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Filing date: **11/07/2008**

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

Proceeding	92048266
Party	Defendant Zucrum Foods, L.L.C.
Correspondence Address	ROBERT TED PARKER KIRKPATRICK & LOCKHART PRESTON GATES ELL 55 Second Street, Suite 1700 San Francisco, CA 94105-3493 UNITED STATES david.dunbar@klgates.com
Submission	Other Motions/Papers
Filer's Name	Robert Ted Parker
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Signature	/rtparker/
Date	11/07/2008
Attachments	20081107_Registrants_Motion.pdf (16 pages)(1792675 bytes)

Summary Judgment Based on Petitioner's Failure to Respond to Necessary Discovery"; (2) "Motion to Continue Registrant's Motion for Summary Judgment Until Completion of Discovery or Alternatively More Time for Registrant to Obtain Affidavits"; and (3) "Motion to Re-Open the Discovery Period Based in Part on Petitioner's Representation of Pending Discovery and To Move Testimony Periods."

On September 24, 2008, Registrant filed its "Objections to Petitioner's Motion to Amend Pleadings," and which Registrant incorporates herein as if fully set forth, as further support for the Board to grant Registrant's motion to amend its answer to admissions. Additional evidence was provided in the "Declaration of Jorge Luis de La Vega in Support of Registrant's Opposition to Petitioner's Motion for Summary Judgment and in Support of Registrant's Cross-Motion for Summary Judgment" filed on September 29, 2008 related to the use of Registrant's mark and the molasses product, and is incorporated herein as if fully set forth.

For all the reasons previously set forth, Registrant respectfully requests the Board to grant its motion to allow for the amended request for admission, which is in accord with the evidence set forth in the supplemental interrogatory responses, supporting documentation, and Declaration of Jorge Luis de La Vega.

Respectfully submitted this 7TH day of November, 2008.

K&L GATES, LLP

By Robert Ted Parker

Robert Ted Parker
Attorney for Registrant Zucrum Foods, LLC

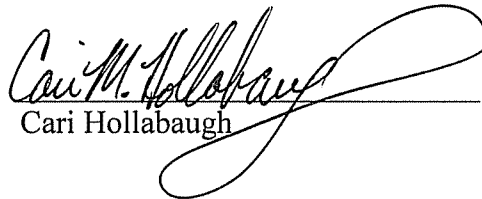
CERTIFICATE OF SERVICE

Cari Hollabaugh, hereby certifies that a true and complete copy of the foregoing document: **Registrant's Motion Regarding Amended Response to First Set of Admissions**, was served on Attorneys for Petitioner on November 7, 2008 by enclosing a copy of said documents in an envelope addressed as set forth below and by causing such envelope to be delivered as indicated below:

Addressee: Gregory N. Owen
Owen, Wickersham & Erickson, P.C.
455 Market Street, Suite 1910
San Francisco, CA 94105

- ☒ BY MAIL: A true and correct copy of such document was placed in a sealed envelope, addressed as shown above, and such correspondence was deposited, with postage fully prepaid, in a United States Post Office mail box at Spokane, WA on the same day in the ordinary course of business.
- ☐ BY PERSONAL SERVICE: A true and correct copy of such document was placed in a sealed envelope, addressed as shown above and the undersigned caused such envelope to be delivered by hand to the offices of the addressee.
- ☐ BY FACSIMILE: Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.
- ☒ BY ELECTRONIC MAIL: Such document was transmitted to the e-mail address listed above. The e-mail was not returned as undeliverable

I declare, under penalty of perjury, that the foregoing is true and correct and is executed
November 7th, 2008 at Spokane, Washington.


Cari Hollabaugh

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Marquez v. Zucrum, Cancellation No. 92048266

ZUCRUM FOODS, LLC

EXHIBIT A

From: Parker, Ted
Sent: Wednesday, September 17, 2008 2:48 PM
To: 'gowen@owe.com'
Subject: Zucrum Foods - Amended Discovery responses with attachment

Please see attached documents.



17096L25SI==200 Amended RFAs.pdf
8-09-17-Ltr-Gre... (128 KB)



Supp Rog 12-with
attachment.pd...

Ted Parker

Partner

K&L Gates

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This email contains information from K&L Gates LLP. The contents may be confidential and intended for addressee(s) only. Any disclosure, copying or use of this email by non-addressees is prohibited. If you received this e-mail in error, please contact me at ted.parker@klgates.com.

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Ted Parker
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September 17, 2008

Mr. Gregory N. Owen
Owen Wickersham & Erickson PC
455 Market Street, #1910
San Francisco, CA 94105-2420

Re: Marquez Brothers International, Inc. vs. Zucrum Foods, LLC.

Dear Greg:

Enclosed please find Zucrum Foods' amended answers to discovery, along with document Bates No. ZF-00400-00401, which is an attachment to Interrogatory No. 12.

Very truly yours,

K&L GATES LLP

Ted Parker

By
Ted Parker

TP:xrh
Enclosures

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

In re registration of:

Registrant: Zucrum Foods, LLC
Registration No.: 2,476,161
Date of Issue: August 7, 2001
Mark: AZUCAR MORENA

MARQUEZ BROTHERS,
INTERNATIONAL, INC.,

Petitioner,

vs.

ZUCRUM FOODS, LLC,

Registrant.

Cancellation No. 92048266

**REGISTRANT ZUCRUM FOODS, LLC'S AMENDED RESPONSES
TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION**

PROPOUNDING PARTY: Petitioner Marquez Brothers International, Inc.

REGISTRANT: Registrant Zucrum Foods, LLC

SET NO.: One

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, registrant ZUCRUM FOODS, LLC ("Registrant") revises its responses to the First Set of Requests for Admission served by petitioner MARQUEZ BROTHERS INTERNATIONAL, INC. ("Petitioner") as follows.

GENERAL STATEMENTS AND OBJECTIONS

I. Registrant has not completed discovery, the investigation of the facts, witnesses, or documents, the analysis of available information, or the preparation for arbitration or trial in this case. Registrant reserves the right to supplement or amend these responses in the event that any facts, documents, or other evidence may be subsequently discovered.

II. These responses are made without prejudice to Registrant's right to introduce facts, documents, witnesses, or other evidence that may be subsequently discovered.

III. These responses are made without prejudice to Registrant's right to supplement or amend these responses in the event that any information previously available to Registrant may have been omitted by oversight, inadvertence, or good faith error or mistake.

IV. Except for the facts explicitly stated herein, no incidental or implied admissions are intended.

V. Registrant expressly reserves:

A. All objections regarding the competency, relevance, materiality, probative value and admissibility of all information provided, documents produced and the contents thereof;

B. All objections as to vagueness, ambiguity, unintelligibility, and overbreadth.

VI. These responses are signed by counsel only as to the objections set forth in the responses. Registrant specifically claims the attorney-client privilege and/or the attorney-work product doctrine as to each and every response set forth herein.

VII. The fact that part or all of any discovery request has been answered should not be construed to be a waiver of any objection to any discovery request.

VIII. Registrant responds to each and every discovery request subject to the foregoing, and each of the foregoing statements and objections is incorporated by reference into each of the following responses.

REVISED RESPONSE TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 19:

Admit that Registrant has never used the phrase AZÚCAR MORENA on or in connection with the advertisement, promotion, distribution, offering for sale or sale of molasses.

REVISED RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Denied.

K&L GATES

Dated: September 17, 2008

By: Ted Parker
Robert Ted Parker
Raymond E. Loughrey
Attorneys for Registrant Zucrum Foods, LLC

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

In re registration of:

Registrant: Zucrum Foods, LLC
Registration No.: 2,476,161
Date of Issue: August 7, 2001
Mark: AZUCAR MORENA

MARQUEZ BROTHERS,
INTERNATIONAL, INC.,

Petitioner,

vs.

ZUCRUM FOODS, LLC,

Registrant.

Cancellation No. 92048266

**REGISTRANT ZUCRUM FOODS, LLC'S SUPPLEMENTAL RESPONSES
TO PETITIONER'S FIRST SET OF INTERROGATORIES**

PROPOUNDING PARTY: Petitioner Marquez Brothers International, Inc.

REGISTRANT: Registrant Zucrum Foods, LLC

SET NO.: One

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, registrant ZUCRUM FOODS, LLC ("Registrant") responds to the First Set of Interrogatories served by petitioner MARQUEZ BROTHERS INTERNATIONAL, INC. ("Petitioner") as follows.

GENERAL STATEMENTS AND OBJECTIONS

I. Registrant has not completed discovery, the investigation of the facts, witnesses, or documents, the analysis of available information, or the preparation for arbitration or trial in this case. Registrant reserves the right to supplement or amend these responses in the event that any facts, documents, or other evidence may be subsequently discovered.

II. These responses are made without prejudice to Registrant's right to introduce facts, documents, witnesses, or other evidence that may be subsequently discovered.

III. These responses are made without prejudice to Registrant's right to supplement or amend these responses in the event that any information previously available to Registrant may have been omitted by oversight, inadvertence, or good faith error or mistake.

IV. Except for the facts explicitly stated herein, no incidental or implied admissions are intended.

V. Registrant expressly reserves:

A. All objections regarding the competency, relevance, materiality, probative value and admissibility of all information provided, documents produced and the contents thereof;

B. All objections as to vagueness, ambiguity, unintelligibility, and overbreadth.

VI. These responses are signed by counsel only as to the objections set forth in the responses. Registrant specifically claims the attorney-client privilege and/or the attorney-work product doctrine as to each and every response set forth herein.

VII. The fact that part or all of any discovery request has been answered should not be construed to be a waiver of any objection to any discovery request.

VIII. Registrant responds to each and every discovery request subject to the foregoing, and each of the foregoing statements and objections is incorporated by reference into each of the following responses.

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 12:

Identify with particularity each of the types of goods and products offered or sold by Registrant using or associated with the phrase AZÚCAR MORENA.

RESPONSE TO INTERROGATORY NO. 12:

Registrant objects to this interrogatory on the grounds that it is vague with respect to time. Subject to and without waiver of this objection, Registrant responds as follows: unrefined sugar, brown sugar (sugar which is brown in color), cane sugar (sugar made from cane), powdered cane sugar, picante sugar (sugar with ground chili).

SUPPLEMENTAL RESPONSE:

Registrant expressly reserved its right supplement its discovery responses as set forth in its "General Statements and Objections" as set forth above, and supplements its prior answer and states as follows: Registrant objects to this interrogatory on the grounds that it is vague with respect to time. Subject to and without waiver of this objection, Registrant responds as follows: unrefined sugar, brown sugar (sugar which is brown in color), cane sugar (sugar made from cane), powdered cane sugar, picante sugar, (sugar with ground chili), and molasses (see attached).

K&L GATES LLP

Dated: September 17, 2008

By: *Ted Parker*

Robert Ted Parker
Raymond E. Loughrey
Attorneys for Registrant Zucrum Foods, LLC

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**ATTACHMENT TO RESPONSE TO
INTERROGATORY NO. 12**



