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

Proceeding	92057222
Party	Defendant Chick-N-Joy Systems Limited
Correspondence Address	WILLIAM M MULLINEAUX ASTOR WEISS KAPLAN & MANDEL LLP 200 SOUTH BROAD STREET THE BELLEVUE, SUITE 600 PHILADELPHIA, PA 19102 UNITED STATES mmullineaux@astorweiss.com
Submission	Opposition/Response to Motion
Filer's Name	William M. Mullineaux
Filer's e-mail	mmullineaux@astorweiss.com
Signature	/wmm/
Date	05/16/2014
Attachments	Brief in Opp to SJ with sig.pdf(351733 bytes ) Ex A resp mo summ judg Affidavit.pdf(413280 bytes ) Ex B trademark cert PTO.pdf(208833 bytes ) Ex C bag with trademark.pdf(93432 bytes )

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

Registrant: Chick-N-Joy Systems Limited	)	
	)	
Registration No.: 3567736	)	
	)	
Registration Date: January 27, 2009	)	
	)	
Mark: CHICK-N-JOY	)	
_____	)	Cancellation No. 92057222
	)	
Jollibee Foods Corporation,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Chick-N-Joy Systems Limited	)	
	)	
Registrant.	)	
_____	)	

**(PROPOSED) ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2014, upon consideration of  
Petitioner Jollibee Foods Corporation’s Motion for Summary Judgment and Registrant  
Chick-N-Joy Systems Limited’s response thereto, it is hereby ORDERED that the Motion  
is DENIED.

**BY THE BOARD:**

\_\_\_\_\_

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

Registrant: Chick-N-Joy Systems Limited )  
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Registration No.: 3567736 )  
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Registration Date: January 27, 2009 )  
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Mark: CHICK-N-JOY )  
\_\_\_\_\_ ) Cancellation No. 92057222  
)  
Jollibee Foods Corporation, )  
)  
Petitioner, )  
)  
v. )  
)  
Chick-N-Joy Systems Limited )  
)  
Registrant. )  
\_\_\_\_\_ )

**Registrant's Response to Petitioner's Motion for Summary  
Judgment and Memorandum of Law in Opposition to the Motion**

William Mark Mullineaux  
Astor Weiss Kaplan & Mandel, LLP  
200 South Broad Street Suite 600  
Philadelphia, PA 19102  
mmullineaux@astorweiss.com

## I. INTRODUCTION

Jollibee Foods Corporation (“Petitioner”) alleges that Chick-N-Joy Systems Limited (“Registrant” and “Chick-N-Joy”) has abandoned U.S. Registration No. 3567736 for the mark CHICK-N-JOY, registered on January 27, 2009. Petitioner contends that it is entitled to summary judgment because it alleges that Chick-N-Joy abandoned the registered mark. Petitioner has the burden of proving that based on the evidentiary record and all inferences thereof, “viewed in the light most favorable” to Chick-N-Joy, that Chick-N-Joy had the “intent” not to use the mark. See 15 U.S.C. 1127 (1).

The following facts, read in the light most favorable to Chick-N-Joy, are contrary to a finding of intent not to use:

“(3) Chick-N-Joy has had the actual intent to use the trademark Chick-N-Joy in the United States ...through today...

(5) At the time of the registration, Mr. Kastanas, President of Chick-N-Joy received the U.S. Trademark Certificate of Registration for Chick-N-Joy that, in part, states:

First Filing: A Declaration of Continued Use (or Excusable Non-use) filed between the **fifth and sixth years** after the registration date...

**YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE SPECIFIED TIME PERIOD.**

(6) ...The correspondence from Chick-N-Joy’s trademark lawyer at the time states the same deadline – between 5 and 6 years.

(8) Mr. Kastanas believed that Chick-N-Joy did not risk losing the trademark because of non-use so long as a declaration of continued use was filed between 5 and 6 years after January 27, 2009 or between **January 27, 2014 and January 27, 2015**. The 5-6 year period has not expired.”

See Exhibit A, Mr. Kastanas Affidavit Paragraphs 3,5,6,8 and Exhibit B, U.S. Trademark Certificate of Registration (page 2) (Emphasis added).

- Since the day of registration Chick-N-Joy required the U.S. trademark to be placed on every food bag made in the U.S. by two manufacturers. Exhibit A, Mr. Kastanas Affidavit Paragraph 19.
- An example of the trademark placed on the bags is attached as Exhibit C; it states, “The Chick-N-Joy name, design and related marks are trademarks of Chick-N-Joy Systems Limited.” (emphahsis added). Exhibit C.
- Because of its intent to use the mark, Chick-N-Joy spent money over many years in order to have the U.S. trademark placed on the bags. Exhibit A, Mr. Kastanas Affidavit Paragraph 20.

From Chick-N-Joy’s answers to interrogatories, Petitioner had knowledge of these facts and elected not to take the deposition of Mr. Kastanas- the source of the information. This unchallenged evidence on intent precludes a finding on a summary judgment motion in favor of Petitioner.

## **II. MATERIAL FACTS IN DISPUTE**

The central material fact in dispute is Chick-N-Joy’s intent to use the mark. Petitioner has not submitted facts contrary to the evidence submitted by Chick-N-Joy in

discovery but instead relies on the fact that Chick-N-Joy did not, within the three-year period following registration, implement a restaurant service utilizing the registered mark. Petitioner fails, however, to understand the full legal standard for trademark abandonment: Chick-N-Joy must have an intention not to use the mark. Chick-N-Joy's uncontradicted evidence illustrates its continuous intent to use the mark, thus the claim for abandonment must fail because Petitioner has not met the burden of proof on a motion for summary judgment.

### **III. STANDARDS OF LAW**

#### **A. Summary Judgment Standard**

“Summary judgment is appropriate where the movant has established that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Odom's Tennessee Pride Sausage, Inc. v. FF Acquisition, L.L.C., 600 F.3d 1343, 1345 (Fed. Cir. 2010) (citing Lincoln Logs Ltd. v. Lincoln Pre-Cut Log Homes, Inc., 971 F.2d 732, 734 (Fed. Cir. 1992)). The United States Patent and Trademark Office Appeal Board Rule 528.01 provides that a fact is material if it “may affect the decision, whereby the finding of that fact is relevant and necessary to the proceedings.” TBMP § 528.01. “A factual dispute is genuine if sufficient evidence is presented such that a reasonable fact finder could decide the question in favor of the non-moving party.” Id.

While a party seeking summary judgment bears the initial burden of demonstrating the absence of any genuine issue of material fact (see Celotex Corp. v. Catrett, 477 U.S. 317 (1986)), the “nonmoving party may not rest on mere denials or conclusory assertions, but rather must proffer countering evidence, by affidavit or as

otherwise provided in Fed. R. Civ. P. 56, showing that there is a genuine factual dispute for trial.” Enbridge, Inc. v. Excelerate Energy LP, 92 U.S.P.Q.2d 1537 (Trademark Tr. & App. Bd. Oct. 6, 2009). Nonetheless, a “nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist; and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party.” TBMP § 528.01.

### **B. Abandonment Standard**

Pursuant to 15 U.S.C. 1127, a mark is deemed to be “abandoned” if either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. “Use” of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.

15 U.S.C.A. § 1127. Paragraph (1) describes the abandonment standard. Implicit with the paragraph (1) are two distinct requirements to prove abandonment: nonuse in commerce and intent not to use. Exxon Corp. v. Humble Exploration Co., Inc., 695 F.2d 96, 103, n.5 (5th Cir. 1983).

Three consecutive years of nonuse is prima facie evidence of abandonment, however, the registrant can rebut the presumed abandonment by evidence of an intention to resume the mark’s use. 3 McCarthy on Trademarks and Unfair Competition § 17:21

(4th ed., 1999). Additionally, although the “burden of production shifts to trademark holder to rebut prima facie showing of trademark abandonment, burden of proof is at all times on party seeking to cancel mark based on such alleged abandonment.” Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc., 892 F.2d 1021 (Fed. Cir. 1989) (citing Lanham Trade-Mark Act, §§ 7(b), 45, 15 U.S.C.A. §§ 1057(b), 1127); see also On-Line Careline, Inc. v. Am. Online, Inc., 229 F.3d 1080, 1087 (Fed. Cir. 2000) (“The burden of persuasion, however, always remains with the petitioner to prove abandonment by a preponderance of the evidence.”); 3 McCarthy on Trademarks and Unfair Competition § 17:21 (4th ed.) (“every federal court that has considered the issue has concluded that a prima facie case of abandonment only shifts the burden of production and the ultimate burden of persuasion always remains with the party claiming that the mark has been abandoned”) (internal citations omitted).

#### **IV. ARGUMENT**

Petitioner’s claim fails for two reasons. First, loss of trademark rights through abandonment requires a showing of nonuse of the mark and proof of intent not to use. Second, Chick-N-Joy’s nonuse is excusable. Even if the mark had not been use for three years, a trademark owner can defeat a claim of abandonment by producing evidence that intended to use the mark. Emergency One, Inc. v. Am. FireEagle, Ltd., 56 U.S.P.Q.2d. 1343, 228 F.3d 531 (promotion of brand and business plan which evidenced continued use precluded judgment as a matter of law). Each argument will be addressed in turn.

##### **1. There Exists Amble Evidence of Intent to Use**

To demonstrate an intent to use, the registrant “ must put forth evidence with respect to what activities it engaged in during the nonuse period or what outside events occurred from which an intent to resume use during the nonuse period may reasonably be inferred.” Imperial Tobacco Ltd., Assignee of Imperial Grp. PLC v. Philip Morris, Inc., 899 F.2d 1575, 1581 (Fed. Cir. 1990); see Miller Brewing Co. v. Oland's Breweries (1971) Ltd., 548 F.2d 349 (C.C.P.A. 1976) (evidence of promotion in the U.S., license renewal, and offers to supply product to U.S. distributors was evidence sufficient to rebut the prima facie case of abandonment of trademark).

The Federal Circuit finds evidence concerning a party’s actions both before and after the three-year statutory period may be relied on to infer the party’s intent to use. Crash Dummy Movie, LLC v. Mattel, Inc., 601 F.3d 1387, 94 U.S.P.Q.2d 1315, 81 Fed. R. Evid. Serv. 1261 (Fed. Cir. 2010) (registrant successfully rebutted the statutory presumption of abandonment by evidence that it needed sufficient time to research, develop and market its re-tooled toys after acquiring the mark).

Here, most poignantly, the fact that Chick-N-Joy required U.S. manufacturers to place the U.S. trademark on every bag made in the U.S. is directly opposite to Chick-N-Joy having an intention to abandon the mark. Exhibit A, Mr. Kastanas Affidavit Paragraph 20. If Registrant indeed wanted to abandon the mark it would not have made the effort and spent the money to require the mark to be on every bag.

Mr. Kastanas’ testimony (not challenged by a deposition) makes it very clear that he always intended to use the mark but he had the understanding that the rights in the mark were protected as long as the mark was used in the U.S. by January 27, 2015. Exhibit A, Mr. Kastanas Affidavit Paragraph 8. Mr. Kastanas, relying on counsel, was

wrong about the date but those uncontradicted facts demonstrate that in this case the passage of time with no use is **not** an indication that Mr. Kastanas had intended to abandon the mark.

Additionally, as discussed in more detail in Section IV.2 below, at all times Chick-N-Joy intended to expand its franchise service into the United States, and only failed to do so due to the failure of its former counsel's management of the deal. These pursuits constitute sufficient evidence to rebut a prima facie case of abandonment since it demonstrates an intention to use the mark. These facts constitute ample evidence of Chick-N-Joy's intention to use its registered mark.

## **2. Registrant's Nonuse was Excusable**

“To prove excusable nonuse, the registrant must produce evidence showing that, under his particular circumstances, his activities are those that a reasonable businessman, who had a bona fide intent to use the mark in United States commerce, would have undertaken.” Rivard v. Linville, 133 F.3d 1446, 1449 (Fed. Cir. 1998). “If a registrant's nonuse is excusable, the registrant has overcome the presumption that its nonuse was coupled with an ‘intent not to resume use.’” Cerveceria Centroamericana, S.A., 892 F.2d at 1027, 13 U.S.P.Q.2d. at 1313. In contrast, if the “activities are insufficient to excuse nonuse, the presumption is not overcome.” Id. Chick-N-Joy has evidence regarding what activities it engaged in during the nonuse period which constitute excusable nonuse.

Since the day of registration Chick-N-Joy has engaged in activities of a reasonable businessman with an intention to use the mark in United States commerce. First, Chick-N-Joy ensured that notice of the trademark was placed on food bags

manufactured in the United States. Exhibit A, Mr. Kastanas Affidavit Paragraph 19; Exhibit C. Meticulously ensuring the trademark was placed on these bags in order to protect the mark is clear evidence of intent to use the mark in U.S. commerce.

Second, Mr. Kastanas, President of Chick-N-Joy (“Petitioner”) relied on the U.S. trademark certificate of registration for Chick-N-Joy which stated that a declaration of continued use (or excusable non-use) must be filed between the “fifth and sixth years of the registration date.” Mr. Kastanas had the understanding from the trademark certificate that the requirement for use was that the use had to start at the latest between the fifth and sixth years or by January 27, 2015. Exhibit A, Mr. Kastanas Affidavit Paragraphs 5-8 and Exhibit C, Certificate of Registration. Additionally, the correspondence from Chick-N-Joy’s trademark lawyer at the time assured Mr. Kastanas of the same deadline – between 5 and 6 years. Exhibit A, Mr. Kastanas Affidavit Paragraph 6. Moreover, Chick-N-Joy’s trademark lawyer at the time did not advise Mr. Kastanas or Chick-N-Joy that if Chick-N-Joy did not use the trademark in the United States within three years that there would be a rebuttable presumption that Chick-N-Joy abandoned use of the trademark. Exhibit A, Mr. Kastanas Affidavit Paragraph 7. Thus, Mr. Kastanas and Chick-N-Joy were unaware of the three year time period which could result in abandonment of the mark.

Third, in addition to the bad legal advice regarding the ramifications of nonuse, Chick-N-Joy had unforeseen delays in initiating the trademark in the U.S. market. Specifically, on April 30, 2010, legal counsel was hired to render advice, consultation, and document preparation in Chick-N-Joy franchising matters. On May 28, 2010, Chick-N-Joy asked legal counsel to prepare agreements for the sale and franchising of two

existing Chick-N-Joy corporate stores. Despite requests to counsel, as of March 27, 2012, counsel still had not prepared or provided the franchise documents or disclosure documents. Chick-N-Joy did not go to other attorneys at that time because of the fees and time already invested in that firm. On March 27, 2012, Chick-N-Joy reached to out its lawyer in another attempt to develop the franchise documents. That firm never did provide the franchise documents or the disclosure documents. Exhibit A, Mr. Kastanas Affidavit Paragraph 9-13.

In October 2012, Chick-N-Joy was introduced to a company that would help develop the Franchise System and in February 2013, Chick-N-Joy retained their services. In May 2013, Chick-N-Joy was introduced to a new law firm that would be able to prepare the franchise documents and disclosure documents. In June 2013, the franchise and disclosure documents were COMPLETED and the sales of two of Chick-N-Joy's corporate stores are complete. Chick-N-Joy is now set and accepting applications for expansion in Canada and the United States. There have been inquiries for information about franchising in the U.S. Exhibit A, Mr. Kastanas Affidavit Paragraph 14-17.

These numerous efforts aimed at introducing the mark in the U.S. constitute excusable explanations as to why same was not completed within three years from the registration and the presumption of abandonment is rebutted. Of course, the attack by the Petitioner, a huge international company, demanding that Chick-N-Joy's trademark be cancelled has an impact on Chick-N-Joy's development of the trademark in the U.S.

## **V. CONCLUSION**

For the reasons above, Petitioner's Motion for Summary judgment should be denied.

/wmm/  
William Mark Mullineaux  
Astor Weiss Kaplan & Mandel, LLP  
200 South Broad Street Suite 600  
Philadelphia, PA 19102  
mmullineaux@astorweiss.com

**CERTIFICATE OF SERVICE**

I, William M. Mullineaux, Esquire, hereby certify that on May 16, 2014, copies of the foregoing Registrant's Response to Petitioner's Motion for Summary Judgment and Memorandum of Law in Opposition to the Motion; and Cross Motion for Summary Judgment and Memorandum of Law in Support thereof were sent by electronic mail to counsel for Petitioner at the following address:

**M. Tally George  
Baker & McKenzie LLP – Chicago  
300 E. Randolph Street, Suite 5000  
Chicago, IL 60601  
tally.george@bakermckenzie.com**

\_\_\_\_\_/wmm/\_\_\_\_\_  
William Mark Mullineaux



# EXHIBIT A

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

Registrant: Chick-N-Joy Systems Limited	)	
	)	
Registration No.: 3567736	)	
	)	
Registration Date: January 27, 2009	)	
	)	
Mark: CHICK-N-JOY	)	
_____	)	Cancellation No. 92057222
	)	
Jollibee Foods Corporation,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Chick-N-Joy Systems Limited	)	
	)	
Registrant.	)	
_____	)	

**AFFIDAVIT OF GEORGE KASTANAS REGEARDING JOLLIBEE’S MOTION  
FOR SUMMARY JUDGMENT AND CHICK-N-JOYS’ CROSS MOTION FOR  
SUMMARY JUDGMENT**

I, George Kastanas, am the President of Registrant Chick-N-Joy Systems Limited President. Under penalty of perjury, I declare the following to be true to the best of my knowledge, information, and belief. The matters that I state in this Affidavit are based on my personal knowledge, and if called as a witness I could, and would, testify competently to them.

(1) The Registrant Chick-N-Joy Systems Limited (“Chick-N-Joy”) is in the restaurant business owning and operating 2 corporate and 2 franchised stores in Canada. George J. Kastanas is President of Chick-N-Joy.

(2) On January 27, 2009, the United States Patent and Trademark Office granted registration of Registrant's Chick-N-Joy trademark.

(3) Chick-N-Joy has had the actual intent to use the trademark Chick-N-Joy in the United States since the date of registration through today as can be seen from the facts below.

(4) At the time of the U.S. registration, Registrant owned and operated 3 stores that provided restaurant services and, among other plans, had a plan to franchise stores in Canada and the USA.

(5) At the time of the registration, Mr. Kastanas, President of Chick-N-Joy received the U.S. trademark certificate of registration for Chick-N-Joy that, in part, states:

First Filing: A Declaration of Continued Use (or Excusable Non-use) filed between the **fifth and sixth years** after the registration date.

\*\*\*\*\*  
YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT  
FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE  
SPECIFIED TIME PERIOD.

(Emphasis added)

A copy of the certificate of registration reviewed by Mr. Kastanas is attached.

(6) Mr. Kastanas had the understanding from the trademark certificate that the requirement for use was that the use had to start at the latest between the fifth and sixth years. The correspondence from Chick-N-Joy's trademark lawyer at the time states the same deadline – between 5 and 6 years.

(7) Chick-N-Joy's trademark lawyer at the time did not advise Mr. Kastanas or Chick-N-Joy that if Chick-N-Joy did not use the trademark in the United States within three years that there would be a rebuttable presumption that Chick-N-Joy abandoned use

of the trademark. Mr. Kastanas and Chick-N-Joy were unaware of that three year time period.

(8) Based on the information from the company's attorney and from the U.S. trademark certificate, Mr. Kastanas believed that Chick-N-Joy did not risk losing the trademark because of non-use so long as a declaration of continued use was filed between 5 and 6 years after January 27, 2009 or between January 27, 2014 and January 27, 2015. The 5-6 year period has not expired.

(9) There were delays in Chick-N-Joy operating in the USA caused by delays of its attorneys. Chick-N-Joy's concrete plans were to go to the USA after it put in place the structure for its operations, including franchise agreements and disclosure documents.

(10) On April 30, 2010 legal counsel was hired to render advice, consultation, and document preparation in franchising matters. Documents would consist of revised franchise agreements as well as disclosure documents.

(11) On May 28, 2010, Chick-N-Joy asked legal counsel to prepare agreements for the sale and franchising of two existing CHICK-N-JOY corporate stores.

(12) Despite requests to counsel, as of March 27, 2012, counsel still had not prepared or provided the franchise documents or disclosure documents. Chick-N-Joy did not go to other attorneys at that time because of the fees and time already invested in that firm.

(13) On March 27, 2012, Chick-N-Joy reached to out its lawyer in another attempt to develop the franchise documents. That firm never did provide the franchise documents or the disclosure documents.

(14) In October 2012, Chick-N-Joy was introduced to a company that would help develop the Franchise System and in February 2013, Chick-N-Joy retained their services.

(15) In May 2013, Chick-N-Joy was introduced to a new law firm that would be able to prepare the franchise documents and disclosure documents.

(16) In June 2013, the franchise and disclosure documents were COMPLETED and the sales of two of Chick-N-Joy's corporate stores are complete.

(17) Chick-N-Joy is now set and accepting applications for expansion in Canada and the United States. There have been inquiries for information about franchising in the U.S.

(18) George J. Kastanas and Chick-N-Joy had hurdles to get over and delays to deal with but through it all they had the intent to do business in the USA and took steps to do so. While Mr. Kastanas went through these development steps, Mr. Kastanas' state of mind always was that he believed that Chick-N-Joy's trademark in the USA was secure so long as the use started within five-six years of the registration of the mark. The mark was not abandoned. To say the least, the use of the mark in the U.S. always had been on the table.

(19) Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured in the United States in (a) Oklahoma by Garnett Office, Factory & Warehouse, 5400 South Garnett, Tulsa, Ok, 74146 from 2011 to the present. (a copy of an example of the trademark placed on the bags in Oklahoma is attached) and (b) in Kentucky by Duro Bag Mfg., 7600 Empire Drive, Florence, KY 41042, (800) 879-3876, (859) 371-2150 from 2007 to 2011.

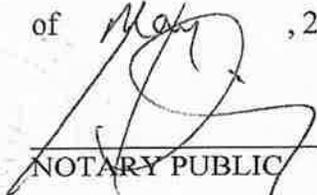
(20) From the beginning of when Chick-N-Joy obtained the US trademark, any contract

the company awarded for manufacturing of bags in USA included the “trademark requirement” and I know that the placing of the mark was considered by the manufacturers in bidding on price and thus Chick-N-Joy spent money in order to have the US trademark placed on the bags.

  
George Kastanas

Sworn to and Subscribed

before me this 15<sup>th</sup> day  
of May, 2014.

  
NOTARY PUBLIC  
Howard Weiskopf

# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)*



*John Doll*

Acting Director of the United States Patent and Trademark Office

## REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

### Requirements in the First Ten Years\*

#### *What and When to File:*

- **First Filing:** A Declaration of Continued Use (or Excusable Non-use), filed between the 5<sup>th</sup> and 6<sup>th</sup> years after the registration date. (See 15 U.S.C. §1058; 37 C.F.R. §2.161.)
- **Second Filing:** A Declaration of Continued Use (or Excusable Non-use) **and** an Application for Renewal, filed between the 9<sup>th</sup> and 10<sup>th</sup> years after the registration date. (See 15 U.S.C. §1058 and §1059; 37 C.F.R. §2.161 and 2.183.)

### Requirements in Successive Ten-Year Periods\*

#### *What and When to File:*

- A Declaration of Continued Use (or Excusable Non-use) **and** an Application for Renewal, filed between each 9<sup>th</sup> and 10<sup>th</sup>-year period after the date when the first ten-year period ends. (See 15 U.S.C. §1058 and §1059; 37 C.F.R. §2.161 and 2.183.)

### Grace Period Filings\*

There is a six-month grace period for filing the documents listed above, with payment of an additional fee.

The U.S. Patent and Trademark Office (USPTO) will **NOT** send you any future notice or reminder of these filing requirements. Therefore, you should contact the USPTO approximately one year prior to the deadlines set forth above to determine the requirements and fees for submission of the required filings.

**NOTE:** *Electronic forms for the above documents, as well as information regarding current filing requirements and fees, are available online at the USPTO web site:*

[www.uspto.gov](http://www.uspto.gov)

**YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT  
FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE  
SPECIFIED TIME PERIODS.**

\*Exception for the Extensions of Protection under the Madrid Protocol:  
The holder of an international registration with an extension of protection to the United States must file, under slightly different time periods, a Declaration of Continued Use (or Excusable Non-use) at the USPTO. See 15 U.S.C. §1141k; 37 C.F.R. §7.36. The renewal of an international registration, however, must be filed at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol. See 15 U.S.C. §1141j; 37 C.F.R. §7.41.

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,567,736

Registered Jan. 27, 2009

SERVICE MARK  
PRINCIPAL REGISTER

CHICK-N-JOY

CHICK-N-JOY SYSTEMS LIMITED (CANADA  
CORPORATION)

4449 KINGSTON ROAD

TORONTO, ONTARIO, CANADA M1E 2N7

FOR: RESTAURANT SERVICES, TAKE-OUT RESTAURANT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF CANADA REG. NO. TMA244314,  
DATED 5-2-1980, EXPIRES 5-2-2010.

SER. NO. 78-508,997, FILED 11-1-2004.

DAYNA BROWNE, EXAMINING ATTORNEY

# EXHIBIT B

# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)*



*John Doll*

Acting Director of the United States Patent and Trademark Office

## REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

### Requirements in the First Ten Years\*

#### *What and When to File:*

- **First Filing:** A Declaration of Continued Use (or Excusable Non-use), filed between the 5<sup>th</sup> and 6<sup>th</sup> years after the registration date. (See 15 U.S.C. §1058; 37 C.F.R. §2.161.)
- **Second Filing:** A Declaration of Continued Use (or Excusable Non-use) **and** an Application for Renewal, filed between the 9<sup>th</sup> and 10<sup>th</sup> years after the registration date. (See 15 U.S.C. §1058 and §1059; 37 C.F.R. §2.161 and 2.183.)

### Requirements in Successive Ten-Year Periods\*

#### *What and When to File:*

- A Declaration of Continued Use (or Excusable Non-use) **and** an Application for Renewal, filed between each 9<sup>th</sup> and 10<sup>th</sup>-year period after the date when the first ten-year period ends. (See 15 U.S.C. §1058 and §1059; 37 C.F.R. §2.161 and 2.183.)

### Grace Period Filings\*

There is a six-month grace period for filing the documents listed above, with payment of an additional fee.

The U.S. Patent and Trademark Office (USPTO) will **NOT** send you any future notice or reminder of these filing requirements. Therefore, you should contact the USPTO approximately one year prior to the deadlines set forth above to determine the requirements and fees for submission of the required filings.

*NOTE: Electronic forms for the above documents, as well as information regarding current filing requirements and fees, are available online at the USPTO web site:*

[www.uspto.gov](http://www.uspto.gov)

**YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT  
FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE  
SPECIFIED TIME PERIODS.**

\*Exception for the Extensions of Protection under the Madrid Protocol:  
The holder of an international registration with an extension of protection to the United States must file, under slightly different time periods, a Declaration of Continued Use (or Excusable Non-use) at the USPTO. See 15 U.S.C. §1141k; 37 C.F.R. §7.36. The renewal of an international registration, however, must be filed at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol. See 15 U.S.C. §1141j; 37 C.F.R. §7.41.

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,567,736

Registered Jan. 27, 2009

SERVICE MARK  
PRINCIPAL REGISTER

CHICK-N-JOY

CHICK-N-JOY SYSTEMS LIMITED (CANADA  
CORPORATION)

4449 KINGSTON ROAD

TORONTO, ONTARIO, CANADA M1E 2N7

FOR: RESTAURANT SERVICES, TAKE-OUT RESTAURANT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

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DATED 5-2-1980, EXPIRES 5-2-2010.

SER. NO. 78-508,997, FILED 11-1-2004.

DAYNA BROWNIE, EXAMINING ATTORNEY

# EXHIBIT C

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