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05/01/2017

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

Proceeding	92060914
Party	Defendant SnoWizard, Inc.
Correspondence Address	KENNETH L TOLAR SNOWIZARD INC 2908 HESSMER AVENUE, SUITE 2 METAIRIE, LA 70002 UNITED STATES tolar@tolarlawoffice.com
Submission	Defendant's Notice of Reliance
Filer's Name	Kenneth L Tolar
Filer's e-mail	tolar@tolarlawoffice.com
Signature	/kenneth l tolar/
Date	05/01/2017
Attachments	NOTICE OF RELIANCE.pdf(50661 bytes ) Exhibit A.pdf(1255033 bytes ) Exhibit C.pdf(937397 bytes ) Exhibit D.pdf(109605 bytes ) Exhibit E.pdf(42854 bytes ) Exhibit B.pdf(982954 bytes )

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

In the Matter of Trademark Registration No.: 4,157,907, WHITE CHOCOLATE & CHIPS® Cancellation No. 92060914

Snow Ball's Chance, Ltd.

v.

DOCKF

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Registrant and Respondent, SnoWizard, Inc., ("SnoWizard") hereby submits this Notice of Reliance according to 37 C.F.R. §2.120 *et seq*. Respondent intends to rely upon the following evidence, which is hereby made of record in this matter.

1. The entire file wrapper of registration no. 4,157,907, which is automatically of record herein pursuant to 37 C.F.R. 2.122(b).

2. Copies of Petitioner's invoices produced by Petitioner attached hereto as Exhibit "A." The documents are relevant to show that Petitioner is a mere proxy of Southern Snow Manufacturing Co., Inc.("Southern Snow"), which was a plaintiff in numerous consolidated cases ("the consolidated cases") in the Eastern District of Louisiana, Case No. 06-9170 c/w 09-3394, 10-0791, and 11-1449 in which it relentlessly attacked registrations of SnoWizard, including WHITE CHOCOLATE & CHIPS®, by alleging the same finally adjudicated and rejected theories asserted herein.

3. A stamped copy of the judgement entered by the trial court in the consolidated cases attached hereto as Exhibit B. The judgment is relevant to clearly show that the mark WHITE CHOCOLATE & CHIPS® is not generic, merely descriptive, functional or was obtained by fraud as alleged in the Petition for Cancellation. These exact same specious and unsupportable theories were alleged by Petitioner's attorney on behalf of Southern Snow and others in privity therewith, and the jury determined that the registered mark WHITE CHOCOLATE & CHIPS® is a valid enforceable trademark belonging to SnoWizard, and that Southern Snow infringed such trademark.

4. A copy of the judgment rendered by the Court of Appeals for the Federal Circuit affirming the trial court judgement that WHITE CHOCOLATE & CHIPS® is a valid, enforceable trademark belonging to SnoWizard, and that Southern Snow infringed such trademark. A copy of the judgment is attached hereto as Exhibit C.

5. A copy of registration no. 4,157,907 attached hereto as Exhibit D.

6. A copy of an email communication from Petitioner's counsel, attached hereto as Exhibit E, wherein he asserts that Petitioner does not offer a flavor under the name White Chocolate & Chips and has never offered such flavor in the past.

Respectfully submitted,

/kennth l. tolar/ Kenneth L. Tolar, Registration No. 39860 Attorney for Defendant, SnoWizard, Inc. 2908 Hessmer Avenue Suite 2 Metairie, Louisiana 70002 (504) 780-9891 (504) 780-7741 facsimile tolar@tolarlawoffice.com

and



/s/ jack e. morris JACK E. MORRIS (La. Bar No. 22539) Attorney for Defendant, SnoWizard, Inc. 4051 Veterans Boulevard Suite 208 Metairie, Louisiana 70002 Telephone: (504) 454-2769 Facsimile: (504) 454-3855 Email: Jem@jemorrislaw.com

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Reliance has been served electronically upon Snow Ball's Chance, Ltd., Petitioner herein, on this 1<sup>st</sup> day of May, 2017, through its counsel of record as follows:

Mark E. Andrews Andrews Arts & Sciences Law, LLC 7104 Coliseum Street New Orleans, Louisiana 70118 mea@mealaw.com

/kennth l. tolar/

Kenneth L. Tolar

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