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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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Date	06/01/2009
Attachments	SF-#184727-v1-Declaration_of_Jonathan_Van_Nuys-1.pdf ( 4 pages )(147028 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**

**JONATHAN VAN NUYS DECLARATION IN OPPOSITION TO AMENDED MOTION  
FOR SUMMARY JUDGMENT; AND SUPPORTING REGISTRANT'S CROSS-  
MOTION FOR PARTIAL SUMMARY JUDGMENT ON GENERICNESS**

I, Jonathan Van Nuys, declare as follows:

1. I am a resident of San Francisco, California. I am employed by e-FocusGroups, a market- and consumer-research company founded by my father, David Van Nuys, Ph.D. I know the information set forth herein of my own personal knowledge, I am competent to testify thereto, and if called as a witness herein, I would testify in accordance with the statements herein.

2. I am a native-born U.S. citizen, but I have studied the Spanish language intensively and I am reasonably fluent in the Spanish language. I have done my Spanish-

*Declaration of Jonathan Van Nuys Opposing Summary Judgment*

language study under the following circumstances: I attended the Costa Rican language academy in 2000 and spent 5 weeks living with a Costa Rican family in an immersion program. Beyond this base, I have supplemented my Spanish skills with Spanish levels 1-4 at San Francisco City College. I have a number of Spanish-speaking friends and acquaintances with whom I speak Spanish only. I also read and write in Spanish and consider myself to be fluent.

3. On the afternoon of May 27, 2009, at the request of Robert Ted Parker, a lawyer in San Francisco of whom I had no previous knowledge, I performed a limited consumer survey among Spanish-speaking adult persons of varying ages in San Francisco, at the following location: 16<sup>th</sup> St. and Mission St. This location is within a district of San Francisco known as the “Mission District,” due to the proximity of the historic Mission Dolores, the original Spanish mission within San Francisco. The Mission District is known in San Francisco as an area frequented by Spanish-speaking persons, with many Mexican and other Latin American businesses, restaurants, etc. In less than a 2-hour period, I conducted 24 interviews, with a method described below.

4. I first went to a neighborhood grocery store catering to Mission District residents and specializing in Mexican and other Latin American food products, and located at 16<sup>th</sup> St. between Valencia and Mission . At this grocery store, I purchased a 2-lb. bag of Zulka “Azucar Morena” sugar and also a bag of C&H brand “brown sugar,” clearly marked as “brown sugar.” I then left the grocery store and went to the interview location noted above. Upon arriving there, I opened each container of sugar, and placed some “Azucar Morena” in a glass container, and some “brown sugar” in another glass container, so that each would be clearly visible to interview subjects. I kept the original containers visible for subjects to see or inspect, if they wished. With this preparation, I was ready for my survey.

5. I waited at this location for potential interview subjects to appear, but as this location has reasonably heavy foot traffic, I did not have long to wait. As potential interview subjects appeared in close proximity, I approached each and initiated conversation, greeting each in the Spanish language. I then ascertained that they were native Spanish-speaking persons. Then I showed each interview subject the two clear glass containers, one holding “brown sugar” and the other holding “Azucar Morena.” As noted, the original bags of the two items were clearly visible to the subjects. The results of the interview are as follows:

6. All of the 24 interview subjects showed some familiarity with each of the two items. A few subjects were initially hesitant to answer because they were suspicious that I might be up to some trick. All of the 24 subjects indicated that they considered the “brown sugar” and the “Azucar Morena” to be different products, and most appeared to be familiar with the differences in sweetness or molasses taste of the two items. The only difference seemed to be for personal preference: seventeen said they use “Azucar Morena” in their coffee, while seven said they like to put U.S. “brown sugar” in their coffee because of its even sweeter/molasses taste, even though it was not a product that they had used in Mexico.

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

Dated: this 28th day of May, 2009



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Jonathan Van Nuys

**CERTIFICATE OF SERVICE**

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

**JONATHAN VAN NUYS DECLARATION IN OPPOSITION TO AMENDED  
MOTION FOR SUMMARY JUDGMENT; AND SUPPORTING REGISTRANT'S  
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT ON 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