clark Capital in its NAVIGATOR® Marks and in its business, reputation, and goodwill and Clark Capital is entitled to injunctive relief and restitution as a result of Defendant's unlawful and/or fraudulent business acts or practices.

PRAYERS FOR RELIEF

WHEREFORE, Clark Capital prays for relief against Defendant as follows:

1. That the Court preliminary and permanently enjoin and restrain Defendant, their officers, directors, agents, employees and all persons in active concert or participation with Defendant who receive actual notice of the injunction, by personal service or otherwise, from doing, abiding, causing or abetting any of the following:

(a) infringing or contributing to the infringement;

- (b) engaging in any acts or activities directly or indirectly calculated to infringe Clark Capital's NAVIGATOR® Marks;
- (c) using in selling, offering for sale, promoting, advertising, marketing or distributing of Defendant's services and/or products, advertisements or marketing materials that use the term "NAVIGATOR," or any mark similar thereto;
- (d) using any configuration or design that is confusingly similar to Clark Capital's NAVIGATOR® Marks; and
- (e) otherwise competing unfairly or deceptively with Clark Capital in any manner whatsoever.

2. That the Court find that Defendant is infringing Clark Capital's NAVIGATOR® Marks, is competing unfairly with and committing deceptive trade practices against Clark Capital.

3. That the Court Order Defendant to deliver up to Clark Capital for destruction, at Defendant's expense, catalogs, web site materials, literature, brochures, quotes, packaging, signs, promotional materials, advertisements and other communications to the public in the possession or under the control of Defendant that use any of the Capital One NAVIGATOR Designations or any other designations similar to any of Clark Capital's NAVIGATOR® Marks, and any other material or any representations that are or may contain the Capital One NAVIGATOR Designations or any other terms similar to Clark Capital's NAVIGATOR® Marks.

4. That the Court Order Defendant to account for and pay to Clark Capital the damages to which Clark Capital is entitled as a consequence of the infringement of Clark Capital's NAVIGATOR® Marks.

5. That the Court Order Defendant to account for and to pay over to Clark Capital all damages suffered by Clark Capital as a result of Defendant's unfair competition.

6. That the Court Order Defendant to account for and to pay over to Clark Capital all damages suffered by Clark Capital as a result of Defendant's deceptive trade practices.

7. That the Court enter an order placing reasonable but effective restrictions on the future transactions and activities of Defendant so as to prevent fraud on the Court and so as to ensure the capacity of Defendant to pay, and the prompt payment of, any judgment entered against Defendant in this action.

8. That the Court award Clark Capital its compensatory, incidental, and consequential damages.

9. That the Court award Clark Capital enhanced, treble, and/or punitive damages.

10. That the Court award Clark Capital its reasonable attorney's fees and the costs of this action.

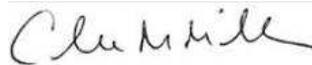
11. That the Court grant Clark Capital such other further relief as is just and proper.

DEMAND FOR JURY TRIAL

Clark Capital demands a trial by jury on all triable issues of fact.

CLARK CAPITAL MANAGEMENT GROUP,
INC.

By Its Attorneys,



DATED: March 5, 2020

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