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TRADEMARK

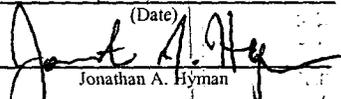
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant : Forum Snowboards, Inc.)
Serial No. : 75/835,719)
Filed : October 29, 1999)
Mark : FORUM SNOWBOARDS)
(as amended))
Examining Attorney : Shari Sheffield)
Law Office : 109)

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on

April 24, 2003

(Date)


Jonathan A. Hyman

NOTICE OF APPEAL

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



04-28-2003

U.S. Patent & TMO/TM Mail Ropt Dt. #11

ATT: TTAB/FEE

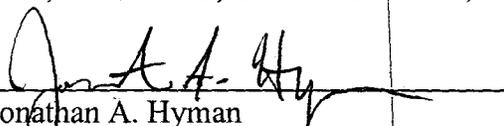
Dear Sir:

Applicant, Forum Snowboards, Inc., hereby appeals to the Trademark Trial and Appeal Board the Examining Attorney's final refusal of the above-referenced application on the ground of a likelihood of confusion under Section 2(d) of the Trademark Act as set forth in the third Office Action dated October 24, 2002.

The required appeal fee is attached hereto. Please charge Deposit account No. 11-1410 for any additional fees which may be required, or credit any overpayment to this account.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

By: 
Jonathan A. Hyman
2040 Main Street, 14th Floor
Irvine, CA 92614
(310) 551-3450

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Dated: 4.24.03

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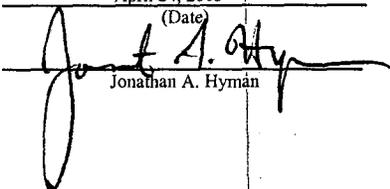
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Jonathan A. Hymán

**APPLICANT'S MOTION FOR SUSPENSION OF APPEAL PENDING REVIEW OF
REQUEST FOR RECONSIDERATION BY EXAMINING ATTORNEY**

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

ATT: TTAB NO FEE

Dear Sir:

Applicant, Forum Snowboards, Inc., through its attorneys, hereby requests that the Trademark Trial and Appeal Board ("TTAB") suspend the appeal in connection with the above-referenced application and remand jurisdiction to the Examining Attorney pending the Examining Attorney's consideration of Applicant's Request for Reconsideration filed on April 24, 2003.

In the third Office Action dated October 24, 2002, the Examining Attorney continued and made final her refusal to register Applicant's mark on the ground of a likelihood of confusion under Section 2(d) of the Trademark Act. In response to this rejection, Applicant has filed an appeal to the final refusal with the TTAB. In addition, Applicant submitted a Request for Reconsideration. A copy of Applicant's Request for Reconsideration is attached hereto as Exhibit A.



04-28-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

In light of Applicant's Request for Reconsideration, Applicant respectfully requests that the TTAB suspend the appeal and remand jurisdiction to the Examining Attorney to consider whether the refusal of Applicant's pending application will be maintained.

Granting this suspension and request for remand is likely to save the Applicant the expense of preparing the appeal brief and will also conserve the resources of the TTAB in the event that the appeal is no longer necessary and can be dismissed at this early stage. Applicant submits that it has shown good cause for suspending the appeal pending the Examining Attorney's reconsideration of her final refusal.

Please charge Deposit Account No. 11-1410 for any additional fees which may be required.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: _____

4.24.03

By: _____

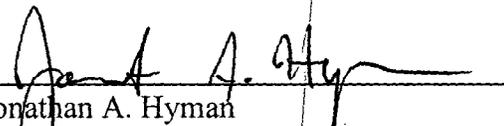

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EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Forum Snowboards, Inc.)
 Serial No. : 75/835,719)
 Filed : October 29, 1999)
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April 24, 2003

(Date)

Jonathan A. Hyman

AMENDMENTS AND RESPONSE TO THIRD OFFICE ACTION
 MAILED OCTOBER 24, 2002 AND REQUEST FOR RECONSIDERATION

Assistant Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, VA 22202-3513

ATT: BOX RESPONSES NO FEE

Dear Sir:

The following amendments and remarks and Request for Reconsideration are in response to the third Office Action mailed October 24, 2002. Applicant has filed a Notice of Appeal simultaneously with this Request for Reconsideration.

AMENDMENT

Amendment of Mark

Please amend the mark from **FORUM** to **FORUM SNOWBOARDS**.

Mark : FORUM SNOWBOARDS
Serial No. : 75/835,719

Disclaimer

Please make the following designation of record:

No claim is made to the exclusive right to use the word SNOWBOARDS apart from the mark as shown.

Identification of Goods

Please amend the identification of goods in the application and on the drawing page as follows:

SNOWBOARD CLOTHING, NAMELY, SNOWBOARD PANTS AND SNOWBOARD JACKETS SOLD IN SPECIALTY SKI SHOPS in International Class 25.

Claim of Ownership

Please make the following designation of record:

Applicant is the owner of U.S. Trademark Registration No. 2,207,535 for the mark FORUM.

REMARKS

I. Amendment of Mark

Applicant has amended its mark in the application, as indicated above, to include the word "SNOWBOARDS." Accordingly, Applicant submits herewith, as Exhibit A, a new drawing page which shows the mark and the goods as amended herein. Applicant respectfully informs the Examining Attorney that the originally-filed specimen submitted with the application shows use of the mark FORUM-SNOWBOARDS on the neck-labels of the shirts. Applicant submits herewith, attached as Exhibit B, enlarged versions of the originally submitted specimens which more clearly show use of the FORUM SNOWBOARDS mark. As these are merely enlargements of the originally filed specimens, there is no need to submit a Declaration in Support of Substitute Specimens.

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Serial No. : 75/835,719

A. A Mark May Be Amended Provided the Amendment is Not a Material Alteration of the Mark

37 C.F.R. Section 2.72(b) permits amendment to the drawing of a mark provided that the specimens support the proposed amendment, and the "proposed amendment does not materially alter the mark." In fact, the T.M.E.P. specifies that an applicant may amend a mark if "the amendment is not a material alteration of the mark, and the specimens of record or foreign registration (if applicable) support use of the mark as amended." T.M.E.P. § 1505.01(c)

As indicated above, the specimens of record support use of the mark as amended. Accordingly, the only question presented to the Examining Attorney is whether the proposed amendment to the drawing materially alters the mark. Applicant respectfully submits that by merely adding the word "SNOWBOARDS" to the mark is not a material alteration the mark.

B. The Mark as Amended Conveys the Same Commercial Impression as the Mark as Shown in Applicant's Application and Thus is Not a Material Alteration

The mark as amended is shown on the specimens in Applicant's application. The addition of the word "SNOWBOARDS" in connection with snowboard clothing conveys the same commercial impression with respect to the identified goods.

T.M.E.P. § 807.14(a) sets forth the test for determining whether an amendment is a material alteration as follows:

The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark. The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition.

T.M.E.P. § (citing In re Hacot-Colombier, 105 F.3d 616, 620, 41 U.S.P.Q.2d 1523, 1526 (Fed. Cir. 1997), quoting Visa International Service Association v. Life-Code Systems, Inc., 220 U.S.P.Q. 740, 743-44 (T.T.A.B. 1983)).

Applicant's mark as amended contains what is the essence of the original mark, conveys the same impression of the original mark, when considered in connection with the applied-for goods and Applicant's ownership of the registration for the mark FORUM for snowboards.

Mark : FORUM SNOWBOARDS
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Further, the amendment is not such an amendment where republication would be required, especially in light of Applicant's disclaimer of the word "SNOWBOARDS." Accordingly, the amendment is not a material alteration.

As further evidence that the mark as amended is not a material alteration, Applicant submits that numerous third-part marks for marks incorporating the wording SNOWBOARD or SKI in connection with clothing in Class 25 exist in which the registrant disclaimed the wording SNOWBOARD or SKI including:

Mark	Reg. No.	Disclaims
BRIDGER SNOWBOARD GEAR	2,525,338	SNOWBOARD GEAR
100% SNOWBOARD BY SPORTINETTA (CANCELLED)	1,983,609	SNOWBOARD
SKI BITCH	2,579,597	SKI
SKI MECCAUSA	2,320,395	SKI USA
SKI TOPS	2,275,621	SKI
SKI JAMMIES	2,211,593	SKI
SKI PUP	2,053,544	SKI
SKI SKINS	1,668,592	SKI
ALPINE SKI	1,461,008	SKI
KAELIN SKIWEAR	1,731,206	SKIWEAR
UNITED WE SKI	2,674,476	SKI

Printouts of these registrations are attached hereto as Exhibit C. These registrations evidence the fact that the PTO has taken the position that wording such as SNOWBOARDS is considered descriptive. Thus, the addition of the descriptive word SNOWBOARDS to Applicant's mark does not change the essence of the mark as originally filed.

II. Disclaimer

Applicant has amended its application, as indicated above, to include a disclaimer of the exclusive right to use the word SNOWBOARDS apart from the mark as shown.

Mark : FORUM SNOWBOARDS
Serial No. : 75/835,719

III. Identification of Goods

Applicant has amended its identification of goods in its application and on the drawing page, as indicated above, to specifically limit its goods to snowboard clothing which is sold through specialty ski shops.

IV. Claim of Ownership

Applicant has amended its application, as indicated above, to include a claim of ownership of U.S. Trademark Registration No. 2,207,535 for the mark FORUM. Applicant's registration covers "snowboards, snowboards binding, snowboards leashes and accessories therefor" in International Class 28. Applicant has used its FORUM mark in connection with "snowboards, snowboards binding, snowboards leashes and accessories therefor" since at least as early as January 20, 1997.

V. Likelihood of Confusion

In the First Office Action, the Examining Attorney initially refused registration of Applicant's mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's mark is likely to be confused with the marks shown in U.S. Trademark Registration Nos.: 1) 826,902 for the mark FORUM in connection with "sweaters" in International Class 25; 2) 845,521 for the mark  in connection with "sportswear- namely, sweaters" in International Class 25; and 3) 1,277,136 for the mark FORUM in connection with "shirts, sweaters, jackets, pants and shorts, sweatshirts, jogging suits and warm-up suits" in International Class 25 (hereinafter collectively referred to as the "Cited Marks").

Applicant notes that it has amended its identification of goods to limit the specific types of clothing it offers and to limit its channels of trade. In light of this amendment, Applicant requests that the Examining Attorney will remove the Section 2(d) refusal.

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A. Likelihood Of Confusion Standard

The Trademark Office recognizes that registration of a mark should not be refused in view of all similar registered marks, but only on the basis of those similar marks whose effect in the marketplace would be to create a likelihood of confusion or mistake on the part of the purchasing public. T.M.E.P. § 1207.01.

The controlling standard for determining likelihood of confusion is whether the purchasing public would mistakenly assume that the applicant's goods originate with, are sponsored by, or are in some way associated with the goods sold under a cited registration or trademark. FBI v. Societe: "M. Bril & Co.", 172 U.S.P.Q. 310 (T.T.A.B. 1971).

A number of factors set forth in *In re DuPont de Nemours & Co.*, must be considered when determining whether a likelihood of confusion exists, including: (1) the similarity or dissimilarity and nature of the goods; (2) the channels of trade for the goods; (3) the similarity or dissimilarity of the marks when considered in their entireties; and (4) third party uses of similar marks. 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973).

B. Dissimilarity Of The Goods

Applicant respectfully submits that there are sufficient differences between the goods associated with the Cited Marks and the goods associated with Applicant's mark such that there is no likelihood of confusion.

The fact that both Applicant's goods and Registrant's goods are both classified in the same International Class of goods by the U.S. Patent and Trademark Office ("PTO") is not determinative of the issue of likelihood of confusion. Groveton Papers Co. v. The Anaconda Co., 197 U.S.P.Q. 576 (T.T.A.B. 1977).

Moreover, it is well established that the issue of whether or not two products are related does not revolve around the question of whether a term can be used that describes them both, or whether

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both can be classified under the same general category. Electronic Data System Corp. v. EDSA Micro Corp., 23 U.S.P.Q.2d 1460, 1463 (T.T.A.B. 1992).

1. There Is No *Per Se* Rule That Articles of Clothing Are Related

The Examining Attorney has indicated that because both marks are used on "apparel" items, there is a likelihood of confusion between the marks. However, because the Cited Marks' goods are limited solely to "shirts, sweaters, jackets, pants and shorts, sweatshirts, jogging suits and warm-up suits," "sweaters," "sportswear-namely, sweaters" and Applicant's goods are limited solely to "snowboard clothing, namely, snowboard pants and snowboard jackets sold in specialty ski shops," the Cited Marks' goods are neither related to, or similar to Applicant's goods. Moreover, as is detailed below, Applicant's goods travel through different channels of trade to different types of purchasers.

Past decisions of the Trademark Trial and Appeal Board and its reviewing courts have held that a "*per se*" rule that articles of clothing bearing the same mark are so similar or related that confusion as to origin is likely is contrary to the basic tenets of trademark law. See In re The Shoe Works, Inc., 6 U.S.P.Q.2d 1890, 1891 (T.T.A.B. 1990) (holding no "*per se*" rule that the use of the same mark on different items of wearing apparel is likely to cause confusion); In re Mercedes Slacks, Ltd., 213 U.S.P.Q. 397, 398 (T.T.A.B. 1982); In re Sydel Lingerie Co., Inc., 197 U.S.P.Q. 629 (T.T.A.B. 1977). The Examining Attorney relies on such a *per se* rule that all items of clothing are related to establish a likelihood of confusion.

Thus, the fact that both Applicant's goods and the Cited Marks' goods can be classified as "apparel" is not a talismanic fact that automatically makes the goods related or otherwise competitive. Instead, the T.T.A.B. has consistently held that in order to support a likelihood of

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confusion, there must be some similarity between the goods beyond the fact that each involves apparel.

Therefore, the proper analysis is not whether the Cited Marks' goods and Applicant's goods sold in specialty ski shops, are related because they are wearing apparel. The proper analysis is whether under the current fact situation as set forth in the application and cited registrations, and not in the abstract, are Applicant's goods and Registrant's goods so related that a likelihood of confusion exists.

Past decisions of the TTAB and the TMEP states: "[t]he facts in each such case vary and the weight to be given each factor may be different in light of varying circumstances; thus, there can be no rule that certain goods or services are *per se* related, such that there must be a likelihood of confusion from use of similar marks in relation thereto." T.M.E.P. § 1207.01(a)(iv) (emphasis in original).

Particularly relevant to the case at hand is *In re British Bulldog, Ltd.*, where the T.T.A.B. held that the mark PLAYERS for "shoes" and PLAYERS for "men's underwear" were not likely to cause confusion. 224 U.S.P.Q. 854 (T.T.A.B. 1984).

Likewise, in *Hyde Park Footwear Co., Inc. v. Hampshire-Designers, Inc.*, the T.T.A.B. found no likelihood of confusion between the use of marks containing the terms "SEAL HARBOUR" on "body shirts" on the one hand and "rubber, canvas boots and shoes" on the other. 197 U.S.P.Q. 639 (T.T.A.B. 1977).

Additionally in *David Crystal, Inc. v. International Shoe Co.*, where the Board found no likelihood of confusion between the mark CONDADO for piece goods for use in dresses, coats, ladies' and men's blouses, and ladies' and men's shorts and the mark CONDADOS for "women's dress, casual, and sport type shoes." 137 U.S.P.Q. 911 (T.T.A.B. 1960)

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Furthermore, in *In re Sydel Lingerie Co., Inc.*, the marks BOTTOMS UP for "ladies' and children's underwear" and BOTTOMS UP for "men's suits, coats and trousers" were allow to co-exist. 197 U.S.P.Q. 629 (T.T.A.B. 1977).

Applicant also directs the Examining Attorney's attention to *Martinique Shoes, Inc. v. Somersville Mfg. Co.*, the Commissioner of Patents determined that use of the mark MARTINIQUE on "shoes" was not likely to be confused with use of the identical mark on "woolen piece goods." 421 U.S.P.Q. 421 (Comm'r of Patents 1958).

Similarly, as goods and the marks at issue in the case at hand are less similar and less likely to cause confusion then the goods and marks in the cited cases, Applicant's mark should be allowed to co-exist with Registrant's mark.

2. The Examining Attorney Rests Her Decision On A Theoretical Likelihood of Confusion Which Is Not The Appropriate Standard

The TTAB and its reviewing courts have established the "no *per se* rule" doctrine to ensure that trademark's are evaluated in real life situations, and not in a vacuum. The Examining Attorney's evidence of third party registrations are the exact prohibition the T.M.E.P. councils against, creation of a "*per se* rule" by examining facts outside the present application and registration.

"There is no likelihood of confusion where the potential for confusion is a mere possibility, not a probability." Castle Oil Corp. v. Castle Energy Corp., 26 U.S.P.Q.2d 1481, (E.D.Pa. 1992) (citing Electronic Data Sales, Inc. v. Electronic Data Sys., 954 F.2d 713, 21 U.S.P.Q.2d 1388, 1393 (Fed.Cir. 1992) (emphasis added)). The Examining Attorney has provided no evidence that transposes the "mere possibility" that there is a likelihood of confusion between the two marks into a "probability." Moreover, the Federal Circuit and the CCPA have held: "[w]e are not concerned with mere theoretical possibilities of confusion, deception, or

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mistake or with de minimums situations but with the practicalities of the commercial world, with which the trademark laws deal." Electronic Data Sales, 954 F.2d at 717. (quoting Witco Chem. Co. v. Whitfield Chem. Co., 418 F.2d 1403, 1405, 164 U.S.P.Q. 43, 44-45 (C.C.P.A. 1969), aff'g, 153 U.S.P.Q. 412 (TTAB 1967). While the Examining Attorney attempts to create a reality from the prior registrations, this evidence is only one theoretical possibility of the practicalities of the commercial world.

Further, Applicant urges the Examining Attorney to adopt the principles set forth in Sears, Roebuck & Co., 2 U.S.P.Q.2d 1312 (T.T.A.B. 1986). In Sears, the TTAB repudiated the principle that all apparel are related by virtue of just common trade channels, common purchasers and the fact that women sometimes buy garments for men. The TTAB held that:

[t]his however, cannot be stated as a matter of law disregarding the competitive distance between different items of apparel considered in light of the particular facts disclosed in each case concerning the conditions and circumstances surrounding the sale of the goods in normal outlets for garments, the possible differences in the likely impact of the marks upon purchasers and prospective purchasers, and the track record of the market interplay between the parties over a measurable period of time in light of common purchasers and trade channels.

Sears, Roebuck & Co., 2 U.S.P.Q.2d 1312.

The instant case is one in which the facts set forth that the goods are not competitively related, nor are the channels of trade and consumers related, such that a likelihood of confusion exists. Specifically, Applicant's mark, as amended is conveys a separate commercial impression form the Cited Marks. Further, the goods covered in Applicant's application are specifically for snowboarding and are not goods which the general public would or could purchase from traditional retail stores, which appears to be the case with the Cited Marks' goods. Of most significance, however, is that Applicant owns a prior registration for the mark FORUM in connection with snowboarding sporting goods in Class 28. Thus, it is more likely than not that

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consumers, upon viewing the FORUM SNOWBOARDS mark will associate snowboarding clothing specifically with Applicant's snowboarding sporting goods and **not** with the clothing offered under the Cited Marks.

C. Third Party Use And Registration Of Similar Marks On Similar Goods

Applicant notes that the PTO has consistently allowed for the registration of the same or arguably similar FORUM marks for clothing by separate companies.

In fact, subsequent to the registration of the Cited Marks, U.S. Trademark Registration No. 1,756,961 for the mark GREAT WESTERN FORUM & Design for "clothing; namely, shirts, jackets, sweaters, caps," owned by California Forum, was examined and proceeded to registration. Further U.S. trademark Application Serial Nos. 75/425,602 for the mark FREE! THE FREEDOM FORUM ONLINE & Design for "T-shirts and baseball caps," owned by The Freedom Forum, Inc., and 78/127,071 for the mark FEDEXFORUM for "men's, women's and children's clothing and footwear; namely, coaches caps, wool hats, painters hats, baseball caps, visors, headbands, earmuffs, knit face masks, belts, wristbands, t-shirts, tank tops, pajamas, golf shirts, dress shirts, sweaters, sweatshirts, jackets, neckties, cloth ski bibs, cloth baby bibs, plastic baby bibs, plastic ski bibs, jerseys, night shirts, coats, robes, raincoats, parkas, ponchos, sneakers, gloves, scarves, mittens, aprons, down jackets, leather jackets, cloth jackets, shorts, sweatpants, jeans, pants, socks, underwear and bathing suits," owned by Federal Express Corporation have either been published for opposition or approved for publication. Print-outs of the registration and applications from the PTO's TESS database are attached hereto as Exhibit D.

In light of this previous stance by the PTO that there was no likelihood of confusion between these marks for "apparel," it seems difficult to reconcile the Examining Attorney's current refusal in this case. The Applicant assumes that these marks were registrable together because the PTO

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believed that only a slight variation in the goods and/or the mark was necessary to avoid any likelihood of confusion.

Since the PTO determined that there was not a likelihood of confusion between these other marks containing the term "FORUM", the same determination supports Applicant's position.

D. The Marks Are Dissimilar

A comparison of Applicant's mark to the Cited Marks shows that the marks are quite dissimilar in appearance, sound, connotation, and commercial impression.

1. The Marks Must Be Compared In Their Entirety

In determining whether there is a likelihood of confusion, potentially conflicting marks must be compared in their entireties. Estate of P.D. Beckwith, Inc. v. Comm'r. of Patents, 252 U.S. 538 (1920) (holding that the commercial impression of a mark is derived from it as a whole, not from the mark's elements considered separately). In fact, it has been held that it is a violation of the anti-dissection rule to ignore elements of a mark in deciding whether confusion is likely. Franklin Mint Corp. v. Master Mfg. Co., 667 F.2d 1005, 1007 (C.C.P.A. 1981).

Applicant's mark is for the term FORUM SNOWBOARDS, while the cited registrations are for the marks FORUM and . The Examining Attorney has only looked at one portion of Applicant's mark in reaching the determination that FORUM SNOWBOARDS has the same commercial impression as FORUM or .

Viewing Applicant's mark as only the word FORUM and conducting a direct comparison between only that portion of the marks, is a violation of the anti-dissection rule. See McCarthy § 23:41, 23-114 (1997) ("The anti-dissection rule is based upon a common sense observation of customer behavior: the typical shopper does not retain all of the individual details of a composite mark in his or her mind, but retains only an overall, general impression created by the composite

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as a whole.”). Even if the “snowboards” portion of Applicant’s mark is deemed is descriptive, by virtue of the anti-dissection rule, it is clear that consumers would place some appreciative value to this term in Applicant’s mark. The purchasing public does not view marks in the marketplace in terms of whether a portion of a mark is generic, instead consumers view marks based on the entire commercial impression of a mark. That is the basis for the anti-dissection rule. This is especially true in light of Applicant’s ownership and use of the FORUM mark on snowboarding sporting goods. Thus, the mark FORUM SNOWBOARDS does not have the exact same commercial impression as the mark FORUM or 

2. The Marks Are Different In Overall Appearance And Commercial Impression

A proper comparison of Applicant’s FORUM SNOWBOARDS mark to the Cited Marks shows that the marks are quite dissimilar in appearance, sound, connotation, and commercial impression.

Although Applicant’s mark and the Cited Marks contain the term “FORUM,” Applicant’s mark also contains the term “SNOWBOARDS.” Thus, even though the Cited Marks and Applicant’s mark contain one common element, because Applicant’s mark contains an additional term, Applicant’s mark offers an entirely different overall appearance and commercial impression from the Cited Marks. Thus, when the marks are properly considered in their entireties, they are dissimilar.

Consumers will undoubtedly see these difference between Applicant’s FORUM SNOWBOARDS mark and the Cited Marks thus negating any likelihood of confusion between the marks.

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The T.T.A.B. and the Federal courts have consistently found that even if a mark incorporates the entire trademark of another, there is no likelihood of confusion between the two marks.

For example, in *In re Variety Supply Co.*, the TTAB found no likelihood of confusion between the marks GAY CHARM and CHARM for the identical types of women's undergarments. 143 U.S.P.Q. 367, 368 (T.T.A.B. 1964).

Applicant also directs the Examining Attorney's attention to *Genesco Inc. v. Tru Balance Corset, Inc.*, where the T.T.A.B. determined that there was no likelihood of confusion between PRIVATE LIFE and LIFE for the identical types of women's undergarments. 152 U.S.P.Q. 198 (T.T.A.B. 1966).

Applicant further directs the Examining Attorney's attention to *Fleetwood Co. v. Mende*, the C.C.P.A. affirmed the T.T.A.B.'s dismissal of a Petition to Cancel the mark "TINT 'N SET" for hair care preparation brought by the owner of the registration for the mark "TINTZ," also for hair care preparations 132 U.S.P.Q. 458 (C.C.P.A. 1962). In reaching its conclusion, the C.C.P.A. stated that merely because both marks contained the term "TINT" and were used on virtually identical goods, did not result in a likelihood of confusion. Id.

Applicant also directs the Examining Attorney's attention to *Giorgio Beverly Hills Inc. v. Revlon Consumer Products Corp.*, where the court found that there was no likelihood of confusion between RED and CHARLIE RED for perfume. 33 U.S.P.Q.2d 1465 (S.D.N.Y. 1994).

Applicant further directs the Examining Attorney's attention to *Bell Laboratories, Inc. v. Colonial Products, Inc.*, where the Court found that no confusion was found between "FINAL" and "FINAL FLIP" both for rodenticides. 231 U.S.P.Q. 569 (S.D. Fla. 1986).

Mark : FORUM SNOWBOARDS
Serial No. : 75/835,719

Because the word "FORUM" is only part of Applicant's mark, consumers will recognize the differences in sight, sound and meaning between the marks. Accordingly, when a proper comparison of Applicant's complete mark and the Cited Marks is made, the obvious differences in appearance, commercial impression and sound outweigh the similarities, and support the conclusion that there is no confusion between the marks.

E. The Conditions Under Which And The Buyers To Whom The Goods Are Sold Are Dissimilar

In light of the amendment to the identification of goods set forth above, Applicant now seeks registration for only **specific** types of clothing sold through **specific** channels of trade. Applicant produces a line of sport clothing, specifically for snowboarders. Applicant's clothing is specially constructed of materials suitable for snowboarding. The clothing is functional, which is necessary to appeal to the snowboarders it is marketed to.

The TTAB has recognized the disparity between the theoretical framework in which the Trademark Office operates and the realities of the marketplace. See, Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG, 34 U.S.P.Q.2d 1266, 1268 (TTAB 1995). The TTAB observed that a registration for a mark used on woolen shirts for sale to miners might block registration of a similar mark used on tee shirts sold at rock concerts on the basis of likelihood of confusion, even though under the **actual circumstances** of the sales conditions, no actual confusion would ever occur. Id. The TTAB noted that "the Board often decides the likelihood of confusion issue on hypothetical, not real world, grounds." Id.

In the real world, the Cited Marks' goods and Applicant's FORUM SNOWBOARDS goods (snowboarder's clothing) will never be sold in the same locale. They will never be sold to the same target audience. And if they were sold side by side in the same marketplace, no consumer would ever mistake one for the other. Given the circumstances under which these

Mark : FORUM SNOWBOARDS
Serial No. : 75/835,719

goods are sold, there is no likelihood of confusion in the marketplace. In fact, Applicant has used its mark for over six (6) years with no instances of confusion with the Cited Marks.

Applicant respectfully urges the Examining Attorney to compare the marks, as a consumer would in the marketplace. The Examining Attorney should consider the real-world style of the goods in question, the manner in which these goods are marketed by Registrant and Applicant, and the target audiences of their respective goods. Applicant respectfully submits that if the Examining Examiner considers the actual and not the hypothetical, she will conclude that there is no likelihood of confusion in the marketplace as to the respective sources of Registrants' and Applicant's goods.

CONCLUSION

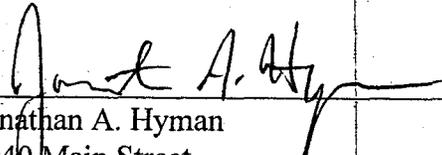
In light of the amendments and remarks set forth above, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register, and requests that the mark be passed to publication. Should the Examining Attorney require further changes to the application which could be made by Examiner's Amendment, the Examining Attorney is requested to contact the undersigned at the telephone number listed below.

Please charge Deposit Account No. 11-1410 for any fees which may be required.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 4.24.03

By: 

Jonathan A. Hyman
2040 Main Street
14th Floor
Irvine, CA 92614
(310) 551-3450
efiling@kmob.com

EXHIBIT A

FORUM.022T

DRAWING

TRADEMARK

APPLICANT:

Forum Snowboards, Inc.

P.O. ADDRESS:

1062 Calle Negocio, Unit-B
San Clemente, CA 92673

FIRST USE ANYWHERE:

January 20, 1997

FIRST USE IN COMMERCE:

January 20, 1997

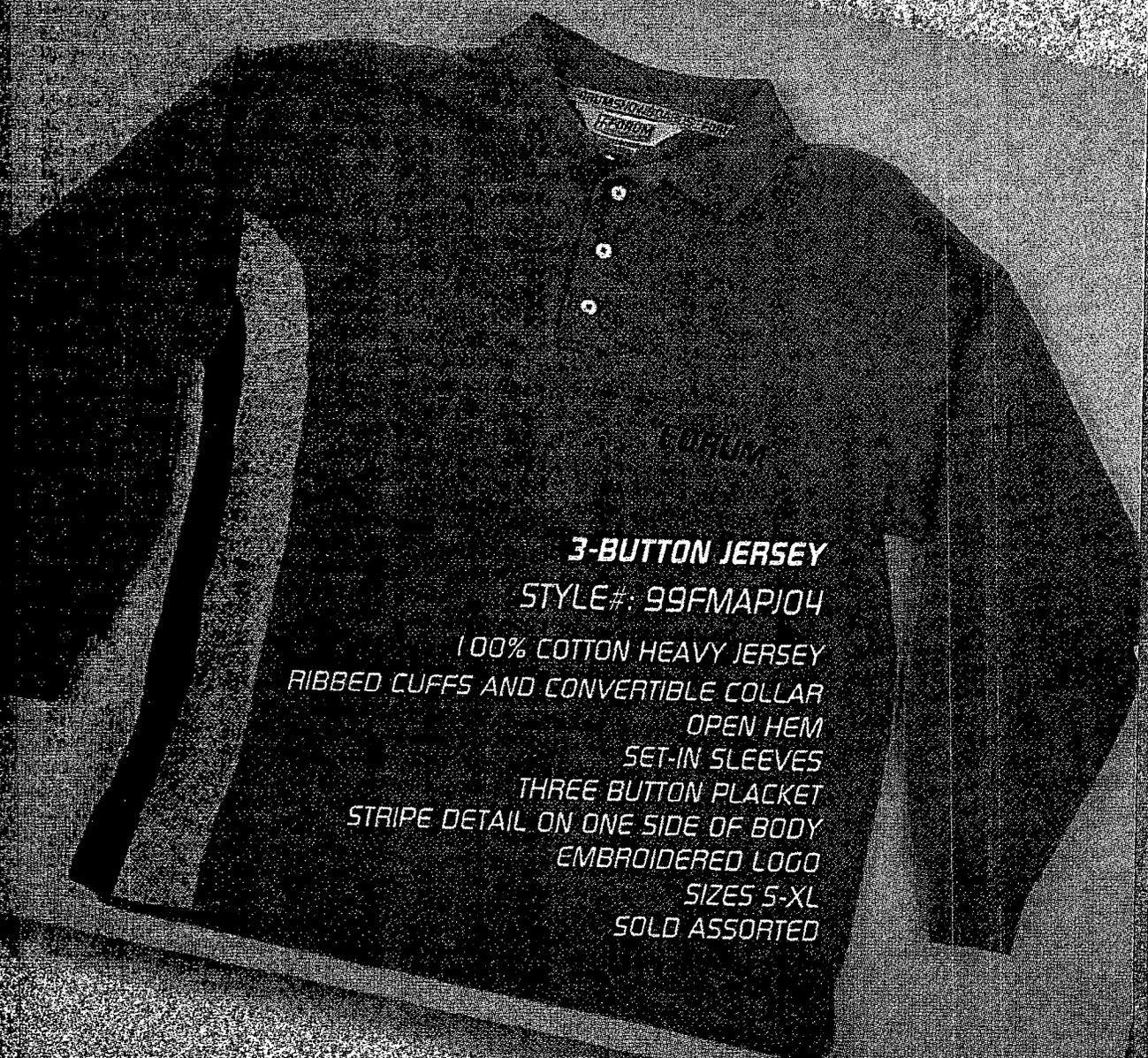
GOODS:

**SNOWBOARD CLOTHING, NAMELY,
SNOWBOARD PANTS AND SNOWBOARD
JACKETS SOLD IN SPECIALTY SKI SHOPS in
International Class 25**

FORUM SNOWBOARDS

EXHIBIT B

PG 35



3-BUTTON JERSEY

STYLE#: 99FMAPJ04

100% COTTON HEAVY JERSEY

RIBBED CUFFS AND CONVERTIBLE COLLAR

OPEN HEM

SET-IN SLEEVES

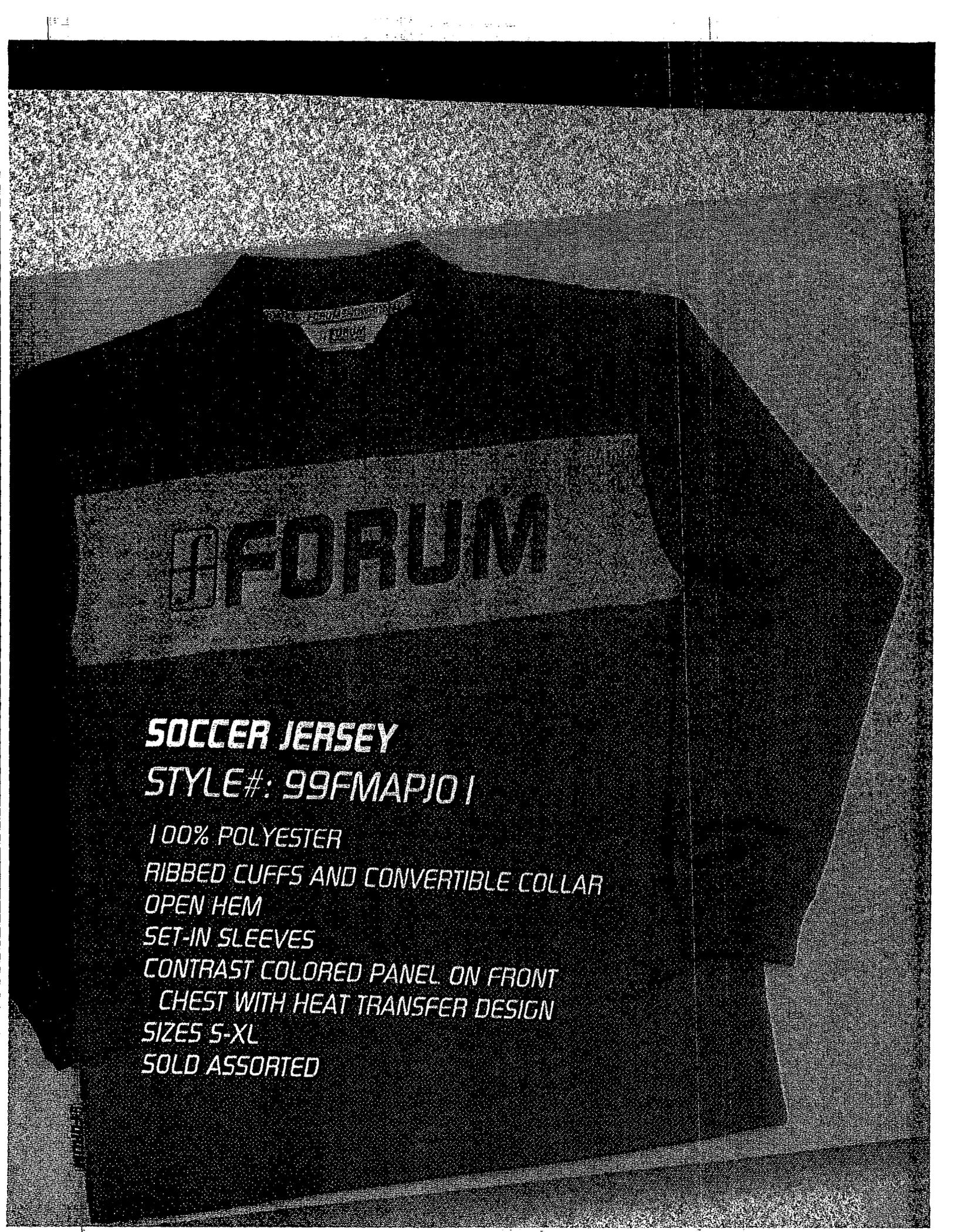
THREE BUTTON PLACKET

STRIPE DETAIL ON ONE SIDE OF BODY

EMBROIDERED LOGO

SIZES S-XL

SOLD ASSORTED



FORUM

Soccer Jersey

STYLE#: 99FMAPJ01

100% POLYESTER

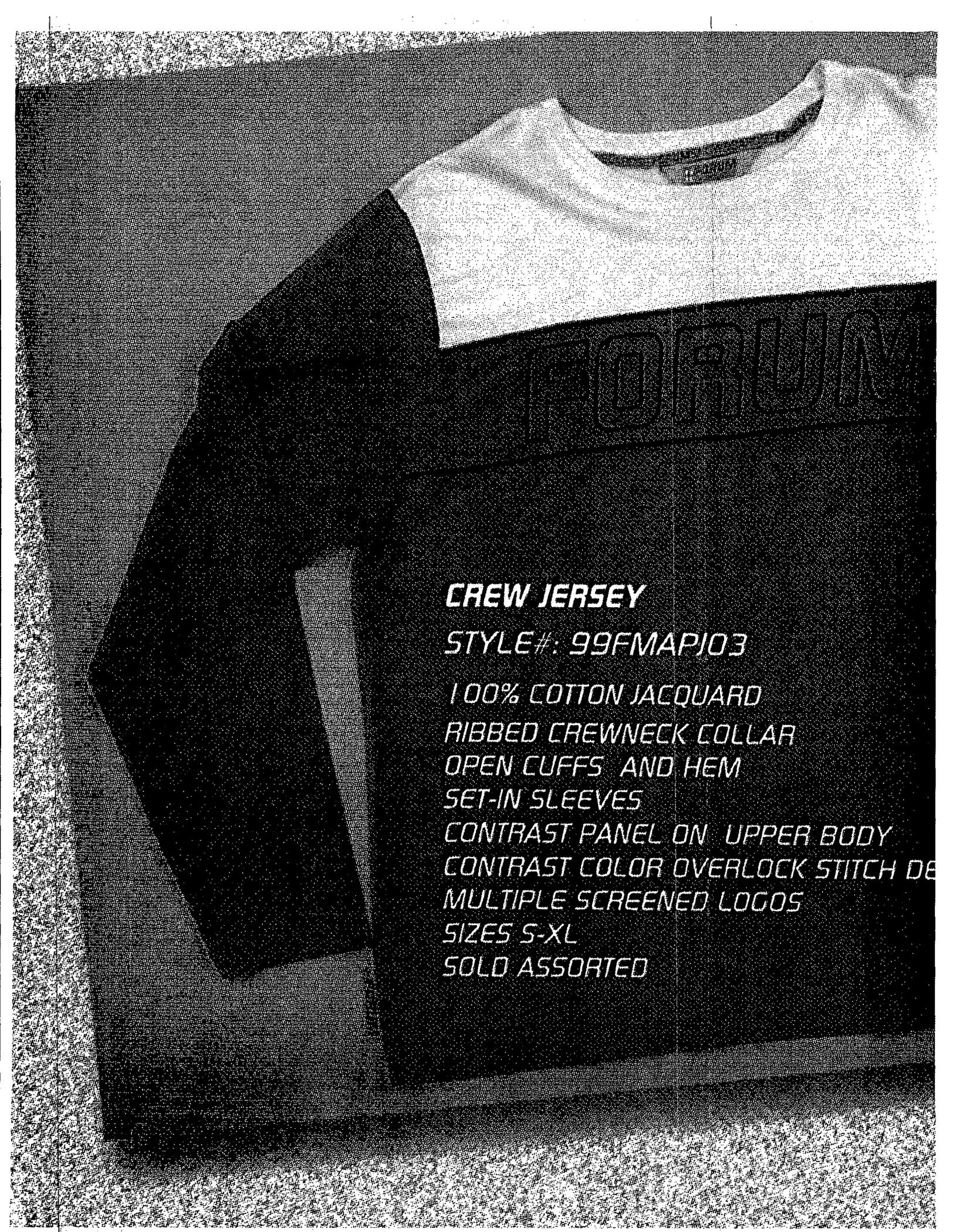
RIBBED CUFFS AND CONVERTIBLE COLLAR
OPEN HEM

SET-IN SLEEVES

CONTRAST COLORED PANEL ON FRONT
CHEST WITH HEAT TRANSFER DESIGN

SIZES S-XL

SOLD ASSORTED



CREW JERSEY

STYLE#: 99FMAPJ03

100% COTTON JACQUARD

RIBBED CREWNECK COLLAR

OPEN CUFFS AND HEM

SET-IN SLEEVES

CONTRAST PANEL ON UPPER BODY

CONTRAST COLOR OVERLOCK STITCH DE

MULTIPLE SCREENED LOGOS

SIZES S-XL

SOLD ASSORTED

EXHIBIT C



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Typed Drawing

Word Mark	BRIDGER SNOWBOARD GEAR
Goods and Services	IC 025. US 022 039. G & S: clothing, namely, jackets, and rainwear, snowboard wear, hunting wear, and ski wear, namely, jackets, pants, overalls, vests and gloves. FIRST USE: 19990100. FIRST USE IN COMMERCE: 19990800
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75217396
Filing Date	December 23, 1996
Filed ITU	FILED AS ITU
Published for Opposition	October 31, 2000
Registration Number	2525338
Registration Date	January 1, 2002
Owner	(REGISTRANT) Triad Sportswear Corporation CORPORATION WASHINGTON 601 Nikles Drive, Suite 2 Bozeman MONTANA 59715
Attorney of Record	WILLIAM B KIRCHER
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SNOWBOARD GEAR" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE



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Word Mark 100% SNOWBOARD BY SPORTINETTA

Goods and Services (CANCELLED) IC 025. US 022 039. G & S: clothing, namely shirts, skirts, pants, jackets, coats, dresses, blouses, sweaters, underwear, pajamas; headgear, namely hats, scarves, berets, headbands, ear muffs and tuques; and footwear

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 210325 241710

Serial Number 74620634

Filing Date January 12, 1995

Filed ITU FILED AS ITU

Published for Opposition April 9, 1996

Registration Number 1983609

Registration Date July 2, 1996

Owner (REGISTRANT) Sportinetta SA JOINT STOCK COMPANY SWITZERLAND Promenade 71
7270 Davos Platz SWITZERLAND

Attorney of Record MESNR.0008

Section 44

Indicator SECT44
Priority Date December 28, 1994
Prior Registrations 1483570
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SNOWBOARD" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Cancellation Date April 5, 2003

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Typed Drawing

Word Mark SKI BITCH
Goods and Services IC 025. US 022 039. G & S: CLOTHING, NAMELY HATS. FIRST USE: 19990200. FIRST USE IN COMMERCE: 19990200
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75874237
Filing Date December 18, 1999
Filed ITU FILED AS ITU
Published for Opposition July 25, 2000
Registration Number 2579597
Registration Date June 11, 2002
Owner (REGISTRANT) SCHAFFER, SUSAN MOST INDIVIDUAL UNITED STATES 2118 VENUS COURT PARK CITY UTAH 84060
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKI" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
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Word Mark SKI MECCAUSA
Goods and Services IC 025. US 022 039. G & S: apparel, namely, tops, bottoms, coats, jackets, hats, sweat suits, footwear, belts, shirts, pants, shorts and gloves. FIRST USE: 19980217. FIRST USE IN COMMERCE: 19980217
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 261709
Serial Number 75484319
Filing Date May 13, 1998
Published for Opposition November 30, 1999
Registration Number 2320395
Registration Date February 22, 2000
Owner (REGISTRANT) International News, Inc. CORPORATION WASHINGTON 19226 Seventieth Avenue South Kent WASHINGTON 98032
Attorney of Record SCOTT R REID
Prior Registrations 2197071;2197072

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKI USA" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

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Typed Drawing

Word Mark	SKI TOPS
Goods and Services	IC 025. US 022 039. G & S: Headwear, hats and headbands, scarves, mitts, gloves, dickies, necktubes, underwear, shirts, T-shirts, pants. FIRST USE: 19720500. FIRST USE IN COMMERCE: 19880700
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75426570
Filing Date	January 30, 1998
Published for Opposition	June 15, 1999
Registration Number	2275621
Registration Date	September 7, 1999
Owner	(REGISTRANT) Do-Gree Fashions Ltd. CORPORATION CANADA 105 Quest de Louvain St. W. Montreal, Quebec CANADA H2N 1A3
Attorney of Record	PERLA M KUHN
Prior Registrations	1923761
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKI" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
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Typed Drawing

Word Mark	SKI JAMMIES
Goods and Services	IC 025. US 022 039. G & S: clothing for men, women and children, namely, tops and bottoms for use as day wear, play wear and sportswear. FIRST USE: 19970731. FIRST USE IN COMMERCE: 19970731
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75193876
Filing Date	November 6, 1996
Filed ITU	FILED AS ITU
Published for Opposition	January 20, 1998
Registration Number	2211593
Registration Date	December 15, 1998
Owner	(REGISTRANT) LOOMWORKS APPAREL, INC. CORPORATION CALIFORNIA 941-3 NEWHALL ST. COSTA MESA CALIFORNIA 92627
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	NEILL A LEVY
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKI" APART FROM THE MARK AS SHOWN
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Typed Drawing

Word Mark	SKI PUP
Goods and Services	IC 025. US 022 039. G & S: clothing, namely gloves, ski gloves, mittens, headwear, hats, headbands, ski masks, neck bands, earmuffs and infantwear. FIRST USE: 19960501. FIRST USE IN COMMERCE: 19960501
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74734236
Filing Date	September 25, 1995
Filed ITU	FILED AS ITU
Published for Opposition	July 2, 1996
Registration Number	2053544
Registration Date	April 15, 1997
Owner	(REGISTRANT) Becker Glove International, Inc. CORPORATION MISSOURI 5049 FYLER AVENUE St. Louis MISSOURI 63139
Attorney of Record	JOHN B. GREENBERG
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKI" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead	LIVE



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Typed Drawing**Word Mark** SKI SKINS

Goods and Services IC 025. US 039. G & S: clothing; namely, men's, ladies' and children's underwear, and men's, ladies' and children's sportswear; namely, parkas, warmup pants, ski pants, jump suits, jackets, sweaters and sport shirts. FIRST USE: 19680521. FIRST USE IN COMMERCE: 19680521

Mark Drawing Code (1) TYPED DRAWING**Serial Number** 74141119**Filing Date** February 21, 1991**Published for Opposition** September 24, 1991**Registration Number** 1668592**Registration Date** December 17, 1991**Owner** (REGISTRANT) Medalist Industries, Inc. CORPORATION WISCONSIN 10850 West Park Place Milwaukee WISCONSIN 53224

(LAST LISTED OWNER) RENA ENTERPRISES, INC. CORPORATION BY ASSIGNMENT, BY ASSIGNMENT, BY ASSIGNMENT FLORIDA 205 SWEITZER ROAD SINKING SPRING PENNSYLVANIA 19608

Assignment Recorded ASSIGNMENT RECORDED**Attorney of Record** ANITA B. POLOTT**Prior Registrations** 0889423

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKI" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20020124.

Renewal 1ST RENEWAL 20020124

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Word Mark ALPINE SKI
Goods and Services IC 025. US 039. G & S: APPAREL, NAMELY, SKI JACKETS, VESTS, AND PARKAS.
 FIRST USE: 19790500. FIRST USE IN COMMERCE: 19790500
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 050101
Serial Number 73612447
Filing Date August 1, 1986
Published for Opposition December 30, 1986
Registration Number 1461008
Registration Date October 13, 1987
Owner (REGISTRANT) SCOPE IMPORTS, INC. CORPORATION TEXAS 8020 BLANKENSHIP HOUSTON TEXAS 77055
Attorney of Record HERBERT COHEN
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKI" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	KAELIN SKIWEAR
Goods and Services	IC 025. US 039. G & S: skiwear for men, women and children. FIRST USE: 19851200. FIRST USE IN COMMERCE: 19851200
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74161128
Filing Date	April 26, 1991
Published for Opposition	July 7, 1992
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	1731206
Registration Date	November 10, 1992
Owner	(REGISTRANT) K-SPORT INTERNATIONAL, LTD. CORPORATION COLORADO 1110 BENFIELD BOULEVARD MILLERSVILLE MARYLAND 21108
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	SHERRY H FLAX
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKIWEAR" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Affidavit Text	SECT 15. SECT 8 (6-YR).

**Live/Dead
Indicator**

LIVE

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Typed Drawing

Word Mark UNITED WE SKI
Goods and Services IC 025. US 022 039. G & S: Clothing, namely-- T-shirts, sweatshirts and hats. FIRST USE: 19931215. FIRST USE IN COMMERCE: 19931215
Mark Drawing Code (1) TYPED DRAWING
Serial Number 76334903
Filing Date November 6, 2001
Published for Opposition October 22, 2002
Registration Number 2674476
Registration Date January 14, 2003
Owner (REGISTRANT) Ridgeway, Richard Allen INDIVIDUAL UNITED STATES 7916 Rugby Road Manassas VIRGINIA 20111
Attorney of Record Robert H. Shapiro
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKI" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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GREAT WESTERN FORUM

Word Mark	GREAT WESTERN FORUM
Goods and Services	IC 025. US 039. G & S: clothing, namely, shirts, jackets, sweaters, caps. FIRST USE: 19890901. FIRST USE IN COMMERCE: 19890901
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	070905
Serial Number	74288518
Filing Date	June 26, 1992
Published for Opposition	December 15, 1992
Registration Number	1756961
Registration Date	March 9, 1993
Owner	(REGISTRANT) CALIFORNIA FORUM composed of California Sports, Incorporated, a California corporation and Jerry H. Buss & Jo Ann C. Buss, both U.S. citizens LIMITED PARTNERSHIP CALIFORNIA 3900 W. Machester Blvd. Inglewood CALIFORNIA 90306
Attorney of Record	Edward A. Sokolski
Type of Mark	TRADEMARK

Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

- | | | | | | | | | | | | |
|---------------------------|---------------------------|---------------------------|--------------------------|----------------------------|---------------------------|---------------------------|---------------------|----------------------|---------------------------|---------------------------|---------------------------|
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Word Mark FREE! THE FREEDOM FORUM ONLINE
Goods and Services IC 009. US 021 023 026 036-038. G & S: Computer peripheral, namely, mouse pads
 IC 021. US 002 013 023 029 030 033 040 050. G & S: mugs
 IC 025. US 022 039. G & S: T-shirts and baseball caps
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 260121
Serial Number 75425602
Filing Date January 29, 1998
Filed ITU FILED AS ITU
Published for Opposition November 23, 1999
Owner (APPLICANT) Freedom Forum, Inc., The CORPORATION VIRGINIA 1101 Wilson Boulevard Arlington VIRGINIA 22209
Attorney of Record HOLLIE A SMITH
Prior Registrations 1785465;1990779
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark FEDEXFORUM
Goods and Services IC 016. US 002 005 022 023 029 037.038 050. G & S: paper bibs

IC 025. US 022 039. G & S: Men's, women's and children's clothing and footwear; namely, coaches caps, wool hats, painters hats, baseball caps, visors, headbands, earmuffs, knit face masks, belts, wristbands, t-shirts, tank tops, pajamas, golf shirts, dress shirts, sweaters, sweatshirts, jackets, neckties, cloth ski bibs, cloth baby bibs, plastic baby bibs, plastic ski bibs, jerseys, night shirts, coats, robes, raincoats, parkas, ponchos, sneakers, gloves, scarves, mittens, aprons, down jackets, leather jackets, cloth jackets, shorts, sweatpants, jeans, pants, socks, underwear and bathing suits

IC 041. US 100 101 107. G & S: entertainment services; namely, providing a facility for the presentation of professional basketball contests, exhibitions and teams

IC 043. US 100 101. G & S: Arena services; namely, providing facilities for sports, concerts, conventions and exhibitions

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78127071

Filing Date May 8, 2002

Filed ITU FILED AS ITU

Owner (APPLICANT) Federal Express Corporation CORPORATION DELAWARE 3620 Hacks Cross Road, Building B, 3rd Floor Memphis TENNESSEE 38125

Attorney of Record Lester A. Bishop

Prior

Registrations 2017855;2518524;2592150;AND OTHERS

Type of Mark TRADEMARK, SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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