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

Proceeding	92042082
Party	Defendant International Gold Star Trading Corp.
Correspondence Address	Roger S. Thompson Cohen, Pontani, Lieberman & Pavane LLP 551 Fifth Avenue Suite 1210 New York, NY 10176 UNITED STATES docket@cplplaw.com, rthompson@cplplaw.com
Submission	Response to Board Order/Inquiry
Filer's Name	Roger S. Thompson
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Signature	/Roger S. Thompson/
Date	09/15/2008
Attachments	5060-2L Response to Order re Walewitsch Transcript.pdf ( 5 pages )(238376 bytes ) 5060-2L Response to Order re Walewitsch Transcript - Exh. A.pdf ( 1 page )(53758 bytes )



but directed counsel for Gold Star to submit a redacted copy of the transcript of the deposition transcript indicating only those portions thereof which Gold Star believed to be Confidential within thirty (30) days. Gold Star does not believe that any portion of the transcript is Confidential and that it should not have been so marked by Four Seasons, and so cannot comply with the Board's directive.

Immediately upon receipt of the Board's August 15, 2008 Order, the undersigned dispatched a copy thereof to counsel for Four Seasons (Exhibit A) and informed him of the Order, that Gold Star did not believe that any portion thereof was Confidential and that Gold Star would so inform the Board. The undersigned invited counsel for Four Seasons to respond to the Board's directive and identify those portions of the transcript which were deemed to be truly Confidential and/or commercially sensitive. As of this writing, no response has been received from counsel for Four Seasons.

Gold Star repeats its contention that no portion of the transcript is truly confidential and that it should be in the public record. Gold Star therefore seeks to have the designation of the Walewitsch transcript as "Trade Secret/Commercially Sensitive" stricken as improperly applied.

## **I. - BACKGROUND**

The parties hereto, Gold Star and Four Seasons, are competitors in the sale and distribution of food to the ethnic, particularly Russian, market. Both are located in the New York area, in Brooklyn, New York. Ms. Walewitsch is an employee and principal of Natar Foods ("Natar"), a competitor of both Gold Star and Four Seasons in that same market, also located in Brooklyn. Ms. Walewitsch was asked to testify on behalf of Four Seasons in this proceeding. She agreed to appear, without subpoena, and without counsel, for a deposition on behalf of Four Seasons.

On June 4, 2008, the testimony deposition of Natalie Walewitsch was held. Present at the deposition, without objection, was Ms. Galina Pincow, an officer of Gold Star. When the deposition transcript was served upon the undersigned counsel for Gold Star, it bore the designation "Trade Secret/Commercially Sensitive". Pursuant to ¶ 1 of the Protective Order herein, such a document is not to be shared *with the parties*, and may

be viewed only by the attorneys and experts involved with the case. However, as noted, Ms. Pincow was present for the *entire* deposition, and no mention was made at the time of the deposition that any portion thereof was confidential, trade secret or in any way commercially sensitive. Ms. Pincow's presence in the deposition room was never challenged, and at no point was she asked to step outside of the deposition room or otherwise be shielded from all or any part of Ms. Walewitsch's testimony. In sum, the *entire* deposition of Ms. Walewitsch was conducted in the presence of Ms. Pincow, presumably the one person involved from whom it would have been most important to shield any allegedly trade secret or commercially sensitive information.

Notwithstanding the complete taking of Ms. Walewitsch's testimony in Ms. Pincow's presence, when Ms. Walewitsch's transcript arrived, it bore the legend "Trade Secret/Commercially Sensitive". For reasons to be set out more fully in a Motion to Strike Ms. Walewitsch's testimony, Gold Star will move to strike Ms. Walewitsch's testimony. Briefly, after Four Seasons concluded its direct examination and secured all of the information it wanted for the record, Ms. Walewitsch walked out during her cross-examination and, even while she was present, refused to answer certain specific questions that she did not want to answer.

Ms. Walewitsch's testimony was filed as the sole Exhibit to Gold Star's letter motion of August 11, 2008.

## II. - ARGUMENT

It is respectfully submitted that the designation of the transcript of Ms. Walewitsch's deposition as "Trade Secret/Commercially Sensitive" material is improper and should be withdrawn, since the entire deposition was conducted in the presence of Ms. Pincow, and, in any event, contained no information that would be considered Trade Secret or Commercially Sensitive.

The marking of a deposition transcript as "Trade Secret/Commercially Sensitive" is primarily intended to shield the information from a competitor who might gain an advantage to having access to trade secrets or other commercially sensitive material revealed during the deposition. In this case, however, Gold Star, one of Natar's prime

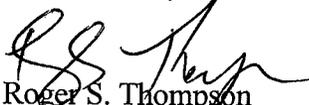
competitors already had full possession of the information by virtue of Ms. Pincow's presence at the deposition, without objection. There can be no justifiable reason to designate this information as containing trade secrets of any other commercially sensitive material, other than to gain a tactical advantage in the contest of whether Ms. Walewitsch's testimony should be stricken.

It is therefore believed that Ms. Walewitsch was able to determine for herself which portions of her testimony she preferred to shield from Ms. Pincow, and which portions she didn't care to keep away from one of her competitors, so that no material considered *by the witness to be her confidential or trade secret information* was revealed during the deposition, and all material divulged there was done so in the presence of Ms. Pincow, thereby demonstrating that the information contained in the transcript was not truly trade secret or commercially sensitive.

It is also pointed out that the deposition included testimony concerning many topics that could not, under any reasonable construction of the term "confidential" be considered to be so, including such topics as: stipulations between counsel (page 4); Natar's published price list (pages 8-10); whether counsel for Four Seasons was representing Ms. Walewitsch (page 13); correspondence between counsel for Gold Star and the witness (page 24-26); and many other matters that could not even remotely be considered to be "confidential", "trade secret" and/or "commercially sensitive". Nonetheless, Four Seasons indiscriminately marked the *entire* transcript as "Trade Secret/Commercially Sensitive". It is submitted, therefore, that the designation of Ms. Walewitsch's deposition transcript as "Trade Secret/Commercially Sensitive" should be stricken, and the entire transcript placed in the public record.

Respectfully submitted,  
COHEN, PONTANI, LIEBERMAN & PAVANE

By

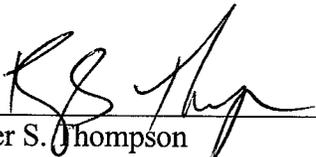
  
Roger S. Thompson  
551 Fifth Avenue  
New York, New York 10176  
(212) 687-2770  
*Attorneys for Registrant,*  
International Gold Star Trading Corp.

Dated: September 15, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Registrant's Response to Board's Order Dated August 15, 2008 Regarding Placing the Transcript of the Deposition of Natalie Walewitsch Under Seal was served by first-class mail, postage pre-paid, and by e-mail on counsel for petitioner, addressed as follows:

Samuel Friedman, Esq.  
[samfriedman@verizon.net](mailto:samfriedman@verizon.net)  
225 Broadway, Suite 1804  
New York, New York 10007

  
\_\_\_\_\_  
Roger S. Thompson  
*Counsel for Registrant*

September 15, 2008  
Date

**Roger S. Thompson**

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**From:** Roger S. Thompson  
**Sent:** Friday, August 15, 2008 10:38 AM  
**To:** 'Sam Friedman'  
**Cc:** Wanda Mason  
**Subject:** RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

**Tracking:** **Recipient**      **Delivery**  
                  'Sam Friedman'  
                  Wanda Mason    Delivered: 8/15/2008 10:38 AM

Sam:

Attached is an Order received from the TTAB granting my motion to withdraw the deposition transcript of Ms. Walewitsch from the public record, with the requirement that I file, within thirty (30) days a redacted copy of that document redacting only those portions thereof which are truly confidential and commercially sensitive. I do not believe that a single word of the transcript contains anything confidential and that it was not properly identified as "Trade Secret/Commercially Sensitive". I shall file a document with the TTAB to that effect well within the thirty day window provided.

However, since the designation was yours, I invite you to make your own submission, explaining what part of the document actually contains trade secret and/or commercially sensitive material. I will oppose the designation of any such material as trade secret or commercially sensitive.

Roger

Roger S. Thompson  
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9/15/2008