

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

In the Matter of Application Serial No. 78/942,645 for the mark ROCKSTAR SALSA filed on August 1, 2006 and published in the Official Gazette on September 11, 2007.

RUSSELL G. WEINER,

Opposer,

v.

JERRY ZARNEKEE,

Applicant.

Opposition No. 91179982

**OPPOSER RUSSELL G. WEINER'S
MOTION FOR SUMMARY
JUDGMENT AND SUPPORTING
MEMORANDUM**



05-16-2008

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1 **NOTICE OF MOTION**

2 Please take notice that Opposer Russell G. Weiner (“Opposer”) hereby moves for summary
3 judgment pursuant to Federal Rule of Civil Procedure 56 and 37 C.F.R. § 2.127(e).

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Applicant Jerry Zarnekee (“Applicant”) failed to respond to Opposer’s discovery requests, which
6 including Opposer’s Requests for Admissions. Opposer’s Requests for Admissions therefore stand
7 admitted by Applicant. 37 C.F.R. § 2.120(a); Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 36; *see*
8 *also* Trademark Trial and Appeals Board Manual of Procedure (“TBMP”) § 407.03(a). In addition,
9 Applicant has made certain admissions in his Answer, and has further failed to deny certain claims made
10 in Opposer’s Notice of Opposition. These matters are thus deemed admitted under Federal Rule of Civil
11 Procedure 8(d) and 37 C.F.R. § 2.116. *See also* TBMP § 101.02. Accordingly, no genuine issue of
12 material fact remains as to whether Applicant’s Mark will create a likelihood of confusion.

13 Applicant has admitted allegations that establish that his ROCKSTAR SALSA mark will likely
14 be confused with Opposer’s ROCKSTAR marks, and therefore no genuine issue of material fact
15 remains. Applicant’s admissions strike at the heart of this matter—Applicant admits that “consumers
16 will confuse” the sources of products sold under each parties’ almost identical ROCKSTAR marks. In
17 addition, Applicant admits that he fraudulently submitted his trademark application to the USPTO.
18 Accordingly, for the reasons set forth below, Opposer respectfully requests the Board to grant summary
19 judgment in favor of Opposer and refuse registration of Applicant’s confusingly similar mark.

20 **BACKGROUND**

21 **A. Opposer**

22 Russell G. Weiner is the opposer. Mr. Weiner is no stranger to the extensive, and quite
23 successful, use of ROCKSTAR marks in commerce, having continuously and substantially licensed the
24 ROCKSTAR marks in interstate commerce for Rockstar’s energy drinks since 2001 to great success.
25 Rockstar is a well-known producer and international distributor of energy drinks. Rockstar has sold over
26 one *billion* cans of product and annually has sales of several hundred million dollars. Mr. Weiner is the
27 C.E.O. of Rockstar, Inc. Declaration of Russell G. Weiner (“Weiner Decl.”), ¶1-4.

1 Having begun use of the ROCKSTAR marks at least as early as 2001, Opposer has established
2 common law rights since that time with continuous use throughout the United States for many of the
3 goods referenced above, in addition to his federal registration rights. *Id.* at ¶3. Opposer has an extensive
4 portfolio of trademarks that bear the mark ROCKSTAR, including the following federally registered
5 trademarks that have been cited in Opposer's Notice of Opposition that have priority over Applicant's
6 application:

- 7 • ROCKSTAR, U.S. Registration No. 3398516, for "sports drinks, namely, energy drinks" in
8 Class 32; Opposer filed his application to register this mark on April 17, 2006, and the mark
9 was registered on March 18, 2008;
- 10 • ROCKSTAR ENERGY DRINK, Reg. No. 2613067, for "sports drinks, namely, energy
11 drinks" in Class 32; Opposer filed his application to register this mark on August 19, 1999,
12 and the mark was registered on the Principal Register on August 27, 2002;
- 13 • ROCKSTAR (Stylized), Reg. No. 2784403, for "sports drinks, namely, energy drinks" in
14 Class 32; Opposer filed his application to register this mark on December 13, 2002, and the
15 mark was registered on the Principal Register on November 18, 2003;
- 16 • ROCKSTAR ENERGY COLA, U.S. Trademark Registration No. 3181547, for "sports
17 drinks; namely colas" in Class 32; Opposer filed his application to register this mark on
18 March 10, 2004, and the mark was registered on the Principal Register on December 5, 2006;
- 19 • ROCKSTAR JUICED, U.S. Trademark Registration No. 3190229, for "sports drinks,
20 namely, energy drinks" in Class 32; Opposer filed his application to register this mark on
21 December 14, 2005, and the mark was registered on the Principal Register on December 26,
22 2006;
- 23 • ROCKSTAR ROASTED, U.S. Trademark Registration No. 3423897, for "Energy drinks" in
24 Class 32; Opposer filed his application to register this mark on May 22, 2007, and the mark
25 was registered on the Principal Register on May 6, 2008;
- 26 • PARTY LIKE A ROCKSTAR, U.S. Trademark Registration No. 2545247, for "sports drinks,
27 namely, energy drinks" in Class 32; Opposer filed his application to register this mark on
28 February 29, 2000, and the mark was registered on the Principal Register on registered on

1 March 5, 2002;

2 (hereinafter collectively "ROCKSTAR Marks"); Weiner Decl. ¶4. The ROCKSTAR Marks are attached
3 as Exhibit A to the Weiner Declaration.

4 **B. Applicant**

5 Applicant filed its trademark application for the mark ROCKSTAR SALSA for "salsa" on
6 August 1, 2006 (Serial No. 78/942,645). Applicant has disclaimed the word "SALSA" in his
7 application. Declaration of Raffi V. Zerounian in Support of Opposer's Motion for Summary Judgment
8 and Supporting Memorandum ("Zerounian Decl.") ¶ 3, Exh. A; *see* Trademark Manual of Examining
9 Procedure ("TMEP") § 1213.08(b) ("Unregistrable matter must be disclaimed in its entirety").
10 Applicant's application was published for opposition on September 11, 2007. Opposer filed a timely
11 notice of opposition, a copy of which is attached hereto as Exhibit B to the Zerounian Declaration.

12 Applicant filed an almost incomprehensible one-page answer with the Board, and neglected to
13 serve a copy upon Opposer or its counsel.¹

14 **C. Discovery**

15 On January 23, 2008, Opposer served Interrogatories, Document Requests and Requests for
16 Admissions ("Requests for Admissions" or "RFA") on Applicant. Zerounian Decl. ¶ 6. A copy of the
17 Opposer's properly served discovery requests, including Opposer's Requests for Admissions, are
18 attached hereto as Exhibit D to the Zerounian Declaration. Applicant's responses to Opposer's discovery
19 requests were due on February 27, 2008. Zerounian Decl. ¶ 8. Applicant has not responded or otherwise
20 objected to any of these requests, including Opposer's Requests for Admission. *Id.*

21 **I. THE EVIDENCE CONFIRMS NO GENUINE ISSUE OF MATERIAL FACT EXISTS**
22 **WITH RESPECT TO LIKELIHOOD OF CONFUSION**

23 Summary judgment is appropriate when there is no genuine issue of material fact requiring a
24 trial. *See Flow Tech., Inc. v. Picciano*, 18 USPQ2d 1970, 1971-71 (T.T.A.B. 1991). The Federal
25 Circuit has noted that the "basic purpose of summary judgment is one of judicial economy." *Pure*
26 *Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 222 U.S.P.Q. 741, 743 (Fed. Cir. 1984) (affirming

27 ¹ A copy of Applicant's Response to Opposer's Notice of Opposition is attached to the Zerounian
28 Declaration as Exhibit C.

1 the Board’s grant of summary judgment). It is against public policy to conduct unnecessary trials,
2 and summary judgment is favored when the time and expense of a full trial can be avoided through
3 the summary judgment procedure. *See id.*

4 The burden of a party moving for summary judgment is met by showing “that there is an
5 absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 US 317,
6 322-24 (1986). When the moving party shows that no genuine issue of material fact exists, the
7 nonmoving party “may not rest upon the mere allegations or denials of [its] pleadings.” Fed. R. Civ.
8 P. 56 (e). Rather, the nonmoving party must respond, setting “forth specific facts showing that there
9 is a genuine factual issue for trial.” *Id.* A factual dispute is genuine only if, on the evidence of
10 record, a reasonable fact finder could resolve the matter in favor of the nonmoving party. *See Lloyd’s*
11 *Food Products, Inc. v. Eli’s, Inc.*, 987 F.2d 766, 767, 25 U.S.P.Q.2d 2027, 2029 (Fed. Cir. 1993).

12 **APPLICANT’S ADMISSIONS CONFIRM THAT SUMMARY JUDGMENT IS**
13 **PROPER FOR OPPOSER**

14 In this case all of the relevant factual issues have been admitted by Applicant’s failure to
15 respond to the Requests for Admissions.² *See* Fed. R. Civ. P. 36(a)-(b); TBMP § 407.03 (“If a party on
16 which requests for admission have been served fails to timely respond thereto, the requests will stand
17 admitted”); *Pinocchio’s Pizza, Inc. v. Sandra Inc.*, 11 U.S.P.Q.2d 1227 (TTAB 1989) (“Since no
18 responses were made to the requests for admission, they are deemed admitted. *See*: Rule 36, FRCP”);
19 *see also* TBMP §411.04.

20 These admissions are conclusive on the matters admitted. *See* Fed. R. Civ. P. 36(b) (“A matter
21 admitted under this rule is conclusively established”) (emphasis added); TBMP §407.04 (“Any
22 matter admitted (either expressly, or for failure to timely respond) under Fed. R. Civ. P. 36 is
23 conclusively established); *see also McDonald’s Corp. v. Do*, 2001 U.S. Dist. LEXIS 10457 (E.D.
24 Va. Apr. 30, 2001) (holding “we deem [Defendant] to have admitted the allegations set forth in
25 Plaintiff’s First Request for Admissions, which effectively establish each of plaintiff’s claims against
26 [Defendant]”); *Villager Franchise Sys. v. Dhami, Dhami & Virk*, 2006 U.S. Dist. LEXIS 6114 (E.D.

27 _____
28 ² The discovery period closed on April 27, 2008. Applicant did not conduct any discovery on Opposer.

1 Cal. Jan. 26, 2006) (holding admissions established through a failure to respond can “serve as the
2 factual predicate for summary judgment: and are “conclusively established.”); *PSC Revenue Control*
3 *Sys., Inc. v. Borland Software Corp.*, 2006 TTAB LEXIS 220, *12 (T.T.A.B. June 16, 2006) (“Inasmuch
4 as respondent never responded to petitioner’s requests for admissions, the requests are deemed
5 admitted.”); The Board routinely grants summary judgment where all elements of likelihood of
6 confusion have been established by a parties’ failure to respond to requests for admission. *See e.g.*,
7 *Royal Bodycare, Inc. v. Miracle Minerals, Inc.*, Cancellation No. 30,109, 2001 WL 403256, at *2
8 (T.T.A.B. April 19, 2001) (unpublished); *Principal Financial Services, Inc. v. Beacon Bank*, Opposition
9 No. 91,156,074 (T.T.A.B. May 26, 2004) (unpublished).

10 Applicant’s Answer failed to specifically deny almost all of Opposer’s claims. Each claim that
11 Opposer did not specifically deny in its Answer constitutes an admission. *See Fed. R. Civ. P. 8(d)*
12 (“Averments in a pleading to which a responsive pleading is required, other than those as to the amount
13 of damage, are admitted when not denied in the responsive pleading.”); *see also Balston, Inc. v. Finite*
14 *Filter Co.*, 212 USPQ 210, 213 (T.T.A.B. 1981) (holding “applicant’s failure to deny . . . must be
15 construed an admission” where applicant’s answer to opposer’s allegations in its notice of opposition
16 was not clear).

17 Here, Applicant admits in his Answer that “opposer is the owner of numerous registrations for
18 rockstar” Furthermore, Applicant fails to specifically deny that his applied for mark is likely to be
19 confused with Opposer’s marks. Rather, the thrust of Applicant’s one page Answer is that his logo
20 differs from Rockstar’s logo:

21 the DEFENDANTS logo consisted of a distressed worn looking skull and
22 crossbones with an old cowboy hat, there is no resemblance what so ever [sic]
23 between a western skull and crossbones cowboy hat.....there is no possible
24 way that the consumer would likely be confused, or deceived or cause mistake as
25 to source of sponsorship or affiliation when energy drinks and juices are in the
26 beverage cooler with a big star logo representing rockstar energy drink.....as
27 compared to the consumer looking in the salsa and chips section of the
28 convenience store.

26 *See Zerounian Decl. Exh. C.*

1 Pointing to differences in the parties' logos, however, is not sufficient to overcome likely
2 confusion in an opposition proceeding before the Board where word marks are at issue. *In re Melville*
3 *Corp.*, 18 USPQ2d 1286, 1991 TTAB LEXIS 18 (T.T.A.B. 1991) ("These marks are identical words.
4 While applicant's mark is in script form and registrant's is in block letters, that is the only difference
5 between them and that is not a significant difference . . . [R]ights in such a mark reside in the term
6 itself rather than in any particular form thereof."); Trademark Manual of Examining Procedure
7 ("TMEP") § 1207.01(c)(iii) (2007 rev.) ("The rights associated with a mark in standard characters
8 reside in the wording (or other literal element, e.g., letters, numerals, punctuation) and not in any
9 particular display. Therefore, an applicant cannot, by presenting its mark in special form, avoid
10 likelihood of confusion with a mark that is registered in standard characters because the registered
11 marks presumably could be used in the same manner of display.") Applicant's failure to deny
12 Opposer's claim that the marks are confusingly similar constitutes a binding admission that confusion is
13 likely.

14 In determining whether there is a likelihood of confusion, the Board considers the factors set
15 forth in *E.I. Dupont De Nemours & Co.*, 476 F 2d 1357, 1361 (C.C.P.A. 1973). These factors either
16 favor Opposer or are neutral. The relevant factors include:

- 17 (1) The similarity or dissimilarity of the marks in their entireties as to appearance,
18 sound, connotation and commercial impression.
- 19 (2) The similarity or dissimilarity and nature of the goods or services as described
20 in an application or registration or in connection with which a prior mark is in
21 use.
- 22 (3) The similarity or dissimilarity of established, likely-to-continue trade channels.
- 23 (4) The conditions under which and buyers to whom sales are made, i.e. "impulse"
24 vs. careful, sophisticated purchasing.
- 25 (5) The fame of the prior mark (sales, advertising, length of use).
- 26 (6) The number and nature of similar marks in use on similar goods.
- 27 (7) The nature and extent of any actual confusion.
- 28 (8) The length of time during and conditions under which there has been
concurrent use without evidence of actual confusion.

- 1 (9) The variety of goods on which a mark is or is not used (house mark, “family”
2 mark, product mark).
- 3 (10) The market interface between applicant and the owner of a prior mark:
- 4 (a) a mere “consent” to register or use.
- 5 (b) agreement provisions designed to preclude confusion, i.e. limitations on
6 continued use of the marks by each party.
- 7 (c) assignment of mark, application, registration and good will of the related
8 business.
- 9 (d) laches and estoppel attributable to owner of prior mark and indicative of
10 lack of confusion.
- 11 (11) The extent to which applicant has a right to exclude others from use of its mark
12 on its goods.
- 13 (12) The extent of potential confusion, i.e., whether *de minimis* or substantial.
- 14 (13) Any other established fact probative of the effect of use.

15 *Id.* at 1361.

16 **1. The ROCKSTAR Marks are Inherently Strong and Therefore Entitled to a Broad
17 Scope of Protection**

18 Applicant’s admissions establish that Opposer’s ROCKSTAR Marks are extremely strong and
19 entitled to a broad scope of protection. Specifically, Applicant admits that Opposer’s ROCKSTAR
20 mark is: “is an extremely strong, well-known and distinctive mark” (RFA No. 32); is strong by virtue of
21 widespread sales and promotion (RFA No. 10); and is well-known and inherently distinctive (RFA Nos.
22 37-38). The undisputed record establishes that the ROCKSTAR Marks are extremely strong and
23 distinctive.

24 The strength of Opposer’s ROCKSTAR Marks, therefore, weighs in favor of finding a
25 likelihood of confusion.

26 **2. Confusion is Likely Because the Dominant Portion of the Parties’ Marks is Identical**

27 It is well settled that “one feature of a mark may be more significant than other features, and
28 that it is proper to give greater force and effect to that dominant feature.” *Giant Food, Inc. v. Nation’s
Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983); *See also*, 3 McCarthy on

1 Trademarks § 23.44 (4th ed. 2002) (if the “dominant portion of both marks is the same, then
2 confusion may be likely, notwithstanding peripheral differences”).

3 Opposer’s ROCKSTAR Marks include ROCKSTAR as a standalone mark, in addition to
4 numerous other trademarks, the dominant elements of which are ROCKSTAR. As with Opposer’s
5 ROCKSTAR Marks, the dominant term in Applicant’s ROCKSTAR SALSA mark is the word
6 “ROCKSTAR.” The SALSA portion of Applicant’s mark is merely descriptive of his products, and
7 is unregistrable, as evidenced by Applicant’s disclaimer of his rights to that term. *See* TMEP §
8 1213.08(b) (“Unregistrable matter must be disclaimed in its entirety”); TMEP”) TMEP § 1213 (“In a
9 trademark application or registration, a disclaimer is a statement that the applicant or registrant does
10 not claim the exclusive right to use a specified element or elements of the mark.”); TMEP § 1213.010
11 (“Typically, disclaimed matter will not be regarded as the dominant, or most significant, feature of a
12 mark.”).

13 Applicant has not and cannot deny that the term “ROCKSTAR” is the dominant portion of both
14 parties’ marks. When marks share the same dominant element, confusion is likely. *See, e.g., Giant*
15 *Food*, 710 F.2d at 1570-71, 218 U.S.P.Q. at 395 (noting that the dominant portion of both applicant’s
16 GIANT HAMBURGERS mark and opposers’ GIANT FOOD, SUPER GIANT, GIANT FOOD &
17 Design, and GIANT & Design marks was the word GIANT and concluding that confusion was likely
18 because the marks were similar in appearance, sound and overall commercial impression); *In re*
19 *Denisi*, 225 USPQ 624, 624 (T.T.A.B. 1985) (holding “if the dominant portion of both marks is the
20 same, then confusion may be likely notwithstanding peripheral differences”); *In re Apparel Ventures,*
21 *Inc.*, 229 USPQ 225, 226 (T.T.A.B. 1986) (“SPARKS’ is the dominant portion of applicant’s mark
22 and it is all of the registered mark. In light of this fact, and contrary to applicant’s contentions, the
23 marks create similar commercial impressions. They are similar in meaning, sound and appearance.”);
24 *In re Marvin Lumber and Cedar Company*, 2006 TTAB LEXIS 403 (T.T.A.B. Sept. 6, 2006) (finding
25 that INFINITY is confusingly similar to INFINITY ENCORE BY AMERICAN); *In re Stonestreet, LLC*,
26 2002 TTAB LEXIS 521 (T.T.A.B. July 18, 2002) (finding that BUCKEYE for wine is confusingly
27 similar to BUCKEYE SPARKLING DRY for beer); *In re paragon AG*, 2002 TTAB LEXIS 705
28 (T.T.A.B. Nov. 14, 2002) (finding that PARAGON is confusingly similar to PARAGON

1 REPRODUCTIONS and PARAGON VINTAGE).

2 Moreover, in determining the similarity of the marks, portions of each mark that are “descriptive
3 or generic with respect to the involved goods . . . [are given] less weight.” *In re Nat'l Data Corp.*, 753
4 F.2d 1056, 1058 (Fed. Cir. 1985). As evidenced by the disclaimer, the SALSA portion of Applicant’s
5 mark is generic. See TMEP § 1213.08(b) (“Unregistrable matter must be disclaimed in its entirety”).
6 Where a junior uses incorporates the entire fanciful mark of another, the addition of a descriptive or
7 generic term is not sufficient to avoid consumer confusion. See *Frehling v. Int’l Select Group*, 192
8 F.3d 1330, 1337 (11th Cir. 1999) (finding likelihood of confusion because “BELL’OGGETTI
9 entirely encompasses OGGETTI and merely adds a descriptive adjective” to the dominant portion of
10 the mark); *King-Kup Candies, Inc. v. King Candy Co.*, 48 C.C.P.A. 948, 950 (C.C.P.A. 1961)
11 (finding likelihood of confusion between KING-KUP and KINGS’s because “[i]f all that a newcomer
12 in the field need do in order to avoid the charge of confusing similarity is to select a word descriptive
13 of his goods and combine it with a word which is the dominant feature of a registered trademark so
14 that the borrowed word becomes the dominant feature of his mark, the registered trade-mark soon
15 becomes of little value.”); *Bellbrook Dairies, Inc. v. Hawthorn-Mellody Farms Dairy, Inc.*, 45
16 C.C.P.A. 842, 843 (C.C.P.A. 1958) (finding likelihood of confusion between VITA-SLIM and SLIM
17 because “[o]ne may not appropriate the entire mark of another and avoid a likelihood of confusion by
18 the addition thereto of descriptive or otherwise subordinate matter”).

19 The ROCKSTAR Marks and the ROCKSTAR SALSA mark create the same commercial
20 impression. The word ROCKSTAR dominates the commercial impression of the respective marks. To
21 make matters even worse, both marks are not ROCK STAR as two words, which has a standard
22 dictionary definition, but rather ROCKSTAR—as one word, which does not.

23 The ROCKSTAR component of Opposer’s admittedly extremely strong and inherently
24 distinctive ROCKSTAR Marks is arbitrary in that it does not suggest any information about the nature,
25 type, or characteristics of the related services to the consumer. Applicant similarly has selected the
26 word ROCKSTAR for its mark, which is similarly arbitrary in relation to salsa. The arbitrary use of the
27 one word version of the word ROCK STAR—commonly associated with popular musicians of the rock
28 n’ roll genre—by both parties does not create a different impression when used by either party on their

1 respective products. Because of the marks' striking similarity in sight, sound, and meaning, both as to
2 their dominant element and in their entirety, Applicant's mark here creates a commercial impression
3 very similar to that of the ROCKSTAR Marks. See *Palm Bay Imports v. Veuve Clicquot Ponsardin*,
4 396 F.3d 1369 (Fed. Cir. 2005). This factor weighs in favor of finding a likelihood of confusion,
5 particularly with respect to a strong and well-known mark that is entitled to broad protection, and
6 especially in the parties' shared food and beverage industry.

7 This factor heavily weighs in favor of Opposer.

8 **3. The Goods are Similar**

9 To prove likelihood of confusion, "it is enough that the goods or services are related in some
10 manner or that circumstances surrounding their marketing are such that they would be likely to be seen
11 by the same person under circumstances which could give rise, because of the marks used thereon, to a
12 mistaken belief that they originate from or are in some way associated with the same producer or that
13 there is an association between the producers of each parties' goods or services." *In re Melville Corp.*,
14 18 USPQ2d 1286, 1991 TTAB LEXIS 18, * 3 (T.T.A.B. 1991) (finding a likelihood of confusion
15 because "[t]he items sold by applicant and registrant are considered to be complimentary goods."); *In*
16 *re Opus One, Inc.*, 60 USPQ2d 1812 (T.T.A.B. 2001) (OPUS ONE for wines confusingly similar to
17 same mark for restaurant services); see also *Kraft, Inc. v. Country Club Food Indus.*, 230 USPQ 549
18 (T.T.A.B. 1986) (finding PHILADELPHIA'S FAMOUS CHEESECAKE was confusingly similar to
19 Kraft's PHILADELPHIA mark used with cream cheese because cream cheese and cheesecake are
20 related). "Thus, even if the goods in question are different from, and thus not related to, one another
21 in kind, the same goods can be related in the minds of the consuming public as to the origin of the
22 goods. It is this sense of relatedness that matters in the likelihood of confusion analysis." *Recot, Inc.*
23 *v. M.C. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000).

24 It is axiomatic that "the greater the similarity in the marks, the lesser the similarity required in
25 the goods or services of the parties to support a finding of likely confusion." McCarthy, § 23:20.50.
26 Moreover, "[i]f the marks are identical, then the degree of similarity between the parties' goods or
27 services can be quite large and there will still be likelihood of confusion." *Id.* If the marks are very
28 similar, it is "only necessary that there be some viable relationship between the goods or services in

1 order to support a holding of likelihood of confusion.” *In re Concordia International Forwarding*
2 *Corp.*, 222 USPQ 2d 355, 356 (T.T.A.B. 1983); *see also In re Opus One, Inc.*, 60 USPQ2d 1812
3 (T.T.A.B. 2001) (“Where the applicant’s mark is identical to the registrant’s mark, . . . there need be
4 only a viable relationship between the respective goods or services in order to find that likelihood of
5 confusion exists.”)

6 Applicant admits that his salsa will be confused with Opposer’s beverages. Specifically,
7 Applicant admits that “consumers will confuse the source of salsa bearing or identified by the
8 ROCKSTAR SALSA MARK with energy drinks bearing the ROCKSTAR MARKS.” RFA No. 44.
9 Furthermore, Applicant admits that “the ROCKSTAR MARKS and the ROCKSTAR SALSA MARK
10 are sufficiently related to each other for consumers to assume that a company that sells energy drinks
11 under the ROCKSTAR MARKS sponsors, is affiliated with, or related to, the maker of salsa sold under
12 the ROCKSTAR SALSA MARK.” RFA No. 5. Applicant admits that “[e]nergy drinks and salsa are
13 related goods” (RFA No. 11); “people consume salsa with energy drinks” (RFA No. 24); and “people
14 consume salsa with beverages” (RFA No. 9). It is therefore beyond dispute that these food and
15 beverages are complementary, and that consumers will confuse the source of the respective products.

16 Moreover, consumers also expect salsa and beverages sold under the same brands to be related
17 because numerous other companies sell them under the same brand. The numerous registrations
18 demonstrate that salsa and beverages and energy drinks are sold by the same companies under the same
19 brands. *See Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (holding
20 “evidence, such as whether a single company sells the goods and services of both parties, if presented, is
21 relevant to the relatedness analysis . . .”). These registrations include:

- 22 1. BI2MUNO, U.S. Reg. No. 3376147, for “. . . salsa . . . non-alcoholic energy drinks . . .”;
- 23 2. BI MUNO, U.S. Reg. No. 3199028, for “. . . salsa . . . non-alcoholic energy drinks . . .”;
- 24 3. AMAZONAS RAINFOREST PRODUCT, U.S. Reg. No. 3217914, for “. . . salsa . . . Fruit
25 drinks, fruit juices, . . . , soft drinks . . .”;
- 26 4. SMART SPOT, U.S. Reg. No. 3395735, for “. . . salsa . . . non-alcoholic sports drinks . . .
27 non-alcoholic and non-carbonated fruit-flavored drinks, fruit juice and juice drinks . . . ; soft
28 drinks . . .”;

- 1 5. SMART CHOICES MADE EASY, U.S. Reg. No. 3101813, for "... salsa ... non-alcoholic
2 sports drinks ... non-alcoholic and non-carbonated fruit-flavored drinks; fruit juice and fruit
3 juice drinks ... soft drinks ...";
- 4 6. SENSATIONAL, U.S. Reg. No. 2632529, for "... salsa ... carbonated and non-carbonated
5 soft drinks ...";
- 6 7. DESERT PEPPER TRADING COMPANY, U.S. Reg. No. 3212374, for "Mexican style food
7 products, namely salsa; ... drinks ...";
- 8 8. bust of Paul Newman, U.S. Reg. No. 3145005, for "... salsa ... fruit juice drinks";
- 9 9. MEMPHIS CHAMPIONSHIP BARBEQUE, U.S. Reg. No. 3317387, for "... salsa ...
10 beverages, namely, lemonade, soft drinks, soda water, root beer.";
- 11 10. RAFAEL'S FOODS, U.S. Reg. No. 3226765, for "... salsa products ... and health drinks".³

12 Zerounian Decl. ¶ 9, Exh. E.

13 Accordingly, this factor also favors Opposer.

14 4. The Trade Channels are Similar

15 The parties' trade channels directly overlap. Where services travel through the same or
16 related trade channels, likely confusion increases. *DuPont*, 476 F.2d at 1361, 177 USPQ at 567. The
17 services described in Opposer's ROCKSTAR registrations and Applicant's application are
18 unrestricted as to channels of trade. Accordingly, all of the parties' services must be assumed to
19 travel in all of the channels of trade considered typical for such services. *See Bongrain Int'l (Am.)*
20 *Corp. v. Moquet Ltd.*, 230 USPQ 626, 628 (T.T.A.B. 1986); *In re Apparel Ventures, Inc.*, 229 USPQ
21 225, 227 (T.T.A.B. 1986).

22
23
24 ³ There are also over twenty five intent-to-use and pending applications for the same brand on both
25 salsa and energy drinks, including the following: U.S. Serial No. 78859654 for PHILOSOPHY; U.S.
26 Serial No. 76659783 for EATING RIGHT; U.S. Serial No. 76666322 for EATING RIGHT; U.S.
27 Serial No. 76669345 for EATING RIGHT UNITING FLAVOR & NUTRITION; U.S. Serial No.
28 77282490 for RESPECT FOR NATURE. PASSION FOR QUALITY; U.S. Serial No. 77295002 for
RESPE TO A LA NATURALEZA. PASIÓN POR LA CALIDAD; U.S. Serial No. 77975476 for UP
& UP; U.S. Serial No. 78592238 for POWER OF ONE; U.S. Serial No. 78793375 for LOVE FOOD,
LOVE LIFE; U.S. Serial No. 78707584 for EATURNA. Zerounian Decl. ¶ 10, Exh. F.

1 Applicant admits that the products of both Applicant and Opposer are sold at some of the same
2 establishments. *See* RFA No. 8. It is also beyond dispute that Applicant's and Opposer's products are
3 both sold at the same retail locations, grocery stores, convenience stores, and other on-premise
4 establishments. *See* RFA Nos. 12, 13, 14, 15, 16, 18, 20, 21, 22, 29, 33, 40, 41, 42, 43, 46, and 47.
5 Moreover, Applicant admits that he intends to target consumers and potential consumers of Opposer's
6 energy drinks. *See* RFA No. 29. This further supports a finding of likelihood of confusion. *See Nina*
7 *Ricci S.A.R.L. v. E.T.F. Enter., Inc.*, 889 F.2d 1070, 1074 (Fed. Cir. 1989) (finding a likelihood of
8 confusion between confusingly similar marks because "the goods of the parties would be sold in some of
9 the same stores . . ."); *Dent Doctor, Inc. v. Bates*, 2003 TTAB LEXIS 84 (T.T.A.B. 2003).

10 Accordingly, this factor also favors Opposer.

11 **5. The Goods are "Impulse" Purchases**

12 Both Applicant's salsa and Opposer's beverages are low-cost impulse purchases. "When
13 products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is
14 increased because purchasers of such products are held to a lesser standard of purchasing care." *Recot*,
15 214 F.3d at 1329 (holding that "the fact that the goods themselves are different--dog food and human
16 food--does not compel a conclusion that consumers may not confuse the origin of the foods in hasty,
17 economically painless, transactions."); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1316 (Fed.
18 Cir. 2003) (holding that tequila is an impulse purchase); *In re Sailerbrau Franz v. Sailer*, 23 USPQ2d
19 1719, 1720 (T.T.A.B. 1992); *South Beach Beverage Company, Inc. v. Schwartz*, 2005 TTAB LEXIS 193,
20 *24, Opposition No. 91121457 (T.T.A.B. May 9, 2005) (holding that tea and fruit beverages are impulse
21 goods; "[t]he fact that, as acknowledged by applicant; his ultimate consumers may be unsophisticated,
22 only increases the likelihood of confusion"); *Beer Nuts, Inc. v. Clover Club Foods, Co.*, 805 F.2d 920
23 (10th Cir. 1986) (holding that relatively inexpensive snack foods are impulse goods).

24 Applicant admits that the goods of both parties are impulse goods and that consumers of salsa are
25 not sophisticated. *See* RFA Nos. 35-36, 45. Accordingly, this factor also favors Opposer.

26 **6. Fame**

27 Opposer's ROCKSTAR mark has been used continuously in commerce since 2001. *See* RFA
28 No. 3. Applicant admits that Weiner's ROCKSTAR mark is: "is an extremely strong, well-known and

1 distinctive mark” (RFA No. 32); is strong by virtue of widespread sales and promotion (RFA No. 10);
2 and is well-known and inherently distinctive (RFA Nos. 37-38). This factor also weights in favor of
3 Opposer.

4 **7. Third Party Marks**

5 There is no evidence that any third party uses the ROCKSTAR mark in the United States for
6 good and beverages except for Opposer. This enhances likelihood of confusion. *See Frehling v. Int’l*
7 *Select Group*, 192 F.3d 1330, 1336 (11th Cir. 1999) (“The less that third parties use the mark, the
8 stronger it is, and the more protection it deserves.”); *Jockey Int’l, Inc. v. Butler*, 3 USPQ2d 1607, 1612
9 (T.T.A.B. 1987) (“No third-party use evidence having been presented, we conclude that the JOCKEY
10 word and design marks are arbitrary in nature as well as famous. This is also a factor which broadens
11 the scope of the marks’ protection and the propensity of purchasers to be confused when confronted with
12 similar marks of others.”) This factor strongly favors Opposer.

13 **8. Actual Confusion / Concurrent Use**

14 Although evidence of actual confusion is competent evidence of confusing similarity, the
15 opposite is not true. The test for confusing similarity “is not actual confusion, but likelihood of
16 confusion.” *South Beach Beverage*, 2005 TTAB LEXIS 193, *25; *see also Helene Curtis Industries Inc.*
17 *v. Suave Shoe Corp.*, 13 USPQ2d 1618 (T.T.A.B. 1989) (holding that evidence of incidents of actual
18 confusion is notoriously difficult to obtain, and is clearly not necessary in order to establish that
19 confusion is likely”); *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (T.T.A.B. 1992) (“the
20 absence of any reported instances of actual confusion would be meaningful only if the record indicated
21 appreciable and continuous use by applicant of its mark for a significant period of time in the same
22 markets as those served by opposer under its marks.”). Therefore, this factor does not favor Applicant.

23 **9. Other Goods**

24 Opposer uses the ROCKSTAR mark on a wide variety of consumables. RFA No. 2. Given this
25 wide range of use, consumers would expect any food and beverage that uses the inherently distinctive
26 ROCKSTAR mark to be associated with Opposer. This factor favors Opposer.

27 **10. Interface Between the Parties**

28 The parties do not have any prior relationship. Applicant has not asserted a laches or estoppel

1 defense. Accordingly, this factor does not favor Applicant.

2 **11. Applicant's Right To Use**

3 Opposer owns numerous prior registrations that are a matter of record. Opposer, therefore, has
4 the right to exclude others from using a confusingly similar mark on similar goods. *See* 15 U.S.C. 1115;
5 15 U.S.C. 1057(b). This factor favors Opposer.

6 **12. The Extent of Potential Confusion**

7 Applicant admits that he intends to target Opposer's consumers (RFA No. 29), that the goods will
8 move in the same channels of trade (RFA Nos. 8, 12, 13, 14, 15, 16, 18, 20, 21, 22, 29, 33, 40, 41, 42, 43,
9 46, 47), that the goods are related (RFA No. 17), and that confusion is likely (RFA Nos. 5; 44). This
10 factor strongly favors Opposer.

11 **13. Other Probative Facts**

12 Applicant admits that he knew of Opposer's mark when he adopted his mark but chose to
13 proceed anyway. RFA Nos. 1, 26. This breached Applicant's duty to stay away from the senior mark.
14 *See Carl Karcher Enter., Inc. v. Stars Rests. Corp.*, 35 USPQ2d 1125, 1133 (T.T.A.B. 1995) (“[A]
15 newcomer has both the opportunity and obligation to avoid confusion. Consequently, a party which
16 knowingly adopts a mark similar to one used by another for the same or closely related goods or services
17 does so at its own peril; all doubts on the issue of likelihood of confusion must be resolved against the
18 newcomer.”)

19 Any doubts are resolved in favor of the established mark. *See Specialty Brands, Inc. v. Coffee*
20 *Bean Distribs., Inc.*, 748 F.2d 669, 674, 223 USPQ 1281, 1284 (Fed. Cir. 1984) (“When balancing the
21 interest in a famous, established mark against the interests of a newcomer, we are compelled to
22 resolve doubts on this point against the newcomer.”); *General Foods Corp. v. ITT Cont'l Baking Co.*,
23 196 USPQ 189 (T.T.A.B. 1977) (FLAV `N BAKE confusingly similar to Opposers' SHAKE `N
24 BAKE mark for similar goods which had been used for many years and which represented a
25 considerable investment); *Hancock v. American Steel & Wire Co.*, 203 F.2d 737, 741, 97 USPQ 330,
26 333 (C.C.P.A. 1953) (any doubt should be resolved in favor of the senior user especially where a mark
27 had been registered years prior to applicant's first use and where sales and nationwide goodwill had
28 developed with substantial sales and advertising).

1 The rationale for placing an obligation on the newcomer is that selection of a dissimilar mark is
2 relatively easy. By contrast, a junior user's selection of a close mark suggests an intent to unfairly benefit
3 from the senior user's hard earned reputation. As noted by the Federal Circuit:

4 The law has clearly been well settled for a longer time than this court has been
5 dealing with the problem to the effect that the field from which trademarks can be
6 selected is unlimited, that there is therefore no excuse for even approaching the
7 well-known trademark of a competitor, that to do so raises "but one inference --
8 that of gaining advantage from the wide reputation established by appellant in the
9 goods bearing its mark," and that all doubt as to whether confusion, mistake, or
10 deception is likely is to be resolved against the newcomer . . .

11 *Specialty Brands, Inc.*, 748 F.2d at 676, 223 USPQ at 1285 (quoting *Planters Nut & Chocolate Co. v.*
12 *Crown Nut Co., Inc.*, 305 F.2d 916, 924-25, 134 USPQ 504, 511 (C.C.P.A. 1962)). As the newcomer,
13 Applicant has not fulfilled his obligation to stay away from Opposer's long-established and well-
14 known ROCKSTAR Marks. In addition, the presence of the ROCKSTAR Marks on the Principal
15 Register put Applicant on constructive notice of Opposer's prior rights at the time of the filing.

16 This factor similarly favors Opposer.

17 **II. THE ADMITTED AND UNDISPUTED FACTS ESTABLISH APPLICANT SEEKS TO**
18 **OBTAIN HIS REGISTRATION THROUGH FRAUD**

19 Applicant admits that "Applicant has not sold its salsa in interstate commerce." RFA No. 17; *see*
20 *also* RFA No. 48 (Applicant admits that Applicant "did not sell its salsa in interstate commerce prior to
21 December 10, 2004"); RFA No. 48 (Applicant does not have any "evidence that shows that [Applicant]
22 sold its salsa in interstate commerce prior to December 10, 2004.").

23 The Trademark Manual of Examining Procedure ("TMEP") 806.01(a), which sets forth the
24 requirements for filing a use based trademark application, provides in pertinent part:

25 Under 15 U.S.C. §1051(a) and 37 C.F.R. §2.34(a)(1), to establish a basis under
26 §1(a) of the Trademark Act, the applicant must:

27 (1) Submit a verified statement that the mark is in use in commerce on or in
28 connection with the goods or services listed in the application. 15 U.S.C.
§1051(a)(3)(C). . . . ;

...

1 (3) Specify the date of the applicant's first use of the mark in commerce as a
2 trademark or service mark (37 C.F.R. §2.34(a)(1)(iii); TMEP §903.02); and

3 ...

4 The Trademark Act defines "commerce" as commerce which may lawfully be
5 regulated by Congress, and "use in commerce" as the bona fide use of a mark in
6 the ordinary course of trade. 15 U.S.C. §1127; 37 C.F.R. §2.34(c). See TMEP
§§901 et seq.

7 *Id.* (emphasis added); *see also* TMEP § 901 ("In a §1(a) application, the applicant must use the mark in
8 commerce on or in connection with all the goods and services listed in the application on or before the
9 filing date of the application. The application must include a verified statement (i.e., a statement
10 supported by an affidavit or declaration under 37 C.F.R. §2.20) that the mark is in use in commerce.")
11 (emphasis added).

12 "A purely intrastate use does not provide a basis for federal registration." TMEP § 901.03.
13 Here, as set forth above, Applicant has admitted that it never sold its products in interstate commerce.
14 *See* RFA No.17. Nevertheless, in his application, Applicant declared under oath that he had sold his
15 salsa in interstate commerce.

16 Applicant's fraudulent misstatement is material because Applicant's Section 1(a) application
17 would not have been published for opposition had Applicant been truthful. *See Helcon Corp. v.*
18 *Magnetic Video Corp.*, 199 USPQ 502, 504 n.3 (T.T.A.B. 1978) (misstatement to the date of first use is
19 fraudulent if there was no valid use prior to the filing date). Therefore, the Board should also refuse
20 registration of Opposer's application because the undisputed evidence establishes that Applicant's
21 trademark application contains a fraudulent material misstatement.

22 CONCLUSION

23 Taken together, under *Du Pont* the admitted facts compel that there is no genuine issue of
24 material fact regarding a finding of a likelihood of confusion. Furthermore, the undisputed evidence
25 established that Applicant's application includes fraudulent misstatements about whether the mark has

26 //

27 //

1 | been used in interstate commerce. Summary judgment therefore should be granted and registration
2 | should be refused.

3 | Dated: May 16, 2008.

Respectfully submitted,
HARVEY SISKIND LLP

4 | 
5 | By: _____
Raffi V. Zerounian

6 | Ian K. Boyd
7 | Raffi V. Zerounian
8 | Four Embarcadero Center, 39th Floor
9 | San Francisco, CA 94111
10 | (415) 354-0100 Telephone
11 | (415) 391-7124 Facsimile

12 | Attorneys for Opposer,
13 | RUSSELL G. WEINER

CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10

"Express Mail" mailing label number: ED 673962332 US

Date of Deposit: May 16, 2008

I hereby certify that the following documents (Opposition No. 91179982):

- OPPOSERS' REPLY BRIEF ON FINAL HEARING, dated May 16, 2008
- DECLARATION OF RAFFI V. ZEROUNIAN IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM, dated May 15, 2008
- DECLARATION OF RUSSELL G. WEINER IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM, dated May 15, 2008

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" under 37 CFR § 1.10 on the date of deposit indicated above and is addressed as follows: "UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451," by Cynthia Lee.



CYNTHIA LEE

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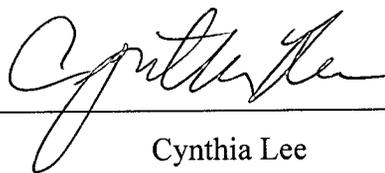
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Cynthia Lee

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

In the Matter of Application Serial No. 78/942,645 for the mark ROCKSTAR SALSA filed on August 1, 2006 and published in the Official Gazette on September 11, 2007.

RUSSELL G. WEINER,

Opposer,

v.

JERRY ZARNEKEE,

Applicant.

Opposition No. 91179982

**DECLARATION OF RUSSELL G.
WEINER IN SUPPORT OF
OPPOSER'S MOTION FOR
SUMMARY JUDGMENT AND
SUPPORTING MEMORANDUM**

14 I, Russell G. Weiner, declare:

15 1. I am the Opposer in this matter, and serve as the C.E.O. of Rockstar, Inc.
16 ("Rockstar"). I have continuously and substantially licensed the ROCKSTAR marks in interstate
17 commerce for Rockstar's energy drinks since at least as early as 2001 to great success.

18 2. Rockstar is a well-known producer and international distributor of energy drinks.
19 Rockstar has sold over one *billion* cans of product and annually has sales of several hundred million
20 dollars.

21 3. Having begun use of the ROCKSTAR Marks at least as early as 2001, Opposer has
22 established common law rights since that time with continuous use throughout the United States for
23 many of the goods referenced above, in addition to his federal registration rights.

24 4. I have an extensive portfolio of trademarks that bear the mark ROCKSTAR, including
25 the following federally registered trademarks:

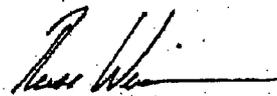
- 26 • ROCKSTAR, U.S. Registration No. 3398516, for "sports drinks, namely, energy drinks" in
27 Class 32; Opposer filed his application to register this mark on April 17, 2006, and the mark
28 was registered on March 18, 2008;

- 1 • ROCKSTAR ENERGY DRINK, Reg. No. 2613067, for "sports drinks, namely, energy
2 drinks" in Class 32; Opposer filed his application to register this mark on August 19, 1999,
3 and the mark was registered on the Principal Register on August 27, 2002;
- 4 • ROCKSTAR (Stylized), Reg. No. 2784403, for "sports drinks, namely, energy drinks" in
5 Class 32; Opposer filed his application to register this mark on December 13, 2002, and the
6 mark was registered on the Principal Register on November 18, 2003;
- 7 • ROCKSTAR ENERGY COLA, U.S. Trademark Registration No. 3181547, for "sports
8 drinks; namely colas" in Class 32; Opposer filed his application to register this mark on
9 March 10, 2004, and the mark was registered on the Principal Register on December 5, 2006;
- 10 • ROCKSTAR JUICED, U.S. Trademark Registration No. 3190229, for "sports drinks,
11 namely, energy drinks" in Class 32; Opposer filed his application to register this mark on
12 December 14, 2005, and the mark was registered on the Principal Register on December 26,
13 2006;
- 14 • ROCKSTAR ROASTED, U.S. Trademark Registration No. 3423897, for "Energy drinks" in
15 Class 32; Opposer filed his application to register this mark on May 22, 2007, and the mark
16 was registered on the Principal Register on May 6, 2008;
- 17 • PARTY LIKE A ROCKSTAR, U.S. Trademark Registration No. 2545247, for "sports drinks,
18 namely, energy drinks" in Class 32; Opposer filed his application to register this mark on
19 February 29, 2000, and the mark was registered on the Principal Register on registered on
20 March 5, 2002;

21 True and correct copies of these registrations are attached hereto as Exhibit A.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct.

24 Executed in Los Angeles, California on May 15, 2008.

25
26 

27 Russell G. Weiner
28

Exhibit A

**To Declaration of Russell G. Weiner in
Support of Opposer's Motion for Summary
Judgment and Supporting Memorandum**

Offered by Opposer Russell G. Weiner

Russell G. Weiner v.

Jerry Zarnekee

Opposition No. 91179982

Application Serial No. 78942645



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ROCKSTAR

Word Mark	ROCKSTAR
Goods and Services	IC 032. US 045 046 048. G & S: Sports drinks, namely, energy drinks. FIRST USE: 19990819. FIRST USE IN COMMERCE: 19990819
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78862808
Filing Date	April 17, 2006
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 1, 2008
Registration Number	3398516
International Registration Number	0885150; 0907841
Registration Date	March 18, 2008
Owner	(REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES P.O. Box 27740 101 Convention Center Drive, Suite 777 Las Vegas NEVADA 89126
Attorney of Record	Ian K. Boyd, Esq.
Prior Registrations	2545247;2613067;2784403
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	ROCKSTAR ENERGY DRINK
Goods and Services	IC 032. US 045 046 048. G & S: SPORTS DRINKS, NAMELY, ENERGY DRINKS. FIRST USE: 19990819. FIRST USE IN COMMERCE: 20010116
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75760313
Filing Date	August 19, 1999
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	February 1, 2000
Registration Number	2613067
Registration Date	August 27, 2002
Owner	(REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES 8 Ross Road Sausalito CALIFORNIA 94965
Attorney of Record	Ian K. Boyd
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENERGY DRINK" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
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ROCKSTAR

Word Mark	ROCKSTAR
Goods and Services	IC 032. US 045 046 048. G & S: Sports drinks, namely, energy drinks. FIRST USE: 19990108. FIRST USE IN COMMERCE: 20000108
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.01.03 - Star - a single star with five points 27.03.05 - Objects forming letters or numerals
Serial Number	78194527
Filing Date	December 13, 2002
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	August 26, 2003
Registration Number	2784403
International Registration Number	0845448
Registration Date	November 18, 2003
Owner	(REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES P.O. Box 27740 Las Vegas NEVADA 89126
Attorney of Record	Ian K. Boyd, Esq.
Prior Registrations	2545247;2613067
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark ROCKSTAR
Goods and Services IC 033. US 047 049. G & S: DISTILLED SPIRITS AND ALCOHOLIC BEVERAGE PRODUCED FROM A BREWED MALT BASE WITH NATURAL FLAVORS. FIRST USE: 20020915. FIRST USE IN COMMERCE: 20060201
Mark Drawing Code (1) TYPED DRAWING
Serial Number 78113129
Filing Date March 7, 2002
Current Filing Basis 1A
Original Filing Basis 1A;1B
Published for Opposition November 12, 2002
Registration Number 3107439
International Registration Number 0847354; 0886409; 0907841
Registration Date June 20, 2006
Owner (REGISTRANT) WEINER, RUSSELL G. INDIVIDUAL UNITED STATES P.O. BOX 27740 LAS VEGAS NEVADA 89126
Attorney of Record IAN K. BOYD
Prior Registrations 2545247;2613067
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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ROCKSTAR ENERGY COLA

Word Mark	ROCKSTAR ENERGY COLA
Goods and Services	IC 032. US 045 046 048. G & S: Soft drinks, namely colas. FIRST USE: 20040701. FIRST USE IN COMMERCE: 20040701
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78381769
Filing Date	March 10, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	December 14, 2004
Registration Number	3181547
Registration Date	December 5, 2006
Owner	(REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES 101 Convention Center Drive P. O. Box 27740 Las Vegas NEVADA 89126
Attorney of Record	Ian K. Boyd, Esq.
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENERGY COLA" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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ROCKSTAR JUICED

Word Mark	ROCKSTAR JUICED
Goods and Services	IC 032. US 045 046 048. G & S: Sports drinks, namely, energy drinks. FIRST USE: 20060201. FIRST USE IN COMMERCE: 20060201
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78773699
Filing Date	December 14, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	June 6, 2006
Registration Number	3190229
Registration Date	December 26, 2006
Owner	(REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES P.O. Box 27740 101 Convention Center Drive, Suite 777 Las Vegas NEVADA 89126
Attorney of Record	Ian K. Boyd, Esq.
Prior Registrations	2545247;2613067;2784403
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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ROCKSTAR

Word Mark	ROCKSTAR
Goods and Services	IC 033. US 047 049. G & S: Distilled spirits and alcoholic beverage produced from a brewed malt base with natural flavors. FIRST USE: 20060301. FIRST USE IN COMMERCE: 20060301
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.01.03 - Star - a single star with five points
Serial Number	78192472
Filing Date	December 9, 2002
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	October 14, 2003
Registration Number	3230400
Registration Date	April 17, 2007
Owner	(REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES P.O. Box 27740 101 Convention Center Drive, Suite 777 Las Vegas NEVADA 89126
Attorney of Record	Ian K. Boyd,
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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 (Use the "Back" button of the Internet Browser to return to TESS)
ROCKSTAR ROASTED

Word Mark	ROCKSTAR ROASTED
Goods and Services	IC 032. US 045 046 048. G & S: Energy drinks. FIRST USE: 20071215. FIRST USE IN COMMERCE: 20071215
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77187005
Filing Date	May 22, 2007
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 25, 2007
Registration Number	3423897
Registration Date	May 6, 2008
Owner	(REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES 101 Convention Center Drive Las Vegas NEVADA 89126
Attorney of Record	Ian K. Boyd
Prior Registrations	2545247;2613067;2784403;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	PARTY LIKE A ROCKSTAR
Goods and Services	IC 032. US 045 046 048. G & S: sports drinks, namely, energy drinks. FIRST USE: 19990819. FIRST USE IN COMMERCE: 20010108
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75950418
Filing Date	February 29, 2000
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	January 9, 2001
Registration Number	2545247
International Registration Number	0885610; 0882352; 0897501
Registration Date	March 5, 2002
Owner	(REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES 101 Convention Center Drive Suite 777 Las Vegas NEVADA 89126
Attorney of Record	Ian K. Boyd
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

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ROCKSTAR 21

Word Mark ROCKSTAR 21

Goods and Services IC 033. US 047 049. G & S: Distilled spirits and alcoholic beverage produced from a brewed malt base with natural flavors. FIRST USE: 20060201. FIRST USE IN COMMERCE: 20060201

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78718845

Filing Date September 22, 2005

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition May 23, 2006

Registration Number 3262855

Registration Date July 10, 2007

Owner (REGISTRANT) Weiner, Russell G. INDIVIDUAL UNITED STATES 101 Convention Center Drive Ste. 777 Las Vegas NEVADA 89126

Attorney of Record Ian K. Boyd,

Prior Registrations 2545247;2784403;AND OTHERS

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10

"Express Mail" mailing label number: ED 673962332 US

Date of Deposit: May 16, 2008

I hereby certify that the following documents (Opposition No. 91179982):

- OPPOSERS' REPLY BRIEF ON FINAL HEARING, dated May 16, 2008
- DECLARATION OF RAFFI V. ZEROUNIAN IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM, dated May 15, 2008
- DECLARATION OF RUSSELL G. WEINER IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM, dated May 15, 2008

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" under 37 CFR § 1.10 on the date of deposit indicated above and is addressed as follows: "UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451," by Cynthia Lee.



CYNTHIA LEE

CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10

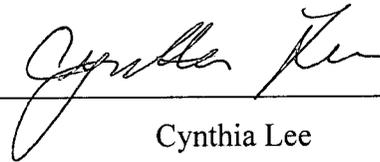
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are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" under 37 CFR § 1.10 on the date of deposit indicated above and are addressed as follows: Jerry Zarnekee, 11274 Evergreen Loop, Corona, California 92883-8477



Cynthia Lee

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

In the Matter of Application Serial No. 78/942,645 for the mark ROCKSTAR SALSA filed on August 1, 2006 and published in the Official Gazette on September 11, 2007.

RUSSELL G. WEINER,
Opposer,
v.
JERRY ZARNEKEE,
Applicant.

Opposition No. 91179982

**DECLARATION OF RAFFI V.
ZEROUNIAN IN SUPPORT OF
OPPOSER'S MOTION FOR
SUMMARY JUDGMENT AND
SUPPORTING MEMORANDUM**

14 I, Raffi V. Zerounian, declare:

15 1. I am an associate of the law firm of Harvey Siskind LLP, counsel of record for
16 Opposer Russell G. Weiner (hereinafter "Opposer").

17 2. I have personal knowledge of the matters stated herein, and, if called as a witness, I
18 could and would testify competently thereto. I make this declaration in support of Opposer's Motion
19 for Summary Judgment.

20 3. A true and correct copy of a printout from the United States Patent and Trademark
21 Office's Trademark Electronic Search System ("TESS") of Applicant's application for ROCKSTAR
22 SALSA, and showing the disclaimer of the SALSA portion of the mark, is attached hereto as Exhibit A.

23 4. A true and correct copy of Opposer's Notice of Opposition is attached hereto as Exhibit
24 B.

25 5. A true and correct copy of Applicant's Response to Opposer's Notice of Opposition is
26 attached hereto as Exhibit C.

27 6. On January 23, 2008, Opposer's counsel properly served Interrogatories, Document
28 Requests and Request for Admissions on Applicant using first class mail.

1 7. A true and correct copy of Opposer's First Set of Requests for Admissions,
2 Interrogatories, and Document Requests are attached hereto as Exhibit D.

3 8. Applicant's responses to Opposer's First Set of Requests for Admissions,
4 Interrogatories, and Documents Requests and Request were due on February 27, 2008, thirty five days
5 after service. As of the date of the signing of this declaration, we still have not received any
6 responses or objections whatsoever from Applicant to Opposer's discovery requests.

7 9. A true and correct copy of the TESS printouts of the following registrations showing
8 salsa and beverages offered under the same brand is attached hereto as Exhibit E: B12MUNO, U.S.
9 Reg. No. 3376147, for "... salsa ... non-alcoholic energy drinks"; BI MUNO, U.S. Reg. No.
10 3199028, for "... salsa ... non-alcoholic energy drinks"; AMAZONAS RAINFOREST PRODUCT,
11 U.S. Reg. No. 3217914, for "... salsa ... Fruit drinks, fruit juices, ... , soft drinks"; SMART SPOT,
12 U.S. Reg. No. 3395735, f salsa ... non-alcoholic sports drinks ... non-alcoholic and non-carbonated
13 fruit-flavored drinks, fruit juice and juice drinks ... ; soft drinks"; SMART CHOICES MADE
14 EASY, U.S. Reg. No. 3101813, for "...salsa ... non-alcoholic sports drinks ... non-alcoholic and non-
15 carbonated fruit-flavored drinks; fruit juice and fruit juice drinks ... soft drinks"; SENSATIONAL,
16 U.S. Reg. No. 2632529, for "... salsa ... carbonated and non-carbonated soft drinks"; DESERT
17 PEPPER TRADING COMPANY, U.S. Reg. No. 3212374, for "Mexican style food products, namely
18 salsa; ... drinks"; bust of Paul Newman, U.S. Reg. No. 3145005, for "... salsa fruit juice
19 drinks"; MEMPHIS CHAMPIONSHIP BARBEQUE, U.S. Reg. No. 3317387, for "... salsa ...
20 beverages, namely, lemonade, soft drinks, soda water, root beer."; RAFAEL'S FOODS, U.S. Reg. No.
21 3226765, for "... salsa products ... and health drinks".

22 10. A true and correct copy of the TESS printouts of the following applications showing
23 salsa and energy drinks offered under the same brand is attached hereto as Exhibit F: U.S. Serial No.
24 78859654 for PHILOSOPHY; U.S. Serial No. 76659783 for EATING RIGHT; U.S. Serial No.
25 76666322 for EATING RIGHT; U.S. Serial No. 76669345 for EATING RIGHT UNITING
26 FLAVOR & NUTRITION; U.S. Serial No. 77282490 for RESPECT FOR NATURE. PASSION
27 FOR QUALITY; U.S. Serial No. 77295002 for RESPETO A LA NATURALEZA. PASIÓN POR
28 LA CALIDAD; U.S. Serial No.77975476 for UP & UP; U.S. Serial No.78592238 for POWER OF

1 ONE; U.S. Serial No. 78793375 for LOVE FOOD, LOVE LIFE; U.S. Serial No. 78707584 for
2 EATURNA.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct.

5 Executed in San Francisco, California on May 15, 2008.

6
7 By: 
8 Raffi V. Zerounian

9
10 Harvey Siskind LLP
11 Ian K. Boyd
12 Raffi V. Zerounian
13 Four Embarcadero Center, 39th Floor
14 San Francisco, CA 94111
15 (415) 354-0100 Telephone
16 (415) 391-7124 Facsimile

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Attorneys for Opposer,
RUSSELL G. WEINER

Exhibit A
To Declaration of Raffi V. Zerounian in
Support of Opposer's Motion for Summary
Judgment and Supporting Memorandum

Offered by Opposer Russell G. Weiner

Russell G. Weiner v.
Jerry Zarnekee
Opposition No. 91179982
Application Serial No. 78942645



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ROCKSTAR SALSA

Word Mark	ROCKSTAR SALSA
Goods and Services	IC 030. US 046. G & S: Salsa. FIRST USE: 20041015. FIRST USE IN COMMERCE: 20041210
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78942645
Filing Date	August 1, 2006
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	September 11, 2007
Owner	(APPLICANT) zarnekee, jerry INDIVIDUAL UNITED STATES 11274 evergreen loop corona CALIFORNIA 92883
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SALSA" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Exhibit B
To Declaration of Raffi V. Zerounian in
Support of Opposer's Motion for Summary
Judgment and Supporting Memorandum

Offered by Opposer Russell G. Weiner

Russell G. Weiner v.

Jerry Zarnekee

Opposition No. 91179982

Application Serial No. 78942645

1 HARVEY SISKIND LLP
2 IAN K. BOYD (SBN 191434)
3 Four Embarcadero Center, 39th Floor
4 San Francisco, CA 94111
5 Telephone: (415) 354-0100
6 Facsimile: (415) 391-7124

7 Attorneys for Opposer,
8 Russell G. Weiner

9
10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
11 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**
12

13 RUSSELL G. WEINER, an individual

14 Opposer,

15 v.

16 JERRY ZARNEKEE, an individual

17 Applicant.

18 **NOTICE OF OPPOSITION**

19 Opposition No.

20 Application Serial No. 78942645

21 Published in the Official Gazette
22 on September 11, 2007

23 Opposer RUSSELL G. WEINER believes that he will be damaged by registration of the mark
24 shown in Serial No. 78942645 and hereby opposes the same.

25 **Description of Applicant's Application:** Filed on August 1, 2006. Published for Opposition
26 in the Official Gazette on September 11, 2007. Mark: ROCKSTAR SALSA in Class 30 for "Salsa."
27 Alleged first use: October 15, 2004. Alleged first use in commerce: December 10, 2004.

28 As grounds of opposition, Opposer alleges that:

1. **Ownership of Registered Marks.** Opposer is the owner of numerous U.S. Trademark
Registrations for ROCKSTAR and similar marks used in conjunction with beverages, including the
following:

• ROCKSTAR ENERGY DRINK, Reg. No. 2613067, for "sports drinks, namely, energy
drinks" in Class 32; Opposer filed his application to register this mark on August 19, 1999, and the
mark was registered on the Principal Register on August 27, 2002.

1 •ROCKSTAR (Stylized), Reg. No. 2784403, for “sports drinks, namely, energy drinks” in
2 Class 32; Opposer filed his application to register this mark on December 13, 2002, and the mark was
3 registered on the Principal Register on November 18, 2003.

4 •ROCKSTAR, U.S. Trademark Registration No. 3107439, registered on June 20, 2006, in
5 Class 33 for “distilled spirits and alcoholic beverage produced from a brewed malt base with natural
6 flavors.”

7 •PARTY LIKE A ROCKSTAR, U.S. Trademark Registration No. 2545247, registered on
8 March 5, 2002, in Class 32 for “sports drinks, namely, energy drinks.”

9 •ROCKSTAR ENERGY COLA, U.S. Trademark Registration No. 3181547, registered on
10 December 5, 2006, in Class 32, for “sports drinks; namely colas.”

11 •ROCKSTAR JUICED, U.S. Trademark Registration No. 3190229, registered on December
12 26, 2006, in Class 32 for “sports drinks, namely, energy drinks.”

13 •PARTY LIKE A ROCKSTAR, U.S. Trademark Registration No. 3213823, registered on
14 February 27, 2007, in Class 33 for “distilled spirits and alcoholic beverage produced from a brewed
15 malt base with natural flavors.”

16 •ROCKSTAR (stylized), U.S. Trademark Registration No. 3230400, registered on April 17,
17 2007, in Class 33, for “distilled spirits and alcoholic beverage produced from a brewed malt base
18 with natural flavors.”

19 •ROCKSTAR 21, U.S. Trademark Registration No. 3262855, registered on July 10, 2007, in
20 Class 33 for “distilled spirits and alcoholic beverage produced from a brewed malt base with natural
21 flavors.”

22 The foregoing registrations were based upon applications filed in the United States Patent and
23 Trademark Office on dates prior to the date of filing of Applicant’s application. Said registered
24 marks of Opposer are valid and subsisting and constitute prima facie evidence of Opposer’s exclusive
25 right to use said marks in commerce on the goods specified in said registrations. In view of the
26 similarity of the parties’ respective marks and the related nature of the parties’ respective goods,
27 Opposer alleges that Applicant’s claimed mark so resembles Opposer’s registered marks as to be
28 likely to cause confusion, or to cause mistake, or to deceive, as to source, sponsorship, or affiliation.

1 2. **Ownership of Pending Applications.** In addition to the Registered Marks noted
2 above, Opposer is the owner of numerous pending U.S. Trademark Applications for ROCKSTAR
3 and similar marks, whose filing date precedes that of Applicant's application, including the
4 following:

5 •ROCKSTAR, U.S. Serial No. 78862808, filed on April 17, 2006 in Class 32 for "sports
6 drinks, namely, energy drinks."

7 The foregoing Application has priority over Applicant's application. Again, in view of the
8 similarity of the parties' respective marks and the related nature of the parties' respective goods,
9 Opposer alleges that Applicant's claimed mark so resembles Opposer's applied-for marks as to be
10 likely to cause confusion, or to cause mistake, or to deceive, as to source, sponsorship, or affiliation.

11 WHEREFORE, Opposer prays that said application Serial No. 78942645 be rejected, that no
12 registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

13 Opposer hereby appoints Harvey Siskind LLP, a law firm composed of members of the bar of the
14 State of California, to act as attorneys for Opposer herein, with full power to prosecute said opposition,
15 to transact all relevant business with the Patent and Trademark Office and in the United States Courts
16 and to receive all official communication in connection with this opposition.

17

18 Dated: October 10, 2007

Respectfully submitted,

19

HARVEY SISKIND LLP
IAN K. BOYD

20

By /s/ Ian K. Boyd
Ian K. Boyd

21

22

23

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Exhibit C

**To Declaration of Raffi V. Zerounian in
Support of Opposer's Motion for Summary
Judgment and Supporting Memorandum**

Offered by Opposer Russell G. Weiner

Russell G. Weiner v.

Jerry Zarnekee

Opposition No. 91179982

Application Serial No. 78942645

ESTTA Tracking number: **ESTTA175572**

Filing date: **11/19/2007**

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

Proceeding	91179982
Party	Defendant zarnekee, jerry
Correspondence Address	ZARNEKEE, JERRY 11274 EVERGREEN LOOP CORONA, CA 92883-8477 jerryzarnekee@sbcglobal.net
Submission	Answer
Filer's Name	jerry zarnekee
Filer's e-mail	jerryzarnekee@sbcglobal.net
Signature	/JERRY ZARNEKEE/
Date	11/19/2007
Attachments	rockstar defendant pdf.pdf (1 page)(141750 bytes)

The DEFENDANT Responding to the following opposition is named Jerry G Zarnekee ,opposition number #9117992.

Answer To Notice Of Opposition:

#1/page 5. Opposer alledges that he will be damaged by the registration of the mark shown in serial no.78942645.opposer is the owner of numerous registrations for rockstar all pertaining to an energy drink,juice drink or cola,or tagline,"party like a rockstar....the logo used for these products is the shape of a star, these products are all beverages.

The plaintiff JERRY G ZARNEKEE contests the opposition, in that the DEFENDANTS logo is quite clearly a completely different logo on the rockstar salsa label,the DEFENDANTS logo consists of a distressed worn looking skull and crossbones with an old cowboy hat, there is no resemblance what so ever between a western skull and crossbones cowboy hat....and the star representing rockstar energy drink.....there is no possible way that the consumer would likely be confused ,or deceived or cause mistake as to the source of sponsorship or affiliation when energy drinks and juices are in the beverage cooler with a big star logo representing rockstar energy drink.....as compared to the consumer looking in the salsa and chips section of the convenience store ,,Especially when the logo is represented by a western skull and crossbones

Exhibit D

**To Declaration of Raffi V. Zerounian in
Support of Opposer's Motion for Summary
Judgment and Supporting Memorandum**

Offered by Opposer Russell G. Weiner

Russell G. Weiner v.

Jerry Zarnekee

Opposition No. 91179982

Application Serial No. 78942645

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

In the Matter of Application Serial No. 78/942,645 for the mark ROCKSTAR SALSA filed on August 1, 2006 and published in the Official Gazette on September 11, 2007.

RUSSELL G. WEINER,

Opposer,

v.

JERRY ZARNEKEE,

Applicant.

Opposition No. 91179982

**OPPOSER'S FIRST SET OF
REQUESTS FOR ADMISSIONS**

Propounding Party: Opposer Russell G. Weiner

Responding Party: Applicant Jerry Zarnekee

Set No.: ONE

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, opposer Russell G. Weiner requests that within the time period and according to the procedures prescribed by the Federal Rules of Civil Procedure, or otherwise by Trademark Trial and Appeal Board order, applicant Jerry Zarnekee respond to the following requests for admission, at the offices of Harvey Siskind LLP, Four Embarcadero Center, 39th Floor, San Francisco, California 94111.

DEFINITIONS

1. The words "YOU", "YOUR" or "APPLICANT" shall mean Jerry Zarnekee, and all of his past and present employees, agents, representatives, attorneys, assignees, licensees, organizations, associations, corporations, predecessors, successors, partnerships, or anyone else acting on behalf of Jerry Zarnekee, or otherwise subject to Jerry Zarnekee's control.

2. The term "**OPPOSER**" shall mean Russell G. Weiner, and his licensee, Rockstar, Inc.

3. The term "**ROCKSTAR MARK**" shall refer to each of the marks set forth in Paragraphs 1 and 2 of **OPPOSER'S** Notice of Opposition to U.S. Trademark Application, Serial No. 78/942,645.

4. The term "**ROCKSTAR SALSA MARK**" shall refer to the mark depicted in Applicant's U.S. Trademark Application, Serial No. 78/942,645, intended to be used in relation to the goods and services described in the application.

5. The terms "**AND**" as well as "**OR**" shall be construed either disjunctively or conjunctively so as to require the broadest response to any request for admission.

6. The singular shall always include the plural and the present tense shall always include the past tense.

7. Each request shall be admitted or denied separately and fully in writing and under oath. The admissions and denials are to be signed and sworn to by the person making them. If **YOU** refuse to admit or deny any request, in whole or in part, **YOU** must state each specific ground for **YOUR** refusal. If **YOU** claim privilege as a ground for not admitting or denying any request in whole or in part, describe the factual basis for **YOUR** claim of privilege in sufficient detail so as to permit the Court to adjudicate the validity of the claim. If **YOU** object in part to any request, admit or deny the remainder completely. If **YOU** cannot truthfully admit or deny a request **YOU** shall set forth in detail the reasons why. **YOU** shall not give "lack of information or knowledge" as the reason for failure to admit or deny unless **YOU** also state that **YOU** have made reasonable inquiry and that the information known or readily obtainable is insufficient to enable **YOU** to admit or deny the request.

REQUESTS FOR ADMISSION

REQUEST NO. 1: Admit that **YOU** were familiar with the goods Rockstar, Inc. sells and promotes under the **ROCKSTAR MARKS** prior to the filing of **YOUR** application for the **ROCKSTAR SALSA MARK**.

REQUEST NO. 2: **OPPOSER** uses the **ROCKSTAR MARKS** on a variety of energy drinks and soft beverages.

REQUEST NO. 3: **OPPOSER** has made continuous use of the **ROCKSTAR MARKS** on energy drinks since prior to any use by **YOU** of the **ROCKSTAR SALSA MARK**.

REQUEST NO. 4: **APPLICANT** has no evidence to dispute **OPPOSER'S** claim that it has made continuous use of the **ROCKSTAR MARKS** on energy drinks since prior to any use by **YOU** of the **ROCKSTAR SALSA MARK**.

REQUEST NO. 5: Admit that the **ROCKSTAR MARKS** and the **ROCKSTAR SALSA MARK** are sufficiently related to each other for consumers to assume that a company that sells energy drinks under the **ROCKSTAR MARKS** sponsors, is affiliated with, or related to, the maker of salsa sold under the **ROCKSTAR SALSA MARK**.

REQUEST NO. 6: Goods bearing the **ROCKSTAR MARKS** are distributed and provided nationally.

REQUEST NO. 7: **APPLICANT** distributes or makes available products bearing or identified by the **ROCKSTAR SALSA MARK** throughout the United States.

REQUEST NO. 8: **APPLICANT'S** salsa is sold at some of the same establishments at which **OPPOSER** sells its energy drinks.

REQUEST NO. 9: Some people consume salsa with beverages.

REQUEST NO. 10: By virtue of widespread sales and promotion, the **ROCKSTAR MARKS** are strong.

REQUEST NO. 11: Energy drinks and salsa are related goods.

REQUEST NO. 12: **OPPOSER'S** energy drinks are sold at grocery stores.

REQUEST NO. 13: **APPLICANT** intends for its salsa to be sold at grocery stores.

REQUEST NO. 14: **OPPOSER'S** energy drinks are sold at convenience stores.

REQUEST NO. 15: **APPLICANT** intends for its salsa to be sold at convenience stores.

REQUEST NO. 16: **APPLICANT** sells its salsa at grocery stores.

REQUEST NO. 17: **APPLICANT** has not sold its salsa in interstate commerce.

REQUEST NO. 18: **APPLICANT** intends for its salsa to be sold at some of the same establishments at which **OPPOSER** sells its energy drinks.

REQUEST NO. 19: **APPLICANT** intends to distribute or make available products bearing or identified by the **ROCKSTAR SALSA MARK** throughout the United States.

REQUEST NO. 20: Admit that **YOU** advertise and promote, or intend to advertise and promote, salsa bearing the **ROCKSTAR SALSA MARK**.

REQUEST NO. 21: Admit that **YOU** advertise and promote, or intend to advertise and promote, salsa bearing the **ROCKSTAR SALSA MARK** over the Internet.

REQUEST NO. 22: Admit that **YOU** advertise and promote, or intend to advertise and promote, salsa bearing or identified by the **ROCKSTAR SALSA MARK** through presentations to potential and actual customers.

REQUEST NO. 23: Admit that **OPPOSER** has no control over the manner in which **YOU** promote products or services bearing or identified by the **ROCKSTAR SALSA MARK**.

REQUEST NO. 24: Some people consume salsa with energy drinks.

REQUEST NO. 25: Admit that **YOU** were familiar with the **ROCKSTAR MARKS** before this dispute arose.

REQUEST NO. 26: Admit that **YOU** were familiar with the **ROCKSTAR MARKS** before **YOU** filed **YOUR** U.S. trademark application for the **ROCKSTAR SALSA MARK**.

REQUEST NO. 27: Admit that **YOU** did not conduct a trademark search prior to adopting the **ROCKSTAR SALSA MARK**.

REQUEST NO. 28: Admit that **YOU** intend to increase the current geographic scope of the distribution or availability of **YOUR** products and/or services in the United States.

REQUEST NO. 29: Admit that **YOU** intend to target consumers or potential consumers of **OPPOSER'S** energy drinks bearing the **ROCKSTAR MARKS** with **YOUR** salsa bearing the **ROCKSTAR SALSA MARK**.

REQUEST NO. 30: By virtue of widespread sales and promotion, the **ROCKSTAR MARKS** are distinctive.

REQUEST NO. 31: By filing **YOUR** application, **YOU** are seeking the exclusive rights to use the **ROCKSTAR SALSA MARK** in connection with salsa on a nationwide basis.

REQUEST NO. 32: **OPPOSER'S ROCKSTAR MARK** is an extremely strong, well-known and distinctive mark.

REQUEST NO. 33: **OPPOSER'S** energy drinks are offered at bars and other on-premise establishments.

REQUEST NO. 34: **APPLICANT** has begun use in commerce of the **ROCKSTAR SALSA MARK**.

REQUEST NO. 35: The targeted consumers of salsa bearing the **ROCKSTAR SALSA MARK** are not sophisticated.

REQUEST NO. 36: Energy drinks are typically impulse purchases.

REQUEST NO. 37: The **ROCKSTAR MARK** is inherently distinctive.

REQUEST NO. 38: The **ROCKSTAR MARK** is a well-known mark.

REQUEST NO. 39: **APPLICANT'S** use of the **ROCKSTAR SALSA MARK** will erode the public's identification of the **ROCKSTAR MARK** with **OPPOSER** alone.

REQUEST NO. 40: The majority of the consumers or targeted consumers of products bearing the **ROCKSTAR SALSA MARK** have knowledge of **OPPOSER'S** energy drinks bearing the **ROCKSTAR MARK**.

REQUEST NO. 41: Some convenience stores sell both energy drinks and salsa.

REQUEST NO. 42: **APPLICANT'S** salsa is sold at convenience stores.

REQUEST NO. 43: **APPLICANT'S** salsa is offered at bars and other on-premise establishments.

REQUEST NO. 44: Admit that consumers will confuse the source of salsa bearing or identified by the **ROCKSTAR SALSA MARK** with energy drinks bearing the **ROCKSTAR MARKS**.

REQUEST NO. 45: Salsa is typically an impulse purchase.

REQUEST NO. 46: Some grocery stores sell both energy drinks and salsa.

REQUEST NO. 47: Some retailers sell both energy drinks and salsa.

REQUEST NO. 48: APPLICANT did not sell its salsa in interstate commerce prior to December 10, 2004.

REQUEST NO. 49: APPLICANT has no evidence that shows that it sold its salsa in interstate commerce prior to December 10, 2004.

Dated: January 23, 2008

HARVEY SISKIND LLP
IAN K. BOYD
RAFFI V. ZEROUNIAN

By: 

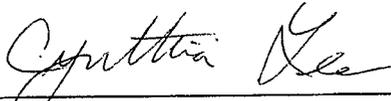
Raffi V. Zerounian

Four Embarcadero Center, 39th Floor
San Francisco, CA 94111
(415) 354-0100 Telephone
(415) 391-7124 Facsimile

Attorneys for Opposer
RUSSELL G. WEINER

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION**, dated January 23, 2008 (Opposition No. 91179982), was served on Applicant by mailing a copy thereof via first-class mail, postage prepaid, addressed to Jerry Zarnekee, 11274 Evergreen Loop, Corona, CA 92883-8477 on January 23, 2008.



CYNTHIA LEE

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

In the Matter of Application Serial No. 78/942,645 for the mark ROCKSTAR SALSA filed on August 1, 2006 and published in the Official Gazette on September 11, 2007.

RUSSELL G. WEINER,

Opposer,

v.

JERRY ZARNEKEE,

Applicant.

Opposition No. 91179982

**OPPOSER'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO APPLICANT**

PROPOUNDING PARTY: Opposer Russell G. Weiner

RESPONDING PARTY: Applicant Jerry Zarnekee

SET NO.: One

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, opposer Russell G. Weiner requests that within the time period and according to the procedures prescribed by the Federal Rules of Civil Procedure, or otherwise by Trademark Trial and Appeal Board order, and pursuant to the following definitions and instructions, applicant Jerry Zarnekee respond to the following requests for production of documents, at the offices of Harvey Siskind LLP, Four Embarcadero Center, 39th Floor, San Francisco, California 94111, (415) 354-0100.

DEFINITIONS AND INSTRUCTIONS

1. The words "YOU", "YOUR" or "APPLICANT" shall mean Jerry Zarnekee, and all of his past and present attorneys, accountants, employees, agents, representatives, assignees,

licensees, organizations, associations, corporations, predecessors, successors, partnerships, or anyone else acting on behalf of Jerry Zarnekee or otherwise subject to Jerry Zarnekee's control.

2. The term "**ANSWER**" shall refer to **YOUR** "Answer to Notice of Opposition" in response to Russell Weiner's "Notice of Opposition" to U.S. Trademark Application, Serial No. 78/942,645 for the mark **ROCKSTAR SALSA**.

3. The term "**OPPOSER**" shall mean Russell G. Weiner, and his licensee, Rockstar, Inc.

4. The terms "**DOCUMENT**" or "**DOCUMENTS**" shall have the same definition as provided in Rule 34 of the Federal Rules of Civil Procedure, and shall include, but not be limited to, the original or copy of the original if the original is unavailable, and any non-duplicative copies, as well as drafts, regardless of origin or location, of any written, typed, printed, recorded, magnetic, graphic, or other matter of any kind or description, however reproduced, known to **YOU** or in **YOUR** actual or constructive possession, custody, or control, or to which **YOU** have or have had access.

5. The term "**PERSON**" shall include natural persons, corporations, associations, partnerships, or any other entity.

6. The term "**ROCKSTAR MARK**" shall refer to each of the marks set forth in Paragraphs 1 and 2 of **OPPOSER'S** Notice of Opposition to U.S. Trademark Application, Serial No. 78/942,645.

7. The term "**ROCKSTAR SALSA MARK**" shall refer to the mark depicted in Applicant's U.S. Trademark Application, Serial No. 78/942,645, intended to be used in relation to the goods and services described in the application.

8. The words "REFER OR RELATE" shall mean any and all documents that comprise, explicitly or implicitly, constitute, refer to, relate to, or reflect the subject of the request.

9. In each instance where **APPLICANT** denies that it is in custody, control or possession of any documents responsive to the request, **APPLICANT** shall identify each person, if any, known or suspected to have such documents in their custody, control or possession.

10. In order to facilitate the expedient completion of discovery and where context allows, all terms in the singular are intended to include and refer to the plural, and all terms in the plural are intended to include and refer to the singular; all terms referring to the female gender are intended to include the male and neuter, all terms referring to the male gender are intended to include the female and neuter, and all neutral terms are intended to include the female gender and male gender.

11. For each document or other requested information asserted to be protected from discovery by a privilege or other exclusion, identify the document or information and the basis for the claim of protection from discovery. Further, identify the extent, if any, to which the document contains information that is unprotected, non-privileged, or not excluded for any other purpose.

REQUESTS FOR PRODUCTION OF DOCUMENTS

DOCUMENT REQUEST NO. 1: DOCUMENTS sufficient to identify all goods or services **YOU** offer under the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 2: DOCUMENTS sufficient to identify all goods or services **YOU** do not now offer, but plan to offer, under the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 3: DOCUMENTS sufficient to identify all goods or services **YOU** previously offered, but do not currently offer, under the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 4: DOCUMENTS revealing the geographic scope of YOUR past, present, and intended future use of the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 5: DOCUMENTS sufficient to show YOUR annual budgets and expenditures for marketing and advertising goods or services under the **ROCKSTAR SALSA MARK** in the past, present, and, to the extent available, future.

DOCUMENT REQUEST NO. 6: Copies of each of YOUR advertisements for goods or services bearing or related to the **ROCKSTAR SALSA MARK**, whether or not presently in use, including all print, billboard, radio, TV, Internet and other advertising, together with summaries of the amount YOU budgeted and spent for such advertising.

DOCUMENT REQUEST NO. 7: Copies of each of YOUR marketing materials for goods or services bearing or related to the **ROCKSTAR SALSA MARK**, whether or not presently in use, including all sales brochures, business cards, direct mail, electronic mail, and other materials, together with summaries of the amount YOU budgeted and spent for such marketing.

DOCUMENT REQUEST NO. 8: All DOCUMENTS that REFER OR RELATE to YOUR attendance at or participation in any trade show or other marketing event during the past two years, including any DOCUMENTS YOU provided at said event, that REFER OR RELATE to salsa, including those offered under the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 9: All DOCUMENTS that REFER OR RELATE to any market studies, focus groups, or surveys that REFER OR RELATE to YOUR use of the **ROCKSTAR SALSA MARK** for salsa or other consumables.

DOCUMENT REQUEST NO. 10: All DOCUMENTS that REFER OR RELATE to any purchaser of YOUR goods or services bearing or related to the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 11: DOCUMENTS from which **YOUR** profits and losses on each of **YOUR** goods or services bearing or related to the **ROCKSTAR SALSA MARK**, in dollars and units, can be determined.

DOCUMENT REQUEST NO. 12: All DOCUMENTS that **REFER OR RELATE** to any challenge by **YOU** to any **PERSON** selling goods or services bearing or related to the **ROCKSTAR SALSA MARK**, including, but not limited to, any cease and desist letters **YOU** sent and any correspondence or communications which resulted from each such letter, pleadings filed in connection with any litigation or other proceedings which resulted from **YOUR** challenge, and any judgment or settlement agreement resolving **YOUR** challenge.

DOCUMENT REQUEST NO. 13: All DOCUMENTS that **REFER OR RELATE** to any third-party challenge to **YOU** regarding **YOUR** use of the **ROCKSTAR SALSA MARK**, including, but not limited to, any cease and desist letters **YOU** received and any correspondence or communications which resulted from each such letter, pleadings filed in connection with any litigation or other proceedings which resulted from the third-party challenge, and any judgment or settlement agreement resolving the third-party challenge.

DOCUMENT REQUEST NO. 14: All DOCUMENTS that **REFER OR RELATE** to any trademark searches or investigations of any records, including but not limited to, the United States Trademark and Patent Office records, state trademark records, trademark or trade publications, business directories, or the records of any trademark service organization, conducted by **YOU** or on **YOUR** behalf, prior to **YOUR** selection of the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 15: All DOCUMENTS that **REFER OR RELATE** to any trademark and/or service mark registration worldwide for the **ROCKSTAR SALSA MARK**

owned by **YOU** or applications to register the **ROCKSTAR SALSA MARK** filed by or for **YOU**.

DOCUMENT REQUEST NO. 16: All **DOCUMENTS** that **REFER OR RELATE** to **YOUR** first use in commerce of the **ROCKSTAR SALSA MARK**, including but not limited to **DOCUMENTS** evidencing the date of first use in U.S. commerce.

DOCUMENT REQUEST NO. 17: All **DOCUMENTS** that **REFER OR RELATE** to **YOUR** licensing of the **ROCKSTAR SALSA MARK**, including but not limited to all license agreements with any third party.

DOCUMENT REQUEST NO. 18: All **DOCUMENTS** reflecting the content of each website, webpage, or other material displaying **YOUR** use of the **ROCKSTAR SALSA MARK** on the Internet.

DOCUMENT REQUEST NO. 19: All **DOCUMENTS** sufficient to identify the name, address, and position of each **PERSON** who participated in the selection, creation, and/or design of the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 20: All **DOCUMENTS** upon which **YOU** expect to rely in this action.

DOCUMENT REQUEST NO. 21: All **DOCUMENTS** identified, or relied upon by **YOU**, in **YOUR** responses to **OPPOSER'S** First Set of Interrogatories.

DOCUMENT REQUEST NO. 22: **DOCUMENTS** from which **YOUR** channels of trade, *i.e.*, the venues in which and means and methodologies by which **YOU** offer and sell **YOUR** goods, or which **YOU** intend to offer and sell **YOUR** goods, may be determined.

DOCUMENT REQUEST NO. 23: **DOCUMENTS** sufficient to identify the prices charged to customers for each good or service provided by **YOU**, or in connection with, the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 24: A representative label for each product bearing the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 25: Each consumer study of the demographics of actual or potential consumers of goods bearing the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 26: All **DOCUMENTS** that **REFER OR RELATE** to **OPPOSER**, including **YOUR** awareness of **OPPOSER** and **OPPOSER'S ROCKSTAR MARKS**.

DOCUMENT REQUEST NO. 27: All **DOCUMENTS** that **REFER OR RELATE** to the launch or planned first use of the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 28: All **DOCUMENTS** that constitute, **REFER OR RELATE** to correspondence, email and other communications between **YOU** and any advertising or public relations agency or firm employed by or for **YOU** to assist in the advertising, marketing and offering of services or products bearing or related to the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 29: All **DOCUMENTS** that **YOU** contend support any affirmative defense asserted by **YOU** in this proceeding.

DOCUMENT REQUEST NO. 30: **DOCUMENTS** sufficient to show the organizational and reporting structure of **YOU**, including the names and contact information of the persons chiefly responsible for advertising and product development.

DOCUMENT REQUEST NO. 31: **DOCUMENTS** sufficient to identify all gross revenue and gross profits regarding sales of any goods or services under the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 32: All **DOCUMENTS** that **REFER OR RELATE** to any instance of actual confusion by an individual between the **ROCKSTAR SALSA MARK** and the **ROCKSTAR MARKS**.

DOCUMENT REQUEST NO. 33: All **DOCUMENTS** that **REFER OR RELATE** to the instant Trademark Trial and Appeal Board proceeding which you have disclosed to any third parties.

DOCUMENT REQUEST NO. 34: All **DOCUMENTS** that **REFER OR RELATE** to any communications regarding the trade dress for any product bearing the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 35: All **DOCUMENTS** that **REFER OR RELATE** to any third party noting any similarity between the respective **ROCKSTAR SALSA MARK** and **ROCKSTAR MARKS**.

DOCUMENT REQUEST NO. 36: **DOCUMENTS** sufficient to identify **YOUR** annual sales for each good or service sold under **YOUR ROCKSTAR SALSA MARK** in the United States.

DOCUMENT REQUEST NO. 37: All **DOCUMENTS** that **REFER OR RELATE** to **YOUR** attendance at or participation in any trade show or other marketing event during the past five years, including any **DOCUMENTS YOU** provided at said event, that **REFER OR RELATE** to any goods sold under the **ROCKSTAR MARK** or the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 38: **DOCUMENTS** sufficient to identify demographic and geographic characteristics and/or information concerning the classes of intended and actual customers of goods or services bearing, or in connection with, the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 39: **DOCUMENTS** sufficient to show each manner in which **APPLICANT** has marketed, promoted or advertised goods or services bearing, or provided in connection with, the **ROCKSTAR SALSA MARK**, including without limitation, advertisements, press releases, brochures, web sites, catalogues, screen shots, screen displays, newsletters, emails, circulars, flyers, newspapers, magazines or other methods.

DOCUMENT REQUEST NO. 40: DOCUMENTS sufficient to identify all distributors and all retail and wholesale stores which offer for sale any good or service bearing, or in connection with, the **ROCKSTAR SALSA MARK**.

DOCUMENT REQUEST NO. 41: All DOCUMENTS that **REFER OR RELATE** to **OPPOSER**.

DOCUMENT REQUEST NO. 42: All DOCUMENTS, not otherwise requested above, which **YOU** intend to rely on or present at trial in this matter.

Dated: January 23, 2008

HARVEY SISKIND LLP
IAN K. BOYD
RAFFI V. ZEROUNIAN

By: _____

Raffi V. Zerounian

Four Embarcadero Center, 39th Floor
San Francisco, CA 94111
(415) 354-0100 Telephone
(415) 391-7124 Facsimile

Attorneys for Opposer,
RUSSELL G. WEINER

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT**, dated January 23, 2008 (Opposition No. 91179982), was served on Applicant by mailing a copy thereof via first-class mail, postage prepaid, addressed to Jerry Zarnekee, 11274 Evergreen Loop, Corona, CA 92883-8477 on January 23, 2008.



CYNTHIA LEE

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

In the Matter of Application Serial No. 78/942,645 for the mark ROCKSTAR SALSA filed on August 1, 2006 and published in the Official Gazette on September 11, 2007.

RUSSELL G. WEINER,

Opposer,

v.

JERRY ZARNEKEE,

Applicant.

Opposition No. 91179982

**OPPOSER'S FIRST SET OF
INTERROGATORIES**

Propounding Party: Opposer Russell G. Weiner

Responding Party: Applicant Jerry Zarnekee

Set No.: ONE

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Opposer Russell G. Weiner requests that within the time period and according to the procedures prescribed by the Federal Rules of Civil Procedure, or otherwise by Trademark Trial and Appeal Board order, and pursuant to the following definitions and instructions, applicant Jerry Zarnekee respond to the following interrogatories, at the offices of Harvey Siskind LLP, Four Embarcadero Center, 39th Floor, San Francisco, California 94111.

DEFINITIONS AND INSTRUCTIONS

1. The words "YOU", "YOUR" or "APPLICANT" shall mean Jerry Zarnekee, and all of his past and present employees, agents, representatives, attorneys, assignees, licensees, organizations, associations, corporations, predecessors, successors, partnerships, or anyone else acting on behalf of Jerry Zarnekee or otherwise subject to Jerry Zarnekee's control.

2. The term **"PERSON"** shall include natural persons, corporations, associations, partnerships, or any other entity.

3. The term **"ROCKSTAR MARK"** shall refer to each of the marks set forth in Paragraphs 1 and 2 of **OPPOSER'S** Notice of Opposition to U.S. Trademark Application, Serial No. 78/942,645.

4. The term **"ROCKSTAR SALSA MARK"** shall refer to the mark depicted in **APPLICANT'S** U.S. Trademark Application, Serial No. 78/942,645, intended to be used in relation to the goods and services described in the application.

5. To **"IDENTIFY"** a document shall mean to describe it in sufficient detail that it can be obtained by a request for production or by subpoena. If **APPLICANT** prefers, it may simply attach to its answer a clear and complete photocopy of the document.

6. To **"IDENTIFY"** a person or a witness shall mean to state with respect to such person or witness:

(a) His or her name and last known business address and last known residence address; and

(b) The name and business address of his or her last known employer and the position held by him or her with such last known employer.

7. The words **"DOCUMENT"** or **"DOCUMENTS"** shall have the same definition as provided in Rule 34 of the Federal Rules of Civil Procedure, and shall include, but not be limited to, the original or copy of the original if the original is unavailable, and any non-duplicative copies, as well as drafts, of any written, typed, printed, electronic, recorded, graphic, or other material of any kind, known to **YOU** or in **YOUR** actual or constructive possession, custody, or control, or to which **YOU** have or have had access.

8. Each interrogatory shall be deemed continuing so as to require supplemental answers if **APPLICANT** obtains any further information between the time its answers hereto are served and the conclusion of this action.

9. In each instance where **APPLICANT** denies knowledge or information sufficient to answer the interrogatory, **APPLICANT** is requested to identify each person, if any, known to have such knowledge.

10. Whenever **APPLICANT** is requested to give specific information, such as a date or figure, and **APPLICANT** cannot give the exact information, **APPLICANT** is requested to give its best estimate.

11. For each document or other requested information asserted to be protected from discovery by a privilege or other exclusion, identify the document or information and the basis for the claim of protection from discovery via a privilege log. Further, identify the extent, if any, to which the document contains information that is unprotected, non-privileged or not excluded for any other purpose.

INTERROGATORIES

INTERROGATORY NO. 1: IDENTIFY each variation of the **ROCKSTAR SALSA MARK** **YOU** have used, or that **YOU** plan to use, in connection with the sale or promotion of **YOUR** goods or services.

INTERROGATORY NO. 2: IDENTIFY each good or service that **YOU** have sold or promoted, or that **YOU** plan to sell or promote, under the **ROCKSTAR SALSA MARK**, including the date(s) that **YOU** sold or promoted, or plan to sell or promote, for each good or service.

INTERROGATORY NO. 3: IDENTIFY the geographic scope of **YOUR** use of the **ROCKSTAR SALSA MARK**, including past, present, and intended future use, within the United States.

INTERROGATORY NO. 4: IDENTIFY each brochure, business card, sign, placard, label, point of sale material, or other means by which the **ROCKSTAR SALSA MARK** or any variation thereof has or will be used on or in connection with any goods or services sold by **YOU**.

INTERROGATORY NO. 5: IDENTIFY each of the ways **YOU** have sought to market or advertise **YOUR** goods or services under the **ROCKSTAR SALSA MARK**, including but not limited to medium, amount budgeted, and amount actually spent on said marketing and advertisement.

INTERROGATORY NO. 6: IDENTIFY each of the ways **YOU** plan to market or advertise **YOUR** goods or services under the **ROCKSTAR SALSA MARK**, including but not limited to medium and amount budgeted.

INTERROGATORY NO. 7: IDENTIFY each **PERSON** who participated in the selection, creation, and/or design of the **ROCKSTAR SALSA MARK**.

INTERROGATORY NO. 8: IDENTIFY all of **YOUR** reasons for selecting the **ROCKSTAR SALSA MARK**.

INTERROGATORY NO. 9: IDENTIFY the cities and states in which **YOU** sell products under the **ROCKSTAR SALSA MARK**.

INTERROGATORY NO. 10: IDENTIFY any communications to which **YOU** were a party regarding **OPPOSER** in the context of selecting the **ROCKSTAR SALSA MARK**.

INTERROGATORY NO. 11: IDENTIFY each **PERSON** known to **YOU** who has become confused as a result of the use of the **ROCKSTAR SALSA MARK**, and describe any such instance of confusion.

INTERROGATORY NO. 12: IDENTIFY all goods and services that **YOU** have offered, or intend to offer, under the **ROCKSTAR SALSA MARK**.

INTERROGATORY NO. 13: Describe the consumer demographics **YOU** intend to target regarding sales of goods or services under the **ROCKSTAR SALSA MARK**.

INTERROGATORY NO. 14: State the date that **YOU** first became aware of the brand of **ROCKSTAR** energy drinks offered for sale by **OPPOSER**.

INTERROGATORY NO. 15: IDENTIFY the person associated with **APPLICANT** who has primary responsibility for the following areas with respect to products or services bearing the **ROCKSTAR SALSA MARK** in the United States:

- (a) Sales
- (b) Marketing
- (c) Advertising and promotion
- (d) Strategic planning

INTERROGATORY NO. 16: Excluding **YOU**, **IDENTIFY** each seller (distributor, retailer and/or wholesaler) of goods or services bearing the **ROCKSTAR SALSA MARK** in the United States.

INTERROGATORY NO. 17: **IDENTIFY** each retailer, distributor, and wholesaler to which **YOU** sell goods or services bearing the **ROCKSTAR SALSA MARK** in the United States.

INTERROGATORY NO. 18: State whether **YOU** conducted a full trademark search prior to the filing of the application for the **ROCKSTAR SALSA MARK**.

INTERROGATORY NO. 19: State the date **YOU** adopted the **ROCKSTAR SALSA MARK**.

INTERROGATORY NO. 20: State whether **YOU** have begun using the **ROCKSTAR SALSA MARK** in commerce in the United States and, if the answer is anything other than an unequivocal "no," then state the date and place of first use.

INTERROGATORY NO. 21: **IDENTIFY** each retailer, distributor, and wholesaler to which **YOU** intend to sell goods or services bearing the **ROCKSTAR SALSA MARK** in the United States.

INTERROGATORY NO. 22: **IDENTIFY** the cities and states in which **YOU** intend to sell products under the **ROCKSTAR SALSA MARK**.

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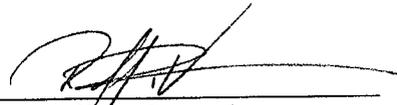
///

///

INTERROGATORY NO. 23: IDENTIFY each person who assisted with the preparation of the answers to these interrogatories.

Dated: January 23, 2008

HARVEY SISKIND LLP
IAN K. BOYD
RAFFI V. ZEROUNIAN

By: 

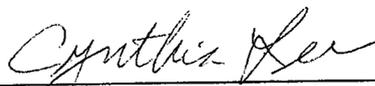
Raffi V. Zerounian

Four Embarcadero Center, 39th Floor
San Francisco, CA 94111
(415) 354-0100 Telephone
(415) 391-7124 Facsimile

Attorneys for Opposer
RUSSELL G. WEINER

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **OPPOSER'S FIRST SET OF INTERROGATORIES**, dated January 23, 2008 (Opposition No. 91179982), was served on Applicant by mailing a copy thereof via first-class mail, postage prepaid, addressed to Jerry Zarnekee, 11274 Evergreen Loop, Corona, CA 92883-8477 on January 23, 2008.



CYNTHIA LEE

Exhibit E

**To Declaration of Raffi V. Zerounian in
Support of Opposer's Motion for Summary
Judgment and Supporting Memorandum**

Offered by Opposer Russell G. Weiner

Russell G. Weiner v.

Jerry Zarnekee

Opposition No. 91179982

Application Serial No. 78942645



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IC 005. US 006 018 044 046 051 052. G & S: PHARMACEUTICAL PRODUCTS, NAMELY, A DIETARY SUPPLEMENT TO BE USED FOR THE ENHANCEMENT AND/OR MAINTENANCE OF GENERAL HEALTH; VETERINARY PRODUCTS, NAMELY, A DIETARY SUPPLEMENT TO BE USED FOR THE ENHANCEMENT AND/OR MAINTENANCE OF GENERAL HEALTH; SANITARY PREPARATIONS FOR MEDICAL PURPOSES; DIETETIC FOOD AND SUGAR ADAPTED FOR MEDICAL USE, BABY FOOD INCLUDING INFANT MILK FORMULAE; MEDICAL PLASTERS FOR DRESSINGS; MATERIAL FOR STOPPING TEETH DECAY AND DENTAL WAX; ALL PURPOSE DISINFECTANTS; PREPARATIONS FOR DESTROYING VERMIN; FUNGICIDES, HERBICIDES; NUTRITIONAL AND DIETARY SUPPLEMENTS; NUTRITIONAL ADDITIVES TO FOODSTUFFS FOR ANIMALS FOR MEDICAL PURPOSES; NUTRITIONAL AND DIETARY ADDITIVES, NAMELY, A PREBIOTIC FOR USE IN FOODS AND DIETARY SUPPLEMENTS FOR HUMAN CONSUMPTION

IC 029. US 046. G & S: MEAT; FISH, POULTRY AND GAME; MEAT EXTRACTS; PRESERVED, DRIED AND COOKED FRUITS AND VEGETABLES; JELLIES, JAMS, COMPOTES; EGGS, MILK AND DAIRY PRODUCTS INCLUDING MILK POWDER, FUNCTIONAL MILKS AND FERMENTED DAIRY PRODUCTS, EXCLUDING ICE CREAM, ICE MILK AND FROZEN YOGURT; EDIBLE OILS AND FATS; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT

IC 030. US 046. G & S: COFFEE, TEA, CACAO, RICE, TAPIOCA, SAGO, ARTIFICIAL COFFEE; FLOURS AND PREPARATIONS MADE FROM CEREALS, NAMELY, BREAKFAST CEREALS, PORRIDGE, PUDDINGS, CEREAL BASED SNACK FOODS AND CEREAL BASED BARS; BREAD, PASTRY AND CONFECTIONERY, NAMELY, CANDY SNACK BARS, CHOCOLATES, SWEETS; ICES, NAMELY, ICE CREAM, ICE MILK AND FROZEN YOGURT; HONEY, TREACLE SYRUP; YEAST, BAKING POWDER, SALT, VINEGAR, CONDIMENT SAUCES, NAMELY, MUSTARD, KETCHUP COOK-IN SAUCES, READY MADE SAUCES AND SIDE OF PLATE SAUCES SUCH AS CHUTNEYS, SALSA SAUCE, SALAD DRESSING AND SALAD CREAM, MAYONNAISE; SPICES; ICE FOR REFRESHMENT; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT

IC 032. US 045 046 048. G & S: BEERS; MINERAL AND AERATED WATERS AND NON-ALCOHOLIC DRINKS, NAMELY, CARBONATED SOFT DRINKS, SPORT DRINKS, FRUIT FLAVORED BEVERAGES; RECREATIONAL BEVERAGES, NAMELY, STILL AND CARBONATED WATERS, FLAVORED AND NON-FLAVORED; FRUIT DRINKS AND FRUIT JUICES; SYRUP AND OTHER PREPARATIONS, NAMELY, POWDER FOR MAKING SOFT DRINKS, NON-ALCOHOLIC ENERGY DRINKS; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Trademark

Search Facility Classification Code LETS-2 BI Two letters or combinations of multiples of two letters
NUM-2 The number 2 or the word Two

Serial Number 79022793

Filing Date March 9, 2006

Current Filing Basis 66A

Original Filing Basis 66A

Published for Opposition November 13, 2007

Registration Number 3376147

International Registration Number 0882171

Registration Date January 29, 2008

Owner (REGISTRANT) CLASADO Inc. CORPORATION PANAMA c/o Arosemena Noriega & Contreras Edificio Interseco, Calle Elvira Mendez no 10 Apartado 0816-01560, Panama 5 PANAMA

Attorney of Record David B. Kirschstein

Priority Date February 16, 2006

Prior Registrations 3199028

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Word Mark BI MUNO

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: PHARMACEUTICAL PRODUCTS, NAMELY, A DIETARY SUPPLEMENT TO BE USED FOR THE ENHANCEMENT AND/OR MAINTENANCE OF GENERAL HEALTH; VETERINARY PRODUCTS, NAMELY, A DIETARY SUPPLEMENT TO BE USED FOR THE ENHANCEMENT AND/OR MAINTENANCE OF GENERAL HEALTH; SANITARY PREPARATIONS FOR MEDICAL PURPOSES; DIETETIC FOOD AND SUGAR ADAPTED FOR MEDICAL USE, BABY FOOD INCLUDING INFANT MILK FORMULAE; MEDICAL PLASTERS FOR DRESSINGS; MATERIAL FOR STOPPING TEETH DECAY AND DENTAL WAX; ALL PURPOSE DISINFECTANTS; PREPARATIONS FOR DESTROYING VERMIN; FUNGICIDES, HERBICIDES; NUTRITIONAL AND DIETARY SUPPLEMENTS; NUTRITIONAL ADDITIVES TO FOODSTUFFS FOR ANIMALS FOR MEDICAL PURPOSES; NUTRITIONAL AND DIETARY ADDITIVES, NAMELY, A PREBIOTIC FOR USE IN FOODS AND DIETARY SUPPLEMENTS FOR HUMAN CONSUMPTION

IC 029. US 046. G & S: MEAT, FISH, POULTRY AND GAME; MEAT EXTRACTS; PRESERVED, DRIED AND COOKED FRUITS AND VEGETABLES; JELLIES, JAMS, COMPOTES; EGGS, MILK AND DAIRY PRODUCTS INCLUDING MILK POWDER, FUNCTIONAL MILKS AND FERMENTED DAIRY PRODUCTS, EXCLUDING ICE CREAM, ICE MILK AND FROZEN YOGURT; EDIBLE OILS AND FATS; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT

IC 030. US 046. G & S: COFFEE, TEA, CACAO, RICE, TAPIOCA, SAGO, ARTIFICIAL COFFEE; FLOURS AND PREPARATIONS MADE FROM CEREALS, NAMELY, BREAKFAST CEREALS, PORRIDGE, PUDDINGS, CEREAL BASED SNACK FOODS AND CEREAL BASED BARS; BREAD, PASTRY AND CONFECTIONERY, NAMELY, SNACK BARS, CHOCOLATES, SWEETS; ICES, NAMELY, ICE CREAM, ICE MILK AND FROZEN YOGURT; HONEY, TREACLE SYRUP; YEAST, BAKING POWDER, SALT, VINEGAR, CONDIMENT SAUCES, NAMELY, MUSTARD, KETCHUP COOK-IN SAUCES, READY MADE SAUCES AND SIDE OF PLATE SAUCES SUCH AS CHUTNEYS, SALSA SAUCE, SALAD DRESSING AND SALAD CREAM, MAYONNAISE; SPICES; ICE FOR REFRESHMENT; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT

IC 032. US 045 046 048. G & S: BEERS, MINERAL AND AERATED WATERS AND NON-ALCOHOLIC DRINKS, NAMELY, CARBONATED SOFT DRINKS, SPORT DRINKS, FRUIT FLAVORED BEVERAGES; RECREATIONAL BEVERAGES, STILL AND CARBONATED WATERS, FLAVORED AND NON-FLAVORED; FRUIT DRINKS AND FRUIT JUICES; SYRUP AND OTHER PREPARATIONS, NAMELY, POWDER FOR MAKING BEVERAGES, NON-ALCOHOLIC ENERGY DRINKS; ALL THE AFOREMENTIONED ENHANCED WITH A DIETARY SUPPLEMENT

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 02.01.33 - Grotesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures
 04.07.03 - Geometric figures or combinations of geometric figures representing a person; Geometric figures representing a person; Geometric shapes forming a person; Person formed by geometric shapes
 26.03.21 - Ovals that are completely or partially shaded
 26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved

Serial Number 79014290

Filing Date June 1, 2005

Current Filing Basis 66A

Original Filing Basis 66A

Published for Opposition October 31, 2006

Registration Number 3199028

International Registration Number 0859001

Registration Date January 16, 2007

Owner (REGISTRANT) CLASADO Inc., c/o Arosemena Noriega & Contreras CORPORATION PANAMA
 Edificio Interseco Calle Elvira Mendez no 10, Apartado 0816-01560 Panama 5 PANAMA

Attorney of Record DAVID B. KIRSCHSTEIN

Priority Date December 2, 2004

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Word Mark **AMAZONAS RAINFOREST PRODUCT**

Translations The English translation of the word **AMAZONAS** in the mark is of the Amazon.

Goods and Services IC 029. US 046. G & S: Processed olives, dried olives, processed edible seeds, processed peppers, processed quince, processed fruits, processed vegetables, canned fruits, canned vegetables, fruit preserves, mixes of seafood, dried beans, processed beans, lentils, fruit paste, frozen fruits, frozen vegetables and clams. FIRST USE: 20030320. FIRST USE IN COMMERCE: 20030320

IC 030. US 046. G & S: Seasonings, pepper sauce, sauces, flour for food, food starch, cocoa, husked barley, sugar, processed herbs, spices, cakes, crackers, cookies, wafers, rice flour, corn flour, potato flour, bean flour, corn meal, instant pudding mixes, soy flour, wheat flour, corn curls, processed corn, hominy, condiments, namely ketchup, honey, bread mixes, donut mixes, soy sauce, processed wheat, vanilla, tamales, tortillas, herb teas, fruit teas, salsa, garlic sauce, basil sauce, carob sauce, chipotle sauce, habanera sauce, mint sauce, potato sauce and hot sauce, corn-based drink mixes in the nature of a food beverage consisting primarily of corn, flour-based drink mixes in the nature of a food beverage consisting primarily of flour. FIRST USE: 20030320. FIRST USE IN COMMERCE: 20030320

IC 032. US 045 046 048. G & S: Fruit drinks, fruit juices, fruit nectars, soft drinks, powders used in the preparation of soft drinks, concentrates used in the preparation of soft drinks, and guarana drinks. FIRST USE: 20030320. FIRST USE IN COMMERCE: 20030320

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design 03.15.14 - Macaws; Parrots; Toucans

Search Code 03.15.24 - Stylized birds and bats

26.11.02 - Plain single line rectangles; Rectangles (single line)

26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined

words or letters; Underlined words or letters

Serial Number 78888015
Filing Date May 19, 2006
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition December 26, 2006
Registration Number 3217914
Registration Date March 13, 2007
Owner (REGISTRANT) Amazonas Imports, Inc. CORPORATION CALIFORNIA 10848 Cantara Street Sun Valley CALIFORNIA 91352
Attorney of Record Evan M. Kent
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AMAZONAS RAINFOREST PRODUCT" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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SMART SPOT

Word Mark **SMART SPOT**

Goods and Services

IC 029. US 046. G & S: Potato-based snacks, namely, potato chips, potato crisps and puffed potato snacks; processed lentil-based dishes, namely, lentil pilaf and felafel mix; beef jerky. FIRST USE: 20041001. FIRST USE IN COMMERCE: 20041001

IC 030. US 046. G & S: Tea; oatmeal and rolled oats; grain-based snack foods; granola bars; rice cakes; sauces and salsa; corn-based snack foods, namely, tortilla chips, corn chips and puffed corn snacks, multigrain chips; pretzels; popped popcorn; grain and rice-based dishes, namely, taboule, couscous, spanish rice, rice pilaf, wheat pilaf, chicken-flavored rice pilaf, barely pilaf, curry rice and long and wild rice pilaf; rice; noodles; alimentary pastes; prepared and partly prepared mixes consisting primarily of rice, alimentary paste, noodles, or rice and alimentary paste. FIRST USE: 20041001. FIRST USE IN COMMERCE: 20041001

IC 032. US 045 046 048. G & S: Drinking water; non-alcoholic sports drinks and powder for making the same; non-alcoholic and non-carbonated fruit-flavored drinks; fruit juice and fruit juice drinks, and syrups and concentrates for making the same; fruit-flavored carbonated or non-carbonated drinking water; soft drinks, and syrups and concentrates for making the same; smoothies consisting of fruit juice, fruit and yogurt. FIRST USE: 20041001. FIRST USE IN COMMERCE: 20041001

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78428377

Filing Date June 2, 2004

Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition February 8, 2005
Registration Number 3395735
Registration Date March 11, 2008
Owner (REGISTRANT) PepsiCo, Inc. CORPORATION NORTH CAROLINA 700 Anderson Hill Road Purchase NEW YORK 10577
Attorney of Record Janet Silverberg
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark **SMART CHOICES MADE EASY**

Goods and Services IC 029. US 046. G & S: Potato-based snacks, namely, potato chips, potato crisps and puffed potato snacks; processed lentil-based dishes, namely, lentil pilaf and felafel mix; beef jerky. FIRST USE: 20041001. FIRST USE IN COMMERCE: 20041001

IC 030. US 046. G & S: Tea; oatmeal and rolled oats; grain-based snack foods; granola bars; rice cakes; sauces and salsa; corn-based snack foods, namely, tortilla chips, corn chips and puffed corn snacks, multigrain chips; pretzels; popped popcorn; grain and rice-based dishes, namely, taboule, couscous, spanish rice, rice pilaf, wheat pilaf, chicken flavored rice pilaf, barely pilaf, curry rice and long and wild rice pilaf; rice; noodles; alimentary pastes; prepared and partly prepared mixes consisting primarily of rice, alimentary paste, noodles or rice and alimentary paste. FIRST USE: 20041001. FIRST USE IN COMMERCE: 20041001

IC 032. US 045 046 048. G & S: Drinking water; non-alcoholic sports drinks and powder for making the same; non-alcoholic and non-carbonated fruit-flavored drinks; fruit juice and fruit juice drinks and syrups and concentrates for making the same; fruit-flavored carbonated or non-carbonated drinking water; soft drinks, and syrups and concentrates for making the same; smoothies consisting of fruit juice, fruit and yogurt. FIRST USE: 20040601. FIRST USE IN COMMERCE: 20040601

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 02.01.33 - Grotesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures
 24.17.15 - Check marks
 26.01.21 - Circles that are totally or partially shaded.
 26.03.02 - Ovals, plain single line; Plain single line ovals

Serial Number 78437498

Filing Date June 18, 2004

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition February 1, 2005

Registration Number 3101813

Registration Date June 6, 2006

Owner (REGISTRANT) PepsiCo, Inc. CORPORATION NORTH CAROLINA 700 Anderson Hill Road
Purchase NEW YORK 10577

Attorney of Record Janet Silverberg

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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SENSATIONAL

Word Mark SENSATIONAL

Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: PAPER PRODUCTS, NAMELY, FACIAL TISSUE, NAPKINS, PAPER TOWELS. FIRST USE: 19980900. FIRST USE IN COMMERCE: 19980900

IC 029. US 046. G & S: PACKAGED DELI MEATS, NAMELY, BOLOGNA, TURKEY, AND HAM; OLIVE OIL; FRUIT PRESERVES; STUFFED CHEDDAR BAKED POTATO; CHICKEN STRIPS; CHICKEN NUGGETS; FROZEN ORGANIC VEGETABLES; CANNED VEGETABLES, NAMELY, TOMATOES, CHICK PEAS, KIDNEY BEANS CANNELLINI; CHEESES, NAMELY, FETA CHEESE, CHEDDAR CHEESE AND GRATED CHEESE AND TOFU. FIRST USE: 19980900. FIRST USE IN COMMERCE: 19980900

IC 030. US 046. G & S: ICE CREAM; VINEGAR; BREAD CRUMBS; PASTA; BREAKFAST CEREAL; COOKIES; CHOCOLATE MORSELS; CHEESECAKE; GOURMET TEAS; COFFEE; REFRIGERATED FLOUR TORTILLAS; FLAT BREADS; MAPLE SYRUP; MUSTARD; FROZEN BAKERY PIES; FROZEN PIZZA; SAUCES, NAMELY, PASTA SAUCE SALSA, STEAK SAUCE, SEAFOOD SAUCE, BARBECUE SAUCE; CHICKEN POT PIE, SHEPHERD'S PIE, SIRLOIN STEAK PIE AND STEAKHOUSE BURGERS; FROZEN ENTREES, NAMELY MEAT LASAGNA, VEGETABLE LASAGNA. FIRST USE: 19980900. FIRST USE IN COMMERCE: 19980900

IC 032. US 045 046 048. G & S: CARBONATED AND NON-CARBONATED SOFT DRINKS, FRUIT JUICE SPARKLING WATER, SELTZER WATER. FIRST USE: 19980900. FIRST USE IN COMMERCE: 19980900

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.11.21 - Rectangles that are completely or partially shaded

Serial Number 76011021

Filing Date March 24, 2000

Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition October 23, 2001
Registration Number 2632529
Registration Date October 8, 2002
Owner (REGISTRANT) Koninklij ke Ahold nv CORPORATION NETHERLANDS Albert Heijnweg 1 1507 EH Zaandam NETHERLANDS
Attorney of Record Albert P. Sharpe, III
Prior Registrations 0176170;1376170;1808281;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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DESERT PEPPER TRADING COMPANY

Word Mark	DESERT PEPPER TRADING COMPANY
Goods and Services	IC 030. US 046. G & S: Mexican style food products, namely salsa; Customized pre-packaged gifts featuring salsas, dips, drinks, snacks, cookies, nuts, cookbooks, grill accessories and kitchen accessories sold as a unit. FIRST USE: 19910815. FIRST USE IN COMMERCE: 19910815
	IC 032. US 045 046 048. G & S: Preparations for making beverages namely, non-alcoholic cocktail mixes. FIRST USE: 19910815. FIRST USE IN COMMERCE: 19910815
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78667928
Filing Date	July 11, 2005
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	December 12, 2006
Registration Number	3212374

Registration Date February 27, 2007
Owner (REGISTRANT) Desert Pepper Trading Company CORPORATION DELAWARE 909 Texas Avenue El Paso TEXAS 79901
Attorney of Record Christopher J. Day
Prior Registrations 1665168
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TRADING COMPANY" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Goods and Services	IC 030. US 046. G & S: Salad dressing, spaghetti sauces, spicy tomato sauce, salsa and breakfast cereal. FIRST USE: 19821100. FIRST USE IN COMMERCE: 19821100
	IC 031. US 001 046. G & S: Unpopped popcorn. FIRST USE: 19821100. FIRST USE IN COMMERCE: 19840900
	IC 032. US 045 046 048. G & S: Lemonade and fruit juice drinks. FIRST USE: 19821100. FIRST USE IN COMMERCE: 19830500
Mark Drawing Code	(2) DESIGN ONLY
Design Search Code	02.01.01 - Busts of men facing forward; Heads of men facing forward; Men - heads, portraiture, or busts facing forward; Portraiture of men facing forward 02.01.05 - Historical men (American); Men, famous; Presidents (American) 02.01.31 - Men, stylized, including men depicted in caricature form
Serial Number	78704865
Filing Date	August 31, 2005
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	June 27, 2006
Registration Number	3145005
Registration Date	September 19, 2006
Owner	(REGISTRANT) No Limit LLC LTD LIAB CO CONNECTICUT 246 Post Road East POB 791 Westport CONNECTICUT 068810791

Attorney of Record Stephen E. Nevas

Prior Registrations 1280046;1581795;AND OTHERS

Description of Mark The colors tan/flesh tone, blue, white, black and yellow are claimed as a feature of the mark. The colors tan/flesh tone and black appear in the face, the colors white and blue appear in the eyes, the color white appears in the teeth, and the colors black, white and yellow appear in the hair. The mark consists of Artistic rendering of the face of Paul Newman.

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

Other Data The name(s), portrait(s), and/or signature(s) shown in the mark identifies Paul Newman, whose consent(s) to register is submitted.

Live/Dead Indicator LIVE

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**MEMPHIS CHAMPIONSHIP
BARBECUE****Word Mark
Goods and
Services**

MEMPHIS CHAMPIONSHIP BARBECUE

IC 016. US 002 005 022 023 029 037 038 050. G & S: PAPER ARTICLES, NAMELY, NAPKINS, MENUS AND CATALOGS RELATING TO FOOD AND RESTAURANTS; PRINTED MATERIALS AND PUBLICATIONS, NAMELY, NEWSLETTERS, HEALTH AND NUTRITION BULLETINS AND INFORMATION SHEETS ALL RELATING TO FOOD AND RESTAURANTS; PAPER SHOPPING BAGS; PRINTED WALL CHARTS; PRINTED COOKING AND RECIPE SHEETS; COLORING BOOKS; AND GIFT CARDS. FIRST USE: 19980815. FIRST USE IN COMMERCE: 19980815

IC 021. US 002 013 023 029 030 033 040 050. G & S: MUGS, BEER MUGS, COFFEE MUGS, CUPS, DISHES, JUGS, PEANUT BUCKETS, ICE BUCKETS, DRINKING GLASSES, GLASS BOWLS, BEVERAGE GLASSWARE, BRUSHES FOR BASTING MEAT, POT CLEANING BRUSHES, CRUMB BRUSHES, WOOD BASKETS, AND gift baskets of wicker and wood, sold empty. FIRST USE: 19980915. FIRST USE IN COMMERCE: 19980915

IC 025. US 022 039. G & S: CLOTHING, NAMELY, T-SHIRTS, SHIRTS, HATS, CAPS, SWEATERS, JACKETS, SWEATSHIRTS, AND APRONS. FIRST USE: 19980915. FIRST USE IN COMMERCE: 19980915

IC 029. US 046. G & S: MEATS, FISH, POULTRY, BEEF, STEAK, SAUSAGES, BARBECUE RIBS, BARBECUE CHICKEN, BARBECUE STEAK, BARBECUE PORK, BABY BACK RIBS, PORK, CHICKEN, HAM, TURKEY, SMOKED PRIME RIB AND TURKEY; BAKED BEANS, COLE SLAW, CAESAR SALADS, GARDEN SALADS, PRE-CUT VEGETABLE SALADS, POTATO CHIPS, FRENCH FRIED POTATOES, POTATO-BASED SNACK FOODS, SANDWICH SPREADS, NAMELY, FRUIT BASED SPREADS, POTATO SALADS, FRUIT SALADS, CHILI, SOUPS, STEWS, FRESH AND COOKED VEGETABLES, OMELETS, ONION RINGS, PICKLES, GUACAMOLE, SOUR CREAM, BUTTER AND HONEY BUTTER. FIRST USE: 19990115. FIRST USE IN COMMERCE: 19990115

IC 030. US 046. G & S: BARBECUE SAUCES AND SPICES, FOOD SAUCES, FOOD SPICES, FOOD SEASONINGS, RELISHES, SALAD DRESSINGS, BREAD, RICE, CORN CHIPS, PUFFED CORN SNACKS, cereal, rice and wheat-based snack foods, iced tea , brewed tea, coffee, salad

dressings and all purpose salad dressing, ALL PURPOSE FOOD SEASONINGS, HONEY MUSTARD SAUCE, CHILI POWDER, SALSA, NACHOS, CHILI SAUCE, SANDWICHES, REUBEN SANDWICHES, TURKEY AND CHICKEN SANDWICHES, STEAK AND MEAT SANDWICHES, HAMBURGERS, CHEESEBURGERS, GRAVY, BURRITOS, GARLIC BREAD, ROLLS, CORN BREAD, CORN MUFFINS, MACARONI, PASTA, SWEET POTATO PIE, STRAWBERRY SHORTCAKE, AND PIES. FIRST USE: 19980915. FIRST USE IN COMMERCE: 19980915

IC 032. US 045 046 048. G & S: BEVERAGES, NAMELY, LEMONADE, SOFT DRINKS, SODA WATER, ROOT BEER. FIRST USE: 19990115. FIRST USE IN COMMERCE: 19990115

**Standard
Characters
Claimed**

**Mark Drawing
Code** (4) STANDARD CHARACTER MARK

Serial Number 78776658

Filing Date December 19, 2005

**Current Filing
Basis** 1A

**Original Filing
Basis** 1A

**Published for
Opposition** August 7, 2007

**Registration
Number** 3317387

**Registration
Date** October 23, 2007

Owner (REGISTRANT) Memphis Championship Barbecue Commissary, Inc. CORPORATION NEVADA
Suite 210 3280 W. Hacienda Avenue Las Vegas NEVADA 891181718

**Attorney of
Record** John E. Kelly

**Prior
Registrations** 1921329;2256568;2302620;AND OTHERS

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE MEMPHIS and BARBECUE APART
FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

**Live/Dead
Indicator** LIVE

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RAFAEL'S FOODS

Word Mark	RAFAEL'S FOODS
Goods and Services	IC 035. US 100 101 102. G & S: Wholesale distributorships and retail store services featuring food products, namely, red chili products, salsa products, pizza products, and health drinks. FIRST USE: 20030101. FIRST USE IN COMMERCE: 20030101
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78644066
Filing Date	June 6, 2005
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 23, 2007
Registration Number	3226765
Registration Date	April 10, 2007
Owner	(REGISTRANT) Rafael's Foods, LLC LTD LIAB CO NEW MEXICO 165 La Entraba Road Los Lunas NEW MEXICO 87031
Attorney of Record	Scott J. Fields
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FOODS" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK
Register PRINCIPAL
**Live/Dead
Indicator** LIVE

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Exhibit F

**To Declaration of Raffi V. Zerounian in
Support of Opposer's Motion for Summary
Judgment and Supporting Memorandum**

Offered by Opposer Russell G. Weiner

Russell G. Weiner v.

Jerry Zarnekee

Opposition No. 91179982

Application Serial No. 78942645



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PHILOSOPHY

Word Mark
Goods and Services

PHILOSOPHY

IC 029. US 046. G & S: Cheese and cracker combinations; Cheese spreads; Cooking oil; Dairy products excluding ice cream, ice milk and frozen yogurt; Dips ; Edible oil; Eggs; Fruit and vegetable salads; Fruit chips; Jams; Jellies ; Meat; Olive oil; Olive pastes; Peanut butter; Potato chips; Poultry; Processed fruits; Processed nuts; Processed vegetables; Sesame oil ; Soups; Tapenades; Vegetable oils; Yogurt

IC 030. US 046. G & S: Bakery goods; Beverages made of coffee; Beverages made of tea; Bread and buns; Breakfast cereals; Candy; Chewing gum; Coffee; Corn chips; Crackers; Flavorings for beverages; Flour; Flour-based chips; Frozen yogurt; Grain-based chips; Ice cream; Marinades; Microwave popcorn; Muffin mixes; Nutritional oils for food purposes; Pancake mixes; Pancake syrup; Pasta; Prepared pasta; Puddings; Salad dressings; **Salsa**; Sauces; Seasonings; Spices; Sugar and sugar substitutes; Tea; Yeast

IC 031. US 001 046. G & S: Fresh fruits; Fresh vegetables

IC 032. US 045 046 048. G & S: Drinking water; **Energy drinks**; Flavored waters; Fruit-flavored beverages; Mineral water; Non-alcoholic beverages containing fruit juices; Non-alcoholic beverages with tea flavor; Non-alcoholic beverages, namely, carbonated beverages; Non-alcoholic cocktail mixes; Soft drinks; Vegetable juices

Standard Characters Claimed

Mark Drawing (4) STANDARD CHARACTER MARK

Code

Serial Number 78859654
Filing Date April 12, 2006
Current Filing Basis 1B
Original Filing Basis 1B
Owner (APPLICANT) philosophy, inc. CORPORATION ARIZONA 3809 East Watkins Street Phoenix ARIZONA 85034
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Mark A. Carlino
Prior Registrations 2016208;2214968;2388010;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark EATING RIGHT

Goods and Services

IC 029. US 046. G & S: Full line of meats; full line of poultry; full line of processed vegetables; full line of processed, canned, dried, or preserved fruits; full line of frozen, prepared or packaged entrees and meals consisting primarily of meat, fish, poultry or vegetables; full line of dairy products excluding ice cream, ice milk and frozen yogurt; full line of dairy-based beverages; full line of fish not live; full line of fruit-based organic food bars, snack foods and spreads; soy chips; potato crisps; full line of oils for cooking; full line of oils for food; margarine; full line of snack dips excluding **salsa** and other sauces used as dips; full line of snack mixes consisting primarily of processed fruits, processed nuts and raisins; full line of soups; prepared salad except macaroni, rice and pasta salad; fruit preserves; hummus; cheese; soy, turkey and veggie burger patties; chili

IC 030. US 046. G & S: Full line of frozen, prepared or packaged entrees and meals consisting primarily of pasta or rice; full line of pasta; full line of prepared coffee and coffee beverages; full line of prepared tea and tea-based beverages; full line of bakery goods; full line of baking powders and spices; full line of breakfast cereals, full line of candies; full line of chocolates; full line of flavorings; full line of flour-based, corn-based or grain-based chips; full line of frozen confections, frozen yogurt, frozen custard and fruit ices; full line of ice creams; full line of herbal food beverages; macaroni and cheese; mixes for bakery goods; noodles, sauce, and seasoning toppings combined in unitary packages; full line of frozen and prepared pizzas; salad dressings; sauces; sandwiches; seasonings; spices; sugar and sugar substitutes; non-organic and non-allergy sensitive cookies; crackers; granola, granola snacks, granola-based snack bars; oatmeal; grain-based food bars also containing dried fruit; muffins; bread and bread products, namely, wraps; tortillas; **salsa**; potato and macaroni salad; waffles

IC 031. US 001 046. G & S: Full line of fresh vegetables and fruits

IC 032. US 045 046 048. G & S: Full line of fruit beverages and juices, water beverages, soft drinks, **energy drinks**, iced and frozen fruit beverages and smoothies; sports drinks

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.11.01 - Rectangles as carriers or rectangles as single or multiple line borders

Serial Number 76659783

Filing Date May 8, 2006

Current Filing Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) SAFEWAY INC. CORPORATION DELAWARE 5918 Stoneridge Mall Road Pleasanton CALIFORNIA 945882322

Attorney of Record Jordan S. Weinstein

Description of Mark The color(s) blue and white is/are claimed as a feature of the mark. The words EATING RIGHT are white on a blue rectangular background.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EATING

Word Mark EATING RIGHT**Goods and Services**

IC 029. US 046. G & S: Full line of meats; full line of poultry; full line of processed vegetables; full line of processed, canned, dried, or preserved fruits; full line of frozen, prepared or packaged entrees and meals consisting primarily of meat, fish, poultry or vegetables; full line of dairy products excluding ice cream, ice milk and frozen yogurt; full line of dairy-based beverages; full line of fish not live; full line of fruit-based organic food bars, snack foods and spreads; soy chips; potato crisps; full line of oils for cooking; full line of oils for food; margarine; full line of snack dips excluding **salsa** and other sauces used as dips; full line of snack mixes consisting primarily of processed fruits, processed nuts and raisins; full line of soups; prepared salads; fruit preserves; hummus; cheese; soy, turkey and veggie burger patties; chili

IC 030. US 046. G & S: Full line of frozen, prepared or packaged entrees and meals consisting primarily of pasta or rice; full line of pasta; full line of prepared coffee and coffee-based beverages; full line of prepared tea and tea-based beverages; full line of bakery goods; full line of baking powders and spices; full line of breakfast cereals, full line of candies; full line of chocolates; full line of food flavorings; full line of flour-based, corn-based or grain-based chips; full line of frozen confections, frozen yogurt, frozen custard and fruit ices; full line of ice cream food and beverage products; full line of herbal food beverages; macaroni and cheese; mixes for bakery goods; noodles, sauce, and seasoning toppings combined in unitary packages; full line of frozen and prepared pizzas; salad dressings; sauces; sandwiches; seasonings; spices; sugar and sugar substitutes; non-organic and non-allergy sensitive cookies; crackers; granola, granola snacks, granola-based snack bars; oatmeal; grain-based food bars also containing dried fruit; muffins; bread and bread products, namely, wraps; tortillas; **salsa**; potato and macaroni salad; waffles

IC 031. US 001 046. G & S: Full line of fresh vegetables and fruits

IC 032. US 045 046 048. G & S: Full line of fruit beverages and juices, water beverages, soft drinks, **energy drinks**, iced and frozen fruit beverages and smoothies; sports drinks

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.11.21 - Rectangles that are completely or partially shaded

Serial Number 76666322

Filing Date September 19, 2006

Current Filing Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) SAFEWAY INC. CORPORATION DELAWARE 5918 Stoneridge Mall Road Pleasanton CALIFORNIA 945882322

Attorney of Record Jordan S. Weinstein

Description of Mark The color(s) green, white is/are claimed as a feature of the mark. The word EATING is green, the word RIGHT is white, and the rectangular background is green.

Type of Mark TRADEMARK

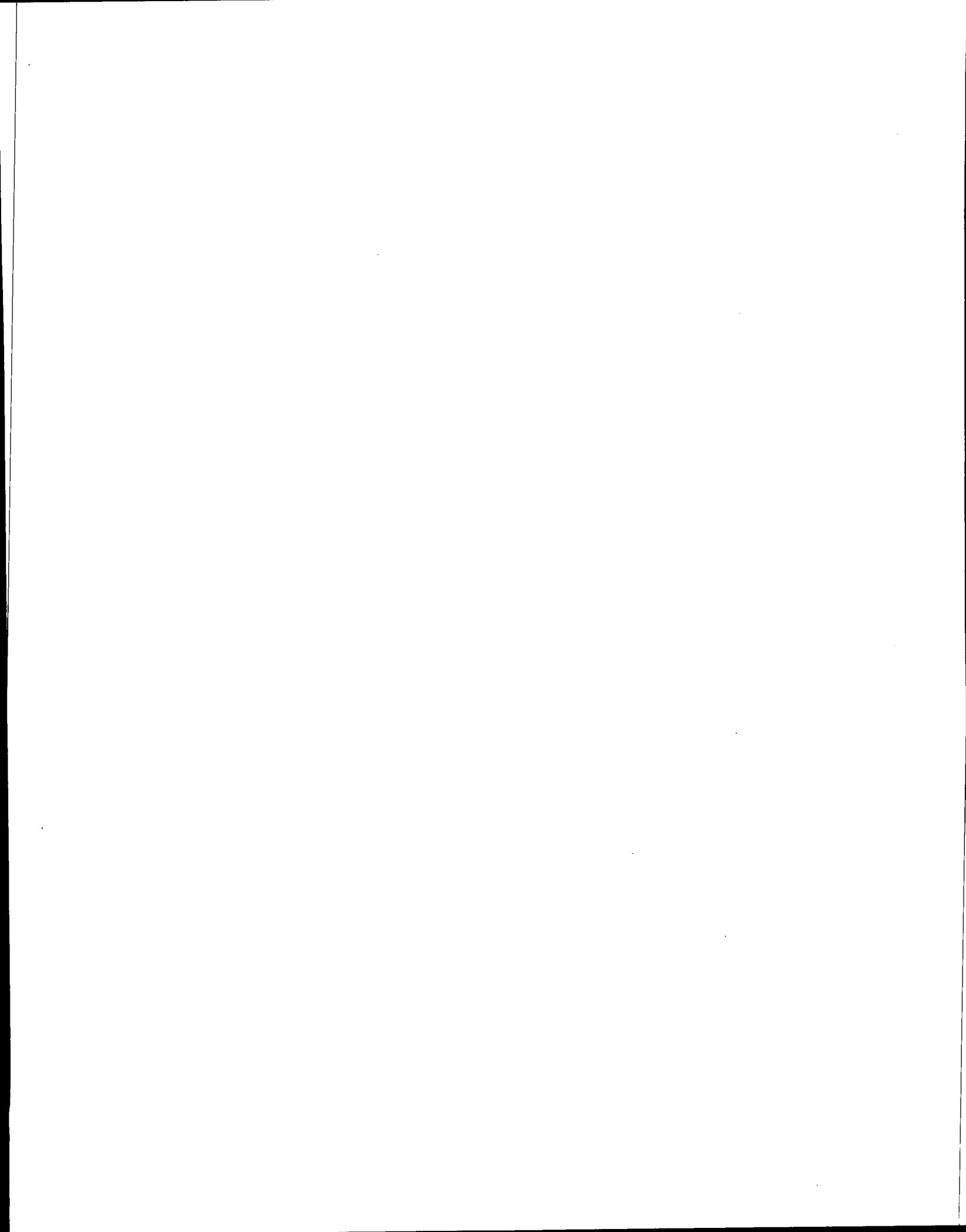
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GRAIN-BASED FOOD BARS ALSO CONTAINING DRIED FRUIT; MUFFINS; BREAD AND BREAD PRODUCTS, NAMELY, WRAPS; TORTILLAS; **SALSA**; POTATO AND MACARONI SALAD; WAFFLES

IC 031. US 001 046. G & S: FULL LINE OF FRESH VEGETABLES AND FRUITS

IC 032. US 045 046 048. G & S: FULL LINE OF FRUIT BEVERAGES AND JUICES WATER BEVERAGES, SOFT DRINKS, **ENERGY DRINKS**, ICED AND FROZEN FRUIT BEVERAGES AND SMOOTHIES; SPORTS DRINKS

IC 035. US 100 101 102. G & S: RETAIL GROCERY STORE SERVICES

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.11.21 - Rectangles that are completely or partially shaded

Serial Number 76669345

Filing Date November 21, 2006

Current Filing Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) SAFEWAY INC. CORPORATION DELAWARE 5918 Stoneridge Mall Road Pleasanton CALIFORNIA 945882322

Attorney of Record Jordan S. Weinstein

Description of Mark The color(s) green and white is/are claimed as a feature of the mark. The color green appears in the background of the entire mark, and in the wording Eating and Uniting Flavor & Nutrition; the color white appears in the wording Right.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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RESPECT FOR NATURE. PASSION FOR QUALITY

Word Mark	RESPECT FOR NATURE. PASSION FOR QUALITY
Goods and Services	IC 029. US 046. G & S: Frozen fruits, frozen vegetables, vegetable purees, fruit purees, canned fruits, canned vegetables, fruit-based organic food bars, fruit-based snack foods, vegetable-based snack foods, tomato paste, applesauce, soups
	IC 030. US 046. G & S: Tomato sauce, vegetable sauces, salsa , ketchup, fruit sauces (except for cranberry and applesauce)
	IC 032. US 045 046 048. G & S: Fruit juices, vegetable juices, fruit juice concentrates, vegetable juice concentrates, fruit drinks, fruit-flavored beverages, carbonated beverages, fruit sodas, drinking waters, fruit-flavored waters, smoothie beverages, energy drinks
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77282490
Filing Date	September 18, 2007
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) SunOpta Fruit Group, Inc. CORPORATION CALIFORNIA 6571 Altura Boulevard,

Suite 200 Buena Park CALIFORNIA 90620

Attorney of Record John L. DuPre'
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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**RESPETO A LA NATURALEZA.
PASIÓN POR LA CALIDAD**

Word Mark RESPETO A LA NATURALEZA. PASIÓN POR LA CALIDAD

Goods and Services IC 029. US 046. G & S: Frozen fruits, frozen vegetables, vegetable purees, fruit purees, canned fruits, canned vegetables, fruit based organic food bars; fruit-based snack foods, vegetable-based snack foods, tomato paste, applesauce, soups

IC 030. US 046. G & S: Tomato sauce, vegetable sauces, **salsa**, ketchup, fruit sauces (except for cranberry and applesauce)

IC 032. US 045 046 048. G & S: Fruit juices, vegetable juices, fruit juice concentrates, vegetable juice concentrates, fruit drinks, fruit-flavored beverages, carbonated beverages, fruit sodas, drinking waters, fruit-flavored waters, smoothie beverages, **energy drinks**

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77295002

Filing Date October 3, 2007

Current Filing Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) SunOpta Fruit Group, Inc. CORPORATION CALIFORNIA 6571 Altura Boulevard,

Suite 200 Buena Park CALIFORNIA 90620

Attorney of Record John L. DuPré
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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UP & UP

Word Mark UP & UP

Goods and Services

IC 003. US 001 004 006 050 051 052. G & S: Cleaning preparations for household purposes; laundry detergent, blueing, pre-soak, soap, and starch; fabric softeners and conditioners for laundry use; all purpose drain openers; automatic and liquid dishwashing detergents and additives; cleaning preparations for carpets, rugs and upholstery; disposable wipes impregnated with chemicals or compounds for household use; hair shampoo, conditioner, bleach, creams, lotions, color, dye, cleaning preparations, gel, mousse, oils, pomades, and relaxers; hair spray; hair bleaching preparations; wax for hair removal; depilatories; baby bath cleansers; baby lotion; baby oil, baby oil gel and creamy baby oil; baby powder and cornstarch baby powder; baby shampoo and hair conditions; baby wipes; cosmetic pads and sponges; cotton swabs, sticks, balls, and puffs for personal cosmetic use; non-medicated diaper rash ointment; disposable wipes impregnated with chemicals or compounds for personal hygiene; non-medicated foot powder; petroleum jelly for cosmetic purposes; nail care preparations; emery boards; nail-polish removers; skin care preparations, namely, bar soap, body wash, body powder, body scrub, hand cream, and skin lotion; liquid skin soap; bath salts; bath and shower gel; skin moisturizer in the nature of a body moisture spray; bubble bath; body mousse; shave foam; shave gel, shave cream, after shave and shaving preparations; pre-electric shave lotion; deodorants and antiperspirants; disposable wipes impregnated with chemicals or compounds for use personal hygiene; lip balm; non-medicated acne treatment preparations; sunscreen lotions, sprays and creams; cleaners and cleansers; breath fresheners; mouthwash; toothpaste; tooth gel and powder; teeth cleaning preparations; tooth whitening preparations; potpourri; room fragrances; refills for electric fragrance dispensers. fragrance oils; scented room sprays; pet odor removers; deodorizers for pets; non-medicated grooming preparations for pets; pet stain removers

IC 004. US 001 006 015. G & S: Candles

IC 005. US 006 018 044 046 051 052. G & S: Alcohol swabs for topical use, alcohol-prepared pads adhesive bandages; air fresheners and room deodorizers; air freshener refills for household use; alcohol for topical use; all purpose disinfectants; analgesics and pain relievers; anti-bacterial and anti-microbial hand and lotion soap; antibiotic creams and ointments; antifungal preparations for personal use; anti-itch creams, lotions, and ointments; antiseptic and medicated mouthwashes; antiseptic creams and ointments; calamine lotion; carpet and room deodorizers; cotton swabs, sticks, balls, and puffs for medical purposes; disinfectant mildew removers; disposable incontinence undergarments, briefs, protective underwear, absorbent shields and pads; electrolyte replacement solutions; Epsom salts; feminine hygiene preparations, namely, douches, feminine cleansing wash, and feminine deodorant sprays; feminine hygiene and protection, namely, tampons, maxi pads, mini pads, and panty liners; gauze; gel air fresheners; hemorrhoid treatment preparations and pads; hand sanitizing and disinfecting preparations; household disinfectants with cleaning, deodorizing and germicidal properties; hydrocortisone creams and ointments; hydrogen peroxide for medical use; infant formula; insecticidal shampoo for pets; medicated shampoo; lice treatment preparations; medical adhesive tape; medicated diaper ointment; medicated foot powder; medicated body powder; medicated pre-moistened wipes; medicated skin lotions; non-adhesive bandages and adhesives for bandages for skin wounds; odor eliminators for use on fabrics; ointments for the prevention and treatment of diaper rash and other skin irritations; ophthalmic preparations, namely eye drops, eye drops containing antihistamines and decongestants, lubricating and rewetting solutions, sterile saline solution, therapeutic ophthalmic preparations; ophthalmic solutions for use with contact lenses, namely, contact lens cleaners, contact lens soaking, wetting and disinfecting solutions and tablets. ovulation test kits; personal lubricating preparations; petroleum jelly for medical purposes; pharmaceutical preparations, namely, allergy relief medications, analgesics and pain relievers, analgesic sleeping aids, antihistamines, aspirin, cold medications; cough treatment medications and suppressants; decongestants, fever reducers, flu medications, menstrual pain and cramp relievers; motion sickness treatment preparations, nasal spray preparations, preparations for the treatment of asthma and hay fever; respiratory infection medications; sinus medications, sleep-aid preparations, throat lozenges, drops and sprays; pharmaceutical preparations, namely, antacids, acid reducers, anti-gas preparations, anti-diarrhea preparations, enema preparations, laxatives, lactose intolerance preparations, mineral oil, stool softeners; pharmaceutical preparations for the treatment, relief, and prevention of gastrointestinal distress, gastrointestinal disorders, constipation; pregnancy test kits for home use; preparations for disinfecting floors; refills for electric fragrance dispensers and scented room sprays; smoking cessation preparations; supplements, namely, vitamin, mineral, dietary, herbal, nutritional, and homeopathic supplements; nutritionally fortified beverages; toilet bowl disinfectant; and witch hazel; adult diapers; acne medications; acne treatment preparations; preparations to prevent nail-biting and thumb-sucking; insect repellants; anti-insect spray; deodorizers for household pet litter boxes; medicated grooming preparations for pets; first aid kits; denture adhesives

IC 006. US 002 012 013 014 023 025 050. G & S: Aluminum foil

IC 008. US 023 028 044. G & S: Shavers, namely razors and razor blades; manicure implements, namely nail files, nail clippers, nail buffers, cuticle pushers, tweezers, nail and cuticle scissors; pedicure implements, namely nail files, nail clippers, nail buffers, cuticle pushers, tweezers, nail and cuticle scissors; scissors

IC 009. US 021 023 026 036 038. G & S: Disposable cameras; batteries

IC 010. US 026 039 044. G & S: Baby bottle liners; gloves for medical use; lancets; disposable syringes; and thermometers for medical use; condoms; elastic bandages; compression bandages; slings

IC 011. US 013 021 023 031 034. G & S: Light bulbs; heating and cooking packs filled with chemical substances that react when required to warm or cool the body; electric fragrance dispensers

IC 021. US 002 013 023 029 030 033 040 050. G & S: Dental floss; dental tape; toothbrushes; dental floss dispensers; denture baths; body sponges; cosmetic brushes; hair combs; hair brushes; disposable latex gloves for general use; cleaning cloths, sponges and brushes; pre-moistened towelettes for household cleaning; disposable plates, bowls and cups; paper baking cups; disposable paperboard bakeware; pet brushes; pet feeding dishes; insect traps; food storage containers; toothpicks; brooms; mops; household cleaning brushes and sponges; clothes brushes; toilet brushes; clothes pins; waste baskets; laundry baskets

IC 026. US 037 039 040 042 050. G & S: Hair accessories, namely, bobby pins, barrettes, clamps, clips, hair bands, bows, buckles, chopsticks, hair coloring and frosting caps, nets, ribbons, rods, scrunchies, non-electric hair curlers and rollers; ribbons and bows for gift wrapping

IC 028. US 022 023 038 050. G & S: Balloons; party favors in the nature of small toys; blow-outs

IC 029. US 046. G & S: All food and beverage products in the class, namely, processed, canned, dried and preserved fruits and vegetables; frozen, prepared and packaged entrees and meals consisting primarily of meat, fish, poultry or vegetables; frozen, prepared and packaged vegetable-based entrees; baked beans; bean dip; bouillon; bouillon concentrates; condensed and evaporated milk; cooked fruits and vegetables; cream cheese; dairy products excluding ice cream, ice milk and frozen yogurt; dips, excluding **salsa** and other sauces used as dips; fish and meat preserves; cheese, egg and milk substitutes; extracts for soups; frozen appetizers consisting primarily of chicken or seafood; frozen fruits and vegetables; fruit and soy based snack food; fruit salads; vegetable salads; potato salad; coleslaw; fruit topping; half and half (milk and cream mixture); jellies, jams and marmalades; jerky; lentils; luncheon meats; butter; butter substitutes; margarine; edible oils and fats; marinated meat, seafood, fish, poultry and vegetables; meat and meat extracts; meat juices; meat substitutes; meat, fish, poultry and game; non-dairy based mix for making whipped icings and fillings; non-dairy creamer; oils and fats for food; organic nut and seed-based snack bars; peanut butter; potato crisps and chips; potato-based snack foods; preparations for making bouillon, broths and soups; prepared meat; prepared nuts; preserved fruit and vegetables; processed and roasted nuts; preserved meats and sausages; preserved, dried and cooked fruit and vegetables; processed meat; processed vegetables and fruits; protein based, nutrient-dense snack bars; protein for use as a food additive; refried beans; salads except macaroni, rice, and pasta salad; seafood, not live. shellfish, not live; shortening; bagged, canned or bottled sliced vegetables; snack dips, excluding **salsa** and other sauces used as dips; snack mix consisting primarily of processed fruits, processed nuts and/or raisins; soups, soup mixes and preparations for making soups; soy burger patties; soy chips; soy protein for use as a food additive; soy-based food bars; soy-based snack foods; tofu; tomato extracts; tomato paste; tomato puree; vegetable chips; vegetable salads; vegetables, instant frozen; vegetable-based food beverages; vegetable-based meat substitutes; vegetable-based snack foods; vegetable-based spreads; dairy or non-dairy based whipped topping

IC 030. US 046. G & S: All food and beverage products in the class, namely, frozen, prepared and packaged entrees consisting primarily of pasta or rice; bagels; bakery products; biscuits; bread; breakfast cereals; cereal based energy bars, not for use as a meal replacement; cereal-based snack foods; chocolate; chocolate covered nuts; chocolate covered raisins; chocolate food beverages not being dairy-based or vegetable based; cinnamon rolls; cocoa; cocoa-based beverages; coffee and coffee substitutes; coffee based beverages; confectionery chips for baking; cookies and cookie mixes; corn-based snack foods; crackers; danish; dessert mousse, puddings and souffles; donuts; dough-based pockets with filling consisting primarily of meats, poultry, fish, fruits and vegetables and cheese; dough-based pockets with filling consisting primarily of pasta or rice; dried pasta; flavored and sweetened gelatins; flavored ices; flavourings; flour; food leavening agents; food package combinations consisting primarily of bread, crackers and/or cookies; food starch; freezer pops; frostings; frozen appetizers consisting primarily of cornmeal; frozen confectionery, confections and custards; frozen dessert consisting of fruit and cream or cream substitutes; frozen pie crusts; frozen yogurt; fruit cakes, cobblers and pies; fruit sauces excluding cranberry sauce and applesauce; grain-based beverages; grain-based chips; grain-based snack foods; granola-based snack foods; granola; honey; ice; ice cream and ice cream substitutes; iced tea; ketchup; macaroni salad; marinades; marshmallow topping; marshmallows; mayonnaise; mixes for bakery goods; mixes for making batters for fried foods; mixes for making breading; molasses; muffins; mustard; oatmeal; pasta salad; pastries; pizza; pizza crust; pizza dough; popcorn; prepared pasta; pretzels; processed cereals; puddings; ravioli; ready-to-eat cereal-derived food bars. ready-to-eat cereals; rice; rice cakes; rice salad; salad dressings; **salsa**; salt; sandwiches; sauces; seasonings and spices; sherbet; soy sauce; soup mixes; stuffing mixes containing bread; sugar and sugar substitutes; taco seasoning; tea; tea based beverages with fruit flavoring; tortellini; tortillas; vinegar; wheat-based snack foods; chewing gum; candy and candy mints

IC 031. US 001 046. G & S: All food products in the class, namely, fresh herbs and fresh nuts; raw nuts; unprocessed nuts; fresh fruits and vegetables; consumable pet chews; aromatic litter for pets; pet food and beverages; edible pet treats

IC 032. US 045 046 048. G & S: Beverages, namely, beer, bottled water, coconut milk, **energy drinks**, flavored bottled water, fruit drinks and juices, fruit-flavored beverages, non-alcoholic beer, non-alcoholic

fruit juice beverages, non-alcoholized wines, non-carbonated, non-alcoholic frozen flavored beverages, smoothie beverages, soft drinks, sparkling water, sports drinks, spring water, vegetable juice beverages; preparations for making beverages, namely, fruit concentrates and purees used as ingredients of beverages, fruit juice concentrates, juice base concentrates, non-alcoholic fruit extracts used in the preparation of beverages

IC 033. US 047 049. G & S: Alcoholic beverages except beers

IC 034. US 002 008 009 017. G & S: Matches

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77975476

Filing Date July 17, 2007

Current Filing Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) Target Brands, Inc. CORPORATION MINNESOTA TPS-3165 1000 Nicollet Mall Minneapolis MINNESOTA 55403

Attorney of Record James R. Steffen

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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POWER OF ONE**Word Mark** POWER OF ONE**Goods and Services**

IC 029. US 046. G & S: DAIRY-BASED BEVERAGES; FRIED PORK RINDS; POTATO-BASED SNACK FOODS, NAMELY, POTATO CHIPS, POTATO CRISPS AND PUFFED POTATO SNACKS; PROCESSED EDIBLE SEEDS; PROCESSED NUTS; SNACK DIPS, NAMELY, CHEESE-BASED SNACK DIPS, BEAN-BASED SNACK DIPS AND DAIRY-BASED SNACK DIPS; MEAT SNACKS, NAMELY, PROCESSED BEEF AND BEEF JERKY; CANDY-COATED NUTS; FRUIT BASED SNACK FOODS; SOY BASED FOOD BEVERAGES USED AS MILK SUBSTITUTES; PLANTAIN CHIPS; CASSAVA CHIPS; TARO CHIPS; VEGETABLE BASED FOOD BEVERAGES

IC 030. US 046. G & S: TEA; NON-ALCOHOLIC TEA-BASED BEVERAGES WITH FRUIT FLAVORING; ISOTONIC DRINKS; ESPRESSO-BASED BEVERAGES; BREAKFAST CEREALS; GRAIN-BASED CHIPS; PANCAKE MIXES; PREPARED SIDE DISHES CONSISTING PRIMARILY OF RICE AND PASTA; CORN-BASED SNACK FOODS, NAMELY, CORN CHIPS, TORTILLA CHIPS AND PUFFED CORN SNACKS; CHEESE FLAVORED PUFFED CORN SNACKS; READY TO EAT POPCORN; CARAMEL-COATED READY TO EAT POPCORN; **SALSA** AND HOT SAUCES; TRAIL MIX; COOKIES; CRACKERS; FILLED CRACKERS; SNACK MIX COMPRISED OF TORTILLA CHIPS, MULTIGRAIN-BASED SNACK CHIPS, CHEESE-FLAVORED PUFFED CORN SNACKS, PRETZELS, BAGEL PIECES AND BREAD STICKS; GRAIN-BASED CHIPS, NAMELY MULTIGRAIN SNACK CHIPS; WHEAT-BASED SNACK FOODS, NAMELY, PUFFED WHEAT SNACKS

IC 032. US 045 046 048. G & S: SYRUPS FOR MAKING SOFT DRINKS AND FRUIT DRINKS AND PREPARATIONS FOR MAKING FRUIT DRINKS AND SOFT DRINKS IN THE NATURE OF CONCENTRATES AND POWDERS; SOFT DRINKS; SEMI-FROZEN SOFT DRINKS; DRINKING WATER; **ENERGY DRINKS**; NON-CARBONATED FRUIT FLAVORED BEVERAGES; FLAVORED

AND UNFLAVORED CARBONATED DRINKING WATER; NON-CARBONATED FLAVORED WATER; SPORTS DRINKS; FRUIT JUICES; FRUIT JUICE DRINKS, NAMELY, NON-ALCOHOLIC BEVERAGES CONTAINING FRUIT JUICES; VEGETABLE DRINKS, NAMELY, VEGETABLE JUICES; SMOOTHIES; SOY BASED BEVERAGES NOT BEING MILK SUBSTITUTES

IC 035. US 100 101 102. G & S: ON-LINE RETAIL STORE SERVICES FEATURING SNACK FOODS AND TELEPHONE CATALOG ORDERING SERVICES FEATURING SNACK FOODS; PROVIDING BUSINESS, CONSUMER AND MARKET RESEARCH INFORMATION, ALL IN THE FIELD OF FOOD PRODUCTS; PROVIDING SALES VOLUME TRACKING FOR OTHERS IN THE FIELD OF FOOD PRODUCTS; PROVIDING STATISTICAL INFORMATION AND STATISTICAL DATA IN THE FIELD OF FOOD PRODUCTS; BUSINESS MANAGEMENT CONSULTANCY AND ADVISORY SERVICES WITH RELATION TO STRATEGY, MARKETING, PRODUCTION AND RETAIL SALES MATTERS, NAMELY, PROVIDING RETAILERS WITH INFORMATION AND STRATEGIES TO INCREASE TOTAL STORE PRODUCTIVITY; CONDUCTING BUSINESS AND MARKET RESEARCH RELATING TO THE PURCHASE AND CONSUMPTION OF FOOD AND PROVIDING ANALYSIS OF THE RESEARCH RESULTS; RETAIL STORE SERVICES FEATURING FOOD PRODUCTS

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78592238

Filing Date March 22, 2005

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition March 14, 2006

Owner (APPLICANT) PepsiCo, Inc. CORPORATION NORTH CAROLINA 700 Anderson Hill Road Purchase NEW YORK 10577

Attorney of Record Joseph J. Ferretti

Prior Registrations 2280130

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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LOVE FOOD, LOVE LIFE

Word Mark LOVE FOOD, LOVE LIFE**Goods and Services**

IC 016. US 002 005 022 023 029 037 038 050. G & S: Printed publications, namely, magazines featuring food, nutrition and health; and cook books

IC 029. US 046. G & S: Food and beverage products, namely, prepared and packaged entrees, meals, and dinners consisting primarily of meat, fish, poultry, or vegetables; fruit salads; vegetable salads; salads except macaroni, rice, and pasta salad; fruit-based food beverages; garden salads; prepackaged dinners consisting primarily of meat, seafood, or poultry served with pasta, rice, and vegetables; soup; baked beans; bisques; chowder; cole slaw; cranberry sauce; fish fillets; hummus; matzo ball soup; meatballs; potato pancakes; potato salad; snack dips; snack food dips; stews; tuna fish; turkey

IC 030. US 046. G & S: Food and beverage products, namely, prepared and packaged entrees, meals, and dinners consisting primarily of pasta or rice; desserts; bakery desserts; bakery goods; beverages made of tea; granola; cakes; cheesecakes; cookies; sandwiches; paninis; sandwich wraps; lasagna; macaroni and cheese; macaroni salad; oatmeal; pizzas; ravioli; brownies; puddings; salad dressings; **salsa**; sauces; tea; bakery products; bakery products, namely, sweet bakery goods; pastries; burritos; coffee; coffee beans; dessert mousse; dough-based pockets with filling consisting primarily of meats, poultry, fish, fruits and vegetables and cheese; fruit pies; fruit teas; gravy, green tea, ground coffee beans; herbal infusions; herbal teas; hoagies; hominy; hot chocolate; iced cakes; iced tea; meat pies; noodles, sauce, and processed vegetables combined in units/packages; pasta salad; rice salad; pies; pigs-in-a-blanket; pot pies; prepared cocoa and cocoa-based beverages; prepared coffee and coffee-based beverages; quesadillas; quiche; shakes; soy burger sandwiches; spaghetti and meatballs; tea-based beverages with fruit flavoring; turkey burger sandwiches; and veggie burger sandwiches

IC 031. US 001 046. G & S: Cat treats; dog treats; fresh apples; fresh bananas; fresh blueberries; fresh fruits; fresh mangos; fresh oranges; and fresh peaches

IC 032. US 045 046 048. G & S: Beverages, namely, fruit juice beverages; drinking water; flavored waters; fruit beverages; smoothies; and vegetable juice beverages; apple juice beverages; beer; bottled artesian water; **energy drinks**; fruit juices; fruit nectars; fruit-based soft drinks flavored with tea; ginger beer; glacial water; lemonade; non-alcoholic beverages, namely, carbonated beverages; non-alcoholic beverages containing fruit juices; non-alcoholic beverages with tea flavor; orange juice beverages; pineapple juice beverages; soft drinks; soy-based beverages not being milk substitutes; sparkling water; sports drinks; spring water; still water; sweet cider; tomato juice; tomato juice beverages; vegetable juice; vegetable juices beverages; and fruit-based beverages

IC 035. US 100 101 102. G & S: Retail store services featuring food and beverage products, entrees, and meals

IC 043. US 100 101. G & S: Carry-out restaurant services; restaurant services; salad bars; self-service restaurants; cafes; cafe-restaurants; catering; catering for the provision of food and beverages; catering of food and drinks; coffee-house and snack-bar services; food preparation; preparation of food and beverages; providing a database in the field of recipes and cooking information; serving food and drinks; and take-out restaurant services

Standard Characters Claimed

Mark

Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78793375

Filing Date January 17, 2006

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition September 4, 2007

Owner (APPLICANT) Eaterna LLC LTD LIAB CO DELAWARE Suite 550 1250 Fourth Street Santa Monica CALIFORNIA 90401

Attorney of Record Bernard R. Gans

Type of Mark TRADEMARK. SERVICE MARK

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Word Mark EATURNA

Goods and Services

IC 016. US 002 005 022 023 029 037 038 050. G & S: Printed publications, including magazines featuring food, nutrition and health; and cook books

IC 029. US 046. G & S: Food and beverage products including prepared and packaged entrees, meals, and dinners consisting primarily of meat, fish, poultry, or vegetables; fruit salads; vegetable salads; salads except macaroni, rice, and pasta salad; fruit-based food beverages; garden salads; prepackaged dinners consisting primarily of meat, seafood, or poultry served with pasta, rice, and vegetables; soup; baked beans; bisques; chowder; cole slaw; cranberry sauce; fish fillets; fruit-based beverages; hummus; matzo ball soup; meatballs; potato pancakes; potato salad; salads except macaroni, rice, and pasta salad; snack dips; snack food dips; stews; tuna fish; turkey

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Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

11.01.01 - Spoons
 11.01.02 - Kitchen (electric), table; Knives, table (without pointed ends); Table knives (without pointed ends)
 11.01.25 - Brushes, basting; Chopsticks; Churns, butter (manual); Cups, measuring; Fruit juices, non-electric; Garlic presses (non-electric); Graters, cheese; Holders, kitchen utensil; Ice cube trays; Juicers, non-electric; Ladles (soup); Measuring cups; Napkin holders; Other non-electric kitchen utensils, utensil holders; Pasta makers, non-electric; Potato peelers; Racks, kitchen tool; Scoops, ice cream; Shakers, cocktail; Sharpeners, knife (non-electric)
 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

Serial Number

78707584

Filing Date

September 6, 2005

Current Filing Basis

1B

Original Filing Basis

1B

Owner

(APPLICANT) EATurna LLC LTD LIAB CO DELAWARE 1250 FOURTH STREET, SUITE 550 SANTA MONICA CALIFORNIA 90401

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record

Bernard R. Gans

Description of Mark

Color is not claimed as a feature of the mark.

Type of Mark

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

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- OPPOSERS' REPLY BRIEF ON FINAL HEARING, dated May 16, 2008
- DECLARATION OF RAFFI V. ZEROUNIAN IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM, dated May 15, 2008
- DECLARATION OF RUSSELL G. WEINER IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM, dated May 15, 2008

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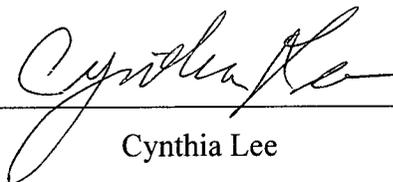
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Cynthia Lee