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

|                        |   |
|------------------------|---|
| Proceeding             | 92042082  |
| Party                  | Plaintiff<br>Four Seasons Dairy, Inc.   |
| Correspondence Address | SAMUEL FRIEDMAN<br>225 BROADWAY, SUITE 1804<br>NEW YORK, NY 10007<br>UNITED STATES<br>samfriedman@verizon.net   |
| Submission             | Plaintiff's Notice of Reliance  |
| Filer's Name           | Samuel Friedman   |
| Filer's e-mail         | samfriedman@verizon.net   |
| Signature              | /Samuel Friedman/   |
| Date                   | 11/04/2009  |
| Attachments            | Notice of Reliance.pdf ( 9 pages )(69972 bytes )<br>Exhibit A - Notice of Reliance.pdf ( 78 pages )(2811107 bytes )<br>Exhibit B - Notice of Reliance.pdf ( 33 pages )(161907 bytes )<br>Exhibit C - Notice of Reliance.pdf ( 47 pages )(273374 bytes )<br>Exhibit D - Notice of Reliance.pdf ( 16 pages )(682513 bytes )<br>Exhibit E - Notice of Reliance.pdf ( 4 pages )(523113 bytes )<br>Exhibit F - Notice of Reliance.pdf ( 10 pages )(1020716 bytes )<br>Exhibit G - Notice of Reliance.pdf ( 8 pages )(120885 bytes )<br>Exhibit H (part 1 of 2) - Notice of Reliance.pdf ( 20 pages )(6365867 bytes )<br>Exhibit H (part 2 of 2) - Notice of Reliance.pdf ( 11 pages )(8051180 bytes )<br>Exhibit I (i) - Notice of Reliance.pdf ( 16 pages )(296228 bytes )<br>Exhibit I (ii) - Notice of Reliance.pdf ( 22 pages )(230322 bytes )<br>Exhibit I (iii) - Notice of Reliance.pdf ( 23 pages )(236671 bytes )<br>Exhibit I (iv) - Notice of Reliance.pdf ( 96 pages )(5851019 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.,

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

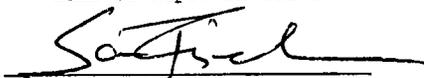
I hereby certify that this correspondence is being filed with the Trademark Trial and Appeal Board through use of the Electronic System for Trademark Trials and Appeals (ESTTA)

November 4, 2009

(Date of Electronic Filing)

Samuel Friedman

Name of Representative



Signature

November 4, 2009

Date of Signature

**PETITIONER'S NOTICE OF RELIANCE**

Petitioner, pursuant to 37 C.F.R. §2.120(j) and 2.122, and §§ 704.03, 704.07, 704.08 and 704.10 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), hereby notices its reliance on the following attached exhibits and requests that they may be made of evidence in support of the Cancellation herein.

**Exhibit A** consists of true copies of the relevant portions of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") that are prepared by the New York Department of State and published by Thomson Reuters/West. The NYCRR is divided into 22 numbered Titles that represent each of the major state agencies. Title 1 (excerpts attached as Ex. A) is entitled "Agriculture and Markets". The NYCRR is available to the public for viewing at no charge at the New York Department of State website, Division of Administrative Rules at [www.dos.state.ny.us/info/nycrr.html](http://www.dos.state.ny.us/info/nycrr.html). It is also available at every county

clerk's office in the State of New York and at many city, town and village clerk's offices, as well as in 225 libraries across the State.

The labeling and packaging requirements of dairy products and milk products are at issue in this proceeding. During its testimony period, Registrant claimed certain uses and sales of dairy and milk products in the State of New York; and sought to introduce certain labels as specimens of actual use. However, the applicable labeling requirements for dairy products as set forth in the NYCRR demonstrate that Registrant's alleged uses are and were fictitious rather than genuine. The relevant packaging and labeling requirements are set forth in Exhibit A at various citations including but not limited to 1 NYCRR § 2.4 (Ex. A, p. 27); 1 NYCRR § 2.50 (Ex. A, p. 35); 1 NYCRR § 3.4 (Ex. A, p. 44); 1 NYCRR § 7.4 (Ex. A, p. 48); 1 NYCRR § 17.18 (Ex. A, pp. 61 - 62); 1 NYCRR § 17.20 (Ex. A, pp. 62 - 63); 1 NYCRR § 221.1, *et seq* (Ex. A, pp. 66 - 76); 1 NYCRR § 259.1 (Ex. A, p. 77).

The foregoing excerpts from the Official Compilation of Codes, Rules and Regulations of the State of New York constitute printed publications and official records and are offered pursuant to 37 C.F.R. 2.122(e) and TBMP §§ 704.07 and 704.08. For ease of reference the pages in Exhibit A have been numbered 1 through 77.

**Exhibit B** consists of true copies of the relevant provisions of the 1999 Revision of Grade "A" Pasteurized Milk Ordinance (the "PMO of 1999") promulgated by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, from which copies may be obtained. The PMO of 1999 is also available to the public for viewing at no charge at the official website of the U.S. Food and Drug Administration at the following url: <http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSModelDocuments/default.htm>

As set forth in its Preface, the PMO of 1999 “[was] incorporated by reference in Federal specifications for procurement of milk and milk products; [was] used as the sanitary regulation for milk and milk products served on interstate carriers; and is recognized by the public health agencies, the milk industry, and many others as a national standard for milk sanitation.” The introductory materials, and Sections 1 through 7 inclusive of the PMO of 1999 are annexed hereto as Exhibit B.

The applicable labeling requirement for milk and milk products, including all of the goods at issue in this proceeding, demonstrate that Registrant’s alleged uses of certain labels for milk products, which labels it seeks to introduce as specimens of actual use in or about 1999, are fictitious rather than genuine. The relevant labeling requirements for milk and milk products are set forth in the PMO of 1999 in various sections including primarily Section 4 entitled “Labeling” that appears at pages 7, 8 and 9 of the PMO of 1999.

The foregoing excerpts from the PMO of 1999 constitute printed publications and official records and are offered pursuant to 37 CFR 2.122(e) and TBMP 704.07 and 704.08.

**Exhibit C** consists of true copies of the relevant provisions of the 2007 Revision of Grade “A” Pasteurized Milk Ordinance (the “PMO of 2007”) promulgated by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, from which copies may be obtained. The PMO of 2007 is also available to the public for viewing at no charge at the official website of the U.S. Food and Drug Administration at the following url: <http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSMODELDOCUMENTS/default.htm>

As set forth in its Preface, the PMO of 2007 “is incorporated by reference in Federal specifications for procurement of milk and milk products; is used as the sanitary

regulation for milk and milk products served on interstate carriers; and is recognized by the Public Health Agencies, the milk industry, and many others as a national standard for milk sanitation.” The introductory materials, and Sections 1 through 7 inclusive of the PMO of 2007 are annexed hereto as Exhibit C.

The applicable labeling requirement for milk and milk products, including all of the goods at issue in this proceeding, demonstrate that Registrant’s alleged uses of certain labels for milk products, which labels it seeks to introduce as specimens of actual use, are fictitious rather than genuine. The relevant labeling requirements for milk and milk products are set forth in the PMO of 2007 in various sections including primarily Section 4 entitled “Labeling” that appears at pages 14, 15 and 16 of the PMO of 2007.

The foregoing excerpts from the PMO of 2007 constitute printed publications and official records and are offered pursuant to 37 CFR 2.122(e) and TBMP 704.07 and 704.08.

**Exhibit D** consists of 14 third party U.S. trademark registrations for cheese, as enumerated below, each containing or consisting of designs of horse and carriage in similar style. This evidence is being submitted pursuant to 37 CFR § 2.122(e) and TBMP § 704.03(b)(1)(B). The evidence is submitted to rebut Item 2 of Registrant’s Notice of Reliance filed November 3, 2008 for U.S. Reg. No. 2,107,774 regarding Petitioner’s alleged “pattern of copying products sold by Registrant”. This exhibit demonstrates that horse and carriage designs are commonly contained within trademark registrations for dairy goods; and that Registrant’s allegations of infringement and copying by Petitioner of marks that are not at issue in this proceeding are groundless and are a desperate attempt to shift focus from the fact that Petitioner has priority with respect to the mark at issue in this proceeding.

The 14 third party U.S. trademark registrations for cheese that embody Exhibit D are enumerated below:

1. United States Trademark Registration No. 2,927,734, registered February 22, 2005 for the mark AMISH TRADITIONS plus design of horse and carriage.
2. United States Trademark Registration No. 1,044,317, registered July 20, 1976 for the mark AMISH COUNTRY THE CHEESE WORTH HAVING A PARTY FOR plus design of horse and carriage.
3. United States Trademark Registration No. 3,011,998 registered November 1, 2005 for the mark MIDDLEFIELD CHEESE plus design of horse and carriage.
4. United States Trademark Registration No. 2,298,018 registered December 7, 1999 for the design only of horse and carriage.
5. United States Trademark Registration No. 2,289,587 registered October 26, 1999 for the mark KAYEM PREMIUM QUALITY plus design of horse and carriage.
6. United States Trademark Registration No. 3,429,086 registered May 20, 2008 for the mark YODER'S IT'S GRANDMA GOOD! plus design of horse and carriage.
7. United States Trademark Registration No. 2,841,118 registered May 11, 2004 for the mark AMISH CHEESE FROM DUTCH COUNTRY DEUTSCH KASE HAUS plus design of horse and carriage.
8. United States Trademark Registration No. 1,823,858 registered February 22, 1994 for the mark BROADVIEW DAIRY SINCE 1897 plus design of horse and carriage.

9. United States Trademark Registration No. 2,785,080 registered November 18, 2003 for the mark HILLSHIRE FARM plus design of horse and carriage.
10. United States Trademark Registration No. 3,158,693 registered October 17, 2006 for the mark "FROM OHIO'S AMISH LAND" TROYER plus design of horse and carriage.
11. United States Trademark Registration No. 3,650,489 registered July 7, 2009 for the mark STEINER CHEESE LTD. plus design of horse and carriage.
12. United States Trademark Registration No. 1,408,738 registered September 9, 1986 for the mark LE RUSTIQUE LES FROMAGERIES LUTIN plus design of horse and carriage.
13. United States Trademark Registration No. 1,412,503 registered October 7, 1986 for the design only of horse and carriage.
14. United States Trademark Registration No. 3,468,228 registered July 15, 2008 for the mark MAGLIO plus design of horse and carriage.

For ease of reference the pages in Exhibit D have been numbered 1 through 15.

**Exhibit E** contains a status and title copy of Petitioner's AMISH STYLE HIGH FAT SOUR CREAM and Design trademark and U.S. Trademark Registration No. 3,339,109 for "sour cream" in International Class 29 on the principal register. This registration is being submitted in accordance with 37 CFR §2.122(d) and TBMP §704.03. Petitioner is the owner of this valid and subsisting trademark and U.S. federal trademark registration. This evidence is submitted to rebut Registrant's unsupported allegation regarding Petitioner's alleged "pattern of

copying products sold by Registrant”; and to demonstrate that horse and carriage designs are commonly contained within trademark registrations for dairy goods.

**Exhibit F** contains a status and title copy of Petitioner’s TVOROG AMISH FARMERS CHEESE plus Design trademark and U.S. Trademark Application Serial No. 77/719,928 for “soft cheese, cream cheese and cottage cheese” in International Class 29. This federal U.S. trademark application is being submitted in accordance with 37 CFR §2.122(e) and TBMP §704.03(b)(2). Petitioner is the owner of this valid and subsisting trademark and U.S. federal trademark application. This evidence is submitted to rebut Registrant’s unsupported allegation regarding Petitioner’s alleged “pattern of copying products sold by Registrant”; and to demonstrate that horse and carriage designs are commonly contained within trademark applications and registrations for dairy goods.

**Exhibit G** consists of Registrant’s Combined Declaration of Use and Incontestability under Sections 8 and 15 for the subject Registration. This Exhibit was filed by the Registrant on August 21, 2007, during the pendency of the instant cancellation proceeding. Therein, Registrant declares under penalty of perjury that there is no pending proceeding involving the owner’s right to keep the mark on the Principal Register of the U.S. Patent and Trademark Office. This evidence is being submitted in accordance with 37 CFR § 2.122(b) to establish the Registrant’s callous disregard for the solemnity of the oath of giving truthful testimony in its filings with the U.S. Patent and Trademark Office.

**Exhibit H** consists of the Office Action issued on July 12, 2005 by the United States Patent and Trademark Office in connection with the application of third party Lisa Troyer and Leeann Martin (an Ohio partnership) for the purported mark YOGURT CULTURED, U.S. Supplemental Trademark Registration No. 3,080,997. As set forth at pages 3 - 4 of Exhibit H, the U.S. Patent and Trademark Office issued a section 2(e)(1) Descriptive Refusal on the

grounds that “the proposed mark merely describes and [sic] ingredient or characteristic of the applicant’s goods and/or services.” This evidence is being submitted pursuant to 37 CFR §2.122(e) and TBMP §704.07. The evidence is submitted to rebut Item 4 of Registrant’s Notice of Reliance filed November 3, 2008 for the mark on the Supplemental Register identified as U.S. Trademark Reg. 3,080,997, which Registrant falsely claims is evidence of Petitioner’s “pattern of copying products sold by Registrant.”

**Exhibit I** consists of (i) Petitioner’s First Set of Interrogatories to Registrant, dated and duly served on December 29, 2003, (ii) Registrant’s Responses to Petitioner’s Interrogatories, sworn to May 21, 2007, (iii) Registrant’s Supplemental Responses to Petitioner’s Interrogatories sworn to June 20, 2007 (with redactions at Registrant’s request pursuant to Protective Order); and (iv) Registrant’s Documents produced on or about November 15, 2007 with bates-stamp nos. GOLD 0001 - GOLD 0095 (with redactions at Registrant’s Request pursuant to Protective Order). The Registrant’s documents were provided by counsel as all or part of its answers to Petitioner’s Interrogatories. This evidence is submitted pursuant to 37 CFR §2.120(j) and TBMP §704.10.

Dated: November 4, 2009  
New York, New York

Respectfully submitted,

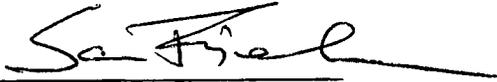


Samuel Friedman, Esq.  
225 Broadway, Suite 1804  
New York, New York 10007  
Tel: (212) 267-2900  
Attorney for Petitioner  
FOUR SEASONS DAIRY, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Petitioner's Notice of Reliance in Cancellation Proceeding No. 92042082 entitled Fours Seasons Dairy, Inc. v. International Gold Star Trading Corp., was, pursuant to stipulation served by email on counsel for Registrant, addressed as follows:

Roger S. Thompson  
Cohen, Pontani, Lieberman & Pavane  
551 Fifth Avenue  
New York, New York 10176  
Email: rthompson@cplplaw.com.



Samuel Friedman

November 4, 2009  
Date