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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 MOTION TO COMPEL

I. INTRODUCTION

Opposer, Soft Serve, Inc. d/b/a Sprinkles, hereby seeks an Order compelling Applicant, Sprinkles Cupcakes, Inc., to answer fully interrogatories set forth in Opposer's First Set of Interrogatories and to fully produce documents responsive to Opposer's First Set of Production Requests. Additionally, as Applicant has failed to provide any supporting basis for, or even identification of, allegedly privileged and/or work product protected documents, Opposer requests an order requiring the production of all such documents.

12-13-2010

U.S. Patent & TMOfc/TM Mail Rept Dt: #91

II. FACTUAL BACKGROUND

This Opposition was brought by Soft Serve, Inc. d/b/a Sprinkles in an effort to prevent registration of the mark SPRINKLES to Applicant Sprinkles Cupcakes for the goods recited in the subject application. On May 28, 2010, one day after the opening of discovery, Opposer Sprinkles served its first set of interrogatories and production requests. Applicant's interrogatory answers, production request responses, and document production were deemed by Opposer to be incomplete and inadequate. In addition, Applicant's frequent assertion of attorney client privilege and work product protection were unsupported, as Applicant provided no identification of any documents or communications withheld from discovery pursuant to Applicant's privilege and work product claims.

On September 13, 2010 Opposer's concerns with respect to Applicant's discovery responses were conveyed in a letter from Opposer's counsel to Applicant's counsel. Applicant's response of September 30, 2010 stated that, with very few exceptions it did not agree to supplement either its document production or its responses to interrogatories. Applicant's September 30 letter promised a privilege log, the supplementation of a single interrogatory answer, and an investigation as to whether it would provide information concerning advertising and promotional expenses.

Having received neither (1) a privilege log, (2) any other attempt to identify withheld documents, (3) the withdrawal of numerous objections believed to be of no merit, (4) any supplementation of interrogatory answers, production request responses or additional documentation, another letter expressing Opposer's continued concerns was forwarded to Applicant's counsel on November 9, 2010. Applicant's response of November 19, 2010

promised very limited supplementation, and the delivery of a privilege log, during the week of November 22, 2010.[1] To date, no privilege log or other attempt to identify any documents withheld on the basis of privilege or work product claims has been received. In addition, objections deemed to be without merit have not been withdrawn and the very limited promised supplementation of interrogatory answers have not been forthcoming. Understandably, Opposer's efforts in developing its case have been seriously hampered.

III. MATTERS IN DISPUTE

Opposer requests an Order compelling Applicant to produce responsive documents and to provide responses to production requests and interrogatory answers with respect to the following portions of Opposer's first round of discovery. In addition, Opposer seeks an Order compelling the production of all documents withheld on the basis of unsupported claims of privilege and work product protection.

Privilege And Work Product Documents and Communications – A party claiming attorney client privilege or work product protection as a basis for excluding documents and the substance of communications from discovery bears the burden of establishing such claims. F.R.C.P. 26(b)(5). In those instances in which a party fails to provide information substantiating its claims of privilege or work product protection, it is appropriate to order the production of withheld documents and the substance of perhaps otherwise protectable communications. See *Banks v. Office of the Senate Sergeant-At-Arms*, 222 F.R.D. 7 (D.D.C. 2004); *First American Corp. v. Al-Nahyan*, 2 F.Supp. 2d 58, 63 n. 5 (D.D.C. 1998) and *Bregman v. District of Columbia*, 182 F.R.D. 352, 363 (D.D.C. 1998). It is submitted that in those instances in which

[1] Correspondence referred to herein relating to efforts to resolve these issues is appended as Exhibits 3 - 6 to the Declaration of Thomas J. Vande Sande submitted herewith.

there exists a repeated failure to provide substantiation in favor of claims of privilege and work product protection, the production of such should be ordered.

The entry of an Order requiring production of withheld allegedly privileged and/or work product documents and communications in the possession of Applicant, or its counsel, is fully warranted. Applicant's discovery responses raised claims of privilege and work product protection but offered nothing in support of those claims. Moreover, in spite of Opposer's repeated requests for a privilege log, and Applicant's repeated promise that such would be forthcoming, not a single document or other allegedly privileged communication has been identified by Applicant. Given Applicant's repeated failures to provide any support for its claims of privilege, its unfulfilled promise to provide such during the last week of discovery, the upcoming deadline for Opposer's pretrial disclosures, and the looming opening of Opposer's testimony period, the issuance of an Order compelling the production of withheld documents and details of involved discussions is fully warranted.

Production Request No. 1 – This request seeks the production of documents relevant to the conception, adoption and selection of SPRINKLES as a mark by Applicant. Applicant has responded by objecting to the Request to the extent that it seeks documents protected by attorney client privilege and/or the work product doctrine. For the reasons discussed above, Opposer seeks the production of all responsive documents in the possession of Applicant, or its counsel, relating to the subject of this request.

Production Request No. 2 – In response to this request, which seeks samples and/or specimens of each different use made by Applicant of the subject SPRINKLES as well as "SPRINKLES OF PALM BEACH" marks asserted by Applicant in its Answer to the Notice of

Opposition, Applicant has lodged an objection claiming that the requested documents are (1) publically available and (2) as accessible to Opposer as they are to Applicant. Applicant also objects to the request as being overly broad and unduly burdensome. Finally, Applicant's response indicates that it will produce "A representative sampling" of documents responsive to this request.

Opposer requests an Order compelling Applicant to fully respond to this request. Opposer is entitled to the production of samples and specimens so that Opposer can meaningfully ascertain the types of uses made by Applicant of the SPRINKLES mark, and the marks asserted by Applicant to be relevant to this controversy through its Answer to the Notice of Opposition. Opposer has no ability to determine from unspecified "publically available" documents the full range of uses made by Applicant. Consequently, Applicant's assertion that such are as accessible to Opposer as they are to Applicant is untenable. This request is neither overly broad nor unduly burdensome. Finally, the production of "a representative sampling" does not provide Opposer with the knowledge it requires, and is entitled to, in preparing its case.

Production Request No. 3 – In response to Opposer's request for materials relating to the advertising and promotion of materials used by Applicant or others at its request, or by any licensee, in connection with the marketing, advertising and sale of goods or services under the SPRINKLES and SPRINKLES OF PALM BEACH marks, Applicant again objects claiming that such documents are publically available and as accessible to Opposer as they are to Applicant. Again, an objection is raised claiming that the request is overly broad and unduly burdensome but promising the production of "a representative sampling" of related documents. As noted above in discussing Applicant's response to Request No. 2, Opposer has no way of determining from its own searching of "publically available" documents the full range of advertising and

promotional activities undertaken by Applicant. Consequently, such documents and things are not as accessible to Opposer as they are to Applicant. This Request is neither overly broad nor unduly burdensome and the production of a very limited representative sampling in no way addresses Opposer's legitimate request.

Production Request No. 4 – This request seeks the production of, inter alia, marketing plans for goods and services offered by, or intended to be offered by, Applicant under the SPRINKLES and SPRINKLES OF PALM BEACH marks. Applicant's objection with respect to confidentiality is mooted by the fact that a Protective Order was agreed to and accepted by the Board long ago. Applicant's objection to this request as being overly broad and unduly burdensome appears to be contradicted by Applicant's assertion that "at this time it does not possess, maintain custody or control any documents that are responsive to this request". Moreover, given Applicant's constant pronouncements with respect to its expansion, both nationally and globally, it is extremely hard to imagine that no documents exist that fall within the scope of this request. Such documents are clearly relevant to various DuPont factors and assist not only Opposer but also the Board in determining the ultimate issue of likelihood of confusion. Consequently, Opposer seeks an Order requesting a full response to Production Request No. 4 and the production of all related documents.

Production Request No. 5 – Applicant has asserted claims of privilege and work product protection in response to this request which seeks the production of documents comprising, reflecting, or relating to opinions of counsel regarding Applicant's right to use or register the subject mark. As noted above, an Order is warranted requiring the production of all such documents given Applicant's repeated failures to substantiate its claim of privilege and work product protection with respect to these documents.

Production Request No. 7 – This two part request seeks the production of all agreements relating to the SPRINKLES OF PALM BEACH marks acquired by Applicant through assignment, and in fairness to Applicant it is possible that such have been produced. However, left unaddressed is Opposer's request for the production of all correspondence between Applicant and any third party concerning or referring to the SPRINKLES OF PALM BEACH marks and/or registrations acquired by Applicant. As it is believed that Applicant routinely asserts the SPRINKLES OF PALM BEACH marks and registrations as part of its practice in threatening third party users of SPRINKLES related marks, Applicant's failure to produce such correspondence and other documentation is questioned, especially as Applicant has elsewhere indicated (see Applicant's Answer to Interrogatory 13) that it has challenged some 19 parties in connection with their uses of SPRINKLES related marks. Finally, the production of third party correspondence cannot be avoided by attorney client privilege and work product claims. Moreover, for the reasons discussed above, Applicant should not be allowed to avail itself at this juncture of claims of attorney client privilege or work product protection for any documents responsive to this request.

Production Request No. 8 – Through this request Opposer sought the production of documents which mention, relate or refer to Opposer or its goods or services, the advertising of those goods or services, and Opposer's marks and trade names. Opposer asserts that Applicant's objection to this request as being overly broad and unduly burdensome is ill-founded and that production of all related documents should be ordered given Applicant's failure to substantiate any possible claims of privilege or work product protection.

Production Request No. 9 – This request seeks the production of search related documents and documents reflecting or relating to any such searches. Applicant has produced

the results of two searches. In addition, Applicant has claimed, but not substantiated, claims of privilege in response to this request. While ordinarily it likely would be found that an attorney's search report, or other documentation reflecting an opinion following an analysis of search results, would be properly withheld from discovery on the basis of privilege or work product protection, it is respectfully submitted that, given Applicant's failure to substantiate its privilege claims, an Order is warranted requiring Applicant to product all related documents.

Production Request No. 10 – Documentation referring, relating to, or involving challenges by third parties to Applicant's right to use or register SPRINKLES is sought through Request No. 10. Applicant promised to produce non-privileged responsive documents but it is believed that Applicant's production of documents responsive to this request is incomplete. Applicant has also asserted claims of privilege and work product which, as discussed throughout this Motion, should not be found to excuse production of such documents.

Production Request No. 11 – Documents evidencing Applicant's first use of SPRINKLES are requested. Curiously, Applicant objects to this request to the extent that it seeks documents that are protected by privilege or work product. In addition, Applicant objects to the request to the extent that it seeks documents which are publically available and are as accessible to Opposer as they are to Applicant. Each of these objections is untenable. First, no basis for privilege or work product protection has been offered. Secondly, the objection claiming public availability of such documents is completely nonresponsive to Opposer's legitimate inquiry into first use on behalf of Applicant. Finally, obviously such documents are not as accessible to Opposer as they are to Applicant.

Production Request No. 14 – In response to Opposer's request for documents evidencing Applicant's intention to use SPRINKLES in connection with the goods recited in the subject application, Applicant again objects on the basis of privilege and work product. It is respectfully submitted that, even if Applicant was still entitled to withhold privileged and work product documents, documents evidencing its intention to use the subject mark would not be subject to such claims.

Equally unsustainable is Applicant's objection to this request as being overly broad and unduly burdensome. Opposer requests an order compelling production of all documents relevant to this request.

Production Request No. 15 – This request seeks the production of documents showing the circumstances under which Applicant first became aware of Opposer's use of SPRINKLES. Applicant's only response is the assertion of attorney client privilege and work product protection. As discussed throughout this Motion, Opposer submits that the withholding of documents on the basis of privilege and work product claims is no longer an option available to Applicant.

Production Request No. 18 – This request seeks the production of documents for which identification was requested in Opposer's Interrogatory No. 5, which in turn inquires as to the relationship and dealings between Applicant and any previous owners of the SPRINKLES OF PALM BEACH marks acquired and relied upon by Applicant. For the reasons discussed above, Opposer submits that Applicant's claims of attorney client privilege and work product protection cannot shield responsive documents from production.

Production Request No. 21 – Requested are documents for which identification was sought in Interrogatory No. 11, which in turn relates to details and documents relevant to first use by Applicant of SPRINKLES and SPRINKLES OF PALM BEACH. Opposer submits that such documents could not in the first instance properly be subject to claims of attorney client privilege or work product protection and, in addition, that such claims are no longer available to Applicant. Opposer also takes issue with Applicant's contention that this request is objectionable as calling for a legal conclusion. Opposer is entitled to learn of Applicant's contentions with respect to its use and first use of marks which have been asserted by Applicant as relevant to the issues of this case and the defenses which have been asserted by Applicant through its Answer to the Notice of Opposition.

Production Request No. 22 – Requested are those documents for which identification was sought through Interrogatory No. 13, which is turn deals with conflicts, challenges and controversies with third parties involving Applicant's SPRINKLES and SPRINKLES OF PALM BEACH marks. Applicant's reliance upon claims of privilege and work product cannot shield from discovery correspondence to and from third parties. Equally unavailing is Applicant's contention that it does not understand the meaning of "controversy" or "conflict". Similarly without merit is Applicant's contention that this request is overly broad and unduly burdensome.

Beyond these objections, Applicant identified through its answer to related Interrogatory 13, some 19 individuals and/or businesses as those against whom "Sprinkles has alleged trademark infringement and related claims". Applicant, in its answer to Interrogatory 13, has provided only names of individuals and businesses with no further identifying details. Moreover, Applicant has provided absolutely no documentation to or from the vast majority of the individuals and business entities it has "identified" in related Interrogatory 13.

Opposer seeks an Order compelling full production of all documents relating to these challenges, including correspondence to and from such third parties, documentation sufficient to identify all related litigation, and all documentation which may have arguably qualified as being privileged or work product but for Applicant's failure to identify such.

Production Request No. 25 – In response to Opposer's request for documents sufficient to show continuity of usage of the SPRINKLES OF PALM BEACH marks asserted by Applicant in its Answer to the Notice of Opposition, Applicant asserts an inability to ascertain the meaning of "continuity of Applicant's use". While Applicant indicates that non-privileged responsive documents will be produced subsequent to a reasonable search, to date no supplementation of Applicant's Response to this Request has been forthcoming and no related documents have been produced.

Redaction – Various pages of documentation produced by Applicant indicate that text has been redacted prior to production. Queried as to the basis for such redaction in correspondence exchanged prior to the filing of this Motion, Opposer was informed that various items of text had been redacted based upon claims of privilege and work product protection. To the extent that an Order issues compelling production of documents as to which Applicant has made no effort to substantiate its claims of privilege and work product protection, Opposer similarly requests the production of unredacted copies of all pages previously produced with redactions.

Interrogatory No. 4 – Included within the scope of this interrogatory is a request for the annual revenues generated by the sale of goods and services offered by Applicant, or any

licensee of Applicant, under the SPRINKLES and SPRINKLES OF PALM BEACH marks. No portion of Applicant's answer to this interrogatory addresses this portion of Opposer's inquiry.

Interrogatory No. 5 – Shortcomings with respect to this interrogatory answer are discussed above in the context of Applicant's response to Production No. 18. Opposer seeks an Order compelling the production of related documents without the benefit of exclusion on the basis of attorney client privilege or work product protection.

Interrogatory No. 8 – As discussed above in the context of Applicant's response to Production Request No. 9, Opposer seeks an Order requiring Applicant to provide opinions of counsel.

Interrogatory No. 11 – As discussed above in the context of Production Request No. 11, inquiries concerning first use cannot properly be avoided on the basis that such call for a legal conclusion as asserted by Applicant. Nor is it seen how first use related details and documents can properly be the subject matter of either attorney client privilege or work product protection.

Interrogatory No. 13 – Opposer's comments concerning the short comings of the answer provided in response to this Interrogatory are set forth above in the discussion relating to Production Request No. 22.

IV. CONCLUSION

Opposer requests an Order compelling the full production of requested and relevant documents and complete answers in response to the discovery requests discussed above. Opposer also requests an Order compelling the production of all documents responsive to Opposer's production requests and the answering of all interrogatories notwithstanding

Applicant's unsubstantiated claims that such are protectable from discovery on the basis of either attorney client privilege or the work product doctrine.

Finally, Opposer requests the issuance of new Scheduling Order setting forth revised dates for all scheduled events including and subsequent to the date for Opposer's submission of its pretrial disclosures.

Respectfully submitted,

Date: 12/10/10

Thomas J. Vande Sande
HALL & VANDE SANDE, LLC
Attorneys 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 MOTION TO COMPEL AND RELATED DECLARATION OF OPPOSER'S COUNSEL WITH SUPPORTING EXHIBITS." 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: 12/10/10

Thomas J. Vande Sande
HALL & VANDE SANDE, LLC
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Potomac, Maryland 20854
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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.	)	

DECLARATION OF THOMAS J. VANDE SANDE
IN SUPPORT OF OPPOSER'S MOTION TO COMPEL

I, Thomas J. Vande Sande, declare as follows:

1. I am an attorney at law licensed to practice in the District of Columbia and the state of Maryland. I am principal in the firm of Hall & Vande Sande. I represent Opposer Soft Serve, Inc., d/b/a Sprinkles in connection with various intellectual property matters. I have personal knowledge of the following facts.
2. Attached hereto as Exhibit 1 is a true and correct copy of Opposer's First Set of Requests for Production of Documents and Things and Applicant's Responses thereto.
3. Attached hereto as Exhibit 2 is a true and accurate copy of Opposer's First Set of Interrogatories and Applicant's Answers thereto.
4. I timely received responses to the aforementioned discovery requests from Applicant. In addition, I subsequently received documents from Applicant's counsel in response to various production requests.

5. My review of Applicant's discovery responses convinced me that such were deficient in several respects. Consequently, on September 13, 2010 I forwarded to Applicant's counsel correspondence attached hereto as Exhibit 3 in an effort to resolve discovery issues raised by Applicant's initial interrogatory answers, document production responses, and document production.
6. Attached hereto as Exhibit 4 is a true and accurate copy of a letter I received from counsel for Applicant in response, dated September 30, 2010.
7. Attached hereto as Exhibit 5 is a true and accurate copy of a letter I sent to Applicant's counsel on November 9, 2010 in a further attempt to resolve outstanding discovery disputes.
8. Attached hereto as Exhibit 6 is a true and accurate copy of a letter I received from Applicant's counsel dated November 19, 2010.
9. I believe that good faith efforts have been made to resolve the discovery issues addressed through Opposer's Motion to Compel.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 10th day of December, 2010 at Potomac, Maryland.

Date: 12/10/10

Thomas J. Vande Sande
HALL & VANDE SANDE, LLC
Attorneys 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 "DECLARATION OF THOMAS J. VANDE SANDE IN SUPPORT OF OPPOSER'S MOTION TO COMPEL" 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: 12/10/10

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

Exhibit 1

ALL-STATE LEGAL 800-222-0510 EDR11 RECYCLED

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

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

APPLICANT SPRINKLES CUPCAKES' RESPONSES TO OPPOSER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Federal Rule of Civil Procedure 34 and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Applicant Sprinkles Cupcakes, Inc. ("Sprinkles"), by and through its undersigned counsel, hereby responds to the First Set of Requests For Production Of Documents And Things ("Requests") by Opposer Soft Serve, Inc. d/b/a/ Sprinkles ("Soft Serve") as follows:

GENERAL OBJECTIONS

GENERAL OBJECTION NO. 1:

Sprinkles objects to the Requests, to each and every individual request contained therein, and to the "Definitions" contained in the Requests, to the extent they are inconsistent with or seek to impose obligations greater than those imposed by the Federal Rules of Civil Procedure and the TBMP.

GENERAL OBJECTION NO. 2:

Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent they seek the production of documents or information that: (1) are protected by the attorney-client privilege; (2) constitute work product of Sprinkles' attorneys; and/or (3) are

otherwise privileged. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity recognized by statute or case law.

GENERAL OBJECTION NO. 3:

Sprinkles objects to the Requests, and to each and every individual request contained therein, as unduly burdensome and oppressive to the extent that they purport to require Sprinkles to search Sprinkles facilities and inquire of Sprinkles employees other than those facilities and employees that would reasonably be expected to have responsive information. Sprinkles' responses are based upon: (1) a reasonable search, given the time allotted to Sprinkles to respond to these requests, of facilities and files that could reasonably be expected to contain responsive information or documents; and (2) inquiries of Sprinkles employees and/or representatives who could reasonably be expected to possess responsive information. The subject matter of these requests is under continuing investigation. Accordingly, these responses are limited to and are applicable only to documents and other information which Sprinkles' counsel has been able to ascertain and locate as of the date hereof. Sprinkles expressly reserves the right to use, rely upon, and offer into evidence any and all documents and other information responsive to these requests, whether or not presently identified or produced, if the documents or other information have not been obtained by counsel and deemed responsive by counsel as of the date of this response, or if the responsiveness of the documents or other information has been overlooked in good faith, or if an objection is interposed to producing a document or other information.

GENERAL OBJECTION NO. 4:

Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent they require Sprinkles to search for and reveal privileged information from it and its attorneys' files pertaining to this matter.

GENERAL OBJECTION NO. 5:

To the extent that the Requests seek confidential or proprietary information pertaining to Sprinkles' business, trade secrets and/or economic relationships, Sprinkles will only produce such information subject to the terms of a Protective Order signed by the parties in this matter and approved by the Trademark Trial and Appeal Board.

GENERAL OBJECTION NO. 6:

Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent they call for the production of documents or things which are confidential or proprietary to, or contain the trade secrets of, a third party. Each such request is overly broad, unduly burdensome, oppressive, and seeks to impose obligations beyond those permitted by the TBMP and the Federal Rules of Civil Procedure. Sprinkles will only produce such material subject to the terms of the Protective Order and upon receipt of permission from the third party, if necessary.

GENERAL OBJECTION NO. 7:

Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent that they call for the production of "all documents" where compliance with such request would be unduly burdensome. In the event a request seeking "all documents" is unduly burdensome, Sprinkles will produce documents sufficient to respond to Soft Serve's request pursuant to TBMP § 419.

GENERAL OBJECTION NO. 8:

Sprinkles objects to the definition of "Sprinkles" on the grounds that it is vague, ambiguous, and unintelligible and that it is so excessively broad that it is unduly burdensome and oppressive. Sprinkles will construe the terms "Sprinkles", "Applicant", "you" and "your" wherever used in the interrogatories to refer to Sprinkles, Inc.

GENERAL OBJECTION NO. 9:

Sprinkles objects to the Requests, and to each and every individual request contained therein, to the extent they seek documents related to experts. Sprinkles will meet and confer with Soft Serve to determine a time when the parties can simultaneously exchange expert-related documents.

GENERAL OBJECTION NO. 10:

Sprinkles objects to the Requests, and to each and every individual request contained therein, as overbroad, unduly burdensome and not reasonably calculated to lead to the production of relevant evidence to the extent they seek documents related to proceedings or the use of marks outside of the United States. Actions taken outside of the United States, and documents relating thereto, are not relevant to this proceeding.

GENERAL OBJECTION NO. 11:

Sprinkles objects to the "Definitions" contained in the Requests insofar as they contain instructions rather than definitions for terms and are thus ambiguous.

Sprinkles expressly incorporates the above General Objections as though set forth fully in response to each of the following individual requests, and, to the extent they are not raised in any particular response, Sprinkles does not waive those objections. An answer to a request shall not be deemed a waiver of any applicable specific or general objection to a request. Likewise, an answer to a request shall not be deemed an admission of any assertions contained in that request.

RESPONSES

REQUEST FOR PRODUCTION NO. 1

All documents of any kind which contain or reflect information bearing upon the conception, adoption and selection of "SPRINKLES" as a mark by Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that at this time it does not possess, maintain custody or control any documents that are responsive to this request.

REQUEST FOR PRODUCTION NO. 2

Samples and/or specimens of each different use made by Applicant of "SPRINKLES" and "SPRINKLES OF PALM BEACH" in connection with Applicant's goods and services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2

Sprinkles objects to this request to the extent it seeks documents that are publicly available and are as accessible to Soft Serve as they are to Sprinkles. Sprinkles objects to this request to the extent it is overbroad and unduly burdensome.

Subject to and without waiving its General Objections and its specific objections above, Sprinkles responds that it will produce a representative sampling of documents responsive to this request that can be located after a reasonable search pursuant to TBMP § 414(2).

REQUEST FOR PRODUCTION NO. 3

All advertising, publicity releases, promotional pieces and materials used by Applicant, or by others at Applicant's request or direction or under license from Applicant, in the marketing, advertising, sale, and/or offering for sale, of goods and/or services under "SPRINKLES" or "SPRINKLES OF PALM BEACH" marks.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3

Sprinkles objects to this request to the extent it seeks documents that are publicly available and are as accessible to Soft Serve as they are to Sprinkles. Sprinkles objects to this request to the extent it is overbroad and unduly burdensome.

Subject to and without waiving its General Objections and its specific objections above, Sprinkles responds that it will produce a representative sampling of documents responsive to this request that can be located after a reasonable search pursuant to TBMP § 414(2).

REQUEST FOR PRODUCTION NO. 4

All documents which comprise, relate to, or refer to any market plans, forecasts, or sales strategies for goods or services offered by or intended to be offered by Applicant, under the "SPRINKLES" and "SPRINKLES OF PALM BEACH" marks.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4

Sprinkles objects to this request as overbroad and unduly burdensome. To the extent that this request seeks confidential or proprietary information pertaining to Sprinkles' business, trade secrets and/or economic relationships, Sprinkles will only produce such information subject to the terms of a Protective Order signed by the parties in this matter and approved by the Trademark Trial and Appeal Board.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that at this time it does not possess, maintain custody or control any documents that are responsive to this request.

REQUEST FOR PRODUCTION NO. 5

All documents comprising, reflecting, relating to, or including, opinions of counsel regarding Applicant's right to use or register "SPRINKLES" as a trademark or service mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

REQUEST FOR PRODUCTION NO. 6

All documents relating to or reflecting the results of any polls or surveys which Applicant has conducted regarding the "SPRINKLES" or "SPRINKLES OF PALM BEACH" marks.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6

Subject to and without waiving its General Objections, Sprinkles responds that at this time it does not possess, maintain custody or control any documents that are responsive to this request.

REQUEST FOR PRODUCTION NO. 7

(a) All assignments and license agreements, and any other agreements relating to the "SPRINKLES OF PALM BEACH" marks referred to in Applicant's Answer, as well as all correspondence between Applicant and any third party concerning or referring to the "SPRINKLES OF PALM BEACH" marks and/or registrations referred to in Applicant's Answer.

(b) All correspondence and all documents comprising or referring to any discussions involving Applicant and any previous owner of the "SPRINKLES OF PALM BEACH" marks and registrations (including all agents, attorneys and representatives of that entity) whether authored prior or subsequent to the assignments of the "SPRINKLES OF PALM BEACH" marks to Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine. To the extent that this request seeks confidential or proprietary information pertaining to Sprinkles' business, trade secrets and/or economic relationships, Sprinkles will only produce such information subject to the terms of a Protective Order signed by the parties in this matter and approved by the Trademark Trial and Appeal Board. Sprinkles objects to this request as vague and ambiguous to the extent the term "authored" is undefined and susceptible to multiple interpretations.

Subject to and without waiving its General Objections and its specific objections above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 8

All documents which mention, relate or refer to

(a) Opposer, or;

(b) Opposer's goods or services, or the promotion or sale of same, or;

(c) Opposer's marks or trade name.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine. Sprinkles objects to this request as overbroad and unduly burdensome to the extent it seeks documents not in the possession, custody or control of Sprinkles.

Subject to and without waiving its General Objections and its specific objections above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 9

All documents comprising, reflecting or relating to any search made by or on behalf of Applicant relating to the "SPRINKLES" mark, or any "SPRINKLES" formative marks.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 10

All documents which refer to, relate to, or involve, any challenge by any third party to Applicant's right to use or register "SPRINKLES" or which contain any suggestion or demand by any third party that Applicant use a different mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 11

All documents evidencing Applicant's first use of "SPRINKLES".

RESPONSE TO REQUEST FOR PRODUCTION NO. 11

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine. Sprinkles objects to this request to the extent it seeks documents that are publicly available and are as accessible to Soft Serve as they are to Sprinkles.

Subject to and without waiving its General Objections and its specific objections above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 12

Documents sufficient to show all channels of trade through which Applicant offers, or intends to offer, goods and services under the "SPRINKLES" mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12

Subject to and without waiving its General Objections above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 13

Documents showing the types of purchasers to whom Applicant has offered goods, or intends to offer, goods or services under the "SPRINKLES" mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13

Sprinkles objects to this request as overbroad and unduly burdensome.

Subject to and without waiving its General Objections and its specific objections above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 14

All documents evidencing Applicant's intention to use "SPRINKLES" in commerce in connection with the goods recited in U.S. Application Serial No. 77/770,541.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine. Sprinkles objects to this request to the extent it is overbroad and unduly burdensome. To the extent that this request seeks confidential or proprietary information pertaining to Sprinkles' business, trade secrets and/or economic relationships, Sprinkles will only produce such information subject to the terms of a Protective Order signed by the parties in this matter and approved by the Trademark Trial and Appeal Board.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 15

Documents showing the circumstances under which Applicant first became aware of Opposer's use of "SPRINKLES".

RESPONSE TO REQUEST FOR PRODUCTION NO. 15

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

REQUEST FOR PRODUCTION NO. 16

All documents for which identification is requested in Opposer's Interrogatory No. 1.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that at this time it does not possess, maintain custody or control any documents that are responsive to this request.

REQUEST FOR PRODUCTION NO. 17

All documents for which identification is requested in Opposer's Interrogatory No. 2.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that at this time it does not possess, maintain custody or control any documents that are responsive to this request.

REQUEST FOR PRODUCTION NO. 18

All documents for which identification is requested in Opposer's Interrogatory No. 5.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 19

All documents for which identification is requested in Opposer's Interrogatory No. 8.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

REQUEST FOR PRODUCTION NO. 20

All documents for which identification is requested in Opposer's Interrogatory No. 10.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20

Sprinkles objects to this request as overbroad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 21

All documents for which identification is requested in Opposer's Interrogatory No. 11.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine. Sprinkles objects to this request to the extent that it calls for a legal conclusion.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that it will produce non-privileged documents responsive to this request in the possession, custody or control of Sprinkles can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 22

All documents for which identification is requested in Opposer's Interrogatory No. 13.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22

Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine. Sprinkles objects to this request as vague and ambiguous to the extent the terms "controversy" and "conflict" are undefined and each are susceptible to multiple interpretations. Sprinkles objects to this request to the extent it is overbroad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 23

All documents identified in any of Applicant's answers to Opposer's First Set of Interrogatories not otherwise produced pursuant to a previous request.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23

Sprinkles objects to this request as overbroad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 24

Any and all documents and things, not produced in response to any other document request, which are within Applicant's possession, custody or control and which are identified or were referred to, reviewed, or consulted in response to, or in preparing answers to, Opposer's First Set of Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24

Sprinkles objects to this request as overbroad and unduly burdensome. Sprinkles objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

REQUEST FOR PRODUCTION NO. 25

Documents sufficient to establish the continuity of Applicant's use of the "SPRINKLES OF PALM BEACH" marks in connection with each item of goods and services recited in the related registrations identified in Applicant's Answer, from the date of first use of each such mark to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25

Sprinkles objects to this request as vague and ambiguous to the extent the term "continuity of Applicant's use" is undefined and susceptible to multiple interpretations.

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that it will produce non-privileged documents responsive to this request that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 26

Documents recording or reflecting the annual revenues received by Applicant from each item of goods and services offered under the "SPRINKLES OF PALM BEACH" marks.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26

Subject to and without waiving its General Objections and its specific objection above, Sprinkles responds that at this time it does not possess, maintain custody or control any documents that are responsive to this request.

Dated: July 2, 2010

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____
John L. Slafsky
Matthew J. Kuykendall

Attorneys for Applicant
Sprinkles Cupcakes, Inc.

CERTIFICATE OF SERVICE BY MAIL

I, Jo Ann Hylton, declare:

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

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

On this date, I served:

APPLICANT SPRINKLES CUPCAKES'S RESPONSES TO OPPOSER'S FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on July 2, 2010.

Jo Ann Hylton

Exhibit 2

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

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

APPLICANT SPRINKLES CUPCAKES' RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES

Pursuant to Federal Rule of Civil Procedure 33 and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Applicant Sprinkles Cupcakes, Inc. ("Sprinkles"), by and through its undersigned counsel, hereby responds to the First Set of Interrogatories ("Interrogatories") by Opposer Soft Serve, Inc. d/b/a/ Sprinkles ("Soft Serve") as follows:

GENERAL OBJECTIONS

GENERAL OBJECTION NO. 1:

Sprinkles has not completed its investigation in this matter. All responses to the Interrogatories are based upon the information presently known to Sprinkles and are given without prejudice to Sprinkles' right to adduce evidence discovered or analyzed subsequent to the date of these responses. Sprinkles expressly reserves the right to revise and supplement its responses to the Interrogatories in the event that its continuing investigation of the facts and/or discovery bring to light any additional information responsive to the Interrogatories.

GENERAL OBJECTION NO. 2:

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, Sprinkles will provide responses to the Interrogatories to the extent that such responses do not waive such privileges or protections.

GENERAL OBJECTION NO. 3:

Sprinkles objects to the 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 Sprinkles that are greater than those imposed by the Federal Rules of Civil Procedure and/or the TBMP.

GENERAL OBJECTION NO. 4:

Sprinkles objects to the Interrogatories, and to each and every individual interrogatory, to the extent they seek information outside of 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 Sprinkles to unreasonable annoyance, burden, and expense.

GENERAL OBJECTION NO. 5:

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 Sprinkles to respond on behalf of, or conduct any inquiry or investigation with respect to, any party other than Sprinkles. Sprinkles will only answer the Interrogatories on its own behalf.

GENERAL OBJECTION NO. 6:

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:

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:

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:

Sprinkles specifically reserves all objections as to the competence, relevancy, materiality, and admissibility of its documents and interrogatory responses or the subject matter thereof, and all rights to object on any ground to the use of any document or interrogatory response, or the subject matter thereof, in any subsequent proceeding, including without limitation the trial of this or any action.

GENERAL OBJECTION NO. 10:

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 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, Sprinkles will provide such information subject to the terms of a Protective Order signed by the parties in this matter and approved by the Trademark Trial and Appeal Board. Sprinkles objects to producing Trade Secret Information before the execution of

such a protective order and approval of such a Protective Order by the Trademark Trial and Appeal Board.

GENERAL OBJECTION NO. 11:

Sprinkles objects to the "Definitions" contained in the Interrogatories insofar as they contain instructions rather than definitions for terms and are thus ambiguous.

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, Sprinkles does not waive those objections. An answer to an interrogatory shall not be deemed a waiver of any applicable specific or general objection to an interrogatory. Likewise, an answer to an interrogatory shall not be deemed an admission of any assertions contained in that interrogatory.

RESPONSES

INTERROGATORY NO. 1:

Describe the facts surrounding the selection of the "SPRINKLES" mark by Applicant, identifying relevant dates and the persons most closely connected with the selection of the mark. Identify all related documents.

RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiving the General Objections, Sprinkles responds: Sprinkles' founders, Charles and Candace Nelson, conceived the name SPRINKLES CUPCAKES in or about February 2003. Sprinkles is not aware of any related documents.

INTERROGATORY NO. 2:

Identify each meeting or discussion at which the consideration, selection, approval or adoption of the "SPRINKLES" mark for use on any of Applicant's services and/or goods was discussed, and for each such meeting or discussion, identify each participant. Identify all related documents.

RESPONSE TO INTERROGATORY NO. 2:

Sprinkles objects to the interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving the General Objections and the specific objections above, Sprinkles responds: Charles and Candace Nelson discussed the SPRINKLES CUPCAKES name informally in or about February 2003. Sprinkles is not aware of any non-privileged related documents.

INTERROGATORY NO. 3:

Identify the individual(s) employed by or associated with Applicant who are most knowledgeable about Applicant's intended and/or actual use of "SPRINKLES" and the "SPRINKLES OF PALM BEACH" marks and registrations referred to by Applicant in its Answer to the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiving the General Objections, Sprinkles responds: Charles Nelson of Sprinkles is most knowledgeable about Sprinkles' intended or actual use of its trademarks and trademark registrations.

INTERROGATORY NO. 4:

Identify and describe all services and all items of goods in connection with which "SPRINKLES" and "SPRINKLES OF PALM BEACH" marks are used, or are intended to be used, by Applicant, and by any licensee or other entity using those mark(s) with Applicant's permission. As to each item of goods and services state the annual revenues in dollars since use of the mark(s) commenced.

RESPONSE TO INTERROGATORY NO. 4:

Subject to and without waiving the General Objections, Sprinkles responds: Sprinkles uses or intends to use its SPRINKLES-related marks in connection with the following goods and services: bakery goods; retail shops featuring baked goods; clothing, namely, shirts, tank tops, baby bodysuits, and hats; computer software for locating retail stores featuring bakery goods,

desserts, and merchandise, for sending gift certificates for bakery goods, desserts, and merchandise, for sending virtual bakery goods, desserts, and merchandise, for games featuring bakery goods and desserts, for ordering bakery goods, desserts, and merchandise, and for providing information about bakery goods, desserts, and merchandise; computer software for mobile devices for locating retail stores featuring bakery goods, desserts, and merchandise, for sending gift certificates for bakery goods, desserts, and merchandise, for sending virtual bakery goods, desserts, and merchandise, for games featuring bakery goods and desserts, for ordering bakery goods, desserts, and merchandise, and for providing information about bakery goods, desserts, and merchandise; serving trays; serving trays with recessed holes to hold cupcakes; serving towers, namely, towers comprised of stacked serving trays; pet treats; mobile retail store services for the sale of baked goods from a custom vehicle; film and video distribution; entertainment services, namely, distributing audio, video, and multimedia content in the fields of food, drink, and leisure; ice cream; frozen yogurt; candy; sweets; cupcake mixes; and ice cream sundaes, sherbets, ices, sorbets, and milk shakes. Sprinkles has no plans to use the SPRINKLES OF PALM BEACH marks itself.

INTERROGATORY NO. 5:

Describe in detail Applicant's relationship and dealings with any and all prior owners of the "SPRINKLES OF PALM BEACH" marks and registrations referred to by Applicant in its Answer to the Notice of Opposition, including but not limited to the facts surrounding Applicant's first learning of "SPRINKLES OF PALM BEACH". Identify all related documents.

RESPONSE TO INTERROGATORY NO. 5:

Sprinkles objects to the interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving the General Objections and the specific objections above, Sprinkles responds: Sprinkles acquired the SPRINKLES OF PALM BEACH marks from Therapy Too, Inc. and Donna Marks, and Sprinkles now licenses use of the marks to Therapy Too, Inc. and Donna Marks. Sprinkles first learned of the SPRINKLES OF PALM BEACH

marks by reviewing the trademark register maintained by the U.S. Patent and Trademark Office. Sprinkles will produce related non-privileged documents that can be located after a reasonable search.

INTERROGATORY NO. 6:

Identify the types and classes of purchasers of the goods and services offered by Applicant under "SPRINKLES" and "SPRINKLES OF PALM BEACH" marks.

RESPONSE TO INTERROGATORY NO. 6:

Subject to and without waiving the General Objections, Sprinkles responds: Sprinkles offers goods and services under SPRINKLES-related marks, not including SPRINKLES OF PALM BEACH. The types and classes of purchasers of Sprinkles' goods and services include individuals, businesses and organizations who buy the following goods and services: bakery goods; retail shops featuring baked goods; clothing, namely, shirts, tank tops, baby bodysuits, and hats; computer software for locating retail stores featuring bakery goods, desserts, and merchandise, for sending gift certificates for bakery goods, desserts, and merchandise, for sending virtual bakery goods, desserts, and merchandise, for games featuring bakery goods and desserts, for ordering bakery goods, desserts, and merchandise, and for providing information about bakery goods, desserts, and merchandise; computer software for mobile devices for locating retail stores featuring bakery goods, desserts, and merchandise, for sending gift certificates for bakery goods, desserts, and merchandise, for sending virtual bakery goods, desserts, and merchandise, for games featuring bakery goods and desserts, for ordering bakery goods, desserts, and merchandise, and for providing information about bakery goods, desserts, and merchandise; serving trays; serving trays with recessed holes to hold cupcakes; serving towers, namely, towers comprised of stacked serving trays; pet treats; mobile retail store services for the sale of baked goods from a custom vehicle; film and video distribution; entertainment services, namely, distributing audio, video, and multimedia content in the fields of food, drink, and leisure; ice cream; frozen yogurt; candy; sweets; cupcake mixes; and ice cream sundaes, sherbets, ices, sorbets, and milk shakes.

INTERROGATORY NO. 7:

Describe in detail the nature of Applicant's business.

RESPONSE TO INTERROGATORY NO. 7:

Sprinkles objects to this interrogatory on the grounds that it is overly burdensome and harassing.

Subject to and without waiving the General Objections and specific objections above, Sprinkles responds: Sprinkles is a retail bakery business that specializes in the creation and sale of premium-quality cupcakes. Sprinkles has retail locations in California, Arizona, and Texas. Sprinkles also licenses its marks to other retail merchants.

INTERROGATORY NO. 8:

With respect to each and every opinion of counsel which relates to or refers to Applicant's right to use or register "SPRINKLES", identify each written or oral communication by counsel providing each such opinion and each such communication requesting each such opinion. Provide the date any such opinion(s) was or were requested, as well as the date any such opinion was rendered, and provide a summary of the opinion(s) rendered. Identify all related documents.

RESPONSE TO INTERROGATORY NO. 8:

Sprinkles objects to the interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving the General Objections and specific objections above, Sprinkles responds: Sprinkles has solicited and received advice from counsel in connection with its use of and applications to register SPRINKLES as a trademark. Sprinkles solicited and counsel provided such advice on or about July 13, 2005 and on or about February 19, 2009.

INTERROGATORY NO. 9:

Identify with specificity when and under what circumstances Applicant first learned of Opposer and Opposer's use of "SPRINKLES".

RESPONSE TO INTERROGATORY NO. 9:

Sprinkles objects to the interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving the General Objections and specific objections above, Sprinkles responds: Sprinkles first learned of Opposer on or about December 16, 2009 when Opposer filed papers with the U.S. Patent and Trademark Office in connection with Sprinkles' application to register the mark SPRINKLES. Sprinkles first learned of Opposer's alleged use of SPRINKLES shortly thereafter.

INTERROGATORY NO. 10:

Describe in detail the factual basis, as presently understood, for each Affirmative Defense set forth in paragraphs 13 through 16 of Applicant's Answer to the Notice of Opposition. Identify all related documents.

RESPONSE TO INTERROGATORY NO. 10:

Sprinkles objects to the interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine.

Subject to and without waiving the General Objections and specific objections above, Sprinkles responds: Sprinkles maintains that Opposer's trademark rights, if any, are extremely narrow, that Opposer does not enjoy trademark priority over Sprinkles (insofar as, among other things, Sprinkles has acquired third-party trademark rights), that there is no likelihood of confusion arising from SPRINKLES' use of SPRINKLES-related marks, that Opposer has not been vigilant about enforcing its trademark rights, if any, and that accordingly it would not be just to allow Opposer to enforce its trademark rights, if any, against Sprinkles. Related documents would primarily be in the custody and possession of Opposer.

INTERROGATORY NO. 11:

Describe in detail Applicant's first use of (a) "SPRINKLES" and (b) "SPRINKLES OF PALM BEACH" with respect to both goods and services. Identify all documents and things

which Applicant contends supports its alleged first use dates and its alleged dates of first use in commerce.

RESPONSE TO INTERROGATORY NO. 11:

Sprinkles objects to the interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Sprinkles objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the General Objections and specific objections above, Sprinkles responds: Sprinkles' first use of SPRINKLES with goods and services is set forth in its Allegation of Use submitted to the U.S. Patent and Trademark Office in connection with registration no. 3306772 and is reflected in other documents to be produced in response to Opposer's document demands. *See* Sprinkles documents SC000001 to SC000002. Sprinkles does not use the SPRINKLES OF PALM BEACH marks itself but rather licenses the marks to third parties.

INTERROGATORY NO. 12:

Identify the person(s) most knowledgeable concerning:

a. the goods and services offered by Applicant;

b. trademarks, trade names, and service marks used by Applicant;

c. advertising and advertising plans in connection with which the "SPRINKLES" and "SPRINKLES OF PALM BEACH" marks have been or are currently used or are intended to be used;

d. Applicant's dealings with the prior owner(s) of the "SPRINKLES OF PALM BEACH" marks and registrations.

RESPONSE TO INTERROGATORY NO. 12:

Subject to and without waiving the General Objections, Sprinkles responds: Charles Nelson is the person most knowledgeable about the goods and services offered by Sprinkles, the trademarks, trade names and service marks used by Sprinkles, Sprinkles' advertising and

advertising plans, and Sprinkles' dealings with the prior owner of SPRINKLES OF PALM BEACH marks and registrations.

INTERROGATORY NO. 13:

Identify and describe in detail any conflict, allegation of infringement, or controversy, whether currently pending or resolved, with any third party involving Applicant and the "SPRINKLES" and/or "SPRINKLES OF PALM BEACH" marks. Identify all documents referring or relating thereto.

RESPONSE TO INTERROGATORY NO. 13:

Sprinkles objects to the interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Sprinkles objects to this request as vague and ambiguous to the extent the terms "conflict" and "controversy" are undefined and each are susceptible to multiple interpretations. Sprinkles further objects to this interrogatory on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the General Objections and specific objections above, Sprinkles responds: Sprinkles has alleged trademark infringement and related claims against the following U.S. users of SPRINKLES-related names and marks: Elizabeth Halpenny, Ali Loewenstein, Ryan Mealey, Matthew Mealey, Dan Mealey, Navigation Catalyst Systems, Inc., Pet Sprinkles, Inc., Perfect Cupcake, LLC, Belize Domain WhoIs Service Ltd., Sprinkles Ice, Sprinkles Fine Desserts, Say It With Sprinkles, Omar Jimenez, Sparkles Cupcakes, Sprinkles Edible Art, Olivia Moran Barre, Sprinkles for Girls, Yolanda Castro, and Sprinkles & Swirls.

INTERROGATORY NO. 14:

State Applicant's annual expenditures for advertising and/or promotion for each of Applicant's goods and services offered in connection with the "SPRINKLES" and "SPRINKLES OF PALM BEACH" marks since the date of first use of those marks.

RESPONSE TO INTERROGATORY NO. 14:

Sprinkles objects to this interrogatory on the grounds that it is overly burdensome and harassing.

Subject to and without waiving the General Objections and specific objections above, Sprinkles responds: Sprinkles does not have such annual expenditure data.

INTERROGATORY NO. 15:

Identify the person or persons most knowledgeable as to each of the answers provided to each of the foregoing Interrogatories.

RESPONSE TO INTERROGATORY NO. 15:

Subject to and without waiving the General Objections, Sprinkles responds: Charles Nelson is most knowledgeable as to each of the answers provided to each of the foregoing Interrogatories.

Dated: July 2, 2010

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____
John L. Slafsky
Matthew J. Kuykendall

Attorneys for Applicant
Sprinkles Cupcakes, Inc.

VERIFICATION

I, Charles Nelson, declare as follows:

1. I am Chief Executive Office of Sprinkles Cupcakes, Inc., and am authorized to make this Verification on behalf of Sprinkles Cupcakes, Inc.

2. I have read **APPLICANT SPRINKLES CUPCAKES' RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES.** I am informed and believe that the responses contained therein are true and correct.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this 30 day of June, 2010 at Houston, Texas.

Charles E. Nelson II

CERTIFICATE OF SERVICE BY MAIL

I, Jo Ann Hylton, declare:

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

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

On this date, I served:

APPLICANT SPRINKLES CUPCAKES'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on July 2, 2010.

Jo Ann Hylton

Exhibit 3

ALL-STATE LEGAL 800-222-0510 EDR11 RECYCLED

HALL & VANDE SANDE, LLC

ATTORNEYS AT LAW

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Patent, Trademark and Copyright Law and Litigation

September 13, 2010

John L. Slafsky, Esquire
Wilson, Sonsini, Goodrich and Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

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

Dear John:

Our review of Sprinkles Cupcakes' Responses to Opposer's First Set of Interrogatories, Sprinkles Cupcakes' Responses to Opposer's First Request for the Production of Documents and Things and the various documents produced in response to our requests indicates that the discovery responses are incomplete. I write in hopes that we will be able to resolve these issues amicably and without pursuing these issues through a Motion to Compel.

Turning first to your client's responses to our First Set of Requests for Production, we cannot accept the reservation your client claims to use, rely upon, and offer into evidence documents or other information responsive to our requests which have not been produced, or which are not timely produced through supplementation. Please be advised that we will look to have excluded from consideration for any purpose documents and information not provided during discovery.

Through General Objection No. 4, and throughout Sprinkles Cupcakes' document production responses and interrogatory answers, we note frequent assertions of attorney/client privilege. However, in no instances do we find any identification of specific communications alleged to be privileged. Consequently, we request a privilege log or supplementation which will identify allegedly privileged (and work product) communications which have been withheld by Sprinkles Cupcakes in responding to our production requests and our interrogatories.

Turning to Applicant's responses to specific production requests, we note, as mentioned above, that no attempt has been made to identify any privileged documents. Also as noted above, we will seek to exclude any documents relating to your client's conception, adoption and selection of SPRINKLES as a mark to the extent that such are not produced during discovery.

As to Applicant's Response to Request No. 2, obviously the burden imposed on the parties is not substantially the same. Without question, the requested samples and/or specimens are relevant to the issues involved in this proceeding. We request prompt supplementation of this response.

Similarly, Applicant's Response to Request No. 3 is not acceptable in that the documents sought are not as accessible to Opposer as they are to Applicant. We ask that Applicant's Response and its related production of documents be supplemented and again note that we will seek to exclude related documents not produced during discovery.

Given the frequent announcement of planned new store openings, etc., we find it hard to believe that your client does not possess the information requested through Request No. 4. We ask that this response and related production be supplemented.

Applicant's response to Request No. 5 once again ignores the need to provide either a privilege log or some other means of communicating details relating to withheld documents. We ask that such be provided.

We are aware of the fact that SPRINKLES OF PALM BEACH registrations have been and continue to be routinely asserted against third parties. Related correspondence to these third parties is highly relevant and cannot conceivably qualify as the subject of attorney/client privilege or work product. We must insist that all such correspondence be promptly produced.

Similarly, we again ask Applicant to produce all non-privileged correspondence passing between Applicant and any previous owner of the SPRINKLES OF PALM BEACH marks and registrations. To the extent that any such communications are claimed to be privileged, we call upon Applicant to provide related details through a privilege log.

Turing to Applicant's response to Request No. 8, we again request the identification of documents withheld based upon privilege through a privilege log.

We also ask that Applicant provide details relating to its specific claims of privilege in response to Request No. 9. In addition, while we have been provided with search results for two searches conducted in 2005, we have not been provided with search results in connection with Applicant's 2009 search. We request the production of the 2009 search results.

Turning to Applicant's response to Request No. 10, obviously correspondence received by your client or your firm from or on behalf of third parties cannot be excluded from production on the basis of attorney/client privileged or work product. Consequently, we ask that all such correspondence and documents be produced. We again request a privilege log specifically providing details of any relevant documents withheld on the basis of privilege or work product claims.

I am particularly troubled by Applicant's response to Production Request No. 11. I fail to see how, under any circumstances, documents evidencing first use can be withheld on the basis of privilege or work product. Furthermore, the claim that documents evidencing your client's first use are as accessible to Opposer as they are to Applicant is simply untenable. We ask for the prompt supplementation of Applicant's response to this request. To the extent that Applicant contends that it has already produced documents evidencing its first use of SPRINKLES, we ask that Applicant specifically identify which of the documents it has produced to date are claimed to evidence Applicant's first use of the mark.

We do not see that we have been provided with any documents responsive to Request No. 14. Please provide such through supplementation or identify by production number relevant document(s) produced to date or acknowledge that no such documents exist. Parenthetically, while we seriously doubt that any valid claim of privilege or work product can be asserted in response to this request, to the extent that Applicant actually believes such is the case, we require the identification of responsive attorney/client privilege and/or work product documents.

Again, we require and are entitled to the identification of relevant documents, even in the event that the substance of the involved communications might arguably be shielded from discovery by either privilege or work product claims.

Please provide details in a supplemented Response to Request No. 16 that will allow us to evaluate Applicant's claim of privilege and work product in response to this request. We will look to exclude any and all relevant documentation and related information not produced during discovery. These comments are similarly relevant to Applicant's Response to Production Request No. 17.

Please identify with specificity any documents produced to date in response to Interrogatory No. 18. Please provide supporting details in connection with Applicant's claims of privilege and work product protection.

Please provide details identifying the documents requested through Request No. 19.

Please explain Applicant's basis for claiming that Request No. 20 is overly broad and unduly burdensome.

Production Request No. 21, referring to Opposer's Interrogatory No. 11, seeks documents relating to Applicant's first use of SPRINKLES. We fail to see how related documents can be withheld based upon claims of privilege or work product. Please explain Applicant's position in this regard and identify any documents withheld from production on the basis of either privilege or work product protection. In addition, we cannot accept Applicant's position that this request is objectionable "to the extent that it calls for a legal conclusion".

We request that any privileged documents responsive to Request No. 22 be identified with the specificity required. Moreover, we must insist that Applicant provide us with correspondence passing between itself and third parties responsive to Interrogatory No. 13. We very seriously doubt whether either Applicant or its counsel are flummoxed as a result of our references to "controversy" and "conflict".

Finally, Applicant has seen fit to represent on numerous occasions that it has frequently and successfully asserted alleged rights in connection with various SPRINKLES marks. Applicant's Response to Interrogatory No. 13 lists various individuals and businesses as third parties with whom a controversy or conflict has existed. We must insist that Applicant provide a better identification of the parties listed in its answer to Interrogatory No. 13. Moreover, we need Applicant to produce the

correspondence between itself or its counsel and third parties (or their counsel) relating to the subject matter inquired of in Interrogatory No. 13.

Applicant has propounded a production request identical to our Request No. 23. As you are likely aware, the TTAB takes a very dim view of a party objecting to discovery virtually identical to that which it has also propounded. We strongly urge Applicant to produce the documents requested through Production Request No. 23. These comments are equally applicable to Production Request No. 24 and Applicant's Response thereto.

We do not believe that any documents have been produced responsive to Request No. 25. To the extent that we are mistaken in this regard, please identify by production number those documents produced by Applicant in response to this request.

Please explain Applicant's position in avoiding Production Request No. 26.

Turning to Applicant's answers to Opposer's First Set of Interrogatories, we request an adequate identification of any and all communications withheld and not identified in Applicant's answers to Interrogatories 2, 5, 8, 9, 10, 11, and 13.

Please supplement Applicant's Response to Interrogatory No. 4 to include a statement of annual revenues, as requested.

Turning to Interrogatory No. 13, please provide specificity in connection with the various entities listed in Applicant's answer, and also details concerning conflicts, allegations, or controversies sufficient to constitute a meaningful answer.

In the event that Applicant cannot account for annual advertising and promotional expenses in connection with each of its goods and services, please provide us with annual figures companywide and without reference to individual products and/or services. This information is clearly discoverable and consequently we believe it very safe to assume that the TTAB would not find this interrogatory to be either overly burdensome or harassing.

Finally, turning to documents thus far produced by Applicant, we note various instances in which redaction has occurred. By way only of example we direct your attention to SC000003, SC000006, SC000239, SC000278, SC000286, SC000290, SC000295, SC000659, and SC000658. We ask that we be provided with a brief but meaningful explanation as to the basis for redaction in all instances in which we have been provided with incomplete documents.

We ask for the production of "The Sales Agreement" referred to in SC000239. We also request the revised agreement referred to SC000241.

I thank you in advance for your cooperation and prompt supplementation.

Sincerely,

Thomas J. Vande Sande

TVS:dn

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September 30, 2010

VIA EMAIL

Thomas J. Vande Sande
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10220 River Road, Suite 200
Potomac, MD 20854

Re: Soft Serve, Inc. v. Sprinkles Cupcakes, Inc.
Opposition No. 91194188 (Application Serial No. 77/770,541 for SPRINKLES)

Dear Tom:

I am responding to your September 13, 2010 letter to John Slafsky concerning the allegedly incomplete responses by Sprinkles Cupcakes ("Sprinkles") to Opposer's First Set of Requests for the Production of Documents and Things ("Production Requests") and to Opposer's First Set of Interrogatories ("Interrogatories"). Before addressing your specific allegations, Sprinkles feels compelled to address the general tone of your letter, which assumes a general inadequacy with the production. Far from it, Sprinkles was diligent and thorough in its responses. The accusations of inadequacy are particularly jarring in light of the meager responses and production of Soft Serve, Inc. ("Soft Serve") in response to Sprinkles' discovery requests – in particular requests to identify and support Soft Serve's date of first use of the SPRINKLES mark – which Sprinkles will address under separate cover.

Production Requests

Unless otherwise noted, Sprinkles does not agree to supplement its production. In most of the instances raised in your letter, a supplemented production is not possible or is unnecessary because of one or more of the following reasons:

- Sprinkles does not have additional documents in its possession or control that are responsive to the Production Request (to ease in addressing the accusations in your letter, we have numbered the paragraphs – here we refer to paragraphs 7, 10, 13, 15, 18[1], 21);

[1] Sprinkles assumes that paragraph 18 concerns Production Request No. 18, rather than Interrogatory No. 18 as stated.

- Sprinkles has produced a sufficient representative sampling of documents responsive to the Production Request pursuant to the TTAB Manual of Procedure;
- The documents responsive to the Production Request are publicly available; and/or
- The documents responsive to the Production Request are in the possession of Soft Serve (*see, e.g.*, ¶ 20).

Paragraph 12 is one of many assertions that mischaracterize Sprinkles' position. You claim that Sprinkles produced two search reports from 2005, and demand production of the 2009 search. In fact, Sprinkles has produced one search from 2005 and one from 2009. (*See* SC000301 indicating that the second search report was completed on February 20, 2009.)

Numerous other paragraphs in your letter merely state and re-state a request for a redaction and privilege log (*see, e.g.*, ¶¶ 3, 4, 8, 10, 11, 13, 16, 17, 27, 31). Sprinkles will certainly provide such logs in the ordinary course, and expects Soft Serve to do the same. As we suspect is the case with Soft Serve as well, to the extent that any documents were redacted or withheld, they concerned attorney-client communications or notes by counsel, which are protected by the work product doctrine. Even if no documents were redacted or withheld on the basis of privilege pursuant to a particular request, Sprinkles is required to make a timely objection to the request on that basis, in the event that such documents emerge or are created in the course of the proceeding.

Several assertions concern a reference to publicly available materials (*see, e.g.*, ¶¶ 5, 6, 14). Sprinkles only means to convey that though documents responsive to the request may not be in Sprinkles' possession, they may be available in public databases or repositories. Such databases are equally available to Soft Serve as they are to Sprinkles. For example, for specimens of Sprinkles' marks, we direct you to the Trademark Document Retrieval service available at the U.S.P.T.O.'s website (www.uspto.gov).

Regarding paragraphs 9 and 22, in the interest of resolution of any discovery dispute, Sprinkles is willing to consider supplementing its production, assuming that the request refers to correspondence to and from third parties addressing the third parties' use of a trademark confusingly similar to Sprinkles' SPRINKLES mark. Although Sprinkles has fully responded to the request identified in paragraph 23, and although you do not further identify what information you still seek, Sprinkles is willing to supplement its response to Interrogatory No. 13 to provide additional information.

Regarding paragraph 24, Sprinkles will supplement its response to indicate that there are no documents in its possession or control that can be located after a reasonable search.

Regarding paragraph 25, you are mistaken, and the documents concerning use of SPRINKLES PALM BEACH are easily identifiable.

Regarding paragraph 26, Sprinkles did not "avoid" any request or interrogatory, but rather responded to each one methodically with applicable objections or information.

Regarding paragraph 28, Sprinkles agrees to look into your request.

In paragraph 32, you ask that Sprinkles produce the agreements referenced by SC000241 and SC000239. Sprinkles agrees to look into this request.

Interrogatories

Unless otherwise noted, Sprinkles does not agree to supplement its responses to the Interrogatories. To the extent that Soft Serve is now requesting information that is outside of the scope of its Interrogatories, it will be necessary for Soft Serve to serve Sprinkles with additional interrogatories.

Regarding paragraph 29, as noted above Sprinkles agrees to supplement its Response to Interrogatory No. 13.

Regarding paragraph 30, Sprinkles will investigate whether it can provide the revised information requested.

We trust that the information contained in this letter and Sprinkles' agreement to amend its discovery responses as noted above resolves the issues that you have raised.

Yours truly,

WILSON SONSINI GOODRICH & ROSATI
A Professional Corporation

Hollis Beth Hire

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Patent, Trademark
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November 9, 2010

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.
Opposition No. 91194188

Dear Hollie:

I write in response to your letter of September 30, 2010 concerning various of the discovery related issues raised in my letter of September 13.

Preliminarily, referring to page 3 of your letter, we ask that you forward to us the supplementations agreed to in connection with my September 13 letter, which you have addressed and identified as paragraphs 24, 28, 32, 29 and 30.

We continue to believe that supplementation is required with respect to Request No. 25 (also paragraph 25) in that we do not see produced to date documents sufficient to establish continuity of use of "SPRINKLES OF PALM BEACH". Please indicate whether Applicant will voluntarily make such documents available.

With respect to the production of search results (paragraph 12), the documents we have received do not contain a page identified as SC000301. Instead, we received two search reports, both of which contain an identical first page bearing "a date received" of July 13, 2005. The first page of each search report, as we received them, bears production number SC000659. The second page of the first search report bears production number SC000302. In the event that you represent that the search results starting at SC000302 are for the search completed on February 20, 2009, please provide us with a copy of SC000301 and we will be able to agree that we have then received both search reports.

Please provide us, at your very earliest convenience, with the privilege log promised at page 2 of your letter.

We again ask Applicant to supplement its Responses to Production Requests 2, 3, and 11 (paragraphs 5, 6, and 14) as well as its related production. As noted in my prior correspondence, the burden imposed on the parties to locate responsive documents and things is obviously not substantially the same. Moreover, your client, and not mine, should have the ability to offer information in connection with Sprinkles Cupcakes' first usage. Please indicate whether your client will voluntarily supplement its responses and related production as requested.

As earlier noted (paragraph 7), we have difficulty in accepting the representation that your client possesses no documents responsive to Request No. 4. Please supplement Applicant's response and production or, in the alternative, please confirm that your client's position is that no such documents exist.

You have indicated that Sprinkles "is willing to consider supplementing its production" as requested through paragraphs 9, 22 and 23. Please provide us with Applicant's supplementation or a statement that such will not voluntarily be forthcoming.

I do not see that the concerns we have raised relating to Applicant's Response to Request No. 3 (paragraph 24) have been addressed. Would you please provide us with Applicant's position in response to our request for a Response to this request.

I thank you in advance for your cooperation in resolving these open matters.

Sincerely,

Thomas J. Vande Sande

TVS:dn

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November 19, 2010

VIA EMAIL

Thomas J. Vande Sande
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10220 River Road, Suite 200
Potomac, MD 20854

Re: Soft Serve, Inc. v. Sprinkles Cupcakes, Inc.
Opposition No. 91194188 (Application Serial No. 77/770,541 for SPRINKLES)

Dear Tom:

I am responding to your letter dated November 9, 2010, which we received late in the day on Friday, November 12.

We will be serving supplemental responses and delivering a privilege log next week.

Regarding SC000301, our records indicate that it was sent with the original production. In any event, another copy of the document is attached with this correspondence.

As we noted in prior correspondence, the only documents referred to when stating that Opposer has equal access are those not in Sprinkles' possession, but rather available only in public repositories such as the U.S. Patent and Trademark Office's online databases. Nonetheless, Sprinkles will supplement its production to provide additional documents from these public databases.

For paragraph 9, addressing correspondence asserting the SPRINKLES PALM BEACH marks against third parties: Sprinkles is still conducting its investigation, but is unaware of any such correspondence at this time. Regarding paragraphs 22 and 23, Sprinkles will provide more detailed information regarding third party conflicts in its supplementation next week.

In the penultimate paragraph of your letter – concerning "Request No. 3" – we cannot ascertain what information you are requesting. Sprinkles has responded fully to Request for Production No. 3 and Interrogatory No. 3. Paragraph 24 of your September 13 letter does not refer to "Request No. 3," but rather to Request No. 23. This Request concerned the documents identified in Sprinkles' responses to interrogatories. To the extent there are any such documents, Sprinkles will provide them. If you still have concerns meant to be expressed in this paragraph, please clarify your request.

We trust that this resolves the issues that you have raised.

Sincerely,

Hollis B. Hire /LR

Hollis Beth Hire

Enclosure