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

Proceeding	91210494
Party	Plaintiff M/s. RUCHI SOYA INDUSTRIES LIMITED
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Submission	Motion for Summary Judgment
Filer's Name	Cathy E. Shore-Sirotin
Filer's e-mail	CShore@LSLLP.com, RGolden@LSLLP.com, EMenist@LSLLP.com, tmefs@LSLLP.com
Signature	/Cathy E. Shore-Sirotin/
Date	04/03/2014
Attachments	Motion for SJ-Compel 4.3.2014.pdf(112155 bytes) Brief in Supp of SJ-Compel Motion 4.3.2014.pdf(651477 bytes) CES Dec. in Supp of SJ-Compel Motion 4.3.2014.pdf(738697 bytes)

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

Application Serial Nos.: 85712990
Mark: NUTRELA & Design
International Class: 29, 30
Applicant: Meenaxi Enterprise, Inc.
Date of Publication: January 29, 2013

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M/s. RUCHI SOYA INDUSTRIES LIMITED,	:
	:
Opposer,	:
	:
v.	: Opposition No.: 91210494
	:
MEENAXI ENTERPRISE, INC.,	:
	:
Applicant.	:
-----	X

MOTION FOR SUMMARY JUDGMENT and MOTION TO COMPEL

M/s. Ruchi Soya Industries Limited (“Opposer”) hereby moves the Trademark Trial and Appeal Board (“Board”) for summary judgment, seeking to have the instant application, owned by Meenaxi Enterprise, Inc. (“Applicant”), denied registration. There are no material facts that need to be decided and, as a matter of law, the Board may decide the issues involved herein in favor of Opposer.

In the event summary judgment in favor of Opposer is not granted for any reason, Opposer also hereby moves the Board to compel Applicant to respond to Opposer’s First Set of Interrogatories and Requests for Production of Documents and Things, served on December 27, 2013, and to which no responses or documents were received, Opposer having made a good faith effort to resolve the discovery dispute. Opposer requests that the interrogatories be answered

Opposition No.: 91210494

fully and without objection, and that the document requests be complied with fully and without objection, with the documents being produced at the offices of Opposer's counsel.

In accordance with Trademark Rule 2.127(e)(1), this Motion For Summary Judgment is timely and, in accordance with 37 CFR § 2.120(e)(1), this Motion To Compel is timely, as they have been filed prior to the opening of the first testimony period, which is scheduled to begin on May 7, 2014, pursuant to the Board's order dated January 31, 2014.

Opposer is simultaneously filing a Brief in Support of Opposer's Motion for Summary Judgment and Motion to Compel, as well as a Declaration of Cathy E. Shore-Sirotin in support of this motion.

Dated: Scarsdale, New York
April 3, 2014

Respectfully submitted,

LACKENBACH SIEGEL, LLP

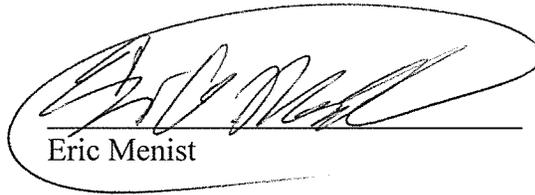
By: 
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Attorneys for Opposer

Opposition No.: 91210494

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the enclosed MOTION FOR SUMMARY JUDGMENT AND MOTION TO COMPEL, BRIEF IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO COMPEL, and DECLARATION OF CATHY E. SHORE-SIROTIN IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO COMPEL were served on counsel for Applicant on April 3, 2014, by First Class U.S. Mail, postage prepaid, addressed as follows:

JungJin Lee, Esq.
Lee, Lee & Associates, P.C.
2531 Jackson Road, Suite 234
Ann Arbor, Michigan 48103



Eric Menist

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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v.	:	Opposition No.: 91210494
	:	
MEENAXI ENTERPRISE, INC.,	:	
	:	
Applicant.	:	
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**BRIEF IN SUPPORT OF OPPOSER’S MOTION FOR SUMMARY JUDGMENT
AND MOTION TO COMPEL**

I. BACKGROUND

M/s. Ruchi Soya Industries Limited (“Opposer”), relying upon its ownership of the mark NUTRELA, has opposed Meenaxi Enterprise, Inc.’s (“Applicant”) application to register the mark NUTRELA & Design. Issue has been joined by the answer of Applicant.

Based on the admitted facts, there is no dispute as to material fact and this case should be decided by the Board as a matter of law on summary judgment in favor of Opposer.

In the alternative, Applicant should be compelled to respond to Opposer’s First Set of Interrogatories and Requests for Production of Documents and Things, to which Applicant has not provided responses, objections or documents, or requested an extension of time to provide the same.

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The Motion For Summary Judgment is timely, in accordance with 37 CFR § 2.127(e)(1), and the Motion To Compel is timely, in accordance with 37 CFR § 2.120(e)(1), as they have been filed prior to the opening of the first testimony period, which is scheduled to begin on May 7, 2014, pursuant to the Board's order dated January 31, 2014.

II. FACTS

On or about August 25, 2012, Applicant filed an application to register the mark NUTRELA & Design, purporting to be the owner of the mark, for the following goods:

“banana chips; cooking oil; cut vegetables; dried fruits; dried lentils; edible oils; formed textured vegetable protein for use as a meat substitute; frozen pre-packaged entrees consisting primarily of seafood; frozen vegetables; fruit and soy based snack food; fruit-based snack food; meat substitutes; nut-based snack foods; pickles; potato-based snack foods; pre-packaged dinners consisting of meat, poultry, seafood or vegetables; sesame oil; soy bean oil; soy burger patties; soy chips; soy-based food bars; soy-based snack foods; textured vegetable protein for use as a meat extender; vegetable chips; vegetable oils; vegetable-based meat substitutes; vegetable-based snack foods; frozen pre-packaged entrees consisting primarily of meat, fish, poultry or vegetables; frozen pre-packaged vegetable-based entrees” in IC 29; and

“Asian noodles; bread mixes; cereal based snack food; crepes; flour; frozen flour-free foods, namely, waffles, pancakes, crepes, sandwich wraps, muffins and griddle cake sandwiches which are protein-enriched; grain-based chips; meal kits consisting primarily of noodles; mix for making combined noodle and sauce dish; mixes for making baking batters; mixes for making batters for fried foods; noodle-based prepared meals; noodles; noodles and sauce mixes combined in unitary packages; noodles and seasoning mixes combined in unitary packages; noodles, sauce, and processed vegetables combined in unitary packages; noodles, sauce, and seasoning toppings combined in unitary packages; noodles, sauce, and topping combined in unitary packages; noodles, sauce, dehydrated vegetables, and topping combined in unitary packages; noodles, seasonings, edible oil, and dehydrated vegetables combined in unitary packages; noodles, seasonings, edible oil, and flavorings combined in unitary packages; packaged meal mixes consisting primarily of pasta or rice; pancake mixes; pasta; pasta and noodles; pre-mixed pancake batter; processed cereal-based food to be used as a breakfast food, snack food or ingredient for making other foods; relish; rice; rice-based snack foods;

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roasted maize; soya flour; tapioca; wafers; wheat-based snack foods; frozen pre-packaged entrees consisting primarily of pasta or rice; pre-packaged meals consisting primarily of pasta or rice” in IC 30.

(collectively, “Applicant’s Goods”). This application was assigned Serial No. 85712990 (the “Application”).

On May 2, 2013, Opposer filed a Notice of Opposition, commencing this opposition proceeding. The opposition was filed based on Opposer’s common law rights in and to the mark NUTRELA for use in connection with a variety of food products, including without limitation, products containing soya chunks¹ (“Opposer’s Goods”). Applicant’s Goods are a subset of Opposer’s Goods, for the reasons discussed below.²

The opposition asserts that Applicant is not the owner of the NUTRELA mark (Notice of Opposition, ¶ 7), but that Applicant is merely the U.S. distributor of Opposer, and thus has no ownership interest in the NUTRELA mark. (*Id.* at ¶ 8). Further, as Opposer’s U.S. distributor of goods bearing the NUTRELA mark, Applicant’s distribution and sale of such goods inure to the benefit of Opposer. (*Id.* at ¶ 9).

On December 27, 2013, Opposer duly served Opposer’s First Set of Interrogatories, Requests for Production of Documents and Things, and Requests for Admissions. *See* Declaration of Cathy E. Shore-Sirotn (“Shore Decl.”) ¶ 3 and Exh. A thereto.

¹ Soya chunks are high-protein meat substitute foods containing soy.

² Opposer subsequently filed an application to register the mark NUTRELA for goods in International Classes 29, 30, and 32, which has been assigned Serial No. 86184298.

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Applicant's Requests for Admission included the following:

Request for Admission No. 1

Admit that Applicant, prior to filing the Application, was a distributor of Opposer's NUTRELA branded food products within the United States.

Request for Admission No. 2

Admit that Applicant is currently a distributor of Opposer's NUTRELA branded food products within the United States.

Request for Admission No. 3

Admit that Applicant, prior to filing the Application, has never used the Mark in connection with any sale of goods within the United States other than in connection with the distribution of Opposer's goods.

Shore Decl. ¶ 3 and Exh. A thereto.

Applicant's responses to Opposer's Requests for First Set of Interrogatories, Requests for Production of Documents and Things, and Admission were due January 31, 2013, pursuant to Rules 33, 34 and 36 of the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") (3d ed. rev.2 2013) . Opposer did not receive Applicant's responses or production of documents by this deadline (Shore Decl. ¶¶ 4 and 5) and, in fact, to date has not received responses to these requests or production of documents. Shore Decl. ¶ 8.

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Most importantly for the purposes of Opposer's Motion for Summary Judgment, Applicant did not timely respond to Opposer's Requests for Admission, or seek an extension of time to do so. Shore Decl. ¶¶ 4, 5 and 8.

Regarding Opposer's Motion to Compel, on February 10, 2014, Opposer's counsel wrote to Applicant's counsel, advising that they had not received a timely response, and that they intended to move to compel Applicant's responses to the interrogatories and production of documents unless they were received in their offices by February 14, 2014. Shore Decl. ¶ 6 and Exh. B thereto. On February 13, 2014, Opposer's counsel received an email stating that Applicant anticipated being able to finalize their responses and productions by the end of [the following] week [i.e., Friday, February 21, 2014], barring any additional severe weather delays. Shore Decl. ¶ 7 and Exh. C thereto. Opposer's counsel did not receive the responses and productions the following week or anytime thereafter, nor did they receive any further communication whatsoever from Applicant's counsel. Shore Decl. ¶ 8.

III. ARGUMENT

A. Motion for Summary Judgment

1. Standard for Summary Judgment

The purpose of the motion for summary judgment is judicial economy, that is, to avoid an unnecessary trial where there is no genuine dispute of material fact and more evidence than is already available could not reasonably be expected to change the result in the case. TBMP §528.01.

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Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, a movant is entitled to summary judgment if it shows that there is no genuine dispute as to any material fact and it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The movant must support its position by citing to particular parts of materials in the record, including admissions. Fed. R. Civ. P. 56(c); TBMP §528.01.

Based on the admissions of Applicant, there is no genuine dispute as to material fact and Opposer is entitled to judgment as a matter of law.

2. The Facts in the Requests to Admit are Deemed Admitted

As stated above, Applicant did not respond in any manner whatsoever to Opposer's Requests for Admission. Shore Decl. ¶ 8. Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, all three (3) of Opposer's Requests for Admission directed to Applicant are thus deemed admitted.³

Addressing Requests for Admission, Rule 36(a) provides that "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or by its attorney." Fed. R. Civ. P. 36(a)(3). Further, Rule 36(b) provides that "[a] matter admitted under this rule is conclusively established."⁴ Fed. R. Civ. P. 36(b).

Based on Applicant's total failure to respond, Applicant has admitted the following facts:

³ Regarding Opposer's Motion for Summary Judgment, only Opposer's Requests for Admission are relevant.

⁴ There is a very limited exception which is not applicable here.

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- i. that Applicant, prior to filing the Application, was a distributor of Opposer's NUTRELA branded food products within the United States (Request For Admission No. 1).
- ii. that Applicant is currently a distributor of Opposer's NUTRELA branded food products within the United States (Request For Admission No. 2);
and
- iii. that Applicant, prior to filing the Application, has never used the Mark in connection with any sale of goods within the United States other than in connection with the distribution of Opposer's goods (Request For Admission No. 3).

Shore Decl. ¶¶ 3 and 8 and Exh. A thereto. Thus, Applicant has admitted it does not own the mark NUTRELA. Further, by admitting that it distributed Opposer's goods bearing the mark NUTRELA, Applicant has admitted that Opposer is the proper owner of the mark NUTRELA.

3. Summary Judgment Is Justified As A Matter Of Law

For Opposer to prevail in this opposition, it must prove that it has a proprietary interest in the contested mark and that its interest was obtained prior to the filing date of Applicant's application. *Miller Brewing co. v. Anheuser-Busch, Inc.*, 27 U.S.P.Q. 2d 1711, 1714 (TTAB 1993). Opposer has established its ownership and priority, based on Applicant's admissions.

Applicant has admitted that the goods bearing the mark that it sold were those of Opposer. Shore Decl. ¶¶ 3 and 8, and Exh. A, Req. Nos. 1 and 3. Applicant has admitted that it was merely a distributor of Opposer's NUTRELA branded food products within the U.S. *Id.*,

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Req. Nos. 1 and 2. Moreover, Applicant has admitted that it never used the mark NUTRELA in connection with any sale of goods in the United States other than in connection with the distribution of Opposer's goods. *Id.*, Req. No. 3.

“Ordinarily, when a manufacturer parts with his goods, and they go upon the market, the purchaser may use them or sell them without removing the trade-mark of the manufacturer. But the purchaser of the goods does not acquire ownership of the trade-mark.” *Spencer v. VDO Instruments, Ltd.*, 232 F. Supp. 735, 738 (E.D. Mich. 1964) (internal quotations omitted).

A distributor, importer, or other distributing agent of the goods of a manufacturer or producer does not acquire a right of ownership in the manufacturer's or producer's mark merely because it moves the goods in trade. Trademark Manual of Examining Procedure (“TMEP”) § 1201.06(a) (April 2013). *See also Nahshin v. Product Source International, LLC*, 107 U.S.P.Q. 2d 1257 (TTAB 2013) (the mere fact that a U.S. distributor distributes a foreign manufacturer's branded product does not, without more, give the U.S. distributor an ownership interest in the mark); J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 29:8 at 29-42 (2013) (an exclusive U.S. distributor does not acquire ownership of a foreign manufacturer's mark anymore than a wholesaler can acquire ownership of an American manufacturer's mark, merely through the sale and distribution of goods bearing the manufacturer's trademark); *Mackie-Lovejoy Mfg Co. v. Birnbaum*, 102 U.S.P.Q. 38 (1954) (“[a]n importer of trade marked articles does not acquire rights in the trade mark used by a foreign manufacturer to identify its goods merely by importing the articles and selling them in this country”).

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Based on the foregoing, it is settled law that as between a foreign manufacturer and its exclusive U.S. distributor, the foreign manufacturer is the owner of a mark.⁵ *Global Maschinen Gmbh v. Global Banking Systems, Inc.*, 227 U.S.P.Q. 862, 866 (TTAB 1985) (application of U.S. distributor to register mark found fraudulent and resulting registration found void *ab initio*); see also *Far-Best Corp. v. Die Casting "ID" Corp.*, 165 U.S.P.Q. 277, 280 (TTAB 1970).

The facts in this case are similar to those in the *Global* case. In that case, at the time the trademark application at issue was filed, the applicant was a distributor of the coin sorting machines manufactured by petitioner. *Global*, 227 U.S.P.Q. at 865. The trademark application was filed by applicant without the consent of the petitioner. *Id.* The specimens filed indicted that the goods were imported, and that applicant was a distributor. *Id.* The Board found registrant was not the owner of the trademark as of the filing date of the application, noting the presumption of ownership in the foreign manufacturer was not rebutted, and held the registration void *ab initio*. *Id.*

In this case, based on Applicant's admissions, Applicant was a mere distributor of Opposer. As a matter of law, Applicant was not the owner of the mark NUTRELA as of the filing date of its application for registration. There is no dispute of material fact to decide. The Board, as a matter of law, should grant Opposer's Motion for Summary Judgment and sustain this Opposition proceeding.

⁵ The limited exception is not present here, namely, an agreement between the distributor and the manufacturer identifying the distributor as the owner of the mark. *Global*, 227 U.S.P.Q. at 866.

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B. Motion To Compel

In the event the Board for any reason denies Opposer's Motion for Summary Judgment, Opposer moves to compel Applicant to respond to Opposer's First Set of Interrogatories and Requests for Production of Documents and Things, pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.⁶

1. The Good Faith Effort Standard Has Been Met

As stated above, on December 27, 2013, Opposer duly served Opposer's First Set of Interrogatories, Requests for Production of Documents and Things, and Requests for Admissions. See Shore Decl. ¶ 3 and Exh. A thereto. Applicant's documents and responses to Opposer's First Set of Interrogatories, Requests for Production of Documents and Things, and Requests for Admission were due on January 31, 2014.

On February 10, 2014, Opposer's counsel wrote to Applicant's counsel advising that the time to respond to Opposer's discovery requests had expired and no response had been received by her firm. Shore Decl. ¶ 6 and Exh. B thereto. The letter further advised that Opposer intended to move to compel Applicant's responses to the interrogatories and production of documents unless they were received by February 14, 2014. *Id.* On February 13, 2014, Opposer's counsel received an email from Applicant's counsel advising that "Applicant has been working on completing Opposer's discovery requests" and that "they anticipate being able to finalize their responses and productions to your office by the end of next week..." Shore Decl. ¶

⁶ Opposer's Motion to Compel does not apply to Opposer's Requests for Admission, as the motion to compel procedure is not applicable to such requests. TBMP §523.01 at 500-104.

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6 and Exh. C thereto. Based on the date of the email, the date unilaterally set by Applicant's counsel for production was Friday, February 21, 2014.

As of today's date, more than six (6) weeks have elapsed since Applicant's counsel's email and Opposer has no received any responses or production of documents from Applicant, nor has Opposer received any further communication (by email, mail, or telephone) from Applicant or Applicant's counsel explaining the further delay or asking or asking for a further extension of time. Shore Decl. ¶ 8. Although Opposer's counsel only sent one letter, Applicant's letter was substantive, and warned of its intent to move to compel should Applicant's responses and documents not be received by the extended deadline proposed by Opposer. Opposer then waited until after the further extended deadline unilaterally set by Applicant before filing this motion. Thus, this case is distinguishable from the recent case of *Hot Tamale Mama...and More, LLC v. SF Investments, Inc.*, ___ U.S.P.Q. 3d ___, Opp. No. 91209030 (TTAB March 20, 2014), where the Board found movant's efforts to be insufficient to satisfy the good faith effort requirement.

Notably, this is not a motion aimed at the sufficiency of Applicant's discovery responses or objections to specific requests. Applicant has not responded at all, and thus, the parties have been unable to reach agreement.

Based on the foregoing, Opposer has made a good faith effort to resolve this discovery dispute before filing this motion to compel. *See, e.g., Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448, 450 (TTAB 1979) (where there has been a complete failure to respond to discovery, telephone call to counsel sufficient as good faith effort). Accordingly,

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pursuant to 37 C.F.R. §§ 2.116 and 2.120(e), and Rule 37 of the Federal Rules of Civil Procedure, Opposer moves the Board for an Order compelling Applicant to provide responses to Opposer's discovery requests.

In addition, as Applicant failed to timely respond, Opposer requests that the interrogatories be answered fully and without objection, and that the document requests be complied with fully and without objection, with the documents being produced at the offices of Opposer's counsel. See, e.g., *Envirotech*, 219 U.S.P.Q. at 450.

IV. CONCLUSION

For the foregoing reasons, judgment should be granted as a matter of law, and Applicant's registration of the mark NUTRELA & Design should be refused, as there is no genuine dispute as to material facts.

In the alternative, should the Board refuse to grant summary judgment for any reason, Applicant should be compelled to respond to Opposer's First Set of Interrogatories, Requests for Production of Documents and Things, without objection, including production of the requested documents at the offices of Opposer's counsel.

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Opposition No.: 91210494

Dated: Scarsdale, New York
April 3, 2014

Respectfully submitted,

LACKENBACH SIEGEL, LLP

By:



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Attorneys for Opposer

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Applicant.	:
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**DECLARATION OF CATHY E. SHORE-SIROTIN IN SUPPORT OF
OPPOSER'S MOTION FOR SUMMARY JUDGMENT and MOTION TO COMPEL**

I, Cathy E. Shore-Sirotn, an Attorney-at-Law, hereby declare as follows:

1. I am an Attorney admitted to practice in the States of New York, New Jersey, California, and the District of Columbia.
2. This Declaration is submitted in connection with Opposer's Motion for Summary Judgment and Motion to Compel, and the Brief in support thereof.
3. Attached as Exhibit A hereto is a true and correct copy of Opposer's First Set of Interrogatories, Requests for Production of Documents and Things, and Requests for Admission, properly served on Applicant's counsel on December 27, 2013.
4. Applicant's documents and responses to Opposer's First Set of Interrogatories, Requests for Production of Documents and Things, and Requests for Admission were due on January 31, 2014.

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5. As of February 10, 2014, Applicant had **not** responded to Opposer's First Set of Interrogatories, Requests for Production of Documents and Things, and Requests for Admission in any manner.

6. On February 10, 2014, Opposer's counsel wrote to Applicant's counsel advising that the time to respond to Opposer's discovery requests had expired and no response had been received by her firm. The letter further advised that Opposer intended to move to compel Applicant's responses to the interrogatories and production of documents unless they were received by February 14, 2014. Attached as Exhibit B hereto is a true and correct copy of the February 10, 2014 letter from Opposer's counsel to Applicant's counsel.

7. On February 13, 2014, Opposer's counsel received an email from counsel for Applicant, advising that "Applicant has been working on completing Opposer's discovery requests" and that "they anticipate being able to finalize their responses and productions to your office by the end of next week..." Attached as Exhibit C hereto is a true and correct copy of the email Opposer's counsel received from Applicant's counsel on February 13, 2014.

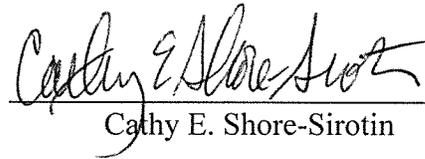
8. As of today's date, more than six (6) weeks have elapsed and Opposer has neither received Applicant's responses and production, nor any further communication (by email, mail, or telephone) from Applicant's counsel explaining the further delay or asking or asking for a further extension of time.

Cathy E. Shore-Sirotnin, declares that she is authorized to make this Declaration, that she has read and signed this document and read all of the accompanying documents and knows the

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contents thereof, that the statements and allegations are true except as to matters stated therein to be upon information and belief, and as to those matters she believes them to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 to Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the document or any relief sought therefrom.

Dated: April 3, 2014


Cathy E. Shore-Sirotn

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Exhibit A

INSTRUCTIONS

1. In the event that you object to any of the interrogatories or requests contained herein below, state the basis or reason for the objection, and answer any remaining part or subpart of the interrogatory or request that is otherwise unobjectionable.
2. If the attorney-client privilege, the attorney work-product doctrine or any other privilege is asserted in response to any interrogatory or request contained herein below, state the specific privilege asserted, the basis therefore, and identify the specific document(s) or communication(s) over which the privilege is being asserted.
3. The following interrogatories and requests require responses that are accurate and complete as of the date on which they are made, and to the extent provided by Rule 26 of the Federal Rules of Civil Procedure, the interrogatories and requests are continuing in nature.

DEFINITIONS

As used herein, the following definitions shall apply:

1. "Document" is used in its broadest sense, consistent with the terms and intentions of Rule 34(a) of the Federal Rules of Civil Procedure. Any drafts or preliminary versions of a document or any document or copy of a document bearing any notations, comments or markings not found on or in the original, shall be considered a separate document.
2. "Communication" means any exchange of information by any means.
3. "Thing" means any tangible object, including, without limitation, goods upon which the Mark (as this term is defined herein below) was, is, or will be used, prototypes, samples, displays, labels, hangtags, cards, advertisements, letterhead, stationery, inserts, packaging, wrappers, receptacles or containers, business cards and/or forms.

4. “Identify” or “state the identity of,” with respect to a person, means to state:
 - a. the person’s full name;
 - b. their present or last known address; and
 - c. their current employer or business affiliation and/or their employer or business affiliation at the time(s) relevant to the interrogatories.

5. “Identify” or “state the identity of,” with respect to a corporation or other business entity, means to state:

- a. the full name of such entity;
- b. the address of such entity;
- c. the form or organization of such entity; and
- d. the principal business or activity of such entity.

6. “Identify” or “state the identity of,” with respect to a document, regardless of whether any claim of privilege is asserted, means to state:

- a. the identity of the person(s) who prepared it, the sender(s) and recipient(s), if any;
- b. the title or a description of the general nature of the document;
- c. the date of preparation; and
- d. the date and manner of distribution and publication, if any.

7. “Mark” means NUTRELA & Design as used as a name or trade name or trademark or service mark, whether used alone or in connection or combination with any other name, word, logo, design, symbol or mark, and regardless of the punctuation or capitalization or stylization, as used or intended to be used by Applicant.

8. "Goods" mean any and all goods upon which or in connection which Applicant has used, or intends to use, the Mark.

9. "Applicant," "Defendant," "You," and/or "Your" means Meenaxi Enterprise, Inc. and any and all current or former licensees, users, owners or assignees of the Mark, as well as the present and former employees, attorneys, agents and representatives, and any predecessor, successor, parent or subsidiary entity, either domestic or foreign, of Applicant.

10. "Opposer," "Plaintiff," "Us" and/or "Our" means M/s. Ruchi Soya Industries Limited, its officers, directors, subsidiaries and divisions.

11. "Application" means Application Serial No. 85712990 for the Mark.

INTERROGATORIES

Interrogatory No. 1

Identify all persons currently or previously employed by or otherwise associated with Applicant who have or may have knowledge of any matter relevant to this proceeding, identify the dates and nature of such employment or association, and set forth the nature or the knowledge had by each such individual.

Interrogatory No. 2

In connection with Applicant's use of the Mark in United States commerce, state or identify:

- a. the date of first use for all goods covered by Applicant's Application;
- b. all other Goods in connection with which the Mark is intended to be used;
- c. Applicant's customers for the Goods;

- d. the total volume, in units, per year, of Goods sold by Applicant in the United States; and
- e. the total volume, in dollars, per year, of Goods by Applicant in the United States.

Interrogatory No. 3

Identify any period during which the Mark was not in consistent or continuous use in the United States by Applicant.

Interrogatory No. 4

State whether Applicant has advertised or otherwise promoted the Mark and/or the Goods in the United States and, if the answer is in the affirmative, set forth and/or identify:

- a. each such advertisement or promotion;
- b. the date of each such advertisement or promotion;
- c. the nature of each such advertisement or promotion (e.g., print, radio, catalog, Internet);
- d. where each such advertisement or promotion appeared; and
- e. the total dollar amount expended by Applicant, per year, in connection with such advertisements or promotions.

Interrogatory No. 5

Describe: (a) the classes of customers to which Applicant markets the Goods; and (b) the classes of customers who are the patrons of the facilities that distribute Applicant's Goods.

Interrogatory No. 6

Describe the marketing methods and channels of distribution used by Applicant in connection with the Goods.

Interrogatory No. 7

Describe the characteristics of purchasers of Applicant's Goods.

Interrogatory No. 8

Describe how and when Applicants first became aware of Opposer and of Opposer's use of its NUTRELA mark.

Interrogatory No. 9

Describe, in detail, all third party uses of which Applicant is aware, if any, of the Mark or any other mark incorporating the designation "nutrela" as used in connection with food products.

Interrogatory No. 10

Describe, in detail, all third party uses of which Applicant is aware, if any, of the Mark or any other mark incorporating the designation "nutrela" as used in connection with goods other than food products.

Interrogatory No. 11

State whether Applicant has experienced any episodes of confusion as between Applicant and Opposer, or between Applicant's Mark and Opposer's NUTRELA mark, and if the answer is in the affirmative, for each such episode, state or identify:

- a. the nature of the confusion (e.g., misdirected mail or telephone calls);
- b. the date the episode of confusion occurred;

- c. the party who was confused (e.g., who mailed the misdirected mail or who placed the misdirected call);
- d. the party on behalf of Applicant who witnessed the confusion (e.g., the party who received the misdirected mail or telephone call); and
- e. all documents which evidence such confusion.

Interrogatory No. 12

Identify all experts with whom Applicant has consulted or intends to consult regarding the Mark and/or this proceeding or upon whose testimony Applicant will or may rely in this proceeding.

Interrogatory No. 13

Identify all witnesses from whom Applicant will or may take testimony in connection with this proceeding.

Interrogatory No. 14

Describe, in detail, when and how Applicant first selected the Mark, whether any trademark searches were conducted, and the results of any and all such searches.

Interrogatory No. 15

Identify all persons who participated in the selection and adoption of Applicant's Mark.

Interrogatory No. 16

Identify all persons involved in the preparation of answers to the foregoing interrogatories and identify the answers or responses to which they contributed and the information provided.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Request for Production No. 1

All documents and things evidencing Applicant's use of the Mark in the United States, including, without limitation: all documents and things which evidence Applicant's first use of the Mark; all documents and things which evidence all goods upon which Applicant has used the Mark; and all documents and things which evidence Applicant's sales, in dollars and units, of Goods (e.g., invoices, purchase orders, bills of lading, and customs or other importation documents).

Request for Production No. 2

All documents and things referring or relating to Applicant's customers for the Goods, including without limitation, customer lists.

Request for Production No. 3

All documents and things evidencing Applicant's advertising or promotion of the Goods, including, without limitation, a copy of each such advertisement or promotion, and all documents which evidence the location and date of such advertising and/or the dollar amount spent on such advertising.

Request for Production No. 4

All documents referring or relating to end consumers/retail purchasers of Applicant's Goods, including, without limitation, all studies or reports pertaining to the actual, perceived or desired demographics of end consumers/retail purchasers of Applicant's Goods.

Request for Production No. 5

All documents referring or relating to Opposer and/or Opposer's use of its NUTRELA mark, including all documents which evidence how and when Applicant first learned of Opposer's use of its NUTRELA mark.

Request for Production No. 6

All documents evidencing, referring or relating to third-party use of the Mark or any mark incorporating the word "nutrela" in connection with food products.

Request for Production No. 7

All documents evidencing, referring or relating to third-party use of the Mark or any mark incorporating the word "nutrela" in connection with goods other than food products.

Request for Production No. 8

All searches and related documents, conducted by or on behalf of Applicant or otherwise known to Applicant, including but not limited to, federal, state or common law trademark, service mark, or trade name searches, in connection with the Mark or any similar mark, and all opinions relating to such searches.

Request for Production No. 9

All documents referring or relating to Applicant's initial selection and/or adoption of the Mark.

Request for Production No. 10

All documents referring or relating to Applicant's Application or any other applications by Applicant for the Mark or any similar marks.

Request for Production No. 11

All documents or things which evidence confusion between Applicant and Opposer, or their respective uses of the Mark and Opposer's NUTRELA mark, or any similar marks, including, without limitation, evidence of misdirected telephone calls, misdirected correspondence, or erroneously returned goods.

Request for Production No. 12

The resume and/or *curriculum vitae* of any expert(s) with whom Applicant has conferred with or intends to call as a witness in this matter and all documents reviewed or received by such expert(s) or prepared by such expert(s).

Request for Production No. 13

The resume or *curriculum vitae* and employment history of all individuals identified in response to any Interrogatory.

Request for Production No. 14

Representative samples of each document or thing, including, without limitation, each box, label, hangtag, letterhead, stationery, container, packaging or the like, upon which Applicant has ever placed the Mark.

Request for Production No. 15

A sample of all Goods upon which Applicant has ever used the Mark.

Request for Production No. 16

All documents or things related to Applicant's business relationship with Opposer, including without limitation any and all documents related to Applicant's distribution of Opposer's products within the United States.

Request for Production No. 17

All documents or things identified in response to Opposer's Interrogatories which have not been otherwise produced.

REQUESTS FOR ADMISSION

Request for Admission No. 1

Admit that Applicant, prior to filing the Application, was a distributor of Opposer's NUTRELA branded food products within the United States.

Request for Admission No. 2

Admit that Applicant is currently a distributor of Opposer's NUTRELA branded food products within the United States.

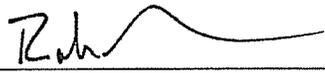
Request for Admission No. 3

Admit that Applicant, prior to filing the Application, has never used the Mark in connection with any sale of goods within the United States other than in connection with the distribution of Opposer's goods.

Dated: Scarsdale, New York
December 27, 2013

Respectfully submitted,

LACKENBACH SIEGEL, LLP

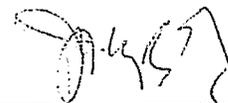
By: 
Robert B. Golden
Lackebach Siegel Building
One Chase Road
Scarsdale, New York 10583
(914) 723-4300
(914) 723-4301 fax
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the enclosed **OPPOSER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS and REQUESTS FOR ADMISSION** on the date set forth below, via U.S. 1st Class Mail, addressed to counsel for Applicant as follows:

JungJin Lee, Esq.
Lee, Lee & Associates, P.C.
2531 Jackson Road, Suite 234
Ann Arbor, MI 48103

Dated: Scarsdale, New York
December 27, 2013



Jeffrey Rollings

Opposition No.: 91210494

Exhibit B

February 10, 2014

Via Email (jj@llapc.com) & Overnight Mail

JungJin Lee, Esq.
Lee, Lee & Associates, P.C.
2531 Jackson Road, Suite 234
Ann Arbor, Michigan 48103

Re: M/s. RUCHI SOYA INDUSTRIES LIMITED v. Meenaxi Enterprise, Inc.
Opposition No.: 91210494
Trademark: NUTRELLA
App. Serial No.: 85712990

Dear JungJin Lee:

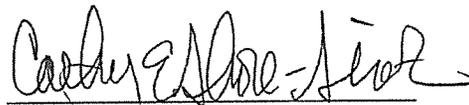
Regarding the above-referenced matter, on behalf of our client, M/s. Ruchi Soya Industries Limited, on December 27, 2013, we served **OPPOSER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS and REQUESTS FOR ADMISSION** via U.S. First Class Mail to your address, as counsel of record for Applicant, Meenaxi Enterprise, Inc. The time to respond has expired, and we have not received a timely response.

The purpose of this letter is to advise that we intend to move to compel Applicant's responses to the interrogatories and production of documents, unless they are received in our offices, at the address set forth below, on or before Friday, February 14th.

Please let us know immediately if you will produce such responses and documents to us before this deadline. Thank you.

Sincerely,

LACKENBACH SIEGEL, LLP



Cathy E. Shore-Sirotn
For the Firm

Opposition No.: 91210494

Exhibit C

Cathy Shore

From: Erin K. [erin@llapc.com]
Sent: Thursday, February 13, 2014 4:13 PM
To: Robert Golden; Cathy Shore; Eric Menist; TMEFS
Cc: J.J. Lee
Subject: Opposition No.: 91210494; M/s. RUCHI SOYA INDUSTRIES LIMITED v. Meenaxi Enterprise, Inc.; Trademark: NUTRELLA

Robert Golden:

The Applicant has been working on completing Opposer's discovery requests, however their offices are closed the remainder of the week due to severe weather. They anticipate being able to finalize their responses and productions to your office by the end of next week, barring any additional severe weather delays.

Thank you,

Erin Kunzelman, Esq.
Attorney & Counselor at Law
Lee, Lee & Associates, P.C.
www.llapc.com
erin@llapc.com
Phone: 866-400-2507
Fax: 800-689-7978