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VIA USPS

November 17, 2011

Office of the Solicitor  
United States Patent and Trademark Office  
Mail Stop 8  
P.O. Box 1450  
Alexandria, VA 22313-1450

Office of the General Counsel  
Patent and Trademark Office  
Madison East 10B20  
600 Dulany Street  
Alexandria, VA 22314

RE: Louis E. Kemp v. Trident Seafoods Corporation  
OPPOSITION NO. 91159912, CANCELLATION NO. 92042289, OPPOSITION NO.  
91162015, OPPOSITION NO. 91167827, OPPOSITION NO. 91167846, OPPOSITION  
NO. 91167653, OPPOSITION NO. 91167857

Dear Sir or Madam:

Enclosed for filing please find the original notice of appeal and a copy of the decision appealed from.

Very truly yours,



Alice M. Anderson

AMA/

Enclosure

CC: Patrick C. Stephenson, Esq.

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

OPPOSITION NO. 91159912  
OPPOSITION NO. 91162015  
CANCELLATION NO. 92-042289

Louis E. Kemp

v.

Trident Seafoods Corporation

OPPOSITION NO. 91167653  
OPPOSITION NO. 91167827  
OPPOSITION NO. 91167846  
OPPOSITION NO. 91167857

Trident Seafoods Corporation

v.

Superior Seafoods, LLC

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Notice is hereby given that Louis E. Kemp, pursuant to 15 U.S.C. § 1071(a), hereby appeals to the United States Court of Appeals for the Federal Circuit decision of the Trademark Trial and Appeals Board dated September 19, 2011.

Kinney & Lange, P.A.



David R. Fairbairn #28125  
Attorney for Louis E. Kemp  
312 S. Third Street  
Minneapolis, MN 55415-1002  
612-339-1863

Dated: November 18, 2011

THIS OPINION  
IS NOT A PRECEDENT  
OF THE T.T.A.B.

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

DUNN

Mailed: September 19, 2011

Opposition No. 91159912  
Opposition No. 91162015  
Cancellation No. 92042289

Louis E. Kemp

v.

Trident Seafoods Corporation<sup>1</sup>

Opposition No. 91167653  
Opposition No. 91167827  
Opposition No. 91167846  
Opposition No. 91167857

Trident Seafoods Corporation

v.

Superior Seafoods, LLC<sup>2</sup>

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<sup>1</sup> Throughout this order, we will use "Trident" as a shorthand reference to Trident Seafoods Corporation and its various predecessors. As more specifically set forth in Assignment Branch records, after an initial transfer in 1989 of ownership of the mark LOUIS KEMP and variations to Oscar Mayer Foods Corporation, which filed the applications underlying the subject registrations, the marks were assigned first to Tyson Foods, Inc., then Bumble Bee Seafoods, Inc. (which filed the opposed applications), ConAgra Foods Packaged Foods Company, Inc., and Trident Seafoods Corporation.

<sup>2</sup> Louis E. Kemp, an individual, and Superior Seafoods, LLC, a California company of which Louis Kemp is president, are represented by the same counsel and stipulated to consolidation of these proceedings involving rights to marks including the name LOUIS KEMP. On September 5, 2006, the Board approved the stipulation and consolidated all proceedings listed at the top of this order.

Before Seeherman, Taylor, and Lykos, Administrative Trademark Judges:

By the Board:

This consolidated case comes up on Trident Seafood Corporation's (hereafter, Trident) September 1, 2006 motion for summary judgment, filed in the three cases in which Trident is defendant, namely Opposition Nos. 91159912 and 91162015 and Cancellation No. 92042289. The motion is brought pursuant to the doctrine of claim preclusion. After a lengthy suspension period, the motion for summary judgment is fully briefed.<sup>3</sup>

*INVOLVED REGISTRATIONS AND APPLICATIONS*

Trident owns the four registrations and two applications shown below, all of which include the statement, "The name LOUIS KEMP identifies a living individual whose consent is of record." Kemp filed a single petition to cancel against Trident's four registrations.

<b>Trident's registration or application</b>	<b>Mark</b>	<b>Goods</b>
Reg. No. 1859815 issued October 25, 1994 (Can. No. 92042289)	LOUIS KEMP	surimi seafood, processed fish or imitation seafood

<sup>3</sup> After Trident moved for summary judgment on the ground that the prior district court judgment should be given preclusive effect, the Board learned that Kemp had filed a Fed. R. Civ. P. 60(d) motion for relief from the judgment with the district court. On November 23, 2010, having been notified that both the district and appellate courts had issued their final orders, the Board resumed proceedings and ordered supplementary briefing.

Reg. No. 1859816 issued October 25, 1994, (Can. No. 92042289)	<b>LOUISKEMP</b>	surimi seafood, processed fish or imitation seafood
Reg. No. 1859817 issued October 25, 1994 (Can. No. 92042289)	<b>LOUISKEMP SEAFOOD Co</b>	surimi seafood, processed fish or imitation seafood
Reg. No. 1879931 issued February 21, 1995 (Can. No. 92042289)	<b>LOUISKEMP SEAFOOD Co</b>	surimi seafood, processed fish or imitation seafood
App. Serial No. 76454734 filed October 2, 2002 (Opp. No. 91159912)	LOUIS KEMP SEAFOOD CO.	frozen, prepared and refrigerated meals and entrees consisting primarily of seafood or imitation seafood; shellfish; seafood- based dips; and seafood- based cocktails  sauces and marinades
App. Serial No. 76454609 filed October 2, 2002 (Opp. No. 91162015)	LOUIS KEMP	frozen, prepared and refrigerated meals and entrees consisting primarily of seafood or imitation seafood; shellfish; seafood- based dips; and seafood- based cocktails  sauces and marinades

The papers filed by the parties in support of and opposition to the motion for summary judgment show that there is no genuine dispute as to the following history:

*COURT PROCEEDINGS*

A. *First district court action (Civ. No. 96-173)*

On May 28, 1996, Louis E. Kemp (hereafter, Kemp) filed a complaint against Trident in Minnesota state court.<sup>4</sup> Kemp's complaint alleged that he sold his surimi seafood business, including the right to use and to register his name, to Trident's predecessor Oscar Mayer Foods Corporation, and that under the sales agreement the right was limited and not-assignable, and thus was abandoned when Oscar Mayer Foods Corporation sold the business to Trident's predecessor Tyson Foods, Inc., so that Trident's continued use of LOUIS KEMP was "without the permission, authority or consent of Plaintiff Louis E. Kemp." The complaint sought a declaratory judgment determining Kemp's right to use the LOUIS KEMP marks because Trident objected to Kemp's use of the LOUIS KEMP marks for a line of wild rice food products. The complaint also alleged tortious interference with contract, and unfair competition based on Trident's attempts to block Kemp's use. Trident removed the action to the United States District Court for the District of Minnesota. *Louis Kemp, Superior Seafoods, Inc. and Quality Finer Foods, Inc. v. Tyson Foods, Inc. and Bumble Bee Seafoods, Inc.*, Civ. No. 96-173 (USDC-Minn).

Trident's answer denied the salient allegations of the complaint, and asserted counterclaims which sought a

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<sup>4</sup> Kemp was joined as plaintiff by two business entities of which he is president: Superior Seafoods, Inc., predecessor to Superior, and Quality Finer Foods, Inc.

declaratory judgment that Trident "is the owner of all right, title, and interest in and to the trademarks LOUIS KEMP and LOUIS KEMP SEAFOOD CO. for use on and in connection with food and related products" and that its registrations "are valid, subsisting and enforceable," and which alleged trademark infringement by Kemp of Trident's federally registered LOUIS KEMP marks.

On March 31, 2001, the court addressed the declaratory judgment claim concerning the parties' contractual rights to the LOUIS KEMP marks, and denied cross-motions for summary judgment. The court found that under the contracts between the parties Trident "acquired only a limited right to use and register LOUIS KEMP and LOUIS KEMP SEAFOOD COMPANY in connection with surimi-based seafood and related products."

The parties then entered into a stipulation and consent judgment which was approved by the District Court judge on May 21, 2001. Inasmuch as this decision is the basis for the defense of claim preclusion, its provisions are summarized and/or set forth below.

After noting the court's jurisdiction (§1), clarifying defendant's entity (§2), and describing the case as involving trademark infringement and unfair competition as more particularly set forth in the pleadings (§3), the court noted that the parties were involved in a number of related litigations in federal, state, and bankruptcy courts (§4),

that the instant proceeding had been suspended pending the resolution of the several litigations (§5), and that the litigations were resolved by means of a demurrer and grant of summary judgment in favor of Trident, coupled with a settlement agreement signed by the parties to those litigations and the parties to the present litigation, and approved by the bankruptcy court (§6). The court then held:

7. Pursuant to the doctrine of res judicata, the Court finds that [Trident] owns all right, title, and interest in and to the LOUIS KEMP Marks, and [Trident] owns U.S. Trademark Registration Nos. 1,859,815 and 1,859,816 (for the mark LOUIS KEMP) and U.S. Trademark Registration Nos. 1,859,817 and 1,879,931 (for the mark LOUIS KEMP SEAFOOD CO.). Accordingly, the Court hereby grants judgment to [Trident] on its claim for declaratory judgment (Am. Ans., Aff. Def. & Ctrcls., Ctrcl. 1 §§ 32-36).

8. [Trident's] LOUIS KEMP Marks are valid, enforceable, and in full force and effect.

9. Based on the findings in paragraphs 7 and 8 above, the Court hereby dismisses with prejudice, pursuant to the doctrine of res judicata, all claims advanced by Kemp against [Trident] related to ownership of the Marks: (1) declaratory judgment (Compl. §§VI-IX); (2) unfair competition (Compl. §XIII); (3) cancellation of federal registrations (Reply to Ctrcls. ("Additional Claims") §§38-44); (4) trademark dilution (Reply to Ctrcls. ("Additional Claims") §45); (5) deceptive trade practices (Reply to Ctrcls. ("Additional Claims") § 46); and (6) unfair competition (Reply to Ctrcls. ("Additional Claims") §47).

10. On March 31, 2001, the Court granted [Trident's] motion for summary adjudication of plaintiffs' claims for tortious interference with contract and unfair competition and thereby dismissed with prejudice Counts II and III of the Complaint (Compl. §X-XIII).

11. Accordingly, the only issues remaining in the present litigation are whether the use by Kemp of the trademark LOUIS KEMP or any formative of this mark in connection with rice products, including without limitation "seasoned wild rice, chicken wild rice soup, and wild rice with stir fried vegetable" as well as "southwestern white and wild rice, cooked and seasoned white and wild rice and wild and white rice stir fry" (all as identified by Kemp in response to [Trident's] Interrogatory no. 1) infringes and/or dilute [Trident's] rights in the LOUIS KEMP marks.

12. The Court shall retain jurisdiction over this matter and the parties for the purpose of enforcing this Consent Judgment.

13. The parties each waive their right to appeal from this Consent Judgment.

On September 30, 2002, following trial, the court entered judgment for Kemp on the remaining issues, finding no infringement or dilution.

Thereafter, Kemp, pursuant to the federal provision for relief based on a declaratory judgment, sought to enjoin use by Trident of the mark LOUIS KEMP on smoked salmon because it was not a surimi-based product. The court held it had jurisdiction because it had expressly retained jurisdiction over the settlement agreement between the parties, and thus had ancillary jurisdiction to enforce the agreement. The court noted that Kemp confirmed at the hearing "that he is essentially asking the Court to clarify the effect of the Consent Judgment in light of the Summary Judgment order."

On March 30, 2004, the district court denied Kemp's requested injunction.<sup>5</sup> The court held that the summary judgment order was superseded by the consent judgment, which referred to related proceedings and an underlying settlement agreement, which in turn was based in part on Kemp's bankruptcy proceeding. The court noted that on behalf of Kemp's estate, the bankruptcy trustee sold to Trident "all ... right, title and interest in claims ... relating to past and future use of the 'Louis Kemp' name by [Trident], as well as any right, title and interest the Kemp estate had relating to the use and registration of the trademarks 'Louis Kemp' and 'Louis Kemp Seafood Company.'" The court concluded that the consent judgment placed no restrictions on Trident's registration, ownership, or use of the LOUIS KEMP and LOUIS KEMP SEAFOOD CO. marks; could not be read to limit the scope of the consent judgment to surimi-based products; and that, while Kemp may be entitled to use his name, this "does not also grant him the right to prevent or otherwise police [Trident's] use of its trademarks."

On February 23, 2005, the United States Court of Appeals for the Eighth Circuit reversed the district court's 2002 order, and found Kemp's use of LOUIS KEMP in connection

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<sup>5</sup> The court's decision was issued by the same judge who had decided the summary judgment motions, approved the consent judgment, and issued the final order on the infringement claim.

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with wild rice food products infringed Trident's LOUIS KEMP marks.

*B. Second district court action (06:-cv-02443)*

In 2006, Kemp and his companies Superior and Quality Finer Foods, Inc. brought another action against Trident in the United States District Court for the District of Minnesota (06:-cv-02443). Kemp sought to set aside the May 22, 2001 consent judgment for fraud on the court and mistake. On March 31, 2009, the court denied Kemp's motion for summary judgment and granted Trident's motion for summary judgment, finding "nothing that occurred here corrupted the Court's decision-making"; that the evidence of 21 months of negotiation which preceded execution of the consent judgment, including discussion of now-disputed provisions, precludes a finding that the consent judgment was entered by mistake; and that Kemp was not without fault and thus was not entitled to equitable relief.

On September 3, 2010, the United States Court of Appeals for the Eighth Circuit affirmed the district court decision. The appellate court found that while Kemp had desired language in the consent agreement limiting the rights of Trident in the LOUIS KEMP marks, the consent agreement did not include the desired language; that there was no allegation that Kemp or his attorney was deceived

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regarding the contents of the agreement; that Kemp's counsel advised him that the desired language was not present but recommended accepting the consent agreement; and that Kemp's attorney signed the agreement and delivered it to the court, and the court entered the consent judgment based on the consent agreement. The appellate court also found that Kemp did not challenge the consent judgment when it issued in 2001, nor when the judge specified that the rights of Trident's predecessor in the LOUIS KEMP marks were not limited to surimi-related products in 2004, nor during the infringement trial or appeal which ended in 2005. The appellate court agreed with the district court that the parties' 2001 consent agreement resolved the previously undecided declaratory judgment issues concerning the parties' relative contractual rights in the LOUIS KEMP marks.

***PROCEEDINGS BEFORE THE BOARD***

On July 10, 2003, Kemp filed Cancellation No. 92042289; on March 22, 2004, Kemp filed Opposition No. 91159912; and on September 2, 2004, Kemp filed Opposition No. 91162015. Each pleading, featuring largely identical allegations, essentially makes the same argument made by Kemp to the district court in seeking a preliminary injunction. Each pleading alleges that the earlier order by the district

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court denying summary judgment recognized limits to Trident's rights which Trident exceeded by filing the applications which resulted in the subject registration and opposed applications.

More specifically, the petition to cancel and the two notices of opposition allege that Kemp was the first user of KEMP marks for fish and seafood products; that he sold his surimi business to Trident, including all trademarks used in connection with the business; that the sales agreement was amended to allow Trident to use and register LOUIS KEMP marks; that the written agreements between Kemp and Trident transferring rights to use the KEMP and LOUIS KEMP marks did not convey all rights to use and register LOUIS KEMP marks but were limited to surimi-based seafood products and such other seafood and fish accessory products within the natural zone of product line expansion; that Kemp "never signed a consent or agreed to the use or registration by [Trident] of the LOUIS KEMP marks for any products beyond those specifically listed in the Amendment"; that in the district court action between the parties, the court ruled in connection with a summary judgment motion that Trident acquired only a limited right to use and register the LOUIS KEMP marks; that Trident has taken action to "expand use of the LOUIS KEMP marks to other products outside the scope of the consent given by [Kemp]"; that the four registrations

and the two opposed applications expand the scope of the LOUIS KEMP marks outside the consent judgment; and that, at the time the applications were filed, Trident "was fully aware" of the district court order limiting its use to "surimi based seafood and related products." <sup>6</sup>

Trident's answers deny the salient allegations of the pleadings and assert the affirmative defense of claim preclusion, contending that the contract issues between the parties were the subject of a district court consent judgment; that the consent judgment held that Trident is owner of the LOUIS KEMP marks; that Kemp's consent to Trident's use and registration of the LOUIS KEMP marks is implicit in the transfer of ownership; and that Kemp is barred by the prior judgment from raising the issue of Trident's ownership of the LOUIS KEMP marks or alleging a lack of consent.

*MOTION FOR SUMMARY JUDGMENT*

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<sup>6</sup> While neither the petition to cancel nor the notices of opposition specify a statutory ground, we construe the notices of opposition as bringing a claim under Trademark Act 2(c) that Trident did not obtain the necessary consent from the living individual LOUIS KEMP for registration of his name, and fraud based on the statement made in the application that the consent was of record. As for the petition to cancel, since the subject registrations are more than five years old, the Section 2(c) ground is unavailable, and we construe the petition to cancel as bringing only the fraud claim, which can be brought against a registration at any time.

Summary judgment is appropriate where there are no genuine disputes of material fact, thus allowing the case to be resolved as a matter of law. Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the burden of demonstrating the absence of any genuine dispute as to any material fact, and that it is entitled to a judgment under the applicable law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). All doubts as to whether any particular factual issues are genuinely in dispute must be resolved in the light most favorable to the non-moving party. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

Under the doctrine of claim preclusion, the entry of a final judgment "on the merits" of a claim (i.e., cause of action) in a proceeding serves to preclude the relitigation of the same claim in a subsequent proceeding between the parties or their privies, even in those cases where the prior judgment was the result of a default or consent. See *Chromalloy American Corp. v. Kenneth Gordon, Ltd.*, 736 F.2d 694, 222 USPQ 187, 189 (Fed. Cir. 1984); *John W. Carson Foundation v. Toilets.com Inc.*, 94 USPQ2d 1942, 1946 (TTAB 2010). A second suit is barred by claim preclusion if (1) the parties (or their privies) are identical; (2) there has been an earlier final judgment on the merits of a claim; and (3) the second claim is based on the same set of

transactional facts as the first. See *Jet, Inc. v. Sewage American Systems*, 223 F.3d 1360, 55 USPQ2d 1854, 1856 (Fed. Cir. 2000).

Here, there is no dispute that the parties are in privity. Kemp was a party bound by the May 21, 2001 consent agreement, and the parties' July 5, 2006 stipulation for substitution of defendant specified that Trident is the successor to ConAgra, Tyson Foods, Inc. and Bumble Bee Seafoods, Inc., and that Kemp and "these various predecessors in interest have previously engaged in multiple litigation proceedings." The stipulation referred the Board to, among other court documents, the May 22, 2001 consent judgment.

It also is undisputed that the May 22, 2001 consent judgment was a final judgment. See *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 327 (1955) (holding that a lawsuit, dismissed with prejudice pursuant to a settlement agreement, "bars a later suit on the same cause of action"); *Foster v. Hallco Mfg. Co.*, 947 F.2d 469, 20 USPQ2d 1241, 1248 (Fed. Cir. 1991) ("there is no dispute that ... claim preclusion principles apply to a consent judgment"); *Zoba International Corp. v. DVD Format/LOGO Licensing Corporation*, 98 USPQ2d 1106, 1110 (TTAB 2011) ("courts have long held that judgments on consent give rise to claim preclusion."). In his initial opposition to the motion for

summary judgment, Kemp merely contended that the judgment could not be said to be final for preclusive purposes while subject to a pending motion to vacate, a matter no longer at issue since the appellate court affirmed the district court's denial of vacatur.

Accordingly, we turn to the third factor for claim preclusion, and address whether the same transactional facts underlying Kemp's claims in the civil action are the basis for Kemp's present claims. The Board's primary reviewing court defines "transaction" in terms of "the same nucleus of operative facts", and held that a common set of transactional facts is to be identified "pragmatically." *Jet, Inc. v. Sewage American Systems*, 223 F.3d 1360, 55 USPQ2d 1854, 1856 (Fed. Cir. 2000).

The operative facts underlying both the district court claims and the claims in this consolidated proceeding concern the contractual right to use and to register the LOUIS KEMP and LOUIS KEMP SEAFOOD CO. marks.<sup>7</sup> As set forth above, Kemp sought a declaratory judgment from the district court that the contracts included a reservation of rights of Kemp to the LOUIS KEMP marks except for Trident's right to use the LOUIS KEMP marks with surimi-based seafood products,

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<sup>7</sup> The courts have found, and Kemp does not dispute, that Kemp did not use LOUIS KEMP in connection with his business before selling the business and trademarks to Trident, and Kemp does not assert common law trademark use.

and Trident sought declaratory judgment that the contracts included broad rights of Trident to use the LOUIS KEMP marks with food and related products, and that its registrations for LOUIS KEMP marks, which include more than surimi-based seafood, are valid. In his petition to cancel and notices of opposition, Kemp alleges that the same contractual reservation of rights supports his claim that Trident's registrations and applications for LOUIS KEMP marks exceed the scope of Kemp's consent.

The contractual rights of the parties to the LOUIS KEMP marks were determined by the district court's May 21, 2001 consent judgment; in which the court "dismisses with prejudice, pursuant to the doctrine of claim preclusion, all claims advanced by Kemp against [Trident] related to ownership of the Marks: (1) declaratory judgment (Compl. ¶¶VI-IX)" (¶9) and "Pursuant to the doctrine of claim preclusion, the Court finds that [Trident] owns all right, title, and interest in and to the LOUIS KEMP Marks, and [Trident] owns U.S. Trademark Registration Nos. 1,859,815 and 1,859,816 (for the mark LOUIS KEMP) and U.S. Trademark Registration Nos. 1,859,817 and 1,879,931 (for the mark LOUIS KEMP SEAFOOD CO.). Accordingly, the Court hereby grants judgment to [Trident] on its claim for declaratory judgment." (¶7). Thus, Kemp's claim of a reservation of contract rights to the LOUIS KEMP marks for all goods

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excepting surimi-based seafood products was dismissed with prejudice, and Trident's claim of ownership of the LOUIS KEMP marks for food and related products, including its four registrations, was granted.

Kemp's opposition to summary judgment contends that Trident's acquisition of ownership of the LOUIS KEMP marks does not include Kemp's implicit consent to registration; that the district court's judgment addressed only Trident's right to use the LOUIS KEMP marks and not Trident's right to register the LOUIS KEMP marks; and that there can be no preclusive effect with respect to Trident's applications filed after issuance of the court's judgment. For the reasons below, we find none of these arguments persuasive, nor do Kemp's papers raise a genuine dispute that would preclude the entry of summary judgment.

Kemp's argument that the district court's consent judgment addressed only Trident's right to use the LOUIS KEMP marks and not Trident's right to register the LOUIS KEMP marks lacks record support. The May 21, 2001 consent judgment, which addressed not only Trident's rights acquired by contract but Trident's rights acquired in Kemp's bankruptcy proceeding and other litigation, found Trident owns all right, title, and interest to the LOUIS KEMP marks, and Trident's registrations to be "valid, enforceable, and

in full force and effect." Moreover, the district court's March 30, 2004 construction of the consent judgment states:

There are no restrictions placed on [Trident's] registration, ownership, or use of the LOUIS KEMP and LOUIS KEMP SEAFOOD CO. marks. This language is unambiguous and simply cannot be read to include the possibility that the scope of [Trident's] marks continued to be limited to surimi-based products. (Emphasis added).

Thus, we find that Trident's right to both use and registration of the LOUIS KEMP marks was the subject of the consent judgment.

Finally, we reject Kemp's argument that the preclusive effect of the consent judgment does not apply to Kemp's claims against Trident's applications because the applications had not been filed when the district court entered the consent judgment. In fact, Kemp brings the identical claims against the registrations and applications, and the preclusive effect of the consent judgment is the same.

The district court judgment granted Trident's declaratory judgment claim that Trident is the "owner of all right, title, and interest in and to the trademarks LOUIS KEMP and LOUIS KEMP SEAFOOD CO. for use on and in connection with food and related products." Both Trident's registrations and applications list goods which are not surimi-based seafood products. Kemp does not argue that the goods listed in either the registrations or the applications

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are not "food or related products." The notices of opposition allege that the applications impermissibly include goods which are not limited to surimi-based products, the same assertion made against Trident's registrations in the petition to cancel, and the same argument rejected by the district court. The court's March 30, 2004 clarification order addressing the scope of the consent judgment stated that it "simply cannot be read to include the possibility that the scope of [Trident's] marks continued to be limited to surimi-based products."

Because both the consent judgment and the March 30, 2004 clarification order determined that Trident has the right to use and register LOUIS KEMP marks for food and related products, and specifically found Trident's registrations, which list food items beyond surimi-based seafood products, to be valid and enforceable, we find that Kemp may not bring his claims against either Trident's registrations or its applications, which also list food items beyond surimi-based seafood products. With respect to both the claims to the LOUIS KEMP marks brought by Kemp's petition to cancel and the claims to the LOUIS KEMP marks brought by Kemp's notices of opposition, Kemp attempts relitigation of claims dismissed with prejudice in the district court action.

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In sum, because the district court judgment recognized Trident's trademark ownership and extinguished claims related to the rights of the parties regarding the LOUIS KEMP marks for food and related products, Kemp is barred by the doctrine of claim preclusion from bringing these actions to cancel Trident's registrations and to oppose its applications for LOUIS KEMP marks for food and related products on the grounds of lack of consent under Trademark Act Sec. 2(c) and fraud based on misrepresentations regarding that consent. Accordingly, there are no genuine disputes as to any material fact and entry of judgment as a matter of law is appropriate. Trident's motion for summary judgment is granted; in Cancellation No. 92042289, the petition to cancel is denied; and in Opposition Nos. 91159912 and 91162015, the notices of opposition are dismissed.<sup>8</sup>

Proceedings herein are resumed with respect to remaining consolidated Opposition Nos. 91167653, 91167827, 91167846, and 91167857. Dates are reset below:<sup>9</sup>

DISCOVERY PERIOD TO CLOSE:	December 16, 2011
Thirty-day testimony period	March 15, 2012

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<sup>8</sup> This order should be the last paper in this proceeding file. With the disposition of the three earliest filed cases in this consolidated proceeding, Opposition No. 91167653 becomes the parent case.

<sup>9</sup> Because this consolidated proceeding commenced prior to November 1, 2007, it is not subject to the amended Trademark Rules and no disclosures are required.

Opposition No. 91159912 (parent)

for party in position of  
plaintiff to close:

Thirty-day testimony period  
for party in position of  
defendant to close:

May 14, 2012

Fifteen-day rebuttal testimony  
period to close:

June 28, 2012

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

Alice M. Anderson of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being duly sworn says that on the 17th day of November 2011 she served a notice of appeal on the following by mail:

Patrick C Stephenson, Esq.  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102-2186

Alice M Anderson

Subscribed and sworn to before me  
this 17th day of November 2011.

Charles A. Cox

