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LEASON ELLIS  
INTELLECTUAL PROPERTY ATTORNEYS

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## The Newtonian®

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### NEWS



We had a great time at our summer outing at Fairview Country Club on August 5! Events included a very competitive game of volleyball, a relaxing session of yoga, swimming for the kids and other fun activities. We followed up the sunny afternoon with a delicious barbeque dinner and dessert on the lovely club patio.

## LITIGATOR HODA RIFAI-BASHJAWISH JOINS THE FIRM

We are happy to welcome **Hoda Rifai-Bashjawish** as an Associate in our Litigation Practice Group. Hoda joins us most recently from Barclay Damon LLP in Syracuse, New York, where she was an associate litigation attorney. Previously, she worked at Radulescu LLP and Skadden, Arps, Slate, Meagher & Flom LLP in New York City. Hoda focuses her practice on patent, trademark and commercial litigation matters, with a concentration in patent enforcement and validity matters. She has worked on all stages of litigation with significant experience in *inter partes* reviews, motion practice and discovery management. Hoda earned her J.D. at Columbia Law School and her simultaneous B.S. degrees in biomedical engineering ( *cum laude* ) from Columbia University, School of Engineering and Applied Sciences and in physics ( *magna cum laude* ) from Adelphi University.



## LEASON ELLIS SECURES SUMMARY JUDGMENT OF NO PATENT INFRINGEMENT FOR CLIENT IN THE EASTERN DISTRICT OF TEXAS

Leason Ellis client Repro-Med Systems, Inc. dba RMS Medical Products (OTCQX: REPR) ("RMS Medical") was recently awarded summary judgment of non-infringement and over \$16,000 in costs in a patent infringement action filed in the Eastern District of Texas (Case No. 2:15-CV-01167-JRG-RSP). The Complaint filed by EMED Technologies Corporation alleged that RMS Medical's needle sets, approximately 60 different products, infringe U.S. Patent No. 8,961,476 and sought unspecified damages. On June 24, 2019, United States Magistrate Judge Payne issued a Report and Recommendation that there was no infringement, literally or under the doctrine of equivalents. On June 26, 2019, the patent owner EMED Technologies Corp. filed objections, arguing that the Magistrate Judge made three errors. On June 28, 2019, United States District Judge Gilstrap overruled the objections and adopted the Magistrate Judge's decision, entering final judgement and dismissing the case with prejudice. On August 30, 2019, Judge Gilstrap entered an amended final judgment also awarding over \$16,000 in costs to RMS Medical. Leason Ellis attorneys Robert Isackson, Matthew Kaufman, Henry Gabathuler and Christina Sauerborn represented RMS Medical.

**[See the Final Judgement Here](#)**



## **LEASON ELLIS OBTAINS SUMMARY JUDGMENT DISMISSING TRADEMARK INFRINGEMENT CLAIMS IN THE CENTRAL DISTRICT OF CALIFORNIA**

On behalf of Leason Ellis client Metal Sport, Inc., a company owned by a Finnish world champion powerlifter who has sold powerlifting gear and related apparel under the mark METAL in stylized form for 20 years, Leason Ellis attorneys Yuval Marcus, Lori Cooper and Christina Sauerborn successfully defended trademark infringement claims brought in the United States District Court for the Central District of California by apparel company Metal Jeans, Inc. based on the mark METAL for clothing.

On July 9, 2019, the Court issued an Order granting Metal Sport's motion for summary judgment on the basis that Metal Jeans' claims were barred by the equitable doctrine of unclean hands. Many of the facts that formed the basis for the unclean hands defense were discovered by Leason Ellis during the deposition of Plaintiff, including misrepresentations by Plaintiff's principal to the United States Patent and Trademark Office and to the public in connection with goods sold under the METAL mark.

**[Read the Court Order Here](#)**

## **LEASON ELLIS SECURES DOMAIN NAME WIN FOR CLIENT**

In a recently announced UDRP decision, Aleks Corporation v. Sushila Asnodkar / Projukti Web Service, FA1906001846745 (NAF July 17, 2019), Leason Ellis, led by Karin Segall, successfully recovered the domain name alekshomeworkhelp.com on behalf of Aleks Corporation, a company owned by McGraw-Hill Education. The disputed domain name was being used for a website offering to complete class assignments accessible through the ALEKS online learning and assessment tool with the promise of timely submissions and good grades. The panel found that the domain name was identical or confusingly similar to the ALEKS trademark, with the addition of "homework help" being a descriptive term insufficient to distinguish the domain name from the ALEKS mark. The panel also found that the domain name was registered and being used in bad faith in providing a service that enabled students to cheat on their assignments.

**[Read the Decision Here](#)**



## **LEASON ELLIS FOILS ANOTHER DOMAIN NAME TYPOSQUATTER**

On behalf of Leason Ellis client Nourison Industries, Inc., attorneys Peter Busch and Yuval Marcus successfully recovered the domain name nourison.com via a UDRP proceeding, Nourison Industries, Inc. v. Rachel Kestenbaum, FA1907001851280 (FORUM August 6, 2019). The disputed domain was the latest attempt by various typosquatters to take advantage of the goodwill in the NOURISON brand for floor coverings. Leason Ellis previously utilized a UDRP to recover the domain name noiurison.com and was able to suspend without the need for filing UDRPs other close variations including, nuorison.com and nourisonn.com.

[Read the Decision Here](#)



## **MARTIN SCHWIMMER RECOGNIZED BY THE BEST LAWYERS IN AMERICA**

Congratulations to Marty Schwimmer for having been selected by his peers for inclusion in the 26th Edition of The Best Lawyers in America. For almost 40 years, Best Lawyers has assisted those in need of legal services to identify the lawyers best qualified to represent them in distant jurisdictions or unfamiliar specialties.



## **MARTIN SCHWIMMER QUOTED IN LAW360 ARTICLE ON OFFENSIVE MARKS**

On June 25, 2019, Law360 posted an article titled A 'Rush' Of Offensive Trademarks? Maybe Not," about the high courts decision to strike down a ban on offensive trademark registrations. U.S. Supreme Court Justice Sonia Sotomayor predicted the decision would lead to a rush of vulgar brand names, but experts are predicting otherwise saying the USPTO will still have plenty of reasons to continue rejecting scandalous trademarks. In the article, Martin Schwimmer is quoted as saying the following: "You almost want to tell your clients to ignore a case, even though it's getting a lot of attention, because the issue never comes up in real life."

[Read the Article Here](#)

## **PETER SLOANE QUOTED IN LAW360 ARTICLE ON OFFENSIVE MARKS**

On August 21, 2019, Peter Sloane was quoted in a Law360 article titled, " Those Trademark Scam Letters Aren't Stopping On Their Own" that discusses the lack of action taken to combat fraudulent letters being sent demanding payment for trademark services from



entities with official-sounding names. "We did put a few of these companies out of business," Sloane said. At the same time, he remarked that the USPTO should do more to take action against the scammers.

[Read the Article Here](#)

## **SPEAKING ENGAGEMENTS**

### **LAUREN EMERSON SPEAKS AT AIPLA DESIGN RIGHTS BOOT CAMP**

The American Intellectual Property Law Association held its Design Rights Boot Camp at the Chicago-Kent College of Law on August 5th and 6th. It was a first of its kind two-day comprehensive CLE program designed for both new and experienced IP practitioners who wish to learn about protecting and enforcing designs in all areas of IP, including design patents, copyright and trademark law. Lauren Emerson was there to speak about copyright basics including preparing and filing copyright applications.



[See Full Agenda Here](#)

### **ROBERT ISACKSON TO SPEAK AT IPO ANNUAL MEETING**

Rob Isackson will speak on a panel at the Annual Meeting of the Intellectual Property Owners Association on Wednesday September 25, 2019. The panel will be addressing "The On-Sale Bar after Helsinn: From the Supreme Court to Practice." This is the 47th Annual Meeting of IPO and it will be held from September 24th through 26th at the Marriot Marquis in Washington DC.



[See Event Details Here](#)

## **LEGAL UPDATE**

### **PTO SHAKES UP RULES OF TRADEMARK PRACTICE IN U.S.**

On July 2, 2019, the United States Patent and Trademark Office published a new rule requiring applicants and registrants located outside of the United States to be represented by a qualified U.S. attorney effective August 3, 2019. The new requirement is intended to reduce inaccurate and potentially fraudulent trademark submissions from foreign

domiciled parties. We at Leason Ellis stand ready to help and can take over representation of affected applications and registrations without charge. If you have any questions, please contact Peter Sloane, Chair of the Trademark Practice Group, by e-mail at [sloane@leasonellis.com](mailto:sloane@leasonellis.com) or by phone at 914.821.9073.

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