

## CIVIL COVER SHEET

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

## I. (a) PLAINTIFFS

TBAC INVESTMENT TRUST

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

## DEFENDANTS

SWANK, INC., TARGET CORPORATION, SAKS, INC. and  
SAKS DEPARTMENT STORE GROUP

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

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

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Diane K. Lettelleir  
Winstead Sechrest & Minick  
5400 Renaissance Tower, 1201 Elm Street  
Dallas, Texas 75270  
(214) 745-5400

Attorneys (If Known)  
Paul Fields  
Darby & Darby  
805 Third Avenue  
New York, New York 10022-7513  
(212) 527-7700

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

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

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

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

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

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

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

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

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

35 U.S.C. § 271 et seq. Patent Infringement

## VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/26/2003

SIGNATURE OF ATTORNEY OF RECORD

Diane K. Lettelleir

FOR OFFICE USE ONLY

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

**FILED**

**§ §**

NOV 26 2003

CLERK, U.S. DISTRICT COURT

By \_\_\_\_\_

CIVIL ACTION NO. \_\_\_\_\_

**Defendants.**

## C. L.

## PARTIES

3. Upon information and belief, Swank is a Delaware corporation having its principle place of business located at 6 Hazel Street, Attleboro Massachusetts 02703. Upon information and belief, Swank is regularly engaged, *inter alia*, in the sale and distribution of personal accessory items and other products to retailers located in the State of Texas. Upon further information and belief, Swank has sold and distributed wallets that infringe one or more claims of the '622 patent to one or more retailers located in the State of Texas and to at least one retailer located in this judicial district. Swank may be served with process by serving its registered agent, Prentice Hall System, 800 Brazos, Austin, Texas 78701.

4. Upon information and belief, Target is a Minnesota corporation having its principle place of business located at 1000 Nicollet Mall, Minneapolis, MN 55403. Upon information and belief, Target is regularly engaged, *inter alia*, in the distribution and sale of personal accessory items and other products through retail locations in the State of Texas. Upon further information and belief, Target has distributed and sold wallets that infringe one or more claims of the '622 patent in the State of Texas and at least one retailer location in this judicial district. Target may be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

5. Upon information and belief, Saks is a corporation having its principle place of business located at 750 Lakeshore Parkway, Birmingham, Alabama 35242. Upon information and belief, Saks is regularly engaged, *inter alia*, in the sale and distribution of personal accessory items and other products to retailers located in the State of Texas. Upon further information and belief, Saks has sold and distributed wallets that infringe one or more claims of the '622 patent to one or more retailers located in the State of Texas and to at least one retailer located in this judicial district. Saks may be served with process pursuant to Tex. Civ. Prac. & Rem. Code § 17.044 through the Secretary of State's office for the State of Texas, who shall mail process to Saks's registered agent, Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203.

6. Upon information and belief, SDSG is an entity having its principle place of business located at 750 Lakeshore Parkway, Birmingham, Alabama 35211. Upon information and belief, SDSG is regularly engaged, *inter alia*, in the sale and distribution of personal accessory items and other products to retail locations in the State of Texas. Upon further information and belief, SDSG has sold and distributed wallets that infringe one or more claims of the '622 patent

through one or more retail locations in the State of Texas and through at least one retail location in this judicial district. SDSG may be served with process pursuant to Tex. Civ. Prac. & Rem. Code § 17.044 through the Secretary of State's office for the State of Texas, who shall mail process to Mr. George L. Jones its President and CEO at 750 Lakeshore Parkway, Birmingham, Alabama 35211.

### **JURISDICTION AND VENUE**

7. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a), granting the United States district courts exclusive original jurisdiction of any civil action arising under an Act of Congress relating to patents.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1400(b) because Defendants Swank, Target and Saks are corporations subject to the personal jurisdiction of the Court, and thus deemed to reside in this judicial district pursuant to 28 U.S.C. § 1391(c) and as to all Defendants because a substantial part of the events or omissions giving rise to the claim occurred in this judicial pursuant to 28 U.S.C. § 1391(b).

### **FACTS GIVING RISE TO THE CAUSE OF ACTION**

9. On December 18, 2001 Raymond Wallace Young applied for a patent on a Personal Accessory with Quick-Access. United States Patent No. 6,601,622 B1 ("the '622 patent") issued on August 5, 2003 and has been assigned to TBAC. A true and correct copy of the '622 patent is attached as Exhibit A.

10. On September 18, 2003, TBAC sent a letter to Target, notifying Target of the '622 patent.

11. On September 18, 2003, TBAC sent a letter to SDSG, notifying SDSG of the '622 patent.

12. Upon information and belief, Defendant Swank, either directly or by and through its parents, subsidiaries and/or affiliates, manufactures, imports offers for sale, and sells personal accessories. Further, upon information and belief, Swank imports personal accessories into the United States.

13. In particular, Defendant Swank has manufactured or imported and then sold and distributed one or more wallets, which is covered by one or more claims of the '622 patent, to Target, Saks and/or SDSG who in turn distributed and sold such one or more wallets at retail locations in Dallas, Texas.

14. Upon information and belief, Defendant Target, either directly or by and through its parents, subsidiaries and/or affiliates, distributed, offered for sale, and sold one or more wallets, which is covered by one or more claims of the '622 patent, at retail locations in Dallas, Texas.

15. Upon information and belief, Defendant Saks, either directly or by and through its parents, subsidiaries and/or affiliates, distributed, offered for sale, and sold one or more wallets, which is covered by one or more claims of the '622 patent, at retail locations in Dallas, Texas.

16. Upon information and belief, Defendant SDSG, either directly or by and through its parents, subsidiaries and/or affiliates, distributed, offered for sale, and sold one or more wallets, which is covered by one or more claims of the '622 patent, at retail locations in Dallas, Texas.

**COUNT ONE**  
**CLAIM FOR PATENT INFRINGEMENT**

17. TBAC herein incorporates each averment contained in Paragraphs 1 through 16 above.

18. Defendants have infringed the '622 patent in violation of 35 U.S.C. § 271(a) by making, using, importing, offering to sell and/or selling wallets that infringe one or more of the claims of the '622 patent.

19. Defendant Swank has infringed the '622 patent in violation of 35 U.S.C. § 271(b) by actively inducing others to infringe one or more claims of the '622 patent.

20. Defendants' acts constitute willful and deliberate infringement of the '622 patent because Defendants have had notice of the '622 patent at least since September 19, 2003 but have continued to offer its wallets for sale and encourage its retail distribution channels to continue to sell the infringing wallets to end consumers.

21. Defendants' infringement of the '622 patent has caused and will continue to cause irreparable injury to Plaintiff.

22. Upon information and belief, Defendants' will continue its infringement if not enjoined by this Court.

23. Unless the acts complained of above are restrained by the Court, they will continue to occur and they will continue to cause irreparable injury to Plaintiff for which there is no adequate remedy at law.

#### **JURY DEMAND**

24. Plaintiff TBAC demands trial by jury for all claims so triable.

**WHEREFORE**, Plaintiff respectfully prays that this Court grant judgment against Defendants as follows:

- (a) Declaring that Defendants have infringed the '622 patent in violation of 35 U.S.C. § 271(a);
- (b) Declaring that Defendant Swank has actively induced others to infringe the '622 patent in violation of 35 U.S.C. § 271 (b);

- (c) Declaring that Defendants have willfully infringed the '622 patent and therefore trebling the damages found or assessed as a result of such willful infringement;
- (d) Enjoining the Defendants and their parents, subsidiaries, affiliates, agents, employees and/or servants and all those acting in concert therewith, from further acts of infringement of the '622 patent under 35 U.S.C. § 283;
- (e) Ordering an accounting and an award of damages under 35 U.S.C. § 284, together with prejudgment interest and costs as fixed by the Court;
- (f) Declaring that this case is exceptional under 35 U.S.C. § 285 and therefore awarding to Plaintiff its costs and counsel fees incurred herein, or reasonable attorney's fees and costs as otherwise permitted by law;
- (g) Awarding post-judgment interest at the maximum legal rate; and
- (h) Any other or further relief that this Court deems proper.

Respectfully Submitted,



Diane K. Lettelleir SBN 12241525  
Jonathan N. Geld SBN 00796620  
WINSTEAD SECHREST & MINICK P.C.  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270-2199  
Telephone: (214) 745-5400  
Facsimile: (214) 745-5390

**ATTORNEYS FOR PLAINTIFF**

DALLAS\_1\3898504\1  
13171-5 11/26/2003