

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

T-PEG, INC and)
TIMBERPEG EAST, INC.,)
Plaintiffs,)
)
vs.) No. 03-CV-462-M
)
VERMONT TIMBER WORKS, INC.,)
and DOUGLAS FRIANT,)
Defendants.)

DEFENDANTS' PROPOSED
ADDITIONAL JURY INSTRUCTION

Defendants respectfully request that the Court add the following additional jury instruction (inserted after former Point 9 on p. 21 of the draft):

In determining whether the plaintiffs' and defendants' works are substantially similar, you must also consider differences between them. Slight or trivial variations between works will not prevent a finding of infringement. But if the points of dissimilarity not only exceed the points of similarity, but indicate that the remaining points of similarity are of minimal importance, either quantitatively or qualitatively, then no infringement results.

See T-Peg, 459 F. 3d 97 at 112 (page attached).

Date: September 22, 2009

VERMONT TIMBER WORKS, INC.
and DOUGLAS FRIANT,
Defendants,

/s/ W. E. Whittington
W.E. Whittington

W. E. Whittington (Bar No. 6916)
Whittington Law Associates, PLLC
35 South Main Street
Hanover, NH 03755
(603) 643-2755
ned@whittington-law.com

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2009, I served the foregoing pleading on the following counsel of record, by causing it to be filed electronically via the CM/ECF filing system.

Daniel E. Will, Esq.
Jonathan Shirley, Esq.
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03105
dwill@deviinemillimet.com
jshirley@devinemillimet.com

/s/ W. E. Whittington
W. E. Whittington