

UNL 3106  
TRADEMARK**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Reg. No. 2,194,387  
Mark: Miscellaneous Design  
International Class: 25  
Issued: October 6, 1998

The Board of Regents of the  
University of Nebraska

Petitioner,

v.

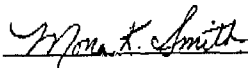
Pasquale W. Croce, Jr.

Registrant.

) Cancellation No.: \_\_\_\_\_  
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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Box TTAB FEE, Assistant Commissioner for Trademarks, 2000 Crystal Drive, Arlington, Virginia 22202-3513 on this 20th day of September, 2001.



Mona K. Smith

**PETITION FOR CANCELLATION**

The Board of Regents of the University of Nebraska, a Nebraska corporation having an address at Varner Hall, 3835 Holdrege Street, Lincoln, Nebraska 68583-0122, (hereinafter referred to as "Petitioner") believes it will be damaged by Registration No. 2,194,387 in Class 25, registered October 6, 1998. To the best of Petitioner's knowledge, the name and address of the current owner of Reg. No. 2,194,387 are as follows:

Pasquale W. Croce, Jr.  
835 Mount Moro Road  
Villanova, Pennsylvania 19085

As grounds for cancellation, it is alleged that:

1. Registration No. 2,194,387 is for the mark Miscellaneous Design depicting a skull and cross bones wearing a football helmet for use with "hats and t-shirts" in class 25. A copy of the registration from the Trademark Office's online database is attached hereto as Exhibit A.

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TRADEMARK

2. Registration No. 2,194,387 has a filing date of August 2, 1995 and asserts a date of first use of December 27, 1995 and a date of first use in commerce of December 27, 1995.
3. Petitioner began using its BLACKSHIRTS and Design mark depicting a skull and cross bones wearing a football helmet at least as early as 1987, in connection with clothing, and at least as early as 1995, in connection with a variety of other goods, including key rings, computer accessories, printed goods, household items, and printed fabric items.
4. Petitioner has used BLACKSHIRTS and Design on clothing and other goods in United States commerce continuously since at least as early as fall 1987 and has not abandoned said mark. Attached hereto as Exhibit B are copies of two pages and a price list from a fall 1987 catalog showing the BLACKSHIRTS and Design mark on clothing sold in interstate commerce.
5. Petitioner, therefore, has been the senior user of the mark, and is entitled to registration thereof.
6. Petitioner applied to register its BLACKSHIRTS and Design mark for use with a variety of goods, including "clothing, namely, caps, jackets, shirts, sweat pants and sweatshirts, t-shirts, boxer shorts and infant wear."
7. Petitioner's application, Ser. No. 76/160,535, has been refused pursuant to Trademark Act Section 2(d) over Reg. No. 2,194,387. A copy of Petitioner's application is attached hereto as Exhibit C, and a copy of the Office action from the Trademark Office is attached hereto as Exhibit D.
8. Petitioner has been damaged as a result of Registrant's Registration No. 2,194,387.
9. If Registrant's Registration No. 2,194,387 is not canceled, Registrant would thereby maintain at least a *prima facie* exclusive right to the use of such mark. Such registration would therefore be a source of damage and injury to Petitioner

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TRADEMARK

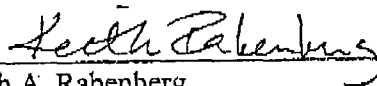
by, *inter alia*, continuing to interfere with Petitioner's application Ser. No. 76/160,535 and potentially interfering with Petitioner's continued use of its mark.

10. Because Petitioner has prior rights to the mark, Registrant's Reg. No. 2,194,387 should be canceled pursuant to TBMP § 312.03 and 37 CFR 2.112(a).

WHEREFORE, Petitioner prays that Reg. No. 2,194,387 be canceled.

\* Two extra copies of this Petition for Cancellation and the fee required under §2.6 are enclosed.

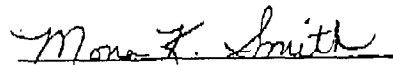
Respectfully submitted,



Keith A. Rabenberg  
Christopher M. Goff  
Julie J. McMurry  
SENNIGER, POWERS, LEAVITT & ROEDEL  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
(314) 231-5400  
Attorneys for Petitioners

CERTIFICATE OF MAILING

I certify that this Petition for Cancellation is being deposited with the United States Postal Service as Express mail in an envelope addressed to: Box TTAB FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on this 20th day of September, 2001.

  
Mona K. Smith

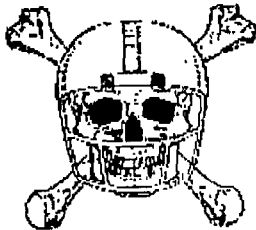
\*Enclosures  
(Two Extra Copies of Petition; Fee)

Q

[PTO HOME](#) [TRADEMARK](#) [TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [BOTTOM](#) [HELP](#)

Record 1 out of 1

## Check Status



IC 025, US 022 039, G & S: [ sweatshirts, sweatpants, jackets and shorts  
] \* hats and T-shirts \*. FIRST USE: 19951227. FIRST USE IN  
COMMERCE: 19951227

(2) DESIGN ONLY

021111 090525

74709894

August 2, 1995

FILED AS ITU

April 9, 1996

February 10, 1998

CHANGE IN REGISTRATION HAS OCCURRED

2194387

October 6, 1998

(REGISTRANT) Croce, Pasquale W., Jr. INDIVIDUAL UNITED STATES 835 Mount Moro Road Villanova PENNSYLVANIA 19085 BRYNA S SILVER

The lining and stippling shown in the drawing are features of the mark and are not intended to indicate color.

TRADEMARK  
SUPPLEMENTAL  
LIVE

## SUPPLEMENTAL

LIVE

[PRO HOME](#) [TRADE MARK](#) [FESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DIRT](#) [TOP](#) [HELP](#)

**Abstract:**

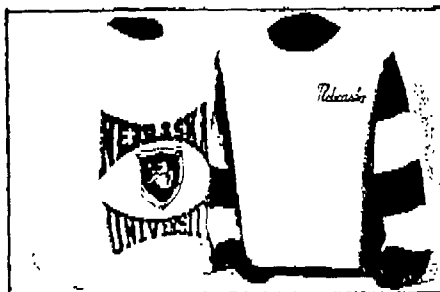
A



# SWEATSHIRTS • T-SHIRTS



3A



3B



3C



3D



3E



3F



3G



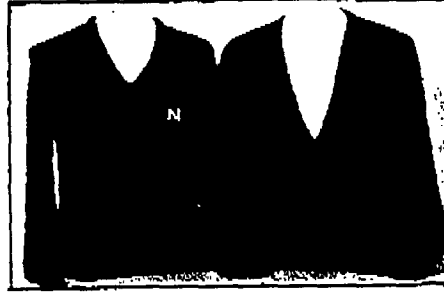
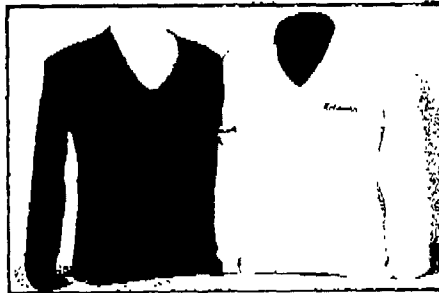
3H



3I

# SWEATERS

100% acrylic • cardigans • v-necks • stripes



3L

## SIZE INFORMATION

<b>Infants</b>	12 Month	<b>Adult</b>	S — 34-36
	18 Month		M — 38-40
	2 Toddler		L — 42-44
	4 Toddler		XL — 46-48
<b>Youth</b>	S — 6-8		2XL — 50-52
	M — 10-12		3XL-4XL-5XL —
	L — 14-16		proportionately

## PAGE 3

T-Shirts and Sweatshirts featured are genuine silk screen process and not plastic transfers. Only top quality manufacturers are used ... Hanes — Russell — Screen Stars ... to name a few.

<b>3A</b>	<b>Replica Game Jerseys</b>	adult s-xl	<b>35.95</b>	<b>3H</b>	<b>"Cultural Cow" T-shirt —</b> specify pink or grey	adult s-xl	<b>8.95</b>
		youth s-m-l	<b>27.95</b>		<b>University T-shirt</b>	adult s-xl	<b>10.95</b>
	<b>Blackshirt T-shirt</b>	adult s-xl	<b>10.95</b>		<b>Sweatshirt</b>	adult s-xl	<b>22.95</b>
		2xl	<b>13.95</b>				
		youth s-m-l	<b>9.95</b>				
<b>3B</b>	<b>"Lion Crest" Sweatshirt</b>	adult s-xl	<b>23.95</b>	<b>3I</b>	<b>Full Color Mascot Sweatshirt</b>	adult s-xl	<b>23.95</b>
	<b>T-shirt</b>	adult s-xl	<b>10.95</b>			2xl	<b>25.95</b>
	<b>Stripe Sleeve Sweatshirt —</b> with embroidered Nebraska	adult s-xl	<b>22.95</b>		<b>T-shirt</b>	adult s-xl	<b>10.95</b>
<b>3C</b>	<b>Hooded Sweatshirt</b>	adult s-xl	<b>23.95</b>		<b>University Seal Sweatshirt</b>	2xl	<b>12.95</b>
	<b>Helmet Design T-shirt</b>	adult s-xl	<b>10.95</b>			adult s-xl	<b>22.95</b>
					<b>T-shirt</b>	2xl	<b>24.95</b>
<b>3D</b>	<b>Fashion Panel Sweatshirt</b>	adult s-xl	<b>25.95</b>	<b>3J</b>	<b>Shaker Knit Stripe —</b> 100% Acrylic Sweater	adult s-xl	<b>34.95</b>
	<b>"Joe Husker" Snoopy Sweatshirt</b>	adult s-xl	<b>23.95</b>		<b>Knit-In Nebraska Sweater —</b> 100% Acrylic	adult s-xl	<b>36.95</b>
		2xl	<b>26.95</b>			2xl	<b>39.95</b>
	<b>T-shirt</b>	adult s-xl	<b>10.95</b>				
		2xl	<b>13.95</b>				
<b>3E</b>	<b>Stadium Bear — front &amp; back design</b>	adult s-xl	<b>23.95</b>				
<b>3F</b>	<b>"My 2 favorite teams are Nebraska and</b> <b>whoever plays Oklahoma!" T-shirt</b>	adult s-xl	<b>9.95</b>	<b>3K</b>	<b>Soft Acrylic V-Necks —</b> red or white embroidered Nebraska	adult s-xl	<b>22.95</b>
		2xl	<b>11.95</b>			2xl/3xl/4xl	<b>26.95</b>
	<b>Nebraska Cornhusker T-shirt</b>	adult s-xl	<b>9.95</b>				
<b>3G</b>	<b>Scroll Nebraska Sweatshirt</b>	adult s-xl	<b>22.95</b>	<b>3L</b>	<b>V-Neck Acrylic Red Sweater —</b> with logo	adult s-xl	<b>29.95</b>
	<b>T-shirt</b>	adult s-xl	<b>10.95</b>			2xl/3xl/4xl	<b>33.95</b>
	<b>Helmet Design Sweatshirt —</b> specify red or white	adult s-xl	<b>23.95</b>		<b>Cardigan Acrylic Knit —</b> with script Nebraska	adult s-xl	<b>29.95</b>
		2xl	<b>25.95</b>			2xl	<b>33.95</b>
	<b>T-shirt — red or white</b>	adult s-xl	<b>10.95</b>				
		2xl	<b>12.95</b>				

BLACK: TS & DESIGN  
Trademark Application

Mark: BLACKSHIRTS & DESIGN  
International Classes: 6, 9, 12, 16,  
21, 24, 25

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

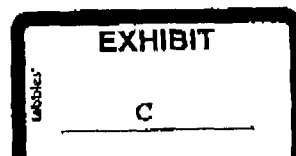
The Board of Regents of the University of Nebraska, a Nebraska corporation  
Varner Hall  
3835 Holdrege Street  
Lincoln, Nebraska 68583-0122

The above-identified Applicant has adopted and is using the above-identified trademark, shown in the accompanying drawing, and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et seq., as amended), for the following goods: *Key rings in International Class 6; computer accessories, namely: mouse pads and computer screen savers in International Class 9; automobile accessories, namely: trailer hitch covers and wheel covers in International Class 12; printed goods, namely: notebooks, notepads, binders, envelopes, stationery, folders, posters, calendars, trading cards, postcards, decals, stickers, and pencils and pens in International Class 16; household goods, namely: glasses, shot glasses, steins, mugs, cups, and coasters in International Class 21; printed fabric items, namely: flags, banners, sheets, blankets, and towels in International Class 24; and clothing, namely: caps, jackets, shirts, sweat pants and sweatshirts, T-shirts, boxer shorts and infant wear in International Class 25.*

The mark was first used in connection with the goods in each class identified above at least as early as 1995; and was first used in interstate commerce in connection with the same goods at least as early as 1995; and is now and has been in use in commerce since these dates in all of the above-referenced classes.

One specimen showing the mark as actually used in connection with the goods is enclosed herewith for each class of goods identified above.

In the event Applicant's basis for this application under Section 1(a) fails for omission of a date of first use in commerce or for failure to submit a proper specimen in connection with the goods of either of the classes for which registration is sought, Applicant seeks registration under





BLACK RTS & DESIGN  
Trademarks Application

the provisions of Section 1(b), on the basis that Applicant has a bona fide intention to use the mark in commerce on or in connection with such goods (15 U.S.C. 1051(b), as amended).

The government filing fee is attached hereto.

Applicant hereby appoints Turan P. Odabasi, a member of the bar of the State of Nebraska, and Christopher M. Goff, a member of the bar of the State of Missouri with full power of substitution, revocation and addition, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, to sign any documents on its behalf in connection with this application or any other matter before the Patent and Trademark Office, and to receive the certificate.

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 that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

The Board of Regents of the University of Nebraska

Date: 11/01/00

By: David E. Lechner

Name: David E. Lechner

Title: Vice President for Business and Finance

DRAWING

The Board of Regents of the University of Nebraska, a Nebraska corporation  
Varner Hall  
3835 Holdrege Street  
Lincoln, Nebraska 68583-0122

In Use

Goods

Date of First Use - At least as early as 1995.

Class 6 - key rings;

Class 9 - computer accessories, namely, mouse pads and computer screen savers;

Class 12 - automobile accessories, namely trailer hitch covers and wheel covers;

Class 16 - printed goods, namely, notebooks, notepads, binders, envelopes, stationery, folders, posters, calendars, trading cards, postcards, decals, stickers, and pencils and pens;

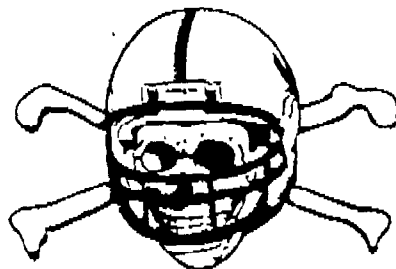
Class 21 - household goods, namely, glasses, shot glasses, steins, mugs, cups, and coasters;

Class 24 - printed fabric items, namely, flags, banners, sheets, blankets, and towels; and

Class 25 - clothing, namely, caps, jackets, shirts, sweat pants and sweatshirts, T-shirts, boxer shorts and infantwear.

Turan P. Odabasi  
E115 Beadle Center  
University of Nebraska-Lincoln  
Lincoln, Nebraska 68588-0669  
Phone - 402-472-0259  
Fax - 402-472-0398

Christopher M. Goff  
Senniger, Powers, Leavitt and Roedel  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
Phone - 314-231-5400  
Fax - 314-231-4342



**BLACKSHIRTS**

LONG SLEEVE T-SHIRT

100% Cotton.  
S-M-L-XL-2XL  
Black  
#N7-119  
\$21.95



Back



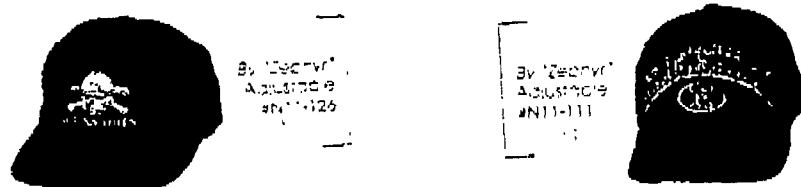
MOCK TURTLENECK

100% Cotton.  
S-M-L-XL-2XL  
Black  
#N7-108  
\$29.95



TANK TOP

100% Cotton.  
S-M-L-XL-2XL  
Black  
#N6-105  
\$11.95



LONG SLEEVE T-SHIRT  
100% Cotton  
S-M-L-XL-3XL  
Black  
#N2-108  
3'9" 25



LONG SLEEVE T-SHIRT  
S-M-L-XL-3XL  
#N18-103



CAR FLAG  
#N22-113  
\$12.95



VISOR FLAG  
#N22-114  
\$9.95

GOLF TOWEL  
#N23-126  
\$7.95

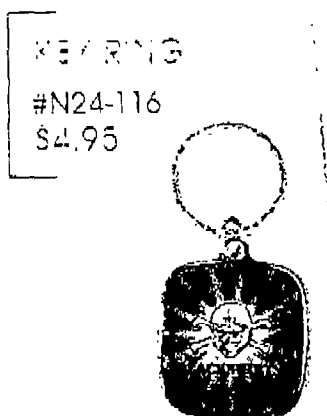


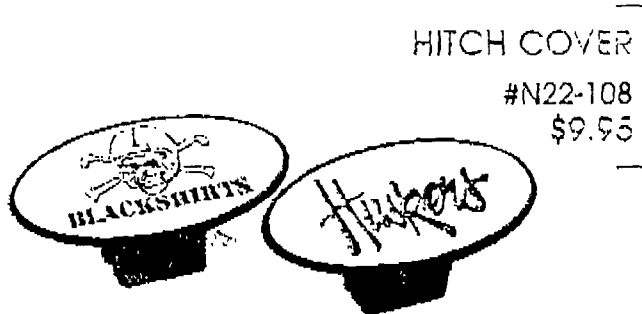
FLAG 3X5  
#N26-117.....Sleeve  
\$3.95  
#N26-118...Grommets  
\$3.95



MOUSE PAD  
#N27-118  
ST. 93









MUG  
#N21-124  
\$6.95



WATERSTONE  
COASTERS  
Set of 2  
#N21-119  
\$8.95



CAN COO  
#N21-113

#N20-113  
\$5.95



ROCK GLASS  
#N21-115  
\$5.95



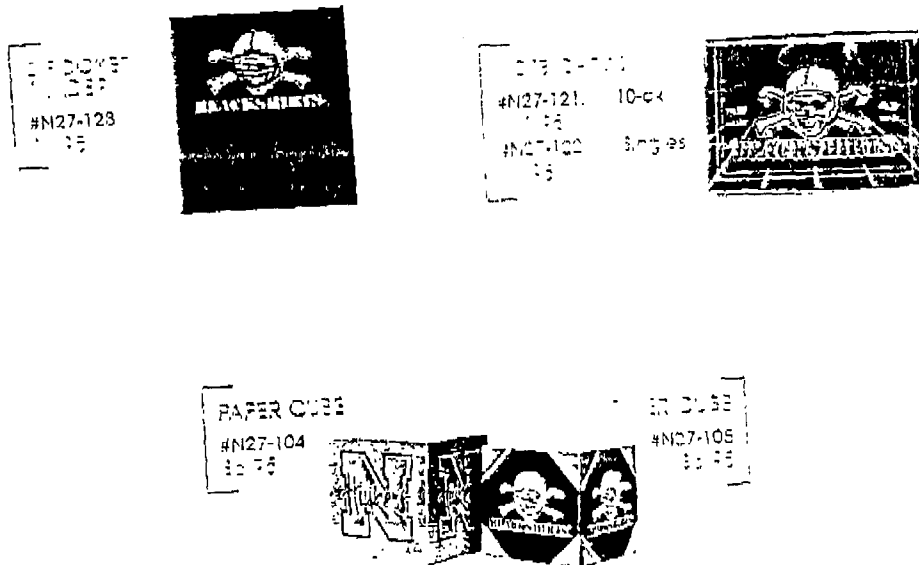
BLACKSHIRTS  
12oz  
Black  
#N20-108  
\$7.95



GLASS MUG  
32oz  
#N20-118  
\$12.95



STE  
16oz  
#N20-119



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## UNITED STATES PATENT AND TRADEMARK OFFICE

<b>SERIAL NO.</b> 76/160535 <input checked="" type="checkbox"/> <b>APPLICANT</b> The Board of Regents of the University of <b>MARK</b> BLACKSHIRTS (AND DESIGN) <sup>3061</sup> <b>ADDRESS</b> CHRISTOPHER M. GOFF (PIF) SENNIGER POWERS LEAVITT AND ROEDEL 1 METROPOLITAN SQ FL 16 SAINT LOUIS MO 63102-2733		<b>PAPER NO.</b>  <b>ADDRESS:</b> Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov  If no fees are enclosed, the address should include the words "Box Responses - No Fee."  Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.
<b>ACTION NO.</b> 01  <b>MAILING DATE</b> 03/23/01  <b>REF. NO.</b> UNL3062	<b>FORM PTO-1525 (5-90)</b> <b>U.S. DEPT. OF COMM. PAT. &amp; TM OFFICE</b>	

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 76/160535

The assigned examining attorney has reviewed the referenced application and determined the following.

**I. 2(d) Refusal- Likelihood of Confusion**

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 2194387 as to be likely to cause confusion, or to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

EXHIBIT

D

76/160535

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Applicant's mark, BLACKSHIRTS and design, and registrant's mark are similar in appearance and meaning. Both marks are skull and crossbones with a single-stripe football helmet. Since applicant's wording is descriptive for the goods, the marks have the same overall commercial impression. When the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956).

Applicant's listed goods, and the goods of the registrant, sweatshirts, sweatpants, jackets and shorts, are similar in nature, use and move in similar channels of trade. Both goods are apparel used by and sold to the general public. As a result, consumers are likely to incorrectly conclude that applicant's mark indicates a source for the goods of the registrant.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following.

## II. Disclaimer

The applicant must disclaim the descriptive wording "BLACKSHIRTS" apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP sections 1213 and 1213.02(a). The wording is merely descriptive because it describes the type and color of the shirts.

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP section 1213.09(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use BLACK SHIRTS apart from the mark as shown.

*See In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

A disclaimer does not remove the disclaimed matter from the mark. It is simply a statement that the applicant does *not* claim exclusive rights in the disclaimed wording or design apart from the mark as shown in the drawing.

## III. Clarification of Identification of Goods

The wording in the identification of goods is unacceptable as indefinite. The applicant must amend the identification to specify the commercial name of the goods. If there is no common commercial name for the goods, the applicant must describe the product and its intended uses. TMEP section 804.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 804.09. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

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International Class 6 Goods

The applicant may adopt the following identification of goods, if accurate: Metal key rings.

International Class 9 Goods

The applicant may adopt the following identification of goods, if accurate: Computer accessories, namely mouse pads; Computer software for use as screen savers.

International Class 12 Goods

The identification is acceptable as listed.

International Class 16 Goods

The applicant may adopt the following identification of goods, if accurate: Printed goods, namely, notebooks, notepads, binders, envelopes, stationery, folders, posters, calendars, trading cards, postcards, decals, stickers, and pencils and pens; Coasters made of paper.

International Class 20 Goods

The applicant may adopt the following identification of goods, if accurate: Non-metal key rings.

International Class 21 Goods

The applicant may adopt the following identification of goods, if accurate: Household items, namely drinking glasses, shot glasses, drinking steins, mugs, cups and plastic coasters.

International Class 24 Goods

The applicant may adopt the following identification of goods, if accurate: Printed fabric items, namely, flags, cloth banners, bed sheets, bed blankets and towels.

International Class 25 Goods

The identification is acceptable as listed.

**IV. Requirements for a Multi-Class Application**

If the applicant prosecutes this application as a combined, or multiple-class, application, the applicant must comply with each of the following:

- (1) The applicant must specifically identify the goods in each class and list the goods by international class with the classes listed in ascending numerical order. TMEP section 1113.01.
- (2) The applicant must submit a filing fee for each international class of goods not covered by the fee already paid. 37 C.F.R. Sections 2.6(a)(1) and 2.86(b); TMEP sections 810.01 and 1113.01. Effective January 10, 2000, the fee for filing a trademark application is \$325 for each class. This applies to classes added to pending applications as well as to new applications filed on or after that date.

- (3) The applicant must submit:

(a) dates of first use and first use in commerce and one specimen for each class that includes goods based on use in commerce under Trademark Act Section 1(a). The

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dates of use must be at least as early as the filing date of this application. 37 C.F.R. Sections 2.34(a)(1) and 2.86(a), and the specimen(s) must have been in use in commerce at least as early as the filing date of the application, and/or

(b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods specified in each class that includes goods based on a bona fide intention to use the mark in commerce under Trademark Act Section 1(b).

(4) The applicant must submit an affidavit or a declaration under 37 C.F.R. Section 2.20 signed by the applicant to verify (3) above. 37 C.F.R. Sections 2.59(a) and 2.71(c).

#### **V. Specimen of Use Required**

An application based on use of the mark in commerce under Trademark Act Section 1(a), 15 U.S.C. Section 1051(a), must include a specimen showing use of the mark in commerce on or in connection with the goods/services. The application does not contain a specimen for the listed International Class 21 and 24 Goods. Examples of acceptable specimens are tags, labels, instruction manuals, containers or photographs that show the mark on the goods or packaging. The applicant must submit a specimen for each class, and must submit the following statement:

The specimen was in use in commerce at least as early as the filing date of the application.

This statement must be verified with an affidavit or a declaration under 37 C.F.R. Section 2.20, 37 C.F.R. Section 2.71(d)(1).

#### **VI. Mark Differs on Drawing and Specimen**

The drawing displays the mark as BLACKSHIRTS and design. However, this differs from the display of the mark on the specimen for International Class 9, where it appears as BLACKSHIRTS and design in a three-dimensional representation. The applicant cannot amend the drawing to conform to the display on the specimen because the character of the mark would be materially altered. 37 C.F.R. Section 2.72(a); TMEP section 807.14(a).

Therefore, the applicant must submit a substitute specimen that shows use of the mark as it appears on the drawing. 37 C.F.R. Section 2.51; TMEP section 807.14. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimen was in use in commerce at least as early as the filing date of the application. 37 C.F.R. Sections 2.59(a) and 2.72(a); TMEP section 905.10

The statement supporting use of the substitute specimen must read as follows:

The substitute specimen was in use in commerce at least as early as the filing date of the application.

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**VII. Drawing Does Not Reproduce Satisfactorily**

The drawing is not acceptable because it will not reproduce satisfactorily. In particular, the details of the drawing will not reproduce properly. The applicant must submit a new drawing showing the mark clearly and conforming to 37 C.F.R. Section 2.52. TMEP section 807.05.

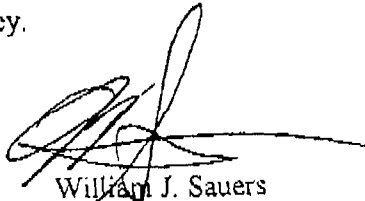
**VIII. Applicant Cannot Assert Both 1(a) and 1(b) for the Same Goods**

The applicant asserts use of the mark in commerce for goods and applicant asserts in the alternative that it has a bona fide intent to use the mark in commerce for the same goods/services. An applicant may not assert both use of the mark in commerce, under Trademark Act Section 1(a), 15 U.S.C. Section 1051(a), and intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b), for the same goods or services. 37 C.F.R. Section 2.34(b)(1). The applicant must delete one basis or divide the goods/services between the two bases, as appropriate.

**VIII. Status Query**

Current status and status date information is available, via push button telephone, for all federal trademark registration and application records maintained in the automated Trademark Reporting and Monitoring (TRAM) system. The information may be accessed by calling (703) 305-8747 from 6:30 a.m. until midnight, Eastern Time, Monday through Friday, and entering a seven-digit registration number or eight-digit application number, followed by the "#" symbol, after the welcoming message and tone. Callers may request information for up to five registration number or application number records per call.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.



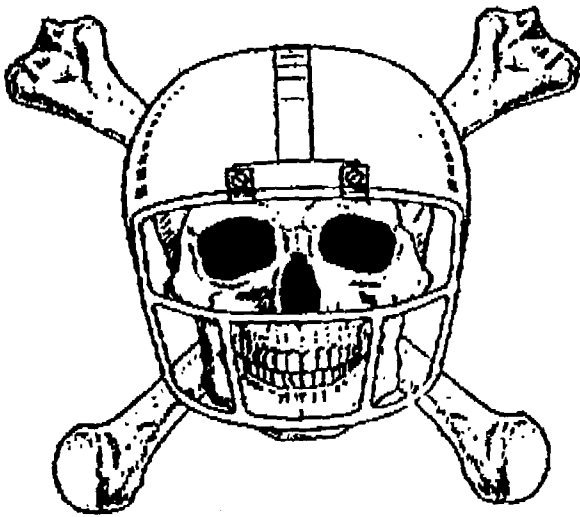
William J. Sauers  
Trademark Attorney  
Law Office 114  
(703) 308-9114 x271

JAN-17-2002 THU 05:31 PM SENNIGER POWERS

FAX NO. 3142314342

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\*\*\* User: wsauers \*\*\* Serial Number: 74709894 \*\*\* 3/21/01 11:52:49 AM \*\*\*



Goods and Services

IC 025. US 022 039. G & S: [ sweatshirts, sweatpants, jackets and shorts ] \* hats and T-shirts \*. FIRST USE: 19951227. FIRST USE IN COMMERCE: 19951227

Mark Drawing Code

(2) DESIGN ONLY

Design Code

021111 090525

Serial Number

74709894

Filing Date

August 2, 1995

Filed ITU

FILED AS ITU

Publication for Opposition Date

April 9, 1996

Supplemental Register Date

February 10, 1998

Change in Registration

CHANGE IN REGISTRATION HAS OCCURRED

Registration Number

2194387

Registration Date

October 6, 1998

Owner Name and Address

(REGISTRANT) Croce, Pasquale W., Jr. INDIVIDUAL UNITED STATES 835 Mount

Received from < 3142314342 > at 1/17/02 6:29:22 PM [Eastern Standard Time]

(cont)



JAN-17-2002 THU 05:32 PM SENNIGER POWERS  
User: wsauers

FAX NO. 3142314342

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Moro Road Villanova PA 19085

Description of Mark

The lining and stippling shown in the drawing are features of the mark and are not intended to indicate color.

Character of Mark

TRADEMARK

Character

SUPPLEMENTAL

Character Dead Indicator

LIVE

Character of Record

BRYNA S SILVER

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One Metropolitan Square  
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## FACSIMILE TRANSMITTAL COVER SHEET

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NAME: Mr. Tyrone Craven, Legal Assistant

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## COMMENT(S)/NOTE(S):

Mr. Craven - Pursuant to our telephone call today, attached is a copy of a Petition for Cancellation that was sent to the TTAB on September 20, 2001. The TTAB's computer system shows that the fee was received and paid on September 24, 2001, but there is no record of the Petition in the system. I understand that you will scan the Petition into the TTAB's system and begin processing it tomorrow, January 18, 2002. Please let me know if you need me to send a copy of the Petition via mail.

Thank you for your assistance.

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