

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

Soft Serve, Inc. d/b/a Sprinkles,	)	Opposition No. 91194188
	)	Opposition No. 91195669
Opposer/Petitioner,	)	Opposition No. 91195985
	)	Opposition No. 91195986
v.	)	Opposition No. 91196035
	)	Opposition No. 91196061
Sprinkles Cupcakes, Inc.,	)	Opposition No. 91196087
)	
Applicant/Registrant.	)	Cancellation No: 92053109
	)	(as consolidated)

77/770,541

**SPRINKLES CUPCAKES' REPORT RE
TERMINATED DISTRICT COURT PROCEEDING**

On March 4, 2011, the Board issued an Order consolidating and staying the above-referenced proceedings, and striking portions of the Notices of Opposition and Petition to Cancel. In the Order, the Board further directed defendant Sprinkles Cupcakes, Inc. ("Sprinkles") to file copies of the pleadings in the Eastern District of Pennsylvania case *Ryan Mealey v. Sprinkles Cupcakes, Inc.*, as well as a report on the status of the case. The case has been terminated.

Mealey was a declaratory judgment action, with a counterclaim by Sprinkles for infringement of its trademarks. The matter was resolved by settlement and stipulated injunction on January 28, 2010, and terminated by Court Order on May 7, 2010. The *Mealey* case was terminated months before Opposer/Petitioner Soft Serve, Inc. ("Soft Serve") filed the Petition of Cancellation referencing the case on September 30, 2010.

<p>CERTIFICATE OF MAILING UNDER 37 C.F.R. §2.190</p>	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451 Alexandria, VA 22313-1451.</p>	
<p>Jo Ann Hylton Printed Name</p>	<p>March 24, 2011 Date of Deposit</p>
<p><i>Jo Ann Hylton</i> Signature</p>	<p>3-24-11 Date</p>



03-29-2011

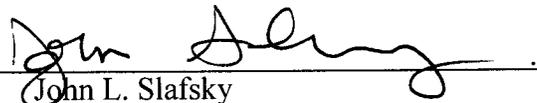
In compliance with the Board's Order, copies of the Complaint, Answer and Counterclaim, and Stipulated Injunction are attached as Exhibits A, B, and C, respectively. However, as the *Mealey* case has been finally resolved, it would not give rise to a suspension in the present consolidated proceeding. A copy of the Court Order terminating the case is attached as Exhibit D.

Dated: March 24, 2011

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____



John L. Slafsky
Hollis Beth Hire

Attorneys for Applicant/Registrant
Sprinkles Cupcakes, Inc.

CERTIFICATE OF SERVICE BY MAIL

I, Jo Ann Hylton, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

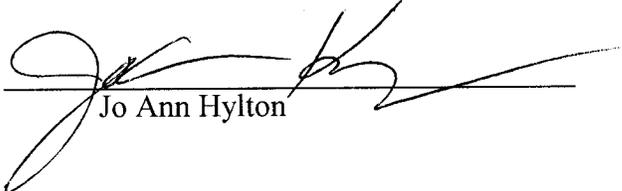
On this date, I served:

SPRINKLES CUPCAKES' REPORT RE TERMINATED DISTRICT COURT PROCEEDING

on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Thomas J. Vande Sande
Hall & Vande Sande, LLC
10220 River Road, Suite 200
Potomac, Maryland 20854

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on March 24, 2011.


Jo Ann Hylton

LAW OFFICES OF ERNEST SASSO
By: Ernest Sasso, Esquire
Pennsylvania Attorney Identification No. 34883
2300 Computer Avenue, Suite M-69
Willow Grove, Pennsylvania 19090-1745
215-706-2000 [Telephone]
215-598-0977 [Fax]
<intl@ernestsasso.com> [E-Mail]

Attorney for Plaintiffs RYAN MEALEY,
MATTHEW MEALEY, and DAN MEALEY

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RYAN MEALEY, MATTHEW MEALEY,
and DAN MEALEY

Plaintiffs,

v.

SPRINKLES CUPCAKES, INC..

Defendant.

Civil Case No.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, by and through their undersigned counsel, aver as follows:

NATURE OF ACTION

1. This is an action for declaratory judgment under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338 in that this Complaint raises federal questions arising under the Trademark Act of 1946, as amended ("Lanham Act"), 15 U.S.C. §

1051, *et seq.*, and arising out of interstate commerce, 15 U.S.C. § 1127.

3. This Court has personal jurisdiction because Sprinkles Cupcakes, upon information and belief, conducts business in the Commonwealth of Pennsylvania, and has sold products which are the subject of this action in this district.

4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and 1391(c).

PARTIES

5. Plaintiff Ryan Mealey, a natural person, is domiciled in the Commonwealth of Pennsylvania.

6. Plaintiff Matthew Mealey, a natural person, is domiciled in the Commonwealth of Pennsylvania.

7. Plaintiff Dan Mealey, a natural person, is domiciled in the Commonwealth of Pennsylvania.

8. Plaintiffs Ryan Mealey and Matthew Mealey (collectively, “the Mealeys”) are siblings, and are the children of Plaintiff Dan Mealey (collectively—in tandem with his children—“the Plaintiffs”).

10. Defendant Sprinkles Cupcakes, Inc. (“Sprinkles Cupcakes” or “Defendant”) is a California corporation with its principal place of business at 9635 Santa Monica Boulevard, Beverly Hills, California 90210-4401.

FACTS

11. On June 19, 2009, the Mealeys opened the first of four frozen-yogurt stores under the name of “Sprinkles Yogurt” in Cherry Hill, New Jersey. Plaintiffs expect to open their second shop on or about September 10, 2009, in Philadelphia, near the University of Pennsylvania campus; two more facilities are scheduled to open in the latter part of 2009 in West

Chester and Malvern, Pennsylvania. The Mealeys further intend to open four additional frozen-yogurt stores in 2010.

12. Concomitant with the opening of the New Jersey store on June 19, 2009, the *Philadelphia Business Journal* (“PBJ”) featured an article about the Mealeys’ venture entitled “Sibs seek to Sprinkles area with yogurt.” Throughout the article, the Mealeys’ store, Sprinkles Yogurt, was repeatedly shortened and referred to as “Sprinkles,” and not the proper name of “Sprinkles Yogurt.” The nomenclature of “Sprinkles” is solely the reporter’s term; throughout their interview with the PBJ staff writer, the Mealeys used the name “Sprinkles Yogurt” only to identify their new venture.

13. Shortly after publication of the PBJ article, the Mealeys received a letter from Hollis Beth Hire, an attorney at Wilson Sonsini Goodrich & Rosati (“Wilson Sonsini”), counsel to Sprinkles Cupcakes. A copy of that letter is attached as Exhibit A hereto. Ms. Hire claimed that her client “recently became aware that [the Mealeys] have adopted the name ‘Sprinkles’ for a chain of frozen yogurt stores.” In her letter, Ms. Hire repeatedly referred to her client, Sprinkles Cupcakes, as “Sprinkles,” and averred that “Sprinkles” owned three U.S. trademark registrations, which she identified by registration number and name.

The trademark registrations referenced by Ms. Hire for Sprinkles Cupcakes—Registration Numbers 3271643 and 3250609—featured product and store images exclusively named “Sprinkles Cupcakes,” and incorporated an express disclaimer for use of the term “‘CUPCAKES’ apart from the mark as shown.”

In her letter, Ms. Hire further claimed that Sprinkles Cupcakes was concerned that the Mealeys’ “adoption and use of the name ‘Sprinkles’ [wa]s likely to cause confusion among consumers who may believe that [the Mealeys] products and stores are offered by, associated

with, or approved by Sprinkles.” Ms. Hire requested that the Mealeys refrain from further use of “the SPRINKLES name or mark or any other similar trademarks . . . [and that they] transition away from the SPRINKLES brand in connection with [the Mealeys’] business.”

14. On July 23, 2009, the Mealeys’ undersigned attorney sent a letter to Ms. Hire in reply to her original communication. A copy of this letter is attached hereto as Exhibit B. Counsel’s reply set forth the contention that the Mealeys’ nomenclature for their frozen yogurt brand was dissimilar from, and would not cause confusion with the trademarks registered by Ms. Hire’s client, Sprinkles Cupcakes.

15. On August 6, 2009, in reply to the undersigned counsel’s letter, Ms. Hire sent an e-mail communication repeating her client’s contention that the Mealeys’ “continued use of the SPRINKLES name or mark [wa]s likely to cause confusion” and would be violative of “the nation-wide [sic] trademark protection that Sprinkles’ federal registrations convey.” A copy of this communication is attached hereto as Exhibit C.

Ms. Hire identified two additional U.S. trademark registrations putatively incorporating “the SPRINKLES mark,” and attached to her communication the PBJ article repeating the reporter’s assertion that the Mealeys’ “shops will be known . . . as . . . ‘Sprinkles.’” Claiming that the marks were “identical,” not merely “highly similar,” Ms. Hire averred that cupcakes and frozen yogurt “are highly related in the minds of consumers, as all are popular retail dessert items, even often found at the same location.” Ms. Hire reiterated her request that the Mealeys totally “transition away from the SPRINKLES brand in connection with their business.”

16. On August 21, 2009, Plaintiffs, through their undersigned attorney, filed an Intent-to-Use (“ITU”) trademark Application (Serial Number 77810064) with the United States Patent and Trademark Office for the mark SPRINKLES YOGURT. With the opening of their

first Pennsylvania facility, Plaintiffs intend to amend the ITU Application to reflect the interstate venue of their retail store product(s) and services featuring frozen yogurt.

17. Defendant's claims and demands have created a reasonable apprehension of litigation against Plaintiffs, and the Mealeys in particular, and have placed a cloud over the Mealeys' ability to use the term "Sprinkles" in connection with their business, as well as use of the name "Sprinkles Yogurt" to identify their business.

18. Plaintiffs intend to continue to devote substantial resources to the development and expansion of their frozen-yogurt stores. Defendant's claims and demands impair their ability to carry on this business.

19. An actual controversy thus exists between the parties based on Defendant's claims and demands.

20. So that they may continue to use the term "Sprinkles" and identify their store(s) as "Sprinkles Yogurt" without interference by Defendant, Plaintiffs, and the Mealeys in particular, desire to promptly resolve this controversy and establish that they are not infringing or otherwise violating any trademark rights of Defendant.

COUNT I
DECLARATION THAT PLAINTIFFS' USE OF "SPRINKLES" AND
"SPRINKLES YOGURT" DOES NOT CONSTITUTE INFRINGEMENT,
UNFAIR COMPETITION, DILUTION, OR ANY OTHER TRADEMARK-BASED
ACTION

21. Plaintiffs reallege and incorporate by reference the allegations adumbrated in paragraphs 1 through 20 hereof as if set forth herein in full.

22. Plaintiffs use of "Sprinkles" and "Sprinkles Yogurt" in connection with their product line, retail store services, and promotional material does not constitute infringement, unfair competition, dilution, or otherwise violate any right of Defendant under the Lanham Act,

15 U.S.C. §§ 1114(1) or 1125.

COUNT II

DEFENDANT'S ALLEGED MARK "SPRINKLES" IS GENERIC, HAS NOT ACQUIRED DISTINCTIVENESS, AND THEREFORE IS NOT ENTITLED TO TRADEMARK PROTECTION

23. Plaintiffs reallege and incorporate by reference the allegations adumbrated in paragraphs 1 through 22 hereof as if set forth herein in full.

24. The widespread use of "sprinkles" throughout the food industry, etc. establishes that the term refers to a topping or additive, and is thus clearly generic and not capable of trademark protection. To afford trademark status to the generic name of a product or service—sprinkles—would prevent all other users of the product or service from identifying it.

Pursuant to 15 U.S.C. § 1119, the United States Patent and Trademark Office should be directed to cancel Defendant's registration of the "Sprinkles" mark—Registration Number 3306772.

COUNT III

DEFENDANT'S ALLEGED MARK "SPRINKLES" IS DESCRIPTIVE, HAS NOT ACQUIRED DISTINCTIVENESS, AND THEREFORE IS NOT ENTITLED TO TRADEMARK PROTECTION

25. Plaintiffs reallege and incorporate by reference the allegations adumbrated in paragraphs 1 through 24 hereof as if set forth herein in full.

26. The widespread use of "sprinkles" throughout the food industry, etc. establishes that the term refers to a topping or additive, is merely descriptive, and thus not capable of trademark protection. On February 2, 2009, the United States Patent and Trademark Office disallowed registration of the mark SALAD SPRINKLES (Serial Number 77605554) on the grounds that the term "SALAD" "was merely descriptive of a food item which the applicant's

goods are to be used,” and that the term “SPRINKLES” “was merely descriptive of how the goods are to be used, namely, as a topping for particular foods.”

Pursuant to 15 U.S.C. § 1119, the United States Patent and Trademark Office should be directed to cancel Defendant’s registration of the “Sprinkles” mark—Registration Number 3306772.

**COUNT IV
ALTERNATIVELY, PLAINTIFFS’ USE OF “SPRINKLES” CONSTITUTES
FAIR USE UNDER THE LANHAM ACT**

27. Plaintiffs reallege and incorporate by reference the allegations adumbrated in paragraphs 1 through 26 hereof as if set forth herein in full.

28. Plaintiffs have not used the term “Sprinkles” as a trademark; their use of “Sprinkles Yogurt” is descriptive of, used fairly, correctly, and in good faith only to describe Plaintiffs’ product line and goods. Moreover, there is no likelihood of confusion concerning the origin of the competing products—Plaintiffs’ “Sprinkles Yogurt” and Defendant’s Sprinkles Cupcakes.

29. Plaintiffs use of the term “Sprinkles” and “Sprinkles Yogurt” therefore constitutes a fair use under the Lanham Act, 15 U.S.C. §§ 1115(b)(4), barring Defendant’s claims of trademark infringement and unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Ryan Mealey, Matthew Mealey, and Dan Mealey accordingly pray for judgment as follows:

1. For a declaration that Plaintiffs' use of the term "Sprinkles" and "Sprinkles Yogurt," in connection with their product line and retail store services, does not violate the Lanham Act, 15 U.S.C. § 1125;
2. For a declaration that Defendant's trademark of "SPRINKLES" should be cancelled because its use of the common descriptive term "Sprinkles" for its cupcakes is generic and is thus not properly registerable as a trademark.
3. For a declaration that Defendant's trademark of "SPRINKLES" should be cancelled because its use of the common descriptive term "Sprinkles" for its cupcakes is merely descriptive and is thus not properly registerable as a trademark.
4. For Plaintiffs' attorneys' fees;
5. For Plaintiffs' costs and disbursements in this action; and
6. For such other and further equitable and legal relief as the court shall find just and proper.

Respectfully submitted,

LAW OFFICES OF ERNEST SASSO

Dated: September 4, 2009

By: _____



Ernest Sasso
Attorney for Plaintiffs
RYAN MEALEY, MATTHEW MEALEY,
and DAN MEALEY

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Montgomery (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Law Offices of Ernest Sasso, 2300 Computer Avenue, Suite M-69, Willow Grove, PA 19090-1745; (215) 706-2000

DEFENDANTS

County of Residence of First Listed Defendant Los Angeles (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) Hollis Beth Hire, Esq., Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304-1050

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338

Brief description of cause: Declaratory Judgment for Non-Infringement of Trademark

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

09/04/2009

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

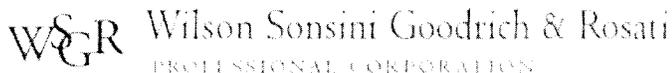
**Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

EXHIBIT A



650 Page Mill Road
Palo Alto, CA 94304-1050
PHONE 650.493.9300
FAX 650.493.6811
www.wsgri.com

June 30, 2009

By Courier

Matthew Mealey
Ryan Mealey
Sprinkles Yogurt
1133 Herkness Drive
Meadowbrook, PA 19047

Re: Intellectual Property Matters for Sprinkles Cupcakes, Inc.

Dear Mr. Mealey and Ms. Mealey:

We represent Sprinkles Cupcakes, Inc. ("Sprinkles") in trademark matters. Our client, one of the fastest-growing and most successful retail dessert businesses, recently became aware that you have adopted the name "Sprinkles" for a chain of frozen yogurt stores.

As you are likely aware, Sprinkles has received an extraordinary amount of national and international publicity, including prominent features on *The Oprah Winfrey Show*, *Good Morning America*, *The Food Network*, *Access Hollywood* and *Entertainment Tonight*, as well as coverage in *The New York Times*, *Los Angeles Times*, *Bon Appetit*, *Food & Wine*, *Gourmet*, *Travel & Leisure* and *InStyle*. Sprinkles has also received coverage in local Pennsylvania press, including Philly.com's Daily News. Williams-Sonoma offers a popular line of SPRINKLES CUPCAKES-branded products in its stores, including numerous locations throughout Pennsylvania. Sprinkles has opened retail stores under the name and mark SPRINKLES CUPCAKES in multiple U.S. cities, and has announced plans to expand to many more, including Philadelphia. As a result of this exposure, consumers have come to associate the SPRINKLES brand strongly with Sprinkles' high quality products.

Sprinkles is the owner of the following U.S. trademark registrations for SPRINKLES and SPRINKLES CUPCAKES:

Reg. No. 3306772	SPRINKLES
Reg. No. 3271643	SPRINKLES CUPCAKES
Reg. No. 3250609	SPRINKLES CUPCAKES

Sprinkles is concerned that your adoption and use of the name "Sprinkles" is likely to cause confusion among consumers who may believe that your products and stores are offered by, associated with, or approved by Sprinkles. Your public statements referring to market research at popular spots in California, where Sprinkles is based, further add to the likelihood of marketplace confusion.

Wilson Sonsini Goodrich & Rosati

PROFESSIONAL CORPORATION

Sprinkles Yogurt

Page 2

Sprinkles welcomes competition from other entrepreneurs. However, to protect its valuable brand and to avoid potential confusion, Sprinkles must ask that you transition away from the SPRINKLES brand in connection with your business. Please confirm in writing by **July 15, 2009** that you will agree not to use the SPRINKLES name or mark or any other similar trademarks, trade names, or Internet domain names in connection with your business, and that you will remove the mark from any store signage and any sales, marketing or promotional materials.

We trust that you, like Sprinkles, respect intellectual property rights and have no desire to encourage marketplace confusion. Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Hollis Beth Hire", written in a cursive style.

Hollis Beth Hire

cc: Sprinkles Cupcakes, Inc.

EXHIBIT B

LAW OFFICES OF ERNEST SASSO
2300 Computer Avenue, Suite M-69
Willow Grove, Pennsylvania 19090-1745



Telephone Number: (215) 706-2000
E-Mail: intllaw@ernestsasso.com

Facsimile Number: (215) 598-0977
Website: <http://www.ernestsasso.com>

VIA FIRST CLASS MAIL AND FACSIMILE TRANSMISSION TO (650) 493-6811

July 21, 2009

Hollis Beth Hire, Esquire
Wilson Sonsini Goodrich & Rosati PC
650 Page Mill Road
Palo Alto, California 94304-1050

RE: Intellectual Property Matters for Sprinkles Cupcakes, Inc.

Dear Ms. Hire:

I am responding to your communication of June 30, 2009, to Matthew Mealey and Ryan Mealey ("the Mealeys") in connection with the above-referenced matter.

In your communication, you state that your firm represents Sprinkles Cupcakes, Inc. in trademark matters, and that your client has recently learned that the Mealeys have adopted the name "Sprinkles" in connection with a chain of frozen yogurt stores. You further state that your client has opened retail stores under the name and mark of "Sprinkles Cupcakes" in multiple U.S. cities, with expansion plans that include Philadelphia.

Subsequent to your citation of three trademark registrations, you note that use of the name "Sprinkles" by the Mealeys "is likely to cause confusion among consumers who may believe" that the frozen yogurt promoted and sold by the Mealeys is "offered by, associated with, or approved by Sprinkles." You indicate that is not the case, and formally request that the Mealeys "transition away from the SPRINKLES brand in connection with [their] business," with the assurance that [they] will remove the mark from any store signage and any sales, marketing or promotional material."

Following the completion of an exhaustive review of U.S. trademark applications and registrations for "Sprinkles" and ancillary/derivative marks, I have concluded that there is no reasonable likelihood of public confusion between "Sprinkles Cupcakes" and "Sprinkles Yogurt."

As you are aware, a trademark owner cannot control every use of its marks, only those uses that infringe or dilute the trademark, or are otherwise actionable as false advertising or unfair competition.

In addressing the issue of marketplace confusion, the following factors are relevant in determining whether confusion is likely: the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression; the number and nature of similar marks in use on similar goods; and the similarity or dissimilarity of established, likely-to-continue trade channels. See TMEP § 1207.01. Further, the issue is not only whether the actual goods are likely to be confused but, rather, whether there is a likelihood of confusion as the source of the goods.

Additionally, while a merely descriptive mark is not registrable if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods [TMEP § 1209.01(b)], a mark that combines descriptive words may be registrable if the words together create a new and different commercial impression, and/or the mark created imparts an incongruous meaning as used in connection with the goods [TMEP § 1209.03(d)].

An analysis under the factors adumbrated above does not demonstrate any likelihood of confusion between your client's mark(s), and the Mealeys' distinctive use of the name Sprinkles in connection with their frozen yogurt offering and distribution. The marks are dissimilar, are not used on similar goods [yogurt vs. cupcakes], and enjoy distinct trade channels—your client's California-based product with a putative national market, compared with the Mealeys' Pennsylvania-based limited regional offering. Further, the descriptive words characterizing the Mealeys' product are incongruous with those of your client's, and are incapable of being mistaken for the same class of goods.

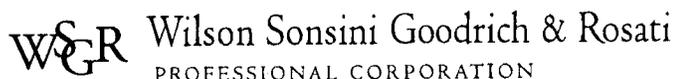
Thank you for your understanding in this matter; if your substantive views differ from the above recitation, I will welcome your reply.

Sincerely,

A handwritten signature in cursive script that reads "Ernest Sasso". The signature is written in black ink and is positioned to the left of the typed name below it.

Ernest Sasso
ES:

EXHIBIT C



650 Page Mill Road
Palo Alto, CA 94304-1050
PHONE 650.493.9300
FAX 650.493.6811
www.wsgr.com

August 6, 2009

By Email and U.S. Mail

Ernest Sasso
Law Offices of Ernest Sasso
2300 Computer Avenue, Suite M-69
Willow Grove, PA 19090-1745

Re: Intellectual Property Matters for Sprinkles Cupcakes, Inc.

Dear Mr. Sasso:

We have reviewed your July 21, 2009 correspondence on behalf of Matthew Mealey and Ryan Mealey (the "Mealeys"). Our client Sprinkles Cupcakes, Inc. ("Sprinkles") remains concerned that your clients' adoption of the identical name SPRINKLES for their premium retail dessert business is likely to cause confusion in the marketplace.

Sprinkles has acquired two further federal registrations incorporating the SPRINKLES mark: Registration Nos. 2,938,800 and 3,004,757 for "ice cream," and "retail store services featuring ice cream." Trademark priority related to these registrations dates back to October 2002, long before your clients adopted the SPRINKLES name for their frozen yogurt shops. In these registrations, for SPRINKLES PALM BEACH, the SPRINKLES element of the mark is the dominant and therefore stronger part of the mark for purposes of analyzing likelihood of confusion in the marketplace. *See* McCarthy on Trademarks and Unfair Competition § 23:42 ("It is appropriate in determining the question of likelihood of confusion to give greater weight to the important or 'dominant' parts of a composite mark, for it is that which may make the greatest impression on the ordinary buyer."); *Cunningham v. Laser Golf Corp.*, 55 222 F.3d 943, USPQ2d 1842 (Fed. Cir. 2000). Indeed, the U.S. Patent and Trademark Office has already found that an application based on intent to use the mark SPRINKLES FROZEN YOGURT was unregistrable, based on a likelihood of confusion with the SPRINKLES PALM BEACH marks. (*See* Application Ser. No. 77/268455 for SPRINKLES FROZEN YOGURT, rejected on December 7, 2007, and August 29, 2008, then abandoned on April 3, 2009.)

For the same reason, your clients' continued use of the SPRINKLES name and mark is likely to cause confusion, and violates the nation-wide trademark protection that Sprinkles' federal registrations convey. *See* McCarthy § 26:31 ("[A] federally registered mark has nationwide protection.").

For the reasons previously stated, coupled with our client's recent acquisition of the SPRINKLES PALM BEACH marks for ice cream, your analysis of the Mealeys' liability for trademark infringement is faulty. Liability for trademark infringement attaches when, as here, there is likelihood of marketplace confusion. To determine likelihood of confusion, courts consider a multi-factor test that takes into account the similarity of the marks, the relatedness of the goods, the

Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

Page 2

price of the goods, the care and attention expected of customers when making a purchase, and other marketplace factors. See *Interspace Corporation v. Lapp, Inc.*, 721 F.2d 460, 462-63 (3d Cir. 1983). These factors weigh heavily in favor of Sprinkles.

The marks used by your clients and Sprinkles are hardly dissimilar; the fact that your client sometimes adds the generic term "Yogurt" to the SPRINKLES mark does not mitigate the high degree of similarity of the marks. As discussed above, the dominant portions of SPRINKLES CUPCAKES, SPRINKLES YOGURT, and SPRINKLES PALM BEACH is SPRINKLES, making these marks highly similar in sight, sound, and meaning. In addition, your clients, like Sprinkles, use the shorthand term SPRINKLES when referring to the business as well. (See attached article in the *Philadelphia Business Journal*, which states "Sprinkles, as the shops will be known . . .") As such, the marks are not merely highly similar, they are identical. Far from "incongruous," the goods identified in the marks (cupcakes, ice cream, and frozen yogurt) are highly related in the minds of consumers, as all are popular retail dessert items, even often found at the same location. Indeed, contrary to your unsupported statement that the goods are "incapable of being mistaken for the same class of goods," in fact baked goods, ice cream, and frozen yogurt are classified in the exact same category of goods at the U.S. Patent and Trademark Office (Class 30).

The fact that your clients are located in Pennsylvania fails to shield them from liability for trademark infringement, for numerous reasons: Sprinkles' products are also sold in Pennsylvania, in numerous Williams-Sonoma stores; Sprinkles' federal trademarks extend protection nation-wide; and Sprinkles' reputation extends to Pennsylvania and around the world.

Sprinkles must reiterate its request that your clients transition away from the SPRINKLES brand in connection with their business. Please confirm in writing by **August 21, 2009** that your clients will agree not to use the SPRINKLES name or mark or any other similar trademarks, trade names, or Internet domain names in connection with their business, and that they will remove the mark from any store signage and any sales, marketing or promotional materials.

Sincerely,


Hollis Beth Hire

cc: Sprinkles Cupcakes, Inc.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RYAN MEALEY, MATTHEW MEALEY,)	
and DAN MEALEY,	)	Case No. 09-4048 MAM
)	
Plaintiffs,	)	Judge: Hon. Mary A. McLaughlin
)	
v.	)	JURY TRIAL DEMANDED
)	
SPRINKLES CUPCAKES, INC.,)	
)	
Defendant.)	
_____)	

**ANSWER AND COUNTERCLAIMS
OF DEFENDANT SPRINKLES CUPCAKES, INC.**

Defendant and Counterclaimant Sprinkles Cupcakes, Inc. (“Sprinkles”) answers the Complaint of Plaintiffs and Counterdefendants Ryan Mealey, Matthew Mealey, and Dan Mealey (collectively the “Mealeys”) as follows:

1. Sprinkles admits that this purports to be an action for declaratory judgment under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
2. Sprinkles admits that this Court has subject matter jurisdiction over the claims in this case.
3. Sprinkles admits that this Court has personal jurisdiction over Sprinkles.
4. Sprinkles admits that venue is proper in this district.

PARTIES

5. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and on that basis denies those allegations.
6. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 and on that basis denies those allegations.

7. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 and on that basis denies those allegations.

8. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and on that basis denies those allegations.

10. Sprinkles notes the absence of a paragraph 9 in the Complaint and denies the allegations of paragraph 10.

FACTS

11. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and on that basis denies the allegations.

12. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and on that basis denies the allegations.

13. Answering paragraph 13, Sprinkles admits that on June 30, 2009 its counsel sent a letter to Matthew Mealey and Ryan Mealey and that a true and correct copy of this letter appears to be attached to the Complaint. Sprinkles also admits that it owns United States Trademark Registrations Nos. 3271643 and 3250609. Sprinkles denies the remaining allegations in paragraph 13 and the allegations in the unnumbered paragraphs following paragraph 13.

14. Answering paragraph 14, Sprinkles admits that a true and correct copy of a letter dated July 23, 2009 from the Mealeys' counsel to Sprinkles' counsel appears to be attached to the Complaint. Sprinkles denies the remaining allegations in paragraph 14.

15. Answering paragraph 15, Sprinkles admits that a true and correct copy of a letter dated August 6, 2009 from Sprinkles' counsel to the Mealeys' counsel appears to be attached to the Complaint. Sprinkles denies the remaining allegations in paragraph 15 and the allegations in the unnumbered paragraph following paragraph 15.

16. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and on that basis denies the allegations.

17. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and on that basis denies the allegations.

18. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 and on that basis denies the allegations.

19. Sprinkles admits the allegations of paragraph 19.

20. Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 and on that basis denies the allegations.

COUNT I

21. Sprinkles incorporates its responses to paragraphs 1 through 20 as if fully restated here.

22. Sprinkles denies the allegations of paragraph 22.

COUNT II

23. Sprinkles incorporates its responses to paragraphs 1 through 22 as if fully restated here.

24. Sprinkles denies the allegations of paragraph 24, and the unnumbered paragraph following paragraph 24.

COUNT III

25. Sprinkles incorporates its responses to paragraphs 1 through 24 as if fully restated here.

26. Answering paragraph 26, Sprinkles lacks knowledge or information sufficient to form a belief as to the truth of the allegations insofar as they relate to a trademark application for the mark SALAD SPRINKLES, and on that basis denies the allegations. Sprinkles denies the remaining allegations in paragraph 26 and the allegations in the unnumbered paragraph following paragraph 26.

COUNT IV

27. Sprinkles incorporates its responses to paragraphs 1 through 26 as if fully restated here.

28. Sprinkles denies the allegations of paragraph 28.

29. Sprinkles denies the allegations of paragraph 29.

GENERAL DENIAL

Sprinkles further denies any of the allegations in Plaintiffs' Complaint which are not specifically admitted in the responses set forth above.

AFFIRMATIVE DEFENSES

Sprinkles alleges the following affirmative and other defenses, reserving the right to modify, amend, and/or expand upon these defenses as discovery proceeds.

First Affirmative Defense
(Failure to State a Claim)

30. As an affirmative defense to Plaintiffs' Complaint, and to each and every claim for relief contained therein, Sprinkles alleges, without admitting that Plaintiffs were injured or damaged in any manner or amount whatsoever, that Plaintiffs' Complaint, and each cause of action asserted therein, is barred in whole or in part because Plaintiffs' Complaint, and each cause of action asserted therein, fails to state facts sufficient to constitute a claim upon which relief can be granted against Sprinkles.

Second Affirmative Defense
(Estoppel)

31. The Mealeys are barred from relief in this action under the doctrine of estoppel.

Third Affirmative Defense
(Waiver)

32. The Mealeys are barred from relief in this action under the doctrine of waiver.

Fourth Affirmative Defense
(Unclean hands)

33. The Mealeys' claims are barred by the doctrine of unclean hands.

Fifth Affirmative Defense
(Misrepresentation of Materials Facts)

34. As an affirmative defense to Plaintiffs' Complaint, and to each and every claim for relief contained therein, Sprinkles alleges, without admitting that Plaintiffs were injured or

damaged in any manner or amount whatsoever, that Plaintiffs are barred from any and all recovery on each and every alleged cause of action on the ground that Plaintiffs' claims are barred by the defense of misrepresentation of material facts.

**COUNTERCLAIMS FOR TRADEMARK INFRINGEMENT
AND RELATED CLAIMS**

Defendant and Counterclaimant Sprinkles asserts the following counterclaims against Plaintiffs and Counterdefendants the Mealeys. Sprinkles alleges as follows:

PARTIES

1. Sprinkles is a Nevada Corporation with its principal place of business at 9635 Little Santa Monica Boulevard, Beverly Hills, CA 90210.
2. Sprinkles is informed and believes, and therefore alleges, that Counterdefendant Ryan Mealey is an individual residing in the Commonwealth of Pennsylvania.
3. Sprinkles is informed and believes, and therefore alleges, that Counterdefendant Matthew Mealey is an individual residing in the Commonwealth of Pennsylvania.
4. Sprinkles is informed and believes, and therefore alleges, that Counterdefendant Dan Mealey is an individual residing in the Commonwealth of Pennsylvania.
5. At all relevant times, the Mealeys were acting in concert with each other, and or as agents for one another, and/or as authorized licensees of each other, engaging in the actions complained of herein.

JURISDICTION AND VENUE

6. This Court has original jurisdiction under 28 U.S.C. §§ 1331, 1332 and 1338. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 for related state law claims as well as jurisdiction under 28 U.S.C. § 1338(b) because the state law claims are joined to a substantial and related trademark claim.
7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to these counterclaims occurred within this judicial district and because one or more of the Mealeys reside in this district.

STATEMENT OF FACTS

8. In 2004 Sprinkles began selling bakery goods and in 2005 Sprinkles opened its first retail bakery in Beverly Hills, California. In just 5 years, Sprinkles has become an international phenomenon. The company and its now-famous desserts have been featured on numerous national television shows including *The Oprah Winfrey Show*, *The Martha Stewart Show*, *The Today Show*, *Good Morning America*, *Nightline*, *Access Hollywood* and *Entertainment Tonight*. Sprinkles has also been featured in major publications such as *The New York Times*, *Time*, *People*, *InStyle*, *Bon Appetit*, *Gourmet* and *Travel & Leisure*, as well as *The New York Daily News*, *The New York Post*, and *The Newark Star-Ledger*. In addition, Sprinkles has received coverage in the Pennsylvania press, including *The Philadelphia Daily News* and *The Pittsburgh Post-Gazette* and local television news programs in the Philadelphia, Harrisburg, and Scranton markets.

9. Sprinkles' success and nationwide fame has afforded the company the opportunity to expand across the United States. In addition to its Beverly Hills store, Sprinkles now operates stores in Newport Beach, California, Palo Alto, California, Dallas, Texas, and Scottsdale, Arizona. Sprinkles is also planning to open stores in other major cities throughout the United States, including Philadelphia, New York, Boston, Chicago and Houston. Sprinkles began discussions about opening a Philadelphia-area location in 2008.

10. Sprinkles' retail stores are not the only places where prospective customers can order and purchase Sprinkles' dessert items. Sprinkles' products are also available in 255 Williams-Sonoma stores throughout North America. Residents of Pennsylvania and New Jersey have purchased Sprinkles products in the numerous Williams-Sonoma stores in and around the Pennsylvania and New Jersey area since as early as December 2006.

11. Sprinkles also maintains a website at www.sprinkles.com (the "Sprinkles Website"), where customers can view Sprinkles' menu and place orders for Sprinkles' desserts and other products. The Sprinkles Website has approximately 290,000 unique visitors per

month, including, upon information and belief, many visitors from Pennsylvania and New Jersey.

12. Over the past year Pennsylvanians and New Jerseyans have contacted Sprinkles and placed hundreds of orders for Sprinkles products.

13. Sprinkles has received numerous unsolicited customer and business proposals from people in Pennsylvania and New Jersey, including specific requests that Sprinkles open up retail stores in Philadelphia, Pennsylvania and Cherry Hill, New Jersey.

14. Sprinkles promotes itself via a dedicated page on the online social network Facebook, where Sprinkles has attracted approximately 70,000 “fans” across the United States, including, upon information and belief, many fans from Pennsylvania and New Jersey.

Sprinkles’ Ice Cream Trademarks and Business Plans

15. Sprinkles has planned since at least as early as 2007 to expand the scope of its business by selling ice cream and related products under the SPRINKLES mark.

16. Sprinkles is the owner of U.S. Trademark Registration Nos. 2938800 and 3004757 for “ice cream” and “retail store services featuring ice cream.” The trademarks covered by these registrations are SPRINKLES OF PALM BEACH and SPRINKLES PALM BEACH and Design respectively (collectively, with the SPRINKLES mark in the paragraph below, the “Sprinkles Ice Cream Marks”). The registrations include disclaimers of, respectively, OF PALM BEACH and PALM BEACH. Trademark priority for these registrations dates back to at least as early as October 2002.

17. On June 29, 2009 Sprinkles filed an intent-to-use trademark application with the U.S. Patent and Trademark Office for the mark SPRINKLES for “ice cream; frozen yogurt; candy; sweets; cupcake mixes; ice cream sundaes, sherbets, ices, sorbets, [and] milk shakes”. The application has been allocated Serial No. 77770541.

18. The U.S. Patent and Trademark Office has examined U.S. Trademark Application Serial No. 77770541 and approved the application for publication, in contemplation of registration of the SPRINKLES mark on the Office’s Principal Register.

19. Sprinkles intends to begin selling ice cream and related products under the SPRINKLES mark in 2010.

Sprinkles' Bakery Goods Trademarks

20. Since selling its first cupcake in 2004, Sprinkles has continuously used and extensively marketed its trademarks, which include SPRINKLES CUPCAKES, SPRINKLES CUPCAKES and Design, and SPRINKLES (collectively the "Sprinkles Bakery Goods Marks"). As a result of Sprinkles' success and publicity, the Sprinkles Bakery Goods Marks have acquired significant recognition among consumers, and the general public has come to associate SPRINKLES and SPRINKLES CUPCAKES with Sprinkles' premium-quality desserts.

21. Sprinkles has been using the trademark SPRINKLES CUPCAKES in connection with bakery goods since at least as early as February 1, 2004 and with retail shops featuring baked goods since as early as April 13, 2005.

22. On June 12, 2007, Sprinkles obtained a federal registration for its SPRINKLES CUPCAKES trademark, U.S. Trademark Registration No. 3,250,609, covering "bakery goods" and "retail shops featuring baked goods."

23. Sprinkles has been using the trademark SPRINKLES CUPCAKES and Design in connection with bakery goods since at least as early as October 19, 2004 and with retail shops featuring baked goods since as early as April 13, 2005.

24. On July 31, 2007, Sprinkles obtained a federal registration for its SPRINKLES CUPCAKES and Design trademark, U.S. Trademark Registration No. 3,271,643, covering "bakery goods" and "retail shops featuring baked goods."

25. Sprinkles has been using the trademark SPRINKLES in connection with bakery goods since at least as early as February 1, 2004 and with retail shops featuring baked goods since as early as April 13, 2005.

26. On October 9, 2007, Sprinkles obtained a federal registration for its SPRINKLES trademark, U.S. Trademark Registration No. 3,306,772, covering "bakery goods" and "retail shops featuring baked goods."

The Mealeys' Infringing Conduct

27. On information and belief, in 2007 or 2008 Plaintiff and Counterdefendant Matthew Mealey visited California to look for business ideas, to review retail cupcake and frozen yogurt businesses, and to advance plans to begin a retail dessert business in the Pennsylvania and New Jersey region.

28. On information and belief, Plaintiff and Counterdefendant Matthew Mealey and/or Plaintiff and Counterdefendant Ryan Mealey and/or Plaintiff and Counterdefendant Dan Mealey knew of Sprinkles before selecting a name for their business.

29. On information and belief, despite prior knowledge of Sprinkles' trademark rights, in 2009 the Mealeys launched a retail dessert business in Pennsylvania and New Jersey called SPRINKLES YOGURT.

30. On information and belief, the Mealeys offer and sell premium frozen yogurt in interstate commerce under the marks SPRINKLES YOGURT and SPRINKLES YOGURT AND DESIGN.

31. On information and belief, the Mealeys' SPRINKLES YOGURT business has locations in Philadelphia, Pennsylvania and Cherry Hill, New Jersey, and the Mealeys have planned new locations for Malvern, Pennsylvania and West Chester, Pennsylvania. Upon information and belief, the Mealeys plan to open additional SPRINKLES YOGURT locations.

32. The Mealeys have registered and used the Internet domain name <sprinklesfrozenyogurt.com> to promote their products and services.

33. The Mealeys have posted a "fan" page on the online social network Facebook in which they are using the mark SPRINKLES YOGURT AND DESIGN to promote their products and services.

34. On August 21, 2009, the Mealeys filed an intent-to-use trademark application with the U.S. Patent and Trademark Office for registration of the mark SPRINKLES YOGURT on the Principal Register for "frozen yogurt." This trademark application has not yet been examined.

35. Sprinkles has requested that the Mealeys cease their use of the SPRINKLES YOGURT mark, but the Mealeys have refused to do so.

36. The Mealeys continue to use SPRINKLES YOGURT as a trademark, in willful disregard of Sprinkles' superior rights, and of the likely confusion caused by their actions.

37. The Mealeys' unauthorized actions have damaged Sprinkles and have caused, and unless restrained will continue to cause, great and irreparable injury to Sprinkles in an amount that cannot be ascertained, leaving Sprinkles with no adequate remedy at law.

FIRST CAUSE OF ACTION

(Infringement of Registered Trademarks, 15 U.S.C. § 1114)

38. Sprinkles realleges and incorporates by reference paragraphs 1 through 37 as set forth fully herein.

39. Sprinkles is the owner of federal trademark registrations as set forth above (the "Sprinkles Registrations").

40. The Mealeys have used in commerce, without Sprinkles' consent, marks that are highly similar to the marks in the Sprinkles Registrations and that, taking into account the extremely similar commercial activities of the parties and other factors, are likely to cause confusion, deception, or mistake among consumers.

41. The Mealeys' unauthorized use of the SPRINKLES YOGURT trademark has damaged Sprinkles and the business and goodwill symbolized by the marks in the Sprinkles Registrations.

42. As a consequence of the Mealeys' infringement of the Sprinkles Registrations, Sprinkles is entitled to an injunction as set forth below, an order of destruction of all of the Mealeys' infringing materials, the Mealeys' profits, Sprinkles' damages and Sprinkles' costs of action. Moreover, because this is an exceptional case, involving calculated and willful misconduct by the Mealeys, Sprinkles is entitled to recover treble damages, treble profits, and attorneys' fees.

SECOND CAUSE OF ACTION

(False Designation of Origin and False Advertising, 15 U.S.C. § 1125(a))

43. Sprinkles realleges and incorporates by reference paragraphs 1 through 42 as though fully set forth herein.

44. The Mealeys' acts described above, including their use in commerce of marks that are highly similar to the Sprinkles Ice Cream Marks and the Sprinkles Bakery Goods Marks, are likely to cause confusion, mistake, or deception as to the source, sponsorship, affiliation or approval of the Mealeys' goods and services. Further, the Mealeys' acts described above constitute false representation of fact that are also likely to cause confusion, mistake, or deceptive as to the source, sponsorship, affiliation, or approval of the Mealeys' goods and services.

45. The Mealeys' unauthorized use of the SPRINKLES YOGURT trademark has damaged Sprinkles and the business and goodwill symbolized by the Sprinkles Ice Cream Marks and the Sprinkles Bakery Goods Marks.

46. As a consequence of the Mealeys' violations of Sprinkles' rights, Sprinkles is entitled to an injunction as set forth below, an order of destruction of all of the Mealeys' infringing materials, the Mealeys' profits, Sprinkles' damages and Sprinkles' costs of action. Moreover, because this is an exceptional case, involving calculated and willful misconduct by the Mealeys, Sprinkles is entitled to recover treble damages, treble profits, and attorneys' fees.

THIRD CAUSE OF ACTION

(Trademark Infringement, 54 Pa. C. S. A. § 1123)

47. Sprinkles realleges and incorporates by reference paragraphs 1 through 46 as though fully set forth herein.

48. The Mealeys' acts as described above, including their use in commerce of marks that are highly similar to the Sprinkles Ice Cream Marks and the Sprinkles Bakery Goods Marks, are likely to cause confusion, mistake, or deception as to the source sponsorship, affiliation or approval of the Mealeys' goods and services. Further, the Mealeys' acts described

above constitute false representation of facts that are also likely to cause confusion, mistake, or deception as to the source, sponsorship, affiliation or approval of the Mealeys' goods and services.

49. The Mealeys' acts as described above, including but not limited to their continued use of the name SPRINKLES YOGURT, constitute trademark infringement under 54 Pa. C. S. A. § 1123.

50. As a consequence of the Mealeys' violations of Sprinkles' rights, Sprinkles is entitled to an injunction as set forth below, an order of destruction of all of the Mealeys' infringing materials, and Sprinkles' costs of action. Moreover, because this case involves wrongful acts committed with knowledge or in bad faith or otherwise by the Mealeys, Sprinkles is entitled to recover treble damages, treble profits, and attorneys' fees.

FOURTH CAUSE OF ACTION

(Common Law Trademark Infringement)

51. Sprinkles realleges and incorporates by reference paragraphs 1 through 50 above as though fully set forth herein.

52. The Mealeys' acts as described above, including their use in commerce of marks that are highly similar to the Sprinkles Ice Cream Marks and the Sprinkles Bakery Goods Marks, are likely to cause confusion, mistake, or deception as to the source sponsorship, affiliation or approval of the Mealeys' goods and services. Further, the Mealeys' acts described above constitute false representation of facts that are also likely to cause confusion, mistake, or deception as to the source, sponsorship, affiliation or approval of the Mealeys' goods and services.

53. The Mealeys' acts as described above, including but not limited to their continued use of the name SPRINKLES YOGURT, constitute trademark infringement under Pennsylvania common law.

54. As a consequence of the Mealeys' violations of Sprinkles' rights, Sprinkles is entitled to an injunction as set forth below, an order of destruction of all of the Mealeys' infringing materials, the Mealeys' profits, Sprinkles' damages, and Sprinkles' costs of action.

FIFTH CAUSE OF ACTION

(Common Law Unfair Competition)

55. Sprinkles realleges and incorporates by reference paragraphs 1 through 54 above as though fully set forth herein.

56. The Mealeys' acts as described above, including their use in commerce of marks that are highly similar to the Sprinkles Ice Cream Marks and the Sprinkles Bakery Goods Marks, are likely to cause confusion, mistake, or deception as to the source sponsorship, affiliation or approval of the Mealeys' goods and services. Further, the Mealeys' acts described above constitute false representation of facts that are also likely to cause confusion, mistake, or deception as to the source, sponsorship, affiliation or approval of the Mealeys' goods and services.

57. The Mealeys' acts described above harm Sprinkles by transferring to the Mealeys the benefit of the goodwill associated with Sprinkles, the Sprinkles Ice Cream Marks, and the Sprinkles Bakery Goods Marks without justification and without compensation to Sprinkles.

58. As a consequence of the Mealeys' violations of Sprinkles' rights, Sprinkles is entitled to an injunction as set forth below, an order of destruction of all of the Mealeys' infringing materials, the Mealeys' profits, Sprinkles' damages, and Sprinkles' costs of action.

SIXTH CAUSE OF ACTION

(Unjust Enrichment)

59. Sprinkles realleges and incorporates by reference paragraphs 1 through 59 above as though fully set forth herein.

60. The Mealeys' acts as described above, including their use in commerce of marks that are highly similar to the Sprinkles Ice Cream Marks and the Sprinkles Bakery Goods

Marks, are likely to cause confusion, mistake, or deception as to the source sponsorship, affiliation or approval of the Mealeys' goods and services.

61. The Mealeys' acts as described above, including but not limited to their continued use of the name SPRINKLES YOGURT and their retention of the benefits obtained by those acts, constitute unjust enrichment under Pennsylvania common law.

62. As a consequence of the Mealeys' violations of Sprinkles' rights, Sprinkles is entitled to an injunction as set forth below, an order of destruction of all of the Mealeys' infringing materials, the Mealeys' profits, Sprinkles' damages, and Sprinkles' costs of action.

PRAYER FOR RELIEF

WHEREFORE, Sprinkles respectfully requests this Court:

A. Permanently enjoin the Mealeys and all persons in privity or acting in concert or in participation with any of them from:

1. using directly or indirectly, in connection with any goods, services or commercial activities, the name SPRINKLES YOGURT, or any other trademark, service mark, or trade name that imitates or simulates, or is otherwise confusingly similar to, the Sprinkles Ice Cream Marks or the Sprinkles Bakery Goods Marks;

2. using any other false designations of origin or false description or representation or doing any other acts or things calculated or likely to cause confusion or mistake in the mind of the trade or the public, or to deceive the trade or the public into believing that the Mealeys' activities are in any way sponsored, licensed or authorized by or affiliated or connected with Sprinkles; and

3. engaging directly or indirectly in any practices, including those complained of herein, that tend to compete unfairly with, or injure, Sprinkles, its business, or the goodwill related to Sprinkles' business or the Sprinkles Ice Cream Marks or Sprinkles Bakery Goods Marks;

B. Order the Mealeys to deliver for destruction all media, signs, prints, advertising, packaging, products, labels, wrappers, receptacles, boxes, cartons, forms, tags, patches, printed

materials and promotional materials in its possession or control that bear the name SPRINKLES YOGURT;

C. Order the Mealeys to discontinue the use of the name SPRINKLES YOGURT on websites, electronic mail addresses or other electronic media;

D. Order the Mealeys to transfer the domain name www.sprinklesyogurt.com to Sprinkles;

E. Direct the Mealeys to account to Sprinkles for their profits derived from SPRINKLES YOGURT and order that Sprinkles recover its damages arising out of the aforesaid acts of infringement in a sum equal to three times such profits or damages (whichever is greater), pursuant to 15 U.S.C. § 1117(a);

F. Order the Mealeys to file with the Court and to serve on counsel for Sprinkles within 30 days of the entry of any injunction issued by the Court in this action, a sworn written statement pursuant to 15 U.S.C. § 1116(a) setting forth in detail the manner and form in which they have complied with any injunction which the Court may enter in this action;

G. Award Sprinkles reasonable attorneys' fees and costs and disbursements incurred by Sprinkles as a result of the Mealeys' intentional infringement, pursuant to 15 U.S.C. § 1117(a) and 54 Pa.C.S.A. § 1125(a);

H. That the Mealeys take nothing from their Complaint for Declaratory Judgment;

I. Award such other and further relief as the Court may deem just and proper.

Dated: October 15 , 2009

SCHNADER HARRISON SEGAL & LEWIS LLP

By: /s/ Ronald J. Ventola II

Ronald J. Ventola II

Attorney ID No. 204332

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SPRINKLES CUPCAKES, INC.

Of Counsel:

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CERTIFICATE OF SERVICE

On October 15, 2009, I filed this document through the ECF system, thereby effecting service upon the plaintiffs. The document is available for viewing and downloading from the ECF system.

Dated: October 15, 2009

BY: /s/ Ronald J. Ventola II
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MAM

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RYAN MEALEY, MATTHEW MEALEY,
and DAN MEALEY,

Plaintiffs and Counterclaim
Defendants,

v.

SPRINKLES CUPCAKES, INC.,

Defendant and
Counterclaimant.

Case No. 09-4048 MAM

Judge: Hon. Mary A. McLaughlin

~~PROPOSED~~ PERMANENT
INJUNCTION



JAN 28 2010
MICHAEL J. ... Clerk
U.S. District Court

The Court, having reviewed and considered the Complaint filed on September 4, 2009 by Plaintiffs Ryan Mealey, Matthew Mealey, and Dan Mealey ("the Mealeys") against Defendant Sprinkles Cupcakes, Inc. ("Sprinkles"), the Counterclaims filed by Counterclaimant Sprinkles on October 15, 2009 against Counterclaim Defendants the Mealeys, and the Stipulation Re Injunction filed by the Mealeys and Sprinkles, hereby ORDERS:

a. That after April 1, 2010, the Mealeys and any affiliated companies, and any successors, assigns, representatives, officers, directors, agents, partners, servants, and employees of those individuals or affiliated companies, and all others in active concert or participation with the Mealeys, are hereby enjoined from using as trade names or trademarks SPRINKLES, SPRINKLES YOGURT, or any other trademark that includes the term "Sprinkles" or is likely to cause confusion with the trademarks SPRINKLES or SPRINKLES CUPCAKES;

b. That on or before April 1, 2010, the Mealeys and any affiliated companies, and any successors, assigns, representatives, officers, directors, agents, partners, servants, and employees of those individuals or affiliated companies, and all others in active concert or participation with the Mealeys, shall deliver up for destruction or themselves delete or destroy all products, labels, signs, prints, packages, wrappers, receptacles, advertisements, website content, content on the social networking website Facebook or any other social networking website,

television advertisements and other electronic forms of data in its possession or control bearing the SPRINKLES or SPRINKLES YOGURT marks, the www.sprinklesfrozenyogurt.com domain name, and any other variation of the SPRINKLES or SPRINKLES YOGURT marks;

c. That on or before April 1, 2010, the Mealeys shall transfer the domain name www.sprinklesfrozenyogurt.com and any other domain name which incorporates or is confusingly similar to the SPRINKLES or SPRINKLES YOGURT marks;

d. That on or before May 15, 2010, the Mealeys shall file with the Court and serve on Sprinkles an affidavit setting forth in detail the manner and form in which they have complied with the terms of the injunction.

Dated:

1/28/10


THE HONORABLE MARY A. MCLAUGHLIN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RYAN MEALEY, et al. : CIVIL ACTION
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SPRINKLES CUPCAKES, INC. : NO. 09-4048

ORDER

AND NOW, this 6th day of May, 2010, upon consideration of the plaintiffs' affidavit (Docket No. 15), which explains that the plaintiffs are in compliance with the terms of the permanent injunction the Court issued on January 28, 2010 (Docket No. 14), IT IS HEREBY ORDERED that this case is dismissed and shall be marked as CLOSED.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.