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

| | |
|------------------------|--|
| Proceeding | 91217482 |
| Party | Plaintiff Stokely-Van Camp, Inc. |
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| Date | 08/03/2015 |
| Attachments | Declaration.pdf(3373805 bytes) |

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

| | | |
|-------------------------|---|-------------------------|
| STOKELY-VAN CAMP, INC., |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | Opposition No. 91217482 |
| |) | |
| JEFF PEARSON, |) | |
| |) | |
| Applicant. |) | |

DECLARATION OF ANDREW HARTSHORN

I, Andrew Hartshorn, under penalty of perjury pursuant to 28 USC 1746 hereby declare:

1. I am Senior Marketing Director for the Gatorade products.
2. Opposer has produced and marketed beverages under the Gatorade mark since 1967.
3. The primary product sold under the Gatorade mark is a sports drink. This is the product that was introduced in 1967, although it was not until later that the term “sports drink” became commonly used. The Gatorade product was scientifically formulated to help athletes stay in the game. It was formulated both to quench thirst and to replenish fluids and minerals lost during exercise.
4. Since the introduction almost fifty years ago, Gatorade beverages have been the number one sports drink in the country.
5. As a result of extensive advertising, promotion, sales and publicity, Gatorade products have achieved great commercial success and Gatorade has been a famous mark throughout the United States for years. The Gatorade mark has been displayed both in all capital letters and with an initial capital letter G.
6. The Gatorade mark has been used for other products in addition to sports drinks.

GATORADE powder for making sports drinks was introduced in 1978. Gatorade energy bars and nutrition shakes were introduced in 2001.

7. In 2010, we introduced a new line of products to provide fuel, fluid and nutrients before and after a game or other activity. The GATORADE PRIME drink, for example, is identified as “pre-game fuel.” The GATORADE RECOVER drink is identified as “Post-Game Protein.”

8. Gatorade products are sold both to athletes and the general public.

9. Gatorade products often are consumed before, during and after participation in a game or other sporting event. The Gatorade products also are consumed by those attending a game or sporting event, as well as during the game to quench thirst or when engaged in other activity.

10. Gatorade sports drinks are low-cost and are sold in individual-sized bottles or packages, as well as larger bottles or packages. Gatorade sports drinks frequently are purchased for immediate consumption. As a result, sales of products sold under the Gatorade marks include impulse purchases.

11. Gatorade products are sold through a wide variety of channels of trade. They are sold through grocery stores, drug stores, convenience stores, dollar stores, club stores and mass merchandisers. In-store displays are used to promote the sale of Gatorade products. Gatorade sports drinks also are sold at refreshment stands, at schools, through vending machines, and via the Internet. In addition, Gatorade sports drinks are sold at sporting goods stores, golf courses, and gyms. They also are sold at football games, basketball games and hockey games.

12. We have extensively advertised and promoted Gatorade drinks. Since at least as early as 1998, more than a hundred million dollars has been spent each year in advertising and

promoting Gatorade products.

13. Gatorade products have been advertised in print, on radio and on TV, including prime time network TV and sports networks.

14. Advertising for Gatorade products often appears during nationally televised sporting events, including college football games, major league baseball games, professional football games, and professional basketball games.

15. Gatorade products have been promoted in the printed programs distributed at football, basketball, and baseball games and other sporting events.

16. Gatorade products have been promoted with slogans such as: "Gameday Hydration"; "Your Game. Your Fuel."; and, "Get The Gear. Own The Game." Attached as Exhibit 1 is a photograph of a recent in-store display for Gatorade products using the latter slogan.

17. Use of advertising or promotion creating a connection between the Gatorade products and games is not new; it goes back to the inception of the product. Television commercials and other advertising for Gatorade products have made reference to games or used a backdrop of players involved in a game. Often, the game depicted has involved high profile athletes, such as Michael Jordan, Mia Hamm, or Derek Jeter.

18. Examples of advertisements and promotional materials are attached. Exhibits 2 and 3 are examples of a print ad and a storyboard of a television commercial from the 1980s. Exhibit 4 contains examples of TV commercials from the early 2000s. Exhibit 5 is an example of a 2008 print ad.

19. Gatorade products are also advertised on the Internet, both on the Gatorade website and third party sites such as the NHL website. Exhibit 6 is a printout from the gatorade.com

website.

20. Gatorade marks are given considerable exposure through the sideline presence of the Gatorade mark at football, basketball and baseball games and other sporting events for many years, long prior to 2013.

21. The Gatorade product is the official sports drink of the NFL, the NBA and Major League Baseball. The ritual dumping of Gatorade drink on a coach by his team to celebrate a game victory began as early as 1987 and became a sideline staple that has continued until today.

22. The Gatorade mark appears on signage at ball parks, stadiums and arenas. Gatorade sports drinks and towels, coolers, and cups bearing the Gatorade mark, appear on the sidelines of major league football, basketball, baseball and hockey games and are shown being used by the players during the broadcast of such games.

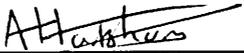
23. The prominent presence of the Gatorade mark and products at games has been incorporated into popular electronic games intended to simulate professional games. The Gatorade mark and products have been a part of the NBA 2K basketball video games since 2008. They have been a presence in the Madden NFL American football video game series since 2011. They were added to the NBA Live video games in 2014 and the NHL video game series in 2015. GATORADE appears within the games on signage and other ways similar to how the GATORADE mark is seen at actual NBA or NFL games. Exhibit 7 shows examples of how the mark appears in the Madden NFL American football game. Exhibit 8 shows examples of how the mark appears in the NBA 2K basketball game.

24. The Gatorade mark also is prominently displayed on a variety of merchandising items. Consumer use of these products leads to further exposure of the Gatorade mark.

25. Gatorade sports drink has been the leading product of the type in the United States for decades and has enjoyed very substantial sales. Billions of dollars' worth of Gatorade drinks have been sold in the United States prior to 2013. Since as early as in the 1990's, the sales of Gatorade products have exceeded a billion dollars (\$1,000,000,000.00) each year. Since 2002, sales have exceeded two billion dollars (\$2,000,000,000.00) worth of Gatorade products each year.

ANDREW HARTSHORN

Date: July 23 , 2015



G

**GET THE GEAR
OWN THE GAME**

WIN FROM WITHIN

**GET ONE FREE PAIR OF G ATHLETIC SOCKS
WHEN YOU BUY ANY THREE GATORADE 12 OZ. BOTTLE 12-PACKS**

PURCHASE MUST BE MADE IN ONE SINGLE TRANSACTION, WHILE SUPPLIES LAST.
*SUEET MIN PURCHASE SOCKS SEPARATELY FOR \$14.99. SOCKS ARE ONE SIZE FITS ALL.

WHAT PUTS MAJOR LEAGUE BASEBALL, NFL, AND NBA PLAYERS BACK IN THE GAME?

THE MAJOR LEAGUE THIRST QUENCHER.



The pros know Gatorade is a great thirst quencher. That's because Gatorade Thirst Quencher is designed to get into your system fast and go right where your body needs it most.

And the pros know Gatorade does more than quench your thirst. It brings you back faster and keeps you going longer because it's scientifically formulated to help replace the fluids, potassium and other vital minerals your body sweats away... elements essential to your performance. Gatorade works for the pros. Just as it works for you.



GATORADE'S THIRST AID FOR THAT DEEP DOWN BODY THIRST.

Clip these coupons and save two ways on Gatorade.

Buy any size bottle and get another one **FREE**



137000000011

Get a **\$1.00 off** when you buy a canister of instant powdered Gatorade



137000000011

FCB

DATE: May, 1983
PRODUCER: Levine-Pytka

CLIENT: Stokely-Van Camp (CP83-4016)
PRODUCT: Gatorade®
FILM NO.: SVGA0430
FILM TITLE: "Players/Tennis"

FILM LENGTH: :30



1. (DRAMATIC MUSIC UNDER)
ANNCR VO: You can tell a
player...



2. (MUSIC)



3. ...by what he brings to the
game.



4. (MUSIC)...



5. ...



6. His intensity...



7. ...his desire...



8. (MUSIC)



9. ...his equipment.



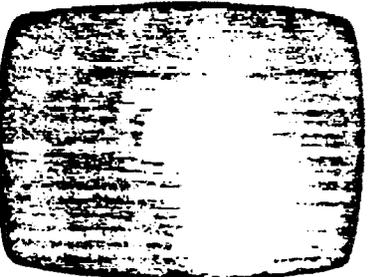
10. Gatorade® thirst quencher.



11. It's standard equipment.



12. Because when you give
it...



13. all you get



14. Gatorade



15. Gatorade

Stokely-Van Camp, Inc.

v.
Jeff Pearson

Oppn. No. 91217482

Hartshorn Decl.

Exhibit 4

GAMES END.

LAST SECOND SHOTS

LIVE FOREVER.

EVERY GAME

NEEDS A HERO.



DO YOU HAVE WHAT IT TAKES TO
COME THROUGH WHEN IT MATTERS MOST?
BRING IT AT LEAGUEOFCLUTCH.COM



G SERIES | HYDRATION

THIRST QUENCHER POWDER

Scoop. Stir. Dominate. Just add water to hydrate with the most scientifically researched and game-tested way to replace electrolytes lost in sweat. Hydrating better than water, Gatorade Thirst Quencher Powder is trusted by some of the world's best athletes.

Sweat: what you lose and why it matters.



BUY NOW ONLINE

FIND NEAR ME
NUTRITION LABEL

WHAT'S INSIDE AND WHY.

**Per 1 2/3 tbsp. serving*

ELECTROLYTES

160mg Sodium / 45mg Potassium

CARBS

21g

CALORIES

80 cal

When you sweat, you lose more than water. You also lose critical electrolytes, like sodium and potassium, which help the brain communicate with muscles and regulate fluid level balance throughout the body. Significant losses in fluids and electrolytes can negatively impact performance, especially during long bouts of training.

RGIII sweats. A lot. But he doesn't sweat the effects of dehydration come game time. He's counted on Gatorade Thirst Quencher since his days as a multi-sport athlete at Copperas Cove High School, where he was named Gatorade Player of the Year in track and field for the state of Texas.

44 YEARS

THIRST QUENCHER HAS BEEN ON NFL SIDELINES SINCE 1969, FUELING CHAMPIONS AND SHOWERING COACHES WITH ICY GATORADE BATHS FOR 44 YEARS.

GAME WITHIN THE GAME

Dive inside the body to see what goes down as you fight to stay hydrated. Science of G.

RELATED PRODUCTS



ENERGY
PRIME
ENERGY
CHEWS



HYDRATION
THIRST
QUENCHER



HYDRATION
LOW-
CALORIE G2



RECOVERY
PROTEIN
SHAKE

PRODUCTS

G SERIES
ENDURANCE
ALL PRODUCTS

BUY

LOCATE PRODUCTS
ONLINE STORE

COMPANY

CONTACT
HERITAGE
FAQS
GATORADE SPORTS SCIENCE INSTITUTE
ATHLETE/PLAYER OF THE YEAR
CAREERS
MEDIA

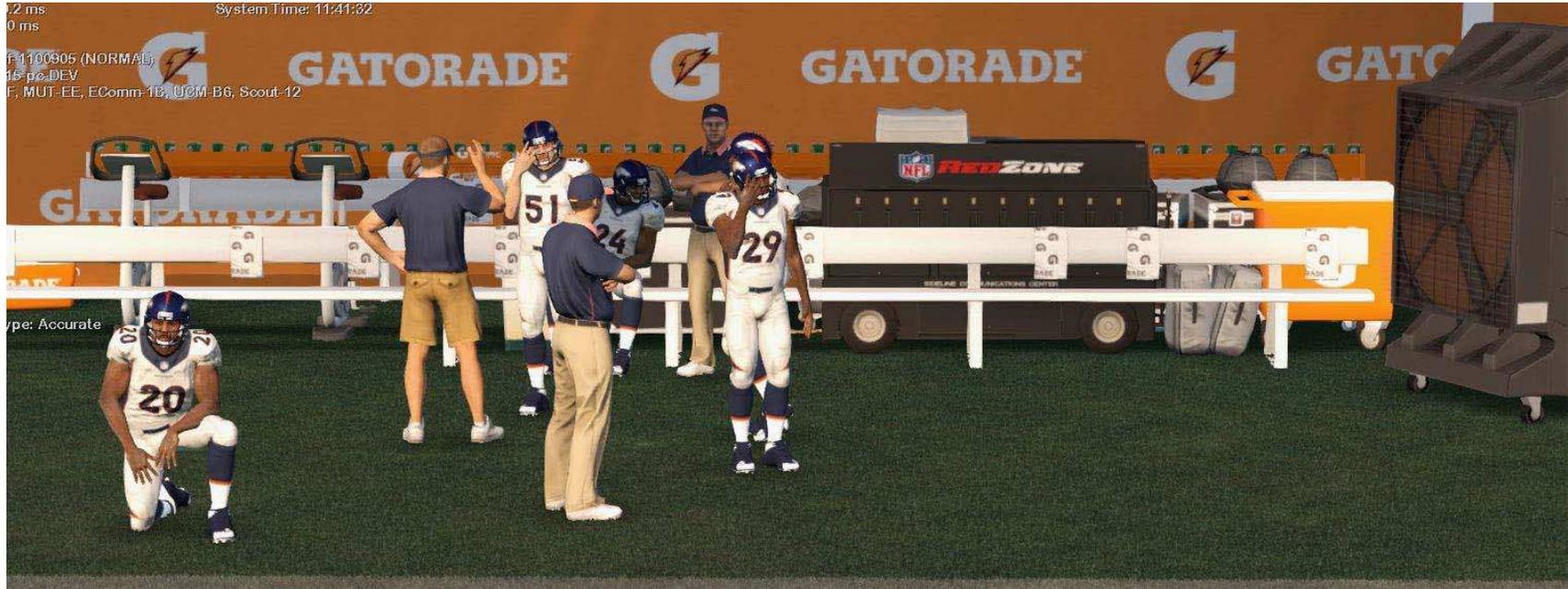
#WINFROMWITHIN

GATORADE

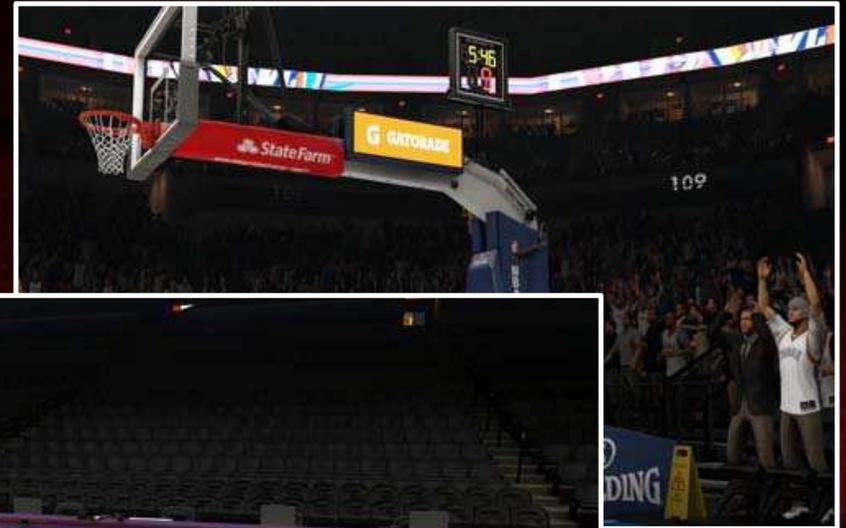
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[TERMS & CONDITIONS](#) | [PRIVACY POLICY](#)





SIGNAGE



CERTIFICATE OF SERVICE

I, Patricia S. Smart, an attorney for opposer, hereby certify that a copy of the Declaration Of Andrew Hartshorn is being served upon Jeff Pearson, 508 Saint Camille St., Lafayette, Louisiana 70506-4321, this 3rd day of August 2015, by first class mail, postage prepaid.

By: / P S Smart /