

ESTTA Tracking number: **ESTTA1013878**

Filing date: **11/06/2019**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Really Good Stuff, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	c/o Excelligence Learning Corporation 20 Ryan Ranch Road, Suite 200 Monterey, CA 93940 UNITED STATES		
Attorney information	Jonathan Purow Gottlieb, Rackman & Reisman, P.C. 270 Madison Avenue New York, NY 10016 UNITED STATES efiling@grr.com, jpurow@grr.com, rfeinland@grr.com 2126843900		

Applicant Information

Application No	88387969	Publication date	10/08/2019
Opposition Filing Date	11/06/2019	Opposition Period Ends	11/07/2019
Applicant	Creative Kids Far East Inc. 750 Chestnut Ridge Road Chestnut Ridge, NY 10977 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container
Class 017. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: absorbent plastic polymer in powder form that expands when hydrated

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2928946	Application Date	03/01/2004
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Registration Date	03/01/2005	Foreign Priority Date	NONE
Word Mark	INSTA-SNOW		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 017. First use: First Use: 2002/01/31 First Use In Commerce: 2002/01/31 Absorbent plastic polymer in powder form that expands when hydrated		

U.S. Application No.	88271200	Application Date	01/22/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	INSTA-SNOW POWDER		
Design Mark			
Description of Mark	The mark consists of "INSTA-SNOW" in blue on top of "POWDER" in red all in a stylized font.		
Goods/Services	Class 017. First use: First Use: 2002/01/31 First Use In Commerce: 2002/01/31 Absorbent plastic polymer in powder form that expands when hydrated		

Related Proceedings	91251032
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Attachments	78376664#TMSN.png(bytes) 88271200#TMSN.png(bytes) AMAZING SNOW INSTANT POWDER Opposition - For Filing.pdf(1888047 bytes)
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Signature	/Jonathan Purow/
Name	Jonathan Purow
Date	11/06/2019

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

In the Matter of Application Serial No. 88/387,969

Filed: September 21, 2018

Mark:




Applicant: Creative Kids Far East Inc.

Published: October 8, 2019

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REALLY GOOD STUFF, LLC	:	
	:	
Opposer,	:	
	:	Opposition No.
v.	:	
	:	
CREATIVE KIDS FAR EAST INC.	:	
	:	
Applicant.	:	
-----	X	

NOTICE OF OPPOSITION

Really Good Stuff, LLC (“RGS” or “Opposer”) believes it will be damaged by the

registration of the trademark  (the “IASP Design Mark”) in Application Serial No. 88/387,969 (the “IASP Design Application”), and hereby opposes the same. As grounds for opposition, Opposer alleges the following:

THE PARTIES

1. Opposer is a limited liability company organized under the laws of the State of Delaware with a principal place of business in Shelton, Connecticut.

2. Creative Kids Far East Inc. (“Applicant”) is a New York corporation with an address of 750 Chestnut Ridge Road, Chestnut Ridge, New York 10977.

3. Opposer is engaged in the manufacture, distribution and sale of innovative educational products of high quality for use at home, as well as in classrooms and school laboratories.

4. Applicant manufactures, distributes, and sells competing products.

RGS'S RIGHTS FORMING THE BASIS FOR THE OPPOSITION

5. Opposer owns the trademark INSTA-SNOW (the "INSTA-SNOW Word Mark"), which has been legally and validly registered on the Principal Register of the United States Patent and Trademark Office ("USPTO") since March 1, 2005 (the "INSTA-SNOW Registration"):

Mark	Reg. No.	Goods/Services	First Use	Filed
INSTA-SNOW	2,928,946	Cl. 17 for Absorbent plastic polymer in powder form that expands when hydrated.	1/31/02	3/1/04

6. The INSTA-SNOW Word Mark is incontestable.

7. A copy of the current USPTO Trademark Status and Document Retrieval ("TSDR") documents concerning, and including, the INSTA-SNOW Registration, is attached as **Exhibit A.**

8. Opposer also owns all common law trademark rights in and to the INSTA-SNOW Word Mark, which has been used in connection with the goods identified in the INSTA-SNOW Registration (the "INSTA-SNOW Goods") since at least as early as January 31, 2002.

9. Opposer also owns extensive common law trademark rights in the below depicted INSTA-SNOW design mark (the "INSTA-SNOW Design Mark"):




10. The INSTA-SNOW Design Mark has been used in connection with the INSTA-SNOW Goods for at least as long as the INSTA-SNOW Word Mark.

11. As depicted below, and also in Ex. A, the INSTA-SNOW Design Mark appeared in the specimen of use first submitted with the application to register the INSTA-SNOW Word Mark on March 1, 2004:



12. As can also be seen in Ex. A, the INSTA-SNOW Design Mark has appeared in every subsequent specimen ever submitted to the USPTO concerning the INSTA-SNOW Registration, i.e., those submitted in connection with declarations of use.

13. The INSTA-SNOW Design Mark is currently the subject of Opposer's USPTO Application Ser. No. 88/271,200 (the "INSTA-SNOW Design Mark Application"):

Mark	Serial No.	Goods/Services	First Use	Filed
	88/271,200	Cl. 17 for Absorbent plastic polymer in powder form that expands when hydrated.	1/31/02	1/22/19

14. A copy of the current USPTO TSDR documents concerning, and including, the INSTA-SNOW Design Mark Application, is attached as **Exhibit B**. The INSTA-SNOW Word Mark and INSTA-SNOW Design Mark are hereinafter referred to collectively as the “INSTA-SNOW Marks.”

15. Opposer acquired the INSTA-SNOW Marks from its predecessor-in-interest, Steve Spangler Inc. (“SSI”) in March of 2018.

16. Steve Spangler is a well-known, Emmy award winning American television and social media personality, author, and science teacher, famous for his science experiments, development of science-based toys, and classroom science kits.

17. An assignment of the INSTA-SNOW Registration from SSI to Opposer was filed with the USPTO on June 13, 2018.

18. Opposer has acquired valuable goodwill in the INSTA-SNOW Marks by its, and its predecessor’s, exclusive and continuous use of the INSTA-SNOW Marks in United States commerce for the last 17 years.

19. Opposer’s goodwill in the INSTA-SNOW Marks includes any and all goodwill attributable to use of the INSTA-SNOW Marks by its, and its predecessor’s, licensees.

20. The INSTA-SNOW Marks have come to indicate, to the trade and to the purchasing public, products having their source of origin in Opposer.

RELEVANT BACKGROUND AND APPLICANT'S MISCONDUCT

21. In June 2004, SSI entered into a license agreement (the "License Agreement") with third party BAP Investors LLC (which subsequently became, and is now known as, BAP Investors, L.C.) ("BAP").

22. Through the License Agreement, SSI permitted BAP to use certain of its marks, including the INSTA-SNOW Marks (collectively the "Licensed Marks") in connection with certain goods, including the INSTA-SNOW Goods.

23. The License Agreement was revised on several occasions, but certain provisions remained fixed throughout, such as that SSI remained the sole owner of the Licensed Marks, and that neither party could assign its rights and obligations under the License Agreement without the other party's written consent.

24. The License Agreement between SSI and BAP proceeded relatively amicably without interruption for nearly fifteen years.

25. In mid-2017, BAP sought SSI's consent to assign the License Agreement to Applicant.

26. SSI withheld its consent, including because it did not want to be associated with Applicant, which has a poor reputation in the toy industry for producing inferior products.

27. Undeterred by SSI's denial, BAP and Applicant circumvented the License Agreement's consent requirement, and SSI's rights under the License Agreement, by causing Applicant to purchase a controlling interest in BAP, without notifying SSI until after the transaction had closed.

28. As a result, although Applicant never was a party to the License Agreement, it controlled BAP.

29. After Applicant's purchase of a controlling interest in BAP (i.e., SSI's licensee), SSI subsequently assigned its rights and obligations under the License Agreement to Opposer. Applicant-controlled BAP consented to that assignment via a Consent Letter dated March 30, 2018 (the "Consent Letter").

30. Although Applicant controlled BAP, Applicant was not a party to the Consent Letter.

31. Applicant-controlled BAP continued as Opposer's Licensee until the License Agreement expired of its own terms on December 31, 2018.

32. The License Agreement was not renewed.

33. After the License Agreement expired, Applicant-controlled BAP continued using the Licensed Marks, including the INSTA-SNOW Marks, without Opposer's authorization. Additionally, Applicant started using the Licensed Marks, including the INSTA-SNOW Marks, without Opposer's authorization.

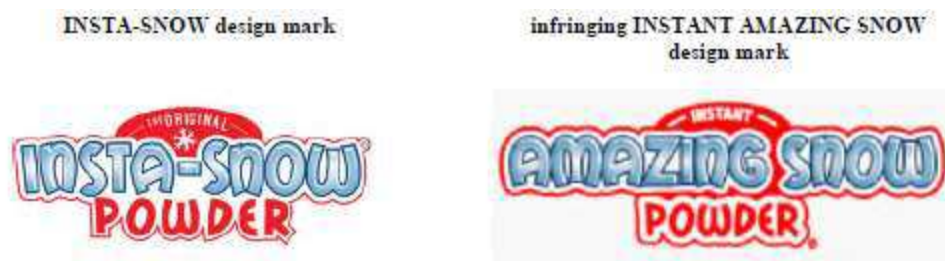
34. After the License Agreement expired, Applicant-controlled BAP and Applicant also started using marks that are confusingly similar to the Licensed Marks, including the INSTA-SNOW Marks. Specifically, among other infringing marks, Applicant-controlled BAP and Applicant started using nearly identical INSTANT AMAZING SNOW and AMAZING INSTANT SNOW word and design marks (the "Infringing Snow Marks"):

The logo for "Instant Amazing Snow Powder" features the words "Instant Amazing" in a red, sans-serif font above the words "Snow Powder" in a larger, bold, red, sans-serif font. A registered trademark symbol (®) is located at the end of "Powder".The advertisement for "The Amazing Instant Snow" has a light gray background. At the top left, the title "The Amazing Instant Snow" is written in a large, blue, sans-serif font. To the right of the title, in a smaller, gray, sans-serif font, is the text "Amazing Instant-Snow® powder is a registered trademark." Below the title, a paragraph of text in a small, gray, sans-serif font describes the product: "Amazing Instant-Snow® powder is the first and original instant snow polymer that actually erupts. No stirring required. Just add water and watch it erupt into snow in seconds. Don't settle for imitation snow that results in a slushy mess, get the original artificial snow that has appeared on The Ellen DeGeneres Show, The Tonight Show, and more!"

The Amazing Instant Snow

Amazing Instant-Snow® powder is a registered trademark.

Amazing Instant-Snow® powder is the first and original instant snow polymer that actually erupts. No stirring required. Just add water and watch it erupt into snow in seconds. Don't settle for imitation snow that results in a slushy mess, get the original artificial snow that has appeared on The Ellen DeGeneres Show, The Tonight Show, and more!



35. On April 11, 2019, Opposer filed Civil Action No. 1:19-cv-02218-LLS in the Southern District of New York against Applicant and Applicant-controlled BAP for, *inter alia*, trademark infringement of the INSTA-SNOW Marks (the “SDNY Litigation”).

36. In the course of the SDNY Litigation, Applicant-controlled BAP has admitted that--other than in connection with selling off INSTA-SNOW Goods remaining in its inventory--Applicant-controlled BAP is not entitled to use the INSTA-SNOW *Word Mark*.



37. As part of its defense, however, Applicant-controlled BAP has alleged that, by virtue of the Consent Letter, it owns the INSTA-SNOW *Design Mark* without the INSTA-SNOW *Word Mark*.

38. Applicant-controlled BAP’s position lacks merit and defies logic because, *inter alia*, the INSTA-SNOW *Word Mark* is part and parcel of the INSTA-SNOW *Design Mark*, and the INSTA-SNOW *Design Mark* has never been used without the INSTA-SNOW *Word Mark*. But even if Applicant-controlled BAP’s position had merit (which it does not), Applicant still would have no rights because it was not a party to the Consent Letter from which those rights are allegedly derived.

39. In the course of the SDNY Litigation, Applicant has taken the position that it should not be a party to the lawsuit because it does not use, and has not used, any of the infringing marks at issue, including the Infringing Snow Marks.

40. On October 17, 2019, the Court entered an order in the SDNY Litigation in which, *inter alia*, Applicant was enjoined from selling any products bearing the Infringing Snow Marks. A copy of the October 17 Order is attached as **Exhibit C**.

41. After the SDNY Litigation was commenced, Opposer learned that Applicant filed intent-to-use applications at the USPTO for multiple marks that infringe marks owned by Opposer:

	Opposer's Mark	Applicant's Purported Mark
		
Serial No.	88/271,200	88/387,969
Goods/Services	Cl. 17 for Absorbent plastic polymer in powder form that expands when hydrated.	Cl. 17 for Absorbent plastic polymer in powder form that expands when hydrated.
		Cl. 16 for Modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container.
First Use	1/31/2002	NA
Filed	1/22/2019	4/16/2019

	Opposer's Mark	Applicant's Purported Mark
	INSTA-SNOW	[INSTANT] AMAZING SNOW
Serial No.	78/376,664 (Reg. No. 2,928,946)	88/126,740
Goods/Services	Cl. 17 for Absorbent plastic polymer in powder form that expands when hydrated.	Cl. 17 for Absorbent plastic polymer in powder form that expands when hydrated.
		Cl. 16 for Modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container.
First Use	1/31/02	NA
Filed	3/1/2004	9/21/2018

	Opposer's Mark	Applicant's Purported Mark
	ENERGY STICK	ENERGY ROD
Serial No.	88/071,949 (Reg. No. 5,726,269)	88/281,122
Goods/Services	Cl. 28 for Educational toys for the purpose of the demonstration of electrical conductivity.	Cl. 28 for Educational toys for the purpose of the demonstration of electrical conductivity.
First Use	1/31/2011	NA
Filed	8/9/2018	1/29/2019

42. Copies of the current USPTO TSDR documents concerning, and including, the abovementioned IASP Design Application, the AMAZING SNOW Application, and the abovementioned ENERGY ROD application are attached as **Exhibit D**, **Exhibit E**, and **Exhibit F** respectively (collectively the “Infringing Applications”).

43. The Infringing Applications show that Applicant has not only adopted confusingly similar, infringing marks, but also has “copy and pasted” the descriptions of goods first used by Opposer in its applications.

44. The IASP Design Application has always listed, and currently lists, §1(b) as its sole filing basis, and Applicant has filed no evidence of use of the IASP Design Mark with the USPTO.

45. In fact, in bad faith, and with full knowledge of Opposer's marks and rights, Applicant commenced, and caused Applicant-controlled BAP to commence, use of the Infringing Snow Marks in connection with products that compete directly with Opposer's INSTA-SNOW Goods.

46. A screenshot of Applicant-controlled BAP's past Amazon product listing for the infringing INSTANT AMAZING SNOW product is below, and attached as **Exhibit G**:



Be Amazing Instant Amazing Snow Jar, Makes 2 Gallons

By Be Amazing! Toys

★★★★★ - 978 ratings | 98 answered questions

Amazon's Choice for "Instant snow"

List Price: \$12.99

Price: **\$7.55** ✓prime

You Save: \$5.44 (42%)

Get \$50 off instantly. Pay \$0.00 upon approval for the Amazon Rewards Visa Card. No annual fee.

Size: **Makes 2 Gallons - 3.5 OZ**

Makes 2 Gallons - 3.5 OZ	Makes 8-10 Gallons - 16 OZ
\$7.55	\$28.94
✓prime	✓prime

- What's not to love? Instant Amazing Snow turns ordinary water into a white fluffy substance that looks like real snow. No stirring, no mixing, tons of science fun.
- Absorbs up to 100 times it's weight in water and fluffs up to way over 2 gallons.
- This educational toy includes an activity guide that explains the science behind the faux snow. Non-toxic and fully safety tested.
- What is S.T.E.M.? STEM stands for Science, Technology, Engineering, and Math, which constitutes many of the areas educators look to cover for science based activities. We are proud to say that this kit has a strong focus on STEM.
- Instant Amazing Snow powder is the first and original instant snow polymer that actually erupts. No stirring

Roll over image to zoom in

47. Additionally, as shown below and also attached as **Exhibit H**, Applicant-controlled BAP's website advertised the product with the infringing logo:



The Amazing Instant Snow

Amazing Instant-Snow® powder is a registered trademark.

Amazing Instant-Snow® powder is the first and original instant snow polymer that actually erupts. No stirring required. Just add water and watch it erupt into snow in seconds. Don't settle for imitation snow that results in a slushy mess, get the original artificial snow that has appeared on The Ellen DeGeneres Show, The Tonight Show, and more!

48. At the time it signed and filed the IASP Design Application on September 21, 2018, Applicant knew that Opposer had a superior right to use the nearly identical INSTA-SNOW Marks in connection with identical goods.

49. At the time it signed and filed the IASP Design Application on September 21, 2018, Applicant knew that it did not have evidentiary support for the allegations it made in its AMAZING SNOW Application.

BASIS OF RELIEF
(Likelihood of Confusion)

50. Opposer repeats and re-alleges each and every allegation contained in Paragraphs 1-49, inclusive, as if fully set forth herein.

51. Opposer has continuously used the INSTA-SNOW Marks in U.S. commerce since at least as early as January 31, 2002, i.e., nearly 17 years before Applicant filed the instant IASP Design Application.

52. The IASP Design Mark so resembles Opposer's previously used, valid, persisting, and registered INSTA-SNOW Marks as to be likely, when used on or in connection with the goods identified in the IASP Design Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus not registrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. 1052(d).

53. Indeed Applicant's Class 17 Goods are *identical* to those in the INSTA-SNOW Registration and INSTA-SNOW Design Mark Application.

54. These goods are not identical by coincidence. Applicant intentionally copied the goods description of the INSTA-SNOW Marks and filed the IASP Design Application in bad faith.

55. Applicant's Class 16 Goods are similar and/or closely related to the goods for which Opposer has used, and is using, its INSTA-SNOW Marks. Indeed, Opposer's INSTA-SNOW Marks are, and always have been, used in connection with goods that can be described in the same manner as Applicant's Class 16 Goods.

56. The goods set forth in the IASP Design Application will be sold and marketed through the same or similar channels of trade as Opposer's INSTA-SNOW Goods.

57. The goods set forth in the IASP Design Application will be marketed to the same class of purchasers as Opposer's INSTA-SNOW Goods.

58. Opposer will be damaged by registration of the IASP Design Mark because registration will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's INSTA-SNOW Marks.

CONCLUSION

In view of the above allegations, Applicant is not entitled to federal registration of the IASP Design Mark.

WHEREFORE, Opposer prays for judgment sustaining this Opposition and refusing registration to Applicant of the IASP Design Mark shown in the opposed Application Serial No. 88/387,969.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.

By: /s/ Jonathan M. Purow
Jonathan M. Purow (jpurow@grr.com)
Robert P. Feinland (rfeinland@grr.com)
270 Madison Avenue, 8th Floor
New York, New York 10016
(212) 684-3900 Tel.
(212) 684-3999 Fax

Dated: November 6, 2019
New York, New York

Attorneys for Opposer Really Good Stuff, LLC

CERTIFICATE OF TRANSMITTAL

I hereby certify that the foregoing Notice of Opposition is being electronically transmitted to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trial and Appeals (ESTTA) this 6th day of November, 2019.

/s/ Jonathan M. Purow
Jonathan M. Purow

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Opposition was served by first class mail and email on Applicant, by its attorney, as follows:

Douglas A. Miro
Amster, Rothstein & Ebenstein LLP
90 Park Avenue, 21st Floor
New York, NY 10016
ptodocket@arelaw.com
dmiro@arelaw.com

/s/ Jonathan M. Purow
Jonathan M. Purow

Dated: November 6, 2019

EXHIBIT A

Int. Cl.: 17

Prior U.S. Cls.: 1, 5, 12, 13, 35 and 50

Reg. No. 2,928,946

United States Patent and Trademark Office

Registered Mar. 1, 2005

**TRADEMARK
PRINCIPAL REGISTER**

INSTA-SNOW

STEVE SPANGLER, INC. (COLORADO CORPORATION)
3920 SOUTH KALAMATH
ENGLEWOOD, CO 80110

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

FOR: ABSORBENT PLASTIC POLYMER IN POWDER FORM THAT EXPANDS WHEN HYDRATED, IN CLASS 17 (U.S. CLS. 1, 5, 12, 13, 35 AND 50).

SER. NO. 78-376,664, FILED 3-1-2004.

FIRST USE 1-31-2002; IN COMMERCE 1-31-2002.

ELISSA GARBER KON, EXAMINING ATTORNEY

Generated on: This page was generated by TSDR on 2019-11-06 12:21:13 EST

Mark: INSTA-SNOW

INSTA-SNOW

US Serial Number: 78376664

Application Filing Date: Mar. 01, 2004

US Registration Number: 2928946

Registration Date: Mar. 01, 2005

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Sep. 18, 2015

Publication Date: Dec. 07, 2004

Mark Information

Mark Literal Elements: INSTA-SNOW

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Absorbent plastic polymer in powder form that expands when hydrated

International Class(es): 017 - Primary Class

U.S Class(es): 001, 005, 012, 013, 035, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 31, 2002

Use in Commerce: Jan. 31, 2002

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: REALLY GOOD STUFF, LLC

Owner Address: 20 RYAN RANCH ROAD

SUITE 200
MONTEREY, CALIFORNIA UNITED STATES 93940

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country DELAWARE
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jonathan M. Purow

Attorney Primary efiling@grr.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Jonathan M. Purow
Name/Address: Gottlieb, Rackman & Reisman, P.C.
270 Madison Avenue
8th Floor
New York, NEW YORK UNITED STATES 10016

Phone: 2126843900

Fax: 2126843999

Correspondent e-mail: efiling@grr.com eleiter@grr.com jpurow@grr.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 24, 2018	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jul. 24, 2018	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jun. 20, 2018	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Sep. 18, 2015	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Sep. 18, 2015	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	76533
Sep. 18, 2015	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	76533
Sep. 18, 2015	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76533
Aug. 19, 2015	TEAS SECTION 8 & 9 RECEIVED	
Nov. 30, 2011	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Mar. 16, 2011	NOTICE OF SUIT	
Sep. 13, 2010	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	64591
Sep. 13, 2010	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	64591
Aug. 27, 2010	TEAS SECTION 8 & 15 RECEIVED	
Mar. 27, 2008	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jan. 25, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Mar. 01, 2005	REGISTERED-PRINCIPAL REGISTER	
Dec. 07, 2004	PUBLISHED FOR OPPOSITION	
Nov. 17, 2004	NOTICE OF PUBLICATION	
Sep. 30, 2004	LAW OFFICE PUBLICATION REVIEW COMPLETED	73793
Sep. 24, 2004	ASSIGNED TO LIE	73793
Sep. 17, 2004	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 17, 2004	ASSIGNED TO EXAMINER	73706
Jul. 07, 2004	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Mar. 17, 2004	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Sep. 18, 2015

Assignment Abstract Of Title Information

Summary

Total Assignments: 2

Registrant: Steve Spangler, Inc.

Assignment 1 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [6352/0073](#)

Pages: 8

Date Recorded: Jun. 13, 2018

Supporting Documents: [assignment-tm-6352-0073.pdf](#)

Assignor

Name: [STEVE SPANGLER, INC.](#)

Execution Date: Apr. 01, 2018

Legal Entity Type: CORPORATION

State or Country Where Organized: COLORADO

Name: [SPANGLER SCIENCE CLUB, LLC](#)

Execution Date: Apr. 01, 2018

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: COLORADO

Assignee

Name: [REALLY GOOD STUFF, LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: 20 RYAN RANCH ROAD
SUITE 200
MONTEREY, CALIFORNIA 93940

Name: [EXCELLIGENCE PARENT HOLDINGS, LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: 20 RYAN RANCH ROAD
SUITE 200
MONTEREY, CALIFORNIA 93940

Correspondent

Correspondent Name: J. SIMS RHYNE III

Correspondent Address: 420 NORTH 20TH STREET
SUITE 3400
BIRMINGHAM,, AL 35203

Domestic Representative - Not Found

Assignment 2 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [6352/0095](#)

Pages: 6

Date Recorded: Jun. 13, 2018

Supporting Documents: [assignment-tm-6352-0095.pdf](#)

Assignor

Name: [EXCELLIGENCE PARENT HOLDINGS, LLC](#)

Execution Date: Jun. 11, 2018

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Name: [EXCELLIGENCE PARENT, INC.](#)

Execution Date: Jun. 11, 2018

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Name: [EXCELLIGENCE HOLDINGS CORP.](#)

Execution Date: Jun. 12, 2018

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Name: [EXCELLIGENCE LEARNING CORPORATION](#)

Execution Date: Jun. 12, 2018

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee**Name:** [REALLY GOOD STUFF, LLC](#)**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where Organized:** DELAWARE**Address:** 20 RYAN RANCH ROAD
SUITE 200
MONTEREY, CALIFORNIA 93940**Correspondent****Correspondent Name:** J. SIMS RHYNE III**Correspondent Address:** 420 NORTH 20TH STREET
SUITE 3400
BIRMINGHAM,, AL 35203**Domestic Representative - Not Found**

Proceedings

Summary**Number of Proceedings:** 1**Type of Proceeding: Opposition****Proceeding Number:** [91251032](#)**Filing Date:** Sep 18, 2019**Status:** Suspended**Status Date:** Oct 28, 2019**Interlocutory Attorney:** SHANNA K SANDERS**Defendant****Name:** Creative Kids Far East Inc.**Correspondent Address:** DOUGLAS A. MIRO
AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE, 21ST FLOOR
NEW YORK NY , 10016**Correspondent e-mail:** ptodocket@arelaw.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
AMAZING SNOW	Opposition Pending	78376664	

Plaintiff(s)**Name:** REALLY GOOD STUFF, LLC**Correspondent Address:** JONATHAN PUROW
GOTTLIEB, RACKMAN & REISMAN, P.C.
270 MADISON AVENUE
NEW YORK NY UNITED STATES , 10016**Correspondent e-mail:** efiling@grr.com , ipurow@grr.com , rfeinland@grr.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
INSTA-SNOW	REGISTERED AND RENEWED	78376664	2928946
INSTA-SNOW POWDER	Opposition Pending	88271200	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Sep 18, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Sep 18, 2019	Oct 28, 2019
3	INSTITUTED	Sep 18, 2019	
4	D MOT TO SUSP PEND DISP CIV ACT W/ CONSENT	Oct 28, 2019	
5	SUSP PEND DISP OF CIVIL ACTION	Oct 28, 2019	

EXHIBIT B

Trademark/Service Mark Application, Principal Register

Serial Number: 88271200

Filing Date: 01/22/2019

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88271200
MARK INFORMATION	
*MARK	\\TICRS\EXPORT17\IMAGEOUT17\882712\88271200\xml1\ RFA0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	INSTA-SNOW POWDER
COLOR MARK	YES
COLOR(S) CLAIMED (If applicable)	The color(s) blue and red is/are claimed as a feature of the mark.
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of INSTA-SNOW in blue on top of POWDER in red all in a stylized font.
PIXEL COUNT ACCEPTABLE	NO
PIXEL COUNT	674 x 208
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	REALLY GOOD STUFF, LLC
INTERNAL ADDRESS	c/o Excelligence Learning Corporation
*STREET	20 RYAN RANCH ROAD, SUITE 200
*CITY	MONTEREY
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	93940
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Delaware
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	017
*IDENTIFICATION	Absorbent plastic polymer in powder form that expands when hydrated

FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/01/2004
FIRST USE IN COMMERCE DATE	At least as early as 03/01/2004
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT17\882\712\88271200\xml1\ RFA0003.JPG
SPECIMEN DESCRIPTION	Image of the product featuring the mark
ADDITIONAL STATEMENTS SECTION	
ACTIVE PRIOR REGISTRATION(S)	The applicant claims ownership of active prior U.S. Registration Number(s) 2928946.
ATTORNEY INFORMATION	
NAME	Jonathan Purow
ATTORNEY DOCKET NUMBER	8879/064
FIRM NAME	GOTTLIEB, RACKMAN & REISMAN, P.C.
STREET	270 MADISON AVENUE, 8TH FLOOR
CITY	NEW YORK
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10016
OTHER APPOINTED ATTORNEY	George Gottlieb, James Reisman, David Kashman, Allen I. Rubenstein, Jeffrey M. Kaden, Tiberiu Weisz, Mitchell S. Feller, Marc P. Misthal, Barry R. Lewin, Donna Mirman, Maria Savio, Jason R. Wachter, Robert Feinland, David Rodrigues, Gloria Tsui-Yip, Alice Denenberg, Wendi Uzar
CORRESPONDENCE INFORMATION	
NAME	Jonathan Purow
FIRM NAME	GOTTLIEB, RACKMAN & REISMAN, P.C.
STREET	270 MADISON AVENUE, 8TH FLOOR
CITY	NEW YORK
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10016
PHONE	212-684-3900
FAX	212-684-3999
*EMAIL ADDRESS	efiling@grr.com; legal@excelligence.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEE DUE	275

*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
SIGNATURE	/Lauren Taylor/
SIGNATORY'S NAME	Lauren Taylor
SIGNATORY'S POSITION	Assoc. General Counsel, NY and CT bar member
SIGNATORY'S PHONE NUMBER	831-333-2000
DATE SIGNED	01/22/2019

Trademark/Service Mark Application, Principal Register

Serial Number: 88271200

Filing Date: 01/22/2019

To the Commissioner for Trademarks:

MARK: INSTA-SNOW POWDER (stylized and/or with design, see [mark](#))

The literal element of the mark consists of INSTA-SNOW POWDER.

The color(s) blue and red is/are claimed as a feature of the mark. The mark consists of INSTA-SNOW in blue on top of POWDER in red all in a stylized font.

The applicant, REALLY GOOD STUFF, LLC, a limited liability company legally organized under the laws of Delaware, having an address of
c/o Excelligence Learning Corporation
20 RYAN RANCH ROAD, SUITE 200
MONTEREY, California 93940
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 017: Absorbent plastic polymer in powder form that expands when hydrated

In International Class 017, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 03/01/2004, and first used in commerce at least as early as 03/01/2004, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) Image of the product featuring the mark.

[Specimen File1](#)

Claim of Active Prior Registration(s)

The applicant claims ownership of active prior U.S. Registration Number(s) 2928946.

The applicant's current Attorney Information:

Jonathan Purow and George Gottlieb, James Reisman, David Kashman, Allen I. Rubenstein, Jeffrey M. Kaden, Tiberiu Weisz, Mitchell S. Feller, Marc P. Misthal, Barry R. Lewin, Donna Mirman, Maria Savio, Jason R. Wachter, Robert Feinland, David Rodrigues, Gloria Tsui-Yip, Alice Denenberg, Wendi Uzar of GOTTLIEB, RACKMAN & REISMAN, P.C. 270 MADISON AVENUE, 8TH FLOOR
NEW YORK, New York 10016
United States

The attorney docket/reference number is 8879/064.

The applicant's current Correspondence Information:

Jonathan Purow
GOTTLIEB, RACKMAN & REISMAN, P.C.
270 MADISON AVENUE, 8TH FLOOR
NEW YORK, New York 10016
212-684-3900(phone)
212-684-3999(fax)
efiling@grr.com;legal@excelligence.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant, the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Lauren Taylor/ Date: 01/22/2019

Signatory's Name: Lauren Taylor

Signatory's Position: Assoc. General Counsel, NY and CT bar member

Payment Sale Number: 88271200

Payment Accounting Date: 01/23/2019

Serial Number: 88271200

Internet Transmission Date: Tue Jan 22 15:04:51 EST 2019

TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XXX-201901221504517

42465-88271200-6201b1892772cb2082eb4fe4d

3e888c72cc678bbac2cc67af1bf23b13c53de4-

DA-1661-20190118164502184854

INSTA-SNOW
POWDER



Generated on: This page was generated by TSDR on 2019-11-06 12:22:39 EST

Mark: INSTA-SNOW POWDER



US Serial Number: 88271200

Application Filing Date: Jan. 22, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Opposition Pending

The pending trademark application has been examined by the Office and was published for opposition, at which time one or more oppositions were filed but they have not yet been decided.

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Sep. 11, 2019

Publication Date: May 14, 2019

Mark Information

Mark Literal Elements: INSTA-SNOW POWDER

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

Description of Mark: The mark consists of "INSTA-SNOW" in blue on top of "POWDER" in red all in a stylized font.

Color Drawing: Yes

Color(s) Claimed: The color(s) blue and red is/are claimed as a feature of the mark.

Disclaimer: "POWDER"

Related Properties Information

Claimed Ownership of US Registrations: 2928946

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Absorbent plastic polymer in powder form that expands when hydrated

International Class(es): 017 - Primary Class

U.S Class(es): 001, 005, 012, 013, 035, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 31, 2002

Use in Commerce: Jan. 31, 2002

Basis Information (Case Level)

Filed Use: Yes

Filed ITU: No

Filed 44D: No

Filed 44E: No

Filed 66A: No

Filed No Basis: No

Currently Use: Yes

Currently ITU: No

Currently 44E: No

Currently 66A: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: REALLY GOOD STUFF, LLC

Owner Address: c/o Excelligence Learning Corporation
20 RYAN RANCH ROAD, SUITE 200
MONTEREY, CALIFORNIA UNITED STATES 93940

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country DELAWARE
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jonathan Purow

Docket Number: 8879/064

Correspondent

Correspondent Name/Address: JONATHAN PUROW
GOTTLIEB, RACKMAN & REISMAN, P.C.
270 MADISON AVENUE, 8TH FLOOR
NEW YORK 10016

Phone: 212-684-3900

Fax: 212-684-3999

Correspondent e-mail: efiling@grr.com legal@excelligence.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 11, 2019	OPPOSITION INSTITUTED NO. 999999	250853
May 21, 2019	EXTENSION OF TIME TO OPPOSE RECEIVED	
May 14, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 14, 2019	PUBLISHED FOR OPPOSITION	
Apr. 24, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 04, 2019	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 04, 2019	EXAMINER'S AMENDMENT ENTERED	88888
Apr. 04, 2019	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Apr. 04, 2019	EXAMINERS AMENDMENT E-MAILED	6328
Apr. 04, 2019	EXAMINERS AMENDMENT -WRITTEN	76509
Apr. 03, 2019	ASSIGNED TO EXAMINER	76509
Mar. 08, 2019	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	68123
Mar. 04, 2019	ASSIGNED TO LIE	68123
Feb. 28, 2019	TEAS VOLUNTARY AMENDMENT RECEIVED	
Feb. 13, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 25, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: HARDY LUDLOW, TARAH KI

Law Office Assigned: LAW OFFICE 110

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Apr. 05, 2019

Proceedings

Summary

Number of
Proceedings: 3

Type of Proceeding: Opposition

Proceeding
Number: [91251032](#)

Filing Date: Sep 18, 2019

Status: Suspended

Status Date: Oct 28, 2019

Interlocutory
Attorney: SHANNA K SANDERS

Defendant

Name: Creative Kids Far East Inc.

Correspondent
Address: DOUGLAS A. MIRO
AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE, 21ST FLOOR
NEW YORK NY , 10016

Correspondent e-
mail: ptodocket@arelaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
AMAZING SNOW	Opposition Pending	88126740	

Plaintiff(s)

Name: REALLY GOOD STUFF, LLC

Correspondent
Address: JONATHAN PUROW
GOTTLIEB, RACKMAN & REISMAN, P.C.
270 MADISON AVENUE
NEW YORK NY UNITED STATES , 10016

Correspondent e-
mail: efiling@grr.com , ipurow@grr.com , rfeinland@grr.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
INSTA-SNOW	REGISTERED AND RENEWED	78376664	2928946
INSTA-SNOW POWDER	Opposition Pending	88271200	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Sep 18, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Sep 18, 2019	Oct 28, 2019
3	INSTITUTED	Sep 18, 2019	
4	D MOT TO SUSP PEND DISP CIV ACT W/ CONSENT	Oct 28, 2019	
5	SUSP PEND DISP OF CIVIL ACTION	Oct 28, 2019	

Type of Proceeding: Opposition

Proceeding
Number: [91250853](#)

Filing Date: Sep 11, 2019

Status: Suspended

Status Date: Oct 18, 2019

Interlocutory
Attorney: ELIZABETH WINTER

Defendant

Name: REALLY GOOD STUFF, LLC

Correspondent
Address: JONATHAN PUROW
GOTTLIEB, RACKMAN & REISMAN, P.C.
270 MADISON AVENUE, 8TH FLOOR
NEW YORK NY , 10016

Correspondent e-
mail: efiling@grr.com , legal@excelligence.com

mail: _____

Associated marks

Mark	Application Status	Serial Number	Registration Number
INSTA-SNOW POWDER	Opposition Pending	88271200	

Plaintiff(s)

Name: Creative Kids Far East Inc.

Correspondent Address: DOUGLAS A. MIRO, ESQ.
AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE, 21ST FLOOR
NEW YORK NY UNITED STATES , 10016

Correspondent e-mail: ptodocket@arelaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
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The stylized lettering featured in the opposed mark.

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Sep 11, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Sep 11, 2019	Oct 21, 2019
3	INSTITUTED	Sep 11, 2019	
4	D MOT TO SUSP PEND DISP CIV ACT W/ CONSENT	Oct 18, 2019	
5	SUSP PEND DISP OF CIVIL ACTION	Oct 18, 2019	

Type of Proceeding: Extension of Time

Proceeding Number: [88271200](#)

Filing Date: May 21, 2019

Status: Terminated

Status Date: Sep 11, 2019

Interlocutory Attorney:

Defendant

Name: REALLY GOOD STUFF, LLC

Correspondent Address: JONATHAN PUROW
GOTTLIEB, RACKMAN & REISMAN, P.C.
270 MADISON AVENUE, 8TH FLOOR
NEW YORK NY , 10016

Correspondent e-mail: efiling@grr.com , legal@excelligence.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
INSTA-SNOW POWDER	Opposition Pending	88271200	

Potential Opposer(s)

Name: Creative Kids Far East Inc.

Correspondent Address: DOUGLAS A. MIRO, ESQ.
AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE, 21ST FLOOR
NEW YORK NY UNITED STATES , 10016

Correspondent e-mail: ptodocket@arelaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

Prosecution History

Entry Number	History Text	Date	Due Date
1	FIRST 90-DAY REQUEST TO EXT TIME TO OPPOSE	May 21, 2019	
2	EXT GRANTED	May 21, 2019	

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REALLY GOOD STUFF, LLC,

Plaintiff,

- against -

**BAP INVESTORS, L.C. and CREATIVE
KIDS FAR EAST INC.,**

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/17/19

19 Civ. 2218 (LLS)

**AMENDED
OPINION & INJUNCTION**

Plaintiff Really Good Stuff, LLC ("RGS") moves under Fed. R. Civ. P. 65(a) for an order preliminarily enjoining Defendants BAP Investors, L.C. ("BAP") and Creative Kids Far East Inc. ("Creative Kids") from selling products bearing RGS's trademarks or using its trademarks in any manner during the pendency of this action.

Plaintiff RGS also moves to dismiss Defendants' counterclaims for failure to state a claim upon which relief can be granted.

Defendants cross-move for a preliminary injunction enjoining RGS from selling products bearing BAP's trademarks.

For the reasons that follow, RGS's motions for preliminary injunction and to dismiss BAP's counterclaims are granted in part and denied in part, and BAP's cross-motion for preliminary injunction is denied.

BACKGROUND

As of March of 2018, RGS owned the intellectual property of

Steve Spangler Inc. ("SSI"), and had given to BAP the exclusive license to market that intellectual property under the parties' Second Amended Exclusive Licensing Agreement ("Licensing Agreement").

As an exclusive licensee, that prevented even the owner of the SSI intellectual property ("SSI IP") from marketing it. Since both BAP and RGS were in the business of marketing these items, they made an arrangement of which one would handle which products, and own the intellectual property. It is set forth in the March 30, 2018 Consent Letter in which the parties confirm that: the only products RGS can market are the Products listed on Exhibit A to the Consent Letter, and that RGS can promote, use, sell, and distribute the Products on Exhibit A using the SSI IP.

All rights to the packaging of the Products - other than the SSI IP - are exclusively owned by BAP. BAP can freely market items that compete with the Products that do not use the SSI IP.

After termination of the Licensing Agreement RGS can freely make, use, and sell any item, including ones that compete with the Products, as long as they do not use BAP's intellectual property.

Thus, both RGS and BAP marketed the Products on Exhibit A, RGS as its only products, and BAP as licensee of RGS, who

received a royalty on BAP's sales. BAP could freely sell competing products, and owned all rights to packaging, except for SSI IP, which was reserved to RGS. Reciprocally, RGS could not use BAP's IP.

The Consent Letter incorporates their confirmation that when the Licensing Agreement expired, RGS could freely market competitive products, as long as they did not use BAP's IP.

Expiration of Licensing Agreement

By its terms, the Licensing Agreement ended on December 31, 2018. It provided:

Purchase of Remaining Products: Upon the expiration of this Agreement's Term, the termination of this Agreement, or, in the event when a Product is discontinued pursuant to Paragraph 7.A, BAP will give SSI in writing the first and prior right to purchase the remaining copies of such Products at BAP's landed cost as shown on shipping invoices and manufacturing (factory) invoices, plus 15% or any lower price offered to any other parties. If SSI does not notify BAP of an intent to purchase such Products within the 10 business days following such offer, BAP may sell such Products to any third party. All such sales shall be subject to all Royalty payments provided herein.

Licensing Agreement ¶ 27. As SSI's assignee, RGS had "the first and prior right to purchase the remaining copies of such Products"

BAP and Creative Kids (the majority shareholder of BAP) notified RGS of the remaining inventory available for RGS to purchase. RGS sought to purchase all of the Insta-Snow 100 gram Jar, Insta-Snow 1 lb. Bag, Energy Stick, and Geyser Tube products; some of the Super Slime products; and other products

not at issue in this case. BAP did not sell to RGS any of the products RGS sought to purchase.

BAP's Post-Expiration Uses of SSI Marks

Following the expiration of the Licensing Agreement term, BAP continued to use SSI marks in its advertising and promotional materials. BAP's website includes the claims: "It all started when we discovered Insta-Snow in 2002" and "Today our product line has expanded and includes the Energy Stick, Geyser Tube, the wildly successful Sick! Science line" The website also displays the Energy Stick product, "Insta-Snow" word and design marks, "Sick Science" word and design marks, and "Super Slime" word mark.

BAP and Creative Kids displayed SSI products at their booth in the 2019 New York Toy Fair, which featured Insta-Snow, Sick Science, and Super Slime products bearing their word and design marks.

BAP also sold non-SSI "Instant Amazing Snow" and "Super Slime" products in BAP's own designs.



SSI's "Insta-Snow" design mark



BAP's "Instant Amazing Snow" design mark



SSI's "Steve Spangler's Super Slime" design mark



BAP's "Super Slime" design mark

The Parties' Claims

RGS claims that Defendants engaged in trademark infringement and unfair competition and breached the Licensing Agreement by (1) selling unapproved Insta-Snow products bearing the "Insta-Snow" and "Steve Spangler Science" word and design marks; (2) selling non-SSI products bearing the word mark "Super Slime" and an imitation of SSI's "Super Slime" design mark; (3) selling non-SSI products bearing an "Instant Amazing Snow" design mark imitation of SSI's "Insta-Snow" design mark; (4) using the "Insta-Snow," "Super Slime," "Sick Science," "Energy Stick," and "Geyser Tube" marks after expiration of the Licensing Agreement in advertising materials; and (4) refusing to sell to RGS the products that it sought to purchase after the Licensing Agreement term expired. Based on those claims, RGS

seeks a preliminary injunction enjoining BAP and Creative Kids from

(1) using in any manner, including in advertising and promotional materials, the word and/or design marks INSTA-SNOW, INSTANT AMAZING SNOW, STEVE SPANGLER SCIENCE, SUPER SLIME, STEVE SPANGLER'S SUPER SLIME, SICK SCIENCE, ENERGY STICK, and GEYSER TUBE; and (2) manufacturing, distributing, selling, or offering for sale, any products bearing any of the foregoing word and/or design marks.

BAP argues that the Consent Letter eliminated RGS's ownership rights to the "Super Slime" word and design marks and the "Insta-Snow" design mark, and that BAP owns those trademarks instead. BAP counterclaims that RGS engaged in unfair competition by selling Insta-Snow and Super Slime products bearing BAP's design marks, and seeks a preliminary injunction enjoining RGS

from selling its INSTA-SNOW and Steve Spangler's Super Slime products, and any similar products, in packaging that infringes Be Amazing Product's rights as defined in the Request for Consent to Assignment between Steve Spangler, Inc. and BAP Investors, L.C., dated March 30, 2018 (Exhibit 3 to the Declaration of Christopher Lisiewski), and for such further and other relief as the Court deems just and proper.

DISCUSSION

RGS's Motion for Preliminary Injunction

A party seeking a preliminary injunction must demonstrate "(1) irreparable harm and (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of its claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in

favor of the moving party.” Oneida Nation of New York v. Cuomo, 645 F.3d 154, 164 (2d Cir. 2011) (citation and internal quotation marks omitted). “Additionally, the moving party must show that a preliminary injunction is in the public interest.” Id.

A. Likelihood of Success on the Merits or Sufficiently Serious Questions Going to the Merits

RGS contends that it is likely to succeed on the merits of its claims of trademark infringement, unfair competition, breach of contract, and breach of the implied covenant of good faith and fair dealing.

BAP makes three arguments explaining why RGS is not likely to succeed on its claims. First, BAP argues that it cannot be infringing RGS’s trademarks because BAP owns the Insta-Snow design mark and the Super Slime word and design marks. Second, BAP argues that the “Insta-Snow” and “Super Slime” marks are not distinctive and thus not entitled to protection. Third, BAP argues that even if the marks are protectable and RGS owns them, BAP is nonetheless authorized to continue selling products bearing the marks because RGS did not offer to purchase all the remaining products in BAP’s inventory when the Licensing Agreement term expired.

1.

BAP first argues that it was granted ownership of the

trademark rights to the "Super Slime" word mark and all SSI design marks, including the Insta-Snow and Super Slime design marks, under the Consent Letter.

The Licensing Agreement defines "SSI Trademarks" as:

Collectively, (i) the phrases "Steve Spangler," "Steve Spangler Science," "created by Steve Spangler Science," "Insta-Snow," "Sick Science" and any design incorporating one of these phrases; and (ii) any words, phrases, and designs originated by SSI that have acquired distinctiveness primarily through the marketing efforts of SSI. "SSI Trademarks" do not include (i) the "Be Amazing" trademarks described as Purchased Assets, identified on Exhibit A to the Bill of Sale executed by SSI in favor of BAP on June 30, 2004, and any design incorporating the one of the phrases of such trademarks; and (ii) any words, phrases, and designs originated solely by BAP, or purchased by BAP from others including but not limited to Design for Today, Inc. that have acquired distinctiveness primarily through the marketing efforts of BAP.

Licensing Agreement ¶ 1(M). The phrases "Steve Spangler's Super Slime™," "Spangler Super Slime™," and "Super Slime™" were added to the SSI Trademarks definition by the Licensing Agreement Addendum. Licensing Agreement Addendum ¶ 4.

Under the "Consent Letter" in which BAP is named as "Company,"

For avoidance of doubt the SSI IP is defined as follows:

- SSI Patents consist of U.S. Patent Nos. 9,273,633; 8,550,379; and 7,971,801.
- SSI Trademarks consist of the following (1) Federal Registrations: SICK SCIENCE (Ser. No. 85/731,191), INSTA SNOW (Ser. No. 78/376,664); and (2) Common Law Trademarks: GEYSER TUBE, STEVE SPANGLER, STEVE SPANGLER SCIENCE, AND CREATED BY STEVE SPANGLER SCIENCE.
- SSI Copyrights: none.

Other than the SSI IP, all rights pertaining to the packaging of the Products including but not limited to all images, designs, instructions, instructional videos, inserts, trade dress,

trademarks, markings, writings and works of authorship associated with the packaging of the Products, whether protectable or unprotectable by patent, trademark, copyright or otherwise, are exclusively owned by Company (the "Company IP").

Consent Letter at 2-3.

The Consent Letter's list of SSI Trademarks does not include most of the language in the Licensing Agreement Addendum's definition of SSI Trademarks, such as the "Steve Spangler's Super Slime™," "Spangler Super Slime™," and "Super Slime™" marks, or the language "any design incorporating one of these phrases." Therefore, BAP argues, the "Super Slime" word marks and all the design marks for "Sick Science," "Insta-Snow," "Steve Spangler Science," and "Steve Spangler's Super Slime" are no longer SSI Trademarks owned by RGS, but rather BAP's property.

BAP points to the Consent Letter's language that "If there is a conflict between this consent letter and the Agreement . . . the consent letter modifies the terms of the Agreement as set forth herein and the terms of the consent letter will prevail." However, the Consent Letter's lists of SSI Patents, Trademarks, and Copyrights likely do not narrow the broader, complete definitions of SSI Patents, Trademarks, and Copyrights in the Licensing Agreement and Addendum. This is shown by the Consent Letter's direct reference to and incorporation of the Licensing Agreement's definitions in the

statement, "Really Good Stuff is permitted to promote, use, sell, and distribute the Products . . . using the SSI Trademarks, SSI Patents and SSI Copyrights (as defined Sections 1M, 1L and 1A of the Agreement, respectively and herein (the 'SSI IP'))." Consent Letter at 2. Therefore, the Licensing Agreement's language "and any design incorporating one of these phrases" still applies, and RGS still owns the design marks of the SSI Trademarks listed in the Consent Letter.

However, because the Consent Letter's list of SSI Trademarks prevails over the specific trademarks listed in the Licensing Agreement and Addendum, the Consent Letter's omissions of the "Steve Spangler's Super Slime," "Spangler Super Slime," or "Super Slime" marks clarify "For avoidance of doubt" that those marks are not SSI IP, and that BAP therefore owns them instead.

2.

BAP also argues that "Insta-Snow" and "Super Slime" are not protectable marks because they are generic.

"Courts assess inherent distinctiveness by classifying a mark in one of four categories arranged in increasing order of inherent distinctiveness: (a) generic, (b) descriptive, (c) suggestive, or (d) fanciful or arbitrary." Brennan's, Inc. v. Brennan's Restaurant, LLC, 360 F.3d 125, 131 (2d Cir. 2004). "Generic marks are those consisting of words identifying the

relevant category of goods or services.” Star Indus., Inc. v. Bacardi & Co., 412 F.3d 373, 385 (2d Cir. 2005). “Descriptive marks are those consisting of words identifying qualities of the product.” Id. “Suggestive marks are those that are not directly descriptive, but do suggest a quality or qualities of the product, through the use of imagination, thought and perception.” Id. (citations and internal quotation marks omitted). “Arbitrary or fanciful marks are ones that do not communicate any information about the product either directly or by suggestion.” Id. “Marks that are arbitrary, fanciful, or suggestive are considered ‘inherently distinctive,’ and are automatically entitled to protection under the Lanham Act.” Genesee Brewing Co. v. Stroh Brewing Co., 124 F.3d 137, 143 (2d Cir. 1997).

“If a mark has been registered with the United States Patent and Trademark Office, the defendants in an infringement action do bear the burden of overcoming the presumption that the mark is not generic.” Reese Pub. Co. v. Hampton Int'l Commc'ns, Inc., 620 F.2d 7, 11 (2d Cir. 1980). The “Insta-Snow” word mark was registered with the USPTO on March 1, 2005, and BAP fails to meet its burden. The term “Insta-Snow” does not identify the product as a children’s educational toy. Although BAP points out that the phrase “instant snow” is becoming increasingly well-known as the powder product made to resemble snow, that

does not render the separate term "Insta-Snow" generic. See Genesee, 124 F.3d at 144 (a "mark is not generic merely because it has some significance to the public as an indication of the nature or class of an article. In order to become generic the principal significance of the word must be its indication of the nature or class of an article, rather than an indication of its origin") (citation and internal quotation marks omitted) (emphases in original).

The mark is also not descriptive of the product's qualities because Insta-Snow is not made up of real snow but a plastic polymer in powder form that expands to turn into a snow-like substance when water is added. Rather, the mark is suggestive as it suggests a product with snow-like qualities, and is distinctive.

"Super Slime" is not generic, either. Although the word "slime" is a generic term known to the public as a soft and slippery substance, the "Super Slime" mark does not have the principal significance of identifying the product to the public as a science slime toy product. Cf. Loctite Corp. v. Nat'l Starch & Chem. Corp., 516 F. Supp. 190, 203 (S.D.N.Y. 1981) (finding the term "Super Glue" to be generic because its principal significance "to the relevant public is that of a designation of a kind of glue which is rapid setting and strong bonding," as "Contemporaneous press releases and articles show

generic use of the term," such as "Super-Glue Disappearing" and "Hazards in Superglue Reported; Sales Halted").

Instead, the "Super Slime" mark is either descriptive or suggestive. "The majority view is that self-laudatory terms such as 'Best,' 'Supreme,' 'Quality,' 'Premier,' 'Exquisite,' 'Famous,' and so on, are descriptive and thus entitled to no trademark protection absent secondary meaning." Classic Liquor Importers, Ltd. v. Spirits Int'l B.V., 201 F. Supp. 3d 428, 443-44 (S.D.N.Y. 2016).

Nonetheless, there is conflicting authority as to the classification of self-laudatory marks in the Second Circuit. Most cases indicate such marks are descriptive. See Murphy v. Provident Mut. Life. Ins. Co. of Phila., 923 F.2d 923, 927 (2d Cir. 1990) ("Marks that are laudatory and that describe the alleged qualities or characteristics of a product or service are descriptive marks."); Supreme Wine Co. v. Am. Distilling Co., 310 F.2d 888, 890 (2d Cir. 1962) ("[L]audatory epithets are normally available to all the world, and are not entitled to trademark protection."); PaperCutter, Inc. v. Fay's Drug Co., 900 F.2d 558, 563 (2d Cir. 1990) (noting that terms "indicating the . . . merits of a product" are descriptive). But a relatively more recent case suggests they may be suggestive. See Estee Lauder Inc. v. The Gap, Inc., 108 F.3d 1503, 1509 (2d Cir. 1997) ("A term that is merely self-laudatory, such as 'plus' or 'super,' seeking to convey the impression that a product is excellent or of especially high quality, is generally deemed suggestive."). In the face of this mixed guidance, district courts in the Second Circuit have made case-by-case determinations as to whether a particular laudatory term as used in context is "descriptive" or "suggestive." See, e.g., Alpha Recycling, Inc. v. Crosby, 2016 WL 1178774, at *5 (S.D.N.Y. Mar. 23, 2016) (finding the term "Alpha" to be suggestive when used in reference to recycling services.)

Id. at 444.

Following the majority view, the self-laudatory term "Super" is more likely descriptive than suggestive, especially

when combined with the generic term "Slime." "A descriptive mark is entitled to protection upon proof that it has obtained a secondary meaning, that is to say, an identity that consumers associate with a single source, even though the source itself may be unknown." Gruner + Jahr USA Pub., a Div. of Gruner + Jahr Printing & Pub. Co. v. Meredith Corp., 991 F.2d 1072, 1076 (2d Cir. 1993). Neither party demonstrates that "Super Slime" has obtained secondary meaning. Thus, although BAP owns the "Super Slime" mark under the Consent Letter, the mark is so likely not entitled to protection that its marketing will not be preliminarily enjoined.

3.

BAP further argues that even if the marks are protectable and RGS owns them, BAP is nonetheless authorized to continue selling products bearing the marks after the expiration of the Licensing Agreement term. BAP claims that the Licensing Agreement provision giving RGS "the first and prior right to purchase the remaining copies of such Products" at the expiration of the term required RGS to purchase all or none of the remaining products in BAP's inventory. Licensing Agreement ¶ 27. RGS only sought to purchase some, not all, of the products in BAP's possession. Therefore, BAP argues, it was not required to sell any products to RGS and could sell them to third parties.

The language in the Licensing Agreement is ambiguous. It does not specify that RGS has the right to purchase "any" or "some" of the remaining products, nor does it specify that RGS must purchase "all" the remaining products in BAP's inventory.

BAP argues that the use of the word "the" in "the remaining copies of such Products" means "all." However, "BAP will give SSI in writing the first and prior right to purchase the remaining copies of such Products" merely means that RGS has the option to purchase all the products, not that it must. The following sentence "If SSI does not notify BAP of an intent to purchase such Products . . . BAP may sell such Products to any third party" does not include the word "the" or any other language indicating that RGS is required to buy either all or none of the products.

The ambiguity of the language is clarified by the parties' course of performance during the Licensing Agreement term. RGS's first and prior right to purchase the remaining products also applied "in the event when a Product is discontinued." On four separate occasions during the term when an SSI product was discontinued, SSI exercised its right and purchased some units of the discontinued product remaining in BAP's inventory, but not all of them. Second Brooks Decl. ¶ 132. See KN Energy, Inc. v. Great W. Sugar Co., 698 P.2d 769, 779 (Colo. 1985) ("The parties' course of performance following execution of the

contract" is "relevant to the interpretation of the agreement," and "may be used as an aid to interpretation whenever one party accepts repeated performance by the other party with knowledge of the nature of that performance and an opportunity to object to it.").¹

RGS has thus established a likelihood of success on the merits of its claim that it was not required to purchase all the remaining products and that BAP's post-expiration sales of products that RGS sought to purchase are unauthorized, or has at least raised sufficiently serious questions going to the merits to make them fair ground for litigation.

BAP also argues that RGS's notification of intent to purchase the products was untimely. BAP gave RGS written notice of the inventory available for purchase on January 1, 2019. Under the Licensing Agreement, RGS was required to notify BAP of its intent to purchase within ten business days, or by January 15, 2019. However, BAP's January 1, 2019 letter specified that its offer "is good through January 19, 2018, at which time said offer will expire."² RGS's notification of its intent to purchase some products in its January 17, 2019 letter was thus timely.

¹ The parties agree that Colorado contract law governs the Licensing Agreement and Consent Letter.

² Because BAP's letter is dated January 1, 2019, the "January 19, 2018" expiration date was most likely intended to be "January 19, 2019."

Finally, BAP argues that it should be restrained only from selling the number of articles which RGS sought to buy, and which BAP refused to sell it, and not the whole remaining balance of those articles in its inventory. That would be a reasonable argument under the Licensing Agreement, if BAP had complied with the Agreement and sold the articles to RGS. But in breach of the Agreement, BAP refused to sell it any fewer than all of the articles, and it is fair now to prohibit BAP from selling any of that line of articles.

4.

The next inquiry is whether BAP's use of RGS's marks is likely to cause consumer confusion.

When an ex-licensee continues to use a mark after its license expires, likelihood of confusion is established as a matter of law. Ryan v. Volpone Stamp. Co., 107 F. Supp. 2d 369, 399 (S.D.N.Y. 2000); see also Bowmar Instrument Corp. v. Continental Microsystems, Inc., 497 F. Supp. 947, 959 (S.D.N.Y. 1980) (holding that continued use of a mark after termination of a license constitutes trademark infringement). In such situations, confusion is almost inevitable because consumers have already associated the formerly licensed infringer with the trademark owner.

L & L Wings, Inc. v. Marco-Destin, Inc., 676 F. Supp. 2d 179, 188 (S.D.N.Y. 2009).

Because BAP is a previous licensee that continues to use RGS's marks after the termination of the Licensing Agreement, it is established as a matter of law that BAP's sales of unapproved Insta-Snow products bearing RGS's "Insta-Snow" and "Steve Spangler Science" word and design marks and use of the "Insta-

Snow," "Sick Science," "Energy Stick," and "Geyser Tube" marks in advertising and promotional materials are likely to cause consumer confusion.

BAP's own "Instant Amazing Snow" word and design marks, however, are not the exact same marks as RGS's "Insta-Snow" marks, and likelihood of confusion is not established as a matter of law. Rather, the determination of likelihood of confusion is based upon the multi-factor balancing test set forth in Polaroid Corp. v. Polarad Elecs. Corp., 287 F.2d 492, 495 (2d Cir. 1961):

Where the products are different, the prior owner's chance of success is a function of many variables: the strength of his mark, the degree of similarity between the two marks, the proximity of the products, the likelihood that the prior owner will bridge the gap, actual confusion, and the reciprocal of defendant's good faith in adopting its own mark, the quality of defendant's product, and the sophistication of the buyers.

Although there is no evidence regarding actual consumer confusion, the inferiority of the Instant Amazing Snow product, or the sophistication of consumers, most of the other Polaroid factors weigh in favor of finding a likelihood of consumer confusion.

The strength of the "Insta-Snow" mark is shown through its association with SSI products since 2002 and its word mark registration with the USPTO since 2005. As previously discussed, the mark is suggestive and distinctive.

The word mark "Instant Amazing Snow" differs in that it

spells out the entire word "Instant" and adds the word "Amazing." However, the design mark is highly similar to RGS's mark, as it uses the same font, colors, and spacing. The main difference between the designs is that Instant Amazing Snow does not include a small white snowflake in the center.

The proximity of the products is extremely close as they are the same type of powder toy made to resemble snow and will undoubtedly compete against each other. Because of that competitive proximity, there is no gap for RGS to bridge. See Star Indus., 412 F.3d at 387 (holding that when "products are already in competitive proximity, there is really no gap to bridge, and this factor is irrelevant to the Polaroid analysis in this case.").

BAP's lack of good faith can be inferred because it used to be the licensee of RGS's marks and adopted almost exactly the same design mark. It is likely that BAP hopes to gain from SSI's reputation and goodwill that RGS now owns.

RGS is therefore likely to succeed on the merits, or has raised sufficiently serious questions going to the merits, of its trademark infringement, unfair competition, and breach of contract claims, with the exception of the "Super Slime" marks.

There is no need to address RGS's claim of breach of implied covenant of good faith and fair dealing. See Eve of Milady v. Impression Bridal, Inc., 957 F. Supp. 484, 487

(S.D.N.Y. 1997) (“Where a plaintiff seeks a preliminary injunction and asserts multiple claims upon which the relief may be granted, the plaintiff need only establish a likelihood of success on the merits on one of the claims.”).

B. Irreparable Harm

“Any party seeking a preliminary injunction ‘must demonstrate that it will suffer irreparable harm in the absence of the requested relief.’” Sussman v. Crawford, 488 F.3d 136, 140 (2d Cir. 2007) (quoting Latino Officers Ass’n v. Safir, 170 F.3d 167, 171 (2d Cir. 1999)). Irreparable harm is “harm that (a) occurs to the parties’ legal interests and (b) cannot be remedied after a final adjudication, whether by damages or a permanent injunction.” Salinger v. Colting, 607 F.3d 68, 81 (2d Cir. 2010).

“Irreparable harm ‘exists in a trademark case when the party seeking the injunction shows that it will lose control over the reputation of its trademark pending trial,’ because loss of control over one’s reputation is neither ‘calculable nor precisely compensable.’” New York City Triathlon, LLC v. NYC Triathlon Club, Inc., 704 F. Supp. 2d 305, 343 (S.D.N.Y. 2010) (quoting Power Test Petroleum Distribs., Inc. v. Calcu Gas, Inc., 754 F.2d 91, 95 (2d Cir. 1985)).

SSI invested time and effort into developing its products

and marks. It used some of its earliest word and design marks, "Steve Spangler Science" and "Insta-Snow," since 1991 and 2002, respectively. As the current owner of those trademarks, RGS will suffer the irreparable harm of losing control over the reputation and goodwill that Steve Spangler Science products have gained if BAP is not enjoined from using those marks, or confusingly similar imitations of the marks, when selling and advertising products. That harm is especially great given that some of BAP's unapproved Insta-Snow products do not perform to requisite quality standards, as they do not expand to the same size and density as those of the approved Insta-Snow products. Second Brooks Decl. ¶¶ 68-72. That loss of goodwill is not calculable and cannot be remedied by royalty payments or other monetary damages.

BAP argues that RGS faces no irreparable harm from BAP's post-expiration sales because BAP is authorized under the Licensing Agreement to continue selling competing SSI products that RGS did not offer to purchase. BAP states that if RGS wanted to maintain control over its products, RGS could have purchased BAP's entire remaining inventory. However, as discussed, RGS was likely not required to purchase the entire inventory. RGS sought to purchase all the remaining Insta-Snow, Energy Stick, and Geyser Tube products that it wanted to sell

after expiration of the term.³ If BAP had honored RGS's first and prior right to purchase those products, BAP would not be able to sell any competing Insta-Snow, Energy Stick, or Geyser Tube products. The fact that some of BAP's other post-expiration sales are authorized under the Licensing Agreement does not eliminate the irreparable harm RGS will suffer from the loss of control over its reputation with respect to the products it sought to purchase if BAP continues to sell them.

C. Balance of Hardships and the Public Interest

RGS's hardships outweigh those of Defendants. RGS faces the continued irreparable harm of loss of goodwill and control over its reputation absent injunctive relief.

In contrast, Defendants would be prevented from using RGS's word and design marks (that they do not own or have a license to use) and confusingly similar imitations of those marks on their unapproved products and advertising materials. They would also be prevented from selling products that they were required to sell to RGS at the expiration of the Licensing Agreement term.

Defendants' businesses would not be severely impacted, as

³ BAP argues that RGS did not seek to purchase all the Insta-Snow products because RGS only offered to purchase all the "Insta-Snow 100 gram Jar" and "Insta-Snow 1 lb. Bag" products. Second Brooks Decl. Ex. T. RGS did not offer to purchase the "Insta-Snow Powder Box" products or "36 pc Super Tube Display" products (which include a variety of different products, one of which is Insta-Snow) because it decided to discontinue selling them. Third Brooks Decl. ¶ 12.

they would still be able to sell other products bearing non-infringing marks. Defendants would also still be able to sell the SSI products that RGS did not offer to purchase; they just would not be able to advertise those products using RGS's design marks. See Licensing Agreement ¶ 10 ("The parties agree that all rights, title and interest granted by SSI to BAP under this Agreement, including BAP's use of the SSI Trademarks, SSI Patents and SSI Copyrights, will revert to SSI at the end of the Agreement Term or upon termination of this Agreement whichever occurs first."). Although Defendants argue that they cannot sell the products without using the design marks, Defendants can sell the products by identifying them by their names and descriptions. It is not necessary for Defendants to display the design marks prominently on their website or advertise that the SSI products are "Brands of Be Amazing Toys."

The public interest also favors RGS and preventing further consumer confusion, as "the public has an interest in not being deceived – in being assured that the mark it associates with a product is not attached to goods of unknown origin and quality." New York City Triathlon, 704 F. Supp. 2d at 344.

Defendants argue that Creative Kids should not be enjoined because it is merely a shareholder of BAP and does not sell the products at issue. However, Creative Kids is the majority shareholder of BAP and has held itself out as affiliated with

BAP and as a seller of SSI products. At the 2019 New York Toy Fair, Creative Kids shared a booth with BAP that advertised and sold SSI products and displayed a sign stating "The Creative Kids and Be Amazing Team." Second Brooks Decl. ¶ 140. The booth's Super Slime display included the logos of both Be Amazing and Creative Kids. Id. ¶ 139. BAP's website features the Creative Kids logo. Id. Exs. L, Q. Additionally, Creative Kids, not BAP, applied to register the "Instant Amazing Snow" design mark with the USPTO. Id. ¶¶ 141-142, Ex. V.

BAP's Cross-Motion for Preliminary Injunction

BAP seeks a preliminary injunction enjoining RGS from selling Insta-Snow and Super Slime products that infringe BAP's trademark rights under the Consent Letter. For the reasons stated above, BAP does not own trademark rights to the Insta-Snow word and design marks; RGS does. BAP's packaging rights are limited to intellectual property "Other than the SSI IP," and the Insta-Snow marks are SSI IP. Although the "Super Slime" marks are not SSI IP, they are likely descriptive and not entitled to protection. BAP is thus not likely to succeed on the merits of its unfair competition claims with respect to Insta-Snow and Super Slime.

BAP's cross-motion for preliminary injunction (Dkt. No. 43) is denied.

RGS's Motion to Dismiss Counterclaims

A. Unfair Competition for Use of Insta-Snow Logo (Counts I and V)

BAP alleges that RGS engaged in unfair competition under the Lanham Act and New York common law by using BAP's Insta-Snow logo, or design mark. BAP does not own trademark rights to the Insta-Snow design mark, and its unfair competition counterclaims with respect to Insta-Snow are dismissed.

B. Unfair Competition for Use of Super Slime Logo (Counts II and VI)

BAP also alleges that RGS engaged in unfair competition under the Lanham Act and New York common law by using BAP's Super Slime logo, or design mark.

BAP adequately alleges that RGS is using BAP's "Super Slime" design mark without authorization. Although it is likely that the Super Slime mark is descriptive and the parties have not demonstrated that it has secondary meaning, it cannot be determined as a matter of law at this time that the mark is unprotectable.

RGS argues that BAP does not adequately plead New York common law unfair competition, which, "unlike its federal counterpart" under the Lanham Act, "requires an additional showing of bad faith." Lorillard Tobacco Co. v. Jamelis Grocery, Inc., 378 F. Supp. 2d 448, 456 (S.D.N.Y. 2005). BAP

alleges that

141. RGS acted with full knowledge of BAP's use of, and statutory and common law rights to, BAP's Super Slime Logo and without regard to the likelihood of confusion of the public created by RGS's activities.

142. RGS's actions demonstrate an intentional, willful, and malicious intent to misappropriate BAP's trademark and trade dress rights and trade on the goodwill associated with BAP's Super Slime Logo to the great and irreparable injury of BAP.

Answer & Counterclaims ¶¶ 134-35. That sufficiently pleads bad faith. See Pearson Educ., Inc. v. Kumar, 721 F. Supp. 2d 166, 191 (S.D.N.Y. 2010) ("where the defendant is aware of the existence of the plaintiff's mark and proceeds to use it in violation of unfair competition, a finding of 'bad faith' has been inferred").

RGS's motion to dismiss Defendants' unfair competition counterclaims respect to Super Slime is denied.

C. Unfair Competition for Use of Energy Stick and Geyser Tube Trade Dress (Counts III-IV, VII-VIII)

BAP alleges that RGS engaged in unfair competition under the Lanham Act and New York common law by continuing to sell and advertise Energy Stick and Geyser Tube products bearing BAP's trade dress after the Licensing Agreement expired.

Under the Consent Letter, BAP owns all rights pertaining to the packaging of the Energy Stick and Geyser Tube products, including the "images," "designs," and "trade dress." RGS argues that BAP cannot own the trade dress because BAP's descriptions of the trade dress include RGS's Energy Stick and

Geyser Tube products; however, the descriptions do not include the products themselves but rather their location and placement in the packaging.

RGS also argues that even if BAP owns the trade dress, its trade dress counterclaims are barred by the first-sale doctrine, which "recognizes that the right of a producer to control distribution of its trademarked product does not extend beyond the first sale of the product." Bel Canto Design, Ltd. v. MSS Hifi, Inc., 837 F. Supp. 2d 208, 222 (S.D.N.Y. 2011) (citation and internal quotation marks omitted). If "a defendant does no more than stock and resell genuine trademarked goods, the mark holder does not have a right to stop it under the Lanham Act." Id.

RGS contends that it purchased its Energy Stick and Geyser Tube products directly from BAP, and that RGS can therefore sell those genuine products after the term's expiration. However, BAP alleges not only that RGS continues to sell the products but also that it continues to advertise the products and their packaging designs – which include both the logos of BAP and Steve Spangler Science – on RGS's website. That suggests a continued affiliation between BAP and RGS or SSI, and could constitute more than merely stocking and reselling the goods. Therefore, it cannot be determined at this time that BAP's counterclaims are barred by the first-sale doctrine. See S&L

Vitamins, Inc. v. Australian Gold, Inc., No. 05-CV-1217 (JS), 2006 WL 8423836, at *6 (E.D.N.Y. Mar. 30, 2006) (stating that S&L's activities of superimposing "its Website name on top of pictures of the Products," copying "graphics and product descriptions found on AG's website" onto its own website, and paying to sponsor internet search terms corresponding to the Products' names and its website means S&L "has done more than simply 'stock and display' the Products for sale," and that "if found to suggest an affiliation between S&L and AG, would render the first sale doctrine inapplicable").

BAP makes the same allegations regarding RGS's bad faith use of the Energy Stick and Geyser Tube trade dress that it did for RGS's use of the Super Slime design mark, and adequately pleads bad faith. Answer & Counterclaims ¶¶ 141-42, 148-49.

Accordingly, BAP plausibly alleges that RGS used BAP's trade dress without authorization, and the motion to dismiss BAP's unfair competition counterclaims with respect to the Energy Stick and Geyser Tube trade dress is denied.

D. Deceptive Trade Practices (Counts IX-XII)

BAP alleges that RGS engaged in deceptive trade practices under N.Y. Gen. Bus. Law § 349 by selling products bearing the Insta-Snow and Super Slime design marks and the Energy Stick and Geyser Tube trade dress, causing a likelihood of consumer

confusion. Those counterclaims are dismissed because BAP does not allege a specific injury to the public interest beyond ordinary trademark infringement and likelihood of consumer confusion. See Perfect Pearl Co. v. Majestic Pearl & Stone, Inc., 887 F. Supp. 2d 519, 543 (S.D.N.Y. 2012) ("the prevailing view in the Second Circuit is that trademark . . . infringement claim[s] are not cognizable under [§ 349] unless there is specific and substantial injury to the public interest over and above the ordinary trademark infringement.") (alterations and omission in original) (citation and internal quotation marks omitted); Sports Traveler, Inc. v. Advance Magazine Publishers, Inc., No. 96 Civ. 5150 (JFK), 1997 WL 137443, at *3 (S.D.N.Y. Mar. 24, 1997) ("The courts of this Circuit have held that trademark infringement actions alleging only general consumer confusion do not threaten the direct harm to consumers that is required to state a claim under section 349.").

E. Breach of Contract (Count XIII)

BAP alleges that RGS breached the Licensing Agreement in three ways: selling products that infringe upon BAP's IP rights, applying to register the Insta-Snow design mark with the USPTO, and bringing this action against BAP.

1. RGS's Sales of Insta-Snow, Steve Spangler's Super Slime, Energy Stick, and Geyser Tube in BAP's IP

As discussed, BAP does not own trademark rights to the Insta-Snow design mark, it cannot be determined as a matter of law at this time that the Super Slime mark is unprotectable, and BAP plausibly alleges that RGS sold and advertised Energy Stick and Geyser Tube products bearing BAP's trade dress.

RGS's motion to dismiss BAP's breach of contract counterclaim is granted with respect to Insta-Snow and denied with respect to Super Slime, Energy Stick, and Geyser Tube.

2. RGS's Application to Register Insta-Snow Design Mark

BAP does not own rights to RGS's Insta-Snow design mark. RGS's pending application to register the design mark with the USPTO is not a breach of any provision in the Licensing Agreement or Consent Letter, and BAP's counterclaim with respect to that is dismissed.

3. RGS's Lawsuit Against BAP

There is not – and BAP does not identify – any provision in the Licensing Agreement or Consent Letter that prohibits RGS from bringing this action for BAP's unauthorized uses of SSI Trademarks. On the contrary, the Licensing Agreement states

It is understood and agreed that all right, title and interest to the SSI Trademarks, SSI Copyrights and SSI Patents will remain vested in SSI, subject to the exclusive license granted to BAP by SSI in this Agreement. Furthermore, BAP agrees to return to

SSI all SSI Trademark materials and data delivered hereunder by SSI to BAP. Nothing in this Paragraph is meant to limit or waive any legal remedy otherwise available, including the return of all materials containing SSI's trademark, for violation of this Agreement, infringement, or for any related claim by SSI.

Licensing Agreement ¶ 14(A). BAP's breach of contract counterclaim with respect to RGS's lawsuit against BAP is dismissed.

F. Breach of Implied Covenant of Good Faith and Fair Dealing (Count XIV)

BAP's allegations of RGS's breach of implied covenant of good faith and fair dealing are the same as those of RGS's breach of the Licensing Agreement and Consent Letter: selling products that infringe upon BAP's IP rights, applying to register the Insta-Snow design mark, and bringing this action against BAP.

"Colorado, like the majority of jurisdictions, recognizes that every contract contains an implied duty of good faith and fair dealing." Amoco Oil Co. v. Ervin, 908 P.2d 493, 498 (Colo. 1995). "The good faith performance doctrine is generally used to effectuate the intentions of the parties or to honor their reasonable expectations." Id. "The duty of good faith and fair dealing applies when one party has discretionary authority to determine certain terms of the contract, such as quantity, price, or time." Id. "The covenant may be relied upon only when the manner of performance under a specific contract term

allows for discretion on the part of either party.” Id.

BAP does not identify any relevant term in the Licensing Agreement or Consent Letter that gives RGS discretionary authority. Nor does BAP state how RGS’s sales of products using BAP’s IP, application to register the Insta-Snow design mark, or lawsuit against BAP are exercises of such discretionary authority that fail to honor BAP’s reasonable expectations. The motion to dismiss this counterclaim is therefore granted. See McKinnis v. Fitness Together Franchise Corp., No. 10-CV-02308-RPM, 2010 WL 5056666, at *4 (D. Colo. Dec. 6, 2010) (“The plaintiffs have not identified any specific contract term that allows for discretion on the part of the defendant. Dismissal is appropriate for that reason.”); City of Boulder v. Pub. Serv. Co. of Colorado, 996 P.2d 198, 204-05 (Colo. App. 1999) (affirming dismissal of implied covenant of good faith and fair dealing claim because “plaintiffs do not allege that PSCo has discretion to determine any relevant term of the contracts, nor does our review of the PPAs reveal any such discretion,” and “The energy purchase rate PSCo determines annually for its tariff filing is not a term of the PPAs subject to PSCo’s discretion because it must be calculated in accordance with PUC’s methodology and other regulations”).

G. Cancellation of Insta-Snow Registration (Count XV)

As discussed, the registered Insta-Snow word mark is not generic but rather suggestive and distinctive. RGS's motion to dismiss BAP's counterclaim that RGS's Insta-Snow trademark registration should be cancelled as generic is granted.

Conclusion

Plaintiff's motion to dismiss Defendants' counterclaims (Dkt. No. 71) is granted in part and denied in part. The motion to dismiss the unfair competition counterclaims is granted with respect to the Insta-Snow design mark (Counts I and V) and denied with respect to the Super Slime design mark and the Energy Stick and Geyser Tube trade dress (Counts II-IV, VI-VIII). The motion to dismiss the breach of contract counterclaim (Count XIII) is granted with respect to the Insta-Snow design mark, application to register the Insta-Snow design mark, and lawsuit; and denied with respect to the Super Slime design mark and Energy Stick and Geyser Tube trade dress. The motion to dismiss the counterclaims of deceptive trade practices (Counts IX-XII), breach of implied covenant of good faith and fair dealing (Count XIV), and cancellation of the "Insta-Snow" registration (Count XV) is granted.

CONCLUSION AND PRELIMINARY INJUNCTION

Plaintiff's motion for a preliminary injunction (Dkt. No. 19) is granted in part, and Defendants are enjoined from selling

any product that RGS sought to purchase at the expiration of the Licensing Agreement⁴ and that bears any of the following marks: the "Insta-Snow" word mark, "Insta-Snow" design mark, "Instant Amazing Snow" word mark, "Instant Amazing Snow" design mark, "Steve Spangler Science" word mark, "Steve Spangler Science" design mark, "Sick Science" word mark, "Sick Science" design mark, "Energy Stick" word mark, "Energy Stick" design mark, "Geyser Tube" word mark, and "Geyser Tube" design mark.

Defendants are enjoined from selling any unit of any product that RGS sought to purchase and that bears any of the foregoing marks, regardless of whether RGS sought to purchase some or all units from BAP's remaining inventory of that product.

Defendants are also enjoined from manufacturing, distributing, selling, or offering for sale Instant Amazing Snow products and "stocking stuffer" Insta-Snow products.

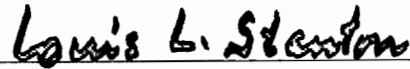
Defendants are also enjoined from using any of the foregoing marks in advertising and promotional materials. They may, however, list a product's name and description for their sales of products that are not enjoined.

⁴ The products RGS sought to purchase are: 4120 Big Bag of Science, 4165 Real Science Real Fun, 4415 Test Tube Wonders, 4420 Test Tube Adventures, 4525 Soda Powered Science, 4530 Shocking Science, 4860 Super Slime Masterpiece, 5885 All Season Snowman, 5889 Super Slime PDO (12 pieces), 5910 Super Slime Art, 6025 Fast Physics, 6035 Slick Tricks, 6040 Solve This, 6205 Sick Science Fizz Boom, 6215 Sick Science Snot Science, 6610 Super Size Sick Science, 7130 Geyser Tube Card, 7155 Geyser Tube with Caps, 7160 36 pc Super Tube Display, 7250 Energy Stick, SNO-500 Insta-Snow 100 gram Jar, and SNO-650 Insta-Snow 1 lb. Bag.

Defendants are entitled to a bond in an amount that will reasonably compensate their damages if this injunction is found to be entered in error. It is impossible at this point to determine the amount of the bond since neither side has presented justification for a particular figure. Defendants are directed to comply with this injunction order by the close of business on Tuesday, October 22, 2019, and thereafter the court will hear the parties to determine the appropriate amount for a bond.

So ordered.

Dated: New York, New York
October 17, 2019

A handwritten signature in black ink, reading "Louis L. Stanton", written over a horizontal line.

LOUIS L. STANTON
U.S.D.J.

EXHIBIT D

Trademark/Service Mark Application, Principal Register

Serial Number: 88387969

Filing Date: 04/16/2019

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88387969
MARK INFORMATION	
*MARK	\\TICRS\EXPORT17\IMAGEOUT17\883\879\88387969\xml1\ RFA0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	AMAZING SNOW INSTANT POWDER
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the words" amazing snow instant powder" in a stylized font; the words "amazing snow" appear against a white background with a black border tracing the shapes of its letters and a sliver of black between the words; above the words "amazing snow" is the word "instant" with a slash to either side, against a black border with a semicircular top and a bottom that traces the shapes of the letters below it; below the words "amazing snow" is the word "powder" against a white background with a black border tracing the shapes of the letters above it.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	925 x 303
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Creative Kids Far East Inc.
*STREET	750 Chestnut Ridge Road
*CITY	Chestnut Ridge
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	10977
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	New York
GOODS AND/OR SERVICES AND BASIS INFORMATION	

INTERNATIONAL CLASS	016
*IDENTIFICATION	modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	017
*IDENTIFICATION	absorbent plastic polymer in powder form that expands when hydrated
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Douglas A. Miro, Esq.
ATTORNEY DOCKET NUMBER	07686/11
FIRM NAME	Amster, Rothstein & Ebenstein LLP
STREET	90 Park Avenue, 21st Floor
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10016
PHONE	212-336-8000
FAX	212-336-8001
EMAIL ADDRESS	ptodocket@arelaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Daniel Ebenstein, Philip H. Gottfried, Neil M. Zipkin, Anthony F. Lo Cicero, Kenneth P. George, Chester Rothstein, Craig J. Arnold, Charles R. Macedo, Brian Comack, Max Vern, Holly Pekowsky, Douglas A. Miro, Richard S. Mandaro, Marc J. Jason, Matthieu Hausig, Alan Miller, Marion Metelski, Benjamin Charkow, Mark Berkowitz, Suzue Fujimori, Jessica Capasso, Brian Amos, Hajime Sakai, David P. Goldberg, Sandra Hudak, Tuvia Rotberg, Dexter Chang, Keith J. Barkaus, Michael R. Jones and Christopher Lisiewski
CORRESPONDENCE INFORMATION	
NAME	Douglas A. Miro, Esq.
FIRM NAME	Amster, Rothstein & Ebenstein LLP
STREET	90 Park Avenue, 21st Floor
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10016
PHONE	212-336-8000
FAX	212-336-8001
*EMAIL ADDRESS	ptodocket@arelaw.com

*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	2
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEE DUE	550
*TOTAL FEE PAID	550
SIGNATURE INFORMATION	
SIGNATURE	/Douglas A. Miro, Esq./
SIGNATORY'S NAME	Douglas A. Miro, Esq.
SIGNATORY'S POSITION	attorney of record; New York State Bar member
SIGNATORY'S PHONE NUMBER	212-336-8000
DATE SIGNED	04/16/2019

Trademark/Service Mark Application, Principal Register

Serial Number: 88387969

Filing Date: 04/16/2019

To the Commissioner for Trademarks:

MARK: AMAZING SNOW INSTANT POWDER (stylized and/or with design, see [mark](#))

The literal element of the mark consists of AMAZING SNOW INSTANT POWDER.

The mark consists of the words "amazing snow instant powder" in a stylized font; the words "amazing snow" appear against a white background with a black border tracing the shapes of its letters and a sliver of black between the words; above the words "amazing snow" is the word "instant" with a slash to either side, against a black border with a semicircular top and a bottom that traces the shapes of the letters below it; below the words "amazing snow" is the word "powder" against a white background with a black border tracing the shapes of the letters above it. The applicant, Creative Kids Far East Inc., a corporation of New York, having an address of

750 Chestnut Ridge Road
Chestnut Ridge, New York 10977
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 016: modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 017: absorbent plastic polymer in powder form that expands when hydrated

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Douglas A. Miro, Esq. and Daniel Ebenstein, Philip H. Gottfried, Neil M. Zipkin, Anthony F. Lo Cicero, Kenneth P. George, Chester Rothstein, Craig J. Arnold, Charles R. Macedo, Brian Comack, Max Vern, Holly Pekowsky, Douglas A. Miro, Richard S. Mandaro, Marc J. Jason, Matthieu Hausig, Alan Miller, Marion Metelski, Benjamin Charkow, Mark Berkowitz, Suzue Fujimori, Jessica Capasso, Brian Amos, Hajime Sakai, David P. Goldberg, Sandra Hudak, Tuvia Rotberg, Dexter Chang, Keith J. Barkaus, Michael R. Jones and Christopher Lisiewski of Amster, Rothstein & Ebenstein LLP 90 Park Avenue, 21st Floor

New York, New York 10016

United States

212-336-8000(phone)

212-336-8001(fax)

ptodocket@arelaw.com (authorized)

The attorney docket/reference number is 07686/11.

The applicant's current Correspondence Information:

Douglas A. Miro, Esq.

Amster, Rothstein & Ebenstein LLP

90 Park Avenue, 21st Floor

New York, New York 10016

212-336-8000(phone)

212-336-8001(fax)

ptodocket@arelaw.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant, the applicant's

attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$550 has been submitted with the application, representing payment for 2 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Douglas A. Miro, Esq./ Date: 04/16/2019

Signatory's Name: Douglas A. Miro, Esq.

Signatory's Position: attorney of record; New York State Bar member

Payment Sale Number: 88387969

Payment Accounting Date: 04/17/2019

Serial Number: 88387969

Internet Transmission Date: Tue Apr 16 14:14:33 EDT 2019

TEAS Stamp: USPTO/BAS-XXX.XXX.XXX.XXX-20190416141433

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82d-DA-492-20190416133521191138

INSTANT
AMAZING SNOW
POWDER

Generated on: This page was generated by TSDR on 2019-11-06 12:26:25 EST

Mark: AMAZING SNOW INSTANT POWDER



US Serial Number: 88387969

Application Filing Date: Apr. 16, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: Application has been published for opposition. The opposition period begins on the date of publication.

Status Date: Oct. 08, 2019

Publication Date: Oct. 08, 2019

Mark Information

Mark Literal Elements: AMAZING SNOW INSTANT POWDER

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the words "amazing snow instant powder" in a stylized font; the words "amazing snow" appear against a white background with a black border tracing the shapes of its letters and a sliver of black between the words; above the words "amazing snow" is the word "instant" with a slash to either side, against a black border with a semicircular top and a bottom that traces the shapes of the letters below it; below the words "amazing snow" is the word "powder" against a white background with a black border tracing the shapes of the letters above it.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "INSTANT" AND "SNOW POWDER"

Design Search Code(s): 26.17.09 - Bands, curved; Lines, curved; Curved line(s), band(s) or bar(s); Bars, curved

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(b)

For: absorbent plastic polymer in powder form that expands when hydrated

International Class(es): 017 - Primary Class

U.S Class(es): 001, 005, 012, 013, 035, 050

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Filed ITU: Yes

Filed 44D: No

Filed 44E: No

Filed 66A: No

Filed No Basis: No

Currently Use: No

Currently ITU: Yes

Currently 44E: No

Currently 66A: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Creative Kids Far East Inc.

Owner Address: 750 Chestnut Ridge Road
Chestnut Ridge, NEW YORK UNITED STATES 10977

Legal Entity Type: CORPORATION

State or Country NEW YORK
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Douglas A. Miro, Esq.

Docket Number: 07686/11

Attorney Primary ptodocket@arelaw.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Douglas A. Miro, Esq.
Name/Address: AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE, 21ST FLOOR
NEW YORK, NEW YORK UNITED STATES 10016

Phone: 212-336-8000

Fax: 212-336-8001

Correspondent e- ptodocket@arelaw.com
mail:

Correspondent e- Yes
mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 08, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 08, 2019	PUBLISHED FOR OPPOSITION	
Sep. 18, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Sep. 05, 2019	ASSIGNED TO LIE	70138
Aug. 29, 2019	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 27, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 26, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 26, 2019	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jul. 26, 2019	LETTER OF PROTEST EVIDENCE REVIEWED-NO FURTHER ACTION TAKEN	69195
Jul. 25, 2019	LETTER OF PROTEST ACCEPTED	
Jun. 18, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 18, 2019	NON-FINAL ACTION E-MAILED	6325
Jun. 18, 2019	NON-FINAL ACTION WRITTEN	69195
Jun. 17, 2019	ASSIGNED TO EXAMINER	69195
May 03, 2019	NOTICE OF DESIGN SEARCH CODE E-MAILED	
May 02, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 19, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: FOSDICK, GEOFFREY A

Law Office LAW OFFICE 111
Assigned:

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Sep. 05, 2019

EXHIBIT E

Trademark/Service Mark Application, Principal Register

Serial Number: 88126740

Filing Date: 09/21/2018

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88126740
MARK INFORMATION	
*MARK	AMAZING SNOW
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	AMAZING SNOW
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Creative Kids Far East Inc.
*STREET	750 Chestnut Ridge Road
*CITY	Chestnut Ridge
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	10977
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	New York
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	016
*IDENTIFICATION	modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	017
*IDENTIFICATION	absorbent plastic polymer in powder form that expands when hydrated
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	

NAME	Douglas A. Miro
ATTORNEY DOCKET NUMBER	07686/8
FIRM NAME	Amster, Rothstein & Ebenstein LLP
STREET	90 Park Avenue, 21st Floor
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10016
PHONE	212-336-8000
FAX	212-336-8001
EMAIL ADDRESS	ptodocket@arelaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Morton Amster, Daniel Ebenstein, Philip H. Gottfried, Neil M. Zipkin, Anthony F. Lo Cicero, Kenneth P. George, Chester Rothstein, Craig J. Arnold, Charles R. Macedo, Brian Comack, Max Vern, Holly Pekowsky, Douglas A. Miro, Richard S. Mandaro, Marc J. Jason, Matthieu Hausig, Jung Hahm, Alan Miller, Marion Metelski, Benjamin Charkow, Mark Berkowitz, Suzue Fujimori, Jessica Capasso, Brian Amos, Hajime Sakai, David P. Goldberg, Sandra Hudak, Tzvi Hirshaut, Tuvia Rotberg, Dexter Chang, Keith J. Barkaus and Michael R. Jones
CORRESPONDENCE INFORMATION	
NAME	Douglas A. Miro
FIRM NAME	Amster, Rothstein & Ebenstein LLP
STREET	90 Park Avenue, 21st Floor
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10016
PHONE	212-336-8000
FAX	212-336-8001
*EMAIL ADDRESS	ptodocket@arelaw.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	2
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEE DUE	550
*TOTAL FEE PAID	550
SIGNATURE INFORMATION	
SIGNATURE	/Douglas A. Miro/

SIGNATORY'S NAME	Douglas A. Miro
SIGNATORY'S POSITION	attorney of record; New York State Bar member
SIGNATORY'S PHONE NUMBER	212-336-8000
DATE SIGNED	09/21/2018

Trademark/Service Mark Application, Principal Register

Serial Number: 88126740

Filing Date: 09/21/2018

To the Commissioner for Trademarks:

MARK: AMAZING SNOW (Standard Characters, see [mark](#))

The literal element of the mark consists of AMAZING SNOW.

The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, Creative Kids Far East Inc., a corporation of New York, having an address of
750 Chestnut Ridge Road
Chestnut Ridge, New York 10977
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 016: modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 017: absorbent plastic polymer in powder form that expands when hydrated

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Douglas A. Miro and Morton Amster, Daniel Ebenstein, Philip H. Gottfried, Neil M. Zipkin, Anthony F. Lo Cicero, Kenneth P. George, Chester Rothstein, Craig J. Arnold, Charles R. Macedo, Brian Comack, Max Vern, Holly Pekowsky, Douglas A. Miro, Richard S. Mandaro, Marc J. Jason, Matthieu Hausig, Jung Hahm, Alan Miller, Marion Metelski, Benjamin Charkow, Mark Berkowitz, Suzue Fujimori, Jessica Capasso, Brian Amos, Hajime Sakai, David P. Goldberg, Sandra Hudak, Tzvi Hirshaut, Tuvia Rotberg, Dexter Chang, Keith J. Barkaus and Michael R. Jones of Amster, Rothstein & Ebenstein LLP 90 Park Avenue, 21st Floor

New York, New York 10016

United States

212-336-8000(phone)

212-336-8001(fax)

ptodocket@arelaw.com (authorized)

The attorney docket/reference number is 07686/8.

The applicant's current Correspondence Information:

Douglas A. Miro

Amster, Rothstein & Ebenstein LLP

90 Park Avenue, 21st Floor

New York, New York 10016

212-336-8000(phone)

212-336-8001(fax)

ptodocket@arelaw.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant, the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$550 has been submitted with the application, representing payment for 2 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
 - The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
 - To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.
- ☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.
- ☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.
- ☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Douglas A. Miro/ Date: 09/21/2018

Signatory's Name: Douglas A. Miro

Signatory's Position: attorney of record; New York State Bar member

Payment Sale Number: 88126740

Payment Accounting Date: 09/21/2018

Serial Number: 88126740

Internet Transmission Date: Fri Sep 21 11:43:10 EDT 2018

TEAS Stamp: USPTO/BAS-XXX.XXX.XXX.XXX-20180921114310

722509-88126740-610c5321558342ac95fa511f

fba74bab5b6136057d996531aa4f19446f4c62fb

58-DA-17000-20180921113214297975

AMAZING SNOW

Generated on: This page was generated by TSDR on 2019-11-06 12:27:10 EST

Mark: AMAZING SNOW

AMAZING SNOW

US Serial Number: 88126740

Application Filing Date: Sep. 21, 2018

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Opposition Pending

The pending trademark application has been examined by the Office and was published for opposition, at which time one or more oppositions were filed but they have not yet been decided.

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Sep. 18, 2019

Publication Date: May 21, 2019

Mark Information

Mark Literal Elements: AMAZING SNOW

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "SNOW"

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: modeling compounds; activity kits comprised of modeling compounds and related accessories for use with modeling compounds sold as a unit in plastic container

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(b)

For: absorbent plastic polymer in powder form that expands when hydrated

International Class(es): 017 - Primary Class

U.S Class(es): 001, 005, 012, 013, 035, 050

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Creative Kids Far East Inc.

Owner Address: 750 Chestnut Ridge Road
Chestnut Ridge, NEW YORK UNITED STATES 10977

Legal Entity Type: CORPORATION

State or Country NEW YORK
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Douglas A. Miro

Docket Number: 07686/8

Attorney Primary ptodocket@arelaw.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent DOUGLAS A. MIRO
Name/Address: AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE, 21ST FLOOR
NEW YORK 10016

Phone: 212-336-8000

Fax: 212-336-8001

Correspondent e-mail: ptodocket@arelaw.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 18, 2019	OPPOSITION INSTITUTED NO. 999999	251032
May 28, 2019	EXTENSION OF TIME TO OPPOSE RECEIVED	
May 21, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 21, 2019	PUBLISHED FOR OPPOSITION	
May 01, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 14, 2019	ASSIGNED TO LIE	70884
Apr. 01, 2019	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 01, 2019	EXAMINER'S AMENDMENT ENTERED	88888
Apr. 01, 2019	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Apr. 01, 2019	EXAMINERS AMENDMENT E-MAILED	6328
Apr. 01, 2019	EXAMINERS AMENDMENT -WRITTEN	93054
Oct. 11, 2018	NOTIFICATION OF PRIORITY ACTION E-MAILED	6326
Oct. 11, 2018	PRIORITY ACTION E-MAILED	6326
Oct. 11, 2018	PRIORITY ACTION WRITTEN	93054
Oct. 09, 2018	ASSIGNED TO EXAMINER	93054
Sep. 27, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 25, 2018	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: KOLODNER, LOUIS FRANCI

Law Office LAW OFFICE 122
Assigned:

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Apr. 18, 2019

Proceedings

Summary

Number of 2
Proceedings:

Type of Proceeding: Opposition

Proceeding [91251032](#)
Number:

Filing Date: Sep 18, 2019

Status: Suspended

Status Date: Oct 28, 2019

Interlocutory SHANNA K SANDERS
Attorney:

Defendant

Name: Creative Kids Far East Inc.

Correspondent DOUGLAS A. MIRO
Address: AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE, 21ST FLOOR
NEW YORK NY , 10016

Correspondent e-mail: ptodocket@arelaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
AMAZING SNOW	Opposition Pending	88126740	

Plaintiff(s)

Name: REALLY GOOD STUFF, LLC

Correspondent JONATHAN PUROW
Address: GOTTLIEB, RACKMAN & REISMAN, P.C.
270 MADISON AVENUE
NEW YORK NY UNITED STATES , 10016

Correspondent e-mail: efiling@grr.com , jpurow@grr.com , rfeinland@grr.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
INSTA-SNOW	REGISTERED AND RENEWED	78376664	2928946
INSTA-SNOW POWDER	Opposition Pending	88271200	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Sep 18, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Sep 18, 2019	Oct 28, 2019
3	INSTITUTED	Sep 18, 2019	
4	D MOT TO SUSP PEND DISP CIV ACT W/ CONSENT	Oct 28, 2019	
5	SUSP PEND DISP OF CIVIL ACTION	Oct 28, 2019	

Type of Proceeding: Extension of Time

Proceeding [88126740](#)
Number:

Filing Date: May 28, 2019

Status: Terminated

Status Date: Sep 18, 2019

Interlocutory
Attorney:

Defendant

Name: Creative Kids Far East Inc.

Correspondent DOUGLAS A. MIRO
Address: AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE, 21ST FLOOR
NEW YORK NY , 10016

Correspondent e-mail: ptodocket@arelaw.com

Associated marks

Serial	Registration
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Mark	Application Status	Number	Number
AMAZING SNOW	Opposition Pending	88126740	
Potential Opposer(s)			

Name: REALLY GOOD STUFF, LLC

Correspondent JONATHAN PUROW

Address: GOTTLIEB, RACKMAN & REISMAN, P.C.
270 MADISON AVENUE
NEW YORK NY UNITED STATES , 10016

Correspondent e-mail: efiling@grr.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
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Prosecution History			
Entry Number	History Text	Date	Due Date
1	FIRST 90-DAY REQUEST TO EXT TIME TO OPPOSE	May 28, 2019	
2	EXT GRANTED	May 28, 2019	

EXHIBIT F

Trademark/Service Mark Application, Principal Register

Serial Number: 88281122

Filing Date: 01/29/2019

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88281122
MARK INFORMATION	
*MARK	ENERGY ROD
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	ENERGY ROD
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	CREATIVE KIDS FAR EAST INC.
*STREET	750 Chestnut Ridge Road
*CITY	Chestnut Ridge
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	10977
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	New York
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	028
*IDENTIFICATION	Educational toys for the purpose of the demonstration of electrical conductivity
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Douglas A. Miro
ATTORNEY DOCKET NUMBER	07686/0009
FIRM NAME	Amster, Rothstein & Ebenstein LLP
STREET	90 Park Avenue

CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10016
PHONE	212-336-8000
FAX	212-336-8001
EMAIL ADDRESS	ptodocket@arelaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Morton Amster, Daniel Ebenstein, Philip H. Gottfried, Neil M. Zipkin, Anthony F. Lo Cicero, Kenneth P. George, Chester Rothstein, Craig J. Arnold, Charles R. Macedo, Brian Comack, Max Vern, Holly Pekowsky, Douglas A. Miro, Richard S. Mandaro, Marc J. Jason, Matthieu Hausig, Jung Hahm, Alan Miller, Marion Metelski, Benjamin Charkow, Mark Berkowitz, Suzue Fujimori, Jessica Capasso, Brian Amos, Hajime Sakai, David P. Goldberg, Sandra Hudak, Tzvi Hirshaut, Tuvia Rotberg, Dexter Chang, Keith J. Barkaus and Michael R. Jones
CORRESPONDENCE INFORMATION	
NAME	Douglas A. Miro
FIRM NAME	Amster, Rothstein & Ebenstein LLP
STREET	90 Park Avenue
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10016
PHONE	212-336-8000
FAX	212-336-8001
*EMAIL ADDRESS	ptodocket@arelaw.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEE DUE	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
SIGNATURE	/Douglas A. Miro/
SIGNATORY'S NAME	Douglas A. Miro
SIGNATORY'S POSITION	Attorney for Applicant
SIGNATORY'S PHONE NUMBER	212-336-8000
DATE SIGNED	01/29/2019

Trademark/Service Mark Application, Principal Register

Serial Number: 88281122

Filing Date: 01/29/2019

To the Commissioner for Trademarks:

MARK: ENERGY ROD (Standard Characters, see [mark](#))

The literal element of the mark consists of ENERGY ROD.

The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, CREATIVE KIDS FAR EAST INC., a corporation of New York, having an address of
750 Chestnut Ridge Road
Chestnut Ridge, New York 10977
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 028: Educational toys for the purpose of the demonstration of electrical conductivity

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Douglas A. Miro and Morton Amster, Daniel Ebenstein, Philip H. Gottfried, Neil M. Zipkin, Anthony F. Lo Cicero, Kenneth P. George, Chester Rothstein, Craig J. Arnold, Charles R. Macedo, Brian Comack, Max Vern, Holly Pekowsky, Douglas A. Miro, Richard S. Mandaro, Marc J. Jason, Matthieu Hausig, Jung Hahm, Alan Miller, Marion Metelski, Benjamin Charkow, Mark Berkowitz, Suzue Fujimori, Jessica Capasso, Brian Amos, Hajime Sakai, David P. Goldberg, Sandra Hudak, Tzvi Hirshaut, Tuvia Rotberg, Dexter Chang, Keith J. Barkaus and Michael R. Jones of Amster, Rothstein & Ebenstein LLP 90 Park Avenue

New York, New York 10016

United States

212-336-8000(phone)

212-336-8001(fax)

ptodocket@arelaw.com (authorized)

The attorney docket/reference number is 07686/0009.

The applicant's current Correspondence Information:

Douglas A. Miro

Amster, Rothstein & Ebenstein LLP

90 Park Avenue

New York, New York 10016

212-336-8000(phone)

212-336-8001(fax)

ptodocket@arelaw.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant, the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
 - The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
 - To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.
- ☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.
- ☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.
- ☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Douglas A. Miro/ Date: 01/29/2019

Signatory's Name: Douglas A. Miro

Signatory's Position: Attorney for Applicant

Payment Sale Number: 88281122

Payment Accounting Date: 01/30/2019

Serial Number: 88281122

Internet Transmission Date: Tue Jan 29 15:51:04 EST 2019

TEAS Stamp: USPTO/BAS-XXX.XXX.XXX.XXX-20190129155104

794292-88281122-620fce3b7d8d7e475d53f58b

cb7359c1287ffa19ccb5b304b66923ccaf4fb345

6-DA-2594-20190129154958836722

ENERGY ROD

Generated on: This page was generated by TSDR on 2019-11-06 12:27:51 EST

Mark: ENERGY ROD

ENERGY ROD

US Serial Number: 88281122

Application Filing Date: Jan. 29, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Jul. 24, 2019

Mark Information

Mark Literal Elements: ENERGY ROD

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Educational toys for the purpose of the demonstration of electrical conductivity

International Class(es): 028 - Primary Class

U.S Class(es): 022, 023, 038, 050

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: CREATIVE KIDS FAR EAST INC.

Owner Address: 750 Chestnut Ridge Road
Chestnut Ridge, NEW YORK UNITED STATES 10977

Legal Entity Type: CORPORATION

State or Country NEW YORK
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Douglas A. Miro
Attorney Primary Email Address: ptodocket@arelaw.com
Docket Number: 07686/0009
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: DOUGLAS A. MIRO
AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE
NEW YORK, NEW YORK UNITED STATES 10016
Phone: 212-336-8000
Fax: 212-336-8001
Correspondent e-mail: ptodocket@arelaw.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 24, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jul. 24, 2019	NON-FINAL ACTION E-MAILED	6325
Jul. 24, 2019	NON-FINAL ACTION WRITTEN	90292
Jul. 24, 2019	LETTER OF PROTEST ACCEPTED	
Apr. 10, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 10, 2019	NON-FINAL ACTION E-MAILED	6325
Apr. 10, 2019	NON-FINAL ACTION WRITTEN	90292
Apr. 10, 2019	ASSIGNED TO EXAMINER	90292
Feb. 21, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 01, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CHANG, ELIZABETH YI HS
Law Office Assigned: LAW OFFICE 115

File Location

Current Location: TMO LAW OFFICE 115 - EXAMINING ATTORNEY ASSIGNED
Date in Location: Jul. 24, 2019

EXHIBIT G



Roll over image to zoom in

Be Amazing! Instant Amazing Snow Jar, Makes 2 Gallons

by Be Amazing! Toys

★★★★★ 978 ratings | 98 answered questions

Amazon's Choice for "instant snow"

List Price: ~~\$12.99~~

Price: **\$7.55** ✓prime

You Save: **\$5.44 (42%)**

Get \$50 off instantly: Pay \$0.00 upon approval for the Amazon Rewards Visa Card. No annual fee.

Size: **Makes 2 Gallons - 3.5 OZ**

Makes 2 Gallons - 3.5 OZ

\$7.55

✓prime

Makes 8-10 Gallons - 16 OZ

\$28.94

✓prime

- What's not to love? Instant Amazing Snow turns ordinary water into a white fluffy substance that looks like real snow. No stirring, no mixing, tons of science fun.
- Absorbs up to 100 times it's weight in water and fluffs up to way over 2 gallons.
- This educational toy includes an activity guide that explains the science behind the faux snow. Non-toxic and fully safety tested.
- What is S.T.E.M.? STEM stands for Science, Technology, Engineering, and Math, which constitutes many of the areas educators look to cover for science based activities. We are proud to say that his kit has a strong focus on STEM.
- Instant Amazing Snow powder is the first and original instant snow polymer that actually erupts. No stirring

EXHIBIT H



Home | Products | About Us | Contact Us | 1-800-451-1111

Home | Products | About Us | Contact Us | 1-800-451-1111



The Amazing Instant Snow

Amazing Instant-Snow® powder is a registered trademark.

Amazing Instant-Snow® powder is the first and original instant snow polymer that actually erupts. No stirring required. Just add water and watch it erupt into snow in seconds. Don't settle for imitation snow that results in a slushy mess, get the original artificial snow that has appeared on The Ellen DeGeneres Show, The Tonight Show, and more!