

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

BISON DESIGNS, LLC, a Colorado limited liability company,

Plaintiff,

vs.

ACME MERCHANDISE AND APPAREL, INC.,  
a Massachusetts corporation;  
ELAINE BUTTER, an individual; and  
DOES 1 through 10, inclusive,

Defendants.

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**VERIFIED COMPLAINT AND JURY DEMAND**

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COMES NOW Plaintiff, Bison Designs, LLC, ("Plaintiff" or "Bison"), by its attorneys,  
Kamlet, Shepherd & Reichert, LLP, and states as follows:

**JURISDICTION**

1. This is an action for patent infringement arising under 35 U.S.C. § 271, for copyright infringement arising under 17 U.S.C. § 501, for unfair competition arising under the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a), and for breach of related state and common law duties. The Court has subject matter jurisdiction over this case and the parties pursuant to 28 U.S.C. §§ 1331, 1338, 1367(a), and 15 U.S.C. § 1121. The Court has personal jurisdiction over the defendants pursuant to Fed. R. Civ. P. 4(k)(1) and/or the Colorado Long Arm Statute, Colo. Rev. Stat. § 13-1-124, because the defendants conduct business in and sell their infringing product in the State of Colorado. This Complaint includes common law claims

over which this Court has jurisdiction under 28 U.S.C. § 1338(b), in that said claims are joined with substantial and related claims under the Patent Laws of the United States of America.

### **VENUE**

2. Venue is proper in the United States District Court of the District of Colorado pursuant to 28 U.S.C. §§ 1391(a) and 1400(a), on the grounds that the infringement, unfair competition and other wrongful acts that gave rise to these claims occurred in this federal district, and on the grounds that the defendants and their agents now, at all times material hereto, do business in the State of Colorado within this federal district.

### **THE PARTIES**

3. Plaintiff Bison Designs, LLC ("Bison") is, and at all relevant times herein was, a limited liability company duly organized and existing under the laws of the State of Colorado with its principal place of business situated at 735 S. Lincoln Street, Longmont, Colorado 80501. Bison designs and sells promotional products throughout the United States of America.

4. Brian James Kelleghan ("Kelleghan") is, and at all relevant times herein was, the inventor of "Foot Shaped Bottle Opener," protected by U.S. Design Patent No. D442,448, which patent issued on May 22, 2001 (the "'448 Patent"). Kelleghan assigned the '448 Patent to Bison.

5. Kelleghan is, and at all relevant times herein was, the author of "Foot," protected by U.S. Copyright Registration No. VA 1-160-023, which patent issued on January 28, 2002. Bison is the Copyright Claimant of Registration No. VA 1-160-023.

6. Bison is informed and believes, and based thereon alleges, that defendant ACME Merchandise and Apparel, Inc. ("ACME") is, and at all relevant times herein was, a domesticated foreign corporation duly organized and existing under the laws of the State of

Massachusetts with its principal place of business located at 46-47 Blackburn Center, Gloucester, Massachusetts, 01930, and that ACME's registered agent for service of process is Michael Butter, 6 Gap Head Road, Rockport, Massachusetts, 01966.

7. Bison is informed and believes, and based thereon alleges, that defendant Elaine Butter ("Butter") is, and at all relevant times herein was, an individual residing in the State of Massachusetts and President of ACME Apparel and Merchandise, Inc.

8. Bison is informed and believes, and based thereon alleges, that defendant Butter is, and at all relevant times was, an officer, manager, and controlling member of ACME Apparel and Merchandise, Inc. who directly participated in, authorized or ratified the infringing activity alleged herein.

9. Defendants, Does 1 through 10, inclusive, are sued herein under fictitious names and capacities because their identities are unknown to Bison. When the true names and capacities are ascertained, Bison will amend this Complaint by inserting the same herein. Each and every allegation of this complaint which charges the other defendants shall also charge Does 1 through 10, inclusive, and each of them.

10. Defendants Does 1 through 10, inclusive, and each of them, at all times mentioned in this Complaint, were the agents and employees of the co-defendants and in doing the things hereinafter alleged were acting within the course and scope of such agency and with the permission and consent of their co-defendants.

#### **FACTUAL ALLEGATIONS**

11. Beginning on or about September 2000, Bison began to market and sell "Foot Shaped Bottle Opener" in the United States of America as Bison Designs' "Foot". The Foot is

made of durable, lightweight aluminum and is available in six different high quality, anodized finishes that can be customized with company names, logos, artwork and other graphic material. A true and correct depiction of Foot appears on Bison's Web page, located at [http://www.bisondesigns.com/mm5/merchant.mvc?Screen=PROD&Store\\_Code=BD&Product\\_Code=131FOOT&Category\\_Code=Bottle\\_Openers](http://www.bisondesigns.com/mm5/merchant.mvc?Screen=PROD&Store_Code=BD&Product_Code=131FOOT&Category_Code=Bottle_Openers), a copy of which is attached as Exhibit A.

12. On October 23, 2000, Keleghan filed a United States Patent Application in the United States Patent and Trademark Office ("USPTO") to protect the ornamental design of "Foot Shaped Bottle Opener" and assigned said patent application to Bison.

13. ACME purchased three separate orders of the "Foot Shaped Bottle Opener" in 2000. Upon information and belief, the openers were all marked "patent pending" per Bison's standard business practice.

14. On May 22, 2001, the USPTO duly and legally issued to Kelleghan U.S. Design Patent No. D442,448 (the "'448 Patent") for "Foot Shaped Bottle Opener" which has been assigned to Bison. True copies of the '448 Patent and the Notice of Recordation and Assignment are attached hereto as Exhibits B and B1, respectively.

15. ACME purchased at least one order of the "Foot Shaped Bottle Opener" in 2001. Upon information and belief, the openers were marked with the patent number per Bison's standard business practice. True and correct copies of an ACME purchase order dated June 21, 2001, and a Bison invoice dated July 13, 2001, are attached hereto as Exhibit F.

16. Bison was and continues to be the first and original inventor of "Foot Shaped Bottle Opener," now sold as Bison Designs' Foot.

17. Bison is, and at all relevant times mentioned herein was, the lawful assignee of the '448 Patent.

18. Bison has not licensed nor assigned any rights under the '448 Patent to the defendants, nor to any agent of the defendants.

19. Beginning on or about July 2001, Bison has placed the required statutory patent notice on Bison Designs' Foot.

20. On January 28, 2002, the United States Copyright Office duly and legally issued to Bison Registration No. VA 1-160-023 for "Foot". A true copy of Certificate of Registration No. VA 1-160-023 is attached hereto as Exhibit G.

21. Kelleghan was and continues to be the first and original author of "Foot", now sold as Bison Designs' Foot.

22. Beginning before January 22, 2007 and continuing through the present, defendants ACME and Butter designed, manufactured, and sold their own version of Bison's Foot Shaped Bottle Opener marked with the Corona trademark.

23. The defendants' version is substantially similar in design and shape to Bison's Foot Shaped Bottle Opener. Moreover, the defendants' version is available in at least two of the same colors in anodized aluminum texture having a smooth and bright finish as those used by Bison. A true and correct copy of the defendants' version of Bison's Foot Shaped Bottle Opener is attached and incorporated herein as Exhibit C.

24. Bison is informed and believes, and based thereon alleges, that the defendants' version of Bison's Foot Shaped Bottle Opener was, and is, marketed, sold, and offered for sale throughout the United States, including but not limited to, the State of Colorado.

25. Bison is, and at all relevant times mentioned herein, was, the lawful owner of the unregistered yet valid and protected trade dress, or overall impression created upon the consumer, which includes features in the size, colors, texture, finish, and choice of material, associated with Bison's Foot. Specifically, the Foot trade dress is defined as the composite image created by the Foot shape, and the anodized aluminum texture having a smooth and bright finish.

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

26. On or about April 10, 2007, by and through counsel, Bison notified Butter and ACME by certified mail letter transmission of their infringement of Bison's U.S. intellectual property rights. The letter was received by ACME on April 13, 2007 as shown by the return receipt. In the letter, Bison directed Butter and ACME to discontinue selling and offering for sale Bison's product designs, specifically the Foot Shaped Bottle Opener, and provided a list of Plaintiff's protected products so that Butter and ACME could avoid infringement of the same. A copy of the notice letter dated April 10, 2007, is attached as Exhibit D. A copy of the return receipt is attached as Exhibit D1.

27. ACME did not respond to Bison's letter.

28. On or about July 17, 2007, by and through counsel, Bison again notified Butter and ACME by FedEx letter transmission of their infringement of Bison's U.S. intellectual property rights. The letter was received by ACME on July 18, 2007 as shown by the delivery confirmation. In the letter, Bison again directed Butter and ACME to discontinue selling and offering for sale Bison's product designs, specifically the Foot Shaped Bottle Opener, and again provided a list of Bison's protected products so that Butter and ACME could avoid infringement

of same. Bison further directed that ACME cancel all pending orders for the Foot Shaped Bottle Opener, turn over remaining inventory to Bison, and provide a complete accounting of sales. A copy of the notice letter dated July 12, 2007, is attached as Exhibit E. A copy of the delivery confirmation is attached as Exhibit E1.

29. As of the present date, the defendants have not yet contacted Bison or Bison's counsel. As a result, Bison has instigated the instant lawsuit.

30. Bison is informed and believes, and based thereon alleges, that thereafter and since April 13, 2007, the defendants did not and have not discontinued the sale and offer for sale of products, namely the defendants' versions of "Foot Shaped Bottle Opener," which infringes Bison's intellectual property rights.

31. Bison is informed and believes, and based thereon alleges, that the defendants, after receiving Bison's written notices dated April 10, 2007 and July 12, 2007, in which the defendants were notified of Bison's intellectual property rights, continue to manufacture, import, sell, display and/or distribute infringing and/or potentially infringing products within this judicial district, and elsewhere.

32. Bison is informed and believes, and based thereon, alleges that the defendants are willfully manufacturing, importing, selling, displaying and/or distributing the infringing products in derogation of Bison's intellectual property rights.

33. Bison is informed and believes, and based thereon, alleges that by manufacturing, importing, selling, and/or distributing the defendants' infringing products, or the defendant's version of Bison's Foot, the defendants are also infringing the trade dress associated with Bison's Foot, which is protected under Section 1125(a) of the Lanham Act.

34. Bison is informed and believes, and based thereon alleges, that in comparing the general impression made by the defendants' articles upon the eye of the ordinary purchaser or user, the defendants' trade dress is likely to cause confusion with Bison's trade dress associated with Bison's Foot.

35. Bison is informed and believes, and based thereon alleges, that the trade dress associated with Bison's Foot has acquired secondary meaning.

36. Bison is informed and believes, and based thereon alleges, that the trade dress associated with Bison's Foot is non-functional and purely ornamental.

37. Bison is informed and believes, and based thereon alleges, that the defendants' close similarity of the trade dress associated with Bison's Foot, in a plethora of detail, raises a serious question of copying and intent to confuse consumers, which further constitutes unfair competition.

**FIRST CLAIM FOR RELIEF**  
**(Patent Infringement – Against All Defendants and Does 1 through 10)**

38. Bison realleges and incorporates by reference each and every allegation contained in the previous paragraphs, as though fully set forth herein.

39. The defendants, and each of them, have infringed and continue to infringe the claims of Bison's '448 Patent by applying their patented designs, or a colorable imitation thereof, to an article of manufacture, and thereafter using, selling or distributing said products within this judicial district and elsewhere throughout the United States.

40. Bison is informed and believes, and based thereon alleges, that the defendants' colorable imitations appropriate the novelty in the Bison's invention, which distinguished it from the prior art.

41. Bison is further informed and believes, and based thereon alleges, that the design of the defendants' colorable imitation and the Bison's invention are substantially the same, such as to deceive consumers into purchasing one supposing it to be the other.

42. Unless restrained and enjoined, the defendants' acts of infringement as alleged above will cause Bison to suffer irreparable injury.

43. By reason of the defendants' infringement of Bison's '448 Patent as alleged above, Bison has lost sales of its products, which it otherwise would have made. The defendants are liable to Bison for the lost profits and/or reasonable royalty and any additional profits of the defendants attributable to such infringement. Said damages are in an amount which is not yet fully ascertainable.

44. The defendants, and each of them, had knowledge of Bison's '448 Patent at least as early as April 13, 2007 before committing acts of continuing infringement, as alleged above. Notwithstanding the defendants' knowledge that their colorable imitation was and is an infringing device of Bison's '448 Patent, the defendants manufactured, sold and/or distributed these imitations in this judicial district and elsewhere. Said acts of the defendants, and each of them, were done willfully, maliciously, intentionally and in bad faith, making this an exceptional case under 35 U.S.C. § 285. Bison is therefore entitled to and hereby requests enhanced damages and statutory penalties pursuant to 35 U.S.C. § 284 and § 289.

45. Bison has incurred, and will continue to incur, attorneys' fees and court costs arising from the acts of the defendants as alleged herein. Bison seeks the recovery of attorneys' fees and costs as the prevailing party in this action.

**SECOND CLAIM FOR RELIEF**

**(Copyright Infringement – Against All Defendants and Does 1 through 10)**

46. Bison realleges and incorporates by reference each and every allegation contained in the previous paragraphs, as though fully set forth herein.

47. As set forth above, Bison's products contain designs wholly original to Bison, and are copyrightable subject matter under the laws of the United States.

48. Bison has duly registered, and has a Certificate of Registration for its Foot Shaped Bottle Opener, Registration No. VA 1-160-023.

49. Bison is the owner of the above-referenced copyright.

50. Upon information and belief, the defendants have copied and/or are using without permission Bison's copyright protected design, in violation of Bison's copyright.

51. By reason of the acts set forth herein, the defendants have infringed, and are infringing, Bison's copyrights.

52. Unless restrained and enjoined, the defendants' acts of infringement as alleged above will cause Bison to suffer irreparable injury.

53. By reason of the defendants' infringement of Bison's Registration No. VA 1-160-023 as alleged above, Bison has lost sales of its products, which it otherwise would have made. The defendants are liable to Bison for the lost profits and/or reasonable royalty and any additional profits of the defendants attributable to such infringement. Said damages are in an amount which is not yet fully ascertainable.

54. In the alternative, the defendants are liable for enhanced statutory damages under 17 U.S.C. § 504(c).

55. Bison has incurred, and will continue to incur attorneys' fees and court costs arising from the acts of the defendants as alleged herein. Bison seeks the recovery of attorneys' fees and costs as the prevailing party in this action.

**THIRD CLAIM FOR RELIEF**  
**(Trade Dress Infringement – Against All Defendants and Does 1 through 10)**

56. Bison realleges and incorporates by reference each and every allegation contained in the previous paragraphs, as though fully set forth herein.

57. The defendants, and each of them, have infringed and continue to infringe the trade dress associated with Bison's Foot by applying Bison's designs, or a colorable imitation thereof, to an article of manufacture, and thereafter using, selling or distributing said products within this judicial district and elsewhere throughout the United States.

58. Bison is further informed and believes, and based thereon alleges, that the designs or trade dress of the defendants' colorable imitations and the Bison's trade dress are substantially the same, such as to cause confusion and deceive consumers into purchasing one supposing it to be the other.

59. The acts of the defendants and each of them, as alleged herein, constitute trade dress infringement in violation of Section 1125(a) of the Lanham Act.

60. Unless restrained and enjoined, the defendants' acts of infringement as alleged above, will cause Bison to suffer irreparable injury.

61. As a direct and proximate result of the aforesaid conduct, and as a foreseeable consequence thereof, Bison has sustained general damages in an amount that will be proven at the time of trial.

62. Bison has incurred, and will continue to incur attorneys' fees and court costs arising from the acts of the defendants as alleged herein. Bison seeks the recovery of attorneys' fees and costs as the prevailing party in this action.

63. Bison is informed and believes, and based thereon alleges, that the actions of the defendants were willful and malicious and done with the intent to injure Bison. Therefore, Bison is entitled to recover, and hereby requests, exemplary damages from the defendants.

64. The wrongful acts of the defendants, as alleged herein, unless restrained and enjoined by order of this Court, will cause great and irreparable injury to Bison, its reputation, and goodwill. Bison has no adequate remedy at law for the injuries that have been, and will continue to be, sustained in this action.

**FOURTH CLAIM FOR RELIEF**  
**(Unfair Competition – Against All Defendants and Does 1 through 10)**

65. Bison realleges and incorporates by reference each and every allegation contained in the previous paragraphs, as though fully set forth herein.

66. The acts of the defendants, as alleged herein, constitute unfair or fraudulent business practices that are damaging to the public in violation of Section 1125(a) of the Lanham Act.

67. As a direct and proximate result of the aforesaid conduct, and as a foreseeable consequence thereof, Bison has sustained general damages in an amount that will be proven at the time of trial.

68. Bison has incurred, and will continue to incur, attorneys' fees and court costs arising from the acts of the defendants as alleged herein. Bison seeks the recovery of attorneys' fees and costs as the prevailing party in this action.

69. Bison is informed and believes, and based thereon alleges, that the actions of the defendants were willful and malicious and done with the intent to injure Bison. Therefore, Bison is entitled to recover, and hereby requests, exemplary damages from the defendants.

70. The wrongful acts of the defendants, as alleged herein, unless restrained and enjoined by order of this Court, will cause great and irreparable injury to Bison, its reputation, and goodwill. Bison has no adequate remedy at law for the injuries that have been, and will continue to be, sustained in this action.

**FIFTH CLAIM FOR RELIEF**  
**(Accounting – Against All Defendants and Does 1 through 10)**

71. Bison realleges and incorporates by reference each and every allegation contained in the previous paragraphs, as though fully set forth herein.

72. Bison is informed and believes, and based thereon alleges, that the defendants, and each of them, have manufactured, imported, sold, and/or distributed products which directly infringe on Bison's '448 Patent. The infringement by the defendants has deprived Bison of sales and/or royalties, which it otherwise would have made and resulted in the unjust enrichment of the defendants at the expense and to the detriment of Bison, among other damage. The defendants' actions have resulted in improper profits, revenues, and other financial gains to the defendants for which Bison, in equity and good conscience, is rightfully entitled to reimbursement.

73. Bison is informed and believes, and based thereon alleges, that the defendants, and each of them, have reproduced, made, distributed, and/or displayed products which directly infringe on Bison's Copyright Registration No. VA 1-160-023. The infringement by the defendants has deprived Bison of sales and/or royalties, which it otherwise would have made and

resulted in the unjust enrichment of the defendants at the expense and to the detriment of Bison, among other damage. The defendants' actions have resulted in improper profits, revenues, and other financial gains to the defendants for which Bison, in equity and good conscience, is rightfully entitled to reimbursement.

74. Bison is informed and believes, and based thereon alleges, that the defendants, and each of them, have applied Bison's designs, or a colorable imitation thereof, to an article of manufacture, and thereafter used, sold or distributed said products which directly infringe on Bison's trade dress. The infringement by the defendants has deprived Bison of sales and/or royalties, which it otherwise would have made and resulted in the unjust enrichment of the defendants at the expense and to the detriment of Bison, among other damage. The defendants' actions have resulted in improper profits, revenues, and other financial gains to the defendants for which Bison, in equity and good conscience, is rightfully entitled to reimbursement.

75. Bison does not know the precise number of infringing products sold or the amount of revenue and profits realized by the defendants, and each of them, which information is uniquely within the knowledge of the defendants. Bison is, therefore, entitled to an accounting, at the defendants' expense, to determine the amount of profits the defendants have unjustly obtained by their acts of infringement.

#### **SIXTH CLAIM FOR RELIEF**

#### **(For Injunctive Relief – Against All Defendants and Does 1 through 10)**

76. Bison realleges and incorporates by reference each and every allegation contained in the previous paragraphs, as though fully set forth herein.

77. By reason of the wrongful acts and unlawful conduct as hereinabove alleged, the defendants, and each of them, have infringed and continue to infringe the claims of the '448

Patent by making, using, selling or distributing within this judicial district and elsewhere throughout the United States, the above-described products embodying the inventions claimed in said patent.

78. By reason of the wrongful acts and unlawful conduct as hereinabove alleged, the defendants, and each of them, have infringed and continue to infringe Copyright Registration No. VA 1-160-023 by reproducing, making, distributing and/or displaying within this judicial district and elsewhere throughout the United States, the above-described products embodying the original work of authorship claimed in said copyright registration.

79. By reason of the wrongful acts and unlawful conduct as hereinabove alleged, the defendants, and each of them, have infringed and continue to infringe Bison's trade dress by applying Bison's designs, or a colorable imitation thereof, to an article of manufacture, and thereafter using, selling or distributing said products within this judicial district and elsewhere throughout the United States, the above-described products embodying Bison's trade dress.

80. Unless and until so enjoined and restrained by order of this Court, the defendants, and each of them, will continue to cause great and irreparable harm and damage to Bison. Bison has no adequate remedy at law for the damages it will suffer should the defendants be permitted to continue the wrongful conduct alleged herein. Without injunctive relief, it will be extremely difficult and impracticable to ascertain the exact amount of damages that Bison will sustain as a result of the defendants' continuing infringing conduct.

**SEVENTH CLAIM FOR RELIEF**

**(For Constructive Trust – Against All Defendants and Does 1 through 10)**

81. Bison realleges and incorporates by reference each and every allegation contained in the previous paragraphs, as though fully set forth herein.

82. All revenue and profits that the defendants have wrongfully and unjustly obtained as a result of their acts of infringement are subject to an equitable lien and constructive trust for the benefit of Bison. Bison therefore requests that this Court impose a constructive trust on the proceeds of the sales of any infringing products, wrongfully in the hands of the defendants, and the portion thereof which are in the hands of others, whether or not the defendants herein, in order to preserve said proceeds for Bison.

**PRAYER FOR RELIEF**

**On The First Claim for Relief**

WHEREFORE, Plaintiff prays for judgment as follows:

1. For an award against the defendants, jointly and severally, for actual damages, including lost profits and a reasonable royalty, according to proof;
2. For an award of all gains, profits, and advantages derived by the defendants by their infringement of Bison's '448 Patent;
3. For enhanced statutory damages;
4. For injunctive relief in the form of a preliminary and permanent injunction, enjoining the defendants from manufacturing, importing, selling, marketing and/or distributing any products that infringe on Bison's '448 Patent;
5. For an order directing the defendants to deliver up to be impounded during the pendency of this action all of the allegedly infringing products;
6. For an order directing the defendants' remaining inventory of infringing products to be delivered up to the custody of the Court for destruction;
7. For reasonable attorneys' fees under 35 U.S.C. § 285, according to proof;

8. For interest at the maximum legal rate on all damages from the date first incurred until paid, if applicable;

On The Second Claim for Relief

9. For an award against the defendants, jointly and severally, for actual damages and all profits derived by them by their infringement of Bison's Copyright Registration No. VA 1-160-023 under 17 U.S.C. § 504(b), or, in the alternative, for enhanced statutory damages under 17 U.S.C. § 504(c);

10. For injunctive relief in the form of a preliminary and permanent injunction, enjoining the defendants from infringing Bison's Copyright Registration No. VA 1-160-023;

11. For an order directing the defendants to deliver up to be impounded during the pendency of this action all of the allegedly infringing products;

12. For an order directing the defendants' remaining inventory of infringing products to be delivered up to the custody of the Court for destruction;

13. For reasonable attorneys' fees and costs under 17 U.S.C. § 505, according to proof;

14. For interest at the maximum legal rate on all damages from the date first incurred until paid, if applicable;

On The Third and Fourth Claims for Relief

15. For restitution of all revenue and profits from the defendants' unfair business practices;

16. For the recovery of attorneys' fees and costs;

17. For exemplary damages;

18. For injunctive relief in the form of a preliminary and permanent injunction enjoining the defendants from engaging the future acts of consumer confusion and unfair or deceptive business practices;

On The Fifth Claim for Relief

19. For an accounting of all profits derived from Defendants' infringement of Bison's '448 Patent, at the defendants' expense;

20. For an accounting of all profits derived from the defendants' infringement of Bison's Copyright Registration No. VA 1-160-023, at the defendants' expense;

21. For an accounting of all profits derived from the defendants' infringement of Bison's trade dress, at the defendants' expense;

On The Sixth Claim for Relief

22. For injunctive relief in the form of a preliminary and permanent injunction, enjoining the defendants from manufacturing, importing, selling, marketing and/or distributing any products which infringe Bison's '448 Patent;

23. For injunctive relief in the form of a preliminary and permanent injunction, enjoining the defendants from reproducing, making, distributing and/or displaying any products which infringe Bison's Copyright Registration No. VA 1-160-023;

24. For injunctive relief in the form of a preliminary and permanent injunctions, enjoining the defendants from applying Bison's designs, or a colorable imitation thereof, to an article of manufacture, and thereafter using, selling or distributing said products which infringe Bison's trade dress;

On The Seventh Claim for Relief

25. For imposition of a constructive trust on all revenues and profits from the defendants' infringement of Bison's '448 Patent;

26. For imposition of a constructive trust on all revenues and profits from the defendants' infringement of Bison's Copyright Registration No. VA 1-160-023;

27. For imposition of a constructive trust on all revenues and profits from the defendants' infringement of Bison's trade dress;

On All Claims for Relief

28. For attorney fees, costs, expert witness fees, and pre- and post-judgment interest as permitted by law;

29. Punitive damages as provided by law; and

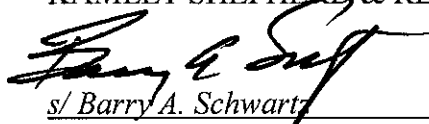
30. For such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues so triable.

Respectfully submitted this 6<sup>th</sup> day of February, 2008.

KAMLET SHEPHERD & REICHERT, LLP



s/ Barry A. Schwartz

Barry A. Schwartz, No. 17981

KAMLET SHEPHERD & REICHERT, LLP

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*COUNSEL FOR PLAINTIFF BISON DESIGNS, LLC*

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Longmont, Colorado 80501

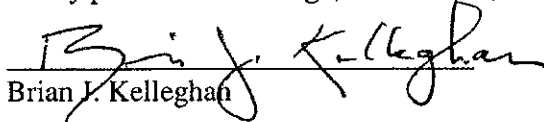
**VERIFICATION**

STATE OF COLORADO )

COUNTY OF BOULDER )

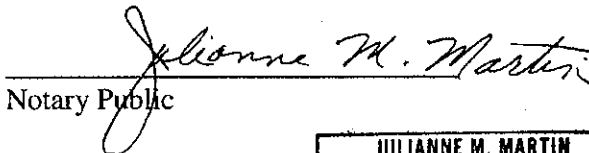
I, Brian J. Kelleghan, being first duly sworn, do now depose and say:

I am the President of Bison Designs, LLC, which is the Plaintiff in this action. I have read the foregoing Complaint and am familiar with its contents. I hereby state that the facts contained within are true and correct to the best of my personal knowledge, information, and belief.

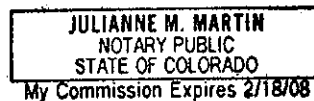
  
Brian J. Kelleghan

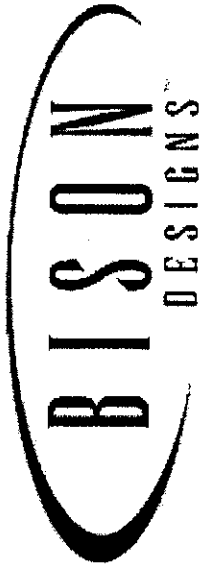
[SEAL]

Subscribed and sworn to before me this 30<sup>th</sup> day of JANUARY 2008.

  
Notary Public

My commission expires 2/18/2008





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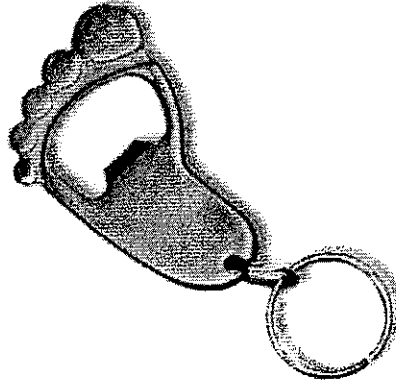
[Key Accessories](#)

[Pets](#)

[Water Bottles](#)

## Foot

Quantity in Basket: None  
Code: 131FOOT  
Price: \$3.50  
Shipping Weight: 1.00 pounds  
Size: 1 inch split ring w/1/4" step ring  
Dimensions: "Length 2 3/8", Width 1 5/8", Thickness 5/16" "  
Imprint Area: 3/4"  
Patent: "# D442,448"



Quantity: 1

Open bottles with your toes.



[View Our Custom Webbing Patterns](#)  
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US00D442448S

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

(10) Patent No.: **US D442,448 S**

(45) Date of Patent: **\*\* May 22, 2001**

(54) **FOOT SHAPED BOTTLE OPENER**

(75) Inventor: **Brian James Kelleghan, Longmont, CO (US)**

(73) Assignee: **Bison Design, L.L.C., Longmont, CO (US)**

(\*\*) Term: **14 Years**

(21) Appl. No.: **29/131,484**

(22) Filed: **Oct. 23, 2000**

(51) LOC (7) Cl. .... **07-99**

(52) U.S. Cl. .... **D8/38; D3/211**

(58) Field of Search .... **D8/33-43, 18, D8/19, 16, 17; 30/400-443; 81/3.07-3.49; 7/151-156; D3/208, 210, 211**

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

D. 033,634 \* 12/1900 Lord, Jr. .... D3/210  
 D. 247,686 \* 4/1978 Desjardins .... D21/793  
 D. 252,541 \* 8/1979 Harper .... D8/211  
 D. 368,496 \* 4/1996 Seger .... D14/117.4  
 D. 375,029 \* 10/1996 Totten .... D8/41  
 D. 382,784 \* 8/1997 Kagiya et al. .... D8/40  
 D. 383,651 \* 9/1997 Wyk .... D8/34  
 D. 393,726 \* 4/1998 Sweeney .... D25/113  
 D. 403,708 \* 1/1999 Wolff .... D20/25  
 D. 428,695 \* 8/2000 Rothschild .... D3/211

D. 431,431 \* 10/2000 Allen et al. .... D8/14  
 1,899,203 \* 2/1933 Labreche .... 7/151  
 4,967,622 \* 11/1990 Phillips .... 81/3.09  
 5,090,277 \* 2/1992 Spiller .... 81/488  
 5,445,420 \* 8/1995 Lairmore et al. .... 283/117

\* cited by examiner

Primary Examiner—Jeffrey Asch

(74) Attorney, Agent, or Firm—Rick Martin; Patent Law Offices of Rick Martin P.C.

(57) **CLAIM**

The ornamental design for a foot shaped bottle opener, as shown.

**DESCRIPTION**

FIG. 1 is a top or bottom plan view of my new design for a foot shaped bottle opener.

FIG. 2 is a front plan view of the bottle opener shown in FIG. 1.

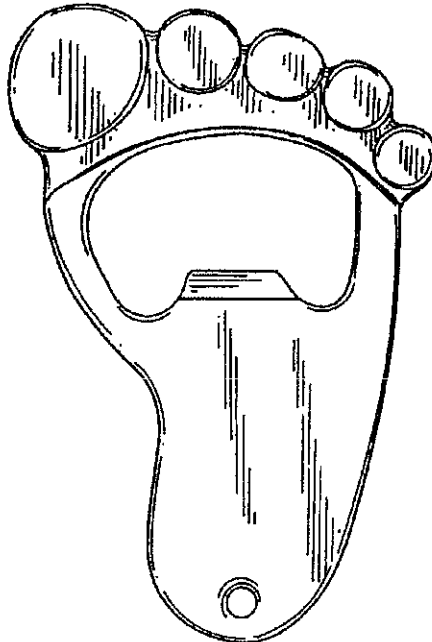
FIG. 3 is a rear side plan view of the bottle opener shown in FIG. 1.

FIG. 4 is a right side plan view of the bottle opener shown in FIG. 1.

FIG. 5 is a left side plan view of the bottle opener shown in FIG. 1; and,

FIG. 6 is a top perspective view of the bottle opener shown in FIG. 1.

**1 Claim, 1 Drawing Sheet**



U.S. Patent

May 22, 2001

US D442,448 S



FIG. 2

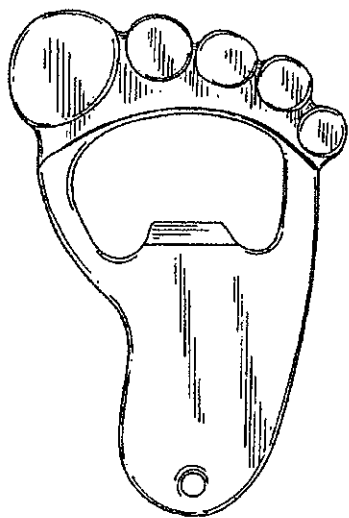


FIG. 1

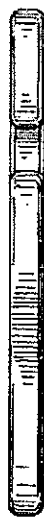


FIG. 4



FIG. 5



FIG. 3

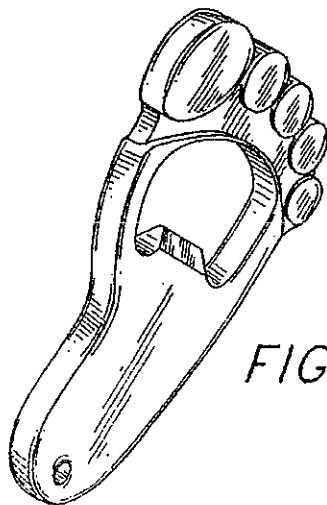


FIG. 6

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416 COFFMAN STREET  
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\*101524416A\*

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**ASSIGNOR:**

KELLEGHAN, BRIAN JAMES

DOC DATE: 10/20/2000

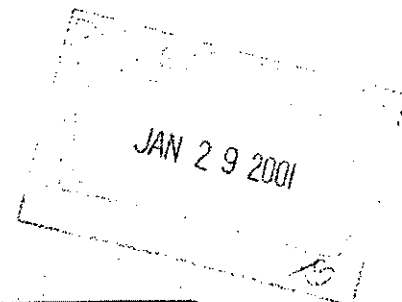
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735 SOUTH LINCOLN STREET  
LONGMONT, COLORADO 80501

SERIAL NUMBER: 29131484

FILING DATE: 10/23/2000

PATENT NUMBER:

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101524416

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Internal Address: \_\_\_\_\_

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B. Patent No.(s)

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5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Rick Martin**

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as Assignee, and its successors, assigns and legal representatives, the entire right, title and interest, for all countries in and to certain inventions relating FOOT SHAPED BOTTLE OPENER described in an application for Letter Patent of the United States, executed by me on the 20 day of Oct., 2000, and all the rights and privileges under any and all Letter Patents that may be granted therefore.

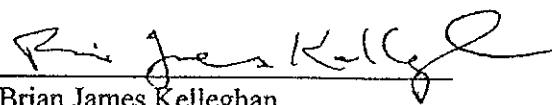
I agree that, when requested, I will, without charge to said Assignee but at its expense, sign all papers, take all rightful oaths, and do all acts which may be necessary, desirable, or convenient for securing and maintaining patents for said inventions in any and all countries and for vesting title thereto in said Assignee, its successors, assigns and legal representatives or nominees.

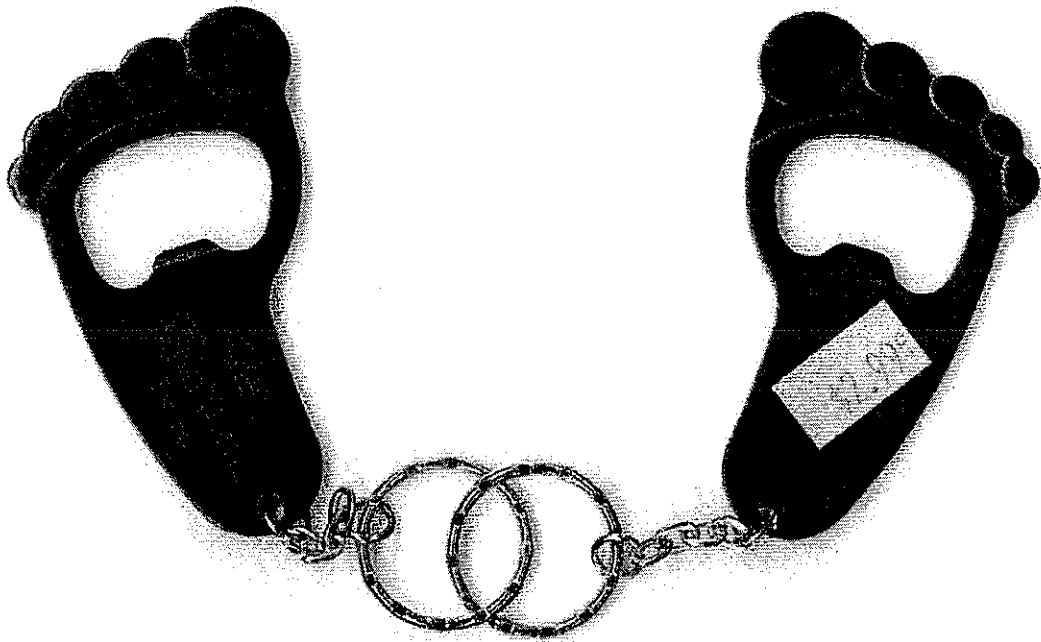
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July 12, 2007

RICK MARTIN, Reg. Pat. Atty  
MARGARET L. POLSON, Reg. Pat. Atty  
Technical Specialist  
ARMAND (A.J.) FERRARO, M.E.E.

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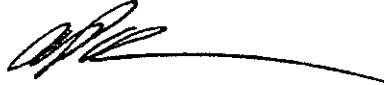
On April 10, 2007, we sent a letter informing you that you are infringing the intellectual property rights of Bison Designs, LLC with the Hang Ten bottle opener sold at <http://www.acmeapparel.com>. We have enclosed a copy of the return receipt for your reference. We have not received any response from you. Bison has a history of vigorously protecting its intellectual property. If we do not hear from you promptly, we will be forced to consider our other options, which could include an infringement lawsuit.

We are again attaching a photocopy of the carabiner and packing list. Bison Designs has filed numerous patent applications and copyright registrations on its novelty carabineers and other aluminum pieces in both the US and China. The Hang Ten bottle opener infringes US Des. Pat. No. 442,448.

A complete list of Bison's issued patents is also attached to this letter, so that you may avoid infringing any more of Bison's intellectual property rights.

Bison Designs hereby demands that you immediately cease selling and offering for sale all of those products covered by issued US patents. Bison demands that all pending orders for these products be cancelled and that all remaining inventory be turned over to Bison Designs. We further demand a complete accounting of all sales for each piece since the issue date of each patent and a complete record of all suppliers and purchasers since the date of the issuance of the patents.

Sincerely,



Margaret Polson  
Patent Attorney

/als



**List of Bison's Patents**

<u>U.S. Pat. No.</u>	<u>Title</u>	<u>Issue Date</u>
D533,760	Wire Gate Carabiner w Tool Handle	12/19/2006
D534,416	Gear Shaped Carabiner	1/2/2007
D533,051	Helmet Shaped Carabiner	12/05/2006
D528405	Apple Shaped Carabiner	9/19/2006
D527987	Longhorn Shaped Carabiner	9/12/2006
D527,245	Sprocket Shaped Carabiner	8/29/2006
D526885	Hexagon Shaped Carabiner	8/22/2006
D526555	Carabiner with tool Handle	8/15/2006
D525,780	Container with Integrated Clip	8/1/2006
D521,362	Clip	5/23/2006
D520,825	Fish Shaped Bottle Opener	5/16/2006
D520,345	Clip	5/09/2006
D519,035	Easter Island Bottle	4/18/2006
D518,360	Bison Shaped Carabiner	4/4/2006
D518,343	Fire Axe Shaped Bottle Opener	4/4/2006
D517,881	Dolphin Shaped Bottle Opener	3/28/2006
D517,419	Tiki Bottle	3/21/2006
D516886	Deer Head Shaped Bottle Opener	3/14/2006
D515,903	Box Knife with Clip	2/28/2006
D513,158	Flamingo Shaped Bottle Opener	12/27/2005
D511,281	Lobster Shaped Bottle Opener	11/08/2005
D509,128	Clover Shaped Carabiner	9/6/2005
D506,383	Howling Canine Carabiner	6/21/2005
D505,847	Bottle Opener	6/7/2005
D504,599	Saw Shaped Bottle Opener	5/3/2005
D504,289	Ice Axe Shaped Opener	4/26/2005
D501,787	Sea Turtle shaped carabiener	2/14/2005
D501,381	Hand Grip Bottle Opener	2/01/2005
D501,395	Guitar Shaped Carabiner	2/01/2005
D500,950	Horse Shoe Shaped Carbiner	1/18/2005
D500,648	Shark Shaped Bottle Opener	1/11/2005
D500,669	Foot Shaped Carabiner	1/11/2005
D497087	Hammer Shaped Bottle Opener	10/12/2004
D496,250	Dragon Shaped Carabiner	9/21/2004
D495,937	Surfboard Shaped Bottle Opener	9/14/2004
D495,587	Butterfly Shaped Carabiner	9/7/2004
D495,570	Snowshoe Shaped Bottle Opener	9/7/2004
D491,790	Gecko Carabiner	6/22/2004
D491,465	Tabbed Bottle Holder	6/15/2004
D491,047	Trout Carabiner	6/8/2004
D489,256	Mouse Head Bottle Holder	5/4/2004
D488,971	Palm Tree Shaped Bottle Opener	4/27/2004

D488,972	Fish Skeleton Shaped Bottle Opener	4/27/2004
D488,973	Turtle Shaped Bottle Opener	4/27/2004
D488,970	Parrot Shaped Bottle Opener	4/27/2004
D488,974	Tikki Shaped Bottle Opener	4/27/2004
D487,014	Curved Heart Shaped Carabiner	2/24/2004
D486,377	Dolphin Carabiner	2/10/2004
D486,056	Cat Carabiner	2/3/2004
D484,071	Belt Buckle	12/23/2003
D484,263	Flashlight with Integrated Clip	12/23/2003
D482,251	Nut Shaped Bottle Opener	11/18/2003
D480,943	Spade Shaped Carabiner	10/21/2003
D480,944	Man on the Moon Shaped Carabiner	10/21/2003
D480,622	Club Shaped Carabiner	10/14/2003
D478,823	Compass Clip	8/26/2003
D476,540	Fish Hook Shaped Bottle Opener	7/1/2003
D476,218	Shark Shaped Carabiner with Bottle Opener	6/24/2003
D475,605	Fish Hook Shaped Carabiner	6/10/2003
D475,604	Pinwheel Shaped Carabiner	6/10/2003
D475,603	Curved Dog Bone Shaped Carabiner	6/10/2003
D475,606	Pine Tree Shaped Carabiner	6/10/2003
D475,607	Stocking Shaped Carabiner	6/10/2003
D475,275	Boot Shaped Carabiner	6/03/2003
D475,276	Peanut Shaped Carabiner	6/03/2003
D473,769	Paw Shaped Bottle Opener	4/29/2003
D473,781	Football Shaped Carabiner	4/29/2003
D472,435	Star End Tool	4/1/2003
D470,393	Diamond Shaped Carabiner	2/18/2003
D467,830	Dagger Ornament	12/31/2002
D467,480	Oval End Tool	12/24/2002
D467,157	Triad Shaped Carabiner	12/17/2002
D451,774	Toothed fish bottle opener	12/11/2002
D466,791	Question Mark Carabiner	12/10/2002
D466,770	Round End Tool	12/10/2002
D466,769	Yin Yang Tool	12/10/2002
D466,768	Alien Tool	12/10/2002
D466,793	Wide Angle Star Carabiner	12/10/2002
D465,995	Peace Sign Shaped Carabiner	11/26/2002
D465,994	Crown Shaped Carabiner	11/26/2002
D465,993	Fish Shaped Carabiner	11/26/2002
D465,723	Chili Pepper Shaped Carabiner	11/19/2002
D462,891	Triad Clip	9/17/2002
D459,173	Fish Shaped Bottle Opener	6/25/2002
D456,693	Round Yin-Yang Shaped Carabiner	5/7/2002
D455,642	Clip	4/16/2002
D454,054	Circle carabiner	3/5/2002

D453,455	Lantern shaped bottle opener	2/12/2002
D453,454	Kokopelli shaped bottle opener	2/12/2002
D452,123	Gecko shaped bottle opener	12/18/2001
D449,500	Guitar shaped bottle opener	10/25/2001
D448,276	Peace fish shaped carabiner	9/25/2001
D447,932	Heart shaped carabiner	9/18/2001
D447,933	2-D cube carabiner	9/18/2001
D447,680	Flower shaped carabiner	9/11/2001
D447,681	Bone shaped carabiner	9/11/2001
D444,100	Belt buckle	6/26/2001
D442,838	Kayak shaped bottle opener	5/29/2001
D442,448	Foot shaped bottle opener	5/22/2001
D441,638	Yin-yang shaped carabiner	5/8/2001
5,572,771	Strap buckle	11/12/1996

<u>Chinese Pat No.</u>	<u>Title</u>	<u>Issue Date</u>
03354593.6	Flashlight with Integrated Clip	
01302199.0	Fish Shaped Carabiner	
01302198.2	Ying-Yang Shaped Carabiner	
01302129.X	Football Shaped Carabiner	
ZL03354594.4	Man on the Moon Shaped Carabiner	
ZL200330104763.3	Dolphin Carabiner	9/8/2004

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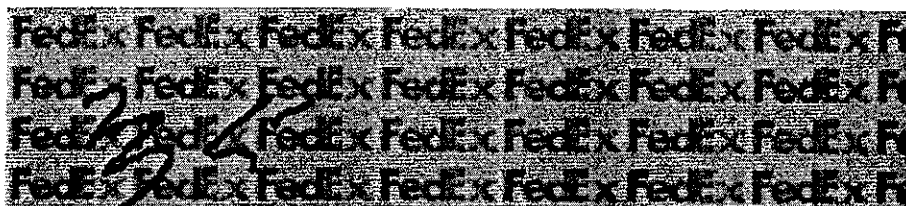
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Bison Designs, LLC P.O.Box 17907 Boulder, Co. 80308-0907 303-678-9988

<b>Ship To</b>
ACME APPAREL of Gloucester 46-47 Blackburn Center Gloucester, MA 01930 phone 978-282-4800 fax 978-282-7300 Corona Catalog

		Ordered By		DUE DATE	SHIP VIA
		Jon		7/13/2001	UPS
ITEM	DESCRIPTION	QTY	RATE	Customer	AMOUNT
	#131Foot Foot key ring bottle opener	5,500	1.09		5,995.00
	3,000pcs engraved with "Corona Light"				
	2,500pcs engraved with "Corona Extra"				
	Please email sample to: jchurchill.acme@verizon.net				
			<b>Total</b>		\$5,995.00





**Corona<sup>®</sup>**  
**Extra**



**Corona<sup>®</sup>**  
**Light**

# INVOICE

PAGE:



BISON DESIGNS, LLC  
BISON BELTS, LLC BISON PETS, LLC

ORDERS/INQUIRIES:  
735 SOUTH LINCOLN STREET  
LONGMONT, COLORADO 80501  
(800) 536-2478 FAX: (303) 678-9768

PLEASE REMIT PAYMENT TO:  
P.O. BOX 17307  
BOULDER, COLORADO 80308-9907

INVOICE NUMBER: 0074918-IN  
INVOICE DATE: 07/11/01  
ORDER NUMBER: 0065819  
ORDER DATE: 05/21/01  
SALESPERSON: 0003  
CUSTOMER NO: ADM000

Sold To	Ship To
ALCHE APPAREL 45-47 BLACKBURN CENTER GLOUCESTER MA 01530	ALCHE APPAREL 45-47 BLACKBURN CENTER GLOUCESTER MA 01530

CUSTOMER P.O.	SHIP VIA	F.O.B.	TERMS
5026	UPS	LONGMONT, MA	NET 30

ITEM NO.	UNIT	ORDERED	SHIPPED	BACK ORDER	PRICE	AMOUNT
ENGRAVED - CORONA LIGHT						
131FOOT OEM CUSTOM FOOT OPENER	EACH	3000.00	3000.00	0.00	1.09	3,270.00
ENGRAVED - CORONA EXT55						
131FOOT OEM CUSTOM FOOT OPENER	EACH	2500.00	2500.00	0.00	1.09	2,725.00

THANK YOU FOR YOUR ORDER, WE APPRECIATE YOUR BUSINESS!! AN INVOICE WILL FOLLOW IN THE MAIL.

NET INVOICE:	5,995.00
FREIGHT:	72.00
LESS DEPOSIT:	2,972.00
INVOICE BALANCE	3,095.00

# Additional Certificate (17 U.S.C. 706) Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

**FORM VA**  
For a Work of the Visual Arts

VA 1-160-023



EFFECTIVE DATE OF REGISTRATION

JAN 28 2002  
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

Foot

NATURE OF THIS WORK ▼ See instructions

☆Bottle Opener

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

NAME OF AUTHOR ▼

Brian James Kelleghan

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

1959

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

Author's Nationality or Domicile  
Name of Country

OR { Citizen of ► U.S.A.  
Domiciled in ► U.S.A.

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No

Author's Nationality or Domicile  
Name of Country

OR { Citizen of ►  
Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

Year in Which Creation of This Work Was Completed

2000

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month ► August

Day ► 11th

Year ► 2001

Nation ► U.S.A.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Bison Designs LLC  
735 South Lincoln St  
Lanham, MD 20650

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

By Assignment

APPLICATION RECEIVED

JAN-28-02

ONE DEPOSIT RECEIVED

JAN-28-02

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ►

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.  
• See detailed instructions.  
• Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 2 pages



\*Deposit contains sculpture.

EXAMINED BY

FORM VA

CHECKED BY

CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPIATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

See instructions  
before completing  
this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Bison Designs LLC - Attn: Brian James Kelleghan  
735 South Lincoln St  
Longmont, CO 80501

Area code and daytime telephone number ▶ (303) 678-9911

Fax number ▶ (303) 678-9988

Email ▶ brian@bisondesigns.com

CERTIFICATION\* I, the undersigned, hereby certify that I am the

check only one ▶

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Bison Designs LLC

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

David B. Orms

Date ▶ 1/23/02

Handwritten signature (X) ▼

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address:

Name ▼

Bison Designs LLC - Attn Brian James Kelleghan

Number/Street/Apt ▼

735 South Lincoln St.

City/State/ZIP ▼

Longmont, CO 80501

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL ITEMS IN THE SAME PACKAGE

1. Application form
2. Nonrefundable filing fee in check or money As of July 1, 1998, the filing fee for Form VA is \$30.
3. Deposit material

MAIL TO:

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

\*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

June 1999—100,000  
WEB REV: June 1999

PRINTED ON RECYCLED PAPER

U.S. GOVERNMENT PRINTING OFFICE: 1999-454-879/1

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

**Bison Designs, LLC, a Colorado limited liability company**

(b) County of Residence of First Listed Plaintiff **Boulder**  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

**Barry A. Schwartz, Kamlet Shepherd & Reichert, LLP**

**1515 Arapahoe Street, Tower 1, Suite 1600, Denver CO 80202**

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## DEFENDANTS

**ACME Merchandising & Apparel, Inc., a Massachusetts corporation, ELAINE BUTTER, an individual, and DOES 1-10, inclusive**

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgement

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

**35 U.S.C. Section 271**

Brief description of cause:

**Patent Infringement**

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

DATE

2/6/08

SIGNATURE OF ATTORNEY OF RECORD

*Barry A. Schwartz*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

---

Court Name: U.S. District Court, Colorado  
Division: 1  
Receipt Number: COX007548  
Cashier ID: sg  
Transaction Date: 02/06/2008  
Payer Name: WILLIE SHEPHERD

---

CIVIL FILING FEE  
For: WILLIE SHEPHERD  
Amount: \$350.00

---

CREDIT CARD  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

08-CV-00252

A fee of \$45.00 will be assessed on  
any returned check.