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

Proceeding	91194188
Party	Defendant Sprinkles Cupcakes, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SOFT SERVE, INC. d/b/a SPRINKLES, Opposer/Petitioner, v. SPRINKLES CUPCAKES, INC., Applicant/Respondent.	**Opposition No. 91194188 (parent)** Opposition No. 91195669 Opposition No. 91195985 Opposition No. 91195986 Opposition No. 91196035 Opposition No. 91196061 Opposition No. 91196087 Cancellation No. 92053109

DECLARATION OF RONALD C. GOODSTEIN, PH.D.

I, Ronald C. Goodstein, Ph.D., declare and state as follows:

I. QUALIFICATIONS

I am an Associate Professor of Marketing at the McDonough School of Business at Georgetown University. I received a Bachelor of Science (with distinction) in marketing and organizational management from the University of Virginia in 1982. I earned my Ph.D. in Marketing from Duke University in 1990. My prior academic experience includes five years at UCLA's Anderson Graduate School of Management (award winning professor), two years at Indiana University's Kelley School, and one year at the University of Pennsylvania's Wharton School, where I received a teaching award. Through my company, SW^2C, LLC, I teach executive education to and consult with companies both independently and through programs sponsored by Georgetown University, Wharton, UCLA, and Duke Corporate Education. I have published numerous journal articles, research reports and book chapters on marketing issues. Over the past ten years, I have served as a consultant or expert witness on marketing issues and issues of consumer confusion, including cases involving intellectual property and trademark issues. My curriculum vita is attached at Tab 1, which includes a list of my publications. A list of cases in which I have appeared as an expert witness is attached at Tab 2. The facts and opinions stated herein are based on my personal knowledge and/or from business records maintained in the ordinary course of business. If called upon, I could testify as to these facts and opinions.

I have substantial experience in assessing matters of brand equity, as well as in analyzing determinants and evidence of consumer confusion. I have personally designed or analyzed hundreds of studies pertaining to consumers' opinions and behaviors relating to marketing and branding. In addition to the materials provided by the parties, I also relied on standard treatises on the application of survey research in trademark law, research pertaining to brand equity, and other consumer behavior and marketing research (see Exhibit C).

In connection with my work on this matter, I have been compensated at my usual rate of $650.00 per hour. I have accumulated approximately 36 hours to date. My compensation for

work on this matter is in no way dependent upon my conclusions, the content of my analysis or opinions, or the outcome of this case.

It is my understanding that discovery in this matter is still underway. Accordingly, I reserve the right to supplement this report and my opinions herein as additional information, data or testimony become available.

II. DOCUMENTS

As part of my work, I relied upon the Petitions for Cancellation, Notices of Opposition, and the related responses from the parties. I also relied on standard treatises on the factors involved in trademark confusion and published works on marketing theory. In addition, I reviewed relevant websites and press coverage. I also personally visited Soft Serve's store in Potomac, Maryland and Sprinkles Cupcakes' store in the Georgetown neighborhood of Washington, DC, and relied on my observations. A list of the specific materials I relied upon can be found at Tab 3. All summaries of facts in this report are offered to the best of my knowledge based on these materials.

III. BACKGROUND

Sprinkles Cupcakes, Inc. is a nationally-renowned brand known for its success in selling upper-end baked goods and related accessories. The company began selling its cupcakes in Beverly Hills, CA and has been noted in the press as the originator of the cupcake craze that has spread nationwide (e.g., LA Times, Washington Post). These reviews fit with the company's positioning as "The Original Cupcake Bakery."[1] Its co-founders, Candace and Charles Nelson, have maintained the company's position as an upper-tier, super-premium brand throughout its expansion. The company now boasts 10 stores nationwide, and is considering 25 other locations that would expand its reach both domestically and internationally. The company is a strong

[1] The Washington Post (Feb. 8, 2012) reports that between October 2010 to October 2011 Americans purchased more than 669.4 million cupcakes nationwide.

giver to charities and has donated over $3.6 million to support causes in their local communities. The company provides its goods in its own retail stores, through delivery, catering, and through cupcake mixes sold at over 250 Williams-Sonoma stores across North America. The Sprinkles name is well recognized within the cupcake industry for its unique quality, experiential boutique locales, and the exposure of its co-founder in various media outlets as one of the true experts in the industry.

Soft Serve, Inc. d/b/a Sprinkles is a Maryland corporation that does business in the local area of Potomac, MD. Soft Serve has a single retail outlet. According to Manta (2012; www.manta.com/c/mmlytjd/sprinkles), "Sprinkles in Potomac, MD is a private company categorized under Frozen Yogurt Stand. Our records show it was established in 1987 and incorporated in Maryland."[2] Manta also estimates that Soft Serve has annual revenue of less than $500,000 and employs a staff of approximately five to nine. A similar website, PowerProfiles.com also lists Soft Serve as a Frozen Yogurt Stand (2012; www.powerprofiles.com/profile/00005150653584/SOFT+SERVE+INC-POTOMAC-MD). PowerProfiles.com is an online business directory. According to PowerProfiles.com, Soft Serve originally opened as an "I Can't Believe It's Yogurt!" franchise.

IV. SUMMARY OF CONCLUSIONS

I was retained by counsel for Sprinkles Cupcakes, Inc. to rely on my background and expertise in marketing to analyze and report as to the likelihood of confusion in this case. I am aware that likelihood of confusion is determined in the Patent and Trademark Office based on a multi-factor test laid out in the DuPont case (In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973)).

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[2] Manta, the world's largest online community for promoting and connecting small business, is a website with more than one million registered users and 87 million company profiles. It promotes and connects small businesses worldwide.

I focused primarily on the following DuPont factors:

- The similarity or dissimilarity of established, likely-to-continue trade channels;
- The conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing;
- The market interface between applicant and the owner of the asserted prior mark; and
- Other established facts probative of the effect of use.

I considered these factors in order to opine on the question of:

- Whether there is a likelihood of confusion in the marketplace based on the parties' use of their trademarks, in particular Sprinkles Cupcakes, Inc.'s use of the SPRINKLES and SPRINKLES CUPCAKES trademarks.

In preparing this declaration, I have utilized processes, methodologies, analyses, and principles that I would ordinarily apply in performing qualitative and quantitative research for non-litigation purposes. The observations and analyses I made tested for factors related to the DuPont standards. Based on my analyses, as well as consideration of the individual factors determining a likelihood of confusion, I conclude that Soft Serve's claim that "it has been, is being, and will continue to be damaged…" by Sprinkles Cupcakes' mark is without merit.

I further conclude that:

- Sprinkles Cupcakes offers a super-premium brand utilizing many marketing tools to do so, while Soft Serve offers a commonplace local ice cream shop experience.
- Marketplace factors including equity positioning and retail atmospherics confirm that there is no likelihood of confusion.
- The geographic differences and differences in customer population are stark.
- The parties offer different primary products in different retail settings which differentiates the products for the consumer.

- Sprinkles Cupcakes would have no incentive to associate itself with Soft Serve, as such association would only harm Sprinkles Cupcakes' well-established, national, super-premium brand identity.
- There is no likelihood of confusion based on the parties' use of their trademarks, including Sprinkles Cupcakes, Inc.'s use of the SPRINKLES and SPRINKLES CUPCAKES marks.

A. SPRINKLES CUPCAKES IS A SUPER-PREMIUM BRAND, OFFERING A STARKLY DIFFERENT CONSUMER EXPERIENCE FROM SOFT SERVE'S TYPICAL, LOCAL ICE CREAM SHOP

Brands differ in the price-quality tier they represent in the marketplace. Consumers use these price-quality tiers to differentiate brands into categories, such as popular, premium, and super-premium brands (e.g., Mintel 2011).[3] Empirical analyses of markets also support the notion that consumers make similar brand distinctions based on price and quality. For instance, Blattberg and Wisniewski (1989) classify brands on such tradeoffs and their model of generic, private label (local), and national brands form distinctions very similar to those described by Mintel. These distinctions are often based on price and quality levels, but may also include other attributes such as breadth of brand awareness, service quality, retail atmosphere (e.g., Keller 2008).

Using these categories of price-quality tradeoffs, Soft Serve is best-described as a typical local brand. They have a history in one specific locale, namely the Potomac Village Shopping Center in Potomac, Maryland. Soft Serve has not reported any intention to expand to other locales. In fact, when the frozen yogurt shop was considering closing due to lease issues, its owner (Orban) stated, "I think the real problem is for the community," he said. Orban said he

[3] Mintel is an international company that provides industry reviews, summaries, and assessments across a variety of business sectors. Its research is cited by the media over 22,000 times a year. www.mintel.com.

would consider re-locating within the Village if another space were available. However, he said he wouldn't re-open elsewhere. ''Relocating means taking a big risk," Orban said. ''In terms of starting up somewhere else, in another community, I'm not going to do that" (ww2.gazette.net July 30, 2008). Orban also speaks of local positioning when he states that the changes made to his store were..."[The renovations are a way to] say thank you to the community for its support and give it the best ice cream store they ever saw," Orban said (owner) (The Observer, March 2, 2010).

In terms of its pricing, an employee indicated that a single dip ice cream cone at Soft Serve costs $2.65. I checked nearby prices and found that a single dip cone at Baskin Robbins costs slightly more at $2.75. This is in the same price tier as the local Dairy Queen, which charges $2.39 for a small cone and $2.79 for a medium. These brands are in a lower price-quality tier than the local Haagen-Daz which charges $4.70 for its single dip cone. In terms of the secondary line of baked goods at Soft Serve – the cupcakes cost $2.85 each and are discounted to $2.39 each if the consumer purchases a dozen. This is similar in price to other local bakeries such as "Cravin Cookies & Sweets," where the price is $30 per dozen ($2.50 each) for their cupcakes. It is also similar in price to the cupcake store in the nearby Montgomery Mall called Yocake. The price there is $2.75 per cupcake. Soft Serve also sells day-old or other baked goods at a discounted price.

Sprinkles Cupcakes is positioned as a national, super-premium cupcake retailer that is at the top of the quality chain and is priced accordingly. Sprinkles Cupcakes' price is $3.50 per cupcake, approximately 23% higher than Soft Serve's. The stores' price per dozen represents an even larger gap between the two parties (on a per cupcake basis: Sprinkles Cupcakes = $3.25, Soft Serve = $2.39): approximately 36%. Sprinkles Cupcakes does not, by its policy, sell its cupcakes at a discount. This maintenance of the high price also enhances Sprinkles Cupcakes' brand equity.

Walter Landor, founder of one of the leading brand consulting firms in the world, once said, "Simply put, a brand is a promise. By identifying and authenticating a product or service it

delivers a pledge of satisfaction and quality" (quoted in Napier, Rivers, and Wagner 2006, p. 202). Sprinkles Cupcakes has adopted many of the hallmarks of super-premium brands by utilizing quality cues (referred to as retail atmospherics, cf. Baker, Parasuraman, Grewal, and Voss 2002) that create unique quality for the store and its products. These include a unique pink and brown color scheme, a distinctive café style layout across multiple stores, distinct cupcake toppers that serve as a symbol of the store. These cues authenticate the store and create an atmosphere that goes beyond merely satisfying the customer. This is not only my expert opinion based on experience and treatises in my field. Sprinkles Cupcakes has also been reviewed for delivering on this promise in no fewer than 45 national, regional, and local print media outlets. It has received equally glowing evaluations in local, regional, and national radio and television outlets in over 25 shows.

Sprinkles Cupcakes is a national brand with plans to expand even farther. Sprinkles Cupcakes' website specifically talks about its desire to expand both nationally and internationally and has a site where its customers can make suggestions as to where they prefer this expansion to take place (http://www.sprinkles.com/location_voting.php).

The super-premium positioning of Sprinkles Cupcakes is further exemplified by the status of the brand and its co-founder serving as a judge in the Food Network's television competition show "Cupcake Wars." One must be seen as the expert and prototype in order to have legitimacy in judging others. Clearly, Sprinkles Cupcakes' super-premium brand is validated by the prominent television appearances of its co-founder.

B. RETAIL ATMOSPHERICS INDICATE THAT SPRINKLES CUPCAKES IS NOT LIKELY TO BE CONFUSED WITH A LOCAL SUBURBAN ICE CREAM SHOP

An important aspect of retailing that influences a store's equity is known as atmospherics. The term "retail atmospherics" refers to all of the physical and nonphysical elements of a store that can be controlled in order to enhance (or restrain) the behaviors of its occupants, both customers and employees. These elements present a multitude of possibilities including ambient

cues such as color, smell, music, lighting, and textures, as well as architectural and artifactual elements (Eroglu and Machleit 1993).

When atmospherics are positive, there is a positive causal link with the attitude and equity afforded the retailer (e.g., Michon et al. 2008). For instance, specialty stores such as bakeries have known for years that the wonderful aromas emanating from their stores have a positive influence on their businesses (e.g., Spangenberg, Crowley, and Henderson 1996). Similarly, attractive color thematics can enhance the reputation of a store, and those colors can actually become a symbolic representation of a brand (e.g., Crowley 1993). Other elements such as store design and brand symbols have similarly positive effects on equity (e.g., Baker et al. 2002). (Figure 1 below shows several examples of Sprinkles Cupcakes' consistent color usage.)

Figure 1: Examples of Sprinkles Cupcakes' consistent use of color.

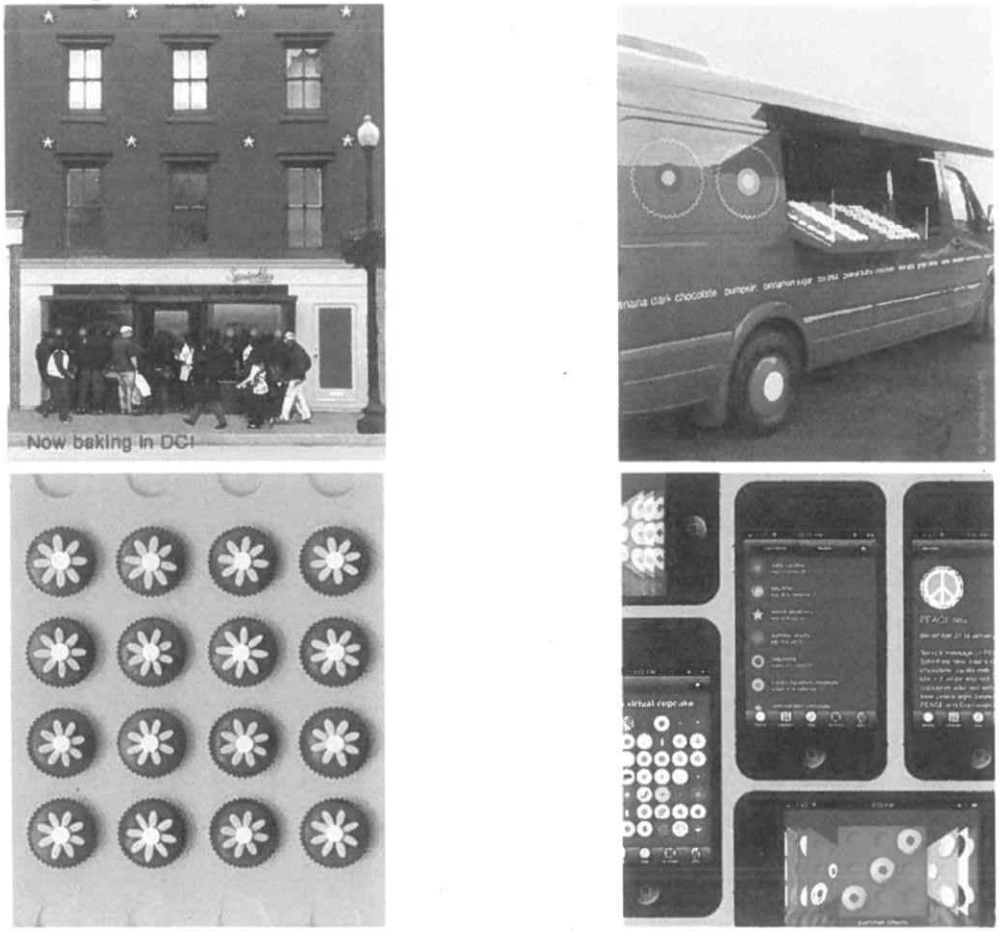

Figure 1 (continued):

Sprinkles
CUPCAKES

Sprinkles Cupcakes is a brand that takes full advantage of the positive influence of retail atmospherics. The shop itself is part of the delight in the brand. They utilize an attractive color scheme that is consistent across outlets and their website. This is also congruent with their packaging and displays, meaning that the brand can be identified both in the retail outlet and outside of the store. Their service is welcoming. At the point-of-purchase, there were several "hellos" and welcoming comments made by the distinctively dressed staff (dressed to match the color scheme of the store). There was an intimate café feeling in the store and in the seating. The display cases for Sprinkle Cupcakes were organized to separate and showcase the cupcakes, in a manner indicating high-end products. The cupcakes certainly had "curb appeal," and appeared appetizing and expensive. Nearly all of their cupcakes include one of the store's unique toppers. (See Figure 2 below.)

Figure 2: Sprinkles Cupcakes' cupcake toppers.

In contrast, Soft Serve's store has no theme per se. The store offers some stools for sitting, though if the stools were used, customers would have little room to squeeze by them in order to place an order. The store had one table in the corner and the tabletop had a glass protector and beneath it were a series of local ads for the Potomac area and letters from a few customers. The store sells its own t-shirts, but the tees looked like they may have been left over inventory from an earlier time as they were stored in Ziploc bags and only size S was available. All tees were imprinted with the stylized Sprinkles name on the outside signage of the store, the design with the dripping ice cream cone replacing the letter "L." This meant that the tees looked to be promoting an ice cream shop as opposed to any other product category.

The view from the front of the Soft Serve store is that ice cream and frozen yogurt are located straight ahead, and baked goods are offered to the right of the frozen desserts. Outside the store, there were two plastic chairs available for outside seating. (See Figure 3.) The storefront for the single, local retail outlet for Soft Serve is that of a generic ice cream/frozen yogurt counter that lacks the ambience associated with super-premium brands such as the Sprinkles Cupcakes' store.

Figure 3: Plastic chairs for seating outside Soft Serve's store.

Across two visits to Soft Serve, I noted significant changes. During my first visit in August 2011, the store's display cases were disorganized. Upon the visit in April 2012, the cases were neater and more appealing. During the first visit, fewer than a dozen cupcakes were presented in a cake holder above the bagel counter. In April, there was an entire display case of cupcakes with about 50 products inside. I noted in April 2012 that Soft Serve apparently is advertising a breakfast menu and the menu is printed on Xerox paper. I also noted signage of the cupcake offerings taped onto the counter signage. (See Figure 4.) These menus were not of high quality.

Figure 4: Soft Serve's menu of cupcake offerings, taped to the counter.

I concluded based on the atmospherics that there is very little chance (and certainly no significant chance given the statistical significance required in my field) that a consumer would mistake one store for the other or believe that one store is in any way associated with the other. Sprinkles Cupcakes is a brand I would suggest other super-premium brands emulate in terms of atmospherics, whereas I found Soft Serve to offer a more typical small town/local atmospheric

environment. In terms of service, I was surprised given the friendly service touted by reviews of Soft Serve that its employees failed to greet me upon entry (though there were only six customers in the store), nor did they thank me for my business upon purchase, nor did they acknowledge the "thank you" offered upon departure.

Another factor that determines the equity of a brand is the number of loyal customers favoring the brand (e.g., Aaker 1991; 1996). Loyalty is important because it represents the proportion of the brand's sales that are due to "regulars," those customers that are most apt to purchase this brand repeatedly. Loyal customers know the brand well, have an affinity and knowledge about the brand that others would not have, and are less susceptible to competitors' tactics because of this intimacy with the brand. A brand loyalist would be more easily able to tell an imitator from the actual brand than would a novice in the product category. My review of websites, commentaries, and stores leads me to conclude that Soft Serve has a strongly loyal local customer base, and Sprinkles Cupcakes has a strongly loyal national customer base. Due to the presence of significant loyalty for both of these brands, the chances that customers would be confused as to which brand was which is significantly diminished.

C. GEOGRAPHIC DISPARITIES ALSO DIFFERENTIATE THE BRANDS

In terms of the geographic aspects of the two parties' positioning, I again see dissimilar brands. Based on my knowledge of brand equity, without additional significant factors (such as national press or an innovative marketing or product campaign), local retail shops like Soft Serve's generally can only have appreciable sales and consumer recognition within its limited geographic market. There is nothing about Soft Serve which would indicate that its reach is broader. In 2008, when Soft Serve was saved from closing in its current location, its owner (Orban) indicated that local support was helpful. "'I think the real problem is for the community,' he said. Orban said he would consider re-locating within the (Potomac) Village if another space were available. However, he said he wouldn't re-open elsewhere. 'Relocating

means taking a big risk,' Orban said. 'In terms of starting up somewhere else, in another community, I'm not going to do that.'" (Gazette Net 2008).

In contrast, Sprinkles Cupcakes specifically talks about its desire to expand both nationally and internationally and has a site where its customers can make suggestions as to where they prefer this expansion to take place (http://www.sprinkles.com/location_voting.php). There are over 20 major national or international locations being considered. These two strategies differentiate the two parties in the minds of consumers.

D. RETAIL OUTLETS AND DISTRIBUTION ARE DIFFERENT

Geographic distinctions affect the trade channels for the stores, i.e., Soft Serve is a single retail outlet serving the community in Potomac, Maryland only. Sprinkles Cupcakes has a national presence. All reviews of Soft Serve via the web (e.g., yelp.com, urbanspoon.com, Potomac.patch.com, yellowpages.com, findfrozenyogurt.com) list it as a store with a single location in Potomac (Cabin John), MD. As stated earlier, ownership indicates that Soft Serve has no geographic expansion plans in mind and plans to stay local, "In terms of starting up somewhere else, in another community, I'm not going to do that" (ww2.gazette.net July 30, 2008). To the best of my knowledge, Soft Serve also has no website for its store or products, it has a relatively new presence in social media (sprinklesdmv), and its product displays indicate a more local feel whereby ambiance of product presentation is less than might be expected of a super-premium outlet (see Figure 5, an example of the ice cream offerings).

Figure 5: An example of Soft Serve's ice cream offerings.

The cupcakes offered by Soft Serve are presented neatly in a display case, but appear to be placed on cafeteria trays inside the case. The cupcakes are iced, but the icing appears to have been squeezed from a tube rather than fully iced. That is, the cupcakes are attractive but do not look the same as those offered by Sprinkles Cupcakes that are iced from edge to edge and include a decoration in the middle. (See Figure 6.)

Figure 6: A cupcake like those offered at Soft Serve on the left, and a Sprinkles Cupcake on the right.

In contrast, Sprinkles Cupcakes has a strong national presence with locations in 10 major cities in the US. Sprinkles Cupcakes also is very bold about its expansion plans and even had a promotion to let customers help them decide where to open locales. The options being considered include 25 national and international cities (see http://www.sprinkles.com/location_voting.php). Sprinkles Cupcakes promotes its products online, in social networking websites (Facebook, Twitter), through an iPhone app, and on a sophisticated website with the capability to order cupcakes for pickup and delivery straight from the website. Sprinkles Cupcakes sells branded products outside its retail stores as well. Sprinkles Cupcakes sells cupcake mixes in over 250 Williams-Sonoma stores across North America, which, like Sprinkles Cupcakes, have a super-premium brand identity. The mixes sell for a super-premium price of $14.95 (see Figure 7 below), compared to around $4 for grocery store brands such as Betty Crocker or Duncan Hines. The presentation of the products is always indicative of its top-tier positioning (see Figure 8 below).

Figure 7: Webpage capture from Williams-Sonoma site for Sprinkles Cupcake mixes.

Figure 8: Presentation of Sprinkles Cupcakes products.

In terms of populations, there is no reason to expect that the populations of the Georgetown M-Street shopping district and that for the Potomac Village Shopping Center are the same. It is highly unlikely that a consumer wishing frozen yogurt or ice cream in the Potomac Village Shopping Center district would travel over 15 miles to Georgetown to buy a cupcake instead.

E. DIFFERENCES IN PRIMARY OFFERINGS AT DIFFERENT RETAIL SETTINGS SIGNIFICANTLY IMPACT THE CONSUMER EXPERIENCE

Soft Serve's primary product offering is ice cream, sold in the retail setting of an ice cream shop. Sprinkles Cupcakes' primary product offering is cupcakes, sold in the retail setting of a cupcake bakery. Consumers categorize the establishments differently, because these primary product offerings and retail settings are different. For example, even though the famous Carnegie Deli in New York sells soda and cheesecake with its corned beef and pastrami sandwiches, consumers do not categorize it as a soda shop or as a bakery; it is a deli. That is, categorization theory in psychology and marketing indicates that consumers organize their experiences into categories that allow them to make generalizations about frequently used concepts. These memory units are known as "schemas" (e.g., Fiske 1982; Goodstein 1993; Loken and Ward 1990; Sujan 1985). Schemas contain descriptions of the attributes typical of the category, as well as the prototypical exemplars that represent the category. For instance, the schema for "birds" might contain attributes such as feathers and beaks, and prototypical exemplars such as a crow or a robin.

Soft Serve is positioned as an ice cream/frozen yogurt shop. Even a cursory review of Soft Serve's local press clippings reveals that "Sprinkles is an ice cream shop" (Potomac Patch 2011). Soft Serve's employees and ownership solidify this positioning in their statements to the press. "Our customers know that we are not some big ice cream franchise, rather, we are a small, local ice cream shop that serves a variety of sweet goods," (Siudzinski (employee) quoted in The Observer, March 2010). In the same article, Soft Serve's owner continues to position the store as

an ice cream shop, "[The renovations are a way to] say thank you to the community for its support and give it the best ice cream store they ever saw."

Sprinkles Cupcakes, on the other hand, is positioned primarily as a cupcake bakery. The press credits Sprinkles Cupcakes with starting the whole cupcake craze that continues to expand across the country. Its co-founder has been used as a judge on national television to rate the quality of cupcakes. Sprinkles Cupcakes has been touted as the leader in the cupcakes marketplace on national television shows including Oprah, The Today Show, Martha Stewart, Tyra Banks, and others. The company has built is brand equity by its unique shop designs that represent a café/boutique feel. Further the pink and brown coloration that represents all of their stores gives them a unique appeal and ties all of their outlets together.

From my experience and research, the fact that one of the "other" offerings that Soft Serve provides its customers is cupcakes does not affect its primary categorization as an ice cream/frozen yogurt shop. As mentioned earlier, this is a position that is supported by Soft Serve's own statements, "Our customers know that we are not some big ice cream franchise, rather, we are a small, local ice cream shop that serves a variety of sweet goods," Siudzinski (employee).

Soft Serve's original signage before the time of this lawsuit also conveys that the establishment is primarily an ice cream shop. The Sprinkles' sign that Soft Serve uses includes a dripping cone as a representation for one of the letters in its name. (See Figure 9.) Upon inspection of the store, I noted a large sign in the window reading "Yogurt" and the same usage of "Yogurt" in the windowpanes in the door. (See Figures 10 & 11.) There was no other product mentions in these spaces. I believe that these Yogurt signs were left from the old "I Can't Believe It's Yogurt!" store (the former name under which Soft Serve did business) because the font and punctuation are the same.

Figure 9: Soft Serve's "Sprinkles" sign including a dripping ice cream cone.

Figure 10: "I Can't Believe It's Yogurt" logo.

Figure 11: "Yogurt!" sign in Soft Serve's window.

Recently – since the Sprinkles Cupcakes store opened in the Georgetown area of Washington, DC – Soft Serve connected a "cupcakes" sign in small lettering to their signage (as shown in the photo below). However, even the positioning of the "cupcakes" sign – added with two hinged screws to the bottom of the existing sign – signals that this offering is secondary. (See Figures 12 & 13.)

Figure 12: Soft Serve's hanging "Sprinkles" sign before 2011.

Figure 13: Soft Serve's hanging "Sprinkles" sign in August, 2011.

F. CONFUSION, IF IT EXISTED, WOULD HARM SPRINKLES CUPCAKES, NOT SOFT SERVE

A brand identity is "a unique set of brand associations that the brand strategist aspires to create or maintain. These associations represent what the brand stands for and imply a promise to customers from the organization members" (Aaker 1996). Associations are based on the image that the company holds in the minds of its constituencies. The image of Soft Serve is that of a local brand (evidenced by the ads, letters, visits, and press about the store), whereas Sprinkles Cupcakes' image is that of a super-premium national brand (evidenced by its atmospherics, press coverage, expansion plans, visits, and styling).

The Soft Serve brand appears to have consumer recognition within its limited geographic market, but this is based almost exclusively on the relationship between the store and the local Potomac Village community. This is evidenced in many of the statements Soft Serve executives have made in the press, as well as the support of local merchants and events in the community that are advertised in the store.

If a firm, like Sprinkles Cupcakes, wanting to sell its products (inter)nationally were to attempt to leverage off of the equity of another brand, it would only make sense to do so from a brand that has a strong national presence and very positive and recognizable atmospherics. As Soft Serve offers neither of these features, there would simply be no incentive for Sprinkles Cupcakes to want to try to leverage off of the brand.

There are other reasons that Sprinkles Cupcakes would not want to create a link between its brand and the Soft Serve brand. First, to do so would reduce Sprinkles Cupcakes to a lower price-quality tier, as opposed to its current positioning as a super-premium brand. Second, such a link would limit Sprinkles Cupcakes position to that of a regional player rather than the national presence it currently enjoys.

In my opinion, Sprinkles Cupcakes would not be the least bit interested in associating itself or its products with the Soft Serve brand. The Soft Serve brand and its positioning simply do not have equity that would enhance the sales or positioning of the Sprinkles Cupcakes' brand

or associated products. In fact, I believe that such an association would work to the detriment of Sprinkles Cupcakes and would actually hurt this brand.

V. CONCLUSIONS

Based on the foregoing, I am confident that the relevant DuPont factors fail to support the allegations made by Soft Serve, Inc. I am further confident that there is no likelihood of confusion in the marketplace based on the parties' use of their respective trademarks, in particular Sprinkles Cupcakes' use of its SPRINKLES and SPRINKLES CUPCAKES trademarks.

Dated: May 25, 2012

Ronald C. Goodstein, Ph.D

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Milberg, Sandra J., Francisca Sinn, and Ronald C. Goodstein (2010), "Consumer Reactions to Brand Extensions in a Competitive Context: Does Fit Still Matter?" *Journal of Consumer Research,* 37 (October), 543-553.

Puccinelli, Nancy M., Ronald C. Goodstein, Dhruv Grewal, Robert Price, Priya Raghubir, David Stewart (2009), "Customer Experience Management in Retailing: Understanding the Buying Process," *Journal of Retailing*, 85 (March), 15-30.

Sinn, Francisca, Sandra J. Milberg, Leonardo Epstein, and Ronald C. Goodstein (2007), "Compromising the Compromise Effect: Brands Matter," *Marketing Letters*, 18, 223-236.

Andreasen, Alan R., Ronald C. Goodstein, and Joan W. Wilson (2005), "Transferring Marketing Knowledge to the Nonprofit Sector," *California Management Review*, 47 (4), 46-67.

Miyazaki, Anthony, Dhruv Grewal and Ronald C. Goodstein (2005), "The Effect of Multiple Extrinsic Cues on Quality Perceptions: A Matter of Consistency," *Journal of Consumer Research*, 32 (1), 146-153.

Goodstein, Ronald C., Deborah A. Cours, Brian K. Jorgensen, and Jaideep Sengupta (2005), "The Positive Effect of Negative Advertising: It's a Matter of Time," in *Applying Social Cognition to Consumer-Focused Strategy*, F. Kardes, P. Herr, and J. Nantel, eds., Mahwah, NJ: Lawrence Erlbaum Associates, 319-330.

Gallagher, William E. and Ronald C. Goodstein (2004), "Inference Versus Speculation in Trademark Infringement Litigation: Abandoning the Fiction of the Vulcan Mind Meld," *Trademark Reporter*, 94 (Nov.-Dec.), 1229-1270.

Devon DelVecchio and Ronald C. Goodstein (2004), "Moving Beyond Race: The Role of Ethnicity in Evaluating Celebrity Endorsers," in *Diversity in Advertising*, P. Devine, C. Haugvedt, W. Lee, J. Williams, eds., Mahwah, NJ: Lawrence Erlbaum Associates.

Campbell, Margaret C. and Ronald C. Goodstein (2001), " The Moderating Effect of Perceived Risk on Consumers' Evaluations of Product Incongruity: Preferences for the Norm," *Journal of Consumer Research*, 28 (December 2001), 439-449.

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Aylesworth, Andrew, Ronald C. Goodstein, and Ajay Kalra (1999), "Effect of Archetypal Embeds on Feelings: An Indirect Route to Affecting Attitudes?" *Journal of Advertising*, 28 (Fall), 74-81.

Kalra, Ajay and Ronald C. Goodstein (1998), "The Impact of Advertising Positioning Strategies on Consumer Price Sensitivity," *Journal of Marketing Research*, 35 (May), 210-224.

Reprinted as "Advertising Positioning Strategies," *Economic Intuition*, (Fall), 1998.

Sengupta, Jaideep, Ronald C. Goodstein, and David Boninger (1997), "All Cues Are Not Created Equal: Obtaining Low Involvement Attitude Persistence," *Journal of Consumer Research*, 23 (March), 351-361.

Goodstein, Ronald C. and Jennifer Edson Escalas (1995), "Improving Pricing Accuracy at the Supermarket: Electronic Shelving Systems and Public Policy" *Journal of Public Policy & Marketing*, 14 (2), 216-224.

Goodstein, Ronald C. and Jennifer Edson Escalas (1994), "UPC Scanner Pricing Accuracy: A Review of Research and Managerial Implications," *Pricing Strategy & Practice: An International Journal*, 2 (1), 4-10.

Goodstein, Ronald C. (1994), "UPC Scanner Pricing Systems: Are They Accurate?" *Journal of Marketing*, 58 (April), 20-30.

Reprinted as "UPC Scanner Pricing Systems: Are They Accurate?," *Stores Magazine: Retailing Review*, University of Florida Center for Retailing Education and Research, (Summer), 1994.

Goodstein, Ronald C. (1993), "Category-Based Applications and Extensions in Advertising: Motivating More Extensive Ad Processing," *Journal of Consumer Research*, 20 (June), 87-99.

Reprinted as "Las categorias y sus aplicaciones a la publicidad," *Quantum*, 1 (Diciembre), 1993.

Moore, Michael J., William Boulding, and Ronald C. Goodstein (1991), "Pioneering and Market Share: Is Entry Time Endogenous and Does It Matter?" *Journal of Marketing Research*, 28 (February), 97-104.

Goodstein, Ronald C., Julie A. Edell, and Marian C. Burke (1990), "When Are Feelings Generated? Assessing the Presence and Reliability of Feelings Generated in Pretests," in *Emotion In Advertising*, S. Agres, J. Edell and T. Dubitsky, eds., 175-193.

REFEREED PROCEEDINGS

Milberg, Sandra, Francisca Sinn, and Ronald C. Goodstein, "Re-Examining the Wisdom of Brand Extensions: The Effects of Competitor Familiarity and Product Information on Risk and Choice," *Latin American Advances in Consumer Research*, Volume 1, 2006.

Galinsky, Karen and Ronald C. Goodstein. "Targeting the Hispanic Populace: Creating Hispanic Targeted Ads," in *Proceedings of the Society for Consumer Psychology Annual Conference*, J. Edell and R. Goodstein, eds., Winter 2002.

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REFEREED PROCEEDINGS (CONT.)

Goodstein, Ronald C., "The Role of Ethnicity in Celebrity Endorsements," in *Abstracts from the 15th Annual Faculty Research Forum of the Washington Consortium of Business Schools*, R. Rustagi, ed., April 1999.

Campbell, Margaret and Ronald C. Goodstein, "The Moderating Role of Perceived Risk on the Effects of Congruity on Evaluations," in *Proceedings of the Society for Consumer Psychology Annual Conference*, C. Pechmann and R. Ratneshwar, eds., Winter 1997.

Goodstein, Ronald C., "Extending Measures of Advertising Effectiveness: Ads' Effects on Price Sensitivity," in *Advances in Consumer Research*, M. Brucks and D. MacInnis, eds., 23, 1996.

Goodstein, Ronald C., "Mood Effects in Consumer Behavior: A Unifying Theme," in *Advances in Consumer Research*, C. Allen and D. John, eds., 21, 1994.

Grewal, Dhruv and Ronald C. Goodstein, "Societal and Public Policy Issue with Retail Pricing," in *Advances in Consumer Research*, L. McAlister and M. Rothschild, eds., 1993.

Kassarjian, Harold H., Ronald C. Goodstein, and Jennifer Escalas, "Scanner Bar Codes and Consumer Protection: An Empirical Study," in *Marketing for Europe - Marketing for the Future: The Proceedings of the 21st Annual Conference of the European Marketing Academy*, Aarhus, ed., 1992.

Curren, Mary T. and Ronald C. Goodstein, "Affect and Consumer Behavior: Examining the Role of Emotions on Consumers' Actions and Perceptions," in *Advances in Consumer Research*, R. Holman and M. Solomon, ed., 1991.

REFEREED ACADEMIC PRESENTATIONS

"Context Sensitive Advertising: A Fitting Story," Association for Consumer Research annual conference, October 2011, with Ajay Kalra, and Claudiu V. Dimofte.

"How Does the Presence of a Guarantee Cue Impact Evaluation of a Retailer? It Depends on Cue Typicality and the Reputation Cue's Valence," Academy of Marketing Science annual conference, May 2008, selected as Best Paper in Track and Best Overall Paper in Retailing, with Anne L. Roggeveen and Dhruv Grewal.

"Is It Worth It? If So Research It: Exploring the Place of Diversity Research in Marketing," roundtable discussion to the Association of Consumer Research annual meeting, October 2003, panel expert.

"Cross-Sector Knowledge Transfer: Implications for Non-Profit Marketing," presentation to the Public Policy and Marketing annual conference, May 2002, with Alan R. Andreasen and Joan Wilson.

Aylesworth, Andrew B., Ronald C. Goodstein and Ramaprasad Unni (2000), "The Effects of Consumer Control, Knowledge and Motivation on Information Processing and Communication Effectiveness on the Web," *The Annual National Society for Consumer Psychology Conference*, San Antonio, TX, (February)

Goodstein, Ronald C., and Andrew B. Aylesworth (2000), "Cue Effects on Attitudes and Behaviors in the World Wide Web Environment," Co-Chairs of Special Session at The Annual National Society for Consumer Psychology Conference, San Antonio, TX, (February)

RONALD C. GOODSTEIN

REFEREED ACADEMIC PRESENTATIONS (CONT.)

"The Magic of Music: Affective Responses to Music in TV Advertisements," presentation to the Society for Consumer Psychology annual meeting, February 2001, with Julie Edell, Marian Moore, and Wanda Wallace.

"Relating Ad Content to the Contextual Environment: Effects on Memory and Attitudes," presentation to the INFORMS International Conference, June 2000, and Association for Consumer Research annual meeting, October 2000, with Ajay Kalra.

"Integration of Academic Research into MBA Teaching: Making Lessons Learnable," presentation to the Academy of Marketing Science annual meeting, May 1999.

"Ethnicity and Endorsements: From Race Matching to Ethnic Congruence," presentation to the Advertising & Consumer Psychology annual meeting, May 1999, with Devon DelVecchio.

"The Applicability of Ethnic Identity Research to Marketing," presentation to the Association of Consumer Research annual meeting, October 1998, with Renee Goodstein and Tammy McCullough.

"Celebrity Endorser Evaluations: Moving Beyond Racial Pairing," presentation to the 1998 AMA Summer Educators Conference, August 1998, with Devon DelVecchio.

"Using Promised Donations to Charity as Purchase Incentives: The Effects of Product Type & Incentive Magnitude," presentation to the INFORMS International Conference, June 1998, with Michal Strahilevitz and Dhruv Grewal.

"Preference for the 'Usual': The Attenuating Effect of Risk on Consumers' Evaluations of Moderately Incongruent Packages," presentation to the Association of Consumer Research annual meeting, October 1997, with Margaret Campbell (working paper available).

"Internet Links on the Cuffs of Other Websites," presentation to Marketing Science annual meeting March 1997, with David J. Reibstein.

"Cognitive Cartography: A Representation of Consumers' Advertising Schemas," presentation to Marketing Science annual meeting March 1997; with Deborah Cours, Michael Ahearne, and Marian C. Moore, Devon DelVecchio.

"The Moderating Effects of Risk on Evaluations of Moderately Incongruent Stimuli," presentation to the Society for Consumer Psychology annual meeting, February 1997, with Margaret C. Campbell.

"The Impact of Positioning Strategies on Consumer Price Sensitivity," presentation to the Association for Consumer Research annual meeting, October 1996, Marketing Science annual meeting July 1995, with Ajay Kalra.

"Incidental Exposure and Affective Reactions to Advertisements," presentation to the Association for Consumer Research annual meeting, October 1994, with Ajay Kalra.

"Schema, Stereotyping, and Characterization Influences in Information Processing," presentation to the American Psychological Association annual meeting, August 1994.

"UPC Scanner Pricing Systems: Can They Be Made More Accurate?" presentation to the Conference on Public Policy and Marketing, May 1994, with Jennifer Edson Escalas, also presented at the European Marketing Academy Meetings, Summer 1991.

REFEREED ACADEMIC PRESENTATIONS (CONT.)

"Unifying the Disparate Effects of Moods on Consumer Behavior," presentation to the Association for Consumer Research annual meeting, October 1993.

"UPC Scanner Pricing Systems and Public Policy," presentation to the Association for Consumer Research annual meeting, October 1992, with Jennifer Edson Escalas and Harold H. Kassarjian.

"Television Advertising: A Categorization Perspective," presentation to the American Marketing Association Winter Meeting, February 1992, with Deborah Cours and Marian Chapman Moore.

"Processing Television Advertising: From Category-Based to Piecemeal-Based Evaluations," presentation to the American Marketing Association Winter Meeting, February 1992.

"Subliminal Messages: The Mediating Effects of Arousal and Temporal Distance on Choice," presentation to the American Marketing Association Winter Meeting, February 1991, with Ajay Kalra.

"Emotions and Consumer Behavior: The Influence on Consumers' Actions and Perceptions," presentation to the Association for Consumer Research annual meeting, October 1990, with Mary T. Curren.

"Assessing the Presence and Reliability of Feelings Generated in Pretests," presentation to the Seventh Annual Advertising and Consumer Psychology Conference, May 1988, with Julie A. Edell and Marian C. Burke.

"Schemer Schema: A Tough Nut to Crack," presentation to the Association for Consumer Research annual meeting, October 1986, with Marian C. Burke.

EDITED VOLUMES

Proceedings of the 2002 Society for Consumer Psychology Annual Conference, with Julie A. Edell.

"Enhancing Knowledge Development in Marketing," *1998 AMA Educators' Proceedings (Vol. 9)*, with Scott MacKenzie.

WORK IN PROGRESS

Milberg, Sandra J., Ronald C. Goodstein, Francisca Sinn, Andres Cuneo, and Leonardo D. Epstein, "Call Back the Jury: Reinvestigating the Effects of Fit and Parent Brand Quality in Determining Brand Extension Success," under revision for submission to the *Journal of the Academy of Marketing Science* (working paper available).

Hardesty, David M., Anthony D. Miyazaki, Ronald C. Goodstein, Dhruv Grewal, and Praveen Kopalle, "The Price Is Right? Scanner Data Accuracy and Marketing Research," under revision for submission to *JPP&M* (working paper available).

Goodstein, Ronald C., Ajay Kalra, and Claudiu V. Dimofte, "Context Sensitive Advertising: A Fitting Story," in revision for resubmission at the *Journal of Consumer Research* (working paper available).

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WORK IN PROGRESS (CONT.)

Dimofte, Claudiu V., Anne Brumbaugh, and Ronald C. Goodstein, "The Impact of Product User Prototype and Collective Self-Esteem on Consumer Attitudes toward the Brand," Explaining the Negative Spillover Effect in Target Marketing: Automatic Social Comparisons that Threaten Collective Self-Esteem," (working paper available).

Roggeveen, Anne L., Ronald C. Goodstein, and Dhruv Grewal, "Improving the Effect of Guarantees: A Case for Moderate Incongruity," in revision for submission to *Journal of Marketing* (working paper available).

PUBLISHED CASES

Beaudin, C.L., M. Senak, and R.C. Goodstein, "Strategic Planning at AIDS Project L.A.," in *Nonprofit Boards and Leadership: Cases on Governance, Change and Board-Staff Dynamics*, M.M. Wood (ed.), San Francisco, Josey-Bass (1996).

Beaudin, C.L., M. Senak, and R.C. Goodstein, "AIDS Project Los Angeles," *Cases in Nonprofit Governance (CGN #12), Program on Nonprofit Organizations/Institutions for Social and Policy Studies*, Yale University (1995).

ACADEMIC EMPLOYMENT

Associate Professor of Marketing
The McDonough School of Business, Georgetown University, July 1998-Present.
Courses Taught: Marketing Strategy (Undergraduate Capstone Course)
Core Marketing Strategy (MBA/IEMBA)
Integrated Marketing Communications (MBA)
Principles of Marketing (Undergraduate)

Associate Professor of Marketing
Indiana University School of Business, July 1996-June 1998.
Courses Taught: Core Marketing Strategy (MBA)
Advertising and Promotion Management (MBA)

Visiting Associate Professor of Marketing
The Wharton School, University of Pennsylvania, July 1995-June 1996.
Courses Taught: Advertising Policy (Undergraduate/MBA)
Marketing Strategy (MBA)

Assistant Professor of Marketing
Anderson Graduate School of Management, UCLA, July 1989-June 1995.
Courses Taught: Advertising Policy (MBA, FEMBA)
Consumer Behavior (Ph.D.)
Elements of Marketing (MBA)

Selected Executive Education Clients (Topics - Equity, Positioning, IMC, Value Development)
Verizon; Sprint; HSBC; Microsoft; Assurant; LG; IBM; Credit Suisse Private Banking; Siemens; Lexis/Nexis; CIAB and AICPCU; Rochester General Hospital; NASA; Dow; Harcros Chemical; Kimberly-Clark; Cedars Sinai Hospital; Lincoln National; GlaxoSmithKline; Headstart; Hughes Aircraft Co.; Johnson & Johnson

RONALD C. GOODSTEIN

ACADEMIC HONORS AND AWARDS

Secretary/Treasurer Elect for Society for Consumer Psychology, 2008.
American Marketing Association Hall of Fame Award, Washington, DC 2004.
Miller- Sherrerd Core Teaching Award, Wharton, Spring 1997 (*in abstentia*)
Summer Research Grant, IU, 1996-1998.
Core Faculty Teaching Award, Wharton, Spring 1996.
Citibank Professor of the Year Award, UCLA, 1995.
UCLA Outstanding Faculty Member, 1993, 1995 Business Week Guide.
George Robbins Teaching Award, UCLA, 1993.
Marketing Professor of the Year, UCLA, 1991, 1993.
AMA Doctoral Consortium Fellow, 1988.
Beta Gamma Sigma/Alpha Mu Alpha.

UNIVERSITY SERVICE

Doctoral Dissertation Committees

Sengupta, Jaideep, 1996 Ph.D. in Marketing, UCLA.
Dissertation: *Yielding Attitude Persistence under Low Involvement*. Co-chairperson.

Beaudin, Christy, 1996 Ph.D. in Public Health, UCLA.
Dissertation: *Marketing in the Health Services Sector, AIDS Project L.A.*

Cours, Deborah, 1995 Ph.D. in Marketing, UCLA.
Dissertation: *Social Power in Advertising: An Investigation of Its Use and Effectiveness.* Co-chairperson.

Garcia, Gilbert, 1994 Ph.D. in Education, UCLA.
Dissertation: *Effects of Text Coherence and Prior Knowledge on the Comprehension of Fifth Grade Students.*

Dhar, Sanjay K., 1992 Ph.D. in Marketing, UCLA.
Dissertation: *Effect of On-Pack Coupons on Market Share and Profits.*

Louie, Therese A., 1992 Ph.D. in Marketing, UCLA.
Dissertation: *Hindsight Distortion and the Perceived Soundness of Past Decisions in Marketing Contexts.*

Sundstrom, Margaret J., 1992 Ph.D. in Education, UCLA.
Dissertation: *Optimizing Graduate Student Housing: A Marketing Model for Higher Education.*

RONALD C. GOODSTEIN

PROFESSIONAL SERVICE

Reviewing for Academic Publications

Editorial Board, *Journal of the Academy of Marketing Science, Journal of Retailing, Marketing Letters.*

Ad hoc Reviewer, *Journal of Consumer Research, Journal of Marketing Research, Journal of Marketing, Journal of Consumer Psychology, Journal of Retailing, Journal of Advertising, Marketing Letters, Journal of Business Research, Journal of International Business Studies, Psychology & Marketing (Special Issue on Persuasion), The Information Society, (Special Issue on Internet Shopping), California Management Review, Tourism Management.*

Reviewing for Professional Conference Publications

American Psychological Association Annual Meeting, Div. 23 *Chair*, 2011.
Society for Consumer Psychology Annual Meeting, *Co-Chair*, 2001.
AMA. Summer Educator's Conference, *Co-Chair*, Summer 1998.
Association for Consumer Research, Program Committee, 1996-1998, 2002-2003, 2005, 2008.
Association for Consumer Research, 1990-present.
Western Decision Sciences Institute, 1992-present.
Society for Consumer Psychology Annual Meeting, 1995-present.
Southern Marketing Association's Annual Meetings, 1990-present.
Southwestern Marketing Association's Annual Meeting, 1994.
AMA Winter Educator's Conference, 1990-present.
AMA Summer Educators' Conference, 1990-present.

TAB 2

Citations from Academic Sources.

Aaker, David A. (1991), *Managing Brand Equity,* New York, NY: The Free Press.

Aaker, David A. (1996), "Measuring Brand Equity Across Products and Markets," *California Management Review*, 38 (Spring), 102-120.

Aaker, David A. (1996), *Building Strong Brands,*(New York, NY: The Free Press

Baker, Julie, A. Parasuraman, Dhruv Grewal, and Glenn Voss (2002), "The Influence of Multiple Store Environment Cues on Perceived Merchandise Value and Store Patronage Intentions," *Journal of Marketing*, 66 (April), 120-141.

Blattberg, Robert C. and Kenneth Wisniewski (1989), "Price-Induced Patterns of Competition," *Marketing Science*, 8 (Fall), 291-309.

Crowley, Ayn E. (1993), "The Two-Dimensional Impact of Color on Shopping," *Marketing Letters*, 4 (January), 59-69.

Eroglu, Sevgin A. and Karen A. Machleit (1993), "Atmospheric Factors in the Retail Environment: Sights, Sounds and Smells," in *Advances in Consumer Research*, Volume 20, eds. Leigh McAlister and Michael L. Rothschild, Provo, UT : Association for Consumer Research, 34.

Fiske, Susan T. (1982); "Schema-triggered Affect: Applications to Social Perception," in *Affect and Cognition: The 17th Annual Carnegie Symposium on Cognition*, eds. Margaret S. Clark and Susan T. Fiske, Hillsdale, NJ: Erlbaum, 55-78.

Goodstein, Ronald C. (1993), "Category-based Applications and Extensions in Advertising: Motivating More Extensive Ad Processing, " *Journal of Consumer Research*, 20 (June), 87-99.

Keller, Kevin Lane (2008), *Strategic Brand Management*, 3rd ed., Upper Saddle River, NJ: Pearson Prentice-Hall.

Loken, Barbara and James Ward (1990), "Alternative Approaches to Understanding the Determinants of Typicality," *Journal of Consumer Research*, 17 (September), 111-126.

Michon, Richard, Hong Yu, Donna Smith, and Jean-Charles Chebat (2008), "The Influence of Mall Environment on Female Fashion Shoppers' Value and Behaviour, " *Journal of Fashion Marketing and Management*, 12 (4), 456 – 468.

Napier, H. Albert, Ollie N. Rivers, and Stuart Wagner (2006), *Creating a Winning E-business*, Thomson Course Technology.

Spangenberg, Eric R., Ayn E. Crowley, and Pamela W. Henderson (1996), "Improving the Store Environment: Do Olfactory Cues Affect Evaluations and Behaviors?" *Journal of Marketing,* 60 (April), 67-80.

Sujan, Mita (1985), "Consumer Knowledge: Effects on Evaluation Strategies Mediating Consumer Judgments," *Journal of Consumer Research,* 12 (June), 16-31.

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E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973)

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The Observer, March 2, 2010

Washington Post (Feb. 8, 2012)

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TAB 3

RELEVANT CASES
IN WHICH RONALD C. GOODSTEIN TESTIFIED

American Airlines, Inc. v. Yahoo! Inc.and Overture Services, Inc. dba Yahoo! Search Marketing, 4:08-CV-626-A, United States District Court for the Northern District of Texas, Fort Worth Division.

American Airlines, Inc. v. Google Inc., 4:07-CV-487-A, United States District Court for the Northern District of Texas, Fort Worth Division.

Association for Financial Professionals v. Institute of Managerial Accountants., Attorney Docket No. 361184US56, United States Patent and Trademark Office before The Trademark Trial and Appeal Board.

Douglas Stowell v. Dale Ostler et al., Case #060918524, District Court of the Third Judicial District In and For Salt Lake County, State of Utah.

House Committee on Veterans' Affairs, Subcommittee on Oversight and Investigations, Media Outreach to Veterans, US House of Representatives, July 2008.

Life Alert Emergency Response, Inc. v. Tracking Now, LLC and Geoff Gross, CV 08-4961 JFW (CTX), United States District Court for the Central District of California, Western Division.

Munhwa Broadcasting Corporation v. Solafide, Inc., SACV 08-00618 DOC, United States District Court for the Central District of California.

Ortho-McNeil Pharmaceutical, Inc. v. Barr Laboratories, Inc., 00-CV-02805, United States District Court for the District of New Jersey.

Weight Watchers International, Inc. v. Curves International, Inc., Civil Action No. 1:2009-CV-08972, United States District Court Southern District New York.

Phillips Products Co., LLC v. RH Phillips, Inc. and Vincor International, Inc., Civil Action No. 02-cv-650 (MJD/JGL), United States District Court for the District of Minnesota.