

TTAB

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June 18, 2003

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Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

06-20-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

CC JUN 27 10 33 AM '03
COMMUNICATIONS SECTION

Attention: Ms. Amy King, Paralegal Specialist

Re: *Saratoga Beverage Group, Inc. v. Sarasota, Inc.*
Opposition Proceeding No. 118,685, Serial No. 75/447,627
Cancellation Proceeding No. 31,411, Registration No. 2,326,908
Our File No. 0436.011 and 0436.013

Dear Ms. King:

Pursuant to your order of June 10, 2003, please find enclosed a copy of the judgment dismissing the action by reason of settlement filed with the United States District Court for the Northern District of New York on March 7, 2002 and the Stipulated Order of Dismissal filed with the United States District Court for the Northern District of New York on March 25, 2002. I also enclose a copy of our letter and enclosures to the TTAB dated January 15, 2003, which include the Settlement Agreement between the parties.

If you have any questions or if anything further is necessary, please contact me. Thank you for your attention to this matter.

Respectfully submitted,

HESLIN ROTHENBERG FARLEY & MESITI P.C.

David P. Miranda

DPM/kf
Enclosures

cc: Stephen M. Gaffigan, Esq. - w/Enc.
Robert Lippman, Esq. - w/Enc.
Irene Fonzi, Esq. - w/Enc.

COPIES SENT
3/7/02
Date By

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

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
MAR 07 2002
CLERK
Lawrence J. O'Connell, Clerk - Syracuse

Saratoga Beverage Group, Inc.

Plaintiff

vs.

1:01-cv-626

PJ's Bar-B-Que, Inc.; Sarasota, Inc.

Defendant

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court having been advised by counsel that the above entitled action has been settled, or is in the process of reaching a settlement, it is unnecessary for the action to remain active on the Court's calendar. Therefore, it is

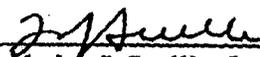
ORDERED that the action is dismissed **WITHOUT PREJUDICE** and further that

The Court will retain jurisdiction to vacate this order and reopen the action upon good cause shown that the settlement has not been completed **AND** that further litigation of the action is necessary. Any party to this action may make an application to reopen this matter by letter brief. If such request is granted, all parties will be given an opportunity to submit further briefing, as directed by the Court. It is further

ORDERED that upon reaching a final settlement, the parties shall file, with the Court, a stipulation of discontinuance and/or a settlement agreement. It is further

ORDERED that the Clerk shall serve copies of this judgment upon all counsel by United States regular mail.

Date: March 7, 2002



Hon. Frederick J. Scullin, Jr.
Chief U.S. District Judge

3-7-02

COPIES SENT
3/24/02
By
Date

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT-N.D. OF N.Y.
FILED
MAR 25 2002
AT O'CONNOR
Lawrence J. O'Connor, Clerk - Syracuse

SARATOGA BEVERAGE GROUP, INC.)
)
Plaintiff,)
vs.)
)
P.J.'S BAR-B-Q., INC. and)
SARASODA, INC.)
)
Defendant.)

Civil Action No. 01-CV-0626 (FJS/RWS)



06-20-2003

U.S. Patent & TMO/c/TM Mail Rcpt Ct. #22

STIPULATED ORDER OF DISMISSAL

WHEREAS, SARATOGA SPRING WATER COMPANY ("SSW"), an interested non-party, and the defendants P.J.'S BAR-B-Q, INC. and SARASODA, INC. ("defendants") have settled to their satisfaction the dispute underlying this action, in a settlement each considers to be fair and just; and

WHEREAS, SARATOGA BEVERAGE GROUP, INC., the named plaintiff in this action, has no objection to the dismissal of this action by virtue of the aforementioned settlement between SSW and defendants;

NOW THEREFORE, IT IS HEREBY STIPULATED, AGREED AND ORDERED that this suit, including all claims and counterclaims, be dismissed with prejudice, each party to bear its own costs and attorneys' fees.

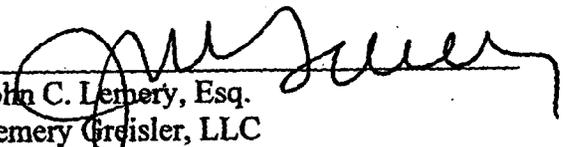
SARATOGA BEVERAGE GROUP, INC.

Dated: March 6, 2002

By: John Powers
John Powers, Esq.
Hancock & Estabrook, LLP
Attorneys for Ultimate Juice Co.
f/k/a Saratoga Beverage Group, Inc.
1500 Mony, Tower 1, P.O. Box 4976
Syracuse, NY 13221-4976
PH: (315) 471-3151

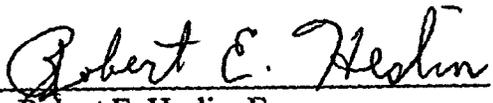
SARATOGA SPRING WATER COMPANY.

Dated: 3/11/02, 2002

By: 
John C. Lemery, Esq.
Lemery Greisler, LLC
Attorneys for Saratoga Spring Water Company
10 Railroad Place
Saratoga Springs, NY 12866
PH: (518) 581-8800

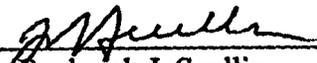
P.J.'S BAR-B-Q, INC. and
SARASODA, INC.

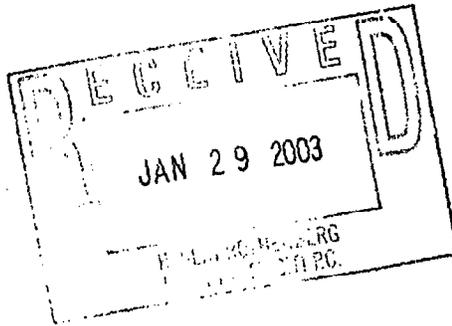
Dated: March 12, 2002

By: 
Robert E. Heslin, Esq.
Attorneys for P.J.'S BAR-B-Q, INC.
and SARASODA, INC.
5 Columbia Circle
Albany, NY 12203
PH: (518) 452-5600

IT IS SO ORDERED:

Date: March 15, 2002


Hon. Frederick J. Scullin
United States District Judge



RE: Saratoga Beverage Group, Inc. v. Sarasoda, Inc.
Opposition Proceeding No. 118,685
Serial No. 75/447,627

Cancellation Proceeding No. [REDACTED]
Registration No. 2,326,908

Enclosure:

- * Letter of Response to January 7, 2003 (1pg)
- * Exhibit "A" attached: (2p. STIPULATION TO SUBSTITUTE PROCEEDING
- * Exhibit "B" attached: (4pgs) SETTLEMENT AGREEMENT

0436.014/DPM/kf

01-17-2003
U.S. Patent & TM Office Mail Rep 101 #70

ion dated

RY AND RE-CAPTION

Date Mailed: 1/15/03
DD: 2/16/03

HESLIN ROTHENBERG FARLEY & MESITI P.C.

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January 15, 2003

Kathy Smith Dias
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Victor A. Cardona
Lee Palmateer
John Pietrangelo*
Alison E. Gugel
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Jacqueline M. Arendt†

Martha L. Boden
Of Counsel

Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Attention: Mr. Albert Zervas, Interlocutory Attorney

Re: *Saratoga Beverage Group, Inc. v. Sarasoda, Inc.*
Opposition Proceeding No. 118,685, Serial No. 75/447,627
Cancellation Proceeding No. 31,411, Registration No. 2,326,908
Our File No. 0436.014

Dear Zervas:

On June 4, 2002 the Stipulation to substitute Saratoga Spring Water Co. as the Opposer/Petitioner in the above matter was filed with the TTAB, a copy of which is enclosed as Appendix "A". Also filed with the TTAB on that date was a copy of the Settlement Agreement between Saratoga Spring Water Co. the substituted Opposer/Petitioner and Sarasoda, Inc. wherein both parties agreed to the amendment of the description of goods in the above referenced application and registration. A copy of the duly executed Settlement Agreement between the parties is enclosed as Appendix "B". This Agreement constitutes the Petitioner/Respondent's consent to the proposed amendment. Please advise us if any further information is necessary. Thank you for your attention to this matter.

Respectfully submitted,

HESLIN ROTHENBERG FARLEY & MESITI P.C.


David P. Miranda

DPM/kf

Enclosures – Appendix "A" and "B"

cc: Stephen M. Gaffigan, Esq. – w/Enc.
Robert Lippman, Esq. – w/Enc.
Irene Fonzi, Esq. – w/Enc.

EXHIBIT "A"

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD

SARATOGA BEVERAGE GROUP, INC.,

Opposer.

v.

Serial No. 75/447,627

Opposition No. 118,685

SARASODA, INC.,

Applicant.

SARATOGA BEVERAGE GROUP, INC.,

Petitioner

v.

Registration No. 2,326,908

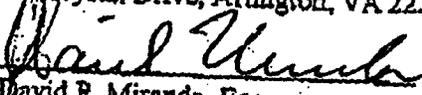
Cancellation No. 31, 411

SARASODA, INC.,

Respondent.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail to Addressee in an envelope addressed to: BOX TTAB NO FEE, Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on June 4, 2002.


David P. Miranda, Esq.
Attorney for Applicant

Date of Signature: June 4, 2002

Commissioner for Trademarks
BOX TTAB NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

STIPULATION TO SUBSTITUTE PARTY
AND RE-CAPTION PROCEEDING

The Opposer/Petitioner and Applicant/Respondent in the above proceedings, by and through their respective attorneys, hereby stipulate and agree that the Opposer/Petitioner,

Saratoga Beverage Group, Inc., be substituted by Saratoga Spring Water Company as the Opposer/Petitioner in these proceedings and that the caption of these proceedings be amended accordingly.

As grounds for this stipulation, Saratoga Beverage Group, Inc. has transferred all of its right, title and interest in and to the trademarks on which the opposition and cancellation proceedings are based to Saratoga Spring Water Company as evidenced by the trademark assignment attached hereto.

Dated: May 21, 2002

Ultimate Juice Co, formerly known as
SARATOGA BEVERAGE GROUP, INC.

By:

Irene Fonz
Irene Fonz, Esq.
General Counsel for Ultimate Juico Co.
f/w/a Saratoga Beverage Group, Inc.
7500 Coquina Drive
North Bay Village, FL 33141
PH: (305) 756-6041

P.J.'S BAR-B-Q, INC. and SARASODA, INC.

Dated: May 28, 2002

By:

Robert E. Heslin
Robert E. Heslin, Esq.
Attorneys for P.J.'S BAR-B-Q, INC.
and SARASODA, INC.
5 Columbia Circle
Albany, NY 12203
PH: (518) 452-5600

EXHIBIT "B"

Copy

SETTLEMENT AGREEMENT

This Agreement by and between SARATOGA SPRING WATER COMPANY, a New York Corporation having its corporate office at 11 Geyser Road, Saratoga Springs, New York 12866 (hereinafter "SSW"), party of the first part, and PJ'S BAR-B-Q, INC. and SARASODA, INC., both being New York corporations having corporate offices at 1 Kaydeross Avenue West, Saratoga Springs, NY 12866 (hereinafter collectively referred to as "PJ'S"), party of the second part.

WITNESSETH:

WHEREAS, suit was brought against PJ'S by SARATOGA BEVERAGE GROUP, INC. (hereinafter "SBG") in the United States District Court for the Northern District of New York entitled, "Saratoga Beverage Group, Inc. v. P.J.'s Bar-B-Q, Inc. and Sarasoda, Inc.," Civil Action No. 01-CV-0626, to enjoin PJ'S from using the mark SARASODA as a trademark and for damages, said suit having been based upon the contention that said mark, as used by PJ'S, is confusingly similar to various trademarks owned by SBG (hereinafter referred to as the "SARATOGA marks"); and

WHEREAS, SBG commenced before the United States Patent and Trademark Office, Trademark Trial and Appeal Board, a cancellation proceeding, Cancellation No. 31,411 seeking to cancel P.J.'s Registration of the mark SARASODA and design, Registration No. 2,326,908 for soft drinks, and an opposition proceeding, Opposition No. 118,685, against P.J.'s application for the mark SARASODA, Serial No. 75,447,627 for soft drinks; and

WHEREAS, SBG has assigned all of its right, title and interest in and to the said suit and the SARATOGA marks to SSW; and

WHEREAS, SSW and PJ'S have come to an amicable resolution of the dispute embodied in said suit;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. PJ'S agrees that it will not use its SARASODA mark on bottled water or clear flavored water products, whether carbonated or still.

2. PJ'S agrees to amend its existing U.S. Trademark Registration No. 2,326,908 by amending the description of goods contained therein to read as follows:

Soft drinks, not including bottled water or clear flavored water products, whether carbonated or still.

3. PJ'S agrees to amend its pending U.S. Trademark Application No. 75/447,627 by amending the description of goods contained therein to read as follows:

Soft drinks, not including bottled water or clear flavored water products, whether carbonated or still.

4. It is understood and agreed that the above proposed description of goods expressed in paragraphs 2 and 3 is subject to the approval of the United States Patent and Trademark Office ("PTO"). Should the PTO require the above proposed description of goods expressed in paragraphs 2 and 3 to be modified, PJ'S agrees to make such modifications so long as the exclusion of bottled water products, including clear flavored water products, whether carbonated or still, remains clear.

5. The parties agree to enter into a stipulated dismissal of said suit in the form attached hereto as Exhibit A and made a part hereof.

6. The parties hereby release each other from any and all claims and counterclaims pending in said suit and reasonably embraced by the pleadings therein.

7. No damages shall be recovered by either of the parties and each of the parties shall bear their own costs and attorney's fees.

8. SSW will promptly dismiss the pending Cancellation Proceeding, No. 31,411, and Opposition Proceeding, No. 118,685 upon receipt of proof of P.J.'s filing of the amendments set forth in Paragraphs 2 and 3, and SSW agrees not to oppose, seek to cancel or otherwise interfere with P.J.'s use, registration or application for registration of the mark SARASODA as limited by Paragraphs 2 and 3 herein.

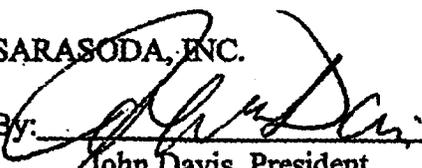
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date when it has been executed by them.

SARATOGA SPRING WATER COMPANY

By: 
Adam Madkour, President

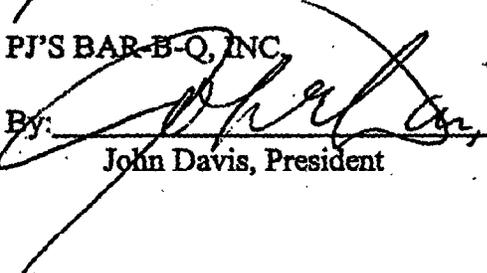
Dated: 3-14- _____, 2002

SARASODA, INC.

By: 
John Davis, President

Dated: 3/29 _____, 2002

PJ'S BAR-B-Q, INC.

By: 
John Davis, President

Dated: 3/29 _____, 2002

STATE OF
COUNTY OF

On this 14th day of March, 2002, before me personally came
ADAM MADKOUR to me known, who, by me duly sworn, did depose and say that he resides at

that he is the President of SARATOGA SPRING WATER COMPANY, the corporation described
in, and which executed the foregoing document, that he knows the seal of the corporation, that the
seal affixed to this document is the corporate seal, that it was affixed by order of the board of
of the corporation, and that he signed his name by like order.

SHANON GREEN
Notary Public, State of New York
No. 01GR6018134

Shanon No: 01GR6018134
Notary Public - State of New York
My Commission Expires: 1-4-03

STATE OF ~~New York~~ ^{Qualified in Saratoga County}
COUNTY OF ~~Saratoga~~ ^{Saratoga} Expires Jan. 4, 2003

On this 29 day of March, 2002, before me personally came JOHN DAVIS
to me known, who, by me duly sworn, did depose and say that he resides at

1 Kaydeross Avenue, Saratoga Springs, NY 12866
that he is the President of SARASODA, INC., the corporation described in, and which executed the
foregoing document, that he knows the seal of the corporation, that the seal affixed to this document
is the corporate seal, that it was affixed by order of the board of directors of the
corporation, and that he signed his name by like order.

Janet McKeen Baldes
Notary Public - State of New York
My Commission Expires: _____

STATE OF NEW YORK
COUNTY OF SARATOGA

JANET McKEEN BALDES
Notary Public, State of New York
No. 4847303, Saratoga County
Commission Expires 11-30-2005

On this 29 day of March, 2002, before me personally came JOHN DAVIS
to me known, who, by me duly sworn, did depose and say that he resides at

1 Kaydeross Avenue, Saratoga Springs, NY 12866
that he is the President of PJ'S BAR-B-Q, INC., the corporation described in, and which executed
the foregoing document, that he knows the seal of the corporation, that the seal affixed to this
document is the corporate seal, that it was affixed by order of the board of directors of the
corporation, and that he signed his name by like order.

Janet McKeen Baldes
Notary Public - State of New York
My Commission Expires: _____

JANET McKEEN BALDES
Notary Public, State of New York
No. 4847303, Saratoga County
Commission Expires 11-30-2005