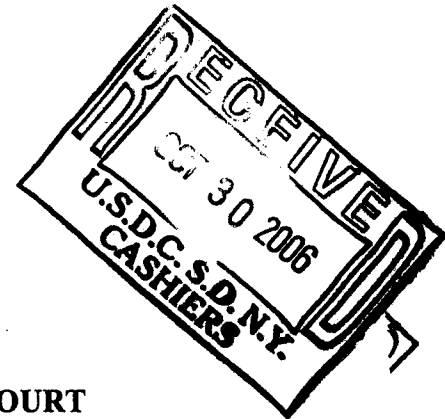


06 CV 11447

David Francescani
Jorge M. Torres
FISH & RICHARDSON P.C.
Citigroup Center, 52nd Floor
153 E. 53rd Street
New York, New York 10022
Telephone: (212) 765-5070
Facsimile: (212) 258-2291

Leonard T. Nuara
Alan F. Kaufman
Lindsay S. Katz
THACHER PROFFITT & WOOD LLP
Two World Financial Center
New York, New York 10281
Telephone: (212) 912-7400
Facsimile: (212) 912-7751

Attorneys for Plaintiff
Built NY, Inc.



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BUILT NY, INC.,

Plaintiff,

v.

**MEYER CORPORATION, U.S.,
BONJOUR, INC., and
BRADY MARKETING COMPANY, INC.**

Defendants.

Civil Action No.

ECF Case

TRIAL BY JURY DEMANDED

COMPLAINT

Plaintiff BUILT NY, INC. ("Built NY" or "Plaintiff"), by and through its attorneys, for its Complaint against defendants MEYER CORPORATION, U.S. ("Meyer"), BONJOUR, INC. ("Bonjour"), and BRADY MARKETING COMPANY, INC. ("Brady") (collectively,

“Defendants”), hereby alleges as follows:

NATURE OF ACTION

1. In this action, Built NY seeks injunctive relief, damages (including lost profits), costs, and attorneys’ fees for Defendants’ acts of willful infringement of Built NY’s patents, trademarks, and trade dress, as well as for Defendants’ false designation of origin, false descriptions, unfair competition, deceptive trade practices, and intent to deceive under the Lanham Act and the laws of the State of New York.

JURISDICTION AND VENUE

2. This Court has original jurisdiction of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. The state law causes of action recited in this Complaint are within the Court’s supplemental jurisdiction.

3. Upon information and belief, Defendants contract to supply goods and transact business in New York within this judicial district, and the tortious acts of Defendants complained of in this Complaint, including, without limitation, the offer for sale, promotion, sale of Defendants’ infringing goods, have been and continue to be committed, and have caused harm to Plaintiff within this judicial district. Accordingly, personal jurisdiction exists over Defendants pursuant to New York Civil Practice Law and Rules §§ 301 and 302.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

THE PARTIES

5. Built NY is a corporation duly organized and existing under the laws of the State of New York, having its principal place of business in New York, New York.

6. Upon information and belief, Meyer is a corporation duly organized and existing under the laws of the State of California, having corporate offices at 1 Meyer Plaza, Vallejo, California.

7. Upon information and belief, Bonjour is a corporation duly organized and existing under the laws of the State of California, having corporate offices at 1 Meyer Plaza, Vallejo, California.

8. Upon information and belief, Brady is a corporation duly organized and existing under the laws of the State of California, having corporate offices at 80 Berry Drive, Pacheco, California.

FACTS

Built NY

9. Built NY is in the business of, *inter alia*, designing, marketing, and selling tote bags for carrying bottles of wine or other similarly sized containers (the “Built Products”).

10. Built NY is a relatively small company with a limited number of products. Built NY’s recognition, reputation and goodwill, as well as its relationship with its suppliers, distributors, and customers is inexorably tied to the Built Products.

11. The Built Products have been, and continue to be, a tremendous critical and commercial success.

12. Since their introduction, the Built Products have received substantial, unsolicited media coverage.

13. As part of the unsolicited media coverage, the Built Products have received

prestigious awards, including, *inter alia*: the Business Week Annual Design Award 2004 Gold Medal, co-sponsored by the Industrial Designers Society of America (IDEA Award); a Fortune 2003 Product of the Year award; an InStyle Top 40 Summer Must-Haves (#19); and acceptance into the juried section of the New York International Gift Fair (Accent on Design).

14. Additional positive media coverage has appeared in, *inter alia*: The Washington Post, New York Times, Chicago Tribune, Good Morning America, Food Network, WCBS am, Bon Appetit, Crain's, Wine Spectator, House and Garden, Conde Nast Traveler, Departures, American Way, the Miami Herald, Wines & Spirits, Fortune Small Business, Kitchenware News, Dwell, ID Magazine, Men's Health, Country Living, Newsweek, AARP, San Francisco Chronicle, CBS Morning Show, Fox Morning Show, Better Home and Gardens, Southern Living, and AARP Magazine. Also, Built NY has appeared in numerous articles in industry trade publications such as Home Furnishing News.

The Patents-In-Suit

15. On or about January 8, 2005, Built NY applied to the U.S. Patent and Trademark Office (the "PTO") for patent protection for its one-bottle tote ("the Built One Bottle Tote").

16. On or about January 3, 2006, the PTO issued to Built NY U.S. Design Patent No. 513,363 S, for the Built One Bottle Tote ("the '363 patent"). A copy of the '363 patent is attached hereto as Exhibit A.

17. On or about January 8, 2005, Built NY applied to the PTO for patent protection for its two bottle tote ("the Built Two Bottle Tote").

18. On or about October 3, 2006, the PTO issued to Built NY U.S. Design Patent No. 529,278 S for the Built Two Bottle Tote ("the '278 patent"). A copy of the '278 patent is

attached hereto as Exhibit B.

19. Built NY is the record owner of the '363 patent and the '278 patent (collectively "the Patents-In-Suit").

20. The Patents-In-Suit are presumptively valid pursuant to 35 U.S.C. § 282.

The Trademarks and Registrations

21. Built NY developed, adopted, used, and continues to use distinctive configurations ("the Trademarks"), which include, but are not limited to, the silhouette of the flat Built Two Bottle Tote and the full Built Two Bottle Tote. Built NY uses the Trademarks in connection with the marketing, promotion, and sale of the Built Two Bottle Tote.

22. The Trademarks are non-functional.

23. The Trademarks are inherently distinctive.

24. Because of Built NY's exclusive and extensive use and promotion of the Trademarks, the sales of the Built Products, and the unsolicited media coverage, the Trademarks have acquired distinctiveness (or secondary meaning), and they indicate that Built NY is the single source of origin of the Built Products.

25. Built NY used the Trademarks in interstate commerce prior to any of the acts of Defendants complained of herein, and the Trademarks are currently in such use.

26. Built NY's use of the Trademarks has been open, notorious, and continuous since the date of first use, a time prior to any of the acts of Defendants complained of herein.

27. On or about April of 2004, Built NY applied to register the Trademarks with the

PTO.

28. On or about December 6, 2005, the PTO issued to Built NY U.S. Trademark Registration No. 3,023,095 for a first “Miscellaneous Design” pertaining to the Built Two Bottle Tote (the “‘095 Registration”). A copy of the ‘095 Registration is attached hereto as Exhibit C.

29. On or about December 13, 2005, the PTO issued to Built NY U.S. Trademark Registration No. 3,026,873 for a second “Miscellaneous Design” pertaining to the Built Two Bottle Tote (the “‘873 Registration”). A copy of the ‘873 Registration is attached hereto as Exhibit D.

30. The ‘095 Registration and the ‘873 Registration (collectively “the Registrations”) are valid.

31. Built NY is the record owner of the Registrations.

The Trade Dress

32. In connection with the promotion, marketing, and sale of the Built Products, Built NY developed, adopted and used, and continues to use, a unique combination of design features. This unique combination of features creates a distinctive overall visual impression (the “Built Trade Dress”) of the Built One Bottle Tote and the Built Two Bottle Tote. The features of the Built Trade Dress include the Built Products’ materials—faced neoprene, the shape, proportions, and silhouette—including an integral cut-out handle, a zig-zag stitching pattern around the perimeter of the Built Products, and use of seam welting in the top-handle portion.

33. The Built Trade Dress is non-functional.

34. The Built Trade Dress is inherently distinctive.

35. Because of Built NY's exclusive and extensive use and promotions of the Built Trade Dress, the sales of the Built Products, and the unsolicited media coverage, the Built Trade Dress has acquired distinctiveness (or secondary meaning) and indicates that Built NY is the single source of origin of the Built Products.

36. Built NY used the Built Trade Dress in interstate commerce prior to any of the acts of Defendants complained of herein, and the Built Trade Dress is currently in such use.

37. Built NY's use of the Built Trade Dress has been open, notorious, and continuous since the date of first use, a time prior to any of the acts of Defendants complained of herein.

The Defendants

38. On its web site, Myer holds itself out as the "largest distributor of range-top cookware in the U.S." See http://www.meyer.com/about_meyer.html (attached as Exhibit E hereto.)

39. Upon information and belief, as compared to Built NY, Meyer is a large company, which sells hundreds of different products, under numerous brands, including Kitchen Aid, Circulon, and SilverStone.

40. On or about March 15, 2006, Built NY filed a complaint in U.S. District Court for the Southern District of New York alleging, *inter alia*, that the Defendants' offer for sale and sale of neoprene one bottle and two bottle totes infringed the intellectual property rights of Built NY. The March 15, 2006 complaint is attached hereto as Exhibit F.

41. Thereafter, on or about May, 15, 2006, Carter Weiss, the Chief Executive Officer and a Principal of Built NY, spoke with Dean Krause, Vice President/General Counsel, and Head of Licensing for Meyer. Mr. Weiss asked Mr. Krause whether Meyer was shipping the one and

two bottle totes accused of infringement in the March 15, 2006 complaint. Mr. Krause replied that Meyer was not shipping the accused totes. Mr. Carter then asked Mr. Krause whether Meyer would consider taking a license from Built NY. Mr. Krause indicated that Meyer was not interested in taking a license.

42. In reliance on the representations of Mr. Krause, on or about May 15, 2006, Built NY voluntarily moved under Federal Rule of Civil Procedure 41(a)(1)(i) to dismiss without prejudice the March 15, 2006 complaint.

43. On or about May 16, 2006, U.S. District Court Judge Shira A. Scheindlin entered an order dismissing the March 15, 2006 complaint without prejudice. A copy of Judge Scheindlin's May 16, 2006 order is attached hereto as Exhibit G.

44. On or about October 4, 2006, Built NY first became aware that, without the authorization or consent of Built NY, the Defendants, including Myer, are in fact making, using, and/or selling products, including, but not limited to, one and two bottle tote bags, which infringe the Patents-In-Suit, the Trademarks, the Registrations, the Trade Dress, and related intellectual property of Built NY ("the Infringing Products").

45. On or about October of 2006, Built NY first became aware that one of its customers is in fact offering the Infringing Products, which are made, used, and/or sold by the Defendants, for sale in the United States.

46. Upon information and belief, Bonjour is a subsidiary, division or otherwise affiliated with Meyer. The Infringing Products, as described in more detail below, are being offered for sale and sold under the Bonjour brand.

47. Upon information and belief, Brady is acting on behalf of Meyer and Bonjour to actively promote the Infringing Products.

48. The Infringing Products sold and/or promoted by the Defendants include a one bottle tote (“the Bonjour One Bottle Tote”) and a two bottle tote (“the Bonjour Two Bottle Tote”).

49. Without the authorization or consent of Built NY, Defendants commenced use, and are currently offering for sale and are selling the Infringing Products, including the Bonjour One Bottle Tote and the Bonjour Two Bottle Tote, whose overall appearance is substantially similar to the designs claimed in the Patents-In-Suit.

50. The Infringing Products, including the Bonjour One Bottle Tote and the Bonjour Two Bottle Tote, appropriate the novel ornamental features of the designs claimed in the Patents-In-Suit.

51. Without the authorization or consent of Built NY, Defendants commenced use, and are currently offering for sale and are selling tote bags which are confusingly similar to, and therefore infringe, the Registrations.

52. Without the authorization or consent of Built NY, and after Built NY built up extensive and valuable business and goodwill in connection with the Trademarks, Defendants commenced use, and are currently offering for sale and are selling tote bags using a trademark which is confusingly similar to, and therefore infringes, the Trademarks.

53. Without the authorization or consent of Built NY, and after Built NY built up extensive and valuable business and goodwill in connection with the Built Trade Dress,

Defendants commenced use, and are currently offering for sale and are selling tote bags using a trade dress (the “Infringing Trade Dress”) which is confusingly similar to, and therefore infringes, the Built Trade Dress.

54. Built NY and Defendants are engaged in the business of selling the same type of goods, to the same class of customers, through the same channels of trade.

55. Defendants’ actions, including the offer for sale, promotion, and sale of the Infringing Products, have injured and interfered with Built NY’s relationships with its suppliers, distributors, and customers.

COUNT I

INFRINGEMENT OF THE ‘363 PATENT

56. Built NY reasserts and incorporates by reference the allegations of the prior paragraphs above as though fully set forth herein.

57. This claim is against the Defendants and arises under the Patent Laws of the United States.

58. This is a claim by Built NY for infringement of the ‘363 patent.

59. The Defendants are not licensed or otherwise authorized by Built NY to make, use, offer for sale, sell, import or export any article embodying the design claimed in the ‘363 patent.

60. The ‘363 patent is valid and subsisting.

61. Defendants are manufacturing, using, and/or selling the Infringing Products.

62. On information and belief, Built NY alleges that the Defendants, jointly and/or severally, actively induce others to infringe the '363 patent by intentionally persuading or inducing third parties to make, use, offer for sale, or sell the Infringing Products.

63. The overall appearance of the Bonjour One Bottle Tote is substantially similar to the design that is claimed in the '363 patent.

64. The Bonjour One Bottle Tote appropriates the novel ornamental features of the design claimed in the '363 patent.

65. On information and belief, the Defendants were aware of the '363 patent on or before March 15, 2006. On information and belief, Built NY alleges that infringement of the '363 patent by the Defendants, as alleged herein, was undertaken with full knowledge of the '363 patent and thus has been done willfully and deliberately.

66. As a direct and proximate result of the Defendant's infringement of the '363 patent, as alleged herein, Built NY has suffered and will continue to suffer damages in an amount not yet determined.

67. On information and belief, Built NY alleges that the Defendants will continue to infringe the '363 patent and damage Built NY unless and until this Court permanently enjoins them from selling the Infringing Products, including the Bonjour One Bottle Tote. Infringement by Defendants of the '363 patent, unless enjoined, will cause Built NY irreparable damage in that Built NY will have no adequate remedy at law to compel the Defendants to cease such infringement. Built NY will be compelled to prosecute a multiplicity of actions, one each time the Defendants, jointly and/or severally, commit an act of infringement, and in each such action it will be extremely difficult to ascertain the amount of compensation that will afford Built NY

adequate relief. The acts of Defendants caused irreparable harm and damage to Built NY and caused Built NY to suffer monetary damage in an amount thus far not determined.

68. Based upon Defendants' acts of willful infringement, Built NY is entitled to injunctive relief, monetary damages, costs, and its attorneys' fees.

COUNT II

INFRINGEMENT OF THE '278 PATENT

69. Built NY reasserts and incorporates by reference the allegations of the prior paragraphs above as though fully set forth herein.

70. This claim is against the Defendants and arises under the Patent Laws of the United States.

71. This is a claim by Built NY for infringement of the '278 patent.

72. The Defendants are not licensed or otherwise authorized by Built NY to make, use, offer for sale, sell, import or export any article embodying the design claimed in the '278 patent.

73. The '278 patent is valid and subsisting.

74. Defendants are manufacturing, using, and/or selling the Infringing Products.

75. On information and belief, Built NY alleges that the Defendants, jointly and/or severally, actively induce others to infringe the '278 patent by intentionally persuading or inducing third parties to make, use, offer for sale, or sell the Infringing Products.

76. The overall appearance of the Bonjour Two Bottle Tote is substantially similar to

the design that is claimed in the '278 patent.

77. The Bonjour Two Bottle Tote appropriates the novel ornamental features of the design claimed in the '278 patent.

78. As a direct and proximate result of the Defendant's infringement of the '278 patent, as alleged herein, Built NY has suffered and will continue to suffer damages in an amount not yet determined.

79. On information and belief, Built NY alleges that the Defendants will continue to infringe the '278 patent and damage Built NY unless and until this Court permanently enjoins them from selling the Infringing Products, including the Bonjour Two Bottle Tote. Defendants' infringement of the '278 patent, unless enjoined, will cause Built NY irreparable damage in that Built NY will have no adequate remedy at law to compel the Defendants to cease such infringement. Built NY will be compelled to prosecute a multiplicity of actions, one each time the Defendants, jointly and/or severally, commit an act of infringement, and in each such action it will be extremely difficult to ascertain the amount of compensation that will afford Built NY adequate relief. The acts of Defendants caused irreparable harm and damage to Built NY and caused Built NY to suffer monetary damage in an amount thus far not determined.

80. Based upon Defendants' acts of infringement, Built NY is entitled to injunctive relief, monetary damages, costs, and its attorneys' fees.

COUNT III

INFRINGEMENT OF REGISTERED TRADEMARKS

81. Built NY reasserts and incorporates by reference the allegations of the prior paragraphs above as though fully set forth herein.

82. By virtue of Defendants' conduct, Defendants have used and intend to continue to use spurious marks in connection with the sale and distribution of goods in interstate commerce, which marks are identified with Built NY's Registrations, which are federally registered trademarks in the PTO, and which are presently in use.

83. Upon information and belief, Defendants' conduct has been willful, malicious and wanton, and it will continue its acts of willful infringement unless enjoined by this Court.

84. The Built Products are sold, distributed and/or advertised to the same or similar classes of purchasers as Defendants. There is, therefore, a strong likelihood of confusion, mistake, or deception, and persons familiar with Built NY's Registrations, its reputation and favorable goodwill, are likely to buy Defendants' goods in the belief that the latter goods are sold or authorized by Built NY.

85. By virtue of Defendants' conduct, Defendants are engaged in infringement of Built NY's federally registered trademarks, in violation of the Lanham Act, 15 U.S.C. § 1114, by using a mark wherein such use is likely to cause confusion, or to cause mistake, or to deceive.

86. Defendants have made unlawful gains and profits from such unlawful infringement and, by reason thereof, Built NY has been deprived of rights and profits which otherwise would have come to Built NY, but for such infringement.

87. Built NY has no adequate remedy at law for the injury alleged in this Count. The injury is intangible in nature and not capable of being fully measured or valued in terms of money damages. Further, the injury is of a continuing nature and will continue to be suffered so long as Defendants continue their wrongful conduct.

88. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Built NY's monetary damages caused by Defendants' wrongful conduct, Built NY is informed and believes, and based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Built NY. Built NY seeks leave of this Court to amend its Complaint to allege the full nature and extent of said monetary damages if, when, and to the extent the damages are ascertained.

COUNT IV

TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION, AND UNFAIR COMPETITION

89. Built NY reasserts and incorporates by reference the allegations of the prior paragraphs above as though fully set forth herein.

90. The aforementioned acts of Defendants have caused and will continue to cause a likelihood of confusion in the minds of the trade and the public, and will damage Built NY's reputation for exclusivity in connection with the Trademark, as well as for quality and reliable merchandise.

91. Defendants' acts constitute trademark infringement and the use of a false designation of origin, a false representation, and unfair competition, by inducing the erroneous belief that Defendants and/or the Infringing Products are in some manner affiliated with, originate from, or are sponsored by Built NY, and by misrepresenting the nature and origin of the Infringing Products, all in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

92. Defendants' acts are willful, unfair, untrue, and deceptive, in that they tend to mislead, deceive and confuse, and will have the result of misleading, deceiving and confusing

the public to believe that Defendants and/or the Infringing Products are affiliated with, sponsored or controlled by Built NY. As a consequence, Defendants have traded upon, and gained public acceptance and other benefits from Built NY's favorable reputation, which has accordingly been placed at risk by Defendants' illegal acts and conduct.

93. Defendants' unlawful actions have interfered with Built NY's sales, have unfairly diverted sales to Defendants, and have caused Built NY monetary damage.

94. Defendants have caused irreparable harm and damage to Built NY and will continue to cause irreparable harm to Built NY, and have caused Built NY to suffer monetary damage in an amount thus far not determined.

95. Built NY has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

COUNT V

TRADE DRESS INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION, AND UNFAIR COMPETITION

96. Built NY reasserts and incorporates by reference the allegations of the prior paragraphs above as though fully set forth herein.

97. The aforementioned acts of Defendants have caused and will continue to cause a likelihood of confusion in the minds of the trade and the public, and will damage Built NY's reputation for exclusivity in connection with the Built Trade Dress, as well as for quality and reliable merchandise.

98. Defendants' acts constitute trade dress infringement and the use of a false designation of origin, a false representation, and unfair competition, by inducing the erroneous belief that Defendants and/or the Infringing Products are in some manner affiliated with, originate from, or are sponsored by Built NY, and by misrepresenting the nature and origin of the Infringing Products, all in violation of Lanham Act § 43(a), 15 U.S.C. §1125(a).

99. Defendants' acts are willful, unfair, untrue, and deceptive, in that they tend to mislead, deceive and confuse, and will have the result of misleading, deceiving and confusing the public to believe that Defendants and/or the Infringing Products are affiliated with, sponsored or controlled by Built NY. As a consequence, Defendants have traded upon, and gained public acceptance and other benefits from Built NY's favorable reputation, which has accordingly been placed at risk by Defendants' illegal acts and conduct.

100. Defendants' unlawful actions have interfered with Built NY's sales, have unfairly diverted sales to Defendants, and have caused Built NY monetary damage.

101. Defendants have caused irreparable harm and damage to Built NY and will continue to cause irreparable harm to Built NY, and have caused Built NY to suffer monetary damage in an amount thus far not determined.

102. Built NY has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

COUNT VI

COMMON LAW TRADE DRESS INFRINGEMENT AND UNFAIR COMPETITION

103. Built NY reasserts and incorporates by reference the allegations of the prior paragraphs above as though fully set forth herein.

104. The acts of Defendants infringe the Trademark and the Trade Dress, and constitute trademark and trade dress infringement in violation of the common law of the State of New York.

105. Defendants misappropriated the Trademarks and the Built Trade Dress, and took advantage and made use of Built NY's efforts and good will, and have otherwise unfairly competed with Built NY, in violation of the common law of the State of New York.

106. Upon information and belief, Defendants intentionally and willfully infringed and misappropriated the Trademarks and the Built Trade Dress, took advantage and made use of Built NY's efforts and good will, and otherwise unfairly competed with Built NY with the intent of causing confusion, mistake and deception as to the source of the Infringing Products and with the intent to palm-off the Infringing Products as the Built Products. As such, Defendants have committed unfair competition in violation of the common law of the State of New York.

107. The foregoing acts of Defendants have injured and will continue to injure Built NY by depriving it of sales of the Built Products, by injuring its business reputation, and by passing off Defendant's Infringing Products as the Built Products, all in violation of the common law of the State of New York.

108. Defendants' acts of common law trade dress infringement and unfair competition

have caused irreparable harm and damage to Built NY and have caused Built NY monetary damage in an amount thus far not determined, for which Built NY is entitled to its actual damages, Defendants' profits, punitive damages, and attorneys' fees and costs.

109. Built NY has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Built NY demands judgment against Defendants as follows:

A. That Defendants' conduct infringes the Patents-In-Suit, the Registrations, the Trademarks, and the Trade Dress, and that the Defendants falsely designate the origin of the Infringing Products, falsely describe such products, and unfairly compete with Built NY, in violation of 35 U.S.C. § 271 *et seq.*, Lanham Act §§ 32 and 4.3(a), and 15 U.S.C. §§ 1114 and 1125.

B. That Defendants' willfully infringe the '363 patent.

C. That Defendants' conduct constitutes willful trademark and trade dress infringement and unfair competition under the statutory and common law of the State of New York.

D. That Defendants and their agents, officers, directors, servants, employees, their successors and assigns, and all others in active concert or participation with Defendants be preliminarily and permanently enjoined from directly or indirectly:

(i) Using the designs disclosed in the Patents-In-Suit, the Registrations, the Trademarks and/or the Built Trade Dress, or any other designs, artwork, trademarks, or trade dresses which are similar to or are colorable imitations of the Patent, the Registrations, the

Trademarks or the Built Trade Dress, alone or as a part of, or together with any other designs, artwork, word or words, trademark, service mark, trade name, trade dress or other business or commercial designation or any logo, symbol or design in connection with the sale, offering for sale, advertising, distributing or promoting of bottle totes, or any products related thereto;

(ii) Representing by words or conduct that the Infringing Products or any products related thereto, which are offered for sale, sold, promoted or advertised by Defendants, are authorized, sponsored, endorsed by, or otherwise connected with Built NY;

(iii) Committing any act which, in and of itself, or from the manner or under the circumstances in which it is done, amounts to patent infringement, trade dress infringement, false designation of origin, false description or false representation of the Infringing Products, whereby wholesalers, retailers and/or consumers of such products are deceived into believing that the Infringing Products, or related products, emanate from Built NY or from a company that is sponsored, authorized, or endorsed by Built NY;

(iv) Taking any action which is likely to put others in a position to sell or palm-off the goods of Defendants as the goods of Built NY or to unfairly compete with Built NY; and

(v) Otherwise unfairly competing with Built NY or committing infringement of Built NY's rights.

E. That the Court issue an Order directing Defendants:

(i) To immediately deliver to Built NY, under oath and for destruction, all bottle totes, labels, packaging, wrappers, receptacles, containers, advertisements, promotional

materials, printing devices, molds, business forms, catalogs, price sheets and/or all of the things in the possession, custody, or control of Defendants, which are or can be used to create and/or display any design, artwork, name, mark or dress which infringes the Patent or is similar to and/or a colorable imitation of the Registrations, the Trademark or the Built Trade Dress, alone or together with any other design, artwork, suffix, prefix, word or words, trademark, service mark, trade name, trade dress or other business or commercial designation or any logo, symbol or design in connection with the manufacture, distribution, sale, offer for sale, advertisement or promotion of bottle totes and/or any products related thereto;

(ii) To file with the Court and serve on Built NY, within thirty (30) days after the service on Defendants of such injunctions, a report in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction.

F. That Built NY be awarded such damages that constitute at least its lost profits, lost royalties, and lost conveyed sales as a result of the wrongful acts of the Defendants.

G. That the Defendants be required to pay to Built NY treble damages under 35 U.S.C. §§ 284 and 289.

H. That this case is exceptional and that Defendants are required to pay Built NY's costs and reasonable attorneys fees under 35 U.S.C. § 285.

I. That the Court award punitive damages to Built NY in an amount to be determined.

J. That the Court require a full and complete accounting of all monies received by Defendants as a result of the manufacture, sale, advertising, and distribution of the Infringing

Products, together with an order transferring to Built NY any amount found to be due to it.

K. For interest on all amounts found to be due to Built NY from Defendants, at the prevailing rate, from the date said amounts or any part thereof became or becomes due.

L. That the Court require Defendants to notify their commercial associates, suppliers and customers, including manufacturers, wholesalers and retailers of said Order.

M. That the Court order such other, further, and different relief as the nature of this action may require and that the Court may deem just and proper.

N. That the Court retain jurisdiction of this action for the purpose of enabling Built NY to apply to the Court, at any time, for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith, and for the punishment of any violations thereof.

TRIAL BY JURY DEMANDED

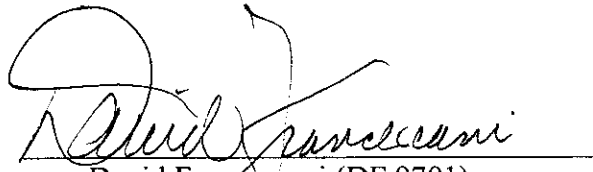
Plaintiff demands a jury trial of all issues so triable.

Dated: New York, New York October 27, 2006.

Respectfully submitted,

FISH & RICHARDSON P.C.
Attorneys for Plaintiff Built NY, Inc.

By:

A handwritten signature in black ink, appearing to read "David Francescani", written over a horizontal line.

David Francescani (DF 9701)
Jorge M. Torres (JT 2901)
Citigroup Center, 52nd Floor
153 E. 53rd Street
New York, New York 10022
Tel: (212) 765-5070
Fax: (212) 258-2291

THACHER PROFFITT & WOOD LLP
Attorneys for Plaintiff Built NY, Inc.

By: Leonard T. Nuara (LN 0781)
Alan F. Kaufman (AK-9114)
Lindsay S. Katz (LK 7717)
Two World Financial Center
New York, New York 10281
Tel: (212) 912-7400
Fax: (212) 912-7751

Exhibit A



US00D513363S

(12) **United States Design Patent**
Swartz et al.

(10) **Patent No.: US D513,363 S**
(45) **Date of Patent: ** Jan. 3, 2006**

(54) **ONE BOTTLE TOTE APPARATUS**

(75) Inventors: **John Roscoe Swartz**, Ridgewood, NJ
(US); **Aaron Lown**, Tuxedo, NY (US)

(73) Assignee: **Built NY, Inc.**, New York, NY (US)

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

(21) Appl. No.: **29/220,929**

(22) Filed: **Jan. 8, 2005**

(51) **LOC (6) Cl. 09-01**

(52) **U.S. Cl. D3/202**

(58) **Field of Classification Search D3/201,**
D3/219, 220, 226, 229, 232, 202, 246, 303,
D3/316; D9/702-705, 710, 711, 751, 753,
D9/754, 444, 445; 206/139, 428, 433; 220/509,
220/515; 383/10, 38, 127
See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

665,942 A	1/1901	Tabler	
1,808,375 A	6/1931	Plooster	
1,983,418 A	12/1934	Thurmer	
2,123,031 A	7/1938	Weiner	
2,297,375 A	9/1942	Vogt	
D140,347 S	* 2/1945	Green	D3/220
3,559,873 A	2/1971	Hart	
4,062,392 A	12/1977	Ishii	
4,180,111 A	12/1979	Davis	
4,197,890 A	4/1980	Simko	
D266,048 S	9/1982	Zillis	
4,428,484 A	1/1984	Rattay et al.	
D289,128 S	4/1987	Bradshaw	
4,681,225 A	7/1987	Schuster	
4,696,403 A	9/1987	Hoover	
D292,879 S	* 11/1987	Smith	D9/753
4,750,639 A	6/1988	Schaerer	
4,872,766 A	10/1989	Dancy	
4,884,683 A	12/1989	Ford	
4,955,516 A	9/1990	Satterfield	
4,984,662 A	1/1991	Jacobson	
5,050,998 A	9/1991	Wachtel	

5,090,526 A	2/1992	Jacobson	
5,110,020 A	5/1992	Uhl	
D344,413 S	* 2/1994	Bedrosian et al.	D3/202
D357,845 S	5/1995	Herszenberg	
D365,441 S	* 12/1995	Drake et al.	D3/205
5,503,476 A	4/1996	Hamdan	
5,624,048 A	* 4/1997	Sander et al.	215/395
D379,119 S	5/1997	Wolfe et al.	
D409,450 S	5/1999	Hamilton	
D414,083 S	9/1999	Hamilton	
6,062,434 A	5/2000	Meik	
6,068,402 A	5/2000	Freese et al.	
6,131,780 A	10/2000	Becker	
D433,802 S	11/2000	Graham	

(Continued)

Primary Examiner—Louis S. Zarfas

Assistant Examiner—John Windmuller

(74) *Attorney, Agent, or Firm*—Lackenbach Siegel, LLP

(57) **CLAIM**

The ornamental design for a one bottle tote apparatus, as shown and described.

DESCRIPTION

The present invention is a design for a product enabling bottle transport.

FIG. 1 is a front elevational view of a one bottle tote apparatus showing our new design;

FIG. 2 is a rear elevational view thereof;

FIG. 3 is a top plan view thereof;

FIG. 4 is a bottom plan view thereof;

FIG. 5 is a right side elevational view thereof, the left side elevational view being identical;

FIG. 6 is a perspective view thereof with a bottle inserted;

FIG. 7 is a front elevational view thereof;

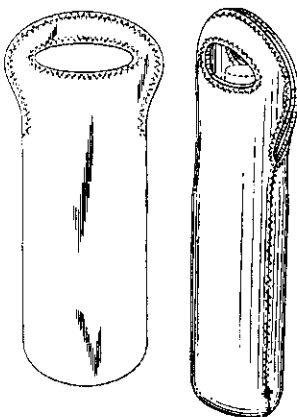
FIG. 8 is a top plan view thereof;

FIG. 9 is a bottom plan view thereof; and,

FIG. 10 is a right side elevational view thereof, the left side elevational view being identical.

The broken line showing of stitching is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 7 Drawing Sheets



US D513,363 S

Page 2

U.S. PATENT DOCUMENTS

D437,481 S	*	2/2001	Vazquez	D3/244	2001/0031104 A1	10/2001	Vazquez
D441,612 S		5/2001	Hamilton			2002/0166779 A1	11/2002	Etesse et al.
D451,665 S		12/2001	Phillips et al.			2003/0128897 A1	7/2003	Lehrman
D462,164 S		9/2002	Phillips			2003/0185465 A1	10/2003	Vazquez
D474,887 S		5/2003	Forster			2003/0228072 A1	12/2003	Tyberg

* cited by examiner

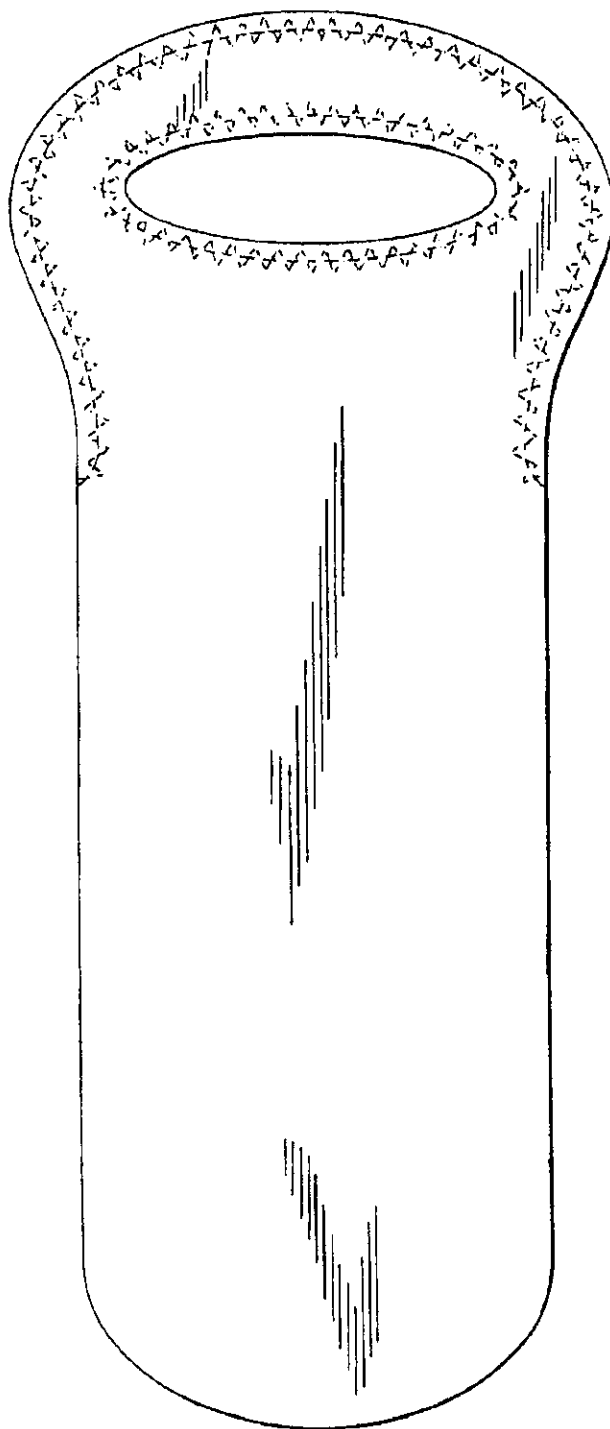


FIG. 1

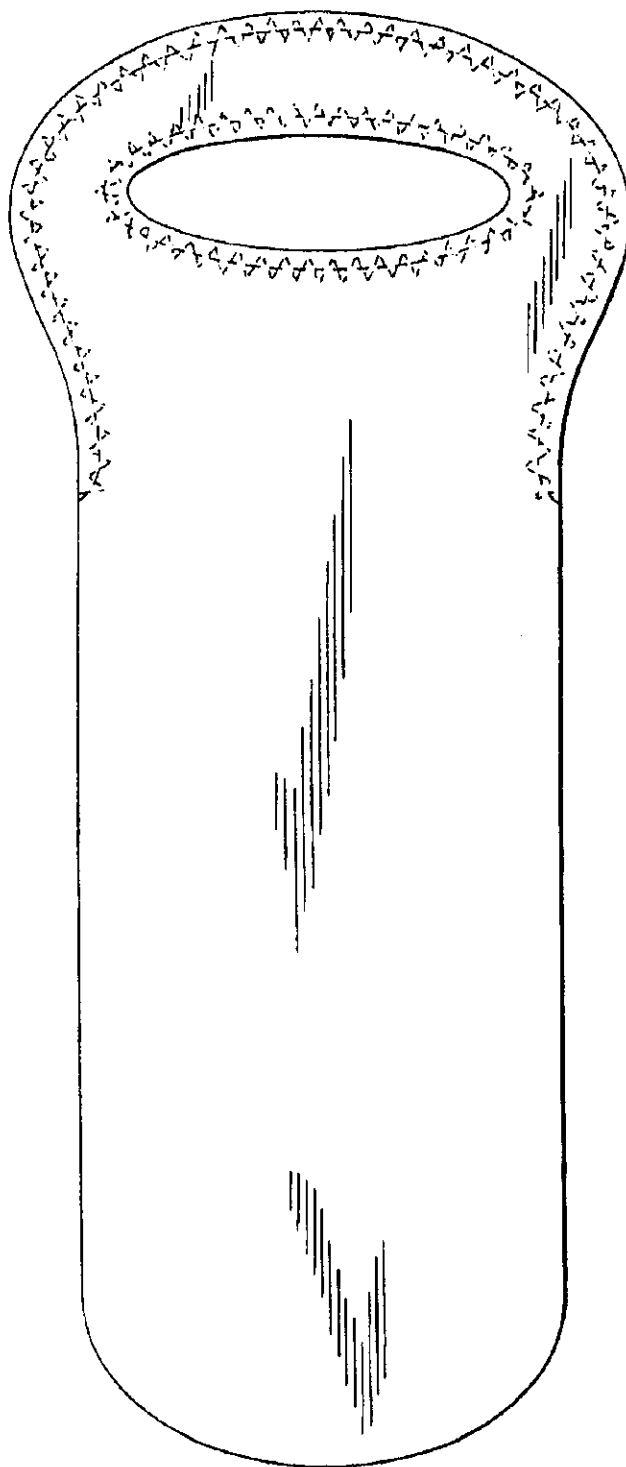


FIG.2

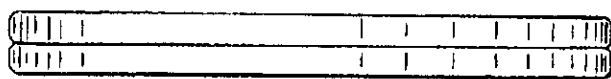


FIG. 3

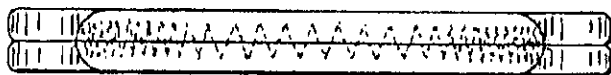
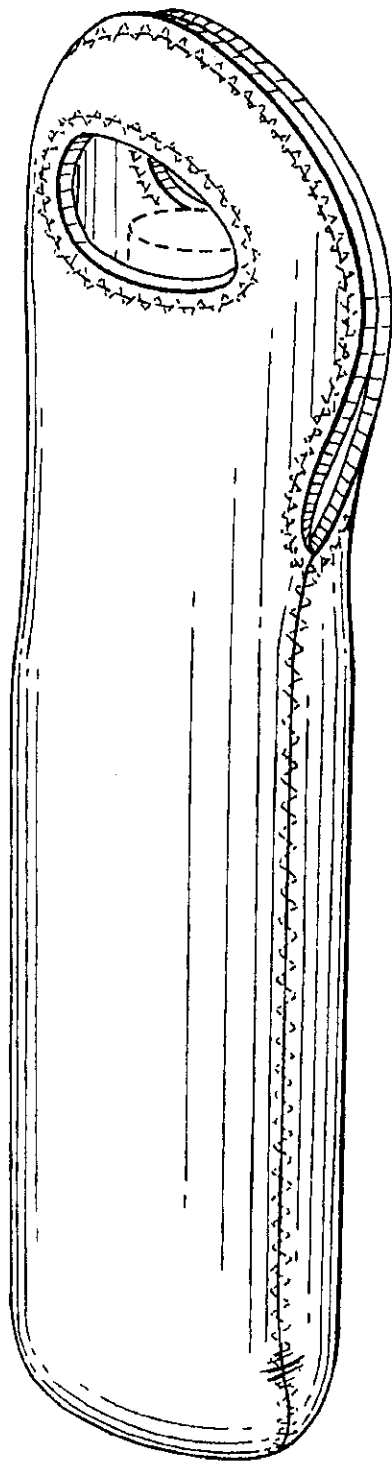


FIG. 4



FIG. 5

FIG.6



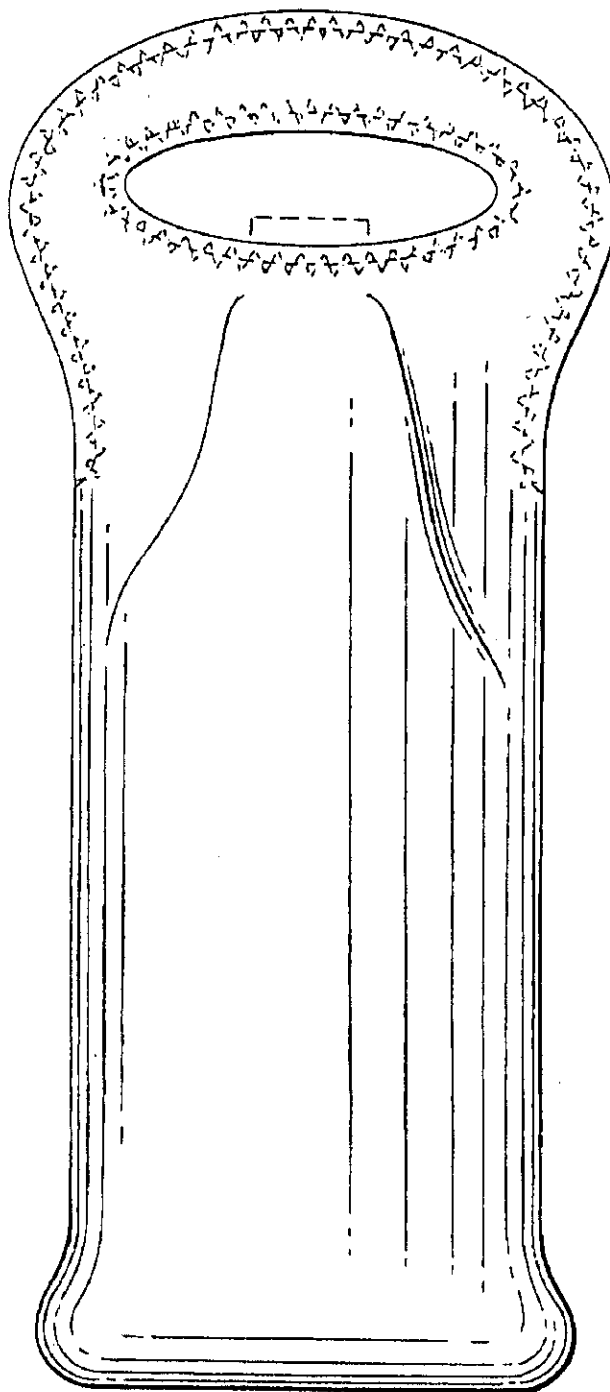


FIG. 7

FIG.8

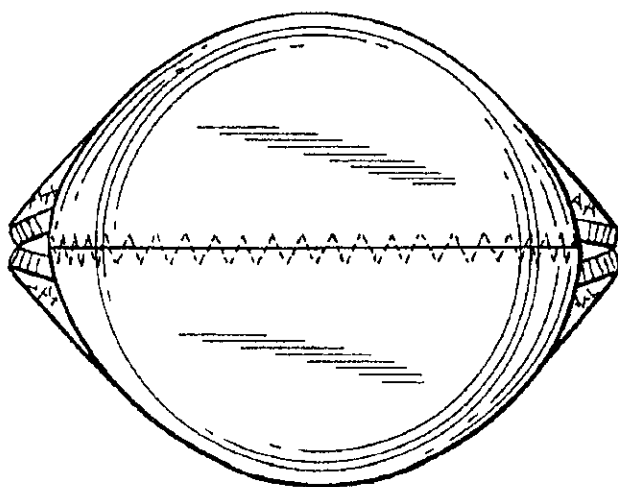
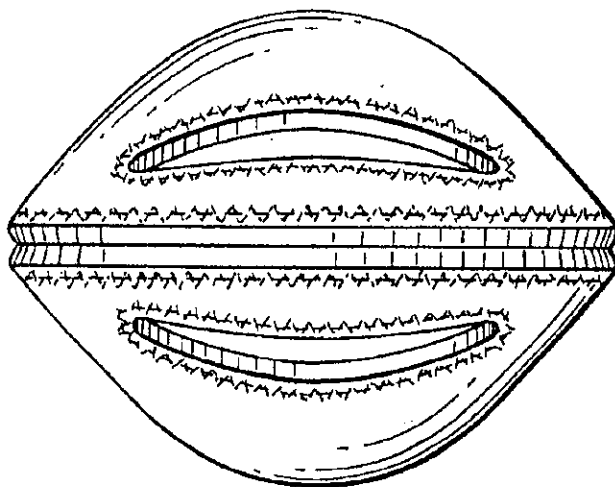


FIG.9

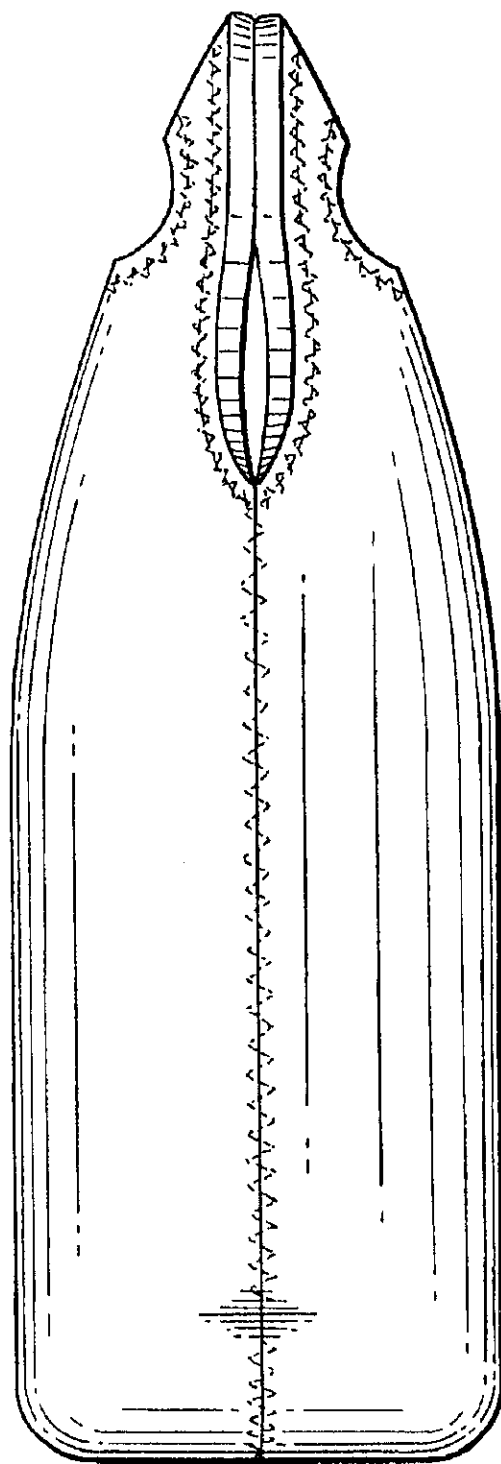


FIG.10

Exhibit B



US00D529278S

(12) **United States Design Patent**
Swartz et al.

(10) **Patent No.:** **US D529,278 S**
(45) **Date of Patent:** **** Oct. 3, 2006**

(54) **TWO BOTTLE TOTE APPARATUS**

(75) Inventors: **John Roscoe Swartz**, Ridgewood, NJ
(US); **Aaron Lown**, Tuxedo, NY (US)

(73) Assignee: **Bullt NY, Inc.**, New York, NY (US)

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

(21) Appl. No.: **29/220,930**

(22) Filed: **Jan. 8, 2005**

4,062,392 A	12/1977	Ishii	
4,180,111 A	12/1979	Davis	
4,197,890 A	4/1980	Simko	
D266,048 S	9/1982	Zillis	
4,428,484 A	1/1984	Rattay et al.	
D289,128 S	4/1987	Bradshaw	
4,681,225 A	7/1987	Schuster	
4,696,403 A	9/1987	Hoover	
D292,879 S *	11/1987	Smith	D9/753
4,750,639 A	6/1988	Schaerer	
4,832,188 A *	5/1989	Christie	206/162
4,872,766 A	10/1989	Dancy	
4,884,683 A	12/1989	Ford	

Related U.S. Application Data

(63) Continuation of application No. 10/816,676, filed on Apr. 2, 2004.

(51) **LOC (8) Cl.** **09-01**

(52) **U.S. Cl.** **D3/202**

(58) **Field of Classification Search** **D3/201,**
D3/219, 220, 226, 229, 232, 202, 246, 303,
D3/316; D9/702-705, 710, 711, 751, 753,
D9/754, 444, 445; 206/139, 428, 433; 220/509,
220/515; 383/10, 38, 127

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

665,942 A	1/1901	Tabler	
1,808,375 A	6/1931	Plooster	
1,983,418 A	12/1934	Thurmer	
2,123,031 A	7/1938	Weiner	
2,297,375 A	9/1942	Vogt	
D142,442 S *	9/1945	Rath	D3/246
D160,564 S *	10/1950	Vines	D9/753
3,559,873 A	2/1971	Hart	

(Continued)

Primary Examiner—Louis S. Zarfas
Assistant Examiner—John Windmuller

(74) *Attorney, Agent, or Firm*—Lackebach Siegel LLP

(57) **CLAIM**

The ornamental design for a two bottle tote apparatus, as shown and described.

DESCRIPTION

FIG. 1 is a front elevational view of a two bottle tote apparatus showing our new design;

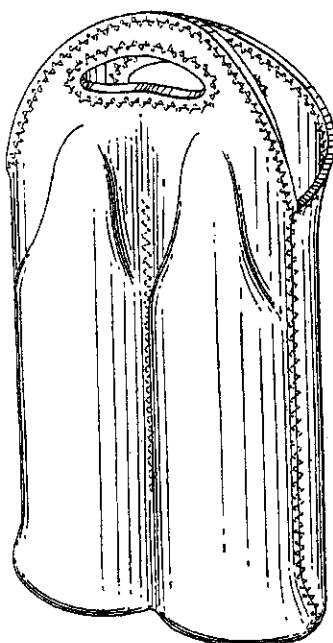
FIG. 2 is a rear elevational view thereof;

FIG. 3 is a front perspective view thereof with bottles inserted; and,

FIG. 4 is a front elevational view thereof with bottles inserted.

The broken line showing of stitching and piping is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 4 Drawing Sheets



US D529,278 S

Page 2

U.S. PATENT DOCUMENTS

4,955,516 A	9/1990	Satterfield	6,131,780 A	10/2000	Becker	
4,984,662 A	1/1991	Jacober	D433,802 S	11/2000	Graham	
5,050,998 A	9/1991	Wachtel	D435,964 S	* 1/2001	Lentz	D3/239
5,090,526 A	2/1992	Jacober	D441,612 S	5/2001	Hamilton	
5,110,020 A	5/1992	Uhl	D451,665 S	12/2001	Phillips et al.	
D330,852 S	* 11/1992	Gontowski et al.	D462,164 S	9/2002	Phillips	
D357,845 S	5/1995	Herszenberg	D466,002 S	* 11/2002	Jones	D9/710
5,503,476 A	4/1996	Hamdan	D469,956 S	* 2/2003	Cone et al.	D3/303
D379,119 S	5/1997	Wolfe et al.	D474,887 S	5/2003	Forster	
D404,203 S	* 1/1999	Maier-Aichen	2001/0031104 A1	10/2001	Vazquez	
D409,450 S	5/1999	Hamilton	2002/0166779 A1	11/2002	Etesse et al.	
D414,083 S	9/1999	Hamilton	2003/0128897 A1	7/2003	Lehrman	
6,062,434 A	5/2000	Melk	2003/0185465 A1	10/2003	Vazquez	
6,068,402 A	5/2000	Freese et al.	2003/0228072 A1	12/2003	Tyberg	

* cited by examiner

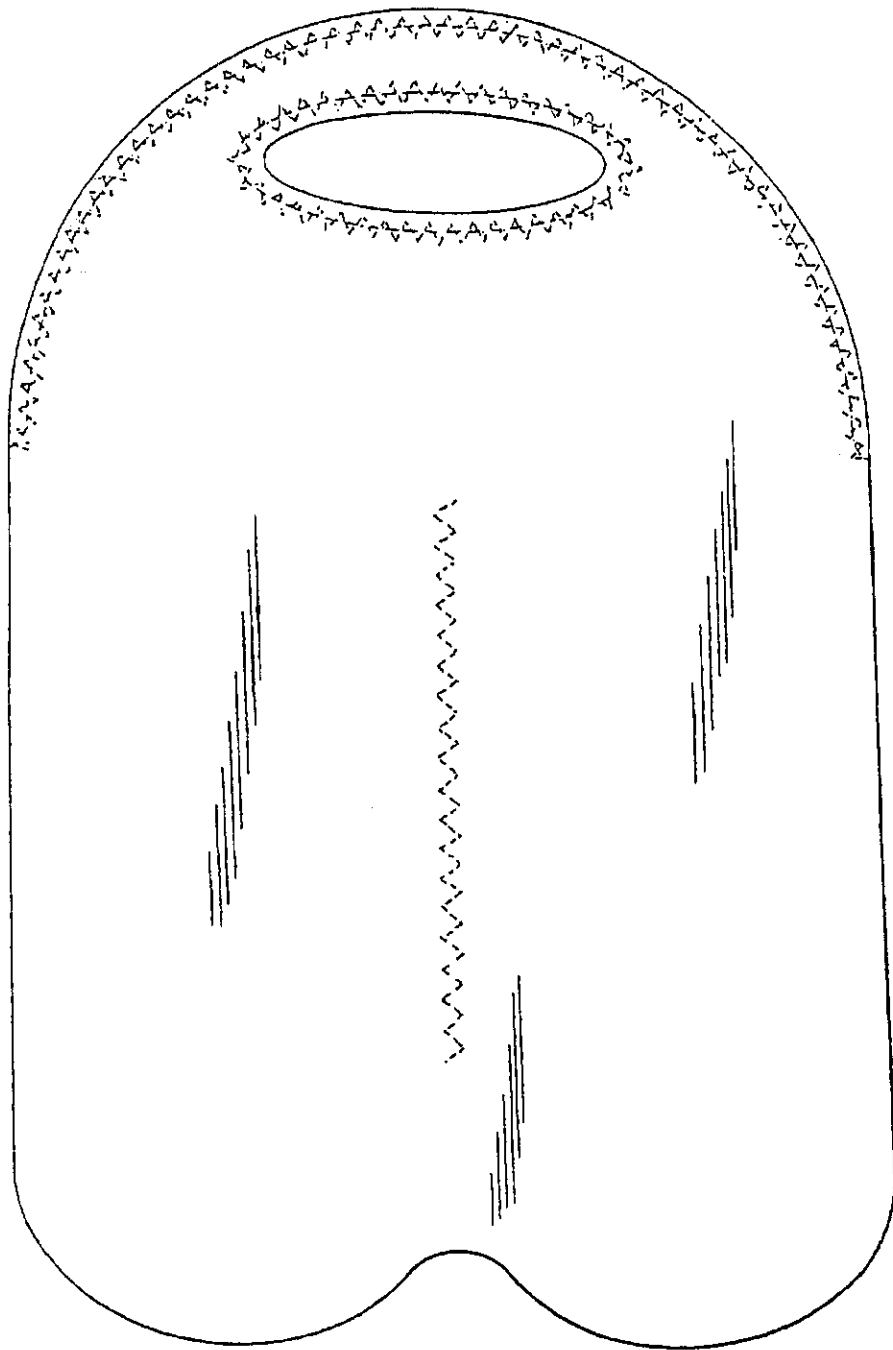


FIG.1

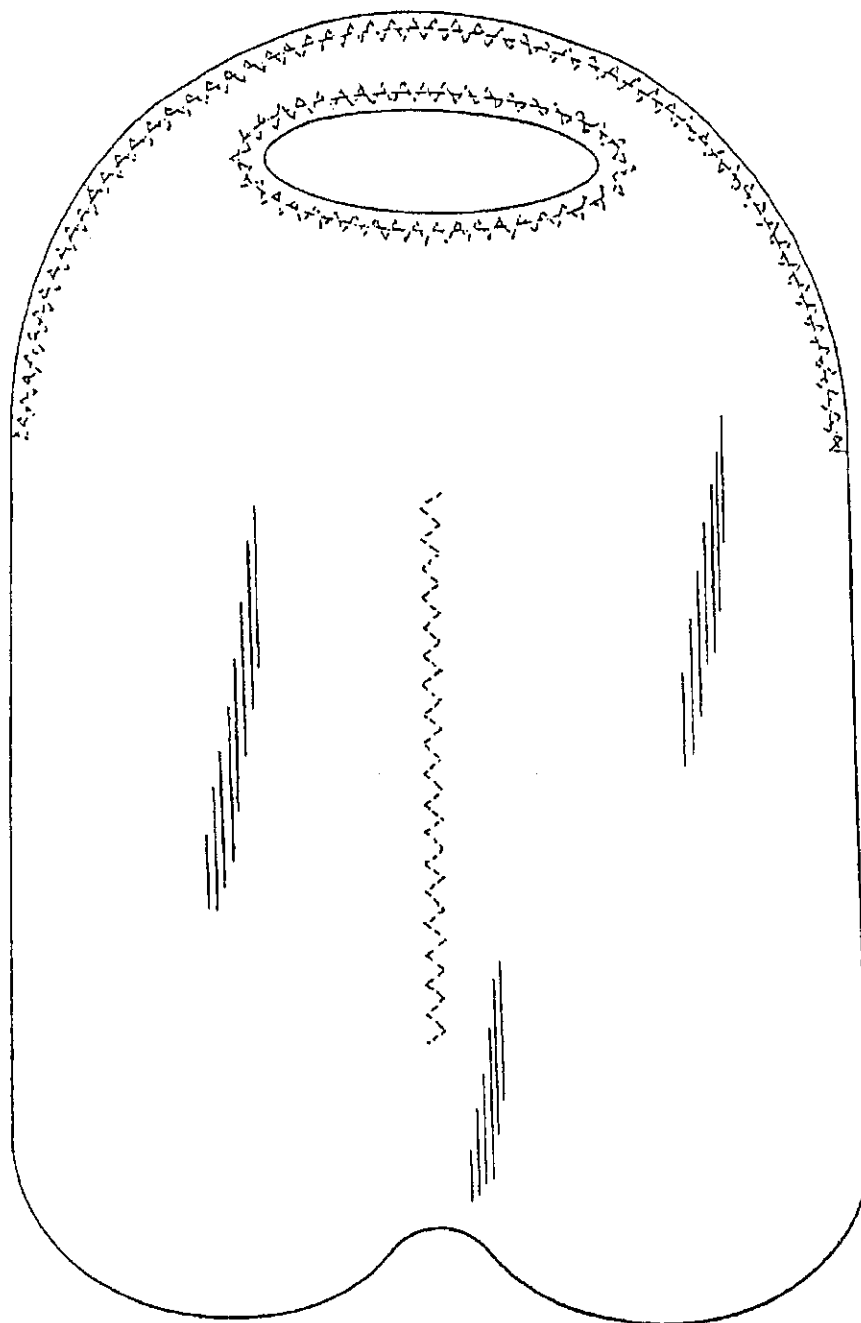


FIG.2

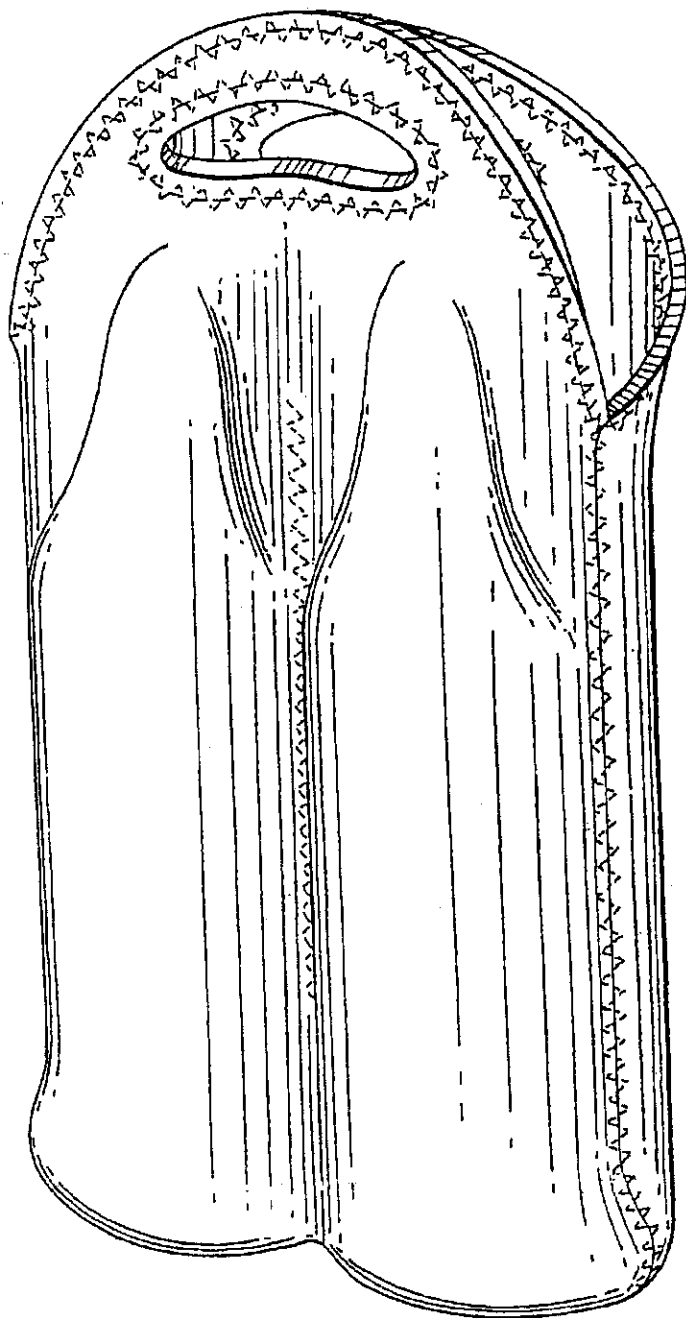


FIG. 3

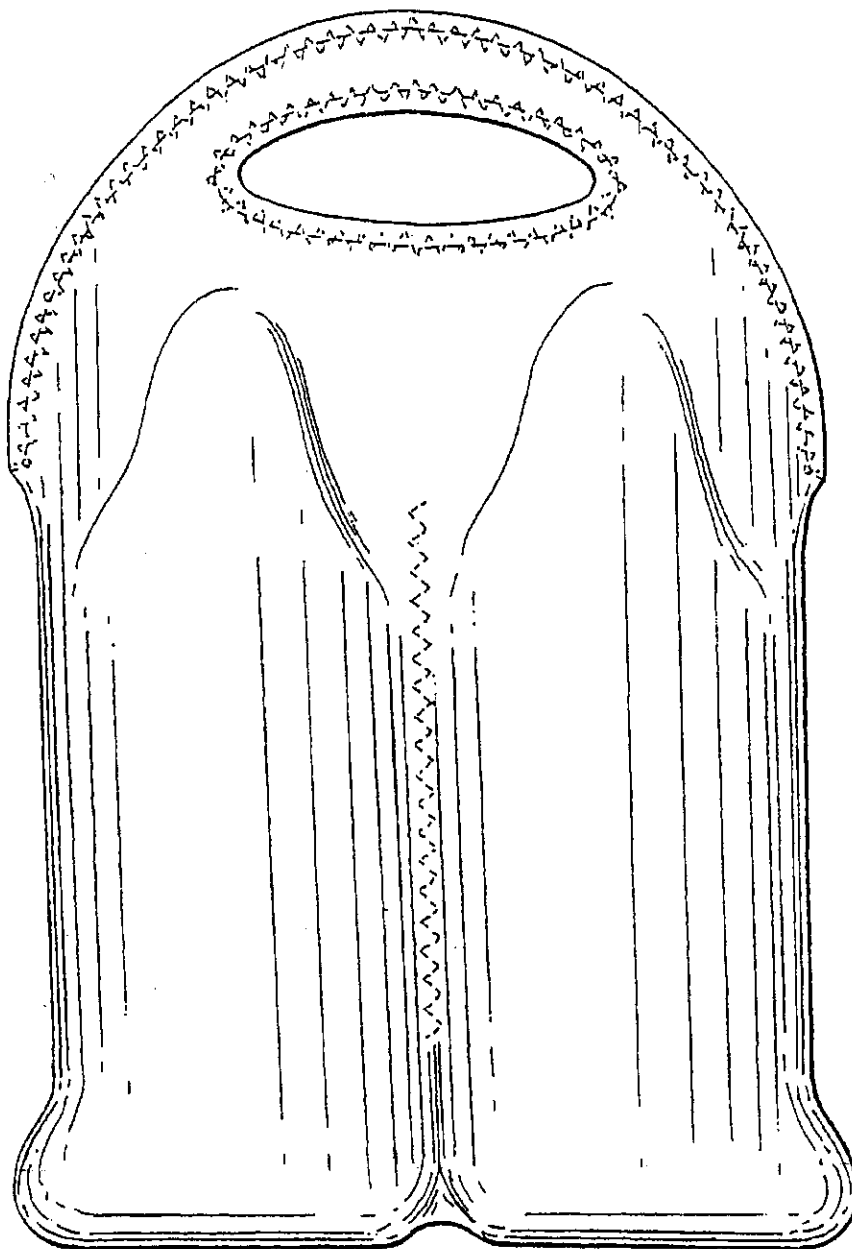


FIG. 4

Exhibit C



United States Patent and Trademark Office

[Home](#) [Site Index](#) [Search](#) [FAQ](#) [Glossary](#) [Guides](#) [Contacts](#) [eBusiness](#) [eBiz alerts](#) [News](#) [Help](#)

Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Wed Oct 25 04:18:44 EDT 2006

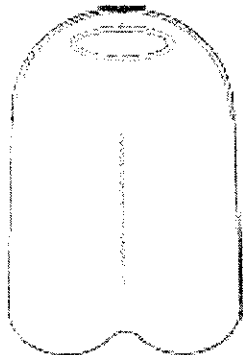
[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[BOTTOM](#)[HELP](#)[Logout](#)

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

Record 1 out of 1

[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

(Use the "Back" button of the Internet Browser to return to TESS)



Goods and Services

IC 021. US 002 013 023 029 030 033 040 050. G & S: thermal insulated bottle totes for beverages. FIRST USE: 20030428. FIRST USE IN COMMERCE: 20030428

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code

19.01.04 - Backpacks; Bags, duffel; Duffle bags; Fanny packs; Gym bags; Knapsacks; Packs, back

19.01.25 - Bags, bowling; Bags, camera; Boot bags, ski; Bowling bags; Cosmetic cases ; Doctor's bags; Hat boxes; Medical bags; Saddle bags; Tote bags

Serial Number

78395303

Filing Date

April 2, 2004

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

September 13, 2005

Registration Number

3023095

Registration Date

December 6, 2005

Owner

(REGISTRANT) Built NY, Inc. CORPORATION NEW YORK 520 Broadway, 2nd Floor
New York NEW YORK 10012

Attorney of Record

Alan F. Kaufman

Description of Mark	The mark consists of the configuration of a beverage tote having two distinct chambers. The portion of the mark shown in doffed line represents stitching on the tote and is claimed as a feature of the mark .
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Live/Dead Indicator	LIVE

[TESS HOME](#)

[NEW USER](#)

[STRUCTURED](#)

[FREE FORM](#)

[BROWSE DICT](#)

[SEARCH OG](#)

[TOP](#)

[HELP](#)

[| HOME](#) [| SITE INDEX](#) [| SEARCH](#) [| eBUSINESS](#) [| HELP](#) [| PRIVACY POLICY](#)

Exhibit D



United States Patent and Trademark Office

[Home](#) [Site Index](#) [Search](#) [FAQ](#) [Glossary](#) [Guides](#) [Contacts](#) [eBusiness](#) [eBiz alerts](#) [News](#) [Help](#)

Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Wed Oct 25 04:18:44 EDT 2006

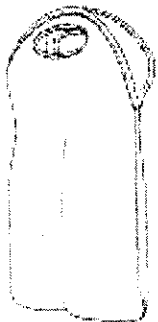
[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[BOTTOM](#)[HELP](#)[Logout](#)

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

Record 1 out of 1

[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)

(Use the "Back" button of the Internet Browser to return to TESS)



Goods and Services

IC 021. US 002 013 023 029 030 033 040 050. G & S: Thermal insulated bottle totes for beverages. FIRST USE: 20030428. FIRST USE IN COMMERCE: 20030428

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code

19.01.25 - Bags, bowling; Bags, camera; Boot bags, ski; Bowling bags; Cosmetic cases ; Doctor's bags; Hat boxes; Medical bags; Saddle bags; Tote bags

Serial Number

78395271

Filing Date

April 2, 2004

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

September 20, 2005

Registration Number

3026873

Registration Date

December 13, 2005

Owner

(REGISTRANT) Built NY, Inc. CORPORATION NEW YORK 520 Broadway, 2nd Floor
New York NEW YORK 10012

Attorney of Record

Alan F. Kaufman

Description of Mark	The mark consists of the configuration of a beverage tote having two distinct chambers when filled. The portion of the mark shown in dotted lines represents stitching on the tote and is claimed as a feature of the mark.
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Live/Dead Indicator	LIVE

[TESS HOME](#)

[NEW USER](#)

[STRUCTURED](#)

[FREE FORM](#)

[BROWSE DICT](#)

[SEARCH OG](#)

[TOP](#)

[HELP](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

Exhibit E

About Us

Meyer Corporation, U.S. is based in Vallejo, California. We've been one of the fastest growing cookware companies in the U.S. throughout the 90's, and have become the largest distributor of range-top cookware in the U.S. There are many Meyer affiliates around the world. Learn more about Meyer Affiliates.

We specialize in the distribution of metal cookware and other kitchen products. Our cookware is made by our own affiliate factories throughout the world, including Italy, Thailand, and China. We focus on developing high quality, top performing cookware, utilizing cutting edge technology and designs. We offer cookware made from stainless steel, hard-anodized aluminum, and nonstick aluminum. Offering different brands enable us to distribute different levels of cookware. Learn more about our cookware.

► HELP ME SHOP

Let our retail site, [PotsandPans.com](#) help you select the right items.

► BUY PRODUCTS ONLINE

Ready to make a purchase? Buy any of our brands at [PotsandPans.com](#).

PRODUCT NEWS

View Circulon's Toss & Turn pan in action. Television Spot.

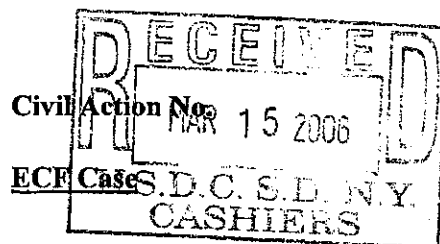


Exhibit F

06 CV 2042

SOUTHERN DISTRICT OF NEW YORK

Defendants.

$$\begin{matrix} \mathbf{x} \\ : \\ : \\ : \\ : \\ : \\ : \\ : \\ : \\ : \\ : \\ \mathbf{x} \end{matrix}$$


TRIAL BY JURY DEMANDED

Plaintiff, BUILT NY, INC. (“Built NY” or “Plaintiff”), by and through its attorneys, for its complaint against defendants MEYER CORPORATION, U.S. (“Meyer”), BONJOUR, INC. (“Bonjour”), and BRADY MARKETING COMPANY, INC. (“Brady”) (collectively, “Defendants”), hereby alleges as follows:

1. In this action, Built NY seeks injunctive relief, lost profits, damages, costs, and attorneys' fees for Defendants' acts of willful patent, trademark, and trade dress infringement, false designation of origin, false descriptions, unfair competition, deceptive trade practices, and intent to deceive, under the Lanham Act, and common law and statutes of the State of New York.

2. This Court has original jurisdiction of this action pursuant to 15 U.S.C. §§ 1121 and 28 U.S.C. §§ 1331 and 1338.

3. Upon information and belief, Defendants contract to supply goods and transact business in New York and is within this judicial district, and the tortious acts of Defendants complained of in this Complaint, including, without limitation, the offer for sale, promotion, sale of Defendants' infringing goods, have been and continue to be committed, and have caused harm to Plaintiff, within this judicial district. Accordingly, personal jurisdiction exists over Defendants pursuant to CPLR §§ 301 and 302.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

THE PARTIES

5. Built NY is a corporation duly organized and existing under the laws of the State of New York, having its principal place of business in New York, New York.

6. Upon information and belief, Meyer is a corporation duly organized and existing under the laws of the State of California, having corporate offices at 1 Meyer Plaza, Vallejo, California.

7. Upon information and belief, Bonjour is a corporation duly organized and existing under the laws of the State of California, having corporate offices at 1 Meyer Plaza, Vallejo, California.

8. Upon information and belief, Brady is a corporation duly organized and existing under the laws of the State of California, having corporate offices at 80 Berry Drive, Pacheco, California.

GENERAL ALLEGATIONS

Built NY

9. Built NY is in the business of, *inter alia*, designing, marketing, and selling tote bags for carrying bottles of wine or other similarly sized containers (the "Products").

10. Built NY is a relatively small company with a limited number of products. Built NY's recognition, reputation and goodwill, as well as its relationship with its suppliers, distributors, and customers is inexorably tied to the Products.

11. Built NY's Products have been, and continue to be, a tremendous critical and commercial success.

12. Since their introduction, Built NY's Products have received substantial, unsolicited media coverage.

13. As part of the unsolicited media coverage, Built NY's Products have received prestigious awards, including, *inter alia*: the *Business Week* Annual Design Award 2004 Gold Medal, co-sponsored by the Industrial Designers Society of America (IDEA Award); a *Fortune* 2003 Product of the Year award; an *InStyle* Top 40 Summer Must-Haves (#19); and acceptance into the juried section of the New York International Gift Fair (Accent on Design).

14. Additional positive media coverage has appeared in, *inter alia*: The Washington Post, New York Times, Chicago Tribune, Good Morning America, Food Network, WCBS am, Bon Appetit, Crain's, Wine Spectator, House and Garden, Conde Nast Traveler, Departures, American Way, The Miami Herald, Wines & Spirits, Fortune Small Business, Kitchenware News, Dwell, ID Magazine, Men's Health, Country Living, Newsweek, AARP, New York Times, San Francisco Chronicle, CBS Morning Show, Fox Morning Show, Better Home and Gardens, Southern Living,

Wine Spectator and AARP Magazine. Also, Built NY has appeared in numerous articles in industry trade publications, such as Home Furnishing News.

The Patent

15. On or about January 8, 2005, Built NY applied to the U.S. Patent and Trademark Office (the "PTO") for patent protection for its "one-bottle tote apparatus."

16. On or about January 3, 2006, the PTO issued to Built NY U.S. Patent No. D513,363, for Built NY's "one bottle tote apparatus" (the "Patent").

17. The Patent is valid.

18. Built NY is the record owner of the Patent.

The Trademark and Registrations

19. In connection with its two-bottle tote, Built NY developed, adopted and used, and continues to use a distinctive configuration (the "Trademark").

20. The Trademark is non-functional.

21. The Trademark is inherently distinctive.

22. Because of Built NY's exclusive and extensive use and promotions of the Trademark, the sales of the Products, and the unsolicited media coverage, the Trademark has acquired distinctiveness (or a secondary meaning) and indicates a single source of origin of Built NY's Products.

23. Built NY used the Trademark in interstate commerce prior to any of the acts of Defendants complained of herein, and the Trademark is currently in such use.

24. Built NY's use of the Trademark has been open, notorious, and continuous since the date of first use, a time prior to any of the acts of Defendants complained of herein.

25. In or about April of 2004, Built NY applied to the PTO for trademark protection for the configuration of its two-bottle tote.

26. On or about December 6, 2005, the PTO issued to Built NY U.S. Trademark Registration No. 3,023,095 for a "Miscellaneous Design" pertaining to the two-bottle tote (the "'095 Registration").

27. On or about December 6, 2005, the PTO issued to Built NY U.S. Trademark Registration No. 3,026,873 for a "Miscellaneous Design" pertaining to the two-bottle tote (the "'873 Registration" and collectively with the '095 Registration, the "Registrations").

28. The Registrations are valid.

29. Built NY is the record owner of the Registrations.

The Trade Dress

30. In connection with its Products, Built NY developed, adopted and used, and continues to use, a unique combination of design features. This unique combination of features creates a distinctive overall visual impression (the "Trade Dress"). The features of the Trade Dress include the Products' materials - faced neoprene, the shape, proportions, and silhouette - including an integral cut-out handle, a zig-zag stitching pattern around the perimeter of the Products, and use of seam welting in the top-handle portion.

31. The Trade Dress is non-functional.

32. The Trade Dress is inherently distinctive.

33. Because of Built NY's exclusive and extensive use and promotions of the Trade Dress, the sales of the Products, and the unsolicited media coverage, the Trade Dress has acquired distinctiveness (or a secondary meaning) and indicates a single source of origin of Built NY's Products.

34. Built NY used the Trade Dress in interstate commerce prior to any of the acts of Defendants complained of herein, and the Trade Dress is currently in such use

35. Built NY's use of the Trade Dress has been open, notorious, and continuous since the date of first use, a time prior to any of the acts of Defendants complained of herein.

The Defendants

36. According to Meyer's own website, Meyer is the "largest distributor of range-top cookware in the U.S."

37. Upon information and belief, as compared to Built NY, Meyer is a large company, which sells hundreds of different products, under numerous brands, including Kitchen Aid, Circulon, and SilverStone.

38. Upon information and belief, Bonjour is a subsidiary, division or otherwise affiliated with Meyer. The infringing products, as described in more detail below, are being offered for sale and sold under the Bonjour brand.

39. Upon information and belief, Brady is acting on behalf of Meyer and Bonjour to actively promote infringing products.

40. Without the authorization or consent of Built NY, Defendants are making, using, and or selling products which infringe the Patent, Trademark, the Trade Dress and related intellectual property (the "Infringing Products").

41. Without the authorization or consent of Built NY, Defendants commenced use, and are currently offering for sale and are selling tote bags which are confusingly similar to, and therefore infringe, the Registrations.

42. Without the authorization or consent of Built NY, and after Built NY built up extensive and valuable business and goodwill in connection with the Trademark, Defendants

commenced use, and are currently offering for sale and are selling tote bags using a trademark which is confusingly similar to, and therefore infringes, the Trademark.

43. Without the authorization or consent of Built NY, and after Built NY built up extensive and valuable business and goodwill in connection with the Trade Dress, Defendants commenced use, and are currently offering for sale and are selling tote bags using a trade dress (the "Infringing Trade Dress") which is confusingly similar to, and therefore infringes, the Trade Dress.

44. Built NY and Defendants are engaged in the business of selling the same type of goods, to the same class of customers, through the same channels of trade.

45. Defendants' actions, including the offer for sale, promotion, and sale of the Infringing Products, have injured and interfered with Built NY's relationships with its suppliers, distributors, and customers.

COUNT I **PATENT INFRINGEMENT**

46. Built NY repeats and realleges each allegation contained in the prior paragraphs

47. Built NY is the owner of United States Letters Patent No. D513,363 S, which issued on January 3, 2006, for a "One Bottle Tote Apparatus."

48. The Patent is valid and subsisting.

49. Defendants are manufacturing, using, and/or selling products which infringe the Patent.

50. Upon information and belief, Defendants are aware of the Patent and continue their infringing activities.

51. Upon information and belief, Defendants' conduct and infringement of the Patent are willful and deliberate.

52. Defendants' unlawful actions interfered with Built NY's sales, unfairly diverted sales to Defendants, and caused Built NY monetary damage.

53. The acts of Defendants caused irreparable harm and damage to Built NY and caused Built NY to suffer monetary damage in an amount thus far not determined.

54. Based upon Defendants' acts of willful infringement, Built NY is entitled to injunctive relief, monetary damages, and its cost and fees, including attorneys' fees.

COUNT II
INDUCEMENT TO INFRINGE THE PATENT

55. Built NY repeats and realleges each allegation contained in the prior paragraphs

56. By the actions plead in the foregoing paragraphs, Defendants are actively inducing others to make, use, and/or sell products which infringe the Patent.

57. Upon information and belief, Defendants are aware of the Patent and continue their inducing activities.

58. Upon information and belief, Defendants' conduct and inducement to infringe the Patent are willful and deliberate.

59. Defendants' unlawful actions interfered with Built NY's sales, unfairly diverted sales to Defendants, and caused Built NY monetary damage.

60. The acts of Defendants caused irreparable harm and damage to Built NY and caused Built NY to suffer monetary damage in an amount thus far not determined.

61. Based upon Defendants' acts of willful inducement to infringe, Built NY is entitled to injunctive relief, monetary damages, and its cost and fees, including attorneys' fees.

COUNT III
REGISTERED TRADEMARK INFRINGEMENT

62. Built NY repeats and realleges each allegation contained in the prior paragraphs.

63. By virtue of Defendants' conduct, Defendants have used and intend to continue to use spurious marks in connection with the sale and distribution of goods in interstate commerce, which marks are identified with Built NY's Registrations, which are federally registered trademarks in the PTO, and which are presently in use.

64. Upon information and belief, Defendants' conduct has been willful, malicious and wanton and it will continue its acts of willful infringement unless enjoined by this Court.

65. Built NY's Products are products which are sold, distributed and/or advertised to the same or similar classes of purchasers as Defendants. There is, therefore, a strong likelihood of confusion, mistake, or deception, and persons familiar with Built NY's Registrations, its reputation and favorable goodwill, are likely to buy Defendants' goods in belief that the latter goods are sold or authorized by Built NY.

66. By virtue of Defendants' conduct, Defendants are engaged in infringement of Built NY's federally registered trademarks, in violation of the Lanham Act, 15 U.S.C. § 1114, by using a mark wherein such use is likely to cause confusion, or to cause mistake, or to deceive.

67. Defendants have made unlawful gains and profits from such unlawful infringement and, by reason thereof, Built NY has been deprived of rights and profits which otherwise would have come to Built NY, but for such infringements.

68. Built NY has no adequate remedy at law for the injury alleged in this Count. The injury is intangible in nature and not capable of being fully measured or value in terms of money damages. Further, the injury is of a continuing nature and will continue to be suffered so long as Defendants continue their wrongful conduct.

69. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Built NY's monetary damages caused by Defendants' wrongful conduct, Built NY is informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Built NY. Built NY seeks leave of this Court to amend its Complaint to allege the full nature and extent of said monetary damages if, when and to the extent the damages are ascertained.

COUNT IV
TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN,
FALSE DESCRIPTION, AND UNFAIR COMPETITION

70. Built NY repeats and realleges each allegation contained in the prior paragraphs.

71. The aforementioned acts of Defendants have caused and will continue to cause a likelihood of confusion in the minds of the trade and the public, and will damage Built NY's reputation for exclusivity in connection with the Trademark, as well as for quality and reliable merchandise.

72. Defendants' acts constitute trademark infringement and the use of a false designation of origin, a false representation, and unfair competition, by inducing the erroneous belief that Defendants and/or the Infringing Products are in some manner affiliated with, originate from, or are sponsored by Built NY, and by misrepresenting the nature and origin of the Infringing Products, all in violation of Lanham Act § 43(a), 15 U.S.C. §1125(a).

73. Defendants' acts are willful, unfair, untrue, and deceptive, in that they tend to mislead, deceive and confuse, and will have the result of misleading, deceiving and confusing the public to believe that Defendants and/or the Infringing Products are affiliated with, sponsored or controlled by Built NY. As a consequence, Defendants have traded upon, and gained public

acceptance and other benefits from Built NY's favorable reputation, which has accordingly been placed at risk by Defendants' illegal acts and conduct.

74. Defendants' unlawful actions have interfered with Built NY's sales, have unfairly diverted sales to Defendants, and have caused Built NY monetary damage.

75. Defendants have caused irreparable harm and damage to Built NY and will continue to cause irreparable harm to Built NY, and have caused Built NY to suffer monetary damage in an amount thus far not determined.

76. Built NY has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

COUNT V
TRADE DRESS INFRINGEMENT, FALSE DESIGNATION OF ORIGIN,
FALSE DESCRIPTION, AND UNFAIR COMPETITION

77. Built NY repeats and realleges each allegation contained in the prior paragraphs.

78. The aforementioned acts of Defendants have caused and will continue to cause a likelihood of confusion in the minds of the trade and the public, and will damage Built NY's reputation for exclusivity in connection with the Trade Dress, as well as for quality and reliable merchandise.

79. Defendants' acts constitute trade dress infringement and the use of a false designation of origin, a false representation, and unfair competition, by inducing the erroneous belief that Defendants and/or the Infringing Products are in some manner affiliated with, originate from, or are sponsored by Built NY, and by misrepresenting the nature and origin of the Infringing Products, all in violation of Lanham Act § 43(a), 15 U.S.C. §1125(a).

80. Defendants' acts are willful, unfair, untrue, and deceptive, in that they tend to mislead, deceive and confuse, and will have the result of misleading, deceiving and confusing the public to believe that Defendants and/or the Infringing Products are affiliated with, sponsored or controlled by Built NY. As a consequence, Defendants have traded upon, and gained public acceptance and other benefits from Built NY's favorable reputation, which has accordingly been placed at risk by Defendants' illegal acts and conduct.

81. Defendants' unlawful actions have interfered with Built NY's sales, have unfairly diverted sales to Defendants, and have caused Built NY monetary damage

82. Defendants have caused irreparable harm and damage to Built NY and will continue to cause irreparable harm to Built NY, and have caused Built NY to suffer monetary damage in an amount thus far not determined.

83. Built NY has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

COUNT VI
INJURY TO BUSINESS REPUTATION AND DECEPTIVE ACTS AND PRACTICES

84. Built NY repeats and realleges each allegation contained in the prior paragraphs.

85. The forgoing acts of Defendants constitute unfair competition and infringement of the Trade Dress.

86. The forgoing acts of Defendants have and will create a likelihood of injury to the business reputation of Built NY, in violation of New York Gen. Bus. Law § 360-1, for which Built NY is entitled to injunctive relief.

87. The foregoing acts of Defendants constitute willful, deceptive acts and practices in the conduct of business, trade and/or commerce, in violation of New York Gen. Bus. Law § 349, for which Built NY is entitled to injunctive relief, actual damages, treble damages, punitive damages, attorneys' fees, and costs.

COUNT VII
COMMON LAW TRADE DRESS INFRINGEMENT AND UNFAIR COMPETITION

88. Built NY repeats and realleges each allegation contained in the prior paragraphs.

89. The acts of Defendants infringe the Trademark and the Trade Dress, and constitute trademark and trade dress infringement in violation of the common law of the State of New York.

90. Defendants misappropriated Built NY's Trademark and Trade Dress, and took advantage and made use of Built NY's efforts and good will, and have otherwise unfairly competed with Built NY, in violation of the common law of the State of New York.

91. Upon information and belief, Defendants intentionally and willfully infringed and misappropriated Built NY's Trademark and Trade Dress, took advantage and made use of Built NY's efforts and good will, and otherwise unfairly competed with Built NY with the intent of causing confusion, mistake and deception as to the source of the Infringing Products and with the intent to palm-off the Infringing Products as those of Built NY. As such, Defendants have committed unfair competition in violation of the common law of the State of New York.

92. The foregoing acts of Defendants have injured and will continue to injure Built NY by depriving it of sales of its Products, by injuring its business reputation, and by passing off Defendant's Infringing Products as Built NY's Products, all in violation of the common law of the State of New York.

93. Defendants' acts of common law trade dress infringement and unfair competition have caused irreparable harm and damage to Built NY and have caused Built NY monetary damage in an amount thus far not determined, for which Built NY is entitled to its actual damages, Defendants' profits, punitive damages, and attorneys' fees and costs.

94. Built NY has no adequate remedy at law.

WHEREFORE, Built NY demands judgment against Defendants as follows:

A. That Defendants' conduct willfully infringes the Patent, the Registrations, the Trademark, and the Trade Dress, falsely designate the origin of the Infringing Products, falsely describes such products and unfairly competes with Built NY, in violation of 35 U.S.C. § 271 et seq. and Lanham Act §§ 32 and 43(a), 15 U.S.C. §§ 1114 and 1125.

B. That Defendants' conduct violates the provisions of New York Gen. Bus. Law §§ 360-1 and 349, and constitutes willful trademark and trade dress infringement and unfair competition under the common law of the State of New York.

C. That Defendants and their agents, officers, directors, servants, employees, their successors and assigns, and all others in active concert or participation with Defendants be preliminarily and permanently enjoined from directly or indirectly:

- (i) Using the Patent, the Registrations, the Trademark and/or the Trade Dress, or any other designs, artwork, trademarks, or trade dresses which are similar to or are colorable imitations of the Patent, the Registrations, the Trademark or Trade Dress, alone or as a part of, or together with any other designs, artwork, word or words, trademark, service mark, trade name, trade dress or other business or commercial designation or any logo, symbol or design in

connection with the sale, offering for sale, advertising, distributing or promoting of bottle totes, or any products related thereto;

- (ii) Representing by words or conduct that the Infringing Products or any products related thereto, which are offered for sale, sold, promoted or advertised by Defendants, are authorized, sponsored, endorsed by, or otherwise connected with Built NY;
- (iii) Committing any act which, in and of itself, or from the manner or under the circumstances in which it is done, amounts to patent infringement, trade dress infringement, false designation of origin, false description or false representation of the Infringing Products, whereby wholesalers, retailers and/or consumers of such products are deceived into believing that the Infringing Products, or related products, emanate from Built NY or from a company that is sponsored, authorized, or endorsed by Built NY;
- (iv) Taking any action which is likely to put others in a position to sell or pass off the goods of Defendants as the goods of Built NY or to unfairly compete with Built NY; and
- (v) Otherwise unfairly competing with Built NY or committing infringement of Built NY rights.

D. That the Court issue an Order directing Defendants:

- (i) To immediately deliver to Built NY, under oath and for destruction, all bottle totes, labels, packaging, wrappers, receptacles, containers, advertisements, promotional materials, printing devices, molds, business forms, catalogs, price sheets and/or all of the things in the possession, custody, or control of

Defendants, which are or can be used to create and/or display any design, artwork, name, mark or dress which infringes the Patent or is similar to and/or a colorable imitation of the Registrations, the Trademark or Trade Dress, alone or together with any other design, artwork, suffix, prefix, word or words, trademark, service mark, trade name, trade dress or other business or commercial designation or any logo, symbol or design in connection with the manufacture, distribution, sale, offer for sale, advertisement or promotion of bottle totes and/or any products related thereto;

- (ii) To file with the Court and serve on Built NY, within thirty (30) days after the service on Defendants of such injunctions, a report in writing and under oath, setting forth in detail the manner and form in which Defendants has complied with the injunction.

E. That the Court award judgment in favor of Built NY for the damages sustained by Built NY and the profits made by Defendants as a result of Defendants' wrongful conduct.

F. That the Court award judgment in favor of Built NY in the amount of treble damages.

G. That the Court award punitive damages to Built NY in an amount to be determined.

H. That the Court award judgment against Defendants for the full costs of this action, including reasonable attorneys' fees.

I. That the Court require a full and complete accounting of all monies received by Defendants as a result of the manufacture, sale, advertising, and distribution of the Infringing Products, together with an order transferring to Built NY any amount found to be due to it.

J. That the Court declare this an exceptional case.

K. For interest on all amounts found to be due to Built NY from Defendants, at the prevailing rate, from the date said amounts or any part thereof became or becomes due.

L. That the Court require Defendants to notify their commercial associates, suppliers and customers, including manufacturers, wholesalers and retailers of said Order.

M. That the Court order such other, further, and different relief as the nature of this action may require and that the Court may deem just and proper.

N. That the Court retain jurisdiction of this action for the purpose of enabling Built NY to apply to the Court, at any time, for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith, and for the punishment of any violations thereof.

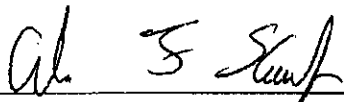
TRIAL BY JURY DEMANDED

Plaintiff demands a jury trial of all issues so triable.

Dated: New York, New York
March 15, 2006

Respectfully submitted,

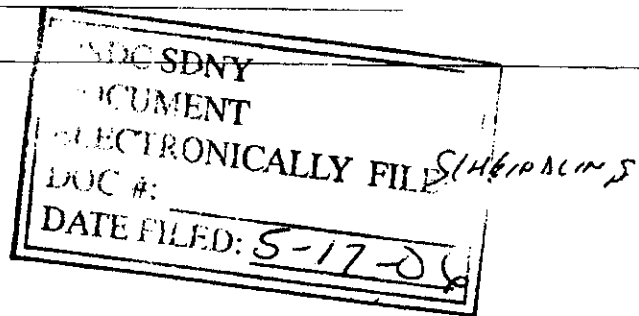
THACHER PROFFITT & WOOD LLP
Attorneys for Plaintiff Built NY, Inc.

By: 
Leonard T. Nuara, Esq. (LN- 0781)
Alan F. Kaufman, Esq. (AK-9114)
Lindsay S. Katz, Esq. (LK-7717)
Two World Financial Center
New York, New York 10281
(212) 912-7400

LACKENBACH SIEGEL LLP
Attorneys for Plaintiff Built NY, Inc.

By: Howard N. Aronson (HA-6743)
Robert B. Golden (RG-6157)
One Chase Road
Scarsdale, New York 10583
(914) 723-4300

Exhibit G



IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

BUILT NY, INC.

Plaintiff,

- against -

MEYER CORPORATION, U.S.,
BONJOUR, INC., and BRADY MARKETING
COMPANY, INC.,

Defendants.

X

:

:

:

:

:

:

:

:

:

:

:

X

Action No.: 06 CV 2042 (SAS)

ECF Case

NOTICE AND ORDER
OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), the above-captioned action is hereby
dismissed without prejudice and without costs.

Dated: May 15, 2006

Respectfully submitted,
THACHER PROFFITT & WOOD LLP

Attorneys for Plaintiff Built NY, Inc.

By: al 3 2006

Leonard T. Nuara, Esq. (LN-0781)
Alan F. Kaufman, Esq. (AK-9114)
25 DeForest Avenue
Summit, New Jersey 07901
(908) 598-5700

SO ORDERED

5/16/06