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

Proceeding	91218363
Party	Defendant Mr. Foamer, Inc.
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Attachments	MSJ.pdf(207500 bytes ) Exhibit1_2011Card.pdf(83301 bytes ) Exhibit2(comp)_665app.pdf(116007 bytes ) Exhibit3(comp)_HearingTr.pdf(171206 bytes ) Exhibit4(comp)_666app.pdf(728519 bytes ) Exhibit5(comp)specimensonlinestore.pdf(1467222 bytes ) Exhibit6(comp)currentspecimensonlinestore.pdf(1843604 bytes ) Exhibit7(comp)currentspecimeninstallation.pdf(2683175 bytes ) Exhibit8(comp)filing800app.pdf(199401 bytes ) Exhibit9_OAin800app.pdf(49685 bytes ) Exhibit10_abandoned800app.pdf(148078 bytes ) Exhibit11(comp)665app.pdf(114347 bytes ) Exhibit12_OA665app.pdf(48377 bytes ) Exhibit13_Interrogs.pdf(3950516 bytes ) Exhibit14_CA.pdf(111029 bytes ) Exhibit15_California.pdf(93890 bytes )

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

Opposition No. 91218363

NEW WAVE INNOVATIONS INC.  
Opposer

vs.

MR. FOAMER, INC.  
Applicant

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**MR. FOAMER’S MOTION FOR SUMMARY JUDGMENT**

MR. FOAMER, INC. (“MR. FOAMER” or “Applicant”) hereby files its Motion for Summary Judgment (the “Motion”) in Opposition No. 91218363 filed by NEW WAVE INNOVATIONS, INC. (“New Wave” or “Opposer”) before the Trademark Trial and Appeal Board (the “Board”). The Motion includes the Procedural Background (Section I), Applicant’s Statement of Undisputed Facts (Section II) and Memorandum of Law in Support of the Motion (Section III). The Motion is accompanied by Applicant’s Motion for Leave to Use Testimony from Another Proceeding.

**SECTION I  
PROCEDURAL BACKGROUND**

On September 16, 2014, Opposer filed the above captioned-opposition with the Board. In response, Applicant filed a motion to dismiss. Subsequently, Opposer filed an amended opposition on November 13, 2014 based on two grounds, namely, a claim of priority of use and likelihood of confusion (Count I) and a claim for fraud (Count II) (the “Amended Opposition”). Applicant filed a motion to dismiss the Amended Opposition on November 18, 2014 (the “Motion to Dismiss”).

On April 3, 2015, the Board issued an order (the “Order on the Motion to Dismiss”). In the Order on the Motion to Dismiss, the Board held that Opposer sufficiently pled a claim for likelihood of confusion and priority. With respect to fraud, the Board found that “the amended notice of opposition is legally sufficient as to ... [the] claim of fraud based on Applicant’s asserted failure to use the mark with the listed services at the time the application was filed” (Order on the Motion to Dismiss, pp. 7-8). The

additional fraud claims made by Applicant were dismissed and the Board granted Opposer leave to amend these claims within ten days (Order on the Motion to Dismiss, p. 8). However, Opposer did not amend its fraud claims within the allocated time.

On July 10, 2015, Applicant filed its answer to the Amended Opposition (the “Answer”). On September 11, 2015, Applicant served its Initial Disclosures on Opposer.

On December 10, 2015, Opposer filed a Motion for Judgment on the Pleadings. On December 19, 2015, the Board issued an order stating that: “inasmuch as the amended notice of opposition does not include a claim of judicial estoppel, no consideration will be given to Opposer’s motion for summary judgment on the unpleaded claims” (“Order of December 2015,” p. 1). On December 28, 2015, Applicant filed an opposition to the Motion for Judgment on the Pleadings. The Board has yet to rule on the Motion for Judgment on the Pleadings.

## **SECTION II** **APPLICANT’S STATEMENT OF UNDISPUTED FACTS**

### *The 2011 Christmas Card of Opposer*

1. On or about late November or early December 2011, Opposer created a Christmas card which depicted one of its products as a Santa Claus figure named “Mr. Foamer” (the “2011 Christmas Card”) (Am. Opp., p. 6, ¶9; a copy of the 2011 Christmas Card is attached as **Exhibit “1”**)<sup>1</sup>.

2. A copy of the 2011 Christmas Card was included as a specimen of use in the trademark application for the MR FOAMER Mark filed by Opposer, App. Serial No. 86304665 (the “’665 Application”)(a copy of the Filing Receipt for the ‘665 Application is attached as **Composite Exhibit “2,”** 2011 Christmas Card at p. 9).

3. The 2011 Christmas Card is composed of the design of a cartoon character, wearing a Santa hat and holding a banner with the message: “Christmas Wishes from mr foamer” (2011 Christmas

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<sup>1</sup> The card attached as Exhibit 2 to the Amended Opposition is not the 2011 Christmas Card as it states that Opposer would like to introduce its new 2014 products and also offers free shipping on all products until January 31, 2014 (Am. Opp., Exh. 2).

Card, Exh. 1).

4. The 2011 Christmas Card included a discount coupon (the “Discount Coupon”) (Am. Opp., p. 6 at ¶11).

5. The Discount Coupon stated that “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.” (Am. Opp., Exh. 3).

***Opposer’s Admissions Related to the 2011 Christmas Card***

6. The president of Opposer, Michael Ross (“Ross”) provided testimony in respect to the 2011 Christmas Card in open court in the Federal Case<sup>2</sup> between Opposer and Applicant during a hearing held on October 29, 2013 (the “October 2013 Hearing”).

7. During the October 2013 Hearing, Opposer, through counsel John Faro, admitted that Opposer had only used the MR. FOAMER term in commerce in the 2011 Christmas Card (Transcript of October 2013 Hearing, attached as **Composite Exhibit “3,”** Hearing Tr. at 25:24-26:3).

8. During the October 2013 Hearing, Ross admitted that Opposer made no offer to sell services or products in the 2011 Christmas Card (Comp. Exh. 3, Hearing Tr. at 80:1-25).

9. During the October 2013 Hearing, Ross admitted that the MR. FOAMER term as used in the 2011 Christmas Card only referred to a “fictional name of [the] character being represented” or the “representation of our product” (Comp. Exh. 3, Hearing Tr. at 80:19-25).

10. During the October 2013 Hearing, Ross admitted that Opposer’s alleged first use of the MR FOAMER term was to refer to a cartoon character and not to a product sold or service offered by Opposer (Comp. Exh. 3, Hearing Tr. at 83:2-11).

11. During the October 2013 Hearing, Applicant’s president, James McClimond (“McClimond”) testified that Applicant never received a copy of the 2011 Christmas Card (Comp. Ex. 3,

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<sup>2</sup> The Federal Case refers to a prior litigation between Opposer and Applicant in the Federal District Court for the Southern District of Florida titled *New Wave Innovations, Inc. v. James McClimond*, Case No. 2013-cv-22541.

Hearing Tr. at 186:4-13).

***Opposer Did Not Use the MR FOAMER Term between December 2011 and October 2013***

12. During the October 2013 Hearing, Ross admitted that Opposer never used the MR FOAMER term in any manner after the 2011 Christmas Card (Comp. Exh. 3, Hearing Tr. at 25:24-26:3).

13. During the October 2013 Hearing, Ross admitted that Opposer only planned on using the MR. FOAMER term again in a future Christmas card, i.e. in December 2013 (Comp. Exh. 3, Hearing Tr. at 46:14-23).

***Applicant First Used the MR FOAMER Mark in August 2012***

14. Applicant's company, Mr. Foamer, Inc., was incorporated in the State of Florida in July 2012 (Am. Opp., p. 2, 1., A., second indent).

15. After incorporating its company, on August 10, 2012, Applicant began to use the MR. FOAMER Mark in commerce (Am. Opp., p. 2, 1., A., second indent) in connection with services, namely, the "sale of car wash equipment and parts thereof including the sale of equipment of others" which services were offered through Applicant's online retail store (the "Online Store Services") (a copy of the Filing Receipt for App. Serial No. 86108666 showing the date of first use of Applicant's Online Store Services is attached as **Composite Exhibit "4,"** see p. 1).

16. The use of the MR FOAMER Mark in connection with the Online Store Services was made on Applicant's website located at [www.mrfoamer.net](http://www.mrfoamer.net) and specimens of use were filed with the USPTO in the application for the MR FOAMER Mark, App. Serial No. 86108666 (a copy of the specimens of use filed in App. Serial No. 86108666 for the Online Store Services are attached as part of **Composite Exhibit "5,"** pp. 1-2, 4).

17. Presently, Applicant continues to use the MR. FOAMER Mark in connection with its Online Store Services on its website (excerpted pages from Applicant's website as of April 6, 2016 showing use of the MR FOAMER Mark in connection with Online Store Services are attached as **Composite Exhibit "6")**.

18. In addition, Applicant has used the MR. FOAMER Mark in connection with installation and maintenance of car wash equipment and parts thereof (the “Installation Services”) (a copy of the specimens of use filed with App. Serial No. 86108666 for the Installation Services are attached as Composite Exhibit 4, pp. 8; 11).

19. Applicant has used the MR. FOAMER Mark in connection with its Installation Services since November 2, 2013 (the “Installation Services”) (Comp. Exh. 4, p. 2).

20. The use of the MR FOAMER Mark in connection with the advertising of Applicant’s Installation Services was made on Applicant’s website located at [www.mrfoamer.net](http://www.mrfoamer.net) (Comp. Exh. 4, pp. 8;11).

21. As of today, Applicant continues to use the MR. FOAMER Mark in connection with its Installation Services on its website (excerpted pages from Applicant’s website as of April 6, 2016 showing use of the MR FOAMER Mark in connection with Installation Services are attached as **Composite Exhibit “7”**).

***The Trademark Application Filed by Applicant on November 2, 2013***

22. On November 2, 2013, Applicant filed Appl. Serial No. 86108666 for the MR. FOAMER Mark (the “’666 Application”) (Comp. Exh. 4).

23. The ‘666 Application was filed in connection with three classes under the following bases:

- Class 003 for “car wash cleaning and polishing preparations” filed on an intent-to-use basis;
- Class 035 for “online retail store services featuring car wash equipment and parts thereof” filed on a use-basis with a date of first use of August 10, 2012;
- Class 037 for “installation and maintenance of car wash equipment and parts thereof” filed on a use-basis with a date of first use of November 2, 2013 (see Comp. Exh. 4).

***The Trademark Applications Filed by Opposer on June 9, 2014***

24. On June 9, 2014, Opposer filed Appl. Serial No. 86303800 (the “’800 Application”)(a copy of the Filing Receipt for the ‘800 Application is attached as **Composite Exhibit “8”**).

25. The '800 Application was filed for the "Christmas Wishes from Mr. Foamer" Design Mark in connection with "online retail store services featuring car wash equipment and parts thereof" (the "'800 Services") (Comp. Exh. 8, p. 2).

26. The '800 Application was rejected on September 23, 2014 (a copy of the Office Action of September 23, 2014 is attached as **Exhibit "9"**).

27. In the Office Action of September 23, 2014, the examiner rejected the mark because the specimen, namely the 2011 Christmas Card filed in the '800 Application, did not show the applied-for mark in use in commerce in connection with the '800 Services (Exh. 9).

28. The '800 Application is now abandoned as Opposer failed to respond to the Office Action of September 23, 2014 (see excerpt of USPTO online records for '800 Application attached as **Exhibit "10"**).

29. On June 9, 2014, Opposer also filed Appl. Serial No. 86304665 (the "'665 Application")(a copy of the Filing Receipt for the '665 Application is attached as **Composite Exhibit "11"**).

30. Like the '800 Application, the '665 Application was filed for the "MR FOAMER Mark" in connection with "online retail store services featuring car wash equipment and parts thereof" (the "'665 Services")(Exh. 11, p. 1).

31. The date of first used of the '665 Services listed in the '665 Application is December 15, 2011 (Exh. 11, p. 1).

32. The specimen of use of the '665 Services filed with the '665 Application consists of the 2011 Christmas Card (Exh. 11, p. 7).

33. Thereafter, the examiner issued an Office Action rejecting the '665 Application because the specimen filed with the '665 Application did not show the applied-for mark in use in commerce in connection with the '665 Services (a copy of the Office Action issued in the 665 Application is attached as **Exhibit "12"**).

***There is No Evidence of Actual Confusion Between Opposer's Use and Applicant's Use of the MR. FOAMER Mark***

34. Opposer has previously admitted that “the instances of actual confusion with Mr. Foamer are largely anecdotal” (a copy of the responses to interrogatories directed to Opposer from the Federal Case are attached as **Exhibit “13,”** emphasis added) (see Exh. 13 at 13, p. 17).

***Opposer's Company is Suspended***

35. Opposer's company is suspended according to the California Secretary of State Division of Corporations (see attached excerpt of the California Secretary of State Division of Corporation online records for Opposer Innovations Inc. attached as **Exhibit “14”**).

**SECTION III**  
**MEMORANDUM OF LAW**

**A. STANDARD FOR FILING MOTIONS FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56(a), a party may file a motion for summary judgment by showing that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. The moving party asserting that a fact is undisputed must support its assertions by citations to the materials in the record. Fed. R. Civ. P. 56(c)(1)(A). The type of evidence which may be used in support or opposition to a motion for summary judgment includes depositions, documents, affidavits, declarations, admissions, interrogatory answers, or other materials of record. T.B.M.P. 528(a)(1). The record also includes the pleadings before the Board and the file of any application subject to the proceeding. A party may also make of record testimony from other proceedings upon motion to the Board. 37 C.F.R. 2.122(f).

**B. THE MOTION SHOULD BE GRANTED AS THERE EXISTS NO GENUINE DISPUTE AS TO THE MATERIAL FACTS ALLEGED BY APPLICANT**

Applicant's Motion should be granted and summary judgment in favor of Applicant should be entered by the Board as there exists no genuine dispute as to the material facts alleged by Applicant, namely, that: a) Opposer's company is currently suspended and had no capacity to file this Opposition; b) Opposer was not the first to adopt and use the MR. FOAMER mark with any service or product; c)

Applicant was the first to adopt and use the MR. FOAMER mark in connection with its “online retail store services featuring car wash equipment and parts thereof;” d) there is no likelihood of confusion in the marketplace; and e) Applicant has committed no fraud at the time of filing of the ‘666 Application.

**1) The Motion Should be Granted Because Opposer had no Capacity to File this Opposition**

An opposition may be filed by any person who believes that he would be damaged by the registration of a mark. 15 U.S.C. § 1063(a). The capacity of a corporation to sue is determined by the laws of the state under which it is organized. Fed. R. Civ. P. 17(b). In California, the exercise of the corporate powers, rights and privileges of a taxpayer may be suspended when a corporate entity fails to pay any tax, penalty or interest. *See* California Revenue and Taxation Code, Section 23301. When a corporate entity is suspended, its status can be seen on the online records for the California Secretary of State Division of Corporation (see description of “Suspended” and “FTB Suspended” found on the website of the California Secretary of State Division of Corporation attached as **Exhibit “15,”** p. 2). A suspended corporation may not prosecute or defend an action in court. *See Ransome-Crummey Co. v. Superior Court* (1922) 188 Cal. 393, 396-397.

In the present case, Applicant recently discovered that Opposer’s corporate status is currently “suspended” according to the online records for the California Secretary of State Division of Corporation (SUF<sup>3</sup> at 35). Because Opposer’s entity is suspended, Opposer’s powers, rights and privileges are suspended. *See* California Revenue and Taxation Code, Section 23301. Therefore, because Opposer’s entity is suspended, Opposer had no capacity to sue and file the present Opposition. As a result, Applicant requests that the Board enters summary judgment in favor of Applicant due to Opposer’s lack of capacity to file this Opposition. In the alternative, if the Board were to find that Opposer had the capacity to file the Opposition, the Board should enter judgment in favor of Applicant because Opposer is not the senior user of the MR FOAMER Mark, there is no likelihood of confusion between the marks and Applicant committed no fraud when filing the ‘666 Application.

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<sup>3</sup> For ease of reference, Applicant will refer to its Statement of Undisputed Facts as “SUF” throughout this Motion.

**2) In the alternative, the Motion Should be Granted Because Opposer is Not the Senior User of the MR FOAMER Mark**

**a. Use Requirements for Service Marks**

In a proceeding before the Board, the plaintiff must prove priority of use of the mark such as prior trademark or service mark use. In the absence of a pleaded registration, the moving party must show prior common law use of the mark. *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1023 (TTAB 2009). In the absence of any evidence of earlier use, the earliest date upon which the respondent may rely is the filing date of its underlying application. *Id.*

A service mark specimen consisting of advertising or promotional materials must show a direct association between the mark and the services for which registration is sought. See *In re Universal Oil Prods. Co.*, 476 F.2d 653, 655, 177 USPQ 456, 457 (C.C.P.A. 1973).

Further, the service mark must be used in a way that makes a commercial impression separate and apart from the other elements of the advertising matter, in order for the mark to be recognized by customers as a source identifier. *In re C.R. Anthony Co.*, 3 USPQ2d 1894 (TTAB 1987). The mark must not blend so well with other matter that it is difficult to discern what the mark is. *In re McDonald's Corp.*, 229 USPQ 555 (TTAB 1985).

Even further, the name or design of a character is not registrable as a service mark if it is used only to identify the character. *In re Hechinger Inv. Col. Of Del.*, 24 USPQ2d 1053 (TTAB 1991). The name of a character is registrable only if it is used in a manner that would be perceived by purchasers as identifying the services in addition to the character. *In re Fla. Cypress Gardens Inc.*, 208 USPQ 288 (TTAB 1980).

**b. Opposer Did Not Use the MR FOAMER Mark as a Service Mark and Has no Priority of Use of the MR. FOAMER Mark**

Notwithstanding the fact that the Amended Opposition relies upon Opposer's alleged common law trademark use of the MR. FOAMER Mark and the trademark applications filed by Opposer Appl. No. 86305665 and Appl. No. 86303800, there is no dispute of material fact that Opposer made no prior use of the MR. FOAMER Mark in commerce.

i) No Prior Common Law Use of the MR. FOAMER Mark by Opposer

Opposer did not establish prior common law use of the MR. FOAMER Mark. Indeed, even though Opposer alleges Opposer was the first to use the MR FOAMER Mark for the “distribution and sale of commercial car wash products” (Am. Opp., pp. 1-2, 1. A. first indent), Opposer’s allegations are not supported by any evidence of record.

Opposer’s claim of priority of use is based on Opposer’s alleged use of the MR FOAMER Mark on a Christmas card (the “2011 Christmas Card”) in December 2011 (Am. Opp., pp. 1-2, 1. A. first indent). A copy of the 2011 Christmas Card was filed in the trademark application for the MR FOAMER Mark filed by Opposer, App. Serial No. 86/304,665 (SUF at 1-2). The 2011 Christmas Card is composed of the design of a cartoon character, wearing a Santa hat and holding a banner with the message: “Christmas Wishes from mr foamer” (SUF at 3).

Upon review of the 2011 Christmas Card, it is clear that the term MR FOAMER as used in the 2011 Christmas Card does not function as a mark because the term MR FOAMER blends with the rest of the sentence in which it is used and thereby creates no distinct commercial impression from the rest of the 2011 Christmas Card to prospective customers. *In re McDonald’s Corp.*, 229 USPQ 555 (TTAB 1985). Most importantly, the term MR FOAMER is only used to identify a character which is not registrable as a service mark unless the mark is used in a manner that would be perceived by purchasers as identifying the services in addition to the character. *In re Hechinger Inv. Col. Of Del.*, 24 USPQ2d 1053 (TTAB 1991). In the present case, the term MR FOAMER is only used to refer to the character being depicted on the 2011 Christmas Card, and the term MR FOAMER does not refer to services offered by Opposer. Therefore, the name of the character – MR FOAMER – cannot be perceived by customers as identifying any service in addition to identifying the character. *In re Fla. Cypress Gardens Inc.*, 208 USPQ 288 (TTAB 1980). As such, it is not registrable and worthy of trademark protection.

Interestingly, Opposer’s claim of priority of use based on the 2011 Christmas Card is contradicted by Opposer’s own admissions in the Federal Case between Opposer and Applicant. In fact, the president of Opposer’s company, Michael Ross (“Ross”), testified during a hearing on Opposer’s motion for a

preliminary injunction held on October 29, 2013 (the “October 2013 Hearing,” SUF at 6). During the October 2013 Hearing, Opposer admitted that Opposer made no offer to sell services or products in the 2011 Christmas Card (SUF at 8). Opposer further admitted that the MR. FOAMER Mark as used in the 2011 Christmas Card only referred to a “fictional name of [the] character being represented” or the “representation of our product” (SUF at 9).

Therefore, the testimony of Ross demonstrates that Opposer did not use the MR FOAMER Mark in commerce in connection with the “distribution and sale of commercial car wash products” as Opposer claims in the Amended Opposition. Even Opposer admits that its alleged first use of the MR FOAMER Mark was to refer to a cartoon character and not to a product sold or service offered by Opposer (SUF at 10).

Thus, Opposer’s use of the term MR FOAMER in the 2011 Christmas Card is not a trademark use from which trademark rights can arise. The 2011 Christmas Card does not show use of the MR FOAMER Mark in commerce in connection with the services Opposer claims it used the MR FOAMER Mark for. Indeed, there is no connection between the MR FOAMER Mark and services consisting of the “distribution and sale of commercial car wash products.” *In re Universal Oil Prods. Co.*, 476 F.2d 653, 655, 177 USPQ 456, 457 (C.C.P.A. 1973). The 2011 Christmas Card does not even vaguely refer to such services so that the services allegedly offered under the MR FOAMER Mark cannot be discerned in the 2011 Christmas Card. Based on the foregoing, the MR FOAMER term was not used in a trademark manner by Opposer in the 2011 Christmas Card.

Moreover, according to Opposer, the 2011 Christmas Card included a discount coupon (Am. Opp., Exh. 3; SUF at 4). However, a review of the coupon shows no use of the term MR FOAMER to refer to a service offered by Opposer (SUF at 5). Therefore, the coupon did not show use of the MR FOAMER Mark in connection with the services Opposer claims Opposer used the MR FOAMER Mark for, namely, the “distribution and sale of commercial car wash products.”

Finally, at the October 2013 hearing, Opposer admitted that Opposer never used the term MR FOAMER in any manner after the 2011 Christmas Card (SUF at 12) and only planned on using the term

MR. FOAMER again in its next Christmas card (SUF at 13). Thus, from December 2011 until October 2013 (date of the hearing), Opposer admitted it made no use of the term MR. FOAMER after its one-time use in the 2011 Christmas Card in December 2011 (SUF at 12). Of import, because Applicant started using the MR. FOAMER Mark in August 2012 in connection with its Online Store Services,<sup>4</sup> Applicant is the senior user of the MR FOAMER Mark.

As a consequence, there is no dispute of material fact that Opposer made no prior common law use of the MR. FOAMER Mark in commerce.

ii) No Prior Use of the MR. FOAMER Mark Based on Appl. No. 86305665

Opposer's claim of priority of use is also based on its pending trademark application for the MR FOAMER mark, Appl. Serial No. 86304665 ("'665 Application"). Yet, in the Amended Opposition, Opposer fails to mention to the Board that the '665 Application was filed in connection with "**online retail store services** featuring car wash equipment and parts thereof" (emphasis added) (SUF at 30). The specimen of use filed in the '665 Application consists of a copy of the 2011 Christmas Card and the discount coupon (SUF at 32). As previously explained, the 2011 Christmas Card consists of a Christmas card containing the design of a cartoon character, wearing a Santa hat and holding a banner with the message: "Christmas Wishes from mr foamer" (SUF at 3). A review of the discount coupon shows no use of the term MR FOAMER to refer to a product sold by Opposer or a service offered by Opposer (SUF at 5). Therefore, neither the 2011 Christmas Card nor the coupon show use of the MR FOAMER Mark in connection with the services Opposer claims Opposer used the MR FOAMER Mark for, namely, the "**online retail store services** featuring car wash equipment and parts thereof." The 2011 Christmas Card and discount coupon do not show use of the MR. FOAMER Mark in the advertising of the online retail store services of Opposer. The term MR. FOAMER in the 2011 Christmas Card only refers to the name

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<sup>4</sup> Of note, Opposer claims that Applicant received a copy of the Card because Application was a customer of Opposer in December 2011. However, the invoices attached by Opposer in support of its allegation are addressed to Car Wash Experts, and not Applicant. Opposer's allegations that the 2011 Christmas Card was received by Applicant were also denied by Applicant in the Federal Case and in the Answer to the Amended Opposition.

of a character and no trademark usage of the MR. FOAMER Mark is made in the 2011 Christmas Card to refer to a service offered by Opposer.

As a result, Opposer's claims that Opposer was the first to adopt and use the MR FOAMER mark for the "**online retail store services** featuring car wash equipment and parts thereof" based on the '665 Application are not supported by evidence of record. In the absence of any evidence of earlier use, the earliest date upon which Opposer may rely is the filing date of the '665 application, namely, June 9, 2014. Because Applicant started using the MR. FOAMER Mark in August 2012 in connection with its online retail store services,<sup>5</sup> Applicant is the senior user of the MR FOAMER Mark.

As a consequence, there is no dispute of material fact that Opposer made a prior use of the MR. FOAMER Mark based on the '665 Application.

iii) No Prior Use of the MR. FOAMER Mark Based on Appl. No. 86303800

Opposer's claim of priority of use is further based on Appl. Serial No. 86303800 ("800 Application"). Of note, Opposer may not rely on the '800 Application as it is currently abandoned (SUF at 28). Thus, there is no dispute of material fact that Opposer made no prior use of the MR. FOAMER Mark based on the '800 Application.

Based on the foregoing, there is no dispute of material fact that Applicant was the first to use the MR. FOAMER Mark in commerce as Applicant has used the MR. FOAMER Mark in commerce since August 10, 2012. As a consequence, Opposer is not the senior user of the MR FOAMER Mark and Applicant's motion for summary judgment should be granted on that basis.

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<sup>5</sup> Of note, Opposer claims that Applicant received a copy of the Card because Application was a customer of Opposer in December 2011. However, the invoices attached by Opposer in support of its allegation are addressed to Car Wash Experts, and not Applicant. Opposer's allegations that the 2011 Christmas Card was received by Applicant were also denied by Applicant in the Federal Case and in the Answer to the Amended Opposition.

**3) The Motion Should be Granted Because Applicant is the Prior User of the MR. FOAMER Mark and Has Used the MR. FOAMER Mark in Connection with Services Since At Least August 10, 2012**

At the outset, it is important to stress out that Applicant's company, Mr. Foamer, Inc., was incorporated in the State of Florida in July 2012 (SUF at 14).

After incorporating its company, on August 10, 2012, Applicant started using the MR. FOAMER Mark in commerce in connection with its online retail store found on Applicant's website featuring commercial car wash products (the "Online Store Services"; SUF at 15). The use of the MR. FOAMER Mark in connection with the Online Store Services was made on Applicant's website located at [www.mrfoamer.net](http://www.mrfoamer.net) and specimens of use were filed with the USPTO in the application for the MR. FOAMER Mark, App. No. 86108666 (SUF at 16). As of today, Applicant continues to use the MR. FOAMER Mark in connection with its Online Store Services on its website (SUF at 17). As a result, Applicant has trademark rights in the MR. FOAMER Mark that Applicant has been using in commerce in connection with its Online Store Services since August 10, 2012.

In addition, Applicant has used the MR. FOAMER Mark in connection with installation and maintenance of car wash equipment and parts thereof. Applicant has used the MR. FOAMER Mark in connection with its installation and maintenance services since November 2, 2013 (the "Installation Services"; SUF at 19). The use of the MR FOAMER Mark in connection with the advertising of Applicant's Installation Services was made and continues to be made on Applicant's website located at [www.mrfoamer.net](http://www.mrfoamer.net) (SUF at 20-21). As a result, Applicant has trademark rights in the MR. FOAMER Mark that Applicant has been using in commerce in connection with the advertising of its services, namely, the Installation Services since November 2, 2013.

With respect to products, Applicant has not used the MR. FOAMER Mark in commerce for the products listed in the '666 Application. As of today, Applicant still does not use the MR FOAMER Mark on a product sold by Applicant.

As a consequence, in light of the evidence of record, there is no dispute of material fact that Applicant has used the MR FOAMER in connection with its online retail store services as early as August

10, 2012, that Applicant is the senior user of the MR FOAMER Mark. As such, Applicant's Motion should be granted.

**4. The Motion Should be Granted Because There is no Likelihood of Confusion**

In the Amended Opposition, Opposer alleged that there existed a likelihood of confusion between Opposer's use of the MR FOAMER Mark and Applicant's use of the MR FOAMER Mark (Am. Opp., p. 2, fourth indent). However, this unsupported allegation is contradicted by prior admissions made by Opposer in the Federal Case. In fact, in response to an interrogatory requesting Opposer to identify specific instances of actual confusion from consumers between the Opposer Marks and the Mr. Foamer Marks, Opposer admitted that "the instances of actual confusion with Mr. Foamer are largely anecdotal" (SUF at 34). The instances of confusion are indeed anecdotal for the simple reason that there cannot be any confusion between Applicant's use of the MR. FOAMER Mark to refer to its services and Opposer's use of the MR FOAMER term to refer to a cartoon character.

Even though the marks are similar, Opposer's use of the MR FOAMER term does not refer to the name of a service offered by Opposer. Therefore, it is impossible to compare the similarities between the services (or the channels of trade) offered by Applicant (online retail store and installation services) with the non-trademark use of the MR FOAMER term by Opposer on a Christmas card. Here, there can be no confusion because Opposer never used the MR. FOAMER Mark in commerce in connection with the sale of a product or service. Similarly, because there is no trademark use of the MR. FOAMER Mark by Opposer, there can be no consumer confusion between the source of the services of Applicant and the source of the services of Opposer as Opposer offers no services under the MR. FOAMER Mark.

As a result, there is no dispute of material fact that there is no likelihood of confusion possible between Opposer's non trademark usage of the MR FOAMER Term and Applicant's use of the MR. FOAMER Mark in commerce to refer to its services.

**5) The Motion Should be Granted Because Applicant Did not Commit Fraud**

Per the Board's order of April 3, 2015 on the Motion to Dismiss, the Board found that "the amended notice of opposition is legally sufficient as to ... [the] claim of fraud based on Applicant's

asserted failure to use the mark with the listed services at the time the application was filed.” (Order on the Motion to Dismiss, pp. 7-8). The Board noted that “the application was filed on the basis of Applicant’s bona fide intent to use the mark on the goods, and thus there is no need for the mark to have been used on the goods at the time the application was filed.” (Order on the Motion to Dismiss, p. 8, footnote 7). With respect to the additional fraud allegations made by Applicant in the Amended Opposition, these claims were dismissed by the Board<sup>6</sup>.

Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with his application. *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 48 (Fed. Cir. 1986). Each class of goods or services in a multiple class application or registration must be considered separately when reviewing the issue of fraud, and judgment on the ground of fraud as to one class does not in itself require cancellation of all classes in a registration. *G&W Laboratories, Inc. v. G W Pharma Limited*, 89 U.S.P.Q.2d 1571 (TTAB 2009). To establish fraud, the moving party must prove that the applicant knowingly, with the intent to deceive the USPTO, made a material misrepresentation that it was using the mark in commerce on the identified services or goods at the time it filed the statement of use, when no such use had been made. *Petroleos Mexicanos v. Intermix SA*, 97 USPQ2d 1403, 1408 (TTAB 2010). The standard for finding intent to deceive is stricter than the standard for negligence or gross negligence, and evidence of deceptive intent must be clear and convincing. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009).

In the Amended Notice of Opposition, Opposer claims that, in a prior litigation, Applicant alleged that the MR. FOAMER Mark had never been used by Applicant in connection with the products or services of Applicant’s company (Am. Opp. p. 9 at 24). In support of its allegation, Opposer relies upon an affidavit of McClimond, the president of Applicant, in which McClimond stated that Applicant had not used the MR. FOAMER Mark in connection with the sale of a *product* (Am. Opp. p. 9 at 25) (emphasis added). Here, Opposer did not seek leave to use the affidavit of McClimond (which comes from a

---

<sup>6</sup> Even though the Board granted leave to amend to Opposer, Opposer failed to amend its Amended Opposition.

separate proceeding). Notwithstanding, Opposer is plainly seeking to confuse the Board and play with words. Applicant's prior statements in the affidavit filed in the Federal Case were clear: Applicant had not used the MR. FOAMER mark in connection with the sale of products, i.e. Applicant never sold products bearing the MR. FOAMER Mark. Applicant never said that Applicant did not use the MR. FOAMER Mark in connection with the offering and rendering of services.

Applicant's prior statements that Applicant never used the MR. FOAMER Mark in connection with products are *consistent* with the contents of the '666 Application where Applicant applied for the MR. FOAMER Mark as follows:

- Class 003 for "car wash cleaning and polishing preparations" filed on an intent-to-use basis;
- Class 035 for "online retail store services featuring car wash equipment and parts thereof" filed on a use-basis with a date of first use of August 10, 2012;
- Class 037 for "installation and maintenance of car wash equipment and parts thereof" filed on a use-basis with a date of first use of November 2, 2013 (Filing Receipt of the '666 Application attached as Comp. Exh. 4).

Therefore, Opposer's allegation that Applicant denied using the MR FOAMER Mark in commerce in connection with the offering of services is unsupported by evidence of record. In fact, Opposer cannot establish that Applicant knowingly, with the intent to deceive the USPTO, made a material misrepresentation that it was using the MR. FOAMER mark in commerce on the identified services at the time it filed the statement of use, when no such use had been made. *Petroleos Mexicanos v. Intermix SA*, 97 USPQ2d 1403, 1408 (TTAB 2010). Based on the evidence of record, Opposer cannot demonstrate that Applicant did not use the services listed in the '666 Application at the time the '666 Application was filed.

As a result, there is no dispute of material fact that Applicant did not commit fraud when Applicant filed the '666 Application. Applicant is entitled to judgment as a matter of law on the fraud claim.

WHEREFORE, Applicant respectfully requests that the Motion be granted by the Board in its entirety and that the Board enters summary judgment in favor of Applicant.

Dated: April 7, 2016

Respectfully submitted,  
/s/ Isabelle Jung  
Isabelle Jung  
[ijung@crgolaw.com](mailto:ijung@crgolaw.com)  
CRGO Law  
7900 Glades Road, Suite 520  
Boca Raton, FL 33434  
Tel. 561-922-3845  
Fax. 561-244-1062

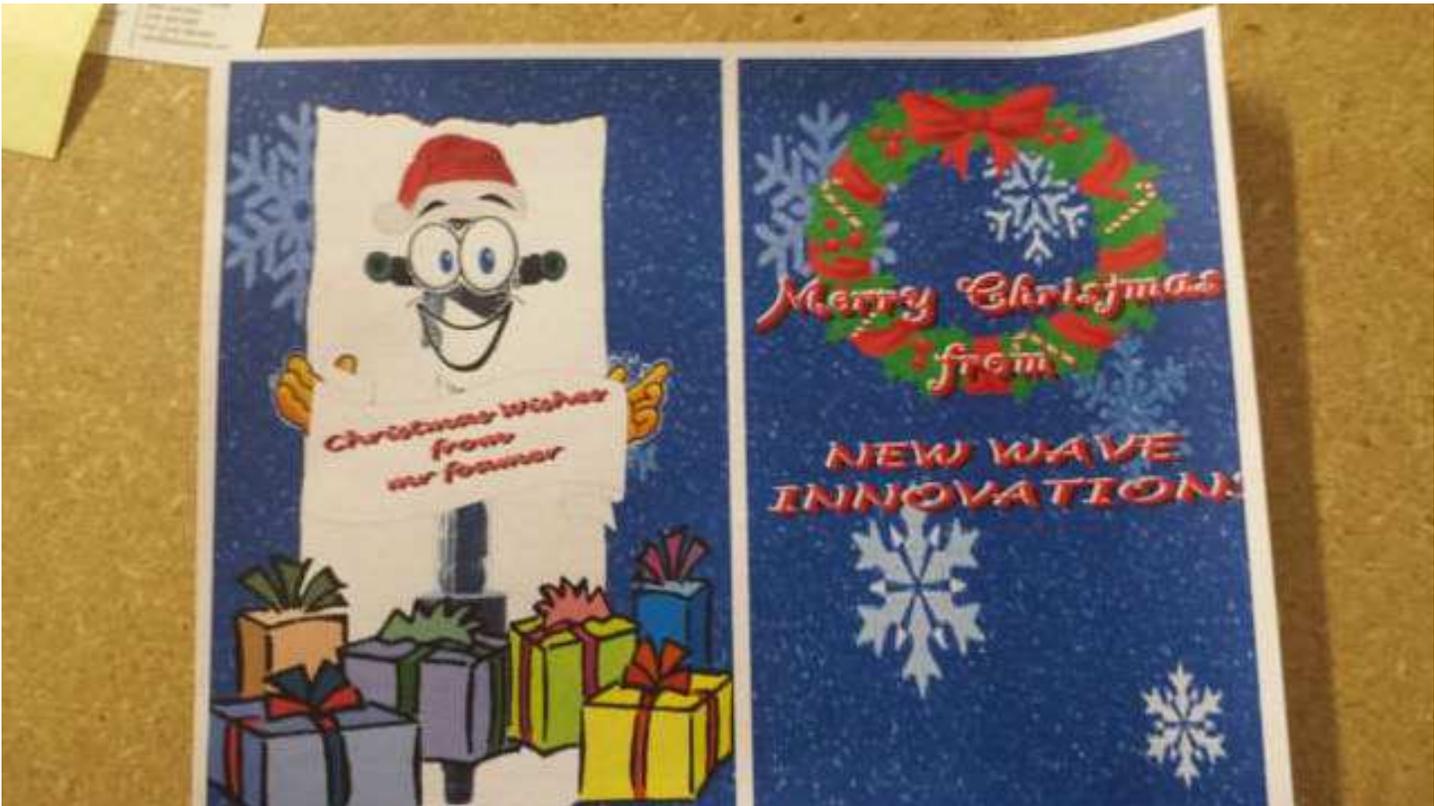
**CERTIFICATE OF SERVICE**

I hereby certify that this Motion for Summary Judgment is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below. I hereby further certify that on the date indicated below true and complete copy of this Motion for Summary Judgment has been served on opposing counsel listed below by first-class mail to the attorney of record for Opposer at the address listed below:

John H. Faro  
Faro & Associates  
1395 Brickell Avenue, Suite 800  
Miami, FL 33131

/s/ Isabelle Jung  
Isabelle Jung  
April 7, 2016

**EXHIBIT 1**  
**2011 Christmas Card**



**COMPOSITE EXHIBIT 2**

**86304665 Application**

## Trademark/Service Mark Application, Principal Register

Serial Number: 86304665

Filing Date: 06/09/2014

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	86304665
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="#">MR. FOAMER</a>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	MR. FOAMER
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	NEW WAVE INNOVATIONS, INC
<b>INTERNAL ADDRESS</b>	C/O FARO & ASSOCIATES
<b>*STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>*CITY</b>	MIAMI
<b>*STATE</b> (Required for U.S. applicants)	Florida
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com
<b>WEBSITE ADDRESS</b>	www.Faro-Law.com
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	corporation
<b>STATE/COUNTRY OF INCORPORATION</b>	Florida
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	035
<b>*IDENTIFICATION</b>	Online retail store services featuring car wash equipment and parts thereof.
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 12/15/2011

<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 12/15/2011
<b>SPECIMEN FILE NAME(S)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\046\86304665\xml1\ APP0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	Christmas Card With Company Mascot - Cartoon Character Corresponding to Product Configuration With Christmas Holiday Garb - Discount coupon included in card for New Wave Innovation, Inc. products
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	JOHN H. FARO, ESQ
<b>FIRM NAME</b>	FARO & ASSOCIATES
<b>STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>CITY</b>	MIAMI
<b>STATE</b>	Florida
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	JOHN H. FARO, ESQ
<b>FIRM NAME</b>	FARO & ASSOCIATES
<b>STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>CITY</b>	MIAMI
<b>STATE</b>	Florida
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com;Johnf75712@aol.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/JOHN H. FARO/
<b>SIGNATORY'S NAME</b>	JOHN H. FARO

<b>SIGNATORY'S POSITION</b>	ATTORNEY - FLORIDA BAR MEMBER
<b>DATE SIGNED</b>	06/09/2014

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## Trademark/Service Mark Application, Principal Register

**Serial Number: 86304665**

**Filing Date: 06/09/2014**

### To the Commissioner for Trademarks:

**MARK:** MR. FOAMER (Standard Characters, see [mark](#))

The literal element of the mark consists of MR. FOAMER.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, NEW WAVE INNOVATIONS, INC, a corporation of Florida, having an address of  
C/O FARO & ASSOCIATES,  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: Online retail store services featuring car wash equipment and parts thereof.

In International Class 035, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 12/15/2011, and first used in commerce at least as early as 12/15/2011, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Christmas Card With Company Mascot - Cartoon Character Corresponding to Product Configuration With Christmas Holiday Garb - Discount coupon included in card for New Wave Innovation, Inc. products.

[Specimen File1](#)

For informational purposes only, applicant's website address is: [www.Faro-Law.com](http://www.Faro-Law.com)

The applicant's current Attorney Information:

JOHN H. FARO, ESQ of FARO & ASSOCIATES  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
United States

The applicant's current Correspondence Information:

JOHN H. FARO, ESQ  
FARO & ASSOCIATES  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
305-761-6921(phone)  
305-726-0029(fax)  
[Johnf75712@aol.com](mailto:Johnf75712@aol.com);[Johnf75712@aol.com](mailto:Johnf75712@aol.com) (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an

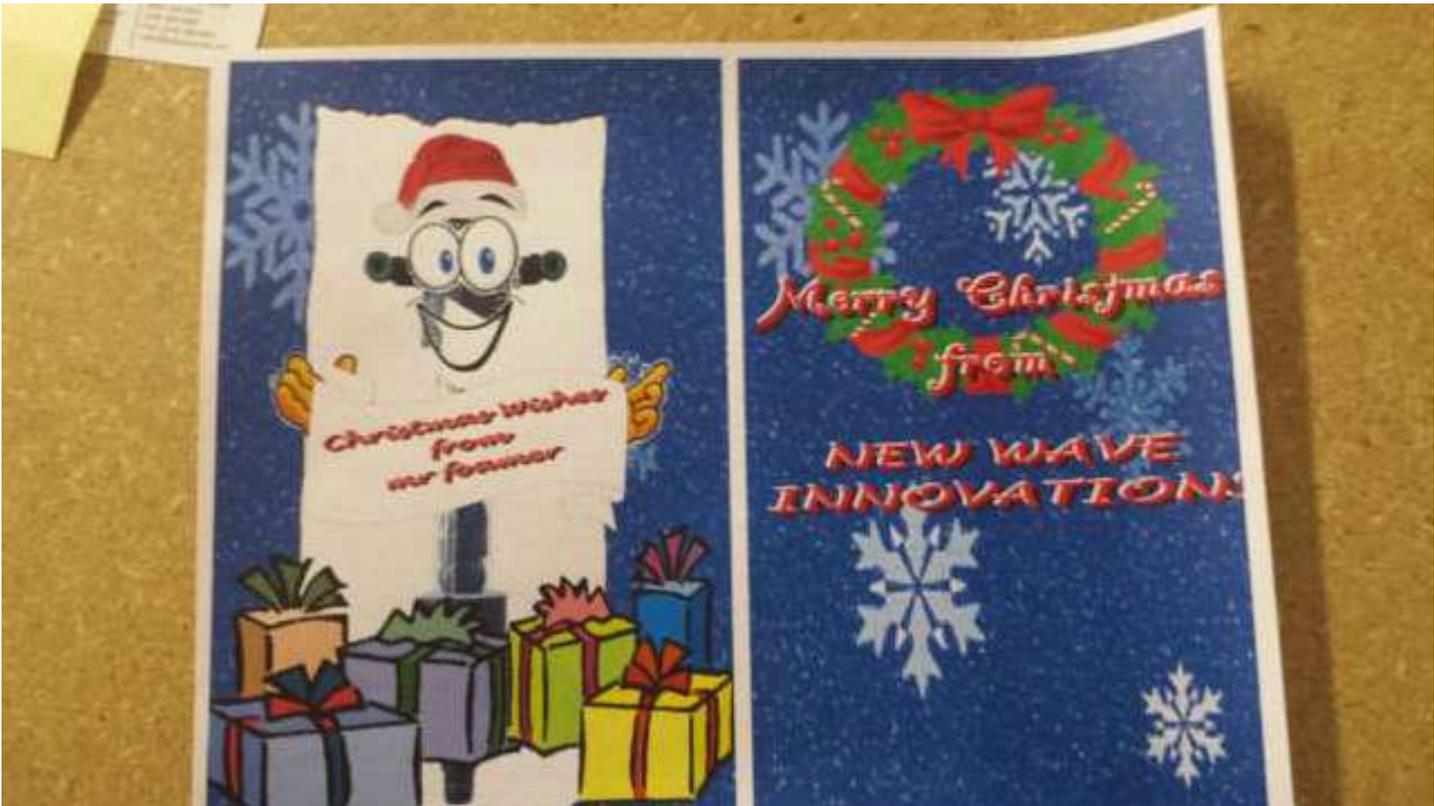
application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

**Declaration Signature**

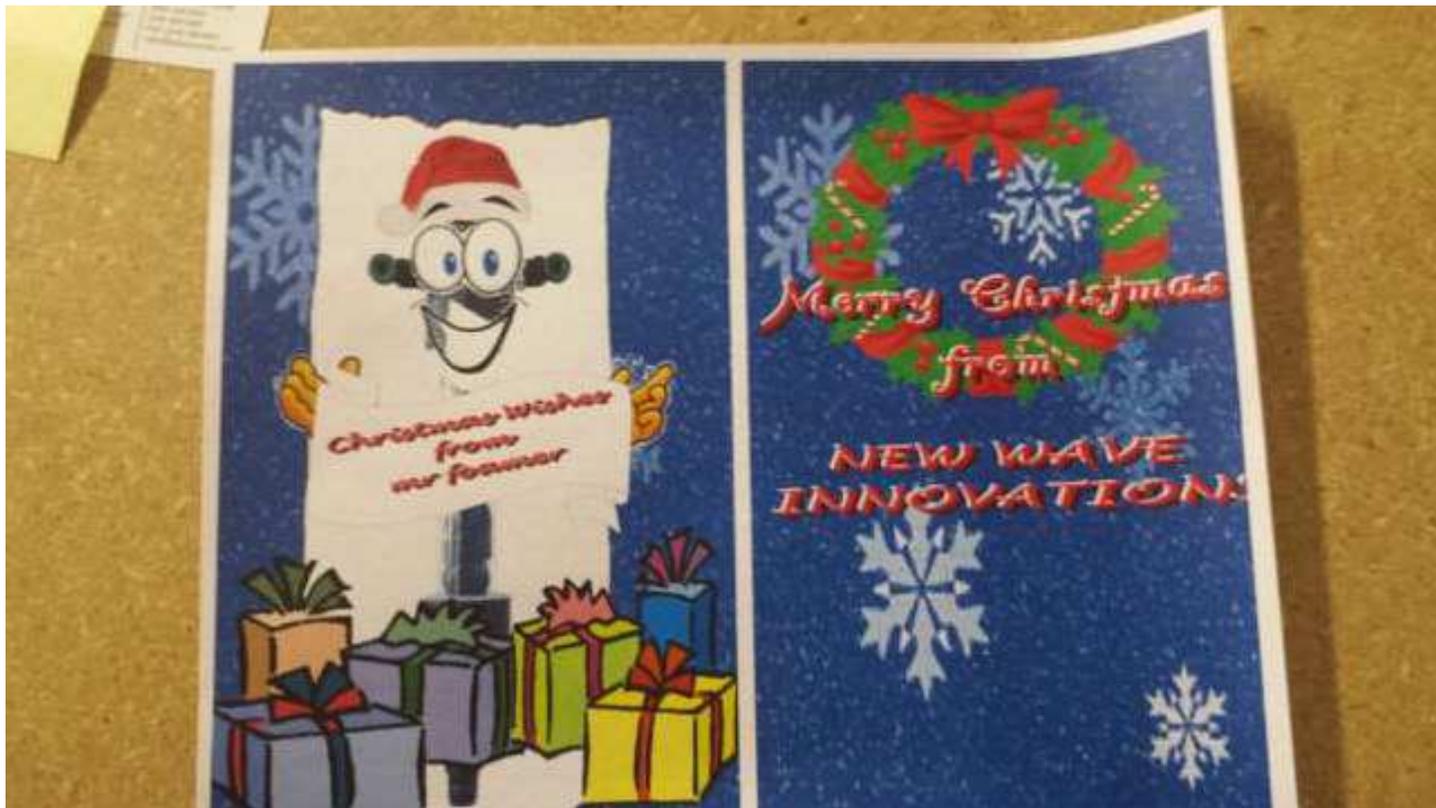
Signature: /JOHN H. FARO/ Date: 06/09/2014  
Signatory's Name: JOHN H. FARO  
Signatory's Position: ATTORNEY - FLORIDA BAR MEMBER  
RAM Sale Number: 86304665  
RAM Accounting Date: 06/10/2014

Serial Number: 86304665  
Internet Transmission Date: Mon Jun 09 19:42:26 EDT 2014  
TEAS Stamp: USPTO/BAS-XX.XXX.XX.XXX-2014060919422655  
5768-86304665-5004fa42bd0fc25a1afa6f07b2  
886a01d23ed627977f15bf9a6b579677f6e65013  
-CC-6129-20140609191724805618

**MR. FOAMER**



**MR. FOAMER**



**COMPOSITE EXHIBIT 3**

Excerpted Pages from the Hearing Transcript of Opposer's Motion  
for a Preliminary Injunction of October 29, 2013

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 MIAMI DIVISION  
4 CASE NO. 13-22541-CIVIL-COOKE

4 NEW WAVE INNOVATIONS, INC., Miami, Florida  
5 Plaintiff, October 29, 2013  
6 vs. 10:18 a.m. to 4:43 p.m.  
7 JAMES McCLIMOND,  
8 MR. FOAMER, INC., and  
9 CAR WASH EXPERTS, INC.,  
10 Defendants. Pages 1 to 286

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11 MOTION FOR PRELIMINARY INJUNCTION  
12 FOR TRADEMARK AND TRADE DRESS INFRINGEMENT  
13 BEFORE THE HONORABLE WILLIAM C. TURNOFF,  
14 UNITED STATES MAGISTRATE JUDGE

14 APPEARANCES:

15 FOR THE PLAINTIFF: JOHN H. FARO, ESQ.  
16 FARO & ASSOCIATES  
17 Post Office Box 490014  
18 Key Biscayne, Florida 33149

19 FOR THE DEFENDANTS: ADAM PALMER, ESQ.  
20 SCHOEPPPL & BURKE  
21 4651 North Federal Highway  
22 Boca Raton, Florida 33431  
23 -and-  
24 STEVEN GREENBERG, ESQ., and  
25 ISABELLE JUNG, ESQ.  
CAREY, RODRIGUEZ, GREENBERG,  
O'KEEFE, LLP  
7900 Glades Road  
Suite 520  
Boca Raton, Florida 33434

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REPORTED BY: LISA EDWARDS, RDR, CRR  
Official Court Reporter  
400 North Miami Avenue  
Twelfth Floor  
Miami, Florida 33128  
(305) 523-5499

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I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Red.</u>
<u>WITNESSES FOR THE PLAINTIFF</u>			
Michael James Ross	38	76	
Timothy Sean Reilly	121	134	
Courtney Chenoweth	141	143	155
<u>WITNESSES FOR THE DEFENDANTS</u>			
James McClimond	161	190	227

PAGE

EXHIBITS RECEIVED IN EVIDENCE

Plaintiff's Exhibit No. 16			239
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1 abandonment of the mark. In this case --

2 THE COURT: Cause the what of the mark?

3 MR. FARO: I'm sorry? Mr. Foamer.

4 THE COURT: To cause the what of the mark?

5 MR. FARO: Abandonment of the mark.

6 THE COURT: Abandonment.

7 MR. FARO: That's correct.

8 There's no evidence and there's no -- nothing that can  
9 be pointed to to show abandonment of the mark. In fact, there  
10 was an effort made by my client to informally resolve the use  
11 of the Mr. Foamer mark and the confusingly similar trade dress,  
12 which was ineffective, thus lawsuit.

13 Mr. Ross will testify as to his concerns and why he did  
14 that.

15 He's going to resume the use of the Mr. Foamer mark for  
16 this holiday season and continue using it in some fashion as to  
17 hopefully avoid any overlap or infringement -- confusion,  
18 rather, with respect to Mr. Foamer, Inc.

19 Presumably, if we can get an injunction, then that  
20 won't be a problem.

21 THE COURT: Let me ask you a question. Nobody's to  
22 read anything into my questions, comments or poor attempts at  
23 humor.

24 Has your client at any time through today used the  
25 title Mr. Foamer?

1 MR. FARO: Not other than in the Christmas card, sir.

2 THE COURT: Only the Christmas card.

3 MR. FARO: That's correct.

4 THE COURT: But what he intends to do is start using  
5 the name Mr. Foamer. Right?

6 MR. FARO: That's correct.

7 He's going to start -- he's going to resume his use  
8 particularly in the holiday season as --

9 THE COURT: Resume his use on products that he  
10 presently manufactures and/or distributes?

11 MR. FARO: It's a service mark. It's not a trademark.  
12 So it is as to identify his company as Mr. Foamer, an  
13 authoritative source of car wash products.

14 THE COURT: Right now the company is known as what?

15 MR. FARO: New Wave Innovations, Inc.

16 THE COURT: New Wave Innovations, Inc.

17 And that's how he markets his products. Right?

18 MR. FARO: That's correct.

19 THE COURT: Okay. And so he wants to start using  
20 Mr. Foamer now?

21 MR. FARO: He wants to resume it. That's correct.

22 THE COURT: Resume what he used in a Christmas card?

23 MR. FARO: That's correct.

24 THE COURT: Okay. Go ahead.

25 MR. FARO: The extent of use has been challenged. The

1 Defendants, did you have any concerns and express those  
2 concerns to anybody else regarding your continued use of the  
3 Mr. Foamer service mark as depicted in your Christmas card?

4 A. Can you elaborate?

5 Q. Let me restate that.

6 A. Yes.

7 Q. Once you became aware that there were -- there was another  
8 company using Mr. Foamer and you had some experience with  
9 customers calling you and complaining about Mr. Foamer  
10 products, did you have any concerns regarding your continued  
11 use of the Mr. Foamer service mark?

12 A. Yes.

13 Q. Could you explain those, please.

14 A. With the confusion that was starting to present itself, I  
15 suspended the use of the Mr. Foamer Christmas card or any other  
16 form of our generator holiday special until the matter could be  
17 resolved.

18 THE COURT: Well, you sent out the Christmas card,  
19 Mr. Foamer. Right? This one. Right?

20 THE WITNESS: Yes.

21 THE COURT: What else -- how else did you use the name?

22 THE WITNESS: We didn't. We were planning on using it  
23 again the following Christmas.

24 THE COURT: So there was no other use, right -- as we  
25 speak --

1 THE WITNESS: Correct.

2 THE COURT: -- of Mr. Foamer, right, other than this  
3 card? Right?

4 THE WITNESS: Correct.

5 THE COURT: Did you get any calls from anybody saying,  
6 "I got your Christmas card. I got this defective product," you  
7 know? Any calls like -- directly or indirectly with reference  
8 to the Christmas card?

9 THE WITNESS: If they had reference to it, they did not  
10 tell me. But that doesn't mean that they did not.

11 THE COURT: Did anybody tell you any other sources,  
12 other than YouTube, that they were connecting you with the  
13 defective product or unsatisfactory product?

14 THE WITNESS: I think that would be best answered by  
15 Courtney, who works in the field.

16 THE COURT: By who?

17 THE WITNESS: By --

18 MR. FARO: We have another declarant here.

19 THE WITNESS: -- another witness.

20 THE COURT: What's your position with the company?

21 THE WITNESS: CEO.

22 MR. FARO: He's -- he distributes the products through  
23 distributors. I think you asked him a question regarding the  
24 perception of the --

25 THE COURT: You're the capo de capo. Right? You're

1 Q. Now, Mr. Foamer, if I may -- Exhibit No. 1 is the ad for  
2 Mr. Foamer? That's ad where -- I'm sorry.

3 This is the Christmas card that you used. Correct?

4 A. Yes.

5 Q. And there's no offer to sell anything in this, is there?

6 A. Yeah. On the inside, actually, there was. We actually did  
7 a coupon.

8 Q. There's no offer to sell in this exhibit, is there, sir?

9 A. No.

10 Q. There's no price in this exhibit, is there?

11 A. Anybody who got that had already purchased from us. So  
12 they were aware of who it's coming from and our products and  
13 what we sell.

14 Q. Okay. So they were -- they would be aware, for instance,  
15 that you used the name New Wave Innovations --

16 A. Yes.

17 Q. -- on the Christmas card?

18 A. Yes.

19 Q. And the Mr. Foamer is not the product, is it, sir? It's  
20 the cartoon character that's around the product. Correct?

21 A. The Mr. Foamer would be the actual name -- the fictional  
22 name of that character being represented.

23 Q. Thank you.

24 So the fictional character is not a product, is it?

25 A. It is a representation of our product.

1 Q. I see.

2 The fictional character was not anything that you ever sold  
3 in commerce, is it?

4 A. What is Santa Claus?

5 Q. You don't have any --

6 THE COURT: Well, that's not before me and I do not  
7 have jurisdiction over that.

8 MR. PALMER: Pardon me, your Honor?

9 THE COURT: You know, I was thinking, looking at this  
10 cartoon, that would be -- and I'm the first user here -- that  
11 would certainly get people's attention and be good advertising  
12 for car washes, would it not, if you put this cartoon face on  
13 these devices?

14 THE WITNESS: It could be. We have actually had the  
15 notion of getting an inflatable outfit to wear at trade shows.

16 THE COURT: I'm not talking about trade shows. I don't  
17 go to a trade show to get my car washed.

18 THE WITNESS: You mean like out on the street corner  
19 dancing?

20 THE COURT: No. I mean, in the car wash, instead of  
21 having a piece of pipe and a hose, you'd have one of these  
22 things with a funny face on it.

23 THE WITNESS: I will look into that.

24 THE COURT: Or have something like -- have like a hose  
25 and a face that says -- and a flashing sign that says "This

1 does nothing."

2 I'm just throwing that out there on a public record so  
3 I have first usage of this.

4 MR. FARO: If you want to copyright that, sir, you  
5 could receive a royalty.

6 THE COURT: I could not afford you, Mr. Faro. But I'm  
7 putting it on the record here at the public expense. Because,  
8 actually, if you think about it, all car washes look the same.

9 But if you had something like this that lit up on one  
10 of these tubes there and maybe actually sprayed something out  
11 of it, that would be interesting, would it not? That would get  
12 somebody's attention.

13 THE WITNESS: Yes.

14 THE COURT: But the point that you're making, sir, is  
15 that this is not what the product looked like. Do you follow  
16 me? This is just a cartoon, but with a nozzle that's coming  
17 out of the eyes -- or the side of the eyes. Right?

18 MR. PALMER: Well, the cartoon, your Honor, is a  
19 fictional character that's been placed, in essence, on top of  
20 the foamer.

21 THE COURT: Okay.

22 THE WITNESS: Would that not be like the Michelin Man  
23 that's made of tires -- Michelin tires with eyes added to it?

24 BY MR. PALMER:

25 Q. Sir, you never registered a trademark. Correct?

1 A. No.

2 Q. And my point was -- and I just wanted a quick answer -- you  
3 never sold anything called -- you never had a product that was  
4 called Mr. Foamer?

5 A. Neither did Mr. Foamer.

6 Q. Is that a "no"?

7 A. That is a "no." But it's to my understanding that I have  
8 two years to register the trademark from my use of it.

9 Q. And Mr. Foamer doesn't have a product called a Mr. Foamer.  
10 Correct?

11 A. No.

12 Q. Mr. Foamer simply is the name of a company, not a product.  
13 Correct?

14 A. Correct.

15 THE COURT: Does Mr. Foamer sell Twist 'n Kleen?

16 MR. PALMER: Yes, your Honor.

17 THE COURT: And that's what -- his product is Twist 'n  
18 Kleen?

19 MR. PALMER: Yes.

20 THE COURT: But the company is Mr. Foamer?

21 MR. PALMER: Yes, sir.

22 THE COURT: Got you.

23 I'm allowed to think out loud and nobody's to read  
24 anything into my thoughts or questions or anything else.

25 MR. PALMER: Thank you, your Honor.

1 THE COURT: Annoying.

2 THE WITNESS: -- annoying at the same time. But I like  
3 it. It fits us. It fits what we're about.

4 THE COURT: Did you get their Christmas card?

5 THE WITNESS: I did not.

6 THE COURT: Are you familiar with their Christmas card?

7 THE WITNESS: The first time I saw the card was when my  
8 attorney gave me the affidavit and the filing.

9 THE COURT: So you're swearing under penalty of perjury  
10 that you did not get the name Mr. Foamer from a Christmas card  
11 or from any other source, directly or indirectly, to your  
12 knowledge, related to the Plaintiff?

13 THE WITNESS: Yes, your Honor. Absolutely.

14 BY MR. PALMER:

15 Q. Do you have an understanding of roughly how many commercial  
16 car washes there are in this country?

17 A. As far as I understand, your probably around 50,000,  
18 somewhere in that ballpark, when you combine touch-free --

19 THE COURT: That's just in Dade County. He's talking  
20 about the country.

21 THE WITNESS: I believe it's around 50,000. But that  
22 number could be even higher. You know, there's self-serves.  
23 There's full-serves. There's rollovers.

24 BY MR. PALMER:

25 Q. So how much of that market do you control?

**COMPOSITE EXHIBIT 4**

86108666 Application

## Trademark/Service Mark Application, Principal Register

**Serial Number: 86108666**  
**Filing Date: 11/02/2013**

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	86108666
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="#">MR. FOAMER</a>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	MR. FOAMER
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	Mr. Foamer, Inc.
<b>*STREET</b>	164 Barbados Drive
<b>*CITY</b>	Jupiter
<b>*STATE (Required for U.S. applicants)</b>	Florida
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE (Required for U.S. applicants only)</b>	33458
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	corporation
<b>STATE/COUNTRY OF INCORPORATION</b>	Florida
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	003
<b>*IDENTIFICATION</b>	car wash cleaning and polishing preparations
<b>FILING BASIS</b>	SECTION 1(b)
<b>INTERNATIONAL CLASS</b>	035
<b>*IDENTIFICATION</b>	sale of car wash equipment and parts thereof including sale of equipment of others
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 08/10/2012
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 08/10/2012
<b>SPECIMEN FILE NAME(S)</b>	

<b>ORIGINAL PDF FILE</b>	<a href="#">SPE0-1-5015421256-113543527 . Class035.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\861\086\86108666\xml1\APP0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	brochure sent to customers showing use of the mark used in connection with the services
<b>INTERNATIONAL CLASS</b>	037
<b>*IDENTIFICATION</b>	installation and maintenance of car wash equipment and parts thereof
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 11/02/2013
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 11/02/2013
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">SPE0-5015421256-113543527 . MrFoamerSpecimen.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\861\086\86108666\xml1\APP0004.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	excerpts from the applicant's website showing use of the mark in connection with the services
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Isabelle Jung
<b>ATTORNEY DOCKET NUMBER</b>	7305-004T
<b>FIRM NAME</b>	Carey Rodriguez Greenberg & O'Keefe LLP
<b>INTERNAL ADDRESS</b>	Suite 520
<b>STREET</b>	7900 Glades Rd
<b>CITY</b>	Boca Raton
<b>STATE</b>	Florida
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	33434
<b>PHONE</b>	5619223845
<b>EMAIL ADDRESS</b>	pto@crgolaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Steven Greenberg
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Isabelle Jung
<b>FIRM NAME</b>	Carey Rodriguez Greenberg & O'Keefe LLP
<b>INTERNAL ADDRESS</b>	Suite 520
<b>STREET</b>	7900 Glades Rd
<b>CITY</b>	Boca Raton
<b>STATE</b>	Florida
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	33434
<b>PHONE</b>	5619223845

<b>EMAIL ADDRESS</b>	pto@crgolaw.com;ijung@crgolaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	3
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	975
<b>*TOTAL FEE PAID</b>	975
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/Isabelle Jung/
<b>SIGNATORY'S NAME</b>	Isabelle Jung
<b>SIGNATORY'S POSITION</b>	Attorney of record, New York bar member
<b>DATE SIGNED</b>	11/02/2013

---

## Trademark/Service Mark Application, Principal Register

**Serial Number: 86108666**

**Filing Date: 11/02/2013**

### To the Commissioner for Trademarks:

**MARK:** MR. FOAMER (Standard Characters, see [mark](#))

The literal element of the mark consists of MR. FOAMER.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Mr. Foamer, Inc., a corporation of Florida, having an address of  
164 Barbados Drive  
Jupiter, Florida 33458  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 003: car wash cleaning and polishing preparations

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 035: sale of car wash equipment and parts thereof including sale of equipment of others

In International Class 035, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 08/10/2012, and first used in commerce at least as early as 08/10/2012, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) brochure sent to customers showing use of the mark used in connection with the services.

**Original PDF file:**

[SPE0-1-5015421256-113543527\\_.\\_Class035.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

International Class 037: installation and maintenance of car wash equipment and parts thereof

In International Class 037, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 11/02/2013, and first used in commerce at least as early as 11/02/2013, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) excerpts from the applicant's website showing use of the mark in connection with the services.

**Original PDF file:**

[SPE0-5015421256-113543527\\_.\\_MrFoamerSpecimen.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

The applicant's current Attorney Information:

Isabelle Jung and Steven Greenberg of Carey Rodriguez Greenberg & O'Keefe LLP

Suite 520  
7900 Glades Rd  
Boca Raton, Florida 33434  
United States

The attorney docket/reference number is 7305-004T.

The applicant's current Correspondence Information:

Isabelle Jung  
Carey Rodriguez Greenberg & O'Keefe LLP  
Suite 520  
7900 Glades Rd  
Boca Raton, Florida 33434  
5619223845(phone)  
pto@crgolaw.com;ijung@crgolaw.com (authorized)

A fee payment in the amount of \$975 has been submitted with the application, representing payment for 3 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

**Declaration Signature**

Signature: /Isabelle Jung/ Date: 11/02/2013  
Signatory's Name: Isabelle Jung  
Signatory's Position: Attorney of record, New York bar member  
RAM Sale Number: 86108666  
RAM Accounting Date: 11/04/2013

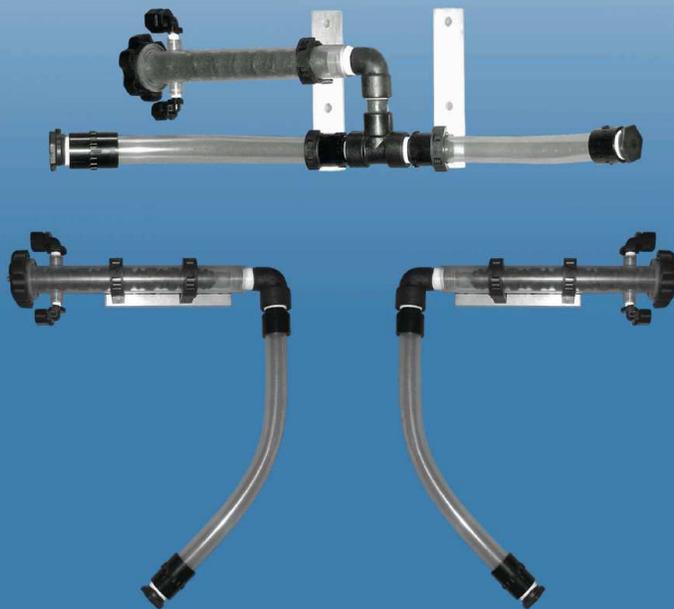
Serial Number: 86108666  
Internet Transmission Date: Sat Nov 02 12:25:38 EDT 2013  
TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XX-2013110212253890  
9533-86108666-500c80bbcd4532f9a0c112ac44  
d5bab254d75a3fe53edc84ec958d2e786b8496-C  
C-7080-20131102113543527066

**MR. FOAMER**

# MR. FOAMER

Introducing  
the New

wist 'n Kleen  
Generator



  
\$99.99

- Saves \$\$\$\$
- One Twist to Clean
- Generates Thick Foam
- Clear One Piece Body
- Fast Installation

WIST n' SAVE Hybrid TRI COLOR  
— SYSTEM —

For Information Contact Tim Smith • 1-888-905-6600  
[www.mrfoamer.com](http://www.mrfoamer.com)

# MRFOAMER.COM

## mr. foamer™ sales and services

- home page
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- product information
- products and photos
- newest installs
- see the difference
- request information
- contact us
- mr. foamer sales & svc

We offer the following services locally throughout Florida and nation wide by appointment:

- Complete design and installation of Mr. Foamer™ equipment.
- 3rd party equipment installation including: Tunnels, Self Serve, Automatic's, and Fleet wash.
- Turn key building and tunnel install's featuring The Tommy building.
- Equipment service and maintenance for all types of wash facilities.

Coming Soon

Mr. Foamer™ Wax's and Soap's specially formulated for the Foaminator™ System and all equipment.

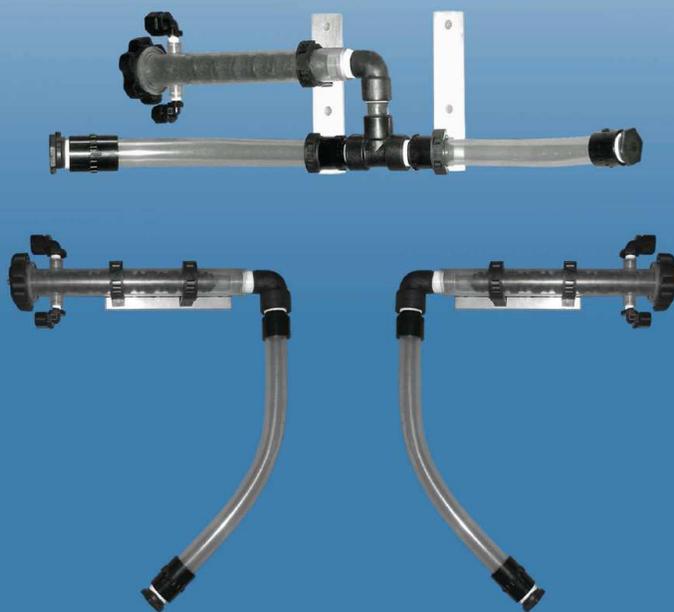
Content copyright 2013. MRFOAMER.COM. All rights reserved.

**MR. FOAMER**

# MR. FOAMER

Introducing  
the New

 Twist 'n Kleen  
Generator



  
\$99.99

- Saves \$\$\$\$
- One Twist to Clean
- Generates Thick Foam
- Clear One Piece Body
- Fast Installation

 WIST n' SAVE Hybrid TRI COLOR  
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[www.mrfoamer.com](http://www.mrfoamer.com)

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- . Turn key building and tunnel install's featuring The Tommy building.
- . Equipment service and maintenance for all types of wash facilities.

Coming Soon

Mr. Foamer™ Wax's and Soap's specially formulated for the Foaminator™ System and all equipment.

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**COMPOSITE EXHIBIT 5**

Specimens of Use Filed in Application 86108666 for the Online Store Services

# MRFOAMER.COM

products and photos

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- products and photos
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- contact us
- mr. foamer sales & svc

**MR. FOAMER**  
Twist 'n Kleen Generator MADE IN THE USA

- Save \$385
- One Twist to Clean
- Cleans in a Minute
- No Disconnecting Hoses
- No Tools Needed to Clean
- Clear One Piece Body
- Works with All Chemicals
- Generates Thick Foam
- All Stainless Steel Internal Hardware
- Fast & Fully Adjustable Installation
- Easy Installation on Any Manufacturer's Equipment
- LIFETIME GUARANTEE on Generator Body\*
- PATENT PENDING

**Twist 'n SAVE Hybrid TRI COLOR SYSTEM**

Side Stick  
Top Stick  
K Nozzle Side Stick  
CTA

\* Excludes Fittings and Insert

For Information Contact

[www.mrfoamer.com](http://www.mrfoamer.com)

Site Back





C.T.A.



Horizontal Mount



Top Stick



K Nozzle Stick



Top K Nozzle Stick



# MRFOAMER.COM

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- . 3rd party equipment installation including: Tunnels, Self Serve, Automatic's, and Fleet wash.
- . Turn key building and tunnel install's featuring The Tommy building.
- . Equipment service and maintenance for all types of wash facilities.

**Coming Soon**

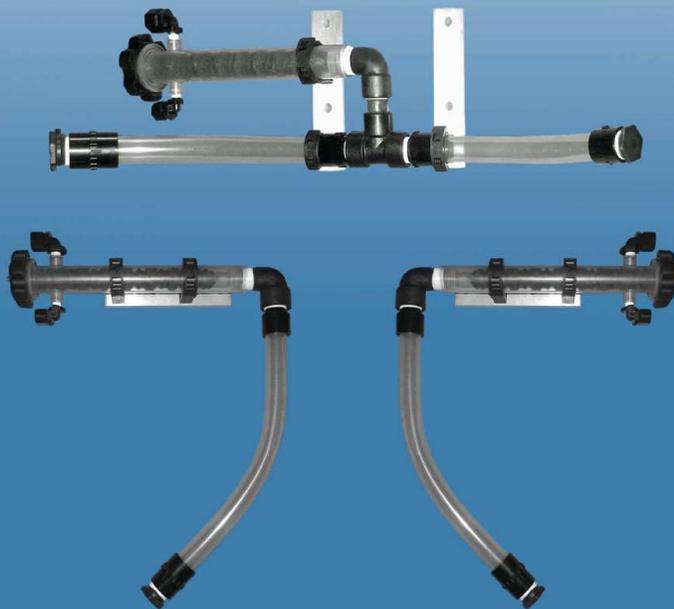
Mr. Foamer™ Wax's and Soap's specially formulated for the Foaminator™ System and all equipment.

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# MR. FOAMER

Introducing  
the New

wist 'n Kleen  
Generator



  
\$99.99

- Saves \$\$\$\$
- One Twist to Clean
- Generates Thick Foam
- Clear One Piece Body
- Fast Installation

WIST n' SAVE Hybrid TRI COLOR  
— SYSTEM —

For Information Contact Tim Smith • 1-888-905-6600  
[www.mrfoamer.com](http://www.mrfoamer.com)

# MRFOAMER.COM

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- youtube channel
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- newest installs
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- mr. foamer sales & svc

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- Turn key building and tunnel install's featuring The Tommy building.
- Equipment service and maintenance for all types of wash facilities.

Coming Soon

Mr. Foamer™ Wax's and Soap's specially formulated for the Foaminator™ System and all equipment.

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**COMPOSITE EXHIBIT 6**

Current Online Store Services of Applicant on Applicant's Website

Home / Product

Grid List

Showing 1-24 of 92 results

Sort By Sort by price: high to low



Multi-Source With Back-Up

0 review(s)

\$5,540.00



FOAMINATOR GRAND ARCH

0 review(s)

\$4,999.99



Multi-Source

0 review(s)

\$4,420.00



MDSA-5/7

0 review(s)

\$3,670.00



MDSA

0 review(s)

\$3,570.00



MD3A-3/5

0 review(s)

\$2,730.00



MD3A

0 review(s)

\$2,640.00



Single Pump

0 review(s)



FOAMINATOR-NON-BACKLIT

0 review(s)

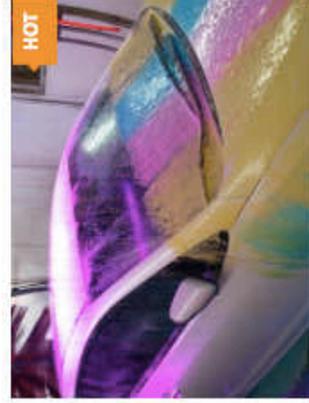
\$1,999.99



Dual Motor Control Unit

0 review(s)

\$1,950.00



Foaminator Triple Fusion

0 review(s)

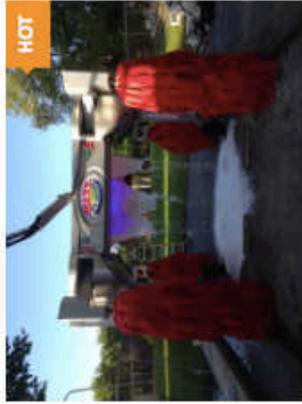
\$1,899.99



Coleman Water Wizard Retrofit Kit

0 review(s)

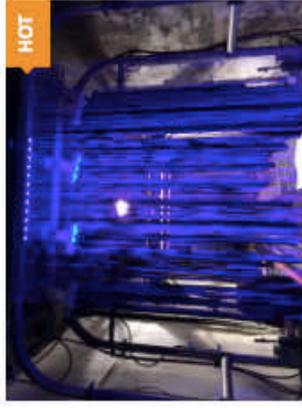
\$1,878.00



FOAMINATOR-INBAY-STANDARD

0 review(s)

\$1,799.99



Foaminator Rain

0 review(s)

\$1,799.99



FOAMINATOR

0 review(s)

\$1,699.99



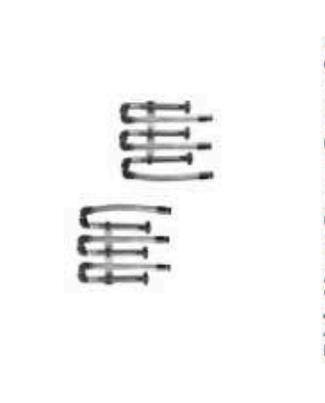
MacNeil Magnum 900 Wheel Blaster No...

0 review(s)

\$1,437.00



Aluminum 3x3 Mounting Arch Powdere...



Triple Mount Banana Foamer Set



FOAMINATOR-INBAY-STANDARD

0 review(s)

NON-ILLUMINATED DIE CUT MENU 4' W x 8' H

\$1,799.99

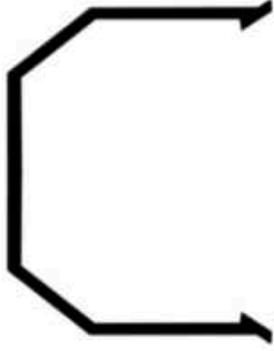


HOT

Foaminator Rain

0 review(s)

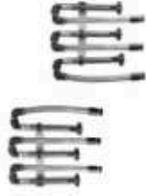
\$1,799.99



FOAMINATOR

0 review(s)

\$1,699.99



MacNeil Magnum 900 Wheel Blaster No...

0 review(s)

\$1,437.00



Aluminum 3x3 Mounting Arch Powdere...

0 review(s)

\$1,299.99

Triple Mount Banana Foamer Set

0 review(s)

\$1,299.99

NON-ILLUMINATED DIE CUT MENU 4' W...

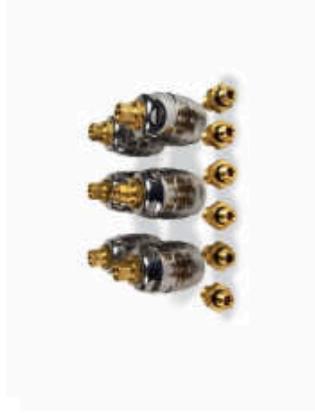
0 review(s)

\$1,399.99

Single Motor Control Unit

0 review(s)

\$1,160.00



Single With Back-Up

0 review(s)

\$1,100.00

Dosatron Pump Station

0 review(s)

\$999.99

MacNeil Magnum 600 Wheel Blaster No...

0 review(s)

\$958.00

Aluminum 3x3 Mounting Arch

0 review(s)

\$899.99

Home / Complete Tunnel Systems / Dosatron Pump Station



## Dosatron Pump Station

Dosatron Pump Station with Stainless Air Manifold-Choice of 110V or 24 V Solenoid & Aluminum Mounting Plate

- Compare
- Add To Wishlist
- Email Your Friend

**\$999.99**

-  +

ADD TO CART

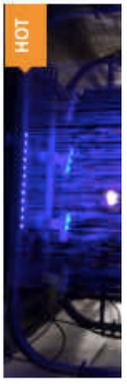
In stock

SKU: DOS-PS  
 Categories: Complete Tunnel Systems, Dosatron Pump Systems

- f
- @
- g+
- in

< Back to Complete Tunnel Systems

### RELATED PRODUCTS



MY CART: \$999.99



Search products...

**MR. FOAMER™**  
Car Wash  
Equipment & SIGNS

HOME ABOUT VIDEO PRODUCTS SHOP BLOG CONTACT

Call us 24/7: (772) 266-8582

## Cart

PRODUCT	PRICE	QUANTITY	TOTAL	
 DOSATRON PUMP STATION	\$999.99	- 1 +	\$999.99	X

CONTINUE SHOPPING

UPDATE CART

### COUPON

Enter your coupon code if you have one.

Coupon code

APPLY COUPON

SUBTOTAL \$999.99

SHIPPING \$35.00

FLORIDA STATE TAX \$60.00

TOTAL \$1,094.99

PROCEED TO CHECKOUT

**COMPOSITE EXHIBIT 7**

Current Advertisement of Installation Services on Applicant's Website

Home / [Installation And Equipment Services](#)





We offer complete equipment installation and service of our products call for more information.

No products were found matching your selection.

# MR. FOAMER™

Car Wash  
Equipment & SIGNS

Search products...



MY CART: \$999.99

HOME

ABOUT

VIDEO

PRODUCTS

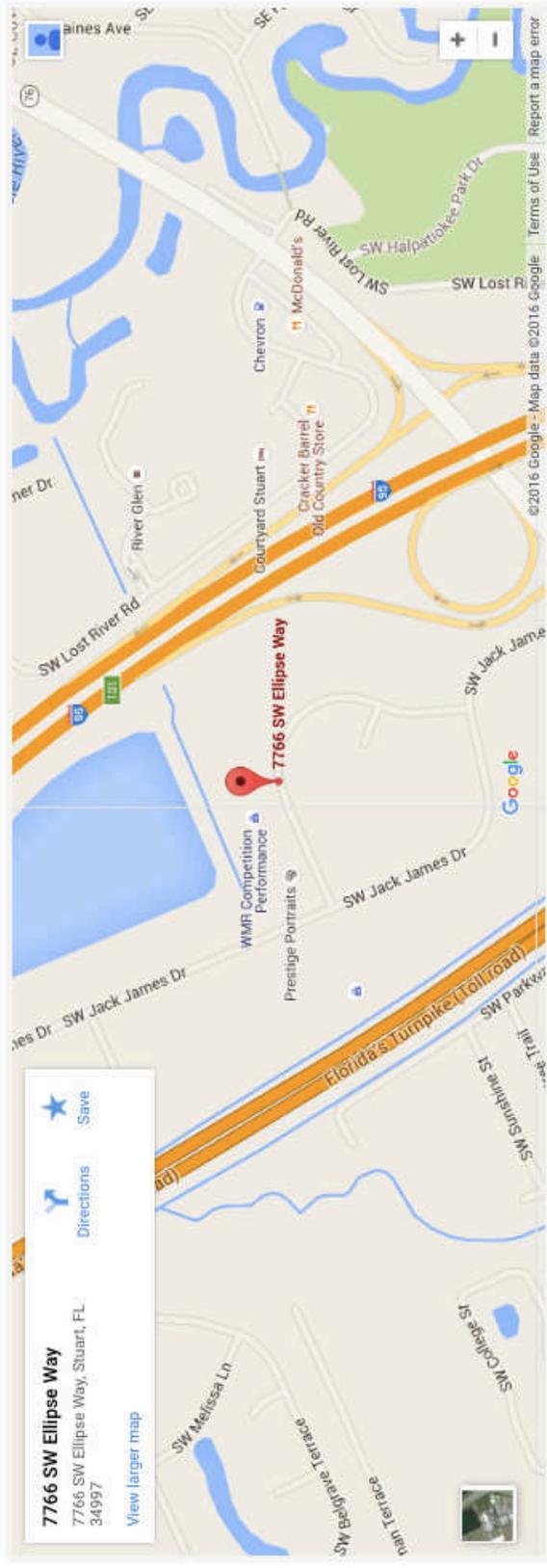
SHOP

BLOG

CONTACT

Call us 24/7: (772) 266-8582

## Contact



Phone: 772-266-8582

Address: 7766 SW Ellipse Way, Stuart, FL 34997

For additional info, please contact us via the form below.

**COMPOSITE EXHIBIT 8**

86303800 Application

## Trademark/Service Mark Application, Principal Register

Serial Number: 86303800

Filing Date: 06/09/2014

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	86303800
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="file:///W:\TICRS\EXPORT16\IMAGEOUT\16\863\038\86303800\xml1\APP0002.JPG">\\TICRS\EXPORT16\IMAGEOUT\16\863\038\86303800\xml1\APP0002.JPG</a>
<b>SPECIAL FORM</b>	YES
<b>USPTO-GENERATED IMAGE</b>	NO
<b>LITERAL ELEMENT</b>	Mr. Foamer cartoon characture in costume
<b>COLOR MARK</b>	NO
<b>*DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of Mr. Foamer cartoon character in seasonal holiday Christmas attire (Santa Claus hat).
<b>PIXEL COUNT ACCEPTABLE</b>	YES
<b>PIXEL COUNT</b>	640 x 828
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	NEW WAVE INNOVATIONS, INC
<b>INTERNAL ADDRESS</b>	C/O FARO & ASSOCIATES
<b>*STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>*CITY</b>	MIAMI
<b>*STATE (Required for U.S. applicants)</b>	Florida
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE (Required for U.S. applicants only)</b>	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com
<b>WEBSITE ADDRESS</b>	www.Faro-Law.com
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	corporation
<b>STATE/COUNTRY OF INCORPORATION</b>	Florida
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	035

<b>*IDENTIFICATION</b>	Online retail store services featuring car wash equipment and parts thereof
<b>FILING BASIS</b>	SECTION 1(a)
<b>SPECIMEN FILE NAME(S)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\038\86303800\xml1\ APP0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	<b>NO DESCRIPTION ENTERED - DESCRIPTION REQUIRED</b>
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>NAME(S), PORTRAITS(S), SIGNATURE(S) OF INDIVIDUAL(S)</b>	The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.
<b>USE OF THE MARK IN ANOTHER FORM</b>	The mark was first used anywhere in a different form other than that sought to be registered at least as early as 12/15/2011, and in commerce at least as early as 12/15/2011.
<b>MISCELLANEOUS STATEMENT</b>	The Mr. Foamer cartoon character is a seasonal or holiday mark. Accordingly, the Mr. Foamer cartoon character is attired in different holiday or seasonal apparel to coincide with a holiday or seasonal event, e.g. thanksgiving, Halloween, etc
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	JOHN H. FARO
<b>FIRM NAME</b>	FARO & ASSOCIATES
<b>STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>CITY</b>	MIAMI
<b>STATE</b>	Florida
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	JOHN H. FARO
<b>FIRM NAME</b>	FARO & ASSOCIATES
<b>STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>CITY</b>	MIAMI
<b>STATE</b>	Florida
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com;johnf75712@gmail.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes

<b>FEE INFORMATION</b>	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
<b>SIGNATURE INFORMATION</b>	
SIGNATURE	/JOHN FARO/
SIGNATORY'S NAME	JOHN H. FARO
SIGNATORY'S POSITION	ATTORNEY OF RECORD
DATE SIGNED	06/09/2014

---

## Trademark/Service Mark Application, Principal Register

**Serial Number: 86303800**

**Filing Date: 06/09/2014**

### To the Commissioner for Trademarks:

**MARK:** Mr. Foamer cartoon characture in costume (stylized and/or with design, see [mark](#))

The literal element of the mark consists of Mr. Foamer cartoon characture in costume.

The applicant is not claiming color as a feature of the mark. The mark consists of Mr. Foamer cartoon character in seasonal holiday Christmas attire (Santa Claus hat).

The applicant, NEW WAVE INNOVATIONS, INC, a corporation of Florida, having an address of

C/O FARO & ASSOCIATES,  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: Online retail store services featuring car wash equipment and parts thereof

In International Class 035, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as \_\_\_\_\_, and first used in commerce at least as early as \_\_\_\_\_, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, .

[Specimen File1](#)

The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

The mark was first used anywhere in a different form other than that sought to be registered at least as early as 12/15/2011, and in commerce at least as early as 12/15/2011.

The Mr. Foamer cartoon character is a seasonal or holiday mark. Accordingly, the Mr. Foamer cartoon character is attired in different holiday or seasonal apparel to coincide with a holiday or seasonal event, e.g. thanksgiving, Halloween, etc

For informational purposes only, applicant's website address is: [www.Faro-Law.com](http://www.Faro-Law.com)

The applicant's current Attorney Information:

JOHN H. FARO of FARO & ASSOCIATES  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
United States

The applicant's current Correspondence Information:

JOHN H. FARO  
FARO & ASSOCIATES  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
305-761-6921(phone)  
305-726-0029(fax)

Johnf75712@aol.com;johnf75712@gmail.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /JOHN FARO/ Date: 06/09/2014  
Signatory's Name: JOHN H. FARO  
Signatory's Position: ATTORNEY OF RECORD  
RAM Sale Number: 86303800  
RAM Accounting Date: 06/09/2014

Serial Number: 86303800  
Internet Transmission Date: Mon Jun 09 11:48:20 EDT 2014  
TEAS Stamp: USPTO/BAS-XX.XXX.XX.XXX-2014060911482056  
8556-86303800-5007e25fd872e365cc31d1570f  
a357529f386e068cd9a9b354b1c49261e3c8840-  
CC-8869-20140609101423603425









**EXHIBIT 9**

Office Action Issued in Application 86303800

**To:** NEW WAVE INNOVATIONS, INC ([Johnf75712@aol.com](mailto:Johnf75712@aol.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86303800 - MR. FOAMER CARTOON CHARACTURE IN - N/A  
**Sent:** 9/23/2014 1:27:59 PM  
**Sent As:** ECOM103@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86303800  MARK: MR. FOAMER CARTOON CHARACTURE IN	<b>*86303800*</b>
<b>CORRESPONDENT ADDRESS:</b> JOHN H. FARO FARO & ASSOCIATES 1395 BRICKELL AVE STE 800 MIAMI, FL 33131-3302	<b>CLICK HERE TO RESPOND TO THIS LETTER:</b> <a href="http://www.uspto.gov/trademarks/teas/response_forms.jsp">http://www.uspto.gov/trademarks/teas/response_forms.jsp</a>  <a href="#">VIEW YOUR APPLICATION FILE</a>
<b>APPLICANT:</b> NEW WAVE INNOVATIONS, INC	
<b>CORRESPONDENT'S REFERENCE/DOCKET NO :</b> N/A <b>CORRESPONDENT E-MAIL ADDRESS:</b> <a href="mailto:Johnf75712@aol.com">Johnf75712@aol.com</a>	

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE: 9/23/2014**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

**SEARCH OF OFFICE'S DATABASE OF MARKS**

The Office records have been searched and there are no similar registered or pending marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

However, applicant must address the following issue(s).

**DESCRIPTION OF MARK INCOMPLETE**

The description of the mark is accurate but incomplete because it does not describe all the significant aspects of the applied-for mark. Applications for marks not in standard characters must include an accurate and concise description of the entire mark that identifies literal elements as well as any design elements. *See* 37 C.F.R. §2.37; TMEP §§808 *et seq.*

Therefore, applicant must provide a more complete description of the applied-for mark. The following is suggested:

**The mark consists of the design of a cartoon figure on a piece of paper with a hat, eyebrows, eyes, ears, face, mouth, and hands. Under the face appear the terms CHRISTMAS WISHES FROM MR. FOAMER.**

### **DRAWING IN COLOR BUT COLOR NOT CLAIMED**

Applicant submitted a drawing showing the mark in color but appears to have identified the mark as non-color in the application form and has not provided a color claim or mark description referencing color. 37 C.F.R. §2.52(b)(1); TMEP §807.07(b). Applications for marks depicted in color must include a complete list of all the colors claimed as a feature of the mark and a description of the literal and design elements that specifies where the colors appear in those elements. 37 C.F.R. §§2.37, 2.52(b)(1); *see* TMEP §§807.07(a) *et seq.*

Therefore, applicant must clarify whether color is claimed as a feature of the mark by satisfying one of the following:

- (1) If **color is not a feature of the proposed mark**, applicant must submit a substitute black and white drawing of the mark to replace the color drawing of record. Amendments or changes to the mark will not be accepted if the changes would materially alter the mark. 37 C.F.R. §2.72(a)(2); TMEP §807.14. However, amending the drawing to delete color would not be considered a material alteration of the mark in this case.; or
- (2) If **color is a feature of the proposed mark**, applicant must submit a statement listing all of the colors claimed as a feature of the mark and a statement describing the literal and design elements in the mark that specifies where the colors appear in those elements. *See* 37 C.F.R. §§2.37, 2.52(b)(1); TMEP §§807.07(a) *et seq.* If any portion of the black, white and/or gray appearing in the mark is not being claimed as color, applicant must also include a statement that the color(s) <black, white and/or gray> represent background, outlining, shading and/or transparent areas and are not part of the mark. TMEP §807.07(d). The following format is suggested: **“The colors blue, black, white, red, and gray are claimed as a feature of the mark. The mark consists of the following: a blue background with white flakes of snow; a white cartoon body outlined in black with a red hat, blue eyes outlined in black with white inside the eyes, black eye brows, gray and black mouth, face and ears; red hands with black outlining; and the terms CHRISTMAS WISHES FROM MR. FOAMER in red.”**

### **CONSENT STATEMENT NOT NECESSARY**

Applicant’s statement regarding the name, portrait or signature of a living individual identified in the mark will not be printed on any registration that may issue from this application. The statement is unnecessary because the mark on its face would not reasonably be perceived as the name or likeness of a specific living individual. TMEP §§813.01(b), 1206.05.

### **SPECIMEN DOES NOT SHOW USE WITH ANY SERVICES**

Registration is refused because the specimen does not show the applied-for mark in use in commerce in connection with any of the goods and/or services specified in the application. 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). Specifically, the specimen consists of a picture of a Christmas card bearing the mark. However, there is not a sufficient connection with the listed services of the application.

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Examples of specimens for goods may include tags, labels, instruction manuals, containers, and photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.* Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods. TMEP §904.03(i). Examples of specimens for services may include advertising and marketing materials, brochures, photographs of business signage and billboards, and website printouts that show the mark used in the actual sale, rendering, or advertising of the services. *See* TMEP §§1301.04 *et seq.*

Applicant may respond to this refusal by satisfying one of the following:

- (1) Submit a different specimen (a verified **“substitute” specimen**) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the application.
- (2) Amend the filing basis to **intent to use under Section 1(b)**, for which no specimen is required. This option will later necessitate additional fee(s) and filing requirements such as providing a specimen at a subsequent date.

For an overview of *both* response options referenced above and instructions on how to satisfy either option online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/specimen.jsp>.

/Sung In/  
Sung In  
Law Office 103  
Phone: (571) 272-9097  
Fax: (571) 272-9103  
Email: sung.in@uspto.gov

**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp). Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

**To:** NEW WAVE INNOVATIONS, INC ([Johnf75712@aol.com](mailto:Johnf75712@aol.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86303800 - MR. FOAMER CARTOON CHARACTURE IN - N/A  
**Sent:** 9/23/2014 1:28:00 PM  
**Sent As:** ECOM103@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED  
ON **9/23/2014** FOR U.S. APPLICATION SERIAL NO. 86303800

Please follow the instructions below:

**(1) TO READ THE LETTER:** Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

**(2) TIMELY RESPONSE IS REQUIRED:** Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **9/23/2014** (or sooner if specified in the Office action). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

**Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response** because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp).

**(3) QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail [TSDR@uspto.gov](mailto:TSDR@uspto.gov).

**WARNING**

**Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application.** For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

**PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION:** Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see [http://www.uspto.gov/trademarks/solicitation\\_warnings.jsp](http://www.uspto.gov/trademarks/solicitation_warnings.jsp).

**EXHIBIT 10**

Abandonment of 86303800 Application

With respect to a very small number of TSDR documents, the PDF download feature has been temporary suspended. We expect this feature to be fully available again in mid-late March. Documents may still be downloaded from the Trademark Documents list in TSDR by selecting (checking) the document(s) you would like to download, clicking the "Download" button, and selecting "Original" as the file type. The selected documents will be delivered to your computer in their original format in a zip file.

<b>STATUS</b>	<b>DOCUMENTS</b>	<a href="#">Back to Search</a>	 <a href="#">Print</a>
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**Generated on:** This page was generated by TSDR on 2016-03-15 15:09:43 EDT

**Mark:** CHRISTMAS WISHES FROM MR. FOAMER



**US Serial Number:** 86303800

**Application Filing Date:** Jun. 09, 2014

**Register:** Principal

**Mark Type:** Service Mark

**Status:** Abandoned because the applicant failed to respond or filed a late response to an Office action. To view the Trademark Document Retrieval link at the top of this page.

**Status Date:** Apr. 21, 2015

**Date Abandoned:** Mar. 24, 2015

**▲ Mark Information**

[▼ Expand All](#)

**▼ Goods and Services**

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** Online retail store services featuring car wash equipment and parts thereof

**International Class(es):** 035 - Primary Class

**U.S Class(es):** 100, 101, 102

**Class Status:** ACTIVE

**Basis:** 1(a)

**Used Anywhere in Another Form:** The mark was first used anywhere in a different form other than that sought to be registered at least as early as 12/15/2011

**Used in Commerce in Another Form:** The mark was first used in commerce in a different form other than that sought to be registered at least as early as 12/15/2011

▲ **Basis Information (Case Level)**

▲ **Current Owner(s) Information**

▲ **Attorney/Correspondence Information**

▲ **Prosecution History**

▲ **TM Staff and Location Information**

▲ **Assignment Abstract Of Title Information - Click to Load**

▲ **Proceedings - Click to Load**

**COMPOSITE EXHIBIT 11**

86304665 Application

## Trademark/Service Mark Application, Principal Register

Serial Number: 86304665

Filing Date: 06/09/2014

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	86304665
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="#">MR. FOAMER</a>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	MR. FOAMER
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	NEW WAVE INNOVATIONS, INC
<b>INTERNAL ADDRESS</b>	C/O FARO & ASSOCIATES
<b>*STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>*CITY</b>	MIAMI
<b>*STATE</b> (Required for U.S. applicants)	Florida
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com
<b>WEBSITE ADDRESS</b>	www.Faro-Law.com
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	corporation
<b>STATE/COUNTRY OF INCORPORATION</b>	Florida
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	035
<b>*IDENTIFICATION</b>	Online retail store services featuring car wash equipment and parts thereof.
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 12/15/2011

<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 12/15/2011
<b>SPECIMEN FILE NAME(S)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\863\046\86304665\xml1\ APP0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	Christmas Card With Company Mascot - Cartoon Character Corresponding to Product Configuration With Christmas Holiday Garb - Discount coupon included in card for New Wave Innovation, Inc. products
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	JOHN H. FARO, ESQ
<b>FIRM NAME</b>	FARO & ASSOCIATES
<b>STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>CITY</b>	MIAMI
<b>STATE</b>	Florida
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	JOHN H. FARO, ESQ
<b>FIRM NAME</b>	FARO & ASSOCIATES
<b>STREET</b>	1395 BRICKELL AVENUE - SUITE 800
<b>CITY</b>	MIAMI
<b>STATE</b>	Florida
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	33131
<b>PHONE</b>	305-761-6921
<b>FAX</b>	305-726-0029
<b>EMAIL ADDRESS</b>	Johnf75712@aol.com;Johnf75712@aol.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/JOHN H. FARO/
<b>SIGNATORY'S NAME</b>	JOHN H. FARO

<b>SIGNATORY'S POSITION</b>	ATTORNEY - FLORIDA BAR MEMBER
<b>DATE SIGNED</b>	06/09/2014

---

## Trademark/Service Mark Application, Principal Register

**Serial Number: 86304665**

**Filing Date: 06/09/2014**

### To the Commissioner for Trademarks:

**MARK:** MR. FOAMER (Standard Characters, see [mark](#))

The literal element of the mark consists of MR. FOAMER.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, NEW WAVE INNOVATIONS, INC, a corporation of Florida, having an address of  
C/O FARO & ASSOCIATES,  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: Online retail store services featuring car wash equipment and parts thereof.

In International Class 035, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 12/15/2011, and first used in commerce at least as early as 12/15/2011, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Christmas Card With Company Mascot - Cartoon Character Corresponding to Product Configuration With Christmas Holiday Garb - Discount coupon included in card for New Wave Innovation, Inc. products.

[Specimen File1](#)

For informational purposes only, applicant's website address is: [www.Faro-Law.com](http://www.Faro-Law.com)

The applicant's current Attorney Information:

JOHN H. FARO, ESQ of FARO & ASSOCIATES  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
United States

The applicant's current Correspondence Information:

JOHN H. FARO, ESQ  
FARO & ASSOCIATES  
1395 BRICKELL AVENUE - SUITE 800  
MIAMI, Florida 33131  
305-761-6921(phone)  
305-726-0029(fax)  
[Johnf75712@aol.com](mailto:Johnf75712@aol.com);[Johnf75712@aol.com](mailto:Johnf75712@aol.com) (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an

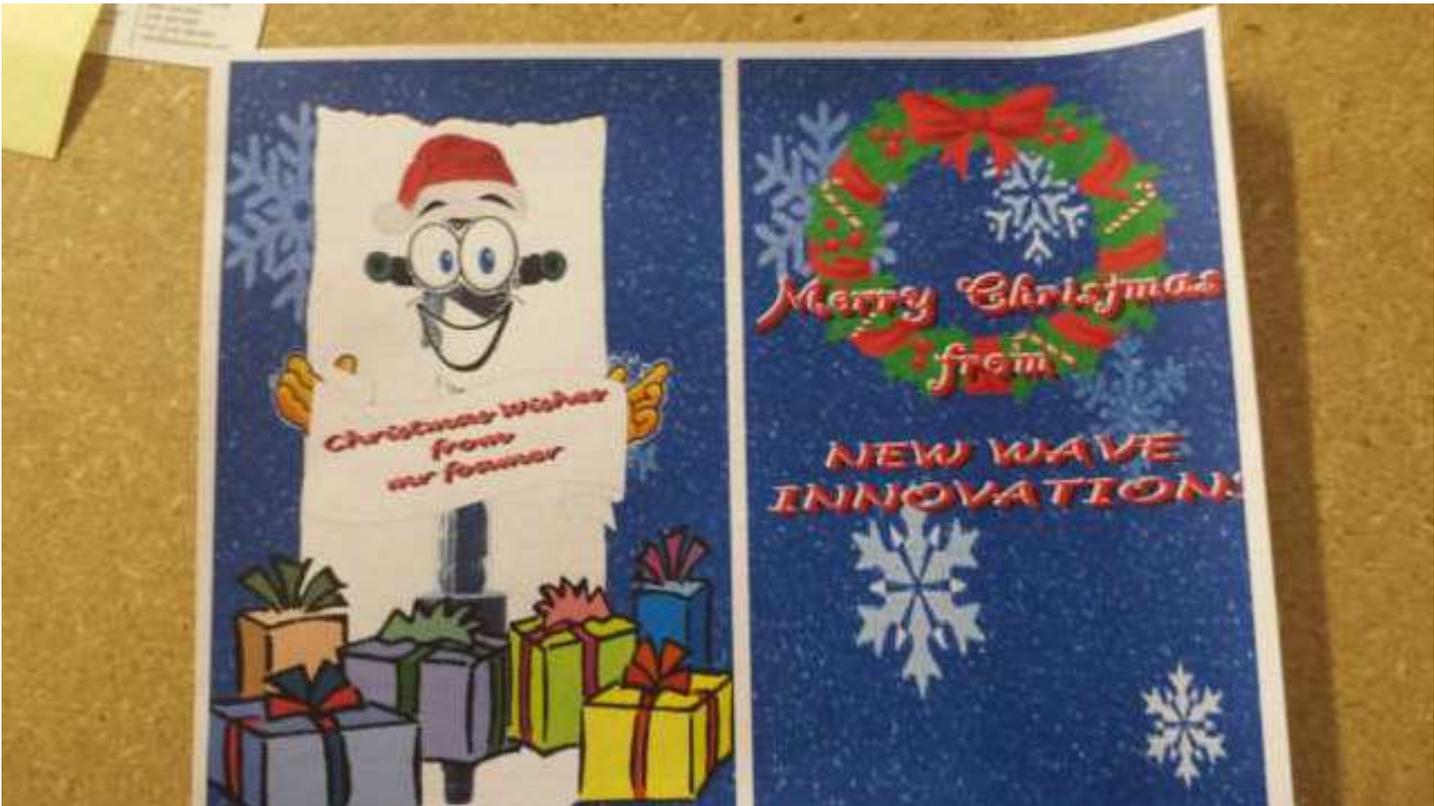
application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

**Declaration Signature**

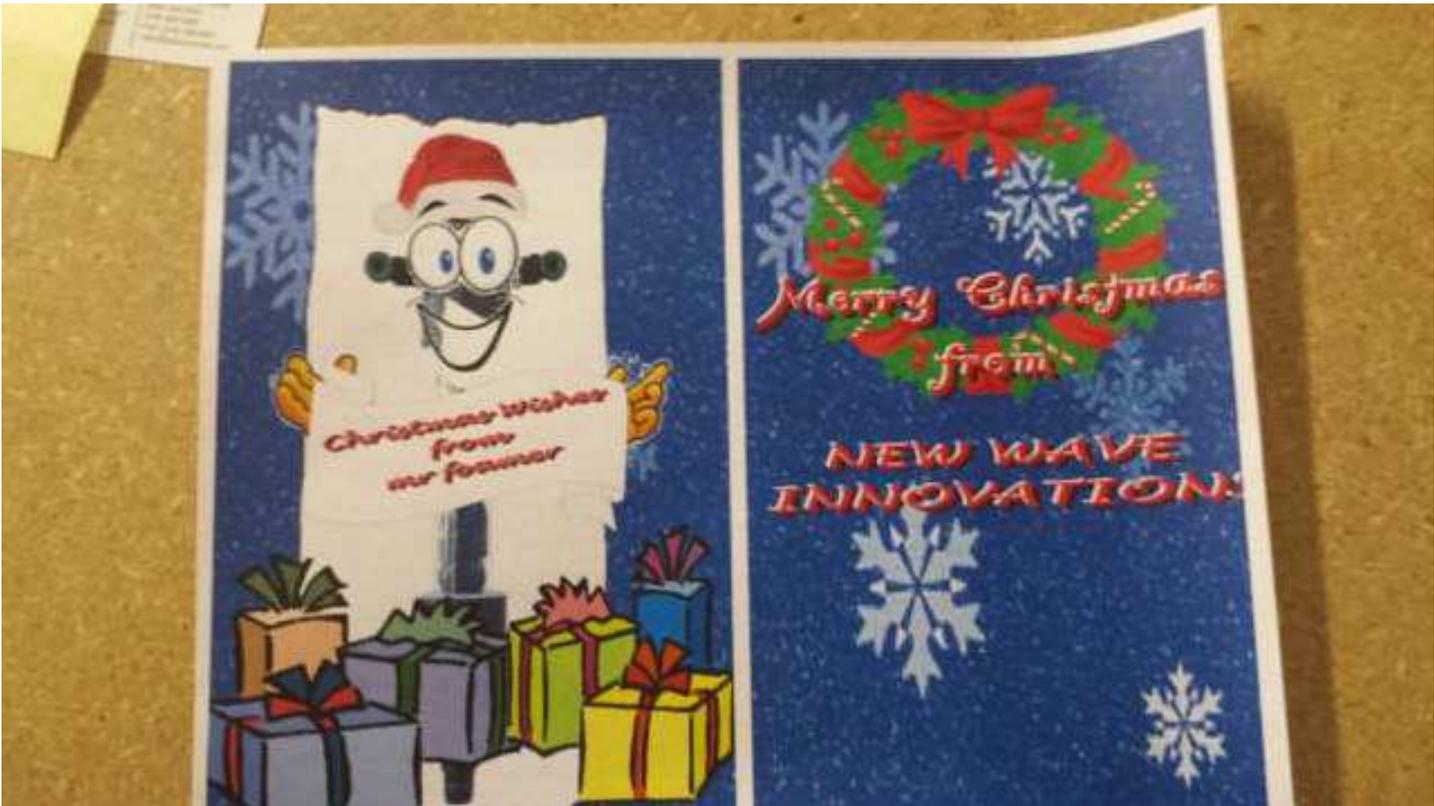
Signature: /JOHN H. FARO/ Date: 06/09/2014  
Signatory's Name: JOHN H. FARO  
Signatory's Position: ATTORNEY - FLORIDA BAR MEMBER  
RAM Sale Number: 86304665  
RAM Accounting Date: 06/10/2014

Serial Number: 86304665  
Internet Transmission Date: Mon Jun 09 19:42:26 EDT 2014  
TEAS Stamp: USPTO/BAS-XX.XXX.XX.XXX-2014060919422655  
5768-86304665-5004fa42bd0fc25a1afa6f07b2  
886a01d23ed627977f15bf9a6b579677f6e65013  
-CC-6129-20140609191724805618

**MR. FOAMER**



**MR. FOAMER**



**EXHIBIT 12**

Office Action Issued in 86304665 Application

**To:** NEW WAVE INNOVATIONS, INC ([Johnf75712@aol.com](mailto:Johnf75712@aol.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86304665 - MR. FOAMER - N/A  
**Sent:** 9/23/2014 1:29:22 PM  
**Sent As:** ECOM103@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

<b>U.S. APPLICATION SERIAL NO.</b> 86304665  <b>MARK:</b> MR. FOAMER	<b>*86304665*</b>
<b>CORRESPONDENT ADDRESS:</b> JOHN H. FARO, ESQ FARO & ASSOCIATES 1395 BRICKELL AVE STE 800 MIAMI, FL 33131-3302	<b>CLICK HERE TO RESPOND TO THIS LETTER:</b> <a href="http://www.uspto.gov/trademarks/teas/response_forms.jsp">http://www.uspto.gov/trademarks/teas/response_forms.jsp</a>  <a href="#">VIEW YOUR APPLICATION FILE</a>
<b>APPLICANT:</b> NEW WAVE INNOVATIONS, INC	
<b>CORRESPONDENT'S REFERENCE/DOCKET NO :</b> N/A <b>CORRESPONDENT E-MAIL ADDRESS:</b> <a href="mailto:Johnf75712@aol.com">Johnf75712@aol.com</a>	

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE: 9/23/2014**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

**SEARCH OF OFFICE'S DATABASE OF MARKS**

The Office records have been searched and there are no similar registered or pending marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

However, applicant must address the following issue(s).

**SPECIMEN DOES NOT SHOW USE WITH ANY SERVICES**

Registration is refused because the specimen does not show the applied-for mark in use in commerce in connection with any of the goods and/or services specified in the application. 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). Specifically, the specimen consists of a picture of a Christmas card bearing the mark. However, there is not a sufficient connection with the listed services of the application.

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Examples of specimens for goods may include tags, labels, instruction manuals, containers, and photographs that show the mark on the actual

goods or packaging, or displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.* Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods. TMEP §904.03(i). Examples of specimens for services may include advertising and marketing materials, brochures, photographs of business signage and billboards, and website printouts that show the mark used in the actual sale, rendering, or advertising of the services. *See* TMEP §§1301.04 *et seq.*

Applicant may respond to this refusal by satisfying one of the following:

- (1) Submit a different specimen (a verified “[substitute](#)” [specimen](#)) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the application.
- (2) Amend the filing basis to [intent to use under Section 1\(b\)](#), for which no specimen is required. This option will later necessitate additional fee(s) and filing requirements such as providing a specimen at a subsequent date.

For an overview of *both* response options referenced above and instructions on how to satisfy either option online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/specimen.jsp>.

/Sung In/  
Sung In  
Law Office 103  
Phone: (571) 272-9097  
Fax: (571) 272-9103  
Email: [sung.in@uspto.gov](mailto:sung.in@uspto.gov)

**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp). Please wait 48-72 hours from the issue/mailling date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

**To:** NEW WAVE INNOVATIONS, INC ([Johnf75712@aol.com](mailto:Johnf75712@aol.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 86304665 - MR. FOAMER - N/A  
**Sent:** 9/23/2014 1:29:23 PM  
**Sent As:** ECOM103@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED  
ON **9/23/2014** FOR U.S. APPLICATION SERIAL NO. 86304665

Please follow the instructions below:

**(1) TO READ THE LETTER:** Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

**(2) TIMELY RESPONSE IS REQUIRED:** Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **9/23/2014** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

**Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response** because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp).

**(3) QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail [TSDR@uspto.gov](mailto:TSDR@uspto.gov).

**WARNING**

**Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application.** For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

**PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION:** Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see [http://www.uspto.gov/trademarks/solicitation\\_warnings.jsp](http://www.uspto.gov/trademarks/solicitation_warnings.jsp).

**EXHIBIT 13**

Opposer's Responses to Interrogatories from Applicant  
in the Federal Case

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(Miami Division)**

**Case No. 13-cv-22541-Civ-COOKE/TURNOFF**

NEW WAVE INNOVATIONS, INC.

Plaintiff,

vs.

JAMES (JIM) MCCLIMOND, MR. FOAMER,  
INC., and CAR WASH EXPERTS INC.

Defendants.

---

**DEFENDANTS' FIRST SET OF INTERROGATORIES DIRECTED TO PLAINTIFF**

Defendants, James McClimond (“McClimond”), Mr. Foamer Inc. (“Mr. Foamer”) and Car Wash Experts Inc. (“Car Wash Experts”) (altogether “Defendants”), by and through undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.340 (a) and (c), propounds the attached Interrogatories to Plaintiff, New Wave Innovations, Inc. (“Plaintiff”) to be answered in writing, under oath within thirty (30) days from the date of service, in accordance with Florida Rule of Civil Procedure 1.340 (a) and (c).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail to: **John H. Faro, Esquire**, Faro & Associates, 1395 Brickell Avenue Suite 800, Miami, FL 33131 ([JohnF75712@aol.com](mailto:JohnF75712@aol.com)) and to **Adam D. Palmer, Esq.**, Schoeppl & Burke, PA, 4651 N. Federal Hwy., Boca Raton, FL 33431 ([apalmer@schoepplburke.com](mailto:apalmer@schoepplburke.com); [asmith@schoepplburke.com](mailto:asmith@schoepplburke.com)) on this 26<sup>th</sup> day of February 2013.

By: /s/ Steven M. Greenberg  
Steven M. Greenberg  
CRGO Law  
sgreenberg@crgolaw.com  
Florida Bar Number 173924

CRGO Law  
7900 Glades Road, Suite 520  
Boca Raton, FL 33434  
Telephone: (561) 922-3845  
Facsimile: (561) 244-1062  
*Attorney for Defendants*

## DEFINITIONS

1. **"Person"** shall mean the plural as well as the singular and shall include any natural person, corporation, partnership, joint venture, association, government agency and every other form of entity cognizable at law.
2. **"You"** and **"your"** refer to the party to whom these Interrogatories is directed, each and every name by which the party is known or has been known, and each and every employee, attorney, and agent for such party.
3. **"Document"** shall include all records, books of account, work sheets, checks, instructions, specifications, manuals, reports, books, periodicals, publications, raw and refined data, memoranda, graphs, drawings, photographs, notes, advertisements, lists, studies, meeting minutes, working papers, transcripts, magnetic tapes or discs, punch cards, computer printouts, letters, telegrams, e-mails, drafts, proposals, recommendations, and any other data recorded in readable and/or retrievable form, whether typed, handwritten, reproduced, magnetically recorded, coded, or in any other way made readable or retrievable.
4. **"And"** shall mean and/or.
5. **"Or"** shall mean and/or.
6. **"New Wave," "Plaintiff," "you," "yours" and/or "yourself"** shall mean the Plaintiff to this litigation, New Wave Innovations, Inc., and/or any directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on behalf of New Wave.
7. **"Mr. Foamer"** and/or **"Defendant"** shall mean the Defendant to this litigation, Mr. Foamer, Inc., and/or any directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on behalf of Mr. Foamer.
8. **"Car Wash Experts"** and/or **"Defendant"** shall mean the Defendant to this litigation, Car Wash Experts, Inc., and/or any directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on behalf of Car Wash Experts.
9. **"McClimond"** and/or **"Defendant"** shall mean the Defendant to this litigation, James McClimond, and/or any representative, heir, successor, affiliate, assign, employee, officer, principal or agent of McClimond.
10. **"Agent"** shall mean: any agent, employee, officer, director, attorney, independent contractor or any other person acting at the direction of or on behalf of another.
11. **"Third party"** or **"third parties"** refers to individuals or entities that are not a party to this action.

12. The singular shall include the plural and vice versa; the terms "**and**" or "**or**" shall be both conjunctive and disjunctive; and the term "**including**" mean "including without limitation."

13. "**Related to,**" "**discussing**" or "**evidencing**" shall mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves or tends to prove, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.

14. "**Complaint**" shall mean the complaint filed in the law suit captioned *New Wave Innovations, Inc. v. James McClimond et al.*, Case No. 1:13-CV-22541, pending in the United States District Court for the Southern District of Florida, Miami Division.

15. "**Communication**" shall mean any disclosure, transfer, or exchange of information or opinion, however made, written, oral or by electronic means.

16. "**New Wave Products**" shall mean any products sold by New Wave including but not limited to the Turbo Foam Generator and the Elephant Ears Foam Applicator.

17. "**New Wave Marks**" shall mean any trademark used by New Wave in commerce in connection with the sale of the New Wave Products.

18. "**New Wave Trade Dresses**" shall mean any trade dress used by New Wave in commerce in connection with the sale of the New Wave Products.

19. "**Mr. Foamer Products**" shall mean any products sold by Mr. Foamer including but not limited to the Twist N' Kleen Generator.

20. "**Mr. Foamer Trade Dresses**" shall mean any trade dress used by Mr. Foamer in commerce in connection with the sale of the Mr. Foamer Products.

21. "**Mr. Foamer Marks**" shall mean any trademark used by Mr. Foamer in commerce in connection with the sale of the Mr. Foamer Products.

22. "**Car Wash Experts Products**" shall mean any products sold by Car Wash Experts.

23. "**Car Wash Experts Trade Dresses**" shall mean any trade dress used by Car Wash Experts in commerce in connection with the sale of the Car Wash Experts Products.

24. "**Car Wash Experts Marks**" shall mean any trademark used by Car Wash Experts in commerce in connection with the sale of the Car Wash Experts Products.

25. All other words not defined in this section shall include the word's plain meaning which shall also include but not be limited to the definition imputed to them by Merriam-Webster's Collegiate Dictionary, 11th Edition (2008).

**INSTRUCTIONS**

1. You are to produce the original of each document unless the same is not within your possession, custody or under your control, in which event you are to produce all copies in your possession, custody or control.

2. To the extent precise and complete documents cannot be furnished, such documents as are available shall be supplied.

3. If any privilege is asserted with respect to any documents described in these Interrogatories, please specifically identify the documents and state, as to each document, the precise nature of and the basis for the privilege relied on.

**FIRST SET OF INTERROGATORIES**

1. Please provide the name, address and position held in Plaintiff's corporation of the person answering these interrogatories.
  
2. Please describe with specificity the confidential documents allegedly provided by Plaintiff to one or more of the Defendants sometime in October-November 2011, and specify which Defendant the confidential documents were provided to.
  
3. Please identify the documents that support Plaintiff's contention that one or more of the Defendants received confidential information from Plaintiff sometime in October-November 2011.
  
4. Please identify the documents that support Plaintiff's contention that one or more of the Defendants qualified or served as a distributor of the New Wave Products.
  
5. Please identify the documents, including but not limited to any survey evidence, that support Plaintiff's contention that the New Wave Marks are well-known, famous, have acquired secondary meaning and/or that the public associates the New Wave Marks with Plaintiff, and specify the New Wave Mark to which the documents pertain to.
  
6. Please identify the documents, including but not limited to any survey evidence, that support Plaintiff's contention that the New Wave Trade Dresses are well-

known, famous, have acquired secondary meaning and/or that the public associates the New Wave Trade Dresses with Plaintiff, and specify the New Wave Trade Dress to which the documents pertain to.

7. Please describe with specificity the type of expenditures made by Plaintiff in advertising and promoting the New Wave Products, the New Wave Marks and the New Wave Trade Dresses, and specify the New Wave Product, Mark or Trade Dress to which the documents pertain to.
8. Please identify the documents that support Plaintiff's contention that Plaintiff made substantial expenditures in advertising and promoting the New Wave Products, the New Wave Marks and the New Wave Trade Dresses, and specify the New Wave Product, Mark or Trade Dress to which the documents pertain to.
9. Please describe with specificity instances of actual confusion from consumers regarding the source of any Car Wash Experts Products, including but not limited to confusion where consumers believed that the Car Wash Experts Products originated from New Wave.
10. Please describe with specificity instances of actual confusion from consumers as to the source of the Mr. Foamer Products, including but not limited to confusion where consumers believed that the Mr. Foamer Products originated from New Wave.

11. Please describe with specificity instances of actual confusion from consumers between the New Wave Marks and the Car Wash Experts Marks, and provide the name of the Car Wash Experts Mark and the name of the New Wave Mark which allegedly created confusion.
  
12. Please identify the documents that support Plaintiff's contention that there exists actual confusion from consumers between the New Wave Marks and the Car Wash Experts Marks.
  
13. Please describe with specificity instances of actual confusion from consumers between the New Wave Marks and the Mr. Foamer Marks, and provide the name of the Mr. Foamer Mark and the name of the New Wave Mark which allegedly created confusion.
  
14. Please describe with specificity instances of actual confusion from consumers between the New Wave Trade Dresses and the Car Wash Experts Trade Dresses, and provide the name of the Car Wash Experts Product and the name of the New Wave Product which allegedly created confusion.
  
15. Please identify the documents that support Plaintiff's contention that there exists actual confusion from consumers between the New Wave Trade Dresses and the Car Wash Experts Trade Dresses.

16. Please describe with specificity instances of actual confusion from consumers between the New Wave Trade Dresses and the Mr. Foamer Trade Dresses, and provide the name of the Mr. Foamer Product and the name of the New Wave Product which allegedly created confusion.
  
17. Please identify the documents that support Plaintiff's contention that there exists actual confusion from consumers between the New Wave Trade Dresses and the Mr. Foamer Trade Dresses.
  
18. Please identify the documents that support Plaintiff's contention that McClimond, Car Wash Experts and/or Mr. Foamer made any claims to third parties that New Wave's Turbo Foam Generator was his/its invention.
  
19. Please identify the documents that support Plaintiff's contention that one or more of the Mr. Foamer Products incorporates the New Wave Trade Dresses including but not limited to the trade dress of New Wave's Turbo Foam Generator and/or Elephant Ears Foam Applicator.
  
20. Please identify the documents that support Plaintiff's contention that one or more of the Car Wash Experts Products incorporates the New Wave Trade Dresses including but not limited to the trade dress of New Wave's Turbo Foam Generator and/or Elephant Ears Foam Applicator.

21. Please identify the documents that support Plaintiff's contention that products manufactured or distributed by McClimond, Mr. Foamer and/or Car Wash Experts have a brand name including the term "turbo."
  
22. Please identify the documents that support Plaintiff's contention that products manufactured or distributed by McClimond, Mr. Foamer and/or Car Wash Experts have a brand name including the term "elephant."
  
23. Please identify the documents that support Plaintiff's contention that products manufactured or distributed by McClimond, Mr. Foamer and/or Car Wash Experts have a brand name including the terms "ear" or "ears."
  
24. Please identify the documents that support Plaintiff's contention that Plaintiff owned one or more pending patent applications at the time of filing of the Complaint.
  
25. Please identify the documents that support Plaintiff's contention that Plaintiff was the exclusive licensee to one or more pending patent applications at the time of filing of the Complaint.
  
26. Please identify by application serial number all patent applications assigned to or licensed by New Wave at any time during the year 2013.

27. Please state the filing dates for each patent application identified as having been assigned to or licensed by New Wave at any time during the year 2013.

28. Please identify the documents that support Plaintiff's contention that Mr. Foamer, Car Wash Experts and/or McClimond made statements that New Wave does not own any pending patent applications or issued patents.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
(Miami Division)

Case No. 13-CV-225421-COOKE/TORRES

NEW WAVE INNOVATIONS, INC.	)
	)
Plaintiff	)
vs.	)
	)
JAMES (JIM) MCCLIMOND (AN INDIVIDUAL),	)
MR. FOAMER, INC.) (A FLORIDA CORPORATION) &	)
CAR WASH EXPERTS, INC. (A FLORIDA	)
CORPORATION)	)
	)
Defendants	)
	/

---

**PLAINTIFF NEW WAVE INNOVATIONS INC. HEREIN FILES ITS NOTICE OF COMPLIANCE WITH COURT ORDER [DE 145] REQUIRING SUPPLEMENTAL RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES**

The Plaintiff, New Wave Innovations, Inc. ("NEW WAVE" or "NWI") herein files its *Notice Of Compliance With Court Order [De 145] Requiring Supplemental Response To Defendants' First Set Of Interrogatories*

The NWI Supplemental Response are annexed hereto

Respectfully,

/s/ John H. Faro  
John H. Faro, Esq.  
Florida Bar No. 527,459  
Attorney For Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
(Miami Division)

Case No. 13-CV-225421-COOKE/TORRES

NEW WAVE INNOVATIONS, INC.	)
	)
Plaintiff	)
vs.	)
	)
JAMES (JIM) MCCLIMOND (AN INDIVIDUAL),	)
MR. FOAMER, INC.) (A FLORIDA CORPORATION) &	)
CAR WASH EXPERTS, INC. (A FLORIDA	)
CORPORATION)	)
	)
Defendants	)
	/

**PLAINTIFF NEW WAVE INNOVATIONS SUPPLEMENTAL REPOSE  
TO DEFENDANT FIRST SET OF INTERROGATORIES**

The Plaintiff, New Wave Innovations, Inc. (“NEW WAVE” or “NWI”) herein responds to the Defendant, First Set of Interrogatories Directed to Plaintiff in numbered paragraphs corresponding to the numbered paragraphs of the Request.

1. Michael J. Ross, CEO NEW WAVE INNOVATIONS, INC. c/o Plaintiff’s Counsel
2. All confidential information was conveyed to the Defendant, Jim McClimond, in the course of several telephone conferences occurring from about May 2011 through about December 2011, (some of which lasted more than 1 hour), incident to his expression of his interest as an “investor” and/or as a “partner” with the NWI in the distribution of the NWI Turbo Foam generator. These telephone conference were conducted on a speaker phone located at the NEW WAVE office in Lodi, California. At least one (1) additional person was present in the NWI offices and overhead many of these phone calls Mr. Ross’ telephone number at the time was 209-298-7667.

These discussions included Confidential Business and Technical Information, as follows:

- a. Business Information, as related to the NEW WAVE Turbo Foam Generator and related accessories, financial information as to cost and profit margins, potential sources for product components, identification of potential and existing customers on the East coast and marketing projections;
- b. Technical Information, as related to the NEW WAVE Turbo Foam Generator and related accessories, discussion of operational parameters of the individual components of the Turbo Foam Generator, and the interaction of these components within the Generator, the various component parts which were evaluated by NEW WAVE in the development of Turbo Foam Generator, (both components that worked and components that did not work), and the performance characteristics of each of these components, identification of components that did not work (in response to suggestions by Defendant, Jim McClimond, specific inquiries relative to different materials traditionally used in such foam generators), the sources of components which were ultimately selected for the commercial configuration of the Turbo Foam Generator.
- c. The T-Mobile records of the conversations between Michael Ross and Jim McClimond are reflected upon the bills for Mr. Ross's cell phone (209, 298-7667), have been requested from T-Mobile and, are as yet unavailable from T-Mobile. These telephone shall confirm the date and frequency of these teleconferences. I believe the date and substance of these teleconference are reflected in my March 27, 2014, deposition taken by Defendants in the matter,

See March 27, 2014, Ross Deposition Tx @ page 162, line 3 to page 164, line 17. .

3. McClimond testimony at his March 25, 2014, Deposition (Tx, @ page 115), identified/acknowledged the dimensions, arrangement and composition of the components of the insert for his Twist 'N Kleen foam generator
4. There are no written distributor agreements between Defendants and NWI.
5. There are no survey documents. Evidence of recognition of NWI marks is largely anecdotal. Widespread dissemination of marketing pamphlets over internet, NWI web page and trade show attendance depicts such trademarks as originating with NWI . The extent of internet and/or email dissemination of the NWI catalogs, promotional materials and the like are reflected in Trade Show announcements which were disseminated to the current and potential customers, and holiday/seasonal cards, e.g. Halloween, Christmas, etc., NWI production Bates Nos 000209-277. The extent of the extent of dissemination of the NWI trademarks is reflected in the Confidential Customer List provide in response to the Defendants Request for Documents, NWI production Bates Nos.000040-000208
6. There are no survey documents. Evidence of recognition of NWI distinctive trade dress is largely anecdotal. Widespread dissemination of marketing pamphlets over internet, web page and trade show attendance depicts such trade dress as originating with NWI. Recognition of the NWI Turbo Foam Generator as the industry leader of foam generator products, and the willingness to pay a premium for its products. The extent of internet and/or email dissemination of the NWI catalogs, promotional materials and the like are reflected in Trade Show announcements which were

disseminated to the current and potential customers, and holiday/seasonal cards, e.g. Halloween, Christmas, etc., NWI production Bates Nos 000209-277. The extent of the extent of dissemination of the NWI trademarks is reflected in the Confidential Customer List provide in response to the Defendants Request for Documents, NWI production Bates Nos.000040-000208

7. The NWI advertising and promotional expenses are approximately \$50,000 to \$75,000, and included magazine adds, trade show promotions, coupon discounts/incentives and in-house contacts with potential customers. The NWI advertising and promotional activities, and expenses, are reflected in my March 27, 2014, deposition taken by Defendants in the matter, March 27, 2014, Ross Deposition Tx @ 27, lines 1-20
8. The advertising and promotional expenses are reflected in the printed reports generated by the accounting system, which is maintained by NWI at its company headquarters in Lodi, California.
9. There are no instances of actual confusion with CWE products
10. The instances of actual confusion with Mr. Foamer are reflected and occur primarily at the trade shows where both the NEW WAVE products and FOAMER products are being concurrently promoted for sale to the same customers. A typical example of such actual confusion is February 17, 2014, email from Chad White to NWI, NWI production to FOAMER Bates Nos 000428
11. There are no NWI marks which conflict with CWE marks
12. See response to Interrogatory No. 11

13. The instances of actual confusion with Mr. Foamer are largely anecdotal. The occurrence and frequency of actual confusion of consumers is at the trade shows for the car wash industry. The confusion is based upon the similarities in the product designs (trade dress) for the Turbo Foam Generator and the Elephant Ears foam applicator. See also response to Interrogatory No. 10
14. There is no instances of actual confusion with any trade dress of CWE
15. See response to Interrogatory No. 14
16. See response to Interrogatory Nos. 10 & 13
17. See response to Interrogatory Nos. 10 & 13
18. NEW WAVE has for some time been queried as to the inventorship of its Turbo Foam Generator, including the McClimond contention that he was the inventor. These queries came from a variety of sources and was calculate to inject uncertainty and confusion among the distributors as to the ownership of the proprietary Turbo Foam Generator design and technology. This questioning of the inventorship of the patent rights prompted the dissemination of a Cease & Desist letter from NEW WAVE counsel (Statutory Notice under 35 USC 154), in which counsel identified a number of pending patent applications, filed and owned by Michael Ross relating to the Turbo Foam Generator. As noted in an earlier response to this Interrogatory, an email reporting McClimond's claim of inventorship was sent to NEW WAVE in about January/February 2012, in which McClimond was reported to have stated to a potential customers that McClimond not Michael Ross, was the inventor. That email has been misfiled and could not be located at the time of this response.

19. Foamer product literature of the parties depicts confusingly similar product designs/configurations. These confusingly similar designs/configurations are evident upon comparison, for example, NEW WAVE product literature Bates Nos. 000278-000302 and FOAMER product literature Bates Nos. 000432-000433 – all such documents are in the Defendants’ possession
20. There are no CWE documents
21. Most, if not all of the NWI promotional materials, which depict the NWI Turbo Foam Generator include the work “Turbo” in reference to its Turbo Foam Generator. The NWI marketing materials for the Turbo Foam Generator have been previously provided to Defendants, Bates Nos. 000278-000302.
22. Most, if not all of the NWI promotional materials, which depict the NWI Elephant Ears foam applicator include the work “Elephant “in reference to its Elephant Ears foam applicator. The NWI marketing materials and product literature for the NWI Elephant Ears foam applicator have been previously provided to Defendants, Bates Nos. 000278-000302
23. See response to Interrogatory No. 22.
24. All Patent Office filing receipts for patent applications relating to the NWI Turbo Foam Generator reflect ownership by Michael Ross – all such receipt have been previously produced to Defendants. The authorization of NWI by Ross to use his inventions and proprietary product designs for the manufacture and sale of products incorporating his proprietary designs and inventions, is reflected in the NWI minutes of a Board of Director’s meeting, dated August 12, 2012. These minutes acknowledged Ross’ authorization of NEW WAVE to manufacture and sell 100,000

units of the Turbo Foam Generator. Insofar as the inventor, Michael Ross, is also the CEO of NEW WAVE, he is duty bound/constrained by his office from authorizing others to do the same (denigrate from the rights conveyed to NEW WAVE), and accordingly, this Ross authorization comprises, in effect, an exclusive, field of use restricted (car wash products) license, under the Ross proprietary designs and patent application as related to the NWI products. This authorization is be confirmed and ratified in a formal license agreement, which is presently in preparation.

25. See response to Interrogatory No. 24 – NWI is authorized to manufacture and sell products covered by the Ross pending patent applications and proprietary designs in accordance NWI corporate minutes dated August 12, 2012
26. The filing receipt for the currently pending US national patent application has been provided to Defendants’ counsel under the Protective Order entered in this case – **“Confidential – Attorney Eyes Only”** – and that designation remains in effect. Recently, Ross has filed a PCT (International) patent application, based upon his prior filed non-provisional utility application, and that filing receipt has yet to be received – which receipt is also to be provided when received as **“Confidential – Attorney Eyes Only - Both the US national application and the PCT application (filed on April 25, 2014) are currently pending; and, the PCT application claims priority to both provisional and non-provisional US patent application, to which it corresponds.**
27. The US national, non-provisional utility patent application was filed on or about April 15, 2013.
28. See response to Interrogatory No, 18.

Pursuant to 28 USC 1726, I Michael J. Ross, hereby declare under penalties of perjury, that the Answers to the foregoing interrogatories, where stating factual information, are truthful, and where based upon informtoin and belief, such statements are believed to be truthful.



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Michael J. Ross      May 8, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document, filed through the ECF system, will be sent electronically to the registered participants, as identified in the Notice of Electronic Filing (NEF), and that paper copies will be sent to the individuals indicated as non-registered participants, (if any), as per the attached Distribution List, on this 8<sup>th</sup> day of May, 2014.

Respectfully,

/s/ John H. Faro  
John H. Faro, Esq.  
Florida Bar No. 527,459  
Attorney For Plaintiff

**EXHIBIT 14**

California Secretary of State Online Records for Opposer's Company Status



*common good* *privacy* *All people* *Liberty* *Speak* *without discrimination.*  
*Conscience*

# California Secretary of State Alex Padilla

Secretary of State Main Website

**Business Programs**

Notary & Authentications

Elections

Campaign & Lobbying

## Business Entities (BE)

### Online Services

- **E-File Statements of Information for Corporations**
- **Business Search**
- **Processing Times**
- **Disclosure Search**

### Main Page

### Service Options

### Name Availability

### Forms, Samples & Fees

### Statements of Information (annual/biennial reports)

### Filing Tips

### Information Requests (certificates, copies & status reports)

### Service of Process

### FAQs

### Contact Information

### Resources

- **Business Resources**
- **Tax Information**
- **Starting A Business**

### Customer Alerts

- **Business Identity Theft**
- **Misleading Business Solicitations**

## Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, April 05, 2016. Please refer to **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

<b>Entity Name:</b>	NEW WAVE INNOVATIONS, INC.
<b>Entity Number:</b>	C3349382
<b>Date Filed:</b>	02/10/2011
<b>Status:</b>	FTB SUSPENDED
<b>Jurisdiction:</b>	CALIFORNIA
<b>Entity Address:</b>	502 N SCHOOL ST
<b>Entity City, State, Zip:</b>	LODI CA 95240
<b>Agent for Service of Process:</b>	MICHAEL JAMES ROSS
<b>Agent Address:</b>	20040 W MITCHELL MINE RD
<b>Agent City, State, Zip:</b>	PINE GROVE CA 95665

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code **section 2114** for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to **Name Availability**.
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Field Descriptions and Status Definitions**.

[Modify Search](#) [New Search](#) [Printer Friendly](#) [Back to Search Results](#)

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**EXHIBIT 15**

California Secretary of State Definition of Company Status

California Secretary of State Alex Padilla

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# Business Search - Field Descriptions and Status Definitions

## Field Descriptions

### Entity Number:

The identification number assigned to a business entity by the Secretary of State at the time of filing.

### Date Filed:

The date of formation of a California (domestic) business entity, the date of qualification or registration of a foreign (not formed in California) business entity doing business in California, the date of registration of a domestic or foreign limited partnership, or the date a business entity converted to a California corporation, California limited liability company or California limited partnership.

### Status:

See [Status Definitions](#) below.

Note: The status of a foreign business entity in California is applicable only to the entity's registration in the State of California. Information regarding the status of the entity must be obtained from the entity's state, country or other place of formation.

### Jurisdiction:

The state, country or other place under which laws a business entity was organized.

### Entity Address:

The executive office or mailing address of a business entity.

### Agent for Service of Process:

An individual (officer, member or any other person, whether or not affiliated with a business entity) or a corporation designated to receive the service of process (court papers) if a business entity is sued by another party.

Note: If the agent for service of process of a limited liability company or limited partnership is a corporation, the address of the agent may be requested by ordering a status report. For information about ordering a status report, see [Information Requests \(business-programs/business-entities/information-requests/\)](#).

[New Search \(http://kepler.sos.ca.gov/\)](http://kepler.sos.ca.gov/)

## Status Definitions

### Active:

*Domestic entities* – Subject to any other requirements imposed by law, the domestic entity has filed its formation document in California and is authorized to carry out its business activities.

*Foreign entities* – Subject to any other requirements imposed by law, the foreign entity has registered and is authorized to transact intrastate business in California.

### Canceled:

*Domestic and foreign corporations* – The formation or qualification filing was canceled by the California Secretary of State because the payment for the filing fee was not honored by the financial institution.

### SOS Canceled:

*Domestic and foreign limited partnerships and limited liability companies* – The formation or registration filing was canceled by the California Secretary of State because the payment for the filing fee was not honored by the financial institution.

### Suspended (domestic entities) or Forfeited (foreign entities):

The business entity's powers, rights and privileges, which include the right to use the entity's name in California, were suspended or forfeited in California as described below:

#### SOS Suspended or SOS Forfeited:

The business entity was suspended or forfeited by the Secretary of State for failure to file the required [Statement of](#)

**Information (/business-programs/business-entities/statements/)**, and in the case of a domestic corporation that is an association formed to manage a common interest development, the required **Statement by Common Interest Development Association (/business-programs/business-entities/statements/)**.

Note: In the case of a domestic or foreign corporation, the Secretary of State suspension or forfeiture also may be due to the failure of the corporation to reimburse the **Victims of Corporate Fraud Compensation Fund (/business-programs/vcfcf/)** for a paid claim. However, in most cases, suspension or forfeiture by the Secretary of State is due to failure to file the required statement(s) as stated above. Further information about the type of Secretary of State suspension or forfeiture can be obtained by ordering a status report. For information about ordering a status report, see **Information Requests (/business-programs/business-entities/information-requests/)**.

**FTB Suspended or FTB Forfeited:**

The business entity was suspended or forfeited by the Franchise Tax Board for failure to meet tax requirements (e.g., failure to file a return, pay taxes, penalties, interest).

**SOS/FTB Suspended or SOS/FTB Forfeited:**

The business entity was suspended or forfeited by both the Secretary of State and the Franchise Tax Board as stated above.

For information about how to revive a suspended/forfeited entity, see **Frequently Asked Questions (/business-programs/business-entities/faqs/#suspension-question3)**.

**Dissolved:**

*Domestic corporations*– The business entity filed a Certificate of Dissolution, or a copy of a court order, decree or judgment declaring the business entity dissolved, and the powers, rights and privileges of the entity have ceased in California.

**Surrender:**

*Foreign corporations* – The business entity surrendered its right to transact business in the State of California

**Dissolved:**

*Domestic limited partnerships and limited liability companies* – The business entity has voluntarily elected to wind up the business operations.

**Pending Cancel:**

*Limited liability companies* – The business entity filed a Certificate of Cancellation without a valid Tax Clearance Certificate prior to September 29, 2006, when the requirement for a Tax Clearance Certificate was eliminated from statute. Questions about the pending cancel status and/or the process required to complete the cancellation of the entity can be directed to our **Sacramento office (/business-programs/business-entities/contact/)**.

**Canceled:**

*Domestic limited partnerships and limited liability companies* – The business entity filed a Certificate of Cancellation and the powers, rights and privileges of the domestic entity have ceased in California.

*Foreign limited partnerships and limited liability companies* – The business entity filed a Certificate of Cancellation and the foreign entity is no longer authorized to transact intrastate business in California.

**Merged Out:**

The business entity merged out of existence in California into another business entity. The name of the surviving entity can be obtained by ordering a copy of the filed merger document containing the name of the surviving entity, or by ordering a status report. Note: If ordering a status report, include a specific request for the name of the surviving entity. For information about ordering a copy of a filed document and/or a status report, see **Information Requests (/business-programs/business-entities/information-requests/)**.

**Converted-Out:**

The business entity converted to another type of business entity or to the same type under a different jurisdiction as provided by statute. The name of the new entity can be obtained by ordering a copy of the filed conversion document containing the name of the new entity, or by ordering a status report. Note: If ordering a status report, include a specific request for the name of the new entity. For information about ordering a copy of a filed document and/or a status report, see **Information Requests (/business-programs/business-entities/information-requests/)**.

**Term Expired:**

*Domestic corporations* – The business entity's term of existence has expired, as provided by the entity's Articles of Incorporation.

**Inactive:**

There is more than one reason for this status. The reason for an inactive status can be obtained by ordering a status report. Note: If ordering a status report, include a specific request for the reason for the inactive status. For information about ordering a status report, see [Information Requests \(/business-programs/business-entities/information-requests/\)](#).

**[New Search \(http://kepler.sos.ca.gov/\)](http://kepler.sos.ca.gov/)**

**Disclaimer:** This tool allows you to search the Secretary of State's California Business Search database for abstracts of information for domestic stock, domestic nonprofit and qualified foreign corporations, limited liability companies and limited partnerships that have filed with this office. This search tool groups corporations separately from limited liability companies and limited partnerships and returns all entities for the search criteria in the respective groups regardless of the current status.

Although every attempt has been made to ensure that the information contained in the database is accurate, the Secretary of State's office is not responsible for any loss, consequence, or damage resulting directly or indirectly from reliance on the accuracy, reliability, or timeliness of the information that is provided. All such information is provided "as is." For information about ordering copies of the official business entity records for a particular entity, see [Information Requests \(/business-programs/business-entities/information-requests/\)](#).