



MICHAEL W. DOBBINS  
CLERK

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
219 SOUTH DEARBORN STREET  
CHICAGO, ILLINOIS 60604

312-435-5670

June 1, 2009

Mr. Gino J. Agnello, Clerk  
U.S. Court of Appeals-Seventh Circuit  
219 South Dearborn Street-Room 2722  
Chicago, Illinois 60604

RE: Franeck -v- Walmart Stores, Inc.

U.S.D.C. DOCKET NO. : 08 cv 58 & 08 cv 1313

U.S.C.A. DOCKET NO. : 09 - 2155

Dear Mr. Agnello:

Please find attached the original record on appeal consisting of the following:

**ELECTRONIC VOLUME(s) OF PLEADING(S): 2**

**ELECTRONIC VOLUME(S) of TRANSCRIPTS:**

VOLUME(S) OF LOOSE PLEADING(S)

VOLUME(S) OF TRANSCRIPT(S)

VOLUME(S) OF DEPOSITION(S)

EXHIBITS:

VAULT ITEMS:

OTHER (SPECIFY):

SPECIAL NOTE: *08cv58 and 08 cv1313 are consolidated*

Please acknowledge date of receipt of the above mentioned materials on the attached copy of this letter.

Very truly yours,

Michael W. Dobbins, Clerk

By: s/D. Jordan  
Deputy Clerk

**I, MICHAEL W. DOBBINS, CLERK** of the United States District Court for the Northern District of Illinois, do hereby certify to the United States Court of Appeals, for the Seventh Circuit, that the documents submitted herewith and annexed hereto are the original papers filed and entered of record in my office, on the dates in the List of Documents, and together with a true copy of docket entries as they appear in the official dockets in this office, consisting of:

***2 Volumes of Pleadings (Electronic)***

In the cause entitled: Franek -v- Walmart Stores.

USDC NO. : 08 cv 58 & 08 cv 1313

USCA NO. : 09 - 2155

IN TESTIMONY WHEREOF, I hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 1st day of June 2009.

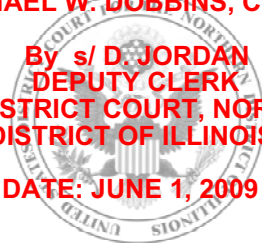
MICHAEL W. DOBBINS, CLERK

By: /s/ D. Jordan,  
Deputy Clerk

**A TRUE COPY-ATTEST  
MICHAEL W. DOBBINS, CLERK**

**By s/ D. JORDAN  
DEPUTY CLERK  
U.S. DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS**

**DATE: JUNE 1, 2009**



**United States District Court**  
**Northern District of Illinois - CM/ECF LIVE, Ver 3.2.2 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-00058**  
**Internal Use Only**

Franek v. Walmart Stores, Inc. et al  
Assigned to: Honorable Robert M. Dow, Jr

Case in other court: 09-02155

Cause: 15:1114 Trademark Infringement

Date Filed: 01/03/2008  
Date Terminated: 03/31/2009  
Jury Demand: Both  
Nature of Suit: 840 Trademark  
Jurisdiction: Federal Question

**Plaintiff**

**Clemens Franek**

represented by **Mark Daniel Roth**  
Orum & Roth, LLC  
53 West Jackson Boulevard  
Chicago , IL 60604  
(312) 922-6262  
Email: markdroth@gmail.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Walmart Stores, Inc.**

represented by **David A. Roodman**  
Bryan Cave, LLP  
211 North Broadway  
Suite 3600  
St. Louis , MO 63102  
(314) 259-2614  
Email: daroodman@bryancave.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Jena M. Valdetero**  
Bryan Cave LLP

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(312) 602-5056  
Email: jena.valdetero@bryancave.com  
*ATTORNEY TO BE NOTICED*

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*ATTORNEY TO BE NOTICED*

**Defendant**

**Target Corporation**

represented by **Larry L. Saret**  
Michael Best & Fredrich LLP  
Two Prudential Plaza  
180 North Stetson Avenue #2000  
Chicago , IL 60601  
(312)222-0800  
Fax: (312) 222-0818  
Email: llsaret@michaelbest.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

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(Illinois)  
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(312)596-5803  
Email: agollwitzer@michaelbest.com  
*ATTORNEY TO BE NOTICED*

**Gilberto Eduardo Espinoza**  
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180 N. Stetson Avenue, Suite 2000  
Chicago , IL 60601  
312-596-5802

Fax: 312-222-0818  
Email: geespinoza@michaelbest.com  
*ATTORNEY TO BE NOTICED*

**Counter Defendant**

**Jay Franco & Sons, Inc.**

represented by **Ezra Sutton**  
Ezra Sutton, PA  
900 Route 9 North  
Woodbridge , NJ 07095  
732 634 3520  
Email: esutton@ezrasutton.com  
*ATTORNEY TO BE NOTICED*

**Counter Claimant**

**Target Corporation**

represented by **Larry L. Saret**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Arthur Gollwitzer , III**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Gilberto Eduardo Espinoza**  
Michael Best & Friedrich LLP  
Two Prudential Plaza  
180 N. Stetson Avenue, Suite 2000  
Chicago , IL 60601  
312-596-5802  
Email: geespinoza@michaelbest.com  
*ATTORNEY TO BE NOTICED*

**Counter Claimant**

**Clemens Franek**

represented by **Mark Daniel Roth**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Counter Claimant**

**Clemens Franek**

represented by **Mark Daniel Roth**

(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Counter Defendant**

**Jay Franco & Sons, Inc.**

represented by **Ezra Sutton**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

| Date Filed | #                 | Docket Text   |
|------------|-------------------|---|
| 01/03/2008 | <a href="#">1</a> | COMPLAINT filed by Clemens Franek; Jury Demand. Filing fee \$ 350. (gmr, ) (Entered: 01/04/2008)  |
| 01/03/2008 | <a href="#">2</a> | CIVIL Cover Sheet. (gmr, ) (Entered: 01/04/2008)  |
| 01/03/2008 | <a href="#">3</a> | ATTORNEY Appearance for Plaintiff Clemens Franek by Mark Daniel Roth. (gmr, ) (Entered: 01/04/2008)   |
| 01/03/2008 | <a href="#">4</a> | (Court only) RECEIPT regarding payment of filing fee paid on 1/3/2008 in the amount of \$350.00, receipt number 1116115. (gmr, ) (Entered: 01/04/2008)  |
| 01/04/2008 |                   | MAILED trademark report to Patent Trademark Office, Alexandria, VA. (gmr, ) (Entered: 01/04/2008)   |
| 01/04/2008 |                   | MAILED Lanham Act Package to Plaintiff's counsel. (gmr, ) (Entered: 01/04/2008)   |
| 01/28/2008 | <a href="#">5</a> | MINUTE entry before Judge Robert M. Dow Jr.:Status hearing is set March 5, 2008 at 9:00 a.m. and at least one week prior to the initial status conference, the parties are directed to file a joint written status report of not more than five pages (see Judge Dow's web page for Standing Order Regarding Initial Status Reports). At the initial status conference, counsel will be asked to discuss (i) the nature of the case; (ii) factual and legal issues; (iii) settlement discussions to date and settlement potential; (iv) discovery taken to date and anticipated in the future; and (v) potential motions to be filed. Mailed notice (tbk, ) (Entered: 01/28/2008) |
| 01/28/2008 | <a href="#">6</a> | CONSENT to Mediation by Clemens Franek(Roth, Mark) (Entered: 01/28/2008)  |
| 01/28/2008 | <a href="#">7</a> | NOTICE by Clemens Franek re consent to mediation <a href="#">6</a> & Certificate of   |

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|------------|--------------------|---|
|            |                    | <i>Compliance with Local Rule 16.3</i> (Roth, Mark) (Entered: 01/28/2008)   |
| 02/07/2008 | <a href="#">8</a>  | ATTORNEY Appearance for Defendant Target Corporation by Larry L. Saret (Saret, Larry) (Entered: 02/07/2008)   |
| 02/07/2008 | <a href="#">9</a>  | ATTORNEY Appearance for Defendant Target Corporation by Arthur Gollwitzer, III (Gollwitzer, Arthur) (Entered: 02/07/2008)   |
| 02/07/2008 | <a href="#">10</a> | ATTORNEY Appearance for Defendant Target Corporation by Gilberto Eduardo Espinoza (Espinoza, Gilberto) (Entered: 02/07/2008)  |
| 02/07/2008 | <a href="#">11</a> | CERTIFICATE by Target Corporation of Compliance with Procedures for Voluntary Mediation Program for Lanham Act Cases (Saret, Larry) (Entered: 02/07/2008)   |
| 02/19/2008 | <a href="#">12</a> | ATTORNEY Appearance for Defendant Walmart Stores, Inc. by David A. Roodman (Roodman, David) (Entered: 02/19/2008)   |
| 02/19/2008 | <a href="#">13</a> | ATTORNEY Appearance for Defendant Walmart Stores, Inc. by Mark A. Paskar (Paskar, Mark) (Entered: 02/19/2008)   |
| 02/19/2008 | <a href="#">14</a> | ATTORNEY Appearance for Defendant Walmart Stores, Inc. by Jena M. Valdetero (Valdetero, Jena) (Entered: 02/19/2008)   |
| 02/19/2008 | <a href="#">15</a> | CERTIFICATE by Walmart Stores, Inc. of Compliance with Local Rule 16.3 and Notice of Willingness to Participate in Lanham Act Mediation (Valdetero, Jena) (Entered: 02/19/2008)   |
| 02/27/2008 | <a href="#">16</a> | STATUS Report by Clemens Franek (Roth, Mark) (Entered: 02/27/2008)  |
| 02/27/2008 | <a href="#">17</a> | NOTICE by Clemens Franek re status report <a href="#">16</a> (Roth, Mark) (Entered: 02/27/2008)   |
| 03/03/2008 | <a href="#">18</a> | <i>Target Corporation's ANSWER to Complaint with Jury Demand, COUNTERCLAIM</i> filed by Target Corporation against Clemens Franek <i>and Disclosure Statement.</i> by Target Corporation(Gollwitzer, Arthur) (Entered: 03/03/2008)  |
| 03/04/2008 | <a href="#">19</a> | MOTION by Defendant Walmart Stores, Inc. for extension of time to file answer <i>or otherwise plead Agreed</i> (Valdetero, Jena) (Entered: 03/04/2008)  |
| 03/04/2008 | <a href="#">20</a> | <i>Agreed</i> NOTICE of Motion by Jena M. Valdetero for presentment of motion for extension of time to file answer <a href="#">19</a> before Honorable Robert M. Dow Jr. on 3/13/2008 at 09:15 AM. (Valdetero, Jena) (Entered: 03/04/2008)  |
| 03/05/2008 | <a href="#">21</a> | MINUTE entry before Judge Robert M. Dow Jr.: Status hearing held on 3/5/2008. MOTION by Defendant Walmart Stores, Inc. for extension of time to file answer or otherwise plead <i>Agreed</i> <a href="#">19</a> is granted to and including 3/18/08. Status hearing set for 4/17/2008 at 09:00 AM.Mailed notice (tbk, ) (Entered: 03/05/2008) |
| 03/18/2008 | <a href="#">22</a> | ANSWER to Complaint <i>and Affirmative Defenses</i> by Walmart Stores, Inc.(Paskar, Mark) (Entered: 03/18/2008)   |

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| 03/19/2008 | <a href="#">23</a> | Corporate Disclosure STATEMENT by Walmart Stores, Inc. (Paskar, Mark) (Entered: 03/19/2008)  |
| 03/26/2008 | <a href="#">24</a> | RESPONSE by Plaintiff Clemens Franek to answer to complaint <a href="#">22</a> <i>Walmart Stores, Inc.'s Affirmative Defenses</i> (Roth, Mark) (Entered: 03/26/2008)   |
| 03/26/2008 | <a href="#">25</a> | RESPONSE by Plaintiff Clemens Franek to answer to complaint, counterclaim <a href="#">18</a> by <i>Target Corporation</i> (Roth, Mark) (Entered: 03/26/2008)   |
| 03/26/2008 | <a href="#">26</a> | NOTICE by Clemens Franek re Response <a href="#">25</a> , Response <a href="#">24</a> <i>Answer to Walmart Stores, Inc.'s Affirmative Defenses and Answer to Target Corporation's Affirmative Defenses and Counterclaims</i> (Roth, Mark) (Entered: 03/26/2008)  |
| 04/15/2008 | <a href="#">27</a> | MOTION by Plaintiff Clemens Franek to consolidate cases (Roth, Mark) (Entered: 04/15/2008)   |
| 04/15/2008 | <a href="#">28</a> | NOTICE of Motion by Mark Daniel Roth for presentment of motion to consolidate cases <a href="#">27</a> before Honorable Robert M. Dow Jr. on 4/17/2008 at 09:00 AM. (Roth, Mark) (Entered: 04/15/2008)   |
| 04/17/2008 | <a href="#">29</a> | MINUTE entry before Judge Honorable Robert M. Dow, Jr: Status hearing held on 4/17/2008. Status hearing set for 5/21/2008 at 09:00 AM.Mailed notice (tbk, ) (Entered: 04/17/2008)  |
| 04/18/2008 | <a href="#">30</a> | MINUTE entry before Judge Honorable Robert M. Dow, Jr: Stipulated Motion to Consolidate <a href="#">27</a> Two Related Actions on Consent Pursuant to FRCP 42(1) is granted. Case 08 C 1313, Jay Franco & Sons, Inc. vs. Clemens Franek, is found to be related to the above-entitled action and is ordered consolidated for all purposes. Defendant Franek shall file his answer to the complaint within 10 days of this Order. Both parties shall serve their Initial Disclosures under Rule 26 within 10 days of this Order. Both parties shall join in the existing discovery schedule in the prior action: Fact discovery to be completed by 12/12/2008; Opening expert reports are due 1/16/2009; Rebuttal expert reports due by 3/6/09; Expert discovery will be completed by 4/3/2009. Mailed notice (jmp, ) (Entered: 04/18/2008) |
| 05/02/2008 | <a href="#">31</a> | MOTION by Plaintiff Clemens Franek for leave to file <i>Answer to Complaint, Affirmative Defenses and Counterclaims</i> (Attachments: # <a href="#">1</a> Answer, Affirmative Defenses and Counterclaims)(Roth, Mark) (Entered: 05/02/2008)  |
| 05/02/2008 | <a href="#">32</a> | NOTICE of Motion by Mark Daniel Roth for presentment of motion for leave to file <a href="#">31</a> before Honorable Robert M. Dow Jr. on 5/7/2008 at 09:15 AM. (Roth, Mark) (Entered: 05/02/2008)   |
| 05/06/2008 | <a href="#">33</a> | MINUTE entry before Judge Honorable Robert M. Dow, Jr: MOTION by Plaintiff Clemens Franek for leave to file <a href="#">31</a> Answer to Complaint, Affirmative Defenses and Counterclaims is granted. Notice of Motion date of 5/7/078 is stricken.Mailed notice (tbk, ) (Entered: 05/06/2008)  |
| 05/06/2008 | <a href="#">34</a> | ANSWER to COMPLAINT for declaratory judgment, affirmative defenses and COUNTERCLAIM filed by Clemens Franek against Jay Franco & Sons,   |



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|            |                    | Inc. (jmp, ). (Entered: 05/20/2008)  |
| 05/16/2008 | <a href="#">41</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>PLAINTIFF JAY FRANCO &amp; SONS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT</i> . (aac, ) (Entered: 08/28/2008)  |
| 05/16/2008 | <a href="#">42</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Notice Of Motion For Partial Summary Judgment</i> . (aac, ) (Entered: 08/28/2008)  |
| 05/16/2008 | <a href="#">43</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco &amp; Sons, Inc's Memorandum In Support Of Its Motion For Partial Summary Judgment</i> (aac, ) (Entered: 08/28/2008)  |
| 05/16/2008 | <a href="#">44</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco &amp; Sons, Inc.'s Local Rule 56.1(a)(3) Statement Of Material Facts As To Which There Is No Genuine Issue</i> (aac, ) (Entered: 08/28/2008)  |
| 05/16/2008 | <a href="#">45</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Appendix of Exhibits In Support of Jay Franco &amp; Sons, Inc.'s Partial Motion For Summary Judgment</i> (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8, # <a href="#">9</a> Exhibit 9, # <a href="#">10</a> Exhibit 10, # <a href="#">11</a> Exhibit 11, # <a href="#">12</a> Exhibit 12, # <a href="#">13</a> Exhibit 13, # <a href="#">14</a> Exhibit 14, # <a href="#">15</a> Exhibit 15, # <a href="#">16</a> Exhibit 16, # <a href="#">17</a> Exhibit 17, # <a href="#">18</a> Exhibit 18, # <a href="#">19</a> Exhibit 19, # <a href="#">20</a> Exhibit 20, # <a href="#">21</a> Exhibit 21, # <a href="#">22</a> Errata 22, # <a href="#">23</a> Exhibit 23, # <a href="#">24</a> Exhibit 24, # <a href="#">25</a> Exhibit 25, # <a href="#">26</a> Exhibit 26)(aac, ) (Entered: 08/29/2008) |
| 05/16/2008 | <a href="#">57</a> | DECLARATION of Robert John Anders by Jay Franco & Sons, Inc. <i>In Support Of Jay Franco &amp; Sons, Inc.'s Partial Motion For Summary Judgment</i> (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N)(aac, ) (Entered: 09/02/2008)  |
| 05/19/2008 | <a href="#">46</a> | <del>Jay Franco &amp; Sons, Inc.'s</del> NOTICE of Motion by Ezra Sutton for presentment of motion for judgment <a href="#">41</a> before Honorable Robert M. Dow Jr. on 5/21/2008 at 09:00 AM. (aac, ) (Entered: 08/29/2008)  |
| 05/20/2008 | <a href="#">35</a> | <i>Jay Franco &amp; Sons, Inc.'s</i> ANSWER to counterclaim filed by Clemens Franek by Jay Franco & Sons, Inc.(Sutton, Ezra) (Entered: 05/20/2008)   |
| 05/20/2008 | <a href="#">37</a> | MINUTE entry before the Honorable Robert M. Dow, Jr: The above-entitled cases have been consolidated for all purposes. A motion for summary judgment <a href="#">10</a> was inadvertently filed in Case 08 C 1313 and should have been filed in 08 C 58. All further pleadings to be filed only in 08 C 58. Mailed notice (ca, ) (Entered: 05/22/2008)   |
| 05/21/2008 | <a href="#">36</a> | MINUTE entry before the Honorable Robert M. Dow, Jr:Status hearing held on 5/21/2008. Response to motion for summary judgment (filed inadvertently   |

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|            |                    | in consolidated case 08 c 1313) is due on or before 7/21/08. Reply brief will be due, if no expert, on or before 8/4/08 or on 8/18/08 if there is an expert. Ruling on motion for summary judgment will be by mail. Status hearing set for 11/13/2008 at 09:00 AM.)Mailed notice (tbk, ) (Entered: 05/21/2008)  |
| 07/21/2008 | <a href="#">47</a> | MEMORANDUM by Clemens Franek in Opposition to motion for summary judgment <a href="#">41</a> (Attachments: # <a href="#">1</a> Declaration Franek, # <a href="#">2</a> Exhibit Beach Towel shapes, # <a href="#">3</a> Exhibit Notice to REI, # <a href="#">4</a> Exhibit Claim Charts)(aac, ) (Entered: 08/29/2008)  |
| 07/21/2008 | <a href="#">48</a> | RESPONSE by Clemens Franek Opposition to MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>PLAINTIFF JAY FRANCO &amp; SONS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT <a href="#">41</a> Response to Statement of Facts</i> (aac, ) (Entered: 09/02/2008)  |
| 07/31/2008 | <a href="#">38</a> | MOTION by Counter Defendant Jay Franco & Sons, Inc. for extension of time to file response/reply to <i>Clemens Franek's Response to Jay Franco &amp; Sons, Inc.'s Motion for Summary Judgment</i> (Attachments: # <a href="#">1</a> Text of Proposed Order Stipulated Consent Order)(Sutton, Ezra) (Entered: 07/31/2008)  |
| 07/31/2008 | <a href="#">39</a> | MINUTE entry before the Honorable Robert M. Dow, Jr: MOTION by Counter Defendant Jay Franco & Sons, Inc. for extension of time to file reply to Clemens Franek's Response to Jay Franco & Sons, Inc.'s Motion for Summary Judgment <a href="#">38</a> , from 8/4/08 to and including 8/14/08, is Granted. Mailed notice (tbk, ) (Entered: 07/31/2008)   |
| 08/14/2008 | <a href="#">40</a> | MINUTE entry before the Honorable Ruben Castillo: Motion hearing held. Plaintiff's motion for leave to file reply memorandum in support of its motion for partial summary judgment of law in excess of 15 pages is granted. Reply brief is limited to 24 pages. Mailed notice (slb, ) (Entered: 08/14/2008)   |
| 08/14/2008 | <a href="#">49</a> | MINUTE entry before the Honorable Ruben Castillo: Motion hearing held. Plaintiff's motion for leave to file reply memorandum in support of its motion for partial summary judgment of law in excess of 15 pages is granted. Reply brief is limited to 24 pages. Mailed notice (aac, ) (Entered: 09/02/2008)   |
| 08/14/2008 | <a href="#">50</a> | REPLY by Jay Franco & Sons, Inc. to memorandum in opposition to motion <a href="#">47</a> , response in opposition to motion <a href="#">48</a> <i>Plaintiff jay Franco &amp; Sons, Inc.'s Reply memorandum in Support of its Motion for Partial Summary Judgment</i> (Attachments: # <a href="#">1</a> Supplement Plaintiff Franco's Responses to Defendant's Statement of Material Facts (1 - 29), # <a href="#">2</a> Supplement Plaintiff jay Franco's Responses to Franek's Objections)(aac, ) (Entered: 09/02/2008) |
| 08/20/2008 | <a href="#">51</a> | MOTION by Defendant Clemens Franek for leave to file <i>Sur-Reply Brief</i> (aac, ) (Entered: 09/02/2008)   |
| 08/20/2008 | <a href="#">52</a> | NOTICE of Motion by Mark Daniel Roth for presentment of motion for leave to file <a href="#">21</a> before Honorable Robert M. Dow Jr. on 8/28/2008 at 09:15 AM.  |

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|            |                    | (aac, ) (Entered: 09/02/2008)   |
| 08/22/2008 | <a href="#">53</a> | RESPONSE by Jay Franco & Sons, Inc.in Opposition to MOTION by Defendant Clemens Franek for leave to file <i>Sur-Reply Brief</i> <a href="#">51</a> Plaintiff Jay Franco & Sons, Inc.'s <i>Opposition to Defendant's Motion for Leave to File Sur-Reply Brief</i> (aac, ) (Entered: 09/02/2008)  |
| 08/25/2008 | <a href="#">54</a> | MINUTE entry before the Honorable Robert M. Dow, Jr:The Court has before it Defendant's motion for leave to file a sur-reply brief <a href="#">21</a> and Plaintiff's opposition <a href="#">23</a> to that motion. The Court will take the motion under advisement and issue a ruling by mail after it has examined the reply brief, the motion, and the response. Notice of motion date of 8/28/08 is stricken and no appearances are necessary on that date. Mailed notice (aac, ) (Entered: 09/02/2008)   |
| 08/28/2008 | <a href="#">55</a> | MINUTE entry before the Honorable Robert M. Dow, Jr: Enter Following Minute Order nunc pro tunc as of 4/17/08: Stipulated Motion to Consolidate <a href="#">27</a> Two Related Actions on Consent Pursuant to FRCP 42(1) is granted. Case 08 C 1313, Jay Franco & Sons, Inc. vs. Clemens Franek, is found to be related to the above-entitled action and is ordered consolidated for all purposes. Defendant Franek shall file his answer to the complaint within 10 days of this Order. Both parties shall serve their Initial Disclosures under Rule 26 within 10 days of this Order. Both parties shall join in the existing discovery schedule in the prior action: Fact discovery to be completed by 12/12/08; Opening expert reports are due 1/16/09; Rebuttal expert reports due by 3/6/09; Expert discovery will be completed by 4/3/09. (FOR ALL FURTHER PROCEEDINGS SEE CASE 08 C 58, Franek vs. Walmart Stores.) Mailed notice (aac, ) (Entered: 09/02/2008) |
| 08/28/2008 | <a href="#">56</a> | MINUTE entry before the Honorable Robert M. Dow, Jr:The above-entitled case having been consolidated for all purposes with Case No. 08 C 58, Franek v. Walmart Stores, Inc., et al, It is Ordered that 08 C 1313, Jay Franco & Sons, Inc. v. Franek, is hereby dismissed and all future pleadings are to be filed in 08 C 58 only. Mailed notice (aac, ) (Entered: 09/02/2008)  |
| 09/09/2008 | <a href="#">58</a> | MINUTE entry before the Honorable Robert M. Dow, Jr: The motion by Defendant Franek for leave to file a sur-reply brief <a href="#">51</a> is denied at this time. If the Court determines in course of its consideration of the motion that further argument from Defendant Franek is warranted, the Court will request a sur-reply at that time.Mailed notice (tbk, ) (Entered: 09/09/2008)   |
| 10/07/2008 | <a href="#">59</a> | MOTION by Counter Defendants Jay Franco & Sons, Inc., Jay Franco & Sons, Inc., Counter Claimants Clemens Franek, Target Corporation, Clemens Franek, Plaintiff Clemens Franek, Defendants Walmart Stores, Inc., Target Corporation for extension of time to complete discovery <i>Agreed Motion Requesting an Extension of Time to Complete Discovery and Requesting a Settlement Conference</i> (Attachments: # <a href="#">1</a> Text of Proposed Order Agreed Consent Order Extending the Time to Complete Discovery and Ordering a  |

|            |                    |  |
|------------|--------------------|--|
|            |                    | Settlement Conference)(Sutton, Ezra) (Entered: 10/07/2008)   |
| 10/08/2008 | <a href="#">60</a> | MINUTE entry before the Honorable Robert M. Dow, Jr: MOTION by Counter Defendants Jay Franco & Sons, Inc., Jay Franco & Sons, Inc., Counter Claimants Clemens Franek, Target Corporation, Clemens Franek, Plaintiff Clemens Franek, Defendants Walmart Stores, Inc., Target Corporation for extension of time to complete discovery and Requesting a Settlement Conference <a href="#">59</a> is granted. ENTER AGREED CONSENT ORDER: Time to complete fact discovery is extended to 3/13/09; date that expert reports are due is extended to 4/16/09; and deadline to complete expert discovery is extended to 7/7/09. A settlement conference will be scheduled with a Judge or a Magistrate Judge if pending motion for summary judgment is not granted. [ For further detail see separate order(s).] Mailed notice (aac, ) (Entered: 10/09/2008) |
| 10/08/2008 | <a href="#">61</a> | AGREED Consent order extending the time to complete discovery and ordering a settlement conference. Signed by the Honorable Robert M. Dow, Jr on 10/8/2008. (aac, ) (Entered: 10/09/2008)  |
| 11/06/2008 | <a href="#">62</a> | MINUTE entry before the Honorable Robert M. Dow, Jr:Status hearing date of 11/13/08 is stricken and Status hearing reset for 1/14/2009 at 09:15 AM.Mailed notice (tbk, ) (Entered: 11/06/2008)   |
| 01/08/2009 |                    | (Court only) ***Motions terminated: <a href="#">41</a> , <a href="#">42</a> , <a href="#">43</a> , <a href="#">44</a> , <a href="#">45</a> . (aac, ) (Entered: 01/08/2009)   |
| 01/08/2009 |                    | (Court only) ***Reopen Document MOTION for partial summary judgment <a href="#">41</a> . (jmp, ) (Entered: 01/09/2009)   |
| 02/18/2009 | <a href="#">63</a> | MOTION by Defendant Walmart Stores, Inc. for extension of time to complete discovery ( <i>Agreed</i> ) and <i>Requesting a Settlement Conference</i> (Paskar, Mark) (Entered: 02/18/2009)  |
| 02/20/2009 | <a href="#">64</a> | NOTICE of Motion by Mark A. Paskar for presentment of motion for extension of time to complete discovery <a href="#">63</a> before Honorable Robert M. Dow Jr. on 2/26/2009 at 09:15 AM. (Paskar, Mark) (Entered: 02/20/2009)  |
| 02/23/2009 | <a href="#">65</a> | MINUTE entry before the Honorable Robert M. Dow, Jr: MOTION by Defendant Walmart Stores, Inc. for extension of time to complete discovery <a href="#">63</a> is Granted. ENTER AGREED CONSENT ORDER EXTENDING THE TIME TO COMPLETE DISCOVERY AND ORDERING A SETTLEMENT CONFERENCE: the deadline to complete fact discovery is extended to 7/13/09; the date that expert reports are due is extended to 8/16/09; and the deadline to complete expert discovery is extended to 11/7/09. Notice of Motion date of 2/26/09 is stricken and no appearances are necessary on that date. [ For further detail see separate order(s).] Mailed notice (aac, ) (Entered: 02/26/2009)   |
| 02/23/2009 | <a href="#">66</a> | AGREED Consent Order extending the time to complete discovery and ordering a settlement conference. Signed by the Honorable Robert M. Dow,   |

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|            |                    | Jr on 2/23/2009. (aac, ) (Entered: 02/26/2009)  |
| 03/13/2009 | <a href="#">67</a> | MINUTE entry before the Honorable Robert M. Dow, Jr:Pursuant to Memorandum Opinion and Order dated 3/13/09, Plaintiffs motion for partial summary judgment <a href="#">41</a> is granted as to Count II of its Complaint for Declaratory Judgment and Other Relief and Franeks U.S. Trademark Registration No. 1,502,261 is invalid as functional. Plaintiffs motion for summary judgment <a href="#">41</a> is also granted as to Counts I through IV of Clemens Franeks Counterclaims against Jay Franco & Sons.Mailed notice (tbk, ) (Entered: 03/13/2009) |
| 03/13/2009 | <a href="#">68</a> | MEMORANDUM Opinion and Order Signed by the Honorable Robert M. Dow, Jr on 3/13/2009.Mailed notice(tbk, ) (Entered: 03/13/2009)  |
| 03/23/2009 | <a href="#">69</a> | MOTION by Plaintiff Clemens Franek to amend/correct <i>Amend Order of March 13, 2009</i> (Attachments: # <a href="#">1</a> Text of Proposed Order)(Roth, Mark) (Entered: 03/23/2009)  |
| 03/23/2009 | <a href="#">70</a> | NOTICE of Motion by Mark Daniel Roth for presentment of motion to amend/correct <a href="#">69</a> before Honorable Robert M. Dow Jr. on 4/1/2009 at 09:15 AM. (Roth, Mark) (Entered: 03/23/2009)   |
| 03/30/2009 | <a href="#">71</a> | MINUTE entry before the Honorable Robert M. Dow, Jr: For the reasons stated below, Franek's motion <a href="#">69</a> to amend the Court's March 13, 2009 order <a href="#">68</a> pursuant to Fed. R. Civ. P. 59(e) is granted. Notice of motion date of 4/1/09 is stricken and no appearances are necessary on that date. [ For further details see minute order.] Mailed notice (aac, ) (Entered: 03/31/2009)  |
| 03/31/2009 | <a href="#">72</a> | ENTERED JUDGMENT Signed by the Deputy Clerk on 3/31/2009.Mailed notice(tbk, ) (Entered: 03/31/2009)   |
| 03/31/2009 |                    | (Court only) ***Civil Case Terminated. (aac, ) (Entered: 03/31/2009)  |
| 04/02/2009 | <a href="#">73</a> | (Court only) MAILED trademark report with certified copy of minute order dated 3/13/09, memorandum opinion and order, and minute order dated 3/30/09 to Patent Trademark Office, Alexandria VA. (aac, ) (Entered: 04/02/2009)   |
| 04/28/2009 | <a href="#">74</a> | NOTICE of appeal by Clemens Franek regarding orders <a href="#">67</a> , <a href="#">72</a> Filing fee \$ 455, receipt number 07520000000003715292. (Also appealing 08-cv-1313 docket entry no. 26)(Roth, Mark) Modified on 4/28/2009 (kj, ). (Entered: 04/28/2009)   |
| 04/28/2009 | <a href="#">75</a> | NOTICE by Clemens Franek <i>Notice of Appeal</i> (Attachments: # <a href="#">1</a> Notice of Filing Service List)(Roth, Mark) (Entered: 04/28/2009)   |
| 04/29/2009 | <a href="#">76</a> | NOTICE of Appeal Due letter sent to counsel of record. (yap, ) (Entered: 04/29/2009)  |
| 04/30/2009 | <a href="#">77</a> | TRANSMITTED to the 7th Circuit the short record on notice of appeal <a href="#">74</a> . Notified counsel. (yap, ) (Entered: 04/30/2009)  |

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| 05/01/2009 | <a href="#">78</a> | <del>ACKNOWLEDGEMENT of receipt of short record on appeal regarding notice of appeal <a href="#">74</a>; USCA Case No. 09-2155. (aac, ) (Entered: 05/04/2009)</del> |
| 05/13/2009 | <a href="#">79</a> | DESIGNATION by Jay Franco & Sons, Inc. of record on appeal (Sutton, Ezra) (Entered: 05/13/2009)   |
| 05/18/2009 | <a href="#">80</a> | DESIGNATION by Clemens Franek of record on appeal (Roth, Mark) (Entered: 05/18/2009)  |
| 05/18/2009 | <a href="#">81</a> | <del>NOTICE by Clemens Franek <i>Designation of Record On Appeal</i> (Roth, Mark) (Entered: 05/18/2009)</del>   |
| 05/19/2009 | <a href="#">82</a> | <del>SEVENTH CIRCUIT transcript information sheet by Clemens Franek (Roth, Mark) (Entered: 05/19/2009)</del>  |
| 05/19/2009 | <a href="#">83</a> | <del>NOTICE by Clemens Franek <i>Transcript Certificate</i> (Roth, Mark) (Entered: 05/19/2009)</del>  |

**KEY**

**All items in (Pleading 1) are documents from case 08 cv 58**  
**All items in (Pleading 2) are documents from case 08 cv 1313.**  
**All crossed out items are not included in the record.**  
**S/C: These items are sent under a separate certificate.**  
**N/A: These items are not available.**

**United States District Court**  
**Northern District of Illinois - CM/ECF LIVE, Ver 3.2.2 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-01313**  
**Internal Use Only**

Jay Franco & Sons, Inc. v. Franek  
Assigned to: Honorable Robert M. Dow, Jr  
Cause: 28:2201 Declaratory Judgement

Date Filed: 03/05/2008  
Date Terminated: 08/28/2008  
Jury Demand: Plaintiff  
Nature of Suit: 110 Contract: Insurance  
Jurisdiction: Federal Question

**Plaintiff**

**Jay Franco & Sons, Inc.**

represented by **Ezra Sutton**  
Ezra Sutton, PA  
900 Route 9 North  
Woodbridge , NJ 07095  
732 634 3520  
Email: esutton@ezrasutton.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Clemens Franek**

represented by **Mark Daniel Roth**  
Orum & Roth, LLC  
53 West Jackson Boulevard  
Suite 1616  
Chicago , IL 60604  
(312) 922-6262  
Email: markdroth@gmail.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

| Date Filed | # | Docket Text |
|------------|---|-------------|
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| 03/05/2008 | <a href="#">1</a>  | COMPLAINT filed by Jay Franco & Sons, Inc.; (Exhibits) Jury Demand. Filing fee \$ 350.(Poor Quality Original-Paper Document on File)(gej, ) (Entered: 03/06/2008)  |
| 03/05/2008 | <a href="#">2</a>  | <del>CIVIL Cover Sheet</del> (gej, ) (Entered: 03/06/2008)   |
| 03/05/2008 | <a href="#">3</a>  | <del>(Court only) RECEIPT regarding payment of filing fee paid on 3/5/2008 in the amount of \$350.00, receipt number 10652007.</del> (gej, ) (Entered: 03/06/2008)   |
| 03/05/2008 | <a href="#">4</a>  | <del>SUMMONS Issued as to Defendant Clemens Franek.</del> (gej, ) (Entered: 03/06/2008)  |
| 03/05/2008 | <a href="#">5</a>  | <del>CERTIFICATE Under Rule 7.1 of Related Entities by Jay Franco &amp; Sons, Inc.</del> (gej, ) (Entered: 03/06/2008)   |
| 03/13/2008 | <a href="#">6</a>  | <del>APPLICATION for Leave to Appear Pro Hac Vice on behalf of Jay Franco &amp; Sons, Inc. by Ezra Sutton; Order entered granting leave by Judge Honorable Samuel Der-Yeghiayan. Filing fee \$ 50 paid, receipt number 10652008.</del> (gej, ) (Entered: 03/17/2008)   |
| 03/25/2008 | <a href="#">7</a>  | <del>MINUTE entry before Honorable Judge Samuel Der-Yeghiayan: Initial status hearing set for 05/06/08 at 9:00 a.m. At least four working days before the initial status hearing, the parties shall conduct a FRCP 26(f) conference and file a joint written Initial Status Report, not to exceed five pages in length, and file the Court's Joint Jurisdictional Status Report and deliver courtesy copies to this Court's chambers. The Court's standing orders on the Initial Status Report and Joint Jurisdictional Status Report maybe obtained from Judge Der-Yeghiayan's web page or from this Court's Courtroom Deputy: Counsel for the Plaintiff is warned that failure to serve summons and complaint on Defendant will result in a dismissal of the action pursuant to FRCP 4. Counsel for Plaintiff is further directed to file with the Clerk of Court, the appropriate return of service and/or waiver of service. Mailed notice</del> (gej, ) (Entered: 03/26/2008) |
| 04/15/2008 | <a href="#">8</a>  | <del>ATTORNEY Appearance for Defendant Clemens Franek by Mark Daniel Roth (Roth, Mark)</del> (Entered: 04/15/2008)   |
| 04/17/2008 | <a href="#">9</a>  | <del>EXECUTIVE COMMITTEE ORDER: Case reassigned to the Honorable Robert M. Dow, Jr for all further proceedings. Signed by Executive Committee on 4/17/2008.</del> (gej, ) (Entered: 04/23/2008)  |
| 04/17/2008 |                    | Cases associated: (gej, ) (Entered: 04/23/2008)  |
| 05/16/2008 | <a href="#">10</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>PLAINTIFF JAY FRANCO &amp; SONS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT</i> (Sutton, Ezra) (Entered: 05/16/2008)   |
| 05/16/2008 | <a href="#">11</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Notice Of Motion For Partial Summary Judgment</i> (Sutton, Ezra) (Entered: 05/16/2008)   |



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| 05/16/2008 | <a href="#">12</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco &amp; Sons, Inc's Memorandum In Support Of Its Motion For Partial Summary Judgment</i> (Sutton, Ezra) (Entered: 05/16/2008)   |
| 05/16/2008 | <a href="#">13</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco &amp; Sons, Inc.'s Local Rule 56.1(a)(3) Statement Of Material Facts As To Which There Is No Genuine Issue</i> (Sutton, Ezra) (Entered: 05/16/2008)   |
| 05/16/2008 | <a href="#">14</a> | MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Appendix of Exhibits In Support Of Jay Franco &amp; Sons, Inc.'s Partial Motion For Summary Judgment</i> (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8, # <a href="#">9</a> Exhibit 9, # <a href="#">10</a> Exhibit 10, # <a href="#">11</a> Exhibit 11, # <a href="#">12</a> Exhibit 12, # <a href="#">13</a> Exhibit 13, # <a href="#">14</a> Exhibit 14, # <a href="#">15</a> Exhibit 15, # <a href="#">16</a> Exhibit 16, # <a href="#">17</a> Exhibit 17, # <a href="#">18</a> Exhibit 18, # <a href="#">19</a> Exhibit 19, # <a href="#">20</a> Exhibit 20, # <a href="#">21</a> Exhibit 21, # <a href="#">22</a> Exhibit 22, # <a href="#">23</a> Exhibit 23, # <a href="#">24</a> Exhibit 24, # <a href="#">25</a> Exhibit 25, # <a href="#">26</a> Exhibit 26)(Sutton, Ezra) (Entered: 05/16/2008) |
| 05/16/2008 | <a href="#">15</a> | DECLARATION of Robert John Anders by Jay Franco & Sons, Inc. <i>In Support Of Jay Franco &amp; Sons, Inc.'s Partial Motion For Summary Judgment</i> (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N)(Sutton, Ezra) (Entered: 05/16/2008)   |
| 05/19/2008 | <a href="#">16</a> | <i>Jay Franco &amp; Sons, Inc.'s</i> NOTICE of Motion by Ezra Sutton for presentment of motion for summary judgment <a href="#">10</a> before Honorable Robert M. Dow Jr. on 5/21/2008 at 09:00 AM. (Sutton, Ezra) (Entered: 05/19/2008)   |
| 05/19/2008 |                    | (Court only) ***Motions terminated: MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Appendix of Exhibits In Support Of Jay Franco &amp; Sons, Inc.'s Partial Motion For Summary Judgment</i> <a href="#">14</a> , MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Notice Of Motion For Partial Summary Judgment</i> <a href="#">11</a> , MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco &amp; Sons, Inc.'s Local Rule 56.1(a)(3) Statement Of Material Facts As To Which There Is No Genuine Issue</i> <a href="#">13</a> , MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>Plaintiff Jay Franco &amp; Sons, Inc's Memorandum In Support Of Its Motion For Partial Summary Judgment</i> <a href="#">12</a> (gej, ) (Entered: 05/19/2008)   |
| 07/21/2008 | <a href="#">17</a> | MEMORANDUM by Clemens Franek in Opposition to motion for summary judgment <a href="#">10</a> (Attachments: # <a href="#">1</a> Declaration Franek, # <a href="#">2</a> Exhibit Beach Towel shapes, # <a href="#">3</a> Exhibit Notice to REI, # <a href="#">4</a> Exhibit Claim Charts)(Roth, Mark) (Entered: 07/21/2008)  |
| 07/21/2008 | <a href="#">18</a> | RESPONSE by Clemens Franekin Opposition to MOTION by Plaintiff Jay Franco & Sons, Inc. for summary judgment <i>PLAINTIFF JAY FRANCO &amp;</i>  |

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|            |                    | <i>SONS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT</i> <a href="#">10</a><br><i>Response to Statement of Facts</i> (Roth, Mark) (Entered: 07/21/2008)   |
| 08/14/2008 | <a href="#">19</a> | MINUTE entry before the Honorable Ruben Castillo: Motion hearing held. Plaintiff's motion for leave to file reply memorandum in support of its motion for partial summary judgment of law in excess of 15 pages is granted. Reply brief is limited to 24 pages. Mailed notice (slb, ) (Entered: 08/14/2008)  |
| 08/14/2008 | <a href="#">20</a> | REPLY by Jay Franco & Sons, Inc. to memorandum in opposition to motion <a href="#">17</a> , response in opposition to motion <a href="#">18</a> Plaintiff jay Franco & Sons, Inc.'s Reply memorandum in Support of its Motion for Partial Summary Judgment (Attachments: # <a href="#">1</a> Supplement Plaintiff Franco's Responses to Defendant's Statement of Material Facts (1 to 29), # <a href="#">2</a> Supplement Plaintiff jay Franco's Responses to Franek's Objections)(Sutton, Ezra) (Entered: 08/14/2008)   |
| 08/20/2008 | <a href="#">21</a> | MOTION by Defendant Clemens Franek for leave to file <i>Sur-Reply Brief</i> (Roth, Mark) (Entered: 08/20/2008)   |
| 08/20/2008 | <a href="#">22</a> | NOTICE of Motion by Mark Daniel Roth for presentment of motion for leave to file <a href="#">21</a> before Honorable Robert M. Dow Jr. on 8/28/2008 at 09:15 AM. (Roth, Mark) (Entered: 08/20/2008)  |
| 08/22/2008 | <a href="#">23</a> | RESPONSE by Jay Franco & Sons, Inc.in Opposition to MOTION by Defendant Clemens Franek for leave to file <i>Sur-Reply Brief</i> <a href="#">21</a> Plaintiff Jay Franco & Sons, Inc.'s Opposition to Defendant's Motion for Leave to File <i>Sur-Reply Brief</i> (Sutton, Ezra) (Entered: 08/22/2008)  |
| 08/25/2008 | <a href="#">24</a> | MINUTE entry before the Honorable Robert M. Dow, Jr:The Court has before it Defendant's motion for leave to file a sur-reply brief <a href="#">21</a> and Plaintiff's opposition <a href="#">23</a> to that motion. The Court will take the motion under advisement and issue a ruling by mail after it has examined the reply brief, the motion, and the response. Notice of motion date of 8/28/08 is stricken and no appearances are necessary on that date.Mailed notice (tbk, ) (Entered: 08/25/2008)   |
| 08/28/2008 | <a href="#">25</a> | <del>MINUTE entry before the Honorable Robert M. Dow, Jr: Enter Following Minute Order nunc pro tunc as of 4/17/08: Stipulated Motion to Consolidate <a href="#">27</a> Two Related Actions on Consent Pursuant to FRCP 42(1) is granted. Case 08-C-1313, Jay Franco &amp; Sons, Inc. vs. Clemens Franek, is found to be related to the above-entitled action and is ordered consolidated for all purposes. Defendant Franek shall file his answer to the complaint within 10 days of this Order. Both parties shall serve their Initial Disclosures under Rule 26 within 10 days of this Order. Both parties shall join in the existing discovery schedule in the prior action: Fact discovery to be completed by 12/12/08; Opening expert reports are due 1/16/09; Rebuttal expert reports due by 3/6/09; Expert discovery will be completed by 4/3/09. (FOR ALL FURTHER PROCEEDINGS SEE CASE 08-C-58, Franek vs. Walmart Stores.) Mailed notice (aac, ) (Entered: 08/28/2008)</del> |

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| 08/28/2008 | <a href="#">26</a> | <del>MINUTE entry before the Honorable Robert M. Dow, Jr. The above-entitled case having been consolidated for all purposes with Case No. 08 C 58, Franek v. Walmart Stores, Inc., et al, It is Ordered that 08 C 1313, Jay Franco &amp; Sons, Inc. v. Franek, is hereby dismissed and all future pleadings are to be filed in 08 C 58 only. Mailed notice (rp, ) (Entered: 08/29/2008)</del>   |
| 01/08/2009 |                    | (Court only) ***Motions terminated: <a href="#">10</a> , <a href="#">21</a> . (aac, ) (Entered: 01/08/2009)   |
| 03/13/2009 | <a href="#">27</a> | <del>MINUTE entry before the Honorable Robert M. Dow, Jr: Plaintiffs motion for partial summary judgment 41 is granted as to Count II of its Complaint for Declaratory Judgment and Other Relief and Franeks U.S. Trademark Registration No. 1,502,261 is invalid as functional. Plaintiffs motion for summary judgment 41 is also granted as to Counts I through IV of Clemens Franeks Counterclaims against Jay Franco &amp; Sons. (Original Minute Order and Memorandum Opinion and Order docketed in Case No. 08 C 58.) Mailed notice (tbk, ) (Entered: 03/13/2009)</del> |

**KEY**

**All items are included in this record.**  
**All crossed out items are not included in the record.**  
**S/C: These items are sent under a separate certificate.**  
**N/A: These items are not available.**