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

Proceeding	91218363
Party	Plaintiff New Wave Innovations, Inc.
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Submission	Opposition/Response to Motion
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Date	01/21/2015
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IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

NEW WAVE INNOVATIONS, INC.  
Opposer

vs.

MR. FOAMER, INC. (A FLORIDA  
CORPORATION)  
Applicant

**OPPOSITION NO.  
91/218,363**

**SUPPLEMENTAL RESPONSE IN OPPOSITION  
TO THE MOTION TO DISMISS AMENDED  
OPPOSITION**

The TTAB is aware that Opposer has presently pending its own trademark application for registration of the Mr. Foamer mark, Trademark Application Ser. No. 86/304,655. Enclosed is the Opposer's Response to the Trademark Examiner Office Action (dated September 23, 2014). The Opposer's Response includes a substitute specimen along with an explanation of its contents. It is respectfully requested that the instant Opposition be supplemented with this Response, accordingly.

Respectfully,

/John H. Faro  
Reg. No .25,859  
Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that the enclosed pleading entitled:

**SUPPLEMENTAL RESPONSE IN OPPOSITION  
TO THE MOTION TO DISMISS AMENDED  
OPPOSITION**

has been served upon Applicant's Counsel, *via email*, this 21<sup>st</sup> day of January 2015.

Respectfully,

/John H. Faro  
Reg. No. 25,859

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January 20, 2015

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir/Madam:

*Re: Trademark Appln Ser. No. 86304665*  
*Mark: MR. FOAMER (Word Mark)*

This letter is in response to the Office Action dated September 23, 2014.

1. The initial use of the mark in commerce was in the form of Christmas card greeting, which was an attachment to an email from the Applicant. This Christmas card depicted one of the Applicant's products (which has a distinctive design/trade dress), as a cartoon character, (corporate mascot), in seasonal/holiday garb. This 2011 Christmas card was folded in half; and, had only two printed (2) panels: specifically, a single outside (front) panel and an inside panel. The enclosed substitute specimen includes each of these two original panels. The outside, or front, panel is the Mr. Foamer mascot, and the inside panel a Christmas wreath with a holiday greeting from Applicant.
2. The original email, which transmitted the 2011 Christmas card, has unfortunately been deleted. The email which accompanied the Applicant's Christmas card for

2013, and is the same as the email used to transmit the 2011 Christmas card to Applicant's customers. Thus, the email identified the sender, [newwavecarwash@yahoo.com](mailto:newwavecarwash@yahoo.com), much in the same way that the "return address" on an "envelope" identifies the sender of the traditional card. In this case, not only did the Applicant's email identify it, as the sender of the "Mr. Foamer" holiday greeting, but further included as an additional email attachment a "Gift Certificate", specifically, a "Discount Coupon" for Applicants' commercial car wash products. Thus, the direct connection of the Mr. Foamer mark with the Applicant was unmistakable, and between the Mr. Foamer mark and Applicant's services – the distribution of commercial car wash products.

3. The substitute specimens provided herein, thus, identifies both the words "Mr. Foamer", and the Mr. Foamer cartoon character, with the Applicant as the source of the Christmas card. The inclusion of a Gift Certificate (Discount Coupon) for Applicant's products, as part of the Christmas card greeting, further manifests a direct connection between the Mr. Foamer mark and cartoon character and Applicant's distribution of car wash products.
4. This initial use and substitute specimen comports with the date of first use in commerce on the instant trademark application.
5. Subsequent uses of the Mr. Foamer seasonal/holiday greeting cards have imprinted the Applicant's product specials and promotions directly on the back panel of the greeting cards.

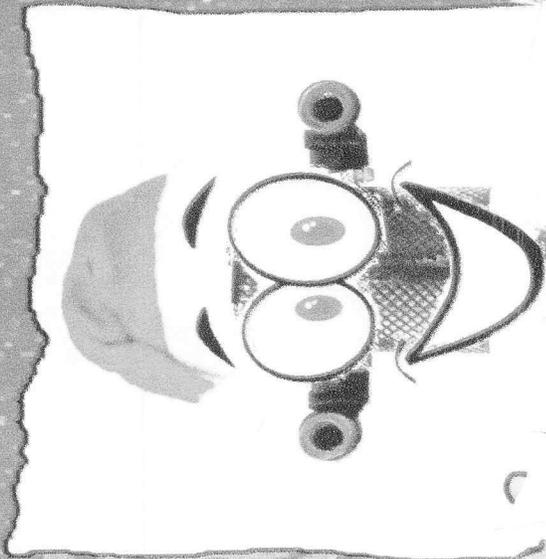
6. Subsequent uses of the Mr. Foamer mark have also adopted additional seasonal/holiday themes, specifically, Thanksgiving, Halloween etc. In each instance the cartoon character is attired in a seasonal/holiday dress, and conveys a seasonal/holiday greeting to the recipient from the Applicant.
7. Subsequent uses of the Mr. Foamer mark also includes the Applicants adoption and use of the [www.mrfoamer.org](http://www.mrfoamer.org) domain name, and links from this domain to Applicant's web site.

### **VERIFICATION**

I am authorized to represent the applicant for the registration of the subject mark, and to execute this verification, under 28 USC 1001, et seq, and herein verify upon information and belief the foregoing statements are accurate, and that the specimens submitted in support of this registration were used in commerce and in interstate commerce of the above dates.

/John H. Faro/

Subj: **Merry Christmas from NEW WAVE INNOVATIONS INC.**  
Date: 12/20/2013 1:29:20 P.M. Eastern Standard Time  
From: [newwavecarwash@yahoo.com](mailto:newwavecarwash@yahoo.com)  
To: [nwiinc@ymail.com](mailto:nwiinc@ymail.com)



Christmas wishes  
from  
our founder



Merry Christmas  
from

NEW WAVE  
INNOVATIONS



Number: CH100

## Gift Certificate

This certificate entitles: **Our Valued Customer**  
to: **Receive \$100 Dollars off any order of \$500.00 Dollars or more.**

Authorized by: **NEW WAVE INNOVATIONS INC** Expires: **03/01/2012**

*Not redeemable for cash. Redemption value not to exceed \$100.00*

NWI INC | newwavecarwash@yahoo.com | 1-912-2110158 | 1-912-246-6688

Number: CH200

## Gift Certificate

This certificate entitles: **Our Valued Customer**  
to: **Receive a FREE set of Elephant Ears with purchase of \$500.00 Dollars or more.**

Authorized by: **NEW WAVE INNOVATIONS INC** Expires: **03/01/2012**

*Not redeemable for cash. Redemption value not to exceed \$200.00*

NWI INC | newwavecarwash@yahoo.com | 1-912-2110158 | 1-912-246-6688

Number: CH300

## Gift Certificate

This certificate entitles: **Our Valued Customer**  
to: **Receive a FREE set of foam sticks with any order of \$500.00 Dollars or more.**

Authorized by: **NEW WAVE INNOVATIONS INC** Expires: **03/01/2012**

*Not redeemable for cash. Redemption value not to exceed \$300.00*

NWI INC | newwavecarwash@yahoo.com | 1-912-2110158 | 1-912-246-6688