

ESTTA Tracking number: **ESTTA136702**

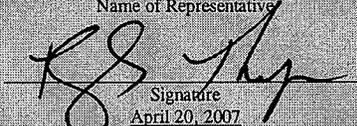
Filing date: **04/20/2007**

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

Proceeding	92042082
Party	Defendant International Gold Star Trading Corp. International Gold Star Trading Corp. 570 Smith Street Brooklyn, NY 11231
Correspondence Address	Roger S. Thompson Cohen, Pontain, Lieberman & Pavane 551 Fifth Avenue New York, NY 10176 UNITED STATES
Submission	Opposition/Response to Motion
Filer's Name	Roger S. Thompson
Filer's e-mail	rthompson@cplplaw.com, docket@cplplaw.com
Signature	/Roger S. Thompson/
Date	04/20/2007
Attachments	5060-2L Cross Motion.pdf ( 9 pages )(595233 bytes ) 5060-2L Cross Motion Exh A.pdf ( 2 pages )(71983 bytes ) 5060-2L Cross Motion Exh B.pdf ( 3 pages )(71510 bytes ) 5060-2L Cross Motion Exh C.pdf ( 33 pages )(1095804 bytes )

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

-----X  
: :  
FOUR SEASONS DAIRY, INC., : Cancellation No. 92/042,082  
: :  
: :  
Petitioner, : :  
: :  
v. : :  
: :  
INTERNATIONAL GOLD STAR : Reg. No. 2,479,287  
TRADING CORP., : :  
: :  
Registrant. : :  
: :  
-----X

I hereby certify that this correspondence is being filed with the Trademark Trial and Appeal Board through use of the Electronic System for Trademark Trials and Appeals (ETTAS)  
April 20, 2007  
(Date of Electronic Filing)  
Roger S. Thompson  
Name of Representative  
  
Signature  
April 20, 2007  
Date of Signature

**REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION TO COMPEL;  
REGISTRANT'S CROSS-MOTION TO RE-OPEN DISCOVERY BILATERALLY AND  
REGISTRANT'S CROSS-MOTION TO ALLOW REGISTRANT TO SERVE  
OBJECTIONS AND TO DENY ADMISSIONS**

Registrant, International Gold Star Trading Corp., hereby opposes the pending Motion to Compel Discovery served by Petitioner, Four Seasons Dairy, Inc. In addition, Registrant also cross-moves to a) re-open discovery bilaterally and b) for leave to (i) serve objections to Petitioner's Interrogatories (Exhibit A to Petitioner's Motion to Compel); (ii) serve objections to Petitioner's Requests for the Production of Documents (Exhibit B to Petitioner's Motion to Compel); and (iii) respond to Petitioner's Requests for Admissions (Exhibit C to Petitioner's Motion to Compel).

## I. Background

The instant cancellation was commenced by Petitioner on or about May 29, 2003, when Petitioner filed a Petition for Cancellation seeking cancellation of Registrant's mark BABUSHKA'S RECIPE, Reg. No. 2,479,287 (TTAB Docket entry No. 1). On or about June 13, 2003, the Board notified Registrant of the filing of the Petition, and established a schedule for answering the Petition, and for all pre-trial and trial dates (*see*, TTAB Docket entry No. 2, attached hereto as Exhibit A, the original Scheduling Order herein). A timely Answer was duly filed (TTAB Docket entry No. 4), and issue was joined.

The initial Scheduling Order (Exhibit A) set discovery to close on December 30, 2003. The parties exchanged written discovery shortly before the close of discovery (*see*, page 2 of Petitioner's Motion to Compel). Subsequently, the parties commenced good faith settlement talks. Rather than undertake the expense of responding to the pending discovery, the parties agreed to an extension of the time for responding to discovery and Petitioner filed a Stipulation requesting that the Board re-set the dates for responding to discovery and all trial dates after the conclusion of discovery (*i.e.*, beginning with the testimony periods) (*see*, TTAB Docket entry No. 5, attached hereto as Exhibit B, the Stipulated Request to Extend prepared by Petitioner). It is expressly noted that the parties sought no extension of the discovery period, and the Board's approval of the Stipulation (*see*, TTAB Docket entry No. 6) simply granted the relief requested and re-set the subsequent dates.

On February 24, 2004, while the parties continued to engage in settlement discussions, Petitioner served its written response to Registrant's discovery (*see*, Exhibit C hereto). In that written response, Petitioner indicated that documents responsive to the Registrant's Requests for Production would be produced at a mutually convenient place and time. To date, Petitioner has produced only a few pages of documents (*see*, Exhibit F to Petitioner's Motion to Compel which shows a fax transmission of four pages, including cover page, of "selected pages from Petitioner's Books of Account"). Still, while settlement talks were ongoing, Registrant made no issue of the promised-yet-missing documents, preferring to direct energies towards settlement rather than

contention. Registrant also did not serve responses to Petitioner's discovery while settlement talks were ongoing.

For the next three years, the parties engaged in intermittent settlement discussions. The parties submitted further Requests for Extensions of the trial testimony periods (*see*, TTAB Docket entries Nos. 7, 9 and 11). The Board granted the first two requests (*see*, TTAB Docket entries Nos. 8 and 10), and then suspended the proceedings while the parties talked (*see*, TTAB Docket entry No. 12). Further extensions, and further suspensions ensued for the next two years (*see*, TTAB Docket entries Nos. 13-29). During this period, at various junctures in the discussions, counsel for Petitioner sent a letter enquiring after responses to the discovery served in 2003, but the issue was not seriously pressed as the desultory talks dragged on. When talks were active, Petitioner made no mention of the overdue discovery. Registrant also did not press for the reciprocal service of the missing documents.

Subsequently, further disputes between the parties arose, which disputes undermined the settlement discussions, and, eventually, derailed them. Registrant recently sent a proposed settlement outline to Petitioner and, in response, Petitioner filed the pending Motion to Compel without renewed demand for responses which, if received, would have resulted in the responses Petitioner now seeks to compel.

Now that talks appear to be fruitless, Registrant is fully prepared to respond to the outstanding discovery, and would propose serving its responses by no later than May 21, 2007. It is submitted that this moots the Motion to Compel.

Registrant, however, now that issue has been re-joined, and answers to discovery will be prepared, may seek to interpose objections, if proper, to the discovery. Petitioner, however, prays that the Board rule that Registrant, by having participated in the settlement talks, be found to have waived any objections to the discovery and be precluded from answering Petitioner's Requests for Admissions. Registrant opposes these demands, and seeks to be permitted to file normal responses to the discovery long held in abeyance.

Petitioner also seeks to have discovery re-opened unilaterally, *i.e.*, for Petitioner only. Registrant opposes this request and asks that the Board either open discovery fully for both sides to permit the parties to further explore the issues in the dispute, or to decline to re-open discovery for either side. Registrant simply seeks to have the two sides treated equally, as both sides engaged in the settlement talks, both sides timely served discovery, and both sides allowed the discovery to sit, without seriously pressing for responses while the talks were ongoing. It is especially noted that discovery had closed before answers to Petitioner's discovery would have been due, even if served with no extension. Thus, neither party would have been entitled to "followup" discovery. Petitioner should not receive it unilaterally now.

## **II. Discussion**

Registrant seeks to have the Board evenhandedly allow the parties to re-join issue after the lengthy, if ultimately unproductive, settlement talks broke off.

### **A *Petitioner's Motion to Compel***

Now that settlement appears unlikely, at least in the immediate future, Registrant is prepared to serve its answers to discovery by Monday, May 21, 2007, and will do so unless the Board orders otherwise. This should moot Petitioner's Motion to Compel.

Because of the travel schedule of the principal of Registrant since the Motion to Compel was received, Registrant has been unable to assist in the preparation of a full response to discovery as yet. However, a full response is expected to be prepared and served by Monday, May 21, 2007.

### **B *Registrant Should be Permitted to Object to Interrogatories and Requests for Production***

Since the instant proceeding has been essentially in abeyance since talks commenced, and Petitioner's discovery was served at the end of the discovery period, it is submitted that both parties should be placed in the positions they were in when talks started. The parties have extended dates, and the Board has suspended proceedings, as necessary and appropriate since early 2004. Now that talks are broken off, Registrant seeks only the right to pick up where the proceedings left off and have each side placed in

the same position it was in when talks started. Both sides had served discovery, neither responded fully, and neither sought to extend or re-open discovery from February 24, 2007 until the present Motion to Compel was served. It is submitted that neither side should be disadvantaged by virtue of having partaken in settlement talks, and Registrant requests that both sides be treated equally.

Accordingly, it is requested that the Board permit Registrant to serve objections, as appropriate, to Petitioner's discovery.

**C      *Registrant Should be Permitted to Answer  
the Requests for Admissions***

For the same essential reasons as set forth in respect to the Interrogatories and Requests for Production, Registrant seeks to be permitted to answer Petitioner's Requests for Admissions, which constitutes a motion for leave to withdraw and/or amend the admissions deemed made by Registrant's failure to earlier answer the Requests for Admission. Fed.R.Civ.P. 36. Unlike the case for Interrogatories and Requests for Production, however, for which there is no specific formula for addressing late-served objections, in the case of Requests for Admissions there is a specific procedure for addressing a withdrawal of a presumed admission set forth in Fed.R.Civ.P 36(b):

“[T]he Court may permit withdrawal or amendment [of admissions] when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits.”

Here, there would be no prejudice to Petitioner if Registrant is permitted to answer the Requests for Admissions, and it is only if Registrant is permitted to answer the requests that the presentation on the merits will be subserved.

Petitioner will not be prejudiced by receiving full and fair responses to the Requests for Admissions, as Petitioner has not changed its position due to, or relied on, the lack of response in any way. It has lost no opportunity to take discovery (the period for discovery had closed before responses were due, and was never re-opened or extended); and could not be prejudiced by being asked to prove its case (“[t]he prejudice

contemplated by [Rule 36(b)] is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth.” *Kerry Steel, Inc. v. Paragon Industries, Inc.*, 106 F.3d 147, 154 (6 Cir. 1997), quoting *Brook Village North Assoc. v. General Elec. Co.*, 686 F.2d 66, 70 (1st Cir. 1982).)

Both sides have acted similarly, with no substantive action being taken for several years, and Petitioner can make, and has made, no credible claim of prejudice, an issue on which it bears the burden of persuasion. Fed.R.Civ.P. 36(b). Registrant, however, would be greatly prejudiced if the Requests for Admissions are deemed admitted, as many of the Requests are untrue.

Requests Nos. 1-6, for example, seek admissions that Registrant failed to use its mark for three consecutive years during various time intervals. This is not the case. In fact, the mark has been in continuous use. Registrant should be given the opportunity to show its use, as it will in its responses to the pending Requests for Production and Interrogatories.

Request No. 18 asks for Registrant to admit that it has never used its mark for butter, while Registrant has used its mark with butter.

These examples are not submitted as exhaustive, but merely illustrative of the facts that would be deemed admitted, even though demonstrably false.

Thus, if Registrant is not permitted to respond to the requests for Admissions, it will be prejudiced in the presentation of its case on the merits, and so it should be entitled to respond. *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 U.S.P.Q.2d 1719, 1721 (TTAB 1989). Cases should be decided upon their merits. *Id.* Furthermore, in its Motion to Compel, Petitioner, although alluding to Registrant’s failure to respond as being deemed an admission (*see*, p. 2, fn. 1) makes no showing of prejudice if the Registrant is permitted to respond. It is the Petitioner’s burden, as the party propounding the Request, to show that it would be prejudiced by the withdrawal of the default admission, *Hadley v. U.S.*, 45 F.3d 1345, 1348 (9<sup>th</sup> Cir. 1995); Fed.R.Civ.P. 36(b). Petitioner has made no such showing and cannot make such a showing, since it is

in the same position today as it would have been in had the responses been served earlier. Its testimony period has not yet begun and it would have been too late for it to take further discovery, in any event.

The undersigned's contact at the Registrant has been traveling extensively for the past few weeks, and is leaving for another trade show in Europe tomorrow, and so it has not been possible to address the full scope of the Requests since Petitioner has re-joined issue, and so it is respectfully requested that Registrant be permitted to fully respond to the Requests for Admissions pursuant to Fed.R.Civ.P. 36(b).

### **III. Conclusion**

With the active participation of both parties, this proceeding has been held in abeyance for more than three years while the parties have discussed settlement. If issue is to be re-joined, both sides should be placed in the position they would have been in at the time they first jointly extended dates. While Registrant would be satisfied if discovery is not re-opened, it no objection to the re-opening of discovery so long as re-opening of discovery is done equally for both sides.

If the Board deems it appropriate, discovery could be re-opened, thereby alleviating any potential for prejudice, to either party, which might result from responses being served after discovery closed (even though they would have been served after the close of discovery even if served timely).

Registrant has now demanded the production of the long-promised but never provided documents, and may need to seek recourse if Petitioner fails to produce those documents. Registrant is perfectly willing to set a date for the mutual exchange of documents, if Petitioner so requests.

Registrant does not seek any advantage with respect to the answering of discovery, or the investigation of the merits of Petitioner's claim. Registrant simply seeks to have the parties treated evenhandedly, and given the same opportunities to gather information at this point in time. Both parties served discovery at the end of the discovery period, which would have precluded either party from "followup" discovery

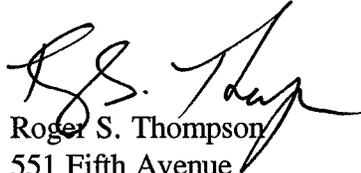
now sought unilaterally by Petitioner. Petitioner seeks to have a benefit it would not have been entitled to receive if talks had not been undertaken and that would be unfair.

Registrant seeks merely that both sides be given the same opportunities to proceed, since both sides have been equally responsible for the delay. In this way, there may be a full and fair exchange of information and the merits of the dispute may be addressed as is preferred, without prejudice to either side.

Early and favorable action is therefore respectfully solicited.

Respectfully submitted,  
COHEN, PONTANI, LIEBERMAN & PAVANE

By

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

Dated: April 20, 2007

*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 Registrant's Opposition to Petitioner's Motion to Compel; Registrant's Cross-Motion to Re-Open Discovery and Registrant's Cross-Motion to Allow Registrant to Deny Admissions, was served by first class mail, postage prepaid, on counsel for Petitioner, addressed as follows:

Samuel Friedman, Esq.  
225 Broadway, Suite 1804  
New York, New York 10007

  
Roger S. Thompson  
*Counsel for Registrant*

April 20, 2007  
Date

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: June 13, 2003

International Gold Star Trading Corp.  
570 Smith Street  
Brooklyn, NY 11231

Cancellation No. 92042082  
Reg. No. 2479287

SAMUEL FRIEDMAN  
225 BROADWAY SUITE 1804  
New York, NY 10007

Four Seasons Dairy, Inc.

V.

International Gold Star Trading  
Corp.

Juan M. Porter, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

**Discovery and testimony periods are set as follows:**

Discovery period to open: July 03, 2003

Discovery period to close: December 30, 2003

**Cancellation No. 920 42,082**

30-day testimony period for party  
in position of plaintiff to close:                    March 29, 2004

30-day testimony period for party  
in position of defendant to close:                    May 28, 2004

15-day rebuttal testimony period  
for plaintiff to close:                                    July 12, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

TTAB

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

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

FOUR SEASONS DAIRY, INC.,

Petitioner,

- against -

INTERNATIONAL GOLD STAR  
TRADING CORP.,

Registrant

Cancellation No.: 92042082

Mark: BABUSHKA'S RECIPE

Reg. No. 2,479,287

Filed: December 7, 1999

Issued: August 21, 2001

**STIPULATED REQUEST TO EXTEND  
TRIAL DATES AND RELATED SCHEDULES**

Four Seasons Dairy, Inc., and International Gold Star Trading Corp. hereby request that the Trademark Trial and Appeal Board extend by three weeks the trial dates set forth in the Board's Scheduling Order. The additional time is necessary to permit the parties to respond to outstanding discovery demands. The new deadlines would be as follows:

30 - day testimony period for party  
in position of plaintiff to close

April 19, 2004

30 - day testimony period for party  
in position of defendant to close

June 18, 2004

15 - day rebuttal testimony period  
for plaintiff to close

August 2, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on the date shown below:

Samuel Friedman  
(Typed Name of Person Signing Certificate)

*Sam Friedman*  
(Signature)

Feb. 23, 2004  
(Date)

02-26-2004

Additionally, the parties, through counsel, have stipulated to mutually extend by three weeks each other's time to respond to any outstanding interrogatories, requests for production and requests for admissions.

The parties agreed to this joint stipulated request via telephone conference on February 2, 2004.

This request is not being made for purpose of delay and we therefore ask for favorable consideration.

Dated: February 23, 2004  
New York, New York

Respectfully submitted,



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

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, a true and correct copy of the foregoing STIPULATED REQUEST TO RESET TRIAL DATES in Cancellation Proceeding No. 92042082 entitled Fours Seasons Dairy, Inc. v. International Gold Star Trading Corp., was served by First Class Mail, on counsel for Registrant, addressed as follows:

Roger S. Thompson  
Cohen, Pontani, Lieberman & Pavane  
551 Fifth Avenue  
New York, New York 10176



Samuel Friedman

February 23, 2004

Date

Tm\4seasons\babushki\cancel\stip-ext

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

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

FOUR SEASONS DAIRY, INC.,

Petitioner,

- against -

INTERNATIONAL GOLD STAR  
TRADING CORP.,

Registrant

Cancellation No.: 92042082

Mark: BABUSHKA'S RECIPE

Reg. No. 2,479,287

Filed: December 7, 1999

Issued: August 21, 2001

**PETITIONER'S RESPONSES AND OBJECTIONS  
TO REGISTRANT'S FIRST SET OF DISCOVERY**

**RESPONSES AND OBJECTIONS TO INTERROGATORIES**

Petitioner Four Seasons Dairy, Inc., by its attorney, Samuel Friedman, hereby responds to Registrant International Gold Star Trading Corp.'s Interrogatories ("Registrant's Interrogatories") upon information and belief, as follows:

**INTRODUCTORY NOTE**

The following Answers to Registrant's Interrogatories are subject to all general and specific objections set forth herein and all objections, protections, privileges and immunities otherwise provided by law. Petitioner's Responses and Objections to Registrant's Requests for Production are set forth infra.

## GENERAL OBJECTIONS

1. Petitioner objects to the Registrant's Interrogatories to the extent that they seek information that exceeds the scope of matters required to be disclosed under Rules 26 and 33 of the Federal Rules of Civil Procedure.

2. Petitioner objects to the Registrant's Interrogatories to the extent that they seek the production of confidential or proprietary information.

3. Petitioner objects to the Registrant's Interrogatories to the extent that they seek to discover attorney work product or attorney client communications.

4. Petitioner objects to the Registrant's Interrogatories to the extent that they call for opinions, analysis or similar observations of its legal counsel. Such information is, by definition, privileged attorney work product.

5. Petitioner objects to the Registrant's Interrogatories to the extent that they seek information that is irrelevant, immaterial, or otherwise not properly the subject of discovery demands.

6. Petitioner objects to the Registrant's Interrogatories to the extent that the demands contained therein are overbroad, overly burdensome, lacking in specificity, vague, ambiguous, and are prefaced with the terms "all", "each" and "any" which is oppressive, vexatious and unduly burdensome.

7. Petitioner objects to the Registrant's Interrogatories to the extent that they seek information contained within Registrant's records, and are not in Petitioner's possession because Registrant has not produced them to Petitioner despite due demand.

8. Petitioner objects to the Registrant's Interrogatories to the extent that Petitioner requires discovery from Registrant and third parties in order to fully respond. Petitioner

reserves the right to revise, correct, amend, supplement, add to or clarify the responses propounded herein.

9. Petitioner objects to the Registrant's Interrogatories to the extent that they are premature and seek contentions that relate to fact or the application of law to fact prior to the completion of discovery. Petitioner reserves the right to revise, correct, amend, supplement, add to or clarify the responses propounded herein.

10. This response is made without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving: (1) all questions as to competency, relevance, materiality, privilege and admissibility as evidence for any purpose in any proceeding or the trial of this action; (2) the right to object to the use of any response, or its subject matter, in any proceeding or the trial of this action on any grounds; (3) the right to object on any ground at any time to a demand for further responses to these or other requests or other discovery procedures involving or relating to the subject matter of the requests answered; and (4) the right at any time to revise, correct, amend, supplement, add to or clarify any of the responses propounded herein.

11. Petitioner objects to the Registrant's Interrogatories insofar as they require Petitioner to produce documents at the offices of Registrant's counsel. Petitioner's only obligation pursuant to Rule 2.120(d) of the Trademark Rules of Practice and Rule 26(b) of the Federal Rules of Civil Procedure is to produce documents where they are normally kept during the normal course of business. For the most part, those documents are kept at the warehouse of Petitioner and may be inspected and copied where kept upon proper notice at a mutually convenient date and time, or as otherwise agreed by counsel.

12. To the extent that any request or interrogatory asks for “all” documents, representative documents will be produced at a mutually convenient time and date, provided that the request is not otherwise objected to.

13. Petitioner objects to the Registrant’s Interrogatories to the extent that they seek information which is cumulative, duplicative, or is obtainable from some other source that is more convenient, less expensive and less burdensome.

14. Petitioner objects to the Registrant’s Interrogatories to the extent that any specific Request purports to seek the production, disclosure or identification of any documents or information not in the possession, custody or control of Petitioner.

### **ANSWERS AND SPECIFIC OBJECTIONS**

The foregoing General Objections are hereby incorporated by reference into each and every answer and specific objection set forth below.

### **INTERROGATORIES**

#### **Interrogatory No. 1**

1. Identify Four Seasons.

#### **Answer to Interrogatory No. 1:**

1. Four Seasons Dairy Inc. is a corporation organized and existing under and by virtue of the laws of the State of New York. It does business and maintains records at 255 58<sup>th</sup> Street, Brooklyn, New York 11220. Its shareholders are Oleg Kessler and Alexander Bekker. They each have knowledge with respect to the subject matter of this proceeding.

**Interrogatory No. 2**

2. Identify all officers and directors of Four Seasons from a date six months prior to the date on which Four Seasons claims to have commenced usage of the Four Seasons mark to the present.

**Answer to Interrogatory No. 2:**

2. Oleg Kessler is the president and a director of Four Seasons Dairy Inc.

Alexander Bekker is the vice president and a director of Four Seasons Dairy, Inc.

**Interrogatory No. 3**

3. Identify all employees of Four Seasons, from a date six months prior to the date on which Four Seasons claims to have commenced usage of the Four Seasons mark to the present, with knowledge of any product sold by Four Seasons bearing the Four Seasons mark.

**Answer to Interrogatory No. 3:**

3. Objection. Vague and ambiguous in that the term "employee" is not defined. Subject to and without waiving the foregoing objections and the general objections, Petitioner states: Oleg Kessler, Alexander Bekker and Svetlana Kessler.

**Interrogatory No. 4**

4. Identify the individual who selected the Four Seasons mark.

**Answer to Interrogatory No. 4:**

4. Objection. Vague and ambiguous in that the term "selected" is not defined. Subject to and without waiving the foregoing objections and the general objections, Petitioner states: Oleg Kessler, Alexander Bekker and Svetlana Kessler.

**Interrogatory No. 5**

5. Identify the individual who designed the Four Seasons mark.

**Answer to Interrogatory No. 5:**

5. Objection. Vague and ambiguous in that the term “selected” is not defined. Subject to and without waiving the foregoing objections and the general objections, Petitioner states: Oleg Kessler, Alexander Bekker and Svetlana Kessler.

**Interrogatory No. 6**

6. Identify all individuals who participated in the selection and/or design of the Four Seasons mark.

**Answer to Interrogatory No. 6:**

6. Objection. Vague and ambiguous in that the term “selected” is not defined. Subject to and without waiving the foregoing objections and the general objections, Petitioner states: Oleg Kessler, Alexander Bekker and Svetlana Kessler.

**Interrogatory No. 7**

7. Explain the circumstances surrounding Four Seasons’ selection and adoption of the Four Seasons mark, including identifying all persons knowledgeable concerning such selection and adoption, identifying all documents concerning such selection and adoption and stating all facts concerning such selection and adoption.

**Answer to Interrogatory No. 7:**

7. Objection. Overbroad. Vague and ambiguous. Subject to and without waiving the foregoing objections and the general objections, Petitioner states that Alexander Bekker, Oleg Kessler and Svetlana Kessler selected and adopted the Four Seasons mark.

**Interrogatory No. 8**

8. Explain any allegation of usage of the Four Seasons mark prior to September, 1999.

**Answer to Interrogatory No. 8:**

8. Objection. Calls for a narrative. Subject to and without waiving the foregoing objections and the general objections, Petitioner states that Alexander Bekker and Oleg Kessler, as officers, directors and shareholders of A&O Corp. started using the Four Seasons mark in or about 1997. The successor in interest and assignee of A&O Corp., Inc., to wit, Four Seasons Dairy, Inc., commenced using the Four Seasons mark in or before January 1999.

**Interrogatory No. 9**

9. State the date of first use of the Four Seasons mark, identifying the party/ies to whom any product bearing the Four Season mark was first sold.

**Answer to Interrogatory No. 9:**

9. Alexander Bekker, Oleg Kessler and A&O Corp. first used the Four Seasons mark in commerce in or about September 1997 by making sales of the relevant goods to "Tri-Line", a Russian Supermarket in the Midwood section of Brooklyn, New York, located at or about the intersections of Kings Highway and West 48<sup>th</sup> Street in Brooklyn, New York.

**Interrogatory No. 10**

10. Identify any product on which Four Seasons claims to use, or have used, the Four Seasons mark, including the inclusive date(s) on which Four Seasons claims to have begun use of the Four Seasons mark thereon and/or ceased use of the Four Seasons mark thereon, and the annual volume of sales of such product (both by numbers of products sold and by dollar volume) from the alleged date of first use thereof to the present and/or to the cessation of sales of such product.

**Answer to Interrogatory No. 10:**

10. Objection. This interrogatory, in part, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. It further seeks information that is proprietary, confidential and constitutes a trade secret. Information concerning dollar volume of sales will not be disclosed absent a suitable protective order. Subject to and without waiving the foregoing objections and the general objections. Petitioner states that it, its officers, directors, shareholders and predecessors commenced using the Four Seasons mark on products including feta cheese, farmers cheese, cottage cheese, yogurt, butter blend, vegetable oil spread, vegetable extracts and margarine in or about September 1997 and continue making sales in commerce for such products to date.

**Interrogatory No. 11**

11. Identify any search performed by or on behalf of Four Seasons concerning the Four Seasons mark, including whether such mark was in use by any party, was registered by any party or owned by any party.

**Answer to Interrogatory No. 11:**

11. Objection. Calls for information subject to the attorney-client privilege, the work-product doctrine and other exemptions from disclosure. Vague and ambiguous in that

the term “search” is not defined. Subject to and without waiving the foregoing objections and general objections, Petitioner states that its principals, on a frequent basis, visit the “Russian Stores” in the New York City area and are fully familiar with the goods being sold in the relevant market. The aforesaid, among other things, constituted a “search” performed concerning the Four Seasons Mark.

**Interrogatory No. 12**

12. Explain in detail Four Seasons’ claim that the Four Seasons mark is “well known and recognized by consumers and the trade as identifying the Products that are affiliated with or have been authorized by Petitioner” as alleged in paragraph 4 of the petition for Cancellation herein.

**Answer to Interrogatory No. 12:**

12. Objection. Calls for a narrative. Overbroad. Subject to and without waiving the foregoing objections and the general objections, Petitioner states that it, its shareholders and predecessors have sold continuously to wholesalers and retailers the relevant products in the relevant market under the Four Seasons mark since in or about September of 1997. As such, consumers and the trade have come to associate the Four Seasons mark with the high quality products sold by Petitioner.

**Interrogatory No. 13**

13. Identify all communications with any person concerning the Four Seasons mark.

**Answer to Interrogatory No. 13:**

13. Objection. Overbroad. Unduly burdensome. Vague and ambiguous. Not reasonably calculated to lead to the discovery of admissible evidence. Calls for proprietary and

confidential information that constitutes trade secrets. Subject to and without waiving the foregoing objections and general objections, Petitioner states: See Answers to Interrogatories Nos. 1-12 and 14-25.

**Interrogatory No. 14**

14. Explain in detail Four Seasons' claim that the Gold Star mark was obtained through fraud, as alleged in paragraph 10 of the Petition for Cancellation herein.

**Answer to Interrogatory No. 14:**

14. Objection. Overbroad. Calls for a narrative. Without waiving the foregoing objections and general objections Petitioner states that at the time of making application to the United States Patent and Trademark office for registration of the mark sought to be cancelled, Registrant had actual knowledge or reasonably should have known of Petitioner's actual use of the Four Seasons mark on the relevant products from a date preceding any alleged use by Registrant. As such, Registrant made knowingly false statements to the USPTO in declaring that to the best of its knowledge, no other person, firm, corporation or association had the right to use the mark in commerce.

**Interrogatory No. 15**

15. State all facts concerning Four Seasons' claim, in paragraph 10 of the Petition for Cancellation herein, that Gold Star knew of Four Seasons' alleged use of the Four Seasons' mark prior to the date on which Gold Star applied to register the Gold Star mark.

**Answer to Interrogatory No. 15:**

15. Objection. Overbroad. Subject to and without waiving the foregoing objections and the general objections, Petitioner states that prior to Registrant's application to

register the subject mark, Registrant had purchased products from Petitioner, its officers, directors, shareholders and predecessors, and had actual and/or constructive knowledge of Petitioner's prior and widespread use of the Four Seasons mark on the relevant goods and products.

**Interrogatory No. 16**

16. Identify all manufacturers or suppliers of any products sold by Four Seasons bearing the Four Seasons mark from the date(s) of first use of each such product to the present.

**Answer to Interrogatory No. 16:**

16. Objection. Calls for the production of highly confidential information that, if divulged, may provide Registrant with a competitive advantage and cause irreparable harm to Petitioner. Information regarding manufacturers and suppliers, except as set forth in Response to Interrogatory 22, will not be disclosed absent a suitable protective order.

**Interrogatory No. 17**

17. Identify any instance of actual confusion which Four Seasons contends has arisen with respect to the Gold Star mark.

**Answer to Interrogatory No. 17:**

17. Objection. Vague and ambiguous. Subject to and without waiving the foregoing objection and the general objections, Petitioner refers Registrant to, among other things, the USPTO Office Action dated June 24, 2002 finding a likelihood of confusion between the Four Seasons mark and Registrant's subject mark and refusing registration of the Four Seasons mark on grounds of likelihood of confusion with "BABUSHKA'S RECIPE."

**Interrogatory No. 18**

18. Identify any communication concerning any instance of alleged confusion between the Gold Star mark and any product or service offered by Four Seasons.

**Answer to Interrogatory No. 18:**

18. Objection. Overbroad. Vague and ambiguous. Subject to and without waiving the foregoing objection and the general objections, Petitioner makes reference to the aforesaid USPTO Office Action and to correspondence sent by Counsel for Registrant dated March 11, 2002 to a competitor within the relevant trade.

**Interrogatory No. 19**

19. Identify any communication concerning any instance in which any person inquired whether there exists or existed any connection, sponsorship or other affiliation or relation between Gold Star and/or any product bearing the Gold Star mark and Four Seasons.

**Answer to Interrogatory No. 19:**

19. Objection. Vague and ambiguous. Subject to and without waiving the foregoing objection and the general objections, Petitioner states: See answers to Interrogatories Nos. 17 and 18. Petitioner further states that principals of Registrant, during a face to face meeting with the Principals of Petitioner, in or about August 2003, indicated the possibility of consumer confusion.

**Interrogatory No. 20**

20. Identify all persons upon whose testimony Four Seasons intends to rely in this proceeding.

**Answer to Interrogatory No. 20:**

20. Objection. Petitioner has not yet determined the identities of all persons upon whose testimony it will rely in this proceeding. Such a determination rests in part upon the Answers to be provided by Registrant to Petitioner's Discovery Demands. Subject to and without waiving the foregoing objections and the general objections Petitioner shall rely upon the testimony of persons including but not limited to:

Arkadiy Golub  
Beluga Caviar Inc.  
32 Second Avenue  
Brooklyn, New York

Leon Sheikhet  
President  
Unsurpassed Meat Inc.  
DBA Miller's Finest Meats  
1914 Kings Highway  
Brooklyn, New York 11229

Mark Goulumb (sp?)  
President  
Western Star Inc.  
2723 West 15<sup>th</sup> Street  
Brooklyn, New York 11224

Arie  
Quick Graphics Inc.  
6308 Bay Parkway  
Brooklyn, New York 11204

Edward Kraven  
EV Business Services, Inc.  
2677 Coney Island  
Brooklyn, New York 11235

Aron Walewitsch  
Natar Foods

255 48<sup>th</sup> Street  
Brooklyn, New York 11220

Mark Gorereck  
East Coast Foods  
2723 West 15<sup>th</sup> Street  
Brooklyn, New York 11224

Alexander & Bob  
Royal Baltic  
9829 Ditmas Avenue  
Brooklyn, New York

Alexander Bekker  
Oleg Kessler  
Svetlana Kessler

Svetlana Yelkin  
Dawn Whitehead  
Marina Pashenkova  
New York State  
Department of Agriculture & Markets  
1 Winners Circle  
Albany, New York 12235

Additional persons to be disclosed subject to protective order

**Interrogatory No. 21**

21. Identify all documents on which Four Seasons intends to rely in this proceeding.

**Answer to Interrogatory No. 21:**

21. Objection. Overbroad. Petitioner has not yet determined the identification of all documents on which it will rely. Subject to and without waiving the foregoing objections

and the general objections, Petitioner makes reference to its Answers and Objections to Registrant's Requests for Production and the documents to be produced in connection therewith. Petitioner further makes reference to the documents that it has demanded of Registrant which have not yet been provided despite due demand and the relevant file wrappers of the USPTO.

**Interrogatory No. 22**

22. Identify the printer, manufacturer and/or supplier of each label, hangtag or other indicia placed on any product sold by Four Seasons bearing the Four Seasons mark, and the date(s) on which any order(s), requests or purchase(s) for such label, hangtag or indicia were placed..

**Answer to Interrogatory No. 22:**

22. Objection. Overbroad and unduly burdensome. Calls for highly confidential and proprietary information that, if disclosed, would subject Petitioner to a competitive disadvantage and irreparable harm. Subject to and without waiving the foregoing objections and the general objections, Petitioner states that two of such printers, manufacturers and/or suppliers are set forth below. Petitioner requires a suitable protective order prior to further disclosure:

Quick Graphics Inc.  
6308 Bay Parkway  
Brooklyn, New York 11204

Herb Bookbinder  
Ideal Label Inc.  
43-10 23<sup>rd</sup> Street  
Long Island City, New York 11101

**Interrogatory No. 23**

23. Identify all persons employed by Four Seasons at any time from six months prior to the date on which Four Seasons alleges to have begun use of the Four Seasons mark to the present who are believed to be knowledgeable about the subject matter of this proceeding.

**Answer to Interrogatory No. 23:**

23. Objection. Vague and ambiguous in that the term “employed” is not defined. Subject to and without waiving the foregoing objections and the general objections, Petitioner states that such persons include Alexander Bekker, Oleg Kessler and Svetlana Kessler.

**Interrogatory No. 24**

24. Identify the channels of trade through which Four Seasons sells or sold each product it now sells or formerly sold bearing the Four Seasons mark..

**Answer to Interrogatory No. 24:**

24. Objection. Vague and ambiguous in that the phrase “channels of trade” is not defined. Subject to and without waiving the foregoing objections and the general objections, Petitioner states that it sells the relevant products under the Four Seasons mark to retailers in the New York City area, as well as to wholesalers and supermarkets in Canada and the U.S.

**Interrogatory No. 25**

25. Identify with specificity the intended customer for each product now sold or formerly sold by Four Seasons bearing the Four Seasons mark.

**Answer to Interrogatory No. 25:**

25. Objection. Overbroad. Vague and Ambiguous in that “intended customer” is not defined. Unduly burdensome. The definitions and instructions to Registrant’s Interrogatories would require the Petitioner to identify each and every end user of its products.

Subject to and without waiving the foregoing objections and the general objections, Petitioner states that the intended customers include wholesalers and retailers that sell to the consuming public in general and persons of Russian heritage in particular.

**PETITIONER'S RESPONSES AND OBJECTIONS  
TO FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS BY REGISTRANT INTERNATIONAL  
GOLD STAR TRADING CORP.**

Petitioner Four Seasons Dairy, Inc., by its attorney Samuel Friedman, hereby responds to the First Request for Production of Documents by Registrant International Gold Star Trading Corp., ("Registrant's Demands"), upon information and belief, as follows:

**INTRODUCTORY NOTE**

The following Responses to Registrant's Demands are subject to all general and specific objections set forth herein and all objections, protections, privileges and immunities otherwise provided by law.

**GENERAL OBJECTIONS**

1. Petitioner objects to the Registrant's Demands to the extent that they seek discovery that exceeds the scope of matters required to be disclosed under Rules 26 and 34 of the Federal Rules of Civil Procedure.
2. Petitioner objects to the Registrant's Demands to the extent that they seek the production of confidential or proprietary information.
3. Petitioner objects to the Registrant's Demands to the extent that they seek to discover attorney work product or attorney client communications.

4. Petitioner objects to the Registrant's Demands to the extent that they call for opinions, analysis or similar observations of its legal counsel. Such information is, by definition, privileged attorney work product.

5. Petitioner objects to the Registrant's Demands to the extent that they seek information that is irrelevant, immaterial, or otherwise not properly the subject of discovery demands.

6. Petitioner objects to the Registrant's Demands to the extent that they are overbroad, unduly burdensome, lacking in specificity, vague, ambiguous, and are prefaced with the terms "each", "any" and "all" which is oppressive, vexatious and unduly burdensome.

7. Petitioner objects to the Registrant's Demands to the extent that they seek documents contained within Registrant's records; and are not in Petitioner's possession because Registrant has not produced them to Petitioner despite due demand.

8. Petitioner objects to the Registrant's Demands to the extent that Petitioner requires discovery from Registrant and third parties in order to fully respond. Petitioner reserves the right to revise, correct, amend, supplement, add to or clarify the responses propounded herein.

9. This response is made without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving: (1) all questions as to competency, relevance, materiality, privilege and admissibility as evidence for any purpose in any proceeding or the trial of this action; (2) the right to object to the use of any response, or its subject matter, in any proceeding or the trial of this action on any grounds; (3) the right to object on any ground at any time to a demand for further responses to these or other requests or other discovery procedures involving or relating to the subject matter of the requests answered; and (4) the right at any time to revise, correct, amend, supplement, add to or clarify any of the responses propounded herein.

10. Petitioner objects to the Registrant's Demands insofar as they require Petitioner to produce documents at the offices of Registrant's counsel. Petitioner's only obligation pursuant to Rule 2.120(d) of the Trademark Rules of Practice and Rule 26(b) of the Federal Rules of Civil Procedure is to produce documents where they are normally kept during the normal course of business. For the most part, those documents are kept at the warehouse of Petitioner and may be inspected and copied where kept upon proper notice at a mutually convenient date and time, or as otherwise agreed by counsel.

11. To the extent that any request or Demands asks for "all" documents, representative documents will be produced at a mutually convenient time and date, provided that the request is not otherwise objected to.

12. Petitioner objects to the Registrant's Demands to the extent that they seek information which is cumulative, duplicative, or is obtainable from some other source that is more convenient, less expensive and less burdensome.

13. Petitioner objects to the Registrant's Demands to the extent that any specific Request purports to seek the production, disclosure or identification of any documents or information not in the possession, custody or control of Petitioner.

### **RESPONSES AND SPECIFIC OBJECTIONS**

The foregoing General Objections are hereby incorporated by reference into each and every response and specific objection set forth below.

## **DOCUMENT DEMANDS**

### **Document Demand No. 1**

1. All documents identified in the above Interrogatories.

#### **Response to Document Demand No. 1:**

1. Petitioner objects to this request on the grounds that (1) it calls for the production of documents subject to the attorney-client privilege, the work-product doctrine, or any other exemption from disclosure; and (2) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, the general objections or the specific objections to Registrant's Interrogatories, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

### **Document Demand No. 2**

2. All documents concerning the first sale of any product sold by Four Seasons bearing the Four Seasons mark.

#### **Response to Document Demand No. 2:**

2. Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

### **Document Demand No. 3**

3. All documents concerning the Four Seasons application.

**Response to Document Demand No. 3:**

3. Petitioner objects to this request on the grounds that (1) it calls for the production of documents subject to the attorney-client privilege, the work-product doctrine, or any other exemption from disclosure; and (2) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 4**

4. Documents sufficient to establish the amount of advertising, promotional and/or other marketing expenditures made by Four Seasons concerning products sold bearing the Four Seasons mark each year from the date on which Four Seasons claims to have first used the Four Seasons mark to present.

**Response to Document Demand No. 4:**

4. Petitioner objects to this request on the grounds that its seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on grounds that the information requested is highly confidential. Subject to and without waiving the foregoing objections or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 5**

5. Documents sufficient to establish the annual dollar volume of sales of each product sold by Four Seasons bearing the Four Seasons mark from the date of the first sale of such product to the present.

**Response to Document Demand No. 5:**

5. Petitioner objects to this request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on grounds that the information requested is highly confidential. Subject to and without waiving the foregoing objections or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 6**

6. Any search performed by or on behalf of Four Seasons concerning the Four Seasons mark.

**Response to Document Demand No. 6:**

6. Petitioner objects to this request on the grounds that (1) it calls for the production of documents subject to the attorney-client privilege, the work-product doctrine, or any other exemption from disclosure; and (2) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control, if any, that it deems responsive to this request.

**Document Demand No. 7**

7. Any search performed by or on behalf of Four Seasons concerning the Gold Star mark.

**Response to Document Demand No. 7:**

7. Petitioner objects to this request on the grounds that (1) it calls for the production of documents subject to the attorney-client privilege, the work-product doctrine, or any other exemption from disclosure; and (2) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control, if any, that it deems responsive to this request.

**Document Demand No. 8**

8. Any opinion of counsel concerning Four Seasons' claim of priority to use the Four Seasons mark compared to Gold Star's usage of the Gold Star mark.

**Response to Document Demand No. 8:**

8. Petitioner objects to this request on the grounds that (1) it calls for the production of documents subject to the attorney-client privilege, the work-product doctrine, or any other exemption from disclosure; and (2) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control, if any, that it deems responsive to this request.

**Document Demand No. 9**

9. Samples of any label, hangtag, or other use of the Four Season's mark on any product.

**Response to Document Demand No. 9:**

9. Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 10**

10. Samples of each product sold by Four Seasons bearing the Four Seasons mark.

**Response to Document Demand No. 10:**

10. Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 11**

11. All documents concerning Four Seasons' purchase, manufacture or other acquisition of each label, hangtag or other indicia bearing the Four Seasons mark.

**Response to Document Demand No. 11:**

11. Petitioner objects to this request on the grounds that (1) it is overbroad and unduly burdensome; and (2) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects that the

information sought is highly confidential. Subject to and without waiving the foregoing objections or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 12**

12. Representative samples of all advertising, marketing or other promotional materials used by Four Seasons for the sale or marketing of any product bearing the Four Seasons mark.

**Response to Document Demand No. 12:**

12. Petitioner objects to this demand to the extent that it seeks information that that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 13**

13. All documents concerning any allegation in the Petition for Cancellation herein.

**Response to Document Demand No. 13:**

13. Petitioner objects to this request on the grounds that (1) it calls for the production of documents subject to the attorney-client privilege, the work-product doctrine, or any other exemption from disclosure; and (2) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (3) it is overbroad and ambiguous. Subject to and without waiving the foregoing objections or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time

those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 14**

14. All documents upon which Four Seasons intends to rely in this proceeding.

**Response to Document Demand No. 14:**

14. Petitioner objects to this request on the ground that (1) it seeks information that is equally available to Registrant but has not yet been produced by Registrant despite due demand; and (2) premature in that Petitioner has not yet determined each document upon which it will rely. Subject to and without waiving the foregoing objections or the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 15**

15. All documents concerning Four Seasons' first knowledge of the Gold Star mark.

**Response to Document Demand No. 15:**

15. Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents, if any, within its possession, custody or control it deems responsive to this request.

**Document Demand No. 16**

16. All documents concerning Four Seasons' first knowledge of Gold Star.

**Response to Document Demand No. 16:**

16. Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents, if any, within its possession, custody or control it deems responsive to this request.

**Document Demand No. 17**

17. All documents concerning Four Seasons' first knowledge that Gold Star claimed proprietary rights in and to any mark which includes the word "BABUSHKA"

**Response to Document Demand No. 17:**

17. Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents, if any, within its possession, custody or control it deems responsive to this request.

**Document Demand No. 18**

18. All documents concerning Four Seasons' allegation that Gold Star knew of Four Seasons' alleged use of the Four Seasons mark prior to the date on which Gold Star applied to register the Gold Star mark.

**Response to Document Demand No. 18:**

18. Petitioner objects to this request on the ground that it seeks information that is equally available to Registrant or that is only available to Registrant and that has not yet been

produced by Registrant despite due demand. Subject to and without waiving the foregoing objections and the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 19**

19. All documents concerning Four Seasons' allegations in paragraph 10 of the Petition for Cancellation herein that Gold Star allegedly committed fraud on the Trademark Office in the filing of Gold Star's application to register the Gold Star mark.

**Response to Document Demand No. 19:**

19. Petitioner objects to this request on the ground that it seeks information that is equally available to Registrant or that is only available to Registrant and that has not yet been produced by Registrant despite due demand. Subject to and without waiving the foregoing objections and the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 20**

20. Documents sufficient to establish continuous usage of the Four Seasons mark from the date on which Four Seasons claims first to have used such mark to the present.

**Response to Document Demand No. 20:**

20. Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 21**

21. Documents submitted to the United States Patent and Trademark Office concerning any petition to revive the Four Seasons application.

**Response to Document Demand No. 21:**

21. Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 22**

22. Documents sufficient to establish the channels of trade through which Four Seasons sells products bearing the Four Seasons mark.

**Response to Document Demand No. 22:**

22. Petitioner objects to this request on the ground that it is vague and ambiguous and seeks information that is confidential and proprietary and that may cause irreparable harm if disclosed. Subject to and without waiving the foregoing objections and the general objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 23**

23. All documents concerning any alleged instance of actual confusion between the Gold Star mark and any mark in which Four Seasons claims ownership, including, but not limited to, the Four Seasons mark.

**Response to Document Demand No. 23:**

23. Petitioner objects to this request on the ground that it seeks information that is equally available to Registrant. Subject to and without waiving the foregoing objection, Petitioner

will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 24**

24. All documents concerning any alleged instance in which any person believed that any product bearing the Gold Star mark originated with, was sponsored by, was licensed by, was approved by or otherwise was associated in any way with Four Seasons.

**Response to Document Demand No. 24:**

24. Petitioner objects to this request on the ground that it seeks information that is equally available to Registrant. Subject to and without waiving the foregoing objection, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 25**

25. All documents concerning any allegation by Four Seasons that the Four Seasons mark "has acquired greater distinctiveness and extensive goodwill, and is well known and recognized by consumers and the trade as identifying the Products that are affiliated with or have been authorized by" Four Seasons, as alleged in paragraph 4 of the Petition for Cancellation herein.

**Response to Document Demand No. 25:**

25. Petitioner objects to this request on the ground that it seeks information that is equally available to Registrant. Subject to and without waiving the foregoing objection, Petitioner will make available for inspection and copying on a mutually agreeable date and time

those non-privileged documents within its possession, custody or control it deems responsive to this request.

**Document Demand No. 26**

26. Any survey, poll or other sampling performed by or on behalf of Four Seasons concerning the Four Seasons mark.

**Response to Document Demand No. 26:**

26. Petitioner objects to this request on the grounds that it calls for the production of documents subject to the attorney-client privilege, the work-product doctrine, or any other exemption from disclosure. Subject to and without waiving the foregoing objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents, if any, within its possession, custody or control it deems responsive to this request.

**Document Demand No. 27**

27. Any survey, poll or other sampling performed by or on behalf of Four Seasons concerning the Gold Star mark.

**Response to Document Demand No. 27:**

27. Petitioner objects to this request on the grounds that it calls for the production of documents subject to the attorney-client privilege, the work-product doctrine, or any other exemption from disclosure. Subject to and without waiving the foregoing objections, Petitioner will make available for inspection and copying on a mutually agreeable date and time those non-privileged documents, if any, within its possession, custody or control it deems responsive to this request.

I DECLARE UNDER PENALTY OF PERJURY  
THAT THE FOREGOING FACTUAL ANSWERS  
ARE TRUE AND CORRECT TO THE BEST  
OF MY KNOWLEDGE, INFORMATION AND BELIEF:

Dated: New York, New York

February 24, 2004

FOUR SEASONS DAIRY, INC.

By: Alexander Bekker  
Alexander Bekker, Vice President

AS TO FORM AND OBJECTIONS:

Dated: New York, New York

By: Samuel Friedman  
Samuel Friedman [SF-4619]  
225 Broadway, Suite 1804  
New York, New York 10007  
Tel.: (212) 267-2900

Attorney for Petitioner  
Four Seasons Dairy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Petitioner's Responses and Objections to Registrant's First Set of Discovery in Cancellation Proceeding No. 92042082 entitled Fours Seasons Dairy, Inc. v. International Gold Star Trading Corp., was served by United States Postal Service First Class Mail on counsel for Registrant, addressed as follows:

Roger S. Thompson  
Cohen, Pontani, Lieberman & Pavane  
551 Fifth Avenue  
New York, New York 10176



Samuel Friedman

February<sup>27</sup>, 2004  
Date

tm\4seasons\babushki\cancel\int-rfp-res