

TTAB

T/3869-140

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

-----X  
The B. Manischewitz Company, LLC :  
:  
Opposer, :  
:  
v. :  
:  
Seaforth Creamery, Inc. :  
:  
Applicant. :  
:  
-----X



11-15-2001  
U.S. Patent & TMO/TM Mail Rpt Dt. #01

Opposition No.  
Serial No.: 76/099,990  
TM: ALL SEASONS

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

BOX TTAB

NOTICE OF OPPOSITION

SIR:

In the matter of pending application Serial No. 76/099,990 filed August 1, 2000 by Seaford Creamery, Inc. of Ontario, Canada for the mark ALL SEASONS, published in the Official Gazette of July 24, 2001 at TM 319, The B. Manischewitz Company, LLC believes that it will be damaged by the registration of the above mark and hereby gives notice of its intention to oppose the above application for registration , its grounds for opposition being as follows:

1. Opposer is a limited liability company organized under the laws of Delaware located and doing business at One Manischewitz Plaza, Jersey City, New Jersey 07302.
2. For many years opposer and its predecessors have used the trademark SEASON in interstate commerce for a line of food products.

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3. Opposer's mark SEASON was first used in connection with sardines in the year 1921 and such use has been continuous since that time to the present time.
4. Opposer is the owner of U.S. Registration No. 156,864 issued July 18, 1922 for the mark SEASON and Design for smoked sardines. This registration is valid and subsisting and in full force and effect. Annexed hereto and made a part hereof and marked opposer's Exhibit 1 is a copy of said registration.
5. Opposer is the owner of U.S. Registration No. 282, 739 issued April 28, 1931 for the mark SEASON and Design for food products which include canned sardines, canned salmon, and canned tuna fish. This registration is valid and subsisting and in full force and effect. Annexed hereto and made apart hereof and marked opposer's Exhibit 2 is a copy of said registration.
6. By reason of extensive sales and distribution of opposer's food products bearing the mark SEASON for more that 75 years, this trademark has acquired substantial goodwill, distinctiveness and secondary meaning as indicating a line of food products having its origin exclusively with opposer.
7. Applicant seeks registration for the mark ALL SEASONS for spoonable and portable salad dressings. These goods are frequently used in connection with canned sardines, canned salmon, and canned tuna fish. Applicant's goods are therefore sufficiently related to opposer's goods such that a likelihood of confusion will exist if the respective products are sold under the same or confusingly similar marks.
8. Applicant's mark ALL SEASONS is confusingly and deceptively similar and virtually identical to opposer's mark which is contained therein and is phonetically and visually very similar to opposer's mark and is also similar in meaning to opposer's mark SEASON.
9. The use and registration of applicant's mark for its goods will create confusion, mistake and deception as to the origin of applicant's goods and will cause the trade and public to believe that applicant's goods originate with or are otherwise sponsored, licensed or authorized by opposer.

10. The use and registration of ALL SEASONS to applicant for spoonable and portable salad dressings will dilute the distinctiveness of opposer's well known trademark SEASON resulting in a lessening and diversion of opposer's goodwill to applicant.
11. By reason of all the foregoing, opposer will be gravely damaged by the registration of ALL SEASONS to applicant.

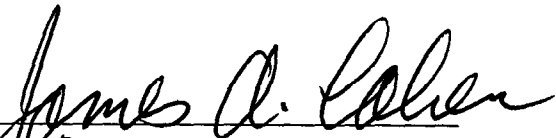
WHEREFORE, opposer respectfully requests that the Notice of Opposition be sustained and that the registration of ALL SEASONS be refused to applicant.

#### **POWER OF ATTORNEY**

Please recognize Martin J. Beran and Ostrolenk, Faber, Gerb & Soffen, LLP as attorneys to prosecute this opposition proceeding. The undersigned hereby appoints customer no. 2352, OSTROLENK, FABER, GERB & SOFFEN, LLP and the members of the firm: Samuel H. Weiner, Robert C. Faber, Edward A. Meilman, Steven I. Weisburd, Max Moskowitz, Stephen A. Soffen, James A. Finder, William O. Gray, III, Louis C. Dujmich, Charles P. LaPolla, Douglas A. Miro, Marc A. Lieberstein and Michael J. Scheer, and of counsel Martin J. Beran, all members of the Bar of the State of New York, with offices at 1180 Avenue of the Americas, New York, New York 10036-8403, (212) 382-0700, its attorneys to prosecute this application with full power of substitution and revocation and to transact all business in the Patent and Trademark Office in connection therewith. Said attorneys are hereby designated its agent upon whom notices or process may be served in proceedings affecting the above-entitled mark. Please address all correspondence to:

Martin J. Beran, Esq.  
OSTROLENK, FABER, GERB & SOFFEN, LLP  
1180 Avenue of the Americas  
New York, New York 10036-8403  
Customer No. 2352

The B. Manischewitz Company, LLC

By:   
Name James A. Cohen  
Title Senior Vice President- Legal Affairs

SECOND RENEWAL

UNITED STATES PATENT OFFICE

ISAAC EPSTEIN OF NEWARK, NEW JERSEY

TRADE-MARK FOR FOOD PRODUCTS—VIZ SMOKED SARDINES

ACT OF FEBRUARY 20, 1905

Registered July 18, 1922

156,861

Application filed December 16, 1921. Serial No. 156,733

STATEMENT

To all whom it may concern: Be it known that I, Isaac Epstein, a citizen of the United States, residing in the city of Newark, in the county of Essex and State of New Jersey, and located and doing business at 97 Montgomery Street, in said city, county, and State, have adopted and used the trade-mark shown in the accompanying drawing, for food products—viz

smoked sardines—in Class 16, Foods and ingredients of foods. The trade mark has been continuously used in my business since September 2, 1921. The trade mark is affixed to the packages containing the goods by attaching thereto printed labels on which the trade mark is shown.

ISAAC EPSTEIN



DECLARATION

State of New York City of New York ss. Isaac Epstein, being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes himself to be the owner of the trade mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereunto, as might be calculated to deceive, or

among the several States of the United States; that the drawing presented truly represents the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods.

ISAAC EPSTEIN

Subscribed and sworn to before me, a Commissioner of deeds, this 2nd day of December, 1921.

LOUIS JAYKOWSKY

Commissioner of

Registered Apr. 28, 1931

Trade-Mark 202,100

Renewed April 28, 1951 to I. Epstein & Sons, Inc., of Newark, New Jersey, a corporation of New Jersey.

# UNITED STATES PATENT OFFICE

EPSTEIN-MINZTER CO. INC., OF NEWARK, NEW JERSEY

ACT OF FEBRUARY 20, 1905

Application filed December 28, 1928. Serial No. 277,291.

11-15-2001

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

# SEASON



## STATEMENT

*To all whom it may concern:*

Be it known that Epstein-Minzter Co. Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and located in Newark, in the county of Essex and State of New Jersey, and doing business at Nos. 729-731 South 12th Street, Newark, New Jersey, has adopted and used the trade-mark shown in the accompanying drawing, for CANNED APRICOTS, GOLDEN BANTAM CORN, HAWAIIAN PINEAPPLE, SPINACH, SWEET PEAS, BARTLETT PEARS, ROYAL ANNE CHERRIES, FRUITS FOR SALADS, FRESH PRUNES, STRINGLESS BEANS, CORN, SAUER-KRAUT, SUGAR CORN, AND YELLOW CLING PEACHES; DRIED PEAS, LENTILS IN PACKAGES, DRIED BEANS IN PACKAGES, RICE IN PACKAGES, CANNED COFFEE AND COFFEE IN BAGS, CANNED CALIFORNIA SARDINES, CANNED SALMON, CANNED TUNA FISH, AND VANILLA AND LEMON EXTRACTS FOR FOOD-FLAVORING PURPOSES, in Class 46, Foods and ingredients of foods.

The trade-mark has been continuously used in the business of said corporation and by those from whom title is derived, on tuna fish since May 20, 1926, and on canned salmon

since May 25, 1926, on rice since March 14, 1927, and has been continuously used in the business of said corporation on all the other items since October 8, 1928; and the said corporation is the owner of Trade-Mark No. 156,864, registered July 18, 1922.

The trade-mark is displayed upon the packages containing the goods by means of a printed label on which the trade-mark is shown, or by printing the same on the containers of the goods.

The undersigned presents herewith a drawing and five specimens of its trade-mark, and requests that the same may be registered in the United States Patent Office in accordance with the act of February 20, 1905 (as amended); and it hereby appoints Orson D. Munn and Lester A. Stanley, constituting the firm of Munn & Co. (Reg. No. 77), of the cities of New York, N. Y., Washington, D. C., Chicago, Ill., San Francisco, Calif., and Los Angeles, Calif., or accredited agents, its attorneys, to prosecute this application and to make all such alterations and amendments therein as may be required, and to sign the drawing and to receive the certificate when issued.

EPSTEIN-MINZTER CO. INC.,  
By ISAAC EPSTEIN,  
President.

Registered Apr. 28, 1931

Trade-Mark 282,739

Renewed April 28, 1951 to I. Epstein & Sons, Inc., of Newark, New Jersey, a corporation of New Jersey.

# UNITED STATES PATENT OFFICE

EPSTEIN-MINZTER CO. INC., OF NEWARK, NEW JERSEY

ACT OF FEBRUARY 20, 1905

Application filed December 28, 1928. Serial No. 277,291.



11-15-2001

U.S. Patent & TMOs/TM Mail Rpt Dt. #01

# SEASON



## STATEMENT

*To all whom it may concern:*

Be it known that Epstein-Minzter Co. Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and located in Newark, in the county of Essex and State of New Jersey, and doing business at Nos. 729-731 South 12th Street, Newark, New Jersey, has adopted and used the trade-mark shown in the accompanying drawing, for CANNED APRICOTS, GOLDEN BANTAM CORN, HAWAIIAN PINEAPPLE, SPINACH, SWEET PEAS, BARTLETT PEARS, ROYAL ANNE CHERRIES, FRUITS FOR SALADS, FRESH PRUNES, STRINGLESS BEANS, CORN, SAUER-KRAUT, SUGAR CORN, AND YELLOW CLING PEACHES; DRIED PEAS, LENTILS IN PACKAGES, DRIED BEANS IN PACKAGES, RICE IN PACKAGES, CANNED COFFEE AND COFFEE IN BAGS, CANNED CALIFORNIA SARDINES, CANNED SALMON, CANNED TUNA FISH, AND VANILLA AND LEMON EXTRACTS FOR FOOD-FLAVORING PURPOSES, in Class 46, Foods and ingredients of foods.

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since May 25, 1926, on rice since March 14, 1927, and has been continuously used in the business of said corporation on all the other items since October 8, 1928; and the said corporation is the owner of Trade-Mark No. 156,864, registered July 18, 1922.

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EPSTEIN-MINZTER CO. INC.,  
By ISAAC EPSTEIN,  
President.

Int. Cl.: 29

Prior U.S. Cl.: 46

Reg. No. 282,739

United States Patent and Trademark Office

Registered Apr. 28, 1931

10 Year Renewal

Renewal Term Begins Apr. 28, 1991

TRADEMARK  
PRINCIPAL REGISTER

SEASON



11-15-2001

U.S. Patent & TMO/TM Mail Rpt Dt. #01

L. EPSTEIN & SONS, INC. (NEW JERSEY CORPORATION)  
14 LORETTO STREET  
IRVINGTON, NJ 07111, ASSIGNEE OF  
EPSTEIN-MINZTER CO. INC. (NEW JERSEY CORPORATION) NEWARK, NJ

OWNER OF U.S. REG. NO. 156,864.  
FOR: CANNED APRICOTS, GOLDEN BANTAM CORN, HAWAIIAN PINEAPPLE, SPINACH, SWEET PEAS, BARTLETT PEARS, ROYAL ANNE CHERRIES, FRUITS FOR SALADS, FRESH PRUNES, STRINGLESS BEANS, CORN,

SAUERKRAUT, SUGAR CORN, AND YELLOW CLING PEACHES; DRIED PEAS, LENTILS IN PACKAGES, DRIED BEANS IN PACKAGES, (RICE IN PACKAGES, CANNED COFFEE AND COFFEE IN BAGS,) CANNED CALIFORNIA SARDINES, CANNED SALMON, CANNED TUNA FISH [ AND VANILLA AND LEMON EXTRACTS FOR FOOD-FLAVORING PURPOSES], IN CLASS 46 (INT. CL. 29).

FIRST USE 5-20-1924; IN COMMERCE 5-20-1924.

SER. NO. 71-277,291, FILED 12-22-1924.

*In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Sep. 17, 1991.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Exhibit 2

LA 110111 2



# OSTROLENK, FABER, GERB & SOFFEN, LLP

1180 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10036-8403

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## WASHINGTON OFFICE

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November 15, 2001

Assistant Commissioner for Trademarks

**ATTN: BOX TTAB FEE**

2900 Crystal Drive

Arlington, VA 22202-3513



11-15-2001

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

Re: OFGS File No. T/3869-140  
U.S. Trademark/Service Mark Appln. No. 76/099,990  
Applicant: Seaforth Creamery, Inc.  
Mark: ALL SEASONS  
Published: July 24, 2001 at TM 319

S I R:

Enclosed for filing is a Notice of Opposition on behalf of: The B. Manischewitz Company, LLC against the above-noted trademark/service mark, including:

- Notice of Opposition, in duplicate;
- OFGS Check No. 07368 in the amount of \$300.00 per class in payment of the Government Filing Fee;
- Return-Addressed Post Card.

In the event the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee due during the pendency of this application is not paid, the P.T. O. is authorized to charge the underpayment to Deposit Account No. 15-0700.

### EXPRESS MAIL CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail to Addressee (mail label # EL 613553945 US ) in an envelope addressed to: Asst. Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on November 15, 2001

Dorothy Jenkins

Name of Person Mailing Correspondence

*Dorothy Jenkins*

Signature

November 15, 2001

Date of Signature Dorothy Jenkins

Respectfully submitted,

Martin J. Beran, Esq.  
Attorneys for Opposer  
OSTROLENK, FABER, GERB & SOFFEN, LLP  
1180 Avenue of the Americas  
New York, N.Y. 10036-8403  
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MJB:he