

ESTTA Tracking number: **ESTTA430509**

Filing date: **09/15/2011**

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

Proceeding	91194188
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Date	09/15/2011
Attachments	Sprinkles Rule 56(d) Motion Continuance.pdf (20 pages)(1714642 bytes) Charles Nelson Declaration.pdf (37 pages)(2041215 bytes) Terra Mardsen Declaration.pdf (1 page)(48982 bytes) Donna Marks Declaration.pdf (15 pages)(321032 bytes) John Slafsky Declaration Part 1.pdf (66 pages)(4231721 bytes) John Slafsky Declaration Part 2.pdf (73 pages)(4746692 bytes) John Slafsky Declaration Part 3.pdf (56 pages)(5904274 bytes) John Slafsky Declaration Part 4.pdf (31 pages)(1358577 bytes)

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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/Respondent.)	Cancellation No: 92053109
_____)	

SPRINKLES CUPCAKES' MOTION FOR RULE 56(d) CONTINUANCE

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SPRINKLES CUPCAKES' MOTION FOR RULE 56(d) CONTINUANCE

INTRODUCTION

Pursuant to Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 528.06 and Federal Rule of Civil Procedure 56(d), Applicant/Respondent Sprinkles Cupcakes, Inc. ("Sprinkles"), by and through its undersigned counsel, hereby requests a continuance enabling affidavits to be obtained, depositions to be taken or other discovery to be undertaken so that Sprinkles can respond fully to the Summary Judgment Motion of Opposer/Petitioner Soft Serve, Inc. ("Soft Serve"). Sprinkles' motion is supported by the declarations of John Slafsky ("Slafsky Dec."), Charles Nelson ("Nelson Dec."), Terra Marsden ("Marsden Dec.") and Donna Marks ("Marks Dec.").¹

Soft Serve does not want its trademark allegations tested against a developed record. With two months remaining in the discovery period, with key party and third-party depositions

¹ Sprinkles intends to oppose vigorously the Summary Judgment Motion. Per the Board's order dated September 8, 2011, Sprinkles' opposition is presently due September 29, 2011. By this motion, Sprinkles requests, for the reasons set forth below, a continuance beyond that date.

pending, with document discovery outstanding, and without expert disclosures, Soft Serve prematurely filed a Summary Judgment Motion, acting unilaterally to thwart Sprinkles from developing any record for the Board to consider. It could not be more clear that Soft Serve is attempting to circumvent the open exchange of information relevant to disputed matters.

In order to defend against Soft Serve's claims, Sprinkles has been diligent in seeking discovery and indeed had noticed depositions for (i) the three witnesses identified in Soft Serve's Initial Disclosures and (ii) the corporate entity Soft Serve, pursuant to Rule 30(b)(6), *shortly before Soft Serve elected to file the Summary Judgment Motion*. Sprinkles also subpoenaed a deposition of Soft Serve's landlord before the proceeding was suspended. However, as a result of the Summary Judgment Motion and the resulting suspension, Sprinkles has not had the opportunity to depose a single Soft Serve witness or a single third-party witness.

Moreover, the Summary Judgment Motion raises new, important questions and reveals new parties who should be subject to discovery. Soft Serve has identified four entirely new witnesses (employee-declarants supporting the Summary Judgment Motion) as well as various never-before-mentioned third parties relevant to its claims.

These circumstances require, at minimum, that Sprinkles be given an opportunity to conduct depositions, including the depositions previously scheduled and pending. Sprinkles has relied on the Board's earlier scheduling order and should not be precluded from completing necessary factual and expert discovery simply because Soft Serve has filed a pre-emptive and baseless motion.

The Board should now allow for discovery to proceed, so that the disputed issues of fact raised by Soft Serve's allegations and Sprinkles' defenses can be decided upon a developed record. Even the presently available evidence indicates that the Summary Judgment Motion lacks merit, and that disputed issues of material fact exist. Sprinkles is confident that further discovery will not only defeat the Summary Judgment Motion but, in all likelihood, will justify summary judgment for Sprinkles dismissing the claims altogether.

FACTS

A. THE SUBSTANTIVE DISPUTE

Soft Serve alleges common-law rights to the mark SPRINKLES arising out of its sale of bakery goods at a single store in Potomac, Maryland. (Slafsky Dec., Exh. 1). Soft Serve is challenging 10 of Sprinkles' federal trademark registrations and applications for SPRINKLES-related marks, alleging priority and likelihood of confusion. Sprinkles denies Soft Serve's allegations and asserts a number of affirmative defenses, such as laches, acquiescence, waiver, and estoppel. (Slafsky Dec., Exh. 2).

B. THE PROCEDURAL POSTURE

Eight of the proceedings initiated by Soft Serve have been consolidated under this parent case (Opposition No. 91194188).² Soft Serve is now seeking Summary Judgment with respect to a single trademark registration owned by Sprinkles: Registration No. 3,306,772 for the mark SPRINKLES with "bakery goods" (Class 30) and "retail shops featuring baked goods" (Class 35). This is the trademark registration subject to Cancellation No. 92053109.

By order dated August 26, 2011, the Board suspended this proceeding pending disposition of the Summary Judgment Motion. Only papers relevant to the Summary Judgment motion will be considered at this time. Once the Summary Judgment Motion is decided, then, presumably, the consolidated Board proceedings will move forward to trial.

At the time of service of the Summary Judgment Motion, on August 11, 2011, expert disclosures were due by September 7, 2011 and discovery was to close on October 7, 2011.³ Significantly, there remained 57 days in the discovery period set by the Board (per its order dated July 6, 2011). Furthermore, as highlighted below, a number of depositions were noticed

² Two other proceedings initiated by Soft Serve (Cancellation Nos. 92054376 and 92054401) have been separately consolidated. The Board has indicated that those two proceedings will be consolidated with these proceedings once the Motion for Summary Judgment is decided.

³ An exception to this general schedule is that discovery has already closed in Opposition No. 91194188. That proceeding is not at issue in the Summary Judgment Motion.

and pending.

C. THE NEEDED DISCOVERY

Sprinkles has sought consent from Soft Serve to proceed with discovery relevant to the Summary Judgment Motion, but Soft Serve declined to proceed. The needed discovery relevant to the Summary Judgment Motion is summarized below.

a. Discovery Outstanding and Not Responded To

The following depositions were noticed by Sprinkles between August 5 and August 11, 2011 (shortly before the Summary Judgment Motion) and were scheduled to take place in September 2011:

- The 30(b)(6) deposition of Soft Serve (Slafsky Dec., Exh. 12);
- The deposition of Soft Serve's principal, Tom Orban (Slafsky Dec., Exh. 11);
- The deposition of Aaron Yoches (an ex-employee identified by Soft Serve in its Initial Disclosures) (Slafsky Dec., Exh. 14); and
- The deposition upon written question of Sara Haider (an ex-employee identified by Soft Serve in its Initial Disclosures, who is apparently in England) (Slafsky Dec., Exh. 13).

In addition, the deposition of Soft Serve's landlord was noticed by Sprinkles on August 24, 2011 and was scheduled to take place in September 2011 (Slafsky Dec., Exh. 15). In view of the Summary Judgment Motion, and the resulting suspension, Sprinkles has not been able to proceed with these depositions.

b. Discovery Promised But Not Yet Produced

Soft Serve, in written discovery responses served on August 26, 2011, over two weeks after the Summary Judgment Motion, notes that "documents are being produced, to the extent that such exist" and that "responsive documents are being produced" with respect to requests nos. 48, 49, 49(2), 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61 and 62. Slafsky Dec., Exh. 20. Soft Serve has also asserted a number of questionable objections to Sprinkles' requests for documents and information. The documents and information relate to Soft Serve's claims of trademark

priority and likelihood of confusion. Notably, Sprinkles has not yet received any of these documents.

c. Declarants Supporting Summary Judgment Motion

Soft Serve's Summary Judgment Motion relies on five declarants: its principal, Tom Orban, and four employees. The four employees -- Benson Panga, Glyeb Koumasinski, Julianna Kariman, and Juliet Hope -- allege actual confusion arising from the opening of a store by Sprinkles in the District of Columbia. (Slafsky Dec., Exhs. 23-26). None of these four witnesses had previously been identified by Soft Serve and Sprinkles has not had any opportunity to depose them.

d. Other Discovery Issues Raised by Summary Judgment Motion

The Summary Judgment Motion reveals various relevant third parties and raises further questions for discovery: When did Soft Serve stop using the business name "I Can't Believe It's Yogurt"? Why does the 2002 permit application form for the Maryland Department of Health and Human Services show the business name "I Can't Believe It's Yogurt" stricken by pen with the name SPRINKLES now hand-written over it? Was this license form ever submitted? Why is the invoice from Soft Serve's sign manufacturer dated October 22, 2003, more than a year after first use of the name SPRINKLES is claimed? What exactly was the timing, nature, and scope of the "late 1990's" asset transfer from Soft Serve to a company called Million, Inc.? These new questions are illustrative but are hardly exhaustive.

As to all of these open discovery issues, Sprinkles sets forth below (Section II, *infra*) why they are particularly relevant to the Summary Judgment Motion.

D. SPRINKLES' TRADEMARK RIGHTS ARE LONGSTANDING AND STRONG

Sprinkles intends to demonstrate that it, not Soft Serve, enjoys trademark priority and that Soft Serve's allegations with respect to likelihood of confusion are meritless. Sprinkles was founded in 2004, and its trademark rights (as explained below) date back to at least as early as 1985. *See* Nelson Dec.; Marks Dec. Sprinkles, the first all-cupcake bakery in the U.S., has 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 Washington Post, The New York Times, The Los Angeles Times, Time, People, InStyle, Bon Appetit, Gourmet and Travel & Leisure.* See Nelson Dec.

Sprinkles' success and nationwide fame have 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, opened August 2006), Palo Alto (California, September 2008), Dallas (March 2007), Scottsdale (Arizona, May 2008), Houston (June 2010), Chicago (July 2010), La Jolla (California, January 2011), Washington, D.C. (March 2011), and New York (May 2011). See Nelson Dec. Sprinkles' stores are not the only places where prospective customers can order and purchase Sprinkles' products. Sprinkles' cupcake mixes are also available in approximately 250 Williams-Sonoma stores throughout North America. Williams-Sonoma started selling Sprinkles-branded products in their stores, including more than a dozen stores in the District of Columbia and surrounding areas, and via their website as early as December 2006. See Nelson Dec.

On July 21, 2009, Sprinkles acquired further rights to the Sprinkles trademark, including the rights underlying two federal trademark filings. These applications matured into U.S. Trademark Registration Nos. 2,938,800 (SPRINKLES OF PALM BEACH) and 3,004,757 (SPRINKLES PALM BEACH and Design) for "ice cream" and "retail store services featuring ice cream" (the "Sprinkles Palm Beach Registrations"). The registrations include disclaimers of, respectively, OF PALM BEACH and PALM BEACH. The registrations are now incontestable, and trademark priority for these registrations dates back to at least as early as October 2002. Furthermore, the underlying common-law rights acquired by Sprinkles date back to at least as early as 1985. See Nelson Dec.; Marks Dec.

A timeline summarizing key facts underlining this matter is set forth below:

SOFT SERVE

SPRINKLES CUPCAKES

Does business as "I Can't Believe It's Yogurt"

Alleged first use of SPRINKLES for baked goods

Maryland Trade Name application for SPRINKLES

First phone directory listing for SPRINKLES

First TTAB proceeding

Alleged consumer confusion



1985

Opening of SPRINKLES Ice Cream & Sandwich Shop (frozen desserts, bakery goods) in Palm Beach

1991 -

National press coverage of SPRINKLES (Palm Beach), including *Washington Post*, begins

1990s - ?

Summer 2002

First use ("at least as early as") in SPRINKLES OF PALM BEACH applications

10/2002

11/13/2002

Filing date for SPRINKLES OF PALM BEACH® trademark

7/16/2003

Filing date for SPRINKLES PALM BEACH AND DESIGN® trademark

9/8/2003

People magazine rates SPRINKLES (Palm Beach) #1 ice cream

2/1/2004

First use ("at least as early as") in SPRINKLES trademark application ("bakery goods")

4/13/2005

First use ("at least as early as") in SPRINKLES trademark application ("retail shops...")

2006

Announces plans to open SPRINKLES store in D.C.

12/2006 -

National sales of SPRINKLES cupcake mixes in Williams-Sonoma stores begin

2008

First sales of SPRINKLES cupcakes (by mail) to Maryland and Virginia

3/12/2010

3/3/2011

Opening of SPRINKLES store in D.C.

5/7/2011

ARGUMENT

I. SUMMARY JUDGMENT IS DISFAVORED IN ACTIONS SOUNDING IN LIKELIHOOD OF CONFUSION

Even if Soft Serve could establish trademark priority (which, as further discovery will confirm, it cannot), courts disfavor summary judgment in likelihood of confusion cases due to the highly factual nature of the analysis. *Fortune Dynamic, Inc. v. Victoria's Secret Store Brand Mgmt., Inc.*, 618 F.3d 1025, 1031 (9th Cir. 2010) (“[b]ecause of the intensely factual nature of trademark disputes, summary judgment is generally disfavored in the trademark arena”) (citation omitted); *Autozone, Inc. v. Strick*, 543 F.3d 923, 929 (7th Cir. 2008) (summary judgment on likelihood of confusion should be approached with great caution and is only appropriate where evidence is so one-sided there can be no doubt). Soft Serve’s Summary Judgment Motion, particularly at this stage of the proceeding, is an extremely poor candidate for pre-trial adjudication.

II. SPRINKLES CANNOT EFFECTIVELY OPPOSE THE SUMMARY JUDGMENT MOTION WITHOUT FIRST COMPLETING DISCOVERY

Under the Federal Rules of Civil Procedure, “the parties must be afforded adequate time for general discovery before being required to respond to a motion for summary judgment.” *Metro. Life. Ins. Co. v. Bancorp Servs., L.L.C.*, 527 F.3d 1330, 1336 (Fed. Cir. 2008) (citation omitted); *see also Khan v. Parsons Global Servs., LTD*, 428 F.3d 1079, 1088 (D.C. Cir. 2005) (“The court has long recognized that a party opposing summary judgment needs a ‘reasonable opportunity’ to complete discovery before responding to a summary judgment motion and that ‘insufficient time or opportunity to engage in discovery’ is cause to defer decision on the motion.”) (citation omitted). “A party that believes that it cannot effectively oppose a motion for summary judgment without first taking discovery may file a request with the Board [pursuant to Fed. R. Civ. P. 56(d)] for time to take the needed discovery.” TBMP § 528.06.⁴ The Board may

⁴ The TBMP discusses motions brought under Fed. R. Civ. P. Rule 56(f), but in 2010 the Federal Rules of Civil Procedure were amended and the provisions of Rule 56(f) were moved to (continued...)

“(1) defer considering the [summary judgment] motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.” Fed. R. Civ. P. 56(d). Courts customarily rule on Rule 56(d) motions before addressing the underlying summary judgment motion. *See Doe v. Abington Friends School*, 480 F.3d 252, 257 (3rd Cir. 2007). The Board should act accordingly in this action.

Here, as set forth below and in the Slafsky Dec., Sprinkles has shown that further discovery is needed on the key issues of priority, likelihood of confusion, and Sprinkles’ equitable defenses; that Sprinkles has been diligent in seeking discovery; that Sprinkles expects to complete the needed discovery within 75 days; and that additional considerations strongly favor a continuance.

A. FURTHER DISCOVERY IS NEEDED ON THE ISSUE OF PRIORITY

Soft Serve’s allegation of trademark priority is critical to its claims against Sprinkles; should the allegation be refuted, then Soft Serve’s claims fail completely.

As set forth in the Nelson Dec. and the Marks Dec., Sprinkles’ trademark rights date back to at least as early as 1985.

In contrast, Soft Serve now alleges local trademark rights dating back to “no later than the summer of 2002.”⁵ Declaration of Thomas Orban (“Orban Dec.”), ¶ 3. This ambiguous first-use date is conveniently just before the initial (October 2002) first-use date for Sprinkles’ earliest federal trademark registrations, for the marks SPRINKLES OF PALM BEACH and SPRINKLES PALM BEACH AND DESIGN (Registration Nos. 2938800 and 3004757, with “PALM BEACH” disclaimed). Soft Serve has not yet conceded that Sprinkles is the only party

(...continued from previous page)

Rule 56(d). As the amendment merely reordered Rule 56’s provisions without substantial change, this motion references Rule 56(d) rather than Rule 56(f).

⁵ The Petition for Cancellation omits any specific first-use date. Only much later, after notice of Sprinkles’ “Palm Beach” trademark registrations, did Soft Serve identify even a general time period when, it claims, it first established trademark rights.

in this proceeding to provide evidence of use of the SPRINKLES mark in 2002 and before. If, as expected, Soft Serve does not concede Sprinkles' earlier common-law trademark rights, and if, as expected, Soft Serve continues to raise specious questions about Sprinkles' two "Palm Beach" trademark registrations, then Sprinkles will continue to need to subject Soft Serve's priority allegation to discovery and scrutiny.⁶

Soft Serve maintains that its prior trademark rights are "indisputable" and "unequivocal." Yet these rights are not reflected in any federal or state trademark registration. Nor are they supported by testimony from either Aaron Yoches or Sara Haider, the ex-employees identified by Soft Serve in its Supplemental Initial Disclosures (specifically in connection with the issue of priority) and whose depositions were pending when the Summary Judgment Motion was filed. Nor are they substantiated in any way by the Orban Dec. supporting the Summary Judgment Motion, or by any of the documents attached thereto. Of the 80 exhibits submitted with Soft Serve's motion papers, only 8 clearly come from the pre-2004 time period and not one of those exhibits evidences a sale in connection with the SPRINKLES mark, much less a sale of "bakery goods" under that mark. *See* Orban Dec., Exhs. 1-80.

The Summary Judgment Motion raises the following questions, among others: When exactly did Soft Serve stop doing business as "I Can't Believe It's Not Yogurt"? When exactly did Soft Serve began use of the SPRINKLES mark on bakery goods? When exactly did Soft

⁶ Conspicuously, Soft Serve omits the "Palm Beach" trademark registrations altogether from its Summary Judgment Motion, even though they are referred to specifically in Sprinkles' Answer (Slafsky Dec., Exh. 2, ¶ 3) and have been specifically discussed by the parties' counsel. Soft Serve has previously made off-hand arguments that Sprinkles should be precluded from asserting rights in the "Palm Beach" trademark registrations based on patent-law principles of "file wrapper estoppel." However, the doctrine of "file wrapper estoppel" does not exist in trademark law. *Anthony's Pizza & Pasta Int'l Inc. v. Anthony's Pizza Holding Co.*, 95 U.S.P.Q.2d 1271, 1280 (TTAB 2009); *see also, e.g., Polo Fashions, Inc. v. Extra Special Prods., Inc.* 451 F. Supp. 555, 561 (S.D.N.Y. 1978) (plaintiff not estopped from asserting rights in POLO term despite previous statement to P.T.O. that the RALPH LAUREN portion of RALPH LAUREN BY POLO mark would prevent confusion amongst competing POLO marks). As necessary, Sprinkles is prepared to brief this issue, in detail, at a later date.

Serve begin use of the SPRINKLES mark in the sale or advertising of retail services featuring baked goods? What exactly does “no later than the summer of 2002” mean?⁷ What was the geographic scope of Soft Serve’s use at that time and how has the scope of use evolved over the past decade? Why in the record are there no Soft Serve trademark specimens pre-dating Sprinkles’ documented use of its mark? Why was the Maryland Trade Name Registration application by Soft Serve dated as of November 21, 2002, months after the alleged time of first use? Why is the name “I Can’t Believe It’s Yogurt” on the December 2002 permit application crossed out by pen with the name SPRINKLES now written in its place? Why do the cancelled Soft Serve checks to a donut supplier begin even later, in March 2003? Why is the name SPRINKLES now handwritten above the payor’s name on these checks? When was a SPRINKLES sign first hung outside the Soft Serve store? What are the dates for the photos of a SPRINKLES sign and of SPRINKLES t-shirts attached to Soft Serve’s motion papers?

Sprinkles is entitled to ask these and many other questions as part of the pre-trial discovery process. In particular, Sprinkles is entitled to ask such questions of Soft Serve (pursuant to Rule 30(b)(6)), of Tom Orban, Aaron Yoches and Sara Haider (the four witnesses identified by Soft Serve in connection with the issue of priority), of Soft Serve’s landlord, of ICBY, of Soft Serve’s alleged donut supplier, and of the sign company with which Soft Serve did business. Sprinkles is also entitled to review relevant documents that Soft Serve has yet to produce. *See Slafsky Dec.*

⁷ Soft Serve’s own statements on its first-use date are inconsistent and are emblematic of the disputed issues of material fact in this case. Soft Serve alleged only unspecified prior rights in its Petition, and then alleged November 2002 in interrogatory answers. Soft Serve then supplemented its interrogatory answers to allege, instead, April 2002. Now in the Summary Judgment Motion Soft Serve has back-tracked to yet another date: “no later than the summer of 2002.” *See Orban Dec.*

B. FURTHER DISCOVERY IS NEEDED ON THE ISSUE OF LIKELIHOOD OF CONFUSION

In order for Soft Serve's claims to succeed, Soft Serve must also show likelihood of confusion. The only evidence Soft Serve submits in this regard are self-serving declarations from employees. Notably, Soft Serve offers no expert testimony on confusion, which suggests that no such confusion exists. *Braun, Inc. v. Dynamics Corp. of Am.*, 975 F.2d 815, 818 (Fed. Cir. 1992) (“[Plaintiff’s] failure to proffer survey evidence, empirical studies or disinterested testimony from consumers or members of the trade as to [the] issue, suggests that the public is not likely to be confused . . .”) (citation omitted).

As set forth in the Nelson Dec. and the Marsden Dec, the likelihood of confusion arising from Sprinkles' use of the SPRINKLES mark is nil. Sprinkles has been selling SPRINKLES products in the greater D.C. area since as early as 2006, and it opened a D.C. retail store in March 2011, yet it is not aware of a single instance of consumer confusion arising from any of these activities. Nelson Dec., ¶ 37; Marsden Dec., ¶ 4. Meanwhile, Soft Serve relies on alleged evidence of confusion during 2011, shortly before and after Sprinkles opened its D.C. store but over four years after Sprinkles began selling locally. Soft Serve's alleged evidence, if anything, suggests merely that a few local purchasers made inquiries to Soft Serve employees about Sprinkles or that, unfortunately, some had their telephone calls to Sprinkles misdirected.⁸

⁸ The Board discredits such evidence as an irrelevant type of confusion or because there is no ability to question the inquirer about the state of his mind when asking the question. Courts have even found such inquiries to be evidence against a likelihood of confusion; the inquiries suggest the inquirers already suspected a distinction between the two entities. *See, e.g., Elec. Water Conditioners, Inc. v. Turbomag Corp.*, 221 U.S.P.Q. 162, 164 (TTAB 1984) (questions regarding the relationship between trademark owner and an alleged infringer do not constitute actual confusion). Courts tend also to disregard misdirected phone call evidence, in particular, noting that these calls may represent just operator error or similar mistakes. *See, Lang v. Ret. Living Publ'g Co.*, 949 F.2d 576, 582-83 (2d Cir. 1991) (four hundred misdirected phone calls are not actionable confusion evidence because trademark challenger failed to show confusion stemmed from confusion between the marks).

Sprinkles operates a fundamentally different business, markets to different consumers, uses different trade channels, sells different products, offers different price points, and does business with a passionate, sophisticated, and discriminating clientele. *See Nelson Dec.* In particular, Sprinkles' cupcakes are sold in distinctive and highly stylish stores created by an award-winning designer. The cupcakes cost \$3.50 each and \$39 per dozen. Sprinkles attracts a particularly upscale customer base that is looking for a top-of-the-line dessert and a luxurious experience. Sprinkles' website receives, on average, over 17,000 visits per day. Sprinkles has been featured on *The Oprah Winfrey Show*, *The Martha Stewart Show*, *The Today Show*, *Good Morning America*, and *Nightline*, and in *People*, *The New York Times* and *Travel & Leisure*, among other media outlets. One of Sprinkles' co-founders is a featured judge on the nationally televised Food Network "hit" *Cupcake Wars*. *Id.* This manner of business could not be more different than that of Soft Serve.

The Summary Judgment Motion raises the following questions, among others: How has Soft Serve presented its SPRINKLES mark over the years? What is the scope of products sold by Soft Serve and how has that scope evolved over the years? What is the quality of these products? How are these products presented to purchasers? What are the prices for these products? To what classes of purchasers does Soft Serve sell these products? What degree of care do these classes of customers show? Where and in what manner does Soft Serve advertise or promote its store? Does Soft Serve have any reputation or goodwill in connection with the sale of bakery goods? What were the circumstances surrounding the instances of confusion now alleged by Soft Serve? Again, these questions are only illustrative examples.

Sprinkles is entitled to ask these and many other questions as part of the pre-trial discovery process. In particular, Sprinkles is entitled to ask such questions of Soft Serve (pursuant to Rule 30(b)(6)), of Tom Orban, of ex-Soft Serve employees Aaron Yoches and Sara Haider, and of current Soft Serve employees Benson Panga, Glyeb Koumasinski, Julianna Kariman, and Juliet Hope. Sprinkles is also entitled to review relevant documents that Soft Serve has yet to produce. *See Slafsky Dec.*

C. FURTHER DISCOVERY IS NEEDED ON THE DEFENSES OF LACHES, ACQUIESCENCE, WAIVER AND ESTOPPEL

Sprinkles' Answer includes affirmative defenses of laches, acquiescence, waiver and estoppel. Slafsky Dec., Exh. 2.

The Summary Judgment Motion begs the following questions, among others: Why did Soft Serve wait to enforce its rights until March 2010, over three years after Sprinkles began selling products in the D.C. area (via its licensee, Williams-Sonoma) and approximately four years after Sprinkles announced its plans to open a store in D.C.? When did Soft Serve first become aware of the SPRINKLES OF PALM BEACH store? When did Soft Serve become aware of Sprinkles' federal trademark filings, the first of which was in 2002 and most of which were filed during the 2005-2009 period? Why did Soft Serve not immediately oppose Sprinkles' pending trademark applications? What steps has Soft Serve taken to monitor and enforce its trademark rights generally?

Sprinkles is entitled to ask these and many other questions as part of the pre-trial discovery process. In particular, Sprinkles is entitled to ask such questions of Soft Serve (pursuant to Rule 30(b)(6)) and of its principal, Tom Orban. Sprinkles is also entitled to review relevant documents that Soft Serve has yet to produce. *See* Slafsky Dec.

D. SPRINKLES HAS BEEN DILIGENT IN SEEKING DISCOVERY

With the October 7, 2011 discovery cut-off in mind, Sprinkles has been pro-active about seeking discovery from Soft Serve and from third parties. Sprinkles served written discovery on Soft Serve beginning in June 2010 and as recently as July 2011.⁹ On August 5, 2011, Sprinkles noticed depositions of Soft Serve (pursuant to Rule 30(b)(6)) and of Tom Orban, and on August 10, 2011 Sprinkles noticed the deposition upon written question of Sara Haider. Slafsky Dec., Exhs. 11 - 13. On August 11, 2011 Sprinkles subpoenaed the deposition of Aaron Yoches.

⁹ This proceeding was suspended in the interim for approximately six months.

Slafsky Dec., Exh. 14. On August 24, 2011, Sprinkles subpoenaed the deposition of Soft Serve's landlord. Slafsky Dec., Exh. 15. This timing certainly weighs in favor of a continuance.

E. SPRINKLES EXPECTS TO COMPLETE THIS DISCOVERY WITHIN 75 DAYS

So long as Soft Serve promptly produces its promised documents and cooperates in securing deposition testimony, Sprinkles should be able to complete the further discovery within 75 days, the approximate time remaining in the discovery period at the time that Soft Serve filed its Summary Judgment Motion. Sprinkles respectfully requests a 30-day period thereafter for the preparation and filing of opposition to the Summary Judgment Motion.

F. ADDITIONAL CONSIDERATIONS FAVOR A CONTINUANCE

Where, as here, essential facts relating to the Summary Judgment Motion are in the possession of Soft Serve or third parties, where Soft Serve filed its Summary Judgment Motion well before the close of fact and expert disclosures, where depositions were noticed and pending when Soft Serve elected to file its motion, and where Soft Serve promised after the Summary Judgment Motion to produce additional documents (but did not produce them), there are particularly compelling reasons for the Board to order a continuance.

CONCLUSION

For the foregoing reasons, the Board should order a continuance enabling affidavits to be obtained, depositions to be taken or other discovery to be undertaken so that Sprinkles can respond fully to the Summary Judgment Motion filed by Soft Serve. In particular, the Board should set a 75-day time period (from the date of the Order regarding this Rule 56(d) motion or from the date of the order lifting suspension, if later) for Sprinkles to complete the discovery described above and set a subsequent 30-day time period for Sprinkles to oppose the Summary Judgment Motion; the Board should direct the parties to make expert disclosures within 30 days (from the date of the Order regarding this Rule 56(d) motion or from the date of the order lifting

suspension, if later); and the Board should direct Soft Serve to produce all documents responsive to Sprinkles' discovery demands well before the first of any depositions in this matter.

Dated: September 14, 2011

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By:


JOHN L. SLAFSKY
HOLLIS BETH HIRE

Attorneys for Applicant
SPRINKLES CUPCAKES, INC.

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, 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.

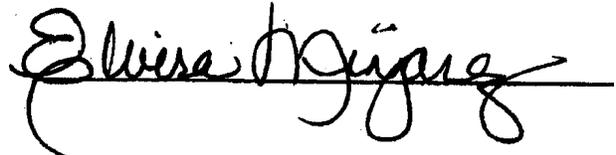
On this date, I served:

1. **SPRINKLES CUPCAKES' MOTION FOR RULE 56(d) CONTINUANCE**
2. **DECLARATION OF CHARLES NELSON**
3. **DECLARATION OF TERRA MARSDEN**
4. **DECLARATION OF DONNA MARKS**
5. **CONFIDENTIAL EXHIBITS A AND F TO DECLARATION OF DONNA MARKS**
6. **DECLARATION OF JOHN L. SLAFSKY**

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 September 14, 2011.



copies of a sampling of such articles are attached to this Declaration as Exhibit A. Sprinkles has

also been featured in local television news programs in the District of Columbia.

3. Sprinkles' success and nationwide fame have 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, opened August 2006), Palo Alto (California,

September 2008), Dallas (Texas, March 2007), Scottsdale (Arizona, May 2008), Houston

(Texas, June 2010), Chicago (Illinois, July 2010), La Jolla (California, January 2011),

Washington D.C. (March 2011), and New York (May 2011).

4. Each of the Sprinkles stores features the distinctive Sprinkles store design, which

was created specifically for Sprinkles by an award-winning designer. The store design includes

a copyrighted menu board design, angled light wood display shelving with built-in individual

cupcake holes, and a tall (over 8 foot) glass panel in front of the cupcake display. Sprinkles'

bakeries have won American Institute of Architects (AIA) Awards for design in Beverly Hills in

2006 and Chicago in 2011. The store is designed to present a luxurious, upscale experience to

visitors.

5. Sprinkles attracts an upscale consumer base, looking for a top of the line dessert

and a luxurious experience. Sprinkles' popularity among Hollywood celebrities has greatly

increased the brand recognition and cachet of Sprinkles' cupcakes in a short time. Sprinkles'

customers are passionate, loyal, and discriminating.

6. Sprinkles' cupcakes cost \$3.50 each, and \$39 for a dozen. The majority of

Sprinkles' cupcakes have Sprinkles' distinctive "modern dot" trademark as a cupcake topper,

and are therefore easily recognizable as Sprinkles' cupcakes.

7. Sprinkles' stores are not the only places where prospective customers can order

and purchase Sprinkles' products. Sprinkles' cupcake mixes are also available in approximately

250 Williams-Sonoma stores throughout North America. Williams-Sonoma started selling

Sprinkles-branded products in their stores and via their website, including more than a dozen

12. 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. As a result of Sprinkles' success and publicity, the Sprinkles trademarks have acquired significant recognition among consumers, and the general public has come to associate SPRINKLES and SPRINKLES CUPCAKES with Sprinkles' premium-quality desserts.

Sprinkles' Trademarks

11. Sprinkles has also received considerable attention due to the popular Food Network television program "Cupcake Wars," televised nationally since December 2009. My wife, Sprinkles' co-founder and head pastry chef Candace Nelson, is a featured judge on the program.

10. Sprinkles also maintains a Twitter account, and has over 60,000 followers, including, on information and belief, many followers from the District of Columbia and surrounding communities.

9. In addition Sprinkles' exposure in national television and print media, Sprinkles promotes itself via a dedicated page on the online social network Facebook, where Sprinkles has attracted approximately 295,000 "fans" across the United States, including, upon information and belief, many fans from the District of Columbia and surrounding communities.

8. Sprinkles also maintains a website at <www.sprinkles.com> (the "Sprinkles Website"), where customers can view Sprinkles' menu and place orders for Sprinkles' cupcakes and other products. The Sprinkles Website receives on average over 17,000 visits each day and 500,000 visits per month from Internet users, including, upon information and belief, many visitors from the District of Columbia and surrounding communities.

8. Sprinkles also maintains a website at <www.sprinkles.com> (the "Sprinkles Website"), where customers can view Sprinkles' menu and place orders for Sprinkles' cupcakes and other products. The Sprinkles Website receives on average over 17,000 visits each day and 500,000 visits per month from Internet users, including, upon information and belief, many visitors from the District of Columbia and surrounding areas, as early as December 2006. Sprinkles' cupcake mixes cost \$14.95 in the Williams-Sonoma store and online.

13. 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.
14. 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.”
15. 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.
16. 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.”
17. 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.
18. 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.”
19. 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.
20. On June 29, 2009, Sprinkles filed an intent-to-use trademark application with the U.S. Patent and Trademark Office for the mark SPRINKLESMOBILE for “retail store services featuring baked goods; mobile retail store services for the sale of baked goods from a custom vehicle.” The application has been allocated Serial No. 77770532.

- 21. Sprinkles has been using the trademark SPRINKLES CUPCAKES in connection with pet treats since at least as early as April 13, 2005.
- 22. On September 21, 2010, Sprinkles obtained a federal registration for its SPRINKLES CUPCAKES trademark, U.S. Trademark Registration No. 3,849,382, covering “pet treats.”
- 23. Sprinkles has been using the trademark SPRINKLES CUPCAKES in connection with serving trays and serving towers since at least as early as April 13, 2005.
- 24. On September 21, 2010, Sprinkles obtained a federal registration for its SPRINKLES CUPCAKES trademark, U.S. Trademark Registration No. 3,849,383, covering “serving trays; serving trays with recessed holes to hold cupcakes; serving towers, namely, towers comprised of stacked serving trays.”
- 25. On August 12, 2009, Sprinkles filed an intent-to-use trademark application with the U.S. Patent and Trademark Office for the mark ISPRINKLES for “computer software for locating retail stores featuring bakery goods, desserts, and merchandise, for sending gift certificates for bakery goods, desserts, and merchandise, for ordering bakery goods and desserts, for ordering bakery goods, desserts, and merchandise, for providing information about bakery goods, desserts, and merchandise, for locating retail stores featuring bakery goods, desserts, and merchandise; computer software for mobile devices for locating retail stores featuring bakery goods, desserts, and merchandise, for sending gift certificates for bakery goods, desserts, and merchandise, for ordering bakery goods and desserts, for ordering bakery goods, desserts, and merchandise, and featuring bakery goods and desserts, for ordering bakery goods, desserts, and merchandise, and for providing information about bakery goods, desserts, and merchandise.” The application has been allocated Serial No. 77802907.
- 26. On October 27, 2009, Sprinkles filed an intent-to-use trademark application with the U.S. Patent and Trademark Office for the mark SPRINKLES CUPCAKES for “clothing, namely, shirts, tank tops, baby bodysuits, hats.” The application has been allocated Serial No. 77858599.

32. On July 21, 2009, Sprinkles acquired further rights to the Sprinkles trademark. Sprinkles in Palm Beach, Florida, has operated a Sprinkles ice cream shop in Palm Beach since at least as early as 1985. It is my understanding that Sprinkles Palm Beach has offered bakery

Sprinkles of Palm Beach

applications cited in the paragraphs above are referred to collectively as the "Applications"). above are referred to collectively as the "Registrations" and the Sprinkles' trademark allocated Serial No. 85198795. (The Sprinkles' trademark registrations cited in the paragraphs gel form; cosmetic soaps; hand soaps; nail polish; cosmetics." The application has been care lotion; sun tan lotion; skin cleansing lotion; after-shave lotion; bath soaps in liquid, solid or lip balm, soap, body polish, body and foot scrub and non-medicated foot cream; skin lotion; sun products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated with the U.S. Patent and Trademark Office for the mark SPRINKLES for "aromatic body care On December 15, 2010, Sprinkles filed an intent-to-use trademark application 31. "bakery goods." The application has been allocated Serial No. 77872012.

with the U.S. Patent and Trademark Office for the mark SAY IT WITH SPRINKLES for On November 13, 2009, Sprinkles filed an intent-to-use trademark application 30. Serial No. 77870009. "clothing, namely, shirts, tank tops, baby bodysuits, hats." The application has been allocated with the U.S. Patent and Trademark Office for the mark I LOVE SPRINKLES and Design for On November 11, 2009, Sprinkles filed an intent-to-use trademark application 29. 77868765.

and "retail shops featuring baked goods." The application has been allocated Serial No. the U.S. Patent and Trademark Office for the mark I LOVE SPRINKLES for "bakery goods" On November 9, 2009, Sprinkles filed an intent-to-use trademark application with 28. featuring baked goods." The application has been allocated Serial No. 77866405.

the U.S. Patent and Trademark Office for the mark SAY IT WITH SPRINKLES for "retail shops On November 5, 2009, Sprinkles filed an intent-to-use trademark application with 27.

36. Sprinkles has been planning to open a store in Washington, D.C. since at least as early as 2006, and has listed Washington, D.C. as one of the cities in the "opening soon" section of the Sprinkles website since that time. On March 3, 2011, Sprinkles followed through with its

Sprinkles' DC Store

July 21, 2009, and Sprinkles now owns the registrations.

35. Therapy Too assigned the Sprinkles Palm Beach Registrations to Sprinkles on True and correct copies of the Sprinkles Palm Beach Registrations are attached as Exhibit C. and trademark priority for these registrations dates back to at least as early as October 2002. respectively, OF PALM BEACH and PALM BEACH. The registrations are now incontestable, ice cream" (the "Sprinkles Palm Beach Registrations"). The registrations include disclaimers of (SPRINKLES PALM BEACH and Design) for "ice cream" and "retail store services featuring Trademark Registration Nos. 2,938,800 (SPRINKLES OF PALM BEACH) and 3,004,757 BEACH and Design was filed on July 16, 2003. These applications matured into U.S.

SPRINKLES OF PALM BEACH was filed on November 13, 2002. SPRINKLES PALM BEACH and SPRINKLES PALM BEACH and Design. The first application, for the word mark BEACH and SPRINKLES PALM BEACH applications: for SPRINKLES OF PALM

34. Therapy Too filed two U.S. trademark applications: for SPRINKLES OF PALM attached as Exhibit B.

Washington Post as early as 1991. True and correct copies of the newspapers articles are the country in 2003. Sprinkles Palm Beach was also featured in *The New York Times* and *The People* magazine, which voted Sprinkles' Triple Chocolate Supreme flavor the best ice cream in shopping district. Sprinkles Palm Beach has received national press in publications including

33. Sprinkles in Palm Beach is a popular tourist destination in a busy Palm Beach Too to continue use of the Sprinkles mark.

trademark to Sprinkles on July 21, 2009. Sprinkles in turn licensed the mark back to Therapy assumed ownership of the store in October 2002. Therapy Too assigned all rights to the goods commonly seen in ice cream shops since long before the current owner, Therapy Too,

longstanding plans and opened a store on M Street in the Georgetown neighborhood of the District of Columbia.

37. I am not aware of a single instance of customer confusion arising from Sprinkles' use of SPRINKLES-related trademarks at or in connection with its Sprinkles D.C. store. To the best of my knowledge, none of Sprinkles' employees at the D.C. store are aware of any instance of confusion arising from Sprinkles' use of its SPRINKLES marks.

38. I am not aware of a single instance of customer confusion arising from Sprinkles' use of SPRINKLES-related trademarks in connection with its promotion and sales of products at local Williams-Sonoma stores or otherwise.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Beverly Hills, California on September 13, 2011.

By: 
Charles Nelson

EXHIBIT A

So, Sweetie, I Quit to Bake Cupcakes



Monica Almeida/The New York Times

Second-act bakers in the Los Angeles area include Amy and Jeremy Berman of the Vanilla Bake Shop.

By AUDREY DAVIDOW

Los Angeles

[Enlarge This Image](#)



Monica Almeida/The New York Times

Mary Odson and Lisa Ritter of Big Sugar (with supportive children).

AS Hollywood apprentices go, Amy Berman had it pretty good as a production assistant on "Will & Grace." She met guest stars like Madonna and Jennifer Lopez, hung out in the writers room and often had drinks with producers after the Tuesday-night tapings. It was a plum Hollywood primer, letting her explore whether writing, directing or producing might be right for her.

After a year and a half of shuttling scripts, she figured it out: what she really wanted to do was bake. She left the entertainment industry for pastry school, and in 2005 began delivering bite-size cupcakes to the sets of TV shows like "The Office." Next week, her bakery, the Vanilla Bake Shop, a little place with cotton-candy-color walls, is to open in Santa Monica, Calif. "I'm still working 15 hours a day," said Ms. Berman, now 29, "But it's my passion"

Inspired by the allure of the quaint, the glamorization of the food industry and the success of places like Sprinkles Cupcakes in Beverly Hills, which brought the let's-wait-in-long-lines-for-a-cupcake trend to the West Coast, a rash of white-collar professionals in Los Angeles have traded corporate jobs for lives as flour-coated entrepreneurs. In the past year, about a dozen boutique bakeries serving expensive versions of all-American desserts like banana pudding and \$3 red velvet cupcakes have popped up around the city, many run by second-act bakers.

Kirk Rossberg, who owns the 23-year-old Torrance Bakery in the South Bay area of Los Angeles County, said he's swamped with intern applicants. "Until last year, I never had people asking to work for free," said Mr. Rossberg, who is also president of the California Retail Bakers Association. He estimated that of the 30 interns he used this year, 90 percent were leaving professional careers to pursue a dream of opening a bakery.

Blame it on a culture where the BlackBerry-obsessed run around like overcaffeinated track stars, but there is a tremendous craving for comfort, particularly in fast-paced cities like Los Angeles, said Grant McCracken, the author of the book "Culture and Consumption II: Markets, Meaning and Brand Management." For many people, he said, "baking represents that, it harks back to a simpler time." Comfort food, it seems, has become a comfort career.

Lesley Balla, the editor of the foodie blog [Eater LA](#), said: "Do we really need another bakery? Probably not. But Angelenos have been starving for sugar and carbs for so long that the bakeries seem like a breath of fresh air." Besides, she said, "if it's the hot new thing, everyone's going to really want it in L.A., because that's what we do."

And, perhaps, overdo. Jonathan Gold, the Pulitzer-winning food critic for LA Weekly, said hardly a week goes by without a box of cookies or cupcakes landing on his desk from a new place he's never heard of. "And they're not just cupcakes," he said. "They're cupcakes with publicists."

Still, Mr. Gold understands why the city might inspire a craving for jobs with more tangible fruits. "In a town where people say no to you all the time and you rarely have the simple satisfaction of getting something made, being able to make a sweet simple thing that makes people happy is really compelling."

Rebecca Marrs, the director of career services at the California School of Culinary Arts in Pasadena, has seen a noticeable rise in the number of older career-shifters, as opposed to 20-somethings hoping to break in after high school or college. Enrollment in the baking program increased 31 percent last year, she said, and the school recently added its first evening and weekend patisserie program to accommodate demand from working professionals looking to switch acts.

Not all late-blooming bakers cultivate the craft at pastry school. Many simply rely on recipes and skills they picked up in grandma's kitchen, with their own ovens and hand mixers playing supporting roles.

Take Charles and Candace Nelson, the team behind the Los Angeles-based cupcake chain Sprinkles, who bid farewell to six-figure investment banking salaries in 2002 to start a dessert-catering business out of their kitchen.

"It was a crazy time to be opening a bakery," Ms. Nelson said. "The 'South Beach Diet Cookbook' was a best seller." She vividly remembers wedding-shower guests refusing to try her cupcakes for fear of exceeding their carb allotment.

[Enlarge This Image](#)



Candace Nelson of Sprinkles.

Nationwide, it was a difficult time for sweets. According to MarketResearch.com, after a four-year no-carb slump, the baked goods business started bouncing back in 2005.

Now, even the sveltest of women can't seem to stop wiping butter cream from their lips.

When the first Sprinkles location opened in April 2005, the couple sold 2,000 cupcakes the first week. Fans, including Oprah Winfrey and Katie Holmes, have been lining up ever since, and now the Nelsons have stores in Dallas and Orange County, Calif., with plans to open six more across the country next year.

Despite their business success, their new life isn't necessarily easier. "I found the one job where the hours are worse than investment banking," Ms. Nelson said. "We're on call essentially 24-7." She is due to have the couple's first baby next month and plans to take only a two-week maternity leave.

Not that they, or others who have made the tradeoff, regret it.

Genevieve Ostrander, who opened Delilah's Bakery in the Echo Park neighborhood of Los Angeles four months ago, said her former job as a beauty publicist was "soul sucking." Now, she specializes in making Southern-inspired desserts. "I'm the poorest girl in all of L.A. I don't eat out, I don't shop, I even had to cancel my cable," said Ms. Ostrander, 34. "But I love it."

Lisa Ritter and Mary Odson, the partners behind the new bakery Big Sugar in the Studio City neighborhood (whose doughnut muffins have a big fan in Marc Cherry, the creator of "Desperate Housewives"), were stay-at-home mothers with corporate pasts looking for a flexible way back into the work force. Now, the children have a place to come after school. "The quality of life is fantastic," Ms. Ritter said. "We get to see our kids so much more."

Of course, turning a baking hobby into a business isn't just a Los Angeles trend. Warren Brown, the lawyer who opened CakeLove in Washington in 2002, is now the host of the Food Network show "Sugar Rush." Then there's Jennifer Appel, the clinical psychologist who, with Allysa Torey, opened Magnolia Bakery in New York in 1996, which many credit with starting the cupcake obsession.

Success doesn't always come easy. The failure rate in the baking business is significant, said Abbye Williams, a consultant who is helping a former teacher open a gluten-free bakery in Culver City. "I think she's crazy, to tell you the truth," Ms. Williams said. "She doesn't have any experience and a brick-and-mortar bakery is a ton of work."

Which is why Clare Crespo, a former music producer, skipped the storefront and with two partners rolled out Treat Street, a roving bakery stand, last September. Inspired by Lucy's psychiatry kiosk in the Peanuts, the pink polka-dot stand pops up in the bohemian Silver Lake neighborhood on random Saturdays.

"The idea is like a rave," said Ms. Crespo, who posts pink signs to direct customers to the secret location. "We set up when people are least expecting it. If someone gave me a ton of money, maybe I'd open my own place, but it's still so much pressure and work — waking up early and making the same thing every day.

"This is more like playing bakery."

[The New York Times Company](#)

**Attack of the killer cupcake;
With squealing fans, ga-ga blogs and even its own tote, the pastry has L.A. in its grip.**

Betty Baboujon. Los Angeles Times. Los Angeles, Calif.: pg. F.1

It's a weekend morning at the Alcove in Los Feliz, and every table on the outdoor patio is laden with omelets and hash browns, huevos rancheros and other big brunchy platters -- except for Natalie Light's. On it sits a cupcake.

It's a chocolate chip cupcake the size of a softball.

"I have this every day," she says, eyeing it with reverence as she sinks her fork into it. "And I come early, or they sell out."

At Auntie Em's Kitchen in Eagle Rock, where a line snakes out the door, cupcakes are selling like hot cakes. You'd think this would put owner Terry Wahl's mind at ease, but no.

"It's almost at the point now where we're thinking of limiting how many cupcakes people can buy," Wahl says. "If someone walks in and says, 'I want three dozen,' they would wipe us out." Not to mention depriving all the jonesing cupcake addicts in line.

All over town, the masses are clamoring for cupcakes.

Leda's Bake Shop, a new custom-cake joint in Sherman Oaks, is selling a couple of hundred a day. And that's on top of the special orders that have pastry chef Ledette Gambini churning out dozens more to sate the cupcake-hungry.

Where people have really gone cuckoo over cupcakes, though, is Beverly Hills. At Sprinkles, a "cupcake boutique," owners Charles and Candace Nelson say they're selling around 1,000 a day.

A thousand cupcakes! Line them up, and they'd nearly span a football playing field.

Even some serious chefs are caught up in cupcake fever.

"Cupcakes seem to be the thing," says Annie Miler of Clementine cafe in Century City. "We basically sell as many as we can put out. Sometimes it's hard for us to keep up."

They've also popped up on the menu of the retro-hip Beechwood restaurant in Venice. Chef Brooke Williamson's under the cupcake spell too. With three flavors on one plate, "they're easier to share and more fun," she enthuses. "It's one of the most ordered desserts, if not the most ordered."

There are blogs devoted to cupcakes, and cupcake entries in general blogs. There are tiered stands, ruffled silicone baking cups made just for cupcakes and even a cupcake transportation module -- a plastic container that lets you tote a single cupcake from home to office to beach to Mt. Everest without the frosting getting mussed, even if the cupcake gets turned upside down.

Who knew that the cupcake-itis that struck New York a couple of years ago was so infectious?

Publishers are doing what they can to spread it. On newsstands, cupcake glamour shots populate the pages of magazines. And four cookbooks devoted to cupcakes have come out in the last few months.

But do we really need the Cake Mix Doctor, or anyone else for that matter, telling us how to shrink a cake?

Yes, it seems we do! After all, if hordes are lining up all over town, squealing and swooning over red velvets, dark chocolates, white vanillas and a whole spectrum of cupcake flavors -- and willing to pay around \$3 a pop, maybe they'll be excited to pay \$18 for a book telling them how to put batter in a smaller pan.

Because when it comes down to it, it's a cupcake. It's just a little cake batter baked in a paper cup and slathered with frosting.

No big deal. And yet, it is.

Talk to cupcake die-hards and they'll wax poetic about the cupcake's high frosting-to-cake ratio, its portability, its cachet as a single-serving indulgence.

And with pastry chefs making them over inside and out with designer ingredients and cool designs, that's icing on the cupcake.

OK, I kind of get it, but not entirely.

I get it when I bite into Sprinkles' dark chocolate cupcake made rich with Callebaut chocolate and real chocolate sprinkles. I don't get it when I can barely taste anything in its Madagascar vanilla cupcake -- and yet it's Sprinkles' top seller. Go figure.

I get it when I pop into my mouth a carrot mini-cupcake with blood-orange curd and mascarpone frosting from Leda's Bake Shop and think, wow, who knew a tiny cupcake could be the dessert version of an amuse bouche? I even get it at the Alcove, despite the cupcakes being crazy-humongous, because the chocolate cake is moist and soft and yummy and so is its Neapolitan frosting.

But I don't get it when my teeth hurt after a taste from the revered Toast Bakery Cafe in L.A. Sure, a cupcake warms the cockles of my heart when it reminds me of my first sugar rush in kindergarten, but if I'm going to drive across town and wait in line, I want flavor too.

Then there's the red velvet thing. If you had it as a kid, it makes you wistful. If not, it makes you baffled. Why would anyone want plain cupcakes stained blood-red by food coloring? There's usually a spoon or two of cocoa powder in the batter too, but you can't taste it.

I try Auntie Em's wildly popular version (another super-sized cupcake, by the way) and it's woefully dense and dry. I bite into the one at Beechwood and love how moist it is. But mostly, I confess, I love how the cream cheese frosting tastes.

At Joan's on Third in L.A., I share a chocolate marshmallow cupcake three ways, then taste a regular chocolate one, plus a coconut for good measure. Good, good, good.

And yet, even when I like a cupcake, I can't imagine going out of my way for one. If I want one, there's always a supermarket nearby. I don't need a pricey, pedigreed cupcake, do I?

I head over to a Gelson's to find out. The cupcakes in the Viktor Benes case are a bargain at \$1.25 each, considering all the \$3-plus- or-minus cupcakes so far. And they look the way cupcakes should. They're all the right size, with perfectly coiffed toupees of frosting and a bright and happy sprinkling of, well, sprinkles. One look at them and I'm 8 again, having a blast at a birthday party.

I eagerly take a bite.

Blech! It tastes like an oily, butterless cotton ball.

I'm aghast. And feverish.

I'm suddenly in need of a good cupcake. Must ... have ... cupcake.

Can I make it to Leda's or Joan's or Sprinkles before they close, I wonder?

See you later. Or maybe I'll see you in line.

*

Mini espresso cupcakes with chocolate ganache and espresso buttercream

Total time: 1 hour, 45 minutes

Servings: 48

Note: From Ledette Gambini of Leda's Bake Shop in Sherman Oaks. She recommends this recipe for minis because the buttercream frosting is quite rich. If you do make regular-sized cupcakes, this recipe makes about 24.

Chocolate ganache

1/4 cup heavy cream

1 tablespoon corn syrup

4 ounces good-quality semi-sweet chocolate, finely chopped

1 tablespoon (1/8 stick) butter, cut into small pieces

1. In a saucepan, bring the cream and corn syrup to a boil.

2. Remove from the heat and add the chocolate and butter. Let stand for a couple of minutes. Whisk until smooth.

Espresso buttercream

1 tablespoon plus 1 1/2 teaspoons espresso powder

1/4 cup egg whites

1/2 cup sugar

Pinch of cream of tartar

8 ounces (2 sticks) unsalted butter, softened just enough to get an imprint when pressed with a finger

1. Dissolve the espresso powder in a tablespoon of water, making a paste.

2. Place the egg whites and sugar in the metal bowl of an electric mixer. Set it over a pan of simmering water, whisking until the sugar has dissolved (so you don't feel any grains between your fingers). Be careful not to let the egg whites cook at this stage; constant beating is important.

3. Remove from the heat. Add the cream of tartar and, with an electric mixer using a whip attachment, beat on high speed until stiff peaks form.

4. Add the butter a tablespoon at a time on slow speed. It may look like undercooked scrambled eggs for a while, but just keep beating it on low until it comes together into a smooth buttercream, about 15 minutes.

5. Add the espresso paste. If you want a stronger espresso taste, make more paste and add.

Cupcakes and assembly

1 1/4 cups all-purpose flour

1/2 teaspoon baking soda

1/2 teaspoon baking powder

1/4 teaspoon salt

2 tablespoons instant espresso powder

4 ounces (1 stick) butter, at room temperature

1 cup sugar

2 eggs, at room temperature

1/2 cup whole milk, at room temperature

Chocolate ganache

Espresso buttercream

1. Heat the oven to 350 degrees. Put cupcake liners into mini- muffin tins.

2. Sift together the flour, baking soda, baking powder, salt and espresso powder.
3. In a bowl, beat the butter and sugar until light and fluffy. Add the eggs slowly, beating well after each addition
4. Alternately add the flour mixture and the milk to the butter mixture, about half at a time, mixing slowly. Do not over beat; mix only until well blended.
5. Fill each muffin tin three-quarters full.
6. Bake 10 to 12 minutes until the cupcakes spring back when you touch them.
7. Remove the cupcakes from the pan and cool completely.
8. Put a quarter-sized dollop of chocolate ganache in the center of each cupcake, leaving the cake exposed around the edges. (You can use a small teaspoon or a pastry bag; warm the ganache slightly over some simmering water if hardened.)
9. Put some espresso buttercream into a pastry bag fitted with a round tip. Start piping at the edge of each cupcake, working in circles to reach the center.

Each serving: 113 calories; 1 gram protein; 11 grams carbohydrates; 0 fiber; 8 grams fat; 4 grams saturated fat; 27 mg. cholesterol; 38 mg. sodium.

Credit: Times Staff Writer

the  list



DIY Cupcakes

WHO THEY'RE FOR: Your sister's brats — er, kids.

WHY THEY'LL LOVE THEM: Cupcake mix? Hello?

WHY THEIR MOM WILL LOVE THEM: They aren't made of plastic, don't require batteries, and won't glue the kids to the computer screen from now until Boxing Day.

WHERE TO BUY THEM: Sprinkles Cupcake Mix, \$14; williams-sonoma.com.

close



Halfway around the world and back and increasingly confused

By Tyler Brule

The past week was a bit faster than usual for your cloud-bound correspondent. Flying halfway around the world and back again in just over a week, here's what I found.

LHR-LAX-LHR-ZRH-LHR-NRT-SYD-BKK-LHR: those were the letters that jumped off the page when my intrepid assistant Gaby handed me my week's itinerary last Monday. Any regular traveller would recognise that the second and third LHRs should have been deleted and the ZRH inserted just after the BKK. Even the less-seasoned flier would know that London-Los Angeles-London-Zurich-London-Tokyo-Sydney-Bangkok-London is pushing it (no matter where you're sitting on the plane), but a board meeting in Zurich demanded I return to Europe before embarking on my Pacific Rim runaround.

The first leg of my journey started in seat 1A on the early BA to LA.

I knew I was in for an irritating flight as soon as the canapes were placed in front of the gentleman across the aisle. My fellow passenger eventually decided on the prawn and roe concoction and popped it in his mouth. I normally wouldn't pay such close attention, but I was trying to peer out of his window to get a fix on our location and soon became transfixed when I noticed that he was incapable of eating with his mouth closed. Initially I dismissed the bad table manners as post-take-off nerves or a mild case of "upgrade excitement" but rapidly concluded that he was a "smacker" - the airborne adult equivalent of the screaming one-year-old.

Just as it's impossible to block out a wailing infant two rows behind you, it's equally challenging to cancel out a grown man who smacks through a five-course meal when he's within your immediate airspace. At first I tried staring at him with my best look of bewilderment. On several occasions I considered saying something and in the end had to resort to headphones to delete the sound of a pasty tongue disengaging from sticky gums.

By the time I reached Los Angeles I was in desperate need of a sugar hit, having been put off the afternoon scones and jam by my neighbour. I replenished my supplies by paying a visit to Sprinkles on Little Santa Monica in Beverly Hills. Launched in April, Sprinkles is a modernist cupcake emporium created by former Martha Stewart editor Page Marchese-Norman. Owned by Charles and Candace Nelson, the chocolate-brown, white and oak space trades in 20 varieties of cupcakes (coconut's my favourite) and is already establishing itself as a "must-give" brand. Where most cupcake emporiums have gone for twee interiors, Marchese-Norman devised a strict, orderly concept with the help of LA-based Austrian architect Andrea Lenardin Madden. Working with the best ingredients and a strong packaging concept, a national roll-out of Sprinkles can't be far off.

Back at LAX 24 hours later, and running very late for my flight to Heathrow, I only had time to grab a copy of the New Yorker and Martha Stewart Living from the newsstand. Since Martha's release, it's clear she's been spending her time under house arrest giving her editorial staff a hard time as the magazine has improved significantly. While climbing to our cruising altitude, I decided that I have to build a screened-in summer room something like the one Martha's team have created in her July issue.

Connecting to Zurich the following afternoon I managed to leave my Fay navy blazer on my Swiss flight and was quite convinced I'd never see it again. By the time I'd finished my board meeting the next morning, the jacket had been recovered and was waiting for me at terminal one. The lady at lost and found proudly told me that pretty much everything gets returned at Zurich airport.

Two hours later I was back at Heathrow, where I picked up Gaby for the Asian portion of my tour - and her first trip to Tokyo.

As ever, the city put on a good show. In Marunouchi I visited the flagship store for Darjeeling Days - the latest concept to come from the United Arrows retail group. Aimed squarely at the male FT reader who doesn't want fashion but does want an elegant, high-quality wardrobe, the concept is already going national across Japan. In Ginza I visited the atelier of Shigeru Takizawa, who's fast becoming Tokyo's most sought after bespoke tailor. In Shinjuku I marvelled at the new-ish Isetan men's store and decided it's the new global benchmark for menswear. Although I didn't need any new garments, I still managed to walk out with a summer trilby from the old-school Tokio Hat brand, eyeglasses from Four Nines and some crisp cotton Gunze briefs.

Remembering that this was also a cultural/social study for Gaby, I took her over to the main Isetan building and gave her a tour of the pinny and slipper section. There's been a proliferation of labels churning out housedresses, aprons, headkerchiefs and little felt booties, so everyone residing in Ebisu and Aoyama can pretend they're either living off the land in Norway (the Ogg brand has cornered this look) or raising chickens in the Piemonte region of Italy.

Escaping the 40°C heat of Tokyo, Sydney greeted us with sunny skies and a crisp 18° C. Still playing tour guide to Miss Gaby, I took her to visit the newest branch of my friend Bill Granger's collection of restaurants, Bills Woollahra, on the corner of Queen Street and Moncur. This latest branch has the added benefit of an entire courtyard filled with tables.

At the time of filing this copy, it's now somewhere between Wednesday and Thursday and I believe I'm on the Qantas QF1 to London. The reason I'm unsure is that there's barely an Australian crew member in sight.

The back of the aircraft seems to be manned by Thai crew and First and Business by English flight attendants. The experience doesn't feel very Qantas - more a set of disconnected people working on a 747-400 that's the flag carrier for a country they have no relationship with. No doubt there are some short-term cost-savings, but for me, who's been around the world in a week, I'd like to know exactly where I am and who I'm flying with. Qantas's finance department might be seeing an upside, but I'm only seeing brand erosion.

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Sprinkles bakery to open in Corona del Mar

Sprinkles Cupcakes, a popular bakery in Beverly Hills, looks to open a second shop in Corona del Mar.

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By NANCY LUNA | The Orange County Register

BEVERLY HILLS - **Sprinkles Cupcakes** got the last-minute order at 2 p.m. A producer with "The Oprah Winfrey Show" asked if the Beverly Hills shop could deliver 300 designer cupcakes to Chicago by 7 a.m. - the next day.

The treats would be featured on "Breakfast with Oprah," where the influential talk-show host touts her favorite treats before millions of viewers.



BEYOND EMPTY CALORIES: A customer, left, watches "cupcake associate" Lindsey Goins serve her at Sprinkles Cupcakes on Wednesday in Beverly Hills. Oprah Winfrey helped put the shop on the culinary map during a "Breakfast with Oprah" segment.

H. LORREN AU JR., THE ORANGE COUNTY REGISTER

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"You can't say no to Oprah," Sprinkles co-owner Candace Nelson said of the opportunity.

So, she boarded a red-eye flight to the Windy City, lugging suitcases and large brown shopping bags carefully stuffed with her finest flavors: red velvet, coconut, chocolate and vanilla - all topped with a half-inch thick layer of butter-cream frosting.

After the Feb. 1 show, sales of Sprinkles cupcakes, which go for \$3.25 a pop, grew 50 percent to 1,500 per day.

Now, Nelson plans to open a second Sprinkles in Corona del Mar. When the store opens in July, the coastal enclave will be among a handful of trendy U.S. cities serving gourmet versions of an old-fashioned party treat.

Retail consultant Greg Stoffel said the ritzy Corona del Mar Plaza, home of **Sur La Table** and **Bristol Farms**, is the perfect spot for shoppers to splurge \$36 for a dozen cupcakes.

"Because this is purely discretionary spending on food, it would require a higher-income area," said Stoffel, of Stoffel & Associates in Irvine. "And, in Orange County, you can't get much higher than Corona del Mar."

Local sweet tooths can hardly wait.

"The red velvet will change your life. It's a heavenly experience," said Miriam Erdosi, 33, of Irvine.

Before moving to Orange County a few months ago, Erdosi worked in West Los Angeles and often visited Sprinkles, a tiny chocolate-colored storefront nestled near the chic boutiques of Rodeo Drive.

The shop opened last April selling a limited menu of fondant-dotted cupcakes, 75-cent frosting shots, coffee and bottled soda.

The same menu will be at the Corona del Mar store.

"The lines are always so ridiculous. You'd think they were selling bricks of gold," Erdosi said.

Nelson and her husband, Charles, are betting that the pace won't stop.

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Sprinkles bakery to open in Corona del Mar
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More information

Sprinkles Cupcakes is slated to open this summer at the Corona del Mar Plaza, 800 Avocado Ave. For more information, go to www.sprinklescupcakes.com. The Frosted Cupcakery is at 195 Claremont Ave. in Long Beach. The shop is co-sponsoring the Last Saturday Art Walk at 433 E. First St. on May 27 from 7 to 11 p.m. Free cupcakes will be served. For more information, call Stacia Samartan at (949) 922-9658.

This week, the couple scouted a third location in Scottsdale, Ariz. Eventually, they want to expand to Chicago, Las Vegas and their hometown of San Francisco, where they once worked as investment bankers.

"We went from banking to baking," laughs Nelson.

After the days of the dot-com boom, Nelson told her husband she wanted to enroll in pastry school to perfect a lifetime love of baking. She emerged from the training with the idea of opening a shop dedicated to the childhood dessert.

"This is something people grow up with. We've

just elevated it," Nelson said.

At Sprinkles, Nelson offers 10 of her 20 flavors each day. Fan favorites such as red velvet and dark chocolate are served daily, while specialty flavors such as carrot cake, peanut butter chocolate and chai latte rotate throughout the week.

A \$3.25 standard-size cupcake, nearly half the cost of a dozen Krispy Kreme glazed donuts, comes with a smooth butter-cream frosting drizzled with French sprinkles or an elegant fondant dot. There's no gaudy piping or flowery writing.

Nelson said her concept was partly inspired by **Magnolia Bakery** in Manhattan, credited for making cupcakes vogue in the Big Apple after they were featured in the popular HBO gal-pal series "Sex and the City."

At the time, New York was one of the only U.S. markets turning the retro dessert into an affordable luxury, said Tina Casaceli, director of pastry arts at the French Culinary Institute in New York City.

"Now I see it's become a big thing everywhere," Casaceli said.

But could this be another food fad that fades faster than a sugar crash? Casaceli doesn't think so.

"This is something that is comfort food for everyone. It's not a trend. It's a staple," she said.

Other cupcake shops popping up across the country include **Cupcake Royale** in Seattle, **Cupcake** in Minneapolis, **Cake Fetish** in Albuquerque and **Frosted Cupcakery** in Long Beach.

Next year, **Starbucks** plans to add cupcakes to its pastry shelves after successfully testing three flavors in stores in February, the company said this week.

Stacia Samartan believes the trend has legs.

She and her mother, Nancy Hanley of Huntington Beach, opened the Frosted Cupcakery in Long Beach's upscale Belmont Shore neighborhood three weeks ago. Their plan: Sell 200 cupcakes a day to break even.

"But, once we opened the door, we realized we couldn't keep up with the demand," said Samartan, who still plans to hang on to her day job at **Paul Frank Industries** in Costa Mesa.

Nelson said Sprinkles sold 200 cupcakes in two hours on opening day. The number eventually jumped to 1,000 a day once word spread in the "90210" that celebrities such as Tyra Banks and Barbra Streisand were devotees. Babs, as it turned out, gave Oprah the gift of Sprinkles over the holidays, which led to that fateful January call, said Nelson, who baked for six hours straight before catching a sleepless flight to the Windy City.

"It was so surreal," she said of the Oprah experience.

What was real was the frenzy that followed.

Last Friday, an overflow crowd spilled outside Sprinkles over a two-hour period. Some wanted a single fix of red velvet, while others ordered by-the-dozen boxes for dinner parties, play dates and co-workers.

Joy Thurman, a tourist from a one-stoplight town in Mississippi, spent more than an hour circling the traffic-jammed streets of Los Angeles in a desperate search for the cupcakes she saw on Oprah. She wound up spending \$22 at Sprinkles during two visits.

"These are divine," said Thurman with a long, satisfying Southern sigh as she nibbled on a strawberry cupcake. "I'm coming back this afternoon." Yet, Georgene Fairbanks of Mission Viejo, who visited Sprinkles recently because of the Oprah hype, said she didn't understand "the fuss."

"It's not that I didn't like it," Fairbanks said. "I've just had cupcakes from Betty Crocker that were just as good."

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This Was Printed From Houston Business Journal

Sprinkles Cupcakes cashes in on Houston's sugar rush

Premium content from Houston Business Journal - by Allison Wollam

Date: Monday, June 14, 2010, 12:00am CDT - Last Modified: Thursday, June 10, 2010, 5:09pm CDT

Tom Cruise used them to woo Katie Holmes.

Hugh Hefner and his band of buxom beauties sampled them on "The Girls Next Door."

They've even been on Oprah. And now they're coming to Houston.

After trying to find a suitable Bayou City location for the past three years, Sprinkles Cupcakes, the apparent cupcake of choice among several high-profile celebrities, is preparing to open a shop this month in Highland Village.

Charles Nelson, who owns Sprinkles Cupcakes along with his wife Candace, says the owners wanted to come to Houston years ago, and began talking to Highland Village in 2007 after the California-based company opened its first shop in Dallas.

"We've had a couple of near misses at Highland Village," he says. "They ended up putting some other tenants in spots where we thought we were going. The lease has been signed for a year and a half, but we think it will be worth the wait."

Sprinkles Cupcakes will be located in a 2,000-square-foot site in a building currently under construction in the high-profile upscale shopping center at the corner of Drexel and Westheimer.

The store is slated to open June 21. Sprinkles is donating its first day of sales — an estimated \$25,000 — to the Shane Battier Take Charge Foundation. Battier, a Houston Rockets player, will be behind the counter serving cupcakes that day from 11 a.m. to 1 p.m.

He says the most popular cupcakes, by far, are the red velvet cupcakes and the black and white cupcakes. Sprinkles Cupcakes also sells cupcakes without frosting for customers who aren't fans of the sweet stuff and frosting shots for customers who only want the frosting.

When the Nelsons opened the first Sprinkles Cupcakes location in 2005, it was the only bakery in the U.S. that just sold cupcakes. Now, cupcake cafes are popping up in every market that Sprinkles Cupcakes enters — or in the case of Houston, several have already been established prior to its arrival.

Local spots like Crave, Sugarbaby's Cupcake Boutique, Celebrity Cupcakes and Frosted Betty will all be competing with Sprinkles for business.

"It's fun that there are so many choices now," he says. "There's been sort of a renaissance for bakeries and people are once again appreciating homemade, made-from-scratch desserts."

Elizabeth Harrison, owner of Crave cupcakes, which opened in Houston two years ago, agrees there is plenty of room in the market for a new concept.

"Our customers come from all over the place and Houston is such a huge city," she says.

Harrison has experienced such a positive reception to her first store in Uptown Park that she's planning to open a second location in West University by the end of the summer.

The second store, at 5600 Kirby, will offer an expanded selection of breakfast cupcakes, six new cupcake flavors and a full coffee and espresso bar.

"Cupcakes are still available at bakeries all over town, but I think that when you focus on just one thing you are able to do it very well," she says. "I think people appreciate the commitment."

Based on current pricing, local high-end cupcake outlets are competing more on taste and service rather than price.

Sprinkles charges \$3.25 per cupcake or \$3 each when purchased by the dozen, the same prices as when the Nelsons launched the concept five years ago. That is the same price as Crave cupcakes, and the same price for Sugarbaby's "Sugar Chic Line" cupcakes. Sugarbaby's sells its "Old Fashioned" line of cupcakes at a slightly lower price, at \$2.75 for a single and \$31 for a dozen.

Nelson and his wife were both investment bankers before starting Sprinkles Cupcakes. He recalls that, at that time, starting a cupcake bakery was a high-risk venture.

"From our research, a cupcake bakery had the highest risk for failing and a low potential for return, but we went ahead and did it anyway," he says.

Nonetheless, he says the bakery segment in general has seen an uptick in business in recent years. For a while, he says, many second and third-generation bakeries were not receiving enough investment and were not using the highest-quality ingredients, eventually causing the industry to suffer.

Much like the dot-com bust, he believes that the current cupcake craze could crest, but he says there will always be a place for a business that offers a good product at a reasonable price point and great customer service.

"It's really a return to artisan food," he says. "We're offering a new, modern take on the cupcake."

Crave's Harrison also doesn't see the cupcake craze going away anytime soon.

"I eat a good number of cupcakes and I don't see myself liking cupcakes any less in a year from now, so I don't see why people would lose interest," she says.

Nelson recalls that an immediate buzz began filtering through Hollywood soon after his wife Candace started Sprinkles Cupcakes out of their home, and phone calls from celebrities soon followed. The couple knew it was time to find a retail site after Hollywood stars began requesting dozens and dozens of cupcakes.

Despite that red-carpet connection, Nelson says Sprinkles Cupcakes target audience spans all walks of life because high-end cupcakes are affordable, portable and popular at family celebrations.

"Our first store is just off Rodeo Drive. We always tell people that they may not be able to afford a celebrity's dress, but they can afford a celebrity's cupcake," he says.

EXHIBIT B



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October 31, 1991, Thursday, Late Edition - Final

SECTION: Section B; Page 8; Column 1; National Desk

LENGTH: 1197 words

HEADLINE: Palm Beach Rape Trial Faces Test: Finding Jury

BYLINE: By DAVID MARGOLICK, Special to The New York Times

DATELINE: PALM BEACH, Fla., Oct. 30

BODY:

Jury selection is to start Thursday in the case of William K. Smith, the 31-year-old Kennedy heir charged with raping a Florida woman on the family's Palm Beach estate over Easter weekend. But the task of finding six citizens sufficiently unaffected by the saturation news coverage the case has already received could prove formidable.

Lawyers say interviewing potential jurors could take two weeks to a month or more, longer than the time earmarked for testimony in the trial, which is scheduled to begin Dec. 2.

But could a fair jury be found more quickly elsewhere? One local lawyer, Joel Weissman, said "you'd have to go to Haiti" to find someone unfamiliar with the case. And Judge Robert Parker of Palm Beach County Circuit Court went further. In an opinion upholding the right of a supermarket tabloid to print the complainant's name, he suggested that even scientists in igloos on the South Pole were following it.

Pervasive Influence

It is hard to walk into any of the bars or restaurants either party patronized without encountering waiters, maitres'd and bartenders who have been subpoenaed to testify.

And now it's time for the hundreds of potential jurors, all residing in the epicenter of the case, to take a turn. Starting Thursday, they will be asked whether they can serve and remain sequestered for the duration of the trial. They will also be asked if they have been affected by the publicity about the case and their feelings about what Judge Mary E. Lupo of Palm Beach County Circuit Court, who is hearing the case, has called "any Kennedy-family issues."

It is not uncommon in cases of great notoriety for jury selection to be both arduous and tedious. It took lawyers in New York two months to select the four women and eight men to hear the 1988 murder trial of Robert Chambers, who was convicted of killing Jennifer Levin in Central Park.

The task here could prove even tougher, since the cast of characters is better known, the story starker, the facts far more widely disseminated and arguably, the composition of the panel even more crucial.

Lawyers for Mr. Smith say the only other portion of the case as critical as jury selection is the ruling Judge Lupo will make on what may be allowed as evidence, most notably the prior sexual histories of Mr. Smith and his accuser. Allegations that Mr. Smith has assaulted several other women and that his accuser has a history of psychological instability have already been splattered worldwide.

Palm Beach Rape Trial Faces Test: Finding Jury The New York Times October 31, 1991, Thursday, Late Edition - Final

Unpredictable Factors

The impact of the hearings on Clarence Thomas's nomination to the Supreme Court, in which the issue of sexual misconduct loomed large, is unpredictable.

Moreover, this is a jury on which, notwithstanding its inconveniences and meager compensation -- \$10 a day plus 14 cents a mile or a free ticket on local mass transit -- people may well want to sit, and would, therefore, be more intent on masking their prejudices.

Judge Lupo has imposed a gag order on all lawyers in the case, and neither the assistant state's attorney prosecuting the case, Moira Lasch, nor the head of Mr. Smith's defense team, Roy E. Black of Miami, would say what sort of jurors they were seeking.

In July both sides submitted proposed questionnaires for potential jurors. Ms. Lasch's two-page form contained standard queries. Mr. Black's was considerably longer and more exotic, including questions on the potential jurors' "favorite famous persons" and the nature of any bumper stickers they had ever placed on their cars.

Lawyers for Mr. Smith have retained Cathy E. Bennett, a jury consultant from Galveston, Tex. Ms. Bennett did not return a reporter's phone calls. But a friend and professional colleague, Amy Singer of Trial Consultants Inc. in Miami, said that Ms. Bennett usually questioned several hundred people in the county from which the jury is to be drawn.

The Kennedy Factor

She would usually ask them their views on the guilt or innocence of the defendant in the case, then correlate her findings to age, sex, educational level and ethnic group, Ms. Singer said. Such investigations, she said, can last six weeks and cost \$150,000.

Ms. Singer said the variable that could prove most important was "the Kennedy love-hate factor." "The Kennedy lovers talk about the girl's moral character, sexual conduct and possible financial gains," she said. "The Kennedy haters talk about the Kennedy boys' moral character, sexual behavior and spoiled-rottenness."

Just as the stolid, utilitarian courthouse in West Palm Beach bears little resemblance to the fanciful, nouveau-Spanish motif of the rest of this gilded ghetto, the Smith case seems in some ways quite remote from quotidian Palm Beach.

The local squirearchy always considered the Kennedys arrivistes, even after one of them was elected President of the United States. Now that Rose Kennedy no longer comes here and her descendants take turns visiting here in season in three-week stints, they are more alien than ever.

That has not dimmed the ardor of local entrepreneurs, who are hawking Kennedy-themed T-shirts. The most popular, with 1,500 sold thus far, parodies the shirts that itemize rock stars' itineraries. On the front is an unflattering caricature of Senator Kennedy holding a mug of beer, along with the words "The Kennedys Easter Tour."

On the back, where the rock star would list the cities where he played, is instead a list of watering holes that family members patronized that Easter weekend, including Au Bar, where Mr. Smith and his accuser first met, Bradley's, Chuck & Harold's, LuLu's and the Safari & Polo Club.

Sprinkles Ice Cream and Sandwich Shop will soon introduce a flavor called "Teddy's Best," which contains Chivas Regal, the scotch Senator Kennedy ordered at Au Bar.

Under the intensity of the television lights, bit players in the drama have gone through whole lifetimes in a matter of weeks.

Smith Is Expected

Since claiming to have seen Senator Kennedy without trousers at the family compound and "kinda wobbling" on the night of March 30, Michelle Cassone of Palm Beach appeared on "Sally Jessy Raphael," "Geraldo" and "A Current Affair"; lost her job as a waitress; fled briefly to the Florida Keys; smashed one of Au Bar's doors in anger; was arrested for violating the terms of her probation for driving violations and was hospitalized after an overdose of sleeping pills.

Palm Beach Rape Trial Faces Test: Finding Jury The New York Times October 31, 1991, Thursday, Late Edition - Final

Mr. Smith will be on hand Thursday. In an effort to make things more orderly than at his arraignment, when a pregnant reporter was pushed around and one of Mr. Smith's own lawyers was shoved into a fire hydrant, the news media have agreed to limit the number of cameramen recording his entrance.

To explore Judge Parker's conjecture, Ron Wiggins, a columnist for The Palm Beach Post, promptly tried calling the South Pole, but couldn't get through. He did reach Chuck Evans, a scientist near the North Pole, who told him he had been following the case on "Hard Copy" and "A Current Affair." "If the defense wins a change of venue to Barrow, Alaska, Chuck Evans will have trouble getting on the jury," Mr. Wiggins wrote.

GRAPHIC: Photo: Local entrepreneurs like David Archibald are selling Kennedy-themed T-shirts in West Palm Beach, Fla. Mr. Archibald has sold 1,500 of the most popular shirt, "The Kennedys Easter Tour." (Associated Press)

LOAD-DATE: April 15, 1992



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November 3, 1991, Sunday, Final Edition

SECTION: SUNDAY TRAVEL; PAGE E1

LENGTH: 2280 words

HEADLINE: Posh Palm Beach: Elusive, Reclusive & Terribly Exclusive

SERIES: Occasional

BYLINE: Mary Jordan, Washington Post Staff Writer

BODY:

You've heard about Palm Beach -- vacationland for millionaires, hangout of the Pulitzers, the Kennedys, the Trumps. Just 12 miles long and a quarter-mile wide, this island of warm winter sun and year-round scandal is as often in the news as in travel books.

So driving across one of the three bridges linking ordinary West Palm Beach to this glamour spot where all things pedestrian -- movie theaters, gas stations, dry cleaners -- are banned, I was expecting a bit more bustle than I found.

For all its notoriety, all its international ink about Prince Charles playing polo and Roxanne Pulitzer playing socialite, Palm Beach remains, to outsiders passing through, a reclusive enclave of gated mansions and private clubs. A place where if you don't have an engraved invitation and a Rolls-Royce, you don't see the action.

Take the current hottest tourist spot, the Kennedy family estate. It's not only inaccessible, it's virtually out of sight.

Of course, everyone here knows exactly which Mediterranean Revival mansion set back from the road it is (1095 N. Ocean Blvd.), and millions have read about the goings-on inside, from President Kennedy's Winter White House galas in the early '60s to the alleged rape there seven months ago involving his nephew, William Kennedy Smith. Passersby, though, see only a sliver of the servants' quarters and the estate's 176 feet of beach.

Farther south on this oceanfront road, at financier Donald Trump's historic 118-room peach-colored castle called Mar-a-Lago (1100 S. Ocean Blvd.), a 75-foot tower with a blue floodlight that mimics the moon is at least visible from the road. But the posted sign has the unofficial island motto: "No Trespassing."

Undeterred, I called Trump's office in New York, and soon the sometime boyfriend of Marla Maples was on the phone granting a rare tour of his home, where every president since Truman has dined.

James Griffin, the caretaker who has lived on the 17-acre estate for more than half a century, said every day or so a tourist starts down the driveway, pretending not to know it is private property. He ejects them immediately, he said. But now, perhaps because Trump is in the midst of a battle with the locals -- over his plans to subdivide the property to build new mini-mansions -- he was conducting this tour of the home, built in 1927 by "Post Toasties" heiress Marjorie Merriweather Post.

Reminiscent of Versailles, this grand palace has velvet thrones, Venetian art, gilded cherubs and vaulted ceilings. Fifty could be seated around the dinner table. Much to the relief of preservationists, Trump has kept intact the historic furnishings that Post collected from around the world (even using the rather small antique bed in the master bedroom). But there are Trump touches: at least five photographs and paintings of the financier on the walls, and two copies of his book "Trump: The Art of the Deal" on his night table.

Posh Palm Beach: Elusive, Reclusive & Terribly Exclusive The Washington Post November 3, 1991, Sunday, Final Edition

Mar-a-Lago is off-limits to the public, but fortunately for frustrated voyeurs, there's Whitehall, a 10-minute drive away near Royal Poinciana Way. The extravagant 73-room mansion was built by Standard Oil millionaire Henry Flagler at the turn of the century for \$ 2.5 million. Then he furnished it for another \$ 1.5 million.

Now a museum, Whitehall hosts an exhibit of the railway that originally connected Palm Beach to the outside world and helped make it a resort. The art collection includes a Gainsborough portrait, the music room has a 1,200-pipe organ, and much of the house has its original furnishings, making it a national landmark and a reminder of the island's early days of grandeur. A few days after touring Mar-a-Lago, when I knew I might be staying for some time as one of 400 reporters who stormed the island to cover the Smith rape case, I foolishly asked a local hotel concierge how I could get a quick organized tour. "As I'm sure you know," he responded smugly, "organized tours are not something that would be allowed here. Buses are not even allowed on the island."

I learned later that if you slip enough money to some of the bellhops and employees at the better hotels, you'll find yourself in a limousine on a personal tour. Instead, I asked the employees at Main Street News and Sprinkles ice cream shop, both on Royal Poinciana Way, to point out celebrity estates and other spots not noted on the maps. Then a local reporter who knew the island helped me continue my mansion tour, past the former home of Beatle John Lennon and his wife, Yoko Ono; past cosmetics magnate Estee Lauder's mansion; past the estates of countless unknown heirs of well-known fortunes -- Kleenex, Campbell Soup, Clairol.

With very little parking allowed along the island's roads, and impatient drivers behind, it can be difficult to drive slowly by the estates, some of which are valued at more than \$ 10 million. One time, as I turned around to drive by one particularly gorgeous estate again, a member of the omnipresent police force pulled me over.

"Casing the joint?" he asked. Then, apparently satisfied that the only thing I was interested in stealing was a look, he said, "You'll never see anything. Everybody is in Europe. They won't be back until Christmas."

In wintertime, the island's year-round population of 10,000 triples.

Almost since the first house was built on the island just after the Civil War, Palm Beach has been a place for the privileged. Its gentle 70-degree December weather and location between the surf of the Atlantic and the shores of Lake Worth make it an ideal resort. A 19th-century brigantine named Providencia, it is said, is responsible for the palm trees that line many of the avenues: Its cargo was coconuts, and when the ship capsized in 1879, they were quickly planted on the island.

The year before, railroad tycoon Henry Morrison Flagler arrived, financing the first railway to the South Florida peninsula and building the hotels that would draw the rich. Soon afterward, members of high society -- the Vanderbilts, Biddles, Wideners and Wanamakers -- were fleeing here from northern winters.

Today, the resort island looks as though an army of gardeners rises before dawn and clips each uneven blade of grass. Jacaranda, orchids, poinciana and scores of other colorful trees shade the streets and estates. There are no billboards, barely any advertising signs at all. The police station is painted cotton-candy pink and other government buildings are light pastels.

Much of the picture-perfect setting is due to an astronomical number of regulations. No laundromats or homes of "inconsistent architecture" are allowed. Lawn mowers and tennis ball machines are outlawed after 5 p.m. Garbage trucks cannot park on the street overnight. (What! And mar the ambiance?)

Crafty zoning laws have placed private land between the street and public beach, making much of the fine white beach sand inaccessible. There is, though, one designated public beach (with accompanying metered parking) on South Ocean Boulevard just north of Royal Palm Way.

The only time there is anything vaguely resembling a traffic jam is when church lets out on Sunday morning and many retired people, a little shaky behind the wheel, drive slowly toward one of the island's "in" spots for brunch.

The grandest and oldest hotel, the Breakers, offers perhaps the most lavish Sunday brunch in Florida. In its grand Italian Renaissance rooms with gilded gold ceilings, there seems always to be some charity ball or wedding in the works. The last time I stopped by, I watched national championship ballroom dancing, where the women wore sparkly costumes and their male partners seemed half their age.

While much of the island's activity does happen behind closed doors, in the homes, estates, and clubs, eventually everyone, resident or visitor, winds up in the island's two main commercial districts: Worth Avenue, one of the most

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expensive shopping districts in the world, and Royal Poinciana Way, where the island's most popular bars and restaurants thrive.

Worth Avenue, known simply as "the Avenue," has been called the classiest shopping district in the country. Store space in this three-block district with Renaissance fountains and wrought-iron lamps has sold for \$ 1,400 a square foot.

Among the 150 or so shops, Saks Fifth Avenue is the largest in this astronomically priced and architecturally acclaimed district. Addison Mizner, the island's legendary architect, left his signature Spanish-style red-roof tiles and Renaissance architecture on much of the area. Among the shops between the Atlantic Ocean and Coconut Row are Charles Jourdan, Cartier, Chanel, Valentino and Van Cleef & Arpels.

Here you can buy everything from pearl-handled caviar servers to fashions by a former Miss America (Kylene Barker Brandon, Miss America 1979, runs her own shop, d. Kylene's). And for the pets, there is a one-of-a-kind "Dog Bar," a pet trough at FAO Schwartz where canines in bows and ties sip sparkling water.

Along with the stores, there are 19 art galleries and notable restaurants, including Renato's, which opens onto one of Worth Avenue's tiny passageways with ornate water fountains and colorful Spanish tiles.

Another type of action can be found on Royal Poinciana Way, a five-minute drive away. Along this avenue of restaurants and bars, where the island's sole newsstand and grocery store are located, are two of the most talked-about locations in the William Kennedy Smith rape trial.

Au Bar, the swanky nightclub where Smith, the nephew of Sen. Edward M. Kennedy, met the woman who accused him of rape, has been exceptionally busy since the incident became public last spring. None of the Kennedy clan has been seen here since then, according to the bartenders, but Roxanne Pulitzer and other local socialites still show up.

A bit pretentious and a definite pickup joint, Au Bar is an expensive club filled with well-dressed people of every age. Rail drinks can run \$ 7; the cover charge is \$ 10. Decorated in one section like a living room, with pink striped couch and matching balloon curtains, the nightclub has a tiny hardwood dance floor and a horseshoe-shaped bar.

Across the street lined with palm trees is Chuck & Harold's, where Burt Reynolds, Brooke Shields and Sen. Kennedy have been customers recently. There is a sidewalk cafe, sometimes a jazz band, and always the best Bloody Marys in town. The food ranges from seafood specials to pizza with sun-dried tomatoes, and the decor is casual.

Kennedy came here for brunch the day after the alleged rape, and customers may testify at the Smith trial scheduled for next month about what, if anything, they heard the senator say about the incident. This Palm Beach institution, like many others, is visited by many as much for its ambiance as its place in the news.

WAYS & MEANS

Palm Beach's winter season (when prices double) kicks off in mid-December and lasts through February. Tour buses are forbidden on the island, and there are no organized tours available. Visitors can stop at Main Street News on Royal Poinciana Way and pick up one of the many maps and guidebooks that point out historic and celebrity homes. It's easy to drive around (rental cars are available at the nearby West Palm Beach airport). Or you can rent a bike from the Palm Beach Bicycle Trail Shop (223 Sunrise Ave., 407-659-4583) and ride along the palm-tree-lined trail along the shoreline of Lake Worth.

GETTING THERE:

Delta, United, Continental and American are among the airlines that offer service between Washington and Palm Beach and are currently quoting round-trip fares of \$ 288 to \$ 340, with restrictions.

WHERE TO STAY:

There is a wide variety of accommodations on the mainland in nearby West Palm Beach. Hotels on the island are, of course, more expensive. Among the choices:

The Breakers (1 S. County Rd., 407-655-6611) is the oldest and grandest hotel in Palm Beach. In-season rates are \$ 280 to \$ 420, double.

Brazilian Court (301 Australian Ave., 407-655-7740) is an elegant, historic hotel. \$ 185 to \$ 290.

The Chesterfield (363 Coconut Row, 407-659-5800) has an English setting. \$ 175 to \$ 250.

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The Colony (155 Hammon Ave., 407-655-5430) draws a slightly younger crowd, with a live band in the bar and an outdoor pool shaped like the state of Florida. \$ 180 to \$ 240.

WHERE TO EAT:

Restaurants include:

Charley's Crab (456 S. Ocean Blvd.) is famous for French seafood and outrageous desserts.

E.R. Bradley's Saloon (111 Bradley Pl.) has a complimentary buffet at happy hour. A very hot singles scene.

Testa's (221 Royal Poinciana Way), one of the island's oldest restaurants, offers Italian cuisine and a sidewalk cafe.

WHAT TO DO:

Among the places of interest in Palm Beach:

Palm Beach Shores Park, north of Lake Worth Inlet, has 3,000 feet of oceanfront beach with lifeguards.

Bethesda-by-the-Sea (141 S. County Rd., 407-655-4554), an Episcopalian church of Spanish-Gothic design, is one of the finest small-scale cathedrals in the world.

The Docks, located on the Intracoastal Waterway and Peruvian, Australian and Brazilian avenues, is home to some of the most luxurious yachts in the world, including the Octopussy of James Bond movie fame.

Whitehall (Coconut Row at Whitehall Way, 407-655-2833), aka the Henry Flagler Museum, is open for tours from 10 a.m. to 5 p.m. Tuesdays through Saturdays, noon to 5 p.m. Sundays. Admission is \$ 5 for adults, \$ 2 for children 6 to 12. INFORMATION:

Palm Beach Chamber of Commerce, 45 Coconut Row, Palm Beach, Fla. 33480, 407-655-3282.

Palm Beach County Convention and Visitors Bureau, 1555 Palm Beach Lakes Blvd., Suite 204, West Palm Beach, Fla. 33401, 407-471-3995.

GRAPHIC: MAP, ABOVE, AN AIRBOAT ZOOMS THROUGH THE FLORIDA EVERGLADES; AT RIGHT, AN OCEANSIDE VIEW OF DONALD TRUMP'S PALM BEACH ESTATE, MAR-A-LAGO. TWP; PHOTO, NATIONAL PARK SERVICE

Posh Palm Beach: Elusive, Reclusive & Terribly Exclusive The Washington Post November 3, 1991, Sunday, Final Edition

EXHIBIT C



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Typed Drawing

Word Mark	SPRINKLES OF PALM BEACH
Goods and Services	IC 030. US 046. G & S: Ice cream. FIRST USE: 20021000. FIRST USE IN COMMERCE: 20021000
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78184899
Filing Date	November 13, 2002
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	April 20, 2004
Registration Number	2938800
Registration Date	April 5, 2005
Owner	(REGISTRANT) Therapy Too, Inc. DBA Sprinkles of Palm Beach CORPORATION FLORIDA 322 Valencia Road West Palm Beach, FLORIDA 33401 (LAST LISTED OWNER) SPRINKLES CUPCAKES, INC. CORPORATION TEXAS 9635 LITTLE SANTA MONICA BLVD. BEVERLY HILLS CALIFORNIA 90210
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Hollis Beth Hire
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OF PALM BEACH" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

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Word Mark	SPRINKLES PALM BEACH
Goods and Services	IC 035. US 100 101 102. G & S: Retail store services featuring ice cream. FIRST USE: 20021000. FIRST USE IN COMMERCE: 20021000
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.15.04 - Explosions; Fireworks display; Sparks 05.01.03 - Palm trees 08.09.01 - Ice cream, sherbet and frozen yogurt in cones; Sundae 26.09.07 - Squares with a decorative border, including scalloped, ruffled and zig-zag edges 26.09.28 - Miscellaneous designs with overall square shape; Square shapes (miscellaneous overall shape)
Serial Number	76529862
Filing Date	July 16, 2003
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	November 16, 2004
Registration Number	3004757
Registration Date	October 4, 2005
Owner	(REGISTRANT) Therapy Too, Inc. CORPORATION FLORIDA 322 Valencia Rd. West Palm Beach FLORIDA 33401 (LAST LISTED OWNER) SPRINKLES CUPCAKES, INC. CORPORATION TEXAS 9635 LITTLE SANTA MONICA BLVD. BEVERLY HILLS CALIFORNIA 90210

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Hollis Beth Hire
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Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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DECLARATION OF DONNA MARKS

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

)	
)	
)	Applicant/Respondent.
)	
)	SPRINKLES CUPCAKES, INC.,
)	
)	v.
)	
)	Opposer/Petitioner,
)	
)	SOFT SERVE, INC. d/b/a SPRINKLES,
)	
)	

Opposition No. 91194188
 Opposition No. 91195669
 Opposition No. 91195985
 Opposition No. 91195986
 Opposition No. 91196035
 Opposition No. 91196061
 Opposition No. 91196087
 Cancellation No: 92053109

DECLARATION OF DONNA MARKS

I, Donna Marks, declare:

1. I am the owner of Sprinkles of Palm Beach, an ice cream and sandwich shop located at 279 Royal Poinciana Way, Palm Beach, Florida. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto.
2. I purchased the Sprinkles of Palm Beach business, including all trademark rights associated with the Sprinkles name, on October 1, 2002. A true and correct copy of the purchase agreement is attached to this declaration as Exhibit A.
3. Eve and Therese Williams were licensed to open the Sprinkles ice cream shop in 1984, and opened the shop shortly thereafter. A true and correct copy of the original owners' 1984 occupational license, as provided to me when I purchased the business, is attached to this declaration as Exhibit B. Numerous celebrities and public figures have visited Sprinkles when in Palm Beach. A list of such celebrities is attached as Exhibit C.
4. After purchasing the Sprinkles business in 2002, I started using the name "Sprinkles of Palm Beach," in addition to Sprinkles, in connection with the ice cream and sandwich shop.
5. Since I started operating the store in 2002, I have always sold baked goods at the store. I have consistently sold muffins, croissants, biscotti, cakes, cupcakes, cookies, and other baked goods. I was a frequent customer at the Sprinkles store before I purchased the business in 2002, and I am aware that the prior owners of the store sold baked goods at the Sprinkles store as well.
6. On November 13, 2002, I filed a federal trademark application for SPRINKLES OF PALM BEACH. This application matured to registration on April 5, 2005. A true and correct copy of the U.S. trademark registration for SPRINKLES OF PALM BEACH is attached to this declaration as Exhibit D.
7. On July 16, 2003, I filed a federal trademark application for the Sprinkles of Palm Beach logo (SPRINKLES PALM BEACH & Design). This application matured to registration on October 4, 2005. A true and correct copy of the U.S. trademark registration for SPRINKLES PALM BEACH & Design is attached to this declaration as Exhibit E.
8. Sprinkles of Palm Beach was featured in the September 8, 2003 issue of *People* magazine, which voted Sprinkles of Palm Beach's Triple Chocolate

Supreme flavor the #1 ice cream in the U.S.

9. Sprinkles of Palm Beach is still a tourist destination, located on a main shopping strip in Palm Beach and featured in numerous guide books to Palm Beach. Sprinkles of Palm Beach still receives visitors from all across the U.S. and from many countries around the world, including visitors from the Washington D.C. metropolitan area.

10. On July 21, 2009, I entered into an agreement to transfer trademark rights in the SPRINKLES OF PALM BEACH and SPRINKLES PALM BEACH & Design trademarks, together with the goodwill associated with those trademarks, to Sprinkles Cupcakes, Inc. Sprinkles Cupcakes, Inc. licensed the trademarks back to me for use with my Palm Beach ice cream and sandwich shop. A true and correct copy of this agreement is attached to this declaration as Exhibit F.

11. I have used the SPRINKLES OF PALM BEACH and SPRINKLES PALM BEACH & Design trademarks continuously since adopting the name and logo in 2002. The SPRINKLES name and trademark has been in use continuously by me and my predecessors-in-interest since at least as early as 1985. In 2009, there was a fire at the Sprinkles of Palm Beach location. I had to close the shop for a brief time (approximately six months) to make repairs; during that time, I made clear to the community and the press that the store would re-open as soon as possible, under the same Sprinkles of Palm Beach name.

12. On August 29, 2011, at Sprinkles Cupcakes, Inc.'s request, I sent samples of ice cream from the SPRINKLES OF PALM BEACH store to an employee of Sprinkles Cupcakes, Inc.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Palm Beach, Florida, on August 31, 2011.

By:


Donna Marks

parties, or by order of the Board.

This exhibit has been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the

FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER

**CONFIDENTIAL - ATTORNEYS' EYES ONLY
RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

EXHIBIT A TO THE DECLARATION OF DONNA MARKS

Cancellation No: 92053109

Opposition No. 91196087

Opposition No. 91196061

Opposition No. 91196035

Opposition No. 91195986

Opposition No. 91195985

Opposition No. 91195669

Opposition No. 91194188

)	
)	Applicant/Respondent.
)	
)	SPRINKLES CUPCAKES, INC.,
)	
)	v.
)	
)	Opposer/Petitioner,
)	
)	SOFT SERVE, INC. d/b/a SPRINKLES,
)	
)	
)	

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

EXHIBIT B

APPLICANT: Full first, middle and last name with date of birth: MEKEBETH WILLIAMS (Last) (Middle Name) (First) (Date of Birth)

PRM: Full names and dates of birth of officers (middle name required) MEKEBETH WILLIAMS (Last) (Middle Name) (First) (Date of Birth)

TRUSTEES: MEKEBETH WILLIAMS (Last) (Middle Name) (First) (Date of Birth)

Business address: 253-A Royal Poinciana Way #8 (Last) (Middle Name) (First) (Date of Birth)

Home address of applicant (managing agent of a firm or business): 111 Seabury Ave. P.B. (Last) (Middle Name) (First) (Date of Birth)

Individual applicant: name and address of your last business establishment
 (Name) (Address) (Phone) (Work Phone) (Home Phone)
832-9271
832-9271

Names and addresses of three local references:
 (Name) (Address) (Phone) (Name) (Address) (Phone) (Name) (Address) (Phone)
Richard Blair 8774 So Ocean Blvd 588-2285
Dr. City Stadium 1055-3801
5145 Kimmell 1 Knott House

Date: Oct 25, 94 (Signature of applicant) Mekebeth Williams

In Building: Verify square footage of leased floor area, if applicable.
 In Building: Verify the application is to be signed by Building Department.
 (Name) (Address) (Phone) (Date of Birth)

APPROVALS:
 Police Chief: 10-25-94
 Director: 10-25-94
 Building & Zoning: 10-25-94
 License Inspector: 10-25-94
 District or required: 10-25-94
 Business category: Business (401-2000 of pt)
 Business code: 63B
 License number: 03435
 Renewal: (500 of pt)
 Date issued: 1931 May 111
 Business code: 200.00
 License number: 200.00
 Date issued: 1931 May 111

Legal name of firm or business: Mekebeth Williams
 (Phone Number) 10-25-94

Nature of business: Ice Cream - Take Out

APPLICANT: Full first, middle and last name with date of birth: MEKEBETH WILLIAMS (Last) (Middle Name) (First) (Date of Birth)

PRM: Full names and dates of birth of officers (middle name required) MEKEBETH WILLIAMS (Last) (Middle Name) (First) (Date of Birth)

TRUSTEES: MEKEBETH WILLIAMS (Last) (Middle Name) (First) (Date of Birth)

Business address: 253-A Royal Poinciana Way #8 (Last) (Middle Name) (First) (Date of Birth)

Home address of applicant (managing agent of a firm or business): 111 Seabury Ave. P.B. (Last) (Middle Name) (First) (Date of Birth)

Individual applicant: name and address of your last business establishment
 (Name) (Address) (Phone) (Work Phone) (Home Phone)
832-9271
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Names and addresses of three local references:
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APPROVALS:
 Police Chief: 10-25-94
 Director: 10-25-94
 Building & Zoning: 10-25-94
 License Inspector: 10-25-94
 District or required: 10-25-94
 Business category: Business (401-2000 of pt)
 Business code: 63B
 License number: 03435
 Renewal: (500 of pt)
 Date issued: 1931 May 111
 Business code: 200.00
 License number: 200.00
 Date issued: 1931 May 111

Legal name of firm or business: Mekebeth Williams
 (Phone Number) 10-25-94

Nature of business: Ice Cream - Take Out

TOWN OF PALM BEACH
 P.O. Box 2029, Palm Beach, FL 33480
 APPLICATION FOR OCCUPATIONAL LICENSE
 Print all information

Applicants Applications will not be processed.

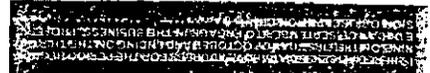
SC000257



LICENSE MUST BE DISPLAYED PROMINENTLY AT ESTABLISHMENT OR PLACE OF BUSINESS
ALLEN C. CLARK
PALM BEACH COUNTY TAX COLLECTOR
30.00

ALLEN C. CLARK
PALM BEACH COUNTY TAX COLLECTOR

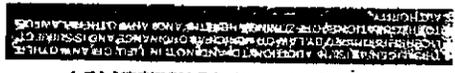
RETAIL STORE



TOTAL \$ 30.00
THIS LICENSE VALID ONLY WHEN ACCOMPANIED BY TAX COLLECTION

89-01454
SPRINKLES
WILLIAMS THERESA & EVE M
111 SEA BREEZE
PALM BEACH FL 33480

**LOCATED AT:
253 A ROYAL POINCIANA WAY
PALM BEACH FL
COUNTY



08-014
CLASSIFICATION

COUNTY ORDINANCE NUMBER 72-7
PALM BEACH COUNTY, STATE OF FLORIDA
COUNTY OCCUPATIONAL LICENSE

ICE CREAM TAKE OUT

EXHIBIT C

PARTIAL LIST OF CELEBRITIES WHO HAVE VISITED
SPRINKLES OF PALM BEACH

Michael Jackson
Rudy Giuliani
Al Melnick
Robert Kraft
Brett Ratner
Rod Stewart

EXHIBIT D

THE THERAPY TOO, INC. (FLORIDA CORPORATION), DBA SPRINKLES OF PALM BEACH,
 322 VALENCIA ROAD
 WEST PALM BEACH, FL 33401
 FIRST USE 10-0-2002; IN COMMERCE 10-0-2002.
 SN 78-184,899, FILED 11-13-2002.
 JOHN E. MICHOS, EXAMINING ATTORNEY

NO CLAIM IS MADE TO THE EXCLUSIVE
 RIGHT TO USE "OF PALM BEACH", APART FROM
 THE MARK AS SHOWN.

SPRINKLES OF PALM BEACH

**TRADEMARK
 PRINCIPAL REGISTER**

United States Patent and Trademark Office
 Registered Apr. 5, 2005
 Reg. No. 2,938,800

Prior U.S. Cl.: 46

Int. Cl.: 30

EXHIBIT E

FIRST USE 10-0-2002; IN COMMERCE 10-0-2002. ODESSA BIBBINS, EXAMINING ATTORNEY

FOR: RETAIL STORE SERVICES FEATURING ICE CREAM, IN CLASS 35 (U.S. CLS. 100, 101 AND 102). SN 76-529,862, FILED 7-16-2003.

WEST PALM BEACH, FL 33401
322 VALENCIA RD.
THERAPY TOO, INC. (FLORIDA CORPORATION)
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PALM BEACH", APART FROM THE MARK AS SHOWN.



SERVICE MARK
PRINCIPAL REGISTER

United States Patent and Trademark Office
Reg. No. 3,004,757
Registered Oct. 4, 2005

Prior U.S. Cls.: 100, 101, and 102

Int. Cl.: 35

parties, or by order of the Board.

This exhibit has been designated confidential, pursuant to a Protective Order, and are not to be disclosed or revealed except to the Trademark Trial and Appeal Board and counsel for the

FILED UNDER SEAL SUBJECT TO PROTECTIVE ORDER

**CONFIDENTIAL - ATTORNEYS' EYES ONLY
RESTRICTED DOCUMENTS PURSUANT TO 37 CFR § 2.126**

EXHIBIT F TO THE DECLARATION OF DONNA MARKS

Cancellation No: 92053109

Opposition No. 91196087

Opposition No. 91196061

Opposition No. 91196035

Opposition No. 91195986

Opposition No. 91195985

Opposition No. 91195669

Opposition No. 91194188

)	Applicant/Respondent.
)	
)	SPRINKLES CUPCAKES, INC.,
)	
)	v.
)	
)	Opposer/Petitioner,
)	
)	SOFT SERVE, INC. d/b/a SPRINKLES,
)	
)	
)	

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

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
Opposer/Petitioner,	)	Opposition No. 91195669
	)	Opposition No. 91195985
v.	)	Opposition No. 91195986
	)	Opposition No. 91196035
SPRINKLES CUPCAKES, INC.,	)	Opposition No. 91196061
	)	Opposition No. 91196087
Applicant/Respondent.	)	Cancellation No: 92053109

DECLARATION OF JOHN L. SLAFSKY

1. I am a member of Wilson Sonsini Goodrich & Rosati, P.C., counsel for Applicant/Respondent Sprinkles Cupcakes, Inc. ("Sprinkles") in this matter. I have personal knowledge of the facts in this declaration, and, if called as a witness, I could competently testify to them.

Pleadings:

2. Attached hereto as Exhibit 1 is a true and correct copy of the Petition to Cancel Sprinkles' U.S. Trademark Registration No. 3,306,772, filed with the Board by Soft Serve on September 29, 2010.

3. Attached hereto as Exhibit 2 is a true and correct copy of Sprinkles' Answer, filed with the Board by Sprinkles on November 2, 2010. In Paragraph 6 of its Answer, Sprinkles asserts that Registration No. 2938800, for SPRINKLES OF PALM BEACH, and Registration No. 3004757, for SPRINKLES PALM BEACH & Design, give Sprinkles superior rights to the SPRINKLES mark.

Board Orders Affecting Discovery Schedule:

4. Attached hereto as Exhibit 3 is a true and correct copy of the Board's December 21, 2010 order suspending this consolidated proceeding, including the duty to respond to later

served discovery requests and to appear at later noticed depositions, pending disposition of a discovery motion.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Board's July 6, 2011 order lifting the six-month suspension, setting September 7, 2011 as the deadline for serving expert disclosures, and setting October 7, 2011 as the deadline for the close of discovery. As detailed below, Sprinkles timely propounded additional discovery requests and noticed several depositions soon after the suspension was lifted.

6. Attached as Exhibit 5 is a true and correct copy of the Board's August 26, 2011 order suspending this consolidated proceeding pending disposition of Soft Serve's Motion for Summary Judgment. As set forth below, various depositions and other discovery responses were pending at this time.

Discovery Served by Sprinkles in This Consolidated Proceeding:

7. Attached hereto as Exhibit 6 is a true and correct copy of Sprinkles' First Set of Interrogatories, served on Soft Serve on June 11, 2010.

8. Attached hereto as Exhibit 7 is a true and correct copy of Sprinkles' First Set of Requests for Production, served on Soft Serve on June 11, 2010.

9. Attached hereto as Exhibit 8 is a true and correct copy of Sprinkles' Second Set of Requests for Production, served on Soft Serve on July 22, 2011.

10. Attached hereto as Exhibit 9 is a true and correct copy of Sprinkles' Second Set of Interrogatories, served on Soft Serve on July 22, 2011.

11. Attached hereto as Exhibit 10 is a true and correct copy of Sprinkles' First Set of Requests for Admission, served on Soft Serve on July 22, 2011.

12. Attached hereto as Exhibit 11 is a true and correct copy of Sprinkles' Notice of Deposition of Tom Orban, served on Soft Serve on August 5, 2011.

13. Attached hereto as Exhibit 12 is a true and correct copy of Sprinkles' Notice of Deposition of Soft Serve Pursuant to Fed. R. Civ. P. 30(b)(6), served on Soft Serve on August 5, 2011.

14. Attached hereto as Exhibit 13 is a true and correct copy of Sprinkles' Notice of Deposition Upon Written Questions of Saira Haider, issued on August 10, 2011.

15. Attached hereto as Exhibit 14 is a true and correct copy of Sprinkles' Deposition Subpoena to Aaron Yoches, issued on August 11, 2011.

16. Attached hereto as Exhibit 15 is a true and correct copy of Sprinkles' Document and Deposition Subpoena to Zuckerman Gravely Management, Inc., Soft Serve's landlord, served on Soft Serve on August 24, 2011.

Soft Serve's Supplemental Initial Disclosures Listing Orban, Yoches, and Haider:

17. Attached hereto as Exhibit 16 is a true and correct copy of Soft Serve's Initial Disclosures claiming that Tom Orban, Soft Serve's President, has information "including but not limited to [Soft Serve's] usage of marks and its trade name; information concerning [Soft Serve's] first use of 'SPRINKLES'; the recognition afforded [Soft Serve's] business, name and mark; possible instances of actual confusion and facts in support of [Soft Serve's] contention that there exists a likelihood of confusion."

18. Attached hereto as Exhibit 17 is a true and correct copy of Soft Serve's Supplemental Initial Disclosures claiming that Saira Haider possesses "[k]nowledge [of Soft Serve's] first use of SPRINKLES at least as early as April 24, 2002" and that Aaron Yoches possesses "[k]nowledge [of Soft Serve's] first use of SPRINKLES at least as early as May - August 2002." Soft Serve's pending Motion for Summary Judgment neither discusses Ms. Haider or Mr. Yoches, nor attaches a declaration from either individual in order to substantiate Soft Serve's now-claimed "as early as Summer 2002" priority date.

Publicly Available Information Casts Doubt on Soft Serve's Claim That it First Used the SPRINKLES Mark "as Early as Summer 2002":

19. Attached hereto as Exhibit 18 are true and correct copies of excerpts from local phone directories for Potomac, Maryland for the years 2001 - 2004. The initial reference to "Sprinkles" at Soft Serve's address is in the January 2004 phone directory.

Discovery Outstanding and Not Responded To:

20. Attached hereto as Exhibit 19 is a true and correct copy of the Declaration of Tom Orban submitted by Soft Serve in support of its Motion for Summary Judgment. As set forth in Exhibit 11, Sprinkles noticed the deposition of Tom Orban for September 22, 2011. Mr. Orban, Soft Serve's principal, possesses unique information regarding Soft Serve's claims of priority in the SPRINKLES mark and likelihood of confusion, and concerning Sprinkles' affirmative defenses. Mr. Orban's declaration represents one of Soft Serve's central pieces of evidence and purports to authenticate each of the exhibits submitted with Soft Serve's Motion for Summary Judgment. While this consolidated proceeding remains suspended, Soft Serve has declined to move forward with the deposition of Tom Orban and, as such, the essential information uniquely in his exclusive possession — including information relating to Soft Serve's rights in the SPRINKLES mark, priority, likelihood of confusion, Soft Serve's efforts to monitor and enforce its trademark rights, when Soft Serve first became aware of Sprinkles' business and its trademark filings, authenticity of documents in the summary judgment record, and nature of documents in the summary judgment record — is unavailable to Sprinkles. Sprinkles expects that, with Soft Serve's cooperation, it can complete the deposition of Mr. Orban within 75 days following a ruling by the Board.

21. As set forth in Exhibit 12, Sprinkles noticed the 30(b)(6) deposition of Soft Serve for September 21, 2011. The noticed topics are relevant to Soft Serve's common law rights in the SPRINKLES mark, and Soft Serve's claims of priority in the SPRINKLES mark and likelihood of confusion. While this consolidated proceeding remains suspended, Soft Serve has declined to move forward with its 30(b)(6) deposition and, as such, the essential information in its exclusive possession — including information relating to Soft Serve's rights in the SPRINKLES mark, priority, and likelihood of confusion — is unavailable to Sprinkles. Sprinkles expects that, with Soft Serve's cooperation it can complete Soft Serve's 30(b)(6) deposition within 75 days following a ruling by the Board.

22. As set forth in Exhibit 14, Sprinkles noticed the deposition of Aaron Yoches for September 23, 2011. Mr. Yoches is a former Soft Serve employee identified by Soft Serve in its Initial Disclosures as possessing knowledge of Soft Serve's first use of the SPRINKLES mark. Although Sprinkles has engaged in efforts to serve Mr. Yoches, both at the address disclosed by Soft Serve in Exhibit 17 and at other addresses where he is known to have resided, Sprinkles has not yet been able to complete service of the subpoena. Soft Serve has disclosed that Mr. Yoches possesses "[k]nowledge [of Soft Serve's] first use of SPRINKLES at least as early as May – August 2002," but Soft Serve's Motion for Summary Judgment does not use Mr. Yoches' testimony in order to substantiate its claimed priority in the SPRINKLES mark. Given the uncertainty surrounding Soft Serve's claimed priority (*see* Exhibit 18), Mr. Yoches' testimony is important to this issue and to the disposition of Soft Serve's pending Motion for Summary Judgment. Sprinkles expects that, with Soft Serve's cooperation, it will be able to serve Mr. Yoches and complete his deposition within 75 days following a ruling by the Board.

23. As set forth in Exhibit 15, Sprinkles noticed the deposition of Zuckerman Gravely Management, Inc. ("Zuckerman"), Soft Serve's landlord, for September 23, 2011 and also requested that it produce documents on that date. As, upon information and belief, Soft Serve's landlord since at least as early as the year 2000, Zuckerman has observed Soft Serve's use of the SPRINKLES mark and possesses valuable and highly relevant information regarding the continuity of that use, the geographic scope of that use, and the means undertaken to engage in promotion of that use. Given the uncertainty surrounding Soft Serve's claimed priority (*see* Exhibit 18), Zuckerman's testimony and documents are important to this issue and to the disposition of Soft Serve's pending Motion for Summary Judgment. Sprinkles expects that, with Soft Serve's cooperation, it will be able to complete Zuckerman's deposition and fully review its expected document production within 75 days following a ruling by the Board.

24. As set forth in Exhibit 13, Sprinkles noticed the deposition upon written questions of Saira Haider for October 6, 2011. Ms. Haider is a former Soft Serve employee, who apparently is in England, identified by Soft Serve in its Initial Disclosures as possessing

knowledge of Soft Serve's first use of the SPRINKLES mark. Soft Serve has disclosed that Ms. Haider possesses "[k]nowledge [of Soft Serve's] first use of SPRINKLES at least as early as April 24, 2002," but Soft Serve's Motion for Summary Judgment does not use Ms. Haider's testimony in order to substantiate its claimed priority in the SPRINKLES mark. Given the uncertainty surrounding Soft Serve's claimed priority (*see* Exhibit 18), Ms. Haider's testimony is important to this issue and to the disposition of Soft Serve's pending Motion for Summary Judgment. Sprinkles expects that, with Soft Serve's cooperation, it will be able to complete Ms. Haider's deposition within 75 days following a ruling by the Board.

25. Attached hereto as Exhibits 20 through 22, respectively, are true and correct copies of Soft Serve's responses to Sprinkles' second set of requests for production, Soft Serve's responses to Sprinkles' second set of interrogatories, and Soft Serve's responses to Sprinkles' first set of requests for admission, each served on Sprinkles on August 26, 2011, 15 days after Soft Serve filed its Motion for Summary Judgment. Soft Serve has objected to or otherwise refused to comply with many of these discovery requests, which requests relate to Soft Serve's claims of priority in the SPRINKLES mark and likelihood of confusion, and Soft Serve's common law rights in the SPRINKLES mark. Sprinkles is entitled to move to compel as to this latest round of discovery responses, but is unable to do so because of the current suspension (*see* Exhibit 5).

Discovery Promised but Not Yet Produced:

26. In its responses to Sprinkles' second set of requests for production, Exhibit 20, Soft Serve notes that "documents are being produced, to the extent that such exist" and that "responsive documents are being produced" with respect to requests nos. 48, 49, 49(2), 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, and 62. These documents, which relate to Soft Serve's claims of priority in the SPRINKLES mark and of likelihood of confusion with Sprinkles, have not yet been produced. As these documents relate to issues central to Soft Serve's Summary Judgment Motion, Sprinkles requests the opportunity to receive and examine them before being required to file its opposition. If Soft Serve promptly completes a full production well in advance of any

upcoming depositions, then Sprinkles will be able to fully review these documents in a timely manner.

Declarants Supporting Soft Serve's Summary Judgment Motion:

27. Attached hereto as Exhibits 23 through 26, respectively, are true and correct copies of the declarations of Juliet Hope, Julianna Kariman, Glyeb Koumasinski, and Benson Panga submitted in support of Soft Serve's Motion for Summary Judgment. Each of these declarants is currently employed by Soft Serve and each alleges actual confusion between Soft Serve and Sprinkles. Soft Serve had not previously identified any of these witnesses in its disclosures and Sprinkles was not aware of any of these witnesses prior to receiving Soft Serve's summary judgment papers. As such, Sprinkles has not had the opportunity to depose any of these witnesses and Sprinkles requests the opportunity to do so before being required to file its opposition. Sprinkles expects that, with Soft Serve's cooperation, it will be able to depose each of these four witnesses within 75 days following a ruling by the Board.

Other Discovery Issues Raised by Soft Serve's Summary Judgment Motion and Recent Discovery Responses:

28. In its Summary Judgment Motion, Soft Serve asserts that an invoice from Sterico, Inc., a sign manufacturer, evidences its priority in the SPRINKLES mark as applied to "bakery goods" and, in its responses to Sprinkles' second set of interrogatories, Soft Serve discloses, for the first time, that "'Cynthia' and Ernie Galyen at Sterico Signs and Design . . . were involved in the design of a SPRINKLES sign . . . [and were] also responsible for the fabrication of the SPRINKLES signage." See Exhibit 20 at Interrogatory 42. The manufacture, delivery, and first public display dates of Soft Serve's SPRINKLES sign are key to determining the date when Soft Serve began operating under the SPRINKLES mark and, as such, are important to Soft Serve's claim of priority in the SPRINKLES mark. Given that the identity of the sign company and the relevant employees thereof were only disclosed after the Summary Judgment Motion was filed and were therefore previously unknown to Sprinkles, Sprinkles requests the opportunity to secure documents from and to ask questions of Sterico, Inc. regarding its

manufacture, delivery, and assistance in the hanging/display of Soft Serve's SPRINKLES sign. Sprinkles expects that, with Soft Serve's cooperation, it will be able to secure and fully review these documents, and complete any deposition within 75 days following a ruling by the Board.

29. Prior to adopting the SPRINKLES mark, Soft Serve did business as a franchisee of "I Can't Believe It's Yogurt" ("ICBY"). Based on the record currently before the Board, the timing of Soft Serve's transition from the ICBY mark to the SPRINKLES mark is unclear. In particular, Soft Serve has provided little substantiation for its now-claimed "as early as Summer 2002" transition to the SPRINKLES mark. Given the ambiguous record on this important issue, Sprinkles requests the opportunity to obtain documents and/or take testimony from ICBY regarding its business relationship with Soft Serve and, in particular, when that relationship was terminated. This information is also key to determining the date when Soft Serve began operating under the SPRINKLES mark and, as such, is important to Soft Serve's claim of priority in the SPRINKLES mark. Sprinkles expects that, with Soft Serve's cooperation, it will be able to complete a deposition within 75 days following a ruling by the Board.

30. In its Summary Judgment Motion, Soft Serve asserts that cancelled checks made out to "Chantilly Donuts" show that Soft Serve began selling bakery goods under the SPRINKLES mark prior to Sprinkles' first use of the SPRINKLES mark. The nature of these cancelled checks is unclear and raise a number of questions, including (1) was the "Sprinkles" text appearing at the top of the checks added to them by hand and, if so, by whom and when?; (2) what transaction do these checks represent, i.e. what was Soft Serve buying from Chantilly Donuts?; and (3) if Soft Serve purchased bakery goods from Chantilly Donuts, did it resell them under the SPRINKLES mark? Given these open questions and the fact that Sprinkles' relationship with Chantilly Donuts was only disclosed in connection with the Summary Judgment Motion and was therefore previously unknown to Sprinkles, Sprinkles requests the opportunity to obtain documents and/or testimony from Chantilly Donuts regarding its business relationship with Soft Serve and, in particular, whether Soft Serve used the SPRINKLES mark during the course of that relationship, whether Soft Serve resold Chantilly Donuts' bakery goods

under the SPRINKLES mark, and whether the Chantilly Donuts' copies of these checks bear the "Sprinkles" text. This information is key to determining the date when Soft Serve began selling bakery goods under the SPRINKLES mark and, as such, is important to Soft Serve's claim of priority in the SPRINKLES mark. Sprinkles expects that, with Soft Serve's cooperation, it will be able to complete a deposition within 75 days following a ruling by the Board.

31. In its latest round of discovery responses, Soft Serve has confirmed that, in June, 2001, Soft Serve sold part of its business to Million, Inc. Soft Serve asserts that the transaction with Million, Inc. was limited to the sale of a Blimpie's franchise (*see* Exhibit 20 at Response 46) and has promised to produce various documents relating to that transaction (*see* Exhibit 19 at Responses 48, 49, and 49(2)), but has not yet done so. Given the proximity of this transaction to Soft Serve's now-claimed "as early as Summer 2002" priority date and the lack of clarity regarding its scope, Sprinkles requests the opportunity to seek documents and/or testimony from Million, Inc. — including, as necessary, from Mohammed Baten, who apparently is Million, Inc.'s President — in order to confirm that Soft Serve's June, 2001 transaction with Million, Inc. did not affect the Soft Serve business or Soft Serve's trademark rights.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Palo Alto, California on September 14, 2011.

By: 
John L. Slafsky

EXHIBIT 1

service mark in connection with baked goods and retail stores for selling same. Said use has been and remains valid and continuous and has not been abandoned. Said trade name and mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of Petitioner's trade name and mark on the one hand and the mark shown in Respondent's registration on the other, and in view of the identical nature of the goods and services of the respective parties, it is alleged that Respondent's registered mark so resembles Petitioner's trade name and mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

2. Petitioner Sprinkles, has been, and is now, operating under the designation SPRINKLES as a retail establishment selling baked goods. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate Petitioner with said designation. In view of Petitioner's prior use of SPINKLES as a trade name and as a mark and in view of the similarity of Respondent's registered mark with Petitioner's trade name and mark, and in view of the related nature of the uses therefor, it is alleged that Respondent's registered mark consists of and comprises matter which may disparage and falsely suggest a connection with Petitioner.

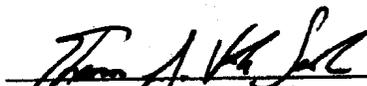
WHEREFORE, Opposer prays that said U.S. Trademark Registration No. 3,306,772 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

HALL & VANDE SANDE, LLC

Date: _____

9/29/10



Thomas J. Vande Sande
Attorneys for Petitioner
10220 River Road, Suite 200
Potomac, Maryland 20854
(301) 983-2500

CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Petitioner hereby certifies that one (1) copy of the foregoing "PETITION FOR CANCELLATION" was this day served on Respondent by mailing same, first class mail, to:

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

Date:

9/29/10



Thomas J. Vande Sande
HALL & VANDE SANDE, LLC
Attorneys for Petitioner
10220 River Road, Suite 200
Potomac, Maryland 20854
(301) 983-2500

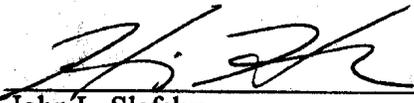
EXHIBIT 2

Fourth Affirmative Defense

6. As between the parties, Registrant has superior rights to the SPRINKLES mark and variations thereof. *See, e.g.*, Reg. Nos. 2938800 and 3004757.

Dated: November 2, 2010

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
John L. Slafsky
Hollis Beth Hire

Attorneys for Registrant
Sprinkles Cupcakes, Inc.

Please address all communications concerning this proceeding to:

John L. Slafsky
Hollis Beth Hire
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
Telephone: (650) 493-9300
Fax: (650) 493-6811
trademarks@wsgr.com

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 **REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION** 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 November 2, 2010.

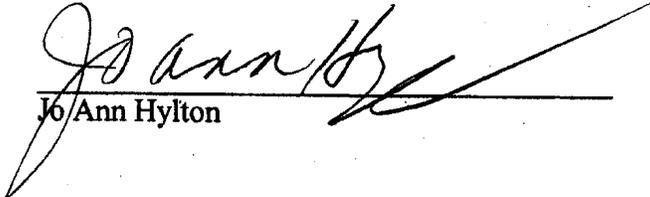

Jo Ann Hylton

EXHIBIT 3

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

nmt

Mailed: December 21, 2010

Opposition No. 91194188

Soft Serve, Inc. d/b/a
Sprinkles

v.

Sprinkles Cupcakes, Inc.

Andrew P. Baxley, Interlocutory Attorney:

Proceedings herein are suspended pending disposition of opposer's motion to compel (filed December 13, 2010), except as discussed below. The parties should not file any paper which is not germane to the motion to compel. See Trademark Rule 2.120(e)(2).

This suspension order does **not** toll the time for either party to make any required disclosure, to respond to discovery requests which had been duly served prior to the filing and service of the motion to compel, or to appear for a discovery deposition which had been duly noticed prior to the filing and service of the motion to compel. See *Id.* The motion to compel will be decided in due course.

EXHIBIT 4

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

Baxley

Mailed: July 6, 2011

Opposition No. 91194188
Opposition No. 91195669
Opposition No. 91195985
Opposition No. 91195986
Opposition No. 91196035
Opposition No. 91196061
Opposition No. 91196087
Cancellation No. 92053109

Soft Serve, Inc. d/b/a
Sprinkles

v.

Sprinkles Cupcakes, Inc.

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of plaintiff's motion to compel (filed December 13, 2010) in Opposition No. 91194188. The motion has been fully briefed.¹

As an initial matter, the Board finds that plaintiff made a good faith effort to resolve the parties' discovery dispute, as required by Trademark Rule 2.120(e)(1), prior to

¹ The Board deferred consideration of the motion to compel pending defendant's response to the Board's March 4, 2011 order in which, among other things, the Board directed defendant to inform the Board of the status of a civil action styled *Ryan Mealey v. Sprinkles Cupcakes, Inc.*, Case No. 2:09-cv-04048-MAM, filed in the United States District Court for the Eastern District of Pennsylvania. In response thereto, defendant indicated that the civil action was terminated on May 6, 2010, after the plaintiffs in that civil action were, among other things, permanently enjoined on January 28, 2010 from using any trademark that includes the term SPRINKLES.

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087; Cancellation No. 92053109

seeking Board intervention. Nonetheless, the Board notes that many of the issues in the motion to compel could have been resolved without Board intervention if the parties had more carefully reviewed TBMP Section 414 (3d ed. 2011) regarding discoverability of various types of information in Board proceedings. The parties are reminded that the Board expects parties to cooperate in the discovery proceeding and looks with disfavor upon those who do not. Each party has a duty not only to make a good faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case. See TBMP Section 408.01.

Through the motion to compel, plaintiff seeks further responses to its interrogatory nos. 4-5, 8 and 13 and document request nos. 1-5, 7-11, 14, 15, 18, 21, 22, and 25 and to require production of all documents withheld under a claim of privilege. As an initial matter, the Board notes that, in response to document request nos. 2, 3, 7-11, 14, 18, 21, and 25, defendant states that, subject to objections, it will produce responsive non-privileged documents that can be located after a "reasonable search." Defendant is reminded that it is under "a duty to *thoroughly* search its records for all information properly sought in

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087; Cancellation No. 92053109

the request, and to provide such information to" plaintiff.
TBMP Section 408.02 (emphasis added).

In interrogatory no. 4, plaintiff asks defendant to identify each of the goods and services on which defendant's SPRINKLES and SPRINKLES OF PALM BEACH marks are used and to provide "annual revenues in dollars" for each good and service.² Regarding the SPRINKLES OF PALM BEACH marks, plaintiff has not sought to cancel defendant's Registration Nos. 2938800 and 3004757 for those marks. However, defendant has rendered those marks relevant to these consolidated proceedings by indicating that it intends to rely upon those registrations to establish "superior rights to the SPRINKLES mark and variations thereof." Answer, Opposition No. 91194188, paragraph 16. Defendant's response that it has no plans to use the SPRINKLES OF PALM BEACH marks is acceptable. Moreover, defendant's identification of goods and services on which it uses or intends to use the SPRINKLES mark is acceptable.

Nonetheless, defendant's assertion in its brief in response that it need not provide sales figures on the ground of irrelevance is incorrect. Annual sales figures, stated in round numbers, for a party's involved goods or services sold under its involved mark are discoverable and

² The Board presumes that plaintiff seeks annual sales figures in dollars.

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087; Cancellation No. 92053109

may be disclosed under protective order.³ See *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147, 149 (TTAB 1985); *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581, 583 (TTAB 1975); TBMP Section 414(18). Moreover, defendant will not be heard to object to providing annual sales figures because it requested such figures in its own discovery requests. See TBMP Section 402.01. Defendant is directed to serve a supplemental response to this interrogatory in which it provides annual sales figures in round numbers for the goods and services identified in defendant's involved application and registration for the mark SPRINKLES in standard character form, i.e., application Serial No. 77770541, the involved application in Opposition No. 91194188, for "ice cream; frozen yogurt; candy; sweets; cupcake mixes; ice cream sundaes, sherbets, ices, sorbets, [and] milk shakes"⁴ and Registration No. 3306772, for "bakery goods" and "retail shops featuring baked goods." Further, defendant is directed to provide annual sales figures in round numbers for the goods and services identified in those registrations, i.e., "ice cream" sold under the mark SPRINKLES OF PALM BEACH and "retail store

³ The parties have filed a stipulated protective order herein.

⁴ The Board notes that application Serial No. 77770541 was filed based on an assertion of a bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. Section

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services featuring ice cream" sold under the registered SPRINKLES OF PALM BEACH and design mark.

In document request no. 25, plaintiff seeks documents sufficient to show continuity of usage of the SPRINKLES OF PALM BEACH marks. Because the Board has already required defendant to provide annual sales figures regarding those marks, the Board finds that the documents sought through this request are unreasonably duplicative of information provided in response to interrogatory no. 4.⁵ See Fed. R. Civ. P. 26(b)(2)(C)(i); Trademark Act Section 45, 15 U.S.C. Section 1127; TBMP Section 402.02. Accordingly, defendant need not respond further thereto.

In interrogatory no. 5 and document request no. 18, plaintiff seeks information and documents regarding defendant's dealings with prior owners of the SPRINKLES OF PALM BEACH marks, including information regarding how defendant became aware of those marks. Defendant's response to interrogatory no. 5 that it was assigned the SPRINKLES OF PALM BEACH marks and now licenses those marks to its predecessor-in-interest to those marks and that it first learned of the SPRINKLES OF PALM BEACH marks by searching

1051(b). Accordingly, sales figures, if any, may be limited with regard to the goods identified in that application.

⁵ To the extent that plaintiff seeks to obtain any documents from third parties, such documents must be obtained via *subpoena duces tecum*. See Fed. R. Civ. P. 45(a)(1)(D).

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USPTO's "trademark register" is incomplete because that response lacks information concerning when the assignment and search at issue took place. Documents reflecting the assignment of those registrations are more conveniently obtained from the records of the USPTO's Assignment Branch.⁶ See Fed. R. Civ. P. 26(b)(2)(C)(i); TBMP Section 402.02. However, any licensing agreements between defendant and the assignor of the SPRINKLES OF PALM BEACH marks are discoverable, as are any reports for searches of USPTO records in which the SPRINKLES OF PALM BEACH marks were discovered. See *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671 (TTAB 1988); *Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980); TBMP Sections 414(6) and 414(10). On the other hand, comments or opinions of attorneys relating to such search reports are privileged. See *Amerace Corp. v. USM Corp.*, 183 USPQ 506, 507 (TTAB 1974); TBMP Section 414(6). Defendant is directed to supplement its response to interrogatory no. 5 in accordance with the foregoing. To the extent that defendant has not done so already, defendant is directed to produce documents responsive to request no. 18 in accordance with the foregoing.

⁶ The Board notes that plaintiff's attorney is based in the Washington, D.C. metropolitan area.

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In interrogatory no. 8 and document request no. 5, plaintiff seeks information and documents regarding opinions of counsel concerning defendant's right to use or register the SPRINKLES mark, including copies and summaries of any opinions rendered, and any search relating to that mark and SPRINKLES formative marks. Defendant's objections on the basis of attorney-client privilege are sustained. See *id.* Respondent's response to interrogatory no. 8 that is solicited and received such advice on or about July 13, 2005 and on or about February 19, 2009 is acceptable. Defendant need not respond further to document request no. 5.

In document request no. 9, plaintiff seeks all documents relating to searches conducted by respondent in connection with SPRINKLES and SPRINKLES formative marks. Any reports for searches of USPTO records in connection with those marks are discoverable. See *Fisons Ltd. v. Capability Brown Ltd.*, *supra*; TBMP Section 414(6). However, comments or opinions of attorneys relating to such search reports are privileged. See *Amerace Corp. v. USM Corp.*, *supra*; TBMP Section 414(6). To the extent that defendant has not done so already, defendant is directed to produce documents in accordance with the foregoing.

In interrogatory no. 13 and document request nos. 10 and 22, plaintiff seeks information and documents regarding controversies with, and challenges by, any third party

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involving defendant with regard to the SPRINKLES and/or SPRINKLES OF PALM BEACH marks, including the identification of all documents referring or relating thereto. Information concerning litigation and controversies including settlement and other contractual agreements between a responding party and third parties based on the responding party's involved mark is discoverable. See *J.B. Williams Co. v. Pepsodent GmbH*, 188 USPQ 577, 580-81 (TTAB 1975); *Johnson & Johnson v. Rexall Drug Co.*, 186 USPQ 167, 172 (TTAB 1975); TBMP Section 414(10). However, the only information which must be provided with respect to any legal proceeding is the names of the parties thereto, the jurisdiction, the proceeding number, the outcome of the proceeding, and the citation of the decision, if published. See *Johnson & Johnson v. Rexall Drug Co.*, *supra*; TBMP Section 414(10). Defendant's response, in which it lists names of parties against whom it has alleged trademark infringement and other claims, is incomplete. Defendant is directed to serve a supplemental response to this interrogatory in which it provides the names of the parties, the jurisdiction, the proceeding number, the outcome, and the citation of any published decision based on the SPRINKLES and mark and information concerning any settlement agreements arising from allegations of infringement of the SPRINKLES mark. To the extent that defendant has not done so already, defendant is

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also directed to produce documents in response to these requests in accordance with the foregoing.

In document request no. 1, plaintiff seeks documents regarding the adoption and selection of the SPRINKLES mark. Basic information concerning the adoption of a mark, such as the identity of persons, dates and documents relating thereto, is discoverable. See *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975); TBMP Section 414(4). However, writings relating to the selection of defendant's marks to show what third parties' marks may have been considered and the extent to which opposer believed its mark conflicted therewith are not discoverable. See *Neville Chemical Co. v. Lubrizol Corp.*, 183 USPQ 184, 190 (TTAB 1974). In document request no. 4, plaintiff seeks documents related to market plans, forecasts and sales strategies regarding use of the SPRINKLES and SPRINKLES OF PALM BEACH marks. Such documents are discoverable under protective order. See *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, *supra* at 1675; TBMP Section 414(8). Defendant indicated in response to these requests that it does not possess, maintain custody or control any responsive documents. Defendant need not create such documents solely to satisfy plaintiff's discovery requests.

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See *Washington v. Garrett*, 10 F.3d 1421, 1437-38 (9th Cir. 1993). Accordingly, these responses are acceptable.⁷

In document request nos. 2 and 3, plaintiff seeks specimens of each use of the SPRINKLES mark and publicity materials used in connection with that mark. Defendant's objections that these document requests are unduly burdensome are sustained. See Fed. R. Civ. P. 26(b)(2)(C); TBMP Section 402.02. Defendant's production of representative samples thereof is acceptable.⁸

In document request no. 7, plaintiff seeks all assignments and agreements including licenses relating to the SPRINKLES OF PALM BEACH marks and all correspondence and documents between defendant and either the assignor of those marks or any third parties. To the extent that this request seeks discoverable information, it is essentially duplicative of interrogatory nos. 5 and 13 and document

⁷ Defendant is reminded, however, that a responding party which fails to provide information and documents that were properly sought in discovery may be precluded from relying as trial evidence on such information and documents, provided that the requesting party raises the matter by objecting to the evidence in question, unless the failure was substantially justified or is harmless. See Fed. R. Civ. P. 37(c)(1); *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718 (TTAB 1987). Defendant is also reminded that, when a party, without substantial justification, fails to amend or supplement a prior response, as required, that party may be prohibited from using as evidence the information not disclosed. See Fed. R. Civ. P. 26(e).

⁸ Plaintiff is reminded that these proceedings are concerned solely with the registrability of respondent's marks. See TBMP Section 102.01.

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request nos. 10 and 18. See Fed. R. Civ. P. 26(b)(2)(C).

To the extent that this request seeks documents protected by attorney-client and/or work product doctrine, defendant's objections on that basis are sustained. Nonetheless, to the extent that defendant has not done so already, defendant is directed to supplement its response to this request by producing copies of any licensing agreements with the assignor of the SPRINKLES OF PALM BEACH marks and any cease and desist letters that it has sent or received concerning those marks.

In document request no. 8, plaintiff seeks all documents relating to plaintiff, its goods and services and its marks or trade name. Defendant's objections that this request is overly broad and unduly burdensome are sustained. See Fed. R. Civ. P. 26(b)(2)(C)(i). Defendant need not respond further thereto.

In document request nos. 11 and 21, plaintiff seeks documents regarding defendant's first use of the SPRINKLES and SPRINKLES OF PALM BEACH marks.⁹ Information concerning defendant's first use of its marks at issue (e.g., when it first sold goods under each mark, when it opened its first retail store under each mark, etc.) is discoverable. See

⁹ Contrary to defendant's response to interrogatory no. 11, dates of use set forth in an "[a]llegation of [u]se" do not constitute evidence of use. Rather, use must be established by competent evidence. See Trademark Rule 2.122(b)(2).

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Georgia-Pacific Corp. v. Great Plains Bag Co., 190 USPQ 193, 195-96 (TTAB 1976); *Miller & Fink Corp. v. Servicemaster Hospital Corp.*, 184 USPQ 495, 496 (TTAB 1975); TBMP Section 414(5). Accordingly, defendant's objections are overruled. To the extent that defendant has not done so already, defendant is directed to produce responsive documents in accordance with the foregoing.

In document request no. 14, plaintiff seeks documents regarding defendant's intent to use the SPRINKLES mark in commerce in connection with the goods identified in application Serial No. 77770541, i.e., "ice cream; frozen yogurt; candy; sweets; cupcake mixes; ice cream sundaes, sherbets, ices, sorbets, [and] milk shakes." Such documents are discoverable under protective order. See *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, *supra*. Further, such documents may provide a basis for an additional claim that defendant did not have a bona fide intent to use the SPRINKLES mark on those goods when it filed that application. See Fed. R. Civ. P. 26(b)(1); *J. B. Williams Co. v. Pepsodent GmbH.*, 188 USPQ 577, 579 (TTAB 1975); TBMP Section 402.01. Accordingly, defendant's objections are overruled. To the extent defendant has not done so already, defendant is directed to produce documents in accordance with the foregoing.

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In document request no. 15, plaintiff seeks documents regarding circumstances under which defendant first became aware of plaintiff's use of the SPRINKLES mark. Information concerning a defendant's actual knowledge of plaintiff's use of the plaintiff's involved mark, including whether defendant has actual knowledge thereof, and, if so, when and under what circumstances it acquired such knowledge, is discoverable. See *American Optical Corp. v. Exomet, Inc.*, 181 USPQ 120, 123 (TTAB 1974); TBMP Section 414(19). Defendant's objection that such documents are protected by attorney-client privilege and/or work product doctrine is overruled. Defendant is directed to produce documents in accordance with the foregoing.

Regarding alleged deficiencies in defendant's privilege log, Federal Rule of Civil Procedure 26(b)(5) states as follows:

When a party withholds information otherwise discoverable by claiming that the information is privileged ..., the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed – and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

The Board agrees with plaintiff that the entry in defendant's privilege log in which it asserts that all

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opinions of outside counsel regarding defendant's right to use and register the mark SPRINKLES between the years 2005 and 2010 are protected by attorney-client privilege is insufficient because it does not enable other parties to assess the propriety of the claim of privilege with regard to each communication. Nonetheless, the Board agrees with defendant that requiring defendant to produce all documents withheld under claim of privilege is unwarranted. See *M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044 (TTAB 2008). Defendant is directed to serve an amended privilege log that provides specific information regarding each document between 2005 and 2010 that is being withheld under claim of privilege. The amended privilege log should also include any documents that were produced with portions redacted under claim of privilege.

Based on the foregoing, the motion to compel is granted in part and denied in part. Defendant is allowed until thirty days from the mailing date set forth in this order to serve supplemental responses to interrogatory nos. 4, 5, and 13 and a revised privilege log. To the extent that defendant has not done so already, defendant is allowed until thirty days from the mailing date set forth in this order to select, designate and identify the items and documents, or categories of items and documents, as supplemental production in response to document requests

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087; Cancellation No. 92053109

nos. 7, 9-11, 14, 15, 18, 21, and 22 and to notify plaintiff that the selection, designation and identification of such items and documents has been completed.¹⁰ Plaintiff is allowed until thirty days from receipt of notification from defendant that the items or documents have been selected, designated and identified to inspect and copy the produced materials, as provided for in Fed. R. Civ. P. 34(b) and Trademark Rule 2.120(d)(2), unless the parties otherwise agree.¹¹

Proceedings herein are resumed. The parties are allowed until thirty days from the mailing date set forth in this order to serve responses to any pending discovery requests in Opposition Nos. 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087 and Cancellation No. 92053109. The discovery period in Opposition No. 91194188 remains closed. Dates in these consolidated proceedings are reset as follows.

Expert Disclosures Due in Opposition Nos. 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087 and Cancellation No. 92053109	9/7/11
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Discovery Closes in Opposition Nos. 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087 and Cancellation	10/7/11
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¹⁰ If the materials are voluminous, defendant may produce a representative sampling and so inform plaintiff that a representative sampling has been produced.

¹¹ If defendant fails to comply with this order, plaintiff's remedy lies in a motion for sanctions, pursuant to Trademark Rule 2.120(g)(1).

Opposition Nos. 91194188, 91195669, 91195985, 91195986, 91196035, 91196061, and 91196087; Cancellation No. 92053109

No. 92053109

Plaintiff's Pretrial Disclosures Due in All Proceedings	11/21/11
Plaintiff's 30-day Trial Period Ends in All Proceedings	1/5/12
Defendant's Pretrial Disclosures Due in All Proceedings	1/20/12
Defendant's 30-day Trial Period Ends in All Proceedings	3/5/12
Plaintiff's Rebuttal Disclosures Due in All Proceedings	3/20/12
Plaintiff's 15-day Rebuttal Period Ends in All Proceedings	4/19/12

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

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

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.

EXHIBIT 5

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

Baxley

Mailed: August 26, 2011

Opposition No. **91194188**
Opposition No. 91195669
Opposition No. 91195985
Opposition No. 91195986
Opposition No. 91196035
Opposition No. 91196061
Opposition No. 91196087
Cancellation No. 92053109

Soft Serve, Inc. d/b/a
Sprinkles

v.

Sprinkles Cupcakes, Inc.

Andrew P. Baxley, Interlocutory Attorney:

Proceedings herein are suspended pending disposition of plaintiff's motion for summary judgment in Cancellation No. 92053109.¹ See Trademark Rules 2.117(c) and 2.127(d).

Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration.

¹ The notice of discovery deposition upon written questions of Saira Haider that defendant filed on August 22, 2011 is noted. Unless defendant files and is granted a motion for leave to take such deposition as part of Fed. R. Civ. P. 56(d) discovery prior to responding the motion for summary judgment, activities in connection with that deposition should cease until the motion for summary judgment is decided.

The parties to these consolidated proceedings are also involved in Cancellation Nos. 92054376 and 92054401, which have been consolidated in a separate order and will be consolidated with these proceedings once the motion for summary judgment is decided.

EXHIBIT 6

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

Soft Serve, Inc. d/b/a/ Sprinkles,

Opposer,

v.

Sprinkles Cupcakes, Inc.,

Applicant.

Opposition No.: 91194188

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

Serial No. 77770541

Pursuant to Trademark Rule of Practice 2.120 (37 C.F.R. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 405, and Federal Rule of Civil Procedure 33, Applicant Sprinkles Cupcakes, Inc. requests that Opposer Soft Serve, Inc. d/b/a Sprinkles answer the following Interrogatories separately and fully, in writing, under oath within thirty (30) days after date of service.

For the purpose of these Interrogatories, the following definitions and instructions shall apply:

DEFINITIONS

1. The terms "Soft Serve," "Opposer," "you," "your," and "yourself" refer to Opposer Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies or joint venturers.
2. The terms "Sprinkles Cupcakes" and "Applicant" refer to Applicant Sprinkles Cupcakes, Inc., and include any persons controlled by or acting on behalf of that entity, including

but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The terms "SPRINKLES" and "the mark SPRINKLES" means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

4. The term "frozen desserts" refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, milk shakes, or ice cream cakes.

5. The term "store name" means the name of any retail or wholesale establishment owned or operated by you.

6. The term "person" means any natural person or any business, legal or governmental entity, or association.

7. Unless otherwise stated, the scope of these Interrogatories is the United States.

8. The term "document" as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any "writings and recordings" and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

9. The term "identify," when referring to:

- a. a natural person, means to give his or her full name, present or last known address and telephone number, last known place of employment and job title;
- b. a public or private corporation, partnership, association, agency or other entity, means to give its present or last known address and telephone number, and state of incorporation, if applicable;
- c. a document, means to state its general character, title, date, addressee or recipient, author or signatory, present location, and who has possession, custody or control of the document;
- d. a product, means to provide a description of the item which is offered for sale, and the intended customer groups, channels of trade, approximate price, and market for the product;
- e. a service, means to describe the service and the intended customer groups, channels of trade, approximate price, and market for the service.

10. The term "communication" is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

11. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

12. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside its scope.

13. The use of a present tense shall include past tenses.

14. The use of the singular form of any word also includes the plural and vice versa.

15. The terms "all" and "each" shall each be construed to include the other.

INSTRUCTIONS

1. In answering these Interrogatories, furnish all information, including information contained in or on any document that is known or available to you, including all information in the possession of your attorneys or other persons acting on your behalf or under your attorneys' employment or direction.

2. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiries and secure information necessary to do so, so state, and answer each such interrogatory to the full extent you deem possible; specify the portion of such interrogatory that you claim you are unable to answer fully and completely; state the facts on which you rely to support your contention that you are unable to answer such interrogatory fully and completely; and state what knowledge, information and/or belief you have concerning the unanswered portion of each such interrogatory.

3. If there is any item of information that you refuse to disclose on grounds of privilege or work-product immunity, answer so much of the interrogatory as does not request information for which you claim privilege, state the nature of the privilege you claim, and provide sufficient details, including the nature of the information, its source, its subject matter, and the names of all persons to whom that information was disclosed, such as would enable the claim of privilege or immunity to be adjudicated.

4. If the response to any interrogatory consists, in whole or in part, of an objection relating to burdensomeness, then with respect to such response:

- a. Provide such information as can be ascertained without undue burden;
- b. State with particularity the basis for such objection including:
 - i. a description of the process or method required to obtain any fact responsive to the interrogatory; and

- ii. the estimated cost and time required to obtain any fact responsive to the interrogatory.

5. These interrogatories are continuing and require further answer and supplementation, as provided by Federal Rule of Civil Procedure 26(e).

INTERROGATORIES

Consistent with the foregoing definitions and instructions, please answer the following Interrogatories:

INTERROGATORY NO. 1:

Identify every product and service offered by you.

INTERROGATORY NO. 2:

Identify every product and service you have offered under the mark SPRINKLES.

INTERROGATORY NO. 3:

For each product and service requested to be identified in Interrogatory No. 2, identify the persons most knowledgeable about each product or service.

INTERROGATORY NO. 4:

For each product and service requested to be identified in Interrogatory No. 2, identify the time period (including day, month, and year) during which you offered each of those products and services.

INTERROGATORY NO. 5:

For each product and service requested to be identified in Interrogatory No. 2, state the sales, on an annual basis (in terms of dollar volume and units) of such product or service from the date of first use of the mark SPRINKLES in connection with such product or service, through the present.

INTERROGATORY NO. 6:

For each product and service requested to be identified in Interrogatory No. 2, explain the extent to which there has been any interruption to continuous use of the mark SPRINKLES to identify the product or service.

INTERROGATORY NO. 7:

For each product and service requested to be identified in Interrogatory No. 2, identify the persons most knowledgeable about the sales and distribution of the product or service.

INTERROGATORY NO. 8:

For each product and service requested to be identified in Interrogatory No. 2, identify the persons most knowledgeable about the advertising and promotion of the product or service.

INTERROGATORY NO. 9:

For each product and service requested to be identified in Interrogatory No. 2, list by year the expenditures you have made on advertising and promotion in the United States for the product or service.

INTERROGATORY NO. 10:

For each product and service requested to be identified in Interrogatory No. 2, identify the nature and title (if applicable) of the media in which all advertisements of the product or service have appeared, including the date of, and geographic scope of such advertisements.

INTERROGATORY NO. 11:

For each product and service requested to be identified in Interrogatory No. 2, identify each location, retail outlet, catalog, and Internet web site or other electronic means, to or through which SPRINKLES products or services have been or are intended to be offered for sale, distributed, sold, or rendered.

INTERROGATORY NO. 12:

Describe all products, packaging, signs, uniforms, name tags, displays, advertising brochures, and other materials on which you have displayed the mark SPRINKLES.

INTERROGATORY NO. 13:

Identify the time period (including day, month, and year) that you offered frozen desserts under the mark SPRINKLES.

INTERROGATORY NO. 14:

Identify the time period (including day, month, and year) that you offered baked goods under the mark SPRINKLES.

INTERROGATORY NO. 15:

Identify the time period (including day, month, and year) that you offered cupcakes under the mark SPRINKLES.

INTERROGATORY NO. 16:

Identify the time period (including day, month, and year) that you offered sweets and candies under the mark SPRINKLES.

INTERROGATORY NO. 17:

Explain the basis for your claim that "Opposer Sprinkles has used the mark, [sic] 'SPRINKLES' in the United States in connection with its various goods and services since at least as early as November 2002" as pleaded in ¶ 2 of your Notice of Opposition.

INTERROGATORY NO. 18:

Identify the time period(s) that you offered products or services under the mark I CAN'T BELIEVE IT'S YOGURT.

INTERROGATORY NO. 19:

Identify the products and services offered under the mark I CAN'T BELIEVE IT'S YOGURT.

INTERROGATORY NO. 20:

Describe all products, packaging, advertising brochures, and other materials on which you have displayed the mark SPRINKLES.

INTERROGATORY NO. 21:

Describe all of your present plans to use the mark SPRINKLES.

INTERROGATORY NO. 22:

Describe all of your efforts or plans to promote or expand awareness of the mark SPRINKLES.

INTERROGATORY NO. 23:

For each effort or plan requested to be identified in response to Interrogatory No. 22, describe the target markets and characteristics of targeted consumers.

INTERROGATORY NO. 24:

Identify any press releases or other public statements in which you mention or associate yourself with the mark SPRINKLES.

INTERROGATORY NO. 25:

Describe in detail each incident, known to you, of actual confusion between you or any of your products and services and Sprinkles Cupcakes or any of its products and services.

INTERROGATORY NO. 26:

For each of the incidents described in response to Interrogatory No. 25, identify the persons with knowledge thereof.

INTERROGATORY NO. 27:

For each of product or service offered by you under the SPRINKLES mark, describe the types of customers to whom you advertise, promote, sell, distribute and/or render the product or service, including information concerning, generally, where your target customers reside.

INTERROGATORY NO. 28:

Identify every trademark search you conducted relating to the mark SPRINKLES.

INTERROGATORY NO. 29:

Identify every opinion, legal or otherwise, requested or received by you, regarding the right to use the mark SPRINKLES, including the identity of the persons requesting the opinion, the date and substance of the opinion, and the persons receiving the opinion.

INTERROGATORY NO. 30:

Describe (including but not limited to party names, dates of inception and expiration dates) the licenses that you maintain with third parties that allow those third parties to use your mark SPRINKLES.

INTERROGATORY NO. 31:

Identify all documents (license, contract, etc.) by which you have authorized any third party to use the mark SPRINKLES.

INTERROGATORY NO. 32:

State your quality control requirements (including any changes to those requirements) for any licensee you have authorized to use the mark SPRINKLES.

INTERROGATORY NO. 33:

Identify any steps you have taken to exercise quality control in connection with the licenses identified in your response to Interrogatory No. 30.

INTERROGATORY NO. 34:

Describe all efforts you have made to enforce against third parties the rights you claim in the mark SPRINKLES.

INTERROGATORY NO. 35:

Describe all instances in which a third party has challenged the rights you claim in the mark SPRINKLES.

INTERROGATORY NO. 36:

Identify each expert witness that you expect to provide testimony in this proceeding, including the facts or subject matter about which they are expected to testify.

INTERROGATORY NO. 37:

Explain the basis for your claim that "Opposer Sprinkles uses 'SPRINKLES' as part of its trade name" as pleaded in ¶ 3 of your Notice of Opposition.

INTERROGATORY NO. 38:

Explain the basis for your claim that "in the eyes and minds of a large part of the public, the mark 'SPRINKLES' as recited in U.S. Trademark Application Serial No. 77/770,541 is closely associated with the goods and services with which Opposer used and is using 'SPRINKLES'" as pleaded in ¶ 12 of your Notice of Opposition.

INTERROGATORY NO. 39:

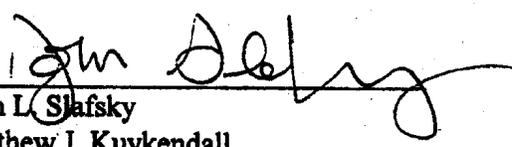
Identify each person who provided information on which your responses to these Interrogatories are based, specifying the interrogatory or interrogatories for which each person provided information.

Dated: June 11, 2010

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____


John L. Slafsky
Matthew J. Kuykendall

Attorneys for Applicant
Sprinkles Cupcakes, Inc.

CERTIFICATE OF SERVICE BY MAIL

I, Jo Ann Hylton, declare:

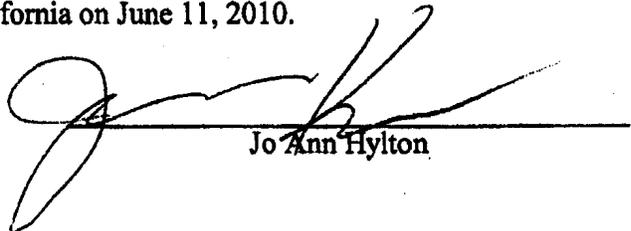
I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

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 **APPLICANT'S FIRST SET INTERROGATORIES TO OPPOSER** on each person listed below, by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) 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, MD 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 June 11, 2010.



Jo Ann Hylton

EXHIBIT 7

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

Soft Serve, Inc. d/b/a/ Sprinkles,

Opposer,

v.

Sprinkles Cupcakes, Inc.,

Applicant.

Opposition No.: 91194188

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

Serial No. 77770541

Pursuant to Trademark Rule of Practice 2.120 (37 C.F.R. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 406, and Federal Rule of Civil Procedure 34, Applicant Sprinkles Cupcakes, Inc. requests that Opposer Soft Serve, Inc. d/b/a Sprinkles produce for inspection and copying the documents and things listed below within thirty (30) days of the date of service hereof, at the offices of counsel for Sprinkles Cupcakes, Inc. or at another mutually agreeable location.

For the purpose of this request for production, the following definitions and instructions shall apply:

DEFINITIONS

1. The terms "Soft Serve," "Opposer," "you," "your," and "yourself" refer to Opposer Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

2. The terms "Sprinkles Cupcakes" and "Applicant" refer to Applicant Sprinkles Cupcakes, Inc. and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The terms "SPRINKLES" and "the mark SPRINKLES" means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

4. The terms "Opposer's SPRINKLES product or service" and "Opposer's SPRINKLES products or services" means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by you in connection with the mark SPRINKLES.

5. The terms "Applicant's SPRINKLES product or service" and "Applicant's SPRINKLES products or services" means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by Applicant in connection with the mark SPRINKLES.

6. The term "frozen desserts" refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, milk shakes, or ice cream cakes.

7. The term "person" means any natural person or any business, legal or governmental entity, or association.

8. Unless otherwise stated, the scope of these Requests For Production is the United States.

9. The term "document" as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any "writings and recordings" and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible

thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

10. The term "communication" is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

11. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

12. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

13. The use of a present tense shall include past tenses.

14. The use of the singular form of any word also includes the plural and vice versa.

15. The terms "all" and "each" shall each be construed to include the other.

INSTRUCTIONS

1. You are requested to produce for inspection and copying all responsive documents and things in your possession, custody or control, including all documents and things in the custody of

your attorneys, consultants, agents, other representatives, and other persons or entities subject to your control.

2. You are to produce the documents and things as they are kept in the ordinary course of business, with appropriate markings or designations so that it may be determined to which request they are responsive.

3. You are to produce the original and all non-identical copies of each requested document or thing, including all copies which bear any additional file stamps, marginal notes or other additional markings or writings that do not appear on the original. The production shall include the file, envelope, folder, binder, or other container in which the responsive documents and things are kept. If, for any reason, the container cannot be produced, you are to produce copies of all labels or other identifying markings.

4. Documents that exist in digital format and constitute or comprise databases or other tabulations or collections of data or information should be produced in their native format. Documents that exist in digital format and constitute or comprise written communications between natural persons (e.g., e-mail messages, internal memos, letters, etc.) should be produced in OCR (optical character recognition) TIFF file format with a Concordance load-file.

5. If you cannot fully respond to any request after a diligent attempt, respond to the request to the extent possible and specify the portion of the request to which you are unable to respond.

6. If you claim that any request, definition or instruction is ambiguous, state the language you claim is ambiguous and the interpretation you have used to respond to the request.

7. If you contend that any document or thing has been lost or destroyed, set forth the contents of the document or thing, the location of any copies, the date of loss or destruction, the name of the person who ordered or authorized the destruction, if any, and the authority and reasons for such destruction.

8. If you decline to produce any information, document, or thing on the basis of the attorney-client, work product, or other privilege, respond to so much of the discovery request as is

not subject to the claimed objection, and for each document or thing, provide the following information:

- a. the type and title of the document or thing;
- b. the general subject matter of the document or description of the thing;
- c. the date of its creation;
- d. the identity of the document's author(s), addressee(s) and recipient(s);
- e. the nature of the privilege being claimed; and
- f. in detail, all facts upon which you base your claim of privilege.

9. Complete production is to be made on the date and at the time indicated above.

10. You have a duty to supplement your responses from now until the time of hearing or trial, as provided by Federal Rule of Procedure 26(e).

DOCUMENTS AND THINGS REQUESTED

Consistent with the foregoing definitions and instructions, please provide the following documents and things:

DOCUMENT REQUEST NO. 1:

All documents relating to Applicant.

DOCUMENT REQUEST NO. 2:

Documents sufficient to identify each of Opposer's SPRINKLES products or services.

DOCUMENT REQUEST NO. 3:

Documents sufficient to show use of the mark SPRINKLES in connection with each of Opposer's SPRINKLES products or services each year that you offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered such products or services.

DOCUMENT REQUEST NO. 4:

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES.

DOCUMENT REQUEST NO. 5:

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES for use with frozen desserts.

DOCUMENT REQUEST NO. 6:

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES for use with baked goods.

DOCUMENT REQUEST NO. 7:

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES for use with candy and sweets.

DOCUMENT REQUEST NO. 8:

Documents sufficient to show use of the mark SPRINKLES on the earliest date on which you will rely in this Opposition proceeding to establish your rights in the mark SPRINKLES for use with cupcakes.

DOCUMENT REQUEST NO. 9:

All documents relating to promotions or advertisements for Opposer's SPRINKLES products or services.

DOCUMENT REQUEST NO. 10:

All documents relating to promotions or advertisements for cupcakes offered by you in connection with the mark SPRINKLES.

DOCUMENT REQUEST NO. 11:

Representative samples of each advertising, marketing, and promotional material, including but not limited to web pages, catalogs, circulars, leaflets, direct mail pieces, brochures, point of sale pieces, press releases, web-based advertisements (including but not limited to banner ads), newspaper and magazine advertisements and articles, yellow page advertisements, transcripts and audio tapes for radio advertisements, and transcripts and video tapes of television advertisements, showing use of the mark SPRINKLES on any goods or services, including but not limited to cupcakes. Include with each item such document which provides the date(s) of use or publication and a description of where the advertisement or promotion appeared.

DOCUMENT REQUEST NO. 12:

All documents relating to your expenditures on advertising and marketing activities related to Opposer's SPRINKLES products or services.

DOCUMENT REQUEST NO. 13:

All documents relating to your expenditures on advertising and marketing activities related to cupcakes offered by you in connection with the mark SPRINKLES.

DOCUMENT REQUEST NO. 14:

All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for you relating to the sale, proposed sale, rendering or proposed rendering of Opposer's SPRINKLES products or services.

DOCUMENT REQUEST NO. 15:

Documents sufficient to show annual advertising expenditures in connection with Opposer's SPRINKLES products or services.

DOCUMENT REQUEST NO. 16:

A complete copy of each version of each website displaying the SPRINKLES mark or offering for sale any of Opposer's SPRINKLES product or service.

DOCUMENT REQUEST NO. 17:

All documents relating to your efforts or plans to promote or expand awareness of the mark SPRINKLES.

DOCUMENT REQUEST NO. 18:

Documents sufficient to show the annual sales (in dollars and in number of units sold) of each product sold by you under the mark SPRINKLES.

DOCUMENT REQUEST NO. 19:

Documents sufficient to show the annual sales (in dollars) of each service rendered by you under the mark SPRINKLES.

DOCUMENT REQUEST NO. 20:

Documents sufficient to show the annual sales (in dollars and in number of units sold) of cupcakes sold by you under the SPRINKLES mark.

DOCUMENT REQUEST NO. 21:

All documents comprising or relating to classes of dealers, customers, clients, sales representatives, brokers, and/or distributors of Opposer's SPRINKLES products and services.

DOCUMENT REQUEST NO. 22:

Documents sufficient to identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which products offered in connection with the SPRINKLES mark are, or are intended to be, advertised, promoted, distributed, sold, or offered for sale.

DOCUMENT REQUEST NO. 23:

All documents, including but not limited to contracts and license agreements, authorizing any third party to use the mark SPRINKLES.

DOCUMENT REQUEST NO. 24:

All documents relating to any license or authorization that you granted to a third party to use the mark SPRINKLES.

DOCUMENT REQUEST NO. 25:

All documents relating to your exercise of quality control concerning the use of the mark SPRINKLES by any third party.

DOCUMENT REQUEST NO. 26:

All documents relating to agreements with third parties concerning the sale of cupcakes in connection with the mark SPRINKLES.

DOCUMENT REQUEST NO. 27:

All documents relating to your adoption of the mark SPRINKLES, including but not limited to all documents identifying when you began using the mark SPRINKLES.

DOCUMENT REQUEST NO. 28:

All documents relating to communications with third parties other than your legal counsel concerning the mark SPRINKLES.

DOCUMENT REQUEST NO. 29:

All documents relating to communications with third parties other than your legal counsel concerning this trademark dispute.

DOCUMENT REQUEST NO. 30:

All documents relating to communications with third parties other than your legal counsel concerning Applicant.

DOCUMENT REQUEST NO. 31:

All documents relating to any trademark applications you have filed for the mark SPRINKLES, including but not limited to any correspondence between you or your legal counsel and the U.S. Patent and Trademark Office.

DOCUMENT REQUEST NO. 32:

Every investigation conducted by you or on your behalf in connection with the availability, registrability, or use of the mark SPRINKLES.

DOCUMENT REQUEST NO. 33:

Every trademark search conducted by you or on your behalf for the mark SPRINKLES.

DOCUMENT REQUEST NO. 34:

Every inquiry, other than an investigation or trademark search, conducted by you or on your behalf in connection with the availability, registrability, or use of the mark SPRINKLES.

DOCUMENT REQUEST NO. 35:

All documents relating to use of the mark SPRINKLES by any third party.

DOCUMENT REQUEST NO. 36:

All documents relating to any confusion as to origin, endorsement, approval or sponsorship of SPRINKLES products or services.

DOCUMENT REQUEST NO. 37:

All documents relating to any incident in which a third party has challenged the rights you claim in the mark SPRINKLES, including but not limited to any demand to cease and desist.

DOCUMENT REQUEST NO. 38:

All documents relating to any incident in which you have challenged the rights of a third party based on the rights you claim in the mark SPRINKLES, including but not limited to any demand to cease and desist.

DOCUMENT REQUEST NO. 39:

All documents relating to actual confusion arising from Applicant's use of the mark SPRINKLES.

DOCUMENT REQUEST NO. 40:

All documents relating to communications between you or your legal counsel with experts in this Opposition proceeding.

DOCUMENT REQUEST NO. 41:

All documents relating to communications between you or your legal counsel with potential experts in this Opposition proceeding.

DOCUMENT REQUEST NO. 42:

All documents comprising or relating to opinions of each expert witness that you will or may call in this Opposition proceeding.

DOCUMENT REQUEST NO. 43:

All documents relating to the basis for your claim that "Opposer Sprinkles uses 'SPRINKLES' as part of its trade name" as pleaded in ¶ 3 of your Notice of Opposition.

DOCUMENT REQUEST NO. 44:

All documents relating to the basis for your claim that "in the eyes and minds of a large part of the public, the mark 'SPRINKLES' as recited in U.S. Trademark Application Serial No. 77/770,541 is closely associated with the goods and services with which Opposer used and is using 'SPRINKLES'" as pleaded in ¶ 12 of your Notice of Opposition.

DOCUMENT REQUEST NO. 45:

All documents relating to the circumstances under which you became aware of application serial no. 77/770541.

DOCUMENT REQUEST NO. 46:

Each document reviewed, consulted, or on which you relied, to draft your answers to Opposer's First Set of Interrogatories to Applicant.

DOCUMENT REQUEST NO. 47:

Each document requested to be identified in Applicant's First Set of Interrogatories to Opposer.

DOCUMENT REQUEST NO. 48:

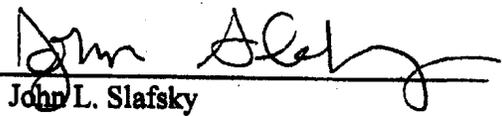
All documents relating to your policies regarding retention, storage, filing and destruction of documents and things, including but not limited to electronic mail.

Dated: June 11, 2010

Respectfully submitted,

**WILSON SONSINI GOODRICH & ROSATI
Professional Corporation**

By: _____


John L. Slafsky

Matthew J. Kuykendall

**Attorneys for Applicant
Sprinkles Cupcakes, Inc.**

CERTIFICATE OF SERVICE BY MAIL

I, Jo Ann Hylton, declare:

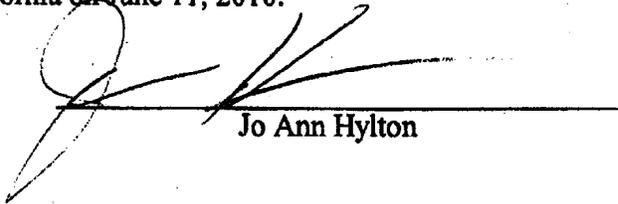
I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

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 **APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION TO OPPOSER** on each person listed below, by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) 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, MD 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 June 11, 2010.



Jo Ann Hylton

EXHIBIT 8

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

Soft Serve, Inc. d/b/a/ Sprinkles,

Opposer,

v.

Sprinkles Cupcakes, Inc.,

Applicant.

Opposition No. 91194188

Opposition No. 91195669

Opposition No. 91195985

Opposition No. 91195986

Opposition No. 91196035

Opposition No. 91196061

Opposition No. 91196087

Cancellation No: 92053109

APPLICANT'S SECOND SET OF REQUESTS FOR PRODUCTION TO OPPOSER

Pursuant to Trademark Rule of Practice 2.120 (37 C.F.R. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 406, and Federal Rule of Civil Procedure 34, Applicant Sprinkles Cupcakes, Inc. requests that Opposer Soft Serve, Inc. d/b/a Sprinkles produce for inspection and copying the documents and things listed below within thirty (30) days of the date of service hereof, at the offices of counsel for Sprinkles Cupcakes, Inc. or at another mutually agreeable location.

For the purpose of this request for production, the following definitions and instructions shall apply:

DEFINITIONS

1. The terms "Soft Serve," "Opposer," "you," "your," and "yourself" refer to Opposer Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

2. The terms "Sprinkles Cupcakes" and "Applicant" refer to Applicant Sprinkles Cupcakes, Inc. and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The terms "SPRINKLES" and "the mark SPRINKLES" means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

4. The terms "Opposer's SPRINKLES product or service" and "Opposer's SPRINKLES products or services" means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by you in connection with the mark SPRINKLES.

5. The terms "Applicant's SPRINKLES product or service" and "Applicant's SPRINKLES products or services" means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by Applicant in connection with the mark SPRINKLES.

6. The term "your store" refers to the business at 10148 River Rd., Potomac, Maryland, currently bearing the name SPRINKLES and formerly bearing other names or marks.

7. The term "frozen desserts" refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, milk shakes, or ice cream cakes.

8. The term "person" means any natural person or any business, legal or governmental entity, or association.

9. Unless otherwise stated, the scope of these Requests For Production is the United States.

10. The term "document" as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any "writings and recordings" and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts,

and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

11. The term "communication" is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

12. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

13. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

14. The use of a present tense shall include past tenses.

15. The use of the singular form of any word also includes the plural and vice versa.

16. The terms "all" and "each" shall each be construed to include the other.

INSTRUCTIONS

1. You are requested to produce for inspection and copying all responsive documents and things in your possession, custody or control, including all documents and things in the custody of your attorneys, consultants, agents, other representatives, and other persons or entities subject to your control.

2. You are to produce the documents and things as they are kept in the ordinary course of business, with appropriate markings or designations so that it may be determined to which request they are responsive.

3. You are to produce the original and all non-identical copies of each requested document or thing, including all copies which bear any additional file stamps, marginal notes or other additional markings or writings that do not appear on the original. The production shall include the file, envelope, folder, binder, or other container in which the responsive documents and things are kept. If, for any reason, the container cannot be produced, you are to produce copies of all labels or other identifying markings.

4. Documents that exist in digital format and constitute or comprise databases or other tabulations or collections of data or information should be produced in their native format. Documents that exist in digital format and constitute or comprise written communications between natural persons (e.g., e-mail messages, internal memos, letters, etc.) should be produced in OCR (optical character recognition) TIFF file format with a Concordance load-file.

5. If you cannot fully respond to any request after a diligent attempt, respond to the request to the extent possible and specify the portion of the request to which you are unable to respond.

6. If you claim that any request, definition or instruction is ambiguous, state the language you claim is ambiguous and the interpretation you have used to respond to the request.

7. If you contend that any document or thing has been lost or destroyed, set forth the contents of the document or thing, the location of any copies, the date of loss or destruction, the

name of the person who ordered or authorized the destruction, if any, and the authority and reasons for such destruction.

8. If you decline to produce any information, document, or thing on the basis of the attorney-client, work product, or other privilege, respond to so much of the discovery request as is not subject to the claimed objection, and for each document or thing, provide the following information:

- a. the type and title of the document or thing;
- b. the general subject matter of the document or description of the thing;
- c. the date of its creation;
- d. the identity of the document's author(s), addressee(s) and recipient(s);
- e. the nature of the privilege being claimed; and
- f. in detail, all facts upon which you base your claim of privilege.

9. Complete production is to be made on the date and at the time indicated above.

10. You have a duty to supplement your responses from now until the time of hearing or trial, as provided by Federal Rule of Procedure 26(e).

DOCUMENTS AND THINGS REQUESTED

Consistent with the foregoing definitions and instructions, please provide the following documents and things:

DOCUMENT REQUEST NO. 48:

All documents relating to Million, Inc., including documents sufficient to show the principals involved in Million, Inc.

DOCUMENT REQUEST NO. 49:

All documents relating to any transfer of assets or other business deal concerning Soft Serve, Inc. and any other person, including Million, Inc. or Mohammed Baten.

DOCUMENT REQUEST NO. 49:

All documents relating to the Articles of Sale and Transfer attached as Exhibit B to Applicant's Second Set of Interrogatories to Opposer, including documents sufficient to identify the assets referenced in the Articles of Sale and Transfer, and documents sufficient to show the current ownership of such assets.

DOCUMENT REQUEST NO. 50:

All documents relating to any lease agreements, franchise agreements, supply agreements, purchase agreements, or other agreements relating to your store or the operation of your store.

DOCUMENT REQUEST NO. 51:

All documents relating to use of the I CAN'T BELIEVE IT'S YOGURT name at your store, including communications with I Can't Believe It's Yogurt relating to use of the name and including documents sufficient to show the date that the I Can't Believe It's Yogurt name was last displayed at your store, printed in the Yellow Pages with your store's address, or advertised by you in any way.

DOCUMENT REQUEST NO. 52:

Documents sufficient to show any name or mark associated with your store or your products or services before you adopted the name Sprinkles, including any name you used between the name I Can't Believe It's Yogurt and the name Sprinkles.

DOCUMENT REQUEST NO. 53:

All documents, including all communications with a landlord, building manager, artist; designer, manufacturer, or any other person, relating to creation, design, fabrication, hanging, or removal of any signage for your store, including the SPRINKLES sign shown in Exhibit A to Applicant's Second Set of Interrogatories to Opposer, any other signage bearing the SPRINKLES or

I CAN'T BELIEVE IT'S YOGURT names, or any other signage, whether or not ultimately hung or used at your store.

DOCUMENT REQUEST NO. 54:

All documents, including all communications, concerning your name change to SPRINKLES, including any advertising or notification of the name change, and including all communications with any landlord, building manager, customer, supplier, vendor, or any other person about the name change.

DOCUMENT REQUEST NO. 55:

Documents sufficient to show the geographic scope of your use of SPRINKLES, including documents sufficient to show the date of first use in any U.S. city in which you claim use, and documents sufficient to show a continuity of use, if any, from the claimed date of first use in each city.

DOCUMENT REQUEST NO. 56:

Documents sufficient to show the geographic distribution of your customers.

DOCUMENT REQUEST NO. 57:

Documents sufficient to show the geographic distribution of your advertising and marketing efforts under the SPRINKLES name.

DOCUMENT REQUEST NO. 58:

Documents sufficient to show the price of all Opposer's SPRINKLES products or services.

DOCUMENT REQUEST NO. 59:

Documents sufficient to show the identities of any celebrities or nationally well-known persons who have visited your store, and the dates of their visits.

DOCUMENT REQUEST NO. 60:

Documents sufficient to show the identities of any persons you claim have experienced actual confusion arising from Applicant's use of the mark SPRINKLES, the dates on which the actual confusion occurred, the circumstances underlying the alleged actual confusion, the number of misdirected sales as a result of the alleged actual confusion, and the amount (in dollars) of sales lost as a result of the alleged actual confusion.

DOCUMENT REQUEST NO. 61:

Each document reviewed, consulted, or on which you relied, to draft your answers to Opposer's Second Set of Interrogatories to Applicant.

DOCUMENT REQUEST NO. 62:

Each document requested to be identified in Applicant's Second Set of Interrogatories to Opposer.

Dated: July 22, 2011

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____

John E. Slafsky
John E. Slafsky
Hollis Beth Hire

Attorneys for Applicant
Sprinkles Cupcakes, Inc.

CERTIFICATE OF SERVICE BY MAIL

I, Vira Minjarez, 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 **APPLICANT'S SECOND SET OF REQUESTS FOR PRODUCTION TO OPPOSER** on each person listed below, by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) 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, MD 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 July 22, 2011.


Vira Minjarez

EXHIBIT 9

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

Soft Serve, Inc. d/b/a/ Sprinkles,

Opposer,

v.

Sprinkles Cupcakes, Inc.,

Applicant.

Opposition No. 91194188

Opposition No. 91195669

Opposition No. 91195985

Opposition No. 91195986

Opposition No. 91196035

Opposition No. 91196061

Opposition No. 91196087

Cancellation No: 92053109

APPLICANT'S SECOND SET OF INTERROGATORIES TO OPPOSER

Pursuant to Trademark Rule of Practice 2.120 (37 C.F.R. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 405, and Federal Rule of Civil Procedure 33, Applicant Sprinkles Cupcakes, Inc. requests that Opposer Soft Serve, Inc. d/b/a Sprinkles answer the following Interrogatories separately and fully, in writing, under oath within thirty (30) days after date of service.

For the purpose of these Interrogatories, the following definitions and instructions shall apply:

DEFINITIONS

1. The terms "Soft Serve," "Opposer," "you," "your," and "yourself" refer to Opposer Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies or joint venturers.

2. The terms "Sprinkles Cupcakes" and "Applicant" refer to Applicant Sprinkles Cupcakes, Inc., and include any persons controlled by or acting on behalf of that entity, including

but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The terms "SPRINKLES" and "the mark SPRINKLES" means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

4. The term "frozen desserts" refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, milk shakes, or ice cream cakes.

5. The term "store name" means the name of any retail or wholesale establishment owned or operated by you.

6. The term "your store" refers to the business at 10148 River Rd., Potomac, Maryland, currently bearing the name SPRINKLES and formerly bearing other names or marks.

7. The term "person" means any natural person or any business, legal or governmental entity, or association.

8. Unless otherwise stated, the scope of these Interrogatories is the United States.

9. The term "document" as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any "writings and recordings" and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings

or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

10. The term "identify," when referring to:

- a. a natural person, means to give his or her full name, present or last known address and telephone number, last known place of employment and job title;
- b. a public or private corporation, partnership, association, agency or other entity, means to give its present or last known address and telephone number, and state of incorporation, if applicable;
- c. a document, means to state its general character, title, date, addressee or recipient, author or signatory, present location, and who has possession, custody or control of the document;
- d. a product, means to provide a description of the item which is offered for sale, and the intended customer groups, channels of trade, approximate price, and market for the product;
- e. a service, means to describe the service and the intended customer groups, channels of trade, approximate price, and market for the service.

11. The term "communication" is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

12. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

13. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside its scope.

14. The use of a present tense shall include past tenses.
15. The use of the singular form of any word also includes the plural and vice versa.
16. The terms "all" and "each" shall each be construed to include the other.

INSTRUCTIONS

1. In answering these Interrogatories, furnish all information, including information contained in or on any document that is known or available to you, including all information in the possession of your attorneys or other persons acting on your behalf or under your attorneys' employment or direction.

2. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiries and secure information necessary to do so, so state, and answer each such interrogatory to the full extent you deem possible; specify the portion of such interrogatory that you claim you are unable to answer fully and completely; state the facts on which you rely to support your contention that you are unable to answer such interrogatory fully and completely; and state what knowledge, information and/or belief you have concerning the unanswered portion of each such interrogatory.

3. If there is any item of information that you refuse to disclose on grounds of privilege or work-product immunity, answer so much of the interrogatory as does not request information for which you claim privilege, state the nature of the privilege you claim, and provide sufficient details, including the nature of the information, its source, its subject matter, and the names of all persons to whom that information was disclosed, such as would enable the claim of privilege or immunity to be adjudicated.

4. If the response to any interrogatory consists, in whole or in part, of an objection relating to burdensomeness, then with respect to such response:

- a. Provide such information as can be ascertained without undue burden;
- b. State with particularity the basis for such objection including:

- i. a description of the process or method required to obtain any fact responsive to the interrogatory; and
- ii. the estimated cost and time required to obtain any fact responsive to the interrogatory.

5. These interrogatories are continuing and require further answer and supplementation, as provided by Federal Rule of Civil Procedure 26(e).

INTERROGATORIES

Consistent with the foregoing definitions and instructions, please answer the following Interrogatories:

INTERROGATORY NO. 40:

Identify the date you first displayed any signage incorporating the SPRINKLES name at your store, including the date the sign in the photograph attached as Exhibit A was first displayed at your store. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

INTERROGATORY NO. 41:

Identify all names you have used for your store, including the dates that use of each name started and ceased. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

INTERROGATORY NO. 42:

Identify all persons involved in the creation, design, fabrication, hanging, or removal of any signage incorporating the name SPRINKLES for your store. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

INTERROGATORY NO. 43:

Identify the date you notified the landlord of your store that you were going to do business as Sprinkles, and the date you notified the landlord of your store that you planned to or had installed

signage that displays the Sprinkles name. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

INTERROGATORY NO. 44:

Identify the date you last used the name I CAN'T BELIEVE IT'S YOGURT, including the date the name was last displayed at your store, printed in the Yellow Pages with your store's address, or advertised by you in any way. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

INTERROGATORY NO. 45:

Identify the document that shows your earliest use of SPRINKLES as a trademark.

INTERROGATORY NO. 46:

Describe Soft Serve, Inc.'s relationship and business dealings with Million, Inc., including the business deal memorialized in the Articles of Sale and Transfer attached hereto as Exhibit B and any previous or subsequent business dealings between Soft Serve, Inc. and Million, Inc., and identify all of Million, Inc.'s officers, directors, principals, and employees, including Mohammed Baten. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

INTERROGATORY NO. 47:

Identify the assets referred to in the Articles of Sale and Transfer attached hereto as Exhibit B, and the current owner of such assets. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

INTERROGATORY NO. 48:

Identify any celebrities or nationally well-known persons who have visited your store, including the dates of their visits. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

INTERROGATORY NO. 49:

Identify any persons you claim have experienced actual confusion arising from Applicant's use of the mark SPRINKLES, the dates on which the actual confusion occurred, the circumstances underlying the alleged actual confusion, the number of misdirected sales as a result of the alleged actual confusion, and the amount (in dollars) of sales lost as a result of the alleged actual confusion. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

Dated: July 22, 2011

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____


John L. Slafsky
Hollis Beth Hire

Attorneys for Applicant
Sprinkles Cupcakes, Inc.

EXHIBIT A

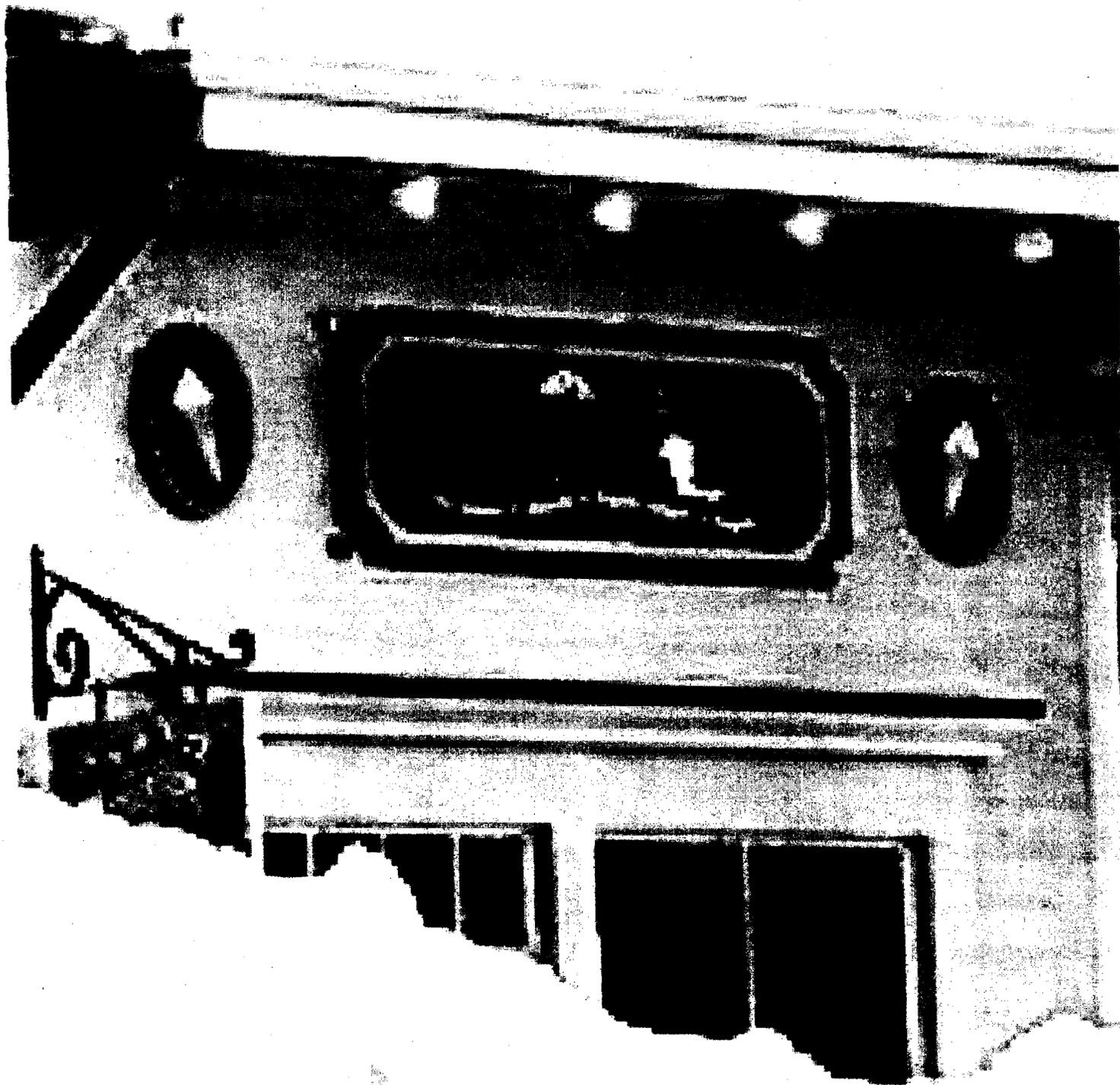


EXHIBIT B

ARTICLES OF SALE AND TRANSFER

Articles of Sale and Transfer entered into by and between SOFT SERVE, INC., a Maryland Corporation (hereinafter referred to as the "Transferor"), and MILLION, INC., a Maryland Corporation, (hereinafter sometimes referred to as the "Transferee").

THIS IS TO CERTIFY:

FIRST: Transferor hereby agrees to sell, assign, transfer, exchange and deliver substantially all of its property and assets to Transferee, its successors and assigns, as hereinafter set forth.

SECOND: The Transferor is SOFT SERVE, INC., a Maryland Corporation, organized under the laws of the State of Maryland, and the Transferee is MILLION, INC., a Maryland Corporation, organized under the laws of the State of Maryland.

THIRD: The name and post office address of Transferee's principal place of business is:

MILLION, INC.
3801 International Drive
Silver Spring, MD 20906

FOURTH: The nature and amount of the consideration to be paid by Transferee for the property and assets hereby transferred to it as set forth in Article Seventh herein, is Seventy Thousand Dollars (\$70,000.00).

FIFTH: The principal office of Transferor is:

SOFT SERVE, INC.
3136 St. Florence Terrace
Onley, Maryland 20832


Transferor

EO 4 V E1 511 222

CUST ID: 680887717
WORK ORDER: 6808484041
DATE: 08-14-2001 02:02 PM
AMT. PRD: 520.00


Transferee

SIXTH: The Board of Directors of Transferor duly adopted a resolution declaring that the sale, assignment and transfer of substantially all of the assets of Transferor as herein set forth was advisable and directed that these Articles of Sale and Transfer be submitted for action thereon by the stockholders of Transferor. The stockholders of Transferor then approved these Articles of Sale and Transfer. The foregoing action was taken in the manner and by the vote required by the Corporations and Associations Article of the Annotated Code of Maryland and the Charter of Transferor.

The Board of Directors of Transferee duly adopted a resolution declaring that the purchase of substantially all of the assets of Transferor as herein set forth was advisable and directed that these Articles of Sale and Transfer be submitted for action thereon by the stockholders of Transferee. The stockholders of Transferee then approved these Articles of Sale and Transfer. The foregoing action was taken in the manner and by the vote required by the law in the State of Maryland and the Charter of Transferee.

SEVENTH: In consideration of the payment to Transferor of Seventy Thousand Dollars (\$70,000.00), Transferor does hereby bargain, sell, grant, convey, transfer, assign, exchange, and deliver to Transferee, its successors and assigns, the assets more particularly described in the Agreement for Purchase and Sale of Assets executed on June 26, 2001.

EIGHTH: Transferee accepts the transfer of the property and assets, and shall not be responsible, liable or obligated to any party for any lien, encumbrance, assessment or debt of the Transferor in connection with the property and assets being transferred to the Transferee.


Transferor


Transferee

NINTH: No Maryland Real Property is owned by Transferor, nor is any interest in real property affected by this transfer.

TENTH: These Articles of Sale and Transfer are executed, acknowledged, sealed and delivered in the State of Maryland by Transferor and Transferee, and it is accordingly understood and agreed that these Articles of Sale and Transfer shall be construed in accordance with the law applicable to contracts made and entirely to be performed within the State of Maryland.

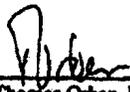
IN WITNESS WHEREOF, each of the parties hereto has caused these Articles of Sale and Transfer to be signed and acknowledged in the name of the corporation by its President and attested by its Secretary as of this 30 day of July, 2001.

TRANSFEROR:

SOFT SERVE, INC.

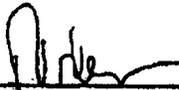


Attest (Secretary)

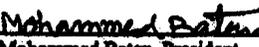
By:  (SEAL)
Thomas Orban, President

TRANSFEEEE:

MILLION, INC.



Attest (Secretary)

By:  (SEAL)
Mohammed Baten, President



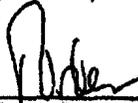
Transferor

Page 3 of 4



Transferee

The undersigned, President of SOFT SERVE, INC., who executed on behalf of said Corporation the foregoing Articles of Sale and Transfer, of which this certificate is made a part, hereby acknowledges, in the name and on behalf of said corporation, the foregoing Articles of Sale and Transfer to be the corporate act of said corporation and further certifies that, to the best of his knowledge, information and belief, the matters and facts set forth therein with respect to the approval thereof are true in all material respects, under the penalties of perjury.



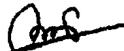
Thomas Orban, President

The undersigned, President of MILLION, INC., who executed on behalf of said corporation the foregoing Articles of Sale and Transfer, of which this certificate is made a part, hereby acknowledges, in the name and on behalf of said company, the foregoing Articles of Sale and Transfer to be the act of said company and further certifies that, to the best of his knowledge, information and belief, the matters and facts set forth therein with respect to the approval thereof are true in all material respects, under the penalties of perjury.



Mohammed Baten, President

Z:\WP\Baten\rd\the sale transfer.doc



Transferor



Transferee

CERTIFICATE OF SERVICE BY MAIL

I, Vira Minharez, 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 **APPLICANT'S SECOND SET INTERROGATORIES TO OPPOSER** on each person listed below, by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) 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, MD 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 July 22, 2011.

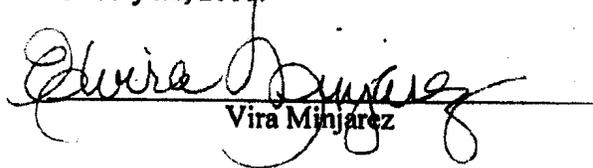

Vira Minharez

EXHIBIT 10

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

Soft Serve, Inc. d/b/a/
Sprinkles,

Opposer,

v.

Sprinkles Cupcakes, Inc.,

Applicant.

Opposition No. 91194188

Opposition No. 91195669

Opposition No. 91195985

Opposition No. 91195986

Opposition No. 91196035

Opposition No. 91196061

Opposition No. 91196087

Cancellation No: 92053109

APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS TO OPPOSER

Pursuant to Trademark Rule of Practice 2.120 (37 C.F.R. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 407, and Federal Rule of Civil Procedure 36, Applicant Sprinkles Cupcakes, Inc. requests that Opposer Soft Serve, Inc. d/b/a Sprinkles make the following admissions for the purpose of this proceeding.

For the purpose of this request, the following definitions shall apply:

DEFINITIONS

1. The terms "Soft Serve," "Opposer," "you," "your" and "yourself" refer to Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies or joint venturers.

2. The terms "Sprinkles Cupcakes" and "Applicant" refer to Applicant Sprinkles Cupcakes, Inc., and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The term "SPRINKLES" and "the mark SPRINKLES" means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

4. The term "frozen desserts" refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, or milk shakes.

5. Unless otherwise stated, the scope of these Requests for Admission is the United States.

6. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

7. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside its scope.

8. The use of a present tense shall include past tenses.

9. The use of the singular form of any word also includes the plural and vice versa.

10. The terms "all" and "each" shall each be construed to include the other.

INSTRUCTIONS

Opposer is required to admit or deny each request below based on the information available to Opposer.

REQUESTS FOR ADMISSIONS

1. You did not sell products or services under the mark SPRINKLES before November 14, 2002.

2. You did not offer for sale products or services under the mark SPRINKLES before November 14, 2002.

3. You did not sell frozen desserts under the mark SPRINKLES before November 14, 2002.

4. You did not offer for sale frozen desserts under the mark SPRINKLES before November 14, 2002.

5. You did not sell baked goods under the mark SPRINKLES before November 14, 2002.

6. You did not offer for sale baked goods under the mark SPRINKLES before November 14, 2002.
7. You did not sell baked goods under the mark SPRINKLES before February 2, 2004.
8. You did not offer for sale baked goods under the mark SPRINKLES before February 2, 2004.
9. You have never sold cupcake mixes under the mark SPRINKLES.
10. You have never sold cupcake mixes.
11. You have never offered for sale cupcake mixes under the mark SPRINKLES.
12. You have never offered for sale cupcake mixes.
13. You have never sold clothing under the mark SPRINKLES.
14. You have never sold clothing.
15. You have never offered for sale clothing under the mark SPRINKLES.
16. You have never offered for sale clothing.
17. You have never sold pet treats under the mark SPRINKLES.
18. You have never sold pet treats.
19. You have never offered for sale pet treats under the mark SPRINKLES.
20. You have never offered for sale pet treats.
21. You have never sold serving towers or trays under the mark SPRINKLES.
22. You have never sold serving towers or trays.
23. You have never offered for sale serving towers or trays under the mark SPRINKLES.
24. You have never offered for sale serving towers or trays.
25. You have never sold candy under the mark SPRINKLES.
26. You have never sold candy.
27. You have never offered for sale candy under the mark SPRINKLES.
28. You have never offered for sale candy.
29. You have never sold sweets under the mark SPRINKLES.
30. You have never sold sweets.
31. You have never offered for sale sweets under the mark SPRINKLES.
32. You have never offered for sale sweets.

33. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in April 2002.
34. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland every day of April 2002.
35. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in May 2002.
36. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in June 2002.
37. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in July 2002.
38. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in September 2002.
39. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in October 2002.
40. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in November 2002.
41. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in December 2002.
42. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in April 2002.
43. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in May 2002.
44. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in June 2002.
45. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in July 2002.
46. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in August 2002.
47. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in September 2002.

48. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in May 2002.
49. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in June 2002.
50. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in July 2002.
51. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in August 2002.
52. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in September 2002.
53. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in October 2002.
54. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in November 2002.
55. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in December 2002.
56. You have never sold products or services under the mark SPRINKLES online.
57. You have never offered for sale products or services under the mark SPRINKLES online.
58. You have never sold products or services under the mark SPRINKLES outside of Potomac, Maryland.
59. You have never offered for sale products or services under the mark SPRINKLES outside of Potomac, Maryland.
60. You have never sold products or services under the mark SPRINKLES other than at the store at 10148 River Rd., Potomac, Maryland.
61. You have never offered for sale products or services under the mark SPRINKLES other than at the store at 10148 River Rd., Potomac, Maryland.
62. You have never sold products or services under the mark SPRINKLES outside of Maryland.

63. You have never offered for sale products or services under the mark SPRINKLES outside of Maryland.
64. You have never advertised products or services under the mark SPRINKLES outside of Potomac, Maryland.
65. You have never advertised products or services under the mark SPRINKLES outside of Maryland.
66. You have never advertised products or services under the mark SPRINKLES outside of the Washington, D.C. metropolitan area.
67. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark outside of Potomac, Maryland.
68. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark outside of Maryland.
69. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark outside of the Washington, D.C. metropolitan area.
70. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark in April 2002.
71. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark before November 14, 2002.
72. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark in 2002.
73. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark in 2003.
74. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark in 2004.
75. You have never entered a license agreement pertaining to the mark SPRINKLES.
76. You do not claim use of the mark SPRINKLES through one or more licensees.
77. You do not claim use of the mark SPRINKLES through one or more predecessors-in-interest.
78. You have not produced any documents in this proceeding that evidence your allegations in ¶ 12 of your Notice of Opposition that "in the eyes and minds of a large part of the

public, the mark 'SPRINKLES' as recited in U.S. Trademark Application Serial No. 77/770,541 is closely associated with the goods and services with which Opposer used and is using 'SPRINKLES.'"

79. You do not operate or control a website.

80. You do not operate or control a website which promotes or advertises your products or services under the SPRINKLES mark.

81. You have never filed an application with the U.S. Patent and Trademark Office to register the SPRINKLES trademark.

82. You do not own a trademark registration issued by the U.S. Patent and Trademark Office for the mark SPRINKLES.

83. You have never filed an application with the state of Maryland to register the SPRINKLES trademark.

84. You do not own a trademark registration issued by the state of Maryland for the mark SPRINKLES.

85. All documents produced by Opposer in response to Applicant's First Set of Requests for Production of Documents in this proceeding are genuine pursuant to the Federal Rules of Evidence.

86. All documents produced by Opposer in response to Applicant's First Set of Requests for Production of Documents in this proceeding are part of the business records of Opposer.

87. All documents produced by Opposer in response to Applicant's First Set of Requests for Production of Documents in this proceeding are kept in the normal course of Opposer's business.

88. All documents produced by Applicant in response to Opposer's First Request for Production of Documents in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections by Applicant on the grounds of relevance.

89. All documents produced by Opposer in response to Applicant's Second Set of Requests for Production of Documents in this proceeding are genuine pursuant to the Federal Rules of Evidence.

90. All documents produced by Opposer in response to Applicant's Second Set of Requests for Production of Documents in this proceeding are part of the business records of Opposer.

91. All documents produced by Opposer in response to Applicant's Second Set of Requests for Production of Documents in this proceeding are kept in the normal course of Opposer's business.

92. All documents produced by Opposer in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections on the grounds of relevance.

93. All documents produced by Applicant in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections on the grounds of relevance.

94. The photograph in Exhibit A to Applicant's Second Set of Interrogatories to Opposer is a true and accurate depiction of signage on the store at 10148 River Rd., Potomac, Maryland.

95. The document in Exhibit B to Applicant's Second Set of Interrogatories to Opposer is a true and accurate copy of the Articles of Sale and Transfer between Soft Serve, Inc. and Million, Inc., as submitted to the Maryland Secretary of State.

Dated: July 22, 2011

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 

John L. Slafsky
Hollis Beth Hire

Attorneys for Applicant
Sprinkles Cupcakes, Inc.

CERTIFICATE OF SERVICE

I, Vira Minjarez, 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 same-day delivery by messenger. In the ordinary course of business, correspondence would be consigned to a messenger service on this date.

On this date, I caused to be served **APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS TO OPPOSER** on each person listed below, by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) 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, MD 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 July 22, 2011.

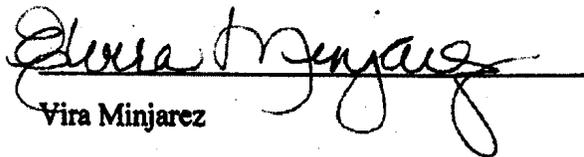

Vira Minjarez

EXHIBIT 11

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

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

**APPLICANT SPRINKLES CUPCAKES' NOTICE OF TAKING OF DEPOSITION OF
TOM ORBAN**

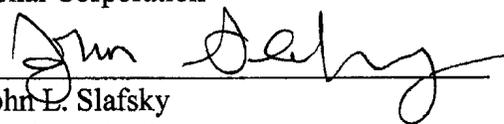
PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404.05, Sprinkles Cupcakes, Inc. ("Sprinkles") will take the deposition upon oral examination of Tom Orban.

The deposition will begin on September 22, 2011 at 9 a.m. at the offices of Mayer Brown LLP, 1999 K Street, N.W., Washington DC 20006-1101, and will continue on a mutually agreed upon day if it is not completed. The deposition will be recorded by stenographic, audio, video, and/or real-time transcription (e.g., LiveNote) means.

Dated: August 5, 2011

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
John L. Slafsky
Hollis Beth Hire

Attorneys for Applicant
Sprinkles Cupcakes, Inc.

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, 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:

APPLICANT SPRINKLES CUPCAKES' NOTICE OF TAKING OF DEPOSITION OF TOM ORBAN

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 August 5, 2011.


Elvira Minjarez

EXHIBIT 12

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

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

**APPLICANT SPRINKLES CUPCAKES' NOTICE OF TAKING OF DEPOSITION OF
OPPOSER SOFT SERVE PURSUANT TO FED. R. CIV. P. 30(b)(6)**

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404.05, Sprinkles Cupcakes, Inc. ("Sprinkles") will take the deposition upon oral examination of Soft Serve, Inc. d/b/a Sprinkles (Opposer). Pursuant to Federal Rule of Civil Procedure 30(b)(6), Opposer shall designate "one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf" as to information known or reasonably available to Opposer regarding the subject matters set forth in Exhibit A hereto.

The deposition will begin on September 21, 2011 at 9 a.m. at the offices of Mayer Brown LLP, 1999 K Street, N.W., Washington DC 20006-1101, and will continue on a mutually agreed upon day if it is not completed. The deposition will be recorded by stenographic, audio, video, and/or real-time transcription (e.g., LiveNote) means.

Dated: August 5, 2011

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
John L. Slafsky
Hollis Beth Hire

Attorneys for Applicant
Sprinkles Cupcakes, Inc.

EXHIBIT A
DEFINITIONS

1. The terms “Soft Serve,” “Opposer,” “you,” “your,” and “yourself” refer to Opposer Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies or joint venturers.

2. The terms “Sprinkles Cupcakes” and “Applicant” refer to Applicant Sprinkles Cupcakes, Inc., and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The terms “SPRINKLES” and “SPRINKLES mark” means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

4. The term “frozen desserts” refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, milk shakes, or ice cream cakes.

5. The term “store name” means the name of any retail or wholesale establishment owned or operated by you.

6. The term “Soft Serve’s store” refers to the business at 10148 River Rd., Potomac, Maryland, currently bearing the name SPRINKLES and formerly bearing other names or marks.

7. The term “person” means any natural person or any business, legal or governmental entity, or association.

8. Unless otherwise stated, the scope of these Interrogatories is the United States.

9. The term “document” as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any “writings and recordings”

and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

10. The term "communication" is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

11. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

12. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside its scope.

13. The use of a present tense shall include past tenses.

14. The use of the singular form of any word also includes the plural and vice versa.

15. The terms "all" and "each" shall each be construed to include the other.

TOPICS

1. Communications between Soft Serve and Sprinkles.

2. Communications between Soft Serve and any person regarding this consolidated opposition matter and all individual opposition or cancellation matters between Soft Serve and Sprinkles.
3. Soft Serve's use of the SPRINKLES mark, including all goods and services with which the mark has been used, and the date on which and manner in which the mark was used in connection with each good or service.
4. The date Soft Serve's first sign, and any subsequent sign, bearing the SPRINKLES mark was created, hung, and displayed at the Soft Serve store, and the identities and contact information of the persons involved in creating, hanging, and displaying the sign.
5. The date Soft Serve stopped using the I CAN'T BELIEVE IT'S YOGURT name and trademark, including the date Soft Serve notified I Can't Believe It's Yogurt or any other person of Soft Serve's cessation of use of the I CAN'T BELIEVE IT'S YOGURT name and trademark, and the contents of such communication and all related communications.
6. The name and mark Soft Serve used immediately before it adopted the SPRINKLES mark, the date Soft Serve stopped using such name and mark.
7. The date Soft Serve notified its landlord or any other person of its cessation of use of the name and mark Soft Serve used immediately before it adopted the SPRINKLES mark, and the contents of such communication and all related communications.
8. The date Soft Serve notified its landlord or any other person of its adoption or use of the SPRINKLES mark, and the contents of such communication and all related communications.
9. Soft Serve's continuity of use of the SPRINKLES mark.
10. Sales and advertising of goods and services under or in connection with the SPRINKLES mark.
11. Trademarks Soft Serve used at Soft Serve's store before or after the adoption of the SPRINKLES mark, including the dates Soft Serve started and stopped using such names and trademarks.

12. Soft Serve's geographic scope of use of the SPRINKLES mark, including the point of sale and delivery for each good or service offered under the mark.
13. Soft Serve's customers, including the geographic origin of customers for each good or service offered under the SPRINKLES mark.
14. The price of goods and services offered under the SPRINKLES mark, for each year since the adoption of the SPRINKLES mark for each good or service, including the average purchase amount per customer per order.
15. Whether Soft Serve's SPRINKLES trademark is famous.
16. Soft Serve's channels of trade for goods and services offered under the SPRINKLES mark.
17. Alleged instances of actual confusion arising from Sprinkles' use of the SPRINKLES mark, including the dates on which the actual confusion occurred, the circumstances underlying the alleged actual confusion, the number of misdirected sales as a result of the alleged actual confusion, and the amount (in dollars) of sales lost as a result of the alleged actual confusion.
18. Any person other than Soft Serve's ownership of and use of the SPRINKLES mark in the United States.
19. Soft Serve's relationship and business dealings with Million, Inc., including the Articles of Sale and Transfer attached as Exhibit B to Sprinkles Second Set of Interrogatories to Soft Serve.
20. Soft Serve's relationship and business dealings with Mohammed Baten.
21. The basis for and evidence supporting the allegations and claims in the Notices of Opposition and Cancellation in this action.
22. Soft Serve's documents produced and discovery responses served in this case.
23. Efforts by Soft Serve to monitor or challenge use of its trademarks by third parties.

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, 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:

**APPLICANT SPRINKLES CUPCAKES' NOTICE OF TAKING OF
DEPOSITION OF OPPOSER SOFT SERVE PURSUANT TO FED. R. CIV. P.
30(b)(6)**

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 August 5, 2011.


Elvira Minjarez

EXHIBIT 13

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

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

**APPLICANT SPRINKLES CUPCAKES'
NOTICE OF TAKING OF DEPOSITION OF SAIRA HAIDER**

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404.07, Sprinkles Cupcakes, Inc. ("Sprinkles") will take the deposition upon written question of Saira Haider.

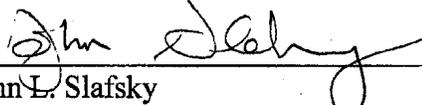
The deposition will begin on October 6, 2011 at 9 a.m. at Harbottle & Lewis LLP, Hanover House, 14 Hanover Square, London, W1S 1HP, and will continue on a mutually agreed upon day if it is not completed. The deposition will be recorded by stenographic, audio, video, and/or real-time transcription (e.g., LiveNote) means.

The questions for the deposition are attached in Schedule A.

Dated: August 10, 2011

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
John L. Slafsky
Hollis Beth Hire

Attorneys for Applicant
SPRINKLES CUPCAKES, INC.

SCHEDULE A

1. Good morning. Please state and spell your full name for the record.
2. You have been named as a witness in a trademark case involving Soft Serve, Inc. d/b/a Sprinkles and Sprinkles Cupcake, Inc. We are taking your deposition by written question today. The court reporter will read the questions to you, and will record your response. Please be sure to speak your response audibly, as head shaking and other gestures cannot be recorded onto the transcript. OK?
3. Please let the court reporter know if you need to take a break, but please wait until you finish the answer to a pending question before taking a break. OK?
4. Is there anything that would prevent you from testifying truthfully today?
5. If so, what is it?
6. Did you speak with anyone in preparation for the deposition today?
7. If so, whom did you speak with, how many times, and for how long?
8. Did you review any documents in preparation for this deposition?
9. If so, which ones, and who provided them?
10. How else did you prepare for this deposition?
11. Have you ever worked at or otherwise been associated with an ice cream or frozen yogurt shop in Potomac, Maryland called Sprinkles?
12. We're going to refer to an "ice cream shop" throughout this deposition; please assume that when we refer to an "ice cream shop," we are referring to the shop now called "Sprinkles" at 10148 River Road in Potomac, Maryland. OK?
13. When did you first learn of or visit this ice cream shop?
14. What was the ice cream shop called when you first learned of it?
15. How long was it called that name?
16. Was there any other name for the ice cream shop?
17. Did you work at this ice cream shop?
18. How did you come to work at this ice cream shop?
19. When (what day, month, and year) did you start work at this ice cream shop?

20. What was the ice cream shop called on your first day of work?
21. What did the sign on the ice cream shop read on your first day of work?
22. Did the ice cream shop change its name at any time since you first became acquainted with the shop?
23. What was the new name?
24. When did you first learn of the name change?
25. How did you learn of the name change?
26. Did the name change occur?
27. When did it occur? Please be specific as to the day, month, and year.
28. Was the sign outside the ice cream shop displaying the old name removed?
29. When? Please be specific as to the day, month, and year.
30. Was a sign placed or hung outside the ice cream shop displaying the new name?
31. When? Please be specific as to the day, month, and year.
32. Was the new name advertised in any way?
33. If so, how was it advertised?
34. When did these advertisements with the new name first get distributed? Please be specific as to the day, month, and year.
35. Did the name of the ice cream shop change any other time that you know of?
36. If so, please repeat the questions for nos. 23-34 above for each new name.
37. Please review Exhibit No. 1 to this Schedule. Do you recognize the sign in that photograph?
38. What is it?
39. Is it the sign currently displayed at the ice cream shop to your knowledge?
40. When was that sign first hung or displayed at the ice cream shop?
41. What kinds of products were sold at the ice cream shop when you worked there or were acquainted with the ice cream shop?
42. Any other products? Please list as many as you can remember.

43. Did you ever see or hear of any celebrities visiting the ice cream shop?
44. If so, who were they, when did they visit, and how did you hear about it?
45. Do you know Tom Orban?
46. If so, how did you come to know him and when did you meet him?
47. Have you spoken with or otherwise communicated with Tom Orban or his lawyer about this case, the Sprinkles name, or about anything we've spoken about today?
48. If so, when, and what was said in the conversation or communication?
49. Did you speak with or otherwise communicate with Tom Orban or his lawyer about this case, the Sprinkles name, or about anything we've spoken about today any other time?
50. If so, please repeat the questions for nos. 47-48 for each time you spoke with Tom Orban or his lawyer about this case, the Sprinkles name, or about anything we've spoken about today.
51. Do you know or know of anyone named Mohammed Baten?
52. If so, who is he, and what is his relationship or connection with Tom Orban or the ice cream shop?
53. Do you know or know of an entity called Million, Inc.?
54. If so, what do you know about it, and what is its relationship or connection with Tom Orban or the ice cream shop?
55. Have you heard of Sprinkles Cupcakes?
56. If so, how did you come to know about them, and when?

CERTIFICATE OF SERVICE BY COURIER

I, Elvira Minjarez, 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 delivery by overnight courier. In the ordinary course of business, correspondence would be deposited with an international overnight courier on this date.

On this date, I served:

**APPLICANT SPRINKLES CUPCAKES' NOTICE OF TAKING OF
DEPOSITION OF SAIRA HAIDER**

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 delivery with international oversight courier on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Saira Haider
89a Leathwaite Road
London, SW11 6RN
United Kingdom

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 August 10, 2011.


Elvira Minjarez

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, 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:

**APPLICANT SPRINKLES CUPCAKES' NOTICE OF TAKING OF
DEPOSITION OF SAIRA HAIDER**

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 August 10, 2011.


Elvira Minjarez

EXHIBIT 14

UNITED STATES DISTRICT COURT
for the
District of Colorado

SOFT SERVE, INC. d/b/a SPRINKLES,
Plaintiff
v.
SPRINKLES CUPCAKES, INC.
Defendant
Civil Action No. 91194183 (consolidated action)
(If the action is pending in another district, state where:
Trademark Trial and Appeal Board)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: AARON YOCHES
5200 S. Ulster St., Apt. 1612, Greenwood Village, CO 80111

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place and Date and Time. Place: Esquire Court Reporting Services, 303 E. 17th Ave., Suite 565, Denver, CO 80203. Date and Time: 10/03/2011 9:00 am

The deposition will be recorded by this method: Stenographically

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See attached Schedule A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:
CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Sprinkles Cupcakes Inc., who issues or requests this subpoena, are:

John L. Slafsky and Hollis Beth Hire
Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304
Bus: (650) 493-9300, Email: jslafsky@wsgr.com, hhire@wsgr.com

Civil Action No. 91194188 (consolidated action)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

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

**SCHEDULE A TO APPLICANT SPRINKLES CUPCAKES'
SUBPOENA TO AARON YOCHES**

For the purpose of this subpoena, the following definitions and instructions shall apply:

DEFINITIONS

1. The terms "Soft Serve" or "Opposer" refer to Opposer Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.
2. The terms "Sprinkles Cupcakes" and "Applicant" refer to Applicant Sprinkles Cupcakes, Inc. and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.
3. The term "Million" refers to Million, Inc., and includes any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors,

owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

4. The terms “SPRINKLES” and “the mark SPRINKLES” means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

5. The terms “Opposer’s SPRINKLES product or service” and “Opposer’s SPRINKLES products or services” means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by Soft Serve in connection with the mark SPRINKLES.

6. The terms “Applicant’s SPRINKLES product or service” and “Applicant’s SPRINKLES products or services” means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by Applicant in connection with the mark SPRINKLES.

7. The term “the Potomac store” refers to the business at 10148 River Rd., Potomac, Maryland, currently bearing the name SPRINKLES and formerly bearing other names or marks.

8. The term “frozen desserts” refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, milk shakes, or ice cream cakes.

9. The term “person” means any natural person or any business, legal or governmental entity, or association.

10. Unless otherwise stated, the scope of this subpoena is the United States.

11. The term “document” as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any “writings and recordings” and “photographs” as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed,

embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

12. The term "communication" is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

13. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

14. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

15. The use of a present tense shall include past tenses.

16. The use of the singular form of any word also includes the plural and vice versa.

17. The terms "all" and "each" shall each be construed to include the other.

INSTRUCTIONS

1. You are requested to produce for inspection and copying all responsive documents and things in your possession, custody or control, including all documents and things in the custody of your attorneys, consultants, agents, other representatives, and other persons or entities subject to your control.

2. You are to produce the documents and things as they are kept in the ordinary course of business, with appropriate markings or designations so that it may be determined to which request they are responsive.

3. You are to produce the original and all non-identical copies of each requested document or thing, including all copies which bear any additional file stamps, marginal notes or other additional markings or writings that do not appear on the original. The production shall include the file, envelope, folder, binder, or other container in which the responsive documents and things are kept. If, for any reason, the container cannot be produced, you are to produce copies of all labels or other identifying markings.

4. Documents that exist in digital format and constitute or comprise databases or other tabulations or collections of data or information should be produced in their native format. Documents that exist in digital format and constitute or comprise written communications between natural persons (e.g., e-mail messages, internal memos, letters, etc.) should be produced in OCR (optical character recognition) TIFF file format with a Concordance load-file.

5. If you cannot fully respond to any request after a diligent attempt, respond to the request to the extent possible and specify the portion of the request to which you are unable to respond.

6. If you claim that any request, definition or instruction is ambiguous, state the language you claim is ambiguous and the interpretation you have used to respond to the request.

7. If you contend that any document or thing has been lost or destroyed, set forth the contents of the document or thing, the location of any copies, the date of loss or destruction, the name of the person who ordered or authorized the destruction, if any, and the authority and reasons for such destruction.

8. If you decline to produce any information, document, or thing on the basis of the attorney-client, work product, or other privilege, respond to so much of the discovery request as

is not subject to the claimed objection, and for each document or thing, provide the following information:

- a. the type and title of the document or thing;
 - b. the general subject matter of the document or description of the thing;
 - c. the date of its creation;
 - d. the identity of the document's author(s), addressee(s) and recipient(s);
 - e. the nature of the privilege being claimed; and
 - f. in detail, all facts upon which you base your claim of privilege.
9. Complete production is to be made on the date and at the time indicated above.

DOCUMENTS AND THINGS REQUESTED

Consistent with the foregoing definitions and instructions, please provide the following documents and things:

DOCUMENT REQUEST NO. 1:

All documents relating to Soft Serve.

DOCUMENT REQUEST NO. 2:

All documents relating to Tom Orban.

DOCUMENT REQUEST NO. 3:

All documents relating to Million.

DOCUMENT REQUEST NO. 4:

All documents, including all communications, concerning the name change of the Potomac store to SPRINKLES, including any advertising or notification of the name change, and including all communications with Soft Serve, Tom Orban, or any landlord, building manager, customer, supplier, vendor, or any other person about the name change.

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, 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:

APPLICANT SPRINKLES CUPCAKES' SUBPOENA TO AARON YOCHES

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 August 11, 2011.


Elvira Minjarez

EXHIBIT 15

UNITED STATES DISTRICT COURT

for the
District of Columbia

SOFT SERVE, INC. d/b/a SPRINKLES,

Plaintiff

v.

SPRINKLES CUPCAKES, INC.

Defendant

Civil Action No. 91194188 (Consolidated Action)

(If the action is pending in another district, state where:

Trademark Trial and Appeal Board

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: ZUCKERMAN GRAVELY MANAGEMENT, INC.

c/o The Corporation Trust Incorporated, 351 West Camden Street, Baltimore, MD 21201

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See attached Schedule A.

Place: Wilson Sonsini Goodrich & Rosati
1700 K Street, NW, 5th Floor
Washington, DC 20006-3817

Date and Time:

09/23/2011 1:00 pm

The deposition will be recorded by this method: Stenographically

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See attached Schedule A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/24/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Sprinkles Cupcakes, Inc.

, who issues or requests this subpoena, are:

John L. Slafsky and Hollis Beth Hire

Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304

Bus: (650) 493-9300, Email: jslafsky@wsgr.com, hhire@wsgr.com

Civil Action No. 91194188 (Consolidated Action)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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
Opposer,	)	Opposition No. 91195669
	)	Opposition No. 91195985
v.	)	Opposition No. 91195986
	)	Opposition No. 91196035
SPRINKLES CUPCAKES, INC.,	)	Opposition No. 91196061
	)	Opposition No. 91196087
Applicant.)	
	)	Cancellation No: 92053109
)	

**SCHEDULE A TO APPLICANT SPRINKLES CUPCAKES'
SUBPOENA TO ZUCKERMAN GRAVELY MANAGEMENT**

For the purpose of this subpoena, the following definitions and instructions shall apply:

DEFINITIONS

1. The terms "Zuckerman" or "you" refer to Zuckerman Gravelly Management, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

2. The terms "Soft Serve" or "Opposer" refer to Opposer Soft Serve, Inc. d/b/a Sprinkles, and include any persons controlled by or acting on behalf of that entity, including but not limited to all partners, officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The terms "Sprinkles Cupcakes" and "Applicant" refer to Applicant Sprinkles Cupcakes, Inc. and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and

attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

4. The terms "SPRINKLES" and "the mark SPRINKLES" means any word, name, symbol or device or other designation of origin incorporating the letter string SPRINKLES, or its phonetic equivalent, or any domain name incorporating the letter string SPRINKLES.

5. The terms "Opposer's SPRINKLES product or service" and "Opposer's SPRINKLES products or services" means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by Soft Serve in connection with the mark SPRINKLES.

6. The terms "Applicant's SPRINKLES product or service" and "Applicant's SPRINKLES products or services" means any product or service offered for sale, offered for distribution, sold, distributed, advertised, marketed, promoted or rendered in the U.S. by Applicant in connection with the mark SPRINKLES.

7. The term "the Potomac store" refers to the business at 10148 River Rd., Potomac, Maryland, currently bearing the name SPRINKLES and formerly bearing other names or marks.

8. The term "frozen desserts" refers to ice cream, frozen yogurt, ice cream sundaes, sherbets, ices, sorbets, milk shakes, or ice cream cakes.

9. The term "person" means any natural person or any business, legal or governmental entity, or association.

10. Unless otherwise stated, the scope of this subpoena is the United States.

11. The term "document" as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any "writings and recordings" and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed,

embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

12. The term "communication" is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

13. The terms "relating to" and "related to" mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

14. The terms "and" and "or" and the term "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

15. The use of a present tense shall include past tenses.

16. The use of the singular form of any word also includes the plural and vice versa.

17. The terms "all" and "each" shall each be construed to include the other.

DEPOSITION TOPICS

1. Communications between you and Soft Serve.

2. Communications between you and any person regarding this consolidated opposition matter and all individual opposition or cancellation matters between Soft Serve and Sprinkles.

3. Soft Serve's use of the SPRINKLES mark, including all Opposer's SPRINKLES products or services, and the date on which and manner in which the SPRINKLES mark was used in connection with each product or service.
4. The date Soft Serve notified you or any other person of its adoption or use of the SPRINKLES mark, and the contents of such communication and all related communications.
5. The continuity of use of the SPRINKLES mark.
6. Sales and advertising of goods and services under or in connection with the SPRINKLES mark.
7. Soft Serve's geographic scope of use of the SPRINKLES mark, including the point of sale and delivery for each good or service offered under the mark.
8. Your relationship and business dealings with Soft Serve and Tom Orban.
9. Your, Soft Serve's, and Tom Orban's relationship and business dealings with Mohammed Baten and Million, Inc.

REQUESTS FOR DOCUMENTS

INSTRUCTIONS

1. You are requested to produce for inspection and copying all responsive documents and things in your possession, custody or control, including all documents and things in the custody of your attorneys, consultants, agents, other representatives, and other persons or entities subject to your control.
2. You are to produce the documents and things as they are kept in the ordinary course of business, with appropriate markings or designations so that it may be determined to which request they are responsive.
3. You are to produce the original and all non-identical copies of each requested document or thing, including all copies which bear any additional file stamps, marginal notes or other additional markings or writings that do not appear on the original. The production shall include the file, envelope, folder, binder, or other container in which the responsive documents

and things are kept. If, for any reason, the container cannot be produced, you are to produce copies of all labels or other identifying markings.

4. Documents that exist in digital format and constitute or comprise databases or other tabulations or collections of data or information should be produced in their native format. Documents that exist in digital format and constitute or comprise written communications between natural persons (e.g., e-mail messages, internal memos, letters, etc.) should be produced in OCR (optical character recognition) TIFF file format with a Concordance load-file.

5. If you cannot fully respond to any request after a diligent attempt, respond to the request to the extent possible and specify the portion of the request to which you are unable to respond.

6. If you claim that any request, definition or instruction is ambiguous, state the language you claim is ambiguous and the interpretation you have used to respond to the request.

7. If you contend that any document or thing has been lost or destroyed, set forth the contents of the document or thing, the location of any copies, the date of loss or destruction, the name of the person who ordered or authorized the destruction, if any, and the authority and reasons for such destruction.

8. If you decline to produce any information, document, or thing on the basis of the attorney-client, work product, or other privilege, respond to so much of the discovery request as is not subject to the claimed objection, and for each document or thing, provide the following information:

- a. the type and title of the document or thing;
- b. the general subject matter of the document or description of the thing;
- c. the date of its creation;
- d. the identity of the document's author(s), addressee(s) and recipient(s);
- e. the nature of the privilege being claimed; and

- f. in detail, all facts upon which you base your claim of privilege.
9. Complete production is to be made on the date and at the time indicated above.

DOCUMENTS AND THINGS REQUESTED

Consistent with the foregoing definitions and instructions, please provide the following documents and things:

DOCUMENT REQUEST NO. 1:

All documents relating to Soft Serve.

DOCUMENT REQUEST NO. 2:

All documents relating to Tom Orban.

DOCUMENT REQUEST NO. 3:

Documents sufficient to show the principals and other persons involved or affiliated with Zuckerman.

DOCUMENT REQUEST NO. 4:

All documents relating to Mohammed Baten.

DOCUMENT REQUEST NO. 5:

All documents relating to Million, Inc.

DOCUMENT REQUEST NO. 6:

All documents, including all communications, concerning the name change of the Potomac store to SPRINKLES, including any advertising or notification of the name change, and including all communications with Soft Serve, Tom Orban, or any landlord, building manager, customer, supplier, vendor, or any other person about the name change.

CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, 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:

**APPLICANT SPRINKLES CUPCAKES' SUBPOENA OF ZUCKERMAN
GRAVELY MANAGEMENT**

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 August 24, 2011.

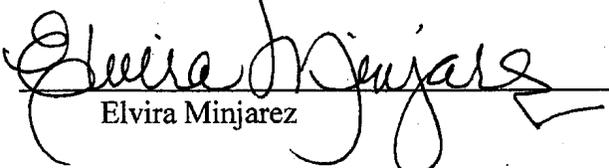

Elvira Minjarez

EXHIBIT 16

II. CATEGORIES AND LOCATION OF DOCUMENTS.

A. Opposer is currently undertaking the collection of, and will produce, documents and things bearing upon the following subjects:

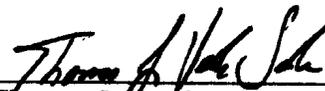
1. Opposer's use and first use of "SPRINKLES"
2. The recognition afforded Opposer's "SPRINKLES"
3. Samples of Opposer's use of "SPRINKLES"
4. Opposer's contention that there exists a likelihood of confusion.

Documents and things relating to these categories are currently being collected from various locations and will be produced from the offices of Opposer's counsel. As the identification of documents and things is made without the benefit of any discovery, Opposer reserves the right to amend its disclosures to add additional categories of documents.

HALL & VANDE SANDE, LLC

Date: _____

5/28/10



Thomas J. Wande Sande
Attorney for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
Telephone No. (301) 983-2500
Facsimile No. (301) 983-2100

EXHIBIT 17

CERTIFICATE OF SERVICE

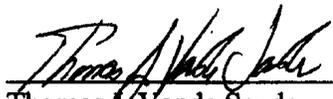
The undersigned, Thomas J. Vande Sande, attorney for Opposer, hereby certifies that one (1) copy of the foregoing "OPPOSER'S SUPPLMENTAL DISCLOSURES" was this day served on Applicant by mailing same, first class mail, to:

Hollis Beth Hire, Esquire
Wilson, Sonsini, Goodrich and Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

HALL & VANDE SANDE, LLC

Date: _____

10/4/10



Thomas J. Vande Sande
Attorneys for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
(301) 983-2500

EXHIBIT 18

2001

BELL ATLANTIC IS NOW VERIZON

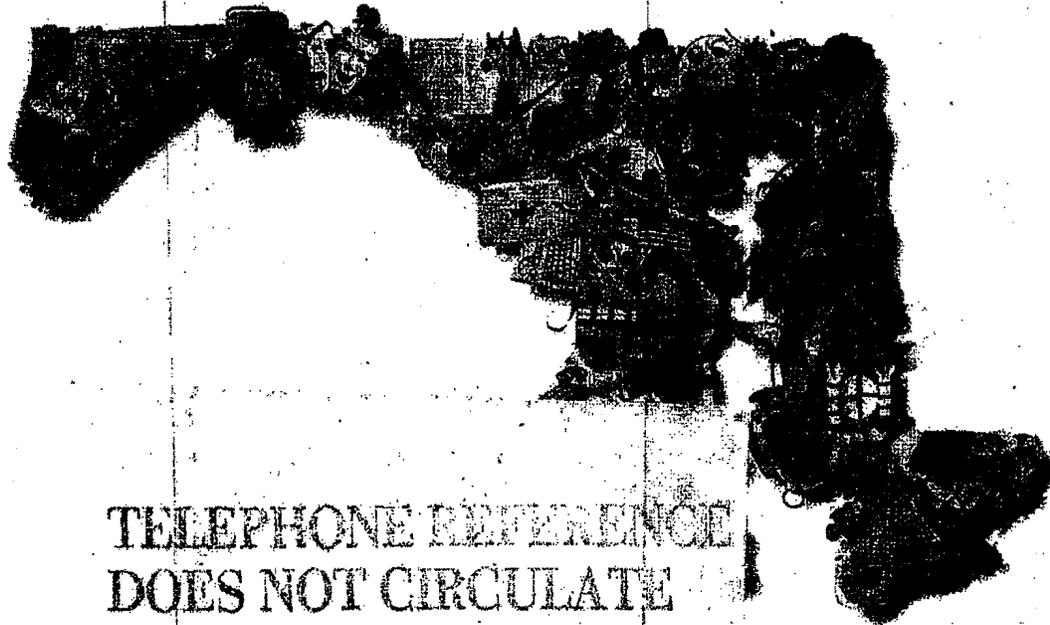
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Springhouse Assisted Living... 301.657-9111

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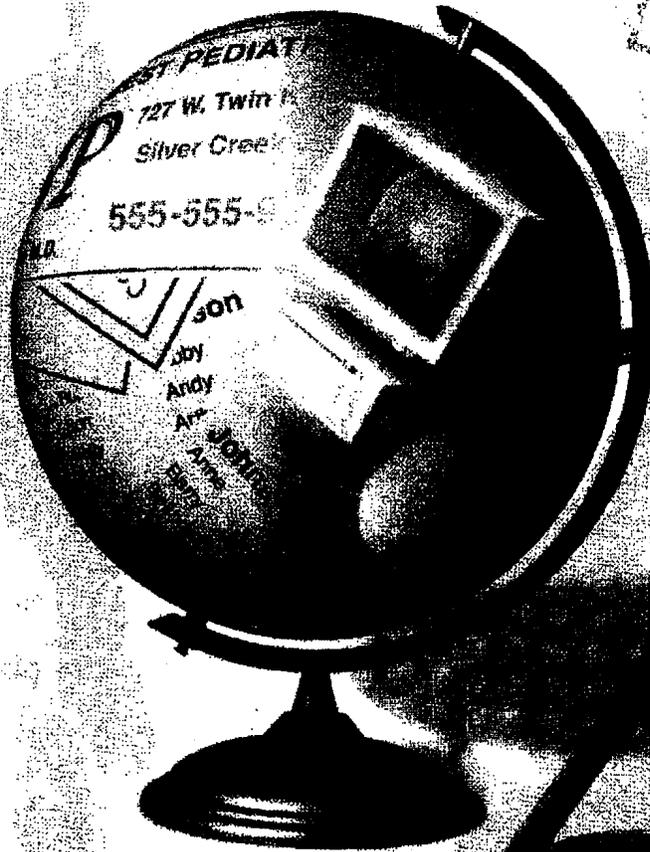
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EXHIBIT 19

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
	)	Consolidated Proceeding No. 91194188
Petitioner,)	
)	
v.	)	Cancellation No. 92053109
)	
Sprinkles Cupcakes, Inc.)	
)	
Registrant.)	
<hr/>		

DECLARATION OF THOMAS ORBAN

I, Thomas Orban, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declare as follows:

1. I am the president and owner of Soft Serve, Inc., the Petitioner in the above-captioned Cancellation proceeding. I have personal knowledge of the matters set forth herein and am competent to so testify.
2. Soft Serve, Inc. owns and operates SPRINKLES, a retail shop located on Falls Road in Potomac, Maryland. SPRINKLES offers to the general public a broad array of products including bakery goods. Included in the array of bakery goods offered are bagels, donuts, pies, muffins, brownies, cupcakes, cakes and pastries. Previously, I have offered other bakery goods under the SPRINKLES trade name and mark, such as cookies, pound cakes, fudge and croissants. Some bakery goods have been and are

baked on the SPRINKLES premises and others, such as bagels and donuts for instance, have always been purchased from third parties and re-sold by SPRINKLES. Ex. 70 hereto comprises representative checks from the pre-February 1, 2004 era evidencing Soft Serve's purchase of various bakery goods that were then resold by SPRINKLES under the SPRINKLES mark.

3. At one point Soft Serve owned several additional stores as a franchisee of I Can't Believe Its Yogurt, and a licensee of Taco Bell and Blimpie. Beginning in the second half of the 1990s I disposed of all of Soft Serve's stores but for the current Potomac location and a Blimpie location which I disposed of in 2001 through a sale to Million, Inc. By no later than the summer of 2002 I had adopted SPRINKLES as the trade name for the Potomac shop and as the trademark and service mark for goods offered and services rendered through that shop.
4. Some months subsequent to my adoption of SPRINKLES as a name and mark, specifically, November 21, 2002, I filed with the state of Maryland a trade name registration application. (Ex. 69). That application identifies "donuts and ice cream" as goods offered at the SPRINKLES retail store under the SPRINKLES trade name.
5. I have sold bakery goods as well as ice cream and frozen yogurt products at the Potomac location continuously since my adoption of SPRINKLES as a mark and trade name to the present.

6. Soft Serve's sale of bakery goods under the SPRINKLES trade name and mark has been and continues to remain a substantial part of my business. In fact, the sale of bakery goods comprises fully one-third of SPRINKLES' business.
7. The SPRINKLES mark has been used on stickers for boxes and bags in which bakery goods are provided to customers, in advertisements and coupons, on menus, hats and shirts, on signs, in correspondence, electronic gift cards, Yelp, Twitter, Facebook, Diet to Go, and also in other customary manners such as coupons issued over the years to potential customers. Exs. 2-67, 69-78 and 80 evidence various representative uses made of the SPRINKLES mark and name. SPRINKLES is used in its capacity as both a trade name and a mark, in standard characters and also as a portion of a design.
8. In the many years of usage of SPRINKLES I have never received a complaint or warning from anyone objecting to my usage of the SPRINKLES mark. Nor over these many years did I have any occasion to assert my rights against any third party until the appearance of Sprinkles Cupcakes.
9. SPRINKLES' customers include virtually anyone who might enjoy a bagel, muffin, pastry, cupcake, pie, donut, ice cream, frozen yogurt product or beverage. Our customers include commuters traveling into and out of Northwest Washington, many via the Falls Road to MacArthur Boulevard or Canal Road routes into Georgetown. In addition, SPRINKLES is frequented by innumerable individuals who bicycle, hike, paddle or just come to visit the many outdoor and natural activities and attractions in

and near Potomac. In fact, SPRINKLES is the first location offering any food or beverage to those entering Potomac from the direction of Great Falls, Glen Echo and the C & O Towpath in the Potomac area.

10. Potomac is an affluent area and as such provides SPRINKLES with its share of national and local celebrities, including sports stars, politicians and show business personalities. Some of these individuals are SPRINKLES customers. I am aware of the fact that many SPRINKLES customers work, dine, visit and shop in Northwest Washington generally, and in Georgetown specifically.
11. Substantial goodwill has been generated in the SPRINKLES name and mark not only through the many years of usage but also as a result of promotion of the name, mark, goods and services offered under SPRINKLES through community and charitable efforts. More specifically, we routinely contribute bakery goods and ice cream products to churches, synagogues, schools and other community organizations. These goods are offered under the SPRINKLES name and mark.
12. Attached hereto as Exs. 2-66 are true and accurate copies of various representative pieces of correspondence evidencing the efforts undertaken and the goodwill generated under the SPRINKLES mark in connection with charitable and community activities.
13. Goodwill under the SPRINKLES name and mark is exhibited by various additional facts. In 2007-2008 SPRINKLES was recognized by DC CHEFS Magazine. (Ex. 67). In 2008 literally hundreds of loyal customers rallied in a successful effort to support SPRINKLES when Soft Serve became involved in a landlord dispute. In

2009 the undersigned was fortunate enough to be named Grand Marshall of the Potomac Day Parade by the Potomac Chamber of Commerce.

14. SPRINKLES has been widely respected and commercially successful. Sales since the adoption of the SPRINKLES name and mark have increased each year. (Ex. 1). I estimate that SPRINKLES makes somewhere in the neighborhood of 120,000 sales per year. However, sales, and the reputation of SPRINKLES, have grown in spite of the fact that Soft Serve has not been required to budget huge sums for advertising. (Ex. 79). SPRINKLES' reputation for quality products, extensive community involvement, and the thousands of annual visitors to the Potomac area, have allowed SPRINKLES to achieve considerable success without the commitment of major advertising expenditures. In addition, electronic advertising opportunities, including Facebook and Twitter, now present significant promotional opportunities at almost no cost. I fear that substantial competition from a significant competitor such as Sprinkles Cupcakes will have, as but one extremely negative side effect, a need to expend additional sums in educating and reeducating the public in order to avoid inevitable continued confusion.
15. For some months prior to the actual opening, Sprinkles Cupcakes' website had first indicated that the Georgetown opening would occur in January and later called for the D.C. opening in February of 2011.
16. In spite of its knowledge of the existence and location of SPRINKLES, Sprinkles Cupcakes, opened its D.C. location in Georgetown and began the sale of its bakery

goods through that location in March 2011, approximately one year after the launching of the first of Soft Serve's challenges to Sprinkles Cupcakes' trademark applications and approximately four months subsequent to a visit to Soft Serve's SPRINKLES made by Sprinkles Cupcakes co-founder Charles Nelson.

17. With the recent opening (March 2011) of the Georgetown store, SPRINKLES and Sprinkles Cupcakes, through the sale of their respective bakery goods, have become competitors. With the Georgetown opening, and pre-opening announcements, have come numerous instances of confusion. In the months since the announcement of the opening of Sprinkles Cupcakes' Georgetown store we have witnessed more than twenty instances of confusion, with most occurring in the eight weeks between the store's opening and the drafting of this Declaration in early May 2011.
18. On October 24, 2010, a date subsequent to Sprinkles Cupcakes' announcement of its plans to open a SPRINKLES retail shop featuring baked goods in Georgetown, I received a telephone call from a writer for a local high school newspaper. The writer had contacted me in an effort to obtain details concerning my move of SPRINKLES to Georgetown. Obviously, as I have had no plans to move SPRINKLES to Georgetown, the writer had confused my business with that of Sprinkles Cupcakes. As the publication of an article announcing the relocation of my business could be expected to have a significant negative impact upon that business, this incident caused me considerable concern.

19. On January 7, 2011 I received a telephone call from an individual who had confused my business with what the caller referred to as "SPRINKLES LA". Sprinkles Cupcakes, of course, was founded, and is headquartered, in California. Similarly, on January 31, 2011 I received a telephone call inquiring as to whether my business was Sprinkles Cupcakes. I received a similar call on February 4, 2011.
20. Ten days later, on February 14, 2011, a caller to SPRINKLES asked whether I was opening in Georgetown. The next day, February 15, 2011, a visitor to my store asked me whether I was opening another SPRINKLES store in Georgetown.
21. On February 17, 2011, approximately three weeks prior to the opening of the Sprinkles Cupcakes location in Georgetown, a visitor to my store asked whether I was opening in D.C. and then stated that he had heard of the opening of a SPRINKLES shop in Washington over the radio.
22. On March 25, 2011 approximately twenty days subsequent to the opening of Sprinkles Cupcakes in Georgetown, a visitor to SPRINKLES asked whether there was another one of these shops in Georgetown.
23. On April 10, 2011 a visitor to my shop discussed an article he had read concerning the SPRINKLES shop in Georgetown and inquired as to whether we were a chain.
24. On April 16, 2011 a caller to my business asked whether I would be closing at the regular time. When I responded in the affirmative the caller stated, "So you'll be open until 7:00 p.m.?" I replied that the store would be open until at least 10:00 p.m. (my normal closing time) whereupon the caller stated that my website indicated that

we closed at 7:00 p.m. on Saturdays. As SPRINKLES has never closed at 7:00 p.m. on Saturdays, I asked whether the caller was looking for Sprinkles Cupcakes. The caller indicated that in fact this was the case. I am aware of the fact that Sprinkles Cupcakes has a website and that its website indicates that it closes at 7:00 on Saturdays.

25. On April 20, 2011 I received a call at SPRINKLES from an individual who was calling to "make sure" this was Sprinkles Cupcakes.
26. On April 25, 2011 a caller asked whether I was affiliated with SPRINKLES in Georgetown.
27. Submitted in support of Soft Serve's Motion for Summary Judgment as exhibits are true and accurate copies of each document as identified in Petitioner's Motion and in this Declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Potomac, Md. on May 3, 2011.

By:



Thomas Orban, President
Soft Serve, Inc. d/b/a SPRINKLES

EXHIBIT 20

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

Atty. Dkt. 4221.014

Soft Serve, Inc. d/b/a Sprinkles,)	
	)	Opposition No. 91194188
	)	Opposition No. 91195669
	)	Opposition No. 91195985
vs.	)	Opposition No. 91195986
	)	Opposition No. 91196035
	)	Opposition No. 91196061
Sprinkles Cupcakes, Inc.	)	Opposition No. 91196087
)	
Applicant.	)	Cancellation No. 92053109

**OPPOSER'S RESPONSES TO APPLICANT'S
SECOND SET OF REQUESTS FOR PRODUCTION TO OPPOSER**

Pursuant to Federal Rule of Civil Procedure 34 and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer Soft Service, Inc. d/b/a Sprinkles ("Opposer Sprinkles"), by and through its undersigned counsel, hereby responds to the Second Set of Requests For Production of Documents to Opposer ("Requests") of Applicant Sprinkles Cupcakes, Inc. as follows:

GENERAL OBJECTIONS

GENERAL OBJECTION NO. 1:

Opposer Sprinkles objects to the Requests, to each and every individual request contained therein, and to the "Definitions" contained in the Requests, to the extent they are inconsistent

with or seek to impose obligations greater than those imposed by the Federal Rules of Civil Procedure and the TBMP.

GENERAL OBJECTION NO. 2:

Opposer Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent they seek the production of documents or information that: (1) are protected by the attorney-client privilege; (2) constitute work product of Opposer Sprinkles' attorneys; and /or (3) are otherwise privileged. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity recognized by statute or case law.

GENERAL OBJECTION NO. 3:

Opposer Sprinkles objects to the Requests, and to each and every individual request contained therein, as unduly burdensome and oppressive to the extent that they purport to require Opposer Sprinkles to search its facilities and inquire of Opposer Sprinkles employees other than those facilities and employees that would reasonably be expected to have responsive information. Opposer Sprinkles' responses are based upon: (1) a reasonable search, given the time allotted to Sprinkles to respond to these requests, of facilities and files that could reasonably be expected to contain responsive information or documents; and (2) inquiries of Opposer Sprinkles employees and/or representatives who could reasonably be expected to possess responsive information. The subject matter of these requests is under continuing investigation. Accordingly, these responses are limited to and are applicable only to documents and other information which Opposer Sprinkles' counsel has been able to ascertain and locate as of the date hereof. Opposer Sprinkles expressly reserves the right to use, rely upon, and offer into

evidence any and all documents and other information responsive to these requests, whether or not presently identified or produced, if the documents or other information responsive to these requests, have not been obtained by counsel and deemed responsive by counsel as of the date of this response, or if the responsiveness of the documents or other information has been overlooked in good faith, or if an objection is interposed to producing a document or other information.

GENERAL OBJECTION NO. 4:

Opposer Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent they require Opposer Sprinkles to search for and reveal privileged information from it and its attorneys' files pertaining to this matter.

GENERAL OBJECTION NO. 5:

To the extent that the Requests seek confidential or proprietary information pertaining to Opposer Sprinkles' business, trade secrets and/or economic relationships, Opposer Sprinkles will only produce such information subject to the terms of the Protective Order signed by the parties in this matter and approved by the Trademark Trial and Appeal Board.

GENERAL OBJECTION NO. 6:

Opposer Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent they call for the production of documents or things which are confidential or proprietary to, or contain the trade secrets of, a third party. Opposer Sprinkles will only produce such material subject to the terms of the Protective Order and upon receipt of permission from the third party, if necessary.

GENERAL OBJECTION NO. 7:

Opposer Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent that they call for the production of “all documents” where compliance with such request would be unduly burdensome. In the event a request seeking “all documents” is unduly burdensome, Opposer Sprinkles will produce documents sufficient to respond to Applicant’s request pursuant to TBMP § 419.

GENERAL OBJECTION NO. 8:

Opposer Sprinkles objects to the definition of “Sprinkles” on the grounds that it is vague, ambiguous, unintelligible and so excessively broad that it is unduly burdensome and oppressive. Opposer Sprinkles will construe the terms “Sprinkles”, “Opposer”, “you” and “your” wherever used in the interrogatories to refer to Opposer Sprinkles.

GENERAL OBJECTION NO. 9:

Opposer Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent they seek documents related to experts. Opposer Sprinkles will meet and confer with Applicant to determine a time when the parties can simultaneously exchange expert-related documents.

GENERAL OBJECTION NO. 10:

Opposer Sprinkles objects to the “Definitions” contained in the Requests insofar as they contain instructions rather than definitions for terms and are thus ambiguous.

Opposer Sprinkles expressly incorporates the above General Objections as though set forth fully in response to each of the following individual requests, and, to the extent they are not raised in any particular response, Opposer Sprinkles does not waive those objections. An answer to a request shall not be deemed a waiver of any applicable specific or general objection to a request. Likewise, an answer to a request shall not be deemed an admission of any assertions contained in that request.

RESPONSES

Document Request No. 48

All documents relating to Million, Inc., including documents sufficient to show the principals involved in Million, Inc.

RESPONSE

Such documents are being produced, to the extent that such exist.

Document Request No. 49

All documents relating to any transfer of assets or other business deal concerning Soft Serve, Inc. and any other person, including Million, Inc. or Mohammed Baten.

RESPONSE

See response to No. 48.

Document Request No. 49

All documents relating to the Articles of Sale and Transfer attached as Exhibit B to Applicant's Second Set of Interrogatories to Opposer, including documents sufficient to identify

the assets referenced in the Articles of Sale and Transfer, and documents sufficient to show the current ownership of such assets.

RESPONSE

See response to No. 48.

Document Request No. 50

All documents relating to any lease agreements, franchise agreements, supply agreements, purchase agreements, or other agreements relating to your store or the operation of your store.

RESPONSE

Opposer objects to this interrogatory as being overly broad and unduly burdensome, requesting as it does all documents relating to all agreements relating to the Sprinkles store or the operation of the Sprinkles store. In addition, Opposer objects on the basis that the request, unlimited as it is in subject matter, scope and time, seeks the production of documents relating to agreements that would be completely irrelevant to any of the issues involved in this dispute. Notwithstanding these objections responsive relevant documents are being produced.

Document Request No. 51

All documents relating to use of the I CAN'T BELIVE IT'S YOGURT name at your store, including communications with I can't Believe it's Yogurt relating to use of the name and including documents sufficient to show the date that the I Can't Believe It's Yogurt name was last displayed at your store, printed in the Yellow Pages with your store's address, or advertised by you in any way.

RESPONSE

Responsive documents are being produced. Opposer has no documents relating to any Yellow Pages printing. See Opposer's answer to Interrogatory 44.

Document Request No. 52

Documents sufficient to show any name or mark associated with your store or your products or services before you adopted the name Sprinkles, including any name you used between the name I Can't Believe It's Yogurt and the name Sprinkles.

RESPONSE

See response to Request No. 51 with respect to "I Can't Believe It's Yogurt". As no other name was used in connection with this store subsequent to the cessation of usage of I Can't Believe It's Yogurt and commencement of usage of SPRINKLES, no documents exist responsive to the remainder of this Request.

Document Request No. 53

All documents, including all communications with a landlord, building manager, artist; designer, manufacturer, or any other person, relating to creation, design, fabrication, hanging, or removal of any signage for your store, including the SPRINKLES sign shown in Exhibit A to Applicant's Second Set of Interrogatories to Opposer, any other signage bearing the SPRINKLES or I CAN'T BELIEVE IT'S YOGURT names, or any other signage, whether or not ultimately hung or used at your store.

RESPONSE

Responsive documents have been produced in response to Applicant's First Set of Requests for Production. As noted elsewhere, Exhibit A to Applicant's Second Set of Interrogatories is not visible and is illegible. Additional related documents are being produced.

Document Request No. 54

All documents, including all communications, concerning your name change to SPRINKLES, including any advertising or notification of the name change, and including all communications with any landlord, building manager, customer, supplier, vendor, or any other person about the name change.

RESPONSE

Relevant documents have been produced and are being produced. Opposer's search for additional relevant documents is continuing and any additional documents located will be produced through supplementation.

Document Request No. 55

Documents sufficient to show the geographic scope of your use of SPRINKLES, including documents sufficient to show the date of first use in any U.S. city in which you claim use, and documents sufficient to show a continuity of use, if any, from the claimed date of first use in each city.

RESPONSE

Opposer objects to this request on the grounds of relevance. Notwithstanding this objection responsive documents evidencing the unlimited scope of Opposer's use of SPRINKLES through such media as Yelp, Facebook and Twitter will be produced.

Document Request No. 56

Documents sufficient to show the geographic distribution of your customers.

RESPONSE

Documents evidencing the geographic distribution of Opposer's customers have previously been produced in response to Applicant's First Set of Production Requests. Additional related documents are being produced.

Document Request No. 57

Documents sufficient to show the geographic distribution of your advertising and marketing efforts under the SPRINKLES name.

RESPONSE

See response to No. 55.

Document Request No. 58

Documents sufficient to show the price of all Opposer's SPRINKLES products or services.

RESPONSE

Opposer objects to this request as being overly broad and unduly burdensome. Notwithstanding this objection Opposer will produce additional documents showing the prices of various of its currently offered products.

Document Request No. 59

Documents sufficient to show the identities of any celebrities or nationally well-known persons who have visited your store, and the dates of their visits.

RESPONSE

This request is objected to on the grounds of relevancy. See Opposer's response to Interrogatory No. 48. Notwithstanding this objection, no relevant documents have been located.

Document Request No. 60

Documents sufficient to show the identities of any persons you claim have experienced actual confusion arising from Applicant's use of the mark SPRINKLES, the dates on which the actual confusion occurred, the circumstances underlying the alleged actual confusion, the number of misdirected sales as a result of the alleged actual confusion, and the amount (in dollars) of sales lost as a result of the alleged actual confusion.

RESPONSE

Information concerning the dates and circumstances surrounding various instances of confusion have been provided in supplemental responses to Applicant's First Set of Interrogatories and, additionally, in Mr. Orban's Declaration offered in support of Opposer's Motion for Summary Judgment. Additional related documentation will be produced.

Document Request No. 61

Each document reviewed, consulted, or on which you relied, to draft your answers to Opposer's Second Set of Interrogatories to Applicant.

RESPONSE

All such documents have previously been produced or are being produced in response to other of Applicant's more specific production requests.

Document Request No. 62

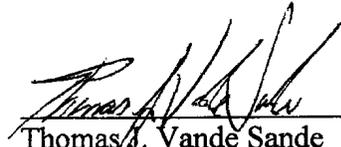
Each document requested to be identified in Applicant's Second Set of Interrogatories to Opposer.

RESPONSE

All such documents have previously been produced or are being produced in response to other of Applicant's more specific production requests.

Hall & Vande Sande, LLC

Date: 8/26/11



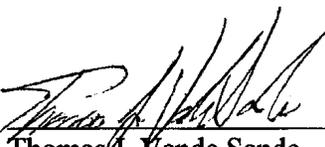
Thomas J. Vande Sande
Attorney for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
Phone: (301) 983-2500

CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Opposer hereby certifies that one (1) copy of the foregoing "OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S SECOND SET OF PRODUCTION REQUESTS" was this day served on Applicant by mailing same, first class mail, to:

John L. Slafsky, Esquire
Matthew J. Kuykendall, Esquire
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

Date: 8/28/11



Thomas J. Vande Sande
HALL & VANDE SANDE, LLC
Attorneys for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
(301) 983-2500

EXHIBIT 21

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

Atty. Dkt. 4221.014

Soft Serve, Inc. d/b/a Sprinkles,)	
	)	Opposition No. 91194188
	)	Opposition No. 91195669
	)	Opposition No. 91195985
vs.	)	Opposition No. 91195986
	)	Opposition No. 91196035
	)	Opposition No. 91196061
Sprinkles Cupcakes, Inc.	)	Opposition No. 91196087
)	
Applicant.	)	Cancellation No. 92053109

**OPPOSER'S RESPONSES TO APPLICANT'S
SECOND SET OF INTERROGATORIES TO OPPOSER**

Pursuant to Federal Rule of Civil Procedure 33 and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer Soft Serve, Inc. d/b/a Sprinkles ("Opposer Sprinkles"), by and through its undersigned counsel, hereby responds to the Second Set of Interrogatories ("Interrogatories") of Applicant Sprinkles Cupcakes, Inc. as follows:

GENERAL OBJECTIONS

GENERAL OBJECTION NO. 1:

Opposer Sprinkles has not completed its investigation in this matter. All responses to Interrogatories are based upon the information presently known to Opposer Sprinkles and are given without prejudice to its right to adduce evidence discovered or analyzed subsequent to the date of these responses. Opposer Sprinkles expressly reserves the right to revise and supplement

its responses to these Interrogatories in the event that its continuing investigation of the facts and/or discovery bring to light any additional information responsive to these Interrogatories.

GENERAL OBJECTION NO. 2:

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they seek information protected by the attorney-client privilege, work product doctrine, and/or any other applicable privilege or protection. Without prejudice to this objection, Opposer Sprinkles will provide responses to the Interrogatories to the extent that such responses do not waive such privileges or protections.

GENERAL OBJECTION NO. 3:

Opposer Sprinkles objects to these Interrogatories, including, but not limited to, the “Definitions” therein, and to each and every individual interrogatory, to the extent they purport to impose duties on Opposer Sprinkles that are greater than those imposed by the Federal Rules of Civil Procedure and/or the TBMP.

GENERAL OBJECTION NO. 4:

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they seek information outside of Opposer Sprinkles’ possession, custody, or control, on the grounds that any such interrogatory is overbroad and unduly burdensome, seeks to impose discovery obligations in excess of those imposed by the Federal Rules of Civil Procedure and/or the TBMP, and would subject Opposer Sprinkles to unreasonable annoyance, burden, and expense.

GENERAL OBJECTION NO. 5:

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, as unduly burdensome, oppressive and in violation of the Federal Rules of Civil Procedure and/or the TBMP to the extent they purport to require Opposer Sprinkles to respond on behalf of, or conduct any inquiry or investigation with respect to, any party other than Opposer Sprinkles. Opposer Sprinkles will only answer Interrogatories on its own behalf.

GENERAL OBJECTION NO. 6:

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they seek information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

GENERAL OBJECTION NO. 7:

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, as overbroad and unduly burdensome to the extent they do not include a limitation or proposed definition of a relevant time period.

GENERAL OBJECTION NO. 8:

Opposer Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they are not consistent with or do not meet the requirements of Federal Rule of Civil Procedure 33 or the TBMP.

GENERAL OBJECTION NO. 9:

Opposer Sprinkles specifically reserves all objections as to the competence, relevancy, materiality, and admissibility of its documents and interrogatory answers or the subject matter thereof, and all rights to object on any ground to the use of any document or interrogatory answer, or the subject matter thereof, in any subsequent proceeding, including without limitation to the trial of this or any action.

GENERAL OBJECTION NO. 10:

Opposer Sprinkles objects to the Interrogatories and to each and every individual interrogatory contained therein, to the extent they seek confidential or proprietary information pertaining to Opposer Sprinkles' business, trade secrets and/or economic relationships ("Trade Secret Information"). To the extent such information is responsive to these Interrogatories and within the proper scope of discovery in this action, Opposer Sprinkles will provide such information subject to the terms of the Protective Order signed by the parties in this matter and approved by the Trademark Trial and Appeal Board.

GENERAL OBJECTION NO. 11:

Opposer Sprinkles objects to the "Definitions" contained in the Interrogatories insofar as they contain instructions rather than definitions for terms and are thus ambiguous.

Opposer Sprinkles expressly incorporates the above General Objections as though set forth fully in response to each of the following individual interrogatories, and, to the extent they are not raised in any particular response, Opposer Sprinkles does not waive those objections. An answer to an interrogatory shall not be deemed a waiver of any applicable specific or general

objections to an interrogatory. Likewise, an answer to an interrogatory shall not be deemed an admission of any assertions contained in that interrogatory.

ANSWERS

Interrogatory No. 40:

Identify the date you first displayed any signage incorporating the SPRINKLES name at your store, including the date the sign in the photograph attached as Exhibit A was first displayed at your store. Identify all documents that you used to respond to this Interrogatory or that support your response in this Interrogatory.

ANSWER

Signage incorporating the SPRINKLES name and mark was first displayed at SPRINKLES in the early fall of 2002. Opposer objects to this interrogatory to the extent that it inquires of the photograph attached as Exhibit A in that the quality of the photograph appearing as Exhibit A is so poor that the signage is not legible. No documents were used in responding to this interrogatory. Documentation that supports Opposer's response to this interrogatory is being produced in response to Applicant's Second Set of Requests for Production.

Interrogatory No. 41:

Identify all names you have used for your store, including the dates that use of each name started and ceased. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

ANSWER

Soft Serve's Potomac location operated under the I Can't Believe It's Yogurt name from 1988 to 1998. SPRINKLES is the only other name that has been used, such usage commencing in 2002 and continuing to the present. No documents have been used in responding to this interrogatory. Documents that support this response include those produced to Applicant in response to its first round of discovery as well as those being produced in response to Applicant's second round of production requests.

Interrogatory No. 42:

Identify all persons involved in the creation, design, fabrication, hanging, or removal of any signage incorporating the name SPRINKLES for your store. Identify all documents that you used to respond to this Interrogatory or that support your response to this interrogatory.

ANSWER

Mr. Orban is knowledgeable as to the creation of signage incorporating the SPRINKLES name. "Cynthia" and Ernie Galyen at Sterico Signs and Designs, 16159 Shady Grove Road, Gaithersburg, MD 20877 were involved in the design of a SPRINKLES sign. Sterico was also responsible for the fabrication of the SPRINKLES signage. Mr. Orban is the individual involved in the hanging and removal of SPRINKLES' signage. No documents have been used to respond to this interrogatory. Documents that support Opposer's response include those previously produced in response to Applicant's First Request for Production of Documents. Opposer's answers will be supplemented to the extent that additional responsive documents are located.

Interrogatory No. 43:

Identify the date you notified the landlord of your store that you were going to do business as Sprinkles, and the date you notified the landlord of your store that you planned to or had installed signage that displays the Sprinkles name. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

ANSWER

Opposer's landlord was notified of Opposer's use of SPRINKLES at least as early as October 18, 2002. Produced in response to Applicant's second set of production requests is a letter dated October 18, 2002 from Mr. Orban to his landlord. Usage of SPRINKLES commenced prior to the date of that letter. More specifically, earlier activities such as the answering of Opposer's phone as SPRINKLES, first occurred well-prior to Opposer's hanging of its SPRINKLES sign. The tone of the letter in terms of signage was adopted in order to avoid delay and the landlord's approval process which Mr. Orban feared could lead to disapproval of his sign as a result of its non-compliance with the landlord's colonial design preferences. Additional documents will be produced to the extent that such are located through further searching of Opposer's records.

Interrogatory No. 44:

Identify the date you last used the name I CAN'T BELIEVE IT'S YOGURT, including the date the name was last displayed at your store, printed in the Yellow Pages with your store's address, or advertised by you in any way. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

ANSWER

Opposer's dealings with I Can't Believe It's Yogurt ("ICBIY") ended not later than 2001. Consequently, Opposer discontinued use of the ICBIY name and de-identified itself from ICBIY leaving a small plate, affixed by a previous owner and located on three of Opposer's five yogurt machines, as the sole remaining and barely visible reference to ICBIY. ICBIY subsequently, through an unscheduled visit by an unidentified representative, confirmed Opposer's de-identification from ICBIY. Subsequent to the 1998 expiration of the Franchise Agreement ICBIY continued to supply some yogurt products to Opposer. That arrangement ended in February 2001. Opposer has no knowledge as to the continued identification or misidentification of Opposer's business by the publishers of the Yellow Pages but notes that Opposer, at no time subsequent to the termination of its ICBIY dealings authorized, requested, ordered, paid for, or was in any other way responsible for any references to its business as ICBIY. Documents used in responding to this interrogatory are being produced in response to Applicant's Second Set of Production Requests.

Interrogatory No. 45:

Identify the document that shows your earliest use of SPRINKLES as a trademark.

ANSWER

No document evidencing the earliest usage of SPRINKLES as a trademark has been located. To the extent that further research uncovers such a document it will be produced through supplementation.

Interrogatory No. 46: Describe Soft Serve, Inc.'s relationship and business dealings with Million, Inc., including the business deal memorialized in the Articles of Sale and Transfer attached hereto as Exhibit B and any previous or subsequent business dealings between Soft Serve, Inc. and Million, Inc., and identify all of Million, Inc.'s officers, directors, principals, and employees, including Mohammed Baten. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

ANSWER

Opposer's only relationship and business dealing with Million, Inc. is that reflected in the document attached to Applicant's second set of interrogatories and identified as Exhibit B thereto. Opposer has no knowledge of the corporate hierarchy, officers or employees of Million, Inc. The assets transferred pursuant to the transaction reflected in Exhibit B involve a Blimpie's store. The transaction reflected in Exhibit B was in no way related to Opposer's River Road location or the business conducted at that location at any time. No documents were used in responding to this interrogatory. Additional related documents, are being produced in Response to Applicant's Second Set of Production Requests.

Interrogatory No. 47:

Identify the assets referred to in the Articles of Sale and Transfer attached hereto as Exhibit B, and the current owner of such assets. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

ANSWER

See Opposer's response to Interrogatory No. 46. Opposer has no knowledge of any current owner of the assets previously transferred by Opposer to Million, Inc.

Interrogatory No. 48:

Identify any celebrities or nationally well-known persons who have visited your store, including the dates of their visits. Identify all documents that you used to respond to this Interrogatory or that support you response to this Interrogatory.

ANSWER

Representative celebrities and representative well-known persons regularly visiting SPRINKLES include, but are not limited to, current and former professional athletes, including a now retired professional heavyweight champion, at least one former Washington Redskin star, and multiple current and/or former NBA players. At least two nationally known television commentators, a former Miss America and TV actress, nationally known business tycoons, an actor and former Governor and multiple members of one of America's most famous political dynasties are currently, or in the past have been, regular SPRINKLES' customers. Opposer objects to this interrogatory on the basis of relevance to the extent that it seeks the specific identification of these individuals. Notwithstanding this objection, Opposer will discuss with Applicant the basis for its request for any further identification of these celebrities but will not identify these individuals without first having in place an agreement protecting the privacy of such individuals. No documents have been used in responding to this interrogatory. In the event that relevant documents are located such will be produced through supplementation.

Interrogatory No. 49:

Identify any persons you claim have experienced actual confusion arising from Applicant's use of the mark SPRINKLES, the dates on which the actual confusion occurred, the circumstances underlying the alleged actual confusion, the number of misdirected sales as a result of the alleged actual confusion, and the amount (in dollars) of sales lost as a result of the alleged actual confusion. Identify all documents that you used to respond to this Interrogatory or that support your response to this Interrogatory.

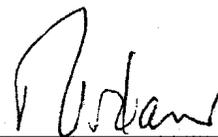
ANSWER

Details concerning various instances of actual confusion, including the date and circumstances underlying such have been provided in supplementation to Applicant's First Set of interrogatories and also in Mr. Orban's Declaration in support of Opposer's Motion for Summary Judgment. Additional instances of actual confusion include: the offering made to Opposer to order for promotional use ball point pens advertising SPRINKLES CUPCAKES and including on the pens photographs of Sprinkles Cupcakes' products. A photograph of this pen, and correspondence relating to the promotional offer are being produced. In addition, documentation evidencing additional instances of actual confusion is being produced in response to Applicant's Second Set of Production Requests. Opposer is unaware of the number of misdirected sales or the amount of sales lost as a result of instances of actual confusion.

Soft Serve, Inc. d/b/a Sprinkles

Date:

August 26, 2011

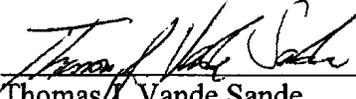


Thomas Orban

As to objections:

Hall & Vande Sande, LLC

Date: 8/28/11



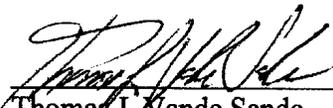
Thomas J. Vande Sande
Attorney for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
Phone: (301) 983-2500

CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Opposer hereby certifies that one (1) copy of the foregoing "OPPOSER'S ANSWERS AND OBJECTIONS TO APPLICANT'S SECOND SET OF INTERROGATORIES" was this day served on Applicant by mailing same, first class mail, to:

John L. Slafsky, Esquire
Matthew J. Kuykendall, Esquire
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

Date: 8/26/11



Thomas J. Vande Sande
HALL & VANDE SANDE, LLC
Attorneys for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
(301) 983-2500

EXHIBIT 22

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

Atty. Dkt. 4221.014

Soft Serve, Inc. d/b/a Sprinkles,)	
	)	Opposition No. 91194188
	)	Opposition No. 91195669
	)	Opposition No. 91195985
vs.	)	Opposition No. 91195986
	)	Opposition No. 91196035
	)	Opposition No. 91196061
Sprinkles Cupcakes, Inc.	)	Opposition No. 91196087
)	
Applicant.	)	Cancellation No. 92053109

**OPPOSER'S RESPONSE'S TO APPLICANT'S
FIRST SET OF REQUESTS FOR ADMISSIONS**

Pursuant to Federal Rule of Civil Procedure 36 and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer Soft Serve, Inc. d/b/a Sprinkles ("Opposer Sprinkles"), by and through its undersigned counsel, hereby responds to the First Set of Requests for Admissions to Opposer of Applicant Sprinkles Cupcakes, Inc. as follows:

REQUESTS FOR ADMISSIONS

1. You did not offer for sale products or services under the mark SPRINKLES before November 14, 2002.

RESPONSE

Denied.

2. You did not offer for sale products or services under the mark SPRINKLES before November 14, 2002.

RESPONSE

Denied.

3. You did not sell frozen desserts under the mark SPRINKLES before November 14, 2002.

RESPONSE

Denied.

4. You did not offer for sale frozen desserts under the mark SPRINKLES before November 14, 2002.

RESPONSE

Denied.

5. You did not sell baked goods under the mark SPRINKLES before November 14, 2002.

RESPONSE

Denied.

6. You did not offer for sale baked goods under the mark SPRINKLES before November 14, 2002.

RESPONSE

Denied.

7. You did not sell baked goods under the mark SPRINKLES before February 2, 2004.

RESPONSE

Denied.

8. You did not offer for sale baked goods under the mark SPRINKLES before February 2, 2004.

RESPONSE

Denied.

9. You have never sold cupcake mixes under the mark SPRINKLES.

RESPONSE

Admitted.

10. You have never sold cupcake mixes.

RESPONSE

Admitted.

11. You have never offered for sale cupcake mixes under the mark SPRINKLES.

RESPONSE

Admitted.

12. You have never offered for sale cupcake mixes.

RESPONSE

Admitted.

13. You have never sold clothing under the mark SPRINKLES.

RESPONSE

Denied.

14. You have never sold clothing.

RESPONSE

Denied.

15. You have never offered for sale clothing under the mark SPRINKLES.

RESPONSE

Denied.

16. You have never offered for sale clothing.

RESPONSE

Denied.

17. You have never sold pet treats under the mark SPRINKLES.

RESPONSE

Denied.

18. You have never sold pet treats.

RESPONSE

Denied.

19. You have never offered for sale pet treats under the mark SPRINKLES.

RESPONSE

Denied.

20. You have never offered for sale pet treats.

RESPONSE

Denied.

21. You have never sold serving towers or trays under the mark SPRINKLES.

RESPONSE

Admitted.

22. You have never sold serving towers or trays.

RESPONSE

Admitted.

23. You have never offered for sale serving towers or trays under the mark SPRINKLES.

RESPONSE

Admitted.

24. You have never offered for sale serving towers or trays.

RESPONSE

Admitted.

25. You have never sold candy under the mark SPRINKLES.

RESPONSE

Denied.

26. You have never sold candy.

RESPONSE

Denied.

27. You have never offered for sale candy under the mark SPRINKLES.

RESPONSE

Denied.

28. You have never offered for sale candy.

RESPONSE

Denied.

29. You have never sold sweets under the mark SPRINKLES.

RESPONSE

Denied.

30. You have never sold sweets.

RESPONSE

Denied.

31. You have never offered for sale sweets under the mark SPRINKLES.

RESPONSE

Denied.

32. You have never offered for sale sweets.

RESPONSE

Denied.

33. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in April 2002.

RESPONSE

Denied.

34. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland every day of April 2002.

RESPONSE

Denied.

35. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in May 2002.

RESPONSE

Denied.

36. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in June 2002.

RESPONSE

Denied.

37. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in July 2002.

RESPONSE

Denied.

38. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in September 2002.

RESPONSE

Denied.

39. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in October 2002.

RESPONSE

Denied.

40. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in November 2002.

RESPONSE

Denied.

41. There was a sign displaying the name I Can't Believe It's Yogurt at your store at 10148 River Rd., Potomac, Maryland in December 2002.

RESPONSE

Denied.

42. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in April 2002.

RESPONSE

Following reasonable inquiry, information thus far known to and obtainable by Opposer is insufficient to enable Opposer to either admit or deny this Request.

43. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in May 2002.

RESPONSE

Following reasonable inquiry, information thus far known to and obtainable by Opposer is insufficient to enable Opposer to either admit or deny this Request.

44. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in June 2002.

RESPONSE

Following reasonable inquiry, information thus far known to and obtainable by Opposer is insufficient to enable Opposer to either admit or deny this Request.

45. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in July 2002.

RESPONSE

Following reasonable inquiry, information thus far known to and obtainable by Opposer is insufficient to enable Opposer to either admit or deny this Request.

46. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in August 2002.

RESPONSE

Following reasonable inquiry, information thus far known to and obtainable by Opposer is insufficient to enable Opposer to either admit or deny this Request.

47. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in September 2002.

RESPONSE

Following reasonable inquiry, information thus far known to and obtainable by Opposer is insufficient to enable Opposer to either admit or deny this Request.

48. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in May 2002.

RESPONSE

See Response to No. 43.

49. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in June 2002.

RESPONSE

See Response to No. 44.

50. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in July 2002.

RESPONSE

See Response to No. 45.

51. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in August 2002.

RESPONSE

See Response to No. 46.

52. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in September 2002.

RESPONSE

See Response to No. 47.

53. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in October 2002.

RESPONSE

Denied.

54. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in November 2002.

RESPONSE

Denied.

55. There was no sign displaying the name Sprinkles at your store at 10148 River Rd., Potomac, Maryland in December 2002.

RESPONSE

Denied.

56. You have never sold products or services under the mark SPRINKLES online.

RESPONSE

Admitted.

57. You have never offered for sale products or services under the mark SPRINKLES online.

RESPONSE

Denied.

58. You have never sold products or services under the mark SPRINKLES outside of Potomac, Maryland.

RESPONSE

Denied.

59. You have never offered for sale products or services under the mark SPRINKLES outside of Potomac, Maryland.

RESPONSE

Denied.

60. You have never sold products or services under the mark SPRINKLES other than at the store at 10148 River Rd., Potomac, Maryland.

RESPONSE

Denied.

61. You have never offered for sale products or services under the mark SPRINKLES other than at the store at 10148 River Rd., Potomac, Maryland.

RESPONSE

Denied.

62. You have never sold products or services under the mark SPRINKLES outside of Maryland.

RESPONSE

Denied.

63. You have never offered for sale products or services under the mark SPRINKLES outside of Maryland.

RESPONSE

Denied.

64. You have never advertised products or services under the mark SPRINKLES outside of Potomac, Maryland.

RESPONSE

Denied.

65. You have never advertised products or services under the mark SPRINKLES outside of Maryland.

RESPONSE

Denied.

66. You have never advertised products or services under the mark SPRINKLES outside of the Washington, D.C. metropolitan area.

RESPONSE

Denied.

67. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark outside of Potomac, Maryland.

RESPONSE

Denied.

68. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark outside of Maryland.

RESPONSE

Denied.

69. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark outside of the Washington, D.C. metropolitan area.

RESPONSE

Denied.

70. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark in April 2002.

RESPONSE

Admitted.

71. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark before November 14, 2002.

RESPONSE

Denied.

72. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark in 2002.

RESPONSE

Denied.

73. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark in 2003.

RESPONSE

Denied.

74. You have not produced in this proceeding any documents that evidence your use of SPRINKLES as a trademark in 2004.

RESPONSE

Denied.

75. You have never entered a license agreement pertaining to the mark SPRINKLES.

RESPONSE

Admitted.

76. You do not claim use of the mark SPRINKLES through one or more licenses.

RESPONSE

Admitted.

77. You do not claim use of the mark SPRINKLES through one or more predecessors-in-interest.

RESPONSE

Admitted.

78. You have not produced any documents in this proceeding that evidence your allegations in ¶ 12 of your Notice of Opposition that “in the eyes and minds of a large part of the public, the mark ‘SPRINKLES’ as recited in U.S. Trademark Application Serial No. 77/770,541 is closely associated with the goods and services with which Opposer used and is using ‘SPRINKLES.’”

RESPONSE

Denied.

79. You do not operate or control a website.

RESPONSE

Denied.

80. You do not operate or control a website which promotes or advertises your products or services under the SPRINKLES mark.

RESPONSE

Denied.

81. You have never filed an application with the U.S. Patent and Trademark Office to register the SPRINKLES trademark.

RESPONSE

Admitted.

82. You do not own a trademark registration issued by the U.S. Patent and Trademark Office for the mark SPRINKLES.

RESPONSE

Admitted.

83. You have never filed an application with the state of Maryland to register the SPRINKLES trademark.

RESPONSE

Admitted.

84. You do not own a trademark registration issued by the state of Maryland for the mark SPRINKLES.

RESPONSE

Admitted.

85. All documents produced by Opposer in response to Applicant's First Set of Requests for Production of Documents in this proceeding are genuine pursuant to the Federal Rules of Evidence.

RESPONSE

Admitted.

86. All documents produced by Opposer in response to Applicant's First Set of Requests for Production of Documents in this proceeding are part of the business records of Opposer.

RESPONSE

Denied.

87. All documents produced by Opposer in response to Applicant's First Set of Requests for Production of Documents in this proceeding are kept in the normal course of Opposer's business.

RESPONSE

Denied.

88. All documents produced by Applicant in response to Opposer's First Request for Production of Documents in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections by Applicant on the grounds of relevance.

RESPONSE

Opposer objects to this request as being vague and indefinite in that documents may be admissible for some purposes but not for others.

89. All documents produced by Opposer in response to Applicant's Second Set of Requests for Production of Documents in this proceeding are genuine pursuant to the Federal Rules of Evidence.

RESPONSE

Admitted.

90. All documents produced by Opposer in response to Applicant's Second Set of Requests for Production of Documents in this proceeding are part of the business records of Opposer.

RESPONSE

Denied.

91. All documents produced by Opposer in response to Applicant's Second Set of Requests for Production of Documents in this proceeding are kept in the normal course of Opposer's business.

RESPONSE

Denied.

92. All documents produced by Opposer in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections on the grounds of relevance.

RESPONSE

Opposer objects to this request as being vague and indefinite in that documents may be admissible for some purposes but not for others.

93. All documents produced by Applicant in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections on the grounds of relevance.

RESPONSE

Opposer objects to this request as being vague and indefinite in that documents may be admissible for some purposes but not for others.

94. The photograph in Exhibit A to Applicant's Second Set of Interrogatories to Opposer is a true and accurate depiction of signage on the store at 10148 River Rd., Potomac, Maryland.

RESPONSE

Denied in that the quality of the photo is such that the signage is not viewable.

95. The document in Exhibit B to Applicant's Second Set of Interrogatories to Opposer is a true and accurate copy of the Articles of Sale and Transfer between Soft Serve, Inc. and Million, Inc., as submitted to the Maryland Secretary of State.

RESPONSE

Admitted.

Hall & Vande Sande, LLC

Date: 8/26/11



Thomas J. Vande Sande
Attorney for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
Phone: (301) 983-2500

CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Opposer hereby certifies that one copy of the foregoing "OPPOSER'S RESPONSE'S TO APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS" was this day served on Applicant by mailing same, first class mail, to:

John L. Slafsky, Esquire
Matthew J. Kuykendall, Esquire
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

Date: 8/26/11



Thomas J. Vande Sande
HALL & VANDE SANDE, LLC
Attorneys for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
(301) 983-2500

EXHIBIT 23

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
	)	Consolidated Proceeding No. 91194188
Petitioner,)	
)	
v.	)	Cancellation No. 92053109
)	
Sprinkles Cupcakes, Inc.)	
)	
Registrant.)	
<hr/>		

DECLARATION OF JULIET HOPE

Juliet Hope declares and says:

1. I have been employed by Soft Serve, Inc. and working at SPRINKLES since April 2010. I have personal knowledge of the facts set forth herein and am competent to, and would, testify as to such.
2. SPRINKLES offers various ice cream products and bakery goods. The sale of bakery goods comprises a substantial portion of SPRINKLES business, and such has been the case during the entire course of my employment at SPRINKLES. Bakery goods offered by SPRINKLES during the course of my employment include muffins, bagels, donuts, pastries, pies and cupcakes.
3. On April 3, 2011 a visitor to SPRINKLES asked me whether we had in fact opened another SPRINKLES store in Georgetown. I am aware of the fact that Sprinkles

Cupcakes, had, at the time of this inquiry, opened its SPRINKLES Georgetown location less than a month earlier.

Juliet Hope declares that she is an employee of Soft Serve, Inc., and is authorized to make this declaration on behalf of the Petitioner; that all statements made herein of her own knowledge are true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 or Title 18 of the United States Code.

This Declaration is executed on May 7, 2011, in Potomac,
Maryland.

By: Hope
Juliet Hope

EXHIBIT 24

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
	)	Consolidated Proceeding No. 91194188
Petitioner,)	
)	
v.	)	Cancellation No. 92053109
)	
Sprinkles Cupcakes, Inc.)	
)	
Registrant.)	
<hr/>		

DECLARATION OF JULIANNA KARIMAN

Julianna Kariman declares and says:

1. I have been employed by Soft Serve, Inc. and working at SPRINKLES since 2007. I have firsthand knowledge of the matters referred to herein and could and would competently testify thereto.
2. SPRINKLES offers various ice cream products and bakery goods. The sale of bakery goods comprises a substantial portion of SPRINKLES business, and such has been the case during the entire course of my employment at SPRINKLES. Bakery goods offered by SPRINKLES during the course of my employment include muffins, bagels, donuts, pastries, pies and cupcakes.
3. On February 19, 2011 I received a telephone call from a potential customer. During the ensuing discussion it became apparent to me that the call was in fact one

expressing interest in locating Sprinkles Cupcakes. I am aware of the fact that for some period of time Sprinkles Cupcakes had announced that its opening in Washington D.C. would occur in February 2011.

4. On March 26, 2011 a visitor to SPRINKLES stated to me that he was happy that he didn't need to go to Georgetown for Sprinkles Cupcakes.

Julianna Kariman declares that she is an employee of Soft Serve, Inc., and is authorized to make this declaration on behalf of the Petitioner; that all statements made herein of her own knowledge are true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 or Title 18 of the United States Code.

This Declaration is executed on April 29, 2011, in Potomac
Maryland

By:

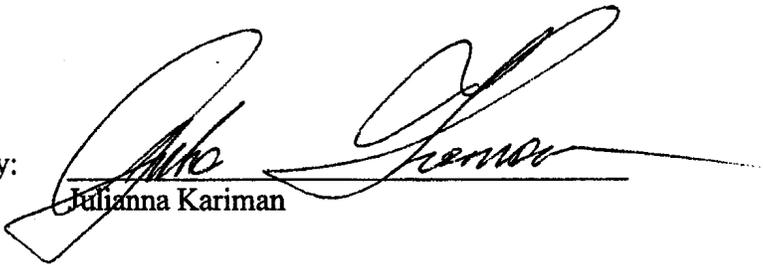

Julianna Kariman

EXHIBIT 25

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
Petitioner,	)	Consolidated Proceeding No. 91194188
)	
v.	)	Cancellation No. 92053109
)	
Sprinkles Cupcakes, Inc.)	
)	
Registrant.)	
<hr/>		

DECLARATION OF GLYEB KOUMASINSKI

Glyeb Koumasinski declares and says:

1. I am an employee of Soft Serve, Inc. and work at SPRINKLES in Potomac Maryland. I have personal knowledge of the facts set forth herein and if called to testify, could and would testify competently thereto.
2. SPRINKLES offers various ice cream products and bakery goods. The sale of bakery goods comprises a substantial portion of SPRINKLES business, and such has been the case during the entire course of my employment at SPRINKLES. Bakery goods offered by SPRINKLES during the course of my employment include muffins, bagels, donuts, pastries, pies and cupcakes.
3. I have been employed at SPRINKLES since 2007. I am aware of various uses of SPRINKLES by my employer, Soft Serve, Inc., including its use of SPRINKLES as

the trade name for the Potomac retail shop and use of SPRINKLES in advertisements, on stickers attached to various items of goods, including bakery goods, on clothing, in advertisements, on letterhead, catering menus and community involvement related correspondence and in connection with various other uses.

4. I am aware of the fact that Sprinkles Cupcakes opened a retail store in Georgetown, Washington D.C. in early March of this year. I am also aware of the fact that Sprinkles Cupcakes announced the opening of that store some months prior to the actual March 2011 opening.
5. I know from discussions with customers during the time I have been employed at SPRINKLES that a substantial number of our customers commute between Northwest Washington and Potomac and that others pass by the SPRINKLES Potomac location commuting to and from downtown Washington. I am also aware of the fact that a substantial number of weekend visitors to the SPRINKLES location in Potomac are bikers, hikers and other outdoor enthusiasts and tourists visiting the Potomac area and that many of these visitors hail from downtown Washington D.C.
6. On March 9, 2011, while working at SPRINKLES, I was presented with a "Sprinkles Cupcakes" gift card redeemable for one dozen cupcakes. This was not a gift card created or offered by my employer but was, instead a gift card created and offered by Sprinkles Cupcakes.
7. On March 23, 2011, while at work I fielded a telephone call from an individual inquiring as to whether this was the SPRINKLES featured in the television show "Cupcake Wars". My employer is not involved with the "Cupcakes Wars" television

show although I understand Ms. Candace Nelson of Sprinkles Cupcakes, is featured on the "Cupcake Wars" series.

8. On April 12, 2011 while working at SPRINKLES I received a telephone inquiry asking whether we were "the cupcake place". In addition, shortly prior to the opening of Sprinkles Cupcakes at its Georgetown location, I received additional similar telephone inquiries. Specifically, on February 16, 2011 I fielded a call inquiring as to whether SPRINKLES was "Sprinkles Cupcakes California". On February 18, 2011 I received a telephone inquiry asking whether we were open. In fact, while Sprinkles Cupcakes would not open until March 5, 2011, its website had, for some time, announced that it would be opening in February 2011. Finally, on March 4, 2011, the day before the opening of Sprinkles Cupcakes in Georgetown, I received a telephone inquiry from a potential customer asking whether we were Sprinkles Cupcakes.

Glyeb Koumasinski declares that he is an employee of Soft Serve, Inc., and is authorized to make this declaration on behalf of the Petitioner; that all statements made herein of his own knowledge are true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 or Title 18 of the United States Code.

This Declaration is executed on May 3rd, 2011, in Potomac,
Maryland.

By: Glyeb Koumasinski
Glyeb Koumasinski

EXHIBIT 26

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
	)	Consolidated Proceeding No. 91194188
Petitioner,)	
)	
v.)	Cancellation No. 92053109
)	
Sprinkles Cupcakes, Inc.)	
)	
Registrant.)	
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DECLARATION OF BENSON PANGA

Benson Panga declares and says:

1. I am an employee of Soft Serve, Inc. and work at SPRINKLES in Potomac Maryland. I have personal knowledge of the facts set forth herein and if called to testify, could and would testify competently thereto.
2. I have been employed at SPRINKLES since 2009. I am aware of various uses of SPRINKLES by my employer, Soft Serve, Inc., including its use of SPRINKLES as the trade name for the Potomac retail shop and use of SPRINKLES in advertisements, on stickers attached to various items of goods, including bakery goods, on clothing, in advertisements, on letterhead, catering menus and community involvement related correspondence and in connection with other uses.

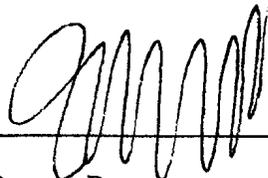
3. SPRINKLES offers various ice cream products and bakery goods. The sale of bakery goods comprises a substantial portion of SPRINKLES business, and such has been the case during the entire course of my employment at SPRINKLES. Bakery goods offered by SPRINKLES during the course of my employment include muffins, bagels, donuts, pastries, pies and cupcakes.
4. I am aware of the fact that Sprinkles Cupcakes opened a retail store in Georgetown, Washington D.C. in early March of this year. I am also aware of the fact that Sprinkles Cupcakes announced the opening of that store some months prior to the actual March 2011 opening.
5. I know from discussions with customers during the time I have been employed at SPRINKLES that a substantial number of our customers commute between Northwest Washington and Potomac and that others pass by the SPRINKLES Potomac location commuting to and from downtown Washington. I am also aware of the fact that a substantial number of weekend visitors to the SPRINKLES location in Potomac are bikers and other outdoor enthusiasts and tourists visiting the Potomac area and that many of these visitors hail from downtown Washington D.C.
6. On February 17, 2011, a customer informed me that he had heard on the radio that a SPRINKLES shop would be opening soon in the District of Columbia. The customer asked me to confirm that this would in fact be another of my employer's SPRINKLES' stores.
7. On March 2, 2011, just three days prior to the opening of the Sprinkles Cupcakes location in Georgetown, I received a telephone call at SPRINKLES asking whether we were opening on Friday.

8. On March 25, 2011 a visitor to SPRINKLES asked me if there was another one of these shops in Georgetown.

Benson Panga declares that he is an employee of Soft Serve, Inc., and is authorized to make this declaration on behalf of the Petitioner; that all statements made herein of his own knowledge are true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 or Title 18 of the United States Code.

This Declaration is executed on April 29, 2011, in Potomac,
Maryland.

By:



Benson Panga