

**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

75/865,702

Cancellation No.: 92042082

Mark: BABUSHKA'S RECIPE

Reg. No. 2,479,287

Filed: December 7, 1999

Issued: August 21, 2001

App. Ser. No. 76-174,746

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Trademark Trial and Appeal Board U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on the date shown below:

Samuel Friedman

(Typed Name of Person Signing Certificate)

*Samuel Friedman*

(Signature)

Sept 2, 2007

(Date)

**PETITIONER'S COMBINED REPLY; AND  
OPPOSITION TO CROSS-MOTION TO COMPEL**

COMES NOW, Petitioner, FOUR SEASONS DAIRY INC. (hereinafter "Petitioner"), by and through counsel, opposing the cross motion of Registrant, INTERNATIONAL GOLD STAR TRADING CORP. (hereinafter "Registrant"), for an Order compelling Petitioner to produce documents -- some three years after



09-06-2007

Petitioner duly and timely responded and objected to Registrant's Requests for Production and Interrogatories.

#### PROCEDURAL HISTORY

In its May 21, 2007 Order, the Board, among other things, (A) denied Registrant's motion to reopen discovery, (B) found that Registrant's failure to serve timely responses to Petitioner's first set of interrogatories, first set of document requests and first set of requests for admissions was not the result of excusable neglect; and (C) granted Petitioner's motion to compel.

#### ARGUMENT

Registrant's opposition and cross motion is unnecessarily long and complicated. In essence, Registrant claims that it is ready, willing and able to produce its responsive documents, and would already have done so had it received the appropriate telephone call.

Petitioner counters that written communications often serve as a more reliable method of memorializing communications between counsel. One such written communication, dated June 21, 2007, is attached to Petitioner's Motion for Sanctions as **Exhibit D.**

Therein, the undersigned offers Registrant's counsel a broad range of dates and times to inspect its documents at the

office of counsel for Registrant. A number of written communications were received from counsel for Registrant, but to the best of my recollection there was no written or verbal communication from Registrant's counsel that agreed to any date or any time for the inspection. Indeed, each communication conditioned Registrant's production of documents -- as mandated by the Board -- on an exchange of documents, whereas the Board denied Registrant's motion to re-open discovery.

In essence, Registrant claims that the parties should be treated equally, when it was Registrant, not Petitioner that defaulted in serving Answers and Objections to discovery. Registrant has made no showing that it is entitled to have its default swept under the rug.

While Registrant has now served responses and objections to Petitioner's aforementioned discovery demands, it has willfully failed and refused to permit Registrant to inspect and copy the materials, or in the alternative to produce copies, as provided for in Fed.R.Civ.P. 34(b), Fed.R.Civ.P. 33(b) and Trademark Rule 2.120(d)(2).

On June 29, 2007 Petitioner further served a letter upon counsel for Registrant demanding inspection and/or production of documents as set forth in the Board's May 21, 2007 (A true copy of the letter is annexed to Petitioner's Motion as

Exhibit F). Therein, the undersigned again declined to negotiate Registrant's compliance with the Board's Order; and expressed the view that Petitioner is not required to exchange documents after the Board denied Registrant's motion to reopen discovery and granted Petitioner's motion to compel. Registrant thereafter sent further correspondence demanding an exchange, but it has not produced any documents.

Petitioner respectfully submits that this Board's Order of May 21, 2007 is unambiguous in that it compels Registrant's compliance with mandated discovery; and does not condition it upon Petitioner's exchange of documents. The sole case cited by Registrant, Nobelle.com LLC v Qwest Communications Int'l Inc., 66 U.S.P.Q.2d 1300 (TTAB 2003) is inapposite in that counsel therein did not condition its compliance with the Order of the Board upon an "exchange" of discovery.

Petitioner in good faith believes that it is not required to "exchange" documents with Registrant, in view of Registrant's default. However, if this is incorrect Petitioner will promptly make its documents available for inspection. However, in this scenario, Registrant should be compelled to produce its documents first, as will be explained below.

In 2004, Petitioner timely responded to Registrant's discovery demands and offered Registrant the opportunity to

inspect and copy pursuant to Rule 2.120(d) of the Trademark Rules and Fed.R.Civ.P. 26(b). True copies of Petitioner's Responses and objections to Registrant's First Set of Discovery, served February 24, 2004 are annexed to Petitioner's Motion for Sanctions as **Exhibit H**. Upon information and belief, counsel for Registrant never availed itself or requested the opportunity to avail itself of the opportunity to inspect and copy, and it therefore waived, relinquished and abandoned its right to do so.

In view of the procedural history of this proceeding, wherein Petitioner has provided timely objections and responses, whereas Registrant delayed for three years, the Petitioner is skeptical of Registrant's insistence on an "exchange". To this end, Petitioner notes that Registrant's alleged date of first use in its Answers to Interrogatories precedes, by more than one year, its dates of first use in its Application for Registration of the subject mark. (True copies of the Registrant's Application, and its relevant answers to Interrogatories, are annexed hereto as **Exhibits A and B**, respectively.) While the foregoing comment is in no way intended to impugn the integrity of counsel, Petitioner notes that the Registrant is known in the relevant community to have employed "brass knuckles" tactics in its dealings with competitors. Petitioner merely wishes to even

the playing field by compelling Registrant to fairly comply with its discovery obligations.

CONCLUSION

The Board has entered an Order compelling Registrant to comply with its discovery obligations; and Registrant has refused to comply by unilaterally imposing unwarranted conditions upon its prospective compliance. Registrant should be sanctioned and compelled to fully answer Petitioner's First Set of Interrogatories by producing the responsive documents; and to promptly produce to Petitioner all documents and things demanded in Petitioner's Requests For Production of Documents. Furthermore, Registrant's Cross Motion to Compel should be denied. Petitioner respectfully requests such other, further and different relief as the Board deems just, proper and equitable.

Respectfully submitted,

FOUR SEASONS DAIRY, INC.

Dated: September 2, 2007

By: 

Samuel Friedman, Attorney at Law  
225 Broadway, Suite 1804  
New York, New York 10007  
Tel. (212) 267-2900  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, a true and correct copy of the foregoing PETITIONER'S COMBINED REPLY; AND OPPOSITION TO CROSS-MOTION TO COMPEL 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

September 2, 2007

Date

**EXHIBIT**

**A**

GOLD STAR-6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK APPLICATION  
CORPORATE APPLICANT

Mark : **BABUSHKA'S RECIPE**  
Applicant : International Gold Star Trading Corp.  
Address : 570 Smith Street  
Brooklyn, New York 11231  
Class : 29 (Intl.)  
Goods : Dairy products, excluding ice cream, ice milk and frozen yogurt  
First Use : September 1999  
Commerce : September 1999

**BABUSHKA'S RECIPE**



12-07-1999

U.S. Patent & TMO/tm Mail Rpt Dt. #54

**NO OCR  
TRADEMARK**  
75865702

**EXHIBIT**

**B**

**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. : Mark: **BABUSHKA'S RECIPE**  
 :  
 INTERNATIONAL GOLD STAR : Reg. No. 2,479,287  
 TRADING CORP., :  
 :  
 Registrant. :  
 :  
-----X

REGISTRANT'S RESPONSES TO PETITIONER'S INTERROGATORIES

Registrant, International Gold Star Trading Corp. ("Gold Star"), hereby responds to the Interrogatories propounded by Petitioner, Four Seasons Dairy, Inc.

General Objections

1. Registrant objects to the Interrogatories to the extent that they seek the identification of documents and/or things subject to a claim of attorney-client privilege, attorney work product or any other immunity from discovery. Any such documents and/or things will not be produced.

2. Registrant objects to the Interrogatories to the extent that they seek the identification of documents and/or things that contain confidential information of Registrant, and shall produce such documents and/or things only in accordance with a Protective Order.

3. Registrant objects to the Interrogatories to the extent that they impose obligations beyond the scope of discovery permissible under the Federal Rules of Civil Procedure, Title 37 of the Code of Federal Regulations, the TBMP or other applicable authority.

responsive to this Interrogatory.

**Interrogatory No. 26:**

Has Registrant ever been a party to any litigation or administrative proceeding, other than the present cancellation proceeding involving Registrant's Mark? If so, state all circumstances surrounding same including, without limitation, the name of the parties and identification of the proceeding, Registrant's status therein, the mark or marks involved, the type of proceeding involved, the name of the court or agency in which it was filed, the date of the filing and the file number, the ultimate disposition of the proceedings, and identify each document relating to such proceeding.

**Response:**

No.

**Interrogatory No. 27:**

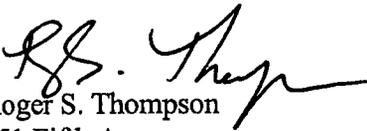
For purposes of establishing priority of use, identify the earliest date upon which Registrant intends to rely in this proceeding with respect to its use of Registrant's Mark and/or any mark that includes the terms BABUSHKA or BABUSHKINO, and produce all documents relating to such use(s).

**Response:**

Shortly after April 7, 1998. Registrant 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

Signed as to Objections  
COHEN, PONTANI, LIEBERMAN & PAVANE

By

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

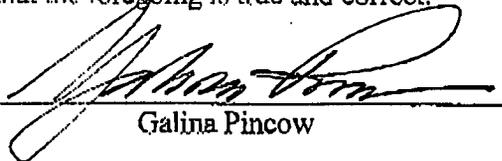
Dated: May 21, 2007

*Attorneys for Registrant,  
International Gold Star Trading Corp.*

**DECLARATION OF GALINA PINCOW**

Galina Pincow declares that she has been authorized by International Gold Star Trading Corp. to make the within Registrant's Responses to Petitioner's Interrogatories and knows the contents thereof, and that to the best of her knowledge, information and belief, after a review of corporate records and a reasonable inquiry, they are true.

I declare under penalty of perjury that the foregoing is true and correct.

  
Galina Pincow

Executed On May 21, 2007