

We have learned that Lyman Boats and Lyman Life jointly posted a statement on the Lyman Boats webpage concerning the ending of the negotiations that we had hoped would resolve the trademark litigation.

This posting includes letters written by Joseph Burke, who is Michelle Burke's husband and also legal counsel for both Lyman Boats (Tom Koroknay's company) and Lyman Life (Michelle's company) regarding various settlement proposals. **Notably absent from this posting are the letters and emails that the LBOA sent to him in an effort to resolve the dispute.** By omitting our letters and emails, their posting creates the appearance that they have been reasonable but the LBOA has not, and that the LBOA has not even responded to their proposals.

Specifically, their posting fails to reference a key element to their proposal regarding a license agreement—a provision that adversely affects the LBOA and would give complete control over our ability to offer LBOA-labelled items. Although we don't believe that there is a legal reason that we must do so, the LBOA has in fact stated a willingness to enter into a royalty-free license agreement with Lyman Boats that would allow the LBOA to sell LBOA labelled merchandise. But although they do not mention it in their posting, Lyman Boats/Lyman Life have insisted that this license agreement give them complete control over the "nature, quality and pricing" of all LBOA-branded items. This would mean that the LBOA could not create and market any LBOA branded items without the permission of Lyman Boats, and that they would have complete discretion to veto anything that we wanted to create. That requirement is unacceptable to the LBOA, and is why we rejected their proposed license agreement. We offered an alternative proposal whereby we would limit the manner and channels of sale of any LBOA-branded items that we would sell, but they have rejected our proposal.

Their posting also fails to disclose that the LBOA also made a proposal to resolve the dispute regarding the Class 35 registration through a co-existence agreement, under which we agreed not to use this registration as a basis to seek any further registrations for the Lyman mark. They have rejected our proposal, and have insisted that we abandon this registration.

The LBOA's specific proposals for a compromise on both issues are set forth in an email from our legal counsel to Mr. Burke dated October 24, 2019, which included our proposed agreement. Both are attached. Also attached are follow-up emails from our counsel to Mr. Burke dated October 30 and November 20 regarding attempts to resolve the legal issues, and an email dated October 23. Although their posting states that "It is only due to the LBOA's leadership and unwillingness to compromise on these two aforementioned issues that we remain deadlocked in this dispute with no agreement in place" the communications from us show that we have been willing to compromise, and it is they who have not.

Their posting also states that "despite offers by Lyman Boats and Lyman Life to extent [the pause in the trademark litigation], the LBOA leadership failed to respond and accept our offer." If by this ambiguous statement they imply that the LBOA did not respond to Mr. Burke's final demand letter of December 11—in which letter he insisted on the two conditions already known not to be acceptable to us, such implication is unfounded. Included in this post is our response,

dated December 27. Note, too, as we reference in this letter, Ryan Koroknay was previously willing to give a license agreement to the LBOA that did not contain any elements of control over the nature, quality and pricing of LBOA-branded merchandise. Yet now they refuse to do so.

If their implication is merely that the LBOA did not accept their “offer” for yet another stay of the trademark proceedings, the offer of another stay was illusory since their “offer” contained their final positions on the two outstanding issues that were unacceptable to us, and known by them to be such.

Their posting also references their “pledge of transparency to the Lyman Community” and says “We share these letters in the interest of transparency so that our position (including any offers, compromises and settlement deterrents) is made clear and not otherwise mischaracterized. You can see with your own eyes the diligent effort we have put forth in reaching global settlement.” One dictionary definition of “transparent” is “free from guile, candid, or open.” It is ironic for them to profess transparency when they post their letters but exclude the LBOA’s responses, and then assert that they have shown that the LBOA has been unwilling to compromise. They are hardly being transparent when they direct people’s “eyes” to their “diligent” efforts but not to ours.

You should also be aware that they have utilized a common litigation strategy. In the trademark litigation they opposed our LBOA mark registration and calendar registrations. They offered to withdraw these two oppositions as part of a “compromise.” They also state that “it is not practical or tenable to settle one issue without settling all issues at the same time.” Legally, however, we believe our position on these two registrations is extremely strong. By “offering” to withdraw their oppositions that we do not believe have any validity in the first place in order to get something else that they want, they are not offering anything that we believe we are not already entitled to. Such an offer, while ostensibly reasonable, has no value other than avoiding the burden of litigation—which is why such strategies are employed.

Finally, their posting claims the moral high ground, asserting that “We can only hope that the LBOA Officers and Trustees make the right decision for the betterment of the club and its members and avoid unnecessary and costly litigation...” as well as acknowledging that “this divisiveness is hurting the Lyman Community.” However, they then state that “we all must remember, it is one’s duty to protect the trademark in which it rightfully owns and utilizes, and we will continue to stand firm on the facts of this case.”

It is the height of shameless audacity for persons owning for-profit companies who have taken legal positions and other actions antagonistic to the LBOA to purport to decide what is the “right decision” for the “betterment” of the LBOA. Not only have they filed challenges to all of the LBOA trademark applications, but they have sponsored and promoted other “Lyman groups” that appear designed to draw members away from the LBOA, or at the very least, dilute and compete with our longstanding activities. As a settlement, they have demanded complete control over the ability of the LBOA to offer LBOA-labelled items and insisted that the LBOA abandon a trademark registration that might give the LBOA some level of protection over the use of the

Lyman mark by groups they are sponsoring. They have rejected our proposal to resolve these issues, which includes letting them give us a license, yet they have the temerity to announce, as if they were disinterested persons looking out for the membership of the LBOA, that the “right decision” is for us to give in to their demands. Just as they claim the right to protect their trademarks, the LBOA has the right, and obligation, to protect our organization from the influence and control of commercial entities—especially ones who have expressed hostility towards us and who have taken actions that manifest this animosity.

We must also point out that the “advice” that the LBOA should capitulate to the demands of Lyman Boats and Lyman Life comes from people who have not only taken legal positions and other actions that are antagonistic to the LBOA, but who were not even LBOA members until Tom Koroknay and Michelle Burke (and their family members) conveniently joined the LBOA last month, December 2019. There has been recent Facebook chatter (as well as other communication) claiming that persons hostile to the LBOA’s leadership plan to take control of the LBOA. Mr. Burke himself has stated in a recent email that “...my clients certainly welcome a change in the leadership of the LBOA since my clients believe that the current leadership is not and has not acted in the best interests of the members....” These are people who profess to know what is best for the LBOA, when what they want is for the LBOA to do what is best for *them*, and, apparently, will try to take control of the LBOA to get their way if the current leadership does not cave in to their ultimatums.

Regarding their claim that we can end the divisiveness by capitulating to their demands, *they* can just as easily end the divisiveness by accepting our proposals. It is the duty of the LBOA officers and trustees determine what is in best interest of our members—not that of persons with their own agenda who would subordinate our interests to theirs and who claim to be “transparent” by publishing their proposals while not even having the decency to publish ours.

As you can see from our emails and proposals, we tried very hard to reach a compromise with Lyman Boats and Lyman Life. But a compromise requires concessions by both sides. We offered a compromise on both the licensing agreement and the Lyman groups issue. It was Lyman Boats and Lyman Life who have refused to budge.

Karl E. May

From: Karl E. May
Sent: Wednesday, October 23, 2019 8:25 PM
To: Joseph T. Burke
Subject: Re: Ryan's authority

My clients and I are wondering why you did not do what you and I agreed to, which was that you would send me a points memo, after your clients approved it, so we could identify the open issues and discuss them and try to resolve them before drafting an agreement. You even sent me an email saying it was drafted and you would send it after they approved. But instead you had an agreement drafted and sent it to me without giving us a chance to talk through the open issues and not even asking me what they were. Now you tell me that it resolves everything and your clients don't know why we have not found it satisfactory. Why did you not stick to what we agreed?

On Oct 23, 2019 2:22 PM, "Joseph T. Burke" <josephtburke@aol.com> wrote:

Karl:

I do not know how well informed you are to the entire history of the multitude of conversations and agreements that were had in an attempt to resolve this matter with Ryan Nagel. There were many. There have been times, as you have stated, where agreements were made, we would send an agreement over, and receive back a document that had no bearing to what was discussed or agreed to. That has happened quite frequently.

On that note, please send to me the redlined version of the agreement that I sent to you by the end of this week. I, and my clients, are already wondering why the last agreement was not satisfactory as it certainly seems to give LBOA the authority it seeks to pursue its mission, while protecting my clients trademark rights and businesses.

Sincerely

Joseph T. Burke, Esq.
Polito Rodstrom Burke LLP
21300 Lorain Road
Fairview Park, Ohio 44126
440-895-1234
440-895-1233 - Facsimile

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

From: Karl E. May <KMay@frantzward.com>
To: Joseph T. Burke <josephtburke@aol.com>
Sent: Wed, Oct 23, 2019 1:48 pm
Subject: Ryan's authority

Ryan will have decision-making authority within broad parameters from the trustees, and significant discretion. That said, I believe that the agreement, when in final form, must be formally approved by the Board, but there is no question that the Board would do so if we reach an agreement within the parameters given to Ryan. It would seem to me unlikely anyway that we would have a fully drafted and agreed-to document ready to sign at the meeting, but if we do, Ryan's signature would still be subject to ratification by the Board. I don't see any way around that, but Ryan would not sign an agreement that had terms that the Board had not pre-approved in substance.

I do take issue with the premise of your email. Like you, I been involved in this matter since its inception. There have been times when we thought something had been agreed on in principal but for whatever reason (and without casting blame on anyone) did not get put into a draft of an agreement, but to the best of my knowledge there has never been an

agreement in principal as to all material terms between Ryan and your clients that was then rejected by the LBOA Board.

In any event, at the meeting, we hope to focus on reaching an agreement that reconciles everyone's needs, and not dwell on what happened before.

Karl E. May



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This e-mail (including any attachments) may contain information that is private, confidential or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

Karl E. May

From: Karl E. May
Sent: Thursday, October 24, 2019 4:55 PM
To: Joseph T. Burke
Subject: Settlement agreement with our proposed changes
Attachments: 00738595.DOCX

Follow Up Flag: Worldox

Per your request, here is our proposed agreement, with revisions and additions redlined to your draft, and approved by the LBOA Trustees. I will be in Columbus all day tomorrow at a seminar and will likely not have much time to speak, but I will be available over the weekend on my cell phone at 216 513 8469 if you want to discuss it then.

Karl E. May



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LBOA'S COMMENTS AND PROPOSED CHANGES TO SETTLEMENT AGREEMENT
SUBJECT TO RULE 408 OF FEDERAL RULES OF EVIDENCE

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PRELIMINARY STATEMENT

The LBOA desires to resolve all outstanding issues with Lyman Boats and Lyman Life. Each party has interests that they want to protect, and to the extent these interests may appear to conflict the challenge is to reach an agreement that resolves the conflicts.

The purpose of a trademark is to identify the source of the goods or services. The LBOA, Lyman Boats, and Lyman Life, have each used the Lyman mark to identify their services and goods, and each is clearly identified as the source of the same. So long as these uses continue in such manner, clearly labelled, there would be no confusion as to the source. As set forth in the proposed revised agreement, the LBOA is willing to agree to restrictions on the manner of its sale of LBOA-labelled merchandise, which will in any event be of interest only to LBOA members.

The LBOA does not intend to use its current common law marks, or any of its pending trademark registration applications, to seek to expand the reach of its marks for any new purpose, or to interfere in any manner with the uses of the Lyman mark by Lyman Boats or Lyman Life, and will agree to this.

We believe that the LBOA's application for registration of the Lyman mark for association services in Class 35 is compatible with and can co-exist with the Lyman Boats registration in Class 41 (which the LBOA consciously decided not to request an extension to oppose so as not to create further tension while we are in negotiations) because each registration reflects activities currently and previously conducted by the LBOA as a non-profit association, and Lyman Boats as a for-profit entity, respectively. Each is known to the Lyman boating world as the source of their specific services, activities, and products under the Lyman mark. If the LBOA and Lyman Boats agree as between each other that they do not infringe, and if Lyman Boats and Lyman Life agree not to form, or encourage others to form a not for profit association using the Lyman mark for association services as conducted by the LBOA, the distinction between the source of the use of the Lyman mark for everyone's activities will remain clear. The LBOA will agree not to use its Class 35 registration as a basis to seek other registrations for the Lyman mark. The draft recently provided to us did not address the groups issue, which had been addressed in the April 29 draft from Ryan Koroknay, and which we have drawn upon in inserting a provision in our draft concerning the Lyman Groups.

Our proposed agreement, redlined to the one provided by Joe Burke on October 11, is as follows:

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter referred to as the "Agreement") is entered into effective as of the last date of signature hereto, by and between LYMAN BOATS LLC, an Ohio limited liability company, its members, directors, representatives, agents, successors and assigns, having an address at 3718 Lindsey Road, Lexington, OH 44904 (hereinafter "Lyman Boats"); and THE LYMAN LIFE, LLC, an Ohio limited liability company, its members, directors, representatives, agents, successors and assigns, having an address at 21300 Lorain Road, Fairview Park, OH 44126 (hereinafter "Lyman Life"), on the one hand; and LYMAN BOAT OWNERS ASSOCIATION, an Ohio not-for-profit corporation organized under IRS §501(c)(3), its members, directors, officers, representatives, agents, successors and assigns, having a principal address located at P.O. Box 40052, Cleveland, Ohio 44140 (hereinafter "LBOA"), on the other hand.

RECITALS

A. **WHEREAS**, Lyman Boats is the owner of the U.S. Trademark Application/Registration Nos. listed on Attachment A attached hereto (the "Lyman Boats U.S. Applied For/Registered Marks"), the corresponding common-law marks, and other marks.

B. **WHEREAS**, Lyman Life is the owner of the U.S. Trademark Application/Registration Nos. listed on Attachment A (the "Lyman Life U.S. Applied For/Registered Marks"), the corresponding common-law marks and other marks, and whereas Lyman Life is the exclusive licensee of the mark LYMAN from Lyman Boats in at least Classes 18, 21, 24 and 25.

C. **WHEREAS**, LBOA has filed the U.S. Trademark Application Nos. listed on Attachment A (the "LBOA U.S. Applied For Marks").

D. **WHEREAS**, ~~a-disputes have arisen between Lyman Boats and Lyman Life-Life,~~
~~on the one hand, and the LBOA, on the other hand,~~ regarding (a) ~~the LBOA U.S. Applied For~~
~~Marks;~~ (b) ~~LBOA's alleged uses of the LYMAN mark;~~ and (c) ~~claims by the LBOA for the use~~
~~of the sale of various goods under the LYMAN BOAT OWNERS ASSOCIATION mark for the~~
~~sale of various goods;~~ and (d) ~~the validity of certain of the Lyman Boats U.S. Applied~~
~~For/Registered Marks.~~

E. **WHEREAS**, the parties wish to resolve all ownership claims and disputes over
the LYMAN mark and wish to resolve all claims and disputes that have been stated or could have
been raised in any mediation, arbitration or litigation.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency
of which are hereby acknowledged, the parties, on behalf of themselves, their respective
members, directors, trustees, managers, officers, employees, representatives, agents, attorneys,
successors and assigns, intending to be legally bound, hereby covenant and agree as follows:

COVENANTS BY LYMAN BOATS AND LYMAN LIFE

1. ~~Lyman Boats and Lyman Life grant LBOA's right to use the mark "LYMAN~~
~~BOAT OWNERS ASSOCIATION" for purposes of the club's association services it provides to~~
~~its members pursuant to Class 35 of the United States Patent and Trademark Office (hereinafter~~
~~"USPTO").~~ COMMENT: This is unnecessary: dismissal of the oppositions and registration of
the marks establishes the rights to the marks.

2. **Dismissal of Opposition Proceedings by Lyman Boats and Lyman Life.**

Within seven (7) days of execution of this Agreement, Lyman Boats and Lyman Life shall
dismiss with prejudice (a) ~~any~~ any opposition to LBOA's trademark application number
87829776 for the mark "LYMAN BOAT OWNERS ASSOCIATION" for purposes of
association services in Class 35 of the USPTO; ~~(b)~~

~~3. Lyman Boats and Lyman Life grant LBOA's right to use the mark "LYMAN" on the club's annual calendar it provides and sells to its association members.~~

~~4. Within seven (7) days of execution of this Agreement, Lyman Boats and Lyman Life shall dismiss with prejudice any opposition to LBOA's trademark application number 87929876 for the mark "LYMAN" for purposes of a "calendar-only" in Class 16 of the USPTO; and (c) any opposition to the LBOA's US Trademark App. No. 87853109 for LYMAN in Class 35 for association services.~~

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COVENANTS BY LYMAN BOAT OWNERS ASSOCIATION

1. LBOA acknowledges Lyman Boats' right to use and license the use of the marks identified in US Registration Nos. 5200311 in Class 12, 2902748 in Class 12; 2578365 in Class 25; 5682470 in Class 32 and 5732705 in Class 32, and the marks identified in US Application Nos. 87343173 in Classes 18, 21, 24 and 25 and 88109546 in Class 41.

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COMMENT: NOT NECESSARY SEE ABOVE COMMENT

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2. **Dismissal of Counterclaims by LBOA.** Within seven (7) days of execution of this Agreement, LBOA shall dismiss with prejudice ~~its any opposition to or notice of or counterclaims~~ for cancellation of Lyman Boats U.S. Registrations including, but not limited to, U.S. Registration Nos. 5200311, 2578365 and 2902748. ~~Within seven (7) days of execution of this Agreement, LBOA shall file an express abandonment of its US Trademark App. No. 87853109 for LYMAN in Class 35 and Lyman Boats and Lyman Life will withdraw, with LBOA's consent, their Oppositions filed against the '109 application, that being Opposition Nos. 91248654 and 91248658.~~

3. **Non-interference by LBOA with Lyman Boats Trademarks.** LBOA further consents to and will take no action to oppose or interfere with, whether directly or indirectly (either through litigation, opposition or cancellation proceedings or otherwise), any use of or application for or registration of the mark LYMAN by Lyman Boats and/or Lyman Life, including, but not limited to, any current common law usage, pending trademark applications or future trademark applications or registrations, including, but not limited to, in Class 12, 18, 21, 24, 25, 32 and 35, so long as registrations for the same are not abandoned, and provided that no such future applications or registration infringe upon the LBOA trademark registrations, when

and if granted, pursuant to the LBOA's application numbers 87829776, 87929876, and 87853109.

4. Lyman Life as Exclusive Licensee. LBOA acknowledges Lyman Life as the exclusive licensee of Lyman Boats and its right to use as a licensee the mark "LYMAN" for purposes of Class 18, 21, 24, 25 and 35 of the USPTO. **NOTE WE HAVE NOT SEEN THE LICENSE AGREEMENT AND DO NOT KNOW IF THERE ARE EXCEPTIONS TO THE EXCLUSIVITY, IF IT HAS A LIMITED TERM, OR IF THERE ARE LIMITATIONS ON ITS USES OF THE LYMAN MARK**

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5. Non-interference by LBOA with Lyman Life Trademarks. LBOA further consents to and will take no action to oppose or interfere with, whether directly or indirectly (either through litigation, opposition or cancellation proceedings or otherwise), any use of or application for or registration of -the mark LYMAN LIFE by Lyman Life, including, but not limited to: any current common law usage, pending trademark applications Nos. 8782977687599436, 8792987687599433 -or 87853109, and future trademark applications or registrations, including, but not limited to, in Class 12, 18, 21, 24, 25, 32 and 35, so long as registrations for the same are not abandoned, and provided that no such future applications or registration infringe upon the LBOA trademark registrations, when and if granted, pursuant to the LBOA's application numbers 87829776, 87929876, and 87853109.

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6. Limitations on Claims of LBOA to the Lyman Mark. Except as otherwise provided herein, LBOA shall not acquire, or claim or represent that it has any rights or ownership in the mark "LYMAN" (except as otherwise provided herein), shall not file any applications or register the mark "LYMAN." (except as otherwise provided herein), shall not directly or indirectly oppose, impair, contest, interfere with or attempt to cancel any rights Lyman Boats or Lyman Life have in the mark "LYMAN," and shall not adopt, use, file an application for or

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register or assist any other party in adopting, using, filing an application for or registering the mark "LYMAN" (except as otherwise provided herein);

7. Non-interference with LBOA's Sale of LBOA-labelled Merchandise. Lyman Boats and Lyman Life consent to the offer and sale by the LBOA of goods and merchandise bearing the LBOA mark, and agree that doing so does not violate any registered or common law marks owned by Lyman Boats or Lyman Life, provided that (a) all such goods and merchandise clearly and distinctly bear the LBOA initials, logo, or full name; (b) ~~LBOA will~~does not create or sell any merchandise having only the mark "LYMAN", script or otherwise, with ~~any~~ said restrictions applying to any and all merchandise LBOA wishes to sell on its website or to the general public whether it is currently doing so or intends to do so in the future; (c) the consent granted by Lyman Boats and Lyman Life to LBOA under this Section 7 will not be used by the LBOA as a basis for seeking future registration of any trademarks bearing the Lyman mark; (d) the LBOA will clearly identify the LBOA as the source of such goods and merchandise when offering any of the same for sale; (e) the LBOA will not establish a booth or display specifically to sell merchandise, and will confine its selling efforts to Facebook, website and other social media promotions, advertisements in *The Clinker*, and other publications of the LBOA, and displays at events that it sponsors such as the All Classics Festival or at events that it attends such as the Cleveland Boat Show, which displays will merely be part of a larger display promoting the LBOA as an association and not on a stand-alone basis; (f) the LBOA will not intentionally copy the design of any goods or merchandise currently or hereinafter offered by Lyman Life as licensee, or of Lyman Boats, and will not pass off any of the LBOA goods or merchandise as the goods and merchandise of either Lyman Life or Lyman Boats, it being understood and agreed however, that the mere offering by LBOA of the same category or type of goods or merchandise, or of goods or merchandise similar in design or color, is not a violation by the LBOA of this

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representation. By way of example with respect to subpart (f), the LBOA may offer for sale boating-related merchandise bearing the LBOA mark that is in the same category of goods or merchandise, and/or may be similar in appearance to such goods and merchandise, but so long as the goods or merchandise offered bear the LBOA mark, the LBOA makes it clear that the LBOA is the source of such goods or merchandise, and the goods and merchandise are sufficiently distinct as to avoid any reasonable confusion as to the source, the LBOA is not in violation of this covenant.

8. **Lyman Groups.**

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(a) Lyman Boats recognizes the LBOA as the only national non-profit association for Lyman boat owners and enthusiasts. The LBOA recognizes that Lyman Boats has created groups bearing the Lyman name that function under the umbrella of the Lyman Boats Facebook home page, consisting of the Lake Erie Lyman Group; St. Croix River Lyman Group, the Chesapeake Bay Lyman Group, The Southeast Lyman Group, the Florida Gulf Coast Lyman Group, and the Puget Sound Lyman Group. ("Lyman Groups"). Lyman Boats and the LBOA agree that Lyman Boats can continue to permit these existing Lyman Groups to function and to utilize any Facebook pages or other social media specifically created for or by these group, but Lyman Boats agrees not to organize events for the Lyman Groups or otherwise promote their activities, to remove from its website and other social media all references to the formation of new Lyman groups including offering assistance to them, and to cease sponsoring or promoting the formation of Lyman groups, except with the approval of the LBOA. Lyman Boats will also encourage, but not require, members of existing Lyman Groups (other than the New England Lyman Group) to become members of the LBOA and to cause the Lyman Groups (other than the New England Lyman Group) to become Chapters of the LBOA in accordance with the Chapter provisions of the LBOA Code of Regulations. NOTE: THIS PROVISION IS DRAWN IN PART FROM

AND INCORPORATES SOME OF THE PROPOSALS FROM RYAN KOROKNAY IN HIS DRAFT AGREEMENT OF APRIL 29, 2019

(b) Lyman Life agrees that it will not, create, sponsor or encourage any other person to create any Lyman groups similar to the Lyman Groups created by Lyman Boats or using the Lyman mark in any manner, including the Lyman Life mark.

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9. Lyman Calendars. Each of Lyman Life and Lyman Boats agrees, severally, that neither it nor any person affiliated therewith will publish a calendar featuring photographs of, dedicated to, or referring to Lyman boats, whether historical or otherwise, including but not limited to a calendar bearing the legal name of either Lyman Life or Lyman Boats, and whether or not such calendar is offered for sale separately or in conjunction with the offer of other items of value, or is offered on a complimentary basis. NOTE: THIS IS SOMETHING THAT RYAN KOROKNAY ALSO OFFERED IN HIS APRIL 29 DRAFT

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COVENANTS BY ALL PARTIES

~~1. Lyman Boats and Lyman Life grant to LBOA a non-exclusive license to sell any merchandise with all royalties waived, utilizing LBOA's current logo defined as a red circle with Lyman script in the center and BOAT OWNERS ASSOCIATION in plain font around the perimeter, as set forth in Attachment B to this Agreement and incorporated herein by reference subject to the following:~~

- ~~a. Lyman Boats retains the right to control the nature and quality of any licensed goods distributed and sold by LBOA and Lyman Life has the right to control the pricing of said goods;~~
- ~~b. Any use of the mark "LYMAN" shall inure to the benefit of Lyman Boats;~~
- ~~c. LBOA shall not acquire, or claim or represent that it has any rights or ownership in the mark "LYMAN" (except as otherwise provided herein), shall not file any applications or register the mark "LYMAN" (except as otherwise provided herein), shall not directly or indirectly oppose, impair, contest, interfere with or~~

~~attempt to cancel any rights Lyman Boats or Lyman Life have in the mark "LYMAN," and shall not adopt, use, file an application for or register or assist any other party in adopting, using, filing an application for or registering the mark "LYMAN" (except as otherwise provided herein);~~

~~d. LBOA will not create or sell any merchandise having only the mark "LYMAN", script or otherwise. Said restrictions apply to any and all merchandise LBOA wishes to sell on its website or to the general public whether it is currently doing so or intends to do so in the future.~~

210. Further Representations. LBOA, Lyman Life and Lyman Boats each

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~~represent to the other parties that; and warrant to the other that:~~

~~(a) Each has the full corporate right, power, and legal authority to enter into this Agreement and to perform the acts required of it hereunder;~~

~~(b) The execution of this Agreement by such Party and the performance by such Party of its obligations and duties hereunder do not and shall not violate any other Agreement to which such Party is a Party or by which it is otherwise bound;~~

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~~(c) When executed and delivered by such Party this Agreement shall constitute the legal, valid and binding obligation of such Party enforceable against such Party according to its terms;~~

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~~(d) Neither has made or makes any representations, warranties or Agreements related to the subject matter hereof that are not expressly specified in this Agreement.~~

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311. Publicity. LBOA, Lyman Life, and Lyman Boats will cooperate to create an appropriate public and promotional announcement relating to the entering into of this Agreement and its terms relationship set forth in the Agreement, and ~~neither~~no party will make any such announcement until the text of the announcement has been agreed to. The announcement will be posted as close to simultaneously as possible on the websites and Facebook pages of LBOA, Lyman Boats, and Lyman Life. If either any party receives a question from a third person that asks for a reason that the parties entered into the agreement, or otherwise asks substantive questions that involve policy, business decisions, or interpretations, the party receiving such question or questions will forward the same to the other party or parties as soon as practicable, and the parties will cooperate in formulating a response. It is the intention of this section to

representatives, agents, successors and assigns of and from any and all past, present and future claims and liabilities, demands, damages, actions, causes of action, suits, debts, interest, costs, taxes, claims for attorneys' fees, liabilities, and expenses of whatever kind or nature, whether known or unknown, whether in contract, tort, equity, or otherwise, whether statutory or common law, whether arising under federal, state or local statute, rule, or ordinance, including but not limited to any and all claims for trademark infringement, and any claims or defenses that were raised or could have been raised in the opposition proceedings Nos. 91248654, 91248655, 91248656, 91248658, and 91248659 currently pending before the United States Trademark Trial and Appeals Board, which Lyman Boats, Lyman Life, or each of them had, now has, or could have against the LBOA, or any of its officers, trustees, representatives, agents, successors, and assigns from the beginning of time to the date hereof.

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13. Pre-litigation Mediation. The parties agree that if any controversy or claim should arise out of or relating to this Agreement or the making, interpretation, or performance hereof, prior to commencing any litigation with respect thereto the complaining party or parties will give written notice to the other party, and the parties will submit the claim(s) to mediation as soon as practicable, and no less than forty-five (45) days after such notice. The mediation will be administered by a mediator mutually agreeable to the parties, and will be held in Cleveland, Ohio. Mediation will be non-binding and confidential. The parties will each be represented in the mediation by a person with authority to settle such dispute, and will participate in any such mediation in good faith with a view to resolving the dispute and avoiding the expense of litigation. The mediator's fee shall be divided equally as between the opposing party, but otherwise each party is responsible for its own expenses. The parties will refrain from initiating any legal proceedings during the mediation process.

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414. Miscellaneous.

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~~(a) It is the express intention of the parties that~~ This Agreement and all of its terms shall be governed by and construed according to the laws of the State of Ohio with jurisdiction in Cuyahoga County, Ohio. If it should appear that any of the terms of this Agreement are in conflict with any rule of law or statutory provision of the State of Ohio, then the terms of this Agreement which may conflict with the law of the State of Ohio shall be deemed inoperative and null and void insofar as they may be in conflict with such law, and shall be deemed modified to conform to such rule of law.

5. ~~(b)~~ This Agreement may not be modified or amended except by a writing signed by the parties, hereto.

~~(c) The parties agree that this Agreement represents the entire agreement of the parties.~~

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All prior existing agreements (oral or otherwise) ~~between~~ between the LBOA and Lyman Boats, and its successor owner, and assignor Tom Koroknay, and Lyman Life, and LBOA are hereby merged into this Agreement as the parties intend that all prior understandings and agreements are and have been integrated into this Agreement. ~~The parties agree that this Agreement represents the entire agreement of the parties.~~

6. ~~(d)~~ This Agreement shall not be transferrable or assignable to another without the prior written consent of all parties. Unless mutually terminated by all three signatory parties, this agreement shall remain in effect for perpetuity. If a party seeks to terminate this agreement on the basis of a material breach by another other party, the party seeking termination must provide written notice to the other party of the specific nature of the material breach asserted and provide sufficient details as to provide the other party with reasonable notice of the purported breach. The receiving party will then have thirty days to cure said breach, and no such termination shall be effective until the expiration of such thirty-day period if the breach is not cured. Termination

shall not relieve either party of any obligations incurred prior to the termination. If the agreement is terminated by mutual agreement or due to a material breach, each party is no longer legally obligated to uphold any agreed upon stipulations contained within this agreement

(e) This Agreement has been negotiated between, and is deemed to have been drafted by, all parties, such that any rule construing ambiguities against the drafter shall have no force and effect in the interpretation of this Agreement.

(f) This Agreement may be executed by signatures on one or more counterparts. If so executed, the various counterparts shall, when taken together, be construed as one instrument. For convenience, the various signatures may be collected and annexed to one or more documents to form complete counterparts, and signatures transferred via facsimile or PDF will be treated as if they were originals for all purposes.

(g) The recitals in the WHEREAS clauses of this Agreement are a material part of this Agreement and shall also be given due consideration in interpreting the other provision hereof.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Settlement Agreement on the day and year indicated.

LYMAN BOATS LLC

By: _____

Print Name: _____

Print Title: _____

Date: _____

THE LYMAN LIFE, LLC

By: _____

Print Name: _____

Print Title: _____

Date: _____

LYMAN BOAT OWNERS ASSOCIATION

By: _____

Print Name: _____

Print Title: _____

Date: _____

ATTACHMENT A

Owner: LYMAN BOATS LLC

Mark: LYMAN	US App. No. 87343173	Classes: 18, 21, 24, 25
Mark: LYMAN	US Reg. No. 5200311	Class: 12
Mark: LYMAN	US Reg. No. 2902748	Class: 12
Mark: LYMAN	US Reg. No. 2578365	Class: 25
Mark: LYMAN	US Reg. No. 5682470	Class: 32
Mark: LYMAN	US App. No. 88109546	Class 41
Mark: LYMAN BOAT BEER WORKS	US Reg. No. 5732705	Class: 32

Owner: THE LYMAN LIFE, LLC

Mark: #LYMANLIFE	US App. No. 87599436	Classes: 18, 21, 24, 25, 35
Mark: LYMAN LIFE	US App. No. 87599433	Classes: 18, 21, 24, 25, 35
Mark: THE BOAT IS JUST THE BEGINNING	US Reg. No. 5460228	Classes: 18, 21, 24, 25
Mark: Design of Boat	US Reg. No. 5460227	Classes: 18, 21, 24, 25

Owner: LYMAN BOAT OWNERS ASSOCIATION

Mark: LYMAN	US App. No. 87929876	Class: 16
Mark: LYMAN	US App. No. 87853109	Class: 35
Mark: LYMAN BOAT OWNERS ASSOCIATION	US App. No. 87829776	Class: 35

Karl E. May

From: Karl E. May
Sent: Wednesday, October 30, 2019 5:54 PM
To: Joseph T. Burke
Subject: this morning's meetings

Ryan and I want to thank you for the courtesies extended to us at the meeting this morning, and for keeping the focus on resolution rather than past history. We also appreciated Jay's "intermediary" role as I think he helped bring the issues—and ways to resolve them—into clearer focus. It was also very helpful that each of us had the opportunity to not only identify what was important to us, but also why; I think that this demonstrated that of our interests are not necessarily in conflict and can be reconciled by agreement.

Karl E. May



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KMay@frantzward.com | FrantzWard.com | [LinkedIn](#)

Karl E. May

From: Karl E. May
Sent: Wednesday, November 20, 2019 5:35 PM
To: Joseph T. Burke
Subject: follow up thought

Hi Joe.

We have looked further into the issue of clarifying the distinction between LBOA labelled merchandise, and Lyman Life or Lyman Boats merchandise, while at the same time preventing someone from arguing that you are not protecting the mark. In talking further with Roger Emerson, he believes that we could enter into an agreement analogous to a "consent agreement" (which would be normally filed with the trademark office to overcome a refusal of a registration but could be used as an agreement between us since filing it would not be necessary in our case) that provides that the parties agree that the marks are not confusingly similar, coupled with an agreement that the LBOA will insure that its full name is prominent on any item that we create AND that we will limit our channels and manner of offering anything we create. We already proposed both of these in our draft agreement. For example, as to the channels and manner, we specifically offered to limit our sales through our website, Facebook, and LBOA booths at shows where merchandise sale is only part of our activity, all clearly under the LBOA banner and therefore avoiding the likelihood of confusion as to source. Moreover, by virtue of the fact that we are using the LBOA name, we are for all intents and purposes limiting our buyers to members (and perhaps a few people who might want to make a gift to a member). Roger feels that such an agreement would be more than a "thin" or "naked" consent, would obviate confusion as to source, and would show control by Lyman Boats/Lyman Life over the use of the mark sufficient to defeat a third party argument that you are not doing so, without imposing the traditional restrictions in a license agreement such as quality, etc. The Trademark rule that covers consent agreements is 1207.01(d)(viii). Such consent agreements are to be given great weight if filed with the Trademark Office in connection with getting approval of filings for similar names, so I should think they would be given considerable weight as against a claim by a third party that you are not enforcing the mark in the unlikely event the issue should ever arise.

Also, there is quite a bit of trademark law that says reasonable enforcement of your mark is sufficient to avoid losing it; you don't have to pursue everyone; all you have to do is prevent such widespread use that the mark becomes generic. This is the view of TTAB.

Can you run this past John?

Karl E. May



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December 27, 2019

FOR SETTLEMENT PURPOSES ONLY
VIA EMAIL

Joseph T. Burke, Esq.
Polito Rodstrom Burke LLP
21300 Lorain Road
Fairview Park, Ohio 44126

Dear Joe:

The LBOA Board of Trustees have considered your letters of December 11, and December 23, 2019.

Items 1-3 in your letter are acceptable.

As to Item 4, as I have stated to you on numerous recent occasions, the characterization of an agreement that permits LBOA-branded apparel as a “license agreement”, while troublesome to the Board, is less important than the terms of the agreement. Your prior proposals have all imposed requirements for control by Lyman Life/Lyman Boats over the “nature, quality, pricing” and although your December 11 letter does not reference this, the LBOA assumes that this is still your position based on our prior conversations. It would have been helpful if your letter had addressed this specifically rather than forcing us to have to try to ascertain what you meant, but if that indeed remains your position, it is unacceptable to the Board.

With further respect to this issue, I want to remind you that in early 2016, when Ryan Koroknay terminated the negotiations with Ryan Nagel regarding a license agreement for the LBOA to create Lyman-labelled goods for Lyman Boats (which was the same time that Lyman Life came into the picture and obtained a license agreement), Ryan Koroknay stated in an email to Ryan Nagel on March 20, 2016 that:

Tom was more than willing and happy to continue and extend the same type of agreement that he (as a founding member of the original Ohio Lyman club) helped draft between the original LOG/LBOA and Mr. Chuck Kinter, the owner of CBC Lyman back in the 1980s. Tom has been granting unwritten permission for continued use of the

Lyman mark in association with routine LBOA business so as not to disrupt the continuity of the club and also out of courtesy and respect for the Ohio organization that he helped found in the early 1980s.

The original agreement granted the Lyman club permission to use the Lyman mark in the course of routine business and on any clothing or like items as long as it stated "Lyman Boat Owners Association" or "LBOA" on clothing/accessories and NOT just "Lyman Boats" or "Lyman Boat Works" etc. so as not to compete directly with the owner of the Lyman mark. (emphasis added).

Problems/disagreements have arisen in the past when a third party profit making entity, *through the Lyman club (emphasis added)* has attempted to use the Lyman mark beyond the scope of routine LBOA business and turn a profit selling Lyman clothing/accessories without a formal agreed upon licensing agreement.

The best way to set everything straight and avoid any future issues would be to engage in writing a further extension of the original agreement that was struck back in the 1980s between Mr. Kinter and the then Lyman Owners Group. Tom has a licensing agreement that we can amend to reflect this formal agreement and we can get it signed and move forward. (emphasis added)

I think rekindling and extending this original agreement would be the best option at the present time given our combined plans/desires to expand the Lyman brand. The agreement would allow the LBOA to design and sell clothing strictly for LBOA members and the betterment of the club. Tom would not pursue any sort of percentage based licensing fee associated with this agreement so long as the proceeds go directly to supporting the non-profit LBOA and not a third party entity.

I think this is a great opportunity to band together. Tom and I will focus on expanding the Lyman brand outside the LBOA, and the LBOA can focus on expanding opportunities with Lyman Boat Owners Association gear. This strategy will allow for large selection of high quality merchandise for every Lyman lover and expansion of the brand, which is the common goal we are all trying to achieve.

As Ryan recognized, therefore, the only relevant limitation was that the LBOA use its name on the goods.

I provide the above to demonstrate that Tom was previously willing to grant a royalty-free license that did not require control over the nature, quality and price, so long as the goods bore the LBOA brand. To reach a global settlement we are and have been willing to settle for an agreement that is substantively the same as the Kinter permission letter and as offered in 2016 by Ryan. In fact, our proposed agreement gives you even more protection because we offered selling channel limitations to make the goods further distinguishable as to source. At one point you and I were going to have a call with John Murtaugh to discuss the trademark law aspects of

such an agreement, but it never got arranged. In any event, it is our conclusion, especially after receiving your Dec. 23 letter, that you have rejected any form of co-existence or license agreement—regardless of what it is called—unless it gives you control over the quality, pricing and nature, and that your position is final.

As for your position that we must abandon our Class 35 registration, in our redlined version of the settlement agreement we offered a mechanism to protect your clients from further expansion of the Lyman mark by the LBOA without even asking that you disband the current groups. We also explained that this co-existence agreement would align all of our interests with respect to third parties who might attempt to use the Lyman mark for similar purposes. Your Dec. 11 letter rejects this, but you have never stated why this is not acceptable and why it does not solve your concerns that we would use the registration to somehow expand our use of the mark, when we have made an explicit agreement not to do so. I believe this issue was one that we were to discuss in the call with Mr. Murtaugh as well. Regardless, we concluded that this, too, is your final position on this issue.

Our position is, and has been, that we can resolve the two remaining issues in the following manner.

- (1) Lyman Boats/Lyman Life will permit the LBOA to create and sell LBOA branded merchandise in the manner and within the narrow channels proposed in our latest draft of the settlement agreement, without control by Lyman Boats/Lyman Life over the “nature, quality and pricing” (which proposal, as noted above, is even more restrictive than the agreement with Kinter or the agreement Tom was willing to sign in 2016 due to the selling channel restrictions we offered); and
- (2) LBOA is allowed to obtain its Class 35 registration, with the restrictions on the LBOA’s expanding the mark, and with the restrictions on further group activities by Lyman Boats, in accordance with the co-existence provisions we proposed in our red-lined draft.

However, because we believe that you intended to communicate to us that your position on these two matters is final, it appears, regretfully, that negotiations are at an end. If our conclusions are wrong, please let me know ASAP.

As to the discovery conference proposed in your Dec. 23 letter, I am not available on the 30th or at any time before the end of the year, as I have (among many other things) a transaction that we are trying to finalize by Dec. 31. In any event, as I understand it, the TTAB will set a new schedule, including a date by which the discovery conference must be held, so there is no urgency to schedule the conference on such short notice.

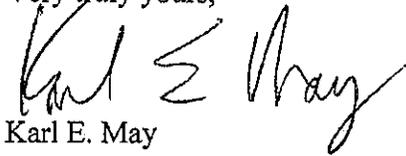
Moreover, in light of what we understand to be a movement to vote the current officers out of office at the LBOA annual meeting on January 18, I see no reason for a discovery conference until it is known whether there will be a change. If there is, I would no longer serve

Joseph T. Burke, Esq.
December 27, 2019
Page 4

as an officer and would also withdraw as legal counsel for the LBOA. If the goal of such movement is to elect persons sympathetic to the position of Lyman Life and Lyman Boats (which goal was not only relayed to me by Mark O'Donnell, but is also consistent with the recent sign-up of new members, including, among others, Tom Koroknay and Michelle), and if they are elected, it is a reasonable conclusion that they would change the position of the LBOA both in the trademark cases and with respect to an agreement with Lyman Boats and Lyman Life.

If you believe that the recent offer of Mark O'Donnell to mediate has any impact on the current status or any of the above, please let me know.

Very truly yours,

A handwritten signature in black ink that reads "Karl E. May". The signature is written in a cursive, slightly slanted style.

Karl E. May

KEM: