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09-CV-00611-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DESIGN RESOURCES, INC., a Washington Corporation,
Plaintiff,
v.
LEATHER INDUSTRIES OF AMERICA,
and DR. NICHOLAS J. CORY and JANE DOE CORY, husband and wife,
Defendants.

No. **C09-0611** *ROM*
COMPLAINT FOR DAMAGES
JURY TRIAL DEMANDED

Plaintiff Design Resources, Inc. brings this Complaint against the Leather Industries of America Inc. ("LIA"), Dr. Nicholas Cory ("Cory") and Jane Doe Cory, husband and wife, and states as follows:

I. PARTIES

1. Plaintiff Design Resources, Inc. ("DRI") is a corporation organized and duly licensed in the State of Washington with its principal place of business in Seattle, Washington.
2. To the best of DRI's knowledge and belief, Leather Industries of America Inc. ("LIA") is a non-profit corporation organized in the District of Columbia with its principal place of business in the District of Columbia.

COMPLAINT FOR DAMAGES - 1

ORIGINAL

1 of the LRL. DRI also sought Dr. Cory's advice to ensure that its advertising and sale of
2 NextLeather® was in full compliance with the law. He told DRI that it could call
3 NextLeather® "bonded leather," and the report issued by his laboratory called it bonded
4 leather. Dr. Cory also complimented DRI's owner Alan Nanness on NextLeather®'s close
5 similarity to leather's look and feel, saying that NextLeather® "scared" him.

6 10. Subsequently, without further notice to DRI, Dr. Cory also was quoted in
7 *Furniture Today*, the furniture industry's leading trade publication, stating unequivocally, in
8 reference to bonded leather products, "To call it 'leather' is outright deception, outright
9 fraud." The *Furniture Today* article also reported that Dr. Cory was on a "crusade" to educate
10 the industry that manufacturers of bonded leather products were engaged in fraud. Dr. Cory
11 also communicated to DRI's largest competitor, Ashley Furniture, and other competitors, that
12 DRI was misrepresenting its product in order to confuse consumers. His advice to Ashley
13 Furniture supported Ashley's own smear campaign against DRI and NextLeather.

14 11. These statements are actionable for unlawfully and falsely impugning DRI and
15 its products and damaging its reputation and goodwill.

16 12. Dr. Cory's public statements denigrating DRI's NextLeather® were motivated
17 by his desire to protect and advance the commercial interests of the leather manufacturing
18 industry to the detriment of DRI and its bonded leather product NextLeather®. In this regard,
19 the leather manufacturing industry's and Ashley Furniture's and other DRI competitors'
20 interests in destroying DRI and NextLeather's goodwill coincided.

21 13. Dr. Cory also disclosed DRI's testing data to LIA, despite his employer's
22 stated policy that testing results would be kept confidential. LIA sponsors the LRL and Dr.
23 Cory is employed by the LIA as well as the director of the LRL. LIA and Dr. Cory
24 misappropriated a photograph of NextLeather® and related testing data belonging to DRI, and
25 used them to support a petition by LIA to the FTC for a change in the FTC Guides for Select
26

COMPLAINT FOR DAMAGES - 3

1 Leather and Imitation Products ("FTC Guides") specifically to preclude DRI's use of the term
2 "bonded leather."

3 14. Dr. Cory had a First Amendment right to express his opinion that FTC Guides
4 governing DRI's use of the term "bonded leather" should be changed. But he had no such
5 right to publicly proclaim that DRI's labeling, advertising and sale of its NextLeather®
6 bonded leather products in conformity with the letter and spirit of the FTC Guides were
7 deceptive and fraudulent.

8 15. Subsequent to these events, the FTC, despite contrary urging from the LIA,
9 decided to retain its Guides which permitted DRI to advertise NextLeather® as bonded
10 leather (DRI was the only producer or seller of bonded leather that participated in the FTC
11 proceeding). This development confirms that, DRI was, in fact, in full compliance with
12 applicable laws and regulations in labeling, advertising and selling NextLeather® as "bonded
13 leather." More importantly, Dr. Cory knew full well (or should have known) that DRI was
14 not a fraudster and that it did not desire to mislead anyone or break the law. In fact, DRI
15 came to Dr. Cory and his laboratory for the testing necessary to ensure that its NextLeather®
16 labels accurately disclosed the information required by the FTC Guides.

17 16. DRI also asked Dr. Cory what to call NextLeather®, and he said that DRI
18 could label, advertise and sell NextLeather® as bonded leather. LRL's report to DRI also
19 referred to NextLeather® as bonded leather. Dr. Cory never amended his advice and
20 representations to DRI even though he later purportedly concluded, after testing
21 NextLeather®, that it was not bonded leather. Thus Dr. Cory knew that DRI sought his
22 advice to ensure that its advertising and sale of NextLeather® was in full compliance with the
23 law.

24 17. Dr. Cory's false, defamatory statements and "crusade" on behalf of his leather
25 manufacturing clients damaged DRI's business and deprived it of a unique, one-time
26

1 opportunity to exploit and capitalize on its position as the first to develop a novel, successful
2 bonded leather product and create a new, emerging market niche.

3 IV. FACTUAL ALLEGATIONS

4 18. DRI has been in the leather products business for more than 27 years. DRI
5 primarily imports bonded leather, bycast leather, and finished leather hides and lines of "cut
6 & sew" products, from which bonded leather, bycast leather or leather hides are cut and sewn
7 to patterns for various furniture manufacturers. Most of these finished goods are
8 manufactured in Europe and Asia and are pre-sold by DRI to fill customer orders.

9 19. DRI's bonded leather products are marketed and sold under the NextLeather®
10 brand with labels and invoices that disclose the percentage of leather fibers and non-leather
11 substances in them, as required by the FTC Guides. Exhibit A. DRI's customers are
12 primarily located in North America and Asia. DRI also provides sales and marketing services
13 to overseas tanneries of leather hides for the furniture market.

14 20. DRI maintains its corporate office in Seattle, Washington, which oversees
15 sales, marketing, customer service and administrative matters. DRI also has an office in
16 Shanghai, China to provide quality control for goods produced by its suppliers in that country.

17 A. Relationship Between Dr. Cory and LIA, and LIA's "Mission"

18 21. According to LIA's Internet site, LIA, one of the oldest trade associations in
19 the United States, has represented American leather tanners and suppliers since 1917. LIA's
20 website further states, "For over 85 years, Leather Industries of America (LIA) has served its
21 members and been an effective force in representing the leather industry of America." "LIA
22 provides environmental, technical, education, statistical and marketing services -- all at the
23 direction of its membership and to the benefit of the leather industry." LIA's Internet site
24 identifies Nicholas Cory as "Technical Director and Editor of the LIA." LRL's website refers
25 to the LIA as "our sponsor." LRL's website further states that Dr. Cory "has now been
26 Director of the Leather Research Laboratory at the University of Cincinnati for nearly 12

1 years, directing the design and construction of the new research facility and catalyzing a
2 600% expansion in laboratory revenue, while expanding his role into various other labeling
3 issues for product manufacturers and retailers.”

4 22. LRL and LIA are so closely associated that they present themselves to the
5 general public as affiliates with identical interests. Their web sites are literally fused. Exhibit
6 G. There is not simply a link to the LRL site from the LIA site or vice versa; rather they share
7 the front piece of the same web site. Exhibit. G. Indeed, LIA’s submission to the FTC stated
8 that “LIA maintains a state-of-the-art Leather Research Laboratory at the University of
9 Cincinnati.”

10 23. Moreover, Dr. Cory and LRL share the same legal counsel, Kelley Drye.
11 Exhibit F. In a letter from Kelly Drye dated October 24, 2007 letter to DRI’s counsel, LIA’s
12 counsel stated that LIA has opposed DRI’s use of the term “bonded leather” with its labeling,
13 advertising and sale of NextLeather® because of “LIA’s long-standing and historical mission
14 of protecting the leather marketplace from products that imitate leather, but are not actual
15 leather.” Exhibit F.

16 **B. Leather Research Laboratory Tests DRI’s NextLeather®**

17 24. DRI recognized its obligation to accurately label and advertise its
18 NextLeather® products. Therefore, DRI sought the assistance of LIA’s affiliated testing
19 laboratory, LRL at the University of Cincinnati.

20 25. In January 2007, DRI asked Dr. Cory, as director of LRL, to test and analyze
21 DRI’s NextLeather® bonded leather and report the percentage of leather fibers and non-
22 leather substances in it. DRI also explained to LRL that it sought LRL’s testing services to
23 ensure that its bonded leather products performed satisfactorily, testing such qualities as
24 strength, abrasion, sunlight resistance, and to determine the compositional breakdown of the
25 product for labeling purposes.

1 26. DRI received LRL's first report in February 2007 on NextLeather's® leather-
2 fiber content. Dr. Cory reported that the average leather content of NextLeather® was 17.2%.
3 Exhibit B. That analysis and report formed the basis for the disclosure DRI uses in its product
4 labeling and invoices. See Exhibit A. Further, Dr. Cory specifically advised DRI's owner
5 Alan Naness that DRI should or could call NextLeather® "bonded leather." Exhibit D.

6 27. In March 2007, DRI received LRL's second report entitled, "Bonded Leather
7 Performance Testing." Exhibit C. LRL tested NextLeather's® crocking and abrasion
8 resistance, colorfastness, and damage to the finish surface from testing. During and after the
9 testing, LRL clearly acknowledged that NextLeather® was "bonded" or "bonded leather."
10 Exhibits C and D. At no time during the testing process or otherwise did LRL suggest that
11 NextLeather® was anything other than bonded leather. See Exhibits B-D.

12 28. The upshot of LRL's performance testing reports was that NextLeather®
13 received very high marks. In fact, it tested so favorably that on February 19, 2007, Dr. Cory
14 wrote to DRI, in an unsolicited email, as follows:

15 [Y]our "Veneto" product scares me.¹ I've never encountered a
16 synthetic/bonded product with a convincing look and feel as this. It's really
incredible.

17 Exhibit D.

18 **C. Dr. Cory's Unauthorized Disclosure of DRI's Test Results to LIA**

19 29. The LRL website contains a statement assuring "confidential testing."
20 However, Dr. Cory, without DRI's permission or knowledge, provided a laboratory
21 photograph of NextLeather® taken during LRL's testing to LIA, of which DRI is a member
22 in good standing.

23 30. LIA, in turn, used the photograph (and other confidential information)
24 provided by Dr. Cory in its written submission to the FTC in support of its proposed revisions

25 _____
26 ¹ When tested, DRI's bonded leather product was tentatively called "Veneto." It has since been renamed and
continues to be actively marketed and sold to the industry under the NextLeather® brand name.

1 to the Guides regarding bonded leather. In its submission, LIA argued, among other things,
2 that NextLeather® should not be labeled, advertised or sold as “bonded leather.”

3 **D. Dr. Cory Publishes False, Defamatory Statements About DRI Inconsistent with**
4 **his Prior Representations to DRI**

5 31. Dr. Cory made false, defamatory statements about bonded leather
6 manufacturers, including DRI, to the furniture trade press in published articles that reached
7 actual and potential customers of DRI. The defamatory content of Dr. Cory’s statements is
8 set forth and well summarized in a July 2, 2007 *Furniture Today* article entitled, “Chemist
9 fears confusion over imitators may hurt category,” authored by Joan Gunin. The article reads
10 in part, as follows:

11 As a leather chemist, Nicholas Cory does not want leather’s reputation to be
12 tarnished by alternative products such as bonded leather.

13 **“To call it ‘leather’ is outright deception, outright fraud,”** said Cory,
14 director of the Leather Research Laboratory at the University of Cincinnati, of
15 bonded leather. “It’s not leather It’s a synthetic that has leather fibers
16 glued to the underside.”

17 **Cory is crusading to educate people about this new leather imitator. Not**
18 **only is the terminology confusing to consumers, but he fears a bad**
19 **experience with bonded products could harm genuine leather’s image and**
20 **make consumers shy away from the real deal in the future.**

21 **“When it gets fabricated into a chair or a sofa, the consumer never gets to**
22 **touch or see the real leather content,”** he said.

23 See Exhibit E, attached (emphasis added).

24 32. Thus, Dr. Cory explicitly accused DRI of deceiving its customers and
25 consumers and engaging in fraud, in effect selling a counterfeit product. These defamatory
26 statements were made as part of his “crusade” to educate the public, including actual and
potential DRI customers, that DRI was a fraudulent company. Inasmuch as DRI was first to
market with NextLeather® there could be no doubt in the minds of DRI’s actual and potential
customers that the article was referring to DRI and NextLeather®. DRI was also the only
producer or supplier of bonded leather that provided comments in response to the FTC

1 proposed change in the FTC Guides to preclude DRI's use of the term bonded leathery to
2 describe its product.

3 33. Dr. Cory also made these defamatory statements directly. For example, he
4 represented to Ashley Furniture that DRI's NextLeather® products should not, or cannot, be
5 legally advertised as "bonded leather," because to do so would "misrepresent the product and
6 confuse the consumer," *even though LIA's suggested revisions to the FTC Guides had not*
7 *been adopted* (and eventually were rejected). *See Exhibit I.*

8 34. Ashley Furniture, in turn, has represented to actual and potential customers of
9 DRI that NextLeather® is not bonded leather and that DRI was engaging in a misleading and
10 fraudulent advertising and marketing campaign. For example, Ashley Furniture ran a full
11 page advertisement that warned buyers to beware of upholstery suppliers who "are using
12 leather scraps that are mis-represented as leather." *See Exhibit L.* The Ashley Furniture
13 advertisement cautioned furniture manufacturers of the dire consequences of using the "mis-
14 represented" product because "the overseas manufacturer has no liability in the U.S.A.," but
15 the domestic manufacturer of the furniture did. *Exhibit L.*

16 35. Ashley Furniture made similar statements that DRI was falsely marketing
17 NextLeather® directly to potential customers of DRI and other competitors of DRI, who
18 repeated this misinformation. In addition, Dr. Cory falsely told Ashley Furniture that DRI
19 had "pasted and made up" (*i.e.*, forged) the email communications between him and DRI.

20 36. Ashley Furniture could not have made any of the foregoing technical
21 statements absent Dr. Cory's active participation and support. Dr. Cory is the director of the
22 leading if not the only specialty leather chemistry laboratory in the United States, he was in
23 communication with Ashley Furniture, and he had a hidden agenda to advance the interests of
24 DRI's competitors, including the leather manufacturing industry. Thus, Ashley furniture
25 republished Dr. Cory's defamatory statements.

26
COMPLAINT FOR DAMAGES - 9

1 37. DRI was the first to the leather upholstered furniture market with bonded
2 leather such as NextLeather®. Thus, an informed reader would have recognized DRI and
3 NextLeather® as the targets of these defamatory statements as well.

4 38. Moreover, the very fact that LIA requested a change in the FTC Guides
5 regarding bonded leather, which the FTC rejected as unnecessary and unwarranted,
6 establishes that Dr. Cory's statements were false and defamatory and that DRI's labeling,
7 advertising and selling NextLeather® as bonded leather *were* legal, not deceptive or
8 fraudulent, and entirely appropriate.

9 39. LIA argued to the FTC that revisions to the Guides were necessary as a result
10 of "an escalating trend of deceptive practice within the U.S., which is curbed more effectively
11 in European countries." In particular, LIA advocated that the Guides more specifically define
12 the term "bonded leather" to "clarify that the definition does not apply to an insubstantial
13 coating of [leather] fibers on the underside of a non-leather material" because "[s]ome
14 companies **erroneously** describe [their] products as 'bonded leather.'" (Emphasis added.)

15 40. However, on May 30, 2008, the FTC rejected (by a unanimous 4-0 vote) LIA's
16 suggested revision, finding that the leather and non-leather content disclosure in the Guides
17 "effectively prevents deception which could be caused by the term 'bonded leather'" and that
18 "[t]ruthful content information, as outlined in the Guides, gives consumers the facts they need
19 to make an informed decision regarding bonded leather and similar materials." See Exhibit
20 H.

21 41. In other words, DRI's labeling, advertising and sale of NextLeather® as
22 "bonded leather" were lawful under the FTC Guides when Dr. Cory made his false,
23 defamatory statements, remain lawful under the Guides despite his (and LIA's) "crusade" to
24 the contrary, and would not have been unlawful, much less deceptive or fraudulent, unless and
25 until the FTC had adopted LIA's proposed revision to the Guides regarding bonded leather.
26 Moreover, the FTC specifically rejected Dr. Cory's public assertions (and LIA's position) that

1 DRI's labeling, advertising and sale of NextLeather® as "bonded leather" under the Guides
2 was an "outright deception, outright fraud."

3 42. Dr. Cory's counsel, Kelly Drye Collier Shannon, which represents both LIA
4 and Dr. Cory in connection with these matters, has admitted that Dr. Cory, in his dealings
5 with DRI, actually called NextLeather® "bonded leather," and advised DRI to call its
6 NextLeather® products bonded leather, albeit before Dr. Cory tested the NextLeather®
7 sample. Dr. Cory's counsel has also admitted that at no time did Dr. Cory withdraw or amend
8 his original advice to DRI, or disclose to DRI that he no longer believed that NextLeather®
9 should be called bonded leather or that he intended to commence a public "crusade" against
10 DRI for doing so. Finally, Dr. Cory's counsel has admitted that throughout these events Dr.
11 Cory acted with an economic motivation, i.e., a motivation to benefit the leather industry.
12 Kelly Drye's October 24, 2007 letter to DRI's counsel concedes the following:

13 In hindsight, perhaps Dr. Cory should have included an explicit opinion that
14 DRI's product was not bonded leather in his February 26, 2007 report to DRI.
15 However, the purpose of the report was not to provide an opinion on whether
16 or not this material was in fact bonded leather, but, rather, to identify the
17 specific composition of the material. The sole reason Dr. Cory did not go
18 beyond the purpose of the report and provide a clearly stated opinion that the
19 material is not bonded leather is because he did not want to offend a new
20 customer, and believed that an opinion on correct labeling for the product was
21 outside the scope of the requested work. . . . It is now clear, though, that
22 Dr. Cory could have been more direct in this matter and expressly
23 communicated his concerns to DRI. **It was Dr. Cory's desire to court DRI
24 as a new and highly valued client that caused him to take the approach
25 that ultimately may have created some confusion regarding his view of the
26 nature of DRI's product.**

LIA and Dr. Cory regret any confusion caused by Dr. Cory's decision not to
explicitly state his opinion that DRI's material was not bonded leather in the
Laboratory report. . . .

See Exhibit F (emphasis added). During this entire period neither Dr. Cory nor his counsel
denied ever denied that Dr. Cory was misquoted in the *Furniture Today* articles or elsewhere.

1 **E. DRI's Resulting Damages**

2 43. The lower average price points for leather covered furniture are highly
3 sensitive to cost of materials, including susceptibility to mass production. For manufacturers
4 of the lowest priced products, cost and ease of use in mass production operations are the
5 primary drivers affecting demand for bonded leather or leather materials including
6 manufacturers' decisions whether to buy leather or bonded leather coverings.

7 44. NextLeather® bonded leather sells wholesale at an average cost that is a
8 fraction of leather. Further, bonded leather comes in rolls, like fabric, rather than odd and
9 disparately shaped hides. NextLeather®-covered furniture is thus much easier and less
10 expensive to mass produce than leather furniture. At lower price levels furniture is both mass
11 produced and extremely price sensitive. Moreover, bonded leather is much less susceptible to
12 price and availability fluctuations caused by feed prices and environmental and political
13 (since most leather is imported from overseas) factors. This is particularly appealing to
14 smaller manufacturers who comprise most of the furniture manufacturing market. At the
15 same time, NextLeather® has the same look and feel as genuine leather in the lower to mid-
16 price levels. At higher average price points the foregoing factors become less important.

17 45. Dr. Cory's false, defamatory statements and "crusade" on behalf of his leather
18 manufacturing clients damaged DRI's goodwill and reputation. As a result, Dr. Cory and LIA
19 deprived DRI of a unique, one-time opportunity to exploit and capitalize on its position as the
20 first to develop a novel, successful bonded leather product and create a new, emerging market
21 niche. DRI's damages thus include lost profits, past and future, caused by the loss of this
22 opportunity reflected in reduced market share below that which DRI otherwise would have
23 captured. Dr. Cory also caused DRI to incur attorney fees and other out of pocket costs in
24 attempting to ameliorate the damaging effects of Dr. Cory and LIA's false advertising and
25 unlawful product disparagement.

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V. CLAIMS FOR RELIEF

Count I:

FALSE ADVERTISING

46. DRI repeats and realleges the preceding paragraphs as if fully set forth.

47. LIA's and Dr. Cory's actions falsely impugning DRI's business ethics, reputation and integrity as LIA and Dr. Cory did with respect to DRI and NextLeather®, unlawfully damaging DRI business and improperly interfering with its customer relationships, constitute false advertising under Section 43(a) of the federal Lanham Act, 15 U.S.C. § 1125(a). Dr. Cory acted as an agent of LIA and his and LIA's purpose and motivation was to damage NextLeather® in order to promote the interests of LIA members' product lines. Dr. Cory's statements thus constitute actionable commercial speech under the Lanham Act.

48. DRI has been harmed by and Dr. Cory's and LIA's false and/or misleading claims about DRI's products made in order to promote the interests of LIA members' product lines. As a result of LIA and Dr. Cory's conduct, DRI's customer relationships have been damaged and DRI has been forced to spend substantial sums to address resulting damage to its goodwill and has lost substantial market share that it otherwise would have captured. DRI is entitled to a judgment against LIA and Dr. Cory, jointly and severally, for direct and consequential damages, for injunctive relief, attorneys' fees and costs.

Count II:

DEFAMATION/PRODUCT DISPARAGEMENT

49. DRI repeats and realleges the preceding paragraphs as if fully set forth.

50. Falsely impugning DRI's business ethics, reputation and integrity as LIA and Dr. Cory did with respect to DRI and NextLeather®, unlawfully damaging DRI business and improperly interfering with its customer relationships, constitute defamation and unlawful product disparagement under Washington law.

COMPLAINT FOR DAMAGES - 13

1 Cory's acts constitute intentional interference with business relationships under Washington
2 law.

3 57. As a result of LIA and Dr. Cory's conduct, DRI's customer relationships have
4 been damaged and DRI has been forced to spend substantial sums to address resulting damage
5 to its goodwill and has lost substantial market share that it otherwise would have captured.
6 DRI is entitled to a judgment against LIA and Dr. Cory, jointly and severally, for direct and
7 consequential damages, for injunctive relief, attorneys' fees and costs.

8 Count V:

9 CIVIL CONSPIRACY

10 58. DRI repeats and realleges the preceding paragraphs as if fully set forth herein.

11 59. Defendants combined and conspired with one another and Ashley Furniture
12 and other DRI competitors to destroy DRI's and NextLeather's reputation and goodwill in the
13 manner discussed in the preceding paragraphs.

14 60. Because defendants' actions involved the tortious and unlawful actions
15 discussed above, their concerted actions with Ashley Furniture and other DRI competitors
16 were unlawful in their purpose and execution.

17 61. Accordingly, DRI is entitled to a judgment against LIA and Dr. Cory, jointly
18 and severally, for direct and consequential damages, for injunctive relief, attorneys' fees and
19 costs.

20 **PRAYER FOR RELIEF**

21 DRI prays for the following relief:

- 22 1. Direct and consequential damages in an amount to be proven at trial;
- 23 2. Appropriate injunctive relief in DRI's favor against defendants;
- 24 3. Treble damages under the Lanham Act and the Washington Consumer

25 Protection Act;

26
COMPLAINT FOR DAMAGES - 15

EXHIBIT A

Take Your Seat for the Performance

The High Performance
of Ultra-Looking New Bonded Leather

Leather™
NEW BONDING

Here's what you've been looking for:

- The strength, feel & look of leather
- Durable yet soft and supple
- Excellent sunlight resistance
- Easy maintenance and cleanability



DESIGN RESOURCES, INC.

composition: 61% polyurethane, 22% poly/cotton, 17% leather

DESIGN RESOURCES, INC.

601 UNION STREET, SUITE 4310
 SEATTLE, WA 98101
 Phone (206) 624-3010 Fax (206) 623-4346
 Email:alannaness@designresourcesinc.com

INVOICE

DATE	INVOICE NO.

BILL TO

SHIP TO

P.O. NO.	TERMS	CIT ACCOUNT #	SHIP DATE	SHIP VIA

ITEM	COLOR	QUANTITY	PRICE	\$ AMOUNT DUE
NextLeather™ is bonded leather, comprised of 61% Polyurethane, 22% poly/cotton fabric & 17% leather.				Total

EXHIBIT B

Dan Peplinski

From: Nick Cory [corynj@uc.edu]
Sent: Monday, February 26, 2007 10:41 AM
To: 'Dan Peplinski'
Subject: Leather Fiber Analysis
Importance: High
Attachments: 18249 _Design Resources_.pdf; 18249 _Design Resources x-section_.pdf

Hi Dan,
An electronic copy of your first report is attached (as two separate files).
We'll get the report for your second, more complex, project to you in a few days.
Best regards,
Nick.

Dr. Nicholas J. Cory
Director
Leather Research Laboratory
UNIVERSITY of CINCINNATI
6987 Center Hill Avenue
Cincinnati, OH 45224
USA
www.leatherusa.org

7/26/2007



Leather Research Laboratory
 University of Cincinnati
 Building C
 5997 Center Hill Avenue
 Cincinnati OH 45224

Phone (513) 242-6300
 Fax (513) 242-9797
 Web www.leatherusa.org

Laboratory Report Number: 18249
 Date of Report: February 26, 2007

DETERMINATION OF LEATHER FIBER CONTENT

SAMPLE INFORMATION

On February 19, 2007, a sample of material labeled as VENETO BONDED LEATHER COLLECTION - LAGUNA/BUFF was received from Mr. Dan Peplinski of DESIGN RESOURCES, INC., 601 Union Street, Suite 4310, Seattle, WA 98101-2327. The request was to determine the leather fiber content.

LABORATORY PROCEDURE

In order to express the composition data on a moisture-free basis, moisture content was determined from the loss in weight after drying in a forced air circulation oven at 102°C.

Total Kjeldahl Nitrogen (TKN) content was determined using ASTM D 2888, *Standard Test Method for Nitrogen Content (Kjeldahl) and Hide Substance Content of Leather*. In this procedure, the ground-up specimen is digested with acid in the presence of a catalyst to convert the nitrogen to the ammonium ion, which is non-volatile under the highly acidic conditions. The acid mixture is then made alkaline, and the liberated ammonia distilled into boric acid solution, which absorbs the ammonia. Finally, the amount of ammonia in the boric acid is determined by back titration with standardized acid to determine the end-point. The analysis was performed in duplicate.

RESULTS

Table 1. HIDE SUBSTANCE & LEATHER FIBER CONTENT

SAMPLE	ORGANIC NITROGEN CONTENT (%)		TKN (%)	HIDE SUBSTANCE (%)
	REPRODUCED	AV. OF 2		
A	1.983	2.241	12.695	17.5
B	1.904	2.151	12.090	16.8
Average		10		

INTERPRETATION OF RESULTS

Hide substance is derived by multiplying the organic nitrogen content from the TKN procedure by 5.62, which is a precise analytical constant. A higher hide substance result correlates to a higher leather fiber content, but hide substance values are not directly equivalent to leather fiber content:

Hide substance results are a measure of the hide fiber content as though it were un-tanned and unprocessed, while *leather fibers* in both real leather and bonded leather also comprise tanning agents (such as chromium salts or vegetable tannins), retanning agents (natural or manmade), dyes, fatliquors (lubricating oils), salts, and other process chemicals. These substances are chemically combined with the leather fibers; they are part of the leather itself, but are not measured by the analytical procedure. This means that to derive an *approximation* of the actual *leather fiber* content in bonded leather, a correlation factor must be applied to the hide substance results.

Previous test results obtained at the *Leather Research Laboratory* have been in the range of 67 to 77 percent. This range reflects the fact that different types of leather are manufactured *differently, depending on the specific physical and aesthetic attributes considered important or appropriate* for the intended end use. This means that on average, real or genuine leather can be assumed to contain approximately 72% hide substance.

The analytical hide substance results are exact, and so provide the most reliable and precise way of expressing the leather fiber content. However, by applying the 72% factor discussed above, we can *estimate* the actual *leather fiber content* of the product as shown in the final column in the Table.

CROSS-SECTIONAL STRUCTURE

The attached photomicrograph (page 3) shows the structural architecture of the VENETO BONDED LEATHER COLLECTION - LAGUNA/BUFF as seen at a magnification of 40x. Leather fibers comprise the underside of the product, with the rest being engineered using a layered combination of woven and non-woven synthetic materials.

Dr. Nicholas J. Cory
Director

Cletta Fambrough
Research Associate



**CROSS-SECTION THROUGH
VENETO BONDED LEATHER COLLECTION - LAGUNA/BUFF
(40x MAGNIFICATION)**

EXHIBIT C

Jan Peplinski

From: Rhonda Price [pricerf@uc.edu]
Sent: Thursday, March 22, 2007 10:28 AM
To: alannaness@designresourcesinc.com
Cc: 'Nick Cory'; 'Kadir Donmez'
Subject: Report 18295
Importance: High
Attachments: 18295 Design Resources.pdf

Mr. Naness:

Attached you will find report **18295, Bonded Leather Performance Testing / Veneto Bonded Leather Collection – Laguna/Buf.**

If we can be of additional assistance, please do not hesitate contacting us.

Best Regards,

Rhonda F. Price

Leather Research Laboratory
University of Cincinnati
5997 Center Hill Ave.
Building C
Cincinnati, Ohio 45224
USA

<http://www.leatherusa.org>
Tel: (513) 242-8300
Fax: (513) 242-9797

7/26/2007



Leather Research Laboratory
University of Cincinnati
Building C
5997 Center Hill Avenue
Cincinnati OH 45224

Phone (513) 242-6300
Fax (513) 242-9797
Web www.leatherusa.org

Laboratory Report Number: 18295
Date of Report: March 22, 2007

BONDED LEATHER PERFORMANCE TESTING

SAMPLE INFORMATION

On February 19, 2007, a sample of material labeled as VENETO BONDED LEATHER COLLECTION - LAGUNA/BUFF was received from Alan Naness of DESIGN RESOURCES, INC., 601 Union Street, Suite 4310, Seattle, WA 98101-2327. Mr. Naness requested a continuation of the original work (report #18249) in the form of testing for colorfastness to rubbing, light fastness, and abrasion resistance.

LABORATORY PROCEDURE

The test samples were conditioned in a constant temperature and humidity laboratory maintained at 72°F and 50% relative humidity for 24 hours prior to testing, as required by ASTM D 1810 (*Conditioning Leather and Leather Products for Testing*). Duplicate samples labeled as "A" and "B" were tested.

Crocking resistance was tested by fastening the specimen onto an AATCC crockmeter, and rubbing the finished side with a white crock test cloth under controlled conditions (AATCC 8). Color transfer to the white cloth was assessed by comparison with the AATCC chromatic transference scale (ISO IS-R 105/1 Part 3) using an Atlas "Color-Chex" light booth with daylight lighting conditions.

Oscillatory abrasion resistance was measured using the Wyzenbœk abrader (ASTM D 4157), which tests the abrasion resistance of the finish by subjecting the specimen to a unidirectional rubbing action under standardized conditions of pressure, tension and abrasive action. The abrasive cloth used was No. 8 canvas duck cloth, and testing was performed with 3 lbs of tension and 2 lbs of pressure to 30,000 cycles.

Colorfastness to xenon light (AATCC method 16E) was tested using an Atlas CI 4000 Weather-Ometer. The samples were evaluated using the Color-Chex light booth and the AATCC Gray scale (ISO R105/1, Part 2).

Resistance to abrasion from rubbing (dry, wet & artificial perspiration) was determined using a VESLIC rub fastness testing machine according to standard test methods IUF 450. In this test, samples measuring 120 x 20mm are clamped under tension on a horizontal metal platform, and then rubbed with a piece of standard wool felt pad measuring 15 x 15mm. Each pad is held against the test sample under standard pressure, exerted by a total rubbing arm weight of 1000g. The rubbing action is linear, with the felt pad traveling 35mm in each direction. The test is performed with the felt pad under three separate conditions: (1) Dry; (2) Wetted with distilled water, and; (3) Wetted with artificial perspiration solution.

Felt Pad Rating System

The degree of color transfer from the leather to the felt rubbing pad was measured using the AATCC Gray Scale for Evaluating Staining (ISO International Standard 105/A03):

- Maximum rating = 5 (this represents zero color transfer to the felt pad);
- Minimum rating = 1 (this represents major color transfer).

Finish Surface Rating System

Although the degree of damage exhibited by the sample is not part of the official test method, we consider that it is important to evaluate the finish surface after testing, because damage or color change to the leather is what the customer is most likely to notice and complain about. The scale rating system (Figure 1) was used to grade damage to the leather.

RESULTS

Table 1. Crocking Resistance

Sample	Rating	Interpretation
A	5 (zero color transfer)	4.5 (slight color transfer)
B	5 (zero color transfer)	4.5 (slight color transfer)

Interpretation of Results:

5 = Zero color transfer to test cloth

1 = Maximum color transfer

Table 2. Wyzenbeek (Oscillatory) Abrasion Resistance (#8 Duck cloth)

Cycles	Result
30,000	No damage.

Interpretation of Results:

Any wear through the finish to the underlying material after 30,000 cycles is normally considered a failure. In this case, the samples exhibited absolutely no signs of any wear.

Table 3. Colorfastness to Xenon Light (AATCC 16E)

Exposure	Rating	Interpretation
160 kJ/m ²	5	0
80 kJ/m ²	5	0
40 kJ/m ²	5	0
20 kJ/m ²	5	0

Interpretation of Results:

5 (the maximum) represents zero color change (best possible performance), while 1 (the minimum) represents major color change. These samples exhibited relatively extensive yellowing of the finish surface as the exposure to UV light increased.

Table 4. Vesilic Rubbing Abrasion Resistance Results

	Color Change (0=No Change/5=Major Color Change)					
	1	2	3	4	5	6
A	5	6	6	5	5	6
B	5	5	5	5	5	5

Interpretation of Results:

5 (the maximum) represents zero color change, and 1 (the minimum) represents major color change.

Figure 1. Finish Surface Evaluation Codes (where applicable)


None		Damage	
5	None	D	Finish Duller
4	Barely Noticeable	S	Finish Shiner
3	Obvious	R	Finish damage extends to leather substrate
2	Relatively Extensive	T	Finish damage only on topcoat
1	Extensive		

SUMMARY

The sample exhibited no significant color transfer and very good abrasion resistance properties. However, the finish yellowed significantly upon exposure to UV light.



Dr. Nicholas J. Cory
Director



Kadir Donmez
Research Associate

EXHIBIT D

Dan Peplinski

From: Dan Peplinski [danpep@designresourcesinc.com]
Sent: Monday, February 19, 2007 11:13 AM
To: 'Nick Cory'
Subject: RE: Bycast leather

Thanks Nick! That is great to hear. We've worked very hard in the past 6 weeks to developing over 40 SKUs of our Veneto Collection in an attempt to create the entire spectrum of leather looks and hand for upholstery.

Obviously, the one I sent you is meant to imitate low-end corrected grain leather (and isn't that attractive), but we have some others that we think do a decent job of fooling folks at the aniline full-grain end of the spectrum as well.

Regards,
Dan

From: Nick Cory [mailto:coryn@uc.edu]
Sent: Monday, February 19, 2007 11:06 AM
To: 'Dan Peplinski'
Subject: RE: Bycast leather

Thanks Dan.
By the way, your "Veneto" product scares me. I've never encountered a synthetic / bonded product with such a convincing look and feel as this. It's really incredible.
Best regards,
Nick.

Nicholas J. Cory
actor
Leather Research Laboratory
UNIVERSITY of CINCINNATI
5997 Center Hill Avenue
Cincinnati, OH 45224
USA
www.leatherusa.org

From: Dan Peplinski [mailto:danpep@designresourcesinc.com]
Sent: Monday, February 19, 2007 1:39 PM
To: 'Nick Cory'
Subject: RE: Bycast leather

Nick,
Please proceed per your recommendation, and thank you for the discounted price.
Regards,
Dan

From: Nick Cory [mailto:coryn@uc.edu]
Sent: Monday, February 19, 2007 10:36 AM
To: 'Dan Peplinski'
Subject: RE: Bycast leather

Dan,
The samples arrived today. The report on the leather fiber content for the bonded leather will be with you early next week.
Our recommended testing program for the Bycast fabric is attached. I'll wait to hear from you before commencing the toxicity testing; don't hesitate to contact me with any questions.

7/26/2007

regards,
Nick Cory.

Dr. Nicholas J. Cory
Director
Leather Research Laboratory
UNIVERSITY of CINCINNATI
5997 Center Hill Avenue
Cincinnati, OH 45224
USA
www.leatherusa.org

From: Dan Peplinski [mailto:danpep@designresourcesinc.com]
Sent: Friday, February 16, 2007 11:38 AM
To: 'Nick Cory'
Subject: RE: Bycast leather

Dr. Cory,

Today I am sending you via DHL 2 samples that we would like tested by your lab.

1. **Bonded Leather:** I have included 1 yard of our bonded leather article called Veneto. No physical tests are needed - we have already performed those tests elsewhere. However, we would like you to conduct composition testing to determine the % of each component, especially the leather fibers. Please provide me a quote via e-mail.
2. **Bycast Fabric (our article named Renaissance) with an embossed Ostrich pattern embossed:** We need this item tested to determine if any of the components of this article might be harmful to humans in its intended use as upholstery cover. Again, please provide a quote via e-mail.

The package will be delivered Tuesday, 2/16/07; waybill 2016 283 8258.

Best regards,

From: Nick Cory [mailto:corynj@uc.edu]
Sent: Tuesday, January 16, 2007 10:22 AM
To: 'Dan Peplinski'
Subject: RE: Bycast leather
Importance: High

Happy New Year Dan,
Our standard recommended testing package for leather (included bonded and Bycast leather) intended for use as upholstery is attached.
However, if your budget dictates a more focused, restricted approach, just let me know, and I'll cut out a few of the less critical tests.

If you do decide to proceed, please send the sample (size approx. 3 x 3 feet minimum if possible) to the address below.

Best regards,
Nick.

Dr. Nicholas J. Cory
Director
Leather Research Laboratory
UNIVERSITY of CINCINNATI
5997 Center Hill Avenue
Cincinnati, OH 45224
USA
www.leatherusa.org

From: Dan Peplinski [mailto:danpep@designresourcesinc.com]
Sent: Monday, January 15, 2007 11:08 AM
To: 'Nick Cory'

7/26/2007

Subject: RE: Bycast leather

Happy New Year Nick.

We have sample "bonded leather" material that we'd like to have tested for composition and suitability for use on upholstery.

How big of a piece would you require and can you give me an estimate of the cost?

Should I send it to your attention at the address below?

Appreciate your help,
Dan

From: Nick Cory [mailto:coryn@uc.edu]
Sent: Monday, December 11, 2006 9:19 AM
To: 'Dan Peplinski'
Subject: RE: Bycast leather

Hi Dan,

ABSOLUTELY NOT!

The Federal Trade Commission's Guides for select Leather and Imitation Leather Products (16 CFR Part 24) states that:

"A material in an industry product that contains ground, pulverized, shredded, reconstituted, or bonded leather and thus is not wholly the hide of an animal should not be represented, directly or by implication, as being leather."

To label or otherwise describe the material as "leather" would conflict with the regulation. Also, as the product most certainly has the appearance of leather, it would constitute deceptive practice if the product were not labeled.

The material needs to be labeled as:

- 1) "Not leather", or;
- 2) "Reconstituted leather" or "Bonded leather"

If "Reconstituted leather" or "Bonded leather" (or similar) is used, the FTC requires the percentage of leather fibers and the percentage of non-leather substances contained in the material to be disclosed in the label. Of course, almost all companies prefer to label such material as "Bonded leather", and if the percentage of leather fibers is not known, we can find out for you using chemical analysis, as well as doing all the physical tests that will be necessary to determine whether it is fit for the intended purpose.

Sincerely,

Nick Cory.

Dr. Nicholas J. Cory
Director
Leather Research Laboratory
UNIVERSITY of CINCINNATI
5997 Center Hill Avenue
Cincinnati
OH 45224
Telephone (513) 242-6300
www.leatherusa.org

From: Dan Peplinski [mailto:danpep@designresourcesinc.com]
Sent: Monday, December 11, 2006 11:29 AM

7/26/2007

To: rynn@uc.edu
Subject: Bycast leather

Hello!

For years we have imported bycast leather (split leather backing with a Polyurethane face) into the USA for use on furniture. As you know, this type of article is widely marketed as "leather".

We have recently located a somewhat different type of article. The face is Polyurethane. However, the PU is not applied to a split. Instead, the backing is reconstituted small leather bits/scrap.

Obviously, we will need to test this article for suitability on furniture. But at the moment, we'd be very interested in your opinion: Can this type of article still be characterized as leather in the USA?

Please advise me via e-mail, or if I should contact a specific individual at LIA, please forward the contact details.

Thanks very much for your prompt response!

Regards,

Dan Paplinski
Chief Operating Officer
Design Resources Inc.
208-824-3010

Pepilnski

From: Rhonda Price [pricerf@uc.edu]
Sent: Thursday, March 22, 2007 10:28 AM
To: alannaness@designresourcesinc.com
Cc: 'Nick Cory'; 'Kadir Donmez'
Subject: Report 18295
Importance: High
Attachments: 18295 Design Resources.pdf

Mr. Nanness:

Attached you will find report 18295, *Bonded Leather Performance Testing / Veneto Bonded Leather Collection -- Laguna/Buf.*

If we can be of additional assistance, please do not hesitate contacting us.

Best Regards,

Rhonda F. Price

Leather Research Laboratory
University of Cincinnati
6097 Center Hill Ave.
Building C
Cincinnati, Ohio 45224
USA

<http://www.leatherusa.org>
Tel: (513) 242-6300
Fax: (513) 242-9797

Pepilnski

From: Nick Cory [coryn]@uc.edu
Sent: Friday, March 23, 2007 10:18 AM
To: 'Alan Naness - Design Resources Inc.'
Subject: RE: Report 18295

Hi Alan,
We greatly appreciated the opportunity to serve you, and will always strive to earn your respect.
Best regards,
Nick.

Dr. Nicholas J. Cory
Director
Leather Research Laboratory
UNIVERSITY OF CINCINNATI
6997 Center Hill Avenue
Cincinnati, OH 45224
www.leatherusa.org

From: Alan Naness - Design Resources Inc. [mailto:alannaness@designresourcesinc.com]
Sent: Friday, March 23, 2007 1:50 PM
To: pricerf@uc.edu
Cc: 'Nick Cory'; 'Kadir Donmez'
Subject: RE: Report 18295

Thank you for getting this done so quickly!
Kindest regards,
Alan Naness

-----Original Message-----

From: Rhonda Price [mailto:pricerf@uc.edu]
Sent: Thursday, March 22, 2007 9:28 AM
To: alannaness@designresourcesinc.com
Cc: 'Nick Cory'; 'Kadir Donmez'
Subject: Report 18295
Importance: High

Mr. Naness:

Attached you will find report 18295, *Bonded Leather Performance Testing / Veneto Bonded Leather Collection - Laguna/Buff*.

If we can be of additional assistance, please do not hesitate contacting us.

Best Regards,

Rhonda F. Price

Leather Research Laboratory
University of Cincinnati
6997 Center Hill Ave.
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Cincinnati, Ohio 45224
USA

<http://www.leatherusa.org>
Tel: (513) 242-6300
Fax: (513) 242-9797

7/26/2007

EXHIBIT E



Databases selected: Multiple databases...

Chemist fears confusion over imitators may hurt category

Joan Gunin. Furniture Today. High Point: Jul 2, 2007. Vol. 31, Iss. 42; pg. 13

Abstract (Summary)

"To call it 'leather' is outright deception, outright fraud," said [Nicholas Cory], director of the Leather Research Laboratory at the University of Cincinnati, of bonded leather. "It's not leather.... It's a synthetic that has leather fibers glued to the underside."

Full Text (420 words)

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Cincinnati-- As a leather chemist, Nicholas Cory does not want leather's reputation to be tarnished by alternative products such as bonded leather.

"To call it 'leather' is outright deception, outright fraud," said Cory, director of the Leather Research Laboratory at the University of Cincinnati, of bonded leather. "It's not leather.... It's a synthetic that has leather fibers glued to the underside."

Cory is crusading to educate people about this new leather imitator. Not only is the terminology confusing to consumers, but he fears a bad experience with bonded products could harm genuine leather's image and make consumers shy away from the real deal in the future.

"When it gets fabricated into a chair or a sofa, the consumer never gets to touch or see the real leather content," he said.

Further complicating the issue is the fact that another type of bonded leather already exists, while the new upstart is also being referred to as bonded leather.

The original bonded leather has been around for many years, Cory said, noting it is prevalent in such items as children's toy holsters but is not strong enough for seating surfaces.

This true bonded leather, Cory said, is a sheet of ground-up leather fibers embedded in a latex matrix, bound together with a fixative.

The new bonded product being used for upholstery features several layers of laminated material. These layers include a polyurethane finish; a thick layer of non-woven polyurethane-type material; a woven synthetic textile; and a thin layer of leather fibers that have not been bound to each other but glued to the underside of the laminate, he said.

The old bonded leather contains 50% to 90% leather fiber and the new product has less than 20%, but the two are identified by the manufacturing process, not leather content, he said.

Citing the Dictionary of Leather Terminology, Cory said, once leather has been pulverized, it is no longer leather: "If tanned hide or skin has been disintegrated mechanically and/or chemically into fibrous particles, small pieces or powders, and then with or without a bonding agent is made into sheets or forms, such sheets or forms are not leather."

It's difficult to get terminology changed, he said. "(Bonded leather) is with us; it's here. But these companies are actually manufacturing synthetic laminated products."

Bycast is still leather because it refers to the process of coating a leather hide with polyurethane, not grinding it. The two-ply product also can be called "polyurethane leather laminate" or "leather polyurethane laminate," depending on which material is thicker.

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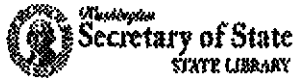


EXHIBIT F

07 OCT 24 PM 2: 54

KELLEY

DRYE

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1420 Fifth Avenue, Suite 4100
Seattle, WA 98101

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CITY Seattle, WA 98101

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PHONE 206-223-7000

NO. OF PAGES (including this page) **23**

DATE October 23, 2007

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FROM Kathryn Mt McMahon-Lohrer

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KELLEY DRYE

COLLIER SHANNON

October 24, 2007

Larry S. Gangnes, Esq.
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101

Dear Mr. Gangnes:

I am in receipt of your correspondence to John Wittenborn dated September 10, 2007, and wish to provide you with a written response. I apologize for the delay in getting back to you. It seems clear that Design Resources Inc. ("DRI") has misunderstood the intent and potential impact of LIA's July 23, 2007 Comments to the Federal Trade Commission ("FTC") recommending revisions to the *Guides for Select Leather and Imitation Leather Products* ("*Leather Guides*"). ~~We would like to work together to resolve that misunderstanding or at least clarify the basis for any disagreement between the Leather Industries of America ("LIA") and DRI.~~ While DRI and LIA may disagree as to whether the current FTC *Leather Guides* provide sufficient guidance to protect the interests of LIA members and the leather manufacturing industry, I am hopeful that we can alleviate any concern that DRI may have as to LIA's motives for filing its July Comments and taking the position that it has regarding the definition of bonded leather.

~~As an initial matter, we need to correct DRI's misstatements~~ in its letter to Dr. Nick Cory of August 30, 2007, your September 10, 2007 letter to John Wittenborn, and DRI's August 13, 2007 Comments to the FTC regarding LIA's alleged failure to inform DRI of its position on the issue of bonded leather and its plan to comment to the FTC on this issue. Although DRI states to the FTC in its August 13 Comments that it only learned of LIA's position on bonded leather upon review of LIA's FTC Comments sometime in early August, this statement is not correct. In fact, LIA provided full and complete advance notice to DRI, not only of its position on the proper definition of bonded leather, but also of its plan to submit comments to FTC on this issue, and the draft Comments themselves.

LIA first provided DRI notice of its intent to submit comments in response to the FTC's Request for Comment on the *Leather Guides* nearly two months in advance of its planned submission. See Attachment A (*John Wittenborn email dated June 7, 2007 to Alan Naness of*

Larry S. Gangnes, Esq.

October 24, 2007

Page - 2 -

KELLEY DRYE

COLLIER SHANNON

DRI). In that notice, LIA expressly notes that the FTC is seeking comments on definitions pertaining to leather and the terms that advertisers can and cannot use in making marketing claims for leather products. LIA asked DRI and the other LIA members at that time for feedback on these issues. DRI provided no comment or feedback of any type.

LIA then provided DRI a draft copy of its Comments for review prior to submission to the FTC, and asked for any responses to be submitted immediately so they could be considered in sufficient time to allow any revisions to the draft Comments (in order to meet the FTC comment deadline). See Attachment B (*John Wittenborn email dated July 20, 2007 to Alan Naness of DRI*). Again, LIA received no response or objection whatsoever from DRI to LIA's plan to submit its comments, and no comment or objection to the draft Comments. A review of the draft Comments submitted to DRI demonstrates that they are identical in all relevant respects to the final Comments submitted to the FTC, and about which DRI now raises strenuous objection. Finally, LIA provided a final copy of its Comments to DRI on July 25, 2007, two days after submitting them to the FTC and certainly well in advance of when DRI claims it first learned of the Comments. See Attachment C (*John Wittenborn email dated July 25 to Alan Naness of DRI enclosing FTC Comments*).

DRI's claim that it lacked knowledge of LIA's position and intent on the issue of how bonded leather ought to be defined prior to LIA's FTC submission is wholly inaccurate. Misstatements of this type, in particular to the FTC, serve no one's interests and simply further confuse the issues.

As to the substance of LIA's position, we disagree with DRI that the current FTC definition of bonded leather is sufficient, and firmly believe that a revision to the definition as recommended in our FTC Comments would serve the interests of the leather manufacturing industry. Fundamentally, LIA's position is based on the fact that the marketing of non-leather or essentially non-leather material as "bonded leather" will negatively impact the leather manufacturing industry. It is indisputably LIA's right and duty to take action that advances the interests of the leather industry.

LIA has no knowledge or understanding of whether advancement of this position will negatively impact DRI's ability to market its NextLeather™¹ line of products. However, even if this is the case – and we've seen no evidence to support this presumption – LIA views this as an unfortunate, but unavoidable circumstance. DRI surely cannot expect LIA to revise its position simply in order to advance DRI's marketing opportunities at the expense of the bulk of the leather manufacturing industry.

¹ For ease of reference, I refer to DRI's product throughout this correspondence as NextLeather™. However, as you know, prior to establishing the trade name NextLeather™, DRI referred to the material at issue as "Veneto Bonded Leather." References to NextLeather™ herein are intended to refer to the material provided to the LIA Laboratory in February 2007 for testing.

In an attempt either to convince LIA to retract its position or to refocus the FTC from the real issue, DRI has improperly and completely unjustifiably called into question the motives of LIA and Dr. Nick Cory on this matter. You accuse Dr. Cory of allowing DRI's competitors to "have a hand in fashioning LIA's Comments and recommended a definition of bonded leather" in order to "sabotage" DRI's NextLeather™ product. This is nonsense and offensive. Neither Dr. Cory nor LIA were advised or influenced by DRI's competitors on this issue. In fact, LIA's recommendation on the revision to the definition of bonded leather comports nearly identically with the existing International Union of Leather Technicians and Chemists Societies' ("IULTCS") definition. Both the LIA recommended definition and the IULTCS definition strengthen the definition of bonded leather by requiring the product itself to be, essentially, a sheet or roll of leather material, albeit bonded together with some sort of adhesive or resin material. This definition precludes material that is essentially not leather (either synthetic or non-synthetic textile or other non-leather material) from being called bonded leather simply and only because a layer of leather fiber is added to it. LIA's position serves to retain as much purity in the leather market as possible, and, consistent with that historical principle, wishes in this instance to prevent a non-leather material from being marketed as leather, even under the subcategory bonded leather.

DRI's product is not bonded leather. It is not leather at all. While, as Dr. Cory has advised, the NextLeather™ product tested by LIA's Laboratory may have many admirable -- and presumably marketable -- qualities (i.e. durability, performance, etc.), it should not be marketed as leather or bonded leather. Even DRI seems to recognize that NextLeather™ is not leather (or bonded leather), but simply *imitates* a genuine leather product. In response to an email Dr. Cory sent to DRI expressing how amazing and "scary" an imitation the NextLeather™ product seemed upon initial visual examination, DRI's representative responded that the specific sample sent to Dr. Cory was "meant to *imitate* low-end corrected grain leather" and that DRI has other lines of product in the NextLeather™ spectrum that "*do a decent job of fooling folks* at the aniline full-grain end of the spectrum as well." See attachment D (*Dan Peplinski's email dated February 19, 2007 to Dr. Nick Cory*) (emphasis added).

NextLeather™ is a polyurethane coated woven and non-woven synthetic laminate backed with a thin layer (composing less than twenty percent of the material) of leather fiber adhered to its base or underside. These leather fibers do not provide any value to the product, as they cannot be touched or seen by anyone using the product in its intended application, and give the product no inherent additional value. The inclusion of this thin layer of leather fiber should not, in LIA's view, be sufficient to market this product as bonded or any type of leather. This position is based on LIA's long-standing and historical mission of protecting the leather marketplace from products that imitate leather, but are not actual leather. While the industry recognizes there is a place for bonded leather products, it simply does not agree with DRI that its NextLeather™ product qualifies as a bonded leather material.

As to DRI's accusation that Dr. Cory intentionally misled DRI that its NextLeather™ material was bonded leather, this presumption is absolutely wrong. Although DRI is incorrect that Dr. Cory took inconsistent positions in communications with DRI and the FTC, we believe we now understand how and why this misunderstanding arose. We hope a full appreciation of

the circumstances surrounding Dr. Cory's relationship with DRI will demonstrate that Dr. Cory certainly in no way intended to mislead DRI on this issue.

First, if you review the email correspondence between Dr. Cory and DRI -- which was the sole manner of communication between Dr. Cory and DRI during the relevant period of time -- you will see, contrary to your representation to the FTC, that ~~Dr. Cory did not refer to DRI's NextLeather product as bonded leather or in any way indicate that he believed that the material was bonded leather once he tested the material.~~ You are correct in stating that, prior to receipt of the material from DRI, Dr. Cory assumed that DRI's material was bonded leather. But this assumption was based solely on DRI's description of the material, as Dr. Cory had never seen the material and was not familiar with it.

Specifically, and as you know, the first knowledge Dr. Cory had of DRI's material was when DRI, per email dated December 11, 2006 from Dan Peplinski, asked Dr. Cory whether the NextLeather™ material could be called "leather." Mr. Peplinski described the material as having a polyurethane face, but, instead of the polyurethane being backed to split leather, he said it was backed with "reconstituted small leather bits/scraps." See Attachment E (*Dan Peplinski email dated December 11, 2006 to Dr. Cory*). In his description of the product, Mr. Peplinski did not identify any material other than the polyurethane face and the reconstituted small leather bits/scraps. ~~Based on this description, Dr. Cory informed Mr. Peplinski that the material was not leather, and had to be marketed and classified as either "not leather," "Reconstituted leather" or "Bonded leather."~~ Based on the information available to Dr. Cory at the time, he was not able to determine which of those terms most appropriately described the material.

The next correspondence between the parties was from Mr. Peplinski to Dr. Cory. In it Mr. Peplinski states, "We have sample "bonded leather" material that we would like to have tested . . ." See Attachment F (*Dan Peplinski email dated January 15, 2007 to Dr. Cory*). Additionally, Mr. Peplinski wrote to Dr. Cory:

Today, I am sending you via DHL 2 samples that we would like tested by your lab.

1. Bonded Leather: I have included 1 yard of a bonded leather article called Veneto. No physical tests are needed- we have already performed those tests elsewhere. However, we would like you to conduct composition testing to determine the % of each component, especially the leather fibers.

See Attachment G (*Dan Peplinski email dated February 16, 2007 to Dr. Cory*).

Subsequent to these communications with DRI, ~~Dr. Cory did refer to the material as bonded leather, but those references were clearly based on DRI's initial December 11th description of the material (consistent with the definition of bonded leather), and DRI's self-classification of the material as bonded leather.~~

Dr. Cory obtained samples of the DRI material on February 19, 2007. ~~By email on that date, after having had an opportunity to do a visual and tactile inspection of the samples, but prior to conducting any laboratory analysis, Dr. Cory referred to the material as "synthetic/bonded."~~ Dr. Cory then conducted a laboratory analysis and discovered that the

material is not bonded leather. In fact, the Laboratory analysis demonstrates that the product is not composed of leather or even leather fiber in any material respect and that the leather fibers adhered to the product are not bound to each other in a continuous matrix or layer. The material is composed of a thick layer of polyurethane applied to a synthetic laminate. The leather "grain" embossed upon the polyurethane surface and the thin coating of leather fibers on the underside merely create the illusion of leather.

Dr. Cory's laboratory analysis convinced him that DRI's product was not bonded leather. In hindsight, perhaps Dr. Cory should have included an explicit opinion that DRI's product was not bonded leather in his February 26, 2007 report to DRI. However, the purpose of the report was not to provide an opinion on whether or not this material was in fact bonded leather, but, rather, to identify the specific composition of the material. The sole reason Dr. Cory did not go beyond the purpose of the report and provide a clearly stated opinion that the material is not bonded leather is because he did not want to offend a new customer, and believed that an opinion on correct labeling for the product was outside the scope of the requested work. Nonetheless, he took the initiative of subtly alerting DRI to the real status of its product by adding a final paragraph to the report entitled "Cross-Sectional Structure." In this paragraph, Dr. Cory took care to describe the true structure of the material while avoiding any reference to the term "bonded leather" as a way of suggesting to DRI that the product had been incorrectly labeled. It is now clear, though, that Dr. Cory could have been more direct in this matter and expressly communicated his concerns to DRI. It was Dr. Cory's desire to court DRI as a new and highly valued client that caused him to take the approach that ultimately may have created some confusion regarding his view of the nature of DRI's product.

LIA and Dr. Cory regret any confusion caused by Dr. Cory's decision not to explicitly state his opinion that DRI's material was not bonded leather in the Laboratory report. However, an examination of the email communications between DRI and Dr. Cory subsequent to Dr. Cory's laboratory analysis of DRI's material shows that Dr. Cory did not again refer to the material as bonded leather.

Finally, as to the issue of confidentiality, the LIA Laboratory does, in fact, offer to conduct confidential testing of various types of materials. However, DRI never requested that its material be treated confidentially, or even raised the notion of confidential testing with Dr. Cory. Dr. Cory was unaware of DRI's desire to have its materials treated confidentially until July 26, 2007, six months after it engaged Dr. Cory to conduct testing on its material and over four months after Dr. Cory provided DRI with its final report on this material.

Indeed, sample materials nearly identical to DRI's NextLeather™ samples also were provided to LIA's Laboratory for testing by other laboratory customers. This makes it clear that DRI was not intending to treat its material as confidential. To the contrary, DRI was broadly disseminating the material in the marketplace in an attempt to market this new product. Accordingly, even if DRI had requested the Laboratory to treat the materials or test results confidentially, DRI's own dissemination of the material into the public domain renders its expressions of concern over LIA's generic reference to the material in its FTC Comments as disingenuous.

Larry S. Gangnes, Esq.
October 24, 2007
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KELLEY DRYE
COLLIER SHANNON

Moreover, while LIA included a picture of DRI's product and description of NextLeather™ in its FTC Comments, LIA refrained from including any company or trade name information in the Comments, thereby preserving the confidentiality of DRI's NextLeather™ product.

To conclude, LIA certainly appreciates DRI's right to take a position contrary to the trade association on this issue, and we hope DRI understands that LIA has every right to take a position that is in the interests of the leather manufacturing industry, even if, under the particular circumstances, DRI views this position as contrary to its interests. While we find the disagreement between LIA and DRI unfortunate, we accept it and hope that DRI will remain a member of LIA. However, we find DRI's attribution of ill or improper motives to LIA and Dr. Cory to be wholly inappropriate and completely unfounded. We certainly hope this correspondence will clarify LIA's position and purpose, resolve any misunderstandings and end any and all further disparaging statements by DRI regarding LIA's motives in commenting on the FTC definition of bonded leather.

LIA's mission for its 90 years of existence has been to serve the interests of the U.S. tanning industry and the companies that manufacture and market leather. The LIA Lab has served the industry for nearly as long as an independent facility dedicated to research, education and testing of leather. Our comments to the FTC were intended to protect the industry, and make the *Leather Guides* consistent with global practices.

I am more than willing to discuss this matter with you directly if you believe further discussions would be productive. Please feel free to contact me if you are interested in talking further.

Sincerely,



Kathryn McMahon

Counsel to

Leather Industries of America

EXHIBIT G

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The Leather Research Laboratory is a state-of-the-art facility dedicated to leather testing and research. Custom designed for this purpose, it was commissioned in January 2001 but has been a department of the University of Cincinnati for nearly 80 years.

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EXHIBIT H



M E M O R A N D U M

TO: LEATHER INDUSTRIES OF AMERICA
FROM: JOHN WITTENBORN
DATE: JUNE 26, 2008
RE: FTC'S GUIDES FOR SELECT LEATHER AND IMITATION LEATHER PRODUCTS: FINAL RULE

I. Introduction

On June 18, 2008, the Federal Trade Commission ("FTC" or "Commission") published its final determination regarding proposed changes to the Guides for Select Leather and Imitation Leather Products ("Guides") with consideration of the comments received. The FTC decided to retain the Leather Guides without change from the current form. *See* 73 Fed. Reg. 34,626 (June 18, 2008).

During the comment period, the FTC received comments from the following organizations: LIA, the Footwear Distributors and Retailers of America ("FDRA"), the Sponge and Chamois Institute ("SCI"), and Design Resources, Inc. ("DRI"). LIA's comments generally sought to make the leather guides consistent with international terms and definitions. FDRA's comments sought exclusion of footwear from the scope of the Leather Guides. SCI requested the addition of a definition for "chamois," which was also a part of LIA's comment. DRI requested that the FTC not make any changes with respect to "bonded leather."

In deciding to retain the Guides in their current form, the Commission noted that the Guides already addressed the issues LIA was attempting to modify. For example, the Commission agreed with LIA that the term "leatherette" may be deceptive; however, it determined there was no need for a specific definition of "leatherette" because Section 24.2(a) of the Guides already provides guidance for content disclosure of imitation or simulated leather.¹

¹ Section 24.2(a) of the Guides reads in relevant part: "If all or part of an industry product is made of non-leather material that appears to be leather, the fact that the material is not leather, or the general nature of the material as something other than leather, should be disclosed." For example: Not leather; Imitation leather; Simulated leather; Vinyl; Vinyl coated fabric; or Plastic. 16 C.F.R. 24.2(a).

The Commission also noted in response to several issues raised by LIA, the lack of evidence in the record to warrant the changes LIA sought.² The FTC often implements or modifies its rules and guides in response to consumer complaints it receives. As such, the Commission's retention of the Guides in current form likely indicates that it has not received a significant volume of consumer complaints. Although the FTC declined to change the Guides, it does support industry use of the proposed defined terms, provided that they were truthful and not deceptive.

The following is a summary of the FTC's basis for the decision to retain the Guides in their current form.

II. LIA's Suggested Definitions and the FTC's Response

LIA proposed adding or modifying definitions for the following terms to the Guides: (1) top grain or full grain leather; (2) corrected grain leather; (3) semi-aniline leather; (4) leather; (5) coated leather; (6) laminated leather; (7) split leather; (8) leatherette; (9) bonded leather; and (10) chamois. LIA proposed the changes to better conform the FTC Guides to standard international terms and definitions.

"Top grain" or "full grain" leather, "corrected grain leather," "split leather," and "semi aniline leather": The FTC decided not to adopt the LIA's proposed definitions for "*top grain*" or "*full grain*" leather, "*corrected grain leather*," "*split leather*," and "*semi aniline leather*." The FTC determined that the Guides already apply to all types of leather and non-leather material with the appearance of leather, making the proposed additional definitions unnecessary. It also noted that there was no evidence regarding consumer understanding of these terms, several of which may be unfamiliar to consumers. Absent such evidence, the FTC determined it was unclear whether adoption of such definitions would assist or hinder consumers. The FTC noted, however, that industry can label products with these terms provided they are truthful and non-deceptive.

"Leather": The FTC also decided not to adopt a broader definition for "*leather*." LIA suggested that the Commission adopt the internationally recognized definition for leather:

Hide or skin with its original fibrous structure more or less intact, tanned to be imputrescible. The hair or wool may or may not have been removed. It is also made from a hide or skin that has been split into layers or segmented either before or after tanning. If the leather has a surface coating, the mean thickness of this surface layer, however applied, has to be 0.15 mm or less. If the tanned hide or skin is disintegrated mechanically and/or chemically into fibrous particles, small pieces or powders and then, with or without the combination of a binding agent, is made into sheets or forms, such sheets or forms are not leather.

² For example, LIA suggested changes to the term "bonded leather." In refusing to adopt the proposed modifications, the Commission stated "[t]here is insufficient information in the record to justify a distinction based upon the method by which leather fibers are placed into the material." 73 Fed. Reg. 34,629.

Like the proposed definitions above, the Commission chose not to adopt LIA's "leather" definition because it felt it unnecessary as the Guides already apply to all types of leather and non-leather material with the appearance of leather.

The FTC also found the portion dealing with disintegrated hide or skin unnecessary because Section 24.2(f) already addresses ground leather and similar materials.³ With respect to the portion of the proposed definition addressing the level of thickness of the finish, the FTC noted that there was no information regarding whether consumers expect that coatings have been applied to products labeled as "leather" without qualification, and that, without such information, it is unclear whether the proposed modification would result in consumer deception or confusion.

"Coated leather" or "laminated leather": LIA suggested the Commission adopted the following definitions for coated and laminated leather:

Coated Leather – A product where the surface coating applied to the leather substrate does not exceed one-third of the total thickness of the product, but is in excess of 0.15 mm.

Laminated Leather – (a) A composite of two or more layers of leather, or (b) a layer of leather and one or more layers of another sheet or film of plastics or some other material. The term should be applied to products that are excluded from the definition of "leather" and "coated leather." The components should be identified according to the proportion they form of the total thickness, e.g. polyurethane/leather laminate, if the leather component accounts for less than 50 percent of the thickness.

For the same reasons the Commission declined to adopt LIA's proposed changes to the definition of "leather," the FTC also declined to adopt definitions for "*coated leather*" or "*laminated leather*" or to include these terms as added examples of appropriate disclosures in Section 24.2(e), which prohibits making a misrepresentation, either directly or by implication, that an industry product is made wholly of a particular composition, and requires the clear disclosure of any non-leather parts.

"Leatherette": LIA urged the FTC to adopt the following definition of leatherette: "a material constructed of paper cloth or synthetic material and finished to simulate the grain, color, and texture of leather." The FTC agreed that the term "*leatherette*" may be deceptive; however, it decided not to adopt the proposed definition. The Commission determined that LIA's proposal was unnecessary because the Leather Guides already apply to all types of leather and non-leather material with the appearance of leather. Moreover, the FTC noted that Section 24.2(a) (*see above*) provides guidance for content disclosures, and that the list of examples of appropriate disclosures in Section 24.2(a) is not an exhaustive list, so there is no need for an additional term.

³ Section 24.2(f) of the guides is titled "ground, pulverized, shredded, reconstituted, or bonded leather," and precludes representing as leather, either directly or by implication, an industry product that is not wholly the hide of an animal because it contains ground, pulverized, shredded, reconstituted, or bonded leather. *See* 16 C.F.R. 24.2(f).

“Bonded leather”: Because some companies erroneously describe products as bonded leather, and the Guides do not currently provide a precise definition for bonded leather, LIA suggested the FTC refine and implement the International Union of Leather Technologists and Chemists Societies (“IULTCS”) definition as follows: “made by forming leather fragments and fibers into a single homogenous sheet or roll with the aid of adhesives, resins or similar bonding agents.” With respect to LIA’s proposed definition, the FTC noted that DRI opposed this definition stating that consumers have not been harmed or deceived in the absence of this definition because the Guides “already require disclosure of the percentage of leather and non-leather substances found in bonded leather used in consumer products.” DRI further commented that such a definition would increase costs to bonded leather manufacturers and businesses without any benefit to consumers, cause confusion to both businesses and consumers, and have significant anti-competitive impacts in the bonded leather goods industry and marketplace. Agreeing with DRI, the FTC declined to adopt LIA’s proposed definition, stating that the current definition, which focuses on disclosure of the percentage of leather fibers and non-leather substances contained in the material, rather than on the method used to place leather fibers into the material, was sufficient. In addition, the FTC stated there was insufficient information in the record to justify a distinction based upon the method by which leather fibers are placed into the material, and determined that the truthful content information outlined in the Guides gives consumers adequate facts that needed to make an informed decision.

“Chamois”: LIA provided the FTC with extensive comments urging the FTC to institute a requirement for fish oil tanning from FTC Advisory Opinion No. 1 be included within the definition of “chamois” leather to minimize misrepresentations and misuse of the “chamois” name. SCI submitted similar comments. With respect to the LIA and SCI proposed definition for “chamois”, the FTC noted that both comments referred to a 1964 FTC advisory opinion addressing use of this term. The FTC declined to adopt the definition, reiterating that there is no need to specifically define different types of leather because the Guides already apply to all types of leather and that other provisions of the Guides provide adequate protection for chamois leather. Specifically, under sections 24.1, which holds that it is unfair or deceptive to misrepresent any material aspect of an industry product; 24.2(a), which provides guidance about disclosures to be made for synthetic products with the appearance of leather; and 24.2(b), which requires disclosures to be made regarding the type of leather in a product that is made of leather which has been processed to simulate the appearance of a different kind of leather, provide sufficient protection against misleading and misrepresented products for both chamois industry participants and consumers. The FTC also noted that the record lacks specific evidence regarding current consumer understanding of the term “chamois.” It also noted that the most common use of chamois described in the comments is for drying polished surfaces, glass, and car bodywork, but that such drying products are outside the scope of the Guides.

Despite the FTC’s decision not to adopt the proposed definitions, the FTC noted that it will encourage industry efforts to inform consumers of the meaning of many of these proposed definitions, provided that the definitions do not mislead consumers.

Scope of Guides

LIA requested that the FTC expand the scope of the Leather Guides to include automotive and furniture upholstery products given these products' prominence in the marketplace. Conversely, FDRA sought to limit the reach of the Guides to exclude coverage of footwear. The FTC declined to adopt either proposal.

LIA - With respect to LIA's proposal, the FTC noted that it previously considered expanding the Guides to cover these two categories of products, but at the time of such consideration in 1996 the record did not warrant such expansion. In connection with this review, the FTC found a similar void and concluded that the current record left unanswered questions regarding the extent of misrepresentations in other industries, consumer interpretation of the appearance of leather for products in other industries, and any special considerations of other industries. Although it decided not to expand the Guides, the FTC noted that members of the leather and imitation leather products industries can obtain useful guidance from the Guides, which are interpretative of laws enforced by the FTC. The FTC can take action against companies engaged in deception regardless of whether they fall within the scope of the Guides.

FDRA - With respect to FDRA's proposal, the FTC rejected FDRA's argument that "the Guides are based on the assumption that consumers believe all parts of shoes with an 'appearance' of leather, are made of leather, regardless of what the distributor says or does not say in labeling or advertising about leather content." It also noted that it has no evidence regarding consumer expectations regarding footwear with the appearance of leather. The FTC noted that the basic premise of the Guides is to reinforce "the FTC's long-standing position that when a product has the appearance of leather, its appearance makes an implied representation that the product is made of leather" and that adopting FDRA's suggested changes would thwart the primary goals of the Guides.

III. Conclusion

The FTC chose not to adopt LIA's proposed revisions to the Guides. The Commission did however, through various comments in its final confirmation, reinforce the notion that it has, and will continue to, protect both consumers and industry from misleading and deceptive practices with regard to leather and imitation leather products. In addition, the Commission stated that nothing in the Guides prevents industry participants from bringing forth those engaged in unfair or deceptive practices within the industry. While the Commission's lack of action on LIA's proposed modifications is somewhat disappointing, the Guides remain a useful tool for communicating truthful and non-misleading messages to consumers concerning leather industry products.

If you have any questions concerning the FTC's recent confirmation of the Leather Guides, please do not hesitate to contact John Wittenborn at jwittenborn@kelleydrye.com or at (202) 342-8514.

EXHIBIT I

Laboratory Report Number: 18411
Date of Report: June 7, 2007
Ashley PO number: 10362

EVALUATION OF SYNTHETIC LEATHER MATERIAL

On June 6, 2007, a swatch of material was received from Chris Ross, Director of Leather Development for **ASHLEY FURNITURE INDUSTRIES, INC.**, 447 Hwy. 346 West, Ecu MS 38841. The material was identified as:

Poly cotton 30%
PU 52%
Leather shavings 18%

The request was for a "ruling" on whether the material can be marketed as "Bonded Leather".

OBSERVATIONS

Figure 1 (see attachment) is a photomicrograph showing a cross-section through the sample at a magnification of 40x, illustrating a distinct layered or laminated structure. In comparison, genuine bonded leather is homogenous, comprising a single layer, as shown by Figure 2. The observations from the photomicrographs are summarized below:

STRUCTURAL COMPARISON		
Layer	ASHLEY SAMPLE	BONDED LEATHER
--	Finish	Finish
1	Synthetic, spongy coagulated polymer	Leather shavings, buffing dust and particles bonded together with latex
2	Woven textile	--
3	Leather fibers adhered to woven textile (apparently not bonded to each other to form an independent layer)	--

The material from Ashley Furniture Industries represents a clear departure from the recognized description of "bonded leather" for the following reasons:

- (1) The U.S. *Federal Trade Commission* (FTC), in its Final Rule¹ concerning the *Guides for Select Leather and Imitation Leather Products*, states that the term "bonded leather" refers to "materials made of leather fibers held together with a bonding agent". This straightforward definition does not fit the multi-layered structure of the sample summarized in Table 1.
- (2) The attached photomicrographs show that the sample is visually very different to genuine bonded leather, which comprises only one layer of material that fits the above definition.
- (3) The *International Union of Leather Technologists and Chemists Societies* (IULTCS), which represents the leather industry on a global basis, describes reconstituted (bonded) leather as being "made by forming leather fragments and fibers into sheet material with the aid of adhesives, resins, etc." Rather than being bound together within a solid matrix of latex (or similar binder) to form a continuous, independent sheet, the leather fibers associated with the Ashley sample appear merely to have been adhered to the underside of the material in the form of a fiber "nap" for aesthetic rather than structural reasons.
- (4) Analytical work at this laboratory has shown that the leather fiber content of bonded leather generally accounts for 50 to 90% of the total weight. However, the leather fiber content of the Ashley material is relatively insignificant, accounting for only 18% of the total.

SUMMARY

The material is not "bonded leather" and should not be described as such because it would misrepresent the product and confuse the customer. Perhaps more importantly, it is our opinion that it would be advantageous to distance this product from bonded leather, and to emphasize its differences as a modern, technologically advanced material. Bonded leather is a relatively primitive product with inferior aesthetics such as low stretch, low compressibility, and poor drape characteristics. It also generally suffers from disappointing physical properties such as low tensile and tear strength. In contrast, the Ashley material looks and feels like leather, and a comprehensive physical testing program might demonstrate superior durability and performance afforded by its composite structure that combines the benefits of modern composites and woven materials in a laminar structure.

CONCLUSION

The material is not bonded leather. It should be described using different terminology that reflects the technological, structural, chemical, aesthetic, and probable performance improvements that this new material might represent. "Laminate" and "composite" are likely to be key terms in the description.

Overall, this product represents a fresh marketing opportunity that can only be maximized by emphasizing its differences to bonded leather.

Dr. Nicholas J. Cory
Director

¹ Federal Register, Vol. 61, No. 193, October 3, 1996.

EXHIBIT J

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Opinion

Susan M. Andrews
Fabric editor

For consumers' sake, let's not call it 'bonded leather'

If you were tared and feathered, would that make you a chicken? If you're selling "bonded leather" upholstery, it's a question you should consider.

The term "bonded leather" is convenient shorthand within the industry, but it's bound to confuse consumers, who are likely to hear only the word "leather." Even worse, true bonded leather is produced more like a paper product, which would be a terribly inferior cover for upholstery.

New composite fabrics now called "bonded leather" have a surface layer of vinyl or polyurethane, a center layer of fabric, and a backing that contains some leather fibers mixed with latex or other material, such as splits, glued onto the fabric for a look that is similar to the back of a leather hide.

Nick Cory of the Leather Research Laboratory at the University of Cincinnati describes the product this way: "On the outside, it's polyurethane embossed to look like leather. Then, to complete the effect, the manufacturer has glued on fibers (on the back) to look like leather."

There's nothing wrong with that, but we need another description for these products or we stand to lose credibility with consumers, something our industry can ill afford.

These are good products with plenty to recommend them. There's really no need to suggest they are leather. Most of these products are extremely durable. Oekopelle, for example, has been tested to more than 100,000 double rubs for durability, which exceeds industry standards.

That durability alone is a great marketing hook, not to mention the outstanding surface patterns that can simulate almost any leather look, and a manufacturing process that is less environmentally damaging than leather. But all that can be neutralized at retail if we aren't careful. No matter how much leather fiber is mixed into the backing, it's still not a leather cover, at least not in any way the consumer can see or touch.

Cory says calling these products bonded leather "is deceptive because it does not represent its true nature. It's a vinyl, or a polyurethane laminate or a composite, but it's not leather. If you tar and feather someone, does that make them a chicken?" Obviously not.

So market the daylights out of the performance, aesthetic and environmental appeal of a fine product. But don't call it bonded leather unless you're prepared for an ugly backlash when some litigious consumer decides he's been duped.

Why confuse a buying public that too often already

Opinion columns are available online at www.furnituretoday.com.

EXHIBIT K

Laboratory Report Number: 18756
Date of Report: December 14, 2007

DETERMINATION OF LEATHER FIBER CONTENT

SAMPLE INFORMATION

On December 12, 2007, one swatch of material referred to as bonded leather¹ by the unidentified supplier in China was received from Mr. Larry Gentry of Max Home, 101 Max Place, Fulton, MS 38843. The request was to determine the leather fiber content of the material.

PROCEDURE

In order to express the composition data on a moisture-free basis, moisture content was determined from the loss in weight after drying in a forced air circulation oven at 102°C.

Total Kjeldahl Nitrogen (TKN) content was determined using ASTM D 2868, *Standard Test Method for Nitrogen Content (Kjeldahl) and Hide Substance Content of Leather*. In this procedure, the ground-up specimen is digested with acid in the presence of a catalyst to convert the nitrogen to the ammonium ion, which is non-volatile under the highly acidic conditions. The acid mixture is then made alkaline, and the liberated ammonia distilled into boric acid solution, which absorbs the ammonia. Finally, the amount of ammonia in the boric acid is determined by back titration with standardized acid to determine the end-point. The analysis was performed in duplicate.

RESULTS

Table 1. HIDE SUBSTANCE & LEATHER FIBER CONTENT

Replicate	Organic Nitrogen Content (%)		HIDE SUBSTANCE (analytical result)	LEATHER FIBER CONTENT (estimate: see page 2)
	As Received	Moisture-Free Basis		
A	1.36	1.40	7.84	10.9
B	1.44	1.47	8.30	11.5
Average	1.40	1.44	8.07	11.2

¹ The material is, in fact, not bonded leather. See Comment section of this report (page 2) for explanation.

INTERPRETATION OF RESULTS

Hide substance is derived by multiplying the organic nitrogen content from the TKN procedure by 5.62, which is a precise analytical constant. A higher hide substance result correlates to a higher leather fiber content, but hide substance values are not directly equivalent to leather fiber content:

Hide substance results are a measure of the hide fiber content as though it were un-tanned and unprocessed, while *leather fibers* in both real leather and bonded leather also comprise tanning agents (such as chromium salts or vegetable tannins), retanning agents (natural or manmade), dyes, fatliquors (lubricating oils), salts, and other process chemicals. These substances are chemically combined with the leather fibers; they are part of the leather itself, but are not measured by the analytical procedure. This means that to derive an *approximation* of the actual *leather fiber* content in bonded leather, a correlation factor must be applied to the hide substance results.

Previous test results obtained at the *Leather Research Laboratory* have been in the range of 67 to 77 percent. This range reflects the fact that different types of leather are manufactured differently, depending on the specific physical and aesthetic attributes considered important or appropriate for the intended end use. This means that on average, real or genuine leather can be assumed to contain approximately 72% hide substance.

The analytical hide substance results are exact, and so provide the most reliable and precise way of expressing the leather fiber content. However, by applying the 72% factor discussed above, we can *estimate* the actual *leather fiber content* of the product as shown in the final column in the Table.

COMMENT

Bonded leather is made by forming leather fragments and fibers into a single homogenous sheet or roll using latex, adhesives, resins of similar bonding agents. The leather fiber content of bonded leather typically accounts for 60 – 90% of the total.

The attached photomicrograph (*Figure 1*) shows the structure of the exact material submitted for this testing through its cross-section. The photograph demonstrates that the material is a wholly synthetic, layered composite with an insubstantial coating of leather fibers adhered to its underside (rather than to each other in an independent sheet). In addition to comprising an insignificant, non-structural part of the material, the analytical testing has shown that the non-continuous layer of leather fibers adhered to the underside constitutes less than 12% of the total. Therefore, the material should not be described, labeled or marketed as "bonded leather".

Dr. Nicholas J. Cory
Director

Cietta Fambrough
Research Associate

EXHIBIT L

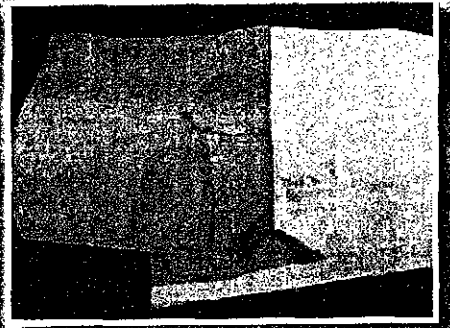
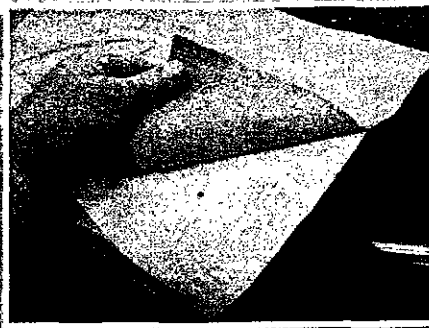
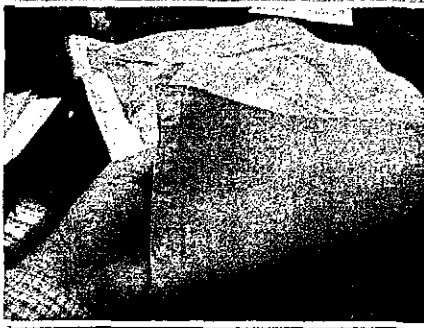
Caveat Emptor

Buyer Beware...

Is It REALLY LEATHER?

No longer secret recipe:

- Top layer is PU or PVC resins.
- Next layer is a denim barrier added for strength.
- Next layer is a glue bonding agent.
- Next layer is glued together leather scraps.



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Office of the General Counsel

Hyun S. Kim
Attorney

Mr. Ronald G. Wasek
Ashley Furniture Industries, Inc.
One Ashley Way
Arcadia, WI 54612

July 25, 2006

Dear Mr. Wasek:

We have received your letter of July 10, 2006, seeking confirmation of your understanding that an importer of furniture will be treated as a manufacturer under the Commission's statutes. Although you requested an advisory opinion, the General Counsel provides legal opinions only in those instances where there is a question of interpretation or ambiguity regarding the applicability or application of the acts administered by the Commission. With respect to your statements, we believe that the statutes are clear that any person who manufactures or imports a consumer product that is introduced or delivered in interstate commerce is required to comply with the same requirements under the standards and regulations promulgated by the Commission as a domestic manufacturer, including all applicable compliance procedures, recordkeeping and reporting requirements.¹ As reflected in the final mattress flammability standard, the requirements for importers were explicitly set forth in the final mattress flammability standard, the requirements for importers were explicitly set forth in the final domestic manufacturers, including the maintenance of the appropriate qualification and confirmation test records for any mattress produced or imported. To the extent you have a specific question regarding recordkeeping, reporting, written guarantees, or other compliance matters, please direct your inquiry to Mary Turo, Associate Director, Division of Recall and Compliance.

Sincerely,

Hyun S. Kim
Hyun S. Kim

¹The Consumer Product Safety Act, 15 U.S.C. § 2052(a)(4) provides that "[t]he term 'manufacturer' means any person who manufactures or imports a consumer product." Among the prohibited offenses under the Flammable Products Act, 15 U.S.C. § 1192, include the manufacture for sale or importation into the United States any products, fabric or related material which fails to conform to an applicable standard or regulation issued under the act. Similarly, the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136a, 1372, prohibits the introduction or delivery for introduction into interstate commerce any misbranded hazardous substance or banned substance, including imports.

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