ESTTA Tracking number: **ESTTA342388**
Filing date: **04/14/2010**

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

Proceeding	92042082
Party	Plaintiff Four Seasons Dairy, Inc.
Correspondence Address	SAMUEL FRIEDMAN 225 BROADWAY, SUITE 1804 NEW YORK, NY 10007 UNITED STATES samfriedman@verizon.net
Submission	Testimony For Plaintiff
Filer's Name	Samuel Friedman
Filer's e-mail	samfriedman@verizon.net
Signature	/Samuel Friedman/
Date	04/14/2010
Attachments	PETITIONER'S TESTIMONIAL DEPOSITION OF N. WALEWITSCH 6-4-08 & EXS.pdf (47 pages)(871492 bytes)

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

In the Matter of Registration No. 2,479,287
Issued on August 21, 2001

FOUR SEASONS DAIRY, INC., Petitioner, - against – INTERNATIONAL GOLD STAR TRADING CORP., Registrant	Cancellation No.: 92042082 Mark: BABUSHKA'S RECIPE Reg. No. 2,479,287 Filed: December 7, 1999 Issued: August 21, 2001

I hereby certify that this correspondence is being filed with the Trademark Trial and Appeal Board through use of the Electronic System for Trademark Trials and Appeals (ESTTA)
April 14, 2010
(Date of Electronic Filing)
Samuel Friedman
Name of Representative

Signature
April 14, 2010
Date of Signature

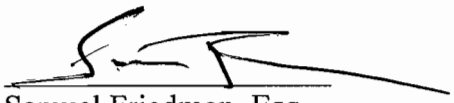
PETITIONER'S NOTICE OF FILING TESTIMONIAL DEPOSITION OF NATALIE WALEWITSCH OF JUNE 4, 2008 AND RELATED EXHIBITS

Petitioner, Four Seasons Dairy, Inc., pursuant to 37 C.F.R. §§ 2.123 and 2.125, gives notice of electronic filing of the certified transcript of the testimonial deposition of Natalie Walewitsch, taken on June 4, 2008, together with the accompanying exhibits, namely Petitioner's Trial Exhibits Nos. 1 and 13; and Respondent's Trial Exhibits Nos. 5 and 6.

True copies of the transcript and exhibits were previously served on counsel for Registrant on July 3, 2008.

Dated: April 14, 2010
New York, New York

Respectfully submitted,



Samuel Friedman, Esq.
225 Broadway, Suite 1804
New York, New York 10007
Tel: (212) 267-2900
Attorney for Petitioner
FOUR SEASONS DAIRY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Petitioner's Notice of Filing Testimonial Deposition of Natalie Walewitsch in Cancellation Proceeding No. 92042082 entitled Four Seasons Dairy, Inc. v. International Gold Star Trading Corp., was, pursuant to stipulation served by email on counsel for Registrant, addressed as follows:

Roger S. Thompson
Cohen, Pontani, Lieberman & Pavane
551 Fifth Avenue
New York, New York 10176
Email: rthompson@cplplaw.com.

Samuel Friedman

April 14, 2010
Date

ORIGINAL

1 THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
2 In the Matter of Registration No. 2,479,287
Issued on August 21, 2001
3 ----------X
FOUR SEASONS DAIRY, INC.,
4
Petitioner,
5
-against-
6
INTERNATIONAL GOLD STAR TRADING CORP.,
7
Registrant.
8 ----------X
9
10
11
12
13 DEPOSITION OF NATALIE WALEWITSCH
14 New York, New York
15 Wednesday, June 4, 2008
16
17
18
19
20
21 Reported by:
SARA FREUND
22
23
24
25

1
2
3
4
5
6
7
8
9
10 DEPOSITION of NATALIE WALEWITSCH,
11 a witness herein, taken pursuant to Article 31 of
12 the Civil Practice Law & Rules of Testimony, and
13 Notice, held at 189 Montague Street, Brooklyn, New
14 York, at the above-mentioned time, before SARA
15 FREUND, a shorthand reporter and a Notary Public of
16 the State of New York.
17
18
19
20
21
22
23
24
25

1 APPEARANCES:

2

3 SAMUEL FRIEDMAN, ESQ.
Attorney for Petitioner
4 225 Broadway - Suite 1804
New York, New York 10007

5

6

7 COHEN, PONTANI, LIEBERMAN & PAVANE
551 Fifth Avenue
8 New York, New York 10176
BY: ROGER S. THOMPSON, ESQ.

9

10

11 ALSO PRESENT:

12 Galina Pincow

13

14

15

16

17

18

19

20

21

22

23

24

25

1 N. Walewitsch

2 N A T A L I E W A L E W I T S C H, after having
3 first been duly sworn by a Notary Public of the
4 State of New York, was examined and testified as
5 follows:
6 EXAMINATION BY MR. FRIEDMAN:
7 Q. Please state your name and address for
8 the record.
9 A. Natalie Walewitsch, 17 53rd Street,
10 Brooklyn, New York 11232.
11 MR. FRIEDMAN: Counsel have conferred
12 and have agreed upon some stipulations:
13 That all objections, except as to the
14 form of the question, are reserved until the
15 time of trial. That the transcript may be
16 sworn before any notary. And that counsel
17 for petitioner shall retain custody of the
18 original exhibits.
19 Q. Miss Walewitsch, I represent Four
20 Seasons Dairy. I will be asking you a number of
21 questions. The court reporter to my right will be
22 taking down everything I say and everything you
23 say. It's important that if you do not understand
24 a question that you let me know, and I will attempt
25 to rephrase the question.

1 N. Walewitsch
2 Are currently employed?
3 A. Yes.
4 Q. Where?
5 A. Natar Foods.
6 Q. What is Natar Foods?
7 A. Wholesale distribution for European
8 products.
9 Q. Food products?
10 A. Yes.
11 Q. What is your position with Natar Foods?
12 A. Buyer.
13 Q. Are you also a principal of the company?
14 A. Yes.
15 Q. And for how long have you been a buyer
16 for Natar Foods?
17 A. Ten years.
18 Q. When you say "buyer," could you be a
19 little bit more specific about what you do as a
20 buyer.
21 A. I buy all the products whatever Natar
22 Foods sells.
23 Q. And does Natar Foods sell any dairy
24 products?
25 A. Yes.

1 N. Walewitsch
2 Q. When did Natar Foods start doing
3 business?
4 A. 1999.
5 Q. Approximately when in 1999?
6 A. Approximately August, September --
7 something like that.
8 Q. So is it from that period of time --
9 from August or September of 1999 -- that you've
10 been the buyer for Natar Foods?
11 A. Yes.
12 Q. Have you ever bought products from a
13 company known as Four Seasons Dairy?
14 A. Yes.
15 Q. Have you bought a product under the
16 brand "Babushkinow" from Four Seasons Dairy?
17 A. Yes.
18 Q. When did you start buying dairy products
19 from Four Seasons Dairy?
20 A. Since we opened.
21 Q. Since you opened. So that would be
22 around --
23 A. 1999.
24 Q. With whom at Four Seasons do you
25 interact?

1 N. Walewitsch
2 A. Both partners.
3 Q. Who are those partners?
4 A. Oleg and Alex.
5 Q. That would be Alex Becker and Oleg
6 Kessler?
7 A. Yes.
8 Q. And back in 1999 with whom at Four
9 Seasons did you interact?
10 A. With both of them.
11 Q. That would be Alex Becker and Oleg
12 Kessler?
13 A. Yes.
14 Q. Back in 1999, could you tell us
15 approximately how much of the dairy products you
16 were purchasing from Four Seasons that you were
17 purchasing under the name "Babushkinow"?
18 A. Up to 30 cases, maybe, a week -- 30, 40.
19 I can't tell you exactly, but approximately that.
20 Q. Has Natar Foods continued purchasing
21 dairy products under the name "Babushkinow" from
22 Four Seasons from 1999 until today?
23 A. Absolutely.
24 Q. And has the volume of purchases
25 increased or decreased?

1 N. Walewitsch
2 A. Increased.
3 Q. So continuously from 1999 until today
4 the volume has increased?
5 A. Yes.
6 Q. I'm showing you something that was
7 marked as Petitioner's Exhibit 1 of April 10 in
8 this matter. Could you identify what you see in
9 this?
10 A. Yes.
11 Q. What is this, please?
12 A. That's butter what they call "Babushka."
13 Q. Is that a Four Seasons product?
14 A. Absolutely. We used it for the price
15 list when we opened up.
16 Q. I'm going to ask you a couple of
17 questions still about Petitioner's 1.
18 Is this, more or less, the label that's
19 been on the product since Natar started buying from
20 Four Seasons?
21 A. Yes.
22 Q. You mentioned a price list. I'm showing
23 you what's been marked previously as Petitioner's
24 Exhibit 13 at a deposition on April 10. Can you
25 identify that?

1 N. Walewitsch
2 A. Yes.
3 Q. What is this, please?
4 A. It's a price list for our company, Natar
5 Foods, that we use a few items. One of them is
6 Babushka's butter from Four Seasons.
7 Q. Is this the entire price list?
8 A. No. This is just a cover. This is the
9 cover for the price list for our company.
10 Q. Has Natar continued to use the
11 Babushkinow label on the cover of its price list --
12 A. Yes.
13 Q. Let me finish the question before you
14 answer -- from whenever this started until the
15 present?
16 A. Yes.
17 Q. Can you tell me approximately when you
18 put the Babushkinow label on the cover of your
19 price list?
20 A. Maybe 2000, maybe '99 -- almost since we
21 opened.
22 Q. And this price list, is it distributed
23 to your customers?
24 A. Yes.
25 Q. Back in 1999 when Four Seasons sent

1 N. Walewitsch
2 products to Natar Foods, how was it sent, in what
3 manner?
4 A. They used to truck themselves. They
5 used to bring the products on their own.
6 Q. "They" being Alex and Oleg?
7 A. Yes.
8 Q. They would bring the products to where?
9 A. To our warehouse.
10 Q. Here in New York?
11 A. Yes.
12 Q. Did Alex and Oleg themselves bring the
13 products into the store?
14 A. Yes.
15 Q. In what manner did they bill Natar for
16 the product sold to Natar?
17 A. With invoices.
18 Q. Back in 1999, could you tell me a little
19 bit about the process of how that was done, how
20 they would provide the invoice to Natar?
21 A. They used to write everything by hand.
22 The invoices was not computerized. They took an
23 order by the hand, and the invoices were also
24 written by hand.
25 Q. And were the invoices contained within a

1 booklet they would carry around?
2 A. Yes. Like a standard invoice receipt
3 book -- however you call them.
4 Q. Would it be a regular size, like an
5 eight-and-a-half-by-eleven paper, or some other
6 size?
7 A. Like this. I'm not sure what size is
8 that.
9 Q. Well, if you look at Petitioner's 1 in
10 front of you that's --
11 A. Yes. About that size.
12 Q. Not very small?
13 A. No.
14 Q. I have no further questions at this
15 time.
16 EXAMINATION BY MR. THOMPSON:
17 Q. Miss Walewitsch, my name is Roger
18 Thompson. I represent International Gold Star
19 Trading Corporation. It's represented by not just
20 me, but its president, Miss Galina Pincow. Have
21 you ever met Miss Pincow before?
22 A. No.
23 Q. Have you ever met anyone from
24 International Gold Star Trading Corporation before?
25

1 N. Walewitsch
2 A. What do you mean by knowing anybody?
3 Q. Have you ever met anyone from
4 International Gold Star?
5 A. Yes. I used to have people who used to
6 work for her and then worked for my company, but
7 owners, no.
8 Q. Do you know when you first heard of
9 International Gold Star Trading Corporation?
10 A. Since we've been in the business.
11 Q. What is your understanding of what
12 International Gold Star Trading does?
13 A. The same thing we do, distributing food
14 products. And I believe they smoke the fish.
15 MR. FRIEDMAN: I'm going to object to
16 this questioning as exceeding the scope of
17 direct.
18 MR. THOMPSON: Okay.
19 Q. As part of your buying duties at Natar
20 did you ever buy products from International Gold
21 Star Trading Corporation?
22 A. No.
23 Q. Does Natar have any retail
24 establishments or is it only wholesale?
25 A. Only wholesale.

1 N. Walewitsch
2 Q. Now, first of all, is Mr. Friedman
3 representing you here today? Is he acting as your
4 lawyer, or not?
5 A. No.
6 Q. In preparation for your deposition were
7 you shown any documents other than the two that we
8 see in front of you right now?
9 MR. FRIEDMAN: I'm just objecting
10 because your question assumes that she was
11 shown the documents before the deposition.
12 MR. THOMPSON: My question says I don't
13 care if she was shown those two or not. I'm
14 not meaning to infer that she was shown
15 those.
16 MR. FRIEDMAN: Okay.
17 A. These are the documents that I saw so
18 far.
19 Q. Were you shown those documents before
20 you came here today?
21 A. This is my product. Who's supposed to
22 show me those products?
23 MR. FRIEDMAN: Petitioner's 13 is a
24 Natar Foods price list. It's been generated
25 by this witness's company.

1 N. Walewitsch
2 MR. THOMPSON: I'm asking if she was
3 shown it with a sticker attached to it
4 showing that it was a document in this
5 proceeding.
6 Q. Now, this other document, which has been
7 marked as Petitioner's 1, which shows a label
8 attached to a Babushkinow dairy product is not a
9 Natar product; is that correct?
10 A. No. This is Four Seasons' product.
11 Q. Is that the same label that has always
12 been on the product insofar as you know?
13 A. Yes.
14 Q. Exactly the same?
15 A. I don't recall. Maybe a few letters or
16 colors maybe, but it looks the same.
17 Q. I ask you to compare Petitioner's 1 to
18 Petitioner's 13, and in the lower right corner of
19 Petitioner's 13 there is a picture of a Babushkinow
20 product; is that right?
21 A. Yes.
22 Q. And on the bottom part of that they have
23 some language in Cyrillic; is that right?
24 A. Yes. It says "Maslo" -- is butter.
25 Q. And "Maslo," that would be a Cyrillic

1 N. Walewitsch
2 word. I'll spell it for the purposes of the
3 record. In English it would be M-A-S-L-O; is that
4 right?
5 A. Yes.
6 Q. And that is Russian for butter; is that
7 right?
8 A. Yes.
9 Q. However, on the pictures of Exhibit 1,
10 the round label in that same location says
11 "Granny." Is that correct?
12 A. Yes.
13 Q. So the two labels are different?
14 A. If you consider them different, yes,
15 it's different. But it's the same pictures and
16 colors and the same setup.
17 Q. Do you know if, in fact, you ever
18 purchased products with the picture of Exhibit 1 on
19 it that said Granny on the bottom?
20 A. Well, obviously, if we use it for our
21 price list we probably purchased from this one.
22 Q. Again, for the purposes of the record
23 when you say "this one" you're pointing to Exhibit
24 13?
25 A. Whatever is shown on our price list.

1 N. Walewitsch
2 Q. So, as far as you know you never
3 purchased the one that's on Exhibit 1. Is that
4 what you're telling me?
5 MR. FRIEDMAN: Objection.
6 A. What kind of question is that? We're
7 still selling this product.
8 Q. And that's the one with the word Granny
9 on it?
10 A. Yes.
11 MR. FRIEDMAN: Objection.
12 MR. THOMPSON: On what basis?
13 MR. FRIEDMAN: Objection to form.
14 MR. THOMPSON: The last one she was
15 pointing to what she was referring to, and I
16 was asking it for clarification if that's the
17 one with the word Granny on it.
18 MR. FRIEDMAN: You're asking for
19 purposes of confusion.
20 MR. THOMPSON: I'm trying to avoid
21 confusion.
22 Q. Do you know if, in fact, you have ever
23 sold the product that has the word Granny on it?
24 A. I'm not answering that.
25 Q. Why not?

1 N. Walewitsch

2 A. Why not? Because I'm not going every
3 day to check my product, every word if it's changed
4 or not. I know I'm selling this product for a long
5 time, and this is the product what I'm selling. If
6 a company changed two letters or color or whatever,
7 I can't keep up with that because I'm not standing
8 in the refrigerator packing this butter.
9 Q. So my question was if you knew, and if
10 your answer is you don't know --
11 A. I can't tell you the difference. Just I
12 know I'm selling this butter and it says
13 Babushkinow for ten years. I don't know if they
14 changed a word and it says Maslo or Granny or
15 whatever. What's the difference?
16 Q. First of all, you said you were selling
17 it for ten years, so that would make it in 1998.
18 Is that what you meant?
19 A. I'm just saying in general. You're
20 trying to make me confused saying what's the
21 difference between those two stickers. I'm saying
22 that I'm not working in the refrigerator packing
23 dairy products to make sure the label is staying
24 the same on the same product. That's what I'm
25 trying to tell you.

1 N. Walewitsch
2 Q. I'm trying to be precise. And I hope
3 you understand that it's important that we be clear
4 that all of the testimony we get is completely true
5 and accurate. Do you understand that?
6 A. Absolutely. I told you I'm selling this
7 butter since we opened our company. If the company
8 decides to change a little bit on the label, I
9 can't control that. Do you agree with me?
10 Q. I didn't ask you --
11 A. I can't keep up to see if every product
12 didn't change one letter or color or anything,
13 right?
14 Q. I don't know what you can or can't do.
15 So you don't know if, in fact, you have
16 ever sold the one with "Granny" on it?
17 MR. FRIEDMAN: Objection. Asked and
18 answered. You're badgering the witness.
19 Move on.
20 MR. THOMPSON: I will point out, Mr.
21 Friedman, that you don't get to tell me to
22 move on.
23 MR. FRIEDMAN: Yes, I do.
24 MR. THOMPSON: No, you don't.
25 MR. FRIEDMAN: Yes, I do.

1 N. Walewitsch

2 Q. Now, Miss Walewitsch, I'm asking you --
3 because I don't believe you have answered -- do you
4 know if you have or have not sold the product that
5 has the word Granny on it?
6 A. We have sold that product.
7 Q. Do you know when?
8 A. I can't tell you exactly when.
9 Q. Is it what you sell today?
10 A. Probably.
11 Q. Do you know for sure?
12 A. I can't tell for sure. If you show me
13 this label today from Four Seasons' product -- I'm
14 sorry, let me finish now -- if you show me this
15 label today from Four Seasons' product on this
16 particular item, and this was before, like you told
17 me, and they changed -- which, the truth, I never
18 paid attention to that. If you say this is
19 different from this, I agree. So we're probably
20 selling this butter right now.
21 MR. FRIEDMAN: Witness is referring to
22 Petitioner's Exhibit 1.
23 Q. Please understand when you point to
24 something and you say "this" and then "this," that
25 doesn't show up on the printed record; so it's

1 N. Walewitsch
2 important that we identify. The first time you
3 referred to the product was --
4 A. It says "Babushkinow" butter, and this
5 says "Babushkinow" butter.
6 MR. FRIEDMAN: Referring to Petitioner's
7 1 and 13.
8 Q. I was simply trying to point out that
9 for purposes of the written record, the first time
10 you referred to "this" product you pointed to
11 Exhibit 1, which is the green one on the right --
12 MR. FRIEDMAN: All you're doing now is
13 confusing the record, Mr. Thompson. When the
14 witness refers to the exhibit pointed out at
15 that time, say it's Petitioner's 1 or
16 Petitioner's 13. You are purposefully trying
17 to confuse the record at this point, and I
18 will not allow it.
19 MR. THOMPSON: I will point out that
20 when she was testifying I tried to interrupt
21 to ask her to point to that, and she raised
22 her hand and said "Let me finish." I was
23 attempting very diligently --
24 MR. FRIEDMAN: You are attempting to
25 confuse the record. That's clear, and the

1 N. Walewitsch
2 record will reflect that. Please move on.
3 MR. THOMPSON: I believe what will be
4 clear on the record is that you are refusing
5 to allow this testimony to proceed, and I
6 think that's highly inappropriate.
7 Q. Now, I would like to ask you if you ever
8 sold any products called Babushkinow other than the
9 ones that are shown in Exhibits 1 and 13?
10 MR. FRIEDMAN: Objection.
11 A. Butter?
12 Q. Any products called Babushkinow.
13 A. I'm not answering that.
14 Q. Is that you are refusing to answer or
15 you don't --
16 A. I refuse to answer.
17 Q. May I ask why?
18 A. It's my personal business. Does it make
19 a difference?
20 Q. I believe that it does.
21 A. For me, no.
22 Q. So you're refusing to answer the
23 question?
24 A. Yes.
25 Q. Have you ever sold any other dairy

1 N. Walewitsch
2 product with the name Babushkinow on it?
3 A. Yes.
4 Q. What kind of product did you sell?
5 A. Farmer's cheese.
6 Q. Who was the supplier of that farmer's
7 cheese?
8 MR. FRIEDMAN: Objection. If this
9 relates to Four Seasons, fine. But if it
10 doesn't -- if you're pressing --
11 Does it relate to Four Seasons?
12 THE WITNESS: It does not.
13 MR. FRIEDMAN: You're trying to confuse
14 the record clearly. Your client is a
15 competitor with Miss Walewitsch, and you are
16 proceeding improperly.
17 MR. THOMPSON: I don't need to join you.
18 Q. So since Mr. Friedman was trying so hard
19 to confuse the record, I'll see if I can clear it
20 up here. You said you have sold farmer's cheese,
21 but I didn't hear your answer as to whether you
22 bought it from Four Seasons or not.
23 A. No.
24 Q. Have you ever purchased any products
25 with the name Babushkinow on it from someone other

1 N. Walewitsch
2 than Four Seasons?
3 A. Yes.
4 Q. May I ask from whom?
5 MR. FRIEDMAN: Objection.
6 A. I'm not answering that.
7 Q. Has Natar ever sold farmer's cheese
8 under its own label called Babushkinow?
9 A. Yes.
10 MR. THOMPSON: I'd like to have this
11 marked as Respondent's Exhibit 5.
12 (Respondent's Exhibit 5 was marked for
13 identification.)
14 Q. I ask you to look at Exhibit 5. Have
15 you seen that before?
16 A. Absolutely.
17 Q. Can you please identify what that is?
18 A. This is Natar's Babushka's Tvorog --
19 farmer's cheese.
20 MR. THOMPSON: For the purposes of the
21 written record Tvorog is spelled T-V-O-R-O-G.
22 Q. Now, has Natar previously sold farmer's
23 cheese under the name Babushkinow or Babushka?
24 A. What do you mean "previous"?
25 Q. Before today.

1 N. Walewitsch
2 A. Of course.
3 Q. Do you still sell that product?
4 A. Yes.
5 Q. Do you remember if you ever received a
6 letter at Natar concerning the sale of farmer's
7 cheese under the name Babushkinow from
8 International Gold Star's attorneys?
9 A. Maybe a long, long time ago.
10 MR. THOMPSON: I'll have this marked as
11 Exhibit 6.
12 (Respondent's Exhibit 6 was marked for
13 identification.)
14 Q. I'll ask if you could look at Exhibit 6
15 and tell me if you have ever seen that?
16 A. Maybe. I probably did. Like I said,
17 it's been a long while.
18 MR. THOMPSON: Just for the record, this
19 is a letter dated March 11, 2002 from the
20 firm Cohen, Pontani, Lieberman & Pavane,
21 counsel for International Gold Star.
22 Q. It was addressed to Mr. Aron Walewitsch
23 at Natar Foods; is that right?
24 A. Yes.
25 Q. Could you tell me who Mr. Aron

1 N. Walewitsch
2 Walewitsch is?
3 A. Yes. He's the president of the company.
4 Q. Are you related to him?
5 A. Yes.
6 Q. In what capacity?
7 A. He's my husband.
8 Q. Although the letter is addressed to Mr.
9 Aron Walewitsch, do you remember if you saw this
10 letter in the time frame of March 2002?
11 A. I don't recall. I know we received the
12 letter. I can't tell you -- probably this one.
13 Q. Do you remember if you -- and by "you" I
14 mean Natar -- took any steps in response to this
15 letter?
16 A. No.
17 Q. Did you, at the time, indicate that you
18 would stop selling the farmer's cheese under the
19 name Babushkinow?
20 A. No.
21 Q. Did you, in fact, stop selling the
22 cheese at any time?
23 A. No.
24 Q. So did you continue selling this product
25 continuously since the time of 2002?

1 N. Walewitsch
2 A. Yes.
3 Q. With respect to the farmer's cheese sold
4 under the name Babushkinow that is the subject of
5 Exhibit 5, did you at Natar have that product
6 specifically made for you?
7 A. Yes.
8 Q. Was that by the name -- the product --
9 MR. FRIEDMAN: I'm objecting to this on
10 the grounds exceeding the scope of direct.
11 You're clearly using this for purposes other
12 than this case, Mr. Thompson. It is totally
13 improper.
14 Q. And it is made by Queensborough Farms;
15 is that right?
16 A. Probably.
17 Q. Did you ever buy a farmer's cheese from
18 --
19 MR. FRIEDMAN: I'd like the record to
20 reflect that Counsel is reading from notes
21 supplied by his client, who is sitting along
22 his side, who is a direct competitor of Miss
23 Walewitsch. This is improper, Mr. Thompson,
24 and I'm asking you to stop it.
25 MR. THOMPSON: I'm going to continue to

1 N. Walewitsch
2 conduct my examination, whether you like it
3 or not.
4 MR. FRIEDMAN: This is irrelevant.
5 A. I got to go. I can't answer any other
6 questions. Besides our company, there is a lot of
7 companies who sell products under Babushkinow. It
8 doesn't have to be butter or farmer's cheese; it
9 could be tomatoes, it could be pickles. A lot of
10 people of different companies using this name. I
11 don't think this is a restricted name because
12 everybody is still using it until today.
13 MISS PINCOW: Thank you.
14 THE WITNESS: You're welcome.
15 A. Any other questions, call me. I got to
16 go. I'm sorry.
17 MR. FRIEDMAN: Thank you very much.
18 MR. THOMPSON: I will be moving to
19 exclude this testimony since, again, your
20 witnesses don't allow me to finish my
21 examination.
22 MR. FRIEDMAN: What do you mean "again"?
23 MR. THOMPSON: Well, Mr. Nigrow --
24 MR. FRIEDMAN: Well, Mr. Nigrow, we're
25 about to complete that.

1 N. Walewitsch
2 MR. THOMPSON: Will we get to complete
3 Miss Walewitsch, as well?
4 MR. FRIEDMAN: She's done.
5 MR. THOMPSON: I haven't finished my
6 questions.
7 MR. FRIEDMAN: You're using it for
8 improper purposes.
9 MR. THOMPSON: I'm allowed to impeach
10 the witness. You may not be aware of that.
11 MR. FRIEDMAN: You were not impeaching
12 the witness. You were attempting to delve
13 into matters that are between your client and
14 this witness.
15 MR. THOMPSON: I will point out for the
16 record that I am allowed to impeach
17 witnesses during my cross-examination.
18 MR. FRIEDMAN: It seemed like you were
19 finished.
20 MR. THOMPSON: I don't believe that I
21 did.
22 MR. FRIEDMAN: Well, I believe you did.
23 MR. THOMPSON: Well, you're wrong again.
24 And if you intend to use this testimony,
25 because she walked out during the middle of

1 N. Walewitsch
2 my cross-examination, I will object.
3 MR. FRIEDMAN: She walked out at the end
4 of your cross-examination.
5 MR. THOMPSON: It was not the end of my
6 cross-examination because I didn't get to
7 finish. I get to determine when the end of
8 my cross-examination is, you don't.
9 MISS PINCOW: Roger, we will impeach
10 this witness, whatever it takes.
11 (Time noted: 2:10 p.m.)
12
13 _____
14 NATALIE WALEWITSCH
15
16
17
18
19
20
21
22
23
24
25

1 A C K N O W L E D G E M E N T

2 STATE OF NEW YORK)

3 COUNTY OF NEW YORK)

4

5 I, NATALIE WALEWITSCH, hereby certify, I have

6 read the transcript of my testimony taken under

7 oath in my deposition of June 4, 2008; that the

8 transcript is a true, complete and correct record

9 of what was asked, answered and said during this

10 deposition, and that the answers on the record as

11 given by me are true and correct.

12

13

14 NATALIE WALEWITSCH

15

16

17 Subscribed and sworn to before me

18 this _____day of_____, 2008.

19

20

21 Notary Public

22

23

24

25

1 I N D E X O F W I T N E S S E S

2 WITNESS EXAMINATION BY PAGE

3 Natalie Walewitsch Mr. Friedman 4

4 Mr. Thompson 11

5

6

7 I N D E X O F E X H I B I T S

8 NO. DESCRIPTION PAGE

9 5 document-food product 23

10 6 letter 24

11

12

13

14 I N D E X O F R E Q U E S T S

15 DESCRIPTION PAGE

16

17

18 I N D E X O F R U L I N G S

19

20

21

22

23

24

25

1 C E R T I F I C A T E

2 STATE OF NEW YORK)
:ss.
3 COUNTY OF KINGS)

4 I, SARA FREUND, a Notary Public
5 within and for the State of New York, do hereby
6 certify:
7 THAT NATALIE WALEWITSCH, the witness
8 whose deposition is hereinbefore set forth, was
9 duly sworn by me and that such deposition is a true
10 record of the testimony given by such witness.
11 I further certify that I am not
12 related to any of the parties to this action by
13 blood or marriage; and that I am in no way
14 interested in the outcome of this matter.
15 IN WITNESS WHEREOF, I have hereunto
16 set my hand this 16th day of June, 2008.
17
18
19 Sara Freund
SARA FREUND
20
21
22
23
24
25

1

2 E R R A T A S H E E T

3

Page	Line	Change from	Change to	Reason
5	___	___	___	___
6	___	___	___	___
7	___	___	___	___
8	___	___	___	___
9	___	___	___	___
10	___	___	___	___
11	___	___	___	___
12	___	___	___	___
13	___	___	___	___
14	___	___	___	___
15	___	___	___	___
16	___	___	___	___
17	___	___	___	___
18	___	___	___	___
19	___	___	___	___
20	___	___	___	___

21

22 Subscribed and sworn to before me

23 this _____ day of _____, 2008

24 _____

25 Notary Public

PETITIONER'S EXHIBIT 1

Cancellation No.: 92042082
Four Seasons Dairy Inc. v. International Gold Star Trading Corp.
Offered by Petitioner, Four Seasons Dairy Inc.

EXHIBIT
Petitioner-1
4/10/08 BC

EXHIBIT
Four Seasons
Gold Star
#92042085

PETITIONER'S EXHIBIT 13

Cancellation No.: 92042082
Four Seasons Dairy Inc. v. International Gold Star Trading Corp.
Offered by Petitioner, Four Seasons Dairy Inc.

EXHIBIT
Petitioner-13
4/10/08 BR

NATAR FOODS INC.

EXHIBIT
Four Seasons
v
Gold Star
#92042082

17 53 RD STREET
BROOKLYN NY 11232
TEL # (718) 439-3900
FAX # (718) 492-9536

EUROPEAN PROVISION

WHOLESALERS & DISTRIBUTORS

PRICE LIST

RESPONDENT'S EXHIBIT 5

Cancellation No.: 92042082
Four Seasons Dairy Inc. v. International Gold Star Trading Corp.
Offered by Respondent, International Gold Star Trading Corp.

EXHIBIT
Respondent 5
SF 6/4/08

EXHIBIT
Four Seasons
v
Gold Star
#92042082

RESPONDENT'S EXHIBIT 6

Cancellation No.: 92042082
Four Seasons Dairy Inc. v. International Gold Star Trading Corp.
Offered by Respondent, International Gold Star Trading Corp.

COHEN, PONTANI, LIEBERMAN & PAVANE
COUNSELLORS AT LAW
PATENTS, TRADEMARKS & COPYRIGHTS
551 FIFTH AVENUE
NEW YORK, NEW YORK 10176

TEL: (212) 687-2770
FAX: (212) 972-5487

MYRON COHEN
THOMAS C. PONTANI, PH.D.
LANCE J. LIEBERMAN
MARTIN B. PAVANE
MICHAEL D. STUART
WILLIAM A. ALPER
KLAUS R. STOFFEL
EDWARD M. WEISZ

YUNLING REN, PH.D.
JULIA S. KIM
MINOY H. CHETTIR
VINCENT M. FAZZARI
CATRIONA M. COLLINS
ALFRED W. FREDERICH
ALFRED H. HEMINGWAY, JR.
KENT H. CHENG, PH.D.
ROGER S. THOMPSON
JEREMY A. KAUFMAN
GEORGE J. BRANOT, JR.
TEODOR J. HOLMBERG
F. BRUCE FALLER
DAVID J. ROSENBLUM
TONY CHEN
ELI WEISS
LISA A. FERRARI

March 11, 2002

VIA FACSIMILE - (718) 492-9536
Mr. Aron Walewitsch
Natar Foods Inc.
255 48th Street
Brooklyn, New York 11220

Re: Trademark Infringement of United States Trademark Registration
Reg. No. 2,479,287
Mark: BABUSHKA'S RECIPE
Our File No.: 5060-24

Dear Mr. Walewitsch:

We represent International Gold Star Trading Corp. ("Gold Star") which sells food products, including dairy products such as farmer cheese, under the BABUSHKA'S RECIPE® registered trademark. Gold Star advertises its food products extensively and offers its products at trade shows and through sales representatives. As a result of its marketing and sales activities, Gold Star has established a large and enviable customer base and general awareness of its business and products among the public.

Among the many food products that Gold Star has sold are the BABUSHKA'S RECIPE® line of products which Gold Star now sells and markets, as it has continuously since 1999. Since our client adopted and commenced its use of the mark on food products, it has sold thousands of BABUSHKA'S RECIPE® products. Gold Star's food products are displayed in retail stores and at trade shows and the BABUSHKA'S RECIPE® mark appears in large, prominent letters on the containers in which the products are sold.

As a consequence, Gold Star's BABUSHKA'S RECIPE® trademark has become known not merely to the tens of thousands of purchasers of the BABUSHKA'S RECIPE® brand food products, but to many more times that number of consumers and other members of the public who have observed and thereby have come to know of the BABUSHKA'S RECIPE® brand and mark and Gold Star's BABUSHKA'S RECIPE® food products.

EXHIBIT
Respondent 6
SF 6/4/08

EXHIBIT
Four Season
Gold v Star
92042082

COHEN, PONTANI, LIEBERMAN & PAVANE

Mr. Aron Walewitsch
March 11, 2002
Page 2

It has come to our client's attention that your company is selling farmer cheese, and other food products, under the unregistered mark "Grandmother's Recipe". The words "Grandmother's Recipe" in English are accompanied even more prominently by the Cyrillic letters: " ", which transliterates to "BABUSHKA'S TVOROG", or "Grandmother's Farmer Cheese".

Further, the GRANMOTHER'S RECIPE labels also bear a picture of a grandmotherly lady to emphasize the use of the name BABUSHKA or Grandmother.

In addition to infringing Gold Star's rights in the BABUSHKA'S RECIPE® mark, your sales of identical products under the same name is blatant unfair competition. This conduct is, pure and simple, knowing and intentional infringement of our client's established, and federally registered, trademark rights - conduct that entitles our client to, *inter alia*, court-ordered trebling of awarded damages and the recovery of its attorneys fees.

Your actions are not merely likely but, indeed, have already caused confusion, mistake and deception among the trade and in the marketplace among the public and, most especially, among our client's customers and potential customers who will be unavoidably deceived and mislead to believe that your company's goods - bearing the nearly identical mark for goods that are either identical to those sold by our client under the mark or closely related to such goods - are produced or distributed or authorized by our client. Moreover, the substantial good will engendered in the BABUSHKA'S RECIPE® mark by our client at great expense and through its longstanding and successful sales efforts will be seriously diminished and impaired by your company's continued unauthorized and improper use of the term "Grandmother's Recipe" emphasized by the picture of a grandmother. The damage that our client can suffer from your infringement of its trademark - a use which clearly constitutes trademark infringement and unfair competition under both state and federal law - cannot be endured and will not be tolerated.

We accordingly seek your prompt assurances that you will immediately cease and desist from all further showing, marketing, advertising, offering for sale, sale and shipment of articles bearing the name "Grandmother's recipe" which is confusingly similar to our client's BABUSHKA'S RECIPE® trademark, or any mark or designation confusingly similar therewith. Any "Grandmother's Recipe"-marked goods that you currently have in your possession, or which are being held or stored for you, or which are hereafter shipped or returned to you, must either be destroyed or have the offending designation permanently and indelibly removed from the goods before they are transferred or sold.

In addition to confirmation of your agreement to and compliance with the foregoing, we further require that you provide us with all of the following information:

COHEN, PONTANI, LIEBERMAN & PAVANE

1. A full description of each of the various products that you have offered for sale or sold to date, and that you are currently offering for sale or selling, that bear or are otherwise identified by or associated with the Grandmother's Recipe mark and/or any other designation or trade dress confusingly similar to the BABUSHKA'S RECIPE® mark;

2. For each such product, the number of units you have sold and the number of units currently remaining in your possession or control;

3. For each such product, the number of units currently being or about to be or in the process of being shipped to you from a third party or affiliated manufacturer;

4. For each such product, the source or supplier to you of the product, including the name, address and telephone number of said source or supplier, and the price you paid for the product; and

5. For each such product, the price at which you have sold or are selling the product.

In view of the extreme seriousness of this matter, we insist that you provide us with this information, and with written notification of your compliance with our demands, within five (5) business days of your receipt of this letter. In the absence of such notification, we shall have no alternative but to take immediate action against you.

This letter is not intended to contain an exhaustive summary of our client's position, and neither should it be understood to be a waiver or limitation of any of its legal or equitable rights, each of which is expressly reserved hereby.

We look forward to your prompt response and cooperation.

Very truly yours,
COHEN, PONTANI, LIEBERMAN & PAVANE

Roger S. Thompson

RST/avg


KEEP
REFRIGERATED
Natar's
Бабушкин творог
FARMER CHEESE
GRANDMOTHER'S RECIPE
REAL
U D
INGREDIENTS: CULTURED PASTEURIZED MILK, CREAM, SALT.
PLANT# 36-0348 • CANASTOTA, NY 13032
NET WT. 16 OZ. (455g) Distributed by: Natar Foods Inc. 255 48 St., Brooklyn, NY 11220 TEL: (718) 439-3900
Nutrition Facts
Serving Size 1oz (30g/about 2 Tbsp)
Serving per container Varied
Amount Per Serving
Calories 50 Calories from fat 25
% Daily Value
Total Fat 2.5 4%
Saturated Fat 1.5g 8%
Cholesterol 10mg 4%
Sodium 120mg 5%
Total Carbohydrate 0g 0%
Dietary Fiber 0g 0%
Sugars 0g
Protein 5g
Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 0%