

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

77770541

Atty. Dkt. 4221.012

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
)	
)	
Registrant.	)	Cancellation No. 92053109

**PETITIONER'S RESPONSE BRIEF IN OPPOSITION
TO REGISTRANT'S RULE 56(d) MOTION**

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I. INTRODUCTION

On August 11, 2011 Petitioner Soft Serve d/b/a Sprinkles filed a Motion for Summary Judgment in Cancellation Proceeding No. 92053109, as consolidated under Case 91194188, on the issues of priority and likelihood of confusion. Through that motion Petitioner has established that evidence of its use of SPRINKLES in connection with the recited baked goods, and the recited services of offering bakery goods, precedes the involved registrations' 2004 and 2005 use dates and its 2006 filing date. Consequently, Petitioner has moved for summary judgment cancelling Registration No. 3,306,772.

Registrant has moved under Rule 56(d) for an Order affording it 75 days for "affidavits to be obtained, depositions to be taken or other discovery to be undertaken". (Reg. Br. p. 1, 15). As evidenced by Registrant's own brief, and as further demonstrated below, Registrant's motion must be denied as Registrant has not, and cannot, satisfy the requirements of Rule 56(d).¹

II. RULE 56(d) DISCOVERY

Rule 56(d) allows a diligent party to conduct specific, limited, and essential discovery where such is shown to be necessary in order for the diligent party to respond to a motion for summary judgment. Fed. R. Civ. P. 56(d) and notes thereto.

Registrant's Rule 56(d) briefing well demonstrates that it is fully capable of responding to Petitioner's summary judgment motion without additional discovery. Consequently,

¹ Petitioner's Motion is contested because it is unwarranted under Rule 56(d), because it represents Registrant's substantive opposition to the summary judgment motion, and because it, without justification and at times through the averment of completely untrue statements, seeks to blame Petitioner for Registrant's discovery shortcomings.

Registrant is not in need of, and thus is not entitled to, additional discovery under Rule 56(d), much less the unlimited and lengthy fishing expedition now sought by Registrant. Finally, Registrant's lack of diligence in pursuing discovery earlier in the process, and its baseless accusations of obstructions on the part of Petitioner, further render Registrant undeserving of the relief afforded by Rule 56(d).

III. ARGUMENT

A. Registrant's Brief and Submissions Clearly Evidence Its Ability to Respond to the Summary Judgment Motion Without Additional Discovery

Registrant's Rule 56(d) brief, and the nearly 300 pages of declarations and exhibits submitted therewith are, first and foremost, a substantive response to Petitioner's summary judgment motion. A substantial portion of Registrant's brief is devoted to the assertion of alleged facts and the discussion of legal precedents relating not to a showing under Rule 56(d) but instead to the substance of Petitioner's summary judgment motion. For instance, Registrant spends pages of its brief vigorously arguing its position with respect to the priority issue. Registrant launches this portion of its substantive response to Petitioner's summary judgment motion by stating "... its trademark rights (as discussed below) date back to at least as early as 1985. See Nelson; Marks Dec." The Declarations referred to in turn offer pages of alleged facts supposedly supporting the substance of Registrant's position with respect to the issues of priority, usage, channels of trade, public recognition, uses of other marks by Registrant's alleged predecessors in interest, and actual confusion.² A full page (Reg. Br. p. 7) is devoted to a time line of alleged events in an effort to substantiate Registrant's interpretation of priority-related events.

² Yet another Declaration submitted by Registrant, that of its D.C. store General Manager, Terra Marsden, solely addresses the substance of the actual confusion issue.

Registrant's burden under Rule 56(d) was to establish that it cannot adequately respond to the summary judgment motion without the opportunity to conduct specific, and essential, additional discovery, not to argue the substance of the summary judgment motion. Registrant's brief makes unavoidable the conclusion that Registrant is presently fully capable of responding to the summary judgment motion as it relates to the issue of priority without additional discovery.

Similarly, Registrant has shown itself capable of responding to the numerous factors relevant to the likelihood of confusion analysis. Specifically, Registrant belittles and dismisses Petitioner's likelihood of confusion showing and castigates Petitioner for exalting the *du Pont* analysis over expert testimony. (Reg. Br. p. 12). Arguments are presented with respect to channels of trade, customers, product lines, and actual confusion, all allegedly supported by sworn Declarations and all supposedly establishing that no likelihood of confusion exists.³ Significantly, Registrant once again refers to alleged facts set forth in various of the Declarations it has filed, **not for the purpose of identifying needed discovery**, but instead in an effort to support its argument that there is no likelihood of confusion. See also Registrant's Brief at page 12 stating "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".

³ Petitioner has resisted the temptation to reply in this brief to the substantive arguments offered by Registrant in response to the underlying summary judgment motion. Suffice it to say that, assuming Registrant is provided yet another opportunity to argue the substance of the summary judgment motion, Petitioner will assert, through its Reply Brief, in the context of proper rebuttal, facts and arguments in reply to Registrant's contentions, including rebuttal of any arguments advanced by Registrant in an effort to go beyond the four corners and recited dates of the challenged '772 registration, and rebuttal in connection with any reliance upon the SPRINKLES OF PALM BEACH registrations allegedly acquired by Registrant and any alleged common law rights asserted by Registrant in connection with the SPRINKLES mark.

These are not the arguments of a party unable to respond to a motion for summary judgment. Significantly, Registrant asserts, “Even the presently available evidence indicates that the Summary Judgment Motion lacks merit, and that disputed issues of material fact exist” (Reg. Br. p. 2). Registrant’s arguing the merits of the summary judgment motion in its Rule 56(d) motion unequivocally supports the conclusion that it is not entitled to discovery under Rule 56(d).

Registrant’s attempted rebuttal, on the merits, of Petitioner’s motion for summary judgment is not limited to just facts but includes as well Registrant’s legal arguments. See, for instance, the very title of the first section of Registrant’s Argument, “SUMMARY JUDGMENT IS DISFAVORED IN ACTIONS SOUNDING IN LIKELIHOOD OF CONFUSION”. See also Registrant’s Argument concerning “File wrapper estoppel” (which has never been asserted by Petitioner) at page 10 and Registrant’s legal dissertation concerning evidence of actual confusion. (Reg. Br. p. 12).

Parties electing to assert their positions on underlying summary judgment motions while at the same time requesting discovery under Rule 56(d) universally, and with good reason, find their Rule 56(d) motions denied, as they have well demonstrated that they do not need, and thus are not entitled to, the relief afforded by discovery under Rule 56(d). *Nature’s Way v. Nature’s Herbs*, 9 USPQ 2d 2077, 2081 (TTAB 1989); *Dyneer Corp. v. Automotive Products, plc*, 37 USPQ 2d 1251, 1253 (TTAB 1995).

B. Registrant’s Lack of Diligence, Not Petitioner, Is the Cause of Registrant’s Alleged Dilemma.

As noted above, Registrant has well demonstrated through the substance of its motion that it presently is not at all unable to respond to Petitioner’s summary judgment motion. While not at all unable to proceed, Registrant would prefer to proceed with the benefit of full discovery.

In fact, it is Registrant's lack of diligence, not Petitioner, that has resulted in Registrant's inability to have already obtained the discovery it now seeks. Moreover, Registrant's attempts to blame Petitioner for its alleged dilemma are baseless and unprofessional in the extreme.

Specifically, Registrant repeatedly asserts that it has had no opportunity to depose the four employees whose Declarations were offered in support of Petitioner's motion because, Registrant would have the Board believe, those individuals were allegedly never identified to Registrant. (Reg. Br. pp. 2, 5). Registrant boldly asserts that these persons represent "four entirely new witnesses". (Reg. Br. p. 2). This allegation is also leveled in the sworn Declaration of Registrant's counsel. (Slafsky Dec. ¶ 27). In fact, each of these four individuals was identified to Registrant as long ago as May 4, 2011 through Petitioner's third supplementation of interrogatory answers.⁴ (Vande Sande Dec. ¶ 1, Ex. 1, p. 8 attached hereto). Registrant's representations are false and irresponsible.

Registrant also repeatedly asserts (Reg. Br. pp. 4-5, 11, 13-15) that Petitioner has failed to produce promised documents responsive to Registrant's second round of written discovery. In fact, these documents were sent to Registrant, by Priority Mail, on September 12, 2011. (Vande Sande Dec. p. 2). Consequently, Registrant has had these documents in its possession for some

⁴ Information and documentation provided through Petitioner's third supplementation of interrogatory answers and document production was subsequently discussed during a June 28, 2011 meeting between Petitioner's counsel and Registrant's Washington-based litigation counsel. (Vande Sande Dec. ¶ 1). Consequently, Registrant cannot deny having received Opposer's third supplementation.

time, and likely prior to the filing of its Rule 56(d) motion.⁵ At a minimum, Registrant's Rule 56(d) motion must be evaluated in the context of its having in its possession, for a month, the documents it alleges are so essential to its ability to respond to the summary judgment motion. Similarly, Registrant's request (Slafsky Dec. ¶ 26) that it be provided the opportunity to receive and examine documents which have now been in Registrant's possession for a month should also be taken into account in determining the length of time that should be afforded Registrant to file any further response to Petitioner's summary judgment motion.

Registrant asserts that further discovery "is needed" relating to the defenses of laches, acquiescence, waiver and estoppel. (Reg. Br. p. 14). Registrant then lists several questions it now concludes it wishes it had earlier asked during discovery. In fact, Registrant has pursued no discovery relating to these issues in the year and a half that has elapsed since the opening of discovery in these proceedings. Registrant's decision to so proceed does not provide a basis for discovery under Rule 56(d).

Registrant's other attempts to lay blame for its inaction at the feet of Petitioner are equally without merit. In fact, Petitioner need not have provided Registrant with the documents referred to above, as the Board's suspension Order had already been entered. Similarly, Petitioner could have declined providing Registrant with Petitioner's answers to Registrant's second set of interrogatories, Petitioner's responses to Registrant's 95 admission requests and Petitioner's written responses to Registrant's second set of production requests, on the basis that Petitioner's summary judgment filing eliminated Petitioner's need to respond to this discovery.

⁵ Even assuming arguendo that Registrant did not receive Petitioner's documents before the filing of Registrant's Rule 56(d) Motion, since such a large portion of its brief is comprised of arguments to the effect that it cannot proceed without these documents, Registrant should have subsequently informed the Board of its possession of these documents.

Instead, Petitioner served, without extensions and on time, its answers and written responses to all of Registrant's outstanding discovery.⁶

Insisting that Petitioner "prematurely filed" its motion "acting unilaterally to thwart Sprinkles from developing any record for the Board to consider" (Reg. Br. p. 2), Registrant asserts to the Board that "Sprinkles has not had the opportunity to depose a single Soft Serve witness or a single third-party witness". (Reg. Br. p. 2). Let us consider the merits of these contentions, bearing in mind Registrant's admission that its most recent discovery activities were undertaken "with the October 7, 2011 discovery cut-off in mind". (Reg. Br. p. 14).⁷ Registrant's proposed deponents include Soft Serve, through Rule 30(b)(6); Tom Orban, principal of Soft Serve; former Soft Serve employees Saira Haider and Aaron Yoches, and the four current employees/declarants discussed above.

- Mr. Orban has been known to Registrant since the filing of the first of these consolidated proceedings, has been identified in all related initial disclosures, and has been referred to in an overwhelming number of interrogatory answers and throughout document production. The first identification of Mr. Orban through an initial disclosure was on May 28, 2010. The first identification of Mr. Orban in response to written discovery occurred on August 10, 2010. (Vande Sande Dec. ¶¶ 3- 4 and Exs. 2 - 3 thereto).

⁶ Registrant, through its brief (p. 4) and counsel's Declaration vaguely hints at alleged insufficiencies in connection with Petitioner's discovery responses. However, no specific shortcomings are noted by Registrant. Counsel's Declaration (Slafsky Dec. ¶ 25) states that Registrant is unable to file a Motion to Compel due to the suspension of proceedings precipitated by the filing of Petitioner's summary judgment motion. This statement is incorrect. Registrant, if the first instance, is unable to file a Motion to Compel because it has never sought to bring to Petitioner's attention, by letter, email, phone call or any other means, a single complaint concerning the sufficiency of Petitioner's responses to Registrant's second round of discovery. Against this background, Registrant's assertions that Petitioner has obstructed Registrant's discovery must be viewed very skeptically.

⁷ The Courts and the Board, of course, do not look favorably upon discovery complaints arising from a party's own delay in conducting discovery. *Dyneer, supra*, at p. 1253; *Spectra Corp. v. Lutz*, 5 USPQ 2d, 1867, 1868 (Fed. Cir. 1988). Registrant's first round of written discovery was served on June 11, 2010. Registrant conducted no further discovery until over a year later, when it served a second round of written discovery on July 22, 2011.

- Ms. Haider was identified in Petitioner’s supplemental disclosures served on November 4, 2010 and again in response to Petitioner’s Answer to Interrogatory 39 on November 5, 2010. (Vande Sande Dec. ¶¶ 5 - 6 and Exs. 4 - 5 thereto).
- Mr. Yoches, like Ms. Haider, was identified in the same supplemental disclosures on November 4, 2010 and on November 5, 2010 in response to Interrogatory 39. (Vande Sande Dec. ¶¶ 5 - 6 and Exs. 4 - 5 thereto).
- All four of the current employees/declarants were, contrary to Registrant’s repeated assertions and Declaration averments, identified to Registrant in discovery served May 4, 2011, three months prior to the filing of Petitioner’s summary judgment motion. (Vande Sande Dec. ¶ 1, Ex.1, p.8).
- As to the 30(b)(6) deposition, Registrant has had the ability to depose Petitioner since the opening of the first discovery period on May 27, 2010.

These facts belie Registrant’s assertion that it “has not had the opportunity to depose a single Soft Serve witness or a single third party witness” and also expose as disingenuous Registrant’s contention that Petitioner has looked “to thwart” Registrant “from developing any record for the Board to consider”.

C. Consideration of What Registrant Refers to as “The Needed Discovery” Underscores the Conclusion That Registrant’s Motion Should Be Denied.

Registrant’s brief, at pp. 4 - 5, identifies four categories of what it refers to as “The Needed Discovery”.

i. Registrant’s first category of “The Needed Discovery”.

The first category Registrant identifies is “discovery outstanding and NOT RESPONDED TO” (emphasis added). Registrant characterizes as “not responded to” its September 2011 first efforts to depose Soft Serve via Rule 30(b)(6), and to take the depositions of Mr. Orban, Mr. Yoches, and Ms. Haider. As noted above, each of these depositions could have been noticed long ago. In addition, none of these depositions represent discovery “not responded to” but instead constitute discovery not obtained by virtue of Board Order and practice.

ii. Registrant's second category of "The Needed Discovery"

The second category of "The Discovery Needed" constitutes what Registrant refers to as "discovery promised but not yet produced". The sole subject matter of this category consists of the documents which, as discussed above, were forwarded to Registrant prior to its filing of this Motion and which have now been in its possession for a month.

iii. Registrant's third category of "The Needed Discovery"

Registrant's third category is entitled "Declarants Supporting Summary Judgment Motion" and is comprised solely of the four employees/declarants which, as evidenced above, Registrant falsely characterizes as not having been previously identified by Petitioner.

iv. Registrant's fourth category of "The Needed Discovery"

Registrant's fourth category of "The Needed Discovery" is merely a listing of questions which have either already been asked and answered or which Registrant could have asked long ago. Specifically, Registrant characterizes the following "as further questions for discovery". (Reg. Br. p. 10).

- Inquiries relating to when Soft Serve stopped using the business name "I Can't Believe Its Yogurt"
 - This question was answered by Petitioner through its response to Interrogatory 18 on August 10, 2010; in response to Registrant's second set of Interrogatories (No. 44) on August 26, 2011; in Orban Dec. ¶ 3 and Petitioner's responses to Registrant's requests for admissions Nos. 33-41). In addition, forwarded to Registrant on September 12, 2011 was documentation relating to Petitioner's long since terminated status as an I Can't Believe Its Yogurt franchisee. (Vande Sande Dec. ¶¶ 7-10 and Exs. 6-9 thereto).

- Details relating to Petitioner’s 2002 Health Department Permit, including the question of whether it was ever filed.
 - This document was produced to Registrant on May 4, 2011. Registrant’s second round of written discovery, served on July 22, 2011, failed to pose any inquiry regarding this document. The document itself, as produced to Registrant bearing Production No. OP 5184, (See Vande Sande Dec. ¶ 1, Ex. 1 thereto) evidences its having been both filed with, and accepted by, the Health Department. Further discovery concerning this document is hardly essential to Registrant’s ability to respond to Petitioner’s motion.
- Questions concerning an October 2003 invoice from a sign manufacturer.
 - This document was produced to Registrant on August 26, 2010 bearing production number OP 5173. (Vande Sande Dec. ¶ 11). No follow-up discovery related to this document was ever attempted by Registrant. Additionally, the document has never been asserted as constituting first use of SPRINKLES by Petitioner. Instead, it indicates usage by Petitioner prior to the 2004 and 2005 first use dates alleged in the ‘772 registration.
- Inquiries relating to the exact nature, timing and scope of the Petitioner’s sale of “Blimpies” to Million, Inc.
 - The exact timing, nature and scope of the sale of a Blimpies to Million, Inc. is information already in Registrant’s possession. (Vande Sande Dec. ¶ 12 and Ex. 10 thereto). Specifically, included in those documents provided to Registrant on September 12, 2011 (which Registrant asserts it did not have at the time of the filing of its motion) were the agreement for sale, contract amendment, assignment and related closing documents bearing production numbers OP 5278 – OP 5303.⁸ Petitioner’s answers to Interrogatories 46 and 47 likewise provided Registrant with information relating to the irrelevant Blimpies sale to Million, Inc. (Vande Sande Dec. ¶ 13 and Ex. 11 thereto).

As Registrant has in its possession all documentation regarding the Blimpies sale to Million, Inc. and, moreover, as that transaction is hardly essential to Registrant’s ability to respond to the summary judgment motion, it provides no basis for discovery under Rule 56(d).

⁸ These documents were not in Petitioner’s possession, but were obtained by Petitioner’s counsel from the law firm that assisted in the transaction so that Registrant’s curiosity as to the involved transaction could be satisfied. (Vande Sande Dec. ¶ 12).

These are the only specific questions identified by Registrant in the fourth category of “The Needed Discovery”, although Registrant elsewhere in its brief sets forth other questions.

Representative examples include the following:

- The prices of Petitioner’s products. (Reg. Br. p. 13).
 - Documentation in the form of photographs of Petitioner’s menu boards clearly showing the prices of Petitioner’s goods were produced on September 12, 2011 bearing production numbers OP 5273 and 5276 as a portion of the document production which Registrant alleges it had not received as of the filing date of its Rule 56(d) motion. (Vande Sande Dec. ¶ 14 and Ex. 12 thereto).
- Registrant’s inquiry as to classes of purchasers to whom Soft Serve sells products. (Reg. Br. p. 13).
 - Registrant has had this information in its possession since Petitioner first responded to Registrant’s first set of interrogatories on August 10, 2010. (Vande Sande Dec. ¶ 15, Ex.13 thereto). In addition, Mr. Orban’s Declaration at ¶¶ 10-12, addresses this issue.
- Registrant’s inquiry concerning where and in what manner Soft Serve advertises or promotes its store. (Reg. Br. p. 13).
 - Petitioner responded to this inquiry on August 10, 2010 in responding to Registrant’s interrogatories 9-12. (Vande Sande Dec. ¶ 16 and Ex. 14 thereto). In addition, Petitioner responded to a series of admission requests relating to the manner in which Petitioner advertises and promotes its store and goods. (See Responses to Registrant’s requests for admissions Nos. 42-69, 79-80). (Vande Sande Dec. ¶ 16 and Ex. 17 thereto.)
- Registrant’s inquiry concerning “the circumstances surrounding the instances of confusion now alleged by Soft Serve”. (Reg. Br. p. 13).
 - Details concerning reported instances of actual confusion were set forth in Petitioner’s Third Supplementation of Interrogatory Answers served on May 4, 2011. Instances of actual confusion were also discussed in Mr. Orban’s Declaration at ¶¶ 17-26. Documents regarding numerous additional instances of actual confusion, specifically various instances of actual confusion occurring subsequent to Petitioner’s third supplementation, were provided to Registrant on September 12, 2011 as part of Petitioner’s responses to Registrant’s second round of discovery.

Finally, Petitioner's answer to interrogatory 49 also discussed additional instances of actual confusion.

- Registrant's inquiries concerning the geographic scope of Petitioner's use of SPRINKLES. (Reg. Br. p. 11).
 - Petitioner's answer to interrogatory 10, Admission Requests 57-69, and Urban Dec. ¶¶ 3, 13, are representative of information conveyed to Registrant concerning the geographical extent of Petitioner's use of SPRINKLES. (Vande Sande Dec. ¶ 17 and Ex. 15 thereto).

None of the specific inquiries posed by Registrant represent subject matter as to which it (a) has not already promulgated written discovery which has been responded to by Petitioner, (b) represent questions which could not have been previously posed by Registrant, or (c) relate to information essential in order to permit Registrant to respond to Petitioner's motion.⁹

In any event, Registrant's election to respond to the substance of Petitioner's motion through its Rule 56(d) briefing, declarations and exhibits, and Registrant's contention that "even the presently available evidence indicates that the summary judgment motion lacks merit and that disputed issues of material fact exist" (Reg. Br. p. 2) clearly demonstrate that the few factual questions posed by Registrant which it has not earlier addressed in discovery are not, by Registrant's own proclamation, required in order for Registrant to be able to respond to the summary judgment motion.

⁹ The assertion that Chantilly Donuts "was only disclosed in connection with the Summary Judgment Motion and was therefore previously unknown to Sprinkles" (Slafsky Dec. ¶ 30) is also false. Cancelled checks provided to Registrant as part of Petitioner's May 4, 2011 supplemental document production included checks to Chantilly donuts at OP 5176, 5181 and 5182. (Vande Sande Dec. ¶ 18 and Ex. 16 thereto).

D. Rule 56(d) Is Not Intended To Authorize Fishing Expeditions Or Significant Discovery Extensions.

As established above, the discovery identified by Registrant as being “The Needed Discovery” (Reg. Br. p. 4) has been provided or could, and should, have been pursued earlier by Registrant. However, elsewhere Registrant asks for an Order “enabling affidavits to be obtained, depositions to be taken, or other discovery to be undertaken”. (Reg. Br. pp. 1, 15). Finally, at another juncture Registrant asserts that it is “entitled” to ask questions “of Soft Serve’s landlord, of ICBY (Petitioner’s former franchisor I Can’t Believe Its Yogurt), of Soft Serve’s alleged donut supplier, and of the sign company with which Soft Serve did business”. (Reg. Br. p. 11). While Registrant would undoubtedly like to have the ability to depose these persons, and others, in an attempt to search for possibly relevant information or leads, Rule 56(d) does not allow for speculative discovery which might have earlier been pursued or which is not essential to the presentation of a defense to a summary judgment motion. *Spectra Corp. v. Lutz*, 5 USPQ 2d, 1867, 1869 (Fed. Cir. 1988); *Nature’s Way v. Nature’s Herbs*, 9 USPQ 2d 2077, 2081 (TTAB 1989); *Dyneer Corp. v. Automotive Products, plc*, 37 USPQ 2d 1251, 1253 (TTAB 1995).

Registrant’s suggestions that it be issued a 75-day fishing license in order to complete discovery is irreconcilably at odds with the concept of summary judgment generally and the purpose and spirit of Rule 56(d) specifically.

IV. CONCLUSION

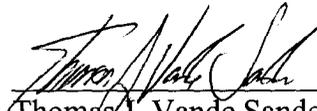
Registrant has failed to make the showing required of it in order to obtain the limited, specific and essential discovery that might be granted a deserving party under Rule 56(d). Registrant, by arguing the merits of the underlying summary judgment motion, has demonstrated that it does not need further discovery in order to respond to Petitioner’s motion. In addition,

Registrant's assertion that "presently available evidence" is sufficient to deny Petitioner's Motion also evidences the fact that discovery is not essential. Moreover, the fact that the vast majority of the discovery now sought by Registrant has already been provided and is already in its possession, and that virtually all other discovery Registrant would like to have could have been previously sought by Registrant, are all factors that, viewed separately or in their totality, warrant the denial of Registrant's Motion under Rule 56(d).

Hall & Vande Sande, LLC

Date:

10/14/11



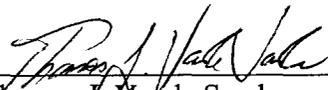
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CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Petitioner, hereby certifies that one copy of the foregoing "PETITIONER'S RESPONSE BRIEF IN OPPOSITION TO REGISTRANT'S RULE 56(d) MOTION" and the related Declaration of Thomas J. Vande Sande and exhibits thereto were this day served on Registrant 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: 10/11/11



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DECLARATION OF THOMAS J. VANDE SANDE

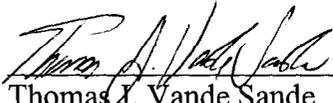
I, Thomas J. Vande Sande, counsel for Soft Serve, Inc. d/b/a Sprinkles in connection with various pending Trademark Trial and Appeal Board proceedings, have firsthand knowledge of the facts set forth below and would, if required, testify thereto.

1. Attached hereto as Ex. 1 is a true and accurate copy of Soft Serve's third supplemental answers to Registrant's first set of interrogatories and Soft Serve's related production of documents bearing production numbers OP 5174 - OP 5192 as served on Registrant's counsel on May 4, 2011. Information conveyed through these materials was discussed during a June 28, 2011 meeting involving the undersigned and Registrant's Washington, D.C. based litigation counsel.
2. On September 12, 2011 our offices forwarded to Registrant's counsel documents responsive to Registrant's second round of written discovery. As the weight of such exceeded that which could be sent by first class mail, the Post Office, at the time of mailing, required us to send these documents as Priority Mail. The U.S. Postal Service website on September 12, 2011 indicated that delivery would be made on September 14, 2011.
3. Exhibit 2 hereto is a true and accurate copy of an initial disclosure served on May 28, 2010 identifying Mr. Orban.
4. Exhibit 3 hereto is a true and accurate copy of answers to interrogatories served on August 10, 2010 identifying Mr. Orban.

5. Exhibit 4 hereto is a true and accurate copy of a supplemental disclosure served on November 4, 2010 identifying Ms. Haider and Mr. Yoches.
6. Exhibit 5 hereto is a true and accurate copy of the answer to Interrogatory No. 39, served on November 5, 2010 identifying Ms. Haider and Mr. Yoches.
7. Exhibit 6 hereto is a true and accurate copy of the answer to interrogatory No. 18, served on August 10, 2010 relating to Soft Serve's relationship with I Can't Believe Its Yogurt.
8. Exhibit 7 hereto is a true and accurate copy of the answer to Interrogatory 44, served on August 26, 2011 relating to Soft Serve's relationship with I Can't Believe Its Yogurt.
9. Exhibit 8 hereto is a true and accurate copy of Responses to Admission Requests 33-41 relating to Soft Serve's relationship with I Can't Believe Its Yogurt, served on August 26, 2011.
10. Exhibit 9 hereto is a true and accurate copy of documentation provided to Registrant on September 12, 2011 relating to Soft Serve's relationship with I Can't Believe Its Yogurt bearing production Nos. OP 5208-5212.
11. The sign manufacturer invoice referred to at page 5 of Registrant's brief was produced to Registrant on August 26, 2010 bearing production No. OP 5173.
12. Exhibit 10 hereto is a true and accurate copy of documentation providing full details concerning Soft Serve's sale to Million, Inc. of a Blimpies store. These documents, bearing production numbers OP 5278 -5303 were provided to Registrant on September

- 12, 2011. These documents were obtained by the undersigned from the law firm which handled the related transaction on behalf of Million, Inc.
13. Exhibit 11 hereto is a true and accurate copy of answers to Interrogatories 46 and 47, served on August 26, 2011 and addressing the Soft Serve/Million, Inc. Blimpie's sale.
14. Exhibit 12 hereto is a true and accurate copy of documentation provided to Registrant on September 12, 2011 evidencing the pricing of Opposer's baked goods and ice cream goods.
15. Exhibit 13 hereto is a true and accurate copy of the answer to Interrogatory 27, served on August 10, 2010, evidencing the classes of purchasers to whom Soft Serve sells its products.
16. Exhibit 14 hereto is a true and accurate copy of answers to interrogatories 9 – 12, served on August 10, 2010 and Responses to Registrant's Requests for Admission Nos. 42-80.
17. Exhibit 15 hereto is a true and accurate copy of the answer to Registrant's interrogatory 10. See also Soft Serve's Responses to Admission requests 57-69 (a portion of Ex. 17) all related to discovery propounded by Registrant in connection with the geographic scope of Soft Serve's use of SPRINKLES.
18. Exhibit 16 hereto is a true and accurate copy of cancelled checks written to Chantilly Donuts, which appeared as a portion of Exhibit 70 to Soft Serve's summary judgment motion, as previously produced to Registrant on May 4, 2011 bearing production numbers 5176, 5181 and 5182.

I declare under penalty of perjury that the foregoing is true and accurate. Executed at
Potomac, Maryland on October 11, 2011.

By: 
Thomas J. Vande Sande

HALL & VANDE SANDE, LLC

ATTORNEYS AT LAW

10220 RIVER ROAD, SUITE 200
POTOMAC, MARYLAND 20854
TELEPHONE: (301) 983-2500
FACSIMILE: (301) 983-2100

THOMAS J. VANDE SANDE
DENNIS A. FOSTER
JOHN GIBSON SEMMES

OF COUNSEL
WILLIAM D. HALL
ROBERT R. PRIDDY

Patent, Trademark
and Copyright Law
and Litigation

May 4, 2011

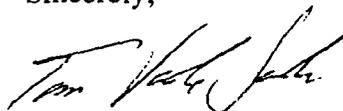
Hollis Beth Hire, Esquire
Wilson, Sonsini, Goodrich and Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

Re: Soft Serve, Inc. v. Sprinkles Cupcakes, Inc.
Consolidated Case No. 91194188

Dear Hollie:

Enclosed you will find a further supplementation of Soft Serve's interrogatory answers and additional documents bearing production numbers OP 5174 – OP 5192.

Sincerely,



Thomas J. Vande Sande

TVS:dn
Enclosures

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	

**OPPOSER’S THIRD SUPPLEMENTAL ANSWERS AND
OBJECTIONS TO APPLICANT’S FIRST SET OF INTERROGATORIES**

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 supplements its Answers to the First 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.

SUPPLEMENTAL ANSWERS

INTERROGATORY NO. 13

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

FURTHER SUPPLEMENTAL ANSWER

Opposer's first use of Sprinkles in connection with the offering of frozen desserts occurred at least as early as April 14, 2002 and has continued uninterrupted to the present.

INTERROGATORY NO. 14

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

FURTHER SUPPLEMENTAL ANSWER

Opposer's first use of Sprinkles in connection with the offering of baked goods occurred at least as early as April 14, 2002 and has continued uninterrupted to the present.

INTERROGATORY NO. 15

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

FURTHER SUPPLEMENTAL ANSWER

As noted in Opposer's Supplemental Answer to Interrogatory 14, Opposer has used SPRINKLES in connection with the offering of various baked goods since at least as early as April 14, 2002.

INTERROGATORY NO. 16

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

FURTHER SUPPLEMENTAL ANSWER

Opposer's first use of Sprinkles in connection with the offering of sweets and candies occurred at least as early as April 14, 2002 and has continued uninterrupted to the present.

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.

FURTHER SUPPLEMENTAL ANSWER

Opposer's ongoing investigation has revealed that Opposer has used SPRINKLES since at least as early as April 14, 2002.

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 of any of its products and services.

FURTHER SUPPLEMENTAL ANSWER

The following further supplements Opposer's/Petitioner's prior Answer. On January 7, 2011 January 24, 2011, February 4, 2011 and February 11, 2011 Mr. Orban received telephone calls, at SPRINKLES, asking whether the caller had reached Sprinkles Cupcakes and otherwise evidencing confusion with Applicant. On February 9, 2011 a call was received at SPRINKLES inquiring as to whether SPRINKLES was opening in D.C. Mr. Orban received a call on February 14, 2011 inquiring as to whether SPRINKLES was opening in Georgetown. A visitor to SPRINKLES on February 15, 2011 asked Mr. Orban whether he wasn't opening another location in Georgetown. On February 16, 2011 a SPRINKLES employee received a telephone call while at SPRINKLES inquiring as to whether SPRINKLES was Sprinkles Cupcakes of California. On February 17, 2011 a visitor to SPRINKLES inquired as to Opposer's opening in Washington D.C. On February 18, 2011 an inquirer asked whether SPRINKLES was open and indicated that perhaps he had called the wrong SPRINKLES. On March 2, 2011 a caller inquired as to whether SPRINKLES was opening on Friday and indicated that he had read such a story on the Internet. On March 4, 2011 an inquirer asked whether SPRINKLES was Sprinkles Cupcakes. On March 9, 2011 a visitor to SPRINKLES presented a SPRINKLES employee with a Sprinkles Cupcakes gift card for 12 cupcakes. On March 23, 2011 a caller inquired as to whether Opposer/Petitioner was SPRINKLES from Cupcake Wars. On March 25, 2011 a visitor asked whether there was another of these shops in Georgetown. On March 26, 2011 a visitor stated that he was happy he need not go to Georgetown in order to get Sprinkles Cupcakes. On

April 3, 2011 a visitor inquired as to whether Opposer had opened another store in Georgetown. On April 10, 2011 a visitor asked whether Opposer was part of a chain and indicated that he had read about the Georgetown location. On April 12, 2011 a caller asked whether Opposer was the cupcake place. On April 16, 2011 a customer asked a SPRINKLES employee whether the Potomac SPRINKLES store is the “same store” as in Georgetown. On April 16, 2011 Mr. Orban fielded a call from an inquirer asking whether the shop would be closing at its regular time today. The caller then asked for confirmation that the closing time was 7:00 p.m. Mr. Orban responded that his store was open until at least 10:00 p.m. The caller indicated that Mr. Orban’s website indicated that the store closed at 7:00 p.m. on Saturdays and, upon further questioning from Mr. Orban, indicated that he was in fact looking for Sprinkles Cupcakes. On April 20, 2011 Mr. Orban received a call at SPRINKLES from an individual who was calling to “make sure” that this was Sprinkles Cupcakes. On April 25, 2011 a caller asked whether SPRINKLES was affiliated with SPRINKLES in Georgetown.

Individuals with knowledge of these occurrences include Mr. Orban as well as the following employees:

Benson Panga
Julianna Kariman
Juliet Hope
Glyeb Koumasinski

INTERROGATORY NO. 39

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

FURTHER SUPPLEMENTAL ANSWER

In addition to Mr. Orban, Saira Haider and Aaron Yoches, more specifically identified in Opposer's Supplemental Disclosures, have knowledge as to Opposer's date of first use and thus the supplementation of Interrogatory Answers 13-17 herein.

Soft Serve, Inc. d/b/a Sprinkles

Date: May 3, 2011



Thomas Orban

As to objections:

Hall & Vande Sande, LLC

Date: 5/3/11



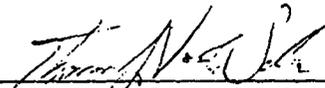
Thomas J. Vande Sande
Attorney for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
Phone: (301) 983-2500

CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Opposer hereby certifies that one (1) copy of the foregoing "OPPOSER'S THIRD SUPPLEMENTAL ANSWERS AND OBJECTIONS TO APPLICANT'S FIRST SET OF INTERROGATORIES" was this day served on Applicant by mailing same, first class mail, to:

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

Date: 5/4/11



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

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1386

date Sept 22, 2003

Pay to the order of Whataburger \$ 1336.00
one thousand three hundred thirty-six / 100 dollars



RIGGS
Potomac Office
Potomac, MD 20854-4903

for 7002

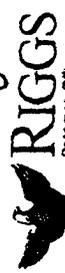
Order

⑆054000030⑆ 5008 180 211 1386 ⑈0000 133666⑈

15-3-540
1318

date June 9/03

Pay to the order of Whataburger \$ 1466.90
one thousand four hundred sixty-six / 100 dollars



SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

SOFT SERVE, INC.
3138 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1295

date July 9, 2003

Pay to the order of Whataburger \$ 1238.78
twelve hundred thirty-eight / 100 dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 7002

Order

⑆054000030⑆ 5008 180 211 1295 ⑈0000 123878⑈

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1379

date Aug 28, 2003

Pay to the order of Whataburger \$ 1191.44
eleven hundred ninety-one / 100 dollars



RIGGS
Potomac Office
Potomac, MD 20854-4903

for 4002 / > JUL 31

Order

⑆054000030⑆ 5008 180 211 1379 ⑈0000 119144⑈

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1343

date July 8, 2003

Pay to the order of Whataburger \$ 1176.92
eleven hundred seventy-six / 100 dollars



RIGGS
Potomac Office
Potomac, MD 20854-4903

for

Order

⑆054000030⑆ 5008 180 211 1343 ⑈0000 117692⑈

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1119

Oct 8 / 02
Date

Pay to the order of Bethesda Bagels \$ 1166²⁰/₁₀₀
one thousand one hundred sixty six²⁰/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 1002

Jordan

⑆054000030⑆ 50081802⑆ 1119 ⑆0000116620⑆

15-3-540

1342

JULY 8, 2003
date

Pay to the order of Chantilly Donuts \$ 2459³⁴/₁₀₀
two thousand four hundred fifty nine³⁴/₁₀₀ dollars



SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1093

Sept 2 / 02
Date

Pay to the order of Bethesda Bagels \$ 1121⁷⁸/₁₀₀
eleven hundred twenty-one⁷⁸/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 1002

Jordan

⑆054000030⑆ 50081802⑆ 1093 ⑆0000112178⑆

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1073

Aug 19 / 02
Date

Pay to the order of Bethesda Bagels \$ 1126⁹⁴/₁₀₀
eleven hundred twenty-six⁹⁴/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 1002

Jordan

⑆054000030⑆ 50081802⑆ 1073 ⑆0000112694⑆

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1032

JULY 3, 2002
Date

Pay to the order of Bethesda Bagels \$ 2353⁵⁴/₁₀₀
two thousand three hundred fifty-three⁵⁴/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

credits \$ 14.52

for THRU JULY 1

Jordan

⑆054000030⑆ 50081802⑆ 1032 ⑆0000235354⑆

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1382

Sept 16, 2003
date

Pay to the order of - *Chantilly Donuts* \$ *1916*^{01/100}
one thousand nine hundred sixteen^{01/100} dollars



for *8/2 thru 8/29*

Order

⑆054000030⑆ 5008 180 2⑈ 1382 ⑆0000199604⑆

15-3-540 1397

Nov 10, 2003
date

Pay to the order of - *Whataburger Bagel Co* \$ *1542*^{16/100}
fifteen hundred forty two^{16/100} dollars



SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1134

Oct 8, 2003
date

Pay to the order of - *Chantilly Donuts* \$ *2668*^{12/100}
two thousand six hundred sixty-eight^{12/100} dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for *8/30 - 10/03*

Order

⑆054000030⑆ 5008 180 2⑈ 1134 ⑆0000266812⑆

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

SPRINKLES
SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1363

Aug 5/03
date

Pay to the order of - *Chantilly Donuts* \$ *2195*^{58/100}
two thousand one hundred ninety five^{58/100} dollars



for *7/5 - 8/1*

Order

⑆054000030⑆ 5008 180 2⑈ 1363 ⑆0000219558⑆

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1150

Nov 5, 2003
date

Pay to the order of - *Chantilly Donuts* \$ *2332*^{02/100}
two thousand three hundred thirty two^{02/100} dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for *10/4 7 10/31*

Order

⑆054000030⑆ 5008 180 2⑈ 1150 ⑆0000233202⑆

447867
SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-640

1167

Nov 7, 2002
date

Pay to the order of Sara Lee \$ 1976 ⁶⁴/₁₀₀
one thousand nine hundred seventy six ⁶⁴/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE

POTOMAC, MD 20854-4903

for 3451437 3451033
3451699 3446035

Order

⑆054000030⑆ 50081802⑈ 1167 ⑆0000197664⑆

~~0421-3451033~~

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-640

1094

Sept 2/02
date

Pay to the order of Sara Lee \$ 1676 ⁹⁵/₁₀₀
sixteen hundred seventy-six ⁹⁵/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

Order

⑆054000030⑆ 50081802⑈ 1094 ⑆0000167695⑆

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-640

1186

Nov 7, 2002
date

Pay to the order of Sara Lee \$ 557 ²⁹/₁₀₀
five hundred fifty seven ²⁹/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

Order

for 7891273
⑆054000030⑆ 50081802⑈ 1186 ⑆0000055729⑆

~~4002~~

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-640

1192

Dec 10, 2002
date

Pay to the order of Bethesda Bagels \$ 1113 ³⁵/₁₀₀
eleven hundred thirteen dollars ³⁵/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

Order

for thru Nov 30
⑆054000030⑆ 50081802⑈ 1192 ⑆0000111335⑆

1195
15-3-640
Dec 20, 2002
date
\$ 1401 ⁶⁴/₁₀₀
dollars
Pay to the order of Sara Lee
fourteen hundred and one dollars ⁶⁴/₁₀₀

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1416

Dec 18, 2003
date

Pay to the order of Whitza Bagel \$1250⁹⁹/₁₀₀
twelve hundred fifty dollars ⁹⁸/₁₀₀ dollars



RIGGS

Potomac Office
Potomac, MD 20854-4903

for 7002

[Signature]

⑆054000030⑆ 50081802⑈ 1416 ⑈0000125098⑈

15-3-540

1406

Nov 13, 2003
date

\$184⁰²/₁₀₀

*Pay to the order of Soft Serve
one hundred eighty-four dollars ⁰²/₁₀₀ dollars*



SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1133

Oct 3, 03
date

Pay to the order of Whitza Bagel \$1208³⁶/₁₀₀
twelve hundred eight dollars ³⁶/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 7002

[Signature]

⑆054000030⑆ 50081802⑈ 1133 ⑈0000120836⑈

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1264

March 9, 2003
date

Pay to the order of Whitza Bagel, Inc. \$999¹²/₁₀₀
nine hundred ninety-nine dollars ¹²/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 7002

[Signature]

⑆054000030⑆ 50081802⑈ 1264 ⑈0000099912⑈

\$500. per David

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1286

April 18/03
date

Pay to the order of Whitza Bagel \$1333²⁴/₁₀₀
thirteen hundred thirty-three ²⁴/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 7002

[Signature]

⑆054000030⑆ 50081802⑈ 1286 ⑈0000133324⑈

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1211

Jan 6/03
date

Pay to the order of *Betresda Bagels* \$ *1111* ^{1/100}
eleven hundred eleven dollars / *100* dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for *7002*

Order

⑆054000030⑆ 50081802⑈ 1211 ⑈0000111100⑈

15-3-540

1432

Jan 23, 2004
date

Pay to the order of - Sara Lee
one hundred fifty eight dollars / *100* dollars \$ *158* ^{10/100}



SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1235

Feb 6, 2003
date

Pay to the order of *Whata Bagel* \$ *362* ^{40/100}
three hundred sixty two / *100* dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for *775.02*
587.38

Order

⑆054000030⑆ 50081802⑈ 1235 ⑈0000036240⑈

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1127

PER ENV.

Sept 24, 2003
date

Pay to the order of *Sara Lee* \$ *1001* ^{62/100}
one thousand one dollars / *100* dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for *8185945 RI* *7428.02* (disc. *745.80* taken)
8875058
8875400 *307.80*

Order

⑆054000030⑆ 50081802⑈ 1127 ⑈0000100162⑈

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1434

Jan 13, 2004
date

Pay to the order of *Whata Bagel* \$ *1157* ^{42/100}
eleven hundred fifty seven / *100* dollars



for *1237* *Dec 31*

Order

⑆054000030⑆ 50081802⑈ 1134 ⑈0000115742⑈

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1164

Nov 7, 2002
Date

Pay to the order of Betseade Bogala \$ 1101¹⁹/₁₀₀
eleven hundred and one dollars¹⁹/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for the Oct 31 18⁰² credit

Order

⑆054000030⑆ 50081802⑆ 1164 ⑆000010119⑆

1438

Jan 13, 2004
Date

15-3-540

\$ 1101¹⁹/₁₀₀
dollars

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1043

July 8, 2002
Date

Pay to the order of Sara Lee \$ 407⁸¹/₁₀₀
four hundred seven dollars⁸¹/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

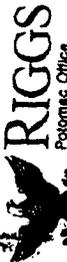
for 7843613

Order

⑆054000030⑆ 50081802⑆ 1043 ⑆000004078⑆

acct 345623
SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

Pay to the order of Sara Lee
four hundred seven dollars⁸¹/₁₀₀



SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1042

July 8, 2002
Date

Pay to the order of Sara Lee \$ 2092⁰⁰/₁₀₀
two thousand ninety-two dollars⁰⁰/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 3449462
3449252
3449146
3448140
3448817
3448694

Order

⑆054000030⑆ 50081802⑆ 1042 ⑆0000209208⑆

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1023

June 11, 2002
Date

Pay to the order of Margaret Baker \$ 2550⁰⁰/₁₀₀
two thousand five hundred fifty⁰⁰/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for the pay

Order

⑆054000030⑆ 50081802⑆ 1023 ⑆0000255000⑆

SPRINKLES
SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540 1301

date May 14, 2003

Pay to the order of Chantilly Donuts \$3617⁴⁶/₁₀₀
Three thousand six hundred sixteen ⁴⁶/₁₀₀ dollars



for 3/29 to 5/9/03

Order

⑆054000030⑆ 5008 1802⑈ 1301 ⑆0000361746⑆

15-3-540 1315

date June 9, 2003

Pay to the order of Sara Lee \$2438⁰³/₁₀₀
two thousand four hundred thirty-eight ⁰³/₁₀₀ dollars

SOFT SERVE, INC.
3138 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540 1285

date April 18/03

Pay to the order of Sara Lee \$2967²⁶/₁₀₀
two thousand nine hundred sixty-seven ²⁶/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

8271260 - 401.40
8272114 - 301.20
8272477 - 779.40
8271406 - 153.60
8271578 - 74.40
8272238 - 313.03

Order

⑆054000030⑆ 5008 1802⑈ 1285 ⑆0000296726⑆

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415



SOFT SERVE, INC.
3138 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540 1277

date March 29/03

Pay to the order of Chantilly Donuts \$2430⁷⁶/₁₀₀
two thousand four hundred thirty ⁷⁶/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 3/1 to 3/28/03

Order

⑆054000030⑆ 5008 1802⑈ 1277 ⑆0000243076⑆

SPRINKLES
SOFT SERVE, INC.
3138 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540 1263

date March 9, 2003

Pay to the order of Chantilly Donuts \$494⁹⁴/₁₀₀
four hundred ninety-four ⁹⁴/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 2/22 - 2/28

Order

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1433

Jan 13, 2004
date

Pay to the order of - Chantilly Donuts \$2534⁸⁶/₁₀₀
two thousand five hundred thirty four ⁸⁶/₁₀₀ dollars



Potomac Office
Potomac, MD 20854-4903

for 11/29-1/2

Order

⑆054000030⑆

5008 180 211 1433

⑆0000253486⑆

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1403

Nov 11/03
date

Pay to the order of - Sara Lee \$435⁹⁴/₁₀₀
four hundred thirty five dollars ⁹⁴/₁₀₀ dollars



Potomac Office
Potomac, MD 20854-4903

for 98996

Order

⑆054000030⑆

5008 180 211 1403

⑆0000043594⑆

345623
SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1400

Nov 10, 2003
date

Pay to the order of - Sara Lee \$934⁸⁰/₁₀₀
nine hundred thirty four ⁸⁰/₁₀₀ dollars



Potomac Office
Potomac, MD 20854-4903

for 1336724

Order

⑆054000030⑆

5008 180 211 1400

⑆0000093480⑆

SPRINKLES
SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1321

June 9/03
date

Pay to the order of - Chantilly Donuts \$2471⁶⁸/₁₀₀
two thousand four hundred seventy one ⁶⁸/₁₀₀ dollars



Potomac Office
Potomac, MD 20854-4903

for 5/10 to 6/6

Order

⑆054000030⑆

5008 180 211 1321

⑆0000247168⑆

MEMO thru April 1

⑈00002736⑈ ⑆054000030⑆

5008 180 2⑈

⑈00001183

Order

MEMO thru Apr. 30

⑈00002749⑈ ⑆054000030⑆

5008 180 2⑈

⑈00001077

Order

MEMO 8421-3456233

⑈00002733⑈ ⑆054000030⑆

5008 180 2⑈

⑈00002775

Order



DEPARTMENT OF HEALTH AND HUMAN SERVICES
 LICENSURE AND REGULATORY SERVICES
 255 ROCKVILLE PIKE, 2ND FLOOR
 ROCKVILLE, MARYLAND 20850
 240-777-3986 FAX 240-777-3088

**FOOD SERVICE FACILITY/EATING AND DRINKING ESTABLISHMENT
 PERMIT APPLICATION**

Application is hereby made for a permit to operate a Food Service Facility/Eating and Drinking Establishment in Montgomery County, Maryland.

(PLEASE PRINT)

Please review data and change if different, fill in any blanks, and sign this application.

TODAY'S DATE Dec 18, 2002

OWNER OR CORPORATION NAME: **SOFT SERVE, INC.**
 OWNER OR CORPORATION ADDRESS: **3136 ST. FLORENCE TERR.
 OLNEY MD 20832**
 OWNER PHONE #: ~~301-570-3796~~
103-748-0978
 NAME OF FACILITY: ~~I CAN'T BELIEVE IT'S YOGURT~~
SPRINKLES PHONE #: **301-299-8415**
 FACILITY ADDRESS: **10148 RIVER RD.
 POTOMAC MD 20854**

DOES THE BUSINESS DO CATERING? [] Yes [X] No

FORMER NAME OF FACILITY (IF APPLICABLE): _____

NORMAL WORKING HOURS AND DAYS OPEN FOR BUSINESS: **6-9**

WATER SUPPLY: [X] PUBLIC OR [] WELL
 (30 days required for well water testing - contact Well & Septic Section at 301-217-6160.)
 SEWERAGE: [X] PUBLIC OR [] SEPTIC SYSTEM

SIGNATURE OF OWNER: *Thomas Orban*

NAME OF ABOVE SIGNATURE (PRINTED): THOMAS ORBAN

PLEASE PAY THIS AMOUNT: \$365.00 Please submit fee (NO CASH) with application and make check payable to "Montgomery County". Return application and fee by December 16, 2002. If application and fee are not received by January 31, 2003, an additional fee of \$100.00 will be required.

OFFICE USE ONLY

Receipt Number: 304106 Date Issued: 12/31/02
 Amount: 365.00 Date Expires: 1/31/04

License # 1230 Area 09

2003 RENEWAL

Form W-4 (2002)

Purpose. Complete Form W-4 so your employer can withhold the correct Federal income tax from your pay. Because your tax situation may change, you may want to refigure your withholding each year.

Exemption from withholding. If you are exempt, complete only lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2002 expires February 16, 2003. See Pub. 505, Tax Withholding and Estimated Tax.

Note: You cannot claim exemption from withholding if (a) your income exceeds \$750 and includes more than \$250 of unearned income (e.g., interest and dividends) and (b) another person can claim you as a dependent on their tax return.

Basic instructions. If you are not exempt, complete the Personal Allowances Worksheet below. The worksheets on page 2 adjust your withholding allowances based on itemized deductions, certain credits, adjustments to

income, or two-earner/two-job situations. Complete all worksheets that apply. However, you may claim fewer (or zero) allowances.

Head of household. Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See line E below.

Tax credits. You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the Personal Allowances Worksheet below. See Pub. 919, How Do I Adjust My Tax Withholding? for information on converting your other credits into withholding allowances.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax.

Two earners/two jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others.

Nonresident alien. If you are a nonresident alien, see the instructions for Form 8233 before completing this Form W-4.

Check your withholding. After your Form W-4 takes effect, use Pub. 919 to see how the dollar amount you are having withheld compares to your projected total tax for 2002. See Pub. 919, especially if you used the Two-Earner/Two-Job Worksheet on page 2 and your earnings exceed \$125,000 (Single) or \$175,000 (Married).

Recent name change? If your name on line 1 differs from that shown on your social security card, call 1-800-772-1213 for a new social security card.

Personal Allowances Worksheet (Keep for your records.)

A Enter "1" for yourself if no one else can claim you as a dependent A 0

B Enter "1" if:
 • You are single and have only one job; or
 • You are married, have only one job, and your spouse does not work; or
 • Your wages from a second job or your spouse's wages (or the total of both) are \$1,000 or less. B 1

C Enter "1" for your spouse. But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.) C 0

D Enter number of dependents (other than your spouse or yourself) you will claim on your tax return D 0

E Enter "1" if you will file as head of household on your tax return (see conditions under Head of household above) E 0

F Enter "1" if you have at least \$1,500 of child or dependent care expenses for which you plan to claim a credit F 0
 (Note: Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)

G Child Tax Credit (including additional child tax credit):
 • If your total income will be between \$15,000 and \$42,000 (\$20,000 and \$65,000 if married), enter "1" for each eligible child plus 1 additional if you have three to five eligible children or 2 additional if you have six or more eligible children.
 • If your total income will be between \$42,000 and \$80,000 (\$65,000 and \$115,000 if married), enter "1" if you have one or two eligible children, "2" if you have three eligible children, "3" if you have four eligible children, or "4" if you have five or more eligible children. G 0

H Add lines A through G and enter total here. Note: This may be different from the number of exemptions you claim on your tax return. ▶ H 1

For accuracy, complete all worksheets that apply.
 • If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the Deductions and Adjustments Worksheet on page 2.
 • If you have more than one job or are married and you and your spouse both work and the combined earnings from all jobs exceed \$35,000, see the Two-Earner/Two-Job Worksheet on page 2 to avoid having too little tax withheld.
 • If neither of the above situations applies, stop here and enter the number from line H on line 5 of Form W-4 below.

Cut here and give Form W-4 to your employer. Keep the top part for your records.

Form W-4 Department of the Treasury Internal Revenue Service	Employee's Withholding Allowance Certificate	OMB No. 1545-0010 2002
▶ For Privacy Act and Paperwork Reduction Act Notice, see page 2.		
1 Type or print your first name and middle initial Last name <u>Aaron S. Voches</u>		2 Your social security number
Home address (number and street or rural route) <u>10414 MacArthur Blvd</u>		3 <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note: If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.
City or town, state, and ZIP code <u>Potomac MD, 20854</u>		4 If your last name differs from that on your social security card, check here. You must call 1-800-772-1213 for a new card. <input type="checkbox"/>
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)		5 <u>1</u>
6 Additional amount, if any, you want withheld from each paycheck		6 \$ <u>0</u>
7 I claim exemption from withholding for 2002, and I certify that I meet both of the following conditions for exemption: • Last year I had a right to a refund of all Federal income tax withheld because I had no tax liability and • This year I expect a refund of all Federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here ▶ 7		
Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate, or I am entitled to claim exempt status.		
Employee's signature (Form is not valid unless you sign it.) ▶ <u>Aaron Voches</u>		Date ▶ <u>6/14/02</u>
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)		9 Office code (optional)
		10 Employer identification number

Cat. No. 102200

Form
MW 507

Employee's Maryland Withholding Exemption Certificate

Comptroller of the Treasury • Revenue Administration Division • Annapolis, Maryland 21411 • Phone 410-260-7360

Print your full name <u>Aaron Yoches</u>	Your Social Security number
Address (including ZIP code) <u>10419 MacArthur Blvd Patuxent MD 20894</u>	County of residence (or Baltimore City) <u>Montgomery</u>

1. Total number of exemptions you are claiming from worksheet below 1. 0
2. Additional withholding per pay period under agreement with employer 2. 0

3. I claim exemption from withholding because (see instructions below and check boxes that apply)
- a. Last year I did not owe any Maryland income tax and had a right to a full refund of all income tax withheld.
AND
- b. This year I do not expect to owe any Maryland income tax and expect to have the right to a full refund of all income tax withheld. (This includes seasonal and student employees whose annual income will be below the minimum filing requirement.)
- If both a and b apply, enter year applicable _____ (year effective) Enter "EXEMPT" here 3. EXEMPT

4. Certification of Nonresidence in the state of Maryland (see instructions on reverse side.) I certify that I am not domiciled in the state of Maryland, and that I do not maintain a place of abode within Maryland. I further certify that my permanent residence is:
- City, town or post office address _____ County _____ State _____ Enter "EXEMPT" here 4. _____

Under the penalty of perjury, I further certify that I am entitled to the number of withholding allowances claimed on line 1 above, or if claiming exemption from withholding, that I am entitled to claim the exempt status on line 3 or line 4, whichever applies.

Employee's signature Aaron Yoches Date 6-19-02

Employer's Name and Address (including zip code) (For employer use only)	Employer Identification Number
--	--------------------------------

Worksheet and instructions

- Line 1
- A. Number of personal exemptions (total exemptions on lines A, C and D of the federal W-4 or W-4A worksheet). 0
- B. Number of additional exemptions for dependents over 65 years of age. 0
- C. Number of additional exemptions for estimated itemized deductions, alimony payments, allowable child care expenses, qualified retirement contributions, business losses and employee business expenses for the year. 0
- D. Number of additional exemptions for taxpayer and/or spouse at least 65 years of age and/or blind. 0
- E. Total - add lines A through D and enter here and on line 1 (Form MW 507). 0

EXEMPTIONS FOR DEPENDENTS To qualify as your dependent, you must be entitled to an exemption for the dependent on your federal income tax return for the corresponding taxable year.

ADDITIONAL EXEMPTIONS FOR DEPENDENTS OVER 65 YEARS OF AGE An additional exemption is allowed for dependents who are 65 years of age or older.

ADDITIONAL EXEMPTIONS You may claim additional exemptions for estimated itemized deductions, alimony payments, allowable child care expenses, qualified retirement contributions, business losses and employee business expenses for the year. One additional withholding exemption is permitted for each \$1,850 of estimated itemized deductions or adjustments to income that exceed the standard deduction allowance.

NOTE: Standard deduction allowance is 15% of Maryland adjusted gross income with a minimum of \$1,500 and a maximum of \$2,000 for each taxpayer.

Please read instructions carefully before completing this form. The instructions must be available during completion of form. ANTI-DISCRIMINATION NOTICE. It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins

Print Name: Last Yoches, First Aaron, Middle Initial S, Maiden Name
Address (Street Name and Number) 10419 MacArthur Blvd, Apt. #, Date of Birth (month/day/year) 3/1/82
City Potomac, State MD, Zip Code 20854, Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen or national of the United States
A Lawful Permanent Resident (Alien # A
An alien authorized to work until (Alien # or Admission #

Employee's Signature

[Handwritten Signature]

Date (month/day/year)

6/19/02

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature

Print Name

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s)

List A OR List B AND List C
Document title:
Issuing authority:
Document #:
Expiration Date (if any):
Document #:
Expiration Date (if any):

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).

Signature of Employer or Authorized Representative

Print Name

Title

[Handwritten Signature]

T. URBAN

Owner

Business or Organization Name

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)

June 20, 2002

Section 3. Updating and Reverification. To be completed and signed by employer

A. New Name (if applicable)

B. Date of rehire (month/day/year) (if applicable)

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title: Document #: Expiration Date (if any):

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative

Date (month/day/year)

EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

1 EMPLOYEE INFORMATION AND VERIFICATION: (To be completed and signed by employee.)

Name: (Print or Type) Last <u>Haider</u> First <u>Saira</u> Middle _____ Birth Name _____	
Address: Street Name and Number <u>11305 SKIPWITH LANE</u> City <u>POTOMAC</u> State <u>MD</u> ZIP Code <u>20854</u>	
Date of Birth (Month/Day/Year) <u>5/3/82</u>	Social Security Number _____

I attest, under penalty of perjury, that I am (check a box):

- 1. A citizen or national of the United States.
- 2. An alien lawfully admitted for permanent residence (Alien Number A _____).
- 3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A _____ or Admission Number _____, expiration of employment authorization, if any _____).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature <u><i>Saira Haider</i></u>	Date (Month/Day/Year) <u>4/14/02</u>
--------------------------------------	--------------------------------------

PREPARER/TRANSLATOR CERTIFICATION (To be completed if prepared by person other than the employee). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature _____	Name (Print or Type) _____
Address (Street Name and Number) _____	City _____ State _____ Zip Code _____

2 EMPLOYER REVIEW AND VERIFICATION: (To be completed and signed by employer.)

Instructions:

Examine one document from List A and check the appropriate box, OR examine one document from List B and one from List C and check the appropriate box. Provide the *Document Identification Number* and *Expiration Date* for the document checked.

List A Documents that Establish Identity and Employment Eligibility	List B Documents that Establish Identity	List C Documents that Establish Employment Eligibility
<input type="checkbox"/> 1. United States Passport <input type="checkbox"/> 2. Certificate of United States Citizenship <input type="checkbox"/> 3. Certificate of Naturalization <input type="checkbox"/> 4. Unexpired foreign passport with attached Employment Authorization <input type="checkbox"/> 5. Alien Registration Card with photograph Document Identification # _____ Expiration Date (if any) _____	<input checked="" type="checkbox"/> 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State) <u>Maryland</u> <input type="checkbox"/> 2. U.S. Military Card <input type="checkbox"/> 3. Other (Specify document and issuing authority) _____ Document Identification # _____ Expiration Date (if any) _____	<input checked="" type="checkbox"/> 1. Original Social Security Number Card (other than a card stating it is not valid employment) <input type="checkbox"/> 2. A birth certificate issued by State, county, municipal authority bearing a seal or certification <input type="checkbox"/> 3. Unexpired INS Employment Authorization. Specify form # _____ Document Identification # _____ Expiration Date (if any) _____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature <u><i>[Signature]</i></u>	Name (Print or Type) _____	Title <u>owner</u>
Employer Name <u>SOFT SERVE INC</u>	Address <u>10148 RIVER RD POTOMAC</u>	Date <u>4/14/02</u>

American Express
Establishment Services
P.O. Box 53773
Phoenix, AZ 85072-3773



01061



Sprinkles
10148 River Road
Potomac, MD 20854

July 21, 2003



Merchant Number: 219-030-109-3

Dear Sprinkles:

Welcome! We are delighted that you have joined the network of fine establishments worldwide that welcome American Express® Cards. Attached is your confirmed discount rate and payment information for accepting American Express Cards. If this information is incorrect please call us immediately at 1-800-528-5200.

You have elected to authorize and submit charges electronically. Please contact your terminal provider, notify them of your new American Express Merchant number, and request to have your terminal programmed accordingly. Advise your terminal provider of your American Express Merchant number. Remember to ask your terminal provider how long it will take to program your terminal, and when you will be ready to start accepting American Express charges. Your terminal provider should provide you with a phone number for servicing issues on a statement or terminal decal.

American Express will automatically deposit payments due to you into your banking account. If you have not already provided your bank account information to your bankcard service provider, please call American Express directly at 1-800-528-5200.

If you have questions or need assistance, please call 1-800-528-5200, 24 hours a day. Your welcome kit should arrive within the next week. Please place the American Express decal on your door. This will ensure that Cardmembers know that you now accept American Express Cards.

Thank you for giving us the opportunity to work with you. We look forward to sharing a productive and mutually profitable relationship with you for many years to come.

Sincerely,

William H. Glenn
President
Establishment Services North America

Encl: Terms & Conditions 21144 C (Rev. 10/02)

Merchant Number: 219-030-109-3
Floor Limit: \$0; ALL charges must be authorized.
Discount Rate: 3.50%
Check Payment/Advice Address: Please review address listed below as we will be sending your payment/advice to this address:
SPRINKLES 10148 RIVER RD.
POTOMAC, MD 20854
Payment Method: You have elected for your payment to be automatically deposited into your bank account and to authorize and submit your charges electronically.
Payment Plan: Payment is sent in 3 business days after we receive and process charges.

WHETHER OR NOT YOU HAVE SIGNED ANOTHER AGREEMENT, BY ACCEPTING THE AMERICAN EXPRESS® CARD FOR THE PURCHASE OF GOODS AND/OR SERVICES, YOU AGREE TO BE BOUND BY THIS LETTER AND THE TERMS AND CONDITIONS (Rev. 10/02) FOR AMERICAN EXPRESS CARD ACCEPTANCE (THE "TERMS AND CONDITIONS") ENCLOSED WITH THIS LETTER. THIS LETTER ALONG WITH THE TERMS AND CONDITIONS FORM THE AGREEMENT WHICH IS REFERENCED IN THE TERMS AND CONDITIONS.

DISCOVER BUSINESS SERVICES
PO BOX 3016
NEW ALBANY OH 43054

MERCHANT NUMBER 6011 0132 0019 050

MONTHLY DETAIL REPORT

PAGE 1 OF 2
ACTIVITY ENDING 10/31/2003

ACTIVITY REPORT

Did you know that we can send this report to your e-mail address? Please visit us at Discoverbiz.com to learn more about paperless reporting.

Did you know that we can send this report to your e-mail address? Please visit us at Discoverbiz.com to learn more about paperless reporting.

#BWNBCRL 31 SMMNRB02 0156292***
#1320019050#
SPRINKLES
10148 RIVER RD
POTOMAC MD 20854-4903

Transaction Summary

TYPE	COUNT	AMOUNT
Sales Accepted	1	63.78
Discount Activity		-1.69

Settlement Activity

The following activity was settled via **ELECTRONIC TRANSFER** to:
RIGGS BANK NATIONAL ASSOCIATIO Account# 50081802

DATE SETTLED	MERCHANT OUTLET NUMBER	TYPE	AMOUNT SETTLED
10/20/03	601101320019050	BATCHES	63.78
TOTAL AMOUNT SETTLED:			63.78
11/03/03	601101320019050	DISCOUNT	-1.69
TOTAL AMOUNT SETTLED:			-1.69

Batches Received

6011 0132 0019 050 SPRINKLES

BATCH DATE	BATCH REF #	CARD BRAND	NUMBER OF ITEMS	TRAN TYPE	RECEIVED AMOUNT
10/18/03		DISCOVER CARD	1	S	63.78
OUTLET TOTAL:					63.78

Discount Activity

Discover Card discount is calculated by multiplying gross sales volume by your discount rate. Gross sales volume equals sales, plus or minus any adjustments.

DATE SETTLED	MERCHANT OUTLET NUMBER	GROSS SALES VOLUME	DISCOUNT RATE	DISCOUNT AMOUNT
10/31/03	601101320019050	63.78	0.02520	-1.6
TOTAL:				-1.6



11358007 SMMNRB02 0156292 7

MONTHLY DETAIL REPORT

PAGE 2 OF 2
ACTIVITY ENDING 10/31/2003**Discount Activity Continued***Discover Card processing fee is calculated by multiplying total number of Discover Card sales transactions by your processing fee rate*

<u>DATE</u>	<u>MERCHANT</u>	<u>TOTAL</u>	<u>PROCESSING</u>	<u>PROCESSING</u>
<u>SETTLED</u>	<u>OUTLET NUMBER</u>	<u>SALES TRANS</u>	<u>FEE RATE</u>	<u>FEE AMOUNT</u>
10/31/03	601101320019050	1	0.08000	-0.08
TOTAL:				-0.08

**THIS IS A STATEMENT OF YOUR ACCOUNT.
THE REPORTED ACTIVITY WILL BE REFLECTED IN YOUR SETTLEMENT.**

FOR SERVICE REQUESTS PLEASE CALL 1-800-347-2000

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	
<hr/>		

OPPOSER'S INITIAL DISCLOSURES

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION THAT MAY BE USED TO SUPPORT OPPOSER'S CLAIMS.

A. Thomas Orban, President, Soft Serve, Inc., 10148 River Road, Potomac, Maryland 20854.

Information Includes:

The nature of Opposer's business, including but not limited to Opposer's usage of marks and its trade name; information concerning Opposer's first use of "SPRINKLES"; the recognition afforded Opposer's business, name and mark; possible instances of actual confusion and facts in support of Opposer's contention that there exists a likelihood of confusion.

Opposer's initial disclosure is made without the benefit of any discovery.

Opposer reserves the right to amend its disclosure to additional witnesses.

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

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	

**OPPOSER’S ANSWERS AND OBJECTIONS TO APPLICANT’S
FIRST SET OF INTERROGATORIES**

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 First 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

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.

ANSWER

Opposer Sprinkles repeats and incorporates by reference herein its objection to Interrogatory No. 2. Without waiving its objection, the person most knowledgeable about the products and services offered by Opposer Sprinkles is Thomas Orban, President and owner of Opposer Sprinkles.

INTERROGATORY NO. 4

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

ANSWER

Opposer Sprinkles repeats and hereby incorporates by reference its objection to Interrogatory No. 2. Without waiving this objection, and subject to supplementation as Opposer Sprinkles' related research continues, Opposer Sprinkles responds as follows: As to all goods and services, with the exception of clothing goods, Opposer Sprinkles' date of first use is a date in 2002 prior to November 21. Further specificity will be provided by supplementation upon the conclusion of Opposer Sprinkles' investigation. Opposer Sprinkles' date of first use in connection with clothing goods is at least as early as November 18, 2004. Opposer Sprinkles' offering of these products and services has been and remains ongoing.

ANSWER

Opposer Sprinkles has used the mark SPRINKLES, as defined by Applicant, for a number of years in connection with various goods specifically recited, and closely related to, the goods recited in the '541 application. Consequently, as a result of Opposer Sprinkles' long and successful usage of the mark and trade name SPRINKLES, the purchasing public has come to recognize the mark SPRINKLES as referring to Opposer Sprinkles.

INTERROGATORY NO. 39

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

ANSWER

Thomas Orban, President and owner of Opposer Sprinkles, as to all Interrogatory answers.

Soft Serve, Inc. d/b/a Sprinkles

Date: Aug 26, 2010



Thomas Orban

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 FIRST 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:

8/10/10



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

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
)	
Opposer,)	
)	
v.)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	
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OPPOSER'S SUPPLEMENTAL DISCLOSURES

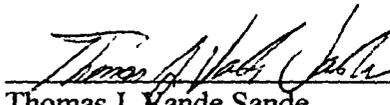
Pursuant to Rule 26 (a) and (d) Opposer identifies the following additional individuals having information that may be used to support Opposer's claims.

1. Saira Haider, 89a Leathwaite Road, London, SW11 6RN, England. Former employee. Knowledge includes Opposer's first use of SPRINKLES at least as early as April 24, 2002.
2. Aaron Yoches, 5200 S. Ulster Street, Apt. 1612, Greenwood Villgae, CO 80111. Former employee. Knowledge includes Opposer's first use of SPRINKLES at least as early as May – August 2002.

Opposer reserves the right to further amend and supplement its initial disclosures.

HALL & VANDE SANDE, LLC

Date: 11/4/10



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

CERTIFICATE OF SERVICE

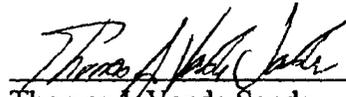
The undersigned, Thomas J. Vande Sande, attorney for Opposer, hereby certifies that one (1) copy of the foregoing "OPPOSER'S SUPPLEMENTAL DISCLOSURES" was this day served on Applicant by mailing same, first class mail, to:

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

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	
<hr/>		

**OPPOSER’S SUPPLEMENTAL ANSWERS AND OBJECTIONS TO APPLICANT’S
FIRST SET OF INTERROGATORIES**

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 supplements its Answers to the First 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

INTERROGATORY NO. 39

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

SUPPLEMENTAL ANSWER

In addition to Mr. Orban, Saira Haider and Aaron Yoches, more specifically identified in Opposer's Supplemental Disclosures, have knowledge as to Opposer's date of first use and thus the supplementation of Interrogatory Answers 13-17 herein.

Soft Serve, Inc. d/b/a Sprinkles

Date: November 5, 2010

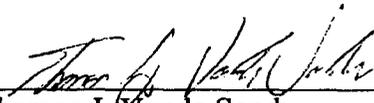


Thomas Orban

As to objections:

Hall & Vande Sande, LLC

Date: 11/5/10



Thomas J. Vande Sande
Attorney for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
Phone: (301) 983-2500

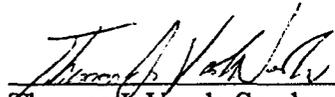
CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Opposer hereby certifies that one (1) copy of the foregoing "OPPOSER'S SUPPLEMENTAL ANSWERS AND OBJECTIONS TO APPLICANT'S FIRST 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:

11/5/10



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

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	

**OPPOSER’S ANSWERS AND OBJECTIONS TO APPLICANT’S
FIRST SET OF INTERROGATORIES**

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 First 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

ANSWER

Applicant's inquiry is not understood. Opposer Sprinkles' investigation of various details relating to its various uses of SPRINKLES is ongoing. Documentation relating to Opposer Sprinkles' earlier uses of SPRINKLES will be produced in response to Production Request No. 4 and additional information and related documentation will be provided through supplementation as Opposer Sprinkles' investigation continues.

INTERROGATORY NO. 18

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

ANSWER

Products and/or services were provided under the mark "I CAN'T BELIEVE ITS YOGURT" from approximately 1989 to 1999.

INTERROGATORY NO. 19

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

ANSWER

Frozen desserts and baked goods.

ANSWER

Opposer Sprinkles has used the mark SPRINKLES, as defined by Applicant, for a number of years in connection with various goods specifically recited, and closely related to, the goods recited in the '541 application. Consequently, as a result of Opposer Sprinkles' long and successful usage of the mark and trade name SPRINKLES, the purchasing public has come to recognize the mark SPRINKLES as referring to Opposer Sprinkles.

INTERROGATORY NO. 39

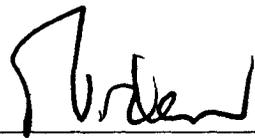
Identify each person who provided information on which your responses to these Interrogatories are based, specifying the interrogatory or interrogatories for which each person provided information.

ANSWER

Thomas Orban, President and owner of Opposer Sprinkles, as to all Interrogatory answers.

Soft Serve, Inc. d/b/a Sprinkles

Date: Aug 26, 2010



Thomas Orban

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 FIRST 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:

8/10/10



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

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

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. 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



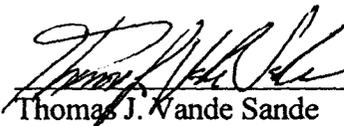
Thomas Orban

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

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.

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.

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.

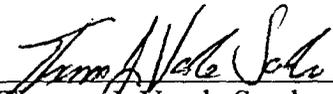
95. The document in Exhibit B to Applicant's Second Set of Interrogatories to Opposer is a true and accurate copy of the Articles of Sale and Transfer between Soft Serve, Inc. and Million, Inc., as submitted to the Maryland Secretary of State.

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
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Patent, Trademark
and Copyright Law
and Litigation

THOMAS J. VANDE SANDE
DENNIS A. FOSTER
JOHN GIBSON SEMMES

OF COUNSEL
WILLIAM D. HALL
ROBERT R. PRIDDY

September 12, 2011

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

Re: Soft Serve, Inc. v. Sprinkles Cupcakes, Inc.
Consolidated Case No. 91194188

Dear Hollie:

Enclosed you will find documents produced in connection with Sprinkles Cupcakes' discovery bearing production numbers OP 5193 – OP 5305.

Sincerely,



Thomas J. Vande Sande

TVS:dn
Enclosures

**I CAN'T BELIEVE IT'S YOGURT
4175 VETERANS HIGHWAY
RONKONKOMA, N.Y. 11779
1-800-423-2763
631-585-8160 FAX**

February 27, 2001

**Mr. Thomas Orban
ICBIY / Soft Serve, Inc.
10148 River Road
Potomac, Md. 20854**

Re: NON-RENEWAL – EXPIRATION OF FRANCHISE / De-Identification

Dear Mr. Orban:

It has come to our attention that you have decided not to re-new your ICBIY franchise agreement, (Paragraph 9 (f)), and are no longer buying our product. We therefore have to “terminate” your franchise.

Accordingly, we ask that you de-identify your location according to your franchise agreement, under paragraph #15(a) through #15(h). I am attaching the appropriate pages from your agreement for your convenience.

I ask that you please call Mr. Brian Ball at the above number at extension 300, or Mr. Marty Lawlor at 336-282-9689 should you have any questions with the de-identification process.

Please note, that we will do an un-announced inspection to verify if this has been done.

Respectfully,


**Robert W. Evans
Credit Manger**

**CC: John Welty
Brian Ball
Marty Lawlor
Clarice Barrett
Store File**

shall have the right to approve or disapprove regions and memberships, bylaws or other rules of the cooperatives, and the decisions of the cooperative as to the content of all advertising.

9. TERM AND RENEWAL.

(a) **Term.** The term of the [REDACTED] subject to renewal in accordance with Section 9(b) and to earlier termination in accordance with Sections 14 and 15.

(b) If, upon the expiration of the term provided in the Franchise Agreement, Franchisee is in full compliance with Franchisee's agreements and obligations under the Franchise Agreement, Franchisee shall have the option to renew the Franchise for an additional term of 10 years by (1) notifying Company of Franchisee's intention to renew not earlier than 180 days nor later than 90 days before the primary term's scheduled expiration date, (2) signing Company's then current renewal form of Franchise Agreement (that will define Franchisee's subsequent renewal rights), (3) not later than 30 days before the primary term's scheduled expiration date, completing the remodeling, refurbishing and modernizing of the Store's interior and exterior, including its furniture, fixtures, signs, equipment and Trade Dress, to conform to the standards Company then stipulates, and (4) if Company begins charging a renewal fee before the primary term expires, paying a renewal fee equal to the lesser of \$4,000 or the standard renewal fee then in effect.

(c) Franchisee's failure or refusal to comply with any of the four conditions to renewal stated in Section 9, each of which Franchisee acknowledges to be reasonable and material, will be interpreted as a conclusive, irrevocable election on Franchisee's part not to renew the term of the Franchise.

(d) The relationship between Company and Franchisee during the renewal period will be governed by the provisions of Company's then current renewal form of Franchise Agreement, including those pertaining to any continuing fees and transfer, renewal or other fees, advertising, competitive protection and concept modifications. Whether or not Franchisee actually signs a then current renewal form of Franchise Agreement, Franchisee will be conclusively presumed to have assented to and to have agreed to be bound by its terms by continuing to operate the Store for one day past the primary term's expiration date.

(e) If Franchisee does not qualify to renew, or elects not to renew, the Franchise, Company will permit Franchisee to transfer the Franchise to a qualified purchaser in accordance with Section 11.

(f) If Franchisee does not qualify to renew, or elects not to renew, the Franchise and it therefore expires, immediately after expiration, Franchisee must comply with the requirements of Section 15, and Company will have the rights and remedies provided in Sections 15(a) through 15(h).

10. USE OF INTELLECTUAL PROPERTY.

(a) **Marks and Copyrighted Materials.** Franchisee acknowledges that Company is authorized by law to prevent the unauthorized use of the Marks, to control the quality of

(4) Franchisee or any other person bound under Section 21 refuses to permit Company to conduct an inspection permitted under Section 7(p), an audit or a financial records inspection permitted under Section 7(v).

(5) Circumstances occur that entitle Company to the additional option provided in Section 11(h)(4), and Company decides not to exercise the option.

(6) Franchisee and/or any person bound under Section 21 commits or allows to occur more than two Events of Default in any 12-month period, whether or not the Events of Default are related types of default and whether or not they are cured.

(7) Franchisee or any guarantor of Franchisee's monetary obligations to Company becomes insolvent, admits in writing the inability to pay Franchisee's monetary obligations as they mature, is adjudicated a bankrupt, voluntarily files a petition for liquidation or reorganization under any provision of the United States Bankruptcy Code, makes an assignment for the benefit of creditors or takes any other action pursuant to any federal or state insolvency statute.

(8) A receiver or trustee is appointed by a court of competent jurisdiction for all or any part of Franchisee's assets, or a judgment for an amount in excess of \$5,000 is entered against Franchisee that remains unsatisfied or un-stayed for 30 days after the judgment is entered.

15. TERMINATION; OTHER REMEDIES.

(a) If Franchisee commits or allows an Event of Default to occur and does not cure it before the related remedial period, if any, expires, Company may at its sole discretion, but subject to compliance with applicable statutory notice and/or hearing requirements, either terminate the Franchise and Franchisee's rights under this Amendment or compel Franchisee to sell the Store in accordance with Section 15(c). Upon termination or expiration of the franchise, Franchisee's right and privilege to use the Marks, the Copyrighted Materials, the Trade Secrets and all components of the Operations Manual shall absolutely and unconditionally cease. Franchisee shall immediately:

(1) discontinue use of the Marks, the Copyrighted Materials, the System and the Trade Secrets;

(2) return to Company the entire Operations Manual, all other Manuals, and any other printed, graphic or audio/visual item designated by Company as containing Trade Secrets;

(3) remove from the Store's premises all interior and exterior I Can't Believe It's Yogurt and Branded Products signs and other uses of the Marks; and

(4) alter the Store's interior to remove all Trade Dress items and otherwise eliminate the distinctive features of the Store concept.

(b) If Franchisee does not comply with the requirements of Section 15(a) within seven days after the Franchise's termination or expiration, Company may, at Franchisee's expense, enter the Store's premises and effect Franchisee's compliance with all these requirements, including removal and storage of Franchisee's signs, and alteration or removal and storage of Trade Dress items. Franchisee irrevocably constitutes and appoints Company and its designees as Franchisee's agent and attorney-in-fact to effect compliance with these requirements, and Company shall have no liability to Franchisee, in trespass or otherwise, on account of or arising from any action it authorizes or takes to effect Franchisee's compliance. In addition, Company shall be entitled to injunctive or similar relief, without bond, against Franchisee and any other person bound under Section 21 to enforce compliance with these requirements.

(c) In lieu of immediately terminating the Franchise in accordance with Section 15(a), Company may order Franchisee to sell the Store and transfer Franchisee's rights under this Amendment to a purchaser designated by or acceptable to Company. After Company orders Franchisee to sell the franchised business, Franchisee shall have no further right or opportunity to remedy a default or to reinstate Franchisee's right to continue operating the Store. Except for Company's right to approve a proposed purchaser's financial and business qualifications and to ensure that all amounts due Company or its affiliates are paid at the closing of the sale, Franchisee shall be entitled to establish and negotiate the terms of sale. If Franchisee does not negotiate definitive terms of sale with a qualified purchaser, either designated by Company or located by Franchisee and approved by Company, within 90 days after Franchisee receives Company's demand to sell, or does not consummate the sale within 45 days after negotiations are completed, Company may terminate the Franchise under Section 15(a) without further notice.

(d) In addition to the preceding rights and remedies, Company may notify each distributor of Branded Products that Franchisee is no longer authorized to purchase Branded Products or any paper goods imprinted with any of the Marks, and that sales of such merchandise to Franchisee must therefore be discontinued until further notice from Company. Company's exercise this right without immediately exercising its rights under Section 15(a) shall not be deemed a waiver of exercising its rights under Section 15(a).

(e) In addition to the preceding rights and remedies, Company may recover all trade obligations due Company, with or without terminating the franchise. If any such obligation is referred to an attorney or a collection agency for collection or is collected in whole or in part through a judicial proceeding, Franchisee agrees to pay Company's reasonable attorneys' fees and costs of collection, including compensation to the collection agency, plus a reasonable charge for the staff and administrative time Company expends to enforce its claims.

(f) In addition to the preceding rights and remedies, Company may obtain injunctive relief, without bond, against Franchisee and/or any other person bound under Section 21 restraining the unauthorized or violative use of any Mark, item of Copyrighted Materials or Trade Secret, with or without terminating the franchise.

(g) In addition to the preceding rights and remedies, Company may recover damages from Franchisee and any other person bound under Section 21 for the unauthorized use of any Mark and/or Trade Secret or the unauthorized use, copying or distribution of any item of

Copyrighted Materials, and for any loss of customer or future Franchisee goodwill in the Trade Area.

(h) In addition to the preceding rights and remedies, Company shall have an option (but no obligation) to purchase all or any part of the Store's signs, equipment, fixtures, useable inventory from Franchisee for 60 days after the Franchise expires or is terminated. The purchase price for signs and equipment will equal their net book value (cost, less depreciation) or fair market value, whichever is lower, the purchase price for useable inventory will equal its invoiced cost to Franchisee. The purchase price will be payable in cash (except that Company may assume any note or lease covering signs, equipment or fixtures). Franchisee agrees to provide Company the information necessary to establish the purchase price, to sign and deliver to Company a bill of sale or an assignment of lease, and otherwise to cooperate with Company in its taking title to and delivery of the items Company purchases. If Franchisee fails or refuses to comply with its obligations under this Section during the option period, Company's option will be extended until 15 days after Franchisee complies.

NOTE: Termination of the Franchise shall ordinarily become effective upon Company's delivery of written notice of termination to Franchisee. However, if (1) an Event of Default occurs, and (2) before Company delivers notice of default and/or notice of termination, a voluntary or involuntary petition is filed under any chapter of the United States Bankruptcy Code by, on behalf of, or against Franchisee, and (3) the Event of Default remains unremedied at the time the bankruptcy or reorganization petition is filed, no notice of default or termination shall be required. Instead, if Franchisee files a voluntary petition for liquidation or reorganization under the United States Bankruptcy Code, termination shall automatically become effective the instant a petition is signed by or on behalf of Franchisee. If an involuntary petition is filed, termination shall automatically become effective the instant the petition is submitted to the clerk of the Bankruptcy Court for filing.

16. HOLDING OVER; VIOLATIVE USE.

(a) If after (1) the expiration of the Franchise in accordance with Section 9, or (2) the termination of the Franchise by Company in accordance with Section 15, Franchisee continues to use any of the Marks, the Copyrighted Materials or the Trade Secrets in connection with the continued operation of the Store, or otherwise, then, in addition to any other remedies available to Company at law or in equity, Company shall be entitled to collect from Franchisee, and Franchisee agrees to pay weekly, royalties for such use of the Marks, the Copyrighted Materials and/or the Trade Secrets equal to 10% of the Gross Sales.

(b) If Franchisee unilaterally terminates the Franchise before the expiration of its term and, within 24 months after the date of termination, directly or indirectly commences operation of a quick-service food business that serves any combination of frozen yogurt, gourmet coffee or fresh baked goods as primary menu items, then, in addition to any other remedies available to Company at law or in equity, Company shall be entitled to receive throughout the entire remaining term of the franchise, and Franchisee agrees to pay, a weekly fee equal to 10% of the competing operation's Gross Sales, as defined in the Glossary attached to this Amendment.

AGREEMENT FOR THE SALE OF
SUBSTANTIALLY ALL THE ASSETS OF A GOING BUSINESS

Made this ___ day of June 2001, by and between THOMAS ORBAN and SOFT SERVE, INC., (hereinafter collectively referred to as "Seller") and MOHAMMED ABDUL BATEN, as incorporator of a corporation to be formed (hereinafter "Purchaser") or his assigns.

WHEREAS, the Seller is the lessee and licensee of a retail business engaged in the operation of a restaurant known as BLIMPIE'S (hereinafter referred to as the "Business"), located at 3801 International Drive, Silver Spring, Maryland 20906, Montgomery County, Maryland, and

WHEREAS, the Seller desires to sell substantially all its tangible and intangible assets (the "Assets") used in conjunction with the Business; and

WHEREAS, the Purchaser desires to purchase substantially all the tangible and intangible assets of the Seller relating to its operation of the Business.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Sale and Purchase of Business. Seller agrees to sell, assign, transfer, convey and deliver its Assets (as more fully defined in Article 4) to Purchaser, and Purchaser shall purchase and accept the same from the Seller at the price upon the terms and conditions hereinafter set forth.

2. Purchase Price. The price to be paid by the Purchaser for the Business Assets shall be Seventy Thousand Dollars (\$70,000.00). Prior to Closing the Purchase Price shall be allocated between equipment, leasehold, fixtures, leasehold improvements, goodwill and covenant not to

compete. Said breakdown shall be attached hereto as Exhibit "A" at the time of Closing. In the event Purchaser and Seller cannot agree upon an allocation, each party shall select an accountant and the accountant shall meet and reach a resolution of any allocation of dispute. Saleable inventory shall be sold separately at wholesale prices to Buyer, payable in immediate funds at closing.

The Purchase Price shall be payable as follows:

(a) At the Closing, Purchaser shall deliver to Closing Attorney for benefit of Seller, Seventy Thousand Dollars (\$70,000.00) in the form of cash, certified check, bank check or cashier's check, of which sum the Deposit provided for hereunder shall be a part.

(b) Deposit. Purchaser has made a good faith Deposit (the "Deposit") of Ten Thousand Dollars (\$10,000.00). The Deposit shall be held by Alan H. Grant, Esquire (the "Agent") in a non-interest bearing escrow account.

3. Settlement.

(a) The purchase and sale described in this agreement shall be consummated unless delayed to another date by agreement of the parties in writing, at 10:00 a.m., Atlantic Daylight Savings Time on July 15, 2001, herein called "closing date", at the offices of Alan H. Grant, P.C., 9210 Corporate Boulevard, Suite 390, Rockville MD 20850 or such other date and time as the parties shall agree in writing.

(b) At Closing, Seller agrees to execute and deliver to Purchaser in the form as set forth on Exhibit "A" attached hereto, (i) Articles of Sale and Transfer and (ii) a Bill of Sale with general warranty of title, free and clear of all liens, conveying to Purchaser all of Seller's right, title, and interest in and to the Assets being sold, transferred or assigned hereby. At Closing, the parties shall also execute and provide for all other documents and payments

provided for herein. Purchaser shall pay the bulk sales tax, filing fees to the State Department of Assessments and Taxation ("SDAT") and any filing fees, if any.

4. Assets of the Business.

(a) The Seller shall transfer to the Purchaser at Closing, in compliance with all provisions of the Uniform Commercial Code, all tangible and intangible Assets used in the operation of the Business, including but not limited to the items set forth in Exhibit "C" attached hereto, and any and all other personal property (tangible or intangible), including but not limited to, telephone equipment and numbers, copies of invoices, books and records necessary for the conduct of, or relating to the operation of the Business and all supplies. All cash, cash deposits and accounts receivable of the Seller are specifically excluded from the Assets sold hereunder.

(b) Seller agrees to cooperate and assist in obtaining an assignment of the lease and use and occupancy permit for the Business premises.

(c) Seller agrees that the proceeds of sale received hereby shall to the extent necessary, be used to promptly pay, settle and discharge any liens, claims, debts, liabilities or encumbrances, including all taxes, whether Federal, state or local, which shall include but not be limited to sales tax, payroll taxes, and personal property taxes, which may exist with respect to any of the Assets being sold, transferred or assigned hereby, whether or not the same have been assessed or levied, which have accrued during the period of time up to and including the Closing date.

5. Operation and Maintenance of the Business until Closing. Seller represents, warrants and covenants that it will (collectively) continue the operation of the Business until Closing in the ordinary course of business, in like manner and with like standards as the same has been operated prior to the execution of their Agreement, and shall exert their best efforts to

maintain and improve Business. Seller will not take any extraordinary actions without Purchaser's prior written consent.

6. Conditions Precedent to Purchaser's Obligations. All obligations of Purchaser to close with respect to this Agreement shall be conditioned and contingent upon (a) assignment and modification of the existing lease of the Business premises (the "Lease") to Purchaser or execution of a new lease with Landlord both acceptable to Purchaser in form and content; (b) execution of a franchise agreement with Blimpie's franchiser acceptable to Purchaser in form and content; (c) receipt of all financial statements and tax returns of the Seller; (d) the representations and warranties made by Seller in Section 11 shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of such date; (e) Seller shall have performed all covenants and obligations and complied with all conditions required by this Agreement to be performed or complied with by it on or before the Closing Date; (f) on the Closing Date, no part of the Business premises shall be about to be acquired, or shall previously have been acquired, by authority of any governmental authority in the exercise of its power of condemnation or of eminent domain or by private purchase in lieu thereof, nor on the Closing date shall there be any threat or imminence of any such acquisition of purchase.

7. Review of Financial Information. Seller has provided or will provide the Purchaser with certain written financial information to enable the Purchaser to evaluate the operations of the Business. Seller represents and warrants that any and all such information, including but not limited to financial statements, income statements and tax returns (if provided) are true and correct. In reliance upon such information, Purchaser has agreed to the price and terms set forth in this Agreement. Pending Closing, Seller shall permit employees, accountants,

attorneys and other representatives of Purchaser to have reasonable access to its Business premises, books of account, contracts, tax returns and other documents, data and records, and to furnish to Purchaser all information with respect to its affairs, and copies of any such records and documents as Purchaser may reasonably request.

8. No Assumption of Liabilities. Purchaser shall not be responsible for any liabilities, contracts or obligations of the Seller, whether presently in existence or which may arise after the Closing Date. Said Liabilities shall include, but not be limited to, sales tax, payroll taxes and personal property tax assessed prior to Closing. Seller hereby agree to indemnify and hold harmless the Purchaser in the event any person brings an action or claim against the Purchaser on account of any debt or liability of the Seller, including all legal fees and expenses necessary to defend such claims or actions. Seller and Purchaser shall each have thirty (30) days after presentation by written notice of a claim from the other before each can pay the claim or incur legal fees or expenses related thereto.

9. Risk of Loss. The Seller assumes all risk of loss due to fire or other casualty up to and through the time of Closing. If any loss occurs prior to Closing, the Purchaser on written notice to the Seller, shall have the right to either require the Seller to repair the space or replace the damaged Assets or to terminate this Agreement and return the Deposit to Purchaser.

10. Bulk Sale Requirements and Escrow Agreement.

(a) In compliance with the provisions of the Maryland Uniform Commercial Code-Bulk Transfers, the Seller, within five (5) days of final acceptance of this Agreement, will furnish to the Purchaser a list of the existing creditors, signed and sworn to or affirmed by the Seller. Such list shall contain the names and business address of all creditors of the Seller, with

the amounts due to each creditor, and also the names of all persons who are known to the Seller even though such claims may be disputed.

(b) The Purchaser will preserve said list of creditors for six (6) months following the Closing Date during which time Purchaser shall permit inspection and copying therefrom at all reasonable hours by any creditor of the Seller.

(c) At least ten (10) days prior to Closing Date, the Purchaser shall give notice of the transfer personally or by certified mail to all persons on the list of creditors furnished by the Seller, and to all persons who are known to the Purchaser to hold or assert claims against the Seller. The contents of such notice shall conform to the requirements of the Maryland Uniform Commercial Code-Bulk Transfers title 6-107.

(d) Seller agrees to permit the Closing Agent to pay directly to the creditors on the list of creditors provided by the Seller all amounts owed to the creditors from the cash paid by the Purchaser at Closing.

(e) Seller agrees to escrow Ten Thousand Dollars (\$10,000.00) to satisfy bulk sale requirements and claims of third parties for a period of six (6) months from closing. The parties shall execute an Escrow Agreement at Closing.

11. Seller's Representations. The Seller represents, warrants and covenants to the Purchaser that:

(a) The Seller now has or shall at time of Closing have full, valid and merchantable title to all Assets and interests conveyed herein and the same are free and clear of all debts, liens and encumbrances. The Seller shall not encumber or suffer the encumbrance of any Asset of interests conveyed herein from the execution of this Agreement to the Closing Date.

(b) There are no proceedings pending or threatened which have as a possible outcome the suspension or revocation of Seller's Food License or imposition of a fine or restriction against said license or materially affecting the conduct of the Business.

(c) There are no impediments to issuance of an unconditional Use and Occupancy Permit to the Purchaser and to the extent there are such impediments, Seller shall immediately remedy the same at its sole expense prior to Closing, otherwise Purchaser may do so and deduct the cost from the cash payment due hereunder.

(d) As of the date of this Agreement and as of the Closing Date, there are no notices or orders outstanding against the Business from the City, County, State or Federal Government alleging violation of any laws or regulations, or requiring modification of the Business premises, and that the Seller has complied with all laws, rules, regulations and licensing requirements, relating to the Assets and the operation of the Business.

(e) All State and Federal sales, withholding and other taxes have been currently paid by Seller and all amounts of said taxes that are or will be due and payable by Seller at or after Closing will be promptly paid.

(f) The financial information which Seller has provided and will provide to the Purchaser for review is complete and accurately reflects the results of the operations of the Business for the period then ended.

(g) The Business and its tangible assets are in good operating condition and are not in need of repairs, and there will be no municipal code violations on the Closing Date. In the event of any repairs or other action are required to pass the Health Department Inspection or to place the Assets in operating order, Seller shall immediately make such repairs or take such

action, otherwise Purchaser may do so and deduct the cost from the payment due hereunder. Any repairs or replacements after Closing shall be at the Purchaser's sole cost and expense.

(h) The Seller is not a party to any labor contracts, service contracts or other agreements which relate to the business premises.

(i) The Seller personally represents and warrants that the Seller has full power and authority to enter into and execute this Agreement and transfer the Business and its Assets to the Purchaser.

(j) Exhibit "D" attached hereto, is a true and complete copy of the Lease to the Business premises, including all amendments, addenda and exhibits thereto. Seller is the lessee under the Lease. The Lease is valid and binding upon lessor and lessee, and in full force and effect and has not been modified except as disclosed in Exhibit "D." The term of the Lease expires on June 30, 2003 and there are no other options to extend. No event of default has occurred under the Lease which has not been cured within any applicable grace period. No default of any of the terms and provisions of the Lease exist which will constitute a default on the giving of notice or the lapse of any applicable grace period.

(k) Seller has not issued or delivered any coupons to the public, except for those set forth on the attached Exhibit "E." Seller shall also provide the number of outstanding coupons delivered to the public and the aggregate liability thereunder on Exhibit "E", if applicable.

13. Non-Competition Covenant. The Seller hereby agrees, covenants and warrants, that each member will not, as an individual, or as the officer or stockholder of a corporation, partner in a partnership, director, consultant, employee or employer or otherwise engage, directly or indirectly, in the operation of any business or entity of the same or similar type as the Seller's

Business for a distance of three (3) miles from the Business and for a period of three (3) years from the Closing Date. Seller further covenants that each member will not use the trade name of the Business or any name substantially similar thereof at any time in the future.

14. Default.

(a) Purchaser's Default. If the Purchaser shall fail to refuse to make settlement in accordance with the provisions hereof or otherwise default hereunder, the deposit made pursuant to Paragraph 2 hereof shall be forfeited as agreed liquidated damages and the Agreement shall be null and void.

(b) Seller's Default. If the Seller shall fail or refuse to make settlement required hereunder, the Purchaser shall be refunded its deposit, the Seller shall pay to Purchaser \$10,000.00 as agreed liquidated damages and the Agreement shall be null and void.

(c) Both parties waive the right of specific performance.

15. Miscellaneous.

(a) This Agreement shall be governed, for all purposes and in all respects by the laws of the State of Maryland and Montgomery County.

(b) Purchaser shall have the right, at any and all times during normal business hours, when the manager or Seller is present, prior to the Closing Date, to enter onto the premises of the Business for the purpose of physical inspection thereof.

(c) This Agreement, including all covenants, representations and warranties herein contained, shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns, or other legal representatives, and shall survive Closing and transfer of the Business, including the delivery of the bill of sale, articles of sale and transfer of all the other settlement documents.

(d) No waiver of any term or condition of this Agreement shall be deemed to have been given by any party hereto, unless such waiver shall be given in writing and signed by the party against whom it is to be enforced.

(e) All notices or other communications required or permitted hereunder shall be delivered personally, or shall be sent by certified mail, return receipt requested, postage prepaid, to the parties hereto at the following addresses (unless a notice of a change of address is given to any party hereto by the other in accordance with the provisions of this paragraph).

If to Seller: Thomas OrbanDavid Thomas
3136 St. Florence Terrace
Olney, Maryland 20832

If to Purchaser: Mohamed Abdul Baten
6304 Stoneface Court
Clinton, Maryland 20735

With a copy to: Alan H. Grant, Esquire
Alan H. Grant, P.C.
9210 Corporate Boulevard, Suite 390
Rockville, Maryland 20850

(f) This Agreement contains the final and entire understanding and agreement among the parties hereto. This Agreement may not be modified, altered, or terminated except by an instrument in writing signed by the parties hereto.

(g) The parties recognize that in order to carry out the intent hereof, it may become necessary to prepare and execute such additional documents not contemplated herein, but which do not vary the provisions hereof. Accordingly, each party agrees to execute such additional instruments as may be necessary to carry out the intent set forth herein. All parties hereto covenant to cooperate with the other in obtaining the transfer of all licenses and the assignment of the Lease.

(h) Section headings are for convenience only and shall not limit or otherwise affect any of the provisions of this Agreement.

(i) The parties to this Agreement hereby indemnify the Escrow Agent against any loss, liability or damage (including costs of litigation and counsel fees) arising from and in connection with the performance of its duties under this Contract, except where its acts are the result of its negligence or willful wrongdoing. Should any dispute arise with respect to this Contract or items deposited hereunder whether such disputes arise between the parties hereto and others, or merely between themselves, it is understood and agreed that the Escrow Agent may interplead such disputes and the parties hereunder will hold the Escrow Agent harmless and indemnify it against all consequences and expenses which may be incurred by the Escrow Agent in connection therewith.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written

SELLER:

SOFT SERVE, INC.

Sally Rodas
Witness

by Thomas Orban 6-26-01 (SEAL)
PRESIDENT

Sally Rodas
Witness

Thomas Orban 6-26-01 (SEAL)
THOMAS ORBAN

PURCHASER:

At Ikh.
Witness

Mohammed Batew (SEAL)
MOHAMMED ABDUL BATE

Exhibit "A"

Equipment & Fixtures	\$20,000
Covenant not to compete	\$40,000
Goodwill	<u>\$10,000</u>
TOTAL	\$70,000

AB *ans*

EXHIBIT "B" Bill of Sale

EXHIBIT "C" Assets

EXHIBIT "D" Lease

EXHIBIT "E" Coupons

AMENDMENT TO CONTRACT OF SALE

THIS AMENDMENT TO CONTRACT OF SALE made this 30th day of July, 2001, by and between SOFT SERVE, INC., and THOMAS ORBAN (hereinafter collectively referred to as "Seller") and MOHAMMED ABDUL BATEN, as incorporator of a corporation to be formed or his assigns (hereinafter "Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser entered into a certain Contract of Sale dated June 26, 2001 (hereinafter "Contract") for the purchase and sale of the business with the street address of 3801 International Drive, Silver Spring, Maryland 20906 (hereinafter "Business"); and

WHEREAS, Seller and Purchaser each desire to amend the Contract to reflect an extension of time of settlement and other matters as reflected in the Contract; and

WHEREAS, Seller agrees to pay for one-half the settlement fees; and

NOW, THEREFORE, for the sum of Ten Dollars (\$10.00), mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the parties hereto as follows:

1. Amendment. The Contract is hereby amended as follows:

(a) Paragraph 3. Settlement Date. Settlement shall occur on July 30, 2001 at 8:00 a.m. at the offices of Alan H. Grant, P.C., 9210 Corporate Boulevard, Suite 390, Rockville, Maryland or such other date and time as agreed to by the parties.



2. (b) Notwithstanding anything in the Contract to the contrary, the parties agree to share equally the transfer fee to Blimpie's in an amount not to exceed \$1,000.00 for each of them.

3. Seller shall pay for one-half the settlement fees of settlement agent.

4. Miscellaneous. To extend the provisions of this Amendment are inconsistent with the provisions of the Contract, the provisions of this Amendment shall control. Except as modified herein, the Contract remains in full force and effect.

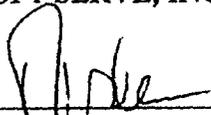
IN WITNESS WHEREOF, Seller and Purchaser have caused this instrument to be executed as of the date set forth above.

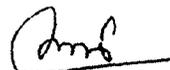
SELLER:

SOFT SERVE, INC.

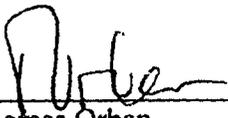


Witness

By:  _____ (SEAL)
Thomas Orban



Witness

 _____ (SEAL)
Thomas Orban

PURCHASER:



Witness

By: Mohammed Baten (SEAL)
Mohammed Abdul Baten

BATENSOFTSERVEAMENDMENT.DOC

ASSIGNMENT OF CONTRACT

THIS ASSIGNMENT OF CONTRACT made this 30th day of July, 2001 by and between MOHAMMED ABDUL BATEN (hereinafter referred to as the "Assignor"), MILLION, INC., a Maryland corporation (hereinafter referred to as the "Assignee") and THOMAS ORBAN and SOFT SERVE, INC., a Maryland Corporation (hereinafter individually and collectively referred to as the "Consentor").

WITNESSETH:

WHEREAS, by virtue of that certain AGREEMENT FOR THE SALE OF SUBSTANTIALLY ALL THE ASSETS OF A GOING BUSINESS executed June 26, 2001, by and between Consentor and Assignor (hereinafter collectively referred to as the "Agreement"), Consentor sold the assets of the business located at 3801 International Drive, Silver Spring, Maryland and as more particularly described in the Agreement, under such terms and conditions as fully set forth under the Agreement, as modified; and

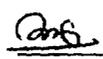
WHEREAS, Assignor has determined and desires that there be an assignment of the Agreement to Assignee named hereinabove; and, as provided under the terms of said Agreement, that the Consentor consents to such assignment; and

NOW THEREFORE, for the sum of Ten Dollars (\$10.00), the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the parties hereto as follows:

1. Effective as of July 30, 2001, Assignor does assign all his right, title and interest in and to the Agreement to Assignee.
2. Assignee accepts such assignment and will be bound by all terms, conditions and covenants on the Agreement.


Assignee


Consentor


Assignor

3. Consentor acknowledges that Assignor's liabile shall cease on July 30, 2001.
Consentor consents to be bound to the terms set forth herein upon Consentor's acceptance of this Assignment.

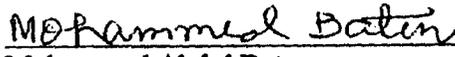
4. This Assignment may be executed in counterparts.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names and affixed their seals.



Witness

ASSIGNOR:

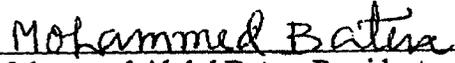
 (SEAL)
Mohammed Abdul Baten



Witness

ASSIGNEE:

MILLION, INC.

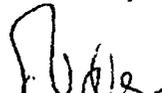
By:  (SEAL)
Mohammed Abdul Baten, President

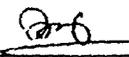


Witness

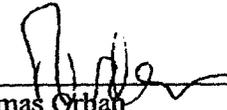
CONSENTOR:

SOFT SERVE, INC.

By:  (SEAL)
Thomas Orban, President



Witness

 (SEAL)
Thomas Orban

Z:\WP\Baten\Olympic's Purchase\k.assignment.contract.doc


Assignee


Consentor


Assignor

THIS MULTI-TONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM

SUNTRUST

Official Check

6744006078

6744006078

Account No. 6744006078
JULY 15, 2002

VOID OVER 10,370.44

JULY 15, 2002

6744 5194

\$10,370.44
DOLLAR ONE ZERO THIRTYSEVEN ZERO ZERO FOUR

Non-Negotiable

TEN THOUSAND THREE HUNDRED SEVENTY DOLLARS AND 44 CENTS

Pay To The Order Of THOMAS J ORBAN

Purchaser THOMAS J ORBAN

Memo
630016 (5/00)

Customer Copy
Non-Negotiable

This Is Not A Check - Customer Copy - This Is Not A Check

VENDOR ID: SOFTSERVEI
PAYEE: SOFT SERVE, INC & THOMAS ORBAN MEMO: 2101 M. Baten

CHECK NO: 00002766

DATE: 08/09/01

ACCOUNT

AMOUNT

2101 BATEN.MOHAMMED

65,956.50

ALAN H. GRANT, P.C. TRUST ACCOUNT

CHECK TOTAL: ****\$65,956.50

2766

PRODUCT 13821 USE WITH COMPANION 3388 DU-D-VUE ENVELOPE PRINTED IN U.S.A. E

VENDOR ID: SOFTSERVEI
PAYEE: SOFT SERVE, INC & THOMAS ORBAN MEMO: 2101 M. Baten

CHECK NO: 00002766

DATE: 08/09/01

ACCOUNT

AMOUNT

2101 BATEN.MOHAMMED

65,956.50

ALAN H. GRANT, P.C. TRUST ACCOUNT

CHECK TOTAL: ****\$65,956.50

2766

PRODUCT 13821 USE WITH COMPANION 3388 DU-D-VUE ENVELOPE PRINTED IN U.S.A. E

ALAN H. GRANT, P.C.
ATTORNEY TRUST ACCOUNT

FIRST UNION NATIONAL BANK
OF MARYLAND

2766

ROCKVILLE, MARYLAND 20850-9006

00002766

SIXTY-FIVE THOUSAND NINE HUNDRED FIFTY-SIX AND 50 / 100 DOLLARS

DATE

AMOUNT

08/09/01

***\$65,956.50

TO THE
ORDER
OF

SOFT SERVE, INC & THOMAS ORBAN

PRIVATE BANKING

2101 M. Baten

⑈002766⑈ ⑆055003201⑆2040637963141⑈

VENDOR ID: SOFTSERVEI

CHECK NO: 00002766

DATE: 08/09/01

PAYEE: SOFT SERVE, INC & THOMAS ORBAN MEMO: 2101 M. Baten

ACCOUNT

AMOUNT

2101 BATEN.MOHAMMED

65,956.50

ALAN H. GRANT, P.C. TRUST ACCOUNT

CHECK TOTAL: ***\$65,956.50

PRODUCT 1101 USE WITH COMPANION 5200 DU-D-VII ENCL01

PRINTED IN U.S.A

E

2766

ALAN H. GRANT, P.C.

ATTORNEYS AND COUNSELORS AT LAW

ALAN H. GRANT (MD, DC)
MICHAEL L. RIFFKIN (MD, PA, DC)
RENA L. STRAUSS (MD, DC)
EDWARD AMOURGIS (MD, VA)

9210 CORPORATE BOULEVARD
SUITE 390
ROCKVILLE, MARYLAND 20850-4608

PHONE: (301) 258-1033
FAX: (301) 330-4491
E-MAIL: grantlaw@erols.com

August 10, 2001

Mr. Thomas Orban
3136 St. Florence Terrace
Olney, MD 20832

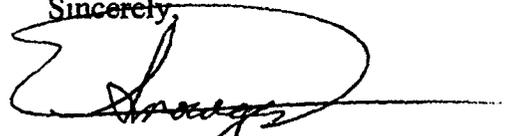
Re: Sale of Blimpie

Dear Mr. Orban:

Enclosed please find a check in the sum of \$65,956.50 representing the proceeds of the Sale of Blimpie's. Please remember that we still hold approximately \$11,000 in escrow. I am enclosing an amended settlement sheet for your information. Signed documents regarding the above sale will be forthcoming in the next few days.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Edward Amourgis

Enclosures

ALAN H. GRANT, P.C.
9210 Corporate Boulevard, #390
Rockville, Maryland 20850
(301) 258-1033

PURCHASER'S SETTLEMENT STATEMENT

PURCHASER: Million, Inc. **SELLER:** Soft Serve, Inc.

SUBJECT PROPERTY: Blimpie, 3801 International Drive, Silver Spring, MD 20906

PRICE AS PER CONTRACT: \$ 70,000.00 \$ 70,000.00

ADJUSTMENTS:

Rent	\$ 172.50	
Inventory	\$ 7,459.00	
Other adjustments	<u>\$ 0.00</u>	
Subtotal	\$ 7,631.50	\$ 7,631.50

SETTLEMENT CHARGES TO PURCHASER:

Filing Fees - Art. of Sale/Transfer	\$ 20.00	
- Financing Statement	\$ 0.00	
-	\$ 0.00	
Title Search	\$ 141.25	
Settlement fees	\$ 675.00	
Incorporation of company fees	\$ 640.00	
Incorporation charges	\$ 90.00	
MD State sales tax	\$ 988.00	
Sales Tax (escrowed)	<u>\$ 1,012.16</u>	
Total	\$ 3,566.41	<u>\$ 3,566.41</u>

GROSS AMOUNT DUE: \$ 81,197.91

CREDITS TO PURCHASER:

Deposit	\$ 10,000.00	
Paid	\$ 71,056.66	
Promissory Note	<u>\$ 0.00</u>	
TOTAL CREDITS:	\$ 81,056.66	<u>\$ 81,056.66</u>

TOTAL AMOUNT DUE FROM PURCHASER: \$ 141.25
(Gross Amount Due Less Total Credits)

The undersigned certifies and agrees that any error or omission concerning the above Settlement Statement will be corrected and remedied by the parties hereto.

Million, Inc.

DATE _____

By: _____

ALAN H. GRANT, P.C.
9210 Corporate Boulevard, #390
Rockville, Maryland 20850
(301) 258-1033

SELLER'S SETTLEMENT STATEMENT

PURCHASER: Million, Inc. **SELLER:** Soft Serve, Inc.

SUBJECT PROPERTY: Blimpie, 3801 International Drive, Silver Spring, MD 20906

PRICE AS PER CONTRACT: \$ 70,000.00 \$ 70,000.00

CREDITS:

Rent	\$	172.50	
Inventory	\$	<u>7,459.00</u>	
Total	\$	7,631.50	\$ 7,631.50

REDUCTIONS TO SELLER:

Deposit	\$	0.00	
Tax (escrowed)	\$	1,000.00	
Settlement fees	\$	675.00	
Bulk Sales Escrow (6 mths as per contract)	\$	10,000.00	
Promissory Note from purchaser	\$	0.00	
Total	\$	<u>11,675.00</u>	\$ 11,675.00

TOTAL AMOUNT DUE SELLER: \$ 65,956.50

The undersigned certifies and agrees that any error or omission concerning the above Settlement Statement will be corrected and remedied by the parties hereto.

Soft Serve, Inc.

DATE: _____

By: _____

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

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 your 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

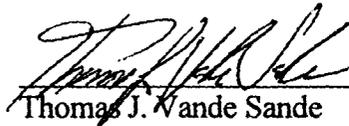
CERTIFICATE OF SERVICE

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

Coffees and Teas

Large 2.00 Medium 1.85 Small 1.60

Cappuccino (Latte)

Large 2.99 Medium 2.75 Small 2.25

Flavored Cappuccino (Latte)

Large 3.65 Medium 3.25 Small 2.75

Espresso

Single 1.25 Double 1.50

Donuts

1-5) 1.10 ea 6-11) .95 ea 12+) .85 ea

Bagels

1.10 ea Bakers Dozen 11.99

Muffins and Buns Mini Cupcakes

1.79 .99

Cupcakes

1-5) 2.85 ea 6-11) 2.59 ea 12+) 2.39 ea

SAMSUNG

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	
<hr/>		

**OPPOSER’S ANSWERS AND OBJECTIONS TO APPLICANT’S
FIRST SET OF INTERROGATORIES**

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 First 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

SPRINKLES and various petitions and free television news coverage afforded SPRINKLES during a landlord dispute, all evidence recognition of Opposer Sprinkles as 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 of any of its products and services.

ANSWER

Thus far, Mr. Orban has received three or four inquiries asking whether Sprinkles Cupcakes is related to his business. In addition, thus far one individual has congratulated Mr. Orban on his plans to open a SPRINKLES located in downtown Washington.

INTERROGATORY NO. 26

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

ANSWER

Thomas Orban, President and owner of Opposer Sprinkles.

INTERROGATORY NO. 27

For each 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.

ANSWER

Opposer Sprinkles' goods and services are offered and sold primarily to individual consumers of baked goods, frozen desserts, and non-alcoholic beverages. Opposer Sprinkles' customers reside in, grew up in, or are visiting the Washington, D.C. metropolitan area and include residents of Potomac, Maryland and surrounding areas; individuals commuting to and from downtown Washington, D.C.; residents of Washington, D.C.; surrounding suburbs of Washington, D.C., and individuals visiting and/or utilizing the various park lands and recreational areas found in Potomac, Maryland. Such include visitors to nearby Great Fall National Park and the thousands of bicyclists per year traveling north and south on Falls Road in Potomac, Maryland who thereby are exposed to Opposer Sprinkles' SPRINKLES retail store and products.

INTERROGATORY NO. 28

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

ANSWER

Prior to the adoption of SPRINKLES, Mr. Orban conducted a basic computer search.

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.

ANSWER

Opposer Sprinkles has used the mark SPRINKLES, as defined by Applicant, for a number of years in connection with various goods specifically recited, and closely related to, the goods recited in the '541 application. Consequently, as a result of Opposer Sprinkles' long and successful usage of the mark and trade name SPRINKLES, the purchasing public has come to recognize the mark SPRINKLES as referring to Opposer Sprinkles.

INTERROGATORY NO. 39

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

ANSWER

Thomas Orban, President and owner of Opposer Sprinkles, as to all Interrogatory answers.

Soft Serve, Inc. d/b/a Sprinkles

Date: Aug 26, 2010



Thomas Orban

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 FIRST 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: 8/10/10



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

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	
<hr/>		

**OPPOSER’S ANSWERS AND OBJECTIONS TO APPLICANT’S
FIRST SET OF INTERROGATORIES**

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 First 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

ANSWER

Thomas Orban, previously identified in response to Interrogatory No. 3, is the person most knowledgeable about the sales and distribution of Opposer Sprinkles' products and services.

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.

ANSWER

Mr. Orban is the person most knowledgeable about any advertising and promotion of Opposer Sprinkles' products and services.

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.

ANSWER

Opposer Sprinkles objects to this interrogatory as being overly burdensome to the extent that it requests a breakdown of advertising and promotional expenditures on a product by product basis. Moreover, Opposer Sprinkles has no way of tracking expenditures incurred in the promotion of one particular item as opposed to Applicant's entire product line.

Notwithstanding Opposer Sprinkles' objections, Opposer Sprinkles will produce in response to Production Request No. 12 a tabulation on a yearly basis indicating advertising expenditures. Substantial promotional activity, such as involvement in various community and civic activities and other activities, for example, the dissemination of coupons to D.C. bound commuters are, of course, promotional activities not reflected in a calculation of advertising expenditures.

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.

ANSWER

Advertisements and other promotional items and events, such as press coverage and television media directed to Opposer Sprinkles has appeared in various newspapers, magazines and direct mailing pieces, as well as at least one Facebook page. The geographic scope of these promotional activities and items includes the Washington, D.C. metropolitan area, specifically, Washington, D.C. and its surrounding environs. Representative documents will be produced in response to Applicant's Production Request No. 2.

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.

ANSWER

All products and services identified in answering Interrogatory No. 2 as those currently offered by Opposer Sprinkles are offered by Opposer Sprinkles through its retail outlet and through Opposer Sprinkles' catering service. Opposer Sprinkles intends to offer its goods and to promote its services through a website.

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.

ANSWER

Opposer Sprinkles objects to this interrogatory to the extent that it is both vague and overly burdensome. More specifically, the request that Opposer Sprinkles "describe" products, packaging, signs, uniforms, etc. is not understood. In the event that Applicant is seeking a written description of these items the interrogatory is overly burdensome. Without waiving these objections Opposer Sprinkles will produce in response to Production Request No.2, samples and/or photocopies of a representative sampling of instances in which Opposer Sprinkles has 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.

ANSWER

See Opposer Sprinkles' Answer to Interrogatory No. 4.

ANSWER

Opposer Sprinkles has used the mark SPRINKLES, as defined by Applicant, for a number of years in connection with various goods specifically recited, and closely related to, the goods recited in the '541 application. Consequently, as a result of Opposer Sprinkles' long and successful usage of the mark and trade name SPRINKLES, the purchasing public has come to recognize the mark SPRINKLES as referring to Opposer Sprinkles.

INTERROGATORY NO. 39

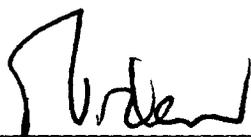
Identify each person who provided information on which your responses to these Interrogatories and based, specifying the interrogatory or interrogatories for which each person provided information.

ANSWER

Thomas Orban, President and owner of Opposer Sprinkles, as to all Interrogatory answers.

Soft Serve, Inc. d/b/a Sprinkles

Date: Aug 26, 2010



Thomas Orban

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 FIRST 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:

8/10/10



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

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

Soft Serve, Inc. d/b/a Sprinkles)	
)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91194188
)	
Sprinkles Cupcakes, Inc.)	
)	
Applicant.)	

**OPPOSER’S ANSWERS AND OBJECTIONS TO APPLICANT’S
FIRST SET OF INTERROGATORIES**

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 First 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

Notwithstanding Opposer Sprinkles' objections, Opposer Sprinkles will produce in response to Production Request No. 12 a tabulation on a yearly basis indicating advertising expenditures. Substantial promotional activity, such as involvement in various community and civic activities and other activities, for example, the dissemination of coupons to D.C. bound commuters are, of course, promotional activities not reflected in a calculation of advertising expenditures.

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.

ANSWER

Advertisements and other promotional items and events, such as press coverage and television media directed to Opposer Sprinkles has appeared in various newspapers, magazines and direct mailing pieces, as well as at least one Facebook page. The geographic scope of these promotional activities and items includes the Washington, D.C. metropolitan area, specifically, Washington, D.C. and its surrounding environs. Representative documents will be produced in response to Applicant's Production Request No. 2.

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.

ANSWER

Opposer Sprinkles has used the mark SPRINKLES, as defined by Applicant, for a number of years in connection with various goods specifically recited, and closely related to, the goods recited in the '541 application. Consequently, as a result of Opposer Sprinkles' long and successful usage of the mark and trade name SPRINKLES, the purchasing public has come to recognize the mark SPRINKLES as referring to Opposer Sprinkles.

INTERROGATORY NO. 39

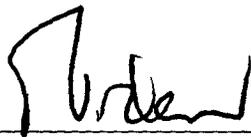
Identify each person who provided information on which your responses to these Interrogatories and based, specifying the interrogatory or interrogatories for which each person provided information.

ANSWER

Thomas Orban, President and owner of Opposer Sprinkles, as to all Interrogatory answers.

Soft Serve, Inc. d/b/a Sprinkles

Date: Aug 26, 2010



Thomas Orban

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 FIRST 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: 8/10/10



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

HALL & VANDE SANDE, LLC

ATTORNEYS AT LAW

THOMAS J. VANDE SANDE
DENNIS A. FOSTER
JOHN GIBSON SEMMES

10220 RIVER ROAD, SUITE 200
POTOMAC, MARYLAND 20854
TELEPHONE: (301) 983-2500
FACSIMILE: (301) 983-2100

Patent, Trademark
and Copyright
and Litigation

OF COUNSEL
WILLIAM D. HALL
ROBERT R. PRIDDY

May 4, 2011

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

Re: Soft Serve, Inc. v. Sprinkles Cupcakes, Inc.
Consolidated Case No. 91194188

Dear Hollie:

Enclosed you will find a further supplementation of Soft Serve's interrogatory answers and additional documents bearing production numbers OP 5174 – OP 5192.

Sincerely,



Thomas J. Vande Sande

TVS:dn
Enclosures

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1382

date Sept 16, 2003

Pay to the order of - Chantilly Donuts \$ 1996^{01/100}
one thousand nine hundred ninety-six^{01/100} dollars



Potomac Office
Potomac, MD 20854-4903

for 8/2 thru 8/29

Order

⑆054000030⑆ 5008 180 2⑈ 1382 ⑆0000199604⑆

15-3-540
1397
New 10 2003

date New 10 2003

Pay to the order of - Whisper Bagel Co \$ 1542^{16/100}
fifteen hundred forty-two^{16/100} dollars



SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

SOFT SERVE, INC.
3138 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1134

date Oct 8, 2003

Pay to the order of Chantilly Donuts \$ 2668^{12/100}
two thousand six hundred sixty-eight^{12/100} dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 8/30 - 10/03

Order

⑆054000030⑆ 5008 180 2⑈ 1134 ⑆0000266812⑆

SPRINKLES
SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1363

date Aug 5/03

Pay to the order of - Chantilly Donuts \$ 2195^{58/100}
two thousand one hundred ninety-five^{58/100} dollars



Potomac Office
Potomac, MD 20854-4903

for 7/5 - 8/1

Order

⑆054000030⑆ 5008 180 2⑈ 1363 ⑆0000219558⑆

SOFT SERVE, INC.
3138 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1150

date Nov 5, 2003

Pay to the order of Chantilly Donuts \$ 2332^{02/100}
two thousand three hundred thirty-two^{02/100} dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 10/4 7 10/31

Order

⑆054000030⑆ 5008 180 2⑈ 1150 ⑆0000233202⑆

SPRINKLES

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1301

May 14, 2003
date

Pay to the order of Chantilly Donuts \$3617⁴⁶/₁₀₀
Three thousand six hundred sixteen ⁴⁶/₁₀₀ dollars



RIGGS
Potomac Office
Potomac, MD 20854-4903

for 3/19 to 5/9/03

Order

⑆054000030⑆ 5008 180 2⑈ 1301 ⑆0000361746⑆

15-3-540 1315
June 9, 2003
date

Pay to the order of Sara Lee \$2438⁰³/₁₀₀
two thousand four hundred thirty-eight ⁰³/₁₀₀ dollars

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1285

April 10/03
date

Pay to the order of Sara Lee \$2967²⁶/₁₀₀
two thousand nine hundred sixty-seven ²⁶/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

8271860 - 401.40
8272114 - 301.20
8272473 - 773.40
8271106 - 133.60
8271518 - 74.40
8272238 - 313.03

Order

⑆054000030⑆ 5008 180 2⑈ 1285 ⑆0000296726⑆

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1277

March 29/03
date

Pay to the order of Chantilly Donuts \$2430⁷⁶/₁₀₀
two thousand four hundred thirty ⁷⁶/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 3/1 to 3/28/03

Order

⑆054000030⑆ 5008 180 2⑈ 1277 ⑆0000243076⑆

SPRINKLES
SOFT SERVE, INC.
3136 ST. FLORENCE TERRACE
OLNEY, MD 20832
(301) 299-8415

15-3-540

1263

March 9, 2003
date

Pay to the order of Chantilly Donuts \$494⁹⁴/₁₀₀
four hundred ninety-four ⁹⁴/₁₀₀ dollars

RIGGS BANK N.A.
POTOMAC OFFICE
POTOMAC, MD 20854-4903

for 2/22 - 2/28

Order

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1433

Jan 13, 2004
date

Pay to the order of - Chantilly Donuts \$2534⁸⁶/₁₀₀
two thousand five hundred thirty four ⁸⁶/₁₀₀ dollars



for 11/29 - 1/2

Order

⑆054000030⑆ 5008 180 2⑈ 1433 ⑆0000253486⑆

SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1403

Nov 11/03
date

Pay to the order of - Sara Lee \$435⁹⁴/₁₀₀
four hundred thirty five dollars ⁹⁴/₁₀₀



for 98996

Order

⑆054000030⑆ 5008 180 2⑈ 1403 ⑆0000043594⑆

345623
SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1400

Nov 10, 2003
date

Pay to the order of - Sara Lee \$934⁰⁰/₁₀₀
nine hundred thirty four ⁰⁰/₁₀₀ dollars



for 1336724

Order

⑆054000030⑆ 5008 180 2⑈ 1400 ⑆0000093480⑆

SPRINKLES
SOFT SERVE, INC.
10148 RIVER ROAD
POTOMAC, MD 20854
(301) 299-8415

15-3-540

1321

June 9/03
date

Pay to the order of - Chantilly Donuts \$2471⁶⁸/₁₀₀
two thousand four hundred seventy one ⁶⁸/₁₀₀ dollars



for 5/10 to 6/6

Order

⑆054000030⑆ 5008 180 2⑈ 1321 ⑆0000247168⑆

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.

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.

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.

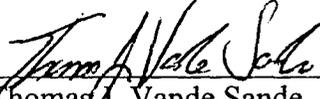
95. The document in Exhibit B to Applicant's Second Set of Interrogatories to Opposer is a true and accurate copy of the Articles of Sale and Transfer between Soft Serve, Inc. and Million, Inc., as submitted to the Maryland Secretary of State.

RESPONSE

Admitted.

Hall & Vande Sande, LLC

Date: 8/26/11



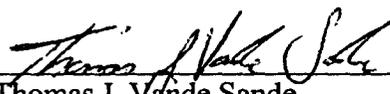
Thomas J. Vande Sande
Attorney for Opposer
10220 River Road, Suite 200
Potomac, Maryland 20854
Phone: (301) 983-2500

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:

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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
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