

ESTTA Tracking number: **ESTTA638625**

Filing date: **11/13/2014**

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

Proceeding	91218363
Party	Plaintiff NEW WAVE INNOVATIONS, INC.
Correspondence Address	John H. Faro, Esq. Faro & Associates 1395 Brickell Avenue Suite 800 Miami, FL 33131 UNITED STATES JOHNF75712@AOL.COM
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/John H. Faro/
Date	11/13/2014
Attachments	MotionAmend2.pdf(88046 bytes ) AmendedOppositionNov12.pdf(136018 bytes ) CombineExh1.pdf(2121212 bytes ) CombineExh2.pdf(497556 bytes ) CombineExh4.pdf(214408 bytes ) CombineExh5.pdf(1546184 bytes ) CombineExh6.pdf(1576090 bytes ) CombineExh7.pdf(87757 bytes ) CombineExh8.pdf(1772719 bytes ) CombineExh3.1.pdf(258772 bytes )

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

NEW WAVE INNOVATIONS, INC.  
Opposer

vs.

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

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

**MOTION TO AMENDED OPPOSITION**

The Opposer, New Wave Innovations, Inc. (hereinafter also "NEW WAVE"), by counsel, herein responds to the Motion to Dismiss Opposition as follows:

1. The Opposition filed in the subject proceeding was sufficiently detailed to comply with the "notice pleading" requirements, insofar as the parties have been engaged litigation since July 2013, in matters which directly implicate the issues now before the Board. Accordingly, the contention by Applicant that its pleadings fail to place it upon notice of the issues is at best disingenuous. Notwithstanding, the proposed detailed Amended Opposition should obviate any perceived inadequacies and provide additional clarity.
2. The Amended Opposition includes a number of additional Exhibits demonstrating both the standing of NEW WAVE to contest this registration and establish priority of use.
3. Accordingly, it is respectfully requested the attached Amended Opposition be entered.

Respectfully,

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

FARO & ASSOCIATES  
1395 Brickell Avenue – Suite 800  
Miami, Florida 33131  
phone 305, 761-6921  
email: [johnf75712@aol.com](mailto:johnf75712@aol.com)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading entitled:

**MOTION TO AMENDED OPPOSITION**

was forwarded, via email, to Counsel for Plaintiff, as per the attached Distribution List this 12<sup>th</sup> day of November, 2014.

/John H. Faro/

DISTRIBUTION LIST:

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

NEW WAVE INNOVATIONS, INC.  
Opposer

vs.

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

---

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

**AMENDED OPPOSITION  
(First)**

The Opposer, New Wave Innovations, Inc. (hereinafter also "NEW WAVE"), by counsel, alleges for its Opposition to *Trademark Application Ser. No. 86/108,666*, for registration of the **MR FOAMER mark** (Date of First Use: August 12, 2012), by Mr. Foamer, Inc. ("FOAMER"), as follows. These allegations are based upon personal knowledge, with respect to NEW WAVE's own acts, and upon information and belief as to all other matters.

**Nature of the Action**

1. New Wave Innovations, Inc., a California Corporation, based in Lodi, California, herein asserts its Opposition to the registration of the MR FOAMER mark by the Trademark Applicant, Mr. Foamer, Inc. The basis of the Opposition can be summarized as follows:

A. **There is Likelihood of Confusion in the marketplace – Count I**

- The NEW WAVE was the first to adopt and use the MR FOAMER mark in commerce in December 2011, in Christmas card promotion and marketing

program for the distribution and sale of NEW WAVE commercial car wash products;

- The FOAMER, with knowledge of the NEW WAVE's prior use of the mark in December 2011, adopted and registered the Mr. Foamer name, as its corporate name, in July 2012, and thereafter in about August 2012, began using the MR FOAMER mark, as a "house mark" in association with virtually all of its commercial car wash products and services;
- There has been actual confusion between the NEW WAVE's use of the MR FOAMER mark, in association with its distribution of commercial car wash products, including specifically internet sales of the commercial car wash products;
- There is and continues to be a likelihood of confusion, more accurately, reverse confusion, between the each of the NEW WAVE's and the FOAMER's use of the MR FOAMER mark on commercial car wash products and services associated with the MR FOAMER mark, because each of the parties commercial car wash products and services are distributed through the same channels of trade (on-line, trade shows, commercial care wash parts distributors and commercial car wash chemicals distributors) to virtually the same customers;
- Upon learning of the FOAMER's attempt to register the MR FOAMER mark, NEW WAVE filed its own trademark applications, which are now pending and awaiting examination, alleging a date of first use in December 2011;

- Accordingly, NEW WAVE has standing to challenge the potential registration of the MR FOAMER mark by FOAMER;

B. The FOAMER's Trademark Application Must Be Stricken For Fraud Upon The Trademark Office – Count II

- FOAMER's trademark application affirmatively represents that FOAMER was the first to adopt and use the MR FOAMER trademark, in commerce, in association with the marketing and distribution of commercial car wash products, which is false and known to have been false at the application was filed;
- FOAMER's trademark application affirmatively represents that FOAMER was not aware of anyone else using the same or similar mark in commerce, and, thus, it asserts that there is no likelihood of confusion with its adoption and use of such mark, which is false;
- FOAMER has affirmatively represented in its trademark application that the exemplar illustrating the use of the MR FOAMER mark was first used on or about August 2012, which is false; and
- FOAMER's attorney, who filed the instant trademark application, is the same attorney who has and continues to represent FOAMER in the unfair competition, trademark infringement lawsuit between the parties in the Federal District Court for the Southern District of Florida, *New Wave Innovations, Inc. v. James (Jim) McClimond*, Case No. 2013-CV-22541. (herein "Lanham Act Litigation")

- The Lanham Act Litigation between the parties asserts a claim from common law trademark infringement by NEW WAVE against FOAMER. Paragraphs 22 & 57 (from Count IV for Common Law Trademark Infringement) are reproduced below for the convenience of the Board:

22. NEW WAVE actively promotes its business, its products and its proprietary “Turbo Foam Technology”, under a number of registered and unregistered marks and product designations, which are prominently displayed on its marketing and promotional materials, including the unregistered trademarks *Mr. Foamer*, *Turbo Foam*, *Turbo Foam Generator* and *Elephant Ear Foam Applicator* (collectively also “NEW WAVE MARKS”). Generator and Elephant Ear Foam Applicator (collectively also “NEW WAVE MARKS”).

57. MCCLIMOND has infringed, and continues to infringe, on NEW WAVE’s exclusive rights to the NEW WAVE MARKS and distinctive trade dress, by applying the NEW WAVE MARKS, or a colorable imitation of the NEW WAVE MARKS, to printed materials, products and advertising materials, including but not limited to the “*Twist ‘n Kleen*” foam generator and the “*Elephant Ears*” foam applicator, sold by MCCLIMOND. The NEW WAVE use and promotion of the “Mr. Foamer” mark being depicted in the holiday character greetings messages annexed hereto as **Exhibit “6”**. Such unauthorized use of the NEW WAVE MARKS is likely to cause confusion or mistake and/or to deceive the public.

- Accordingly, the FOAMER representations in its trademark application, as regards its priority of adoption and use of the MR FOAMER mark and likelihood of confusion, were patently false and known to have been false at the time of the filing of FOAMER’s application for the registration of the MR FOAMER mark; and, such representation were intentional and calculated to deceive the Trademark Office. FOAMER’s trademark application should be stricken.

## **Parties**

1. The Opposer, NEW WAVE is a California corporation, (founded in about January 2010), with its principle place of business in Lodi, California. NEW WAVE designs, engineers, and manufactures innovative and proprietary products for automatic commercial car washes.

2. NEW WAVE markets and distributes its proprietary commercial car wash products in commerce, nationally, under various trade and service marks, including the MR FOAMER mark.

3. James (Jim) McClimond (also "MCCLIMOND"), is an individual, customer and reseller of NEW WAVE automatic commercial car wash products and accessories incorporating the NEW WAVE proprietary product designs and trademarks.

4. Car Wash Experts, Inc., is a Florida corporation, organized and existing under the laws of the State of Florida; and, upon information and belief, was founded by MCCLIMOND to manufacture, market and/or distribute automatic commercial car wash products, including automatic commercial car wash products and accessories incorporating the NEW WAVE proprietary product designs and trademarks

5. The Applicant, Mr. Foamer, Inc., is a Florida corporation, organized and existing under the laws of the State of Florida; and, upon information and belief, was founded by MCCLIMOND to manufacture, market and/or distribute automatic commercial car wash products, including automatic commercial car wash products and accessories incorporating the NEW WAVE proprietary product designs and trademarks.

## **COUNT I**

6. NEW WAVE incorporates Paragraphs 1- 4, as if restated herein and further alleges:

7. In late October and/or early November 2011, MCCLIMOND contacted NEW

WAVE and solicited information relative to the Car Wash Experts, Inc., distribution of automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”.

8. From about November 2011, through March 2012, Car Wash Experts, Inc., ordered approximately \$7,000, in automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”, including products having a distinctive “turbo foam generator” and distinctive “elephant ears” design and appearance, New Wave Innovations Invoice Nos. 156, 166, 179 & 213, annexed hereto as **Composite Exhibit “1”**.

9. On or about late November or early December 2011, NEW WAVE designed a Christmas card, (based upon its proprietary product design), which depicted its proprietary product as Santa Claus figure named Mr. Foamer, NEW WAVE December 2011, Christmas card annexed hereto as **Exhibit “2”**.

10. NEW WAVE sent this MR FOAMER Christmas card, *via email*, to its customers and prospective customers in December 2011, including McClimond at Car Wash Experts, Inc., in Florida.

11. This MR FOAMER Christmas card included a discount coupon for the purchase of NEW WAVE’s products, Discount Coupon for NEW WAVE’s products annexed hereto as **Exhibit “3”**.

12. This Discount Coupon (**Exhibit “3”**) offered a number of discounts on the purchase of NEW WAVE products if made before March 1, 2012 – reflecting the NEW WAVE solicitation of sale of NEW WAVE commercial car wash products in advance of the March 12, 2012, expiration date, and before the incorporation of FOAMER in July 2012, and the date of first use of the MR FOAMER mark by FOAMER in August 2012

13. NEW WAVE has continued to use the MR FOAMER mark and the MR FOAMER character, in commerce, with discount coupons solicitation of sales on NEW WAVE products for various holiday product promotions, including Halloween, Thanksgiving and New Year's, NEW WAVE's MR FOAMER Halloween card depicted its proprietary product emerging from a pumpkin, annexed hereto as **Exhibit "4"**.

14. NEW WAVE's use of the MR FOAMER mark, for the name of the NEW WAVE promotional figure/character (typically dressed in holiday/seasonal garb or regalia), in association with NEW WAVE's holiday/seasonal promotions for its commercial car wash products, has and continues to result in the likelihood and/or the reverse confusion of NEW WAVE with FOAMER, and FOAMER's products marketed under the MR FOAMER house mark with NEW WAVE's products and services.

15. NEW WAVE's use of the MR FOAMER mark, for the name of the NEW WAVE promotional figure/character (typically dressed in holiday/seasonal garb or regalia), for the promotions of its commercial car wash products, has and continues to result in the likelihood of confusion of consumers of commercial car products, as to relationship/affiliation between NEW WAVE and FOAMER.

16. NEW WAVE has since learning of the FOAMER trademark application, has applied for registration of the MR. FOAMER mark as a service mark for its distribution of commercial car wash products. Each of NEW WAVE's applications were filed on or about June 19, 2014, SN 86/304,665 & SN 86/303,800, filing receipts annexed hereto, as **Exhibits "5" & "6"**. The date of first use for each of the NEW WAVE's applications is December 2011, which is prior in time to the date of first use alleged in *Application Ser. No. 86/108,666*

17. There has been actual confusion, more accurately, reverse confusion, between

NEW WAVE and FOAMER, in that NEW WAVE is repeatedly queried by his own customers as it use of the MR FOAMER mark, and as to his affiliation with the FOAMER.

18. There has been actual confusion as between the FOAMER's customers and NEW WAVE, and FOAMER's defective products have and continue to be returned to NEW WAVE for a refund and/or replacement.

WHEREFORE NEW WAVE respectfully requests the Board grant this Opposition and deny registration of the MR FOAMER mark to FOAMER as likelihood to result in confusion of NEW WAVE and FOAMER and confusion between their respective products.

## COUNT II

19. NEW WAVE incorporates Paragraphs 1- 4, as if restated herein and further alleges:

20. Each of NEW WAVE and FOAMER are competitors; and, each manufacture and distribute commercial car wash foam generators, and accessory product, which are virtually indistinguishable from one another.

21. On or about July 16, 2013, NEW WAVE sued Mr. Foamer et al in the Federal District Court for the Southern District of Florida, *New Wave Innovations, Inc. v. James (Jim) McClimond*, Case No. 2013-CV-22541. The claims asserted against Mr. Foamer et al, include unfair competition based upon trade secret theft, common law trademark and trade dress infringement. Copy of Amended (current) Complaint annexed hereto as **Exhibit "7"**.

22. On September 27, 2013, the Defendants, including FOAMER, filed their Answer To Amended Complaint [DE #43], in this lawsuit, and asserted by way of Affirmative Defense, that:

**Fifth Defense**  
**Failure to State a Claim Against Mr. Foamer for Trademark Infringement, Trade Dress Infringement and Unfair Competition**

Contrary to New Wave's allegations, Mr. Foamer does not use in commerce the alleged trademarks or trade dress of New Wave in connection with the sale of its products. Accordingly, New Wave cannot demonstrate any trademark infringement, trade dress infringement or unfair competition on the part of Mr. Foamer.

23. FOAMER's attorney, who filed the trademark application before the Board, and who represents FOAMER in this above Opposition, is the same attorney who has and continues to represent FOAMER in the lawsuit filed by NEW WAVE against the FOAMER pending in the Federal District Court in the Southern District of Florida.

24. On or about October 29, 2013, the Federal District Court conducted an evidentiary hearing on a NEW WAVE Motion for Preliminary Injunction. The Defendants (including Mr. Foamer, Inc.) put on a classic "fair use" defense – e.g. the NEW WAVE Mr. Foamer mark was merely descriptive, lacked any secondary meaning within the trade and had never been used by any of the Defendants, including Mr. Foamer, Inc. in association with any of the products or services of his company.

25. In support of this "fair use" defense, the Jim McClimond, the founder and corporate representative of Mr. Foamer, Inc.,

- a. filed an affidavit in Opposition to the Plaintiff's Motion for Preliminary Injunction in which he stated under oath that Mr. Foamer, Inc. **has not used the terms** "Mr. Foamer", in connection with the sale of a product (Affidavit of McClimond, DE 50-1 @ 13 – annexed hereto as **Exhibit "8"**

Paragraph 13 of the McClimond Affidavit states in unequivocal terms

**13. Mr. Foamer does not use a trademark containing the terms MR. FOAMER in connection with the sale of any product**

b. testified, under oath, that that Mr. Foamer, Inc. **has not used** the **terms** “Mr. Foamer”, in connection with the sale of products, Hearing on October 29, 2013, Tx @ page 217 @ line 5-8; & page 219, lines 5-7, - annexed hereto as **Exhibit “9**

26. Notwithstanding the prior representations, under oath, in the pending Federal District Court litigation involving the parties, FOAMER filed a Federal application (Serial No. 86/108,666) with the US Trademark Office seeking Federal Registration of the terms “Mr. Foamer” for **“car wash cleaning & polishing preparations”** and for **“sale of car wash equipment and parts thereof, including sale of equipment to others”**, in direct contradiction of the McClimond Affidavit and testimony before the Federal District Court.

27. Notwithstanding the NEW WAVE requests for production of documents to Mr. Foamer, Inc. in the pending Federal District Court litigation involving the parties, Mr. Foamer, Inc. did not produce any document manifesting any trademark usage of the MR. FOAMER mark.

28. Only now in the FOAMER attempted registration of the MR FOAMER mark, has FOAMER now produced an exemplar in support of registration illustrating, Mr. Foamer, Inc. use of the MR FOAMER mark in commerce.

29. This FOAMER exemplar depicts the MR FOAMER mark (its “house mark”) with a “tm” superscript.

30. Upon information and belief, this MR FOAMER exemplar was either withheld during discovery and thereby concealed from the Court at the time of the hearing on the NEW WAVE Motion for Preliminary Injunction, because of its obvious conflict with the “fair use” defense to trademark infringement; and alternatively, was created after the October 29, 2013, for sole purpose of support the subject registration.

31. NEW WAVE has, since the discovery of the Mr. Foamer, Inc. trademark application, filed a *Motion to Strike* its pleadings in the litigation before the Federal District Court, based upon the apparent misconduct before the Federal District Court.

32. The representations by FOAMER in its trademark application for registration of the MR FOAMER mark are irreconcilable with the foregoing assertions and conduct in the litigation between the parties in the Federal District Court

33. The representation by FOAMER in its trademark application for registration of the MR FOAMER mark manifest a disregard for the duty of candor imposed upon all applicants and their counsel who practice before the United States Trademark Office.

34. The representation by FOAMER in its trademark application for registration of the MR FOAMER are deserving of the most draconian of sanctions, including without limitation the striking of the FOAMER trademark application for registration of the MR FOAMER mark

WHEREFORE NEW WAVE respectfully requests the Board grant this Opposition by striking the FOAMER application for registration of the MR FOAMER mark for fraud upon the Trademark Office.

Respectfully,

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

FARO & ASSOCIATES  
1395 Brickell Avenue – Suite 800  
Miami, Florida 33131  
phone 305, 761-6921  
email: [johnf75712@aol.com](mailto:johnf75712@aol.com)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading entitled:

**AMENDED OPPOSITION  
(First)**

was forwarded, via email, to Counsel for Plaintiff, as per the attached Distribution List this 12<sup>th</sup> day of November, 2014.

/John H. Faro/

DISTRIBUTION LIST:

Isabel Jung, Esq.  
CARY, RODRIGUEZ, GREENBERG & O'KEEFE  
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Boca Raton, FL 33434  
Email: [IJung@crgolaw.com](mailto:IJung@crgolaw.com)

EXHIBIT “1”

New Wave Innovations, Inc.

502 N. School Street,  
Lodi, CA 95240

# Invoice

Date	Invoice #
11/12/2011	135

**PAID**  
01/17/2012

Bill To
CAR WASH EXPERTS INC JIM MCCLIMOND 6436 REVELLE CIR. S. JUPITER, FL 33458

Ship To
CAR WASH EXPERTS INC JIM MCCLIMOND 6436 REVELLE CIR. S. JUPITER, FL 33458

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
			12/7/2011	UPS		
Quantity	Item Code	Description			Price Each	Amount
1	TCS-3MK	TRIPLE COAT SET- TWO ELEPHANT EARS AND ONE TOP EAR W/ GENERATORS AND MOUNTS			487.95	487.95
	1238	1/2 FIT, 3/8 FIT			0.00	0.00
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00
1	TSG-1MK	TOP STICK W/ GENERATOR W/ MOUNTING KIT			209.95	209.95
	1238	1/2 FIT, 3/8 FIT			0.00	0.00
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00
1	TFS-2MK	FOAM STICK SPT SET W/ GENERATOR W/ MOUNTING KIT			349.95	349.95
	1238	1/2 FIT, 3/8 FIT			0.00	0.00
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00
	SHIPPING ESTIM..				79.00	79.00
		Out-of-state sale, exempt from sales tax			0.00%	0.00
Thank you for your business.					<b>Total</b>	\$1,126.85

New Wave Innovations, Inc.

502 N. School Street,  
Lodi, CA 95240

# Invoice

Date	Invoice #
12/29/2011	166

**PAID**  
03/02/2012

<b>Bill To</b> CAR WASH EXPERTS INC. JIM MCCLIMOND 6436 REVELLE CIR. S. JUPITER, FL 33458
---

<b>Ship To</b> CAR WASH EXPERTS INC. JIM MCCLIMOND 6436 REVELLE CIR. S. JUPITER, FL 33458
---

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30		12/29/2011	UPS		
Quantity	Item Code	Description			Price Each	Amount
2	TCS-3MK	TRIPLE COAT SET- TWO ELEPHANT EARS AND ONE TOP EAR W/ GENERATORS AND MOUNTS			487.95	975.90T
	1238	1/2 FIT, 3/8 FIT			0.00	0.00T
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00T
1	TSG-1MK	TOP STICK W/ GENERATOR W/ MOUNTING KIT			209.95	209.95
	1238	1/2 FIT, 3/8 FIT			0.00	0.00T
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00T
2	TFS-2MK	TURBO FOAM STICK SET W/ GENERATOR W/ MOUNTING KIT			349.95	699.90
	1238	1/2 FIT, 3/8 FIT			0.00	0.00T
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00T
1	CTA-2MT	SET OF CTA'S WITH MOUNTS			384.95	384.95
	1238	1/2 FIT, 3/8 FIT			0.00	0.00T
2	KSS-2ME	K-FOAMER SIDE STICK SET W/ EASY CLEAN GENERATOR 48" LONG W/ THREE NOZZLES W/ MOUNT			349.95	699.90T
	1238	1/2 FIT, 3/8 FIT			0.00	0.00T
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00T
2	KTF-1MK	TOP FOAMING K-STICK- TWO MINI GENERATORS AND 2 NOZZLES W/ MOUNTS			279.95	559.90T
	1238	1/2 FIT, 3/8 FIT			0.00	0.00T
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00T
5	GEN-1	EASY CLEAN GENERATOR			97.95	489.75T
	1238	1/2 FIT, 3/8 FIT			0.00	0.00T
	SHIPPING ESTIM...				187.00	187.00
		Out-of-state sale, exempt from sales tax			0.00%	0.00
					<b>Total</b>	<b>54,207.25</b>

New Wave Innovations, Inc.

502 N. School Street,  
Lodi, CA 95240

# Invoice

Date	Invoice #
1/12/2012	179

**PAID**

<b>Bill To</b>
CAR WASH EXPERTS INC. JIM MCCLIMOND 6436 REVELLE CIR. S. JUPITER, FL 33458

<b>Ship To</b>
CAR WASH EXPERTS INC. JIM MCCLIMOND 6436 REVELLE CIR. S. JUPITER, FL 33458

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30		1/12/2012	UPS		
Quantity	Item Code	Description			Price Each	Amount
5	GEN-1 123810M	EASY CLEAN GENERATOR 1/2 FIT, 3/8 FIT, 1 IN MALE MISSING FROM ORDER Out-of-state sale, exempt from sales tax			0.00  0.00%	0.00T 0.00T 0.00
					<b>Total</b>	\$0.00

New Wave Innovations, Inc.

502 N. School Street,  
Lodi, CA 95240

# Invoice

Date	Invoice #
3-1-2012	213

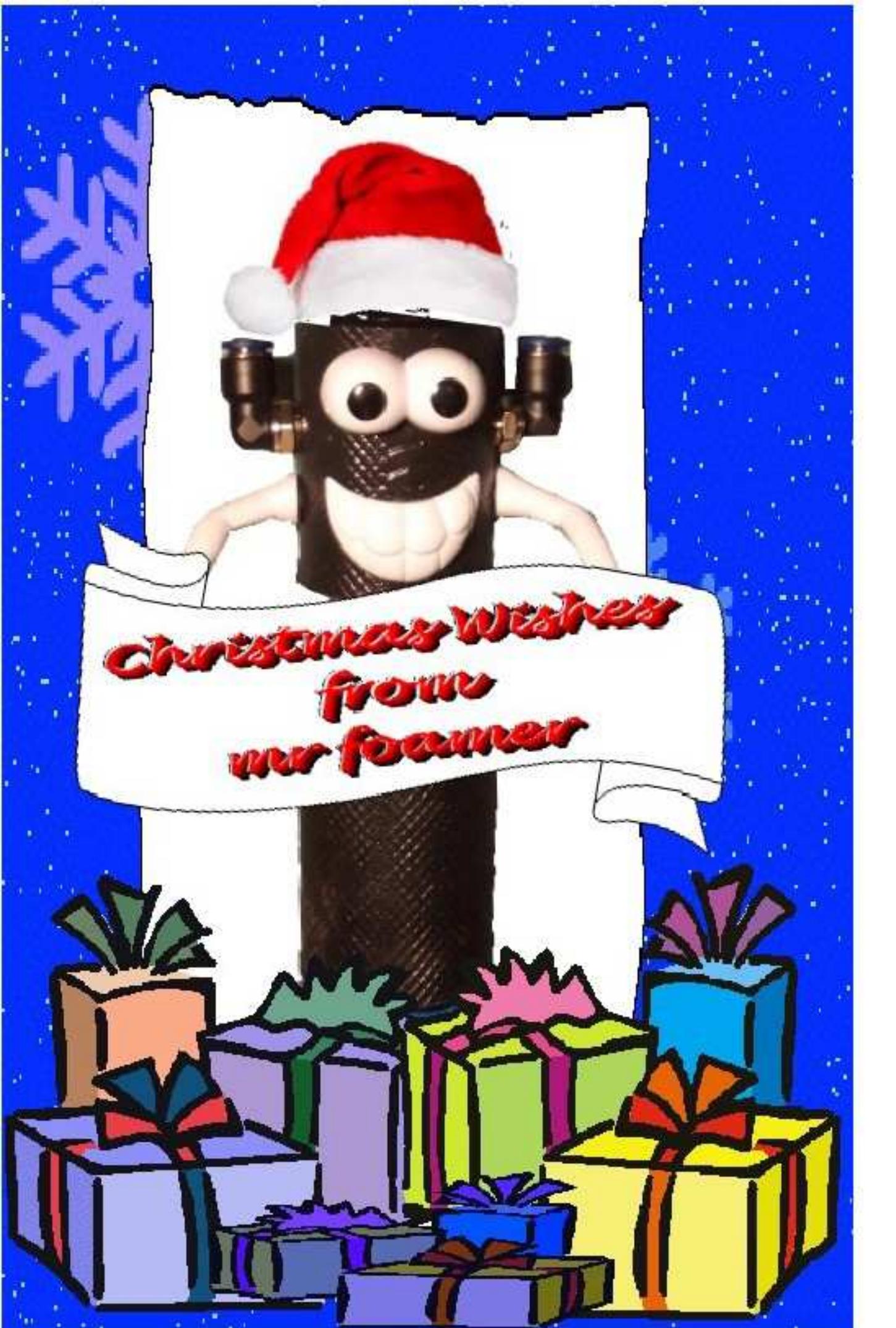
**PAID**  
04/27/2012

<b>Bill To</b>
CAR WASH EXPERTS INC. JIM MCCLIMOND 6436 REVELLE CIR. S. JUPITER, FL 33458

<b>Ship To</b>
CAR WASH EXPERTS INC. JIM MCCLIMOND 6436 REVELLE CIR. S. JUPITER, FL 33458

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Net 30		3-1-2012	LPS		
Quantity	Item Code	Description			Price Each	Amount
1	TCS-3MK	TRIPLE COAT SET- TWO ELEPHANT EARS AND ONE TOP EAR W/ GENERATORS AND MOUNTS			510.95	510.95
	1238	1/2 FIT, 3/8 FIT			0.00	0.00
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00
1	ETF-1MK	TOP EAR FOAMER W/ GENERATOR W/ MOUNTING KIT			188.95	188.95
	1238	1/2 FIT, 3/8 FIT			0.00	0.00
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00
2	TSG-1MK	TOP STICK W/ GENERATOR W/ MOUNTING KIT			209.95	419.90
	1238	1/2 FIT, 3/8 FIT			0.00	0.00
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00
1	TFS-2MK	TURBO FOAM STICK SET W/ GENERATOR W/ MOUNTING KIT			349.95	349.95
	1238	1/2 FIT, 3/8 FIT			0.00	0.00
	44SQ	4X4 IN SQUARE FRAME			0.00	0.00
	SHIPPING ESTIM...	SHIPPING ESTIMATE			65.00	65.00
		Out-of-state sale, exempt from sales tax.			0.00%	0.00
					<b>Total</b>	51534.75

EXHIBIT “2”





Mr. Foamer would like to wish you a Merry Christmas and thank you with a special Christmas offer.

Mr. Foamer, the car wash expert here at New Wave Innovations would like to proudly introduce our new 2014 products and recommend New Wave Innovations for all your applicator needs.

Come see us today at:

[www.newwaveinnovations.us](http://www.newwaveinnovations.us)

See us on YOUTUBE:

[NEWWAVEINNOVATIONS1](https://www.youtube.com/channel/UC...)

Call us at:

1-855-235-2100

\* Offer on back



*A Message  
from Santa*

free shipping  
on all orders  
through  
Jan 3, 2014  
plus a special  
gift with every  
order from  
Mr. Foamer  
at New Wave  
Innovations

EXHIBIT “4”



**HAPPY HALLOWEEN!**

**FROM MR. FOAMER  
AT  
NEW WAVE INNOVATIONS**

EXHIBIT “5”

Trademark Electronic Application System (TEAS) filing receipt

1. **YOUR MARK:** MR. FOAMER (Standard Characters, mark.jpg)  
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.
2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '86304665' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.  
Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.
3. **RECEIVING E-MAIL COMMUNICATIONS/FILING DOCUMENTS ON-LINE:** If you have authorized receipt of correspondence by e-mail, please make sure that your server will accept USPTO e-mail and not treat it as SPAM. If you have not authorized communication by e-mail, please do so at any time by using the "Change of Correspondence Address" form, available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>. If you must submit correspondence to us, please use the Trademark Electronic Application System (TEAS) forms, available at <http://www.uspto.gov/trademarks/teas/index.jsp>.
4. **KEEP YOUR ADDRESS CURRENT IN USPTO RECORDS:** We do not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must update the correspondence and/or owner's address if a postal address and/or e-mail address changes, using the form(s) available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.
5. **WARNING ABOUT UNSOLICITED COMMUNICATIONS:** You may receive trademark-related communications from private companies not associated with the USPTO. These communications frequently display customer-specific information, including your USPTO serial number or registration number and owner name, and request fees for trademark-related services, such as monitoring, listings in international publications, and document filing. None of the companies offering these services are affiliated with the USPTO or any other federal agency. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, VA, and if by e-mail, specifically from the domain "@uspto.gov." Please consult the "Warning" page on the Trademarks section of the USPTO's website for further information about unsolicited communications and to view representative examples of them. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult [www.uspto.gov](http://www.uspto.gov), contact the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199.
6. **LEGAL EXAMINATION PROCESS:** Your application is now pending examination. In approximately 3 months, your application will be assigned to a USPTO examining attorney for review. The application cannot mature into a registration unless all legal requirements are met, and many applications never satisfy these requirements and therefore never register. The overall

process can take up to 18 months.

7. **CHECK STATUS AND REVIEW DOCUMENTS OR YOUR APPLICATION MAY BE UNINTENTIONALLY ABANDONED:** You must check the status and review all documents associated with your application at least every 3-4 months using Trademark Status and Document Retrieval (TSDR), available at <http://tsdr.uspto.gov/>. Promptly e-mail the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199 (select option #1) if an Office action (letter from the USPTO) or notice has issued for your application that you did not receive or do not understand. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.
8. **FILING ERRORS:** If you discover an error in the application data, you must file a Voluntary Amendment at <http://www.uspto.gov/trademarks/teas/miscellaneous.jsp>. Do not submit any proposed amendment to [TEAS@uspto.gov](mailto:TEAS@uspto.gov), because the TEAS technical support team may not make any data changes. Please wait approximately 7 days after the filing date of your application to submit a Voluntary Amendment in order to allow for initial upload of your application data into the USPTO database. The assigned examining attorney will determine the acceptability of any Voluntary Amendment during examination. Not all errors may be corrected. For example, if you submitted the wrong mark or if the proposed correction would be considered a material alteration to your original filing, it will not be accepted. In this situation, your only recourse would be to file a new application, with a new fee and no refund of your original filing fee.
9. **REQUEST FOR REFUND AND/OR CANCELLATION:** Since your application has already been assigned a serial number, please do not contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov) to request a refund or to cancel the filing. We will only cancel the filing and refund the filing fee if the application does not meet minimum filing requirements. The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.  
In the limited situation where you inadvertently filed identical applications, one immediately after the other, because no confirmation of the first filing was received, please provide both serial numbers to the technical support team at [TEAS@uspto.gov](mailto:TEAS@uspto.gov).
10. **SelectUSA:** The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit [SelectUSA.gov](http://SelectUSA.gov) or call +1-202-482-6800.

#### **SUMMARY OF APPLICATION DATA FOLLOWS:**

#### **APPLICATION DATA: Trademark/Service Mark Application, Principal Register**

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-1 [SPE0-9823848233-191724805\_.\_2011\_Chistmas\_Card\_Specimen.jpg ]

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;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

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Thank you,

The TEAS support team

Mon Jun 09 19:42:26 EDT 2014

STAMP: USPTO/BAS-98.238.48.233-20140609194226555768-86304665-

5004fa42bd0fc25a1afa6f07b2886a01d23ed627977f15bf9a6b579677f6e65013-CC-6129-

20140609191724805618

EXHIBIT “6”

Trademark Electronic Application System (TEAS) filing receipt

1. **YOUR MARK:** Mr. Foamer cartoon characture in costume (stylized and/or with design, mark\_9823848233-101423603\_.\_Mr.\_Foamer\_Drawing\_Resized.jpg)

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).

2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '86303800' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

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4. **KEEP YOUR ADDRESS CURRENT IN USPTO RECORDS:** We do not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must update the correspondence and/or owner's address if a postal address and/or e-mail address changes, using the form(s) available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.
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In the limited situation where you inadvertently filed identical applications, one immediately after the other, because no confirmation of the first filing was received, please provide both serial numbers to the technical support team at [TEAS@uspto.gov](mailto:TEAS@uspto.gov).
10. **SelectUSA:** The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit [SelectUSA.gov](http://SelectUSA.gov) or call +1-202-482-6800.

#### **SUMMARY OF APPLICATION DATA FOLLOWS:**

**APPLICATION DATA: Trademark/Service Mark Application, Principal Register**

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-1 [SPE0-9823848233-101423603 \_.\_2011\_Chistmas\_Card\_Resized.jpg ]

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

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Thank you,

The TEAS support team

Mon Jun 09 11:48:20 EDT 2014

STAMP: USPTO/BAS-98.238.48.233-20140609114820568556-86303800-

5007e25fd872e365cc31d1570fa357529f386e068cd9a9b354b1c49261e3c8840-CC-8869-

20140609101423603425

EXHIBIT “7”

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

Case No. 13-CV-22541-COOKE/TURNOFF

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	)
_____	/

**AMENDED COMPLAINT**  
**(Second)**

The Plaintiff, New Wave Innovations, Inc. (hereinafter also "NEW WAVE"), by counsel, alleges for its Complaint, upon knowledge, with respect to its own acts, and upon information and belief as to all other matters, as follows:

Nature of the Action

1. New Wave Innovations, Inc., a California Corporation, based in Lodi, California, brings this action against the Defendants, James (Jim) McClimond, Car Wash Experts, Inc., and Mr. Foamer, Inc., (herein also collectively "MCCLIMOND") for
  - a. False Designation Of Origin under the Lanham Act, 15 U.S.C. § 1125(a);
  - b. Trade Dress Infringement under the Lanham Act, 15 U.S.C. § 1125(a);
  - c. Breach of Confidential Business Relationship, State Law;
  - d. Trademark Infringement, State Law
  - e. Florida Unfair and Deceptive Trade Practices Act, §§ 501.201, et seq., Fla. Stat.

### **Jurisdiction and Venue**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1121 (original jurisdiction over Lanham Act claims), 28 U.S.C. §1331 (federal question), 28 U.S.C. §1332 (diversity of citizenship); 28 U.S.C. §1338 (original jurisdiction over trademark claims), 28 U.S.C. §1367 (supplemental jurisdiction), and principals of ancillary and pendent jurisdiction.

3. Defendant, Car Wash Experts, Inc., is a Florida corporation, (founded in March 2011), which operates, conducts, engages in, and/or carries on a business in this district (Jupiter, Florida), and is therefore subject to personal jurisdiction in this district.

4. Defendant, Mr. Foamer, Inc., is a Florida corporation (founded in July 2012), which operates, conducts, engages in, and/or carries on a business in this district (Jupiter, Florida), and is therefore subject to personal jurisdiction in this district.

5. Defendant, James (Jim) McClimond, (hereinafter "MCCLIMOND") is the founder and officer of each of the Defendants Mr. Foamer, Inc., and Car Wash Experts, Inc., and controls and directs the actions of each of the Defendants Mr. Foamer, Inc., and Car Wash Experts, Inc., including the unlawful conduct of the Defendants Mr. Foamer, Inc., and Car Wash Experts, Inc., in this district. MCCLIMOND also resides in this judicial district and is therefore subject to personal jurisdiction in this district.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), § 1391(c), and otherwise because, among other things, MCCLIMOND personally resides in this district and the corporate Defendants which he directs and controls, have a principal place of business in this district and a substantial part of the events or omissions giving rise to this action occurred in this district.

**Parties**

7. The Plaintiff, NEW WAVE is a California corporation, with its principle place of business in Lodi, California. NEW WAVE designs, engineers, and manufactures innovative and proprietary products for automatic commercial car washes. NEW WAVES markets and distributes its proprietary products, including products incorporating it proprietary “Turbo Foam Technology”, directly to customers and through a distributor network.

8. The Defendant, James (Jim) McClimond (also “MCCLIMOND”), is an individual, and a former distributor of NEW WAVE automatic commercial car wash products and accessories incorporating the NEW WAVE proprietary “Turbo Foam Technology”.

9. The Defendant, Car Wash Experts, Inc., is a Florida corporation, organized and existing under the laws of the State of Florida; and, upon information and belief, was founded by MCCLIMOND to manufacture, market and/or distribute automatic commercial car wash products, including products incorporating the NEW WAVE proprietary “Turbo Foam Technology” and NEW WAVE product designs.

10. The Defendant, Mr. Foamer, Inc., is a Florida corporation, organized and existing under the laws of the State of Florida; and, upon information and belief, was founded by MCCLIMOND to manufacture, market and/or distribute automatic commercial car wash products, including products incorporating the NEW WAVE proprietary “Turbo Foam Technology” and NEW WAVE product designs.

**Parties Confidential Business Relationship & History**

11. In late October and/or early November 2011, MCCLIMOND contacted NEW WAVE and solicited information relative to the MCCLIMOND distribution of automatic

commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”.

12. Incident to this contact in October-November 2011, between MCCLIMOND and NEW WAVE, MCCLIMOND requested and was provided with NEW WAVE confidential technical, marketing and competitive sales information, relative to automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”.

13. The NEW WAVE confidential technical, marketing and competitive sales information, relative to automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”, referenced hereinabove in Paragraph (12), was provided and entrusted to MCCLIMOND for his use exclusively with the sales, marketing and distribution of unique and distinctive automatic commercial car wash products available from NEW WAVE.

14. The NEW WAVE confidential technical, marketing and competitive sales information, relative to automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”, referenced hereinabove in Paragraph (12), was provided and entrusted to MCCLIMOND, with the agreement, in fact, that such information was to be used for the exclusive benefit of NEW WAVE.

15. The NEW WAVE confidential technical, marketing and competitive sales information, relative to automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”, referenced hereinabove in Paragraph (12), was provided and entrusted to MCCLIMOND, with the agreement, in fact, that such information would not be used and/or disclosed to third party, including specifically an entity competing with NEW WAVE.

16. From about November 2011, through March 2012, MCCLIMOND, ordered approximately \$7,000, in automatic commercial car wash products incorporating the NEW

WAVE proprietary “Turbo Foam Technology”, including products having a distinctive “turbo foam generator” and distinctive “elephant ears” design and appearance, New Wave Innovations Invoice Nos. 156, 166, 179 & 213, annexed hereto as **Composite Exhibit “1”**.

### **Defendant's Wrongful Acts**

17. Upon information and belief, MCCLIMOND used the NEW WAVE information, without authorization or license, to reverse engineer NEW WAVE products, to produce competing automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”, including the slavishly copying the NEW WAVE proprietary and distinctive “Turbo Foam Technology”, and the proprietary and distinctive designs for the “Turbo Foam Generator” and the “Elephant Ears” foam applicator, the NEW WAVE distinctive product designs being depicted in the NEW WAVE product literature annexed hereto as **Exhibit “2”**; and, the MCCLIMOND “**knock off**” of the NEW WAVE distinctive products being depicted to the MR. FOAMER product literature annexed hereto as **Exhibit “3”**.

18. The commercial environment, and circumstances relative to the qualification of MCCLIMOND as a NEW WAVE distributor, as set forth in Paragraphs 12-15, inclusive, created a confidential business relationship between NEW WAVE and MCCLIMOND, and an agreement, in fact, imposing rights and obligations relative to the use and restraint upon disclosure of NEW WAVE information, which are enforceable under the law, including state and federal law.

19. Notwithstanding the confidential business relationship between NEW WAVE and MCCLIMOND, MCCLIMOND, from and after April 2012, undertook preparations to “knock off” automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”, including the slavish copying of the distinctive and proprietary NEW

WAVE Turbo Foam Generator and the distinctive and proprietary NEW WAVE designs for the Turbo Foam Generator and the Elephant Ears Foam Applicator.

20. From and after April 2012, MCCLIMOND undertook to manufacture, market and distribute automatic commercial car wash products, in competition with NEW WAVE, incorporating the NEW WAVE proprietary “Turbo Foam Technology”, and to manufacture, market and distribute automatic commercial car wash products incorporating the NEW WAVE proprietary trade dress, specifically, a “Twist ‘n Kleen” (Foam) Generator, and Elephant Ears foam applicators, having the same distinctive design and appearance as the NEW WAVE “turbo foam generator” and “elephant ears”.

21. The MCCLIMOND “Twist ‘n Kleen” (Foam) Generator, and Elephant Ears foam applicators, are marketed to the same customers and through the same channels of trade, to the same customers, as are automatic commercial car wash products incorporating the NEW WAVE proprietary “Turbo Foam Technology”.

#### **NEW WAVE Trademarks & Trade Dress**

22. NEW WAVE actively promotes its business, its products and its proprietary “Turbo Foam Technology”, under a number of registered and unregistered marks and product designations, which are prominently displayed on its marketing and promotional materials, including the unregistered trademarks *Mr. Foamer*, *Turbo Foam*, *Turbo Foam Generator* and *Elephant Ear Foam Applicator* (collectively also “NEW WAVE MARKS”).

23. As a result of NEW WAVE’s widespread use and display of its NEW WAVE MARKS, the automatic car wash parts and accessories, which it advertises and markets through various media and in various venues, the public recognizes the NEW WAVE products and services, which are associated with the NEW WAVE MARKS, are regarded as high quality products and emanating from a single source, *i.e.*, New Wave Innovations, Inc., and are

therefore, extremely well known, and have established secondary meaning and extensive goodwill.

24. NEW WAVE is the exclusive owner of the NEW WAVE MARKS and has the exclusive right to use and license the NEW WAVE MARKS.

25. NEW WAVE has expended substantial sums in advertising and promoting the NEW WAVE MARKS through print and other media. The NEW WAVE MARKS are therefore well known throughout Florida and the United States.

26. As a result of NEW WAVE extensive sales, advertising, and promotions, the NEW WAVE MARKS are widely and favorably known by distributors for automatic car wash parts and accessories, and to the purchasing public generally as indicating the source of the products and services offered by NEW WAVE, and NEW WAVE has established extraordinary goodwill of incalculable value in the NEW WAVE MARKS for the NEW WAVE “Turbo Foam Technology”.

**COUNT I**  
**(Violation of 15 U.S.C. § 1125(1)(A))**  
**Unfair Competition - False Designation Of Origin)**

27. The allegations in Paragraphs 7 through 26, inclusive, are incorporated herein by reference.

28. MCCLIMOND has used and is continuing to use one or more of the NEW WAVE MARKS (*Mr. Foamer, Turbo Foam, Foam Generator and Elephant Ears*), or a similar mark in commerce in connection with automatic car wash parts and accessories in violation of 15 U.S.C. § 1125(a), in that it has falsely designated the origin of its automatic car wash parts and accessories. Such unauthorized use of the NEW WAVE MARKS is a false description and representation that MCCLIMOND’s products and business is legitimately connected with, affiliated with, franchised by, licensed by, or in some other manner sponsored, endorsed or approved by NEW WAVE, and

consumers are likely to confuse the two companies. Such likelihood of confusion is further compounded by MCCLIMOND's adoption of a similar color scheme (blue) similar to NEW WAVE, for its brochures and product literature, so as to further enhance/create the total commercial impression that NEW WAVE's and MCCLIMOND's originate from a common source or origin,

29. Such conduct by MCCLIMOND causes consumers to believe that MCCLIMOND is in some way affiliated with NEW WAVE or its business, and is designed to take advantage of the reputation and goodwill of NEW WAVE and the NEW WAVE Mark(s). MCCLIMOND's actions in this regard constitute unfair competition with NEW WAVE in violation of 15 U.S.C. §1125(a).

30. MCCLIMOND has unfairly profited from the infringing actions alleged herein.

31. NEW WAVE has incurred, and will continue to incur, actual and substantial damages as a direct and proximate result of MCCLIMOND's knowing and intentional use of such false descriptions or representations. MCCLIMOND's unfair competition, including, without limitation, confusion and deception of the automatic car wash parts customers and distributors, as well as the purchasing public generally, is causing NEW WAVE to incur irreparable injury to NEW WAVE's reputation and goodwill, actual damages, and the expenditure of attorneys' fees.

32. NEW WAVE has no adequate remedy at law. NEW WAVE has suffered irreparable injury to its reputation and goodwill and otherwise, and will continue to suffer irreparable injury unless MCCLIMOND's wrongful acts are enjoined by the Court. Accordingly, NEW WAVE is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a).

33. By reason of MCCLIMOND's willful acts, NEW WAVE is entitled to an equitable accounting, and to recover MCCLIMOND's profits generated in connection with MCCLIMOND's wrongful use of the NEW WAVE Mark(s), recovery of all damages sustained

by NEW WAVE, and an award of costs of this action, and NEW WAVE's profit award should be enhanced and its damages trebled pursuant to 15 U.S.C. § 1117(a).

34. This is an exceptional case making NEW WAVE eligible for an award of attorneys' fees under 15 U.S.C. § 1117(a).

**COUNT II**  
**(Violation of 15 U.S.C. § 1125(a)(1)(A))**  
**Unfair Competition – Trade Dress Infringement**

35. The allegations in Paragraphs 7 through 26, inclusive, are incorporated herein by reference.

36. MCCLIMOND has used and is using one or more of the NEW WAVE MARKS, specifically, the trade dress associated with the distinctive and proprietary non-functional design features of the NEW WAVE *Turbo Foam Generator* and *Elephant Ears Foam Applicator*, or a similar distinctive non-functional design features, in commerce, in connection with the marketing, sales and distribution of automatic car wash parts and accessories, in violation of 15 U.S.C. § 1125(a)(1)(A), in that it has falsely designated the origin of its automatic car wash parts. Such unauthorized use of the NEW WAVE trade dress is a false description and representation that MCCLIMOND's products and business is legitimately connected with, affiliated with, franchised by, licensed by, or in some other manner sponsored, endorsed or approved by NEW WAVE, and consumers are likely to confuse the two companies. Such likelihood of confusion is further compounded by MCCLIMOND's adoption of a similar color scheme (blue) similar to NEW WAVE, for its brochures and product literature, so as to further enhance/create the total commercial impression that NEW WAVE's and MCCLIMOND's originate from a common source or origin,

37. Such conduct by MCCLIMOND causes consumers to believe that MCCLIMOND is in some way affiliated with NEW WAVE or its business, and is calculated to take advantage of the

reputation and goodwill of NEW WAVE and the NEW WAVE MARKS and trade dress. MCCLIMOND's actions in this regard constitute unfair competition with NEW WAVE in violation of 15 U.S.C. §1125(a).

38. MCCLIMOND has unfairly profited from the infringing actions alleged herein.

39. NEW WAVE has incurred, and will continue to incur, actual and substantial damages as a direct and proximate result of MCCLIMOND's knowing and intentional use of such false descriptions or representations. MCCLIMOND's unfair competition, including, without limitation, confusion and deception of the automatic car wash parts industries, as well as the purchasing public generally, is causing NEW WAVE to incur irreparable injury to NEW WAVE's reputation and goodwill, actual damages, and the expenditure of attorneys' fees.

40. NEW WAVE has no adequate remedy at law. NEW WAVE has suffered irreparable injury to its reputation and goodwill and otherwise, and will continue to suffer irreparable injury unless MCCLIMOND's wrongful acts are enjoined by the Court. Accordingly, NEW WAVE is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a).

41. By reason of MCCLIMOND's willful acts, NEW WAVE is entitled to an equitable accounting and to recover MCCLIMOND's profits generated in connection with MCCLIMOND's wrongful use of the NEW WAVE trade dress, recovery of all damages sustained by NEW WAVE, and an award of costs of this action, and NEW WAVE's profit award should be enhanced and its damages trebled pursuant to 15 U.S.C. § 1117(a).

42. This is an exceptional case making NEW WAVE eligible for an award of attorneys' fees under 15 U.S.C. § 1117(a).

**COUNT III**  
**(Breach of Confidential Business Relationship)**

43. The allegations in Paragraphs 7 through 26, inclusive, are incorporated herein by reference.

44. As early as March 8, 2011, the novel proprietary functional features of the NEW WAVE Turbo Foam Generator have been the subject of one or more NEW WAVE pending patent applications, Filing Receipt - Provisional Patent Application Serial No. 61/450,278 (filed March 8, 2011) annexed hereto as **Exhibit No. "4"**; Provisional Patent Application Serial No. 61/639,876 (filed April 28, 2012) annexed hereto as **Exhibit No. "5"**;

45. A number of the features and functions of the NEW WAVE Turbo Foam Generator are disclosed and claimed in one or more of the NEW WAVE pending patent applications, and such pending patent applications are and continued to be maintained in secret by the United States Patent & Trademark Office.

46. At all times material hereto, the novel proprietary functional features of the NEW WAVE Turbo Foam Generator have been and continue to be maintained secret and confidential by NEW WAVE; and, where a disclosure thereof, in whole or in part, has been made by NEW WAVE, such disclosure was prefaced by an admonition that such information was confidential and the acknowledgement of the confidential nature thereof by the recipient.

47. Incident to the qualification of a party as a NEW WAVE distributor, NEW WAVE was required to educate its distributors, including MCCLIMOND, as to the unique structure, function and operation of the NEW WAVE Turbo Foam Generator, including, the proprietary and potentially patentable features of the NEW WAVE Turbo Foam Generator, and of the accessories associated therewith. Such "education" necessarily included a discussion of competitive marketing information, economies of operation, maintenance advantages, and the

HOW and WHY such functional features achieved these advantageous results (herein also “Know How” & “Show How”).

48. At all times material hereto, the commercial environment, and circumstances relative to the qualification of MCCLIMOND as a NEW WAVE distributor, as set forth in Paragraph 47, created a confidential business relationship, and an agreement, in fact, to maintain NEW WAVE proprietary information confidential, including specifically the competitive marketing information, economies of operation, maintenance advantages, and the HOW and WHY such functional features achieved these advantageous results.

49. At all times material hereto, the commercial environment, and circumstances relative to the qualification of MCCLIMOND as a NEW WAVE distributor, as set forth in Paragraph 46, obligated MCCLIMOND to maintain the NEW WAVE proprietary and potentially patentable features of the NEW WAVE Turbo Foam Generator, and the accessories associated therewith,

50. At all times material hereto, the commercial environment, and circumstances relative to the qualification of MCCLIMOND as a NEW WAVE distributor, as set forth in Paragraph 46, obligated MCCLIMOND to maintain secret and confidential NEW WAVE proprietary business and technical information.

51. At all times material hereto, the commercial environment, and circumstances relative to the qualification of MCCLIMOND as a NEW WAVE distributor, as set forth in Paragraph 46, obligated MCCLIMOND to refrain from use of the NEW WAVE proprietary business information other than exclusively in conjunction with the distribution of the NEW WAVE Turbo Foam Generator, and the accessories associated therewith, and for no other purpose.

52. Notwithstanding a confidential business relationship, and an agreement, in fact, between MCCLIMOND and NEW WAVE, to maintain NEW WAVE proprietary information confidential and proprietary in confidence, and to refrain from the use thereof except for the

exclusive marketing and distribution of the NEW WAVE Turbo Foam Generator, and the accessories associated therewith, MCCLIMOND used and disclosed such information without regard to his obligations to NEW WAVE, and in furtherance of a business which was to compete with NEW WAVE.

53. The MCCLIMOND use and disclosure of NEW WAVE proprietary information, without regard to his obligations to NEW WAVE, as set forth in Paragraph 52, breached his obligation to NEW WAVE under the agreement, in fact, to maintain such proprietary information in confidence and refrain from use thereof other than as authorized.

54. The MCCLIMOND use and disclosure of NEW WAVE proprietary information, without regard to his obligations to NEW WAVE, as set forth in Paragraph 52, has been deliberate and calculated to damage NEW WAVE in its business and in the perception of the NEW WAVE distributors and customers.

55. The MCCLIMOND use and disclosure of NEW WAVE proprietary information, without regard to his obligations to NEW WAVE, as set forth in Paragraph 52, has caused and shall continue to cause, irreparable harm to NEW WAVE, which cannot be adequately compensated by monetary damages.

**Count IV**  
**(Trademark Infringement – Florida Common Law)**

56. The allegations in Paragraphs 7 through 26, inclusive, are incorporated herein by reference.

57. MCCLIMOND has infringed, and continues to infringe, on NEW WAVE's exclusive rights to the NEW WAVE MARKS and distinctive trade dress, by using, in commerce, the NEW WAVE MARKS, or a colorable imitation of the NEW WAVE MARKS, specifically, the NEW WAVE adoption and use of the marks "*Mr. Foamer*", "*Elephant Ears*", and the NEW

WAVE distinctive trade dress, in connection with the sale, offering for sale, distribution, or advertising of its product and/or by applying the NEW WAVE MARKS, or a colorable imitation of the NEW WAVE MARKS, to printed materials, products and advertising materials, including but not limited to the “*Twist ‘n Kleen*” foam generator and the “*Elephant Ears*” foam applicator, sold by MCCLIMOND. The NEW WAVE use and promotion of the “Mr. Foamer” mark being depicted in the holiday character greetings messages annexed hereto as **Exhibit “6”**. Such unauthorized use of the NEW WAVE MARKS is likely to cause confusion or mistake and/or to deceive the public.

58. MCCLIMOND has unfairly profited from the infringing actions alleged hereinabove in Paragraph 57.

59. At all relevant times, MCCLIMOND had actual knowledge that NEW WAVE owns the NEW WAVE MARKS, and distinctive trade dress, that NEW WAVE has the exclusive right to use the NEW WAVE MARKS, and distinctive trade dress, and that NEW WAVE was previously and continuously using the NEW WAVE MARKS, and distinctive trade dress, before MCCLIMOND commenced its use of the NEW WAVE MARKS, and NEW WAVE distinctive trade dress. NEW WAVE has objected to MCCLIMOND’s use of the NEW WAVE MARKS and distinctive trade dress, and MCCLIMOND knows that it lacks authorization or permission to use the NEW WAVE MARKS, and NEW WAVE distinctive trade dress, in its business or otherwise. Furthermore, MCCLIMOND has committed the acts complained of herein with knowledge that its imitation of the NEW WAVE MARKS is intended to cause confusion, or to cause mistake, or to deceive. Despite such knowledge, MCCLIMOND has intentionally, maliciously, and without any justification whatsoever failed and refused to discontinue its infringing use of the NEW WAVE MARKS.

60. NEW WAVE has incurred, and will continue to incur, actual and substantial damage as a direct and proximate result of MCCLIMOND’s wrongful acts, including, without limitation, injury to its reputation and goodwill, plus the expenditure of attorneys’ fees.

61. NEW WAVE has no adequate remedy at law. NEW WAVE has suffered irreparable injury to its goodwill and otherwise, and will continue to suffer irreparable injury unless MCCLIMOND's wrongful acts of infringement are enjoined by the Court. Accordingly, NEW WAVE is entitled to preliminary and permanent injunctive relief under state law.

62. By reason of MCCLIMOND's willful acts, NEW WAVE is entitled to an equitable accounting and to recover MCCLIMOND's profits generated in connection with MCCLIMOND's wrongful use of the NEW WAVE MARKS, recovery of all damages sustained by NEW WAVE, and an award of costs of this action, and NEW WAVE's profit award should be enhanced and its damages trebled.

63. This is an exceptional case making NEW WAVE eligible for an award of attorneys' fees.

**COUNT V**  
**(Violation of Florida Deceptive and Unfair Trade Practices Act)**

64. The allegations in paragraphs 7 through 26, inclusive, are incorporated herein by reference.

65. MCCLIMOND's unauthorized use of the NEW WAVE MARKS and distinctive trade dress is likely to cause, and has caused, confusion and mistake as to the source and/or origin of products that Defendant markets and sells bearing the NEW WAVE MARKS and distinctive trade dress.

66. MCCLIMOND's unauthorized use of the NEW WAVE MARKS and distinctive trade dress constitutes an unfair and/or deceptive act or practice in the conduct of trade or commerce and therefore violates the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et seq. ("FDUTPA").

67. As a result of MCCLIMOND's violations of FDUTPA, NEW WAVE has incurred, and will continue to incur, actual and substantial damages, including, without limitation, injury to its reputation and goodwill, plus the expenditure of attorneys' fees.

68. NEW WAVE has no adequate remedy at law.

69. NEW WAVE has suffered irreparable injury to its reputation and goodwill and otherwise, and will continue to suffer irreparable injury unless MCCLIMOND's wrongful acts are enjoined by the Court.

#### **Prayer for Relief**

**WHEREFORE**, Plaintiff NEW WAVE respectfully requests that the Court enter judgment in its favor and against the Defendants, James (Jim) McClimond, Car Wash Experts, Inc., and Mr. Foamer, Inc., as follows:

- a. As to Counts I-II and Counts VI-V, temporarily, preliminarily, and permanently enjoining each of the Defendants, as well as its employees, agents, representatives, and anyone acting on its behalf or in concert with it, from using for any purpose the NEW WAVE MARKS and distinctive trade dress, and/or any other trademark or service mark belonging to NEW WAVE, and awarding NEW WAVE compensatory, consequential, incidental, and statutory damages against Defendant in an amount to be determined at trial, plus costs and attorneys' fees incurred in relation to this action;
- b. As to Count III, temporarily, preliminarily, and permanently enjoining each of the Defendant, as well as its employees, agents, representatives, and anyone acting on its behalf or in concert with it, from using for any purpose the NEW WAVE proprietary and confidential technical and business information, relating to the NEW WAVE Turbo Foam Generator and related accessories, and

awarding NEW WAVE's costs and attorneys' fees incurred in relation to this  
action; and

- c. For such other and further relief as the Court deems just and proper.

Respectfully,

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

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

email:Johnf75712@aol.com

Phone 305, 761-6921  
Fax 305, 726-0029

EXHIBIT “8”

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-cv-22541  
TURNOFF, 07/22/2013

NEW WAVE INNOVATIONS, INC.

Plaintiff,

vs.

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

Defendants.

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**AFFIDAVIT OF JAMES MCCLIMOND IN SUPPORT OF DEFENDANTS'  
OPPOSITION (D.E. 33) TO PLAINTIFF'S MOTION FOR A PRELIMINARY  
INJUNCTION (D.E. 17)**

STATE OF FLORIDA

),ss:

COUNTY OF \_\_\_\_\_

James McClimond, being duly sworn, deposes and says:

1. I am the president of Car Wash Experts, Inc. ("Car Wash Experts") and the president of Mr. Foamer, Inc. ("Mr. Foamer").

**Mr. Foamer and Car Wash Experts**

2. Mr. Foamer and Car Wash Experts are both in existence.

3. Mr. Foamer is a separate company from Car Wash Experts and Car Wash Experts is not a predecessor in-interest to Mr. Foamer.

4. Mr. Foamer sells car wash foam generators also known as foamers, car wash foam applicators and other car wash related products manufactured by Mr. Foamer.

**Representations Made by Myself, Mr. Foamer or Car Wash Experts**

16. Mr. Foamer has never alleged on its website, [www.mrfoamer.com](http://www.mrfoamer.com), that Mr. Foamer provided a comparable car wash foamer to the New Wave Turbo Foam Generator.

17. Mr. Foamer has never told customers that the Mr. Foamer Twist N' Kleen was the same product as the New Wave Turbo Foam Generator.

18. Mr. Foamer has never represented that Mr. Foamer was the East coast address for New Wave.

19. I have never held myself out as being affiliated with New Wave.

20. Car Wash Experts has never held itself out as a company being affiliated with New Wave.

21. Mr. Foamer has never held itself out as a company being affiliated with New Wave.

22. Mr. Foamer has never alleged on its website, [www.mrfoamer.com](http://www.mrfoamer.com), that Mr. Foamer is a company owned by New Wave or a company affiliated with New Wave.

23. I have never claimed or stated to anyone that I was the inventor of the New Wave Turbo Foam Generator.

24. The posting on Mr. Foamer's Facebook account webpage as shown in Exhibit A to this affidavit, namely "Jim you said you were the inventor," was made by a person named "Dave Wright." (See attached Exhibit "A").

25. I do not know and never met a person named Dave Wright.

26. I have never claimed or stated to anyone that New Wave appropriated the New Wave Turbo Foam Generator from me.

27. Car Wash Experts has not purchased products sold by New Wave for the purpose of promoting its own products.

28. Mr. Foamer has not purchased products sold by New Wave for the purpose of promoting its own products.

**Confidential Information**

29. I never received any confidential or proprietary information about any product sold by New Wave from New Wave.

30. Car Wash Experts never received any confidential or proprietary information about any product sold by New Wave from New Wave.

31. Mr. Foamer never received any confidential or proprietary information about any product sold by New Wave from New Wave.

32. Aside from invoices, the only documents (the "Documents") I have ever received from New Wave were emailed to me by New Wave in two separate emails on or about November 17, 2011, copies of which are attached as Exhibit B to this affidavit (Exhibit "B").

33. The Documents consist of six (6) brochures/advertisement pertaining to the products sold by New Wave, a blank document entitled "customer information sheet," a blank document entitled "account agreement form," a blank document entitled "order form," a blank form entitled "authorized users," a form entitled "order instructions," and a price list. A copy of the Documents is attached as Exhibit C to this affidavit (Exhibit "C").

**The New Wave Christmas Card**

34. I never received an original or copy of the Christmas card sent by New Wave as seen on Exhibit D to this Affidavit. (See attached Exhibit "D," New Wave Christmas card.)

35. The first time I saw a copy of the Christmas card sent by New Wave as seen on Exhibit D was when I was served with a copy of the Motion for a Preliminary Injunction (D.E. 17) filed by New Wave in this action.

36. I did not adopt "Mr. Foamer, Inc." as a company name in an effort to create an association with New Wave.

**New Wave Products and Consumer Recognition**

37. Third parties do not associate the design of the New Wave Turbo Foam Generator with New Wave.

38. Third parties do not know that New Wave is the source of the Turbo Foam Generator.

39. Third parties do not associate the design of the New Wave Elephant Ears Applicator with New Wave.

40. Third parties do not know that New Wave is the source of the Elephant Ears Applicator.

**The New Wave Foamer Designs**

41. The use of the color blue in advertising and promotional materials in the car wash industry is extremely common as the color blue is generally associated with the color of water.

42. The design and shape of New Wave's Turbo Foam Generator is not unique to foamers and is actually common in the car wash industry as shown in the attached photographs evidencing that competitors of New Wave use a similar design and shape for competitive foamers (Exhibit E).

43. New Wave's Turbo Foam Generator is a variation of a commonly seen design for foamers used in the car wash industry.

44. New Wave's Elephant Ears Applicator is a variation of a commonly seen design for foam applicators used in the car wash industry.

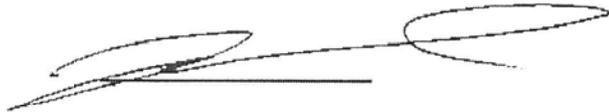
45. The configuration of the New Wave's Turbo Foam Generator are functional in nature: (1) the design of the foam insert of the Turbo Foam Generator allows easy disassembly and removal of the insert from the device; (2) the number of the inlet ports on the housing of the New Wave's Turbo Foam Generator is necessary for the device to perform its intended use—one inlet port for the entry of the air/water, the other inlet port for the entry of the chemicals in the generator; (3) the placement of the inlets on the upper part of the device is required in order to deliver the air/water and chemicals from the top portion and allow them to flow downwards and throughout the device until they reach the bottom portion—placement of these inlets anywhere else on the foamer would not allow the foamer to work properly; (5) the alternating elements on the insert of the New Wave's Turbo Foam Generator allow the foam to be created in a more consistent manner; (6) the transparent housing of New Wave's Turbo Foam Generator determines when the device is dirty and needs to be cleaned; and (7) the upper and lower couplings and their location on New Wave's Turbo Foam Generator allow the mounting of an outlet to the device.

50. The term "GENERATOR" is often used in the car wash industry to refer to a device which generates foam.

51. The term "APPLICATOR" is often used in the car wash industry to refer to a device to apply foam to cars in the car wash industry.

52. The term "FOAMER" is often used in the car wash industry to refer to a device which generates foam to be applied to cars in the car wash industry.

53. The terms "ELEPHANT EARS" are used by a company called Sonny's Enterprises Inc., one of the most famous companies in the car wash industry. Sonny's Enterprises Inc. uses the terms "ELEPHANT EARS" in connection with the sale of its drying device in the car wash industry.



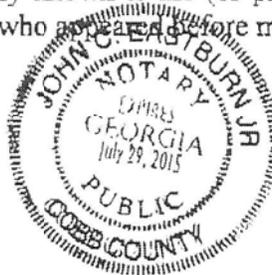
By: James McClimond

GEORGIA  
STATE OF ~~FLORIDA~~  
COUNTY OF COBB

Subscribed and sworn to (or affirmed) before me on this 21 day of oct, 2013  
by JAMES MCCLIMOND, personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person who appeared before me.

(Seal)

  
Signature



5. Car Wash Experts used to sell car wash related products manufactured by third parties.

6. Car Wash Experts stopped selling products sometime around June 2013.

7. Car Wash Experts currently does not sell any products.

**Trademark Use**

8. Car Wash Experts does not use a trademark containing the terms "TURBO FOAM" in connection with the sale of any product or service.

9. Mr. Foamer does not use a trademark containing the terms "TURBO FOAM" in connection with the sale of any product or service.

10. Car Wash Experts does not use a trademark containing the terms "ELEPHANT EARS" in connection with the sale of any product or service.

11. Mr. Foamer does not use a trademark containing the terms "ELEPHANT EARS" in connection with the sale of any product or service.

12. Car Wash Experts does not use a trademark containing the terms "MR. FOAMER" in connection with the sale of any product or service.

13. Mr. Foamer does not use a trademark containing the terms "MR. FOAMER" in connection with the sale of any product.

14. New Wave Innovations, Inc. ("New Wave") does not sell any product or service under the trademark "MR. FOAMER."

15. I have expended approximately over \$30,000.00 in branding my company as "Mr. Foamer, Inc." and any requirement that I rebrand my company will likely cost as much if not more.

EXHIBIT “3”

Number: CH100

# Gift Certificate

This certificate entitles: Our Valued Customer

to: Receive \$100 Dollars off any order of \$500.00 Dollars or more.

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

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

NWI INC | newwavecarwash@yahoo.com | 1-912-2inov8 | 1-912-246-6688

Number: CH200

# Gift Certificate

This certificate entitles: Our Valued Customer

to: Receive a FREE set of Elephant Ears with purchase of \$500.00 Dollars or more.

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

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

NWI INC | newwavecarwash@yahoo.com | 1-912-2inov8 | 1-912-246-6688

Number: CH300

# Gift Certificate

This certificate entitles: Our Valued Customer

Receive a FREE set of foam sticks with any order of \$500.00  
to: Dollars or more.

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

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

NWI INC | newwavecarwash@yahoo.com | 1-912-2inov8 | 1-912-246-6688