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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRANSMITTAL LETTER (GENERAL)
(With Certificate of Mailing by First Class Mail)

Applicant/Registrant: **Kencraft, Inc.**
Serial No.: **76/362,977**
Registration No.:
Trademark: **ALPINE CONFECTIONS**

Docket No.
8598.131

TO THE COMMISSIONER FOR TRADEMARKS:

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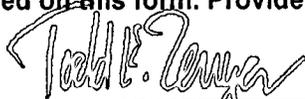
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Opposition No: 911582237

Opposer: World Confections, Inc.

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Dated: **June 16, 2005**

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06-20-2005

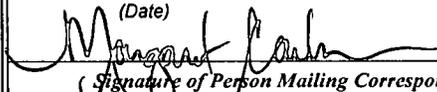
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Margaret Carlson

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

In the matter of Trademark Application Serial No. 76/362,977
Published in the Official Gazette of June 3, 2003 on page TM 441
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Filed: January 24, 2002
Mark: ALPINE CONFECTIONS

WORLD CONFECTIONS, INC.
Opposer,

vs.

KENCRAFT, INC.
Applicant.

Opposition No. 91158237

**OPPOSITION TO WORLD
CONFECTIONS, INC.'S MOTION FOR
SUMMARY JUDGMENT**

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Kencraft, Inc., submits this Opposition to World Confections, Inc.'s (WCI)¹ motion for summary judgment.

A. INTRODUCTION

There is no likelihood of confusion in favor of WCI because of its apparent abandonment during critical times in the history of this matter. If there is a likelihood of confusion, it is of WCI's own, erroneous making, but in favor of Kencraft. In the alternative, because likelihood of confusion is a question of fact, and because genuine issues of material fact exist, WCI's motion for summary judgment should be denied.

During a critical period of time from September 2000 through February 2002, there is a lack of probative and admissible evidence of continued use. In the alternative, genuine issues of material fact exist regarding probative evidence of WCI's uses of the mark.

Similarly, as to other indicia of likelihood of confusion such as the nature of goods, product packaging, use of marks such as designs, and admitted trade channels, the material of evidence indicates a lack of likelihood of confusion or that genuine issues of material fact exist. These circumstances reveal that Kencraft has properly and timely asserted priority rights in the mark ALPINE CONFECTIONS.

WCI's motion for summary judgment should be denied.

B. SUMMARY OF FACTS REVEALING GENUINE ISSUES OF DISPUTED MATERIAL FACT

There are many genuine issues of material fact. The material facts of this case reveal WCI's apparent abandonment of the mark during a critical time period. WCI abandoned its earlier trademark application for ALPINE CONFECTIONS while prosecuting other marks and while being

¹ The term WCI shall include its predecessors, including Alpine USA Ltd.

represented by experienced trademark counsel.² WCI then took no action after receiving an office action in 2000 informing WCI that the case would be abandoned if WCI failed to respond. In fact, WCI did fail to respond. Subsequently a notice of abandonment for failure to respond in the required time was sent to WCI. Again, WCI failed to show any intent to resume asserting priority trademark rights by failing to revive the application as was its right after the application went abandoned. Subsequently, Kencraft expressly brought its own use to WCI's attention and demanded that WCI refrain from using the terms ALPINE CONFECTIONS. WCI not only failed to act or respond to Kencraft's demand, WCI sent a letter to the industry participants that it was changing its name away from Alpine Confections. As a result, WCI has been unable to produce any probative evidence of continued use of the ALPINE CONFECTIONS mark during a time critical to its abandonment period. All evidence, and the inferences drawn from the probative evidence of record point to abandonment in favor of Kencraft. These serious failures to take any action exhibit WCI's intent not to resume use of the mark ALPINE CONFECTIONS.

Another genuine issue of material fact is the alleged likelihood of confusion. As discussed above, the Board should infer, based on the documents produced by WCI, that WCI abandoned the ALPINE CONFECTIONS identifier, thus precluding any confusion. Furthermore, WCI failed to produce any evidence of their use of the identifier as a trademark, but merely as a tradename. This distinction is critical for two reasons: first, WCI abandoned the ALPINE CONFECTIONS tradename when it notified all its customers of its name change. Second, tradenames and trademarks are less likely to be confused, especially where there are differences in the goods, product packaging, clearly labeled sources of origin, and channels of trade.

² In individual attorney ranking, Stephen L. Baker was listed within the top 10 Attorneys, and the firm Baker and Rannells was listed within the top 100 in the United States for the number of trademark applications successfully submitted to the USPTO. (See <http://www.tmlawworldwide.com>)

Finally there is a substantial question of material fact regarding the alleged confusion. The Board should recognize that the record lacks any direct evidence of confusion or likelihood of confusion. WCI has utterly failed to provide any evidence of any consumer confusion. Furthermore, any potential confusion was caused by WCI when WCI incorrectly held itself out as Kenkraft's parent company Alpine Confections Inc. instead of properly identifying itself as Alpine USA Ltd. Furthermore, WCI admits the confusion was actually "joking" by people who were not confused. Thus the Board is obliged to infer the confusion is diminimis, and that there is no likelihood of confusion.

Finally, there is a genuine issue of material fact regarding WCI's claim to priority. While WCI claims priority to the word mark ALPINE CONFECTIONS, WCI has failed to produce any probative evidence that it used the ALPINE CONFECTIONS mark during the critical abandonment period after they abandoned their mark and prior to Kenkraft's filing its trademark application. Therefore, on the present motion, the Board is to draw all inferences in favor of Kenkraft, thus there is a substantial question of material fact regarding WCI's priority.

1. Material Issues At Core Of Opposition And Motion For Summary Judgment

a. **Type and Similarity of Goods**

(1) WCI asserts use of the mark ALPINE CONFECTIONS "applied to a wide range of goods and services directed to wholesale and retail customers." Ex. 1, Notice of Opposition, ¶ 1. However WCI fails to provide any evidence that it uses the mark on any goods other than gummy products and a related gummi rope it calls licorice. In fact, Mathew Cohen, WCI's President, stated that WCI's use of the term "Alpine" was limited to "gummies" and "licorice." Ex. 2, Deposition of Matthew Cohen, pg. 41 lns. 23-25.

(2) While WCI asserts substantially identical goods, Mr. Cohen admits to having no evidence that Kenkraft Inc. makes gummi products or the type of licorice candies made by WCI.

Ex. 2, ¶ 2; Summary Judgment Brief, pgs. 3, 7-8 (“legally identical and similar”), Ex. 2, pg. 42, lns. 2-14.

(3) WCI itself distinguishes “flavored gummi candy” from candy generally. WCI’s other trademark registrations including SWAMP BUDDIES (Reg. No. 2685218), RUDE DUDES (Reg. No. 2450995), SKIN CRITTERS (Reg. No. 1943193), and DINOSAUR BONES (Reg. No. 1807782) (“WCI Registrations”) have a description different from “flavored gummi candy” seeking protection for the “candy” instead. Ex. 3.

(4) Kencraft has not, does not make and will not , sell, market or distribute flavored gummi candy. Ex. 4, Taiclet Decl., ¶¶ 2, 3 and 4.³

b. Source of Origin of Goods

(5) WCI fails to provide any evidence in support of its self-serving assertion that the mark ALPINE CONFECTIONS identifies WCI “as the source of a wide variety of goods.” Ex. 1, ¶ 2.

(6) All of WCI’s asserted uses of the mark have been in connection with its cottage logo and design and in connection with a distinguishing tradename. Kencraft has neither used, uses, nor intends to use a cottage logo design. Ex. 4, ¶ 5. As a result, this permits WCI’s use of its cottage logo design to continue to be exclusive to WCI without any potential source of origin problems associated therewith.

(7) WCI is a small family business. Ex. 12, page 92. People in the trade know of WCI’s family business. Ex. 2, page 92.

c. Continuous Use of Mark

(8) WCI asserts continued use. Ex. 1, ¶¶ 2-5; Summary Judgment Brief, pgs. 3-5; Cohen Decl., ¶¶ 9, 11-12.

(9) WCI makes unsupported claims of sales since 2003 under both the ALPINE and ALPINE CONFECTIONS marks. Cohen Decl., ¶ 12.

³ To the extent this point is materially significant in the TTAB’s analysis or decision, Kencraft should be permitted to seek such an amendment if Kencraft desires.

(10) WCI admits suspending use of the ALPINE CONFECTIONS mark since April 2003. Cohen Decl., ¶ 13.; Ex. 5, WCI Response to Interrogatory No. 8.

d. Senior Use of Mark

(11) WCI admits it ceased using the mark on many of its products, and that its trademark registration went abandoned. Ex. 2, pg. 21, ln. 18, Ex. 6.

(12) WCI asserts senior use. Ex. 1, ¶¶ 2-5, 7; Summary Judgment Brief, pgs. 3-5; Cohen Decl., ¶¶ 9, 17.

(13) To the extent WCI has not used ALPINE CONFECTIONS as a trademark, has abandoned use as a tradename, and suspended use on product packaging, Kencraft's January 24, 2001 filing date establishes a senior priority in Kencraft.

(14) Kencraft's application for the Alpine Confections mark, filed January 24, 2002 is in fact senior to WCI's current application. Ex 7.

e. Similarity of Channel of Trade

(15) WCI asserts "same channels of trade." Ex. 1, ¶ 8; Summary Judgment Brief, pgs. 3, 8-9 ("the channels of trade are legally identical").

(16) WCI asserts that its gummi candy is sold 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." Cohen Decl., ¶ 10; Summary Judgment Brief, pgs. 8-9

(17) Mr. Cohen admits, "No, we have no internet sales." Ex. 2, pg. 109, ln 23.

(18) WCI provides no evidence of the channels of trade used to sell its gummi candy, and states the "vast majority of sales" are to dollar-type stores. Ex. 2, pgs. 42-45

(19) There is no evidence of record that Kencraft sells through dollar-type stores.

f. Similarity of Class of Purchaser

(20) WCI asserts "same ultimate consumer." Ex. 1, ¶ 8; Summary Judgment Brief, pg. 11.

(21) WCI asserts “that candy products are impulse purchase items.” Summary Judgment Brief, pgs. 11-12.

(22) WCI fails to provide any evidence for its conclusion as to similarity of class of customers, that as a matter of law, the TTAB must find similarity. This is erroneous. First, Kencraft agrees to refrain from selling flavored gummi candy under the mark ALPINE CONFECTIONS. Second, there is no rule of law that states that candy buyers do not seek out particular brands. Third, other factors, including inspection of product packaging, equally influence impulse buyers. *Schieffelin & Co. v. The Jack Co.*, 31 USPQ2d 1865, 1879 (S.D.N.Y. 1994).

g. Confusion

(23) WCI asserts confusing similarity. Ex. 1, ¶ 9; Summary Judgment Brief, *in toto*.

(24) WCI asserts that the goods of Kencraft and WCI “are substantially related in part and generally related in part.” Ex. 1, ¶ 10.

(25) WCI asserts actual confusion. Cohen Decl., ¶ 14-15; Summary Judgment Brief, pgs. 9-11.

(26) Similarly WCI asserts confusion by a publisher. Cohen Decl., ¶¶ 14 and 15.

(27) The only evidence that WCI relies upon for its claim of confusion comes from non-market participants. Ex 2, pgs. 75-79, 149-152,.

(28) Mr. Cohen states that some confusion was not actually confusion, but rather “joking” or “derogatory” thus leaving the amount of confusion potentially *de minimis*. Ex. 2, pg. 86, lns 9-11.

(29) WCI caused much of the confusion in a memo to “All Customers” erroneously identifying its own company, Alpine USA, Limited, as Kencraft’s parent company “Alpine Confections Inc.” Ex. 2, pg. 8, lns. 9-11.

(30) Mr. Cohen estimates the memo went to 500 industry participants and customers. Ex. 2, pg. 117, ln 1.

h. WCI Failure to Use ALPINE CONFECTIONS as a trademark

(31) WCI asserts use of ALPINE CONFECTIONS as a trademark, but fails to provide any evidence of the duration of use. Furthermore, WCI’s asserted trademark use of “Alpine

Confections” is tradename use always associated with its distinctive design logo. This is revealed by WCI product packaging of Exs. 8-10 and by the Cohen Declaration.

(32) The product packaging of WCI does not evidence intent of WCI or its predecessor to use ALPINE CONFECTIONS as a trademark, but appears to be tradename use, at best. Attached hereto as Ex. 9 is product packaging provided by Mr. Cohen. As seen in reverse through the back of the packaging is “Alpine Confections, Brooklyn, NY USA 11232.” “Alpine Confections” is again used on the front but without any “TM” designation while a brand name STRAWBERRY PEAKS does bear a “TM”. Similarly, Ex. 10 shows WCI designated “Scooters” Sour Gummi Candy with the “TM”, while simultaneously leaving the TM off the Alpine name right next to it. WCI has not used the available common law “TM” notice to indicate to the consuming public that ALPINE CONFECTIONS is a trademark. That leaves only the tradename use, apparently abandoned after November 2001, as discussed below.

(33) WCI had numerous reprints of its product packaging. Each reprint lacked any use of a TM in connection with ALPINE CONFECTIONS. Ex. 2, pages 59-61. From 1997 to the present, no product packaging has born a TM or ® label or the term “brand” next to the terms ALPINE CONFECTIONS. Ex. 2, pg. 21. Mr. Cohen was involved in branding and understood the use of the label TM to mean brand or trademark. *Id.* pages 25-26. From 1997 to the present, WCI has never sought and received a trademark registration including the term ALPINE. Ex. 2, pages 39-41

(34) Mr. Cohen declares about his product packaging of Ex. 3: “... product packaging that has been and/or is currently used by WCI for its gummy candy products.” Cohen Decl., ¶ 11. WCI provides no evidence of prior use. In fact, all evidence points to WCI’s abandonment of the “Alpine Confections” tradename coincident with the merge of World Candies and Alpine USA Limited, and the abandonment of the “Alpine” trademark application.

(35) WCI’s own 1997 contemporary description of their name reveals tradename use only: “Alpine Confections name ... in reality only means Confections From Alpine.” Mr. Cohen attempts to contradict this contemporary statement. In his April 2005 deposition, Mr. Cohen denied that it means confections from Alpine. Ex. 2, pg. 12, ln 20 through pg. 13, ln 17.

(36) All this at a time when Mr. Cohen's company was represented by experienced, trademark counsel and sought and obtained federal registration for a number of other marks including SWAMP BUDDIES (Reg. No. 2685218), RUDE DUDES (Reg. No. 2450995), SKIN CRITTERS (Reg. No. 1943193), and DINOSAUR BONES (Reg. No. 1807782) ("WCI Registrations"). Cohen Decl., ¶ 6. The WCI Registrations were prosecuted by counsel from 1992 through 2003. Ex. 3.

(37) WCI never sought nor obtained an internet domain name registration for www.alpineconfections.com. Ex. 2, page 108, first registered by a third party in March 2000.

(38) Mr. Cohen admitted under oath that WCI's logo symbol including the oval shape with an alpine scene and incorporating the words ALPINE and CONFECTIONS was used as a short form to refer to the company. Ex. 2, pages 162-164.

i. Abandonment of use of ALPINE CONFECTIONS and Lack of Continued Use

(39) WCI's business and marketing has steadily abandoned use of ALPINE CONFECTIONS.

(40) In early 2001, an earlier trademark application for ALPINE CONFECTIONS was abandoned by WCI, formerly known as Alpine USA Ltd. When asked in Kencraft's Interrogatory No. 19, why the application was abandoned, the entire and total response provided by Mr. Cohen is merely one word, namely, "inadvertence." Ex. 5, pg. 12. No explanation. This same response was reiterated by Mr. Cohen when deposed. Ex. 2, 139 ln 11.

(41) That the abandonment was not inadvertent is evidenced by WCI's prosecuting other marks and perfecting registration or filing Section 8 & 15 affidavits before, during and after the abandonment through the same counsel. Ex. 3. Each time WCI had a trademark application matter, it was handled by counsel. Ex. 2, pg. 142. Intended abandonment is further evidence by WCI's failure to act in response to the notice of abandonment mailed from the U.S. Trademark Office on May 02, 2001, even though, as admitted by Mr. Cohen under oath, that WCI had discussions with counsel in 2001 about the abandoned application. Ex. 2, pg. 134. Mr. Cohen has, however, refused

to disclose his 2001 discussions with counsel regarding the abandoned application Serial No. 76/007736. Ex. 2, pages 144-147.

(42) In late 2001, Kencraft demanded that WCI discontinue use of the terms ALPINE CONFECTIONS. Ex. 12. WCI did not respond in writing to the demand letter. Ex. 2, pgs 136-137.

(43) In or about November 2001, use of the tradename ALPINE CONFECTIONS was dropped by WCI. *See* Cohen Decl., Ex. 2.

(44) On January 2, 2002, WCI sent a letter to its approximately 500 market participants announcing WCI move away from ALPINE CONFECTIONS. Ex. 13.

(45) In April 2003, WCI suspended use of the mark ALPINE CONFECTIONS, transitioning away from ALPINE CONFECTIONS. Ex. 5, Response (5) to Interrogatory No. 8.

(46) In Interrogatory Nos. 2 and 15, Kencraft sought the identity of all persons having first-hand and most knowledge of WCI's use of the mark ALPINE CONFECTIONS in commerce for each year from 1997 to the present. WCI identified only Mr. Matthew Cohen. Ex. 5, pgs. 5 and 11.

(47) Mr. Cohen is the sole witness identified by WCI and the sole factual declarant in support of continued use in WCI's motion for summary judgment.

(48) In Interrogatory Nos. 4-5, Kencraft sought the identification of all documents as to use. WCI identified types of documents. Ex. 5, pg. 6.

(49) However, when asked to produce the documents identified in responses in Interrogatories and to produce other documents in Document Request Nos. 1-24, including Nos. 1, 9, 11, 19 and 24 directed to use, not a single document was produced, only the promise that nonprivileged, identified documents "will be made available for inspection and copying" in New York. Ex. 14.

(50) WCI fails to provide any probative evidence of use during the critical times of September 2000 through February 2002.

(51) WCI's own invoices themselves raise issues of fact because not a single invoice uses ALPINE CONFECTIONS as a trademark. Some use Alpine Confections as a tradename only.

Others, from November 2001 to the present don't use ALPINE CONFECTIONS or ALPINE at all, evidencing an apparent abandonment.

(52) WCI's documents further reveal discontinued use of the term "ALPINE CONFECTIONS," all before Kencraft filed its application having a priority date of January 24, 2002.

(53) This evidence of abandonment reveals that the abandonment of Trademark Application No. 76/007,736 in March 2001 was not inadvertence.

(54)Kencraft has repeatedly asked for a copy of WCI's prosecution history file of abandoned application Serial no. 76/007,736. To date, no copy has been provided.

C. **ARGUMENT**

1. As The Non-Moving Party, Kenkraft Is Entitled To Have All Inferences Drawn On Its Behalf.

The Board cannot grant WCI's Motion for Summary Judgment unless, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

To establish that a factual dispute is genuine, Kenkraft "need only present evidence from which a jury might return a verdict in [its] favor." *Olde Tyme Foods Inc. v. Roundy's Inc.* 22 USPQ2d 1542, 1544 (CAFC 1992) citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). That is, the Board must view the evidence in the light most favorable to the nonmovant. *Olde Tyme Foods Inc.* at 1544. Since opposing factual inferences may arise from the same set of undisputed subsidiary facts, the Board must draw all reasonable inferences in favor of the nonmovant. *Olde Tyme Foods Inc.* 1544 citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) ("On summary judgment the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion."). Therefore, there need not be a conflict in the evidence of the underlying facts to preclude summary judgment. *Id.* At 1544.

Whether a genuine factual issue is material so as to preclude summary judgment would depend on applicable substantive law. *Old Tyme Foods Inc.* at 1544 citing *Anderson*, 477 U.S. at 248 ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.").

The Board cannot grant WCI's motion because there are several issues of material fact that if presented to a jury would return a verdict in Kenkraft's favor. This is especially true where all

inferences are drawn in Kencraft's favor, and where the facts in dispute substantively affect the outcome of the suit.

2. WCI Bears The Burden Of Proving Likelihood Of Confusion

WCI bears the burden of proving likelihood of confusion and the absence of genuine issues of material fact. This WCI has not, and on the evidence of record, cannot do.

3. WCI is Using the Opposition Proceeding in an Attempt to Resurrect its Abandoned Trademark.

WCI's abandonment of the ALPINE CONFECTIONS mark creates a substantial question of material fact. There is compelling evidence that WCI intended to abandon the mark and did not have an intent to resume use of it. The inferences drawn from this evidence, when drawn in favor of Kencraft, support a finding of abandonment. Thus, there can be no summary judgment.

Abandonment is an issue of fact. *Rivard v. Linville*, 133 F.3d 1446, 1449 (Fed. Cir. 1998). Before the TTAB, abandonment may be proven by a preponderance of the evidence. *Id.*; *Cerveceria Modelo S.A. de C.V. v. R.B. Marco & Sons Inc.*, 55 U.S.P.Q.2D (BNA) 1298, 1300 (T.T.A.B. 2000) (citing *Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.*, 892 F.2d 1021, 1023 (Fed. Cir. 1989)).

The Lanham Act defines abandonment of a trademark:

A mark shall be deemed to be "abandoned" if either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.

15 U.S.C. § 1127 (2000). The first occurrence requires two elements: first, the bona fide use in trade of the mark is discontinued; second, there must be an intent not to resume the bona fide use of the mark in trade. This is different from an intent to abandon the mark, as recognized in the landmark *Humble* case: “An ‘intent to resume’ requires the trademark owner to have plans to resume commercial use of the mark. Stopping at an ‘intent not to abandon’ tolerates an owner’s protecting a mark with neither commercial use nor plans to resume commercial use. Such a license is not permitted by the Lanham Act.” *Exxon Corp. v. Humble Exploration Co.*, 695 F.2d 96, 102 (5th Cir. 1983).

Although three years of nonuse are prima facie evidence of abandonment, 15 U.S.C. at § 1127, intent not to resume commercial use may be inferred from the actions of the former user after shorter than three-year periods of nonuse. See *Intrawest Financial Corp. v. Western Nat’l Bank of Denver*, 610 F. Supp. 950 (D. Colo. 1985) (finding no bona fide intent to use and abandonment after only a few months nonuse). For example, intent not to resume commercial use may be stated in advertising, such as that advising of a change of company name or announcement of intention to discontinue sale of a product. *Hiland Potato Chip Co. v. Culbro Snack Foods, Inc.*, 720 F.2d 981, 983-984 (8th Cir. 1983); *Cumulus Media, Inc. v. Clear Channel Communications, Inc.*, 304 F.3d 1167, 1178 (11th Cir. 2002) (Announcement of name change is evidence from which intent not to resume use may be inferred.). A later use of the mark is not evidence of earlier intent to resume use sufficient to prevent a finding of abandonment. *Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.*, 892 F.2d 1021, 1027-1028 (Fed. Cir. 1989); *Auburn Farms Inc. v. McKeey Foods Corp.*, 51 U.S.P.Q.2d (BNA) 1439, 1445 (T.T.A.B. 1999); *AmBrit, Inc. v. Kraft, Inc.*, 812 F.2d 1531, 1551

(11th Cir. 1986). The proper inquiry is whether the prior user, at the relevant time of nonuse, intended to resume meaningful commercial use of the mark. *AmBrit* 812 F.2d at 1550.

A prior user's mere proclamations of his uses are awarded little or no weight. *Cf. Rivard v. Linville*, 133 F.3d 1446, 1449 (Fed. Cir. 1998) (citing *Imperial Tobacco Ltd. v. Philip Morris, Inc.*, 889 F.2d 1575, 1581 (Fed. Cir. 1990)). "To prove excusable nonuse, the registrant must produce evidence showing that, under his particular circumstances, his activities are those that a reasonable businessman, who had a bona fide intent to use the mark in United States commerce, would have undertaken." *Id.* Evidence must thus be shown from which an intent to resume use may reasonably be inferred. *Imperial Tobacco*, 889 F.2d at 1581.

Once a trademark is abandoned, any merchant or manufacturer may seek to use it. *P. Daussa Corp. v. Sutton Cosmetics (P.R.) Inc.*, 462 F.2d 134, 136 (2d Cir. 1972) (citing *Sutton Cosmetics (P.R.) Inc. v. Lander Co.*, 455 F.2d 285, 288 (2d Cir. 1972)). Thus, abandonment breaks the chain of priority so that even if a senior user resumes use, intervening use by the junior user grants the junior user superior rights in the trademark. *Auburn Farms Inc. v. McKee Foods Corp.*, 51 U.S.P.Q.2D (BNA) 1439, 1445 (T.T.A.B. 1999). *Conwood Corp. v. Loew's Theatres, Inc.*, 173 U.S.P.Q. (BNA) 829, 830 (T.T.A.B. 1972).

The facts and circumstances of this case do not reveal that under the particular circumstances of this case WCI undertook reasonable activities to evidence intent to resume or continue use. WCI abandoned its trademark application. WCI has proffered no samples of product from the relevant time period of September 2000 to February 2002. The prosecution history of the abandoned application shows a non-final Office action was mailed to WCI on September 12, 2000.

Notwithstanding discovery requests, a copy of the complete prosecution history has not been provided by WCI.⁴

In October 2001, Kenkraft sent a cease and desist letter to WCI demanding it stop using the mark. Ex. 12. WCI failed to respond in writing to Kenkraft. In late 2001, WCI discontinued use of the name Alpine Confections. And, on January 2, 2002, WCI expressly announced this change away from Alpine Confections to its customers and others in the industry. Ex. 13. A reasonable jury could find that WCI did abandon the ALPINE CONFECTIONS mark and thus find for Kenkraft. Thus the Board should deny WCI's Motion for Summary Judgment.

4. WCI's Claim of Likelihood of Confusion is Erroneous Because there are Substantial Questions as to WCI's Continuity of Use and Consumer Confusion.

The likelihood of confusion is an issue of fact. As the moving party, WCI bears the burden of proof to establish that there is, "no genuine issue of material fact and that it is entitled to judgment as a matter of law." *See* FRCP 56 (c). Thus, there must be, "no reasonable trier of fact that could find other than for" WCI's motion to be granted. Not only does WCI fail to meet this heavy burden, but WCI fails to provide any evidence on many key issues, and thin evidence on the rest of the issues before the Board. Thus WCI must be denied its motion.

a. Type and Similarity of Goods

WCI has failed to produce evidence that Kenkraft sells goods under the Alpine Confections mark that are of the type and similarity as those sold by WCI.

The determination of type and similarity of goods is a fact-sensitive inquiry and thus should be determined in trial. Indeed:

the facts in each case vary and the weight to be given each factor may be different in light of the varying circumstances; therefore, there can be no rule that certain goods

⁴ The TTAB should take judicial notice of the U.S. Trademark Office document destruction policy and that a copy of the complete prosecution history file of WCI's earlier, abandoned application Serial No. 76/_____ is not available from the PTO. WCI has failed to produce it, and the related communications to and from counsel regarding it. The TTAB should draw an adverse inference from this lack of production and evidence.

or services are *per se* related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto. See, e.g., *Information Resources Inc. v. X*Press Information Services*, 6 USPQ2d 1034, 1038 (TTAB 1988) (regarding computer hardware and software); *Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 USPQ2d 1169, 1171 (TTAB 1987) (regarding food products); *In re Quadram Corp.*, 228 USPQ 863, 865 (TTAB 1985) (regarding computer hardware and software); *In re British Bulldog, Ltd.*, 224 USPQ 854, 855-56 (TTAB 1984) and cases cited therein (regarding clothing). TMEP 1207.01(a)(iv).

That this issue is a basis for WCI's motion for summary judgment, supports the denial of the motion.

To determine the similarity of goods, the TMEP instructs,

if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. See, e.g., *Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) (cooking classes and kitchen textiles not related); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990) (LITTLE PLUMBER for liquid drain opener held not confusingly similar to LITTLE PLUMBER and design for advertising services, namely the formulation and preparation of advertising copy and literature in the plumbing field); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field).

Under this guideline, a substantial question of material fact remains for the Board to determine.

WCI provides no evidence to support its bald assertion that its use of the mark ALPINE CONFECTIONS is "applied to a wide range of goods and services directed to wholesale and retail customers." Ex. 1, ¶ 1. In fact, in response to Kenkraft's Document Request No. 1, which asked for all "uses in commerce...of Opposer's Trademark ALPINE CONFECTION," WCI produced only gummi candy packaging. Similarly, Mr. Cohen's subsequent deposition testimony shows WCI uses the ALPINE CONFECTIONS name on fruit flavored gummi snacks only. There is no evidence to support WCI's claim that it uses the ALPINE CONFECTIONS for any goods other than fruit flavored gummi candy.

As previously shown, Kenkraft did not, does not, nor does it plan to make, sell, market or distribute flavored gummi candy under the mark ALPINE CONFECTIONS.. Ex. 4, ¶ 2, ¶ 3, ¶ 4.

Furthermore, WCI distinguishes “flavored gummi candy” from candy generally in its own trademark applications. This difference is important, especially when classifying the type and similarity of goods. Ex. 3. WCI’s failure to provide any evidence to support its claim of identical goods, WCI’s limited use of the ALPINE CONFECTIONS name, and the difference between gummi candy and candy generally that WCI recognizes and represents to the PTO, all present substantial issues of material fact that can only be determined at trial.

b. Source of Origin of Goods

As discussed above, WCI fails to provide any evidence in support of its self-serving assertion that the mark ALPINE CONFECTIONS identifies WCI “as the source of a wide variety of goods.” Ex. 1, ¶ 2.

WCI uses of the mark have been in connection with its cottage logo and design. Kencraft has neither used, uses, nor intends to use a cottage logo design. Ex. C, Taiclet Decl., ¶ 5. As a result, this permits WCI’s use of its cottage logo design to continue to be exclusive to WCI without any potential source of origin problems associated therewith.

c. Continuous Use of Mark

A substantial question of material fact regarding WCI’s claim of continuous use exists, thus precluding the Board from granting WCI’s Motion for Summary Judgment. WCI fails to provide any evidence of its continuous use of the ALPINE CONFECTIONS name, and even admits to discontinuing use of the ALPINE CONFECTIONS name. Cohen Decl., ¶ 13.; Ex. 5, Response to Interrogatory No. 8.

WCI’s assertion of continuous use is directly counter to the evidence in this case. In March 2001, while represented by trademark counsel and concurrently prosecuting other co-pending trademark applications, WCI abandoned its trademark application Serial No. 76/007,736 for ALPINE CONFECTIONS. As per USPTO procedure, WCI had some months in which to revive its application, and anytime thereafter to re-file its application. WCI did nothing.

On October 30, 2001, six months after WCI abandoned its application, Kencraft sent a letter to WCI requesting it, “cease immediately the use of the Alpine Confections name on any products.”

Ex. 12, (emphasis in the original). WCI failed to make any response to this letter. Ex. 2. A mere three months later WCI announced to all its customers that World Candies, Inc. and Alpine Confections Inc. [sic] were being consolidated into World Confections Inc. Ex. 13, (emphasis in the original).

Kencraft relied upon this conduct in adopting the ALPINE CONFECTIONS mark, and filed for registration of the mark in January 2002. Shortly thereafter, almost one year after abandoning its ALPINE CONFECTIONS trademark application, WCI re-filed its application. It was only after Kencraft's purchase of a large candy company in January 2004, and the attending publicity, that WCI asserted any claim to the ALPINE CONFECTIONS mark by filing this Opposition in July of 2004. All of WCI's previous inactivity supports an inference of abandonment of the mark.

Only after WCI's apparent abandonment of the ALPINE CONFECTIONS mark did Kencraft begin spending significant time and capital in developing the ALPINE CONFECTIONS name.

There is a substantial question as to whether WCI has continued use of the mark because WCI has failed to produce any probative evidence of continuous use, and WCI abandoned its registration and failed to take the remedial steps a reasonable businessman would take under the circumstances thereafter. Use and abandonment are material issues appropriate for trial.

d. Senior Use of Mark

Kencraft has seniority in the trademark ALPINE CONFECTIONS as evidenced by their trademark registration 76/365,845 having an earlier filing date than any WCI application for a mark containing the word "Alpine."

In *ex parte* examination, priority among conflicting pending applications is determined based on the effective filing dates of the applications, without regard to whether the dates of use in a later-filed application are earlier than the filing date or dates of use of an earlier-filed application, whether the applicant in a later-filed application owns a registration of a mark that would be considered a bar to registration of the earlier-filed application, or whether an application was filed on the basis of use of the mark in commerce or a bona fide intent to use the mark in commerce.

TMEP 1208.01. WCI abandoned its use of the ALPINE CONFECTIONS name, and also admits it had ceased using the mark on many of its products, and that its trademark registration went abandoned. Ex. 2, 21 ln 18, Ex. 6.

WCI asserts senior use. Ex. 1, ¶¶ 2-5, 7; Summary Judgment Brief, pgs. 3-5; Cohen Decl., ¶¶ 9, 17.

To the extent WCI has not used ALPINE CONFECTIONS as a trademark, has abandoned use as a tradename, and suspended use on product packaging, Kencraft's January 24, 2001 filing date establishes a senior priority in Kencraft.

Kencraft's application for the Alpine Confections mark, filed January 24, 2002 is in fact senior to WCI's current application. Exs. 7 and 15.

e. Similarity of Channel of Trade

WCI asserts "same channels of trade." Ex. 1, ¶ 8; Summary Judgment Brief, pgs. 3, 8-9 ("the channels of trade are legally identical").

WCI asserts that its gummi candy is sold 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." Cohen Decl., ¶ 10; Summary Judgment Brief, pgs. 8-9

Mr. Cohen admits, "No, we have no internet sales." Ex. 2, pg. 109 ln 23.

WCI provides no evidence of the channels of trade used to sell its gummi candy, and states the "vast majority of sales" are to dollar-type stores. Ex. 2, pg. 45 lns 8-12.

f. Similarity of Class of Purchaser

WCI asserts "same ultimate consumer." Ex. 1, ¶ 8; Summary Judgment Brief, pg. 11.

WCI asserts "that candy products are impulse purchase items." Summary Judgment Brief, pgs. 11-12.

WCI fails to provide any evidence for its conclusion as to similarity of class of customers, that as a matter of law, the TTAB must find similarity. This is erroneous. First, Kencraft agrees to *refrain from selling flavored gummi candy under the mark ALPINE CONFECTIONS*. Second, there

is no rule of law that states that candy buyers do not seek out particular brands. Third, other factors, including inspection of product packaging, equally influence impulse buyers. *Schieffelin & Co. v. The Jack Co.*, 31 USPQ2d 1865, 1879 (S.D.N.Y. 1994).

g. Confusion

WCI asserts confusing similarity. Ex. 1, ¶ 9; Summary Judgment Brief, *in toto*.

WCI asserts that the goods of Kenkraft and WCI “are substantially related in part and generally related in part.” Ex. 1, ¶ 10.

WCI asserts actual confusion. Cohen Decl., ¶ 14-15; Summary Judgment Brief, pgs. 9-11. Similarly WCI asserts confusion by a publisher in the Cohen Decl., ¶¶ 14 and 15.

The only evidence that WCI relies upon for its claim of confusion comes from non-market participants. Ex 16.

Mr. Cohen states that some confusion was not actually confusion, but rather “joking” or “derogatory” thus leaving the amount of confusion potentially diminimus. Ex. 2, pg. 86 lns 9-11.

WCI caused much of the confusion in a memo to “All Customers” erroneously identifying its own company, Alpine USA, Limited, as “Alpine Confections Inc.” Deposition of Matthew Cohen Page 8 lns 9-11, Exhibit 13.

Mr. Cohen estimates the memo went to 500 people. Ex. 2, pg. 117 ln 1.

h. Distinction Trademark and Tradename has on Likelihood of Confusion

WCI asserts use of ALPINE CONFECTIONS as a trademark, but fails to provide any evidence of the duration of use during the critical period after the abandonment of the mark and before Kenkraft filed its application.

The product packaging of WCI does not evidence intent of WCI or its predecessor to use ALPINE CONFECTIONS as a trademark, but only as a tradename. Attached hereto as Exs. 8-10 are product packaging provided by Mr. Cohen. As seen in Ex 9, the product packaging bears the designation “Alpine Confections, Brooklyn, NY USA 11232.” “Alpine Confections” is again used on the front but without any “TM” designation while a brand name STRAWBERRY PEAKS does

bear a “TM”. Similarly, Ex. 10 shows WCI designated “Scooters” Sour Gummi Candy with the “TM”, while simultaneously leaving the TM off the Alpine name right next to it. WCI has not used the available common law “TM” notice to indicate to the consuming public that ALPINE CONFECTIONS is a trademark. That leaves only the tradename use, apparently abandoned on all invoices after November 2001, discussed below, and there is not proffer of actual product packaging during the critical period of time.

Notwithstanding the many opportunities WCI had to correct this deficiency, WCI did not do so. This reveals, at best, tradename use in connection with its logo design. Where Kencraft utilizes no facsimile of WCI logo design, there is no likelihood of confusion.

Mr. Cohen declares about his product packaging of Ex. 3: “... product packaging that *has been* and/or is currently used by WCI for its gummy candy products.” Cohen Decl., ¶ 11. WCI provides no probative, reliable evidence of prior use. WCI has produced no reliable evidence of the nature and content of product packaging during the critical time from September 2000 through February 2002. In fact, all evidence points to WCI’s abandonment of the “Alpine Confections” tradename coincident with the merge of World Candies and Alpine USA Limited, and the abandonment of the “Alpine” trademark application.

Furthermore, WCI’s own description of their tradename use is “Alpine Confections name...in reality only means Confections From Alpine.” Ex 11.

All this at a time when Mr. Cohen’s company was represented by experienced trademark counsel and sought and obtained federal registration for a number of other marks including SWAMP BUDDIES (Reg. No. 2685218), RUDE DUDES (Reg. No. 2450995), SKIN CRITTERS (Reg. No. 1943193), and DINOSAUR BONES (Reg. No. 1807782) (“WCI Registrations”). Cohen Decl., ¶ 6. The WCI Registrations were prosecuted by counsel from 1992 through 2003. Ex. 3.

5. WCI Failed to Produce Any Evidence Supporting Its Claim to Priority

a. **Abandonment of use of ALPINE CONFECTIONS and Lack of Continuous Use**

In early 2001, an earlier trademark application for ALPINE CONFECTIONS was abandoned by Alpine USA Limited. When asked in Kenkraft's Interrogatory No. 19, why the application was abandoned, the entire and total response provided by Mr. Cohen is merely one word, namely, "inadvertence." Ex. 5, pg. 12. No explanation. This same response was reiterated by Mr. Cohen. Ex. 2, pg. 139 ln 11. That the abandonment was not inadvertent is evidenced by WCI's prosecuting other marks and perfecting registration or filing Section 8 & 15 affidavits before, during and after the abandonment through the same counsel from the 1980s through the present. Ex. 3.

In or about November 2001, use of the tradename ALPINE CONFECTIONS was dropped by WCI. *See* Cohen Decl., Ex. 2.

In April 2003, WCI suspended use of the mark ALPINE CONFECTIONS, transitioning away from ALPINE CONFECTIONS. Ex. 5, Response (5) to Interrogatory No. 8.

In Interrogatory Nos. 2 and 15, Kenkraft sought the identity of all persons having first-hand and most knowledge of WCI's use of the mark ALPINE CONFECTIONS in commerce for each year from 1997 to the present. WCI identified only Mr. Matthew Cohen. Ex. 5, pgs. 5 and 11.

Mr. Cohen is the sole witness identified by WCI and the sole factual declarant in support of continued use in WCI's motion for summary judgment.

In Interrogatory Nos. 4-5, Kenkraft sought the identification of all documents as to use. WCI identified types of documents. Ex. 5, pg. 6.

However, when asked to produce the documents identified in responses in Interrogatories and to produce other documents in Document Request Nos. 1-24, including Nos. 1, 9, 11, 19 and 24 directed to use, not a single document was produced, only the promise that nonprivileged, identified documents "will be made available for inspection and copying" in New York. Ex. 14. Even then, no copies of product packing, or probative evidence thereof, was produced.

WCI fails to provide any evidence showing their use of the ALPINE CONFECTIONS identifier after the abandonment date and before Kencraft's filing date.

In the Cohen Declaration submitted in support of WCI's motion for summary judgment (Cohen Decl., Ex. 2), some invoices were provided, but these only support Kencraft's argument of abandonment. At the end of 2001 the name Alpine Confections is replaced with World Confections Inc. Thus WCI fails to produce any probative, corroborating evidence of use after the abandonment and before Kencraft's filing. This evidence, supports that the abandonment of Trademark Application No. 76/007736 in March 2001 was not inadvertence, but was intentional, and thus the Board should infer abandonment.

D. CONCLUSION

WCI filed trademark application in March 2000, and allowed it to go abandoned in March 2001. In October 2001, Kencraft sent WCI a cease and desist letter requesting WCI stop using the mark on any products. WCI failed to make any response to the letter.

Three months later WCI publicly announced it was abandoning its use of the Alpine Confections name. Kencraft immediately filed its trademark application. Kencraft is now nationally known as Alpine Confections.

Drawing all inferences in favor of Kencraft, as is required on a motion for summary judgment, the Board cannot grant this motion because WCI abandoned the mark, there is no likelihood of confusion between the two marks, and Kencraft has priority to the mark.

DATED this 16th day of June, 2005.

KIRTON & McCONKIE

By: 

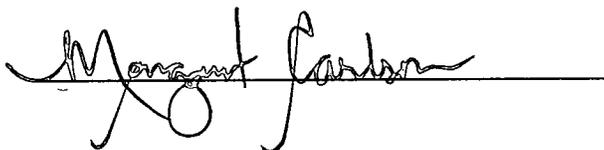
Todd E. Zenger, Reg. No. 33,610
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Attorney for Applicant
KENCRAFT, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2005, a true and correct copy of the foregoing OPPOSITION TO WORLD CONFECTIONS, INC.'S MOTION FOR SUMMARY JUDGMENT was served on the following counsel, by United States mail, postage prepaid, in an envelope addressed as follows:

Jack Rannell
Stephen L. Baker
BAKER & RANNELLS, PA
626 North Thompson Street
Raritan, New Jersey 08869

A handwritten signature in cursive script, appearing to read "Margaret Carlson", is written over a horizontal line.

TTAB

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

-----X
World Confections, Inc.

Opposer:

Mark: ALPINE CONFECTIONS

v.

Serial No.: 76362977

Kencraft Inc.

Filed: January 24, 2002

Applicant

-----X

NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C SECTION 1063

10-01-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #78

In the matter of trademark application Serial No. 76362977 filed by Applicant, Kencraft Inc. ("Applicant"), for ALPINE CONFECTIONS as a trademark for candy ("Applicant's Goods"), published for opposition in the Official Gazette of June 3, 2003, at TM 441, the time to oppose having been extended Opposer, World Confections, Inc., a corporation organized and existing under the laws of the State of New York and located and doing business located and doing business at 185 30th Street, Brooklyn, New York, 11232, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 76362977 and opposes the registration under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13).

As grounds of opposition, it is alleged that:

1. 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 as applied to a wide range of goods and services directed to wholesale and retail consumers.

2. Opposer is now and for many years has been trading as and known by the Opposer's Mark, identifying Opposer as the source of a wide variety of goods, including fruit flavored gummy candy the same being substantially identical to and generally related to Applicant's Goods offered or intended to be offered under its alleged mark ALPINE CONFECTIONS.

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3. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use Opposer's Mark for fruit flavored gummy candy and goods and services related thereto.

4. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the sale of a wide variety of fruit flavored gummy candy and goods and services related thereto under Opposer's Mark.

5. Since long prior to any date which may be claimed by Applicant, Opposer on its own behalf has been, and is now engaged in the sale of the goods identified in paragraphs 3 and 4 hereinabove under the Opposer's Mark in interstate commerce.

6. Opposer filed an application serial no. 76365845 for the trademark ALPINE CONFECTIONS in international class 30, dated February 1, 2002, which application was rejected on Applicant's application for the trademark ALPINE CONFECTIONS in international class 30, serial no 76362977, said application being the subject of the opposition herein.

7. The use by Opposer of the Opposer's Mark for the Opposer's goods and services alleged herein, is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

8. Upon information and belief, Applicant distributes and sells its goods through the same channels of trade as Opposer, and direct its respective goods to the same ultimate consumer as Opposer.

9. The Opposer's Mark and Applicant's ALPINE CONFECTIONS mark are confusingly similar when applied to the goods of the parties.

10. The goods of Applicant and Opposer are substantially related in part and generally related in part, and Applicant's intended use of ALPINE CONFECTIONS in connection with its goods is without the consent or permission of Opposer.

11. Since Opposer owns the Opposer's Mark by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

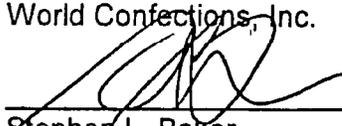
12. The registration of the mark ALPINE CONFECTIONS to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's goods are made by, licensed by, controlled by,

13. Opposer believes that it is and will be damaged by registration of the mark applied by Applicant.

WHEREFORE, Opposer prays that the application for registration of ALPINE CONFECTIONS, Serial No. 76362977 filed on January 24, 2002, be denied and that this Opposition be sustained.

Respectfully submitted for Opposer
World Confections, Inc.

By:



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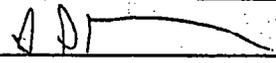
Dated: September 26, 2003

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: _____ September 26, 2003 _____

Name of Applicant, Assignee,
or Registered Representative: Baker and Rannells PA

Signature:  _____

Date of Signature: _____ September 26, 2003 _____

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

WORLD CONFECTIONS, INC., : MARK: ALPINE
 : CONFECTIONS
 : Opposer, :
 :
 vs. : Opposition No.
 : 91/158,237
 :
 KENCRAFT, INC., : Application No.
 : 76/362,977
 : Applicant. :
 -----x

TESIMONY OF: MATTHEW COHEN

TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter as taken by and before TAMMY M. CRANE, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, held at the offices of WORLD CONFECTIONS, INC., 185 30th Street, Brooklyn, New York, 11232, on Thursday, April 14, 2005, commencing at approximately 2:25 p.m.

T.C. REPORTING SERVICE

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* * *

I_N_D_E_X

WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
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MATTHEW COHEN

By Mr. Zenger	5		172	
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By Mr. Rannells		169		
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E_X_H_I_B_I_T_S

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(C o n t i n u e d):

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* * *

1 A Yes.

2 Q And was there a name associated with
3 the products of Alpine USA, Limited?

4 A Yes.

5 Q What was that name?

6 A Alpine Confections.

7 Q And that name Alpine Confections then
8 was used by Alpine USA, Limited up through or for
9 how long?

10 A It's still being used.

11 Q Okay. And how long did Alpine USA,
12 Limited use it?

13 A Alpine USA is still using it.

14 Q Okay.

15 A Alpine -- okay, ask the questions.

16 Q Is Alpine USA still in business?

17 A Alpine USA changed its name to World
18 Confections.

19 Q When?

20 A According to this document, January 22 --
21 24, 2002.

22 Q After January 2002 did Alpine USA,
23 Limited continue to do business in the name of
24 Alpine USA, Limited or was business done
25 thereafter in the name of World Confections, Inc.?

1 A What date did you say?
2 Q January 2002.
3 A Yes, World Confections.
4 Q Okay. So it discontinued using the
5 name Alpine USA, Limited?
6 A Yes.
7 Q While Alpine USA, Limited was doing
8 business between 1997 and January of 2002, one of
9 its business names or what we call a d/b/a, it was
10 doing business as, Alpine Confections, right?
11 A True.
12 Q Was it also known as simply -- was
13 Alpine USA, Limited also known just simply as
14 Alpine?
15 A It was known by Alpine, Alpine Confections.
16 Q Both names?
17 A Yes.
18 Q The company was known by those names?
19 A Yes.
20 Q And it's true, isn't it, that Alpine
21 Confections meant confections from Alpine, right?
22 A No.
23 Q It's not?
24 A Could you repeat the question?
25 Q Sure. The use of the term "Alpine

1 Confections" meant confections from Alpine?

2 MR. RANNELLS: To whom? Could I ask?

3 A No, I don't see it entirely that way.

4 Q What did Alpine Confections mean?

5 A Alpine Confections was a marketing name for
6 primarily gummi products that were known to come
7 from Europe. And we came up with the name Alpine.

8 Q How does Alpine connote Europe?

9 A Alpine would connote Europe because I
10 believe in Switzerland there are Alpine -- it's a
11 popular -- you know, Alpine is a ski term. It's
12 sometimes a mountain term. It just seemed like a
13 nice name to us. We kicked around a few names and
14 that's the one we picked.

15 Q So then Alpine Confections does mean
16 confections from Alpine, right?

17 A No, I don't see it that way. Where is
18 Alpine? Alpine, New Jersey? Where is Alpine?

19 Q Does that make a difference?

20 A Does what make a difference?

21 Q Whether the products are coming from
22 a place called Alpine or not?

23 A No.

24 Q What if they do come from a place
25 called Alpine?

1 does it?

2 A I don't see one.

3 Q And, in fact, from 1997 to the
4 present day, none of them, have they?

5 A I'm not sure. I didn't know it was required
6 by law.

7 Q I am not asking you if it is required
8 by law. I am asking whether from 1997 to this
9 date whether the product packaging has bore a "TM"
10 symbol or an "R" in circle symbol next to "Alpine
11 Confections" on the product packaging.

12 A I don't believe so.

13 Q You don't have any evidence that any
14 product packaging has ever bore the "TM" trademark
15 symbol, do you?

16 A I don't think I do. But we have these
17 registrations, these trademark registrations.

18 Q We will get there. In the spring of
19 2003, World Confections, Inc. started
20 transitioning away from the term or the name
21 Alpine Confections to the term Alpine Brand,
22 correct?

23 A With some products.

24 Q That was first done in the spring of
25 2003?

1 A I have to see my letter, that letter from
2 our supplier, when we started to make the
3 transition that I made you a copy of. I don't
4 recall if it was in the spring or fall. I have to
5 see a copy.

6 I do know the diskette I showed you that was
7 created on December 2003, which you have a copy of
8 all the graphics, showed I think three of 11 or
9 four of 11 that had "Alpine Brand" as opposed to
10 "Alpine Confections."

11 Q And prior to using the term "Alpine
12 Brand," the packages had never said Alpine
13 Confections Brand, had they?

14 A No, it said "Alpine Confections."

15 Q Didn't say "Brand" or "TM" or "R" in
16 a circle or anything, right?

17 A No.

18 Q And even to this day, World
19 Confections, Inc. doesn't mind being known as
20 Alpine Confections, does it?

21 A World Confections, Inc. doesn't mind being
22 known as Alpine Confections? It was just known as
23 Alpine Confections. I don't think we would be as
24 happy having Alpine Confections or World
25 Confections?

1 (Actual package of Strawberry Peaks
2 marked Applicant's Exhibit K-3a for
3 Identification.)

4 Q That is an actual sample of the
5 Strawberry Peaks product, correct?

6 A Right.

7 Q Up to the right of the "y" there is a
8 "TM," right?

9 A Uh-huh.

10 Q Who is responsible for -- part of
11 your responsibility is to deal with brand names,
12 right?

13 A Correct.

14 Q And how long has that been your
15 responsibility?

16 A Well, we are a family business. My father
17 passed away a year ago December, so I would guess
18 bottom line responsibility since a year ago
19 December.

20 Q But even before then you were
21 involved in choosing brand names, dealing with
22 product packagers to put brand names on, correct?

23 A Yes.

24 Q Why does Strawberry Peaks bear a
25 "TM?"

1 A It's an interesting story.

2 Q Tell me the story.

3 A We had, prior to Strawberry Peaks, we had
4 called it Strawberry Puffs. And Strawberry Puffs
5 was, I'm not sure if it was a registered trademark
6 of somebody else or too close to somebody else's
7 mark, I don't exactly remember what happened, but
8 we changed it to Strawberry Peaks. It was one of
9 the few products that we actually changed.

10 We never changed Gummi Peach Rings or Gummi
11 Bears or Neon Bears or Apple Rings, but the
12 Strawberry Peaks was changed from Strawberry
13 Puffs, I don't remember exactly when, and at that
14 time a "TM" must have been placed there.

15 Q In subsequent printings of the
16 product packaging?

17 A Right. When we changed over. This
18 particular instance was an item that we changed
19 the name midstream somewhere down the line.

20 Q And that "TM" means brand name,
21 trademark, right?

22 A It seems like "TM" means trademark.

23 Q That's your understanding, isn't it?

24 A It's my understanding.

25 MR. ZENGER: Would you mark that,

1 MR. RANNELLS: Objection. You don't
2 file trademark registration. You file trademark
3 applications.

4 Q Why didn't you seek trademark
5 registration by filing a trademark application for
6 Alpine?

7 A I thought the word "Alpine," including
8 Alpine Confections, was good enough.

9 Q You don't have a trademark
10 registration for the term "Alpine," do you?

11 A Alpine Confections.

12 Q You don't have a trademark
13 registration for any brand name including the term
14 "Alpine," do you?

15 A What is the purpose of this meeting?

16 Q For me to discover the facts as you
17 sit here today, Mr. Cohen.

18 MR. RANNELLS: Objection.

19 Q World Confections, Inc. has never --

20 MR. RANNELLS: I object if you're
21 going to be arguing with my client. It's a matter
22 of semantics here as to application or
23 registration. If you clear it up I think you
24 would get the answer you're looking for.

25 Q You have not -- sorry. Neither World

1 Confections, Inc. nor World Candies, Inc. nor
2 World Alpine USA, Limited has ever received a
3 Certificate of Trademark Registration for a mark
4 bearing the term "Alpine."

5 A That's is not true. We have it for Alpine
6 Confections. It has the term "Alpine" in it.

7 Q You have never received a
8 registration certificate, have you?

9 MR. RANNELLS: I will stipulate to
10 the fact there is a pending application for my
11 client for Alpine, that my client has not received
12 the registration for Alpine Confections or any
13 other mark, to my knowledge, that contains the
14 term "Alpine" alone or in combination with other
15 terms, symbols or the like.

16 MR. ZENGER: And we also stipulate no
17 such application has, as we sit here today, has
18 ever been allowed. Or do I have to prove it?

19 MR. RANNELLS: I am not sure.

20 MR. ZENGER: As of the last office
21 application.

22 MR. RANNELLS: As of the last office
23 application for what application?

24 MR. ZENGER: Any application
25 containing the word "Alpine."

1 MR. RANNELLS: Well, I do know that
2 the current pending application by my client for
3 the term "Alpine Confections" has not been allowed
4 in publication yet. I don't recall whether or not
5 the prior application of Alpine USA, Limited did
6 or did not. So that is something you need to
7 prove. You are going to have to prove it.

8 Q You don't have any evidence or any
9 documents to present to me today, Mr. Cohen, do
10 you, of a United States Trademark Registration
11 Certificate including the term "Alpine," do you?

12 A You would have to ask my attorney.

13 MR. RANNELLS: No, he does not.
14 Unless somebody else filed it and I don't know
15 about it.

16 Q And you don't know about anyone
17 filing any other applications for your company, do
18 you?

19 A No.

20 Q Can you describe for me the category
21 of your company's products that bear the name
22 including the word "Alpine?"

23 A Yes. Mostly gummies. Alpine Confections,
24 Alpine Brand, Alpine is used on gummi products and
25 some what we call licorice, but it's really

1 artificial flavored candy.

2 Q What evidence do you have that
3 Kenkraft, Inc. makes gummi candies or such a
4 licorice-type candies?

5 A I don't know much about Kenkraft, Inc.'s
6 products line. I know they are a very big
7 company. They own a few different subsidiaries.
8 I know they might import. I have no idea what
9 their complete line of candy is.

10 Q I am not asking if you know their
11 complete line. I am asking what evidence you have
12 that they make gummi products or the type of
13 licorice candies you have just mentioned?

14 A I don't have any evidence.

15 Q Okay.

16 A Do they? I don't know.

17 Q You sell a number of -- you have a
18 number of customers who are the dollar-type
19 stores, whether it's Dollar Tree or Dollar General
20 or 99 Cents Only, correct?

21 A Yes. Is that derogatory?

22 Q No. No.

23 A They are the fastest growing segment in the
24 United States of stores. I mean, they comprise
25 tens of thousands of stores. I just want to go on

1 record as saying that. They are every client's
2 dream account. Okay, go ahead. Worked hard
3 getting them, as well.

4 MR. ZENGER: Off the record.

5 (Discussion held off the record.)

6 Q Now, you will acknowledge, won't you,
7 that of your gummi-type product sales or your
8 licorice-type sales that the vast majority of them
9 bearing a name including the word "Alpine" are
10 sold to such dollar-type stores, correct?

11 A I would say that we are a multi million
12 dollar business with Alpine and a large portion of
13 our Alpine sales do go to dollar stores. But we
14 are not limited to other customers.

15 Q But, in fact, it's over 75 percent,
16 isn't it?

17 A It might be. You have been looking at the
18 books.

19 MR. RANNELLS: Just for
20 clarification, are you talking about dollar stores
21 or are you talking about those types of stores?

22 MR. ZENGER: Those types of stores.

23 MR. RANNELLS: Okay.

24 A It's possible.

25 Q Let me lay a foundation. Nobody

1 knows more about this business than you?

2 A Right.

3 Q Nobody knows more about the sales of
4 products than you do, right?

5 A Right.

6 Q And you are familiar with all the
7 accounts, right?

8 A Uh-huh.

9 Q Because you see all the sales
10 numbers, correct?

11 A Yes, I do.

12 Q And it's true, isn't it, that not a
13 mere 51 percent majority, but the vast majority of
14 the sales of products which bear any labeling with
15 the word "Alpine" in it are sold to dollar-type
16 stores, correct?

17 A Yes.

18 Q Estimate for me that percentage based
19 on your knowledge of the sales and customers of
20 your companies.

21 A Which year would you like me to estimate
22 that mix for you?

23 Q I want you to start in '97 and go
24 through to today, annually.

25 A That might be difficult.

1 Q Do your best.

2 A Well, I would say that we have had grocery
3 accounts. We still have grocery accounts. We
4 have had discounters such as K-Mart. We have sold
5 product into dollar stores. We've sold product
6 into 99 cent stores. We sold products to
7 wholesalers who distribute the product up and down
8 the streets. But yes, the vast majority of sales
9 right now because they are the fastest growing
10 customers in the country are dollar stores. We
11 are perfect for them with this product and we are
12 selling a lot to them.

13 Q And that's because the product can be
14 sold to the end consumer consistently at or below,
15 near or below a dollar, right?

16 A Well, if you are selling to a dollar store,
17 it better be at a dollar.

18 Q No, they have to be able to sell it
19 for a dollar.

20 A Absolutely. This product.

21 Q You have to sell it to them less than
22 a dollar?

23 A Absolutely. By the way, we are not the only
24 ones marketing seven-ounce gummi bears or
25 six-ounce gummi bears or eight-ounce gummi bears

1 that retail for a dollar. That is the general
2 price. You will see this as a dollar twenty-nine
3 in the supermarket.

4 Q K-3?

5 A Yeah, you will see K-3 in the supermarket.
6 We don't have much of a control about the exact
7 retail price. Obviously when it goes to a dollar
8 store it's selling for a dollar. But in the end,
9 you can sell it for a dollar forty-nine.

10 Q Back to my question. Estimate for me
11 the percentage of the sales; 80 percent or 85
12 percent or 90, gummi sales.

13 A I would say your 75 percent now at this
14 current mix sounds about right.

15 Q About how many years would that be
16 true? At least since the year 2002?

17 A I would say yes.

18 Q And before then?

19 A Before then our dollar base was much lower,
20 so, you know, I don't think it was 75 percent in
21 1997. You know, when we did, you know, under
22 500,000 in sales in Alpine Brand and went to
23 800,000 and went to a million seven and two
24 million four and three million three, that growth
25 came from dollar stores.

1 But in the first year I think of the
2 400,000, the first year I think only a hundred
3 thousand went -- I may be wrong, but we had a
4 wholesale line, we had other items.

5 So yeah, as the dollar amount got bigger,
6 the dollar stores accounted for more of a
7 percentage because they are responsible for more
8 of the growth.

9 Q And that trend you project is going
10 to continue, correct?

11 A Well, I could project it. I would like to
12 see it.

13 Q That is what your company is planning
14 on, correct?

15 A Actually, not really. Actually, we think --

16 MR. RANNELLS: This part of the
17 deposition I want to be considered confidential
18 because it has to do with future plans of the
19 company.

20 MR. ZENGER: Sorry. Thank you.

21 A We feel we may have reached a pinnacle with
22 the dollar store business that we have with Alpine
23 and we are now going to be embarking on a slight
24 redirection of our brand to focus in on other
25 customers. And maybe expanding the product line

1 as well.

2 Q But the growth over the last six
3 years is attributed to the business model of
4 selling through dollar-type stores?

5 A Well, yes. It turns out that way, but that
6 is not exactly the business model.

7 Q Let me say it another way. The sales
8 successes over the last six or seven years is
9 attributed to the ability to have accounts of
10 dollar-type stores, correct?

11 A They are the fastest growing segment in the
12 candy business now. They're the fish that
13 everybody is trying to catch.

14 Q So the answer is yes?

15 A So the answer is yes. Can I add something
16 to that?

17 Q Of course.

18 A I would hate to feel pigeon-hold that all we
19 can sell with this is dollar stores. The dollar
20 store fits our method of sales and distribution
21 like a glove and, you know, I mean, we are always
22 out trying to work with other customers.

23 Q You don't sell through the likes of
24 Fannie May or Harry London, do you?

25 A No.

1 of packages that are on the premises as of 2004
2 when this Declaration was filed, correct?

3 A "Accompanying this Declaration are true
4 copies of representative Alpine Confections
5 product packaging that has been or is currently
6 used by CWI for its gummi candy products." That's
7 a true statement.

8 Q But the actual depictions themselves
9 were of packages that were being distributed in
10 2004, correct? The actual images themselves were
11 packages distributed in 2004?

12 A I have to look at all the exhibits.
13 "...that has been or is currently..."

14 Q Tell me if any of these have been
15 discontinued.

16 A You want to talk about the Gummi Peach Rings
17 first, the ones you are showing me? That item has
18 not been discontinued. That Alpine Confections
19 Gummi Peach Rings has been sold continuously from
20 1997 to current day. I could even show you the
21 orders we just talked about have those orders on
22 there.

23 Q But there have been some changes to
24 the product packaging that have required reprints?

25 A Yes. Absolutely. I mean, our supplier is

1 constantly buying films, using film, buying more
2 film. Change his film suppliers, giving them the
3 artwork to redo. It's a living, breathing thing.

4 But the package itself is extremely
5 identifiable, almost exactly as it was on that fax
6 we showed you from April 1997 that shows the
7 original design graphics for Alpine Gummi Peach
8 Rings, yes.

9 Q But from 1997 to the present, for
10 example, with the Gummi Peach Rings, this has been
11 reprinted many, many times because they needed it
12 for suppliers?

13 A Of course.

14 Q There weren't 10 bags in 1997?

15 A No. No, it's a living, breathing and they
16 have a factory in Spain and factory in Brazil and
17 the one in Brazil is printing and the one in Spain
18 is printing.

19 Q How often do they do a package?

20 A That would depend on the movement item.

21 Q How about for the gummi products?

22 A Well, depend what gummi product. There is a
23 minimum order of film required by the supplier.

24 Q What is that minimum order?

25 A The minimum orders vary. The guy in Spain,

1 Fini in Spain, may have a different contract with
2 their supplier and Brazil may have a different
3 contract with their supplier. Sometimes you can
4 gang them up, run three or four together, get a
5 break on the quantity. Sometimes order by itself
6 and order larger quantities. It varies.

7 Q But that quantity is in what, hundred
8 of thousand of units?

9 A I think the quantity -- I'm not sure if it's
10 hundred of thousands, but I think it might be.

11 Q But since that time there have been
12 how many, estimate for me, how many printings
13 there would have been for the Gummi Peach
14 packaging?

15 A I couldn't say.

16 Q A lot? A dozen? Two thousand?

17 A I would say at least a 10 for sure.

18 Q And is the same true with respect to
19 the other gummi products, there have been at least
20 a number of printings of the product packaging?

21 A Yes, I would say that Gummi Peach Rings --

22 MR. RANNELLS: Do them one at a time.

23 A -- which is one of our core items, has been
24 printed many times. Gummi Dinosaurs, which is a
25 newer item.

1 Q When did it come?

2 A I am not exactly sure. Maybe a year after
3 the Peach Rings. Maybe '98 or '99. There was a
4 wave. Every couple of years we introduce a few
5 new items. But I assume there has been reprints
6 on Dinosaurs as well.

7 Q The Gummi Frogs?

8 A This is not the same Gummi Frogs. This
9 Gummi Frogs I don't think has been reprinted.
10 Four-seventy code. If you look at 470, this one
11 stopped a long time ago. No, no, no. Sorry.

12 MR. RANNELLS: There is two on the
13 page. Is that correct? Let's identify which one
14 you are talking about.

15 A They are the same, 1.5 ounces. One is laid
16 flat and one is folded up.

17 MR. RANNELLS: Very good.

18 A This item is not sold separately, but is
19 sold as part of our Swamp Buddy mix.

20 Q That has been discontinued?

21 A It has not been discontinued, but it is a
22 slow seller.

23 Q When did it begin? When did the
24 Gummi Frogs and the Swamp Assorted kit begin?
25 Just an estimate.

1 A I would say '98, '97. '98.

2 Q Early on?

3 A Early on. Yeah, I think. I am pretty sure.

4 Q Next page. The top seven-ounce Gummi

5 Frogs. Again, about the same time?

6 A I would have to check my records. I don't

7 know exactly which wave we introduced the Gummi

8 Frogs. It was not a founding member, a core,

9 founding member.

10 Q Seven-ounce, does that tell you

11 anything?

12 A Yeah, it's a regular item. I am looking

13 over here. I see we are selling them still.

14 Q They were eight-ounce.

15 A Let me put it this way: All the eight-ounce

16 bags were converted to seven-ounce.

17 Q When?

18 A Again, I'm not sure. I have a memo, you saw

19 a memo on that where my supplier is saying we have

20 to go to seven-ounce if you want to keep the price

21 the same. I said we are going to have to go to

22 all of them and not just one here and one there.

23 I have to look back at that memo to see what date

24 it was, but it was a few years ago, absolutely.

25 Q Like 2003?

1 A I don't think 2003. No, no, no. Way before
2 2003. Way before. '99 or 2000.

3 Q How about the bottom one?

4 A There is documentation to the effect.

5 Q Is this Gummi Frogs on the top in the
6 five-ounce or seven-ounce styles being used?

7 A Yes, absolutely.

8 Q How about the Gummi Bears?

9 A Yep.

10 Q On the bottom of the page.

11 A Still an item. Doesn't sell as well. We
12 don't sell as many Gummi Bears of other ones.

13 This is not our biggest mover.

14 Q Sour Gummi Bears?

15 A That item, 1.5 Sour Gummie Bugs, which is
16 sold in our Swamp Kiddie Assortment, if you want
17 to look.

18 MR. RANNELLS: What are we looking
19 for?

20 THE WITNESS: The Swamp Buddy.

21 Q It was that long box?

22 A Right there. Now you can see.

23 Q You already opened one up?

24 A No, here we go. You can see inside this
25 Swamp Buddy collection is a package of Frogs, is a

1 shows, I have been telephone called, we showed you
2 a couple of letters by consumers. But inside the
3 trade, when Kenkraft decided to start using Alpine
4 Confections, you know, years after we have been
5 using it, people are coming up to us and say, oh,
6 you're Alpine Confections? Oh, I heard you bought
7 Fannie May.

8 Well, we didn't buy Fannie May. People know
9 us as Alpine Confections. We have -- there is a
10 press release in the industry, "Alpine Confections
11 Buys Fannie May." I get phone calls; hey, you
12 guys bought Fannie May?

13 Q What articles?

14 A Well, there is an article here. This is a
15 perfect case over here. This is a --

16 Q Tell me what you're --

17 A I am on Exhibit 4.

18 Q Of your Declaration?

19 A Of my Declaration. And this is just one
20 instance and it says, "Alpine acquires Fannie May,
21 Fannie Farmer Brands." It says, "Alpine
22 Confection, Inc. acquires the intellectual
23 property to 31 company-owned retail stores of
24 Fannie May and Fannie Farmer bought for \$8.9
25 million from Archibald Candy. Alpine sales were

1 reported at \$80 million prior to the purchase.
2 Alpine will make Fannie May its flagship brand.
3 The company has been producing Fannie May's most
4 popular..." you want me to read the whole thing?

5 Q No. This is the type of article you
6 are referring to?

7 A Right. And the article -- wait, wait. The
8 thing that is so confusing about the article is
9 dead smack in the middle of the press release is
10 my Alpine Confections logo. It's my logo. My
11 front of my bag logo which is on hundreds and
12 hundreds and thousand of bags we have in the
13 market. They used our logo. I don't know who did
14 it, but it was used in the center of the release
15 that says, "Alpine Acquires Fannie May."

16 This articles was in our trade publication.
17 I believe, I want to say, I am not sure, during
18 one of our conventions where people, they were
19 giving away the magazine and people were looking
20 at it. So clearly they see my Alpine Confections
21 logo with Alpine Confections of Utah. Don't you
22 think somebody would confuse that? And we are
23 both in the same industry. Hey, you guys bought
24 Fannie May?

25 Q Who wrote the article?

1 communications caused you to say "communications
2 from parties" in paragraph 13 -- is it paragraph
3 13?

4 MR. RANNELLS: Yes, 13.

5 Q That's all I want. Whether it's an
6 article, a letter, an e-mail, I want copies of it.

7 A Okay.

8 Q Now, so let's go to oral
9 communications.

10 A Right.

11 Q Those such communications about this
12 article of Exhibit 4, for example, Exhibit 4 to
13 your Declaration, couldn't have been before June
14 of 2004, could they? Because this publication,
15 nobody made a -- you didn't even know about this
16 publication.

17 A 2004?

18 Q Yeah.

19 A June 2004 is when that article came out? I
20 am asking you.

21 Q We never heard anything from your
22 company until 2004 about this article. And you
23 say that this was distributed at the show?

24 A I said I think it was. I didn't say -- you
25 can read it back. I didn't say I know it was

1 distributed at the show. I know people were
2 coming up to me at the trade show. I don't know
3 the June 2004 or June 2002 trade show. I don't
4 remember exactly which trade show it was, but I am
5 assuming -- and I feel that that publication was
6 at -- the magazine was at a trade show because I
7 recollect people coming up to me and asking me
8 about this, whether it was in a serious manner or
9 some people know us better was in a joking manner.

10 I even had some people come up to me in kind
11 of a derogatory manner; hey, you doing 80 million
12 in sales? Those type of things. Clear confusion
13 by people in our industry.

14 Q But your testimony is that that
15 confusion was caused by this article, Exhibit 4 to
16 your Declaration?

17 MR. RANNELLS: No.

18 A I don't think so.

19 MR. RANNELLS: Paragraph 13 doesn't
20 refer to that article.

21 Q What did the people tell you in their
22 oral communications was the basis for their
23 statements to you?

24 A I just said that there were -- there have
25 been press releases all over the place. It seems

1 to me the guys in Utah give out a lot of press or
2 there is a lot of articles written about them.
3 Especially in Chicago and this whole thing with
4 the purchase of Fannie May. I don't know exactly
5 what it was, but I know I got some calls from
6 Chicago. I think Fannie May is in Chicago. I am
7 not sure. Would you know that?

8 Q No.

9 A Okay. They might be in Chicago. I don't
10 know, the Midwest somewhere, and this was
11 appearing in articles. Alpine Confections is
12 negotiating to buy. Alpine Confections bought
13 them. And there was a whole thing going on and I
14 received phone calls about it.

15 I mean, this was not -- I didn't receive
16 written questionnaires or anything legal. It was
17 an industry feeling I had that Alpine Confections
18 was really making a push in Utah to get their name
19 out there. And their push to get their name out
20 there created confusion in the marketplace.

21 Q That's your feeling, right?

22 A That is my feeling.

23 Q And if all these people who either
24 spoke to you or all these people who spoke to you,
25 none of them told you where they got their

1 information, did they?

2 A Well, if somebody said, hey, I read; hey, I
3 heard, nobody in today's world -- we have hundreds
4 of phone calls a day. Nobody calls up and says,
5 hello, Matthew, how are you? I read in an article
6 dated so and so.

7 We are not lawyers. We are candy people.
8 And it's casual and that's where I heard it, in a
9 casual manner. Nobody wrote me a 10-page letter
10 on it.

11 Q Have you ever, in your years of
12 experience, ever had someone misrepresent your
13 products? I want you to give me copies. I am not
14 going to --

15 A Look at the screen.

16 MR. RANNELLS: Just for the record,
17 Mr. Cohen is showing -- apparently, just did, an
18 e-mail.

19 A An e-mail I received.

20 MR. RANNELLS: An e-mail he received
21 and is showing it on his computer screen to Mr.
22 Zenger at Mr. Zenger's request.

23 A Dated January 5th, 2004. "Archibald Candy
24 selling Fannie May." I will print it out. I will
25 get a copy of the whole article to you.

1 Q And a creditor is someone who gives
2 you that line of credit, right?

3 A Yes.

4 Q And in connection with that you have
5 to give them certain information and keep them
6 apprised of certain information, right, financial
7 information, right?

8 A Yes.

9 Q Do you have a recollection of any
10 such persons called you when they have seen these
11 kinds of articles?

12 A I don't recall if they did or didn't.

13 Q You don't recall one way or the
14 other?

15 A I don't recall.

16 Q Is it possible some could have?

17 A It is possible. I mean, we don't travel in
18 the same financial circles. We are a small family
19 business doing 12, 13 million in sales. They are
20 an \$80 million conglomerate, so I don't think we
21 travel in the same financial services. In the
22 same financial circles.

23 Q People in the trade know your family
24 businesses, don't they?

25 A Yes.

1 A "www.better" --

2 Q Who is.

3 A Dot com.

4 MR. RANNELLS: Is that better than

5 "Who Is"?

6 A Is there two t's in better?

7 Q Yes. Now, in the search please type
8 in "Alpine Confections.com." Scroll down. This
9 is the summary report. To get the full report,
10 "To view complete domain information, click here."
11 Please click.

12 Who is listed as the registrant of
13 "www.alpineconfections.com"? The registrant.

14 A "Alpine Confections, Stamford Town Center,
15 100 Gray Rock Place, Stamford, Connecticut, US."

16 Q That is not your company, is it?

17 A No, it is not.

18 THE WITNESS: Write that down.

19 Q What date was this record completed?

20 A March 10, 2000. Can I make another search,
21 please?

22 Q Please. I would love it. You don't
23 own Alpine Gummie.

24 A We do own something with Alpine in it dot
25 com. I don't know what it is, but we own it. We

1 haven't developed the web site, but we own Alpine
2 something dot com. Tomorrow I will have my
3 controller pull out the invoice from Network
4 Solutions.

5 Q When did you register it?

6 A I couldn't tell you for sure. I don't even
7 know the full correct name for it, but I know we
8 have a name with the word Alpine dot com
9 something. Something Alpine.

10 Q But it wasn't sought until recently?

11 A No, no, no. In the '90s. Absolutely.

12 Q So you have never used it since the
13 '90s?

14 A We never used www.World Confections.com. We
15 never used www.World Candies. We are always
16 getting to it. We don't sell through the
17 Internet. We know we need a presence on the
18 Internet and I am almost certain we have a domain
19 name with the word "Alpine" in it. Is there a way
20 to search --

21 Q You don't have any Internet sales,
22 correct?

23 A No, we have no Internet sales.

24 Q And you have never had any Internet
25 marketing then of your products either bearing

1 "Alpine"?

2 A No, there are -- that is not true. That is
3 not true. There is Internet commerce with
4 "Alpine" on there.

5 Q Your company --

6 A My company.

7 Q -- does not have web sites?

8 A No, we don't have web sites where we are
9 selling our product on, no.

10 Q Including products bearing the name
11 "Alpine?"

12 A But we do sell to companies that do market
13 that product on the web.

14 Q Let me show you an exhibit marked
15 K-10.

16 A This is us. "Alpine Gummies.com." Does
17 that say "World"?

18 Q Click here.

19 A Let the record show that World Confections
20 owns Alpine Gummies.com.

21 Q When was it created?

22 A December 3rd, 2001.

23 Q That web site has never been used to
24 market Alpine-named products, has it?

25 A No, but "Alpine Gummies.com" is a domain

1 name that is owned by World Confections from
2 December 3rd, 2001.

3 Q Thank you. Would you look at Exhibit
4 10 for me, sir?

5 A Yes.

6 Q Today you produced a bunch of
7 documents to me, maybe thousands of pages. I had
8 a chance to look through some of them. Would you
9 please confirm for me that the documents set forth
10 in Exhibit 10 are true and correct copies of your
11 company records?

12 A Yes, they appear to be.

13 Q And would you please confirm for me
14 that these are records kept in the ordinary course
15 of your business operations?

16 A They look like, yes.

17 Q Well, they came from your files,
18 right?

19 A Right. Right.

20 Q And your own people copied them here
21 on your own copy machine, right?

22 A Yes.

23 Q So they are true and correct copies?

24 A Yes.

25 Q And it's your business practice to

1 keep business records that are accurate so you can
2 rely upon them, right?

3 A Yes.

4 Q Go to page four.

5 A The shipping?

6 Q Yes, the Fini Sanchez. For example,
7 this is a document indicating that on or about
8 September 13, 2001 Fini from, I guess that's
9 Spain, had sent or invoiced World Confections a
10 number of the gummi products we have talked about
11 today, correct?

12 A Okay.

13 Q And in connection with that these
14 would have been products bearing the Alpine name,
15 correct?

16 A Yes. They have code numbers that correspond
17 consistently throughout our years.

18 Q Okay. And further back in the
19 document there is a document dated December 4,
20 2001. It's says at the top "United States Food
21 and Drug Administration." You see that?

22 A Yes.

23 Q That is a document apparently from
24 the United States Food and Drug Administration to
25 World Candies, Inc.?

1 A Correct.

2 Q And it's dealing with product called
3 "Gummie Candies"?

4 A Right. Well, it's not -- gummi candies,
5 it's a classification.

6 Q There is a product description?

7 A There is a Harmony code that -- yeah, go
8 ahead.

9 Q But this has to do with the products,
10 the gummi products we have been talking about
11 today that have been distributed with the name
12 including the word "Alpine," correct?

13 A Yeah, uh-huh.

14 Q Now, look with me if you would, sir,
15 at -- there is in here a check number 1034. Do
16 you see that?

17 A Yes.

18 Q And it's a check from company Alpine
19 Confections, correct?

20 A Yes.

21 Q And it's in the amount of \$31,444
22 paid to World Candies, Inc.?

23 A Yes.

24 Q And it was for, it says down below it
25 says "10036." Is that referring to an invoice?

1 A Right.

2 Q And if you turn to the next page,
3 that is the invoice, correct?

4 A Yes.

5 Q So there was an invoice -- so World
6 Confections or the invoice on the next page to
7 World Candies was paid by the check 1034, correct?

8 A Right.

9 Q So these types, these documents of
10 Exhibit 10 represent true and accurate business
11 dealings of World Candies, correct?

12 A Yes.

13 Q And the associated companies?

14 A Correct.

15 Q Let's go to exhibit 11. Okay, do you
16 recognize Exhibit 11?

17 A Yes, I do.

18 Q Tell me what it is.

19 A "Please be advised we have consolidated
20 World Candies, Inc..." --

21 Q When you read, her fingers can only
22 fly so fast.

23 A -- "...and our sister company, Alpine
24 Confections, into one corporation. The new
25 corporate name will be World Confections, Inc.

1 Please remit payment."

2 Q Who did you send this to?

3 A It says, "All customers."

4 Q Now, in line one it talks about two
5 companies; World Candies and it says "our sister
6 company, Alpine Confection, Inc." There is no
7 such company. You never had a company called
8 Alpine Confection, Inc., did you?

9 A Well, Alpine USA.

10 Q But it doesn't say Alpine USA,
11 Limited, does it?

12 A Hold on one second.

13 Q Correct?

14 A Okay, let me --

15 Q None of your related companies have
16 ever had a company incorporated as Alpine
17 Confections, Inc., correct?

18 A Yes, but I will explain this to you: Our
19 invoices, if we get our invoices out, copy of our
20 invoice, Alpine's invoice -- do you have that?

21 Q Sure, we have some here. Let's go
22 back to an earlier exhibit. Let's go to Exhibit
23 6?

24 A Exhibit 6.

25 Q I have it here?

1 A So if you look at all our invoices it says
2 "Alpine Confections." So they were writing checks
3 out to "Alpine Confections." If you're disputing
4 the "Inc.", you know, I mean that could have just
5 been a mistake, typo mistake.

6 Q I am just asking.

7 A I am saying.

8 Q You never had a company named or
9 incorporated as Alpine Confections, Inc., right?

10 A No, our company was Alpine USA, Ltd. doing
11 business as Alpine Confections. So all our
12 invoices said Alpine Confections. So as a letter
13 to our customers, what we are trying to get them
14 to do is to start writing out checks to World
15 Confections.

16 Q I understand.

17 A So that's what that is.

18 Q Thank you. And so when this says it
19 went out to all customers, how many customers do
20 you estimate it went to?

21 A I couldn't say. I mean, I couldn't tell you
22 how many customers it went out to.

23 Q Can you estimate for me; hundreds?
24 Thousands?

25 A No, not thousands. No. Oh, wait, wait.

1 Maybe -- maybe 500. You know, give you an
2 estimation. What we were doing was I remember at
3 the time we were -- you know, every time we get a
4 check in, overflow check, we put this in with an
5 invoice. We would put this in with the invoice
6 trying to show them what was going on and make the
7 check out now to the appropriate company.

8 Q Would you look at Exhibit 12, please,
9 sir?

10 A Yes, Exhibit 12 is a letter I showed you
11 earlier today.

12 Q All right.

13 A That we gave to the buyer at Wal-Mart
14 stores.

15 Q And is this again a business record
16 that you have, kind of business record you rely
17 upon to do business?

18 A Yes. What we were trying to do here was to
19 sell Wal-Mart gummies and we wanted to let them
20 know what Alpine was about, that it was backed by
21 years in the industry, that we weren't -- because
22 Wal-Mart won't buy from a fly-by-night company.

23 So we were trying to show them we have years
24 of experience and backed by our old World Candies
25 good faith and don't worry, you can buy them.

1 Q So it was talking about the company

2 Alpine Confections?

3 A Right. Would you like me to read that?

4 Q No.

5 A And does this document -- okay.

6 Q Would you please look at Exhibit 13.

7 You recognize that as a true and correct copy as

8 one of your business papers?

9 A I do.

10 Q Can you tell me what it is?

11 A It says "Certificate of Registration" and it

12 says "Title of World Alpine Candy," bag numbers,

13 and it references all the items that we have

14 been -- that have been in our line that you have

15 reviewed consistently, many of them since 1997,

16 being sold continuously throughout Alpine

17 Confections.

18 Q And samples of them are attached,

19 right?

20 A Yes.

21 Q Did you request that this copyright

22 registration be prepared?

23 A Yes.

24 Q Why?

25 A Well, I think we felt that there were

1 certain elements that we wanted to have
2 registered. Our product was becoming, you know,
3 quite accepted.

4 Q If you look in block number three on
5 the first page?

6 A Yes.

7 Q It says, "Year in which creation of
8 this work was completed: 1997." You see that?

9 A Yes.

10 Q Then over on the right-hand side in
11 block four it says that the application was
12 received June 12th of 2002. Does that refresh
13 your recollection that this was filed in 2002?

14 A No.

15 Q Turn it over. Is that your agent at
16 the bottom, "Steven L. Baker," who signed this
17 paper?

18 A That is our attorney's partner over here to
19 your left.

20 Q And do you have any reason to believe
21 that the date 6/10/2002 is inaccurate?

22 A No, I don't believe that the date is
23 inaccurate. But I do remember sending him this,
24 you know, way before 2002.

25 Q This copy of the registration form?

1 A He -- is my signature on here?

2 Q No.

3 A Right. I mean, I sent him the product to be
4 registered way prior to this date.

5 Q When?

6 A I'm not sure of the exact date.

7 Q Weeks, months?

8 A Oh, I think much -- I think before that.

9 Q Can you estimate for me?

10 A I don't know exactly the date, but I do
11 remember this was slow to come.

12 Q Months or years?

13 A I said I don't remember the day. I just
14 remember waiting for it to happen.

15 Q Do you have any explanation as to why
16 if the words were created in 1997, the application
17 was not filed until five years later?

18 A I would have to ask our attorneys that
19 question or you have to ask Steven Baker that
20 question.

21 Q I am asking you as the copyright
22 claimant listed in block number four. Is that one
23 of your companies you are claiming to be in block
24 four, "Alpine Confections, Inc."?

25 A Well, again, "Inc.", "Inc." appears -- I

1 know, that had to come together. Our supplier
2 wouldn't give us credit. World Candies had to
3 lend its money back and forth, back and forth.
4 Credit was an issue. My father was handling the
5 finances and administrative. I was on the road
6 putting and selling the product.

7 Q In March of 2000 your father was
8 sheparding this trademark application as Exhibit
9 K-18?

10 A Well, he might have been and I might have
11 been. It depends whose desk it might have fallen
12 onto at the time.

13 Q But you said you don't remember?

14 A I don't remember it. I don't remember this
15 document.

16 Q Now, the document itself, do you
17 remember in or about 2000, early in 2000, having
18 counsel file a trademark application for Alpine
19 Confections?

20 A I have to say I don't.

21 Q Do you remember in the year 2001
22 having any discussion with counsel about the
23 application of Exhibit K-18?

24 A Yes, I do.

25 Q When did you have those discussions,

1 Q I am not asking you what the content
2 of your communication were. I am asking you why
3 you had the call.

4 A It's easier than sending a letter.

5 Q Was there something that you learned
6 that prompted you to call counsel or did counsel
7 call you and inform you of something?

8 A No, we called counsel.

9 Q Why did you call counsel?

10 A We called counsel -- I know where you are
11 going, so we will go to it, okay? It is possible
12 that they were called in response to a letter your
13 client sent to us.

14 Q Okay. Would you please look at
15 Exhibit 17. Do you have recall receiving a letter
16 from David Taiclet towards the end of 2001?

17 A This letter was addressed to my father.
18 However, I do remember looking at it.

19 Q So you -- okay.

20 A I have not seen it since then until now.

21 Q And do you recall what the nature of
22 your concern was at the end of 2001?

23 A I believe we looked at this letter and we
24 were amused by it and sent -- and ran it by our
25 attorney. Because when any letter comes up of

1 this nature, we send it to our attorney.
2 Especially when it's copied to his attorney. It's
3 customary to pass along to our attorney.

4 Q And at that time -- there was never a
5 written response to this letter, was there?

6 A This letter to me is such a ridiculous
7 letter it didn't warrant a written response from
8 us.

9 Q I didn't ask how you characterized
10 the letter. I am asking you, you didn't respond
11 to this letter, did you?

12 A I don't know of any response in writing to
13 this letter and that's it.

14 Q In fact, earlier today you had asked
15 me for this letter, hadn't you?

16 A Right.

17 Q But you can't provide me -- you
18 haven't provided me any response to this letter,
19 any written response to this letter, have you, in
20 the documents you have looked for?

21 A No, no written response to this letter.
22 Didn't warrant a written response.

23 Q Now, I want to go back to Exhibit 18.

24 A What document is that? This one?

25 Q Yes. This application that was filed

1 in March 2000 went abandoned, correct?

2 A Oh, I don't know what you mean by
3 "abandoned." I really don't know what it means.
4 Did we ever stop selling the mark? No. We have
5 always been selling. I don't know what this
6 "abandoned" means here.

7 Q Do you have an understanding that if
8 you don't file a trademark application that you
9 will not receive a trademark registration? Do you
10 have that understanding?

11 A Yes, there is an understanding to that.

12 Q And similarly, based on your
13 experience with other marks and other
14 applications, you know that if you file an
15 application and don't meet the requirements of the
16 Trademark Office, then you still don't get a
17 trademark registration, right?

18 A If you say so.

19 Q No, I am asking what your
20 understanding is.

21 A You're the lawyer.

22 Q I am asking what your experience and
23 understanding is.

24 A My experience and understanding is if you
25 want to receive a trademark, you should apply for

1 one.

2 Q And just applying for it doesn't mean
3 you are going to get it, right?

4 A That's correct.

5 Q And so if you file an application and
6 you don't get it, then you don't get a
7 registration or registration certificate, right?

8 A That would be true.

9 Q Do you know why the application shown
10 in Exhibit K-18 went abandoned?

11 A Sloppy administration.

12 Q Who was administering?

13 A It was either myself, my father, Steven
14 Baker or Jack Rannels.

15 Q When did you learn it had gone
16 abandoned?

17 A We learned it had gone abandoned, I would
18 say, when we forwarded this letter to our
19 attorney.

20 MR. RANNELLS: By "this letter," you
21 are referring to?

22 A I am referring to this letter that came to
23 our attention.

24 Q K-17?

25 A Right, K-17.

1 Q So by early November 2001 you were
2 aware of the abandonment of the application of
3 K-18?

4 A I would say so. I mean, you have to
5 understand, we are running a small family business
6 here. My father was 80, in his 80's at this time.
7 I was on the road trying to build the business.
8 We are short on administrative help here. That is
9 not excuses, but you have to understand the
10 backdrop, which is why certain paperwork could
11 fall through the cracks.

12 But at no time did we ever stop using Alpine
13 Confections in our products, in your sales, in
14 what we are trying to achieve. We have shown a
15 continuity of sales for Alpine gummies since 1997.

16 When I received this letter, my father
17 received this letter in 2001, we looked at it and
18 our mouths went open. We couldn't believe that
19 somebody who lives in an area of Alpine, Utah
20 would ask us to stop. They knew we were selling
21 the products. We asked you to stop. The nerve.

22 They want to file an Intent to Use. We are
23 selling millions of dollars of the items and
24 because they are in Alpine, they want us to stop.

25 If I move to Alpine, New Jersey, is that

1 jumped through?

2 A Administrative error.

3 Q That's your answer?

4 A Yes.

5 Q So in the year 2000 and 2001 such
6 administration for sheparding trademark
7 applications was primarily under your father's
8 responsibility because you were out on the road?

9 A Yes.

10 Q And that continued to 2002 and 2003?

11 A Yes.

12 Q And in each instance where your
13 company has filed an application for a trademark
14 registration has done so through trademark
15 counsel, right?

16 A Through this trademark counsel?

17 Q Through trademark counsel you have
18 relied upon, correct?

19 A Yes.

20 Q Do you remember in the year 2000 or
21 2001 being in any conferences with your father
22 discussing the status of pending trademark
23 applications?

24 A What time period?

25 Q 2000 and 2001.

1 A Right.

2 Q Six years later, in 2001, a paper had
3 to be filed. Do you remember discussing the
4 filing of papers for Skin Critters with your
5 father in 2001?

6 A No.

7 Q Okay. The Rude Dudes trademark
8 application was filed in May of 2000. It
9 registered in May of 2001. Do you remember in the
10 2000 to 2001 time period having discussions with
11 your father about the status of this pending Rude
12 Dudes application?

13 A Yes, I do.

14 Q Do you remember also having
15 discussions with counsel about it?

16 A I must have. I don't remember the
17 conversations.

18 Q Do you remember having conversations
19 about the Swamp Buddies application filed May
20 2000, registered February 2003?

21 A Yes, I do.

22 Q And do you also remember having a
23 need to communicate with counsel about that?

24 A I'm sure we did.

25 Q So back again to Exhibit 18. Do

1 you -- so it's your testimony sometime in late
2 2001 you learned that this application had gone
3 abandoned?

4 A Yes.

5 Q And you had that discussion with
6 counsel, too?

7 A Yes.

8 Q And did you talk about why it went
9 abandoned?

10 MR. RANNELLS: I think I am going to
11 have to object at this point.

12 Q I am just asking whether he talked
13 about it or not, not the communication.

14 MR. RANNELLS: You are asking him
15 why. What was the question? Could you repeat it,
16 please?

17 (Whereupon the following question was
18 read back by the reporter:

19 "QUESTION: And did you talk about
20 why it went abandoned?")

21 Q Will you tell me what your discussion
22 was with counsel?

23 A No. Do I have to?

24 Q I am asking if you will tell me.

25 A No.

1 Q Why?

2 A Because I am under the impression the
3 conversation I have with my counsel are
4 confidential.

5 Q And so you are going to assert that
6 privilege now and not tell me what discussion you
7 had with counsel about the application shown in
8 Exhibit K-18 in November 2001?

9 A Could I consult with my attorney whether I
10 should?

11 MR. RANNELLS: I will advise you to
12 maintain the attorney/client privilege because it
13 would just open the door for whatever.

14 A I will maintain the attorney/client
15 privilege.

16 Q You are not going to answer my
17 question?

18 A That is correct.

19 MR. RANNELLS: In fact, he already
20 did answer the question when he was asked why it
21 was allowed to be abandoned. He said
22 administrative error.

23 MR. ZENGER: Well, that's his
24 understanding. Are you telling me that's the
25 communication and discussion with counsel?

1 MR. RANNELLS: I am saying that is
2 what his response was to the question that you
3 asked.

4 Q Did you discuss administrative error
5 with your counsel?

6 A Isn't that attorney/client privilege? Are
7 we back to that?

8 MR. RANNELLS: Yes, we are.

9 Q So you're not going to answer my
10 question?

11 A I am not going to answer your question.

12 Q Did counsel ever inform you when he
13 learned that the application of Exhibit K-18 had
14 gone abandoned?

15 A I am not going to answer that question.

16 Q Are you asserting the privilege?

17 A Yes.

18 Q In Exhibit 17, Mr. Cohen, Mr. Taiclet
19 requested your companies to move away from the
20 Alpine Confections mark, didn't he?

21 MR. RANNELLS: No, that's not what
22 the document says. Could you read that here for
23 me?

24 MR. ZENGER: Last sentence of the
25 second paragraph, "Therefore, we respectfully ask

1 Supplemental Declaration that you submitted to the
2 Trademark Trial and Appeal Board dated August 17,
3 2004, correct?

4 A Uh-huh. August 24 -- you received it
5 August.

6 Q You signed it August 17th, right?

7 A Okay.

8 Q Correct?

9 A Can I find my signature, please?

10 MR. RANNELLS: Page two.

11 A Yes.

12 Q Now, attached is an exhibit. There
13 is a letter in here from Mrs. Carol Anderson,
14 Chicago, Illinois. Have you ever -- did you know
15 Miss Anderson?

16 A No. And I still don't know her.

17 Q Did this letter come with this
18 excerpt from the newspaper in it?

19 A Yes.

20 Q She sent that to you?

21 A Yes.

22 Q So you hadn't ever seen that before,
23 that article before?

24 A I don't even know where -- I don't even know
25 where the article came from. Must be Chicago.

1 newspaper.

2 Q So the first time you had seen or
3 heard about this article was when she sent it to
4 you, right?

5 A That would be correct. Unless -- unless --
6 I would like to go back on this. Remember I
7 mentioned to you we get these Market Trend updates
8 by the association via e-mail? I showed you where
9 there is some press releases.

10 It's possible that this article could have
11 been e-mailed to me through this Market Trends
12 industry e-mail alerts where they have everybody's
13 little blurbs with their press releases. This
14 might have been in my e-mail. So I don't know. I
15 don't know.

16 Q Okay.

17 MR. RANNELLS: In other words, you
18 may have seen it before?

19 A Right. This is the type of thing I was
20 trying to say before; we get e-mails. "Alpine
21 plans to open 40 Fannie Mays." "Hershey planned
22 to make a dietetic candy," so forth.

23 Q Go to the next page. It is a form
24 letter and a note at the bottom?

25 A Yes.

1 Q You never spoke to Miss Anderson?

2 A No.

3 Q You don't know if she has ever bought
4 candy of either of your companies, do you?

5 A No. I don't even know how she got this
6 addressed envelope where she addressed it to,
7 "Dave Taiclet, Alpine Confections, 185 30th
8 Street, Brooklyn, New York."

9 Q You don't know who gave her that
10 information?

11 A No, but it's an example of the confusion.
12 She addressed the letter to the president in
13 Alpine, Utah and sent it to me in Brooklyn.

14 Q And you don't know who gave her that
15 address?

16 A I don't know who gave her that address.

17 Q And you never asked her?

18 A I never asked her. It's amazing. Nobody in
19 my office could give her this information because
20 nobody knows who Dave Taiclet is. Nobody in this
21 office knows who Dave Taiclet is.

22 Q You know who Dave Taiclet is?

23 A I don't think I knew who Dave Taiclet was in
24 August of 2004. I know who he is now.

25 Q Of course you did. You read his

1 letter in October 2001.

2 A I don't know if I had his name committed to
3 memory.

4 Q You knew who he was since October
5 2001, right?

6 A What's the point of that?

7 Q Now, look at this other attachment
8 Miss Anderson put on here from Sauganash Women's
9 Club Foundation. Do you see that? Looks like
10 another form letter.

11 A Yes.

12 Q There is nothing in here that is
13 specific to your company?

14 A No.

15 Q Or to any of products?

16 A No, that is a form letter. I don't think --

17 Q It says "Sauganash."
18 S-a-u-g-a-n-a-s-h. Sauganash, whatever. You
19 don't have any evidence or information that the
20 Sauganash Women's Club Foundation is an industry
21 participant in the candy industry, do you?

22 A I don't know who they are.

23 Q Thank you. So when did you and your
24 company first learn of the use of Alpine
25 Confections by the companies associated with David

1 Q So why didn't you revive the
2 application?

3 A Well, we did.

4 Q Would you turn to your Declaration,
5 please, and go to Exhibit 4. This is the article
6 we talked about earlier and this symbol here in
7 the middle. That's a symbol that you've used to
8 represent the company?

9 MR. RANNELLS: Object to your
10 characterization.

11 Q "Alpine USA, Ltd.," right?

12 A Could you ask that question one more time,
13 please.

14 MR. ZENGER: Would you read it back,
15 please?

16 (Whereupon the following question was
17 read back by the reporter:

18 "QUESTION: Would you turn to your
19 Declaration, please, and go to Exhibit 4. This is
20 the article we talked about earlier and this
21 symbol here in the middle. That's a symbol that
22 you've used to represent the company?

23 MR. RANNELLS: Object to your
24 characterization.

25 QUESTION: Alpine USA, Limited,

1 right?")

2 Q I will do it again. The logo that
3 you have talked about in the middle of Exhibit 4,
4 your companies have used that as a short form
5 to --

6 MR. RANNELLS: Objection as to form.

7 Q -- as a short form to identify the
8 companies that have used that logo, right?

9 A Well, it never appears alone. It always
10 appears with the words "Alpine Confections."

11 Q I know. That's what I am saying.
12 That's the very question I am asking. It's used
13 as a short form to refer to the company?

14 A I don't know about "short form," but it's
15 the graphics that are behind the word, somewhat
16 behind the word "Alpine."

17 Q I am saying the whole thing.

18 A Oh, including "Alpine Confections." Yeah,
19 yeah, yeah. Okay.

20 Q It was used to designate Alpine USA,
21 Limited and its d/b/a operations?

22 A Right.

23 MR. RANNELLS: Objection as to form.

24 Q And the same thing with respect to
25 World Confections, Inc.?

1 A World Confections, Inc. doesn't have that.
2 You mean for World Confections' logo or -- I am
3 confused what you are trying to get at here. This
4 is the logo that appears on our packaging.

5 Q Right.

6 A Okay.

7 Q And it's used to identify the
8 company?

9 MR. RANNELLS: Why don't you ask him
10 what it is used to identify.

11 Q It's used to identify the company?

12 A It's one of the things that are used to
13 identify the company.

14 Q Okay, thank you. During the course
15 of our discussion -- let me just check this list
16 here.

17 Oh, sorry. We have talked today
18 about recent addition of lot numbers on your
19 product packaging, correct?

20 A Yes.

21 Q And would you confirm for me it's
22 found on the back of the products?

23 A Yes.

24 Q And on the back of the products there
25 is, we have seen today, a W and an X and --



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Record 1 out of 1

Check Status (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark DINOSAUR BONES
 Goods and Services IC 030. US 046. G & S: candy. FIRST USE: 19890324. FIRST USE IN COMMERCE: 19890712

Mark Drawing Code (1) TYPED DRAWING
 Serial Number 74285990
 Filing Date June 18, 1992
 Current Filing Basis 1A
 Original Filing Basis 1A
 Published for Opposition September 7, 1993
 Registration Number 1807782
 Registration Date November 30, 1993
 Owner (REGISTRANT) World Candies, Inc. CORPORATION NEW YORK 185 30th Street Brooklyn NEW YORK 11232
 Attorney of Record Stephen L. Baker
 Type of Mark TRADEMARK
 Register PRINCIPAL
 Affidavit Text SECT 15. SECT 8 (6-YR).
 Live/Dead Indicator LIVE

K-5



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Record 1 out of 1

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Typed Drawing

Word Mark	SKIN CRITTERS
Goods and Services	IC 030. US 046. G & S: candy with temporary tatto/combination. FIRST USE: 19940516. FIRST USE IN COMMERCE: 19940516
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74490635
Filing Date	February 16, 1994
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	December 27, 1994
Registration Number	1943193
Registration Date	December 19, 1995
Owner	(REGISTRANT) World Candies, Inc. CORPORATION NEW YORK 185 30th Street Brooklyn NEW YORK 11232
Attorney of Record	STEPHEN L BAKER
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKIN" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead	LIVE



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Record 1 out of 1

Check Status (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark RUDE DUDES
Goods and Services IC 030. US 046. G & S: Candy. FIRST USE: 19920326. FIRST USE IN COMMERCE: 19920326
Mark Drawing Code (1) TYPED DRAWING
Serial Number 76048177
Filing Date May 12, 2000
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition February 20, 2001
Registration Number 2450995
Registration Date May 15, 2001
Owner (REGISTRANT) World Candies, Inc. CORPORATION NEW YORK 185 30th Street Brooklyn NEW YORK 11232
Attorney of Record Stephen L Baker
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE



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Record 1 out of 1

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Typed Drawing

Word Mark SWAMP BUDDIES
Goods and Services IC 030. US 046. G & S: Candy. FIRST USE: 19980600. FIRST USE IN COMMERCE: 19980600
Mark Drawing Code (1) TYPED DRAWING
Serial Number 76052455
Filing Date May 19, 2000
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition November 19, 2002
Registration Number 2685218
Registration Date February 11, 2003
Owner (REGISTRANT) World Candies, Inc. CORPORATION NEW YORK 185 30th Street Brooklyn NEW YORK 11232
Attorney of Record Stephen L. Baker
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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

In the matter of Trademark Application Serial No. 76/362,977
Published in the Official Gazette of June 3, 2003 on page TM 441
International Class: 030
Filed: January 24, 2002
Mark: ALPINE CONFECTIONS

WORLD CONFECTIONS, INC.
Opposer,

vs.

KENCRAFT, INC.
Applicant.

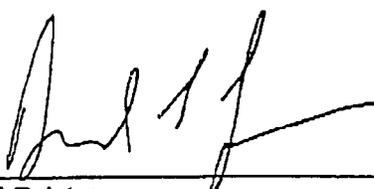
Opposition No. 91158237

RULE 56(f) DECLARATION
OF
DAVID TAICLET

The declarant, David Taiclet, states as follows:

1. I am President of Applicant, Kencraft, Inc.
2. Kencraft has not made, sold, marketed or distributed flavored gummi candy.
3. Kencraft does not make, sell, market or distribute flavored gummi candy.
4. Kencraft has no intention of making, selling, marketing or distributing flavored gummi candy under the mark ALPINE CONFECTIONS.
5. Furthermore, Kencraft has neither used, uses nor intends to use a cottage logo design.
6. I declare under penalty of perjury that the forgoing is true and correct.

DATED this 6th day of August, 2004.



David Taiclet

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

OPPOSER'S RESPONSE TO APPLICANT'S FIRST
SET OF INTERROGATORIES

Pursuant to 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer World Confections, Inc. ("Opposer") hereby responds and objects to Applicant Kencraft Inc's ("Applicant") First Set of Interrogatories (the "Interrogatories") dated April 26, 2004, as follows:

GENERAL OBJECTIONS

The following general objections are incorporated by reference in Opposer's response to each and every Interrogatory below.

1. The specific responses set forth below are for the purposes of discovery only, and Opposer neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, documents or writing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such response.

2. Opposer expressly reserves its right to rely, at any time including trial, upon subsequently discovered information or information omitted from the specific responses set forth below as a result of mistake, oversight or inadvertences.

3. The specific responses set forth below are based upon Opposer's interpretation of the language used in the Interrogatories, and Opposer reserves its right to amend or to supplement its response in the event Applicant asserts an interpretation that differs from Opposer's interpretation.

4. By making these responses, Opposer does not concede it is in possession of any information responsive to any particular Interrogatory or that any response given is relevant to this action.

5. Subject to and without waiving the general and specific responses and objections set forth herein, Opposer will provide herewith information that Opposer has located and reviewed to date. Opposer will continue to provide responsive information as such is discovered. Opposer's failure to object to a particular Interrogatory or willingness to provide responsive information pursuant to an Interrogatory is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.

6. Because Opposer may not have discovered all the information that is possibly within the scope of the Interrogatories, Opposer expressly reserves its right to amend or to supplement these Responses and Objections with any additional information that emerges through discovery or otherwise.

7. Opposer objects to the Interrogatories to the extent that they require the production of documents protected from disclosure by the attorney-client privilege, the attorney

work product doctrine, the joint defense privilege or any other applicable privilege or immunity. Opposer responds to the Interrogatories on the condition that the inadvertent response regarding information covered by such privilege, rule, doctrine or immunity does not waive any of Opposer's rights to assert such privilege, rule, doctrine or immunity and the Opposer may withdraw any such response inadvertently made as soon as identified.

8. Opposer objects to the Interrogatories to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Opposer responds to the Interrogatories on the condition that the inadvertent responses regarding any proprietary, sensitive, or confidential information does not waive any of Opposer's rights and that Opposer may withdraw any such response inadvertently made as soon as identified.

9. Opposer objects to the Interrogatories to the extent that they seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Opposer objects to the Interrogatories to the extent that they are vague, ambiguous and/or overbroad and therefore not susceptible to a response as propounded.

11. Opposer objects to the Interrogatories to the extent that they exceed the requirements of the Federal Rules of Civil Procedure of the Trademark Rules of Practice.

12. Opposer objects to the Interrogatories to the extent that they require Opposer to undertake any investigation to ascertain information not presently within its possession, custody or control on the grounds of undue burden and because information from other sources are equally available to Applicant.

13. Opposer objects to the Interrogatories to the extent that they require Opposer to undertake such an extensive review that such Interrogatories are unduly burdensome and harassing.

14. Opposer objects to the Interrogatories to the extent that Applicant seeks the residential addresses of individuals, on the grounds that disclosure of such information impinges on the privacy interest of such individuals.

15. Opposer objects to these Interrogatories to the extent that they are not limited to matters within the United States or other commerce that Congress may regulate.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

1. Opposer objects to the definition of the terms "Opposer", "you" or "yours" as being overly broad and unduly burdensome to comply with and as potentially violative of the attorney-client privilege, insofar as it includes "attorneys", "agents", and/or "employees". Further, Opposer is under no obligation to provide information, documents or things not within Opposer's custody or control. Further, all communications between Opposer and Opposer's attorneys are protected by the attorney-client privilege and all information, documents and the like prepared by Opposer's attorneys in the course of or in anticipation of this proceeding are protected by the attorney work product privilege.

2. Opposer objects to the definition of the term "Applicant" as being vague in its reference to "predecessors in business, . . . officers, directors, agents, employees, and attorneys, both past and present." The entities and persons referred to are not identified by Applicant. Accordingly, Opposer has no idea who Applicant may be referring to and cannot be expected to respond as if Opposer did know their identities.

3. Opposer objects to the definition of "identify" when referring to natural persons to the extent it requires the provision of confidential information, or information unnecessary in order to properly identify a person (e.g. home telephone number where business number provided).

4. Opposer objects to the definition of "identify" when referring to "communications" and/or when referring to "documents" as being overly broad and unduly burdensome to comply with.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1: Identify the person or persons who created or selected the ALPINE CONFECTIONS mark as allegedly used by Opposer.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: Matthew Cohen.

Interrogatory No. 2: Identify all persons who have first-hand knowledge of actual use of the mark ALPINE CONFECTIONS by Opposer in commerce for each year from 1997 to the present.

Response: Opposer objects to Interrogatory No. 2 insofar as it requests the identity of "all persons" as being overly broad. Without waiver of and subject to the above objection and each and every General Objection and Objection to Definitions and Instructions, Opposer states that the person with the most knowledge of actual use of the mark ALPINE CONFECTIONS by Opposer in commerce for each year from 1997 to the present is Matthew Cohen.

Interrogatory No. 3: Identify all documents in Opposer's possession, custody or control which relate to the evolution, selection, trademark, searching, clearance, evaluation and first use in commerce of the ALPINE CONFECTIONS on Opposer's goods and/services.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: Invoices.

Interrogatory No. 4: Identify all documents in Opposer's possession, custody or control which evidence use of the mark ALPINE CONFECTIONS by Opposer between March 2000 and February 2002.

Response: Opposer objects to Interrogatory No. 4 insofar as it requests the identity of "all documents" as being overly broad and unduly burdensome to comply with. Without waiver of and subject to said objections and without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: Invoices, financial books and records (confidential), sell sheets, magazine article ("Professional Candy Buyer"), advertisement ("Professional Candy Buyer"), signs, tradeshow materials ("NCA"), and promotional material for the stated period.

Interrogatory No. 5: Identify all documents in Opposer's possession, custody or control which evidence use of the mark ALPINE CONFECTIONS by Opposer between May 1997 and February 2000.

Response: Opposer objects to Interrogatory No. 5 insofar as it requests the identity of "all documents" as being overly broad and unduly burdensome to comply with. Without waiver of and subject to said objections and without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: Invoices, financial books and records (confidential), tradeshow materials, sell sheets, and promotional materials for the stated period.

Interrogatory No. 6: Answer whether Opposer has ever received, and identify all opinions concerning trademark validity or possible conflicts arising out of Opposer's application to register and any subsequent adoption or use of the ALPINE CONFECTIONS mark.

Response: Opposer objects to Interrogatory 6 as being, in part, unintelligible. Opposer responds to the interrogatory based upon the assumption that Applicant is requesting information on any search reports that Opposer may have conducted or had conducted for it concerning the mark ALPINE CONFECTIONS. Without waiver of and subject to each and every General Objections and Objection to Definitions and Instructions, Opposer states that Opposer did not conduct or commission a trademark search for the mark in issue.

Interrogatory No. 7: If the answer to Interrogatory No. 4 is yes, then state the date upon which each opinion was rendered, the identity of the person or persons rendering such opinions, all recipients of each such opinion, and the identity of all documents in Opposer's possession, custody or control which refer to such opinions or upon which the opinion was based and provide a descriptive of all investigations and/or surveys undertaken with each such opinion.

Response: Opposer objects to Interrogatory 7 as being, in part, unintelligible. Opposer responds to the interrogatory based upon the assumption that Applicant is actually referring to interrogatory no. 6. Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: N/A.

Interrogatory No. 8: Identify and describe in detail all uses of the mark ALPINE CONFECTIONS by Opposer, such description of uses should include, but not be limited to, facts such as the dates of use, geographic location of such uses, in interstate commerce in the United States, if any, the type and/or class of customers, the trade, sale and/or distribution channels, the number of units distributed or sold, and the price charged for all sold units bearing the mark; for each such product or service identified, state whether the use has continued to the present date, has changed in any respect (and describe all such changes), or state the inclusive dates during which use of the APLINE CONFECTIONS mark was discontinued for any period of time, and if there remain products or services for which Opposer intends to use but has not yet started using the ALPINE CONFECTIONS mark, identify the products, the date on which Opposer anticipates commencing use of the mark on the products and the expected channels of distribution for the products.

Response: Opposer objects to interrogatory 8 to the extent it seeks information regarding use outside the United States or use outside of commerce with the United States. Opposer also objects to the interrogatory insofar as it requests Opposer to identify "all" uses of Opposer's mark as being overly broad and unduly burdensome to comply with. Without waiver of and subject to the foregoing objections, and each and every General Objection and Objection to Definitions and Instructions:

(1) Dates of Use of ALPINE CONFECTIONS. **Response:** Continuously from at least as early as June 1997 to approximately present date.

(2) Geographic location of such uses. **Response:** The forty-eight (48) contiguous States.

(3) The type and/or class of customers. Response: Purchasers of candies and confections of every gender, every age group, every nationality, every socio-economic level, every sex, and every geographic region of the continental United States.

(4) The trade, sale and/or distribution channels. Response: Manufacturer to wholesaler to retailer to consumer. Such goods are sold in, without limitation, supermarkets, grocery stores, bodegas, so-called mom and pop stores, drug stores, candy stores, delicatessens, convenience stores, gas station comfort stores, Internet sales, and any other retail outlet through which candy is sold. It is also sold through mass merchandisers and discounters.

(5) Dates When Use Discontinued. Response: Beginning in the late Spring of 2003, Opposer began a change over from ALPINE CONFECTIONS to ALPINE BRAND. The changeover was commenced as a result of Opposer receiving a barrage of communications from parties concerning confusion as to a relationship between Opposer and Applicant. Opposer decided to temporarily suspend use of the mark ALPINE CONFECTIONS. Opposer intends to resume use of the mark upon a decision in the present case, or earlier.

(6) Number of Units Sold. Response: Opposer's sale figures are confidential. Upon the parties agreeing to and executing a formal protective order, Opposer shall respond.

(7) Wholesale Prices. Response: \$.36 and \$.65.

(8) Product Identification. Response: Primarily gummi type candies, but other types of candy (e.g., sour licorice).

Interrogatory No. 9: Identify and describe in detail all of Opposer's uses of the ALPINE CONFECTIONS mark on product packaging labels or other media that accompany the product in commerce.

Response: Opposer objects to interrogatory no. 9 as being vague and ambiguous insofar as it refers to "media that accompany the product in commerce." Opposer does not know what is meant by the referenced phrase. Opposer will respond to that portion of the interrogatory upon receiving an explanation. Without waiver of and subject to the foregoing objection and without

waiver of and subject to each and every General Objection and Objections to Definitions and Instructions, Opposer states that Opposer uses the mark on packaging containing candy products.

Interrogatory No. 10: Identify and describe in detail all types of media, including publications, radio, television and Internet, through which Opposer has advertised or offered for sale in the United States each of Opposer's products or services using the ALPINE CONFECTIONS mark and the geographic extent of such advertising, and state the amounts measured in U.S. dollars, by type of media and by date, which have been or will be expanded by Opposer in promoting, advertising or offering each of Opposer's products or services using the ALPINE CONFECTIONS mark.

Response: Opposer objects to interrogatory 10 to the extent it seeks information regarding marketing outside the United States or marketing outside of commerce with the United States. Opposer also objects to the interrogatory insofar as it requests Opposer to identify "all" types and uses of marketing Opposer's mark as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states:

(1) Types of Media: Response: Primarily trade publications and in-trade marketing materials.

(2) Geographical Extent of Advertising: Response: Continental United States.

(3) Advertising and Promotion Expenses: Response: Opposer's advertising and promotion figures are confidential. Upon the parties agreeing to and executing a formal protective order, Opposer shall respond.

Interrogatory No. 11:

- (a) Explain all bases for Opposer's assertions, if any, that its uses and/or promotion of the ALPINE CONFECTIONS mark had created a public perception of the mark as an indication of source in favor of Opposer.
- (b) Identify the documents that evidence, refer to or otherwise relate to the response to subparagraph (a) of this interrogatory.

Response:

(a) Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states that the bases, in part, of Opposer's assertions that its uses and/or promotion of the ALPINE CONFECTIONS mark had created a public perception of the mark as an indication of source in favor of Opposer are Opposer's sales and advertising figures (and related documents), third party references to Opposer and Opposer's Mark, the number of years that Opposer has sold its products under Opposer's Mark, and the distinctiveness of Opposer's Mark

(b) Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states that all documents identified and/or produced in response to Applicant's discovery requests evidence, refer to or otherwise relate to Opposer's response to subparagraph (a) of this interrogatory.

Interrogatory No. 12: Identify all persons, other than Opposer, if any, allegedly authorized or allowed by Opposer to use in commerce any of Opposer's trademarks, including any licensee(s) of Opposer's ALPINE CONFECTIONS mark.

Response: Opposer objects to interrogatory 12 to the extent it seeks information regarding trademarks of Opposer other than ALPINE CONFECTIONS and variations of the same. Without waiver of and subject to the foregoing objection, and each and every General Objection and Objection to Definitions and Instructions, Opposer states: Opposer has no licensees in the United States.

Interrogatory No. 13: Describe the factual bases for Opposer's assertion of confusion, mistake, deception, and misleading in Paragraphs 11 and 12 of its Notice of Opposition.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: The marks in issue are identical and or highly similar. The goods in issue are identical and/or substantially similar in nature. The typical channels of trade through which such goods sold are identical. The same types of consumers purchase the parties' respective products. Opposer has priority as a result of prior use of its mark. The goods in issue are impulse type items, not requiring a particular sophistication

or particular care in choosing or purchasing such products. Additionally, all facts stated and all documents identified and/or produced pursuant to applicant's discovery requests recite, in part, factual bases for Opposer's assertion of confusion, mistake, deception, and misleading in Paragraphs 11 and 12 of its Notice of Opposition.

Interrogatory No. 14: Identify all documents supporting answers and all persons providing information to answers to all Interrogations.

Response: Opposer objects to interrogatory No. 14 as being overly broad and unduly burdensome to comply with insofar as it requests "all documents supporting answers . . . to all Interrogatories." Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use Opposer's Mark for Opposer's goods. Accordingly, and without waiver of and subject to the foregoing comments and objections, and/or the General Objections and Objections to Definitions and Instructions, Opposer identifies various representative types of documents, namely: invoices, packaging, sell sheets, trade ads, and sales records (confidential). The person at Opposer providing information to answer the Interrogatories is Matthew Cohen.

Interrogatory No. 15: Identify the person having the most knowledge of Opposer's uses of its ALPINE CONFECTIONS mark.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: Matthew Cohen.

Interrogatory No. 16: Identify all persons Opposer intends to call as witnesses in this matter; all documents upon which the witness(es) intends to rely upon and the substance of the witness(es) intended testimony.

Response: Opposer objects to the interrogatory as being violative of the attorney work product privilege. In any event, Opposer has not yet determined "all persons Opposer intends to call as witnesses in this matter" and has not yet determined "all documents upon which the witness(es) intend(s) to rely upon" and has not yet determined "the substance of the witness(es) intended testimony", and Opposer is under no obligation to provide such information.

Interrogatory No. 17: Describe the relationship, if any, between Alpine USA, Ltd. and Opposer, including the date and details of any transfer or license of rights or property between the two.

Response. Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states that Alpine USA Ltd. changed its name to World Confections Inc. 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 on January 24, 2002.

Interrogatory No. 18: List by month from June 1997 to the present the number of units Opposer distributed in commerce bearing the mark ALPINE CONFECTIONS.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: Opposer's sales and distribution figures are confidential. Upon the parties agreeing to and executing a formal protective order, Opposer shall respond.

Interrogatory No. 19: If Opposer claims to be the successor-in-interest of, or the renamed entity of Alpine USA, Ltd., state the reasons for abandonment of U.S. Trademark Application Serial No. 76/007,736 and for any decision to refrain from reviving or failure to revive U.S. Trademark Serial No. 76/007,736.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: inadvertence.

Dated: June ____, 2004

Respectfully submitted,

World Confections, Inc.

By: _____
Matthew Cohen
President, World Confections, Inc.

Interrogatory No. 17: Describe the relationship, if any, between Alpine USA, Ltd. and Opposer, including the date and details of any transfer or license of rights or property between the two.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states that Alpine USA Ltd. changed its name to World Confections Inc. 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 on January 24, 2002.

Interrogatory No. 18: List by month from June 1997 to the present the number of units Opposer distributed in commerce bearing the mark ALPINE CONFECTIONS.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: Opposer's sales and distribution figures are confidential. Upon the parties agreeing to and executing a formal protective order, Opposer shall respond.

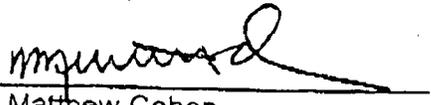
Interrogatory No. 19: If Opposer claims to be the successor-in-interest of, or the renamed entity of Alpine USA, Ltd., state the reasons for abandonment of U.S. Trademark Application Serial No. 76/007,736 and for any decision to refrain from reviving or failure to revive U.S. Trademark Serial No. 76/007,736.

Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: inadvertence.

Dated: June ____, 2004

Respectfully submitted,

World Confections, Inc.

By: 

Matthew Cohen
President, World Confections, Inc.

As to Objections:

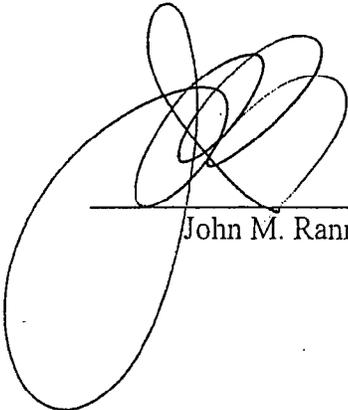
John M. Rannells
Baker And Rannells PA
Attorneys for Opposer
626 North Thompson St.
Raritan, New Jersey 07769

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES in re: World Confections, Inc. v. Kencraft, Inc. Opp. No. 91/158,237 was served on counsel for Applicant, this 15th day of June, 2004, by sending same via First Class Mail, postage prepaid, to:

Michael F. Krieger, Esq.
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84145

DATED: June 15, 2004



John M. Rannells

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

OPPOSER'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST
SET OF INTERROGATORIES (NAMELY INTERROGATORY NOS. 13, AND 14)

Pursuant to 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer World Confections, Inc. ("Opposer") hereby responds and objects to Applicant Kencraft Inc's ("Applicant") First Set of Interrogatories (the "Interrogatories") dated April 26, 2004, as follows:

GENERAL OBJECTIONS

The following general objections are incorporated by reference in Opposer's response to each and every Interrogatory below.

1. The specific responses set forth below are for the purposes of discovery only, and Opposer neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, documents or writing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such response.

2. Opposer expressly reserves its right to rely, at any time including trial, upon subsequently discovered information or information omitted from the specific responses set forth below as a result of mistake, oversight or inadvertences.

3. The specific responses set forth below are based upon Opposer's interpretation of the language used in the Interrogatories, and Opposer reserves its right to amend or to supplement it response in the event Applicant asserts an interpretation that differs from Opposer's interpretation.

4. By making these responses, Opposer does not concede it is in possession of any information responsive to any particular Interrogatory or that any response given is relevant to this action.

5. Subject to and without waiving the general and specific responses and objections set forth herein, Opposer will provide herewith information that Opposer has located and reviewed to date. Opposer will continue to provide responsive information as such is discovered. Opposer's failure to object to a particular Interrogatory or willingness to provide responsive information pursuant to an Interrogatory is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.

6. Because Opposer may not have discovered all the information that is possibly within the scope of the Interrogatories, Opposer expressly reserves its right to amend or to supplement these Responses and Objections with any additional information that emerges through discovery or otherwise.

7. Opposer objects to the Interrogatories to the extent that they require the production of documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunity. Opposer responds to the Interrogatories on the condition that the inadvertent response regarding information covered by such privilege, rule, doctrine or immunity does not waive any of Opposer's rights to assert such privilege, rule, doctrine or immunity and the Opposer may withdraw any such response inadvertently made as soon as identified.

8. Opposer objects to the Interrogatories to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Opposer responds to the Interrogatories on the condition that the inadvertent responses regarding any proprietary, sensitive, or confidential information does not waive any of Opposer's rights and that Opposer may withdraw any such response inadvertently made as soon as identified.

9. Opposer objects to the Interrogatories to the extent that they seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Opposer objects to the Interrogatories to the extent that they are vague, ambiguous and/or overbroad and therefore not susceptible to a response as propounded.

11. Opposer objects to the Interrogatories to the extent that they exceed the

requirements of the Federal Rules of Civil Procedure of the Trademark Rules of Practice.

12. Opposer objects to the Interrogatories to the extent that they require Opposer to undertake any investigation to ascertain information not presently within its possession, custody or control on the grounds of undue burden and because information from other sources are equally available to Applicant.

13. Opposer objects to the Interrogatories to the extent that they require Opposer to undertake such an extensive review that such Interrogatories are unduly burdensome and harassing.

14. Opposer objects to the Interrogatories to the extent that Applicant seeks the residential addresses of individuals, on the grounds that disclosure of such information impinges on the privacy interest of such individuals.

15. Opposer objects to these Interrogatories to the extent that they are not limited to matters within the United States or other commerce that Congress may regulate.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

1. Opposer objects to the definition of the terms "Opposer", "you" or "yours" as being overly broad and unduly burdensome to comply with and as potentially violative of the attorney-client privilege, insofar as it includes "attorneys", "agents", and/or "employees". Further, Opposer is under no obligation to provide information, documents or things not within Opposer's custody or control. Further, all communications between Opposer and Opposer's attorneys are protected by the attorney-client privilege and all information, documents and the like prepared by

Opposer's attorneys in the course of or in anticipation of this proceeding are protected by the attorney work product privilege.

2. Opposer objects to the definition of the term "Applicant" as being vague in its reference to "predecessors in business, . . . officers, directors, agents, employees, and attorneys, both past and present." The entities and persons referred to are not identified by Applicant. Accordingly, Opposer has no idea who Applicant may be referring to and cannot be expected to respond as if Opposer did know their identities.

3. Opposer objects to the definition of "identify" when referring to natural persons to the extent it requires the provision of confidential information, or information unnecessary in order to properly identify a person (e.g. home telephone number where business number provided).

4. Opposer objects to the definition of "identify" when referring to "communications" and/or when referring to "documents" as being overly broad and unduly burdensome to comply with.

SUPPLEMENTAL RESPONSES TO INTERROGATORY NOS. 13, AND 14

Interrogatory No. 13: Describe the factual bases for Opposer's assertion of confusion, mistake, deception, and misleading in Paragraphs 11 and 12 of its Notice of Opposition.

Original Response: Without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer states: The marks in issue are identical and or highly similar. The goods in issue are identical and/or substantially similar in nature. The typical channels of trade through which such goods sold are identical. The same types of consumers purchase the parties' respective products. Opposer has priority as a result of prior use of its mark. The goods in issue are impulse type items, not requiring a particular sophistication or particular care in choosing or purchasing such products. Additionally, all facts stated and all documents

identified and/or produced pursuant to applicant's discovery requests recite, in part, factual bases for Opposer's assertion of confusion, mistake, deception, and misleading in Paragraphs 11 and 12 of its Notice of Opposition.

Supplemental Response: In supplementation of Opposer's original response, and without waiver of and subject to each and every General Objection and Objection to Definitions and Instructions, Opposer adds: Evidence of actual confusion.

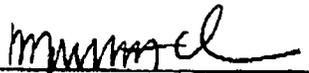
Interrogatory No. 14: Identify all documents supporting answers and all persons providing information to answers to all Interrogatories.

Original Response: Opposer objects to interrogatory No. 14 as being overly broad and unduly burdensome to comply with insofar as it requests "all documents supporting answers . . . to all Interrogatories." Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use Opposer's Mark for Opposer's goods. Accordingly, and without waiver of and subject to the foregoing comments and objections, and/or the General Objections and Objections to Definitions and Instructions, Opposer identifies various representative types of documents, namely: invoices, packaging, sell sheets, trade ads, and sales records (confidential). The person at Opposer providing information to answer the Interrogatories is Matthew Cohen.

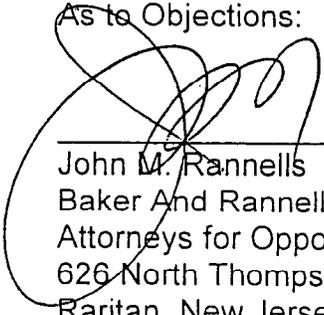
Supplemental Response: With regard to documents supporting Opposer's Supplemental Response to Interrogatory No. 13, and without waiver of and subject to the comments and objections in Opposer's Original Response to Interrogatory 14, and/or the General Objections and Objections to Definitions and Instructions, Opposer identifies the May-June 2004 edition of *Professional Candy Buyer* (News & Trends Section).

Respectfully submitted,

World Confections, Inc.

By: 
Matthew Cohen
President, World Confections, Inc.

As to Objections:



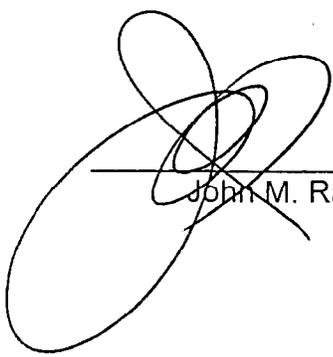
John M. Rannells
Baker And Rannells PA
Attorneys for Opposer
626 North Thompson St.
Raritan, New Jersey 07769

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing OPPOSER'S SUPPLEMENTAL RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES (NAMELY INTERROGATORIES 13 AND 14) in re: World Confections, Inc. v. Kencraft, Inc. Opp. No. 91/158,237 was served on counsel for Applicant, this 24th day of June, 2004, by sending same via First Class Mail, postage prepaid, to:

Michael F. Krieger, Esq.
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84145

DATED: June 24, 2004



John M. Rannells



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Typed Drawing

Word Mark	ALPINE CONFECTIONS
Goods and Services	(ABANDONED) IC 030. US 046. G & S: Fruit flavored gummy products. FIRST USE: 19970500. FIRST USE IN COMMERCE: 19970500
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76007736
Filing Date	March 23, 2000
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Alpine USA Ltd. CORPORATION NEW YORK 185 30th Street Brooklyn NEW YORK 11232
Attorney of Record	Stephen L. Baker
Type of Mark Register	TRADEMARK PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	March 13, 2001

1K-18

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Serial Number: 76007736

Registration Number: (NOT AVAILABLE)

Mark (words only): ALPINE CONFECTIONS

Standard Character claim: No

Current Status: Abandoned-Failure To Respond Or Late Response

Date of Status: 2001-05-02

Filing Date: 2000-03-23

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-04-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Alpine USA Ltd.

Address:

Alpine USA Ltd.
185 30th Street
Brooklyn, NY 11232
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 030
Fruit flavored gummy products
First Use Date: 1997-05-00
First Use in Commerce Date: 1997-05-00

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2001-05-02 - Abandonment - Failure To Respond Or Late Response
2000-09-12 - Non-final action mailed
2000-08-30 - Case file assigned to examining attorney
2000-08-30 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent
Stephen L. Baker (Attorney of record)

STEPHEN L. BAKER
BAKER & FRIEDMAN
P.O. BOX 672
SOMERVILLE, NEW JERSEY 08876



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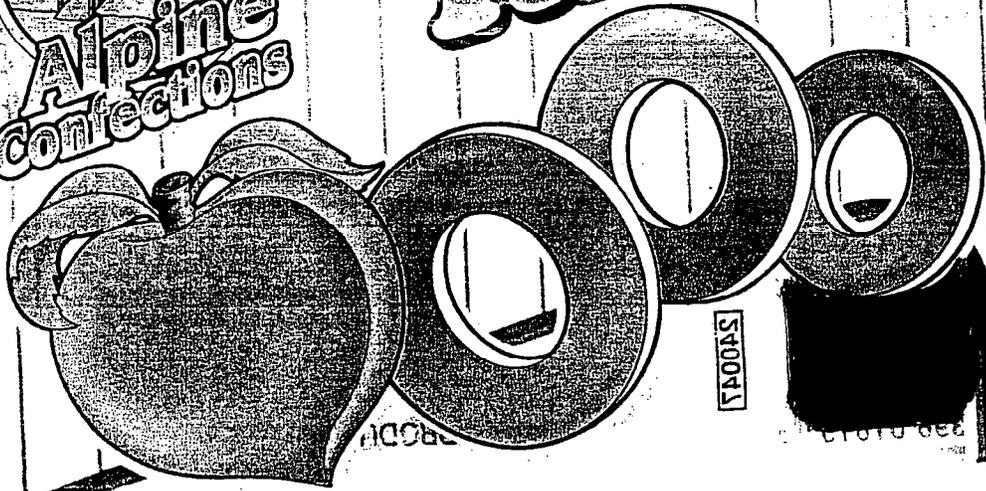
Typed Drawing

Word Mark ALPINE CONFECTIONS
 Goods and Services IC 030. US 046. G & S: candy
 Mark Drawing Code (1) TYPED DRAWING
 Serial Number 76362977
 Filing Date January 24, 2002
 Current Filing Basis 1B
 Original Filing Basis 1B
 Published for Opposition June 3, 2003
 Owner (APPLICANT) Kencraft, Inc. CORPORATION UTAH 119 East 200 North Alpine UTAH 84004
 Assignment Recorded ASSIGNMENT RECORDED
 Attorney of Record Michael F. Krieger
 Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CONFECTIONS" APART FROM THE MARK AS SHOWN
 Type of Mark TRADEMARK
 Register PRINCIPAL
 Live/Dead Indicator LIVE

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Gummy Peach Rings

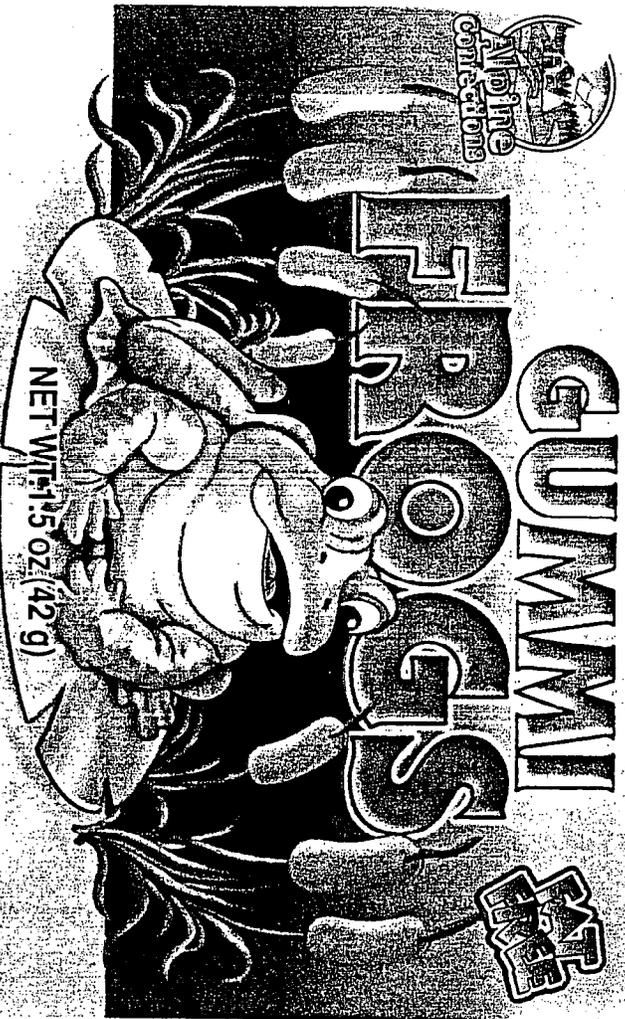


NEW

GUMMY DINOSAURS



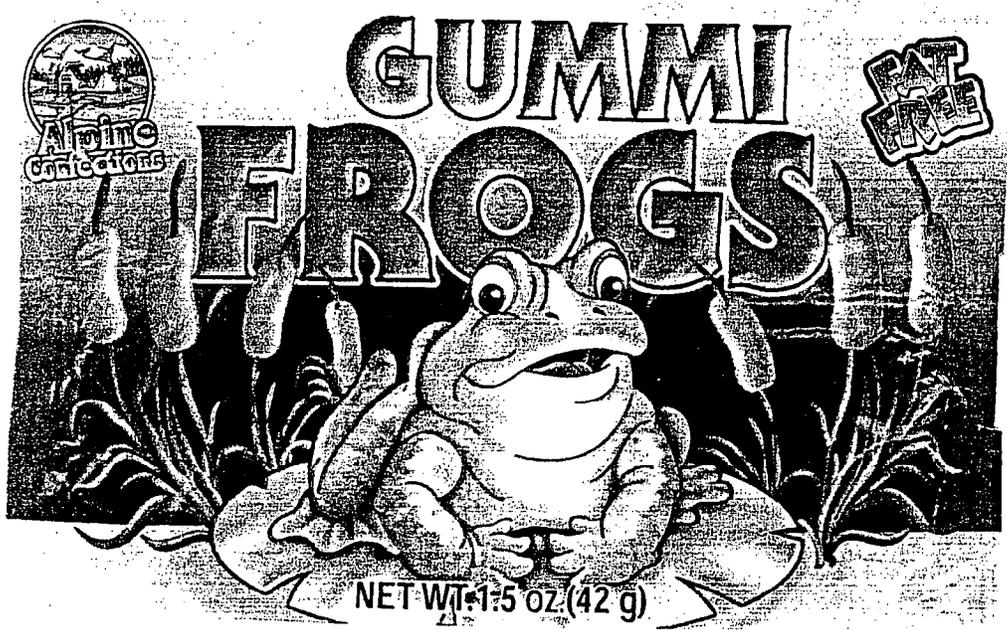
Nutrition		Amount / Serving	% DV*	Amount / Serving	% DV*
Facts					
Serving Size 1 Packet (42g)					
Calories 117.4					
Calories from fat 0					
Total Fat	0 g	0%	Total Carb.	30.5 g	10%
Sat. Fat	0 g	0%	Dietary Fiber	0 g	
Cholest.	0 g	0%	Sugars	25 g	
Sodium	25 mg	1%	Protein	3.6 g	
Vitamin C	0%		Not a significant source of dietary fiber, Vitamin A, calcium and iron		



PRODUCT OF SPAIN
 INGREDIENTS: CORN SYRUP, SUGAR, WATER, GELATIN, DEXTROSE, CITRIC ACID, LACTIC ACID, ARTIFICIAL AND NATURAL FLAVORS, COLORS ADDED: FD&C YELLOW 5, YELLOW 6, RED 40, BLUE 1, ANTI-STICKING: BEEWAX.

GUMMI FROGS

8836/01
 240510





	Amount / Serving	% DV*	Amount / Serving	% DV*
Nutrition Facts				
Serving Size	1 Packet (42g.)			
Calories	144.4			
Calories from fat	0			
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%			

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

Not a significant source of dietary fiber, vitamin A, calcium and iron



BUGZ



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.

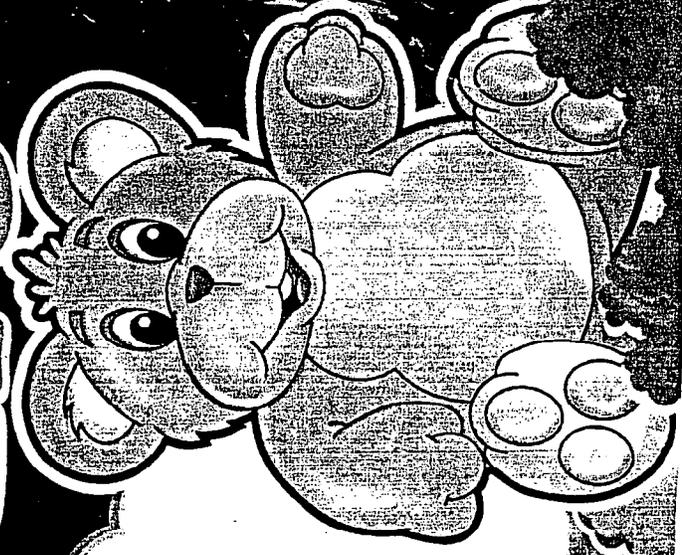


240509

8037/01



BEARS



CHOCOLATE

PRODUCED BY FINI SWEETS

INGREDIENTS

NET WT 1.5 OZ (42g)

Nutrition Facts		Amount / Serving	% DV*	Amount / Serving	% DV*
Serving Size 1 Packet (56g)					
Calories 192.5					
Calories from fat 0					
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%	*Percent Daily Values (DV) are based on a 2,000 calorie diet.		
Vitamin C		0%	†A significant source of dietary fiber, vitamin A, calcium and iron.		

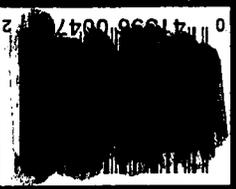


Gummy Sour Worms

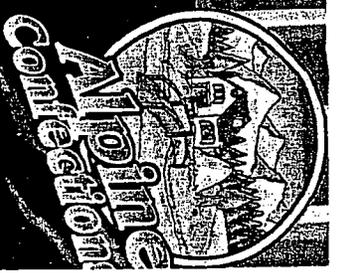
NET WT. 2 oz. (56g)

PRODUCED BY
FINI 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.



Gummy Sour Worms

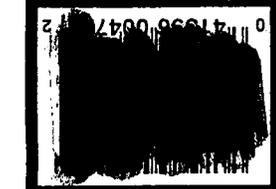


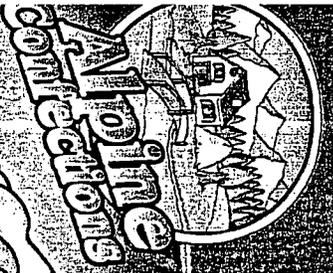
Gummy Glow Worms

NET WT. 7.1oz. (198g)

PRODUCED BY
FINI 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.





STARDUST



NET WT. 7.0z (198g)

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

NET WT. 7.0z (198g)

Nutrition Facts

Amount / Serving % DV* Amount / Serving % DV*

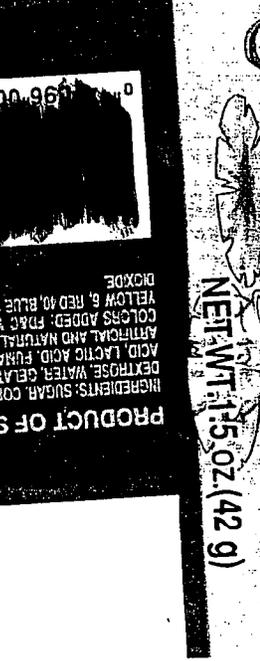
Total Fat	0 g	0%	Total Carb	32.9 g	11%
Sat. Fat	0 g	0%	Dietary Fiber	0 g	
Cholest.	0 g	0%	Sugars	30.4 g	
Sodium	16.6 mg	0.7%	Protein	2.7 g	
Vitamin C		0%			

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

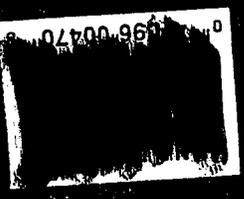
Not a significant source of dietary fiber, Vitamin A, calcium and iron.



STARDUST



240506



INGREDIENTS: SUGAR, CORN SYRUP, DEXTROSE, WATER, GELATIN, CITRIC ACID, LACTIC ACID, FUMARIC ACID, ARTIFICIAL AND NATURAL FLAVORS, YELLOW 5, RED 40, BLUE 1, MANGANESE DIOXIDE

PRODUCT OF SPAIN

NET WT. 1.5oz (42g)



Alpine Collections

45TOM 2 AFTOM 2 BED 4P BUNE
 1 EUR 18.00
 YCID COGONE ADDED: 1.97
 CITRIC ACID 0.1400 28.00
 31 2 94
 1 EUR 18.00
 45TOM 2 AFTOM 2 BED 4P BUNE
 1 EUR 18.00
 YCID COGONE ADDED: 1.97
 CITRIC ACID 0.1400 28.00
 31 2 94
 1 EUR 18.00

MIRAGE HOTEL

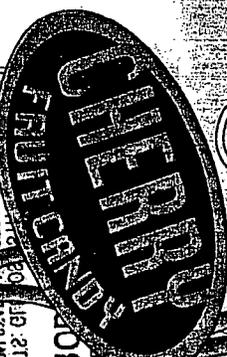


Alpine Collections



NFT WT. 7 OZ. (198g)

FRUIT CANDY
CHERRY



STRAWBERRY



PRODUCED BY FINE SWEETS
MADE IN U.S.A.

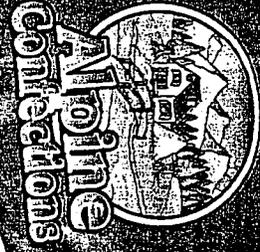
NFT WT. 7 OZ. (198g)



PRODUCED BY FINE SWEETS
MADE IN U.S.A.

PRODUCED BY FINE SWEETS
MADE IN U.S.A.

STRAWBERRY





SOUR RUDE DUDES

EAT
FIRST

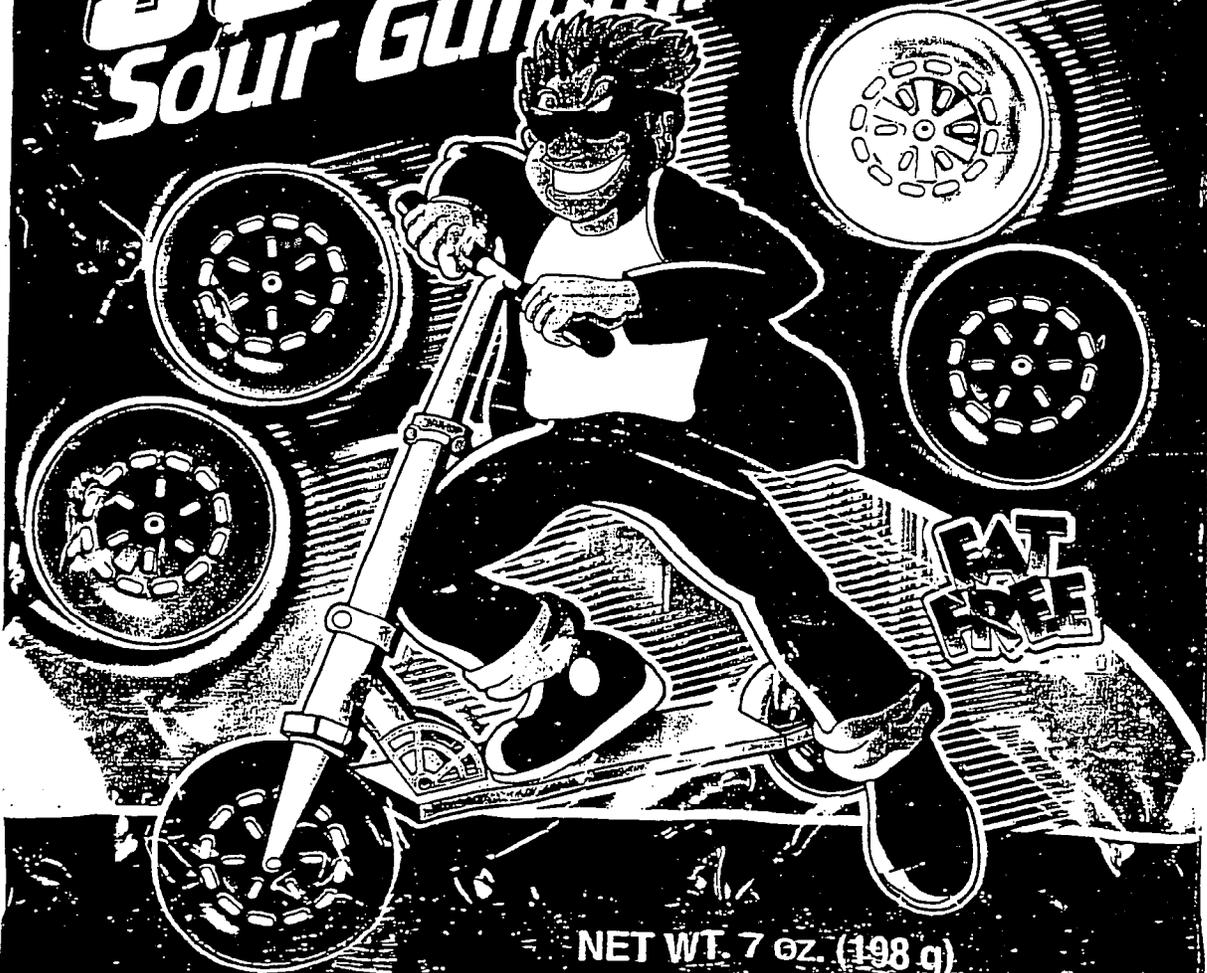


NET WT 7 oz (198 g)



SCOOTERSTM

SOUR GUMMI Candy



NET WT. 7 OZ. (198 g)

01624

WORLD

Candies inc.

- 185 30th STREET
- BROOKLYN, N.Y. 11232, U.S.A.
- (718) 768-8100

-Page 2-

We understand your position regarding the quantity of bags needed. We propose that you keep the Alpine Confections name on the front. This name in reality only means "Confections from Alpine". On the back of the bag you can hot stamp the information regarding Alpine Confections, the company.

On the back you keep the Fini Sweets and elephant, but eliminate the address, phone #, etc.. Only Product of Spain.

This compromise will allow Fini to sell this product elsewhere and allow our marketing strategy to continue.

We must have your confirmation on this matter at once and 6 new samples each of this revised artwork sent to us. We cannot present this product to the major customers in this present form.

Please confirm.

Best regards,


Matthew Cohen

October 30, 2001

Mr. Samuel Cohen
President
World Candies, Inc.
185 30th Street
Brooklyn, NY 11232

Dear Mr. Cohen:

I was recently made aware of your, or a close affiliate of yours, usage of the Alpine Confections name on some of the products you manufacture and/or distribute. This is of grave concern for us, and we believe potentially could cause much confusion in the marketplace.

Kencraft, Inc. has been in business well over 30 years and has been located in Alpine, Utah since inception. Most of our key customers know that we are located in Alpine. Our 100,000 square foot factory that houses our 400 employees is often referred to as the "Candy Factory in Alpine" and the industry knows that we often use in our marketing brochures "nestled in the Wasatch Mountains in Alpine, Utah"... We believe your use of Alpine Confections could potentially confuse many customers. Therefore, we respectfully ask that you cease immediately the use of the Alpine Confections name on any products.

Mr. Cohen, we realize that you may have spent monies on packaging with the Alpine Confections name on it. Obviously, we would want to discuss how to dispose of this packaging properly and would not want you to lose money on it. We are reasonable people. We would only ask for a commitment of a date to have the packaging "closed out" that makes sense for both of us. I look forward to your reply and potential resolution.

Sincerely,

David L. Taiclet
President

Cc: Michael Krieger, Attorney, Kirton & McConkie

K-17

WORLD

confections inc.

January 2, 2002

To: All Customers

Re: Corporate Name Change

Please be advised that we have consolidated *World Candies, Inc.* and our sister company, *Alpine Confections, Inc.* into one corporation. The new corporate name will be: *World Confections Inc.* Please remit payment as below.

WORLD CONFECTIONS, INC.
185 30th STREET
BROOKLYN, NY 11232

PHONE: (718) 768-8100
FAX: (718) 499-4918
TOLL FREE: (800) 252-2639

E-MAIL: info@worldconfections.com

Please update your records to reflect this change. Looking forward to our continuing relationship.

Sincerely,
WORLD CONFECTIONS, INC.

Matthew Cohen
Vice President

WORLD

Candies inc.

December 26, 2001

• 185 30th STREET
• BROOKLYN, N.Y. 11232, U.S.A.
• (718) 768-8100

To: All Brokers

In an effort to serve our customers and create a more efficient method of selling, World Candies, Inc. and Alpine Confections have combined forces.

Effective Jan. 1, 2002, the new corporate name will be:

WORLD CONFECTIONS, INC.

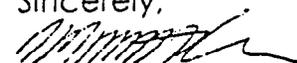
Our location, phone, fax, e-mail and personnel will remain the same as World Candies, Inc. See attached sheet.

2002 marks the 50th Anniversary of World Candies, Inc.. We look forward to working with you in the future, as we have in the past, to overcome the obstacles and maximize the opportunities. We have many exciting plans with regards to new product development and the distribution expansion of our line. Our New January 1st Price List should arrive shortly.

If you have any questions regarding this matter, please contact us.

We would like to wish you all a Happy & Healthy Season.

Sincerely,


Matthew Cohen
Vice President

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

OPPOSER'S RESPONSE TO APPLICANT'S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER

Pursuant to 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, Opposer World Confections, Inc. ("Opposer") hereby responds and objects to Applicant Kencraft Inc.'s ("Applicant") First Requests For Production Of Documents and Things To Opposer (the "Document Requests") dated April 26, 2004, as follows:

GENERAL OBJECTIONS

The following general objections are incorporated by reference in Opposer's response to each and every Document Request below.

1. The specific responses set forth below and any documents and/or things produced are for the purposes of discovery only, and Opposer neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, document or thing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects, documents or things covered by such response or production.

2. Opposer expressly reserves its right to rely, at any time including trial, upon subsequently discovered information and/or documents or things, or information, documents or things omitted from the specific response set forth below or as part of production, as a result of mistake, oversight or inadvertences.

3. The specific responses set forth below are based upon Opposer's interpretation of the language used in the Document Requests, and Opposer reserves its right to amend or to supplement its response in the event Applicant asserts an interpretation that differs from Opposer's interpretation.

4. By making these responses, Opposer does not concede it is in possession of any information, document or thing responsive to any particular Document Request or that any response given or document or thing produced is relevant to this action.

5. Opposer's failure to object to a particular Document Request is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any information, document or thing, nor does it constitute a representation that any such information, document or thing in fact exists.

6. Because Opposer may not have discovered all the information, documents or things that are possibly within the scope of the Document Requests, Opposer expressly reserves its right to amend or to supplement these Responses and Objections with any additional information, document or thing that emerges through discovery or otherwise.

7. Opposer objects to the Document Requests to the extent that they require the production of documents or things protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunity. Opposer responds to the Document Requests on the condition that the inadvertent

response or production regarding information, documents or things covered by such privilege, rule, doctrine or immunity does not waive any of Opposer's rights to assert such privilege, rule, doctrine or immunity and the Opposer may withdraw and request the return of any such response, document or thing inadvertently made or produced as soon as identified.

8. Opposer objects to the Document Requests to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Opposer responds to the Document Requests on the condition that the inadvertent responses or production of documents or things regarding any proprietary, sensitive, or confidential information, document or thing does not waive any of Opposer's rights and that Opposer may withdraw and request the return of any such response, document or thing inadvertently made as soon as identified.

9. Opposer objects to the Document Requests to the extent that they seek information, documents or things that are not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

10. Opposer objects to the Document Requests to the extent that they are vague, ambiguous and/or overbroad and therefore not susceptible to a response as propounded.

11. Opposer objects to the Document Requests to the extent that they exceed the requirements of the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

12. Opposer objects to the Document Requests to the extent that they require Opposer to undertake any investigation to ascertain information, documents or things not presently within its possession, custody or control on the grounds of undue burden and because information, documents and things from other sources are equally available to Applicant.

13. Opposer objects to the Document Requests to the extent that they require Opposer to undertake such an extensive review that such Document Requests are unduly burdensome and harassing.

14. Opposer's only obligation pursuant to Rule 2.120(d) of the Trademark Rules of Practice and Rule 34(b) of the Federal Rules of Civil Procedure is to produce documents and things where they are normally kept during the normal course of business. For the most part, those documents and things are kept at Opposer's offices at 185 30th Street, Brooklyn, N.Y. 11232, and may be inspected and copied where kept (or other location mutually agreed upon by the parties) upon proper notice at a mutually convenient date and time.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

1. Opposer objects to the definition of the terms "Opposer", "you" or "yours" as being overly broad and unduly burdensome to comply with and as potentially violative of the attorney-client privilege, insofar as it includes "attorneys", "agents", and/or "employees". Further, Opposer is under no obligation to provide information, documents or things not within Opposer's custody or control. Further, all communications between Opposer and Opposer's attorneys are protected by the attorney-client privilege and all information, documents and the like prepared by Opposer's attorneys in the course of or in anticipation of this proceeding are protected by the attorney work product privilege.

2. Opposer objects to the definition of the term "Applicant" as being vague in its reference to "predecessors in business, . . . officers, directors, agents, employees, and attorneys, both past and present." The entities and persons referred to are not identified by Applicant. Accordingly, Opposer has no idea who Applicant may be referring to and cannot be expected to respond as if Opposer did know their identities.

3. Opposer objects to the definition of "identify" when referring to natural persons to the extent it requires the provision of confidential information, or information unnecessary in order to properly identify a person (e.g. home telephone number where business number provided). Further, the definition is improper for a request for documents. Opposer has no obligation to identify documents, persons, communications or the like pursuant to a request for documents.

4. Opposer objects to the definition of "identify" when referring to "communications" and/or when referring to "documents" as being overly broad and unduly burdensome to comply with. Further, the definition is improper for a request for documents. Opposer has no obligation to identify documents, persons, communications or the like pursuant to a request for documents.

RESPONSES TO DOCUMENT REQUESTS

Request No. 1: Produce all documents and things referring to or relating to the creation, evolution, selection, adoption, licensing, advertising, and uses in commerce, including first uses in commerce and interstate commerce, of Opposer's Trademark ALPINE CONFECTION.

Response: Opposer objects to Request No. 1 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 1, the General Objections, and Objections to Definitions and Instructions, representative documents and/or things referring to or relating to the creation, evolution, selection, adoption, advertising, and uses in commerce, including first uses in commerce and interstate commerce, of Opposer's Trademark ALPINE CONFECTION will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 2: Produce all documents and things referring or relating to the searching, clearance and/or evaluation of Opposer's Trademark ALPINE CONFECTIONS.

Response: Without waiver of and subject to the General Objections, and Objections to Definitions and Instructions, other than the trademark application papers filed with and/or received from the USPTO concerning Opposer's mark, Opposer has not as of the date of this response located any further documents responsive to request no. 2.

Request No. 3: Produce all documents and things constituting, referring to, or relating to any opinions concerning trademark validity or possible conflicts arising out of Opposer's adoption, use and application to register Opposer's Trademark ALPINE CONFECTIONS or any other brand name use of the term ALPINE CONFECTIONS.

Response: Opposer objects to Request No. 3 insofar as it requests the production of documents protected by the attorney work product privilege and/or the attorney client privilege. Without waiver of and subject to each and every comment and objection to Request No. 3, the General Objections, and Objections to Definitions and Instructions:

Attorney work product privileged: Correspondence from Stephen L. Baker, Esq. to Matthew Cohen at Opposer, dated 1/4/2003.

Other than the above privileged documents and the trademark application papers filed with and/or received from the USPTO concerning Opposer's mark, Opposer has not as of the date of this response located any further documents responsive to request no. 3.

Request No. 4: Produce all documents and things concerning searches or investigations conducted by or on behalf of Opposer prior to adopting or using any mark by Opposer which is allegedly likely to be confused with Applicant's marks.

Response: Opposer objects Request No. 4 as being, in part, violative of the attorney-client privilege and/or violative of the attorney work product privilege. Opposer objects to Request No. 4 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Opposer objects to request no. 4 as being vague and ambiguous insofar as its use of the term "Applicant's marks" is concerned. The term "Applicant's marks" is not defined by Applicant. Accordingly, Opposer does not know what marks Applicant is referring to and whether the same have any relevance to the present proceeding. Opposer will

respond as if Applicant is referring to Applicant's Trademark (as that term is defined by Applicant). Without waiver of and subject to each and every comment and objection to Request No. 4, the General Objections, and Objections to Definitions and Instructions, Opposer has not as of the date of this response located any documents responsive to request no. 4.

Request No. 5: Produce all documents and things concerning searches or investigations conducted by or on behalf of Opposer in connection with Applicant's Trademark ALPINE CONFECTIONS.

Response: Opposer objects Request No. 5 as being, in part, violative of the attorney-client privilege and/or violative of the attorney work product privilege. Without waiver of and subject to each and every comment and objection to Request No. 5, the General Objections, and Objections to Definitions and Instructions:

Attorney work product privileged: Correspondence from Stephen L. Baker, Esq. to Matthew Cohen at Opposer, dated 1/4/2003.

Attorney work product privileged: Internet documents dated March 9, 2004.

Attorney work product privileged: Internet documents dated July 31, 2003.

Other than the above privileged documents, Opposer has not as of the date of this response located any further documents responsive to request no. 5.

Request No. 6: Produce all documents and things directed to you from suppliers, customers, or other members of the public concerning any goods associated with the ALPINE CONFECTIONS mark.

Response: Opposer objects to Request No. 6 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Opposer further considers many of such documents to be confidential business records. Without waiver of and subject to each and every comment and objection to Request No. 6, the General Objections, and Objections to Definitions and Instructions, representative non-confidential documents and/or things directed to Opposer from suppliers, customers, or other members of the public concerning any goods associated with the ALPINE CONFECTIONS mark will be made available for inspection and

copying at Opposer's offices upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 7: Produce all documents and things concerning any communication received by you that was intended for Applicant.

Response: Without waiver of and subject to each and every General Objection, and Objections to Definitions and Instructions Opposer has not, as of the date of this response, located any documents or things responsive to request no. 7.

Request No. 8: Produce all documents and things referring to or relating to Opposer's corporate ownership and corporate organizational structure, including any organization charts and lines of responsibility and authority.

Response: Opposer objects to Request No. 8 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Opposer also objects to the request as being in part irrelevant and immaterial to the proceeding. Without waiver of and subject to each and every comment and objection to Request No. 8, the General Objections, and Objections to Definitions and Instructions, representative documents and/or things, to the extent they exist, referring to or relating to Opposer's corporate ownership and corporate organizational structure, including any organization charts and lines of responsibility and authority will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Respondent making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 9: Produce all documents and things that identify and describe each product and/or service for which Opposer has at any time used or will use the term ALPINE CONFECTIONS as a brand name.

Response: Opposer objects to Request No. 9 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Opposer further objects to the request to the extent it asks for documents pertaining to future plans of Opposer as being confidential – such documents will only be produced upon execution by the parties of a

protective order. Without waiver of and subject to each and every comment and objection to Request No. 9, the General Objections, and Objections to Definitions and Instructions, representative documents and/or things that identify and describe each product and/or service for which Opposer has at any time used the term ALPINE CONFECTIONS as a brand name will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 10: Produce one specimen of the form of each of your marks with which Applicant's Trademark is allegedly likely to be confused.

Response: Without waiver of and subject to each and every General Objection, and Objections to Definitions and Instructions, specimens will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 11: Produce all documents and things that identify dates, geographic location, details of sales including the number of units sold and the prices charged, type and/or classes of customers and distribution channels for all products and services either sold or offered by Opposer that bear the ALPINE CONFECTIONS mark.

Response: Opposer objects to Request No. 11 as requesting confidential business information. Such information will only be produced upon the entry of a suitable protective order. Opposer further objects to Request No. 11 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 11, the General Objections, and Objections to Definitions and Instructions, and upon entry of a suitable protective order, representative documents and/or things that identify dates, geographic location, details of sales including the number of units sold and the prices charged, type and/or classes of customers and distribution channels for all products and services either sold or offered by Opposer that bear the ALPINE CONFECTIONS mark will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 12: For all products or services for which Opposer intends to use the ALPINE CONFECTIONS mark but has not yet used the mark, produce all documents and things that identify the dates when Opposer intends or plans to use the mark, the geographic locations for expected product or service distribution, the types and/or classes of expected customers, and the expected distribution channels for all products or services that will bear the mark.

Response: Opposer objects to Request No. 12 as requesting confidential business information. Such information will only be produced upon the entry of a suitable protective order. Opposer further objects to Request No. 12 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 12, the General Objections, and Objections to Definitions and Instructions, and upon entry of a suitable protective order, representative documents and/or things that identify dates, geographic location, details of sales including the number of units sold and the prices charged, type and/or classes of customers and distribution channels for all products and services either sold or offered by Opposer that bear the ALPINE CONFECTIONS mark will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 13: Produce all documents and things constituting, referring to, or relating to communications between or among any Opposer's employees, agents or representatives, and any of Opposer's customers or potential customers regarding Applicant, Applicant's goods or services, or Applicant's Trademark.

Response: Opposer objects to Request No. 13 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 13, the General Objections, and Objections to Definitions and Instructions, representative documents and things (to the extent they exist) constituting, referring to, or relating to communications between or among any Opposer's employees, agents or representatives, and any of Opposer's customers or potential

customers regarding Applicant, Applicant's goods or services, or Applicant's Trademark will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 14: Produce all documents and things that constitute, relate to, or support any surveys regarding Opposer's use or intended use of the ALPINE CONFECTIONS mark.

Response: Without waiver of and subject to each and every General Objection, and Objections to Definitions and Instructions, Opposer has not, as of the date of this response, located any documents responsive to request no. 14.

Request No. 15: Produce all documents and things constituting, referring to, or relating to any consumer and/or public opinions regarding the attributes, qualities, characteristics, features, and/or reputation of Opposer's products or services that bear or will bear the ALPINE CONFECTIONS mark.

Response: Opposer objects to Request No. 15 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 15, the General Objections, and Objections to Definitions and Instructions, representative documents and/or things (to the extent they exist) constituting, referring to, or relating to any consumer and/or public opinions regarding the attributes, qualities, characteristics, features, and/or reputation of Opposer's products or services that bear or will bear the ALPINE CONFECTIONS mark will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 16: Produce all documents and things concerning any consumer or market survey, test, or study you have conducted or caused to be conducted regarding the public's or the trade's recognition of or reaction to Applicant's Trademark or use of the mark ALPINE CONFECTIONS.

Response: Without waiver of and subject to each and every General Objection, and Objections to Definitions and Instructions, Opposer has not, as of the date of this response, located any documents responsive to request no. 16.

Request No. 17: Produce all documents and things concerning any communication or notice to you concerning the possibility that your use of your ALPINE CONFECTIONS mark, or any portion thereof, might or might not result in confusion or mistake in any industry or among the public, particularly in view of Applicant's use of its ALPINE CONFECTIONS mark.

Response. Opposer objects to Request No. 17 to the extent it requires Opposer to take as fact that Applicant has used Applicant's mark. Opposer further objects to the request to the extent it asks for the production of documents protected by the attorney-client privilege. Without waiver of and subject to each and every comment and objection to Request No. 17, the General Objections, and Objections to Definitions and Instructions, as of the date of this response, other than correspondence from Applicant, Opposer has not located any documents responsive to request 17 other than documents protected by the attorney-client privilege.

Request No. 18: Produce all documents and things concerning any dispute, infringement case, opposition, or cancellation proceeding in connection with any of Opposer's trademarks incorporating the term ALPINE.

Response: As of the date of this response, Opposer has not located any documents or things responsive to request no. 18.

Request No. 19: To the extent not already produced, produce all documents and things and things identified or referred to in your responses to Applicant's First Set of Interrogatories.

Response: Without waiver of and subject to the General Objections, and Objections to Definitions and Instructions, representative documents and/or things identified or referred to in responses to Applicant's First Set of Interrogatories will be made available for inspection and

copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 20: Produce all documents and things establishing the relationship, if any, between Opposer and Alpine USA, Ltd., including any transfer or license of any ownership or property between them, including but not limited to, trademarks or trade names licenses or assignments.

Response: Opposer objects to Request No. 20 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 20, the General Objections, and Objections to Definitions and Instructions, representative documents and/or things establishing the relationship, if any, between Opposer and Alpine USA, Ltd., including any transfer or license of any ownership or property between them, including but not limited to, trademarks or trade names licenses or assignments will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 21: Produce all documents and things related to the prosecution histories of U.S. trademark application serial nos. 76/007,736 and 76/365,845.

Response: Opposer objects to Request No. 21 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 21, the General Objections, and Objections to Definitions and Instructions, representative documents and/or things relating to related to the prosecution histories of U.S. trademark application serial nos. 76/007,736 and 76/365,845 will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 22: Produce all documents and things related or revealing the annual revenue of Opposer generated by products bearing the ALPINE CONFECTIONS mark.

Response: Opposer objects to Request No. 22 as requesting confidential business information. Such information will only be produced upon the entry of a suitable protective order. Opposer further objects to Request No. 22 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 22, the General Objections, and Objections to Definitions and Instructions, and upon entry of a suitable protective order, representative documents and/or things related or revealing the annual revenue of Opposer generated by products bearing the ALPINE CONFECTIONS mark will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 23: Produce all documents and things related to or revealing the annual advertising expenditures for Opposer's products bearing the ALPINE CONFECTIONS mark.

Response: Opposer objects to Request No. 23 as requesting confidential business information. Such information will only be produced upon the entry of a suitable protective order. Opposer further objects to Request No. 23 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 23, the General Objections, and Objections to Definitions and Instructions, and upon entry of a suitable protective order, representative documents and/or things related to or revealing the annual advertising expenditures for Opposer's products bearing the ALPINE CONFECTIONS mark will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

Request No. 24: Produce all documents and things so as to provide an example of Opposer's trademark use in interstate commerce of the mark ALPINE CONFECTIONS for each year from 1997 to present.

Response: Opposer objects to Request No. 24 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 24, the General Objections, and Objections to Definitions and Instructions, representative documents and/or things so as to provide an example of Opposer's trademark use in interstate commerce of the mark ALPINE CONFECTIONS for each year from 1997 to present will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

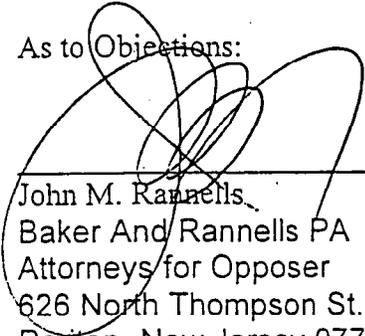
Dated: June ____, 2004

Respectfully submitted,

World Confections, Inc.

By: _____
Matthew Cohen
President, World Confections, Inc.

As to Objections:



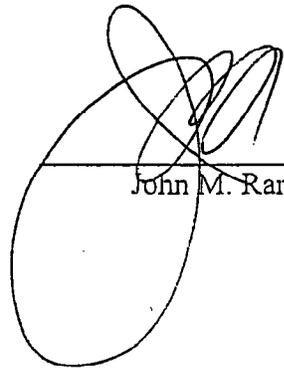
John M. Rannells,
Baker And Rannells PA
Attorneys for Opposer
626 North Thompson St.
Raritan, New Jersey 07769

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER in re: World Confections, Inc. v. Kencraft, Inc. Opp. No. 91/158,237 was served on counsel for Applicant, this 15th day of June, 2004, by sending same via First Class Mail, postage prepaid, to:

Michael F. Krieger, Esq.
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84145

DATED: June/15 2004



John M. Rannells

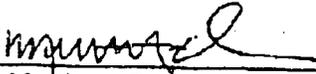
Request No. 24: Produce all documents and things so as to provide an example of Opposer's trademark use in interstate commerce of the mark ALPINE CONFECTIONS for each year from 1997 to present.

Response: Opposer objects to Request No. 24 insofar as it requests "all" documents and things as being overly broad and unduly burdensome to comply with. Without waiver of and subject to each and every comment and objection to Request No. 24, the General Objections, and Objections to Definitions and Instructions, representative documents and/or things so as to provide an example of Opposer's trademark use in interstate commerce of the mark ALPINE CONFECTIONS for each year from 1997 to present will be made available for inspection and copying at Opposer's offices or other location mutually agreed to by the parties, upon Applicant making reasonable accommodations with Opposer with regard to the times and dates for the same.

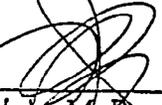
Dated: June __, 2004

Respectfully submitted,

World Confections, Inc.

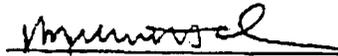
By: 
Matthew Cohen
President, World Confections, Inc.

As to Objections:


John M. Rannells
Baker And Rannells PA
Attorneys for Opposer
626 North Thompson St.
Raritan, New Jersey 07769

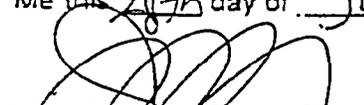
As to Objections:

I, Matthew Cohen, President of World Confections, Inc., have reviewed the responses set forth above and state that they are true and correct to the best of my knowledge and belief.


Matthew Cohen

during telephone conversation with the above individual on

Subscribed and sworn to ~~before~~
Me this 26th day of July 2004


John M. Rannells
Baker And Rannells PA
Attorneys for Opposer
626 North Thompson St.
Raritan, New Jersey 08869

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER in re: World Confections, Inc. v. Kencraft, Inc. Opp. No. 91/158,237 was served on counsel for Applicant, this ___ day of June, 2004, by sending same via First Class Mail, postage prepaid, to:

Michael F. Krieger, Esq.
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84145



United States Patent and Trademark Office

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Check Status

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	ALPINE CONFECTIONS
Goods and Services	IC 030. US 046. G & S: Fruit flavored gummy candy. FIRST USE: 19970600. FIRST USE IN COMMERCE: 19970600
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76365845
Filing Date	February 1, 2002
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) World Confections Inc. CORPORATION NEW YORK 185 30th Street Brooklyn NEW YORK 11232
Attorney of Record	Stephen L. Baker
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CONFECTIONS" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Serial Number: 76365845

Registration Number: (NOT AVAILABLE)

Mark (words only): ALPINE CONFECTIONS

Standard Character claim: No

Current Status: Further action on the application has been suspended.

Date of Status: 2005-03-18

Filing Date: 2002-02-01

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 105

Attorney Assigned:
SPILS CAROL L Employee Location

Current Location: L5X -TMEG Law Office 105 - Examining Attorney Assigned

Date In Location: 2005-03-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. World Confections Inc.

Address:
World Confections Inc.
185 30th Street
Brooklyn, NY 11232
United States

Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 030
Fruit flavored gummy candy
First Use Date: 1997-06-00
First Use in Commerce Date: 1997-06-00

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "CONFECTIONS"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-03-18 - Report Completed Suspension Check Case Still Suspended
2004-09-17 - Report Completed Suspension Check Case Still Suspended
2003-12-11 - Case File in TICRS
2003-05-14 - Case file assigned to examining attorney
2002-05-01 - Letter of suspension mailed
2002-04-26 - Examiner's amendment mailed
2002-04-23 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Stephen L. Baker (Attorney of record)

STEPHEN L. BAKER
BAKER & RANNELLS
626 NORTH THOMPSON STREET
RARITAN, NEW JERSEY 08869

Phone Number: (908) 722-5640

Alpine plans to re-open 40 Fannie May outlets

by MELISSA NIELSEN
More than 40 Fannie May locations in the Chicago area will be back in business under new owners Alpine Confections, including stores in Chicago, Skokie, Lincolnwood and Niles.
Utah-based Alpine Confections bought the bankrupt Fannie May and Fannie Farmer companies with plans to reopen high-performing stores, as well as to open new locations where demand is high, according to an Alpine Confections spokesman.

Fannie May to thrive for many years to come.

Hiring of part-time and full-time employees has begun, but no preference will be given to former Fannie May employees who lost their jobs when the 84-year-old company folded.

The chocolates will be made using the original ingredients, same supplies and in many cases the same equipment to ensure the quality matches the standards of the chocolates produced by Fannie May.

The initial list of Fannie May stores opening this fall includes 1813 W. Montrose Ave., 10066 N. Skokie Blvd., Skokie, 7001 N. Lincoln Ave., Lincolnwood, and 8534 W. Golf Road, Niles.

"Our decisions on which stores to open are based on a mix of business and performance criteria," said Alpine co-president David Taiclet. "Our goal is to build a Fannie May retail chain of strong, popular locations that will enable

Dear Friends,

I'd like to add my personal request to the attached.

Large companies usually have established charity policies that help to create tax savings etc; and they often do support causes that parallel ours, but our small group deserves your consideration.

For over 75 years our club has been diligent and hardworking supporting many great causes. Who else can say they bought guide dogs, sent kids to camp and supported the USO while working within the community?

We're homeowners, parents, consumers, your neighbors – in fact, we are the customers you vie for with your ads. We are the backbone of communities, concerned caring individuals who work to help others.

This year I am the chair of our annual fundraiser and ask..... won't you help?

Sincerely,

Mike

*For many years the Jimmy Ray
Stake and Cathedral are an excellent
and were very supportive of our club.
Thank you for the*

Sauganash Woman's Club Foundation

5861 North Kostner Avenue

Chicago, Illinois 60646

Gentlemen,

This year the Sauganash Woman's Club Foundation benefit will be held on November 11, 2004. This is our primary fundraiser.

November may seem a long way off, but it's not too soon to start seeking donations to support the success of this event.

Organizations such as yours receive many requests for donations. When I sat down to write this letter I wondered how to make it unique to catch your eye or your heart, and I wanted to tell you who we are and what we do.

For over 75 years our club has supported the community with scholarships, helped stock food pantries, created layettes for New Moms, assisted the homeless and family shelters and gave to the USO. The attached list will help you to know us better. We are your friends, your neighbors and your customers.

We need donations of cash, gift certificates or raffle prizes so that we might continue to support the needs of the community. All donations will be acknowledged and a tax letter provided.

As I observed earlier, it may not be cute or clever, but the needs aren't either. Won't you please consider our request?

We will follow up in approximately two weeks if we have not had the favor of your response.

Sincerely,

Carole J. Anderson

Carole J. Anderson

Chairman

1-(773)-736-4254

Patricia Lamey

Patricia Lamey

Grand Raffle, Chairman

1-(773)-282-5976

Please note: The Sauganash Woman's Club is guided by IRS code 501[C][3] "To benefit and indefinite number of people."

These are the legal guidelines, but more importantly we are led by our desire to serve the community.

This list represents a small sampling of organizations our club has supported since its inception in 1926.

Albany Park Food Pantry
American Cancer Society
Boy Scouts of America
Child Serv
Children's Memorial Make a Wish Foundation
Chicago Area Special Olympics
Erie Neighborhood House
Girl Scouts of America
Infants Inc.
Leukemia Research Foundation
Little Brothers of the Poor
Little Sisters of the Poor
Misericordia
New Moms, Inc.
Pacific Garden Missions
Queen of All Saints Church
St. Andrews Home
Salvation Army
Sauganash Community Church

Over the years we have folded bandages for cancer patients, distributed hundreds of personal item packets to nursing homes and over a thousand boxes of clothing and household items to the needy.

This past year, over \$1000.00 of toys, games and books were donated to Children's Memorial Hospital for terminally ill children.

To help New Moms over 150 handmade items including quilts, sweaters and layette items.

Cookies are a holiday must and we've distributed hundreds of bags to those in need.

Erie Neighborhood House received donations of toys, gifts and clothing for the community it serves.

We support the Sauganash Park District Halloween Party.

This year we filled 3000 eggs for the annual Easter Egg Hunt.

NEWS & TRENDS

Continued from page 15

Alpine Acquires Fannie May, Fannie Farmer Brands

CHICAGO — Alpine Confections Inc. acquires the intellectual property and 31 company-owned retail stores of Fannie May and Fannie Farmer brands for a reported purchase price of \$38.9 million, from Archibald Candy Corp. The acquisition will expand Alpine's sales which were reported at \$80 million prior to the purchase.

Alpine will make Fannie May its official flagship brand. The company has been producing Fannie May's most popular products and distributing them through Chicago-area retailers since early March under an interim licensing agreement.

Sources say Alpine's relationship with North Development Co., an Illinois real estate firm, was an important part of

the acquisition, and will help the company build Fannie May's initial retail presence. Alpine cofounders Dave Talcot and Taz Murray say: "We're especially pleased to have North's president, Calvin D. Boender, and his team as our real estate partner in this effort."



Talcot and Murray say Fannie May will start with 30 to 40 Midwest retail stores in the Fall and build from there. A small staff will be headquartered in Chicago.

In other news, Archibald retains Paragon Capital Partners, LLC to assist in the sale of Laura Secord, a leading Canadian marketer of boxed chocolates and other confectionery items. The decision follows last year's attempt to sell the company which had to be abandoned, the result of complications with Archibald's Chapter 11 filing.

Frankford Buys Nestlé's Wonderball Brand

PHILADELPHIA — Frankford Candy & Chocolate Co. has purchased the Wonderball brand from Nestlé USA, Inc. Wonderballs are hollow milk chocolate balls with candy surprises inside.

Frankford CEO Stuart Selarnick, tells **PROFESSIONAL CANDY BUYER**: "We believe our extensive licensing experience and character portfolio will provide tremendous new opportunities for the Wonderball brand. At the same time, Wonderball provides Frankford with a well-established chocolate brand in the growing segment of children's novelty candy."

Frankford currently offers a range of non-chocolates products including several featuring Nickelodeon licenses.

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