

BULKY DOCUMENTS

(Exceeds 100 pages)

Proceeding/Serial No: 92044888

Filed: 9-19-05

Title: MOTION TO SUSPEND PROCEEDINGS

MARK: FURU

Part 5 of 5

LAW OFFICES OF
LAURA FARINA
194 NASSAU STREET
PRINCETON, NEW JERSEY 08542
TELEPHONE (609) 924-6444
FAX (609) 683-4636
EMAIL: lfarina88@aol.com

February 15, 1999

Mr. Tyrone McRae
c/o Benny's
Naji Sportswear
627 N. Olden Avenue
Trenton, New Jersey 08638

Re: Trademark Application, NAJI

Dear Naji:

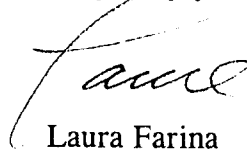
After four years of law practice in Princeton, I have decided to close down my practice and relocate. Consequently, I am writing to you to ask about your wishes with regard to the above-referenced matter.

If you are interested in having your file sent to you, please provide me with a Federal Express account number (or other means of payment for postage) and I will be happy to send the file to you.

Please contact me on or before February 26, 1999 as I expect to close my office by March 5, 1999 and relocate one week later. Thank you for your prompt attention to this matter

I have enjoyed the opportunity to work with you and wish you and your business the best in the future.

Very truly yours,



Laura Farina

April 16, 1999

VIA CERTIFIED MAIL

Mr. Tyrone McRae
c/o Benny's
Naji Sportswear
627 North Olden Avenue
Trenton, NJ 08638

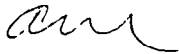
RE: Trademark Advice

Dear Naji:

As we have discussed, I enclose a copy of your file. I have recommended that you contact a local New Jersey attorney to represent you in this matter. While I have agreed to follow up on the status of your application, it would be most beneficial to you to retain new counsel in New Jersey to protect your rights regarding pursuit of the trademark application and your common law trademark rights against infringers.

Please call me at 301-961-9270 if you have any questions. I will follow up with you next week concerning any discussions I may have with Trademark Examiner Terria Hicks and your retention of new counsel. As I suggested, you should contact Mercer County Bar Association's Lawyer Referral Service. The number is listed in the Trenton Bell Atlantic Directory.

Very truly yours,



Laura Farina

SPERRY, ZODA & KANE

PATENT ATTORNEYS

SUITE D

ONE HIGHGATE DRIVE

TRENTON, NEW JERSEY 08618-2098

TELEPHONE
(609) 882-7575

FAX
(609) 882-5815

JOHN J. KANE
NEW JERSEY BAR

OF COUNSEL
FREDERICK A. ZODA
DISTRICT OF COLUMBIA BAR

ALBERT SPERRY
(1900-1997)

June 3, 1999

Mr. Tyrone McRae
627 N. Olden Avenue
Trenton, NJ 08638

Re: Our File McR-1-C
Trademark Matters

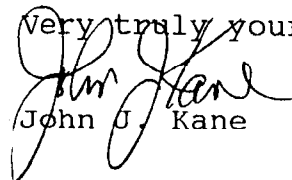
Dear Mr. McRae:

I spoke with the Examining Attorney in charge of this application and she stated that there has been a further Office Action mailed in order to suspend proceedings. I did not receive a copy of that more recent Office Action from you and therefore I ask you to check your records and forward a copy of it to me if at all possible.

It is possible that the Office Action was sent to the previous attorney's address and may have been lost in the mail. Therefore, you should execute the enclosed two documents which establishes me as the attorney of record in this case and the Examiner has told me once that has been filed, the Examiner will send a fax copy of the most recent Office Action to me and I will then make a photocopy and sent it to you and we will discuss this case further.

As such, unless you have received the Office Action, I suggest that you execute the enclosed two documents and return them to me immediately.

Very truly yours,


John J. Kane

JJK:sam
enclosures

SPERRY, ZODA & KANE

PATENT ATTORNEYS

SUITE D

ONE HIGHTGATE DRIVE

TRENTON, NEW JERSEY 08618-2098

TELEPHONE
(609) 882-7575

FAX
(609) 882-5815

JOHN J. KANE
NEW JERSEY BAR

OF COUNSEL
FREDERICK A. ZODA
DISTRICT OF COLUMBIA BAR

ALBERT SPERRY
(1900-1997)

August 20, 1999

Mr. Tyrone McRae
627 North Olden Avenue
Trenton, NJ 08638

Re: Our File MCR-1-C
Mark: NAJI

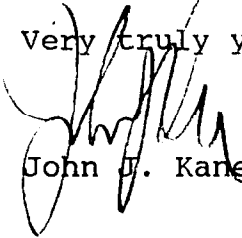
Dear Naji:

There is no change in the status of your trademark application. It is being held in limbo and no action will be taken until a final resolution is made in regard to the cited registration filed by James Todd Smith.

As soon as there is a final resolution to that mark, that is, once they file evidence of usage, then most likely a rejection will be issued on your application. There is nothing we can do to respond now. We must wait. It could easily be as long as six months or more until we receive an official Office Action. However, please be advised that as soon as we receive anything we will notify you. We are also monitoring this on a monthly basis to be sure that an Office Action is not issued and mailed to a wrong address.

I did try to return your call at 1-888-957-9124 but was told that the telephone has been disconnected. For that reason, I am sending you this letter.

Very truly yours,


John J. Kane

JJK:mjs

SPERRY, ZODA & KANE

PATENT ATTORNEYS

SUITE D

ONE HIGHGATE DRIVE

TRENTON, NEW JERSEY 08618-2098

JOHN J. KANE
NEW JERSEY BAR

OF COUNSEL
FREDERICK A. ZODA
DISTRICT OF COLUMBIA BAR

ALBERT SPERRY
(1900-1997)

RECEIVED
OCT 10 1999
FBI
U.S. DEPT. OF JUSTICE

October 4, 1999

Mr. Tyrone McRae
627 North Olden Avenue
Trenton, NJ 08638

Re: Our File MCR-1
Serial No. 75/421,844
Filed: 1/14/98
Mark : NAJI

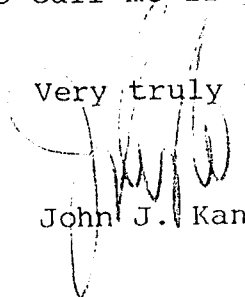
Dear Mr. McRae:

Enclosed please find a copy of a submission that I made for you to the United States Patent and Trademark Office to reinitiate examination of your above-identified application. This was based on the fact that we have determined that the previous application No. 75/306,844 has been abandoned by the applicant. That was the application filed by James Todd Smith as you are well aware.

Also now that I am initiating legal proceedings for you, it will be necessary for you to provide me with a legal retainer to cover pending future expenses. Therefore, I would ask you to forward to me a check in the amount of \$500 which we will use to charge against future legal action in regard to this application, and any other matters that you may have question on.

Please feel free to call me if you have any question or comment.

Very truly yours,


John J. Kane

JJK:mjs
enclosure

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Ikahaanaten Armor Incorporated
(Naji Sportswear)
Serial No. : 75/421,843
Filed : January 14, 1998
For : NATI
Law Office : 108
TM Attorney : Terria P. Hicks

REQUEST TO REINITIATE EXAMINATION

Trenton, New Jersey
October 4, 1999

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Examiner Hicks:

Applicant hereby requests the Examiner to reinitiate examination of the above-identified application since Serial No. 75/306,844 is now noted in the Patent and Trademark Office records as being abandoned.

Since that application is abandoned and the above-identified application had the proceedings suspended thereon because of that application, applicant requests the examination of the present application to be reinstituted.

As such, applicant requests the Examiner to issue a substantive action on the present application.

attention to the new Power of Attorney filed in this application for the below attorney. Please direct all correspondence to the below

CHANDLER

Attorney for Applicant
Reg. No. 26,921

CHANDLER, JAMES A. LEWIS
SHERIDAN, JAMES A. LEWIS
1000 New Jersey Avenue

609-882-7575

FAX: 609-882-5815

I hereby certify that this correspondence is being
mailed with the United States Postal Service as
first class mail in an envelope addressed to: Assistant
Commissioner For Trademarks 2900 Crystal Drive,
Arlington, VA 22202-3513,

on

10-4-99
CHANDLER, JAMES A. LEWIS

SPERRY, ZODA & KANE

PATENT ATTORNEYS

SUITE D

ONE HIGHGATE DRIVE

TRENTON, NEW JERSEY 08618-2098

TELEPHONE
(609) 882-7575

FAX
(609) 882-5815

E-MAIL
jjkane@njcc.com

JOHN J. KANE
NEW JERSEY BAR

OF COUNSEL
FREDERICK A. ZODA
DISTRICT OF COLUMBIA BAR

ALBERT SPERRY
(1900-1997)

May 17, 2000

Mr. Tyrone McRae
627 North Olden Avenue
Trenton, NJ 08638

Re: Our File MCR-1
Mark: NAJI
Serial No. 75/421,843
Filed: 1/14/98

Dear Mr. McRae:

We are pleased to inform you that prosecution of this application before the Examiner of Trademarks in the United States Patent and Trademark Office has been concluded successfully. The Examiner has determined that Federal registration of the above trademark is proper.

However, under the United States trademark laws, after an application for trademark registration on the Principal Register has cleared the examination procedure, it is published for opposition in the Official Gazette of the Patent and Trademark Office. When a trademark is published, anyone who feels that he would be damaged by issuance of a registration has the right to file a formal Notice of Opposition, within a period of thirty days after the date of publication, or within such extended period thereafter as the Patent and Trademark Office may see fit to grant, upon request by the potential opposer.

In this particular case, the mark will be published for opposition on June 6, 2000.

If no opposition is filed, then a certificate of registration will issue in due course, usually within a period of about two to three months following expiration of the time period within which opposition can be filed.

We shall of course be glad to answer any questions that you may have, and will report promptly any further developments as they occur.

Very truly yours,


John J. Kane

JJK:mjs

SPERRY, ZODA & KANE

PATENT ATTORNEYS

SUITE D

ONE HIGHGATE DRIVE

TRENTON, NEW JERSEY 08618-2098

TELEPHONE
(609) 882-7575

FAX
(609) 882-5815

E-MAIL
jjkane@njcc.com

JOHN J. KANE
NEW JERSEY BAR

OF COUNSEL
FREDERICK A. ZODA
DISTRICT OF COLUMBIA BAR

ALBERT SPERRY
(1900-1997)

September 8, 2000

Mr. Tyrone McRae
627 North Olden Avenue
Trenton, NJ 08638

Re: Our File MCR-1

Mark: MAST

Certificate No.: 2,380,278

Dated : 8/29/00

Dear Mr. McRae:

We have just received and enclose herewith the Certificate of Registration in connection with the above designated mark.

Please take note that an Affidavit must be filed between the end of the fifth year and the end of the sixth year following the date of registration, evidencing that the mark is still in use. Failure to file the Affidavit will result in cancellation of the registration. We have set our records to call this to your attention at that time.

Renewal will be due 10 years from the date of issuance. Again, we have so noted our records to provide a timely reminder of the necessity for renewal. However, in view of the length of time intervening before renewal comes due, it would obviously be desirable that you establish your own reminder as a double check in regard to filing of the renewal as well as the above Affidavit of use.

Under the law, a registrant is required to give notice that his mark is registered by displaying with the mark as used the words, "Registered in U.S. Patent Office", or "Reg. U. S. Pat. Off.", or the letter R enclosed within a circle. The law specifies that in any suit for infringement by the registrant who fails to apply such notice, no profits and no damages shall be recovered unless the defendant has actual notice of the registration. We, therefore, suggest that steps be taken promptly to have labels, catalogs, advertising material, letterhead - indeed everything on which the mark appears - show clearly that the mark is registered in the manner described in this paragraph.

We consider proper usage of a mark to be a subject of extreme importance. A trademark or service mark can be lost even though a registration certificate has issued if used improperly. Whenever used in printed material, a trademark or service mark should be distinguished from the surrounding copy by the use of capital letters or quotation marks or some other means of differentiation. The mark should always be used as an adjective immediately prior to a noun which describes the generic goods to which it pertains. The mark should never be used as a noun representing the goods to which the trademark pertains. Also the mark should never be used as a verb. All variations of the mark should be avoided, that is, the mark should not be compounded with other terms, it should not be abbreviated and it should not be used to coin another word or phrase.

We shall of course be glad to advise with respect to any specific questions or problems which may arise. Soft copies of the Certificate of Registration are enclosed for your use.

Very truly yours,



John J. Kane

JJK:mjs
enclosures

P.S. We are holding the original of this letter and the original Letters Patent in our office waiting for you to pick them up. Please call us before you come.

EXHIBIT G

Tyrone T. Mc Rae

Jun. 04, 1990

A-5 #179

Cobb County Adult Detention Facility

Post Office Box "L"

Marietta, Ga 30061

To: Mr. William Morse

191 Roswell St.

Suite 202

Marietta, Ga. 30060

Re: Tyrone T. Mc Rae, petitioner, v. Sheriff
of Cobb County, State of Georgia; Habeas Corpus-
(State), Habeas Corpus (Federal) pre-indictment
petition.

Dear Mr. Morse,

Enclosed in this letter is a Writ of Habeas Corpus (FED.), of which I am entitled to, along with effective court appointed counsel.

As you know, I have been here approx. 6 mths. from the date of 12-6-89. I made my first appearance in court on 1-29-90, and did not receive a bond until 4-6-90, in excess of \$100,000, of which I am unable to post bail because of indigency. Also, on this same court appearance, 1-29-90, a commitment was stated by Magistrate Judge Bodiford to bind my case over to a higher court according to transcripts of appearances submitted by Marilyn C. Roe, CCR-B-869 Official Court Reporter. At this time I was entitled to the attached Habeas Corpus claims which you withheld thru counsel stating, "There are no remedies I can pursue, until they indict you." Approximately six weeks later I was scheduled for a 'bond reduction' hearing which I was denied by Judge Bodiford and then given another commitment to the court that "The District Attorney will present this matter to the Cobb County Grand Jury within 30 days" (5-22-90).

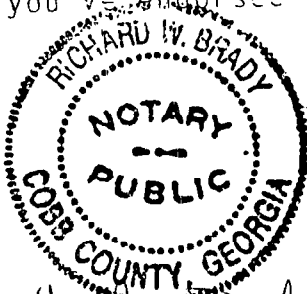
I am hoping you will provide the adequate assistance to process these forms for a more effective assistance and counsel.

being that I have been denied the first commitment hearing, and now we are following upon a second commitment by the court which also may be subject to denial, and this unprecedented process could extend over a substantial length of time in which I am illegally and unlawfully detained, with an excessive bond, and undicted.

I see your points in filing for the motion to dismiss for want of prosecution, yet I also see the legalities of Habeas Corpus as a reinforcement to: the motion to dismiss; the setting of a reasonable bond, and the binding over to a higher court/or indictment more efficiently.

If there is any conflict of interest on the part of the legal opinion of counsel, in granting the effective assistance required to file these pre-indictment forms, I ask you to please withdraw from the case of Tyrone T. Mc Rae v. State of Georgia, # _____, immediately.

I don't expect for you to defend me on these Habeas Corpus motions since you stated yesterday, "If you file the Habeas Corpus, I am going to withdraw from the case." But if you should reconsider for some reason or another, I want copies of these attached forms after you've endorsed and notarized your assistance.



Richard W. Brady
NOTARIZED

Notary Public, Cobb County, Georgia,
My Commission Expires May 9, 1993

Sincerely,
Tyrone T. Mc Rae
Tyrone T. Mc Rae,
Defendant



UNITED STATES PATENT AND TRADEMARK OFFICE

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TESS was last updated on Thu Nov 4 04:25:02 EST 2004

Logout Please logout when you are done to release system resources allocated for you.

Start List At: **OR Jump** to record:

Check Status

F.U.B.U.

Word Mark F.U.B.U.

Goods and Services IC 025. US 039. G & S: men's, women's and children's clothing, namely sweatshirts, shirts, jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, visors, caps, dresses, shoes, sneakers, boots, wristbands, socks, T-shirts, belts, undergarments, neckties, dress shirts, collared shirts, rugby shirts, knit shirts, shorts and sandals.
FIRST USE: 19920101. FIRST USE IN COMMERCE: 19920101

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 74527332

Filing Date May 23, 1994

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition May 16, 1995

Registration Number 1910169

Registration Date August 8, 1995

Owner (REGISTRANT) J. ALEXANDER MARTIN INDIVIDUAL UNITED STATES 102-20 FARMERS BLVD HOLLIS NEW YORK 11423

(LAST LISTED OWNER) GTFM, INC. CORPORATION BY ASSIGNMENT NEW YORK 350 FIFTH AVENUE., SUITE 6617 NEW YORK NEW YORK 10118

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record WILLIAM C COX

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

350 FIFTH AVENUE., SUITE 6617

NEW YORK, NY 10118

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025

men's, women's and children's clothing, namely sweatshirts, shirts, jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, visors, caps, dresses, shoes, sneakers, boots, wristbands, socks, T-shirts, belts, undergarments, neckties, dress shirts, collared shirts, rugby shirts, knit shirts, shorts and sandals

First Use Date: 1992-01-01

First Use in Commerce Date: 1992-01-01

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2001-05-15 - Section 8 (6-year) accepted & Section 15 acknowledged

2001-02-14 - Section 8 (6-year) and Section 15 Filed

1995-08-08 - Registered - Principal Register

SEE WYS DOS FOR FUGU THE COLLECTION LLC.

1995-05-16 - Published for opposition

1995-04-14 - Notice of publication

1994-09-30 - Approved for Pub - Principal Register (Initial exam)

1994-09-27 - Examiner's Amendment Completed

1994-09-24 - Case file assigned to examining attorney

CONTACT INFORMATION

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=74527332>

9/8/2004

Correspondent

WILLIAM C COX (Attorney of record)

WILLIAM C COX

SHARVEY, GORDON, HERLANDS, RANDOLPH & COX

355 LEXINGTON AVENUE

NEW YORK, NY 10017



United States Patent and Trademark Office

[Home](#) [Site Index](#)[Guides](#) [Contacts](#) [eBusiness](#) [eBiz alerts](#) [News](#) [Help](#)[Assignments on the Web](#) > [Trademark Query](#)**Trademark Assignment Abstract of Title****Total Assignments: 1****Serial #:** 74527332**Filing Dt:** 05/23/1994**Reg #:** 1910169**Reg. Dt:** 08/08/1995**Registrant:** J. ALEXANDER MARTIN**Mark:** F.U.B.U.**Assignment: 1****Reel/Frame:** 1430/0145**Received:** 02/20/1996**Recorded:** 02/02/1996**Pages:** 3**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** MARTIN, J. ALEXANDER**Exec Dt:** 01/26/1996**Entity Type:** INDIVIDUAL**Citizenship:** UNITED STATES**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** GTFM, INC.

SUITE 4820

350 FIFTH AVENUE

NEW YORK, NEW YORK 10118

Correspondent: HERZFELD & RUBIN, P.C.

WILLIAM H. COX

40 WALL STREET

NEW YORK, NY 10005

Search Results as of: 09/08/2004 11:39 AM

If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 703-308-9723

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List At: OR to record: **Record 60 out of 61**

Check Status

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)



Word Mark FUBU

Goods and Services IC 025. US 022 039. G & S: men's, women's and children's clothing, namely, sweatshirts, shirts, jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, visors, caps, dresses, shoes, sneakers, boots, wristbands, socks, T-shirts, belts, undergarments, neckties, dress shirts, collared shirts, rugby shirts, knit shirts, shorts and sandals. FIRST USE: 19920900. FIRST USE IN COMMERCE: 19920900

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 261112 261121

Serial Number 75087056

Filing Date April 4, 1996

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition November 5, 1996

Registration 2068058

Number**Registration
Date**

June 3, 1997

Owner(REGISTRANT) GTFM, Inc. CORPORATION NEW YORK 350 Fifth Avenue, Suite
4820 New York NEW YORK 10118**Attorney of
Record**

William H. Cox

**Prior
Registrations**

1910169

Type of Mark TRADEMARK**Register** PRINCIPAL**Affidavit Text** SECT 15. SECT 8 (6-YR).**Live/Dead
Indicator**

LIVE

[PTO HOME](#)[TRADEMARK](#)[TSS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[TOP](#)[HELP](#)[PREV LIST](#)[CURR LIST](#)[FIRST DOC](#)[PREV DOC](#)[NEXT DOC](#)[LAST DOC](#)[LAST DOC](#)[HOME](#) | [INDEX](#) | [SEARCH](#) | [SYSTEM ALERTS](#) | [BUSINESS CENTER](#) | [NEWS&NOTICES](#) |
[CONTACT US](#) | [PRIVACY STATEMENT](#)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-09-22 11:56:55 ET

Serial Number: 75087056

Registration Number: 2068058

Mark



(words only): FUBU

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2002-07-25

Filing Date: 1996-04-04

Transformed into a National Application: No

Registration Date: 1997-06-03

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2002-07-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. GTFM, Inc.

Address:
GTFM, Inc.

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=75087056>

9/22/2004

350 Fifth Avenue, Suite 4820
New York, NY 10118
United States

Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025

men's, women's and children's clothing, namely, sweatshirts, shirts, jeans, jackets, coats, sweatpants, slacks, suits, hats, headbands, visors, caps, dresses, shoes, sneakers, boots, wristbands, socks, T-shirts, belts, undergarments, neckties, dress shirts, collared shirts, rugby shirts, knit shirts, shorts and sandals

First Use Date: 1992-09-00

First Use in Commerce Date: 1992-09-00

Basis: 1(a)

ADDITIONAL INFORMATION

Prior Registration Number(s):
1910169

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2002-07-25 - Section 8 (6-year) accepted & Section 15 acknowledged

2002-06-10 - Section 8 (6-year) and Section 15 Filed

2002-06-10 - PAPER RECEIVED

1997-06-03 - Registered - Principal Register

1997-04-11 - Allowed for Registration - Principal Register (SOU accepted)

1997-04-04 - Statement of use processing complete

1997-02-28 - Amendment to Use filed

1997-01-28 - Notice of allowance - mailed

1996-11-05 - Published for opposition

1996-10-04 - Notice of publication

1996-08-28 - Approved for Pub - Principal Register (Initial exam)

1996-08-27 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

William H. Cox (Attorney of record)

WILLIAM H. COX

JANVEY GORDON HERLANDS et al

355 LEXINGTON AVE

NEW YORK, NY 10017

NY State Department of State
Division of Corporations

Selected Entity Name: FUBU THE COLLECTION, LLC

Current Entity Name: FUBU THE COLLECTION, LLC
Initial DOS Filing Date: NOVEMBER 15, 1999
County: NASSAU
Jurisdiction: NEW YORK
Entity Type: DOMESTIC LIMITED LIABILITY COMPANY
Current Entity Status: ACTIVE

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O GTFM, LLC
350 FIFTH AVE / SUITE 6617
NEW YORK, NEW YORK 10118

Registered Agent

NONE

NOTE: New York State does not issue organizational identification numbers.

[]

|

||

|

EXHIBIT H

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For Us, Forever - marketing of urban apparel maker FUBU - Statistical Data Included - Interview

Brandweek, Oct 11, 1999 by Sloane Lucas

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Take our survey

IN AN URBAN-APPAREL SEGMENT WHERE SUCCESS CAN BE FLEETING, DAYMOND JOHN IS ORCHESTRATING ADS, ENDORSEMENTS AND LICENSES TO ASSURE FUBU OF A LONG-TERM PRESENCE.

Ads by Google

Though FUBU co-founder and CEO Daymond John says it's been told far too often already, who can resist repeating the tale of a veritable hip-hop Horatio Alger who started a clothing company by stitching knit hats in his Queens, N.Y., basement and selling them on street corners, and after seven years had nurtured it into a broad apparel provider that is available in 5,000 stores and generating an estimated \$350 million in wholesale sales?

Urban Wear Wholesale
Save 50-90%
retail prices
instant acc
listings now
www.Clothing

But that can wait until later. More pertinently, the founder of "For Us, By Us" has been nominated as a Brandweek Marketer of the Year by virtue of the fact that he is running his company in a manner that suggests it will be around for another seven years. In a segment with more than its share of splashy, edgy successes, FUBU has differentiated itself by aligning itself for long-term success: hedging on styles, like baggy jeans, that it knows won't be around forever, adding significant licensing partnerships, including the National Basketball Association, and strengthening its commitment to advertising and marketing without, so far, losing the spirit of a homespun startup.

Cool New Clothing & Beanies, M hats, Yoga Skirts, Sho Boxers, Th dorkclothing.co

John, now 29, is "aggressive, hard-working and very focused," said Russell Simmons, the hip-hop legend and founder/CEO of clothing line Phat Farm. "Daymond is a great marketer, and I believe he knows his community. In the past, there have not been great executives who have had the opportunity to exploit their own community, and what their own community brings to the world.

Hip Hop C Gear Prom Discounts, enyce, girb akademiks, www.urbankin

"Daymond is in a great position to evolve as his audience does," Simmons added. "He knows the core and he knows what makes them tick. He doesn't want to lose them He's really smart and sensitive to the people who are the most trend-setting."

FUBU's success in parlaying home-made hats into a major label within the \$5 billion hip-hop fashion market is due in no small part to nimble marketing efforts which have run the gamut from orchestrated graffiti blitzes to cultivating spokespeople who connect with FUBU's broadening demo.

Phat Farm
Save up to
perfume/co
Check out
clearance
department
www.Scentime

The celebrity connections go back to 1993, when FUBU's four founders welcomed their

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partnersh

Simmons, hales from the same Queens neighborhood as John. LL Cool J appeared wearing FUBU clothing in the brand's first print ad, in hip-hop magazine The Source, and his clout later got a FUBU hat on TV, in a Gap commercial, for which the rapper had penned a little ditty that, unbeknownst to The Gap, included the phrase, "For us, by us, on the down low"---a veiled nod to the FUBU line.

THOM
GAL

In addition to LL Cool J, a parade of hip-hop's elite have helped build the brand: directors Hype Williams and Billy Woodruff, singers Mariah Carey, Mary J. Blige, Boys II Men, Fugees and Sean "Puffy" Combs, as well as athletes such as Tim Hardaway, Simeon Rice, Kevin Garnett and Terrell Davis.

The celebrity support has been balanced by guerrilla marketing efforts that convey a sense of street savvy. One early tactic: painting store gates to display the FUBU logo when they were rolled down after the stores closed. Lately, FUBU has had a van navigating the East Coast offering FUBU fans tickets to a huge Labor Day bash in St. Martin in the Caribbean. And in September, Macy's, a key FUBU retailer, set up interactive window displays to tout FUBU's sponsorship of Y2G.com, a youth-targeted Internet portal.

Despite the brand's progress, John said fresh approaches to marketing are just as crucial now. "We still look for the next vein to do it in, not [always] the normal channels ... even though we do go through the normal channels," he said, "But we're always looking for something different."

The company keeps its print ads constantly varied in approach and placement, and broadened the media mix to TV advertising on BET and MTV last year.

With the company having achieved visibility and retail credibility, John is moving quickly to position it for a long-term role. His latest coup: being tapped by the National Basketball Association this year to produce a line of jerseys, shorts, warm-up suits and sweater vests emblazoned with the logos of the 29 teams. Industry reports put revenues from the NBA products somewhere in the \$25-50 million range.

Although some considered that a risky step, given the softness in athletic licensing, John has no reservations. "I mean, our consumers [are] waiting for stuff like us to come into the NBA market because they understand that we're young kids who can probably understand basketball. They can identify with us. We're the kids from the street."

The expansion of FUBU's licensing programs has come as another step toward brand ubiquity. Industry execs figure that \$150 million, or nearly half of FUBU's annual revenues, derives from such licensed products as Jordache ladies' and girls' wear, La Rue men's and women's bags and Wittnauer watches. Licensees are pending in fragrances, baby products and other segments.

FUBU is also pushing its own retail imprint into the market, particularly to establish a firm standard in overseas markets where it may have first been represented by illegal knockoffs. A freestanding store opens this month in South Africa, and a concept shop in Australia. Freestanding units are planned for 2000 in Manhattan, South America,

Greece, Mexico, Italy and the U.K.

That's not bad for a kid who started knocking out knit caps in his basement. And while John would like to move beyond the Horatio Alger story, in the interest of positioning the company as a durable, established force, the story indeed is too good not to tell.

For starters, friends say that as long as they have known him, John was looking to set up shop, any shop. "Daymond always had a plan," said FUBU cofounder Keith Perrin. "He wanted to have his own business."

It was serendipity that led him to fashion. John was a waiter at Red Lobster when he went with his friend Carl Brown on a shopping trip into Manhattan looking for a hat. John was shocked to see vendors were getting \$20 for simple knit creations.

A self-sufficient son of a single mom, John had hemmed enough pants to know he could make that hat himself. So he began stitching hats at home and selling them around the neighborhood, raking in as much as \$800 in one day.

Even with that first hint of success, it was future FUBU vp/co-founder J. Alexander Martin, who was putting himself through college working part-time as a Macy's salesperson, where he harbored an urge to become a buyer, who urged John to seriously consider fashion as a business opportunity.

Martin soon shipped off to the Gulf War, but when he returned, the two, along with Brown and Perrin, began to forge ahead with FUBU. It was John who brainstormed the full name, "For us, by us," reduced by the others to a two-syllable acronym that they felt emulated the punchy Nike and Reebok monikers. Research was done on the fly, with the FUBU team scouring the streets and nightclubs for inspiration, while Martin poked around manufacturers to investigate how they did business.

By 1993, they had signed LL Cool J as spokesman, and crashed the Magic apparel trade show in Las Vegas, staging a fringe showing in their hotel room that yielded a \$300,000 order from The Lark, a Chicago retailer.

To finance production, Martin offered up \$5,000 he had gotten as a settlement from a car accident and John took out a \$100,000 mortgage on his home. Using a few sewing machines scattered around John's house, FUBU became a full-fledged manufacturer. By 1995, FUBU had caught the eye of Samsung's textile division, which became an exclusive distributor, and the partners were on their way to building their network of 5,000 retailers.

Today, the roles of the co-founders remain fluid, as at the start. Perrin primarily oversees promotional efforts. Brown acts as licensing policeman, overseeing quality and brand control. Martin continues to steer design. And John sets the vision.

"He's the type of person that can analyze the whole thing and see something, and then go for it," says Brown. "He'll take chances when the average person would say 'No, you can't do that.' He's the type of person that will ask, 'Why not?'"

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Young Businessmen Score With "For Us By Us" Clothing Line

Ebony, Oct, 1999 by Kevin Chappell

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THE elevator to the FUBU corporate headquarters on the 66th floor of the Empire State Building moves so fast that the ride is over before you realize how high you have climbed. But as soon as the doors open, the significance of the journey is immediately apparent.

Ads by Google

In this high-rise bastion of lily-white stodginess, hip-hop tunes spill out of FUBU's mahogany and black marble offices and into the hallway. Within the company's expansive maze of corridors and offices, baby-faced executives wearing baggy jeans, bubble jackets and big-lade sneakers fill million-dollar orders, and four similarly dressed 29-year-old Brothers run the show.

Fubu Jean Wholesale
Save 50-90%
retail prices
instant acc
listings now
www.ClothingL

Some have called the story of how Damon John, J. Alexander Martin, Keith Perrin and Carl Brown went from hawking tie-top hats on New York City street corners to heading a global fashion empire "the classic rags-to-riches tale." But it's much more than that. It is in fact a story unparalleled in modern fashion history, and one that holds its own with any business success of the late '90s.

Fubu Plus
14W-24W
Huge selec
Fubu Ladie
35 Jeans, [and Tops!
www.alight.cor

Seven years ago, FUBU was little more than a street hustle. Last year, the company raked in \$350 million with a line of 500 garments in more than 5,000 stores in 15 countries. "We all thought we'd have a company and work," says Alexander, who serves as vice president. "But not have a compan-e-e. I spell that with two e's. To take nothing and turn it into something, and to be at this point in our lives where we can sit back and see all the things that we have accomplished feels really good."

Cool New Clothing & Beanies, M hats, Yoga Skirts, Sho Boxers, Th dorkclothing.co

Selling everything from jeans to watches to pajamas, FUBU has infiltrated the 'hood, Hoboken, Hong Kong, and every place in-between. Now the company is on the cusp of becoming what few corporations ever become--a household name, and perhaps even a lifestyle.

Leading the charge are the four Brothers from Queens who are looking to overthrow Hilfiger, Lauren and the other European fashion kingpins who have long held the world captive under their thimble thumbs. "A lot of designers feel like their ideas can change the world," says John, FUBU's president. "One designer who is really in love with fashion won't take the advice of anybody else. His mind-set is, 'I want to make this, and that's it, and everybody's going to love it.' That's not the way run our business. It's a 'majority rules' situation and we listen to our consumers in regard to what they want. And besides, we live a fairly normal life and we know what we like when it comes to fashion. We might be a little off sometimes, but our little off is better than the other

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8/24/2004

guy's best."

Confident talk from a guy who was once a waiter at Red Lobster. In 1992, while waiting tables at the seafood restaurant, John began to make extra money by making tie-top hats. Carl would cut the simple squares of fabric, and John and the other guys would sell them at concerts, sporting events or anywhere there was a group of Brothers. One day, they sold \$800 worth of hats and knew they were on to something.

The name FUBU--an acronym meaning "For Us By Us"--was created one day while the guys were just sitting around kicking it. "When we were making the hats, a lot of people were making those same hats. So we figured, what can we do to make ours different? So we decided to put a name on it," John says. "We wanted to come up with an acronym meaning something. It had to be a name, a name that you hadn't heard before, but a name that you would definitely remember. You didn't know if it was Italian or Japanese or American. So that's how we came up with the name."

It was Martin, then a student at New York's Fashion Institute of Technology, who persuaded the guys to make a variety of other garments in addition to the hats.

The group's first break came in 1993 when they convinced rapper L.L. Cool J., a neighborhood acquaintance John had known since high school, to wear FUBU garments on a magazine photo shoot. Then other rappers, like Brand Nubian, began to wear FUBU clothes in videos and at concerts.

After becoming aware of the street acceptance of their creations, the four founders flew to a garment trade show in Las Vegas in 1994 in hopes of snagging a retail account. With no money to purchase a booth, they handed out postcards that invited buyers to come to their hotel room a few miles outside the city to see their garments, which consisted of several embroidered and screen-printed T-shirts, a few sweatshirts and polo-style fleece tops.

When the trade show ended, they had written \$300,000 in orders. "Booking turned out to be the easy part," Martin says. "But it was an ordeal to make those 15 pieces. Now we had to make 20,000 to 30,000 pieces, and we had no idea how we were going to do it."

Money was the first thing they knew they needed. John took out a second mortgage on his two-story home, and turned the first floor into a factory assembly line. "We had these ladies come in and cut and sew fabric all day long," John says. "At the same time, we took out an ad in the New York Times. It said: 'Million dollars in orders. Need finances.'"

For the next six months, the four founders received a crash course in running a clothing factory. "We would bum fabrics in the backyard," Perrin says. "We had big dumpsters back there. We broke every fire code there was."

Meanwhile, about 20 companies answered FUBU's ad seeking funding. The best deal came from Samsung America, one of the world's largest distributors. "That was in 1995. It took about two more years for everybody to know us," John says. "Once we started

working with Samsung, and we were on that level, retailers knew we were for real."

One retailer that took the four seriously was Macy's, which saw FUBU as a chance to tap into the urban mens-wear market which, at the time, was dominated by local "street" stores. In 1996, FUBU became the first African American designer to have its own display window in Macy's famed New York City store.

For the first four years, Brown says they pumped virtually every penny they made back into the business. "We'd just do it and wouldn't even notice that we were working for no money," he says. "After a while it was just fun. We were going to expos, We were flying around. We were consumed trying to make our dream a reality. We were caught up in it so much, it just wasn't an option to stop. You worked so hard at it because you wanted it to become something."

What FUBU has become is a fashion statement that crossed every social, economic and geographic boundary, and shattered the myth that Black designers don't sell well outside of the 'hood. In fact, White suburban teenagers are now one of the company's fastest growing consumer segments. "We're not necessarily chasing that dollar," John says. "But if they want to support us, then we appreciate it."

FUBU's tremendous success has only intensified the work schedule for the four founders. Their typical day now consists of arriving at the office by 10 a.m., making their rounds to a dozen or so meetings with manufacturers, sales teams, the public relations staff and licensees. "In one day, we make about 100 different decisions," John says. "We get calls from stylists for videos and photo shoots, will have people bringing in new fabrics. We're really busy until 5 or 6 o'clock."

After work, they usually have dinner with a client, friend or industry person, then it's time to hit New York City's party circuit to network and keep in touch with the latest trends. "You're lucky to get home by 2 a.m.," John says. "Then the weekend is usually spent flying to either a charity event or to visit a store."

For FUBU, the possibilities are endless. In addition to rolling out new product lines, like footwear, eyewear, swimwear, loungewear and a stat collection, the company plans to open 30 FUBU stores in the fall, and about 100 worldwide in the next five years. The first in the United States is planned for New York City. Then there's the FUBU perfume, the new line of FUBU NBA apparel, the FUBU racing team, and even talk of FUBU entertainment ventures.

While Brown is the only founder who is married, three of them have children. They all hope to eventually pass the business on to their offspring. In the meantime, they say, they will remain the same guys they've always been. "Our company has changed, but we're the same people," John says. "We are not necessarily doing this for money, but for the independence, to be able to choose our own destiny. A lot of people have jobs that they have to go to but don't necessarily love, or even like. So to get up every day and be inspired to go to work is a blessing."

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'We're a Company, Expanding into a Lifestyle'

Brandweek sat down recently with Daymond John in his office in New York's Empire State Building to get a read on where he, and the FUBU brand, are heading. Here are some excerpts:

Brandweek: Does FUBU work hard to leverage the lore of the company's start in a basement in Queens?

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CNN Movers

Team FUBU Looks Back to the Streets for the Designs of the Future

Aired January 8, 2000 - 3:30 p.m. ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

JAN HOPKINS, HOST (voice-over): Deborah Cox is a crossover star, a singer whose R&B hits have topped the pop charts. She's a fitting fashion model for FUBU, a clothing company with awesome crossover power. FUBU's football jerseys, jeans, shirts and other apparel have scored big with both urban and suburban young people.

The company is run by four African-American men and its name means "for us, by us." FUBU's cultural roots -- streets and the sounds of America's inner cities -- are one reason Canadian-born Deborah Cox agreed to model the company's clothes.

DEBORAH COX, SINGER: FUBU -- the whole collection, the guys, what they represent -- is a very positive image as well. So knowing from where they came from and where they're going to end up and where they're going to be, you know, I'm just glad to be a part of it.

HOPKINS: The guys are FUBU's four founders, all under 30 years of age: CEO and leader Daymond John and three of his friends -- J. Alexander Martin, Keith Perrin and Carl Brown. The guys grew up together in the modest surroundings of Hollis Queens, New York.

The four young men have come a long way. Today, they wheel, deal and design 66 floors up in the Empire State Building: FUBU's corporate headquarter. From there, they preside over a fashion powerhouse with \$200 million in sales in 1998 plus another 150 million from licensing agreement.

FUBU is a trailblazer in the 5 billion so-called "urban clothing" market that includes established brands like Tommy Hilfiger and Polo Ralph Lauren as well as newcomers like Phat Farm, Mecca (ph), Ineechay (ph), and Sean John: a line from rap star Sean Puffy Combs.

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Rap music and hip-hop culture are driving forces behind the explosion in urban sports wear. For FUBU, the sweet sounds of success all started with selling \$20 hats on street corners and a street kid who learned from his mom how to sew.

DAYMOND JOHN, CO-FOUNDER & CEO, FUBU: Around 1992, J. Martin and myself, we went out to the streets. We were looking for a hat. It was a hat that just came out, it was just in-style. And it had a little tie on the top of it and it held close to your head. So we bought it. It was about \$20. And we said to ourselves: We can make this, you know, we can sew, you know, at home, because I knew how to sew a little bit, you know, from hemming my pants or whatever it may be.

So we made the hat and then we made a couple more. We said, you know, let's make a couple and see how they would do if we try to sell them ourselves, because these are \$20 a piece and we needed the money.

HOPKINS: Money they made. About \$800 in one day. John, a son of a single mother, was waiting tables at a local Red Lobster. His success selling hats hooked him on apparel. The inspiration to expand to shirts and other clothes came from J. Alexander Martin, who attended the Fashion Institute of Technology and had just returned from serving in the Gulf War.

Martin's academic link to the fashion world served the team well.

UNIDENTIFIED MALE: We were always coming to brick walls and we didn't know the answer. What he would do is go to school, ask his professor, and he would get an answer and come back and tell us.

JOHN: And then he would go, yes, put little suits on and...

UNIDENTIFIED MALE: And try to go and handle it.

JOHN: ... and walk out to all the...

UNIDENTIFIED MALE: Trial and error.

HOPKINS (on camera): Well, did he have more of a vision? I mean, he said you guys started with hats, and J., you said...

J. ALEXANDER MARTIN, CO-FOUNDER, FUBU: Well, I wanted to be in the business, so I had to convince these guys to get in the business with me.

UNIDENTIFIED MALE: He had more -- he had...

JOHN: He had a fashion...

UNIDENTIFIED MALE: Vision.

JOHN: ... definitely a vision for fashion. We had a hunger for money. So you know, that put it together.

UNIDENTIFIED MALE: Put it together and there it goes.

HOPKINS (voice-over): John's mother moved out of their house and John convinced his three friends to move in. They created a mini-factory, producing hats and shirts emblazoned with the FUBU logo.

John and his partners held down their day jobs, working into the wee hours on FUBU. Sales reached \$10,000 in six months. When they hit 60,000, FUBU was straining to keep up with customer orders.

John took out a \$100,000 second mortgage on his home and bought sewing machines and hired seamstresses. He did everything he could to promote FUBU. That included trying to persuade rappers to wear FUBU in music videos. JOHN: It was persistence, because I went to video sets where I got doors slammed in my face. Stylists would not talk to me, or the artist would say, wait here, I'm going to wear it. I wait there for 12 hours and then they don't wear it, and they tell me, go home. And then I sit there and I have to go back home at 3:00 in the morning with this big trunk of clothes.

You know, those times did happen, and it was very frustrating, you know, getting started. But one of us would always push the other to do it. And we just kept on going on.

HOPKINS: When MOVERS returns, the man who put FUBU on the rap map and the Korean company that helped finance the dream.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP, COMMERCIAL)

L.L. COOL J, RAPPER: ... can't resist the shopping, big balling, no stopping, yes, y'alling, jeans popping in every mall and town and city. G-A-P pretty, ready to go: for us, by us on the low. G -- that's for getting the...

(END VIDEO CLIP)

HOPKINS: That's rap star L.L. Cool J in an ad for the Gap. His line "for us, by us" is a reference to FUBU. The rapper is also wearing a FUBU cap, another plug for the company run by Daymond John and his three friends.

(on camera): How did you convince him to wear the product?

JOHN: Going to his house about 20, 30 times, keep asking him to wear it.

HOPKINS: You knew him, though, right?

JOHN: Oh yes. We were acquaintances from -- you know, we lived in the same neighborhood, and he had said that he was going to help us. But you know, he didn't like the product at first.

HOPKINS: Ah-ha.

JOHN: But -- you know, and then -- and also we were about to take out an ad in some papers with him in it. And you know, that -- then you're dealing with management and him going behind his management's back and risking contracts with bigger companies.

HOPKINS: Right.

JOHN: But we just kept pushing him and kept pushing him, and he finally agreed. He said, all right, you know, he said he's going to do it for us. And so he did it.

HOPKINS: And that made the big difference, didn't it?

JOHN: I think it did. Yes.

UNIDENTIFIED MALE: Yes. (UNINTELLIGIBLE) made a huge difference.

JOHN: It made a difference in the consumer's eyes. It gave them that, you know -- it made us...

(CROSSTALK)

UNIDENTIFIED MALE: Gave us the credibility.

JOHN: Stores (UNINTELLIGIBLE). And with investors that were looking at us, they -- you know, they then said that these guys are serious. These guys have -- you know, they're in, they're connected.

(BEGIN VIDEO CLIP, COMMERCIAL)

L.L. COOL J: These kids know what they're doing. FUBU -- these clothes make a statement. But you've got to get your own (UNINTELLIGIBLE). FUBU, baby.

(END VIDEO CLIP)

HOPKINS (voice-over): L.L. Cool J became a paid FUBU spokesman in 1996. Raising the money to pay for big-budget advertising took

years of traveling a long, hard road of sweat and strain.

In 1994, that road took the four friends to Las Vegas, site of a major trade show for the apparel industry.

CARL BROWN, CO-FOUNDER, FUBU: We got a small room in the Mirage, I believe it was. And we showed our line from that room.

We sent out -- before the -- actually before the show, we went out postcards to different vendors, different stores, to tell them what room we were going to be in, if they had time, to come see us -- see what we had to offer.

HOPKINS (on camera): But you didn't have enough to buy a booth.

(CROSSTALK)

JOHN: We barely had enough to stay in the room. It was -- what? -- four of us -- six of us saying in the room.

UNIDENTIFIED MALE: Six in a one-bedroom suite.

JOHN: In a one-bed suite. Yes.

So -- and surprisingly enough, a lot of -- a lot of the stores that we were hoping to come down and see us actually came.

HOPKINS: And did they order?

UNIDENTIFIED MALE: Yes, they did.

UNIDENTIFIED MALE: They ordered \$300,000.

BROWN: Yes, we ordered -- we had about \$300,000 in orders. So right then we thought we were straight.

HOPKINS (voice-over): The flood of orders convinced John to take out the second mortgage on his house. But the FUBU team needed more, more capital to fulfill the orders. Private investors turned them away. Things looked bleak until John's mother stepped in and placed a classified ad.

JOHN: My mother was the one who got us to put the ad in paper, because we had been rejected by so many private investors that we said, we're not putting an ad in the paper. Nobody wants to hear our story. Nobody wants to -- nobody believes in us. And my mother went ahead and put ad in "The Daily News." And it said, -- it said, sportswear company with hundred of thousands of dollars in orders, need money to finance -- something similar to that. And we got a lot of calls.

HOPKINS: One of those calls ended up connecting FUBU with a South Korean conglomerate, Samsung. In 1995, Samsung America invested some \$2 million in FUBU and became its distribution and manufacturing partner. The deal, along with L.L. Cool J's endorsement, is what turned FUBU's vision into a reality.

But FUBU almost rejected the investment.

JOHN: We were already talking to Samsung for about a year. And when they decided really what to do with us, you know, truthfully, we were like, no, we don't need the deal. We're all right, you know? But after, you know, the deal was properly structured and we felt we went with it. After we turned around and looked at it, you know, we probably would have been homeless after about another two more months of that.

JOHN: This is too long. This is not our normal spec.

HOPKINS: Samsung's backing fortified FUBU's reputation with retailers. The team from Queens knew they'd arrived when their clothes landed in the promised land of American retailers: Macy's.

In 1996, FUBU became the first black-owned designer to have its own display window in Macy's flagship store in New York.

JOHN: Macy's was one of the biggest deals, because it's a dream as a fashion designer to have your stuff in Macy's. Macy's -- at that point, we felt that it took us to another level -- not taking away from the speciality stores, because we owe them for basically getting our name out there. But this took level where Middle America was understanding what we were doing.

HOPKINS: Ahead on MOVERS, defining FUBU. How a company from the inner city stays true to its roots when its founders are millionaires and its customers include white kids in suburbia.

(COMMERCIAL BREAK) SEAN "PUFFY" COMBS, RAPPER: Instead of just him just dominating the whole thing it's more of a sharing type. And that's how we cross-market. So he has his own line, he wears my stuff...

JOHN: I wear his stuff all the time.

COMBS: I wear his.

HOPKINS: Rap star Sean "Puffy" Combs and FUBU CEO Daymond John are talking shop at Justin's Bar & Grill, a Manhattan hot spot owned by Combs. The meeting took place before Combs was arraigned on gun-possession charges in late 1999. Combs denies the charges. A month before Combs' arrest, a Wisconsin school district banned

students from wearing FUBU, citing concerns that the clothes could be a sign of gang membership.

Hip hop culture's rough, urban image is no doubt one reason that kids in Middle America are embracing designers like FUBU.

(on camera): One of the things that you're doing now is you're selling in malls, you're selling in the suburbs. Does that -- do you want white suburban kids wearing FUBU clothes.

JOHN: Do I want white suburban kids wearing FUBU clothes? The color doesn't necessarily mean anything. Do they understand what we're doing? And that's all that really matters, because we're going to make the product just as edgy every year. If they understand it, and if they -- you know, if they understand the same culture that we understand then I don't have a problem with it.

But if they're doing it for -- white or black, it doesn't matter -- if they're doing it for any other kind of statement, that's not what they really are, then I would rather them not.

PERRIN: I mean, it doesn't matter whether you're in suburban areas or not. You know, if you like the clothes and you feel like that's what you want to wear, then you go out and purchase it, you know?

JOHN: I mean, people -- I don't know what people think, but the kids in suburbia, they have culture also.

PERRIN: They do.

JOHN: What are they so supposed to walk around, in white all day?

UNIDENTIFIED MALE: White robes.

JOHN: Yes, they, have identity also. And people have been ignoring that.

HOPKINS (voice-over): FUBU's success at selling to a mass market comes with a risk: alienating its original core customer -- young, urban men who want to be on the edge of fashion. Some have cut down on FUBU purchases, like this 24-year old New Yorker who says the brand has become commercialized. But he's glad to see people of other races wearing FUBU.

JERRY OSEILULU, STUDENT: No, it doesn't matter -- the more the merrier. That's what it's there for, you know? I mean, I don't want it to be limited for only certain people. I mean, I don't want it to be limited for only certain people. you know what I'm saying? I mean, it would be selfishness. No, it's made for us, but if other people feel like wearing it, it's clothes. You know what I'm saying?

HOPKINS: FUBU ability to broaden its cultural reach without losing face with its original customer base is a sign of the times, says youth marketing consultant Dexter Wimberly. He compares FUBU's crossover to that of rap stars like LL Cool J.

DEXTER WIMBERLY, CEO, AUGUST BISHOP: Years ago, the concept of being a crossover rap artist, you know, could have gotten you into a fight if you said to someone, oh, you've crossed over. Because what you were in essence saying is that you've left your core market and you've gone somewhere else. You've gone white. You've gone this, you've done that. If you're a white artist, you've gone black. You've crossed over. You know, where is this imaginary line that everyone's talking about, when in actuality it may mean you've crossed street and now you can go into the bank, because that's really what it began to mean after a certain amount of time.

UNIDENTIFIED FEMALE: Ladies and gentlemen, 1999 Essence Awardees Daymond John, Carl Brown, Keith Perrin and J. Alexander Martin.

MAGIC JOHNSON: Known as FUBU.

HOPKINS: The black community acknowledged FUBU's cultural and financial accomplishments at the 1999 Essence awards, marking the first time Essence honored a company.

JOHN: I want to say the black dollar has a lot of power. Remember that. Use it wisely.

White is perfect, OK? You put the red FUBU on the blue sport.

HOPKINS: To keep its prices affordable, FUBU manufacturer most of its close overseas, where labor cost are lower.

People that are buying, are they going to think "for us, by us" means not only designed by, but also made by?

MARTIN: That's business. In the fashion business, you make things overseas. The person, you know, looking in might say, well, that's crazy, but that's how it goes.

PERRIN: Yes, because, you know, you make a pair of jeans here it is going to cost you \$250. You want to pay \$500 for a pair of jeans, that's fine, we will make it here.

JOHN: But the "us," the "us" is always construed as so many different things. The "us" can be young people making clothes, it can be us as a consumer generation Y, or we can consider it can be us as African-Americans, it can be us as Americans, it can be us as people who listen to R&B, that kind of culture -- "us" is so many different things.

HOPKINS: When "Movers" returns, plotting a course for the future. How Damon John the FUBU team plan to build a company that lasts for decades.

(COMMERCIAL BREAK)

HOPKINS: Halftime at a New York Knicks game, and FUBU is giving away money, a check for \$200,000 to fix up local basketball courts. FUBU also hopes to make plenty of money from its ties to the NBA. In early 1999, the company began selling clothes with the logos of FUBU and NBA teams. Damon John predicted sales of \$50 million the first year. FUBU won't say if the deal is living up to that goal. The company no longer releases its sales figures. And FUBU's four founders no longer discuss their personal lives.

JOHN: What has happened is a lot of the concentration on our company has sort of been how much dollars these guys are making, where do they live, where is their cars and stuff like that. And at this point, all I am concerned with is keeping our identity.

HOPKINS: How do you stay in tune when you don't live in the exact same neighborhood, you aren't as in touch with the street in the same way you were when you started the company.

JOHN: No, are you just sleeping somewhere different. And when I was sleeping in the same neighborhood they weren't sleeping with me. But you know, hanging out, shopping, getting your haircut, whatever it may be, you are in the same neighborhood.

HOPKINS: FUBU's sensitivity to issues concerning its identity came to a head when we asked Damon John about an article in "Vibe" magazine. In it he was quoted as saying he dealt drugs in his youth.

UNIDENTIFIED MALE: He cannot discuss anything personal, I made that clear.

HOPKINS: Of course, FUBU's future is far more relevant than Damon John's past. Some industry observers believe the brand's best days are behind it.

WIMBERLY: Prevailing sentiment is that they have peaked, and if they are around in two years, you know, it will be a miracle, you know. That's because people don't know what else to think. Because they can't look at the situation and go, wow, from zero to 350 million under four years, whether it be through direct sales or through licensing agreements, that's a heck of a lot of volume. How could it possibly go to 600 million? But four years ago how could it have possibly gone to 350?

HOPKINS: To reach the next level, FUBU is going vertical, planning

to open 30 retail stores in the U.S. and abroad by 2001.

John says that will keep FUBU's ears to the street, and help ensure a sound future. JOHN: We feel in our hearts that it is going to be around as long as any other of these major lines have been, 20, 30, 40 years, because we understand it is a lifestyle. But so many people tell us from the outside that, well, you know, a fashion company's life is maybe five years. And, oh, you know, these guys couldn't do it and these guys couldn't do it, so it keeps us paranoid. That keeps us saying, well, hold on, maybe we shouldn't get too comfortable.

HOPKINS: Team FUBU, four young movers looking back to the streets as they try to a design future where FUBU's fashion remain in style.

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STATE OF NEW JERSEY, COUNTY OF

SS.:

The undersigned hereby certifies that **TYRONE McRAE**conducting a business under the following name style, or designation, viz.: **NAJI APPAREL**at No. **25 CHADWICK ST TRENTON NJ 08638** Street or Avenue, in the
of _____ in the County of _____ and State of New Jersey.That the nature of the business is **PRIVATE LABEL T-SHIRT MANUFACTURING**,
NAJI; TRADEMARKand the true, real, or full name or names, post office address and residence of all persons interested or members
of such firm, partnership or business is as follows, viz.:

Names

P.O. Address

Residence

TYRONE McRAE**627 N. OLDEN AVE
TRENTON NJ
08638****FILE**WITNESS: his hand this **24th** day of **MARCH** **2000****Tyrone McRae**

Signed in the Presence of

STATE OF NEW JERSEY, COUNTY OF **Merces**

SS.:

The undersigned being duly sworn according to law on his oath depose and say that
he is the person named in the foregoing certificate and that the statements contained therein are true.**Tyrone McRae**Subscribed and sworn to this **24th**
day of **MARCH** **2000**
before me at **Trenton, NJ****Patricia Marie Matzen**
Patricia Marie Matzen**PATRICIA MARIE MATZEN**
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires **July 9, 2001**

Mercer County Community College

P.O. Box B, Trenton, N.J. 08690

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MCRAE, TYRONE T
46 TYRELL 1ST FLOOR
TRENTON NJ 08609

MCRAE, TYRONE T
46 TYRELL 1ST FLOOR
TRENTON NJ 08609
STUDENT ID: 145-52-2614
PROGRAM...: AA-HUMANITIES & SOCI
DATE.....: 08/28/00

SPRING 1988 (19882)		BEGINNING: 01/18/88 ENDING: 05/06/88		
ENG101	ENG101	ENGLISH COMP I	T W	3.0 0. 0.
MET121	MET201	MANUFACTURING PROCES	W	3.0 0. 0.
ACADEMIC WARNING		TERM TOTALS.....: 0.00 0.00 0.00 (PTS: 0.00)		
FALL 1992 (19931)		BEGINNING: 08/31/92 ENDING: 12/16/92		
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MSK110	MAT030	BASIC ALGEBRA	S	3.0 3.0 3.0
SOC101	SOC101	INTR TO SOCIOLOGY	C	3.0 3.0 3.0
VIS111	VIS111	BASIC DRAWING	C	3.0 3.0 3.0
		TERM TOTALS.....: 9.00 12.00 2.33 (PTS: 21.00)		
SPRING 1993 (19932)		BEGINNING: 01/19/93 ENDING: 05/11/93		
ENG102	ENG102	ENGLISH COMP II	B	3.0 3.0 3.0
ENT113	ENT113	ENGINEERING GRAPHICS	C	3.0 3.0 3.0
MAT101	MAT101	INTERMEDIATE ALGEBRA	B	3.0 3.0 3.0
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		TERM TOTALS.....: 12.00 12.00 2.75 (PTS: 33.00)		
FALL 1993 (19941)		BEGINNING: 08/30/93 ENDING: 12/15/93		
DRA190	DRA190	INTR COMP DRFT AUTOC	T F	2.0 0. 0.
HPE110	HPE110	CONC HEALTH/FITNESS	W	2.0 0. 0.
HPE171	HPE171	PERSONAL FITNESS	A	1.0 1.0 1.0
MAT115	MAT115	ALGEBRA & TRIG I	B	3.0 3.0 3.0
PHY101	PHY101	COLLEGE PHYSICS I	T W	4.0 0. 0.
ACADEMIC PROBATION		TERM TOTALS.....: 6.00 4.00 3.25 (PTS: 13.00)		
SPRING 1994 (19942)		BEGINNING: 01/18/94 ENDING: 05/09/94		
DRA190	DRA190	INTR COMP DRFT AUTOC	R C	2.0 2.0 2.0
MAT116	MAT116	ALGEBRA & TRIG II	F	3.0 0. 0.
PHY101	PHY101	COLLEGE PHYSICS I	R F	4.0 0. 0.
ACADEMIC PROBATION		TERM TOTALS.....: 9.00 2.00 0.44 (PTS: 4.00)		
		OVERALL CUM.....: 36.00 30.00 2.09 (PTS: 71.00)		

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46 TYRELL 1ST FLOOR
TRENTON NJ 08609

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SPRING 1988 (19882) BEGINNING: 01/18/88 ENDING: 05/06/88
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VIS111 VIS111 BASIC DRAWING C 3.0 3.0 3.0
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MAT101 MAT101 INTERMEDIATE ALGEBRA B 3.0 3.0 3.0
VIS114 VIS114 THREE DIMEN DESIGN B 3.0 3.0 3.0
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FALL 1993 (19941) BEGINNING: 08/30/93 ENDING: 12/15/93
DRA190 DRA190 INTR COMP DRFT AUTOC T F 2.0 0. 0.
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HPE171 HPE171 PERSONAL FITNESS A 1.0 1.0 1.0
MAT115 MAT115 ALGEBRA & TRIG I B 3.0 3.0 3.0
PHY101 PHY101 COLLEGE PHYSICS I T W 4.0 0. 0.
ACADEMIC PROBATION
TERM TOTALS.....: 6.00 4.00 3.25 (PTS: 13.00)

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PHY101 PHY101 COLLEGE PHYSICS I R F 4.0 0. 0.
ACADEMIC PROBATION
TERM TOTALS.....: 9.00 2.00 0.44 (PTS: 4.00)
OVERALL CUM.....: 36.00 30.00 2.09 (PTS: 71.00)

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DONALD A. BEACH, REGISTRAR



1 CASE NO. 111-8195036261		2 SOURCE P-85		3 DATE 1150		4 TIME 1150		5 RACE		10 SEX		11 DOB			
6 CRIME/OFFENSE/INCIDENT Soliciting w/o License OR Permit V.C.O				7 NJS 6-2				8 ARRESTEE SS# 145-52-2614				9 NAME Tyrone McRAE B/m 7-1-68			
12 DATE AND TIME		13 HOUR		14 D WK		15 MTH		16 DAY		17 YEAR		18 HOME ADDRESS-CITY-STATE			
AT 1150		54		28		95		Trenton N.J. 08611		20 EMPLOYER SCHOOL		25 DATE AND TIME			
19 LOCATION/PLACE OR OCCURRENCE Flo 104 E. State St.				22 STREET CRIME yes				23 CODE				24 PERSON REPORTING CRIME Pt. F. Clayton			
21 ZONE SECTOR 3		26 TYPE OF PREMISES Street		27 CODE 01		28 WEAPONS-TOOLS Phys Force		29 CODE 30		30 ADDRESS T.P.D. Bike Patrol		35 SERIAL NUMBER OR IDENTIFICATION			
31 HOW ATTACKED Arrestee Solicited & Displayed Shirts w/o License or Permit				32 VEHICLE				33 YEAR				34 MAKE			
35 BODY TYPE				36 COLOR				37 REG NUMBER & STATE				38 STATUS INCIDENT			
39 CURRENCY				40 JEWELRY				41 FURS				42 CLOTHING			
43 AUTO				44 MISC				45 TOTAL VALUE STOLEN				46 TOTAL VALUE RECOVERED			
47 TELETYPE ALARM				48 WEATHER Clear				49 STATUS CASE CL-Arrest				50 STATUS CASE			

LIST OTHER PERSONS INVOLVED. IDENTIFY ADDITIONAL VICTIMS AND CONDITION. DESCRIBE PERPETRATORS OR SUSPECTS • ACTION TAKEN INCLUDE FINDINGS AND OBSERVATIONS OF INVESTIGATOR • PHYSICAL EVIDENCE FOUND • WHERE • TO WHOM • DISPOSITION. PRESENT LOCATION AND TECHNICAL SERVICES PERFORMED • INTERVIEW OF VICTIMS • WITNESSES • PERSONS CONTACTED • ACCUSED SUSPECTS • LIST • DESCRIBE STOLEN PROPERTY • VALUE • COURT ACTION • ATTACH STATEMENTS

Arrestee # **122569**
 Shawn Reid B/m unk W. State St. Trenton NJ 08618
 Officers: Pt. Ayres, Pt. Deerecott, Pt. Clayton

At 1150 hrs DATE while At the 9/6 E. State & Broad I observed T. McRAE And S Reid Flo 104 E State St. on the Ground was A Blk Gym Bag with Asst Shirts sticking out of the unzipped bag in Plain view and I observed S. Reid go into the bag several times Pull out A shirt And Display it to passing Pedestrians.

After watching This Activity I approached S. Reid And Asked him for I.D. but he stated he had NO I.D. And what was the Problem. I then began to Explain to him

57A LIST OTHER RELATED CASES

57B OTHER REPORTS SUBMITTED: ☐ SUPPLEMENTARY ☐ PROPERTY ☐ VEHICLE ☐ ARREST ☐ OTHER

57C NAME Pt. F. Clayton		58A BADGE NUMBER 145		58B 397		59 PAGE 1 OF 2 PAGES		60 DATE OF REPORT 4-28-95	
SIGNATURE Pt. F. Clayton		61 TIME COMPLETED 1310		62 G.A. NO					

APPROVED BY

EXTRA COPY FOR

That he needed A Permit to sell merchandise and that's when T. McRAE approached from behind me and stated that the shirts in the bag were his shirts.

I then asked T. McRAE for I.D. and advised him that I was going to issue a summons for soliciting w/o a permit, and then McRAE began to get loud stating that he didn't know that S. Reid went into his bag and was displaying or trying to sell his shirts, although I observed T. McRAE talking with S. Reid and standing on the side walk in front of S. Reid and the bag of shirts doing spin kicks against a light pole. As I tried to talk with T. McRAE he began to get really loud causing a crowd to gather and he was advised by Ptl Ayres to calm down but he refused and officer Ayres placed him under arrest. See Ptl Ayres Supp Report.

S. Reid was then issued sumo #SF 100766 and released. T. McRAE was transported to HQ along with the bag of shirts. The shirts were placed on a P.D. 102 and turned into evidence.

Ptl. Frank Clayton Ptl. [Signature] SIGNATURE	58 BADGE NUMBER 145	58 PAGE 2 OF 2 PAGES	60 DATE OF REPORT 4-15-95
---	------------------------	-------------------------	------------------------------

TRENTON POLICE DIVISION

1 CASE NO.		2 CODE		UNIFORM CRIME STATUS				DISPOSITION	
118 95036261				3 TN STOLEN	4 OTHER NJ	5 OUT STATE OR FEDERAL	6 OTHER	7 PENDING	8 COMPLETE
9 VOUCHER NO.		10 CROSS INDEX NO.		CONFISCATED				XXXX	
11 OWNER'S NAME - FIRST - MIDDLE - LAST								TELEPHONE NO.	
Tyrone McRae									
12 ADDRESS (NUMBER - STREET - MUNICIPALITY - STATE)									
226 Maple St Trenton NJ									
13 STOLEN DATE		14 PLACE STOLEN (STREET - MUNICIPALITY - STATE)						15 CODE	

DETAILS OF RECOVERY

16 RECOVERED DATE		17 PLACE RECOVERED (STREET - MUNICIPALITY - STATE)		18 CODE	
4-28-95		6104 E. STATE ST. Trenton NJ			
19 FOUND IN POSSESSION OF		SEX		RACE	DOB
Tyrone McRAE		M		B	7-1-68
20 ADDRESS		21 RETAINED EVIDENCE		22 PLACE RETAINED	
Same as #12		YES		Central Evidence	
		23 CONDITION OF PROPERTY		24 OWNER'S ESTIMATED VALUE	
		Good			
25 NARRATIVE					

Listed Property confiscated after Arrestee T. McRAE solicited
Shirts 6104 E. STATE W/O Permit and caused Disturbance

(18) Ass't Shirts Various Colors And sizes in A Black

KOHCO Gym Bag

(1) Green & White Skirt

(1) Address Book } In Gym Bag

(1) Business Planner }

Rec'd CEB 4-28-95

1240 R. deane

VALUE OF RECOVERED PROPERTY	28 CURRENCY	29 JEWELRY	30 FURS	31 CLOTHING	32 MISCELLANEOUS	33 TOTAL VAL RECOVERED
4-28-95				145		
34 REPORT DATE	35 SIGNATURE - OFFICER			36 BADGE NUMBER	37 APPROVED BY	
	[Signature]					

DISPOSITION OF PROPERTY

38 RELEASE DATE	39 PROOF OF OWNERSHIP	40 SIGNATURE OF OFFICER AUTHORIZING RELEASE	
41 RELEASED TO OWNER - AGENT - OFFICIAL		42 ADDRESS	
43 SIGNATURE OF OWNER - AGENT - OFFICIAL		44 SIGNATURE OF OFFICER RELEASING PROPERTY	

PENNSAUKEN, NEW JERSEY 08109-4364
(609) 663-7878

PENNSAUKEN, NEW JERSEY 08109-4364
(609) 663-7878

F
R
O
M

Podgor

Joseph E. Podgor Co., Inc.

Podgor

Joseph E. Podgor Co., Inc.

SHIPMENT NUMBER

SHIPMENT NUMBER

HIE

1187940-0001-01
215-428-4954

1187940-0001-01

BILL TO: HIEROGRAPX
609 NOLAN AVE.
APT #13
MORRISVILLE PA 19067

SHIP TO: HIEROGRAPX
46 TYRELL ST.
TRENTON NJ 08638

CUSTOMER P.O. NO. 08/29/95 13:16:07

CUSTOMER P.O. NO. 08/29/95 13:16:07

*** COD ***** COD ***** COD ***** COD ***** COD ***** COD ***** COD *****

SHIPMENT NUMBER		SLSMN.	ORDER DATE	TAKER	CUSTOMER P.O. NUMBER	DATE
1187940-0001-01		111	08/29/95	2	08/29/95 13:16:07	08/29/95
INSTRUCTIONS						FRT. PAGE NO.
PICK UP						B 1
QUANTITY		DISP.	ITEM CODE AND DESCRIPTION	U/M	UNIT PRICE	AMOUNT
ORDERED	B.O. SHIPPED					
1		*	PODGOR IS A DISTRIBUTOR OF ADVANCE PRODUCTS. POD-SAMPLE-00 ARROW YH-120 SPOTTING GUN 1-013091	EA	45.0000	45.
HAZARDOUS MATL:						

CODE EXPLANATION

SHIP ORDERSHIP ORDER**

SUB TOTAL

45.

* STATE TAX APPLICABLE
FED. OTHER TAX APPLICABLE
+ STATE & FEDERAL TAX APPL
B BALANCE BACK ORDERED

0829951317
0829951318

0829951318 0

*** ORDER COMPLETED ***

STATE TAX
PAYMENT REC'D.

0.
2.
0.

TOTAL AMOUNT D
47.

KLOPTB 8/88

DATE _____ REC'D. BY _____
PACKING LIST



PENNSACKEN, NEW JERSEY 08107-7504
(609) 663-7878



Podgor

Joseph E. Podgor Co., Inc.

FROM



PENNSACKEN, NEW JERSEY 08107-7504
(609) 663-7878



Podgor

Joseph E. Podgor Co., Inc.

SHIPMENT NUMBER

HIE

1169192-0002-01
609-663-7886

SHIPMENT NUMBER

1169192-0002-01

BILL TO: HIERUGRAFEX

46 TYRELL ST.
TRENTON

NJ 08638

SHIP TO:

HIERUGRAFEX

46 TYRELL ST.
TRENTON

NJ 08638

CUSTOMER P.O. NO. 12/02/94 13:29:31

CUSTOMER P.O. NO. 12/02/94 13:29:31

*** CUD ***** CUD ***** CUD ***** CUD ***** CUD ***** CUD ***** C

SHIPMENT NUMBER		SLSMN.	ORDER DATE	TAKER	CUSTOMER P.O. NUMBER		DATE	
1169192-0002-01		110	12/02/94	12	12/02/94 13:29:31		12/02/94	
INSTRUCTIONS							FRT.	PAGE NO.
PICK-UP							8	1
ADD \$23.48								
QUANTITY			DISP.	ITEM CODE AND DESCRIPTION	U/M	UNIT PRICE	AMC	
ORDERED	B.O.	SHIPPED						
3		3	*	FLEXIBLES PRICE INCREASE EFFECTIVE 12/1/94 STR-RFMZX-1820/LAB-00 EA M-ZX T-SHIRT FRAME 18X20 - LAB UNIT - 1-	EA	16.6600		
								HAZARDOUS MATL:

CODE EXPLANATION
* - STATE TAX APPLICABLE
+ - FED. OTHER TAX APPLICABLE
B - STATE & FEDERAL TAX APPL.
- BALANCE BACK ORDERED
C - CONSIDER COMPLETE
D - DIRECT SHIPMENT
F - FACTORY MINIMUM

SHIP UNDERSHIP UNDER***

PICKED BY

PACKED BY

SUB TOTAL

1202941330

1202941340

1202941340

0

*** ORDER COMPLETED ***

STATE TAX

PAYMENT REC'D.

XLOPTB 8/88

DATE REC'D. BY

PACKING LIST

**UNITED STATES DISTRICT COURT
TRENTON DISTRICT OF NEW JERSEY**

Tyrone T. McRae,

Plaintiff,

v.

CIVIL ACTION NO. 03-5382 (AET)

James Todd Smith, et. al.,

Defendant.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS

**BRIEF IN SUPPORT OF ITS MOTION TO STRIKE AND/OR DISMISS COUNTERCLAIMS
AND
--PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT ON CANCELLATION OF A REGISTERED
TRADEMARK; AND FRAUDULENT REGISTRATION OF A TRADEMARK**

1. Brief-supporting motion to strike counterclaims

**Plaintiff's Brief in Support of the Motion to strike and/or dismiss counterclaims in
defendants answer.**

Statement of Facts

- A. Defendants can produce no evidence to support their counterclaims and plaintiff moves for summary judgment and is entitled to judgment as a matter of law.**
- B. Defendants James Todd Smith et. al., (hereinafter, LL Cool J) are the same parties and privies in previous Interference and Opposition proceedings at the USPTO and had full opportunity to litigate issues; defendants abandoned application to register.**
- C. Defendant James Todd Smith and "Charles Fisher" have not answered plaintiff's cause of action yet defendants are shareholders in GTFM INC.**

I. INTRODUCTION

A. *Plaintiff's Standing*

Akhenaten is the rightful owner of the mark, NAJI, and his trademark rights are exclusive and irrevocable. *SILVERSTAR ENTERPRISES, INC v. Marvin Lee Aday* Akhenaten's sole proprietorship NAJI

sportswear is the predecessor and Licensor of the registrant Ikhanaten Armor Inc.. Ikhanaten Armor Inc. is also a wholly owned corporation owned by Akhenaten. Akhenaten owns 100% shares in Ikhanaten Armor Inc. and retains all rights to the NAJI trademarks as his personal property. *Ste. Pierre Smirnoff, FLS., Inc. v. Hirsch*, 109 F. Supp. 10, 12 (S.D.Cal. 1952) See *Quaburg Rubber Co. v. Fabiano Shoe Co., Inc.*, 567 F.2d 154, 195 USPQ 689.

Akhenaten exercises complete control over the nature and quality of clothing on which Ikhanaten Armor Inc. uses the mark and retains the legal authority for preventing and prosecuting any unauthorized sale or use of the mark NAJI. *Philip W. STANFIELD v. OSBORNE INDUSTRIES, INC.*, 839 F. Supp. 1499, 30 USPQ 2d 1842. Akhenaten granted no rights to Ikhanaten Armor Inc. to institute any legal proceedings in the name of Akhenaten nor may Ikhanaten Armor Inc. institute legal proceedings against the Licensor. Ikhanaten Armor Inc. has been granted a license to use and is entitled to registration yet it is merely the "registrant" and licensee of the mark, NAJI. *House of Westmore v. Denney*, 151 F.2d 261 (3d Cir. 1945); *Simmons Co. v. Cantor*, 57 F. Supp. 992 (WDPa 1994).

Akhenaten is the designer, manufacturer and supplier of NAJI brand clothing and the marks to Ikhanaten Armor Inc. Akhenaten thus has complete supervision and inspection of all NAJI clothing sold by Ikhanaten Armor Inc. Akhenaten is the owner of the entire exclusive right in the business, its goodwill and the NAJI marks.

B. Doctrine of Collateral Estoppel

THE DOCTRINE OF COLLATERAL ESTOPPEL

BARS THE RELITIGATION OF ISSUES CENTRAL TO IT'S PRESENT APPLICATION

Under the doctrine of collateral estoppel, a prior judgment between the same parties, or their privies, operates as an estoppel with respect to the relitigation of issues which were necessary to the prior judgment. Thus when an issue of material fact has been determined by a valid judgment, that issue cannot be relitigated between the same parties in a future lawsuit. See, e.g., *Int'l Order of Job Daughters v. Lindeburg & Co.*, 727 F.2d 1087, 1090 (Fed. Cir. 1984); *Bass Anglers Sportsman Society of America, Inc. v. Bass Pro Lure, Inc.*, 200 USPQ 819, 822 (T.T.A.B. 1978).

As applied in the present case, the doctrine of collateral estoppel prevents GTFM INC. from relitigating the issues of (1) priority of use of the NAJI trademark; and likelihood of confusion when this mark is applied to the parties respective products. Clearly all of the prerequisites for invoking the doctrine are present here. First, the requirement that the prior judgment be between the same parties, or their

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privies, is satisfied. Second, the aforementioned issues were central to the Examining Attorney's decision in McRae's favor.

C. *Summary Of Argument*

Counter-defendant, herein named plaintiff, moves this court for cancellation of counter-plaintiff's federal registration for the mark(s) F.U.B.U. and FUBU. Plaintiff requests entry of summary judgment in its favor and against the defendant on Counts I-II of plaintiff's compulsory counterclaims of Cancellation of a Registered Trademark and Fraudulent Trademark Registration.

Neither defendant's actual trademark use prior to the actual filing date, nor the statements submitted by defendant with its application, support defendant's federal registration of the slogan "FOR US BY US."

Plaintiff attended Mercer County Community College, where he publicized his slogan, between 9/92-9/94. Defendant "J. Alexander Martin," an agent of Def Jam Records, was present during the lecture. "Martin" is Smith's manager and under the identity of "Charles Fisher," made false and fraudulent statements for plaintiff's slogan, FOR U BY US, on 05-23-94 and on 06-11-97 in an attempt to register a homonym of McRae's word mark, NAJI. Defendants have simulated plaintiff's mark, made fraudulent affidavits in an unsuccessful attempt to register his word mark, and fraudulently obtained federal registration of an acronym of his slogan. Defendant's have been using plaintiff's slogan and registration for the slogan is pending this litigation.

On 05-23-94 "J. Alexander Martin" also known as "Charles Fisher," Smith's manager, filed an application to register F.U.B.U. an acronym of plaintiff's slogan. F.U.B.U. was placed on the Principal Register on 08-08-95 (Exhibit C,D). GTFM INC. was formed and filed with NYS DOS on 11-20-95. The assignment to GTFM INC. was recorded and entered on 02-20-96. GTFM INC. registered the assignment as a dual registration for F.U.B.U. and *FUBU*, the later with LL COOL J's endorsement: F.U.B.U.'s assignment was placed on the Principal Register on 08-08-95; and *FUBU* was placed on the Principal Register on 06-03-97. GTFM INC. registered the word mark FUBU and stated the meaning as "FOR US BY US, a simulation of plaintiff's slogan for the mark (NAJI EXHIBIT C,G.). With LL Cool J's endorsement and financial backing, GTFM INC. registered *FUBU* to indicate LL Cool J as an endorser for the product. GTFM INC. filed additional registrations of, FUBU 05, FB, and others. *The endorsed mark* was placed on the Principal Register on 06-03-97. Eight days later, on 06-11-97, "Martin Fisher" and LL Cool J filed an Intent To Use application to register the word mark NAJEE (EXHIBIT B). On 11-25-97 plaintiff had his initial meeting with his Trademark Attorney after being confronted with his customers about "LL Cool J on television talking about coming out with a line of shoes and clothing

branded 'NAJEE'. On 12-10-97, "Martin" under the name of "Charles Fisher", filed in the NYS DOS, the formation of NAJEE INC. "Martin/Fisher" abandoned the corporation due to plaintiff's interference with defendants obvious "tying" arrangement. On 08-13-98, GTFM INC. formed and filed THE FUBU FOUNDATION, INC. On 9-22-98, an Office Action rejecting plaintiff's In Use application for the word mark NAJI on the grounds of "ornamental" and **"likelihood of confusion--prior pending application"**, was sent to plaintiff (EXHIBIT A). Plaintiff was given 6 months to respond too the Office Action to avoid abandonment. "Martin" under the name "Charles Fisher" was co-applicant on the ITU application. On 8-21-98 "Martin/Fisher's" ITU application to register NAJEE was approved for Pub-Principal Register (Initial exam EXHIBIT B) "Martin/Fisher's" application for NAJEE was published for opposition on 10-27-98. On 1-14-99 plaintiff's In Use application for NAJI was filed at the PTO (EXHIBIT A). On 2-15-99, plaintiff's attorney closed down her practice and relocated prior to responding to the Office Action (EXHIBIT F). Plaintiff hired a new attorney and reinitiated the examination of the In Use application on 10-04-99 (EXHIBIT F). On 11-15-99, GTFM INC. filed the formation of FUBU THE COLLECTION LLC. at the NYS DOS.

Defendants were unsuccessful at registering "NAJEE" and registration of NAJI was granted in favor of plaintiff on 08-29-2000 (EXHIBIT A, F). Nevertheless, defendants have introduced "NAJEE" products into commerce and threaten to continue infringing activities despite plaintiff's protest. Defendants made false statements of ownership of the mark and that no one else has used the mark. "Martin" knew that he could not register the slogan "FOR US BY US," so he registered the acronym of the slogan, assigned it GTFM INC. and as a corporation, defendants were able to secure the word mark and define it as an acronym for the slogan, "FOR US BY US". GTFM INC. knew or should have known the meaning of the acronym as a purchaser and relied on "Martin's" assignment of the entire interest. LL Cool J bankrolled the corporation and "Martin" being his manager could not blatantly come out with NAJEE, FOR US BY US. It was a gradual reverse confusion process that would return to the head of the conspiracy. Thus, when LL Cool J was unsuccessful in registering NAJEE he abandoned the mark and no longer endorsing FUBU (EXHIBIT C), wrote his biography, which includes photo images of his co-conspirators (EXHIBIT D). *Watts v. University of Delaware*, 622 f.2d 47, 50 (3d Cir.1980) "Martin" changed his name to "Charles Fisher" when he and LL Cool J filed an application to register NAJEE. Defendants intended to defraud plaintiff and the public. Within days of the Publication of the assignment of FUBU with the mark of LL Cool J's endorsement on the Principal Register, on 6-11-89 defendants "Charles Fisher" and James Todd (Smith LL Cool J) made false statements under affidavit in filing for registration of NAJEE knowing that plaintiff is the owner of te mark and the slogan FOR U BY US. James Todd Smith has recently publicly announced that he "owns a piece of FUBU." "Martin" is the vice-

president of "FUBU." Mr. Smith display's a photograph of "J. Alexander Martin" in his biography and states that his name is "Charles Fisher," his manager for Def Jam Records. "J. Alexander Martin" is known publicly as one of the "FUBU brothers." In Smith's biography, the photographic image of "Charles Fisher" is clearly "J. Alexander Martin, Smith's manager." The images reveal that "Charles Fisher" and "J. Alexander Martin" are the same person. Further, He states in his biography that his manager "Cornell Cark," (EXHIBIT D) "lost 70 pounds and died from AIDS." The photo images of "Cornell" indicate that he is no other than the depiction of the man on the FUBU hangtags and shoeboxes that is known as "Keith Perrin."

LL Cool J's manager interchangeably used the names "J. Alexander Martin" and "Charles Fisher" on applications to register "NAJEE" and "F.U.B.U.". LL Cool J's manager hired attorney Robert Meloni as "Charles Fisher" for the NAJEE application. and hired attorney William Cox as "J. Alexander Martin" for F.U.B.U. The applications were filed at different times. LL Cool J's manager gave conflicting testimony concerning dissected parts of the same mark belonging to McRae. Defendants knew that plaintiff would never sell his intellectual property nor join the entertainment business. They relied on his naivete, insiders at the PTO, and lawyers who accepted payoffs to overlook plaintiff. ("Martin/Fisher" is LL Cool J's and R. Kelly's manager. Plaintiff's trademark application was filled in on R. Kelly's birthday and filed at the PTO on LL Cool J's birthday.

1. Issue Presented

Should defendants counterclaims be dismissed and/or stricken because they are the same parties and privies to the adversary proceedings at the Patent and Trademark Office?

Brief Ans. Yes.

Did the defendants give false statements and make fraudulent affidavits under oath in filing applications to register plaintiff's mark and obtaining registration of his slogan?

Brief Ans. Yes.

Was fraud committed by defendants on plaintiff and the Patent and Trademark Office?

Brief Ans. Yes.

2. Questions Presented

Are McRae's claims of trademark infringement, unfair competition and false designation of origin valid enough for him to seek cancellation of defendants GTFM INC.'s registration and obtain relief under Section 43(a) of the Lanham Act for fraudulent registration of a trademark?

Does an individual who files two separate trademark applications to register portions of the same mark that originally belongs to another owner, illuminate the owner's claims of the false and fraudulent statements made at the United States Patent and Trademark Office?

If the registrant interchangeably used the names, "Charles Fisher" and "J. Alexander Martin" on separate trademark applications filed at different times, with different attorneys yet while under oath, does he and his co-applicant, James Todd Smith, commit fraud when they are successful in obtaining registration for McRae's slogan (F.U.B.U.) but unsuccessful in obtaining registration of the dominant part of McRae's mark (NAJI)?

Are McRae's *compulsory counterclaims* properly asserted as an affirmative defense to defendant's "answer" and *counterclaims* under Federal Rules Civil Procedure Section 43(a) of the Lanham Act?

D. Substantive Trademark Law

1. Section 43(a) of Lanham Act:

a. Trademark Infringement and Unfair Competition

Following authority granted under Article 1, section 8, clause 3 of the United States Constitution, Congress enacted the Trademark Act of 1946, more commonly known as the Lanham Act. As acknowledged by the United Supreme Court, "the Lanham Act was intended to make 'actionable the deception and misleading use of marks' and 'to protect persons engaged in ...commerce against unfair competition.'" The Lanham Act affords protection to an owner whether the owner registers the mark or not. More specifically, in cases where a trademark owner has registered its mark with a federal registration, an action for federal trademark infringement may lie under 15 USC s 1114(1). This statute proscribes such infringement and authorizes a registrant to sue for infringement of the federal registration. The statute states:

(1). Elements of Cause of Action

- Any person who shall, without consent of the registrant---
 - use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with sale, offering for sale, distribution or advertising of any goods or services on or in connection with which such use is likely to cause confusion or to cause mistake, or to deceive; or

- reproduce counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services
- on or in connection with such use is likely to cause confusion, or to cause mistake, or to deceive;

- Shall be liable in a civil action by the registrant for the remedies herein provided. Under subsection (b) of this section, the registrant shall not be entitled to recover profits or damage unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

- As used in this subsection, the term "any person" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any non governing entity.

2. **15 USC §1125. False designations of origin and false descriptions forbidden**

A. **COMMON LAW RIGHTS UNAFFECTED THE VALIDITY OF REGISTRATION**

The Lanham Act also proscribes certain conduct and affords certain rights and remedies even absent a registration, as established through 15 USC § 1125(a) (commonly referred to as § 43(a)). That section states:

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

- is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

- in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities,
- shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

3. Relationship between 15 USC s 1114(1) and 15 USC s 1125(a) of The Lanham Act

Concerning the relationship between 15 USC s 1114(1) and 15 USC s 1125(a) of The Lanham Act, the Supreme Court acknowledged that

[s]ection 43(a)"prohibits a broader range of practices than does S 32 [15 USC s 1114]," which applies to registered marks, *Inwood laboratories, Inc v. Ives Laboratories, Inc.*, 456 U.S. 844, 858 (1982), but it is common ground that S 43(a) protects qualifying unregistered trademarks and that the general principles qualifying a mark for registration under S 2 of the Lanham Act are for the most part applicable in determining whether an unregistered mark is entitled to protection under 43(a).

E. Cancellation of a Registered Trademark 15 USC S 1119

Generally, 15 USC s 1119 gives the courts concurrent power with the Patent and Trademark office to conduct cancellation proceedings, and permits them to cancel on the same grounds as the Patent and trademark Office, such as fraud for instance. The decision on infringement controls the decision on cancellation of the defendant's trademark. The legal issue in a cancellation proceeding is he right to register a mark. 15 USC s 1052(d) provides that a mark may not be registered if it:

...[c]onsists of or comprises a mark which so resembles a mark registered in the Patent Office or a mark or tradename previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, mistake or to deceive. . . . A finding of likelihood of confusion in a cancellation proceeding requires cancellation of the registration; use of the mark is irrelevant. *SCM Corp. v. Royal McBee Corp.*, 395 F.2d 1018, 55 CCPA 1179 (1968).

1. Effect of Incontestability of a Registered Trademark

Conclusive evidence of the right to use a registered trademark that has obtained "incontestable" status under 15 USCA S 1065 is subject to proof of infringement, and to certain statutory defenses or defects under 15 USCA S 1115(b) or Section 33(b) of the Patent and Trademark Office . A federal

trademark registration may be attacked in a cancellation petition filed in court by an action seeking to enjoin the use of the registered mark and to cancel the registration, or by a trademark infringement defendant raising invalidity as a defense or as a basis for a counterclaim.

a. Law of Assignments

(1.) Rights of Assignee- 6A C.J.S. § 88

An assignee ordinarily obtains only the rights possessed by the assignor at the time of the assignment, and no more, since, as discussed supra § 73, an assignment operates to transfer only such right, title, or interest as is possessed by the assignor, and takes the obligation, contract, chose, or other thing assigned subject to the same restrictions limitations, and defects as it had in the hands of the assignor. In other words, an assignee stands in the shoes, in place of, or in the same position as, his assignor *Marshak v. Treadwell*, 58 F.Supp.2d 551, *affirmed* 240 F.3d 184

The assignee's rights depend upon, or are controlled by, those of the assignor, and his situation or position is no better than that of the assignor. He takes only the interest, which his assignor had to part with, and, since his rights are derivative, he may not receive what his assignor could not. If the assignor suffered no damages, or is not owed anything under a contract, the assignee cannot recover anything. Nothing will pass to the assignee if the assignor never had the right claimed under the assignment, or if, having had it, he had already disposed of it, or had settled the claim on which the right was based. If a contract, instrument, or claim is void, or otherwise invalid, in the hands of the assignor, it cannot be vitalized by his assignment of it.

The time of the assignment determines the rights of the assignee and not the time of suit. The assignee of a cause of action can have no stronger claim than had the assignor, nor may he claim a stronger position merely upon the ground that the assignor is beyond the jurisdiction of the court; and he cannot sue if the assignor could not have maintained the action.

2. Available Defenses of an Incontestable Mark

Under Section 33(b)(1) it is a defense to an infringement action that the registration was obtained fraudulently. 15 USC 1115b(1). The following are the Section 33(b) "defenses and defects" which may be asserted by a defendant to an action for infringement of an incontestable trademark registration:

- That the registration or the incontestable right to use the mark was obtained fraudulently;
- That the mark has been abandoned by the registrant;

That the registered mark is being used, by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services in connection with which the mark is used;

- That the use of the name, term, or devise charged to be an infringement is a use, otherwise than as a trade or service mark, of the party's individual name of anyone in privity with such party, or a term or devise which is descriptive of and used fairly and in good faith only to describe to users the goods or services of such party, or their geographic origin;
- That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to registration of the mark under this Act or publication of the registered mark under subsection (c) of section 12 of this Act; *Provided, however*, That this defense or defect shall apply only for the are in which such continuous prior use is proved;
- That the mark whose use is charged as an infringement was registered and used prior to the registration under this Act or publication under subsection (c) of this section 12 of this Act of the registered mark of the registrant, and not abandoned: *Provided, however*, That this defense or defect shall apply only for the are in which the mark was used prior to such registration or such publication of the registrant's mark;
- That the mark has been used to violate the anti-trust laws of the United States.
(An exception to the compulsory-counterclaim rule is when the counterclaim is the subject of another proceeding between the same parties or parties privity.)

- That equitable principles, including laches, estoppel, and acquiescence

3. Statutory Affect of Incontestable Defense

The statutory interpretation states simply that an incontestable registration is "conclusive evidence" except when one of the enumerated defenses or defects is established, in which case one must conclude, it is not. If it is not, then presumably the registrant is left not with Section 33(b) "conclusive evidence" but Sections 7(b) and 33(a), "any legal or equitable defense or defect which might have been asserted if such mark had not been registered."

F. FEDERAL RULES CIVIL PROCEDURE:

1. RULE 13(a) COUNTERCLAIM AND CROSS-CLAIM

(a). **FRCP 13(a) Compulsory Counterclaims.** A pleading shall state as a counterclaim *any* claim which at the time of the serving the pleading the pleader has against any opposing

party, if it arises out of the *transaction or occurrence* that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

b. *Compulsory Counterclaim In Reply or Answer*

In a response to a trademark infringement complaint, the defendant must present any defense or objections by way of an *answer*, which may include *affirmative defenses or counterclaims*, and the defendant may use either an affirmative defense or a counterclaim to collaterally attack the *validity* of the plaintiff's mark.

The courts have applied four tests in determining whether a counterclaim is compulsory in trademark infringement lawsuits:

- Whether the factual and legal issues raised by the claim and counterclaim are largely the same;
- Whether res judicata would bar a subsequent suit on the defendant's claim without the compulsory counterclaim rule;
- Whether substantially the same evidence supports or refutes both the plaintiff's claim and the defendant's counterclaim;
- Whether there is a "logical relationship" between the plaintiff's claim and the defendant's counterclaim.

c. *Holdings; Compulsory Counterclaims*

In a trademark infringement case, in accordance with the rule in patent cases, the claim of a defendant in an infringement action for cancellation of a plaintiff's invalid registration has been termed a compulsory counterclaim. *See Federal Procedure, L.Ed*, Patents S 60:985. The defendant's charges of anti-trust violations, which would be a direct defense to enforcement of a trademark, is also a compulsory counterclaim. *Minnetonka, Inc. v. Sani-Fresh Intern., Inc.*, 103 F.R.D. 377 (D. Minn. 1984).

G. *The Pleadings*

In plaintiff's Amended Complaints for False Designation of Origin; Trademark Infringement and Unfair Competition is set forth the grounds for cancellation of defendant's F.U.B.U, FUBU registrations and others, in addition to plaintiff's compulsory counterclaims and anti-trust violations.

Plaintiff's Cancellation of a Registered Trademark and Fraudulent Registration of a Trademark claims are based on the ground that defendant's knowingly gave false and fraudulent statements to the Patent and Trademark Office as to the ownership of the mark NAJI and the slogan FOR U BY US. Defendants filed two applications for the same mark and the registrant interchangeably used different names and different attorneys. Defendants were unsuccessful in registering the dominant element of plaintiff's word mark at the USPTO, thus res judicata/collateral estoppel. **The dominant portions of the names is what causes confusion and the addition of second names does no lessen the confusion** in the minds of the purchasers. *Robert Bruce, Inc. v. Sears, Roebuck & Co.*, 343 F. Supp. 1333, 1345-1346 (EDPA 1972). Defendant's declaration in its application that he is the owner of the mark and that he has no knowledge of another person who has a right to use the mark is a false declaration in violation of 15 USC s 1120. Under 15 USC s 1119, this court has the power and jurisdiction to order cancellation of a registration which was procured by a false statement.

Plaintiff asserts that it has been heretofore held that likelihood of confusion was the same issue before the Trademark Trial and Appeal Board and in the instant case. The same marks and goods are involved in the present suit and are the same parties, marks and goods involved at the TTAB. Plaintiff asserts that defendants reverse confusion and fraudulent affidavits resulted in them deceptively obtaining registration of his slogan despite plaintiff's success in the inter partes proceeding. Despite the TTAB administrative decision defendants have continued using plaintiff's mark causing actual confusion and are using the fraudulent registered slogan of plaintiff's mark. Defendants registration must be cancelled because of their false designation of origin, trademark infringement and unfair competition. Plaintiff has no other remedy at law and is likely to be harmed by defendants acts.

Defendant's pleadings and counterclaims raise no contested issue of material facts of plaintiff's claim and are legal conclusions that are alleged, unsupported by well-pleaded facts and general denials. McRae's complaint 1 for trademark infringement and unfair competition and complaint 2, false designation of origin, enjoined carefully the relationship between defendants concerning plaintiff's trademark and slogan. Defendants have failed to enjoin James Todd Smith and "Charles Fisher" as indispensable parties to this action, entry of default on said defendants has been entered by the Clerk. Further, the defaulted defendants are shareholders of GTFM INC. and vicariously liable.

Defendants have not asserted any affirmative defenses as required by Section 43(a) of the Lanham Act, under trademark law, for trademarks that have obtained incontestable status. Defendants cannot now assert them and have not responded to complaint 2 for trademark infringement and unfair competition. GTFM INC.'s "answer" and "counterclaims" are not sculpted in such a fashion as to articulate defendant's

allegations or theory of plaintiff's "wrongful acts." Defendants allegations of trademark counterfeiting, trademark infringement, false designation of origin, and trademark dilution are false and fraudulent. Therefore, plaintiff asserts that defendant's answer and counterclaims have no merit and are insufficient.

II. STATEMENT OF FACTS

A. *Plaintiff's business and trademarks*

1. Since 1992 McRae has been and continues to be actively engaged in the business of producing and selling NAJI® clothing. Plaintiff started off gradually purchasing equipment with monies left over from his school grant. After winning a lawsuit from a car accident, McRae was able to purchase a 6-color 4-station Hopkins Int'l screenprinting press while a student at Mercer County Community College. Plaintiff initially invested approximately \$50,000 to complete his printshop. After discovering that the equipment couldn't fit into his small apt., plaintiff's girlfriend allowed him to place the equipment in her living room in Pa.

Plaintiff first designed his symbol and would walk from Pennsylvania to Trenton everyday and return to his girlfriend's house every evening. Plaintiff would ask people if they needed t-shirts for any occasion and he discovered that there was a large market for custom t-shirts in the business communities. Plaintiff started taking orders with a minimum of 4-6 dozen and would finish the entire job, matter how large, in 2-weeks.

Plaintiff discovered that he was making more money in less time by designing and selling his own label so he capitalized on the reputation of his mark. After quickly becoming recognized as the urban fashion designer, professionally known as "Naji", McRae publicized his slogan, FOR U BY US at Mercer County Community College. Plaintiff was a student at the college and publicized his slogan, between 92-94, during a lecture given by Sister Souljah. McRae was inspired by Souljah while he was incarcerated and had a predetermined idea to handle his business upon his release.

Plaintiff attended college for 2 years and thereafter pursued his business of designing t-shirts for his line and printing customized shirts for others in the community. It would take McRae only 4 hours to manufacture a 3-color screen and print between 50-100 shirts per hour by himself. After breaking-up with his girlfriend, plaintiff started renting garages where he'd live and perfect his craft. Plaintiff would relocate periodically and he eventually founded a store on N. Clinton Ave. After selling several cases of The Million March t-shirts, plaintiff incorporated and named the store Ikhanaten Armor Inc.

2. McRae retained his factory, NAJI sportswear where he manufactured his goods and sold his goods through his wholly owned corporation. Ikhanaten Armor Inc. was the exclusive seller of the designs licensed by Pharo NAJI Akhenaten himself.

In 1998, the dominant portion of plaintiff's mark was seized by rapper LL Cool J and the "FUBU brothers". Plaintiff's business and reputation was drastically harmed when defendant's began using a simulation of his mark NAJEE and his slogan FOR US BY US. Plaintiff was forced to go "underground", take his designs back to the streets and sell directly to his customers. (EXHIBIT G)

Prior to plaintiff closing his store, his symbol had evolved into the word mark, NAJI. Plaintiff closed his store after being introduced to the son of Mr. Brown, a mechanic behind his store. His son, Sherwood Brown, owned a sports bar (Benny's, EXHIBIT A) a basketball team, Trenton FLAMES. Plaintiff designed his t-shirts and helped him promote his basketball games at the CYO. Plaintiff would sport his NAJI shirts while selling the FLAMES shirts and discovered that his shirts were in much greater demand. Plaintiff resided on the third floor of Sherwood's Business, Benny's Bar, and printed on the second floor. The upstairs portion of the building was very inhabitable. While virtually homeless, McRae began printing t-shirts with a distinctive symbol and publicized his fashion identity as PHARO NAJI AKHENATEN. Plaintiff created a very large demand for his product and was able to finance his business from the cashflow generated. Plaintiff reinvested his money in his business and was able to live a comfortable life until Defendants drastically affected the urban market with their unfair competition money and power. Plaintiff image and style was given to "rappers" who dominated the entire market in the United States.

B. *Evolution of symbol and slogan*

McRae operated his business out of rundown buildings and garages that he lived in. McRae's primary geographic market was the Northeast tri-state area and gradually spread out to other major cities in the U.S.. Plaintiff expanded his skill into designing all other types of garments in demand by the public due to widespread circulation of his branded t-shirts.

a. *Strength of NAJI*

McRae has always been known as "Naji" and continuous usage and modeling of his clothing with his symbol has evolved into "NAJI". NAJI is plaintiff's word mark, the source of his word mark is his symbol and source of his symbol is its slogan, FOR U BY US. McRae sells his clothing in various states in the U.S. and ships overseas to his customers. All of McRae's clothing is distinctive and his mark has acquired strong secondary meaning as evidenced with the federal registration of NAJI.

McRae markets his products directly to customers in predominately urban black neighborhoods and would carry dufflebags of his wears selling them while walking the streets. He would walk 15-25 miles a day selling his clothes and sell wholesale to certain shops. Plaintiff

prefers to control his quality control and every aspect of his business and frequently travels to pursue his business.

C. *Defendants reverse confusion 15 USCA SS 1051-1127*

1. After being confronted with various customers in his hometown of Trenton NJ, plaintiff discovered that James Todd Smith also known as LL Cool J had appeared on television advertising that he was "coming out with a line of boots and sneakers," branded NAJEE. In January 1989, plaintiff's attorney, Laura Farina, confirmed this statement with an Office Action from the USPTO. After suddenly resigning from practice and relocating to Washington, DC, plaintiff attorney gave him a letter that had been typed containing the status of Smith's application. "Charles Fisher," the co-applicant's name, was not on the document.

Plaintiff went to New York to inquire about the misrepresentation of his mark and protested to the use of his mark. Smith's attorney admitted to the infringing activities and suggested that Smith's manager was responsible. Smith's attorney, Robert Meloni is the Attorney of Record for Smith's Intent to Use application to register NAJEE.

Plaintiff's reputation was damaged by the boots that defendants introduced into commerce in that not only were his customers confused into believing that defendants NAJEE products were plaintiff's but defendant's had also introduced products bearing simulations of his slogan FOR U BY US. Defendants in bad faith interfered with plaintiff's business relationships to injury of plaintiff. *See Small v. United States*, 333 F.2 702, 704 (3d Cir. 1964). As part of the plan to divert orders, LL Cool J held himself out as spokesman and model for FUBU THE COLLECTION LLC/GTFM INC. while "J. Alexander Martin" and "Keith Perrin" were still managers for him at Def Jam Records. After the alleged diversion of orders was complete, "Martin" and "Perrin" resigned from management and became sales manager and eventually vice-president of FUBU. Defendants GTFM INC. went beyond acts of mere business competition and engaged in deceptive conduct designed to steal plaintiff's customers and harm his ability to operate his business. In addition, Smith and "Fisher's" employer, Def Jam Records procured the trade dress of one of his designs of a caricature of a pig on his shirts and branded it "Phat Farm."

Defendants whom are agents for Def Jam Records are concealing themselves behind the corporate veil of FUBU to intentionally embark upon a course of action designed to trade upon the widespread publicity given to McRae's NAJI, FOR U BY US clothing, as well as the enormous consumer demand for the product. FUBU's activities are likely to cause confusion among the public

and the trade, to dilute the distinctiveness of McRae's NAJI trademark, to create injury to McRae's business reputation, and to otherwise compete unfairly.

III. STATEMENT OF ISSUES

2. Whether the defendants fraudulent intent to register plaintiff's trademark and defendants fraudulent registration of his slogan resulting in defendant's abandonment of its application are enjoined under the doctrine of collateral estoppel in the present action?
3. Whether the Patent and Trademark Office's determination of "likelihood of confusion" between the conflicting marks illuminate plaintiff's allegations of fraud and are determinative of the persuasive value of the USPTO's holding in seeking cancellation of a registered trademark?
4. Whether defendants' Registration No.'s 1910169, 2068058 and others should be cancelled because of
 - a. the false and fraudulent statements made by the registrant as to the ownership and use of mark
 - b. dissecting plaintiff's slogan from its mark
 - c. filing multiple applications for the same mark
 - (1.) using interchangeable identities as the registrant on multiple applications
 - (2.) filing applications to register with interchangeable names and different attorneys to fraudulently procure the mark

VI. ARGUMENT

POINT I

A. *DEFENDANTS ARE NOT ENTITLED TO FEDERAL REGISTRATION OF FUBU UNDER THE LANHAM ACT BECAUSE AT THE TIME OF FILING ITS APPLICATION DEFENDANTS DID NOT OWN THE MARK AND MADE FALSE DECLARATIONS AS TO KNOWLEDGE OF ANYONE HAVING RIGHTS THEREOF*

1. *Defendants abandoned their Intent to Use application to register NAJEE without opposition to NAJI. In the present proceeding plaintiff is seeking to recover its slogan for the same mark. Plaintiff's slogan was previously registered by the same parties defendant. The records clearly indicate that "Charles Fisher" and "J. Alexander Martin" are the same person and that he interchangeably used different applications to falsify applications and that the primary defendants are agents for Def Jam records.*
2. *Plaintiff's initial symbol and its slogan FOR U BY US is inherently distinctive with secondary meaning. The strength of plaintiff's symbol evolved into NAJI from continuous usage and its slogan remains FOR U BY US.*

3. *GTFM INC.'s attempt to avoid the preclusive effect of the Examining Attorney's prior judgment of a likelihood of confusion for NAJI/NAJEE and the fraudulent registration of plaintiff's slogan under a*

pseudonym cannot succeed. Actual reverse confusion has occurred from introducing NAJEE products into commerce despite defendants full opportunity to litigate the issue. Defendant's registration is subject to cancellation at any time under 15 USC s1064(c) and the fraud may be relied on as a defense in this trademark infringement action and plaintiff's assertion of the doctrine of collateral estoppel.

4. These considerations, taken together, compel the conclusion that the Board's holdings on priority of use and likelihood of confusion in the interference and Opposition proceeding equally apply to the facts to this proceeding.

5. McRae's office action in the USPTO, brought by the Examining attorney, on behalf of James Todd Smith and "Charles Fisher", concerning NAJI/NAJEE precluded the likelihood of confusion standard provided by the common comparison of 15 USC s1114(1) and 15 USC s1125(a) of the Lanham Act for establishing a prima facie case. *Coca -Cola v. Nehi Corp.*, 26 Del.Ch 140, 25 A.2d 364, 369 (1942), *aff'd* 27 Del.Ch. 318, 36 A.2d 156 (1944). *See also Draper Communications v. Delaware Valley Broadcasters*, 505 A.2d 1283, 1290 (Del.Ch.1985).

6. NAJI is the dominant part of McRae's mark, a 'partial registration.' McRae's registration was compulsory due to defendants' interference, unfair competition and reverse confusion.' It is a well established principle that the dominant aspect of a composite mark is separately protectable from the word mark in a composite registration. *Polo Fashions, Inc. v. Branded Apparel Merchandising, Inc.*, 592 F.Supp 648 (D.Mass. 1984). In *Chaussyres Bally Societe Anonyme De Fabrication v. Dial Shoe Co.*, 345 F.2d 216, The holding of the court is, "court cannot dissect and set aside any portion of a mark and eliminate it from consideration in judging matter of similarity or dissimilarity of competing marks." McRae's mark was placed on the Principal Register after the USPTO determined the validity of McRae's ownership.

7. Despite Mr. Smith's lack of success in fraudulently registering McRae's mark, he has not ceased his infringing activities in NAJI and is attempting to shield himself behind the corporate veil of the merging of GTFM INC./FUBU THE COLLECTION LLC and Def Jam Records. Mr. Smith is a shareholder of FUBU THE COLLECTION LLC and an actual participant in the tort *Donsco, Inc. v. Casper Corp.*, 587 F.2d 602, 606 (3d. Cir.1978). An entry of default has been entered on his failure to answer.

8. Mr. Smith and J. Alexander Martin are agents for Def Records and have been trying to sign McRae for almost 20 years. As a result McRae is being "stalked" for his intellectual property. McRae is not interested in becoming a rapper, an employee for Def Jam or sharing his intellectual property with "FUBU."

9. McRae was never afforded his day in court consistent with due process principles in regards to Mr. Smith's co-conspirators in the fraudulent registration and dissection of McRae's slogan, "FOR U BY US," from his mark, NAJI. The courts held in *Miles Laboratories v. Foley & Co.*, 1944, 144 F.2d 888, In order to arrive at an intelligible understanding in cases where only parts of the mark are similar, it is necessary to look to the significance of the parts of the marks in order to determine the dominant parts.

10. There are still issues that remain, as to the other part of plaintiff's mark, to be resolved, with those in privity with Mr. Smith i.e., J. Alexander Martin, Daymond John, Keith Perrin and Carl Brown i.e. (FUBU THE COLLECTION LLC), and Samsung International or GTFM INC. It has been held in *Breese v. Tampax Inc.* SDNY 1941 42 F. Supp. 115 that "all persons participating in the infringement of a trademark are liable for infringement, even though acting simply as officers of the corporation."

In light of defendants fraud in establishing "incontestability" of a trademark pursuant to 15 USCA S 1065, the court has held that "a defendant accused of trademark violation can defend itself only on the seven grounds enumerated." *Salton Inc. v. Cornwall Corp.*, 477 F. Supp 975, 205 USPQ 428.

GTFM INC. has not asserted any of the enumerated defenses. Defendant GTFM INC. has not stated any valid counterclaims upon which relief may be granted and has presented no justiciable controversy. The raising of issues in defendant's counterclaim does not insure the question of the validity of plaintiff's claim for false designation of origin nor trademark infringement and unfair competition. GTFM INC. has introduced no evidence and the evidence which defendant indicates could be presented would not improve defendant's position.

POINT II

B. PLAINTIFF (COUNTER-DEFENDANT) MAY ASSERT COMPULSORY COUNTERCLAIM

An assignor may not claim any rights of an assignee if the assignment is invalid. *Donruss Co. v. Farley Mfg. Co.*, 132 USPQ 298 (T.T.A.B. 1961). See N. 1 *supra*. In trademark infringement lawsuits, a plaintiff may assert a compulsory counterclaim as a defense to invalidate a trademark registration and seek cancellation via substantive law of the Lanham Act under Rule 13(a) of FRCP.

Federal Rules of Civil Procedure permits the District Courts to cancel a trademark registration that has obtained "incontestable" status. GTFM INC. has not amended its answer to conform to the evidence and judicial notice averred in McRae's pleadings. Furthermore, GTFM INC. has not defended itself on any of the seven grounds enumerated for incontestable marks. Under RULE 8(c), GTFM INC. cannot now assert those defenses, which were required in their initial responsive pleading.

The "circumstances constituting fraud" have been stated with particularity, under FRCP 9(b) GTFM INC. has been placed on notice of the precise misconduct with which it is charged.

McRae's Reply and Compulsory Counterclaims specifically challenges and attacks defendants fraudulent registration. The antitrust violations pleaded in McRae's compulsory counterclaims result from the same transaction of the false and fraudulent statements made on the applications by James Todd Smith and his manager for DEF JAM RECORDS. Under Smith's direction "Charles Fisher" a.k.a "J. Alexander Martin," a double-agent for GTFM INC./FUBU THE COLLECTION LLC. and DEF JAM Records, dissected plaintiff's mark and filed separate trademark applications for one mark under different identities to conceal the true owner of the mark.

The same parties-defendant to McRae's cause of action are the same parties that attempted to sign McRae in the mid-80's. The primary defendant's are agents for Def Jam Records. GTFM INC. et.al., used different names and different attorneys for the common cause of fraudulent registration, unfair competition, reverse confusion, and trademark infringement. DEF JAM's artist James Todd Smith and his manager's false fraudulent statements, fraudulent applications, fraudulent registration, and the void assignment of McRae's slogan to form FUBU THE COLLECTION LLC/GTFM INC., all result from the same occurrence and transaction.

POINT IV

C. COUNTERCLAIM APPROPRIATE IN ANSWER TO INFRINGEMENT COMPLAINT (THOUGH SAME ISSUES MIGHT BE RAISED BY WAY OF DEFENSE OR DENIALS)

McRae's complaint and reply include the time, place, and content of the false representations, as well as the identities of the persons making the representations, the medium through which the fraud was perpetrated, what the defendants obtained and what the plaintiff lost as a consequence of the fraud, and what was false or misleading about the statements.

GTFM INC. has answered McRae's complaint of false designation of origin under the Lanham Act and has generally denied all averments except that J. Alexander Martin is an "employee" and the assignor of the mark F.U.B.U. to GTFM INC.

GTFM INC. has denied that it has "knowledge of information sufficient to form a belief as to the truth concerning the averments of defendant James Todd Smith."

POINT V

**D. GTFM INC. HAS NOT CONDUCTED INVESTIGATION OF JUDICIAL NOTICE
NOR CONFORMED ITS PLEADING TO EVIDENCE**

McRae is establishing the burden of proof by establishing a defect in GTFM INC.'s registration under 15 USCA s 1115(b):

"the effect of establishing a defense removes the statutory effect of defendants registration as "conclusive" evidence of the registrant's rights, thereby relegating the registrant to his normal burden of proving the validity of the mark."

According to James Todd Smith's biography, J. Alexander Martin, registrant of F.U.B.U., is, in fact "Charles Fisher". "J. Alexander Martin," is James Todd Smith's manager who is also the vice-president of FUBU THE COLLECTION LLC. Smith and his manager made false and fraudulent statements on affidavits for separate applications filed at the USPTO. Smith's manager, under his direction, used different names on his applications to fraudulently register McRae's marks F.U.B.U. and NAJI, respectively.

William H. Cox, trademark attorney, proposed a trademark application for "J. Alexander Martin" as an individual. Robert Meloni, attorney for Def Jam Records proposed a trademark application for his client, James Todd Smith, and his client's manager "Charles Fisher." Smith and Fisher are the co-applicants on the Intent to Use application filed at the USPTO for the mark, NAJEE. Both Smith and Fisher are agents for Def Jam Records. When William Cox administered "J Alexander Martin's" trademark application under oath and filed the application at the trademark office, "Martin" knew that he was not the owner of the slogan, FOR U BY US. "Martin" is the manager of Mr. Smith and was directed to fraudulently register the mark, word mark, the slogan and assign them to NAJEE INC. GTFM INC. is a substitution for NAJEE INC., a business entity registered by "Charles Fisher/J. Alexander Martin" in New York. Mr. Smith directed his manager, "Charles Fisher/J. Alexander Martin" to register the business in New York under NAJEE INC. Fisher and Smith abandoned their application to register NAJEE and thus NAJEE INC.

POINT IV

E. DEFENDANT HAS NOT ASSERTED ANY OF THE SEVEN ENUMERATED DEFENSES

"Martin" assigned all rights to GTFM INC. after achieving Smith's objective of registering "F.U.B.U." The mark obtained "incontestable status," while Mr. Smith financed and endorsed a false designation of origin of McRae's product. Smith and Martin knew that FOR US BY US was a weak mark without the secondary meaning of the source of production, NAJI. "F.U.B.U." does not tell a consumer about the source of the product. It is merely an acronym and unregistrable without secondary meaning. GTFM INC.

have not breathed secondary meaning into it by registering FUBU, FOR US BY US. FUBU is not the source of FOR US BY US. An acronym is certainly not the source of its composite term. LL Cool J's endorsement of FUBU does not indicate the source of the slogan. It tells about the product itself.

Both Mr. Smith and "Martin" knew that they were making false and fraudulent statements on both applications for "NAJEE" and "FOR US BY US." They knew that McRae was continuously using the marks and sought to willfully infringe and usurp the goodwill of his business.

Mr. Smith's status as a famous person gave the mark F.U.B.U. a temporary false secondary meaning and origin. McRae discovered that his former prospective labelmate had publicized that he was introducing a line of shoes and clothing branded NAJEE, a simulation of NAJI.

McRae was informed by his trademark attorney, Laura Farina, that there was a conflicting application to register NAJEE. The application was filed by Robert Meloni, attorney for James Todd Smith and "Charles Fisher," Smith's manager. Smith published his biography, "I Make My Own Rules" pending the "likelihood of confusion" of NAJI/NAJEE decision determined by Laura Hicks, Examining Attorney of the Office Action in USPTO. Mr. Smith states in his biography that, "the only "clothes I wear is FUBU. . . and " I just started a sneaker and boot company, Najee. . . " McRae's attorney never informed him that "Charles Fisher" was a co-applicant on the application to register NAJEE. It was Robert Meloni, attorney for James Todd Smith who questioned McRae's knowledge of "Charles Fisher."

McRae discovered that "Charles Fisher" was a co-applicant on Smith's application to register NAJEE by accessing records at the USPTO. McRae discovered that Smith's book contained a picture of "Charles Fisher" and recognizes him as "J. Alexander Martin". Under the interchangeable names of "J. Alexander Martin" and "Charles Fisher," James Todd Smith's manager for Def Jam Records is the registrant of F.U.B.U.; the assignor of FUBU to GTFM INC.; the vice-president of FUBU THE COLLECTION LLC; the co-applicant on trademark application for the registration of NAJEE; and the listed registrant of NAJEE INC. in the state of New York. Judicial notice evident in all "FUBU" garments containing photographic images of "J. Alexander Martin." Judicial notice is also evident in trademark applications filed by defendants concerning records at the USPTO for NAJI/NAJEE and F.U.B.U./FUBU.

McRae was irreparably injured by the reverse confusion caused by Mr. Smith and his Def Jam management. NAJI is the dominant part of McRae's mark that was initially built upon his continuous use of his symbol and slogan. McRae is known to the public as "NAJI" and also uses the epithet PHARO NAJI AKHENATEN to designate himself as the producer of all of his works. McRae's designs are distinctive fanciful and arbitrary.

V. CONCLUSION

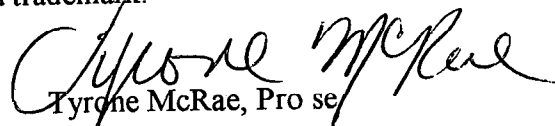
GTFM INC.'s attorney, William Cox, in his dual capacity has an obligation first to the courts and the public. Mr. Cox's duty as an officer of the court should not conflict with his duties to his client, GTFM INC. GTFM INC. is merely standing in the shoes of "Martin," the assignor, and in the administration of justice and evidence of fraud, opposing counsel must yield to the former.

"J. Alexander Martin" who is James Todd Smith's manager, conspired with Smith to fraudulently attempt to register McRae's mark, NAJI, at the USPTO. "Martin" has interchangeably used the name "J. Alexander Martin" and "Charles Fisher" to not only deceptively file an application to register a simulation of the mark FOR U BY US but he was also unsuccessful in the attempt to fraudulently register McRae's mark, NAJI. "Keith Perrin" of FUBU THE COLLECTION LLC. is also one of Smith's managers for DEF JAM RECORDS and is purportedly to have died from AIDS and lost 70 pounds.

Plaintiff believes that "Kieth Perrin" and "Charles Fisher" were some of the recording label managers present during McRae's public announcement of his symbol and slogan at Mercer County Community College. "Mr. Fisher" informed Smith about McRae's mark and presentation to Sister Souljah. Smith, being informed of McRae's previous unwillingness to sign, directed defendants to misrepresented plaintiff's product.

For the reasons set forth above, McRae prays that defendant's motion to strike and/or dismiss be denied and that his counterclaims remain as an affirmative defense on the grounds of fraudulent registration of a trademark and cancellation of registered trademark.

Date: 11-24-04



Tyrone McRae, Pro se

P.O. Box 1332

Trenton, NJ 08607

609-396-0093

naaaji@mcomail.com



UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X
TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER :
MARTIN, AND FUBU, GTFM, :

Defendants. :
-----X

03 Civ. 5382 (AET) (JJH)

NOTICE OF CROSS MOTION FOR
SUMMARY JUDGMENT OR TO
DISMISS THE COMPLAINT

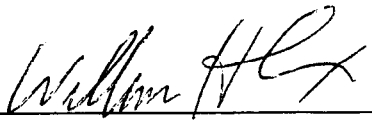
PLEASE TAKE NOTICE that upon the annexed Affidavit of William H. Cox, Esq. sworn to on December 9, 2004, the Affidavits of Daymond John and Keith Perrin both sworn to on December 8, 2004, the statement of facts and memorandum of law, and upon the complaint, the answer, affirmative defenses and counterclaims and all prior proceedings herein, defendants, J. Alexander Martin and Fubu, The Collection, LLC and GTFM, Inc., (to the extent that the latter two were named as, and are deemed to be, defendants) (collectively, "FUBU Defendants"), will move this Court before the Honorable Anne E. Thompson, United States District Judge, United States Courthouse, 6000 Clarkson S. Fisher Federal Building, 402 East State Street, Trenton, New Jersey

08608, in Room 4W, on the 20th day of December, 2004, at 9:30 a.m. or as soon thereafter as counsel may be heard, for an order, (i) pursuant to Fed. R. Civ. P. 56(b), granting summary judgment in favor of the FUBU Defendants; (ii) pursuant to Fed. R. Civ. P. 17, dismissing plaintiff's purported Complaint (the "Complaint"), in its entirety, upon the grounds that Plaintiff lacks standing to assert the claims set forth therein; (iii) pursuant to Fed. R. Civ. P. 12(f), striking the Plaintiff's purported "Amended Pleading, Reply to Answer, Affirmative Defenses, and Counterclaims - Complaint 1" in its entirety, upon the grounds that Plaintiff may not assert counterclaims, and the rest of the pleading is unresponsive; (iv) pursuant to Fed. R. Civ. P. 12(e), directing the plaintiff to make a clear and concise reply to FUBU Defendants' Answer, Affirmative Defenses and Counterclaims, dated June 17, 2004, upon the grounds that Plaintiff's pleading is so unintelligible, vague and ambiguous as to be unresponsive and prejudicial to the defendants; (v) pursuant to Fed. R. Civ. P. 9(b) dismissing the Reply for failure to plead the circumstances constituting the alleged fraud with the required particularity; and (vi) for such other and further relief as this court may deem just and reasonable.

Defendants request oral argument on the Plaintiff's motion for summary judgment and on this motion.

Dated: New York, New York
December 9, 2004

JANVEY, GORDON, HERLANDS,
RANDOLPH & COX LLP

By: 
William H. Cox (WC 3295)

Attorneys for Defendants
J. Alexander Martin and Fubu, The
Collection, LLC and GTFM, Inc.
433 Hackensack Avenue
Hackensack, New Jersey 07601
(201) 488-9339

To: Tyrone T. McRae
Plaintiff, Pro Se
P.O. Box 1332
Trenton, New Jersey 08607

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:
03 Civ. 5382 (AET) (JJH)
:

:
:
AFFIDAVIT OF WILLIAM H. COX
:

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM H. COX, being duly sworn deposes and states:

1. I am a partner in the law firm of Janvey, Gordon, Herlands, Randolph & Cox, LLP, counsel to defendants J. Alexander Martin, FUBU The Collection, LLC and GTFM, Inc. (collectively, the "FUBU Defendants"). I make this affidavit based upon my personal knowledge and upon my familiarity with the files pertaining to this case. As such, I am fully familiar with the facts set forth herein. I submit this affidavit in support of the motion by the FUBU Defendants for summary judgment and/or to dismiss the

Plaintiff's Complaint and in opposition to Plaintiff's motion for summary judgment.

2. Plaintiff, Tyrone T. McRae, originally filed his Complaint on November 14, 2003. This Court dismissed the Complaint with leave to amend. Plaintiff subsequently re-filed his Complaint on January 22, 2004. The Complaint was served upon the answering defendants on April 29, 2004.

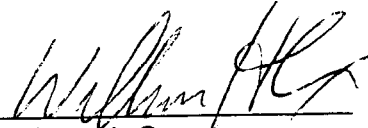
3. The answering defendants served and filed their Answer, Affirmative Defenses and Counterclaims dated July 17, 2004. In response thereto, Plaintiff served and filed a purported "Reply to Answer, Affirmative Defenses and Counterclaims - (Complaint 1)" (the "Reply"). By motion dated September 9, 2004, Defendants moved to strike Plaintiff's Reply as unresponsive. Plaintiff filed opposing papers and cross-moved for summary judgment (the "First Motion for Summary Judgment"). By Decision dated November 1, 2004, Defendants' motion was granted in its entirety dismissing Plaintiff's Reply and denying Plaintiff's First Motion for Summary Judgment.

4. On November 8, 2004, Plaintiff filed an "Amended Pleading Reply to Answer, Affirmative Defenses, and Counterclaims - (Complaint 1)" (the "Amended Reply"). The Amended Reply is nearly identical to the Reply, except that Plaintiff has added paragraphs XXXV, XXXVI, XXXVII, XXXVIII, wherein he makes vague, general statements denying the allegations contained in Defendants' counterclaims. In his Amended Reply Plaintiff has also added an allegation that James Todd Smith's former (and now deceased) employee/friend/advisor Cornell is the same person as Keith

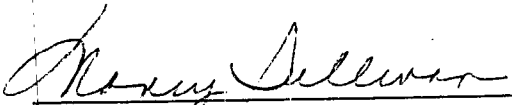
Perrin, one of the original partners of Daymond John, the founder of the FUBU trademarks.

5. Subsequently, by motion dated November 24, 2004, Plaintiff served and filed a second motion for summary judgment (the "Second Motion for Summary Judgment").

6. Upon information and belief, Defendant' James Todd Smith's son is named "NAJEE." Attached hereto as Exhibit A is a biographical piece concerning James Todd Smith that shows that Najee Smith was born in 1989, at least five years before NAJI was adopted as a trademark by the Plaintiff.


William H. Cox

Sworn to before me this
9th day of December, 2004


Notary Public
Nancy Sullivan
Notary Public, State of New York
No. 24-4742078
Qualified in Kings County
Commission Expires March 30, 20 07

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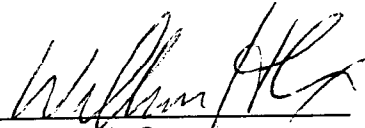
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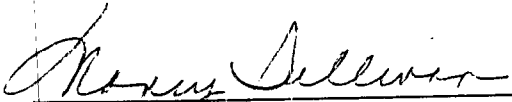
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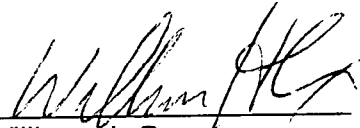
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Perrin, one of the original partners of Daymond John, the founder of the FUBU trademarks.

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6. Upon information and belief, Defendant' James Todd Smith's son is named "NAJEE." Attached hereto as Exhibit A is a biographical piece concerning James Todd Smith that shows that Najee Smith was born in 1989, at least five years before NAJI was adopted as a trademark by the Plaintiff.


William H. Cox

Sworn to before me this
9th day of December, 2004



Notary Public
Nancy Sullivan
Notary Public, State of New York
No. 24-4742078
Qualified in Kings County
Commission Expires March 30, 20 07

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X
TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER :
MARTIN, AND FUBU, GTFM, :

Defendants. :
-----X

03 Civ. 5382 (AET) (JJH)

AFFIDAVIT OF WILLIAM H. COX

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM H. COX, being duly sworn deposes and states:

1. I am a partner in the law firm of Janvey, Gordon, Herlands, Randolph & Cox, LLP, counsel to defendants J. Alexander Martin, FUBU The Collection, LLC and GTFM, Inc. (collectively, the "FUBU Defendants"). I make this affidavit based upon my personal knowledge and upon my familiarity with the files pertaining to this case. As such, I am fully familiar with the facts set forth herein. I submit this affidavit in support of the motion by the FUBU Defendants for summary judgment and/or to dismiss the

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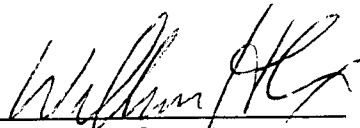
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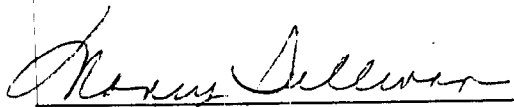
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William H. Cox

Sworn to before me this
7th day of December, 2004


Notary Public
Nancy Sullivan
Notary Public, State of New York
No. 24-4742078
Qualified in Kings County
Commission Expires March 30, 20 07

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X
TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER :
MARTIN, AND FUBU, GTFM, :

Defendants. :
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03 Civ. 5382 (AET) (JJH)

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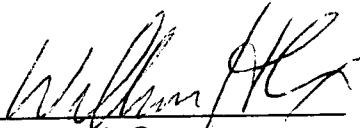
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William H. Cox

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9th day of December, 2004



Notary Public
Nancy Sullivan
Notary Public, State of New York
No. 24-4742078
Qualified in Kings County
Commission Expires March 30, 20 07

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

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TYRONE T. MCRAE,

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-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER
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Defendants.
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03 Civ. 5382 (AET) (JJH)

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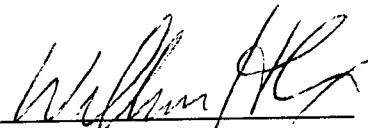
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Notary Public
Nancy Sullivan
Notary Public, State of New York
No. 24-4742078
Qualified in Kings County
Commission Expires March 30, 2007

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

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Plaintiff,

-against-

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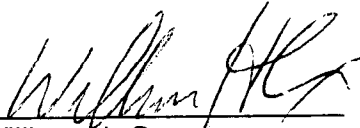
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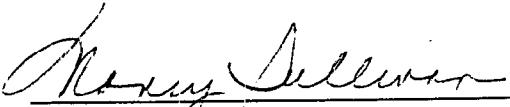

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EXHIBIT A

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Biography for LL Cool J

Birth name

James Todd Smith

Nickname

Uncle L

Height

6' 1½" (1.87 m)

Mini biography

LL Cool J was born James Todd Smith on January 14, 1968 in Bay Shore, Long Island to James and Ondrea Smith. Todd, as he was called, did not have a very happy childhood. At the young age of four, he saw his mother and grandfather suffering from gunshot wounds caused by his own father. After his grandfather and mother finally recovered from the injuries, Todd's mother began to date a young physical therapist she met while in the hospital. The therapist treated Ondrea kindly, but his true nature was revealed to Todd. For years, this man physically and verbally abused Todd. This caused Todd to be a bully himself. In fact, it was during this time that Todd started wearing hats all the time (one of LL Cool J's trademarks is the fact that people never see him without a hat on). Fortunately, Ondrea finally learned of Todd's abuse and she left him. As Todd grew older, he found a way to escape the effects of his abuse and his bullying attitude: rap music. Todd fell in love with rap music at the age of nine, and at the age of eleven, he was writing lyrics and making his own songs with some DJ equipment his grandfather gave him. At the age of fifteen, Todd and one of his best friends came up with his present stage name, LL Cool J, which is an acronym for "Ladies Love Cool James." In 1984, when LL was sixteen, he met a man named Rick Rubin, a student at NYU, who gave him his big break in music. Rick really liked LL's music, and he decided to try to get him a record deal. Together, they made the single, "I Need a

Beat," and sent to a record manager named Russell Simmons. Russell loved the single, and in 1985, Rick and Russell created the infamous Def Jam record company, and LL's album was the first to be released from that company. Even today, LL is considered one of Def Jam's most prized possessions. LL's first album, "Radio," was released in 1985, and this was also the year LL started his acting career. LL first starred in the movie "Krush Groove," which is a semi-biographical account of Russell Simmons' career. LL had a cameo appearance in the film, and he was also used as an extra. In 1986, LL also had a cameo appearance in the movie "Wildcats," and he made the theme song for that movie. After that, LL took a small break from film and concentrated more on his first love, his music. LL's music career took off, and after every single one of his albums hit platinum selling status, he was (and still is) regarded as one of the greatest hip hop artists of all time. After a few years, he had small roles in a few other films, but he was still better known for his music. All this changed in 1995. By this time, LL was a happily married 27 year old man with three children. His first starring role, which was in the movie "Out of Sync," had also been released. This movie didn't do very well at the box office, but it made the producers at NBC very interested in giving LL a role in a sitcom they wanted to air. This sitcom was "In the House," which truly showed LL's acting ability. The show stayed on the air from 1995 to 1999. Between and after the time of the sitcom, LL was offered many film roles. His big break in film came in 1998, when he was in the movie "Halloween H20: Twenty Years Later." After this film, LL was given bigger and better film roles, and he has acted alongside actors such as Whoopi Goldberg, Samuel L. Jackson, Jamie Lee Curtis, James Woods, Al Pacino, Omar Epps, Pam Grier, Stanley Tucci, and Dennis Quaid, to name a few. In 2000, LL was finally rewarded for his acting talents. That year, he won a Blockbuster Entertainment Award for the best supporting actor in an action film (the film was "Deep Blue Sea"). Even though LL's career in film has taken off, he hasn't forgotten his love for rap music. In 1998, he was planning to retire from rap and just concentrate on his film career, but he later decided to keep pursuing both talents. Today, LL is not only known as one of the greatest rappers of all time, but he is also known as a great actor.

IMDb mini-biography by

Nadiya K. Edwards <nadiyae@clemson.edu>

Spouse

Symone Smith (August 1995 - present) 4 children

Trade mark

Always wears a hat when off-camera.

Trivia

Almost always wears a hat, and wears one of his pant legs rolled up.

LL Cool J stands for "Ladies Love Cool James."

Regarded as one of the most succesful rap artists of all time.

Separated from girlfriend Simone Johnson sometime after the birth of their second child.

Hosted the 2001 American Music Awards with Britney Spears.
[2001]

[Has four children (one boy and three girls): Najee (b. 1989), Italia (b. 1990), Samaria (b. 1995), and Nina Simone (b. 2000).]

The only job he had besides being an entertainer was that he was briefly a paper boy.

Appeared with Rollerball (2002) qv co-star Chris Klein on World Wrestling Federation programming in early 2002 to promote the film. Their appearance is with APA members Faarooq and Bradshaw, both of whom appear in the film along with a number of other WWF Superstars.

He has been on Def Jam Records longer than any other artists from its start in 1985 to the present.

Wrote and performed the first ever rap love song "I Need Love" in 1985.

He speaks Spanish fluently.

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Personal quotes

"Keeping it real ain't about carrying a gun or smoking blunts. It's about being true to yourself and those around you."

"Rollerball sucked!" - discussing one of his movies on Late Night with Conan O'Brien.

"Am I James Todd Smith now or LL Cool J? Pick a name baby. Pick a name and ride with it. I don't wanna abandon my identity as LL Cool J, but at the same time, I had to figure out how to let people know that I'm really serious about making these movies. You know when you do 25 or 30 movies and people are still asking you 'how does it feel making the transition?' you know you're not communicating correctly. So I just put the James Todd Smith thing there to let people know I was serious. It's not like I made it Lawrence Cool J or something!."

"Hip-hop can be limiting and I refuse to accept limits. I've been training as an actor for six years. Nobody goes to acting school for six years. I mean, the college course is only four years! I absolutely trained. My acting coach is from the Stanislavsky school. It's real - I act."

"I'm happy to be black. I am what I am, I'm doing very well in my life, and I'm thankful to God for that. I am a real person that cares about his art and cares about what he's doing - I have a heart and a soul and want to touch people and give. As a black man, my hope is that I can touch more and more people all over the world of different races and different colours. And I think eventually, if I just stay on this path, we'll get there."

"One thing I'm not gonna do, because I'm black, is suddenly say 'you know what, I can't play a villain!' You don't need to be the good guy to get a good message out. I'm not going to limit myself like that. I just want to play good roles and be able to touch a lot of people."

"I think when you move past your fear and you go after your dreams wholeheartedly, you become free. Know what I'm saying? Move past the fear."

"I don't think you should go around talking trash about people because I think that's how you get your hat handed to you. I'm good at what I do, but I wouldn't be so bold and arrogant as to say something disrespectful about, say, Eminem. He's talented and he's good at what he does."

Salary

Rollerball (2002) \$1,000,000

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Affirm
Affidavit

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X	
TYRONE T. MCRAE,	:
	:
Plaintiff,	:
	:
-against-	:
	:
JAMES TODD SMITH, CHARLES	:
FISHER, NAJEE, INC., J. ALEXANDER :	:
MARTIN, AND FUBU, GTFM,	:
	:
Defendants.	:
-----X	

03 Civ. 5382 (AET)

AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAYMOND AURUM, being duly sworn deposes and says:

1. I am the founder of FUBU The Collection and I am the chief executive officer of GTFM, Inc., and a member of FUBU The Collection, LLC, and have held each of those positions since in or about 1996, when those entities were formed. As such, I am fully familiar with the facts set forth herein. I submit this affidavit in support of the motion by FUBU The Collection, LLC, GTFM, Inc. and J. Alexander Martin to dismiss, in opposition to plaintiff's motion for summary judgment, and in support of the defendants' motion for summary judgment.

2. I do not and have never used the name "Cut Creator" for any purposes or been known as "Cut Creator."

3. I am not and have never been an agent for Def Jam Records. I have never attended any lectures at Mercer County Community College, and to my knowledge do not personally know the plaintiff in this action.

4. Neither GTFM, Inc., FUBU The Collection, LLC, nor I have ever sold, manufactured or distributed any merchandise under the NAJI and/or NAJEE trademarks.

5. GTFM, Inc. does not and has never conducted business under the name NAJEE, Inc. Attached hereto as Exhibit A are copies of New York State Department of State database printouts for GTFM, Inc. and NAJEE, Inc. It is clear they are two separate entities. Furthermore, NAJEE, Inc. was apparently dissolved by proclamation on June 27, 2001, whereas GTFM, Inc. continues to exist. In any event NAJEE, Inc. is not a "pseudonym" for GTFM, Inc., as Plaintiff claims.



Daymond Aurum

Sworn to before me this
8th day of December, 2004


Notary Public

WILLIAM H. COX
Notary Public, State of New York
No. 02CO6009920
Qualified in New York County
Commission Expires July 6, 2006

EXHIBIT A

State of New York
Department of State } ss:

I hereby certify, that the Certificate of Incorporation of GTFM, INC. was filed on 11/20/1995, with perpetual duration, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation. I further certify the following:

A Certificate of Amendment was filed on 07/01/1997.

A Biennial Statement was filed 11/13/1997.

A Biennial Statement was filed 12/07/1999.

A Biennial Statement was filed 10/31/2001.

A Biennial Statement was filed 11/04/2003.

I further certify, that no other documents have been filed by such Corporation.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 08th day of December
two thousand and four.*

Secretary of State

State of New York
Department of State } ss:

I hereby certify, that a diligent examination has been made of the Corporate index for documents filed with this Department by NAJEE, INC. and that upon such examination the following has been filed with this office:

A Certificate of Incorporation of NAJEE, INC. was filed on 12/10/1997.

It was dissolved by proclamation of the Secretary of State published on 06/27/2001 pursuant to the Tax Law and that such dissolution has not been annulled.

I further certify, that no other documents have been filed by such Corporation.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 08th day of December
two thousand and four.*

Secretary of State

Perrin
Affidavit

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

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TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER :
MARTIN, AND FUBU, GTFM, :

Defendants. :
-----X

03 Civ. 5382 (AET)

AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

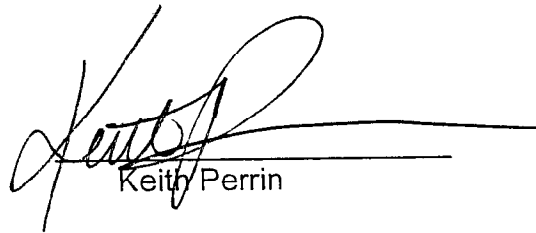
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KEITH PERRIN, being duly sworn deposes and says:

1. I am a founder of FUBU The Collection and an employee of GTFM, Inc. I have been an employee of GTFM, Inc. since in or about 1996, when that entity was formed. As such, I am fully familiar with the facts set forth herein. I submit this affidavit in support of the motion by FUBU The Collection, LLC, GTFM, Inc. and J. Alexander Martin to dismiss, in opposition to plaintiff's motion for summary judgment, and in support of the defendants' motion for summary judgment.

2. I do not and have never used the name "Cornell" for any purposes or been known as "Cornell."

3. I am not and have never been an agent for Def Jam Records. I have never attended any lectures at Mercer County Community College, and to my knowledge do not personally know the plaintiff in this action.


Keith Perrin

Sworn to before me this
8th day of December, 2004


Notary Public

WILLIAM H. COX
Notary Public, State of New York
No. 02CO6009920
Qualified in New York County
Commission Expires July 6, 20 06

03 Civ. 5382 (AET)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER
MARTIN, AND FUBU, GTFM,

Defendants.

**NOTICE OF CROSS MOTION FOR
SUMMARY JUDGMENT OR TO DISMISS THE
COMPLAINT WITH SUPPORTING AFFIDAVITS
AND EXHIBITS**

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X
TYRONE T. MCRAE, :
 : 03 Civ. 5382 (AET) (JJH)
Plaintiff, :
 :
-against- :
 :
JAMES TODD SMITH, CHARLES :
FISHER, NAJEE, INC., J. ALEXANDER :
MARTIN, AND FUBU, GTFM, :
 :
Defendants. :
-----X

**MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANTS' CROSS
MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

**JANVEY, GORDON, HERLANDS,
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

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TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER :
MARTIN, AND FUBU, GTFM, :

Defendants. :
-----X

03 Civ. 5382 (AET) (JJH)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
CROSS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This memorandum is submitted on behalf of defendants J. Alexander Martin and FUBU The Collection, LLC and GTFM, Inc., (to the extent that the latter two were named as, and are deemed to be, defendants) (collectively, the "FUBU Defendants") in support of their motion, for an order (i) pursuant to Fed. R. Civ. P. 56(b), granting summary judgment in favor of the FUBU Defendants; (ii) pursuant to Fed. R. Civ. P. 17, dismissing plaintiff's purported Complaint (the "Complaint"), in its entirety, upon the grounds that Plaintiff lacks standing to assert the claims set forth therein; (iii) pursuant

to Fed. R. Civ. P. 12(f), striking the Plaintiff's purported "Amended Pleading, Reply to Answer, Affirmative Defenses, and Counterclaims - Complaint 1" in its entirety, upon the grounds that Plaintiff may not assert counterclaims, and the rest of the pleading is unresponsive; (iv) pursuant to Fed. R. Civ. P. 12(e), directing the plaintiff to make a clear and concise reply to Fubu's Answer, Affirmative Defenses and Counterclaims, dated June 17, 2004, upon the grounds that Plaintiff's pleading is so unintelligible, vague and ambiguous as to be unresponsive and prejudicial to the defendants; (v) pursuant to Fed. R. Civ. P. 9(b) dismissing the Reply for failure to plead the circumstances constituting the alleged fraud with the required particularity; and (vi) for such other and further relief as this court may deem just and reasonable, and in opposition to Plaintiff's motion for summary judgment.

Procedural History

Plaintiff, Tyrone T. McRae, originally filed his Complaint on November 14, 2003. This Court dismissed the Complaint with leave to amend. Plaintiff subsequently re-filed his Complaint on January 22, 2004. The Complaint was served upon the answering defendants on April 29, 2004.

The FUBU Defendants served and filed their Answer, Affirmative Defenses and Counterclaims dated July 17, 2004. In response thereto, Plaintiff served and filed a purported "Reply to Answer, Affirmative Defenses and Counterclaims - (Complaint 1)"

(the "Reply"). By motion dated September 9, 2004, the FUBU Defendants moved to dismiss and/or strike Plaintiff's Reply. The FUBU Defendants filed a memorandum in support of their motion and then a reply memorandum in further support of their motion and in opposition to Plaintiff's motion for summary judgment (see below)(hereinafter collectively referred to as "FUBU Defendants First Motion Dismiss and/or Strike"). In response to the FUBU Defendant's First Motion to Dismiss and/or Strike, Plaintiff filed opposing papers and cross-moved for summary judgment (the "First Motion for Summary Judgment"). By Decision dated November 1, 2004, the FUBU Defendants' motion was granted in its entirety dismissing Plaintiff's Reply and denying Plaintiff's First Motion for Summary Judgment.

On November 8, 2004, Plaintiff filed an "Amended Pleading Reply to Answer, Affirmative Defenses, and Counterclaims - (Complaint 1)" (the "Amended Reply"). The Amended Reply is nearly identical to the Reply, except that Plaintiff has added paragraphs XXXV, XXXVI, XXXVII, XXXVIII, wherein he makes vague, general statements denying the allegations contained in Defendants' counterclaims. In his Amended Reply Plaintiff has also added allegations that (i) James Todd Smith's former (and now deceased) employee/friend/advisor Cornell is the same person as Keith Perrin, one of the original partners of Daymond John, the founder of the FUBU trademarks, and (ii) Daymond John a/k/a Daymond Aurum is the same person as "Cut Creator" the deejay for defendant, James Todd Smith.

Subsequently, by motion dated November 24, 2004, Plaintiff served and filed a second motion for summary judgment (the "Second Motion for Summary Judgment").

Statement of Facts

The Court is referred to Defendants' Motion to Strike and/or Dismiss the Plaintiff's Reply, Defendant's Affidavit and the Memoranda of Law, previously filed with the Court in connection with the Fubu Defendants' First Motion to Dismiss and/or Strike, and the Exhibits thereto for the facts relevant to this matter.

ARGUMENT

POINT I

SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF DEFENDANTS'

Summary judgment may be granted when the moving party has established that there are no genuine issues as to any material facts necessary to its claims. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, 477 U.S. 242 (1985).

This Court has stated "In order to prevail on a motion for summary judgment, the moving party must show that there are no genuine issues of material fact and that viewing the facts in the light most favorable to the non-movant, the movant will prevail as a matter of law." J.B. v. Bohonovsky, 835 F.Supp. 796, 799 (D.N.J. 1993). "In making this determination, the Court must draw all reasonable inferences in favor of the

non-movant." Newsome v. Coleman, 103 F.Supp.2d 807, 815 (D.N.J. 2000).

Plaintiff did not meet his burden on his First Motion for Summary Judgment, and accordingly, it was denied by the Court. Plaintiff's Second Motion for Summary Judgment must also be denied because Plaintiff has submitted no additional evidence upon which the Court could grant his motion. If Plaintiff believes this Court acted erroneously in denying his First Motion for Summary Judgment, he may be able to file an interlocutory appeal. His Second Motion for Summary Judgment is in reality a motion to reargue his First Motion for Summary Judgment and he has no basis upon which to do so.

In creating his Second Motion for Summary Judgment, Plaintiff simply added to his First Motion for Summary Judgment a section on standing (Plaintiff's arguments on the issue of standing are dealt with below at Point II), and submitted some additional exhibits, many of which appear to have no relevance to this case. The additional Exhibits submitted by Plaintiff include such things as photos of Plaintiff and others wearing clothing with the term NAJI printed on them; Plaintiff's college transcript, correspondence between the Plaintiff and his trademark attorneys concerning his trademark application for NAJI; articles concerning GTFM and/or the FUBU trademarks, excerpts from James Todd Smith's book, "I Make My Own Rules" (Mr. Smith is professionally known as LL Cool J); printouts showing purported Najee footwear for sale on eBay; loan documents signed by Plaintiff on behalf of "Doggy Do Daycare,

Inc.," documents concerning Plaintiff's incarceration in Georgia; copies of printouts from the Patent and Trademark Office database concerning FUBU trademarks; purported business documents pertaining to Plaintiff's alleged T-shirt business; and a police report concerning Plaintiff's 1995 arrest for soliciting without a license or permit.

Despite the sheer number of exhibits and voluminous documentation submitted by Plaintiff, almost all of which is incomprehensible and/or clearly irrelevant, Plaintiff is essentially pursuing two actions against the FUBU Defendants:

- (1) Plaintiff asserts that he owns a non-registered trademark which is alternatively described by Plaintiff as (a) "FOR YOU BY US" (Complaint - Par. VIII); (b) "This is, 'FOR U BY US' " (Amended Reply - Par. XLVIII (a)); (c) "FOR U BY US" (Amended Reply - Par. III); (d) "NAJI, FOR U BY US" (Amended Reply - Par. XXVIII) (hereinafter collectively referred to as "Plaintiff's Alleged FOR U BY US Mark(s)"). He also asserts that the FUBU Defendants fraudulently infringed or stole Plaintiff's alleged trademark.
- (2) Plaintiff asserts that he owns a registered trademark for NAJI and that the FUBU Defendants conspired with James Todd Smith and Charles Fisher to register a trademark "NAJEE" for boots and/or to manufacture "NAJEE" goods for James Todd Smith and Charles Fisher and/or that the FUBU defendant, J. Alexander Martin, was actually Charles Fisher (who was previously the manager for James Todd Smith).

A. THE FUBU DEFENDANTS HAVE PRIORITY OVER ANY USE BY PLAINTIFF OF PLAINTIFF'S ALLEGED FOR U BY US MARK(S).

The FUBU Defendants should be granted summary judgment with request to Plaintiff's infringement claims revolving around Plaintiff's Alleged FOR U BY US Mark(s), because the facts as set forth on the face of Defendant's pleadings, motions

and memoranda clearly show that the FUBU Defendant, GTFM, Inc., has priority with respect to its various "FUBU" trademarks due to the fact that any actions by Plaintiff took place after GTFM, Inc. had already established its trademark rights and begun using its various "FUBU" trademarks.

In his pleadings, motions and memoranda, Plaintiff has alleged various dates of first use for Plaintiff's Alleged FOR U BY US Mark(s). The earliest of these dates is November 1992 (Complaint, Par. VIII) which is approximately eleven (11) months after the first use date set forth in FUBU's trademark registration for F.U.B.U. (U.S. Trademark Regn. No. 1,910,169). Plaintiff reaffirms this claim at paragraph 2 of his Affidavit in support of his motion for summary judgment.

However, based on the evidence Plaintiff has produced in his pleadings, motions and memoranda and based upon the date of use for U.S. Trademark Registration No. 2,380,278 for NAJI, it appears that Plaintiff's first use of Plaintiff's Alleged FOR U BY US Mark(s) was probably at least two years and eleven months after the first use of FUBU by the FUBU defendants.

- (a) On January 14, 1998, a trademark application for NAJI (App. Serial No. 75/421843) was filed by Ikhanaten Armor Incorporated and was signed by Plaintiff as President of the applicant (a copy of such application is attached as part of Exhibit I to the affidavit of J. Alexander Martin (the "Martin Affidavit") which was previously filed with the Court in connection with the FUBU Defendant's First Motion to Dismiss and/or Strike). That application and the trademark registration for NAJI (Regn. No. 2380278 issued on August 29, 2000) (the "NAJI Trademark Registration") both state a first use date of November 25, 1994. Since Plaintiff claims that his

trademark is really NAJI, FOR U BY US and that apparently "NAJI" and "FOR U BY US" are linked (Amended Reply - Par. XLIV (g), it appears that Plaintiff's use, if any, of both NAJI and Plaintiff's FOR U BY US Mark(s) was no earlier than November 25, 1994.

- (b) The first use date of November 25, 1994 set forth in the NAJI Trademark Registration is consistent with other statements made in Plaintiff's pleadings. For example, in Paragraph XLVIII a. of the Amended Reply Plaintiff states that " around or about the Fall or the pre-winter of 1992 or 1994, plaintiff presented his T-shirt to a mutual acquaintance (Sister Souljah) of LL Cool J and publicized his slogan, "This is FOR U BY US."
- (c) The statements set forth in the foregoing paragraphs (a) and (b) make it clear that Defendant is not sure when, if ever, he adopted the Plaintiff's Alleged FOR U BY US Mark(s). Indeed, in Paragraph X of the Complaint, Plaintiff appears to claim that he adopted the Plaintiff's Alleged FOR U BY US Mark(s) "in recent months" prior to his filing of the complaint in this action.

B. PLAINTIFF HAS FAILED TO SHOW ANY USE OF THE PLAINTIFF'S ALLEGED FOR U BY US MARK(S).

- (a) Despite numerous statements throughout his pleadings, motions and memoranda regarding the Plaintiff's Alleged FOR U BY US Mark(s), Plaintiff has failed to attach even a label, advertisement, package or any other evidence to suggest that he has ever used any of the Plaintiff's Alleged FOR U BY US Mark(s). In fact, even the letter dated January 7, 1999, from his lawyer, Laura Farina, Esq., which is attached to Plaintiff's Complaint as part of Exhibit A shows that Plaintiff ordered trademark searches for "NAJI" and for "LOVE" and for "THE LOVING" but neither this letter nor any of the other voluminous documents submitted by Plaintiff as Exhibits makes any mention of any use or trademark use of Plaintiff's Alleged FOR U BY US Mark(s).
- (b) The only specific explanation set forth in Plaintiff's pleadings, motions or memoranda of any alleged use of the Plaintiff's Alleged FOR U BY US Marks is in Paragraph XLVIIIa. of the Amended Reply: "Since his return from incarceration, Plaintiff has always

made a living selling NAJI products and his slogan is FOR U BY US. Plaintiff stated to SS, If it weren't for you, I'd be serving a life sentence in prison. Plaintiff presented his goods and said, "This is, 'FOR U BY US!' " If this is the basis for Plaintiff's claims, Plaintiff has failed to show any trademark use because the quoted statement is in the nature of a greeting or salutation rather than showing use in interstate commerce to indicate source as is required for a slogan to constitute a trademark. Anheuser-Busch, Inc., v. The Customer Company, Inc., 947 F. Supp. 422, 424 (N.D.Ca. 1996).

C. THE FUBU DEFENDANTS HAVE INCONTESTABLE TRADEMARK REGISTRATIONS. PLAINTIFF HAS FAILED TO SHOW ANY FRAUD ON THE PART OF THE FUBU DEFENDANTS

The FUBU Defendants have submitted copies of incontestable U.S. trademark registrations for F.U.B.U. (Regn. No. 1,910,169), FUBU and Design (Regn. No. 2,068,058), FUBU (Regn. No. 2,403,324), FUBU 05 (Regn No. 2,415,191), and FUBU SPORTS (Regn No. 2,432,774)(See Affidavit of J. Alexander Martin, Exhibits B, C and E). The FUBU Defendants have also submitted an affidavit of J. Alexander Martin, based upon personal knowledge, setting forth use at least as early as January 1, 1992 and attaching a copy of an advertisement from the May 1993 issue of "Right On" magazine showing advertising of FUBU merchandise.

Plaintiff has essentially tried to defeat the incontestable status of the FUBU trademark registrations by arguing that the FUBU Defendant's committed fraud based on Plaintiff's assertion that at the time that the application for the FUBU Trademarks were filed, the FUBU Defendants knew of Plaintiff's Alleged FOR U BY US Mark(s). However, as set forth above, it appears that use by Plaintiff, if any, of the Plaintiff's

Alleged FOR U BY US Mark(s) was after use by the FUBU Defendants. Plaintiff has also tried to assert in Paragraph XXXV of his Amended Pleading that fraud exists due to his allegations that the FUBU Defendant J. Alexander Martin, is really Charles Fisher, (the former manager of the non-FUBU defendant, James Todd Smith). Plaintiff also asserts that two of the FUBU founders Keith Perrin and Daymond John, who are not defendants in this case are respectively (i) "Cornell" a former manager of James Todd Smith, who apparently died of AIDS in the mid to late 1990's (Mr. Perrin is in fact alive and well); and (ii) James Todd Smith's DeeJay known as Cut Creator.

Defendant goes on in Paragraph XXXV of the Amended Complaint to state that "Defendants have injured plaintiff by choreographing a conspiracy symbolic to the children of Israel falsifying their brother [J]oseph's death and selling him into slavery."

Based on all of the foregoing, it seems clear that the Defendant's are entitled to summary judgment because, even viewing the facts in the light most favorable to Plaintiff, Plaintiff's claims are entirely baseless and appear to be figments of his active imagination. .

D. PLAINTIFF HAS FAILED TO SHOW THAT THE TRADEMARK NAJEE INFRINGED PLAINTIFF'S TRADEMARK NAJI.

Plaintiff has failed to show that the trademark NAJEE infringed Plaintiff's trademark NAJI, or continues to infringe Plaintiff's trademark NAJI or that the FUBU Defendants have any involvement with NAJI or NAJEE

- (a) In a letter to the U.S. Patent and Trademark Office on October 23, 1998 (Attached to the Martin Affidavit as part of Exhibit I), counsel for Ikhanaten Armor Incorporated, Laura Farina, Esq., argued that NAJI was used prior to NAJEE and that "at this time there appears to be no likelihood of confusion between the two marks." [Emphasis Added]. Plaintiff's earlier inconsistent statement is an admission against interest and should be considered evidentiary. American Rice, Inc. v. H.I.T. Corporation, 231 USPQ 793 (TTAB 1986); Mason Engineering and Designing Corporation v. Mateson Chemical Corporation, 225 USPQ 956 (TTAB 1985).
- (b) In a letter to Plaintiff dated January 7, 1999 (attached to Plaintiff's Complaint as an Exhibit), the same counsel, Ms. Farina, states that on October 1, 1998 she sent to Plaintiff a copy of the office action in which the Examiner raised the previously filed and pending application for NAJEE as a conflict. Ms. Farina's letters of October 23, 1998 and January 7, 1999 show that Plaintiff was well aware of the NAJEE application, but he never filed an opposition during the 30 day period following October 27, 1998.
- (c) Plaintiff has attached to his Complaint and to his Amended Reply various pages and photographs from the book "I MAKE MY OWN RULES" by James Todd Smith. Plaintiff had to be aware at the time he filed his complaint that James Todd Smith's oldest son is named "NAJEE." In fact, at paragraph XXXV of his Amended Reply Plaintiff acknowledges that Mr. Smith's son is named "NAJEE." Attached as Exhibit A to the Affidavit of William H. Cox, Esq. submitted herewith are biographical pieces concerning James Todd Smith that show that Najee Smith was born in 1989, at least five years before NAJI was allegedly adopted as a trademark by the Plaintiff.

E. PLAINTIFF HAS FAILED TO SHOW THAT THERE IS ANY CONTINUED USE OF THE TRADEMARK NAJEE.

As set forth in the Affidavit of Daymond John, sworn to on December 8, 2004, and submitted herewith, the corporation NAJEE, Inc. was dissolved by proclamation on June 27, 2001. Furthermore, the only evidence of sales of NAJEE goods submitted by

Plaintiff are sales of single pairs of NAJEE shoes or boots on E-Bay. Clearly, Plaintiff has not shown that there are any continuing sales of NAJEE goods by any defendant that would justify Plaintiff's claims.

F. PLAINTIFF HAS FAILED TO SHOW THAT THE FUBU DEFENDANTS HAVE OR HAD ANY INVOLVEMENT WITH NAJEE or NAJI.

Plaintiff's entire basis for asserting that the FUBU Defendants are liable for infringement of his trademark, NAJI, appears to be (i) that James Todd Smith infringed NAJI by producing NAJEE footwear and (ii) some or all of the FUBU Defendants employed James Todd Smith as a celebrity endorser for FUBU products sold by the FUBU Defendants. Defendant's have submitted the affidavit of J. Alexander Martin stating that none of the FUBU Defendants have ever sold distributed manufactured on or promoted or any other merchandise under or bearing the trademark NAJEE or NAJI. Even if James Todd Smith's use of NAJEE infringed Plaintiff's trademark NAJI, Plaintiff has failed to show any involvement in such activity by the FUBU Defendants, and their mere employment of James Todd Smith as a celebrity endorser for an entirely different product line and trademark is irrelevant.

The FUBU Defendants are entitled to an order granting summary judgment in their favor and against the Plaintiff on the merits of the case. While procedural rules may not be strictly applied to a pro se litigant, such a litigant is not exempt from the rule concerning summary judgment. See, Carter v. Cuyler, 415 F.Supp. 852 (D.C.Pa 1976);

Frito Lay of Puerto Rico v. Canas, 92 F.R.D. 384 (D.P.R. 1981). In this case, the Plaintiff's claims have been revealed for what they are - completely baseless and unsupported by any facts whatsoever.

Having now moved for summary judgment twice, Plaintiff cannot claim that additional discovery is required. Based upon the record as it now exists the Court can only conclude that the Plaintiff's purported claims are wholly without merit and that they present no issue of fact which would warrant trial of the matter. The evidence submitted by the FUBU Defendants establishes GTFM's prior adoption and use of the FUBU trademarks and ownership of incontestable trademark registrations for FUBU and related marks. Plaintiff on the other hand has submitted no evidence of trademark use of the FUBU marks.

POINT II

DEFENDANTS' MOTION TO DISMISS SHOULD BE GRANTED

Plaintiff's Complaint should be dismissed because the Plaintiff lacks standing to assert the claims therein. Plaintiff alleges that: "This action arises under the trademark laws of the United States, particularly 15 U.S.C. §1125(a). Jurisdiction is conferred on this court by 15 U.S.C. §1121 and 28 U.S.C. §1338." (Complaint, par. II, see also, Complaint par. 1).

In order to assert a claim for trademark infringement, a plaintiff must own the

trademark which was allegedly infringed. Gaia Technologies, Inc. v. Reconversion Technologies, Inc., et al., 93 F.3d 774, 777 (Fed. Cir. 1996). In order to recover damages under the Lanham Act, 15 U.S.C. §1114(1) a plaintiff must be the owner of a federal trademark registration. Reliable Tire Distributors, Inc. v. The Kelly Springfield Tire Company, et al., 592 F. Supp. 127, 136 (E.D.Pa. 1984). Tyrone T. McRae does not own or even claim to own a federal trademark registration, and therefore may not maintain this action to the extent he purports to state any claims for recovery under 15 U.S.C. §1114(1).

In his complaint, Plaintiff has referenced only registration no. 2,380,278, dated August 29, 2000, for NAJI (the "NAJI Registration"). A copy of the NAJI Registration is attached to the Complaint. However, the NAJI Registration is owned by Ikhanaten Armor Incorporated (NAJI Sportswear), a Delaware corporation with an address at 627 N. Olden Avenue, Trenton, NJ 08638. Plaintiff states: "....exclusive rights belong to NAJI Sportswear Inc. under the trademark laws of the United States..." (Complaint, par. VIII). Only Ikhanaten Armor Incorporated, the trademark registration owner, may bring suite for alleged infringement of the NAJI Registration.

Plaintiff also purports to assert claims of false designation of origin under 15 U.S.C. §1125(a). It is recognized that standing to sue under 15 U.S.C. §1125(a) extends beyond the trademark owner. SK&F, Co., v. Premo Pharmaceutical Laboratories, Inc., 625 F.2d 1055, 1065 (D.N.J. 1980). However, to maintain an action

under 15 U.S.C. §1125(a) a party must demonstrate it has "potential for a commercial or competitive injury." Nordco A.S. v. John G. Ledes, 44 U.S.P.Q. 2d 1220 (S.D.N.Y. 1997), citing, Berni v. International Gourmet Restaurants of America, Inc., 838 F.2d 642 (2d Cir. 1988). J. McCarthy, McCarthy on Trademarks and Unfair Competition, 4th ed. 2004, §32:12, states that "Courts have held that an exclusive licensee of a mark may have standing to sue under §43(a) for acts which cause injury to the licensee." This exception does not apply to the Plaintiff in this case.

Plaintiff in both his Complaint and Memorandum of Law in Support of his Second Motion for Summary Judgment claims to be the exclusive owner of the NAJI mark. (See, Complaint, par. VIII - and Second Motion for Summary Judgment, page 10). (See copy of trademark registration annexed to Plaintiff's moving papers as part of Exhibit A). Plaintiff also claims that he is the licensor to registrant Ikhanaten Armor, Incorporated. (Second Motion for Summary Judgment, page 11). Such claims are inconsistent with the existing federal registration of the NAJI mark in the name of Ikhanaten Armor, Inc. and the representations Plaintiff made in prosecuting the application to register the NAJI mark. In the NAJI trademark application (Exhibit I to the Martin Affidavit submitted in opposition to Plaintiff's First Motion for Summary Judgment), Plaintiff McRae makes a sworn statement that he "believes the applicant [Ikhanaten Armor Inc.] to be the owner of the trademark/service mark sought to be registered." And that "to the best of his/her knowledge and belief no other person, firm,

corporation, or association has the right to use the above identified [NAJI] mark in commerce..." Those statements are made under penalty of perjury under 18 U.S.C. §1001. Furthermore, in the Amended Reply, Plaintiff states that he "... Has no contracts, agreements, endorsements, or licensing of any kind..." (Amended Reply, par. X)

In his Second Motion for Summary Judgment, Plaintiff also claims that "he manufactured his goods and sold his goods through his wholly owned corporation." (Second Motion for Summary Judgment, page 22). It is clear that Plaintiff's corporation owns the NAJI trademark and conducts the NAJI business. While Plaintiff may be a shareholder of Ikhanaten Armor, Incorporated, he can not establish standing to assert the claims in this case by simply claiming, without any evidence, ownership of the NAJI mark and registration. Plaintiff has not produced any alleged license agreement between him and Ikhanaten Armor, Incorporated.

POINT III

DEFENDANTS' MOTION TO STRIKE SHOULD BE GRANTED

Plaintiff's Amended Reply should be stricken for same reasons that Plaintiff's Reply was stricken - the two documents are nearly identical. The changes Plaintiff incorporated into the Amended Reply are insubstantial and do not remedy that document's deficiencies. In dismissing the Reply, the Court described the document as

incomprehensible. That description is equally applicable to the Amended Reply.

Plaintiff's amendment to the Reply consists of the addition of: i) paragraphs XXXV, XXXVI, XXXVII, XXXVIII, wherein he makes vague, general statements denying the allegations contained in Defendants' counterclaims; and ii) an allegation that James Todd Smith's former (and now deceased) employee/friend/advisor Cornell is the same person as Keith Perrin, one of the original partners of Daymond John, the founder of the FUBU trademarks. The absurdity of Plaintiff's contentions in general is highlighted by this point. In his book, Mr. Smith states that Cornell is deceased as even the Plaintiff acknowledges (Memorandum of Law in Support of Plaintiff's Second Motion for Summary Judgment, par. C, page 14), whereas Mr. Perrin is alive. (See affidavit of Keith Perrin, submitted herewith). Furthermore, Daymond John, a/k/a Daymond Aurum is not Cut Creator (see affidavit of Daymond John a/k/a Daymond Aurum, submitted herewith).

Furthermore, a Plaintiff has no right to assert counterclaims. Plaintiff may not circumvent the rule requiring a Plaintiff to seek leave of court to amend his Complaint after the answer has been filed by asserting counterclaims in what should be a simple reply to the Defendants' counterclaims. Plaintiff's Amended Reply must be stricken.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X		
TYRONE T. MCRAE,	:	
	:	03 Civ. 5382 (AET) (JJH)
Plaintiff,	:	
	:	
-against-	:	
	:	
JAMES TODD SMITH, CHARLES	:	
FISHER, NAJEE, INC., J. ALEXANDER	:	
MARTIN, AND FUBU, GTFM,	:	
	:	
Defendants.	:	
-----X		

STATEMENT OF FACTS

The following facts exist in this case such that defendants J. Alexander Martin, FUBU The Collection, LLC and GTFM, Inc. (the "Answering Defendants") are entitled to summary judgment:

1. GTFM, Inc. is the owner of incontestable U.S. Trademark Registrations for F.U.B.U., registration no. 1,910,169 dated August 8, 1995, for clothing and accessories in International Class 25, and for FUBU AND DESIGN, registration no. 2,068,058 dated June 3, 1997, for clothing and accessories in International Class 25.

2. J. Alexander Martin and Charles Fisher are not the same person. J. Alexander Martin's filing of the F.U.B.U. trademark registration no. 1,910,169 was not fraudulent. Plaintiff has no basis to cancel GTFM, Inc.'s incontestable trademark registration nos. 1,910,169 and 2,068,058.

3. Due to GTFM, Inc.'s extensive use, promotion and advertising of its FUBU trademarks, such trademarks have acquired considerable value and have come to be associated by the public with a single source of origin, namely GTFM, Inc. FUBU is a famous mark.

4. GTFM, Inc.'s use in commerce of its FUBU marks is prior to any alleged use by Plaintiff of his NAJI mark.

5. Neither Plaintiff Tyrone T. McRae, nor his companies Ikhanaten Armor, Inc. and NAJI Sportswear have any common law trademark rights in the FUBU trademarks or in the phrase FOR US BY US.

6. Neither GTFM, Inc., FUBU The Collection, LLC nor J. Alexander Martin has ever sold, distributed, manufactured or promoted clothing or any other merchandise under or bearing the trademark NAJEE or NAJI.

7. The Answering Defendants have not infringed any trademark rights of Plaintiff.

8. Plaintiff has infringed GTFM, Inc.'s FUBU trademarks to the extent that he has used FUBU or any related term owned by GTFM, Inc. on his merchandise.

9. J. Alexander Martin, who does not own the FUBU trademarks, has no personal liability to the Plaintiff.

10. FUBU The Collection LLC, which does not own the FUBU trademarks, has no individual liability to the Plaintiff.

11. Plaintiff does not own the NAJI trademark registration no. 2,380,278.

12. Any rights in the NAJI trademark, including common law trademark rights, are owned by Ikhanaten Armor Inc. and not Plaintiff, Tyrone T. McRae.

13. Plaintiff lacks standing to bring this action.

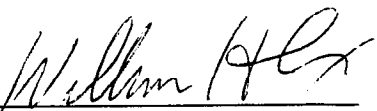
14. Plaintiff has no trademark use in commerce of the term FOR US BY US.

15. Plaintiff does not own any trademark rights, including common law trademark rights, in the term FOR US BY US, FOR U BY US or FOR YOU BY US.

16. Plaintiff was not and is not being harmed by GTFM's registration and use of the F.U.B.U. and FUBU and Design trademarks.

Dated: New York, New York
December 9, 2004

JANVEY, GORDON, HERLANDS,
RANDOLPH & COX, LLP

By: 
William H. Cox (WC 3295)
Attorneys for Defendants
GTFM, Inc., FUBU The Collection, LLC
and J. Alexander Martin
433 Hackensack Avenue
Hackensack, New Jersey 07601
(201) 488-9339

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X
TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER :
MARTIN, AND FUBU, GTFM, :

Defendants.
-----X

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: 03 Civ. 5382 (AET)
:

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: AFFIDAVIT OF SERVICE
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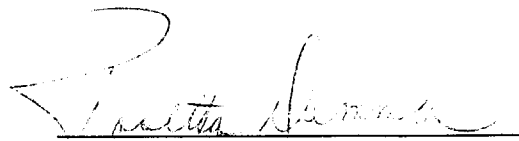
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, Rosetta Demma being duly sworn, deposes and says:

I am not a party to the action, am over eighteen years of age and reside in
Kings County, State of New York.

On December 9, 2004, I served a copy of the within Statement of Facts in
the above-captioned action by overnight delivery via Express Mail, Airbill No.: EL
752697691 US addressed to:

Tyrone T. McRae
P.O. Box 1332
Trenton, New Jersey 08607


Rosetta Demma

Sworn to before me this
9th day of December, 2004



Notary Public

TASIA PAVALIS
Notary Public, State of New York
No. 31-4851729
Qualified in New York County
Commission Expires February 3, 2006



**POST OFFICE
TO ADDRESSEE**

EL 752647641 US

ORIGIN (POSTAL USE ONLY)				DELIVERY (POSTAL USE ONLY)			
PO ZIP Code	Day of Delivery <input type="checkbox"/> First <input type="checkbox"/> Second		Flat Rate Envelope <input type="checkbox"/>	Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Date in Mo. Day Year	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM		Postage \$	Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Time in <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day		Return Receipt Fee	Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Weight lbs. ozs.	In:1 Alpha Country Code		COD Fee	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only): Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.			
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials		Total Postage & Fees \$	<input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday <input type="checkbox"/> Customer Signature			
CUSTOMER USE ONLY METHOD OF PAYMENT: Express Mail Corporate Acct. No. <u>X 097082</u>				Federal Agency Acct. No. or Postal Service Acct. No.			
FROM: (PLEASE PRINT) Janvey, Gordon, Herlands, Randolph & Cox LLP 355 Lexington Avenue New York, N.Y. 10017				TO: (PLEASE PRINT) Tyrone T. McRae P.O. Box 1332 Trenton, New Jersey 08607			

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03 Civ. 5382 (AET)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER
MARTIN, AND FUBU, GTFM,

Defendants.

STATEMENT OF FACTS

JANVEY, GORDON, HERLANDS,
RANDOLPH & COX, LLP
Attorneys for Defendants
GTfM, Inc., Fubu The Collection, LLC
and J. Alexander Martin
433 Hackensack Avenue, 6th floor
Hackensack, New Jersey 07601
(201) 342-7100

- 1 -

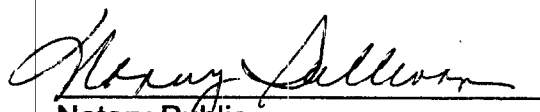
judgment.

2. In response to the Defendants' cross-motion for summary judgment, Plaintiff submits a document entitled "Notice of Motion and Motion," dated January 31, 2005, along with purported supporting documents. Plaintiff's documents contain absolutely no evidence or cognizable legal arguments which would warrant denial of the Defendants' motion for summary judgment. Plaintiff submits, as one exhibit, a copy of the U.S. Patent and Trademark Office database pertaining to a cancelled trademark registration for VITAMINHEAD. This mark was not and is not owned by Plaintiff or any of the Defendants, and is merely another example of Plaintiff's absurd and pointless purported arguments that have been advanced in this matter.

3. Plaintiff has not submitted one shred of evidence in support of his alleged claims, and has not even articulated those claims sufficiently to be understood. It is clear that Plaintiff has no basis for any of his claims in this action, and that the moving Defendants are entitled to entry of summary judgment on the merits in their favor.


William H. Cox

Sworn to before me this
31 day of January, 2005


Notary Public
Nancy Sullivan
Notary Public, State of New York
No. 24-4742078
Qualified in Kings County
Commission Expires March 30, 20 07

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X
TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER
MARTIN, AND FUBU, GTFM,

Defendants.
-----X

03 Civ. 5382 (AET)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, Rosetta Demma being duly sworn, deposes and says:

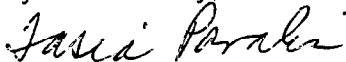
I am not a party to the action, am over eighteen years of age and reside in Kings County, State of New York.

On February 4, 2005, I served a copy of the within Affidavit of William H. Cox in the above-captioned action by depositing a true copy thereof in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

Tyrone T. McRae
25 Hart Avenue
Trenton, New Jersey 08638


Rosetta Demma

Sworn to before me this
4th day of February, 2005



Notary Public

TASIA PAVALIS
Notary Public, State of New York
No. 31-4851729
Qualified in New York County
Commission Expires February 3, 2006

03 Civ. 5382 (AET)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER
MARTIN, AND FUBU, GTFM,

Defendants.

**AFFIDAVIT OF
WILLIAM H. COX**

**JANVEY, GORDON, HERLANDS,
RANDOLPH & COX, LLP**
Attorneys for Defendants
**GTFM, Inc., Fubu The Collection, LLC
and J. Alexander Martin**
433 Hackensack Avenue, 6th floor
Hackensack, New Jersey 07601
(201) 342-7100



UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER
MARTIN, AND FUBU, GTFM,

Defendants.

03 Civ. 5382 (AET)

NOTICE OF ENTRY

PLEASE TAKE NOTICE, that the within is a true and complete copy of the

Memorandum and Order entered on March 18, 2005.

Dated: New York, New York
March 24, 2005

JANVEY, GORDON, HERLANDS,
RANDOLPH & COX LLP

By: William H. Cox

William H. Cox (WC 3295)

Attorneys for Defendants

GTFM, Inc., Fubu The Collection, LLC

and J. Alexander Martin

433 Hackensack Avenue

Hackensack, New Jersey 07601

(201) 342-7100

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TYRONE T. MCRAE,

Plaintiff,

v.

JAMES TODD SMITH, et al.,

Defendants.

Civil No. 03-5382 (AET)

MEMORANDUM & ORDER

This matter comes before the Court on Plaintiff's motion to strike or dismiss Defendants' counterclaims, Plaintiff's motions for summary judgment, and Defendant FUBU GTFM, Inc. and J. Alexander Martin's motion for summary judgment or to dismiss the complaint. The Court has decided this motion after considering the parties' written submissions and without oral argument pursuant to Fed. R. Civ. P. 78. For the reasons stated below, Plaintiff's motions will be denied and Defendants' motion will be granted.

As an initial matter, on November 1, 2004, this Court conducted oral argument with regard to previous motions filed between the parties. Following argument, the Court granted Defendants' motion to strike Plaintiff's Reply to Defendant's Answer, Affirmative Defenses and Counterclaims as unresponsive. On November 8, 2004, Plaintiff filed a slightly amended version of the same document which contains many of the same deficiencies as the first reply. For this reason, the Court will again strike this pleading. However, the Court's disposition below may make it unnecessary to file additional pleadings, should Defendants wish to withdraw their counterclaims.

It is on this 18th day of March 2005.

ORDERED that Plaintiff's motion to strike or dismiss counterclaims and Plaintiff's motions for summary judgment [39-1 and 47-1] are DENIED; and it is further

ORDERED that Defendants' motion for summary judgment or to dismiss [42-1] is GRANTED, and it is further

ORDERED that Plaintiff's complaint and amended reply are dismissed; and it is further

ORDERED that Defendants should advise the Court within ten days of the date of entry of this Order whether they intend to pursue their counterclaims.

s/Anne E. Thompson

ANNE E. THOMPSON, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY, TRENTON DIVISION

-----X
TYRONE T. MCRAE,

Plaintiff,

-against-

JAMES TODD SMITH, CHARLES
FISHER, NAJEE, INC., J. ALEXANDER :
MARTIN, AND FUBU, GTFM, :

Defendants.
-----X

:
: 03 Civ. 5382 (AET)
:

:
: AFFIDAVIT OF SERVICE
:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, Amina R. Rock, being duly sworn, say:

1. I am not a party to the action, am over eighteen years of age and reside in Kings County, State of New York.

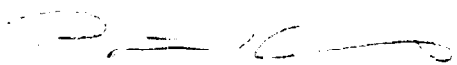
2. On March 24, 2005, I served the Notice of Entry in the above-captioned action by depositing a true copy thereof in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

Clerk, U.S. District Court of New Jersey
U.S. Courthouse
402 East State Street, Room 2020
Trenton, New Jersey 08608

Tyrone T. McRae
P.O. Box 1332
Trenton, New Jersey 08607

Amina R. Rock

Sworn to before me this
24th day of March, 2005



Notary Public

PATRICIA KEARNS
Notary Public, State of New York
No. 01-K24894167
Qualified in Kings County
Commission Expires May 16, 20 07





UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TYRONE T. MCRAE,

Plaintiff,

v.

JAMES TODD SMITH, et al.,

Defendants.

Civil No. 03-5382 (AET)

ORDER

The Court having received Plaintiff's request for an enlargement of time to amend his reply to Defendants' counterclaims; and the Court noting that Defendants withdrew their counterclaims making a response unnecessary; and the Court further noting that, to the extent that Plaintiff was requesting reconsideration of this Court's Order dismissing his complaint, motions under Rule 7.1(g) may address only those matters of fact or issues of law which were previously presented to, but not considered by, the Court in its prior decision, SPIRG v. Monsanto Co., 727 F. Supp. 876, 878 (D.N.J. 1989), aff'd, 891 F.2d 283 (3d Cir. 1989); and for good cause shown;

It is on this 5th day of April 2005,

ORDERED that Plaintiff's request for enlargement of time [56-1] is MOOT; and it is further

ORDERED that, to the extent that Plaintiff is seeking reconsideration of this Court's March 18, 2005 Order, such request is DENIED.

s/Anne E. Thompson

ANNE E. THOMPSON, U.S.D.J.



OTES

RECEIPT

DATE 4/20/05 NO. 3686

RECEIVED FROM Tyrone McRae

ADDRESS 25 Hunt Ave

Trenton, NJ 08638

FOR McRae vs. James Todd Smith CL-03-5382 (AET)

Appeal

BY Anna Smith

01900 RECEIPT 5L816

Defendant

RECEIVED

20 2005

NOTICE OF APPEAL

Plaintiff Tyrone T. McRae moves pursuant to R. 4(a)4A to amend or make additional factual findings under Rule 52(b) for the memorandum and order denying based on the following grounds:

1. Plaintiff's attorney fraudulently represented herself as a trademark attorney and filed the corporation as the Applicant while knowing that the President of the corporation is the Rightful Owner of the mark.
2. Plaintiff's trademark attorney was suspended for representing her own interests when filing plaintiff's trademark application; Plaintiff informed the PTO of his conflict of interest with his attorney which ultimately led to her suspension.
3. Plaintiff could not amend his application which would have resulted in abandonment and registration of Plaintiff's mark by Defendants.
4. Plaintiff's trademark attorney was suspended by the PTO for unethical conduct in favor of Defendants, while processing his application, prior to resigning from practice and relocating to Washington, D.C.
5. Plaintiff's trademark attorney knew that he was the rightful owner of the mark(s) and forfeited his name as the applicant on the registration application. The PTO has documented the suspension of Plaintiff's attorney on his trademark applications prosecution history.
6. Plaintiff's trademark attorney never substituted herself before resigning and the subsequent attorney was unprepared with surrounding circumstances of Plaintiff's case.
7. Plaintiff's trademark attorney knew that Defendants prior Filing Date was for VITAMINHEAD and assisted them after she searched his mark without conflict. Plaintiff's Filing Date was prior to Defendants; Defendants used V'HEAD's Date of Repository as NAJEE's Filing Date in exchange for F.U.B.U. to obtain secondary meaning for NAJEE.
8. Plaintiff has business records dating as far back as 1994 and business licensee records from City Hall proving his ownership of the NAJI mark 6 months prior to incorporating his retail storefront.
9. Plaintiff has 12 years of pre- and post IKHANATEN ARMOR INC. receipts of his business under the NAJI marks.

10. Plaintiff has records of his factory's operation as a sole proprietorship 2 years before the establishment of IKHANATEN ARMOR INC. and separately from his storefront Plaintiff made an agreement between himself and his corporation to protect himself from foreseeable subterfuge by his trademark attorney.
11. Plaintiff licensed his personal name PHARO NAJI AKHENATEN to his sole proprietorship, NAJI SPORTSWEAR, to manufacture goods bearing his marks and his last name, IKHANATEN to his wholly owned corporation, IKHANATEN ARMOR INC. to sell NAJI products manufactured by NAJI SPORTSWEAR.
12. Defendants' Unfair Competition terminated the license between Plaintiff and his corporation, IKHANATEN ARMOR INC; Article III in the Agreement provided for termination of license and rights of Licensor.
13. Plaintiff's corporate storefront was forced out of business after only 2 months of operation and his NAJI SPORTSWEAR factory remained in continuous operation; Plaintiff filed his business license for the storefront on 6-17-96; LL Cool J was contracted by FUBU on 10-1-96; IKAHNATEN ARMOR INC. was incorporated as a retail store 10-12-96 and Plaintiff was evicted from the store on 12-10-96; Plaintiff has obviously been under attack by Defendants.
14. Plaintiff is the personal owner of the trademarks used as tradenames on NAJI SPORTSWEAR and IKHANATEN ARMOR INC.
15. Plaintiff's lease of the storefront was only for 6 months and Plaintiff's license to IKHANATEN ARMOR INC. was only for 6 month; the agreement was terminated because of Defendants Interference.
16. Defendants Filing Date of 6-11-97 for NAJEE is based on the 6-11-97 Date of Repository for VITAMINHEAD. VITAMINHEAD was exchanged for F.U.B.U. and transferred to NAJEE. NAJEE was fraudulently given priority over Plaintiff's NAJI application; Plaintiff's In Use application was held in limbo for almost 2 years at the PTO because of Defendants Interference.
17. Plaintiff's has records from the Mercer County Courthouse, Special Civil Division, proving that his corporation was forced into eviction while Defendants were infringing his marks and falsely advertised his mark on goods on television.
18. Plaintiff has ordered complete Patent and Trademark Office prosecution history records of file wrappers consisting of all Defendants attorney's correspondence for VITAMINHEAD, L FUBU, NAJEE, and it's conflict with NAJI.
19. Plaintiff has corporate records proving himself to wholly own his corporation.

Respectfully Submitted,

Tyhone T. McRae
 Tyhone T. McRae
 25 Hart Ave.
 Trenton, NJ 08638
 609-394-1039

4-20-05

J. ALEXANDER MARTIN

represented by **WILLIAM H. COX**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant**FUBU GTFM, INC.**

represented by **WILLIAM H. COX**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant**J. ALEXANDER MARTIN**

represented by **WILLIAM H. COX**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Counter Defendant**TYRONE T. MCRAE**

represented by **TYRONE T. MCRAE**
 P.O. Box 1332
 TRENTON, NJ 08607
 PRO SE

Date Filed	#	Docket Text
11/14/2003		Complaint Received with application to proceed IFP. (ck) (Entered: 11/17/2003)
12/24/2003	1	ORDER, denying pltfs application to proceed in forma pauperis , dismissing pltfs. claims (signed by Judge Anne E. Thompson) (NM) (ck) (Entered: 12/29/2003)
12/24/2003	2	COMPLAINT filed. (ck) (Entered: 12/29/2003)
12/29/2003	3	NOTICE of Allocation and Assignment filed. (TRENTON - Judge ANNE E. THOMPSON - Magistrate Judge JOHN J. HUGHES) (NM) (ck) (Entered: 12/29/2003)
12/29/2003		Case closed (ck) (Entered: 12/29/2003)
01/22/2004	4	NOTICE of Change of Address by TYRONE T. MCRAE (SA,) (Entered: 02/02/2004)
01/22/2004	5	Amended Complaint Received. (SA,) (Entered: 02/04/2004)
02/09/2004	5	LETTER ORDER stating that the amended complaint was not filed and directing the pltf. to pay \$150.00 filing fee before proceeding w/case. . Signed by Judge Anne E. Thompson on 2/3/04. (ck,) (Entered: 02/13/2004)

03/11/2004	3	Filing fee: \$ 150.00, receipt number 332868 Received by Tyrone T. McRae (ck,) (Entered: 03/11/2004)
03/11/2004	6	AMENDED COMPLAINT against CHARLES FISHER, FUBU GTFM, INC., J. ALEXANDER MARTIN, NAJEE INC., JAMES TODD SMITH , filed by TYRONE T. MCRAE, NAJI SPORTSWEAR INC.. (ck,) (Entered: 03/11/2004)
04/01/2004	7	Letter requesting the issuance of summonses as to the amended complaint from Tyrone T. McRae. (ck,) (Entered: 04/01/2004)
04/01/2004	8	Summonses Issued as to CHARLES FISHER, FUBU GTFM, INC., J. ALEXANDER MARTIN, & JAMES TODD SMITH. Days Due - 20. (Handed to pltf.) (ck,) (Entered: 04/01/2004)
05/07/2004	8	CERTIFICATE OF SERVICE by TYRONE T. MCRAE of Summons, 6 Amended Complaint as to defts. J. ALEXANDER MARTIN, FUBU d/b/a GTFM, INC. (SA,) (Entered: 05/11/2004)
05/27/2004	9	ORDER extending time for defts, GTFM, Fubu, and Martin TO ANSWER. Signed by Judge John J. Hughes on 5/26/04. (dg,) (Entered: 05/27/2004)
06/18/2004	10	ANSWER & COUNTERCLAIM against TYRONE T. MCRAE by FUBU GTFM, INC., J. ALEXANDER MARTIN.(ij,) (Entered: 06/22/2004)
06/18/2004	11	Exhibits to 10 Answer. (ij,) (Entered: 06/22/2004)
06/18/2004	12	CERTIFICATE OF SERVICE re 10 Answer (ij,) (Entered: 06/22/2004)
06/18/2004	13	RULE 7.1 Disclosure STATEMENT by FUBU GTFM, INC. & J. ALEXANDER MARTIN. (ij,) (Entered: 06/22/2004)
06/28/2004	14	SUMMONS Returned Executed by TYRONE T. MCRAE. JAMES TODD SMITH served on 6/22/2004, answer due 7/12/2004. (ck) (Entered: 06/28/2004)
06/28/2004	15	SUMMONS Returned Executed by TYRONE T. MCRAE. CHARLES FISHER served on 6/22/2004, answer due 7/12/2004. (ck) (Entered: 06/28/2004)
06/29/2004		***Case Reopened per 5 Order directing pltf to pay filing fee, which was paid on 3/11/04. (ms) (Entered: 06/29/2004)
07/19/2004	16	ANSWER to Counterclaim with Counterclaims by TYRONE T. MCRAE.(lk,) (Entered: 07/21/2004)
07/22/2004	17	Letter from pltf re: address of dft's counsel. (ij,) (Entered: 07/22/2004)
07/29/2004	18	NOTICE of Change of Address by WILLIAM H COX (ij,) (Entered: 08/06/2004)
08/04/2004	19	Request for Default by TYRONE T. MCRAE against James Todd Smith & Charles Fisher for failure to plead. (ij,) (Entered: 08/09/2004)

03/11/2004	③	Filing fee: \$ 150.00, receipt number 332868 Received by Tyrone T. McRae (ck,) (Entered: 03/11/2004)
03/11/2004	⑥	AMENDED COMPLAINT against CHARLES FISHER, FUBU GTFM, INC., J. ALEXANDER MARTIN, NAJEE INC., JAMES TODD SMITH , filed by TYRONE T. MCRAE, NAJI SPORTSWEAR INC.. (ck,) (Entered: 03/11/2004)
04/01/2004	⑦	Letter requesting the issuance of summonses as to the amended complaint from Tyrone T. McRae. (ck,) (Entered: 04/01/2004)
04/01/2004	⑧	Summonses Issued as to CHARLES FISHER, FUBU GTFM, INC., J. ALEXANDER MARTIN, & JAMES TODD SMITH. Days Due - 20. (Handed to pltf.) (ck,) (Entered: 04/01/2004)
05/07/2004	⑧	CERTIFICATE OF SERVICE by TYRONE T. MCRAE of Summons, ⑥ Amended Complaint as to defts. J. ALEXANDER MARTIN, FUBU d/b/a GTFM, INC. (SA,) (Entered: 05/11/2004)
05/27/2004	⑨	ORDER extending time for defts, GTFM, Fubu, and Martin TO ANSWER. Signed by Judge John J. Hughes on 5/26/04. (dg,) (Entered: 05/27/2004)
06/18/2004	⑩	ANSWER & COUNTERCLAIM against TYRONE T. MCRAE by FUBU GTFM, INC., J. ALEXANDER MARTIN.(ij,) (Entered: 06/22/2004)
06/18/2004	⑪	Exhibits to 10 Answer. (ij,) (Entered: 06/22/2004)
06/18/2004	⑫	CERTIFICATE OF SERVICE re ⑩ Answer (ij,) (Entered: 06/22/2004)
06/18/2004	⑬	RULE 7.1 Disclosure STATEMENT by FUBU GTFM, INC. & J. ALEXANDER MARTIN. (ij,) (Entered: 06/22/2004)
06/28/2004	⑭	SUMMONS Returned Executed by TYRONE T. MCRAE. JAMES TODD SMITH served on 6/22/2004, answer due 7/12/2004. (ck) (Entered: 06/28/2004)
06/28/2004	⑮	SUMMONS Returned Executed by TYRONE T. MCRAE. CHARLES FISHER served on 6/22/2004, answer due 7/12/2004. (ck) (Entered: 06/28/2004)
06/29/2004		***Case Reopened per 5 Order directing pltf to pay filing fee, which was paid on 3/11/04. (ms) (Entered: 06/29/2004)
07/19/2004	⑯	ANSWER to Counterclaim with Counterclaims by TYRONE T. MCRAE.(lk,) (Entered: 07/21/2004)
07/22/2004	⑰	Letter from pltf re: address of dft's counsel. (ij,) (Entered: 07/22/2004)
07/29/2004	⑱	NOTICE of Change of Address by WILLIAM H COX (ij,) (Entered: 08/06/2004)
08/04/2004	⑲	Request for Default by TYRONE T. MCRAE against James Todd Smith & Charles Fisher for failure to plead. (ij,) (Entered: 08/09/2004)

08/06/2004	20	LETTER ORDER extending time to answer COUNTERCLAIM to 9/9/04 for J. Alexander Martin & GTFM Inc. Signed by Judge John J. Hughes on 8/5/04. (ij,) (Entered: 08/11/2004)
08/09/2004	20	Clerk's ENTRY OF DEFAULT as to defendants CHARLES FISHER & JAMES TODD SMITH for failure to plead. (ij,) (Entered: 08/09/2004)
08/16/2004	21	Deficient MOTION for Default Judgment as to GTFM, INC. J Alexander martin & FUBU by TYRONE T. MCRAE. NO BRIEF or Cert of svc (ij,) (Entered: 08/24/2004)
09/10/2004	21	Setting Deadlines as to 21 MOTION for Default Judgment as to. Motion set for 9/20/2004 10:00 AM in Trenton - Courtroom 4W before Judge Anne E. Thompson. (PER CHAMBERS) (ij,) (Entered: 09/10/2004)
09/13/2004	22	ORDER denying 21 Motion for Default Judgment . Signed by Judge Anne E. Thompson on 9/10/04. (ij,) (Entered: 09/14/2004)
09/13/2004	23	MOTION to Strike by FUBU GTFM, INC. & J. ALEXANDER MARTIN w/ attached affidavit (ij,) (Entered: 09/14/2004)
09/13/2004	24	BRIEF in Support re 23 MOTION to Strike filed by FUBU GTFM, INC., J. ALEXANDER MARTIN. (ij,) (Entered: 09/14/2004)
09/13/2004	25	Exhibit A pages 15 thru 20. (ij,) (Entered: 09/14/2004)
09/13/2004	26	Exhibit A pages 21 to conclusion. (ij,) (Entered: 09/14/2004)
09/14/2004	23	Setting Deadlines as to 23 MOTION to Strike. Motion set for 10/18/2004 10:00 AM in Trenton - Courtroom 6W before Magistrate Judge John J. Hughes. (ij,) (Entered: 09/14/2004)
09/20/2004	27	Letter from pltf re: request for extension of time to file motion in opposition. (ij,) (Entered: 09/21/2004)
10/04/2004	28	MOTION to Strike or Dismiss Counterclaims by TYRONE T. MCRAE ret'ble 11/1/04. (Attachments: # 1 Affidavit of pltf, # 2 Memorandum of Law, # 3 Proposed Findings of Fact)(ms) (Entered: 10/07/2004)
10/04/2004	29	TABLE OF CONTENTS to pltf's Memorandum of Law. (ms) (Entered: 10/07/2004)
10/18/2004	30	Letter from Chambers of Judge Anne E. Thompson re: adjournment of motions 23 to strike & 28 motion for summary judgment to 11/1/04 @ 10 am on oral argument. (ij,) (Entered: 10/18/2004)
10/21/2004	34	MOTION for Peter J. Vranum to appear Pro Hac Vice for dfts (ij,) (Entered: 10/28/2004)
10/25/2004	31	STATEMENT of Material Fact in Support re 28 MOTION to Dismiss filed by FUBU GTFM, INC.. (COX, WILLIAM) (Entered: 10/25/2004)
10/25/2004	32	BRIEF in Opposition re 28 MOTION to Dismiss <i>for summary judgment and in further support of motion to strike counterclaims</i> filed by FUBU GTFM, INC.. (COX, WILLIAM) (Entered: 10/25/2004)

10/25/2004	33	AFFIDAVIT in Opposition re 28 MOTION to Dismiss filed by FUBU GTFM, INC.. (Attachments: # 1 Exhibit A to C# 2 Exhibit D# 3 Exhibit E# 4 Exhibit F to H# 5 Exhibit I# 6 Errata I continued# 7 Affidavit of service)(COX, WILLIAM) (Entered: 10/25/2004)
10/28/2004	34	Setting Deadlines as to 34 MOTION for Leave to Appear. Motion set for 11/15/2004 10:00 AM in Trenton - Courtroom 6W before Magistrate Judge John J. Hughes. PLEASE BE ADVISED THAT ALL MOTIONS WILL BE DECIDED ON THE PAPERS UNLESS OTHERWISE NOTIFIED BY CHAMBERS. (ij,) (Entered: 10/28/2004)
11/01/2004	37 TPO	Minute Entry for proceedings held before Judge Anne E. Thompson : Motion Hearing held on 11/1/2004 re 23 MOTION to Strike filed by FUBU GTFM, INC., J. ALEXANDER MARTIN -Granted; 28 MOTION to Dismiss filed by TYRONE T. MCRAE - Denied. (Court Reporter MCGUIRE.) (AC,) (Entered: 11/04/2004)
11/03/2004	35	LETTER ORDER directing dfts to file certain motion to dismiss. Signed by Judge Anne E. Thompson on 11/3/04. (ij,) (Entered: 11/04/2004)
11/03/2004	36	ORDER granting 23 Motion to Strike & denying 28 Motion to Dismiss . Signed by Judge Anne E. Thompson on 11/1/04. (ij,) (Entered: 11/04/2004)
11/08/2004	38	Amended reply to answer & Counterclaims. (ij,) (Entered: 11/09/2004)
11/24/2004	39	MOTION.to Strike or Dismiss Counterclaims, and MOTION for Summary Judgment by TYRONE T. MCRAE ret'ble 12/2004. (Attachments: # 1 Exhibit A-C, # 2 Exhibit D-G, # 3 Exhibit H) (CLERK'S NOTE: Pltf papers indicate there are Exhibits A-I, but no Exhibit I was found.) (PLEASE BE ADVISED MOTION WILL BE DECIDED ON THE PAPERS UNLESS THE COURT OTHERWISE DIRECTS)(ms) (Entered: 11/30/2004)
11/24/2004	40	BRIEF filed by TYRONE T. MCRAE in Support of 39 MOTION to Strike or Dismiss Counterclaims, and MOTION for Summary Judgment. (Attachments: # 1 Proposed Findings of Fact & Conclusions of Law)(ms) (Entered: 11/30/2004)
11/30/2004	41	Set Deadlines as to 39 MOTION to Strike or Dismiss Counterclaims, and MOTION for Summary Judgment MOTION for Summary Judgment. Motion set for 12/20/2004 before Judge Anne E. Thompson. (ms) (Entered: 11/30/2004)
12/09/2004	41	Letter Order directing certain parties to address in writing w/in 10 days of this letter, whether pltf's Complaint should be dismissed in part or in its entirety due to lack of standing & advising that the Court will not hear oral argument on pltf's motion to strike or dismiss counterclaims. Signed by Judge Anne E. Thompson 12/8/04 (ij,) (Entered: 12/09/2004)
12/09/2004	42	Cross MOTION for Summary Judgment or to Dismiss the Complaint by FUBU GTFM, INC.. Responses due by 12/20/2004 (Attachments: # 1 Affidavit # 2 Affidavit # 3 Affidavit)(COX, WILLIAM) (Entered: 12/09/2004)

		12/09/2004)
12/09/2004	43	BRIEF in Support re 42 Cross MOTION for Summary Judgment <i>or to Dismiss the Complaint and in opposition to Plaintiff's Motion for Summary Judgment</i> filed by FUBU GTFM, INC.. (COX, WILLIAM) (Entered: 12/09/2004)
12/09/2004	44	STATEMENT of Material Fact in Support re 42 Cross MOTION for Summary Judgment <i>or to Dismiss the Complaint</i> filed by FUBU GTFM, INC.. (COX, WILLIAM) (Entered: 12/09/2004)
12/30/2004	45	Request by pltf for an extension of time to file opposition to dft's cross motion for summary judgment. (ij,) (Entered: 01/04/2005)
01/04/2005	46	Letter from pltf advising of change of address. (ij,) (Entered: 01/05/2005)
01/31/2005	47	DEFICIENT CROSS MOTION in opposition to dft's motion for summary judgment re 42 Cross MOTION for Summary Judgment <i>or to Dismiss the Complaint</i> ; by TYRONE T. MCRAE. (NO Certsvc) (ij,) (Entered: 02/02/2005)
01/31/2005	48	STATEMENT by TYRONE T. MCRAE. (ij,) (Entered: 02/02/2005)
02/04/2005	49	REPLY to Response to Motion re 47 MOTION opposition to dft's motion for summary judgment re 42 Cross MOTION for Summary Judgment <i>or to Dismiss the Complaint</i> filed by FUBU GTFM, INC.. (COX, WILLIAM) (Entered: 02/04/2005)
02/11/2005	51	AFFIDAVIT of Tyrone T. McRae (ij,) (Entered: 02/16/2005)
02/14/2005	50	ORDER granting 34 Motion for Peter J. Vranum, Esq leave to Appear pro hac vice . Signed by Judge John J. Hughes on 2/14/05. (ij,) (Entered: 02/16/2005)
03/18/2005	52	MEMORANDUM & ORDER denying [39-1 & 47-1] Motion, granting 42 Motion for Summary Judgment, dismissing Pltf's Complain and amended reply & directing dfts to advise the Court w/in ten days of the entry date of Order whether they intend to pursue the Counterclaims . Signed by Judge Anne E. Thompson on 3/18/05. (ij,) (Entered: 03/21/2005)
03/24/2005	53	NOTICE by FUBU GTFM, INC., JAMES TODD SMITH, CHARLES FISHER, FUBU GTFM, INC., NAJEE INC., J. ALEXANDER MARTIN (COX, WILLIAM) (Entered: 03/24/2005)
03/29/2005	54	Letter from William H. Cox, Esquire, Counsel for Defendants, J. Alexander Martin, Fubu the Collection, LLC, and GTFM, Inc., agreeing to withdraw their Counterclaims without prejudice. (AC) (Entered: 03/29/2005)
03/29/2005	56	Request by pltf for an enlargement of time to Amend Response to dft's Counterclaims. (ij,) (Entered: 04/01/2005)
03/30/2005	55	AFFIDAVIT in Opposition to Plaintiff's Motion for Reargument by

		JAMES TODD SMITH, CHARLES FISHER, FUBU GTFM, INC., NAJEE INC., J. ALEXANDER MARTIN. (COX, WILLIAM) (Entered: 03/30/2005)
03/30/2005	58	DEFICIENT MOTION reargument of Motion for Summary Judgment by TYRONE T. MCRAE. (NO BRIEF) (ij,) Additional attachment(s) added on 4/6/2005 (ij,). (Entered: 04/06/2005)
03/30/2005	59	BRIEF filed by TYRONE T. MCRAE. (ij,) (Entered: 04/06/2005)
03/30/2005	60	AFFIDAVIT of Tyrone T. McRae (ij,) (Entered: 04/06/2005)
04/01/2005	57	ORDER closing matter due to the withdrawal of the Counterclaims by FUBU GTM INC & ALEXANDER MARTIN . Signed by Judge Anne E. Thompson on 3/31/05. (ij,) (Entered: 04/01/2005)
04/01/2005		***Civil Case Terminated. (ij,) (Entered: 04/01/2005)
04/06/2005	61	ORDER mootng 56 Request for an enlargement of time to amend his reply to dfts' counterclaims & denying request for reconsideration of the Court's 3/18/05 Order . Signed by Judge Anne E. Thompson on 4/5/05. (ij,) (Entered: 04/11/2005)