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Filing date: **12/04/2015**

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

| | |
|------------------------|---|
| Proceeding | 92060914 |
| Party | Plaintiff Snow Ball's Chance, Ltd. |
| Correspondence Address | MARK EDW ANDREWS ANDREWS ARTS & SCIENCES LAW LLC 7104 COLISEUM ST NEW ORLEANS, LA 70118-4818 UNITED STATES mea@mealaw.com, docket@artsciencelaw.com, artsciencelaw@gmail.com |
| Submission | Motion to Reopen |
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| Signature | /Mark Edw. Andrews/ |
| Date | 12/04/2015 |
| Attachments | MotionResume_WHITE-CHOCOLATE-CHIPS.pdf(401130 bytes) |

UNITED STATES PATENT & TRADEMARK OFFICE
TRADEMARK TRIAL & APPEAL BOARD

CANCELLATION No. 92060914
REGISTRATION No. 4,157,907
WHITE CHOCOLATE & CHIPS
REGISTERED 12-JUN-2012
SNOW BALL'S CHANCE, LTD.
v.
SNOWIZARD, INC.

MOTION TO RESUME

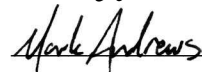
Petitioner Snow Ball's Chance, Ltd., moves to resume this cancellation proceeding in light of the dismissal of the civil action in US District Court that was the basis for suspension.

In an Order and a Judgment entered 25 September 2015, the US District Court for the Louisiana Eastern District dismissed all of Plaintiff SnoWizard's claims, and dismissed Civil Action 15-1002 in its entirety, under Rule 12, on the motion of Defendant Snow Ball's Chance, Ltd. The Order and the Judgment are appended here. SnoWizard, Inc. did not move for any reconsideration and did not give notice of any appeal during the allowed delays, which have already run.

Petitioner directs the Board's attention to potentially related Cancellation No. 92060915, CAJUN RED HOT, between the same parties. Petitioner directs the Board's attention to a potentially related cancellation proceeding between the same parties which was filed 3-DEC-2015 and was assigned the tracking number ESTTA712483, against Reg. No. 3,543,583 for MOUNTAIN MAPLE.

DATED: 4 DECEMBER 2015

RESPECTFULLY SUBMITTED:
Attorney for Petitioner Snow Ball's Chance, Ltd.



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— CERTIFICATE OF SERVICE —
I, Mark Edw. Andrews, certify this document is served on counsel for Registrant SnoWizard, Inc. Kenneth L. Tolar by U.S. Mail to 2908 Hessmer Av, Ste 2, Metairie, LA 70002, and by e-mail to <tolar@tolarlawoffice.com>, this 4 December 2015.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SNOWIZARD, INC.

VERSUS

SNOW BALL'S CHANCE, LTD.

CIVIL ACTION

NO. 15-1002


SECTION "G"(1)

JUDGMENT

In accordance with the Court's Order¹ entered on September 25, 2105,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the defendant, Snow Ball's Chance, Ltd., and against the plaintiff, SnoWizard, Inc., dismissing plaintiff's claims.

New Orleans, Louisiana, this 25th day of September 2015.


NANNETTE JOLIVETTE BROWN
UNITED STATES DISTRICT JUDGE

¹ Rec Doc. 21.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

SNOWIZARD, INC.

CIVIL ACTION

VERSUS

CASE NO. 15-1002

SNOW BALL'S CHANCE, LTD.

SECTION: "G"(1)

ORDER

In this litigation, SnoWizard, Inc. ("SnoWizard") seeks a judgment "(1) declaring that SnoWizard, Inc. continues to own a valid and enforceable federally registered trademark in 'CAJUN RED HOT®' and 'WHITE CHOCOLATE & CHIPS®,['] as the court and jury in the consolidated cases previously determined; (2) that Defendant is barred by the doctrine of *res judicata* from attacking the validity of the registered trademarks CAJUN RED HOT® and WHITE CHOCOLATE & CHIPS®; (3) ordering the Trademark Trial and Appeal Board [("TTAB")] to dismiss pending cancellation proceedings nos. 92060914 and 92060915 filed by Defendant; (4) attorneys' fees, costs, expenses, interest and any further relief as the Court deems just or equitable under the circumstances."¹ Pending before the Court is Snow Ball's Chance's "Motion to Dismiss and Strike Under Rule 12"² in which it urges the Court to dismiss the "Complaint for Declaratory Judgment of Trademark Validity"³ filed by SnoWizard. Having reviewed the motion, memorandum in support, memorandum in opposition, the supplemental memoranda, the record, and the applicable law, the Court will grant the motion.

¹ Rec. Doc. 1 at p. 18.

² Rec. Doc. 8.

³ Rec. Doc. 1.

I. Background

On February 20, 2015, Snow Ball's Chance filed two petitions for the cancellation of the trademarks "CAJUN RED HOT" and "WHITE CHOCOLATE & CHIPS" with the United States Patent and Trademark Office's Trademark Trial and Appeal Board.⁴ On April 1, 2015, SnoWizard filed a complaint seeking a declaratory judgment in this Court, requesting that the Court declare that it *continues* to own valid and enforceable federally registered trademarks for the snowball flavors "CAJUN RED HOT" and "WHITE CHOCOLATE & CHIPS."⁵

SnoWizard's ownership of valid and enforceable trademarks for these snowball flavors was decided by a jury empaneled by this Court in *Southern Snow Manufacturing Company, Inc. v. SnoWizard Holdings, Inc. et al.*, Case No. 06-9170.⁶ In 2006, Southern Snow Manufacturing Co., Inc. ("Southern Snow"), filed a Petition and a Supplementing and Amending Petition, in the 24th Judicial District Court of the Parish of Jefferson, Louisiana, against SnoWizard for violation of the Louisiana Unfair Trade Practices Act and U.S. trademark law.⁷ SnoWizard subsequently removed that case to the United States District Court for the Eastern District of Louisiana, invoking federal question jurisdiction pursuant to 28 U.S.C. § 1331.⁸ Southern Snow, along with other plaintiffs, subsequently filed three amended complaints bringing additional claims, including claims under

⁴ Rec. Docs. 1-4; 1-5.

⁵ Rec. Doc 1 at p. 18.

⁶ *S. Snow Mfg. Co., Inc. v. SnoWizard Holdings, Inc. et al*, Case No. 06-9170, Rec. Doc. 665; Rec. Doc. 709-1.

⁷ *Id.* at Rec. Doc. 1-1.

⁸ *Id.* at Rec. Doc. 1.

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