



CHILDREN'S CLOTHING, NAMELY, INFANT CLOTH DIAPER COVERS, SOCKS, PANTS, SIDE SNAP SHIRTS, BOOTIES, MITTENS, CREEPERS, GOWNS, UNION SUITS, HOODED ROBES, COVERALLS, SLEEP AND PLAY SUIT SETS, SWEATERS, PANTS, PANT SETS, JACKET SETS, VEST SETS, WIND SUITS, SWIMWEAR, COVER-UPS, OVERALLS, OVERALL SETS, DRESSES, SHORTS, SHORT SETS, INFANT CLOTH DIAPER SETS, SKIRTS, SKIRT SETS, SHORTALL SETS, SHORTALLS, SKORTS, SKORTALLS; NAMELY, KNEE-LENGTH OVERALLS HAVING A PANEL SO AS TO RESEMBLE A SKIRT; JUMPERS, JUMPER SETS, ROMPERS, SUN SUITS, SUNDRESSES, ALL FOR USE BY INFANT OR CHILD CARE-GIVERS AS A SECONDARY SOURCE INDICATOR OF APPLICANT'S INFANT-RELATED PRODUCTS; in International Class 025.--

#### **REMARKS**

This trademark application is the subject of pending Opposition No. 91176126.

Applicant and Opposer have reached agreement on terms of settlement of the pending opposition. In accordance with those agreed-upon terms, which have been memorialized in a writing signed by both Applicant and Opposer, Applicant will amend its Identification of Goods, to limit the recited goods in the manner set forth above, and Opposer will then withdraw the pending opposition when the above-requested amendment of the Identification of Goods has been entered.

Thus, the above-requested amendment of the Identification of Goods of this trademark application is being submitted with the consent of Opposer.

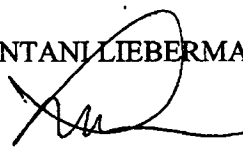
It is not believed that republication of the mark will be required upon entry of the above-requested amendment.

Finally, it is not believed that any fees or charges are required in connection with this Request for Amendment. Nevertheless, any such fees or charges that are required in connection with this Request for Amendment may be charged to our Patent and Trademark Account No. 23-2412.

Respectfully submitted,

COHEN PONTANI LIEBERMAN & PAVANE LLP

By \_\_\_\_\_

  
Lance J. Lieberman  
Reg. No. 28,437  
551 Fifth Avenue, Suite 1210  
New York, New York 10176  
(212) 687-2770

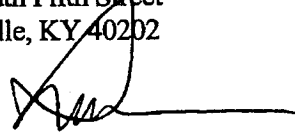
Dated: January 12, 2009

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing **REQUEST FOR AMENDMENT BY CONSENT OF TRADEMARK APPLICATION** was served by First Class Mail, postage prepaid, on counsel for Opposer as follows:

Suzan J. Hixon, Esq. Amy B. Berge, Esq.  
Greenbaum Doll & McDonald PLLC  
3500 National City Tower  
101 South Fifth Street  
Louisville, KY 40202

Dated: January 12, 2009



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Lance J. Lieberman

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

Opposition No. 91176126

Serial No. 78/711,329

In Re Trademark Opposition of  
**National Tobacco Company, L.P.,**  
**Opposer,**  
v.  
**Beech-Nut Nutrition Corporation**  
**Applicant.**

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

Response to Notice of Default

The undersigned, Lance J. Lieberman, is the attorney of record and representative of Applicant Beech-Nut Nutrition Corporation ("Beech-Nut") in connection with Beech-Nut's U.S. Trademark Application No.78/711,329, filed September 12, 2005 ("the '329 Application"), which is the subject of the above-identified opposition proceeding No. 91176126. This paper is submitted in response to the Notice of Default which was issued by the Trademark Trial and Appeal Board on December 11, 2008 and, more specifically, to show cause why judgment by default should not be entered against applicant Beech-Nut in this opposition.

As noted above, the undersigned is the record attorney of the '329 Application. However, when undersigned's firm took over representation of the '329 Application from Beech-Nut's prior attorneys, it inadvertently failed to also assume representation of Applicant in connection with the instant opposition which relates to the '329 Application; Beech-Nut's prior attorneys, Armstrong Teasdale LLP, remained (as of and subsequent to issuance of the Notice of Default) Beech-Nut's record representative for the instant opposition.<sup>1</sup>

As a result, a copy of the Notice of Default, when it issued, was not mailed or otherwise sent or delivered to undersigned by the USPTO. Neither did the undersigned receive a copy of the Notice of Default from the Armstrong Teasdale firm. Undersigned only learned fortuitously of the Notice of Default in a coincidental status check on the '329 Application subsequent to issuance of the Notice of Default.

Opposer and Applicant have in fact already agreed on and completed terms of settlement of the instant opposition, which terms have been memorialized in a writing that has been signed by Applicant and Opposer. By its terms, Applicant has agreed to amend the Identification of Goods of the '329 Application to further limit them so that, after said amendment, the Identification of Goods of the '329 Application will recite "*bath bags for use by infant or child care-givers as a secondary source indicator of Applicant's infant-related products*" in International Class 018, and "children's clothing, namely, infant cloth diaper covers, socks, pants, side snap shirts, booties, mittens, creepers, gowns, union suits, hooded robes, coveralls, sleep and play suit sets, sweaters, pants, pant sets, jacket sets, vest sets, wind suits, swimwear, cover-ups, overalls, overall

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<sup>1</sup> Applicant Beech-Nut has today (January 10, 2008) filed, electronically, a Substitute Power of Attorney appointing undersigned as its record representative in connection with the instant opposition proceeding.

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sets, dresses, shorts, short sets, infant cloth diaper sets, skirts, skirt sets, shortall sets, shortalls, skorts, skortalls, namely, knee-length overalls having a panel so as to resemble a skirt; jumpers, jumper sets, rompers, sun suits, sundresses, *all for use by infant or child care-givers as a secondary source indicator of Applicant's infant-related products*" in International Class 025; the italicized language is to be added by amendment. Upon entry of this agreed-upon limiting amendment of the Identification of Goods of the '329 Application, pursuant to the terms of the settlement agreement, Opposer will withdraw the instant opposition.

Applicant's failure to timely file its Answer in the instant opposition, or to request a further extension of time to file its Answer, was inadvertent and without intent to deceive or delay or otherwise mislead Opposer or the Board. Indeed, the agreed-upon settlement of this opposition had been completed long prior to the most recently-set due date for the filing of Applicant's Answer.

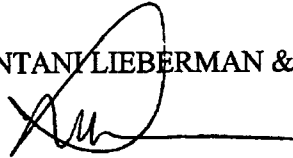
It is accordingly believed, and respectfully submitted, that entry of a judgment by default in the instant opposition is unnecessary and inappropriate, and that the Notice of Default should be withdrawn to permit Opposer and Applicant to complete their agreed-upon settlement of the opposition.

Finally, Applicant submits herewith, accompanying this Response to Notice of Default, a Request for Amendment by Consent of Trademark Application, formally requesting that the above-mentioned amendment to the Identification of Goods of the '329 Application, to which amendment Applicant and Opposer have expressly agreed, be entered in the '329 Application.

It is believed that no fees or charges are required at this time in connection with the instant opposition. Nevertheless, in the event that any such fees or charges are required at this time, they may be charged to our Patent and Trademark Account No. 23-2412.

Respectfully submitted,

COHEN PONTANI LIEBERMAN & PAVANE LLP



By \_\_\_\_\_

Lance J. Lieberman  
Reg. No. 28,437  
551 Fifth Avenue, Suite 1210  
New York, New York 10176  
(212) 687-2770  
Attorneys for Applicant

Dated: January 12, 2009

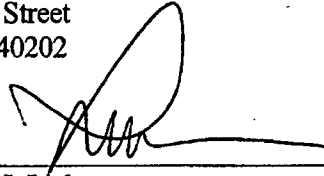


**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing RESPONSE TO NOTICE OF DEFAULT was served by First Class Mail, postage prepaid, on counsel for Opposer as follows:

Suzan J. Hixon, Esq. Amy B. Berge, Esq.  
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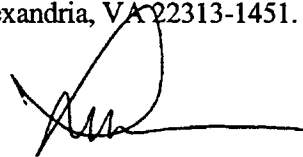
Lance J. Lieberman

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**CERTIFICATE OF FIRST CLASS MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Box TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

Dated: January 12, 2009



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Lance J. Lieberman