ESTTA Tracking number: **ESTTA231333**
Filing date: **08/19/2008**

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

Proceeding	92042082
Party	Plaintiff Four Seasons Dairy, Inc.
Correspondence Address	SAMUEL FRIEDMAN 225 BROADWAY, SUITE 1804 NEW YORK, NY 10007 UNITED STATES
Submission	Other Motions/Papers
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Date	08/19/2008
Attachments	Opposition to Motion to Exend Testimony Period.pdf (10 pages)(105872 bytes)

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.,	Cancellation No.: 92042082
Petitioner,	Mark: BABUSHKA'S RECIPE
- against –	Reg. No. 2,479,287
INTERNATIONAL GOLD STAR TRADING CORP.,	Filed: December 7, 1999
Registrant	Issued: August 21, 2001

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 (ESTTA)

August 19, 2008
(Date of Electronic Filing)
Samuel Friedman
Name of Representative

Signature
August 19, 2008
Date of Signature

PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION FOR AN EXTENSION OF ITS TESTIMONY PERIOD

Petitioner Four Seasons Dairy Inc. ("Four Seasons"), by undersigned counsel, respectfully opposes the application of Registrant International Gold Star Trading Corp. ("Gold Star") for an extension of its testimony period.

Gold Star previously opposed Four Seasons' requests for extension on the stated grounds that Four Seasons should have secured subpoenas for the witnesses that it wished to depose. Gold Star should now be held to the same standard; and

its request for an extension should be denied. Gold Star did not bother to subpoena any witnesses, notice any testimonial depositions or schedule any testimony to be taken during its testimony period of July 22, 2008 to August 21, 2008. All of the foregoing could have been accomplished in advance of its testimony period, notwithstanding the push of other litigation. No satisfactory explanation has been provided for Gold Star's failure to proceed with even minimal diligence.

Four Seasons identified its witnesses in its 2004 Responses to Registrant's 2003 Interrogatories. Gold Star on the other hand refused to identify any of its witnesses in its June 20, 2007 Responses to Interrogatories that were served upon it in 2003. See Exhibit A, consisting of excerpts from Registrant's "Supplemental" Responses to Petitioner's Interrogatories.

Four Seasons requested that Gold Star provide a comprehensive list identifying each of the witnesses that it wished to depose in connection with its request to extend testimony period. (Ex. E to Gold Star's Motion to Extend). In response, Four Seasons received a list of names, without any other identifying information, which names were not revealed in response to legitimate discovery demands during the discovery period. (Ex. F to Gold Star's Motion to Extend) Apart from the names of the principals of the corporate parties, most names are unfamiliar to undersigned counsel and Four Seasons.

Previous extensions of Four Seasons' testimony period have been limited in scope to either: (a) a rescheduling of the remaining unused days in Petitioner's testimony period (Docket Entries: 48, 49 and 50); or (b) specifically limited to deposing only the witnesses that it had previously noticed for deposition (Docket Entries: 51, 52, 55 and 56).

The extensions previously granted to Four Seasons were limited to Four Seasons completing the depositions of its scheduled witnesses. It is respectfully requested that the same limitation be imposed upon Gold Star. Since Gold Star has not bothered to schedule any witnesses and has not shown why it was prevented from scheduling witnesses, it should be precluded from offering any testimony.

Gold Star has failed to demonstrate that its request for extension of time is not necessitated by its own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefore. See Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co., 55 USPQ2d 1848, 1851 (TTAB 2000). In this case, counsel for Gold Star has known for several months that its testimony period was scheduled to open July 22, 2008 and close on August 21, 2008. Had Gold Star's counsel proceeded with even minimal diligence, the scheduling of the testimony would have occurred prior to July 22, 2008. At no time prior to August 4, 2008 did counsel

for Gold Star inform the undersigned that he would seek an extension. Here, the failure of Gold Star to schedule any testimony demonstrates that its need for an extension results from its own delay and lack of diligence. As such, the application for an extension should be denied. See e.g. Luemme, Inc. v. D.B. Plus Inc., 53 USPQ2d 1758 (TTAB 1999). Similarly, counsel for Gold Star has failed to explain how an alleged theft suffered by its client prevented counsel from either scheduling or taking any testimony in this cancellation proceeding. As such, the alleged theft does not constitute good cause for an extension. See Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc., 61 USPQ2d 1542, 1543-44 (TTAB 2001).

While it is generally the policy of undersigned counsel for Four Seasons to liberally agree to requests for extensions and to extend any reasonable professional courtesy -- the continuing unreasonable and offensive behavior of counsel for Gold Star has compelled me to withhold consent in this matter. This unreasonable behavior includes counsel's prior refusals of extension requests, mischaracterizations of communications regarding extension requests and the scheduling of testimony, failures to provide full and fair responses to discovery demands, improper questioning of witnesses and failures to abide by the terms of the Protective Order in this matter. While one might argue that such conduct is to be

expected of counsel who files an affidavit of incontestability pursuant to Trademark Act Section 15 (15 U.S.C. Section 1065) while engaged in a proceeding in the Patent and Trademark Office concerning the very same mark, it should not be tolerated where, as here, it is designed to give one party to the proceedings unfair advantage over the other.

In the event that the Board is inclined to grant Gold Star an extension, it is respectfully requested that such extension be conditioned upon Gold Star providing reasonable advance identification of each of its witnesses including place of employment, address, and brief description of the proposed subject matter of the testimony. It is further requested that said testimony period open no earlier than September 20, 2008 as undersigned counsel has several other engagements during the preceeding period which were scheduled, among other things, in reasonable reliance upon the expectation that Gold Star would have concluded the bulk of its testimony by August 21, 2008.

FOR ALL THE FOREGOING REASONS, it is respectfully requested that Gold Star's motion to extend be denied.

Respectfully submitted,

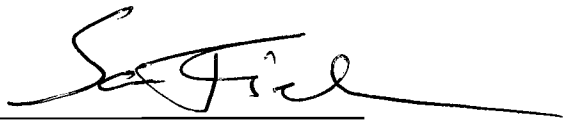
Dated: August 19, 2008 By: _____

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 OPPOSITION TO REGISTRANT'S MOTION FOR AN EXTENSION OF ITS TESTIMONY PERIOD in Cancellation Proceeding No. 92042082 entitled Four Seasons Dairy, Inc. v. International Gold Star Trading Corp., was pursuant to stipulation served by email upon the law offices of counsel for Registrant, addressed as follows:

Roger S. Thompson, Esq.
Cohen, Pontani, Lieberman & Pavane
551 Fifth Avenue
New York, New York 10176
RThompson@cplplaw.com



Samuel Friedman

August 19, 2008
Date

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

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

REGISTRANT'S SUPPLEMENTAL 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 the 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.

Interrogatory No. 29:

State the approximate percentage of sales of products bearing Registrant's Mark via the Internet versus other sales channels, and identify documents sufficient to support your response to this Interrogatory.

Response:

Please see General Objection No. 2. Subject to that Objection, and without waiving that Objection, Registrant makes no sales over the Internet.

Interrogatory No. 30:

Identify all experts employed by Registrant for purposes of this action. For each expert. identify his or her field of specialization, whether Registrant intends to call him or her as a witness, the subject matter on which he or she is expected to testify, the bases for each opinion, and identify all documents that relate in any way to the subject matter, facts, and/or circumstances as to which the expert is expected to testify.

Response:

Registrant has not as yet retained any expert.

Interrogatory No. 31:

Identify each non-expert witness that Registrant expects to testify, the subject matter on which the witness is expected to testify, each fact and/or opinion to which the witness is expected to testify, the bases for each opinion and identify all documents that relate in any way to the subject matter, facts, and/or circumstances as to which the witness is expected to

testify.

Response:

Registrant has not yet identified all of the witnesses it intends to call, nor the exact subject matter of the testimony on which any witness will testify.

Interrogatory No. 32:

Identify each person who participated in or supplied information used in answering any of the above interrogatories; beside the name of each such person, state the number of the interrogatory answer(s) with respect to which the person participated in or supplied information.

Response:

Galina Pincow, all Interrogatories.

Signed as to Objections
COHEN, PONTANI, LIEBERMAN & PAVANE

By

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

Attorneys for Registrant,
International Gold Star Trading Corp.

Dated: June 20, 2007

DECLARATION OF ROBERT PINCOW

Robert Pincow declares that he 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 his 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.

Robert Pincow

Executed On June 20, 2007