

ESTTA Tracking number: **ESTTA574445**

Filing date: **12/03/2013**

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

|                        |  |
|------------------------|--|
| Proceeding             | 92048732   |
| Party                  | Plaintiff<br>Altwater Gessler - J.A. Baczewski International (USA) Inc. and Altwater Gessler - J.A. Baczewski GmbH   |
| Correspondence Address | PETER S SLOANE<br>LEASON ELLIS LLP<br>ONE BARKER AVE, FIFTH FL<br>WHITE PLAINS, NY 10601<br>UNITED STATES<br>sloane@leasonellis.com, reuber@leasonellis.com, tmdocket@leasonellis.com  |
| Submission             | Other Motions/Papers   |
| Filer's Name           | Deirdre A. Clarke  |
| Filer's e-mail         | clarke@leasonellis.com, tmdocket@leasonellis.com, sloane@leasonellis.com   |
| Signature              | /deirdreclarke/  |
| Date                   | 12/03/2013   |
| Attachments            | dec of pss.pdf(71616 bytes )<br>cert of service -alt.pdf(16129 bytes )<br>Exhibit A.pdf(67899 bytes )<br>Exhibit B.pdf(94393 bytes )<br>Exhibit C.pdf(547089 bytes )<br>Exhibit D.pdf(186646 bytes )<br>Exhibit E.pdf(171318 bytes )<br>Exhibit F.pdf(259538 bytes )<br>Exhibit G.pdf(500355 bytes )<br>Exhibit H.pdf(158448 bytes )<br>Exhibit J.pdf(91099 bytes )<br>Exhibit K.pdf(113469 bytes )<br>Exhibit I.pdf(47740 bytes ) |

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

-----X  
:   
ALTVATER GESSLER – J.A. BACZEWSKI :   
INTERNATIONAL (USA) INC. and ALTVATER :   
GESSLER – J.A. BACZEWSKI LIKÖRERZEUGUNG :   
GESELLSCHAFT M.B.H. d/b/a :   
ALTVATER GESSLER – J.A. BACZEWSKI GMBH, :   
:   
Petitioners, : Cancellation No. 92048732  
:   
v. :   
:   
RONALD BECKENFELD, :   
:   
Registrant. :   
:   
-----X

**DECLARATION OF PETER S. SLOANE IN SUPPORT OF PETITIONERS' REPLY  
TO RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION FOR LEAVE  
TO AMEND THE PETITION FOR CANCELLATION**

I, PETER S. SLOANE, hereby declare and state as follows:

1. I am a Partner in Leason Ellis LLP, attorneys for Petitioners Altvater Gessler – J.A. Baczewski International (USA) Inc. and Altvater Gessler – J.A. Baczewski Likörerzeugung Gesellschaft m.b.H. d/b/a Altvater Gessler – J.A. Baczewski GmbH. I submit this Declaration in support of Petitioners' Reply to Respondent's Opposition to Petitioners' Motion for Leave to Amend the Petition for Cancellation. The facts stated herein are within my personal knowledge and are true to the best of my knowledge and belief.

2. Attached as **Exhibit A** are pages 1 and 25-27 from the transcript to the discovery deposition of Mickey Beckenfeld taken on May 8, 2008.

3. Attached as **Exhibit B** are Petitioners' Initial Disclosures Pursuant to Fed. R. Civ. P. {04718/606020-000/01106970.1}

26(a)(1) as served on May 30, 2008.

4. Attached as **Exhibit C** are pages 1, 8, 17-19, 32-33, 40-43, 58-60, 62-64, 66, 75, 91, 96-99, 128 and 159-160 from the transcript to the discovery deposition of Ronald Beckenfeld taken on August 4, 2011.

5. Attached as **Exhibit D** are pages 1 and 87-94 from the transcript to the discovery deposition of John Wilson taken on November 18, 2011.

6. Attached as **Exhibit E** are Petitioners' Responses to Respondent's Second Set of Interrogatories as served on March 18, 2013.

7. Attached as **Exhibit F** are Petitioners' Responses to Respondent's Second Set of Requests for Production of Documents as served on March 18, 2013.

8. Attached as **Exhibit G** is the Declaration of Rasiel Gessler in Opposition to Respondent's Motion for Summary Judgment as signed on May 30, 2013 and filed on May 31, 2013 (without exhibits).

9. Attached as **Exhibit H** is the Declaration of Leonie Gessler in Opposition to Respondent's Motion for Summary Judgment as signed on May 21, 2013 and filed on May 31, 2013.

10. Attached as **Exhibit I** is an e-mail from Michael Lovitz dated November 27, 2013. Respondent produced 73 pages of documents with the e-mail.

11. Attached as **Exhibit J** is Respondent's Amended Responses to Petitioners' First Requests for Admission as served by Respondent upon Petitioners on November 27, 2013.

12. Attached as **Exhibit K** is the Declaration of Harvey Monastirsky dated December 14, 2012. Respondent produced the same declaration, but labeled as confidential, on November 27, 2013. The declaration is not confidential despite the designation.

13. Elek Gessler passed away on May 9, 2008 and Mickey Beckenfeld passed away in July of 2012.

14. Respondent has not taken the discovery deposition of Rasiel Gessler yet. I agreed with my adversary Michael Lovitz that Respondent could take the discovery deposition of Rasiel Gessler outside of the discovery period and before trial.

15. Throughout this cancellation action, the parties have routinely consented to each other's requests to extend discovery and trial dates.

16. Respondent, though counsel, has consented to Petitioners moving the Board to make the discovery deposition of Mickey Beckenfeld of record at trial.

I hereby declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Date: December 3, 2013

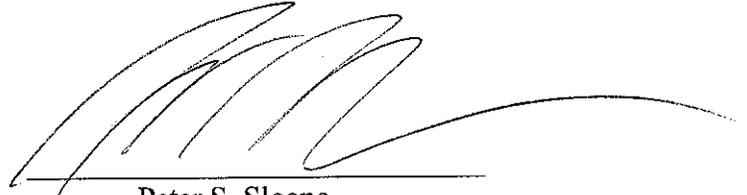


Peter S. Sloane

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing **DECLARATION OF PETER S. SLOANE IN SUPPORT OF PETITIONERS' REPLY TO RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION FOR LEAVE TO AMEND THE PETITION FOR CANCELLATION** was served upon counsel for Registrant, this 3rd day of December, 2013, by First-Class mail, postage prepaid, addressed as follows:

Michael L. Lovitz, Esq.  
BOWEN HAYES & KREISBERG  
10350 Santa Monica Blvd., Ste. 350  
Los Angeles, California 90025

A handwritten signature in black ink, consisting of several large, sweeping loops and a long horizontal tail extending to the right.

Peter S. Sloane

# Exhibit A

**COPY**

1

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

In re Registration Nos. 2,731,948

-----x

ALTVATER GESSLER - J.A. BACZEWSKI  
INTERNATIONAL (USA) INC. AND ALTVATER  
GESSLER - J.A. BACZEWSKI GMBH,

Petitioners,

CANCELLATION NO. 92048732

v.

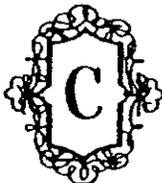
RONALD BECKENFELD,

Registrant.

-----x

May 8, 2008  
10:12 A.M.

Deposition of MICKEY BECKENFELD,  
taken by Petitioner, at the offices of Mutual  
Wholesale Liquor, 4510 South Boyle Avenue, Los  
Angeles, California 90058, before Sara U. Misa, a  
Certified Shorthand Reporter and Notary Public  
within and for the State of California.



ARTAS PASCULLO, President

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1 M. Beckenfeld

2 Q. Wilson drafted your  
3 correspondence?

4 A. Well, he may have drafted the  
5 letter and I signed it.

6 Q. Do you know whose idea it was to  
7 draft the letter?

8 A. Wilson handled it. He handled  
9 the account and 90 percent of this time was  
10 spent with Gessler. I wasn't too much  
11 involved with the details.

12 Q. Did you speak with Elek Gessler  
13 at the time this agreement was signed?

14 A. No.

15 Q. Do you know whether Wilson spoke  
16 with Gessler at the time?

17 A. I don't know.

18 Q. Do you remember what the  
19 financial condition of Baczewski was in 1992  
20 when the agreement was signed?

21 A. If I know what?

22 Q. What kind of financial situation  
23 Baczewski was in when they signed this letter?

24 A. I don't know what it is. I know  
25 they had some trouble, some bankruptcy

1 M. Beckenfeld

2 trouble.

3 Q. What do you know about those  
4 bankruptcy troubles?

5 A. Before I bought their label from  
6 Gessler, he had some trouble and he wanted to  
7 get the item placed very badly. So we  
8 decided, as much as we are against it, not to  
9 own a brand, but we produce or we import.

10 We decided we're going to put it  
11 on and put some muscles behind it. We hired a  
12 national sales manager to work with  
13 wholesalers, worked with the state control  
14 stores, worked for discount beers. See if we  
15 can place it. The only condition I would buy  
16 it if we sell it to me the label and the  
17 brand.

18 Q. Had --

19 A. We agreed that he will sell me  
20 the label if I give him an order. So we  
21 prepared the order. When I say "we," John  
22 Wilson is the one who handled it.

23 Q. Did you ever speak with Elek  
24 Gessler about these issues?

25 A. Well, there was nothing to speak

1 M. Beckenfeld

2 about.

3 Q. The first paragraph of the letter  
4 signed by you says, "This confirms and  
5 outlines the arrangements reached between us  
6 today by telephone on vodka Monopolowa - J.A.  
7 Baczewski."

8 Do you remember that telephone  
9 conversation?

10 A. Who was the telephone  
11 conversation with?

12 Q. I assume the same day the letter  
13 was written or dated August 27, 1992.

14 A. If I had talked to Gessler?

15 Q. Yes. Did you?

16 A. I don't remember.

17 Q. Wasn't Mutual selling Baczewski  
18 products prior to the date of this letter?

19 A. Yes.

20 Q. How much product was it selling?

21 A. I don't know.

22 Q. Approximately a small amount?  
23 Medium?

24 Large?

25 A. You'd have to ask Wilson.

# Exhibit B

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

In re Registration Nos. 2,731,948

ALTVATER GESSLER – J.A. BACZEWSKI  
INTERNATIONAL (USA) INC. and ALTVATER  
GESSLER – J.A. BACZEWSKI GMBH,

Petitioners,

Cancellation No. 92048732

v.

RONALD BECKENFELD,

Registrant.

**PETITIONERS' INITIAL DISCLOSURES PURSUANT TO FED.R.CIV.P. 26(a)(1)**

Petitioners, Altvater Gessler – J.A. Baczewski International (USA) Inc. and Altvater Gessler – J.A. Baczewski GmbH (“Petitioners”), by and through their attorneys, Ostrolenk, Faber, Gerb & Soffen, LLP, for their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1), hereby state as follows:

**A. Identification of Individuals Likely to have Discoverable Information**

The following individuals may have discoverable information that Petitioners may use to support their claims contained in the Petition for Cancellation:

1. Rasiel Gessler  
President  
Altvater Gessler – J.A. Baczewski International (USA) Inc. and Altvater  
Gessler – J.A. Baczewski GmbH  
7/3 Taiber Street  
Givataim, Israel 53415  
Tel.: (972) (3) 573-4413

Petitioners' ownership of the mark in dispute. This individual may be contacted through Petitioners' counsel.

2. Leonie Gessler  
Vice President  
J.A. Baczewski International (USA) Inc.  
2179 South Street  
Fort Lee, New Jersey 07024  
Tel.: 201-592-7245

Petitioners' ownership of the mark in dispute. This individual may be contacted through Petitioners' counsel.

3. Tom Gessler  
Vice President  
Altwater Gessler – J.A. Baczewski GmbH  
2716 Riverdale Avenue  
Bronx, New York 10453  
Tel.: 201-314-1021

Petitioners' ownership of the mark in dispute. This individual may be contacted through Petitioners' counsel.

4. Mickey Beckenfeld  
President  
Mutual Wholesale Liquor Inc. d/b/a International Import Export  
4510 South Boyle Avenue  
Los Angeles, California 90058

Petitioners' ownership of the mark in dispute.

5. Ronald Beckenfeld  
President  
CVC Wholesale  
Los Angeles, California 90058

Petitioners' ownership of the mark in dispute.

6. John Wilson  
General Manager  
Mutual Wholesale Liquor Inc. d/b/a International Import Export  
4510 South Boyle Avenue  
Los Angeles, California 90058

Petitioners' ownership of the mark in dispute.

7. Harvey Monastirsky  
Vice President  
Mutual Wholesale Liquor Inc. d/b/a International Import Export  
4510 South Boyle Avenue  
Los Angeles, California 90058

Petitioners' ownership of the mark in dispute.

Petitioners reserve the right to supplement, if necessary, this initial disclosure as additional facts are discovered during the pendency of this action which are presently not known.

**B. Description of Documents by Category and Location**

The following is a description, by category, of the documents that Petitioners believe, at the present time, may be used in support of their claims as set forth in the Petition for Cancellation.

1. Corporate documents.
2. Label approval documents.
3. Trademark registration documents.
4. Purchase orders, invoices and payment accountings.
5. Shipping documents.
6. Bottling labels and cartons and photographs.
7. Advertising and promotional materials.
8. Awards.
9. Internet advertising.
10. Articles.
11. Letters and e-mails.
12. Surveys.
13. Registrations in Poland and Austria.
14. Recipes.
15. Historical documents.

As presently known, relevant documents that Petitioners may use to support their claims may be found at the below locations.

Rasiel Gessler  
7/3 Taiber Street  
Givataim, Israel 53415

Altwater Gessler – J.A. Baczewski GmbH  
Strobelgasse 2/2  
Stock 13  
A-1010 Vienna, Austria

Altwater Gessler – J.A. Baczewski International (USA) Inc.  
2179 South Street  
Fort Lee, New Jersey 07024

Mutual Wholesale Liquor Inc. d/b/a International Import Export  
4510 South Boyle Avenue  
Los Angeles, California 90058

Petitioners reserve the right to supplement, if necessary, this initial disclosure as additional facts are discovered during the pendency of this action which are presently not known.

**C. Computation of Damages**

Monetary damages are not at issue in this *inter partes* proceeding before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

**D. Insurance Agreements**

Monetary damages are not at issue in this *inter partes* proceeding before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

Dated: May 30, 2008 OSTROLENK, FABER, GERB & SOFFEN, LLP  
New York, New York

By: 

Peter S. Sloane  
Angela M. Martucci

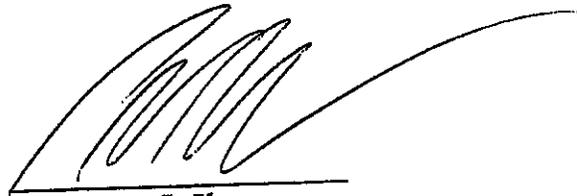
1180 Avenue of the Americas  
New York, New York 10036-8403  
Telephone: (212) 382-0700  
Facsimile: (212) 382-0888

Attorneys for Petitioners

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing **PETITIONERS' INITIAL DISCLOSURES PURSUANT TO FED.R.CIV.P. 26(a)(1)** was served upon counsel for Registrant this 30th day of May, 2008, by First-Class mail, postage prepaid, addressed as follows:

Michael L. Lovitz, Esq.  
Connolly Bove Lodge & Hutz LLP  
333 S. Grand Ave., Suite 2300  
Los Angeles, California 90071



Peter S. Sloane

# Exhibit C

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

In the Matter of Registration No. 2.731.948

-----  
ALTVATER GESSLER - J.A. BACZEWSKI  
INTERNATIONAL (USA) INC. and  
ALTVATER GESSLER - J.A. BACZEWSKI  
GMBH,

Petitioner's,

vs.

Cancellation No.  
92048732

RONALD BECKENFELD,

Registrant.

-----  
DEPOSITION OF  
RONALD BECKENFELD  
NONCONFIDENTIAL PORTIONS

August 4, 2011  
9:57 a.m.

1875 Century Park East, Suite 500  
Los Angeles, California

Stephanie Guice, CSR 13285



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Q. What do you do for a living?

A. I'm in the vitamin business -- manufacture and distribute.

Q. With what company?

A. My own company, Continental Vitamin.

Q. Is Continental Vitamin also referred to as CVC?

A. That -- right.

Q. Is it also referred to as CVC Specialties?

A. Yes.

Q. Are you are the 100 percent owner of CVC?

A. Yes.

Q. Do you also have an executive title with the company?

A. Yes.

Q. And what is that title?

A. President.

Q. Where is CVC located?

A. 4510 South Boyle, Los Angeles.

Q. You said that CVC is a vitamin company. Can you be more specific about what kinds of vitamins or other products the company sells?

A. Dietary food supplements. That covers everything.

Q. Can you give me some examples of dietary



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1 Q. And how did that transpire that these two  
2 companies are doing business at the same address?

3 A. It's a long story.

4 Q. We have time.

5 A. I started business basically out of the trunk  
6 of my car.

7 Q. When was that?

8 A. '69, 1969.

9 Q. How old are you, Mr. Beckenfeld?

10 A. 67 this month.

11 Q. Happy birthday.

12 So go on.

13 A. And it just evolved to where my dad had that  
14 building and I just started renting some space from him  
15 and it grew. From the trunk to the closet of my house  
16 to another building he had then over a period of all  
17 these years...

18 Q. Who owns the building on Boyle?

19 A. Mickey Beckenfeld.

20 Q. And is Mickey Beckenfeld your father?

21 A. Right.

22 Q. When did you organize or otherwise incorporate  
23 CVC as a company?

24 A. '69.

25 Q. Was that your first job?



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1 A. Pretty much, yeah, pretty much.

2 Q. Besides your real estate ventures has it been  
3 your only job?

4 A. Yes.

5 Q. How did you get involved in the vitamin  
6 business?

7 A. I just told you.

8 Q. Well you started selling out the trunk of your  
9 car, but what lead you to --

10 A. I've always been into health even at a very  
11 young age. Just went well for me.

12 Q. Getting back to Mutual what is the business of  
13 Mutual? What business are you involved in?

14 A. In the business to make money.

15 Q. How do they make money?

16 A. Selling liquor.

17 Q. What kind?

18 A. Spirits -- beer, wine, liquor.

19 Q. Any particular brands?

20 A. They have a few.

21 Q. Can you name at a few please?

22 A. Besides the Monopolowa Vodka?

23 Q. I'm sorry?

24 A. Am I saying it right, Monopolowa?

25 Q. Don't look to your attorney.



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- 1 A. Sure I can.
- 2 Q. Can you spell the vodka please.
- 3 A. No, I don't know how to spell it.
- 4 Q. You don't know how to spell it?
- 5 A. No.
- 6 Q. Were you referring to Monopolowa?
- 7 A. Right.
- 8 Q. What other spirits does Mutual sell besides
- 9 Monopolowa Vodka?
- 10 A. We have several wines and beers.
- 11 Q. Can you name a few?
- 12 A. Orange Boone, Peters Beer, a few others. I'm
- 13 not familiar with all of them.
- 14 Q. Are you able to name any others as we sit here
- 15 today?
- 16 A. I think there's an Islander Rum. I think a
- 17 Rothschild, Cordial.
- 18 Q. Is Rothschild a nonbeverage or --
- 19 A. Rothschild is a brandy.
- 20 Pierre Duchene is another brandy.
- 21 Q. Who is the owner of Mutual?
- 22 A. Didn't I answer that already?
- 23 Q. I'm not sure and I apologize if you did but
- 24 can you --
- 25 A. Mickey Beckenfeld.



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1 the transcript for you to fill it in.

2 A. \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_

5 Q. Why are you on the board of Mutual?

6 A. My dad loves me and that's probably the reason  
7 to be real honest.

8 Q. Do you do anything for Mutual in your capacity  
9 as a member of the board?

10 A. What I do is I have many, many, many, many  
11 conversations with my father about this business. This  
12 is what he hangs on to at his age.

13 Q. And what kind of things do you talk about in  
14 these discussions?

15 A. Just about everything in business. I'm in  
16 business. Business is business.

17 Q. Do you get compensated for your role as a  
18 board member of Mutual?

19 A. No.

20 Q. Have you ever been compensated as a board  
21 member of Mutual?

22 A. No.

23 Q. Have you ever worked for Mutual in any other  
24 capacity?

25 A. Probably about 40 years ago.



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- 1 Q. 40?
- 2 A. 40 years ago for a short period.
- 3 Q. And what were you doing at that time?
- 4 A. Sales.
- 5 Q. Sales?
- 6 A. More than 40 years.
- 7 Q. Were you out in the field selling?
- 8 A. Yes.
- 9 Q. And about how long did that stint last for?
- 10 A. Probably six months.
- 11 Q. Is this before you began selling vitamins out
- 12 of your car?
- 13 A. Yes.
- 14 Q. And why did the stint come to an end?
- 15 A. Because as I mentioned before I'm in the
- 16 health business. It kind of goes against -- the booze;
- 17 and I want to be my own boss. I wanted my own
- 18 business. That was the major driving point.
- 19 Q. Do you ever intend to be an employee or
- 20 officer of Mutual in the future?
- 21 A. I don't know.
- 22 Q. Do you own any interest in Mutual?
- 23 A. No.
- 24 Q. Do you own any -- any stocks in the company?
- 25 A. No.



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1 (NONCONFIDENTIAL TRANSCRIPT - RESUMED)

2 BY MR. SLOANE:

3 Q. Okay. Back on the nonconfidential portion of  
4 the transcript.

5 Mr. Beckenfeld, do you have any experience in  
6 the liquor business besides the short stint that you  
7 testified to about 40 years ago?

8 A. In the liquor business?

9 Q. Yes.

10 A. Being in business as long as I have, business  
11 is pretty much business and I have a lot of experience  
12 in business in general and I understand distribution  
13 and that's what Mutual does and that's what I do.

14 Q. When you say that's what you do, do you mean  
15 as part of your business in running CVC?

16 A. Absolutely.

17 Q. Do you have any more specific experience in  
18 connection with the liquor or spirits business besides  
19 a general understanding of how business and  
20 distribution works?

21 A. Through my father I mean the constant  
22 conversations for when he wasn't able to drive too well  
23 and it was like an hour to two hours every day for  
24 several years of what goes on in that company.

25 Q. Have you ever held any employment positions



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1 with any other company, besides Mutual, in the liquor  
2 or spirits business?

3 A. No.

4 Q. Have you ever been paid as a consultant or  
5 otherwise for any experience that you may have in the  
6 liquor or spirits business?

7 A. You see those checks there.

8 Q. You said those checks were provided to you by  
9 Mutual as a measure of love. Were they provided for  
10 some other reason?

11 A. I don't know how you want to interpret it.

12 Q. Well we're speaking now about your experience  
13 in the liquor business?

14 A. I'm a seasoned businessman -- liquor, shoes or  
15 whatever, I can do.

16 Q. Okay.

17 A. Seasoned, I mean seasoned --

18 Q. That's all very well and good.

19 A. -- in the liquor business.

20 Q. Let's get back to my question. Have you ever  
21 served as a consultant or otherwise been paid by anyone  
22 other than Mutual for your experience in the liquor or  
23 spirits business?

24 A. I've given advise to people and they've paid  
25 me.



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1 Q. Have you ever taken any courses in the alcohol  
2 or spirits industry?

3 A. That's a hard question to answer because  
4 through manufacturing, I manufacture liquids. Very  
5 similar. I have a laboratory. I have people that do  
6 all this work. I have a fairly good understanding and  
7 it's a pretty similar business.

8 Q. Have you ever taken any courses or had any  
9 training specifically in the -- in the spirits or  
10 liquor business?

11 A. No.

12 Q. Have you ever drank or consumed Monopolowa  
13 Vodka?

14 A. Yes.

15 Q. On what occasions?

16 A. I can't remember but I'm not much of a  
17 drinker.

18 Q. Approximately how many times have you drank  
19 Monopolowa?

20 A. Probably once or twice.

21 Q. Once or twice in the course of your life?

22 A. Correct.

23 Q. And was it five years ago? Ten year ago?

24 A. Probably somewhere in that range.

25 Q. So was it once or twice that drank Monopolowa?



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1 A. Once or twice.

2 Q. But in about the same time frame?

3 A. Probably.

4 Q. And do you remember on what occasion you drank  
5 the beverage?

6 A. No.

7 Q. Do you have any recollection of what  
8 Monopolowa tastes like?

9 A. Like I say I'm not much of a drinker and all  
10 vodka pretty much, the little that I've had, taste all  
11 the same.

12 Q. Do you claim to be the owner of the US  
13 Trademark Registration for the mark Monopolowa for  
14 vodka?

15 A. Yes.

16 Q. How did you come to own the Trademark  
17 Registration?

18 A. My dad basically gave it to me.

19 Q. When did he give it to you?

20 A. In 2007.

21 Q. Why did he give it to you?

22 A. Because he loves me. I'm his son.

23 Q. Do you know what products the registration  
24 covers?

25 A. Yes.



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1 A. 1535 Carla Ridge.

2 Q. In what city?

3 A. Beverly Hills.

4 Q. Is your father still living there today?

5 A. Correct.

6 Q. Do you have any other siblings besides Linda?

7 A. No.

8 Q. Back when you were contemplating agreeing to  
9 the assignment of the registration from Mutual did the  
10 idea of Mutual receiving a license back ever come up?

11 A. Yes.

12 Q. And when was that? When did that issue come  
13 up?

14 A. When he transferred it over it licensed back  
15 to Mutual.

16 Q. "He" being your father?

17 A. My father.

18 Q. Whose idea was it to include a license back as  
19 part of the assignment?

20 A. If I'm not wrong it was his.

21 Q. Did he tell you why he wanted a license back?

22 A. That's just good business.

23 Q. What's the purpose of a license back?

24 A. Just a sound business move.

25 Q. In what way?



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1 A. They have protection there.

2 Q. What kind of protection?

3 A. Well, they retain the distribution of the  
4 product.

5 Q. "They" being who?

6 A. Mutual Wholesale.

7 Q. Was it your understanding that Mutual would  
8 not be able to distribute the product without a license  
9 back?

10 A. I imagine they still could but I think it's  
11 the proper way to do things.

12 Q. Do you know whether the license back was made  
13 a condition of the transfer?

14 A. Say that again?

15 Q. Would Mutual have transferred the mark if you  
16 did not simultaneously agree to license back the  
17 Trademark?

18 A. Still would have transferred.

19 Q. What were the terms of the license back?

20 A. I don't have a copy of it here but I'm pretty  
21 sure they can use it as long as they want.

22 Q. You said "they," are you referring to Mutual?

23 A. Mutual, correct.

24 Q. And what does the 30-day notice provision  
25 mean?



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1           A.    I don't have the provision in front of me.  
2           There's certain provisions they have to adhere to.  
3           That's good business practices.

4           Q.    What kind of provisions?

5           A.    I just said it.  Good business practices.

6           Q.    Can you --

7           A.    That encompasses good business practices.

8           Q.    Tell me what you mean by "good business  
9           practices"?

10          A.    Basically the way they conduct their business.  
11          Doing everything properly.

12          Q.    Were there any terms of the license agreement  
13          that pertained directly to the Trademark Monopolowa?

14          A.    I don't have it in front of me so I can't  
15          remember everything.

16          Q.    To the best of your recollection?

17          A.    Say it again?

18          Q.    To the best of your recollection what would  
19          some of those good business practices have been as they  
20          relate to the Trademark Monopolowa?

21          A.    Well the -- as far as merchandise, that's in  
22          good shape, the specs are all there, meeting its  
23          alcohol content potencies, running a good show.

24          Q.    Would you know if Mutual didn't run a good  
25          show?



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1 take place?

2 A. I think prior to the assignment if I'm not  
3 wrong.

4 Q. Can you give me a year?

5 A. Prior to 2007.

6 Q. Was it prior to 2000?

7 A. No, I don't think so.

8 Q. Do you have any other specific information  
9 regarding such an alleged quality control incident?

10 A. It's not alleged. It was a quality control  
11 problem there.

12 Q. Tell me what you know about this --

13 A. What I know is they were --

14 Q. Excuse me.

15 A. I'm sorry.

16 Q. Let me finish my question.

17 Please tell me what you know about this  
18 quality control incident?

19 A. That the plant was putting out -- the alcohol  
20 content was a little low, low fills. Just the QC  
21 wasn't up to what I would call snuff. That's probably  
22 from there -- they were a small plant and they had  
23 growing pains.

24 Q. Did Mutual ever supply you with anything in  
25 return for the license?



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1 A. As of what?

2 Q. Any consideration for the license.

3 A. Monies?

4 Q. Yes.

5 A. No.

6 Q. Anything?

7 A. Just the \$10.

8 Q. I'm not referring to the assignment, I'm  
9 referring to the license?

10 A. No.

11 Q. Was there any other consideration apart from  
12 money that Mutual gave you in return for the license  
13 back?

14 A. Just with my father the conversation about the  
15 business. Nothing -- no monetary.

16 Q. Explain what you mean?

17 A. We would talk about the business, what's going  
18 on.

19 Q. So in return for your conversing with your  
20 father about the business, you attribute that as some  
21 of the consideration supplied by Mutual in return for  
22 the license back?

23 MR. LOVITZ: I just want to object because of the  
24 use of the legal term "consideration," that I don't  
25 know if the witness understands what's meant by --



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1       legally by "consideration" when it comes to a contract.  
2       He's not an attorney; as to just two individuals  
3       showing consideration for each other.

4             MR. SLOANE:   Okay.

5       BY MR. SLOANE:

6             Q.    I wasn't referring to consideration as between  
7       two individuals.  I'm referring to something of value?

8             A.    No.

9             Q.    Okay.  So just to be clear it's your testimony  
10       that Mutual did not supply you with anything of value  
11       in return for the license back?

12            A.    No.

13            Q.    What is your understanding of the value of the  
14       brand Monopolowa for vodka at the time of the license?

15            A.    Say that again?

16            Q.    What did you think the brand Monopolowa was  
17       worth when you licensed it to Mutual?

18            A.    That's a very hard question to really answer.  
19       There's so much variables in there.  It's worth  
20       something.  Exact figure I don't know.  You'd have to  
21       get an expert on that.  I'd be speculating.

22            Q.    Is it worth more than -- was it worth back in  
23       2007 more than \$100?

24            A.    Obviously.

25            Q.    Was it worth more than \$1,000?



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1 call them. There's a lot of money and it devalues the  
2 value in my opinion. Greatly.

3 Q. Was the license agreement involving the  
4 Trademark Monopolowa ever put in to writing?

5 A. Say that again?

6 Q. Was the license back ever put in to writing?

7 A. Back when?

8 Q. Back in 2007. Back when you licensed rights  
9 for Trademark Monopolowa for vodka, was that license  
10 ever put into a written instrument, ever put down on  
11 paper?

12 A. I'm not sure.

13 Q. Do you recall ever seeing a license agreement  
14 between you and Mutual involving the Trademark  
15 Monopolowa?

16 A. I don't know. I can't remember that.

17 MR. SLOANE: Off the record.

18 (A discussion was held off the record.)

19 MR. SLOANE: We'll mark as next exhibit a  
20 three-page document Bates stamped BEC0191 to 193. It's  
21 labeled as "Confidential" but I've conferred with  
22 Mr. Lovitz and while it's agreed that to the extent  
23 that we may file such an agreement with Trademark  
24 Trials Appeals Board the testimony about the agreement  
25 shall not be considered confidential.



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1 (NONCONFIDENTIAL TRANSCRIPT - RESUMED)

2 MR. SLOANE: Okay. Back on the nonconfidential  
3 portion.

4 BY MR. SLOANE:

5 Q. Did -- Mr. Beckenfeld, does the license  
6 agreement refer to any considerations applied in return  
7 for the license?

8 A. I haven't really looked at it that carefully  
9 and I don't believe so.

10 Q. I direct your attention to the first page.  
11 There's a reference to \$10?

12 A. Correct, yeah.

13 Q. Do you recall who came up with the \$10?

14 A. If I'm not wrong the attorney. We've already  
15 covered this once already.

16 Q. Well, we talked about things in connection  
17 with the assignment. Now we're referring specifically  
18 to the license back.

19 A. I already talked about the \$10.

20 Q. The \$10 that you say that you gave to  
21 Mutual --

22 A. To my father.

23 Q. That was in connection with the license?

24 A. This is the second time around, the same  
25 question.



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1 A. No.

2 Q. Why is there such a disparity in prices  
3 between vodkas that you find in the marketplace if the  
4 recipe is so easy to duplicate?

5 A. It's all in the marketing.

6 Q. Do all vodkas taste the same?

7 A. I'm not qualified to answer that. To me none  
8 of them taste good.

9 MR. SLOANE: Off the record.

10 (A discussion was held off the record.)

11 BY MR. SLOANE:

12 Q. Mr. Beckenfeld, I will mark as Exhibit 11  
13 the -- a four-page document beginning with the Bates  
14 No. BEC 118 to 121. It's designated as confidential.  
15 Mr. Lovitz stipulates to including this on the  
16 nonconfidential portion of the transcript to the extent  
17 that it's filed with the Trademark Trial and Appeal  
18 Board we shall do so under seal.

19 (Confidential Exhibit RB11 was marked for  
20 identification.)

21 BY MR. SLOANE:

22 Q. Mr. Beckenfeld, have you seen this document  
23 before?

24 A. No.

25 Q. Have you ever had any dealings with the



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1 action in a dispute without your express written  
2 consent?

3 A. No, I was not aware.

4 Q. Did Mutual ever seek your consent in  
5 connection with a settlement agreement between  
6 Altvater Gessler and Horwatz?

7 A. I knew it was going on. I don't know if it  
8 was quite in that terminology.

9 Q. Well, did anyone ask for your permission to  
10 enter into an agreement such as this?

11 A. No.

12 Q. Have you ever approved of the way Monopolowa  
13 has the Trademark displayed on the vodka sold by  
14 Mutual?

15 A. Say it again?

16 Q. Have you ever approved the display, the look,  
17 of the Trademark Monopolowa on vodka sold by Mutual?

18 A. Have I approved of it?

19 Q. Have you ever approved, have you ever reviewed  
20 and approved labeling for Monopolowa?

21 A. I've looked at the label.

22 Q. Have you ever approved it, said yes this is  
23 acceptable to you?

24 A. It's acceptable.

25 Q. Have you ever conveyed that acceptance or



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1 approval to anyone?

2 A. Well just in general talking. It's acceptable  
3 packaging. Is that what you mean?

4 Q. In a more formal sense have you ever approved  
5 the labeling for Monopolowa Vodka?

6 A. Well, I looked at it, yeah, sir.

7 Q. Have you ever conveyed such approval in  
8 writing?

9 A. No.

10 Q. Have you ever entered the premises of Mutual  
11 for the purpose of inspecting the license products?

12 A. I have looked at bottles that were short fills  
13 and so on and so forth.

14 Q. Where was that done?

15 A. Mr. Wilson's office.

16 Q. When was that done?

17 A. Probably around 2007 or 8. Right in that area  
18 of dates were when they were having the problems with  
19 the quality control. I thought it was earlier. There  
20 was some I think even prior than this later stuff.

21 Q. Apart from that incident have you ever  
22 formally inspected the licensed products?

23 A. Have I looked at the products, oh, sure.

24 Q. Have you inspected the products for purposes  
25 as contemplated by the license agreement?



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1 MR. LOVITZ: Asked and answered.

2 THE WITNESS: Excuse me?

3 BY MR. SLOANE:

4 Q. Have you ever inspected the product for the  
5 purposes contemplated by the license agreement?

6 A. I imagine so.

7 Q. Do you have any specific recollection of doing  
8 so?

9 A. There's always bottles of it laying around,  
10 you're always looking. It's around.

11 Q. Anything more formal than that?

12 A. I've been in the warehouse. I've looked at  
13 them.

14 Q. Was it in connection with the license  
15 agreement that you made such inspections?

16 A. Probably due in part.

17 Q. Have you ever been involved in the label  
18 approval process?

19 A. On this product here?

20 Q. Yes, on Monopolowa Vodka?

21 A. No.

22 Q. If you wouldn't mind looking back at the  
23 license agreement which we've marked as an exhibit.

24 A. What number is it?

25 This one here. Seven. It's been a long time.



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1 Q. I think you testified that you'd never seen  
2 this agreement before?

3 A. Well, I didn't -- that's not true. I said I  
4 signed it so obviously I saw it.

5 Q. Since signing the agreement have you ever  
6 reviewed the license agreement?

7 A. I don't think so.

8 Q. Paragraph 3 of the license agreement says  
9 "Licensee may use the Trademark only on licensed  
10 products whose quality is in all respects is  
11 satisfactory to Licensor."

12 I asked before whether you approved or  
13 inspected the product in connection with the license  
14 agreement. Now that you're looking specifically at the  
15 license agreement do you remember the reasons why you  
16 inspected the product or -- strike that. Strike the  
17 whole thing.

18 Do you receive any ongoing continuing  
19 royalties from Mutual under the license?

20 A. You've already asked me that?

21 Q. What was your answer?

22 A. No.

23 Q. How do you intend to benefit from the  
24 assignment of the Trademark to you?

25 A. To see Mutual do well makes me feel good. Not



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1 Q. How would you describe the characteristics of  
2 Monopolowa Vodka?

3 A. Like I say I'm not -- I'm not a drinker so I  
4 couldn't be an expert. That's for sure.

5 Q. From the one or two times that you drank  
6 Monopolowa, do you recall what it taste like?

7 A. It just tastes like vodka and I couldn't tell  
8 the difference from any vodka.

9 Q. Is there anything special to your knowledge  
10 about the bottles on which Monopolowa Vodka is sold.

11 A. It's pretty much an old fashion standard  
12 bottle. Nothing spectacular.

13 Q. Anything else?

14 A. That's about it. It's a standard bottle used  
15 in the industry for I think several types of brands of  
16 different types of liquors.

17 Q. I believe that you testified that it's the  
18 Horwatz' who manufacture Monopolowa Vodka. Have you  
19 ever met with the Horwatz'?

20 A. No.

21 Q. Have you ever spoken with them?

22 A. No.

23 Q. Have you ever corresponded with the Horwatz'?

24 A. No.

25 Q. Do you know who oversees the production of



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1 It's in your liter.

2 Q. What's your understanding of what this is?

3 A. It could be a lot of things. It's pretty  
4 ambiguous. This could be an advertising piece, it  
5 could be something that you're sending off to somebody  
6 to show them how your product looks. You can use it  
7 any way you want to use it. It's just a piece of paper  
8 with the name of a company on it. It's not attached to  
9 anything.

10 Q. I'll put before you a document that we'll  
11 label as Exhibit 23.

12 (Exhibit RB23 was marked for identification.  
13 A copy of which is attached hereto.)

14 BY MR. SLOANE:

15 Q. Are you familiar with this document,  
16 Mr. Beckenfeld?

17 A. You showed it to me earlier if I'm not wrong.

18 Q. Is this what you understand to be the label  
19 for Monopolowa Vodka?

20 A. I think this -- this might be a little bit of  
21 change from the other one. I'd have at to look at it,  
22 look back. It's a subtle change. I'm not sure.

23 Q. I put before you the document from the  
24 Declaration of Use. Does this refresh your  
25 understanding of what the label shown in Exhibit 23 is?



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1           A.     So it's still the same brand.  You move things  
2 around, subtle changes.

3           Q.     Which one is the more current version?

4           A.     I really don't know.

5           Q.     How come you don't know?

6           A.     Because I don't look at it every day.  This is  
7 not what I do for a living.  It doesn't overexcite me.

8           Q.     What doesn't overexcite you?

9           A.     I'm not in this business.  This is not what I  
10 do for a living.  This is part of what I do.  It's  
11 there and I own it.  A lot of people own things.  It  
12 doesn't mean you're involved in the day-to-day  
13 operations or every little detail made.

14          Q.     Isn't a Trademark like any other asset?

15          A.     Trademark --

16          MR. LOVITZ:  Calls for a legal conclusion.

17          THE WITNESS:  It has asset, sure.

18          BY MR. SLOANE:

19          Q.     Do you know if there's any differences between  
20 Trademarks and any other kinds of physical assets?

21          A.     What do you mean by "physical assets"?

22          Q.     A car?

23          A.     Well, I think a Trademark to me would be  
24 much -- a Registered Trademark if it's a good product  
25 would be worth more than a car.  To me it would.



# Exhibit D

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALTVATER GESSLER-J.A. BACZEWSKI,  
GMBH, et al.,

Plaintiffs,

vs.

No. Cancellation  
92048732 (TTAB)

RONALD BECKENFELD,

Defendant.

~~~~~

DEPOSITION OF  
JOHN F. WILSON  
NONCONFIDENTIAL PORTION

November 18, 2011  
10:49 a.m.

1875 Century Park East  
Suite 500  
Los Angeles, California

Martin Spee, CSR 10303



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1 Wilson 7 is a fax transmittal sheet from you to  
2 Rasiel Gessler dated October 15, 2001.

3 (Whereupon, Exhibit 7 was marked for  
4 identification.)

5 MR. SLOANE:

6 Q. In this letter you wrote that Mickey  
7 Beckenfeld wanted a meeting with Elek Gessler and  
8 Rasiel Gessler to discuss Monopolowa; is that  
9 correct?

10 A. Correct, yeah.

11 Q. Is it not a fact that the meeting was  
12 requested by Mickey Beckenfeld because Rasiel  
13 Gessler insisted that Monopolowa Vodka, or that the  
14 Monopolowa brand, belonged to Altvater Gessler and  
15 Altvater Gessler had the right to determine the  
16 prices for its products?

17 A. I can't remember any such. When it  
18 came to price increases, as I mentioned to you, the  
19 feeling of Mutual, including Mickey and myself, was,  
20 we got to discuss this with the Gesslers because  
21 this is injurious to our business and so on so  
22 forth.

23 Now, at the time, 10 October 2001, it may be  
24 that Mickey had a conversation with Rasiel or his  
25 father regarding other matters; I don't know.



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1 Oftentimes, Mickey would have a discussion that need  
2 not be, you know, in party to me unless it was  
3 necessary.

4 Q. When was the first time you recall  
5 Rasiel Gessler insisting that Monopolowa belonged to  
6 Altvater Gessler?

7 A. Okay. It was in a telephone  
8 conversation that we had, and I can't remember the  
9 date, but obviously it was prior to the beginning of  
10 the process to register Monopolowa with the Trade  
11 Bureau.

12 Q. Do you recall approximately when that  
13 telephone conversation took place?

14 A. No. Again, I can't even remember when  
15 we applied for the registration. I know it's  
16 somewhere in here.

17 Q. If I told you it was in 2002, would  
18 that refresh your recollection?

19 A. It would be, perhaps, maybe around  
20 this time or --

21 Q. Around the time of the October 15 fax?

22 A. Yeah, yeah. That is probably what  
23 prompted Mickey to make the statement he has here,  
24 that was down for a general meeting regarding  
25 Monopolowa. That may have been, you know, part of



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1 the impetus. I don't know.

2 Q. The next exhibit I'll introduce is  
3 Wilson 8. It's a letter dated November 6, 2001 from  
4 Rasiel Gessler to your attention.

5 (Whereupon, Exhibit 8 was marked for  
6 identification.)

7 MR. SLOANE:

8 Q. Do you recall receiving this fax or  
9 letter, Mr. Wilson?

10 A. I'm sure I did, yes.

11 Q. Does it not say at the end of the  
12 letter that, quote, I can let you know that we  
13 intend on making the clear labels available to  
14 Mutual, although, in all honesty, we hope that it  
15 will be worth the risk and investment. Do you see  
16 that, Mr. Wilson?

17 A. I do, yes.

18 Q. I'll introduce a responsive letter  
19 dated November 14, 2001 from yourself to  
20 Mr. Gessler.

21 (Whereupon, Exhibit 9 was marked for  
22 identification.)

23 MR. SLOANE:

24 Q. The court reporter has marked this as  
25 Wilson 9.



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1 Is this your letter, Mr. Wilson?

2 A. Yes.

3 Q. You wrote at the end that you, quote,  
4 feel confident there's no risk whatsoever in making  
5 the move, unquote; is that correct?

6 A. Correct, yeah.

7 Q. What risk in investment was undertaken  
8 by Altvater Gessler?

9 A. Well, again, I'm not quite sure, but I  
10 have to imagine that there was a cost in the design  
11 of the label. There was a cost in the production of  
12 the labels.

13 Q. Isn't true that Altvater Gessler  
14 solely undertook to arrange for the production of  
15 the clear labels in Austria?

16 A. I would have to say yes to that, yes.

17 Q. The next exhibit I'll introduce is a  
18 letter dated January 2, 2002 from Mr. Gessler to  
19 yourself.

20 (Whereupon, Exhibit 10 was marked for  
21 identification.)

22 MR. SLOANE: The court reporter has  
23 marked this as Exhibit 10.

24 (Pause in the proceedings.)

25 MR. SLOANE:



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1 Q. Do you recall this letter, Mr. Wilson?

2 A. Yes.

3 Q. In fact, the next exhibit we'll  
4 introduce is a responsive letter dated January 4,  
5 2002 acknowledging receipt of the January 2  
6 correspondence, and we'll mark this as Wilson 11.

7 (Whereupon, Exhibit 11 was marked for  
8 identification.)

9 MR. SLOANE:

10 Q. Is that your letter, Mr. Wilson?

11 A. It is, yes.

12 Q. Turning back to Exhibit 10, did you  
13 discuss this January 2nd letter with Mickey  
14 Beckenfeld?

15 A. (No audible response.)

16 Q. It wouldn't be reflected in the  
17 letter. Do you have any independent recollection of  
18 discussing it with Mr. Beckenfeld?

19 A. No, but I'm sure that -- I shouldn't  
20 say I'm sure -- but letters of this nature would  
21 always be -- Mr. Beckenfeld would be made aware of  
22 the gist of them, yes.

23 Q. To try to refresh your recollection  
24 regarding this letter specifically. I direct your  
25 attention to paragraph 3, which states that Altwater



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1 Gessler has decided not to raise prices paid by  
2 Mutual for our products.

3 Do you recall whether or not Mickey  
4 Beckenfeld had anything to say about that paragraph?

5 A. No, I don't.

6 Q. Is it not a fact that Rasiel Gessler  
7 told you that Altvater Gessler had the absolute  
8 right to set its prices to Mutual?

9 A. I -- I don't remember the specific  
10 discussion on that part. But if he did, why would I  
11 object to it since he was the supplier? Give me the  
12 question again, please.

13 Q. Sure. Isn't it true that Rasiel  
14 Gessler told you that his company had the absolute  
15 right to set pricing?

16 A. Well, any supplier has the right to  
17 set pricing, but whether it's acceptable to the  
18 person that he's setting the prices to is another  
19 matter.

20 Q. Was Mickey Beckenfeld ever made aware  
21 that Rasiel Gessler claimed that Monopolowa Vodka or  
22 that the Monopolowa brand belonged to Altvater  
23 Gessler?

24 A. Yes, he was, yeah.

25 Q. Who made him aware?



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1 A. I did.

2 Q. And what did you say exactly?

3 A. I can't remember word-for-word, but  
4 I'm sure I -- whatever the conversation was with  
5 Altvater Gessler in the sense that they were making  
6 this claim, I would tell Mickey about it.

7 Q. And how did Mickey respond to those  
8 claims?

9 A. He would invariably say we have the  
10 agreement. We have the letter from Gessler signed  
11 by Elek that transfers the ownership of the brand to  
12 Mutual Wholesale.

13 Q. Isn't it true that Mutual applied to  
14 register Monopolowa as a trademark after these  
15 arguments between yourself and Rasiel Gessler?

16 A. That's certainly true, yes.

17 Q. And why was the decision made to  
18 register the trademark?

19 A. I felt that the -- first of all, that  
20 Mutual should be protected as best they could with  
21 regard to the brand. And I felt it was important to  
22 register the product even in spite of the fact that  
23 Rasiel had indicated they'd already registered the  
24 product.

25 And I found out they hadn't registered



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1 Monopolowa, but rather they had registered Altvater  
2 Gessler.

3 Q. At that time in 2002, had Mutual ever  
4 applied to or registered any other trademarks with  
5 the U.S. Patent and Trademarks office?

6 A. Not to my knowledge, no.

7 MR. SLOANE: Let's take a break.

8 (A recess was taken at 1:12 p.m., and  
9 back on the record at 1:31 p.m.)

10 MR. SLOANE: Back on the record.

11 We'll introduce Wilson Exhibit 12.

12 (Whereupon, Exhibit 12 was marked for  
13 identification.)

14 MR. SLOANE:

15 Q. I will represent that Wilson Exhibit  
16 12 is a five-page document. On the top of the first  
17 page it states, "Applicant, Mutual Wholesale Liquor,  
18 Inc., dba International Import/Export." And the  
19 last of the five pages is actually numbered page 3.

20 Are you familiar with this document,  
21 Mr. Wilson?

22 A. Yes, I am.

23 Q. What is this document?

24 A. It's a communication from the attorney  
25 who handled the trademark registration for Mutual



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# Exhibit E

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

|                                     |          |                                    |
|-------------------------------------|----------|------------------------------------|
| <b>ALTVATER GESSLER – J.A.</b>      | <b>:</b> | <b>Cancellation 92048732</b>       |
| <b>BACZEWSKI</b>                    | <b>:</b> |                                    |
| <b>INTERNATIONAL (USA) INC. and</b> | <b>:</b> |                                    |
| <b>ALTVATER GESSLER – J.A.</b>      | <b>:</b> |                                    |
| <b>BACZEWSKI GMBH,</b>              | <b>:</b> |                                    |
|                                     | <b>:</b> |                                    |
| <b>Petitioners,</b>                 | <b>:</b> | <b>Registration No.: 2,731,948</b> |
|                                     | <b>:</b> |                                    |
| <b>v.</b>                           | <b>:</b> |                                    |
|                                     | <b>:</b> |                                    |
| <b>RONALD BECKENFELD,</b>           | <b>:</b> |                                    |
|                                     | <b>:</b> |                                    |
| <b>Respondent.</b>                  | <b>:</b> |                                    |

**PETITIONERS' REPOSES TO RESPONDENT'S SECOND SET OF  
INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Petitioners, Altvater-Gessler – J.A. Baczewski International (USA) Inc. and Altvater Gessler – J.A. Baczewski GmbH, through their attorneys, Leason Ellis LLP, hereby respond to Respondent's Second Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

1. Petitioners object to Respondent's interrogatories to the extent that they seek information protected by the attorney-client privilege and/or work-product doctrine.
2. Petitioners object to Respondent's interrogatories to the extent that they are overly broad, unduly burdensome, seek irrelevant information and/or are not reasonably calculated to lead to the discovery of admissible evidence.
3. Petitioners object to Respondent's interrogatories to the extent that they seek information that does not exist and/or is not in the custody or possession of Petitioners, or

under the control of Petitioners, or can more easily be obtained from Respondent or other third parties including, but not limited to, Mutual Wholesale Liquors, Inc. d/b/a International Import Export (hereinafter referred to as "Mutual").

4. Petitioners object to Respondent's interrogatories to the extent that they seek information that is highly confidential and of a commercially sensitive nature.

5. Petitioners object to Respondent's interrogatories to the extent that they prematurely call for information not yet required to be disclosed under the Federal Rules of Civil Procedure.

6. Petitioners reserves the right to excise or redact from any documents which they otherwise agree to produce those portions which: (i) are unrelated to any relevant subject matter on the ground that such portions are not relevant to the subject matter of this action or likely to lead to the discovery of admissible evidence; (ii) any documents or portions thereof that constitute or document settlement discussions; or (iii) any documents or portions thereof that contain Highly Confidential information and/or Trade Secrets of a Commercially Sensitive nature.

7. Petitioners object to Respondent's "Instructions" to the extent that they are inconsistent with or require action beyond the requirements of the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

8. Petitioners object to Respondent's interrogatories to the extent that they call for information pertaining to Petitioners' activities outside of the United States.

9. All of Petitioners responses incorporate and are subject to, without waiver, the foregoing General Objections as well as the additional specific objections set forth below.

## RESPONSES TO INTERROGATORIES

### INTERROGATORY NO. 1:

Explain with particularity the financial hardships Petitioner claims it experienced in the early 1990s, and describe the manner in which such hardships were overcome.

### RESPONSE TO INTERROGATORY NO. 1:

Eduard Gessler, the principal of Petitioners' predecessors-in-interest after World War II, died in 1979, owing a significant amount of money to several creditors. Following his death, Eduard Gessler's son, Elek Gessler, consolidated the affairs of such predecessors into two legally distinct companies. In 1980, Elek Gessler organized the Austrian company Altvater Gessler – J.A. Baczewski, GmbH. In 1983, to manage United States operations, Elek Gessler established Altvater Gessler – J.A. Baczewski International (USA) Inc., a New Jersey corporation.

In the 1980s, Petitioners' business was running at a loss. Production was outsourced and, upon information and belief, Elek Gessler used his personal credit cards and a line of credit on his home to finance the business. Elek Gessler's financial situation was so dire that it eventually compromised his marriage such that, on or about June 13, 1991, he signed a divorce agreement with his wife, Leonie. Under the agreement, Leonie received, *inter alia*, two real estate properties and Elek Gessler's shares in Altvater Gessler – J.A. Baczewski International (USA) Inc., while Elek was left with most of the debts.

It was the business activities in Poland that eventually resolved the financial hardships. On or about November 5, 1991, Altvater Gessler - J.A. Baczewski International (USA) Inc. signed an agreement with Polmos, a producer in Poland. Thereafter, the business in Poland

became very successful. In 1992, sales reached almost 795,000 bottles. In 1993, sales reached almost 5,700,000 bottles. In 1994, sales were over 5,800,000 bottles. Before the agreement with Polmos was terminated in 2000, the revenues obtained were approximately \$1,000,000 and were sufficient to resolve the financial hardships.

**INTERROGATORY NO. 2:**

Describe in detail the criteria used by Petitioners in deciding in which countries to register their trademarks, including the trademark MONOPOLOWA.

**RESPONSE TO INTERROGATORY NO. 2:**

Petitioners object to this interrogatory on the ground that it is vague. The meaning of "criteria" is unclear within the meaning of the interrogatory. Petitioner further objects to this interrogatory on the ground that it assumes facts not in evidence to the extent that it assumes Petitioners had or have a "criteria" for deciding in which countries to register their trademarks. Subject to the foregoing objection and their general objections, Petitioners respond as follows: Petitioners did not have any formal "criteria" for deciding in which countries to register their trademarks.

**INTERROGATORY NO. 3:**

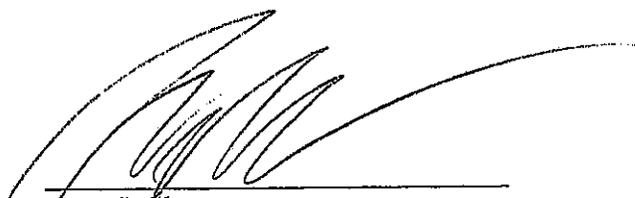
Explain the reason Petitioner chose not to file for a trademark registration in the United States prior to 1992.

**RESPONSE TO INTERROGATORY NO. 3:**

Petitioners object to this interrogatory on the ground that it assumes that Petitioners made an affirmative decision not to file for a trademark registration in the United States prior to 1992. Subject to the foregoing objection and their general objections, Petitioners respond as follows:

Petitioners are not trademark lawyers and were heretofore unsophisticated about trademark rights. Petitioners previously believed that their foreign trademarks were enforceable wherever they sold their products. Furthermore, Petitioners believed that marks such as ALTVATER GESSLER - J.A. BACZEWSKI generally encompassed other marks of the company such as MONOPOLOWA. Additionally, Petitioners applied to register their trademarks only in countries where they had products produced in meaningful quantities or where they were otherwise required to obtain trademark registration by contract with others. Petitioners have never produced their products in the U.S. and Petitioners did not have any agreements with any third parties prior to 1992 requiring Petitioners to register any trademarks in the U.S.

Dated: March 18, 2013  
White Plains, New York



Peter S. Sloane  
Cameron S. Reuber

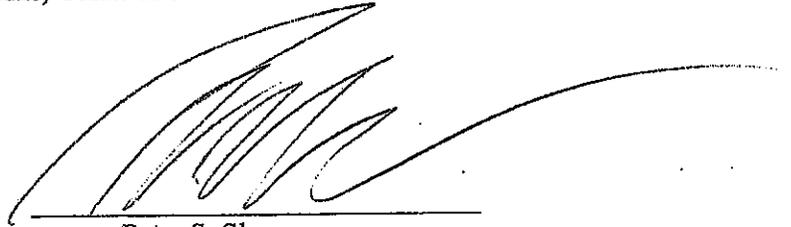
LEASON ELLIS LLP  
One Barker Avenue, Fifth Floor  
White Plains, New York 10601  
Tel.: (914) 821-9073

Attorneys for Petitioners

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below a true and correct copy of **PETITIONERS' RESPONSES TO RESPONDENT'S SECOND SET OF INTERROGATORIES** was served by First-Class Mail, postage prepaid, upon the attorneys for Respondent, this 18th day of March, 2013, addressed as follows:

Michael L. Lovitz, Esq.  
LOVITZ IP LAW, PC  
9701 Wilshire Blvd., Suite 1000  
Beverly Hills, California 90212

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', written over a horizontal line.

Peter S. Sloane

VERIFICATION

Rasiel Gessler, hereby verifies the following under penalty of perjury: I am the General Manager of Altvater-Gessler – J.A. Baczewski International (USA) Inc. and the President of Altvater Gessler – J.A. Baczewski, GmbH, Petitioners in this cancellation action, I have read the foregoing "Petitioners' Responses to Respondent's First Set of Interrogatories," and the answers contained therein are true to the best of my knowledge and belief.

  
\_\_\_\_\_  
Rasiel Gessler

Dated: March 18, 2013

# Exhibit F

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

|                                     |          |                                    |
|-------------------------------------|----------|------------------------------------|
| <b>ALTVATER GESSLER – J.A.</b>      | <b>:</b> | <b>Cancellation 92048732</b>       |
| <b>BACZEWSKI</b>                    | <b>:</b> |                                    |
| <b>INTERNATIONAL (USA) INC. and</b> | <b>:</b> |                                    |
| <b>ALTVATER GESSLER – J.A.</b>      | <b>:</b> |                                    |
| <b>BACZEWSKI GMBH,</b>              | <b>:</b> |                                    |
|                                     | <b>:</b> |                                    |
| <b>Petitioners,</b>                 | <b>:</b> | <b>Registration No.: 2,731,948</b> |
|                                     | <b>:</b> |                                    |
| <b>v.</b>                           | <b>:</b> |                                    |
|                                     | <b>:</b> |                                    |
| <b>RONALD BECKENFELD,</b>           | <b>:</b> |                                    |
|                                     | <b>:</b> |                                    |
| <b>Respondent.</b>                  | <b>:</b> |                                    |

**PETITIONERS' RESPONSES TO RESPONDENT'S SECOND SET OF  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Petitioners, through their attorneys Leason Ellis LLP, respond to Respondent's Second Request for Production of Documents and Things as follows:

**GENERAL OBJECTIONS**

1. Petitioners generally object to Respondent's requests to the extent that they seek documents or things protected by the attorney-client privilege and/or work-product doctrine.
2. Petitioners generally object to Respondent's requests to the extent that they are overly broad, unduly burdensome, seek irrelevant information and/or are not reasonably calculated to lead to the discovery of admissible evidence.
3. Petitioners generally object to Respondent's requests to the extent that they seek the production of documents or things that do not exist and/or are not in the custody or

possession of Petitioners, or under the control of Petitioners, or can more easily be obtained from Respondent or other third parties including, but not limited to, Mutual Wholesale Liquors, Inc. d/b/a International Import Export.

4. Petitioners generally object to Respondent's requests to the extent that they seek Highly Confidential documents or things and Trade Secrets of a Commercially Sensitive nature.

5. Petitioners generally object to Respondent's requests to the extent that they seek the production of "all" documents or things where representative documents or things would adequately respond to the requests.

6. Petitioners reserve the right to excise or redact from any documents which they otherwise agree to produce those portions which: (i) are unrelated to any relevant subject matter on the ground that such portions are not relevant to the subject matter of this action or likely to lead to the discovery of admissible evidence, or (ii) any documents or portions thereof that constitute or document settlement discussions, or (iii) any documents or portions thereof that contain Highly Confidential Information and/or Trade Secrets of a Commercially Sensitive nature.

7. Petitioners generally object to Respondent's "Instructions" to the extent that they are inconsistent with or require action beyond the requirements of the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

8. Petitioners generally object to Respondent's requests to the extent that they seek the production of documents pertaining to Petitioners' activities outside of the United States.

9. All of Petitioners' responses incorporate and are subject to, without waiver, the foregoing General Objections as well as the additional specific objections set forth below.

## REQUESTS

### REQUEST NO. 1:

For each product sold in the U.S. under the "MONOPOLOWA" trademark, documents sufficient to identify every person, other than Mutual Wholesale Liquor Inc. d/b/a International Import Export (hereinafter, "Mutual"), who has imported such product into the U.S. since August 1992.

### RESPONSE TO REQUEST NO. 1:

Petitioners object to this request to the extent that it is duplicative of requests in Respondent's First Request for Production of Documents and Things. Subject to and without waiving the foregoing objection or their General Objections, Petitioners respond that, to the extent that any additional non-privileged responsive documents exist, they will produce such documents on a date and at a time and location mutually agreeable to the parties.

### REQUEST NO. 2:

Documents sufficient to establish the value of the "MONOPOLOWA" brand.

### RESPONSE TO REQUEST NO. 2:

Petitioners object to this request on the ground that the word "value" is vague in the context of the request. Petitioners further object to this request to the extent that it is duplicative of requests in Respondent's First Request for Production of Documents and Things. Subject to and without waiving the foregoing objections or their General Objections, Petitioners respond that, to the extent that any additional non-privileged responsive documents exist, they will produce such documents on a date and at a time and location mutually agreeable to the parties.

REQUEST NO. 3:

Document sufficient to establish that Petitioners were experiencing financial hardships in the early 1990s.

RESPONSE TO REQUEST NO. 3:

Petitioners object to this request to the extent that it is duplicative of requests in Respondent's First Request for Production of Documents and Things. Subject to and without waiving the foregoing objection or their General Objections, Petitioners respond that, to the extent that any additional non-privileged responsive documents exist, they will produce such documents on a date and at a time and location mutually agreeable to the parties.

REQUEST NO. 4:

Documents sufficient to support Petitioners' assertion that Petitioners never intended to sell the MONOPOLOWA brand to Mutual.

RESPONSE TO REQUEST NO. 4:

Petitioners object to this request to the extent that it assumes facts not in evidence and is otherwise duplicative of requests in Respondent's First Request for Production of Documents and Things. Subject to and without waiving the foregoing objections or their General Objections, Petitioners respond that, to the extent that any additional non-privileged responsive documents exist, they will produce such documents on a date and at a time and location mutually agreeable to the parties.

REQUEST NO. 5:

Document sufficient to establish the reasons why Petitioners never filed for registration of the mark MONOPOLOWA in the United States prior to 2002.

RESPONSE TO REQUEST NO. 5:

Petitioners object to this request to the extent that it is duplicative of requests in Respondent's First Request for Production of Documents and Things. Subject to and without waiving the foregoing objection or their General Objections, Petitioners respond that, to the extent that any additional non-privileged responsive documents exist, they will produce such documents on a date and at a time and location mutually agreeable to the parties.

REQUEST NO. 6:

Non-redacted copies of all licenses and agreements between Petitioners and Horvath's Spezereyen Kontor ("Horvath") concerning the manufacture and/or distribution of MONOPOLOWA products.

RESPONSE TO REQUEST NO. 6:

Petitioners object to this request on the ground that all responsive licenses and agreements have already been produced and any redacted portions are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Petitioners further object to this request on the ground that it seeks production of highly confidential information and trade secrets of a commercially sensitive nature.

REQUEST NO. 7:

Documents sufficient to identify each recipe used in the manufacture of MONOPOLOWA vodka since 1992.

RESPONSE TO REQUEST NO. 7:

Petitioners object to this request on the ground that it not reasonably calculated to lead to the discovery of admissible evidence. Petitioners further object to this request on the ground that

it seeks production of highly confidential information and trade secrets of a commercially sensitive nature.

REQUEST NO. 8:

Documents sufficient to describe the reasons for each change(s) in the recipe used to manufacture MONOPOLOWA vodka since 1992.

RESPONSE TO REQUEST NO. 8:

Petitioners object to this request on the ground that it not reasonably calculated to lead to the discovery of admissible evidence. Petitioners further object to this request on the ground that it seeks production of highly confidential information and trade secrets of a commercially sensitive nature.

REQUEST NO. 9:

Copies of the master batch records pertaining to the manufacture of MONOPOLOWA since 1992.

RESPONSE TO REQUEST NO. 9:

Petitioners object to this request on the ground that the wording "master batch records" is vague and unclear. Petitioners further object to this request on the ground that it not reasonably calculated to lead to the discovery of admissible evidence. Petitioners also object to this request on the ground that it seeks production of highly confidential information and trade secrets of a commercially sensitive nature.

REQUEST NO. 10:

Documents sufficient to identify all quality control testing undertaken by Petitioners since 1992 in connection with the manufacture of MONOPOLOWA vodka, including the results of such testing.

RESPONSE TO REQUEST NO. 10:

Petitioners object to this request on the ground that it calls for the production of "all" documents rather than representative documents. Petitioners further object to this request on the ground that it calls for the production of documents in the custody, possession of control of third parties. Petitioners also object to this request on the ground of attorney-client privilege and/or attorney work product doctrine. Petitioners also object to this request to the extent that it is duplicative of requests in Respondent's First Request for Production of Documents and Things. Subject to and without waiving the foregoing objections or their General Objections, Petitioners respond that, to the extent that any additional non-privileged responsive documents exist, they will produce such documents on a date and at a time and location mutually agreeable to the parties.

REQUEST NO. 11:

Documents sufficient to establish the steps taken by Petitioners to insure the quality of MONOPOLOWA vodka.

RESPONSE TO REQUEST NO. 11:

Petitioners object to this request on the ground that it calls for the production of documents in the custody, possession of control of third parties. Petitioners further object to this request on the ground of attorney-client privilege and/or attorney work product doctrine.

Petitioners also object to this request to the extent that it is duplicative of requests in Respondent's First Request for Production of Documents and Things. Subject to and without waiving the foregoing objections or their General Objections, Petitioners respond that, to the extent that any additional non-privileged responsive documents exist, they will produce such documents on a date and at a time and location mutually agreeable to the parties.

REQUEST NO. 12:

Documents sufficient to establish when Rasiel Gessler first became employed by Petitioners.

RESPONSE TO REQUEST NO. 12:

Subject to and without waiving their General Objections, Petitioners respond as follows: No responsive documents are believed to exist in the custody, possession or control of Petitioners.

REQUEST NO. 13:

Documents sufficient to establish the experience of Rasiel Gessler in the alcohol and spirits industry at the time he was first employed by Petitioners.

RESPONSE TO REQUEST NO. 13:

Subject to and without waiving their General Objections, Petitioners respond as follows: No responsive documents are believed to exist in the custody, possession or control of Petitioners.

REQUEST NO. 14:

Documents sufficient to identify the equipment used in the production of MONOPOLOWA vodka.

RESPONSE TO REQUEST NO. 14:

Subject to and without waiving their General Objections, Petitioners respond as follows:  
No responsive documents are believed to exist in the custody, possession or control of  
Petitioners. Petitioners use third-party producers to manufacture MONOPOLOWA vodka.

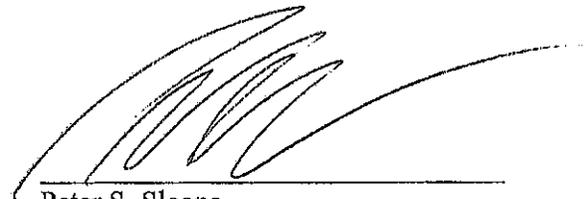
REQUEST NO. 15:

Copies of all documents and things, other than those produced in response to the  
foregoing Requests, identified in response to, or which otherwise refer or relate to the questions  
contained in, Respondent's Second Set of Interrogatories to Petitioners.

RESPONSE TO REQUEST NO. 15:

Subject to and without waiving their General Objections, Petitioners respond that they  
will produce any responsive documents on a date and at a time and location mutually agreeable  
to the parties.

Dated: March 18, 2013  
White Plains, New York



Peter S. Sloane  
Cameron S. Reuber

LEASON ELLIS LLP  
One Barker Avenue, Fifth Floor  
White Plains, New York 10601  
Tel.: (914) 821-9073

Attorneys for Petitioners

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below a true and correct copy of **PETITIONERS' RESPONSES TO RESPONDENT'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** was served by First-Class Mail, postage prepaid, upon the attorneys for Respondent, this 18th day of March, 2013, addressed as follows:

Michael L. Lovitz, Esq.  
LOVITZ IP LAW, PC  
9701 Wilshire Blvd., Suite 1000  
Beverly Hills, California 90212

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Peter S. Sloane

# Exhibit G

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

|                                         |   |                           |
|-----------------------------------------|---|---------------------------|
| -----X                                  | : |                           |
| ALTVATER GESSLER – J.A. BACZEWSKI       | : |                           |
| INTERNATIONAL (USA) INC. and ALTVATER   | : |                           |
| GESSLER – J.A. BACZEWSKI LIKÖRERZEUGUNG | : |                           |
| GESELLSCHAFT M.B.H. d/b/a               | : |                           |
| ALTVATER GESSLER – J.A. BACZEWSKI GMBH, | : |                           |
|                                         | : |                           |
| Petitioners,                            | : | Cancellation No. 92048732 |
|                                         | : |                           |
| v.                                      | : |                           |
|                                         | : |                           |
| RONALD BECKENFELD,                      | : |                           |
|                                         | : |                           |
| Registrant.                             | : |                           |
| -----X                                  | : |                           |

**DECLARATION OF RASIEL GESSLER IN OPPOSITION  
TO RESPONDENT’S MOTION FOR SUMMARY JUDGMENT**

I, Rasiel Gessler, hereby declare as follows:

1. I am the General Manager of Petitioner Altvater Gessler – J.A. Baczewski International (USA) Inc. and the President of Petitioner Altvater Gessler – J.A. Baczewski Likörerzeugung Gesellschaft m.b.H. d/b/a Altvater Gessler – J.A. Baczewski GmbH (collectively “Petitioners”). I submit this Declaration in opposition to the motion for summary judgment filed by Respondent Ronald Beckenfeld (“Respondent”).

2. Petitioner Altvater Gessler – J.A. Baczewski International (USA) Inc. is the true owner of the mark MONOPOLOWA for vodka and Respondent has never had anything to do with the brand. Any purported transfer of the mark from Petitioners to their U.S. distributor

Mutual Wholesale Liquor, Inc. (“Mutual”) is void because, among other things, the alleged assignor did not exist and there was never any intent to transfer ownership of the mark.

### **The Long History of Petitioners**

3. Petitioner Altvater Gessler – J.A. Baczewski GmbH enjoys a proud centuries’ old reputation for producing the highest quality alcoholic beverages. The original company was founded by my family’s ancestors in or about 1650 in Bromberg, Pomerania, under the name Geiger Brothers, Spirits and Rosoglio Production.

4. In 1777, after Austrian annexation of Bukovina, a branch of the original company was established in Czernowitz, the capital city of Bukovina. Enlarged by marriages, two more branches were established, one in Lwow, in 1782, under son-in-law Joseph Baczeles, later known as J.A. Baczewski, the other in Zuckmantel, Silesia, under the second son-in-law Paul Gessler.

5. In 1873, the original company, which by then was supplying the entire Austrian-Hungarian Monarchy and all corners of the Empire, was reorganized in Jägerndorf, Silesia. During the Monarchy, the brand name “ALTVATER” gained world renown under the popular slogan “3 Worte: Altvater-Gessler-Jägerndorf.” Examples of advertising with the slogan are attached as Exhibit 1. The company was permitted to use the title “Purveyor to the Imperial and Royal Household,” and, in the 19th century, participated in some of the most important world exhibitions.

6. The Gessler Company, as it was then known, was honored with gold medals in 1888 in Melbourne and St. Petersburg, and in 1889 in Barcelona and Brussels. In 1900, it received the gold medal in Paris and, in 1904, in Vienna. These awards attest to the worldwide

reputation the company had earned as a result of its tradition and the high quality of its products.

7. After the collapse of the Austro-Hungarian Monarchy, independent branches of the company were founded in most of the countries originally constituting the Austro-Hungarian Empire, and licenses were granted to such branches for the manufacture of GESSLER branded products in Vienna, Budapest, Czernowitz, Bielsko and Zagreb.

8. After the Second World War, all of the branches in Eastern Europe were nationalized and became state operated. The House of Vienna alone remained owned by the Gessler family and was run for about forty years by its patriarch, my grandfather, Eduard Gessler, who also reacquired J.A. Baczewski in the 1950's.

9. Under Eduard Gessler's guidance, Altvater Gessler and J.A. Baczewski reunited under the combined name Altvater Gessler – J.A. Baczewski, with its principal place of business in Vienna, Austria, where it is located to this day.

10. The reconstituted company continued to specialize in quality alcoholic products for domestic consumption in Poland and Austria and for export to various countries and continents including Australia, Africa, Asia, Europe and North America, most notably the United States. Its centuries' old reputation and record of quality led to its being selected as the only representative of the Austrian liquor industry at the International World Fair in Chicago in 1950.

#### **Petitioners' Reintroduction of J.A. BACZEWSKI VODKA MONOPOLOWA**

11. In the late 1950's, Eduard Gessler was responsible for commercializing a brand of vodka known as MONOPOLOWA, produced and bottled under the trade name and mark J.A. BACZEWSKI. The Polish word "monopolowa" means "monopoly" in English.

12. MONOPOLOWA is distinctive potato vodka, produced of a traditional formula,

imbued with a distinct intensity and smoothness attributable to a “back-to-basics” tradition of being distilled from potatoes. Vodka, native to Poland, Estonia, Latvia, Lithuania, as well as Russia, was traditionally assumed to be made from potatoes. Presently, however, most other vodkas are produced from grain.

13. MONOPOLOWA brand vodka has won numerous medals and awards over the years including at the San Francisco World Spirits Competition, the New York Spirits Awards Competition, the England International Wine & Spirit Competition, and the International Review of Spirits Competition conducted by the Chicago-based Beverage Tasting Institute. Examples of awards and press are attached as **Exhibit 2**.

14. Eduard Gessler passed away in 1979. Eduard left behind an enormous personal debt because he had insisted on signing personally for all the liabilities of the business even during times of financial difficulty. His son, Elek Gessler, my father, voluntarily and personally assumed those debts.

15. In 1980, Elek Gessler consolidated the affairs of the family business into a new legal entity, an Austrian corporation named Altvater Gessler – J.A. Baczewski Likörerzeugung Gesellschaft m.b.H., which does business as Altvater Gessler – J.A. Baczewski GmbH (“AGJAB-Austria”).

16. In 1983, to manage United States operations, Elek Gessler established Altvater Gessler – J.A. Baczewski International (USA) Inc., a New Jersey corporation (“AGJAB-USA”).

17. Also in 1983, after AGJAB-USA was incorporated, presumably as a means to manage Elek Gessler’s debt, AGJAB-Austria assigned all of its property and trademark rights to AGJAB-USA. A copy of the assignment document as written in German with an English

translation is attached as **Exhibit 3**. I only learned about the transfer many years later, when reviewing old records in conjunction with this cancellation action.

18. Elek Gessler passed away on May 9, 2008. However, true to tradition, both AGJAB-Austria and AGJAB-USA, the Petitioners, continue to be managed by the Gessler family. Petitioners continue to produce specialized quality products, previously in Poland and now in Austria, for domestic consumption and for export to a variety of countries, in particular to the United States.

**Petitioners' Sale of MONOPOLOWA Brand Vodka in the U.S.**

19. Since the 1960's, Petitioners have sold a wide variety of alcoholic products under the name and mark J.A. BACZEWSKI in the United States including MONOPOLOWA (vodka), MALINOWA (raspberry liqueur), KRUPNIK (honey liqueur) and WISNIOWKA (cherry liqueur). Attached as **Exhibit 4** are some of the various J.A. BACZEWSKI product labels.

20. Petitioners have long sold their J.A. BACZEWSKI product in the U.S. through a variety of different importers including, but not limited to, Tower Eximpo Inc. in New York, Boller Wine and Liquor, Inc. in New Jersey, Schenley Distributors in Texas, and Stanley Stawski Distributing Co., Inc. in Illinois. Product labels identifying various distributors are attached as **Exhibit 5**.

21. In the 1980's, Petitioners began using Mutual in Los Angeles to import and sell J.A. BACZEWSKI products, including MONOPOLOWA, in the U.S. Labels and sell sheets designating Mutual (or its d/b/a "International Import Export") as the importer are attached as **Exhibit 6**.

22. Up until his death last year, Mutual was owned and operated by its president Mickey Beckenfeld.

23. Among other products, Mutual also distributes beer, wine and other spirits. However, upon information and belief, at all relevant times it has not been a manufacturer of alcoholic beverages.

#### **The Purported Transfer of Rights**

24. Petitioners' initial sales of J.A. BACZEWSKI product through Mutual were slow. However, they started picking up in 1989, in which year Petitioners sold Mutual four containers totaling 3,500 cases of product. In 1990, Petitioners sold Mutual six containers, totaling 5,400 cases. Over the subsequent two years, Petitioners sold Mutual fourteen containers, totaling 12,600 cases. At the time, these numbers were a big improvement over prior years' sales.

25. By the early 1990's, having invested hundreds of thousands of dollars of his personal money in the business, and due to the debts assumed from his father, Elek Gessler was still in dire financial straits and on the verge of personal bankruptcy.

26. In 1991, as a means to mitigate losses in the event of personal bankruptcy, Elek Gessler assigned all his shares in AGJAB-USA to my mother Leonie Gessler. Attached as **Exhibit 7** are the minutes of the annual meeting of shareholders of AGJAB-USA discussing the future transfer of his shares to my mother. Attached as **Exhibit 8** is a copy of an attorney letter to Elek Gessler attaching the resolution effectuating the transfer. The shares were never transferred back to my father.

27. In or about August of 1992, Mickey Beckenfeld, who was well aware of my father's financial difficulties, suggested to Elek Gessler, who was residing in Fort Lee, New

Jersey, that it would be a shame to lose the MONOPOLOWA brand in bankruptcy and suggested that Elek Gessler sign an executory transfer to be effected only in the event that Elek Gessler was actually forced into bankruptcy. Such document also served both as collateral for the letters of credit which Mutual issued to Petitioners in conjunction with every transaction and to ensure Petitioners' performance as long as the said financial difficulties continued. Elek Gessler trusted Mickey Beckenfeld not to abuse the understanding. I did not learn of these circumstances until about nine or ten years later, after we learned of Mutual's wrongful assertion that it owned the mark MONOPOLOWA.

28. On or about August 27, 1992, Mickey Beckenfeld had prepared and sent a fax to Elek Gessler (the "1992 Letter") which purportedly confirmed and outlined the substance of their conversation. A copy of the letter is attached as **Exhibit 9**. The 1992 Letter stated, among other things, that it was agreed that Elek Gessler would immediately fax a letter declaring the transfer of brand ownership in the U.S. of VODKA MONOPOLOWA/J. A. BACZEWSKI to Mutual for the absurd sum of \$1.00.

29. Without the benefit of legal counsel, Elek Gessler immediately signed and returned the letter on behalf of an entity designated as "ALTVATER GESSLER G.a.b." as well as a single paragraph letter stating that "[t]his confirms my agreement to transfer brand ownership of VODKA MONOPOLOWA/J. A. BACZEWSKI (Brand & Label Format), in the USA [sic] to MUTUAL WHOLESALE LIQUOR INC. (MUTUAL) for the sum of One-dollar (\$1.00)." A copy of the letter is attached as **Exhibit 10**. This letter itself was also prepared by Mutual on the copied letterhead of AGJAB-Austria.

30. It defies common sense that Elek Gessler would have sold the brand MONOPOLOWA to anyone for just \$1.00, especially when sales were steadily improving at the time. In any event, there is absolutely no evidence that Elek Gessler even received the purported \$1.00 consideration.

31. To the extent that Respondent argues that there was consideration greater than \$1.00, it would have been an obligation by Mutual to pay royalties to Petitioners and to purchase from their contract producer in perpetuity. It also would have included an implied covenant to never assign the brand to a third party such as Respondent who does not have the ability to perform. Such undertakings are unenforceable as indeterminately vague and impossible to fulfill.

32. Moreover, there was never any entity called "Altvater Gessler G.a.b." and Elek Gessler did not personally own the mark MONOPOLOWA. AGIAB-USA owned the rights in and to the mark MONOPOLOWA following the assignment from AGJAB-Austria in 1983 and Elek Gessler had transferred all his interest in AGJAB-USA to Leonie Gessler in late 1991. Thus, any purported assignment of the mark is invalid.

**Petitioners' Investment in the MONOPOLOWA Brand**

33. Following the events of 1992, sales of MONOPOLOWA brand vodka improved gradually and consistently. To date, many millions of dollars worth of product have been sold in the U.S. However, the responsibilities of the parties did not change. Petitioners continued to oversee production and delivery of MONOLPOLOWA vodka to Mutual and Mutual continued to import and distribute it in the U.S.

34. Mutual has never acted as the owner of the brand MONOPOLOWA. It is a mere importer and wholesaler of Petitioners' Austrian-made product. Mutual has never produced a single drop of MONOPOLOWA vodka.

35. Mutual has never invested or paid any sum for the development of new MONOPOLOWA products such as MONOPOLOWA DRY GIN, the variety of MONOPOLOWA liqueurs, and, most recently, the MONOPOLOWA RUM currently under development. It has never invested or paid any sum for the development of new MONOPOLOWA caps, labels or cartons.

36. In particular, MONOPOLOWA DRY GIN has won numerous awards in recent years. Examples of such awards, photographs and labeling of product packaging are attached as **Exhibit 11**. However, Respondent makes no claim to ownership of the mark MONOPOLOWA for gin in the U.S. There would be significant consumer confusion if ownership of the brand were so divided among such closely related goods.

37. Not surprisingly, the labels and sell sheets for the vodka distributed and sold in the U.S. under the mark MONOPOLOWA state "imported by International Import Export, Los Angeles, California" (International Import being a d/b/a for Mutual) in only very small letters. See **Exhibit 6**. If Mutual really believed it owned the brand MONOPOLOWA, it would have advertised and promoted that by displaying its name in large letters or at least showing a trademark notice on the labeling.

38. Quite the opposite, the labels and sell sheets for the vodka distributed and sold in the U.S. under the mark MONOPOLOWA prominently state "PRODUCED AND BOTTLED BY J.A. BACZEWSKI" in very large letters. See **Exhibit 6**. Thus, Mutual never shied away

from the fact that MONOPOLOWA vodka originates with Petitioners and American consumers have long been educated to make that association.

**Petitioners' Prior Misapprehension of Trademark Rights**

39. Petitioners, who are not trademark attorneys, have always believed that U.S. Registration No. 1,952,832 of the mark ALTVATER GESSLER – J.A. BACZEWSKI, dated January 30, 1996, and registered by AGJAB-USA, protected all the trademark rights of the company in the U.S. including in the mark MONOPOLOWA. A copy of the Certificate of Registration is attached as **Exhibit 12**.

40. Mutual knowingly took advantage of the fact that Petitioners erroneously thought that all their products were protected by Registration No. 1,952,832 by later applying to register the mark MONOPOLOWA alone. I have since learned from new trademark counsel that our prior registration of the mark ALTVATER GESSLER – J.A. BACZEWSKI would have blocked an application to register the overall mark VODKA MONOPOLOWA J.A. BACZEWSKI.

41. Petitioners likewise mistakenly believed that they should register their trademarks only in countries where they had products produced in meaningful quantities or where they were otherwise required to obtain trademark registration by contract with others. Petitioners have never produced their products in the U.S. and Petitioners did not have any agreements with any third parties requiring them to register any trademarks in the U.S. For example, attached as **Exhibit 13** are documents evidencing Austrian and Polish registrations of the mark MONOPOLOWA.

42. In his motion for summary judgment, Respondent argues that I confirmed the existence and validity of the purported transfer agreement in a letter dated September 18, 1996

(the "1996 Letter"). Respondent's Motion for Summary Judgment and Memorandum in Support at p. 4. A copy of the 1996 Letter is attached as **Exhibit 14**. However, I was not actively involved in the business of Petitioners at the time and was not an officer of the companies. Indeed, as Respondent notes, the letter was written on the letterhead for my personal legal practice rather than the stationary of either of the Petitioners. Any statements made by me at the time in my individual capacity are in no way attributable to Petitioners. Indeed, at the time of the 1996 Letter, I was unaware of the true ownership of the mark by AGJAB-USA or the understanding between Mickey Beckenfeld and my father concerning the executory nature of their understanding.

43. In writing the 1996 Letter, it was obvious to me that the 1992 Letter was infirm. It made absolutely no sense to me that my father would transfer the MONOPOLOWA brand for \$1.00 without at least a continuing obligation to always distribute the product on behalf of Petitioners. As a result, I mentioned in the 1996 Letter that, among other things, the 1992 Letter did not include any provision for reversion of ownership in the event that Mutual stopped distributing or promoting the product. The fact the Mutual did not sign and return the 1996 Letter, as I had requested, demonstrates its bad faith dealings in connection with the earlier 1992 Letter.

**Mutual's Underhanded Registration of the Mark Behind the Backs of Petitioners**

44. I only became active in the business of Petitioners in or about the late 1990's after the death of AGJAB-Austria's secretary and office manager, Stefanie Sauer, who ran the administration of the company in Vienna. A copy of her death certificate is attached as **Exhibit**

15. When she died, all of the company's records were sealed in boxes and stored in Vienna. I did not receive these boxes or see their contents for several years thereafter.

45. Since 1999, and especially in 2001 and 2002, I had several arguments with Mickey Beckenfeld and John Wilson, the then General Manager of Mutual, concerning ownership of the brand MONOPOLOWA. It was only about that time that my father first told me about his understanding with Mickey Beckenfeld.

46. Upon information and belief, as a result of those arguments, Mutual applied to register the mark MONOPOLOWA with the United States Patent and Trademark Office on September 16, 2002. See Declaration of Michael Lovitz (the "Lovitz Dec.") at Ex. A. If Mutual really believed that it owned the mark MONOPOLOWA as a result of the 1992 Letter, why did it wait until ten years later before applying for registration? The answer is obvious. It was worried that Petitioners were actively challenging rights in the mark and would cancel the owner-importer relationship between Petitioners and Mutual.

47. I learned about Mutual's registration of the mark MONOPOLOWA in or about early 2005 after visiting the website of the U.S. Patent and Trademark Office in conjunction with another matter. A printout showing the results of a contemporaneous search of the USPTO records is attached as **Exhibit 16**. Mutual never notified my father or me of the registration and I firmly believe that Mutual tried to hide the registration from us.

48. Mutual knows that it never owned the mark MONOPOLOWA. On February 28, 2003, it tried to obtain a "Letter of Authorization and Power of Attorney" from Petitioners, backdated to August 27, 1992. A copy is attached as **Exhibit 17**. Mutual unbelievably stated that the original had been "mislaidd" and that they needed a "replacement." The draft document

stated that Petitioners grant to Mutual a power of attorney in matters of registration of MONOPOLOWA VODKA and to enter into contracts on its behalf with third parties for the sale of MONOPOLOWA VODKA. If Mutual truly owned the brand, why would it need a power of attorney from Petitioners?

49. Respondent alleges in the Declaration of Michael Lovitz that the proffered “Letter of Authorization and Power of Attorney” was signed and the signature obscured by correction fluid. Lovitz Dec. at ¶ 6, Ex. B. This is absurd. No such claim has ever been raised by any of the parties hereto either in writing or orally. I have no idea how Mr. Lovitz took “close up photographs” of the document “from the front and from behind” as alleged in his declaration. In any event, the document was a copy which came from Mutual under subpoena and not from Petitioners.

50. On March 16, 2003, AGJAB-Austria signed a “Letter of Authorization and Power of Attorney” which was materially different from the one proffered by Mutual. A copy is attached as **Exhibit 18**. The reference to registration of MONOPOLOWA VODKA and the statement that “[i]t is also confirmed herewith that, by a separate agreement, brand ownership of MONOPOLOWA VODKA (Distilled from Potatoes) in the U.S.A. has already been transferred to MUTUAL WHOLESALE LIQUOR, INC. d/b/a INTERNATIONAL IMPORT EXPORT” (along with the backdating) were removed before the document was signed by Elek Gessler on the letterhead of AGJAB-Austria. Among other things, the letter merely stated confirmation that Mutual was granted the exclusive right to import, market, sell and distribute MONOPOLOWA products in the U.S. Such changes flatly contradict any purported admission in the 1996 Letter.

51. At the time, I had a contentious telephone conversation with Mr. Wilson regarding my contention that my family owns the brand MONOPOLOWA. It was not the first time we had had such as conversation.

**Respondent's Lack of Involvement with the Brand and the Importance of Petitioners**

52. I understand that Mutual assigned the registration to Respondent Ron Beckenfeld in 2007. Respondent has had absolutely nothing to do with the business of making or selling MONOPOLOWA brand vodka either before or after the assignment.

53. I never had any business dealings with Respondent and have no recollection of ever having even met or talked with him until the deposition of his father in this case.

54. Over the years, Petitioners have routinely dealt with issues concerning the manufacture and bottling of MONOPOLOWA vodka in their capacity as the owner of the brand. For example, on March 17, 2008, the Alcohol and Tobacco Tax and Trade Bureau ("TTB") sent a warning letter to Mutual raising concerns about Monopolowa Vodka. A copy of the letter is attached as **Exhibit 19**.

55. After being advised of the TTB issue, Petitioners investigated the testing of the product and exchanged correspondence with Anton Paar GmbH, which produces high-end measuring and laboratory instruments. A copy of the correspondence is attached as **Exhibit 20**.

56. Petitioners subsequently communicated their findings to Mutual. A copy of the correspondence is attached as **Exhibit 21**. The e-mail ends by stating that Petitioners and their manufacturer "will study and discuss the subject in the coming days." The issue was eventually rectified and Respondent was never involved.

56. Respondent is not even familiar with the labeling for MONOPOLOWA vodka. Attached as **Exhibit 22** is a copy of the renewal application with specimen of use which Respondent filed in the registration in dispute earlier this year. Incredibly, Respondent submitted a label which we have not used for about nine years. This label is referred to as the “blue” label. That Respondent would claim that such a specimen shows the mark as used in commerce demonstrates his ignorance of the brand.

**Petitioners’ Promotion of the Brand MONOPOLOWA**

57. Over the years, Petitioners have also paid Mutual substantial monies to promote MONOPOLOWA brand product. A promotional price has always been factored into the prices in the invoices sent to Mutual.

58. Petitioners also invested in other ways to promote the sale of MONOPOLOWA brand vodka in the U.S. For example, Petitioners paid to promote the brand at bar shows at the Jacob Javitz Center in New York City in June of 2007 and June of 2012. Copies of the contracts are attached as **Exhibit 23**. Petitioners paid for the space, booth design, advertising, handouts, t-shirts, product samples and ancillary costs. A copy of the handout is attached as **Exhibit 24**. Representatives from Petitioners even manned the booth. A photograph taken at the most recent bar show is attached as **Exhibit 25**.

59. Just this year, Petitioners have entered into a promotional program with distributors in New York and other states in New England, where Petitioners will invest at least \$50,000 in promotion of MONOPOLOWA, which includes a competition in which the top six sales managers and persons will be awarded an all expenses paid four days and nights trip to

Vienna, Austria, to learn about Petitioners' history and products, to visit the production plant, and to enjoy the Austrian culture and cuisine.

60. Petitioners have also devoted significant time to developing and distributing materials to promote the sale of MONOPOLOWA brand vodka in the U.S. Attached as **Exhibit 26** is a black and white photocopy of a glossy color brochure created by Petitioners.

61. Petitioners have long promoted the sale of MONOPOLOWA vodka through their website at [www.agjab.com](http://www.agjab.com) and [www.monopolowa.at](http://www.monopolowa.at). A printout of a small portion of the comprehensive website at [www.agjab.com](http://www.agjab.com) is attached as **Exhibit 27**.

62. The boxes containing MONOPOLOWA potato vodka prominently feature the name and mark J.A. BACZESWKI as well as the registered eagle design and JAB marks of AGJAB-USA. Photographs and the corresponding U.S. registration certificates are attached as **Exhibit 28**. International Import Export is merely listed on the boxes as an importer. This is inconsistent with any claim that Mutual owned the brand MONOPOLOWA.

#### **Mutual's Recognition of Petitioners' Ownership Rights**

63. Even Mutual now admits that Petitioners own the brand MONOPOLOWA. An e-mail from Nicole Monastirsky Kiley ("Kiley"), the current General Manager of Mutual and Mickey Beckenfeld's granddaughter, to a third party referring to me as the brand owner is attached as **Exhibit 29**.

64. In a later e-mail, Kiley stated that Mutual would need an agreement with the Gesslers and their Austrian contract manufacturer, Horvath's Spezereyen Kontor Und Lebensmittelproduktions GmbH, in order to carry a third party product. A copy of the e-mail,

dated July 30, 2012, is attached as **Exhibit 30**. The actions of Mutual therefore clearly belie any claim that it owned or that Respondent owns the mark MONOPOLOWA for vodka in the U.S.

65. Neither Mutual nor Respondent even bothered to renew the domain name monopolowa.com when it recently was set to expire. Mutual was previously listed as the registrant. A Whois printout from 2011 listing it as such is attached as **Exhibit 31**.

66. When the domain name monopolowa.com expired in 2013, Petitioners, who clearly have the greatest interest in the brand, promptly proceeded to register it. A printout showing Petitioners as the current record registrant is attached as **Exhibit 32**.

67. Indeed, Mutual has long held itself out to be just an importer of MONOPOLOWA brand vodka and nothing more. See **Exhibit 6**. In all examples, International Import Export (not even Mutual) is listed merely as the importer of the product.

68. American consumers likewise recognize Petitioners as the source of origin of MONOPOLOWA vodka. Attached as **Exhibit 33** is an e-mail from a company regarding a cocktail video it created featuring MONOPOLOWA vodka.

69. Mutual itself even directs consumer inquiries regarding MONOPOLOWA vodka to Petitioners. For example, attached as **Exhibit 34** is a chain of e-mails wherein Mutual forwarded to me a consumer e-mail about the distillation of MONOPOLOWA vodka, to which I responded. Respondent has had absolutely no role in such dealings.

70. Third parties also consistently refer to J.A. Baczewski and the Gesslers as producers of MONOPOLOWA vodka. Examples from various third party websites are attached as **Exhibit 35**.

71. In conclusion, Respondent could never own the mark MONOPOLOWA for vodka because Mutual, the purported assignor, did not own any rights in the mark at the time of the alleged assignment. Furthermore, there was no intent to assign, there was an absence of any meaningful consideration, the \$1.00 was never paid, and there is an inability to perform because any undertakings are unenforceable as indeterminately vague and impossible to fulfill. Furthermore, Petitioners have always acted in a manner consistent with their role as the source of origin of MONOPOLOWA brand vodka while Mutual has expressly and impliedly acknowledged as such. Indeed, Respondent has never had anything to do with the manufacture, import or sale of the product such that he should or could be recognized as the brand owner.

I hereby declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Date: May 30, 2013



Rasiel Gressler

# Exhibit H

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

|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| -----X                            | : |                           |
| ALTVATER GESSLER – J.A. BACZEWSKI | : |                           |
| INTERNATIONAL (USA) INC. AND      | : |                           |
| ALTVATER GESSLER – J.A. BACZEWSKI | : |                           |
| GMBH,                             | : |                           |
|                                   | : |                           |
| Petitioners,                      | : | Cancellation No. 92048732 |
|                                   | : |                           |
| v.                                | : |                           |
|                                   | : |                           |
| RONALD BECKENFELD,                | : |                           |
|                                   | : |                           |
| Registrant.                       | : |                           |
| -----X                            | : |                           |

**DECLARATION OF LEONIE GESSLER IN OPPOSITION  
TO RESPONDENT’S MOTION FOR SUMMARY JUDGMENT**

I, Leonie Gessler, hereby declare as follows:

1. I submit this Declaration in opposition to the motion for summary judgment filed by Respondent.

2. I am the wife of Elek Gessler. Elek Gessler inherited a Vienna-based spirits business named Altvater Gessler – J.A. Baczewski from his father Eduard Gessler, who died in 1979. Eduard Gessler was responsible for the reintroduction of the product J.A. BACZEWSKI VODKA MONOPOLOWA.

3. Elek Gessler also assumed personal liability of an enormous debt of about one million dollars when Eduard Gessler passed away. Eduard had become senile in the last several years of his life, during which time he made mistakes in his business which cost a significant amount of money. Eduard had insisted on signing for everything personally rather than incorporate as a business.

4. Following Eduard Gessler's death, in 1980, Elek Gessler established a new business entity known as Altvater Gessler – J.A. Baczewski GmbH, an Austrian corporation. In 1983, Elek Gessler also established Altvater Gessler – J.A. Baczewski International (USA) Inc., a New Jersey corporation (the "U.S. company"), to manage United States operations.

5. The debt inherited by Elek Gessler continued to haunt him through the 1980s. Elek did not share many details of the business with me, but I was aware that we were in dire financial straits. Things were so bad that, in 1988 or 1989, we had to refinance one of our homes to pay off some debts in Vienna.

6. We also had about several hundred thousands of dollars in debt on our credit cards and were afraid of going broke and being left with nothing. Elek started talking about the looming threat of bankruptcy. As a result, I took steps such as separating my credit from my husband's credit. An attorney letter to the credit agency TRW requesting such a split is attached as **Exhibit A**.

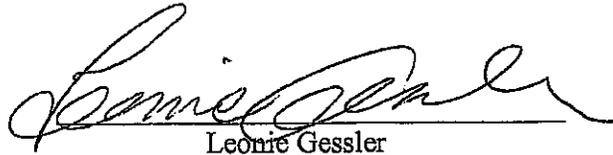
7. In 1991, as a means to mitigate losses in the event of personal bankruptcy, Elek Gessler also assigned to me all his shares in the U.S. company. Attached as **Exhibit B** are the minutes of the annual meeting of shareholders of the U.S. company discussing the future transfer of his shares to me. Attached as **Exhibit C** is a copy of an attorney letter to Elek Gessler attaching the resolution effecting the transfer. The shares were never transferred back to him.

8. Things with the business improved significantly in or about 1993. Sales in Poland had increased dramatically. Around that time, the company started making its vodka kosher. People in Poland believed that kosher vodka reduced the risk of hangovers. Within a year or two, the company had earned enough money that Elek Gessler was able to pay off his debts.

9. I was unaware of any purported transfer of the mark MONOPOLOWA to Mutual. I only learned about the claim after my son Rasiel Gessler told me in or about 2007. I was shocked to learn that Mutual claimed that it owns the mark. Elek Gessler would never have parted with the brand absent bankruptcy or some other catastrophic event.

I hereby declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Date: May 21, 2013



Leonie Gessler

# Exhibit A

STEVEN M. HONIG

RICHARD C. BURNS<sup>1</sup>  
THOMAS A. GIAMANGO<sup>1</sup>  
GARY D. HONIG<sup>1</sup>  
OF COUNSEL

HERMAN G. HONIG  
(1928-1965)  
RUTH EPSTEIN-HONIG  
(1929-1989)

<sup>1</sup> Also admitted in N.Y.  
<sup>1</sup> Admitted in FL., Mass.

HONIG & HONIG  
ATTORNEYS AT LAW

167 FRANKLIN TURNPIKE  
P.O. BOX 124  
WALDWICK, N.J. 07463-0124

(201) 652-5101

Fax (201) 652-1623

November 1, 1991

FLORIDA OFFICE  
2800 E. HALLENDALE BEACH BOULEVARD  
HALLENDALE, FL 33009  
(305) 486-5903

REFER TO FILE #

TRW  
P.O. Box 749029  
Dallas, Texas 75374

Re: Leonie Gessler

Gentlemen:

This firm represents Leonie Gessler who has consulted us with reference to separating her credit record from that of her husband.

Mrs. Gessler's social security number is 091-38-9869. The year of her birth is November 16, 1931. Her address is 2179 South Street, Fort Lee, New Jersey 07024.

Mr. and Mrs. Gessler have separated and are in the process of divorcing each other. Please advise the procedure to be followed in connection with this matter.

Thank you for your assistance relative to the above.

Very truly yours,

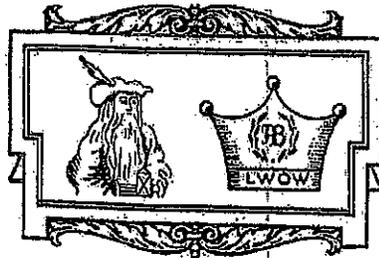
HONIG & HONIG

STEVEN M. HONIG

SMH:cag

cc: Leonie Gessler

# Exhibit B



# ALTWATER GESSLER - J. A. BACZEWSKI INTERNATIONAL (USA) INC.

E. GESSLER  
PRESIDENT

2179 SOUTH STREET  
FORT LEE, NEW JERSEY 07024 USA  
(201) 592-7245

JULY 6, 1991

SUBJECT: Annual Meeting of the Shareholders of Altwater Gessler--J.A. Baczewski International (USA) Inc.

1. The annual meeting of the shareholders of the Altwater Gessler--J.A. Baczewski International (USA) Inc. was held on Saturday, 6 July 1991 at 3 Short Way, Paramus, New Jersey, USA.

2. Present were:

|                   |   |             |
|-------------------|---|-------------|
| Elek Gessler      | - | President   |
| Elisabeth L. Winn | - | Shareholder |
| Leonie Gessler    | - | Future      |
| Shareholder       | - |             |
| Stanley Stawski   | - | Importer    |
| Absent:           |   |             |
| Roman Gessler     | - | Shareholder |

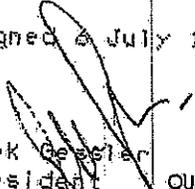
3. The President and Shareholders present

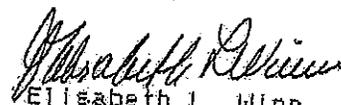
a. Discussed the future transfer of 400 shares of Altwater Gessler--J.A. Baczewski International (USA) Inc. from Elek Gessler to Leonie Gessler; such transfer to be effective upon signature by all shareholders.

b. Discussed and approved a trip to Poland by Mr Elek Gessler and Mr Stanley Stawski to contact the POLMOS corporation in Starogard, Poland, reference the future production of Baczewski products for sales and consumption in Poland. Any profits are to be divided as follows:  
one-third to Stanley Stawski, Chicago, Illinois;  
one-third to Elek Gessler, Fort Lee, New Jersey;  
one-third to Altwater Gessler--J.A. Baczewski International (USA) Inc.

4. The meeting began at 1600 hours on Saturday, 6 July 1991 and adjourned at 1800 hours on the same date.

Signed 6 July 1991 in Paramus, New Jersey, USA:

  
Elek Gessler  
President

  
Elisabeth L. Winn

(absent)  
Roman Gessler

OUR LIQUERS ARE PRODUCED BY ALTWATER GESSLER - J. A. BACZEWSKI, VIENNA, AUSTRIA  
AND UNDER LICENSE AGREEMENT BY RHON HESSISCHE WEINBRENNEREI, FULDA, WEST GERMANY

STEVEN M. HONIG

RICHARD C. BURNS<sup>1</sup>  
THOMAS A. GIAMANCO<sup>1</sup>  
GARY D. HONIG<sup>2</sup>  
OF COUNSEL

HERMAN G. HONIG  
(1928-1985)  
RUTH EPSTEIN-HONIG  
(1929-1989)

<sup>1</sup> Also admitted in N.Y.  
<sup>2</sup> Admitted in FL, Mass.

**HONIG & HONIG**

ATTORNEYS AT LAW

167 FRANKLIN TURNPIKE  
P.O. BOX 124  
WALDWICK, N.J. 07463-0124

(201) 652-6101  
Fax (201) 652-1523

November 7, 1991

FLORIDA OFFICE  
2500 E. HALLENDALE BEACH BOULEVARD  
HALLENDALE, FL 33009  
(305) 456-3903

REFER TO FILE #

Mr. Elek Gessler  
2179 South Street  
Fort Lee, NJ 07024

Re: Altvater Gessler - J.A. Baczewski  
International [USA], Inc.

Dear Elek:

Enclosed herewith please find an original and two copies of a Resolution as well as the stock certificate indicating 400 shares to Leonie. Kindly have the Resolution and stock certificate signed and return same to me for filing in the Corporate Minute Book.

If you have any questions or comments, please feel free to contact me.

Very truly yours,

HONIG & HONIG

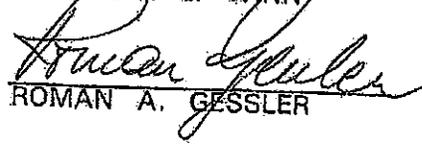
STEVEN M. HONIG

SMH:cag  
Enclosures

RESOLUTION

THE UNDERSIGNED, being the shareholders and directors of  
Altwater Gessler - J.A. Baczewski International [USA] Inc. hereby  
consent to and authorize the following:

RESOLVED, that the shares in the name of Elek Gessler be  
and the same are hereby cancelled of record and said shares shall be  
reissued to Leonie Gessler.

  
\_\_\_\_\_  
ELEK GESSLER  
\_\_\_\_\_  
ELISABETH L. WINN  
\_\_\_\_\_  
ROMAN A. GESSLER

# Exhibit J

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

|                                          |          |                                       |
|------------------------------------------|----------|---------------------------------------|
| <b>ALTVATER GESSLER – J.A. BACZEWSKI</b> | <b>:</b> | <b>Cancellation 92048732</b>          |
| <b>INTERNATIONAL (USA) INC. and</b>      | <b>:</b> |                                       |
| <b>ALTVATER GESSLER – J.A.</b>           | <b>:</b> |                                       |
| <b>BACZEWSKI GMBH,</b>                   | <b>:</b> |                                       |
|                                          | <b>:</b> |                                       |
| <b>Petitioners,</b>                      | <b>:</b> | <b>Registration No.: 2,731,948</b>    |
| <b>v.</b>                                | <b>:</b> |                                       |
|                                          | <b>:</b> |                                       |
| <b>RONALD BECKENFELD,</b>                | <b>:</b> |                                       |
|                                          | <b>:</b> |                                       |
| <b>Respondent</b>                        | <b>:</b> | <b>Attorney Docket No. B1001-9001</b> |

**RESPONDENT’S AMENDED RESPONSES TO  
PETITIONERS’ FIRST REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Respondent, Ronald Beckenfeld (“Respondent”), hereby provides the following amended responses to Requests Nos. 1-5 from Petitioner’s First Set of Requests for Requests for Admissions to Registrant:

**INTRODUCTION AND GENERAL OBJECTIONS**

Respondent hereby specifically incorporates, as if fully set forth herein as applicable to these Requests, the Introduction and General Objections contained in Respondent’s Responses to Petitioner’s First Set of Interrogatories.

**RESPONSES**

**REQUEST NO. 1:**

Admit that Registrant, apart from and independent of any activities of Mutual, has never exercised control over the quality of any product sold under the mark MONOPOLOWA.

**RESPONSE**

Respondent asserts the Ambiguity Objection with respect to the phrase “exercised control over”. Notwithstanding the foregoing objection, and in a good faith effort to respond, Respondent

states as follows: Under the assumption that Registrant's activities in consulting with and providing information to Mutual concerning the exercise by Mutual over quality of MONOPOLOWA products falls within Petitioners' intended definition of "exercised control over", Respondent answers as follows: denied.

REQUEST NO. 2:

Admit that Registrant, apart from and independent of any activities of Mutual, has not participated in designing the labels for any product sold under the mark MONOPOLOWA.

RESPONSE

Respondent asserts the Ambiguity Objection with respect to the phrase "participated in". Notwithstanding the foregoing objection, and in a good faith effort to respond, Respondent states as follows: Under the assumption that Registrant's activities in consulting with and providing information to Mutual concerning the designs, layouts and content of labels for MONOPOLOWA products falls within Petitioners' intended definition of "participated in", Respondent answers as follows: denied.

REQUEST NO. 3:

Admit that Registrant, apart from and independent of any activities of Mutual, has not participated in advertising any product sold under the mark MONOPOLOWA.

RESPONSE

Respondent asserts the Ambiguity Objection with respect to the phrase "participated in". Notwithstanding the foregoing objection, and in a good faith effort to respond, Respondent states as follows: Under the assumption that Registrant's activities in consulting with and providing recommendations to Mutual regarding the advertising and promotion of MONOPOLOWA products falls within Petitioners' intended definition of "participated in", Respondent answers as follows: denied.

REQUEST NO. 4:

Admit that Registrant, apart from and independent of any activities of Mutual, has not participated in the sale of any product sold under the mark MONOPOLOWA.

RESPONSE

Respondent asserts the Ambiguity Objection with respect to the phrase "participated in the sale". Notwithstanding the foregoing objection, and in a good faith effort to respond, Respondent states as follows: Under the assumption that Petitioners' intended definition of "participated in the sale" is that Registrant himself directly wholesaled MONOPOLOWA products independent of the sales activities of its exclusive licensee, Respondent answers as follows: admitted.

REQUEST NO. 5:

Admit that Registrant, apart from and independent of any activities of Mutual, has not participated in the manufacture of any product sold under the mark MONOPOLOWA.

RESPONSE

Respondent asserts the Ambiguity Objection with respect to the phrase "participated in". Notwithstanding the foregoing objection, and in a good faith effort to respond, Respondent states as follows: Under the assumption that Registrant's activities in consulting with and providing information to Mutual concerning the manufacturing process, product testing, sampling and quality assurance steps to be taken with respect to MONOPOLOWA products falls within Petitioners' intended definition of "participated in", Respondent answers as follows: denied.

Respectfully submitted,

Dated: November 27, 2013

By: 

Michael L. Lovitz  
BOWEN HAYES & KREISBERG  
10350 Santa Monica Blvd., Ste. 350  
Los Angeles, CA 90025  
(424) 256-8489  
Attorneys for Registrant

**CERTIFICATE OF SERVICE**

I, Michael L. Lovitz, hereby certify on this 27<sup>th</sup> day of November, 2013, that a true and correct copy of the following document:

RESPONDENT'S FIRST AMENDED RESPONSES TO PETITIONERS' FIRST REQUESTS FOR ADMISSION

was served upon correspondent of record by e-mail, with a copy by first-class mail, at the following address:

Peter S. Sloane  
Leason Ellis LLP  
One Barker Avenue, Fifth Floor  
White Plains, NY 10601  
Sloane@leasonellis.com

  
Michael L. Lovitz

# Exhibit K

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

-----X  
ALTVATER GESSLER – J.A. BACZEWSKI :  
INTERNATIONAL (USA) INC. AND :  
ALTVATER GESSLER – J.A. BACZEWSKI GMBH, :  
 :  
Petitioners, : Cancellation No. 92048732  
 :  
v. :  
 :  
RONALD BECKENFELD, :  
 :  
Registrant. :  
-----X

**DECLARATION OF HARVEY MONASTIRSKY**

I, HARVEY MONASTIRSKY, declare:

1. I am President of Mutual Wholesale Liquor Inc. (“Mutual”) in Los Angeles, California.
2. Incorporated in 1959, Mutual has been one of Southern California’s leading importers and distributors of beer, wine, and spirits for more than 50 years. Mutual also distributes its wide range of products throughout the United States.
3. Until his death in May of 2012, Mutual was owned by my father-in-law, Mickey Beckenfeld, and his deceased wife, Lillian.
4. I joined Mutual in June of 1974. I served as Vice-President of Mutual from the mid 1990s until August 2012, when I became President. My responsibilities at Mutual have included the overall supervision of the company’s operations.

5. One of the products imported and distributed by Mutual is MONOPOLOWA brand vodka. MONOPOLOWA is a distinctive potato vodka made using a traditional recipe and formula which has won numerous awards in competitions and taste tests for its outstanding quality. It is produced in Austria by Petitioners Altvater Gessler – J.A. Baczewski International (USA) Inc. and Altvater Gessler – J.A. Baczewski Likorezezeugung GmbH (collectively “Altvater Gessler”).

6. Altvater Gessler has manufactured MONOPOLOWA brand vodka and sold it in the United States since the 1960s. Mutual began importing MONOPOLOWA vodka into the U.S. in the 1980s. Mutual has always imported MONOPOLOWA from Altvater Gessler and no one else.

7. In or around the early 1990s, Altvater Gessler and its owner, Elek Gessler, were experiencing serious financial hardship. At the time, Mutual was ordering several thousand cases per annum of MONOPOLOWA vodka from Altvater Gessler.

8. It is my belief that on or about August 27, 1992, during a telephone conversation between Elek Gessler (in Fort Lee, New Jersey) and Mickey Beckenfeld (in Los Angeles, California), Elek Gessler told Mickey Beckenfeld about his financial troubles and his concern that those troubles might affect the supply of product to Mutual.

9. Mickey Beckenfeld suggested to Elek Gessler that Mutual would be willing to take on the financial responsibility of payment to Altvater Gessler’s European producer if the brand MONOPOLOWA was used as collateral. At the time of the call, I do not believe that Elek Gessler intended to sell the brand MONOPOLOWA to Mutual.

10. Following the telephone conversation on August 27, 1992, Mickey Beckenfeld instructed John Wilson, then General Manager of Mutual, to draft the two page letter attached hereto as Exhibit A (the "August 27, 1992 Letter") and fax it to Elek Gessler.

11. Elek Gessler signed the August 27, 1992 Letter that same day and faxed it back to Mutual. Due to the speed at which this was done, it is my opinion that Elek Gessler never sought legal counsel before signing the August 27, 1992 Letter. I believe that Mickey Beckenfeld used the circumstances to take advantage of Elek Gessler.

12. In 2002, ten years after the August 27, 1992 Letter, John Wilson arranged to apply for registration after Rasiel Gessler and John Wilson had a set of intense arguments over ownership of the mark. Rasiel Gessler had insisted that the brand belonged to Altvater Gessler. I believe that the 2002 application for registration of the mark MONOPOLOWA, filed by Mutual, breaches the understanding between Elek Gessler and Mickey Beckenfeld.

13. It is my belief that, before I became President of the company, if Mutual truly believed that it owned the brand MONOPOLOWA, it would not have waited ten years to apply to register the mark with the U.S. Patent and Trademark Office. It would also have put the registration symbol on the label for the product after the registration issued.

14. Since its outset in or about 1985, the business relationship between Mutual and Altvater Gessler has not changed significantly. Altvater Gessler continues to oversee the manufacture and delivery of MONOPOLOWA brand vodka and Mutual continues to import and distribute it within the United States. Today, Mutual sells about 120,000 cases of MONOPOLOWA brand vodka per year.

15. I understand that Ronald Beckenfeld, the son of Mickey Beckenfeld, claims ownership of the mark MONOPOLOWA for vodka. Ronald Beckenfeld has had no meaningful

involvement in the business of Mutual and has had nothing meaningful to do with the manufacture, importation, sale, advertisement or promotion of MONOPOLOWA brand vodka.

16. My daughter, Nicole Monastirsky Kiley, is now the General Manager of Mutual. Rasiel Gessler is now the CEO of Altvater Gessler in place of the late Elek Gessler, who passed away in 2008. Both work hand-in-hand bringing MONOPOLOWA brand vodka to the U.S. for sales and distribution.

17. Based upon the foregoing, I believe that Altvater Gessler is the true owner of the trademark MONOPOLOWA for vodka and that Mutual is Altvater Gessler's importer and distributor in the U.S. Indeed, Mutual has no control over the recipe, manufacture, or bottling of the product such that it could produce genuine MONOPOLOWA vodka without the cooperation of Altvater Gessler.

I hereby declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Date: \_\_\_\_\_

12/14/12



\_\_\_\_\_  
Harvey Monastirsky

# Exhibit I

**Peter S. Sloane**

---

**From:** Michael Lovitz <michael@bowenhayes.com>  
**Sent:** Wednesday, November 27, 2013 5:53 PM  
**To:** Peter S. Sloane  
**Subject:** Discovery response update  
**Attachments:** Beckenfled signed 2d set of Rogs responses.pdf; ATT00001.htm; Response to 1st admissions requests - amended.pdf; ATT00002.htm; 20131127 production of docs.pdf; ATT00003.htm

Hi Peter -

A. Responses to Petitioners' Discovery Requests:

Please find attached the following documents and materials:

- a) the fully-executed signature page for Respondent's Responses to Petitioners' Second Set of Interrogatories
- b) Respondent's First Amended Responses to Petitioners' First Requests for Admission
- c) Additional documents responsive to Petitioners' Requests for Production - we will continue to update these files as additional documents are uncovered or otherwise come to our client's attention.

B. Mutual's Document No. 7297 (as well as 7298-7300)

As previously identified to you, this document was altered at some time by someone at Mutual (although the identify of such person has not yet been disclosed to us) wherein the signature of Elek Gessler was covered by white out. It is our intention to have a restoration company remove the white out so that the signature can be seen unobscured. The efforts undertaken during restoration will be detailed in a declaration by the restoration company.

We expect to have the restoration done in December, but can make the document available to you (or your CA local counsel) for inspection prior to undertaking the restoration activities. Let me know if you wish to inspect the document prior to restoration.

C. Privilege Log

I'm updating the privilege log and will provide you with the same next week.

D. Petitioners' Discovery responses

As we discussed, we are still waiting for an un-redacted copy of the manufacturing agreement between your client and the Horvaths.

Should you have any questions concerning the foregoing, please don't hesitate to contact us.

Best regards.

-michael

Michael L. Lovitz, Esq.

**BOWEN HAYES & KREISBERG**

10350 Santa Monica Blvd., Ste. 350

Los Angeles, CA 90025

**Phone:** 310-893-0422 [office] / 424-256-8489 [direct]

**Fax:** 310-861-6566

**E-Mail:** [michael@bowenhayes.com](mailto:michael@bowenhayes.com)

**Notice To Recipient:** This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you have received this e-mail in error, be aware that any review, use, dissemination, distribution, or copying of this e-mail by you is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message and any and all duplicates of this message from your system. Thank you in advance for your cooperation in this matter.