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

Proceeding	92048266
Party	Defendant Zucrum Foods, L.L.C.
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Attachments	Otto_Hohnerlein_final Declaration_2.pdf ( 6 pages )(36873 bytes )

**-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**

**OTTO HOHNERLEIN DECLARATION OPPOSING AMENDED MOTION FOR  
SUMMARY JUDGMENT; AND SUPPORTING REGISTRANT'S CROSS-MOTION  
FOR PARTIAL SUMMARY JUDGMENT REGARDING GENERICNESS**

I. Otto Hohnerlein, declare as follows:

1. I reside near Townsend, Georgia. I am a Process engineer who has spent most of my career in the Sugar Industry. My education is in engineering at Southern Technical Institute, Marietta, Georgia, and chemistry at Armstrong State College, Savannah, Georgia. I was employed by Savannah Foods & Industries Inc. (SF&I) from 1968 thru 1987 and again from 1991 thru mid 1997. I was initially employed as a Process Chemist and over the years worked in almost all phases of this business. I left the company when it changed ownership. At that time I was VP of International Development and was responsible for Joint Ventures in Mexico with a Grupo Azucar Mexico (GAM). This joint venture involved providing technical assistance and

the establishment of a sugar packaging company with locations in several locations. For approximately two years I served as GAM's Director of Plant Operations overseeing five Cane Sugar operations. The Packing Company was Providora De Alimentos (PAM). I presently provide technical and product sourcing services the sugar industry. I am familiar with the sugar industry in Mexico as well as the United States.

2. From my years of experience in the sugar industry, I am familiar with the methods of cane processing, raw sugar production, refining of raw sugar, production of various intermediate refinery products, and manufacturing "brown sugar," as that product is known in the U.S. as well as the various forms of sugars produced in Mexico.

3. "Brown sugar," as that product is known in the United States, is virtually unknown in Mexico. It is not produced by Mexican Cane sugar processors or Mexican Refiners. Any brown sugar sold in Mexico is imported from the USA. "Brown sugar," as known in the U.S., is manufactured using different process systems than those presently in place in the Mexican Sugar Cane sugar processing facilities.

4. "Brown sugar" is also known as "soft sugar" due to its moisture content and a higher level of glucose and fructose (commonly referred to as reducing sugars or Invert). It is produced in a Cane Refinery from raw sugar that has previously been produced at a Cane Sugar Mill. The raw sugar delivered to the Refinery contains from 1.5% to 4% non-sucrose impurities (gums, waxes, etc.) By either of two methods:

a) **Painting Technique**. This method coats pure, refined sugar crystals with a liquid comprised of clarified Cane Refinery molasses and special Cane refinery intermediate syrups. The refined sugar is screened to obtain a uniform size before the syrup is added and then blended to obtain a consistent product. The amount of paint

added is about 9% by weight. Most “brown sugar” producers in the U.S. use this “painting technique,” because it requires less equipment and produces finished products which work well as a baking ingredient. These painted soft sugars do not have occluded color or flavor compounds.

Soft Sugars produced from “Beets” are made with paint produced in a cane refinery.

b) **Boiling Technique**. This method uses the products from the refining process operations, then crystallizing this to form a product containing the desired color and taste profile needed in the finished product. In this case the brown sugar crystals will contain occluded impurities. The soft brown sugar is not dried and the moisture content remains high. This leaves the soft sugar mushy. The crystals in a Boiled Soft are much smaller than a white sugar. This is due to the amount of original impurities they contain. I am aware of only one substantial U.S. producer of “brown sugar” that still uses the boiling technique. All others in the U.S. now use the “painting” method.

5. In Mexico and most Latin countries, the sugar extracted from cane juice at sugar mills is consumed directly without going through the refining process that U.S. producers employ. The amount of impurities within the sucrose crystal on Latin sugar can vary tremendously, resulting in a variety of different types of finished sugars. The processing operations differ from country to country and from sugar mill to sugar mill.

6. In Mexico, sugar is normally produced directly from the cane juice that is extracted from the sugar cane, which contains about 12% dissolved sucrose solids. The remaining contents, i.e., the waxes, gums and other plant products are separated out in processing. Mexican cane mills normally produce a sugar called Estandar (Standard sugar) which contains approximately 0.5% to 0.7% impurities. Estandar has a straw color and a very slight flavor

compared to refined sugar (“refinado”), which has none. I am familiar with Zucrum Foods’ “Azucar Morena,” which has a moderate (0.7%) level of molasses and syrup impurities, and with other Mexican sugars which can have higher levels: e.g., Muscovado, piloncillo, turbinado. These varieties of sugar are produced with varying degrees of tan or light brown color, but none of them are “brown sugar” produced in the same manner and with the same syrups as in the U.S.

7. In the United States, “brown sugar” or “soft sugar” is never produced directly from cane juice. In the U.S., “brown sugar,” whether boiled or painted (as described above), is produced from crystalline raw sugar purchased from a by a Cane sugar mill to, and processed at, a sugar refinery. That raw sugar is about 98% pure sucrose, and the impurities are then completely removed before the paint is blended back to make “painted brown sugar.”

8. From a consumer’s point of view, “brown sugar” as known in the U.S., and “Estandar” as known in Mexico, are different products due to their respective differences in taste, usages, consistencies, aromas, as a result of containing a different trace chemical profile.

9. From a sugar producer’s point of view, there is an additional difference in the products known as “brown sugar” and “Estandar,” of which “Azucar Morena” is an example: the Mexican “Estandar” is sugar that contains materials from the original cane juice from which the sugar crystals were formed, while this is not true for “brown sugar” (whether boiled or painted).

10. The above-described differences in manufacturing processes, in addition to the differences perceived by the average consumer, support the conclusion that Zucrum’s “Azucar Morena” is a different product than “brown sugar” as known in the U.S. Besides having different consumer uses, and different color, aroma, and consistency, it is produced with different process and even from a different type of manufacturing facility – a mill, not a refinery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 1, 2009

OttoHohnerlein\_\_\_\_\_

Otto Hohnerlein

**CERTIFICATE OF SERVICE**

I, David A. Dunbar, hereby certify that a true and complete copy of the foregoing document:

**OTTO HOHNERLEIN DECLARATION OPPOSING AMENDED MOTION FOR SUMMARY JUDGMENT; AND SUPPORTING REGISTRANT'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING GENERICNESS**

was served on Attorneys for Registrant on June 1, 2009 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:

Gregory N. Owen  
Owen, Wickersham & Erickson, P.C.  
455 Market Street, Suite 1910  
San Francisco, CA 94105  
e-mail: GOWEN@owe.com

- [X] 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.
- [X] 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

June 1, 2009 at San Francisco, California.

David A. Dunbar

David A. Dunbar