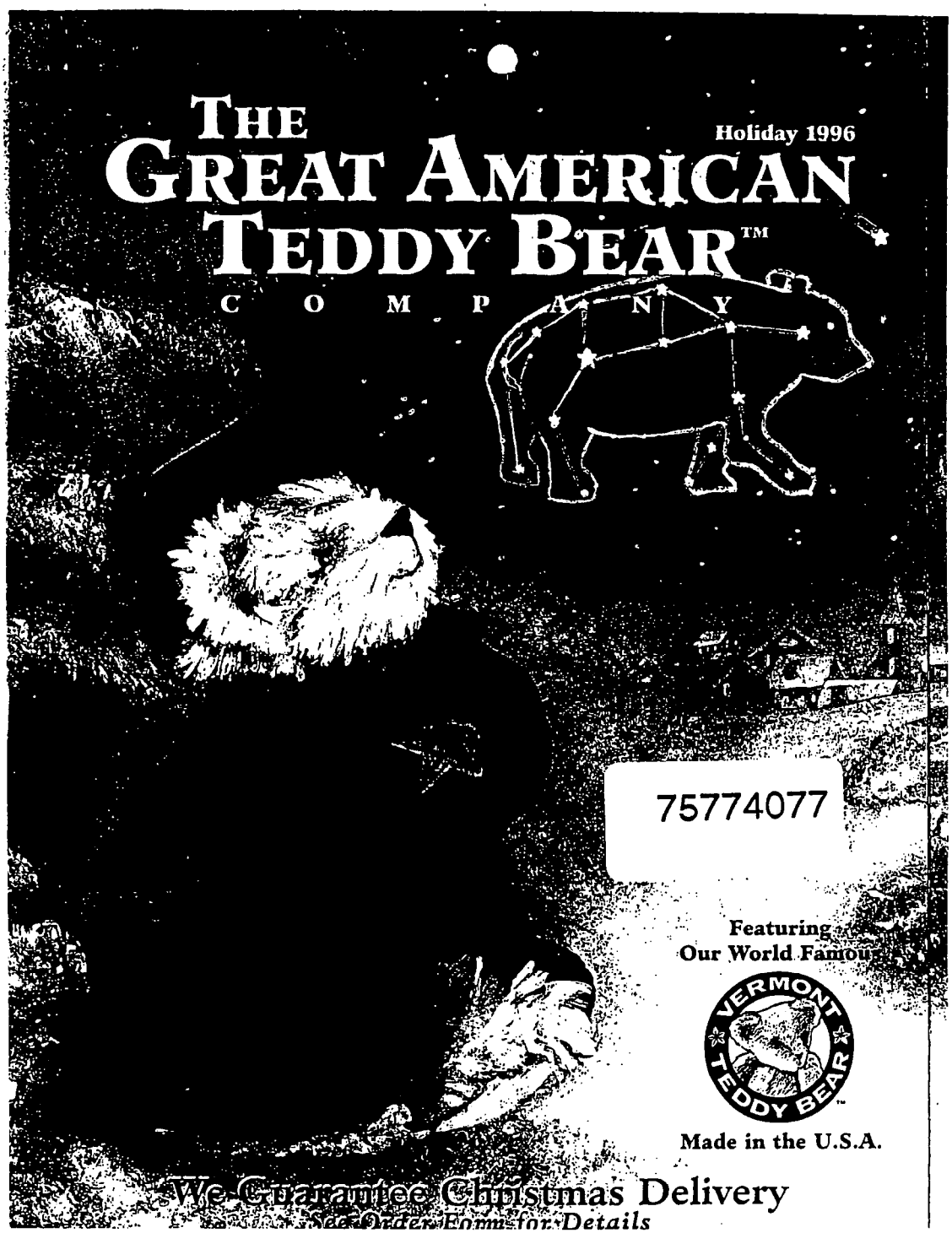
THE GREAT AMERICAN TEDDY BEAR™ COMPANY

Holiday 1996



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Featuring
Our World Famou

VERMONT TEDDY BEAR™

Made in the U.S.A.

We Guarantee Christmas Delivery
See Order Form for Details

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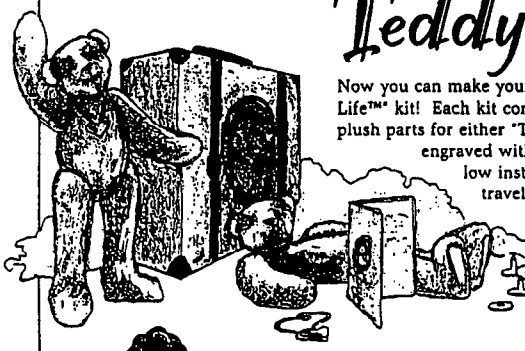
Make Your Own Teddy Bears!



Now you can make your own teddy bear at home with our "Make A Friend For Life™" kit! Each kit contains everything you need to bring your friend to life-six plush parts for either "Teddy" or "Theo", magical bear stuffing, a brass heart engraved with, *"Teddy loves Theo"* to put inside your bear, and easy-to-follow instructions. It's all packaged in a sturdy suitcase, perfect for traveling with Teddy, Theo and all their toys and clothes.

13" "Teddy" Make a Friend Kit
670501 $36

13" "Theo" Make a Friend Kit
670502 $36

First you fill your bear with Dreams...

Inside the box you will find instructions and six plush parts. The polyester stuffing allows you to fill your bear perfectly for hugging. You can fill your bear's head with dreams...the heart you fill with love.

Then put your bear together

Our easy, snap-together T-joints allow your bears to move their arms and legs so they can play with you. They are specially designed to last through all your adventures.

Place brass heart inside bear, a final stitch & you're done!

Fill in the Birth Certificate with your Bear's name and the exact time of that last stitch. We have enclosed the Friends for Life Code to help you and your bear get your lifelong friendship started.

Dress your bear for big adventures

Turn to pages 44 & 45 to check out our winter clothes designed especially for your new friend and all of your new adventures together.

Save 10% when you dress either bear in any of the outfits sold on pages 44 & 45.

The Great American Teddy Bear™ Co.
104 Challenger Drive
Portland, TN 37148-1718

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TEDDY BEAR

08-12-1999

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Step 1

Open the stuffing packet and divide it into four equal groups. These will be used to fill the arms, legs, head, and body. You'll want to start with the arms, then do the legs and the head. Hold off doing the body until after the pieces are attached to it. You may find the handle of a wooden spoon is useful for pushing the stuffing to the bottom of the arms and legs.

Step 2
Attach your Bear's head.

If you look closely at the opening where you filled the head you will find it has three small holes near the opening you used to stuff it. Place the joint peg inside the large opening so the peg is sticking out, then place the two side small holes over the peg. Next place the back hole over the peg. The head attaches to the top of the body at the juncture of the seams. Place the peg through the hole and press a washer from the inside. The t-joint supplied is particularly useful for making sure the head is on tight. (See figure A).

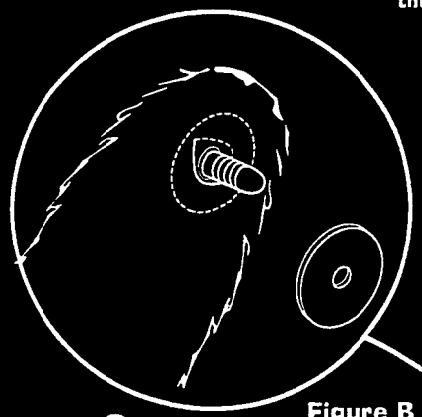

Figure B

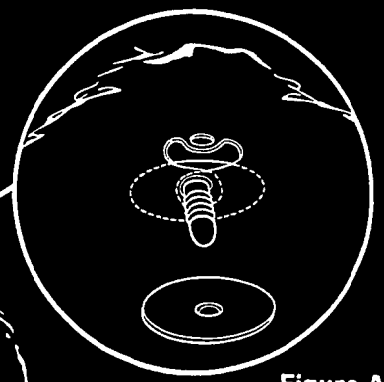

Figure A

Step 3
Attach the arms and legs to your Bear.

Begin with the legs. Find the two small holes above and below the opening you used to stuff the leg. Place the joint peg inside the large opening with the peg sticking out. Next take the bottom small hole and place it over the peg, then take the top small hole and place it over the peg. Do this for the other leg and for both arms

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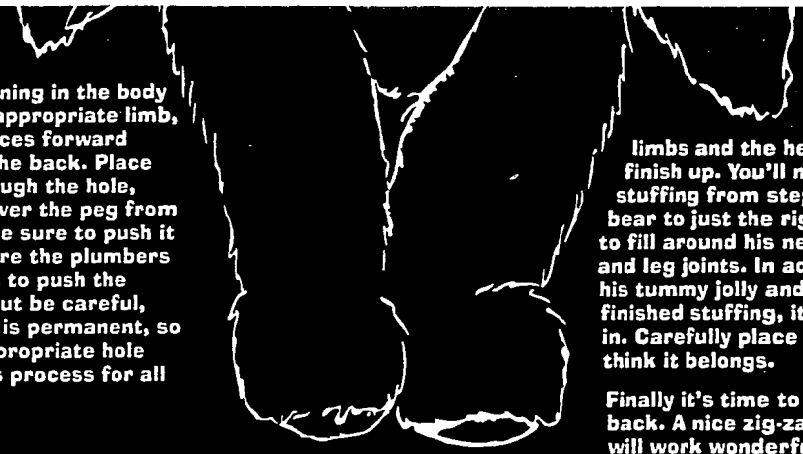
Finally place the body in front of you with the butt tag at the bottom facing you. Find the opening in the body to correspond with the appropriate limb, making sure the limb faces forward when the butt tag is in the back. Place the peg on the limb through the hole, then press the washer over the peg from the inside of the body. Be sure to push it down tightly. This is where the plumbers T comes in handy. Use it to push the washer on completely, but be careful, once the washer is on it is permanent, so be sure you have the appropriate hole for the limb. Repeat this process for all the limbs.



Step 4
Stuff and seal your bear's body.

Now that you have all the limbs and the head attached it's time to finish up. You'll need the remainder of the stuffing from step one. Fill the body of your bear to just the right firmness, making sure to fill around his neck and around all the arm and leg joints. In addition make sure you make his tummy jolly and round. When you're finished stuffing, it's time to place the heart in. Carefully place the heart exactly where you think it belongs.

Finally it's time to sew up his back. A nice zig-zag stitch will work wonderfully. (See figure C)

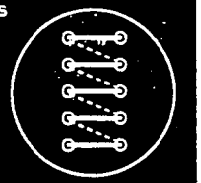


Figure C

Step 5
Congratulations! You've made a friend for life.

Be sure to fill out your bear's birth certificate with the exact time of that last stitch, because that's the time of his birth. Now it's time to make friends with your bear. So first of all introduce yourself. Then you two can begin all your adventures.

Tools You'll Need:
A Wooden Spoon
A Large Sewing Needle

Contents of Kit:	
(1) Furry Head	(5) Joint Pins (they look like big thumb tacs)
(1) Furry Body	(5) Washers
(2) Furry Arms	(1) Plumbers T
(2) Furry Legs	(1) Bag of Stuffing
(1) Brass Heart	Heavy Nylon Thread

VERMONT TEDDY BEAR™

Make A Friend For Life™

The Great American Teddy Bear Company™
2236 Shelburne Road
Shelburne, Vermont 05482

Scale = N.T.S.

09/06/1996

Drawn By: Teddy

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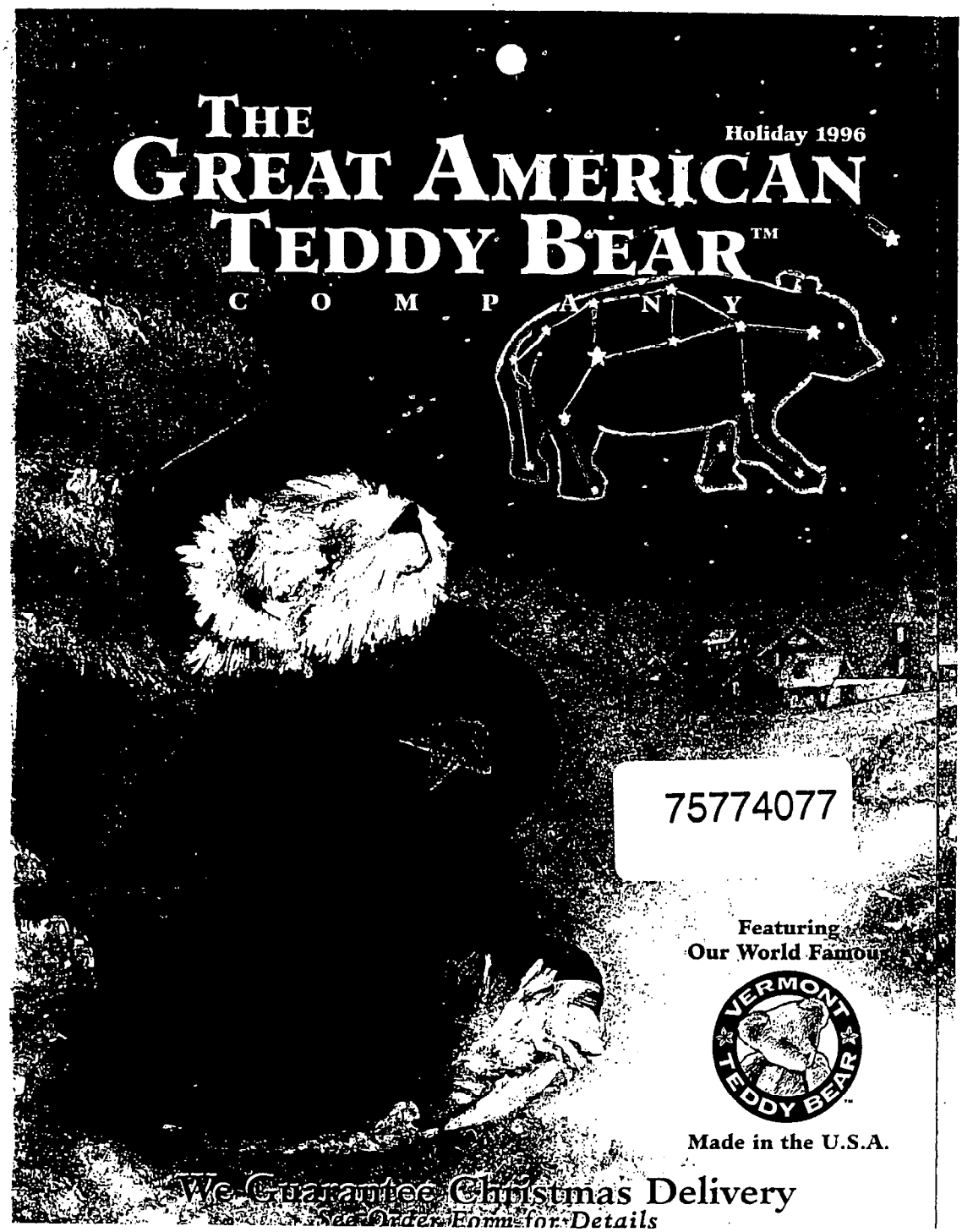

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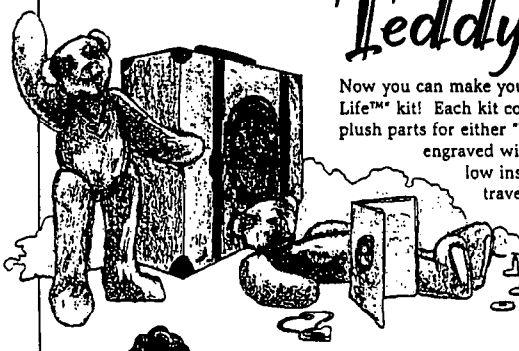
Make Your Own Teddy Bears!



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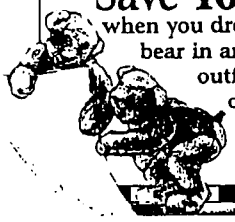
Place brass heart inside bear, a final stitch & you're done!

Fill in the Birth Certificate with your Bear's name and the exact time of that last stitch. We have enclosed the Friends for Life Code to help you and your bear get your lifelong friendship started.

Dress your bear for big adventures

Turn to pages 44 & 45 to check out our winter clothes designed especially for your new friend and all of your new adventures together.

Save 10% when you dress either bear in any of the outfits sold on pages 44 & 45.



The Great American Teddy Bear™ Co.
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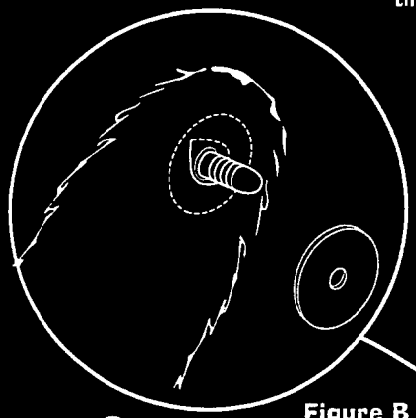
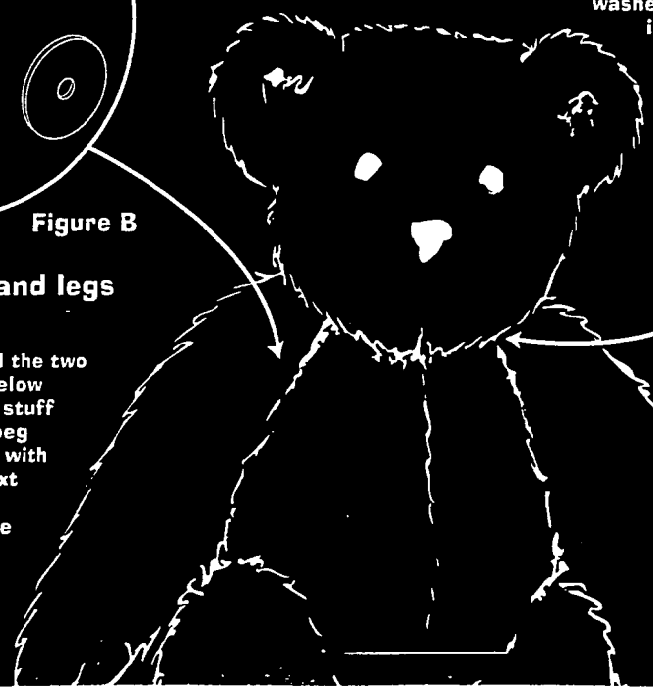
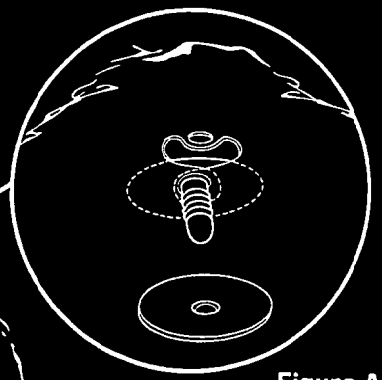


Figure B





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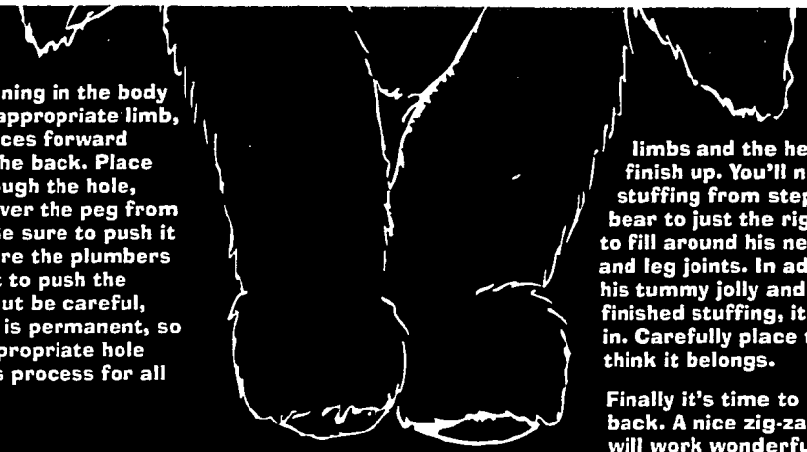
Finally place the body in front of you with the butt tag at the bottom facing you. Find the opening in the body to correspond with the appropriate limb, making sure the limb faces forward when the butt tag is in the back. Place the peg on the limb through the hole, then press the washer over the peg from the inside of the body. Be sure to push it down tightly. This is where the plumbers T comes in handy. Use it to push the washer on completely, but be careful, once the washer is on it is permanent, so be sure you have the appropriate hole for the limb. Repeat this process for all the limbs.



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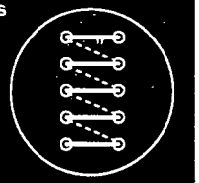

Figure C

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2236 Shelburne Road
Shelburne, Vermont 05482

Scale = N.T.S.

09/06/1996

Drawn By: Teddy

1 of 1

BABW-VTB-363

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/774077 **APPLICANT** VERMONT TEDDY BEAR COMPANY, INC., THE	PAPER NO.
MARK MISCELLANEOUS DESIGN	ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513
ADDRESS H. JAY SPIEGEL P.O. BOX 444 MOUNT VERNON, VIRGINIA 22121	**ACTION NO.** 01
	MAILING DATE 01/06/00
	REF. NO.
FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE	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.

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.*

First Office Action

RE: Serial Number: 75/774077

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

Fails to Function as a Mark

The examining attorney refuses registration because the proposed mark does not function as a trademark nor as a service mark. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Sections 1051, 1052, 1053 and 1127. It neither identifies and distinguishes the goods and services of the applicant from those of others nor indicates their source. *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); *In re Hughes Aircraft Co.*, 222 USPQ 263 (TTAB 1984); TMEP sections 1301.02(a). First and foremost, none of the specimens even show the proposed mark. Furthermore, the instructions on the back of the catalog and on the blueprint indicate that the proposed mark is used as one of the pieces of a kit for making a teddy bear and that it is not used as a trademark to identify the source of the applicant's goods or services. It is merely, a body part, like one of the bears legs or arms, which is used to build a bear. As such, it would not be perceived by purchasing public as mark which identifies and distinguishes source of the applicant's goods or services. In sum, the proposed mark is not

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registrable because its usage as described in specimens of record fails to impart any commercial impression as trademark or service mark.

The applicant should also note the following additional ground for 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 proposed mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration Nos. 1744649 and 1975529 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registrations.

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 or services 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).

U.S. Registration No. 1744649:

The registered mark consists of a faceted faced heart shaped object simulating a gemstone placed in the navel of a troll doll and the applicant is seeking to register a mark that consist of a three dimensional heart shaped object that is placed somewhere inside a bear. Clearly, both the applicant and the registrant have three dimensional heart shaped objects placed on or in the toys. Furthermore, the applicant has not identified a specific location of its heart, and as such, it could possibly be put inside the navel of one of the applicant's plush animals and stuffed toy animals. In addition to the marks being confusingly similar, the goods and services are highly related. The registrant's goods are "dolls, stuffed and plastic." The applicant's goods are "plush animals and stuffed toy animals" and "blueprints and catalogs" and the applicant's services are "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor." The goods and services are related in that they are the types of goods and services that originate from the same source under the same mark. The examining attorney encloses third party registrations in which the applicant's goods and services and the registrant's goods emanate from a single source under the same mark as evidence of the relatedness of the parties' goods and services. See attached. Moreover, the goods and services are the types of goods and services that are directed to the same class of purchasers and flow in the same channels of trade. In sum, given that the marks are confusingly similar and that the goods and services are highly related, there is a likelihood of confusion.

U.S. Registration No. 1975529:

The registered mark consists of a heart positioned on the lower front portion of a doll's dress and the applicant is seeking to register a mark that consist of a three dimensional heart shaped object that is placed somewhere inside a bear. Clearly, both the applicant and the registrant have three dimensional heart shaped objects placed on or in the toys. Furthermore, the applicant has not identified a specific location of its heart, and as such, it could possibly be put anywhere in the applicant's plush animals and stuffed toy animals. The applicant's catalog even shows a drawing

of one of its bears wearing a heart on a chain around his neck. In addition to the marks being confusingly similar, the goods and services are highly related. The registrant's goods are "dolls." The applicant's goods are "plush animals and stuffed toy animals" and "blueprints and catalogs" and the applicant's services are "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor." The goods and services are related in that they are the types of goods and services that originate from the same source under the same mark. The examining attorney encloses third party registrations in which the applicant's goods and services and the registrant's goods emanate from a single source under the same mark as evidence of the relatedness of the parties' goods and services. See attached. Moreover, the goods and services are the types of goods and services that are directed to the same class of purchasers and flow in the same channels of trade. In sum, given that the marks are confusingly similar and that the goods and services are highly related, there is a likelihood of confusion.

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 informalities.

<u>Specimens</u>

Blueprints:

The blueprint specimens are unacceptable as evidence of actual trademark use for the goods in International Class 28, because they do not show the proposed mark as it is used on the "plush animals and stuffed toy animals." Any material whose function is merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is unacceptable to support trademark use. Similarly, information or instruction sheets like the applicant's blueprints are generally not acceptable for showing trademark use. *In re Schiapparelli Searle*, 26 USPQ2d 1520 (TTAB 1993); *In re Drilco Industrial Inc.*, 15 USPQ2d 1671 (TTAB 1990); In re ITT Rayonier Inc., 208 USPQ 86 (TTAB 1980); *In re Bright of America, Inc.*, 205 USPQ 63 (TTAB 1979). Furthermore, the proposed mark does not appear anywhere on the specimens. The applicant must submit a stuffed or plush toy specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The blueprint specimens are also unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because the proposed mark does not appear anywhere on the blueprint specimens. The applicant must submit a blue print or catalog specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal on the goods. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The blueprint specimens are also unacceptable to show use of the proposed mark in connection with the applicant's services in International Class 35, because they are printed publications that do not show the mark used in the sale or advertising of the "retail store services and mail order services." Trademark Act Section 45, 15 U.S.C. Section 1127; *In re Universal Oil Products Co.*, 476 F.2d 653, 177 USPQ 456 (CCPA 1973); TMEP section 1301.02. The specimen must show use of the mark "in the sale or advertising of services," as such, a printed blueprint containing

instructions on how to assembly a stuffed bear is unacceptable to show service mark use. Furthermore, the proposed mark does not appear anywhere on the specimens. The applicant must submit an advertising specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used in connection with the services in commerce is not acceptable.

Catalog Covers:
The catalog covers are unacceptable as evidence of actual trademark use for the goods in International Class 28, because they are merely catalogs which serve to advertise the applicant's goods. Advertising material is generally not acceptable as specimens for goods. Any material whose function is merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is unacceptable to support trademark use. Furthermore, the proposed mark does not appear anywhere on the specimens. As stated above, the applicant must submit a stuffed or plush toy specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The catalog covers are unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because the proposed mark does not appear anywhere on the catalog cover. As stated above, the applicant must submit a blue print or catalog specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal on the goods. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The catalog covers are unacceptable as evidence of actual trademark use for the "retail store services and mail order services" in International Class 35, because the proposed mark does not appear anywhere on the catalog cover. As stated above, the applicant must submit an advertising specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used in connection with the services in commerce is not acceptable.

In sum, the applicant must submit a substitute specimen for each class of goods and services showing the proposed mark as used in commerce on the goods in International Classes 28 and 16 and showing the proposed mark as used in commerce in the sale or advertisement of the applicant's services in International Class 35. Examples of acceptable specimens for the goods in International Classes 28 and 16 are tags, labels, instruction manuals, containers or photographs that show the mark on the goods or packaging. Examples of acceptable specimens for the services in International Class 35 are signs, photographs, brochures or advertisements that show the mark used in the sale or advertising of the services. TMEP section 1301.04. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimens were in use in commerce at least as early as the filing date of the application. *Jim Dandy Co. v. Siler City Mills, Inc.*, 209 USPQ 764 (TTAB 1981); 37 C.F.R. Section 2.59(a); TMEP section 905.10. The examining attorney encloses an example of a properly worded declaration supporting the substitute specimens below.

DECLARATION SUPPORTING THE SUBSTITUTE SPECIMENS

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 the facts set forth in this response are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true. The substitute specimens were in use in commerce at least as early as the filing date of the application. 37 C.F.R. Section 2.59(a); TMEP section 905.10.

_____
(Signature)

_____
(Print or Type Name and Position)

_____
(Date)

Identification of Goods

The identification of goods is unacceptable because it is indefinite and it identifies goods in other classes. TMEP section 804. The Trademark Act requires that the identification of goods be specific, clear, accurate, definite and as concise as possible. TMEP 804.01. Therefore, the applicant must make the following clarifications.

(1) The applicant's identification of goods is entered into the record as: "plush animals and stuffed toy animals" in International Class 28, "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor" in International Class 35 and "blueprints and catalogs" in International Class 16. Therefore, applicant must indicate the subject matter of the catalogs and classify the blueprints and the catalogs in International Class 16, e.g., "blueprints and catalogs featuring plush toy animals, stuffed toy animals, and accessories therefor in International Class 16." If the applicant did not intend to include the blueprints and catalogs in the identification, then the applicant must so indicate in its response and request that they be deleted from the identification.

(2) The applicant must expressly indicate that the "plush animals" are toys, e.g., "plush toy animals in International Class 28."

Multiple Class Application

If the applicant adds another class to this two class application when clarifying the identification, 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. Currently, the fee for filing a trademark application is $245.00 for each class of goods or services. *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 either:

(a) dates of first use and first use in commerce in each class and one specimen for each class. The 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, or

(b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class.

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).

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

Jodi Lauterbach
Trademark Attorney
Law Office 107
(703) 308-9107 ext. 293

Effective January 10, 2000, the following trademark filing fees will increase:

37 C.F.R Section	Description of Paper Filed	Old Fee Amount	New Fee Amount (effective 1/10/2000)
2.6(a)(1)	Application for Registration, per class	$245	$325
2.6(a)(4)	Request for Extension of time for filing Statement of Use, per class	$100	$150
2.6(a)(5)	Application for Renewal, per class	$300	$400
2.6(a)(13)	Filing Section 15 Affidavit, per class	$100	$200
2.6(a)(16)	Petition for Cancellation, per class	$200	$300
2.6(a)(17)	Notice of Opposition, per class	$200	$300

See notices at 64 FR 67774 (Dec. 3, 1999) and 1229 TMOG 12 (Dec. 7, 1999).

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/774077 **APPLICANT** VERMONT TEDDY BEAR COMPANY, INC., THE	PAPER NO.
MARK MISCELLANEOUS DESIGN	ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513
ADDRESS H. JAY SPIEGEL P.O. BOX 444 MOUNT VERNON, VIRGINIA 22121	If no fees are enclosed, the address should include the words "Box Responses - No Fee"
ACTION NO. 02	
MAILING DATE 01/12/00	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.
REF. NO.	
FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE	

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.*

Second Office Action

RE: Serial Number: 75/774077

This Office action incorporates by reference the refusals and requirements issued in the first Office Action dated January 6, 2000. In addition to those refusals and requirements issued in the first Office Action, the applicant should note the following potential refusal with respect to the cited prior pending application. The applicant must address all issues raised in the first Office Action and in this Office Action in a proper response which must be received by the Office within 6 months from the date of this action in order to avoid abandonment.

Prior Pending Application

Please note that, in addition to the aforementioned prior registration, there is also a possible likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), between the applicant's mark and the mark in pending Application No. 75-434462. 37 C.F.R. Section 2.83. See attached. The filing date of the referenced application precedes the applicant's filing date. If the earlier-filed application matures into a registration, the examining attorney may have additional grounds for refusal of registration under Section 2(d).

BABW-VTB-298

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

Jodi Lauterbach
Trademark Attorney
Law Office 107
(703) 308-9107 ext. 293

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO.	APPLICANT	PAPER NO.
75/774077	VERMONT TEDDY BEAR COMPANY, INC., THE	
MARK	MISCELLANEOUS DESIGN	
ADDRESS	H. JAY SPIEGEL P.O. BOX 444 MOUNT VERNON, VIRGINIA 22121	
ACTION NO.	03	
MAILING DATE	09/01/00	
REF. NO.		

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

ADDRESS:
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.

THIRD OFFICE ACTION
Notice of Suspension

RE: Serial Number: 75/774077

This letter responds to the applicant's communication filed on July 7, 2000. The refusals based on Trademark Act Sections 1, 2, 3 and 45 and 2(d) and the requirements for substitute specimens and an amended identification of goods are continued. Action on this application is suspended pending the disposition of Application Serial No. 75-434462.

The applicant did not address any of the refusals or requirements. Rather, the applicant merely stated that the mark in the prior pending application "is identical in all respects to the mark claimed herein," and as such, this application should be passed to publication as well. The applicant should note that previous decisions by examining attorneys in approving other marks are without evidentiary value and are not binding upon the agency or the Board. TMEP Section 1207.01(c)(vii). *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 641 (TTAB 1984). Each case must be decided on its own merits. Furthermore, the applications are, in fact, very different from each other. The prior pending application was based on intent to use. Therefore, there were no specimens filed, and as such, no specimens refusal. Likewise, a refusal to register based on a failure to function as a trademark would not have been issued given that the prior pending application is an intent to use application. Such a refusal would not be issued until an allegation of use has been filed and the specimens submitted therewith indicate that the proposed mark fails to function as a trademark. Lastly, the identification of goods and services is also different. As such, the requirements for an amended identification of goods and services would be different for each case. In sum, the applications are very different from each other and there has been no inconsistent positions taken by the Office.

Fails to Function as a Mark

The examining attorney refuses registration, because the proposed mark does not function as a trademark nor as a service mark. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Sections 1051, 1052, 1053 and 1127. It neither identifies and distinguishes the goods and services of the applicant from those of others nor indicates their source. *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); *In re Hughes Aircraft Co.*, 222 USPQ 263 (TTAB 1984); TMEP sections 1301.02(a). First and foremost, none of the specimens even show the proposed mark. Furthermore, the instructions on the back of the catalog and on the blueprint indicate that the proposed mark is used as one of the pieces of a kit for making a teddy bear and that it is not used as a trademark to identify the source of the applicant's goods or services. It is merely, a body part, like one of the bears legs or arms, which is used to build a bear. As such, it would not be perceived by purchasing public as mark which identifies and distinguishes source of the applicant's goods or services. In sum, the proposed mark is not registrable because its usage as described in specimens of record fails to impart any commercial impression as trademark or service mark.

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 proposed mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration Nos. 1744649 and 1975529 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registrations.

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 or services 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).

U.S. Registration No. 1744649:

The registered mark consists of a faceted faced heart shaped object simulating a gemstone placed in the navel of a troll doll and the applicant is seeking to register a mark that consist of a three dimensional heart shaped object that is placed somewhere inside a bear. Clearly, both the applicant and the registrant have three dimensional heart shaped objects placed on or in the toys. Furthermore, the applicant has not identified a specific location of its heart, and as such, it could possibly be put inside the navel of one of the applicant's plush animals and stuffed toy animals. In addition to the marks being confusingly similar, the goods and services are highly related. The registrant's goods are "dolls, stuffed and plastic." The applicant's goods are "plush animals and stuffed toy animals" and "blueprints and catalogs" and the applicant's services are "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor." The goods and services are related in that they are the types of goods and services that originate from the same source under the same mark. The examining attorney encloses third party registrations in which the applicant's goods and services and the registrant's goods emanate from a single source under the same mark as evidence of the relatedness of the parties' goods and services. See attached. Moreover, the goods and services are the types of goods and services that are directed to the same class of purchasers and flow in the same channels of trade. In sum, given that the marks are confusingly similar and that the goods and services are highly related, there is a likelihood of confusion.

U.S. Registration No. 1975529:
The registered mark consists of a heart positioned on the lower front portion of a doll's dress and the applicant is seeking to register a mark that consist of a three dimensional heart shaped object that is placed somewhere inside a bear. Clearly, both the applicant and the registrant have three dimensional heart shaped objects placed on or in the toys. Furthermore, the applicant has not identified a specific location of its heart, and as such, it could possibly be put anywhere in the applicant's plush animals and stuffed toy animals. The applicant's catalog even shows a drawing of one of its bears wearing a heart on a chain around his neck. In addition to the marks being confusingly similar, the goods and services are highly related. The registrant's goods are "dolls." The applicant's goods are "plush animals and stuffed toy animals" and "blueprints and catalogs" and the applicant's services are "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor." The goods and services are related in that they are the types of goods and services that originate from the same source under the same mark. The examining attorney encloses third party registrations in which the applicant's goods and services and the registrant's goods emanate from a single source under the same mark as evidence of the relatedness of the parties' goods and services. See attached. Moreover, the goods and services are the types of goods and services that are directed to the same class of purchasers and flow in the same channels of trade. In sum, given that the marks are confusingly similar and that the goods and services are highly related, there is a likelihood of confusion.

Specimens
Blueprints:
The blueprint specimens are unacceptable as evidence of actual trademark use for the goods in International Class 28, because they do not show the proposed mark as it is used on the "plush animals and stuffed toy animals." Any material whose function is merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is unacceptable to support trademark use. Similarly, information or instruction sheets like the applicant's blueprints are generally not acceptable for showing trademark use. *In re Schiapparelli Searle*, 26 USPQ2d 1520 (TTAB 1993); *In re Drilco Industrial Inc.*, 15 USPQ2d 1671 (TTAB 1990); In re ITT Rayonier Inc., 208 USPQ 86 (TTAB 1980); *In re Bright of America, Inc.*, 205 USPQ 63 (TTAB 1979). Furthermore, the proposed mark does not appear anywhere on the specimens. The applicant must submit a stuffed or plush toy specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The blueprint specimens are also unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because the proposed mark does not appear anywhere on the blueprint specimens. The applicant must submit a blue print or catalog specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal on the goods. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The blueprint specimens are also unacceptable to show use of the proposed mark in connection with the applicant's services in International Class 35, because they are printed publications that do not show the mark used in the sale or advertising of the "retail store services and mail order services." Trademark Act Section 45, 15 U.S.C. Section 1127; *In re Universal Oil Products Co.*, 476 F.2d 653, 177 USPQ 456 (CCPA 1973); TMEP section 1301.02. The specimen must show use of the mark "in the sale or advertising of services," as such, a printed blueprint containing instructions on how to assembly a stuffed bear is unacceptable to show service mark use. Furthermore, the proposed mark does not appear anywhere on the specimens. The applicant must submit an advertising specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant

should note that a drawing which merely illustrates what the mark looks like and is not actually used in connection with the services in commerce is not acceptable.

Catalog Covers:
The catalog covers are unacceptable as evidence of actual trademark use for the goods in International Class 28, because they are merely catalogs which serve to advertise the applicant's goods. Advertising material is generally not acceptable as specimens for goods. Any material whose function is merely to tell the prospective purchaser about the goods, or to promote the sale of the goods, is unacceptable to support trademark use. Furthermore, the proposed mark does not appear anywhere on the specimens. As stated above,. the applicant must submit a stuffed or plush toy specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The catalog covers are unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because the proposed mark does not appear anywhere on the catalog cover. As stated above, the applicant must submit a blue print or catalog specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal on the goods. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used on or in connection with the goods in commerce is not acceptable.

The catalog covers are unacceptable as evidence of actual trademark use for the "retail store services and mail order services" in International Class 35, because the proposed mark does not appear anywhere on the catalog cover. As stated above, the applicant must submit an advertising specimen that shows a three dimensional heart shaped object that is placed inside a stuffed or plush toy animal. The applicant should note that a drawing which merely illustrates what the mark looks like and is not actually used in connection with the services in commerce is not acceptable.

Heart Placed Inside Teddy Bear:
The applicant indicates in its response to the first two Office Actions, that it also submitted "a sample of the heart that is placed inside the teddy bear during its manufacture." This specimen was never received by the Office.

The applicant should note that the heart specimen would not be acceptable as evidence of actual trademark use for the goods in International Class 28, because they would not show the proposed mark as it is used on the "plush animals and stuffed toy animals." Furthermore, they would not show the proposed mark as functioning as a trademark. It would neither identify nor distinguish the goods of the applicant from those of others nor indicate their source. *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); *In re Hughes Aircraft Co.*, 222 USPQ 263 (TTAB 1984); TMEP sections 1301.02(a). According to the instructions on the back of the catalog and on the blueprint, the proposed mark is used as one of the pieces of a kit for making a teddy bear and that it is not used as a trademark to identify the source of the applicant's goods. It is merely, a body part, like one of the bears legs or arms, which is used to build a bear. As such, it would not be used on the goods as a trademark.

The heart specimens would also be unacceptable as evidence of actual trademark use for the "blueprints and catalogs" in International Class 16, because they would not show use of the proposed mark on blueprints and catalogs. Specimens showing trademark use for goods must show the mark on the goods, containers, tags, labels or displays associated with the goods. TMEP Section 905.04. A heart

that is inserted in a bear would not show the proposed mark as it is used on the blueprints or catalogs or on the containers, tags, labels or displays associated with the blueprints and catalogs.

The heart specimens would also be unacceptable to show use of the proposed mark in connection with the applicant's services in International Class 35, because they would not show the mark used in the sale or advertising of the "retail store services and mail order services." Trademark Act Section 45, 15 U.S.C. Section 1127; *In re Universal Oil Products Co.*, 476 F.2d 653, 177 USPQ 456 (CCPA 1973); TMEP section 1301.02.

In sum, the applicant must submit a substitute specimen for each class of goods and services showing the proposed mark as used in commerce on the goods in International Classes 28 and 16 and showing the proposed mark as used in commerce in the sale or advertisement of the applicant's services in International Class 35. Examples of acceptable specimens for the goods in International Classes 28 and 16 are tags, labels, instruction manuals, containers or photographs that show the mark on the goods or packaging. Examples of acceptable specimens for the services in International Class 35 are signs, photographs, brochures or advertisements that show the mark used in the sale or advertising of the services. TMEP section 1301.04. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimens were in use in commerce at least as early as the filing date of the application. *Jim Dandy Co. v. Siler City Mills, Inc.*, 209 USPQ 764 (TTAB 1981); 37 C.F.R. Section 2.59(a); TMEP section 905.10. The examining attorney encloses an example of a properly worded declaration supporting the substitute specimens below.

> 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 the facts set forth in this response are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true. The substitute specimens were in use in commerce at least as early as the filing date of the application. 37 C.F.R. Section 2.59(a); TMEP section 905.10.
>
> _____
> (Signature)
>
> _____
> (Print or Type Name and Position)
>
> _____
> (Date)

Identification of Goods

The identification of goods is unacceptable because it is indefinite and it identifies goods in other classes. TMEP section 804. The Trademark Act requires that the identification of goods be specific, clear, accurate, definite and as concise as possible. TMEP 804.01. Therefore, the applicant must make the following clarifications.

(1) The applicant's identification of goods is entered into the record as: "plush animals and stuffed toy animals" in International Class 28, "retail store services and mail order services featuring plush toy animals, stuffed toy animals, and accessories therefor" in International Class 35 and "blueprints and catalogs" in International Class 16. Therefore, applicant must indicate the subject matter of the catalogs and classify the blueprints and the catalogs in International Class 16, e.g., "blueprints and catalogs featuring plush toy animals, stuffed toy animals, and accessories therefor in International Class 16." If the applicant did not intend to include the blueprints and catalogs in the identification,

then the applicant must so indicate in its response and request that they be deleted from the identification.

(2) The applicant must expressly indicate that the "plush animals" are toys, e.g., "plush toy animals in International Class 28."

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 or services that are not within the scope of the goods and services recited in the present identification.

Multiple Class Application

If the applicant adds another class to this two class application when clarifying the identification, the applicant must comply with each of the following:

(1) The applicant must specifically identify the goods and services in each class and list the goods and services 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 and services 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. Currently, the fee for filing a trademark application is $245.00 for each class of goods or services. *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 either:

(a) dates of first use and first use in commerce in each class and one specimen for each class. The 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, or

(b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class.

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).

Prior Pending Application

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application, the latter, if and when it registers, may be cited against this application. See 37 C.F.R. §2.83. A copy of information relevant to this pending application was sent previously.

The applicant may request that the application be removed from suspension by presenting arguments related to the potential conflict between the relevant applications or other arguments related the ground for suspension. The applicant's election to present or not to present arguments at this time will not affect the applicant's right to present arguments later.

The applicant indicates in its response to the two Office Actions, that it is in settlement negotiations with the owner of the prior pending application. If an acceptable consent agreement is submitted for the record, then the potential likelihood of confusion refusal with respect to the prior pending application will be withdrawn. The applicant should note, however, that such an agreement would not resolve the outstanding refusals based on a failure to function as a mark and a likelihood of confusion between the applicant's proposed mark and the marks in the cited registrations nor the outstanding requirements for substitute specimens and an amended identification goods.

As stated above, action on this application is ***SUSPENDED*** pending the disposition of Application Serial No. 75-434462.

Jodi Lauterbach
Trademark Attorney
Law Office 107
(703) 308-9107 ext. 293

Our bears say it best

Greeting cards are good...but Teddy Bears are better! When you want to send a special wish–for a birthday, anniversary or other special event–a Teddy Bear-Gram® from the Vermont Teddy Bear Co. will make the occasion even more memorable.

For most of our bears, you can choose from lustrously soft furs in Honey, Tan, Brown, Black or Champagne. (Please see page 11 for descriptions.)

Happy Anniversary Bears

Mr. Anniversary Bear has never looked better—all dressed up for the occasion in a black bow tie, with a dapper black top hat. Mrs. Anniversary Bear is as beautiful as the day they were married, with a big white bow, plus a white pillbox hat and veil. Both are very festive, with an abundance of curled gold and silver ribbons and a brass heart pendant engraved "Happy Anniversary 1994."

Pair of 15" Anniversary Bears $95
15" Mr. or Mrs. Anniversary Bear $52
Pair of 20" Anniversary Bears $125
20" Mr. or Mrs. Anniversary Bear $68

Pregnancy Bear

If congratulations (and crackers for breakfast) are in order, this bear is just the one to send. She's in a rich blue floral print button-on jumper. (The pillow sewn into the jumper gives her the nice round tummy.) As a mommy-to-be herself, this bear is great for hugging or hand-holding in the delivery room, too! Many women have used this bear to tell their husbands the good news that a child is on the way!

15" Pregnancy Bear $69
20" Pregnancy Bear $89

EXHIBIT
tabbies
7

Our bears say it best

Greeting cards are good...but Teddy Bears are better! When you want to send a special wish–for a birthday, anniversary or other special event–a Teddy Bear-Gram® from the Vermont Teddy Bear Co. will make the occasion even more memorable.

For most of our bears, you can choose from lustrously soft furs in Honey, Tan, Brown, or Champagne. (Please see page 11 for descriptions.)

Happy Anniversary Bears

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- Pair of 15" Anniversary Bears – $95
- 15" Mr. or Mrs. Anniversary Bear – $52
- Pair of 20" Anniversary Bears – $125
- 20" Mr. or Mrs. Anniversary Bear – $68

Pregnancy Bear

Sharing the moment of creation is a pleasure without equal. Our Pregnancy Bear can announce the event to the new dad-to-be, a gentle reminder of love from a parent or grandparent. The handsome bear wears a charming maternity dress (fabrics may vary) and hair bow while waiting patiently for her own newborn (and, by the look of her tummy, that may not be too long!). And, yes, of course, she's brought some delicious candy for your starving mother-to-be!

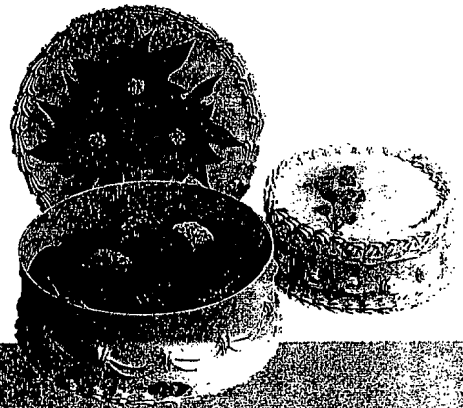
- 15" Pregnancy Bear – $69
- 20" Pregnancy Bear – $89

BIRTHDAY CHOCOLATES

These beautiful hand-decorated boxes are just the right touch for a loved one's birthday. Year after year, this beautiful box will make a wonderful keepsake.

Regular 4 1/2 inch birthday box **$21**
Regular 6 inch birthday box **$40**

Holiday 4 inch birthday box **$22**
Holiday 6 inch birthday box **$42**



BIRTHDAY BEARS

Birthdays are the most popular reason for sending a Vermont Teddy Bear. In 1993, our customers ordered 40,671 birthday bears for friends and family members ranging in age from one to 96 years of age. That's a lot of bears, and a lot of happy people.

15 inch Plush Bear **$59**
20 inch Plush Bear **$74**
Regular birthday bear includes ribbon necklace, party hat, and party horn.
Fall birthday bear includes ribbon necklace, and fall hat.
Winter birthday bear includes ribbon necklace, and winter hat.

VTB 00009

Outfit Your Fr iends For Life ... Teddy and Theo

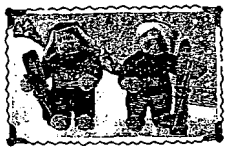
Presenting our exclusive collection of teddy bear outfits designed by our very own Kathleen Straube, for Holiday 1996. Choose from these finely detailed selections to dress our great 13" bears for generations!

So you'll see how adorable Teddy and Theo will look, we've presented both bears and their hand sewn winter clothes as cutouts. Snip the art from our catalog...enjoy the family fun of paper doll play.

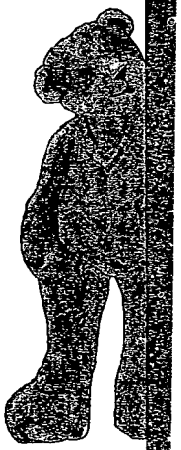
Teddy's and Theo's Ski Outfits

Both wear a grey fleece sweatshirt with snowflake embroidered trim. White ribbed turtleneck collar. Teddy has green wide-wale corduroy knicker overalls and a fleece-lined grey wool hat. Theo wears red/black flannel knicker overalls and a flannel hat with black silk cord ties. Outfits include skis and poles.

Teddy's Ski Outfit 670301 $39
Theo's Ski Outfit 670302 $39

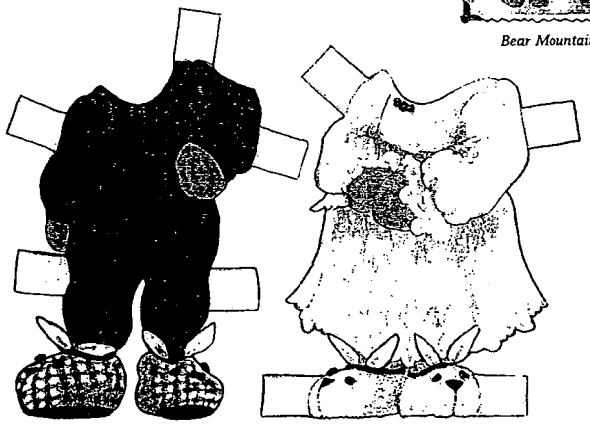


Bear Mountain '94



SAVE 10%

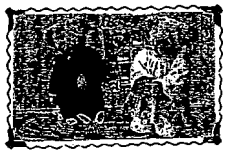
When you buy Teddy or Theo with any outfit on these pages.



Teddy and Theo's Sleepwear

Teddy's long johns are cozy red flannel with red rib trim and even have the traditional drop seat. Theo's nightgown is a beautiful all-over eyelet pattern of white cotton with colorful red rose trim at front, and they both wear bunny slippers.

Teddy's Long Johns and Slippers 670303 $31
Theo's Nightgown and Slippers 670304 $31



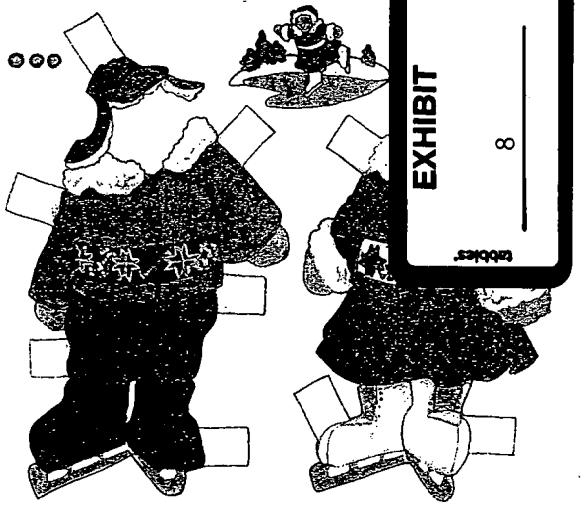
Beary Christmas '91

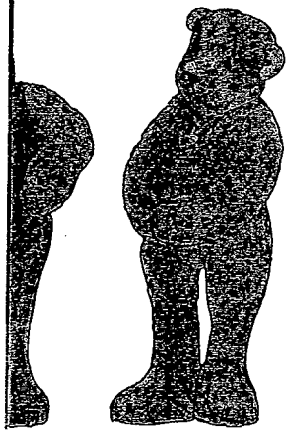
Adopt a Friend for Life™...

Did you know Teddy lovingly assembled Theo at the Great American Teddy Bear Company? Now you can adopt either Teddy or Theo... or both. Blonde plush. Poseable. Huggable. Each with a Bear-Gram℠ card so you can tell all about them when you give them. Teddy and Theo both wear a brass heart pendant that reads "Teddy Loves Theo."

13" Teddy (black nose) 670321 $36
13" Theo (pink nose) 670322 $36

To Order Call 1-800-370-6266





Teddy's Skating Outfit

Zippered green felt "marble cloth" jacket with fleece collar and snowflake embroidered hem. Grey wool knicker overalls. Matching fleece-lined acrylic cap with covered-button closure. Black lace-up skates with safety edges.

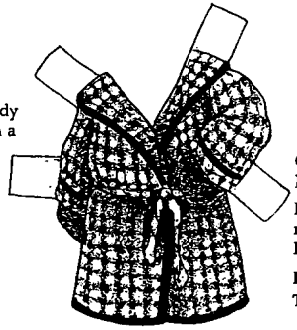
Teddy Skating Outfit 670306 $39

Theo's Skating Outfit

Grey wool jacket with fleece collar, snowflake embroidered trim and white/black checked flannel lining. Sleeveless jumper in red/black flannel with rickrack trim. Coordinating flannel hat with acrylic fleece trim and silk cord closure. White panties and white lace-up skates with safety edges.

Theo's Skating Outfit 670307 $39
Hand crafted Wooden Sled 670308 $10

Bruin Lake '93



To Order Call 1-800-370-6266

Cozy Flannel Bathrobe

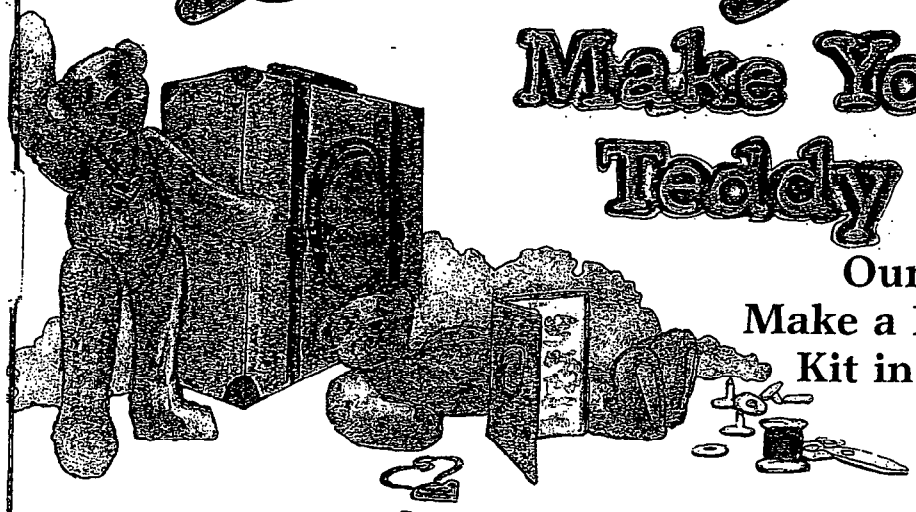
Pure cotton check flannel robe with red trim. Detachable belt.

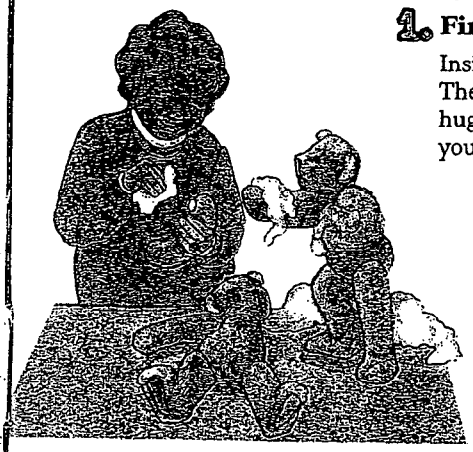
Bathrobe for Teddy or Theo 670305 $12

EXHIBIT 8

Make Your Own Teddy Bears!

Our Very Own Make a Friend for Life™ Kit in 5 Easy Steps



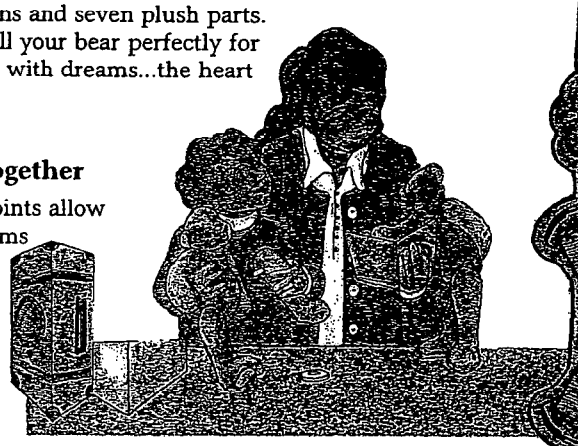


1. First you fill your bear with Dreams...

Inside the box you will find instructions and seven plush parts. The polyester stuffing allows you to fill your bear perfectly for hugging. You can fill your bears' head with dreams...the heart you fill with love.

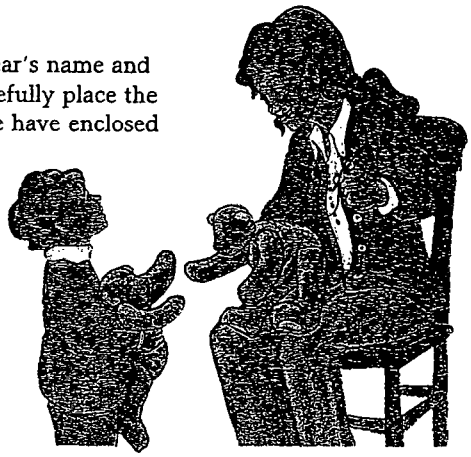
2. Then put your bear together

Our easy, snap-together T-joints allow your bears to move their arms and legs so they can play with you. They are specially designed to last through all your adventures.



3. A final stitch, & you're done!

Fill in the Birth Certificate with your Bear's name and the exact time of that last stitch and carefully place the brass heart around your bear's neck. We have enclosed the Friends for Life Code to help you and your bear get your lifelong friendship started.



4. Congratulations, you've made your own Friend for Life™

Your new bear's suedecloth pawpads, plastic safety-eyes and hand-stitched noses (black for a "Teddy", pink for a "Theo") have already been very expertly sewn by us.

13" "Teddy" Make a Friend Kit 670501
13" "Theo" Make a Friend Kit 670502

5. Dress your bear for big adventures

And get the winter started!

Save 10% when you dress either bear in any of the outfits sold on these pages.

EXHIBIT
tabbies
9

EXHIBIT

tabbies

10

VTB 00002

Step 1

Open the stuffing packet and divide it into four equal groups. These will be used to fill the arms, legs, head, and body. You'll want to start with the arms, then do the legs and the head. Hold off doing the body until after the pieces are attached to it. You may find the handle of a wooden spoon is useful for pushing the stuffing to the bottom of the arms and legs.

Step 2
Attach your Bear's head.

If you look closely at the opening where you filled the head you will find it has three small holes near the opening you used to stuff it. Place the joint peg inside the large opening so the peg is sticking out, then place the two side small holes over the peg. Next place the back hole over the peg. The head attaches to the top of the body at the juncture of the seams. Place the peg through the hole and press a washer from the inside. The t-joint supplied is particularly useful for making sure the head is on tight. (See figure A).

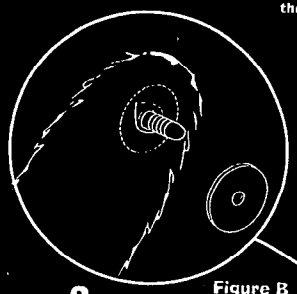
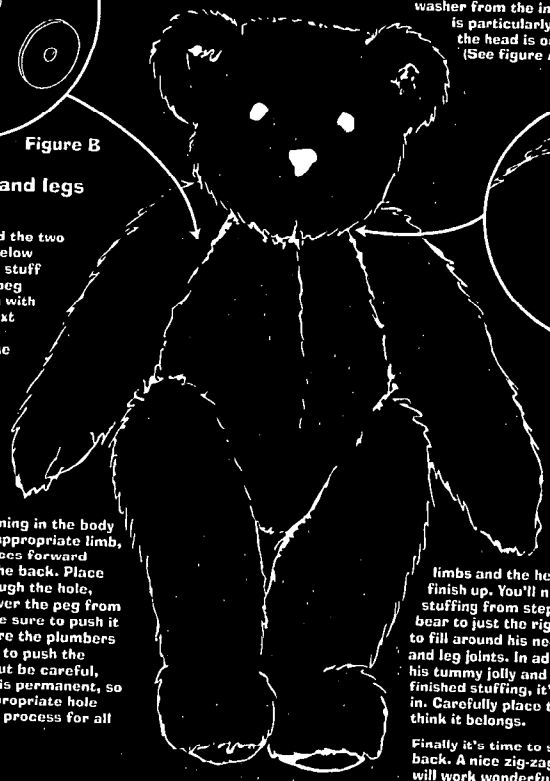


Figure B



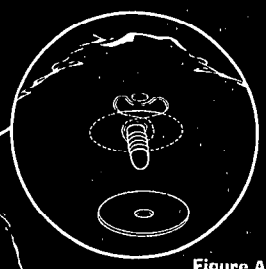


Figure A

Step 3
Attach the arms and legs to your Bear.

Begin with the legs. Find the two small holes above and below the opening you used to stuff the leg. Place the joint peg inside the large opening with the peg sticking out. Next take the bottom small hole and place it over the peg, then take the top small hole and place it over the peg. Do this for the other leg and for both arms (See figure B).

Finally place the body in front of you with the butt tag at the bottom facing you. Find the opening in the body to correspond with the appropriate limb, making sure the limb faces forward when the butt tag is in the back. Place the peg on the limb through the hole, then press the washer over the peg from the inside of the body. Be sure to push it down tightly. This is where the plumbers T comes in handy. Use it to push the washer on completely, but be careful, once the washer is on it is permanent, so be sure you have the appropriate hole for the limb. Repeat this process for all the limbs.

Step 4
Stuff and seal your bear's body.

Now that you have all the limbs and the head attached it's time to finish up. You'll need the remainder of the stuffing from step one. Fill the body of your bear to just the right firmness, making sure to fill around his neck and around all the arm and leg joints. In addition make sure you make his tummy jolly and round. When you're finished stuffing, it's time to place the heart in. Carefully place the heart exactly where you think it belongs.

Finally it's time to sew up his back. A nice zig-zag stitch will work wonderfully. (See figure C)

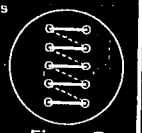


Figure C

Step 5
Congratulations! You've made a friend for life.

Be sure to fill out your bear's birth certificate with the exact time of that last stitch, because that's the time of his birth. Now it's time to make friends with your bear. So first of all introduce yourself. Then you two can begin all your adventures.

Tools You'll Need:
A Wooden Spoon
A Large Sewing Needle

Contents of Kit:	
(1) Furry Head	(5) Joint Pins (they look like big thumb tacs)
(1) Furry Body	(5) Washers
(2) Furry Arms	(1) Plumbers T
(2) Furry Legs	(1) Bag of Stuffing
(1) Brass Heart	Heavy Nylon Thread

VERMONT TEDDY BEAR

Make A Friend For Life™

The Great American Teddy Bear Company™
2236 Shelburne Road
Shelburne, Vermont 05482

Scale = N.T.S.

09/06/1996

Drawn By: Teddy

1 of 1

THE GREAT AMERICAN TEDDY BEAR™ COMPANY

Holiday 1996

Featuring
Our World Famous

VERMONT TEDDY BEAR™

Mad

We Guarantee Christmas Deliv

See Order Form for Details

EXHIBIT
11

VTB 00003

Outfit Your Friends For Life...

Presenting our exclusive collection of teddy bear outfits designed by our very own Kathleen Straube, for Holiday 1996. Choose from these finely detailed selections to dress our great 13" bears for generations!

Adopt a Friend for Life™...

Did you know Teddy lovingly assembled Theo at the Great American Teddy Bear Company? Now you can adopt either Teddy or Theo... or both. Blonde plush. Poseable. Huggable. Each with a Bear-Gram™ card so you can tell all about them when you give them. Teddy and Theo both wear a brass heart pendant that reads "Teddy Loves Theo."

13" Teddy (black nose) 670321 $36
13" Theo (pink nose) 670322 $36

"Teddy & Theo"

Cozy Flannel Bathrobe

Pure cotton check flannel robe with red trim. Detachable belt.

Bathrobe for Teddy or Theo
670305 $12

Teddy and Theo's Sleepwear

Teddy's long johns are cozy red flannel with red rib trim and even have the traditional drop seat. Theo's nightgown is a beautiful all-over eyelet pattern of white cotton with colorful red rose trim at front, and they both wear bunny slippers.

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Theo's Nightgown and Slippers 670304 $31

Teddy's Skating Outfit

Zippered green felt "marble cloth" jacket with fleece collar and snowflake embroidered hem. Grey wool knicker overalls. Matching fleece-lined acrylic cap with covered-button closure. Black lace-up skates with safety edges.

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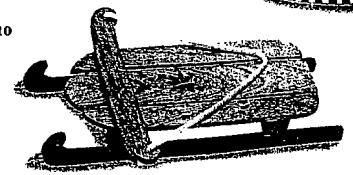
Grey wool jacket with fleece collar, snowflake embroidered trim and white/black checked flannel lining. Sleeveless jumper in red/black flannel with rickrack trim. Coordinating flannel hat with acrylic fleece trim and silk cord closure. White panties and white lace-up skates with safety edges.

Theo's Skating Outfit 670307 $39
Hand-crafted Wooden Sled 670308 $10



Wooden "Flyer" Sled

Imagine the fun Teddy and Theo will have sledding on this hand-crafted wooden "flyer" sled with snowflake design. The ultimate winter toy for bears.

Hand-crafted wooden sled
670308 $10

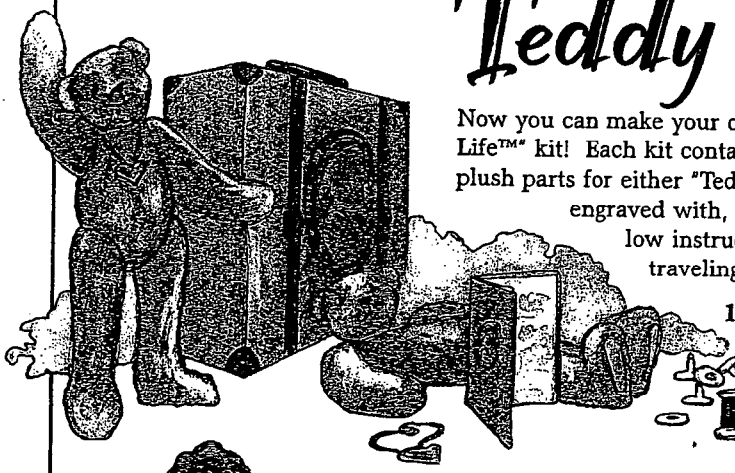
Save 10% when you buy Teddy or Theo with any outfit on these pages.

Teddy's and Theo's Ski Outfits

Both wear a grey fleece sweatshirt with snowflake embroidered trim. White ribbed turtleneck collar. Teddy has green wide-wale corduroy knicker overalls and a fleece-lined grey wool hat. Theo wears red/black flannel knicker overalls and a flannel hat with black silk cord ties. Outfits include skis and poles.

Teddy's Ski Outfit 670301 $39
Theo's Ski Outfit 670302 $39

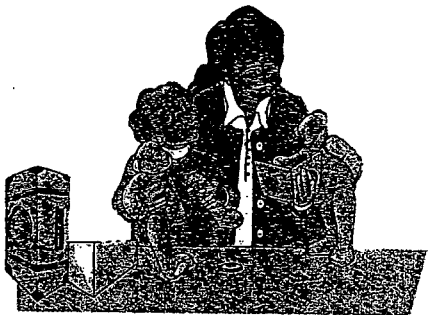
Make Your Own Teddy Bears!

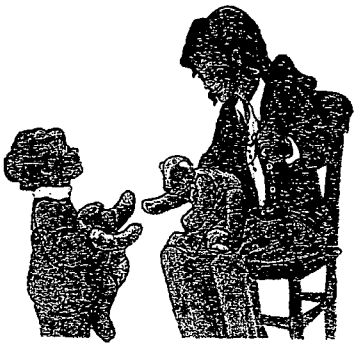


Now you can make your own teddy bear at home with our "Make A Friend For Life™" kit! Each kit contains everything you need to bring your friend to life-six plush parts for either "Teddy" or "Theo", magical bear stuffing, a brass heart engraved with, *"Teddy loves Theo"* to put inside your bear, and easy-to-follow instructions. It's all packaged in a sturdy suitcase, perfect for traveling with Teddy, Theo and all their toys and clothes.

13" "Teddy" Make a Friend Kit
670501 $36

13" "Theo" Make a Friend Kit
670502 $36





First you fill your bear with Dreams...

Inside the box you will find instructions and six plush parts. The polyester stuffing allows you to fill your bear perfectly for hugging. You can fill your bear's head with dreams...the heart you fill with love.

Then put your bear together

Our easy, snap-together T-joints allow your bears to move their arms and legs so they can play with you. They are specially designed to last through all your adventures.

Place brass heart inside bear, a final stitch & you're done!

Fill in the Birth Certificate with your Bear's name and the exact time of that last stitch. We have enclosed the Friends for Life Code to help you and your bear get your lifelong friendship started.

Dress your bear for big adventures

Turn to pages 44 & 45 to check out our winter clothes designed especially for your new friend and all of your new adventures together.

Save 10% when you dress either bear in any of the outfits sold on pages 44 & 45.

The Great American Teddy Bear™ Co.
104 Challenger Drive
Portland, TN 37148-1718

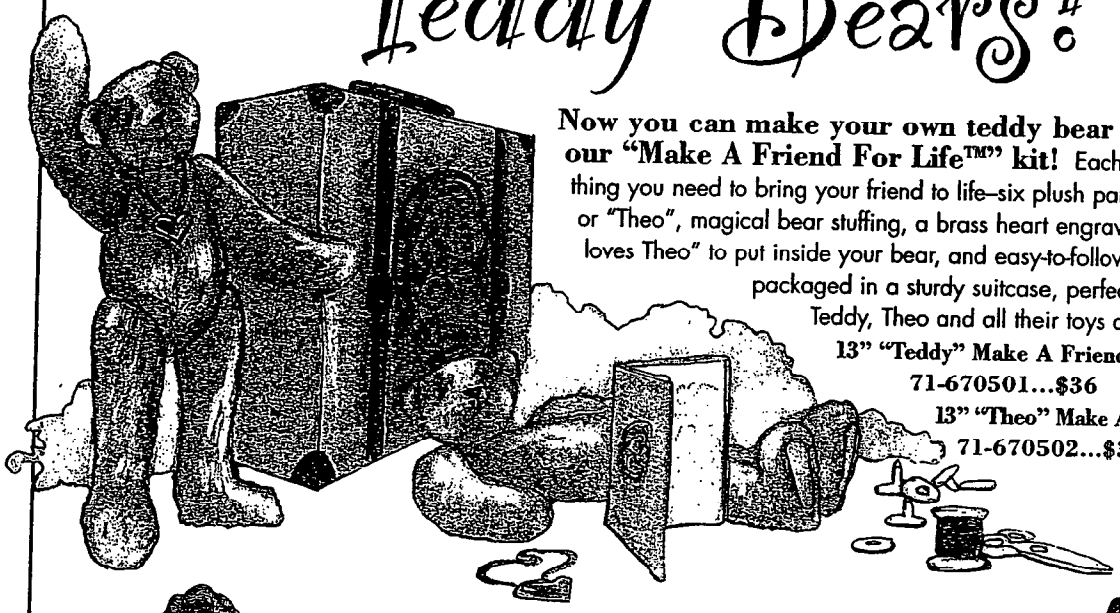
CHERISHABLE
Open Promptly

BULK RATE
U.S. POSTAGE
PAID
VERMONT
TEDDY BEAR

VTB 00020

Make Your Own Teddy Bears!

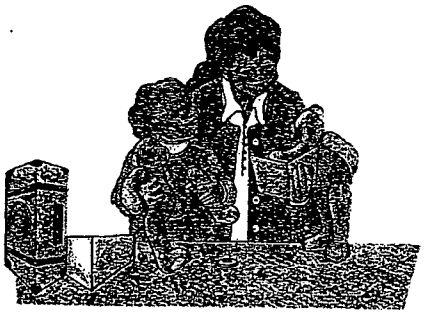
MAKE A FRIEND FOR LIFE™



Now you can make your own teddy bear at home with our "Make A Friend For Life™" kit! Each kit contains everything you need to bring your friend to life–six plush parts for either "Teddy" or "Theo", magical bear stuffing, a brass heart engraved with "Teddy loves Theo" to put inside your bear, and easy-to-follow instructions. It's all packaged in a sturdy suitcase, perfect for traveling with Teddy, Theo and all their toys and clothes.

13" "Teddy" Make A Friend Kit
71-670501...$36

13" "Theo" Make A Friend Kit
71-670502...$36



First you fill your bear with Dreams... Inside the box you will find instructions and six plush parts. The polyester stuffing allows you to fill your bear perfectly for hugging. You can fill your bear's head with dreams...the heart you fill with love.

Then put your bear together. Our easy, snap-together T-joints allow your bears to move their arms and legs so they can play with you. They are specially designed to last through all your adventures.

Place brass heart inside bear, a final stitch & you're done! Fill in the Birth Certificate with your Bear's name and the exact time of that last stitch. We have enclosed the Friends for Life Code to help you and your bear get your lifelong friendship started.

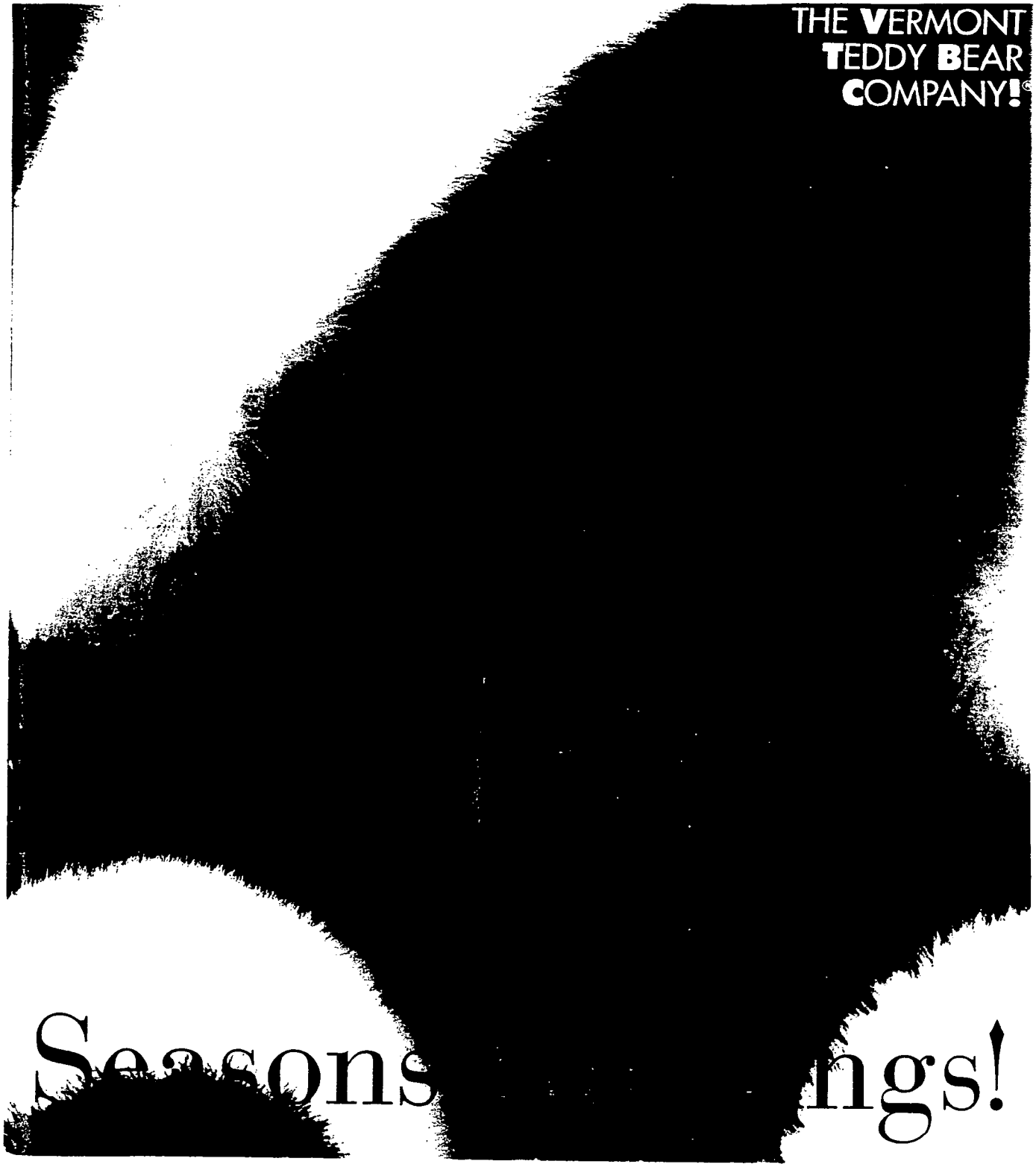
Save 10%

when you choose either bear with any of the outfits sold on pages 14 & 15.

Dress your bear for big adventures!

Turn to pages 14 ... er clothes designed especially ... all of y ... er.

EXHIBIT
12



BABW-VTB-721

EXHIBIT

13

Holiday BearGrams®

A. 20" Father Christmas.
Celebrating the Spirit of Christmas past, this 20" super plush Teddy Bear wears a green velvet robe, garland of holly and wooden scepter.
#20268...FATHER CHRISTMAS...**$99.00**

B. Chanukah Girl.
Celebrate the Festival of Lights with this 15" bear dressed in a velvet dress accented with white & gold braid trim, velvet headbow & gold Star of David Necklace.
#15410...CHANUKAH GIRL...**$75.00**

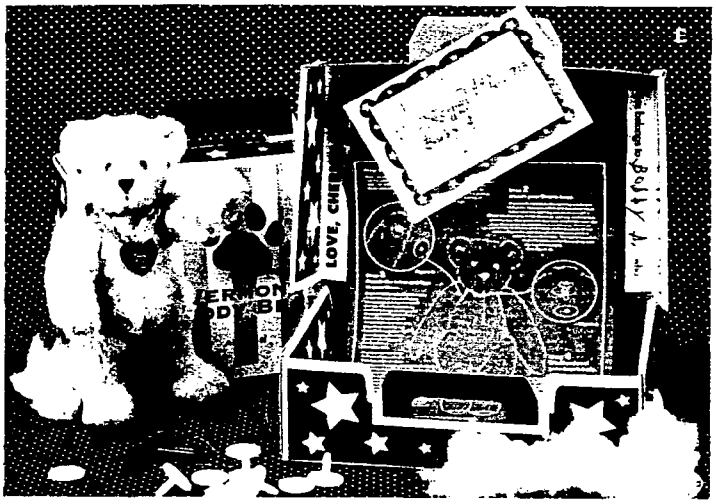
B

C. Chanukah Boy.
Honoring tradition, this 15" bear is dressed in a yarmulke accented with white and gold braid trim & a Star of David tallis with fringe.
#15414...CHANUKAH BOY...**$65.00**

Miniature gold & white enamel Torah with scroll.
#00092...TORAH...**$7.00**
Star of David Necklace (gold only).
#00003...**$5.00**

make the...

D



D. Sugar Plum Fairy.
Give your precious ones visions of dancing Sugar Plum Fairies with this 15" plum fur bear dressed in a sparkling tulle tutu with white satin ballet slippers.
#15400...SUGAR PLUM FAIRY...**$70.00**

E. Make A Friend for Life® Kit.
You make your own 13" Vermont Teddy Bear® in THE VERMONT TEDDY BEAR COMPANY!® Make a Friend For Life® Kit. Stuff it, stitch it & bring it to life! Detailed blue prints for constructing your Teddy Bear, all the teddy parts, stuffing, joint fastener, thread, birth certificate and carrying case included.
#13067...MAFFL® TEDDY...**$36.00**

F. Trick-or-Treat Teddy.
Treat your favorite MONSTER! to a cuddly, 15" surprise. Black mask, orange & black jacquard bowtie, pumpkin basket with candy corn.
#15423...TRICK OR TREAT TEDDY...**$68.00**

BABW-VTB-737

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

THE VERMONT TEDDY BEAR COMPANY, INC.,	)	
Opposer,	)	
v.	)	Opposition No. 115,198
BUILD-A-BEAR WORKSHOP, INC.,	)	
Applicant.	)	

CERTIFICATE OF SERVICE

Honorable Commissioner for Trademarks
2900 Crystal Drive
Box TTAB Fee
Arlington, Virginia 22202-3513

Sir:

I hereby certify that a true copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES was served by First Class Mail, postage prepaid, this 23rd day of February, 2004, on the following Attorney for Applicant:

Eric G. Enlow, E.D.
BLACKWELL SANDERS PEPER MARTIN
720 Olive Street, Suite 2400
St. Louis, MO 63101-2396.

DATED: 2/23/04

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES

H. Jay Spiegel
Attorney for Opposer
THE VERMONT TEDDY BEAR COMPANY, INC.
Registration No. 30,722

H. JAY SPIEGEL & ASSOCIATES
P.O. Box 11
Mount Vernon, VA 22121
(703) 619-0101 - Phone
(703) 619-0110 - Facsimile

EXHIBIT
tabbies
14

2/23/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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v.	)	Opposition No. 115,198
BUILD-A-BEAR WORKSHOP, INC.,	)	
Applicant.	)	

OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Opposer THE VERMONT TEDDY BEAR COMPANY, INC. (Opposer), hereby submits their response to Applicant BUILD-A-BEAR WORKSHOP, INC.'s (Applicant) FIRST SET OF INTERROGATORIES.

GENERAL STATEMENT

1. Opposer, based upon its current knowledge, understanding, and belief of the facts and information available to them as of the date on which this response is made responds and objects as set forth below to Applicant's First Set of Interrogatories. This response, while being based on diligent exploration by Opposer and its counsel, reflects only the current state of Opposer's knowledge, understanding and belief respecting the matters about which inquiry was made. Further, Opposer has not completed their investigation of all of the facts relating to this Proceeding, and anticipates that as this Proceeding continues, further facts may be discovered by them, and, without in any way obligating themselves to do so, Opposer reserves the right to modify or supplement their responses with such pertinent information as they may subsequently discover.

2. Opposer's responses are made without in any way waiving or intending to waive, but, on the contrary, intending to preserve and preserving:

A. The right to raise all questions of relevancy, materiality, privilege and admissibility as evidence for any purpose of any documents produced in response to these requests, which may arise in any subsequent proceeding in, or the trial of, this or any other action;

B. The right to object to the use of the documents in any subsequent proceeding or in this or any other proceeding on any grounds;

C. The right to object on any ground at any time to other document requests or other discovery involving the documents or the subject matter thereof;

D. The right to use or rely on during this proceeding, or otherwise, subsequently discovered information or information omitted from this response as a result of error, oversight or inadvertence;

E. The right to produce additional facts and evidence during this proceeding, or otherwise, and to object on appropriate grounds to the introduction of any evidence included in this response.

3. Words and terms used in the following responses shall be construed in accordance with their normal meanings and connotations and shall in no way be interpreted as terms of art or statutorily defined terms as used in the Patent, Trademark or Copyright laws, and Opposer specifically disavows any such meaning or connotation that might be accorded such terms unless explicitly stated otherwise.

4. Specific objections to a request are made on an individual basis in the responses set forth below. In addition to these specific objections, Opposer makes the following general objections to

the requests and incorporates these objections into each of Opposer's responses, whether or not explicitly referenced.

GENERAL OBJECTIONS

1. The information contained in these objections and the following discovery responses are provided in accordance with the provisions and intents of the Federal Rules of Civil Procedure and the Patent and Trademark Office Rules of Practice, which require the disclosure of non-privileged facts within the recipient's knowledge that may be relevant to the claims and/or defenses involved in the action. These objections and the following discovery responses are made without waiving any rights or objections or admitting the relevancy, materiality or admissibility into evidence of the subject matter or facts contained in any discovery request or Opposer's response thereto. Furthermore, Opposer specifically reserves the right to object to the uses of such responses on any ground in any further proceeding in this action as well as the right to object on any ground at any time in response to a demand or request by Opposer.

2. Opposer objects to each and every request to the extent it seeks information protected from disclosure by the attorney-client privilege and/or work product doctrine or that would singularly or in combination reveal the mental impressions or thought processes of Opposer's attorneys. Such documents are immune from discovery and will not be produced. The specific objections stated below on the grounds of attorney-client privilege and/or work product doctrine in no way limit the generality of this objection. Nothing contained in these responses is intended to be nor should be considered a waiver of any attorney-client privilege, work product doctrine protection, the right of privacy or any other applicable privilege or doctrine and to the extent that any Interrogatory may be construed as calling for disclosure of information or documents protected

by such privileges or doctrines, a continuing objection to each and every such request is hereby imposed.

3. Opposer objects to each and every Interrogatory to the extent it seeks information in Opposer's possession the disclosure of which is subject to or precluded by restrictions of confidentiality imposed by or pursuant to an agreement with a third party or a Court order.

4. Opposer objects to Applicant's Interrogatories to the extent that they are unreasonable, unnecessary, burdensome and oppressive, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

5. Opposer objects to Applicant's Interrogatories to the extent that they are unclear, vague and/or ambiguous.

6. Opposer objects to Applicant's Interrogatories to the extent they call for the production of documents or information containing confidential information of Opposer or third parties including trade secrets, research and development or commercial information entitled to be kept confidential under Federal Rule of Civil Procedure 26(c). Opposer will produce such documents or information to the extent they are responsive, not privileged, and not covered by another objection upon entry of a Protective Order.

Subject to the foregoing general objections, Opposer provides the following specific responses and reserves the right to modify, supplement or correct them.

INTERROGATORIES

Interrogatory No. 1:

Please identify all persons who provided information in connection with Opposer's Notice of Opposition.

Response to Interrogatory No. 1:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Courtney Griesser.

Interrogatory No. 2:

Identify each location of Opposer's place(s) of business where Opposer sells or has sold or offers or has offered for sale its goods or services with which Opposer has used Opposer's heart. Further identify all persons with knowledge and all documents relating to or reflecting the identity of such locations.

Response to Interrogatory No. 2:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer currently sells the goods with which Opposer uses Opposer's heart at The Vermont Teddy Bear Factory Store in Shelburne, Vermont. Previously, Opposer sold these goods at the following locations and for the noted time periods:

Currently:

The Vermont Teddy Bear Factory Store
6655 Shelburne Road, Shelburne, VT 05482
Route 100, Waterbury, VT

Previously:

North Conway, NH (July 1996 - October 1998)
Freeport, ME (August 1997 - August 1998)
Madison Avenue, New York, NY (November 1996 - December 1997)

Licensed:

Zany Brainy Stores
Marlton, NJ (September 1999 - November 2000)
Rockville, MD (September 1999 - November 2000)
Wynnewood, PA (September 1999 - November 2000)
Alpharetta, GA (October 1999 - November 2000)
Birmingham, AL (September 1999 - November 2000)
Durham, NC (September 1999 - November 2000)

Wayne, NJ (October 1999 - November 2000)
Northbrook, IL (September 1999 - November 2000)
Edina, MN (September 1999 - November 2000)
Newport Beach, CA (September 1999 - November 2000)
Thousand Oaks, CA (September 1999 - November 2000)

Concerning the identities of knowledgeable persons, Opposer further objects to this request as being oppressive and not likely to result in discovery of information relevant to the Opposition Proceeding. All current employees of Opposer are aware of the Factory Stores and the products they offer. Employees employed prior to 1998 are aware of Opposer's off-site stores. Concerning documents, relevant documents will be produced in response to document requests.

Interrogatory No. 3:

Identify each good or service with which Opposer has used Opposer's heart and for each such good or service state:

(a) The date(s) of first use with Opposer's heart, specifying for each use whether such use involved the use of a red felt heart, a brass heart, or both and whether such use depicted or provided for the use of the heart in connection with a chain, necklace or other device for hanging the heart;

(b) The date(s) during which such good or services have been offered;

(c) The quantity and dollar value of the sales of good or services offered during each year since the first use of the heart;

(d) The marketing area (by city, county, province, state or other political subdivision) in which the heart was used during each year since the first use of the heart, specifying for each area whether such use involved the use of a red felt heart, a brass heart, or both and whether such use depicted or provided for the use of the heart in connection with a chain, necklace or other device for hanging the heart;

(e) The marketing and distribution method by which the good or service was offered during each year since the first use of Opposer's heart;

(f) The identity of the person responsible for supervising the quality of the goods or services offered; and

(g) The identity of all persons with knowledge and all documents relating to the quality control of the heart.

Response to Interrogatory No. 3:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows using the same letters (a)-(g) as set forth in the Interrogatory:

(a) and (b) From July, 1996 to the present, MAKE A FRIEND FOR LIFE® bears have been sold in all retail stores open at various times. The hearts were made of either red felt or brass in 1996, and have been exclusively red felt since sometime in 1998. In addition, from Fall, 1996 through 1998, TEDDY & THEO finished bears were sold with a necklace carrying a brass heart. From Fall, 1996 through sometime in 1998, MAKE A FRIEND FOR LIFE® kits were sold via mail order. Although the brass hearts had a hole therethrough, they came with no rope and were accompanied with instructions to place the heart inside the bear.

(c) Opposer additionally objects to this Interrogatory as being unduly oppressive and burdensome. Opposer does not keep detailed computerized records concerning sales of each item they sell. While the information exists, it would require a lengthy period of time to cull through hundreds of thousands of records for each year in question in order to identify the pertinent records.

(d) Opposer has kept no records as to whether specific sales of stuffed teddy bears with a heart therein had a heart of brass or felt. However, the marketing area for TEDDY & THEO bears and MAKE A FRIEND FOR LIFE® mail order kits has been the entirety of the 50 States of the United States through use of catalogs. For example, the catalog in the Fall of 1996 that first showed the heart in the bear had a printing of about 1 million copies that were distributed throughout the 50 States of the United States. MAKE A FRIEND FOR LIFE® bears were also promoted in advertisements printed in various catalogs, in the years 1996-1999, which advertisements promoted

visiting Opposer's factory. MAKE A FRIEND FOR LIFE® bears are also advertised throughout Vermont and New England in tourism brochures and in travel magazines every year since 1996.

(e) Opposer has marketed teddy bears with hearts in them via catalogs from 1996-1999, in the company's web site from 1998 to the present, in Zany Brainy Stores from 1999 to 2000, and in store brochures from 1997 to the present. Distribution is either through mail order from the factory or direct purchase in the factory store or in a Zany Brainy Store.

(f) Claudia Moeykens.

(g) Claudia Moeykens.

Interrogatory No. 4:

Identify each present or past agent of Opposer who has or had the most knowledge regarding Applicant's Heart Mark..

Response to Interrogatory No. 4:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Elisabeth Robert, CEO & President; Kathleen Straube, Director of Product Development; Courtney Griesser, Assistant to the President; Tom Clark, Director of Corporate Sales.

Interrogatory No. 5:

State the date and manner of first use of a brass heart by Opposer and identify all persons with knowledge and all documents relating to such use.

Response to Interrogatory No. 5:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: First use of a brass heart in association with a teddy bear by Opposer occurred approximately in 1989 in connection with Opposer's Anniversary and Birthday bears, as part of a

bow arrangement around the bear's neck with the wording "Happy Anniversary" or "Happy Birthday." Knowledgeable persons concerning this use are Kathleen Straube who designed the bow, and any employee currently employed with Opposer that was employed since 1989.

Interrogatory No. 6:

State the date and manner of first use of a red felt heart by Opposer and identify all persons with knowledge and all documents relating to such use.

Response to Interrogatory No. 6:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: First use of a red felt heart was in July, 1996 for the retail MAKE A FRIEND FOR LIFE® bears. Knowledgeable persons are Kathleen Straube and Courtney Griesser as well as former employee, Robert Delsandro.

Interrogatory No. 7:

Please identify each person who has, claims to have or whom you believe may have knowledge or information pertaining to the factual basis for your assertions in paragraphs 13-14 of the Notice of Opposition.

Response to Interrogatory No. 7:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Elisabeth Robert.

Interrogatory No. 8:

Please identify each person who has, claims to have or whom you believe may have knowledge or information pertaining to the factual basis pertaining to Opposer's alleged prior use of Opposer's heart before Applicant made use of Applicant's Heart Mark.

Response to Interrogatory No. 8:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Elisabeth Robert, CEO & President; Kathleen Straube, Director of Product

Development; Catherine Camardo, Vice President of Operations; Courtney Griesser, Assistant to the President; Robert Delsandro, Former Vice President of Creative Design; and Patrick Burns, Former CEO & President.

Interrogatory No. 9:

Please state the specific nature and substance of the knowledge that you believe the people identified in your response to Interrogatory No. 7 and 8 may have, and identify the people most knowledgeable about each specific topic.

Response to Interrogatory No. 9:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer is aware that Opposer first used the heart in the bear as early as Summer, 1996, with documentation to prove it, and is also aware that the earliest date of first use claimed by Applicant is July, 1997. Kathleen Straube and Robert Delsandro designed the logo, product and associated items. Courtney Griesser ordered product for the stores. Elisabeth Robert was the CFO and was aware of all purchasing of services in connection with development of the mark. Patrick Burns was CEO and oversaw the project.

Interrogatory No. 10:

Identify each area of distribution (by city, county, province, state or other political subdivision) for Opposer's goods or services with which Opposer has used Opposer's heart. Further identify all persons with knowledge and all documents relating to or reflecting each such area of distribution for Opposer's said goods or services.

Response to Interrogatory No. 10:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: There are no "areas of distribution" for goods including the heart in the bear mark. Distribution is nationwide via catalog sales for MAKE A FRIEND FOR LIFE® kits and in stores for MAKE A FRIEND FOR LIFE® bears. Concerning persons with knowledge, reference is made

to the response to Interrogatory No. 8. Concerning documents, relevant documents will be produced.

Interrogatory No. 11:

State whether there has ever been a period, either universally or in any of the individual areas of use and distribution, identified in Interrogatories 2 or 10 above, during which use of any of Opposer's heart has been discontinued (by either Opposer or a predecessor in interest). If yes, state:

(a) The inclusive dates of such period of non-use;

(b) The identity of the marks;

(c) The reason the mark was not used;

(d) Whether the discontinuance was voluntary, and if so, the reason; and

(e) The identity of all persons with knowledge and all documents relating to any discontinuance of use.

Response to Interrogatory No. 11:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Use of the heart in the bear mark has been continuous in one form or another since the date of first use in 1996.

Interrogatory No. 12:

Identify each person who rendered services to or on behalf of Opposer or otherwise participated in the development and selection of Opposer's heart, including but not limited to persons who performed trademark, trade dress and design searches. For each such person, state the nature of services provided or the extent of participation and the dates on or during which such participation occurred.

Response to Interrogatory No. 12:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Concerning development of the heart in the bear mark, Kathleen Straube and Robert Delsandro developed this mark. Concerning trademark, trade dress and design searches, Opposer

objects to this Interrogatory on the ground that the information requested is covered by the attorney-client and attorney work product privileges.

Interrogatory No. 13:

Identify each person who has rendered services to or on behalf of Opposer in connection with the advertising or promotion of Opposer's heart, and for each such person:

(a) state the nature of the services performed;

(b) state the dates on which or during which such services were performed; and

(c) identify all proposed or used advertising or promotional material or plans prepared by such persons for Opposer's heart.

Response to Interrogatory No. 13:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer creates all of its own advertising "in-house" and controls all of its own advertising and promotions for its products and services in-house. Numerous catalogs mailed by Opposer throughout the 50 States of the United States from 1996-1998 have advertised the MAKE A FRIEND FOR LIFE® kit, Opposer's retail store has continuously advertised and promoted the MAKE A FRIEND FOR LIFE® products since their inception in July of 1996, and the company's web site features an area where one can visualize the steps of the MAKE A FRIEND FOR LIFE® process as conducted in the retail store. Advertising and promotion of the MAKE A FRIEND FOR LIFE® products and services has existed on Opposer's web site since 1998.

Interrogatory No. 14:

For the period from the date of first use of Opposer's heart, state the annual expenses, in round numbers, which relate to the advertising and promotion of Opposer's heart, and identify all documents which state or indicate in summary or compilation form the dollar amount of such advertising and promotion.

Response to Interrogatory No. 14:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: It is not possible to determine the specific annual expenses for advertising and promotion of the heart in the bear mark since such advertising and promotion is typically done as part of a catalog, advertisement, brochure or web design expense that includes expenses for numerous other products and services of Opposer.

Interrogatory No. 15:

Identify each advertisement or promotion by or on behalf of Opposer using or containing Opposer's heart, specifying for each advertisement whether such use involved the use of a red felt heart, a brass heart, or both and whether such use depicted or provided for the use of the heart in connection with a chain, necklace or other device for hanging the heart, including but not limited to, advertisements in newspapers and magazines, catalogs, hand bills, promotion flyers, and advertisements on radio or television or other media, and for each such advertisement or promotion, identify:

(a) Each publication in which it was published by title, date and page number, and/or the radio or television station over which it was broadcast, and/or the location in which it was displayed; and

(b) Identify all persons with knowledge and all documents reflecting, referring to, or relating to each such advertisement or promotion.

Response to Interrogatory No. 15:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer further objects on the ground that the Interrogatory is oppressive. Numerous advertisements and promotions have existed since July, 1996 concerning Opposer's heart in the bear mark. Opposer will produce copies of as many documents that Opposer can reasonably uncover responsive to this Interrogatory. Concerning subparagraph (b), the persons are Robert Delsandro, Kathleen Straube, Elisabeth Robert, James Guertin, Opposer's Art Director, and anyone working in Opposer's Art Department since 1996.

Interrogatory No. 16:

Identify each advertisement or promotion by or on behalf of Opposer using or containing Opposer's heart that specifically draws attention to Opposer's heart in a way specifically intended to distinguish Opposer's goods or otherwise constitutes "look for" advertising intended to identify a heart located inside a stuffed animal with Opposer's products.

Response to Interrogatory No. 16:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer particularly directs Applicant's attention to Opposer's web site which includes step 5 including the statements "You Gotta have Heart!" and "Everyone Needs Love, Be Sure Your Friend Has HEART!" Furthermore, the MAKE A FRIEND FOR LIFE® logo consists of a ring surrounding a heart with the words "Make A Friend For Life" within the ring. This logo is used in conjunction with all advertising and promotion of the MAKE A FRIEND FOR LIFE® products and services.

Interrogatory No. 17:

Identify each present or past agent of Opposer who has or had primary responsibility for the distribution and sale of goods and services sold in connection with Opposer's heart.

Response to Interrogatory No. 17:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer further objects to this Interrogatory as being vague since "agent" is not defined in the context of the Interrogatory. As Opposer best understands the Interrogatory, distribution and sale of goods and services sold in connection with Opposer's heart have been and are conducted by Opposer's factory store in Shelburne, Vermont, Opposer's retail store in Waterbury, Vermont, prior retail stores in New Hampshire, Maine and New York, and previously through Zany Brainy Stores.

During the entire period, the goods and services have often been sold and distributed in Opposer's catalogs.

Interrogatory No. 18:

For the period since the first use of Opposer's heart, state the annual gross sales revenue, in round numbers, of products sold in connection with Opposer's heart.

Response to Interrogatory No. 18:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer further objects to this Interrogatory as oppressive and overly burdensome. While products sold in connection with Opposer's heart are the best selling products currently sold in Opposer's factory store, Opposer does not organize sales from the factory store in such a way that it would be possible to easily respond to this Interrogatory. In order to so respond, Opposer would have to go through thousands upon thousands of transactions on SKUs to separate out the sales in question.

Interrogatory No. 19:

State whether you are aware of any instance or occasion of confusion or mistake involving the source, origin or sponsorship of goods and services offered by Opposer under Opposer's alleged mark, including any inquiry regarding whether any of the goods or services were sponsored or otherwise connected with Applicant or any good or service of Applicant. If yes, identify:

(a) The identity of each person, firm, corporation, association involved in such inquiry or instance of confusion or mistake;

(b) The substance or content of any inquiry;

(c) The date on which each such instance or inquiry occurred;

(d) The manner in which each such person, firm, corporation, association or other entity indicated that he, she, or it was allegedly confused or mistaken to the source or origin of the goods or services offered under the marks; and

(e) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

Response to Interrogatory No. 19:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer is unaware of any such instance or occasion of confusion or mistake.

Interrogatory No. 20:

Please identify all licenses, assignments or other transfers to or from Opposer of any rights in Opposer's heart.

Response to Interrogatory No. 20:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: None.

Interrogatory No. 21:

Please identify any person knowledgeable about any court action or administrative proceeding filed by or against Opposer, and all written challenges or objections made by or directed to Opposer relating or referring to Opposer's use of Opposer's heart.

Response to Interrogatory No. 21:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: The only such instance concerns Applicant's challenge to Opposer's right to the heart in the bear mark. The persons are Courtney Griesser and Elisabeth Robert.

Interrogatory No. 22:

Please identify any person knowledgeable of or responsible for Opposer's state or federal registrations of, or applications to register, Opposer's heart, including any relevant domain name registrations.

Response to Interrogatory No. 22:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Courtney Griesser and Elisabeth Robert.

Interrogatory No. 23:

State whether Opposer has ever conducted, or caused to be conducted on its behalf, any market survey, focus group, or other analysis or investigation which discloses, indicates or relates in any way to consumer recognition or awareness of any of Opposer's heart. If yes, identify:

(a) All documents which relate in any way to each such survey, focus group, analyses or investigation;

(b) All officers, employees and/or agents of Opposer who participated in each such survey, focus group, analyses or investigation; and

(c) All officers, employees and/or agents of Opposer who received a copy of any report based upon any such survey, focus group, analyses or investigation.

Response to Interrogatory No. 23:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No.

Interrogatory No. 24:

State whether Opposer has ever conducted, or caused to be conducted on its behalf, any market survey, focus group, or other analysis or investigation in connection with Opposer's heart. If yes, identify:

(a) All documents which relate in any way to each such survey, analyses or investigation;

(b) All officers, employees and/or agents of Opposer who participated in each such survey, analyses or investigation; and

(c) All officers, employees and/or agents of Opposer who received a copy of any report based upon any such survey, analyses or investigation.

Response to Interrogatory No. 24:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No.

Interrogatory No. 25:

Please identify any expert Opposer expects to use for purposes of this case, state in detail all expert opinions and grounds therefor, and identify all documents considered or generated by or on behalf of the expert.

Response to Interrogatory No. 25:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No expert has yet been retained, although Opposer reserves the right to do so.

Interrogatory No. 26:

State whether Opposer has ever been involved in any other contested matter, dispute, correspondence or negotiations with a third-party concerning Opposer's heart. If yes, please identify:

(a) The matter by case, title and the identity of the marks in controversy;

(b) The outcome of such matter, dispute, correspondence or negotiation proceeding; and

(c) If such proceeding resulted in a settlement, briefly describe the terms of such settlement or attach a copy of any such settlement to your answers to these interrogatories.

Response to Interrogatory No. 26:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No.

Interrogatory No. 27:

Please identify any person who answered or assisted in the preparation of an answer to the preceding interrogatories, and the particular interrogatory as to which each answered or assisted.

Response to Interrogatory No. 27:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Courtney Griesser.

VERIFICATION

I hereby declare under penalty of perjury under the laws of the United States of America that Applicant The Vermont Teddy Bear Company Inc.'s responses to Applicant's First Set of Interrogatories are true and correct to the best of my present knowledge.

Dated: February 20, 2004.

Elisabeth B. Robert, President

DATED: 2/23/04

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES

H. Jay Spiegel
Attorney for Opposer

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

[redacted]

06-15-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #78

THE VERMONT TEDDY BEAR COMPANY, INC.,	)	
Opposer,	)	
v.	)	Opposition No. 115,198
BUILD-A-BEAR WORKSHOP, INC.,	)	
Applicant.	)	

CERTIFICATE OF SERVICE

Honorable Commissioner for Trademarks
2900 Crystal Drive
Box TTAB Fee
Arlington, Virginia 22202-3513

Sir:

I hereby certify that a true copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR DOCUMENTS was served by First Class Mail, postage prepaid, this 23rd day of February, 2004, on the following Attorney for Applicant:

Eric G. Enlow, E.D.
BLACKWELL SANDERS PEPER MARTIN
720 Olive Street, Suite 2400
St. Louis, MO 63101-2396.

DATED: 2/23/04

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES

H. Jay Spiegel
Attorney for Opposer
THE VERMONT TEDDY BEAR COMPANY, INC.
Registration No. 30,722

H. JAY SPIEGEL & ASSOCIATES
P.O. Box 11
Mount Vernon, VA 22121
(703) 619-0101 - Phone
(703) 619-0110 - Facsimile

EXHIBIT
15

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

06-15-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #78

THE VERMONT TEDDY BEAR COMPANY, INC.,	)	
Opposer,	)	
v.	)	Opposition No. 115,198
BUILD-A-BEAR WORKSHOP, INC.,	)	
Applicant.	)	

OPPOSER'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer THE VERMONT TEDDY BEAR COMPANY, INC. (Opposer), hereby submits its response toApplicant BUILD-A-BEAR WORKSHOP, INC.'s (Applicant) First Request for Documents.

GENERAL STATEMENT

1. Opposer incorporates by reference the general statement and general objections set forth in the concurrently served Responses to Applicant's First Set of Interrogatories.

2. Without waiving the objections set forth below and subject to the limitations stated above and in the general statement and general objections incorporated by reference herein, Opposer will produce and/or make available for inspection and copying, in a mutually agreeable time and place, the documents and things it believes are responsive and the subject of legitimate discovery after it has completed a reasonable search of those files which it believes are likely to contain such documents and things.

DOCUMENTS AND THINGS REQUESTED

Document Request No. 1:

All documents identified in response to or for which identification is sought in Applicant's First Set of Interrogatories to Opposer.

Response to Document Request No. 1:

Opposer incorporates its general objections. Subject to those objections, Opposer will produce relevant documents.

Document Request No. 2:

All documents relating to or reflecting all uses of Opposer's heart that Opposer has made in advertising, promotions, or as a trademark.

Response to Document Request No. 2:

Opposer incorporates its general objections. Subject to those objections, Opposer will produce a representative sample of Opposer's uses of the "HEART IN THE BEAR" mark.

Document Request No. 3:

All documents relating to or reflecting any other contested matter, dispute, correspondence or negotiations with a third party that Opposer has been involved in concerning Opposer's heart.

Response to Document Request No. 3:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents exist except those generated during the course of this Opposition proceeding. Applicant has originals or copies of all such documents.

Document Request No. 4:

All documents relating to or reflecting all uses known to Opposer by any third party of a heart located inside the chest of a toy or stuffed animal.

Response to Document Request No. 4:

Opposer incorporates its general objections. Subject to those objections, Opposer will produce relevant documents responsive to this request.

Document Request No. 5:

All documents that relate or pertain to or mention Applicant's Heart Mark or the goods and services sold under Applicant's Heart Mark.

Response to Document Request No. 5:

Opposer incorporates its general objections. Subject to those objections, Opposer will produce relevant documents responsive to this request.

Document Request No. 6:

All documents that relate or pertain to Applicant's Heart Mark.

Response to Document Request No. 6:

Opposer incorporates its general objections. Refer to Opposer's response to Document Request No. 5.

Document Request No. 7:

All documents that evidence, refer or relate to the creation, selection, and adoption of Opposer's heart.

Response to Document Request No. 7:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer will produce documents demonstrating Opposer's first use of the "HEART IN THE BEAR" mark, but has not as yet uncovered documents evidencing, referring or relating to the creation, selection, or adoption of the mark. Opposer will supplement this response should such documents be uncovered.

Document Request No. 8:

Representative samples of documents that evidence, refer or relate to each use, expected use, former use or claim of use of Opposer's heart.

Response to Document Request No. 8:

Opposer incorporates its general objections. Subject to those objections, Opposer will produce a representative sample of those documents.

Document Request No. 9:

All compilations or other summary documents that evidence, refer or relate to Opposer's annual gross sales revenues in connection with all products bearing Opposer's heart for each year since Opposer's first sale of each such product or service.

Response to Document Request No. 9:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer does not compile financial documents separately concerning the "HEART IN THE BEAR" mark or concerning any individual product. Upon entry of a protective order, Opposer will produce summary documents relevant to this request.

Document Request No. 10:

All documents supporting or relating to the factual basis for your assertions in the Notice of Opposition, including paragraphs 13-14 of the Notice of Opposition and Opposer's alleged prior use of Opposer's heart before Applicant's Heart Mark.

Response to Document Request No. 10:

Opposer incorporates its general objections. Subject to those objections, Opposer will produce relevant documents responsive to this request.

Document Request No. 11:

All documents that evidence, refer or relate to Opposer's state or federal registrations of, or applications to register, Opposer's heart or any similar marks, including any relevant domain name registrations.

Response to Document Request No. 11:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: There are no relevant domain name registrations or state registrations. The sole federal application for registration is the subject of this Opposition proceeding and its contents are in Applicant's possession.

Document Request No. 12:

All documents that comprise, refer to or are related to each plan, schedule or program of advertising or promotion of goods bearing Opposer's heart.

Response to Document Request No. 12:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents.

Document Request No. 13:

All compilations or other summary documents that evidence, refer or relate to Opposer's marketing expenses for each type of product or service offered under Opposer's heart, including but not limited to expenses for advertising or promotion.

Response to Document Request No. 13:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer does not compile financial documents separately concerning the "HEART IN THE BEAR" mark or concerning any individual product. Upon entry of a protective order, Opposer will produce summary documents relevant to this request.

Document Request No. 14:

Documents reflecting examples of each different advertisement, catalog, circular, brochure, bulletin, sign, sales display, or other promotional material using or containing goods bearing Opposer's heart ever circulated, distributed or displayed to any member of the public.

Response to Document Request No. 14:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer will produce a representative sampling of the materials requested.

Document Request No. 15:

All documents relating to or reflecting the results of any analysis, survey, focus group, poll or other analysis or investigation, conducted by, for, or on behalf of, Opposer relating to the public's recognition of or reaction to Opposer's heart.

Response to Document Request No. 15:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents.

Document Request No. 16:

All documents relating to or reflecting the results of any analysis, survey, focus group, poll or other analysis or investigation, conducted by, for, or on behalf of, Opposer relating to Opposer's heart.

Response to Document Request No. 16:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents.

Document Request No. 17:

All documents relating or referring to the use or application for registration by Opposer or any third party of any trademarks that consist of a heart located in the chest of a toy or stuffed animal, including but not limited to Application No. 75/774,077 filed by Opposer.

Response to Document Request No. 17:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer is unaware of any such applications other than the two applications that are the subject of this Opposition proceeding. Applicant is in possession of the relevant documents.

Document Request No. 18:

All documents relating to or reflecting all licenses, assignments or other transfers to or from Opposer of any rights in Opposer's heart.

Response to Document Request No. 18:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents.

Document Request No. 19:

All documents relating to or reflecting any court action or administrative proceeding filed by or against Opposer, and all written challenges or objections made by or directed to Opposer relating or referring to Opposer's use of Opposer's heart.

Response to Document Request No. 19:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents exist except for those generated during the course of this Opposition proceeding. Applicant has in its possession either originals or copies of each such document.

Document Request No. 20:

All documents relating to, reflecting or referring to any trademark search, clearance or investigation by, for, or on behalf of Opposer concerning the availability of Opposer's heart for Opposer's goods or services.

Response to Document Request No. 20:

Opposer incorporates its general objections. Subject to those objections, Opposer further objects on the ground that the requested documents are covered by the attorney-client and/or work product privileges. Notwithstanding the foregoing objections, no such documents exist.

Document Request No. 21:

All documents referring to Applicant's Heart Mark or Applicant's goods or services sold under Applicant's Heart Mark prepared, received or obtained by Opposer or at Opposer's direction prior to the filing of the Notice of Opposition.

Response to Document Request No. 21:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer will produce those documents in its possession, although Opposer cannot state, with certainty, whether the documents to be produced were obtained by Opposer before or after the date on which the Notice of Opposition was filed.

Document Request No. 22:

All documents referring to Applicant's Heart Mark or Applicant's goods or services sold under Applicant's Heart Mark prepared, received or obtained by Opposer or at Opposer's direction after the filing of the Notice of Opposition.

Response to Document Request No. 22:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer will produce those documents in its possession, although Opposer cannot state, with certainty, whether the documents to be produced were obtained by Opposer before or after the date on which the Notice of Opposition was filed.

Document Request No. 23:

All documents relating to or reflecting all communications, oral or written, between Opposer and Applicant.

Response to Document Request No. 23:

Opposer incorporates its general objections. Subject to those objections, Opposer further objects to this request as being oppressive. Applicant has in its possession either originals or copies of communications between the parties to this Opposition proceeding. Opposer does not have any documents concerning oral communications.

Document Request No. 24:

All documents relating to or reflecting each location of Opposer's place(s) of business where Opposer sells or offers for sale its goods or services with which Opposer has used Opposer's heart.

Response to Document Request No. 24:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer will produce documents relevant to this request.

Document Request No. 25:

All documents relating or reflecting Opposer's quality control in connection with Opposer's heart.

Response to Document Request No. 25:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer has not uncovered any documents concerning quality control, but will supplement this response should such documents be uncovered.

Document Request No. 26:

All documents relating to or reflecting each area of distribution (by city, county, province, state or other political subdivision) for Opposer's goods or services with which Opposer has used Opposer's heart.

Response to Document Request No. 26:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Opposer will produce documents relevant to this request.

Document Request No. 27:

All documents relating to or reflecting any discontinuance of use of Opposer's heart mark.

Response to Document Request No. 27:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents.

Document Request No. 28:

All documents relating to or reflecting any instance or occasion of confusion or mistake involving the source, origin or sponsorship of goods and services offered by Opposer under Opposer's alleged mark, including any inquiry regarding whether any of the goods or services were sponsored or otherwise connected with Applicant or any good or service of Applicant.

Response to Document Request No. 28:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents.

Document Request No. 29:

All documents relating to or reflecting the first use of a brass heart by Opposer.

Response to Document Request No. 29:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Documents reflecting use of a brass heart by Opposer will be produced. Opposer cannot state with certainty whether the documents to be produced reflect Opposer's first use of the brass heart.

Document Request No. 30:

All documents relating to or reflecting specimens of each different advertisement, catalog, circular, brochure, bulletin, sign, sales display, or other promotional material using or containing goods or services bearing Opposer's brass heart ever circulated, distributed or displayed to any members of the public.

Response to Document Request No. 30:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: A representative sampling of such documents will be produced.

Document Request No. 31:

All documents relating to or reflecting the date and manner of first use of a red felt heart by Opposer.

Response to Document Request No. 31:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Documents reflecting use of a red felt heart by Opposer will be produced. Opposer cannot state with certainty whether the documents to be produced reflect Opposer's first use of the red felt heart.

Document Request No. 32:

All documents relating to or reflecting specimens of each different advertisement, catalog, circular, brochure, bulletin, sign, sales display, or other promotional material using or containing goods or services bearing Opposer's red felt heart ever circulated, distributed or displayed to any members of the public.

Response to Document Request No. 32:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: A representative sampling of such documents will be produced.

Document Request No. 33:

All documents that evidence, refer or relate to any contacts or the result of any contacts Opposer has had with experts in connection with this proceeding, including all documents provided to or by any such expert, all reports or work papers prepared by or under the direction of such expert, and all drafts thereof.

Response to Document Request No. 33:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents exist, although Opposer reserves the right to supplement this response should Opposer retain an expert.

Document Request No. 34:

The current resume and/or curriculum vitae of all expert witnesses or consultants with whom you have consulted, either directly or indirectly in this action.

Response to Document Request No. 34:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: No such documents exist, although Opposer reserves the right to supplement this response should Opposer retain an expert.

Document Request No. 35:

All documents relating to or reflecting specimens of each different advertisement, catalog, circular, brochure, bulletin, sign, sales display, or other promotional material using or containing goods or services bearing Opposer's heart that specifically draws attention to Opposer's heart in a way specifically intended to distinguish Opposer's goods or otherwise constitutes "look for" advertising intended to identify a heart located inside a stuffed animal with Opposer's products.

Response to Document Request No. 35:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Documents responsive to this request will be produced.

Document Request No. 36:

All documents relating to or reflecting the use of a heart on a chain, ribbon or other device for hanging the heart in connection with the sale or promotion of Opposer's goods and services.

Response to Document Request No. 36:

Opposer incorporates its general objections. Subject to those objections, Opposer responds as follows: Documents responsive to this request will be produced.

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES, P.C.

By H. JAY SPIEGEL, Reg. No. 30,722
Attorney for Opposer
The Vermont Teddy Bear Company, Inc.

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P.O. Box 11
Mount Vernon, VA 22121
(703) 619-0101 - Phone
(703) 619-0110 - Facsimile

CERTIFICATE OF MAILING

I hereby certify that this correspondence is addressed to: TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, and is being deposited with UPS for next day delivery on June 14, 2004.

Michelle Alvez

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

[redacted]

06-15-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #78

THE VERMONT TEDDY BEAR COMPANY, INC.	)	
Opposer,	)	
v.	)	Opposition No. 115,198
BUILD-A-BEAR WORKSHOP, INC.,	)	
Applicant.	)	

MOTION FOR SUMMARY JUDGMENT

COMES NOW Applicant Build-A-Bear Workshop, Inc. ("BABW"), pursuant to Fed. R. Civ. P. 56, and moves this Board for Summary Judgment of Opposition 115,198. In support of this motion, BABW states:

1. There are no genuine issues of material fact.

2. BABW is entitled to entry of judgment in its favor as a matter of law.

3. In support of its Motion, BABW submits the accompanying Memorandum in Support of Motion for Summary Judgment and incorporates the Memorandum as if set forth in full herein.

WHEREFORE, BABW respectfully requests and prays that:

1. The Board enter summary judgment in favor of BABW and against The Vermont Teddy Bear Company, Inc.

2. The Board suspend all further proceedings in this Opposition pending the Board's ruling on BABW's motion for summary judgment, including all discovery,

testimony, and trial dates and deadlines, pursuant to 37 C.F.R. §2.127(d) and T.B.M.P. §528.03

Dated: June 14, 2004

Respectfully submitted,

By: _____

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Attorneys for Build-A-Bear Workshop, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served upon H. Jay Spiegel, H. Jay Spiegel & Associates, 8778 Thomas J. Stockton Parkway, Alexandria, Virginia 22308, by depositing it with UPS for next day delivery on this 14th day of June 2004.

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