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

Proceeding	91248336
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Attachments	BJC_App_AMENDED_Reply_ISO_MSJ and Redline.pdf(532790 bytes) EX A - Prior Disclosure of tags.pdf(2709575 bytes) EX B - NEW TECH IMAGES.pdf(4832797 bytes) EX C - Step and Repeat - logos.pdf(3150716 bytes) EX D - Expired Reg of 1940 Full Jockey - Jul 2005.pdf(615146 bytes) EX E - 2011_KABA_Annual_Report.pdf(4962148 bytes) EX F - Coopers change to Jky.pdf(403409 bytes) EX G - Auction Items Sold.pdf(1680924 bytes) EX H - JKY Evasive INT Resp.pdf(682202 bytes) EX I - BJC Door decal.pdf(2168604 bytes) EX J - POS Sys.pdf(757087 bytes) EX K - Hat not ornamental.pdf(2350089 bytes) EXHIBIT L - Provided Under Seal.pdf(6328 bytes) Declarations.pdf(4440863 bytes)

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

JOCKEY INTERNATIONAL, INC.
Opposer.

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Opposition No. 91248336

v.

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LAMONT D. COOPER

Applicant.

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**APPLICANT’S AMENDED REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT**

Lamont D. Cooper (“Applicant”) submits this Amended Reply in Support of Applicant’s Motion for Summary Judgment and Opposition to Jockey’s Motion for Summary Judgment. Applicant submits this amended response to correct a prior failure to redact confidential information.

PRELIMINARY STATEMENT

Generally, a party that seeks summary judgment on an unpleaded issue may simultaneously move to amend its pleading to assert the matter. TBMP § 314 (citing to *Societe des Produits Marnier Lapostolle v. Distillerie Moccia S.R.L.*, 10 U.S.P.Q.2d 1241, 1242 n.4 (TTAB 1989) (motion to amend to add new ground, filed simultaneously with motion for summary judgment, granted). Here, Applicant filed its amended defenses and counterclaims, not simultaneous with, but prior to filing the instant motion and therefore the issues are properly before the Board.

STATEMENT OF FACTS

None of Jockey’s alleged undisputed facts are supported by evidence except for the allegations regarding Applicant’s application submission. However, what is undisputed is that Jockey has *no evidence* to support *any* of its claims. In fact, the evidence of record contradicts Jockey’s “undisputed” claims and declarations. Whereas, Applicant has provided uncontroverted facts to include testimony and documentary evidence to support his priority in this proceeding.

PRIORITY

I. JOCKEY'S EVIDENTIARY OBJECTIONS TO APPLICANT'S PRIORITY EVIDENCE SHOULD BE OVERRULED

A. DECLARATION OF SEAN CARTER SHOULD NOT BE EXCLUDED

A court has broad discretion to determine whether a nondisclosure of evidence is substantially justified *or* harmless for purposes of excluding that evidence. *SMD Software, Inc. v. EMove, Inc.*, 945 F. Supp. 2d 628 (E.D.N.C. 2013). In making this determination, courts are to weigh the following factors: (1) surprise to the party against whom the evidence would be offered; (2) ability of that party to cure the surprise; (3) extent to which allowing the evidence would disrupt the trial; (4) importance of the evidence; and (5) nondisclosing party's explanation for its failure to disclose the evidence. *Id.* Applicant's delayed disclosure is substantially justified *and* harmless. Applicant has always maintained that he was having difficulty locating witnesses because of the nature of the transactions (*i.e.* cash sales and/or relatively low-priced items not requiring disclosure of customer information) and further provided that he was continuing to search for witnesses in order to support his claims. 28 TTABVUE 30, Int. No. 7 (2nd and 3rd supplemental responses); *Id.* at 37, Int. No. 26. There has been no surprise here as priority and use has been an issue since the commencement of the proceeding and Applicant has had a continuing obligation to prove use and priority. Accordingly, there is no surprise that Applicant might have later discovered witnesses that he would present to support his priority and use claims. The introduction of this evidence does not disrupt trial; there is no reason that, if the parties fail to prevail in their respective motions, that trial cannot proceed as a matter of course. The information is critical to Applicant's case as third-party testimony is vital to bolstering other evidence which might otherwise be deemed self-serving. The fact that this information helps Applicant's case and therefore Jockey desires to exclude it does not constitute prejudice to Jockey. Jockey did not attempt to depose any of the other disclosed witnesses (customers listed as having purchased items) provided in Applicant's initial disclosures; and, there is no evidence to suggest that there would have been any difference with Mr. Carter. Furthermore, Jockey did not serve its discovery permitting enough time for discovery depositions.¹ Accordingly, this is not a matter of bad faith or withholding of evidence,

¹ Jockey served its discovery on December 27, 2019, 32 days before the close of discovery. See generally, 11 TTABVUE 28.

but reasonable difficulty of ascertaining information not within the possession and control of Applicant. *Jenkins v. Med. Labs. of E. IA, Inc.*, 880 F. Supp. 2d 946 (N.D. IA 2012) (8th Cir. 2013)(Employer's failure to disclose witness in its initial disclosures and in its response to interrogatories was substantially justified and harmless; court would not strike witness's summary judgment affidavit and testimony; there was no reason to believe that employer omitted witness in bad faith, and witness's testimony would not result in any surprise or prejudice to employee.). *See also, Charrette Corp. v. Bowater Commc'n Papers Inc.*, 13 U.S.P.Q.2d 2040, 2041 (TTAB 1989) (failure to identify witness in response to interrogatory seeking identification of all witnesses who would testify at trial, did not preclude testimony of such witness). *In re Mercedes-Benz Anti-Tr. Litig.*, 225 F.R.D. 498 (D.N.J. 2005) (Summary judgment rule does not require disclosure of affiants prior to filing of summary judgment motion). Accordingly, to preclude such evidence under these circumstances would be highly prejudicial to Applicant and unjust.

B. SUPPLEMENTED DISCLOSURE OF ACTUAL HANG TAGS SHOULD NOT BE EXCLUDED

Jockey argues that Applicant's supplementation of two pieces of evidence (2006 and 2016 hang tags) should be excluded. The failure to disclose the actual tags earlier in discovery was inadvertent and harmless. With respect to the 2006 hang tag, Applicant disclosed the information in a different form (*i.e.* mock-ups, patches, and interior labels). Ex. A. In addition, the actual 2006 hang tag can be seen in both Applicant's and Jockey's productions. *Id.* at A010-014.² *See*, TBMP § 408.03 (if the information has otherwise been made known to the propounding party during the discovery process or was otherwise made known in writing, the answering party need not amend its prior response or previously made disclosure). Applicant did not realize the omissions until his September submission and he supplemented as soon as it was realized. *Smith v. Conway Org., Inc.*, 154 F.R.D. 73, 77 (S.D.N.Y. 1994)("[a] party is under a duty seasonably to amend a prior response to... request for production...if the party learns that the response is in some material respect incomplete or incorrect."). It is clear that the facts are not what Jockey seeks, but rather for Applicant to capitulate or exhaust his finances defending frivolous motions and arguments. At

² Annotations added. Additional enlarged images added for convenience.

any rate, if Jockey cared to ascertain the facts, a simple inquiry regarding the mock-ups could have remedied the situation as Jockey made a host of other insignificant requests.³ If Jockey conducted an investigation into Applicant's Facebook "friends," surely they could have enlarged the photos. Accordingly, the omissions were harmless, not committed in bad faith, and Applicant cured as soon as it became apparent that there was an omission.

C. DECLARATIONS OF COMPANY OWNERS, AGENTS, AND CUSTOMERS ARE CREDIBLE AND ADMISSIBLE

The evidentiary objections raised by Jockey to attack the credibility and admissibility of Applicant's priority evidence are unwarranted. The declarations are sufficient. By virtue of his position as owner, Applicant can provide a sworn statement about the sales figures. *Ava Ruha Corp. v. Mother's Nutritional Ctr., Inc.*, 113 U.S.P.Q.2d 1575, 1578 (TTAB 2015) (testimony from personal knowledge based on review of files and records *or position with company*).⁴ Moreover, the amended declaration cures any such alleged prior inadequacies or admissibility issues. In addition, his position with the company and personal knowledge regarding store layout⁵ and displays are admissible and proper for declaration as is his memory of early inventory purchases and sales. Fed. R. Civ. P. 56(c)(4). Accordingly, the declarations of Cortez Waters and Robert Hayes respecting the running and operations of the business are also admissible based on their personal knowledge and prior positions. With respect to the customer declarations, third-party declarations based on personal knowledge are admissible to prove Applicant's priority and continued use. Fed. R. Civ. P. 56(c)(4); *see also, 4U Co. of Am., Inc. v. Naas Foods, Inc.*, 175 U.S.P.Q. 251, 253 (TTAB 1972) (in summary judgment, affidavit admissible to prove prior and continuous use). *Stoupakis v. Bros. Gourmet Coffees, Inc.*, 165 F.R.D. 5 (D.D.C. 1996)(factual assertions contained in affidavits and other evidence in support of motion for summary judgment *shall be accepted as true unless facts are*

³ *E.g.* URLs which they already had access to; unredacted documents which had already been provided on numerous occasions.

⁴ Applicant has provided an amended declaration specifically stating that the records were and are kept in the ordinary course of business and were produced from the store's point of sale system. App. Am. Decl. ¶ 17-18.

⁵ Jockey argues that counsel's annotations are inadmissible. The Exhibit was identified by Applicant in his sworn declaration. In addition, Applicant has amended his statement to also authenticate the substance of the annotations. *Id.* at ¶ 9.

controverted by nonmoving party through affidavits or other documentary evidence). Moreover, all of the declarations are corroborated by documentary evidence and therefore shall be accepted as true.

II. APPLICANT'S EVIDENCE IS SUFFICIENT TO SUPPORT HIS PRIORITY OVER JOCKEY'S 2011 AND LATER MARKS

Jockey argues that Applicant has failed to provide evidence of trademark use only ornamental use. This is false as Applicant has provided hang tags (2006-present),⁶ proper trademark use on clothing,⁷ sworn statements to include a drawing of a display in association with the goods (dating back to 2008),⁸ retail store signage (dating back to 2009),⁹ sales figures (2006-present), electronic web displays (at least as early as 2010)¹⁰ and sworn statements from customers (dating back to 2008).¹¹

More specifically, with respect to the nature of use, Applicant provides that *all* Black Jockey Clothing products are sold with one of the hang tags at Applicant's prior Ex. H affixed, App. Am. Decl. ¶ 11. Accordingly, all sales, including those of Mr. Carter, Mr. Jones, and Mr. Harvey from 2006 to 2016 (creation date of second label) are sufficient to support Applicant's priority date for his Black Jockey and Black Jockey with text mark. Applicant's claim is supported by viewing the social media images in which tags are affixed to the goods. Ex. A010-014; Ex. B001-004,006-008. The 2006 hang tag is sufficient to support use for Applicant's Black Jockey mark because he is prominently displayed; the surrounding matter is merely informational (*i.e.* descriptive text, company designation, collection information, etc.); and, respecting the other logo, it creates a separate and distinct commercial impression. TMEP § 807.12(d). *See also, In re Univ. of Miami*, 123 U.S.P.Q.2d 1075, 1079 (TTAB 2017) and cases cited therein. In addition, the point of sale display described by Applicant in his sworn statement and the 2010 electronic display

⁶ App. Decl. ¶ 8; App. Am. Decl. ¶ 11; Hayes Decl. ¶ 2, 33 TTABVUE 236.

⁷ *See generally*, Ex. B, 33 TTABVUE 31.

⁸ App. Decl. ¶ 6; App. Am. Decl. ¶ 8. *See also*, Ex. B-010 screenshot of a video, admittedly well after the use date, but consistent with the location that Applicant provided the display was located. In anticipation of Jockey's exclusion argument, Jockey's attempts to discredit Applicant's continued use due to the opening of the new store unveiled this evidence. Accordingly, Applicant should be permitted to provide evidence from the store to support use.

⁹ App. Am. Decl. ¶ 10. Applicant concedes this is not appropriate use for the recited goods per se. However, it is relevant to the analysis respecting Jockey's claim of any ornamental use in 2009 and thereafter for his Black Jockey mark. TMEP § 1202.03(c)(To show secondary source, the applicant may show non-ornamental use of the mark in commerce on other goods or services).

¹⁰ Marks used on a step and repeat backdrop are perceived as logos/trademarks. *See e.g.* Ex. C. Accordingly, Applicant's logo used in the background is a bona fide trademark use.

¹¹ Applicant, Mr. Carter, and Mr. Harvey provided declarations that they are not friends; therefore, the sales were not token sales as alleged by Jockey. LaDon Jones has submitted an amended declaration to correct the spelling error in his name.

show the mark used in association with the goods.¹² All such use occurred well before Jockey's 2011 use. Further, the 2006 hang tag is sufficient to support use for the Black Jockey with text mark, because the other matter is merely informational or creates a separate and distinct commercial impression. *Id.* Accordingly, the use of this mark on the 2006 hang tag, predates Jockey's October 31, 2011 and May 23, 2012 intent to use ("ITU") applications for its 2011 Full Jockey marks.

With respect to the BJC Stars mark(s), Applicant provided that the other hang tag at his prior Ex. H-002 has been used since 2016 ("2016 hang tag").¹³ The BJC Stars mark is clearly displayed on the back of the tag. *Id.* Accordingly, this is proper use and clearly predates Jockey's November 2, 2017 ITU application for registration for its Jockey Seal. Further in support of Applicant's claims, the October 30, 2017 images at Ex. B001-002 show that the tag was in use prior to Jockey's ITU application. The other dated images corroborate and support Applicant's claims of continuous use of the mark.¹⁴ *Id.* In anticipation of Jockey's attempt to exclude this evidence, in its opposition motion, in an effort to attack the credibility of Mr. Waters's sworn statement regarding continuous use (*i.e.* continuous restocking of Black Jockey inventory at One of a Kind Fashions), Jockey introduced evidence regarding the closure of One of a Kind Fashion and the opening of The New Tech Outlet & Level Up Fashions ("Level Up") into the record.¹⁵ Accordingly, upon review and investigation of counsel's claims and suggestions that the closure of one store negates or refutes Mr. Waters's and Applicant's claims of continued use, Level Up's social media and related evidence provide that there was a name change. However, it continued to carry Black Jockey Clothing products. Accordingly, any attempt to discredit Mr. Waters's sworn statements because he might have miscalculated the time-frame of a name change is ineffective as the evidence clearly shows that the

¹² See discussion at *supra* n.10.

¹³ App. Am. Decl. ¶11. Also, use on Mr. Carter's 2008 hat purchase is not ornamental. It is common trade practice for companies, sports teams, etc. to display logos in such a manner. *See e.g.* accepted trademark specimen and fashion companies at Ex. K.

¹⁴ The Jimmy Winkfield V-Neck and Tangerine Be Legendary Tees depicted in B-004 show the BJC Stars book-style tag affixed and the sales figures for 2016 and 2017 show sales for both. Shirt names with images can be found at A008-009. Highlighted for convenience. Accordingly, Applicant having provided a sworn declaration that the tags were in use since 2016, Applicant has proven use for the BJC Stars mark.

¹⁵ "However, social media posts suggest that One of a Kind Fashion was shuttered in the first half of 2017 and replaced with a different store front named New Tech Outlets and Level Up Fashions by June 18, 2017." 40 TTABVUE 26.

new store continued to carry Black Jockey Clothing goods supporting his claim. In addition, Applicant remained to be the owner. App. Am. Decl. ¶ 13.

With respect to Applicant's sales figures, they are sufficient and admissible to support Applicant's priority as the records were kept in the ordinary course of business. App. Am. Decl. ¶ 17-18. The discrepancies provided by Jockey are due to a software conversion issue not a result of false manipulation of the numbers. App. Am. Decl. ¶ 19. In addition, Jockey's claim that since Applicant cannot remember every single product sold, only a general recollection, that his testimony is not credible.¹⁶ Nothing could be further from the truth. If anything, it shows that Applicant is credible and not conspiring with the other witness (alleged to be his friends) to create a false record, or as also alleged, otherwise manipulating the numbers.

With respect to Jockey's claims of insufficient sales, first, non-use was not pleaded. To the extent, the Board requires that Applicant must provide any such proof, the sales are not de minimis and the cases cited by Jockey are distinguishable from the instant case. First, *Paramount* did not hold that the use was de minimis solely because of the low number of sales, but also and notably, *inter alia*, the product had no utilitarian function or purpose as a game and it was clear that the applicant was not attempting to establish a trade in games. *Paramount Pictures Corp. v. White*, 31 U.S.P.Q.2d 1768 (TTAB 1994). *Proctor and Gamble* is also distinguishable. No bona fide use was found, because P&G had not put the product to market *in a meaningful way* nor did they have plans to do so, much like Jockey for all of the years which they have failed to show use or intent to resume for its 1940 and 1960's¹⁷ Jockey marks. For instance, the court discussed the fact that P&G was not manufacturing the product or doing any marketing. P&G was merely purchasing another brand, repackaging, relabeling the brand's (not P&G) product, and shipping once a year merely to reserve rights in the mark. *Procter & Gamble Co. v. Johnson & Johnson Inc.*, 485 F. Supp. 1185 (S.D.N.Y. 1979). *La Societe* is also distinguishable in that the court found that a business purporting to be a manufacturing business but having only 89 sales, in a 20 year period, and only selling at cost did not

¹⁶ 40 TTABVUE 26 (Jockey argues that Mr. Carter's purchase is inconsistent with the sales from Applicant's memory).

¹⁷ 1960 Full Jockey and 1960 Half Jockey.

constitute a “*good faith commercial exploitation.*” The lower court recognized that the appearance was “more likely...a relatively painless way to keep a potential competitor at bay.” *La Societe Anonyme des Parfums le Galion v. Jean Patou, Inc.*, 495 F.2d 1265, 1273, 181 U.S.P.Q. 545 (2d Cir. 1974). However, those are not the facts here, at least not as it pertains to Applicant. All three cases make clear that “use in commerce” followed by activities indicating a continuing effort to place the product on the market on a commercial scale within a reasonable time was sufficient to constitute a bona fide use. In addition, those cases provide that there must be an active and public attempt or intent to establish such a trade and make use of the mark commercially. Further, it has been well established that even small scale sales followed by continuous activity are sufficient to constitute a bona fide use. *See, Sheila's Shine Prods., Inc. v. Sheila Shine, Inc.*, 486 F.2d 114, 123 179 U.S.P.Q. 577, (5th Cir. 1973) (10 years of small, door-to-door sales held sufficient to establish priority)(“The mere fact that a business is small and its trade modest does not necessarily militate against its being an established business capable of acquiring goodwill and rights in a trademark.”). *See also, Christian Faith Fellowship Church v. adidas AG*, 841 F.3d 986, 993, 120 U.S.P.Q.2d 1640 (Fed. Cir. 2016) (sale of two trademarked caps sufficient to constitute bona fide use in commerce.). *See also, Knights Armament Co. v. Optical Sys. Tech., Inc.*, 636 F. Supp. 2d 1283, 1298 (M.D. Fla. 2009)(“even a *single use* in trade may sustain trademark rights if *followed by continuous commercial utilization.*”)(citing to *Blue Bell, Inc. v. Farah Mfg. Co.*, 508 F.2d 1260 (5th Cir. 1975))(emphasis added). In the instant case, Applicant’s use and intent to establish such a trade is clear. Applicant has consistently maintained inventory and sales which have increased over the years. In addition, he has consistently marketed his goods through various channels including radio, website, and social media. 11 TTABVUE 65; 29 TTABVUE 140. And, indeed he has established a trade in retail because in addition to his e-commerce store, for many years, he owned and operated the brick and mortar stores. Accordingly, Jockey is the only party hereto that has failed to show any evidence to substantiate its claims of use for its pleaded marks

Accordingly, the evidence shows that there is no genuine issue of fact that Applicant has priority in his Black Jockey, Black Jockey with text, and BJC Stars marks as evidenced by the 2006 and 2016 hang

tags, sworn declarations of customers and company management supporting sales, sworn declarations regarding the point of sale display, and 2010 electronic web display.

III. JOCKEY HAS FAILED TO PRODUCE ANY EVIDENCE TO SUPPORT ANY USE OF ITS PLEADED MARKS THEREFORE APPLICANT PREVAILS AS A MATTER OF LAW

Jockey has failed to provide *any* evidence of use for its pleaded marks. After eight months of delay, Jockey provided a total of 2,539 pages of documents which evince mere advertising from decades ago and much of fails to display any of the pleaded marks. In addition, while Jockey has provided some evidence of affixation, the evidence does not make clear whether the use is U.S. use or foreign use as the 2,539 pages include an overwhelming amount of foreign use commingled with U.S. use.¹⁸ Most notably, there is *not one* sales figure to support *any* sales in association with *any* pleaded marks. Jockey's declarations merely provide that Jockey has substantial sales of "products" for the "Jockey figures," or "Opposer's Products are sold,"¹⁹ in connection with the "Jockey Figure Marks" but remains completely silent regarding sales under which mark with the exception of some discussion related to the "1960 Jockey Boy designs,"²⁰ However, again, the declarations and supporting exhibits fail to attribute the figures to any particular mark. Further, there is no documentation to support use or even advertising of the 1940 mark in this decade or the 1960's marks after 2004 (1960 Full Jockey) and 2006 (Half Jockey). Jockey was required to produce it and failed to do so. The statements unsupported by documentary evidence are insufficient.

With respect to the 2011 and later marks, the evidence in discovery shows that all of the pleaded marks are not affixed to each product. Accordingly, once again, blanket sales figures are insufficient to support use for the three later pleaded marks. Jockey's Ex. M-N some of which irrelevant as it is after the initiation of this proceeding, appear to be evidence of token use merely to reserve rights in the marks, *viz.* internal use (on corporate headquarters), and/or use for manufacturing services which are not the recited goods at issue before the Board - also irrelevant. In order for Jockey to prevail on any of its claims or against Applicant's counterclaims, Jockey must first prove that the marks were indeed used in connection with the

¹⁸ Even if we were to assume that all of the commingled use is U.S. use, there are *no* sales figures attributable to the pleaded marks.

¹⁹ Putlak Decl. ¶24-25; Arbas ¶3-4; Lecigne Decl.¶ 3.

²⁰ Putlak Decl. defines "1960 Jockey Boy designs" as the 1960 Half Boy together with the 1960 Full Boy mark. Putlak Decl. ¶ 10.

recited goods and used before Applicant's use and not abandoned. This information is within the possession and/or control of Jockey. Jockey has had eight months to provide this information, was compelled to provide such, but has failed to do so. Without any sales figures attributable to the pleaded marks Jockey cannot sustain its burden in proving its priority (or continued use) in this proceeding. Accordingly, as a matter of law, having provided no documentary evidence of *any* use, Jockey's registrations are void *ab initio*. Further, as a matter of law, having provided evidence (to include sales) predating Jockey's unsupported allegations of use, Applicant prevails on priority over all of Jockey's 2011 and later marks. The burden of the moving party may be met by showing "that there is an absence of evidence to support the non-moving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

ABANDONMENT

I. JOCKEY HAS FAILED TO PRESENT ANY EVIDENCE TO REBUT APPLICANT'S PRIMA FACIE CASE OF ABANDONMENT

Contrary to Jockey's allegations, Applicant's pleading of abandonment is sufficiently plead and Applicant, in his motion, has established a *prima facie* case of abandonment. Once the presumption of abandonment is established, the burden of showing evidence of intent to resume use *shifts to the registrant*. *Exxon Corp v. Humble Exploration*, 695 F.2d 96, 99 (5th Cir. 1983) ("when a prima facie case of trademark abandonment exists *because of non use* of the mark...*the owner of the mark has the burden* to demonstrate that circumstances do not justify the inference of intent not to resume use")(emphasis added). To meet the burden of showing an intent to resume use, the registrant is required to show "*hard evidence of actual concrete plans to resume use*" in the "*reasonably foreseeable future* when conditions requiring suspension abate." *Emmpresa Cubana Del Tabaco v. Culbro*, 213 F. Supp. 2d 247, 268 (S.D.N.Y. 2002) (citing *Silverman v. C.B.S., Inc.*, 870 F. 2d 40, 46 (2nd Cir. 1989).

Jockey argues that Applicant has failed to produce any evidence to prove abandonment. Applicant cannot produce evidence of something that does not exist (*i.e.* non-use). Accordingly, Applicant, having provided that there is no evidence of use or advertising even for the 1940 Full Jockey in this decade, no evidence of use since at least 2004 for the 1960 Full Jockey, and 2006 for the Half Jockey, has sustained

his burden of showing that there is a lack of evidence to support use for three or more years. In its opposition, Jockey only provides outdated evidence and conclusory allegations or claims of use (and continued use) which are insufficient to overcome a motion for summary judgment. *Smith v. Anson*, 801 F. Supp. 176, 180 (S.D. Ill. 1992) (When parties dispute the fact on a motion for summary judgment, the parties must produce **proper documentary evidence** to support their contentions, and cannot rest on mere allegations in the pleadings or **upon conclusory allegations in affidavits**); *See also, Bryant v. Com. of Ky.*, 490 F.2d 1273, 1275 (6th Cir. 1974).

Contrary to the unsupported claims in Putlak declaration, Jockey's Ex. C²¹ does not evince any use (or continued use) of the 1940 Jockey mark for a number of reasons:²² (1) it only displays mere advertising some of which is from several decades ago; (2) others well after the abandonment date and commencement of Applicant's use; (3) some with no dates at all; (4) the commercial packaging, assuming *arguendo*, there were actual sales of that particular product in that packaging during that year, only evince use prior to the abandonment period on or before July 16, 2005;²³ and (5) the store statue was pulled from Jockey's archives to be placed in this store which was erected in May 2011. Ex. E004, 035-037. Thus, the use commenced **well after** the abandonment date and Applicant's established use. Moreover, the statue is not a display used in connection with the goods as there are no goods within close proximity - it is only memorabilia, used as decor,²⁴ and used in association with travel, not the recited goods - same with the framed photos (*i.e.* memorabilia and decor). The 27 year old statue (nor the park plaque)²⁵ provided at Jockey's Ex. D which Jockey admits was erected for internal use is not a point of sale display associated with the goods; not used

²¹ Putlak Decl. ¶5-6.

²² The registration for this mark expired July 16, 2005. *See, Ex. D.* Highly relevant to intent. In addition, the record is completely devoid of any evidence of its use in connection with goods in recent years, even the three years leading up to the expiration of the registration.

²³ Commercial packaging and label provide that goods are those of Jockey's predecessor, "Coopers." According to Jockey's website, Coopers has been non-existent since 1971. Ex. F.

²⁴ "[H]istorical memorabilia or decoration are not present evidence of a trademark use in commerce." *Louangel, Inc. v. Darden Restaurants, Inc.*, 2013 WL 2452664, at *6 (S.D.Tex., 2013).

²⁵ "Furthermore, it is not unusual for signs to be left over when a brand is discontinued, which may be kept for historical purposes. Under the circumstances, the continued display of the sign in this manner is more consistent with nostalgia than it is with an intent to resume use of the mark." *PIANOS ETC. INC. v. KIMBALL PIANO USA, INC. (NV) KIMBALL PIANO USA, INC. (IL)*, 2020 WL 5229484, at *13; *See e.g., Exec. Coach Builders*, 123 U.S.P.Q.2d 1175, 1198 (finding the appearance of the mark on interior signs, plaques, and memorabilia displayed inside Opposer's plant merely reflective of the historical use of that mark on cars).

in the ordinary course of trade; there is no evidence that the public associates it with the recited goods,²⁶ that it was ever used in connection with goods, or that it is even accessible to the public; and finally, the 2020 Wisconsin media coverage *after* the initiation of this proceeding about Jockey's *services* is irrelevant to the current issues before the Board. Similarly, Jockey's Ex. E-F only evince internal use which is irrelevant and insufficient to constitute a bona fide trademark use or intent to resume for the recited goods. TMEP § 904.04(b) and cases cited therein.

Regarding the 1960's Jockey marks, again the declaration allegations of continued use are unsupported by any documentary evidence. Jockey's Ex. G-L also fail to evince any use (or continued use) for the same reasons as its Ex. C. Also, much of its Ex. G and some of its Ex. H-I are for different, abandoned, and unpleaded marks and therefore not relevant to this analysis and accordingly should be stricken.²⁷ In addition, the retail and service mark signage at Ex. K-L, O fail to evince use for the recited goods. Jockey's retail and manufacturing services are not currently before the Board. Likewise, the unsupported claim of "Jockey's practice is to continue use" as outlined in the Putlak and Lecigne declarations²⁸ are also unsupported by *any* documentary evidence. In addition, Jockey's claims of use and submitted registrations for its unpleaded "Jockey" standard character text marks²⁹ are wholly irrelevant to this proceeding and should therefore be stricken and given no further consideration.

In addition to having no evidence of use, there is no documentary evidence to support any intent to resume use of any of the marks. Jockey has improperly placed the burden of proof on Applicant. Quite simply, because there is no such proof of intent, only an intent to abandon as the 1940 Full Jockey registration expired on June 11, 2005³⁰ and there has been no attempt to renew. The record shows that 1960's marks have gone unused since 2004 and 2006 and certain goods permanently from the application. 33 TTABVUE 6. Finally, and most notably, a licensing agreement between Jockey and another

²⁶Putlak's allegations are not evidence of public association, nor has she been designated an expert to opine. Putlak Decl. ¶ 7.

²⁷ Registration Nos. 0957864 (cancelled February 4, 2014), 1145086 (cancelled March 11, 2016), 1671441 (cancelled October 12, 2002). Tacking not permitted as it was not pleaded. Any attempts futile for the same reasons cited, *infra* p. 13.

²⁸ Lecigne ¶2-5. The entire declaration is self-serving and unsupported by documentary evidence and should be afforded little value. See also, Putlak ¶ 5. (regarding 1940 Full Jockey mark).

²⁹ Opp. Mtn., Ex. B, 40 TTABVUE 156.

³⁰ Registration No. 2187176, Ex. D.

manufacturer evince an intent to abandon the Half Jockey because a 2006 amendment to the 2000 licensing agreement provides that the Half Jockey Figure was removed (Ex. L)³¹ which is consistent with the date of the last advertising, commercial packaging, etc. Jockey provided 1,026 pages of licensing agreements (5 relevant to U.S. use and 12 irrelevant pertaining to foreign use),³² none of which evince *any* intent to resume use only an intent to abandon. The remaining evidence provided by Jockey fails to evince any use or intent to resume use under the 1960 Full Jockey Figure, of the 1,026 pages or agreements, not even one licensing agreement.

In addition, contrary to Jockey's misrepresentation in its opposition motion,³³ Applicant makes no concession that the 2011 and later Jockey marks enjoy the benefit of priority of the early mark(s). In fact, Applicant has previously objected to and maintains its objection that any such attempt to tack on use of the earlier marks is impermissible as the tacking claim was not pleaded. *See, Citigroup Inc. v. Capital City Bank Grp., Inc.*, 94 U.S.P.Q.2d 1645, 1655-56 (TTAB 2010)(Board deemed unpleaded affirmative defense of tacking by prior use of an unpleaded mark to have been tried by implied consent). *See also, H.D. Lee Co. v. Maidenform Inc.*, 87 U.S.P.Q.2d 1715, 1720 (TTAB 2008). Moreover, any such argument would be futile, because the 1940 and 1960's marks were already abandoned,³⁴ the later marks are not the legal equivalent of the old marks, and do not create the same commercial impression as you cannot determine the 1960's marks are jockeys and further the Half Jockey has no lower body or equipment like the 1940 and 1960 Full Jockey marks or those adopted after 2011. *Owens-IL, Inc. v. Optimist Int'l*, 173 U.S.P.Q. 120 (TTAB 1972)(removing letters from design background changed the overall commercial impression of the unitary mark). *See also, Louangel, Inc. v. Darden Restaurants, Inc.*, 2013 WL 1223653, at *5 (S.D. Tex. Mar. 22, 2013)(No tacking permitted. "defendants' trademark change, a smiling cartoon cow is replaced by

³¹ The initial agreement was entered into in 2000. The 2006 Amendment ("Amendment Three") removed the 1960 Half Jockey from the agreement. Amendments Four - Six did not include the 1960 Half Jockey. The 1960 Half Jockey reappears in Amendment Seven, five years after learning of Applicant's use. It is not Applicant's burden to prove intent. Therefore, the introduction of this evidence in this Reply is timely as it was not required for Applicant to produce in his *prima facie* case of abandonment when filing the motion.

³² The overwhelming majority of these documents are foreign transactions and a small number for marks not subject to this proceeding.

³³ 40 TTABVUE 17 n.9.

³⁴ Applicant's commencement prior to Jockey resuming any use would preclude tacking of the six-year resumption of the marks.

an abstract outline that shares none of Bongo's familiar elements. Facial features are gone, horns go from short verticals to long horizontals, and the placement vis-à-vis the words is completely different”).³⁵ See also, *Van Dyne-Crotty Inc. v. WearGuard Corp.*, 926 F.2d 1156, 1159, 17 U.S.P.Q.2d 1866 (Fed. Cir. 1991)(to meet the legal equivalents test, the marks must be indistinguishable from one another or create the same, continuing commercial impression such that the consumer would consider both as the same mark.)³⁶ Accordingly, adding word(s), body elements, changes from a cartoon-like to more detailed features creates different commercial impressions making any such arguments futile.

The record is clear that Jockey abandoned the marks and that it had no intent to resume any such use. Jockey let the registered 1940 Full Jockey registration expire and has made no attempts to renew. The record provides that there is no evidence of affixation or use in connection with the recited goods for the 1940 Full Jockey in this decade and 2004 and 2006 for the 1960's marks. Jockey amended its licensing agreements to exclude the use of the Half Jockey. There are no licensing agreements regarding the 1960 Full Jockey mark. It was not until Jockey encountered Applicant that Jockey decided it wanted to “modernize” or resurrect the mark. Unfortunately, the law provides that such resumption was too late. *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135, 149, 82 U.S.P.Q.2d 1414, 1421 (2d Cir. 2007)(The intent to resume use must be formulated **during** the three year period of nonuse: “An intent to resume use of the mark formulated after more than three years of nonuse cannot be invoked to dislodge the rights of another party who has commenced use of a mark—thereby acquiring priority rights in that mark—after three years of nonuse.”). See also, *Specht v. Google Inc.*, 747 F.3d 929, 934, 110 U.S.P.Q.2d 1319 (7th Cir. 2014). Accordingly, Applicant is entitled to judgment as a matter of law, because Jockey has failed to rebut Applicant's *prima case* of abandonment by proving any intent to resume and its conclusory allegations of continued use are insufficient to create a genuine issue of fact or prevail. *Exec. Coach Builders, Inc. v. SPV Coach Co., Inc.*, 123 U.S.P.Q.2d 1175, 1199 (TTAB 2017) (Mark held abandoned because owner had no

³⁵ Accordingly, the 1960 Full Jockey lacking any detail is not indistinguishable and creates a different commercial impression from the 1940 and 2011 later marks.

³⁶ Thus, the 1960 Half Jockey with no legs and no equipment is not indistinguishable from a full body mark making this argument futile to any or the marks adopted after the Half Jockey.

evidence of an intent to resume use in the reasonably foreseeable future within the three-year period of nonuse.). *Imperial Tobacco Ltd., Assignee of Imperial Grp. PLC v. Philip Morris, Inc.*, 899 F.2d 1575, 1581 (C.A.Fed.,1990)(“one must, however, proffer more than conclusory testimony or affidavits. An averment of no intent to abandon is little more than a denial in a pleading, which is patently insufficient to preclude summary judgment on the ground the facts are disputed. As this court has frequently said in connection with motions for summary judgment, a conclusory statement on the ultimate issue does not create a *genuine* issue of fact.”)(emphasis in original).

DILUTION

I. JOCKEY HAS FAILED TO PRESENT ANY EVIDENCE OF FAME FOR ANY OF THE PLEADED MARKS

Jockey argues that as long as “*any*” of its marks became famous before Applicant’s use, then a subsequently adopted mark would automatically be famous. Jockey’s argument is a gross misinterpretation of the law. The law requires that in order to be famous, the mark must have received a certain level of public recognition, and one cannot acquire public recognition without actually using the mark publicly. *Bose Corp. v. QSC Audio Prod., Inc.*, 293 F.3d 1367, 1371 63 U.S.P.Q.2d 1303 (Fed. Cir. 2002)(“fame of a mark may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling *under the mark*, and by the length of time those indicia of commercial awareness have been evident.”)(emphasis added). *See also, Regents v. Miners*, 110 U.S.P.Q.2d 1182 (TTAB 2014)(“opposer has failed to meet its burden of proving fame. Opposer has not persuasively established the percentage of revenue or advertising figures which pertain *specifically to the MINERS word and design marks, collectively or individually*”)(emphasis added). Accordingly, Jockey’s gross misinterpretation fails. Even in its opposition, Jockey failed to present any evidence of fame. Jockey provides several unsupported allegations that “Jockey” is well known or beloved, well recognized, and references to the “famous Jockey marks” and similar such statements in an effort to support its allegations of fame.³⁷ However, mere allegations without documentary evidence is insufficient to defeat a motion for summary judgment. *Bryant*,

³⁷ Putlak Decl. ¶¶ 2-3, 25-29.

490 F.2d at 1275. *See also, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Second, with respect to advertising, the overwhelming majority of the marketing material is for underwear not fashion clothing or even activewear, and niche fame is insufficient. *Roederer v. J. Garcia Carrion, S.A.*, 732 F. Supp. 2d, 836, 880 (D. Minn. 2010)(plaintiff's CRISTAL mark was not famous for dilution purposes where its fame was limited to the wine industry). With respect to Jockey's Ex. A, the 2008 WWD aided survey results of only 2,311 women (not the general consuming public) is of no significance here, because, *inter alia*, the pleaded marks are not displayed, mentioned, and most notably, not in use (*i.e.* 1940 Full Jockey and 1960 Half and Full Jockey had been abandoned well before the article and new marks by Jockey's own admission had not yet been put to use for, at least, another four years). Jockey's Ex. R-T are also insufficient to evince fame as some of it fails to display the subject marks, evinces marks not subject to this proceeding, outdated marketing materials, provide no dates at all, representative of only a small sector, or the dates fall on or before the established abandonment period and/or after Applicant commenced use. Accordingly, in its rebuttal, Jockey has still failed to produce any evidence of use or advertising for the expired and abandoned 1940 Full Jockey and nothing for the 1960's marks after 2004 and 2006. There is no expert testimony or other evidence of consumer recognition³⁸ of **any** of the pleaded marks. The modern advertising (at Ex. R-T) also fails to display **any** of the pleaded marks or it targets a small segment (*i.e.* not general consuming public).³⁹ There is no evidence of advertising or consumer recognition of the 2011 and later marks **predating** Applicant's established priority dates. Finally, the advertising figures are also insufficient as they do not provide evidence of marketing in association with any particular mark. Arbas Decl.¶¶ 7, 28.⁴⁰ Accordingly, the advertising is insufficient to evince fame for **any** of the pleaded marks.

Third, the sales figures are insufficient to evince fame of **any** of the pleaded marks. Jockey ***never discusses the sales figures attributable to any particular mark***, Jockey merely combines sales for *all*

³⁸ The allegations made by Jockey employees are insufficient as there is nothing in the record to suggest that they are experts capable to opine on consumer awareness.

³⁹ Limited to Jockey catalog subscribers; Primer magazine which is targeted at men in their early 20s; New Jersey newspaper limited to New Jersey; GQ limited to men. Ex. T.

⁴⁰ In addition, the annual figures are significantly low and Arbas's attempt to inflate the figures by combining 14 years is also insufficient to prove any fame.

Jockey marks together⁴¹ and the Arbas declaration⁴² lumps together both 1960's marks merely alleged to have been continually used providing no documentation of use after 2004. In addition to the unsupported allegations of use (and continuous use) of the 1960's marks, the allegations of sales via various retailers is also insufficient as there is no documentary support. In sum, there is insufficient evidence to evince fame for any of the pleaded marks because one cannot distinguish which sales are attributable to which product and/or used in connection with which mark, if any.⁴³ Accordingly, there is no evidence of record to support Jockey's claim of fame.

Fourth, the 33 year old *Jockey v. Butler*⁴⁴ case has no bearing on this case as the parties are different, Jockey's involved marks are different some involve more abandoned and expired registrations, the evidence from that case is not currently before the Board, the fame standard has changed twice since that time since that time,⁴⁵ and furthermore even famous marks can be abandoned, as is the case here. As provided above, the 1940 and 1960's marks were abandoned and Jockey has failed to rebut Applicant's *prima facie* case. Jockey cannot tack on the use because tacking has not been pleaded and as stated above any attempt would be futile.

Finally, the collectors' sales⁴⁶ are not evidence of fame let alone fame for the pleaded marks. There is no evidence of who purchased these items, the purchaser could be Jockey employees or affiliates. In addition, there is no evidence of record to support that a sale of an item on these sites constitutes any level of fame. People and enthusiasts purchase auction items at higher value than that which was purchased for Jockey's vintage statue, amongst other things, a grilled cheese sandwich sold for \$28,000. *See generally*, Ex. G. If this is any indication of fame, then Jockey is not even as famous as a grilled cheese sandwich.

⁴¹ For example, "Opposer has achieved significant U.S. sales of *Opposer's Products* promoted or sold in connection *with its Jockey Figure Marks*." 40 TTABVUE 7; Arbas Decl. ¶3 (emphasis added). "Indeed, prior to Applicant's earliest alleged first use date in 2006, Opposer had generated substantial sales of *Opposer's Products* and expended substantial sums in advertising and promotional expenditures, further increasing consumer recognition of the *Jockey Figure Marks*." 40 TTABVUE 11, Putlak Decl. ¶¶25, 28; Arbas Decl. ¶¶ 4-5, 7., Ex. B (Opp. Mtn.)(emphasis added).

⁴²Arbas Decl. ¶5. Then, at paragraph 6, providing that, "From 2005 to date.. [REDACTED]"

[REDACTED] "Emphasis added.

⁴³ Jockey has several hundred other unpleaded and registered marks which could be attributable to those figures.

⁴⁴ 3 U.S.P.Q.2d 1607 (TTAB 1987).

⁴⁵ 1996 Federal Trademark Dilution Act ("FTDA"); 2006 Trademark Dilution Revision Act ("TDRA").

⁴⁶ Ex. U; Putlak Dec. ¶ 29.

Accordingly, there is no genuine dispute as to the dilution, since (1) the early marks were abandoned and (2) there is no evidence of fame for the 2011 and later marks *before* Applicant commenced use. In its opposition, Jockey merely states that a genuine issue exists which is insufficient to create a dispute. *Imperial Tobacco*, 899 F.2d at 1581 (“As this court has frequently said in connection with motions for summary judgment, a conclusory statement on the ultimate issue does not create a *genuine* issue of fact.”).

FRAUD

As an evidentiary matter, the correspondence alleged to have come from Applicant’s prior counsel should be excluded because it was not disclosed during discovery. Moreover, and more importantly, it would be inadmissible at trial under as Jockey is offering it to disprove the fraud claim, *viz.* to overcome its clear knowledge of Applicant’s prior and superior use. Fed. R. Evid. 408(a)(conduct or statements made during compromise negotiations are inadmissible “*to prove or disprove the validity or amount of a disputed claim* or to impeach by a prior inconsistent statement or a contradiction”)(emphasis added).

In his Reply to his Motion to Amend Applicant has already provided the facts to support the claims made on information and belief and therefore will not reargue them in this motion. With regard to the question of intent, Applicant agrees with Jockey that if there were a factual question of intent remaining, then a disposition on summary judgment would be inappropriate. However, there are no factual disputes remaining and therefore, in this case, summary judgment is appropriate.⁴⁷ The facts are clear: (1) Jockey had knowledge of Applicant’s “*right to use;*” (2) Jockey had knowledge that Applicant’s rights were not merely “*equal to,*” but superior to Jockey’s subsequent use; (3) the signed declaration regarding knowledge of another’s superior right to use was false; (4) Jockey knew it was false (see 1 and 2 regarding knowledge); (5) the false statements were material; and (6) knowingly making a false statement is objective evidence of an intent to mislead. Specifically, the facts here show that Jockey had *full knowledge* of Applicant’s use of

⁴⁷ Summary judgment granted on fraud issue. *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 U.S.P.Q.2d 1483 (Fed. Cir. 1986); *Medinol Ltd. v. Neuro Vasx Inc.*, 67 U.S.P.Q.2d 1205 (TTAB 2003).

and “**right to use**” his Black Jockey mark due to the 2010 electronic display/background.⁴⁸ Jockey’s attempt to argue that it did not know of Applicant’s use and/or superior use or did not believe Applicant’s use was superior because of a judgment related to a separate and distinct mark owned by Applicant is unreasonable. *See, San Juan Prods., Inc. v. San Juan Pools of Kan., Inc.*, 849 F.2d 468, 472 (10th Cir.1988) (stating that in determining whether a statement is fraudulent, courts must focus on the “declarant’s subjective, honestly held, **good faith** belief.”)(emphasis added). There is no reasonable or good faith belief that a judgment in a case for a separate and distinct mark would confer any superior rights in a mark subsequently adopted and created by Jockey which was allegedly “modernized” to look similar to a second and wholly different mark owned by Applicant.⁴⁹ *Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 U.S.P.Q.2d 1477, 1502 (TTAB 2017) (“Board will not find fraud if the evidence shows that a false statement was made with a **reasonable** and honest **belief** that it was true, rather than an intent to mislead the U.S.P.T.O. into issuing a registration to which the applicant was not entitled.”)(emphasis added). Therefore, in accord with *Luxco*, having no **reasonable** or honest **belief** that the prior judgment stripped Applicant of any rights in his separate and distinct Black Jockey mark, the Board should find that there was fraud. Further, Jockey’s early marks (1940 and 1960’s marks) had been long abandoned so there was no reasonable or good faith belief that they could tack on any such use to a mark created and used 5-7 years later. Jockey knew that it had abandoned the earlier marks because as the record shows, the 1940 mark registration expired, Jockey removed the Half Jockey mark from the license agreements, and was not otherwise using it on goods or even advertising. Similarly, the 1960 Full Figure was not in use, advertised, or licensed. Moreover, assuming *arguendo*, on February 17, 2010, Applicant momentarily ceased using the mark or sometime thereafter, such cessation would not have constituted abandonment.⁵⁰ Therefore, when Jockey signed the declaration less than two years later, Applicant’s rights remained intact and it was Applicant that had a “**superior right to use**” the

⁴⁸ Any alleged ornamentation argument is undercut by the Black Jockey background display indicating secondary source.

⁴⁹ Additionally, the threats raised in Jockey’s cease and desist letter do not support Jockey’s claims of superior use or reasonable belief because the 1940 Full Jockey mark registration had long been expired and abandoned as well as the use in the 1960’s marks. Accordingly, Jockey knew its threats were baseless conferring no superior rights.

⁵⁰ Abandonment not pleaded. Applicant does not raise this issue to argue the merits of any unpleaded abandonment claim but for the limited purpose of denoting the unreasonableness of any claims that Jockey may raise regarding knowledge of Applicant’s continued use.

mark over Jockey. With respect to Applicant's other marks, it is clear that Jockey had knowledge of those as well because Jockey clearly conducted an investigation into Applicant's business which then led to the adoption and creation of almost identical marks.

Accordingly, there is no question that Jockey knew of Applicant's superior right to use and the falsity of the declaration. In addition, the scheme to create additional products to create confusion,⁵¹ the claims of likelihood of confusion in the cease and desist letter, and this opposition proceeding proves that Jockey knew that a likelihood of confusion would result. Otherwise, Jockey would have to admit that this case is being maintained in bad faith. *Daniel J. Quirk, Inc. v. Village Car Co.*, 120 U.S.P.Q.2d 1146, 1149 (TTAB 2016) (The challenger must prove that applicant knew that another's rights in the mark were superior and that applicant either believed that a likelihood of confusion would result from that use of the mark or had no basis for believing otherwise. No fraud was found.). Therefore, knowing that it was not the superior user and a failure to provide that it was the superior user would result in the denial of the application is clear evidence of an intent to mislead the USPTO. There would be no need to knowingly provide a material misrepresentation except to mislead the USPTO into approving a registration for which it was not entitled. *See, e.g. MPC Franchise, LLC v. Tarantino*, 826 F.3d 653, 660–661 (2d Cir. 2016) (Fraud found where applicant knew other members of his family were using mark for decades for the same goods; signer “knew that others had rights to use the mark that were *at least equal, if not clearly superior, to his own.*”)(emphasis added). Accordingly, just as in *MPC Franchise*, the signer, Jockey, knew that Applicant had been using the Black Jockey mark (and other marks) for overlapping goods and his rights were superior because Jockey had long abandoned its early marks. Accordingly, Jockey defrauded the PTO when it obtained its registrations and all such registrations should be cancelled.

LIKELIHOOD OF CONFUSION

I. HAVING PROVEN HIS PRIORITY APPLICANT ALSO PREVAILS ON HIS LIKELIHOOD OF CONFUSION CLAIMS

⁵¹ Ex. G, 33 TTABVUE 221 is admissible evidence and may be presented in admissible form at trial in the form of self-authenticating internet evidence (*i.e.* screenshots from Wayback Machine).

The bad faith adoption supports a finding in Applicant's favor. The cease and desist letter was sent on January 26, 2010 and the screen capture was taken on the 25th. Jockey has been careful (or evasive) about the date in which it made the decision to "modernize."⁵² In addition, the claims that the Jockey Seal was inspired by an image of a man on a bag wearing long john underwear that is not a jockey is far-fetched, especially when the Jockey Seal looks almost identical to Applicant's BJC Stars marks. At any rate, having had no use of the 1940 and 1960's marks for over 5-7 years, and failing to provide any plans to resume, it is clear that the adoption came after learning of Applicant's use. *In re US Warriors Ice Hockey Pgm., Inc.*, 122 U.S.P.Q.2d 1790, 1794 (TTAB 2017)("[W]hen it is within a party's power to produce a certain kind of persuasive testimony or documentary evidence on an urged factual finding, and it fails to do so, a tribunal is at least permitted--perhaps even compelled--to draw the inference that that fact is unsupported and/or untrue."). Accordingly, the Board should find that Jockey adopted the marks at its peril.

If the Board does not find the bad faith evidence compelling, as stated above, Applicant has proven his priority for his Black Jockey, Black Jockey with text, and BJC Stars marks. And, Jockey has admitted to likelihood of confusion by virtue of the claims in its Opposition. Accordingly, there is no genuine issue remaining.

II. JOCKEY'S CROSS-MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED

A. THE 1940 AND 1960 FULL JOCKEY MARKS HAVE BEEN ABANDONED THEREFORE JOCKEY CANNOT HAVE PRIORITY

As stated above, the 1940 Full Jockey registration expired in 2005 and use abandoned. There is no evidence of record to support *any* use of the 1940 Full Jockey. The conclusory allegations of continued use provided in the various declarations are unsupported and contradicted by the record. More specifically, as stated above, none of the exhibits provided by for the 1940 Full Jockey evince any use, the alleged use is outdated, historical/memorabilia, decor, not used in connection with the recited goods (only travel), internal use, and no sales figures. Further, there is no documentation evincing any intent to resume; Jockey has not

⁵² Putlak Decl. ¶ 16-17 ("In or around 2010, Opposer decided to again refresh and modernize its iconic and well-known jockey figure icon.")(designs were "finalized in 2011" and "finalized in 2012. Jockey refuses to provide creation and adoption dates even though requested in discovery providing that they were finalized in 2011 and 2012 and the first use dates. Ex. H.

even attempted to renew the registration. In addition, as stated above, the 1960 Full Jockey has also been abandoned, therefore Jockey cannot prevail on any priority claim.⁵³

B. JOCKEY’S FRAUDULENTLY PROCURED APPLICATION FOR ITS INFRINGING 2011 FULL JOCKEY DOES NOT USURP APPLICANT’S RIGHTS AS SENIOR USER

“The territorial rights of a holder of a federally registered trademark are always subject to any superior common law rights acquired by another party through actual use prior to the registrant’s constructive use.” *Allard Enters., Inc. v. Advanced Programming Res.*, 249 F.3d 564, 572 (6th Cir. 2001). Accordingly, Jockey’s claims of incontestability do not usurp Applicant’s rights. *Marshak v. Treadwell*, 240 F.3d 184, 198 n.10, 57 U.S.P.Q.2d 1764 (3d Cir. 2001) (“Even if a junior user’s mark has attained incontestable status, such status does not cut off the rights of a senior user.”). *Miller v. Glenn Miller Prods., Inc.*, 454 F.3d 975, 79 U.S.P.Q.2d 1545 (9th Cir. 2006) (rejecting argument that because a party owned an incontestable registration, it had to be the owner of the mark, not just a licensee of a senior user who had not registered); *Dorpan, S.L. v. Hotel Melia, Inc.*, 728 F.3d 55, 62–63, 108 U.S.P.Q.2d 1093 (1st Cir. 2013) (The territorial rights of the owner of an incontestable federal registration are always subject to the prior common law rights of a senior user as defined in Lanham Act § 15.). Accordingly, Applicant still maintains his common law rights, and if Applicant fails to prevail on the fraud and non use claims, then Applicant must be afforded an opportunity at trial to prove his geographic common law rights and Jockey’s registration should be restricted accordingly.

C. OPPOSER’S ALLEGATIONS OF APPLICANT’S “CONSTRUCTIVE NOTICE” IS BASELESS AND INSUFFICIENT TO INFER BAD FAITH ADOPTION

Assuming *arguendo*, that Opposer’s mark had not been abandoned and Applicant had constructive knowledge of Jockey’s 1960’s marks, constructive knowledge would not be sufficient to prove a bad faith of *an intent to cause confusion*. *A & H Sportswear Co., Inc. v. Victoria’s Secret Stores, Inc.*, 57 F. Supp. 2d 155, 52 U.S.P.Q.2d 1143 (E.D. Pa. 1999) (“The existence of [constructive] notice is not evidence that a

⁵³ To establish priority on a likelihood of confusion ground brought under Trademark Act Section 2(d), a party must prove that, vis-a-vis the other party, it owns either a registration or a mark “previously used in the United States ... and *not abandoned*...” Trademark Act Section 2, 15 U.S.C. § 1052. Emphasis Added.

later user necessarily intended to confuse.”). Moreover, common sense requires that in order to have an intent to confuse or capitalize off of a prior user’s mark, one has to have actual knowledge of the existence. Assuming *arguendo*, the older marks had not been abandoned, the marketing materials do not show widespread and public recognition for shirts, hoodies, etc... and much of it does not display the early marks, but merely shows marketing in connection with underwear. Even by Jockey’s own admission, the Half Jockey was only being used for underwear.⁵⁴ Accordingly, Jockey’s claim that Applicant’s constructive notice of an already abandoned mark subject to cancellation unfounded, and Jockey’s reliance on the fact that it managed to escape having its application challenged on grounds for abandonment before now is untenable.

CONCLUSION

There is no issue of genuine dispute that Jockey abandoned its 1940 Full Figure and 1960’s marks. The records is completely devoid of any evidence to support use of the 1940 Full Figure at all or the 1960’s marks since 2004 and 2006, which only evince affixation or marketing, no sales. Jockey’s unsupported allegations of use, continued use, and practice to continue use are insufficient to prevail or create a genuine issue. Applicant, having established a *prima facie* case of abandonment and Jockey’s failure to rebut or provide any documentary evidence to the contrary supports a finding in Applicant’s favor. *Smith v. Anson*, 801 F. Supp. at 180 (When parties dispute fact on summary judgment, the parties must produce *proper documentary evidence* to support their contentions, and cannot rest on *mere allegations* or *upon conclusory allegations in affidavits*). (The burden of the moving party may be met by showing “that there is an absence of evidence to support the non-moving party’s case.”). There is not one shred of evidence to support dilution as the early marks were abandoned and any alleged use of later marks occurred *after* Applicant’s established use. Again, Jockey’s conclusory claims of genuine issues remaining are insufficient. Further, there is no genuine issue remaining regarding Applicant’s priority as his use is supported by documentary evidence. With respect to the fraud claim, the facts are clear that Jockey had full

⁵⁴ Registration No. 0711570 Section 8 & 9 Declaration and Application for renewal.

knowledge of Applicant's right to use his marks but Jockey knowingly signed the declaration stating otherwise.

In sum, there is absolutely no evidence that a reasonable fact-finder could resolve in favor of Jockey because there is not one piece of evidence to support *any* of Jockey's claims, most notably, *no sales figures* to support *any use for the pleaded marks*. Accordingly, the absence of any evidence to support Jockey's case supports a finding in Applicant's favor. *Celotex Corp. v. Catrett*, 477 U.S. at 323-24 (The burden of the moving party may be met by showing "that there is an absence of evidence to support the non-moving party's case.").

Dated: December 17, 2020

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing APPLICANT'S AMENDED REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT has been served via electronic mail upon the following counsel of record this 17th day of December, 2020.

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

JOCKEY INTERNATIONAL, INC.
Opposer.

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Opposition No. 91248336

v.

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*

*

LAMONT D. COOPER

Applicant.

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* * * * *

**APPLICANT’S AMENDED REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT**

Lamont D. Cooper (“Applicant”) submits this Amended Reply in Support of Applicant’s Motion for Summary Judgment and Opposition to Jockey’s Motion for Summary Judgment. Applicant submits this amended response to correct a prior failure to redact confidential information.

PRELIMINARY STATEMENT

Generally, a party that seeks summary judgment on an unpleaded issue may simultaneously move to amend its pleading to assert the matter. TBMP § 314 (citing to *Societe des Produits Marnier Lapostolle v. Distillerie Moccia S.R.L.*, 10 U.S.P.Q.2d 1241, 1242 n.4 (TTAB 1989) (motion to amend to add new ground, filed simultaneously with motion for summary judgment, granted). Here, Applicant filed its amended defenses and counterclaims, not simultaneous with, but prior to filing the instant motion and therefore the issues are properly before the Board.

STATEMENT OF FACTS

None of Jockey’s alleged undisputed facts are supported by evidence except for the allegations regarding Applicant’s application submission. However, what is undisputed is that Jockey has *no evidence* to support *any* of its claims. In fact, the evidence of record contradicts Jockey’s “undisputed” claims and declarations. Whereas, Applicant has provided uncontroverted facts to include testimony and documentary evidence to support his priority in this proceeding.

PRIORITY

I. JOCKEY'S EVIDENTIARY OBJECTIONS TO APPLICANT'S PRIORITY EVIDENCE SHOULD BE OVERRULED

A. DECLARATION OF SEAN CARTER SHOULD NOT BE EXCLUDED

A court has broad discretion to determine whether a nondisclosure of evidence is substantially justified *or* harmless for purposes of excluding that evidence. *SMD Software, Inc. v. EMove, Inc.*, 945 F. Supp. 2d 628 (E.D.N.C. 2013). In making this determination, courts are to weigh the following factors: (1) surprise to the party against whom the evidence would be offered; (2) ability of that party to cure the surprise; (3) extent to which allowing the evidence would disrupt the trial; (4) importance of the evidence; and (5) nondisclosing party's explanation for its failure to disclose the evidence. *Id.* Applicant's delayed disclosure is substantially justified *and* harmless. Applicant has always maintained that he was having difficulty locating witnesses because of the nature of the transactions (*i.e.* cash sales and/or relatively low-priced items not requiring disclosure of customer information) and further provided that he was continuing to search for witnesses in order to support his claims. 28 TTABVUE 30, Int. No. 7 (2nd and 3rd supplemental responses); *Id.* at 37, Int. No. 26. There has been no surprise here as priority and use has been an issue since the commencement of the proceeding and Applicant has had a continuing obligation to prove use and priority. Accordingly, there is no surprise that Applicant might have later discovered witnesses that he would present to support his priority and use claims. The introduction of this evidence does not disrupt trial; there is no reason that, if the parties fail to prevail in their respective motions, that trial cannot proceed as a matter of course. The information is critical to Applicant's case as third-party testimony is vital to bolstering other evidence which might otherwise be deemed self-serving. The fact that this information helps Applicant's case and therefore Jockey desires to exclude it does not constitute prejudice to Jockey. Jockey did not attempt to depose any of the other disclosed witnesses (customers listed as having purchased items) provided in Applicant's initial disclosures; and, there is no evidence to suggest that there would have been any difference with Mr. Carter. Furthermore, Jockey did not serve its discovery permitting enough time for discovery depositions.¹ Accordingly, this is not a matter of bad faith or withholding of evidence,

¹ Jockey served its discovery on December 27, 2019, 32 days before the close of discovery. See generally, 11 TTABVUE 28.

but reasonable difficulty of ascertaining information not within the possession and control of Applicant. *Jenkins v. Med. Labs. of E. IA, Inc.*, 880 F. Supp. 2d 946 (N.D. IA 2012) (8th Cir. 2013)(Employer's failure to disclose witness in its initial disclosures and in its response to interrogatories was substantially justified and harmless; court would not strike witness's summary judgment affidavit and testimony; there was no reason to believe that employer omitted witness in bad faith, and witness's testimony would not result in any surprise or prejudice to employee.). *See also, Charrette Corp. v. Bowater Commc'n Papers Inc.*, 13 U.S.P.Q.2d 2040, 2041 (TTAB 1989) (failure to identify witness in response to interrogatory seeking identification of all witnesses who would testify at trial, did not preclude testimony of such witness). *In re Mercedes-Benz Anti-Tr. Litig.*, 225 F.R.D. 498 (D.N.J. 2005) (Summary judgment rule does not require disclosure of affiants prior to filing of summary judgment motion). Accordingly, to preclude such evidence under these circumstances would be highly prejudicial to Applicant and unjust.

B. SUPPLEMENTED DISCLOSURE OF ACTUAL HANG TAGS SHOULD NOT BE EXCLUDED

Jockey argues that Applicant's supplementation of two pieces of evidence (2006 and 2016 hang tags) should be excluded. The failure to disclose the actual tags earlier in discovery was inadvertent and harmless. With respect to the 2006 hang tag, Applicant disclosed the information in a different form (*i.e.* mock-ups, patches, and interior labels). Ex. A. In addition, the actual 2006 hang tag can be seen in both Applicant's and Jockey's productions. *Id.* at A010-014.² *See*, TBMP § 408.03 (if the information has otherwise been made known to the propounding party during the discovery process or was otherwise made known in writing, the answering party need not amend its prior response or previously made disclosure). Applicant did not realize the omissions until his September submission and he supplemented as soon as it was realized. *Smith v. Conway Org., Inc.*, 154 F.R.D. 73, 77 (S.D.N.Y. 1994)("[a] party is under a duty seasonably to amend a prior response to... request for production...if the party learns that the response is in some material respect incomplete or incorrect."). It is clear that the facts are not what Jockey seeks, but rather for Applicant to capitulate or exhaust his finances defending frivolous motions and arguments. At

² Annotations added. Additional enlarged images added for convenience.

any rate, if Jockey cared to ascertain the facts, a simple inquiry regarding the mock-ups could have remedied the situation as Jockey made a host of other insignificant requests.³ If Jockey conducted an investigation into Applicant's Facebook "friends," surely they could have enlarged the photos. Accordingly, the omissions were harmless, not committed in bad faith, and Applicant cured as soon as it became apparent that there was an omission.

C. DECLARATIONS OF COMPANY OWNERS, AGENTS, AND CUSTOMERS ARE CREDIBLE AND ADMISSIBLE

The evidentiary objections raised by Jockey to attack the credibility and admissibility of Applicant's priority evidence are unwarranted. The declarations are sufficient. By virtue of his position as owner, Applicant can provide a sworn statement about the sales figures. *Ava Ruha Corp. v. Mother's Nutritional Ctr., Inc.*, 113 U.S.P.Q.2d 1575, 1578 (TTAB 2015) (testimony from personal knowledge based on review of files and records ***or position with company***).⁴ Moreover, the amended declaration cures any such alleged prior inadequacies or admissibility issues. In addition, his position with the company and personal knowledge regarding store layout⁵ and displays are admissible and proper for declaration as is his memory of early inventory purchases and sales. Fed. R. Civ. P. 56(c)(4). Accordingly, the declarations of Cortez Waters and Robert Hayes respecting the running and operations of the business are also admissible based on their personal knowledge and prior positions. With respect to the customer declarations, third-party declarations based on personal knowledge are admissible to prove Applicant's priority and continued use. Fed. R. Civ. P. 56(c)(4); *see also, 4U Co. of Am., Inc. v. Naas Foods, Inc.*, 175 U.S.P.Q. 251, 253 (TTAB 1972) (in summary judgment, affidavit admissible to prove prior and continuous use). *Stoupakis v. Bros. Gourmet Coffees, Inc.*, 165 F.R.D. 5 (D.D.C. 1996)(factual assertions contained in affidavits and other evidence in support of motion for summary judgment ***shall be accepted as true unless facts are***

³ *E.g.* URLs which they already had access to; unredacted documents which had already been provided on numerous occasions.

⁴ Applicant has provided an amended declaration specifically stating that the records were and are kept in the ordinary course of business and were produced from the store's point of sale system. App. Am. Decl. ¶ 17-18.

⁵ Jockey argues that counsel's annotations are inadmissible. The Exhibit was identified by Applicant in his sworn declaration. In addition, Applicant has amended his statement to also authenticate the substance of the annotations. *Id.* at ¶ 9.

controverted by nonmoving party through affidavits or other documentary evidence). Moreover, all of the declarations are corroborated by documentary evidence and therefore shall be accepted as true.

II. APPLICANT'S EVIDENCE IS SUFFICIENT TO SUPPORT HIS PRIORITY OVER JOCKEY'S 2011 AND LATER MARKS

Jockey argues that Applicant has failed to provide evidence of trademark use only ornamental use. This is false as Applicant has provided hang tags (2006-present),⁶ proper trademark use on clothing,⁷ sworn statements to include a drawing of a display in association with the goods (dating back to 2008),⁸ retail store signage (dating back to 2009),⁹ sales figures (2006-present), electronic web displays (at least as early as 2010)¹⁰ and sworn statements from customers (dating back to 2008).¹¹

More specifically, with respect to the nature of use, Applicant provides that *all* Black Jockey Clothing products are sold with one of the hang tags at Applicant's prior Ex. H affixed, App. Am. Decl. ¶ 11. Accordingly, all sales, including those of Mr. Carter, Mr. Jones, and Mr. Harvey from 2006 to 2016 (creation date of second label) are sufficient to support Applicant's priority date for his Black Jockey and Black Jockey with text mark. Applicant's claim is supported by viewing the social media images in which tags are affixed to the goods. Ex. A010-014; Ex. B001-004,006-008. The 2006 hang tag is sufficient to support use for Applicant's Black Jockey mark because he is prominently displayed; the surrounding matter is merely informational (*i.e.* descriptive text, company designation, collection information, etc.); and, respecting the other logo, it creates a separate and distinct commercial impression. TMEP § 807.12(d). *See also, In re Univ. of Miami*, 123 U.S.P.Q.2d 1075, 1079 (TTAB 2017) and cases cited therein. In addition,

⁶ App. Decl. ¶ 8; App. Am. Decl. ¶ 11; Hayes Decl. ¶ 2, 33 TTABVUE 236.

⁷ *See generally*, Ex. B, 33 TTABVUE 31.

⁸ App. Decl. ¶ 6; App. Am. Decl. ¶ 8. See also, Ex. B-010 screenshot of a video, admittedly well after the use date, but consistent with the location that Applicant provided the display was located. In anticipation of Jockey's exclusion argument, Jockey's attempts to discredit Applicant's continued use due to the opening of the new store unveiled this evidence. Accordingly, Applicant should be permitted to provide evidence from the store to support use.

⁹ App. Am. Decl. ¶ 10. Applicant concedes this is not appropriate use for the recited goods per se. However, it is relevant to the analysis respecting Jockey's claim of any ornamental use in 2009 and thereafter for his Black Jockey mark. TMEP § 1202.03(c)(To show secondary source, the applicant may show non-ornamental use of the mark in commerce on other goods or services).

¹⁰ Marks used on a step and repeat backdrop are perceived as logos/trademarks. *See e.g.* Ex. C. Accordingly, Applicant's logo used in the background is a bona fide trademark use.

¹¹ Applicant, Mr. Carter, and Mr. Harvey provided declarations that they are not friends; therefore, the sales were not token sales as alleged by Jockey. LaDon Jones has submitted an amended declaration to correct the spelling error in his name.

the point of sale display described by Applicant in his sworn statement and the 2010 electronic display show the mark used in association with the goods.¹² All such use occurred well before Jockey's 2011 use. Further, the 2006 hang tag is sufficient to support use for the Black Jockey with text mark, because the other matter is merely informational or creates a separate and distinct commercial impression. *Id.* Accordingly, the use of this mark on the 2006 hang tag, predates Jockey's October 31, 2011 and May 23, 2012 intent to use ("ITU") applications for its 2011 Full Jockey marks.

With respect to the BJC Stars mark(s), Applicant provided that the other hang tag at his prior Ex. H-002 has been used since 2016 ("2016 hang tag").¹³ The BJC Stars mark is clearly displayed on the back of the tag. *Id.* Accordingly, this is proper use and clearly predates Jockey's November 2, 2017 ITU application for registration for its Jockey Seal. Further in support of Applicant's claims, the October 30, 2017 images at Ex. B001-002 show that the tag was in use prior to Jockey's ITU application. The other dated images corroborate and support Applicant's claims of continuous use of the mark.¹⁴ *Id.* In anticipation of Jockey's attempt to exclude this evidence, in its opposition motion, in an effort to attack the credibility of Mr. Waters's sworn statement regarding continuous use (*i.e.* continuous restocking of Black Jockey inventory at One of a Kind Fashions), Jockey introduced evidence regarding the closure of One of a Kind Fashion and the opening of The New Tech Outlet & Level Up Fashions ("Level Up") into the record.¹⁵ Accordingly, upon review and investigation of counsel's claims and suggestions that the closure of one store negates or refutes Mr. Waters's and Applicant's claims of continued use, Level Up's social media and related evidence provide that there was a name change. However, it continued to carry Black Jockey Clothing products. Accordingly, any attempt to discredit Mr. Waters's sworn statements because he might have miscalculated the time-frame of a name change is ineffective as the evidence clearly shows that the

¹² See discussion at *supra* n.10.

¹³ App. Am. Decl. ¶11. Also, use on Mr. Carter's 2008 hat purchase is not ornamental. It is common trade practice for companies, sports teams, etc. to display logos in such a manner. *See e.g.* accepted trademark specimen and fashion companies at Ex. K.

¹⁴ The Jimmy Winkfield V-Neck and Tangerine Be Legendary Tees depicted in B-004 show the BJC Stars book-style tag affixed and the sales figures for 2016 and 2017 show sales for both. Shirt names with images can be found at A008-009. Highlighted for convenience. Accordingly, Applicant having provided a sworn declaration that the tags were in use since 2016, Applicant has proven use for the BJC Stars mark.

¹⁵ "However, social media posts suggest that One of a Kind Fashion was shuttered in the first half of 2017 and replaced with a different store front named New Tech Outlets and Level Up Fashions by June 18, 2017." 40 TTABVue 26.

new store continued to carry Black Jockey Clothing goods supporting his claim. In addition, Applicant remained to be the owner. App. Am. Decl. ¶ 13.

With respect to Applicant's sales figures, they are sufficient and admissible to support Applicant's priority as the records were kept in the ordinary course of business. App. Am. Decl. ¶ 17-18. The discrepancies provided by Jockey are due to a software conversion issue not a result of false manipulation of the numbers. App. Am. Decl. ¶ 19. In addition, Jockey's claim that since Applicant cannot remember every single product sold, only a general recollection, that his testimony is not credible.¹⁶ Nothing could be further from the truth. If anything, it shows that Applicant is credible and not conspiring with the other witness (alleged to be his friends) to create a false record, or as also alleged, otherwise manipulating the numbers.

With respect to Jockey's claims of insufficient sales, first, non-use was not pleaded. To the extent, the Board requires that Applicant must provide any such proof, the sales are not de minimis and the cases cited by Jockey are distinguishable from the instant case. First, *Paramount* did not hold that the use was de minimis solely because of the low number of sales, but also and notably, *inter alia*, the product had no utilitarian function or purpose as a game and it was clear that the applicant was not attempting to establish a trade in games. *Paramount Pictures Corp. v. White*, 31 U.S.P.Q.2d 1768 (TTAB 1994). *Proctor and Gamble* is also distinguishable. No bona fide use was found, because P&G had not put the product to market ***in a meaningful way*** nor did they have plans to do so, much like Jockey for all of the years which they have failed to show use or intent to resume for its 1940 and 1960's¹⁷ Jockey marks. For instance, the court discussed the fact that P&G was not manufacturing the product or doing any marketing. P&G was merely purchasing another brand, repackaging, relabeling the brand's (not P&G) product, and shipping once a year merely to reserve rights in the mark. *Procter & Gamble Co. v. Johnson & Johnson Inc.*, 485 F. Supp. 1185 (S.D.N.Y. 1979). *La Societe* is also distinguishable in that the court found that a business purporting to be a manufacturing business but having only 89 sales, in a 20 year period, and only selling at cost did not

¹⁶ 40 TTABVUE 26 (Jockey argues that Mr. Carter's purchase is inconsistent with the sales from Applicant's memory).

¹⁷ 1960 Full Jockey and 1960 Half Jockey.

constitute a “**good faith commercial exploitation.**” The lower court recognized that the appearance was “more likely...a relatively painless way to keep a potential competitor at bay.” *La Societe Anonyme des Parfums le Galion v. Jean Patou, Inc.*, 495 F.2d 1265, 1273, 181 U.S.P.Q. 545 (2d Cir. 1974). However, those are not the facts here, at least not as it pertains to Applicant. All three cases make clear that “use in commerce” followed by activities indicating a continuing effort to place the product on the market on a commercial scale within a reasonable time was sufficient to constitute a bona fide use. In addition, those cases provide that there must be an active and public attempt or intent to establish such a trade and make use of the mark commercially. Further, it has been well established that even small scale sales followed by continuous activity are sufficient to constitute a bona fide use. *See, Sheila's Shine Prods., Inc. v. Sheila Shine, Inc.*, 486 F.2d 114, 123 179 U.S.P.Q. 577, (5th Cir. 1973) (10 years of small, door-to-door sales held sufficient to establish priority)(“The mere fact that a business is small and its trade modest does not necessarily militate against its being an established business capable of acquiring goodwill and rights in a trademark.”). *See also, Christian Faith Fellowship Church v. adidas AG*, 841 F.3d 986, 993, 120 U.S.P.Q.2d 1640 (Fed. Cir. 2016) (sale of two trademarked caps sufficient to constitute bona fide use in commerce.). *See also, Knights Armament Co. v. Optical Sys. Tech., Inc.*, 636 F. Supp. 2d 1283, 1298 (M.D. Fla. 2009)(“even a **single use** in trade may sustain trademark rights if **followed by continuous commercial utilization.**”)(citing to *Blue Bell, Inc. v. Farah Mfg. Co.*, 508 F.2d 1260 (5th Cir. 1975))(emphasis added). In the instant case, Applicant’s use and intent to establish such a trade is clear. Applicant has consistently maintained inventory and sales which have increased over the years. In addition, he has consistently marketed his goods through various channels including radio, website, and social media. 11 TTABVUE 65; 29 TTABVUE 140. And, indeed he has established a trade in retail because in addition to his e-commerce store, for many years, he owned and operated the brick and mortar stores. Accordingly, Jockey is the only party hereto that has failed to show any evidence to substantiate its claims of use for its pleaded marks

Accordingly, the evidence shows that there is no genuine issue of fact that Applicant has priority in his Black Jockey, Black Jockey with text, and BJC Stars marks as evidenced by the 2006 and 2016 hang

tags, sworn declarations of customers and company management supporting sales, sworn declarations regarding the point of sale display, and 2010 electronic web display.

III. JOCKEY HAS FAILED TO PRODUCE ANY EVIDENCE TO SUPPORT ANY USE OF ITS PLEADED MARKS THEREFORE APPLICANT PREVAILS AS A MATTER OF LAW

Jockey has failed to provide *any* evidence of use for its pleaded marks. After eight months of delay, Jockey provided a total of 2,539 pages of documents which evince mere advertising from decades ago and much of fails to display any of the pleaded marks. In addition, while Jockey has provided some evidence of affixation, the evidence does not make clear whether the use is U.S. use or foreign use as the 2,539 pages include an overwhelming amount of foreign use commingled with U.S. use.¹⁸ Most notably, there is *not one* sales figure to support *any* sales in association with *any* pleaded marks. Jockey's declarations merely provide that Jockey has substantial sales of "products" for the "Jockey figures," or "Opposer's Products are sold,"¹⁹ in connection with the "Jockey Figure Marks" but remains completely silent regarding sales under which mark with the exception of some discussion related to the "1960 Jockey Boy designs,"²⁰ However, again, the declarations and supporting exhibits fail to attribute the figures to any particular mark. Further, there is no documentation to support use or even advertising of the 1940 mark in this decade or the 1960's marks after 2004 (1960 Full Jockey) and 2006 (Half Jockey). Jockey was required to produce it and failed to do so. The statements unsupported by documentary evidence are insufficient.

With respect to the 2011 and later marks, the evidence in discovery shows that all of the pleaded marks are not affixed to each product. Accordingly, once again, blanket sales figures are insufficient to support use for the three later pleaded marks. Jockey's Ex. M-N some of which irrelevant as it is after the initiation of this proceeding, appear to be evidence of token use merely to reserve rights in the marks, *viz.* internal use (on corporate headquarters), and/or use for manufacturing services which are not the recited goods at issue before the Board - also irrelevant. In order for Jockey to prevail on any of its claims or against

¹⁸ Even if we were to assume that all of the commingled use is U.S. use, there are *no* sales figures attributable to the pleaded marks.

¹⁹ Putlak Decl. ¶24-25; Arbas ¶3-4; Lecigne Decl. ¶ 3.

²⁰ Putlak Decl. defines "1960 Jockey Boy designs" as the 1960 Half Boy together with the 1960 Full Boy mark. Putlak Decl. ¶ 10.

Applicant's counterclaims, Jockey must first prove that the marks were indeed used in connection with the recited goods and used before Applicant's use and not abandoned. This information is within the possession and/or control of Jockey. Jockey has had eight months to provide this information, was compelled to provide such, but has failed to do so. Without any sales figures attributable to the pleaded marks Jockey cannot sustain its burden in proving its priority (or continued use) in this proceeding. Accordingly, as a matter of law, having provided no documentary evidence of *any* use, Jockey's registrations are void *ab initio*. Further, as a matter of law, having provided evidence (to include sales) predating Jockey's unsupported allegations of use, Applicant prevails on priority over all of Jockey's 2011 and later marks. The burden of the moving party may be met by showing "that there is an absence of evidence to support the non-moving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

ABANDONMENT

I. JOCKEY HAS FAILED TO PRESENT ANY EVIDENCE TO REBUT APPLICANT'S PRIMA FACIE CASE OF ABANDONMENT

Contrary to Jockey's allegations, Applicant's pleading of abandonment is sufficiently plead and Applicant, in his motion, has established a *prima facie* case of abandonment. Once the presumption of abandonment is established, the burden of showing evidence of intent to resume use *shifts to the registrant*. *Exxon Corp v. Humble Exploration*, 695 F.2d 96, 99 (5th Cir. 1983) ("when a prima facie case of trademark abandonment exists *because of non use* of the mark... *the owner of the mark has the burden* to demonstrate that circumstances do not justify the inference of intent not to resume use")(emphasis added). To meet the burden of showing an intent to resume use, the registrant is required to show "*hard evidence of actual concrete plans to resume use*" in the "*reasonably foreseeable future* when conditions requiring suspension abate." *Emmpresa Cubana Del Tabaco v. Culbro*, 213 F. Supp. 2d 247, 268 (S.D.N.Y. 2002) (citing *Silverman v. C.B.S., Inc.*, 870 F. 2d 40, 46 (2nd Cir. 1989)).

Jockey argues that Applicant has failed to produce any evidence to prove abandonment. Applicant cannot produce evidence of something that does not exist (*i.e.* non-use). Accordingly, Applicant, having provided that there is no evidence of use or advertising even for the 1940 Full Jockey in this decade, no

evidence of use since at least 2004 for the 1960 Full Jockey, and 2006 for the Half Jockey, has sustained his burden of showing that there is a lack of evidence to support use for three or more years. In its opposition, Jockey only provides outdated evidence and conclusory allegations or claims of use (and continued use) which are insufficient to overcome a motion for summary judgment. *Smith v. Anson*, 801 F. Supp. 176, 180 (S.D. Ill. 1992) (When parties dispute the fact on a motion for summary judgment, the parties must produce **proper documentary evidence** to support their contentions, and cannot rest on mere allegations in the pleadings or **upon conclusory allegations in affidavits**); *See also, Bryant v. Com. of Ky.*, 490 F.2d 1273, 1275 (6th Cir. 1974).

Contrary to the unsupported claims in Putlak declaration, Jockey's Ex. C²¹ does not evince any use (or continued use) of the 1940 Jockey mark for a number of reasons:²² (1) it only displays mere advertising some of which is from several decades ago; (2) others well after the abandonment date and commencement of Applicant's use; (3) some with no dates at all; (4) the commercial packaging, assuming *arguendo*, there were actual sales of that particular product in that packaging during that year, only evince use prior to the abandonment period on or before July 16, 2005;²³ and (5) the store statue was pulled from Jockey's archives to be placed in this store which was erected in May 2011. Ex. E004, 035-037. Thus, the use commenced **well after** the abandonment date and Applicant's established use. Moreover, the statue is not a display used in connection with the goods as there are no goods within close proximity - it is only memorabilia, used as decor,²⁴ and used in association with travel, not the recited goods - same with the framed photos (*i.e.* memorabilia and decor). The 27 year old statue (nor the park plaque)²⁵ provided at Jockey's Ex. D which

²¹ Putlak Decl. ¶5-6.

²² The registration for this mark expired July 16, 2005. *See*, Ex. D. Highly relevant to intent. In addition, the record is completely devoid of any evidence of its use in connection with goods in recent years, even the three years leading up to the expiration of the registration.

²³ Commercial packaging and label provide that goods are those of Jockey's predecessor, "Coopers." According to Jockey's website, Coopers has been non-existent since 1971. Ex. F.

²⁴ "[H]istorical memorabilia or decoration are not present evidence of a trademark use in commerce." *Louangel, Inc. v. Darden Restaurants, Inc.*, 2013 WL 2452664, at *6 (S.D.Tex., 2013).

²⁵ "Furthermore, it is not unusual for signs to be left over when a brand is discontinued, which may be kept for historical purposes. Under the circumstances, the continued display of the sign in this manner is more consistent with nostalgia than it is with an intent to resume use of the mark." *PIANOS ETC. INC. v. KIMBALL PIANO USA, INC. (NV) KIMBALL PIANO USA, INC. (IL)*, 2020 WL 5229484, at *13; *See e.g., Exec. Coach Builders*, 123 U.S.P.Q.2d 1175, 1198 (finding the appearance of the mark on

Jockey admits was erected for internal use is not a point of sale display associated with the goods; not used in the ordinary course of trade; there is no evidence that the public associates it with the recited goods,²⁶ that it was ever used in connection with goods, or that it is even accessible to the public; and finally, the 2020 Wisconsin media coverage *after* the initiation of this proceeding about Jockey's *services* is irrelevant to the current issues before the Board. Similarly, Jockey's Ex. E-F only evince internal use which is irrelevant and insufficient to constitute a bona fide trademark use or intent to resume for the recited goods. TMEP § 904.04(b) and cases cited therein.

Regarding the 1960's Jockey marks, again the declaration allegations of continued use are unsupported by any documentary evidence. Jockey's Ex. G-L also fail to evince any use (or continued use) for the same reasons as its Ex. C. Also, much of its Ex. G and some of its Ex. H-I are for different, abandoned, and unpleaded marks and therefore not relevant to this analysis and accordingly should be stricken.²⁷ In addition, the retail and service mark signage at Ex. K-L, O fail to evince use for the recited goods. Jockey's retail and manufacturing services are not currently before the Board. Likewise, the unsupported claim of "Jockey's practice is to continue use" as outlined in the Putlak and Lecigne declarations²⁸ are also unsupported by *any* documentary evidence. In addition, Jockey's claims of use and submitted registrations for its unpleaded "Jockey" standard character text marks²⁹ are wholly irrelevant to this proceeding and should therefore be stricken and given no further consideration.

In addition to having no evidence of use, there is no documentary evidence to support any intent to resume use of any of the marks. Jockey has improperly placed the burden of proof on Applicant. Quite simply, because there is no such proof of intent, only an intent to abandon as the 1940 Full Jockey

interior signs, plaques, and memorabilia displayed inside Opposer's plant merely reflective of the historical use of that mark on cars).

²⁶Putlak's allegations are not evidence of public association, nor has she been designated an expert to opine. Putlak Decl. ¶ 7.

²⁷Registration Nos. 0957864 (cancelled February 4, 2014), 1145086 (cancelled March 11, 2016), 1671441 (cancelled October 12, 2002). Tacking not permitted as it was not pleaded. Any attempts futile for the same reasons cited, *infra* p. 13.

²⁸Lecigne ¶2-5. The entire declaration is self-serving and unsupported by documentary evidence and should be afforded little value. See also, Putlak ¶ 5. (regarding 1940 Full Jockey mark).

²⁹Opp. Mtn., Ex. B, 40 TTABVUE 156.

registration expired on June 11, 2005³⁰ and there has been no attempt to renew. The record shows that 1960's marks have gone unused since 2004 and 2006 and certain goods permanently from the application.

33 TTABVUE 6. Finally, and most notably, a licensing agreement between Jockey and another manufacturer evince an intent to abandon the Half Jockey because a 2006 amendment to the 2000 licensing agreement provides that the Half Jockey Figure was removed (Ex. L)³¹ which is consistent with the date of the last advertising, commercial packaging, etc. Jockey provided 1,026 pages of licensing agreements (5 relevant to U.S. use and 12 irrelevant pertaining to foreign use),³² none of which evince *any* intent to resume use only an intent to abandon. The remaining evidence provided by Jockey fails to evince any use or intent to resume use under the 1960 Full Jockey Figure, of the 1,026 pages or agreements, not even one licensing agreement.

In addition, contrary to Jockey's misrepresentation in its opposition motion,³³ Applicant makes no concession that the 2011 and later Jockey marks enjoy the benefit of priority of the early mark(s). In fact, Applicant has previously objected to and maintains its objection that any such attempt to tack on use of the earlier marks is impermissible as the tacking claim was not pleaded. *See, Citigroup Inc. v. Capital City Bank Grp., Inc.*, 94 U.S.P.Q.2d 1645, 1655-56 (TTAB 2010)(Board deemed unpleaded affirmative defense of tacking by prior use of an unpleaded mark to have been tried by implied consent). *See also, H.D. Lee Co. v. Maidenform Inc.*, 87 U.S.P.Q.2d 1715, 1720 (TTAB 2008). Moreover, any such argument would be futile, because the 1940 and 1960's marks were already abandoned,³⁴ the later marks are not the legal equivalent of the old marks, and do not create the same commercial impression as you cannot determine the 1960's marks are jockeys and further the Half Jockey has no lower body or equipment like the 1940

³⁰ Registration No. 2187176, Ex. D.

³¹ The initial agreement was entered into in 2000. The 2006 Amendment ("Amendment Three") removed the 1960 Half Jockey from the agreement. Amendments Four - Six did not include the 1960 Half Jockey. The 1960 Half Jockey reappears in Amendment Seven, five years after learning of Applicant's use. It is not Applicant's burden to prove intent. Therefore, the introduction of this evidence in this Reply is timely as it was not required for Applicant to produce in his *prima facie* case of abandonment when filing the motion.

³² The overwhelming majority of these documents are foreign transactions and a small number for marks not subject to this proceeding.

³³ 40 TTABVUE 17 n.9.

³⁴ Applicant's commencement prior to Jockey resuming any use would preclude tacking of the six-year resumption of the marks.

and 1960 Full Jockey marks or those adopted after 2011. *Owens-IL, Inc. v. Optimist Int'l*, 173 U.S.P.Q. 120 (TTAB 1972)(removing letters from design background changed the overall commercial impression of the unitary mark). *See also, Louangel, Inc. v. Darden Restaurants, Inc.*, 2013 WL 1223653, at *5 (S.D. Tex. Mar. 22, 2013)(No tacking permitted. “defendants' trademark change, a smiling cartoon cow is replaced by an abstract outline that shares none of Bongo's familiar elements. Facial features are gone, horns go from short verticals to long horizontals, and the placement vis-à-vis the words is completely different”).³⁵ *See also, Van Dyne-Crotty Inc. v. WearGuard Corp.*, 926 F.2d 1156, 1159, 17 U.S.P.Q.2d 1866 (Fed. Cir. 1991)(to meet the legal equivalents test, the marks must be indistinguishable from one another or create the same, continuing commercial impression such that the consumer would consider both as the same mark.)³⁶ Accordingly, adding word(s), body elements, changes from a cartoon-like to more detailed features creates different commercial impressions making any such arguments futile.

The record is clear that Jockey abandoned the marks and that it had no intent to resume any such use. Jockey let the registered 1940 Full Jockey registration expire and has made no attempts to renew. The record provides that there is no evidence of affixation or use in connection with the recited goods for the 1940 Full Jockey in this decade and 2004 and 2006 for the 1960's marks. Jockey amended its licensing agreements to exclude the use of the Half Jockey. There are no licensing agreements regarding the 1960 Full Jockey mark. It was not until Jockey encountered Applicant that Jockey decided it wanted to “modernize” or resurrect the mark. Unfortunately, the law provides that such resumption was too late. *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135, 149, 82 U.S.P.Q.2d 1414, 1421 (2d Cir. 2007)(The intent to resume use must be formulated **during** the three year period of nonuse: “An intent to resume use of the mark formulated after more than three years of nonuse cannot be invoked to dislodge the rights of another party who has commenced use of a mark—thereby acquiring priority rights in that mark—after three years of nonuse.”). *See also, Specht v. Google Inc.*, 747 F.3d 929, 934, 110 U.S.P.Q.2d 1319 (7th Cir. 2014).

³⁵ Accordingly, the 1960 Full Jockey lacking any detail is not indistinguishable and creates a different commercial impression from the 1940 and 2011 later marks.

³⁶ Thus, the 1960 Half Jockey with no legs and no equipment is not indistinguishable from a full body mark making this argument futile to any or the marks adopted after the Half Jockey.

Accordingly, Applicant is entitled to judgment as a matter of law, because Jockey has failed to rebut Applicant's *prima case* of abandonment by proving any intent to resume and its conclusory allegations of continued use are insufficient to create a genuine issue of fact or prevail. *Exec. Coach Builders, Inc. v. SPV Coach Co., Inc.*, 123 U.S.P.Q.2d 1175, 1199 (TTAB 2017) (Mark held abandoned because owner had no evidence of an intent to resume use in the reasonably foreseeable future within the three-year period of nonuse.). *Imperial Tobacco Ltd., Assignee of Imperial Grp. PLC v. Philip Morris, Inc.*, 899 F.2d 1575, 1581 (C.A.Fed.,1990)("one must, however, proffer more than conclusory testimony or affidavits. An averment of no intent to abandon is little more than a denial in a pleading, which is patently insufficient to preclude summary judgment on the ground the facts are disputed. As this court has frequently said in connection with motions for summary judgment, a conclusory statement on the ultimate issue does not create a *genuine* issue of fact.")(emphasis in original).

DILUTION

I. JOCKEY HAS FAILED TO PRESENT ANY EVIDENCE OF FAME FOR ANY OF THE PLEADED MARKS

Jockey argues that as long as "*any*" of its marks became famous before Applicant's use, then a subsequently adopted mark would automatically be famous. Jockey's argument is a gross misinterpretation of the law. The law requires that in order to be famous, the mark must have received a certain level of public recognition, and one cannot acquire public recognition without actually using the mark publicly. *Bose Corp. v. QSC Audio Prod., Inc.*, 293 F.3d 1367, 1371 63 U.S.P.Q.2d 1303 (Fed. Cir. 2002)("fame of a mark may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling *under the mark*, and by the length of time those indicia of commercial awareness have been evident.")(emphasis added). *See also, Regents v. Miners*, 110 U.S.P.Q.2d 1182 (TTAB 2014)("opposer has failed to meet its burden of proving fame. Opposer has not persuasively established the percentage of revenue or advertising figures which pertain *specifically to the MINERS word and design marks, collectively or individually*")(emphasis added). Accordingly, Jockey's gross misinterpretation fails. Even in its opposition, Jockey failed to present any evidence of fame. Jockey provides several unsupported

allegations that “Jockey” is well known or beloved, well recognized, and references to the “famous Jockey marks” and similar such statements in an effort to support its allegations of fame.³⁷ However, mere allegations without documentary evidence is insufficient to defeat a motion for summary judgment. *Bryant*, 490 F.2d at 1275. *See also, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Second, with respect to advertising, the overwhelming majority of the marketing material is for underwear not fashion clothing or even activewear, and niche fame is insufficient. *Roederer v. J. Garcia Carrion, S.A.*, 732 F. Supp. 2d, 836, 880 (D. Minn. 2010)(plaintiff’s CRISTAL mark was not famous for dilution purposes where its fame was limited to the wine industry). With respect to Jockey’s Ex. A, the 2008 WWD aided survey results of only 2,311 women (not the general consuming public) is of no significance here, because, *inter alia*, the pleaded marks are not displayed, mentioned, and most notably, not in use (*i.e.* 1940 Full Jockey and 1960 Half and Full Jockey had been abandoned well before the article and new marks by Jockey’s own admission had not yet been put to use for, at least, another four years). Jockey’s Ex. R-T are also insufficient to evince fame as some of it fails to display the subject marks, evinces marks not subject to this proceeding, outdated marketing materials, provide no dates at all, representative of only a small sector, or the dates fall on or before the established abandonment period and/or after Applicant commenced use. Accordingly, in its rebuttal, Jockey has still failed to produce any evidence of use or advertising for the expired and abandoned 1940 Full Jockey and nothing for the 1960’s marks after 2004 and 2006. There is no expert testimony or other evidence of consumer recognition³⁸ of **any** of the pleaded marks. The modern advertising (at Ex. R-T) also fails to display **any** of the pleaded marks or it targets a small segment (*i.e.* not general consuming public).³⁹ There is no evidence of advertising or consumer recognition of the 2011 and later marks **predating** Applicant’s established priority dates. Finally, the advertising figures are also insufficient as they do not

³⁷ Putlak Decl. ¶¶ 2-3, 25-29.

³⁸ The allegations made by Jockey employees are insufficient as there is nothing in the record to suggest that they are experts capable to opine on consumer awareness.

³⁹ Limited to Jockey catalog subscribers; Primer magazine which is targeted at men in their early 20s; New Jersey newspaper limited to New Jersey; GQ limited to men. Ex. T.

provide evidence of marketing in association with any particular mark. Arbas Decl. ¶¶ 7, 28.⁴⁰ Accordingly, the advertising is insufficient to evince fame for *any* of the pleaded marks.

Third, the sales figures are insufficient to evince fame of *any* of the pleaded marks. Jockey *never discusses the sales figures attributable to any particular mark*, Jockey merely combines sales for *all* Jockey marks together⁴¹ and the Arbas declaration⁴² lumps together both 1960's marks merely alleged to have been continually used providing no documentation of use after 2004. In addition to the unsupported allegations of use (and continuous use) of the 1960's marks, the allegations of sales via various retailers is also insufficient as there is no documentary support. In sum, there is insufficient evidence to evince fame for any of the pleaded marks because one cannot distinguish which sales are attributable to which product and/or used in connection with which mark, if any.⁴³ Accordingly, there is no evidence of record to support Jockey's claim of fame.

Fourth, the 33 year old *Jockey v. Butler*⁴⁴ case has no bearing on this case as the parties are different, Jockey's involved marks are different some involve more abandoned and expired registrations, the evidence from that case is not currently before the Board, the fame standard has changed twice since that time since that time,⁴⁵ and furthermore even famous marks can be abandoned, as is the case here. As provided above, the 1940 and 1960's marks were abandoned and Jockey has failed to rebut Applicant's *prima facie* case. Jockey cannot tack on the use because tacking has not been pleaded and as stated above any attempt would be futile.

⁴⁰ In addition, the annual figures are significantly low and Arbas's attempt to inflate the figures by combining 14 years is also insufficient to prove any fame.

⁴¹ For example, "Opposer has achieved significant U.S. sales of *Opposer's Products* promoted or sold in connection *with its Jockey Figure Marks*." 40 TTABVUE 7; Arbas Decl. ¶3 (emphasis added). "Indeed, prior to Applicant's earliest alleged first use date in 2006, Opposer had generated substantial sales of *Opposer's Products* and expended substantial sums in advertising and promotional expenditures, further increasing consumer recognition of the *Jockey Figure Marks*." 40 TTABVUE 11, Putlak Decl. ¶¶25, 28; Arbas Decl. ¶¶ 4-5, 7., Ex. B (Opp. Mtn.)(emphasis added).

⁴² Arbas Decl. ¶5. Then, at paragraph 6, providing that, "From 2005 to date...Jockey made DTC Sales of over 17.5 million units of product in the '*Classics' men's line of products*.'" Emphasis added.

⁴³ Jockey has several hundred other unpleaded and registered marks which could be attributable to those figures.

⁴⁴ 3 U.S.P.Q.2d 1607 (TTAB 1987).

⁴⁵ 1996 Federal Trademark Dilution Act ("FTDA"); 2006 Trademark Dilution Revision Act ("TDRA").

Finally, the collectors' sales⁴⁶ are not evidence of fame let alone fame for the pleaded marks. There is no evidence of who purchased these items, the purchaser could be Jockey employees or affiliates. In addition, there is no evidence of record to support that a sale of an item on these sites constitutes any level of fame. People and enthusiasts purchase auction items at higher value than that which was purchased for Jockey's vintage statue, amongst other things, a grilled cheese sandwich sold for \$28,000. *See generally*, Ex. G. If this is any indication of fame, then Jockey is not even as famous as a grilled cheese sandwich.

Accordingly, there is no genuine dispute as to the dilution, since (1) the early marks were abandoned and (2) there is no evidence of fame for the 2011 and later marks *before* Applicant commenced use. In its opposition, Jockey merely states that a genuine issue exists which is insufficient to create a dispute. *Imperial Tobacco*, 899 F.2d at 1581 ("As this court has frequently said in connection with motions for summary judgment, a conclusory statement on the ultimate issue does not create a *genuine* issue of fact.").

FRAUD

As an evidentiary matter, the correspondence alleged to have come from Applicant's prior counsel should be excluded because it was not disclosed during discovery. Moreover, and more importantly, it would be inadmissible at trial under as Jockey is offering it to disprove the fraud claim, *viz.* to overcome its clear knowledge of Applicant's prior and superior use. Fed. R. Evid. 408(a)(conduct or statements made during compromise negotiations are inadmissible "*to prove or disprove the validity or amount of a disputed claim* or to impeach by a prior inconsistent statement or a contradiction")(emphasis added).

In his Reply to his Motion to Amend Applicant has already provided the facts to support the claims made on information and belief and therefore will not reargue them in this motion. With regard to the question of intent, Applicant agrees with Jockey that if there were a factual question of intent remaining, then a disposition on summary judgment would be inappropriate. However, there are no factual disputes

⁴⁶ Ex. U; Putlak Dec. ¶ 29.

remaining and therefore, in this case, summary judgment is appropriate.⁴⁷ The facts are clear: (1) Jockey had knowledge of Applicant's "**right to use**;" (2) Jockey had knowledge that Applicant's rights were not merely "**equal to**," but superior to Jockey's subsequent use; (3) the signed declaration regarding knowledge of another's superior right to use was false; (4) Jockey knew it was false (see 1 and 2 regarding knowledge); (5) the false statements were material; and (6) knowingly making a false statement is objective evidence of an intent to mislead. Specifically, the facts here show that Jockey had **full knowledge** of Applicant's use of and "**right to use**" his Black Jockey mark due to the 2010 electronic display/background.⁴⁸ Jockey's attempt to argue that it did not know of Applicant's use and/or superior use or did not believe Applicant's use was superior because of a judgment related to a separate and distinct mark owned by Applicant is unreasonable. *See, San Juan Prods., Inc. v. San Juan Pools of Kan., Inc.*, 849 F.2d 468, 472 (10th Cir.1988) (stating that in determining whether a statement is fraudulent, courts must focus on the "declarant's subjective, honestly held, **good faith** belief.")(emphasis added). There is no reasonable or good faith belief that a judgment in a case for a separate and distinct mark would confer any superior rights in a mark subsequently adopted and created by Jockey which was allegedly "modernized" to look similar to a second and wholly different mark owned by Applicant.⁴⁹ *Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 U.S.P.Q.2d 1477, 1502 (TTAB 2017) ("Board will not find fraud if the evidence shows that a false statement was made with a **reasonable** and honest **belief** that it was true, rather than an intent to mislead the U.S.P.T.O. into issuing a registration to which the applicant was not entitled.")(emphasis added). Therefore, in accord with *Luxco*, having no **reasonable** or honest **belief** that the prior judgment stripped Applicant of any rights in his separate and distinct Black Jockey mark, the Board should find that there was fraud. Further, Jockey's early marks (1940 and 1960's marks) had been long abandoned so there was no reasonable or good faith belief that they could tack on any such use to a mark created and used 5-7 years later. Jockey knew that it had abandoned

⁴⁷ Summary judgment granted on fraud issue. *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 U.S.P.Q.2d 1483 (Fed. Cir. 1986; *Medinol Ltd. v. Neuro Vasx Inc.*, 67 U.S.P.Q.2d 1205 (TTAB 2003).

⁴⁸ Any alleged ornamentation argument is undercut by the Black Jockey background display indicating secondary source.

⁴⁹ Additionally, the threats raised in Jockey's cease and desist letter do not support Jockey's claims of superior use or reasonable belief because the 1940 Full Jockey mark registration had long been expired and abandoned as well as the use in the 1960's marks. Accordingly, Jockey knew its threats were baseless conferring no superior rights.

the earlier marks because as the record shows, the 1940 mark registration expired, Jockey removed the Half Jockey mark from the license agreements, and was not otherwise using it on goods or even advertising. Similarly, the 1960 Full Figure was not in use, advertised, or licensed. Moreover, assuming *arguendo*, on February 17, 2010, Applicant momentarily ceased using the mark or sometime thereafter, such cessation would not have constituted abandonment.⁵⁰ Therefore, when Jockey signed the declaration less than two years later, Applicant's rights remained intact and it was Applicant that had a "**superior right to use**" the mark over Jockey. With respect to Applicant's other marks, it is clear that Jockey had knowledge of those as well because Jockey clearly conducted an investigation into Applicant's business which then led to the adoption and creation of almost identical marks.

Accordingly, there is no question that Jockey knew of Applicant's superior right to use and the falsity of the declaration. In addition, the scheme to create additional products to create confusion,⁵¹ the claims of likelihood of confusion in the cease and desist letter, and this opposition proceeding proves that Jockey knew that a likelihood of confusion would result. Otherwise, Jockey would have to admit that this case is being maintained in bad faith. *Daniel J. Quirk, Inc. v. Village Car Co.*, 120 U.S.P.Q.2d 1146, 1149 (TTAB 2016) (The challenger must prove that applicant knew that another's rights in the mark were superior and that applicant either believed that a likelihood of confusion would result from that use of the mark or had no basis for believing otherwise. No fraud was found.). Therefore, knowing that it was not the superior user and a failure to provide that it was the superior user would result in the denial of the application is clear evidence of an intent to mislead the USPTO. There would be no need to knowingly provide a material misrepresentation except to mislead the USPTO into approving a registration for which it was not entitled. *See, e.g. MPC Franchise, LLC v. Tartino*, 826 F.3d 653, 660–661 (2d Cir. 2016) (Fraud found where applicant knew other members of his family were using mark for decades for the same goods; signer "knew that others had rights to use the mark that were **at least equal, if not clearly superior, to his own.**")(emphasis

⁵⁰Abandonment not pleaded. Applicant does not raise this issue to argue the merits of any unpleaded abandonment claim but for the limited purpose of denoting the unreasonableness of any claims that Jockey may raise regarding knowledge of Applicant's continued use.

⁵¹ Ex. G, 33 TTABVUE 221 is admissible evidence and may be presented in admissible form at trial in the form of self-authenticating internet evidence (*i.e.* screenshots from Wayback Machine).

added). Accordingly, just as in *MPC Franchise*, the signer, Jockey, knew that Applicant had been using the Black Jockey mark (and other marks) for overlapping goods and his rights were superior because Jockey had long abandoned its early marks. Accordingly, Jockey defrauded the PTO when it obtained its registrations and all such registrations should be cancelled.

LIKELIHOOD OF CONFUSION

I. HAVING PROVEN HIS PRIORITY APPLICANT ALSO PREVAILS ON HIS LIKELIHOOD OF CONFUSION CLAIMS

The bad faith adoption supports a finding in Applicant's favor. The cease and desist letter was sent on January 26, 2010 and the screen capture was taken on the 25th. Jockey has been careful (or evasive) about the date in which it made the decision to "modernize."⁵² In addition, the claims that the Jockey Seal was inspired by an image of a man on a bag wearing long john underwear that is not a jockey is far-fetched, especially when the Jockey Seal looks almost identical to Applicant's BJC Stars marks. At any rate, having had no use of the 1940 and 1960's marks for over 5-7 years, and failing to provide any plans to resume, it is clear that the adoption came after learning of Applicant's use. *In re US Warriors Ice Hockey Pgm., Inc.*, 122 U.S.P.Q.2d 1790, 1794 (TTAB 2017)("[W]hen it is within a party's power to produce a certain kind of persuasive testimony or documentary evidence on an urged factual finding, and it fails to do so, a tribunal is at least permitted--perhaps even compelled--to draw the inference that that fact is unsupported and/or untrue."). Accordingly, the Board should find that Jockey adopted the marks at its peril.

If the Board does not find the bad faith evidence compelling, as stated above, Applicant has proven his priority for his Black Jockey, Black Jockey with text, and BJC Stars marks. And, Jockey has admitted to likelihood of confusion by virtue of the claims in its Opposition. Accordingly, there is no genuine issue remaining.

II. JOCKEY'S CROSS-MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED

⁵² Putlak Decl. ¶ 16-17 ("In or around 2010, Opposer decided to again refresh and modernize its iconic and well-known jockey figure icon.")(designs were "finalized in 2011" and "finalized in 2012. Jockey refuses to provide creation and adoption dates even though requested in discovery providing that they were finalized in 2011 and 2012 and the first use dates. Ex. H.

A. THE 1940 AND 1960 FULL JOCKEY MARKS HAVE BEEN ABANDONED THEREFORE JOCKEY CANNOT HAVE PRIORITY

As stated above, the 1940 Full Jockey registration expired in 2005 and use abandoned. There is no evidence of record to support *any* use of the 1940 Full Jockey. The conclusory allegations of continued use provided in the various declarations are unsupported and contradicted by the record. More specifically, as stated above, none of the exhibits provided by for the 1940 Full Jockey evince any use, the alleged use is outdated, historical/memorabilia, decor, not used in connection with the recited goods (only travel), internal use, and no sales figures. Further, there is no documentation evincing any intent to resume; Jockey has not even attempted to renew the registration. In addition, as stated above, the 1960 Full Jockey has also been abandoned, therefore Jockey cannot prevail on any priority claim.⁵³

B. JOCKEY’S FRAUDULENTLY PROCURED APPLICATION FOR ITS INFRINGING 2011 FULL JOCKEY DOES NOT USURP APPLICANT’S RIGHTS AS SENIOR USER

“The territorial rights of a holder of a federally registered trademark are always subject to any superior common law rights acquired by another party through actual use prior to the registrant’s constructive use.” *Allard Enters., Inc. v. Advanced Programming Res.*, 249 F.3d 564, 572 (6th Cir. 2001). Accordingly, Jockey’s claims of incontestability do not usurp Applicant’s rights. *Marshak v. Treadwell*, 240 F.3d 184, 198 n.10, 57 U.S.P.Q.2d 1764 (3d Cir. 2001) (“Even if a junior user’s mark has attained incontestable status, such status does not cut off the rights of a senior user.”). *Miller v. Glenn Miller Prods., Inc.*, 454 F.3d 975, 79 U.S.P.Q.2d 1545 (9th Cir. 2006) (rejecting argument that because a party owned an incontestable registration, it had to be the owner of the mark, not just a licensee of a senior user who had not registered); *Dorpan, S.L. v. Hotel Melia, Inc.*, 728 F.3d 55, 62–63, 108 U.S.P.Q.2d 1093 (1st Cir. 2013) (The territorial rights of the owner of an incontestable federal registration are always subject to the prior common law rights of a senior user as defined in Lanham Act § 15.). Accordingly, Applicant still maintains his common law rights, and if Applicant fails to prevail on the fraud and non use claims, then Applicant

⁵³ To establish priority on a likelihood of confusion ground brought under Trademark Act Section 2(d), a party must prove that, vis-a-vis the other party, it owns either a registration or a mark “previously used in the United States ... and *not abandoned*...” Trademark Act Section 2, 15 U.S.C. § 1052. Emphasis Added.

must be afforded an opportunity at trial to prove his geographic common law rights and Jockey's registration should be restricted accordingly.

C. OPPOSER'S ALLEGATIONS OF APPLICANT'S "CONSTRUCTIVE NOTICE" IS BASELESS AND INSUFFICIENT TO INFER BAD FAITH ADOPTION

Assuming *arguendo*, that Opposer's mark had not been abandoned and Applicant had constructive knowledge of Jockey's 1960's marks, constructive knowledge would not be sufficient to prove a bad faith of *an intent to cause confusion*. *A & H Sportswear Co., Inc. v. Victoria's Secret Stores, Inc.*, 57 F. Supp. 2d 155, 52 U.S.P.Q.2d 1143 (E.D. Pa. 1999) ("The existence of [constructive] notice is not evidence that a later user necessarily intended to confuse."). Moreover, common sense requires that in order to have an intent to confuse or capitalize off of a prior user's mark, one has to have actual knowledge of the existence. Assuming *arguendo*, the older marks had not been abandoned, the marketing materials do not show widespread and public recognition for shirts, hoodies, etc... and much of it does not display the early marks, but merely shows marketing in connection with underwear. Even by Jockey's own admission, the Half Jockey was only being used for underwear.⁵⁴ Accordingly, Jockey's claim that Applicant's constructive notice of an already abandoned mark subject to cancellation unfounded, and Jockey's reliance on the fact that it managed to escape having its application challenged on grounds for abandonment before now is untenable.

CONCLUSION

There is no issue of genuine dispute that Jockey abandoned its 1940 Full Figure and 1960's marks. The records is completely devoid of any evidence to support use of the 1940 Full Figure at all or the 1960's marks since 2004 and 2006, which only evince affixation or marketing, no sales. Jockey's unsupported allegations of use, continued use, and practice to continue use are insufficient to prevail or create a genuine issue. Applicant, having established a *prima facie* case of abandonment and Jockey's failure to rebut or provide any documentary evidence to the contrary supports a finding in Applicant's favor. *Smith v. Anson*,

⁵⁴ Registration No. 0711570 Section 8 & 9 Declaration and Application for renewal.

801 F. Supp. at 180 (When parties dispute fact on summary judgment, the parties must produce *proper documentary evidence* to support their contentions, and cannot rest on *mere allegations* or *upon conclusory allegations in affidavits*). (The burden of the moving party may be met by showing “that there is an absence of evidence to support the non-moving party’s case.”). There is not one shred of evidence to support dilution as the early marks were abandoned and any alleged use of later marks occurred *after* Applicant’s established use. Again, Jockey’s conclusory claims of genuine issues remaining are insufficient. Further, there is no genuine issue remaining regarding Applicant’s priority as his use is supported by documentary evidence. With respect to the fraud claim, the facts are clear that Jockey had full knowledge of Applicant’s right to use his marks but Jockey knowingly signed the declaration stating otherwise.

In sum, there is absolutely no evidence that a reasonable fact-finder could resolve in favor of Jockey because there is not one piece of evidence to support *any* of Jockey’s claims, most notably, *no sales figures* to support *any use for the pleaded marks*. Accordingly, the absence of any evidence to support Jockey’s case supports a finding in Applicant’s favor. *Celotex Corp. v. Catrett*, 477 U.S. at 323-24 (The burden of the moving party may be met by showing “that there is an absence of evidence to support the non-moving party’s case.”).

Dated: December 17, 2020

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing APPLICANT'S **AMENDED** REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT has been served via electronic mail upon the following counsel of record this 17th day of December, 2020.

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EXHIBIT A

SHOP

Home > Shop > Page 2 Showing 13-24 of 30 results Default sorting



MUSTARD BE LEGENDARY TEE \$34.99
MUSTARD LEGENDARY CAP \$39.99
NAVY BLACK JOCKEY NY CAP \$24.99
NAVY WILLIE SIMMS NY 1893 CAP \$29.99



NAVY/GREY WILLIE SIMMS NY 1893 \$39.99
RED ANTHONY HAMILTON 1889 CAP \$29.99
RED BLACK JOCKEY NY CAP \$24.99
RED WILLIE SIMMS NY 1893 CAP \$29.99



RED/WHITE WILLIE SIMMS NY 1893 \$34.99
TANGERINE BE LEGENDARY TEE \$34.99
TANGERINE LEGENDARY CAP \$39.99
TEAM BJC RUGBY \$149.99 - \$159.99



PHOTO OF ACTUAL INTERIOR LABEL APPENDED AT A-015; MOCK UP AT A-003



015

A-002

vintage Black Jockey

INSPIRED BY
THE LEGACY
OF AMERICA'S
FIRST ATHLETES



Black Jockey

Clothing co. A-003

052

Filter Results

POSTED BY

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PHOTO TYPE

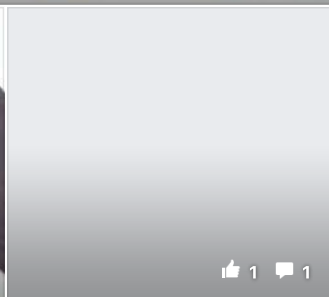
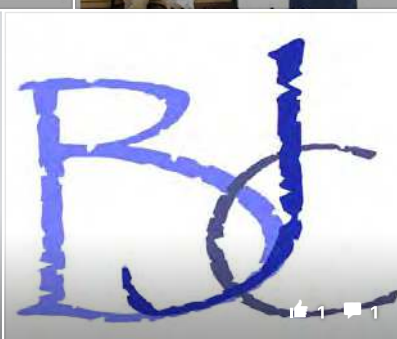
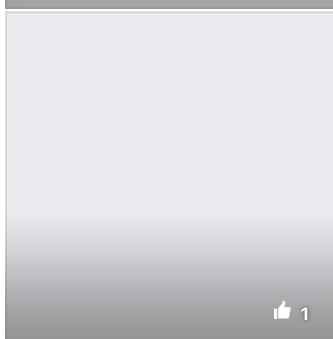
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TAGGED LOCATION

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- 2020
- 2019
- 2018
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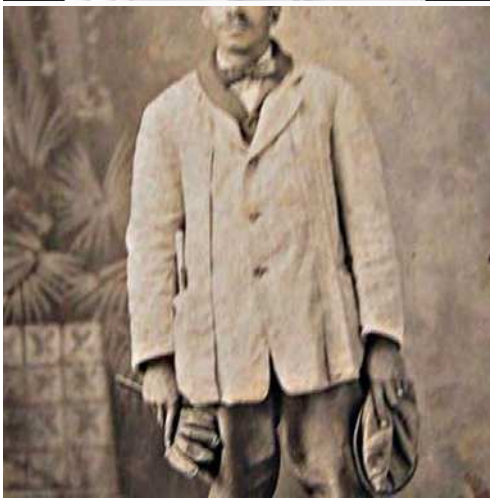


062

A-004

Instagram

Search



060

A-005

SHOP

Home > Shop

Showing 1-12 of 30 results Default sorting



ANTHONY HAMILTON 1889
\$29.99



ANTHONY HAMILTON
BROOKLYN 1889 PIPED
SPORT JACKET
\$49.99



BLACK ANTHONY HAMILTON
1889 CAP
\$29.99



BLACK WILLIE SIMMS NY
1893 CAP
\$29.99



BLACK/RED WILLIE SIMMS
NY 1893
\$39.99



BLACK/WHITE WILLIE
SIMMS NY 1893
\$39.99



BLACK/WHITE WILLIE
SIMMS NY 1893
\$34.99



BURGUNDY BE LEGENDARY
TEE
\$34.99



ISSAC MURPHY FAUX
LEATHER VARSITY JACKET
\$299.99



JIMMY WINKFIELD CLASSIC
V NECK
\$24.99 - \$27.99



MAROON LEGENDARY CAP
\$39.99



MAROON/NAVY WILLIE
SIMMS 1893
\$34.99

PHOTO OF INTERIOR LABEL APPENDED AT END



Filter Results

POSTED BY

- Anyone
- You
- Your Friends
- Your Friends and Groups
- Choose a Source...

PHOTO TYPE

- All Photos
- Photos You've Seen

TAGGED LOCATION

- Anywhere
- Choose a Location...

DATE POSTED

- Any Date
- 2020
- 2019
- 2018
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061

A-007

ENLARGED PHOTO APPENDED TO END

Black Jockey Clothing — History, Perseverance, & Style

[Home](#) [About Us](#) [Shop](#) [Blog](#) [Gallery](#) [Contact](#)

Shop

Showing 17–30 of 30 results

Default sorting



Navy/Grey Willie Simms NY 1893
SSSSS
\$39.99

Select options



Red Anthony Hamilton 1889 Cap
SSSSS
\$29.99

Add to cart



Red Black Jockey NY Cap
SSSSS
\$24.99

Add to cart



Red Willie Simms NY 1893 Cap
SSSSS
\$29.99

Add to cart



Red/White Willie Simms NY 1893



Tangerine Be Legendary Tee



Tangerine Legendary Cap



Team BJC Rugby
SSSSS

PHOTO OF INTERIOR LABEL APPENDED AT END



Black/Red Willie Simms NY 1893

~~SSSSS~~

\$39.99

Select options

Black/White Willie Simms NY 1893

~~SSSSS~~

\$39.99

Select options

Black/White Willie Simms NY 1893

~~SSSSS~~

\$34.99

Select options

Burgundy Be Legendary Tee

\$34.99

Select options



Issac Murphy Faux Leather Varsity Jacket

~~SSSSS~~

\$299.99

Select options

Jimmy Winkfield Classic V Neck

~~SSSSS~~

\$24.99 – \$27.99

Select options

Maroon Legendary Cap

~~SSSS~~

\$39.99

Add to cart

Maroon/Navy Willie Simms 1893

~~SSSSS~~

\$34.99

Select options



SHOP

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GALLERY

ABOUT US

BLOG

CONTACT



History, Perseverance, & Style

Sport of Kings



Shop



Blog



Photo Gallery

ENLARGED PHOTO APPENDED AT A-011

A-010

ENLARGED FOR CONVENIENCE

https://blackjockeyclothing.com

Go

AUG

JAN

MAY



19 captures

1 Jun 2017 - 19 Sep 2020

2017

19 2019

2020

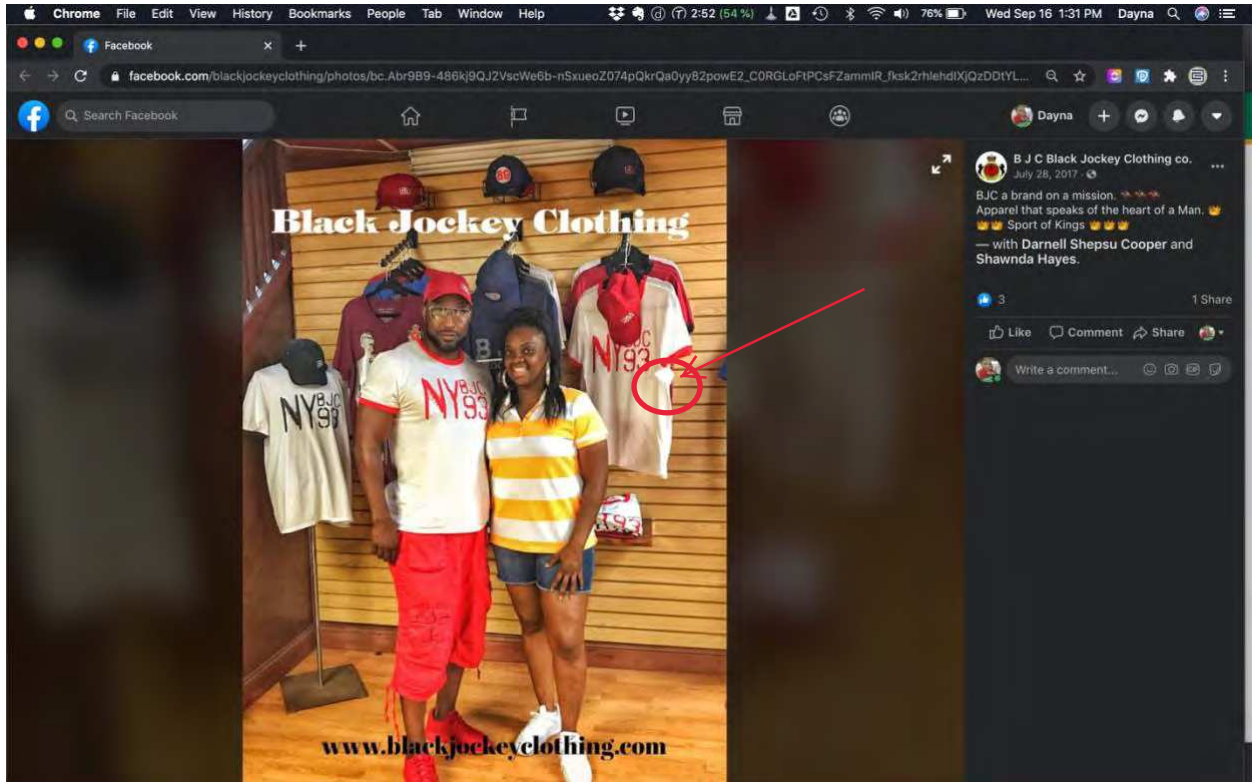
About this capture



PUBLIC FACEBOOK PAGE

PREVIOUSLY DISCLOSED AT 058, 062 (see following page)

Jockey brought to Applicant and counsel attention that the image was cut off (legitimate complaint) and complained that no URL was provided even though the URL was accessible and clickable in the production. So, Applicant reproduced this image



https://www.facebook.com/blackjockeyclothing/photos/bc.Abopwy3MCYcGbKd1nO-iRyctv19C3cwXUk-XYkINILQZr-N7WZj_oZd9lcCVOoZsR7_9rkTmcGdTdLC1bho71CGIkNyt4OFN65Y1CkPHIzPKNNCvtED-S0N-vFTNhCJYRPDJEspoX6x91LHyX69g24bu5gJ4r-fvTQaZ6PtLB2NO_A/971336333008645/?type=1&opaqueCursor=AbrsDxhp4KBbMrRFXIbM3G39Xr-cE4HQBNSigma7PPFqKD3SsgvSfSpCIMU7n2hp6MidIkDp513DLYgdjiCb3FhfMtYYHhWnobE7jFNINW59HYNuF_sfaqdAWzFmGstxU2ltYo7vedVwKXIhElzZMPAgVxxtXBZaNs_MSGEmClaYzIbAe63o_wS1jcpED7rFPEXLUoHzpEU7JwPdm-QmQs05OxkQrr9sKQVDPI9QsZ5O4VMCGoVuhzRtWhilJal2h-mDxi2ZKfKvudr2zuZt16EY8qJv9SxpVL9JcVtp9F9ywfY2o7OR8A1RHXA0JzIKpGPvVoJoMKIjevITtb_sBjTHkaHrd-He0BhHUo5WQtVPDkS_6WG-0MY6hueWuLj3nTP9-x8vcMqROfjykb3QsF6mGS4VjgIEfMh3Ri6fBleWYcYBsBDZnm_46jYxmOJepsKrBuCXicR FpjmO-Xzky11VURAV4ztyjlGbgCpZpWozVIXzATrxpASfz0d5pe-vTNQVJm5SWmi5-MOYKhLtr2I

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PHOTO TYPE

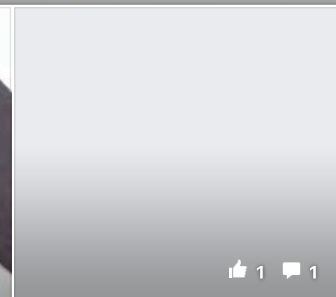
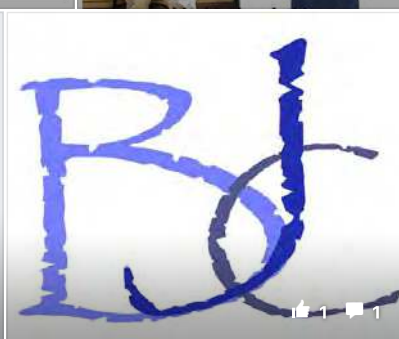
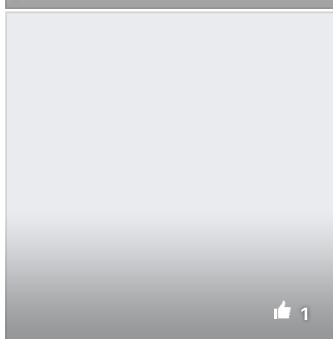
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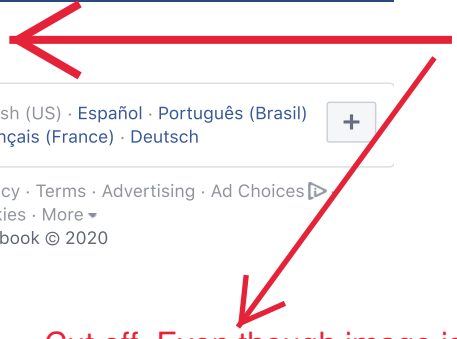
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Cut off. Even though image is publicly accessible and url embedded/clickable, when brought to Applicant's attention, Applicant cured.



Filter Results

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TEAM BJC RUGBY JERSEY

\$149.99

Size dropdown menu showing 'S'

ADD TO CART

Buy with PayPal

More payment options

Inspired by the Legacy of America's first Athletes, BJC produces a classic ruby with style and flair. Keeping you cool in the summer and warm in the winter, you can wear your BJC Ruby Jersey all year round. The thick natural premium cotton fibers provide comfort in all climates by slowing the transfer of heat towards the body in the summer and away from the body in the winter. Our Knitted Rugby Jersey's are made of 100% natural cotton so your comfort is never compromised.

Product Details: Classic rugby with a comfortable fit and feel: Material; body 70% cotton 30% polyester, ribbing 15% elastane, collar 100% cotton twill

SHARE TWEET PIN IT



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THE LEGACY SERIES FLEECE SWEATERS

\$124.99

Size Color

S White/Green

ADD TO CART

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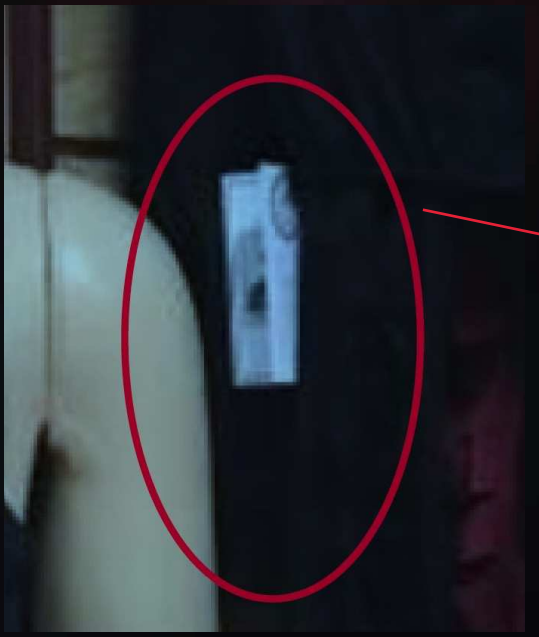


Oliver Lewis 1875 (yellow/black) and Issac Lewis 1884 (white/green). Our polycotton fleece sweater is a crowd favorite, and one of our best sellers. It is unlikely any other crew-neck you have ever owned, every detail has been carefully considered. The Sweater is crafted from a premium 330gsm polycotton fleece, so it's built to last you through years of wear and memories. Represent America's first athlete the Black Jockey with the perfect mix of style and comfort that's always a crowd favorite.

Product Details:
 Very comfortable fit and durable. Made up of 70% cotton 30% polyester, ribbings 85% cotton and 15% Elastane.

SHARE TWEET PIN IT

Enlarged Image



B-001

The New Tech Outlet & Level up Fashions October 30, 2017 · 3 Like Comment Share Write a comment...





The New Tech Outlet & Level up Fashions October 30, 2017

2 Like Comment Share 3 Comments Most Relevant

Dee Jay Jamison Do y'all have any woman sweat suits with hoodies

Like Reply 3y

Darnell Shepsu Cooper That one has a hood. But I got some more different kinds coming

Like Reply 3y

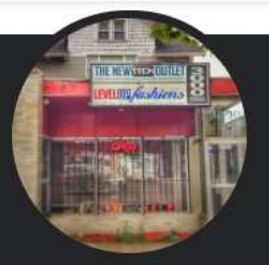
Dee Jay Jamison What time you close

Like Reply 3y

Write a reply...

Write a comment...

B-002



The New Tech Outlet & Level up Fashions

@Thenewtechoutletandlevelupfashion · Product/Service

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411 Total Likes

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Public Posts at The New Tech Outlet & Level up Fashions

Divine Willams ▸ The New Tech Outlet & Level up Fashions
 December 28, 2017 ·

THE NEW TECH OUTLET & LEVEL UP FASHIONS 3000 BAILEY BUFFALO NEW home of the BLACK JOCKEY CLOTHING LINE YORK.....open from 10 am...to 10 pm.....



B-003





B-004

Divine Willams November 9, 2017

3000 bailey. ..BLACK JOCKEY..1 WORDLIT.....

7 2 Comments

Like Comment Share

Frank White Do you have big men sizes Like Reply 3y

Divine Willams Yes come see us at 3000 Bailey I'll be there from 11 to 4 everyday Like Reply 3y

Write a comment...

Divine Willams November 7, 2017 · 🌐

👍 Like 🗨️ Comment

Divine Willams This is the place where you can find the deals they going down 3000 Bailey you passed by it everyday stop and come in get your deal today thank you

Like · Reply · 3y

Write a reply... 🗨️ 📷 🎬 🗨️



Divine Willams November 7, 2017

Like Comment

Write a reply...



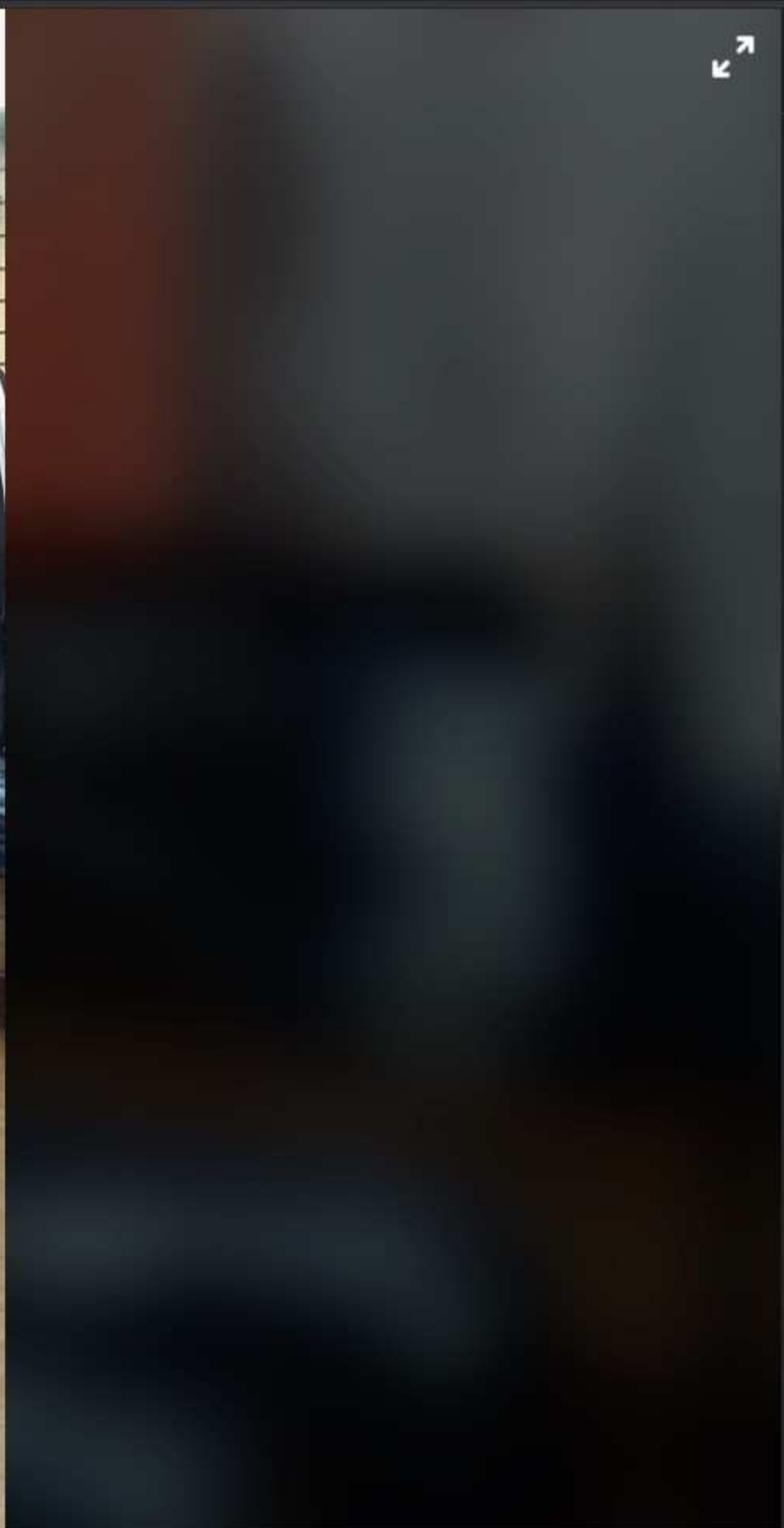
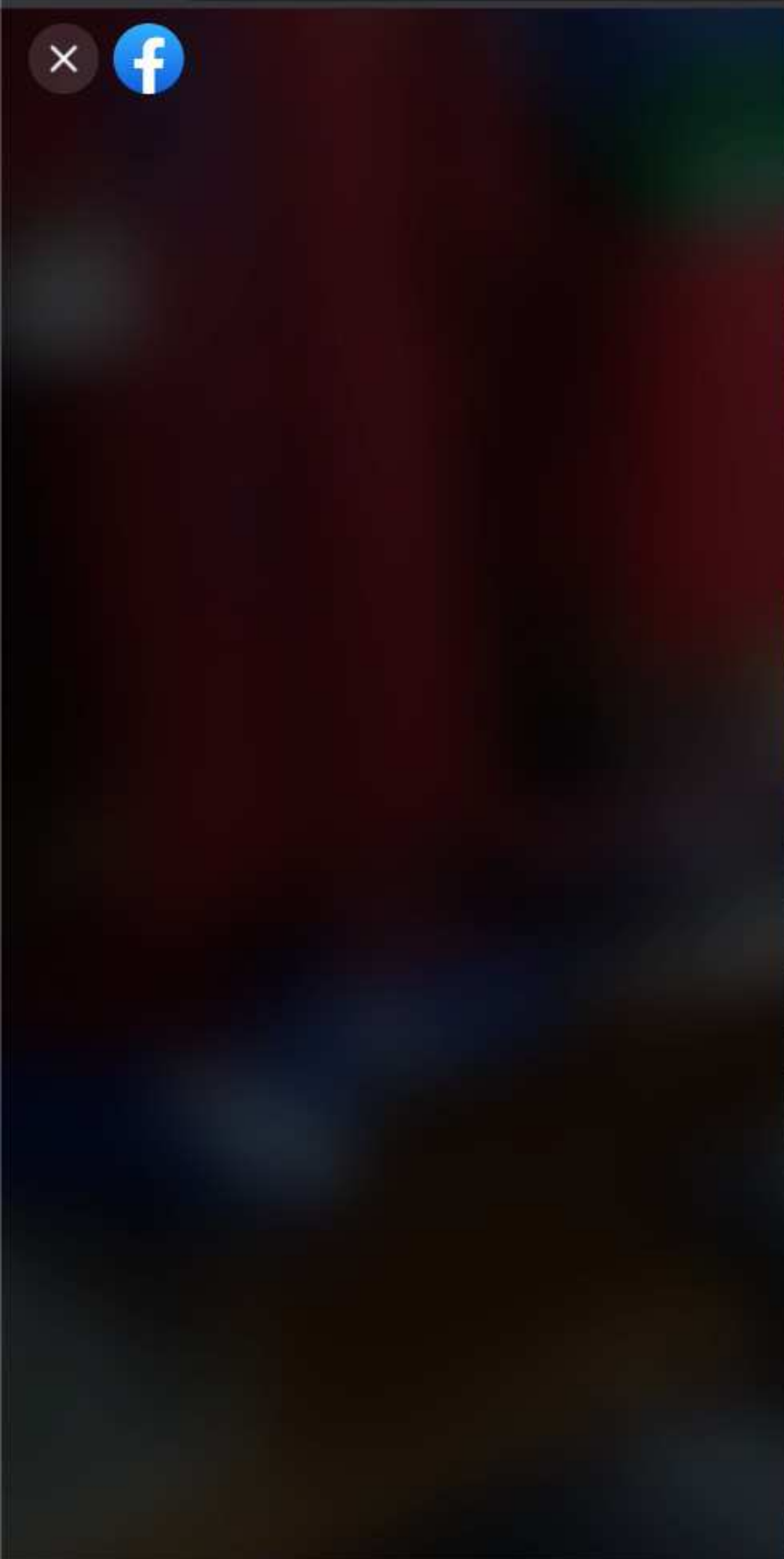
B-006



The New Tech Outlet & Level up Fashions November 17, 2017

1 Like Comment Share Write a comment...

B-007



Facebook interaction icons: a plus sign, a speech bubble, a notification bell with a red '1', and a dropdown arrow.

Divine Willams
November 9, 2017 · 🌐

3000 bailey. ..BLACK JOCKEY..1 WORD
.....LIT.....

7 2 Comments

Like Comment Share

Frank White
Do you have big men sizes
Like · Reply · 3y

Divine Willams
Yes come see us at 3000 Bailey I'll
be there from 11 to 4 everyday
Like · Reply · 3y

Write a comment... 🗨️ 📷 🎬 🎭





Divine Willams
November 9, 2017 · 🌐
3000 Bailey. ..LEVEL UP FASHION. . Home of the black jockey clothing line

6 3 Comments 1 Share
Like Comment Share

Devenaire Williams
Needs some more of the BJC & Those Gray jeans Bro...
Like · Reply · 3y

Divine Willams
I got you come see me
Like · Reply · 3y

Aamzing Alice Feagins
Hey brother. How are y'all doing? Really hate I couldn't be home to see Dewey off.... The love is still the same.... No matter the distance
Like · Reply · 3y

Write a comment... 🗨️ 📷 📺 📺



LEVEL UP *fashions*

HOME OF BLACK JOCKEY CLOTHING
Mr. Cooper Productions Inc



THE NEW TECH OUTLET

Directed By IAM_AKReedFilms

Play

0:01 / 1:00



+ (Add)

🗨️ (Comment)

🔔 (Notifications)

👤 (Profile)

The New Tech Outlet & Level up Fashions

January 2, 2018 · 🌐

Level Up

3000 Bailey Ave, Buffalo NY ...

👍 9 444 Views

👍 Like 🗨️ Comment ➦ Share

Up Next

Steve's Not Negotiating with Kids

Steve Harvey ✓

26 weeks ago · 19.2M View

Something Has To Break · By Kierra...

Kierra Sheard ✓

19 weeks ago · 988.4K Vie

I Love Myself · By Chaka Khan ft. B...

Chaka Khan ✓

4 weeks ago · 525.6K View

Cooking While Angry

Steve Harvey ✓

37 weeks ago · 543.2K Vie

Tommi Lashes Out At LeToya After...

T.I. & Tiny: Friends & ... ✓

30 weeks ago · 915.6K Vie

Don't Judge Me

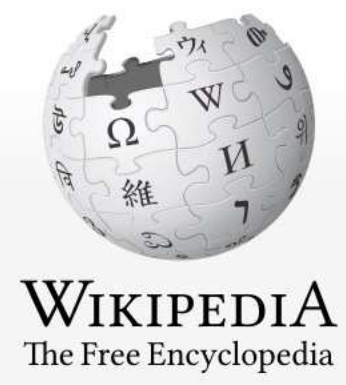
Comments See All

Write a comment...

👤 📷 📺 🗨️

B-010

EXHIBIT C



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Step and repeat

From Wikipedia, the free encyclopedia

This article **does not cite any sources**. Please help improve this article by adding citations to reliable sources. Unsourced material may be challenged and removed.

Find sources: "Step and repeat" – news · newspapers · books · scholar · JSTOR (June 2019) (Learn how and when to remove this template message)

For the nanolithography process, see *Nanoimprint lithography § Step and repeat nanoimprint*.

A **step and repeat** banner (sometimes a step and repeat wall or press wall) is a publicity backdrop used primarily for event photography, printed with a repeating pattern such that **brand logos or emblems** are visible in photographs of the individuals standing in front of it. Step and repeat banners are common fixtures of **red carpet** or fashion events, or custom-printed for weddings or galas in order to give a more "celebrity-like" feel to attendees' photos.

Material [\[edit \]](#)

Step-and-repeat backdrops can be made in several ways. The most common ways are either vinyl, fabric, poster paper, canvas or adhered onto a hard substrate such as plywood or foamcore. Recently step and repeats have been created with greenery, called 'green step and repeats'. Each has its own sets of pros and cons. Fabric is less likely to have hotspots in photography which means it tends to absorb a flash rather than reflecting it. Vinyl is heavier duty and sometimes has brighter, more vibrant images. The support structure can vary depending on size. Standard trade show display frames are often used, or it can be hung from or applied on a wall.

Usage [\[edit \]](#)

The main use for step and repeats is brand awareness. Vendors may charge a sponsorship fee for a logo to be displayed or for the company name to be featured in the background. The idea is that the photos will be shared through various platforms causing a ripple effect in impressions. More recently, step and repeat banners are being used more widely in and not just for hollywood style events. They can also be seen at **trade shows**, **conventions**, demo days, grand openings and even weddings and birthdays.

References [\[edit \]](#)

This photography-related article is a *stub*. You can help Wikipedia by *expanding it*.

C-001



Television personality **Rita Verreos** in front of a step and repeat banner with multiple company logos.

Store Ratings

What Are Step and Repeat Banners?

Often referred to as backdrops, step and repeat banners are typically used as a backdrop for photos at trade shows and other events. They are comprised of one or more repeating logos, hence the name step-and-repeat.

They are a great way to advertise sponsors at an event as well as providing a great place for attendees to take pictures. They provide a great non-intrusive form of advertising.



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1-888-222-4929
support@signs.com

Time To Ship
One Business Day
Order within 23 hrs, 48 minutes
Ships **Wednesday, Dec 09**

Estimate Shipping
zip code See Rates

Price Each
\$284.07

FREE SHIPPING available **C-002**

[Get Started](#)

4.7 ★★★★★
Google Customer Reviews



Description Product Specifications How to Set Up Frequently Asked Questions Customer Reviews

Step & repeat banners- A Marketing Essential That Will Make Sure Your Brand is Recognized

Step and repeat banners are known for their presence at star-studded parties and events. But your event doesn't have to be in Hollywood to make an impact. Promote your brand or business with a custom step and repeat backdrop from BannerBuzz and take your advertising game to the next level. These beautifully printed backdrops can instantly elevate your brand at any event or show, and that too in a minimal budget. They are a perfect choice for events that involve photography and videography. With your brand/event sponsor's logos printed on the backdrop wall repeatedly, you are bound to achieve enhanced brand logo visibility.

Free pole pockets. Adjustable stands at a very minimal cost!

We print our banners in full-color 720DPI, Eco-Solvent Printing on 11oz PVC Flex fabric. You can add top and bottom pole pockets, or left and right pole pockets at no extra cost. Plus, get your banner laminated at a very minimal price. You can also add a sturdy and durable adjustable banner stand to your order. This versatile adjustable stand has a strong, lightweight aluminum frame with telescopic poles for easy adjustment. The pop-up frame is easy to set up and quick to break down after use. Step & repeat banners are a very impactful event tool for indoor events like trade shows, weddings, and conferences, etc. Not just that, we also offer you a quick choice to add a red carpet to your order, again at a very affordable price. This red carpet can act as a fantastic accessory to highlight your banner and banner stand at any event. Designed to withstand the sun and wet weather conditions, these red carpet banners are all you need, indoors and out.

Key benefits of using a Step & Repeat Banner

These photography backdrops come with the below benefits:

1. Great way to bring attention to your brand logo



- 2. Fantastic way to promote your event sponsors
- 3. Engage your guests/attendees with pictures and videography
- 4. Repeated brand promotion every time a picture from the event is shared
- 5. Very impactful event tools for both indoor and outdoor advertising

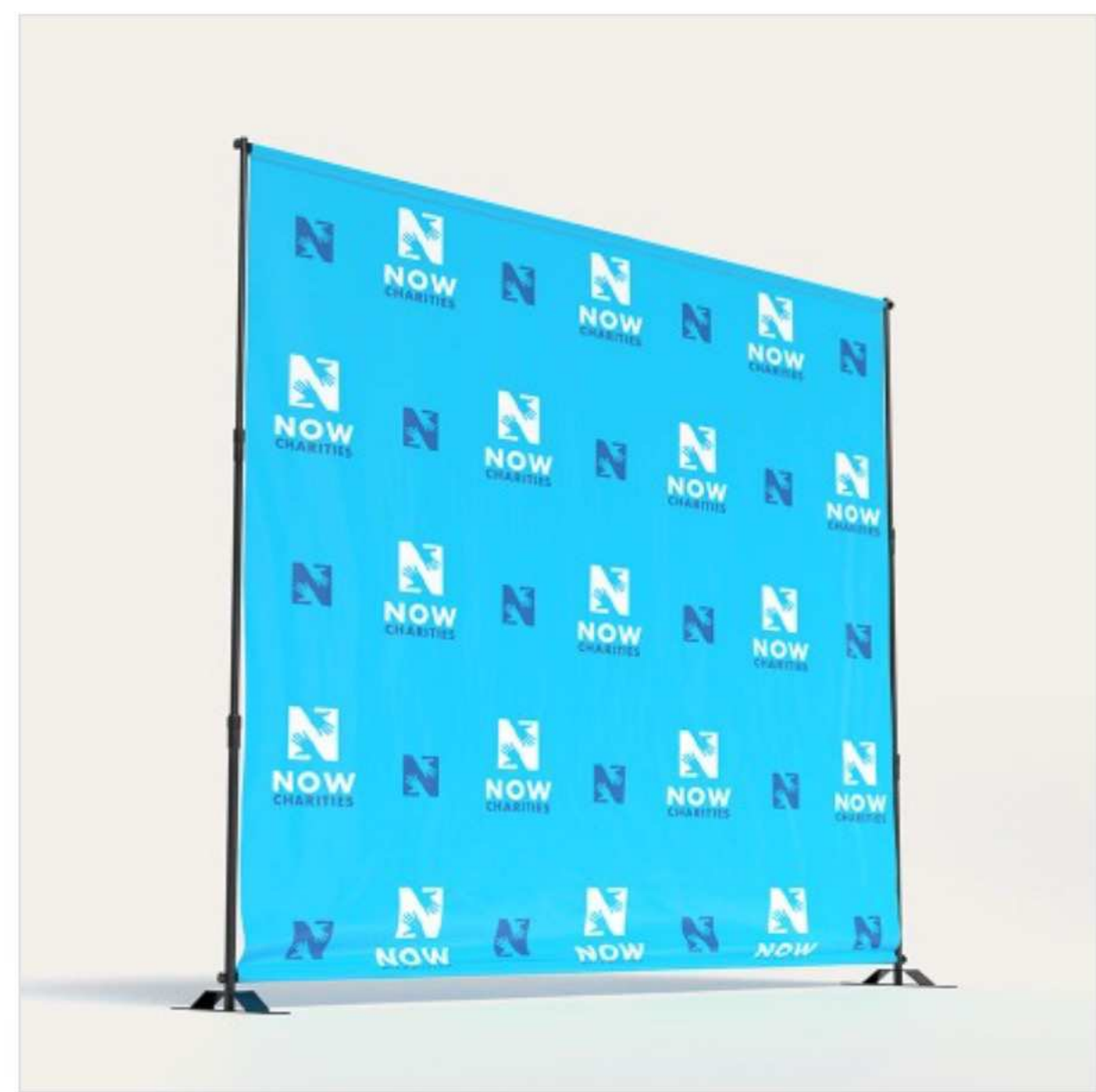


...ides camera flashes, making them a perfect choice for media and product photography.

...ess ordering experience is what we offer!

C-003

Step and Repeat Banners ★★★★☆ 4.4 (62) [Write a review](#)



- ✓ Prominently display your logos
- ✓ Pole pockets or grommets for easy hanging
- ✓ 3 materials to choose from
- ✓ Choose your custom size

Configure & Price

[Share Product](#)

Banner + Stand
 Banner Only

Size:

 Material:

 Printed Side:

 Pole Pocket:

 Grommets:

Quantity:

 Printing Time:

 Printing Cost: **\$37.80**

UPLOAD YOUR FILE & ORDER NOW

C-004

[or Create Your Design Online](#)

Live Chat



EXHIBIT D

Generated on: This page was generated by TSDR on 2020-11-02 14:48:42 EST

Mark:



US Serial Number: 71468833

Application Filing Date: Mar. 30, 1944

US Registration Number: 409514

Registration Date: Oct. 10, 1944

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



DEAD/REGISTRATION/Expired

The trademark application registered, but subsequently removed from the registry when the registration was not successfully maintained.

Status: This registration was not renewed and therefore has expired.

Status Date: Jul. 16, 2005

Mark Information

Mark Literal Elements: None

Standard Character Claim: No

Mark Drawing Type: 2 - AN ILLUSTRATION DRAWING WITHOUT ANY WORDS(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The jockey figure constituting this trade-mark is a fanciful representation.

Design Search Code(s): 02.01.19 - Strongmen; Athletes (men); Golfer; Men, athletes, strongmen

Related Properties Information

Claimed Ownership of US Registrations: 00391692, 00392123

Publish Previously Registered Mark: Yes

Previously Registered Mark Publication Date: Nov. 16, 1948

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Men's and Boys' Underwear

International Class(es): 025

U.S Class(es): 039 - Primary Class

Class Status: EXPIRED

Basis: 1(a)

First Use: Jan. 15, 1940

Use in Commerce: Jan. 15, 1940

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Jockey International, Inc.

Owner Address: Kenosha, WASHINGTON UNITED STATES

Legal Entity Type: CORPORATION

State or Country: WISCONSIN
Where Organized:

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: RICHARD H COMPERE
WILLIAN BRINKS OLDS HOFER GILSON
& LIONE LTD
P O BOX 10395
CHICAGO, ILLINOIS UNITED STATES 60061

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 16, 2005	CANCELLED SEC. 8 (10-YR)/EXPIRED SECTION 9	
Oct. 10, 1984	REGISTERED AND RENEWED (SECOND RENEWAL - 20 YRS)	
Jul. 16, 1984	REGISTERED - SEC. 9 FILED/CHECK RECORD FOR SEC. 8	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: FILE REPOSITORY (FRANCONIA)

Date in Location: Jun. 17, 2004

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: Cooper's, Incorporated

Assignment 1 of 1

Conveyance: CHANGE OF NAME 19720426

Reel/Frame: [0220/0692](#)

Pages: 3

Date Recorded: May 22, 1972

Supporting Documents: No Supporting Documents Available

Assignor

Name: [COOPER'S INCORPORATED](#)

Execution Date: May 03, 1972

Legal Entity Type: UNKNOWN

State or Country: No Place Where Organized Found
Where Organized:

Assignee

Name: [JOCKEY INTERNATIONAL, INC.](#)

Legal Entity Type: UNKNOWN

State or Country: No Place Where Organized Found
Where Organized:

Address: No Assignee Address Found

Correspondent

Correspondent Name: HUME, CLEMENT, ET AL.

Correspondent Address: SUITE 5150
ONE FIRST NATIONAL PLAZA
CHICAGO, IL 60670

Domestic Representative - Not Found

UNEXPECTED kenosha

2011
Annual
Report

KENOSHA AREA BUSINESS ALLIANCE

TABLE OF CONTENTS

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The Kenosha Area Business Alliance (KABA) is Kenosha County's economic development organization and employers association.

A public-private partnership, KABA is focused on making the Kenosha Area a better place to do business, live, and work, through: (1) Economic development initiatives that stimulate private sector investment and job creation; (2) Providing programs, products, and services that improve the competitiveness of Kenosha Area employers and their employees; and (3) Educational initiatives aimed at improving student achievement and overall school performance.



KABA MISSION STATEMENT

The Kenosha Area Business Alliance is the lead business organization that drives economic development throughout Kenosha County. KABA supports and provides services to its investors and the community to ensure quality growth, a robust economy and a positive business climate for the Kenosha area.

MESSAGE FROM THE CHAIRMAN



Dear KABA Members,

As your outgoing Chairman of the Board, I want to express my sincere gratitude for allowing me to serve in this position. It has been an honor to represent KABA at many area functions throughout my term. The strong and efficient leadership of the KABA staff and having an active and knowledgeable board made it easy to carry out my responsibilities. It has been a pleasure.

Respectfully,

A handwritten signature in black ink that reads "Stanley J. Torstenson".

Stanley J. Torstenson, Chair

Dear Investors,

I am pleased to share the 2011 Annual Report for the Kenosha Area Business Alliance on behalf of the board of directors, committees, and staff.

As detailed in the report that follows, we continue to make significant progress toward the five primary goals outlined in the Kenosha First strategic plan.

Each of these elements is important to the overall economic development success of the community. A particular emphasis in 2011 was placed on jump-starting Downtown revitalization. KABA made a sizable commitment to this effort by converting a 90-year old, vacant commercial building into a new Jockey Factory Store and professional office space to serve as KABA's permanent home. Additionally, the development of an updated development and investment strategy for Downtown was commissioned and has been initiated. A vibrant and thriving Downtown will greatly enhance the image of the community and support our economic and talent development initiatives.

As the economic recovery continues, particularly in the industrial sector, workforce development will also remain a high priority. We need to ensure that there is alignment between the skills of the community's labor force and the hiring demands of area employers. It became increasingly evident in 2011 that job creators are having a difficult time finding skilled workers, while the number of unemployed remains persistently high. We need to address this.

As we move into 2012, we want to thank you for your past generous support of KABA and its economic development mission. We look forward to your continued support and involvement in the coming year and beyond.

Sincerely,

A handwritten signature in black ink that reads "Todd Battle".

Todd Battle, President

MESSAGE FROM THE PRESIDENT

E-003



KABA RELOCATES TO DOWNTOWN KENOSHA

KABA moved into its new Downtown offices on June 27, 2011. It purchased a 14,000-square-foot building at 5500 Sixth Avenue in February 2011 and renovated it substantially, bringing vitality to a structure that had been vacant for over a decade. The historic building is in the heart of Downtown with beautiful views of Kenosha's harbor and Lake Michigan. KABA converted the second floor into professional office space and will occupy approximately 3,800 square feet.



The \$1.5 million project is an outgrowth of KABA's 2009 strategic plan, Kenosha First. That blueprint strongly recommended additional focus on Downtown development initiatives.

Jockey International, Inc. signed a lease to occupy retail space on the 7,100-square-foot lower level of the two-story building.



Jockey relocated its existing 39th Street Closeout Center (4200 39th Ave.) to the Downtown location, offering discounted products and a unique assortment of value and closeout merchandise, unavailable at other Jockey stores. **In addition, Jockey used a portion of the space to showcase memorabilia spanning its long history in Kenosha.**

In late May 2011, Jockey International, Inc. held the Jockey Outlet Store grand re-opening. The event, bolstered by the appearance of company spokesman and NFL quarterback Tim Tebow, drew hundreds of people.



Jockey has been a part of the fabric of Kenosha for almost 120 years. Having a downtown store location is a great way to demonstrate Jockey's commitment to serve the Kenosha community and I believe that the design of this store makes it a place that all Kenoshans can be proud of.

– Debra Waller, Jockey Chairman & CEO

BOARD OF DIRECTORS

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Retired Chief Executive Officer;
Stan's Lumber, Inc.



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Chief Executive Officer;
LMI Packaging Solutions, Inc.



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Senior Vice President &
Chief Operating Officer;
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PICTURE
NOT
AVAILABLE

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Officer; Snap-on Incorporated

Barbary Riley
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Carl Schultz
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Five Star Fabricating, Inc.

Gregg Thompson
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Bukacek Construction

Frank Unick
Chief Financial Officer;
Uline, Inc.

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Valeri Agency, Inc.

Dennis Vignieri
President,
Kenosha Beef International, Ltd.

Timothy Woods
Director Manufacturing &
Operations NA,
S.C. Johnson & Son

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Wayne Kottka

Heather Kraeuter
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Jerold Franke
David Geertsen
Mark Jaeger
Virginia Moran
Robert Terwall
Stanley Torstenson
Barbara Riley

Personnel

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Chair
Jerold Franke
Virginia Moran
Frank Unick

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Treopia Cannon
Gerald Demske
John Donnell
Linda Langenstroer

Downtown Development

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Janet Dietrich
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Mark Molinaro, Jr.
Lou Molitor
Virginia Moran
David Nankin
Dr. Julio Rivera
Ald. Theodore Ruffalo
Ric Schmidt Jr.
Randall Troutman

STAFF



Todd Battle
President



Lisa Feltson
Administrative Assistant



Teri Muehlbauer
Office Manager



Becky Noble
Director of Marketing



Brian Rademacher
Director of Economic Development



Richard Rodenbeck
Director of Business Finance

KENOSHA FIRST: The Next Phase

In late 2008, KABA engaged TIP Strategies, Inc., an Austin-based economic development consulting firm, to assist in developing an economic development plan for Kenosha County. The seven-month process incorporated input and ideas from key stakeholders throughout the county. The resulting report – 'Kenosha First: An Economic Development Strategy for Kenosha County: The Next Phase' – was adopted in 2009 and has served as the blueprint for KABA's economic development activities to date. The following pages detail specific progress toward the plan's five primary goals:

1. Support and expand the existing base through business retention and consolidation strategies.
2. Position Kenosha County for long-term economic growth and vitality.
3. Attract, retain, and engage talent.
4. Ensure all parts of the county are economically, digitally, and physically connected.
5. Build a distinct image and brand for Kenosha County.

Kenosha First's Vision: Kenosha County is the premier destination for new investment and talent in the Chicago-Milwaukee corridor.

Catalyst Exhibits chose Kenosha County as the site of its new facility. The trade show exhibit manufacturer, previously located in Crystal Lake, IL, signed a long-term lease to occupy a 144,000 SF building in Pleasant Prairie's LakeView Corporate Park in and invested \$2.5 million to renovate and equip the new facility.



Four Kenosha County companies were recognized as a Wisconsin Company to Watch at an awards program presented by the Wisconsin Entrepreneurs Network on behalf of the Edward Lowe Foundation. Honored at the May ceremony was Centrisys Corporation, Equity Creative, Regulatory Compliance Associations and Xten Industries.

E-007

KABA's CEO Roundtable continues to be a valuable resource for many Kenosha County business owners, who meet monthly to discuss key issues and best practices. In June, the eleven members met with Congressman Paul Ryan for a listening session.



Eight fast-growing, innovative Kenosha County companies were honored at the 2011 Business Excellence Awards in November. Almost 350 people attended the awards dinner presented jointly by KABA and the Kenosha Area Chamber of Commerce, and sponsored by Johnson Bank. Honored at the dinner program were Xten Industries - Business of the Year; GEM Manufacturing - Small Business of the Year; Craig Deaton (Gateway Mortgage Corporation) - Entrepreneur of the Year; Allied Plastics, Equity Creative, Five Star Coatings Group, Offsite, and RJ Underground were named 'Fast Five', recognizing fast-growing companies in Kenosha County.



Matthew Davidson (CEO) & Bill Renick (President), Xten Industries



Rob (President) & Kevin Gottschalk (CEO), GEM Manufacturing

GUY BRADSHAW
CEO, Bradshaw Medical



When it comes to Kenosha's sheer business potential, the conversation may begin with location, but it doesn't end there. Companies that have made this area their home know firsthand about Kenosha's pro-business environment, dedicated business development organization, strong labor force and high quality business parks. For them, Kenosha is the perfect spot to expand their operations. And available financing and incentives, as well as lower costs of doing business only strengthen the argument.

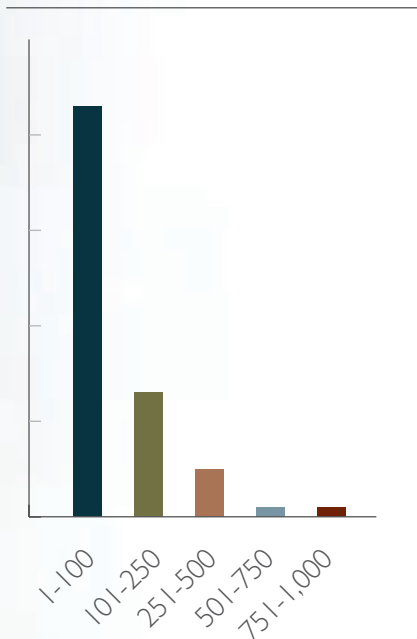
The Business Development Program

KABA has redoubled its efforts to support and expand the existing business base. The Business Development Program is designed to gather insight from business leaders about the community – insight on their efforts to build sustainable and competitive organizations and their perspective on Kenosha County as a place to have a business and to do business. These visits afford KABA the ability to recognize opportunities and challenges, strengths and weaknesses and competitive advantages about the local economy. This focus helps to foster job creation, increase revenue and enhance Kenosha's quality of life.

The Program has a threefold purpose:

- 1) Provide support, services, and solutions for challenges and opportunities identified by businesses.
- 2) Take the pulse of the County's economy to identify key advantages and opportunities for growth.
- 3) Refine and develop enhanced development strategies for Kenosha County.

Majority of firms are small businesses



Number of employees

Since May 2011, 65 companies have participated in a business visit and include a diverse cross section of industry sectors. The companies are predominately small businesses and the majority (53%) serve a national market.

Advanced Manufacturing	22%
Industrial Goods	19%
Transportation	19%
Consumer Goods Producer	8%
Retail Related Operations	8%
Durable Goods Producer	6%
Agriculture	5%
Building & Construction	5%
Health Care & Pharmaceuticals	2%
Technology/Information	2%

Companies

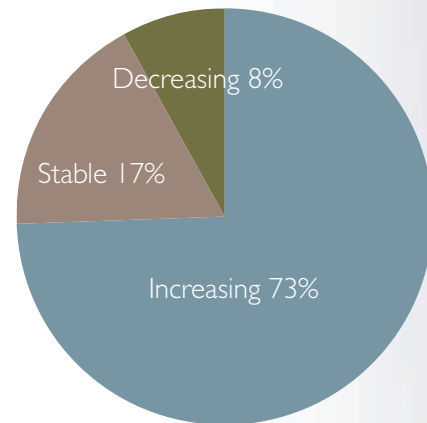
KABA brought on Brian Rademacher in May to fill its newly created position of Economic Development Director. Brian's primary focus is to implement a formal business retention and expansion program, helping companies succeed and grow in Kenosha County.



Products

Overall, businesses are optimistic about future growth. 73% of responding businesses experienced increased sales, returning to pre-recession levels and in some instances surpassing them. Looking out two years, many firms anticipate new products due to technology improvements, new applications, and entering new markets. As a result of increased activity, 36% of companies expressed intentions to expand operations in the near future.

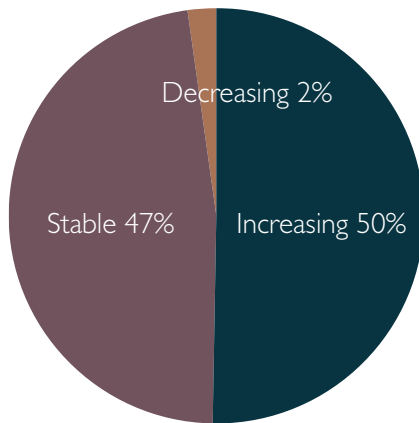
Total Company Sales



New products anticipated in the next 2 years

Yes	73%
No	27%

Employment Needs



The majority of companies interviewed indicated that their employment needs are increasing. Firms are generally satisfied with the availability, quality, stability, and productivity of the workforce in the area. As employment needs pick-up, companies are increasingly seeking skilled production workers and professional acumen.

Workforce Rating*

<u>Availability</u>	<u>Quality</u>
4.49	4.51
<u>Stability</u>	<u>Productivity</u>
5.13	5.18

Labor Force

* Based on a scale of 1 to 7, with 1 being low and 7 being high

Proximity to Chicago and Milwaukee, infrastructure, and strong and stable work ethic of employees are a few of the advantages to being located in Kenosha County. Companies identified the lack of amenities downtown and the shortage of skilled labor as some of the weaknesses. **Over 80% of respondents would consider Kenosha for future expansion of their companies.**

Top Community Strengths

1. Location
2. Workforce / Labor Market Attributes
3. Positive Business Climate

Top Community Weaknesses

1. Lack of Vibrant Corridors / Downtown Development
2. Labor-Skilled Worker Supply Inadequate



TIM ROBERTS
President & CEO, Catalyst Exhibits

KABA partnered with the Racine County Economic Development Corporation (RCEDC) to host Wisconsin Secretary of Commerce Paul Jadin for a presentation regarding the new Administration's perspective on economic development, including regulatory changes to Wisconsin's tax climate, economic development programs and policies to make Wisconsin a better place to do business.

KABA co-hosted two Legislative Updates with the Kenosha Area Chamber of Commerce: U.S. Senator Ron Johnson and a State Senate Candidate Forum with Senator Robert Wirch and Challenger Jonathan Steitz.

Kenosha County is one of the fastest growing areas in the state of Wisconsin. And with over five million square feet of industrial development since 2006, the potential for continued growth is great. A few of the companies that have recently made major investments in Kenosha County include ACCO Brands, Gordon Food Service, Mondi Akrosil and Uline. A bit unexpected? Sure. But that's also what makes Kenosha so compelling.

The Kenosha County High Impact Economic Development Fund was funded in February with \$1 million investment from Kenosha County. County Executive Jim Kreuser's 2012 budget includes an additional \$500,000 contribution to the fund.



KABA hosted a session with WHEDA (Wisconsin Housing & Economic Development Authority) and area developers, investors, and financiers. WHEDA administers a number of programs that can apply to various urban development projects above and beyond just housing. This was an attempt to better understand their programs/tools, build awareness within the development community, and explore how to utilize.



In August, Governor Walker signed a tax increment financing bill at Norstan in Pleasant Prairie that gives the Village the flexibility it needs to continue to use TID financing as a major economic development tool.



James Glassman, director and senior economist for JP Morgan Chase & Co., spoke at KABA's Annual Economic Forum, sponsored by Chase. Over 200 people came to hear his outlook for 2012.



The City of Kenosha's Development Opportunity Zone, which comes with a \$5 Million allocation of Wisconsin Corporate Income Tax Credits was established in 2011.



Kenosha will take ownership and lead development of the 106-acre Chrysler site. An agreement was reached between its manager—Old Carco Liquidation Trust, the city, and the state. Federal and state money will pay for an environmental cleanup, including ten million dollars in federal Troubled Asset Relief Program (TARP) funds.



KABA partnered with Living As A Leader to offer a comprehensive leadership development program in Kenosha County for managers, supervisors and others in leadership positions. The KABA Leadership Development Series is a comprehensive process for developing and equipping leaders with the skills and knowledge that are critical for them to effectively lead others. The series includes a combination of classroom training and one-on-one leader coaching.



LIVING
AS A
LEADER™

Few leaders are intuitively effective in holding their employees accountable, creating inspiration and approaching each day with a mindset of service to employees!



KABA strongly supports Young Leader's in Kenosha (Y-Link) which continues to act on its mission to support and develop the young professional community in the Kenosha Area by providing educational opportunities for personal and professional growth, a chance to affect positive change in the community in which they live and work, and opportunities to develop professional relationships.



3. Attract and retain talent.

DEBRA WALLER
Chairman of the Board & CEO,
Jockey International, Inc.

Professional Development

KABA offers and coordinates training courses, workshops, webinars, briefings and roundtable discussions for its business members and the community. KABA maintains a comfortable and convenient training center at its office and can also coordinate customized, on-site training programs for individual companies.

In 2011, KABA provided 28 training programs and workshops for 309 individuals from 50 area employers. Three HR Roundtables were held with 24 individuals attending.

KABA introduced the Finance Roundtable in 2011 for finance professionals or middle/senior level finance managers at KABA member companies. KABA hosts business roundtables because we believe that the opportunity to dialog and network with other professionals provides real value for organizations by discussing "best practices" in handling real business challenges. Three Finance Roundtables were held in 2011 with 27 individuals attending.

Masters Certificate Programs

KABA offers Masters Certificate Programs in Supervisory, Human Resource and Quality Management through a partnership with Gateway Technical College. Participants that complete the program earn six credit hours of advanced standing toward an Associate's Degree.

The Supervision series introduces participants to the concepts of management and the qualifications required to become an exemplary supervisor. The HR Management Series prepares participants in all areas of HR including legal updates, staffing and performance management. The Quality Management Series is grounded in the American Society of Quality (ASQ) and provides an introduction to the background and philosophy of quality management. All course instructors are certified, experienced managers that utilize case studies and encourage class participation.

KABA hosted a candidate forum for the four candidates running for seats on the Kenosha Unified School Board. There was a chance for the business community to ask questions during the moderated discussion. KABA believes the educational system of a community has a direct affect on its economic development. Businesses need educated employees - today's students are tomorrow's workforce!



Finding and keeping the right people has an enormous impact on an organization's performance. To ensure success, companies need to find employees who have the potential to be top performers. Kenosha has a reputation for having a labor force with a superior work ethic. Surprising? It shouldn't be. After all, nearly 54% of Kenosha County residents 25 years and over have some post secondary education. And being able to tap the talent pools of both Chicago and Milwaukee doesn't hurt either.

The KABA Foundation

In 1996, the Kenosha Area Business Alliance Foundation, Inc. was formed to develop education initiatives with local Kenosha schools to increase graduation rates, improve the overall quality of education and foster the best educational system in the state.

Through this foundation, KABA plays an active role in the Kenosha Area's education system including an elementary school mentoring program, annual scholarship awards, and support for various technology-related initiatives.

Today's students are tomorrow's workforce!

Elementary School Mentoring Program

The KABA Mentor Program is a school-based program that empowers both young people and the adults working with them. Volunteer mentors from area businesses commit 30-45 minutes of their time each week with a third through fifth grade or middle school student to work on academic and social skills. In the 2011/12 school year, 139 mentors from 50 member organizations participated in the program. The mentors helped students in the Bristol Grade School, Kenosha Unified and Trevor-Wilmot Consolidated School Districts.

2011 / 2012 Mentors

Angela Allen	Cindy Farmer	Kelly Infusino	Teri Muehlbauer	Heather Schulz
Lisa Anderson	Dena Feingold	Nick Infusino	Maura Murphy	George Sedloff
Diana Andrekus	Amanda Felbab	Natasha Jennings	Rodney Nixon	Nancy Sedloff
Kelly Andreoli	Pat Finnemore	Bruce Johnson	Ashley Noble	Lautauscha Shell
Sherri Arnold	Janet Frederick	Megan Jurvis	Becky Noble	Bill Siel
Beth Augustyniak	Karl Frederick	Pamela Kavalauskas	Terry Nolan	Kathy Sinclair
Maria Bartholomew	Margie Gentner	Diane Kentala	Carmela Parker	Terri Sinnott-
Todd Battle	Juli Georno	Kelly Koblenski	Janet Parmentier	Chardukian
Patty Bauer	Jackie Gianceselli	Linda Langenstroer	Eric Perkins	Deneen Smith
Nita Becker	Edwin Giboyeaux	Joseph Leonardi	Jonathan Pietkiewicz	Eddie Snyder
Sheryl Becker	Jean Glitzky	Krystle Litz	Silvana Presta	Helene Sobin
Eric Belongia	Linda Godin	Kevin Loef	Adam Prust	Linda Stephens
* Sally Berzinsky	Maureen Goldstein	Rachael Malsack	Barbara Randolph	Beverly Stoops
Bruce Bosman	Deanna Goodwin	Tommy Malsack	Harry Rarick	Danette Strickland
Barbara Brever	Adelene Greene	Susan Margetson	Karen Reget	Randi Suttles
Guida Brown	Alex Greno	Phil Marlotty	Barb Riley	Scott Tench
Neil Buchanan	Bill Harris	Shirley Marlotty	Connie Rinaldi	Beverly Terry
Stacy Busby	Miles Hartley	Molly McCann	Irene Robaidek	Dustin Tody
Patricia Jo Caira	Tom Hartley	James McPhaul	Marcy Romanowski	Ismael Torres
Jan Caputo	Jackie Hartley	Karin Meade	Ken Ropp	Matt Troha
Delia Chiappetta	Lori Heckel	Ingrid Meffle	Lisa Ruediger	Debra Tutlewski
Stephanie Christenson	Amy Henn	Kevin Metallo	Rich Salisbury	Daphne Ursu
Ashley Cooper	Dawn Herrmann	Sasha Mika	Susan Scalzo	Tamara Vendetta
Joan Dobbins	Thomas Hessefort	John Milisaukas	Hillary Schenk	Linda Ventura
Andrew Dodge	Vickie Hessefort	Rosanna Molinaro	Brenda Schmidt	Kristina Wamboldt
Laura Donnell	Robert Hofer	Stacy Monson	Rosalie Schmitz	Fran Wargolet
Jay Eckholm	John Hogan	Brian Morton	Tina Schmitz	Jeannie Wawioroka
Kimberly Erdmann	Cheryl Ide	Ken Muehlbauer	Michelle Schroeder	Sheryl Zaionc

* 2011 KABA Mentor of the Year

Mentor Program Sponsor Companies and Organizations

A.B. Schmitz Agency, Inc.

Abbott Laboratories

Aldi

Andrea & Orendorff

Asyst Technologies

Bank of Kenosha

Belongia-Hervat Group

Beth Hillel Temple

Bosman Monuments

Carpetland USA

Chase Bank

Gateway Technical College

Goodwill Industries of SE Wisconsin

Grand Appliance & TV

Guttormsen, Hartley, Wilk & Higgins, LLP

Hair Unlimited

Helene Sobin Consulting

Herbert's Jewelers

HOPE Council, Inc.

JHT Holdings

Jockey International

Johnson Bank

KABA

Kenosha Area Convention & Visitors Bureau

Kenosha County

Kenosha County Division of Health

Kenosha County Job Center

Kenosha News

Kenosha Police Department

Kenosha Public Library

Kenosha Unified School District

Kidzone Child Care Center

Liberty Builders

Liberty Mutual

Lifetouch/Prestige Portraits

Madigrano Aiello & Santarelli, Inc.

Northwestern Mutual

Professional Services Group, Inc.

Riley Construction

S.C. Johnson & Son

Sanmina-SCI

Sign-A-Rama

State Bank of the Lakes

SuperValu, Inc.

Terken, Inc.

United Hospital System

USABlueBook

Walgreens

College Scholarship Program

Each year KABA awards thousands of dollars in college scholarships. In 2011, KABA awarded \$20,000 to Kenosha County High School graduates pursuing higher education.

\$4,000 scholarship recipients, planning to attend a four year college or university:

- Stephanie Althoff, Tremper High School, Western Michigan University, International Business
- Rebecca Bullis, St. Joseph Catholic Academy, University of Notre Dame, Biochemistry
- Brandon Dunk, LakeView Technology Academy, UW-LaCrosse, Microbiology/Biomedical Sciences
- Bradley Gorsline, Westosha Central High School, Princeton University, Mathematics
- Zachary Skanron, Tremper High School, UW-Madison, International Business & Marketing

KABA's Scholarship Program is primarily funded by the Annual Scholarship Golf Classic, presented by TDS, and co-hosted by KABA and the Kenosha Area Chamber of Commerce. The 2011 outing raised over \$27,000 for the education foundations of KABA and the Chamber.



Supporting STEM

The KABA Foundation actively promotes Science, Technology, Engineering and Math (STEM) in the K-12 Kenosha County school systems by sponsoring various programs and initiatives such as the robotics team at LakeView Technology Academy and the expansion of the "Project Lead The Way" curriculum at Wilmot Union High School.



According to the International Economic Development Council (IEDC), ensuring that a wide range of institutions and individuals have broadband access has never been more important given the increasingly interconnected global economy and its importance to local business growth.

Kenosha County recognizes this and its 2012 budget calls for expanded broadband deployment to more rural / undeserved areas in the western part of the county.



**4. Ensure all parts
of the County
are economically,
digitally and
physically connected.**

NICHOLAS & ANTHONY CHIAPPETTA
Chiappetta Shoes, Inc.

A lot of communities talk about a high quality of life. But few can deliver as complete an offering as Kenosha County. Just what sets us apart? Great K-12 and higher education systems, a close-knit business community, a strong economy, 11 miles of Lake Michigan shoreline and a wide variety of arts and cultural offerings that include three world-class museums. All of these things, combined with an enviable location between two big cities, continue to drive Kenosha's unexpected high quality of life.



KABA, in conjunction with City officials and a team of community leaders assembled as a Downtown steering committee, began developing an updated investment strategy that will serve as a blueprint for the revitalization of Kenosha's Downtown.

After a nationwide search and selection process, The Lakota Group was hired to serve as the lead consultant on the project. Lakota and its partners have expertise in planning, urban design, landscape architecture, community relations, real estate analysis, transportation engineering, and environmental engineering and analysis.

The first step in the planning process was for the Lakota team to collect and analyze data; prepare maps; meet with City officials, staff, and stakeholders; conduct land-use, market, and transportation analyses; and identify issues and opportunities.

This extensive public planning process is intended to engage the community, create a clear and cohesive vision for Downtown development, and establish priorities and an implementation plan to direct future initiatives. This effort is also consistent with the community's economic development plan, which calls for increased focus on Downtown development.





KABA launched a comprehensive marketing campaign in 2011 that shines a light on some facts that people may not know about Kenosha. UnexpectedKenosha.com, a new website for the organization, serves as the campaign's centerpiece.

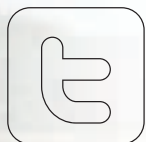
The site features four videos, each telling the story of an individual or company that has made Kenosha their home or place of business.

Unexpected Kenosha includes efforts and incentives to:

- Encourage new businesses of all sizes to consider Kenosha County;
- Encourage and aid expansion of existing businesses in Kenosha County;
- Attract and retain talent within the area (including recent local college grads);
- Spark the return of former residents who might now be working and living in the surrounding area.

KABA engaged Equity Creative, a Kenosha-based marketing/design firm, and Dallas-based Slipher Marketing to develop a comprehensive marketing plan that implements the major marketing and branding priorities outlined in the Kenosha First report.

To develop strategy as well as the campaign's various marketing messages, Slipher Marketing conducted interviews with a range of individuals, from local business leaders and real estate development professionals to managers of peer community organizations.



The “Unexpected Kenosha” promotional campaign seeks to raise awareness of the benefits of living, working and doing business in Kenosha County. It spotlights real companies and businesses in Kenosha County and why they choose to do business here.

5. Build a distinct image and brand for Kenosha County.

CAROLYN KIRKBY
Owner, Carolyn’s Coffee Connection

You might not expect that just over the Illinois border, in southeastern Wisconsin, is a place that people are describing as the ideal spot to live and work. Perfect for both business expansion and relocation, it also offers its residents excellent K-12 and higher education institutions, beautiful parks, 11 miles of Lake Michigan shoreline and close proximity to two major cities as well as two major airports. And while all of this may seem a bit unexpected to you, to us, this place is home.

This place is Kenosha.



FINANCIAL INFORMATION

Kenosha Area Business Alliance, Inc. and its Subsidiaries
 Consolidated Statement of Financial Position
 Compiled for the Years Ending:

	(Unaudited) 2011	(Unaudited) 2010
Assets		
Cash & Short Term Investments	\$10,873,789	\$13,630,104
Notes Receivable Less Allowance for Doubtful Accounts	\$15,483,410	\$13,411,546
Other Assets	\$802,404	\$653,270
Total	\$27,159,604	\$27,694,920
Fixed Assets		
Property & Equipment Net of Accumulated Depreciation	\$13,846,468	\$12,091,714
Total Assets	\$41,006,072	\$39,786,634
Liabilities		
Accounts Payable & Other Short Term Liabilities	\$882,384	\$771,380
Custodial Funds	\$—	\$187,678
Refundable Deposits	\$12,000,000	\$12,000,000
Total Liabilities	\$12,882,384	\$12,959,058
Net Assets		
Unrestricted	\$10,655,583	\$10,134,512
Temporarily Restricted	\$1,661,762	\$1,005,570
Permanently Restricted	\$15,806,342	\$15,687,495
Total Net Assets	\$28,123,688	\$26,827,576
Total Liabilities and Net Assets	\$41,006,072	\$39,786,634

FINANCIAL INFORMATION

Kenosha Area Business Alliance, Inc. and its Subsidiaries

Consolidated Statement of Activities - All Funds

Compiled for the Years Ending:

	(Unaudited) 2011 Operating	(Unaudited) 2011 Restricted Funds	(Unaudited) 2010 Operating	(Unaudited) 2010 Restricted Funds
Revenues				
Contract Services	\$165,000	\$—	\$165,000	\$—
Membership Dues	\$217,360	\$—	\$201,314	\$—
Loan Service Fees	\$86,718	\$—	\$65,854	\$—
CEO Roundtable Fees	\$33,000	\$—	\$17,555	\$—
Training	\$32,691	\$—	\$34,522	\$—
New Revolving Loan Fund Contracts	\$—	\$1,000,000	\$—	\$318,119
Interest (Bank, Short-Term Investments & Notes)	\$1,095	\$611,879	\$892	\$663,637
Revolving Loan Fund Administration	\$550,669	\$—	\$510,511	\$—
Other	\$69,265	\$53,942	\$58,755	\$2,991
Total Revenue	\$1,155,798	\$1,665,821	\$1,054,402	\$984,746
Expenses				
Personnel (Including Temporary Help & Benefits)	\$622,588	\$—	\$551,874	\$—
Administrative Contracts (Non-recurring)	\$—	\$—	\$—	\$—
Revolving Loan Fund Administration	\$—	\$550,669	\$—	\$510,511
Travel/Meetings/General Administration	\$38,914	\$—	\$45,636	\$—
CEO Roundtable	\$24,991	\$—	\$19,531	\$—
Equipment	\$105	\$—	\$42	\$—
Mailing/Printing/Office Supplies	\$17,263	\$930	\$13,705	\$—
Legal	\$3,795	\$4,014	\$962	\$200
Accounting/Auditing	\$32,143	\$—	\$31,138	\$—
Insurance (Business & General Liability)	\$11,787	\$3,439	\$11,770	\$—
Telecommunications/Computer Services	\$6,030	\$516	\$7,662	\$—
Rent/Space Maintenance/Utilities	\$82,800	\$15,409	\$78,396	\$—
Marketing & Member Communications	\$99,973	\$—	\$71,136	\$—
Business Development	\$59,313	\$—	\$26,695	\$—
Membership Programs & Events	\$25,713	\$—	\$41,670	\$—
Youth Apprenticeship Program	\$—	\$—	\$—	\$—
Depreciation & Property Taxes	\$33,930	\$37,137	\$24,382	\$—
Miscellaneous	\$15,280	\$2,434	\$10,764	\$3,792
Doubtful Account Adjustment	\$—	\$(164,000)	\$—	\$(129,000)
Total Expenses	\$1,074,625	\$450,547	\$935,363	\$385,503
Change In Net Assets	\$81,173	\$1,215,274	\$119,039	\$599,243

FINANCIAL INFORMATION

Kenosha Area Business Alliance Foundation, Inc.

Statement of Financial Position

Compiled for the Years Ending:

	(Unaudited) 2011	(Unaudited) 2010
Assets		
Cash & Miscellaneous Receivables	\$134,227	\$119,314
Short-Term Investments	\$252,885	\$244,032
Other Assets	\$5,487	\$200
Total Assets	\$392,599	\$363,545
Fixed Assets		
Land & Building Net of Accumulated Depreciation	\$1,096,594	\$1,121,256
Total Assets & Fixed Assets	\$1,489,192	\$1,484,801
Liabilities		
Accounts Payable	\$10,000	\$11,700
Notes Payable	\$750,161	\$787,163
Total Liabilities	\$760,161	\$798,863
Net Assets		
Temporarily Restricted	\$729,031	\$685,938
Total Net Assets	\$729,031	\$685,938
Total Liabilities and Net Assets	\$1,489,192	\$1,484,801

FINANCIAL INFORMATION

Kenosha Area Business Alliance Foundation, Inc.

Statement of Activities

For the Periods Ending:

	(Unaudited) 2011	(Unaudited) 2010
Revenues		
Interest & Investments	\$9,100	\$21,311
Golf Outing	\$50,110	\$50,594
Rental	\$150,000	\$140,000
Marketing	\$—	\$—
Miscellaneous	\$7,625	\$—
Total Revenue	\$216,835	\$211,905
Expenses		
Audit	\$3,500	\$3,500
Legal Expense	\$—	\$—
Golf Outing	\$36,360	\$37,518
Planning/Research	\$—	\$—
Interest	\$32,299	\$33,215
Depreciation & Amortization	\$25,721	\$24,662
Scholarship	\$21,356	\$26,050
Skills Challenge	\$3,500	\$—
Mentor Program	\$2,772	\$2,395
Technology Academy	\$3,169	\$4,682
Horizon Center Capital Campaign	\$—	\$—
Marketing	\$—	\$—
Foundation Administration	\$40,000	\$40,000
Miscellaneous	\$5,064	\$410
Total Expenses	\$173,742	\$172,432
Change In Net Assets	\$43,093	\$39,473

2011 BORROW

Allied Plastics, Inc.

Custom Thermoforming Manufacturer

KABA Financing: \$615,466

Total project amount: \$1,230,923*

Participating lender: M & I Bank,
a part of BMO Financial Group

Jobs created/retained: 98

KABA's funds were used to purchase equipment to expand the company's production capabilities. Allied Plastics, Inc. is a full-service custom thermoformer specializing in vacuum-forming, twin sheeting and pressure forming medium to heavy gauge plastic sheets. The company designs and manufactures custom products and reusable packaging for a variety of industries including agricultural, transportation, recreation and food service.



"Moving to Pleasant Prairie is an important part of our strategy to keep our business growing. Pleasant Prairie offers a great location near I-94, and business infrastructure that will help us serve our clients more quickly and efficiently. Wisconsin is well-known for its hard working, experienced workforce, and we can't wait to make them our neighbors, friends, and teammates."

—Tim Roberts, CEO, Catalyst Exhibits



Catalyst Exhibits, Inc.

Tradeshow Exhibit Designer & Manufacturer

KABA Financing: \$1,250,000

Total project amount: \$2,781,000*

Participating lender: Wisconsin Economic
Development Corporation

Jobs created/retained: 113

KABA's funds were used to assist with the company's relocation from Crystal Lake, Illinois to Pleasant Prairie, Wisconsin. The company leased 144,000 square feet of space in Lakeview Corporate Park. The project includes build-out of interior office space, improving the facility's utility infrastructure, equipment purchases and working capital. Catalyst designs and fabricates trade show exhibits for major corporations.



Bradshaw Medical, Inc.

Surgical Instrument Manufacturer

KABA Financing: \$850,000

Total project amount: \$1,750,000*

Participating lender: Johnson Bank

Jobs created/retained: 112

KABA's funds were used to purchase CNC equipment for the production line. Bradshaw Medical designs and manufactures Class One medical devices for the orthopedic industry. In October 2010, Bradshaw Medical moved into a new 30,000-square-foot manufacturing facility in the Business Park of Kenosha.

"KABA was very easy to work with and it's that same cooperative spirit that originally attracted us to locate in Kenosha a decade ago."

—Joe Rickard, Partner, Offsite LLC

"Having a resource such as KABA basically side by side helping you improve your business is huge. It really does wonders towards what we've accomplished."

—Keith Easter, President, Bradshaw Medical, Inc.

Offsite LLC

Data Services & Disaster Recovery Solutions

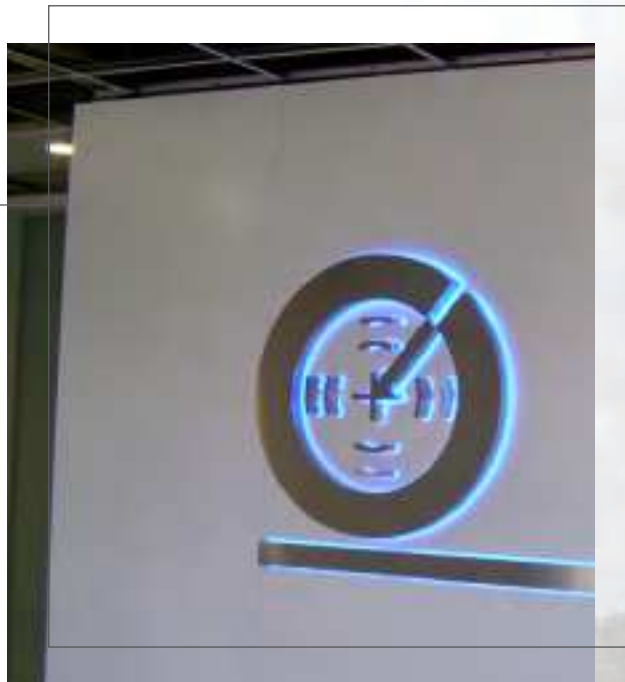
KABA Financing: \$1,000,000

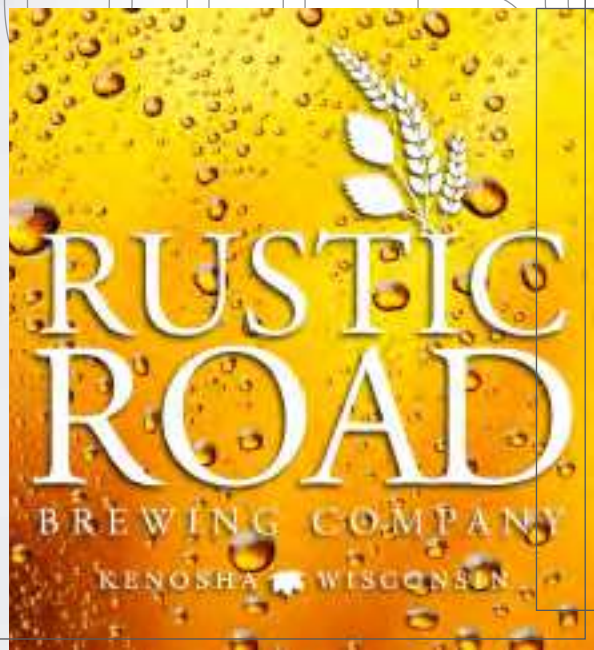
Total project amount: \$2,500,000*

Participating lender: Southport Bank

Jobs created/retained: 15

KABA's funds were used to assist with the build-out of a second data center at their five-acre corporate campus on Kenosha's lakefront. Offsite specializes in serving the disaster recovery needs of its clients. They offer a unique blend of traditional co-location space and private datacenter suites combined with a full service workplace recovery facility.





Rustic Ventures

Downtown Kenosha Nano-brewery
KABA Financing: \$82,500
Total project amount: \$110,000*
Jobs created/retained: 2

KABA's funds were used for equipment and leasehold improvements for a nano-brewery and tasting room to be located in downtown Kenosha. The company will be operating under the name "Rustic Road Brewing Co" and offer a limited selection of beers brewed in the old Wisconsin artisan style.

During 2011, KABA supported \$21 million in business development activity throughout Kenosha County by supplying \$5.3 million from various revolving loan programs administered by KABA. During 2011, KABA leveraged an additional \$2.93 in third party financing for each \$1.00 of financing provided by KABA.

Wilmot Mountain

Recreational Ski Facility
KABA Financing: \$800,000
Total project amount: \$5,368,286*
Participating lender: Community Bank & Trust of Sheboygan, WI
Jobs created/retained: 722

KABA's funds were used to expand the company's recreational offerings. The project includes construction of a winter tubing run with related support facilities as well as enhancements to the company's snow making capabilities. Wilmot Mountain, Inc. provides ski and snowboarding facilities for local and regional enthusiasts.



Sazzy B's

Downtown Kenosha Bar & Restaurant

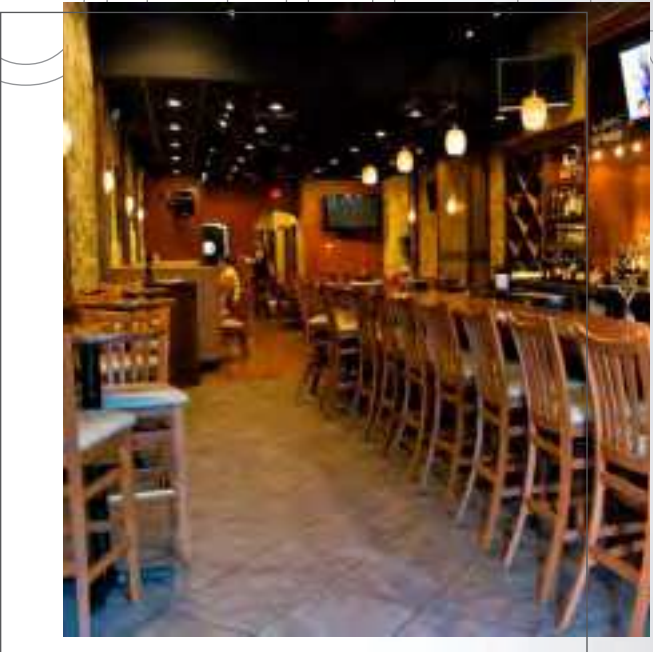
KABA Financing: \$140,000

Total project amount: \$420,000*

Participating lender: State Bank of the Lakes

Jobs created/retained: 9

KABA's funds were used to purchase real estate located in downtown Kenosha. The property is currently occupied by the Sazzy B restaurant. Sazzy B is a full service, casual restaurant and bar serving a broad clientele.



"Kenosha is just a great place to do business. From the moment we got here, we've been embraced by the local community. Xten continues to grow and we want to grow in Kenosha."

—Matt Davidson, CEO, Xten Industries, Inc.



Xten Industries, Inc.

Plastic Injection Molder

KABA Financing: \$600,000

Total project amount: \$6,948,837*

Participating lender: Delaware Place Bank,
Ridgestone Bank

Jobs created/retained: 87

KABA's funds were used for working capital to meet customer demand. Xten is an award winning contract manufacturer and injection molder for small and mid-sized manufacturers. The company also assembles, packages and sells plastic and other manufactured goods and services to customers throughout the US.

* dollar amounts are approximate

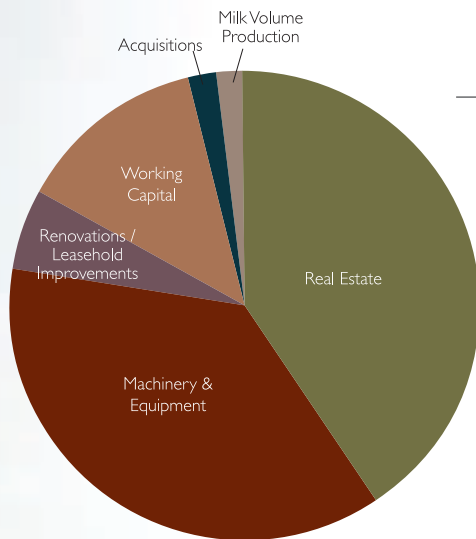
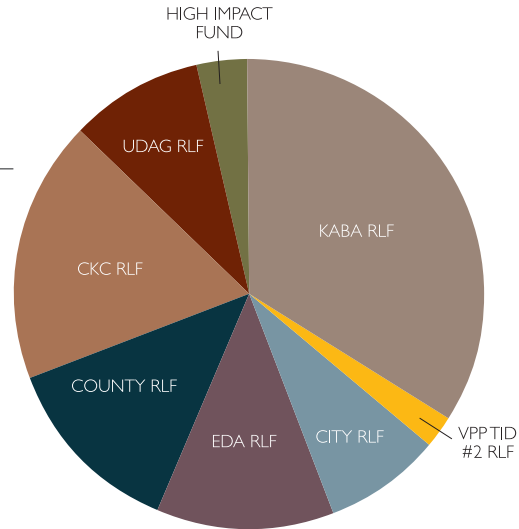
FINANCIAL INFORMATION

Supplemental Information

Loan Allocation by Revolving Loan Fund (RLF)

KABA RLF	\$9,843,473	34.1%
VPP TID#2 RLF	\$660,030	2.3%
CITY RLF	\$2,294,771	8.0%
EDA RLF	\$3,482,579	12.1%
COUNTY RLF	\$3,738,020	13.0%
CKC RLF	\$5,152,053	17.9%
UDAG RLF	\$2,658,650	9.2%
High Impact Loan Fund	\$1,001,732	3.5%
Total	\$28,831,308	100.0%

*Total fund balance as of 12/31/11



Loan Uses

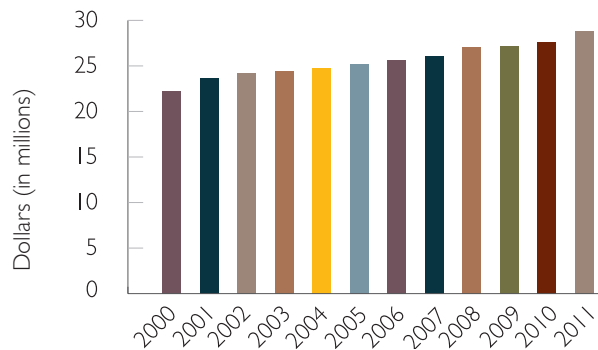
	No.*	Percent
Real Estate (Land/Building/Expansion)	22	40.7%
Machinery & Equipment	20	37.0%
Renovations/Leasehold Improvements	3	5.6%
Working Capital	7	13.0%
Acquisitions	1	1.9%
Milk Volume Production	1	1.9%
Totals	54	100.0%

*Number of loans as of 12/31/11

Through its financing services, KABA recommends local, state and federal loan programs that best meet the needs of business.

KABA staff assists in packaging loan requests and works with financial institutions to expedite the lending process.

As noted in the chart to the right, KABA experienced a 4.36% growth rate in net assets for 2011 and an average growth rate of 2.42% in net assets since 2000.



2011 KABA MEMBERSHIP LISTING

Banking

AM Community Credit Union
Bank of America
Bank of Kenosha
Chase
Community State Bank
Educators Credit Union

First American Bank
Gateway Mortgage Corporation
Johnson Bank
M&I, a part of BMO Financial Group
MB Financial Bank
PNC Bank

Southern Lakes Credit Union
Southport Bank
State Bank of the Lakes
Talmer Bank (formerly First
Banking Center)
Tri City National Bank

Business Services

Accurate Printing Company, Inc.
Adecco
ADP
APEX Alarm Systems, Inc.
Badger Press Photographics, Inc.
Boost Associates
Catalyst Exhibits, Inc.
Computer Technologies, Inc.
Copy Center
Crown Trophy & HTE Promotional
Dooley & Associates, LLC
Econoprint
Equity Creative
Express Employment Professionals
Hallum Enterprises, Inc.

Image Management LLC
Impact Networking, LLC
Kelly Services
Knoll
Lee Hecht Harrison
Leitch Printing Corporation
Len Iaquinta's Excellence in
Communications, Inc.
Living As A Leader
M&M Office Interiors, Inc.
Manpower, Inc.
Martin Group
McTernan Wireless / Mobile One
Momentum BPA, Inc.
MRA
Mueller Communications, Inc.

OFFSITE, LLC
Otto Nelson Moving and Storage
Outstanding Graphics
Platinum Systems, Inc.
Professional Services Group, Inc.
QPS Employment Group
Simplified Staffing
Sodexo @ University of
Wisconsin-Parkside
Stan's Office Technologies
Suite Imagery, LLC
Terken, Inc.
The Bristol Group
The Colergét Conference Center
Winter Services, Inc.

Construction & Related Industries

Bane-Nelson, Inc.
Berghammer Construction Corporation
Bukacek Construction
Camosy Construction
Cicchini Asphalt, LLC
Concrete Specialties Company -
Kenosha
Dickow-Cyzak Tile Company
Electrical Contractors of Wisconsin, Inc.

Great Lakes Electric
J. H. Findorff & Son Inc.
Keller, Inc.
Lee Plumbing Mechanical Contractors, Inc.
Martin Petersen Co, Inc.
Milwaukee Alarm Company
Pieper Electric, Inc.

Plumbers and Steamfitters
Local #118 U.A.
Rasch Construction & Engineering, Inc.
Riley Construction Company, Inc.
RJ Underground, Inc.
Ruffalo Painting Company, Inc.
United Scrap
Wisconsin Fuel & Heating

2011 KABA MEMBERSHIP LISTING

Engineering & Architectural Services

Clark Dietz, Inc.
Crispell-Snyder, Inc.
Eppstein Uhen Architects

JSD Professional Services, Inc.
Kueny Architects, LLC

Partners in Design Architects, Inc.
Ruekert Mielke

Government & Education

Carthage College
Central High School District of
Westosha
City of Kenosha
Concordia University-Wisconsin
Department of Workforce
Development Kenosha Job Service
Gateway Technical College

Herzing University
Kenosha County
Kenosha Unified School District No. 1
St. Joseph Catholic Academy
The Prairie School
Town of Paris
Town of Salem
Town of Somers

Town of Wheatland
UW-Parkside
Village of Bristol
Village of Paddock Lake
Village of Pleasant Prairie
Village of Silver Lake
Village of Twin Lakes
Wilmot Union High School District

Health Care & Related Industries

Abbott
Arvasi Life Spa
Aurora Health Care
Bradshaw Medical Inc.
Business Health Care Group
Daniel R. Santarelli DDS
Dental Associates, Ltd.
Doctors of Physical Therapy

Dr. Jeanne S. Vedder, M.D.
Dr. Steven Schwimmer, D.O., S.C.
Drs. Ganesh & Bharathi Pulla
Frantal Dental Care
Garretto Real Estate LLC
Hospice Alliance, Inc.
Hospira Worldwide Inc.
Kenosha Community Health Center, Inc.

Kenosha Radiology Center
Kenosha Visiting Nurse
Association & Affiliates
Regulatory Compliance Associates Inc.
Sports Physical Therapy &
Rehab Specialists
Teleflex Medical OEM
United Hospital System

Individual Members

Alan Swartz
Carl D. Holborn, JD MST
Clifton Peterson, M.D.
County Executive Jim Kreuser
David M. Geertsen

Greg Wernisch
Jerry Franke
Karl Ostby
Michael F. Montemurro
Representative Samantha Kerkman

Robert E. Heiderman, CLU, ChFC, CLTC
Ronald R. Frederick
Stanley A. Torstenson
Terry Nolan
Wayne E. Koessl

Insurance, Legal & Financial Services

A.B. Schmitz Agency, Inc.
Ameriprise Financial Services, Inc.
Andrea & Orendorff, LLP
Baker Tilly Virchow Krause, LLP

Brookhouse & Hensing Law Offices
CliftonLarsonAllen
David Insurance Agency
Davison Law Office, Ltd.

Ehlers and Associates, Inc.
Gateway Mortgage Corporation
Godin Geraghty Puntillo Camilli, SC
Guttormsen, Hartley, Wilk & Higgins, LLP

2011 KABA MEMBERSHIP LISTING

Insurance, Legal & Financial Services, cont/

Hays Companies	PPG Partners LLC	Tirabassi, Felland & Clark, LLC
Jenkins & Vojtisek, S.C.	Reilly, Penner & Benton LLP	Trottier Insurance Group
Lindner & Marsack, S.C.	Reinhart Boerner & Van Deuren S.C.	Valeri Agency, Inc.
Madrigano, Aiello & Santarelli, LLC	Sam Ruffolo Agency	Villani, Becker & Larsen S.C.
Michael Best & Friedrich LLP	Scott Olson, CPA, LLC	Wells Fargo Advisors
O'Connor, DuMez, Alia, & McTernan, S.C.	Seymour & Associates, S.C.	Whyte Hirschboeck Dudek S.C.

Manufacturing

Abatron, Inc.	Fair Oaks Farms, LLC	Northlake Engineering, Inc.
Abbott	Finishing & Plating Service, Inc.	Ocean Spray Cranberries, Inc.
ACCO Brands	Five Star Fabricating, Inc.	Ocenco, Inc.
Air Flow Technology, Inc.	GEM Manufacturing Inc.	Pacific Sands, Inc.
Albany-Chicago Company, LLC	Gerdau	Parker Plastics, Inc.
Allied Plastics, Inc.	Horizon Milling LLC	Powerbrace Corporation
Anderson Manufacturing Company, Inc.	IEA, Inc.	PPC Industries, Inc.
Asyst Technologies, LLC	IRIS USA, Inc.	Pride Abrasive, Inc.
Badgerland Products, Inc.	ITO Industries, Inc.	Puratos Chocolate USA
Beckart Environmental, Inc.	Jockey International, Inc.	Reflective Concepts, Inc.
Bio Fab Technologies, Inc.	Kenosha Beef International, Ltd.	Rust-Oleum Corporation
Bothe Associates Inc.	Kenosha Lumber & Manufacturing Company, Inc.	S.C. Johnson & Son
Bradshaw Medical Inc.	Kirsan Engineering, Inc.	Sanmina-SCI
Branko Perforating FWD, Inc.	Lakeside Steel & Mfg. Co.	Snap-on Incorporated
Calumet Diversified Meats, Inc.	LMI Packaging Solutions, Inc.	ST Specialty Foods
Centrisys Corporation	Mikrotech, LLC	Teleflex Medical OEM
Contact Rubber Corporation	Monarch Plastics, Inc.	The Metal Shop
Converting Solutions, Inc.	Norstan, Inc.	Vista International Packaging, LLC
Cordeck	North American Salt	Wicked Steel Company
Expanded Technologies Corp.		Xten Industries, Inc.

Media

Kenosha Community Media, Inc.	Kenosha News
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Non-Profit Organizations

Alzheimer's Association	I.B.E.W. Local 127	Kenosha Area Chamber of Commerce, Inc.
Boys & Girls Club of Kenosha	Jane Cremer Foundation	Kenosha Area Convention & Visitors Bureau
Goodwill Industries of Southeastern Wisconsin, Inc	Kenosha Achievement Center, Inc.	Kenosha Area Family & Aging Services, Inc.

2011 KABA MEMBERSHIP LISTING

Non-Profits, cont.

Kenosha Common Markets, Inc.
Kenosha Community Foundation
Kenosha Country Club
Kenosha Human Development
Services, Inc.

Lake County Partners
Lemon Street Gallery & ArtSpace, Inc.
Twin Lakes Area Chamber &
Business Association, Inc.

United Way of Kenosha County
WHEDA
Women and Children's Horizons, Inc.

Real Estate

Active Appraisal Services, Inc.
Bear Realty of Kenosha, Inc.
CenterPoint Properties
Clovis Point, LLC
Darwin Realty & Development
Corporation
JAM Investment Properties, LLC
Janko Group

Landmark Title Corporation
Lee & Associates of Illinois LLC
Legacy Property Management Services, LLC
Paddock Lake Heights
Paine/Wetzel / TCN Worldwide
Petretti Builders & Developers
Pitts Brothers & Associates LLC
Prudential Premier Properties

RE/MAX Elite, Inc. - Mary Dixon
The Club at Strawberry Creek
Tim O'Brien Homes
Tri-State Realty, Ltd.
WISPARK LLC
Zilber Property Group (formerly
Towne Investments)

Retail Establishments

Action Marine, Inc.
Best Western Harborside Inn &
Kenosha Conference Center
Calumet Diversified Meats, Inc.
Candlewood Suites
Cast, LLC DBA Sazzy B
Crown Trophy & HTE Promotional
Dickow-Cyzak Tile Company
Flowers by Joseph, Inc.
Jelly Belly Candy Company

Jockey International, Inc.
Kentucky Fried Chicken
Lakeside Music, LLC
Luigi's Pizza Kitchen
McTernan Wireless / Mobile One
Paielli's Bakery, Inc.
Palmen Auto Group
Pleasant Prairie Premium Outlets
Radisson Hotel & Conference
Center-Kenosha

Rode's Camera & Photo Supplies
Rustic Road Brewing Co.
Spiegelhoff's Supervalu
Tenuta's Delicatessen & Liquors, Inc.
Total Furniture
Triangle Appliance, Video & Carpeting Inc.
Twin Lakes Country Club Golf Course
Wilmot Mountain, Inc.

Telecommunications & Utilities

Kenosha Water Utility

TDS

We Energies

Transportation, Logistics, Distribution, Packaging & Shipping

Affiliated Foods Midwest
Arvato Digital Services
Associated Bag Company
C.H. Coakley & Company
C.H. Robinson Worldwide, Inc.
Cool Runnings
Exel
Gordon Food Service

Heartland Produce Co.
Hospira Worldwide Inc.
Jay-Bee Collision Repair Center
Jelly Belly Candy Company
Jensen & Jensen, Inc.
JHT Holdings, Inc.
Lotus Light Enterprises
Mann Warehouse

Otto Nelson Moving and Storage
Pepsi Americas
Pulera Collision Auto Care Center
Rehrig Pacific Company
SuperValu, Inc.
Uline, Inc.
Volkswagen Group of America, Inc.
Yamaha Motor Corporation, USA

The Kenosha Area Business Alliance (KABA) is a public-private partnership.

5500 Sixth Avenue, Suite 200, Kenosha, WI 53140 | 262.605.1100 | www.KABA.org

Some of the photography included in this publication is courtesy of Kenosha Community Media and Partners in Design Architects.



Jockey Flagship Store Design



Jockey renovated a turn of the century building in Kenosha, WI for their flagship store. They wanted to embrace the industrial details of the structure; a departure from their typical clean-lined branding. Jockey's product is all about comfort and the flagship store echoed that sentiment with homey touches like sofas, floor lamps and side tables.

I had the privilege of being let loose in Jockey's archives to select artifacts and custom frame advertising and marketing collateral.

My roll as designer and consultant was to provide Jockey with expertise in paint color selection, flooring selection, furniture ordering and placement, fixture design and placement, lighting and electrical placement, to name but a few.

In 5 short months we were able to take a shell of a building into a rocking retail environment that was much different than anything they have ever done, take



Jockey Flagship Store Design

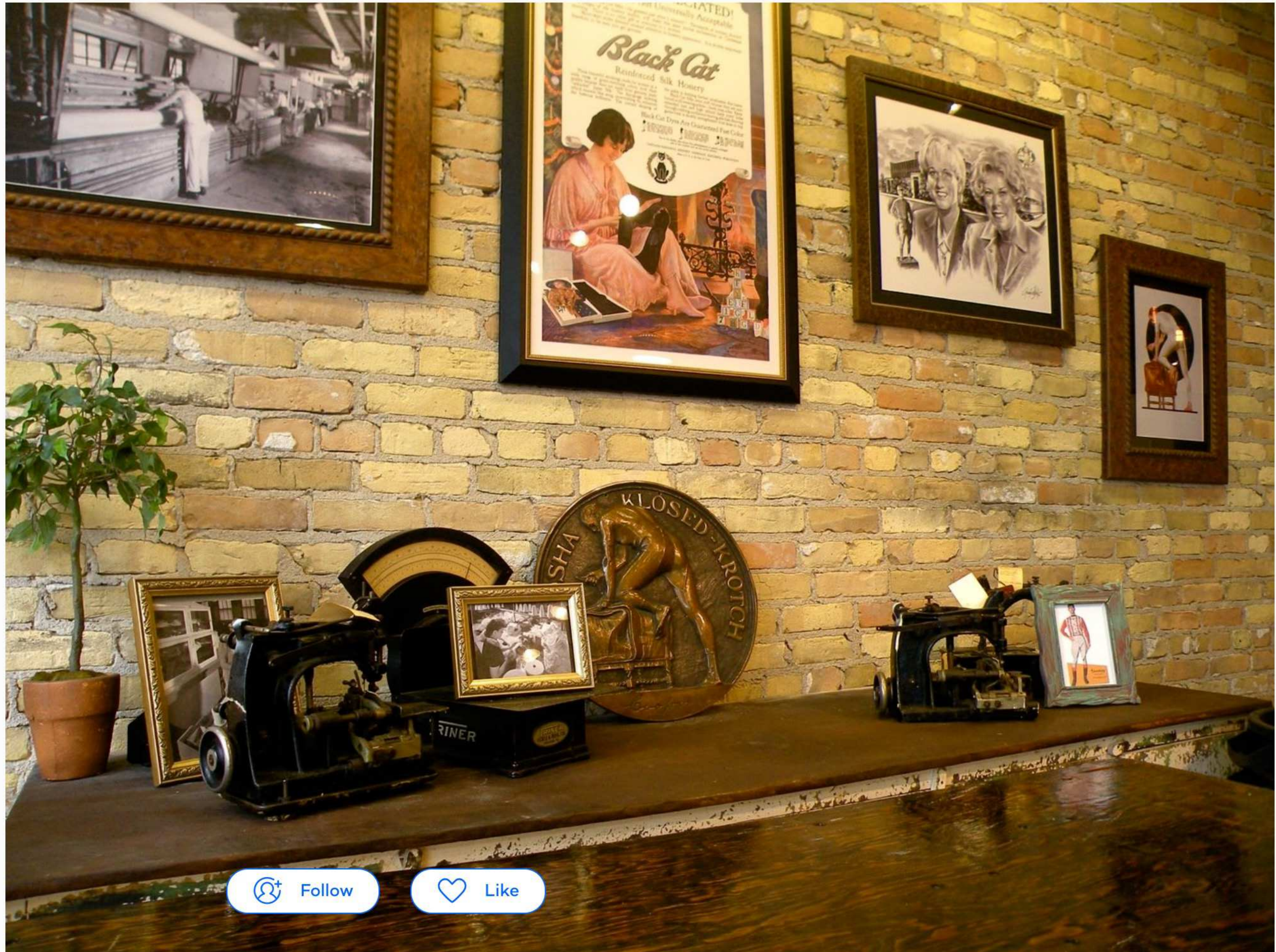


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Follow Like

JOCKEY®

Jockey to Relocate Kenosha 39th Ave Store

📅 March 9, 2011 [Print Pitch](#)

Jockey International, Inc. will relocate its existing 39th Street Closeout Center (4200 39th Av) to Kenosha's downtown / harbor front area. **The new address will be 5500 Sixth Avenue. Jockeyr plans to open the new store during the Memorial Day holiday weekend.**

In addition to offering a wide range of Jockey's regular product line at discounted prices, the new Jockeyr Factory store will offer a unique assortment of value and closeout merchandise, unavailable at other **Jockeyr stores.**

The knowledgeable and experienced staff currently at the 39th Avenue location will make the transition to the new location, never skipping a beat to assist customers, many of whom have been coming to the store for decades. Jockeyr has operated the 39th Avenue store location (4200 39th Av) since 1977.

"Jockey has been a part of the fabric of Kenosha for almost 120 years," said Jockeyr Chairman and CEO, Debra S. Waller. "Having a downtown store location is a great way to demonstrate Jockey's commitment to serve the Kenosha community and I believe that the design of this store makes it a place that all Kenoshans can be proud of. We think it will only further enhance the wonderful downtown area."

Jockeyr plans to build a nearly 6,000 square foot retail store that will continue to serve its valued 39th Avenue customers, and additionally serve new customers that work in the adjacent areas, commute the Sheridan Road corridor, or attend the host of summertime activities in the harbor area. Jockeyr expects to partner with local businesses in the downtown area to offer special shopping events.

This exciting new retail space will occupy a newly refurbished space with views of Kenosha's harbor and Lake Michigan and will include décor and memorabilia that reflects the rich, 135-year history of the Jockeyr brand, and the Company's longstanding relationship with Kenosha. Jockey's presence in the Kenosha community dates back to 1892.

Jockeyr will share the store's building and lease with the Kenosha Area Business Alliance (KABA), who will operate from the building's second floor.

[Share](#) [About](#) [Contact](#) [Pitches](#)

Twitter Pitch™

Jockey to Relocate Kenosha 39th Ave Store



Quick Facts

- ✓ Jockey International, Inc. is relocating its 39th Ave. Closeout Center in Kenosha, WI.
- ✓ The new location will be in Kenosha's harbor area.
- ✓ The new Jockey store will offer discounted prices and exclusive closeout merchandise
- ✓ Jockey plans to partner with local businesses to offer customer special shopping events.
- ✓ The new store will open Memorial Day weekend.

Related Links

- [Jockey.com](#)
- [Jockey on Facebook](#)
- [Jockey on Twitter](#)
- [Jockey on YouTube](#)
- [Jockey Blog](#)

EXHIBIT F

year.
Cooper's introduced the Jockey® Life® Low Rise brief to the United States in 1965.

1970s



In 1971, Coopers, Inc. changed its name to Jockey Menswear, Inc.®, and then changed its name to Jockey International, Inc. in 1972.

In 1972, Jockey International, Inc. established a new line called Trophy®, fashions for the golf course, and by 1975, Jockey's Sportswear line accounted for one third of the company's sales.

The Jockey® Elance® collection was launched in 1976, beginning the company's longstanding leadership in the world of men's fashion underwear.

20% OFF X



WORLD

'Virgin Mary grilled cheese' sells for \$28,000

eBay item 5535890757 (Ends Nov-22-04 17:22:07 PST) - Virgin Mary In Grilled Cheese NOT A HOAX! - Microsc

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Help

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Listed in category: [Everything Else](#) > [Metaphysical](#) > [Psychic, Paranormal](#)**Virgin Mary In Grilled Cheese NOT A HOAX! LOOK & SEE!**Bidder or seller of this item? [Sign in](#) for your status**Note: This listing is restricted to pre-approved bidders or buyers only.**[Email the seller](#) to be placed on the pre-approved bidder/buyer list.
[↓ Larger Picture](#)
Current bid: **US \$99,999,999.00**

Place Bid >

Time left: **5 days 9 hours**

7-day listing

Ends Nov-22-04 17:22:07 PST

Start time: Nov-15-04 17:22:07 PST

History: [38 bids](#) (US \$3,000.00 starting bid)

High bidder: User ID kept private

Item location: Ft. Lauderdale

— E-Bay put the 'Virgin Mary in Grilled Cheese' sandwich back on sale after temporarily pulling the item last week. [ebay.com](#)

Nov. 17, 2004, 10:43 AM EST / Source: The Associated Press

A woman who said her 10-year-old grilled cheese sandwich bore the image of the Virgin Mary will be getting a lot more bread after the item sold for \$28,000 on eBay.

GoldenPalace.com, an online casino, confirmed that it placed the winning bid, and company executives said they were willing to spend “as much as it took” to own the 10-year-old half-sandwich with a bite out of it.

“It’s a part of pop culture that’s immediately and widely recognizable,” spokesman Monty Kerr told The Miami Herald. “We knew right away we wanted to have it.”

Photos posted on eBay show what can be viewed as a woman’s face emblazoned on the sandwich, a bite taken out of one end. Bidding closed Monday.

In a statement, GoldenPalace.com CEO Richard Rowe said he planned to use the sandwich to raise money for charity. Kerr and Steve Baker, CEO of GoldenPalace’s management company, Cyberworld Group, flew to south Florida on Monday to make arrangements for a sandwich handover from its owner, Diana Duyser.

Recommended



WORLD

Nude statue honoring feminist icon Mary Wollstonecraft sparks criticism

WORLD

Two popes knew of allegations against McCarrick years ago, Vatican finds

“I would like all people to know that I do believe that this is the Virgin Mary Mother of God,” Duyser, a work-from-home jewelry designer, said in the casino’s statement.

The online auction site initially pulled the sale, saying it didn’t post joke items. The page was restored after the company was convinced that Duyser would deliver on the bid, said eBay spokesman Hani Durzy.

Duyser said she took a bite after making the sandwich 10 years ago and saw a face staring back at her. She put the sandwich in a clear plastic box with cotton balls and kept it on her night stand. She said the sandwich has never sprouted a spore of mold. 🐦

G-002

WORLD

Illinois-shaped corn flake sells for \$1,350



— This March 2008 photo provided by Melissa McIntire shows a corn flake next to a dime.

Donald McIntire / AP

March 22, 2008, 12:11 PM EDT / Source: The Associated Press

Two sisters from Virginia sold their Illinois-shaped corn flake on eBay Friday night for \$1,350.

"We were biting our nails all the way up to the finish, seeing what would happen," said Melissa McIntire, 23. "There's a lot of relief involved."

The winner of the auction, which lasted more than a week, is the owner of a trivia Web site who wants to add the corn flake to a traveling museum.

"We're starting a collection of pop culture and Americana items," said Monty Kerr of Austin, Texas. "We thought this was a fantastic one."

Kerr owns TriviaMania.com and said he will likely send someone to Virginia to pick up the flake by hand, so it won't be damaged. This isn't the first corn flake that Kerr has tried to buy. He said he purchased a flake billed as the world's largest, but that by the time it was delivered it had crumbled into three pieces.

Recommended



WORLD

Nude statue honoring feminist icon Mary Wollstonecraft sparks criticism

WORLD

Two popes knew of allegations against McCarrick years ago, Vatican finds

McIntire and her sister Emily, 15, listed the corn flake on eBay last week, but eBay canceled the auction saying it violated the Web site's food policy.

The sisters restarted their Ebay auction, advertising a coupon redeemable for their corn flake, instead of the cereal itself.

The McIntires said they'll likely use the money for a family vacation.

Copycat items have popped up on eBay, including corn flakes shaped like Hawaii and Virginia. There's also been a potato chip shaped like Florida, and Illinois corn flake paraphernalia,

G-004



Presentation Folders

Presentation Folders

Presentation Folders

Ultra Th
(**WEIRD NEWS** 06/26/2013 12:47 pm ET | Updated Jun 27, 2013

Guinea Pig Armor Sold: Winning eBay Bid Is \$24,300 (PHOTOS)



A little over a week ago, someone put an elaborately fashioned [guinea pig suit of armor](#) on eBay, and the Internet went *crazy*.

When HuffPost Weird News first learned about the sale, the highest bid was a measly \$305.

On Friday, when bidding closed, [that amount was \\$24,300.](#)

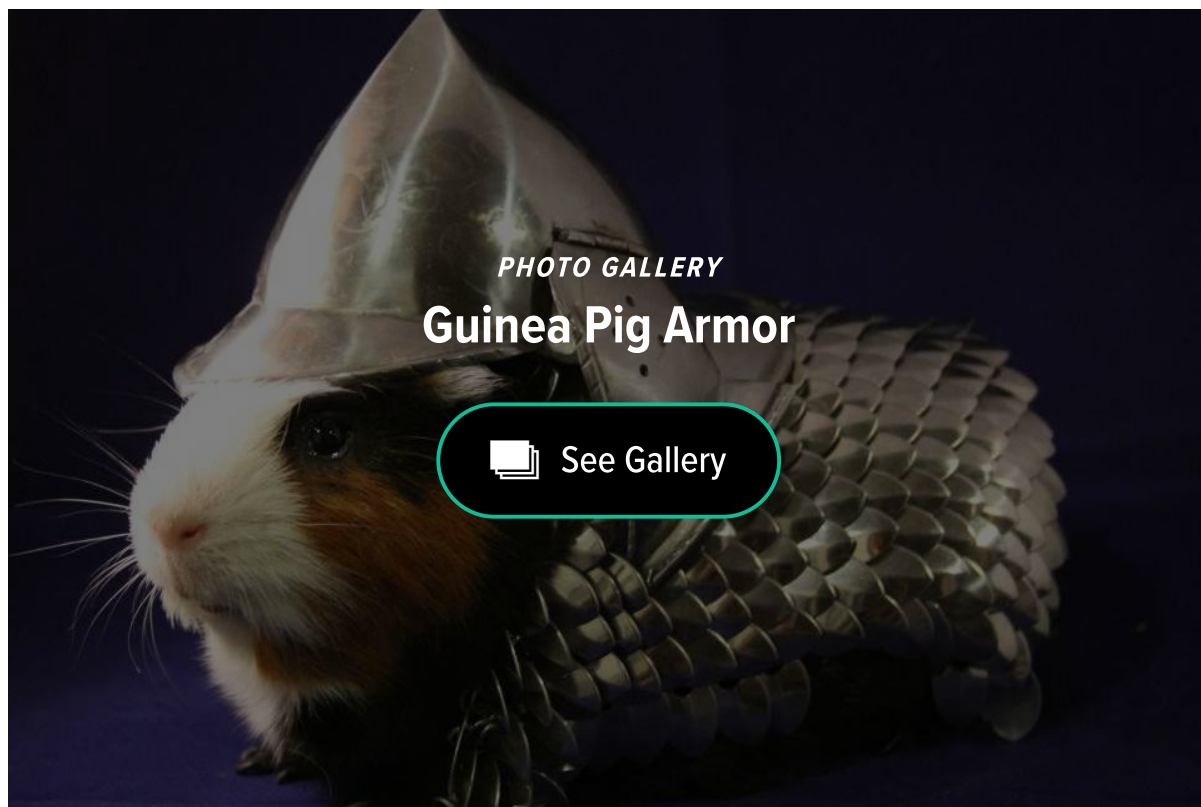
G-005

You read that right.

According to the product’s description, 100 percent of those profits will go toward [Metropolitan Guinea Pig Rescue](#), a non-profit organization in Virginia dedicated to rescuing, rehabilitating, and finding new homes for unwanted guinea pigs.

Hats off to seller mightys0x. We certainly did not see that coming.

UPDATE: June 27 — According to the [Metropolitan Guinea Pig Rescue’s Facebook page](#), the winning bidder in the guinea pig suit of armor auction has backed out. The item has been [relisted on eBay here](#).



 **BEFORE YOU GO**

MORE:

- [Guinea Pig Armor Ebay](#)
- [Weird News](#)
- [Guinea Pig Armor](#)
- [Guinea Pig Suit Of Armor](#)

EXHIBIT H

10. Jockey objects generally to the Interrogatories to the extent that they are vague, ambiguous, unintelligible, confusing, and unduly burdensome in that they incorporate by reference and require interpretation of extraneous document(s), fact(s), and/or information.

11. Jockey objects generally to the Interrogatories to the extent that they incorporate undefined terms subject to various interpretations which fail to give a reasonably clear indication of the matter(s) on which disclosure is sought.

12. Jockey objects generally to the Interrogatories to the extent that they require production of any confidential or proprietary information and will produce any such information subject to the Board's Standard Protective Order.

13. Jockey objects to the definition of "Applicant's Mark" contained in the Interrogatories on the basis that it is vague and subject to multiple interpretations. Jockey's responses therefore consider "Applicant's Mark" in the Interrogatories to mean the mark that is the subject of this Opposition Proceeding, namely, Application Ser. No. 87863113.

14. Jockey objects to the definitions of "Opposer", "You" and "Your" contained in the Interrogatories on the basis that it is overbroad. Jockey's responses therefore consider "Opposer", "You" and "Your" in the Interrogatories to mean Jockey International, Inc. and its predecessors in interest.¹

SPECIFIC RESPONSES AND OBJECTIONS TO THE INTERROGATORIES

INTERROGATORY NO. 1:

Describe with particularity all relevant facts and circumstances (including dates) under which Opposer selected, created, developed, adopted, and first used Opposer's Mark depicted in Exhibits A-C in connection with the goods identified in its application for

¹ Defined terms, if not specifically defined herein, shall have the same definition as that stated in the Notice of Opposition in this proceeding.

registration.

RESPONSE TO INTERROGATORY NO. 1:

Opposer objects to this Interrogatory on the grounds that it is vague, overbroad and unduly burdensome and not proportional to the needs of the case to the extent that it requests “all relevant facts and circumstances” of Opposer’s selection, creation, development, adoption and first use of certain of Opposer’s marks, which are merely updated designs of certain of its JOCKEY Figure Marks that were first created and adopted many decades ago, and which are the subject of valid and subsisting U.S. Trademark Registrations. Opposer further objects to this Interrogatory to the extent that it seeks the production of information protected by the attorney-client privilege or attorney work product doctrine.

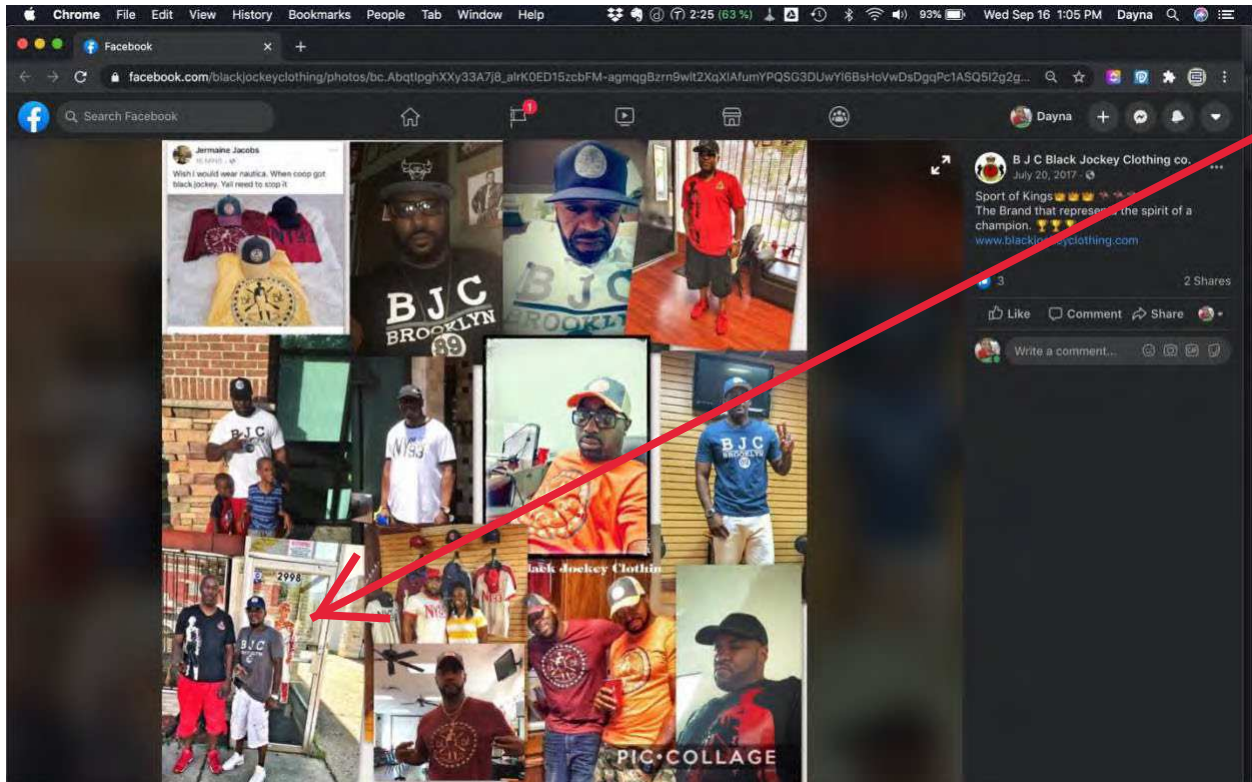
Subject to the foregoing objections, Opposer states that the JOCKEY Figure Marks depicted in Exhibits A and B to Applicant’s Interrogatories are subject to valid and subsisting registrations (U.S. Reg. Nos. 4471345 and 4641620 respectively) (hereinafter collectively referred to as the “2011 Jockey Full Boy Designs”). True and correct copies of the TSDR pages demonstrating the ownership and validity of these registrations have been produced by Opposer at Jockey0997-Jockey0999 and Jockey1003-Jockey1005. The jockey figure in the 2011 Jockey Full Boy Designs is an updated version of the JOCKEY Figure Marks that Opposer adopted and has used since the 1940’s, including the original JOCKEY Figure Mark Opposer first used in the 1940’s in which Jockey owns common law rights (referred to hereinafter as the “1940 Jockey Full Boy”), and the JOCKEY Figure Marks that are subject to valid and subsisting U.S. Registration Nos. 0711570 and 0768840 (respectively referred to hereinafter as the “1960 Jockey Half Boy” and the “1960 Jockey Full Boy.”) A true and correct copy of the USPTO TSDR pages demonstrating the ownership and validity of these registrations has been produced by

Opposer at Jockey1000-Jockey1002 and Jockey0994-Jockey0996. Opposer created and adopted the 2011 Jockey Full Boy Designs to refresh and modernize its iconic and well-known 1960 Jockey Full Boy, 1960's Jockey Half Boy and 1940 Jockey Full Boy designs. The mark depicted in Exhibit A to Applicant's Interrogatories was first used in commerce in June 2012. The mark depicted in Exhibit B to Applicant's Interrogatories was first used in commerce in July 2013.

Opposer further states that the JOCKEY Figure Mark depicted in Exhibit C to Applicant's Interrogatories is subject to a valid and subsisting registration (U.S. Reg. No. 87/669,260) (hereinafter referred to as the "Jockey Seal"). A true and correct copy of the TSDR pages demonstrating the ownership and validity of this registration has been produced by Opposer at Jockey1006-Jockey1008. The Jockey Seal was created as part of a refresh of Opposer's packaging and marketing for certain JOCKEY branded products. The design of the Jockey Seal was inspired by and based upon Jockey's heritage and historical branding, including the 1940 Jockey Full Boy, and the goal of the updated design was to highlight Jockey's branding roots in a refreshed manner for new generations of customers. The Jockey Seal incorporates a cropped version of the 1940 Jockey Full Boy into a circular motif. The circular background is inspired by the "Man on the Bag," a famous marketing image used by Opposer in the 1900's. The Jockey Seal, which incorporates the 1940 Jockey Full Boy and the circular "Man on the Bag" motif, is a continuation of Jockey's heritage and longtime branding. The Jockey Seal was first used in commerce in May 2018.

EXHIBIT I

ENLARGED PHOTO PROVIDED AT I-003



https://www.facebook.com/blackjockeyclothing/photos/bc.AbofBhjjI2nwi9SKqe2uHjERh8GprwnhyN7jGxHlftMU-qHMQTuy30ot3ahOvDlCRWwnkgG7MMIXONX9eIuwJc5lFy5QcYcJVD79_zaDEtqG1StqYcTRRNDJjZjm9TOnko5h8jiLXEF1QcuoFknBQ9l4Rqc1dE4rYjSNIq9m2cVzpw/966358456839766/?type=1&opaqueCursor=AbrAIV3xWDLlkNtSC4lS6zyB1J-DkYbDidYi2lb70Pg1lNINr3ctZyghUVCgWiMkeoi082yEFWRk6MKIS3F9aglbQdKG6FwgnlVW6hvOA7WqmR2oSX2X6_Nu-VOIJ9WuSI-aoAN4rubIVAionl6k4GoEFaDoAjbYQbFU9iIYLvuDes6sbiAlhXB7xwNml6p-zlIQL0tAtZKEECnGD8xGzNRzSgNDUifo9tUPvbG3DVrs7hPR-4YBcbhmjhoLCxp67_FyGoKIw5zOcdG28EN94O0eEWGX9mO4HVh895NuDc-z-Bpeq8TqfG1Nb5stcHU3XTZk95w6I97WSghZT0_7U8CLMY0p7YEnwTqi8lAKjaUp7H0EZyxI_IV1G0dFzGRfhvG_z8sNDxIPofhTmcc4NBTEMQnud1-zplDvN4N_A9ju52HkSMn0BzPxQMPJQUma79jPqRX5GgJq74x-Cn6nKPzUcWNlujH5yTleKZ4yBEp9-pGsdrRIIEcA8DCQ3C-jJqnfDdCVjCCdqpscXLtrNpZhDpuGzBk-Tcm9p9mzT1tuls8EhLfXcdMkb3vAfNBNbZLmdMhrbB2NMq8N4qTf5ThmcQzeBXn49UzeGd6hGT6M7A

B-049

255

I-001

Filter Results

POSTED BY

- Anyone
- You
- Your Friends
- Your Friends and Groups
-

PHOTO TYPE

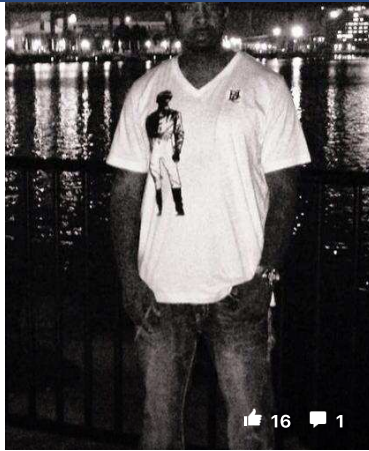
- All Photos
- Photos You've Seen

TAGGED LOCATION

- Anywhere
-

DATE POSTED

- Any Date
- 2020
- 2019
- 2018
-



English (US) · Español · Português (Brasil) · Français (France) · Deutsch

Privacy · Terms · Advertising · Ad Choices · Cookies · More Facebook © 2020



Jermaine Jacobs 16 MINS -
Wish I would wear nautica. When coop got black jockey. Yall need to stop it



B J C Black Jockey Clothing co. July 20, 2017

Sport of Kings
The Brand that represents the spirit of a champion.
www.blackjockeyclothing.com

3 2 Shares

Like Comment Share

Write a comment...



Facebook interaction icons: +, Messenger, Share, and a dropdown menu.

The New Tech Outlet & Level up Fashions November 17, 2017

Like Comment Share

Write a comment...



Registration No. 1604733
class 25: Shirts, Jackets,
Hat Visors, Hats [and
Neckties]



K-001

50% OFF \$100 + FREE 2-DAY SHIPPING

USE CODE: SNOW

FIND A STORE

TOMMY HILFIGER

SEARCH SIGN IN

MEN WOMEN KIDS GIFTS TOMMY JEANS SALE

NORTH AMERICA STORE UPDATE, LET'S STAY SAFE. [LEARN MORE](#)



K-002

TOMMY HILFIGER

MONOGRAM BASEBALL CAP

~~\$29.50~~ \$26.50

4 interest-free payments. Available for orders above \$35. [Klarna](#). [Learn more](#)

Color: Grey



Size:



In Stock

Quantity: 1

ADD TO BAG

SHOPRUNNER Offers free 2-day shipping & returns. Due to COVID-19 warehouse safety measures, order processing & delivery times may vary. [Learn more](#) | [Sign in](#)

50% OFF \$100: SNOW

Tommy Hilfiger Digital Assistant

Feedback



DUE TO COVID-19 RESTRICTIONS, PLEASE EXPECT EXTENDED PROCESSING & DELIVERY TIMES DURING THIS HIGH VOLUME PERIOD >

- LOGO CAP \$ 20.00
- CREW CAP \$ 20.00
- HH BRAND CAP \$ 35.00
- OUTLINE BEANIE \$ 25.00
- HP FOIL CAP \$ 35.00
- ROAM HAT \$ 45.00
- HH TRUCKER CAP \$ 25.00
- CHAMPOW BEANIE \$ 30.00



HH BALL CAP

★★★★☆ 14 Reviews

\$ 25.00

Due to COVID-19 restrictions, please expect extended processing and delivery times during this high volume period. We can no longer guarantee delivery before 12/25.

Color: 222 ALERT RED



Select size:

STD

ADD TO CART

[Size guide](#)

DISCOVER MORE

[Hats & Beanies](#) | [Outdoor](#) | [Outdoor](#) | [Accessories](#)

K-003

OMOTON iPad Keyboard and Mouse Combo, Wireless... \$27.99 prime

Customers who viewed Tommy Hilfiger Men's Dad Hat Tommy Flag Cap Hat also viewed



Tommy Hilfiger Men's Tony Baseball Cap 4.5 stars 78 \$14.69 prime 1 used and new from \$14.69



Tommy Hilfiger Men's Cole Dad Hat 4.5 stars 363 \$15.49 prime 2 used and new from \$15.49



Tommy Hilfiger Men's Big Flag Cap 4.5 stars 34

Clothing, Shoes & Jewelry > Men > Accessories > Hats & Caps > Baseball Caps



Tommy Hilfiger Men's Dad Hat Tommy Flag Cap Hat 4.5 stars 70 ratings

Price: \$29.99 & FREE Shipping

Best price S+

Get \$125 off: Pay \$0.00 upon approval for the Amazon Business Prime Card. Terms apply.

Fit: True to size. Order usual size.

Color: Classic White



- 100% Cotton
Imported
Adjustable closure
Hand Wash Only
Unfinished raw edges on applique
Tommy Hilfiger dad hat featuring our classic Hilfiger logo
Raised tech logo flag

Show more

Report incorrect product information.

\$29.99

& FREE Shipping

Arrives: Jan 4 - 11

Fastest delivery: Dec 29 - Jan 4

Arrives after Christmas. Need a gift sooner? Send an Amazon Gift Card instantly by email or SMS.

In stock.

Usually ships within 4 to 5 days.

Qty: 1

Add to Cart

Buy Now

Secure transaction

Ships from West Coast Fashion St...

Sold by West Coast Fashion St...

Details

Deliver to Dayna - Baltimore 21213

EXHIBIT L

PROVIDED UNDER SEAL

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

JOCKEY INTERNATIONAL, INC.,
Opposer.

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Opposition No. 91248336

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v.

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LAMONT D. COOPER,

*

Applicant.

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* * * * *

AMENDED DECLARATION OF LAMONT D. COOPER

I, Lamont D. Cooper declare as follows:

BLACK JOCKEY CLOTHING BACKGROUND

1. I am the owner of The Black Jockey Clothing brand.
2. I began making and selling Black Jockey Clothing products in the summer of 2006.
3. I started as a sole proprietor at a store on Genesee St. in Buffalo, NY in which I first began printing and selling my Black Jockey Clothing products with the assistance of Robert C. Hayes. You can actually see the heat press machine in the image in my previous Exhibit J-002 (upper right image).
4. This is the same store that was referenced by Abdus Burgos and the drawing provided in my previous Exhibit J-002. It does not surprise me that he called it One of Kind Fashions, because One of a Kind Fashions followed shortly after the shop on Genesee St. I had customers that continued to patronize when I moved to the Bailey St. location and even internally, on occasion someone might refer to it as One of a Kind Fashions because I was

just a sole proprietor while at Genesee St. I did not have a business/trade name so once I opened One of a Kind Fashions, it was just easier to refer to it as One of a Kind Fashions. So, it is possible that someone might have considered it to be the same store just moving to a different location.

5. On December 4, 2007, I opened One of a Kind Fashions, LLC in Buffalo, NY. Exhibit I.¹
6. One of Kind Fashions carried and sold Black Jockey Clothing products as well as other brands and labels.
7. On September 12, 2008, I decided to register The Black Jockey Clothing, Inc. as an entity.
Id.

POINT OF SALE DISPLAYS AND HANG TAGS

8. Since Black Jockey Clothing was my personal brand, I made sure to display it as a featured item at my store, One of Kind Fashions. On the second floor of the store, there was a feature display which included Black Jockey Clothing branded items and a cut-out sign of my Black Jockey figure. This particular display was first used in 2008. A mock-up or depiction of the feature display is attached to this declaration. Exhibit J.²
9. Exhibit J provides true and accurate depictions of my store layouts (Genesee St. and Bailey Ave.). In addition, the annotations were dictated by me to my counsel to be included. Accordingly, they are also true and accurate.
10. In addition to the Black Jockey figure cut out, I had a decal of the figure placed on the exterior of the door. Exhibit I. I first put this decal on the door in 2009 and it remained throughout my time there. On occasion it would be removed for cleaning or for replacement.

¹ 33 TTABVUE 226.

² 33 TTABVUE 231.

11. All Black Jockey Clothing products are sold with hang tags affixed. Exhibit H³ (with dates of use indicated). Any hang tags would be one of these two styles.⁴ It should be noted that I have variations of the book-style tag depicted at my prior Exhibit H-002. The fronts and backs are identical but the interior would have an image of Anthony “The Black Demon” Hamilton with bio, Willie Simms with bio, or my Black Jockey man logo with general information about the history of the black jockey. See, Exhibit B-004. All of the book-style tags were put to use at the same time.
12. The image provided by Jockey at Exhibit A-010 shows an image of the 2006 square hang tag but because of the glare you cannot see the detail.

TRANSITION TO THE NEW TECH OUTLET & LEVEL UP FASHIONS

13. My business partner, Cortez Waters made the decision to move to Detroit, MI so we ended our business relationship, but I remained the owner and continued the business under a new name, The New Tech Outlet and Level Up Fashions.
14. The new business name went into effect sometime toward the end of 2017 beginning of 2018. The transition was gradual so I cannot give an exact date.
15. The new business continued to sell and stock Black Jockey Clothing products.

BLACK JOCKEY SALES AND SALES FIGURES

16. As evidenced by the sales figures, supporting declarations, and social media images provided in discovery, my Black Jockey Clothing products have been sold continuously under my pleaded marks since 2006 through my brick and mortar and e-commerce stores. (blackjockeyapparel.com and blackjockeyclothing.com).

³ 33 TTABVUE 224.

17. I have continuously sold Black Jockey Clothing products since 2006. In discovery, I disclosed sales figures of Black Jockey Clothing products dating back to 2006 through 2019. Exhibit B001-003.⁵ The figures were generated directly from my store point of sale system (POS) and kept in the regular course of business. An image of the system can be seen at Exhibit J.
18. The reason for some of the missing figures is because the early POS was damaged which I believe was already disclosed to Jockey's counsel in discovery. Before I purchased the POS, to the extent that I could, in the ordinary course of business, I entered the records into spreadsheets which were then imported into the POS once purchased. When the early POS was damaged, I could only import what I had left over of the early spreadsheets into the new POS.
19. The discrepancies in the numbers are a result of an Excel export conversion issue between files exchanged between me and my attorney. Prior to submitting discovery, we noticed that her Excel software was automatically converting the dates into another format. While we solved the date conversion issue, we did not realize (until Jockey filed its motion) that there were other conversion issues occurring (*i.e.* some of dates were being calculated into the annual totals and the last line did not import the product amount and therefore the totals in 2017 and 2018 were not calculated accurately). I have since manually checked the numbers in the POS and the numbers at my prior B-001 are correct.

ALLEGATIONS REGARDING FACEBOOK "FRIENDS"


20. I have 2,300 individuals within my Facebook "friends" network. I do not know all of these people personally. With respect to the Facebook "friends" claims, I am not personal friends

⁵ 33 TTABVUE 31-35

with these gentlemen (Sean Carter and Demar Harvey) outside of Facebook or their patronage of my store.

21. During their time as patrons of the store, I have learned that they are also business owners and it is possible that I may have accepted or “friended” them on Facebook in order to use our network to promote our respective small and black-owned business. I have always referred to it as networking.

I am over the age of 18. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



Lamont D. Cooper

12/16/2020

Date

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

JOCKEY INTERNATIONAL, INC.,
Opposer.

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Opposition No. 91248336

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LAMONT D. COOPER,

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Applicant.

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AMENDED DECLARATION OF DEMAR HARVEY

I, Demar Harvey declare as follows:

1. I purchased a Black Jockey shirt in 2009 from One of A Kind Fashion.
2. I remember this item was purchased in 2009 because I wore my BJC shirt on a boat ride in Buffalo, NY which was held in that year.
3. Attached to this declaration is a true and accurate depiction of the item purchased from One of A Kind Fashion in 2009.
4. I have 4,955 Facebook “friends” and they are not all my personal friends. Lamont Cooper is one of those Facebook “friends.” We do not have a personal relationship outside of Facebook.
5. I am a business owner of several small business ventures which includes everything from sales and marketing and party/event planning and promotions.

6. I became acquainted with Lamont Cooper and his business after I purchased the shirt for the 2009 event. We became Facebook “friends” so that we could use each other’s networks to promote our businesses and support each other’s businesses.
7. Since I am in the promotion business and have a larger network than some, you will find that many people will tag my page in order to promote their products and services. Just within the last month or so, most of the posts to my page have been from other people promoting their products or services by tagging or linking to my page - see the posts attached to this declaration.

I am over the age of 18. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

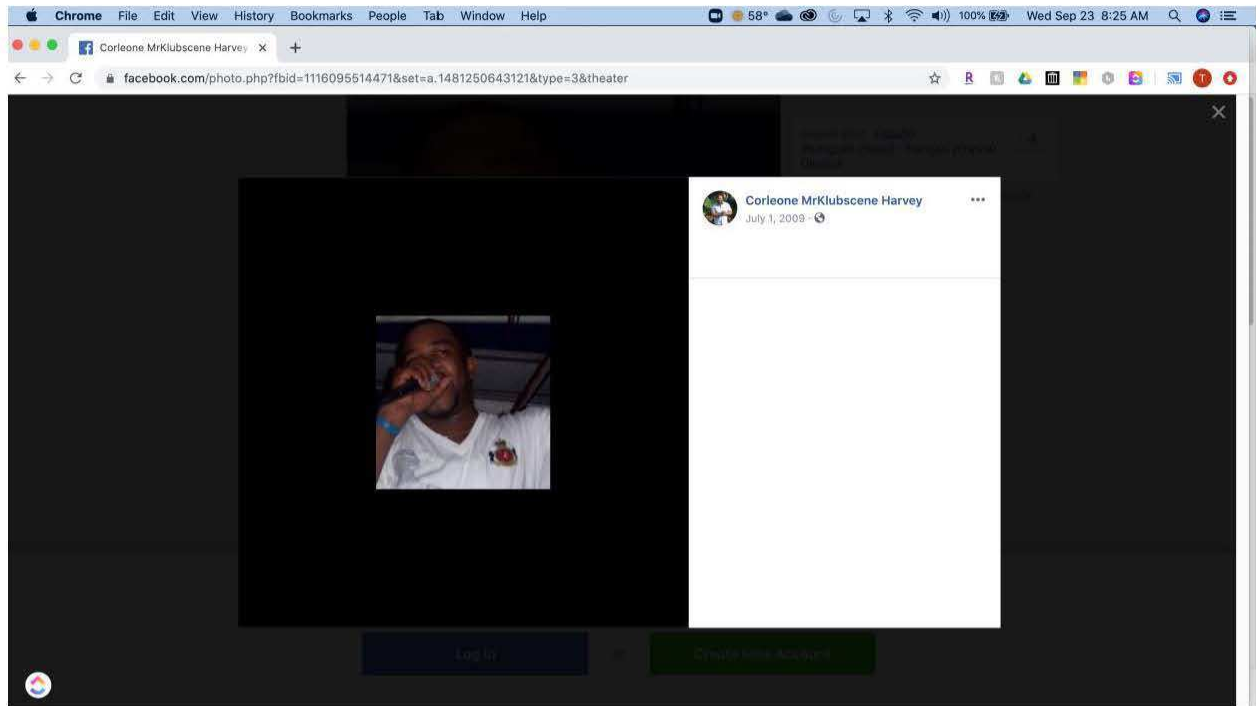


Demar Harvey

11/15/2020

Date

DEMAR HARVEY'S PROOF OF PURCHASE



https://www.facebook.com/photo.php?fbid=1116095514471&set=a.1481250643121&type=3&eid=ARAJBZC8aTUXkTGEI7Gcm2qDrZVYuNTVXPviw_C11LRXckNSuDkVahmPCvfMoSoV0VOjZyXf8wzxvKUC



Do you know Corleone? To see what he shares with friends, send him a friend request. Add Friend

Intro

- Works at KlubScene Ent
- Studied Medical speciality codes at University at Buffalo
- Went to Bennett High School
- Went to burgard high school
- Lives in Buffalo, New York
- From Buffalo, New York
- Married
- AIMcoleythe12know

Leah White is with Roze Kyle and 49 others.
November 9 at 9:33 AM · 🌐

👤 Dinners on Wednesdays 11/11 🍴

CHICKEN, RIB, SHRIMP, AND FISH DINNERS (STARTING AT 1030am)

Dinners are \$15 which includes 1 meat, 2 sides and a dessert!!!
Combos are \$21 which includes 2 meats, 2 sides and and a dessert!!!

Sides:
Macaroni and cheese
Candid Yams
String Beans
Pototoe Salad
Cole slaw

Preorders received a beverage!!!

VIEW ITEM
Ask the seller for more details Message

Photos See All Photos

10 10 Comments 4 Shares

Like Share

View 4 more comments

Dovie J Boykin CW
Yes and 20 for my jewelry
Like · 5d

Leah White replied · 3 Replies

Corleone MrKlubscene Harvey

Add Friend



LIKE Share

Aaron Eady is with Charise Mingo and 47 others.
 November 6 at 8:08 AM · 🌐

GET READY FOR THE HOLIDAYS
 "COUSIN" SHIRTS
 ALL COLORS... ALL SIZES...
 GROUP RATES
 FREE SAME DAY DELIVERY
 INBOX FOR DETAILS

Friends See All Friends

4,955 friends



Laraé Envi Nana Love Terrance Bass



Dalisha Simmons-Bass Monica Mullen Jones NaTasha Aramis



VIEW ITEM

Ask the seller for more details

Message

Corleone MrKlubscene Harvey

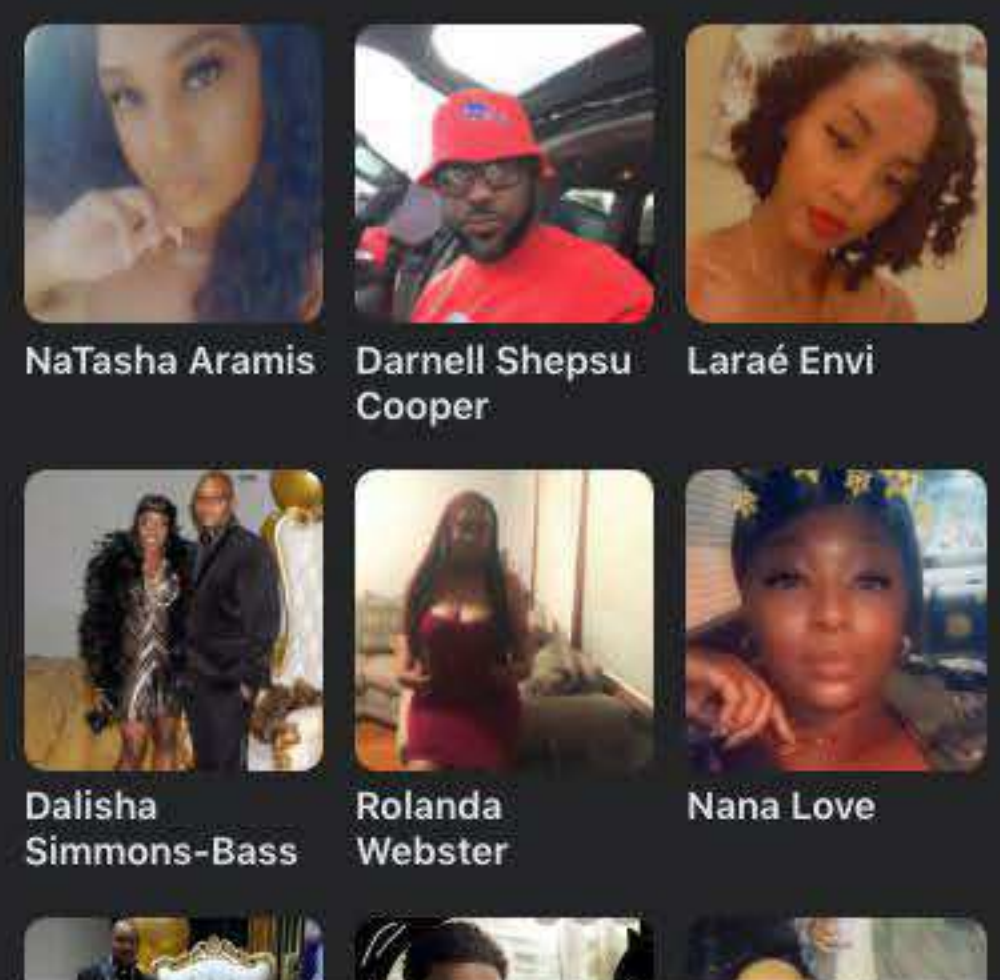
Add Friend, messages, search, more



Write a comment... with emoji, photo, gif, video icons

Aaron Eady is with Charise Mingo and 47 others. October 29 at 9:14 AM · KIDS CANT. "TRICK OR TREAT" NO PROBLEM.... HALLOWEEN (GIFT IN BALLOON) FULL OF CANDY & A PRIZE ONLY \$37. FREE SAME DAY DELIVERY INBOX FOR DETAILS

Friends 4,955 friends See All Friends





Corleone MrKlubscene Harvey

Add Friend



Write a comment...

Shae Love is with Jayce Ridgeway and 59 others. October 26 at 2:15 PM

So it's official!!! My mind never stop working no matter what I'm going thru an one thing 2020 has taught me is CATCH NO FEELING!!!! Yes so it's mines I'm taking orders get with me like an share

Friends See All Friends

4,955 friends



NaTasha Aramis Darnell Shepsu Cooper Laraé Envi Cooper



Dalisha Simmons-Bass Rolanda Webster Nana Love



91 21 Comments 20 Shares

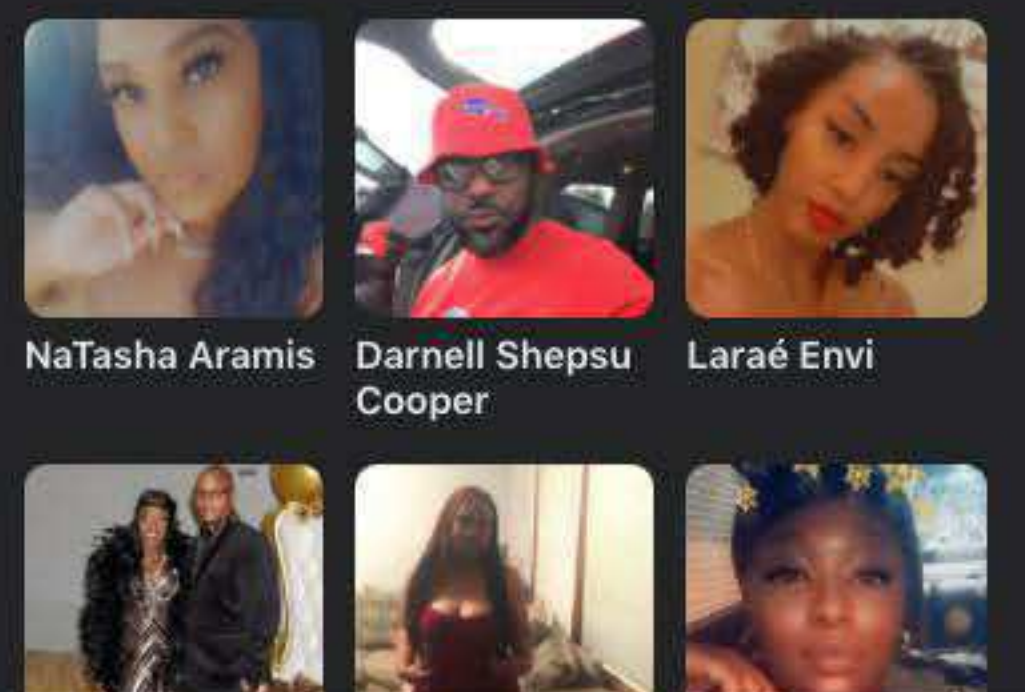
 **Corleone MrKlubscene Harvey**
 9+ notifications


Photos [See All Photos](#)



Friends [See All Friends](#)

4,955 friends



 **Glenn Coles** is with **Brandon Grippy J Campbell** and **97 others**.
 October 14 · 🌐

Looking to establish or re-establish your online presence?
 Need an image reboot on your online platforms?
 Today is the second workshop in the free, virtual "Black Businesses Matter" workshop series.
 Learn from a few local experts TONIGHT at 6pm...
 Marquis Burton, Owner of Breland Designs and one of the hottest website designers in WNY. (P.S. Marquis even built the BBM site for Dixon-Schwabl!)
 -and-
 Josh Smith, SEO Manager at Dixon Schwabl
 The session will be hosted by online guerilla marketing and event pro, Glenn Coles (so you know it's going to good)!!!
 There's still time to register at: www.blackbusinessworkshops.com

Establishing Your Online Presence



Corleone MrKlubscene Harvey

Add Friend

- went to bennett high school
- Went to burgard high school
- Lives in Buffalo, New York
- From Buffalo, New York
- Married
- AIMcoleythe12know


Stevo Johnson is with **Antoinette Thomas** and **89 others**.
 October 7 · 🌐

[#SHARE](#) The Biggest Sale Of My Career [#Live From](#)
[#NewYorkCity](#) Ya'll Ain't Ready For This One 🙌 This [#SATURDAY](#)
[#Reshare](#) & [#Tag](#) Someone [#MoreInfo](#) 716.510.8307

Photos See All Photos



Friends See All Friends

4,955 friends

LIVE · FROM · NEW · YORK · CITY

Matti Rouse

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SATURDAY · OCTOBER · 10TH · 3PM

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

JOCKEY INTERNATIONAL, INC.,
Opposer.

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Opposition No. 91248336

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v.

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LAMONT D. COOPER,

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Applicant.

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AMENDED DECLARATION OF SEAN CARTER

I, Sean Carter declare as follows:

1. I purchased a Black Jockey hat and t-shirt in the summer of 2008.
2. The clothesline was being promoted on social media. I liked what it looked like and also what it represented and wanted to show my support.
3. Attached to this declaration is a true and accurate depiction of the 2008 hat purchased from Lamont Cooper.
4. I am a business owner. I own Doris Records in Buffalo, NY.
5. I have 4,922 Facebook “friends” and they are not all my personal friends.
6. Lamont Cooper is one of those Facebook “friends.” We do not have a personal relationship outside of Facebook.
7. We became Facebook “friends” so that we could use each other’s networks to promote our businesses and support each other’s businesses. You will see from other posts on my page

that I am a proud advocate for investing in and supporting black owned businesses. A sample of those posts are attached to this declaration.

8. You will notice that many of those posts are tagged to other personal accounts, because it allows for a wider reach.

I am over the age of 18. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

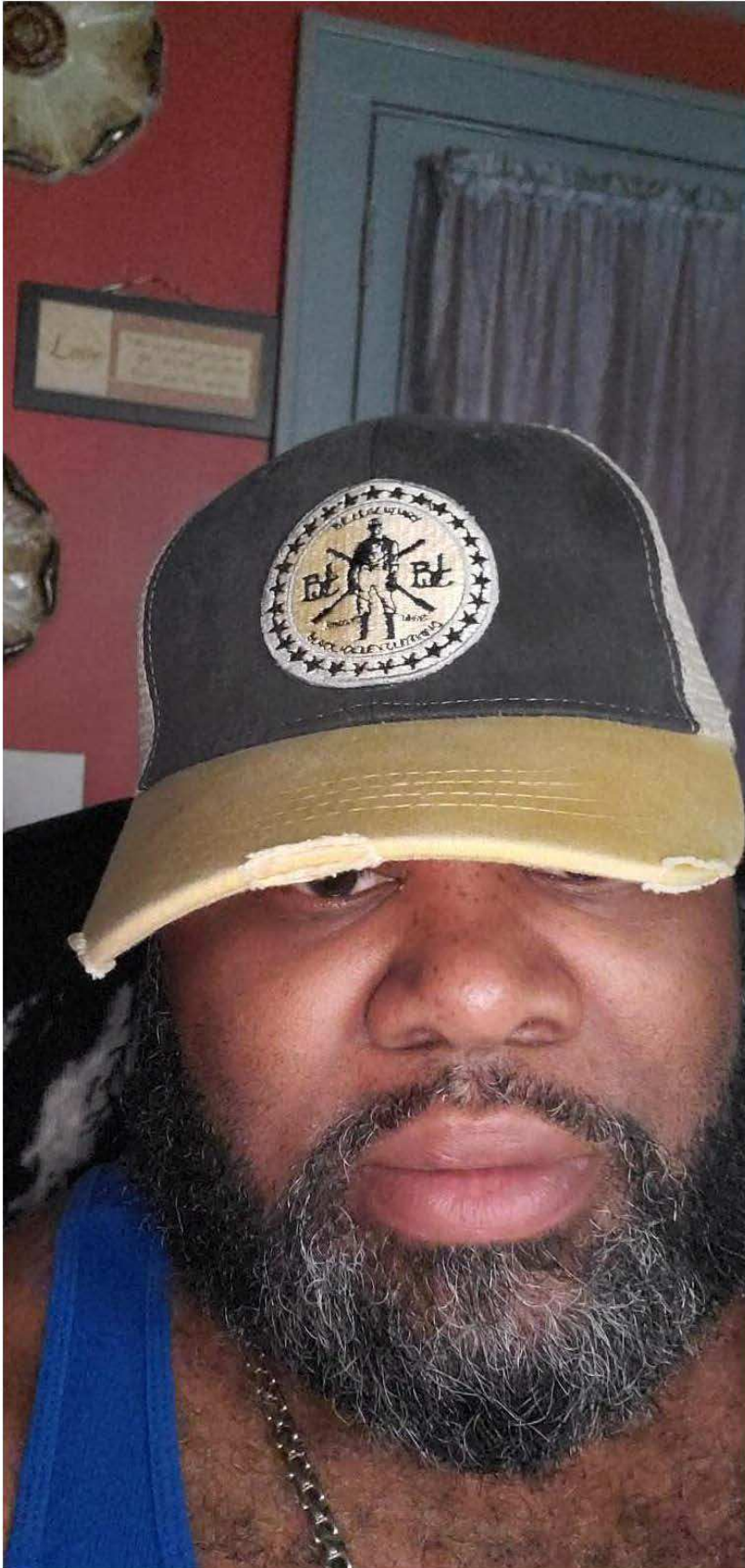
sean carter

Sean Carter

11/15/2020

Date

SEAN CARTER'S PROOF OF PURCHASE





Sean Carter March 13, 2018

Green machine smoothie by @ericacreates Aka Erica Webster

32 7 Comments 1 Share

Like Comment Share

Erica Chantel Thank you unc 🍀🍀🍀 Like · Reply · 2y

Taru Woods Don't shit on yourself Like · Reply · 2y

Sean Carter replied · 1 Reply

Felicia Parker How it taste Like · Reply · 2y

Sean Carter replied · 3 Replies

Write a comment...





Sean Carter
 May 9, 2019 · 🌐

pouring water by supporting by our own... chef Nikki Keysha Searles

6

Like Comment Share

Write a comment... 📷 📺 📺



DECLARATION OF SEAN CARTER - 006



Sean Carter
October 22, 2019 · 🌐

Rise & Grind!!! Thank you God for waking us today...

63 8 Comments 6 Shares

Like Comment Share

View 2 more comments



Bert Stevenson
GM

Like · Reply · 1y



Danyelle Lindsay
Good morning

Like · Reply · 1y



Monique Degree
Gd mrng

Like · Reply · 1y



Latrice Carr
Good morning Pete

Like · Reply · 1y



Kegler Eric
YES SIR.....

Like · Reply · 1y



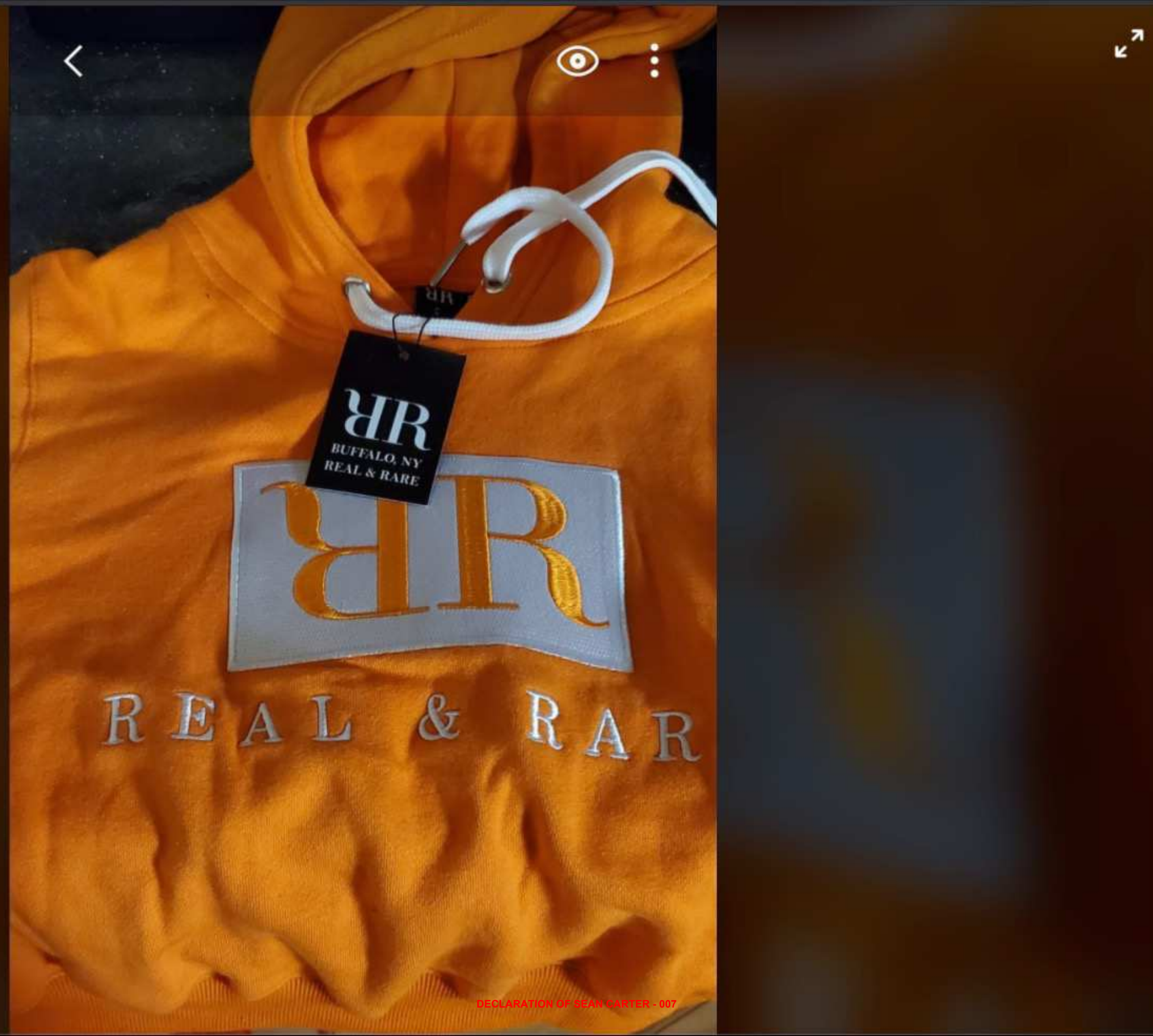
Steve Reed
AMEN my man.

Like · Reply · 1y



Write a comment... 🗨️ 📷 📺 📹





Facebook mobile app navigation bar with icons for home, messages, notifications, and profile.

Sean Carter
September 25 · 🌐

support our own..... the official #real&rare grand opening 9/26/20 (Amherst & parkridge) — feeling proud with Jerel Briggs and 2 others in Buffalo, New York.

👍❤️😂 122 10 Comments 7 Shares

👍 Like 💬 Comment ➦ Share

View 3 more comments

Charlie Rose Cash
Where Need one



Like · Reply · 7w

Kristie Latrice Mccarley
Love it ❤️

Like · Reply · 7w

Kimberly McCarley



Like · Reply · 7w

Krystal Carr
Love it !

Like · Reply · 7w

Write a comment... 🗨️ 📷 🧠 🔄



Sean Carter
October 13 · Buffalo, NY ·

living proof that we can stand the test of time... let's continue the journey together n support by sharing, purchasing or just liking. The Doris Records Family love yal & thanks in advance. \$25 (plus \$5 shipping outside Buffalo) please inbox color & address \$eancarter72 — at Doris Records.

101 28 Comments 15 Shares

Like Comment Share

View 10 more comments

Lisa Lane
Pink for me
Like · Reply · 4w

Reuben Jones
No share button
Like · Reply · 4w
Sean Carter replied · 1 Reply

Sean Carter
color n address please n thanks.
#oyab Narvell Benning
Like · Reply · 4w · Edited
Narvell Benning replied · 1 Reply

Keré Y. Boyd
How do I order? Me & Karma gonna get one.
Like · Reply · 4w
Keré Y. Boyd replied · 4 Replies

Write a comment...



Sean Carter
September 29 · 🌐

#molsonjuicebeverages
support our own... #716
— in Buffalo, New York.

30 18 Comments 4 Shares

Like Comment Share

Todd 'TheRef' Harris
Bro they are Arabs
Like · Reply · 6w
↳ Alan Croxie replied · 12 Replies

Larry Happy Miles
These really 🔥🔥🔥
Like · Reply · 6w

Allen Williams
Well I want some pete
Like · Reply · 6w 1

↳ Prince Christopher ... · 3 Replies

Write a comment... 🗨️ 📷 🧩 📄



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www.thecollectiondw.com



Sean Carter
 October 20 at 6:53 PM · 🌐

support our own.....
 — with **Dennis Wilson Jr. and Tashae Wilson.**

👍❤️ 9 3 Shares

👍 Like 💬 Comment ➦ Share

Write a comment... 😊 📷 🎬 🗨️





Sean Carter
October 22 at 1:31 PM · 🌐

This how I support others. #716 we on....
#scale #www.mrdwilson.com
— with Larry Legends and Dennis Wilson Jr. in Buffalo, New York.

👍❤️ 30 1 Comments 3 Shares

👍 Like 💬 Comment ➦ Share

Sonia Marie Croxie
Dennis Jr. Wilson i just got my shirt in the mail Saturday 🥳🥳🥳
🥳🥳
Like · Reply · 3w

Write a comment... 🗨️ 📷 🎬 📄



DECLARATION OF SEAN CARTER - 012

Sean Carter
October 31 at 2:02 PM · Buffalo, NY ·

ONLY IF WE CONTINUE TO SUPPORT EACH OTHER!
— feeling grateful at Doris Records.

124 4 Comments 4 Shares

Like Comment Share

Tha Real DjSmooth
100 100 100
Like · Reply · 2w

Antoinette Thomas
Absolutely
Like · Reply · 1w

Shontai Dannette Brown
right
Like · Reply · 1w

Michael Jarrad
YOU'VE BEEN WANTING TO GET YOUR PICTURE CARTOONED, LOGOS, FLYERS, MIXTAPE COVERS ??HIT ME UP FOR PRICES AND ENQUIRIES



Write a comment...

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

JOCKEY INTERNATIONAL, INC.,
Opposer.

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Opposition No. 91248336

v.

*

*

LAMONT D. COOPER,
Applicant.

*

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AMENDED DECLARATION OF LADON JONES

I, LaDon Jones, declare as follows:

1. I purchased a Black Jockey Clothing brand shirt from One of A Kind Fashion in 2009 and unable to locate these items.
2. Throughout the years, I continued to patronize One of A Kind Fashions and purchase BJC items.
3. Attached to this declaration is a true and accurate depiction of the item purchased from One of A Kind Fashion in 2015-2016.

I am over the age of 18. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

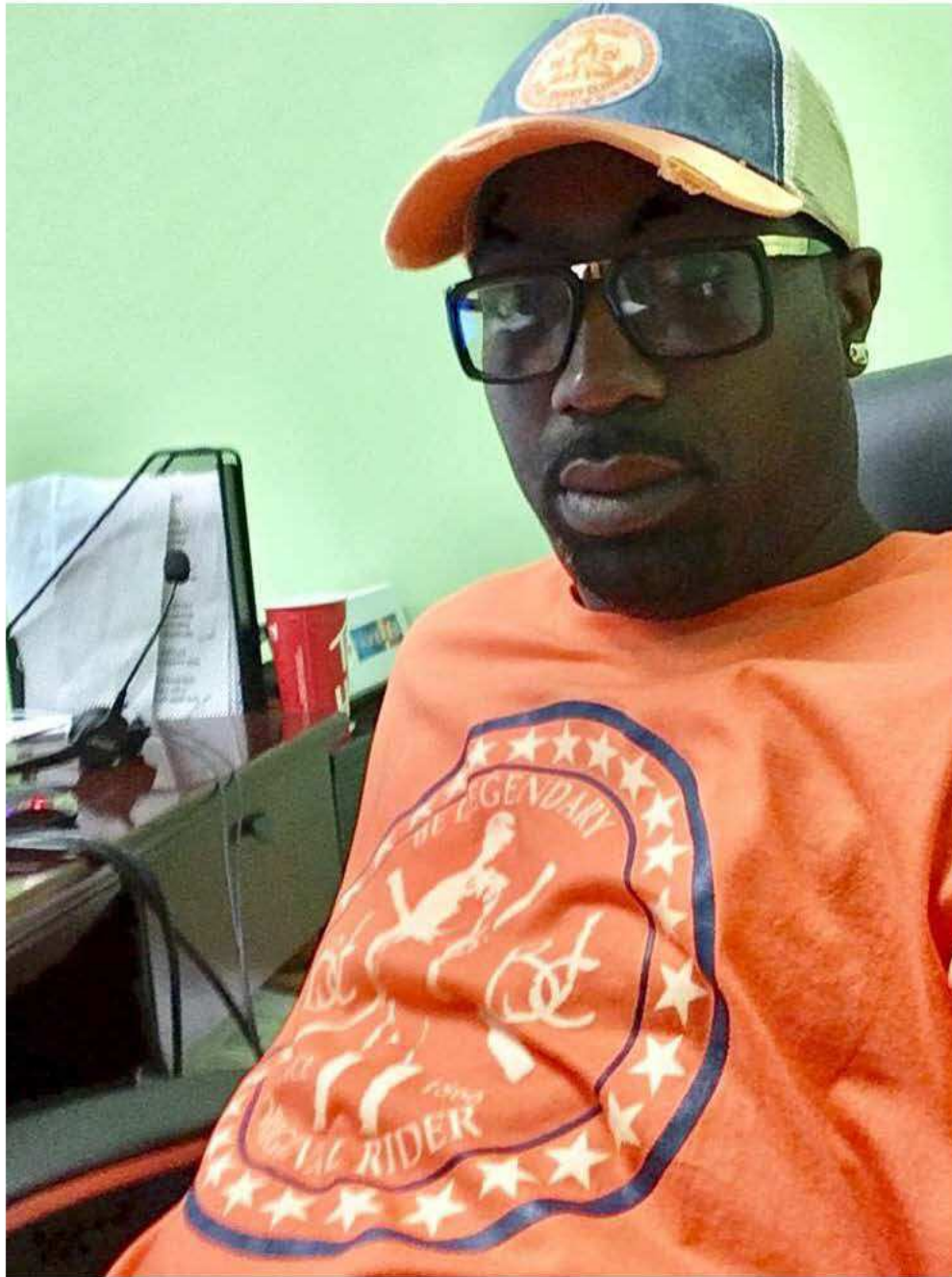
LaDon Jones

11/13/2020

LaDon Jones

Date

LADON JONES'S PROOF OF PURCHASE



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

JOCKEY INTERNATIONAL, INC. *
Opposer. *
 * Opposition No. 91248336
v. *
 *
LAMONT D. COOPER *
Applicant. *
 * * * * * * * * * * * * *

**DECLARATION OF DAYNA C. COOPER IN SUPPORT OF
APPLICANT’S MOTION FOR SUMMARY JUDGMENT**

I, Dayna C Cooper, hereby declare and state as follows:

1. I am the principal of Cooper Legal, LLC, counsel for Lamont D. Cooper (“Applicant”) in the above-captioned proceeding, and I have knowledge of all facts set forth in this declaration from my personal knowledge of the matters stated herein and/or my review of Cooper Legal’s files.
- AUTHENTICATION OF (NON-SELF AUTHENTICATING) DOCUMENTS**
2. EXHIBIT E is a true and accurate copy of the 2011 KABA Annual Report downloaded from the internet - http://kaba.org/wp-content/uploads/2017/04/2011_KABA_Annual_Report.pdf.
Last accessed December 15, 2020.
 3. EXHIBIT H is a true and accurate copy of an excerpt of Jockey’s Amended Responses and Objections to Applicant’s First Set of Interrogatories served by Jockey’s counsel on September 14, 2020.

I am over the age of 18, and I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 17th day of December 2020



Dayna C. Cooper