IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	GENERAL CONTAINER COMPANY, LLC.		
Filed:	21 April 2005	Law Office:	104
Serial No.:	76/636710	Examining Attorney:	Estrada, L.
Mark:	MACKINAC ISLAND CREAMERY		

TRADEMARK APPLICATION TRANSMITTAL LETTER

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Enclosed are the following materials for filing the above-identified trademark application:

1. Certificate of Mailing Under 37 CFR 1.8(a);
2. Request for Reconsideration (8 Pages); and
3. Postcard.

Any charges associated with the filing of the foregoing may be charged to our Deposit Account No. 25-0115.

Respectfully submitted,

Christopher A. Mitchell
Reg. No. 40,729

DATED: 10 January 2007
Attorney Docket No. GNC-160-TM
Facsimile No.: (734) 662-1014

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RESPONSE AND AMENDMENT

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

In response to the Final Office Action dated 10 July 2006, please consider the following request for reconsideration made in connection with the above-captioned application:

I. Refusal Under 15 USC Section 2(e)

The examining attorney refuses registration of the subject mark as being primarily geographically descriptive under 15 USC Section 2(e)(2). But while the examining attorney acknowledges her obligation to meet the three-part test set forth in TMEP Section 1210.01 – namely, evidencing (1) that the primary significance of the mark is geographic, (2) that purchasers would be likely to make a goods/place association, and (3) that the goods originate in the place identified in the mark – she proceeds to fail in making out a *prima facie* case. Assuming, *arguendo*, that the name "Mackinac Island" primarily signifies a geographic location, the examining attorney specifically fails to show either that the goods originate in the place identified in the mark, or that purchasers would

be likely to make a goods/place association. Accordingly, Applicant respectfully requests reconsideration of the final refusal to register.[1]

A. *Refusal Under Section 2(e)(2)Requires the Trademark Office to Show That the Goods Originate in the Place Named by the Mark*

It is the Trademark Office's evidentiary burden to demonstrate that the goods or services originate in the place named by the mark in order to sustain a geographic-descriptiveness refusal. *See* TMEP § 1210.01(a). Relative to this evidentiary requirement, Applicant again states for the record that the goods of this application are neither produced nor manufactured on Mackinac Island. Rather, the goods are produced elsewhere, while Applicant's place of business is located in Hillsdale, in Michigan's lower peninsula.

And while Applicant acknowledges that the goods have in the past been sold by others on Mackinac Island (although currently the Applicant's goods are **not** being sold on Mackinac Island), Applicant is unaware of any reported decision which holds that such sales alone are sufficient to support a conclusion that an applicant's goods "originate" in a place named in its mark.

Accordingly, Applicant submits that the examining attorney has failed to evidence that Applicant's goods (i.e., ice cream) originate on Mackinac Island, Michigan.

B. *A Refusal Under Section 2(e)(2)Also Requires the Trademark Office to Show That Purchasers of the Goods Would be Likely to Make a Goods/Place Association*

In order to make a *prima facie* showing of a goods/place association, it is incumbent upon

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[1] Applicant notes that a Notice of Appeal of the final refusal in this case was filed with the TTAB on January 9, 2007, along with a request to stay consideration of that appeal pending disposition of the instant Request for Reconsideration.

the examining attorney to do more than demonstrate that a geographic place is known to the public and that the goods **could** come from there. Rather, the examining attorney must, at a minimum, show that consumers identify the geographic place as a known source of such goods. *See, e.g., In re Les Halles De Paris J.V.*, 334 F.3d 1371, 1374, 67 USPQ2d 1539, 1541 (Fed. Cir. 2003) ("[T]he goods-place association often requires little more than a showing that the consumer identifies the place as a known source of the product.").

Instantly, the examining attorney cites much law, but no competent evidence, in her final Office Action. Specifically, there is no evidence proffered to meet the Trademark Office's burden of showing that consumers identify Mackinac Island as a source of ice cream. What the examining attorney has instead offered is a misinterpretation of the specimens of record, as well as the results of an internet search showing pages from Applicant's web site. Citing to the TTAB's decision in *In re Nantucket Allserve Inc.*, 28 USPQ2d 1144 (TTAB 1993), the examining attorney contends that these materials demonstrate that Applicant "affirmatively fosters a goods/place association." Applicant disagrees.

In the *Nantucket* decision, the TTAB **did** find the applicant's labels for its goods to be evidence of a goods/place association where those labels bore a picture of Nantucket Town and contained the following statement:

> "Born on the Faraway Isle, Nantucket Nectars were created during the long winter months of 1990. Their flavor embodies the wholesome quality of the Island whose name they bear...Distributed by Nantucket Nectars, A Division of Allserve Inc., Straight Wharf, Nantucket, MA 02554." 28 USPQ2d at 1145.

Notably, the TTAB **also** found relevant the fact that the applicant's research and development center was located on Nantucket and, "[t]hus, a principal origin, if not the principal origin, of applicant's

products is Nantucket." *Id.*

Instantly, the specimen of record comprises a portion of the packaging for Applicant's goods. The examining attorney has misinterpreted this specimen as depicting "a logo consisting of the wording MACKINAC ISLAND CREAMERY, a sailboat design and the outline of an island behind the sailboat." Presumably it is the examining attorney's contention that this "island outline" represents Mackinac Island, much as the product label in the *Nantucket* case depicted Nantucket Town. However, the record specimen in fact shows a sailboat and its **wake**, rather than the silhouette of an island. This is quite evident from the color reproduction of another, similar packaging specimen for Applicant's goods which accompanies this paper.

As for the printouts of Applicant's web site appended to the final Office Action, Applicant notes in the first instance that the *Nantucket* decision does **not** support the conclusion that anything other than **product labels** may be considered as evidence going to the issue of whether or not there is a goods/place association. For while the TTAB in that case referenced record evidence comprising a newspaper article discussing the applicant and its products, that material was relied on only in establishing that the applicant had a store on Nantucket where it sold its goods, and that the goods included some ingredients from that island. *See* 28 USPQ2d at 1146.

Nor, moreover, is Applicant aware of any reported case which holds that anything other than labels or point-of-purchase materials are competent evidence going to the issue of the goods/place association. *See, e.g., In re Broyhill Furniture Industries, Inc.*, 60 USPQ2d 1511, 1517 (TTAB 2001)(Point of purchase display catalogs); and *In re Nantucket Allserve Inc.*, 28 USPQ2d 1144 (TTAB 1993)(Product labels).

Thus, even assuming, *arguendo*, that the record evidence comprising printouts from

Applicant's web site (which does **not** permit customer purchase of its products and so cannot be considered a point-of-purchase item) create a goods/place association, Applicant respectfully submits that these materials are not competent evidence to the issue.

Notwithstanding the foregoing, Applicant further submits that the content of the printouts from its' web site are not analogous to the content of the labels discussed in the *Nantucket* decision, and so do not establish a goods/place association. In particular, nothing in the Applicant's web site materials of record suggests, as was the case in *Nantucket*, that Applicant's goods were "born" or otherwise find their origin on Mackinac Island. And while the product labels at issue in the *Nantucket* case mentioned no other geographic location than Nantucket Island, Applicant's own packaging (shown in an attached exhibit) for "MACKINAC ISLAND CREAMERY" brand ice cream identifies the manufacturing dairy and its Monroe, Michigan (in Michigan's lower peninsula) location, as well as Applicant's own Hillsdale, Michigan (also in Michigan's lower peninsula) place of business.

C. *The Examining Attorney has Approved Another of Applicant's Applications to Register the "MACKINAC ISLAND CREAMERY" Mark*

Finally, Applicant notes for the record that the examining attorney has recently approved for publication Applicant's case seeking registration of the word mark "MACKINAC ISLAND CREAMERY" for use in connection with non-frozen, dairy and non-dairy fluids and cultures, Serial No. 78/689,457. Reflecting the impropriety – or at least arbitrary nature of – the current refusal to register, Applicant notes that no such final refusal was made in that case.

II. Conclusion

In light of the above, Applicant respectfully requests that the final refusal to register be withdrawn and that the mark of this application be approved for prompt publication. Of course, the examining attorney is invited to contact Applicant's undersigned counsel at (734) 662-0270 should she have any questions respecting this paper, or if a telephone interview might otherwise expedite the prosecution of this case.

Respectfully submitted,

Christopher A. Mitchell
Reg. No. 40,729
YOUNG BASILE
3001 W. Big Beaver Road.
Suite 624
Troy, Michigan 48084
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E-mail mitchell@youngbasile.com

Dated: 10 January 2007

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CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that the attached correspondence comprising:

1. Trademark Application Transmittal Letter (in duplicate);
2. Request for Reconsideration (8 Pages); and
3. Postcard

is being deposited with the United States Postal Service, as first class mail in an envelope addressed to:

COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

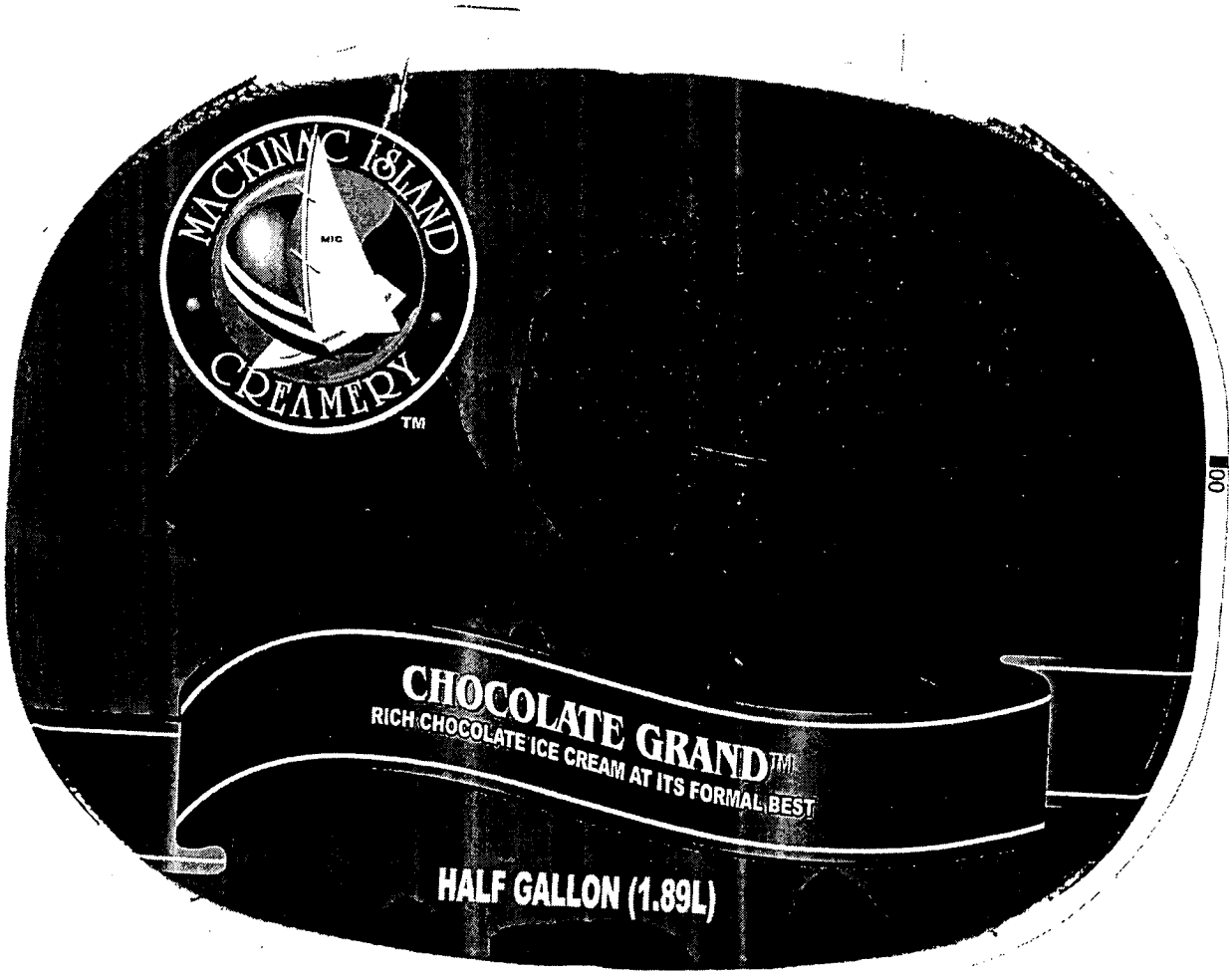
Dated: 10 January 2007

Christopher A. Mitchell

Signature of person mailing paper

01-16-2007

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #30


MACKINAC ISLAND
CREAMERY
TM
MIC
CHOCOLATE GRAND™
RICH CHOCOLATE ICE CREAM AT ITS FORMAL BEST
HALF GALLON (1.89L)


Nutrition Facts
Serving Size 1/2 Cup (68g)
Servings Per Container 16
Per Serving
Fat Cal. 110
% Daily Value*
18%
26%
10%
6%
6%
0%
2%
INGREDIENTS: CREAM, NONFAT DRY MILK, SWEET WHEY POWDER, SUGAR, SUCROSE, CORN SYRUP, PECAN HALVES, ROASTED, SALTED CASHEWS, BROWN SUGAR, SALT, NATURAL FLAVORS, BUTTER, SOY LECITHIN, POTASSIUM SORBATE, CITRIC ACID, CARAGEENAN.
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MONROE, MI 48162
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