

ESTTA Tracking number: **ESTTA344447**

Filing date: **04/28/2010**

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	Lubenskaya Transcript.pdf (72 pages)(113188 bytes) Petitioner Ex. 212.pdf (4 pages)(109429 bytes) Registrant Ex. 132.pdf (2 pages)(43778 bytes) Registrant Ex. 133.pdf (10 pages)(2163149 bytes)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 IRINA LUBENSKAYA
New York, New York
Friday, October 17, 2008

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

October 17, 2008

2:07 p.m.

Confidential Examination of IRINA
LUBENSKAYA, 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2 (Registrant Exhibit 132, Amended
3 Notice of Deposition of Irina Lubenskaya,
4 marked for identification.)

5 (Registrant Exhibit 133, color
6 copies of labels, Bates stamped GOLD 0290
7 through GOLD 0299, marked for
8 identification.)

9 * * *

10 I R I N A L U B E N S K A Y A,

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

14 EXAMINATION BY

15 MR. THOMPSON:

16 Q. Thank you for showing up,
17 Miss Lubenskaya. We have had the reporter mark
18 and hand to you a document marked with a number
19 Registrant 132, which is an Amended Notice of
20 Deposition of Irina Lubenskaya. It identifies
21 Ms. Lubenskaya of 5 Pearl Street, Hawthorne,
22 New York. Is that you?

23 A. That's me.

24 Q. Could you please tell me what you do
25 for a living?

1 Lubenskaya - Confidential

2 A. I work for IBM. I am an art director
3 for IBM.com.

4 Q. In the past have you done any work
5 for a company called International Gold Star
6 Trading Corporation?

7 A. Yes, I have.

8 Q. And what have you done for them?

9 A. I've designed several food labels,
10 some piece of packaging, I believe one holiday
11 card and possibly business cards.

12 Q. Have you ever worked with any
13 products with the name Babushka's Recipe on
14 them?

15 A. Yes, I did.

16 Q. Could you please tell me when you
17 first heard the name Babushka's Recipe and in
18 what context?

19 A. I believe our first brainstorming
20 session for this product before it was even
21 called Babushka's Recipe was in 1997.

22 Q. And who was part of this
23 brainstorming?

24 A. Miss Pincow was working with me on
25 that.

1 Lubenskaya - Confidential

2 Q. Now, was this an in-person
3 brainstorming session?

4 A. Yes.

5 Q. And do you have any idea of when in
6 1997 that took place?

7 A. It's been a very long time. I mean,
8 I can only judge by, you know, the files I have
9 in my archive I believe are from somewhere June
10 '97, and this is the end of the process, so we
11 probably started discussing it at least at the
12 beginning of the year, because it takes a long
13 time, you know, from sketches to actually
14 getting the actual artwork done.

15 Q. Now, could you please describe as
16 best you can what happened during those
17 brainstorming sessions?

18 A. Well, the process is usually going
19 like this, like there is some idea, Ms. Pincow
20 has an offer of some kind of product to promote
21 to her market, and we start with like a very
22 generic thought on what it might be and I
23 believe at that time we were only talking about
24 a cheese or something, one kind of cheese, and
25 were thinking of, oh, this could be like a

1 Lubenskaya - Confidential

2 little pot with cheese or sour cream and we
3 wanted to make it look very ethnic so it
4 appeals to ethnic Russian market and, you know,
5 I usually do, I can show you, I don't have the
6 ones from twelve years ago, but the more recent
7 one -- I brought some sketches. Yes, something
8 like that happens, you know, we are just asked
9 is the name sounding okay in Russian and in
10 English, because it is a challenge to do, so
11 something like that happens, so I started with
12 little scribbles and from that I do very rough
13 sketches and I fax it to Galina for her to take
14 a look and see what might work and, you know,
15 after that she usually picks a couple of
16 things, and even at that point the name is not
17 necessarily what the name is going to be, and I
18 just work on refining the artwork until it
19 looks what Galina would like it to look like.
20 Actually, I do remember that when we were
21 working on it one of my inspirations for the
22 artwork was these illustrations. It's a
23 Russian illustrator. I actually kind of
24 imitated some of the patterns from here with a
25 simplified manner.

1 Lubenskaya - Confidential

2 Q. Now, do you still have any of your
3 initial sketches from 1997 with relation to
4 Babushka's Recipe?

5 A. It's been a very long time, but the
6 files I sent to you, they are layered, and the
7 black layer is a scan of my sketch, you know,
8 so whatever blackout lines here, it's a scan of
9 my -- it's not an original sketch, but it's a
10 sketch that finally made it like into the final
11 artwork, so it was somewhere like beginning of
12 '97, I suppose.

13 Q. Well, we have had some documents
14 previously marked as exhibits and I will ask
15 you if you can get them and put them in front
16 of you. One of them will have the number 206
17 at the bottom, Petitioner's 206, and one will
18 be Petitioner's 207.

19 A. Is it this one, Gem Printing?

20 Q. It should say 206 in the lower
21 right-hand corner.

22 A. Yes.

23 Q. And then the following document as
24 well, 207.

25 A. Okay, yes.

1 Lubenskaya - Confidential

2 Q. If you turn to the second page of
3 207, can I ask you first to look at 207 and
4 tell me if you can identify what that document
5 is.

6 A. Yes. This is a directory of my
7 files that were finalized for printer and that
8 one grannycollect.eps is a file that has all
9 the layers for colors and the black layer is a
10 scan of my sketch. So that's dated July 27,
11 the latest. By the time this is being done
12 there is so much work that goes into it like in
13 refining the label, so this is essentially --
14 this is something that already was finalized
15 and went to a printer with all the separations.

16 Q. So the dates that appear there in
17 Exhibit 207 represent the final dates that
18 those files were modified; is that right?

19 A. Yes. This is something that would
20 go to the printer. This is ready to go into
21 production.

22 Q. Now could I ask you to look at
23 Exhibit 206 and start -- if you could start
24 looking at that at number -- in the lower
25 right-hand corner you will see there are what

1 Lubenskaya - Confidential

2 we call Bates numbers which begin GOLD
3 02-something, do you see that?

4 A. Yes.

5 Q. If you could start at the number
6 0213, and I will ask you to look at the pages
7 from there until the end of the document.

8 A. Yes, those are bar codes. I think I
9 generated those bar codes at the time. This --
10 I think these are part -- that directory of
11 files, those are files from that directory, I
12 think.

13 Q. So far you have only turned to the
14 first few pages. Can I ask you to look at all
15 of the pages first and then I will ask you some
16 questions.

17 (Document review.)

18 A. Yes.

19 Q. There is one more page.

20 (Document review.)

21 A. Yes.

22 Q. Okay. Now I can ask if you can
23 identify what those documents are. You started
24 referring to the --

25 A. I believe those are printouts of the

1 Lubenskaya - Confidential

2 documents that are listed in the previous page
3 I looked at, the directory of the documents.

4 Q. Could I ask you to keep --

5 MR. FRIEDMAN: Could you just read
6 back the last question and answer.

7 (Record read.)

8 Q. Could I ask you to turn to the
9 second page of 207, which is that directory
10 listing, and look at that, if you will, at the
11 same time as you are looking at the documents
12 beginning at the number 213, and can you tell
13 me if you can, in fact, match any of those
14 documents to the computer files?

15 A. Yes, sure. I see 213 is number 7 on
16 the list.

17 Q. Which has the number 42023?

18 A. YCvegLoaf, yes, that's 213.
19 The number 214 is the first
20 document.

21 Number 215 is the second document on
22 the list.

23 I have a double here. You might
24 have 216 and 213 as the same thing.

25 Q. So you believe that 216 and 213 are

1 Lubenskaya - Confidential

2 the same document, just printed twice?

3 A. Yes. Oh, no, no, no. I'm sorry,
4 no. No, there is a difference. Oh, no, no.
5 Okay. Not the same. 216 is number 3 on the
6 list.

7 Q. Which has the number 42013 YCVeg?

8 A. Yes. And 217 is number 4 on the
9 list. That's 42014 YCOrigWheel.EPS. I'm
10 sorry, did I say 214 is number 1 on the list?

11 Q. Yes.

12 A. Okay. That's correct. Then number
13 218 is number 5 on the list.

14 Number 219 is number 6 on the list.

15 Number 220 is number 7 on the list.

16 And number 221 is number 8 on the
17 list.

18 Number 222 is number 9 on the list.

19 Number 223 is number 10 on the list.

20 Now we are going to have -- well, I think that
21 number 225 is grannycolor4.eps and it's 13th on
22 the list.

23 Q. That would be the third one from the
24 bottom?

25 A. Yes. And this looks like just one

1 Lubenskaya - Confidential

2 part of another document, of the granny
3 collect, but there is no definite way for me to
4 tell you unless I see the document from the
5 list, because there were several color layers
6 in there, so -- and this was actually -- this
7 was original scan, that black layer that we
8 scanned, so I think it's granny collect, but
9 it's missing some parts, unless it's just black
10 and white printout.

11 Q. And I will just be clear, you are
12 referring to page 0224; is that right?

13 A. Right, 224, yes. So my guess it's
14 number 4 from the bottom, but it's missing some
15 parts, the printout itself.

16 Q. Okay. I will show you another
17 document that has been marked as Exhibit 133
18 and I will ask if you recognize that.

19 MR. THOMPSON: For the record, these
20 bear Bates numbers GOLD 0290 through 0299,
21 and they were not part of the original
22 production of documents to Mr. Friedman.

23 A. Well, I believe -- am I looking at
24 each of these pages or just the top one?

25 Q. First if you can look at them

1 Lubenskaya - Confidential

2 individually and then if you can describe them.

3 MR. FRIEDMAN: In keeping with your
4 comment, I will just note my objection to
5 introduction of documents not previously
6 exchanged during discovery.

7 (Document review.)

8 A. Do you have a laptop I can use? You
9 are asking me to, like, look at the printouts
10 from twelve years ago.

11 Q. I don't have a laptop handy. I
12 might be able to get you one. Would it have to
13 be able to read a Mac disk? Because all of our
14 laptops are PCs.

15 A. Yeah. If there is Adobe Illustrator
16 on it I might be okay. Okay. I am going to
17 say I almost hundred percent sure what it is.

18 Q. Well, what is your best
19 understanding of what these documents are?

20 A. Okay. 290 and 291 are the document
21 at the bottom of the list that's called
22 Kefir.doc and what this is is just a label with
23 all the collected info for the printer with
24 nutrition facts and the artwork in there.

25 The documents number 292, 293, 294,

1 Lubenskaya - Confidential

2 295 --

3 MR. FRIEDMAN: Is the witness, if I
4 understand correctly, she is still
5 comparing to the directory that has the
6 Bates number 0008?

7 MR. THOMPSON: That is my
8 understanding.

9 Q. Miss Lubenskaya?

10 A. Yes. I mean, I remember -- I mean,
11 those are all my documents, that's for sure.

12 MR. FRIEDMAN: 0008, the directory?

13 A. Both, yeah, this is my stuff and
14 this is printouts from this and --

15 Q. So the record is clear, please
16 understand that we may seem like we are being
17 difficult, but because the printed record
18 doesn't know when you say "this is this" and
19 "this is this" when you are gesturing at
20 something, we have to then state for the
21 record. When you first pointed to the "this"
22 was when you referred to the directory, which
23 is at Gold Star 0008, as being the first thing
24 you were looking at, and then you were looking
25 at the production numbers 0290 through 0299.

1 Lubenskaya - Confidential

2 Is that right?

3 A. Right, but actually 292 through 295
4 are the document that's named cheese.com.

5 Q. You mean cheese.doc?

6 A. Cheese.doc. Sorry. And documents
7 296 to 299, I have to look at the file. You
8 know, the circular label. They are a circular
9 label, so I need to see if they are still part
10 of that cheese.doc. I can't answer it right
11 now. I can probably give you a call back if I
12 will be able to open this document.

13 Q. Well, we will see if we can find a
14 computer that you can use while you are here,
15 because it would be important to do it while
16 you were still under oath and not simply call
17 me back, but for our purposes right now, do you
18 remember having made these pictures in the time
19 frame of on or before December 29th, 1997?

20 A. It definitely was done before that,
21 yes. This is directory of files that went into
22 production, so I worked on it before that.

23 MR. FRIEDMAN: Can I just ask for
24 clarification. When you say all those
25 documents, you are referring to --

1 Lubenskaya - Confidential

2 MR. THOMPSON: The documents that
3 were in her hand, Exhibit 133, the
4 documents she had looked at as part of 206,
5 and -- those are all the documents I think
6 that we were talking about.

7 MR. FRIEDMAN: Okay.

8 Q. So with respect to the computer
9 files that are listed in GOLD 0008, that's the
10 directory, all of those files had been last
11 modified on no later than December 29th, 1997?

12 A. That's correct.

13 Q. Do you know what you did with the
14 bar codes that we have seen as numbers 213
15 through 223; do you remember?

16 A. Can you clarify what do you mean
17 what did I --

18 Q. They were in electronic format. Did
19 you send them to someone for use and do you
20 remember who you sent them to in 1997?

21 A. Well, these documents are Quark
22 Xpress documents you see here. Kefir.doc and
23 cheese.doc, they are containing all the bar
24 codes and artwork and they are compiled into
25 the full label. So they were sent together to

1 Lubenskaya - Confidential

2 the printer, the bar codes with this artwork
3 set in a setup label for the printer.

4 Q. I am trying to make sure I
5 understand. What you are saying is you never
6 sent anybody just the bar code, what you did
7 was put the bar code into a picture of a whole
8 entire label which you then shipped to somebody
9 else?

10 MR. FRIEDMAN: Objection.

11 Q. Is that what you are saying? I am
12 trying to understand.

13 A. Yes. As a rule, the bar code was
14 included in a complete artwork.

15 Q. And the complete artwork would be
16 what we see in Exhibit 133; is that right?
17 That's what's in your right hand right now.

18 A. Oh, yes.

19 Q. Do you remember what you did with
20 the computer files that included the complete
21 artwork as we have seen in Exhibit 133?

22 A. They were put on a disk and sent to
23 Ms. Pincow and then she probably sent it to her
24 printer.

25 Q. But what you did was you put it on a

1 Lubenskaya - Confidential

2 disk and shipped it to Ms. Pincow at Gold Star?

3 A. Right.

4 Q. Were any changes made to these
5 computer files subsequent to December 30th of
6 1997?

7 A. No.

8 MR. THOMPSON: I have no further
9 questions.

10 EXAMINATION BY

11 MR. FRIEDMAN:

12 Q. My name is Sam Friedman. I
13 represent Four Seasons Dairy.

14 After you put the documents on the
15 disk and sent them to Miss Pincow, did you also
16 keep copies of the documents?

17 A. Yes, I have my archive.

18 Q. So your archive was kept on what,
19 your computer?

20 A. Yes.

21 Q. So in order to create the disk, you
22 copied material from your archives to the
23 disk --

24 A. That's correct.

25 Q. -- and then sent them to Ms. Pincow.

1 Lubenskaya - Confidential

2 Did you ever have any dealings
3 directly with any printer for Miss Pincow or
4 International Gold Star?

5 A. Not unless there was a problem with
6 my files which I needed to resolve, which I
7 don't recollect any problems with this file.

8 Q. So you did occasionally have direct
9 contact with a printer for International Gold
10 Star?

11 A. It wasn't direct. Galina usually
12 would initiate -- the printer would contact
13 Ms. Pincow if there would be a problem with my
14 files and she would redirect their question to
15 me, but as a rule I send this artwork to
16 Miss Pincow and I don't see it, you know, I
17 don't really know how it's used afterwards.

18 Q. At times, if any, that you did have
19 contact with the printer for International Gold
20 Star, do you remember who the printer was?

21 A. Not for Babushka's Recipe labels. I
22 mean, do you mean like in general?

23 Q. Yes.

24 A. I only remember recent interactions
25 with a printer on some fish labels. It was a

1 Lubenskaya - Confidential

2 shop in Long Island. I don't remember the name
3 of it off the top of my head.

4 Q. Gem Printing?

5 A. I'm not sure. Oh, actually, yeah,
6 this person sounds familiar, Dan Bartolomeo.

7 Q. You are looking now at P 206?

8 A. Yes. Yes, he sounds familiar.

9 MR. FRIEDMAN: I want to take a
10 minute to look at these documents.

11 MR. THOMPSON: Do you want more than
12 a minute? We will give you as much time as
13 you need.

14 MR. FRIEDMAN: Do you want to break?

15 MR. THOMPSON: It depends on how
16 much time you feel you need.

17 MR. FRIEDMAN: I don't think I need
18 much time.

19 Q. Regarding the Babushka's Recipe
20 labels, did you have one or more than one
21 brainstorming session with Galina about it?

22 A. Well, there probably were more than
23 one, but only one face-to-face. I live pretty
24 far away, so it's hard for me to get down to
25 her. We talk on the phone if she has some

1 Lubenskaya - Confidential

2 changes and some other ideas.

3 Q. Could I have a look at the thing
4 that you said you used sort of as inspiration
5 for the Babushka's Recipe label.

6 A. Sure (handing).

7 Q. Are there any babushkas in here that
8 you used as inspiration?

9 A. No, I didn't borrow the babushka,
10 but the style in general, like framing and
11 patterns around frames, that's the spirit that
12 I wanted to bring in in a simplified form,
13 because that was very -- like three- or
14 four-color printing on plastic. I couldn't
15 really make it any more complex.

16 Q. And what is this that you handed me?

17 A. That's actually -- it's a fairy
18 tale, Russian fairy tale, and this is an
19 illustrator from 1890s, 1910s. That's the
20 style that speaks to me as ethnic Russian very
21 much so. I thought I can use it as an
22 inspiration for these ethnic Russian labels.

23 Q. Are you, yourself, ethnic Russian?

24 A. Well, I am Jewish, but from Russia.

25 Q. Do you remember food products in

1 Lubenskaya - Confidential

2 Russia with the name of Babushka?

3 A. No. Food products in Russia when I
4 was in Russia were like milk number 135. There
5 was not much imagination there, definitely.

6 Q. How far back was that?

7 A. That was -- we left Russia in 1988.

8 Q. Was there a time that you were --
9 how did it come about that you ended up
10 transmitting what we see here as GOLD 0008?
11 Did you send this to somebody?

12 A. Yes, actually, James Pincow
13 contacted me through Linked In and asked me if
14 I have the files still, so I thought it would
15 be helpful to him if I will send him the
16 directory of what I had in my archive.

17 Q. And I am only vaguely familiar with
18 Linked in. Can you tell me what that means?

19 A. Oh, it's awesome. You should join.
20 It's kind of My Space or Face Book but for
21 professionals, so you can keep track of people
22 who you worked with or if you are looking for a
23 job you can network with people in your
24 industry.

25 Q. But I thought you continued to have

1 Lubenskaya - Confidential

2 contact with Galina through the present?

3 A. Actually, we had a pretty -- a long
4 time when we didn't have any contact and, you
5 know, I think James found me through Linked in,
6 because I moved on -- I used to work for a
7 different company and I was traveling a lot, so
8 I wasn't very accessible through regular ways
9 of contacting people.

10 Q. When did James Pincow contact you
11 through Linked in, if you know; do you
12 remember?

13 A. Probably it's been definitely more
14 than a year, possibly more. Definitely was
15 more.

16 Q. So then he contacted you by e-mail;
17 is that right?

18 A. It's not exactly e-mail, it's like,
19 you know, it's like on My Space you send the
20 message through -- you send a message through
21 this application within the website, so you
22 don't really need to know the person's e-mail.
23 You get a message from one Linked in user to
24 another Linked in user.

25 Q. And what did you do in response to

1 Lubenskaya - Confidential

2 getting the Linked in message from James
3 Pincow?

4 A. Well, at first I didn't think I
5 would find anything, it's been a long time and
6 I only have limited capacity to hold onto my
7 files, but, you know, I was lucky, I found the
8 old archive with Gold Star packaging files and
9 I was able to send it to him in hope that it
10 would be helpful.

11 Q. And in what manner did you send it
12 to him?

13 A. I believe I just zipped that file
14 and e-mailed it to him.

15 Q. Did you have any contact with him
16 after sending him the zipped file?

17 A. No, I don't think so. You know, I
18 think he just responded with a "thank you" and
19 that's it.

20 Q. So he acknowledged the receipt of
21 the zipped file?

22 A. Yes, he did.

23 Q. And did you have reason to believe
24 that he was able to open that zipped file?

25 A. No, I don't know if he was able to

1 Lubenskaya - Confidential

2 open it or not, but -- I mean, because zip
3 files, you can see, they are Macintosh files
4 and they were created in proprietary software.
5 He probably was able to open the zipped file,
6 but I don't know if he was able to open the
7 files itself.

8 Q. But he acknowledged the receipt of
9 the zipped files. And then did there come a
10 time that you were contacted again by somebody
11 from International Gold Star in connection with
12 this artwork?

13 A. Well, Galina sent me an e-mail, you
14 know, saying that I might be called for a
15 deposition at some point. She sent me an
16 e-mail telling me that I might be contacted by
17 her lawyer.

18 Q. And then did you provide your
19 address and things of that nature to make it
20 easy to contact you?

21 A. Mr. Thompson called me and I gave
22 him my address.

23 Q. Were you served with a subpoena in
24 order to come here today to testify?

25 A. No.

1 Lubenskaya - Confidential

2 Q. As best as you can remember during
3 your brainstorming session with Galina -- and,
4 by the way, you had had earlier contact with
5 Galina before the brainstorming session on
6 Babushka's Recipe?

7 A. Yes, I did some other work for
8 Galina before that.

9 Q. What kind of work had you done for
10 her before?

11 A. We did a brochure together, like a
12 promotional brochure together, and some flyers.
13 Galina was, you know, working on some, you
14 know, promotional materials.

15 Q. Like for food products?

16 A. Chocolate, I believe, yes, and some
17 other food products.

18 Q. So was the brainstorming session
19 regarding Babushka's Recipe the first contact
20 that you had had with her concerning this
21 concept of Babushka's Recipe?

22 A. Yes.

23 Q. Did there come a time -- I keep
24 speaking like a lawyer and I will try not to.

25 Did you send your zipped file to

1 Lubenskaya - Confidential

2 Mr. Thompson?

3 A. Yes, I did.

4 Q. And when was that, approximately?

5 A. It was last week. I don't remember
6 exactly what day.

7 Q. And then did you have any further
8 contact with Mr. Thompson in connection with
9 opening the files contained within the zipped
10 file?

11 A. Yes. I believe he called back and
12 he said that he was able to open the zipped
13 file.

14 Q. What about the documents within the
15 zipped file?

16 A. I believe he did mention that he was
17 able to open it. I'm not a hundred percent
18 sure I paid much attention.

19 Q. Now, the directory that we see on
20 Gold 0008, are these the documents within the
21 zipped file?

22 A. Yes, these are the same exact
23 documents.

24 Q. Was it one zipped file or more than
25 one zipped file?

1 Lubenskaya - Confidential

2 A. It was one zipped file, but it
3 contained a folder with all the documents in
4 it.

5 Q. And is it the same zipped file that
6 you had sent to James Pincow a year and a half
7 before?

8 A. It's the same folder, but I actually
9 zipped it for Mr. Thompson right before I sent
10 it to him. I didn't keep the zipped file, the
11 one that I sent to James a while ago.

12 Q. Okay. The same contents, but a
13 different zip?

14 A. Yeah, exactly.

15 Q. And although it was a different zip,
16 it was the same kind of zip?

17 A. Exactly.

18 Q. If I understood your earlier
19 testimony correctly, most of the documents
20 within the directory of GOLD 0008 are these bar
21 code images on GOLD --

22 A. Yeah.

23 MR. THOMPSON: I would object to the
24 characterization as "most." It depends on
25 whether you are talking about the number of

1 Lubenskaya - Confidential

2 files or the size of the files, so your
3 question is not clear.

4 A. If I may clarify, these two
5 documents here, the cheese.doc and Kefir.doc --

6 Q. Referring to 0008.

7 A. These are Quark Xpress documents.
8 Quark Xpress is a layout document that is
9 essentially an aggregator for all other pieces
10 of content, so it's comparable to web page, you
11 know, to HTML code, so, you know, you can code
12 it and include different elements into the code
13 and it will appear on the page. This is what
14 these two documents are. What they do is they
15 aggregate all this other content into one
16 place.

17 Q. And just so if I remember correctly,
18 you are talking about cheese.doc and Kefir.doc?

19 A. Exactly.

20 Q. Those two documents, those two Quark
21 documents contain all of the other
22 information --

23 A. Right.

24 Q. -- in this directory?

25 A. Yes. So they take the bar code and

1 Lubenskaya - Confidential

2 the piece of artwork like this --

3 Q. You are now referring to 133.

4 A. Yes. So let's say document 225 and
5 document 219, for example, would be placed into
6 one so-called page in the Quark Xpress document
7 and that's how this label is created, by sort
8 of pulling all the different elements into one
9 place, so that's why there are so many
10 documents in this folder, but essentially they
11 are all being compiled within this Cheese.doc
12 and Kefir.doc into this composition.

13 Q. And the composition you are
14 referring to, R 133?

15 A. Right, exactly.

16 Q. The composition in 133, in addition
17 to the bar code and the design, contains some
18 additional information, such as nutritional
19 facts?

20 A. Right. And these are just text
21 elements that --

22 Q. Like the nutritional facts are the
23 text?

24 A. Yeah, the nutritional facts and the
25 weight and International Gold Star phone number

1 Lubenskaya - Confidential

2 and address, these are elements that are native
3 to this Quark Xpress document itself, so you
4 can actually type in things and bring in images
5 like EPS files and jpeg files, so that's what
6 it is. For example, cheese.doc on this
7 so-called page where the outline is, I would
8 have to bring the artwork -- this is 292, I
9 would have to bring the 225 on the page and the
10 bar code, which in this case it's like 221 on
11 the same page and then I would type in this
12 information like yogurt cheese in English and
13 Russian and nutritional facts, whatever, within
14 the Quark document already. Did I clear it up?

15 Q. Yes, that was helpful. I appreciate
16 it. Thank you.

17 If we look at something like let's
18 say, for example, 292 and there is like sort of
19 a white bar toward the middle of the design, it
20 has the word "original," and then there is a
21 dot and there is a series of letters to the
22 right. What is that series of letters?

23 A. This is "original" in Russian, but
24 probably whoever printed it out didn't have the
25 right font. It should have been --

1 Lubenskaya - Confidential

2 Q. You intended it to look differently?

3 A. Oh, no, it looks different. They
4 just didn't have the right font.

5 Q. It's intended to be in Cyrillic
6 characters?

7 A. Yes, Cyrillic characters, right.

8 Q. And the same would be true of the
9 line just above it where it says "yogurt
10 cheese"?

11 A. Exactly.

12 Q. And I take it the same would be true
13 of the other pages that have the series of
14 letters to the right?

15 A. Right. And you can see that the
16 font is courier, so it's a substitute font and
17 obviously they didn't have Cyrillic encoding,
18 so they couldn't get the right words in there.

19 Q. Did you ever do a design with
20 Babushka's Recipe that had butter in the label?

21 A. I don't remember and, you know, when
22 this mark was designed, it was used in many
23 different ways and it was designed to be used
24 many different ways. Like, for example, this
25 bar could have been anything that needed to be,

1 Lubenskaya - Confidential

2 like any product.

3 Q. So is it the case that the recipient
4 of the file was able to manipulate it to change
5 things around?

6 A. Definitely. It was designed for
7 that so things could be changed or substituted
8 with something else.

9 Q. And the information with respect to
10 bar codes, was all of that information provided
11 to you by Galina?

12 A. Yes. She would give me the number
13 and I had a software that generated bar codes,
14 general.

15 Q. Did you have any discussions with
16 Galina concerning the bar codes?

17 A. No. They are just mechanical
18 things. I put in the numbers and I get EPS
19 file back.

20 Q. Was there ever, as far as you
21 remember, a change in the system for the bar
22 code numbering? For example --

23 A. I don't quite understand how the
24 general food bar codes work, but I work with a
25 lot of publishing houses and they have to send

1 Lubenskaya - Confidential

2 the request for like ISPN number and at times
3 it's in sequence and at times it's not, so, you
4 know, I don't really question numbers. You
5 know, let's say the check number, the last
6 number here doesn't compute, my software would
7 let me know that there is something wrong.

8 Q. You are looking now at 133?

9 A. I am looking at 133 and this number
10 at the end and there is an algorithm that
11 calculates the bar code numbers. This
12 number --

13 Q. You are pointing to the very bottom
14 of --

15 A. Yes, the very bottom of the page,
16 290. So let's say Galina would give me a
17 number that isn't correct, it wouldn't generate
18 the bar code for me. It wouldn't compute. So
19 then I would have to get back to her and let
20 her know that that doesn't sound right, but
21 since it generated, the bar codes were fine.

22 Q. Did all of the final designs that
23 you gave to Galina have bar codes in them?

24 A. No. At times the printer generates
25 bar codes too.

1 Lubenskaya - Confidential

2 Q. So the printer could then manipulate
3 and change it to whatever he wanted?

4 MR. THOMPSON: Object to use of the
5 word "it." I don't think that's clear.
6 What could he change?

7 MR. FRIEDMAN: The bar code.

8 A. No, they would have to generate
9 their own bar code. They can't change my bar
10 code.

11 Q. Do you remember generating images
12 for Galina that had a system of bar coding that
13 had a combination of letters and numbers rather
14 than just numbers?

15 MR. THOMPSON: Could I just have
16 that read back.

17 (Record read.)

18 A. No. Again, the bar codes are
19 generated by a software that doesn't take
20 anything that's not standard. You need to have
21 this 12 digits and if they don't compute within
22 the algorithm that's assigned to them, it can't
23 happen.

24 Q. These images that you sent to
25 Galina, do you know for a fact whether they

1 Lubenskaya - Confidential

2 were ever printed on labels?

3 A. I seen some of these labels in
4 Galina's catalogs, so I safely assume they were
5 used and printed.

6 Q. Did you see the labels being placed
7 on the product itself?

8 A. I've seen the product with the
9 labels in Galina's showroom, so yes, I've seen
10 them done.

11 Q. On what occasions were you in
12 Galina's showroom?

13 A. When we had a project starting up
14 and I would come for brainstorming sessions.

15 Q. So these designs you say that you
16 last modified at the very end of December of
17 1997; correct?

18 A. Right. That date in the directory
19 in 207, 0008, this is a set of files that were
20 completely finalized and sent to a printer.
21 This was the latest iteration of these files.

22 Q. And did you have visits to Galina's
23 showroom after that time?

24 A. Yes, I did, but it had nothing to do
25 with this project.

1 Lubenskaya - Confidential

2 Q. Can you give me a sense of how many
3 times you went to Galina's showroom after
4 December of 1997?

5 A. Probably maybe five times. Maybe
6 less than that. I wish I could go more often.
7 It's usually a struggle for us to actually get
8 together.

9 Q. Do you remember on what products you
10 saw these labels?

11 A. I saw yogurt cheese with this label
12 and I believe a bottle of Kefir with this label
13 as well.

14 Q. I'm sorry --

15 A. A bottle of Kefir.

16 Q. Bottle?

17 A. Yes, I think so.

18 Q. Do you remember what kind of yogurt
19 cheese it was?

20 A. Like what flavor?

21 Q. Okay.

22 A. I think it was plain original yogurt
23 cheese.

24 Q. Do you have any reason to know if or
25 when Galina started actually selling products

1 Lubenskaya - Confidential

2 with these labels on them?

3 A. No, I wouldn't know that.

4 Q. So you don't know one way or the
5 other?

6 A. No.

7 Q. Now, you say that you saw them in
8 catalogs, right, in Galina's catalogs. Did you
9 have any involvement in the printing of the
10 catalogs?

11 A. No.

12 Q. The design of the catalogs?

13 A. No.

14 Q. Why was it that you were looking at
15 catalogs?

16 A. Well, for a general idea what the
17 line of products look like, so if I design
18 something else that fits into the whole
19 aesthetics of Galina's brand.

20 Q. And approximately when was it that
21 you fell out of contact with Galina?

22 A. It was around 2000, 2001. I used to
23 work not far from Brooklyn in Long Island City
24 and then I started -- I moved on to another
25 job.

1 Lubenskaya - Confidential

2 Q. And when you mentioned catalogs, do
3 you mean International Gold Star catalogs?

4 A. Uh-huh, yes.

5 Q. I am showing you something that was
6 previously marked as Respondent's Exhibit 4.
7 Have you seen that before?

8 A. This looks like an old one. I'm
9 pretty sure I saw it. Yeah, I saw this one.

10 Q. I am showing you what was previously
11 marked as Registrant Exhibit 122. Do you
12 remember seeing that?

13 A. I don't. I'm not involved with
14 pricing or price lists. It's beyond my scope.

15 Q. Did you see any catalogs other than
16 Respondent's Exhibit 4?

17 A. I saw one of the later ones from a
18 year or two ago.

19 Q. A year or two ago. So it would have
20 been 2007 or something of that nature?

21 A. Something like that.

22 Q. But I thought that you fell out of
23 contact with Galina and did not resume contact
24 until very, very recently?

25 A. Right, you know, after James

1 Lubenskaya - Confidential

2 contacted me, like I guess -- I sent him an
3 e-mail with my phone number, so Galina was able
4 to contact me again.

5 Q. And was that like around the time of
6 the e-mail with James?

7 A. Yes. So yes, I was able to work on
8 another project for her after.

9 Q. Did that other product have anything
10 to do with Babushka's Recipe?

11 A. No, it has nothing to do. Actually,
12 I have exactly the date, because that's my
13 sketch that I have. It was in June 2007.

14 Q. What was in June 2007?

15 A. Well, our first brainstorming
16 session for this project I worked.

17 Q. For a new project?

18 A. Yes, for a new project.

19 MR. FRIEDMAN: I am just going to
20 take a minute to look through my notes.

21 (Recess was taken from 3:03 to
22 3:07.)

23 (Petitioner Exhibit 212, e-mail
24 dated October 10, 2008, marked for
25 identification.)

1 Lubenskaya - Confidential

2 BY MR. FRIEDMAN:

3 Q. I am showing the witness what has
4 been marked as P 212. It is four pages stapled
5 together. At the top it says "Sam Friedman"
6 and it is an e-mail from Roger Thompson sent
7 Friday, October 10, to Sam Friedman, a copy to
8 Wanda Mason.

9 Miss Lubenskaya, if you look down
10 towards the bottom of the first page, is this
11 the e-mail that you sent to Mr. Thompson --

12 A. Yes.

13 Q. -- last week?

14 A. Yes.

15 Q. And attached to it are the zipped
16 files that were sent to Mr. Thompson; is that
17 correct?

18 A. Yes, that's correct.

19 Q. Now, does each of the two pages
20 attached, does each one represent a zipped
21 file?

22 MR. THOMPSON: I'm sorry, each of
23 what two pages attached?

24 Q. The third page of the exhibit at the
25 top it says "Babushka Kefir cheese" and below

1 Lubenskaya - Confidential

2 that it says "18 items, 2.6 gigabytes
3 available," and then the next page at the top
4 it says "Gold Star."

5 A. There is no other page.

6 MR. THOMPSON: We don't have that.
7 That's why I was asking.

8 MR. FRIEDMAN: I guess the
9 photocopier didn't take this last page.

10 MR. THOMPSON: Do you want me to
11 make some copies?

12 MR. FRIEDMAN: Yes.

13 (Recess was taken from 3:09 to
14 3:12.)

15 MR. FRIEDMAN: While we were off the
16 record we realized that the last page of
17 P 212 was inadvertently omitted and it has
18 since been added and P 212 now consists of
19 four pages.

20 BY MR. FRIEDMAN:

21 Q. And now I am asking the witness
22 whether there were actually two zipped files
23 that were sent to Mr. Thompson.

24 A. No. I believe the fourth page
25 represents root directory, a parent directory,

1 Lubenskaya - Confidential

2 of what's on page 3. That's the folder -- if
3 you will see at the top of the page, "Babushka
4 Kefir cheese," that's one of the folders in a
5 directory on the fourth page, so that's a
6 general archive of Gold Star files.

7 Q. You are saying the fourth page is
8 the general archive?

9 A. Right.

10 Q. And then the third page is the
11 directory of documents consisting of the
12 Babushka's Recipe design?

13 A. Right, what's number 2 on the fourth
14 page.

15 Q. And I see that there are some dates
16 in the Date Modified column.

17 A. Right.

18 Q. There is a few dates that are
19 January 8th, 1998 as the date modified.

20 A. Because I added the fonts folder
21 into the directory at some point and it
22 modified the dates in the folder.

23 Q. When you say "the fonts folder,"
24 that's the fifth from the bottom and it has a
25 little arrow pointing to it?

1 Lubenskaya - Confidential

2 A. Right. This is the font that you
3 see encrypted words, you need the fonts in
4 order to see the words, encrypted words.

5 Q. That is when one opens the document,
6 one needs the font to be able to read the
7 Cyrillic words?

8 A. Cyrillic font.

9 Q. So then that font directory was
10 added when?

11 A. I think -- I did it for
12 Mr. Thompson's benefit more than anything else,
13 because I have my fonts in a different -- this
14 is my archive, so --

15 Q. When you say this is your archive,
16 you are referring to the third page or the
17 fourth page?

18 A. Both pages, so this Babushka folder
19 is within my archive, so the date you see is
20 the date when it was put on a disk, on an
21 additional disk. I mean, I'm not sure even
22 that -- so the files that we see before were
23 sent to the printer and this is a file that
24 were put after everything was done in an
25 archive.

1 Lubenskaya - Confidential

2 Q. When you say "the files that we see
3 before," what --

4 A. The directory.

5 Q. The 0008?

6 A. Right.

7 Q. 0008 is what was sent to the
8 printer, you said?

9 A. Right, exactly, and this is
10 something that I --

11 Q. "This" being the third page of P
12 212?

13 A. Right, third page of --

14 Q. P 212.

15 A. 212, right.

16 Q. And what is the third page of P 212?
17 What were you saying?

18 A. Well, if there is -- the files were
19 sent to the printer in December of 1997, after
20 which on January 8th I put all the files into
21 my archive and that's where you see this, you
22 know, January 8th date, and I added fonts on
23 February 13th to it. You mean file is
24 actually -- the granny collect, this is the
25 artwork. Everything else is just additional

1 Lubenskaya - Confidential

2 things. So that's when the artwork was
3 finalized, on July 27th.

4 Q. The artwork was finalized July 27,
5 1997, but then only sent to the printer in
6 December of 1997?

7 A. Right, because there is a lot of
8 additional work had to be done, like, for
9 example, working on a name, working on all the
10 different flavors, generating bar codes,
11 putting it all together in the packages, you
12 know, by the time --

13 Q. I'm sorry, putting what into
14 packages?

15 A. Artwork like what you see in a Quark
16 Xpress document is a packaged product, my
17 packaged product.

18 Q. You are not talking about the goods
19 themselves?

20 A. Not the cheese. Just the label.

21 Q. I just wanted to make sure.

22 A. Not the cheese. So, you know, by
23 the time everything is done and everything is
24 approved, it took some time.

25 Q. And why are there -- above the fonts

1 Lubenskaya - Confidential

2 folder you have -- there is a cheesewheel.doc
3 and a cheeseloaf.doc that indicates
4 modification on February 13, 1998, and those
5 also are Quark Xpress documents. So how do you
6 explain that?

7 A. They are probably additional -- I
8 think that's -- okay. I know what it is.
9 Those round labels that we saw in Exhibit --
10 give me one second. I'm not sure where it is
11 now.

12 Q. You are looking at P 206.

13 A. Where was the document with the
14 different labels?

15 Q. The round label?

16 A. The round label, which I wasn't sure
17 if it belongs in these documents, that's
18 cheeseloaf.doc. In the back of that exhibit.

19 MR. THOMPSON: Exhibit 133.

20 A. Yes. So there were a couple of
21 labels in circular shape.

22 MR. THOMPSON: Do you have them
23 there or not? I want you to be able to
24 look at them.

25 A. Right. The circular labels --

1 Lubenskaya - Confidential

2 Q. And you are referring to -- what's
3 the number on the bottom?

4 A. 296, 297, 298 and 299. These are --
5 I'm pretty, pretty, pretty sure it's
6 cheesewheel.doc and those are just additional
7 labels that were created later after the first
8 set of labels was created.

9 Q. And were there also later sets of
10 labels that you created after February 13,
11 1998?

12 A. If it's not in this archive, no.

13 Q. When you say "this archive," I'm
14 sorry, but what are you talking about?

15 A. I am talking about the fourth page
16 in 212.

17 Q. And when you say if it's not in that
18 fourth page --

19 A. I'm sorry, third page. Third page.
20 Page 3.

21 Q. Not in the third page?

22 A. Yes. The page that is labeled
23 Babushka Kefir Cheese, if there is no extra
24 documents made in my archive, it means that
25 nothing else was added to it.

1 Lubenskaya - Confidential

2 Q. And it's the third page now that you
3 are referring to as the archive, but I thought
4 you referred to the fourth page also as the
5 archive?

6 A. Well, the third page is a folder in
7 the fourth page archive. I can call it
8 sub-archive.

9 Q. The third page is the sub?

10 A. Yes, sub. It's this folder over
11 here. It's folder number 2 on page 4 in 212.

12 Q. I am almost done, but on the fourth
13 page, the archive, does the archive consist of
14 what I am looking at printed or is the printed
15 page merely the cover of a new universe of
16 documents?

17 MR. THOMPSON: I will object because
18 I did not understand that question.

19 A. I think I do understand. Yeah, this
20 is it, this is closed archive. I am not adding
21 anything to it or -- is that what you asked?

22 Q. Well, okay, it's a closed archive,
23 so that if we are on the fourth page, the
24 second item down is Babushka Kefir cheese,
25 right, that's a folder that has a date of March

1 Lubenskaya - Confidential

2 27, 1998, so what does that date of March 27,
3 1998 represent?

4 A. That's when all the documents got
5 into the archive. I'm not sure how exactly
6 Macintosh interprets the date when you copy a
7 file into the folder, but more than likely it's
8 the last sets of files. The cheeseloaf.doc and
9 cheesewheel.doc were copied into this archive
10 on March 27th. Even though these files were
11 created in February they were archived last on
12 March 27th, 1998.

13 Q. And the other things that we see on
14 page 4, for example, the one just underneath
15 the Babushka Kefir cheese, the box_lids.qxd,
16 what does that represent?

17 A. Those are other projects I did for
18 Galina. The box lids were series of chocolate
19 boxes. This is a Quark Xpress document and
20 it's just a template for box lids. The Cru was
21 a chocolate box product. EmilyPOP was a
22 chocolate point of purchase display. Fish cans
23 were for fish cans. Would you like me to go
24 on?

25 Q. Not necessarily, but I would just

1 Lubenskaya - Confidential

2 like to ask you with respect to the most recent
3 date set forth here, that is the to_your_health
4 of July 1, 2001, does that represent the most
5 recent project that you did for Galina before
6 approximately a year ago when you started?

7 A. No. The latest one I did last year
8 in 2007. It's not in this archive, because I
9 do not use this computer any longer.

10 Q. I think I misspoke. I meant before
11 your 2007 project.

12 A. Oh, yes, this is it. To_your_health
13 was -- yeah.

14 Q. The last project with Galina?

15 A. Right.

16 MR. FRIEDMAN: All right. I have no
17 further questions at this time.

18 MR. THOMPSON: I just have one or
19 two things I will try to square away.

20 FURTHER EXAMINATION BY

21 MR. THOMPSON:

22 Q. Can we look at that page 3 we were
23 just looking at. I will call your attention to
24 the first item which says 342023 YC, et cetera.
25 Do you see that?

1 Lubenskaya - Confidential

2 A. Uh-huh.

3 Q. And now I will ask you to look again
4 at what we had previously looked at on the bar
5 codes, which was Exhibit 206, starting at page
6 213 of Exhibit 206. Now, if you remember, we
7 had found two what appeared to be identical bar
8 codes?

9 A. No, I think we resolved it.

10 Q. I thought that we had said that 213
11 and one of the other, 220, were identical.

12 A. No, then I saw that they are not
13 identical.

14 Q. And what's the difference between
15 213 and 220?

16 A. 213 and 220?

17 Q. Yes.

18 A. Oh, I'm sorry. I think you are
19 correct. These are identical. Yes. Sorry.
20 There are two printouts.

21 Q. Now, if you look at that page 3 of
22 Exhibit 212, the first item and the eighth item
23 have the exact same name except the first one
24 has a 3 in front of it; is that right?

25 A. Yeah, this looks -- this is right.

1 Lubenskaya - Confidential

2 Q. Do you have any idea why you had two
3 apparently identical files with just that one
4 difference in name?

5 A. I believe the top one was a mistake.

6 Q. But that would explain why there
7 were two otherwise identical pages?

8 A. I believe so, yes.

9 Q. And with respect to the date
10 modified of January 8th on page 3 of 212, can
11 you tell me why that date would be different
12 than what we had seen on Exhibit 207, page 2,
13 which was the one that I had asked you about?

14 A. I'm not sure why Bar Code Pro
15 assigns new dates when you copy a file from one
16 copy to another, but you can't modify these
17 files. When you open it, you know, it either
18 regenerates a bar code completely and saves a
19 new file with the same numbers -- I mean, you
20 can't modify the files, the bar code files.

21 Q. To be clear, you said you can or
22 cannot?

23 A. You cannot modify bar code files.

24 Q. So by looking at those two files,
25 two documents, excuse me, the one GOLD 0008

1 Lubenskaya - Confidential

2 which is the older -- I'm sorry, that's from
3 Exhibit 207. I want to make sure I have the
4 two in front of you. That's the one document
5 you don't have to look at, the one you are
6 looking at now. I am going to draw your
7 attention to this document.

8 A. I'm sorry.

9 Q. That's okay. There are a lot of
10 things going on.

11 So if you look at that list of
12 folders, which is the one bearing the Bates
13 number GOLD 0008, and compare it to the page 3
14 of Exhibit 212, can you explain to me why the
15 two have different dates modified?

16 A. From a technical standpoint, the
17 only reason why it could be changing was
18 because it was moved from one folder to
19 another, from one directory to another, it
20 might have assigned a new date.

21 Q. But isn't it true that you sent the
22 page that's got the Bates number GOLD 0008 to
23 James Pincow in 2007?

24 A. Yes, I did.

25 Q. And you did not modify the files

1 Lubenskaya - Confidential

2 after that date; is that right?

3 A. No, I didn't modify the files. And
4 if I did, it would be dated 2007.

5 Q. So to the best of your testimony,
6 what you can tell us is that these files were
7 fixed certainly no later than January 8th of
8 1998?

9 A. Yes. And the only reason why the
10 dates might be different was because things
11 were added to the archive, additional files.

12 MR. THOMPSON: I have nothing else.

13 FURTHER EXAMINATION BY

14 MR. FRIEDMAN:

15 Q. Is it possible that you saved these
16 files in more than one place?

17 A. It is possible that I have a
18 duplicate archive, definitely.

19 Q. And that there might be a duplicate
20 archive which was modified at a later date and
21 that might explain why it's January 8?

22 A. The only way this archive was
23 modified were files added to it.

24 Q. When you say "this archive," you are
25 looking now at page 3 of 212?

1 Lubenskaya - Confidential

2 A. Right. Actually, just judging by
3 where the source is, I think I am pretty sure
4 what happened, I probably put these files for
5 James on a CD-Rom, because it says that 15
6 items, 1 megabyte available. This looks like
7 the files -- the files were on a smaller disk.
8 You can also judge by the size of the files.
9 And this other directory, 18 items, 2.6 gig,
10 because the size is like ten times bigger, it
11 shows that it was in a much larger drive, so
12 the partitions were larger.

13 Q. So is it the case then that you sent
14 the files to James Pincow on a disk, on a
15 physical disk?

16 A. I don't remember if I sent it on a
17 disk. It's been a long time.

18 Q. Isn't that what you indicate in your
19 e-mail?

20 A. Maybe I did.

21 MR. THOMPSON: I would object to
22 that characterization. I don't think
23 that's what her e-mail says.

24 Q. Well, let's have a look. P 207, the
25 first page, the e-mail to James where it says

1 Lubenskaya - Confidential

2 "the original disk" open paren, it says "zip
3 disk if needed"?

4 MR. THOMPSON: I think you should
5 start reading it at beginning of the
6 sentence. It says: "Attached is a screen
7 capture of the files directory and a zipped
8 folder with files all dated November,
9 December 1997. I'll be happy to send you
10 the original disk if needed." I mean, what
11 that says is it is an e-mail, so she is
12 sending attached to the e-mail a folder and
13 says "I can send you the disk if you want."

14 MR. FRIEDMAN: You are right, that
15 is what it says, and the printing of the
16 e-mail got -- the line breaks got thrown
17 off, so you are right. Thank you for
18 pointing that out.

19 Q. So you offered to send it if needed
20 and you don't remember whether you did or did
21 not send it?

22 A. I don't think I did send it, because
23 I wouldn't probably know where to send it, so
24 as you can see, that's right, this was on a zip
25 disk. That's why the files are smaller and --

1 Lubenskaya - Confidential

2 Q. You would not know where to send it?

3 A. Well, he didn't give me his address.

4 I wouldn't send it just anywhere. It was his
5 request, not Galina's.

6 Q. It is my impression that you changed
7 your testimony after having a look exchange
8 with Galina Pincow who is sitting at this
9 table.

10 A. I don't --

11 MS. PINCOW: I was looking at you,
12 Mr. Friedman, and you know that I was
13 looking at you.

14 MR. FRIEDMAN: I was looking at the
15 witness.

16 MS. PINCOW: And I was looking at
17 you.

18 MR. FRIEDMAN: We can't do this
19 again with this seating arrangement.

20 MR. THOMPSON: First, I didn't hear
21 her change her testimony, so I don't know
22 what you are talking about.

23 MR. FRIEDMAN: She earlier said she
24 doesn't remember. There was an exchange of
25 looks with Galina and then she suddenly

1 Lubenskaya - Confidential

2 thinks that she did not. That's exactly
3 what happened. I would not be saying this
4 if I did not see that transpire. Can we
5 have an agreement that future witnesses
6 will not be able to see Miss Pincow?

7 MR. THOMPSON: Well, first, two of
8 the witnesses are going to be your
9 witnesses, so --

10 MR. FRIEDMAN: That then doesn't
11 matter, but we are going to have three
12 witnesses on Monday that are your witnesses
13 and I cannot take the chance of this
14 happening. It's just -- it is -- it
15 perverts the proceeding.

16 MR. THOMPSON: If what you are
17 saying is factual rather than just
18 paranoia, that would be one thing. If it
19 is simply paranoia, that's something else.

20 MR. FRIEDMAN: Well, just because
21 I'm paranoid doesn't mean it's not really
22 happening.

23 MR. THOMPSON: It doesn't mean it is
24 happening either.

25 MR. FRIEDMAN: That's true, but it

1 Lubenskaya - Confidential

2 is what I saw, so it was my observation.

3 MS. PINCOW: Why don't you ask the
4 witness if she saw any signs from me.

5 MR. THOMPSON: Miss Pincow, please.

6 The only thing that I would be able
7 to suggest is if you wanted to have the
8 depositions videotaped or video recorded
9 instead of simply transcribed.

10 MR. FRIEDMAN: The video recording
11 would focus on the witness. Correct?

12 MR. THOMPSON: It would.

13 MR. FRIEDMAN: All that we need to
14 do is make sure that Miss Pincow is not in
15 the view of the witness. That's all we
16 need to do. And I tell you --

17 MR. THOMPSON: Let me just say I
18 haven't seen anything happen. I understand
19 she is sitting behind me.

20 MR. FRIEDMAN: Correct.

21 MR. THOMPSON: I haven't seen any
22 fleeting looks from the witness in any
23 particular direction. I have seen her look
24 over at the court reporter sometimes,
25 because she feels she is apparently talking

1 Lubenskaya - Confidential

2 to the court reporter rather than to you or
3 to me. I have seen her look at you, I have
4 seen her look at me, and that's all I have
5 seen. So I don't know what you are
6 referring to.

7 MR. FRIEDMAN: I am not suggesting
8 that you are a part of this, Mr. Thompson.
9 You did not see what happened.

10 MR. THOMPSON: And I will say I had
11 my eyes down on the paper when you started
12 this discussion. But for our purposes
13 right now, can we proceed?

14 MR. FRIEDMAN: Yes.

15 BY MR. FRIEDMAN:

16 Q. Did you have a discussion with James
17 Pincow with respect to writing a letter?

18 MR. THOMPSON: Can I ask when this
19 discussion is being referenced?

20 Q. In or around May of 2007.

21 A. I don't remember discussions about
22 anything. I just remember he contacted me with
23 information that he might need some files from
24 me and I found these files and responded back.

25 Q. And when you write in your e-mail

1 Lubenskaya - Confidential

2 "let me know if you would still like me to
3 write a letter and to whom it should be
4 addressed," what are you referring to in your
5 e-mail, P 207?

6 A. I didn't feel at the time that just
7 any zip file would be enough and I offered to
8 write an explanation what's in this file, and
9 since I didn't have to do it, he probably
10 didn't ask me to do it.

11 Q. But it says "let me know if you
12 would still like me to write a letter."

13 A. It referred to the previous
14 paragraph --

15 MR. THOMPSON: Excuse me. I would
16 object. That's not what it says. "If you
17 would still like me to write a letter," not
18 "like me still to write a letter," which
19 is, I think, what you said.

20 MR. FRIEDMAN: "If you would still
21 like me to write a letter." Are we agreed
22 on that?

23 MR. THOMPSON: Yes.

24 A. It refers to the above paragraph in
25 case it's not enough to send the zip file.

1 Lubenskaya - Confidential

2 Q. The above paragraph is "I'll be
3 happy to send you the original disk if needed";
4 correct?

5 A. The above paragraph describes what I
6 am sending him, the screen capture and the
7 zipped file. So the line below it just I
8 offered if he needs an explanation what's in
9 this file.

10 Q. But "if you would still like me to
11 write a letter" would certainly indicate that
12 there was some discussion with him about
13 writing a letter.

14 MR. THOMPSON: Objection. You are
15 attempting to ask -- may I suggest you ask
16 her what she understands the word "still"
17 to mean rather than trying to put your
18 interpretation of it. I mean, it's obvious
19 from the witness that English was not her
20 first language, so you are putting your
21 interpretation of what that means rather
22 than what the witness understands it to
23 have meant.

24 MR. FRIEDMAN: This is an adverse
25 witness called by you. If she does not

1 Lubenskaya - Confidential

2 speak sufficient English, you should have
3 brought a translator. It is my impression
4 that she is very fluent in English.

5 MR. THOMPSON: She is, but that
6 doesn't mean that she has the same
7 understanding of the term that you do and
8 you are attempting to force your
9 interpretation of this sentence on her
10 rather than letting her explain what she
11 meant.

12 MR. FRIEDMAN: It's the obvious
13 common English language interpretation and
14 I would suggest that your objection here is
15 inappropriate.

16 Q. But please, tell me what did you
17 mean by the word "still"?

18 A. I meant if it's not enough what's
19 already in the e-mail, because this e-mail is
20 very brief and has just very brief explanation
21 of what's coming.

22 Q. I'd like you to take a look, please,
23 at P 206, and please take a look at the pages
24 that precede 213.

25 MR. THOMPSON: I will just point out

1 Lubenskaya - Confidential

2 for the record that right now you are going
3 beyond the scope of my redirect.

4 Q. Are you familiar with any of those
5 pages?

6 A. No, this is not my work. I mean,
7 except for the label itself, this additional
8 original yogurt cheese, I do not believe I did
9 this.

10 Q. You believe that you did not do any
11 of the work in the pages preceding 213?

12 A. Yes.

13 Q. You are agreeing with my statement?

14 A. Yes.

15 MR. FRIEDMAN: All right. No
16 further questions.

17 FURTHER EXAMINATION BY

18 MR. THOMPSON:

19 Q. By saying you didn't do any of the
20 work, could you explain what you meant by that?

21 A. Well, once a label is designed, as I
22 have mentioned before, there is a space that is
23 created within the label for additional product
24 names or whatever is needed. So these
25 additional names were done by someone else. I

1 Lubenskaya - Confidential

2 didn't do it.

3 Q. And by "additional names" you are
4 referring to things like original yogurt cheese
5 and garlic and herb yogurt cheese?

6 A. Well, if you needed to document it,
7 on 207 is vegetable yogurt cheese and smoked
8 yogurt cheese. I didn't work on inserting
9 these names in here. On 208, original yogurt
10 cheese and garlic and herb yogurt cheese. I
11 did not insert those names. On 210, vegetable
12 yogurt cheese, I did not work on inserting
13 these product names. In 211, garlic and herb
14 yogurt cheese and smoked yogurt cheese, I did
15 not insert those names in here. And on 212,
16 original yogurt cheese, I did not insert this
17 name in there.

18 Q. When you said you had done the work
19 on it, would you agree that you had done the
20 pictures themselves?

21 A. Right, yeah, the same picture as was
22 used on Exhibit 225. If you will take a look,
23 the field that was designed just for this
24 purpose so it could be extended and new things
25 could be added here, anyone could do it.

1 Lubenskaya - Confidential

2 Q. And just to be clear, you referred,
3 I believe to Exhibit 225. You mean page number
4 225, that's what you were pointing to; am I
5 right?

6 A. Yes.

7 MR. THOMPSON: I have nothing else.

8 MR. FRIEDMAN: I just have a quick
9 one.

10 FURTHER EXAMINATION BY

11 MR. FRIEDMAN:

12 Q. I am showing you what was marked as
13 R 103 and it has the Bates stamp number GOLD
14 209 at the bottom. Would it also be your
15 testimony that you did not put the Havarti
16 yogurt cheese in that label?

17 A. Yes, I did not put the Havarti
18 yogurt cheese in the label.

19 Q. I am showing you what was marked as
20 Registrant's 117. It has GOLD 0002 at the
21 bottom. The designs that you see there on the
22 label, are those your designs?

23 MR. THOMPSON: I will also object
24 because this, again, goes beyond the scope
25 of the now re-redirect.

1 Lubenskaya - Confidential

2 A. This looks like the same label I've
3 designed. This is a very bad copy and I can't
4 make out half of it, but it looks like a mark,
5 but very much reduced.

6 Q. Looks like, I'm sorry, a mark?

7 A. Yeah, looks like a design I did, but
8 it's reduced, scaled down.

9 MR. FRIEDMAN: Okay. No further
10 questions.

11 MR. THOMPSON: And I have nothing
12 further. Thank you, Ms. Lubenskaya.

13 THE WITNESS: Thanks.

14 (Time noted: 3:46 p.m.)

15

16

17

18

IRINA LUBENSKAYA

19

20 Subscribed and sworn to before me

21 this day of 2008.

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 IRINA LUBENSKAYA, 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
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

WITNESS	EXAMINATION BY	PAGE
IRINA LUBENSKAYA	MR. THOMPSON	4, 52, 66
	MR. FRIEDMAN	19, 56, 68

-----EXHIBITS-----

REGISTRANT	PAGE	LINE
Exhibit 132	4	2
Amended Notice of Deposition of Irina Lubenskaya.....	4	5
Exhibit 133		
Color copies of labels, Bates stamped GOLD 0290 through GOLD 0299..		

-----EXHIBITS-----

PETITIONER	PAGE	LINE
Exhibit 212	41	23
E-mail dated October 10, 2008.....		

Sam Friedman

From: Roger S. Thompson [RThompson@cplplaw.com]
Sent: Friday, October 10, 2008 5:34 PM
To: samfriedman@verizon.net
Cc: Wanda Mason
Subject: Files received today from Irina Lubenskaya
Attachments: GoldStar_BabushkaLabel.zip; fonts.zip

Sam:

I have just today received the below electronic files and I produce them as received. I have not yet reviewed them and will have suitable hard copies printed out and Bates numbered for Monday.

Roger

Roger S. Thompson
COHEN PONTANI LIEBERMAN & PAVANE LLP
551 Fifth Avenue
New York, NY 10176
(212) 687-2770 - p
(212) 972-5487 - f
rthompson@cplplaw.com
www.cplplaw.com

This message and any attachments are solely for the use of the intended recipients. They may contain privileged and/or confidential information, attorney work product or other information protected from disclosure. If you are not an intended recipient, you are hereby notified that you received this e-mail in error, and that any review, dissemination, distribution or copying of this e-mail and any attachment is strictly prohibited. If you have received this e-mail in error, please contact the sender and delete the message and any attachment from your system. Thank you for your cooperation.

-----Original Message-----

From: Irina Lubenskaya [mailto:irinal@us.ibm.com]
Sent: Friday, October 10, 2008 4:05 PM
To: Roger S. Thompson
Subject: Galina Pincow's files

Warning: Your file, fonts.zip, contains more than 32 files after decompression and cannot be scanned.

Mr. Thompson,

Hope this can be helpful:

These are fonts used, if needed:

Thanks

Irina Lubenskaya

Art Director, Client Design Services

917-473-3227 TL: 522-3227

alt: 914-747-3972

Learn more about the Client Design Services Team:

<http://ibmcom.bluehost.ibm.com/gwse/gcs/cds/>

Need Client Design Services? Request a quote:

<http://godot.pok.ibm.com/emt/>

Babushka/Kefir/Cheese

18 items, 2.6 GB available

Name	Date Modified	Size	Kind
 342023YCVegLoaf.EPS	Thu, Jan 8, 1998, 9:49 AM	257K	Bar Code Pro 3.08 document
 42011YCGarWheel.EPS	Thu, Jan 8, 1998, 9:45 AM	257K	Bar Code Pro 3.08 document
 42012YCSmokWh.EPS	Thu, Jan 8, 1998, 9:46 AM	257K	Bar Code Pro 3.08 document
 42013YCVegWh.EPS	Thu, Jan 8, 1998, 9:46 AM	257K	Bar Code Pro 3.08 document
 42014YCOriWheel.EPS	Thu, Jan 8, 1998, 9:47 AM	257K	Bar Code Pro 3.08 document
 42021YCGarLoaf.EPS	Thu, Jan 8, 1998, 9:48 AM	257K	Bar Code Pro 3.08 document
 42022YCSmokLoaf.EPS	Thu, Jan 8, 1998, 9:48 AM	257K	Bar Code Pro 3.08 document
 42023YCVegLoaf.EPS	Thu, Jan 8, 1998, 9:51 AM	257K	Bar Code Pro 3.08 document
 42024YCOriLoaf.EPS	Thu, Jan 8, 1998, 9:51 AM	257K	Bar Code Pro 3.08 document
 44001KefirPI.EPS	Thu, Jan 8, 1998, 9:52 AM	257K	Bar Code Pro 3.08 document
 44002KefirLF.EPS	Thu, Jan 8, 1998, 9:52 AM	257K	Bar Code Pro 3.08 document
 CheeseLoaf.doc	Fri, Feb 13, 1998, 4:07 PM	643K	QuarkXPress document
 CheeseWheel.doc	Fri, Feb 13, 1998, 4:05 PM	643K	QuarkXPress document
 fonts	Fri, Feb 13, 1998, 12:27 PM	—	folder
 grannyCollect.eps	Sun, Jul 27, 1997, 7:55 PM	7 MB	Photoshop® EPS file
 grannyColor4.eps	Fri, Feb 13, 1998, 4:01 PM	8.6 MB	Adobe Illustrator® 8.0.1 document
 grannyColor4.epsold	Sun, Nov 30, 1997, 3:08 PM	8.7 MB	Adobe Illustrator® 8.0.1 document
 Kefir.doc	Thu, Jan 8, 1998, 11:26 AM	514K	QuarkXPress document

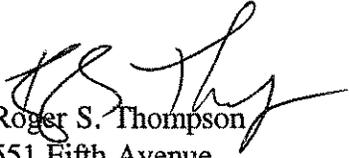
16 items, 2.6 GB available

Name	Date Modified	Size	Kind
▼ archive	Fri, Feb 13, 1998, 11:37 AM	—	folder
▼ Babushka/Kefir/Cheese	Fri, Mar 27, 1998, 3:05 PM	—	folder
box lids.qxd	Tue, Feb 22, 2000, 11:44 PM	257K	QuarkXPress document
▼ Cru	Mon, Apr 17, 2000, 5:15 PM	—	folder
▼ EmilyPOP	Thu, Mar 5, 1998, 9:41 AM	—	folder
▼ FishCars	Sun, Nov 30, 1997, 10:28 PM	—	folder
▼ galaxy	Thu, Mar 5, 1998, 9:58 AM	—	folder
▼ images	Wed, Feb 23, 2000, 4:28 AM	—	folder
▼ inside_box.qxd	Tue, Feb 22, 2000, 11:27 PM	257K	QuarkXPress document
▼ PinkCow	Fri, Mar 27, 1998, 3:01 PM	—	folder
▼ StarBar	Thu, Mar 5, 1998, 10:11 AM	—	folder
▼ template1.eps	Tue, Feb 22, 2000, 10:55 PM	257K	Adobe Illustrator® 8.0.1 document
▼ template2.eps	Tue, Feb 22, 2000, 10:56 PM	257K	Adobe Illustrator® 8.0.1 document
▼ template3.eps	Tue, Feb 22, 2000, 11:07 PM	257K	Adobe Illustrator® 8.0.1 document
▼ to_your_health	Sun, Jul 1, 2001, 9:46 PM	—	folder
▼ trapesoid.qxd	Tue, Feb 22, 2000, 11:17 PM	257K	QuarkXPress document

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

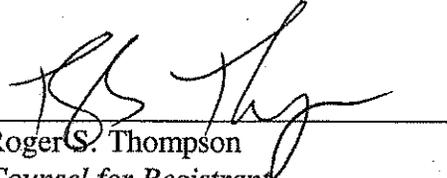
Dated: October 10, 2008

Attorneys for Registrant,
International Gold Star Trading Corp.

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

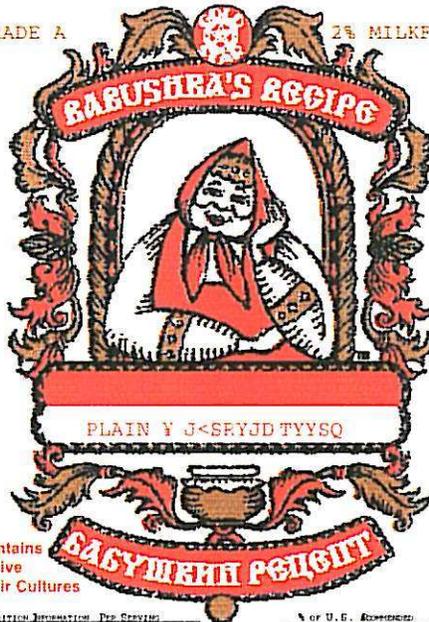


Roger S. Thompson
Counsel for Registrant

October 10, 2008
Date

GRADE A

2% MILKFAT



Contains Active Kefir Cultures

Nutrition Information Per Serving	
Serving Size	8 oz
Servings per Container	4
Calories	120
Protein	8 gr.
Carbohydrate	11 gr.
Fat	5 gr.
Sodium	130 mg.

% of U.S. Recommended Daily Allowance (U.S. RDA)	
Protein	20
Vitamin A	4
Vitamin C	4
Thiamine	6
Riboflavin	25
Niacin	0
Calcium	30
Iron	0
Vitamin B ₆	6
Vitamin B ₁₂	15
Phosphorus	25



NOT TO BE SOLD AFTER:

CONTAINS:

Cultured Pasteurized Grade A 2% Lowfat Milk, Nonfat Milk.

DO NOT REFRIGERATE
SHAKE WELL
KEEP REFRIGERATED

32 fl. oz (1 quart) (946 ml)

International Gold Star Trading Corp.
570 Smith St., Brooklyn, NY 11231 718-522-1545

Four Seasons Dairy, Inc., Petitioner
v.
International Gold Star Trading Corp., Registrant
Cancellation No. 92/042,082

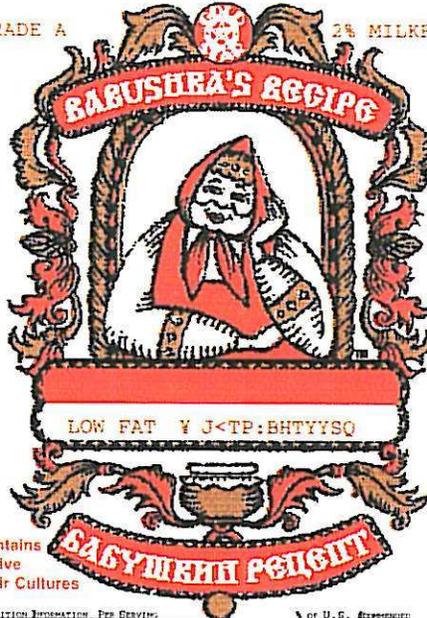
Registrant Exhibit 133

KK
10-17-08

GOLD 0290

GRADE A

2% MILKFAT



LOW FAT Y J<TP:BHTYYSQ

Contains Active Kefir Cultures

International Organization For Standards

Serving Size	8 oz
Servings per Container	4
Calories	120
Protein	8 gr.
Carbohydrate	11gr.
Fat	5 gr.
Sodium	130 mg.

% of U.S. Government Daily Allowance (U.S. PDA)

Protein	20	Calcium	30
Vitamin A	4	Iron	0
Vitamin C	4	Vitamin B ₆	6
Thiamine	6	Vitamin B ₁₂	15
Riboflavin	25	Phosphorus	25
Niacin	0		



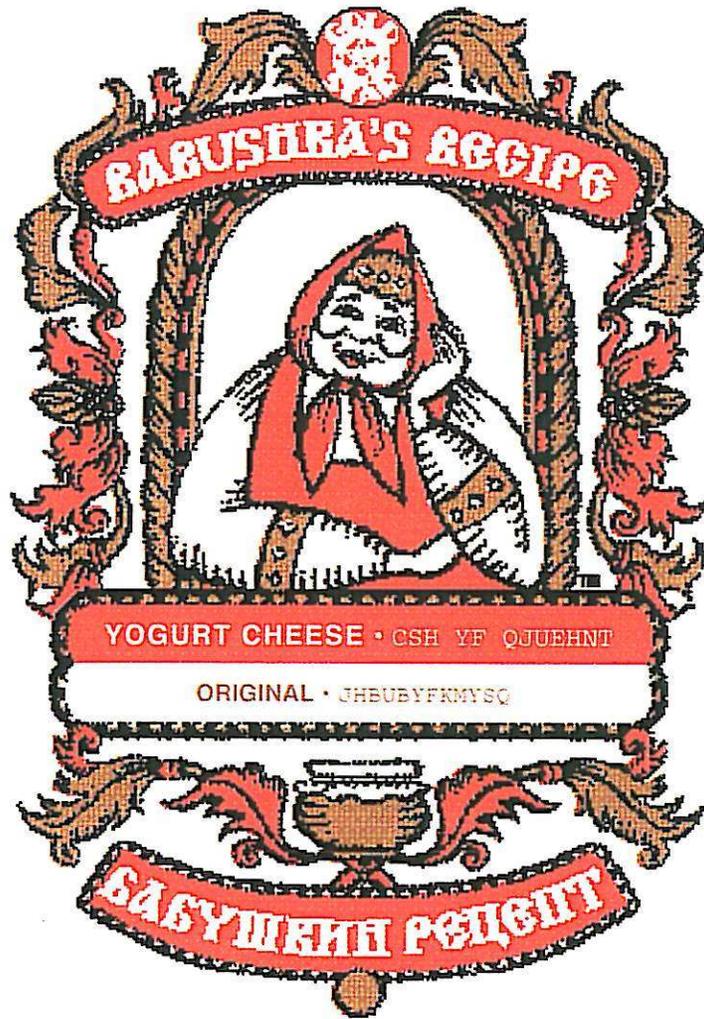
Ingredients:
 Cultured Pasteurized Grade A
 2% Lowfat Milk, Nonfat Milk.
 BE PRESERVATIVES
 SHAK WELL
 KEEP REFRIGERATED

32 fl. oz (1 quart) (946 ml)

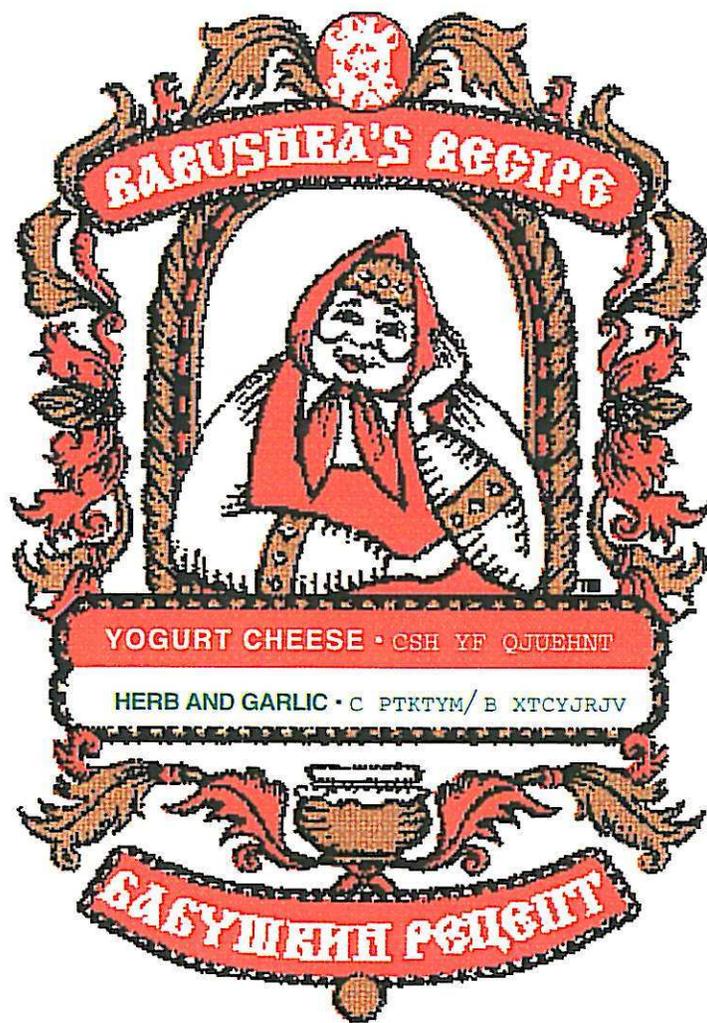
International Gold Star Trading Corp
570 Smith St., Brooklyn, NY 11231 718-522-1545

NOT TO BE SOLD AFTER:

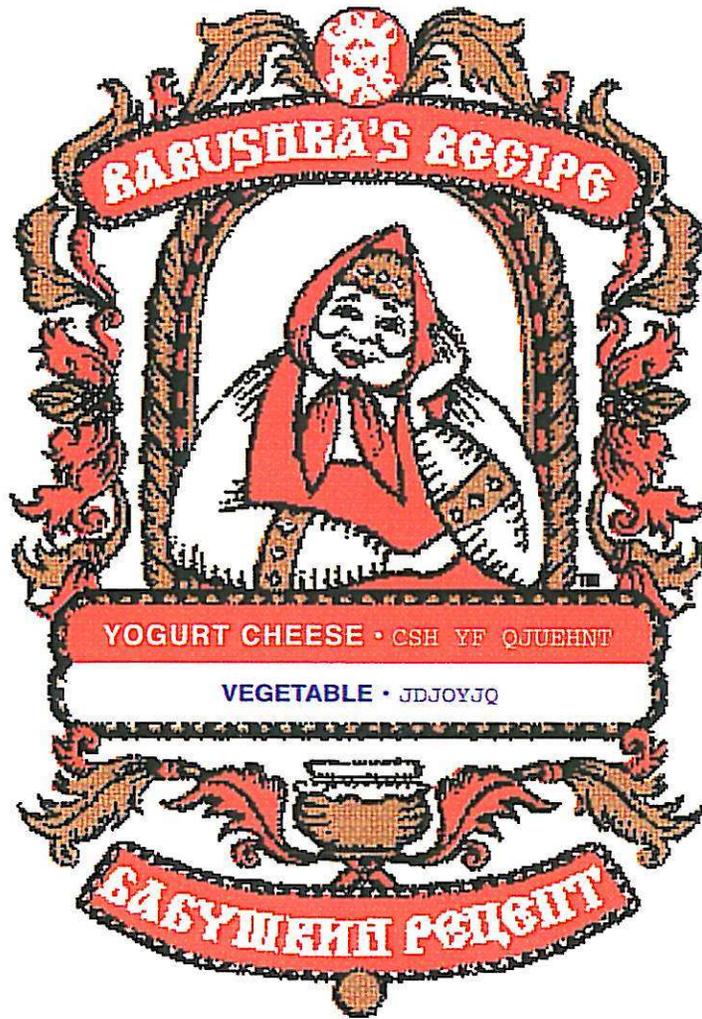
GOLD 0291



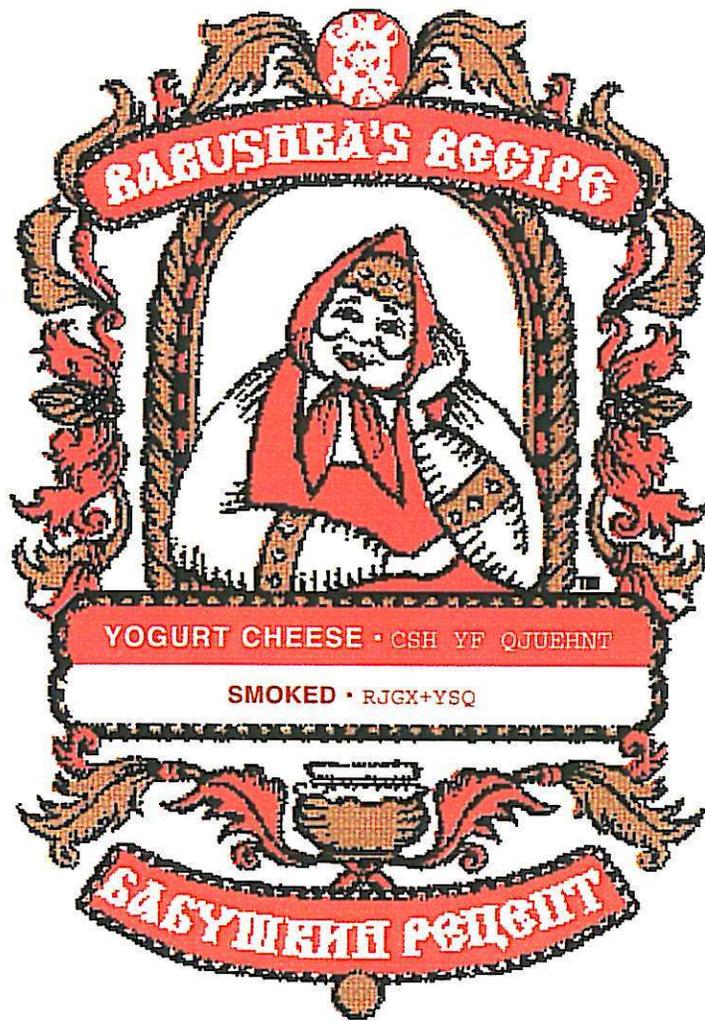
GOLD 0292



GOLD 0293



GOLD 0294



GOLD 0295



GOLD 0296



GOLD 0297



0 21143142013 5

GOLD 0298



GOLD 0299