



October 30, 2013

Via FedEx

Target Corporation
1000 Nicollet Mall
Minneapolis, MN 55403
Phone: (612) 304-6073
ATTN: Legal Department and/or Timothy Baer, Esq. – General Counsel

Via FedEx

Hanesbrands Inc. d/b/a Champion
1000 E. Hanes Mill Road
Winston-Salem, NC 27105
Phone: (336) 519-2299
ATTN: Legal Department and/or Joia Johnson, Esq. – General Counsel

**Re: Target Corporation and Hanesbrands Inc. d/b/a Champion --
Notice of Design Patent Infringement**

Dear Sir/Madam or Mr. Baer and Ms. Johnson:

Our firm represents lululemon athletica canada inc. (hereinafter “lululemon”) of Vancouver, BC, Canada, in connection with its intellectual property rights, and in particular, its patent rights. lululemon is a designer and manufacturer of innovative athletic apparel for yoga, running and most other athletic and athletic-related pursuits. Relevant examples of two of our client’s products are the No Limits Tank for which we direct your attention to our client’s website at <http://shop.lululemon.com/products/clothes-accessories/tanks-light-support/No-Limit-Tank-32275> and the Practice Freely Tank, not currently in stores, but which you can see in one of the pictures on the following webpage <http://www.lululemon.com/community/blog/find-the-yoga-tank-for-you/?sli=1>.

Our client has been selling these tanks across the United States and in Canada since late 2009, at its lululemon athletica stores. Such stores are located in at least 45 states, including, but not limited to locations in New Jersey and New York. lululemon’s tanks are also available in numerous countries worldwide through lululemon’s online store, and strategic sales partners.

Our client's tank design related to the No Limits Tank and the Practice Freely Tank is unique. In fact, lululemon has received United States Design Patent No. D654,665S (hereinafter "the '665 patent"), issued on February 28, 2012, providing patent protection for this innovative tank design. A copy of the issued '665 patent is enclosed herewith.

It has recently come to our client's attention that Target Corporation is having produced for it by Hanesbrands Inc. and sold under the Champion brand (hereinafter Target and Hanesbrands d/b/a Champion collectively referred to as "you" or "your"), and is otherwise promoting, offering for sale, selling and/or importing an item named "C9 by Champion® Women's Layered Tank with Bra – Assorted Colors" (hereinafter "C9 items" or "infringing items"). Copies of Target's website pages showing Target's promotion and sale of the infringing items, as well as customer reviews posted on Target's website observing that the infringing item "looks just like", "is just like", and/or is "exactly like" (*i.e.*, have the same design as) one or more products of lululemon, are enclosed with this letter. From the tags of the C9 items, it is clear that Hanesbrands Inc. is having these infringing items made in Vietnam and then importing them into the United States for sale by Target under the Champion brand. Also enclosed with this letter are screenshots from two third-party websites comparing the C9 infringing items to our client's tanks. Specifically, the first website says that the C9 item is "a copy of the popular Lululemon tank that all the girls are wearing", and the second website is recommending the C9 infringing item to consumers because it is like lululemon's No Limits Tank and the Practice Freely Tank, especially because the "sports bra [is] showing and the little bit of skin [is] showing on the side".

The design of the C9 items (the "C9 design") fall squarely within the scope of protection provided to our client by its '665 patent. For example, both the patented design and your C9 design have at least the following significant elements that make the designs as a whole substantially the same to the ordinary observer:

1. A loose, outer tank over an inner and attached bra element;
2. The bra element showing from the front, back and sides of the tank; and
3. A waistband at the bottom of the loose, outer tank.

As such, the subject acts by your companies of making, importing, offering for sale and selling your C9 items are in violation of the rights granted to our client under the '665 patent, pursuant to the Patent Laws of the United States, 35 U.S.C. §101 *et seq.*

On behalf of our client, we hereby place you **ON NOTICE** of the subject U.S. patent infringements, and call upon each of your companies to **immediately cease and desist** all such wrongful activities, including but not limited to, manufacturing, having manufactured for you, importing, promoting, marketing, supplying, offering for sale and/or selling any items that infringe the rights of our client under the '665 patent, including but not limited to, garments bearing your C9 design.

lululemon also owns corresponding, valuable patent rights in Canada under Canadian Design Patent No. 136,782, registered on March 14, 2011, for which we also herein put your companies ***ON NOTICE***, should we later determine that you have also been selling, or otherwise infringing, our client's rights in Canada. A copy of the issued Canadian patent is also enclosed herewith.

While our client is willing to resolve this matter in an amicable manner, our client is steadfast in its intent to protect its rights in the above patents. As such, if such an amicable approach is undertaken by the parties, but does not bear fruit relatively quickly, or if we do not hear back from you of your willingness to resolve this amicably, then our client has authorized us to commence legal proceedings against your companies, and any customers we might later determine have purchased and/or sold the infringing goods, in either of the United States District Courts for the District of New York or New Jersey. In addition, our client would likely further investigate your activities in Canada, and if found to be infringing their Canadian patent, would likely also take action against such infringements in Canadian court(s). In any such litigations, and certainly in the U.S. litigation, we will seek on behalf of our client all available remedies, including an injunction, damages and attorneys' fees which might be available to our client against your companies, especially for any continuing, and therefore willful, infringing acts; including, but not limited to, those occurring after your receipt of this letter.

In the spirit of the above attempt to amicably resolve this matter without the need of costly litigation, possibly in two separate countries, we will look to receive from your companies the following representations, documents and information, by or before **5:00 P.M., EST, on Friday, November 15, 2013:**

- A. Representations that your companies will immediately cease all marketing and sales activities associated with any infringing items in the United States and Canada, and represent to us that this has been done and that you will not recommence the subject activities;
- B. Representations that you will immediately cease all manufacturing, production, importing and/or supplying of any infringing items to the United States and Canada, and represent to us that this has been done and that you will not recommence the subject activities;
- C. Remove any and all such infringing items from all of your companies' stores, if any, and from their website(s), catalogs and all other manner of displaying or offering such items for sale, including recalling any such infringing display material from all sales representatives;
- D. Immediately cease all means of advertising and promoting any goods and/or services of Target, Champion and/or Hanesbrands Inc. using any of the infringing items, including, but not limited to, taking down any websites or the portion of any websites bearing the infringing items, and which are under your companies' possession and/or control;

- E. Agree to issue a joint press release with our client stating essentially as follows:

Champion's and/or Hanesbrands' "C9 by Champion® Women's Layered Tank with Bra – Assorted Colors" sold by Target infringes upon the design patent rights of lululemon athletica canada inc. of Vancouver, BC, Canada, in its U.S. Pat. No. D654,665S and Canadian Patent No. 136,782. As such, we will no longer be manufacturing and then selling this item in the United States or Canada. If you desire a garment like our C9 garment, we suggest you look to lululemon athletica canada inc. and their No Limits Tank and Practice Freely Tank garments.

- F. Produce to us all documents in the possession, custody or control of Target, Champion and/or Hanesbrands Inc., regarding the creation of the infringing items;
- G. If Target, Champion and/or Hanesbrands Inc. did not create the infringing items, identify your source(s) of the infringing items by name, address, contact person, phone/fax numbers and email address;
- H. If Champion/Hanesbrands Inc. is not the only supplier and/or manufacturer involved, identify the other of your companies' supplier(s)/manufacturer(s) of the infringing items by name, address, contact person, phone/fax numbers and email address;
- I. Forward to us copies of all purchases orders by your companies to your companies' supplier(s)/manufacturer(s), and all of the invoices and bills of lading from your companies' supplier(s)/manufacturer(s) to your companies: (1) for past, already filled orders for any infringing item(s); and (2) for pending, unfilled orders, of any such infringing item(s);
- J. Indicate to us the remaining quantity of any infringing items in inventory or otherwise under your companies' control, and agree to turn these items over to our client;
- K. Indicate to us the quantity of such infringing items that are on order to your supplier(s)/manufacturer(s) and/or en route to your companies from its supplier(s)/manufacturer(s); and
- L. Representations that you will enter into a written agreement with our client relating to the accusations of this letter and the above representations, documents and information, and wherein you agree to liquidated damages for any future infringements of either of our client's above patents in the amount of US\$50 per infringing garment.

Target Corporation and Timothy R. Baer, Esq.
Hanesbrands Inc. d/b/a Champion and Joia M. Johnson, Esq.
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We look forward to receiving your above representations, documents and information by the **November 15, 2013** deadline. Failing this, our client will thereafter require production of documents sufficient to account for all of your sales of the infringing items in both the U.S. and Canada, along with your agreement to then compensate our client for the greater of either its lost sales or your profits on the sale of these infringing items.

Nothing in this letter is meant as any type of waiver or relinquishment of any rights, causes of action or defenses our client may have in this matter, this letter being solely for notification and dispute resolution purposes.

Very truly yours,

PERGAMENT GILMAN & CEPEDA LLP



Michael R. Gilman

MRG/lkm
Enclosures

c: lululemon athletica canada inc. (via email w/o enclosures)

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The
United
States
of
America



**The Director of the United States
Patent and Trademark Office**

Has received an application for a patent for a new, original, and ornamental design for an article of manufacture. The title and description of the design are enclosed. The requirements of law have been complied with, and it has been determined that a patent on the design shall be granted under the law.

Therefore, this

United States Patent

Grants to the person(s) having title to this patent the right to exclude others from making, using, offering for sale, or selling the design throughout the United States of America or importing the design into the United States of America for the term of fourteen years from the date of grant of this patent, subject to any disclaimer under 35 U.S.C. 253.

David J. Kappas

Director of the United States Patent and Trademark Office



US00D654665S

(12) **United States Design Patent**
Lam(10) **Patent No.:** **US D654,665 S**(45) **Date of Patent:** **** Feb. 28, 2012**(54) **TANK TOP**(75) **Inventor:** **Jennie P. Lam, Vancouver (CA)**(73) **Assignee:** **Lululemon Athletica Canada Inc.,
Vancouver (CA)**(**) **Term:** **14 Years**(21) **Appl. No.:** **29/368,004**(22) **Filed:** **Aug. 17, 2010**(51) **LOC (9) Cl.** **02-02**(52) **U.S. Cl.** **D2/840**(58) **Field of Classification Search** **D2/717,
D2/724, 725, 749-751, 755, 828, 830-834,
D2/836, 839-841, 844, 845, 847, 849, 779;
2/90, 93, 95-98, 106, 108, 115, 116**
See application file for complete search history.(56) **References Cited****U.S. PATENT DOCUMENTS**

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* cited by examiner

Primary Examiner — Rashida Johnson(74) *Attorney, Agent, or Firm* — Joseph Connely;
McCarthy Tetrault LLP(57) **CLAIM**

The ornamental design for a tank top, as shown and described.

DESCRIPTION

FIG. 1 is a front view of a tank top according to a first embodiment of the design;
FIG. 2 is a rear view thereof;
FIG. 3 is a left side view thereof;
FIG. 4 is a right side view thereof;
FIG. 5 is a front perspective view thereof;
FIG. 6 is a front view of a tank top according to a second embodiment of the design;
FIG. 7 is a rear view thereof;
FIG. 8 is a left side view thereof;
FIG. 9 is a right side view thereof; and,
FIG. 10 is a front perspective view thereof.

The symbol depicted in FIGS. 2 and 4 forming part of the claimed design is a registered trademark of Lululemon Athletica Canada Inc.

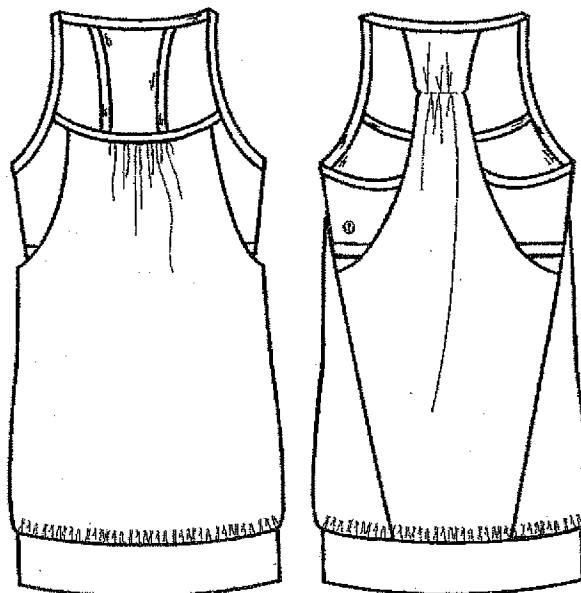
1 Claim, 10 Drawing Sheets

FIG. 1

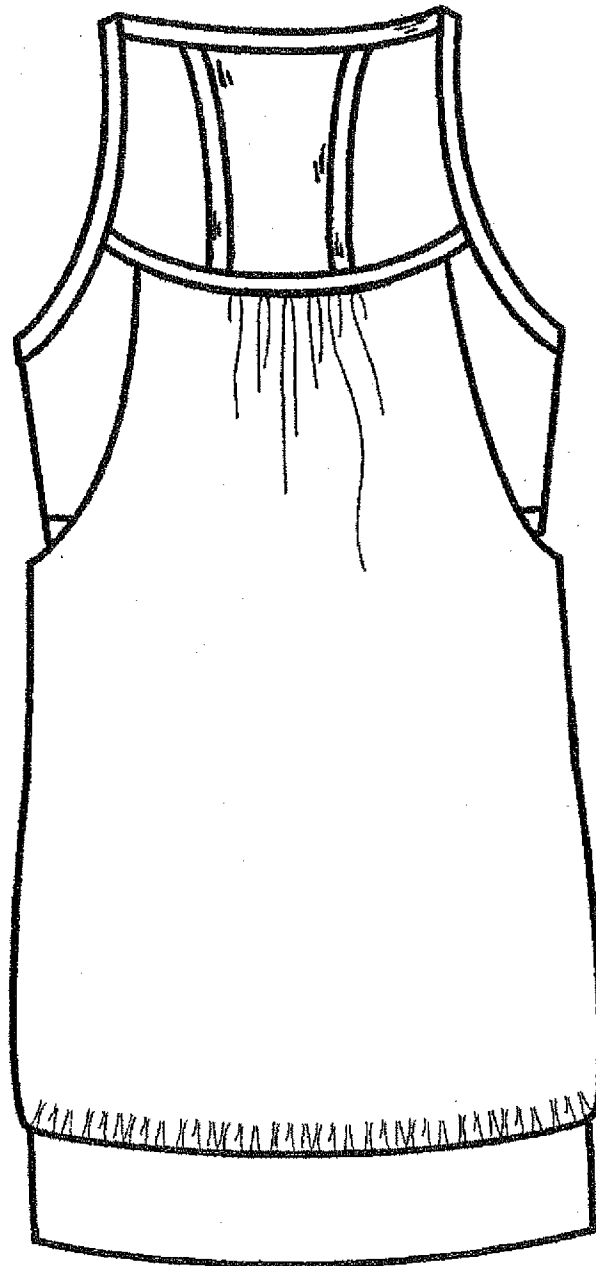


FIG. 2

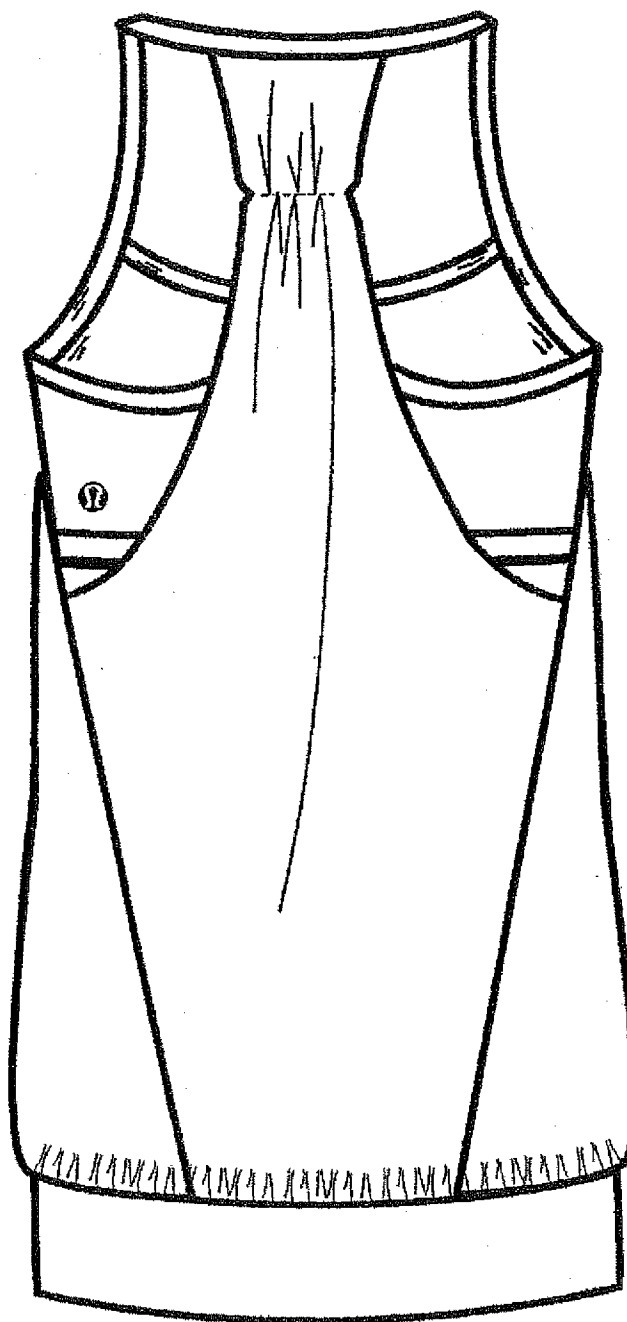


FIG. 3

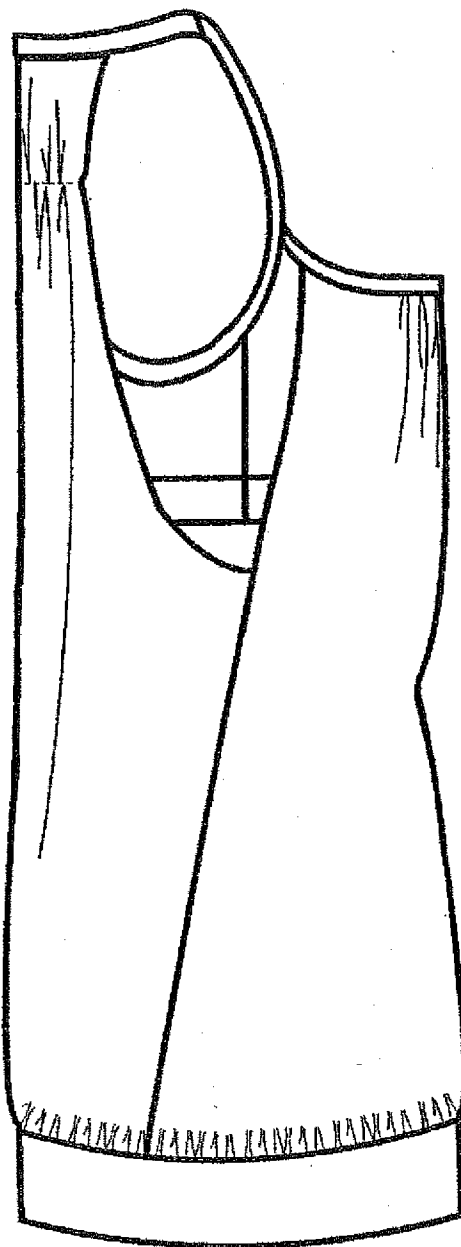


FIG. 4

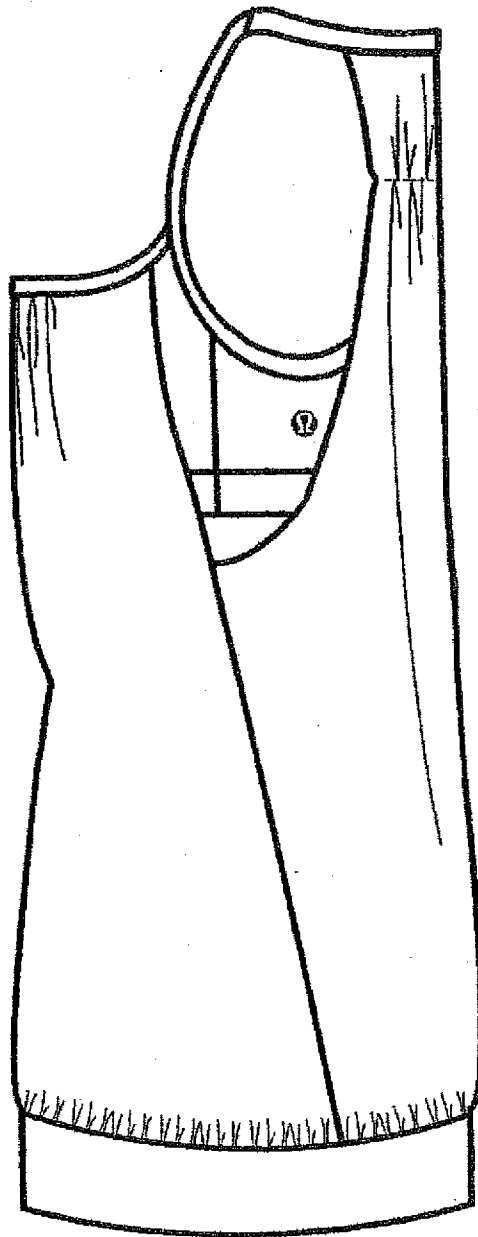


FIG.5

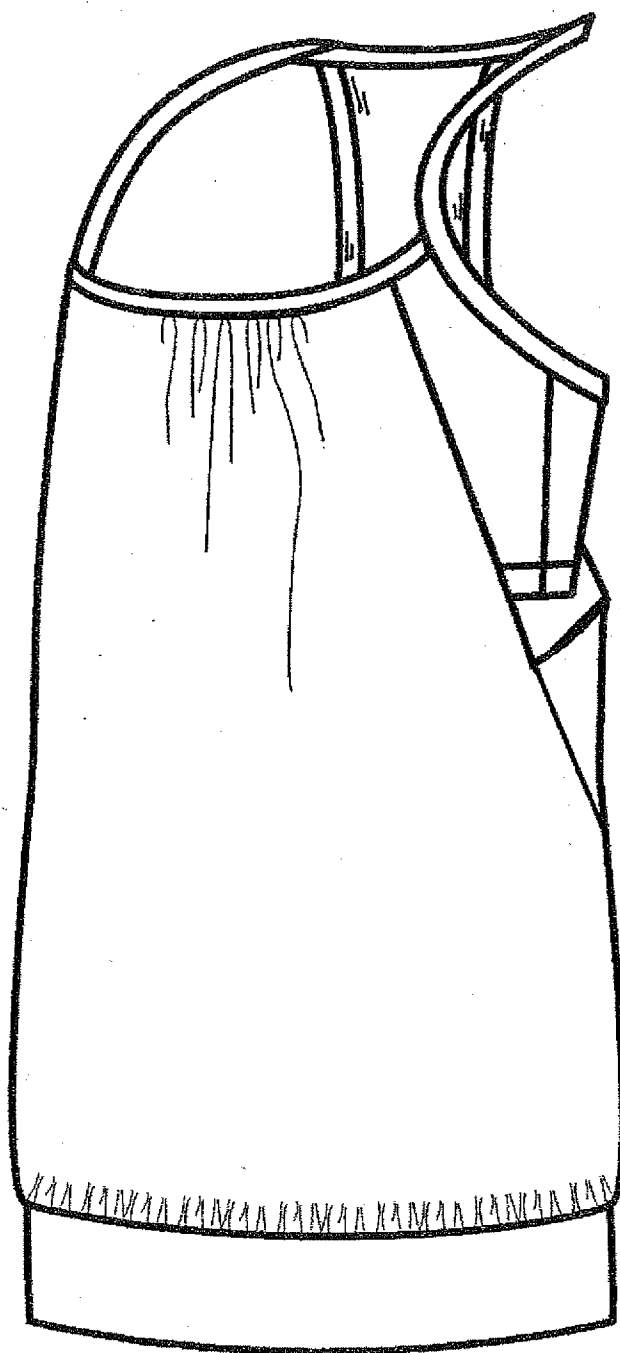


FIG. 6

