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

Proceeding	92042082
Party	Defendant International Gold Star Trading Corp.
Correspondence Address	ROGER S. THOMPSON COHEN, PONTAIN, LIEBERMAN & PAVANE LLP 551 FIFTH AVENUE , SUITE 1201 NEW YORK, NY 10176 UNITED STATES RThompson@cplplaw.com
Submission	Testimony For Defendant
Filer's Name	Roger S. Thompson
Filer's e-mail	rthompson@cplplaw.com, ngonsalves@cplplaw.com, wmason@cplplaw.com
Signature	/Roger S. Thompson/
Date	04/28/2010
Attachments	Bartolomeo Transcript.pdf (61 pages)(94216 bytes) Petitioner Ex. 211.pdf (3 pages)(172350 bytes) Registrant Ex. 128.pdf (2 pages)(43542 bytes)

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

FOUR SEASONS DAIRY, INC.,	)
	) Cancellation No.
Petitioner,	) 92/042,082
	)
vs.	) Mark: Babushka's Recipe
	)
INTERNATIONAL GOLD STAR	) Reg. No. 2,479,287
TRADING CORP.,	)
	)
Registrant.	)
----------	)

CONFIDENTIAL EXAMINATION OF DANIEL BARTOLOMEO
New York, New York
Friday, October 17, 2008

Reported by:
KRISTIN KOCH, RPR, RMR, CRR, CLR
JOB NO. 19190a

October 17, 2008

9:37 a.m.

Confidential Examination of DANIEL BARTOLOMEO, held at the offices of Cohen, Pontani, Lieberman & Pavane, LLP, 551 Fifth Avenue, New York, New York, before Kristin Koch, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter and Notary Public of the State of New York.

A P P E A R A N C E S:

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

COHEN PONTANI LIEBERMAN & PAVANE, LLP
Attorneys for Registrant
551 Fifth Avenue - Suite 1210
New York, New York 10176
BY: ROGER S. THOMPSON, ESQ.

ALSO PRESENT:

GALINA PINCOW, International Gold Star

(Registrant Exhibit 128, Amended Notice of Deposition of Daniel Bartolomeo, marked for identification.)

* * *

D A N I E L B A R T O L O M E O,

called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. THOMPSON:

Q. Thank you, Mr. Bartolomeo, for showing up today. We have had the reporter mark as Exhibit 128 a document bearing the title Amended Notice of Deposition of Daniel Bartolomeo, which identifies Daniel Bartolomeo of Gem Printing at 100a Cabot Street, West Babylon, New York. Is that you?

A. That's me.

Q. Are you currently employed, sir?

A. Yes, I am.

Q. Where are you employed?

A. I am the owner of Northport Printing and Gem Printing.

Q. And that's at --

A. 100a Cabot Street, West Babylon.

Q. What type of business are you in?

A. We are in the printing business. We print labels for food manufacturers as well as pharmaceutical and nutritional companies.

Q. As part of your business, do you have dealings with International Gold Star?

A. Yes, we do.

Q. And how long have you been working with International Gold Star?

A. I have been since I purchased the company in July of 2000. Prior to that we probably go back to at least '95. I would have to check exactly when Gem started doing business with Gold Star.

Q. Well, first I will ask you what kind of business do you currently do for Gold Star?

A. We currently produce their fish labels, a series of different labels on gold foil, on paper, and on clear film.

Q. But you do exclusively labels?

A. That's correct.

Q. Now, you indicated that you purchased the business. Could you state

exactly when that was?

A. We closed on the deal July 19th, 2000.

Q. And at the time you purchased the business, what was the business that you purchased?

A. We purchased the assets of Gem Printing Industries, their list of accounts, telephone number, books and records and such like that.

Q. As part of their accounts, did those accounts include International Gold Star?

A. Yes, they did.

Q. And the books and records, could you describe just a little more about what books and records you got?

A. We got their latest financials, their accounts receivable, accounts payable, which we did not purchase, but we got the records of those, so we had all the addresses of the accounts as well as all the addresses of their vendors. We also got their books and copies of their label files, their plates and dies.

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Q. And those are the books and records that were maintained by your predecessor company in the ordinary course of business?

A. That is correct.

MR. FRIEDMAN: Objection.

Q. You are familiar with the fact that you are being called here in a deposition as part of a proceeding involving the Babushka's Recipe mark; is that right?

A. Yes.

Q. Were you asked to do anything in connection with finding documents for this case?

A. Yes.

Q. What were you asked to do?

A. On May 1st or 2nd last year Galina Pincow called and asked me if I had a copy of the Babushka label and when we first produced that label. So I went to our file under Gold Star, pulled out the appropriate pages from that file, and just gave her a list of when we produced it first and then subsequent up until the time that I purchased the business.

Q. Were you later asked to produce

copies of those records?

A. Yes, we were.

Q. And when did you produce those copies?

A. On the 2nd of May as well as, I believe, the 24th of May and then I sent you a sample last week.

Q. Could you, please, look at what has been marked as Exhibit Petitioner's 206, which is the document you have in your hand, and also a document which is separately labeled as Registrant's 103.

A. This piece I am familiar with. The separate UPC codes I am not.

Q. Since the record doesn't reflect when you say "this" or "that" --

A. I'm sorry.

Q. -- we need to be very clear.

A. I'm sorry.

Q. Right now you are holding in your hand what has been marked as Petitioner's 206?

A. 206, that's correct.

Q. And in the lower right-hand corner you will see that there are little sticky

labels with some what we call Bates numbers on them.

A. That's correct.

Q. Could you please identify which pages you are familiar with?

A. I am familiar with pages 204 through 212.

Q. Thank you. Now, I believe that page 209 is missing from that stack; is that right?

A. Yes, 209 is missing.

Q. Could you please find what has been marked separately as Exhibit Registrant's 103, which bears the number 209 in the lower right.

A. I have 209 and number 103 in my hands and this is familiar to me.

Q. Okay. So the pages that bear the Bates numbers of 204 through 212, which spread over the two documents, are the documents that you produced; is that right?

A. That is correct.

Q. Now, could you please explain what the documents bearing the Bates numbers 206, 7, 8, 9, 10, 11 and 12 are?

A. These are records of jobs that Gem

Printing had that date back to April 7th of '98. What they would normally do in their course of business would be they would assign a new job, a new job number, they would write the date that the job was produced and then how many of each label they produced, and that's what we have here as job 5860, which is page 206 and 7, and our job number, 5864, on your pages 210 and following.

Q. Now, what has been marked as Exhibit 103, which is Bates numbered 209 --

A. Yes.

Q. -- it appears to be a copy of a label?

A. That's correct.

Q. And in the upper left-hand corner there is a date -- some handwriting which says "new 7/12/99."

A. Right.

Q. Now, is that your handwriting?

A. No, it's not.

Q. Do you know whose handwriting that is?

A. I don't. It looks to be Ester's,

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Ester Scatteriggo, who was the previous owner of Gem Printing, but it would also indicate that it's the same date as on your 206, 7-12-99, 5,000 were produced.

Q. That would be 5,000 labels?

A. 5,000 labels, right, and there is a plate charge there of $125 -- I'm sorry, an artwork charge of 125 and plate charge of 80.

MR. FRIEDMAN: What page number is the witness looking at?

THE WITNESS: I am looking at 206.

MR. THOMPSON: That's part of Petitioner's 206. It's page 206 too.

MR. FRIEDMAN: I understand.

Q. Can you identify what the other pages that we have looked at in Exhibit 206 are, for example, page 208?

A. 208 is another version of the same label, the change being that the artwork -- the base artwork remains the same, but vegetable yogurt cheese, if you are looking right under the babushka, that's a different product, the smoked yogurt cheese. These are all additional plates, so they are additional copies of the

same label.

Q. And looking at page 210, there is a different label. Do you know why that has a different job number?

A. It's a different job number because it's a different size. That's a 4 and 3/4 inch circle, as opposed to the Exhibit 206, which is a 4 by 8 butt cut, so it's a different size label requiring a different die and plates.

Q. And a butt cut is a rectangular --

A. Butt cut is a rectangular label without a space between it. There are also various types, an RCR which would have a space between it.

Q. I'm sorry, RCR?

A. RCR, round corner, just a term from the industry.

Q. Now, looking back again at -- starting at page 206, there is handwriting on that. Is any of that handwriting known to you?

A. It's not mine. Since I didn't take this business over until 2000, I would guess it would be either Ester or one of her administrative assistants, but I couldn't tell

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you who it was that wrote that.

Q. But this information was in the files when you purchased it?

A. This was in the files when I purchased the company.

Q. And on the page 210 there is also handwriting. Is your answer the same?

A. My answer would be the same to that.

Q. Now, as part of your being asked to come here, were you asked to bring the originals of these documents?

A. Yes, I was.

Q. Do you have those originals with you?

A. Yes, I do.

MR. THOMPSON: Thank you. I will show them to Mr. Friedman. We can look at them either now or you can take a minute off the record if you want. I don't want to have them marked because I want to be able to return them to Mr. Bartolomeo so he can keep running his business, but I just want you to be able to satisfy yourself that these are copies of his original

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documents. Do you want to take a minute to do that now?

MR. FRIEDMAN: Yes, please.

(Recess was taken from 9:48 to 9:50.)

BY MR. THOMPSON:

Q. Now, are these records such as the ones that you have produced the sorts of records that you rely on in the ordinary course of business?

A. Yes, when I purchased the business, absolutely. We have gone to a more computerized system now, but that's eight years down the road.

MR. THOMPSON: I have nothing further.

EXAMINATION BY

MR. FRIEDMAN:

Q. Good morning.

A. Good morning.

Q. My name is Samuel Friedman and I represent Four Seasons Dairy.

A. Okay.

Q. The business that you purchased in

July of 2000, was the name of that business at the time Gem?

A. Yes, it was Gem Printing Industries.

Q. Was there a business called Jes?

A. There was a business that preceded Gem that was Jes Printing.

Q. And when you say that it preceded Gem, what do you mean by that?

A. To my knowledge, that business was a partnership between John and Ester Scatteriggo, husband and wife, and when John and Ester divorced or split, Ester kept the business but under the name Gem Printing.

Q. And do you know when that split occurred?

A. I don't pay attention to other people's personal problems, to be honest with you.

Q. Did you acquire the assets of Jes Printing as well?

A. I acquired the assets of Gem Printing Industries.

Q. And did Gem at the time contain as well the assets of Jes Printing?

A. I would think so. I mean, I don't know how they would have broken that out, but I would think that we probably purchased some part of whatever was with Jes.

Q. You mentioned that your records demonstrate that the dealings between Gem and Gold Star went back to 1995.

A. I would say I think they probably go back to '95. To be absolutely certain I would have to go back in the records.

Q. In 1995, assuming that was the time that Gold Star was dealing with Gem Printing, was Gold Star dealing at that time in 1995 with Jes or with Gem?

A. Jes was in existence through '99, I believe, or through '98. I started doing business with Gem Printing in '98, so I think just before that it was Jes and then it turned over to Gem.

Q. And in '98 when you were doing business with Gem, in what capacity were you doing business?

A. We were printing their four-color work that they couldn't produce.

Q. I'm sorry, printing what?

A. Well, they had other work that their equipment could not produce, so we could do their -- we basically subcontracted to them for certain jobs.

Q. And when you say "we," as of 1998 what does that mean?

A. At that point it was whatever entity, Gem or Jes, and Northport Printing, which is the company that I own.

Q. So Northport Printing was the company that acquired Gem in 2000?

A. Well, actually, we do business -- I mean, to be absolutely clear on this, the parent company is Bartolomeo Publishing, Inc. I do business as Northport Printing and Gem Printing. Bartolomeo Publishing bought Gem Printing and we do business as, just to be clear.

Q. Was Northport or Bartolomeo doing work for International Gold Star prior to July of 2000?

A. No.

Q. If you were to take a look at this

Exhibit 206, the first page is dated May 2, 2007. When did you transmit this letter dated May 2, 2007 to Miss Pincow?

A. Either May 2nd or May 3rd of 2007.

Q. And did documents accompany this May 2, 2007 letter at the time?

A. Yes.

Q. What documents accompanied the May 2, 2007 letter?

A. The documents dated -- the documents numbered Gold 206, 207, 208, 209, 210 and 211, and I believe 212 as well.

Q. And in what manner did you transmit these documents to Ms. Pincow?

A. We sent a facsimile, a fax, and then I believe I also sent a UPS red the next day, next day air, or FedEx, but I'm pretty sure I sent a copy of -- the hard copy.

Q. The hard copy that you sent to Ms. Pincow, was it color copies?

A. It's a representation of what we have here.

Q. So yes, it was color?

A. Yes.

Q. And then there later came a time that you sent a letter dated May 24 to Ms. Pincow?

A. That is correct.

Q. Okay. And the letter of May 24, did that have any documents that accompanied it?

A. Yes, it did.

Q. And what was that?

A. That was a copy of a Babushka label that was done on some clear stock.

Q. What do you mean by "clear stock"?

A. As opposed to white paper, it would almost -- if you looked at a piece of tape, you could see through it.

Q. Is that label present in these documents that you have marked as P 206?

A. I don't see a copy of that here.

Q. Do you have a copy of that with you in your file?

A. I don't have a copy with me in my file.

Q. So was it only then one clear stock label --

A. That's correct.

Q. -- that accompanied it?

A. Yes.

Q. Do you remember what that label said?

A. That label was a butter label, I believe.

Q. And it was just one label that accompanied it?

A. That's correct.

Q. Now, I note that on this letter of May 24, 2007 that's GOLD 0205, by the way, it's not signed. Why is that?

A. That's just a copy, I guess. I will be more than happy to sign it for you.

Q. Did you ever sign it?

A. Yes, I did.

Q. Did you transmit a signed copy to Ms. Pincow?

A. Yes, I did.

Q. So how did it come about that you transmitted one that was not signed and then one that was signed?

A. This could have been a copy that I just printed out of my printer now to take to

send over to them. I don't know.

Q. When you say "this," you are looking at GOLD --

A. I'm sorry, 205 and 204.

Q. Did you first provide to Ms. Pincow a letter for her review and receive any comments from her before finalizing it?

A. No.

Q. Now, I note that on the document with the Bates stamp number 0205, which is the letter of May 24, 2007, you note "per our conversation I have enclosed copies of our records regarding the Babushka's Recipe farmer cheese Tropol labels. These include our invoice as well as a facsimile of the label."

Now, does that refresh your recollection as to whether anything in addition to a label was attached to this letter?

A. I provided whatever was said in this letter.

Q. And that which you provided --

A. Is not in this package at this point.

Q. So you provided an invoice plus

copies of records regarding Babushka's Recipe farmer cheese Tropol labels.

What were the "copies of our records regarding those Babushka's Recipe farmer cheese Tropol labels"?

A. That would be a copy of the label and a copy of the invoice.

Q. Would it also have the handwritten note such as you attached --

A. We didn't --

Q. Please allow me to finish the question -- such as you attached to your May 2, 2007 letter?

A. We don't keep handwritten notes.

Q. What do you mean you don't keep handwritten notes?

A. We don't keep handwritten notes the same way Gem Printing kept handwritten notes.

Q. Okay. So is it the case then that in your May 24, 2007 letter you are attaching only records maintained by Gem as opposed to records maintained by the company that you had acquired?

A. That is correct.

Q. The labels that you have attached to your May 2, 2007 letter, such as, for example, what you see on GOLD 2007, do you know whether either of these labels were actually used by Gold Star in terms of placement on a product?

A. I have no idea if that was the case.

Q. Do you have any personal knowledge as to whether any of the labels attached to your May 2, 2007 letter were ever placed on product by Gold Star?

A. I would have no knowledge of that.

Q. Just to close any loose ends, do you have any knowledge as to whether these labels were placed on any Gold Star product at any time?

A. I wouldn't have any knowledge of that.

Q. Now, referring to GOLD 2007, the labels represented there, I see that there is a bar code at the bottom of each label. Do you see that?

A. Yes, I do.

Q. What does that represent?

A. I assume that's their unique product

number. That's generally what customers use a bar code for.

Q. When Gem produces labels for Gold Star, does it include these code numbers?

A. For customers in general or --

Q. Specifically for Gold Star.

A. In the case that they require a bar code, we put a bar code on. In the case that they don't require a bar code, we don't put a bar code on it.

Q. When they do require a bar code, do they supply that bar code to you?

A. They either supply the bar code or they will supply the number and then we will generate the bar code.

Q. Has it been the case that Gold Star has changed their bar code for any individual products during the time that Gem has been doing business for Gold Star?

A. I cannot recall a time when they have changed the bar code.

Q. When you transmitted the letter to Miss Pincow dated May 24, 2007, in what manner did you transmit that letter?

A. By fax.

Q. Was it also sent by hard copy?

A. I most likely sent a hard copy to her as well.

Q. Are you familiar with an individual by the name of Irina Lubenskaya?

A. I can't say that I'm absolutely familiar, but I probably talked to someone by that name in Gold Star. I don't know for a fact. I couldn't say yes or no. I mean, it doesn't really sound that familiar, but pardon me, the Russian names are a little difficult to deal with.

Q. Does Gem in its dealings with Gold Star, does it deal with the designer, whatever person designs the labels for Gold Star?

A. We have in -- we just did a series of other labels that we were provided a copy from a designer.

Q. Does Gem get involved in actually designing labels?

A. Generally, no, that's not our business.

Q. And in terms of the assets that Gem

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acquired in July of 2000, was that predecessor company involved in designing labels for Gold Star, as far as you know?

A. Possibly. I don't know. We do it so infrequently as far as Gold Star is concerned that I wouldn't know who they use for their artwork, to be honest with you.

MR. FRIEDMAN: I'd like to have this marked as the next petitioner's exhibit.

(Petitioner Exhibit 211, letter dated May 24, 2000, Bates stamped GOLD 0009 through GOLD 0011, marked for identification.)

Q. I have put before you a document that has been marked as P 211 and it consists of three pages and at the bottom it has Bates stamp numbers Gold 0009, 0010 and 0011. Do you recognize this?

A. I recognize the letter, yes.

Q. Do you recognize the attachments to the letter?

A. Yes.

Q. What are they?

A. These are labels for the clear stock

that we produced, the smaller one being a sample that we didn't produce. I don't think we ever produced that label.

Q. The smaller one you are referring to, it is GOLD 0011?

A. Yes.

Q. And the label on the side, the smaller rectangular label --

A. That's correct.

Q. -- you say that Gem did not produce that?

A. I don't think we ever produced that label.

Q. How do you know? How can you tell by looking at it?

A. Memory.

Q. What is it that you remember about it?

A. It looks to be a sample that was provided as a type sample. I'd have to go back and check our computer records to see if we actually have that.

Q. And who provided this to Gem, this sample?

A. This top -- which one are you talking about?

Q. The one on the side that you say was not created by Gem.

A. I didn't say it wasn't created by Gem. I said I don't think we produced the label, actually printed the label.

Q. And when you say now "produced," do you draw a distinction between that and created?

A. Yes, I do.

Q. Okay. What's the distinction?

A. The distinction is that's a printed label.

Q. When you say "that," what are you looking at?

A. This sample that you have in front of you here.

Q. Okay. You are pointing to an actual original actual label?

A. To an actual original label.

Q. Okay. And what are you saying about this?

A. That I would say we produced that

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label. We actually printed that label. This could have been something that --

Q. Now when you say "this," you are referring to a photocopy in GOLD 0211; correct?

A. That's correct.

Q. And what are you saying about the photocopy?

A. We were probably asked to create a new label for them using the artwork that they already had and just doing the type for the nutrition facts and the product name.

MR. FRIEDMAN: Could you read back that answer, please.

(Record read.)

Q. And what is GOLD 0010?

A. GOLD 0010 is an invoice for the farmer cheese recipe that is on GOLD 0011.

Q. If it's for farmer's cheese, why does it say homestyle butter?

A. Good question.

Q. Do you know?

A. I don't know. The person who typed my invoice that day made a mistake. I don't know.

Q. How do you remember sitting here today that this invoice that says that it was for homestyle butter labels was actually for farmer's cheese labels?

A. I don't.

Q. Are you withdrawing then your testimony that this invoice was for farmer's cheese labels?

A. I'm saying that we only do one label for them. If this is the copy, which I have to go back and check, we do one label on clear stock for them. This does say clear stock.

Q. So you are saying Gem only does one label on clear stock for International Gold Star?

A. For the Babushka product.

Q. Okay. And when you say "does," we need to narrow down the time frame.

A. Okay. We actually print -- we have printed one label for them for the Babushka -- with the Babushka artwork on clear stock.

Q. What time frame does that statement encompass?

A. That time frame is from the 29th,

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9-29-2002.

Q. 9-29-2002?

A. That's correct, for the clear material.

Q. Since 2002?

A. On the clear material.

Q. Okay. And what about prior to September 29, 2002?

A. We did not do any on clear material prior to 9-29-2002. Prior to that it was only on paper.

Q. What is the significance of this date of 9-29-2002?

A. That's the date that we actually shipped the product.

Q. Which product?

A. The product on clear stock.

Q. How do you remember that?

A. That's the date on the invoice. We invoice the same day we ship.

Q. Okay. I am going to direct your attention to the upper right-hand side of this invoice. Do you see where there is a box that says "date"?

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A. Yes.

Q. Underneath it there is a date?

A. Yes.

Q. What is that date?

A. The date is 9-29-2000.

Q. Now, you have repeatedly said "9-29-2002."

A. My mistake.

Q. So then can you then give me your testimony again with the correct dates.

A. Sure. The date that this label was produced, shipped to Gem -- shipped to Gold Star was 9-29-2000, the clear label.

Q. So you are saying that then this invoice represents the first time that Gem did a label on clear stock for International Gold Star's Babushka's Recipe?

A. That is correct.

Q. And prior to that date, 9-29-2000 --

A. 2000.

Q. -- then what was Gem doing for International Gold Star?

A. On the Babushka labels, the red and gold on paper stock was produced from 4-7-98

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onward.

Q. But is it fair to say that you have no personal knowledge as to whether it was being produced for International Gold Star on 4-7-98?

A. That is correct.

Q. You do not have personal knowledge?

A. That is correct.

Q. You are relying solely upon the records contained in the files that accompanied your purchase of the assets of Gem?

A. That is correct.

MR. FRIEDMAN: I don't have much more, but I am just reviewing my notes to make sure that I am not missing anything.

MR. THOMPSON: Do you want to take just a minute? We can again let the reporter rest.

MR. FRIEDMAN: We don't need to take a break to get up. I will just be a minute.

Q. I'd like to direct your attention, please, to P 206 to the third page that has the Bates stamp number GOLD 0206. Now, there are

different colors being used in the ink that this was written with; correct?

A. Yes.

Q. Do you know why different colors are present on the same record?

A. Not being in the office when the individual entries were written, I wouldn't know what color pen they picked up to write.

Q. Are you familiar with the handwriting of Ester?

A. To some degree.

Q. Are you familiar with the handwriting of her assistant?

A. No.

Q. Did she have one or more than one assistant?

A. I don't know. I know that she had one when I purchased the business and I'm sure that there were others previous to that.

Q. Could you give me the spelling of Ester's last name, please.

A. I could try.

Q. Okay.

A. S-C-A-T-T-E-R -- I believe it's

I-G-G-O, it might be I-G-G-I-O, but I can get the exact spelling if someone needs it.

Q. Are you still in touch with Ester?

A. It would be pretty difficult to do that since she is passed away almost eight years now. Actually, over eight years.

Q. So she passed away prior to your purchase of the business?

A. That's correct.

Q. So who did you deal with in terms of purchasing the business?

A. Her brother-in-law Gary, who was running it for her at the time. She had breast cancer, so she was not in -- she was in and out of the office.

Q. Does Gary have the same last name?

A. No, Gary's last name is Orlafsky. I believe it's O-R-L-A-F-S-K-Y.

Q. During the time that Gem was in operation with Ester, was Gary Orlafsky also working there?

A. He was at the end. She was pretty ill but didn't let on to it and he came in -- I'm not real sure when she came in -- when he

came into the business to help her out.

Q. As far as you know, it was very close to the end?

A. Yes.

Q. So can you say with any degree of certainty who wrote what on this 0206?

A. I can't say exactly who wrote this. I would say the heading and the first line of entry from 4-7 appears to be Ester's handwriting.

Q. And that first entry from 4-7-98 there is a cross-out and something written on the top?

A. Yes.

Q. What is written on the top, is that the same handwriting as what is on 4-7-98?

A. It does appear to be.

Q. Okay. I am going to direct your attention now to four lines down, the entry that says "4/21/99." Do you recognize whoever's handwriting that is?

A. I couldn't say.

Q. Does that handwriting on that line of 4-21-99 appear to be different handwriting

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than the handwriting directly above it?

MR. THOMPSON: I object to form. I don't think he is qualified as a graphologist.

A. I'd have to be a forensic scientist, I guess. I don't know.

MR. FRIEDMAN: Well, the witness testified earlier that it appeared to him that the cross-out, what is written above the first line of 4-7-98 above the cross-out, that that appeared to be the same handwriting as what is written on the line.

MR. THOMPSON: And if he hadn't given his answer so quickly, I would have objected to that question too, but he had already given his answer, so I saw no point.

Q. So then would you like to then withdraw your testimony with respect to an opinion that the handwriting above the cross-out is the same as the handwriting on the line that is crossed out?

A. It's my opinion.

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Q. It is your opinion. So you do consider yourself to be qualified to render and opinion on --

A. No, I don't.

Q. You don't.

A. I am not qualified to render an opinion on handwriting.

Q. So is it the case then that you really don't know whose handwriting is above the cross-out on the line of 4-7-98?

A. I do not know whose handwriting it was, no.

Q. And you do not know if it was the same handwriting that was originally on that line?

A. No, I don't.

Q. What significance, if any, does the name of Robert have to you that appears on the line that has the date of 7-12-99?

A. I can only assume that this is Robert Pincow who probably ordered the labels. Ester had -- she would tend to write either a purchase order or who called next to whatever the job was. First line she says "Galina,"

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so...

Q. So that to you refers to Galina Pincow?

A. I would think -- given that it's Gold Star and given that Robert Pincow is one of the people involved in Gold Star, my assumption would be that it would be Robert.

Q. Is it the case that you have had personal dealings with Robert Pincow in connection with your printing of labels of Babushka's Recipe?

A. I couldn't say that we did.

Q. Have you had personal dealings with Robert Pincow concerning your printing of any labels for International Gold Star?

A. Yes.

Q. What is the nature of your personal dealings with Mr. Pincow?

A. I would go to the -- personal meaning face to face?

Q. No. When I say "personal," I mean direct communication with him, whether by telephone, face-to-face, in writing.

A. Okay, in the course of normal

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business, though, you are talking about.

Q. Yes, that's what I mean, course of business.

A. I have gotten phone calls from him to order specific labels or a new line of labels, to sit down and discuss how the packaging should be done, things of that nature.

Q. Do you remember discussing bar codes with Robert Pincow?

A. Not particularly.

Q. Not particularly, but has it come up in the course of your interactions with him?

A. As a general rule, when artwork is provided, generally speaking the bar code is already included in that artwork on either a digital file or facsimile, so to say that we discussed a bar code specifically, I couldn't say that we did.

Q. What does the entry of April 21, 1999, what does that indicate? How do you interpret it?

MR. THOMPSON: And you are referring to page 206?

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MR. FRIEDMAN: Yes, and when I say "April," I mean the entry of 4/21/99.

A. That they ran a total of 10,000 pieces. I don't -- can't make out who actually called in, but it says PO with someone's name. They ran 5,000 of the original, 3,000 of the vegetable, a thousand of the smoked and a thousand of the garlic and whatever that is at the end.

Q. Okay. And when it says 3,000 of the vegetable, what does that mean?

A. That means on -- referring to GOLD 207, 208, you can see the label says vegetable yogurt cheese, smoked yogurt, original yogurt and garlic and herb yogurt cheese. That's what that would relate to.

Q. Okay. That those labels were ordered in that quantity of 3,000 for vegetable?

A. That's correct.

Q. I'm sorry, and how many for smoked?

A. It appears to be 1,000.

Q. 1,000 for garlic and herb?

A. That's correct.

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Q. And is that 5,000 original?

A. 5,000 original, 3,000 vegetable, 1,000 smoked and 1,000 garlic and herb.

Q. Does Gem print any labels that bear the mark "Heini's"?

A. I don't -- I don't know.

Q. Does Gem do any work for Bunker Hill?

A. No, we don't.

MR. FRIEDMAN: Do we have the exhibits from yesterday?

MR. THOMPSON: All of the exhibits are here. Which one are you looking for?

MR. FRIEDMAN: I just want to find the color --

MR. THOMPSON: If you give me a clue, I could try to help.

MR. FRIEDMAN: Gold Star's color catalogs.

MR. THOMPSON: The original color catalog was Respondent's 4 and I don't know if you took that one back or not, since that was your exhibit.

MR. FRIEDMAN: That's right. I do

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have that.

MR. THOMPSON: That was the only actual catalog that we had in color from yesterday. I think you had taken that back because that was part of the exhibits that was introduced during your testimony period rather than mine.

MR. FRIEDMAN: That's correct.

Q. Does Gem do any printing on plastic packaging?

A. No.

Q. Does it do any printing on the covering of vacuum packed goods?

A. No.

Q. I am going to show the witness the document previously marked as Respondent's Exhibit 3 from a deposition of April 17, 2008, and I am directing the witness if you could please look at what would be page 28, although it does not have a page number on it. It is the page directly preceding page 29.

So looking here at various products with the mark "Heini's" on it, does that help to refresh your recollection as to whether Gem

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does any printing of labels with the mark of Heini's?

A. I can say that none of these labels look familiar to me. None of these labels on these sheets look familiar to me that we have produced them since 2000.

Q. And you are looking now at pages 28 and 29; is that correct?

A. That's correct.

Q. Now, I am going to direct the witness' attention to Respondent's Exhibit 4 from a deposition of April 17, 2008 and ask that you please look at the items on page 20, lower left-hand side, with the code numbers of 42021, 42023 and 42024.

Does that help to refresh your recollection as to whether Gem did any printing for goods with the mark Heini's?

A. Those don't look familiar to me at all.

Q. Does Gem do printing for Queensboro Farms?

A. Gem did at one time print for Queensboro Farms.

Q. With whom did Gem deal at Queensboro Farms?

A. I couldn't -- that's way before my time.

Q. This was before you purchased?

A. That's correct.

Q. So you have no personal knowledge of it?

A. No, none whatsoever.

Q. Do you know what printing they did for Queensboro?

A. I would assume, labels. That's all they had the capability of doing.

Q. Now, as a printer you must be extremely accurate in your records; is that correct?

A. Yes.

Q. The information that you print on labels must be very accurate?

A. Yes.

Q. And the information that you print on invoices must also be very accurate; correct?

A. Yes.

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Q. It's fair to say that you check your invoices carefully before sending them to a client?

A. Yes.

Q. And if there are any mistakes, you correct those mistakes?

A. Should have corrected those mistakes, yes.

MR. FRIEDMAN: I just need one more minute. I think I am done.

Let's go off the record for a second.

(Discussion off the record.)

BY MR. FRIEDMAN:

Q. I'd like to direct your attention to the Bates stamp number 0210 within Exhibit P 206. There is a great deal of handwriting on this page as well. I mean, it's similar to P 206.

A. We are talking about 0210 though.

Q. Yes.

MR. THOMPSON: Page 210 of Exhibit 206.

Q. Do you recognize the handwriting on

this page?

A. Not being a handwriting expert, I think it's Ester's, Ester Scatteriggo's handwriting.

Q. Does it appear to be the same handwriting that we see on the page number 206?

A. Yes.

Q. Apart from the date of July 12, 1999, we have the same dates appearing on page 210 as we have on page 206; correct?

A. That's correct.

Q. Does it refer to the same order?

A. There are two separate labels, because there are two separate sizes. 206 is a 4-by-8 butt cut label.

Q. Is that everything on 206 is the 4-by-8 butt cut?

A. That is correct.

Q. And you can tell that from what is written on the upper left-hand corner; is that right?

A. That is correct.

Q. And then if we look at 210?

A. 210 is a 4-and-three-quarter-inch

circle.

Q. And what was ordered on April 7, 1998 that we see in GOLD 210?

A. 7,000 total labels; 4,000 original, 1,000 smoked yogurt, 1,000 garlic and herb and 1,000 vegetable yogurt.

Q. And how do you know what label it was for? Where does it indicate on the order itself what should be on the label that is being ordered?

A. The job number relates to a job ticket which has the original plates in it and then the die specification which would list the 4-and-three-quarter-inch die, list the colors that it's printed in, and list how it's rolled and on what stock.

Q. At what point in time then was the label that we see in 210 actually affixed to this piece of paper?

A. That label would have been affixed on 4-7-98.

Q. So that the label was already in existence at that time?

A. The label was produced at or about

that time, you know, within a day.

Q. When the handwriting was placed on the piece of paper for the 4-7-98 order, was the label already on the piece of paper?

A. I couldn't tell. I wasn't in the office at that time. This is prior to my owning the company, but in the normal course of the way they did their business, they would take out a lined sheet of paper, write who it was, write the size, write all the information, pick up the next job number, slap a label on it or write first and then slap a label on it, but it's basically done at the same time.

Q. Okay. And you say the job number 5864 refers to certain plates and dies; correct?

A. That is correct.

Q. Are those plates and dies still in existence?

A. I believe those plates are still in existence. I know the die is definitely in existence.

Q. In the same form as it was on April 7, 1998?

A. When you say "in the same form," meaning --

Q. Has the plate changed?

A. We may have made new plates because the old plates were destroyed, you know, got beat up over use, but I would doubt it based on the number of labels that were produced in this run.

Q. You would doubt that it was destroyed?

A. Yeah, I would be -- you know, we at times will remake plates, only because the type of plates that Gem made -- how far do you want me to get into this?

Q. A little bit more.

A. They used a rubber plate which has a bit of a stretch, so when you put it on a cylinder, because it's a rotary label, when you put it on a cylinder, rubber has give. Any time you are trying to do a very close register job, which this is, because you are matching the red into a gold and into a black, any bit of stretch is going to show in the quality of that production. The more up-to-date types of

plates are photopolymer Cyrel plates. The backing of the plate is stiff, so the image stays in the same place, you can't stretch the plate, you know, horizontally or vertically, which will give you a better quality. So I may have decided at some point after production to remake a set of plates. I don't know if I ever did it on these, because we haven't run these that often, but a lot of things that we did for Gem we did remake, you know, we just took their original artwork and re-made the plates again just to have a better quality product.

Q. So you may or not have the original plates?

A. I may or may not.

Q. Could I see the original documents that I looked at before?

A. Sure.

Q. Mr. Bartolomeo, do you have any personal knowledge of when the label that we see on GOLD 210, do you have any personal knowledge of when that label was affixed to the piece of paper?

A. No, I don't.

Q. Do you have any personal knowledge of when any of the labels that we see in P 206, the entire exhibit, of when those actual labels were affixed to the pieces of paper?

A. No, I don't. Except to say that they were affixed prior to July 19, 2000. Just for clarity purposes.

Q. And looking at 210, what was ordered on April 21 of 1999?

A. 10,000 of job 5864, 3,000 vegetable, vegetarian, 5,000 original, 1,000 smoked, and 1,000 garlic and herb.

Q. And if we look at GOLD 206, could you tell me, please, what was ordered on July 12, 1999?

A. July 12, 1999, 5,000 of the Havarti yogurt cheese.

Q. And I'd like to direct your attention to GOLD 213. You said earlier that you have not seen this before?

A. I have not seen that before.

Q. Have you received materials that very much resemble this from Gold Star?

A. No.

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Q. And I'd like to direct your attention to Bates stamp number GOLD 225. It's the very last page. Have you seen that before?

A. No, I have not.

Q. Do you know what it is?

A. It's a color break-out for the Babushka's Recipe label.

Q. Is that the kind of color break-out that Gold Star provides to Gem?

A. They haven't provided this to me.

Q. And when Gem produces the labels for Gold Star, how did the labels get to Gold Star?

A. UPS, messenger service, or I have at times delivered them myself, if need be.

MR. FRIEDMAN: No further questions at this time.

MR. THOMPSON: Just a very couple, a very short couple of questions.

FURTHER EXAMINATION BY
MR. THOMPSON:

Q. If you could refer to page 206 of Exhibit 206. We were discussing or you were discussing with Mr. Friedman the order date of 4-7-98 and that there is an item purchase of

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7,000 that has a price next to it?

A. Yes.

Q. Next to that there is an initial ATP $190 and I can't tell if it's a P and P or PTP 360. Could you explain what those are?

A. ATP would be artwork, the charge for the artwork, and P and P is plates and prep, so those are the actual physical printing plates and the film required to make those plates.

Q. And every time there is a new job you need a new set of plates?

A. Every time there is a change to a job or a new job there is a new set of plates.

Q. So if there is a charge for a set of plates, that would be an indication that that was at that time a first job of that kind?

A. That's correct.

Q. So would I be correct in understanding then that on April 7th, '98, a new set of plates was required for performing this job?

A. That's correct.

Q. What, if anything, would that lead you to conclude about that job?

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A. That it was either first done or -- given that it's the first line on this job number, it's probably the first time this job was ever run.

Q. And later on down on that same page with the 7-12-99 entry where there is a PP charge, what would the presence of that charge indicate to you?

A. That would indicate that the first time they ran the Havarti Yogurt Cheese was on 7-12-99.

Q. And that would be consistent with the date in handwriting on page 209, which is Exhibit 103?

A. That's correct.

MR. THOMPSON: That's it.

FURTHER EXAMINATION BY
MR. FRIEDMAN:

Q. Looking at the Bates stamp number 206, I see that there is -- after the entry of April 7, '98 there is no entry until April 21, '99; is that correct?

A. That's correct.

Q. And does that indicate to you that

there was no order placed for labels of this type in between April 7, '98 and April 21, '99?

A. That's what it indicates to me.

Q. And you said earlier that the plates would have been prepared on or around 4-7-98 for the order of 4-7-98; right?

A. Yeah, it would probably -- in the normal course of business you would expect about a week before that, at least.

Q. So that would have been the first time that the plates were prepared for this Babushka's Recipe?

A. Given this indication, yes, that's what I would guess from it.

Q. Now, referring to Gold 210, is it also fair to say that this indicates that no orders were placed in between April 7, '98 and April 21, 1999?

A. That's correct.

Q. And is it fair to say that on July 12, '99 no order was placed for the circular labels?

A. That is correct. That would be my indication from the record here.

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Q. So is it fair to say that the records that are contained within P 206 plus R 103 are all of the records that you were able to find for work done for Gold Star relating to Babushka's Recipe prior to your purchase of the company?

A. Yes.

Q. And did you, in fact, do a diligent search for records?

A. Yes, I did.

Q. And that was at the request of Miss Pincow?

A. That is correct.

(Continued on next page to include jurat.)

Bartolomeo - Confidential

Q. And that request was first made around or about May of 2007?

A. That is correct.

MR. FRIEDMAN: No further questions at this time.

MR. THOMPSON: And none for me. We thank you very much for your time, Mr. Bartolomeo.

THE WITNESS: Thank you.

MR. FRIEDMAN: Thank you.

(Time noted: 10:53 a.m.)

DANIEL BARTOLOMEO

Subscribed and sworn to before me
this day of 2008.

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, KRISTIN KOCH, a Notary Public within and for the State of New York, do hereby certify:

That DANIEL BARTOLOMEO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of October, 2008.

KRISTIN KOCH, RPR, RMR, CRR, CLR

1

2 ----------I N D E X----------

3

WITNESS EXAMINATION BY PAGE

4

5 DANIEL BARTOLOMEO MR. THOMPSON 4, 53

6 MR. FRIEDMAN 14, 55

7

----------EXHIBITS----------

8

9 REGISTRANT PAGE LINE

10

Exhibit 128 4 2

11 Amended Notice of Deposition of

Daniel Bartolomeo.....

12

13 ----------EXHIBITS----------

14

PETITIONER PAGE LINE

15

16 Exhibit 211 26 11

Letter dated May 24, 2000, Bates

17 stamped GOLD 0009 through GOLD 0011..

18

19

20

21

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Four Seasons v. Gold Star

Dep. Date: October 17, 2008

Deponent: Daniel Bartolomeo

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
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_____

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS____DAY OF_____, 2008.

_____

(Notary Public) MY COMMISSION EXPIRES:_____

100A Cabot Street
West Babylon, NY 11704
631- 420-4949
631-420-4909 (Fax)

Gem Printing

May 24, 2007

Gold Star International
570 Smith Street
Brooklyn, NY 11231

Galina,

Per our conversation I have enclosed copies of our records regarding the "Babushka's Recipe" Farmer Cheese Tropol labels. These include our invoice as well as a facsimile of the label.

Our records indicate that these labels were first produced on September 29, 2000. At that time a total of 5,500 labels (4" x 8" butt cut) were made. These labels were printed blue and gold on a clear stock.

I hope this information is helpful. If I am able to locate any additional information, I will forward it to your attention as soon as it is available. If you have any questions or comments please feel free to contact me at the number above.

Regards,

Dan Bartolomeo

Four Seasons Dairy, Inc., Petitioner
v.
International Gold Star Trading Corp., Registrant
Cancellation No. 92/042,082
Petitioner Exhibit 211 KK 10-17-08

GOLD0009

GEM PRINTING

100A CABOT STREET
WEST BABYLON, NY 11704
PH 631-420-4949 FAX 631-420-4909

Invoice

Date	Invoice #
9/29/2000	3151

PAID

Bill To	Ship To
Gold Star International 570 Smith Street Brooklyn, N.Y. 11231	Gold Star International 570 Smith Street Brooklyn, N.Y. 11231

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
GALINA	Net 30		9/29/2000	OT	BROOKLYN	

Quantity	Item Code	Description	Price Each	Amount
5,500	0272	4" X 8" BUTT CUT, BABUSHKA'S RECIPE, HOMESTYLE BUTTER, 3/C ON CLEAR STOCK	0.05785	318.18
	300	Shipping & Handling 11 ROLLS, 500/ROLL	10.00	10.00

Total $328.18

GOLD0010

FARMER CHEESE TROPOL

Nutrition Facts	Amount/Serving	%DV*	Amount/Serving	%DV*
Serving Size 1oz. (30g) about 2 Tbsp.	**Total Fat** 2.5g	4%	**Total Carb.** 0g	0%
Servings Per Container Varied	Sat. Fat 1.5g	8%	Dietary Fiber 0g	0%
Calories 50	**Cholesterol** 10mg	4%	Sugars 0g	
Fat Cal. 25	**Sodium** 120mg	5%	**Protein** 5g	

*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Vitamin A 0% • Vitamin C 0% • Calcium 4% • Iron 0%

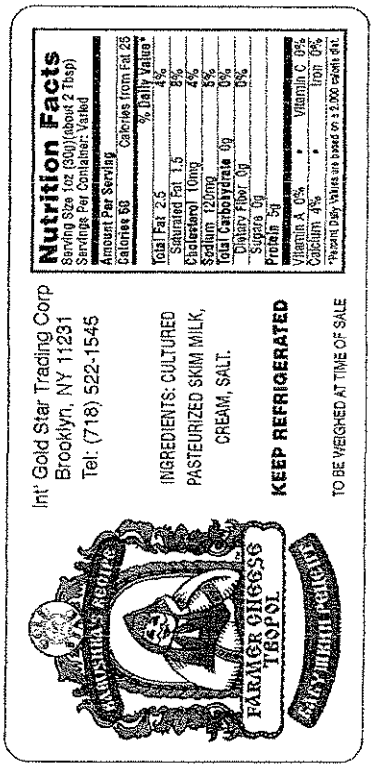
Ingredients: Cultured Pasteurized Skim Milk, Cream, salt.

БАБУШКИН РЕЦЕПТ

TO BE WEIGHED AT TIME OF SALE

KEEP REFRIGERATED

International Gold Star Trading Corp.
570 Smith Street, Brooklyn, New York 11231
(718) 522-1545



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

FOUR SEASONS DAIRY, INC.,	Cancellation No. 92/042,082
Petitioner,	
v.	Mark: **BABUSHKA'S RECIPE**
INTERNATIONAL GOLD STAR TRADING CORP.,	Reg. No. 2,479,287
Registrant.	

AMENDED NOTICE OF DEPOSITION OF DANIEL BARTOLOMEO

PLEASE TAKE NOTICE that, pursuant to Rule 30(a)(1) of the Federal Rules of Civil Procedure, Registrant, Gold Star International Trading Corp. ("Gold Star"), will take the deposition of Daniel Bartolomeo of Gem Printing at 100A Cabot Street, West Babylon, NY 11704 in the above-captioned action, at the offices of Cohen Pontani Lieberman & Pavane, LLP, located at 551 Fifth Avenue, Suite 1210, New York, New York, before a person designated by Rule 28 of the Federal Rules of Civil Procedure, by stenographic and audiovisual means, commencing on October 17, 2008 at 9:30 a.m., and continuing thereafter from day to day until completed.

Four Seasons Dairy, Inc., Petitioner
v.
International Gold Star Trading Corp., Registrant
Cancellation No. 92/042,082
Registrant Exhibit 128 AK 10/17/08

You are invited to attend and cross-examine.

Respectfully submitted,
COHEN, PONTANI, LIEBERMAN & PAVANE

By 

Roger S. Thompson
551 Fifth Avenue
New York, New York 10176
(212) 687-2770

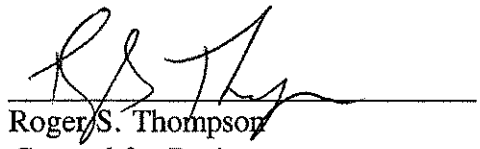
Attorneys for Registrant,
International Gold Star Trading Corp.

Dated: October 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Notice of Deposition was served by first-class mail, postage pre-paid, and by e-mail on counsel for petitioner, addressed as follows:

Samuel Friedman, Esq.
samfriedman@verizon.net
225 Broadway, Suite 1804
New York, New York 10007



Roger S. Thompson
Counsel for Registrant

October 10, 2008
Date