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Part 1 of 1



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

TTAB

NIRVANA, INC.)

Petitioner,)

v.)

NIRVANA FOR HEALTH INC.)

Registrant.)

Cancellation No.: 92042878

Attorney Ref.: 2779-6

PETITIONER'S MOTION FOR SUMMARY JUDGMENT



07-31-2006

TABLE OF CONTENTS

I. MATERIAL FACTS THAT ARE NOT IN DISPUTE.....	2
II. STANDARD FOR SUMMARY JUDGMENT	10
III. NHI HAS ABANDONED REGISTRATION NO. 2,731,312 THROUGH NONUSE.....	11
A. The Standard for Abandonment.....	11
B. There is <i>Prima Facie</i> Evidence that NHI Abandoned the NIRVANA Mark	12
IV. NHI HAS FRAUDULENTLY OBTAINED REGISTRATION NO. 2,731,312	13
A. The Standard for Fraudulent Procurement of Registration	13
B. There is Undisputed Evidence that NHI Fraudulently Obtained Registration No. 2,731,312	14
V. CONCLUSION	18

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	10
<i>Auburn Farms Inc. v. McKee Foods Corp.</i> , 51 USPQ2d 1439 (TTAB 1999) ..	16
<i>Bakaert Steel Wire Corp. v. S.p.A. Officine Maccaferri Gia' Raffaele Maccaferri & Fagli</i> , 196 USPQ 558 (TTAB 1977)	14
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S. Ct. 2548 (1986)	10
<i>Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.</i> , 892 F.2d 1021 (Fed. Cir. 1989)	11
<i>First Int'l Serv. Corp. v. Chuckles Inc.</i> , 5 USPQ2d 1628 (TTAB 1988).	13
<i>General Car and Truck Leasing Systems, Inc. v. General Rent-A-Car Inc.</i> , 17 USPQ2d 1398 (S.D. Fla. 1990)	13
<i>General Rent-A-Car Inc. v. General Leaseways, Inc.</i> , Canc. No. 14,870 (TTAB May 2, 1998)	13
<i>Imperial Tobacco Ltd. v. Philip Morris, Inc.</i> , 899 F.2d 1575 (Fed. Cir. 1990) ..	11
<i>Martahus v. Video Duplication Serv., Inc.</i> , 3 F.3d 417 (Fed. Cir. 1993)	11
<i>Medinol Ltd. v. Neuro Vasx Inc.</i> , 67 USPQ2d 1205, 1208 (TTAB 2003).....	13, 14
<i>Mister Leonard Inc. v. Jacques Leonard Couture Inc.</i> , 23 USPQ2d (TTAB 1992)	13
<i>Money Store v. Harriscorp Finance, Inc.</i> , 689 F.2d 666, 216 USPQ 11 (7th Cir. 1989);	16
<i>On-line Careline Inc. v. America Online Inc.</i> , 229 F.3d 1080 (Fed. Cir. 2000).	11
<i>Parfums Nautee Ltd. v. American International Industries</i> , 22 USPQ2d 1306 (TTAB 1992).....	16
<i>Rivard v. Linville</i> , 133 F.3d 1446 (Fed. Cir. 1998)	11
<i>Torres v. Cantine Torresella S.r.l.</i> , 808 F.2d 46 (Fed. Cir. 1986).....	13

Woodstock's Enterprises Inc. (California) v. Woodstock's Enterprises Inc. (Oregon), 43 USPQ2d 1440 (TTAB 1997)..... 14

STATUTES AND ACTS

Fed.R.Civ.P. 56 (c)..... 10

15 U.S.C. § 1064(3) (2000)..... 11

15 U.S.C. §1127 (2000)..... 11, 12

TMEP §901.05..... 15

TMEP §1201.03..... 15

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NIRVANA, INC.)	
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Petitioner,)	
)	Cancellation No.: 92042878
v.)	
)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, Fed.R.Civ.P., petitioner Nirvana, Inc. ("Nirvana") hereby moves for summary judgment that Nirvana for Health Inc. ("NHI") has abandoned its rights in the mark of Registration No. 2,731,312, or alternatively, has fraudulently obtained trademark Registration No. 2,731,312. As a consequence, this motion seeks the cancellation of the NIRVANA registration.

As demonstrated below, NHI has not used the mark NIRVANA for "bottled natural spring mineral water" in well over three years and has provided no evidence that it intends to resume use of the mark. Thus, it should be deemed to have abandoned the mark for "bottled natural spring mineral water." In addition, there is no material fact in dispute that at the time NHI filed an application for the mark NIRVANA for "bottled natural spring mineral water," NHI knew that it was not the owner of the NIRVANA trademark for such goods and yet persuaded the USPTO to issue the '312 Registration for such goods.

I. MATERIAL FACTS THAT ARE NOT IN DISPUTE

The following material facts are not in dispute:

1. Nirvana Restaurant Inc. of 30 Central Park South New York, New York 10019 filed Application Serial No. 75/565,188 for the mark NIRVANA for "bottled water" on October 5, 1998. This application claimed a first date of use of October 30, 1996 and a first date of use in commerce of October 30, 1996. This application was abandoned on August 17, 1999 because of the Applicant's failure to completely respond to an Office Action. See **Exhibit 1**, De Luca Decl., Tab A.

2. Nirvana for Health Inc. of 40 Central Park South, 2A New York, New York 100191633, filed Application Serial No. 76/319,172 for the mark NIRVANA for "bottled natural spring mineral water" on October 1, 2001. This application issued as Registration No. 2,731,312. See **Exhibit 2**.

3. Registration No. 2,731,312 claims a first date of use anywhere of August 14, 1970 and a first date of use in commerce of August 14, 1990. See **Exhibit 2**.

4. In Application Serial No. 76/319,172, NHI listed its mailing address as "Nirvana for Health Inc., 40 Central Park South, 2A, New York, New York 10019-1633, Nirva [sic] founded in 1970 by Shamsheer Wadud." (emphasis added). See **Exhibit 3**.

5. The cover letter to Application Serial No. 76/319,172 was signed by Shamsheer Wadud, as "Chairman & President – Nirvana for Health Inc." and "President – Nirvana Restaurant Inc." See **Exhibit 4**, cover letter to application from file history of the '172 Application.

6. One attachment submitted with the application in Application Serial No. 76/319,172 is a certificate that indicates that "Nirvana Himalayas Water Corporation" was

a member of the Water Quality Association. The certificate is dated 1990. See **Exhibit 5**, from the file history of the '172 Application.

7. Another attachment submitted with the application in Application Serial No. 76/319,172 indicates that Nirvana restaurant included "Nirvana Spring Water" on its menu. The menu indicates that the restaurant was founded "in 1970 by Shamsheer Wadud." The menu is not dated and does not include the restaurant's location. See **Exhibit 6**, from the file history of the '172 Application.

8. A specimen of use submitted in Application Serial No. 76/319,172 shows water bottles with a label including the term NIRVANA that according to the label were being offered by "Nirvana Penthouse, 30 Central Park South, New York, NY 10019." The label indicates that the restaurant was "celebrating its 25th Anniversary." See **Exhibit 7**, from the file history of the '172 Application.

9. If Nirvana Penthouse is the restaurant owned by Nirvana Restaurant Inc., which was alleged to have been in business since 1970, then the restaurant's 25th anniversary date was in 1995. Thus, the specimens of use submitted with the application in September 2001 were not specimens of current use as of 2001.

10. No specimens of use submitted in Application Serial No. 76/319,172 indicate use by Registrant, Nirvana for Health Inc.

11. NHI is the record owner of United States Trademark Registration No. 2,731,312. See **Exhibit 8**, a copy of the '312 Registration and its record from TESS.

12. Petitioner, Nirvana is the owner of the trade name and trademark NIRVANA in connection with spring water, having incorporated in New York as Nirvana, Inc. on June 1, 1995 (See **Exhibit 9**, Rafizadeh Decl., Tab A) and thereafter continuously used and is

using the trade name and trademark NIRVANA in commerce in connection with the marketing and sale of spring water. See **Exhibit 9**, Rafizadeh Decl., Para. 2 and Tab B.

13. The mark shown in Registration No. 2,731,312 and Petitioner's name and mark NIRVANA are identical.

14. Petitioner's spring water and NHI's bottled natural spring mineral water identified in Registration No. 2,731,312 are virtually identical products which are or are likely to be offered through the same or overlapping channels of trade to the same or overlapping classes of purchasers.

15. There is no evidence of record showing that the entity NHI made bona fide use of the mark NIRVANA as a trademark for the goods covered by Registration No. 2,731,312.

16. There is no evidence that NHI was the owner of the mark NIRVANA when the application for registration was filed on October 1, 2001.

17. At the time that the application for registration was executed by Shamsheer Wadud, President of NHI (hereafter "Wadud") on September 24, 2001, Wadud knew that the mark NIRVANA had not been used by NHI and that NHI was not the owner of the mark NIRVANA.

18. In Application Serial No. 76/319,172 for registration filed by NHI under notice of 18 U.S.C. § 1001, Wadud falsely stated that "he/she believes the applicant to be the owner of the trademark/service mark sought to be registered...." See **Exhibit 3**, from the file history of the '172 Application.

19. At the time he signed the application oath in Application Serial No. 76/319,172 on September 24, 2001, Wadud knew that NHI did not own the mark NIRVANA for bottled water and that the allegation of ownership made in the oath was false.

20. In Application Serial No. 76/319,172 for registration filed by NHI under notice of 18 U.S.C. § 1001, Wadud falsely stated that:

to the best of his/her knowledge and belief no other person, firm, corporation or association has the right to use the above identified 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.... See **Exhibit 3**, from the file history of the '172 Application.

21. Petitioner at no time assigned to NHI any rights in the trade name or trademark NIRVANA.

22. NHI's false statements were made with the intent to induce authorized agents of the United States Patent and Trademark Office to grant Registration No. 2,731,312 and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration to NHI.

23. NHI claims that its predecessors insofar as NHI's use of rights in the mark NIRVANA are concerned are Nirvana Bengal Cabaret, Inc. and Nirvana Himalayas Water Corporation. See **Exhibit 10**, NHI's Response to Interrogatory No. 4.

24. NHI claims that its first commercial use of the mark NIRVANA on bottled natural spring mineral water was on August 14, 1970, when Mr. Wadud made labels that he placed on bottles which he sold from his restaurant, then located at 1193 Lexington Ave., New York, New York 10028. See **Exhibit 11**, NHI's Response to Interrogatory No. 6.

25. NHI claims that its bottles of water under the NIRVANA mark are “sold from a restaurant and distributed to other restaurants in boxes of 12 or 24, in either plastic or glass, and that the type of customers that ultimately purchase the bottled water are mainly sophisticated customers who learn of the bottled water when the [sic] frequent the restaurant(s). See **Exhibit 12**, NHI’s Response to Interrogatory No. 13.

26. NHI claims that the public becomes aware of NHI’s bottled natural spring mineral water and the mark NIRVANA by hearing it primarily by word of mouth, or when displayed for sale in restaurants, or when mentioned in news feature articles. See **Exhibit 13**, NHI’s Response to Interrogatory No. 19.

27. NHI’s cover letter for its Application Serial No. 76/319,172 stated that “[a]t this time . . . NHI is now planning to engage in a mass marketing campaign of ‘NirvanaTM’ water and increase global sales. . .” See **Exhibit 4**.

28. NHI has not placed advertisements with newspapers or on the internet for bottled water under the mark NIRVANA. See **Exhibit 13**, NHI’s Response to Interrogatory No. 20.

29. NHI was not listed as a member of the International Bottled Water Association in the 2003 Membership Roster. See **Exhibit 9**, Rafizadeh Decl., Tab C.

30. NHI is not a current member of the International Bottled Water Association. See **Exhibit 14**, NHI’s Response to Interrogatory No. 23.

31. The Nirvana Himalayas Water Corporation was issued a license by the Nepalese government to establish a spring water bottling plant in the Remechap district of Nepal on May 8, 1991. See **Exhibit 9**, Rafizadeh Decl., Tab D. A condition of the license is that “the license will be cancelled and the deposit will be confiscated if the industry is not

established according to the work plan and not operated within 12 months. If the industry could not be established according to the schedule, approval from the department for the extension of the license is required." See **Exhibit 9**, Rafizadeh Decl., Tab D at p. 2.

32. A business plan for Nirvana Himalayas Water Corporation of 40 Central Park South, New York, New York 10019 of September 19, 1990, indicates that as of September 1990, the company was only a start up and sales were still only projected versus actual. See **Exhibit 9**, Rafizadeh Decl., Tab E.

33. A New York Post article of June 28, 1991 reports that Shamsheer Wadud "intends [his bottled water] to be a Perrier, Asian-style." See **Exhibit 9**, Rafizadeh Decl., Tab F.

34. A New York Newsday article from June 21, 1991 indicates that Nirvana bottled spring water "will be priced, and will come in vase-like bottles." See **Exhibit 9**, Rafizadeh Decl., Tab G.

35. On or about July 23, 2002, a wall of the restaurant Nirvana located at 30 Central Park South collapsed. See **Exhibit 1**, De Luca Decl., Tab B, paras. 4-5, excerpt from document in *In re Nirvana Restaurant, Inc.*, Bankruptcy Case. As a result of the damage, a vacate order was issued by the city of New York. The restaurant immediately ceased operations. Articles from the internet indicate that the restaurant never reopened. See **Exhibit 1**, De Luca Decl., Tab C.

36. Certain of the Nirvana restaurant assets were abandoned. (**Exhibit 1**, De Luca Decl., Tab D). The restaurant property was sold in the Bankruptcy Court. In particular, an auction of the restaurant property was conducted at the Courthouse on February 9, 2004 (**Exhibit 1**, De Luca Decl., Tab E) and a hearing to approve the auction was held on

February 10, 2004 (**Exhibit 1**, De Luca Decl., Tab F). Wadud did not bid at the auction and the Court entered an Order on February 11, 2004 authorizing and approving the terms and conditions of the sale by the Trustee to Dr. Dipak Nandi, the highest bidder. See **Exhibit 1**, De Luca Decl., Tabs F and G, paras. 11, 12.

37. Nirvana for Health Inc. was incorporated in New York on June 14, 2001. See **Exhibit 15**. Nirvana for Health Inc. was not incorporated at the time of the alleged date of first use anywhere (August 14, 1970) and the date of first use in commerce in Application Serial No. 76/319,172 (August 14, 1990). Thus, the only way that Nirvana for Health Inc. could have used the mark as early as the first use dates claimed in the '172 application was through its predecessor companies.

38. The company Nirvana Restaurant Inc. of 40 Central Park South, New York, NY 10019 was incorporated in New York on May 3, 1995, well after the alleged first date of use and first date of use in commerce of the mark of the '172 application. The Nirvana Restaurant Inc. filed for Chapter Eleven bankruptcy on November 6, 2001, about a month after the '172 application was filed. See **Exhibit 1**, De Luca Decl., Tab H. The Chapter 11 Bankruptcy (reorganization) was converted to a Chapter 7 Bankruptcy (liquidation) on July 17, 2003. See **Exhibit 1**, De Luca Decl., Tab I.

39. The Bengal Cabaret Inc., a New York corporation of 1193 Lexington Avenue, New York, NY 11028, filed an application on December 9, 1970 for the mark NIRVANA for "restaurant services," which issued as Registration No. 947,368. See **Exhibit 16**, copy of the '368 Registration and its record from TESS. The '368 Registration expired under Section 9 on August 23, 1993. See **Exhibit 1**, De Luca Decl., Tab J, record from TESS. Registration 947,368 claims a first date of use of August 14, 1970. The Bengal Cabaret

Inc. allegedly assigned the entire interest and the goodwill of the '368 registration, effective Jan. 15, 1980 to Moti-Mahal Inc. Moti-Mahal Inc. allegedly assigned the entire interest and the goodwill, effective August 29, 1983 to Bhuyan, Farida Kamal. Bhuyan, Farida Kamal allegedly assigned the entire interest and the good will effective May 15, 1986 to Global Dynamics, Inc. Global Dynamics, Inc. allegedly assigned the entire interest and the good will as of March 25, 1988 to Nirvana Global Corporation. Nirvana Global Corporation allegedly assigned the entire interest to Rooftop Restaurant Inc. (executed August 14, 1995). Rooftop Restaurant Inc. allegedly assigned an undivided part of assignors interest (executed December 15, 1997) to Nirvana Restaurant Inc. See **Exhibit 1**, De Luca Dec., Tab K, printouts from the USPTO trademark assignment database.

40. The Bengal Cabaret Inc. has been inactive since 1987. See **Exhibit 1**, De Luca Decl., Tab L, Dun & Bradstreet company report of Bengal Cabaret Inc. Any assignments from the Bengal Cabaret Inc. of the mark NIRVANA after that date for bottled water from the Bengal Cabaret Inc. are invalid, since the goodwill of the business associated with the mark could not possibly have been assigned.

41. Since Registration No. 947,368 expired on August 23, 1993, the recorded assignments of Registration No. 947,368 to Rooftop Restaurant in 1995) and subsequently to Nirvana Restaurant Inc. in 1997 were also invalid since the goodwill of the business associated with the mark could not possibly have been assigned.

42. The NYS Department of State Division of Corporations records indicate that Nirvana Himalayas Water Corporation was incorporated on April 9, 1990. See **Exhibit 17**. The NYS Department of State records indicate that the Nirvana Himalayas Water Corporation was dissolved by proclamation on September 28, 1994. See **Exhibit 1**, De

Luca Decl. Para. 14. There is no evidence that the Nirvana Himalayas Water Corporation assigned the mark NIRVANA for bottled water and its goodwill to NHI before it dissolved.

43. Nirvana Restaurant Inc. of 30 Central Park South New York NEW YORK 10019 was the record owner of Registration No. 2,205,868 for the mark Nirvana for restaurant and nightclub services. See **Exhibit 18**, copy of '868 Registration and its record from TESS. Registration No. 2,205,868 was cancelled under section 8 on August 27, 2005. See **Exhibit 1**, De Luca Decl., Tab M, TESS record.

II. STANDARD FOR SUMMARY JUDGMENT

Under Rule 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513 (1996).

Once the movant establishes *prima facie* evidence that it is entitled to judgment as a matter of law, the non-movant may not rest on its pleadings, but must affirmatively demonstrate, by specific, verified facts, that there is a genuine issue of material fact that requires trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 106 S. Ct. 2548, 2553 (1986). There is no issue for trial "unless there is sufficient evidence favoring the nonmoving party for a [court] to return a verdict for that party." *Anderson*, 477 U.S. at 249, 106 S.Ct. at 2511.

III. NHI HAS ABANDONED REGISTRATION NO. 2,731,312 THROUGH NONUSE

A. The Standard for Abandonment

Under the Lanham Act, “[a] registered trademark may be canceled if it has been abandoned. See 15 U.S.C. § 1064(3) (2000). A registered trademark is considered abandoned if its “use has been discontinued with intent not to resume such use.” 15 U.S.C. § 1127 (2000). Since trademark registrations are presumed valid, the party seeking cancellation of such registration must rebut this presumption by a preponderance of the evidence. See *Martahus v. Video Duplication Serv., Inc.*, 3 F.3d 417, 421 (Fed. Cir. 1993); *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 1087 (Fed. Cir. 2000); *Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.*, 892 F.2d 1021, 1023 (Fed. Cir. 1989). “The party seeking cancellation establishes a prima facie case of abandonment by showing proof of nonuse for three consecutive years. See 15 U.S.C. § 1127. Establishing a prima facie case ‘eliminates the challenger’s burden to establish the intent element of abandonment as an initial part of [his] case,’ creating a rebuttable presumption that the trademark owner has abandoned the mark without intent to resume use. The burden then shifts to the trademark owner to produce evidence that he either used the mark during the statutory period or intended to resume use.” *America Online Inc.*, 229 F.3d at 1087 (citations omitted). Abandonment is a question of fact. *Id.*

“A registrant’s proclamations of his intent to resume or commence use in United States commerce during the period of nonuse are awarded little, if any, weight. *Rivard v. Linville*, 133 F.3d 1446, 1449 (Fed. Cir. 1998) citing *Imperial Tobacco Ltd. v. Philip Morris, Inc.*, 899 F.2d 1575, 1581 (Fed. Cir. 1990) (“In every contested abandonment case, the

respondent denies an intention to abandon its mark; otherwise there would be no contest.").

The pertinent portion of 15 U.S.C. §1127, provides:

A mark shall be deemed to be "abandoned" when ... its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

B. There is *Prima Facie* Evidence that NHI Abandoned the NIRVANA Mark

In this case, NHI was incorporated in June 14, 2001. Fact 37. Respondent indicates that it has sold water through its restaurant. Fact 25. The restaurant implicated is the Nirvana Restaurant referred to in NHI's cover letter to the USPTO in its Application Serial No. 76/319,172. Fact 5. See also Fact 7. However, as of July 2002, the Nirvana restaurant was closed because of the collapse of a wall. Fact 35. The Nirvana Restaurant, Inc. is now in Chapter 7 Bankruptcy. Fact 38. In 2004, the restaurant property was sold to a third party. Fact 36. The restaurant has not reopened. Fact 35. The Nirvana Restaurant's registration for restaurant services was not maintained. Fact 43. NHI was not a member of the International Bottled Water Association in 2003 and is not a current member. Facts 29 and 30. There is no evidence that NHI has sold bottled natural spring mineral water from any other restaurant entity.

Assuming arguendo that the Nirvana Restaurant Inc.'s use of the mark NIRVANA bottled natural spring mineral water can be attributable to NHI¹, NHI has not used the mark "Nirvana" in connection with bottled natural spring mineral water in the U.S. for more than

¹ There is no evidence to show that NHI ever controlled the use of the mark NIRVANA for bottled water by the Nirvana Restaurant.

three years,” referring to the time period beginning July 2002 through the present date. This nonuse of the mark during this period establishes a *prima facie* showing of abandonment pursuant to 15 U.S.C. §1127. There is no genuine issue that NHI did not use the mark in commerce between those dates, and this three-plus-year period of nonuse constitutes *prima facie* evidence of abandonment.

IV. NHI HAS FRAUDULENTLY OBTAINED REGISTRATION NO. 2,731,312

A. The Standard for Fraudulent Procurement of Registration

“If fraud can be shown in the procurement of a registration, the entire resulting registration is void.” *Medinol Ltd. v. Neuro Vasx Inc.*, 67 USPQ2d 1205, 1208 (TTAB 2003). “A trademark applicant commits fraud in procuring a registration when it makes material representations of fact in its declaration which it knows or should know to be false or misleading.” *Id.* at 1209 (citing *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46 (Fed. Cir. 1986)). See also *Mister Leonard Inc. v. Jacques Leonard Couture Inc.*, 23 USPQ2d 1064, 1065 (TTAB 1992) (“[A]ccording to *Torres*, to constitute fraud on the PTO, the statement must be (1) false, (2) a material representation and (3) made knowingly.”).

The correct inquiry into fraud is not into the registrant’s subjective intent, but instead into the objective manifestations of that intent. *Medinol Ltd.*, 67 USPQ2d at 1209. The Board has recognized that it is difficult, if not impossible, to prove what occurs in a person’s mind, and thus, it has found that intent must often be inferred from the circumstances and any related statements made by that person. See *First Int’l Serv. Corp. v. Chuckles Inc.*, 5 USPQ2d 1628, 1636 (TTAB 1988). See also *General Car and Truck Leasing Systems, Inc. v. General Rent-A-Car Inc.*, 17 USPQ2d 1398, 1400 (S.D. Fla. 1990), *aff’g General Rent-A-Car Inc. v. General Leaseways, Inc.*, Canc. No. 14,870

(TTAB May 2, 1998) (“proof of specific intent to commit fraud is not required, rather, fraud occurs when an applicant or registrant makes a false material representation that the applicant or registrant knew or should have known was false”); *Medinol Ltd.*, 67 USPQ2d at 1209 (“Respondent’s knowledge that its mark was not in use on stents — or its reckless disregard for the truth — is all that is required to establish intent to commit fraud in the procurement of a registration.”).

“Fraud implies some intentional deceitful practice or act designed to obtain something to which the person practicing such deceit would not otherwise be entitled. Specifically, it involves a willful withholding from the Patent and Trademark Office by an applicant or registrant of material information which, if disclosed to the Office, would have resulted in disallowance of the registration sought or to be maintained.” *Woodstock’s Enterprises Inc. (California) v. Woodstock’s Enterprises Inc. (Oregon)*, 43 USPQ2d 1440 (TTAB 1997).

“To prove fraud opposer would have to show that applicant intentionally misrepresented a material fact with the intention of inducing the Office to grant a registration to which applicant knew he was not entitled.” *Bakaert Steel Wire Corp. v. S.p.A. Officine Maccaferri Gia’ Raffaele Maccaferri & Fagli*, 196 USPQ 558 (TTAB 1977).

B. There is Undisputed Evidence that NHI Fraudulently Obtained Registration No. 2,731,312

Based on the undisputed facts and the case law, Nirvana is entitled to summary judgment that NHI has fraudulently obtained the NIRVANA trademark. As a consequence, the NIRVANA trademark registration should be cancelled.

The specimens of use Respondent submitted in Application Serial No. 76/319,172 do not show use by NHI. There is no statement in the application that NHI claimed use

through a related company. The labels enclosed as specimens indicate use by Nirvana Penthouse, celebrating its 25th anniversary, which was 6 years before the application for the '312 Registration was filed. Facts 8 and 9. The application does not claim that the mark is being used by one or more related companies as required under TMEP Section 901.05, which indicates that:

If the applicant is not itself using the mark in commerce but the mark is being used by one or more related companies whose use inures to the applicant's benefit (15 U.S.C. §§1055 and 1127), this must be stated in the application or allegation of use. 37 C.F.R. §2.38(b); TMEP §1201.03(a).

Further, TMEP Section 1201.03(a) provides that:

If the mark is not being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under §5 of the Act, then these facts must be disclosed in the application. 37 C.F.R. §2.38(b). See Pease Woodwork Co., Inc. v. Ready Hung Door Co., Inc., 103 USPQ 240 (Comm'r Pats. 1954); Industrial Abrasives, Inc. v. Strong, 101 USPQ 420 (Comm'r Pats. 1954). . . .

. . . In an application under §1(a) of the Trademark Act, the applicant should state in the body of the application that the applicant has adopted and is using the mark through its related company (or equivalent explanatory wording). . .

Application Serial No. 76/319,172 claimed that NHI was the entity using the mark. In its application, NHI made no claim in the application that use was being made through a related company. At best, the coversheet to its application indicated that use was being made by an alleged "sister corporation," Nirvana Restaurant, Inc." However, there is no evidence that NHI owned the Nirvana Restaurant or controlled the nature and quality of the Nirvana Restaurant, Inc.'s alleged use of the mark NIRVANA for bottled water. There is evidence that the Nirvana Restaurant Inc. itself claimed ownership of the trademark NIRVANA for "bottled water" in 1998. Fact 1.

Respondent's alleged predecessor company, the Bengal Café at 1193 Lexington Avenue (Facts 23 and 24) was inactive as of 1987. Fact 40. Any assignment of the mark NIRVANA for bottled water after that date was ineffective. See *Auburn Farms Inc. v. McKee Foods Corp.*, 51 USPQ2d 1439 (TTAB 1999) ("Campbell's abandonment of the mark JAMMERS a number of years prior to the assignment resulted in an invalid assignment (that is, an assignment in gross) since "[a]n abandoned trademark is not capable of assignment." *Money Store v. Harriscorp Finance, Inc.*, 689 F.2d 666, 216 USPQ 11, 19 (7th Cir. 1989); and *Parfums Nautee Ltd. v. American International Industries*, 22 USPQ2d 1306, 1309 (TTAB 1992)."). There is no evidence of any assignment of the mark NIRVANA and its goodwill for bottled water from the Bengal Café prior to that date.

Respondent's subsequent predecessor company, the Nirvana Himalayas Water Corporation (Fact 23) was incorporated on April 9, 1990, (Fact 42), which is years after the Bengal Café became inactive. A business plan dated September 19, 1990 indicates that the corporation had not yet started operating as of that date. Fact 32. Newspaper reports on a Nirvana entity reports that in 1991 Nirvana's bottled water operations were still not a reality. Facts 33 and 34. The records of the New York State Department of State Division of Corporations show that by September 28, 1994 the Nirvana Himalayas Water Corporation was dissolved. Fact 42. The Nirvana Himalayas Water Corporation's Nepalese license to bottle water in Nepal appears to be compromised by the corporation's inactivity. Fact. 31. There is no evidence of any assignment of the mark NIRVANA and its goodwill from the Nirvana Himalayas Water Corporation for bottled water prior to that date.

At the time of filing Application Serial No. 76/319,172 on October 1, 2001 for "bottled natural spring mineral water" for the mark NIRVANA, (Fact 2), there is no evidence that either of NHI's two alleged predecessors in interest were using the mark NIRVANA. Further, there is no evidence that Respondent obtained a valid assignment of the NIRVANA mark and its good will for "bottled natural spring mineral water" from its predecessor companies.

Despite its knowledge that at the time of filing application No. 76/319,172 on October 1, 2001, NHI wasn't itself using the mark for bottled water and could not possibly have claimed a first use date of the mark of 1970, it made these representations to the USPTO. Facts 18 and 20. Furthermore NHI submitted outdated specimens of use in commerce in its application (Fact 8) and indicated in its address that NHI was founded in 1970 (Fact 4). NHI further indicated in a cover letter to the USPTO that it was planning to engage in a mass marketing campaign of the under the NIRVANA mark for its bottled water, which it never fulfilled. Facts 27 and 28. Rather all marketing appears to have been under the control of the Nirvana Restaurant. Fact 26. Nevertheless, in reliance on these misrepresentations, the USPTO fraudulently issued Registration No. 2,731,312.

V. CONCLUSION

Based on the information that has come forth through discovery in this case, the documentation -- or lack of documentation -- confirms that NHI has abandoned the mark NIRVANA for "bottled natural spring mineral water"; and NHI has obtained Registration No. 2,731,312 by fraud. Nirvana, therefore, requests entry of an order canceling the NIRVANA trademark registration.

Respectfully submitted,

NIRVANA, INC.

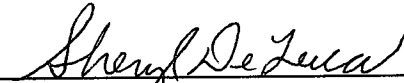
Date: July 31, 2006

By: Donna J. Buntton
Donna Buntton
Sheryl De Luca
NIXON & VANDERHYE P.C.
Attorneys for Petitioner
901 North Glebe Road, 11th Floor
Arlington, Virginia 22203
703-816-4000 (Phone)
703-816-4100 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITIONER'S MOTION FOR SUMMARY JUDGMENT was served upon the following attorney of record for Respondent by depositing same in the United States mail, first class, postage prepaid, this 31st day of July, 2006:

John Alunit, Esq.
PATEL & ALUNIT, P.C.
16830 Ventura Blvd.
Suite 360
Encino, CA 91436



Sheryl De Luca

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 1
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

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

NIRVANA, INC.)	
)	
Petitioner,	)	Cancellation No.: 92042878
)	
v.	)	Attorney Ref.: 2779-6
)	
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**

I, Sheryl Scharmach, declare as follows:

1. I am employed as an attorney by NIXON & VANDERHYE P.C. I am submitting this declaration in support of Nirvana, Inc.'s ("Nirvana") Motion for Summary Judgment.
2. Attached at Tab A hereto is a true and correct copy of a record that I printed from the USPTO TESS database for Application Serial No. 75/565,188.
3. Attached at Tab B hereto is a true and correct copy of excerpted pages from Motion for Approval of Stipulation and Order Consenting to Termination of the Automatic Stay from *In re Nirvana* Bankruptcy case No. 01-15653.
4. Attached at Tab C hereto are true and correct copies of articles that this firm printed from the internet, which indicate that the Nirvana Restaurant closed its operations in 2002 due to the collapse of a wall and has not since reopened.

5. Attached at Tab D hereto is a true and correct copy of a Notice of Abandonment of the Nirvana restaurant's walk-in-refrigerator and stove located at the restaurant property in *In re Nirvana*, Bankruptcy Case 01-15653.

6. Attached at Tab E is a true and correct copy of a notice that the Nirvana Restaurant property was to be sold at public auction on February 9, 2004 that I printed out from the Internet.

7. Attached at Tab F is a copy of "Order to Bankruptcy Code Section 363 Authorizing and Approving the terms and conditions of a Memorandum for the Sale by the Trustee to Dipak Nondi of the Penthouse Condominium Unit Located at 30 Central Park South New York City, Including all of the Debtor's Interest in said Real Property Free and Clear of all Liens, Clams and Encumbrances, and ranting Related Relief, dated February 11, 2004 in *In re Nirvana* Bankruptcy case No. 01-15653.

8. Attached at Tab G is a true and correct copy of Application in Support of Entry of (a) an Order to Show Cause (b) an Order Vacating Notices of Pendancy and Fixing Notice of Hearing on Trustee's Application for Contempt Sanctions against Scott P. Strong, Esq. and Shamsheer Wadud, (c) an Order hold Scott P. Strong, Esq. and Shamsheer Wadud in Contempt for Willful Violations of the Automatic Stay and (e) an Order Granting Such Other and Further Relief as the Court Deems Appropriate in *In re Nirvana* Bankruptcy case No. 01-15653.

9. Attached at Tab H is a true and correct copy of the Voluntary Petition for Chapter 11 Bankruptcy of Nirvana Restaurant, Inc. dated November 6, 2001.

10. Attached at Tab I is a true and correct copy of the Order Converting Chapter 11 Case to a Case Under Chapter 7 in *In re Nirvana* Bankruptcy case No. 01-15653.

11. Attached as Exhibit J hereto is a true and correct copies of a printout from the USPTO TESS database for Registration No. 947,368.

12. Attached as Tab K hereto is a true and correct copy of a printout from the USPTO trademark assignment database for Registration No. 947,368.


13. Attached as Tab L hereto is a true and correct copy of a Dun & Bradstreet company report of Bengal Cabaret Inc. that was ordered by a paralegal at our firm.

14. On April 4, 2006, I called the NY Secretary of State at (518) 473-2492 and asked the customer service agent the date on which the Nirvana Himalayas Water Corporation became inactive. I was told it was "Dissolved by Proclamation on September 28, 1994.

15. Attached as Exhibit M hereto is a true and correct copy of a record from the USPTO TESS database for Registration No. 2,205,868.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on July 28, 2006



Sheryl L. De Luca
NIXON & VANDERHYE P.C.
901 N. Glebe Rd., 11th Floor
Arlington, VA 22203

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

NIRVANA, INC.)

Petitioner,)

v.)

NIRVANA FOR HEALTH INC.)

Registrant.)

) Cancellation No.: 92042878

) Attorney Ref.: 2779-6

**EXHIBIT A
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**



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Typed Drawing

Word Mark NIRVANA
Goods and Services (ABANDONED) IC 032. US 045 046 048. G & S: bottled water. FIRST USE: 19961030. FIRST USE IN COMMERCE: 19961030
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75565188
Filing Date October 5, 1998
Current Filing Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) Nirvana Restaurant Inc. CORPORATION NEW YORK 30 Central Park South New York NEW YORK 10019
Attorney of Record John A. Hyland
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Abandonment Date August 17, 1999

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This page was generated by the TARR system on 2006-05-04 13:44:57 ET

Serial Number: 75565188

Registration Number: (NOT AVAILABLE)

Mark (words only): NIRVANA

Standard Character claim: No

Current Status: Abandoned: Incomplete response to an Office action.

Date of Status: 1999-09-15

Filing Date: 1998-10-05

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 111

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2003-07-31

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nirvana Restaurant Inc.

Address:

Nirvana Restaurant Inc.
30 Central Park South
New York, NY 10019
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 032

Class Status: Active

bottled water

Basis: 1(a)

First Use Date: 1996-10-30

First Use in Commerce Date: 1996-10-30

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

1999-09-15 - Abandonment - Incomplete response

1999-09-09 - Examiner's amendment mailed

1999-08-13 - Communication received from applicant

1999-02-16 - Non-final action mailed

1999-02-04 - Case file assigned to examining attorney

1999-02-03 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

John A. Hyland (Attorney of record)

JOHN A. HYLAND

SHERRY & O'NEILL

305 MADISON AVENUE, SUITE, 1701

NEW YORK, NEW YORK 10165

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

NIRVANA, INC.)

Petitioner,)

v.)

NIRVANA FOR HEALTH INC.)

Registrant.)

) Cancellation No.: 92042878

) Attorney Ref.: 2779-6

EXHIBIT B

To

Declaration of Sheryl De Luca

in Support of Petitioner's Motion for Summary Judgment

Silverman Perlstein & Acampora LLP
Attorneys for Kenneth P. Silverman,
the Chapter 7 Trustee
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
(516) 479-6300
Edward M. Flint

Presentment Date: November 7, 2003
Time: 12:00 p.m.
Objections Due: November 4, 2003
Time 4:30 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
AT BOWLING GREEN

-----x
In re:

Chapter 7
Case No: 01B-15653 (SMB)

NIRVANA RESTAURANT, INC.,

Debtor.
-----x

**MOTION FOR APPROVAL OF STIPULATION AND ORDER
CONSENTING TO TERMINATION OF THE AUTOMATIC STAY**

Kenneth P. Silverman, the Chapter 7 Trustee of Nirvana Restaurant, Inc. (the "Trustee"), by his attorneys, Silverman Perlstein & Acampora, LLP, for his Motion (the "Motion") seeking approval of the Stipulation and Order Consenting to Termination of the Automatic Stay annexed hereto (the "Stipulation"), between the Trustee and Board of Managers of Central Park South Medical Condominium (the "Board") and granting such other, further and different relief as this Court may deem just and proper, respectfully sets forth and represents as follows:

BACKGROUND

1. On November 6, 2001 (the "Filing Date"), the Debtor filed a voluntary petition in accordance with Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York.
2. By Order of the Court dated July 17, 2003 (the "Conversion Date") the Debtor's Chapter 11 proceeding was converted to a liquidation under Chapter 7.
3. On July 24, 2003, Kenneth P. Silverman, Esq. was appointed the Interim Chapter 7 Trustee for this estate. Thereafter, the Trustee qualified as permanent Trustee and continues in that capacity.

4. On the Filing Date, the Debtor operated an Indian Restaurant located in the 15th floor penthouse (the "Penthouse") of 30 Central Park South, New York, New York. Subsequent to the Filing Date, on or about July 23, 2002, a portion of the south wall of the Penthouse collapsed.

5. As a result of the collapse of the south wall, the Buildings Department of the City of New York issued a "vacate order" and the Debtor was forced to close its operations. The Debtor's restaurant has not re-opened since the collapse of the wall.

6. The Debtor has asserted that the collapse of the south wall was the result of negligent conduct by a construction company retained by the Board to make certain repairs to the façade of the building in which the Debtor operated. The Board and the construction company have not admitted liability.

7. Also as a result of the collapse of the south wall, the interior of the Penthouse was partially exposed. The Board has asserted to the Trustee that such exposure presents an imminent threat to the building and the building's other tenants because of the potential for, inter alia, water damage. The Board has obtained approval from the Buildings Department of plans for the restoration of the collapsed wall.

8. However, the proposed restoration would reconstruct the wall at a location that would reduce the square footage of the premises previously occupied by the Debtor that is available for occupancy after the restoration. The Board has asserted that the relocation of the wall is necessary because the original wall that collapsed had not been approved by the Buildings Department and was, therefore, illegal. Then Debtor and its principal have vigorously disputed this position. The Trustee has not determined whether or not restoration of the wall to its previous location would be permissible under local building codes and laws.

9. The Board has provided to the Trustee certain plans relating to the proposed reconstruction, which plans have been approved by the Buildings Department (the "Approved Plans"). The Board has informed the Trustee that if construction on the collapsed wall does not

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

NIRVANA, INC.

Petitioner,

v.

NIRVANA FOR HEALTH INC.

Registrant.

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Cancellation No.: 92042878

Attorney Ref.: 2779-6

EXHIBIT C
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment

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service

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VISITOR REVIEW

By: asf - bio
Not Public

12/15/05
8:58 AM

I just learned this fabulous restaurant, one of my favorites, has been forced to close due to extensive structural vandalism. Something about a competing condominium board that wanted to muscle Nirvana out of this space. If NYC residents care about this restaurant, I hope they will rally behind Nirvana's owner to reclaim their restaurant!

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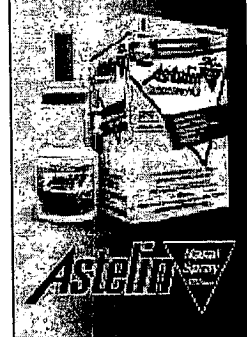
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Chowhound's Manhattan Message Board (48)

Subject: Re(1): best view of central park
Name: jc
Posted: November 23, 2004 at 09:26:51

In Reply To: [best view of central park](#)
Posted by christine on November 23, 2004 at 08:28:17

Message: I am not sure of any restaurants that have direct Central Park views from high up -- other than those in Time Warner. I've had two wonderful meals at Asiate. The sea bass was one of the best dishes I've ever had. I know that in their early days the reveiws were bad, but now are much improved. The restaurants on Central Park South are typically street level. Unless "Nirvana on Rooftop" an Indian place on 30 CPS next to the Plaza is still open (don't think it is...), I don't think there are any other places other than the restaurants in Time Warner (that have direct park views). I could be blanking out on someplaces though....

[[Post A Reply](#)] [[Chowhound's Manhattan Message Board \(48\)](#)]

Followups

- [Re\(2\): best view of central park coll 13:57:42 11/23/04 \(0\)](#)

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Name:

E-Mail:

Subject: Re(2): best view of central park

Message:



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[Unwrap Lines](#) [Search Archive](#)Message 1129 of 1487 | [Previous](#) | [Next](#) [[Up Thread](#)] [Message Index](#)Msg # [Go](#)**From:** Sreenath Sreenivasan <sree@s...>**Date:** Mon Jan 27, 2003 10:40 pm**Subject:** NYC: Curry Combat as "Nirvana" owner alleges anti-Indian racism[Home](#)**► Messages**[Post](#)[Files](#)[Photos](#)[Links](#)[Calendar](#)**Members Only**[Chat](#)[Database](#)[Promote](#)

For those of you outside NYC, Nirvana is a Bangladeshi restaurant that was one of the most expensive restaurants in NYC (thanks to its spectacular view of Central Park at night). The NYP story below refers to "anti-Indian" racism... You may also want to read a story from 2000 about other Bangla restaurants that serve "Indian" food:
<http://www.nyc24.com/2000/issue01/story06/>

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New York Post
Jan. 24, 2003

CURRY COMBAT

By TODD VENEZIA and MARIANNE GARVEY

<http://www.nypost.com/seven/01242003/news/regionalnews/53590.htm>

PHOTO: HITS THE ROOF - Nirvana owner Shamsher Wadud says the condo board is refusing to fix a collapsed wall at his restaurant.

January 24, 2003 -- Last year, they worked at Nirvana - but now they say they are living in hell.

That's what a group of laid-off employees of the Midtown Indian restaurant Nirvana claimed in a street protest outside the shuttered eatery yesterday afternoon.

They claim they've been ruined because the management of the building where the once celebrity-packed restaurant is located refuses to let them reopen after a wall collapsed last July.

"I'm mad," said Nirvana's former doorman Jashim Chowdhury. "I want my job back. It's been six months."

The workers, and the restaurant's owner, are mad because they claim the board of the condominium on which the rooftop curry house sits won't fix a collapsed wall. What's more, they say the board's leader is motivated by anti-Indian racism.

"They're just discriminating against us," said Masudur Kahn, who had been Nirvana's bartender for some 30 years. "They don't want the restaurant here."

These new claims of racism mark a nasty elevation of the rhetoric in a battle that has been going on for more than six months between Nirvana owner Shamsher Wadud and the board at 30 Central Park South, which is a condominium filled with doctors' offices headed by board president Dr. Russ Mandor.

Wadud claims that the week before the wall collapsed, Mandor told him, "I will find a way to put you out of business by next week," while complaining about water leaking into a doctor's office below.

Because of this, Wadud says that he believes the wall collapse - which made headlines because it closed the eatery where boldfaced names like Tommy Mottola, Leonardo DiCaprio and Yoko Ono once ate - was deliberate.

The city Buildings Department has said scaffolding erected for a repair job contracted by building management caused the damage.

Last year, Wadud said he believes the board wanted him out so that the place, which he rented, could be made into a condo. Now he says sources in the building have convinced him that Mandor and the board want him out because of his ethnicity.

"The only reason why he has done this is because I'm from India," Wadud said yesterday. "And a lot of people say he wants me out because he doesn't like our people. If this was a French restaurant, we would be back in business."

Mandor declined to discuss the issue. Though when told of Wadud's racism claims, he said, "I won't even dignify that with a comment."

In the past, the president has said he can't let the restaurant reopen because the city Buildings Department has a vacate order in effect for the premises.

Message 1129 of 1487 | [Previous](#) | [Next](#) [[Up Thread](#)] [Message Index](#)

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Rush & Molloy

George Rush grew up in a small Midwestern town, and then went on to Brown University, followed by Columbia University, where he received his master's degree in journalism. He wrote articles on weighty topics for national magazines, and a book, "Confessions of a Secret Service Agent." But after meeting Joanna Molloy, a fifth-generation New Yorker, Rush soon straightened out his life and began writing a gossip column with her. The couple, who have been married since 1992, have a little Rush.

Email:
rushmolloy@edit.nydailynews.com

Past Columns

Now you can visit our complete archive of Rush & Molloy's news columns. Click below for the complete lineup and a free sneak preview of each column, plus info on our affordable purchase options!

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Is it really 'K-19: The Weddingmaker'?

Are Harrison Ford and Calista Flockhart planning a Christmas wedding?

London's Daily Mail yesterday quoted Ford's longtime manager, **Patricia McQueeney**, as saying:

"I won't talk about Calista Flockhart because we don't discuss her. But other people tell me not to be surprised if there's a wedding around Christmas."

But don't send gifts - just yet.

"I did not say that," McQueeney tells us. "I know better."

Ford has recently been adamant about not discussing his personal life. What's more, he still hasn't wrapped up his divorce from "E.T." screenwriter **Melissa Mathison**. (They filed for legal separation last August.)

Ford, 60, and Flockhart, 37, have been dating since the beginning of the year - often bringing along his 11-year-old daughter, **Georgia**, or her 1-year-old son, **Liam**.

Last week, they took the big step of arriving hand in hand at the New York and L.A. screenings of his movie "K-19: The Widowmaker."

But McQueeney swears they're not engaged.

"They're a long way from that," she says.

Above par at City Hall

Mayor Bloomberg isn't playing nearly as much golf as he used to, back when he



Corkery NEWS

Calista Flockhart and paramour Harrison Ford

GE
VI
WR

IND

was just a private billionaire and not a public-service billionaire.

Which may explain why the legendary **Jack Nicklaus** was in City Hall yesterday, offering a few pointers to the city's First Duffer.

"He's been playing for five years and is still very frustrated," Nicklaus told Daily News' City Hall bureau chief **Dave Saltonstall**. "But he refused to divulge his handicap."

Actually, the Golden Bear came to City Hall to push the golf course he is trying to build in the Bronx's Ferry Point Park, which is just under the Whitestone Bridge.

Nicklaus and his team, which yesterday included former Deputy Mayor **Rudy Washington**, have trucked 750,000 cubic yards of fill into the park and now need a permit for 550,000 cubic yards more to fill out the Nicklaus-designed course.

The problem: The 220-acre spread is built atop an old landfill that is leaking methane gas, leading to serious environmental concerns and many bad jokes about exploding golf balls.

So what is the mayor's handicap?

"Room 9," quipped Bloomberg communications chief **Bill Cunningham**, referring to the City Hall press room.

Hair it is - a new Pitt

We've heard of the goatee. We've heard of the Van Dyke, of the Imperial and of muttonchops. But **Brad Pitt** has his own name for that growth on his face: "The [**Osama**] **Bin Laden**."

Pitt, who now looks like a Chia Pet on steroids, tells us that he started letting his beard grow when he signed on to star in **Darren Aronofsky's** "The Fountain," a sci-fi epic that has been repeatedly postponed as Warner Bros. wrestled the director's budget down to \$70 million.

"We were supposed to go[to Australia] and then we weren't," Pitt said at Tuesday's L.A. premiere of his latest picture, "Full Frontal," in which he plays himself.

"Then we were supposed to go again, and we weren't. Next thing I know, I've got this Bin Laden on my face."

Pitt confirmed that he and his wife, **Jennifer Aniston**, will camp out in Australia for the shoot, which could last as long as six months.

"We're gonna be there a while, but we're not moving there," he said at the film's after-party, where he was joined by **Julia Roberts** and her new hubby, **Danny Moder**; **George Clooney**, **David Duchovny** and "Full Frontal" director **Steven Soderbergh**. "I love my L.A."

P.S. He also loves his ranch near Santa Barbara, where legend has it that he sometimes moons passing trains.

Maybe Soderbergh should plan a sequel called "Brazen Backside."

At home on E. Side

The Prisoner of Park Ave. seems to be stretching the boundaries of her house arrest.

Diana Brooks, the former Sotheby's CEO, spotted at a Starbucks on June 28, has slipped out of her apartment again. Our spies have since caught her at a Lexington Ave. shop (appraising cashmere sweaters) and at the Gracious Home store on Third Ave., where her expert's eye was sizing up housewares.

Chris Stanton, chief probation officer for the Southern District of New York, tells us that Brooks can go shopping so long as she gets permission.

If she didn't?

"We would decide whether to file a petition" with her sentencing judge, said Stanton.

Brooks' lawyer, **Stephen Kaufman**, insists that Brooks "knows and observes the conditions" of her house arrest.

As for her recent trip to Starbucks, Kaufman says, "I think she went in there to buy a pound of coffee. She has a right to buy food for her family."

Crashing Nirvana

The spectacular views of Central Park from Nirvana Penthouse Restaurant on Central Park S. will be off limits for some four months.

"The back wall of the entire 15th floor collapsed around 7 a.m. (Tuesday) morning" as a result of a rooftop construction project, said **Warren Wadud**, son of owner **Shamsher Wadud**. "We woke up to that."

The family, which has run the Indian restaurant for 32 years, is trying to be upbeat. "We'll rebuild, and make it even more beautiful," Wadud added. As luck would have it, "my mom's a general contractor."

Side dishes

Isabella Brewster, the 19-year-old college student who's just as gorgeous as her more famous sister, **Jordana**, economized on taxis after dancing like a wild child at the party to launch the Jordan Two3 clothing line Tuesday. Isabella left the Chelsea Piers party with "Oz" star **Kirk Acevedo**, easily as hunky as Jordana's boyfriend, **Derek Jeter** ...

Sarah Jessica Parker is up in Toronto with hubby **Matthew Broderick**, who's

there shooting a new version of "The Music Man." While Broderick shines up his 76 trombones, Parker has been catching up on her movies. She checked out "About a Boy" by herself. Meanwhile, we hear the expectant couple is about ready to move into the West Village townhouse the two have spent months renovating ...

Which married restaurateur arrived with a hotelier pal and 10 models at Bungalow 8 the other night? After a brief eeny-meeny-miney-mo, he left with one of the lovelies - while the innkeeper was overheard making a reservation for the naughty couple at his hotel ...

Queens and Dublin have made a love match. **Richie Notar**, who went from being a Studio 54 busboy to running Nobu restaurants around the world, has served up a proposal of marriage to **Jane Wogan**, an actress and the niece of U.K. chat show king **Terry Wogan**. Notar chose the Tuscan town of Porto Ercole to present the ring. "I didn't sleep for three days," he says. They're planning a fall wedding ...

Donna Karan, **Calvin Klein**, **Marc Jacobs** and **Kenneth Cole** are among the 150 clothes creators contributing to the "designer garage sale" on Saturday in the Hamptons, a benefit for the Ovarian Cancer Research Fund. **Kyle MacLachlan**, who can't make the event because he's in a play in London, has told his wife, **Desiree Gruber**, that she must get him the Italjet Scooter that's up for auction. For further info check www.ocrf.org...

Dennis Miller has kept uncharacteristically silent since the Hollywood Reporter announced his weekly HBO show would end Aug. 30 after nine years. He'll talk for the first time with **Jay Leno** Monday night. Perhaps he'll tell us what happened.

**With Kasia Anderson
and Suzanne Rozdeba**

*Got a hot tip? Send confidential e-mail
to rushmolloy@edit.nydailynews.com*

Originally published on July 24, 2002

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

NIRVANA, INC.

Petitioner,

v.

NIRVANA FOR HEALTH INC.

Registrant.

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Cancellation No.: 92042878

Attorney Ref.: 2779-6

**EXHIBIT D
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**

Silverman Perlstein & Acampora LLP
Counsel to Kenneth P. Silverman Esq., Interim Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Anthony C. Acampora, Esq. (ACA#0838)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
AT BOWLING GREEN

-----X
In re:

NIRVANA RESTAURANTS, INC.,

Chapter 7
Case No.: 01B-15653 (SMB)

Debtor.
-----X

NOTICE OF ABANDONMENT

TO: ALL INTERESTED PARTIES

In accordance with Rule 6007 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. §554, notice is given by Kenneth P. Silverman, Esq., the Interim Chapter 7 Trustee of the estate of Nirvana Restaurant, Inc., (the "Debtor") by his attorneys, Silverman Perlstein & Acampora LLP, of the proposed abandonment of "all of the Trustee's right, title and interest" in and to the Debtor's interest in the walk-in refrigerator and stove located at, the Debtor's premises, known as and located at 30 Central Park South Medical Condominium, 15th Floor, New York, New York (the "Property") as of September 22, 2003. The Property has been deemed to have an inconsequential value to the estate.

Objections to the proposed abandonment must be filed, in writing, with the Clerk of the Bankruptcy Court at the United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408, with a courtesy copy to the Chambers of the Honorable Stuart M. Bernstein, with proof of such service upon Kenneth P. Silverman, Esq., the Interim Chapter 7 Trustee, Silverman Perlstein & Acampora LLP, Attention: Anthony C. Acampora, Esq., with offices located at 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, by September 18, 2003.

If objections are timely filed (the "Objections"), a hearing to consider the Objections will be scheduled by the Court.

Dated: Jericho, New York
August 20, 2003

Silverman Perlstein & Acampora LLP
Attorneys for Kenneth P. Silverman, Esq.
Interim Chapter 7 Trustee of the estate of
Nirvana Restaurant, Inc.

By: s/Anthony C. Acampora
Anthony C. Acampora (ACA#0838)

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

NIRVANA, INC.)
)
) Petitioner,)
) Cancellation No.: 92042878
) v.)
) Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)
)
) Registrant.)

EXHIBIT E
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment

David R. Maltz & Co., Inc

BANKRUPTCY SALE - UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT of NEW YORK

PUBLIC AUCTION

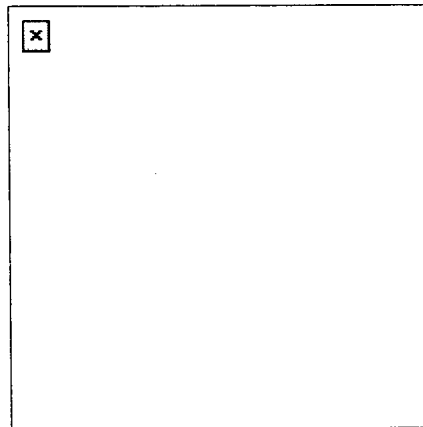
In Re: NIRVANA RESTAURANT, INC.

Case No. 01B-15653 (SMB)

Sold at the United States Bankruptcy Court, Southern District of New York

1 Bowling Green, Room 723, New York, NY

Monday, February 9, 2004, at 11:00 a.m.



Views of Central Park

PENTHOUSE COMMERCIAL CONDOMINIUM

Sold to High Bidder for \$2,500,000.00

This condominium is located on the 15th floor of the Central Park South Medical Condominium and is approximately 3,116 sq. ft., with a view of Central Park. Its previous use was a gourmet restaurant, and is currently zoned F4-Commercial.

Block 1274; Lot 1055;

Monthly Maintenance Fees: approximately \$3,703.59

Monthly Assessment: \$2,300.92; Bi-annual Real Estate Taxes: \$11,592.44

INSPECTIONS

A representative from the Auctioneer's Office will be on location on

Wednesday, January 21st, 28th, and February 4th, 2004, 10:00 a.m. - 2:00 p.m.

TERMS & CONDITIONS OF SALE

\$250,000.00 deposit in certified or bank check made payable to Kenneth P. Silverman, Chapter 7 Trustee in order to register to bid; balance due in certified funds at closing to be held on or before March 1, 2004, at the office of Silverman, Perlstein, Acampora, LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York. Sale is not subject to purchaser obtaining financing. Property is sold "AS IS" except free and clear of any mortgages or judgments liens. The sale is subject to confirmation by the United States Bankruptcy Court for the Southern District of New York. Contact Auctioneer's office for additional Terms and Conditions of Sale.

The Chapter 7 Trustee, Attorney for the Trustee, and the Auctioneer do not guarantee the accuracy of any of the descriptions or any other information pertaining to the sale of this property. All prospective bidders are urged to do their own due diligence prior to participating in this public auction sale.

DAVID R. MALTZ, DCA # 762794

Telephone (516) 349-7022

Auction Calendar

Real Estate Sales

Home

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

NIRVANA, INC.)

Petitioner,)

v.)

NIRVANA FOR HEALTH INC.)

Registrant.)

Cancellation No.: 92042878

Attorney Ref.: 2779-6

**EXHIBIT F
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**

Silverman Perlstein & Acampora LLP
Counsel to Kenneth P. Silverman, Esq., the Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
Anthony C. Acampora, Esq. (ACA#0838)
Edward M. Flint, Esq. (EMF#7001)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
AT BOWLING GREEN

-----X
In re:

NIRVANA RESTAURANT, INC.,

Chapter 7
Case No. 01-15653 (SMB)

Debtor.

-----X

ORDER PURSUANT TO BANKRUPTCY CODE SECTION 363 AUTHORIZING AND APPROVING THE TERMS AND CONDITIONS OF A MEMORANDUM FOR THE SALE BY THE TRUSTEE TO DIPAK NONDI OF THE PENTHOUSE CONDOMINIUM UNIT LOCATED AT 30 CENTRAL PARK SOUTH, NEW YORK CITY, INCLUDING ALL OF THE DEBTOR'S INTEREST IN SAID REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, AND GRANTING RELATED RELIEF

Upon consideration of the application (the "Application"), dated November 10, 2003, of Kenneth P. Silverman, Esq., the Chapter 7 Trustee (the "Trustee") for the estate of Nirvana Restaurant, Inc. (the "Debtor"), by and through his counsel, Silverman Perlstein & Acampora LLP, seeking the entry of an Order (a) approving sale procedures and form of notice for the sale of the penthouse condominium unit located at 30 Central Park South, New York, New York (the "Penthouse Unit") (b) approving stipulation between the Trustee and 30 Central Park South Realty Company ("30 CPS"), and (c) fixing date for a hearing on the approval of the sale of the Penthouse Unit (the "Hearing") pursuant to Sections 105 and 363 of Title 11 of the United States Code, as amended (the "Bankruptcy Code"), free and clear of all liens, claims and encumbrances; and upon the objection to the Application of Shamsheer Wadud, dated November 13, 2003, the objection to the Application of the employees of the Debtor, dated November 17, 2003; and a hearing having been held on the Application on November 26, 2003, at which all parties in interest were afforded an opportunity to be heard; and upon the Order of the Court,

entered on November 26, 2003 approving the Application, the sales procedures and the form of notice of sale, and fixing the date for the hearing on approval of the sale of the Penthouse Unit to the highest bidder (the "Sales Procedures Order"); and upon the Notice of Hearing to Confirm Sale and Notice of Trustee's Sale at Public Auction of Penthouse Condominium Unit, dated January 9, 2004 (the "Sale and Sale Hearing Notice"); and upon the application of the Trustee for entry of an Order approving shortened notice, a break-up fee with Joseph Pezza and amended terms and conditions of sale (the "Terms and Break-Up Fee Application"), dated January 30, 2004; and upon the Objection to the Terms and Break-Up Fee Application ~~filed~~ **filed** [SMB 2/11/04] by Shamsheer Wadud, dated February 4, 2004; and a hearing having been held on the Terms and Break-Up Fee Application on February 5, 2004, at which all parties in interest were afforded an opportunity to be heard and at which Shamsheer Wadud was represented by counsel; and upon the Order of the Court, dated February 5, 2004, approving the Terms and Break-Up Fee Application (the "Terms Order"); and upon the hearing held on February 10, 2004 to confirm the sale of the Penthouse Unit at public auction held at the Courthouse on February 9, 2004, and

IT APPEARING , that this Court has jurisdiction to consider the Application, the Terms and Break-Up Fee Application and the sale of the Penthouse Unit and relief requested therein pursuant to 28 U.S.C. §§157 and 1334 and 11 U.S.C. § 363;

IT FURTHER APPEARING, that the Debtor holding sufficient interest in the Penthouse Unit and the owner, 30 CPS, having consented to the sale of the Unit by the Trustee, and all other parties interests being fully protected by transferring all liens, claims and encumbrances on and to the Penthouse Unit to the proceeds of the sale, that there is grounds and cause for the sale of the Penthouse Unit pursuant to 11 U.S.C. § 363(f);

IT FURTHER APPEARING, that, prior to the auction on February 9, 2004, the Trustee entered into an agreement with Joseph Pezza for the purchase and sale of the Penthouse Unit for the price of \$2,325,000, subject to higher and better offers, with a break-up fee in the amount

of \$75,000 (THE "Break-Up Fee") payable to Pezza if the Trustee accepted an offer for the Penthouse Unit for more than \$2,425,000 from a party other than Pezza;

IT FURTHER APPEARING, that a public auction was held at the Courthouse on February 9, 2004 (the "Auction"), at which time four (4) parties registered as bidders, and at which appeared Shamsheer Wadud and his attorney, Harris Leinwand;

IT FURTHER APPEARING, that the Auction was conducted by David R. Maltz & Co., Inc., the Court-approved real estate agent in compliance with and under the authority of the Sales Procedure Order and the Terms Order;

IT FURTHER APPEARING, that at the conclusion of the Auction, the Trustee selected Dipak Nandi (the "Buyer") as the highest bidder at a purchase price of \$2,500,000 (the "Purchase Price") and Apollon Group LLC as the second highest bidder (the "Second Buyer") for a bid of \$2,475,000 (the "Second Highest Price");

IT FURTHER APPEARING, that the Buyer and the Second Buyer have each executed a Memorandum of Sale for the purchase and sale of the Penthouse Unit;

IT FURTHER APPEARING, that Sale and Sale Hearing Notice has been given in accordance with the Sale Procedures Order issued by this Court and with Rule 2002 of the Federal Rules of Bankruptcy Procedure with such notice specifically having been provided to: (i) the Debtor; (ii) the Office of the United States Trustee; (iii) the Debtors' counsel; (iv) Shamsheer Wadud, Nirvana Cuisine, Inc. and Best Vista, Inc.; (v) no fewer than three attorneys who have appeared on behalf of or represented Shamsheer Wadud, Nirvana Cuisine, Inc. and Best Vista, Inc.; (vi) 30 Central Park South Realty Company; (vii) the Board of Managers of Central Park South Medical Condominium; (viii) all creditors of the Debtor's estate required to receive notice; (ix) all federal, state and local taxing authorities; (x) all entities that have properly served and filed a Notice of Appearance in the Debtor's cases; and (xi) all parties that are believed to have asserted an interest in the assets;

IT FURTHER APPEARING, that no other or further notices need be given;

IT FURTHER APPEARING, that service of the Sale and Sale Hearing Notice constitutes good and sufficient notice as evidenced by the Affidavit of Service, dated January 9, 2004 and filed with the Court;

IT FURTHER APPEARING, that

AND UPON the Application, the Sales Procedure Order, the Terms and Break-Up Fee Application, the Terms Order, the Sale and Sale Hearing Notice, the consent of 30 CPS, the record of the Hearing held before this Court on February 10, 2004 (the "Sale Hearing"), the transcript of which is incorporated by reference herein and upon the evidence proffered or presented at the Hearing, and after due deliberation having been had and no objections or other responses having been filed to the Application and the Sale, and good and sufficient cause having been shown.

IT IS HEREBY FOUND THAT¹,

1) The Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334 and this matter is a core proceeding under 28 U.S.C. 157(b)(2)(A), (N). Venue of these Chapter 7 cases and the Application in this district is proper under 28 U.S.C. §§1408 and 1409.

2) The statutory predicates for the relief sought in the Application are Sections 105(a), 363(b), (f), (m) and (n) of the Bankruptcy Code and Rules 2002, 9006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3) Proper, timely, adequate and sufficient notice of the Application, of the Auction and of the Sale Hearing and the transactions contemplated thereby has been provided in accordance with Sections 102(1), 363(b) and (f) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, 9006, 9007, 9008 and 9014, which notice adequately described the nature of the Hearing and the relief requested in the Application and which notice was good and sufficient, and appropriate under the particular circumstances and no other or further notice of the Application, the Auction or the Sale Hearing and the transactions contemplated thereby, or

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as finding of fact when appropriate. See Rule 7052 of the Federal Rules of Bankruptcy Procedure.

of the entry of this Order is required.

4) A reasonable opportunity to object or be heard with respect to the Application and the relief requested has been afforded to all interested persons and entities, including: (i) the Debtor; (ii) the Office of the United States Trustee; (iii) the Debtors' counsel; (iv) Shamsher Wadud, Nirvana Cuisine, Inc. and Best Vista, Inc.; (v) no fewer than three attorneys who have appeared on behalf of or represented Shamsher Wadud, Nirvana Cuisine, Inc. and Best Vista, Inc., (vi) 30 Central Park South Realty Company; (vii) the Board of Managers of Central Park South Medical Condominium; (viii) all creditors of the Debtor's estate required to receive notice; (ix) all federal, state and local taxing authorities; (x) all entities that have properly served and filed a Notice of Appearance in the Debtor's' cases; and (xi) all parties that are believed to have asserted an interest in the assets.

5) The Trustee has full power and authority to accept and enter into the Memoranda of Sale and to consummate the transactions contemplated by the Memoranda of Sale.

6) No consents or approvals, other than the consent of 30 CPS and those expressly provided for in the Memoranda of Sale or the Terms and Conditions of Sale, are required for the Trustee to consummate the Memoranda of Sale.

7) The Trustee has advanced sound business justifications for seeking to sell the Penthouse Unit under the Terms and Conditions of Sale approved in the Terms Order as demonstrated at the Sale Hearing, and the Sale under those Terms and Conditions of Sale is a reasonable exercise of the Trustee's business judgment.

8) The Memoranda of Sale were negotiated, proposed and entered into by the Trustee and the Buyer and the Second Buyer without collusion, in good faith, and from arm's-length bargaining positions. Neither the Trustee nor the Buyer nor the Second Buyer has engaged in any conduct that would cause or permit the Memoranda of Sale to be avoided under Section 363 (n) of the Bankruptcy Code.

9) The Buyer and the Second Buyer are each a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code and, as such, are entitled to all the protections afforded thereby. The Buyer and the Second Buyer, as the case may be, will be acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code in closing the

transactions (the "Closing") as contemplated by the Memorandum of Sale, the Terms and Conditions of Sale, and this Order.

10) In the absence of a stay pending appeal, the Buyer or the Second Buyer, as the case may be, will be acting in good faith pursuant to Section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Memoranda of Sale any time on or after the entry of this Order.

11) The Terms and Conditions of the Sale of the Penthouse Unit including the total consideration realized by the Debtor's estate pursuant to the sale: (i) are fair and reasonable; (ii) represents the highest and best offer for the Penthouse Unit; (iii) provides a greater recovery for the Debtor's' creditors than would be provided by any other practical available alternative; and (iv) constitutes fair consideration.

12) The sale and transactions contemplated by the Memoranda of Sale must be approved and consummated promptly in order to preserve the value of the Penthouse Unit.

13) The transfer of the Penthouse Unit pursuant to the Memoranda of Sale and the Terms and Conditions of Sale upon the Closing will: (i) be a legal, valid, and effective transfer of interests in property of the Debtor's estates, of 30 CPS and of all other parties claiming an interest in or to the Penthouse Unit which is the subject of the Memoranda of Sale to the Buyer and to the Second Buyer, as the case may be, and (ii) vest the Buyer or the Second Buyer, as the case may be, with good, marketable and insurable title to the Penthouse Unit free and clear of any liens, claims and encumbrances and security interest of whatever kind or nature.

14) All of the provisions of this Order and the Memoranda of Sale and Terms and Conditions of Sale are nonseverable and mutually dependent.

15) The Buyer and the Second Buyer would not have accepted and entered into the Memoranda of Sale and would not consummate the Sale of the Penthouse Unit and the transactions contemplated thereby, if the Sale of the Penthouse Unit were not free and clear of claims, liens and encumbrances.

16) The Trustee has not entered into any other agreements with any other person or entity, except the Buyer and the Second Buyer, under which he has granted any rights in the Penthouse Unit.

17) Upon entry of this Order, the Trustee shall have full power and authority to transfer all rights in and to the Penthouse Unit with the consent of 30 CPS for the Trustee to sell.

18) To the Trustee's actual knowledge, no action, suit or proceeding (including any proceeding over which this Court has jurisdiction under 28 U.S.C §157(b) and (c) brought by any governmental entity to alter, enjoin, restrain or prohibit, or that would be reasonably likely to prevent or make illegal the transactions contemplated under the Memoranda of Sale is pending.

19) To the Trustee's actual knowledge, no governmental entity has issued any order, decree or ruling and there is no statute, rule or regulation that restrains, enjoins or prohibits the consummation of the transactions contemplated under the Memoranda of Sale.

20) The Trustee has demonstrated that it is an exercise of his sound business judgment and in the best interests of the Debtors, their estates, and their creditors to consummate the transactions contemplated in the Memoranda of Sale.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1) The Application is hereby granted ~~in its entirety~~ **to the extent indicated** [SMB 2/11/04].

2) All objections to the Application or the relief requested therein, and to the Sale of the Penthouse Unit, if any, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled.

3) The terms of the Memoranda of Sale are approved, and the execution of the Memoranda of Sale is ratified and approved and the Trustee be, and hereby is, authorized, empowered and directed to sell the Penthouse Unit at a closing (the "Closing") that shall take place no later than February 27, 2004 (the "Closing Date") at the office of the Trustee's attorneys and enter into, and to perform his obligations under the Memoranda of Sale and to take such actions, expend such funds, execute such documents and do such things as are necessary to effectuate the terms of the Memoranda of Sale including the execution of all documents, instruments and papers necessary and appropriate to effectuate, implement and

consummate the transactions contemplated by the Memoranda of Sale.

4) **Time shall be of the essence against the Buyer and the Second Buyer with respect to the Closing Date, and the Trustee is authorized and directed to take such steps as necessary and as contemplated by the Terms and Conditions of Sale to complete the Sale of the Penthouse Unit on or before February 27, 2004.**

5) At the Closing, the Trustee is authorized and directed to pay the Break-Up Fee to Joseph Pezza.

6) The Trustee is, pursuant to Section 363(b) and (f) of the Bankruptcy Code, authorized, empowered and directed to transfer the Penthouse Unit, as more particularly set forth in the Memoranda of Sale, to the Buyer, or to the Second Buyer, free and clear of any and all liens, claims, encumbrances and security interests of whatever kind or nature, (the "Liens"), with such Liens to attach to the proceeds of sale in the same extent and priority as they existed on the filing date of these bankruptcy cases.

7) All provisions of the Memoranda of Sale and the Terms and Conditions of Sale providing for payment and disposition of the Purchase Price (as defined in the Terms and Conditions of Sale and the Memoranda of Sale) paid under the Memoranda of Sale, are deemed incorporated hereby and shall have the same force and effect as if restated in full herein.

8) All persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding claims of any kind and nature arising prior to the Closing or relating to acts occurring prior to the Closing, and whether imposed by agreement, understanding, law, equity or otherwise against the Debtor or the Penthouse Unit (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising on or before the Closing (as defined in the Memoranda of Sale), or out of, under, in connection with, or in any way relating to, events occurring prior to the Closing, with respect to the Assets,

hereby are forever barred, estopped, and permanently enjoined from asserting such claims of any kind and nature against the Buyer or the Second Buyer, as the case may be, or its successors or assigns.

9) The terms and provisions of the Memoranda of Sale and the Terms and Conditions of Sale, together with the terms and provisions of this Order, shall be binding ~~in all respects~~ [SMB 2/11/04] upon, and shall inure to the benefit of, the Trustee and the Buyer, or the Second Buyer, as the case may be, and their respective affiliates, successors and assigns, and shall be binding ~~in all respects~~ [SMB 2/11/04] upon any affected third parties, and all persons asserting a claim against or interest in the Debtor's estate or of the Penthouse unit to be sold to the Buyer or such Second Buyer pursuant to the Memoranda of Sale.

10) This Court retains exclusive jurisdiction to interpret, construe and enforce the provisions of the Memoranda of Sale, the Terms and Conditions of Sale and this Order, provided, however, that, in the event this Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this clause or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

11) The failure specifically to include any particular provisions of the Memoranda of Sale or the Terms and Conditions of Sale in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Memoranda of Sale be authorized and approved in its entirety.

12) The Trustee is authorized and empowered to expend such funds, execute and deliver any and all documents as reasonably necessary to implement the terms of the Application and this Order.

13) The Buyer and the Second Buyer have acted in good faith and will, as the case may be, acquire the Penthouse Unit pursuant to the Memoranda of Sale in good faith within the

meaning of Section 363(m) of the Bankruptcy Code.

14) To the extent that any secured creditor holds a valid perfected first priority lien against the Assets, such parties rights under 11 U.S.C. §363(k) are preserved.

15) This Court hereby orders that the ten-day stays provided for in Rules 6004(g) and 6006(d) of Bankruptcy Rules shall not be in effect with respect to the Sale and other transactions contemplated thereby, and pursuant to Rule 7062 of the Bankruptcy Rules this Order shall be effective and enforceable immediately upon entry. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay or risk its appeal being foreclosed as moot.

Dated: February 11, 2004
New York, New York

/s/ Stuart M. Bernstein
Honorable Stuart M. Bernstein
Chief United States Bankruptcy Judge

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

NIRVANA, INC.

Petitioner,

v.

NIRVANA FOR HEALTH INC.

Registrant.

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Cancellation No.: 92042878

Attorney Ref.: 2779-6

**EXHIBIT G
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**

Silverman Perlstein & Acampora LLP
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
Anthony C. Acampora, Esq. (ACA#0838)
Edward M. Flint, Esq. (EMF#7001)

Hearing Date: March 15, 2004
Time: 9:59 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
AT BOWLING GREEN

-----X
In re:

NIRVANA RESTAURANT, INC.,

Chapter 7
Case No. 01-15653 (SMB)

Debtor.
-----X

**APPLICATION IN SUPPORT OF ENTRY OF
(A) AN ORDER TO SHOW CAUSE (B) AN ORDER VACATING
NOTICES OF PENDANCY AND FIXING NOTICE
OF HEARING ON TRUSTEE'S APPLICATION FOR
CONTEMPT SANCTIONS AGAINST SCOTT P. STRONG, ESQ.
AND SHAMSHER WADUD, (C) AN ORDER HOLD SCOTT P. STRONG, ESQ.
AND SHAMSHER WADUD IN CONTEMPT FOR WILLFUL VIOLATIONS
OF THE AUTOMATIC STAY AND (E) AN ORDER GRANTING SUCH
OTHER AND FURTHER RELIEF AS THE COURT DEEMS APPROPRIATE**

**TO: THE HONORABLE STUART M. BERNSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE**

Kenneth P. Silverman, the Chapter 7 Trustee (the "Trustee") of Nirvana Restaurant, Inc. (the "Debtor"), through his attorneys, Silverman Perlstein & Acampora LLP, by the instant Application (the "Application"), seeks the entry of (I) an Order to show cause directing Scott P. Strong, Esq., Nirvana Cuisine, Inc. ("Cuisine") and Shamsheer Wadud ("Wadud") to show cause on March 15, 2004 at 9:59 a.m. why an order should not be entered vacating the Notices of Pendency filed on March 10, 2004 by Strong, as attorney for Cuisine, and Wadud, pro se, (II) an Order vacating the Notices of Pendency and fixing notice of hearing on the Trustee's application, pursuant to sections 105 and 362 of the Bankruptcy Code and Rule 9011 of the

Federal Rules of Bankruptcy Procedure, for an Order holding Strong and Wadud in contempt for willful violations of the automatic stay, (III) an Order holding Strong and Wadud in contempt for willful violations of the automatic stay and (IV) an Order granting such other and further relief as the Court may deem appropriate, and respectfully sets forth and represents as follows:

1. The present Application is made on extremely short notice as a result of the improper, illegal and void notices of pendency (the "Notices of Pendency") filed on March 10, 2004, by Cuisine, by its attorney, Scott P. Strong, Esq. and by Wadud, pro se.¹ Copies of the Notices of Pendency are attached hereto as Exhibit 1. The Notices of Pendency were expressly filed against the penthouse condominium unit at 30 Central Park South, New York, New York (the "Penthouse Unit") with the Clerk of the City of New York. The effect of the filing of the Notices of Pendency is to create the impression of a lien or cloud on title of the Penthouse Unit on the eve of the closing of the sale of the Penthouse Unit, which is scheduled on Monday, March 15, 2004, pursuant to an Order (the "Sale Order") entered by the Court on February 11, 2004. A copy of the Sale Order is attached hereto as Exhibit 2. Unless the relief sought herein vacating the Notices of Pendency is granted by noon on Monday, March 15, 2004, the estate may forever lose the benefits obtained in the long process leading up to the sale of the Penthouse Unit. Under the circumstances, the Notices of Pendency are nothing less than crude and unlawful attempts to abort the closing of the sale of the Penthouse Unit. Those efforts by Strong and Wadud constitute willful violations of the automatic stay and the Court's Sale Order that warrant immediate vacatur of the Notices of Pendency and that are punishable by contempt.

JURISDICTION

2. This Court has jurisdiction over this Application pursuant to 28 U.S.C. ' 157 and

¹ Although Wadud filed his Notice of Pendency "Pro Se," Strong is Wadud's attorney of record in this case, having filed an answer to the complaint on Wadud's behalf in *Silverman v. Nirvana Cuisine, Inc., et al.*, adv. Proc. No. 03-09637. No Order has been, or sought, relieving Strong of his duties as Wadud's counsel. The Notices of Pendency were filed under the adversary proceeding caption.

1334 and the Standing Order of Referral of Cases to Bankruptcy Judges entered by the United States District Court for the Southern District of New York. Venue of this case and the Application is proper in this district pursuant to 28 U.S.C. ' ' 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. ' ' 105 and 362, and Rules 9006(c)(1), 9011 and 9014 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

3. On November 6, 2001 (the "Filing Date"), the Debtor filed a voluntary petition for reorganization in accordance with Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the "Court").

4. Thereafter, by Order of the Court dated July 17, 2003, this case was converted to a Chapter 7 liquidation proceeding. By Notice of Appointment dated July 24, 2003, Kenneth P. Silverman, Esq., was appointed the interim Chapter 7 Trustee of the estate, and has since qualified, and is acting as permanent Trustee.

5. On or about July 18, 1995, Rooftop Restaurant, Inc., as buyer ("Rooftop"), and 30 Central Park South Realty Co. ("30 CPS"), as seller, entered into a purchase agreement (the "Contract") for the Penthouse Unit. The purchase price under the Contract is \$1,725,000 (the "Purchase Price").

6. By assignment dated March 7, 1997, the Contract was assigned to the Debtor. Thereafter, the Debtor assigned the Contract to Cuisine in 1999. The Trustee's analysis of the Debtor's books and records reveals that (a) between July 18, 1995, and April 2003, the Debtor paid to 30 CPS approximately \$638,220 on account as "contract down payments" credited against the Purchase Price (the "Down Payments") and (b) the Debtor received no consideration for the assignment of the Contract to Cuisine or for the Down Payments.

7. By its terms, as extended by 30 CPS from time to time, the Contract was to expire on December 30, 2003. The Trustee and 30 CPS entered into two Stipulations the

effect of which is (a) 30 CPS consents to the sale of the Penthouse Unit under section 363 of the Bankruptcy Code and (b) the time to close on the sale of the Penthouse Unit and the Contract is extended until March 15, 2004. *If the closing of the sale of the Penthouse Unit does not occur on or before March 15, 2004, the estate will lose the value of its interest in the 1995 Contract and the Penthouse Unit.* The Stipulations between 30 CPS and the Trustee have been approved by the Court over the objections of Cuisine and Wadud.

8. The Trustee has asserted that the Contract is property of the Debtor's estate or, alternatively, that the Down Payments are fraudulent transfers avoidable and recoverable by the Trustee. Accordingly, the Trustee has commenced an adversary proceeding against Cuisine, Best Vista, Inc. ("Best"), Wadud, 30 CPS and Blenheim Realty, Ltd. ("Blenheim")² seeking judgment, inter alia, declaring that the Contract is property of the Debtor's estate and awarding the Trustee recovery of the Down Payments from the Defendants. Adversary Proceeding No. 03-09637 (SMB) (the "Adversary Proceeding"). On November 3, 2003, Wadud, Cuisine and Best, by their counsel, Strong, served an answer by facsimile.

9. The Trustee and 30 CPS have agreed to sell the Property and the Trustee's rights in and to the Contract, with all claims and liens, including all claims and liens of Wadud and Cuisine, to attach to the proceeds of the sale, subject to further order of the Court.

10. Subsequently, the Court (a) approved a break-up fee payable to Joseph Pezza, who had executed an agreement to purchase the Penthouse Unit for \$2,300,000 cash, and (b) fixed February 9, 2004 as the date for the auction of the Penthouse Unit.

11. The auction was conducted at the Courthouse on February 9, 2004. At the auction, attended by Wadud and certain financial associates of Wadud, Dipak Nandi was the highest bidder. On February 11, 2004, the Court entered the Sale Order confirming and

² Blenheim is the agent for 30 CPS and, the Trustee believes, the initial transferee of some of the Down Payments. As part of the Stipulation extending the time to close of the Contract and the sale of the Penthouse Unit, the Trustee settled his claims against 30 CPS and Blenheim and agreed to dismiss the adversary proceeding only as to them. Upon approval of the Stipulation, the adversary proceeding was dismissed as to 30 CPS and Blenheim.

approving the results of the auction.

12. At every step of the way, Wadud and Cuisine have appeared and participated in the proceedings. Wadud and Cuisine objected to the entry of the Order, dated November 26, 2004, approving the sales procedures in connection with the auction. The sales procedure order was entered over their objections. Docket nos. 142, 155 and 156. Wadud and Cuisine, by its counsel, Harris P. Leinwand, objected to the amended terms and conditions of sale and the break-up fee payable to Pezza as the stalking horse. Docket nos. 194 and 205. Wadud and his counsel, Leinwand, appeared at the hearing on the motion for approval of the amended terms and conditions of sale and the break-up fee payable to Pezza as the stalking horse. Wadud, and his putative financiers, were present at the auction on February 9, 2004, but did not bid. Wadud objected to the entry of the Sale Order, docket no. 203, and filed a notice of appeal from the Sale Order, docket no. 202. Significantly, neither Wadud nor Cuisine moved for a stay of the Sale Order pending appeal. Of course had such a motion have been filed, they would have been required to post an appropriate bond. Instead, Wadud and Cuisine seek the benefits of a stay, i.e., aborting of the sale closing, through the illegal and improper device of Notices of Pendency filed in clear violation of the automatic stay and the Sale Order.

13. Pursuant to the Sale Order, decretal paragraph 6,

“The Trustee is, pursuant to Section 363 (b) and (f) of the Bankruptcy Code, authorized, empowered and directed to transfer the Penthouse Unit ... to the Buyer ... *free and clear of any and all liens, claims, encumbrances and security interests of whatever kind or nature* (the “Liens”), with all such Liens to attach to the proceeds of sale in the same extent and priority as they existed on the filing date....” (Emphasis added.)

14. What ever claims Wadud and Cuisine believe are represented by the Notices of Pendency are clearly covered and protected by Paragraph 6 of the Sale Order. Assuming the closing takes place, under Paragraph 6 of the Sale Order, Wadud and Cuisine would have the same rights after the closing as before. *The only purpose of the Notices of Pendency, therefore, can be to cloud title and abort the closing.*

15. As the Court, Wadud and Cuisine are aware, if the closing does not take place on March 15, 2004, the Trustee's right to close on the sale will be forfeited and 30 CPS will reap a windfall. Indeed, the Trustee calculates that, after payments to 30 CPS and its agent, and the fee of the broker, the net proceeds, subject to further order of the Court may be as high as \$1,000,000. This benefit will be forever lost if Wadud, Cuisine and Strong are successful in their scheme to abort the closing on March 15, 2004.

16. Moreover, because the filing of the Notices of Pendency constitutes an action to create or perfect a lien on, or to exercise control over, property in which the estate has an interest, i.e., the Contract for sale of the Penthouse Unit and the Penthouse Unit, the filing of the Notices of Pendency constitute violations of the automatic stay, 11 U.S.C. §§362 (a)(3) and (4), which are void ab initio.

17. Accordingly, the Trustee is entitled to entry of Orders (a) directing Scott P. Strong, Esq., Cuisine and Wadud to show cause on March 15, 2004 at 9:59 a.m. why an order should not be entered vacating the Notices of Pendency filed on March 10, 2004 by Strong, as attorney for Cuisine, and Wadud, pro se, (b) an Order vacating the Notices of Pendency and fixing notice of hearing on the Trustee's application, pursuant to sections 105 and 362 of the Bankruptcy Code and Rule 9011 of the Federal Rules of Bankruptcy Procedure, for an Order holding Strong and Wadud in contempt for willful violations of the automatic stay, (d) an Order holding Strong and Wadud in contempt for willful violations of the automatic stay and imposing sanctions and (e) granting such other and further relief as the Court may deem appropriate.

RELIEF REQUESTED

A. The Trustee Is Entitled to An Order Vacating the Notices of Pendency

18. Section 105(a) of the Bankruptcy Code authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). Section 105(a) has been interpreted to give the bankruptcy courts broad

authority in bankruptcy cases. *United States v. Energy Resources, Co.*, 495 U.S. 545, 110 S.Ct. 2139, 109 L.Ed.2d 580 (1990). The primary limitation on the power granted to the Court under section 105(a) is that the exercise of the power granted not violate any express provisions of the Bankruptcy Code. *Barbieri v. RAJ Acquisition Corp. (In re Barbieri)*, 199 F.3d 616 (2d Cir. 1999).

19. It is well settled law that an act in violation of the automatic stay is void, not voidable. *Eastern Refractories Co. v. Forty Eight Insulations, Inc.*, 157 F.3d 169 (2d Cir. 1998). As such, the Notices of Pendency have no *legal* effect at all, but serve only to cloud issues concerning the closing of the sale and, Wadud hopes, to abort the closing entirely. As demonstrated above, the interests of Wadud and Cuisine are fully protected by the transfer of their claims to the proceeds of the sale.

20. Accordingly, the Trustee has demonstrated ample cause for entry of an emergency Order under Section 105(a) of the Bankruptcy Code vacating the Notices of Pendency.

B. The Trustee Is Entitled to Entry of an Order Fixing a Hearing Date and Briefing Schedule On the Trustee's Application for an Order Finding Contempt and Awarding Sanctions

21. The Trustee requests that the Court fix a hearing date and a briefing schedule for the Trustee's Application, pursuant to Section 105(a) of the Bankruptcy Code and Rule 9011 of the Federal Rules of Bankruptcy Procedure, for an Order finding Wadud and Strong in contempt of Court for violation of Rule 9011, the automatic stay and the Sale Order, and imposing sanctions. This application is without prejudice to the Trustee's right to seek damages for, inter alia, tortious interference and slander of title, if, as a result of the Notices of Pendency, the Trustee is unable to close the sale of the Penthouse Unit.

22. The Trustee suggests that all parties be afforded sufficient time to submit documentary evidence and briefs, prior to an evidentiary hearing on this prong of the

Application.

23. The Trustee respectfully submits that because of the emergency nature of this Application, and the fact that there are no novel or unsettled issues of law, the requirement for the filing of a memorandum of law with the Application be waived.

24. No prior request for the relief sought herein has been made to this or to any other court.

WHEREFORE, the Trustee prays for entry of (I) the annexed Order to Show Cause directing Scott P. Strong, Esq., Cuisine and Wadud to show cause on March 15, 2004 at 9:59 a.m. why an order should not be entered vacating the Notices of Pendency filed on March 10, 2004 by Strong, as attorney for Cuisine, and Wadud, pro se, and (II) an Order, substantially in the form attached hereto as Exhibit 3, vacating the Notices of Pendency, and fixing notice of hearing on the Trustee's application, pursuant to sections 105 and 362 of the Bankruptcy Code and Rule 9011 of the Federal Rules of Bankruptcy Procedure, for an Order holding Strong and Wadud in contempt for willful violations of the automatic stay, and granting such other and further relief as the Court may deem appropriate.

Dated: Jericho, New York
March 12, 2004

Silverman Perlstein & Acampora LLP
Attorneys for Plaintiff Kenneth P. Silverman, Esq., Chapter
7 Trustee of the estate of Nirvana Restaurant, Inc.

By: /s/ Edward M. Flint
Edward M. Flint, Esq. (EMF#7001)
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

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

NIRVANA, INC.)

Petitioner,)

v.)

NIRVANA FOR HEALTH INC.)

Registrant.)

Cancellation No.: 92042878

Attorney Ref.: 2779-6

**EXHIBIT H
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**

United States Bankruptcy Court

Southern District of New York

VOLUNTARY PETITION

Name of Debtor - (If individual, enter Last, First, Middle): NIRVANA RESTAURANT INC.	Name of Joint Debtor (Spouse) (Last, First, Middle): None
All Other Names used by the Debtor in the last 6 years (Include married, maiden, and trade names) None	All Other Names used by the Joint Debtor in the last 6 years (Include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all):	Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code): 40 CENTRAL PARK SOUTH, 2A NEW YORK, NY 10019	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business: New York	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor: (if different from address listed above)	Attorney for Debtor: Scott L. Lanin, Esq. SLL-2269 Lanin & Associates 60 East 42nd St. Suite 5101 New York, NY 10165

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- | | |
|---|---|
| <input type="checkbox"/> Individual(s) | <input type="checkbox"/> Railroad |
| <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> Stockbroker |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Commodity Broker |
| <input type="checkbox"/> Other | |

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- | | | |
|--|--|-------------------------------------|
| <input type="checkbox"/> Chapter 7 | <input checked="" type="checkbox"/> Chapter 11 | <input type="checkbox"/> Chapter 13 |
| <input type="checkbox"/> Chapter 9 | <input type="checkbox"/> Chapter 12 | |
| <input type="checkbox"/> Sec. 304 - Case Ancillary to Foreign Proceeding | | |

Nature of Debt (Check one box)

- Consumer/Non-Business Business

Filing Fee (Check one box)

- Filing fee attached
- Filing fee to be paid in installments. (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3

Chapter 11 Small Business (Check all boxes that apply)

- Debtor is a small business as defined in 11 U.S.C. § 101.
- Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e). (Optional)

THIS SPACE FOR COURT USE ONLY

Statistical/Administrative Information (Estimates only)

- Debtor estimates that funds will be available for distribution to unsecured creditors.
- Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Assets							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Debts							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10 million to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Voluntary Petition (This page must be completed and filed in every case).	Name of Debtor(s): NIRVANA RESTAURANT INC.
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Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheets)

Location Where Filed: None	Case Number	Date Filed
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Pending Bankruptcy Case Filed By Any Spouse, Partner Or Affiliate Of This Debtor (If more than one, attach additional sheet)

Name of Debtor None	Case Number	Date Filed
District	Relationship	Judge

SIGNATURES

<p style="text-align: center;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct. (If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7) I am aware that I may proceed under chapter 7, 11, 12 and 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7 I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><input checked="" type="checkbox"/> _____ Signature of Debtor</p> <p><input checked="" type="checkbox"/> _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (If not represented by attorney)</p> <p>_____ Date</p>	<p style="text-align: center;">Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><input checked="" type="checkbox"/> /s/SHAMSHER WADUD Signature of Authorized Individual</p> <p>_____ SHAMSHER WADUD Printed Name of Authorized Individual</p> <p>_____ PRESIDENT Title of Authorized Individual</p> <p>_____ November 6, 2001 Date</p>
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<p style="text-align: center;">Signature of Attorney</p> <p><input checked="" type="checkbox"/> /s/Scott L. Lanin, Esq. Signature of Attorney for Debtor(s) Scott L. Lanin, Esq. SLL-2269 Printed Name of Attorney for Debtor(s)</p> <p>_____ Lanin & Associates Firm Name 60 East 42nd St. Suite 5101 New York, NY 10165 Address (212) 949-1560 (212) 949-1572 Telephone Number Fax Number November 6, 2001 Date</p>	<p style="text-align: center;">Signature of Non-Attorney Petition Preparer</p> <p>I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.</p> <p>_____ Printed or Typed Name of Bankruptcy Petition Preparer</p> <p>_____ Social Security Number</p> <p>_____ Address Telephone Number</p> <p>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:</p>
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Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

Exhibit A is attached and made a part of this petition

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

/s/Scott L. Lanin, Esq. November 6, 2001
Signature of Attorney for Debtor(s) Date

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate official form for each person.

Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

Debtor

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Hus., Wife, Joint, or Comm." If the debtor holds no interest in real property, write "None" under "Description and Location of Property." Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUS., WIFE, JOINT, OR COMM.	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR	AMOUNT OF SECURED CLAIM	P R I O R I T Y
None					

Total:

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Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided. If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Hus., Wife, Joint, or Comm." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.) Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Sch

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	C O D E B T O R	HUS., WIFE, JOINT, OR COMM	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION OF CLAIM

(Total of this page) Subtotal ⇨ \$0.00
 Total ⇨ N/A

In re: NIRVANA RESTAURANT INC.

Case No.

Chapter 11

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	C O D E B T O R	HUS., WIFE, JOINT, OR COMM	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I D A T E	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION OF CLAIM

(Total of this page) Subtotal ⇒

\$0.00

Total ⇒

\$0.00

0 continuation sheet(s) attach

UNITED STATES BANKRUPTCY COURT

Southern District of New York

In re:
NIRVANA RESTAURANT INC.
Debtor

Chapter 11
Case Number: _____

Disclosure of Compensation of Attorney for Debtor

- 1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:
For legal services, I have agreed to accept..... \$4,170.00
Prior to the filing of this statement I have received..... \$4,170.00
Balance Due..... \$0.00
2. The source of the compensation paid to me was:
[X] Debtor [] Other (specify)
3. The source of compensation to be paid to me is:
[X] Debtor [] Other (specify)
4. [X] I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
5. In return for the above fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
d. Other:
6. By agreement with the debtor(s), the above-disclosed fee does not include the following services:

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Date: 11-06-01

/s/Scott L. Lanin, Esq.
Signature of Attorney
Scott L. Lanin, Esq.
Lanin & Associates

NIRVANA RESTAURANT INC.

(A New York Corporation)

UNANIMOUS WRITTEN CONSENT OF SOLE SHAREHOLDER

The undersigned, being the sole shareholder of all of issued and outstanding shares of common stock of NIRVANA RESTAURANT INC., a New York corporation (the "Company"), hereby approves the following actions by written consent in lieu of a meeting:

RESOLVED, that it is in the best interest of the Company to file a voluntary Chapter 11 bankruptcy petition in order to resolve its debts, and to retain counsel for that purpose, that the Company and its officers be authorized to file a Chapter 11 case and liquidate the Company.

IN WITNESS WHEREOF, this Consent has been executed as of this 6th day of November 2001.

By: _____
Nivana Cuisine Inc. as Sole
Shareholder of Nirvana
Restaurant Inc., by its Sole
Shareholder and President
Shamsher Wadud

VERIFICATION AND ACKNOWLEDGMENT

STATE OF NEW YORK)
 ss:)
COUNTY OF NEW YORK)

I, Shamsher Wadud, being duly sworn hereby swears as follows: I am the sole shareholder of Nirvana Cuisine Inc. which is the sole shareholder of Nirvana Restaurant Inc. I have read the foregoing consent and know the contents thereof; and the same is true to my own knowledge. This verification is made by me because Nirvana Cuisine Inc. is a corporation and I am an officer thereof and the sole shareholder.

Shamsher Wadud

Sworn to before me this
6th day of November 2001

Notary Public
Scott Lanin, Notary, State of New York, County of New York
60 E 42 St. Suite 5101 NY, NY 10165, Registration Number 02LA4976380
Expires 1/14/03

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re

Case No.:

Chapter 7

Debtor(s)

-----X

DECLARATION RE: ELECTRONIC FILING

PART I -- DECLARATION OF PETITIONER[S]:

I [We] _____ [and _____] the undersigned debtor[s], hereby declare under penalty of perjury, that the information I [we] have given my [our] attorney and the information provided in the electronically filed petition is true and correct. I [We] consent to my [our] attorney sending my [our] petition, and the accompanying statements and schedules to the United States Bankruptcy Court, the trustee appointed in my [our] case and the United States Trustee. I [We] understand that failure to provide the trustee with the signed original of this Declaration Re: Electronic Filing within 15 days following the date the petition was electronically filed will cause my [our] case to be dismissed pursuant to 11 U.S.C. § 707(a)(3) without further notice.

Dated: _____

Signed _____

PART II -- DECLARATION OF ATTORNEY:

I declare under penalty of perjury that I have examined the above debtor's[s'] petition, schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete. The debtor[s] will have signed this form before I file the petition, schedules and statements, I will give the debtor[s] a copy of all forms and information to be filed with the United States Bankruptcy Court and I will send copies of this declaration, the petition, schedules and statements to the trustee appointed in this case and to the United States Trustee. This declaration is based upon all information of which I have knowledge.

Dated: _____

Signed: _____

Attorney for Debtor[s]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----x
IN RE:

NIRVANA RESTAURANT INC'

Chapter 11

Case No.

Debtor,

-----x

AFFIDAVIT REGARDING EXHIBIT A TO THE PETITION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SHAMSHER WADUD, being duly sworn, deposes and says:

1. I am the President of Nirvana Cuisine Inc the sole shareholder of Nirvana Restaurant Inc. (the "Debtor"). I am fully familiar with the facts and circumstances involved herein.
2. I submit this affidavit to advise the Court that the Debtor is not required to file Exhibit A to the petition because the Debtor does not file periodic reports with the Security and Exchange Commission pursuant to the Securities and Exchange Act of 1934.

SHAMSHER WADUD

Sworn to before me the this
6TH day of Nov 2001

Notary Public
Scott Lanin, Notary, State of New York, County of New York
60 E 42 St. Suite 5101 NY, NY 10165, Registration Number 02LA4976380
Expires 1/14/03

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

NIRVANA, INC.)

Petitioner,)

v.)

NIRVANA FOR HEALTH INC.)

Registrant.)

) Cancellation No.: 92042878

) Attorney Ref.: 2779-6

EXHIBIT I

To

Declaration of Sheryl De Luca

in Support of Petitioner's Motion for Summary Judgment

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re : Case No. 01 B 15653 (SMB)
: :
: :
NIRVANA RESTAURANT, INC., : (Chapter 11)
: :
Debtor. :
: :
-----x

ORDER CONVERTING CHAPTER 11 CASE
TO A CASE UNDER CHAPTER 7

Based upon the hearing held before this Court and the application of the United States Trustee and it appearing that appropriate notice has been given and cause existing for the relief requested, it is

ORDERED, that this case commenced under Chapter 11 of the Bankruptcy Code be and hereby is converted to a case under Chapter 7 pursuant to 11 U.S.C. § 1112(b); and it is further

ORDERED, that the debtor shall file (i) a schedule of unpaid debts incurred after the commencement of the Chapter 11 case within 15 days of the date of this order, and (ii) a final report within 30 days of the date of this order, pursuant to F.R. Bankr. Proc. 1019(5).

Dated: New York, New York
July 17, 2003

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
CHIEF BANKRUPTCY JUDGE

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

NIRVANA, INC.

Petitioner,

v.

NIRVANA FOR HEALTH INC.

Registrant.

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Cancellation No.: 92042878

Attorney Ref.: 2779-6

EXHIBIT J

To

**Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**



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TARR Status ASSIGN Status TDR TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark NIRVANA
 Goods and Services (EXPIRED) IC 042. US 100. G & S: RESTAURANT SERVICES. FIRST USE: 19700814. FIRST USE IN COMMERCE: 19700814
 Mark Drawing Code (1) TYPED DRAWING
 Design Search Code
 Serial Number 72378228
 Filing Date December 9, 1970
 Current Filing Basis 1A
 Original Filing Basis 1A
 Registration Number 0947368
 Registration Date November 14, 1972
 Owner (REGISTRANT) BENGAL CABARET INC. CORPORATION NEW YORK 1193 LEXINGTON AVE. NEW YORK NEW YORK 10028
 Assignment Recorded ASSIGNMENT RECORDED
 Type of Mark SERVICE MARK
 Register PRINCIPAL
 Affidavit Text SECT 15. SECT 8 (6-YR).
 Live/Dead Indicator DEAD

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This page was generated by the TARR system on 2006-05-04 17:37:57 ET

Serial Number: 72378228 Assignment Information

Registration Number: 947368 Assignment Information

Mark (words only): NIRVANA

Standard Character claim: No

Current Status: This registration was not renewed and is considered to be expired.

Date of Status: 1993-08-23

Filing Date: 1970-12-09

Transformed into a National Application: No

Registration Date: 1972-11-14

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 1999-05-14

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. BENGAL CABARET INC.

Address:

BENGAL CABARET INC.

1193 LEXINGTON AVE.

NEW YORK, NY 10028

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

U.S. Class: 100 (International Class 042)

Class Status: Expired

RESTAURANT SERVICES

Basis: 1(a)

First Use Date: 1970-08-14

First Use in Commerce Date: 1970-08-14

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

1998-12-17 - Post Registration action correction

1993-08-23 - Expired Section 9

1979-01-22 - Section 8 (6-year) accepted & Section 15 acknowledged

CORRESPONDENCE INFORMATION

(NOT AVAILABLE)

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

NIRVANA, INC.

Petitioner,

v.

NIRVANA FOR HEALTH INC.

Registrant.

)
)
) Cancellation No.: 92042878

)
) Attorney Ref.: 2779-6
)
)
)

EXHIBIT K

To

**Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**



United States Patent and Trademark Office

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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 7**Serial #:** 72378228**Filing Dt:** 12/09/1970**Reg #:** 0947368**Reg. Dt:** 11/14/1972**Registrant:** BENGAL CABARET INC.**Mark:** NIRVANA**Assignment: 1****Reel/Frame:** 0360/0067**Received:****Recorded:** 12/03/1979**Pages:** 2**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOOD WILL, EFFECTIVE JAN. 15, 1980.**Assignor:** BENGAL CABARET, INC.**Exec Dt:** 11/28/1979**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** MOTI-MAHAL INC.30 CENTRAL PARK SOUTH
NEW YORK, NEW YORK 10019**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Correspondent:** YUTER, ROSEN, ET AL.122 E. 42ND ST.
NEW YORK, NY 10017**Assignment: 2****Reel/Frame:** 0448/0512**Received:****Recorded:** 09/09/1983**Pages:** 2**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOOD WILL EFFECTIVE AUG. 29, 1983**Assignor:** MOTI-MAHAL INC.**Exec Dt:** 09/07/1983**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** BHUYAN, FARIDA KAMAL23546 PEBWORTH PLACE
SPRING, TEXAS 77373**Entity Type:** UNKNOWN**Citizenship:** NONE**Correspondent:** YUTER, ROSEN & DAINOW489 FIFTH AVE.
NEW YORK, NY 10017**Assignment: 3****Reel/Frame:** 0526/0963**Received:****Recorded:** 05/27/1986**Pages:** 2**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOOD WILL EFFECTIVE AS OF MAY 15, 1986**Assignor:** BHUYAN, FARIDA KAMAL**Exec Dt:** 05/15/1986**Entity Type:** UNKNOWN**Citizenship:** NONE**Assignee:** GLOBAL DYNAMICS, INC.40 CENTRAL PARK SOUTH
NEW YORK, NEW YORK 10019**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Correspondent:** GLOBAL DYNAMICS, INC.

40 CENTRAL PARK SOUTH

NEW YORK, NY 10019

Assignment: 4**Reel/Frame:** 0597/0041**Received:****Recorded:** 03/28/1988**Pages:** 2**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL AS OF MARCH 25, 1988**Assignor:** GLOBAL DYNAMICS INC.**Exec Dt:** 03/25/1988**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** NIRVANA GLOBAL CORPORATION

40 CENTRAL PARK SOUTH

NEW YORK, NEW YORK 10019

Correspondent: NIRVANA GLOBAL CORPORATION

40 CENTRAL PARK SOUTH

NEW YORK, NY 10019

Assignment: 5**Reel/Frame:** 1565/0985**Received:** 04/02/1997**Recorded:** 12/16/1996**Pages:** 4**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** NIRVANA GLOBAL CORPORATION**Exec Dt:** 08/14/1995**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** ROOFTOP RESTAURANT INC.

30 CENTRAL PARK SOUTH

NEW YORK, NEW YORK 10019

Correspondent: SHERRY & O'NEILL

JOHN A. HYLAND

305 MADISON AVENUE

SUITE 1701

NEW YORK, NY 10165

Assignment: 6**Reel/Frame:** 1582/0621**Received:** 05/08/1997**Recorded:** 05/05/1997**Pages:** 6**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** NIRVANA GLOBAL CORPORATION**Exec Dt:** 08/14/1995**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** ROOFTOP RESTAURANT INC.

30 CENTRAL PARK SOUTH

NEW YORK, NEW YORK 10019

Correspondent: JOHN A. HYLAND

SHERRY & O'NEILL

305 MADISON AVENUE

SUITE 1701

NEW YORK, NY 10165

Assignment: 7**Reel/Frame:** 1679/0869**Received:** 01/28/1998**Recorded:** 01/12/1998**Pages:** 4**Conveyance:** ASSIGNMENT OF AN UNDIVIDED PART OF ASSIGNORS INTEREST**Assignor:** ROOFTOP RESTAURANT INC.**Exec Dt:** 12/15/1997**Entity Type:** CORPORATION

Assignee: NIRVANA RESTAURANT INC.
30 CENTRAL PARK SOUTH
NEW YORK, NEW YORK 10019

Citizenship: NEW YORK
Entity Type: CORPORATION
Citizenship: NEW YORK

Correspondent: SHERRY & O'NEILL
JOHN A. HYLAND
305 MADISON AVENUE
SUITE 1701
NEW YORK, NY 10165

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

NIRVANA, INC.

Petitioner,

v.

NIRVANA FOR HEALTH INC.

Registrant.

)
)
) Cancellation No.: 92042878
)
) Attorney Ref.: 2779-6
)
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**EXHIBIT L
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**



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COMPREHENSIVE REPORT

Our information indicates that this business is no longer active at this location. If you have reason to believe that this business is currently operating, please call our Customer Service Center at the phone number listed below to request an investigation.

DUNS: 05-667-5838
BENGAL CABARET INC
NIRVANA-ON-ROOFTOP
BANGLADESH INDIA
PAKISTAN INTERNATIONAL
GOURMET RESTAURANT

FINANCIAL STRESS CLASS: 0
CREDIT SCORE CLASS: 0

KEY

30 CENTRAL PARK SOUTH
NEW YORK NY 10019
TEL: 212 486-5700

=====					
LOWEST RISK			HIGHEST RISK		
1	2	3	4	5	

SIC: 58 12
LINE OF BUSINESS: RESTAURANT
CONTROL DATE: 1969

DATE PRINTED: JUL 23 2003

CHIEF EXECUTIVE: SHAMSHER WADUD, PRES

CREDIT CAPACITY SUMMARY

D&B Rating: NQ
(formerly --)

Payment Activity

of Employees

Average High Credit: -
Highest Credit: -

Total: 19

Total Highest Credits: -

Worth: -

Working Capital: -

=====

SPECIAL EVENTS

09/11/89 According to Shamsher Wadud, President, the subject has been inactive since 1987. At least \$34,960 was reported left in unpaid obligations.

=====

FINANCIAL STRESS SUMMARY

Based on information in D&B's data files, the FINANCIAL STRESS CLASS for this business is 0. This means the company is either OPEN BANKRUPTCY, DISCONTINUED OPERATING AT THIS LOCATION, or cannot be scored. See SPECIAL EVENTS for details.

Financial Stress Norms are provided in the next section to support your analysis of other accounts you may have with similar demographic characteristics as the subject company.

You may also wish to order full reports on these firms for a more thorough review of their risk profile.

=====

FINANCIAL STRESS NORMS

Norms for Companies in the Same ...	National Percentile
- Region (MIDDLE ATLANTIC)	60
- Industry: ENTERTAINMENT AND LEISURE	42
- Employee Range (10-19)	57
- Years in Business Range (26+)	82

Notes:

- Financial Stress statistics are derived using D&B's Stress Model. This model uses mathematical probabilities to determine the likelihood of a business experiencing financial stress within a twelve month period. Companies experiencing financial stress are those that terminate operations without paying all creditors in full, or reorganize or obtain relief from creditors under state or federal law.
- Based on 2002 failure statistics.
- Percentiles are based on a 100 point scale.
- The National Percentile reflects the relative ranking of a company among all scorable companies in D&B's file.

=====

CREDIT SCORE SUMMARY

Based on information in D&B's data files, the CREDIT SCORE CLASS for this business is 0. This means the company is either OPEN BANKRUPTCY, DISCONTINUED OPERATING AT THIS LOCATION, or cannot be scored. See SPECIAL EVENTS for

details.

Credit Score Norms are provided in the next section to support your analysis of other accounts you may have with similar demographic characteristics as the subject company.

You may also wish to order full reports on these firms for a more thorough review of their risk profile.

=====
CREDIT SCORE NORMS

Norms for Companies in the Same ...	National Percentile
- Region (MIDDLE ATLANTIC)	43
- Industry: ENTERTAINMENT AND LEISURE	39
- Employee Range (10-19)	60
- Years in Business Range (26+)	70

- Note:
- Credit Score predicts the likelihood of a firm paying in a severely delinquent manner (90+ Days Past Terms) over the next twelve months. It was calculated using statistically valid models and the most recent payment information in D&B's files.
 - Percentiles are based on a 100 point scale.
 - The percentile ranks a firm relative to other businesses. For example, a typical company located in a specific geographic region that is in the 80th percentile nationwide is a better risk than 79% of the total population of scored companies in D&B's files.

=====
PUBLIC FILINGS SUMMARY

The following data includes both open and closed filings found in D&B's database on the subject company.

Record Type	#	Most Recent Filing Date
Bankruptcy Proceedings	0	-
Judgments	0	-
Liens	2	08/30/1993
Suits	0	-
UCC's	1	02/26/1998

=====
PUBLIC FILINGS DETAIL

The following data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

* * * LIEN(S) * * *

A lienholder can file the same lien in more than one filing location. The appearance of multiple liens filed by the

same lienholder against a debtor may be indicative of such an occurrence.

DOCKET/WARRANT: E000215704

AMOUNT: \$36,322 STATUS: Open
TYPE: State Tax DATE STATUS ATTAINED: 08/30/1993
FILED BY: NYS TAX COMMISSION DATE FILED: 08/30/1993
AGAINST: BENGAL CABARET INC LATEST INFO RECEIVED: 09/20/1993
WHERE FILED: NEW YORK COUNTY SUPREME COURT,
NEW YORK, NY

DOCKET/WARRANT: E000215704W0066

AMOUNT: \$35,301 STATUS: Open
TYPE: State Tax DATE STATUS ATTAINED: 05/25/1993
FILED BY: NYS TAX COMMISSION DATE FILED: 05/25/1993
AGAINST: BENGAL CABARET INC LATEST INFO RECEIVED: 07/02/1993
WHERE FILED: NEW YORK COUNTY SUPREME COURT,
NEW YORK, NY

* * * UCC FILING(S) * * *

COLLATERAL: Leased Computer equipment
FILING NO: 98041582 DATE FILED: 02/26/1998
TYPE: Original LATEST INFO RECEIVED: 03/27/1998
SEC. PARTY: SANWA LEASING CORPORATION, TROY, MI FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
DEBTOR: PAKISTAN INTERNATIONAL NY

The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this report was printed.

=====

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

NIRVANA, INC.

Petitioner,

v.

NIRVANA FOR HEALTH INC.

Registrant.

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Cancellation No.: 92042878

Attorney Ref.: 2779-6

**EXHIBIT M
To
Declaration of Sheryl De Luca
in Support of Petitioner's Motion for Summary Judgment**



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Record 1 out of 1

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Typed Drawing

Word Mark NIRVANA
Goods and Services (CANCELLED) IC 042. US 100 101. G & S: restaurant and nightclub services. FIRST USE: 19700814. FIRST USE IN COMMERCE: 19700814
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75421590
Filing Date January 22, 1998
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition September 1, 1998
Registration Number 2205868
Registration Date November 24, 1998
Owner (REGISTRANT) Nirvana Restaurant Inc. CORPORATION NEW YORK 30 Central Park South New York NEW YORK 10019
Attorney of Record JOHN A HYLAND
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Cancellation Date August 27, 2005

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Serial Number: 75421590

Registration Number: 2205868

Mark (words only): NIRVANA

Standard Character claim: No

Current Status: Registration canceled under Section 8.

Date of Status: 2005-08-27

Filing Date: 1998-01-22

Transformed into a National Application: No

Registration Date: 1998-11-24

Register: Principal

Law Office Assigned: LAW OFFICE 107

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 1999-04-09

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nirvana Restaurant Inc.

Address:
Nirvana Restaurant Inc.
30 Central Park South
New York, NY 10019
United States

Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 042
Class Status: Section 8 - Cancelled

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 2
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 2,731,312

Registered July 1, 2003

**TRADEMARK
PRINCIPAL REGISTER**

NIRVANA

**NIRVANA FOR HEALTH INC. (NEW YORK
CORPORATION)
40 CENTRAL PARK SOUTH, 2A
NEW YORK, NY 100191633**

FIRST USE 8-14-1970; IN COMMERCE 8-14-1990.

SER. NO. 76-319,172, FILED 10-1-2001.

**FOR: BOTTLED NATURAL SPRING MINERAL
WATER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).**

MITCHELL FRONT, EXAMINING ATTORNEY

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 3
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

TRADEMARK/SERVICE MARK APPLICATION PRINCIPAL REGISTER WITH DECLARATION	MARK (Word(s) and/or Design) <h1 style="text-align: center;">NIRVANA</h1>	CLASS NO. (If known)
--	--	-------------------------

TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS

APPLICANT'S NAME: NIRVANA FOR HEALTH INC.
 APPLICANT'S MAILING ADDRESS: NIRVANA FOR HEALTH INC.
(Display address exactly as it should appear on registration)
40 CENTRAL PARK SOUTH, 2.A.
NEW YORK, NY 10019-1633
NIRVA. FOUNDED IN 1970 BY SHAMSHER WADUD

APPLICANT'S ENTITY TYPE (Check one and supply requested information)

Individual - Citizen of (Country): _____

Partnership - State where organized (Country, if appropriate): _____
 Names and Citizenship (Country) of General Partners: _____

Corporation - State (Country, if appropriate) of Incorporation: NEW YORK

Other (Specify Nature of Entity and Domicile): _____

GOODS AND/OR SERVICES

Applicant requests registration of the trademark/service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) for the following goods/services (SPECIFIC GOODS AND/OR SERVICES MUST BE INSERTED HERE):

BOTTLED NATURAL SPRING/
MINERAL WATER (CLASS 32)

BASIS FOR APPLICATION (Check boxes which apply, but never both the first AND second boxes; and supply requested information related to each box checked.)

Applicant is using the mark in commerce on or in connection with the above identified goods/services. (15 U.S.C. 1051(a), as amended.) Three specimens showing the mark as used in commerce are submitted with this application.

- Date of first use of the mark in commerce which the U.S. Congress may regulate (for example, interstate or between the U.S. and a foreign country): CLASS 32 8-14-1990
- Specify the type of commerce: INTERSTATE
(for example, interstate or between the U.S. and a specified foreign country)
- Date of first use anywhere (the same as or before use in commerce date): CLASS 32 8-14-1970
- Specify manner or mode of use of mark on or in connection with the goods/services: MARK APPLIED TO LABELS OR SILK SCREENED ONTO BOTTLES OF WATER
(for example, trademark is applied to labels, service mark is used in advertisements)

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services. (15 U.S.C. 1051(b), as amended.)

- Specify intended manner or mode of use of mark on or in connection with the goods/services: _____
(for example, trademark will be applied to labels, service mark will be used in advertisements)

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services, and asserts a claim of priority based upon a foreign application in accordance with 15 U.S.C. 1126(d), as amended.

- Country of foreign filing: _____
- Date of foreign filing: _____

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services and, accompanying this application, submits a certification or certified copy of a foreign registration in accordance with 15 U.S.C 1126(e), as amended.

- Country of registration: _____
- Registration number: _____

NOTE: Declaration, on Reverse Side, MUST be Signed

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. 1001, and that such willful false statements 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. 1051(b), he/she believes the 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 above identified 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.

SEPTEMBER 24, 2001

DATE

SIGNATURE

212-888-2790

TELEPHONE NUMBER

SHAMSHER WADVA PRESIDENT
PRINT OR TYPE NAME AND POSITION

INSTRUCTIONS AND INFORMATION FOR APPLICANT

TO RECEIVE A FILING DATE, THE APPLICATION MUST BE COMPLETED AND SIGNED BY THE APPLICANT AND SUBMITTED ALONG WITH:

1. The prescribed **FEE (\$245.00)** for each class of goods/services listed in the application;
2. A **DRAWING PAGE** displaying the mark in conformance with 37 CFR 2.52;
3. If the application is based on use of the mark in commerce, **THREE (3) SPECIMENS** (evidence) of the mark as used in commerce for each class of goods/services listed in the application. All three specimens may be the same. Examples of good specimens include: (a) labels showing the mark which are placed on the goods; (b) photographs of the mark as it appears on the goods, (c) brochures or advertisements showing the mark as used in connection with the services.
4. An **APPLICATION WITH DECLARATION** (this form) - The application must be signed in order for the application to receive a filing date. Only the following persons may sign the declaration, depending on the applicant's legal entity: (a) the individual applicant; (b) an officer of the corporate applicant; (c) one general partner of a partnership applicant; (d) all joint applicants.

SEND APPLICATION FORM, DRAWING PAGE, FEE, AND SPECIMENS (IF APPROPRIATE) TO:

Assistant Commissioner for Trademarks
Box New App/Fee
2900 Crystal Drive
Arlington, VA 22202-3513

Additional information concerning the requirements for filing an application is available in a booklet entitled **Basic Facts About Registering a Trademark**, which may be obtained by writing to the above address or by calling: (703) 308-HELP.

This form is estimated to take an average of 1 hour to complete, including time required for reading and understanding instructions, gathering necessary information, recordkeeping, and actually providing the information. Any comments on this form, including the amount of time required to complete this form, should be sent to the Office of Management and Organization, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. Do NOT send completed forms to this address.

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 4
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**



SHAMSHER WADUD, CHAIRMAN

DIRECT LINE: 212 888 2790

By Overnight Express Mail

September 24, 2001

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Application for Registration of the Mark "NIRVANA™"

Dear Sir/Madam:

Nirvana for Health Inc. ("NHI") is the sister company of Nirvana Restaurant Inc. ("Nirvana"), both New York corporations located at 40 Central Park South, 2A, New York, NY 10019. Nirvana is the obtainer of the registered trademark "NIRVANA" (serial number 75-421590; registration number 2205868; International Class 042) and is the oldest registered user of the trademark "NIRVANA" in the United States, having used the trademark for restaurant/food related businesses *consistently* since August 14, 1970. Nirvana restaurant has sold "Nirvana™" water as of August 14, 1970 (first use), and we seriously began to engage in the sale of "Nirvana™" water, particularly on an interstate commerce basis, from August 14, 1990.

At this time, however, as NHI is now planning to engage in a mass marketing campaign of "Nirvana™" water and increase global sales, it is now seeking to formally obtain the registration of the mark "NIRVANA™". In accordance with your requirements for registration, attached please find the following:

- 1) The filled in registration application for said mark;
- 2) The Drawing Page for said mark;
- 3) 3 (three) specimens of said mark as used in commerce;
- 4) A check in the amount of \$325.00 (three hundred twenty five dollars) for registration of the mark under IC 32.
- 5) Miscellaneous materials showing Nirvana's involvement in the bottled water industry from the early 1990s.
- 6) The last page of Nirvana's menu (beverage section) will show that we have been selling "Nirvana™" water *on a continuous basis*.

We very much hope that the attached materials will satisfy your requirements for registration of the of said mark. Should you have any questions or comments concerning the foregoing, please contact the undersigned at 212 888 2790 or fax to 212 888 3930.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Wadud". The signature is enclosed within a large, hand-drawn oval shape.

Shamsheer Wadud
Chairman & President - Nirvana for Health Inc.
President - Nirvana Restaurant Inc.

Enclosures

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 5
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**



Certificate of Membership

Nirvana Himalayas Water Corporation

HAVING CLEARLY EVIDENCED SINCERE INTEREST
IN THE PROGRESS AND THE DEVELOPMENT OF WATER
QUALITY FOR ALL MANKIND YOU ARE HEREBY
ELECTED TO MEMBERSHIP WITH FULL PRIVILEGES IN

WATER QUALITY ASSOCIATION

U.S. Patent & TM Office Mail Report DP 900



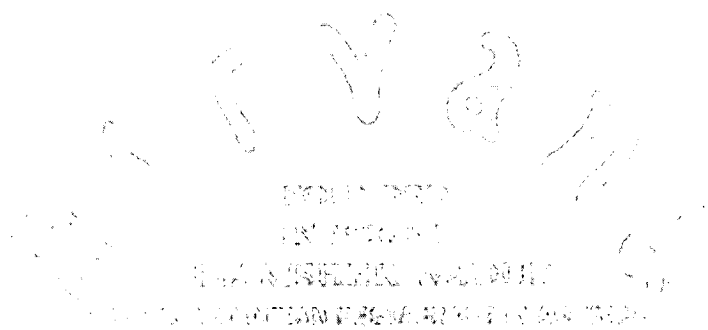
10-01-2001

76319172

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 6
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**



10-01-2001

U.S. Patent & TMO/TM Mail Rept. Dt. #31

76319172



*All our meat is Halal.
 Halal, simply put, is a process similar to Kosher.
 This insures the purity and freshness of the product.
 The animal is blessed with a prayer, thereby signifying its purpose as sustenance.*

(Served continuously from 12:00 noon to 1:00 a.m. every day)

Feasts

<i>Raja's Feast</i>	<i>Vegetarian Feast for Two</i> Twenty exotic vegetarian items (from mild to medium spicy) served in a romantic manner.	<i>199.00</i>
<i>Nizami Feast</i>	<i>Feast for Two</i> Twenty-two exotic Items (includes meat dishes) (from mild to medium spicy) served in a romantic manner.	<i>269.00</i>
<i>Maharaja's Feast</i>	<i>Vegetarian Feast for Four to Six People</i> Twenty-four exotic vegetarian items (from mild to medium spicy) served in a festive manner.	<i>339.00</i>
<i>Nawabi Feast</i>	<i>Feast for Four to Six People</i> Twenty-seven exotic Items (includes meat dishes) (from mild to medium spicy) served in an Indian manner.	<i>399.00</i>
<i>Nirvana™ Feast</i>	<i>Feast for Eight to Ten People</i> Forty exotic items (includes meat dishes) (from mild to medium spicy) served in a royal manner.	<i>699.00</i>

Appetizers

<i>Papor* (8 pcs.)</i>	Spiced lentil wafer.	3.95
<i>Piazi* (4 pcs.)</i>	Fritters of thinly sliced onions prepared with aromatic spices.	8.95
<i>Vegetable Bora* (4 pcs.)</i>	Fritters of lentils and thinly sliced cabbage prepared with aromatic spices.	8.95
<i>Chana Bhaji*</i>	Indian chickpeas sauteed with spices and fresh herbs.	9.95
<i>Shingara* (4 pcs.) with Tamarind Chutney*</i>	A flavourful blend of delicately spiced vegetables in pastry turnovers served with tropical tamarind fruit chutney.	10.95
<i>Samosa* (4 pcs.) with Tamarind Chutney*</i>	A flavourful blend of delicately spiced minced chicken turnover served with chutney of tamarind fruit.	12.95
<i>Assorted Vegetarian Appetizers*</i>	A full plate of appetizers consisting of Chana Bhaji (Indian chickpeas sauteed with spices), Vegetable Bora (fritter), Piazi (onion fritter), Shingara (mixed vegetable turnover), and Papor (spiced lentil wafer) served with tamarind chutney.	12.95

Breads Made to Order

<i>Naan</i>	Tandoor baked flat bread.	6.95
<i>Tandoori Roti</i>	Unleavened whole-wheat bread baked in the tandoor.	6.95
<i>Tandoori Paratha</i>	Multi-layered unleavened whole-wheat bread baked in the tandoor.	7.95
<i>Onion Naan</i>	Bread stuffed with chopped onions and baked in the tandoor.	8.95
<i>Garlic Naan</i>	Bread stuffed with chopped garlic and baked in the tandoor.	9.95
<i>Cheese Naan</i>	Tandoor baked bread with home-made cheese and spices.	10.95
<i>Potato Paratha*</i>	Whole-wheat bread stuffed with spiced potatoes and fresh herbs.	10.95
<i>Nirvana Minced Meat Paratha*</i>	Whole-wheat bread stuffed with minced chicken, fresh herbs and spices.	12.95
<i>Nirvana™ Poori</i>	Giant puffed bread.	12.95
<i>Spinach Bread</i>	Whole-wheat bread stuffed with fresh spinach and baked in the tandoor.	12.95

Condiments

<i>Tamarind Chutney*</i>	Sweet and sour chutney of tropical tamarind fruit.	3.95
<i>Chilli Achar***</i>	Fiery-hot chill pickle with exotic spices.	5.95
<i>Lemon Achar***</i>	Fiery-hot lemon pickle with exotic spices.	5.95
<i>Mango Chutney</i>	Sweet chutney of sliced mango.	5.95
<i>Coriander Chutney*</i>	Freshly made chutney of coriander leaves.	6.95

Rice

<i>Pilaf</i>	Fragrant Basmati rice cooked with saffron, raisins and almonds.	9.95
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Salad

<i>Salad of the Day</i>	A delicately flavoured refreshing salad – a different one each day.	9.95
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Side Dishes

<i>Vegetable Raita</i>	A cool blend of creamy yogurt and fresh vegetables, seasoned with mild spices and herbs.	9.95
<i>Nirvana Dal of the Day*</i>	Lentils cooked with spices and fresh herbs – a different type each day.	10.95
<i>Spinach Bhaji*</i>	Fresh spinach gently cooked with spices and fresh herbs.	11.95

Soups

<i>Mulligatawny Soup*</i>	Made with rich meat stock, vegetables, curry and herbs.	7.95
<i>Nirvana™ Soup*</i>	A delicate blend of seasonal vegetables cooked with lentil, fresh herbs and other seasonings.	7.95
<i>Real Tomato Soup</i>	A delicately flavoured soup, cooked with herbs and fresh tomatoes.	7.95

* Mildly Spicy ** Spicy *** Hot and Spicy

A la Carte Entrees or Four Course Dinner

(Served continuously from 12:00 noon to 1:00 a.m. every day)

Four course dinner includes Assorted Vegetarian Appetizers (Papoi, Chana Bhaji, Shingara, Piazzi, Vegetable Bora and Tamarind Chutney), choice of A la Carte Entree, Basmati Pilaf (rice), Dessert (Payesh, Dhal or Nirvana™ Halwa) and Nirvana™ Tea or Nirvana™ Coffee.*

Nirvana™ Vegetarian Cuisine

		<i>A la Carte Entrees</i>	<i>Four Course Dinner</i>
<i>Chickpeas & Potato Masala**</i>	Chickpeas and potatoes sauteed with a blend of spices and fresh herbs.	<i>16.95</i>	<i>29.95</i>
<i>Lentil Shabji**</i>	Lentils cooked with mixed vegetables, fresh herbs and spices.	<i>19.95</i>	<i>32.95</i>
<i>Lentil Shag**</i>	Lentils cooked with fresh spinach, spices and herbs.	<i>20.95</i>	<i>33.95</i>
<i>Vegetable Bhaji**</i>	A delicate blend of fresh vegetables sauteed with spices and herbs.	<i>20.95</i>	<i>33.95</i>
<i>Vegetable Masala**</i>	Mixed fresh vegetables cooked with a blend of spices and fresh herbs.	<i>20.95</i>	<i>33.95</i>
<i>Okra Masala**</i>	Fresh okra sauteed with onions, tomatoes, spices and herbs.	<i>21.95</i>	<i>34.95</i>
<i>Peas Paneer**</i>	Moist pieces of home-made cheese braised with green peas and fresh herbs in a spicy sauce.	<i>22.95</i>	<i>35.95</i>
<i>Spinach Paneer**</i>	Cubes of home-made cheese gently cooked with fresh spinach and aromatic spices.	<i>23.95</i>	<i>36.95</i>
<i>Vegetable Biryani</i>	Fresh vegetables cooked with fragrant Basmati rice, saffron, raisins and almonds.	<i>24.95</i>	<i>37.95</i>
<i>Vegetable Korma</i>	Mixed fresh vegetables cooked with mildly spicy sauce.	<i>25.95</i>	<i>38.95</i>

Fish Specialties

<i>Fish Masala**</i>	Delicate fish filets sauteed with onions, tomatoes, chilis, spices and fresh herbs.	<i>26.95</i>	<i>39.95</i>
<i>Shrimp Biryani</i>	Shrimp cooked with fragrant Basmati rice, saffron and almonds.	<i>26.95</i>	<i>39.95</i>
<i>Shrimp Doptazi**</i>	Juicy shrimp sauteed with sliced onions, spices and fresh herbs.	<i>26.95</i>	<i>39.95</i>

From the Tandoor

(Specialties from the clay oven)

<i>Beef Kabab*</i>	Tender pieces of beef marinated with mild spices and herbs, then roasted on skewers in the tandoor.	<i>26.95</i>	<i>39.95</i>
<i>Chicken Kabab*</i>	Succulent pieces of boneless chicken marinated with mild spices and herbs, then broiled in the tandoor.	<i>26.95</i>	<i>39.95</i>
<i>Chicken Tandoori*</i>	Chicken marinated in yogurt with aromatic spices and roasted in the tandoor.	<i>25.95</i>	<i>38.95</i>
<i>Lamb Kabab*</i>	Tender pieces of lamb marinated with mild spices and herbs, then roasted on skewers in the tandoor.	<i>26.95</i>	<i>39.95</i>
<i>Tandoori Mix*</i>	Assorted full plate of marinated beef, chicken and lamb kabab, broiled in the tandoor, and Chicken Tandoori.	<i>26.95</i>	<i>39.95</i>

** Mildly Spicy ** Spicy *** Hot and Spicy*

Chicken Specialties

		<i>À la Carte Entrees</i>	<i>Four Course Dinner</i>
<i>Chicken Biryani</i>	Pieces of tender boneless chicken cooked with fragrant Basmati rice, saffron, raisins and almonds.	26.95	39.95
<i>Chicken Doptiaz**</i>	Succulent pieces of boneless chicken sauteed with sliced onions, spices and fresh herbs.	26.95	39.95
<i>Chicken Korma</i>	Tender pieces of boneless chicken cooked with a mildly spiced sauce.	26.95	39.95
<i>Chicken Shag**</i>	Succulent pieces of boneless chicken cooked with fresh spinach, spices and herbs.	26.95	39.95
<i>Chicken Tikka Masala**</i>	Boneless chicken pieces broiled in the Tandoor, then cooked with spices and herbs.	26.95	39.95
<i>Chicken Vegetable Masala**</i>	Tender pieces of boneless chicken slowly cooked with fresh mixed vegetables, onions, herbs and spices.	26.95	39.95

Meat Specialties

<i>Beef Bhoona**</i>	Succulent pieces of beef cooked with a blend of spices and herbs.	26.95	39.95
<i>Beef Shag**</i>	Tender pieces of beef cooked with fresh spinach, spices and herbs.	26.95	39.95
<i>Lamb Bhoona**</i>	Tender pieces of lamb cooked with a blend of spices and herbs.	26.95	39.95
<i>Lamb Biryani</i>	Succulent pieces of lamb cooked with fragrant Basmati rice, saffron, raisins and almonds.	26.95	39.95
<i>Lamb Korma</i>	Tender pieces of lamb cooked with a mildly spiced sauce.	26.95	39.95
<i>Lamb Shag**</i>	Tender pieces of lamb cooked with fresh spinach, spices and herbs.	26.95	39.95

Desserts

<i>Dhat</i>	Home-made sweet yogurt.	5.95
<i>Payesh</i>	A creamy dessert cooked with rice, raisins and almonds.	5.95
<i>Nirvana™ Halwa</i>	A soft-textured Bengali sweet cooked with raisins and almonds and garnished with pistachios.	7.95
<i>Kulfi</i>	The classic home-made Indian ice cream.	8.95
<i>Nirvana™ Mango Kulfi</i>	Home-made ice cream prepared with mango (in season).	9.95
<i>Dessert of the Day</i>	Exotic Indo-Bengali sweet – a different dessert each day.	9.95

Beverages

<i>Nirvana™ Coffee</i>	Freshly brewed choice premium coffee.	3.95
<i>Nirvana™ Tea</i>	Choice premium tea.	3.95
<i>Indian Spiced Tea</i>	Choice premium tea delicately flavored with cinnamon, cardamom and cloves.	4.95
<i>Nirvana™ Cassi</i>	A thirst-quenching drink of lightly sweetened yogurt with rose essence.	6.95
<i>Mango Cassi</i>	A thirst-quenching drink of yogurt blended with mangoes.	7.95
<i>Nirvana™ Spring Water</i>	Natural spring water.	Bottle of 375 ml. 7.95 Bottle of 750 ml. 9.95

* Mildly Spicy **Spicy ***Hot and Spicy

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

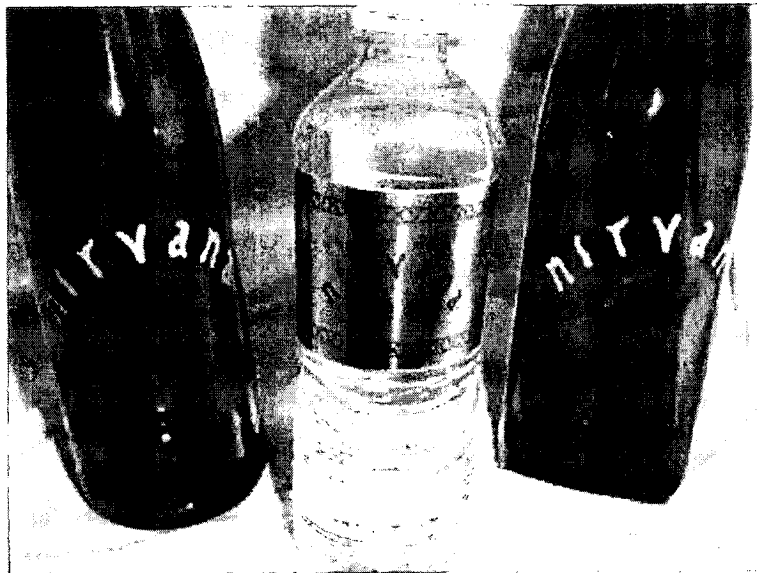
NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 7
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

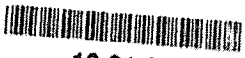


10-01-2001

U.S. Patent & TMOft/TM Mail Rcpt Ct #51

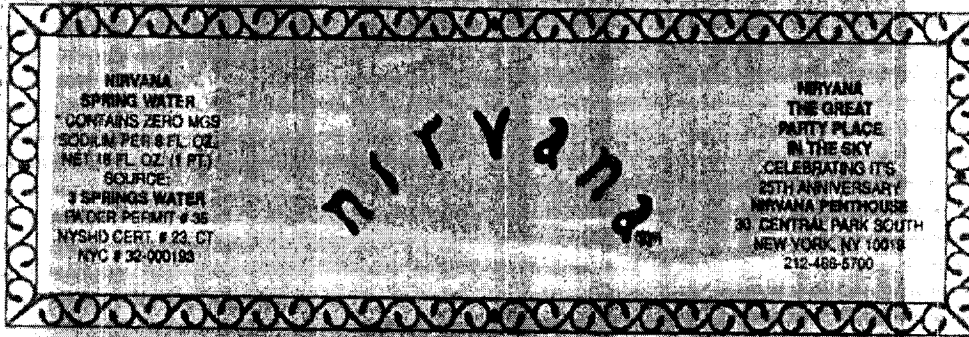


76319172



10-01-2001

U.S. Patent & TMOtc/TM Mail Rcpt. Dt. #91



76319172

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 8
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,731,312

United States Patent and Trademark Office

Registered July 1, 2003

**TRADEMARK
PRINCIPAL REGISTER**

NIRVANA

**NIRVANA FOR HEALTH INC. (NEW YORK
CORPORATION)
40 CENTRAL PARK SOUTH, 2A
NEW YORK, NY 100191633**

FIRST USE 8-14-1970; IN COMMERCE 8-14-1990.

SER. NO. 76-319,172, FILED 10-1-2001.

**FOR: BOTTLED NATURAL SPRING MINERAL
WATER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).**

MITCHELL FRONT, EXAMINING ATTORNEY



United States Patent and Trademark Office

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Record 1 out of 1

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Typed Drawing

Word Mark NIRVANA
Goods and Services IC 032. US 045 046 048. G & S: Bottled natural spring mineral water. FIRST USE: 19700814. FIRST USE IN COMMERCE: 19900814
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 76319172
Filing Date October 1, 2001
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition April 8, 2003
Registration Number 2731312
Registration Date July 1, 2003
Owner (REGISTRANT) NIRVANA FOR HEALTH INC. CORPORATION NEW YORK 40 CENTRAL PARK SOUTH, 2A New York NEW YORK 100191633
Attorney of Record CHARLES E. BAXLEY
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.	)	Registration No.: 2,731,312
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**EXHIBIT 9
TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

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

NIRVANA, INC.)	
)	
Petitioner,)	
	)	Cancellation No.: 92042878
v.)	
	)	Attorney Ref.: 2779-6
NIRVANA FOR HEALTH INC.)	
)	
Registrant.)	

**Declaration of Mozafar Rafizadeh
in Support of Petitioner's Motion for Summary Judgment**

I, Mozafar Rafizadeh, declare as follows:

1. I am the President of Nirvana, Inc. I am submitting this declaration in support of Nirvana, Inc.'s ("Nirvana") Motion for Summary Judgment.

2. Nirvana incorporated in New York as Nirvana, Inc. on June 1, 1995. See Tab A, a true and correct copy of the incorporation records of Nirvana. Nirvana has used and is using the trade name and trademark NIRVANA in commerce in connection with the marketing and sale of spring water since that date. Attached at Tab B hereto are true and correct of documents evidencing Nirvana's use of the mark NIRVANA.

3. Attached at Tab C hereto is a true and correct copy of the 2003 Membership Roster of the International Bottled Water Associate that I obtained.

4. Attached at Tab D hereto is a true and correct copy of a license by the Nepalese government to establish a spring water bottling plant in the Remechap

district of Nepal on May 8, 1991 that was provided to me by Mr. Samsheer Wadud in 2003.


5. Attached at Tab E hereto is a true and correct copy of a business plan for Nirvana Himalayas Water Corporation of 40 Central Park South, New York, New York 10019 of September 19, 1990, that was provided to me by Mr. Samsheer Wadud in 2003. It shows that as of September 1990, the company was only a start up and sales were still only projected versus actual.

6. Attached at Tab F hereto is a true and correct copy of a New York Post article of June 28, 1991 reports that Shamsheer Wadud "intends [his bottled water] to be a Perrier, Asian-style" that was provided to me by Mr. Samsheer Wadud in 2003.

7. Attached at Tab G hereto is a true and correct copy of a New York Newsday article from June 21, 1991 indicates that Nirvana bottled spring water "will be priced, and will come in vase-like bottles" that was provided to me by Mr. Samsheer Wadud in 2003.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on 7/28, 2006



Mozafar Rafizadeh
NIRVANA, INC.
1 Nirvana Plaza
Forestport, New York 13338

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

NIRVANA, INC.)

Petitioner,)

v.)

NIRVANA FOR HEALTH INC.)

Registrant.)

) Cancellation No.: 92042878

) Attorney Ref.: 2779-6

**EXHIBIT A
TO
DECLARATION OF MOZAFAR RAFIZADEH
IN SUPPORT OF PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

State of New York | SS:
Department of State

I hereby certify, that the Certificate of Incorporation of NIRVANA, INC. was filed on 06/02/1995, with perpetual duration, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is a subsisting corporation.

*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 08th day of June
two thousand.*



Special Deputy Secretary of State

200006090173 37

**NIRVANA TAX ID-
16-1495474**

CERTIFICATE OF INCORPORATION

OF

NIRVANA, INC.

Under Section 402 of the Business Corporation Law

The undersigned, a natural person over 18 years of age, for the general purpose of forming a corporation under Section 402 of the Business Corporation Law, hereby certifies:

FIRST: The name of the corporation is:

NIRVANA, INC.

SECOND: The purposes for which this corporation is formed are:

To engage in any lawful activity for which a corporation may be organized under the Business Corporation Law of the State of New York, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

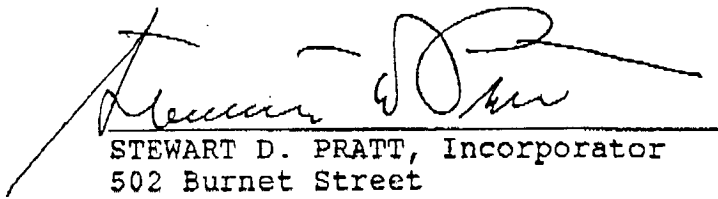
THIRD: The office of the Corporation is to be located in the County of Oneida, State of New York.

FOURTH: The aggregate number of shares which the corporation shall have authority to issue is 200 common shares without par value, all of which shall be of one class.

FIFTH: The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process served upon it is Route 12, P.O. Box 521, Boonville, New York 13309.

IN WITNESS WHEREOF, I have subscribed this Certificate of Incorporation this 1st day of June, 1995 and affirm under the penalties of perjury that the statements contained herein are true.

DATED: June 1, 1995



STEWART D. PRATT, Incorporator
502 Burnet Street
Utica, New York 13501

RECEIPT OF SECRETARY OF STATE

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVENUE
ALBANY, NY 12231

FILING RECEIPT

ENTITY NAME : NIRVANA, INC.

DOCUMENT TYPE : INCORPORATION (DOM. BUSINESS)

COUNTY: ONEI

SERVICE COMPANY : INFOSEARCH, INC.

SERVICE CODE: 17 *

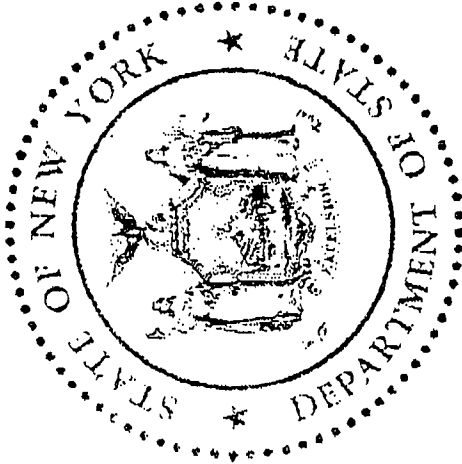
FILED: 06/02/1995 DURATION: PERPETUAL CASH #: 950602000213 FILM #: 950602000204

ADDRESS FOR PROCESS

THE CORPORATION
ROUTE 12, P.O. BOX 521
BOONVILLE, NY 13309

REGISTERED AGENT

STOCK: 200 NPV



FILER	FEES	PAYMENTS	REFUND:
STEWART D. PRATT, ESQ. 502 BURNET STREET UTICA, NY 13501	FILING : 125.00 TAX : 10.00 CERT : 0.00 COPIES : 0.00 HANDLING: 25.00	CASH : 0.00 CHECK : 0.00 BILLED: 160.00	0.00
		160.00	0.00

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

NIRVANA, INC.

Petitioner,

v.

NIRVANA FOR HEALTH INC.

Registrant.

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Cancellation No.: 92042878

Attorney Ref.: 2779-6

**EXHIBIT B
TO
DECLARATION OF MOZAFAR RAFIZADEH
IN SUPPORT OF PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

STEWART D. PRATT

ATTORNEY AND COUNSELOR AT LAW

502 BURNET STREET
UTICA, NEW YORK 13501

Telephone (315) 735-2272
Fax (315) 735-0831

March 29, 1996

MOZAFAR RAFIZADEH
c/o SUGAR LOAF TRAILS
5 Cherry Lane
Chester, New York 10918

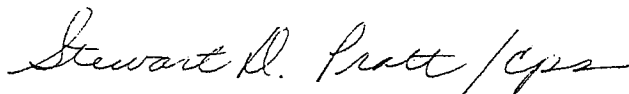
Re: NIRVANA TRADEMARK APPLICATION

Dear Mozafar:

Enclosed please find copy of Certificate of Trademark Registration which has been granted by the Secretary of State of New York for class number "45".

If you have any questions, please call me.

Very truly yours,



STEWART D. PRATT
SDP:cps

Enclosure

FILING RECEIPT FOR TRADEMARK APPLICATION

Page 01 of 01

Oct 27, 1998

Receipt on the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

STEWART D PRATT
502 BURNET ST
UTICA NY 13501

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Office of Trademark Program Control. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 75/552839
FILING DATE: Sep 14, 1998
REGISTER: Principal
LAW OFFICE: 101
MARK: NIRVANA IT'S ABOUT TIME
MARK TYPE(S): Trademark
DRAWING TYPE: Stylized words, letters, or numbers
FILING BASIS: Sect. 1(a) (Use in Commerce)

ATTORNEY: STEWART D PRATT

OWNER: NIRVANA, INC (NEW YORK, Corporation)
1 Nirvana Plaza
Forestport, NEW YORK 13338

FOR: Spring Water
INT. CLASS: 032
FIRST USE: Feb 1996 USE IN COMMERCE: Aug 17, 1998
ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

KALEIDOSCOPE

345 PARK AVENUE SOUTH NEW YORK, NEW YORK 10010 • PHONE 212-779-6666 • FAX 212-685-0797

MEMORANDUM
Via Fax 914-469-5164

TO: Mozafar Rafizadeh

DATE: September 15, 1995

FM: Julie Perez
Ray Volpe's Office

RE: Trademark

Our attorney, Matthew Pace, tells me that legal fees and filing costs to obtain a trademark for Nirvana Water will be \$1,250.00. If you would like Mr. Pace to proceed, please send a check made payable to Matthew Pace, Esq. to the address above.

Best regards,

*State of New York • Department of State
Certificate of Trademark Registration*

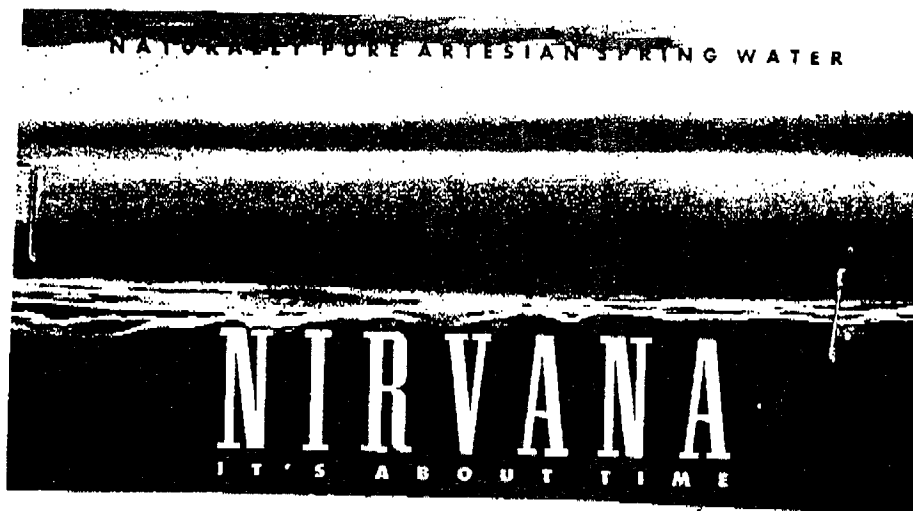
I, ALEXANDER F. TREADWELL, SECRETARY OF STATE OF THE STATE OF NEW YORK DO CERTIFY THAT
in accordance with the application filed in this office on the 12th day of March, 1996
the TRADEMARK described below has been duly registered in this Department pursuant to Article 24 of the
General Business Law, on behalf of Nirvana, Inc.,
whose address is PO Box 200, Forestport, NY

CLASS OF GOODS 45	REGISTRATION DATE 3/15/96	EXPIRATION DATE 3/15/06
REGISTRATION NUMBER R-28266	DATE FIRST USED IN U.S.A. 2/96	DATE FIRST USED IN NEW YORK 2/96

Description of Trademark and Description of Goods on which the Trademark is used:

Nirvana It's About Time and design of sky at twilight above the cloudline with light and dark cloudlines

Used in connection with spring water



the seal of the Department
many this 15th

Alexander F. Treadwell

DOS-685 (Rev. 1/95)

Secretary of State

STEWART D. PRATT

ATTORNEY AND COUNSELOR AT LAW
502 BURNET STREET
UTICA, NEW YORK 13501

Telephone (315) 735-2272
Fax (315) 735-0831

May 7, 1996

MOZAFAR RAFIZADEH
c/o SUGAR LOAF TRAILS
5 Cherry Lane
Chester, New York 10918

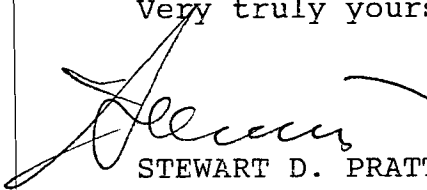
Re: NIRVANA TRADEMARK APPLICATION

Dear Mozafar:

Enclosed please find copy of Certificate of Trademark Registration which has been granted by the Secretary of State of New York for class number "50".

If you have any questions, please call me.

Very truly yours,


STEWART D. PRATT
SDP:cps

Enclosure

COEXISTENCE AGREEMENT

This Coexistence Agreement (the "Agreement") is made and entered into as of the last of the execution dates below, and is by and between NIRVANA, INC., a New York corporation, with its principal place of business at 1 Nirvana Plaza, Forestport, New York 13338 (hereinafter "NIRVANA"), and OREGON CHAI, INC., an Oregon corporation, with its principal place of business at 1745 NW Marshall Street, Portland, Oregon 97209 (hereinafter "OREGON CHAI").

WITNESSETH:

WHEREAS, NIRVANA has adopted, used, is using and is the owner of the trademark NIRVANA for *spring water and flavored water and the bottling and labeling of water for others*, and has filed Application Serial No. 76/561,979 for the mark NIRVANA for those goods and services with the United States Patent and Trademark Office (the "USPTO") on November 26, 2003;

WHEREAS, OREGON CHAI has adopted, used, is using and is the owner of the following trademarks which include the word "NIRVANA", and is the owner of the following registrations and applications for such marks: (i) for *tea-based beverages consisting primarily of tea, spices and honey*. Registration No. 2,216,558 of the mark NIRVANA. NOW AVAILABLE BY THE CUP., issued January 5, 1999; Registration No. 2,710,091 of the mark NIRVANA. NOW AVAILABLE BY THE GLASS., issued April 22, 2003; and Application Serial No. 76/386,315 for the mark NIRVANA ON THE ROCKS, filed with the USPTO on March 20, 2002; (ii) for *tea-based beverages consisting primarily of tea, soy, spices and honey*. Registration No. 2,511,119 of the mark

NIRVANA FOR NOMADS, issued November 20, 2001; and (iii) for *tea-based beverages consisting primarily of tea, fruit, spices and honey*. Application Serial No. 78/328,910 for the mark NIRVANA. NOW AVAILABLE BY THE MUG, filed with the USPTO on November 17, 2003 (hereinafter "OREGON CHAI'S Trademarks");

WHEREAS, NIRVANA filed Cancellation No. 92042779 in the U.S. Patent and Trademark Office seeking to cancel Registration No. 2,216,558;

WHEREAS, NIRVANA and OREGON CHAI desire to effect an amicable settlement of the cancellation proceeding and to resolve all other controversies which may arise between them regarding use and registration of their respective marks;

WHEREAS, NIRVANA and OREGON CHAI agree that concurrent use of their respective marks is not likely to cause confusion, mistake or deception for the following reasons:

(a) NIRVANA uses its mark solely for spring water and flavored water and for the bottling and labeling of water for others, but not for tea or tea-based beverages, mixes for making tea-based beverages, or ice cream and frozen confections.

(b) OREGON CHAI uses its NIRVANA marks solely for (i) tea-based beverages, (ii) mixes for making tea-based beverages, and (iii) for its business activities involving sales of its mark. OREGON CHAI plans to use its NIRVANA marks for ice cream and frozen confections.

(c) The parties have peacefully coexisted, each in their respective businesses for at least eight years, with no instance of actual confusion of which either party is aware and, to the best of their knowledge and belief, the parties do not compete directly with each other.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the sufficiency of which is hereby mutually acknowledged, NIRVANA and OREGON CHAI agree as follows:

1. NIRVANA agrees not to object to or pursue any administrative or judicial action with respect to the use and registration of OREGON CHAI'S Trademarks and/or any similar mark or marks used or registered by OREGON CHAI for tea-based beverages, mixes for making tea-based beverages, or ice cream and frozen confections.

2. OREGON CHAI agrees not to object to or pursue any administrative or judicial action with respect to the use and registration of the mark NIRVANA and/or any similar mark or marks used by NIRVANA for spring water and flavored water, excluding tea-based beverages, mixes for making tea-based beverages, and ice cream and frozen confections.

3. NIRVANA consents to the use and registration by OREGON CHAI of the OREGON CHAI Trademarks for tea-based beverages, mixes for making tea-based beverages, and ice cream and frozen confections. OREGON CHAI consents to the use and registration by NIRVANA of the mark NIRVANA for spring water and flavored water, excluding tea-based beverages, mixes for making tea-based beverages, and ice cream and frozen confections. These mutual consents are based upon the specific facts set forth above which demonstrate that confusion is not likely to result from the concurrent use of the respective marks of the parties.

4. The parties agree that their respective trademarks for the goods and services set forth in their respective trademark applications and registrations therefor are *different* and that coexistence of those marks in the marketplace has not created actual

confusion to date and is not likely to create customer confusion in the future.

Nevertheless, should any instance of actual confusion arise, the parties will cooperate to take such steps as are reasonable and necessary to prevent any further consumer confusion.

5. The parties agree to cooperate fully with each other with respect to obtaining registrations of their respective marks, including the prompt execution of any further documents or consents which shall be reasonably requested by the other party, or its attorneys, in order to obtain registrations of the aforementioned marks consistent with the terms of this Agreement.

6. Concurrent with the full execution of this Agreement, NIRVANA and OREGON CHAI shall enter into a stipulation, in the form annexed hereto as Exhibit A, dismissing Cancellation No. 92042779 with prejudice.

7. The territory covered by this Agreement consists of the United States and all territories which are under its jurisdiction and control.

8. This Agreement may be submitted by either party to any government agency or court, in a territory as defined herein, in support of said party's right to use and register its respective mark(s), and is evidence of the other party's consent to the same.

9. This Agreement constitutes the entire understanding between NIRVANA and OREGON CHAI regarding the subject matter hereof and may not be modified or amended in any way except by an instrument in writing duly executed by both parties. A waiver of any provision of this Agreement shall not constitute a general waiver of any other rights hereunder.

10. This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the parties and their respective officers, agents, servants and other affiliates, successors and assigns.

11. In the event any dispute arises between the parties about this Agreement or the trademarks covered by this Agreement, the parties will first discuss the matter in good faith to seek amicable resolution. Thereafter the parties, if necessary, shall submit the dispute to non-binding resolution under then prevailing rules of the International Trademark Association (Alternate Dispute Resolution) at minimum cost reasonable under the facts and circumstances. If a hearing is necessary it would be conducted in a neutral location between Portland, Oregon and Forestport, New York chosen by the non-complaining party hereto. After exhaustion of the foregoing discussion and alternate dispute resolution procedures a party hereto can bring a legal action or suit in equity against the other party hereto.

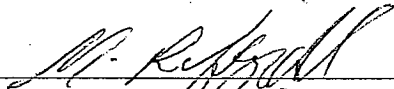
12. This Agreement will be governed primarily by federal trademark and unfair competition laws and secondarily, (i) in the event NIRVANA brings a complaint under this Agreement, by contract and other laws of the State of Oregon, or (ii) in the event OREGON CHAI brings a complaint under this Agreement, by contract and other laws of the State of New York.

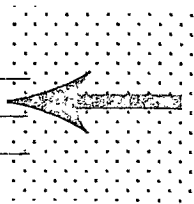
Signatures on next page.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respective duly authorized officers.

NIRVANA, INC.

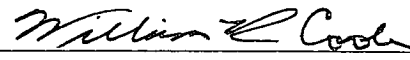
Dated: 8/1/04

By: 
Name: Mozafar Rafiqzadeh
Title: President



OREGON CHAI, INC.

Dated: July 14, 2004

By: 
Name: William R. Coole
Title: Vice President and Secretary

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

NIRVANA, INC.)

Petitioner)

v.)

OREGON CHAI, INC.)

Registrant)

Cancellation No. 92042779

STIPULATION

Petitioner and Registrant, through their undersigned counsel, the Trademark Trial and Appeal Board consenting thereto, hereby stipulate that the above-captioned cancellation proceeding be dismissed with prejudice.

NIRVANA, INC.

Date: _____

By: _____

Donna J. Bunton
Attorney for Petitioner
NIXON & VANDERHYE P.C.
1100 North Glebe Road, 8th Floor
Arlington, Virginia 22201
(703) 816-4000

OREGON CHAI, INC.

Date: JULY 6, 2004

By: _____


Christopher D. Erickson
Attorney for Registrant
TONKON TORP LLP
888 SW Fifth Avenue, Suite 1600
Portland, Oregon 97204
(503) 802-2123

EXHIBIT A

State of New York
Department of Health

**Certificate of Approval
To
Operate a Bottled Water Facility**

Approval to bottle and distribute bottled water in the State of New York is issued under the provisions of 10 NYCRR, Part 5 to:

Nirvana, Inc.

1 Nirvana Plaza
Forestport NY 13309

NYSHD Cert. #360

Subject to the following conditions:

- I. THAT this Certificate shall be revocable at any time or subject to modification when in the judgement of the State Commissioner of Health such revocation shall become necessary.
- II. THAT any interruption in the operation or treatment, or change in source shall be reported immediately to the State Commissioner of Health in which case approved plans may be required.
- III. THAT complete reports of operation of the bottling and treatment shall be submitted each month on forms which are satisfactory to the State Commissioner of Health.
- IV. THAT all required water quality monitoring sample results be submitted at the frequency determined by the State

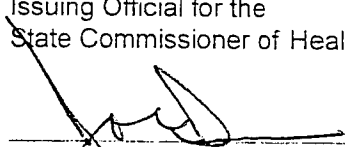
Identification of Approved Source(s)

Type	Name of Source	Location of Source	Owner of Source
Spring	Nirvana	Boonville, Oneida County, NY	Millers Wood Development Corp.

Date Issued: **June 26, 1998**

Expiration Date: **July 1, 1999**

Issuing Official for the
State Commissioner of Health

For 
Michael E. Burke, P.E., Director
Bureau of Public Water Supply Protection

(This certificate must be prominently displayed at the bottling facility)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER SUPPLY MANAGEMENT

PUBLIC WATER SUPPLY PERMIT

NO. 9996496

<p>A. PERMITTEE: (Name and Address) Nirvana, Inc. One Nirvana Plaza Forestport, NY 13338</p>	<p>B. PROJECT/PLANT LOCATION Municipality <u>One Nirvana Plaza, Forestport</u> County <u>Oneida, NY</u></p>
--	---

C. THIS PERMIT APPROVES FOR: 1. CONSTRUCTION AS INDICATED BELOW: 2. OPERATION OF FACILITIES
Approved Under Construction Permit No. _____

<u>Source</u>	<u>Facilities</u>	<u>BVRB</u>
<input type="checkbox"/> Well(s)	<input type="checkbox"/> Impoundment	<input checked="" type="checkbox"/> Bottled Water System
<input checked="" type="checkbox"/> Spring(s)	<input type="checkbox"/> Settling	<input type="checkbox"/> Bulk Water Hauling System
<input type="checkbox"/> Surface Water	<input type="checkbox"/> Filtration	<input type="checkbox"/> Vended Water System
<input type="checkbox"/> Finished Water	<input type="checkbox"/> Iron and Manganese Treatment	<input type="checkbox"/> Retail Water Facility
Nivana Springs	<input type="checkbox"/> Softening	
	<input type="checkbox"/> Fluoridation	
	<input type="checkbox"/> Distribution Facility	
	<input type="checkbox"/> General Corrosion Control	
	<input type="checkbox"/> Corrosion Control for lead/copper	
	<input type="checkbox"/> Disinfection	
	<input type="checkbox"/> Pump Station(s)	
	<input type="checkbox"/> Transmission Lines	
	<input type="checkbox"/> Finished Water Storage	
	<input type="checkbox"/> Other _____	

KNOWN AS Nirvana Natural Spring Water

LIMIT OF AUTHORIZATION

YOU ARE HEREBY AUTHORIZED TO CONSTRUCT OR OPERATE, AS INDICATED ABOVE, PROVIDED THAT FAILURE TO COMPLY WITH CHAPTER 109, OF THE RULES AND REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OR THE TERMS OR CONDITIONS OF THIS PERMIT SHALL VOID THE AUTHORITY GIVEN TO THE PERMITTEE BY THE ISSUANCE OF THE PERMIT.

THE PLANS, SPECIFICATIONS, REPORTS AND SUPPORTING DOCUMENTS SUBMITTED AS PART OF THE PERMIT APPLICATION BECOME PART OF THE PERMIT.

NO DEVIATIONS FROM APPROVED PLANS OR SPECIFICATIONS AFFECTING THE TREATMENT PROCESS OR QUALITY OF WATERS SHALL BE MADE WITHOUT WRITTEN APPROVAL FROM THE DEPARTMENT.

THIS PERMIT IS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION UNDER THE AUTHORITY OF THE PENNSYLVANIA SAFE DRINKING WATER ACT, THE ACT OF MAY 1, 1984 (P.L. 206, NO. 43). OPERATION SHALL COMPLY WITH THE PROVISIONS OF CHAPTER 109 ADOPTED UNDER THE AUTHORITY IN SECTIONS 4 AND 6(e) OF THE PENNSYLVANIA SAFE DRINKING WATER ACT.

THIS PERMIT IS SUBJECT TO THE ATTACHED SPECIAL CONDITIONS A, B, C, D, E, F, and G.

PERMIT ISSUED

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date February 16, 2001

John J. Wroblewski
By John J. Wroblewski, Chief
Technology Section

Title Division of Drinking Water Management



CONSUMER AND ENVIRONMENTAL HEALTH SERVICE

P.O. Box 369 Trenton, New Jersey 08625-0369

BOTTLED & BULK WATER CERTIFICATION

Certified as: bottler bulk water facility which utilizes the following bottled water sources:

FORRESTPORT NY 13338

Reg. No. 7200199
NIRVANA INC
T/A NIRVANA
1 NIRVANA PLZ
FORRESTPORT, NY USA 13338

ISSUED PURSUANT TO
N.J.A.C. 8:21-5.15
EXPIRES: 06/30/2004

Establishment Copy



PERMIT



BUREAU FOR PUBLIC HEALTH
OFFICE OF ENVIRONMENTAL HEALTH SERVICES

Suite 418 Morrison Building
(304) 558-2981 FAX 558-1071

815 Quarrier Street
Charleston, WV 25301-2616

PERMIT TO BOTTLE AND DISTRIBUTE BOTTLED WATER

PERMIT NO. BW-36-03-008

Issued 03/07/03

Expires 03/31/04

THIS IS TO CERTIFY, after reviewing the appropriate application, that

**NIRVANA, INC.
ONE NIRVANA PLAZA
FORESTPORT, NEW YORK 13338**

is hereby granted approval to bottle water and to distribute bottled water in West Virginia bottled at **NIRVANA, INC., ONE NIRVANA PLAZA, FORESTPORT, NY 13338.**

This permit is contingent upon the following:

1. Operation under the conditions specified on the application for permit.
2. Immediate notification to this agency upon receipt of any positive bacteriological analysis.
3. Submission to this agency of receipt of all inspections performed by:
NEW YORK DEPARTMENT OF HEALTH

THIS AGENCY MUST BE NOTIFIED if conditions specified on the original permit application change.



Ronald K. Forren, Director
Public Health Sanitation Division

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC HEALTH, DIVISION OF FOOD AND DRUGS
305 SOUTH STREET, JAMAICA PLAIN, MA. 02130



Permit

IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAWS

Chapter 94 Sections 10A, 10B
EXPIRES TYPE

NUMBER
MA-1288

ISSUED
03/08/2001

03/08/2002 Manufacture or bottle water
or carbonated nonalcoholic beverages,
outside the Commonwealth for sale within

ISSUED TO

Nirvana, Inc.
One Nirvana Plaza
Forestport, NY 13338

Howard K. Kahn

COMMISSIONER OF PUBLIC HEALTH

239865



STATE OF CONNECTICUT

6/22/98

DEPARTMENT OF CONSUMER PROTECTION

165 CAPITOL AVE • HARTFORD CT 06106-1630

Be it known that

NIRVANA INC
1 NIRVANA PLAZA
FORESTPORT, NY 13338

Is hereby certified by the Department of Consumer Protection
as a licensed

NON ALCOHOLIC BEVERAGE MANUFACTURER

License Number: 00632

Effective Date: 6/18/98

Expiration Date: 6/30/99

Mark A. Shiffrin

Commissioner



Orthodox Union

Union of Orthodox Jewish Congregations of America · איחוד קהילות האורתודוקסים באמריקה

11 Broadway New York, NY 10004 * Tel: (212) 563-4000 * Fax: (212) 564-9058 * www.ou.org

June 24, 2002

TO WHOM IT MAY CONCERN:

This is to certify that the following products, listed under their respective brand names, prepared by

Nirvana, Inc., Forestport, NY 13338

are manufactured under the supervision of the Kashruth Division of the Orthodox Union and are kosher when bearing the symbol adjacent to each product as indicated below. Products designated below as OU are certified kosher pareve. The company is authorized to place only this symbol on packaging.

Brand: Nirvana

Symbol

• Natural Spring Water

OU

This certification is effective from June 1, 2002 through May 31, 2003, and is subject to renewal at that time.

Sincerely yours,

UNION OF ORTHODOX JEWISH
CONGREGATIONS OF AMERICA

Rabbi Menachem Genack
Rabbinic Administrator

Established 1898

בס"ד



Orthodox Union

Union of Orthodox Jewish Congregations of America • איחוד קהילות האורתודוקסים באמריקה

11 Broadway New York, NY 10004 * Tel: (212) 563-4000 * Fax: (212) 564-9058 * www.ou.org

July 22, 2003

TO WHOM IT MAY CONCERN:

This is to certify that the following products, listed under their respective brand names, prepared by

Nirvana, Inc., Forestport, NY 13338

At the following facility:

Nirvana, Inc., Forestport, NY

are manufactured under the supervision of the Kashruth Division of the Orthodox Union and are kosher when bearing the symbol adjacent to each product as indicated below. Products designated below as OU are certified kosher pareve. The company is authorized to place only this symbol on packaging.

Brand: Nirvana

Symbol

• Natural Spring Water

OU

This certification is effective from June 1, 2003 through May 31, 2004, and is subject to renewal at that time.

Sincerely yours,

UNION OF ORTHODOX JEWISH
CONGREGATIONS OF AMERICA

Rabbi Menachem Genack
Rabbinic Administrator

17:57

2015 483 7554

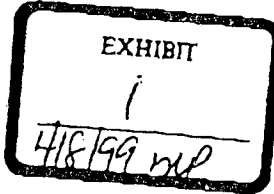
O'BRIEN & GERE

002



O'BRIEN & GERE
ENGINEERS, INC.

6-28-94
prepare
notice letter
per 4 app'd
letter
6-28-94
1035
SPM



June 21, 1994

Mansur Rafizadeh
Mansur's Farm
Route 12
P.O. Box 521
Boonville, New York 13309

Re: Scope of Services
Spring Water Bulk and Bottled Facility

File: 5768.002 #1

Dear Mr. Rafizadeh:

We appreciate the opportunity to assist you in your development of a bulk and bottled spring water facility. The intent of this letter is to identify the scope of services which you have requested that O'Brien & Gere Engineers, Inc. (O'Brien & Gere Engineers) provide regarding this project.

We understand that at this time, there are three general areas of assistance you have requested: 1) the preparation of letters regarding the source and quality of your spring; 2) assistance with the design and layout of the equipment for the bulk and bottled water operations; and 3) assistance in obtaining certification for your facility from New York State.

O'Brien & Gere Engineers will prepare two letters which you can provide to your potential clients. One letter is to address the quality of the spring water. The second letter is to address the source of the water of your spring.

The assistance that you have requested regarding the design and layout of the facility operations involves treatment, equipment specifications, equipment selection, and equipment layout. O'Brien & Gere Engineers will assist you with the selection of the treatment process and provide you with a treatment process flow schematic. We will assist you in the development of the basis of design and outlining specifications for the various bottling equipment, tanks, piping, and electrical equipment. O'Brien & Gere Engineers will assist you in the selection of the equipment. Finally, we will develop equipment layout plans to assist you in the installation of the equipment.

The third area of assistance which O'Brien & Gere Engineers will provide is in obtaining certification for your facility from New York State. This effort is expected to involve the preparation of an engineers' report for subinitial to New York State.

At this time, the exact level of effort required for each effort is difficult to define. We believe that a flexible scope of work may best suit this project. For your information, traditionally the engineering for facilities design projects comprises approximately 10 to 15 percent of the total construction costs. We have therefore established a budgetary estimate of \$10,000 to \$15,000 for our efforts to assist you in the above areas.

EXHIBIT A

Mansur Rafizadeh
Mansur's Farm
June 21, 1994
Page 2

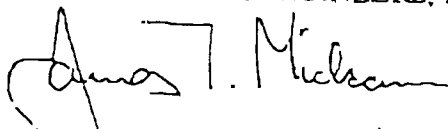
O'Brien & Gere Engineers proposes to provide our services to you on a time and material basis of salary cost times a multiplier of 2.5 plus direct expenses. This method allows flexibility should additional assistance on this project be required. Salary cost is defined as the wages and benefits (including sick leave, vacation, and holiday pay, as well as unemployment taxes, social security, workers compensation and disability insurance, retirement benefits, and group insurance benefits) provided to personnel. All direct expenses shall be invoiced by O'Brien & Gere Engineers at a cost. Payment is to be made monthly on the basis of invoices submitted by O'Brien & Gere Engineers, Inc. Each payment is due thirty days after submission of invoice. You will be charged interest at the rate of 1.5 percent per month, compounded to the date of payment for all invoiced amounts remaining unpaid 30 days after the date of invoice.

At your request, O'Brien & Gere Engineers has initiated work on this project. This work is being completed prior to the development of a written contract. As an indication of your commitment to reimbursing O'Brien & Gere Engineers for this work, we request a retainer of \$2,000. This retainer will be applied to the project costs incurred.

If this arrangement is acceptable to you, please countersign both copies of this letter and return one to us at your earliest convenience. If you have any questions, please do not hesitate to contact us.

Very truly yours,

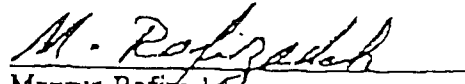
O'BRIEN & GERE ENGINEERS, INC.



James T. Mickam, CPG
Vice President

Agreed to on: June 24, 1994

By:


Mansur Rafizadeh
Mansur's Farm

GAS:bdm/MF0022

cc: Guy A. Swenson, CPG (O'Brien & Gere Engineers, Inc.)
Richard Gell (O'Brien & Gere Engineers, Inc.)
Donald R. Brondou (OBG Laboratories, Inc.)

FROM :

FAX NO. :

Jul. 24 2003 12:08PM P4



O'BRIEN & GERE
LABORATORIES, INC.

Invoice

Date: May 30, 1995

Invoice No. 29022

MANSUR'S FARM, INC.
Nirvana Spring
P.O. Box 200
Forestport, NY 13358

EXHIBIT
9
41899 mve

S768 .001.517

MS

Description of Services

9507100001

Amount

Laboratory services for the test sample(s) collected or received on:

4-27-95:	1 water sample analyzed for SDWA Primary Inorganic Chemicals (\$183.00), SDWA Secondary Inorganic Chemicals including Corrosivity (\$141.50) and SDWA Pesticides (\$120.00)	\$ 444.50
	1 water sample analyzed for PALX (\$11.00) (including bicarbonate and carbonate), color(\$8.50), Odor (\$8.50), Silica (\$12.00), TCOLI (\$25.00) & Turbidity (\$8.50)	73.50
	1 water sample analyzed for Gross Alpha (\$27.00) & Gross Beta (27.00)	54.00
	1 water sample analyzed for MG (\$11.00), & Hardness (\$3.00)	14.00
	1 water sample and 1 QC trip blank analyzed for Volatile Organics (Method 502.2) @ \$200.00ea.	400.00
	1 water sample and 1 QC trip blank analyzed for TTHMs (Method 501.1) @ \$50.00ea.	100.00
5-5-95:	1 water sample analyzed for SPC	25.00
	NYS Certification Fee	111.10
	<u>SUBCONTRACTING</u>	
	1 water subcontracted for Radium 226, Radium 228 & Photon Activity	322.00
	TOTAL	\$1544.10

Please Remit To: O'Brien & Gere Laboratories, Inc.
P.O. Box 3351
Syracuse, New York 13220-3351

STATE OF NEW YORK
DEPARTMENT OF HEALTH

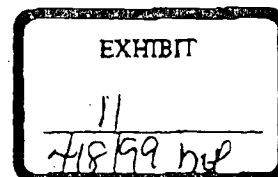
Office of Public Health

11 University Place

Albany, New York 12203-3399

Barbara A. DeBuono, M.D., M.P.H.
CommissionerKaren Schimke
Executive Deputy Commissioner

July 20, 1995

Mr. Richard E. Gell, P.E.
Managing Engineer
O'Brien & Gere Engineers, Inc.
5000 Brittonfield Parkway
P.O. Box 4873
Syracuse, NY 13221RE: Log No. B70
Application for Certification
Bulk Water Facility
Nirvana Spring Water Facility
(formerly Mansur Spring)
(T) Boonville, Oneida County

Dear Mr. Gell:

We have received and reviewed the raw water quality data for the above referenced project. Based on the quality results and the November 15, 1994 inspection letter from Mr. Joseph Robertaccio of the Oneida County Health Department (copy enclosed), this office endorses the spring source for use as a bulk water supply.

Please note that prior to distribution of this water, all of the items listed in Part 5, Subpart 5-6, Section 5-6.15 of the New York State Sanitary Code must be satisfied.

Please feel free to contact this office at (518) 458-6756 if you have any questions.

Sincerely,

Stephen S. Marshall
Assistant Sanitary Engineer
Bureau of Public Water Supply Protectioncc: NYSDOH, Attn: Dr. Mohanka
Oneida County Health Department, Attn: Mr. Ferrara



STATE OF NEW YORK DEPARTMENT OF HEALTH

Office of Public Health

11 University Place

Albany, New York 12203-3398

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

EXHIBIT

2

11/18/99 mp

ONEIDA COUNTY
HEALTH DEPT.

December 18, 1996

DEC 1 1996

Mansur Farms, Inc.
Nirvana Spring Water Company
Route 12 North
Boonville, NY 13309

Dir. Enr. Health

RE: Log No. B219
Application for Certification
Bulk Water Facility
Nirvana Springs Bulk Water
(T) Boonville, Oneida County

Dear Mr. Mansur:

It has been brought to the attention of this office that the above referenced facility has begun the process of selling bulk water. Enclosed is a copy of our last comment letter dated July 20, 1995 which states: "Please note that prior to the distribution of this water, all of the items listed in Part 5, Subpart 5-6, Section 5-6.15 of the New York State Sanitary Code must be satisfied." To this date, no additional materials in support of your application for certification have been received.

We have received and reviewed the letter regarding the November 19, 1996 inspection of your facility by the Oneida County Health Department (OCHD). Based on that letter and previously submitted materials, we have the following questions and/or comments:

1. This facility has not received a certification number or Certificate of Approval from this office. A Certificate of Approval is mandatory prior to the distribution of water.
2. The sale of untreated water is prohibited and must be stopped immediately. Part 5, Subpart 5-6, Section 5-6.5 of the New York State Sanitary Code states that the "minimum treatment of each water supply source used shall be disinfection by chlorination, ozonation, ultraviolet radiation or other disinfection methods...".
3. The sale of bulk water from this facility is prohibited until the disinfection requirements laid out in Part 5, Subpart 5-6, Section 5-6.5 of the New York State Sanitary Code are met.
4. The water quality analyses listed in the OCHD letter must be received by this office, as well as the OCHD, no later than December 31, 1996.

FROM :

FAX NO. :

Jul. 24 2003 12:09PM P7

12 10 98; 15:14;

518-588420 -> ONEIDA HEALTH DEPT.; #3

2/18/98

14:08

FAX 5184588420

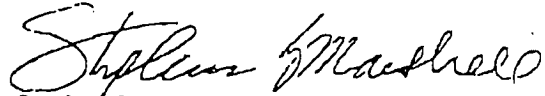
WOLCO DESIGN

000

5. Final engineering plans and specifications for the completed buildings associated with the bulk water operations must be submitted. These plans will replace all previously submitted plans and will be considered "as built".

The above summarizes our concerns at this time. Please feel free to contact this office at (518) 458-6756 if you have any questions. We can also be reached by FAX at (518) 458-6420.

Sincerely,



Stephen S. Marshall
Assistant Sanitary Engineer
Bureau of Public Water Supply Protection

cc: Oneida County Health Department, Attn: Mr. Ferrara
NYSDOH, Attn: Dr. Mohanka
O'Brien & Gere, Attn: Mr. Gell

ONEIDA COUNTY

HEALTH DEPT.

DEC 11 1996

Div. Env. Health



February 19, 1997

Mozafar Rafizadch
Sugar Loaf Trails
5 Cherry Lane
Chester, NY 10918

Dear Mozafar:

It was a pleasure meeting with you last week. Our entire company is extremely pleased with the quality of the bulk water supplied to us to date.

As we discussed, at this time Saratoga Beverage Group can guarantee you co-packing of 250,000 cases of one gallon bottles; production to commence as soon as your plant is operational. This assumes that you will be in production by the end of April 1997.

I wish to leave the door open on the PET .5 liter and 1 liter bottles. You will have to be competitive in price on these items.

I look forward to our future discussions and I hope to see you at the Water Convention in Montreal on February 27. In closing, I appreciate the trust and confidence you have in us.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Anthony Principe", written over a horizontal line.

Anthony Principe
Chief Financial Officer

TO MUZAFAR / 1 PAGE

SkyShots.sit
Complete Archive Listing

Name	Kind	Date	Expanded	Stuffed	Saved
☞ CLOUD_18.TIF	Photoshop® file	12/1/94	5,612K	3,311K	41%
☞ CLOUD_20.TIF	Photoshop® file	11/30/94	6,319K	4,174K	34%
☞ My Helix	Photoshop® file	12/9/94	2,218K	1,178K	47%
☞ New Nirvana Label	Photoshop® file	12/1/94	6,024K	3,813K	37%
☞ New Nirvana Label FINAL	Photoshop® file	3/22/95	4,671K	3,180K	32%
☞ New Nirvana Label FINAL #1	Photoshop® file	3/23/95	4,377K	2,983K	32%
☞ New Nirvana Label FINAL #2	Photoshop® file	3/23/95	4,199K	2,832K	33%
☞ New Nirvana Label FINAL #3	Photoshop® file	3/23/95	4,498K	2,970K	34%
☞ New Nirvana Label FINAL #3 CMYK	Photoshop® EPS file	3/5/98	10,599K	4,905K	54%
☞ New Nirvana Label#1	Photoshop® file	12/5/94	6,027K	3,702K	39%
☞ New Nirvana Label#1A	Photoshop® file	12/5/94	6,082K	4,122K	32%
☞ New Nirvana Label#1AA	Photoshop® file	12/6/94	5,954K	3,997K	33%
☞ New Nirvana Label#1AAA	Photoshop® file	12/9/94	4,052K	2,648K	35%
☞ New Nirvana Label#2	Photoshop® file	12/1/94	4,158K	2,419K	42%
☞ SKY#4	Photoshop® file	12/1/94	1,753K	1,103K	37%
☞ Sunset 3	Photoshop® TIFF file	9/29/94	2,785K	1,227K	56%
☞ Sunset 3 copy	Photoshop® TIFF file	12/1/94	2,089K	929K	58%
☞ Sunset#1	Photoshop® file	12/5/94	5,951K	3,457K	42%
☞ Sunset#1A	Photoshop® file	12/5/94	3,758K	2,376K	37%
☞ Sunset#2	Photoshop® file	12/5/94	5,384K	3,214K	40%

EARLY
DATES OF
NIRVANA
CONCEPTION.

DM

ASCENZO DESIGN	Telephone	Marketing
109 West 27th Street	212.366 9173	Design
New York, NY 10001 6208	Facsimile	☞
Suite 9C	212.366 9177	Communications

December 27, 1994

TO: Mozafar Rafizadeh / Nirvana Spring Water
RE: PRODUCTION BUDGETS

Dear Mozafar--

Here is a breakdown of our estimated budget to produce the components you are requesting for Nirvana Artesian Spring Water.

WATER BOTTLE DESIGN (1 LITER BOTTLE):

First Presentation (as billed)	2000.00
Second Presentation with alterations (as billed)	600.00
Final Artwork, Retouching, Rendering	3000.00
Final Design	650.00
Typesetting	350.00
Composition and Prep	400.00
Expenses:	
3 sets of Iris prints @ 125.00 each	375.00
Composed Film for 4 color printing @ 75.00 each	300.00
Color key	125.00
CD-ROM disk with stock photography	75.00
TOTAL FOR ABOVE	\$7875.00



WATER BOTTLE DESIGN (1-2.5 GALLON BOTTLE):

Revised Design	300.00
Revised Typesetting	200.00
Composition and Prep	200.00
Expenses:	
1 Iris print @ 125.00 each	125.00
Composed Film for 4 color printing @ 75.00 each	300.00
Color key	125.00
TOTAL FOR ABOVE	\$1250.00

WATER BOTTLE DESIGN (12 OZ., 16 OZ., 1.5 LITER BOTTLES):

Revised Design	300.00
Revised Typesetting	250.00
Composition and Prep	250.00
Expenses:	
1 Iris print @ 125.00 each	125.00
Composed Film for 4 color printing @ 75.00 each	300.00
Color key	125.00
TOTAL FOR ABOVE	\$1350.00

STATIONERY: LETTERHEAD, ENVELOPE AND BUSINESS CARDS

Design	NC
Typesetting	NC
Composition and Prep	NC
Expenses:	
Composed Film for 2 color printing @ 75.00 each.....	300.00
TOTAL FOR ABOVE	\$300.00

SIX-PACK BOX DESIGN FOR 16 OZ. BOTTLES:

Design	500.00
Typesetting	350.00
Hi-res scanning	250.00
Composition and Prep	500.00
Expenses:	
1 Iris print @ 125.00 each.....	125.00
Composed Film for 4 color printing @ 100.00 each....	400.00
Color key	150.00
TOTAL FOR ABOVE	\$2275.00

FOUR-PANEL WHOLESALE BROCHURE FOLDS TO 8.5 X 11:

Design	750.00
Typesetting	550.00
Hi-res Scanning, Artwork, Retouching.....	1000.00
Composition and Prep	600.00
Expenses:	
2 Iris prints @ 125.00 each.....	250.00
Composed Film for 4 color printing @ 100.00 each....	800.00
Color key for each side	250.00
TOTAL FOR ABOVE	\$4200.00

SIX-PANEL CONSUMER BROCHURE TO FIT #10 ENVELOPE:

Design	500.00
Typesetting	400.00
Hi-res Scanning, Retouching.....	700.00
Composition and Prep	450.00
Expenses:	
1 Iris print @ 125.00 each.....	125.00
Composed Film for 4 color printing @ 75.00 each.....	600.00
Color key for each side	250.00
TOTAL FOR ABOVE	\$3025.00

CORRUGATED SHIPPING BOXES

(TO BE REVISED BY PRINTER FOR VARIOUS SIZES):

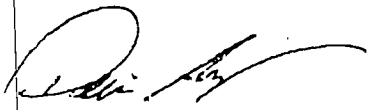
Design	300.00
Typesetting	250.00
Hi-res Scanning and Retouching.....	300.00
Composition and Prep	250.00
Expenses:	
Composed Film for 1 color printing.....	300.00
TOTAL FOR ABOVE	\$1400.00
 GRAND TOTAL FOR ALL ABOVE MENTIONED ITEMS.....	 \$21,675.00

Prices quoted are estimates only and may vary depending on the scope of the project, client revisions and alterations.

Prices quoted do not include the cost of printing.

Prices quoted do not include any additional photography that may be necessary to produce the desired piece nor do they include any copywriting.

Expenses are any costs incurred necessary to produce this project, such as: supplies, messengers, freight and photocopies. Additional presentations will incur additional charges.



Dennis Ascienzo

May 14-27, 2001

WATER: Nirvana's brand can be found throughout the Northeast and parts of the Midwest and Southeast

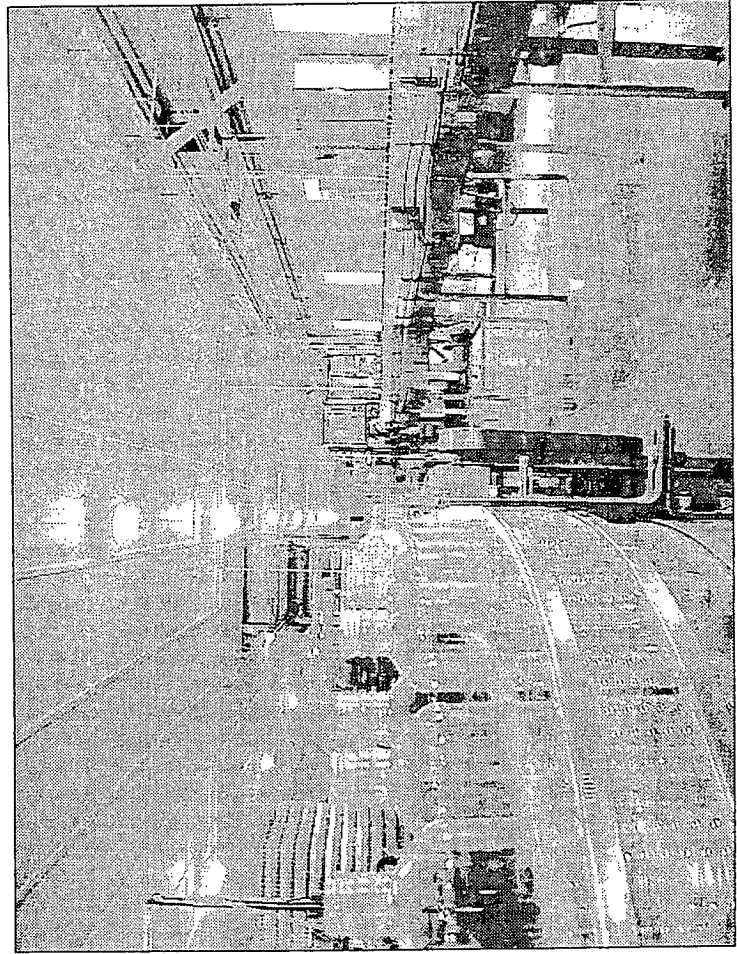
▶ Continued from page 1

bottles, is between \$14 and \$20, says Rafizadeh. Four years after Forestport-based Nirvana was founded, the company's spring water is now distributed extensively throughout the Northeast and parts of the Midwest and Southeast.

Mansur Rafizadeh, chairman of Nirvana and elder brother of Mozafar, attributes the company's dramatic increase in production directly to its recent expansion, which included the construction of a 40,000-square-foot warehouse and a \$1.8-million purchase of new bottling and shrink-wrapping machinery. "We couldn't grow until we had more warehousing space," he says. "Even now, with all this space, we could still use more."

The increase in production also means an increase in jobs. Since the completion of the expansion project in March, Nirvana has hired 35 more workers and increased its staff to 100, Mansur says, and adds, "We aren't done hiring yet. We just can't find the people." He says that the company is still looking to fill mechanical and office positions. The Nirvana chairman says it's "a little surprising" that the company is having difficulty filling positions, in view of the closing of the Lyons Falls Pulp and Paper Mill in January, when 186 people lost their jobs. The mill, located in Lyons Falls, is approximately 10 miles from Nirvana's bottling facility.

While the company's production has increased dramatically because of the new machinery and expanded warehousing



PAUL ALLEN/THE MOHAWK VALLEY BUSINESS JOURNAL

Last June, Nirvana bottled and packaged approximately 6,000 cases of spring water a day. This June, President Mozafar Rafizadeh estimates the company will package between 30,000 and 35,000 cases a day.

ing space, Mozafar says he is cautious about allowing the business to grow too quickly. "The worst thing is promising product and not delivering. We want to make sure we can satisfy our existing customers before we look to new markets," he says.

In 1975, the Rafizadeh brothers, immigrants from Iran, purchased 2,000 acres in rural Forestport and started a dairy

in the bedrock without being pumped and is generally from a much older water source. Water from an artesian spring is usually cold and free of organic contaminants, making it ideal for drinking. According to Herman Muskatt, professor of geology at Utica College, the water is approximately 450 million years old. Muskatt says that he believes that the area west of the Nirvana spring "was deeply gouged by glacial ice, leaving behind a trough, which was subsequently filled with glacial deposits."

The spring, a bovine hot spot during the days of the dairy farm, produces some of the "best water in the world," Mansur says. "The amount of water here is unbelievable," he adds. "We saw the success of other international companies like Perrier and Evian and decided that, since we have superior product, we were going to start our own spring-water company."

Mansur concludes that while other industries rise and fall, the demand for water will always be there. In fact, he says, the demand for bottled water has doubled over the last decade. An annual report by New Beverage Marketing supports Rafizadeh's claim. According to the report, Americans drink more than 18 gallons of bottled water every year — double the amount consumed 10 years ago and six times as much as in 1980. The report concludes that by 2004, bottled water could surpass coffee and milk in popularity. □

Contact **Allen** at pallen@tmvbj.com



ascienzodesign
marketing + visual communications

art directi
project ma
marketing
consultati



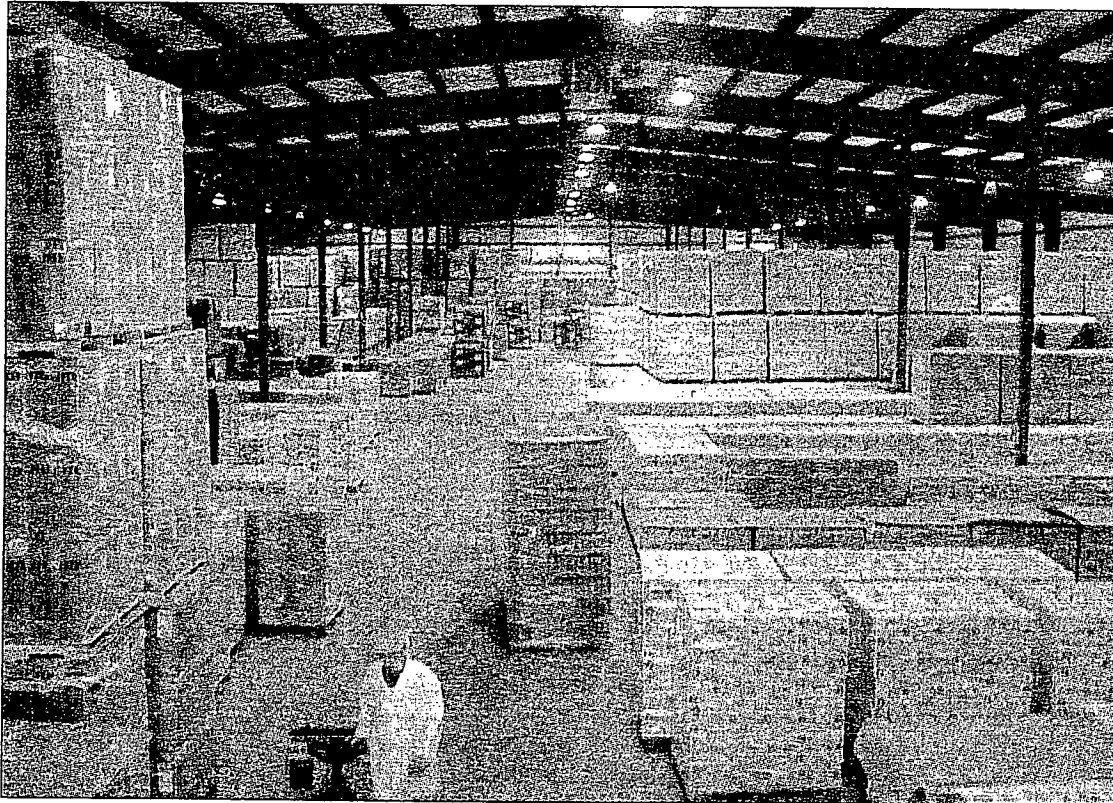
"Nirvana" Natural Spring Water, Consumer Packaging

Label and package design for the spring water "Nirvana". See "advertising" and "collateral material" for related projects.



CONTACT CLIENTS RECOGNITION DIALOGUE+INSIGHT CASE STUDIES DESIGN CONSULTATION MACINTOSH C

Expansion breeds production for water bottler



PAUL ALLEN/THE MOHAWK VALLEY BUSINESS JOURNAL

After completing a \$4.5-million expansion project that included the construction of a 40,000-square-foot warehouse and purchase of \$1.8 million in new bottling and shrink-wrapping machinery, Nirvana has increased its production 500 percent from last year, says President Mozafar Rafizadeh (pictured).

New warehouse, packaging system has Nirvana in high gear

By Paul Allen

Journal Staff

FORESTPORT — Springwater bottler Nirvana has seen a 500-percent increase in production in the three months since it

completed a \$4.5-million expansion project. Nirvana President Mozafar Rafizadeh says that last June the company bottled and packaged approximately 6,000 cases of water a day. This year, Rafizadeh esti-

mates Nirvana will be packaging between 30,000 and 35,000 cases a day. The retail price of a case, which ranges from 24 half-liter bottles to 12 1.5-liter

See **WATER**, page 3 ▼

New director takes reins at Vernon Downs

Hoover brings racing background, local knowledge to track

By Casey J. Dickinson

Journal Staff

VERNON — Two weeks after the resignation of its former president and director of racing operations, Vernon Downs Raceway, Inc., the track's new management team has recently named its new director at the Downs.

Hoover served as assistant secretary at Vernon Downs from 1991 and has worked as a secretary and simulcast director at the Syracuse Mile. He has been a trainer, and driver of horses, and following his stint at Vernon's racing office in 1991, he returned to the track as its director in 1998. A year later, Hoover joined the management team at Northfield Park (near Columbus, Ohio) and while there, Hoover served as assistant publicity director, simulcast director, Player Manager, substitute racing secretary and television handicapper. Hoover resigned from his Northfield position for the opportunity to return to the "home track" in Vernon.

Mid-State's previous president...

See **TRAC**

Superfund puts 42 local remediation projects on track

Erin Crotty recently visited the Mohawk Valley Oil site in North Utica, where she joined with area

As of March 31, \$1.1 billion in funds from the Environmental Quality Bond Act of 1986 has

cleaned up. Crotty estimates that it would require another \$1.5 to \$1.8 billion to complete the

commissioner's remarks. The site was once the site of a coal gas manufacturing



UTICAOD.COM

THE MEETING PLACE AND MARKETPLACE OF THE MOHAWK VALLEY



March 13, 2006

a service of The Observer-Dispatch

uticaOD.com

healthylivingny.com

uticaBoilerma:

NEWS-COUPONS-DATING-SHOPPING-JOBS-CARS-APARTMENTS-HOMES-SUBS



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Boonville's resiliency will be tested once again

Some employers may pick up slack after Ethan Allen plant shuts down

Sun, Apr 25, 2004

TIM BLYDENBURGH
Observer-Dispatch

Twenty-one years ago this May, a tornado smashed through Boonville, destroying buildings and wreaking damage in the millions of dollars.

The scars lingered for a long time but eventually were absorbed by this independent little community.

Last week, the town took another blow. The Ethan Allen plant closing was likened to a "natural disaster" by Oneida County Executive Joseph Griffo.

Boonville residents say the loss of more than 250 good-paying jobs and a major source of tax and other revenues will hurt. Bouncing back won't be easy -- and some people are very pessimistic. Still, there are some bright signs.

"There's disappointment, sadness, uncertainty," Mayor David Ernst said. "(But) we still have our quality of life and sense of community. ... We are resilient."

The village of Boonville stands mostly by itself on this high and hilly part of northern Oneida County. It's the site of the annual county fair and Woodsmen's Field Days. Over the centuries, people made their living off the land with agriculture and timber-related pursuits. The Ethan Allen furniture plant, started here about 50 years ago, was an outgrowth of that.

Ethan Allen corporate executives said closing the Boonville plant, and another in Bridgewater, Va., with about the same number of jobs, means more efficiency. Consolidation among the 12 remaining plants will allow the firm to transfer production to "more suitable" manufacturing sites in Vermont, North Carolina and Virginia, Chairman and CEO Farooq Kathwari said last week.

As well as the job loss, the community is bracing for a loss of tax income and other revenue.



By PATRICK PALLADINO. Observer-Dispatch

Gary Bourgeois, right, vice president of 3B Timber Company, discusses with scaler Kevin Burdick the classification and destination of a utility pole in the company's peeler plant in Boonville. 3B Timber President Mark Bourgeois said it's possible his company could expand beyond 30 workers.

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Ernst said the plant pays \$12,000 in sewer use fees annually, as well as being a major power customer of the Boonville Municipal Commission. Town Supervisor Harlan Bellinger said the company property is assessed at about \$1.5 million.

Where there's hope

There's not a lot of cheer in the coffee-shop conversations in and around Boonville. Many people already were upset last month with the news that the state has granted a landfill permit for the neighboring town of Ava. Signs along the highway protest the landfill.

But there are other signs. Nirvana Spring Water off Route 12 has a billboard advertising "help wanted." A 7-year-old company, it already employs nearly 100 people, Controller Dan Hughes said.

"We're looking for machine operators, warehousing and sanitary (workers)," Hughes said.

Yet another business linked to the land, 3B Timber, could be expanding beyond its 30 workers, President Mark Bourgeois said. Among its products are utility poles. It also handles pulp, a business that's grown after two area mills closed, he said.

"The biggest potential is in the pulp," Bourgeois said. "We could have 100 people cutting and trucking pulp. But we need to increase our rail siding."

The company can load 20 rail cars at a time but only has siding enough for three, he said. State Sen. Raymond Meier, R-Western, is assisting in ways to expand the rail siding, Bourgeois said.

And one of the few remaining large furniture makers in the area, Harden Furniture of Camden, is looking for workers and has contacted Ethan Allen officials about hiring. Harden Vice President of Human Resources Nancy Taylor said Harden could train as well.

"Our hearts go out to them," Taylor said.

Mark Kovach's son and his son's fiancee work at Ethan Allen -- and are planning to marry soon and move into their new home. Their situation is not uncommon, said Kovach, who lives in the Lewis County community of Brantingham.

"Mostly men worked at the Lyons Falls paper mill, so their wives at least were working somewhere when it closed," he said. "A lot of couples work at Ethan Allen. What are they going to do for health insurance?"

Kovach, who owns a boat/snowmobile/ATV repair shop, said he needs help and could hire his son. Other ex-workers may not be as lucky, he said.

Ethan Allen's closing will be more devastating than the 2001 closing of the Lyons Falls Pulp and Paper Mill and the Deferiet Paper Co. in Carthage at about the same time, he said.

"Lyons Falls is like a ghost town. ... In two years Boonville could be like that," he said.

Boonville's spirit

About 4,500 people live in the town of Boonville, and its biggest employers are Ethan Allen and the Adirondack School District. An average worker travels 28 minutes to work, according to the U.S. Census.

"People are used to driving to Utica or Rome, because they like living here," Ernst said. "So if someone has to drive 30 to 40 miles, they'll do it. It won't cause them to move."

County officials said last week they are setting up an emergency response station for soon-to-be displaced workers. County and state labor agencies will help people find work. There's also the matter of finding a new owner or tenant for the Ethan Allen factory, which will be the second priority for local officials.

Meier said he would like Gov. George Pataki to get personally involved in helping out.

Ernst said village residents have energy and compassion, citing their volunteer spirit and resiliency.

"That positive attitude will come through," he said.

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Welcome to Nirvana Natural Spring Water!

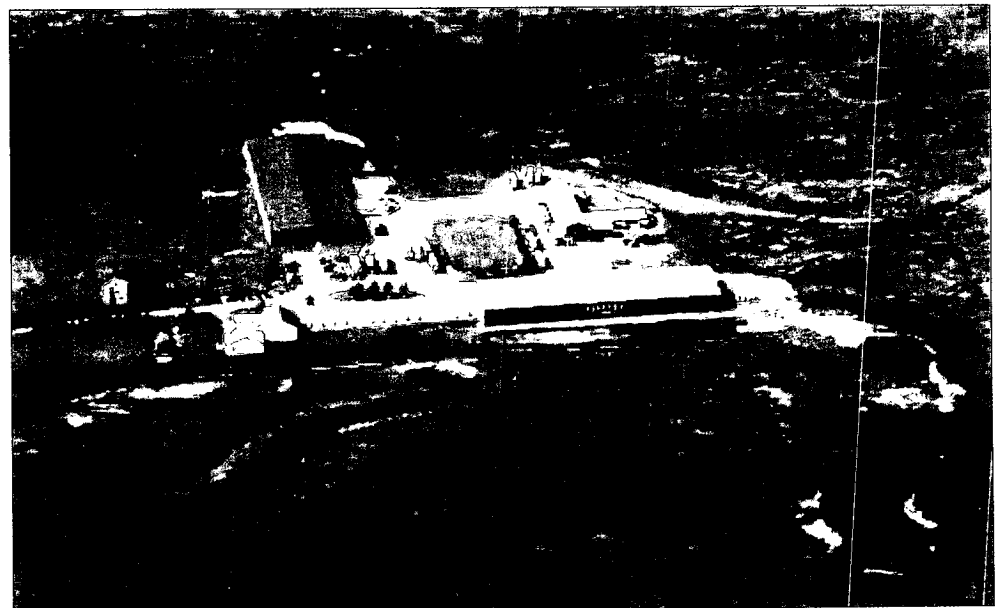
Here you will find the most pristine Natural Spring Water source. Nirvana is located in the foothills of the majestic Adirondack Mountains, amidst 2,000 acres of untouched wilderness, is the source that is NIRVANA where we bottle pure mountain spring water that flows naturally from our springs to the surface of untouched wilderness with its own natural minerals.

Enjoy our video to discover why Nirvana offers the finest pure Natural Spring Water with its natural minerals and is the natural solution to your bottled water product requirements.

All of Nirvana's springs are located in Forestport New York at the Adirondack Mountains.

Experience Nirvana and taste its natural purity. There Is Only One!

Nirvana-definition-is an ideal condition of rest, harmony, stability, purity and joy. What a perfect way to describe the company that provides purely remarkable bottled natural spring water.





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- [PRODUCTS](#)
- [INFO VIDEO](#)
- [FAQS](#)
- [CONTACT](#)
- [WATER FACTS](#)

- [HOME DELIVERY](#)
- [OFFICE DELIVERY](#)

About Our Company

Nirvana owns 2,000 acres in the foothills of the Adirondack Mountains of upstate New York, and has identified numerous naturally occurring pristine springs. The water from these springs is allowed to flow naturally into nearby streams and lakes. Nirvana has a more than abundant supply of this pure, delicious water.

Nirvana is poised to develop your Private Label brand water products and has clearly proven to our customers and consumers alike, that the enjoyment of drinking Nirvana spring water can not be paralleled by any other bottled water on the market. Our fully automated, state of the art facility coupled with our idyllic natural resources give our Private Label customers a distinct competitive advantage.

Nirvana customers include national and regional grocery, mass, club and convenient store chains. Nirvana is the premium source for private label bottled water.



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- [FAQS](#)
- [CONTACT](#)
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- [HOME DELIVERY](#)
- [OFFICE DELIVERY](#)

About Our Source

Experience the finest in Spring Water. Nirvana - There's only one.

And, here's why.

The source that is NIRVANA is a natural spring. This rare and unique water emerges naturally from fractures in a bedrock aquifer dating from the Ordovician Age. The pristine spring water flows at a constant 42 degrees, attesting to its extremely deep-rooted nature. Water analyses confirm its natural purity and the virtual lack of contaminants found in most source water.

Nirvana has commercially developed four of the springs on its sprawling 2,000 acres of protected property. To best maintain the water's natural taste characteristics, Nirvana strategically located its bottling facility to ensure that the water is exclusively bottled at the source; no expensive tankering, or unnecessary handling. Nirvana's Spring Water products are never touched by human hands until they are purchased for consumption. Nature differentiates Nirvana's source and guarantees that drinking Nirvana spring water is an unparalleled experience.

Nirvana Spring Water is like no other and offers our customers the finest product available. Our pure source provides the premium product that you will be proud to offer in you stores or to label your own.

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[PRODUCTS](#)

[INFO VIDEO](#)

[FAQS](#)

[CONTACT](#)

[WATER FACTS](#)

[HOME DELIVERY](#)

[OFFICE DELIVERY](#)

About Our Operation

Nirvana's operation is efficient, flexible and offers a wide variety of capabilities to meet our customers' specific needs. Our production facility which houses the bottling operation is in excess of 200,000 square feet. Raw materials and finished goods are stored separately in our immaculate, newly completed on site warehouse.

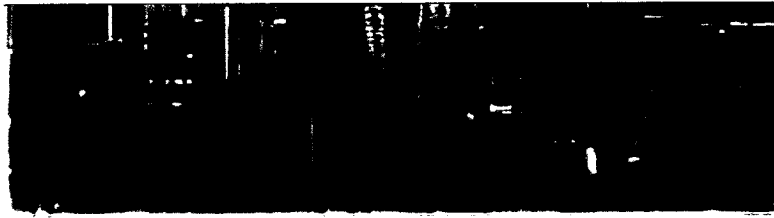
Nirvana has state-of-art high-speed PET bottling lines. Our on site cavity blow molding offers our customers efficient, cost effective co-packing operations. Nirvana is one of a few bottlers in the country capable of self-manufacturing PET containers with many size and closure options. Once bottled, Nirvana can package and wrap the products in a wide array of configurations.

In order to best meet the desires and needs of our customers, Nirvana water can be bottled as the pure, natural spring water that it is, or processed through a reverse-osmosis purification system to produce "purified" water. Nirvana has responded to the explosion that the water market has experienced by expanding operations to include flavored water, nutritionally enhanced water, as well as mineralized and fluoridated water. Our expanded "cold filled" processing operations allow our customers to offer their consumers the same alternatives that their branded competitors do. At Nirvana, we strive to remain on the cutting edge of technology and respond quickly to product changes as the bottled water industry continues to make advances.

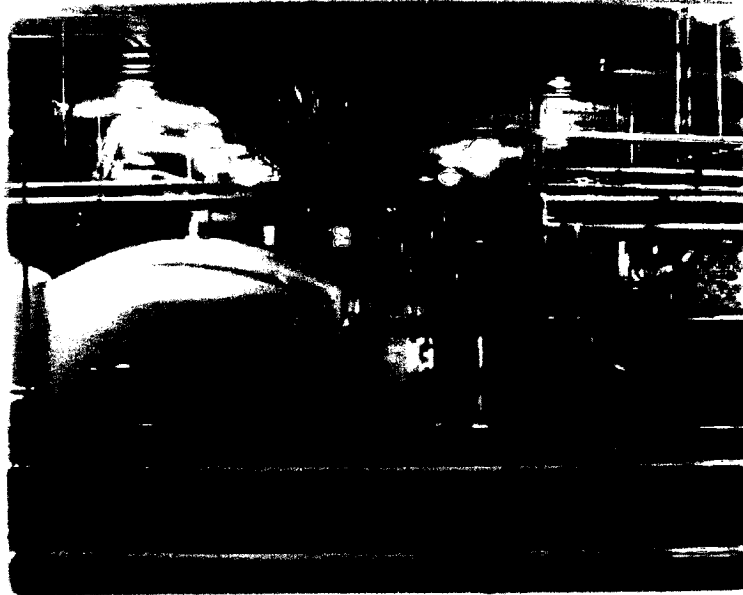
For our specific packaging capabilities please see the [Our Products](#) page. Nirvana offers the finest in Spring Water in many popular bottle sizes and multipack options. To explore custom capabilities please use the [Contact Us](#) tab.

Nirvana is very proud of our state of the art facility where the pristine spring water arrives directly from the source, is bottled, labeled, case packed and shipped. The pure, natural spring water is never touched by human hands until opened by the consumer. Please take a moment to scroll through the photos below to get a better picture of Nirvana's operational capabilities.





Nirvana's on site blow-molding operation. Newly produced bottles travel via air conveyor to the filler.



The storage tanks where the pristine spring water arrives, untouched, directly from the source into the operation.



From these tanks, the spring water moves directly to the fillers.



Nirvana's fully enclosed high speed fillers are capable of producing 1,050 bottles per minute.



Filled bottles are then conveyed to labeling.



Nirvana's fully enclosed high speed fillers are capable of producing 1,050 bottles per minute.



Filled bottles are then conveyed to labeling.



The labeled bottles are then conveyed to the case packing and palletizing operations.

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- ABOUT
- PRODUCTS
- INFO VIDEO
- FAQS
- CONTACT
- WATER FACTS

- HOME DELIVERY
- OFFICE DELIVERY

Nirvana Products

Nirvana Water can be bottled as the pure, natural spring water that it is or bottled with the varying systems available to fulfill the needs of our customers.

PRODUCTS

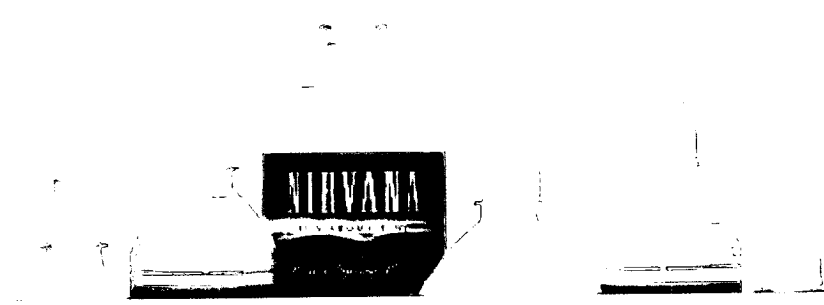
- Spring Water
- Purified (Reverse Osmosis Water)
- with or without mineral add back
- Fluoridated
- Flavored / value added

SIZES AVAILABLE

- 8 ounce
- 12 ounce
- 16.9 ounce (1/2 Liter)
- 24 ounce
- 33.8 ounce (Liter)
- 50.7 ounce (1-1/2 Liter)
- Flat Cap or Sport Cap

SECONDARY PACKAGING

- Tray/Shrink Pack Clear or Registered Film
- Multi-Pack Sizes Available
- 6, 8, 12, 15, 24, 32 Bottles Per Package



OFFICE DELIVERY

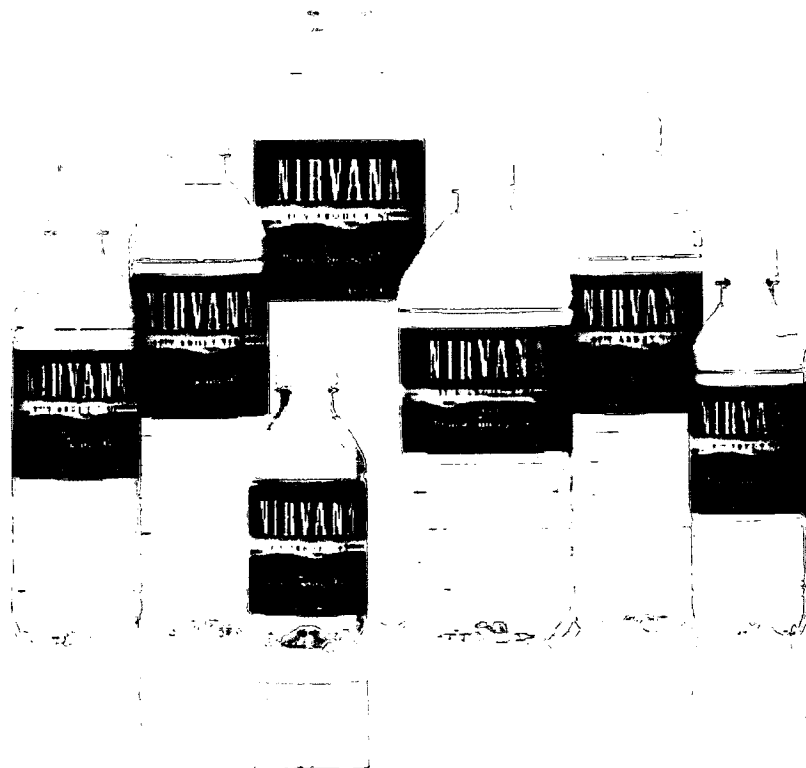
- with or without mineral add back
Fluoridated
Flavored / value added

SIZES AVAILABLE

8 ounce
12 ounce
16.9 ounce (1/2 Liter)
24 ounce
33.8 ounce (Liter)
50.7 ounce (1-1/2 Liter)
Flat Cap or Sport Cap

SECONDARY PACKAGING

Tray/Shrink Pack Clear or Registered Film
Multi-Pack Sizes Available
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PRODUCTS

REGIONS

FAQS

CONTACT

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Nirvana Info Video

Please watch this informational video to further enhance your view of our Bottled Water Facility. If you would like to make it full screen please right-click on the video and select 'Zoom' and then select 'Full Screen'.

Enjoy.....

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- ABOUT
- PRODUCTS
- INFO VIDEO
- CONTACT
- WATER FACTS
- HOME DELIVERY
- OFFICE DELIVERY

Frequently Asked Questions

Did you know that all bottled waters are not the same?

Q) - Are all the bottled waters the same?

A) - No they are not. Spring water is as unique as the land that it comes from. Nature creates the individual taste profile of spring water. With so many bottled waters on the market, Nirvana wants to help consumers sort through the labels to better understand the nature of the water that they are purchasing. We encourage you to take the time to visit our "Water Facts" section for more information.

Q) - Are healthy minerals present in water?

A) - The mineral composition of spring water is also a function of the geological formations through which it passes. Naturally occurring healthy minerals are present in Nirvana spring water.

Q) - Are there unhealthy minerals in water?

A) - There can be naturally occurring potentially unhealthy minerals like arsenic, chromium, lead and nitrates, to name a few.

Q) - How do I know that the water that I am buying contains a safe level of "bad" minerals?

A) - The bottled water industry is well regulated at both the federal and state level. The FDA has set strict Quality Standards for water. The FDA has established maximum standard levels for any potentially harmful mineral. There are no established maximums for beneficial minerals. To better illustrate, please see Nirvana's water analysis below versus the FDA standards. The numbers speak for themselves.

Mineral Composition	FDA Quality Standards (Maximum)	Nirvana* Mg/Liter
Total Dissolved Solids (TDS)	NA	59
Calcium	NA	14
Chloride	15	3.6
Sodium	NA	2
Fluoride	1.4-2.4	0.2
Lead	.05	ND
Color	15	ND

Mineral	ppm	ppb
Calcium	NA	14
Chloride	15	3.6
Sodium	NA	2
Fluoride	1.4-2.4	0.2
Lead	.05	ND
Color	15	ND
Nitrate	10	ND
Sulfate	250	ND
pH	6.5-8.5	7.0
Potassium	NA	1.8
Magnesium	NA	.46

*Source cited: Nirvana, 09/26/04 analysis by National Testing Laboratories, LTD.

NA: Not Available or there is no limit

ND: This content was not detected

Please note that Nirvana's water analysis is far superior to the FDA requirements and that is without purification or filtration. Nirvana is naturally pure and great tasting!

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Q) - What healthy minerals are naturally occurring in spring water?

A) - At moderate levels, certain minerals offer significant health benefits.

Fluoride is known for its effectiveness in preventing tooth decay. Although, high levels of fluoride are undesirable and the FDA regulates the allowable level accordingly.

Calcium is well recognized for promoting strong bones and helping to prevent osteoporosis.

Magnesium, sometimes called the "anti-stress" mineral, has many associated health benefits. It aids in muscle relaxation and is used in the treatment of coronary artery spasm, preclampsia, and PMS.

Potassium helps to regulate the acid water balance in tissues and blood and is the most frequently prescribed mineral. Potassium aids nerve function, cardiovascular health and a consistent level in cells is crucial to healthy body function.

Q)- What is the purpose of listing Nutritional Facts?

A) -Federal labeling laws require the Nutritional Facts be published. These labeling laws assist consumers in determining the benefits of a particular product and help in the purchase decision-making. Unfortunately, in the case of water, its benefits are underrepresented in typical label format. Over 75% of the human body is water and its consumption is vital to the transportation of nutrients, removal of wastes and maintenance of body temperature. It is so critical that while we can go weeks without food, we cannot survive even a week without water!

Q) - Is purified water safe and beneficial?

A) - Purified water is safe and free of contaminants. Unfortunately, it does not introduce any of the healthy minerals imperative to intracellular communication that are naturally occurring in spring water.

Q) - Are minerals ever added to purified water?

through its natural mineral composition.

Q) - Why do the largest companies in the beverage industry manufacture and market purified water instead of natural spring water?

A) - A spring water source is one of nature's gifts and therefore in a fixed location. Each spring has a unique taste profile, a function of its geological origins. Companies trying to market nationally cannot supply and distribute cost effectively from a single source. So, alternatively, they often purify municipal water from many locations and bottle it.

Q) - What is drinking water?

A) - Water labeled as "drinking water" is either municipal or well water. Please see our "Water Facts" to learn more about the meaning of different water labels.

Q) - Can you tell me more about the plastic bottles Nirvana spring water comes in?

A) - Our plastic bottles are made of PET (polyethylene terephthalate), the most widely used plastic for beverage containers worldwide and the most recyclable of all plastics. Nirvana blow molds our own clear plastic PET bottles on site to further monitor and control the quality of our finished products.

Q) - How do I best compare the taste of waters?

A) - For tasting purposes, it is best to consume waters side by side at room temperature. Although the preference is to drink water cold, this tends to numb the taste buds and hide some subtleties that are more easily detected at room temperature.

Q) - How should I store bottled water?

A) - For best results, bottled water should be stored in a cool, odor-free and dry environment out of direct sunlight and away from chemicals and other non-food items. Due to its natural mineral content, spring water is more delicate than other bottled waters and exposure to extreme temperatures should be avoided. Both overheating and freezing can cause minerals to crystallize, and actually separate out of solution.

Q) - How long can I store bottled water?

A) - While water has no specific "shelf life," it is preferably consumed within two years of bottling. If stored properly, bottled water can be used indefinitely.

Q) - How do I know when my Nirvana water was bottled?

A) - Every bottle of spring water that Nirvana produces is date coded. The information can be found on the shoulder of the bottle, the area just above the top of the label and below the cap. Nirvana uses a two line code. The first line is the date the water was bottled and reads PROD (produced) followed by a date and time. The second line of the code reads EXP followed by a date. This is the recommended "use by" date for consumption of the water.

Q) - How do I know the source of my bottled water?

A) - All bottled spring water must identify both the spring source and bottling plant on the label. If the locations aren't the same, or different sources are listed, the spring water had to be tankered to the bottling location. Nirvana is proud to label our water "Bottled at the Source." Interestingly, you won't even find a source listed on "purified" or "drinking" water!

Q) - How much water should I drink per day?

A) - For proper hydration, the adult recommendation is for at least eight 8 oz. servings per day.

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Q) - How much water should I drink per day?

A) - For proper hydration, the adult recommendation is for at least eight 8 oz. servings per day.

Q) - Why is water so important?

A) - Water is essential to life. In the body, water lubricates joints and muscles, aids in nutrient absorption, circulation and digestion, keeps minds alert and regulates body temperature. Water also helps the body metabolize stored fat and maintain proper muscle tone.

Q) - How do I decide which water is best for me to drink?

A) - Do your homework before making your purchase decision. Let our "Water Facts" help you. Pretty labels are attention-getting, admire them, but read them from an informed perspective. "North Pole Ice" isn't magic water bottled by Santa and his elves. Research the origin of the water, research the company that bottles it, visit their website, ask questions and then determine what water is best for you. We know that your research will lead you to us - NIRVANA.



ABOUT

PRODUCTS

INFO VIDEO

FAQS

CONTACT

WATER FACTS

HOME DELIVERY

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[ABOUT](#)

[PRODUCTS](#)

[INFO VIDEO](#)

[FAQS](#)

[CONTACT](#)

[WATER IN US](#)

[HOME DELIVERY](#)

[OFFICE DELIVERY](#)

Water Facts

Nirvana would like to help inform our consumers about the bottled water industry to help dispel misconceptions surrounding water labeling as well as to provide interesting general information about water. Please see our "FAQ's" for additional health and quality related information.

As the World Bank President stated at the Geneva Convention; "The 20th century's war was for oil, and the 21st century's war will be a battle for fresh, clean water between the countries." Fresh water is an essential necessity for the development of any civilization. Only in the past two centuries have we seen water treatment processes being implemented to drinking water worldwide. Chlorination has played a critical role in protecting America's drinking water from infectious diseases for decades. "Life Magazine" stated that the filtration of drinking water and the use of chlorine are "probably the most significant public health advance of the millennium."

THE ORIGIN OF SPRING WATER

Fundamentally, natural spring waters owe their chattels to the rock strata through which it filters. The water begins as rain or snow, is both filtered by and picks up minerals from the geological formations that it passes through. Rain or melted snow simply filters through permeable soil or rock until it is stopped underground by impervious rock, such as clay or granite. Shallow springs emerge at the junction of permeable and impermeable rocks, close to the surface. Mineral waters usually come from much deeper aquifers from which the water rises through fissures under the pressure created by superimposed layers. The very fact that the aquifer is thus sealed off above from ground water maintains purity and unchanging mineral content. This process can take years; in essence, the water matures, like a fine wine. It can take centuries for water to reach its source.

Although other minor elements are often present, minerals found in natural waters consist largely of calcium, magnesium, sodium, potassium, bicarbonate, carbonate, sulfate and chloride. One of the most common trace elements is fluoride, which as we know, is good for the teeth. Mineral content varies of spring water varies largely due to the geology of the region. Limestone, for example, will make water rich in calcium, dolomites provide magnesium, and rocks resulting from volcanic action will bestow sodium. Austrian water, of volcanic origin, was found to be so full of sodium and bicarbonates that it actually contains 5,400 milligrams per liter of mineral salts. In great contrast, water tested in France was found to have a mere 12 milligrams per liter and could actually be regarded as distilled water. It has been determined that lightly mineralized water is one that possesses less than 500 milligrams per liter, medium mineralization is up to 1,000 milligrams per liter, and high mineralization is anything over 1,000 milligrams per liter, but precise definitions vary from country to country.

What is a borehole?

1,000 milligrams per liter, and high mineralization is anything over 1,000 milligrams per liter, but precise definitions vary from country to country.

What is a borehole?

A borehole is a well that is drilled near a spring. The water in the borehole is then pumped out of the well mechanically. This is Well Water and not Spring Water, unless it meets certain stringent requirements.

Chemists, microbiologists and geologists say that there is a major difference between the two. The water quality and composition can drastically change when it is pumped out of boreholes. The composition of spring water does not change. Boreholes can actually create a vacuum within the reservoir, not allowing the reservoir time to replenish itself. As the underground reservoir depleted, because of the borehole and mechanical pump, poorly filtered surface water can penetrate the water supply.

The FDA recently tightened the regulations regarding borehole-extracted water. Water derived from Borehole can be labeled as "spring water" only if:

- A. There must be a spring.
- B. There must be a confirmed hydraulic connection between the spring and the borehole.
- C. Water flow must be maintained while the borehole is being pumped.
- D. The water from the spring and borehole must contain the same physical and chemical composition.
- E. The borehole cannot be under any surface water encroachment.

Water Classifications:

Municipal Water:

Municipal water is widely known as tap water which generally comes from lakes and rivers. The EPA has reported that hundreds of tap water sources fail to meet minimum standards. Simply consider the distance which tap water has to travel before it reaches a consumer's home, not to mention what that water travels through in this process. Municipal water is actually used as the source for more than 50% of the bottled water sold in the United States. Municipal water may be "purified" (please see the "Purification Process" section). With water, the word pure is often used for treated water, rather than for water that is pure by nature.

Well Water:

Well water is defined as bottled water from a hole bored, drilled or otherwise constructed in the ground, which taps the water aquifer. Many people depend on wells for their water supply, especially in the more rural areas. Underground water is usually clean, because soil is a good filter, and the water generally contains dissolved minerals. When a well is drilled, it should be drilled through the first layer of bedrock in order to protect the water source.

Spring Water:

Spring water is defined as bottled water derived from an underground formation from which water flows

contains dissolved minerals. When a well is drilled, it should be drilled through the first layer of bedrock in order to protect the water source.

Spring Water:

Spring water is defined as bottled water derived from an underground formation from which water flows naturally to the surface of the earth. Spring water is the natural overflow or point of escape from an underground reservoir of water. Natural spring water is individual, as unique as the land formations that it passes through.

WATER TREATMENT

In New York State, all bottled water facilities packaging water for distribution must provide satisfactory treatment of each water source used. Water bottles are required to be completely sanitized, rinsed with ozonated water before filling. In New York State ozonation or ultra-violet disinfection are considered the only two acceptable treatments for water bottlers.

Ozonation:

Ozone is most commonly used for purification by water bottlers. Ozone is a three atom form of oxygen that is a natural element in the Earth's atmosphere. Ozone attacks and destroys micro-organisms. Ozone does not produce any toxic halogenated compounds. The advantage of ozonation is rather uncomplicated; using absolutely no chemicals, water is sanitized without impacting its natural great taste. Ozone purification has been practiced since the late 1800's and is the most powerful water purification process, to be readily available. For this reason, ozone is currently being used in thousands of water bottling facilities around the world.

Ultraviolet Light (UV):

Ultraviolet technology is another non-chemical approach to water disinfection. This method employs the use of ultraviolet germicidal lamps that are designed to produce a specific dosage of UV light. UV-C light is an actual germicide; it deactivates DNA in bacteria, viruses, and other microorganisms, thereby destroying their ability to multiply and cause disease. The UV-C light damages the nucleic acid of microorganisms by forming covalent bonds between adjacent bases in the DNA, preventing DNA from being released for replication, leaving the organism incapable of reproduction.

THE PURIFICATION PROCESS

Reverse Osmosis:

Scientists have developed a process called reverse osmosis to remove all the Total Dissolved Solids (TDS), or in other words, all minerals, to produce purified drinking water that is like distilled water. In normal osmosis, water flows from fresh water into mineral water when separated by an appropriate semi-permeable membrane. By applying pressure to the water, this movement is reversed and unwanted solids are removed. Any source water, municipal, well or spring can be "purified" by reverse osmosis. Another less utilized purification method is distillation.

BOTTLED WATER LABELING

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BOTTLED WATER LABELING

The Bottled Water Industry in the United States is regulated on the Federal, State and Trade Association levels. Bottled water companies must follow the FDA's Quality Standards, Standards of Identity as well as comply with Good Manufacturing Practices. We must also comply with state and industry regulations. The FDA regulates bottled water labeling claims and has made great strides in regulating and standardizing the bottled water industry in order to protect the consumer.

There are several different varieties of bottled water. The product may be labeled as bottled water, drinking water or any of the following terms. The Food and Drug Administration's (FDA) product definitions for bottled water are:

Drinking Water: Bottled water containing municipal or well water is labeled as drinking water.

Mineral Water: Bottled water containing not less than 500 parts per million total dissolved solids may be labeled as mineral water. Mineral water is distinguished from other types of bottled water by its constant level and relative proportions of mineral and trace elements at the point of emergence from the source. No minerals can be added to this product.

Purified Water: Water that has been processed by reverse osmosis, distillation, deionization or other suitable process meets the definition of purified water.

Sparkling Water: Water that after treatment and possible replacement with carbon dioxide contains the same amount of carbon dioxide that it had at emergence from the source. Soda water, seitzer water and tonic water are regulated separately, may contain sugar and calories, and are considered soft drinks, not sparkling waters.

Spring Water: Bottled water derived from an underground formation from which water flows naturally to the surface of the earth. Spring water must be collected only at the spring or through a bore hole tapping the underground formation finding the spring. Spring water collected with the use of an external force must be from the same underground stratum as the spring and must have all the physical properties, before treatment, and be of the same composition and quality as the water that flows naturally to the surface of the earth.

Well Water: Bottled water from a hole bored, drilled or otherwise constructed in the ground which taps the water of an aquifer.

We at Nirvana are extremely proud of our water products and believe that we are blessed with an unparalleled pristine natural resource. We hope that this information helps in your bottled water purchase decision. Please feel free to "Contact Us" we would love to hear from you.



NIRVANA™

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FOOD & DRINK

OFFICE DELIVERY

Nirvana Home Delivery

PLEASE CHECK BACK ON APRIL 2006 FOR THE LAUNCH OF NIRVANA SPRING WATER HOME DELIVERY. IF YOU ARE INTERESTED IN NIRVANA SPRING WATER HOME DELIVERY, PLEASE FILL OUT THE FORM BELOW.

* Required Field

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Subject:

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**DAYMON INTERNATIONAL
MARKETING
PRESENTATION**

2005

OBJECTIVE

- Secure private label co-pack alliances with Daymon.
- Expose Nirvana's state of the art operations and natural spring water nationally.
- Provide the best prices, best service, and best quality bottled water and beverages in the market.

NIRVANA[®]

MARKET OVERVIEW

- Consumers prefer bottled water as the healthy alternative beverage.
 - 35% of the Average American's daily beverage intake is Water.
 - Bottled Water share is 37% of the Average American's total water intake.
- Bottled Water continues to lead the beverage category in annual growth.
- Projected to grow a minimum of 10% per year over the next five years.

MARKET OVERVIEW - Continued

- Value-added bottled water products capture consumer attention and add a new dimension along with profit opportunity to the category.
- Natural Spring Water maintains image, as an upscale and premier product.
- Age demographics of bottled water consumers has expanded to include teens and kids.

PRODUCT DEFINITION

- Nirvana Natural Spring Water Products.
 - “Natural” Spring Water bottled at the source, along with purified, mineral added, and cold filled.
 - Packaged in attractive PET bottles in all of the consumer preferred sizes.
 - Upscale attractive packaging and brand identification.
 - Nirvana’s spring source is the only NSWA (National Spring Water Association) approved source in New York.
-

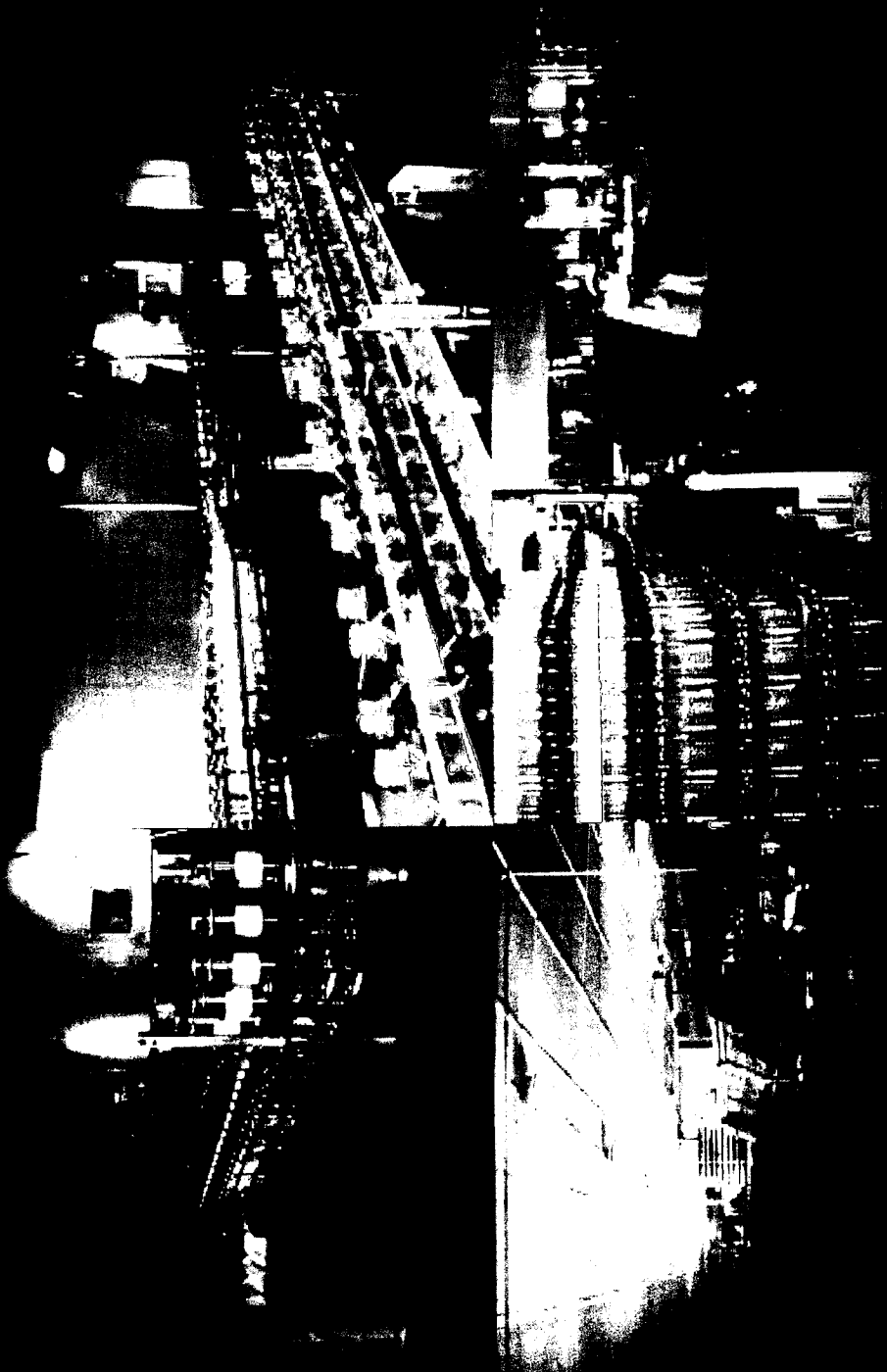
ABOUT NIRVANA - Source

- Nirvana is defined as an ideal condition of rest, harmony, stability and joy.
 - Nirvana has seven sources located amidst 2,000 acres of undisturbed land that is owned by Nirvana at the foothills of the Adirondack Mountains.
-

ABOUT NIRVANA - Source

- Only Four springs have been developed:
 - Provide flow at approximately 795 gallons per minute.
 - Water has constant Temperature of 42°F.
 - Water flow is constant through the seasons.

ABOUT NIRVANA – Production

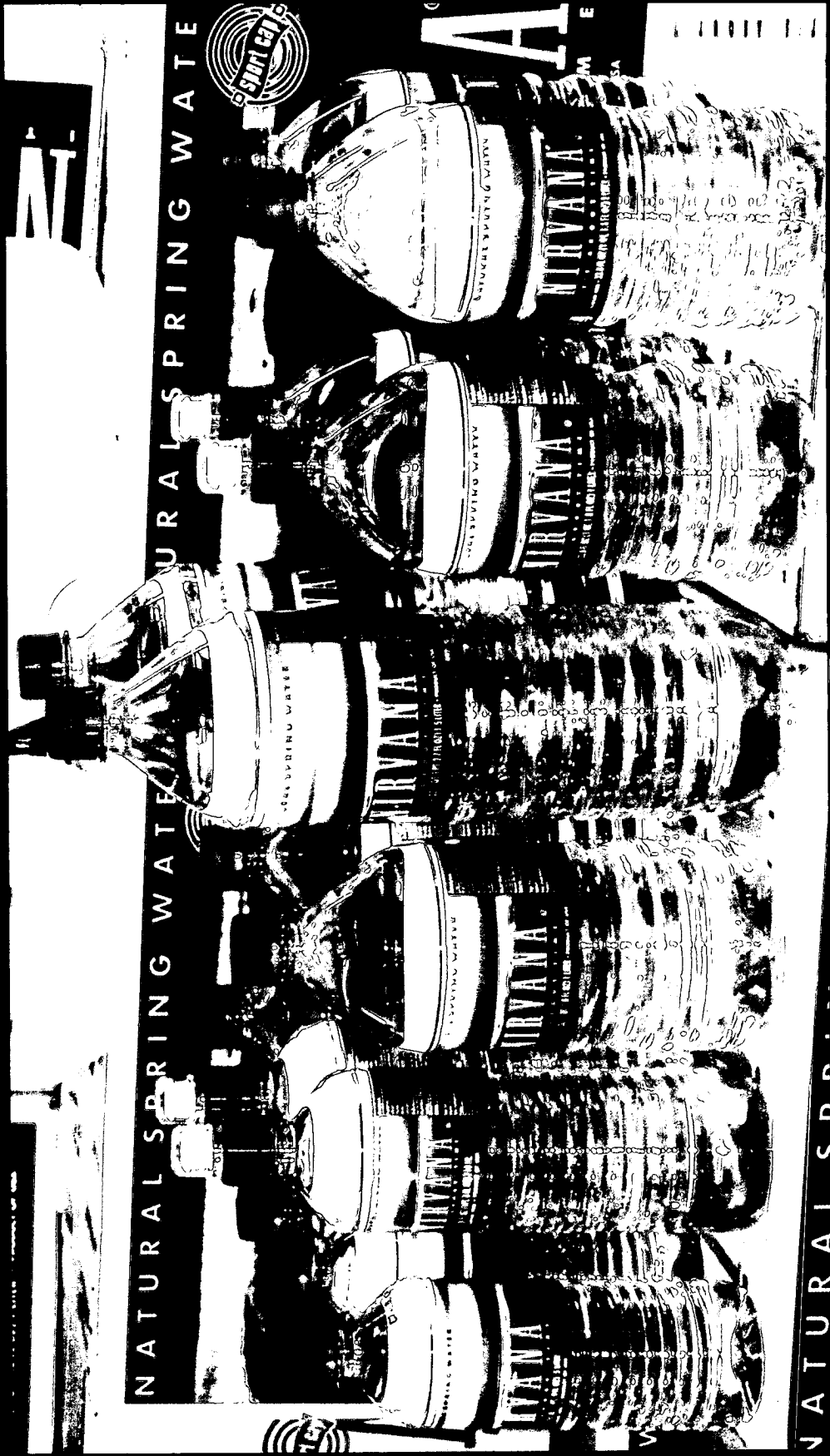


ABOUT NIRVANA – Production

- Nirvana has two high speed bottling lines that are capable of producing more than 20-million cases annually:

– (2) PET Lines.

ABOUT NIRVANA – Production



NATURAL SPRING WATER

NATURAL SPRING WATER



ABOUT NIRVANA – Production

Capable of producing the following Sizes:

- 8 OZ.
- 12 OZ.
- 20 OZ.
- 500 mL.

- 1 Liter.
- 1.5 Liter.
- 24 OZ.

WHY NIRVANA???

- There are 2,000 brands of bottled water sold in the United States.
 - Less than 50 of these bottlers, own their source. They transport water to their facilities.
 - Nirvana's sources flow freely underground to the facilities. No trucks required.
 - None of these companies' source is equal to the quality of the water available in Nirvana's source.
-

WHY NIRVANA???

- Nirvana has the ability to produce bottled water that can be labeled as:
 - Natural Spring Water.
 - Purified Drinking Water (Reverse Osmosis Purification).
 - Purified Drinking Water with Minerals Added for Taste.
 - Fluoridated Spring Water.
 - Drinking Water.
 - Flavored and value-added beverages