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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
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Signature	/Roger S. Thompson/
Date	04/28/2010
Attachments	Kesler Transcript - REDACTED.pdf (32 pages)(56987 bytes) Registrant Ex. 142.pdf (2 pages)(113206 bytes)

1
2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
3 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
4

5 FOUR SEASONS DAIRY, INC.,)
6) Cancellation No.
7 Petitioner,) 92/042,082
8)
9 vs.) Mark: Babushka's Recipe
10)
11 INTERNATIONAL GOLD STAR) Reg. No. 2,479,287
12 TRADING CORP.,)
13)
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CONFIDENTIAL EXAMINATION OF OLEG KESLER
New York, New York
Wednesday, October 22, 2008

Reported by:
KRISTIN KOCH, RPR, RMR, CRR, CLR
JOB NO. 19342b

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October 22, 2008

5:13 p.m.

Confidential Examination of OLEG
KESLER, 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.

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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:

ELLA AROLOVICH, Russian Interpreter
ALEXANDER BEKKER
GALINA PINCOW, International Gold Star

1
2 (Registrant Exhibit 142, Amended
3 Notice of Deposition of Oleg Kesler, marked
4 for identification.)

5 * * *

6 (Interpreter was sworn.)

7 O L E G K E S L E R,

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

11 EXAMINATION BY

12 MR. THOMPSON:

13 Q. We have had the reporter mark as
14 Exhibit 142 a document which bears the title
15 Amended Notice of Deposition of Oleg Kesler. I
16 will ask you to look at the original so you can
17 give your attorney back the copy. And this
18 names Oleg Kesler of Four Seasons Dairy, Inc.
19 at 255 58th Street, Brooklyn, New York. Is
20 that you?

21 A. Yes.

22 Q. And are you currently employed?

23 A. Yes.

24 Q. And where are you employed?

25 A. Four Seasons Dairy, Inc.

1 Kesler - Confidential

2 Q. And what is your position with Four
3 Seasons Dairy, Inc.?

4 A. I am the president.

5 Q. How long have you been president?

6 A. Since January of 1999.

7 Q. And that was when Four Seasons was
8 incorporated; am I right?

9 A. Yes.

10 Q. Are you also a shareholder of Four
11 Seasons Dairy?

12 A. Yes.

13 Q. And have you always been a
14 shareholder?

15 A. Yes.

16 Q. And how much of the company do you
17 own?

18 A. More than 60 or 70 percent. I don't
19 remember.

20 Q. And are you and Mr. Bekker the only
21 shareholders of the company?

22 A. Yes.

23 Q. Now, you were in the room during all
24 of my examination of Mr. Bekker; am I right?

25 A. Yes.

1 Kesler - Confidential

2 THE INTERPRETER: I just requested
3 that he speak louder.

4 Q. I will make that request too. For
5 purposes of the record, of course, it's most
6 important that the translator be able to be
7 heard, but she has to hear you, so...

8 Could you please describe what your
9 duties are at Four Seasons?

10 A. It's a very interesting question. I
11 have to find products, buy products, market
12 products. In fact, all questions and issues of
13 the business I have to do.

14 Q. You said that you have to find
15 products. What do you mean by that?

16 A. It's not like I find them on the
17 street. I meant that in general.

18 Q. I would understand it to mean that
19 you assist in the development of new products
20 for Four Seasons?

21 A. Yes.

22 Q. And would your responsibilities
23 include helping design new labels?

24 A. Yes.

25 Q. And were you involved with the

1 Kesler - Confidential

2 creation of the Babushkine labels that Four
3 Seasons uses for various dairy products?

4 A. Yes.

5 Q. What is your recollection of how the
6 Babushkine labels were developed?

7 **REDACTED**
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18 Q. Was that the end of your answer?

19 A. Yes.

20 Q. Now, you refer to the motherland.

21 Where are you from?

22 A. Ukraine.

23 Q. And where in Ukraine?

24 A. Nikolaev region.

25 Q. What city in the Nikolaev region?

1 Kesler - Confidential

2 A. Pervomaysk.

3 Q. Now, you have indicated that you
4 were trying to get products for the Russian
5 market, and I am attempting to explain my
6 understanding, so please tell me if I am wrong,
7 that you wanted to develop products for the
8 Russian marketplace based on your recollection
9 of what people back home liked. Am I correct?

10 A. Yes.

11 Q. And both you and Mr. Bekker were
12 from Ukraine?

13 A. Yes.

14 Q. Did you grow up speaking Russian or
15 Ukrainian?

16 A. At that time everything was Russian
17 and our first language was Russian. I do
18 understand Ukrainian, though.

19 Q. What is the word for grandmother in
20 Ukrainian?

21 A. I don't remember. The word for
22 daddy would be Tata. We were taught in Russian
23 and everybody spoke Russian.

24 Q. Okay. And when did you leave
25 Ukraine?

1 Kesler - Confidential

2 A. In '94.

3 Q. And did you come straight to the
4 United States?

5 A. Yes.

6 Q. Now, when you left Ukraine in '94,
7 were there commercial products available
8 bearing different brands in Ukraine?

9 A. What do you mean? I don't
10 understand your question.

11 Q. Well, it's my recollection that
12 during the Soviet era that there were not many
13 choices of different kinds of products. For
14 example, if you went to the store, you would
15 buy milk. You would not be able to buy as in
16 the United States Borden's milk or Elmhurst
17 Dairy milk or different brands of milk.

18 A. That's not right. In 1994
19 everything was already different and there were
20 different sorts of products. What you are
21 talking about was maybe until 1991 or 1992.
22 There were -- a lot of products were lacking,
23 but in '93, '95 they opened the borders and we
24 had much more different kinds of products.

25 Q. So when you had the different

1 Kesler - Confidential

2 varieties of products starting in '91 and '92,
3 that was when there first began in Ukraine, at
4 least, the concept of different brands of
5 similar products?

6 MR. FRIEDMAN: Objection.

7 A. What year?

8 Q. You testified that in '91 and '92
9 things changed.

10 A. No.

11 Q. I thought that's what you said.

12 A. No. Somewhere in '93, '94, later,
13 but until 1992 it wasn't like that.

14 Q. I'm sorry, wasn't like what? I'm
15 confused now.

16 A. You know, until 1992 they didn't
17 have such a choice of products.

18 Q. But after '92, that was when there
19 began to be more choice of products?

20 A. After '93.

21 Q. After '93. And when there started
22 to be this greater choice of products, do you
23 remember seeing any products that were sold
24 under the name "Babushka"?

25 A. Butter.

1 Kesler - Confidential

2 Q. You remember seeing a Babushka's
3 butter in Ukraine in 1993?

4 A. I don't remember. Could be '93,
5 '94.

6 Q. But before you left?

7 A. Yes.

8 Q. In Ukraine at that time in '93, '94
9 were products marked in Ukrainian or in
10 Russian?

11 A. What do you mean, marked or written?

12 Q. Well, for example, if you remember
13 seeing a product called Babushka, that would be
14 in Russian; am I right?

15 A. Russian.

16 Q. Were most products marked with
17 Russian names when you began to see them in '93
18 and '94 or with Ukrainian names?

19 A. I don't remember now.

20 Q. Now, with respect to the products
21 that you started selling in the United States
22 under the Babushkine name for Four Seasons, do
23 you remember who specifically came up with the
24 name Babushkine for the products that you began
25 to sell?

1 Kesler - Confidential

2 A. I don't understand the question.

3 Q. Well, it's my understanding from
4 what you have testified and from what
5 Mr. Bekker has said that the two of you
6 collaborated to develop product names and
7 labels.

8 A. Yes.

9 Q. So do you remember which of you came
10 up with the idea to call the product
11 Babushkine, was it you or Mr. Bekker?

12 A. I don't remember.

13 Q. Was the Babushkine butter product
14 the first product that Four Seasons sold when
15 it came into existence?

16 THE INTERPRETER: Okay. I have
17 translated Four Seasons Dairy into Russian
18 and he asked me "what are you talking
19 about, Four Seasons Dairy in English or
20 Four Seasons in Russian"?

21 Q. Well, on behalf of the company Four
22 Seasons Dairy, Incorporated.

23 A. Could you repeat the question.

24 Q. We have established that Four
25 Seasons Dairy, Incorporated was incorporated in

1 Kesler - Confidential

2 January of 1999.

3 A. Yes.

4 Q. Was the product, the Babushkine
5 butter, one of the first products that Four
6 Seasons Dairy sold?

7 A. No.

8 Q. What was the first product that Four
9 Seasons Dairy sold?

10 A. Four Seasons Dairy were selling
11 different kinds of product.

12 Q. Is that it?

13 THE INTERPRETER: I think he said
14 something else, but I didn't hear.

15 A. But they were selling different
16 kinds of products.

17 Q. Well, when did you first start
18 selling the Babushkine butter?

19 A. Who are we --

20 Q. Four Seasons Dairy.

21 A. In '99 in January.

22 MR. FRIEDMAN: Mr. Thompson, just to
23 make clear, when the witness just asked you
24 who you are referring to and you said Four
25 Seasons Dairy, your question relates solely

1 Kesler - Confidential

2 to the corporation Four Seasons Dairy, Inc.
3 that you established came into existence in
4 January 1999?

5 MR. THOMPSON: I don't know of any
6 other Four Seasons Dairy. Am I confusing
7 if I just refer to Four Seasons Dairy? Is
8 there another entity that I need to know
9 about?

10 MR. FRIEDMAN: Well, you were
11 present during all of the prior testimony
12 in this action where we spoke of Four
13 Seasons Dairy or Four Seasons before it was
14 incorporated and the predecessor, A&O.

15 MR. THOMPSON: I specifically
16 referred to Four Seasons Dairy, so then I
17 am referring to Four Seasons Dairy, Inc.,
18 because I don't believe there was any other
19 entity known under any stretch by Four
20 Seasons Dairy other than Four Seasons
21 Dairy, Inc.

22 Q. But to be clear then, I am referring
23 to Four Seasons Dairy, Incorporated. Is that
24 what you understood me to be referring to when
25 I asked my last question about Four Seasons

1 Kesler - Confidential

2 Dairy?

3 A. What was the question?

4 Q. All right. Am I correct that Four
5 Seasons Dairy, Inc. first began selling
6 Babushkine butter in January of 1999?

7 A. Yes.

8 Q. And that was one of the first
9 products that Four Seasons Dairy Inc. sold; am
10 I right?

11 A. One of the first products?

12 Q. Yes.

13 A. We were selling farmer cheese, also
14 feta. I don't remember.

15 Q. And the farmer's cheese and the feta
16 were sold under the Babushkine name?

17 A. Yes.

18 Q. And which of those products was the
19 first product sold by Four Seasons Dairy, Inc.
20 with the name Babushkine on it?

21 A. I don't understand the question.

22 Q. You just referred to a farmer's
23 cheese that was sold by Four Seasons Dairy,
24 Incorporated. Am I right?

25 A. Yes.

1 Kesler - Confidential

2 Q. And was that product sold under the
3 name "Babushkine"?

4 A. Yes.

5 Q. And was that product sold under the
6 name "Babushkine" by Four Seasons Dairy,
7 Incorporated in January of 1999?

8 A. Yes.

9 Q. We have had previously produced in
10 this case and referred to a sales book showing
11 sales of products in 1999 by Four Seasons
12 Dairy, Inc. Do you remember that book?

13 A. Yes.

14 Q. Do you know if that was the first
15 book that Four Seasons Dairy, Inc. was able to
16 find documenting sales of Babushkine branded
17 products?

18 A. It is the only book that we have
19 left that we can confirm with that we were
20 selling these products, but I can't remember if
21 it was the first one or the last one.

22 Q. You heard, I believe, Mr. Bekker
23 speak of having worked at a Russian grocery
24 store called Friendly Foods in the 1994 to 1996
25 time frame. Did you work there as well?

1 Kesler - Confidential

2 A. In Friendly Foods?

3 Q. Yes.

4 A. I was helping.

5 Q. What did you do at Friendly Foods?

6 A. I was helping. I wasn't working
7 there. I was just helping.

8 Q. Well, what do you mean by "helping"?

9 A. I was putting products on shelves.
10 I just came into that country in 1994 and I
11 wasn't working yet. Because for seven to eight
12 months we were receiving stipend from Nyana, so
13 that's how it was.

14 MR. FRIEDMAN: Mr. Thompson, is
15 there a time frame on this question?

16 MR. THOMPSON: I am right now in the
17 time frame of '94, '96.

18 MR. FRIEDMAN: '94 through '96?

19 MR. THOMPSON: In roughly the time
20 period that Mr. Bekker testified he was
21 working at Friendly Foods.

22 MR. FRIEDMAN: Are you translating
23 this? Because I think it's important for
24 the witness to know the time frame.

25 (Interpreter translates.)

1 Kesler - Confidential

2 THE WITNESS: Yes.

3 Q. Did you understand me to be
4 referring to that time frame?

5 A. '94 and '96?

6 Q. Yes.

7 A. Yes, but I didn't work then.

8 Q. I understand. You were just
9 helping.

10 A. You know, he is my relative and I
11 would just come and help.

12 Q. Okay. What is your relation to him?

13 A. His sister is my wife.

14 Q. So he is your brother-in-law?
15 That's correct, he is your brother-in-law?

16 A. Yes.

17 Q. Were you paid at all for doing work
18 at Friendly Foods?

19 MR. FRIEDMAN: I object on the
20 grounds of relevance.

21 A. No. I just came into this country
22 and I was getting the stipend from Nyana.

23 Q. Could you please explain what Nyana
24 is?

25 A. Everybody comes to this country

1 Kesler - Confidential

2 through Nyana and for some time, seven months
3 or ten months, a year, helps the new arrivals
4 to learn language, to find a job. That's it.

5 Q. And Nyana is the organization that
6 does that?

7 A. They are located here in Manhattan.
8 I don't remember the address. It's an official
9 organization.

10 Q. I don't want to take you through all
11 of the same questions that I have asked
12 Mr. Bekker, since I think that would be as
13 boring for you as it would be for the rest of
14 us, but you did hear all of Mr. Bekker's
15 testimony; am I right?

16 A. Yes.

17 Q. And first do you have any
18 disagreements with the things that Mr. Bekker
19 said?

20 A. Can I take a look?

21 Q. I don't have the written transcript
22 to provide to you. I am asking if you remember
23 anything --

24 A. I agree. I agree.

25 Q. Is there anything that he said that

1 Kesler - Confidential

2 you believe needed to be explained more?

3 MR. FRIEDMAN: I am objecting to
4 that question.

5 A. You know, if we would go back to all
6 that, maybe I would be able to add something.

7 Q. Well, do you remember anything more
8 about the development of any of the labels that
9 we have seen as the New Salzberg label, which
10 is Exhibit 111, for example?

11 A. Yes.

12 Q. And what do you remember?

13 A. How we developed it, how we were
14 looking for -- what do you mean? Are you
15 talking about the product or the label?

16 Q. First I am talking about the label.

17 A. I do remember how we were looking
18 for colors, what color would be better looking
19 on the design.

20 Q. Is that the end of your testimony?

21 A. Yes.

22 Q. And what do you remember, if
23 anything, about the development of the product
24 itself?

25 A. I don't understand the question.

1 Kesler - Confidential

2 Q. Do you remember anything about how
3 the product that Four Seasons sells under the
4 name "New Salzberg" was developed?

5 **REDACTED**
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13 Q. Do I understand you to say that when
14 you were growing up in the Soviet Union that
15 they had Austrian cheeses available?

16 MR. FRIEDMAN: Objection.

17 A. Yes, Austrian. In Moscow. Moscow
18 had a lot of imported products; Austria,
19 Poland, Czechoslovakia, Yugoslavia. If we are
20 talking about history and naming of -- because
21 they were friends of Soviet Union -- I mean, I
22 can tell you actually how it was. A certain
23 percentage of the products was exchanged for
24 Moldavian wine. See, in Soviet Union was
25 exporting a lot of its products to those

1 Kesler - Confidential

2 countries, these countries would import --
3 would export their products to Soviet Union.
4 It wasn't like we had a lot of that product,
5 but in limited quantities we had that product.
6 And if a person was able to find this product
7 in a store, that person would be very happy and
8 that person would remember about that lucky
9 occasion for many years. I can tell you more.

10 Q. Sure, please do.

11 **REDACTED**
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21 Q. Do you remember how Four Seasons
22 came to develop the name "Lappi" for cheese?

23 A. I do remember, but that was mostly
24 Alex's thing. I did approve the design, I did
25 approve the colors, but mostly he should be

1 Kesler - Confidential

2 able to talk about it.

3 Q. Well, what do you remember?

4 A. What do you mean what exactly I
5 remember?

6 Q. About the name "Lappi."

7 **REDACTED**
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17 MR. THOMPSON: Let me just go over
18 my notes and see where I want to go from
19 here.

20 (Recess was taken from 5:54 to
21 6:02.)

22 BY MR. THOMPSON:

23 Q. What was your first paying job after
24 you came over from Ukraine?

25 MR. FRIEDMAN: Object on the grounds

1 Kesler - Confidential

2 of relevance.

3 A. A&O Corporation.

4 Q. And that was the company that you
5 owned in partnership with Mr. Bekker; am I
6 right?

7 A. Yes.

8 Q. And that was your first job after
9 you came over from Ukraine?

10 A. Yes.

11 Q. How did you go about funding your
12 contributions to A&O Corporation?

13 MR. FRIEDMAN: Objection.

14 A. Could you repeat your question. I
15 didn't understand.

16 Q. Well, as I understood your
17 testimony, when you first came over you were
18 receiving a stipend from Nyana; am I correct?

19 A. Yes.

20 Q. And then your first paying job was
21 with A&O Corporation.

22 A. Yes.

23 Q. But A&O Corporation was a company
24 that you founded with Mr. Bekker; am I right?

25 A. Yes.

1 Kesler - Confidential

2 Q. And, in fact, the A&O of A&O
3 Corporation are Alexander and Oleg; am I right?

4 A. Yes.

5 Q. And as I recall from earlier
6 testimony, you were even shareholders with
7 Mr. Bekker at the beginning?

8 A. When we just started A&O Corporation
9 we had to put some money in and we were
10 supposed to take shares 50/50, but I wasn't
11 able to give money to Alex at that time. I
12 could not. So actually I just gave him all the
13 shares, so all the corporation belonged to him,
14 but I continued to work for the corporation as
15 a vice president, but I didn't have the shares.
16 I had to give him back the shares since I
17 didn't have the money to pay for it.

18 Q. So Mr. Bekker funded A&O Corporation
19 by himself?

20 A. What do you mean by funding?

21 Q. Put the money in to start the
22 business.

23 A. Yes.

24 Q. When it came time to start Four
25 Seasons Dairy, Incorporated, you testified that

1 Kesler - Confidential

2 you were the 60 or 70 percent shareholder; am I
3 right?

4 A. Approximately.

5 Q. So were you able to fund the startup
6 of the corporation of Four Seasons Dairy,
7 Incorporated when it began?

8 A. Yes.

9 Q. So between the time that you started
10 A&O Corporation and the time you started Four
11 Seasons Dairy, Incorporated, you were able to
12 put together the funds to start up the second
13 corporation?

14 A. Yes.

15 Q. And what was the source of the
16 income that allowed you to fund the new
17 corporation?

18 MR. FRIEDMAN: Objection.

19 A. One more time.

20 Q. Where did you get the money then to
21 start up the new corporation since you started
22 the old corporation and didn't have the funds
23 at that time to buy in?

24 A. Well, the moment when we started the
25 original corporation I couldn't give him the

1 Kesler - Confidential

2 money because I needed the money for a
3 different business, so then I calculated that
4 it's better for me to be a vice president of
5 that company, so I am going to be a vice
6 president and I gave all the shares to Alex and
7 would not put the money in that corporation.

8 Q. And are you referring there to A&O
9 Corporation?

10 A. Yes. So the money that I had I
11 didn't put into that corporation.

12 Q. What business did you put that money
13 into?

14 A. Then I had more money to put into
15 Four Seasons.

16 Q. I'm sorry, are you referring to
17 putting more money into Four Seasons Dairy,
18 Incorporated or another business called Four
19 Seasons?

20 A. Four Seasons Dairy.

21 Q. My question was earlier you had said
22 that you did not have the money to give to Alex
23 when you started A&O Corporation because you
24 had put the money into another business.

25 That's my understanding.

1 Kesler - Confidential

2 A. No, I didn't say that.

3 Q. Then please, I'm sorry, I
4 misunderstood.

5 Then what had you said?

6 A. I meant to say that I didn't have
7 money to give to A&O Corporation. It was my
8 first business and putting money into that
9 company -- I was just afraid. I didn't have
10 enough money to lose. It's a business. You
11 know, business one day it's here and other day
12 it's not. So I didn't give him the money, and
13 I remained a vice president. But when we
14 decided to start Four Seasons, we weren't able
15 to sell A&O Corporation, we didn't sell that
16 company, but I was able to put more money into
17 Four Seasons.

18 Q. All right. Do you have a criminal
19 record, Mr. Kesler?

20 A. No.

21 Q. That would be both here and in
22 Russia?

23 A. No.

24 Q. And you have never been arrested in
25 either country?

Kesler - Confidential

A. No.

MR. THOMPSON: I have no further questions.

MR. FRIEDMAN: No questions.

(Time noted: 6:11 p.m.)

OLEG KESLER

Subscribed and sworn to before me

this day of 2008.

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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 OLEG KESLER, 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 29th day of October, 2008.

KRISTIN KOCH, RPR, RMR, CRR, CLR

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

WITNESS	EXAMINATION BY	PAGE
OLEG KESLER	MR. THOMPSON	4

-----EXHIBITS-----

REGISTRANT	PAGE	LINE
Exhibit 142	4	2

Amended Notice of Deposition of
 Oleg Kesler.....

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.
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Roger S. Thompson
Counsel for Registrant

October 10, 2008
Date