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**-FILED-**

DEC 10 2014

At \_\_\_\_\_ M  
ROBERT N. TRGOVICH, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

ZIP-A-TEE SHIRT INC. )  
James Cross )  
 )  
Plaintiff )  
 )  
v. )  
 )  
COALITION TO ADVANCE )  
THE PROTECTION OF NBA, NFL )  
MLB, NHL, AND CLC LLC. )  
SPORTS LOGOS dba CAPS )  
Members Defendants )  
Debevoise & Plimpton LLP )  
Represent CAPS Defendants )  
----- )

Patented and Trademark Infringement Suit

CIVIL ACTION

**2 . 14 CV 451**

No. \_\_\_\_\_

**COMPLAINT**

**Parties**

1. The plaintiff is a resident of Michigan City, Indiana, and a citizen of the United States.
2. The defendant, Coalition to Advance the Protection of Sports Logos, is a company with its principal place of business in 122 E. Poplar Avenue Coeur d'Alene, Kootenai, Idaho. The defendant for CAPS members is Debevoise & Plimpton LLP 919 Third Ave New York, NY 10022

**Jurisdiction**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*
4. This action arises *under the patent laws of the United States of America, Title 35 Of the*

*United States of America, Title 35 of the United States Code. The Court has jurisdiction of this action under 28 U.S.C §§ 1331 and 1333 (a)*

5. This Court has jurisdiction over Defendant as it has conducted business via the Internet and the mail with Plaintiff in this district.
6. Venue is proper in this district as Plaintiff resides and is engaged in business, and Defendant has been engaging, and will continue to engage, in business within this judicial district.
7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400 (b).

#### **Background Facts**

8. On February 2, 6, 27, 2012, March 20, 2012, and January 29, 2013 Defendant transmitted 5 letters via e-mail and through the regular post to Plaintiff alleging infringement request, infringement claim, and Caps member confirm letter. A copies of the letters is attached as Exhibit 1, 2, 3,7,8
9. Defendant specifically alleges that Defendant represents owners of names and logo owned and /or licensed by various sports enterprises ("CAPS Members"), and that these names and logos are protected under various United States Federal Trademark Registrations ("CAPS Members Marks").
10. Defendant specifically alleges two infringement e-mails: infringement request letter on March 20, 2012 to Tip Top's website company to remove Plaintiff's web listings. The defendant stated their company filed in Federal Court on January 29, 2013 an infringement claim that led to Go-Daddy.com Company removing the Plaintiff's web listings. The Defendant stated that Plaintiff had been using one or more Cap Member marks in violation of CAPS Member right exhibit 2,3

11. Plaintiff has been doing business through two websites TipTopWebsite.com. and GoDaddy.com. ZIPATEEE.COM and ZIPATEE2.COM website offers commemorative sports zip- up jerseys that are not made to resemble pull-over jerseys that are awarded to members of CAPS Marks. The Zip-Up jerseys does not feature a versions of the CAPS Member Register Marks.
12. Upon information and belief, none of the CAPS Members offer for sale to the public any similar commemorative to Plaintiff's trademark name Authentic Z- Zip-A-Tee with 2 designs patented that feature a full length separating zipper jersey/t-Shirts.  
Exhibit 4, 5,6,9,10,11,
13. Plaintiff's website and listings on TipTopWebsite.com and GoDaddy.com clearly and unequivocally state on letter dated on February 2, 2012 by Defendant transmitted via email and through the regular post to Plaintiff alleging infringement of Defendant's members' trademarks. Defendant, and Plaintiff two letters dated on February 6, 27, 2012 confirm that ZIP-A- TEE SHIRT INC. website [www.zpatee2.com](http://www.zpatee2.com) and [www.zipatee.com](http://www.zipatee.com) have removed the images of unauthorized jerseys bearing the Register Marks of one or more of the CAPS members. Exhibit 1, 7, 8,
14. As the logos owned by the CAPS Members are not used exclusively to identify the source of a good or service, but rather serve also to identify the team in a generic way.
15. Plaintiff's offering of sports Patented and Trademark Authentic Z-Zip-A-Tee Zip-Up Jersey/T-shirt with separating zipper, names and colors on them for sale to the public does not dilute the selling power of the CAPS Members Register Marks as stated in Defendant letter on February 27, 2012. Exhibit 7,8, 9,10, 11

**FIRST CLAIM FOR RELIEF  
DECLARATORY RELIEF OF NON-INFRINGEMENT OF TRADEMARK**

16. Plaintiff realleges and incorporates by reference all prior allegations as though fully stated herein.
17. Plaintiff disputes the allegation of an infringement request letter and infringement claim that Plaintiff actions constitute infringement of any trademark rights allegedly owned by Defendant's members.
18. Plaintiff alleges that patented and trademark products sold or distributed by Plaintiff do not violate any trademark rights allegedly owned by Defendant's members.

**SECOND CLAIM FOR RELIEF  
PRELIMINARY AND PERMANENT INJUNCTION**

19. Plaintiff realleges and incorporates by reference all prior allegations as though fully stated herein.
20. Defendant has sent threatening letters intended to interfere with Plaintiff's business.
21. Defendant has successfully interfered with Plaintiff's business by contacting TipTopWebsite.com Company, and GoDaddy.com Company with an infringement request letter and an infringement claim demand that both web-site remove Plaintiff's listings. On November 22, 2014, the Plaintiff asked the Defendant to forward a copy of request letter and infringement claims to support their allegations of infringement.
22. As Plaintiff's actions do not constitute a violation of Defendant's members' trademark rights, such actions by Defendant are in violation of Plaintiff's patented and trademark rights.

23. Plaintiff alleges he is entitled to an immediate and permanent injunction precluding Defendant from interfering with his business.

WHEREFORE, Plaintiff pray for judgment as follows:

1. Plaintiff be granted a declaratory judgment of non-infringement of patented and trademark respect to Defendant's allegations of trademark infringement.
2. Plaintiff be granted an immediate and permanent injunction preventing Defendant from interfering with Plaintiff's business; and
3. In the alternative, that Plaintiff's be awards statutory damages, to 15 U.S.C § 1117 (c) (2) of Seven Hundred Millions Dollars (\$700,000,000.00) for each website removed by CAPS member Infringement request and claims, and Plaintiff be awarded Five Hundred Thousand Dollars (\$500,000.00) per domain name change pursuant to 15 U.S.C § 1117 (d). Plaintiff ask that the jury awards punitive damages to the sum of Five Billion Dollars (\$5,000,000,000.00) because the Defendant's conduct was wilfully, wanton, egregiously, and insidious.
4. That Plaintiff be award their reasonable attorney's fees and cost; and
5. Any other remedy this Court determines is just.
6. The Plaintiff demands a trial by jury.

Signed: \_\_\_\_\_



Mr. James E. Cross  
ZIP-A-TEE SHIRT INC.  
120 Glencove Dr.  
Michigan City IN 46360  
219-879-1620 Home  
219-561-3251 Office

tip top website profile

Re:ZIP-A-TEE ERROR PATENTED NUMBER

**Me**

Kari Gondry

HERE ARE THE TWO PATENTED DESIGN NUMBER #581136  
DESIGN #580633

**Subject:** Unauthorized Use of the CAPS Members' Trademarks



**CAPS**

122 E. Poplar Avenue, Coeur d'Alene, ID 83814  
Telephone: (208)292-1010 Fax: (208)292-1015

February 2, 2012

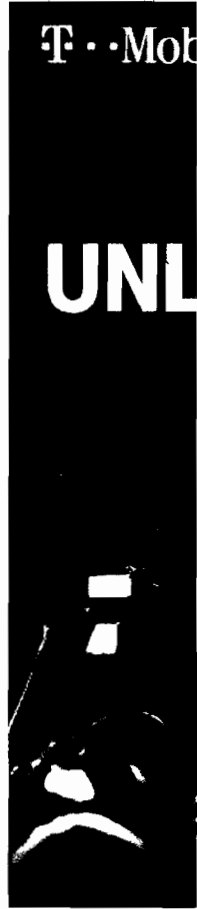
**VIA ELECTRONIC AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Zip-A-Tee Shirt Inc.  
[www.zipatee2.com](http://www.zipatee2.com)  
120 Glencove Dr.  
Michigan City, IN 46360  
[Zipatee55@att.net](mailto:Zipatee55@att.net)

**Re: Unauthorized Use of the CAPS Members' Trademarks**

Dear Sir/Madam:

This letter is sent on behalf of the members of the Coalition to Advance the Protection of Sports Logos ("CAPS"), namely, The Collegiate Licensing Company; Major League Baseball Properties, Inc.; NBA Properties, Inc.; NFL Properties LLC and NHL Enterprises, L.P. (collectively, the "CAPS Members"). The CAPS Members are the owners of, and/or are responsible for the licensing and protection of, the names, trademarks, copyrights, symbols, emblems, designs, logos, photographs, uniforms, team colors and identifications of the CAPS Members and their respective teams and organizations (hereinafter, the "Marks"). For your reference, some of the Marks include, but are not limited to, those shown in Exhibit A. Based on the foregoing rights, no one may manufacture, distribute, offer to sell and/or sell any products bearing the Marks unless said



- Compose
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- Drafts (83)
- Sent
- Spam (203)
- Trash (126)
- ▼ Folders
  - Deleted Messages
  - Drafts
  - Junk
  - Notes
- ▶ Recent
- Sponsored
- Southwest ▶
  - Grab a seat.
  - Your favorite Seat.
  - Book now to take advantage of Southwest Airlines' fare sale.

◀ ◀ ▶ ▶ Delete More More Collapse All ↑ ↓ ×

Fw: CAPS - LEGAL ZIP-A-TEE ADDITIONAL E-MAIL(2)

Me  
info@grossmanlegal.com  
zipatee55@att.net, Me

Hello Mr. Grossman:

Here are additional information. Please feel free to read all e-mail before you make your decision on this matter.

Thankyou

James Cross

Hello Sir:

Zip-A-Tee have the right to say Zip-A-Tee Bulls or Lakers on the zip-up jerseys. So if you remove my website page. Please feel free to let me know ASAP. This company do not have any Caps logos or name such as NBA, Chicago Bulls or Los Angles Lakers on the zip-up jerseys.

From: TipTopWebsite.com <info@tiptopwebsite.com>  
To: James Cross <zipatee55@att.net>  
Sent: Tue, March 20, 2012 3:21:07 PM  
Subject: CAPS - please reply.

Here is their reply.  
They are saying the you are clearly infringing on their trademark. If you do not remove the remove the jerseys bearing the "Lakers" and "Bulls" marks from your website, you will be in violation of our TOA you agreed to at sign up and Rackspace will be forced to remove your website  
If you want, we can transfer the domain to you and you can take your website elsewhere.  
Let us know if you are going to comply with the trademark infringement request from CAPS.  
Here is their reply:

"Thank you for your e-mail. Unfortunately, it is clear to us that your customer does not understand the meaning of our previous correspondence to him regarding his unauthorized use of the CAPS Members' trademarks. We would like him to remove the jerseys bearing the "Lakers" and "Bulls" marks from his website. Mr. Cross' trademark infringement has nothing to do with the patent he describes in the below e-mail.

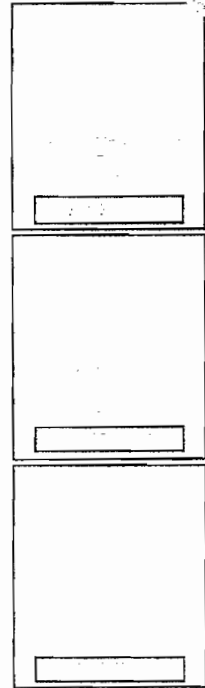
Please let me know if there is any further information I can help you with to see that Mr. Cross complies with our requests.

Thank you,  
Kari "

On Tue, Mar 20, 2012 at 1:44 PM, James Cross <zipatee55@att.net> wrote:

Hello Ms. Armstrong,

Please revisit the letter dated:2-6-12, it may have been misunderstood. The Zip-A-Tee Shirt Inc. has complied as follows:



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Inbox (39) Drafts (83) Sent Spam (203) Trash (126)

Deleted Messages Drafts Junk Notes Recent Sponsored

Southwest Grab a seat. Your favorite Seat. Book now to take advantage of Southwest Airlines' fare sale.

VIP Trademark website reverse request(11)

Me trademarkclaims@godaddy.com, domaindisputes@godaddy.com, trademarkclaims@godaddy.com Me

Hello Parties:

We ask that go-daddy.com look at the website again and see that ZIP-A-TEE SHIRT INC. Zip-Up Jersey/T-Shirt have a U.S TradeMark name, and Patented Design Authentic Z- Zip-A-Tee Zip-Up jerseys/T-Shirt bulls, and Authentic Z- Zip-A-Tee Zip-Up jersey/T-Shirt Lakers on our website pages. The website TradeMark/Patented Authentic Z- Zip-A-Tee Zip-Up Jersey/T-Shirts do not infringe on Caps Members because there pull-over jerseys/T-Shirt Trademark is NBA Los Angeles Lakers #1836873, and NBA Bulls #78509970. The jerseys are very different because of the separating zipper and TradeMark/Patented name. This product is just like Coke and Pepsi look the same but flavor is different not infringement. We ask that go-daddy return our Zipatee.com website back.

Two U.S Patented Design#580,633, #581,136 TradeMark Name Authentic Z- Zip-A-Tee #85-600-540 (Authentic Zip-A-Tee Bulls, and Lakers can be use on this zip-up jersey/T-Shirt.))

the product look the

Bulls #1836873 Los Angeles Lakers #78509970

From: "trademarkclaims@godaddy.com" <trademarkclaims@godaddy.com> To: zipatee60@att.net Sent: Tue, January 29, 2013 1:10:29 PM Subject: [FWD: RE: [FWD: VIP Trademark website removal request]]

Dear Parties,

We have received a formal trademark infringement claim regarding your hosted site, ZIPATEE.COM from the owner of the registered trademark: Bulls® and Los Angeles Lakers®. In accordance with our Trademark and Copyright Infringement Policy http://www.godaddy.com/agreements/ShowDoc.aspx?pageid=TRADMARK\_COPY your hosting account has been suspended pending the resolution of this matter.

Please note that the suspension of your hosting account does not affect your domain name registration.

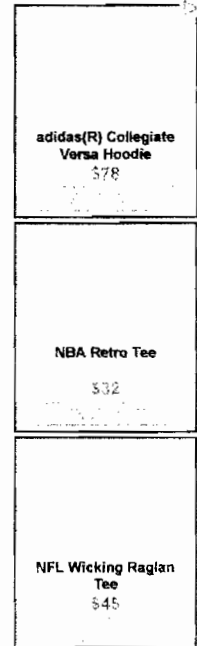
If you wish to contest this claim, our Counter Notification Policy http://www.godaddy.com/agreements/ShowDoc.aspx?pageid=TRADMARK\_COPY gives you an opportunity to file a counter notification and sets forth the necessary information that you must provide to us.

Attached for your convenience is the original claim that was sent to us.

To resolve this issue directly with the complaining party, or if you have questions about the claim, please contact:

Kari Gondry CAPS Paralegal TrademarkManagement 122 E. Poplar Ave Coeur d' Alene, Idaho 83814 (208) 292-1010 kari@trademarkmanagement.com

Regards,





# United States of America

United States Patent and Trademark Office

**Reg. No. 4,343,916**

CROSS, JAMES (UNITED STATES INDIVIDUAL)

**Registered May 28, 2013**

120 GLENCOVE DR  
MICHIGAN CITY, IN 46360

**Int. Cl.: 25**

FOR: CLOTHING, NAMELY, FOOTWEAR, HEADWEAR, TOPS, BOTTOMS, SHIRTS, T-SHIRTS, JERSEYS, AND PANTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

**TRADEMARK**

FIRST USE 1-1-2012: IN COMMERCE 1-1-2012.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF THE WORDS "AUTHENTIC Z ZIP-A-TEE" SHOWING WITH A T-SHIRT WHEREIN "AUTHENTIC" IS WRITTEN ABOVE THE STYLIZED LETTER "Z" AND TO THE BELOW OF WHICH THE WORDS "ZIP-A-TEE" ARE WRITTEN AS SHOWN IN THE MARK.

SN 85-600,540, FILED 4-17-2012.

JENNY PARK, EXAMINING ATTORNEY



*Lisa Street Lee*  
Acting Director of the United States Patent and Trademark Office



(12) **United States Design Patent**  
**Cross**

(10) **Patent No.:** **US D580,633 S**  
 (45) **Date of Patent:** **\*\* Nov. 18, 2008**

(54) **CONVERTIBLE T-SHIRT**  
 (76) **Inventor:** **James E. Cross, 2616 Massachusetts St., Gary, IN (US) 46407**  
 (\*\*) **Term:**  
 (21) **Appl. No.:** **29/317,223**  
 (22) **Filed:** **Apr. 24, 2008**

6,298,485 B1 10/2001 Heller  
 6,349,413 B1 2/2002 Rose et al.  
 6,360,372 B2 3/2002 Oster  
 6,430,754 B1 8/2002 Taylor et al.  
 6,473,904 B2 11/2002 Long  
 D499,857 S 12/2004 Evans  
 D521,712 S \* 5/2006 Overby ..... D2/717  
 7,230,206 B1 6/2007 Randall

**Related U.S. Application Data**

(62) Division of application No. 29/298,060, filed on Nov. 28, 2007.  
 (51) **LOC (8) Cl.** ..... 02-02  
 (52) **U.S. Cl.** ..... **D2/840; D2/847**  
 (58) **Field of Classification Search** ..... D2/717,  
 D2/828, 830, 833, 840, 845; 2/85, 86, 90,  
 2/93, 94, 96, 97, 100  
 See application file for complete search history.

**OTHER PUBLICATIONS**

Web site printout from Sep. 12, 2007 of <http://www.buckandbuck.com/cgi-bin/shop.pl?id=55f>—Buck & Buck Shop for Men.

\* cited by examiner  
*Primary Examiner*—Ian Simmons  
*Assistant Examiner*—Anna J Burmeister  
 (74) *Attorney, Agent, or Firm*—Cook Alex Ltd.

(57) **CLAIM**

The ornamental design for a convertible T-shirt, as shown and described.

(56) **References Cited**

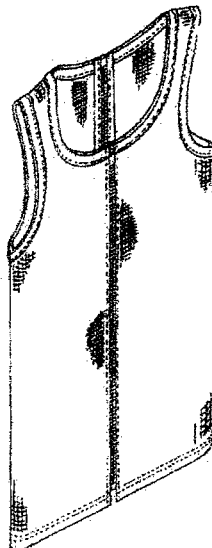
**U.S. PATENT DOCUMENTS**

D109,319 S 4/1938 Friedland  
 D109,570 S \* 5/1938 Solomon ..... D2/847  
 D115,484 S 6/1939 Smith  
 D119,122 S 2/1940 Bauer  
 3,276,087 A 10/1966 Hanson  
 D294,882 S \* 3/1988 Harrell ..... D2/717  
 5,182,813 A \* 2/1993 Booze ..... 2/104  
 D341,471 S 11/1993 Cross  
 5,383,235 A 1/1995 Peters  
 D368,353 S \* 4/1996 McCrudden ..... D2/841  
 5,553,323 A 9/1996 Chou et al.  
 D393,736 S \* 4/1998 Rubin ..... D2/717  
 6,029,270 A 2/2000 Ost et al.

**DESCRIPTION**

FIG. 1 is a perspective view of a convertible T-shirt showing the new design;  
 FIG. 2 is a front elevational view thereof;  
 FIG. 3 is a side elevational view thereof;  
 FIG. 4 is a top plan view thereof;  
 FIG. 5 is a bottom plan view thereof; and,  
 FIG. 6 is a rear elevational view thereof.  
 The broken lines shown in the drawings represent a stitching line.

1 Claim, 2 Drawing Sheets





**(12) United States Design Patent**  
**Cross**

**(10) Patent No.: US D581,136 S**  
**(45) Date of Patent: \*\* Nov. 25, 2008**

**(54) CONVERTIBLE T-SHIRT**

**(76) Inventor: James E. Cross, 2616 Massachusetts St., Gary, IN (US) 46407**

6,430,754 B1 *	8/2002	Taylor et al.	2/458
6,473,904 B2	11/2002	Long	
D499,857 S	12/2004	Evans	
7,230,206 B1	6/2007	Randall	

**(\*\*)** Term:

**(21)** Appl. No.: **29/298,060**

**(22)** Filed: **Nov. 28, 2007**

**(51) LOC (8) Cl. .... 02-02**

**(52) U.S. Cl. .... D2/840**

**(58) Field of Classification Search .... D2/717,  
D2/828, 830, 833, 840, 845; 2/85, 86, 90,  
2/93, 94, 96, 97, 100**

See application file for complete search history.

**(56) References Cited**

**U.S. PATENT DOCUMENTS**

D109,319 S *	4/1938	Friedland	D2/840
D115,484 S *	6/1939	Smith	D2/836
D119,122 S *	2/1940	Bauer	D2/839
3,276,087 A	10/1966	Hanson	
D341,471 S	11/1993	Cross	
5,383,235 A	1/1995	Peters	
5,553,323 A	9/1996	Chou et al.	
6,029,270 A	2/2000	Ost et al.	
6,298,485 B1	10/2001	Heller	
6,349,413 B1 *	2/2002	Rose et al.	2/126
6,360,372 B2	3/2002	Oster	

**OTHER PUBLICATIONS**

Web site printout from Sep. 12, 2007 of <http://www.buckandbuck.com/cgi-bin/shop.pl?id=55f>—Buck & Buck Shop for Men.

\* cited by examiner

*Primary Examiner*—Ian Simmons

*Assistant Examiner*—Anna J Burmeister

**(74) Attorney, Agent, or Firm**—Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd.

**(57) CLAIM**

The ornamental design for a convertible t-shirt, as shown and described.

**DESCRIPTION**

FIG. 1 is a front perspective view of a convertible t-shirt, showing my new design;

FIG. 2 is a front elevational view thereof;

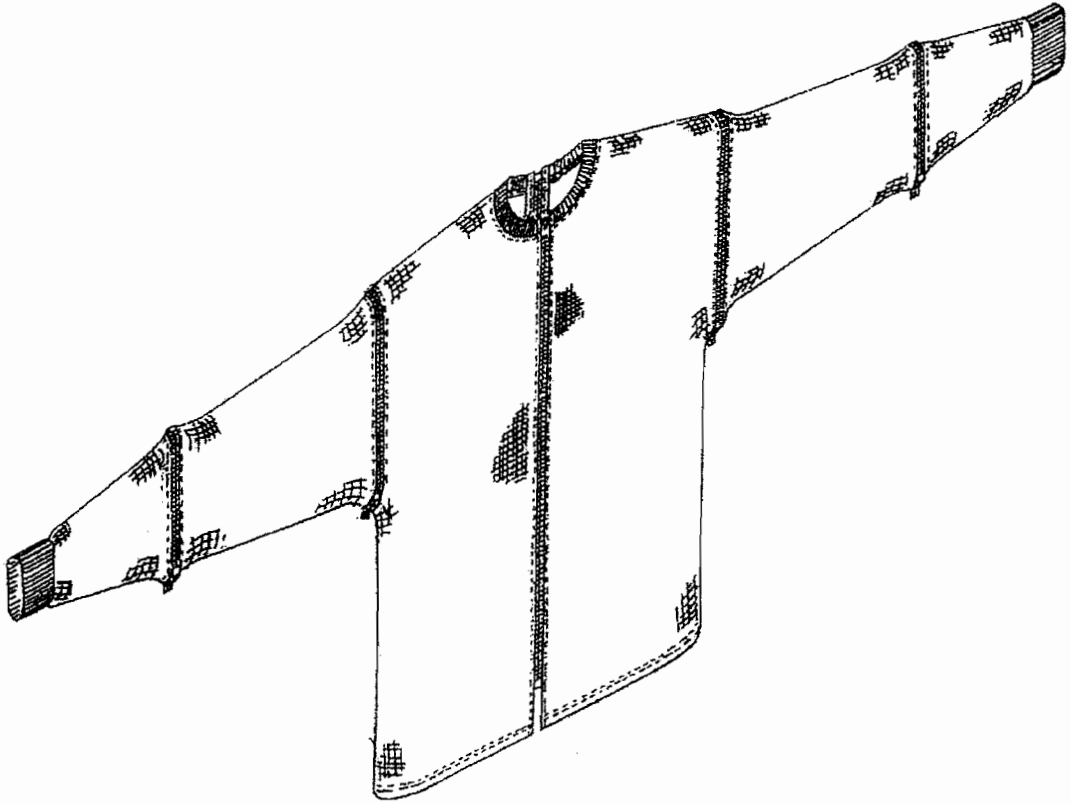
FIG. 3 is a side elevational view thereof;

FIG. 4 is a top plan view thereof;

FIG. 5 is a bottom plan view thereof; and,

FIG. 6 is a rear elevational view thereof.

**1 Claim, 3 Drawing Sheets**



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Southwest

Grab a seat. Your favorite Seat. Book now to take advantage of Southwest Airlines' fare sale.

James Cross ZIPATEE.COM Added information(2)

Me trademarkclaims@godaddy.com, copyrightclaims@godaddy.com Me

From: Kari Gondry <Kari@trademarkmanagement.com> To: "Zipatee55@att.net" <Zipatee55@att.net> Cc: Hallie Alexander <halliea@trademarkmanagement.com> Sent: Mon, February 27, 2012 12:12:22 PM Subject: Unauthorized Use of the CAPS Members' Trademarks



CAPS 122 E. Poplar Avenue, Coeur d'Alene, ID 83814 Telephone: (208)292-1010 Fax: (208)292-1015

February 27, 2012

James Cross Zip-A-Tee Shirt Inc. www.zipatee2.com zipatee55@att.net

Re: Unauthorized Use of the CAPS Members' Trademarks

Dear Mr. Cross,

We are in receipt of your response dated February 6, 2012. Additionally, we have reviewed your website, www.zipatee2.com, and confirm that you have removed the images of unauthorized jerseys bearing the Marks of one or more of the CAPS Members. Thank you for the same.

In your correspondence to our office, you state that you cover the CAPS Members' Marks with your own logo on your products for sale. Please be advised that covering up the logos does not change the fact that you are purchasing and re-selling counterfeit jerseys, and profiting from the goodwill associated with the CAPS Members' Marks. Further, please also note that adding a zipper to a counterfeit product does not make it a legitimate product.

Lastly, if the Zip-A-Tee Company is not a manufacturing company, we ask that you supply us with the manufacturer's contact information.

The above information is expected in our office no later than March 8, 2012, or further action will be taken against you by the CAPS Members, as is necessary to protect their valuable intellectual property rights.

Your cooperation is appreciated.

Very truly yours, /s/ Lisa Uriguen Armstrong Administrator LU/Akg

cc: CAPS Members

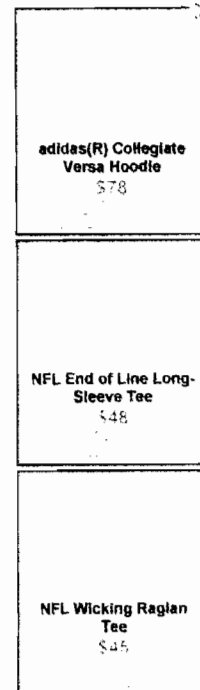


Exhibit 9

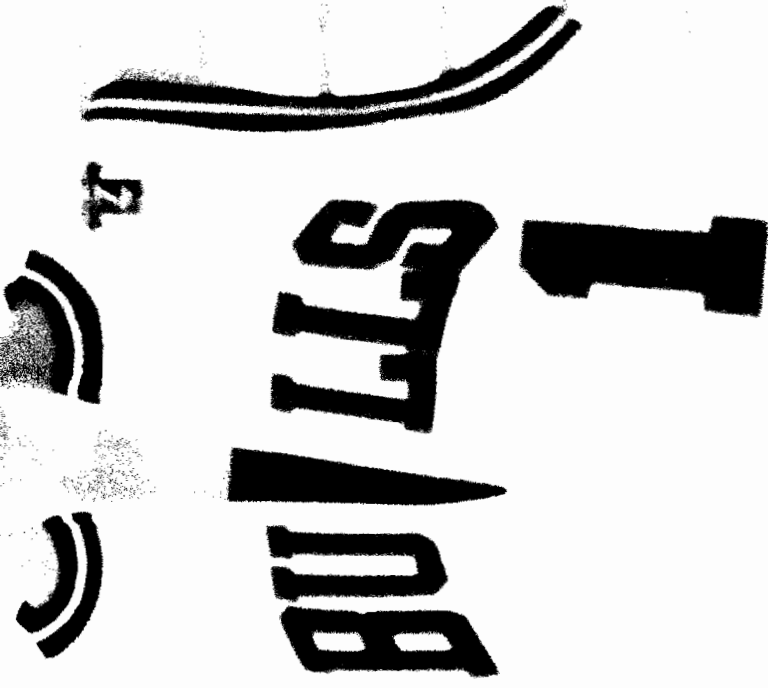


Exhibit 9

Exhibit 10

**BRYANT**  
**24**

**LAKERS**  
**24**



Exhibit 10





Exhibit 11

14

13

11

11