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PLEASE REPLY TO NEW JERSEY OFFICE

August 23, 2004

TTAB

United States Patent and Trademark Office
Box TTAB
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: World Confections v. Kencraft, Inc.
Opposition Number: 91158237
Application Number: 76362977

To Whom It May Concern:

We represent the Opposer in the above referenced matter. Enclosed for filing are the following documents.

1. Opposer's Response and Objection to Applicant's Rule 56(f) Motion for a Continuance for Discovery;
2. Declaration of Stephen L. Baker in support of Opposer's Response and Objection to Applicant's Rule 56(f) Motion.
3. Declaration of John M. Rannells in Support of Opposer's Response and Objection to Applicant's Rule 56(f) Motion with Exhibits A thru D.

Very truly yours,

BAKER & RANNELLS

John M. Rannells

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08-26-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

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

----------X

World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

OPPOSER'S RESPONSE AND OBJECTION TO APPLICANT'S RULE 56(f) MOTION FOR A CONTINUANCE FOR DISCOVERY

TO THE HONORABLE BOARD:

Opposer, World Confections, Inc., through its undersigned attorneys, respectfully responds and objects to Applicant's Rule 56 (f) motion; requests that the motion be denied; and that Applicant be cautioned for its distortion of the facts presented in support of the Rule 56(f) motion.

Accompanying and in support of this response are the declarations of John M. Rannells and Stephen L. Baker, both attorneys for Opposer. Accompanying the declaration of Rannells as exhibit "A" is the declaration of Opposer's President with exhibits 2 and 3 thereto, that was previously submitted in support of Opposer's pending motion for summary judgment.

Factual Background

1. This opposition concerns the Applicant's "Intent to Use" Application for the mark ALPINE CONFECTIONS for "candy".

2. The Applicant has not yet begun to use the mark on the goods recited in the application. [Decl. Rannells ¶ , Ex. A thereto].

3. Opposer has used the mark ALPINE CONFECTIONS on, inter alia, gummy candy, continuously from 1997 to the present date. [Decl. Rannells, Ex. A (ex. 2 thereto - invoices evidencing sales of Opposer's ALPINE CONFECTIONS gummi candy for every year from 1997 to the present date)].

4. There are no limitations or restrictions in the recitation of goods in the application in issue as to channels of trade, class of consumer, geographic area, or anything else.

5. The goods sold by Opposer, under the identical mark, are candy products.

Responses to Applicant's Misleading Facts

1. Applicant's Representation to the Board: "It appears WCI is avoiding discovery. Opposer has always maintained that Applicant may discover the requested information, but despite Applicant's repeated requests Opposer never provided a time at which Applicant could discover, examine and copy the documents . . . ." [Emphasis added]. [App's Motion, p. 2, numbered ¶7].

The statement is simply untrue. Attached as Ex. "B" to the accompanying declaration of Rannells, is Rannells' email to Applicant's attorney, Mr. Zenger, dated July 28, 2004 which specifically advised Mr. Zenger that Opposer's documents would be made available for inspection on August 13, August 20, and September 3. Attached

as Ex. "C" to the accompanying declaration of Rannells is Mr. Zenger's reply email which clearly evidences the fact that Mr. Zenger received the exhibit B email in Ex. A and was aware of the dates proposed by Opposer long prior to filing Applicant's Rule 56(f) motion. See also Decl. Rannells, Ex. D. Instead of choosing a date or advising that he was unavailable on those dates, and requesting other dates, Mr. Zenger filed the present Rule 56(f) motion on the misleading and untrue basis that he was never provided with dates.

2. Applicant's Representation to the Board: "Shortly after receiving WCI's June 15, 2004 discovery response, Kencraft submitted to WCI interrogatories and discovery requests to find support for Kencraft's contention that WCI abandoned or lacked continuous use of the disputed mark Alpine Confections." [Emphasis added]. [Appl. Motion, p. 4].

This statement is untrue. The Applicant did not serve Opposer with any "interrogatories and discovery requests" after June 15, 2004. In fact, Applicant has not served Opposer with any discovery requests other than Applicant's initial requests dated April 26, 2004. The Applicant's moving papers do not contain copies of any discovery requests other than its initial request. The reason is that no other "interrogatories and discovery requests" exist.

3. Applicant's Representation to the Board: "Applicant's repeated discovery requests were met with deferrals . . . ." [App's Motion, p. 2, numbered ¶3].

To the extent Applicant's statement infers that Opposer did not timely respond to Applicant's discovery requests, the Applicant's statement is untrue. Opposer timely responded to all of Applicant's discovery requests. In its papers, Applicant omits the

dates upon which it served discovery and the dates upon which Opposer responded. The actual facts are:

(a). Applicant served all of its discovery requests (i.e., interrogatories, document requests, and request for admissions) on Opposer on April 26, 2004 (at the time, 19 days before discovery was set to close).

(b). Opposer timely moved for a two (2) week extension of its time to respond to discovery (i.e., until June 15, 2004). The Extension was granted by Order of the Board [Order 7/8/04].

(c). Opposer timely served complete responses to all of Applicant's discovery requests on June 15, 2004. The Board is invited to review Opposer's responses to Applicant's discovery requests. Applicant's interrogatories and Opposer's response thereto are annexed to Mr. Zenger's declaration as Exhibit A. Applicant's document requests and Opposer's responses thereto are annexed to the Zenger declaration as Exhibit F.

(d). With regard to Applicant's document requests, Opposer advised Applicant that pursuant to Rule 2.120(d) of the Trademark Rules of Practice and Rule 34(b) F.R.Civ.P., Opposer's documents would be made available for inspection and copying at the Opposer's offices. See, Ex. F. Zenger Decl., page 4, numbered paragraph 14. As addressed above, Applicant was provided with dates to inspect documents. Applicant responded by filing the present motion.

4. Applicant's Representation to the Board: "Applicant's repeated discovery requests were met with deferrals and statements that Opposer's counsel had to discuss the discovery requests with the Opposer." ." [App's Motion, p. 2, numbered ¶3].

This statement is either misleading, incomprehensible, or simply untrue. As evidenced above, Opposer timely responded to all of Applicant's discovery requests. There were no deferrals and no statements that Opposer's counsel had to discuss the discovery requests with Opposer. No such conversations ever occurred between counsel.

To the extent the statement is intended to refer to Applicant's requests for dates that it could inspect Opposer's documents, the statement is misleading. First, it clearly infers another meaning. Second, in discussing dates with Applicant's attorney, Opposer's attorney never stated that it "had to discuss the discovery requests with Opposer." The only statements made by Opposer's attorney were that he would inquire as to available dates for Applicant to inspect documents [Decl. Rannells ¶ 5]. Finally, and completely and conspicuously absent from Applicant's motion is the fact that on July 27, 2004, Applicant was informed that Opposer's documents would be made available for inspection on August 13, August 20, and September 3, that Opposer would forward a Stipulated Protective Order for Applicant's review (which it did), and that "in the event [Applicant is] only seeking document inspection at this point, [Opposer] will consent to extending the due date for [Applicant's] response to the motion for summary judgment to seven days after inspection of documents." [Decl. Rannells, Ex. B]. Applicant had an obligation to bring these facts to the attention of the Board. Obviously that would be difficult to do where, as here, the Applicant has misrepresented to the Board that dates were never provided.

5. Applicant's Representation to the Board: "Kencraft requests the Board to grant its Rule 56(f) motion to allow completion of outstanding discovery, including the deposition of Mr. Cohen . . .". [App's Motion, pp. 5-6].

This statement is misleading. Applicant has never served Opposer with a Notice of Taking Deposition. There simply is no noticed deposition that constitutes "outstanding discovery." Perhaps this is why Applicant requests the right to depose Mr.

Cohen in an almost parenthetical manner, and fails to state any legally valid and specific reason why it should be permitted to depose Mr. Cohen.

6. Applicant's Representation to the Board: "Opposition is still in discovery stage". [App's Motion, p. 4].

Technically this is true. Apparently, on June 2, 2004, Applicant's counsel called Opposer's counsel, Stephen L. Baker, for consent to extend trial dates by two months. Unbeknownst to and unrevealed to Mr. Baker during the conversation, Applicant's discovery period had already closed. [Decl. Baker ¶ 5].

While it is the policy of Baker and Rannells PA, out of courtesy, to grant extensions of time to colleagues requesting the same, it is not office policy to consent to the reopening of dates, without first obtaining client consent. Applicant's counsel did not request a reopening of the discovery period and the same was not granted. [Decl. Baker, ¶¶ 5 and 6].

Applicant filed its motion for extension of dates, and included therewith an "extension" of the discovery period. Conspicuously, Applicant did not request the reopening of its discovery period in its motion before the Board. The discovery period extension went unnoticed by Opposer's office. The Board also apparently did not notice that the discovery period was closed, and granted Applicant's motion.

Applicant's Non-Issues

1. Applicant's Statement: "WCI has not provided documentation sufficient to establish their claim of senior use of Applicant's mark." [App's Motion, p. 5].

Opposer is baffled at this statement. Opposer's exhibits attached to the motion for summary judgment evidence continuous use of Opposer's mark on candy products for each and every year from 1997 to the present date. See Exhibit "A" (and exhibit 2 thereto) to the accompanying declaration of Rannells –. Applicant filed its intent to use application long after Opposer began use of the mark. Further, Applicant has not yet begun to use its mark on the goods recited in its intent to use application ("candy"). Finally, Applicant has been offered dates to inspect Opposer's documents but choose instead to file the present motion

2. Applicant's Statement: "WCI has failed to show use since 2001 to refute abandonment." ." [App's Motion, p. 5].

First of all, there is nothing to refute. There is no evidence of abandonment to refute and no legal presumption involved. Secondly, exhibit 2 to the Declaration of Opposer's President in support of Opposer's motion for summary judgment (see accompanying declaration of Rannells, Ex. A – ex, 2 thereto) is comprised of representative invoices from each and every year from 1997 to the present date evidencing sales of Opposer's candy goods under Opposer's mark. Finally, Applicant has been offered dates to inspect Opposer's documents but choose instead to file the present motion that at best only delays matters and increases the time and expense that Opposer must spend in this proceeding.

3. Applicant's Statement: "WCI has not provided documentation sufficient to establish that their use of the mark as a mark rather than as a trade name." ." [App's Motion, p. 5].

Exhibit 3 to the summary judgment Declaration of Opposer's President (see Exhibit A to the accompanying declaration of Rannells – exhibit 3 thereto) is comprised of representative packages of Opposer's goods bearing the mark in issue. They clearly evidence trademark use. Nevertheless, if Applicant intends to present some argument that such use does not constitute trademark use, it is a purely legal argument. More importantly, however, trade name use is sufficient use upon which one may base an opposition. Paragraph 1 of the Notice of Opposition states: "Opposer is the owner of the mark ALPINE CONFECTIONS, and variations thereof ("Opposer's Mark") as a trademark, trade name, and as a service mark . . . ".

4. Applicant's Statements: In the Zenger declaration which accompanies Applicant's Rule 56(f) motion, Applicant sets forth so-called matters in issue (i.e., duPont factors) that it allegedly requires discovery of prior to responding to the summary judgment motion, namely :

(a) Similarity of Channel of Trade. [Decl Zenger p. 7]. Applicant states that it "is a worthy subject of discovery". Applicant's intent to use application for the mark for "candy" is not limited or restricted in any way as to channels of trade. Opposer use the identical mark on candy products. Applicant has not yet begun to use its mark. Opposer's goods are sold though all typical channels of trade through which candy products are sold. [Decl. Rannells, Ex A (¶ 10)]. Accordingly, in this case, the Board must find, as a matter of law, that Opposer's and Applicant's goods move (or will move) in all channels of trade that are appropriate for the goods identified, namely candy products. See Miles Laboratories v. Naturally Vitamin Supplements, 1 USPQ2d 1445,1450 (TTAB 1987). There simply is no issue here.

(b) Similarity of Class of Purchaser. [Decl Zenger p. 7]. Again, there are no limitations or restrictions in the application in issue regarding classes of purchasers of "candy". Applicant states that it would agree not to sell gummi candy under the mark. The statement is irrelevant. The application in issue is for "candy" without limitation. Further, Applicant's motion is not a proper vehicle for attempting settlement discussions. Applicant cites a federal district court case from the Southern District of New York referring to "product packaging", yet fails to explain how the case is relevant to an opposition proceeding before the Board, especially where, as here, Applicant has no product and no packaging for its product. There simply is no issue here.

Legal Argument

The precedent which has developed around Rule 56(f) motions requires, *inter alia*, that the movant substantiate its request by showing in an affidavit or declaration a genuine and convincing need for discovery, by: (1) stating with precision/specificity the materials and the facts the non-movant hopes to discover (the request for materials and facts must be narrowly focused and be neither cumulative nor speculative); (2) articulating a plausible basis for its belief that such materials exist and are within the exclusive control of the movant; and (3) stating how each of the materials sought will produce specific facts that will enable the non-movant to convince the trier that there is/are genuine issues of material fact. See Simmons Oil Corp. v. Tesoro Petroleum Corp., 86 F.3d 1138, 1144 (Fed. Cir. 1996); Fennel v. First Step Designs, Ltd., 83 F.3d 526, 531 (1st Cir. 1996); Maljack Prods., Inc. v. Good-Times Homme Video Corp., 81 F.3d 881, 888 (9th Cir. 1996); Evans v. Technologies Applications & Serv. Co., 80 F.3d 954, 961 (4th Cir. 1996).

The declaration submitted by Applicant's counsel is merely a complaint that unless Applicant is granted unlimited discovery from Opposer, that Applicant cannot present facts essential to justify its opposition to the pending motion for summary judgment. To paraphrase the CAFC in Keebler Co. v. Murray Bakery Products, 9 USPQ2d 1736, 1738 (Fed. Cir. 1989): "...it is difficult to interpret Applicant's declaration support as saying anything more than 'we have no factual basis for opposing summary judgment, but, if you stay proceedings, we *might* find *something*'".

The fact that the Respondent may not have taken all the discovery it now desires or feels it may be entitled to, is not a sufficient basis under Rule 56(f) to obtain a discovery continuance. Applicant must support its request by a showing of need and by convincing argument that the discovery sought will produce specific facts to raise a genuine issue of material fact. See, e.g., Keebler, supra, 9 USPQ2d at 1739.

Stating that you need something and that it may somehow be relevant is an insufficient showing of specific need. Id. See also, Krim v. Banctexas Group, Inc., 989 F.2d 1435, 1442 (5th Cir. 1993); Committee for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992), and Paddington Partners v. Bouchard, 34 F.3d 1132, 1138 (2nd Cir. 1994). The Applicant may not simply state that it requires discovery and that such discovery is generally relevant to a duPont factor and/or that it "is a worthy subject of discovery", and thereby obtain a continuance in the hopes of finding something to support its defense of the summary judgment motion. As the Federal Circuit held in Keebler, supra, 9 USPQ2d 1736:

> If all one had to do to obtain a grant of a Rule 56(f) motion were to allege possession by movant of "certain information" and "other

> evidence", every summary judgment decision would have to be delayed while the non-movant goes fishing in the movant's files.

See, also Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 251 (2d Cir. 1985), cert. denied, 484 U.S. 918 (1987).

Because of the absence of a showing of a genuine and convincing need for specific, non-speculative, and narrowly-focused discovery required to rebut the summary judgment motion, Applicant's request for a continuance for discovery should be denied.

Summary

Even if Applicant could make the required showings, the Applicant is not entitled to further discovery. The Applicant's Rule 56(f) motion is based upon numerous false and misleading statements and non-issues. For that reason alone, Applicant's motion should be denied.

Opposer has always been willing to provide an opportunity to Applicant to inspect documents it requested. It is the Applicant who has not taken the opportunity to inspect Opposer's documents. Applicant choose instead, to falsely state that dates were never provided.

Contrary to Applicant's assertions, Opposer did not file its motion for summary judgment to avoid responding to discovery. Opposer filed the motion because the case is quite straightforward. The marks are identical; the goods in issue are legally identical; and Opposer has priority. The purpose in filing the motion for summary judgment is to obtain a judgment with as much economy of time and expense as possible.

CONCLUSION

For all the foregoing reasons, Opposer respectfully requests that the Board deny Applicant's Rule 56(f) motion in its entirety.

Respectfully submitted,

John M. Rannells
BAKER AND RANNELLS PA
Attorney for Opposer
626 North Thompson St.
Raritan, N.J. 08869
908-722-5640
Fax: 908-725-7088

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing **OPPOSER'S RESPONSE AND OBJECTION TO APPLICANT'S RULE 56(F) MOTION FOR A CONTINUANCE FOR DISCOVERY** in re: World Confections, Inc. v. Kencraft, Inc. Opp. No. 91/158,237 was served on counsel for Applicant, this 23RD day of August, 2004, by sending same via First Class Mail, postage prepaid, to:

Todd E. Zenger, Esq.
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

DATED: August 23, 2004

John M. Rannells

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202

Date of deposit: AUG. 23, 2004

Name of Applicant, Assignee, or Registered Representative: JOHN M. RANNELLS

Signature:

Date of Signature: AUG. 23, 2004

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

----------X

World Confections, Inc.

Opposer

Mark: ALPINE CONFECTIONS

v.

Opposition No.: 91/158,237

Kencraft Inc.

Application No. 76/362,977

Applicant

----------X

DECLARATION OF STEPHEN L. BAKER IN SUPPORT OF OPPOSER'S RESPONSE AND OBJECTION TO APPLICANT'S RULE 56(f) MOTION

Stephen L. Baker declares and says:

1. I am an attorney at law admitted to practice before the courts of the States of New York and New Jersey.

2. I am a partner in the law firm of Baker And Rannells PA. We maintain offices at 626 North Thompson Street, Raritan, New Jersey, and at 60 East 42nd St., Suite 817, New York, New York 10165. The firm and the undersigned represent the Opposer in the captioned proceeding.

3. I make this declaration in support of World Confections, Inc's ("Opposer") response and objection to Applicant's Rule 56(f) motion for a continuance for discovery. I have personal knowledge of the facts set forth herein, and if called to testify, could and would testify competently thereto.

4. On or about June 2, 2004, Applicant's counsel, Mr. Zenger, spoke with me and requested consent to extend trial dates by two months. It is the policy of Baker and

Rannells PA, out of courtesy, to grant extensions of time to colleagues requesting the same. Accordingly, I consented to an extension of trial dates.

5. I did not have the case trial book before me during the conversation. Unbeknownst to me, unrevealed to me by Mr. Zenger, and not discussed during the conversation, was the fact that Applicant's discovery period was closed at the time Mr. Zenger called. It is not Baker and Rannells office policy to consent to a request for the reopening of dates without first obtaining our client's consent. Mr. Zenger did not ask, and I did not consent to a reopening of the discovery period.

6. Mr. Zenger then filed a motion for extension of dates. Included therein was an "extension" of the discovery period. Applicant did not request the reopening of its discovery period in its motion before the Board. The discovery period extension went unnoticed by our office. In granting the motion, the Board apparently also failed to notice that the discovery period had closed.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed on August 23, 2004.

Stephen L. Baker

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing **DECLARATION OF STEPHEN L. BAKER IN SUPPORT OF OPPOSER'S RESPONSE AND OBJECTION TO APPLICANT'S RULE 56(f) MOTION FOR A CONTINUANCE FOR DISCOVERY** in re: World Confections, Inc. v. Kencraft, Inc. Opp. No. 91/158,237 was served on counsel for Applicant, this 23rd day of August, 2004, by sending same via First Class Mail, postage prepaid, to:

Todd E. Zenger, Esq.
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

DATED: August 23rd, 2004

John M. Rannells

CERTIFICATE OF MAILING

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Name of Applicant, Assignee, or Registered Representative: JOHN M. RANNELLS

Signature:

Date of Signature: Aug. 23, 2004

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

----------X

World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

DECLARATION OF JOHN M. RANNELLS IN SUPPORT OF OPPOSER'S RESPONSE AND OBJECTION TO APPLICANT'S RULE 56(f) MOTION

John M. Rannells declares and says:

1. I am an attorney at law admitted to practice before the courts of the States of New York and New Jersey.

2. I am a partner in the law firm of Baker And Rannells PA. We maintain offices at 626 North Thompson Street, Raritan, New Jersey, and at 60 East 42nd St., Suite 817, New York, New York 10165. The firm and the undersigned represent the Opposer in the captioned proceeding.

3. I make this declaration in support of World Confections, Inc's ("Opposer") response and objection to Applicant's Rule 56(f) motion for a continuance for discovery. I have personal knowledge of the facts set forth herein, and if called to testify, could and would testify competently thereto.

4. Accompanying this Declaration as Exhibit "A" is a copy of the declaration of Matthew Cohen, President of Opposer, (including exhibits 2 and 3 thereto) that was previously submitted with Opposer's motion for summary judgment.

5. On page 2, numbered paragraph 3, of Applicant's Rule 56(f) motion, Applicant states that "Applicant's repeated discovery requests were met with deferrals and statements that Opposer's counsel had to discuss the discovery requests with the Opposer." First, Applicant was timely served with responses to all discovery requests served upon Opposer. Secondly, neither the undersigned nor anyone else from the offices of Baker and Rannells PA ever made a statement to Applicant's counsel that it "had to discuss discovery requests with the Opposer." Such a conversation never took place. In discussing dates for inspection of documents with Applicant's attorney, the only statements made by the undersigned were that I would inquire as to available dates for Applicant to inspect documents.

6. Accompanying this Declaration as Exhibit "B" is a copy of an email, dated July 28, 2004, sent by the undersigned to Mr. Zenger, advising Mr. Zenger that Opposer's documents were available for inspection on August 13, August 20, and September 3, 2004. The email also states that that Opposer would forward a Stipulated Protective Order for Applicant's review (which I did), and that "in the event [Applicant is] only seeking document inspection at this point, [Opposer] will consent to extending the due date for [Applicant's] response to the motion for summary judgment to seven days after inspection of documents."

7. Accompanying this Declaration as Exhibit "C" is a copy of a return email, dated July 29, 2004, from Mr. Zenger to the undersigned. The email confirms that Mr. Zenger was advised of available dates to inspect Opposer's documents.

8. Accompanying this Declaration as Exhibit "D is a copy of a follow-up email, dated August 4, 2004 from the undersigned to Mr. Zenger again addressing production

of documents for inspection. The exhibit further confirms that Opposer provided dates for inspection of documents, that Applicant was aware of the same at the time it filed its Rule 56(f) motion, stating therein that "Opposer never provided a time at which Applicant could discover, examine and copy the documents."

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed on August 23, 2004.

John M. Rannells

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing **DECLARATION OF JOHN M. RANNELLS IN SUPPORT OF OPPOSER'S RESPONSE AND OBJECTION TO APPLICANT'S RULE 56(f) MOTION FOR A CONTINUANCE FOR DISCOVERY** in re: World Confections, Inc. v. Kencraft, Inc. Opp. No. 91/158,237 was served on counsel for Applicant, this 23rd day of August, 2004, by sending same via First Class Mail, postage prepaid, to:

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

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World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

EXHIBIT "A"

To the Declaration of John M. Rannells

In Support of Opposer's Response and Objection to Applicant's Rule 56(f) Motion for Discovery

(Copy of Declaration of Cohen with internal exhibits 2 and 3)

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

----------X

World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

DECLARATION OF MATTHEW COHEN IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Matthew Cohen, declares as follows:

1. I am the President of World Confections, Inc. ("WCI") of 185 30th Street, Brooklyn, New York 11232, the Opposer in the captioned proceeding.

2. I have been employed by WCI and its predecessor (Alpine USA Ltd.) and related company (World Candies, Inc.) since 1980. I both run and oversee all of the day-to-day operations of WCI.

3. I make this declaration in support of Opposer's motion for summary judgment granting Opposer's opposition to application Ser. No. 76/362977 for the mark ALPINE CONFECTIONS for candy.

4. I have personal knowledge of the facts set forth herein, and if called to testify, could and would testify competently thereto.

5. WCI was previously named Alpine USA Ltd. On January 24, 2002 a Certificate of Amendment of the Certificate of Incorporation of Alpine USA Ltd.

amending the name of the corporation to World Confections Inc. was filed with the New York State Division of Corporations. A copy of the Certificate of Amendment and filing receipt accompanies this declaration as Exhibit "1".

6. WCI is a manufacturer, importer and exporter of confectionery products, including without limitation, sugar confections in a box, gummi candy, gum, chocolate, lollipops, hand decorated jelly products, popping candy, Holiday candies, and licorice. Our products are sold under a variety of marks, for example, SWAMP BUDDIES (Reg. No. 2685218), RUDE DUDES (Reg. No. 2450995), SKIN CRITTERS (Reg. No. 1943193), DINOSAUR BONES (Reg. No. 1807782), and ALPINE CONFECTIONS (Ser. No. 76365845).

7. All sales of our gummi candy products have been sold under the mark ALPINE CONFECTIONS (and recently, as explained in paragraph 13 below, also under the mark ALPINE BRAND).

8. WCI owns pending trademark application Ser. No. 76/365845 for the mark ALPINE CONFECTIONS for fruit flavored gummy candy. The application is currently in suspension, pending the outcome of this opposition proceeding. WCI (as Alpine USA Ltd.) previously filed an application for the same mark (i.e., Ser. No. 76/007736) which inadvertently became abandoned, although use of the mark never ceased.

9. WCI has sold its ALPINE CONFECTIONS brand gummi candy since June of 1997. Sales of the product under the ALPINE CONFECTIONS mark have been continuous from June of 1997 to the present date. Accompanying this declaration as Exhibit "2" are true copies of representative invoices (prices redacted) from each year from 1997 to the present date, namely invoices dated 9/11/97, 1/19/98, 2/17/98,

1/04/99, 7/6/99, 1/10/00, 7/26/00, 3/14/01, 10/01/01, 10/04/01, 11/30/01, 3/18/02, 10/28/02, 1/08/03, 01/14/03.

10. Our ALPINE CONFECTIONS brand gummi candy is sold throughout the forty-eight (48) contiguous States, through all typical channels of trade, including without limitation, supermarkets, grocery stores, so-called mom and pop stores, drug stores, candy stores, delicatessens, convenience stores, and over the Internet, namely all types of retail outlets through which candy is typically sold.

11 Accompanying this Declaration, as Exhibit "3", are true copies of representative ALPINE CONFECTIONS product packaging that has been and/or is currently used by WCI for its gummi candy products.

12. Sales of WCI's ALPINE CONFECTIONS brand gummi products has grown from approximately $850,000 in the year 1998 to between $3 million and $3.5 million for each of the past three years. As explained in paragraph 13 below, sales of our gummi products in 2003 and 2004 have been under both our ALPINE CONFECTIONS mark and our ALPINE BRAND mark.

13. Beginning in the late Spring of 2003, WCI began a temporary changeover from the mark ALPINE CONFECTIONS to the mark ALPINE BRAND. The changeover was commenced as a result of WCI receiving a number of communications from parties wondering if there was a relationship between WCI and Kencraft's parent company, Alpine Confections, Inc. In an attempt to avoid our customers being confused or making such a connection, WCI decided to temporarily change from ALPINE CONFECTIONS to simply ALPINE BRAND. The changeover is still in process,

however WCI intends to resume use of the mark ALPINE CONFECTIONS upon a decision in the present case.

14. Unfortunately, our attempts to avoid confusion and mistake have not been that successful. The May-June '04 edition of *Professional Candy Buyer* (the News & Trends section) contains an article about Kencraft's parent company entitled "Alpine Acquires Fannie May, Fannie Farmer Brands". The center and most prominent portion of the article contains an exact replica of WCI's distinct Alpine Confections logo (a fanciful pastoral scene with cottage, haystack, river, bridge, forest trees and mountains and the words ALPINE CONFECTIONS) which logo is used on WCI's ALPINE CONFECTIONS gummi products (see Ex. 3). Obviously, the trade is confused and/or mistaken as to the source of origin of ALPINE CONFECTIONS candy. Accompanying this Declaration as Exhibit "4" is a copy of the article.

15. The May-June '04 edition of *Professional Candy Buyer* was distributed at and made available to the participants and attendees of the National Confectioners Association ("NCA") "All Candy Expo 2004" trade show which was held June 8 – 10, 2004 at Lakeside Center, McCormick Place, Chicago, Illinois. Both WCI and Kencraft were in attendance at and had exhibit booths at the trade show. As stated on the All Candy Expo website (a copy of which accompanies this Declaration as Exhibit "5"):

> The ALL CANDY EXPO®, sponsored by the National Confectioners Association, is the largest confectionery-only show in North America, and serves as the meeting place for the confectionery industry. The EXPO is a unique opportunity to buy, sell and network with industry professionals and decision makers. There were 480 exhibitors and more than 18,000 attendees at the 2004 event. . . . Attendees are buyers from all classes of trade including supermarkets, drug stores, vending, convenience stores, wholesalers, theaters, mass merchants, specialty and department

stores. Importers, exporters, suppliers, distributors and brokers also attend, making the EXPO the 'must attend' show of the year.

16. The appearance of our distinctive logo on and in an article about Kencraft's parent company during the most important trade show of the year, was a terrible embarrassment for WCI. Kencraft, however, is apparently unconcerned. On June 23, 2004, our attorney sent a letter to Kencraft complaining about the matter and demanding that the situation be corrected. Accompanying this Declaration as Exhibit "6" is a copy of said letter. To date, Kencraft has failed to respond. It has simply ignored the matter.

17. WCI is seeking, through the summary judgment procedure, an expedited resolution of the matter before the U.S. Trademark Trial & Appeal Board. We were using the mark on our gummi candy products prior to Kencraft filing its Intent to Use application and prior to the incorporation date of Kencraft's parent company Alpine Confections, Inc. or the incorporation date of Kencraft's sister company Alpine Confections Holdings, Inc. As such, WCI has priority of use of the mark. Further, confusion and/or mistake as to source of origin is apparently inevitable.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed on July 13, 2004.

Matthew Cohen

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing **DECLARATION OF MATTHEW COHEN IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT** in re: World Confections, Inc. v. Kencraft, Inc. Opp. No. 91/158,237 was served on counsel for Applicant, this 14th day of July, 2004, by sending same via First Class Mail, postage prepaid, to:

Todd E. Zenger, Esq.
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

DATED: July 14, 2004

John M. Rannells

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202

Date of deposit: JULY 14, 2004

Name of Applicant, Assignee, or Registered Representative: JOHN M RANNELLS

Signature: _____

Date of Signature: JULY 14, 2004

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

----------X

World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

EXHIBIT "2"

To the Declaration of Matthew Cohen

In Support of Opposer's Response and Objection to Applicant's Rule 56(f) Motion for Discovery

(Representative Invoices 1997-2004)

Alpine Confections

185 30th St. Brooklyn, NY USA 11232

Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
09/11/97	933581

ACCOUNT NO.:

1763903

SOLD TO
ANPESIL DIST.
7001 ROUSTEIN AVENUE

NORTH BERGEN NJ 07047

SHIPPED TO
ANPESIL DIST.
7001 ROUSTEIN AVENUE

NORTH BERGEN NJ 07047

CARRIER: SAFEWAY (1)

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	09/11/97	WC-0905	09/09/97	04 GOLICK/MA	1 % 15 Net 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
40	1400	3	PREPAID

ASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
10	03301	8	TB	SOUR STRAPZ-CHERRY/COLA	80			
30	03304	8	TB	SOUR STRAPZ-STRWBRY/KIWI	240			

COPY

REMIT [redacted] IF THIS INVOICE IS PAID BY 09/26/97

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TOTAL DUE [redacted]

'O ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1763903	933581	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232
Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
01/19/98	933606

ACCOUNT NO.: 1783890

SOLD TO
99 CENTS ONLY STORE
4000 UNION PACIFIC AVENUE

CITY OF COMMERCE CA 90023

SHIPPED TO
99 CENTS ONLY STORE
4000 UNION PACIFIC AVENUE

CITY OF COMMERCE CA 90023

CARRIER: LA PIER

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	01/19/98	75856	12/02/97	06 LICHT	% Net 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
3330	46620	5	COLLECT

ASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
366	01610	24	BG	8oz GUMMI BEARS-BAG	8784			
366	01611	24	BG	8oz GUMMI WORMS - BAG	8784			
966	01612	24	BG	8oz NEON GUMMI BEARS-BAG	23184			
966	01613	24	BG	8oz GUMMI GLOW WORMS-BAG	23184			
666	01615	24	BG	8oz GUMMI PEACH RINGS-BA	15984			

COPY

REMIT [redacted] IF THIS INVOICE IS PAID BY 01/19/98

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TOTAL DUE [redacted]

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1783890	933606	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232

Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
02/17/98	933609

ACCOUNT NO.:

1646893

SOLD TO
DOLLAR TREE/ONLY $1.00
500 VOLVO PARKWAY

CHESAPEAKE VA 23320

SHIPPED TO
DOLLAR TREE/ONLY $1.00
MEMPHIS DOLLAR TREE
7860 HACKS CROSS ROAD
OLIVE BRANCH MS 38654

CARRIER: PIER SAVANA

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	02/17/98	19811-00002	12/09/97	94 SHINNAMON	% Net 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
3330	46620	5	COLLECT

SES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
565	01612	24	BG	8oz NEON GUMMI BEARS-BAG	13560			
.00	01613	24	BG	8oz GUMMI GLOW WORMS-BAG	26400			
.00	01615	24	BG	8oz GUMMI PEACH RINGS-BA	26400			
565	01616	24	BG	8oz GUMMI APPLE RINGS-BA	13560			

COPY

REMIT [redacted] IF THIS INVOICE IS PAID BY 02/17/98

[redacted]

TOTAL DUE

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

O ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1646893	933609	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232

Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
01/04/99	933660

ACCOUNT NO.:

1646230

SOLD TO
DOLLAR TREE/ONLY $1.00
500 VOLVO PARKWAY

CHESAPEAKE VA 23320

SHIPPED TO
DOLLAR TREE DISTRIBUTION, INC.
GREENBRIER, DOLLAR TREE
1330 EXECUTIVE BLVD
CHESAPEAKE VA 23320-000

CARRIER: NORFOLK PIE

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	01/04/99	27303-00001-	10/26/98	94 SHINNAMON	% Net 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
3330	46620	7	COLLECT

CASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
370	01612	24	BG	NEON GUMMI BEARS-8oz BAG	8880			
407	01613	24	BG	GUMMI GLOW WORMS-8oz BAG	9768			
333	01615	24	BG	GUMMI PEACH RINGS-8oz BA	7992			
666	01617	24	BG	GUMMI BUGZ- 7oz BAG	15984			
444	01618	24	BG	NEON GUMMI GATORS-7oz BA	10656			
777	01619	24	EA	GUMMI LIZARDS, 7oz BAG	18648			
333	01620	24	BG	GUMMI FROGS, 7oz BAG	7992			

COPY

REMIT [redacted] IF THIS INVOICE IS PAID BY 01/04/99

[redacted]

TOTAL DUE

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1646230	933660	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232
Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
07/06/99	933681

ACCOUNT NO.: 1526359

SOLD TO
SAVE-A-LOT STORES INC.
P.O. BOX 809

BRIDGETON MO 63045-0809

SHIPPED TO
SAVE-A-LOT STORES
2 VAN BUREN BLVD
BLDG. 8
GUILDERLAND CTR NY 12085

CARRIER: CHAMPION (1

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	07/06/99	11025858-1	06/01/99	81 GRABBE-LE	1 % 30 Net 31

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
120	1440	3	PREPAID

SES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
120	18101	24	BG	24-7OZ GUMMI ASST CASE	2880			

COPY

REMIT [redacted] IF THIS INVOICE IS PAID BY 08/05/99

[redacted]
TOTAL DUE

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1526359	933681	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232

Phone: (718) 768-8882 • Fax: (718) 788-7932 • Toll free: (888) 750-4455

INVOICE

DATE	NUMBER
01/10/00	933744

ACCOUNT NO.:

COPY

1398261

SOLD TO: VALUE CITY MERCHANTS WHSE
ATTN: AP MERCHANDISE DEPT.
3241 WESTERVILLE ROAD
COLUMBUS OH 43224

SHIPPED TO: VALUE CITY MERCHANTS WHSE
4310 E. FIFTH AVENUE

COLUMBUS OH 43219

CARRIER: SAFEWAY

DEPT	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	01/10/00	708012	11/09/99	68 ALL-STATE	1 % 15 Net 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
1097	15358	3	PREPAID

CASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
300	01613	24	BG	GUMMI GLOW WORMS-7oz BAG	7200			
230	01619	24	EA	GUMMI LIZARDS, 7oz BAG	5520			
231	01620	24	BG	GUMMI FROGS, 7oz BAG	5544			
236	01621	24	BG	STRAWBERRY PUFFS- 7 OZ	5664			
100	01610	24	BG	GUMMI BEARS-7oz BAG	2400			

TERMS: [redacted] IF THIS INVOICE IS PAID BY 01/25/00 [redacted]

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE

TOTAL DUE

TO INSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1398261	933744	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232

Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
07/26/00	933851

ACCOUNT NO.:

COPY

1018051

SOLD TO
UNIVERSAL INTERNATIONAL, INC.
5000 WINNETKA AVE N.

NEW HOPE MN 55428

SHIPPED TO
ONLY DEALS, INC.
5000 WINNETKA AVE, N.

NEW HOPE, MN 55428

CARRIER: CHAMPION (1

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	07/26/00	33153	06/02/00	06 LICHT	1 % 15 Net 3

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
3750	52500	7	PREPAID

CASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
468	01616	24	BG	GUMMI APPLE RINGS-7oz BA	11232			
468	01610	24	BG	GUMMI BEARS-7oz BAG	11232			
468	01613	24	BG	GUMMI SOUR WORMS-7oz BAG	11232			
468	01612	24	BG	NEON GUMMI BEARS-7oz BAG	11232			
468	01615	24	BG	GUMMI PEACH RINGS-8oz BA	11232			
468	01611	24	BG	GUMMI WORMS - 7oz BAG	11232			
474	01623	24	BG	SOUR "RUDE DUDES" 7oz	11376			
468	01621	24	BG	STRAWBERRY PEAKS- 7 OZ	11232			

REMIT [redacted] IF THIS INVOICE IS PAID BY 08/10/00 [redacted]

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TOTAL DUE

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1018051	933851	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232
Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
03/14/01	933963

ACCOUNT NO.: 1783890

SOLD TO
99 CENTS ONLY STORE
4000 UNION PACIFIC AVENUE
CITY OF COMMERCE CA 90023

SHIPPED TO
99 CENTS ONLY STORE
4000 UNION PACIFIC AVENUE
CITY OF COMMERCE CA 90023

CARRIER: L.A. PIER

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	03/14/01	121309	12/13/00	06 LICHT	% Net 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
3750	52500	7	PREPAID

ASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
600	01615	24	BG	GUMMI PEACH RINGS-8oz BA	14400			
550	01613	24	BG	GUMMI SOUR WORMS-7oz BAG	13200			
600	01612	24	BG	NEON GUMMI BEARS-7oz BAG	14400			
550	01611	24	BG	GUMMI WORMS - 7oz BAG	13200			
550	01610	24	BG	GUMMI BEARS-7oz BAG	13200			
440	01621	24	BG	STRAWBERRY PEAKS- 7 OZ	10560			
460	01623	24	BG	SOUR "RUDE DUDES" 7oz	11040			

COPY

REMIT [redacted] IF THIS INVOICE IS PAID BY 03/14/01

[redacted]
TOTAL DUE

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1783890	933963	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232

Phone: (718) 768-8882 • Fax: (718) 788-7902 • Toll Free: (888) 750-4455

INVOICE

DATE	NUMBER
10/01/01	934214

ACCOUNT NO.: 1766449

COPY

SOLD TO: WAKEFERN FOOD CORP/GROC. WHSE
600 YORK STREET

ELIZABETH NJ 07207-0506

SHIPPED TO: WAKEFERN FOOD CORP.
%DAYTON DISTR. CTR/60 TOWER RD

DAYTON NJ 08810

CARRIER: SAFEWAY (1)

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	10/01/01	01255218	07/06/01	04 GOLICK/MA	1 % 15 Net 3

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
864	10368	3	PREPAID

CASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
288	09615	24	BG	GUMMI PEACH RINGS-CLIP S	6912			
288	09621	24	BG	STRAWBERRY PEAKS-CLIP ST	6912			
192	09612	24	BG	GUMMI NEON BEARS-CLIP ST	4608			
96	09613	24	BG	GUMMI SOUR WORMS-CLIP ST	2304			

REMIT [redacted] IF THIS INVOICE IS PAID BY 10/16/01 [redacted]

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TOTAL DUE

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1766449	934214	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232

Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
10/04/01	934315

ACCOUNT NO.:

COPY

1819364

SOLD TO
CASEY'S GENERAL STORE, INC.
% DISTR. CTR. P.O. BOX 3001
ONE CONVIENCE BLVD
ANKENY IA 50021-0030

SHIPPED TO
CASEY'S GENERAL STORE, INC.
% DISTR. CTR. P.O. BOX 3001
ONE CONVIENCE BLVD
ANKENY IA 50021-0030

CARRIER: ROADWAY (1)

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	10/04/01	123456	10/02/01	66 KEY SALES	1 % 15 Net 3

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
960	6720	3	PREPAID

CASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
190	01210	12	BG	GUMMI BEARS-7OZ BAG	2280			
200	01211	12	BG	GUMMI WORMS - 7 OZ BAG	2400			
300	01221	12	BG	STRAWBERRY PEAKS-7OZ BAG	3600			
270	01220	12	BG	GUMMI FROGS - 7 0Z BAG	3240			

REMIT [redacted] IF THIS INVOICE IS PAID BY 10/19/01 [redacted]

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TOTAL DUE

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANC

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1819364	934315	$

CUSTOMER

Alpine Confections

185 30th St. Brooklyn, NY USA 11232

Phone: (718) 768-8882 • **Fax:** (718) 788-7902 • **Toll Free:** (888) 750-4455

INVOICE

DATE	NUMBER
11/30/01	934363

ACCOUNT NO.: COPY 1819488

SOLD TO
PALMER CANDY
311 BLUFF STREET

SIOUX CITY IA 51102

SHIPPED TO
PALMER CANDY COMAPNY
605 WESLEY WAY

SIOUX CITY IA 51102-0326

CARRIER: ROADWAY (1)

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	11/30/01	4551	11/21/01	66 KEY SALES	1 % 15 Net 3

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
920	6440	3	PREPAID

CASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
240	01210	12	BG	GUMMI BEARS-7OZ BAG	2880			
240	01211	12	BG	GUMMI WORMS - 7 OZ BAG	2880			
440	01221	12	BG	STRAWBERRY PEAKS-7OZ BAG	5280			

REMIT [redacted] IF THIS INVOICE IS PAID BY 12/15/01 [redacted]

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TOTAL DUE

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Make checks payable to:
ALPINE USA LTD.
185 30th STREET
BROOKLYN, NY 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1819488	934363	$

WORLD confections Inc.

185 30th Street
Brooklyn, N.Y. 11232, U.S.A.
Tel.: (718) 768-8100
Fax: (718) 499-4918
Toll Free: 1-800-252-2639
E-mail: info@worldconfections.com

INVOICE

DATE	NUMBER
03/18/02	934849

COPY

ACCOUNT NO.: 1467026

SOLD TO
DOLGENCORP, INC.
ATTN: ACCOUNTS PAYABLE
100 MISSION RIDGE
GOODLETSVILLE TN 37072

SHIPPED TO
DOLLAR GNERAL DISTRIBUTION CTR
2505 EAST POINTE DRIVE

ZANESVILLE OH 43701

CARRIER: ROADWAY

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	03/18/02	DNYFCF	03/14/02	71 .05 MIKE ALEX	% NET 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
400	2800	3	PREPAID

ASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC PER UNIT	NET AMOUNT
400	01221D	12	BG	STRAWBERRY PEAKS-7OZ D.G	4800			

REMIT [redacted] IF THIS INVOICE IS PAID BY 03/18/02 [redacted]

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TOTAL DUE

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

WORLD CONFECTIONS INC.
185 30th STREET
BROOKLYN, N.Y. 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1467026	934849	$

NUMERICAL FILE

WORLD confections Inc.

185 30th Street
Brooklyn, N.Y. 11232, U.S.A.
Tel.: (718) 768-8100
Fax: (718) 499-4918
Toll Free: 1-800-252-2639
E-mail: info@worldconfections.com

INVOICE

DATE	NUMBER
10/28/02	936077

COPY

ACCOUNT NO.: 1783890

SOLD TO
99 C ONLY STORES
4000 UNION PACIFIC AVENUE

CITY OF COMMERCE CA 90023

SHIPPED TO
99 C ONLY STORES
4000 UNION PACIFIC AVENUE

CITY OF COMMERCE CA 90023

CARRIER: ROADWAY

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	10/28/02	169839	07/23/02	06 LICHT	% NET 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
3820	53480	7	PREPAID

CASES	PRODUCT NO.	UNITS/ CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
675	01610	24	BG	GUMMI BEARS-7oz BAG	16200			
700	01612	24	BG	NEON GUMMI BEARS-7oz BAG	16800			
500	01613	24	BG	GUMMI SOUR WORMS-7oz BAG	12000			
650	01615	24	BG	GUMMI PEACH RINGS-7oz BA	15600			
600	01616	24	BG	GUMMI APPLE RINGS-7oz BA	14400			
695	01623	24	BG	SOUR "RUDE DUDES" 7oz	16680			

REMIT [redacted] IF THIS INVOICE IS PAID BY 10/28/02

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TOTAL DUE [redacted]

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

Open 800.04

WORLD CONFECTIONS INC.
185 30th STREET
BROOKLYN, N.Y. 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1783890	936077	$

NUMERICAL FILE

WORLD confections Inc.
185 30th Street
Brooklyn, N.Y. 11232, U.S.A.
Tel.: (718) 768-8100
Fax: (718) 499-4918
Toll Free: 1-800-252-2639
E-mail: info@worldconfections.com

INVOICE

DATE	NUMBER
01/08/03	935615

COPY

ACCOUNT NO.: 1646915

SOLD TO
DOLLAR TREE/ONLY $1.00
500 VOLVO PARKWAY

CHESAPEAKE VA 23320

SHIPPED TO
DOLLAR TREE/ONLY $1.00
WOODRIDGE DC 3
2500 INTERNATIONALE PKWY
WOODRIDGE IL 60517

CARRIER: F.O.B. ILL

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	01/08/03	148290-99003	06/19/02	93 ROY PUTZE	% NET 30

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
1787	28592	3	COLLECT

CASES	PRODUCT NO.	UNITS/CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
1787	01950	24	BG	GUMMI BEARS-9.5OZ BAG	42888			
				VENDOR # 23987				

REMIT [redacted] IF THIS INVOICE IS PAID BY 01/08/03

[redacted]
TOTAL DUE

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

WORLD CONFECTIONS INC.
185 30th STREET
BROOKLYN, N.Y. 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1646915	935615	$

NUMERICAL FILE

WORLD confections Inc.

185 30th Street
Brooklyn, N.Y. 11232, U.S.A.
Tel.: (718) 768-8100
Fax: (718) 499-4918
Toll Free: 1-800-252-2639
E-mail: info@worldconfections.com

INVOICE

DATE	NUMBER
01/14/03	937100

COPY

ACCOUNT NO.: 1530569

SOLD TO
SAVE-A-LOT LTD.
P.O. BOX 4484

HAZELWOOD MO 63042-4484

SHIPPED TO
SAVE-A-LOT MACON
7595 INDUSTRIAL HIGHWAY

MACON GA 31206

CARRIER: ROADWAY

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	01/14/03	10806825-1	01/13/03	81 LEONARD	1 % 30 NET 31

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
180	2160	3	PREPAID

CASES	PRODUCT NO.	UNITS/CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
80	18101	24	BG	24-7OZ GUMMI ASST CASE	4320			

RECEIVED
JUL 7 2004
DISCOUNTED

REMIT [redacted] IF THIS INVOICE IS PAID BY 02/13/03

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

[redacted]
TOTAL DUE

ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

ORLD CONFECTIONS INC.
185 30th STREET
BROOKLYN, N.Y. 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1530569	937100	$

NUMERICAL FILE

WORLD confections Inc.

185 30th Street
Brooklyn, N.Y. 11232, U.S.A.
Tel.: (718) 768-8100
Fax: (718) 499-4918
Toll Free: 1-800-252-2639
E-mail: info@worldconfections.com

INVOICE

DATE	NUMBER
06/09/04	940248

ACCOUNT NO.: 1783890

SOLD TO
99 C ONLY STORES
4000 UNION PACIFIC AVENUE
CITY OF COMMERCE CA 90023

SHIPPED TO
99 C ONLY STORES
4000 UNION PACIFIC AVENUE
CITY OF COMMERCE CA 90023

CARRIER: YELLOW

DEPT.	DATE SHIPPED	CUSTOMER ORDER NO.	ORDER DATE	SALESPERSON	TERMS
	06/09/04	229352	03/29/04	06 LICHT	% Net

NO. OF CASES	WEIGHT	SHIPPED FROM	FREIGHT CHARGES
3750	52500	7	PREPAID

CASES	PRODUCT NO.	UNITS/CASES	U/M	DESCRIPTION	TOTAL UNITS	UNIT PRICE	DISC. PER UNIT	NET AMOUNT
650	01612	24	BG	NEON GUMMI BEARS-7oz BAG	15600	.565		8814.00
600	01613	24	BG	GUMMI SOUR WORMS-7oz BAG	14400	.565		8136.00
700	01615	24	BG	GUMMI PEACH RINGS-7oz BA	16800	.565		9492.00
600	01616	24	BG	GUMMI APPLE RINGS-7oz BA	14400	.560		8064.00
631	01623	24	BG	SOUR "RUDE DUDES" 7oz	15144	.565		8556.36
569	01625	24	BG	GUMMI DINOSAURS- 7OZ	13656	.565		7715.64

REMIT 50778.00 IF THIS INVOICE IS PAID BY 06/09/04

TOTAL DUE 50778.00

PLEASE SEE NOTES RE: CLAIMS, RETURNS, GUARANTEES AND CERTIFICATION ON REVERSE OF THIS INVOICE.

TO ENSURE PROPER CREDIT, PLEASE DETACH AT PERFORATION AND ENCLOSE THIS STUB WITH YOUR REMITTANCE

WORLD CONFECTIONS INC.
185 30th STREET
BROOKLYN, N.Y. 11232

ACCOUNT NUMBER	INVOICE NUMBER	AMOUNT ENCLOSED
1783890	940248	$

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

----------X

World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

EXHIBIT "3"

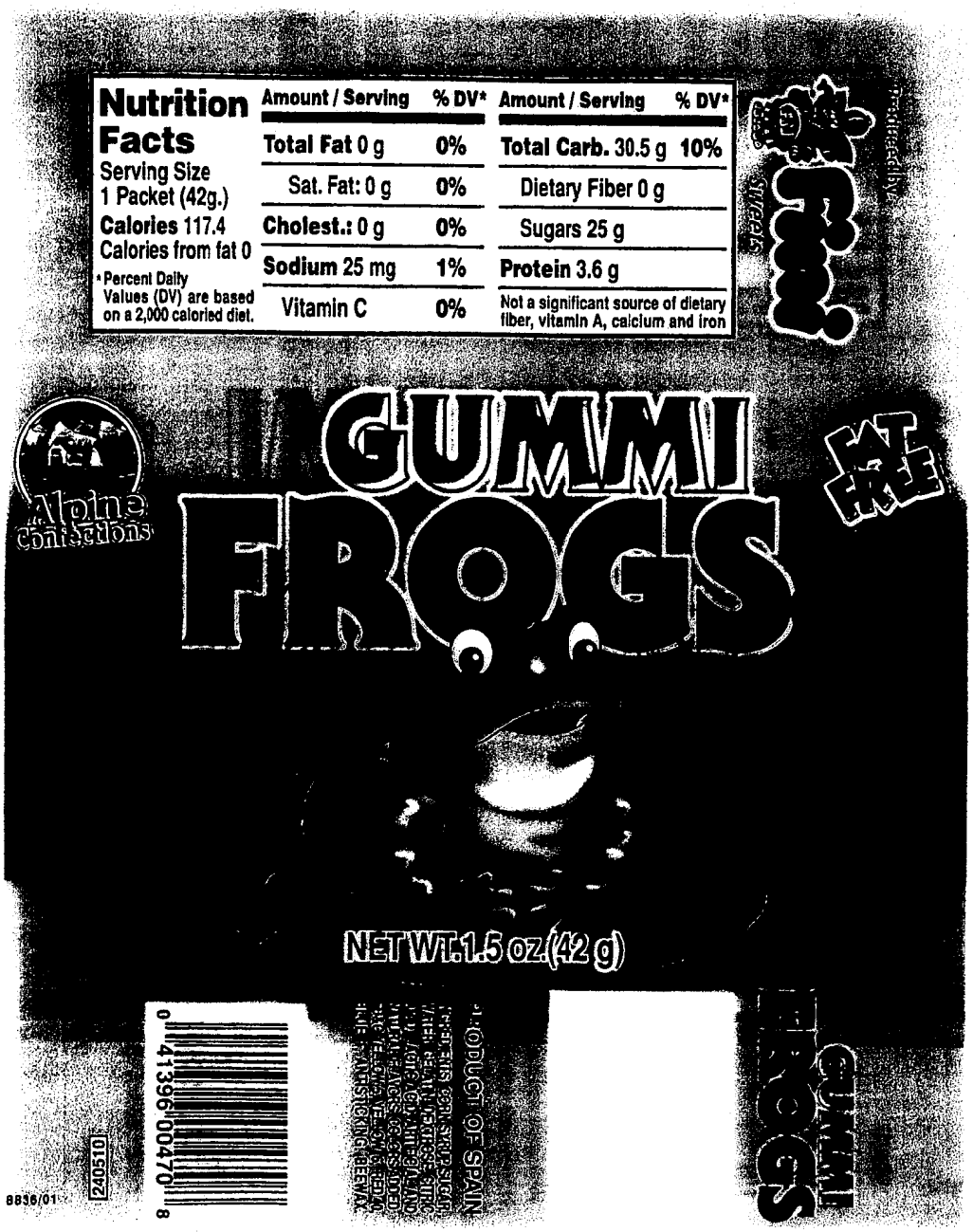
To the Declaration of Matthew Cohen

In Support of Opposer's Response and Objection to Applicant's Rule 56(f) Motion for Discovery

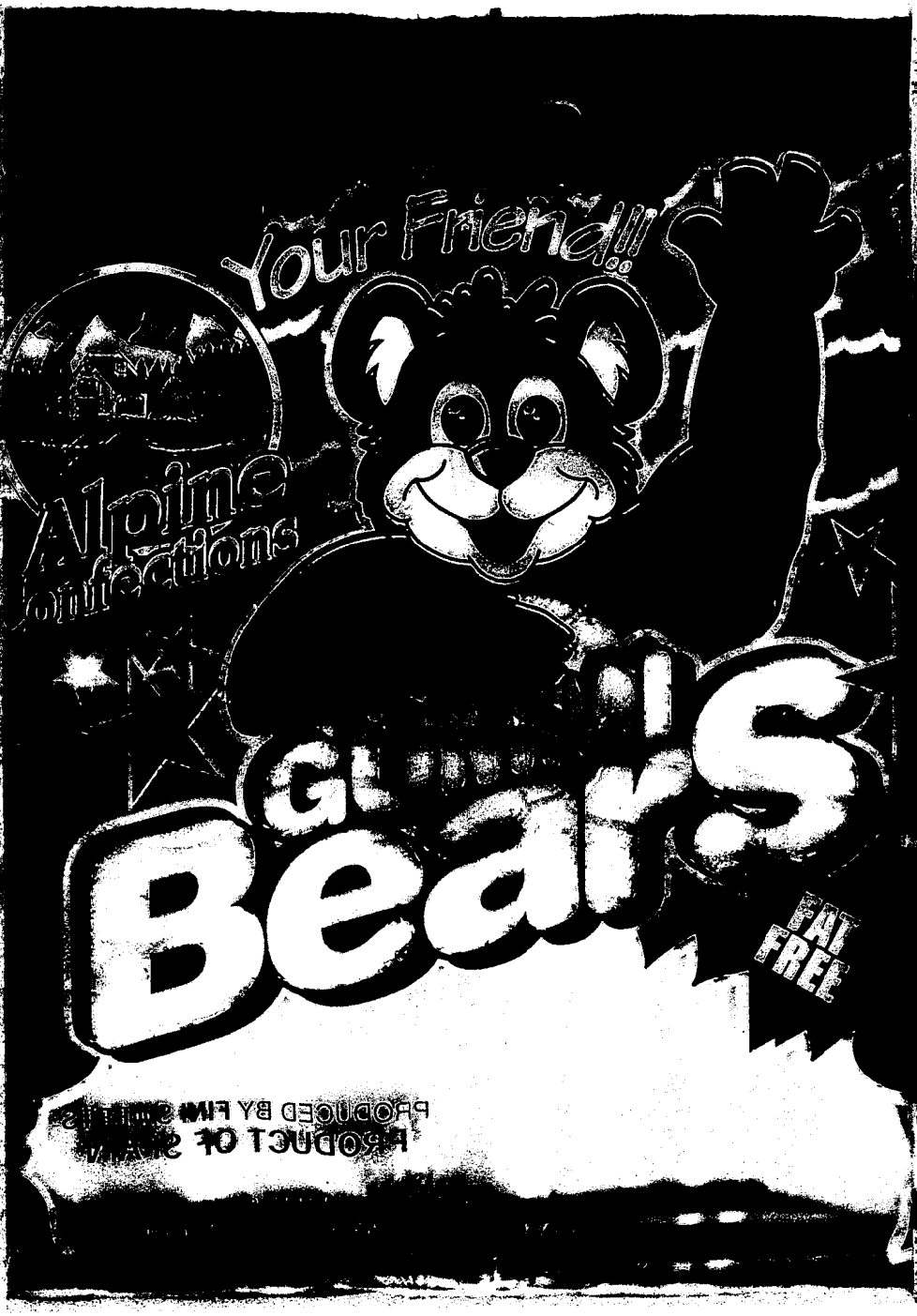
(Representative product packaging)

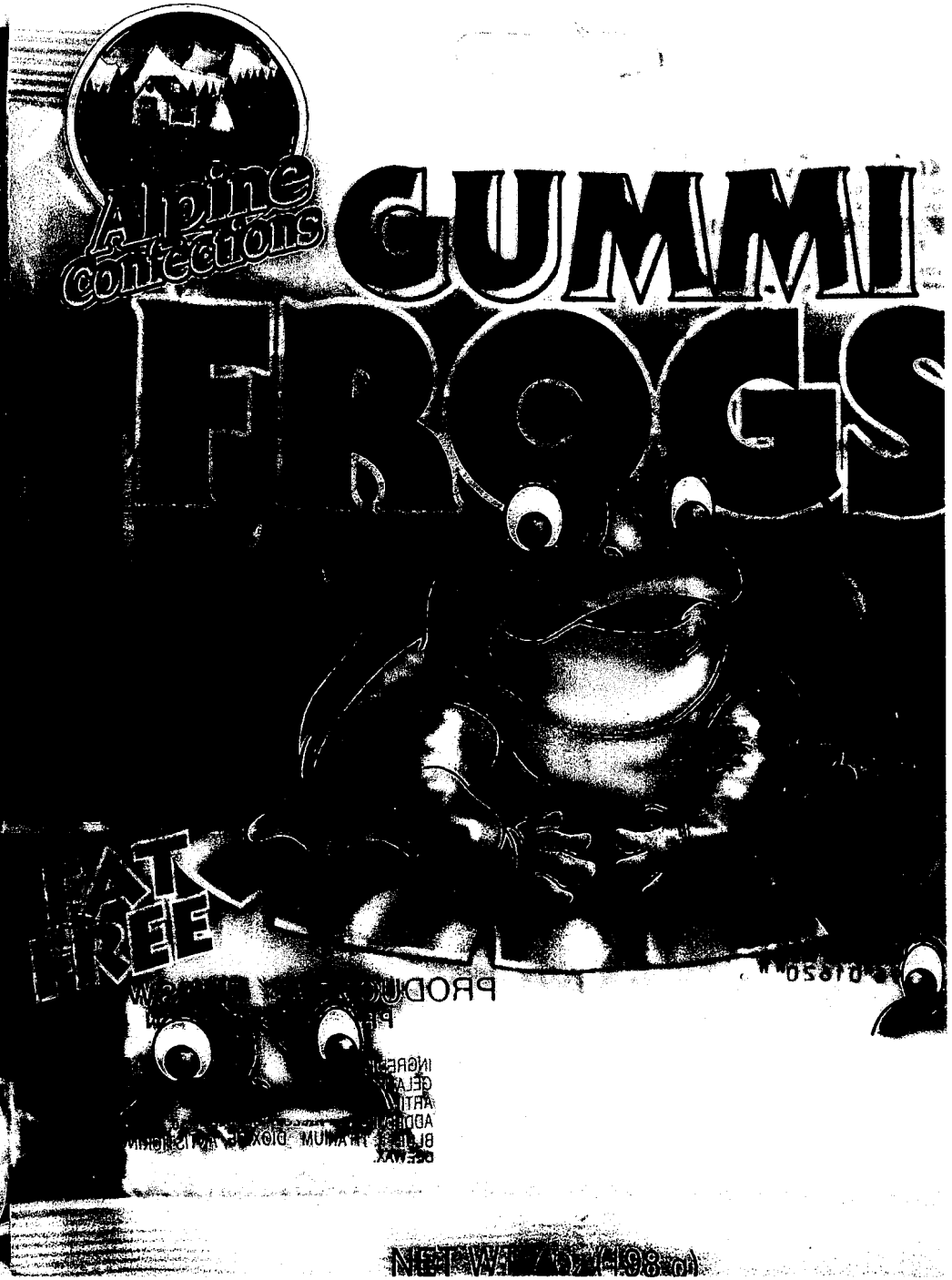

Gummy
Peach
Rings
Alpine
Confections

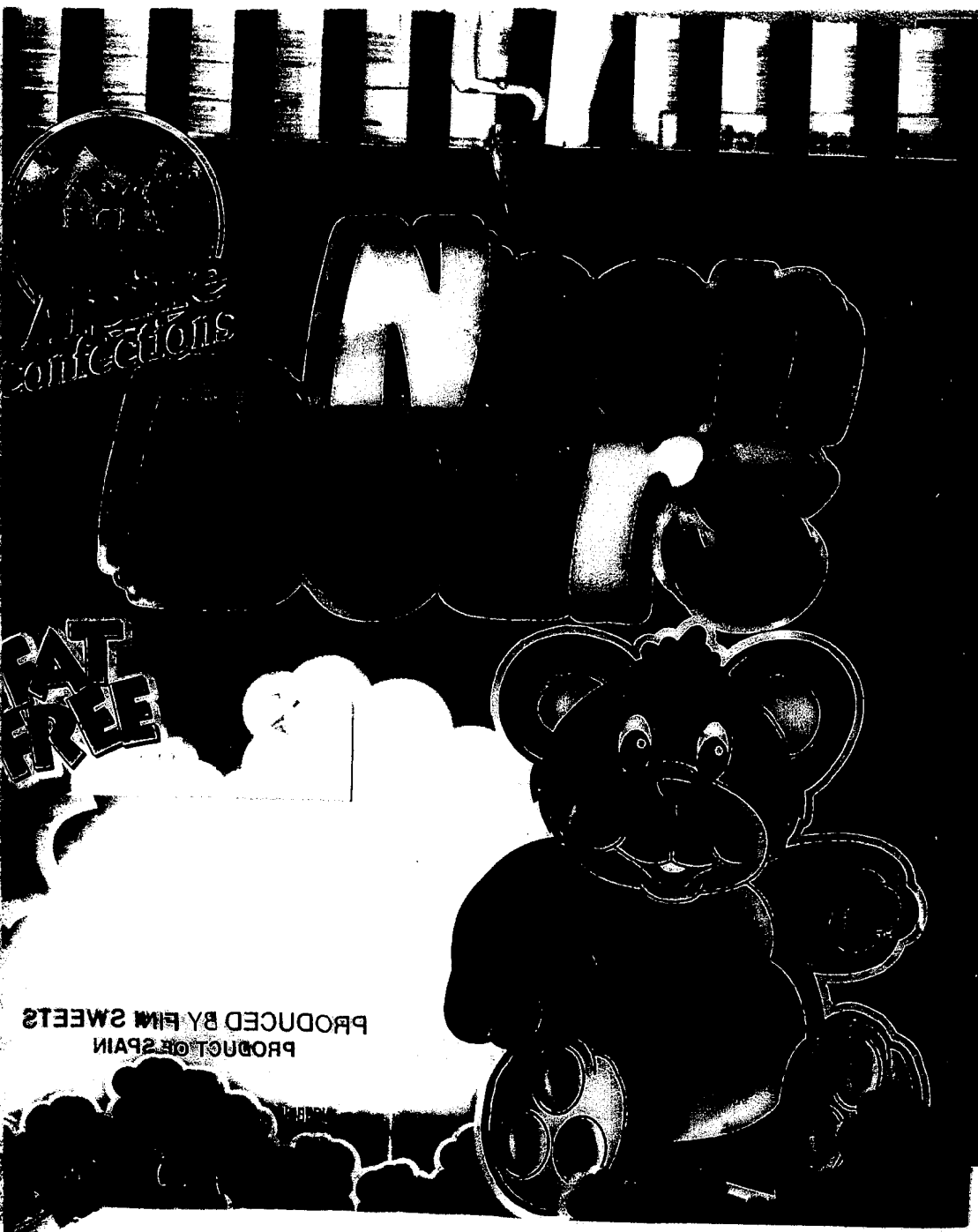

Gummy
Peach
Rings


Nutrition Facts
Serving Size 1 Packet (42g.)
Calories 117.4
Calories from fat 0
* Percent Daily Values (DV) are based on a 2,000 caloried diet.
Amount / Serving % DV*
Total Fat 0 g 0%
Sat. Fat: 0 g 0%
Cholest.: 0 g 0%
Sodium 25 mg 1%
Vitamin C 0%
Amount / Serving % DV*
Total Carb. 30.5 g 10%
Dietary Fiber 0 g
Sugars 25 g
Protein 3.6 g
Not a significant source of dietary fiber, vitamin A, calcium and iron
Sugar Free
Sweetened with Sucralose
Alpine Confections
GUMMI FROGS
FAT FREE
NET WT. 1.5 oz (42 g)
PRODUCT OF SPAIN
GUMMI FROGS
240510
8836/01
0 41369 00470 8


GUMMI FROGS
FAT FREE
NET WT. 1.5 oz (42 g)


Your Friend!!
Alpine confections
Bears
FAT FREE


Alpine confections
GUMMI
FROGS
FAT FREE



Nutrition Facts

Serving Size
1 Packet (42g.)

Calories 144.4
Calories from fat 0

*Percent Daily Values (DV) are based on a 2,000 caloried diet.

Amount / Serving	% DV*	Amount / Serving	% DV*
Total Fat 0 g	0%	**Total Carb.** 32.9 g	11%
Sat. Fat: 0 g	0%	Dietary Fiber 0 g	
Cholest.: 0 g	0%	Sugars 30.4 g	
Sodium 16.6 mg	0.7%	**Protein** 2.7 g	
Vitamin C	0%	Not a significant source of dietary fiber, vitamin A, calcium and iron.	

Fini Sweets

Alpine Confections

SOUR GUMMI BUGZ

NET WT. 1.5 oz (42 g)

PRODUCT OF SPAIN

INGREDIENTS: SUGAR, CORN SYRUP, DEXTROSE, WATER, GELATIN, CITRIC ACID, LACTIC ACID, FUMARIC ACID, ARTIFICIAL AND NATURAL FLAVORS; COLORS ADDED: FD&C YELLOW 5, YELLOW 6, RED 40, BLUE 1, TITANIUM DIOXIDE.

0 41396 00470 8

240509

8837/01

BUGZ

Nutrition Facts

Serving Size
1 Packet (42g.)
Calories 117.4
Calories from fat 0

*Percent Daily Values (DV) are based on a 2,000 caloried diet.

Amount / Serving	% DV*	Amount / Serving
Total Fat 0 g	0%	**Total Carb.** 30.5
Sat. Fat: 0 g	0%	Dietary Fiber 0
Cholest.: 0 g	0%	Sugars 25 g
Sodium 25 mg	1%	**Protein** 3.6 g
Vitamin C	0%	Not a significant source fiber, vitamin A, calciu

240505

0 41396 00470 8

Nutrition Facts

Serving Size 1 Packet (56g.)

Calories 192.5
Calories from fat 0

Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount / Serving	%DV*	Amount / Serving	%DV*
Total Fat 0g	0%	**Total Carb.** 43.9g	15%
Sat. Fat: 0g	0%	Sugars 40.6g	
Cholest.: 0mg	0%	**Protein** 3.7g	
Sodium 22mg	1%	Not a significant source of dietary fiber, vitamin A, calcium and iron.	
Vitamin C	0%		

Gummi Sour Worms

NET WT. 2 oz. (56 g)

0 41396 00472 2

2409507

PRODUCED BY
EIN SWEETS
PRODUCT OF SPAIN

INGREDIENTS: SUGAR, CORN SYRUP, DEXTROSE, WATER, GELATIN, CITRIC ACID, LACTIC ACID, FUMARIC ACID, ARTIFICIAL AND NATURAL FLAVORS, COLORS ADDED: FD & C YELLOW 5, YELLOW 6, RED 40, BLUE 1, TITANIUM DIOXIDE

EIN SWEETS

Gummi Glow Worms

NET WT. 2 oz. (56 g)

Alpine Confections

LIZARDS

Nutrition Facts

Serving Size 1 Packet (42g.)
Calories 144.4
Calories from fat 0

*Percent Daily Values (DV) are based on a 2,000 caloried diet.

Amount / Serving	% DV*	Amount / Serving	% DV*
Total Fat 0 g	0%	Total Carb. 32.9 g	11%
Sat. Fat: 0 g	0%	Dietary Fiber 0 g	
Cholest.: 0 g	0%	Sugars 30.4 g	
Sodium 16.6 mg	0.7%	Protein 2.7 g	
Vitamin C	0%	Not a significant source of dietary fiber, vitamin A, calcium and iron.	

Alpine Confections

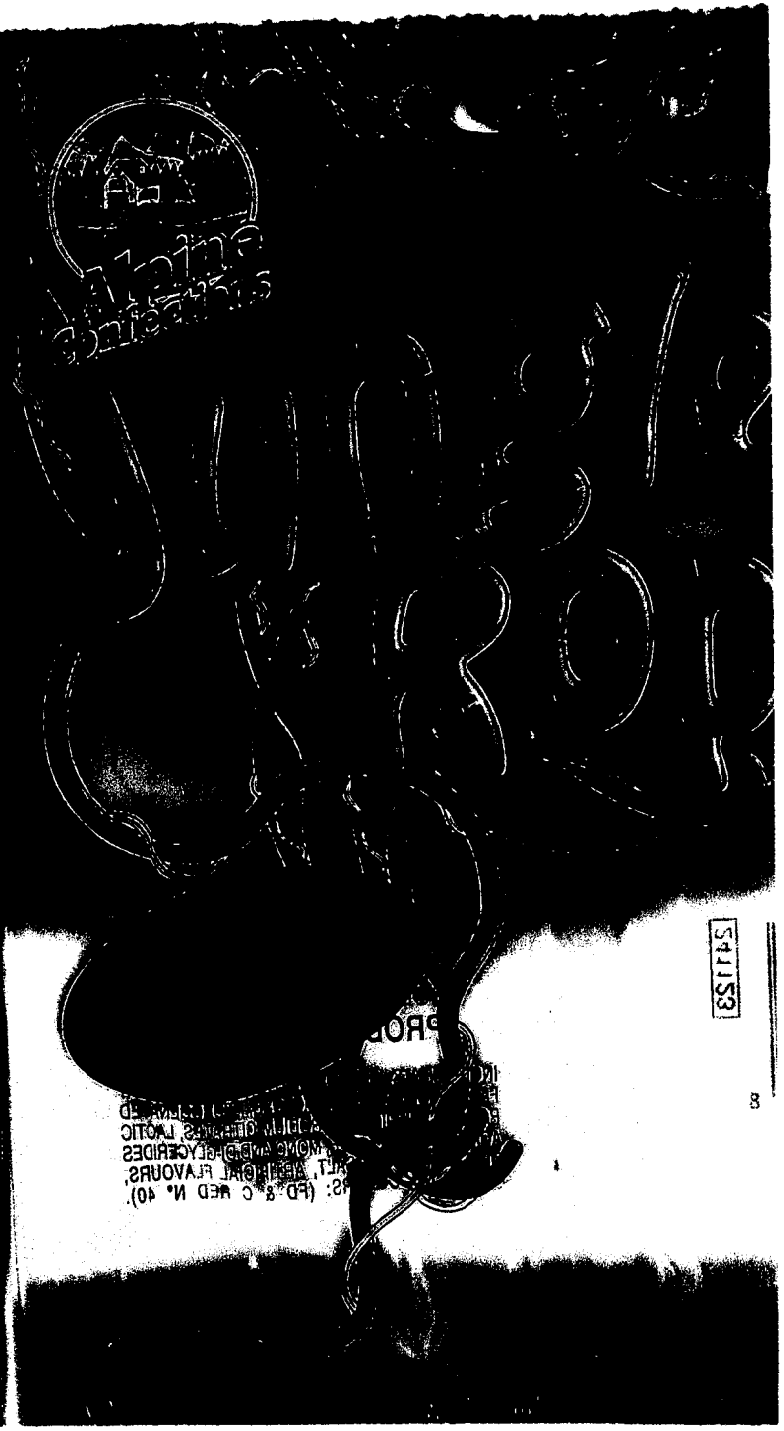
GLOW LIZARDS

NET WT. 1.5 oz. (42 g)

240506

0 17136 00470 8


Alpine
Confections
Brooklyn, NY USA 11232


Alpine
Confections

544155

gummy
apple
rings
Atlantic
confections
coop

atlantic
confections
sweet
treats
coop

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

----------X

World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

EXHIBIT "B"

To the Declaration of John M. Rannells

In Support of Opposer's Response and Objection to Applicant's Rule 56(f) Motion for Discovery

(Email - Rannells to Zenger dated 7/28/04)

john rannells

From: john rannells [jmr@br-tmlaw.com]
Sent: Tuesday, July 27, 2004 6:54 PM
To: Todd Zenger
Subject: RE: ALPINE CONFECTIONS Opposition No. 91158237

Todd: I respond as follows:

Regarding your comment:
"You have not responded to my repeated requests"

I went over dates with my client today. They are available on August 13, August 20, and September 3 for your document inspection. I will forward to you a Stip. Protective Order modeled on the TTAB form.

I would note for the record, that on June 23, 2004, we sent you a letter regarding the use of my client's Alpine Confections Logo in an article that appeared in the industry leading trade publication, "Professional Candy Buyer" about your client's company or its parent company. The matter is quite serious but has been ignored by your client. The fact that your client has not responded is quite troublesome. Your client's failure to deal with and correct the matter shows a cavalier and arrogant approach to the proceeding at hand.

Regarding your comment:
". . . now to file a motion for summary judgment. This appears to be an effort to avoid responding [to outstanding discovery]."

I did not file a motion for summary judgment simply to avoid responding to discovery. I filed the motion because the case is quite straightforward. The marks are identical and my client has priority. The purpose in filing any motion for summary judgment is to obtain a judgment with as much economy of time and expense as possible. My client's use has been significant and continuous since long prior to your client's use of the mark. The documents accompanying the motion for summary judgment attest to the same. The discovery you are seeking appears to be an effort to stall or avoid responding to the motion for summary judgment.

In the event you are only seeking document inspection at this point, my client will consent to extending the due date for your response to the motion for summary judgment to seven days after inspection of documents. If that is not sufficient you will have to make your motion. Any other discovery you seek is considered an unnecessary cost and expense to the parties in time and money.

I await your response.

John "Jack" Rannells

-----Original Message-----
From: Todd Zenger [mailto:tzenger@kmclaw.com]
Sent: Monday, July 26, 2004 6:17 PM
To: jmr@br-tmlaw.com
Subject: FW: ALPINE CONFECTIONS Opposition No. 91158237

Jack --

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

----------X

World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

EXHIBIT "C"

To the Declaration of John M. Rannells

In Support of Opposer's Response and Objection to Applicant's Rule 56(f) Motion for Discovery

(Email – Zenger to Rannells dated 7/29/04)

john rannells

From: Todd Zenger [tzenger@kmclaw.com]
Sent: Thursday, July 29, 2004 4:19 PM
To: jmr@br-tmlaw.com
Subject: RE: ALPINE CONFECTIONS Opposition No. 91158237

Jack -

Kencraft also wants to depose Matt Cohen. Please confirm his availability for deposition before Kencraft is required to respond to WCI's motion for summary judment.

Todd E. Zenger
801-321-4877 direct dial
tzenger@kmclaw.com

From: john rannells [mailto:jmr@br-tmlaw.com]
Sent: Tuesday, July 27, 2004 4:54 PM
To: Todd Zenger
Subject: RE: ALPINE CONFECTIONS Opposition No. 91158237

Todd: I respond as follows:

Regarding your comment:
"You have not responded to my repeated requests"

I went over dates with my client today. They are available on August 13, August 20, and September 3 for your document inspection. I will forward to you a Stip. Protective Order modeled on the TTAB form.

I would note for the record, that on June 23, 2004, we sent you a letter regarding the use of my client's Alpine Confections Logo in an article that appeared in the industry leading trade publication, "Professional Candy Buyer" about your client's company or its parent company. The matter is quite serious but has been ignored by your client. The fact that your client has not responded is quite troublesome. Your client's failure to deal with and correct the matter shows a cavalier and arrogant approach to the proceeding at hand.

Regarding your comment:
". . . now to file a motion for summary judgment. This appears to be an effort to avoid responding [to outstanding discovery]."

I did not file a motion for summary judgment simply to avoid responding to discovery. I filed the motion because the case is quite straightforward. The marks are identical and my client has priority. The purpose in filing any motion for summary judgment is to obtain a judgment with as much economy of time and expense as possible. My client's use has been significant and continuous since long prior to your client's use of the mark. The documents accompanying the motion for summary judgment attest to the same. The discovery you are seeking appears to be an effort to stall or avoid responding to the motion for summary judgment.

In the event you are only seeking document inspection at this point, my client will consent to extending the due date for your response to the motion for summary judgment to seven days after inspection of documents. If that is not sufficient

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

----------X

World Confections, Inc.

Opposer

v.

Kencraft Inc.

Applicant

----------X

Mark: ALPINE CONFECTIONS

Opposition No.: 91/158,237

Application No. 76/362,977

EXHIBIT "D"

To the Declaration of John M. Rannells

In Support of Opposer's Response and Objection to Applicant's Rule 56(f) Motion for Discovery

(Email – Rannells to Zenger dated 8/04/04)

john rannells

From: john rannells [jmr@br-tmlaw.com]
Sent: Wednesday, August 04, 2004 12:26 PM
To: Todd Zenger
Subject: RE: ALPINE CONFECTIONS Opposition No. 91158237

Todd: As I advised in my last email, one of the purposes in my client filing its motion for summary judgment is economy in time and expense. The motion for summary judgment includes documents that clearly evidence my client's priority and its continuous use of the mark in issue. Even going through the document production exercise, which my client is willing to do, appears to be a ploy to make my client needlessly spend time and money. Your client's responses to discovery indicate that Kencraft has not yet even begun using the mark on candy products. There simply is no issue in this case. Your client's request to depose Mr. Cohen appears to be a stalling tactic and a strategy to make my client spend further unnecessary time and expense on this case. Your client and its related companies apparently have a large amount of resources to throw at my client.

In my last email I advised that "in the event you are only seeking document inspection at this point, my client will consent to extending the due date for your response to the motion for summary judgment to seven days after inspection of documents. If that is not sufficient you will have to make your motion. Any other discovery you seek is considered an unnecessary cost and expense to the parties in time and money." My client has not changed its position.

Jack Rannells

-----Original Message-----
From: Todd Zenger [mailto:tzenger@kmclaw.com]
Sent: Thursday, July 29, 2004 4:19 PM
To: jmr@br-tmlaw.com
Subject: RE: ALPINE CONFECTIONS Opposition No. 91158237

Jack -

Kencraft also wants to depose Matt Cohen. Please confirm his availability for deposition before Kencraft is required to respond to WCI's motion for summary judment.

Todd E. Zenger
801-321-4877 direct dial
tzenger@kmclaw.com

From: john rannells [mailto:jmr@br-tmlaw.com]
Sent: Tuesday, July 27, 2004 4:54 PM
To: Todd Zenger
Subject: RE: ALPINE CONFECTIONS Opposition No. 91158237

Todd: I respond as follows:

Regarding your comment:
"You have not responded to my repeated requests"

I went over dates with my client today. They are available on August 13, August 20, and September 3 for your document inspection. I will forward to you a Stip. Protective Order modeled on the TTAB form.

I would note for the record, that on June 23, 2004, we sent you a letter regarding the use of my client's Alpine Confections Logo in an article that appeared in the industry leading trade publication, "Professional Candy Buyer" about your client's company or its parent company. The matter is quite serious but has been ignored by your client. The fact that your client has not responded is quite troublesome. Your client's failure to deal with and correct the matter shows a cavalier and arrogant approach to the proceeding at hand.

Regarding your comment:
". . . now to file a motion for summary judgment. This appears to be an effort to avoid responding [to outstanding discovery]."

I did not file a motion for summary judgment simply to avoid responding to discovery. I filed the motion because the case is quite straightforward. The marks are identical and my client has priority. The purpose in filing any motion for summary judgment is to obtain a judgment with as much economy of time and expense as possible. My client's use has been significant and continuous since long prior to your client's use of the mark. The documents accompanying the motion for summary judgment attest to the same. The discovery you are seeking appears to be an effort to stall or avoid responding to the motion for summary judgment.

In the event you are only seeking document inspection at this point, my client will consent to extending the due date for your response to the motion for summary judgment to seven days after inspection of documents. If that is not sufficient you will have to make your motion. Any other discovery you seek is considered an unnecessary cost and expense to the parties in time and money.

I await your response.

John "Jack" Rannells

-----Original Message-----
From: Todd Zenger [mailto:tzenger@kmclaw.com]
Sent: Monday, July 26, 2004 6:17 PM
To: jmr@br-tmlaw.com
Subject: FW: ALPINE CONFECTIONS Opposition No. 91158237

Jack --

Further to my emails of June 25, June 28, July 2, July 12 and July 19, 2004, Kencraft wishes to inspect documents and take depositions. You have not responded to my repeated requests, now only to file a motion for summary judgment. This appears to be an effort to avoid responding. In connection with document inspection and WCI's objections as to confidentiality, we propose the stock protective order available for download from the Trademark Office website at http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm and attached. Please identify dates for document inspection and depositions.

Kencraft requests that WCI stipulate to extend Kencraft's response period on the summary judgment