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Filing date: **04/01/2010**

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 RThompson@cplplaw.com
Submission	Testimony For Defendant
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Signature	/Roger S. Thompson/
Date	04/01/2010
Attachments	Lerner Transcript.pdf ( 21 pages )(88923 bytes ) Registrant Ex. 113.PDF ( 2 pages )(53959 bytes )

1  
2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
3 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
4

5 FOUR SEASONS DAIRY, INC., )  
 ) Cancellation No.  
6 Petitioner, ) 92/042,082  
 )  
7 vs. ) Mark: Babushka's Recipe  
 )  
8 INTERNATIONAL GOLD STAR ) Reg. No. 2,479,287  
 TRADING CORP., )  
9 )  
 Registrant. )  
10 -----)

11  
12  
13  
14 EXAMINATION OF DMITRY LERNER  
15 New York, New York  
16 Tuesday, October 14, 2008  
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23 Reported by:  
24 KRISTIN KOCH, RPR, RMR, CRR, CLR  
25 JOB NO. 19188b

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October 14, 2008

1:30 p.m.

Examination of DMITRY LERNER, held  
at the offices of Cohen, Pontani,  
Lieberman & Pavane, LLP, 551 Fifth Avenue,  
New York, New York, before Kristin Koch, a  
Registered Professional Reporter,  
Registered Merit Reporter, Certified  
Realtime Reporter, Certified Livenote  
Reporter and Notary Public of the State of  
New York.

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A P P E A R A N C E S:

SAMUEL FRIEDMAN, ESQ.  
Attorney for Petitioner  
225 Broadway - Suite 1804  
New York, New York 10007

COHEN PONTANI LIEBERMAN & PAVANE, LLP  
Attorneys for Registrant  
551 Fifth Avenue - Suite 1210  
New York, New York 10176

BY: ROGER S. THOMPSON, ESQ.

ALSO PRESENT:

GALINA PINCOW, International Gold Star

1  
2 (Registrant Exhibit 113, Amended  
3 Notice of Deposition of Dmitry Lerner,  
4 marked for identification.)

5 \* \* \*

6 D M I T R Y L E R N E R,

7 called as a witness, having been duly sworn  
8 by a Notary Public, was examined and  
9 testified as follows:

10 EXAMINATION BY

11 MR. THOMPSON:

12 Q. Mr. Lerner, I will show you a  
13 document we have had marked as Registrant's  
14 Exhibit 113, which is a Notice of Deposition  
15 for Dmitry Lerner, and apparently I have  
16 learned I spelled your first name incorrectly,  
17 for which I apologize, but having an address of  
18 2818 West 8 Street, Brooklyn, New York. Is  
19 that you?

20 A. Yes.

21 Q. Could you please tell me are you  
22 currently employed?

23 A. Spa 88.

24 Q. Were you ever associated with a  
25 store in Brooklyn known as in English the word

1 Lerner

2 "south," which I believe in Russian is Yuzhni?

3 A. Yes, I was.

4 Q. What was your connection to that  
5 store?

6 A. I was a silent partner.

7 Q. As part, though, of your being a  
8 partner in that store, were you knowledgeable  
9 about the products that they sold there?

10 A. More or less.

11 Q. Are you familiar with any buying  
12 practices of the store?

13 A. A little bit.

14 Q. I will represent to you that there  
15 has been prior testimony that there were  
16 products sold in that store that had been  
17 imported from Russia, they were dairy products  
18 imported from Russia, that did not have proper  
19 U.S. labeling on them.

20 Are you aware of that store ever  
21 having purchased such products?

22 A. I believe not.

23 MR. FRIEDMAN: I am just going to  
24 object to the form of that question.

25 Q. Are you aware of the store -- and I

1 Lerner

2 just want to call it the store, so I don't have  
3 to try to pronounce Yuzhni too many times.

4 Are you familiar with that store  
5 ever having purchased products that had not had  
6 USDA labeling on them?

7 A. I believe not.

8 Q. And can you tell me why not?

9 A. Because it's not legal.

10 Q. So to the best of your knowledge,  
11 this store, Yuzhni, did not sell products that  
12 did not have appropriate USDA labeling?

13 A. Yes.

14 MR. FRIEDMAN: Objection. Leading.

15 Q. Are you aware of whether the store  
16 Yuzhni ever sold products with the name  
17 Babushka on it?

18 A. I don't really remember.

19 MR. THOMPSON: That's the only  
20 questioning I have.

21 EXAMINATION BY

22 MR. FRIEDMAN:

23 Q. Mr. Lerner, my name is Sam Friedman  
24 and I represent Four Seasons Dairy.

25 Are you here today pursuant to

1 Lerner

2 subpoena?

3 A. No.

4 Q. How did it come about that you are  
5 here today to testify?

6 A. Because the owner of the Gold Star  
7 asked me about they have a court with Four  
8 Seasons and if I remember about product, about  
9 this court.

10 Q. Just that last word?

11 A. Court. Not court. About the  
12 situation about the products.

13 Q. And when you say owner of Gold Star,  
14 to whom are you referring?

15 A. Robert Pincow and Galina Pincow.

16 Q. What did Robert Pincow say to you in  
17 connection with this proceeding?

18 A. Asked me to testify to tell like  
19 what's going on.

20 Q. Are you being paid for your time  
21 today?

22 A. No.

23 Q. Do you purchase any products from  
24 Gold Star?

25 A. Right now?

1 Lerner

2 Q. Now.

3 A. A little bit, yes, I do.

4 Q. What is it that you purchase from  
5 Gold Star?

6 A. Some fish, some herring. A few kind  
7 of fish.

8 Q. And where do you work now?

9 A. Spa 88.

10 Q. Is that the name of a store?

11 A. It's the name of the bath house, of  
12 the business.

13 Q. And where is Spa 88?

14 A. 88 Fulton Street.

15 Q. In what borough?

16 A. New York, Manhattan.

17 Q. What is your position with Spa 88?

18 A. Vice president.

19 Q. Do you work at Spa 88?

20 A. Yes, I am full-time manager there.

21 Q. And you serve fish at the spa?

22 A. I have a restaurant. Separate from  
23 the spa we have a restaurant inside.

24 Q. What is the restaurant?

25 A. It's call Polyanka.

1 Lerner

2 Q. Polyanka?

3 A. Polyanka.

4 Q. P-O-L-Y-A-N-K-A?

5 A. Yes, N-K-A.

6 Q. And where is that restaurant?

7 A. It's inside the spa.

8 Q. At 88 Fulton Street?

9 A. Yes.

10 Q. Are you an owner of Spa 88?

11 A. I am one of the partners.

12 Q. So you are one of the owners?

13 A. Yes, one of the owners.

14 Q. Are you a silent partner?

15 A. No.

16 Q. Okay. And you gave some testimony  
17 regarding a store called, what was it, Yuzhni?

18 A. Yes.

19 Q. How do you spell that in English?

20 A. Southern.

21 MR. THOMPSON: He is saying the word  
22 "Yuzhni" means southern and that's what he  
23 was translating for you.

24 MR. FRIEDMAN: Well, the word  
25 Yuzhni, how is the court reporter spelling

1 Lerner

2 it in English?

3 MR. THOMPSON: I believe it is

4 Y-U-Z-H-N-I.

5 Q. Y-U-Z-H-N-I, Yuzhni?

6 A. Yes.

7 Q. That is a word in Russian?

8 A. Yes.

9 Q. It means southern in English?

10 A. Yes.

11 Q. And that was the name of a store?

12 A. Yes.

13 Q. Is that store still in existence?

14 A. Yes, but a different name.

15 Q. So there is a store in the same

16 location with a different name?

17 A. Yes.

18 Q. What is the location?

19 A. 231 Brighton Beach Avenue.

20 Q. In Brooklyn?

21 A. Yes.

22 Q. From when to when did you work at

23 Yuzhni?

24 A. I never worked. I was a silent

25 partner there. From 1993 until 1999.

1 Lerner

2 Q. What did you do as a silent partner  
3 in connection with Yuzhni?

4 A. I invest money into operation and I  
5 was like silent, like investor.

6 Q. So you had no participation in the  
7 day-to-day operations of the --

8 A. No.

9 Q. You have to let me finish. I'm  
10 sorry. I am going to try to get you out of  
11 here fast, but I have to ask you to let me  
12 finish the question.

13 So you had no participation in the  
14 day-to-day operations of the store?

15 A. No, I don't.

16 Q. How often did you actually go to the  
17 store, Yuzhni?

18 A. Three, four times a week.

19 Q. What did you do while you were at  
20 the store?

21 A. Hard to say. I would see what's  
22 going on. Difficult to say. To see what's  
23 going on.

24 Q. Were you involved in ordering  
25 products for the store?

1 Lerner

2 A. No.

3 Q. Were you involved in stocking the  
4 shelves for the store?

5 A. No.

6 Q. Were you involved in determining  
7 what products would be sold in the store?

8 A. Sometime we discuss it.

9 Q. So occasional involvement; is that  
10 fair to say?

11 A. Yes.

12 Q. And who were the other partners in  
13 the store?

14 A. I have other partners. Yuri  
15 Baublitz and Irina. I don't remember her last  
16 name.

17 Q. Is Yuri Baublitz still one of the  
18 owners of the store?

19 A. Yes, I believe he now is an owner of  
20 the store.

21 Q. And is Irina still there?

22 A. No.

23 Q. What is the name of the store now?

24 A. It's New Heaven. Like Heaven or New  
25 Heaven. I don't remember exactly.

1 Lerner

2 Q. Is that the translation of the name  
3 from Russian to English or is that --

4 A. No, it is the name of it, New  
5 Heaven.

6 Q. During the period of time that you  
7 worked at Yuzhni -- I'm sorry, you didn't work  
8 there -- that you were a silent partner there,  
9 what was the business of Yuzhni?

10 A. Sell food.

11 Q. Any particular kind of food?

12 A. Plenty of different.

13 Q. All different kinds?

14 A. Russian-oriented food.

15 Q. So by 1999 you were no longer a  
16 silent partner in the store?

17 A. No.

18 Q. Do you have any documentation to  
19 substantiate that you were a silent partner in  
20 the store?

21 A. No.

22 Q. No documentation whatsoever?

23 A. No, I don't.

24 Q. Could you say that just a little  
25 louder?

1 Lerner

2 A. No.

3 Q. For how long have you known Robert  
4 Pincow?

5 A. 25 years.

6 Q. And for how long have you known  
7 Galina Pincow?

8 A. The same.

9 Q. What is your relationship to Robert  
10 Pincow?

11 A. Friends.

12 Q. Are you related in any way?

13 A. No.

14 Q. Do you have any current business --  
15 well, tell me, what has been your history of  
16 business dealings with Robert Pincow?

17 A. Mostly I was buying the product from  
18 him. I was buying the products. Before they  
19 have like wholesale of Russian product, one of  
20 the first one in the Russian market and mostly  
21 all stores which were from the Russian  
22 community buy from them, and like I believe  
23 99 percent of the stores buying product from  
24 them, if not a hundred percent.

25 Q. On what basis would you say that

1 Lerner

2 99 percent of stores buy product from them?

3 A. Because it's like years ago, not  
4 now, years ago, it was only two wholesalers.  
5 Now like it's a lot of them, but years ago I  
6 may say they were only one to start to sell  
7 Russian community with the products. Like 25,  
8 30 years ago I'm sure there was only one who  
9 was selling -- who was serving the Russian  
10 community with the products.

11 Q. Are you familiar with Beluga Caviar?

12 A. Beluga Caviar, I heard about, but  
13 it's -- Beluga Caviar, I believe it was also  
14 part of Robert Pincow. He was a partner there  
15 years ago. He was a partner and then there was  
16 some incident with them. I don't remember. We  
17 talking about 20 years ago. But I'm sure he  
18 was a partner and then they bought him out or  
19 something. But it come from there. Gold Star  
20 was a partner there.

21 Q. Are you familiar with Eastern Star?

22 A. Eastern Star, yeah, I am familiar,  
23 but they start to do business maybe 10 years  
24 after the Gold Star. They came to the Russian  
25 market 10, 15 years after them. Gold Star

1 Lerner

2 maybe they been on the market for 30 years now.

3 Q. Are you familiar with Western Star?

4 A. Also familiar with the Western Star.

5 It also supplied, but they also came to the  
6 market like 10, 15 years after the Gold Star.

7 Q. Are you familiar with Natar Foods?

8 A. Natar Foods, not really. Not  
9 really. I know the name, but I don't  
10 remember -- I don't know what kind of product  
11 they sell. Name I know, but...

12 Q. Are you familiar with Unsurpassed  
13 Foods?

14 A. What?

15 Q. Unsurpassed.

16 A. No.

17 Q. Are you familiar with Leon Sheikhet?

18 A. No.

19 Q. Are you familiar with Matreshka?

20 A. No.

21 Q. Did you ever have any day-to-day  
22 responsibilities in a store that sold Russian  
23 foods?

24 A. No.

25 Q. Never?

1 Lerner

2 A. No. Not on -- no, I never was.

3 Q. So your familiarity is based solely  
4 upon being a silent partner from 1993 to 1999?

5 A. I knew the Gold Star before that. I  
6 knew Gold Star before that. Before I went to  
7 the store, I knew Robert, and when I ask  
8 Robert, Robert gave me advice to go to the  
9 store. It was like -- I ask him what about his  
10 idea, he told me it's a good business, so he  
11 recommend me to go to the store.

12 (Continued on next page to include  
13 jurat.)

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1 Lerner

2 Q. Recommended that you invest as a  
3 silent partner --

4 A. Yes.

5 Q. -- in Yuzhni?

6 A. Yes.

7 MR. FRIEDMAN: Okay. I have no  
8 further questions at this time.

9 MR. THOMPSON: I have no questions.  
10 I thank you very much for your time and  
11 your patience, Mr. Lerner.

12 (Time noted: 1:47 p.m.)

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DMITRY LERNER

17

18 Subscribed and sworn to before me

19 this day of 2008.

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C E R T I F I C A T E

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NASSAU )

I, KRISTIN KOCH, a Notary Public within  
and for the State of New York, do hereby  
certify:

That DMITRY LERNER, the witness whose  
deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition  
is a true record of the testimony given by  
such witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage; and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 21st day of October, 2008.

-----

KRISTIN KOCH, RPR, RMR, CRR, CLR

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-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
DMITRY LERNER	MR. THOMPSON	4
	MR. FRIEDMAN	6

-----EXHIBITS-----

REGISTRANT'S	PAGE	LINE
Exhibit 113	4	2
Amended Notice of Deposition of		
Dmitry Lerner.....		



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

**AMENDED NOTICE OF DEPOSITION OF DIMITRI LERNER**

PLEASE TAKE NOTICE that, pursuant to Rule 30(a)(1) of the Federal Rules of Civil Procedure, Registrant, Gold Star International Trading Corp. ("Gold Star"), will take the deposition of Dimitri Lerner, 2818 West 8<sup>th</sup> Street, Brooklyn, New York 11224 of in the above-captioned action, at the offices of Cohen Pontani Lieberman & Pavane, LLP, located at 551 Fifth Avenue, Suite 1210, New York, New York, before a person designated by Rule 28 of the Federal Rules of Civil Procedure, by stenographic and audiovisual means, commencing on October 14, 2008 at 1:30 p.m., and continuing thereafter from day to day until completed.

FOUR SEASONS DAIRY  
INC., PETITIONER  
V  
INTERNATIONAL GOLD  
STAR TRADING CORP.  
REGISTRANT  
PENGAD 800-631-6989

CANCELLATION NO.  
92/042,082  
REGISTRANT EXHIBIT  
113  
10/14/08  
PENGAD 800-631-6989

You are invited to attend and cross-examine.

Respectfully submitted,  
COHEN, PONTANI, LIEBERMAN & PAVANE

By

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

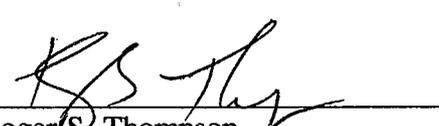
*Attorneys for Registrant,*  
International Gold Star Trading Corp.

Dated: October 10, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Notice of Deposition 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*

October 10, 2008  
Date