ESTTA Tracking number: **ESTTA842706**

Filing date: **08/29/2017**

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

Proceeding	92060914
Party	Plaintiff Snow Ball's Chance, Ltd.
Correspondence Address	MARK EDW ANDREWS ANDREWS ARTS & SCIENCES LAW LLC 7104 COLISEUM ST NEW ORLEANS, LA 70118-4818 UNITED STATES Email: mea@mealaw.com, docket@artsciencelaw.com, arts-ciencelaw@gmail.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Mark Edw Andrews
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Signature	/Mark Edw Andrews/
Date	08/29/2017
Attachments	92060914-WHITE-CHOCOLATE-CHIPS-PsNoticeReliance.pdf(434425 bytes) TTAB_92060914-WHITE-CHOCOLATE-CHIPS-PNR-A.pdf(807437 bytes) TTAB_92060914-WHITE-CHOCOLATE-CHIPS-PNR-B.pdf(779572 bytes) TTAB_92060914-WHITE-CHOCOLATE-CHIPS-PNR-C.pdf(3803812 bytes) TTAB_92060914-WHITE-CHOCOLATE-CHIPS-PNR-D.pdf(1425285 bytes)

United States Patent & Trademark Office
Trademark Trial & Appeal Board

Cancellation No. 92060914
WHITE CHOCOLATE & CHIPS

Snow Ball's Chance, Ltd.
v.
SnoWizard, Inc.

Petitioner's Notice of Reliance

Petitioner Snow Ball's Chance, Ltd. submits this Notice of Reliance, and will rely upon the following evidence, which is already of evidence in this matter or is hereby made of evidence.

PNR-A: Trial Testimony Declaration of George Miller, principal of Petitioner Snow Ball's Chance, Ltd., served on Respondent on 3-MAR-2017.

PNR-B: Excerpts of transcript of sworn testimony by Respondent SnoWizard's principal Ronald Sciortino in Civil Action 06-9170 in USDC LAED in 2013, a public record, the specific excerpted pages having been identified, with copies provided, to Respondent on 16-JAN-2017.

PNR-C: Excerpted pages from the File Wrapper of Application No. 85473205 for WHITE CHOCOLATE & CHIPS, the application leading to the subject registration, already of record.

PNR-D: Excerpted pages from the File Wrapper of Application No. 77471425 for WHITE CHOCOLATE & CHIPS, the prior application for the same mark, which is explicitly referenced in the later application, a public record of the USPTO.

Petitioner Snow Ball's Chance, Ltd. also intends to rely upon evidence identified in Respondent's Notice of Reliance and in Respondent's trial testimony, already made of record by the Respondent.

Dated: 29 August 2017

Respectfully Submitted:
Attorney for Petitioner Snow Ball's Chance, Ltd.

Mark Edw. Andrews
La. Bar No. 26172
Andrews Arts & Sciences Law llc
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504-383-3632
mea@mealaw.com

—Certificate of Service—
I, Mark Edw. Andrews, certify this document is served on counsel for Registrant SnoWizard, Inc. Kenneth L. Tolar by U.S. Mail to 2908 Hessmer Av, Ste 2,Metairie, LA 70002, and by e-mail to <tolar@tolarlawoffice.com>, this 29 August 2017.

UNITED STATES PATENT & TRADEMARK OFFICE
TRADEMARK TRIAL & APPEAL BOARD

CANCELLATION NO. 92060914
WHITE CHOCOLATE & CHIPS

CANCELLATION NO. 92060915
CAJUN RED HOT

SNOW BALL'S CHANCE, LTD.
v.
SNOWIZARD, INC.

DECLARATION OF GEORGE MILLER

I HEREBY DECLARE:

1. I am George Miller, a person of majority and a resident of New Orleans, Louisiana.

2. I have personal knowledge of the matters stated and I am competent to testify.

3. I am the President and principal of Snow Ball's Chance, Ltd., a Louisiana corporation, which operates Rodney's Snowball Stand at 9231 Lake Forest Blvd in New Orleans, which sells snowballs, soft-serve ice cream, and nachos to the public.

4. I verify the truthfulness of the information provided here.

5. Snow Ball's Chance, Ltd. filed petitions to cancel some of SnoWizard's trademark registrations because the existence of those registrations on flavor names prevents my snowball stand from offering those flavor names to the public, and prevents me from efficiently managing my back-of-shop commissary operations of mixing ready-to-use snowball syrups from flavoring concentrates.

6. The decision to file the cancellation proceedings was mine. At the beginning of the season, I called Southern Snow to order my flavors. Every year I may add 2 or 3 new flavors and stop using some of the flavors that were not as popular the year before. When I placed my order, the representative told me that "this was fine – all of the flavors are available, but two of them you will need to call something else. You cannot call White Chocolate and Chips or Cajun Red Hot those names." I asked the representative why I could not and was transferred to Bubby Wendling. Bubby requested that I call Mark Andrews for a full explanation. Mark said he could fix this for me. I had seen in the newspapers a few years back that Southern Snow, along with two snowball-stands, Plum Street and Van's, had sued SnoWizard to get about twenty trademarks on flavor names canceled, and that they got fifteen of those trademarks canceled. I knew that Mark Andrews was Southern Snow's attorney because his name was in the newspapers several times, and I had seen and spoken to him briefly and occasionally at Bubby's parties over the years. Bubby gave me Mark's phone number. I called Mark, and he was able to explain trademarks and cancellations to me, since I did not know much about them at the time. I decided to hire Mark Andrews as my attorney because he gave me a good explanation of the process and because he had already been successful in eliminating fifteen of SnoWizard's trademarks on snowball flavor names. He agreed to represent me for a very reasonable flat fee, which I paid him in cash. I pay for everything in cash, just like every other snowball stand does. Mark paid the $300-each filing fees through his Internet connection to the Trademark Office, and I reimbursed him in cash. At first I only filed two cancellations, against White Chocolate and Chips and Cajun Red Hot. Later I decided to file a third cancellation against Mountain Maple.

7. I buy a couple of thousand dollars worth of snowball flavor concentrates per year from Southern Snow. I buy most of my flavor concentrates from Southern Snow. Southern Snow gives me good prices and good service. I prefer to buy my flavor concentrates from Southern Snow. SnoWizard flavor concentrates cost more per gallon than Southern Snow's. In my own experience and from what I have heard from other snowball stands, SnoWizard's service is not as good as Southern Snow's service. SnoWizard's owner has offended many snowball stand owners since the early 1980s. I am not the only snowball stand owner in the New Orleans area who does not want to do business with SnoWizard. I do not want to be forced to purchase any flavor concentrate for any flavor name from SnoWizard just because SnoWizard obtained a trademark registration on the flavor name.

8. To customers, one of the most appealing aspects of getting a snowball is choosing the flavor name of the snowball. Especially for children, it is a big deal to be able to make a completely personal choice about anything, and the visit to the snowball stand is an event and an experience that is bigger than just the resulting cup of shaved ice with sweet, colored syrup poured over it. Many adults bring children to the snowball stand out of a feeling of nostalgia for when their parents or grandparents brought them, and a desire to provide the same experience to their children or grandchildren. The young person's experience at a snowball stand is a lot like an older person's experience at a cocktail bar. One of the main aspects of both is that the customer gets to state his or her personal preference, by name, from a range of choices. The choices are identified by cocktail names or flavor names. Although some bars and some snowball stands might have a few unique offerings, the majority of cocktail and flavor names are part of a common tradition and common knowledge. The unique offerings have to be explained to customers, but the traditional and common cocktail and flavor names do not have to be explained. Everybody, on both sides of the counter, even the child, knows what is being asked for.

9. Through Snow Ball's Chance, Ltd. I have a plan and I am developing a franchise. This plan to franchise makes my concerns about the effect of trademarked flavor names for snowballs even larger than my concerns about the problems that trademarks already cause for my single Rodney's Snowball Stand.

10. The snowball part of my Rodney's Snowball Stand business operates essentially the same as every other snowball stand that I know of. There is a counter or a window where customers place their orders. Rodney's has a window. Visible to the customers is a large sign having a menu of the flavor names available. Many years ago there were fewer flavor choices. Thirty flavors would have been a huge offering. But now, thirty flavors is a small, minimal list. Sometimes, such as when serving a special event like a party or a festival from a mobile unit, the choice of flavors will be cut down to closer to ten. But at the permanent snowball stand, a large variety of flavor choices is expected. While waiting in line to approach the window, the customer reads the menu of flavor names. Even if the customer already knew what flavor he or she wanted, the customer still reads the menu of flavor names. When adults bring children, discussions based on the menu board are common, such as "I know you want Cajun Red Hot, but this snowball stand does not offer Cajun Red Hot, it isn't on the menu board".

11. At the window, the customer places an order by stating what size of a cup of shaved ice, such as small, medium, or large, is desired, and then by stating the flavor name of the desired snowball. Behind the window, one or more employees shave the desired-sized cup of ice and then pour a sweet, colored, flavored syrup over the shaved ice. This syrup can be called ready-to-use syrup. After the customer states the desired flavor name, an employee behind the window

reaches for a bottle of ready-to-use syrup which has a label which has the flavor name printed or written on it. There are many such bottles— at least one for each flavor name offered. Most snowball stands use clear glass or plastic bottles of the 750ml or "fifth" size, in order to show off the various colors of the syrups, which are an important factor in the customers' choice of flavor. The only way for the employee to pick the correct bottle is to read the flavor name. This happens quickly at busy times, and it is essential that the flavor names on the labels on the bottles of ready-to-use syrup match the flavor names offered on the menu board and the names by which the customers place their orders. There is not time for the employee to assemble any recipes or make any substitutions.

12. The employees of snowball stands are usually teenagers, and it is usually the teenager's first job, so having uniform, unchanging, easy-to-follow work processes are necessary. Also, the newest and least experienced employees often start out by mixing syrups in the back or in the separate commissary, away from contact with the customers, away from the ice-shaving machine, and away from the cash register.

13. The bottles of ready-to-use syrups having labels with flavor names are made up in the back or in a separate commissary. Usually, for each flavor name, a number of bottles sufficient for one day or a few days are made up in batches. The ready-to-use syrup contains a large amount of sugar, and is subject to spoilage if made up too far in advance of use. The employee or employees in the back or in the commissary receive empty labeled bottles from the front as they are used up. These empty labeled bottles are then cleaned. Usually, the flavor-name label is permanent enough to withstand the cleaning, and the bottle can be refilled with the same flavor. Otherwise, the cleaned bottle becomes available for re-labeling after refilling. The ready-to-use syrups are made by adding a small amount of flavor concentrate to a much larger amount of simple syrup, which is sugar water. Usually, a large thirty to fifty gallon container of simple syrup is made up by dissolving about five pounds of sugar per gallon of water, which requires some warming and some stirring. This common supply of simple syrup is then used to make smaller amounts of several different ready-to-use syrups. The flavor concentrates are formulated so that a uniform 4 ounces of concentrate is added to each gallon of simple syrup. Mixing different flavors does not require measuring different amounts of flavor concentrate. The flavor concentrates are all the same strength.

14. The flavor concentrates used to make all of the various flavors of ready-to-use syrups are purchased in either quart-sized or gallon-sized bottles, depending upon how much ready-to-use syrup of any given flavor is expected to be used, or in other words the expected popularity of a given flavor. The area used for mixing the ready-to-use syrups, which is required to meet food-safety standards, and which is usually an area not seen by customers, has shelves of bottles of flavor concentrates. There is at least one bottle of flavor concentrate for every flavor name listed on the menu board, and for popular and fast-moving flavors there are probably several bottles of flavor concentrate, which might be stored in a separate area and brought into the mixing area as needed.

15. When the time comes to mix and fill up five bottles of "strawberry" ready-to-use syrup, the employee will gather five cleaned and sanitized bottles which are each labeled "strawberry". The employee will then go to the shelf and pick up the bottle of flavor concentrate labeled "strawberry", and pour off 4 ounces into a cleaned and sanitized measuring cup. The employee will then pour off one gallon of simple syrup from the large container into a smaller mixing container, and will add the 4 ounces of "strawberry" flavor concentrate to the gallon of simple

syrup and will stir or mix the two together to make "strawberry" ready-to-use syrup. Then the employee will pour the ready-to-use syrup into the cleaned and sanitized bottles which are each labeled "strawberry". After that, the bottles of "strawberry" ready-to-use syrup are delivered either to the snowball-making area or to a nearby reserve storage area.

16. In a busy snowball operation different employees will be performing different tasks in different locations. Therefore it is critical that the employees are able to very clearly understand what flavor name is being worked on at that moment. During the operation of a snowball stand, including the preparations and cleaning done before and after opening and closing time, newer or junior employees are often sent to retrieve bottles of ready-to-use syrups and bottles of flavor concentrates from a separate storeroom. The employee is told to retrieve a specific flavor name or names. Therefore it is necessary to have the flavor names clearly and prominently visible on all of the bottles' labels. It is also necessary that the flavor name on the label of the ready-to-use syrup is the same flavor name on the label of flavor concentrate. Otherwise, the extra complication of having to learn the proper associations among the flavor names listed on the menu board, the flavor names on the labels of ready-to-use syrup bottles, and the flavor names on the labels of flavor concentrates leads to errors such as mislabeling and ultimately giving the customer the wrong flavor.

17. My Rodney's Snowball Stand offers a large variety of flavors of snowballs. The customers use the flavor names to convey their chosen flavors. The front-of-house employees use the flavor names on the bottles of ready-to-use syrups to prepare the right flavor of snowball. The back-of-house employees use the flavor names on the bottles of flavor concentrates to prepare the right and properly labeled flavor of ready-to-use syrup. Employees sent to the storeroom to fetch either a bottle of ready-to-use syrup or a bottle of flavor concentrate use the flavor names on the bottles to identify the correct one. With so many different flavors, with so many inexperienced employees, with such a large volume of production at busy times, where the flavor of the snowball is very important to the customer, each flavor name has to be uniform and consistent from the menu board to the ready-to-use syrup to the flavor concentrate. Otherwise the wrong flavors will be mixed and the wrong flavors will be poured over shaved ice and given to the customers.

IN ACCORD WITH 28 USC §1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 2nd MARCH 2017 AT NEW ORLEANS, LOUISIANA.

GEORGE MILLER
President, Snow Ball's Chance Ltd.

09:08:04

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

****

SOUTHERN SNOW MANUFACTURING COMPANY, INC., ET AL

v.

SNOWIZARD HOLDINGS, INC., ET AL

Docket No. 06-CV-9170
Section "G"
New Orleans, Louisiana
Thursday, February 21, 2013

****

TRANSCRIPT OF TRIAL PROCEEDINGS
HEARD BEFORE THE HONORABLE NANETTE JOLIVETTE BROWN
UNITED STATES DISTRICT JUDGE
VOLUME 3

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Proceedings recorded by mechanical stenography, transcript produced by computer.

I N D E X

WITNESSES FOR THE PLAINTIFFS:	PAGE/LINE:
RONALD R. SCIORTINO	
Direct Examination by Mr. Andrews	8/12
RULE 50 MOTION BY DEFENDANTS	146/4

15:28:13 MR. MORRIS: No objection.
15:28:16 BY MR. ANDREWS:
15:28:16 Q. Thank you, I am showing you P-69. Do you recognize this
15:28:23 document?
15:28:29 A. Yes. That's a document for the State of Louisiana for
15:28:34 registering White Chocolate and Chips flavoring concentrate for
15:28:38 shaved ice confections.
15:28:40 Q. Thank you. When was this filed?
15:28:44 A. Would that be the registration date?
15:28:57 Q. It's very likely, that's what's on there. What was the
15:29:00 registration date of this?
15:29:01 A. November 17th of 2006.
15:29:03 Q. Who applies for Louisiana state trademarks on behalf of
15:29:12 SnoWizard?
15:29:12 A. I could have applied for them, I could have had my attorney
15:29:19 apply for them.
15:29:20 Q. Do you recall who applied for this one?
15:29:25 A. No, I don't.
15:29:25 Q. And does it claim a date of first use?
15:29:31 A. It appears to be May 1st of 1986.
15:29:38 Q. Looking again at the registration date of November 17th, 2006,
15:29:49 was that before or after this litigation that we're here for today
15:29:53 was filed?
15:29:54 A. Repeat that for me, please.
15:30:00 Q. Let me rephrase it. Do you know when the earliest of the

15:30:08 lawsuits that we're here about today was filed?
15:30:10 A. There have been so many, I don't know which one we're in right
15:30:19 now.
15:30:19 Q. If I told you that this lawsuit was -- that the earliest of the
15:30:26 lawsuits was filed in March of 2006, would you accept that date?
15:30:31 A. Yes.
15:30:32 Q. And when was this registration of White Chocolate and Chips?
15:30:39 A. November 17th of 2006.
15:30:42 Q. Which is after March of 2006?
15:30:45 A. Yes.
15:30:46 MR. ANDREWS: 70.
15:30:48 MR. MORRIS: No objection.
15:30:52 BY MR. ANDREWS:
15:30:52 Q. I'm showing you P-70. Do you recognize the document?
15:30:56 A. Yeah, that's another registration for Buttered Popcorn.
15:31:03 Q. Skipping to the next page, who signed the declaration in this
15:31:14 application?
15:31:15 A. I did.
15:31:16 Q. Thank you. And was there a cost to you to make this
15:31:24 application?
15:31:25 A. $275.
15:31:28 Q. Thank you. Looking back at the first page and the filing date,
15:31:37 what was --
15:31:37 A. April 24th of 2008.
15:31:41 Q. Do you recall that yesterday we saw SW-106, you don't have to

15:31:48 recall the number, that was a letter from myself on behalf of
15:31:54 SnoWizard -- on behalf of Southern Snow claiming a trademark on
15:31:59 behalf of Southern Snow in "Buttered Popcorn" and demanding that
15:32:04 you cease using "Buttered Popcorn"?
15:32:07 A. Yes, I do.
15:32:08 Q. Do you recall that the date of that letter was April the 8th of
15:32:11 2008?
15:32:11 A. No, I don't.
15:32:12 Q. Do you want to look at it?
15:32:17 A. Well, if you would like to show it to me, I would be happy to
15:32:21 look at it.
15:32:22 Q. I think I won't. Is April 24th before or after April the 8th?
15:32:29 A. It's after.
15:32:30 Q. Thank you. Looking at page 3 of P-70, what is this?
15:32:38 A. This is a SnoWizard label for the flavor Buttered Popcorn
15:32:44 flavoring concentrate.
15:32:45 Q. Thank you. You say this is a label for flavor concentrate --
15:32:52 A. Yes.
15:32:52 Q. -- for snowballs. Thank you.
15:32:55 A. Yes.
15:32:56 Q. Looking back at page 1, what does the application say that the
15:33:01 goods are?
15:33:02 A. International class 30. Food flavorings.
15:33:11 Q. Is there a difference between food flavorings and snowball
15:33:15 flavor concentrates?

15:44:02 it say?
15:44:03 A. Are you referring to, what, the date at the bottom or where it
15:44:10 says Snosweet?
15:44:11 Q. Snosweet.
15:44:13 A. Snosweet is a -- Snosweet -- can you enlarge that a little,
15:44:24 please.
15:44:25 Q. Sure.
15:44:29 A. "Snosweet is a sugar-free powdered simple syrup substitute."
15:44:37 Q. That's good enough. Thank you. Looking at the next page,
15:44:43 page 20, is there a listing of Parasol's flavors?
15:44:54 A. Yes.
15:44:54 Q. And does it include Buttered Popcorn?
15:44:58 A. Yes.
15:44:58 Q. Do you recognize this document which is P-70, page 22?
15:45:17 A. That's a notice of abandonment for Buttered Popcorn.
15:45:24 Q. Thank you.
15:45:26 MR. ANDREWS: 71.
15:45:28 MR. MORRIS: No objection.
15:45:37 BY MR. ANDREWS:
15:45:37 Q. Referring to P-71, page 1, does this appear to be an
15:45:41 application filed on May 12th, 2008, for White Chocolate and Chips?
15:45:47 A. Yes.
15:45:47 Q. Looking at page 2, was the declaration signed by you?
15:45:52 A. Yes.
15:45:53 Q. Looking at page 3, was the specimen -- what was the specimen?

15:46:03 A. The specimen is a label.
15:46:04 Q. Thank you. Does that label contain any indication that you
15:46:11 claim a trademark in White Chocolate and Chips?
15:46:15 A. No, it doesn't.
15:46:16 Q. Looking at page 6, does this purport to be a response to an
15:46:25 office action?
15:46:26 A. Yes.
15:46:26 Q. Looking at page 11, is this an opinion from the Trademark Trial
15:46:55 and Appeal Board?
15:46:55 A. Yes.
15:46:56 Q. Do you know how the Trademark Trial and Appeal Board -- do you
15:47:00 know who they are and how they work?
15:47:02 A. No, I do not.
15:47:03 Q. Can you read the indicated sentence.
15:47:10 A. "SnoWizard, Inc. seeks registration on the principal registerer
15:47:15 of the term White Chocolate and Chips (in standard character
15:47:22 format) for food flavorings and international class 30."
15:47:26 Q. Good. Thank you. Looking at the next page of that opinion.
15:47:31 Did the Trademark Trial and Appeal Board recognize use of White
15:47:38 Chocolate and Chips by third parties?
15:47:39 A. Is that -- would you like me to read that?
15:47:47 Q. No. I am trying to get it done. Does the Trademark Trial and
15:47:54 Appeal Board mention third parties?
15:47:55 A. Yes.
15:47:56 Q. And is Southern Snow one of those third parties?

15:47:59 A. Yes.
15:48:00 Q. Looking at page 13, is Sno-Joe another one of those parties?
15:48:07 A. Yes.
15:48:08 Q. Looking at page 14, can you read the indicated paragraph?
15:48:20 A. "Thus, we find 'white chocolate' is highly descriptive of the
15:48:27 flavor of the goods, and that 'chips' is merely descriptive of the
15:48:30 specs, and when joined together with an ampersand" -- did I
15:48:37 pronounce that correctly, ampersand?
15:48:39 Q. Works for me.
15:48:40 A. -- "the resulting term 'White Chocolate and Chips' is merely
15:48:46 descriptive."
15:48:47 MR. ANDREWS: 72.
15:48:48 MR. MORRIS: No objection.
15:48:49 BY MR. ANDREWS:
15:48:49 Q. Looking at P-72, page 1, is that an application for federal
15:48:55 trademark registration of Georgia Peach filed on May the 12th,
15:48:58 2008?
15:48:58 A. Yes, it is.
15:48:59 Q. And isn't that the exact same date as the one we just looked
15:49:04 at, White Chocolate and Chips or Buttered Popcorn?
15:49:08 A. I think it is.
15:49:08 Q. Looking at the next page, does it indicate that filing this
15:49:19 application cost any money?
15:49:20 A. $275.
15:49:23 Q. And who signed the declaration is this application?

15:50:40 A. No.
15:50:44 MR. ANDREWS: Thank you. 74.
15:50:46 MR. MORRIS: No objection.
15:50:47 BY MR. ANDREWS:
15:50:48 Q. Looking at P-74, page 1, is this an application for federal
15:50:51 trademark registration of Cajun Red Hot?
15:50:55 A. Yes, it is.
15:50:55 Q. Was it filed on May the 13th of 2008?
15:50:59 A. That's correct.
15:51:00 Q. What category of goods was it filed for?
15:51:06 A. Class 30, food flavorings.
15:51:09 Q. Looking at the next page, did it cost you any money?
15:51:12 A. $275.
15:51:14 Q. And who signed the declaration?
15:51:15 A. I did.
15:51:15 Q. As a specimen, what did you submit?
15:51:19 A. The label.
15:51:22 Q. Does the label show that SnoWizard claims a trademark in Cajun
15:51:28 Red Hot?
15:51:28 A. Does it show --
15:51:31 Q. Does it give any indication from looking at the label that
15:51:35 SnoWizard claims a trademark in Cajun Red Hot?
15:51:40 A. No, it doesn't show a TM on there.
15:51:43 Q. Thank you. Looking at page 4, is this a response to an office
15:51:50 action?

15:51:51 A. Yes, it is. Yes.
15:51:53 Q. Looking at page 5, was it signed by Kenneth L. Tolar?
15:52:01 A. That's correct.
15:52:01 Q. On what date?
15:52:02 A. September 21st, 2009.
15:52:04 Q. Thank you. Looking at page 6, can you read the indicated
15:52:18 sentences?
15:52:19 A. "The examiner notes that registrant's food flavorings are
15:52:23 identified broadly. Therefore, it is presumed that the
15:52:26 registration encompasses all goods of the type described, including
15:52:31 those in applicant's identification, that they move in all normal
15:52:36 channels of trade, and that they are available to all potential
15:52:39 customers. However, applicant's product is not being sold through
15:52:44 all normal channels of trade and they are not available to all
15:52:47 potential customers. Applicant provides goods and services to snow
15:52:53 cone vendors and to distributors and suppliers to snow cone
15:53:03 vendors. Applicant provides a complete package of equipment,
15:53:03 supplies and consulting services for assisting individuals and
15:53:05 entities with establishing in or operating a viable snow cone
15:53:11 business."
15:53:13 Would you like me to continue?
15:53:15 Q. That's good enough. Thank you. Looking at page 8, does this
15:53:35 appear to be an opinion of the Trademark Trial and Appeal Board?
15:53:38 A. Yes.
15:53:39 Q. Does it appear to concern Cajun Red Hot?

09:11:02

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

****

SOUTHERN SNOW MANUFACTURING
COMPANY, INC., ET AL

Docket No. 06-CV-9170
Section "G"

v.

New Orleans, Louisiana
Monday, February 25, 2013

SNOWIZARD HOLDINGS, INC., ET AL

****

TRANSCRIPT OF TRIAL PROCEEDINGS
HEARD BEFORE THE HONORABLE NANETTE JOLIVETTE BROWN
UNITED STATES DISTRICT JUDGE
VOLUME 5

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03:40:31 A. Well, because this was a recipe for people to make it on their
03:40:35 own, you know, in the snowball shop from what they were buying.
03:40:39 It's nothing more than regular vanilla, the caramel-colored
03:40:44 vanilla. Making it into a cream flavor. So if you made, just say
03:40:48 vanilla cream, just like you make ice cream cream or nectar cream.
03:40:52 So if you made vanilla cream, all you're doing is adding a couple
03:40:54 of drops of red, a couple of drops of a blue, it gives it a purple
03:41:00 color, and that's Orchid Cream Vanilla.
03:41:03 But the Orchid Cream Vanilla I made was from scratch. It
03:41:06 has vanilla base to it, but there are other -- there's probably
03:41:11 about 12 other ingredients that go into it that give its peculiar
03:41:16 taste, not like what you get from this.
03:41:18 Q. It doesn't taste anything like this recipe?
03:41:22 A. No, nothing like it.
03:41:45 MR. MORRIS: Look at SW-75.
03:41:53 MR. ANDREWS: No objection.
03:41:55 BY MR. MORRIS:
03:42:09 Q. When you -- the flavoring concentrates that you make and sell,
03:42:14 do you sell -- you don't sell them to purchase or to snowball
03:42:21 eaters, people who eat snowballs?
03:42:23 A. No. These go to the -- you couldn't use it like that. These
03:42:28 go to the snowball shops and then they mix them with sugar and
03:42:32 water, simple syrup, to make the ready-to-use flavor. The snowball
03:42:37 concentrate is not edible as it is, it needs further processing,
03:42:41 you might say, before you can consume it.

03:42:43 Q. So the snowball shops are your customers?
03:42:47 A. Yes.
03:42:48 Q. And is it -- when you, when SnoWizard claims trademarks on
03:42:56 certain flavors for concentrates that it develops, does SnoWizard
03:43:01 expect or the shops that buy that flavor to use that flavor name
03:43:08 when they sell the snowball using it?
03:43:10 A. Well, they could use any name that they wanted, but most of
03:43:14 them are going to use the names that we have on our labels.
03:43:18 Q. And the fact that SnoWizard may or may not claim a trademark on
03:43:22 that, does that affect the right of that snowball shop owner to do
03:43:26 that?
03:43:26 A. Not that I am aware of.
03:43:29 Q. Has SnoWizard ever demanded that a snowball shop not use a
03:43:39 particular flavor name?
03:43:40 A. No, never -- well, I think it stands to reason you wouldn't
03:43:46 want to trademark a flavor to prevent your snowball shop from being
03:43:51 able to use it, it's for people who are doing what you're doing,
03:43:55 making flavoring concentrates, not what's going to the consumer who
03:44:00 is buying it at the snowball shop.
03:44:03 Q. Now, if we go to page 1292. Looking at this flavor list, is it
03:44:18 correct that SnoWizard was the first to use the flavor name Cajun
03:44:22 Red Hot?
03:44:22 A. Yes.
03:44:23 Q. And what year was, did SnoWizard first use it?
03:44:29 A. I'm pretty sure it was 1988. Yes, 1988.

03:44:42 Q. As we're looking at this flavor list here and there is no date
03:44:46 on it.
03:44:47 A. I know. That was one of my very first flavor lists, and if you
03:44:52 look under Mountain Maple you can see natural banana, natural
03:45:00 peach, natural strawberry, and I thought I was going to come up
03:45:03 with some natural flavors that no one else had. But since I was,
03:45:09 you know, it was still early in my learning about how to -- it's
03:45:13 not like a chef with using food ingredients in the kitchen. Now I
03:45:18 am having to learn a whole new process, it's still like cooking,
03:45:23 but I've got to learn the chemicals and the ingredients.
03:45:26 So I thought I would be able to come out with a natural
03:45:28 line of flavors that no one else would have, but, you know, I soon
03:45:32 learned afterwards that it's almost -- I don't want to say
03:45:36 impossible -- but it is extremely difficult to get the same
03:45:39 concentration that you can with a natural flavor than with a
03:45:43 natural and artificial flavor. So I would need to put too much of
03:45:47 a natural flavor compound into the gallon to make 32 gallons of
03:45:52 syrup and the math didn't work. So I never did come out with
03:45:57 those.
03:45:58 Q. In the case of Cajun Red Hot, do you specifically recall
03:46:07 creating that name for that flavor?
03:46:09 A. Yeah. In fact, there are several on here that I did at the
03:46:14 same time. There's Granny Smith Apple, there's Cajun Red Hot,
03:46:21 Georgia Peach, White Chocolate and Chips, just looking over that
03:46:27 very quickly. And it all started with a customer in Florida, and

03:46:35 he was purchasing -- if you saw on one of those earlier lists we
03:46:39 were getting Green Apple, that was coming from National Fruit
03:46:42 Flavor Company. And Green Apple was a delicious flavor, and even
03:46:48 when I took over we were getting that from National Fruit Flavor
03:46:53 but even though when I took it over from Warren Leruth, I started
03:46:58 making my own green apple and I couldn't understand why it was
03:47:01 selling well. Delicious flavor.
03:47:03 And then I took an order for a customer, he was located
03:47:06 in Florida, and we were just talking and he ordered two cases of
03:47:11 gallons, that's eight gallons of Green Apple. And I just, you
03:47:16 know, had to ask him, it's like what do you do with Green Apple
03:47:20 that you sell so much of it? He says, oh, we add additional citric
03:47:27 acid to it and we call it Granny Smith Apple and it's our best
03:47:31 seller. And that's what lit off the light in my head to say the
03:47:34 names are important.
03:47:35 So I wanted to start coming up with creative names that
03:47:40 would get people to focus on the flavor to where it looked better,
03:47:44 you know, Granny Smith Apple, Green Apple, Mountain Maple, you
03:47:49 know, Georgia Peach instead of Peach. So that's when I changed my
03:47:54 names, or created the flavor for the new one I wanted to come up
03:47:58 with. And it does make a difference tremendously. Granny Smith
03:48:02 Apple is now -- it went from like the bottom ten percent to the top
03:48:07 ten flavors.
03:48:12 Q. Is Mountain Maple one that you coined also?
03:48:16 A. Yes.

03:48:17 Q. You specifically recall creating that name?
03:48:19 A. Absolutely. And even with the name people just don't order
03:48:27 maple, we haven't sold -- I don't believe we sold a gallon of
03:48:30 Mountain Maple in the last six years and we might sell 24 or
03:48:36 36 quarter quarts throughout the entire year. So even with the
03:48:40 catchy name, it didn't make any difference. I guess it's because
03:48:46 maple is just not a popular flavor.
03:48:55 THE COURT: We're going to take a break at four, so.
03:48:59 MR. MORRIS: Okay. SW-76.
03:49:07 MR. ANDREWS: Okay. No objection.
03:49:10 BY MR. MORRIS:
03:49:12 Q. Look at 1335. Now, this is a Southern Snow flavor list from
03:49:27 2010. Is it your understanding that this is the first year that
03:49:32 Southern Snow copied Cajun Red Hot?
03:49:35 A. I believe that's correct. In fact, not only that but the
03:49:38 Mountain Maple as well.
03:49:44 Q. And the same with White Chocolate and Chips?
03:49:49 A. I think he had that much -- many years before this.
03:49:53 Q. And Mountain Maple, you said that was first copied in 2010?
03:49:59 A. I believe so. I am not certain but I believe that was the same
03:50:02 year. I think he put both of those on together, Cajun Red Hot and
03:50:08 Mountain Maple.
03:50:10 Q. Okay. Page 1300. Next page -- I'm sorry, you can leave it on
03:50:41 that page. Do you see Buttered Popcorn flavor on this page?
03:50:45 A. Yes.

04:24:08 and then it got transferred over after they withdrew as attorneys.
04:24:13 It got transferred over to Seth and he picked it up, and when I had
04:24:17 my original conversations with Carver Darden I explained to them,
04:24:22 because I had some concern about that, I said, you know, we have
04:24:26 snowball stands that are using this and I am coming out with the
04:24:30 same thing to try and trademark it. And that's when they explained
04:24:33 that, no, it doesn't apply them, it's a different class, you're
04:24:36 applying for a trademark for a class. So that's why they proceeded
04:24:41 with it.
04:24:42 They were fully informed of snowballs -- snowball stands
04:24:46 using it, as well as me giving out the recipe for it.
04:25:00 MR. MORRIS: SW-103.
04:25:01 MR. ANDREWS: No objection.
04:25:02 BY MR. MORRIS:
04:25:07 Q. And is this a federal registration of the trademark White
04:25:12 Chocolate and Chips?
04:25:13 A. Yes, that is.
04:25:14 Q. And did you file this, an application for this registration in
04:25:18 November of 2011?
04:25:20 A. Yes, I did.
04:25:20 Q. And is the date of first use listed here correct?
04:25:27 A. That's correct.
04:25:30 Q. What date is that?
04:25:31 A. That's May 1st of 1986.
04:25:34 Q. And at the time you filed this application, did you have

knowledge or belief that any other person had the right to use the mark in commerce in connection with snowball flavoring concentrates?

A. No. I don't think anyone had the right to use it, it was something that I developed, I created the name, so it was mine.

Q. Well, have you heard the testimony that Southern Snow had been copying White Chocolate and Chips?

A. Yes. And I think at the same time that Mr. Nehrbass first contacted him that he also informed him about White Chocolate and Chips.

Q. Was SnoWizard the exclusive manufacturer and seller of White Chocolate and Chips flavoring concentrate until Southern Snow started copying it?

A. Yeah, and I don't think anyone else other than them has copied it. Or if they did it was just recently.

Q. Now, is it correct that SnoWizard first used White Chocolate and Chips in 1986?

A. That's correct.

Q. And that Southern Snow began copying it in 1999?

A. I am not certain of the first year that they came out with it. I can't recall that date.

Q. We can go to SW-76. And if we can scroll down to the 1999 list -- well, actually, go up one. So actually it looks the first year that they started using it was 1996.

A. That's correct.

04:27:48 Q. So does SnoWizard have sales records that far back?
04:27:54 A. To 1996, no, we don't.
04:27:59 Q. How much was -- have you looked at how much SnoWizard's total flavor sales in each of the years 2006 through 2012?
04:28:20 A. Yes, I ran a report on our sales for those years. For 2006 our flavorings were $599,942.30; for 2007, $600,847.73 --
04:28:46 MR. ANDREWS: Your Honor, may I approach?
04:28:48 THE COURT: Yes. You want to approach?
04:28:57 (WHEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HELD:)
04:29:14 MR. ANDREWS: He's giving figures that were different from our Joint Exhibit J-1. We've already agreed to these figures.
04:29:34 THE COURT: That's different?
04:29:38 MR. MORRIS: Yes, your Honor, they are different and I am going to ask him to explain that.
04:29:44 MR. ANDREWS: They've already had their opportunities to correct --
04:29:50 THE COURT: The thing is then you can attack his credibility if he is changing his mind on the stand.
04:30:06 (OPEN COURT.)
04:30:08 BY MR. MORRIS:
04:30:11 Q. So we have an exhibit J-1. Do you recall looking at this exhibit?
04:30:27 A. Yes, that was shown to me earlier by Mr. Andrews.
04:30:31 Q. And does it list the amounts of SnoWizard's flavor sales in each of the years 2006 through 2012?
04:30:40

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF LOUISIANA

AT NEW ORLEANS

SOUTHERN SNOW MANUFACTURING CO., INC.,
Plaintiff,
v.
SNOWIZARD HOLDINGS, INC., et al.,
Defendant.

Case No. 06-CV-9170 "G"
Case No. 09-CV-3394
Case No. 10-CV-0791
Case No. 11-CV-1499
March 26, 2013
Jury Trial

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE NANNETTE JOLIVETTE BROWN

UNITED STATES DISTRICT JUDGE

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:39:10 Q All right. We're looking at your Exhibit SW 92. Do you
:39:14 recognize this paper?
:39:15 A Yes.
:39:16 Q And does it claim a date first used of May 31st, 1985?
:39:26 A Yes.
:39:27 Q Thanks.
:39:42 Do you recall at 4:25 yesterday looking at this
:39:48 document, your Exhibit SW 103?
:39:54 A Yes, I do.
:39:57 Q And do you recall verifying the date of first use on this
:40:07 document?
:40:09 A I believe so, yes.
:40:10 Q Do you recall what that date of first use is?
:40:14 A May 1st of 1986.
:40:20 Q And remind us what this document is.
:40:32 A Trademark for White Chocolate & Chips.
:40:38 Q Is that a federal trademark?
:40:40 A Yes.
:40:40 Q And is that a registration, a federal registration?
:40:43 A Yes.
:40:47 Q And will you remind us the date that you filed the
:40:52 application for this registration.
:40:55 A November 15th of 2011.
:41:01 Q How long ago was that?
:41:03 A The year before last.

:41:08 Q Was this litigation already going on when you filed this
:41:13 application?
:41:13 A Yes. I think this started back in 2005 or 2006.
:41:22 Q And will you remind us what date the Patent and Trademark
:41:30 Office issued this registration?
:41:31 A June 12th of 2012.
:41:33 Q How long ago was that?
:41:37 A Middle of last year.
:41:39 Q Thank you.
:41:41 Do you recall at the same time yesterday
:41:48 identifying your Exhibit SW 104?
:41:55 A I believe so.
:41:56 Q And what is this document?
:41:58 A State registration for White Chocolate & Chips.
:42:12 Q And will you remind us the date of first use that you claim
:42:16 for that.
:42:16 A May 1st of 1986.
:42:19 Q Thank you.
:42:40 Do you recall yesterday identifying this document?
:42:42 A Yes. That was shown to me yesterday.
:42:44 Q And did you call it one of your earliest flavor lists?
:42:51 A Well, early would be a long time ago when I first got
:42:54 started. You know, it's been 30 years since I've been in
:42:58 business. So that would have been from after when I first
:43:04 started manufacturing flavoring concentrates.

:43:06 Q Do you recall at 3:45 yesterday saying that this list is one
:43:13 of the very first flavor lists for SnoWizard?
:43:17 A Well, I wasn't really identifying the, you know, the first
:43:22 or the second. That was a term just to use early.
:43:30 Q I'd like to look at a detail, if this machine will do it.
:43:45 Are you able to determine a date on your copy of
:43:50 this flavor list?
:43:51 A No, I'm not.
:43:55 THE COURT: Can you see it?
:43:57 Do you want to hand it to him?
:43:59 Can you see it that way?
:44:03 Is the fact that it's on the overhead preventing
:44:06 him from reading it?
:44:08 MR. ANDREWS: Excellent point, Your Honor.
:44:11 May I approach the witness?
:44:13 THE COURT: Yes.
:44:17 BY MR. ANDREWS:
:44:24 A No. I'm sorry, I can't make that out.
:44:29 Q Thank you.
:44:30 I would like to show you already admitted Exhibit
:44:34 P-87. Does this appear to be a copy of the very same flavor
:44:45 list with the markings next to some of the flavor names?
:44:52 A Yes.
:44:53 Q And, on this, the plaintiff's copy, are you able to make out
:45:06 a date?

:45:08 A That appears to be 1992. Maybe 1990. One of those two
:45:16 dates.
:45:20 MR. ANDREWS: May I approach the witness?
:45:24 THE COURT: Yes.
:45:24 BY MR. ANDREWS:
:45:32 A 1992.
:45:34 Q Would a 1992 flavor list be one of the first flavor lists
:45:41 for SnoWizard?
:45:42 A Well, I consider that an early one, yes. One of the firsts.
:45:49 Q Would it be one of the very first flavor lists for
:45:52 SnoWizard?
:45:52 A Well, the first list would be the first one or the second
:45:56 one.
:45:57 Q When was the very first list for SnoWizard?
:46:01 A Well, you know, my aunt and uncle had flavor lists before I
:46:05 took over the business. So the first flavor lists would have
:46:10 been something that they produced.
:46:14 Q What would have been the first flavor list after you,
:46:18 SnoWizard, started manufacturing its own flavors?
:46:21 A Well, I started some time in June of '85. So it would have
:46:31 had to have been after that.
:46:32 Q When do you bring out your flavor lists?
:46:38 A Oh, at different times throughout the year.
:46:42 Q I'd like to show you already admitted document P-87. And do
:46:53 you recognize this document?

:46:57 A That's the wholesale price list.
:47:03 Q Does it list the flavoring extracts that you offered?
:47:08 A Yeah. It lists flavoring extracts, yes.
:47:12 Q And does it have a date?
:47:20 A March 1st of 1986.
:47:24 Q Would that be an early, a very early or perhaps the first flavor list?
:47:31 A That would be early to very early one because that's right after I took over the business from Mr. Laruth.
:47:41 Q Thank you.
:47:42 Please identify for us where on this list Mountain Maple is.
:47:47 A Mountain Maple isn't on that list.
:47:48 Q Thank you.
:47:52 Please identify for us on this list where White Chocolate & Chips is.
:47:57 A It's not on that list.
:48:03 Q And please identify for us where on this list Cajun Red Hot is.
:48:04 A It's not on that list either.
:48:11 Q Thank you.
:48:12 A Mr. Andrews, just because it's not on that list doesn't --
:48:15 THE COURT: You need to just answer the question.
:48:16 THE WITNESS: I'm sorry, Your Honor.
:48:19 BY MR. ANDREWS:
:48:25
:48:28

:48:56 Q Yesterday at 3:26 p.m., you identified this document, your
:49:06 Exhibit SW 64, which is also labeled Exhibit B. Do you recall
:49:14 identifying this document?
:49:16 A SW 74.
:49:19 Q SW 74 listed as Exhibit B.
:49:23 A Yes.
:49:24 Q Thank you.
:49:27 And what did you say this list represented?
:49:31 A That was a list of flavors that we were -- flavor
:49:40 concentrates that were being purchased from Charles Dennery,
:49:44 National Fruit Flavor, and the other company, I think it's
:49:51 Certa. So we were buying from three different vendors at that
:49:57 time.
:49:57 Q And did you tell us why this Exhibit B was created?
:50:03 A I think my bank requested documents, and I provided it for
:50:12 them in the loan that they were making for me.
:50:15 Q Thank you. We'll come back to that.
:50:28 Looking at page 1 of SW 74, can you tell us what
:50:38 this document that had Exhibit B was?
:50:41 A That was the purchase of the business from Mr. Laruth, one
:50:46 of the documents from that file.
:50:48 Q And what date did that occur?
:50:50 A On May 21st of 1985.
:50:54 Q And what was the name of Mr. Laruth's business that you
:50:58 purchased?

:50:59 A I can't recall what the name of the business was.
:51:08 Laruth's, Inc.
:51:09 Q Thank you.
:51:10 Looking at page 2 of this same document, would you
:51:18 read this paragraph 2, please.
:51:23 A The formula for flavorings and vanilla extract heretofore
:51:31 developed by Laruth's, Incorporated, an exclusive listing of
:51:34 which formulas is attached hereto as Exhibit B and made a part
:51:39 hereof.
:51:41 Q Thank you.
:51:42 What does that paragraph say that Exhibit B is?
:51:48 A I just read that, an exclusive listing of which formulas is
:51:59 attached hereto as Exhibit B.
:52:01 Q Does that paragraph say that Exhibit B is the formulae for
:52:07 flavorings and vanilla extract heretofore developed by Laruth's,
:52:12 Inc.?
:52:12 A That's what it says.
:52:13 Q Thank you.
:52:16 Now looking again at Exhibit B, can you identify
:52:26 where Cajun Red Hot is on that list?
:52:29 A Cajun Red Hot's not on that list.
:52:31 Q Can you identify where Mountain Maple is on that list?
:52:36 A Mountain Maple is not on this list.
:52:38 Q And can you identify where White Chocolate & Chips is on
:52:42 that list?

:52:42 A White Chocolate & Chips is not on this list at all.
:52:51 Q Thank you.
:52:59 Yesterday at 10:18 a.m., you testified that the
:53:04 Eisenmann Products Company and specifically Mrs. Eisenmann
:53:08 wanted to copy your uncle's machine in 1979. Is that correct?
:53:14 A Yes.
:53:15 Q Do you recall what you did about that copying?
:53:24 A Yes. Mr. Kede, on my behalf, filed a lawsuit to prevent
:53:33 the -- it was actually Craig Collier who was making the
:53:36 machines -- to prevent them from copying the machine.
:53:42 Q Thank you.
:53:47 Do you remember what the result of that lawsuit
:53:49 was?
:53:50 A I don't remember the legal -- you know, final legal
:53:58 determination. But it had something to do with -- something to
:54:09 do with the fact that the machine was an expensive item and
:54:15 people would be aware of what they're purchasing and they
:54:18 wouldn't be confused.
:54:22 Q Do you remember whether you won or lost that lawsuit?
:54:28 A No. We were ruled against in that one.
:54:33 Q Do you remember whether you appealed to the Fifth Circuit
:54:38 Court of Appeals?
:54:38 A Yes, we did.
:54:39 Q And do you remember what result you got from the Fifth
:54:43 Circuit Court of Appeals?

:58:56 A Correct.
:58:57 Q What percentage of your flavors do you develop by that
:59:05 process?
:59:05 A Most of them have been developed by that process.
:59:17 Q Thank you.
:59:18 And did you testify that your competitors order
:59:25 samples from the flavor houses and taste them to see which one
:59:30 they like best and then order that flavor from the flavor house?
:59:34 A That's correct.
:59:35 Q Are the flavor houses still willing to send you samples?
:59:43 A Well, the flavor houses would send anyone who requests a
:59:47 sample.
:59:47 Q Are the flavor houses unaware that your favorite sample is
:59:53 going to be analyzed and duplicated with no revenue to the
:59:58 flavor house?
:59:59 A I'm not aware of what the flavor house would be aware of or
:00:03 not aware. I deal with flavor houses who know what I do, such
:00:06 as Bell Flavors. And we get a couple of flavors from them. And
:00:14 they've been to my facility, and they know what I do and they
:00:18 continue to still sell me samples. Because there are some
:00:21 flavors that I don't make. Those would be the slower selling
:00:25 flavors.
:00:26 Q Thank you.
:00:26 Yesterday at 3:43 approximately, did you state
:00:31 that SnoWizard has never demanded that a snowball shop cease and

:00:39 desist from selling any flavor?
:00:41 A Correct.
:00:42 Q Did you also testify that you had no intention to make
:00:48 snowball shops cease and desist anything?
:00:51 A That's correct.
:00:52 Q Who has SnoWizard ever sent a cease and desist letter or
:01:01 filed a lawsuit against?
:01:03 A We've sent a cease and desist letter to both Mr. Wendling
:01:11 and Mr. Drewes.
:01:16 Q Are Southern Snow, owned by Mr. Wendling, and Parasol
:01:23 Flavors, owned by Mr. Drewes, competing manufacturers of flavor
:01:26 concentrates?
:01:27 A Yes.
:01:28 Q Are there any other competing manufacturers of flavor
:01:33 concentrates that you intend to send cease and desist letters
:01:36 to?
:01:36 A If I have a trademark, and I'm aware that they're doing it,
:01:45 yes.
:01:45 Q Are several of your trademarks registered for food
:01:53 flavoring?
:01:53 A Yes, I believe so.
:01:54 Q Who could you send cease and desist letters to for a
:02:00 registered trademark on a food flavoring?
:02:04 A If someone were using that mark --
:02:09 MR. MORRIS: Objection, Your Honor. It calls for

:02:11 speculation and beyond the expertise of the witness as to who he
:02:16 could send a cease and desist letter to.
:02:20 THE COURT: I'm going to overrule it. If he knows he
:02:23 can answer it. If he doesn't know, he won't.
:02:30 Go ahead.
:02:30 THE WITNESS: I'm sorry, could you repeat the question?
:02:30 BY MR. ANDREWS:
:02:33 Q Certainly.
:02:34 We established that some of your trademark
:02:36 registrations were for food flavorings.
:02:39 A Yes.
:02:39 Q And my question was, who all could you send cease and desist
:02:46 letters to regarding your trademarks for food flavorings?
:02:52 A Well, whoever it is, I would have my attorney send who's
:02:59 ever violating.
:03:04 Q Did you testify yesterday at 3:48 approximately, that the
:03:10 name of a flavor does make a difference tremendously?
:03:14 A Yeah. In some flavors.
:03:16 It didn't in Mountain Maple.
:03:18 Q Did you testify yesterday at 4:40 p.m. that SnoWizard has
:03:42 never done, sold, over 383 ice shaving machines in a year?
:03:47 A That's the most I can ever remember.
:03:53 Q Yesterday at 4:54 p.m. did you testify that SnoWizard was
:04:12 able to run computer reports for flavor sales?
:04:15 A Yes, that's correct.

:04:15 Q And did you use data from such reports in estimating damages
:04:19 for White Chocolate & Chips and Cajun Red Hot and Mountain
:04:27 Maple?
:04:27 A Yes, I did.
:04:28 Q Do you recall whether the plaintiffs asked for any data like
:04:34 that during this lawsuit?
:04:37 A No. I don't recall.
:04:40 Q I'm going to back up to 4:30.
:04:57 THE COURT: He's going backwards now.
:04:57 BY MR. ANDREWS:
:05:07 Q I'm showing you Joint Exhibit 1. Do you recognize the
:05:11 document?
:05:11 A Yes, I do.
:05:12 Q Does it list SnoWizard's sales in some of the years 2004
:05:21 through 2012?
:05:23 A Yes.
:05:24 Q Do you recall giving a deposition on March 27th of 2012?
:05:39 A Yes, I do.
:05:41 Q Do you recall who was taking that deposition?
:05:45 A You were.
:05:53 MR. ANDREWS: May I approach the witness?
:05:54 THE COURT: Yes, you may.
:05:56 (Pause in proceedings.)
:06:05 MR. ANDREWS: Is it appropriate to show this on the
:06:07 jumbotron?

:33:55 MR. ANDREWS: But after the Rule 50 motions?
:33:58 THE COURT: If they have any. That's the way it
:34:03 proceeds.
:34:06 MR. ANDREWS: Thank you.
:34:07 THE COURT: Because it may be affected by Rule 50
:34:10 motions. The charges could be. So that's why I put it in that
:34:14 order.
:34:15 All right. So, if there's nothing else, let's
:34:17 bring in the jury.
:34:18 You good?
:34:18 MR. ANDREWS: Good.
:34:19 THE COURT: Bring in the jury.
:34:21 (Jury enters.)
:35:03 THE COURT: Please be seated.
:35:04 And proceed.
:35:04 REDIRECT EXAMINATION
:35:04 BY MR. MORRIS:
:35:10 Q Hello, Mr. Sciortino.
:35:23 Mr. Andrews asked you about this Exhibit SW 75
:35:28 showing what you have referred to as one of the earliest flavor
:35:33 lists after you took over the company.
:35:35 A Correct.
:35:36 Q And it showed you a handwritten date of 1992 on a version of
:35:42 this. Do you recall that?
:35:43 A Yes.

Q Did you write that handwritten date on there?
A I don't know where that date came from.
Q Do you have any reason to dispute it?
A No.
Q Yesterday, I believe, I had questioned you whether you knew the date that this list had been published. And do you recall your answer?
A No, I don't.
Q Do you have an answer? Do you know the date that this list was published?
A If it's the date in the upper right-hand corner, then it would be -- is it 1992? Yes.
Q But you weren't able -- you have no reason to dispute that --
A No.
Q -- again?
Then you were asked about this list. And this one is actually dated March 1st of 1986; right?
A Correct.
Q And can you confirm that Cajun Red Hot, Mountain Maple, and White Chocolate & Chips are not on this list?
A Correct.
Q Can you explain why they're not on these lists?
A Well, these lists aren't updated every time we make a change on the flavor. So whatever was put on there at the time that

this one right here was printed, was what we had. But we also have flavors that are also made for the Ronald Reginald's which would be on a separate list.

So, you know, when a flavor is made, it doesn't automatically go on a list. And some flavors can be overlooked on the list. But we try to do our best to keep everything up to date.

Q Exhibit SW 74. Look to the list of flavors.

Remember this list of flavors attached to the Laruth act of sale?

A Yes.

Q And, again, why are Cajun Red Hot, Mountain Maple, and White Chocolate & Chips not on this list?

A Well, these are the flavors -- again, these are the flavors that were from Charles Dennery Company, National Fruit Flavor Company, and Certa. And they didn't make any of those flavors. So this is simply a list of the flavors that we were purchasing from those three companies.

Q Remember, we looked at paragraph 2 where it says that the list of flavors attached as Exhibit B are heretofore developed by Laruth's, Inc.?

A Yes.

Q So is that the same as a list of flavors that SnoWizard has purchased from Dennery and other companies?

A There was some other flavors also that's not on that list.

:39:10 There was a line of vanillas that Mr. Laruth made and other
:39:14 flavors for bakery, cooking companies, et cetera. So it was
:39:20 more than that.
:39:21 Q So is this the list that appears with this document the same
:39:27 as the flavors that SnoWizard was buying from Charles Dennery
:39:31 and other companies?
:39:32 A Yes.
:39:33 Q You were asked about the claims of the patent.
:39:53 And we go to the next page. One up. One down.
:40:02 Another one down. Okay.
:40:05 Do you recall being asked yesterday why the side
:40:11 walls appear on figure 4 around the indentation or recess on the
:40:18 bottom of that fork lever.
:40:21 A Yes. And I said that was just a personal preference. They
:40:24 didn't really need to be there.
:40:26 Q Okay. So you didn't -- did you say -- did you testify that
:40:28 the recess itself or indentation was a personal preference?
:40:33 A No, I didn't. It was the side walls that I was asked about.
:40:36 Q And is the recess or indentation itself important?
:40:41 A It wouldn't work without that. That's part of the patent.
:40:46 Q But the side walls --
:40:50 A The side walls are not necessary. The recess is.
:40:50 Q Okay.
:40:55 A In fact, I think I testified that I didn't have the recess
:40:59 in there first, and then I had to put it in.

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85473205
Filing Date: 11/15/2011

To the Commissioner for Trademarks:

MARK: WHITE CHOCOLATE & CHIPS (Standard Characters, see mark)
The literal element of the mark consists of WHITE CHOCOLATE & CHIPS.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, SnoWizard, Inc., a corporation of Louisiana, having an address of
101 River Road
Jefferson, Louisiana 70121
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 030: Flavoring concentrate for non-nutritional purposes, namely, flavoring concentrate for shaved ice confections

In International Class 030, the mark was first used at least as early as 05/01/1986, and first used in commerce at least as early as 05/01/1986, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) copy of product label.

Original PDF file:
spec-21683244244-155412579_._specimen_WCC.pdf
Converted PDF file(s) (1 page)
Specimen File1

The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.
The applicant submits the following evidence to support the §2(f) claim:

Original PDF file:
e2f-21683244244-155412579_._argument_new_app_WCC.pdf
Converted PDF file(s) (9 pages)
2(f) evidence-1
2(f) evidence-2
2(f) evidence-3
2(f) evidence-4
2(f) evidence-5
2(f) evidence-6
2(f) evidence-7
2(f) evidence-8
2(f) evidence-9
Original PDF file:
e2f-21683244244-155412579_._Exhibit_1_new_app_wcc.pdf
Converted PDF file(s) (2 pages)
2(f) evidence-1
2(f) evidence-2
Original PDF file:
e2f-21683244244-155412579_._Exhibit_2_wcc_new_app.pdf
Converted PDF file(s) (2 pages)
2(f) evidence-1
2(f) evidence-2
Original PDF file:

e2f-21683244244-155412579_._exhibit_3_wcc_new_app.pdf
Converted PDF file(s) (3 pages)
2(f) evidence-1
2(f) evidence-2
2(f) evidence-3
Original PDF file:
e2f-21683244244-155412579_._Exhibit_4_WCC_new_app.3.pdf
Converted PDF file(s) (9 pages)
2(f) evidence-1
2(f) evidence-2
2(f) evidence-3
2(f) evidence-4
2(f) evidence-5
2(f) evidence-6
2(f) evidence-7
2(f) evidence-8
2(f) evidence-9

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

This mark is also the subject of pending application Serial No. 77/471,425 in which the TTAB affirmed a refusal that the mark is merely descriptive under 15 U.S.C. 1052(e)(1), but found it registrable on the Supplemental Register. That application did not include an alternative claim that the mark has acquired distinctiveness under section 2(f). Applicant disagrees that the mark is not inherently distinctive and has filed a civil action in the Eastern District of Louisiana seeking review of the TTAB's decision. That action, Snowizard v. Kappos, Case No. 11-880 is currently pending. Applicant's filing of this application seeking registration of the mark under section 2(f) is not a concession that the mark is not inherently distinctive, but rather is offered as a claim in the alternative that the mark has acquired distinctiveness.

The applicant's current Attorney Information:
Kenneth L. Tolar
2908 Hessmer Avenue
Metairie, Louisiana 70002
United States

The applicant's current Correspondence Information:
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tolar@cavtel.net (authorized)

A fee payment in the amount of $325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /ronald r. sciortino/ Date Signed: 11/15/2011
Signatory's Name: Ronald R. Sciortino

Signatory's Position: President

RAM Sale Number: 3561
RAM Accounting Date: 11/16/2011

Serial Number: 85473205
Internet Transmission Date: Tue Nov 15 16:46:11 EST 2011
TEAS Stamp: USPTO/BAS-XXX.XX.XXX.XXX-201111151646110
83295-85473205-480ad4a8875db21202ef6839c
1fd2d249cb-CC-3561-20111115155412579721

DIRECTIONS: USE 4 OZ. TO FLAVOR AND
COLOR 1 GALLON OF SIMPLE SYRUP
15
SnoPoints
1 QUART
QWHCHO
05090802
Premium Quality
SnoWizard®
FLAVORING CONCENTRATE
Natural & Artificial
White Chocolate & Chips
Water, propylene glycol, sugar, natural and artificial flavors, natural gums, pure vanilla extract, vanilla bean extractives, titanium dioxide and sodium benzoate.
MANUFACTURED BY SNOWIZARD, INC. NEW ORLEANS, LA 1-800-366-9766 WWW.SNOWIZARD.COM

A. The Trademark WHITE CHOCOLATE & CHIPS is Inherently Distinctive

A mark is considered merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. *See In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). The determination of whether or not a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. This requires consideration of the context in which the mark is used or intended to be used in connection with those goods/services, and the possible significance that the mark would have to the average purchaser of the goods or services in the marketplace. *See In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (C.C.P.A. 1978); *In re Venture Lending Associates,* 226 USPQ 285 (TTAB 1985).

The product sold under the trademark WHITE CHOCOLATE & CHIPS is a flavored concentrate that is purchased by snow ball vendors, or snow ball vendor suppliers, to produce a ready-to-use, flavored syrup. The snow ball vendor, in turn, pours the ready-to-use syrup over shaved ice to make a flavored snow ball, a/k/a, a snow cone. Typically, Applicant does not sell flavored concentrate to the general public.

In the final refusal issued in the prior application, the examiner cites dictionary definitions that provide that "white chocolate refers to a sweet confection cocoa butter and flavored vanilla, and 'chips' are very small pieces of food. Together, these terms readily impart that applicant's food flavoring is white chocolate in flavor, and contains small pieces. See the enclosed copy of applicant's website, in which applicant describes the chocolate flavor, vanilla and 'specks' ingredients."

not merely descriptive, but instead inherently distinctive of applicant's goods; therefore, the mark WHITE CHOCOLATE & CHIPS is registerable on the Principal Register.

B. Applicant's Trademark WHITE CHOCOLATE & CHIPS Has Acquired Secondary Meaning

Although Applicant hereby avers that the mark is not merely descriptive but at most suggestive, in the alternative, and without conceding or otherwise waiving any claim of inherent distinctiveness, Applicant hereby submits evidence that overwhelmingly establishes that the mark has become distinctive and is, therefore, registerable on the Principal Register.

37 C.F.R. §2.41 provides that:

> "(a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the Act but which is said by applicant to have become distinctive in commerce of the goods or services set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, or declarations in accordance with 2.20, depositions, or other appropriate evidence showing duration, extent and nature of use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, or declarations in accordance with §2.20, letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods.
>
> (b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness. Also, if the mark is said to have become distinctive of

applicant's goods by reason of substantially exclusive and continuous use in commerce thereof by applicant for the five years before the date on which the claim of distinctiveness is made, a showing by way of statements which are verified or which include declarations in accordance with §2.20, in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. In each of these situations, however, further evidence may be required."

In addition, 15 U.S.C. §1052(f), provides that "proof of substantially exclusive and continuous use" of a designation "as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made" may be accepted as *prima facie* evidence that the mark has acquired distinctiveness as used with the applicant's goods in commerce. The declaration of Applicant's president, Ronald R. Sciortino, which is attached hereto as Exhibit 3, clearly establishes that the mark has been in substantially exclusive and continuous use in commerce by Applicant since at least as early as May 1, 1986, more than twenty-five years before the date on which this claim of distinctiveness is made. (Exhibit 3, p. 2, ¶¶9, 10). Accordingly, Applicant has clearly submitted *prima facia* evidence of distinctiveness under both 15 U.S.C. §1052(f) and 37 C.F.R. §2.41.

Not only has Applicant established substantially continuous and exclusive use of the mark in commerce for at least twenty-five years, but one of Applicant's competitors has intentionally copied the mark in order to exploit its popularity and fame. Courts have consistently considered intentional copying as the most significant evidence of secondary meaning. Evidence of intentional copying creates a presumption of secondary meaning upon which a judgment must issue in the absence of rebutting proof. *Osem Food Industries, Ltd. v.*

Sherwood Foods, Inc., 917 F. 2d 161 (4th Cir 1990). In essence, copying another's mark is an admission that the mark has acquired secondary meaning. *Marker International v. De Bruler*, 844 F.2d 763 (10th Cir. 1988). And, the presumption of secondary meaning applies equally to the copying of a trademark or a trade dress. *Larsen v. Terk Tech Corp.*, 151 F. 3d 140(4th Cir. 1998).

The trademark WHITE CHOCOLATE & CHIPS is the subject of numerous lawsuits filed in the Eastern District of Louisiana involving Applicant, Applicant's competitor, Southern Snow Manufacturing Co., Inc. ("Southern Snow") and various other parties. In deposition testimony, a transcript of which is attached hereto as Exhibit 4, Milton Wendling, President of Southern Snow, admitted that he intentionally copied the mark WHITE CHOCOLATE & CHIPS and that Applicant was the first to use the mark. (Exhibit 4, p. 36, lines 20-22; p. 37, lines 9-16). Therefore, since intentional copying of a mark is overwhelming evidence of secondary meaning, and considering that Applicant has exclusively used the mark for over twenty-five years(other than the infringing use by Southern Snow), the mark has become distinctive of Applicant's goods. Therefore, the mark should be registered on the Principal Register.

C. Conclusion

As is readily apparent from the evidence attached hereto, Applicant, SnoWizard, Inc., has continuously used the trademark WHITE CHOCOLATE & CHIPS in commerce for more than twenty-five years. Other than Southern Snow's intentional copying of the mark, SnoWizard's use has been exclusive. Instead of offering a similar product under a different name, Southern Snow simply elected to profit from the goodwill that SnoWizard accumulated over a twenty-five-year period. Therefore, the overwhelming evidence of record indicates that the mark WHITE CHOCOLATE & CHIPS is inherently distinctive, or alternatively has acquired distinctiveness

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: **WHITE CHOCOLATE & CHIPS Trademark Application**

Applicant: **SnoWizard, Inc.**

Mark: **WHITE CHOCOLATE & CHIPS**

APPLICANT'S DECLARATION

STATE OF LOUISIANA
PARISH OF JEFFERSON

I, Ronald R. Sciortino, hereby declare under penalty of perjury that:

1) I am the President of SnoWizard, Inc., Applicant in the above-captioned trademark application(hereinafter referred to as "Applicant").

2) I have personal knowledge of each and every fact asserted herein.

3) Applicant produces flavoring concentrates for shaved ice confections, i.e. snowballs, that are sold to snowball vendors, and to distributors and suppliers of snowball vendors.

4) A snowball vendor mixes a flavoring concentrate with other ingredients to produce a ready-to-use syrup that is poured over ice to produce a flavored snowball.

5) One of the marks applied to a flavoring concentrate is WHITE CHOCOLATE & CHIPS, which is the subject of the above-referenced trademark application.

6). The pertinent goods listed in the above-referenced application are flavoring concentrates for non-nutritional purposes, namely, flavoring concentrates for shaved ice confections.

7) Applicant was the first to produce and market a flavoring concentrate for shaved iced confections under the name WHITE CHOCOLATE & CHIPS.

8) Applicant's WHITE CHOCOLATE & CHIPS flavoring concentrate is manufactured using an original and proprietary secret recipe that I created and developed.

9) The mark WHITE CHOCOLATE & CHIPS has been in substantially exclusive and continuous use by Applicant in interstate commerce since at least as early as May 1, 1986, other than an isolated instance of trademark infringement by a competitor, which first occurred well after the mark had become distinctive of Applicant's goods.

10) As a result of the substantially exclusive and continuous use in commerce since May 1, 1986, the mark WHITE CHOCOLATE & CHIPS has become distinctive of Applicant's goods as specified in the above-captioned application.

11) One of Applicant's major competitors is Southern Snow Manufacturing Co., Inc. (Southern Snow) located in Belle Chasse, Louisiana.

12) Southern Snow has repeatedly copied flavor names created by Applicant in attempt to profit from the notoriety and popularity of Applicant's original and proprietary flavoring concentrates known to the public by those names.

13) Prior to Applicant first using the mark WHITE CHOCOLATE & CHIPS in 1986, and until Southern Snow began copying the mark, Applicant knows of no other entities that actually used the trademark WHITE CHOCOLATE & CHIPS in conjunction with flavored concentrates for shaved ice confections or similar goods other than Applicant's own customers.

14) At the time when Applicant first developed and sold the product offered under the trademark WHITE CHOCOLATE & CHIPS, no other competitor was offering a flavored concentrate under the same or similar name until Southern Snow began deliberately copying the mark.

15) The mark WHITE CHOCOLATE & CHIPS is the subject of numerous consolidated lawsuits(E.D. La. master case no. 06-9170) currently pending in the Eastern District of Louisiana involving Applicant, Southern Snow and various other litigants.

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

Dated: November 15, 2011

Ronald R. Sciortino

Ronald R. Sciortino, President
Snowizard, Inc.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

PARASOL FLAVORS, INC.	*	CIVIL ACTION
	*	NO. 09-3394
VERSUS	*	SECT. "S"
	*	JUDGE LEMMON
SNOWIZARD, INC.	*	MAG. DIV. 3
	*	MAG. JUDGE KNOWLES

Deposition of MILTON G. WENDLING, JR., 1915 Engineers Road, Belle Chasse, Louisiana 70037, taken in the offices of JACK E. MORRIS, 4051 Veterans Boulevard, Suite 208, Metairie, Louisiana 70002, on Thursday, December 17, 2009.

APPEARANCES:

ANDREWS ARTS & SCIENCES LAW, L.L.C.
BY: MARK EDWARD ANDREWS, ESQUIRE
7104 Coliseum Street
New Orleans, Louisiana 70118
ATTORNEY FOR PLAINTIFF

JACK E. MORRIS, ESQUIRE
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Metairie, Louisiana 70002
ATTORNEY FOR DEFENDANT

ALSO PRESENT:

RONALD R. SCIORTINO

REPORTED BY:

WILMA B. GERACI, CCR, RPR
CERTIFIED COURT REPORTER

EXHIBIT INDEX:

EXHIBIT NO.:	PAGE NO.:
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SS-2 - Southern Snow Flavor Lists	39
SS-3 - SnoWizard 2007 Flavor List	39
SS-4 - Letter From M. Andrews to R. Sciortino 4-8-08	41
SS-5 - SnoWizard Sales Invoices	42

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Mr. Andrews	76
Mr. Morris	76

S T I P U L A T I O N

It is stipulated and agreed by and between counsel for the parties hereto that the deposition of the aforementioned witness is hereby being taken under the Federal Rules of Civil Procedure, for all purposes in accordance with law;

That the formalities of reading and signing are specifically not waived; that the formalities of sealing, certification and filing are specifically waived;

That all objections, save those as to the form of the question and the responsiveness of the answer, are hereby reserved until such time as this deposition, or any part thereof, may be used or sought to be used in evidence.

* * * *

WILMA B. GERACI, Certified Court Reporter, in and for the Parish of Orleans, State of Louisiana, officiated in administering the oath to the witness.

MILTON G. WENDLING, JR.,

1915 Engineers Road, Belle Chasse, Louisiana 70037, after having been first duly sworn by the above-mentioned Court Reporter, did testify as follows:

EXAMINATION BY MR. MORRIS:

Q. Mr. Wendling, my name is Jack Morris, as you know, and I'm the attorney representing SnoWizard. Have you given a deposition before?

A. Yes.

Q. When was that?

A. I gave one just a couple of -- I think about a month ago.

Q. What kind of case was that?

A. It was -- Let's see. What was that? A guy got in a traffic accident and he was arrested. It seems like it was -- He's suing Harry Lee for false arrest, and I was sort of a character witness.

Q. So you're not a party to that?

A. No.

Q. Did you witness the incident --

A. No.

Q. -- that was the subject of --

A. No.

a question, just say that you don't understand or you need me to clarify it.

First of all, what is your relationship with Southern Snow Manufacturing Company?

A. I own 100 percent of the stock.

Q. And what about Mr. Hagood? What's his position with the company?

A. He's president of Southern Snow.

Q. So you're a 100 percent shareholder?

A. Yes.

Q. Are you also an officer?

A. I'm a board of director.

Q. So you're not an officer, like president, vice president?

A. No.

Q. What responsibilities do you have for the day-to-day operations of the company?

A. I'm pretty much CEO or CFO, general manager.

Q. And what about Mr. Hagood? What are his responsibilities?

A. His main purpose would be -- what do you call it -- loss -- I can't think of the name of it. Loss maintenance, you know. What they call those guys in the insurance industry? Loss -- I

A. I would have to look at my list, but it goes back, and I got it from the Eisenmann list.

Q. Do you have a specific list of when you started using --

A. I would have to fish it out. Yeah. We got the old Eisenmann -- Well, we don't have all the Eisenmann's. I got that old 1980 Eisenmann.

Q. Let me just give you -- this is a -- Look at that and tell me if those are Southern Snow's flavor lists.

A. Yes, it is.

Q. And there should be a sequence of years going back to about --

A. Yeah. 1987 -- it looks like -- It looks like I made it in 1987.

Q. And do you have any idea when SnoWizard started selling that?

A. I would have to look. I don't really know.

Q. Okay. What flavor names do you recall actually copying from SnoWizard?

A. Oh, White Chocolate and Chip. Well, you can't say Orchid Cream Vanilla because that's Plum Street's flavor. If I went down the list, I could probably do pretty good.

Q. Well, --
A. If there's a current list, I can pick out some.
Q. Those should be in order if you look at the last one in that stack.
A. Oh, the last one? Here we are. That's mine.
Q. That should be one of your most recent.
A. Yeah. I need a SnoWizard list, I think. Let's see. I can go off of my list, I guess, if you don't have a SnoWizard list.
Let's see. What did SnoWizard do first? Butter Cream. Creamy Coconut. Daiquiri. Toasted Coconut. Vanilla Malt. White Chocolate and Chips. White Russian. And that looks like the end of it.
Q. A series of flavors called Clear Blackberry, Clear Bubble Gum, Clear Cherry --
A. He calls it Clearly. I call it Clear.
Q. And didn't SnoWizard begin coming up with those names first and then you modified them?
A. Well, that's pretty descriptive. Clearly is a trade -- you know, could be some kind of trade deal. But Clear, you just leave the

REPORTER'S CERTIFICATE

I, WILMA B. GERACI, Certified Court Reporter, do hereby certify that the above-named witness, after having been first duly sworn by me to testify to the truth, did testify as herein above set forth;

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

WILMA B. GERACI, CCR, RPR

CERTIFIED COURT REPORTER

THIS OPINION IS NOT A PRECEDENT OF THE TTAB

Mailed:
February 17, 2011
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Snowizard, Inc.

Serial No. 77471425

Kenneth L. Tolar for Snowizard, Inc.

Janice L. McMorrow, Trademark Examining Attorney, Law Office 115 (John T. Lincoksi, Acting Managing Attorney).

Before Seeherman, Bucher and Zervas, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Snowizard, Inc. seeks registration on the Principal Register of the term **WHITE CHOCOLATE & CHIPS** *(in standard character format)* for "food flavorings" in Int. Class 30.[1]

The Trademark Examining Attorney refused registration on the ground that the term is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

At the same time as applicant filed this Notice of Appeal, it also filed with the Trademark Examining Attorney a Request for Reconsideration of the refusal to register in which, in the alternative, it amended its application to the

[1] Application Serial No. 77471425 was filed on May 12, 2008, based upon claims of first use anywhere and first use in commerce at least as early as May 1, 1986.

Supplemental Register. The Trademark Examining Attorney has stated explicitly that she finds this proposed mark registrable on the Supplemental Register. Hence, based upon our analysis, *infra*, we find this proposed mark to be merely descriptive under Section 2(e)(1) of the Act, and affirm the refusal to register this application on the Principal Register, but a registration will issue in due course on the Supplemental Register.

The Trademark Examining Attorney takes the position that "the designation 'white chocolate & chips' immediately, and without conjecture or speculation, describes two of the most notable characteristics or features of the applicant's goods, namely, the type of flavor of the food flavorings, and the fact that they contain 'chips.' "

In partial support of her refusal, the Trademark Examining Attorney has submitted a dictionary definition of the term "white chocolate" as "cocoa butter combined with milk and a sweetener, often flavored with vanilla."[2] Applicant does not take issue with the conclusion that the term "white chocolate" alone immediately conveys information about the flavor of the involved goods. On the other hand, applicant argues that its goods do not contain "chips."

[2] THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, 4th Edition, 2000.

Hence, our determination turns on whether the word "chips" describes a characteristic of the goods, and whether the phrase, as a whole, is merely descriptive.

We turn then to applicant's website, where under the heading of "Literature / Flavor Descriptions," applicant lists alphabetically all of its food flavoring concentrates. The entry for "White Chocolate & Chips" flavoring identifies the color as "White with Specks" and describes the flavor as "A luscious Swiss Chocolate flavor with little specks."[3]

[3] http://www.snowizard.com/ and http://www.snowizard.com/literature/flavordescrip.htm

Applicant has explained that the specks occur naturally because of the manufacturing process for its vanilla extract, which can leave behind tiny specks of spent vanilla bean seeds. These seeds are no longer whole seeds, but have actually been ground into very small particles.

The question then, as applicant and the Trademark Examining Attorney have framed it, is whether the word "Chips" describes these "specks." In connection therewith, the Trademark Examining Attorney and applicant have submitted several dictionary definitions, of which the following are most relevant:

> 5. a. A thin, usually fried slice of food, especially a potato chip. Often used in the plural.
> b. A very small piece of food or candy. Often used in the plural: *chocolate chips*... .[4]
>
> 1. a. a small, slender piece, as of wood, separated by chopping, cutting, or breaking.
> 2. a very thin slice or small piece of food, candy, etc.: *chocolate chips.*[5]
>
> 1. a small piece removed by chopping, cutting, or breaking
> 5. (*US*), (*Canadian*) ,,, a very thin slice of potato fried and eaten cold as a snack
> 6. a small piece or thin slice of food[6]
>
> 1. small piece broken or cut off: a small piece that has been broken, chopped, or cut off something hard or brittle
> 3. piece of thin crisp snack food: a very thin crunchy slice of a starchy food, usually potato or corn, that has been fried until it is crisp
> • *corn chips*[7]

---

[4] THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, 4th Edition (2000).

[5] www.dictionary.com, Unabridged, Based on the RANDOM HOUSE DICTIONARY (2011).

[6] www.dictionary.com, Based on the COLLINS ENGLISH DICTIONARY - Complete & Unabridged 10th Edition (2009).

[7] http://encarta.msn.com/encnet/features/dictionary/

> 1 … *a* **:** a small usually thin and flat piece (as of wood or stone) cut, struck, or flaked off
> *b*: a small piece of food: as *(1)*: a small thin slice of food; *especially*: potato chip *(2)*: french fry [8] *(3)*: a small cone-shaped bit of food often used for baking <chocolate *chips*> [9]

Referring specifically to the *Merriam-Webster* dictionary entry shown immediately above, applicant takes the position that in the context of foods, the word "chips" can mean only "cone-shaped baking morsels, fries or potato chips." Applicant's brief at 4-7.

The above entries show that there are two recurring usages of the word "chips" as applied to food items in the United States, namely, 'thin fried slices of food, such as potato chips or corn chips' or 'small pieces of food or candy, e.g., chocolate chips.' However, the Trademark Examining Attorney takes the position that these are not the only possible meanings of the word "chips" as applied to foodstuffs. She contends that the word "chips" describes the appearance of "specks, flakes, bits, morsels, fragments [or] smidgens." Trademark Examining Attorney's appeal brief at unnumbered 4.

We agree with the position of the Trademark Examining Attorney. Whether one focuses on the primary dictionary definitions above of 'small pieces cut off of something hard'

---

[8] Because this is chiefly a British usage of the term "chips," and we are concerned with the meaning of the term to consumers in the U.S., we have given this particular definition no consideration.

[9] MERRIAM-WEBSTER ONLINE DICTIONARY, http://www.merriam-webster.com/

or the somewhat more narrow and later entry of 'small pieces of food,' we find that the word "chips" can be used to describe the specks that are a notable feature of applicant's goods.

Moreover, the record shows descriptive usage of the term "White Chocolate & Chips" by third parties. The Trademark Examining Attorney has submitted at least three examples of such usage for snow cone flavorings by applicant's main competitors in the New Orleans metropolitan area:

[10]

[10] http://snow-balls.com/flavors.htm

[11]

[12]

In addition, the Trademark Examining Attorney included an excerpt of an article that appeared in the Sunday edition of *The Houston Chronicle* on July 21, 1996 (***emphasis*** supplied):

> **HEADLINE:** ***In search of vendors, flavors?***
>
> "Here's a sample of snowball vendors in the Houston area:
>
> "MVP's New Orleans Snowballs, 11006 Dorrance (Highway 59 at Murphy Road); 530-5544. Open noon-10 p.m., Mondays-Saturdays, 1-9 p.m., Sundays. Seating: two benches under a shade …
>
> "… in the front window.
>
> "Probably the fluffiest, smoothest snow this side of the Crescent City, made not too juicy but just right.
>
> "Flavors include vanilla malt, cranberry, hazelnut, Andes chocolate mint, ***white chocolate and chips***, cantaloupe, butter cream and creamy coconut. For an extra 30 cents, MVP [Mark Vincent Paul] will add such toppings as cream, condensed milk, Hershey's chocolate syrup, cherries and Knottsberry [sic] Farm crushed pineapples and strawberry. Mario Monterroza uses a gentle touch with the snow machine and creates a sublime coffee-flavored snoball topped with sweetened condensed milk. Prices start at $1.^{00}$ for small and go up to $3.^{85}$ for 44-ounce size."

---

[11] http://sno-joe.com/flavors.html

[12] http://www.tyssno.com/flavors.htm

These third-party uses support our view that the term "White Chocolate & Chips" is merely descriptive. Applicant dismisses these uses by its competitors by asserting that they are "unlawful use," although it is not clear what applicant has done to counteract this usage. In any event, the fact that third parties consistently use this term to describe a flavoring is an indication that manufacturers and retail merchants as well as the ultimate snow cone consumers in New Orleans and Houston view "White Chocolate & Chips" as a descriptive term for this particular flavoring. In determining descriptiveness, tribunals often look to whether competitors actually use the identical term and/or need to use the disputed term to compete within an established product line. *See* 2 McCarthy on Trademarks and Unfair Competition, §§ 11.68 and 11.69, 4th Edition (2010).

Thus, we find that "White Chocolate" is highly descriptive of the flavor of the goods, and that "Chips" is merely descriptive of the specks, and when joined together with an ampersand, the resulting term, "White Chocolate & Chips," is merely descriptive.

Nonetheless, applicant argues that, even if the involved term otherwise appears to have a descriptive meaning, it is registrable on the Principal Register because it conveys a double entendre. In this regard, applicant likens its

alleged mark to the well-known example of **SUGAR & SPICE** in arguing that its applied-for term should be found to be non-descriptive. Indeed, a mark is registrable if it has, in addition to a descriptive meaning, a unique, incongruous, or otherwise non-descriptive meaning in relation to the goods. *See The Institut National des Appellations D'Origine v. Vintners International Co. Inc.*, 958 F.2d 1574, 22 USPQ2d 1190 (Fed. Cir. 1992) [affirming Board's position that **CHABLIS WITH A TWIST** projects a double meaning, e.g., the unusual approach of garnishing wine with a citrus flavoring]; *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 384 (CCPA 1968) [the term **SUGAR & SPICE** held not to be merely descriptive of bakery products][13] and *In re National Tea Co.*, 144 USPQ 286 (TTAB 1965) [**NO BONES ABOUT IT** for fresh pre-cooked ham]. In addition to the straightforward and merely descriptive meaning, the term in each of these cases creates a second, non-descriptive meaning that members of the public would readily understand, thereby rendering the term registrable on the Principal Register as an inherently distinctive mark.

[13] In this oft-cited decision of the predecessor to our principal reviewing court, the Court found this matter clearly functioned as a trademark because "sugar and spice" is a well-known phrase taken from a nursery rhyme. The composite mark is inherently distinctive as applied to bakery products – even ones containing these two ingredients – precisely because this combination from the nursery rhyme is familiar to anyone seeing or hearing this mark.

However, applicant has not explained what non-descriptive meaning consumers would ascribe to its mark, and a non-descriptive meaning is certainly not readily apparent to us. Therefore, we find that the term "White Chocolate & Chips" does not consist of a clever or incongruous combination and conveys no double entendre.

Rather, we find that the Trademark Examining Attorney has demonstrated that the term, "White Chocolate & Chips," when viewed as a whole, immediately conveys readily understood information about the primary flavor of the goods, as well the presence of tiny specks in the goods. Hence, we conclude that applicant's applied-for mark is merely descriptive of its identified "food flavorings."

Genericness

The question of whether this term is capable of functioning as a source identifier is not before us. The Trademark Examining Attorney has already determined that this term is registrable on the Supplemental Register. Hence, this mark will not be published for opposition, but will proceed to issuance on the Supplemental Register.

Decision: In view of the above findings, the refusal to register on the Principal Register is hereby affirmed. However, the registration will issue on the Supplemental Register in due course.

(TTAB 1985).

The product sold under the trademark WHITE CHOCOLATE & CHIPS is a flavored concentrate that is purchased by snow ball vendors, or snow ball vendor suppliers, to produce a ready-to-use flavored syrup. The snow ball vendor, in turn, produces the ready-to-use syrup and pours it over shaved ice to make a snow ball, a/k/a, a snow cone. Applicant does not sell flavored concentrate to the general public.

In the initial refusal, the examiner asserted that "white chocolate refers to a sweet confection cocoa butter and flavored vanilla, and 'chips' are very small pieces of food. Together, these terms readily impart that applicant's food flavoring is white chocolate in flavor, and contains small pieces. See the enclosed copy of applicant's website, in which applicant describes the chocolate flavor, vanilla and 'specks' ingredients."

In response to the argument, applicant submitted as evidence the Meriam-Webster Online Dictionary definition of chips which is:

"1:a: a small usually thin and flat piece (as of wood or stone) cut, struck, or flaked off; b: a small piece of food: as (1) : a small thin slice of food; especially: potato chip (2): french fry (3): a small cone-shaped bit of food often used for baking <chocolate chips>

2 : something small, worthless, or trivial

To:	SNOWIZARD, INC. (tolar@cavtel.net)
Subject:	U.S. TRADEMARK APPLICATION NO. 77471425 - WHITE CHOCOLATE & CHIPS - N/A
Sent:	5/5/2010 10:22:31 AM
Sent As:	ECOM115@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7 Attachment - 8 Attachment - 9 Attachment - 10 Attachment - 11 Attachment - 12 Attachment - 13 Attachment - 14 Attachment - 15 Attachment - 16 Attachment - 17

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/471425

MARK: WHITE CHOCOLATE & CHIPS

77471425

CORRESPONDENT ADDRESS:
KENNETH L TOLAR
SUITE 2
2908 HESSMER AVENUE
METAIRIE, LA 70002

GENERAL TRADEMARK INFORMATION:
http://www.uspto.gov/main/trademarks.htm

APPLICANT: SNOWIZARD, INC.

CORRESPONDENT'S REFERENCE/DOCKET NO:
N/A
CORRESPONDENT E-MAIL ADDRESS:
tolar@cavtel.net

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 5/5/2010

Applicant is requesting reconsideration of a final refusal issued/mailed October 15, 2009.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

The examining attorney specifically finds that the proposed mark is registrable on the Supplemental Register, but maintains the refusal of the proposed mark on the Principal Register under Trademark Act Section 2(e)(1). Additional evidence of descriptiveness is attached. Since the applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

If the applicant has any questions, please contact the undersigned.

Janice L. McMorrow
/Janice McMorrow/
Trademark Examining Attorney
Law Office 115
571-272-9194
email: janice.mcmorrow@uspto.gov

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at http://tarr.uspto.gov. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Time of Request: Tuesday, May 04, 2010 10:45:48 EST
Client ID/Project Name:
Number of Lines: 74
Job Number: 2842:219444750

Research Information

Service: Terms and Connectors Search
Print Request: Current Document: 30
Source: US Newspapers
Search Terms: white chocolate w/1 chip and snowcone or snowball or snoball

30 of 31 DOCUMENTS

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The Houston Chronicle

July 21, 1996, Sunday, 2 STAR Edition

SECTION: LIFESTYLE; Pg. 5

LENGTH: 917 words

HEADLINE: In search of vendors, flavors?

BYLINE: Staff

BODY:

.

Here's a sample of **snowball** vendors in the Houston area:

MVP's New Orleans **Snowballs,** 11006 Dorrance (Highway 59 at Murphy Road); 530-5544. Open noon-10 p.m. Mondays-Saturdays, 1-9 p.m. Sundays. Seating: two benches under a shade ...

...in the front window.

Probably the fluffiest, smoothest snow this side of the Crescent City, made not too juicy but just right.

Flavors include vanilla malt, cranberry, hazelnut, Andes chocolate mint, **white chocolate and chips,** cantaloupe, butter cream and creamy coconut. For an extra 30 cents, MVP will add such toppings as cream, condensed milk, Hershey's chocolate syrup, cherries and Knottsberry Farm crushed pineapple and strawberry. Mario Monterroza uses a gentle touch with the snow machine and creates a sublime coffee-flavored **snowball** topped with sweetened condensed milk. Prices start at $ 1 for small and go up to $ 3.85 for 44-ounce size.

GRAPHIC:

Photo: Mark Vincent Paul, owner of MVP's New Orleans **Snowballs,** mixes up a snowy concoction; Howard Castleberry/Chronicle

108B8C

********** Print Completed **********

Time of Request: Tuesday, May 04, 2010 10:45:48 EST

Select From 160 Flavors

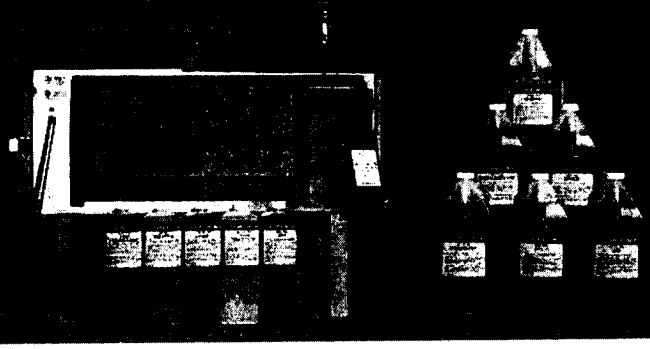
Southern Snow™ offers 165 flavors. All flavors are made in house & are always in stock. Our flavor concentrates cost $9.00/quart or $27/gallon regardless which flavor you order.

Southern Snow™ ***has the:***

Best tasting flavors	Largest flavor variety	Fastest service	Widest color variety

How Many Snowballs Our Flavor Concentrates Make:

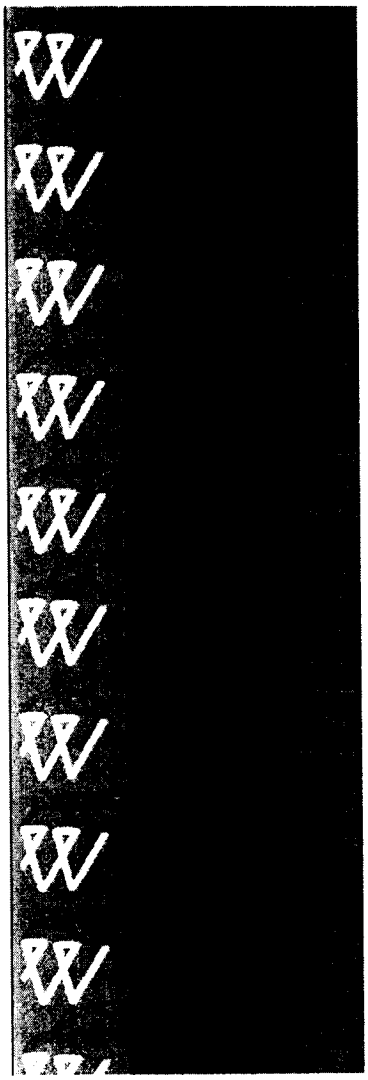
1 Quart ($9.00/qt)	This quart will flavor and color 8 gallons of simple syrup (sugar & water), giving you 250 twelve ounce snowballs in this flavor.
1 Gallon ($27/gal)	This quart will flavor and color 32 gallons of simple syrup (sugar & water), giving you 1000 twelve ounce snowballs in this flavor.



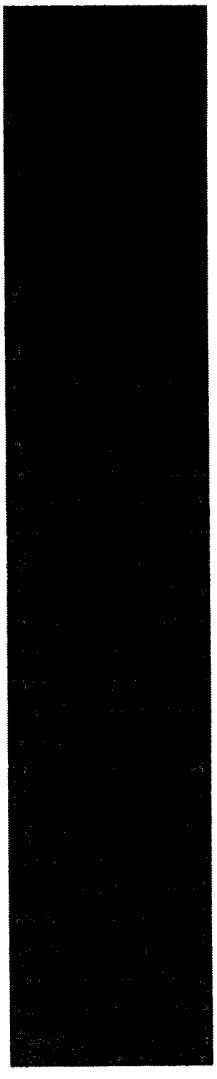
Southern Snow ® FLAVOR CONCENTRATE

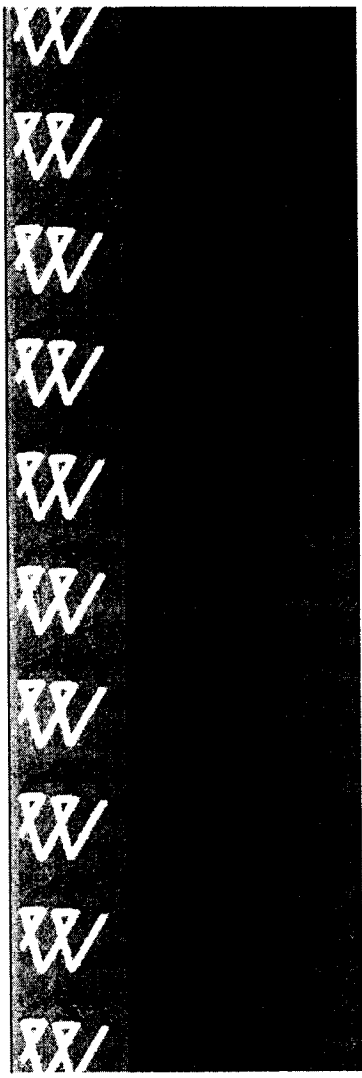
2010 2010

ALMOND COTTON CANDY-PINK PEACH



ALMOND
AMARETTO
ANISETTE
APPLE
APPLE PIE
APRICOT
BAHAMA MAMA
BANANA
BANANA BUBBLE GUM
BANANA DAIQUIRI
BANANAS FOSTER
BIRTHDAY CAKE
BLACKBERRY
BLACK CHERRY
BLACK RASPBERRY
BLACK WALNUT
BLUEBERRY
BLUEBERRY CHEESECAKE
BLUE COCONUT
BLUE EAGLE
BLUE HAWAIIAN
BLUE RASPBERRY
BLUE STRAWBERRY
BOYSENBERRY
BRANDY
BUBBLE GUM - BLUE
BUBBLE GUM - PINK
BUBBLE GUM - YELLOW
BUTTER CREAM
BUTTER PECAN
BUTTERED POPCORN
BUTTERSCOTCH
CAJUN RED HOT
CAKE BATTER
CANDY APPLE
CANTALOUPE
CAPPUCCINO
CARAMEL
CARAMEL POPCORN
CHAI
CHEESECAKE
CHERRY
CHERRY COLA
CHERRY LIME-AID
CINNAMON
CINNAMON GUM
CLEAR BLACKBERRY**
CLEAR BUBBLE GUM**
CLEAR CHERRY**
CLEAR GRAPE**
CLEAR RASPBERRY**
CLEAR SPEARMINT**
CLEAR STRAWBERRY**
COCONUT
COFFEE
COTTON CANDY-PINK
CRANBERRY
CREAM CHEESE
CREAM SODA
CREAMY COCONUT
CREME DE MENTE
CUSTARD
DAIQUIRI
DILL PICKLE***
DINOSAUR
DREAMSICLE
EGG CUSTARD
EGG NOG
FIREBALL
FRENCH VANILLA
FRUITASIA
FUZZY NAVEL
GEORGIA PEACH
GRAPE
GREEN APPLE
GUANABANA
GUAVA
HAWAIIAN
HAZELNUT
HONEY DEW MELON
HURRICANE
ICE CREAM
ICED TEA
IRISH CREAM
KEY LIME PIE
KIWI
KIWI LIME
LECHE
LEMON - YELLOW
LEMONADE -CLEAR
LEMON LIME
LEMON MERINGUE
LICORICE
LIME
MAI TAI
MALT
MALTED MILK
MANDARIN
MANGO
MAPLE
MARASCHINO CHERRY
MARDI GRAS KING CAKE
MARGARITA
MAUI WOWEE
MOJITO
MOUNTAIN MAPLE
MUDSLIDE
NECTAR
ORANGE
ORANGE PINEAPPLE
PEACH
PEACH DAIQUIRI
PEANUT BUTTER
PEAR
PEPPERMINT - CLEAR
PEPPERMINT - RED
PINA COLADA - CLEAR
PINA COLADA - YELLOW
PINEAPPLE
PINK CHAMPAGNE
PINK GRAPEFRUIT
PINK LEMONADE
PINK LEMON SOUR
PINK MAI TAI
PISTACHIO
PLUM
POLAR PUNCH
POPEYE
PRALINE
PUMPKIN PIE
RASPBERRY
RED VELVET CAKE
ROCK & ROLL
ROOTBEER
RUM
SEA BREEZE
SILVER FOX ™
SNOW ANGEL ™
SOUR APPLE
SOUR CHERRY
SOUR GRAPE
SPEARMINT
STRAWBERRY
STRAWBERRY CHEESECAKE
STRAWBERRY DAIQUIRI
STRAWBERRY KIWI
STRAWBERRY MANGO
STRAWBERRY SHORTCAKE
SWEET CHERRY
TAMARIND
TANGERINE
TIGER BLOOD
TOASTED COCONUT
TOFFEE
TROPICAL PUNCH
TSUNAMI ™
TUTTI FRUTTI
VANILLA
VANILLA MALT
WATERMELON
WEDDING CAKE
WHITE CHOCOLATE & CHIPS
WHITE CHOCOLATE MACADAMIA
WHITE RUSSIAN
WILD CHERRY





COFFEE
COLA
COOKIE DOUGH
COTTON CANDY-BLUE
ORANGE PINEAPPLE
ORCHID
PAPAYA
PASSION FRUIT
WILD CHERRY
WILD STRAWBERRY
WINE COOLER

* CHOCOLATE SYRUP IS BEST MADE WITH HOMEMADE CHOCOLATE SYRUP AND NOT FLAVOR CONCENTRATE. SEE DETAILED DESCRIPTIONS FOR CHOCOLATE SYRUP BELOW.
** SUGAR FLAVORS HAVE NO ADDED COLOR
*** DILL PICKLE - ADD 4 OZ. CONCENTRATE TO ONE GALLON WATER TO PREPARE PICKLE JUICE. NO SUGAR ADDED

INSTRUCTIONS:
LEARN HOW TO MAKE THE BEST SHAVED ICE, SNOWBALLS AND SNOWCONES WITH THESE DETAILED DESCRIPTIONS FOR...

Making Simple Syrup | Toppings | Making Sugar Free Syrup
Making Chocolate Syrup | Using Fruit Acid/Preservatives | Using Splenda
How To Make Shaved Ice, Snow Ball or Sno Cone Flavor Syrup

Looking to open a snowball outlet or make a large quantity purchase? *Click here!*

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Picard's range of Creme Glacee in Pistache avec Morceaux de Pistache, Caramel avec Morceaux de Caramel, Chocolat Blanc avec Morceaux de Chocolat Blanc varieties available in France Product Launch Tracker April 23, 2010 Friday (Copy w/ Cite) Pages: 2

Source: Legal > / . . . / > **News, All (English, Full Text)**
Terms: **"white chocolate & chips" w/s ice** (Edit Search | Suggest Terms for My Search)

Select for FOCUS™ or Delivery

Picard's range of Creme Glacee in Pistache avec Morceaux de Pistache, Caramel avec Morceaux de Caramel, Chocolat Blanc avec Morceaux de Chocolat Blanc varieties available in France Product Launch Tracker April 23, 2010 Friday

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April 23, 2010 Friday

LENGTH: 85 words

HEADLINE: Picard's range of Creme Glacee in Pistache avec Morceaux de Pistache, Caramel avec Morceaux de Caramel, Chocolat Blanc avec Morceaux de Chocolat Blanc varieties available in France

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Morceaux de Chocolat Blanc varieties available in France

BODY:

In France, Picard les Surgeles has extended its line of frozen products with the addition of 3 varieties of Creme Glacees (**Ice** Creams) marketed under the Picard brand name. The varieties are: Chocolat Blanc avec Morceaux de Chocolat Blanc (White Chocolate with **White Chocolate Chips)**, Pistache avec Morceaux de Pistache (Pistachio with Pieces of Pistachio) and Caramel avec Morceaux de Caramel (Caramel with Pieces of Caramel). Presented in 1l plastic tubs, they retail for 3.20 EUR.

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Picard's range of Creme Glacee in Pistache avec Morceaux de Pistache, Caramel avec Morceaux de Caramel, Chocolat Blanc avec Morceaux de Chocolat Blanc varieties available in France Product Launch Tracker April 23, 2010 Friday (Copy w/ Cite)

Source: Legal > / . . . / > **News, All (English, Full Text)**
Terms: **"white chocolate & chips" w/s ice** (Edit Search | Suggest Terms for My Search)
View: KWIC
Date/Time: Monday, May 3, 2010 8:25 PM EDT

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http://snoballsupplies.com/page2.html 05/05/2010 10:08:52 AM

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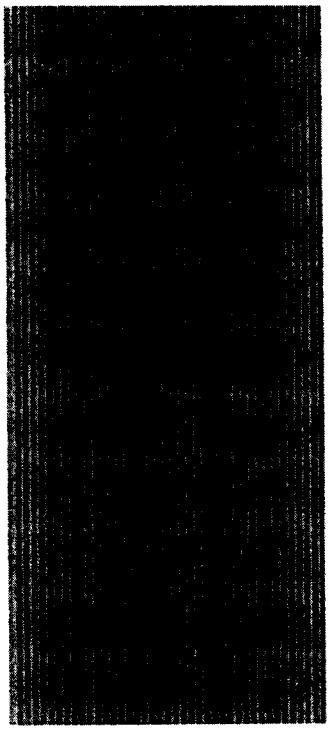
BONNIE'S SNAK SHAK

Your source for snoball supplies and equipment.

Available Flavors

Almond	Coconut/White	Mango	Sea Breeze
Apple/Green	Coffee	Margarita	Silver Fox
Apple/Red		Nectar	Sour Apple
Bahama Mama	Cotton Candy	Ninja Turtle Juice	Spearmint
Banana	Cream Soda	Orange	Strawberry
Banana Daiquiri	Custard	Papaya	Strawberry Cheesecake
Barney	Daiquiri	Passion Fruit	Strawberry Daiquiri
Beetle Juice	Dill Pickle	Peach	Strawberry Shortcake
Blackberry	Dreamsicle	Peach Daiquiri	Strawberry/Wild
Black Cherry	French Vanilla	Peanut Butter	Tamarind
Black Walnut	Fudgesicle	Pear	Tangerine
Blueberry	Fuzzy Navel	Peppermint	Tiger's Blood



Bubblegum/Blue	Grape	Pina Colada/White	Toasted Coconut
Bubblegum/Pink	Grapefruit	Pina Colada/Yellow	Toffee
Butter Cream	Guava	Pineapple/Blue	Tutti Frutti
Butterscotch	Hawaiian/Blue	Pineapple/Yellow	Vanilla
Cajun Red Hot	Hawaiian/Red	Pink Champagne	Vanilla Malt
Candy Apple	Honeydew Melon	Pink Lemonade	Watermelon
Cantaloupe	Hurricane	Pink Lemon Sour	Wedding Cake
Cappuccino	Ice Cream	Pistachio	White Choc. Chip
Caramel	Irish Creme	Plum	White Russian
Cheesecake	Kiwi	Polar Punch	Wine Cooler/Red
Cherry	Leche	Popeye	Wine Cooler/Yellow
Cherry/Maraschino	Lemon	Praline	Yellow Cake Batter
Cherry/Sweet	Lemon Drop	Raspberry/Blue	
Cherry/Wild	Lemon Limo	Raspberry/Red	
Cherry Limeade	Lemon Meringue	Red Velvet Cake	
Chocolate	Licorice	Rock & Roll	
Cinnamon	Lime	Rootbeer	
Coconut/Blue	Mandarin	Rum	

TYPED DRAWING

Serial Number
74039250

Status
REGISTERED AND RENEWED

Word Mark
GRAND ORANGE

Standard Character Mark
No

Registration Number
1696309

Date Registered
1992/06/23

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(1) TYPED DRAWING

Owner
MARIE BRIZARD ET ROGER INTERNATIONAL AKA MARIE BRIZARD & ROGER INTERNATIONAL CORPORATION FRANCE 130-142 RUE FONDAUDEGE 33000 BORDEAUX FRANCE

Goods/Services
Class Status -- ACTIVE. IC 030. US 046. G & S: alcoholic food flavoring containing non-essential oils and essences and extracts used as a food flavoring. First Use: 1989/04/00. First Use In Commerce: 1989/06/00.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ORANGE" APART FROM THE MARK AS SHOWN.

Filing Date
1990/03/16

Examining Attorney
BATTLE, KENNETH D.

Attorney of Record

HOWARD C. MISKIN

Print: May 5, 2010 **78359300**

DESIGN MARK

Serial Number
78359300

Status
REGISTERED

Word Mark
LEMON'S BEST

Standard Character Mark
No

Registration Number
2928872

Date Registered
2005/03/01

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner
RMK, Incorporated CORPORATION DELAWARE 680 West End Avenue New York NEW YORK 10025

Goods/Services
Class Status -- ACTIVE. IC 030. US 046. G & S: citrus-oil based food flavoring. First Use: 2004/04/20. First Use In Commerce: 2004/04/20.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LEMON" APART FROM THE MARK AS SHOWN.

Filing Date
2004/01/29

Examining Attorney
TAYLOR, DAVID

Attorney of Record
Bret J. Danow

LEMON'S
BEST

DESIGN MARK

Serial Number
78491317

Status
REGISTERED

Word Mark
WHITE CHOCOLATE CARAMEL SPLASH

Standard Character Mark
Yes

Registration Number
2980020

Date Registered
2005/07/26

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Wells' Dairy, Inc. CORPORATION IOWA P.O. Box 1310 One Blue Bunny Drive Le Mars IOWA 51031

Goods/Services
Class Status -- ACTIVE. IC 030. US 046. G & S: FROZEN CONFECTIONS. First Use: 2004/12/28. First Use In Commerce: 2004/12/28.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "white chocolate caramel" APART FROM THE MARK AS SHOWN.

Filing Date
2004/09/29

Examining Attorney
STINE, DAVID

Attorney of Record
Bruce W. McKee

WHITE CHOCOLATE CARAMEL SPLASH

Print: May 5, 2010 **78760369**

DESIGN MARK

Serial Number
78760369

Status
REGISTERED

Word Mark
KEYLIME WHITE CHOCOLATE CHEESE BRULEE

Standard Character Mark
Yes

Registration Number
3284012

Date Registered
2007/08/21

Type of Mark
TRADEMARK

Register
SUPPLEMENTAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Sweet Street Desserts, Inc. CORPORATION PENNSYLVANIA 722 Hiesters lane Reading PENNSYLVANIA 19605

Goods/Services
Class Status -- ACTIVE. IC 030. US 046. G & S: Dessert products, namely bakery desserts. First Use: 1998/02/00. First Use In Commerce: 1998/02/00.

Filing Date
2005/11/23

Amended Register Date
2007/06/26

Examining Attorney
GARTNER, JOHN

Attorney of Record
Stephen J. Meyers

KEYLIME WHITE CHOCOLATE
CHEESE BRULEE

DESIGN MARK

Serial Number
78762244

Status
REGISTERED

Word Mark
RASPBERRY WHITE CHOCOLATE CHEESE BRULEE

Standard Character Mark
Yes

Registration Number
3284016

Date Registered
2007/08/21

Type of Mark
TRADEMARK

Register
SUPPLEMENTAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Sweet Street Desserts, Inc. CORPORATION PENNSYLVANIA 722 Hiesters lane Reading PENNSYLVANIA 19605

Goods/Services
Class Status -- ACTIVE. IC 030. US 046. G & S: Dessert products, namely, bakery desserts. First Use: 2001/04/00. First Use In Commerce: 2001/04/01.

Filing Date
2005/11/29

Amended Register Date
2007/06/26

Examining Attorney
GARTNER, JOHN

Attorney of Record
Stephen J. Meyers

RASPBERRY WHITE CHOCOLATE
CHEESE BRULEE