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Title: DECLARATION OF JEFFREY KAPLAN IN
SUPPORT OF PETITIONER'S TRIAL BRIEF.

Part 1 of 1



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

Jeffrey Kaplan

Petitioner,

v.

Cancellation No. 92053030

Insight Pharmaceuticals L.L.C.

Respondent

**DECLARATION OF JEFFREY KAPLAN
IN SUPPORT OF PETITIONER'S TRIAL BRIEF**

I, Jeffrey Kaplan, hereby declare under penalty of perjury:

1. I am over the age of eighteen and I make this Declaration based upon my personal knowledge. I have reviewed the factual allegations contained in Kaplan's Trial Brief Exhibits and the Notice of Reliance plus its Exhibits and find it all accurate.

2. Kaplan is the President of Florida based Global Beverage Enterprises Inc., President of S.O.S. Public Insurance Adjusters Inc. and is President of Retrobrands U.S.A. Inc. with an internet web site at www.retrobrands.net and has been in business since 2010. Retrobrands U.S.A. Inc. acquires and then through extensive marketing efforts, business plans and financial commitment, licenses, markets and distributes famous, iconic abandoned brands to the public.

3. Some famous abandoned trademark examples that Kaplan has successfully acquired and re-launched to the public are Puss' N Boots® Reg. No.4,089,070 for cat food through a license agreement with Manhattan Marketing, NYC, Tegrin® Reg. No. 4,081,335 for medicated shampoo through a license agreement with Manhattan Marketing, NYC, Hai Karate® Reg. No. 4,010,208 for aftershave cologne through a license agreement with Kyoku Holdings L.L.C., Hai Karate After Shave ® Reg. No. 4044298 for T-Shirts through a license agreement with I Fly Guy L.L.C. Boynton Beach Fl., Chipwich® Serial. No. 85421384 for T-Shirts through a license agreement with I Fly Guy L.L.C. Boynton Beach Fl.,

Di-Gel® Reg. No. 4,029,805 for antacids through a license agreement with Peerless Brands L.L.C., Edgewater, Maryland, Chipwich® Reg. No. 4,062,133 for Ice Cream through a license agreement with Peerless Brands L.L.C., Edgewater, Maryland and Datril® Reg. No.4010296 through a license agreement with Peerless Brands L.L.C., Edgewater, Maryland.

4. Insight is a large manufacturing and marketer based in Langhorne, Pennsylvania that offers to the public leading non-prescription medications that aid users in dealing with common ailments. Some products are Anacin®, Allerest®, Sucrets®, Nix® and many other popular brands. Insight products and brands are available at most leading retailers, drug stores, supermarkets and mass merchandisers throughout the United States.

5. Insight currently owns the Federal Trademark ASPERGUM ®for chewing gum containing aspirin Registration No. 792,115.

6. Plaintiff has a bona fide intent to use the same mark for related goods, and filed an intent-to-use application to register the mark, and believes registration of the mark will be refused in view of respondent's registration.

7. Mr. Jeffrey Kaplan is an inventor, entrepreneur and business man who for the last 30 years has invented, patented, trademarked, marketed and distributed many, many various products.

8. Mr. Kaplan has patents and trademarks for inventions such as his Nick Care® Reg. No. 3,131,880, a pain free styptic pencil and Epizine™ a herbicide to eliminate the weed Tillandisa Recurvata.

9. Through his Florida corporation Global Beverage Enterprises Inc. Mr. Kaplan manufactures, markets and sells numerous beverage brands including: Mavi Power® Reg. No. 3,871,053 for energy drinks containing mavi extract; Tepache Power® Reg. No. 3,854,453 for energy drinks containing tepache extract; Mr. Q. Sparkling Gin® Reg. No. 3,891,044 for spirits; Mr. Q. Cumber® Reg. No. 3,849,496 for non-alcoholic beverages. and Sparkling Cow® Reg. No. 3,800,225 for non- alcoholic beverages namely carbonated beverage. (Hereby attached as Exhibit A)

10. Global Beverage Enterprises Inc. beverage products are sold and distributed through various nationwide distributors such as Tree of Life, KeHe Distributors, Haddon House, UNFI, Goya Foods, Associated Buyers, FSI Avalon, New England Distributors, Thirstmonger.com, Grocers Supply, Unified Grocers and is even sold internationally through Myco Foods, a distributor located in Allicante Spain.

11. Mr. Kaplan's award winning beverage brands have also been featured on television shows such as The View®, The Today Show® and mentioned in dozens of magazines, articles and blogs.

12. Mr. Kaplan has prepared business plans using similar templates for all his brands and has utilized the basis of these business plans to locate prospective licensees and has signed trademark license agreements with Manhattan Marketing, I Fly Guy L.L.C., Kyoku Holdings L.L.C. and Peerless Brands L.L.C.

13. Mr. Kaplan is also in licensee discussions with Mr. Jeffrey Himmel, CEO of The Himmel Group, Miami Fl. which is the company that successfully re-launched Ovaltine® and Gold Bond® and is in talks with Mr. Mark Thomann, the CEO of River West Brands, the company that re-launched Eagle Snacks®, Underalls®, Coleco® and other famous abandoned brands

14. Attached as Exhibit F is a true and correct copy of Kaplan's email to Insights consumer representative and the email response received from Insight's customer representative whereby Kaplan was informed that there were no ASPERGUM® products in commerce and there were no plans to resume use of the ASPERGUM®

15. Attached as Exhibit E is a true and correct copy of Insights internet web page that I downloaded and printed from the Internet which clearly indicates no mention of the ASPERGUM® products in commerce and no plans to resume use of the ASPERGUM® product.

16. Attached as Exhibit O is a true and correct copy of printout I obtained on line from the PTO's Trademark Inquiry System showing the Examiners Office Action refusing registration of Kaplan's Aspergum trademark based on a Section 2(d) refusal.

17. Attached as Exhibits G, H and I are true and correct copies of printouts I obtained on line from the Internet in regards to the availability and history of ASPERGUM® products.

18. Attached as Exhibits B, C, D ,J, K, L, M and N are true and correct copies of Interrogatories, Document Production Requests and Admissions from Insight produced in Discovery Proceedings in Kaplan v. Insight Pharmaceuticals LLC Cancellation No. 92053030.

19. Attached as Exhibit P is a true and correct copies of printout I obtained on line from the Internet in regards to my ownership of the web domain address

www.aspergum.com

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

Lauderdale Florida this 6th day of February 2012.



Jeffrey Kaplan

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