

Stephen F. Roth  
Samantha M. Kameros  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, NJ 07090-1497  
Tel: 908.654.5000  
Fax: 908.654.7866

*Attorneys for Plaintiff KBS Apparel Group, Inc.*

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

KBS APPAREL GROUP, INC.,	:	
	:	Civil Action No.
Plaintiff	:	
v.	:	
	:	
FAMILY DOLLAR STORES, INC.; JOHN	:	
DOE, a fictitious entity whose present identity	:	
is unknown; and DOLLAR GENERAL	:	
CORP.,	:	
	:	
Defendants.	:	
	:	X

**COMPLAINT AND DEMAND FOR TRIAL BY JURY**

Plaintiff KBS Apparel Group, Inc., having its principal place of business at 649 Route 206, Suite 317, Hillsborough, New Jersey 08844, for its complaint, hereby alleges as follows:

**NATURE OF THE SUIT**

This is an action for patent infringement under United States law, unfair competition under New Jersey law, and other state law causes arising from defendants' improper taking and improper use of plaintiff's rights to the design and implementation of

a jacket. Such acts have injured the plaintiff, have damaged its business, and unless restrained will continue to cause such damage.

### **PARTIES**

1. KBS Apparel Group, Inc. (hereinafter "KBS") is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at 649 Route 206, Suite 317, Hillsborough, New Jersey 08844.

2. Upon information and belief, defendant Family Dollar Stores, Inc. (hereinafter "Family Dollar") is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 10401 Old Monroe Road, Charlotte, North Carolina 28201

3. Defendant John Doe is a fictitious entity whose present identity and address is unknown, who has also infringed plaintiff's rights as set forth herein, or who assisted, conspired, or otherwise cooperated with the named defendants in the acts complained of herein.

4. Upon information and belief, defendant Dollar General Corp. (hereinafter "Dollar General") is a corporation organized and existing under the laws of the State of Tennessee, having its principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072.

5. The named defendants and John Doe are hereinafter collectively referred to as "defendants."

### **JURISDICTION AND VENUE**

6. This is a civil action arising under the patent laws of the United States, Title 35 of the United States Code. This Court has original and exclusive jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has jurisdiction over KBS's claims arising under state law pursuant to 28 U.S.C. § 1338(b), as well as pendent jurisdiction over those claims.

8. This Court has supplemental jurisdiction over KBS's state law claims set forth in this complaint pursuant to 28 U.S.C. § 1367(a).

9. Defendants do business in this district, have substantial contacts with this district, direct their business to this district, and otherwise have sufficient contacts with this district to confer jurisdiction of this Court.

10. Defendants are now, and at all times relevant to this complaint have been, subject to personal jurisdiction in the State of New Jersey and the District of New Jersey.

11. Venue is proper in this district under 28 U.S.C. § 1391, as defendants do business in this district, and upon information and belief, have committed acts and sold products in this district that are the subject of this suit.

### **BACKGROUND**

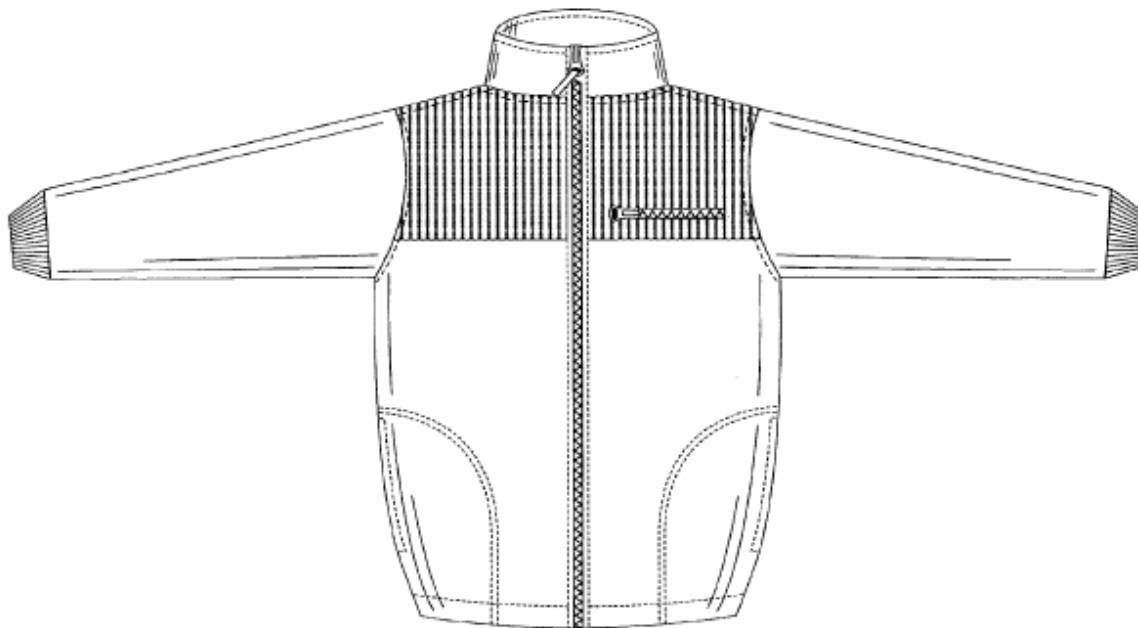
12. KBS is in the business of manufacturing and selling apparel such as jackets and hooded jackets. KBS is the owner of numerous intellectual properties including patents, trademarks, and copyrights covering its original apparel items.

13. On September 12, 2006, the United States Patent and Trademark Office issued United States Design Patent No. D527,868, entitled "Jacket" (hereinafter "the '868 Patent").

14. KBS is the owner of the entire right, title, and interest in and to the '868 Patent.

15. As implied by the title, the '868 Patent covers the ornamental appearance of a jacket. A representative drawing from the '868 Patent is displayed below:

**FIG. 1**



16. Dollar General is a retail chain that sells basic consumer goods. Prior to the damages complained of herein, KBS and Dollar General enjoyed a mutually beneficial relationship whereby KBS would present sample apparel in confidence to Dollar General,

and Dollar General would purchase the apparel products for sale in its retail stores from KBS.

17. At least as early as October 2006, KBS arranged for and attended a meeting with Dollar General for the purpose of determining whether Dollar General was interested in selling several new products conceived of by KBS, including the jackets covered by the '868 Patent, in its retail stores.

18. After the meeting, KBS sent an art board and a sample of a jacket with the design shown in the '868 Patent to Dollar General. The sample jacket was reversible; one side was quilted, and the other side was fleece. After the meeting, Dollar General retained possession of the sample jacket, for approximately two weeks, and then returned the sample jacket to KBS.

19. In accordance with the standard and customs in the industry for this type of potential business relationship, KBS and Dollar General had the customary and implicit understanding that KBS's proposals and ideas would be kept in confidence by Dollar General, and if they were adopted, KBS would be compensated for the benefits that were conferred.

20. Upon information and belief, sometime after the meeting between KBS and Dollar General, Dollar General furnished KBS's sample jacket to John Doe, a vendor of Dollar General and a competitor of KBS in the apparel manufacturing industry, so that John Doe could potentially supply Dollar General with copies of KBS's jacket for eventual sale by Dollar General.

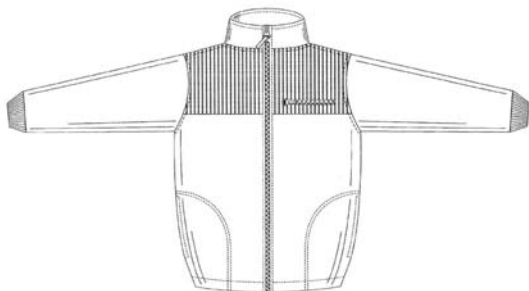
21. John Doe knew, or should have known, that the sample jacket provided to it by Dollar General was proprietary to another apparel manufacturing company.

22. Upon information and belief, John Doe copied KBS's sample jacket and sold the imitation jackets to Family Dollar, another retail chain store that sells basic consumer goods.

23. Family Dollar has sold, and continues to sell, the imitation jackets to the public in their retail stores. Photos of the jacket made by John Doe and sold by Family Dollar are reproduced below:



24. A comparison of the jackets clearly shows the identity of the jacket and the design created by KBS:



**FIRST CLAIM FOR RELIEF**

**Patent Infringement Of United States Patent No. D527,868  
(Against Family Dollar and John Doe)**

25. Family Dollar and John Doe are manufacturing, importing, advertising, marketing, selling, and/or offering for sale jackets that infringe the claim of the '868 Patent.

26. Family Dollar's and John Doe's manufacturing, importing, advertising, marketing, selling, and/or offering for sale jackets that infringe the claim of the '868 Patent is a violation of KBS's statutory rights under the United States Patent Statute (35 U.S.C. § 1 *et seq.*).

27. Upon information and belief, after a reasonable opportunity for further investigation or discovery, it is likely that KBS will develop evidentiary support that John Doe and/or Family Dollar were aware of KBS's rights to the '868 Patent, or the facts of this matter placed upon John Doe and Family Dollar a duty of reasonable and due care to determine that they did not infringe KBS's rights, which duty it did not satisfy.

28. Family Dollar and John Doe have been and are continuing to infringe the '868 Patent by manufacturing, importing, advertising, marketing, selling, and/or offering for sale jackets that infringe the claim of the '868 Patent, directly or through the use of

intermediaries, within this judicial district and elsewhere within the United States, its territories and possessions, or by inducing others to do same, or by contributing to others' infringement of the '868 Patent.

29. The aforesaid acts of Family Dollar and John Doe were committed willfully, knowingly, and in conscious disregard of KBS's rights and were with actual or constructive knowledge of KBS's '868 Patent.

30. Such conduct is willful and deliberate, thus rendering this case exceptional under 35 U.S.C. § 285.

31. The aforesaid conduct of Family Dollar and John Doe has caused KBS immediate, great and irreparable injury in its property and business, which will continue unless Family Dollar and John Doe are restrained from their wrongful acts.

32. KBS has no adequate remedy at law.

## **SECOND CLAIM FOR RELIEF**

### **Misappropriation Of Ideas (Against Dollar General)**

33. All of the foregoing allegations are incorporated by reference as though fully set forth at length herein.

34. In the course of KBS's discussions with Dollar General, KBS provided unique, concrete, and specific ideas and a sample jacket to Dollar General, which Dollar General was not aware of prior to KBS providing such information.

35. Under the circumstances outlined above, and because of the association between KBS and Dollar General, there is a contractual or fiduciary relationship implied by law between KBS and Dollar General.

36. Dollar General is liable to KBS for restitution or the value of the benefit conferred by KBS by its ideas.

37. The aforementioned acts of Dollar General constitute misappropriation of ideas contrary to the common laws of the United States and the State of New Jersey.

38. The aforesaid conduct of Dollar General was committed willfully, knowingly, maliciously, and in conscious disregard of KBS's rights.

39. The aforesaid acts by Dollar General have caused immediate and irreparable injury to KBS's property and business.

40. KBS has no adequate remedy at law.

### **THIRD CLAIM FOR RELIEF**

#### **Breach Of Contract Implied In Fact (Against Dollar General)**

41. All of the foregoing allegations are incorporated by reference as though fully set forth at length herein.

42. Implied in the relationship and course of dealing and conduct between KBS and Dollar General was the promise that KBS would be compensated for the ideas, value, methods, and services provided to Dollar General.

43. Dollar General accepted such information without compensating KBS.

44. The aforementioned acts of Dollar General constitute a breach of a contract implied in fact contrary to the common laws of the United States and the State of New Jersey.

45. The aforesaid conduct of Dollar General was committed willfully, knowingly, maliciously, and in conscious disregard of KBS's rights.

46. The aforesaid acts by Dollar General have caused immediate and irreparable injury to KBS's property and business.

47. KBS has no adequate remedy at law.

#### **FOURTH CLAIM FOR RELIEF**

##### **Common Law Unfair Competition (Against John Doe and Dollar General)**

48. All of the foregoing allegations are incorporated by reference as though fully set forth at length herein.

49. The aforementioned acts of John Doe and Dollar General constitute unfair competition and unfair business practices contrary to the common laws of the United States and the State of New Jersey.

50. The aforesaid conduct of John Doe and Dollar General was committed willfully, knowingly, maliciously, and in conscious disregard of KBS's rights.

51. The aforesaid acts by John Doe and Dollar General have caused immediate and irreparable injury to KBS's property and business.

52. KBS has no adequate remedy at law.

#### **FIFTH CLAIM FOR RELIEF**

##### **Unjust Enrichment (Against John Doe and Dollar General)**

53. All of the foregoing allegations are incorporated by reference as though fully set forth at length herein.

54. KBS provided a benefit to John Doe and Dollar General in the form of unique ideas for selling a new and patented jacket.

55. KBS expected to be paid for such benefits if they were adopted and used by John Doe and Dollar General.

56. John Doe and Dollar General have profited from KBS's ideas without compensating KBS.

57. John Doe's and Dollar General's retention of the benefits provided by KBS, without compensation to KBS, would be unjust.

58. The aforementioned acts of John Doe and Dollar General constitute unjust enrichment contrary to the common laws of the United States and the State of New Jersey.

59. The aforesaid conduct of John Doe and Dollar General was committed willfully, knowingly, maliciously, and in conscious disregard of KBS's rights.

60. The aforesaid acts by defendants have caused immediate and irreparable injury to KBS's property and business.

61. KBS has no adequate remedy at law.

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

##### **Quantum Meruit (Against John Doe and Dollar General)**

62. All of the foregoing allegations are incorporated by reference as though fully set forth at length herein.

63. As noted above, KBS provided valuable benefits to John Doe and Dollar General.

64. John Doe's and Dollar General's retention of the benefits provided by KBS without compensation to KBS would be unjust. Such compensation should be no less than the amount of the benefit provided to John Doe and Dollar General.

65. The aforesaid conduct of John Doe and Dollar General was committed willfully, knowingly, maliciously, and in conscious disregard of KBS's rights.

66. The aforesaid acts by John Doe and Dollar General have caused immediate and irreparable injury to KBS's property and business.

67. KBS has no adequate remedy at law.

#### **SEVENTH CLAIM FOR RELIEF**

##### **Breach Of Contract Implied In Law (Quasi Contract) (Against John Doe and Dollar General)**

68. All of the foregoing allegations are incorporated by reference as though fully set forth at length herein.

69. The aforementioned acts of John Doe and Dollar General constitute the breach of a quasi contract, contrary to the common laws of the United States and the State of New Jersey.

70. The aforesaid acts by John Doe and Dollar General were committed willfully, knowingly, maliciously, and in conscious disregard of KBS's rights.

71. The aforesaid acts by John Doe and Dollar General have caused immediate and irreparable injury to KBS's property and business.

72. KBS has no adequate remedy at law.

## **EIGHTH CLAIM FOR RELIEF**

### **Conversion (Against John Doe and Dollar General)**

73. All of the foregoing allegations are incorporated by reference as though fully set forth at length herein.

74. The aforementioned acts of John Doe and Dollar General constitute a conversion of KBS's property, contrary to the common laws of the United States and the State of New Jersey.

75. The aforesaid acts by John Doe and Dollar General were committed willfully, knowingly, maliciously, and in conscious disregard of KBS's rights.

76. The aforesaid acts by defendants have caused immediate and irreparable injury to KBS's property and business.

77. KBS has no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff KBS Apparel Group, Inc. demands judgment as follows:

- A. a declaration that defendants infringed United States Patent No. D527,868;
- B. a declaration that defendants willfully infringed United States Patent No. D527,868;
- C. a preliminary and permanent injunction enjoining defendants, their officers, agents, servants, employees, attorneys, and those in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from manufacturing, advertising, marketing, selling, and/or offering for sale, jackets that infringe the subject matter of United States Patent No. D527,868;

D. a monetary award to KBS in the amount of damages adequate to compensate it for defendants' infringement of United States Patent No. D527,868, but in no event less than a reasonable royalty;

E. a monetary award to KBS for infringement of design patents under 35 U.S.C. § 289;

F. a monetary award to KBS in the amount of its lost profits;

G. an order requiring defendants to pay KBS treble the amount of compensatory damages for patent infringement, pursuant to 35 U.S.C. § 284;

H. a monetary award to KBS in the amount of the actual damages sustained by it resulting from the unfair competition by defendants;

I. a monetary award of restitution to KBS in the amount that any and all of the defendants have been unjustly enriched by the defendants' actions;

J. a disgorgement of the profits made by defendants from the benefit provided by KBS;

K. an award to KBS of compensatory, consequential, and/or incidental damages;

L. an award to KBS of treble, exemplary, and/or punitive damages;

M. an award to KBS of its reasonable attorney fees and the costs of this action, and an award to KBS of its attorney fees and costs available under 35 U.S.C. § 285;

N. prejudgment and postjudgment interest on the above monetary awards; and

O. such other and further relief as this Court deems equitable and just.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), plaintiff hereby demands a trial by a jury of twelve (12) on all issues so triable.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Plaintiff KBS Apparel  
Group, Inc.*

Dated: January 4, 2008

By: s/ Stephen F. Roth  
Stephen F. Roth  
Tel: 908.654.5000  
E-mail: sroth@ldlkm.com  
[litigation@ldlkm.com](mailto:litigation@ldlkm.com)

**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither plaintiff nor plaintiff's attorney is aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject.

Dated: January 4, 2008

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Plaintiff KBS Apparel  
Group, Inc.*

By: s/ Stephen F. Roth  
Stephen F. Roth  
Tel: 908.654.5000  
E-mail: sroth@ldlkm.com  
litigation@ldlkm.com