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

Proceeding	85691028
Applicant	Cowan, Jeff
Applied for Mark	SIT, FLOP, POP AND LOOK
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Submission	Applicants Request for Remand and Amendment
Attachments	Request for Suspension and Remand.pdf(327934 bytes ) Exhibit 1 - SFPL.pdf(851691 bytes ) Exhibit 2 - Cowan Declaration.pdf(4045501 bytes ) Exhibit 3 - SFPL photos.pdf(3934203 bytes )
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Signature	/Marta L. Paul/
Date	10/17/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**TRADEMARK TRIAL AND APPEAL BOARD**

Application No.: 85/691,028  
Applicant: Jeff Cowan  
Filing Date: July 31, 2012  
Law Office: 110  
Examiner: Dezmona J. Mizelle-Howard  
Attorney Docket No.: 011104-000043  
Mark: SIT, FLIP, POP AND LOOK

**REQUEST FOR SUSPENSION AND REMAND UNDER 37 CFR §2.142(d)**

To the Trademark Trial and Appeal Board:

Applicant respectfully requests that the Board suspend the appeal of the present application and remand to the Examining Attorney for consideration of the additional evidence submitted herewith. Applicant has obtained the Examining Attorney's consent to suspension of the appeal and remand of the application.

The present application is the subject of a Final Office Action dated March 4, 2013, asserting that the specimens of record are unacceptable. In response thereto, Applicant filed a Notice of Appeal on September 4, 2013. With the present Request for Suspension and Remand, Applicant wishes to introduce additional evidence into the record of the present application for consideration by the Examining Attorney.

**I. EXPLANATION OF GOOD CAUSE**

The additional evidence Applicant wishes to introduce (discussed in greater detail below) consists of additional materials showing use of the trademark and a Declaration by the Applicant.

There was delay in obtaining these materials. Separately, as mentioned above, Applicant notes that the Examining Attorney has provided consent to the present Request.

As background, Applicant's lead employee is the General Manager of Applicant's business who was out of the office on maternity leave from June to September of 2013. Applicant's General Manager is the primary individual responsible for the management of advertising, educational and training materials, and all other materials relating to Applicant's services. The review and discussion of materials were delayed until after the return of Applicant's General Manager from maternity leave.

Additionally, as stated above Applicant notes that the Examining Attorney has agreed to the remand. The undersigned counsel conducted a telephone conference on October 7, 2013 with Examining Attorney Mizelle-Howard, in which she provided her consent to the present Request for Suspension and Remand.

Based on the above, Applicant respectfully requests that the present Request for Suspension and Remand be granted and the application file be returned to the Examining Attorney for consideration of the additional evidence submitted herewith.

## **II. ADDITIONAL EVIDENCE**

Although Applicant respectfully maintains that the specimens of record in the present application are sufficient to show use of the mark in commerce, Applicant respectfully submits that the additional evidence submitted herewith is sufficient to show use of the mark in connection with the identified services.

The additional evidence submitted herewith includes: additional training materials (Exhibit 1), a Declaration by Applicant (Exhibit 2), and photographs of the trademark used on related goods (Exhibit 3).

**a. Additional Training Materials (Exhibit 1)**

In its previous Response to Office Action dated February 6, 2013, Applicant submitted excerpts from training manuals as specimens. In response, the Examining Attorney maintained the assertion that the trademark was not shown to be used in connection with the services and again rejected the specimens in the Final Office Action dated March 4, 2013. To address the Examining Attorney's concerns, Applicant submits herewith additional training materials showing additional uses of the trademark SIT, FLIP, POP AND LOOK, including use of the trademark in a PowerPoint® presentation and in an online training presentation. Applicant respectfully asserts that consideration of all the various uses of the trademark makes clear that the trademark is broadly used to promote Applicant's training services and materials, and functions as a source identifier for Applicant's educational services.

In the Final Office Action, the Examining Attorney objected to the training manual excerpts as not showing the applied-for mark used in connection with the specified services. Specifically, the Final Office Action asserts that the mark "is merely a topic in a workshop (teaching the participant to sit, flip, pop and look) and not likely to be seen as a source identifier." Applicant respectfully disagrees. The variety of training materials submitted in the present case show that the trademark is not "merely a topic" in the workshop. Rather, the mark is arbitrary, unique and was coined by Applicant to broadly promote its services.

Applicant respectfully asserts that merely because the mark is used in part as a title by Applicant in rendering the training services does not remove it from functioning as a service mark. The present mark is not used as a generic or common name of a class subject such as “mathematics” or “marketing 101”; indeed the mark has no clear or recognized meaning outside of the context of the Applicant’s services. Thus, the mark is perceived by the public as uniquely identifying and associated with Applicant’s training services. This is comparable to the case of *In re ICE Futures U.S., Inc.*, where the TTAB recognized that marks referring to contract names (comparable to “subject matter”) used in rendering services, where the marks were created by the applicant and had a long history of exclusive use, supported that the marks functioned as service marks:

in these cases, SUGAR NO. 11, SUGAR NO. 14 and COTTON NO. 2 not only identify the relevant contracts, contracts which are unique to applicant, but SUGAR NO. 11, SUGAR NO. 14 and COTTON NO. 2 also identify the source of the futures exchange services.

*In re ICE Futures U.S., Inc.*, 85 USPQ2d 1664, 1669 (TTAB 2008) [precedential]

We conclude so based on our analysis of the specimens themselves, the context of use and the history of applicant’s exclusive use in the industry reflected in this record.

*Id.*

Corroborating that it is a service mark, the SIT, FLIP, POP AND LOOK mark in Applicant’s specimen is physically set-off from textual matter and emphasized by use of the ® symbol. The mark is used in a way that creates a separate commercial impression that is recognized by consumers differently from merely text or merely “the subject matter.” These factors support that the mark is perceived as a service mark. *See* TMEP 1301.02 and *In re Post Properties, Inc.*, 227 USPQ 334 (TTAB 1985) (the designation QUALITY SHOWS, set off from text of advertising copy in extremely large typeface and reiterated at the conclusion of the narrative portion of the ad, held to be a registerable service mark for applicant’s real estate

management and leasing services, because it was used in a way that made a commercial impression separate from that of the other elements of advertising material upon which it was used, such that the designation would be recognized by prospective customers as a source identifier.)

Finally, while the mark may also identify the “subject” of Applicant’s training services in the sense that the title is Applicant’s coined term, the Applicants states in his Declaration that the subject matter is “integral and essential” to Applicant’s services as a whole. (Cowan Decl., para. 9). See, *In re ICE Futures U.S., Inc.*, 85 USPQ2d at 1670 (“While the marks may also identify the futures contracts, again contracts which, on this record, are unique to applicant, the contracts are an integral and essential component of the identified services, that is, the operation of a futures exchange.”)

When considering the full context of use of the mark with respect to the variety of specimens submitted herewith, the mark created by the Applicant broadly promotes Applicant’s educational and training services as a whole and identifies and distinguishes that Applicant is the source of the services.

**b. Declaration of Applicant (Exhibit 2)**

Applicant also seeks to submit herewith the Declaration of the Applicant, Jeff Cowan. In his Declaration, Mr. Cowan discusses the extensive history of his services and the recognition he has received as being the leader in the field. (Cowan Decl., paras. 1-5). Additionally, Mr. Cowan states that the SIT, FLIP, POP AND LOOK trademark has been used on a variety of different materials to promote the identified services, including use on the “website, training materials, presentations and even clothing items.” (Cowan Decl., para. 8). As Mr. Cowan states,

the SIT, FLIP, POP AND LOOK trademark is a “unique” trademark that he “coined” to promote the services. (Cowan Decl., para. 9). The uniquely-coined trademark SIT, FLIP, POP AND LOOK refers to subject matter which is “integral and essential” to Applicant’s services. (Cowan Decl., para. 9).

**c. Photographs of Trademark Used on Related Goods (Exhibit 3)**

Applicant also seeks to submit photographs of a shirt with the trademark printed thereon. (Exhibit A to Cowan Decl.; Exhibit 3 to the present Request). Applicant submits the photographs in an effort to corroborate the specimens already of record in the present case, and also presents the photographs as additional specimens in their own right.

Clothing items showing the trademark, such as the pictured shirt, are regularly worn by Applicant and his staff while the identified services are being promoted and performed. (Cowan Decl., para. 8). As provided in the TMEP, “[a] specimen that shows the mark as used in the course of *rendering or performing* the services is generally acceptable. Where the record shows that the mark is used in performing (as opposed to advertising) the services, a reference to the services on the specimen itself may not be necessary.” (TMEP §1301.04(b), emphasis in original). Accordingly, although the clothing items do not explicitly reference the services, they serve to show how the mark is used when the services are actually performed.

This is comparable to the case of *In re Red Robin Enterprises, Inc.* where the TTAB found that a photograph of a costume which is worn by a performer during the *performance* of the identified entertainment services was an acceptable manner of showing use of the mark. 222 U.S.P.Q. 911 (TTAB 1984). Similarly here, the shirts are worn by Applicant and his staff during the rendering of the educational services. Accordingly, Applicant asserts that the photographs of

the shirt are acceptable specimens showing use of the applied-for mark in connection with the identified services.

The specimens were in use in commerce at least as early as the filing date of the application. Based on the foregoing, Applicant respectfully requests that the supplemental photograph specimens be accepted.

**d. Consideration of All Evidence**

Applicant notes that the Examining Attorney “must carefully review the specimen, together with any other information in the record, to see how the applicant uses the proposed mark.” (TMEP §1301.02(e), emphasis added). The additional materials Applicant seeks to introduce corroborate and reinforce that Applicant is the source of the identified services. All of the various uses of the trademark on the different types of materials submitted in the present case have the primary purpose of promoting Applicant’s services under the SIT, FLIP, POP AND LOOK trademark. Upon consideration of the additional evidence, Applicant respectfully asserts that the record, as a whole, shows “that there is a direct association between the mark and the service.” (TMEP §1301.02).

### III. CONCLUSION

In view of these remarks and the additional materials submitted herewith, Applicant respectfully requests that the present Request for Suspension and Remand be granted, and that the specimens be accepted. Applicant respectfully submits that the mark is in condition for publication and allowance, and action towards such is respectfully requested.

Respectfully submitted,

By   
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Sit, Flip, Pop, Look

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## The Four Point Walk Around

1. Get the V.I.N.
2. Sit, flip, pop and look®
3. Walk to the back
4. Walk to the front and lift the hood

**Every car every time? Every car, every time!®**



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## The Walk Around Exit Word Track

*"Mr. Customer, before I walk you into our world-class waiting room, I want you to take a look around. I want you to see those tires over there. That means that we are in the tire business. I can put any tire on not only this vehicle, but any vehicle you have, regardless of manufacturer, any time you want. In addition, our tires are very competitively priced as well. Also, let's look further around the room. I want you to see all the products and services we offer. I can tint your windows, detail your car, install a new stereo, replace your floor mats, help you with extended warranties, take dents out of your car, put chrome rims on it, install Bluetooth technology, get you racing paraphernalia, get you a new battery when you need one, replace windshield wipers, fix chipped glass, fix chipped paint, clean your headlights and just about anything else you might imagine. In short, anytime, from this point forward, you need anything for this, or any vehicle you own, you should consider me your go-to guy. Not only is everything we offer either Factory or Technician approved, but it is backed by a warranty and installed by a factory-trained technician who works on vehicles like yours everyday that drive on the same streets in the same conditions that you do. They are the best, and we are the best, and my only goal is to continue to earn your business for as long as you drive cars. If you will follow me over here now, I would like to show you around our world class waiting room. We have free TV, internet, and free coffee. I think today they have some French Vanilla brewed. Let me get you a cup."*



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# EXHIBIT 2



University Platform and a featured speaker at Dealer 20 Group meetings, groups of principals and managers from non-competing automotive dealers.

5. My educational services and materials are recognized as the Nation's #1 Service Advisor Sales Training and I am recognized as "the modern day creator of walk-around and selling processes for service drives." My services and materials are widely distributed through agreements on a dealer-by-dealer basis as well as a on a nationwide basis through major automotive manufacturers.
6. Since at least 2002 and continuously to date, I have adopted and used in interstate commerce the SIT, FLIP, POP AND LOOK trademark in connection with my educational services and related goods.
7. In addition to the present application, I am also the owner of United States Trademark Registration No. 2,787,690 registered November 25, 2003, for the identical mark SIT, FLIP, POP AND LOOK® for "t-shirts, button shirts and hats."
8. The SIT, FLIP, POP AND LOOK trademark is currently and has been used on a variety of different types of materials in an effort to promote my services, including on my website, training materials, presentations and even clothing items. Attached as Exhibit A is a photograph of a shirt showing the SIT, FLIP, POP AND LOOK trademark. My staff and I regularly wear clothing items showing the SIT, FLIP, POP AND LOOK trademark, such as the pictured shirt, during the course of promoting and performing my educational services.
9. SIT, FLIP, POP AND LOOK is a unique trademark that I coined to promote my educational services and materials. The SIT, FLIP, POP AND LOOK trademark is a coined term referring to subject matter which is integral and essential to my educational services.

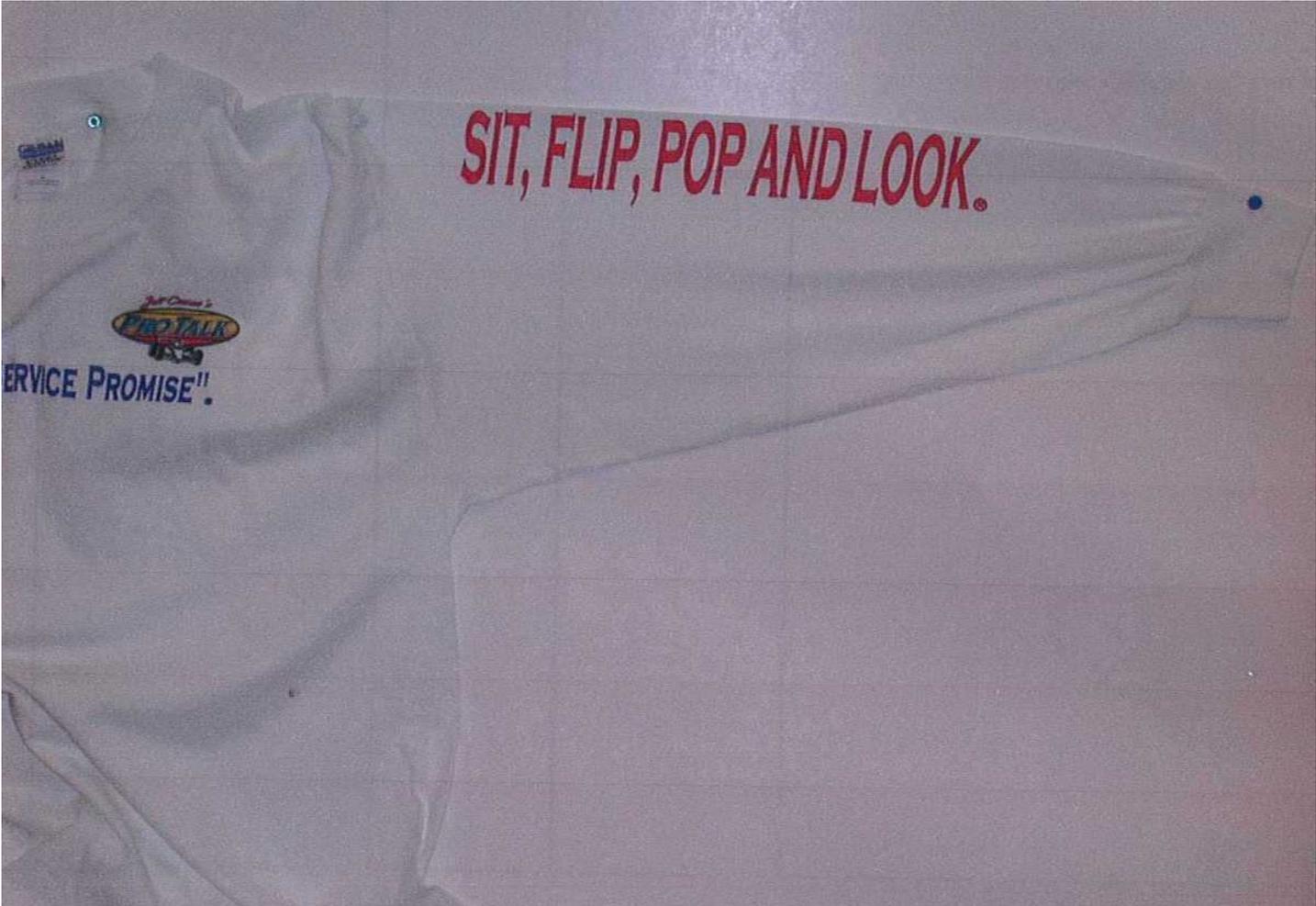
10. The SIT, FLIP, POP AND LOOK trademark is well known and consumers have come to know, rely upon, and recognize the mark as identifying my goods and services as a whole.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

October 16, 2013  
Date

Jeff Cowan  
Jeff Cowan

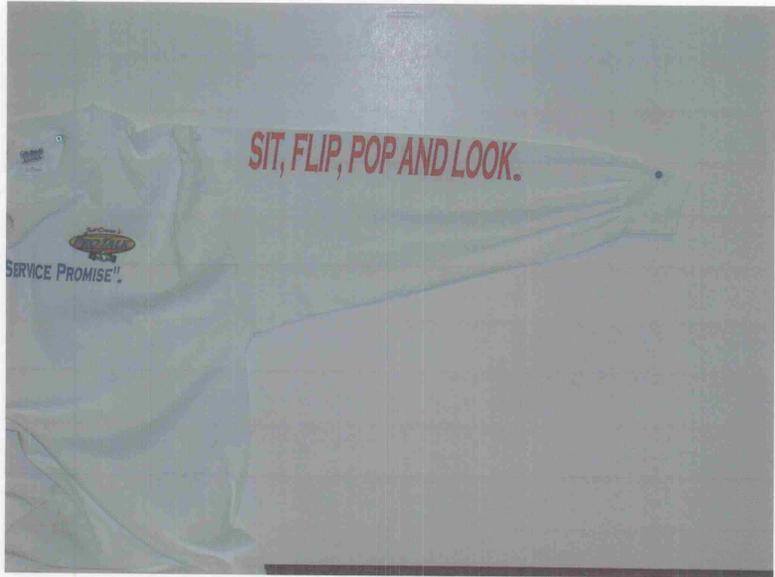
# EXHIBIT A



**SIT, FLIP, POP AND LOOK.**



**SERVICE PROMISE!**



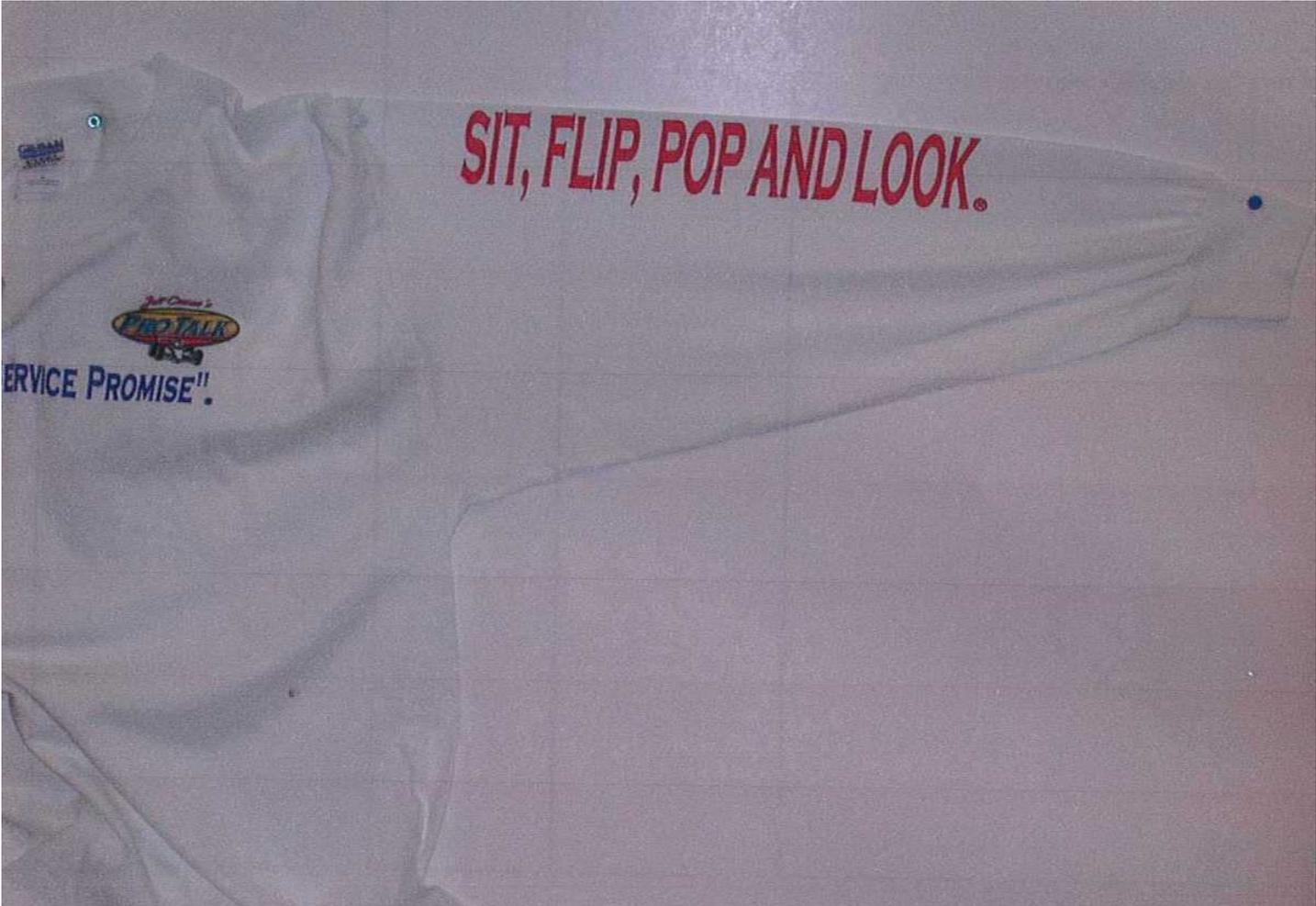
SIT, FLIP, POP AND LOOK.®

EVERY CAR, EVERY TIME.



THE FULL SERVICE PROMISE™.

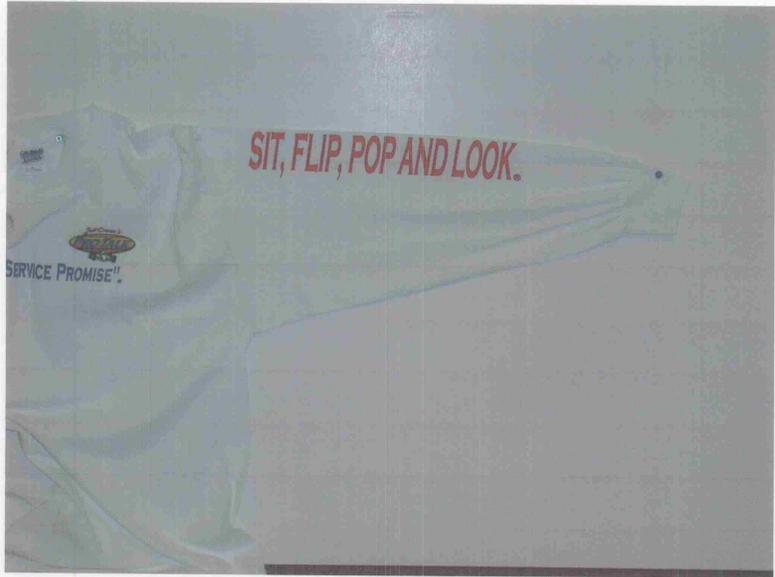
SIT, FLIP, POP AND LOOK.



**SIT, FLIP, POP AND LOOK.**



**SERVICE PROMISE!!**



SIT, FLIP, POP AND LOOK.®

EVERY CAR, EVERY TIME.



THE FULL SERVICE PROMISE™.

SIT, FLIP, POP AND LOOK.