IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

HONUS WAGNER COMPANY, Plaintiff, v. HILLERICH & BRADSBY CO. and WILSON SPORTING GOODS CO., Defendants,	Case Number: 0:15-cv-61963-WPD

FIRST AMENDED COMPLAINT

Plaintiff Honus Wagner Company, by and through its attorney, Elliot Zimmerman, BCS, P.A., sues Defendant Hillerich & Bradsby Co. (sometimes hereinafter referred to as "Hillerich") and Defendant Wilson Sporting Goods Co. (sometimes hereinafter referred to as "Wilson"), both jointly and severally hereinafter referred to as "Defendants," timely files this, its First Amended Complaint, pursuant to the Fed. R. Civ. P., Rule 15 (a) (1) (B) as a Matter of Course within 21 days after service of Defendant's responsive pleading on or about October 14, 2015, to-wit, Defendant's Answer and Affirmative Defenses to the Complaint [DE 9], and further alleges:

INTRODUCTION

1. More than eighty-six (86) years ago, Plaintiff Honus Wagner Company acquired any and all rights to the Honus Wagner name and brand for commercial and advertising purposes.

2. For most fans of baseball history, Johannes Peter "Honus" Wagner ("Honus Wagner") represents one of the most respected and mythic figures the game has ever known. The "Flying Dutchman" spent all but three seasons of his 21 year major league career playing

shortstop for the Pittsburgh Pirates before becoming an inaugural inductee to the Baseball Hall of Fame in 1936.

3. Honus Wagner Company, now a Florida corporation, was initially formed in Pennsylvania by Honus Wagner in 1922, after his retirement. To date, Honus Wagner Company continues to sell a wide variety of sporting good items, including but not limited to baseballs, baseball bats, and tee shirts.

4. In 1929, the Honus Wagner Company along with the use of Honus Wagner's name, mark, likeness, and identity, was bought by E. L. Braunstein ("Braunstein").

5. In 1933, Wagner brought suit against the Honus Wagner Company, et al., asking for an accounting of sales of sporting goods made in the three years since he had contracted the use of his name, mark, likeness, and identity.

6. Wagner also claimed personal injury citing newspaper ads indicating he had sold his store because he was forced to liquidate due to financial distress. He also believed he was owed $8,000 from sales made and wanted to stop the use of his name, likeness, mark, and identity altogether.

7. Wagner's suit detailed his successful 21 year baseball playing career and claimed that his brand was a valuable commodity. Wagner wanted the judge to essentially give him back his name, mark, likeness, identity, and reputation for his sole use.

8. The final decree, attached hereto as Exhibit "A," rendered on August 21, 1934 by the Court of Common Pleas of Allegheny County, Pennsylvania, Case No. 3326, July Term, 1933, refused Wagner's attempt to reclaim his name, mark, likeness, and identity. The Court found that "the right to the exclusive use of the name 'Honus Wagner' for all commercial and advertising purposes is vested in the ... Honus Wagner Company ... their heirs, executors,

administrators, successors and assigns." This was based on Braunstein having bought the assets, as well as a contract Wagner had signed in January, 1929. The judge believed that Wagner's contract was clear and that no evidence had been proffered indicating any breach.

9. Wagner lived the remainder of his life in Pittsburgh, where he was well known as a friendly figure around town. He died on December 6, 1955 at the age of 81, and he is buried at Jefferson Memorial Cemetery in the South Hills area of Pittsburgh.

10. Honus Wagner Company prospered with Mr. Braunstein and his son-in-laws running it. They expanded to 10 stores in the 1930s and 40s, which were reduced to seven and then three after the 1960s.

11. In 1969, two years after Braunstein's passing, his son-in-law Murray Shapiro acceded to the ownership of Honus Wagner Company.

12. The company was highly successful and engaged in interstate as well as international commerce.

13. The physical store was closed March 21, 2011 because of the economy and Point Park University buying up most of downtown Pittsburgh.

14. On or about the 18th day of May, 2011, the Allegheny County Council of Pennsylvania officially filed a Proclamation, hereto attached as Exhibit "B," resolving that:

> "… Allegheny County Council, on behalf of the citizens of Allegheny County, commends the Honus Wagner Co. and the Shapiro family for providing a reliable and welcoming sports memorabilia store to the citizens of Allegheny County for 93 years. The store became an icon of Pittsburgh retail business, and along with the Shapiro family, it will forever be engrained in the memory of citizens of this community as one of the great entities that defines the character of Pittsburgh and Allegheny County."

15. Murray Shapiro died April 20, 2012 and ownership of Honus Wagner Company was passed to his daughter who then transferred it to her brother Allen Shapiro. At that time,

Allen Shapiro moved the Honus Wagner Company's principal place of business to Florida and has been transitioning the physical store to the World Wide Web. It is now online at www.HonusWagner.biz.

16. On or about April 16, 2014, Plaintiff filed two applications for registration of the mark HONUS WAGNER in the United States Patent and Trademark Office ("USPTO") on an actual use in interstate commerce (1A) basis. The first application was for International Class 35 as an on-line retail store featuring sporting goods, and the second was for International Classes 25 & 28 for baseballs, baseball bats, and tee shirts. The following are print-outs of the current status of those applications.

a) PLAINTIFF'S FIRST APPLICATION IN INTERNATIONAL CLASS 35 FOR ON-LINE RETAIL STORE SERVICES FEATURING SPORTING GOODS

HONUS WAGNER

Word Mark	**HONUS WAGNER**
Goods and Services	IC 035. US 100 101 102. G & S: On-line retail store services featuring sporting goods. FIRST USE: 19281228. FIRST USE IN COMMERCE: 19290121
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86253890
Filing Date	April 16, 2014
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Honus Wagner Company CORPORATION FLORIDA 3032 East Commercial Blvd. Fort Lauderdale FLORIDA 33308
Attorney of Record	Elliot Zimmerman

Type of Mark	SERVICE MARK
Register	PRINCIPAL
Other Data	The name Honus Wagner does not identify a living individual.
Live/Dead Indicator	LIVE

b) <u>PLAINTIFF'S SECOND APPLICATION IN INTERNATIONAL CLASSES 25 (TEE SHIRTS) & 28 (BASEBALLS & BASEBALL BATS)</u>

HONUS WAGNER

Word Mark	**HONUS WAGNER**
Goods and Services	IC 025. US 022 039. G & S: Tee shirts. FIRST USE: 19281228. FIRST USE IN COMMERCE: 19290121 IC 028. US 022 023 038 050. G & S: Baseball bats; Baseballs. FIRST USE: 19281228. FIRST USE IN COMMERCE: 19290121
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86254025
Filing Date	April 16, 2014
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Honus Wagner Company CORPORATION FLORIDA 3032 East Commercial Blvd. Fort Lauderdale FLORIDA 33308
Attorney of Record	Elliot Zimmerman
Type of Mark	TRADEMARK
Register	PRINCIPAL
Other Data	The name Honus Wagner does not identify a living individual.
Live/Dead Indicator	LIVE

17. At or about that time, Plaintiff discovered that on or about June 6, 2011, Defendant Hillerich previously applied to register the mark HONUS WAGNER in the USPTO on an intent to use basis (1B) in International Class 28 for its baseball bat. The following is a print-out of the current status of that application:

Honus Wagner

Word Mark	**HONUS WAGNER**
Goods and Services	IC 028. US 022 023 038 050. G & S: Baseball bats. FIRST USE: 20141100. FIRST USE IN COMMERCE: 20141100
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85339375
Filing Date	June 6, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	November 15, 2011
Owner	(APPLICANT) Hillerich & Bradsby Co. CORPORATION KENTUCKY 800 West Main Street Louisville KENTUCKY 40202
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Julie Ann Gregory
Type of Mark	TRADEMARK
Register	PRINCIPAL
Other Data	The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.
Live/Dead Indicator	LIVE

18. As a result of Defendant Hillerich's application, both of Plaintiff's applications were suspended by the USPTO.

19. Defendant Hillerich extended the time to file its Statement of Use five (5) times, over a period of more than three (3) years after its initial application, before finally filing same on or about January 2, 2015.

20. Still actively seeking registration of Plaintiff's mark HONUS WAGNER, on July 17, 2015. Defendant Hillerich, responded to the USPTO's first "SECTION 2(a) REFUSAL" of its application. On or about August 3, 2015, the USPTO issued its second "SECTION 2(a) REFUSAL" of Defendant Hillerich's application for registration of the mark HONUS WAGNER as follows:

> *"As discussed with applicant's attorney, applicant must submit contract evidence or third party evidence showing that HONUS WAGNER endorsed applicant's goods during his lifetime in order to overcome the refusal.*
>
> Accordingly, the refusal is continued and maintained. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see* TMEP §1203.03, (c). *See generally Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).
>
> Applicant has submitted evidence from its own website to show the connection between HONUS WAGNER and applicant. However, such evidence is not persuasive or impartial. Evidence from impartial third parties (e.g., newspapers) that show endorsement/sponsorship of the claimed goods existed during Mr. Wagner's lifetime or a contract between HONUS WAGNER and applicant may suffice.
>
> Regarding applicant's rights of publicity assertions, this refusal is directed to trademark rights based on what appears to be a false connection and not the rights of publicity. The earlier attached evidence appears to show that another party has exclusive rights to use the mark, but applicant may overcome this refusal by showing probative evidence of a connection.

/Q Queen/
Examining Attorney
Law Office 111
571-272-6695
Esther.Queen@uspto.gov"

To date, Defendant Hillerich has not withdrawn or assigned its application and has several months to reply to the latest said USPTO refusal, *supra*.

Plaintiff hereby pleads, with the same force and effect as if fully set forth hereat, the status and all documents at the USPTO with respect to Defendant's aforestated application (http://tsdr.uspto.gov/#caseNumber=85339375&caseSearchType=US_APPLICATION&caseType=SERIAL_NO&searchType=statusSearch) and Plaintiff's applications (http://tsdr.uspto.gov/#caseNumber=86253890&caseSearchType=US_APPLICATION&caseType=SERIAL_NO&searchType=statusSearch and http://tsdr.uspto.gov/#caseNumber=86254025&caseSearchType=US_APPLICATION&caseType=SERIAL_NO&searchType=statusSearch).

21. Notwithstanding the refusal, Defendants have used and continue to use Plaintiff's mark "HONUS WAGNER to sell, offer for sale and advertise Defendants' products over the internet at www.slugger.com, http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797, and http://www.slugger.com/search/products?q=HONUS+WAGNER to customers in the Southern District of Florida, and more generally, throughout the United States and the world. Additionally, the very same products sold, offered for sale, and/or advertised by Defendants' at the foregoing websites listed under "HONUS WAGNER" are sold, offered for sale, and/or advertised at brick and mortar stores here in the Southern District of Florida, and, more generally, throughout the United States and the world.

22. As a result thereof, Plaintiff Honus Wagner Company filed this action.

23. This action is necessary to stop Defendants' use of infringing marks and to prevent any further harm to Honus Wagner Company's reputation and the good will associated with its marks. It is also necessary to redress confusion in the marketplace and among the trade.

24. Accordingly, in this action, Plaintiff Honus Wagner Company seeks relief for i) Unfair Competition under 15 U.S.C. § 1125(a) of the Lanham Act; ii) False Advertising under 15 U.S.C. § 1125(a) of the Lanham Act; iii) Trademark Dilution by Blurring under 15 U.S.C. § 1125(c) of the Lanham Act; iv) Trademark infringement under Florida Common Law; v) Unfair Competition under Florida Common Law; and vi) Violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.204 *et seq.*

25. This action seeks damages, treble damages, statutory damages, lost profits, Defendants' profits, punitive damages, attorneys' fees and costs, prejudgment interest, and injunctive relief to permanently enjoin Defendants from their ongoing unlawful activities.

THE PARTIES

26. Defendant Hillerich & Bradsby Co. is a Kentucky corporation with its principal place of business at P O Box 35700, 800 W Main St, Louisville, KY 40232. The registered agent of record for service of process is National Registered Agents, Inc., 306 W. Main Street, Suite 512, Frankfort, KY 40601.

27. Defendant Wilson Sporting Goods Co. is an Illinois corporation with its principal place of business at 8750 West Bryn Mawr Avenue, Chicago, IL 60631. The registered agent of record for service of process is CT Corporation System, 208 South LaSalle St., Suite 814, Chicago, IL 60604.

28. Plaintiff Honus Wagner Company is a Florida corporation with its principal place

of business at 3032 East Commercial Blvd., Fort Lauderdale, FL 33308.

29. Defendant Hillerich & Bradsby Co. has at all material times hereto been and is presently listed as the applicant/owner according to the USPTO records of Application Serial No. 85339375 for the mark HONUS WAGNER, *supra*.

30. Defendant Hillerich & Bradsby Co. is asserted to be the owner of the HONUS WAGNER trademarks appearing on www.slugger.com, http://www.slugger.com/search/products?q=HONUS+WAGNER, and http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797 websites, where Defendants market their goods and services. See Exhibits "C" and "D." Additionally, each and every page on the aforementioned websites bears the following copyright notice: "© Copyright 2015 Hillerich & Bradsby, All Rights Reserved"

31. Prior to April 15, 2015, Defendant Hillerich is asserted to be the owner of the domain names www.slugger.com, www.sluggergifts.com, http://www.slugger.com/search/products?q=HONUS+WAGNER, and http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797, that are interactive, commercial websites where Defendants market, sell, offer for sale and advertise their goods and services, which Plaintiff alleges infringe its mark "HONUS WAGNER."

32. After April 15, 2015, Wilson Sporting Goods Co. is asserted to be the owner of the domain names www.slugger.com, www.sluggergifts.com, http://www.slugger.com/search/products?q=HONUS+WAGNER and http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797, that are interactive, commercial websites where Defendants market, sell, offer for sale and

advertise their goods and services, which Plaintiff alleges infringe its mark "HONUS WAGNER."

33. Upon information and belief, Defendants have entered into an agreement with respect to the mark *Louisville Slugger*. Newspaper articles contend that Defendant Wilson acquired rights to *Louisville Slugger* from Defendant Hillerich for approximately Seventy Million Dollars ($70,000,000.00). Although Plaintiff is not privy to said agreement, upon information and belief, Defendants are partners with respect to the manufacture and distribution of *Louisville Slugger* bats (Wilson allegedly exclusively distributing bats manufactured by Hillerich, who, in turn, would exclusively manufacture same for Wilson). Upon information and belief, Defendant Hillerich retains trademarks and copyrights as is evidenced by its above referenced live application for trademark of HONUS WAGNER and its above referenced copyright notice ("© Copyright 2015 Hillerich & Bradsby, All Rights Reserved") on each and every page of www.slugger.com, http://www.slugger.com/search/products?q=HONUS+WAGNER and http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797. See ¶ 30, *supra*. Plaintiff contends that in all respects, Defendants act in concert with respect to *Louisville Slugger*.

JURISDICTION

34. This Court has subject matter jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331, 1332, 1338, and 15 U.S.C. §§ 1121 and 1125 et seq. because this Complaint alleges violations of federal law under the Lanham Act. This Court has jurisdiction over Plaintiff's state law claims under 28 U.S.C. §§ 1338(b) and 1367.

35. This Court has personal jurisdiction over Defendants under Fla. Stat. § 48.193 (1)

because they operate, conduct, engage in, or carry on a business or business venture in this state or have offices or agencies in this state.

36. This Court has personal jurisdiction over Defendants under Fla. Stat. § 48.193 (2) because the tortious actions alleged occurred in Florida, including without limitation, by and through their sales, solicitations, advertisements here and through the websites www.slugger.com, www.sluggergifts.com, http://www.slugger.com/search/products?q=HONUS+WAGNER, and http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797.

37. This Court has personal jurisdiction over Defendants under Fla. Stat. §§ 48.193 (6) (a) & (b) because the tortious actions alleged, including without limitation, by and through their sales, solicitations, advertisements and through brick and mortar stores and the websites www.slugger.com, www.sluggergifts.com, http://www.slugger.com/search/products?q=HONUS+WAGNER, and http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797, caused injury to persons or property within this state arising out of an act or omission by the Defendants outside this state, and at or about the time of the injury, either:

a. The Defendants were engaged in solicitation or service activities within this state; or

b. Products, materials, or things processed, serviced, or manufactured by the Defendants anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

VENUE

38. Venue is proper in this District pursuant to § 28 U.S.C. 1391 (b) (2) because a substantial part of the events or omissions giving rise to the claim occurred here, or a substantial part of property that is the subject of the action is situated here. Plaintiff is aware of sales made

over the internet and brick and mortar stores in this District of products listed under "HONUS WAGNER" at Defendants' websites listed in ¶ 21, *supra*. See Affidavit of Mitchell T. McRae, Esq. hereto attached as Exhibit "E" and Affidavit of Mark P. Bockstein, Esq. attached hereto as Exhibit "F." Additionally, the products listed at Defendants' aforementioned websites under "HONUS WAGNER" are not only sold, offered for sale, and/or advertised over the internet by Defendants, but also at brick and mortar stores (Sports Authority, Dick's Sporting Goods, and more) located in this District, throughout Florida, the United States, and the world. See Exhibit "G." Defendant Hillerich admits selling six (6) bats under "HONUS WAGNER." See Declaration of Anne Jewell [DE 8-2, ¶ 6].

39. Alternatively, if there is no district in which this action may otherwise be brought as provided under § 28 U.S.C. 1391 (b) (1) or (2), venue is proper in this District pursuant to § 28 U.S.C. 1391 (b) (3) because, as aforesaid, *supra*, Defendants are subject to this Court's personal jurisdiction with respect to this action.

HONUS WAGNER COMPANY WORLD REKNOWN FAMOUS SPORTING GOODS COMPANY

40. Honus Wagner Company provides education and information to consumers, as well as product consultants to assist consumers in the field of sporting goods.

41. Honus Wagner Company is continuously developing new products and services, and continues to expand its offerings.

42. As Honus Wagner Company's business grows, it also protects and actively polices its trademarks and other intellectual property.

43. Honus Wagner Company has applied for the marks listed in paragraph 16 *supra* at the USPTO.

44. Honus Wagner Company continuously uses the trade name "HONUS

WAGNER." This is also a trademark and service mark that is protected under the Lanham Act and common law.

45. Honus Wagner Company owns and uses the internet domain www.HonusWagner.biz in addition to other domain names incorporating its brand.

46. Since its inception, Honus Wagner Company has made systematic and continuous use of these trademarks, service marks, trade names, and domain names (collectively "Honus Wagner Company Marks," and/or "Honus Wagner Company's Marks" and/or "Marks" and/or "Mark") throughout the United States, including the Southern District of Florida.

47. Honus Wagner Company has invested substantial sums to market its goods and services under the Honus Wagner Company Marks to a broad general market across the US. It advertises online, in print, through affiliate networks, by email marketing campaigns, sample programs, and special promotions.

48. Through these successful marketing efforts and extensive sales across the US, the Honus Wagner Company Marks have become distinctive and are immediately associated by the consuming public with Honus Wagner Company.

49. Prior to Defendants' recent entry into the market, the Honus Wagner Company Marks had become famous as a result of their distinctiveness, the duration and extent of their use in interstate commerce, the extent of the advertising and publicity that employed the Honus Wagner Company Marks, the geographic scope of the advertising and publicity, the volume and geographic extent of the sales of goods and services under the Honus Wagner Company Marks.

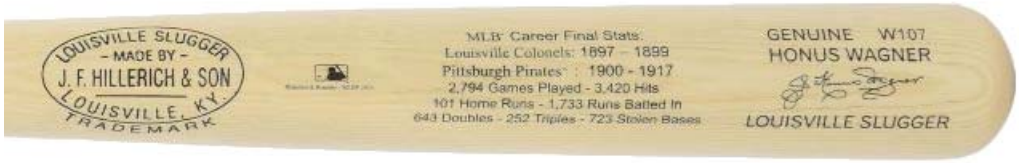
50. Because of Honus Wagner Company's status as an innovator in the industry, its reputation for quality products and services, and its distinctive Honus Wagner Company Marks, these Honus Wagner Company Marks have built up tremendous good will and are of significant

value.

51. Sometime in 2015, after Honus Wagner Company was well established in the industry, Defendants took Honus Wagner Company's distinctive and famous HONUS WAGNER Marks and began marketing similar products and services under same. In support thereof, the following are excerpts from Defendants' web pages (as screen shot on or about November 17, 2015). The entire pages are attached hereto as Exhibits "C" and "D."

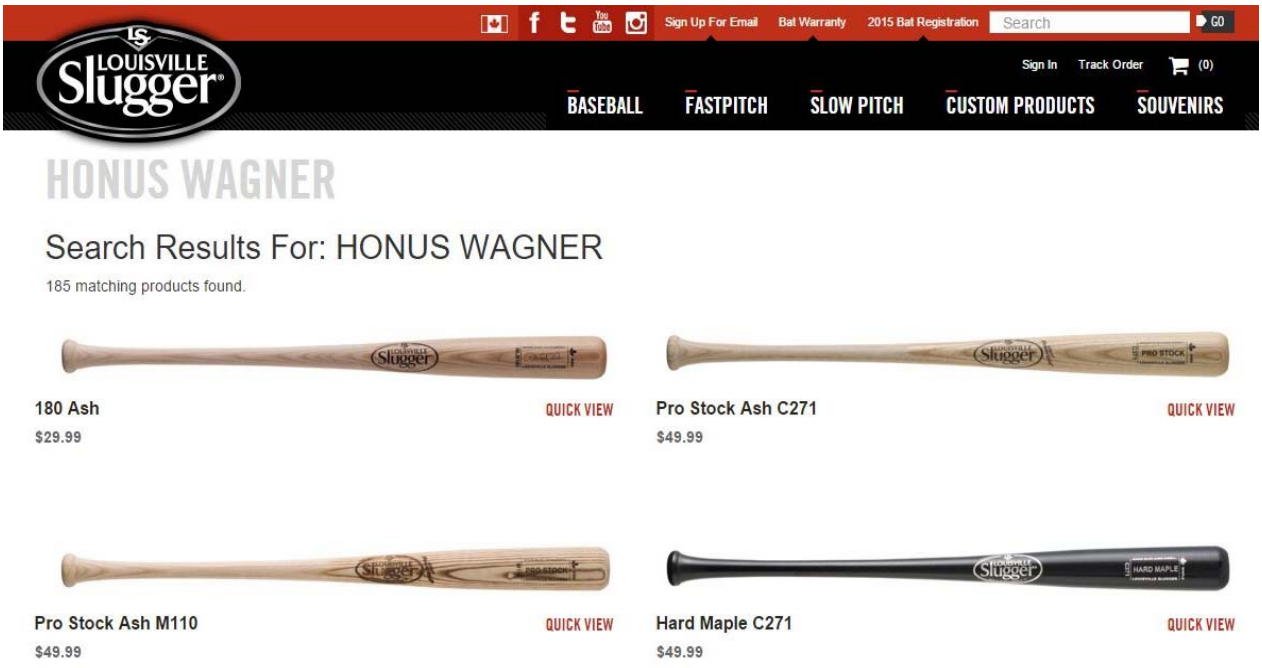
The Uniform Resource Locator ("URL"), aka web address, for Defendants' interactive commercial web page offering for sale the infringing bat pictured below is:

http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797



The URL for Defendants' interactive commercial web page offering the 185 products matching "HONUS WAGNER" excerpted picture below is:

http://www.slugger.com/search/products?q=HONUS+WAGNER



52. A visual comparison of the two marks demonstrates how similar they are in appearance, sound, and connotation.

53. Defendants even adopted a font and colors similar to those of Plaintiff.

54. Defendants have offered and continue to offer for sale in both retail and online settings the same goods and services that Honus Wagner Company offers.

55. By adopting virtually identical marks as those of Honus Wagner Company, Defendants are attempting to trade on the good will of Honus Wagner Company, and to suggest an affiliation with, or that their goods and services originate with Honus Wagner Company.

56. Defendants' online advertising containing the infringing Mark HONUS WAGNER falsely suggests an affiliation with Honus Wagner Company and its famous marks.

57. Defendants were on actual notice about Honus Wagner Company's Marks and that their use of same was likely to be confused with the Honus Wagner Company Marks since at least January 20, 2015, when the USPTO initially refused Defendant Hillerich's attempt to

register the mark HONUS WAGNER.

58. Nevertheless, after January 20, 2015 Defendants continued to sell their products and services under the mark HONUS WAGNER.

59. Defendants own, control, license, and/or have adopted and continue to use www.slugger.com, www.sluggergifts.com, http://www.slugger.com/search/products?q=HONUS+WAGNER, and http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797 to market their services and goods.

60. Knowing that Honus Wagner Company's Marks are famous, that the Marks have garnered a positive reputation and have valuable good will, and knowing that their use of same is infringing, Defendants have willfully infringed by continuing to sell under the Marks and several variations same.

61. Knowing that Honus Wagner Company's Marks are famous, that the Marks have garnered a positive reputation and have valuable good will, and knowing that their use of the HONUS WAGNER mark is infringing, Defendants have willfully infringed Honus Wagner Company's HONUS WAGNER mark by continuing to offer substantially the same products and services.

62. Defendants continue to advertise their products, offer more locations, and expand their businesses using the HONUS WAGNER mark.

63. Defendants' infringing activities are both likely to and designed to confuse and deceive consumers about the source of its goods and services.

64. Defendants' infringing activities are both likely to and designed to suggest an affiliation with Honus Wagner Company's reputation and goods and services.

65. Defendants' infringing activities yielded significant sales and profits to Defendants.

66. Defendants' infringing activities have caused harm to Honus Wagner Company and its HONUS WAGNER Marks.

67. Honus Wagner Company has no adequate remedy at law.

COUNT I

Unfair Competition Under the Lanham Act: 15 U.S.C. § 1125(a)

68. Honus Wagner Company incorporates the allegations in paragraphs 1-67 as if fully set forth herein.

69. Honus Wagner Company has made continuous use of its Marks throughout the United States, including Florida, in connection with the retail, wholesale, and online sales of sporting goods (including but not limited to tee shirts, baseballs and baseball bats), as well as the education, information, and consulting services associated with such sales.

70. Defendants adopted and continue to use marks that are virtually identical, and certainly confusingly similar to Plaintiff's Marks without its permission, consent, or authorization.

71. Defendants' acts are likely to cause confusion, mistake, or deceive consumers into believing that Defendants' products and services are associated with, sponsored by, or in some other manner connected with Honus Wagner Company creating a false designation of origin, false or misleading statements of fact, representation of facts, and unfair competition in violation of 15 U.S.C. § 1125(a).

72. Defendants' infringing acts have been willful and with the intention of deceiving Honus Wagner Company's current, potential, and future consumers.

73. As a direct and proximate result of Defendants' infringing acts, Honus Wagner Company has suffered and will continue to suffer damage, injury to its business reputation, and irreparable harm.

74. Honus Wagner Company has no adequate remedy at law.

COUNT II

False Advertising Under the Lanham Act: 15 U.S.C. § 1125(a)

75. Honus Wagner Company incorporates the allegations in paragraphs 1-67 as if fully set forth herein.

76. Honus Wagner Company has made continuous use of its Marks throughout the United States, including Florida, in connection with the retail, wholesale, and online sales of sporting goods (including but not limited to tee shirts, baseballs and baseball bats), as well as the education, information, and consulting services associated with such sales.

77. Defendants adopted and continue to use marks that are virtually identical, and certainly confusingly similar to Honus Wagner Company's Marks without Honus Wagner Company's permission, consent, or authorization.

78. Defendants' use of the HONUS WAGNER Marks in their advertising is likely to cause confusion, mistake, or deceive consumers into believing that Defendants' products and services are associated with, sponsored by, or in some other manner connected with Honus Wagner Company constituting false and deceptive advertising, creating a false designation of origin, false or misleading statements of fact, representation of facts, and unfair competition in violation of 15 U.S.C. § 1125(a).

79. Defendants' infringing acts misrepresent the nature, qualities and characteristics of Plaintiff's goods and services and commercial activities as well as Honus Wagner Company's

commercial activities by suggesting an affiliation with Honus Wagner Company that does not exist.

80. Defendants' infringing acts have been willful and with the intention of deceiving Honus Wagner Company's current, potential, and future consumers.

81. As a direct and proximate result of Defendants' actions, Honus Wagner Company has suffered and will continue to suffer damage, injury to its business reputation, and irreparable harm.

82. Honus Wagner Company has no adequate remedy at law.

COUNT III

Dilution by Blurring Under the Lanham Act: 15 U.S.C. § 1125(c)

83. Honus Wagner Company incorporates the allegations in paragraphs 1-67 as if fully set forth herein.

84. Honus Wagner Company's Marks are famous; they are widely recognized by the general consuming public as a designation of goods and services offered by Honus Wagner Company.

85. Honus Wagner Company's Marks were famous before Defendants' adoption of the infringing mark HONUS WAGNER. Honus Wagner Company's Marks were widely recognized by the general consuming public as a designation of goods and services. This recognition is because of the distinctiveness of the marks, together with Plaintiff's use, sales, and advertising of same.

86. Defendants' use of the infringing HONUS WAGNER marks after Honus Wagner Company's Marks became famous causes harm to the reputation of Honus Wagner Company and Honus Wagner Company's Marks.

87. Defendants' use of the infringing HONUS WAGNER marks causes dilution of the distinctive quality of Honus Wagner Company's famous Marks by blurring. The power and strength of Honus Wagner Company's Marks are diminished by the false identification with Defendants' goods and services.

88. As a direct and proximate cause of Defendants' infringing acts, Honus Wagner Company has suffered and will continue to suffer harm

89. Honus Wagner Company has no adequate remedy at law.

COUNT IV

Trademark Infringement Under Florida Common Law

90. Honus Wagner Company incorporates the allegations in paragraphs 1-67 as if fully set forth herein.

91. Honus Wagner Company has made continuous use of Honus Wagner Company's Marks throughout the United States, including Florida, in connection with sporting goods (including but not limited to baseballs, baseball bats and tee shirts) and associated goods and services and enjoys common law trademark rights in Honus Wagner Company's Marks.

92. Defendants adopted and continue to use HONUS WAGNER that is virtually identical, and certainly confusingly similar to Honus Wagner Company's Marks without Honus Wagner Company's permission, consent, or authorization.

93. Defendants' acts are likely to cause confusion, mistake, or deceive consumers into believing that Defendants' products and services are associated with, sponsored by, or in some other manner connected with Honus Wagner Company creating a false designation of origin, false or misleading statements of fact, representation of facts, and unfair competition.

94. Defendants' infringing acts misrepresent the nature, qualities and characteristics

of Defendants' goods and services and commercial activities as well as Honus Wagner Company's commercial activities.

95. Defendants' acts have harmed Honus Wagner Company's Marks, reputation, and goodwill.

96. As a direct and proximate result of Defendants' actions, Honus Wagner Company has suffered and will continue to suffer damage, injury to its business reputation, and irreparable harm.

97. Honus Wagner Company has no adequate remedy at law.

COUNT V

Unfair Competition Under Florida Common Law

98. Honus Wagner Company incorporates the allegations in paragraphs 1-67 as if fully set forth herein.

99. Honus Wagner Company has made continuous use of Honus Wagner Company's Marks throughout the United States, including Florida, in connection with sporting goods (including but not limited to baseballs, baseball bats and tee shirts) and associated goods and services and enjoys common law trademark rights in Honus Wagner Company's Marks.

100. Its marks are distinctive and distinguish them from others in the industry.

101. Defendants adopted and continue to use a mark that is virtually identical, and certainly confusingly similar to Honus Wagner Company's Marks without Honus Wagner Company's permission, consent, or authorization to confuse the public into believing that Defendants' conduct is sponsored or authorized by Honus Wagner Company.

102. Defendants' acts are likely to cause confusion, mistake, or deceive consumers into believing that Defendants' products and services are associated with, sponsored by, or in some

other manner connected with Honus Wagner Company creating false designation of origin, false or misleading statements of fact, representation of facts, and unfair competition.

103. As a direct and proximate result of Defendants' actions, Honus Wagner Company has suffered and will continue to suffer damage, injury to its business reputation, good will, and irreparable harm.

104. Honus Wagner Company has no adequate remedy at law.

COUNT VI

Violation of the Florida Deceptive and Unfair Trade Practices Act: Fla. Stat. § 501.204 *et seq.*

105. Honus Wagner Company incorporates the allegations in paragraphs 1-67 as if fully set forth herein.

106. Honus Wagner Company has made continuous use of Honus Wagner Company's Marks throughout the United States, including Florida, in connection with sporting goods (including but not limited to baseballs, baseball bats and tee shirts) and associated goods and services and enjoys common law trademark rights in Honus Wagner Company's Marks.

107. Its marks are distinctive and distinguish them from others in the industry.

108. Defendants adopted and continue to use a mark that is virtually identical, and certainly confusingly similar to Honus Wagner Company's Marks without Plaintiff's permission, consent, or authorization.

109. Defendants' acts are likely to cause confusion, mistake, or deceive consumers into believing that Defendants' products and services are associated with, sponsored by, or in some other manner connected with Honus Wagner Company creating false designation of origin, false or misleading statements of fact, representation of facts, and unfair competition.

110. As a direct and proximate result of Defendants' actions, Honus Wagner Company

has suffered and will continue to suffer damage, injury to its business reputation, good will, and irreparable harm.

111. Honus Wagner Company has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Honus Wagner Company prays this Court enter judgment in Plaintiff's favor on the claims set forth above and award Plaintiff the following relief.

a. That this Court find Plaintiff's Marks have been infringed as a direct and proximate result of the willful acts of Defendants as set forth in this Complaint in violation of Plaintiff's rights under federal and state law.

b. That this Court find Defendants have competed unfairly with Plaintiff in violation of Plaintiff's rights under federal and state law.

c. That this Court find Defendants have committed acts of false advertising under federal law.

d. That this Court find the Plaintiff Honus Wagner Company's Marks have been diluted, and have caused injury to Plaintiff's reputation, as a direct and proximate cause of the willful acts of Defendants as set forth in this Complaint, including Defendants' use of marks that are confusingly similar to those of Plaintiff in violation of federal and state law.

e. That Defendants, and all heirs, officers, directors, agents, servants, employees, attorneys, successors, assigns, and all persons in active concert or participation therewith, be preliminarily and permanently enjoined and restrained:

i. From using Plaintiff Honus Wagner Company's Marks, any reproduction, infringement, copy, or colorable imitation and any formative variations or phonetic equivalents, or any term, name, or mark which incorporates any of the

foregoing or any trademarks similar thereto or likely to be confused therewith, in connection with the distribution, marketing, advertising or sale of any goods or services;

ii. From using any logo, trade name, trademark, and/or URL which may be calculated to falsely represent or which has the effect of falsely representing that the unauthorized products and/or services of Defendants are sponsored by, authorized by, or in any way associated with Plaintiff;

iii. From infringing, contributing to, conspiring to, or inducing the infringement of the Plaintiff Honus Wagner Company's Marks;

iv. From doing any other act or thing likely to cause the public or the trade to believe that there is any connection between Defendants and Plaintiff, or their respective goods or services; and

v. From falsely representing themselves or their affiliates as being connected with Plaintiff, or sponsored by or associated with Plaintiff, or engaging in any act which is likely to falsely cause the trade, regulators, retailers, and/or members of the purchasing public to believe that Defendants or their affiliates are associated with Plaintiff and/or that Plaintiff is associated with Defendants.

f. That Plaintiff recovers Defendants' profits and the damages to Plaintiff, in an amount to be trebled, arising from Defendants' wrongful acts.

g. That Plaintiff recovers such sums as are necessary to place or compensate for corrective advertising.

h. That Plaintiff recovers its actual monetary damages.

i. That Plaintiff recovers statutory damages as a result of the acts of infringement

alleged herein, as provided for in 15 U.S.C. §1117.

j. That Plaintiff recovers, pursuant to the laws of the State of Florida, and common law, in addition to its actual damages, punitive damages in an amount which the Court deems just and proper.

k. That Plaintiff recovers both pre-judgment and post-judgment interest on each and every damage award.

l. That Plaintiff recovers its reasonable attorneys' fees incurred in this action, pursuant to 15 U.S.C. § 1117, Fla. Stat. § 501.2105, and/or as otherwise authorized.

m. That Plaintiff recovers its taxable costs and disbursements herein, pursuant to Fed. R. Civ. P. 54 and/or Fla.Stat. § 57.041, and as otherwise authorized.

n. That Plaintiff has and recovers such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: October 26, 2015

Respectfully submitted,

ELLIOT ZIMMERMAN, BCS, P.A.

/s/ *Elliot M. Zimmerman*

By: Elliot M. Zimmerman

1776 N Pine Island Road, Ste. 224
Plantation, FL 33322
Telephone: (954) 565-6996
Email: legal@cyberlaw.info
FBN: 315291

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 26, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel/parties of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

ELLIOT ZIMMERMAN, BCS, P.A.

/s/ *Elliot M. Zimmerman*
By: Elliot M. Zimmerman

No. 3326 July Term, 1933.

JOHN H. WAGNER

vs.

E. L. BRAUNSTEIN; E. L. BRAUNSTEIN AND COMPANY, INC., a corporation; HONUS WAGNER COMPANY, a corporation; NATIONAL STORES COMPANY, a corporation; E. L. Braunstein and Company, Inc., trading as UNITED SPORTING GOODS COMPANY.

D E C R E E

AUG 21 1934

LEONARD S. LEVIN
ATTORNEY AT LAW
PITTSBURGH, PA.

FILED AUG 21 1934

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

SITTING IN EQUITY

JOHN H. WAGNER vs. E. L. BRAUNSTEIN: E. L. BRAUNSTEIN AND COMPANY, INC., a corporation; HONUS WAGNER COMPANY, a corporation; NATIONAL STORES COMPANY, a corporation; E. L. BRAUNSTEIN AND COMPANY, INC., trading as UNITED SPORTING GOODS COMPANY.	No. 3326 July Term, 1933.

DECREE

AND NOW, to wit, Aug 21st 1934, the following decree is entered in the above entitled case by consent of all the parties thereto:

FIRST: That all commissions due, or alleged to be due, the plaintiff by any or all of the defendants by reason of any sales, or any cause or causes whatsoever, have been fully paid.

SECOND: That the right to the exclusive use of the name "Honus Wagner" for all commercial and advertising purposes is vested in E. L. Braunstein & Co. Inc., a corporation, E. L. Braunstein and Honus Wagner Company, a corporation, their heirs, executors, administrators, successors and assigns, as appears by Order of Court dated December 28th, 1928, of Watson B. Adair, Esq., Referee in Bankruptcy of the District Court of the United States for the Western District of Pennsylvania, made in the Matter of The Honus Wagner Sporting Goods Company, a Delaware Corporation, Bankrupt, at No. 14400 In Bankruptcy, and further as acknowledged

in the written agreement between John H. Wagner and E. L. Braunstein, to the said same effect, dated January 21st, 1929:

Attorney for John H. Wagner

Attorney for E. L. Braunstein, individually, and E. L. Braunstein & Co.Inc., a corporation, and E. L. Braunstein & Co.Inc., trading as United Sporting Goods Company.

Attorney for Honus Wagner Company, a corporation.

Attorney for National Stores Company, a corporation.

CERTIFIED FROM THE RECORD

Prothonotary

Deputy

02/28/2013 12:12 9545638483 FEDEX OFFICE 1599 PAGE 01/01

WILLIAM RUSSELL ROBINSON
DISTRICT 10

CHAIR,
BUDGET & FINANCE

OFFICE OF THE COUNTY COUNCIL
119 COURTHOUSE · 436 GRANT STREET
PITTSBURGH, PA 15219
PHONE (412) 350-6570 · FAX (412) 350-6499
WROBINSON@COUNTY.ALLEGHENY.PA.US
WWW.COUNTY.ALLEGHENY.PA.US/COUNCIL

May 23, 2011

Harriet and Murray Shapiro
3555 South Ocean Boulevard, Apt. PH 15
South Palm Beach, FL 33480

Dear Harriet and Murray:

Enclosed you will find the proclamation honoring the Honus Wagner Co. store for its longevity as a family-friendly business and commending your family for operating the store for such an impressive period of time. The store became a foundation of our community over the years as families, children and sports fans from all over the country visited the business to witness its charm and ingenuity. It will remain in our memories as a landmark and as a symbol of our area. Your family maintained the business for so long that you too will remain in our memories as ambassadors of our area's culture and welcoming atmosphere. I am proud to bring attention to the store's history, and I am proud it was a fixture of our community for 93 years.

This proclamation was read into the Official Record of Council during the May 18th Regular Meeting.

Yours truly,

Bill

William Russell Robinson

Allegheny County Council

Proclamation

WHEREAS, family-owned retail stores in Allegheny County sustain operations for many years and become symbols of our region by relying on dependable management, sound business practices and customer loyalty; and

WHEREAS, the Honus Wagner Co. of Downtown Pittsburgh became an iconic Pittsburgh retail store throughout its 93 years of operation; and

WHEREAS, Honus Wagner, the Hall of Fame shortstop of the Pittsburgh Pirates, opened the store in 1918, selling sports memorabilia; and

WHEREAS, in 1928, the Shapiro family purchased the store from Mr. Wagner; eventually, the family moved the store from its location on Liberty Avenue to Forbes Avenue; and

WHEREAS, four generations of the Shapiro family operated the Honus Wagner store for over 80 years; the family maintained a welcoming atmosphere and a customer-first policy that allowed the store to maintain healthy business; despite its success, Honus Wagner Co. closed its doors in 2011;

NOW, THEREFORE BE IT RESOLVED, that Allegheny County Council, on behalf of the citizens of Allegheny County, commends the Honus Wagner Co. and the Shapiro family for providing a reliable and welcoming sports memorabilia store to the citizens of Allegheny County for 93 years. The store became an icon of Pittsburgh retail business, and along with the Shapiro family, it will forever be engrained in the memory of citizens of this community as one of the great entities that defines the character of Pittsburgh and Allegheny County.

Sponsored by Council Member Bill Robinson and Amanda Green Hawkins presented this 18th day of May 2011.

Attest:

President of Council
Jim Burn

Allegheny County Council

CLICK TO ZOOM

Full-size Honus Wagner Commemorative Career Stat Bat

$69.99

SIZE: 34"

SIZE NOT IN STOCK?

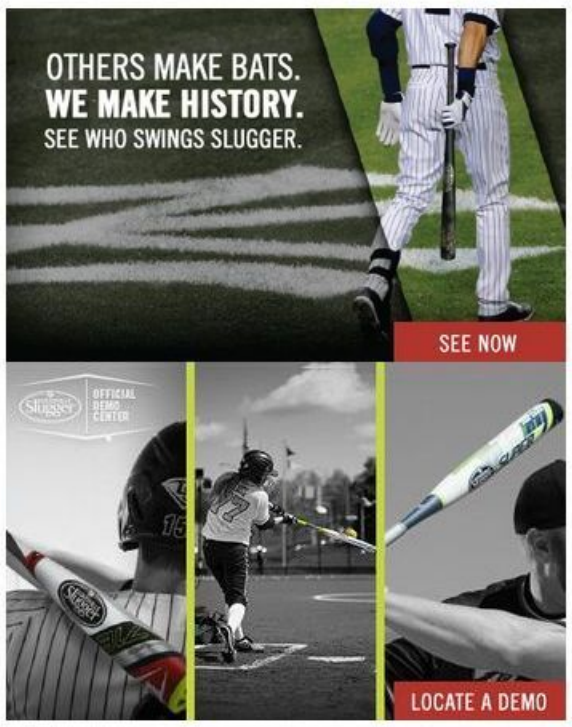
NOTIFY ME

ADD TO WISHLIST

Features

Description

Louisville Slugger has turned back the clock to offer a commemorative Honus Wagner career stat bat. The "Flying Dutchman" was part of the first Hall of Fame class.



RECOMMENDED FOR YOU

PRO STOCK ASH C271
$49.99

PRO STOCK ASH M110
$49.99

PRO STOCK ASH C243
$49.99

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Catalog

Catalog Page 1 of 1 Sort: Alphabetical Alphabetical Reverse Price Low to High Price High to High

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10.00

Batting Glove
$ 15.00

Batting Glove
$ 15.00

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10.00

Arrow Shaft
$ 10

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

HONUS WAGNER COMPANY, Plaintiff, v. HILLERICH & BRADSBY CO. and WILSON SPORTING GOODS CO., Defendants,	Case Number: 0:15-cv-61963-WPD

AFFIDAVIT OF MITCHELL T. McRAE, ESQUIRE

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned notary public, personally appeared MITCHELL T. McRAE, ESQUIRE, who upon oath deposes and states as follows:

1. My name is Mitchell T. McRae. I am over the age of eighteen (18) years and make this Affidavit upon personal knowledge of all matters stated herein. I am a duly licensed attorney practicing in the State of Florida since 1984. At all times material hereto, I have been and remain a member in good standing of the Florida Bar and the U.S. District Court for the Southern District of Florida, including the Trial Bar.

2. While at my home in Broward County, Florida, on or about October 17, 2015, I used my computer to visit the web address http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797. The resulting web page displayed a "GENUINE HONUS WAGNER" baseball bat. Exhibit 1, a screen shot of said resulting web page, is a true and correct copy of the original page I observed on that date.

3. While at the page at the web address set forth in ¶ 2, *supra*, I typed "HONUS WAGNER" in the search box in the upper right corner. I was transported to http://www.slugger.com/search/products?q=HONUS+WAGNER, a true and correct copy of which is hereto attached as Exhibit 2. As is shown on Exhibit 2, the aforesaid search for HONUS WAGNER found "185 matching products" which were displayed by pictures with prices under "HONUS WAGNER,"

4. I clicked on the very first product displayed, to-wit, Item Id; 1141, the "180 Ash' bat for $29.99, and was able to purchase same by clicking further through the website and paying for same with PayPal. A copy of the transaction receipt and shipping confirmation is hereto attached as Exhibit 3.

5. The bat arrived at my office in Delray Beach, Florida, on or about October 22, 2015. See Exhibit 4 hereto attached.

6. In addition to viewing the above referenced web addresses on or about October 17, 2015, I viewed the web page at www.slugger.com, and several other pages at and/or under said domain. Each and every page I viewed contained the following copyright notice in the footer: "© Copyright 2015 Hillerich & Bradsby, All Rights Reserved"

FURTHER AFFIANT SAYETH NAUGHT.

Mitchell T. McRae, Esq.

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this day before me, the undersigned officer duly authorized in the state and county aforesaid to take acknowledgments, personally appeared MITCHELL T.

MCRAE, to me known and known to me to be the person described in and who executed the foregoing, and he acknowledged before me that he executed same, (XXX) who is personally known to me (___), who has produced _____ as identification, and who (XXX) did (___) did not take an oath, and who executed the foregoing.

SWORN TO and subscribed before me this 26th day of October, 2015.

_____
NOTARY PUBLIC, State of Florida

My commission expires:

Notary Public State of Florida
Steven Goerke
My Commission FF 072056
Expires 11/20/2017

CLICK TO ZOOM

Full-size Honus Wagner Commemorative Career Stat Bat

$69.99

SIZE:
34"

SIZE NOT IN STOCK?

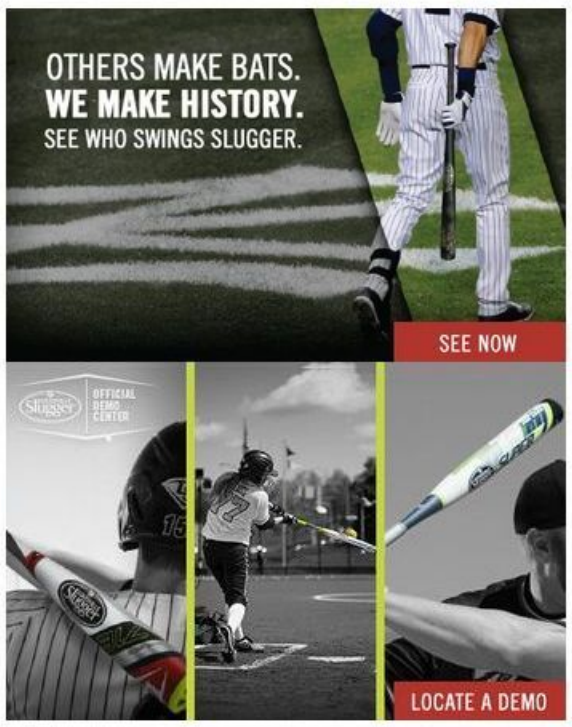
NOTIFY ME

ADD TO WISHLIST

Features

Description

Louisville Slugger has turned back the clock to offer a commemorative Honus Wagner career stat bat. The "Flying Dutchman" was part of the first Hall of Fame class.



RECOMMENDED FOR YOU

PRO STOCK ASH C271
$49.99

PRO STOCK ASH M110
$49.99

PRO STOCK ASH C243
$49.99

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Batting Gloves
$ 19.99

Batting Gloves
$ 19.99

Batting Gloves
$ 19.99

ORDER DETAIL

PRINT VIEW ORDER HISTORY

Order Date: 10/17/2015
Order ID: 388801
Order Status: Shipped

Shipping Choice: UPS Next Day
Shipping Cost: $30.50

Billing Address
Mitchell McRae
5300 W Atlantic Ave Suite 412
Delray Beach FL 33484
Phone: 111-222-3333
mmcrae@mcraelawfirm.com

Shipping Address
Mitchell McRae
5300 W Atlantic Ave Suite 412
Delray Beach FL 33484
Phone: 111-222-3333
mmcrae@mcraelawfirm.com

	Item Id	Item	Size	Color	Description	Quantity	Price
	1141	180 Ash	34"	N/a	Louisville Slugger's adult wood bats are pulled from their original production line for some minor flaw that will not affect the bat's performance. These small production errors mean deep savings on superior bats ideal for practice, batting cages or even games.Features-Wood: Ash-Finish: Natural-Lengths Available: 32", 33", 34"	1	$29.99

Payment Method: PayPal
Credit Card: **********VCCL

Merchandise:	$29.99
Shipping &	$30.50
Handling:	$3.63
Sales Tax:	$64.12
Grand Total:	

Shipped Via: UPS Next Day
Ship Status: Shipped
Tracking Info: 1Z89YW750100500346

Important Notice: Although the tracking numbers with the shipping company are finalized, the shipping company may not have processed the package(s) through their system. If you click through to the shipping company's web site and see a message such as 'Invalid tracking number', please try again at the end of the business day your order was shipped.

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PACKING LIST ENCLOSED
Lista de Paquete Incluida
Louisville Slugger
UPS NEXT DAY AIR

Order Number:
SLGR-388801

Packing List

Ship to:
Mitchell McRae
300 W ATLANTIC AVE
DELRAY BEACH FL 33484
USA

Carrier:
United Parcel Service

0-25-90, OUTLINE, 1-800-295-5510

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

HONUS WAGNER COMPANY, Plaintiff, v. HILLERICH & BRADSBY CO. and WILSON SPORTING GOODS CO., Defendants,	Case Number: 0:15-cv-61963-WPD

AFFIDAVIT OF MARK P. BOCKSTEIN, ESQUIRE

STATE OF FLORIDA)
COUNTY OF BROWARD)

BEFORE ME, the undersigned notary public, personally appeared MARK P. BOCKSTEIN, ESQUIRE, who upon oath deposes and states as follows:

1. My name is Mark P. Bockstein. I am over the age of eighteen (18) years and make this Affidavit upon personal knowledge of all matters stated herein. I am a duly licensed attorney practicing in the State of Florida since 1980. At all times material hereto, I have been and remain a member in good standing of the Florida Bar

2. While at Dick's Sporting Goods ("Dicks") in Plantation, Broward County, Florida, on or about October 24, 2015, I used my cell phone to visit the web address http://www.slugger.com/fullsize-honus-wagner-commemorative-career-stat-bat/d/1467C1797. The resulting web page displayed a "GENUINE HONUS WAGNER" baseball bat. Exhibit 1, a screen shot of said resulting web page, is a true and correct copy of the original page I observed on that date.

3. At the web address set forth in ¶ 2, *supra*, I typed "HONUS WAGNER" in the

search box. I was transported to http://www.slugger.com/search/products?q=HONUS+WAGNER, a true and correct copy of the top portion of which is hereto attached as Exhibit 2. As is shown on Exhibit 2, the aforesaid search for HONUS WAGNER found "226 matching products" each of which were displayed by pictures with prices under "HONUS WAGNER."

4. I clicked on the very first product displayed, to-wit, the "180 Ash" bat for $29.99, to ascertain more details. I found the bat in Dick's Sporting Goods, see Exhibit 3 and purchased same at the checkout line. A copy of the sales receipt is hereto attached as Exhibit 4.

FURTHER AFFIANT SAYETH NAUGHT.

Mark P. Bockstein

STATE OF FLORIDA)
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day before me, the undersigned officer duly authorized in the state and county aforesaid to take acknowledgments, personally appeared MARK P. BOCKSTEIN, to me known and known to me to be the person described in and who executed the foregoing, and he acknowledged before me that he executed same, (XXX) who is personally known to me (___), who has produced _____ as identification, and who (XXX) did (___) did not take an oath, and who executed the foregoing.

SWORN TO and subscribed before me this 26 day of October, 2015.

NOTARY PUBLIC, State of Florida

My commission expires:

ALFRED P DENOWITZ
MY COMMISSION # FF902769
EXPIRES August 09, 2019
(407) 398-0153 FloridaNotaryService.com

CLICK TO ZOOM

Full-size Honus Wagner Commemorative Career Stat Bat

$69.99

SIZE:
34"

SIZE NOT IN STOCK?

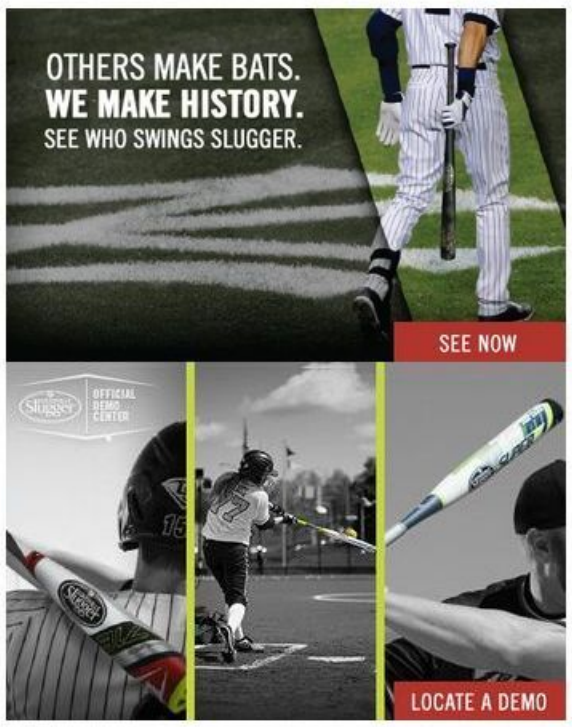
NOTIFY ME

ADD TO WISHLIST

Features

Description

Louisville Slugger has turned back the clock to offer a commemorative Honus Wagner career stat bat. The "Flying Dutchman" was part of the first Hall of Fame class.



RECOMMENDED FOR YOU

PRO STOCK ASH C271
$49.99

PRO STOCK ASH M110
$49.99

PRO STOCK ASH C243
$49.99

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HONUS WAGNER

Search Results For: HONUS WAGNER

226 matching products found.

180 Ash QUICK VIEW

$29.99

Pro Stock Ash C271 QUICK VIEW

$49.99

Pro Stock Ash M110 QUICK VIEW

$49.99

Advanced Design Adult QUICK VIEW

$59.99

Hard Maple C271 QUICK VIEW

$49.99

MLB Authentic Cut Ash QUICK VIEW

$79.99

MLB Prime Maple C271 QUICK VIEW

$119.99

Prime 916 (-3) QUICK VIEW

$399.99

MLB Prime Maple M110 QUICK VIEW

$119.99

Series 5 Adult QUICK VIEW

$19.99

Please Wait...

Loading Products...

Pro Stock Ash C243 QUICK VIEW

$49.99

MLB Authentic Cut Maple C271 QUICK VIEW

$89.99

Omaha 516 (-3) QUICK VIEW

$199.99

Hard Maple I13 QUICK VIEW

$49.99

Xeno PLUS (-10) QUICK VIEW

$299.99

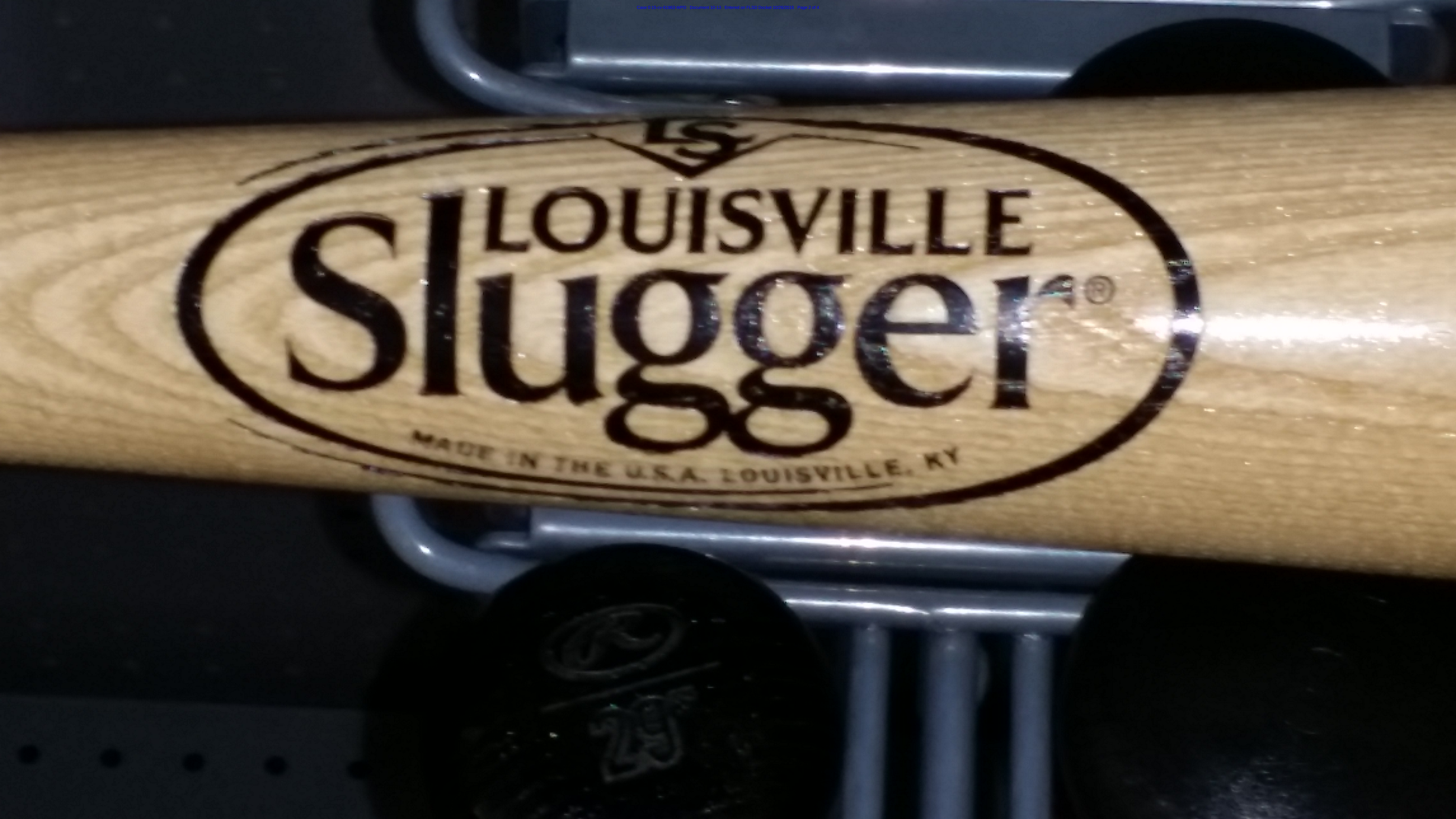
MLB Authentic Cut Maple I13 QUICK VIEW

$89.99

MLB Prime Tee Ball QUICK VIEW

$11.99

WBA814DBBCNA330
Original
NOW
$24.99
0 44277 02000 2


LS
LOUISVILLE
Slugger®
MADE IN THE U.S.A. LOUISVILLE, KY

NAZARETH
Louisville Slugger
WLB1080
LOUISVILLE SLUGGER
ASH
BATS
WOOD
WOOD
WOOD
WOOD
SLOW PITCH

WOOD
WOOD
SLOW PITCH

DICK'S SPORTING GOODS

Plantation, FL
(954) 472-8855

10/24/15 04:19 PM
RECEIPT EXPIRES ON 01/22/16

S-00668 R-4 T-6386 A-0379800 SALE

Your associate today is: Ryan

Customer Copy

044277020002 MLB180ASHN/N 24.99

ITEM TOTAL	24.99
SUBTOTAL	24.99
TAX	1.50
TOTAL	**26.49**

AMEX	$26.49
ACCOUNT #: ********4000	
AUTH# 506916	
CHANGE DUE	0.00

1006680040386102415016

Get your ScoreCard today!
It's FREE! Earn one point for every
$1 of merchandise purchased.
300 points = $10 Reward
Visit MyScoreCardAccount.com for more
information.
****

Your Loyalty Card is Now
More Powerful Than Ever!

You can now use your current loyalty card
to earn and redeem rewards at
DICK'S Sporting Goods
Golf Galaxy
Field & Stream

****

Now Hiring Part Time Holiday Cashiers &
Sales Associates! Apply online at:
www.DicksSportingGoods.jobs

****

Now Hiring Part Time Holiday Cashiers &
Sales Associates! Apply online at:
www.DicksSportingGoods.jobs

****

October is National Breast Cancer
Awareness Month

Sport Your Support
on and off the field.

Free Shipping on Sport Your Support
Collection Items!

Visit
www.DICKS.com/Pink

Together We'll Turn the Sports World Pink.

****

Get $10 off your next purchase of $50!
Complete our online Customer Survey at
www.Dicks.com/feedback.
Survey must be completed within
7 days of store visit.
DISPONIBLE EN ESPANOL

Like us on Facebook!
DicksSportingGoods
Follow us on Twitter!
@DICKS

Check Store Availability

Louisville Slugger 180 Series Ash Bat
Web ID: 33398326

$24.99

Length: 34.0 IN
QUANTITY: 1

Enter ZIP Code or City, State
33324

28 Stores found within 250 miles

Only Display Stores with Availability

Store Locations	Distance	Store Availability	Buy Online, Pick Up in Store
PLANTATION The Fountains 801 S. University Drive Plantation, FL 33324 **954-472-8855** Map | Directions | Hours	1 Miles	Limited Stock	PICK UP IN STORE *As early as today!
PEMBROKE PINES Pembroke Crossings 11940 Pines Blvd. Pembroke, FL 33026 **954-430-5873** Map | Directions | Hours	7 Miles	Out of Stock	Out of Stock
CORAL SPRINGS The Plaza At Coral Springs 8921 W. Atlantic Boulevard Coral Springs, FL 33071 **754-484-3423** Map | Directions | Hours	9 Miles	Limited Stock	In-Store Purchase Only
FT. LAUDERDALE Regions Bank Plaza 2420 North Federal Hwy Ft Lauderdale, FL 33305 **954-566-1448** Map | Directions | Hours	10 Miles	In Stock	PICK UP IN STORE *As early as today!
KENDALL The Palms At Town & Country 11900 Mills Drive Miami, FL 33183 **305-595-9410** Map | Directions | Hours	29 Miles	Out of Stock	Out of Stock

Displaying 1-5 of 28 Stores — Next

*Buy Online, Pick Up In Store orders are typically ready for pick up within two hours of submitting an order. Orders placed after store hours will be ready for pick up the next day. In-store availability is based on the store inventory and is typically updated every two hours. Orders are held for four days after processing.

Louisville

Product Info

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FEATURES:

- Northern
- Ash wood
- Amish Ya
- Wood Gri
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- Louisvil

NOTICE: We

SPECS:

- **Drop (approx)**: -2
- **Material**: Ash
- **Turning Model**: Randomly selected
- **Barrel/Handle Finish**: Natural
- **End**: Cupped
- **Age**: Adult
- **Sport**: Baseball
- **Series**: MLB® 180® Ash
- **Model**: WBA3140BCNA

Country of Origin: United States
Web ID: 33398326

Customer Reviews: Own this product? WRITE A REVIEW

Average Rating 3.6 / 5

72% of reviewers recommend this product

Rating Breakdown (76 reviews)

5 Stars		(34)
4 Stars		(17)
3 Stars		(3)
2 Stars		(5)
1 Star		(17)

Image Gallery

Sort by Most recent — Enter phrase or keyword

lasted 3 days.used for 15 minutes each day. — October 20, 2015
no stars...lasted 3 days and split along the grain. useless now and Dick's would not exchange it. Save your money. NO WARRANTY...
feelingcheated — from Arden, Age 51 Plus, Gender Male, Purchase Location In-Store
Was this helpful? YES (0) NO (0) Report inappropriate content

Only lasted 3 games — October 19, 2015
Handle is way to thin. Will break on any pitch close to inside.
At least I got it on sale for $16 so didn't break the bank, but still not even worth that.
MarkP — Purchase Location In-Store
Was this helpful? YES (0) NO (0) Report inappropriate content

Great bat — September 29, 2015
Bought this bat to replace my old wooden one. Light weight and great feel to swing through a ball with this one.
BostoNik — from Boston, MA, Age 30 - 34, Gender Male, Purchase Location In-Store, I recommend this product.
Was this helpful? YES (0) NO (0) Report inappropriate content

Still a Great Go To Bat — September 22, 2015
Always a great and reliable bat. Have used them for years. Great balance, nice grip.
BaseGirl — from AZ, Age 35 - 50, Gender Female, Purchase Location In-Store, I recommend this product.
Was this helpful? YES (0) NO (0) Report inappropriate content

Good Bat — September 18, 2015
This bat is a good deal. The bat has held up well.
Dora99 — Purchase Location In-Store, I recommend this product.
Was this helpful? YES (0) NO (0) Report inappropriate content

Breaks easily — September 8, 2015
I used for twice and it broke I have bought three of them now
Willk44 — from Loveland Colorado, Age 25 - 29, Gender Male, Purchase Location In-Store, I recommend this product.
Was this helpful? YES (0) NO (0) Report inappropriate content

Poor — September 8, 2015
This bat broke on its first hit. The weight felt good. It just shattered on contact.
Jim303 — from Oceanside, CA, Age 30 - 34, Gender Male, Purchase Location In-Store
Was this helpful? YES (0) NO (0) Report inappropriate content

Great product — August 12, 2015
My son bought this for fall ball and picked it because it seems to be exactly what he needs
Flea — from Bel Air, MD, Age 35 - 50, Gender Female, Purchase Location In-Store, I recommend this product.
Was this helpful? YES (0) NO (0) Report inappropriate content

great wooden bat that won't break the bank! — August 11, 2015
For a low cost bat, this bat has very good balance,comfortable handle and a large sweet spot
msan278 — I recommend this product.
Was this helpful? YES (0) NO (0) Report inappropriate content

Louisville Slugger 180 Series Ash Bat — August 5, 2015
Louisville Slugger have always be a good bat to me. I have been using Them from time I played baseball as a kid and I still use them to this day. When you have a good bat that you can count on you think of Louisville Slugger. I just crack one of my new Louisville Slugger got mad at myself for hitting the baseball the wrong way. Went Back to Store and got 2 more . Because they are good bats
Al — from Chicago IL, Age 35 - 50, Gender Male, Purchase Location In-Store, I recommend this product.
Was this helpful? YES (0) NO (0) Report inappropriate content

1 2 3 4 5 ... 8 Next

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