

# TTAB

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Irma Sevin, President

Sunshine C & C, Inc.

197 Hilltop Crescent

Walnut Creek, 94597

Mailed: October 21, 2013

Opposition No. 91208911

Fox Restaurant Concepts LLC

v.

Sunshine C & C, Inc.

Expert Disclosure From Irma Sevin, Pro Se

TO: Lalita Greer, Paralegal Specialist, USPTO

Trademark Trial and Appeal Board

P.O. Box 1451, Alexandria, VA 22313-1451

Receipt is acknowledged of the following schedule and instructions contained in that document mailed September 25, 2013:

On July 26, 2013, the Board granted the withdrawal of applicant's counsel and allowed applicant thirty days to either appoint new counsel or choose to represent itself. On August 22, 2013, applicant submitted a change of correspondence address. Accordingly, the Board records have been updated and correspondence will be held directly with Irma Sevin. Proceedings herein are RESUMED and trial dates are reset as follows:

Expert Disclosures Due 10/24/2013

Discovery Closes 11/23/2013

Plaintiff's Pretrial Disclosures Due 1/7/2014

Plaintiff's 30-day Trial Period Ends 2/21/2014

# 85677047



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Defendant's Pretrial Disclosures Due 3/8/2014

Defendant's 30-day Trial Period Ends 4/22/2014

Plaintiff's Rebuttal Disclosures Due 5/7/2014

Plaintiff's 15-day Rebuttal Period Ends 6/6/2014

### **Pro Se Information**

Applicant has chosen to proceed Pro Se in this matter to the best of her ability. Funds allocated for attorney representation were depleted by the demands of the former legal counsel which concluded with confusing and unsuccessful results.

Pro Bono support has been given, encouraging the position of Sunshine C & C, Inc. that the legal process was intended to be helpful in disagreements, not onerous in itself.

### **Mission of Sunshine C & C, Inc. (Sunshine)**

The Corporation was created in 1986 as an aid for a 501 (c)(3) non profit whose motto has been "Helping people help themselves." A part of that effort has included joining as investors and advisor with Healthy Original Vegetarian Group (HOV Group) in developing and promoting healthful food that has been predominantly Asian. The CEO James Tu, has written a letter attesting to that fact. Mr. Tu and HOV have been extensively documented by the Press, including dates substantiating the research and sale of Zen Burger, the product and trademark that is the object of this correspondence. When difficult financial times hit, Sunshine, represented by its vice president, John Qualltrough, was asked to take more expert leadership with HOV, and he discovered among several needs, the lapsing of the trademark. Expediency suggested that Sunshine help resolve this issue, which was done. The application reached the final acceptance until the Filing of Opposition 91208911 by Fox Restaurant Concepts, LLC.

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### **Present Status**

It is my goal to simplify presentation of the two major issues as I and those advising me have seen them, not to cast aspersions on any prior efforts.

When Glenn Bacal, the attorney for Fox Restaurant Concepts, LLC, sent me an email on October 4, 2013 introducing himself, he in essence required that I respond by October 14, which I did. Those emails are attached.

I stated my request for simplicity, cooperation, compromise, and confidence in the judgment of the PTO, if we couldn't see eye to eye. I further stated that what was in my email was essentially what would appear in format to the PTO.

I have not heard from him, but appreciate his timeliness, which helped me realize what is needed most.

### **Position of Sunshine regarding Opposition issues**

#### **1. THE NAMES**

*Zinburger* with its logos pairing animals and a sophisticated glass evoke immediate reference to enjoyment of *Zinfandel* (or other) wine with an assortment of choices of accompanying burger. Apparently one choice could be of vegetarian ingredients, but that is minor and certainly not the focus.

*Zen Burger* with its logo of an appealing burger, bun and vegetables speaks to a clientele appreciating an Asian approach focusing on vegetarian food. The word Zen stands alone with its connotations that refer to an entirely different style of living from those who would seek *Zinburgers*.

An enlightened person is not likely to confuse the two amid the surrounding advertising. Should someone not notice and venture inside, the difference would be quickly obvious - much more so than say a McDonalds and Burger King crossover.

## Opposition No. 91208911

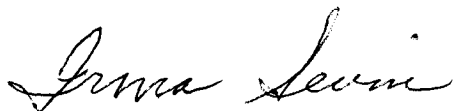
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### 2. SENIORITY

Documentation is in our possession that shows HOV Group (Healthy, Original, Vegetarian) in production of Zen Burgers relative to its Zen Palate Restaurants since early 2007 with much earlier research. This predates the timing of Zinburger that I have been given. I have noticed that Glenn Bacal by name is aware of HOV's place in the origin of Zen Burger. Sunshine has stockholder and contractual relationship with HOV, which substantiates our authority to pursue use of the name.

### Conclusion

Regardless of Seniority, Zen Burger and Zinburger are not threats to each other and have their own widely different places within the food industry. Sunshine has no interest in limiting or interfering with what Fox Restaurants has in its future. Sunshine believes that neither type of burger is likely to establish itself as the only burger everyone in every city wants to eat. Sunshine feels that it would be in the best interest of all involved to use their funds to make the best offering possible in their own style instead of feeding the money into endless litigation.



Irma Sevin

*Exhibit A*



Irma Sevin <igsevin@gmail.com>

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**Fwd: Fox Restaurant Concepts, LLC v. Sunshine C & C Inc. (Opp. No. 91208911) (Our Ref. No. 53494-5014)**

5 messages

Fri, Oct 4, 2013 at 12:58 PM

Glenn Bacal <Glenn.Bacal@bacalgroup.com>  
To: "igsevin@gmail.com" <igsevin@gmail.com>  
Cc: David Andersen <David.Andersen@bacalgroup.com>

Dear Ms. Sevin,

I am writing to introduce myself to you and to remind you of certain obligations that you have regarding the pending opposition proceeding involving Sunshine C & C Inc. ("Sunshine") and my client Fox Restaurant Concepts, LLC ("Fox"). We also understand that Sunshine is no longer represented by counsel in this matter, after the withdrawal of Kuscha Hatami. Nonetheless, Sunshine is still required to comply with the rules governing the opposition. As outlined below, there are a number of things that we contend that Sunshine should have already done in the opposition, which it has not yet done. We ask for your attention to these matters now that the proceedings have been unsuspended.

As an initial matter, you should know that that Fox is prepared to see this through and will not allow Sunshine to use or register the mark ZEN BURGER. If Sunshine does begin use of ZEN BURGER, Fox will take further steps as necessary to protect its mark against Sunshine's infringement. Therefore, we ask that you consider withdrawing the application to register ZEN BURGER and agreeing not to use that mark.

With respect to the opposition proceedings, Sunshine (through counsel) raised various affirmative defenses that we believe have no legal or factual basis and never should have been raised. These included failure to state a claim, no injury, lack of likelihood of confusion, narrow rights, lack of standing, laches, acquiescence, waiver, and insufficient prior exclusive rights. Your prior counsel indicated that you are willing to withdraw at least two of these defenses (laches and acquiescence). To date, however, Sunshine has not withdrawn any of these affirmative defenses. Therefore, unless you withdraw your affirmative defenses, we will have to pursue appropriate remedies with the Board.

Sunshine also has failed to supplement its incomplete and inadequate discovery responses or provide any responsive documents to our discovery requests. Your prior counsel committed to provide documents responsive to our prior discovery requests once there was a protective order in place. However, there is an automatic protective order in place, and therefore Sunshine has an obligation to produce responsive documents even if they are allegedly confidential in nature. Please provide

any and all responsive documents to us immediately. Failure in this regard will also force us to pursue all available remedies from the Board.

Assuming these matters are not timely rectified, we will file a motion to compel and/or a motion for sanctions against Sunshine. Please let us know by Monday October 14 whether Sunshine still has any intention of registering or using ZEN BURGER, and if so, that Sunshine will fulfill its obligations under the rules, as outlined above. In the absence of a response, we will assume that you are not willing to rectify these matters.

Sincerely,

Glenn Spencer Bacal

Bacal Law Group

6991 East Camelback Suite D-102

Scottsdale AZ 85251

Email: [glenn.bacal@bacalgroup.com](mailto:glenn.bacal@bacalgroup.com)

Direct: 480-245-6233

Cell: 602-524-6950

Fax: 480-245-6231

Website: [www.bacalgroup.com](http://www.bacalgroup.com)

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Irma Sevin <[igsevin@gmail.com](mailto:igsevin@gmail.com)>  
To: John Qualtro <[jqualtro@aol.com](mailto:jqualtro@aol.com)>

Fri, Oct 4, 2013 at 2:02 PM

Exhibit B

91208911

Irma Sevin <igsevin@gmail.com>

Mon, Oct 14, 2013 at 11:55 AM

To: david.andersen@bacalgroup.com, Glenn Bacal <Glenn.Bacal@bacalgroup.com>

Dear Mr. Bacal,

Your letter on behalf of Fox Restaurant Concepts, LLC, has been received and thoughtfully considered. Sunshine C & C, Inc ("Sunshine"). has been active, since 1985. It has never been our intention to hurt anyone's legitimate progress. We are generous in our treatment of others, and have been a major support of non profit activity and start-up businesses. We are hard working and frugal, not resorting to trickery such as laches and acquiescence. We have patience and have never asked for sanctions, rather expecting that those with whom we may have opposing views can be willing to listen to our explanations and respond with reason. If not, then judges within our legal system usually can make decisions from straightforward facts without excessive verbiage from those presenting their cases.

I apologize that the attorney paid to represent Sunshine was not capable of hearing us nor of helping you and your client understand from where we are coming and where we are heading. No one knows us as well as we know ourselves and after numerous conversations with attorneys and colleagues who have encouraged me, I would like to now explain how you and we are not threats to each other and have our own different places within the food industry.

#### 1. THE NAMES

*Zinburger* with its logos pairing animals and a sophisticated glass evoke immediate reference to enjoyment of *Zinfandel* (or other) wine with an assortment of choices of accompanying burger. Apparently one choice could be of vegetarian ingredients, but that is minor and certainly not the focus.

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With the above information before us I invite your cooperation in amicably working together for coexistence. Sunshine isn't interested in interfering with Fox Restaurant Concepts. Neither type of burger is likely to establish itself as the only burger everyone in every city wants to eat. It would behoove us to use our funds to make the best offering possible in our own style instead of feeding the money into endless litigation.

This is the essence of what I intend to put into legal format for Lolita Greer at USPTO.

Most sincerely,

Irma Sevin, President

Sunshine C& C, Inc.

*[Quoted text hidden]*




**Certificate of Service**

The undersigned hereby certifies that a copy of the Expert Disclosure for the Greer in Proceeding 91208911 of the Trademark Trial and Appeal Board, has been sent both by Fed Ex and email to the following on this date, October 21, 2013:

Lalita Greer, Paralegal Specialist  
USPTO  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Glenn S. Bacal  
Bacal Law Group PC  
6991 East  
Camelback Road  
Suite D102  
Scottsdale, AZ 85251

Sunshine C & C, Inc  
197 Hilltop Crescent  
Walnut Creek, CA 94597



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Irma Sevin