

ESTTA Tracking number: **ESTTA568406**

Filing date: **10/31/2013**

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

Proceeding	91210158
Party	Plaintiff Larry Pitt & Associates, P.C.
Correspondence Address	JACQUELINE M LESSER WOODCOCK WASHBURN LLP 2929 ARCH STREET CIRA CENTRE, 12TH FLOOR PHILADELPHIA, PA 19104-2891 UNITED STATES trademarks@woodcock.com, jlesser@woodcock.com, jdale@woodcock.com
Submission	Other Motions/Papers
Filer's Name	Jacqueline M. Lesser
Filer's e-mail	trademarks@woodcock.com, jlesser@woodcock.com, jdale@woodcock.com
Signature	/Jacqueline M. Lesser/
Date	10/31/2013
Attachments	Declaration of Jacqueline Lesser with Exhibits A-E.PDF(5555509 bytes ) Declaration of Jacqueline Lesser with Exhibit B1a.PDF(3515469 bytes ) Declaration of Jacqueline Lesser with Exhibit B1b.PDF(4265702 bytes ) Declaration of Jacqueline Lesser with Exhibit B2.PDF(1836236 bytes ) Declaration of Jacqueline Lesser with Exhibit B3.PDF(3371439 bytes ) Declaration of Jacqueline Lesser with Exhibits C(000421-10-31-2013 5-00-56 PM).PDF(2119177 bytes ) Declaration of Jacqueline Lesser with Exhibits D (000421-10-31-2013 5-00-56 PM).PDF(2660132 bytes ) Declaration of Jacqueline Lesser with Exhibit E(000421-10-31-2013 5-00-56 PM).PDF(2372917 bytes )

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

LARRY PITT & ASSOCIATES, P.C.

Opposer,

v.

LUNDY LAW, LLP

Applicant

Opposition No 91210158

**DECLARATION OF JACQUELINE LESSER IN SUPPORT OF  
MOTION UNDER FED. R.CIV.P. 56(D)**

I, Jacqueline Lesser, hereby declare as follows:

1. I am an attorney associated with the firm of Woodcock Washburn LLP, attorneys for Larry Pitt & Associates, PC (“Larry Pitt” or “Opposer”) in the above referenced Opposition proceeding. I submit this declaration and attached exhibits in support of Larry Pitt & Associates’ motion under Fed. R. Civ. P. 56(d). I make the following statements based on personal knowledge.
2. Attached hereto as Exhibits A and B are true and correct copies of the Complaint and Motion for a Preliminary Injunction filed by Applicant, Lundy Law LLP (“Lundy Law”) to enjoin Opposer’s use of the phrase REMEMBER THIS NUMBER in *Lundy Law LLP v. Larry Pitt & Associates*, Civil Action No. 2:13-cv-01161-CDJ. This Complaint was voluntarily dismissed by Lundy Law without consent and without prejudice to its re-filing.

3. Attached hereto as Exhibit C is a true and correct copy of Applicant's responses to Opposer's First Request for Production of Documents.
4. Attached hereto as Exhibit D is a true and correct copy of Applicant's responses to Opposer's First Set of Interrogatories. The responses identify -- for the first time -- potential deposition witnesses and third parties with knowledge.
5. Attached hereto as Exhibit E is a true and correct copy of Applicant's responses to Opposer's First Request for Admissions.
6. Opposer is unable to respond to Applicant's Motion for Summary Judgment without the following discovery:
  - a. Discovery by way of deposition of Leonard Lundy, Frank Bass, Tami Sortman and Kelly Carson of Lundy Law, and Mike Bozelle of Boseken Advertising regarding the selection and creation of the phrase REMEMBER THIS NAME, of client association of REMEMBER THIS NAME with Applicant, and with financial information relating to REMEMBER THIS NAME. Mr. Lundy, Ms. Sortman and Ms. Carson were identified by Applicant in its response to Opposer's Interrogatory No. 1. Discovery by deposition of Jon Roche and Sara Lundy of Titan Advertising regarding slogans in outdoor advertising, and billboards of Lundy Law.
  - b. Third party discovery from advertising and marketing companies identified in Applicant's response to Opposer's Interrogatory No. 2:
    - i. Whitehard Advertising
    - ii. Boseken Advertising

- iii. Ningio
- iv. CJ Advertising
- v. Titan Advertising
- vi. Gateway Advertising

7. Opposer is entitled to document discovery and complete responses on the following subjects to respond to Applicant's summary judgment motion:

- a. Lundy Law's awareness of third party use of the term "remember" in advertising, requested by Opposer in Interrogatory No. 16.
- b. Information related to Applicant's marketing of its services requested by Opposer in Interrogatory No. 2.
- c. Discovery on the purpose of marketing services through billboards, public transportation placement, public arenas and via television (*i.e.*, each of the media through which Applicant states that it has advertised) for which Lundy Law has objected on grounds of relevancy, and on grounds that any discovery on the purpose of public marketing information would be confidential information and would not be released without a protective order (Interrogatory No. 17).<sup>1</sup> The parties have agreed that no protective order will issue in this Opposition.

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<sup>1</sup> The parties have agreed to proceed forward without a protective order in this case – however information marketing and its purpose – *i.e.*, discovery on publicly released, purported promotional materials could not be confidential, and there has been no explanation from Applicant as to why this information could be considered proprietary at all. Similarly no financial information related should be deemed confidential since Lundy Law has already made this information public in earlier filings before the PTO. Therefore, no protective order is required to respond to these requests.



- d. Documents regarding Lundy Law's first use and comments on the first use of REMEMBER THIS NAME as requested in Document Request No. 8.
- e. Communications to or from it and advertising agencies, promotional agencies, billboard companies, and television production companies regarding the placement of advertising, including drafts, comments, changes or revisions to any advertising on grounds of burden – and has agreed to production of responsive documents that it considers relevant, as requested by Document Request No. 11. No documents have been produced.
- f. Documents regarding or concerning the creation of the phrase REMEMBER THIS NAME, and all tests, mock ups, drafts or revisions for any advertising or promotional materials, as requested by Document Requests 3, 11 and 13. No documents have been produced.
- g. Documents showing each type of media in which Lundy Law has advertised its services, as requested by Document Request No. 14. Lundy Law has objected on grounds of relevancy, burden, and privilege. Opposer is entitled to this information prior to responding to Lundy Law's summary judgment motion.
- h. Documents which show the identity of Lundy Law's first customer or client associated with the phrase REMEMBER THIS NAME on grounds of burden, and attorney client privilege. Lundy Law has refused production despite the fact that the name of the first customer is generally

available through discovery, and this information is directed to the genericness and descriptiveness claims. Lundy Law has agreed to produce representative documents that refer to, relate to or comment on the first use in commerce of the phrase, however to date no such documents have been produced (Document Requests Nos. 15 and 8, respectively).

- i. All documents that support Applicant's contentions that REMEMBER THIS NAME is not merely descriptive (Document Request No. 18) and that the phrase has acquired distinctiveness in the minds of consumers. (Document Request No. 19). Lundy Law has refused to produce responsive documents on grounds of relevancy – but has stated that it will produce documents that it has deemed relevant. No documents have been produced thus far.

8. Opposer requires production of the identified categories of documents and discovery of the identified persons and third parties in order to respond to Applicant's summary judgment motion.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on this 31<sup>st</sup> day of October.



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Jacqueline M. Lesser, Esq.  
Woodcock Washburn LLP  
Cira Centre, 12th Floor  
2929 Arch Street

Philadelphia, PA 19104-2891  
Tel: 215-568-3100  
Fax: 215-568-3439

*Attorneys for Opposer, Larry Pitt & Associates*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31 day of October, 2013, I caused a true and correct copy of the foregoing DECLARATION OF JACQUELINE LESSER IN SUPPORT OF MOTION UNDER FED.R.CIV.P. 56(D) to be served by first class mail to counsel for Applicant, Lundy

Law at:

Manny D. Pokotilow  
Caesar Rivise, Bernstein, Cohen & Pokotilow Ltd.  
1635 Market Street  
11<sup>th</sup> Floor – Seven Penn Center  
Philadelphia, PA 19103-2212  
mpokotilow@crbcp.com

/s/ Jacqueline M. Lesser  
Jacqueline M. Lesser



**EXHIBIT A TO JACQUELINE LESSER'S DECLARATION**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>LUNDY LAW, LLP,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Civil No. _____</b>
	)	
<b>LARRY PITT &amp; ASSOCIATES</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	
<b>Defendant.</b>	)	<b>VERIFIED COMPLAINT</b>
	)	

Plaintiff, Lundy Law, LLP, by and through its attorneys, and as for its Complaint, avers as follows:

**JURISDICTION**

1. This civil action asserts claims for trademark infringement, false designation of origin, and unfair competition arising under the Lanham Act, as amended, 15 U.S.C. §§ 1051 et seq. and the statutory and common laws of the Commonwealth of Pennsylvania. The amount in controversy exclusive of interest and costs exceeds the sum or value of \$75,000.

2. This Court has jurisdiction over the claims Plaintiff is asserting under the Federal Trademark Act, 15 U.S.C. § 1121, and the Judicial Code, 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367(a).

3. Plaintiff, Lundy Law, LLP (“Lundy Law”), is a Pennsylvania limited liability partnership having a principal place of business at 1635 Market Street, 19<sup>th</sup> Floor, Philadelphia, Pennsylvania 19103.

4. On information and belief, Defendant, Larry Pitt & Associates (“Pitt”), is a Pennsylvania limited liability partnership having its principal place of business at 1918 Pine Street, Philadelphia, Pennsylvania 19103.

**COUNT I – TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

5. As a cause of action and ground for relief, Lundy Law alleges trademark infringement by Pitt and alleges that Pitt has engaged in acts in violation of under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and at common law, and incorporates ¶¶ (1) through (4) of the Complaint as part of this count.

6. Since at least as early as May 16, 2011, long prior to the acts complained of herein, Lundy Law has used the mark REMEMBER THIS NAME in connection with legal services in interstate commerce.

7. Lundy's services provided and sold under the mark REMEMBER THIS NAME, which are recognized in this Commonwealth and in the United States to be of the highest quality, are offered for sale and sold in interstate commerce.

8. From at least as early as May 16, 2011 to the present, Lundy's advertising and sales of services under the mark REMEMBER THIS NAME have been and are significant.

9. From at least as early as May 16, 2011 to the present, Lundy Law has engaged in substantially exclusive use of the mark REMEMBER THIS NAME for legal services and in particular personal injury legal services, identical to those now advertised for and offered by Defendant Pitt.

10. Notwithstanding Lundy Law's prior exclusive rights in the mark REMEMBER THIS NAME, Defendant Pitt, with actual notice of the mark REMEMBER THIS NAME, has adopted and used the mark REMEMBER THIS NUMBER in this judicial district and in interstate commerce, in connection with services customary in the legal services industry, and specifically the identical area of personal injury legal services advertised for and offered by



Plaintiff Lundy Law.

11. On or about January 24, 2013, Plaintiff, Lundy Law became aware of Defendant's use of the mark REMEMBER THIS NUMBER in the exact same media used by Lundy Law. Lundy Law's use of REMEMBER THIS NAME is for example used on the outside and inside of transit buses, as shown on the attached Exhibit A, while Pitt's use of REMEMBER THIS NUMBER was designed to be used on the exact same size and style posters, such as Exhibit B, on the same location on the inside of some of the same buses.

12. By letter dated January 25, 2013, Plaintiff Lundy Law, through its legal counsel, demanded that Defendant Pitt immediately cease and permanently desist from all use of the name and mark REMEMBER THIS NUMBER in connection with legal services. Despite the foregoing, Pitt continues to use the name and mark REMEMBER THIS NUMBER.

13. Defendant Pitt is not associated, affiliated or connected with or authorized, endorsed or sanctioned by Plaintiff Lundy Law. In fact, Defendant Pitt is in direct competition with Plaintiff Lundy Law in the same geographic area for the same legal services.

14. Pitt's use of REMEMBER THIS NUMBER in the manner hereinabove alleged was and is without the consent or authority of Lundy Law.

15. Pitt's use of REMEMBER THIS NUMBER, in the manner hereinabove alleged, has likely caused the public to believe, contrary to fact, that Pitt's business activities and services offered under the name and mark REMEMBER THIS NUMBER are sponsored, licensed and/or otherwise approved by, or in some way connected or affiliated with Lundy Law.

16. Pitt's unauthorized use of the name and mark REMEMBER THIS NUMBER, as set forth above, is likely to damage and materially diminish the value of the mark REMEMBER THIS NAME and result in Defendant Pitt unfairly benefiting and profiting from the reputation



and goodwill that is represented by the mark REMEMBER THIS NAME.

17. Pitt's use of REMEMBER THIS NUMBER in the manner hereinabove alleged constitutes trademark infringement under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), and at common law.

18. On information and belief, Pitt had actual knowledge of Lundy Law's prior use of the mark REMEMBER THIS NAME when Pitt began using the name and mark REMEMBER THIS NUMBER in connection with Pitt's legal services. On further information and belief, Pitt has long known of the fact that the public associates the mark REMEMBER THIS NAME with the services of Lundy Law, and Pitt has sought to capitalize on the goodwill engendered by the mark REMEMBER THIS NAME by intentionally adopting the name and mark REMEMBER THIS NUMBER.

19. Upon information and belief, Pitt has performed the aforementioned acts willfully, deliberately, with the knowledge of the infringement they would cause, to appropriate and unfairly trade upon the goodwill in the REMEMBER THIS NAME mark, and with entire want of care as would raise the presumption of conscious indifference to their consequences.

20. By reason of Pitt's acts alleged herein, Lundy Law has and will suffer damage to its business, reputation, and goodwill, and Pitt will enjoy profits to which it is otherwise not entitled, for which Lundy Law is entitled to relief at law.

21. Unless enjoined by this Court, Pitt will continue to infringe the mark REMEMBER THIS NAME, thereby deceiving the public and causing Lundy Law immediate and irreparable injury. It would be difficult to ascertain the amount of compensation that could afford Lundy Law adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required. Lundy Law's remedy at law is not adequate to compensate it for

injuries threatened.

**COUNT II – FALSE DESIGNATION OF ORIGIN**

22. As a cause of action and ground for relief, Plaintiff Lundy Law alleges that Defendant Pitt has engaged in acts in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and incorporates by reference ¶¶ (1) through (21) inclusive of the Complaint as part of this count.

23. Defendant Pitt's use of mark REMEMBER THIS NUMBER in the manner hereinabove alleged constitutes a false designation of origin within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), which is likely to cause confusion, mistake or deception as to the source, origin, authorization, sponsorship and/or approval of Defendant Pitt's commercial activities with respect to the mark REMEMBER THIS NAME.

24. The nature and probable tendency and effect of Pitt's use of the name and mark REMEMBER THIS NUMBER in the manner hereinabove alleged is to enable Pitt to confuse or deceive the public by misrepresenting the service offered for sale and rendered under said name and mark as sponsored, licensed and/or approved by, or in some way connected or affiliated with REMEMBER THIS NAME. Such conduct constitutes a false designation of origin in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

25. Upon information and belief, Defendant Pitt's actions have been conducted intentionally and willfully, with the express intent to cause confusion and mistake, to deceive and mislead the purchasing public, to trade upon the high quality reputation of Lundy Law and to improperly appropriate to itself the valuable trademark rights of Lundy.

**COUNT III – UNFAIR COMPETITION**

26. As a cause of action and ground for relief, Plaintiff Lundy Law alleges that



Defendant Pitt has engaged in acts of unfair competition at common law, and incorporates by reference ¶¶ (1) through (25) inclusive of the Complaint as part of this count.

27. By virtue of Defendant Pitt's acts hereinabove pleaded, Pitt has engaged in conduct which is contrary to honest industrial and commercial practice, and thus, has engaged in unfair competition, in violation of the common law of the Commonwealth of Pennsylvania.

28. Defendant Pitt's acts hereinabove pleaded, are calculated to procuring an unfair competitive advantage by misappropriating the valuable goodwill developed by Plaintiff Lundy Law at substantial effort and expense represented by the distinctiveness of the mark REMEMBER THIS NAME.

29. Pitt has engaged in the aforementioned acts willfully and deliberately and with full knowledge of the mark REMEMBER THIS NAME and Lundy Law's rights therein.

30. Pitt will continue to compete unfairly unless restrained by this Court. As a result of Pitt's unfair competition, Lundy Law will be unable to control the loss of the distinctive quality and reputation represented by the mark REMEMBER THIS NAME and will sustain still further damages in an amount difficult to ascertain.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Alliance respectfully prays that:

1. The Court enter judgment that:
  - a. Defendant has infringed the mark REMEMBER THIS NAME under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and at common law;
  - b. Defendant has committed unfair competition of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and
  - c. Defendant has engaged in unfair competition at common law.

2. Defendant and each of its/his agents, employees, servants, attorneys, successors and assigns, and all others in privity or acting in concert therewith, be preliminarily and permanently enjoined from:

- a. Using the mark REMEMBER THIS NUMBER and/or any other confusingly similar designation, alone or in combination with other words, phrases, symbols or designs, as a service mark, trademark, trade name, domain name component, or otherwise to market, advertise or identify Defendant's commercial activities or services;
- b. Otherwise infringing the mark REMEMBER THIS NAME;
- c. Unfairly competing with Plaintiff in any manner whatsoever, or otherwise injuring its business reputation in the manner complained of herein; and
- d. Engaging in assignments or transfers, formation of new entities or associations or utilization of any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (a) through (c) above.

3. The Court order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendant, bearing the mark REMEMBER THIS NUMBER, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, be delivered up and destroyed.

4. Defendant be ordered to notify in writing and direct to the relevant federal or state Departments of Transportation and to its advertisers and all publishers of directories, registries or lists in which the Defendant's use of the name and mark REMEMBER THIS NUMBER appears, to delete all references to said names and marks from their files, databases and



directories.

5. Defendant be required, within thirty (30) days after service of judgment, to file with this Court and serve upon Plaintiff's counsel, a written report, under oath, setting forth in detail the manner in which Defendant has complied with the Judgment.

6. Defendant be directed to pay to Plaintiff compensatory damages in an amount to be determined at trial for the injuries sustained by Plaintiff in consequence of the acts complained of herein and that such damages be trebled because of the willful acts described herein.

7. Defendant be required to account for and pay to Plaintiff all profits realized by Defendant as the result of the acts complained of herein.

8. Defendant be required to pay to Plaintiff both the costs of this action and the reasonable attorneys' fees incurred by Plaintiff.

9. Defendant be required to pay pre- and post-judgment interest according to law.

10. The Court award any punitive and exemplary damages against Defendant and in favor of Plaintiff.

11. Plaintiff be granted such other, different and additional relief as this Court deems equitable and proper.

Respectfully submitted,

**CAESAR, RIVISE, BERNSTEIN,  
COHEN & POKOTILOV, LTD.**

Dated: March 4, 2013

By

  
Manny D. Pokotilow

1635 Market Street

12th Floor - Seven Penn Center

Philadelphia, PA 19103-2212

*Attorneys for Plaintiff Lundy Law, LLP*

# **EXHIBIT A**



2

# 1-800-LindyLaw

PA • NJ • DE

## INJURED? REMEMBER THIS NAME



8273

215-580-7800

www.septa.org

THIS VEHICLE MAKES WIDE TURNS

THIS VEHICLE MAKES WIDE TURNS





**1-800-Lindy Law**

**PA • NJ • DE**

**INJURED? REMEMBER THIS NAME**

The advertisement features a large, 3D-style logo for "1-800-Lindy Law". The numbers "1-800-" are in blue with a gold shadow, while "Lindy Law" is in a larger, bold blue font with a gold shadow. Below the logo, the text "PA • NJ • DE" is written in white on a dark blue background. At the bottom, the phrase "INJURED? REMEMBER THIS NAME" is written in bold, orange and white text. The entire graphic is enclosed in a red border.



**INJURED? REMEMBER THIS NAME**

**1-800-LundyLaw**

**PA • NJ • DE**

**INJURY, DISABILITY & WORKERS' COMPENSATION**

**[www.LundyLaw.com](http://www.LundyLaw.com)**<sup>®</sup>



**INJURED?**  
**REMEMBER THIS NAME**

**1-800-LundyLaw**  
PA • NJ • DE

INJURY, DISABILITY & WORKERS' COMPENSATION

[www.LundyLaw.com](http://www.LundyLaw.com)<sup>®</sup>

# **EXHIBIT B**



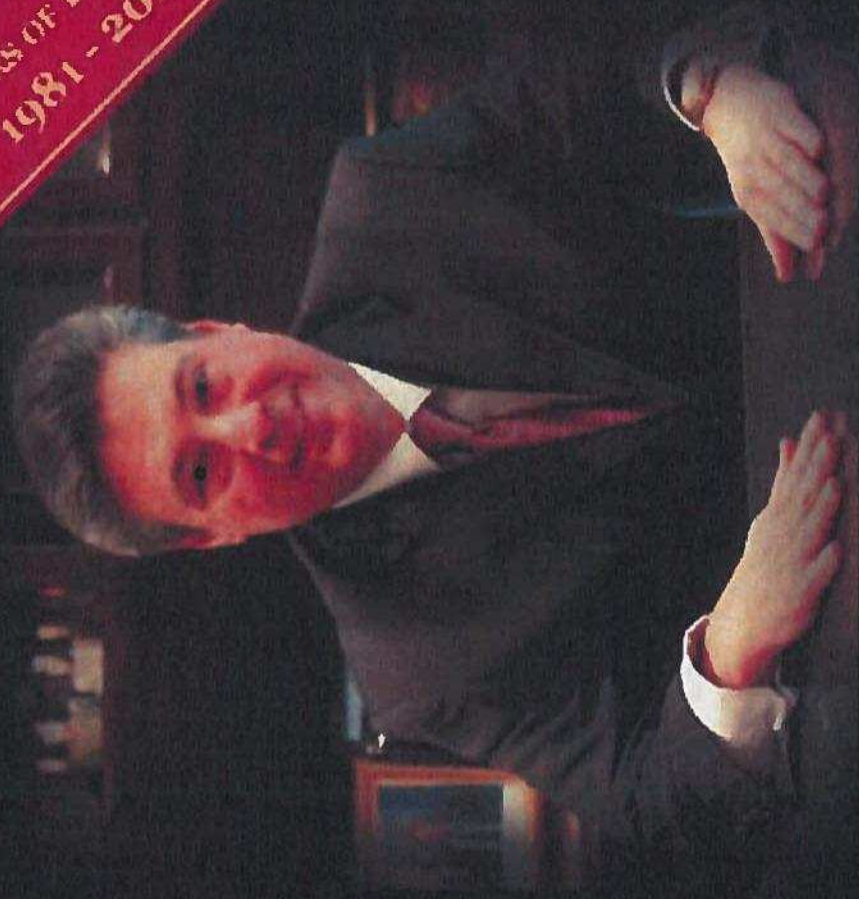
**Injured  
At work?  
In an accident?**

**Larry Pitt  
& Associates**

- Workers Compensation Law
- Personal Injury Law
- Social Security Disability

**REMEMBER THIS NUMBER  
Call 1-888-PITT-LAW**

**32 YEARS OF EXCELLENCE  
1981 - 2013**







**32 YEARS OF EXCELLENCE  
1981 - 2013**

**Injured at work?  
Injured in an accident?**

## **Larry Pitt & Associates**

- **Workers Compensation Law**
- **Personal Injury Law**
- **Social Security Disability**

**REMEMBER THIS NUMBER**

**Call 1-888-PITT-LAW**



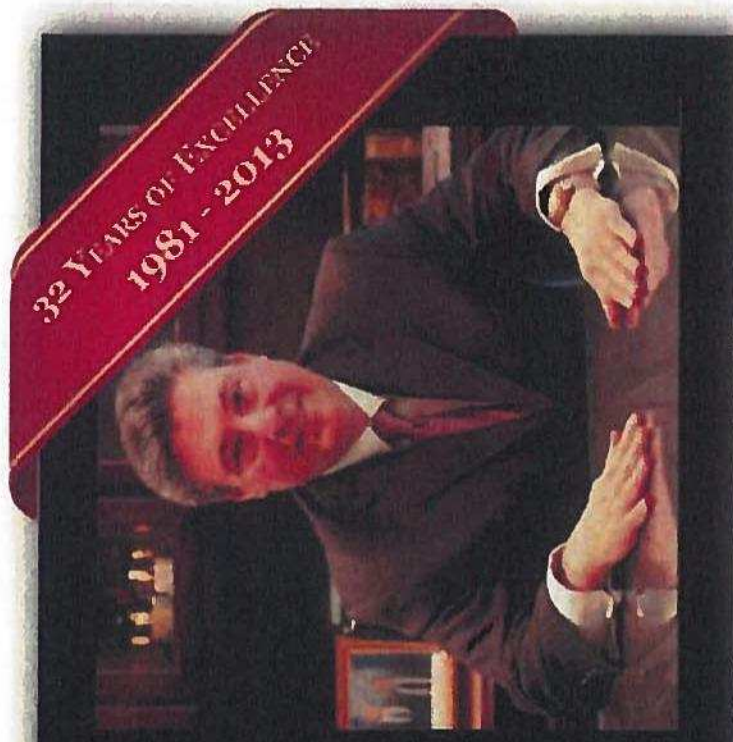
**Injured at work?  
Injured in an accident?**

**Larry Pitt & Associates**

- Workers Compensation Law
- Personal Injury Law
- Social Security Disability

**REMEMBER THIS NUMBER**

**Call 1-888-PITT-LAW**



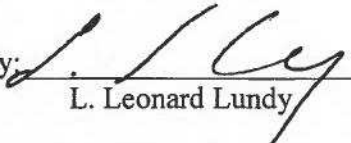
**VERIFICATION**

I, L. LEONARD LUNDY, declare as follows:

I am Managing Partner of Lundy Law, LLP, Plaintiff herein. I have read the foregoing Verified Complaint and know the contents thereof and the same are true of my own knowledge except as to such matters herein stated to be on information and belief, and as to these matters, I believe them to be true.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty and perjury that the foregoing is true and correct.

Dated: March 4, 2013

By:   
L. Leonard Lundy



FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff 1635 Market Street, 19th Floor, Philadelphia, PA 19103

Address of Defendant: 1918 Pine Street, Philadelphia, PA 19103

Place of Accident, Incident or Transaction: Eastern District of PA and elsewhere  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities? Yes  No

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases  
(Please specify) trademark infringement and unfair competition, false designation of origin

B. Diversity Jurisdiction Cases:

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases  
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

- I, Manny Pokotilow, counsel of record do hereby certify:  
 Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs,  
 Relief other than monetary damages is sought.

DATE: March 4, 2013

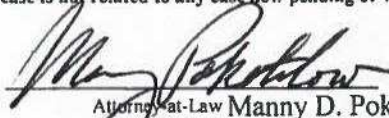
  
Attorney-at-Law Manny D. Pokotilow

13310  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: March 4, 2013

  
Attorney-at-Law Manny D. Pokotilow

13310  
Attorney I.D.#



\*JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b> Lundy Law, LLP</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Philadelphia County</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> (215)567-2010 Caesar, Rivise, Bernstein, Cohen &amp; Pokotilow, Ltd. 1635 Market Street - 11th Floor: Phila, PA 19103-2212</p>	<p><b>DEFENDANTS</b> Larry Pitt &amp; Associates</p> <p>County of Residence of First Listed Defendant <u>Philadelphia County</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (if Known) Woodcock Washburn; Cira Centre, 12th Floor 2929 Arch Street; Phila, PA 19104-2891</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business in This State</td> <td><input checked="" type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business in This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business in This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Maine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <input type="checkbox"/> SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. Sections 1051 et seq

Brief description of cause:  
trademark infringement and unfair competition, false designation of origin

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMAND: See Prayers for Relief    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: March 4, 2013    SIGNATURE OF ATTORNEY OF RECORD: Manny D. Pokotilow  
 FOR OFFICE USE ONLY: \_\_\_\_\_

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Lundy Law, LLP

v.

Larry Pitt & Associates

:  
:  
:  
:  
:

CIVIL ACTION

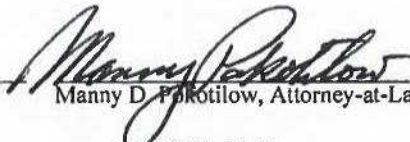
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

March 4, 2013  
Date

  
Manny D. Pokotilow, Attorney-at-Law

Manny D. Pokotilow  
Attorney for Plaintiff

215-567-2010

215-751-1142

mpokotilow@crbcp.com

Telephone

FAX Number

E-Mail Address

**EXHIBIT B TO JACQUELINE LESSER'S DECLARATION**

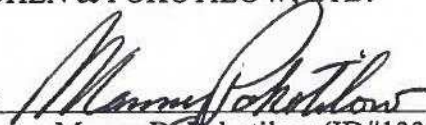


Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,  
COHEN & POKOTILOW, LTD.

Dated: March 4, 2013

By



\_\_\_\_\_

Manny D. Pokotilow (ID#13310)  
1635 Market Street  
11th Floor - Seven Penn Center  
Philadelphia, PA 19103-2212

*Attorneys for Plaintiff Lundy Law, LLP*





**TABLE OF CONTENTS**

**I. RELEVANT FACTS.....1**

    A. The Parties.....1

    B. The Lundy Law Mark.....2

    C. Defendant’s Unlawful Conduct.....2

**II. LUNDY LAW IS ENTITLED TO A PRELIMINARY INJUNCTION.....4**

    A. Lundy Law Will Suffer Irreparable Harm.....5

    B. Lundy Law Is Likely To Succeed On The Merits Of Its Claims.....7

        1. Lundy Law Is Likely To Prevail On Its Claim Of Trademark Infringement.....7

            a. The REMEMBER THIS NAME Mark Is Legally Protectable.....9

            b. Defendant’s Use Of The REMEMBER THIS NUMBER Mark Is Likely To Cause Confusion.....11

    C. Consideration Of the Lapp Factors Unequivocally Show A Likelihood Of Confusion Is Created By Plaintiff’s Mark.....13

        1. The Parties’ Marks Are Strikingly And Confusingly Similar.....14

        2. The Parties’ Services Are Closely Related, If Not Identical.....18

        3. The Strength Of Lundy Law’s Mark Favors A Finding Of A Likelihood Of Confusion.....19

        4. The Third Lapp Factor Favors Lundy Law.....21

        5. The Lack Of Any Actual Confusion Evidence Is Of No Moment.....22

        6. Similar Channels Of Trade And Targets Of Sales Efforts Point To A Likelihood Of Confusion.....23

        7. The Lapp Factors Relating To Good Faith.....24

**III. THE BALANCE OF HARDSHIPS TIPS DECIDEDLY IN LUNDY LAW’S FAVOR AND THE PUBIC WILL SUFFER HARM IF AN INJUNCTION DOES NOT ISSUE.....25**

**IV. CONCLUSION.....28**

**TABLE OF AUTHORITIES**

	Page(s)
<b>CASES</b>	
<u>A&amp;H Sportswear Co. Inc. v. Victoria Secret Stores, Inc.</u> , 926 F. Supp. 1233 (E.D. Pa. 1996), <u>aff'd</u> , 166 F.3d 191 (3d Cir. 1999) .....	23
<u>A&amp;H Sportswear Co. Inc. v. Victoria Secret Stores, Inc.</u> , 237 F.3d 198 (3d Cir. 2000).....	passim
<u>A.J. Canfield Co. v. Honickman</u> , 808 F.2d 291 (3d Cir. 1986).....	8
<u>Alliance Bank v. New Century Bank</u> , 742 F. Supp.2d 532 (E.D. Pa. 2010) .....	9, 10
<u>American Diabetes Association, Inc. v. National Diabetes Association</u> , 533 F. Supp. 16 (E.D. Pa. 1981) .....	5, 27
<u>American Express Co. v. Pan American Express</u> , 509 F. Supp. 348 (E.D. Pa. 1981) .....	13
<u>American Tel. and Tel. Co. v. Winback and Conserve Program, Inc.</u> , 42 F.3d 1421 (3d Cir. 1994).....	27
<u>AMF, Inc. v. Sleekcraft Boats</u> , 599 F.2d 341 (9th Cir. 1979) .....	20
<u>Century 21 Real Estate Corp. v. Century Life of America</u> , 23 USPQ2d 1698 (Fed. Cir.), <u>cert. denied</u> , 506 U.S. 1034 (1992).....	16
<u>Checkpoint Systems, Inc. v. Check Point Software Technologies, Inc.</u> , 269 F.3d 270 (3d Cir. 2001).....	18, 23, 24
<u>Chips N Twigs, Inc. v. Chip-Chip, Ltd.</u> , 414 F. Supp. 1003 (E.D. Pa. 1976).....	5, 24
<u>Country Floors, Inc. v. Partnership of Gepner and Ford</u> , 930 F.2d 1056 (3d Cir. 1999).....	12,15, 16
<u>Dallas Cowboy Cheerleaders, Inc. v. Pussycat Cinema, Ltd.</u> 604 F.2d 200 (2d Cir. 1979).....	8



Dranoff-Perlstein v. Sklar,  
967 F.2d 852 (3d Cir. 1992).....13

Fisons Horticulture, Inc. v. Vigoro Industries, Inc.,  
30 F.3d 466 (3d Cir. 1994)..... passim

Ford Motor Company v. Summit Motor Products, Inc.,  
930 F.2d 277 (3d Cir. 1991).....22

G.D. Searle & Co. v. Chas. Pfizer & Co., Inc.,  
265 F.2d 385 (7<sup>th</sup> Cir. 1958) .....25

Gideons Int’l, Inc. v. Gideon 300 Ministries, Inc.,  
94 F. Supp.2d 566 (E.D. Pa. 1999) .....9

Giersch v. Scripps Networks Inc.,  
90 USPQ2d 1020 (TTAB 2009) .....21

Harold F. Ritchie, Inc. v. Chesebrough-Ponds, Inc.,  
281 F.2d 755 (2d Cir. 1960).....25

Heritage Community Bank v. Heritage Bank, N.A.,  
2008 WL 5170190 (D.N.J. Dec. 9, 2008).....20

In re 1<sup>st</sup> USA Realty Professionals, Inc.,  
84 USPQ2d 1581 (TTAB 2007) .....15

Interpace Corp. v. Lapp, Inc.,  
721 F.2d 460 (3d Cir. 1983)..... 11, 14, 18, 24

Kos Pharmaceuticals, Inc. v. Andrx Corp.,  
369 F.3d 700 (3d Cir. 2004)..... 15, 18, 23, 24

Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Company,  
799 F.2d 867 (2d Cir. 1986).....22, 23

Opticians Ass’n of America v. Independent Opticians of America,  
920 F.2d 187 (3d Cir. 1990).....6, 25, 26, 27

Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772,  
396 F.3d 1369 (Fed. Cir. 2005).....15

Pappan Enterprises, Inc. v. Hardee’s Food Systems, Inc.,  
143 F.3d 800 (3d Cir. 1998).....5, 25, 26

Presto Products, Inc. v. Nice-Pak Products, Inc.,  
9 USPQ2d 1895 (TTAB 1988) .....15

<u>Richards v. Cable News Network, Inc.</u> 15 F. Supp.2d 683 (E.D. Pa. 1998) .....	9
<u>Two Pesos, Inc., v. Taco Cabana, Inc.</u> 505 U.S. 763 (1992) .....	10
<u>Versa Products Co., Inc. v. Bifold Co. (Mfg.) Ltd.</u> 50 F.3d 189 (3d Cir.), <u>cert. denied</u> , 516 U.S. 808 (1995) .....	23
<u>Villanova University v. Villanova Alumni Educational Foundation, Inc.</u> 123 F. Supp. 2d 293 (E.D. Pa. 2000) .....	5
<u>Winchester Federal Sav. Bank, et al. v. The Winchester Bank, Inc.</u> 359 F. Supp.2d 561 (E.D. Ky. 2004) .....	17
<u>Wynn Oil Co. v. Thomas</u> 839 F.2d 1183 (6th Cir. 1988) .....	24
<b>STATUTES</b>	
15 U.S.C. § 1051 .....	1,7
15 U.S.C. § 1114(1) .....	4
<b>OTHER AUTHORITIES</b>	
J. Thomas McCarthy, MCCAthy on Trademarks and Unfair Competition (4 <sup>th</sup> Ed. 2010) .....	10, 11

Plaintiff, Lundy Law, LLP, owner of the registered mark REMEMBER THIS NAME, submits this Memorandum of Law in support of its Motion under Fed. R. Civ. P. 65(a) for a preliminary injunction to enjoin Defendant, Pitt & Associates, from using the name and mark REMEMBER THIS NUMBER in connection with Defendant's commercial activities.

Defendant's use of the mark or name REMEMBER THIS NUMBER constitutes acts of trademark infringement, false designation of origin, and unfair competition arising under the Lanham Act, as amended, 15 U.S.C. §§ 1051 *et seq.* and the statutory and common laws of the Commonwealth of Pennsylvania. Use of REMEMBER THIS NUMBER is likely to confuse, deceive and mislead consumers as to the source of origin of Defendant's commercial activities and has lessened the capacity of Lundy Law's REMEMBER THIS NAME mark to identify and distinguish Plaintiff's legal services and related services customary in the legal industry.

**I. RELEVANT FACTS.**

**A. The Parties.**

1. Plaintiff, Lundy Law, LLP ("Lundy Law"), is a Pennsylvania limited liability partnership having a principal place of business located at 1635 Market Street, 19<sup>th</sup> Floor, Philadelphia, Pennsylvania 19103. (Verified Compl. at ¶ 3<sup>1</sup>).

On information and belief, Defendant, Pitt & Associates ("Pitt"), is a Pennsylvania limited liability partnership having its principal place of business at 1918 Pine Street, Philadelphia, Pennsylvania 19103. (*Id.* at ¶ 4).

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<sup>1</sup> A true and correct copy of Lundy Law's Verified Complaint is annexed hereto as Exhibit A and is made part hereof.



**B. The Lundy Law Mark.**

Lundy Law has been and now is extensively engaged in the business of providing in interstate commerce its legal services, and since May 16, 2011, has advertised extensively its services under the mark REMEMBER THIS NAME. (Id. at ¶ 6).

Lundy Law's services are advertised extensively under the mark REMEMBER THIS NAME, which is recognized in this Commonwealth, bordering states, and elsewhere in the United States to be representative of the highest quality legal services. (Id. at ¶ 7).

From at least as early as May 16, 2011 to the present, Lundy Law's advertising for legal services under the mark REMEMBER THIS NAME has been and is significant and for most of this period Lundy Law has been the predominant advertiser of personal injury services. (Id. at ¶ 8). From at least as early as May 16, 2011 to the present, Lundy Law has engaged in the exclusive use of the mark REMEMBER THIS NAME for legal services and uses the mark as its slogan. (Id. at ¶ 9).

As a result of the substantial advertising and use of Lundy Law's legal services under the mark, the mark REMEMBER THIS NAME has become identifiable with Lundy Law and is an extremely valuable symbol of Lundy Law, its reputation, and goodwill. (Id. at ¶ 9).

**C. Defendant's Unlawful Conduct.**

Notwithstanding Lundy Law's prior exclusive rights in the mark REMEMBER THIS NAME, Defendant Pitt, a direct competitor of Lundy Law, with actual notice of Lundy Law's exclusive and pervasive use of the mark REMEMBER THIS NAME, designed his advertising campaign to adopt and use the slogan and mark REMEMBER THIS NUMBER in this judicial district and in interstate commerce, in connection with services customary in the legal services industry, and specifically the area of personal injury identical to the legal services advertised for

and offered by Lundy Law and in identical media in which Lundy Law has been advertising its mark REMEMBER THIS NAME. (Id. at ¶ 10).

On or about January 24, 2013, Plaintiff, Lundy Law became aware of Defendant's use of the mark REMEMBER THIS NUMBER in the exact same advertising media used by Lundy Law. Lundy Law's use of REMEMBER THIS NAME is for example used exclusively and extensively on the outside and extensively on the inside of transit buses, subway and commuter rail cars as shown on the attached Exhibit B, and Pitt specifically used REMEMBER THIS NUMBER on posters, such as Exhibit C, on the inside of buses, subway and commuter rail cars in the same size, configuration and location. (Id. at ¶ 11).

By letter dated January 25, 2013, Plaintiff Lundy Law, through its legal counsel, demanded that Defendant Pitt immediately cease and permanently desist from all use of the name and mark REMEMBER THIS NUMBER in connection with legal services. Despite the foregoing, Pitt continues to use the name and mark REMEMBER THIS NUMBER. (Id. at ¶ 12).

Defendant Pitt is not associated, affiliated or connected with or authorized, endorsed or sanctioned by Plaintiff Lundy Law. (Id. at ¶ 13). Pitt's use of REMEMBER THIS NUMBER in the manner alleged was and is without the consent or authority of Lundy Law. (Id. at ¶ 14).

Pitt's use of REMEMBER THIS NUMBER was specifically designed to and has likely caused the public to believe, contrary to fact, that Pitt's business activities and services offered under the name and mark REMEMBER THIS NUMBER are sponsored, licensed and/or otherwise approved by, or in some way connected or affiliated with Lundy Law. (Id. at ¶ 15).

Pitt's unauthorized use of the mark REMEMBER THIS NUMBER, as set forth above, is likely to damage and materially diminish the value of the mark REMEMBER THIS NAME and



result in Defendant Pitt unfairly benefiting and profiting from the reputation and goodwill that is represented by the mark REMEMBER THIS NAME. (Id. at ¶ 16).

Pitt's use of REMEMBER THIS NUMBER in the manner alleged constitutes trademark infringement under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), and at common law. (Id. at ¶17).

On information and belief, Pitt had actual knowledge of Lundy Law's prior use of the mark REMEMBER THIS NAME when Pitt began using the name and mark REMEMBER THIS NUMBER in connection with Pitt's legal services. On further information and belief, Pitt has long known of the fact that the public associates the mark REMEMBER THIS NAME with the services of Lundy Law, and Pitt has sought to intentionally capitalize on the goodwill engendered by the mark REMEMBER THIS NAME by adopting the name and mark REMEMBER THIS NUMBER. (Id. at ¶ 18).

Upon information and belief, Pitt has performed the aforementioned acts willfully, deliberately, with the knowledge of the infringement they would cause, to appropriate and unfairly trade upon the goodwill in the REMEMBER THIS NAME mark, and with entire want of care as would raise the presumption of conscious indifference to their consequences. (Id. at ¶ 19).

## **II. LUNDY LAW IS ENTITLED TO A PRELIMINARY INJUNCTION.**

Preliminary injunctions are commonly granted in actions for trademark infringement, false designation of origin, and unfair competition. Preliminary injunctions are considered appropriate in such cases because the factors which indicate a likelihood of success are often readily apparent, and irreparable injury or harm to a trademark is inherent in the situation.



The requirements to be met by one seeking a preliminary injunction have been clearly established in the Third Circuit:

When ruling on a motion for preliminary injunctive relief, a district court must consider four factors: (1) the likelihood that the plaintiff will prevail on the merits at final hearing; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which the defendant will suffer irreparable harm if the preliminary injunction is issued; and (4) the public interest.

Pappan Enterprises, Inc. v. Hardee's Food Systems, Inc., 143 F.3d 800, 803 (3d Cir. 1998) (citations omitted); see also Villanova University v. Villanova Alumni Educational Foundation, Inc., 123 F. Supp.2d 293, 301 (E.D. Pa. 2000) (Brody, J.).

As Lundy Law will demonstrate herein, and at the hearing on this Motion, the evidence shows that Lundy Law has satisfied all of the factors to entitle it to the preliminary relief requested.

**A. Lundy Law Will Suffer Irreparable Harm.**

Courts have recognized the harm that a plaintiff will suffer due to the loss of control over its reputation and goodwill as a result of a defendant's infringement, and that such harm may not be adequately remedied through damages. For example, the Court in American Diabetes Association, Inc. v. National Diabetes Association, 533 F. Supp. 16, 21 (E.D. Pa. 1981), aff'd, 681 F.2d 804 (3d Cir. 1982), stated:

The imminent harm plaintiffs will suffer if defendants are not enjoined is the loss of control of their reputation and goodwill, which plaintiffs have established over a forty year period. This harm is, by nature, inadequately remedied by legal means. Chips N Twigs, Inc. v. Chip-Chip, Ltd., 414 F. Supp. 1003, 1020 (E.D. Pa. 1976). Plaintiffs may also suffer the loss of potential donations because people may mistakenly donate to the defendant charity and may refrain from donating to any diabetes charity in the future because of unhappy results in dealing with the National Diabetes Association. Although these injuries are more susceptible to

remedy by monetary awards, they are notoriously difficult to prove.

Similarly, in Opticians Ass'n of America v. Independent Opticians of America, 920 F.2d 187, 195 (3d Cir. 1990), the Third Circuit summarized the damage inherent in trademark infringement cases as follows:

In Ambassador East Inc. v. Orsatti, Inc., 257 F.2d 79 (3d Cir. 1958), we held that a plaintiff's "mark is his authentic seal; by it he vouches for the goods which bear it; it carries his name for good or ill. If another uses it, he borrows the owner's reputation, whose quality no longer lies within his own control. This is an injury, even though the borrower does not tarnish it, or divert any sales by its use ...." (quoting Yale Elec. Corp. v. Robertson, 26 F.2d 972, 974 (2d Cir. 1928))

Under the present circumstances, there can be little doubt that Lundy Law will suffer the loss and control of its reputation and goodwill which it has endeavored to establish since it started using the mark. Through Lundy Law's continuous and exclusive use, the Lundy Law name and mark have become so closely associated with Lundy Law that any other use of a similar name and mark will cause consumers to associate Lundy Law with that use, even if Lundy Law is not involved. Any such use of a mark by another would, therefore, deprive Lundy Law of control over its goodwill and reputation. Defendant's use of the designation REMEMBER THIS NUMBER in association with legal services is such that Defendant's use can only be calculated to cash in on Lundy Law's valuable reputation and goodwill.

The damage to Lundy Law's reputation and goodwill that will occur as a result of Defendant's use of REMEMBER THIS NUMBER cannot be accurately ascertained or compensated for, and the injunctive powers of this Court are necessary in order to prohibit the loss which will be suffered because of Defendant's infringing use.



Accordingly, consideration of the irreparable harm factor should be decided in favor of Lundy Law.

**B. Lundy Law Is Likely To Succeed On The Merits Of Its Claims.**

Lundy Law respectfully submits that Defendant's use of REMEMBER THIS NUMBER constitutes trademark infringement, false designation of origin, and unfair competition arising under the Lanham Act, as amended, 15 U.S.C. §§ 1051 et seq. and the statutory and common laws of the Commonwealth of Pennsylvania.

As will be shown, Lundy Law is likely to succeed on the merits of these claims and a preliminary injunction is warranted prohibiting Defendant's use of REMEMBER THIS NUMBER.

**1. Lundy Law Is Likely To Prevail On Its Claim of Trademark Infringement.**

Lundy Law alleges trademark infringement under § 43(a) of the Lanham Act, which provides in part:

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which –

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,



shall be liable in a civil action by any person who believes that he or she is likely to be damaged by such act.

The appropriate standard for determining whether Lundy Law is likely to succeed on the merits on its claims of trademark infringement under the Lanham Act is a “likelihood of confusion.” A & H Sportswear v. Victoria’s Secret Stores, 166 F.3d 197, 205 (3d Cir. 1999) (en banc), appeal after remand, 237 F.3d 198 (3d Cir. 2000).

The court in Fisons Horticulture, Inc. v. Vigoro Industries, Inc., 30 F.3d 466, 472 (3d Cir. 1994) addressed the standard of “likelihood of confusion” where it stated:

The law of trademark protects trademark owners in the exclusive use of their marks when use by another would be likely to cause confusion. . . . [L]ikelihood of confusion exists when ever consumers viewing the mark would probably assume that the product or service it represents is associated with the source of a different product or service identified by a similar mark. (citations and quotations omitted)

The concept of “source” is broader than the literal meaning of the term and it encompasses sponsorship and other associations. As stated in Dallas Cowboy Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 604 F.2d 200, 204-205 (2d Cir. 1979):

In order to be confused, a consumer need not believe that the owner of the mark actually produced the item and placed it on the market. . . . The public’s belief that the mark’s owner sponsored or otherwise approved the use of the trademark satisfies the confusion requirement.

The source or sponsor identified by a trademark also need not be known by name, but may be anonymous. Buyers are entitled to assume that all products carrying the same trademark are somehow linked with or sponsored by a single anonymous source. See A.J. Canfield Co. v. Honickman, 808 F.2d 291, 301-04 (3d Cir. 1986).

To prove trademark infringement in violation of the Lanham Act,<sup>2</sup> a plaintiff must show that (1) ownership of a valid and legally protectable trademark, and (2) the defendant's use of the mark to identify goods or services is likely to create confusion concerning the origin of the goods or services. See Fisons, 30 F.3d at 472; A & H Sportswear, Inc., 237 F.3d at 210.

**a. The REMEMBER THIS NAME Mark Is Legally Protectable.**

In Alliance Bank v. New Century Bank, 742 F. Supp. 2d, 532, 546-7 (E.D. Pa. 2010), Judge Slomsky granted a preliminary injunction where Plaintiff used the mark CUSTOMER FIRST for banking services and defendant adopted the name and mark CUSTOMERS 1<sup>ST</sup> BANK for its banking services. The defendant asserted that unless plaintiff had proved secondary meaning for the mark CUSTOMER FIRST, the mark was not legally protectable. The court explained how you determine that a mark is valid and legally protectable. He explained as follows:

Whether a mark is actually valid and legally protectable is tied to its distinctiveness. [\*547] Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763, 768, 112 S. Ct. 2753, 120 L. Ed. 2d 615 (1992). Trademark law recognizes four separate categories of marks based on their level of inherent distinctiveness. From most distinctive [\*\*31] to least distinctive, the four categories are:

[1] arbitrary (or fanciful) terms, which bear no logical or suggestive relation to the actual characteristics of the goods [or services]; [2] suggestive terms, which suggest rather than describe the characteristics of the

<sup>2</sup> The test for a granting of a preliminary injunction as it relates to Lundy Law's claims of trademark infringement and unfair competition under the Lanham Act and the common law is identical, and the facts which substantiate an action for trademark infringement under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), will support an action for false designation under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and Pennsylvania common law trademark infringement and unfair competition. See A & H Sportswear, 237 F.3d at 210; Fisons, 30 F.3d at 473; Gideons Int'l, Inc. v. Gideon 300 Ministries, Inc., 94 F. Supp.2d 566, 580 (E.D. Pa. 1999) (citations omitted); Richards v. Cable News Network, Inc., 15 F. Supp.2d 683, 687 n. 11 (E.D. Pa. 1998). Accordingly, Lundy Law will not distinguish between these causes of action and only the federal trademark infringement action will be discussed for purposes of analysis.



goods [or services]; [3] descriptive terms, which describe a characteristic or ingredient of the article [or service] to which it refers[;] and [4] generic terms, which function as the common descriptive name of a product [or service] class.

He then cited from Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. at 768 where the Supreme Court stated "If we hold a term arbitrary or suggestive, we treat it as distinctive and it automatically qualifies for trademark protection, at least in those geographic and product areas in which the senior user applies it to its goods."

Judge Slomsky also noted:

The most popular test for determining whether a mark is descriptive or suggestive is the "imagination test." McCarthy § 11:67. The Third Circuit has described the "imagination test" as follows: "A term is suggestive if it requires imagination, thought or perception to reach a conclusion as to the nature of goods. A term is descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods." Honickman, 808 F.2d at 297 (*Internal quotation omitted*). In other words, suggestive marks are those which "suggest rather than describe the characteristics of the goods" or services. Id. at 296. Courts also consider "whether sellers of similar products [or services] [**\*\*35**] are likely to use, or actually do use, the term in connection with their goods." Sec. Ctr., Ltd. v. First Nat'l Sec. Ctrs., 750 F.2d 1295, 1299 (5th Cir. 1985); see Dranoff-Perlstein v. Sklar, 967 F.2d at 858 ("Frequent use of a term by sellers of similar products or services tends to indicate that the term is descriptive or generic rather than suggestive.").

Alliance Bank, 742 F. Supp. 2d, 548.

In the present case, the mark REMEMBER THIS NAME is at the least suggestive. Suggestive terms are protected "[i]f information about the product or service given by the term is indirect or vague." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition (4<sup>th</sup> Edition 2010).



If you apply the imagination test to the Plaintiff's mark REMEMBER THIS NAME, it can be seen that it is at least suggestive and therefore inherently distinctive. REMEMBER THIS NAME does not provide direct information regarding Lundy Law's legal services. The mark does not "forthwith" convey to whom the services are provided or directed. In short, a customer would not know or connect the mark REMEMBER THIS NAME with legal services. As Professor McCarthy states in his treatises at Section 11:67 "If the mental leap between the word and the product's attributes is not almost instantaneous, this strongly indicates suggestiveness, not direct descriptiveness." The mark REMEMBER THIS NAME as applied to legal services is, therefore, at most, a suggestive mark. The fact that the mark REMEMBER THIS NAME is suggestive means it should be treated as distinctive and, therefore, automatically qualifying for trademark protection, as set forth above. Thus, the mark is protectable.

**b. Defendant's Use Of The REMEMBER THIS NUMBER Mark Is Likely To Cause Confusion.**

Lundy Law respectfully submits that Defendant's use of REMEMBER THIS NUMBER is likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection or association of Defendant with Lundy Law and as to the origin, sponsorship or approval of Defendant's services by Lundy Law.

Whether use of a designation causes a likelihood of confusion with the use of another's trademark is determined by a consideration of the circumstances involved in the marketing of the respective goods or services and/or in the operation of the respective businesses of the parties. See Interpace Corp. v. Lapp, Inc., 721 F.2d at 462.

Here, a likelihood of confusion is self-evident: consumers viewing the REMEMBER THIS NUMBER designation will assume that the Defendant's services are associated with Lundy Law and its services. The commercial impression of Defendant's designation speaks for

itself, as the public readily will perceive, an affiliation, connection, or association with Lundy Law due to Defendant's use of the REMEMBER THIS NUMBER mark. The fact that Plaintiff's mark is advertised on the outside of a bus and passengers see the Defendant's mark REMEMBER THIS NUMBER on the inside of the bus is likely to cause confusion, particularly where the services are identical. Under these circumstances, a likelihood of confusion is an inevitable result.

Consideration of other marketplace factors<sup>3</sup> further supports the conclusion that a likelihood of confusion exists between the parties' marks. The distinctive and dominant component of the parties' respective marks is the term REMEMBER THIS, and it is this feature that will most likely be impressed upon the minds of consumers and remembered. Thus, confusion is likely. See Country Floors v. Partnership of Gepner and Ford, 930 F.2d 1056, 1065 (3d Cir. 1991).

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<sup>3</sup> The Third Circuit has advised that the following factors, known as the Lapp Factors, where relevant, should be considered to test for likelihood of confusion:

- (1) the degree of similarity between the owner's mark and the alleged infringing mark;
- (2) the strength of the mark;
- (3) the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase;
- (4) the length of time the defendant has used the mark without evidence of actual confusion arising;
- (5) the intent of the defendant in adopting the mark;
- (6) the evidence of actual confusion;
- (7) whether the goods, competing or not, are marketed through the same channels of trade and advertised through the same media;
- (8) the extent to which the targets of the parties' sales efforts are the same;
- (9) the relationship of the goods in the minds of consumers, whether because of the near-identity of the products, the similarity of function, or other factors;
- (10) other facts suggesting that the consuming public might expect the prior owner to manufacture both products, or expect the prior owner to manufacture a product in the defendant's market, or expect that the prior owner is likely to expand into the defendant's market.

See A & H Sportswear, 237 F.3d at 214-15.



Furthermore, the REMEMBER THIS NAME mark is both a conceptually and commercially strong mark, entitling it to broad protection. In addition, as will be demonstrated at the hearing on this Motion by way of Lundy Law's advertising expenditures and sales, the REMEMBER THIS NAME mark is distinctive and well-known among consumers.

Insofar as Defendant's intent in adopting REMEMBER THIS NUMBER is concerned, because of the reputation of the REMEMBER THIS NAME mark and the popularity of Lundy Law's services marketed thereunder, it is difficult to fathom any reason for adopting the REMEMBER THIS NUMBER mark if Defendant did not intend to obtain an unfair commercial advantage and trade upon the goodwill of the REMEMBER THIS NAME mark. In this respect, in American Express Co. v. Pan American Express, 509 F. Supp. 348, 352 (E.D. Pa. 1981), the court stated:

[W]e express concern over defendants' choice, from among the infinite variety of names and terms which could have been chosen as company names and service marks, of terms which so closely resemble the long, established, registered marks of the plaintiff.

The foregoing facts all point to the conclusion that consumers viewing Defendant's REMEMBER THIS NUMBER designation will assume that the goods and services represented by that designation are associated with and connected to Lundy Law. The elements of a trademark infringement action are satisfied, and Lundy should be granted injunctive relief.

**C. Consideration Of The Lapp Factors Unequivocally Show A Likelihood Of Confusion Is Created By Plaintiff's Mark.**

A likelihood of confusion exists "when the customers viewing the mark would probably assume that the product or service it represents is associated with the source of a different product or service identified by a similar mark" Fisons, 30 F.3d at 472 (quoting Dranoff-Perlstein Assoc. v. Sklar, 967 F.2d 852, 862 (3d Cir. 1992)), and which is determined by



considering various marketplace factors, known as the “Lapp factors.” See A&H Sportswear, 237 F.3d at 211-12; Interpace Corp. v. Lapp, Inc., 721 F.2d 460, 463 (3d Cir. 1983). As these factors have been set forth above, they will not be repeated here. However, it bears noting that “the *Lapp* test is a qualitative inquiry. Not all factors will be relevant in all cases; further, the different factors may properly be accorded different weights depending on the particular factual setting. A district court should utilize the factors that seem appropriate to a given situation.” A&H Sportswear, 237 F.3d at 215.

Using the Lapp factors, Lundy Law submits that a review of these factors and the facts in this case indicate unequivocally that a likelihood of confusion is created by Pitt’s use of the mark REMEMBER THIS NUMBER.

**1. The Parties’ Marks Are Strikingly And Confusingly Similar.**

“The single most important factor in determining likelihood of confusion is mark similarity.” A&H Sportswear, Inc., 237 F.3d at 216 (quoting Fisons, 30 F.3d at 476); see also id. at 214 (“[W]hen goods are directly competing, both precedent and common sense counsel that the similarity of the marks takes on great prominence.”). “Marks are confusingly similar if ordinary consumers would likely conclude that [the two services] share a common source, affiliation, connection or sponsorship.” Id. (citation and quotation omitted). “Side-by-side comparison of the two marks is not the proper method for analysis when the products are not usually sold in such a fashion. Instead, an effort must be made to move into the mind of the roving consumer.” Id. A defendant can often point out minute differences which, upon intense scrutiny, would seem to distinguish the parties’ marks. Such differences, though, may not register in the minds of consumers who may be confused upon seeing the defendant’s mark. “

“However, the general rule that marks should be viewed in their entirety does not undermine the common-sense precept that the more forceful and distinctive aspects of a mark should be given more weight, and the other aspects less weight.” *Id.* “When the dominant portions of the two marks are the same, confusion is likely.” Country Floors, Inc. v. Partnership of Gepner and Ford, 930 F.2d 1056, 1065 (3d Cir. 1999). In determining “dominance,” it has been stated that, generally, it is the first part of a mark that is dominant, as that is the part that is most likely to be impressed upon the mind of a purchaser and remembered. See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d at 1372; Presto Products, Inc. v. Nice-Pak Products, Inc., 9 USPQ2d 1895, 1897 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered.” KID-WIPES held confusingly similar to KID STUFF both for baby wipes.). Further, where a composite mark consists of disclaimed matter, that disclaimed matter is not usually regarded as the dominant part of the mark. Country Floors, Inc., 930 F.2d at 1065. Where “a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services.” In re 1st USA Realty Professionals, Inc., 84 USPQ2d 1581, 1586 (TTAB 2007) (Applicant’s use of 1ST USA and design for real estate brokerage and listing services likely to cause confusion with FIRST USA in stylized form for banking, credit card, and related services).

In addition, the Third Circuit has recognized that “[t]here is no simple rule as to when marks are too similar. The degree of similarity . . . needed to prove likely confusion will vary with the difference in the goods . . . of the parties. Where the goods . . . are directly competitive, the degree of similarity required to prove a likelihood of confusion is less than in the case of dissimilar products.” Kos Pharmaceuticals, Inc. v. Andrx Corp., 369 F.3d 700, 713 (3d Cir.



2004) (citation and quotation omitted); see also Century 21 Real Estate Corp. v. Century Life of America, 23 USPQ2d 1698, 1700 (Fed. Cir.), cert. denied, 506 U.S. 1034 (1992) (“When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.”) (finding CENTURY LIFE OF AMERICA for insurance underwriting services likely to cause confusion with CENTURY 21 for insurance brokerage services).

With the above-standards in mind, it would strain credulity to suggest that the mark REMEMBER THIS NAME and the mark REMEMBER THIS NUMBER are anything but confusingly similar.

When viewed in their entirety, the parties’ respective marks are virtually indistinguishable in appearance. REMEMBER THIS NAME and REMEMBER THIS NUMBER are even used in substantially the same fonts.

Significantly, the dominant portion of Pitt’s mark is REMEMBER THIS which are the first words that one would see and speak in calling for Pitt’s legal services. Because the dominant portion of Pitt’s mark REMEMBER THIS NUMBER is virtually the same as Lundy Law’s mark REMEMBER THIS NAME, confusion is likely. See Country Floors, Inc., 930 F.2d at 1065.

As to sound, the parties’ marks are, again, highly similar. While Pitt’s mark ends with the term NUMBER and Lundy Law’s mark ends with the term NAME, they do not differentiate that you are reminded to remember the source of the services. As noted above, the wording REMEMBER THIS is the dominant, more source-indicating portion of both marks.

The slight difference in the parties' marks becomes even less significant when considering the fact that the parties' marks convey the same overall commercial impressions. The meaning is the same, namely, remember the person advertising under the mark.

The similarities in the mark REMEMBER THIS NAME and mark REMEMBER THIS NUMBER far outweigh their slight differences, especially when considering the fact that under actual marketing conditions, consumers do not have the luxury of making side-by-side comparisons between marks and must rely upon their imperfect recollections. Average purchasers are not infallible in their recollection of trademarks and often retain only a general overall impression of marks that they may previously have seen in the marketplace. The differences in the parties' marks are not so significant that they are likely to be noted or remembered by purchasers when seeing the marks at different times in connection with identical services. Rather, consumers, being familiar with Lundy Law's mark REMEMBER THIS NAME, and encountering Pitt's mark REMEMBER THIS NUMBER, likely will confuse the marks, and misremember one as the other.

In sum, the appearance, sound, connotation and commercial impression of the involved marks are highly similar. The parties' marks when viewed in their entirety are confusingly similar. See Winchester Federal Sav. Bank, et al. v. The Winchester Bank, Inc., 359 F. Supp.2d 561, 569 (E.D. Ky. 2004).<sup>4</sup> The similarity of the parties' marks weighs heavily in favor of a finding of a likelihood of confusion.

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<sup>4</sup> In Winchester, the court granted summary judgment in favor of plaintiffs on their trademark infringement claim. Concerning the issue of similarity between the marks, the court explained, "Here, the parties' marks bear great similarity to each other, which increases the likelihood of confusion. . . . Even if the plaintiffs typically use additional words in conjunction with the word WINCHESTER when promoting WFSB's name, the predominant feature of the name is WINCHESTER. Since the word is also the predominant feature of the defendant's name, the likelihood of confusion is high." The Court also found that both banks offered similar banking services, and were to operate in the same geographic area.



**2. The Parties' Services Are Closely Related, If Not Identical.**

It is well settled that “[t]he closer the relationship between the products . . . the greater the likelihood of confusion.” Lapp, 721 F.2d at 462. Under this Lapp factor (9), the question is how similar, or closely related, the products are. Fisons, 30 F.3d at 481 (describing cases where “the relationship of the products was close enough to lead to the likelihood of confusion” and “the goods were similar enough that a consumer could assume they were offered by the same source”). “This factor focuses on the nature of the products themselves, asking whether it would be reasonable for consumers to associate them or see them as related.” Kos Pharmaceuticals, 369 F.3d at 723.

Goods or services need not be identical for this factor to support finding a likelihood of confusion. See, e.g., A&H Sportswear, 237 F.3d at 224 (affirming holding that “product similarity factor favored [plaintiff]” where products were only “somewhat interchangeable” due to “slightly different functions”). The question is not whether it is possible to distinguish between the goods or services but whether, and to what extent, the goods or services seem related, “whether because of [their] near-identity ... or similarity of function, or other factors.” Id. at 215. Courts may consider here “whether buyers and users of each party’s goods are likely to encounter the goods of the other, creating an assumption of common source[,] affiliation or sponsorship.” Checkpoint Systems, Inc. v. Check Point Software Technologies, Inc., 269 F.3d 270, 286 (3d Cir. 2001).

In this case, there is no argument that the legal services under both marks are substantially identical.

**3. The Strength Of Lundy Law's Mark Favors A Finding Of A Likelihood Of Confusion.**

Under the second Lapp factor, the strength of the trademark owner's mark is measured by "(1) the distinctiveness or conceptual strength of the mark; and (2) the commercial strength or marketplace recognition of the mark." A & H Sportswear, 237 F.3d at 221. The first prong of this test looks to the inherent features of the mark; the second looks to factual evidence of "marketplace recognition." Id.

Distinctiveness or conceptual strength of a mark is determined by placing the mark in one of four categories. A&H Sportswear, 237 F.3d at 221. As noted above, these four categories are: (1) generic marks, which function as the common descriptive name of a product class; (2) descriptive marks, which convey an immediate idea of the ingredients, qualities, or characteristics of the goods; (3) suggestive marks, which suggest a quality or ingredient of goods and require consumer imagination, thought, or perception to determine what the product is; and (4) arbitrary or fanciful marks, which use terms that neither describe nor suggest anything about the product, and bear no logical or suggestive relation to the actual characteristics of the goods. Id. at 221-22. In order to qualify for trademark protection, a mark must be arbitrary, fanciful, suggestive, or descriptive with a demonstration of secondary meaning. Id. at 222. Marks that are descriptive without secondary meaning and generic marks do not receive trademark protection. Id.

The classification system's primary purpose is to determine whether a mark is protectable. Id. Classification of a mark can be used secondarily to determine the degree of protection a mark should receive. Id. Stronger marks are entitled to greater protection. Id. At the same time, it is well established that even the owner of a "weak" mark is entitled to be protected from damage due to a likelihood of confusion with another's use of the same or



confusingly similar mark. See AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341, 350 (9th Cir. 1979) (although a weak mark is entitled to a “restricted range of protection,” infringement will be found “if the marks are quite similar, and the goods closely related”). As stated by Professor McCarthy:

Even the weakest, most flabby mark must have some degree of strength or else it would not be a trademark at all. Even weak marks are entitled to protection against subsequent registration or use by another for a closely similar format on closely competitive goods or services. Even a “weak” mark has at least some strength to cause likely confusion when another edges very close. Whether a mark is weak or not is of little importance where the conflicting mark is identical and the goods are closely related. 2 McCarthy § 11:76.

Commercial strength or marketplace recognition is another measure of mark strength. Fisons, 30 F.3d at 479.

As demonstrated more fully above, Lundy Law’s mark REMEMBER THIS NAME is at least a suggestive mark. The mark is inherently distinctive and is, accordingly, entitled to a high level of protection. A&H Sportswear, 237 F.3d at 222.

Furthermore, Lundy Law’s mark REMEMBER THIS NAME has substantial commercial strength. Lundy Law has been almost continually the most prominent largest legal advertisers in Southeastern Pennsylvania, Southern New Jersey and Delaware for years and, thus, one of the best known firms in the tri-state area. As will be seen at the hearing, Lundy Law’s advertising under the mark REMEMBER THIS NAME has been pervasive and substantial.

Lundy Law submits that the foregoing is substantial evidence regarding the commercial strength of its mark REMEMBER THIS NAME. See Heritage Community Bank v. Heritage Bank, N.A., Civ. A. No. 08-4322, 2008 WL 5170190 at \*6-7 (D.N.J. Dec. 9, 2008) (granting preliminary injunction; HERITAGE COMMUNITY BANK confusingly similar to HERITAGE

BANK, N.A., both for banking services; finding advertisements consisting of local newspaper, radio, billboard and train station poster ads directed to Northern New Jersey residents over a two (2) year period to be “strong evidence to consider regarding the commercial strength of Plaintiff’s mark.”)

Even if, arguendo, Lundy Law’s mark is deemed to not be a strong mark, or even a weak mark, such marks are still entitled to protection against the subsequent user of a similar mark for closely related goods and/or services. In view of identity of the marks, the identical services and the same local geographic trading area, the mark REMEMBER THIS NAME should be considered a sufficiently strong mark to be entitled to a scope of protection necessary to enjoin Pitt’s use of the confusingly similar marks REMEMBER THIS NUMBER.

The second Lapp factor weighs in favor of Lundy Law.

**4. The Third Lapp Factor Favors Lundy Law.**

Lundy Law respectfully submits that the degree of care used by a consumer in selecting a personal injury lawyer from an advertisement is predominantly exercised by unsophisticated and often times minimally educated consumers. Lundy Law and Pitt both advertise in, *inter alia*, public transit with the knowledge that public transportation in large urban areas is used by unsophisticated members of the public. A less sophisticated customer creates a greater likelihood of confusion. In any event, even sophisticated consumers who may be knowledgeable as to legal services are not necessarily knowledgeable in the field of trademarks or immune to source confusion arising from the use of confusingly similar marks on closely related goods. See Giersch v. Scripps Networks Inc., 90 USPQ2d 1020, 1027 (TTAB 2009).

Even when the purchasing class is mixed – one which consists of commercial professionals and ordinary consumers – courts normally do not hold the general class to a high



standard of care. Ford Motor Company v. Summit Motor Products, Inc., 930 F.2d at 293 (“When the buyer class is mixed, the standard of care to be exercised by the reasonably prudent purchaser will be equal to that of the least sophisticated consumer in the class.”). If there is evidence that both average consumers and commercial professionals buy goods or services, there is a lower standard of care because of the lack of sophistication of some of the relevant purchasers. Id. (“Where the buyer class consists of both professional buyers and consumers then the issue will center on the consumers, for confusion within the lowest stratum of reasonably prudent buyers may give rise to liability even if professional buyers in the market are not confused.”) (quotation and citation omitted).

The third Lapp factor favors Lundy Law.

**5. The Lack Of Any Actual Confusion Evidence Is Of No Moment.**

To begin, “it is black letter law that actual confusion need not be shown to prevail under the Lanham Act, since actual confusion is very difficult to prove and the Act requires only a likelihood of confusion as to source.” Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Company, 799 F.2d 867, 875 (2d Cir. 1986). The district court in A&H Sportswear discussed the significance of “actual confusion” as follows:

We are mindful that this factor [actual confusion] alone is not determinative as the Third Circuit has stated:

[T]he more evidence of actual confusion that a plaintiff can muster, the stronger likelihood of confusion in the future but lack of evidence of actual confusion at least where the time period that the two products have been in competition is short or when the particular circumstances do not indicate such evidence should have been available, does not raise an inference that there is no likelihood of confusion. Versa Products Co., Inc. v. Bifold Company (Mfg.) Ltd., 50 F.3d 189, 205 (3d Cir.

1995), cert. denied, —U.S.—, 116 S.Ct. 54, 133 L.Ed.2d (1995) (citation omitted).

A&H Sportswear Co. Inc. v. Victoria Secret Stores, Inc., 926 F. Supp. 1233, 1261 (E.D. Pa. 1996), aff'd, 166 F.3d 191 (3d Cir. 1999).

Courts acknowledge that a plaintiff need not prove actual confusion in order to establish trademark infringement. This fact is especially true where a defendant's product or service has been on the market for a relatively short period of time that the receipt of reported instances of actual confusion is unlikely. In such instances, courts treat the actual confusion factor as a non-factor, with the absence of such evidence having no adverse impact on plaintiff's ability to prove infringement.

The particular circumstances in the present case show that there has been little opportunity for actual confusion to occur. The unavailability of such evidence is to be expected, and the receipt of any reported instances of actual confusion is unlikely. The law in this Circuit requires that a negative inference cannot be drawn from the lack of evidence when defendant has been operational for only a short period of time. See Versa Products Co., Inc. v. Bifold Co. (Mfg.) Ltd., 50 F.3d 189, 205 (3d Cir.), cert. denied, 516 U.S. 808 (1995). Furthermore, "it would be unfair to penalize [Lundy Law] for acting to protect its trademark rights before serious damage has occurred." Lois Sportswear U.S.A., Inc., 799 F.2d at 875.

Accordingly, the Lapp factors relating to actual confusion and the length of time defendant has used the mark without evidence of actual confusion are neutral.

**6. Similar Channels Of Trade And Targets Of Sales Efforts Point To A Likelihood Of Confusion.**

The greater the similarity between the parties' advertising and marketing campaigns, the greater the likelihood of confusion. Checkpoint, 269 F.3d at 289; Kos Pharmaceuticals, 369 F.3d at 722. Applying this factor "requires a court to examine the 'media the parties use in marketing



their products as well as the manner in which the parties use their sales force to sell their products to consumers.” Kos Pharmaceuticals, 369 F.3d at 722 (quoting Checkpoint, 269 F.3d at 289). In addition, when the parties target their sales efforts to the same consumers, there is a stronger likelihood of confusion. Checkpoint, 269 F.3d at 289.

As will be shown at the evidentiary hearing on this Motion, the parties use similar advertising and marketing channels. To date, a large part of both parties’ marketing has been done through bus advertisements to the same consumers in the exact same geographic area. In addition, the parties target their sales efforts to the same consumers – individuals in the exact same geographic areas. It is almost irrefutable that existing potential consumers of the parties’ services in the same geographic areas come across advertisements about both parties’ services.

Both Lapp factors 7 and 8 weigh in favor of a finding of a likelihood of confusion.

#### **7. The Lapp Factors Relating To Good Faith.**

The fifth Lapp factor is the intent of the defendant in adopting the mark. The relevant inquiry is whether the defendant adopted its mark with the intent of obtaining unfair commercial advantage from the plaintiff’s reputation. See Fisons, 30 F.3d at 479-80. However, wrongful intent is not a prerequisite to an action for trademark infringement, and good faith is no defense. Chips ‘n Twigs, Inc. v. Chip-Chip, Ltd., 414 F. Supp. 1003, 1015 (E.D. Pa. 1976); see also Wynn Oil Co. v. Thomas, 839 F.2d 1183, 1189 (6th Cir. 1988) (“the defendant’s good intentions do not in any way preclude a finding of a likely confusion”; “While . . . we do consider intention to be relevant when a plaintiff shows that a defendant knowingly copied the contested trademark, we agree . . . that absent such a showing, intentions are irrelevant.”)

In the present case, it is highly likely that Pitt’s adoption and use of its mark REMEMBER THIS NUMBER has not been in good faith. If Pitt was aware of Lundy Law’s

advertising, in order to prevent likelihood of confusion, it should have steered-clear of Lundy Law's mark REMEMBER THIS NAME.

In Harold F. Ritchie, Inc. v. Chesebrough-Ponds Inc., 281 F.2d 755, 758 (2d Cir. 1960),

the court states:

In this circuit and others, numerous decisions have recognized that the second comer has a duty to so name and dress his product as to avoid all likelihood of consumers confusing it with the product of the first comer. This principle is well illustrated by G. D. Searle & Co. v Chas. Pfizer & Co., Inc., 7 Cir., 265 F.2d 385, 387, certiorari denied 361 U.S. 819, 80 S.Ct. 64, 4 L.Ed.2d 65, which held the trademark 'Dramamine' was infringed by 'Bonamine,' each designating a remedy for motion sickness. At page 387, quoting verbatim from an earlier decision of the Seventh Circuit, the court said:

One entering a field of endeavor already occupied by another should, in the selection of a trade name or trademark, keep for enough away to avoid all possible confusion.

**III. THE BALANCE OF HARDSHIPS TIPS DECIDEDLY IN LUNDY LAW'S FAVOR AND THE PUBLIC WILL SUFFER HARM IF AN INJUNCTION DOES NOT ISSUE.**

When evaluating this third factor of the preliminary injunction analysis, a court must "undertake to balance the hardships to the respective parties." Pappan Enterprises, Inc., 143 F.3d at 805. "[T]he basic purpose behind the balancing analysis is to ensure that the issuance of the injunction would not harm the infringer more than a denial would harm the mark's owner." Opticians, 920 F.2d at 197.

Under the present facts, the balance of hardship weighs heavily in Lundy Law's favor. Lundy Law respectfully submits that it has established a likelihood of success on the merits and irreparable injury resulting from Defendant's acts of infringement and unfair competition.



Lundy Law has expended substantial sums of money since adopting the mark to promote and advertise its services and has continuously sold substantial amounts of services under its REMEMBER THIS NAME mark.

Defendant cannot complain that it will suffer injury if a preliminary injunction is issued. Plaintiff respectfully submits that Defendant intentionally attempted to trade upon the goodwill and established renown of the REMEMBER THIS NAME mark, with full knowledge of Lundy Law's rights, in order to enhance Defendant's commercial activities. Defendant can hardly claim to be harmed, because it misappropriated the distinctiveness of the REMEMBER THIS NAME mark with full knowledge of Lundy Law's rights. See Pappan Enterprises, Inc., 143 F.3d at 806 ("the self-inflicted nature of any harm suffered by [the defendant] also weighs in favor of granting preliminary injunctive relief"); Opticians, 920 F.2d at 197 (by virtue of its recalcitrant behavior, party cannot "hardly claim to be harmed, since it brought any and all difficulties occasioned by the issuance of an injunction upon itself.").

Even if Defendant could so complain, it is highly unlikely that Defendant will suffer irreparable harm if a preliminary injunction is issued. An injunction would not prevent Defendant from offering its legal services in connection with other names and marks in the same media outlets in which it now advertises including inside public transit buses, subways and rail cars. Defendant would be able to continue offering its services, provided that any new names and marks do not lead consumers into the belief that Defendant's products or services are affiliated with or connected to Lundy Law. Moreover, Defendant has only recently begun using the infringing mark, compared with Lundy Law's substantial use of its REMEMBER THIS NAME mark since May 16, 2011.

Thus, any injury Defendant might suffer as a result of the issuance of a preliminary injunction is outweighed by the irreparable harm Lundy Law would suffer as a result of Defendant's use of REMEMBER THIS NUMBER. It is clear that Lundy Law has and will continue to suffer harm because of Defendant's actions. Defendant's use of the infringing mark diminishes the value of Lundy Law's REMEMBER THIS NAME mark, business and goodwill. These are hardships which Lundy Law will suffer if an injunction is not granted.

Finally, where a party demonstrates both the likelihood of success on the merits and irreparable harm, "it almost always will be the case that the public interest will favor" the issuance of an injunction. American Tel. and Tel. Co. v. Winback and Conserve Program, Inc., 42 F.3d 1421, 1427 n. 8 (3d Cir. 1994), cert. denied, 115 S.Ct. 1838 (1995). The policy of the trademark law is to protect the public from confusion. In a trademark case, public interest "is most often a synonym for the right of the public not to be deceived or confused." Opticians, 920 F.2d at 197 (citations omitted). Protection of the public from confusion through the grant of a preliminary injunction is a policy favored and followed in this Court. In American Diabetes Association, Inc., the court stated, 533 F. Supp. at 21:

There are several competing policy interests active in shaping the law of trademark infringement. One of these, plaintiffs' concern that the fruits of their labor not be misappropriated, has been discussed in some detail. The basic policy of trademark law, however, is the protection of the public from confusion. In this case, the public will benefit from a preliminary injunction because they will be protected from misdirecting any funds, and other harms, as a result of becoming confused between the two charities.

Against these interests must be weighed the concern for creating a healthy competition wherever possible in our economy and the harm which will accrue to defendants in particular. The only perceivable harm to defendants is that the National Diabetes Association will be delayed in its fundraising activities until final adjudication of this matter. As to the possibility of a preliminary



injunction throttling a healthy spirit of competition in this case, it need only be said that, whenever competing policy interests meet, inevitably the lesser must be compromised.

In the present case, the policy of protecting the public from confusion will be fostered by the granting of a preliminary injunction. As shown, Defendant's use of REMEMBER THIS NUMBER infringes the REMEMBER THIS NAME mark, and thus, Lundy Law has and will suffer irreparable harm. Thus, the public interest lies primarily, consistent with the intent of the Lanham Act, in protecting Lundy Law's mark. The issuance of an injunction will protect the public from the deceptive and unlawful use of the REMEMBER THIS NUMBER mark by Defendant. Accordingly, the issuance of a preliminary injunction is warranted.

#### IV. CONCLUSION.

For all of the foregoing reasons, preliminary injunctive relief should be granted to Lundy Law to preserve the status quo ante. The use of REMEMBER THIS NUMBER by Defendant infringes Lundy Law's REMEMBER THIS NAME mark. Lundy Law will suffer irreparable injury if Defendant is allowed to continue to use REMEMBER THIS NUMBER as its name and mark, and the balance of hardships and public interest weigh in favor of granting injunctive relief.

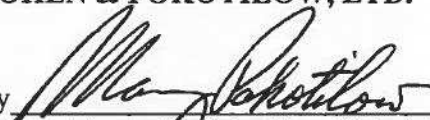
Accordingly, injunctive relief is warranted and respectfully requested.

Respectfully submitted,

**CAESAR, RIVISE, BERNSTEIN,  
COHEN & POKOTILOV, LTD.**

Dated: March 4, 2013

By



Manny D. Pokotilow (I.D. # 13310)  
1635 Market Street  
12th Floor - Seven Penn Center  
Philadelphia, PA 19103-2212  
*Attorneys for Plaintiff Lundy Law, LLP*

**EXHIBIT B TO JACQUELINE LESSER'S DECLARATION**



# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>LUNDY LAW, LLP,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Civil No. _____</b>
	)	
<b>LARRY PITT &amp; ASSOCIATES</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	
<b>Defendant.</b>	)	<b>VERIFIED COMPLAINT</b>
	)	

Plaintiff, Lundy Law, LLP, by and through its attorneys, and as for its Complaint, avers as follows:

**JURISDICTION**

1. This civil action asserts claims for trademark infringement, false designation of origin, and unfair competition arising under the Lanham Act, as amended, 15 U.S.C. §§ 1051 et seq. and the statutory and common laws of the Commonwealth of Pennsylvania. The amount in controversy exclusive of interest and costs exceeds the sum or value of \$75,000.

2. This Court has jurisdiction over the claims Plaintiff is asserting under the Federal Trademark Act, 15 U.S.C. § 1121, and the Judicial Code, 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367(a).

3. Plaintiff, Lundy Law, LLP (“Lundy Law”), is a Pennsylvania limited liability partnership having a principal place of business at 1635 Market Street, 19<sup>th</sup> Floor, Philadelphia, Pennsylvania 19103.

4. On information and belief, Defendant, Larry Pitt & Associates (“Pitt”), is a Pennsylvania limited liability partnership having its principal place of business at 1918 Pine Street, Philadelphia, Pennsylvania 19103.



**COUNT I – TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

5. As a cause of action and ground for relief, Lundy Law alleges trademark infringement by Pitt and alleges that Pitt has engaged in acts in violation of under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and at common law, and incorporates ¶¶ (1) through (4) of the Complaint as part of this count.

6. Since at least as early as May 16, 2011, long prior to the acts complained of herein, Lundy Law has used the mark REMEMBER THIS NAME in connection with legal services in interstate commerce.

7. Lundy's services provided and sold under the mark REMEMBER THIS NAME, which are recognized in this Commonwealth and in the United States to be of the highest quality, are offered for sale and sold in interstate commerce.

8. From at least as early as May 16, 2011 to the present, Lundy's advertising and sales of services under the mark REMEMBER THIS NAME have been and are significant.

9. From at least as early as May 16, 2011 to the present, Lundy Law has engaged in substantially exclusive use of the mark REMEMBER THIS NAME for legal services and in particular personal injury legal services, identical to those now advertised for and offered by Defendant Pitt.

10. Notwithstanding Lundy Law's prior exclusive rights in the mark REMEMBER THIS NAME, Defendant Pitt, with actual notice of the mark REMEMBER THIS NAME, has adopted and used the mark REMEMBER THIS NUMBER in this judicial district and in interstate commerce, in connection with services customary in the legal services industry, and specifically the identical area of personal injury legal services advertised for and offered by

Plaintiff Lundy Law.

11. On or about January 24, 2013, Plaintiff, Lundy Law became aware of Defendant's use of the mark REMEMBER THIS NUMBER in the exact same media used by Lundy Law. Lundy Law's use of REMEMBER THIS NAME is for example used on the outside and inside of transit buses, as shown on the attached Exhibit A, while Pitt's use of REMEMBER THIS NUMBER was designed to be used on the exact same size and style posters, such as Exhibit B, on the same location on the inside of some of the same buses.

12. By letter dated January 25, 2013, Plaintiff Lundy Law, through its legal counsel, demanded that Defendant Pitt immediately cease and permanently desist from all use of the name and mark REMEMBER THIS NUMBER in connection with legal services. Despite the foregoing, Pitt continues to use the name and mark REMEMBER THIS NUMBER.

13. Defendant Pitt is not associated, affiliated or connected with or authorized, endorsed or sanctioned by Plaintiff Lundy Law. In fact, Defendant Pitt is in direct competition with Plaintiff Lundy Law in the same geographic area for the same legal services.

14. Pitt's use of REMEMBER THIS NUMBER in the manner hereinabove alleged was and is without the consent or authority of Lundy Law.

15. Pitt's use of REMEMBER THIS NUMBER, in the manner hereinabove alleged, has likely caused the public to believe, contrary to fact, that Pitt's business activities and services offered under the name and mark REMEMBER THIS NUMBER are sponsored, licensed and/or otherwise approved by, or in some way connected or affiliated with Lundy Law.

16. Pitt's unauthorized use of the name and mark REMEMBER THIS NUMBER, as set forth above, is likely to damage and materially diminish the value of the mark REMEMBER THIS NAME and result in Defendant Pitt unfairly benefiting and profiting from the reputation



and goodwill that is represented by the mark REMEMBER THIS NAME.

17. Pitt's use of REMEMBER THIS NUMBER in the manner hereinabove alleged constitutes trademark infringement under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), and at common law.

18. On information and belief, Pitt had actual knowledge of Lundy Law's prior use of the mark REMEMBER THIS NAME when Pitt began using the name and mark REMEMBER THIS NUMBER in connection with Pitt's legal services. On further information and belief, Pitt has long known of the fact that the public associates the mark REMEMBER THIS NAME with the services of Lundy Law, and Pitt has sought to capitalize on the goodwill engendered by the mark REMEMBER THIS NAME by intentionally adopting the name and mark REMEMBER THIS NUMBER.

19. Upon information and belief, Pitt has performed the aforementioned acts willfully, deliberately, with the knowledge of the infringement they would cause, to appropriate and unfairly trade upon the goodwill in the REMEMBER THIS NAME mark, and with entire want of care as would raise the presumption of conscious indifference to their consequences.

20. By reason of Pitt's acts alleged herein, Lundy Law has and will suffer damage to its business, reputation, and goodwill, and Pitt will enjoy profits to which it is otherwise not entitled, for which Lundy Law is entitled to relief at law.

21. Unless enjoined by this Court, Pitt will continue to infringe the mark REMEMBER THIS NAME, thereby deceiving the public and causing Lundy Law immediate and irreparable injury. It would be difficult to ascertain the amount of compensation that could afford Lundy Law adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required. Lundy Law's remedy at law is not adequate to compensate it for



injuries threatened.

### **COUNT II – FALSE DESIGNATION OF ORIGIN**

22. As a cause of action and ground for relief, Plaintiff Lundy Law alleges that Defendant Pitt has engaged in acts in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and incorporates by reference ¶¶ (1) through (21) inclusive of the Complaint as part of this count.

23. Defendant Pitt's use of mark REMEMBER THIS NUMBER in the manner hereinabove alleged constitutes a false designation of origin within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), which is likely to cause confusion, mistake or deception as to the source, origin, authorization, sponsorship and/or approval of Defendant Pitt's commercial activities with respect to the mark REMEMBER THIS NAME.

24. The nature and probable tendency and effect of Pitt's use of the name and mark REMEMBER THIS NUMBER in the manner hereinabove alleged is to enable Pitt to confuse or deceive the public by misrepresenting the service offered for sale and rendered under said name and mark as sponsored, licensed and/or approved by, or in some way connected or affiliated with REMEMBER THIS NAME. Such conduct constitutes a false designation of origin in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

25. Upon information and belief, Defendant Pitt's actions have been conducted intentionally and willfully, with the express intent to cause confusion and mistake, to deceive and mislead the purchasing public, to trade upon the high quality reputation of Lundy Law and to improperly appropriate to itself the valuable trademark rights of Lundy.

### **COUNT III – UNFAIR COMPETITION**

26. As a cause of action and ground for relief, Plaintiff Lundy Law alleges that

Defendant Pitt has engaged in acts of unfair competition at common law, and incorporates by reference ¶¶ (1) through (25) inclusive of the Complaint as part of this count.

27. By virtue of Defendant Pitt's acts hereinabove pleaded, Pitt has engaged in conduct which is contrary to honest industrial and commercial practice, and thus, has engaged in unfair competition, in violation of the common law of the Commonwealth of Pennsylvania.

28. Defendant Pitt's acts hereinabove pleaded, are calculated to procuring an unfair competitive advantage by misappropriating the valuable goodwill developed by Plaintiff Lundy Law at substantial effort and expense represented by the distinctiveness of the mark REMEMBER THIS NAME.

29. Pitt has engaged in the aforementioned acts willfully and deliberately and with full knowledge of the mark REMEMBER THIS NAME and Lundy Law's rights therein.

30. Pitt will continue to compete unfairly unless restrained by this Court. As a result of Pitt's unfair competition, Lundy Law will be unable to control the loss of the distinctive quality and reputation represented by the mark REMEMBER THIS NAME and will sustain still further damages in an amount difficult to ascertain.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Alliance respectfully prays that:

1. The Court enter judgment that:
  - a. Defendant has infringed the mark REMEMBER THIS NAME under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and at common law;
  - b. Defendant has committed unfair competition of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and
  - c. Defendant has engaged in unfair competition at common law.



2. Defendant and each of its/his agents, employees, servants, attorneys, successors and assigns, and all others in privity or acting in concert therewith, be preliminarily and permanently enjoined from:

- a. Using the mark REMEMBER THIS NUMBER and/or any other confusingly similar designation, alone or in combination with other words, phrases, symbols or designs, as a service mark, trademark, trade name, domain name component, or otherwise to market, advertise or identify Defendant's commercial activities or services;
- b. Otherwise infringing the mark REMEMBER THIS NAME;
- c. Unfairly competing with Plaintiff in any manner whatsoever, or otherwise injuring its business reputation in the manner complained of herein; and
- d. Engaging in assignments or transfers, formation of new entities or associations or utilization of any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (a) through (c) above.

3. The Court order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendant, bearing the mark REMEMBER THIS NUMBER, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, be delivered up and destroyed.

4. Defendant be ordered to notify in writing and direct to the relevant federal or state Departments of Transportation and to its advertisers and all publishers of directories, registries or lists in which the Defendant's use of the name and mark REMEMBER THIS NUMBER appears, to delete all references to said names and marks from their files, databases and

directories.

5. Defendant be required, within thirty (30) days after service of judgment, to file with this Court and serve upon Plaintiff's counsel, a written report, under oath, setting forth in detail the manner in which Defendant has complied with the Judgment.

6. Defendant be directed to pay to Plaintiff compensatory damages in an amount to be determined at trial for the injuries sustained by Plaintiff in consequence of the acts complained of herein and that such damages be trebled because of the willful acts described herein.

7. Defendant be required to account for and pay to Plaintiff all profits realized by Defendant as the result of the acts complained of herein.

8. Defendant be required to pay to Plaintiff both the costs of this action and the reasonable attorneys' fees incurred by Plaintiff.

9. Defendant be required to pay pre- and post-judgment interest according to law.

10. The Court award any punitive and exemplary damages against Defendant and in favor of Plaintiff.

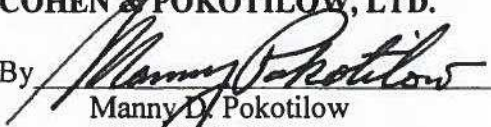
11. Plaintiff be granted such other, different and additional relief as this Court deems equitable and proper.

Respectfully submitted,

**CAESAR, RIVISE, BERNSTEIN,  
COHEN & POKOTILOV, LTD.**

Dated: March 4, 2013

By

  
Manny D. Pokotilow  
1635 Market Street  
12th Floor - Seven Penn Center  
Philadelphia, PA 19103-2212  
*Attorneys for Plaintiff Lundy Law, LLP*



**EXHIBIT B TO JACQUELINE LESSER'S DECLARATION**

# **EXHIBIT A**



**1-800-LundyLaw**

PA • NJ • DE

**INJURED? REMEMBER THIS NAME**



8273

[www.septa.org](http://www.septa.org) 215-580-7800

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2



**1-800-Timothy Law**

**PA • NJ • DE**

**INJURED? REMEMBER THIS NAME**

The advertisement features a large, 3D-style logo for "1-800-Timothy Law". The numbers "1-800-" are in blue with a gold shadow, while "Timothy Law" is in a larger, bold blue font with a gold shadow. Below the logo, the text "PA • NJ • DE" is written in white on a dark blue background. At the bottom, the phrase "INJURED? REMEMBER THIS NAME" is written in bold, orange and white text. The entire graphic is enclosed in a thick red border.



**INJURED? REMEMBER THIS NAME**

**1-800-LundyLaw**

**PA • NJ • DE**

**INJURY, DISABILITY & WORKERS' COMPENSATION**

**[www.LundyLaw.com](http://www.LundyLaw.com)**<sup>®</sup>



**INJURED?**

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**1-800-LundyLaw**  
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INJURY, DISABILITY & WORKERS' COMPENSATION

[www.LundyLaw.com](http://www.LundyLaw.com)<sup>®</sup>



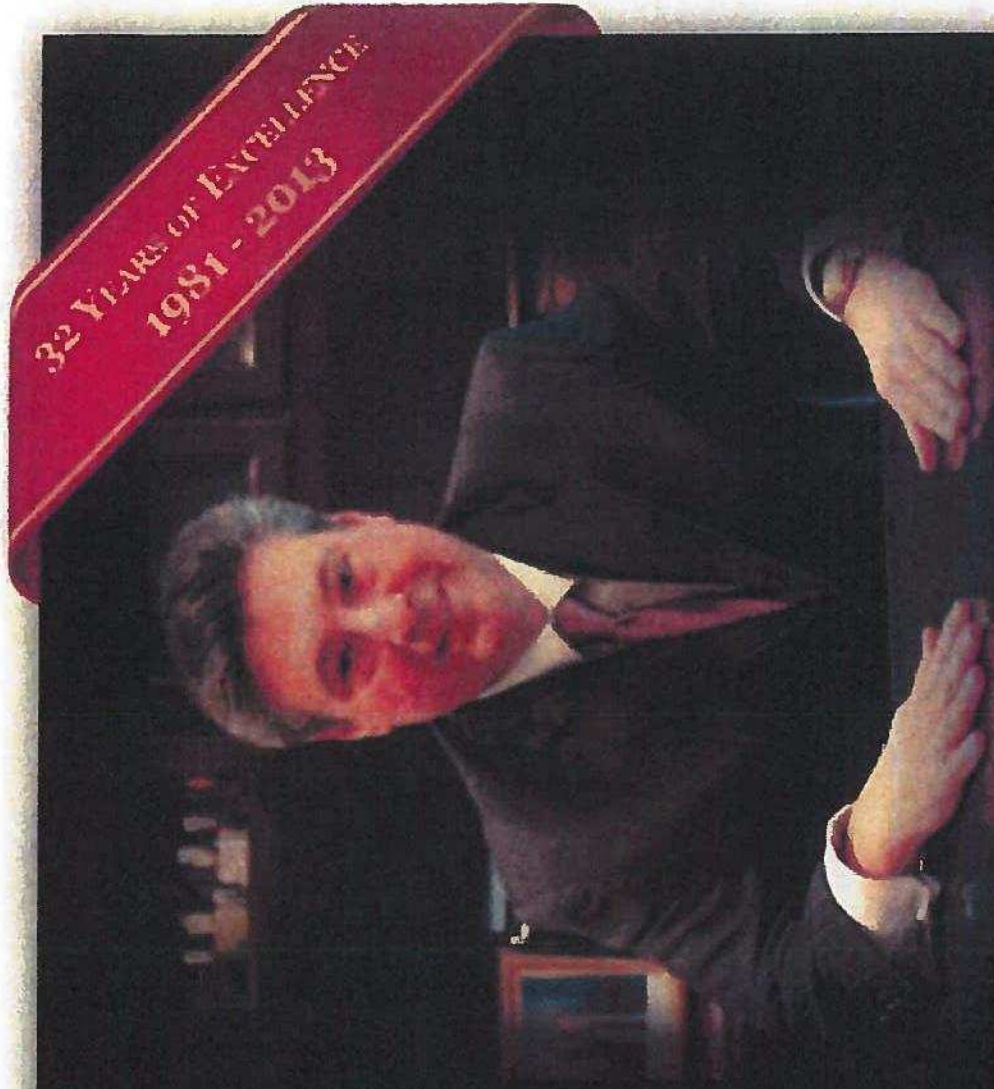
# **EXHIBIT B**

**Injured  
At work?  
In an accident?**

**Larry Pitt  
& Associates**

- Workers Compensation Law
- Personal Injury Law
- Social Security Disability

**REMEMBER THIS NUMBER  
Call 1-888-PITT-LAW**







32 YEARS OF EXCELLENCE  
1981 - 2013

**Injured at work?  
Injured in an accident?**

## **Larry Pitt & Associates**

- **Workers Compensation Law**
- **Personal Injury Law**
- **Social Security Disability**

**REMEMBER THIS NUMBER**

**Call 1-888-PITT-LAW**



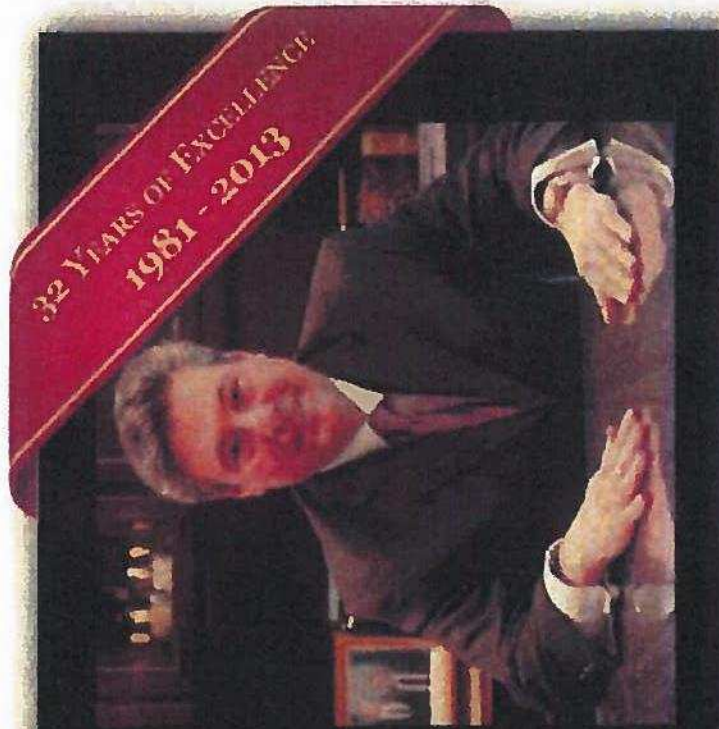
**Injured at work?  
Injured in an accident?**

**Larry Pitt & Associates**

- Workers Compensation Law
- Personal Injury Law
- Social Security Disability

**REMEMBER THIS NUMBER**

**Call 1-888-PITT-LAW**



**32 YEARS OF EXCELLENCE  
1981 - 2013**



**VERIFICATION**

I, L. LEONARD LUNDY, declare as follows:

I am Managing Partner of Lundy Law, LLP, Plaintiff herein. I have read the foregoing Verified Complaint and know the contents thereof and the same are true of my own knowledge except as to such matters herein stated to be on information and belief, and as to these matters, I believe them to be true.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty and perjury that the foregoing is true and correct.

Dated: March 4, 2013

By:

  
L. Leonard Lundy

# **EXHIBIT B**





2

1-800-LindyLaw

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INJURED? REMEMBER THIS NAME

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**1-800-LindaLaw**  
**INJURED? REMEMBER THIS NAME**  
PA • NJ • DE

The advertisement is contained within a red-bordered rectangular frame. The phone number '1-800-LindaLaw' is written in large, bold, blue letters with a gold-to-blue gradient and a 3D effect. Below the phone number, the slogan 'INJURED? REMEMBER THIS NAME' is written in bold, orange and white letters. At the bottom, the text 'PA • NJ • DE' is written in white letters on a dark blue background.



**INJURED? REMEMBER THIS NAME**

**1-800-LundyLaw**

PA • NJ • DE

INJURY, DISABILITY & WORKERS' COMPENSATION

[www.LundyLaw.com](http://www.LundyLaw.com)<sup>®</sup>



**INJURED?**

**REMEMBER THIS NAME**

**1-800-LundyLaw**  
PA • NJ • DE

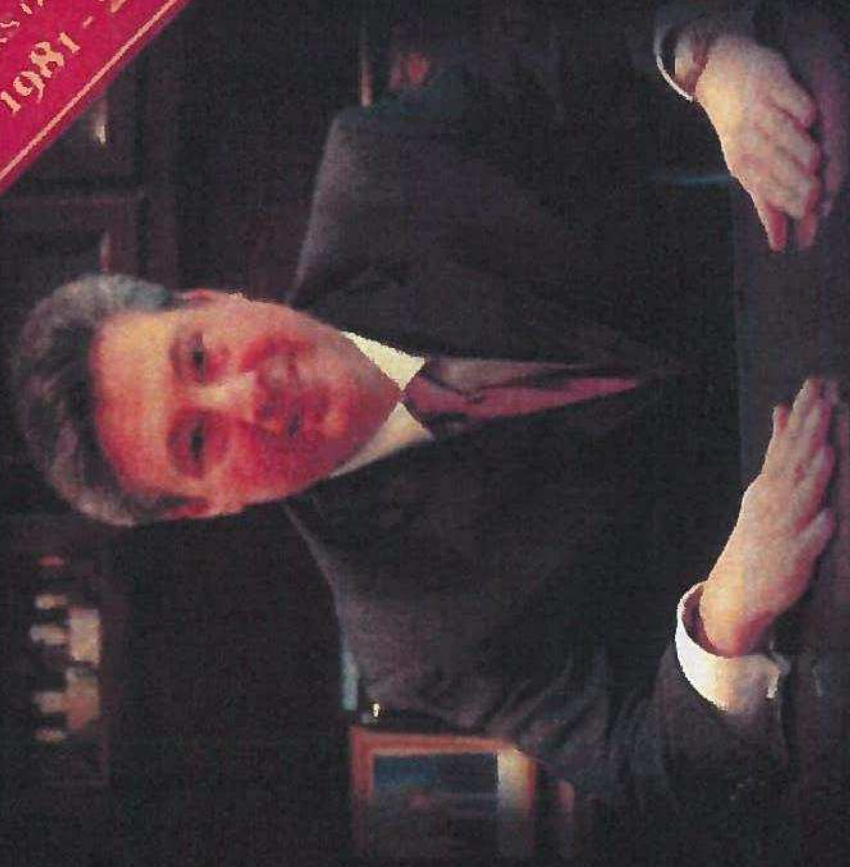
INJURY, DISABILITY & WORKERS' COMPENSATION

[www.LundyLaw.com](http://www.LundyLaw.com)<sup>®</sup>



# **EXHIBIT C**

**32 YEARS OF EXCELLENCE  
1981 - 2013**



**Injured  
At work?  
In an accident?**

**Larry Pitt  
& Associates**

- Workers Compensation Law
- Personal Injury Law
- Social Security Disability

**REMEMBER THIS NUMBER  
Call 1-888-PITT-LAW**





**32 YEARS OF EXCELLENCE  
1981 - 2013**

**Injured at work?  
Injured in an accident?**

## **Larry Pitt & Associates**

- **Workers Compensation Law**
- **Personal Injury Law**
- **Social Security Disability**

**REMEMBER THIS NUMBER**

**Call 1-888-PITT-LAW**

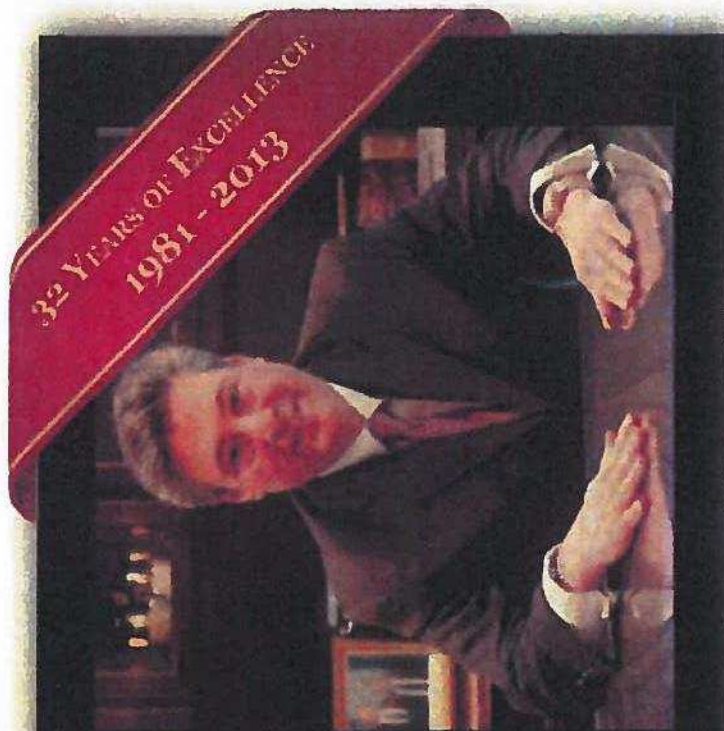


**Injured at work?  
Injured in an accident?**

**Larry Pitt & Associates**

- Workers Compensation Law
- Personal Injury Law
- Social Security Disability

**REMEMBER THIS NUMBER  
Call 1-888-PITT-LAW**







**EXHIBIT C TO JACQUELINE LESSER'S DECLARATION**



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

LARRY PITT & ASSOCIATES, P.C.,	:	
	:	
Opposers,	:	
	:	
vs.	:	OPPOSITION NO. 91210158
	:	
	:	Serial No. 85767757
LUNDY LAW, LLP,	:	
	:	
Applicant.	:	

**APPLICANT'S RESPONSES AND OBJECTIONS TO OPPOSER'S  
REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Applicant, Lundy Law, LLP, provides the following responses and objections to the First Request for Production of Documents and Things to Applicant propounded by Opposer, Larry Pitt & Associates, P.C. in accordance with Rule 34(b) of the Federal Rules of Civil Procedures and 37 C.F.R. §2.120, reserving its right to amend or supplement these response as information becomes known to it during the course of discovery.

**OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. Applicant incorporate herein its Objections to Definitions and Instructions set forth in Applicant's Responses and Objections to Applicant's First Set of Interrogatories.

**GENERAL OBJECTIONS**

1. Applicant objects to the Document Request to the extent it conflicts with or exceeds the scope of the Federal Rules of Civil Procedures, 37 C.F.R. §2.120, or applicable case law.

2. Applicant objects to the Document Requests to the extent its incorporation of Definitions in the individual requests could lead to the formulation of responses that are either inaccurate when read against a specific request or would create an inaccurate, confusing or misleading record.

3. Applicant objects to the Document Request to the extent it seeks the disclosure of materials protected from disclosure by the attorney-client privilege, the attorney work product doctrine and any other applicable protection, restriction or immunity from discovery. Such privileges are explicitly preserved and are not waived or limited by any response herein.

4. Applicant objects to the Document Requests to the extent that developing a response to any individual request would be oppressive, unduly burdensome, unreasonably expensive or would require an unreasonable investigation on the part of Applicant.

5. Applicant objects to the Document Requests to the extent any individual request is ambiguous, confusing, misleading or unclear.

6. Applicant objects to the Document Requests as overbroad.

7. Applicant objects to the Document Requests to the extent any individual request seeks information that can be found in public records or the information sought is equally available to Opposer.

8. Applicant objects to the Document Requests to the extent they requires the disclosure of confidential, proprietary, reserve, reinsurance or otherwise protected business and commercial information.



9. Applicant objects to each request as vexatious or harassing to the extent it seeks documents that are unreasonably cumulative or duplicative, that are in the possession, custody or control of Applicant or their agents or representatives, that are in the possession of third-parties over whom Applicant has no direct control, or that are available from a more convenient source.

10. Applicant objects to Opposer's requests, including but not limited to the definitions and instructions, to the extent that they call upon Applicant to determine or produce documents wherein such documents are not in the possession, custody or control of Applicant.

11. Applicant objects to the production of any document that would require Applicant to violate any applicable contractual obligation to third parties.

12. To the extent Applicant responds to the requests to which it objects, such objections are not waived. These responses are made without waiver of, and with preservation of all issues as to the competency, relevancy, materiality, privilege and admissibility of these responses and documents to be produced for any purpose.

13. In addition to these General Objections, Applicant may set forth further objections with its specific responses below. By setting forth such specific objections, Opposes do not intend to limit or restrict these General Objections, which are incorporated by reference into its responses.

#### **REQUEST NO 1.**

All documents and things referring or relating to or comprising the information used, identified, referenced, or otherwise incorporated into any of Applicant's responses to Opposer's First Request for Interrogatories and First Request for Admissions.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to the Document Request to the extent that developing a response to any individual request would be oppressive, unduly burdensome, unreasonably expensive or would require an unreasonable investigation on the part of Applicant. Applicant further objects to this Request to the extent that it seeks information protected by attorney-client and/or work-product privileges and for any reason Applicant has given in its objections to the underlying interrogatories upon which this Request is based.

Subject to these objections and without waving same, Applicants will provide, or has already provided non-privileged responsive documents.

**REQUEST NO. 2.**

All documents and things referring or relating to or comprising any report or analysis of any expert retained by or on behalf of Applicant in connection with the Opposition, or that such expert has referred to or relied upon in connection with any such report.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to the Document Request to the extent that it seeks information protected by attorney-client and/or work-product privileges. Subject to these objections and without waiving same, Applicant states that there are no responsive documents at the present time.

**REQUEST NO. 3.**

All documents and things referring or relating to any decision and/or process by which Applicant created, conceived, cleared, adopted, acquired, or otherwise made the decision to use and/or apply to register in the United States Trademark Office the phrase REMEMBER THIS



NAME as a trademark or service mark.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to the Document Request to the extent that it seeks information protected by attorney-client and/or work-product privileges. Subject to these objections and without waiving same, Applicant states that Applicant will provide non-privileged responsive documents, provided there are any.

**REQUEST NO. 4**

All documents and things referring or relating to any searches, surveys, investigations, analyses, or studies by or on behalf of Applicant relating to any trademark, service mark, trade name, name, word, design, term or phrase that includes the term REMEMBER, or REMEMBER THIS NAME, including dates of any of the above searches, surveys, investigations, analyses, or studies.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to the Document Request to the extent that it seeks information protected by attorney-client and/or work-product privileges. Subject to these objections and without waiving same, Applicant states that Applicant will provide non-privileged responsive documents, provided there are any.

**REQUEST NO. 5**

All documents and things referring or relating to any potential logos, slogans, or phrases that have been contemplated for use with Applicant's services, used in connection with Applicant's use of the phrase REMEMBER THIS NAME.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to the Document Request to the extent that it seeks information protected by attorney-client and/or work-product privileges. Subject to these objections and without waiving same, Applicant states that to the extent there are any advertisements containing any logos, slogans or phrases for use with Applicant' services, used in connection with Applicant's use of the phrase REMEMBER THIS NAME, such documents have been produced.

**REQUEST NO. 6.**

All documents and things referring or relating to each slogan, trademark, or service mark, whether registered or unregistered used by Applicant to advertise and promote its services from 2009 to date, including the inclusive dates of such use.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to the Document Request to the extent that it seeks many irrelevant documents which are not likely to lead to the development of relevant and/or admissible evidence. Applicant further objects to the extent that the Requests precedes any use by more than a year. Applicant further objects on the basis that the Request is unduly burdensome and substantially irrelevant to the issues in this proceeding. Subject to these objections and without waiving same, Applicant will produce relevant, non-privileged documents.

**REQUEST NO. 7.**

Representative documents that disclose the geographic areas where Applicant has advertised or promoted its services under the phrase REMEMBER THIS NAME and representative



documents identifying the locations and the inclusive dates of any such advertising.

**RESPONSE**

Applicant incorporates herein its General Objections. Subject to these objections and without waiving same, Applicant will produce relevant, non-privileged documents that it has located.

**REQUEST NO. 8.**

Representative documents that refer to, relate to, or comments on the first use by Applicant of the phrase REMEMBER THIS NAME in U.S. commerce.

**RESPONSE**

Applicant incorporates herein its General Objections. Subject to these objections and without waiving same, Applicant will produce relevant, non-privileged documents that it has located.

**REQUEST NO. 9.**

All advertising, marketing, and promotional materials used by Applicant which incorporate the phrase "REMEMBER THIS NAME," including documents relating or referring to the inclusive dates that such advertising and promotional materials were distributed, circulated or otherwise displayed.

**RESPONSE**

Applicant incorporates herein its General Objections. Subject to these objections and without waiving same, Applicant states that it has already produced these documents and will produce any other relevant documents that it has located

**REQUEST NO. 10.**

All stand-alone advertising of Applicant which use the phrase REMEMBER THIS NAME.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects on the basis that the Request is vague and indefinite as to the meaning of "stand-alone advertising." Subject to these objections and without waiving same, Applicant states that it has produced all advertising of Applicant which uses the phrase REMEMBER THIS NAME.

**REQUEST NO. 11.**

All communications to or from Applicant and any advertising agencies, promotional agencies, billboard companies, television production companies, or any other entity involved in the placement of advertising for Applicant, regarding any drafts, comments, changes or revisions to any of Applicant's advertising, marketing or promotional materials from January 2009 to date relating to or concerning the use of the phrase REMEMBER THIS NAME.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to this Request to the extent that developing a response this Request would be oppressive, unduly burdensome, unreasonably expensive and/or would require an unreasonable investigation on the part of Applicant. It is further objected to on the basis that the time limit extends well before any date of first use or filing of the application in this proceeding. Subject to these objections and without waiving same, Applicant will produce relevant, non-privileged documents responsive to this Request.

**REQUEST NO. 12.**

Representative examples of advertising from January 2009 to date on any form of public transportation regarding the placement of any advertising of Applicant referring to or



incorporating REMEMBER THIS NAME.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to this Request to the extent that developing a response this Request would be oppressive, unduly burdensome, unreasonably expensive and/or would require an unreasonable investigation on the part of Applicant. It is further objected to on the basis that the time limit extends well before any date of first use or filing of the application in this proceeding. Subject to these objections and without waiving same, Applicant has produced relevant documents that it has located.

**REQUEST NO. 13.**

All documents regarding or concerning the creation of the tag line phrase REMEMBER THIS NAME, or any variations thereof, including all tests, mock ups, drafts, revisions, for any advertising or promotional materials of Applicant, or prepared by or on behalf of Applicant that includes the phrase REMEMBER THIS NAME.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to this to the extent that it seeks information protected by attorney-client and/or work-product privileges. Applicant further objects to this Request which characterizes Applicant's mark REMEMBER THIS NAME as a "tag line phrase" and such term is vague and ambiguous. Subject to these objections and without waiving same, Applicant will provide any relevant, non-privileged responsive documents.

**REQUEST NO. 14.**

Representative documents since 2009 showing each type of media in which Applicant has advertised its services.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to this Request to the extent that developing a response this Request would be oppressive, unduly burdensome, unreasonably expensive and/or would require an unreasonable investigation on the part of Applicant. Applicant further objects on the basis that the Request seeks information that is not relevant to this proceeding and not likely to lead to the production of relevant and admissible evidence. Subject to these objections and without waiving same, Applicant will produce relevant, non-privileged documents responsive to this Request, if there are any.

**REQUEST NO. 15.**

Documents showing the identity of Applicant's first customer or client associated with Applicant's first use of the term "REMEMBER THIS NAME."

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects to this Request to the extent that developing a response to this Request would be oppressive, unduly burdensome, unreasonably expensive and/or would require an unreasonable investigation on the part of Applicant. Applicant further objects on the basis that the Request seeks information that is protected by the attorney-client and work-product privileges. Subject to and without waiving these objections, Applicant states that it is not aware of any responsive documents.



**REQUEST NO. 16.**

All cease and desist letters sent to or received by Applicant relating to any trademark rights of Applicant or any third party.

**RESPONSE**

Applicant incorporates herein its General Objections. Subject to these objections and without waiving same, Applicant states that it does not have any responsive documents.

**REQUEST NO. 17.**

All cease and desist letters sent to or received by Applicant relating to intellectual property rights of Applicant regarding "REMEMBER THIS".

**RESPONSE**

Applicant incorporates herein its General Objections. Subject to these objections and without waiving same, Applicant states that it does not have any responsive documents.

**REQUEST NO. 18.**

All documents that support Applicant's contention that REMEMBER THIS NAME is not merely descriptive.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further states that it will not engage in an unreasonable and unduly burdensome search for documents. Subject to these objections and without waiving same, Applicant states that to the extent there are non-privileged and relevant documents, such documents have been produced.

**REQUEST NO. 19.**

All documents that support Applicant's contention that REMEMBER THIS NAME has acquired distinctiveness in the minds of consumers.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects on the basis that this Request is not relevant to this proceeding and not likely to lead to the production of relevant and admissible evidence. Subject to these objections and without waiving same, Applicant will produce non-privileged relevant documents.

**REQUEST NO. 20.**

All documents from customers or clients, or potential customers or clients referring to the phrase REMEMBER THIS NAME as a trademark or service mark.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects on the basis that it seeks attorney-client and work-product privileged documents. Subject to these objections and without waiving same, Applicant states that to the extent that Opposer seeks relevant and non-privileged documents, Applicant states that it is not aware of any.

**REQUEST NO. 21.**

All documents and things concerning, relating or referring to Larry Pitt, Esq., or Larry Pitt & Associates' use of the phrase REMEMBER THIS NUMBER.

**RESPONSE**

Applicant incorporates herein its General Objections. Applicant further objects on the



basis that this Request seeks information protected by the attorney-client and work-product privileges and not relevant to the issues in this proceeding. Subject to these objections and without waiving same, Applicant states that to the extent that Opposer seeks relevant and non-privileged documents, Applicant will produce such documents.

**REQUEST NO. 22.**

All documents which support any instances of actual confusion between Lundy Law's use of REMEMBER THIS NAME, and Larry Pitt's use of REMEMBER THIS NUMBER.

**RESPONSE**

Applicant incorporates herein its General Objections. Subject to these objections and without waiving same, Applicant states that it is not aware of any relevant, non-privileged documents at this time.

Respectfully submitted,

**CAESAR, RIVISE, BERNSTEIN,  
COHEN & POKOTILOW, LTD.**

Dated: September 10, 2013

By   /mdp/    
Manny D. Pokotilow  
1635 Market Street  
Seven Penn Center - 12th Floor  
Philadelphia, PA 19103  
Tel: (215) 567-2010  
Fax: (215) 751-1142  
Attorneys for Applicant





**EXHIBIT D TO JACQUELINE LESSER'S DECLARATION**

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

LARRY PITT & ASSOCIATES, P.C.	:	
	:	
Opposer,	:	
	:	Opposition No. 91210158
vs.	:	
	:	Serial No. 85767757
LUNDY LAW, LLP	:	
	:	
Applicant.	:	

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST  
SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120(d), Applicant, Lundy Law, LLP, hereby serves upon Opposer, Larry Pitt & Associates, P.C. their objections and responses to Opposer's First Set of Interrogatories to Applicant.

**GENERAL RESPONSES AND OBJECTIONS**

Each of the following general responses and objections are incorporated in the response to each and every interrogatory:

1. By responding to any interrogatory, Applicant does not concede the materiality of the subject to which it refers. Applicant's responses are made expressly subject to, and without waiving or intending to waive, any questions or objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence or for any other purpose of any of the information or response produced, or the subject matter thereof, in any proceeding, including the trial of this action or any subsequent proceeding.
2. Applicant objects to Opposer's Interrogatories to the extent that they call for information subject to the attorney-client, attorney work-product, and/or other privilege. In

responding to these interrogatories, Applicant does not waive, but rather preserves, all such privileges.

3. Applicant objects to Opposer's interrogatories to the extent that they are unduly broad and burdensome. Unless otherwise indicated, Applicant will provide relevant responses.

4. Applicant objects generally to Opposer's interrogatories to the extent that they seek information beyond the scope of this proceeding.

5. Applicant objects generally to those interrogatories to the extent that they seek information beyond the scope of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

6. Applicant objects, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure to any interrogatory that asks it to identify documents, that it produces in this action.

7. Applicant objects to those interrogatories that seek information which Applicant considers to be confidential or proprietary, including trade secrets or other confidential research, development or commercial information. Responses to such interrogatories only will be provided on an attorneys' eyes only basis and as warranted under the terms of the Protective Order in this proceeding.

8. Inadvertent production of any information which is privileged, was prepared in anticipation of litigation, or is otherwise immune from discovery shall not constitute a waiver of any privilege or of any other ground for objecting to discovery with respect to that document or any other document, or the subject matter thereof, or the information contained therein, or of Applicant's right to object to the use of any such document or the information contained therein during any proceeding in this action or otherwise.

9. Applicant objects to Opposer's Interrogatories that request the identification of all persons having knowledge, or who participated in a particular event, or requesting the production



or identification of all documents or things as burdensome and oppressive, especially where the degree of knowledge or participation of lesser and knowledgeable or contributing persons or the degree of relevance of certain documents is significantly less than the others, and where a complete response can thus even be misleading. However, Applicant will identify those persons believed to be most knowledgeable or who have participated most in the subject matter of the specific requests and will identify and/or produce those documents believed to be most responsive to the subject matter of the specific request, if not otherwise objectionable.

10. Applicant objects to Opposer's Interrogatories, including but not limited to the definitions and instructions, to the extent that they call upon Applicant to determine or produce information and documents wherein such information and documents are not in the possession, custody or control of Applicant.

11. Applicant objects to the production of any information that would require Applicant to violate any applicable contractual obligation to third parties.

12. The responses provided herein are submitted while Applicant is continuing its investigation of facts and discovery of information and documents relating to the claims and defenses in this Opposition Proceeding. These responses are based only upon Applicant's current knowledge and reasonable belief.

13. Applicant reserves its right to supplement its responses and objections to Applicant's discovery requests.

14. Applicant objects to Opposer's instructions to the extent not permitted under or beyond the scope of the Rules of Civil Procedure and the Rules of Practice governing Opposition Proceedings.

These General Objections are incorporated by this reference into each and every response to the Interrogatories herein.

## **RESPONSES TO INTERROGATORIES**

### **Interrogatory No 1.**

Identify by name, and contact information the persons at Applicant chiefly responsible for: a) the operation of the company; b) the marketing of the company's services; and c) financial records for the company.

### **Response**

Applicant incorporates by reference its general objections. Applicant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and the foregoing General Objections, and without waiving the same, Applicant's preliminary response is as follows:

(a) L. Leonard Lundy, Managing Partner, (b) Tami Sortman, Marketing Director, and (c) Kelly Carson, Firm Administrator.

### **Interrogatory No. 2.**

Identify by name, address and principle contact each advertising, marketing, promotional and/or production agency used by Applicant to produce advertising for Applicant from 2009 to the present.

### **Response**

Applicant incorporates by reference its general objections. Applicant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to lead to the discovery of

admissible evidence. Applicant further objects to this Interrogatory to the extent that it is seeking confidential business information, attorney-client privilege information, that constitutes attorney work product, or that is protected by any other applicable privilege or protection. Subject to these objections and the foregoing General Objections, and without waiving the same, Applicant's preliminary response is as follows:

CJ Advertising has done legal advertising for Lundy Law since 2003, Whitehardt Advertising made commercials for Marvin Lundy from 2006-2010, Bozeken Productions makes REMEMBER THIS NAME ads for Lundy Law from 2011 to date, Ningio Advertising makes Soul Football ads for Lundy Law since 2011. Lundy Law advertises on most TV stations in the Philadelphia Designated Market Area (DMA) through CJ Advertising or the individual stations themselves, on KYW radio through the station, on Comcast Cable through Comcast, at the Wells Fargo Center through Comcast Spectacor, on Public Transportation in Pennsylvania, New Jersey and Delaware through Titan Advertising and Gateway Outdoor Advertising and Direct Media, All Web services are through CJ Advertising or Ningio Advertising , all print and graphic advertising and give-aways are done in house.

**Interrogatory No. 3.**

Identify and describe all types of advertising, marketing and promotional activities that Applicant conducts to market, promote and sell its services under REMEMBER THIS NAME; list the type(s) of advertising, the medium for any ad placement; the geographic location of advertising; and identify all individuals or entities involved in the creation, selection and placement of all such advertising, marketing and promotional materials for Applicant since the first use of the slogan REMEMBER THIS NAME to the present.



**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that “all types of advertising, marketing and promotional activities” is overly broad and unduly burdensome. Applicant further objects to this Interrogatory on the grounds that it seeks confidential information which is irrelevant to the current proceeding. Subject to and without waiver of these and its general objections, Applicant incorporates by reference its response to Interrogatory No. 2. Applicant will respond further to this Interrogatory after the entry of a Protective Order.

**Interrogatory No. 4.**

Identify all persons with personal knowledge of Applicant's use and claim of rights in the phrase REMEMBER THIS NAME from date of adoption to the present.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that “all persons with personal knowledge” is overly broad and unduly burdensome and requires a search for information that far exceeds the scope of information relative to the claims or defenses in this proceeding. Subject to and without waiver of these and its general objections, Applicant’s preliminary response is as follows:

Leonard Lundy and Tami Sortman.

**Interrogatory No. 5.**

Identify Applicant's first use of the phrase REMEMBER THIS NAME in interstate commerce, and identify: 1) the date of first use; 2) the manner of first use; 3) the type of first use; 4) the location of the first use, and 5) all persons with personal knowledge of Applicant's first use of the phrase REMEMBER THIS NAME in interstate commerce.

**Response**

Applicant incorporates by reference its general objections. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

- (1) The date of first use is May 16, 2011;
- (2) The manner first used was on banners used at a Philadelphia SOUL game and at motorcycle events;
- (3) The type of first use: See (2) above;
- (4) The location of the first use: See (2) above.

**Interrogatory No. 6.**

Identify all channels of trade in which Applicant promotes and provides services under the slogan REMEMBER THIS NAME.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

REMEMBER THIS NAME is used on all forms of advertising, television, radio, print, outdoor, stadium, website advertising in parts of Pennsylvania, New Jersey and Delaware. All advertising that uses REMEMBER THIS NAME says REMEMBER THIS NAME LUNDY LAW, or on occasion, the advertising says REMEMBER THIS NAME, 1-800-Lundy-Law on some radio announcements due to time constraints.

**Interrogatory No. 7.**

Identify and describe the circumstances surrounding Applicant's decision to file any applications to register REMEMBER THIS NAME and I'M GLAD I REMEMBERED THE NAME.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it seeks information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to the discovery of admissible evidence. Applicant further objects to this Interrogatory as seeking information that is protected by the attorney-client privilege, that constitutes attorney work product or that is protected by any other applicable privilege or protection. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

Applicant tries to register all of the marks it uses. It is routine. Applicant does it to protect its marks.

**Interrogatory No. 8.**

Identify and describe the decision-making process behind Applicant's creation, conception, clearance and adoption of the phrase REMEMBER THIS NAME.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it seeks information that is protected by the attorney-client privilege, that it constitutes attorney work product, or that is protected by any other applicable privilege or protection. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:



The creation, conception, clearance and adoption was a result of a meeting between Leonard Lundy, Tami Sorkin and Mike Fanelle of Bozekin Productions.

**Interrogatory No. 9.**

Identify all slogans or phrases that Applicant has contemplated for use with Applicant's services as an alternative to the phrase REMEMBER THIS NAME.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it seeks information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this Interrogatory as seeking information that is protected by the attorney-client privilege, that constitutes attorney work product, or that is protected by any other applicable privilege or protection. Applicant objects to this Interrogatory on the basis that the Interrogatory is unclear and confusing and not understandable. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

To the extent that it is understandable, Applicant has not used a phrase or trademark as an alternative to REMEMBER THIS NAME.

**Interrogatory No. 10.**

Identify all slogans used in connection with the name Lundy Law.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it seeks information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to lead to the discovery of

admissible evidence. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

Applicant has used the following trademarks in association with the name Lundy Law: REMEMBER THIS NAME, I'M GLAD I REMEMBERED THIS NAME, I AM GLAD I REMEMBERED THE NAME.

**Interrogatory No. 11.**

Identify all standalone usages of the phrase REMEMBER THIS NAME by Applicant, including the media, the manner and date or dates of such use.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory to the extent that "all standalone usages of the phrase REMEMBER THIS NAME" is not understandable to Applicant, and accordingly, Applicant is unable to respond because the Interrogatory is vague and indefinite. The use of REMEMBER THIS NAME by Applicant is shown in the documents produced by Applicant.

**Interrogatory No. 12.**

Describe Applicant's areas of legal practice.

**Response**

Applicant incorporates by reference its general objections. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

Applicant's practice areas are listed on its website at [www.lundylaw.com](http://www.lundylaw.com) and a copy of the website is being produced.

**Interrogatory No. 13.**

Identify and describe each means utilized by Applicant to promote its services to clients and/or potential clients.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it is overly broad and uses language that requires a search for information that far exceeds the scope of information relative to the claims or defenses raised in this proceeding. Applicant further objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome. Applicant objects to this Interrogatory on the basis that it not only seeks information protected by the attorney-client privilege, it also seeks information that is highly confidential and irrelevant to this proceeding. To the extent such information is not confidential or privileged, Applicant states that it has previously answered above how it publicly promotes its services to clients.

**Interrogatory No. 14.**

Does Applicant refer any retained clients to third party law firms?

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it seeks information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this Interrogatory as seeking information that is protected by the attorney-client privilege, that constitutes attorney work product, or that is protected by any other applicable privilege or protection. Still further, Applicant further objects



to this Interrogatory insofar as it seeks highly confidential business information and there is no Protective Order in place.

**Interrogatory No. 15.**

If the answer to the preceding question is yes, describe the process and reasons for referring such clients to third party law firms.

**Response**

Applicant incorporates by reference its objections with respect to Interrogatory No. 14 and accordingly, will not produce the information requested by Interrogatory No. 15.

**Interrogatory No. 16.**

Identify and describe Applicant's awareness of the use of the word "remember" in law firm advertising.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that the Interrogatory is vague and indefinite insofar as it requests "Applicant's awareness of the use of the word 'remember' in law firm advertising." It is not clear what meaning this expression has with respect to any claim or defense raised in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects on the basis it is vague and indefinite because it does not specify what time frame Opposer requests as to Applicant's awareness. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

To the extent that Applicant has become aware of searches performed, after the filing of this proceeding, Applicant states that it is aware that the term "REMEMBER" is part of trademarks of the applications and registrations produced by Applicant.

**Interrogatory No. 17.**

Describe Applicant's purpose in marketing its services through advertising via billboards; public transportation placement; public arenas; and via television.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it seeks information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this Interrogatory insofar as it seeks highly confidential business information without there being a Protective Order in place. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

Applicant's purpose in marketing in all of the areas set forth in Interrogatory No. 17 is to market its services.

**Interrogatory No. 18.**

Identify and describe any searches, surveys, investigations, analyses, or studies by or on behalf of Applicant relating to Applicant's use of the phrase REMEMBER THIS NAME and the dates of such searches, surveys, investigations, analyses, or studies and the names of the persons who commissioned the same.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that this Interrogatory seeks information that is protected by the attorney-client privilege, that constitutes attorney work product, or that is protected by any other

applicable privilege or protection. Subject to and without waiver of these and its general objections, Applicant's preliminary response is as follows:

None.

**Interrogatory No. 19.**

State with specificity where, when and how Applicant first became aware of Opposer's use of the phrase REMEMBER THIS NUMBER in Opposer's advertising.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it seeks information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence, because this proceeding does not relate to infringement, but rather to the registerability of Applicant's mark REMEMBER THIS NAME. Accordingly, this Interrogatory is completely irrelevant. Subject to and without waiving its objections, Applicant states that on January 24, 2013 an employee reported to Applicant that she saw someone else using the mark REMEMBER THIS NAME. The employee did not remember who. Applicant requested that she return to the place where she saw the advertisement and find the name of the law firm using the mark. The employee took a picture of the advertisement located on the inside of a SEPTA bus with her cell phone. The advertisement was that of Opposer. The advertisement did not use the Applicant's mark REMEMBER THIS NAME, rather, it used the mark REMEMBER THIS NUMBER.

**Interrogatory No. 20.**

Identify all persons who participated in any way in the preparation of the answers or responses to any of these interrogatories and requests for production, and requests for admission including the areas of participation of each such person.

**Response**

Applicant incorporates by reference its general objections. Applicant further objects to this Interrogatory on the grounds that it seeks information that is protected by the attorney-client



privilege, that constitutes attorney work product, or that is protected by any other applicable privilege or protection.

As to Objections,

**CAESAR, RIVISE, BERNSTEIN,  
COHEN & POKOTILOW, LTD.**

Dated: September 10, 2013

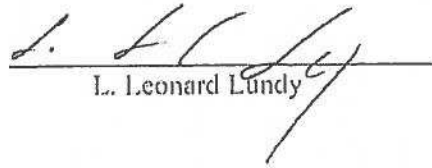
By /mdp/  
Manny D. Pokotilow  
1635 Market Street  
Seven Penn Center - 12th Floor  
Philadelphia, PA 19103  
Tel: (215) 567-2010  
Fax: (215) 751-1142

Attorneys for Applicant

VERIFICATION

I, L. LEONARD LUNDY, Managing Partner of Lundy Law, LLP have read the foregoing Responses and Objections to Opposer's First Set of Interrogatories. Based upon my personal knowledge, I hereby certify that the statements set forth in Applicant's Responses are true and accurate to the best of my knowledge.

Dated: September 9, 2013

  
L. Leonard Lundy

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the within APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES is being served upon counsel of record for Applicant, via First Class Mail on September 10, 2013, in an envelope addressed to:

Jacqueline M. Lesser  
Woodcock Washburn LLP  
2929 Arch Street  
Cira Centre, 12<sup>th</sup> Floor  
Philadelphia, PA 19104-2891

/mdp/

Manny D. Pokotilow



**EXHIBIT E TO JACQUELINE LESSER'S DECLARATION**

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

LARRY PITT & ASSOCIATES, P.C.,	:	
	:	
Opposers,	:	
	:	
vs.	:	OPPOSITION NO. 91210158
	:	
	:	Serial No. 85767757
LUNDY LAW, LLP,	:	
	:	
Applicant.	:	

**APPLICANT'S OBJECTIONS AND RESPONSES TO  
APPLICANT'S FIRST SET OF REQUEST FOR  
ADMISSIONS TO OPPOSERS (NOS. 1-33)**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Applicant, Lundy Law, LLP hereby submits its objections and responses to Opposer's Requests for Admission. In furnishing these objections and responses, Applicant does not admit or concede the relevance, materiality, authenticity and/or admissibility in evidence of any such responses or admissions.

**GENERAL OBJECTIONS**

All of Applicant's specific responses are subject to and without waiver of the following general objections:

1. Applicant objects to Opposer's Requests and the definitions and instructions thereto, to the extent they may seek to impose on Applicant obligations different from, or greater than, those required by the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Rules of Practice.

2. Applicant objects to Opposer's Requests to the extent they seek information that is neither relevant to any claim or defense raised in this proceeding, nor reasonably calculated to

lead to the discovery of admissible evidence. To the extent that Applicant provides responses, notwithstanding these objections, it is an effort to expedite discovery in this proceeding.

3. Applicant objects generally to Opposer's Requests to the extent they call for information that is subject to one or more privileges, including, but not limited to, the attorney-client and work-product privileges. To the extent privileged information is inadvertently disclosed, such disclosure is without prejudice to, and is not a waiver of, any subsequent assertion of privilege by Applicant.

4. Applicant objects to the definitions of "Lundy Law" and "Applicant," as overbroad. Applicant states that as referenced in its responses herein, unless otherwise indicated, Applicant is defined as Lundy Law LLP.

5. Applicant objects to Opposer's Requests to the extent that they require Applicant to render legal conclusions regarding the relationship of certain information or documents to contested legal or factual issues. By responding to these Requests, Applicant makes no representation as to whether or not such information or documents tend to prove or disprove any factual or legal issue.

6. Applicant objects to Opposer's Requests on the grounds and to the extent that they are overly broad and unduly burdensome.

7. Applicant objects to Opposer's Requests on the grounds and to the extent that they are vague or ambiguous.

8. Applicant objects to Opposer's Requests to the extent they contain undefined or ambiguously defined terms or call for speculation, conjecture, or opinion.

9. Applicant objects to each of Opposer's Requests on the grounds and to the extent they call for disclosure of information outside the possession, custody or control of Applicant.



10. The specific objections and/or answers set forth below are based upon information now available to Applicant after making a diligent search of any files in their possession, custody, or control that reasonably relate to one or more of the specific requests contained in the Requests. All responses herein are submitted as presently advised, and are made without prejudice to Applicant's right to modify, amend, revise, correct, supplement, add to and/or clarify such responses as any additional responsive information may become known to Applicant.

11. By responding to any Request, Applicant does not waive and expressly reserves all objections to the relevance, materiality, and admissibility of any information contained in its response.

12. Applicant incorporates these general objections by reference into each and every objection and/or response below to the extent applicable.

#### RESPONSES TO APPLICANT'S REQUESTS

##### Request for Admission No. 1:

Admit that it is important to Applicant that potential clients recognize the name of its law firm, Lundy Law.

##### Response to Request for Admission No. 1:

Applicant objects to this Request on the grounds that the Request is irrelevant and incorporates by reference its general objections set forth above. Subject to this objection and to the foregoing general objections, Applicant admits that it is important to Applicant that potential clients recognize the name of its law firm, Lundy Law.

Request for Admission No. 2:

Admit that Applicant uses the phrase, REMEMBER THIS NAME, in order that potential clients remember the name of the Lundy Law firm.

Response to Request for Admission No. 2:

Applicant objects to this Request on the grounds that it is vague and indefinite and that the Request is for an admission of a fact that may be taken out of context. Applicant further objects on the basis that the Request is for an admission of fact that cannot be admitted or denied. Applicant further incorporates by reference its general objections above. Subject to this objection and to the foregoing general objections, Applicant cannot admit or deny this Request.

The Request cannot be admitted or denied because the mark was adopted because it was memorable and would be associated with Applicant's services. However, it is also true that Applicant wishes to have its potential clients know how to contact the firm.

Request for Admission No. 3:

Admit that Applicant uses the phrase REMEMBER THIS NAME on advertising used on public transportation.

Response to Request for Admission No. 3:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 4:

Admit that Applicant advertises its services on television.

Response to Request for Admission No. 4:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 5:

Admit that Applicant advertises its services on its website.

Response to Request for Admission No. 5:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 6:

Admit that Applicant uses the phrase REMEMBER THIS NAME as a tag line on its advertising.

Response to Request for Admission No. 6:

Applicant objects to this Request's use of the term "tag line" as vague and ambiguous, and therefore, the response to the Request can be subject to different meanings. Subject to this objection and the foregoing general objections, Applicant states that it is admitted to the extent the definition of "tag line" is "an often repeated phrase associated with an individual, organization or commercial product or service."

Request for Admission No. 7:

Admit that Applicant has used a variety of tag lines on its advertising.

Response to Request for Admission No. 7:

Applicant objects to this Request's use of the term "tag lines" as vague and ambiguous, and therefore, the Request can be subject to different meanings. Subject to this objection and the foregoing general objections, and to the extent that the term "tag line" means "an often repeated phrase associated with an individual, organization or commercial product or service," it is admitted.



Request for Admission No. 8:

Admit that Applicant practices law in the areas of personal injury.

Response to Request for Admission No. 8:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 9:

Admit that certain of Applicant's advertisements are directed to persons who suffer injuries.

Response to Request for Admission No. 9:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 10:

Admit that certain of Applicant's advertisements are directed to persons who require assistance in applying for social security disability.

Response to Request for Admission No. 10:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 11:

Admit that certain of Applicant's advertisements are directed to persons who suffer a disability.

Response to Request for Admission No. 11:

Applicant objects to this Request's use of the term "who suffer a disability" as vague and ambiguous, and therefore, the Request can be subject to different meanings. Subject to this objection and to the foregoing general objections and subject to the meaning of the term "a

person who suffers a disability” suffers the disability from an accident and/or from negligence, admitted.

Request for Admission No. 12:

Admit that Applicant did not consider the phrase REMEMBER THIS NAME to be a trademark or service mark usage when it first included the phrase in its advertising.

Response to Request for Admission No. 12:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: denied.

Request for Admission No. 13:

Admit that Applicant filed a trademark application to protect REMEMBER THIS NAME as a trademark, after it had learned that Opposer had used the phrase "remember this number" in Opposer's advertising.

Response to Request for Admission No. 13:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections Applicant states as follows: denied.

Request for Admission No. 14:

Admit that at the time Applicant filed its trademark application for REMEMBER THIS NAME, it was aware of third party law firm use of the term "remember" used in connection with the provision of legal services.

Response to Request for Admission No. 14:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: denied.

Request for Admission No. 15:

Admit that Applicant did not conduct a common-law search of slogans that included the term "remember" before it began its use of the phrase "REMEMBER THIS NAME."

Response to Request for Admission No. 15:

Applicant incorporates by reference its general objections above. Applicant further objects to this on the basis that the term "slogan" is ambiguous as used herein. Subject to this objection and the foregoing general objections, Applicant states as follows: admitted that Applicant did not conduct a common law search of slogans before it began use of the mark REMEMBER THIS NAME.

Request for Admission No. 16:

Admit that Applicant did not conduct a common-law search of slogans that included the term "remember" before it applied to register REMEMBER THIS NAME as a trademark.

Response to Request for Admission No. 16:

Applicant incorporates by reference its general objections above. Applicant further objects on the basis that the term "slogan" as used herein is ambiguous. Subject to this objections and the foregoing general objections, Applicant states as follows: admitted that Applicant did not conduct a common law search of slogans before it applied to register the mark REMEMBER THIS NAME as a trademark.

Request for Admission No. 17:

Admit that Applicant's sole purpose in applying to register REMEMBER THIS NAME was to attempt to prevent Opposer from using "Remember this number" over Opposer's telephone number in Opposer's advertising.

Response to Request for Admission No. 17:



Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: denied.

Request for Admission No. 18:

Admit that Applicant's adoption of the phrase REMEMBER THIS NAME is used in connection with print advertising on public transportation in the Philadelphia area.

Response to Request for Admission No. 18:

Applicant incorporates by reference its general objections above. Applicant further objects to the wording "adoption of the phrase REMEMBER THIS NAME is used in connection with print advertising on public transportation in the Philadelphia area" as vague and indefinite. Subject to this objection and the foregoing general objections, Applicant admits that the mark REMEMBER THIS NAME is used in connection with print advertising on public transportation in the Philadelphia area.

Request for Admission No. 19:

Admit that Applicant promotes its business under the name Lundy Law.

Response to Request for Admission No. 19:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 20:

Admit that Applicant has used several tag lines and slogans in connection with the Lundy Law name.

Response to Request for Admission No. 20:

Applicant incorporates by reference its general objections above. Applicant further objects to the Request's use of the terms "tag lines and slogans" as vague and ambiguous.

Subject to this objection and to the foregoing general objections, Applicant states as follows: admitted to the extent that "tag lines and slogans" mean "often repeated phrases associated with an individual, organization, or commercial product or service.,

Request for Admission No. 21:

Admit that Applicant formally changed its name from the Law Offices of Marvin Lundy to Lundy Law, LLP following the passing of the firm's founder, Marvin Lundy, in 2011.

Response to Request for Admission No. 21:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant cannot admit or deny the Request as worded and Applicant states as follows: Marvin Lundy passed away on December 1, 2010. At the time of his death, the name of Applicant was The Law Offices of Marvin Lundy, LLP, d/b/ a Lundy Law. In 2011, the name of Applicant was changed to Lundy Law, LLP.

Request for Admission No. 22:

Admit prior to adopting "Injured, Remember this Name?", Applicant has used the phrase: "Injured? We can help." in its advertising.

Response to Request for Admission No. 22:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 23:

Admit that Applicant has not sought protection of "Injured? We can help" as a trademark or service mark.

Response to Request for Admission No. 23:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant cannot admit or deny the Request as worded. Although Applicant has not filed a trademark application with the U.S. Patent and Trademark Office, the use of a trademark at common law creates protection as the mark is used.

Request for Admission No. 24:

Admit Applicant uses the tagline "Get Serious — Get Lundy" on its website.

Response to Request for Admission No. 24:

Applicant incorporates by reference its general objections above and further objects to the term "tagline" as vague and ambiguous. Subject to this objection and the foregoing general objections, Applicant states as follows: admitted that the words "Get Serious—Get Lundy" remain on its website even though it is no longer used in its advertising.

Request for Admission No. 25:

Admit that Applicant has not sought protection of "Get Serious — Get Lundy" as a trademark or service mark.

Response to Request for Admission No. 25:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: Applicant cannot admit or deny the Request as worded. Although Applicant has not filed a trademark application with the U.S. Patent and Trademark Office, the use of a trademark at common law creates protection as the mark is used.

Request for Admission No. 26:



Admit that Applicant's production documents identified as LUNDY0001-0005 show use of the phrase "Injured? Remember this name"

Response to Request for Admission No. 26:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states that it cannot answer with an admission or denial and therefore states as follows: admitted that LUNDY0001 shows use of the words in the following format: Injured? Remember this Name; denied that LUNDY0002 contains the phrase "Injured? Remember this name", LUNDY 0003-0005 shows use of the words INJURED? REMEMBER THIS NAME with the word INJURED in a different color than REMEMBER THIS NAME.

Request for Admission No. 27:

Admit that Applicant's production document identified as LUNDY0006 show Applicant's use of the phrase "I'm glad I remembered this name" which appears as a quote from an "auto accident" client.

Response to Request for Admission No. 27:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states that it cannot answer with an admission or denial and therefore states as follows: the phrase "I'm glad I remembered this name" appears in all capital letters within quotes, adjacent a smiling man and a smiling woman over the words AUTO ACCIDENT CLIENT.

Request for Admission No. 28:

Admit that Applicant's production document identified as LUNDY0007 shows Applicant's use of the phrase "I'm glad I remembered this name" which appears as a quote from a "slip and fall client."

Response to Request for Admission No. 28:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states that it cannot answer with an admission or denial and therefore states as follows: the phrase "I'm glad I remembered this name" appears in all capital letters within quotes, adjacent a smiling girl and a smiling woman over the words SLIP AND FALL CLIENT.

Request for Admission No. 29:

Admit that Applicant's production document identified as LUNDY00012 was not in use by Applicant at the time of the filing of the application upon which this opposition is based.

Response to Request for Admission No. 29:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: admitted.

Request for Admission No. 30:

Admit that Applicant's use of the phrase REMEMBER THIS NAME is always used in conjunction with the Lundy Law name.

Response to Request for Admission No. 30:

Applicant incorporates by reference its general objections above. Applicant also states that it cannot admit or deny this Request because the mark REMEMBER THIS NAME is often used with 1-800-LUNDYLAW, which is Applicant's telephone number.

Request for Admission No. 31:

Admit Applicant receives telephone calls from potential clients based on their recollection of its number 1-800-LUNDYLAW.

Response to Request for Admission No. 31:

Applicant incorporates by reference its general objections above. Applicant further objects to the statement "receives telephone calls from potential clients based on their recollection of its number 1-800-LUNDYLAW" as vague and ambiguous. Subject to this objection and the foregoing general objections, Applicant admits it receives telephone calls from potential clients who recall its number 1-800-LUNDYLAW.

Request for Admission No. 32:

Admit Applicant has no evidence that the public perceives REMEMBER THIS NAME to be a trademark.

Response to Request for Admission No. 32:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: denied.

Request for Admission No. 33:

Applicant has no evidence that the public perceives the phrase REMEMBER THIS NAME as indicating a single source of origin.

Response to Request for Admission No. 33:

Applicant incorporates by reference its general objections above. Subject to the foregoing general objections, Applicant states as follows: denied.

**\* \* \* SIGNATURE PAGE FOLLOWING \* \* \***



Respectfully submitted,

**CAESAR, RIVISE, BERNSTEIN,  
COHEN & POKOTILOW, LTD.**

Dated: September 10, 2013

By   /mdp/    
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the within APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUEST FOR ADMISSIONS TO OPPOSERS (NOS. 1-33) is being served upon Opposer's counsel via First Class Mail, postage prepaid on this 10<sup>th</sup> day of September, 2013 addressed to:

Jacqueline M. Lesser  
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  /mdp/    
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