

ESTTA Tracking number: **ESTTA649823**

Filing date: **01/13/2015**

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

Proceeding	92057023
Party	Plaintiff LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck
Correspondence Address	JENNIFER FRASER NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP 1875 EYE STREET NW, ELEVENTH FLOOR WASHINGTON, DC 20006 UNITED STATES trademark@novakdruce.com, jennifer.fraser@novakdruce.com, daniel.mullarkey@novakdruce.com, breanne.staley-ashe@novakdruce.com, tm-docket@novakdruce.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Daniel P. Mullarkey
Filer's e-mail	daniel.mullarkey@novakdruce.com, ali.karimpour@novakdruce.com
Signature	/Daniel P. Mullarkey/
Date	01/13/2015
Attachments	Rebuttal Notice of Reliance-Final.pdf(18567 bytes ) Ex A -Public_ Final.pdf(108421 bytes ) Ex B_-Final.pdf(493772 bytes )

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

In the matter of Trademark Trial and Appeal Board

Cancellation No. 92057023

Registration Nos:     4,220,686 - GIOVANNI'S ALOHA FOODS  
                          4,224,400 - GIOVANNI'S SCAMPI MARINADE  
                          4,232,469 - GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK  
                          4,248,595 - GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

**PETITIONER'S REBUTTAL NOTICE OF RELIANCE**

Petitioner, by its undersigned attorney, pursuant to 37 C.F.R. §§ 2.122(a), 2.122(d), 2.122(e), 2.120(j), 2.120(j)(3)(i), hereby gives notice of its intent to rely on the following rebuttal evidence, which includes discovery deposition transcript excerpts and official records from the State of Hawaii Department of Commerce and Consumer Affairs. The additional excerpts of testimony and official records "should in fairness be considered so as to make not misleading what was offered by Respondent" and are necessary to clarify, rebut and/or place in context the excerpts of testimony and the third party testimony and documents offered by Respondent in his testimony period. Additionally, the rebuttal excerpts help to clarify and place in context Petitioner's objections to Respondent's improper, vague, and/or leading questions.

Discovery Deposition Transcripts Excerpts

The following discovery depositions are admissible via a stipulation of the parties and/or pursuant to the Trademark Rules:

- Excerpts from Discovery Deposition Transcript of John Aragona, dated June 18, 2014, marked confidential and filed under separate cover (see Exhibit A for pages 10-12, 38, 68, 81-82, 84, 121 and 169).

State of Hawaii Department of Commerce and Consumer Affairs Official Records

- LuckyU 002076, LuckyU 002079, LuckyU 002080, LuckyU 002082, and LuckyU 002083-84.

Testimony Transcripts

LuckyU intends to rely on any testimony provided in this proceeding.

Respectfully submitted,

Date: January 13, 2015

/s/ Daniel P. Mullarkey  
Jennifer Fraser  
Daniel P. Mullarkey  
Novak Druce Connolly Bove + Quigg, LLP  
1875 Eye Street, NW  
Eleventh Floor  
Washington, DC 20006  
Jennifer.fraser@novakdruce.com  
Daniel.mullarkey@novakdruce.com  
Attorneys for Petitioner

Enclosures: 1. Discovery Deposition Transcript Excerpts  
2. State of Hawaii Department of Commerce and Consumer Affairs Official Records

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of January 2015 a true and correct copy of the foregoing **PETITIONER'S REBUTTAL NOTICE OF RELIANCE** was served on Respondent's Counsel, Jamie N. Pitts., The Law Office of Jamie N. Pitts, Esq., 887 W. Marietta Street, NW, Ste. M-105, Atlanta, GA 30318, via First Class Mail, with a courtesy copy served via e-mail to jamienpitts@jnplawfirm.com.

s/Ali Karimipour/  
Ali Karimipour

*In the matter of Trademark Trial and Appeal Board*

*In the matter of Trademark Trial and Appeal Board*

*Cancellation No. 92057023*

*Registration Nos: 4,220,686 - GIOVANNI'S ALOHA FOODS  
4,224,400 - GIOVANNI'S SCAMPI MARINADE  
4,232,469 - GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK  
4,248,595 - GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE*

*LuckyU Enterprises, Inc., dba Giovanni's :  
Original White Shrimp Truck :  
Petitioner, :  
v. : Cancellation No. 92057023  
John "Giovanni" Aragona :  
Respondent. :*

PETITIONER'S REBUTTAL NOTICE OF RELIANCE

Public Version

# Exhibit A

Excerpts from J. Aragona's June 18, 2014 Deposition Transcript

*In the matter of Trademark Trial and Appeal Board,*

*In the matter of Trademark Trial and Appeal Board*

*Cancellation No. 92057023*

*Registration Nos: 4,220,686 - GIOVANNI'S ALOHA FOODS  
4,224,400 - GIOVANNI'S SCAMPI MARINADE  
4,232,469 - GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK  
4,248,595 - GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE*

*LuckyU Enterprises, Inc., dba Giovanni's :  
Original White Shrimp Truck :  
Petitioner, :  
v. : Cancellation No. 92057023  
John "Giovanni" Aragona :  
Respondent. :*

PETITIONER'S REBUTTAL NOTICE OF RELIANCE

# Exhibit B

**State of Hawaii Dept. of Commerce and Consumer Affairs Official Record**

07/16/201310013

Nonrefundable Filing Fee - \$50.00

Name OKKT

Submit Original and

one True Copy

EXPEDITED REVIEW

STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
Business Registration Division  
1010 Richards Street  
Mailing Address: P. O. Box 40, Honolulu, Hawaii 96810

RECEIVED  
APR - 3 1998  
12:15 pm

APPLICATION FOR REGISTRATION OF TRADE NAME

Dept of Commerce & Consumer Affairs  
STATE OF HAWAII

GENERAL INFORMATION AND INSTRUCTIONS

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

CONNIE

TN2 00115386

2- 4/14/98

70.00

1. APPLICANT'S NAME: CONNIE M. ARAGONA  
Address: P.O. Box 390 City Haleiwa State HI Zip Code 96712
2. Check one: Registration is:  New OR  Renewal
3. Status of applicant: (Check one)  Sole Proprietor  Corporation  Partnership  Unincorporated Association  
 Other (explain) \_\_\_\_\_
4. If applicant is a corporation or partnership, list state or country of incorporation/formation: \_\_\_\_\_
5. Trade name is Giovanni's Aloha Foods **CANCELLED**  
(This form is not to be used to register the name of a new corporation or partnership.)
6. Applicant is (check one):  Originator of name OR  Assignee (one to whom name was assigned by another)
7. Nature of business for which the trade name is being used: bottling sauces - Wholesale  
Retail

I certify, under the penalties set forth in Section 482-3.5, Hawaii Revised Statutes, that

CHECK ONE:  I am the applicant OR  I am the \_\_\_\_\_ (office held)

of the applicant named in the foregoing application, and that the statements made in the application are true and correct to the best of my knowledge and belief.

Connie M. Aragona (Signature) 4/3/98 (Date)

This application must be certified by the applicant if an individual, or by an officer if a corporation, or by a general partner if a partnership. Signature must be in black ink.

(DEPARTMENTAL USE ONLY)

Certificate of Registration No. 215770

CERTIFICATE OF REGISTRATION OF TRADE NAME **CANCELLED**

In accordance with the provisions of Chapter 482 of the Hawaii Revised Statutes, this Certificate of Registration is issued to secure to the aforesaid applicant the use of the said TRADE NAME throughout the State of Hawaii for the term of

ONE (1) year(s) from APR - 3 1998 to APR - 2 1999

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

Dated: APR - 3 1998  
[Signature]  
Director of Commerce and Consumer Affairs

REGISTRATION OF A TRADE NAME WITH THE DEPARTMENT DOES NOT GRANT YOU OWNERSHIP OF THE TRADE NAME

2222050

LuckyU 002076

# DCCA State of Hawaii

Downloaded on July 16, 2013.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

## Business Information

MASTER NAME	GIOVANNI'S ALOHA FOODS, L.L.C.
BUSINESS TYPE	Domestic Limited Liability Company (LLC)
FILE NUMBER	2045 C5
STATUS	Adm. Terminated
PURPOSE	SALE/MANUFACTURE OF BOTTLED SAUCES
PLACE INCORPORATED	Hawaii UNITED STATES
REGISTRATION DATE	Oct 22, 1998
MAILING ADDRESS	59-618 KAWOA PL HALEIWA, Hawaii 96712 UNITED STATES
PARTNER TERMS	AT-WILL
MANAGED BY	MEMBER(S)
AGENT NAME	CONNIE ARAGONA
AGENT ADDRESS	98-1362 WAIHONA ST PEARL CITY, Hawaii 96782 UNITED STATES

## Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2004		Delinquent
2003		Delinquent
2002		Not Required
2001		Delinquent
2000		Processed
1999		Processed

## Officers

NAME	OFFICE	DATE
ARAGONA, CONNIE M	MEM	Dec 31, 1999
GOODRICH, JAMES L	MEM	Dec 31, 1999
NITSCHKE, TROY E	MEM	Dec 31, 1999

LuckyU 002079

DOMESTIC LLC  
FILING FEE: \$25.00

STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
BUSINESS REGISTRATION DIVISION  
1010 RICHARDS STREET

ORIGINAL-RETURN BY JUNE 30  
PENALTY FOR LATE FILING

Mailing Address: Annual Filing, P.O. Box 40, Honolulu, HI. 96810

DOMESTIC LIMITED LIABILITY COMPANY ANNUAL REPORT FOR THE YEAR ENDED DECEMBER 31, 1998.

COMPANY NAME AND DESIGNATED OFFICE ADDRESS:  
Giovanni's Aloha Shrimp, L.L.C.  
59-618 Kawoa Place  
Haleiwa, HI. 96712

The above designated office address cannot be changed without filing a change form first.

1. Principal Office Address:

59-618 Kawoa Place	L22 00214253	13-12/28/99	10.00
Haleiwa, HI. 96712	L27 00214252	13-12/28/99	25.00

If address of principal office differs from the above, state the corrected address below. Give Number, Street, City, State, and Zip Code: \_\_\_\_\_

2. Organized under the laws of: Hawaii

3. Nature of business transacted in Hawaii:

Manufacture and sale of ~~Bottled Sauces~~ Shrimp Products  
(If any change, line out and print correction below)

4. Name and street address of the designated agent in Hawaii.  
(Designated agent and/or street address of agent cannot be changed without filing a change form first):

John Aragona  
59-618 Kawoa Place  
Haleiwa, HI. 96712

5. The company is: member-managed.  
If company is manager-managed, state the total number of members here \_\_\_\_\_.

6. Managers or members for the year ended December 31, 1998 are (If any change, line out and print correction on the right. See instructions on the reverse side of form.):

TITLE	NAME	RESIDENCE ADDRESS (DO NOT LIST BUSINESS ADDRESS) (INCLUDE NUMBER & STREET, APT. NO., CITY, STATE & ZIP CODE)
Member	John Aragona	59-618 Kawoa Place Haleiwa, HI. 96712
Member	Connie Aragona	
Member	James Goodrich	1717 Ala Wai Blvd. #1402 Honolulu, Hawaii 96815
Member	Diane Wong	

DECLARATION

I certify under the penalties of section 428-1302, Hawaii Revised Statutes, that I have read the above and the information is true and correct.

DATE: 11-8-99

J Goodrich  
AUTHORIZED SIGNATURE

Member  
TITLE

FILE NO. 2046CS  
Rev. 1/98

(File this original. Photo copies not accepted.)  
(SEE REVERSE SIDE FOR INSTRUCTIONS)

L17 25  
L22 10

LuckyU 002080

# DCCA State of Hawaii

Downloaded on July 16, 2013.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

## Business Information

MASTER NAME	GIOVANNI'S ALOHA SHRIMP, L.L.C.
BUSINESS TYPE	Domestic Limited Liability Company (LLC)
FILE NUMBER	2046 C5
STATUS	Adm. Terminated
PURPOSE	MANUFACTURE AND SALE OF SHRIMP PRODUCTS
PLACE INCORPORATED	Hawaii UNITED STATES
REGISTRATION DATE	Oct 22, 1998
MAILING ADDRESS	59-618 KAWOA PL HALEIWA, Hawaii 96712 UNITED STATES
PARTNER TERMS	AT-WILL
MANAGED BY	MEMBER(S)
AGENT NAME	CONNIE ARAGONA
AGENT ADDRESS	96-1362 WAIHONA ST PEARL CITY, Hawaii 96782 UNITED STATES

## Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2004		Delinquent
2003		Delinquent
2002		Not Required
2001		Delinquent
2000		Processed
1999		Processed

## Officers

NAME	OFFICE	DATE
ARAGONA, CONNIE M	MEM	Dec 31, 1999
GOODRICH, JAMES L	MEM	Dec 31, 1999

LuckyU 002082

204605



03/24/2006 10:163

## Department of Commerce and Consumer Affairs

### CERTIFICATE OF ADMINISTRATIVE TERMINATION

I, MARK E. RECKTENWALD, Director of Commerce and Consumer Affairs of the State of Hawaii, do hereby certify that the limited liability company listed on the attached letter from this Department, dated May 11, 2005, was administratively terminated by Decree of the Director of Commerce and Consumer Affairs on July 11, 2005, for failure to file an annual report for a period of two years or remit fees as required by law, and that in accordance with the provisions of Section 428-810, Hawaii Revised Statutes, the last managers of the company if the company was manager-managed, or if not manager-managed, the last members of the company shall be and act as trustees for the creditors and members of the limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Commerce and Consumer Affairs, at Honolulu, State of Hawaii, effective the 11<sup>th</sup> day of July, 2005.

*Mark E. Recktenwald*

Director of Commerce and Consumer  
Affairs

By *[Signature]*  
Commissioner of Securities



03/24/2006 10:163

LuckyU 002083

03/24/2006 10163

2046C5

State of Hawaii  
Department of Commerce and Consumer Affairs  
Business Registration Division  
335 Merchant Street  
Mailing Address: P. O. Box 40, Honolulu, Hawaii 96810  
Telephone (808) 586-2727  
May 11, 2005

GIOVANNI'S ALOHA SHRIMP, L.L.C.  
59-618 KAWOA PL  
HALEIWA HI 96712

NOTICE OF DELINQUENCY AND INTENTION TO TERMINATE COMPANY

Our records indicate that you are delinquent in filing your limited liability company annual report(s) as required by Section 428-210, Hawaii Revised Statutes (HRS).

Please file your annual report(s) together with the fee(s) and penalties for the following:

Filing Year	Fees	Penalty	Total
2001	\$15	\$40	\$55
2003	\$15	\$20	\$35
2004	\$15	\$10	\$25
<b>Total</b>			<b>\$115</b>

Due Date: July 11, 2005, at 4:00 P.M.

Unless all delinquent annual reports are filed in this department by the due date together with the filing fees and penalties, your company shall be administratively terminated by the Director of Commerce and Consumer Affairs as provided by Section 428-810, HRS.

03/24/2006 10163

LuckyU 002084