

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CLEMENS FRANEK,

Plaintiff,

v.

WALMART STORES, INC. and TARGET  
CORPORATION,

Defendants.

Civil Action No. 08-cv-0058

Judge Robert M. Dow Jr.

**Joint Initial Status Report**

Plaintiff, Clemens Franek, and Defendants, Wal-Mart Stores, Inc. and Target Corporation, respectfully submit the following Joint Initial Status Report pursuant to the Court's Order dated January 28, 2008 (See Docket No. 5) and the Court's Standing Order.

**I. The Nature of the Case**

**A. Attorneys of record**

Plaintiff's attorney:

Mark D. Roth  
Orum & Roth LLC  
53 West Jackson Boulevard, Suite 1616  
Chicago, IL 60604-3606

Mr. Roth will try the case for Plaintiff.

Wal-Mart Stores, Inc.'s attorneys:

David A. Roodman  
Bryan Cave LLP  
One Metropolitan Square, Suite 3600  
St. Louis, MO 63102-2750

Mark A. Paskar  
Jena M. Valdetero  
Bryan Cave LLP  
161 North Clark Street, Suite 4300  
Chicago, Illinois 60601-3315

Mr. Roodman and/or other attorneys from the law firm of Bryan Cave LLP are expected to try the case for Wal-Mart Stores, Inc.

Target Corporation's attorneys:

Larry L. Saret  
Arthur Gollwitzer III  
Gilberto Espinoza  
MICHAEL BEST & FRIEDRICH LLP  
Two Prudential Plaza  
180 N. Stetson Ave., Ste 2000  
Chicago, IL 60601  
312-222-0800

Mr. Gollwitzer and attorneys from Faegre & Benson in Minneapolis, Minnesota are expected to try the case for Target Corporation.

Defendants Target and Wal-Mart are entitled to indemnification from their vendor Jay Franco & Sons, Inc. Defendants understand that Jay Franco & Sons, Inc. is considering intervening or otherwise becoming involved in this matter.

**B. Basis for Federal Jurisdiction**

The Complaint states that federal question jurisdiction exists pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

It further states that jurisdiction over the state law claims exists pursuant to 28 U.S.C. § 1367.

**C. Nature of the claims asserted in the Complaint**

Plaintiff alleges that he is the owner of a registered United States Trademark for a round shaped beach towel. Plaintiff alleges that both Defendants have sold round beach

towels and therefore purportedly infringed Plaintiff's mark. Plaintiff has filed an action for violations of the Lanham Act and state unfair competition based on Defendants' alleged sales of round beach towels. Defendants deny infringement and liability.

No Answers or counterclaims have been filed as of the date of this Report, but Defendants expect to deny all material allegations and, at least, assert counterclaims seeking a declaration that Plaintiff's trademark registration is invalid and should be cancelled. Defendants also expect to deny all liability and assert a number of affirmative defenses to the Complaint.

**D. Parties not served**

All parties have been served or waived service.

**E. and F. Principal legal and factual issues**

Plaintiff contends that the factual and legal issues in this case are whether Defendants sold towels that infringed Plaintiff's trademark and whether and to what extent Plaintiff has been damaged.

Defendants contend that the primary legal and factual issues in this case are:

- The existence and validity of Plaintiff's purported trademark rights
- Whether there is/was any likelihood of confusion
- Plaintiff's laches, acquiescence and estoppel
- The functionality of the purported trademark
- The statute of limitations
- The existence of any damages and the amount
- The lack of irreparable harm or other basis for injunctive relief

- Whether Defendants have made any actionable “trademark use” of the asserted mark
- Whether Plaintiff has abandoned any rights that it may have in the asserted mark for failure, since the mid-1980s, to enforce any of its alleged rights against third parties

**G. Jury trial**

Plaintiff has demanded a jury trial.

**H. Discovery**

No discovery has been taken to date. The parties anticipate using all permissible discovery methods.

The parties propose exchanging Rule 26(a)(1) disclosures by March 26, 2008.

The parties propose that all fact discovery be completed by December 12, 2008.

The parties propose the following expert discovery schedule:

Opening expert reports are due January 16, 2009. This means that the party bearing the burden of proof on issues for which it proffers expert testimony must submit a report or reports on those issues by this time.

Rebuttal expert reports are due by March 6, 2009.

Expert discovery will be completed by April 3, 2009.

**I. Trial date and length of trial**

The parties estimate that a trial of this matter will take approximately 5 days.

The parties propose being ready for trial by September 14, 2009.

**J. Proceeding before a Magistrate Judge**

The parties do not consent unanimously to proceed before a Magistrate Judge at this time.

**K. and L. Status of settlement discussions and settlement conference.**

Settlement discussions have occurred in the past, but not among present counsel. Plaintiff and Defendant Wal-Mart Stores, Inc. have agreed to take part in the Court's Lanham Act mediation program and Target Corporation is currently considering whether it will take part in this program. The parties are also considering whether to request a settlement conference with a Magistrate Judge.

Dated: February 27, 2008

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