

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

**PLUM STREET SNOBALLS,
THEODORE EISENMANN,
RAGGS SUPPLY, LP,
SPECIAL T ICE CO., INC.,
PARASOL FLAVORS, LLC,
SIMEON, INC.,
SOUTHERN SNOW MFG. CO., INC.,
& SNOW INGREDIENTS, INC.**

v.

**SNOWIZARD, INC. &
RONALD R. SCIORTINO**

CIVIL ACTION

CASE No. 11-1499

SEC.

MAG.

JURY DEMANDED

COMPLAINT

- **18 USC §1961 Civil-RICO claims**
- **35 USC §102(b) Invalidity of U.S. Patent 7,536,871**
- **35 USC §282 Invalidity of U.S. Patents 7,536,871 & 7,543,459**
- **35 USC §292 Patent False Marking (*qui tam*) claims**
- **28 USC §2201(a) Patent Declaratory Judgment**
- **15 USC §1125(a) Trademark Infringement claims**
- **15 USC §1120 Trademark Fraudulent Registration claims**
- **28 USC §2201(a) Trademark Declaratory Judgment**
- **15 USC §1125(a) Unfair Competition claims**
- **La. R.S. 51:211, §219(4), & §221 Louisiana Trademark claims**
- **La. R.S. 51:1405 LUTPA Unfair Competition claims**
- **Texas Unfair Competition & Declaratory Judgment claims**
- **Related EDLA-2:10-cv-4275-JCZ-SS**
- **Cases EDLA-2:06-cv-9170-JCZ-SS c/w 09-3394, 10-0791**
- **EDLA-2:11-cv-0515-ILRL-JCW**
- **EDLA-2:11-cv-0880-JCZ-SS**

Plum Street Snoballs, Theodore Eisenmann, Raggs Supply, LP, Special T Ice Co., Inc., Parasol Flavors, LLC, Simeon, Inc., Southern Snow Mfg. Co., Inc., and Snow Ingredients, Inc., respectfully represent:

Related Cases

1. This case is related to several cases in the Louisiana Eastern District: Case No. 10-4275-JCZ-SS, Case No. 06-9170-JCZ-SS, c/w 09-3394, 10-0791, Case No. 11-0515-ILRL-JCW, and Case No. 11-0880, as explained in the separate notice.

Jurisdiction and Venue

2. This U.S. District Court has jurisdiction under 28 USC §1331 because Plaintiffs complain under 18 USC §1961, *et seq.* (civil-RICO); jurisdiction under 28 USC §1338 for claims under federal patent law, 35 USC §100, *et seq.*; and jurisdiction under 15 USC §1121 for claims under the federal Lanham Act, 15 USC §1501, *et seq.* This Court has supplemental jurisdiction under 28 USC §1367 over Plaintiffs' state-law claims: under Louisiana trademark law at La. R.S. 51:211, *et seq.*; under the Louisiana Unfair Trade Practices Act (LUTPA), La. R.S. 51:1405, *et seq.*; under Louisiana Civil Code Article 2315; under Texas Unfair Competition and Business Practices law, Tex. Bus. & Com. Code; Texas common law; and under Texas Declaratory Judgment law, Tex. Civ. Prac. & Rem. Code Ann. §37.004; which arise from the same transactions or occurrences and implicate the same questions of fact and related questions of law.

3. Venue is proper in the Eastern District of Louisiana under 28 USC §1391 where the Defendants are subject to personal jurisdiction and are doing business, and where the acts complained of occurred or originated in such district.

Plaintiffs

4. Plum Street Snoballs is an unincorporated business owned by Donna and Claude Black, having its place of business at 1300 Burdette St., (corner Plum), New Orleans, LA 70118, and is Plaintiff herein.

5. Theodore Eisenmann is a former owner of Eisenmann Products, who maintains an office at 2438 Thorntree Dr., Frisco, TX 75033, Denton County, Texas, and is Plaintiff herein.

6. Raggs Supply, LP, (Raggs) is a Texas limited partnership operating Raggs Sno-Cone Supplies, having its place of business at 2000 Whitley Road, Suite T, Keller, TX 76248, Tarrant County, Texas, and is Plaintiff herein

7. Special T Ice Co., Inc., (Special T Ice) is a Louisiana corporation having its place of business at 7601 U.S. Highway 167, Abbeville, LA 70510, Vermilion Parish, Louisiana, and is Plaintiff herein.

8. Parasol Flavors, LLC, (Parasol) is a Louisiana limited liability company having its place of business at 69345 Highway 59, Abita Springs, LA 70420, St. Tammany Parish, Louisiana, and is Plaintiff herein.

9. Simeon, Inc., (Simeon) is a Louisiana corporation having its place of business at 103 West W St., Belle Chasse, LA 70037, Plaquemines Parish, Louisiana, and is Plaintiff herein.

10. Southern Snow Mfg. Co., Inc., (Southern Snow) is a Louisiana corporation having its place of business at 103 West W St., Belle Chasse, LA 70037, Plaquemines Parish, Louisiana, and is Plaintiff herein.

11. Snow Ingredients, Inc., (Snow Ingredients) is a Louisiana corporation having its place of business at 103 West W St., Belle Chasse, LA 70037, Plaquemines Parish, Louisiana, and is Plaintiff herein.

Defendants

12. SnoWizard, Inc., (SnoWizard) is a Louisiana corporation having its place of business at 101 River Road, Jefferson, LA 70121, Jefferson Parish, Louisiana, and is made Defendant herein.

13. Ronald R. Sciortino is a natural person of majority, resident of Louisiana, is the owner and principal officer of SnoWizard, Inc., maintaining a business office at 101 River Road, Jefferson, LA 70121, Jefferson Parish, Louisiana, and is made Defendant herein.

Overview of Complaint — Details Are in the Counts

14. The parties here are all engaged in the business of snowball shaved-ice confections at the retail-vendor, distributor, or manufacturer level. SnoWizard and its principal officer Ronald R. Sciortino are attempting to manipulate the snowball market through a scheme to assert exclusive monopoly rights to sell products into that market, starting with non-existent patent rights on the ice-shaving machine itself, claiming to be the inventor of the ice-shaving machine, the entire snowball trade, and the owner of flavor and product names, escalating to improperly asserting

and registering 8 trademarks in 2003–2005, then an additional 14 trademarks in 2008, asserting non-existent, then improvidently granted patents and trademarks, to distributors and customers, and threatening and bringing actions and litigation to force the withdrawal of legitimate products and producers from the market based on fraudulently asserted and obtained patent and trademark rights.

15. SnoWizard’s fraudulent scheme complained of here is fraud upon everyone. It is fraud upon the purchasers of snowball-making equipment and supplies, because they are falsely told that SnoWizard owns government-sanctioned patents and trademarks. It is fraud against distributors and resellers of snowball equipment and supplies, because they are threatened with government-sanctioned liability. It is fraud against the competing manufacturers, because their distributors and direct customers have been told of bogus patents and trademarks, and SnoWizard has sent the competitors “cease and desist” letters asserting bogus rights. Also, it is fraud against the government’s patent and trademark administering authorities, who require that the whole truth and nothing but the truth be told to them, in order to avoid putting the government’s imprimatur on undeserved rights. SnoWizard defrauds the government in order to obtain undeserved patents and trademarks, in order to assert those bogus rights to customers, making a circuit of the scheme.

16. If each discrete step in SnoWizard’s scheme is viewed narrowly and only in isolation from the others, then the issues can be falsely portrayed as whether this or that patent or trademark is valid, or whether any given belief is reasonable. But the Plaintiffs allege, with specificity, and will prove, that patents and trademark registrations were granted improvidently because of SnoWizard’s fraud, that whatever unregistered rights were asserted by SnoWizard were asserted fraudulently, and that SnoWizard’s ongoing abusive enforcement and litigation tactics are devoid of any legitimate basis in any legitimate intellectual property rights. Also, even single, isolated material misstatements to the government are unlawful because they violate the duties of candor and of reasonable inquiry that are imposed on every applicant.

Application of general law to the snowball business

17. The business of making and selling snowballs and equipment and supplies for snowballs is governed by general federal and state business law. Except for a small amount of snowball business that may occur on military or other reservations, the vast majority of snowball business is governed by general business law. Therefore, patents and trademarks have the same legal meaning and significance in the snowball business as they do in any other business.

Law regarding fraud in obtaining patents and trademark registrations

18. Federal laws and regulations governing patents and trademark registrations impose duties of candor and reasonable inquiry upon all applicants. Willful false statements in applications to the U.S. Patent and Trademark Office (USPTO) for patents and trademark registrations are violations of 18 USC §1001, punishable by fine or imprisonment, or both, as acknowledged in sworn declarations.

19. Federal patent law provides for the invalidation and unenforceability of patents that are obtained through fraud and other inequitable conduct.

20. Federal trademark law, at Lanham Act §38 (15 USC §1120), provides: “Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.”

21. In order to obtain a Louisiana trademark, the Louisiana Secretary of State requires a signed and notarized solemn statement attesting to the truth and accuracy of the statements made in obtaining a Louisiana registration, and further swearing: “I, the applicant, am the owner of the trade name, trademark or service mark sought to be registered and no other person, firm, association, union or corporation has the right to such use in such class, either in the identical form hereinabove described, or in any such resemblance thereto as may be calculated to deceive, and the facsimiles or counterparts herein filed are true and correct.”

22. Louisiana trademark law, at La. R.S. 51:221, provides: “Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.”

23. The serious consequences of fraud in obtaining patents and trademark registrations are set out in the law and regulations. Making fraudulent statements to the government for the purpose of obtaining undeserved government-sanctioned patent monopolies and recognitions of trademarks is not a question of free speech or of innocent mistake—applicants are required to make reasonable inquiry and candid statements—in accord with published guidelines. Intentional material misstatements are incompatible with the administration of intellectual property rights, and are clearly not allowed.

Significance of exclusive use and ownership of trademark

24. By law, there can be no ownership of a trademark in any term that has not been used exclusively by the would-be owner. That is because the purpose of trademarks is to identify the source of the goods, and if the term is also used by unrelated sources, no trademark exists. This is true no matter whether the term is inherently distinctive or not. If the term is used non-exclusively, it cannot be a trademark. Therefore, if an applicant knows, after reasonable inquiry, that a term has also been used continuously by one or more competitors for a significant time, the applicant cannot honestly swear that the applicant is the owner of the term and that no other person has any rights to the term. This duty is imposed on the applicant because the government wants to keep junk trademarks out of its registries. Willful ignorance and unrealistic assessments are not allowed. Trademark rights arise from exclusive continuous use, not from scattershot trademark applications.

No time-bar here under civil-RICO or other claims

25. The complained-of unlawful activities are ongoing. The doctrine of continuing tort or injury applies to the claims here except for the civil-RICO and patent-false-marking claims. Several of the unlawful activities complained of here were first perpetrated in 2008 and were first discovered by some, but not all of the Plaintiffs in 2009. Others of the unlawful activities were first perpetrated more than 4 years and less than 10 years ago, but are continuations of an ongoing pattern of unlawful activity. Therefore, there is no time bar to this action other than the 10-year outer limit for civil-RICO and the outer limit for patent false marking.

Standing to sue

26. The parties here are all engaged in the business of snowball shaved-ice confections at the retail-vendor, distributor, or manufacturer level.

27. SnoWizard, Inc., is a manufacturer and purveyor of snowball flavor concentrates and ice-shaving machines, selling at wholesale and retail and as private labelings.

28. The SnoWizard Snoball Shoppe at 4001 Magazine Street in New Orleans, which is a retail vendor of snowballs, is related to SnoWizard, Inc., through common ownership by Ronald R. Sciortino.

29. Ronald R. Sciortino is the owner and principal officer of SnoWizard, Inc., and is the owner of the SnoWizard Snoball Shoppe.

30. Plum Street Snoballs is a vendor of snowballs at retail to the general public, and is a former customer of SnoWizard, making non-exclusive purchases of some SnoWizard flavor concentrates and ice-shaving machines for several decades. Plum Street Snoballs is a customer of Southern Snow, Snow Ingredients, and Parasol, and uses ice-shaving machines and flavor concentrates in its business.

31. Theodore Eisenmann is a former owner and proprietor of Eisenmann Products, formerly located on St. Claude Avenue in New Orleans, manufacturer of flavor concentrates and ice-shaving machines under the trademark FLAVOR SNOW,

and a competitor of SnoWizard. Mr. Eisenmann continues a relationship with the Eisenmann Products FLAVOR SNOW business, which was sold to the owner of Southern Snow in 2006.

32. Raggs Supply, LP, is a distributor, also called a reseller, of snowball flavor concentrates and ice-shaving machines, and is additionally a seller of ice, supplies, and ready-to-use syrups. Raggs distributes products from more than one manufacturer. Raggs was formerly a distributor of SnoWizard flavor concentrates and ice-shaving machines from approximately 1991 through June 2010. Raggs is a distributor of Southern Snow, Snow Ingredients, and Parasol products.

33. Special T Ice Co., Inc., is a distributor, also called a reseller, of snowball flavor concentrates and ice-shaving machines, and is additionally a seller of ice and supplies. Special T Ice does not distribute SnoWizard products. Special T Ice is a distributor of Southern Snow, Snow Ingredients, and Parasol products.

34. Parasol Flavors, LLC, is a manufacturer of snowball flavor concentrates, selling at wholesale and retail and as private labeling, and is a competitor of SnoWizard. Parasol sells at wholesale to Raggs and Special T Ice, and at retail to Plum Street Snoballs.

35. Simeon, Inc., is related to Snow Ingredients, Inc., and Southern Snow Mfg. Co., Inc., through common ownership, and is a company owning rights, recipes, and designs for snowball-related products, but does not sell directly at wholesale or retail to the public, and is a competitor of SnoWizard.

36. Southern Snow Mfg. Co., Inc., is related to Simeon and Snow Ingredients through common ownership, and is a manufacturer and purveyor of ice-shaving machines, selling at wholesale and retail and as private labeling, and is a competitor of SnoWizard. Southern Snow sells at wholesale to Raggs and Special T Ice, and at retail to Plum Street Snoballs.

37. Snow Ingredients, Inc., is related to Southern Snow Mfg. Co., Inc., and Simeon, Inc., through common ownership, and is a manufacturer and purveyor of

snowball flavor concentrates, selling at wholesale and retail and as private labeling, and is a competitor of SnoWizard. Snow Ingredients sells at wholesale to Raggs and Special T Ice, and at retail to Plum Street Snoballs.

38. Plaintiffs' standing to bring civil-RICO claims will be established by Plaintiffs showing a pattern of violation of 18 USC §1962 by Defendants, with such violations directly causing injury to Plaintiffs' business or property, which Plaintiffs allege here and set forth with the required specificity herein under each separate count.

39. Plaintiffs standing to bring claims under federal patent law, the federal Lanham Act, and state unfair-competition and trade-practices law is established by the business-competitor, distributor, or business-customer relationships among the parties, by both the implied and the explicit threats of enforcement and litigation made by SnoWizard against the Plaintiffs, and by the enforcement actions and litigation actually brought by SnoWizard against the Plaintiffs. Plaintiffs standing to bring claims for declaratory judgment is established by (1) explicit threats and other action by SnoWizard, which create a reasonable apprehension on the part of the Plaintiffs that they will face infringement claims, and (2) present activity which could constitute infringement or concrete steps taken with the intent to conduct such activity, as set forth in detail herein.

Civil-RICO Person

40. Defendant Ronald R. Sciortino is an individual capable of holding a legal or beneficial interest in property as defined by 18 USC §1961(3).

41. Defendant Ronald R. Sciortino is the owner and principal officer of Defendant SnoWizard, Inc.

42. Defendant Ronald R. Sciortino is a person distinct from the enterprise or enterprises known as SnoWizard, Inc., and SnoWizard Snoball Shoppe, which further comprise other persons with various employment, contractor, or supplier relationships, and 2 staffed facilities in Jefferson and New Orleans, Louisiana.

Civil-RICO Enterprise

43. SnoWizard, Inc., is the successor corporation to several “SnoWizard” corporate entities that formerly owned various aspects of flavor-concentrate and machine manufacturing and sales.

44. All of the various aspects of SnoWizard’s business, except for the retail snowball shop at 4001 Magazine Street, are presented to the public as one single business accessed through a single facility at 101 River Road, through a single internet website, a single toll-free telephone number, and a single fax number.

45. SnoWizard, Inc., employs a number of people in addition to its principal officer Ronald R. Sciortino. SnoWizard’s promotional materials make reference to “our knowledgeable personnel”. The names of several individual employees of SnoWizard appear on SnoWizard business cards, sales and marketing materials, and invoices for ordered goods.

46. The SnoWizard Snoball Shoppe at 4001 Magazine Street in New Orleans employs personnel to make and sell snowballs to the public.

47. On the <snowizard.com> website, SnoWizard states: “Any current or potential SnoWizard clients are invited to visit our manufacturing, production and sales facilities located at 101 River Road, New Orleans, Louisiana 70121, as well as the nearby SnoWizard Snoball Shoppe at 4001 Magazine Street. Just telephone to make arrangements and we will proudly provide a personal tour of our operations.”.

48. The SnoWizard enterprise or enterprises comprise other persons with various employment or contractor relationships, a showroom and walk-up-sales facility at 101 River Road in Jefferson, Louisiana, manufacturing, packaging, and shipping facilities, toll-free telephone and fax order-taking facilities, internet order-processing facilities, and facilities for generating marketing and promotional material, and the retail SnoWizard Snoball Shoppe at 4001 Magazine Street.

49. SnoWizard, Inc., and the SnoWizard Snoball Shoppe comprise an “enterprise” or “enterprises” as defined in 18 USC §1961(4).

50. The enterprise or enterprises have an existence apart from and beyond the racketeering activity complained of in this action, and are an entity or entities distinct from the person Ronald R. Sciortino.

Civil-RICO Pattern

51. Defendants have violated the provisions 18 USC §1962(c) by conducting or participating, directly or indirectly, in the conduct of the affairs of an enterprise or enterprises, through a pattern of racketeering activity, as further set forth with the required specificity under each separate count.

52. Defendants' pattern of racketeering activity has continued and escalated for more than 4 years, and continues through the present day.

53. The pattern of Defendants' violation of 18 USC §1962(c) has caused injury in the business and property of Plaintiffs as contemplated by 18 USC §1964(c), as further set forth with the required specificity under each separate count.

Summary Allegation & Characterization of Civil-RICO Injury

54. Plaintiffs suffered injury to their business or property, and damages, including economic or financial damages, proximately caused by Defendants' unlawful actions, as further set forth with the required specificity under each count.

55. The damages here are greater than just the sum of damages from each bad action considered in isolation, because purchases are made in consolidated form for convenience and cost savings, and therefore purchasing decisions based on false assertions of exclusive rights to sell individual products, including the ice-shaving machines themselves, and "exclusive" flavors, have a multiplying effect. As an example, Strawberry and Coconut flavor concentrate may be purchased from anyone, but it is more convenient and less costly to purchase the Strawberry and Coconut in the same order and shipment with any "exclusive" flavors that must be purchased from a specific supplier. Also, many snowball vendors initially perform research, make their decisions from whom to purchase their capital equipment and initial stock, and then stay with that source until motivated to do otherwise.

Relevant Background—Events of More Than 10 Years Ago

56. “Snowballs” or “snoballs” are shaved ice confections. They are flavored and colored with a variety of “flavoring syrups” which are usually made from a small amount of “flavor concentrate” mixed with a larger amount of sugar water known as “simple syrup”. A snowball is said to be distinguishable from a “snow cone” or “sno-cone”, where the snowball is made of finely shaved ice and where the sno-cone is made of more coarsely ground ice. In Hawaii, a very similar confection is known as “shave-ice”, or “shaved-ice”. New Orleans has a long tradition of interest in snowballs, and New Orleans brings an effective marketing allure to national and international sales of snowballs themselves and supplies and paraphernalia for making snowballs.

57. The history of ice-shaving machines in New Orleans was explored in depth in the *Sno-Wizard Manufacturing, Inc., v. Eiseman Products Co., et al.* case, which was decided against SnoWizard by Judge Carr in the federal Eastern District of Louisiana in 1984 and affirmed against SnoWizard by the Fifth Circuit in 1986. The litigation determined that SnoWizard did not have any trademark or trade-dress rights in its ice-shaving machine, and did not have any patent rights either—exposing 42 years of SnoWizard putting “PATENT PENDING” on the door of the machine as 42 years of false statements. (NOTE: the Eisenmann name was misspelled in the reported case from 1984.)

58. Issues from the 1980s litigation are relevant background here because during the mid-2000s, SnoWizard went on a renewed offensive in trying to assert and establish bogus intellectual property rights—all traceable to the fundamental falsehood that SnoWizard invented the shaving of ice, invented the machine for shaving of ice, invented flavoring of shaved ice, invented the names of flavoring of shaved ice, invented the name “snoball”—that SnoWizard invented the whole “industry”—and that everybody else is just a copying, infringing pirate. Having failed in its attempt to bully and litigate competitors out of the business in the 1980s, SnoWizard has tried to amass a portfolio of bogus patents and trademarks to lend

some credence to SnoWizard's "cease and desist" letters to competing manufacturers and even to its own distributor. Also, SnoWizard has gone straight to the customers with its claims of having exclusive patent and trademark rights to sell ice-shaving machines and two-dozen flavor names.

59. One type of ice-shaving machine used in making snowball shaved ice confections is the horizontal block ice-shaving machine, characterized by its use of a block of ice pushed against rotating shaving blades, with the pressure of the pushing being applied and regulated by the user of the machine. This type of ice-shaving machine uses large blocks of ice, which was the common form of ice before electric freezers and ice trays became prevalent in homes and businesses. By using horizontal, hand-pushed, regulated pressure, rather than vertical gravity-influenced pressure, the operator can bring the rotating shaving blades up to speed before introducing the ice, can stop the shaving when desired, and can, with practice, apply just the proper amount of pressure to achieve the desired finely shaved ice.

60. Before the development of artificial methods for freezing water, ice was harvested from cold areas, cut into blocks, transported, and distributed through ice houses. Later, the early methods for artificially freezing water were practiced in large-scale, centralized facilities which made and sold ice in blocks. The now-antique ice boxes were designed to accommodate a common, large block of ice.

61. The availability of electricity in homes and businesses in New Orleans was a development of the early decades of the 20th Century. Although the first electric streetcar in New Orleans began operation in 1893, it was not until the 1920s that the process of electrification in New Orleans started making progress. Electric motors had been rarely used by people who did not have electricity, but became more available and more popular by the 1930s, when inventive people fitted electric motors to machines which had been formerly motivated by hand or foot power.

62. Ice-shaving machines of various forms have been known since at least the 1800s. These were devices that used blades to shave ice finely, not ice picks or

chippers or crushers, all of which have also been known. Hand shavers for ice were widely known and popular. Mechanized shavers were also known. Even electric shavers were known and were the subject of patents granted in the 1920s.

63. The making of snowball shaved ice confections has been known and has been popular for more than a century. Push-carts and mule-drawn carts selling snowballs were known in the 1800s and early 1900s, and could often be found outside of schools and in heavily travelled areas. The grandfather of the owner of Southern Snow sold snowballs from a push-cart in Algiers, Louisiana, starting in 1929.

64. The late Ernest Hansen, of New Orleans, is recognized for developing his own early electric-powered horizontal block ice-shaving machine and obtaining a patent on some of his improvements to the machine. Although the Hansens' snowball business, which they called "Sno-Bliz", did not begin regular operations in a fixed location until 1939, the Hansen ice-shaving machine is recognized to have been developed in 1934.

65. The Hansen machine had substantially all of the features of the SnoWizard and Southern Snow ice-shaving machines at issue here. In the Hansen machine, the ice-advancing handle and pushing mechanism is moved out of the way and the block of ice is loaded into the end opposite the cutter blades, like a breech-loading cannon, and then the pushing mechanism and advancing handle are replaced behind the block of ice. Therefore in the Hansen machine, the pushing mechanism is substantially removable. In the SnoWizard and Southern Snow machines, a door is opened on the side of the machine, a block of ice is placed in, and then the pushing mechanism is brought into contact with the ice. In these machines, the pushing mechanism is not easily removable, but is secured in place under screwed-down covers.

66. The Plum Street Snoball stand was opened in approximately 1943 by Sid Williams, on the corner of Burdette and Plum Streets in Uptown New Orleans, and the business was acquired by the present owners Donna and Claude Black in approximately 1979.

67. During the period before and immediately after Ronald R. Sciortino took over the SnoWizard company from his uncle George Ortolano in the early 1980s, SnoWizard sold flavor concentrates manufactured by the Charles Dennery Company. SnoWizard did not manufacture any of its own flavor concentrates at that time.

68. Starting in 1981, Southern Snow entities began manufacturing flavor concentrates and ice-shaving machines in Gretna, then in Belle Chasse, Louisiana, and selling at retail directly to snoball vendors and at wholesale through distributors.

69. SnoWizard was started in 1937—according to every one of SnoWizard’s advertisements and publications since at least 1983. Then, all of a sudden in 2011, it was started in 1936. The Plaintiffs here suspect the reason behind this re-writing of history is to generate enough mentions of the 1936 date to create enough search-engine results showing “1936” that the date becomes an accepted truth, after which SnoWizard will step up its efforts to elbow aside the other New-Orleans snowball innovators from the 1930s and 1940s, and continue to falsely assert that SnoWizard is the original and only company worth buying from.

Group A Allegations
Allegations common to all civil-RICO & fraud counts.

70. Willful false statements in applications to the U.S. Patent and Trademark Office (USPTO) for both patents and trademark registrations are violations of 18 USC §1001, punishable by fine or imprisonment, or both, as acknowledged in the sworn declarations required by the USPTO, which are public records available in the file wrappers of the patent and trademark applications.

71. The required solemn declaration for a patent application to the U.S. Patent and Trademark Office includes the language “I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56 ...”.

72. Louisiana Trade Marks are administered by the Louisiana Secretary of State, and require a solemn notarized statement, attesting to the truth of the application and the ownership of the applied-for trademark.

73. SnoWizard's internet website <snowizard.com>, with IP address 70.85.215.2, is hosted by Website-Welcome, at <websitewelcome.com> which is a branch or alternate identity for Host Gator, at <hostgator.com>. Host Gator is based in Houston, Texas, and exclusively uses The Planet (<theplanet.com>) as its data-center and networking provider. The Planet maintains physical data centers in Dallas and Houston, Texas, Seattle, Washington, San Jose, California, and Washington, DC. These data centers are where the physical server computers are located. All internet website communications originating from SnoWizard are first uploaded (transferred) over the internet from SnoWizard in Louisiana to a physical server computer in either Texas, California, Washington State, or Washington, DC, and from there are downloaded (transferred) over the internet to various locations. Therefore, all internet postings uploaded from Louisiana by SnoWizard are transferred by interstate wire to a data center outside of Louisiana, no matter where the viewer of such internet postings may be located.

74. Because SnoWizard uses an out-of-state internet hosting provider as described above, all internet and website communications from SnoWizard in Louisiana are carried over interstate wire transmissions no matter whether any particular recipient or viewer is located within or without Louisiana.

75. For the same reasons shown for the internet and website, all email communications from SnoWizard are carried over interstate wire transmissions no matter whether the recipient is located within or without Louisiana, because email travels over the internet communications connection.

76. Ronald R. Sciortino owns and controls an internet discussion group called <snoballs@yahogroups.com>, which is hosted by Yahoo, outside of Louisiana, and is disseminated nationally on the internet and by emails to members. Sciortino is the moderator of this group, as "Ronnie <snowizard@aol.com>". The members of the group are approved for membership by Sciortino. Sciortino frequently makes assertions via this discussion group regarding SnoWizard's purported intellectual property rights at issue in this civil action. These communications occur over interstate wire.

77. Ronald R. Sciortino is a member of another internet discussion group called <Shaved_Ice_Discussion@yahoogroups.com> which is hosted by Yahoo, outside of Louisiana, and is disseminated nationally on the internet and by emails to members. Sciortino makes postings to <Shaved_Ice_Discussion@yahoogroups.com>, over interstate wire, as “Ronnie <snowizard70121@yahoo.com>”. On 21 March 2007, Sciortino made a long posting to the group, explaining and asserting SnoWizard’s supposed intellectual property rights, and stating, *inter alia*, “[w]e will protect our legal and trademark rights if anyone infringes on them”.

78. SnoWizard advertises and promotes its business on the Facebook internet website <facebook.com>, under the user names <snowizard> and <snowizard-the-original-new-orleans-snoball>. The Facebook organization is known to be based in California, and is not known to operate any significant physical data centers in Louisiana. Therefore presumably all communications posted by SnoWizard through the Facebook internet website make use of interstate wire communications.

79. In addition to specific faxes referenced in this civil action, SnoWizard has made extensive use of fax transmissions to its distributors, customers, and potential customers. Over the past 10 years, SnoWizard’s use of fax has lessened as its use of the internet has increased. SnoWizard has exclusive knowledge of the specific lists of recipients and the specific faxes sent out. Plaintiffs have samples of faxed materials. As a point-to-point telephone transmission, the interstate character of a fax transmission depends on the locations of the sender and recipient and the transmission route of any particular fax.

80. In addition to specific mailings referenced in this civil action, SnoWizard has made extensive use of the U.S. Mail to disseminate its marketing and promotional literature to distributors, retail customers, and potential customers. Over the past 10 years, SnoWizard’s use of the U.S. Mail has lessened as its use of the internet has increased. SnoWizard has exclusive knowledge of the specific lists of recipients and the specific mailings sent out. Plaintiffs have samples of mailed materials.

Group B Allegations
Allegations common to Counts 1, 23, 25, 53, 80, 81, 82, & 83;
False patent assertion & marking.

81. The whole SnoWizard ice-shaving machine was never patented. SnoWizard's first owner filed a patent application that was denied in 1942, and the prominent "patent pending" on the door of the ice-shaving machine after 1942 was a false marking. As noted by the district and circuit courts in the *Sno-Wizard v. Eise[n]man[n]* litigation in 1984–86, SnoWizard never removed the false "patent pending" marking from the doors of its machines. Therefore this false marking had been on the machines for 42 years in 1984, and was to remain on the machines until being changed to a false marking of "patented" some time in the 1990s.

82. Besides the false marking of "patent pending" and "patented" cast into the doors of the actual SnoWizard ice-shaving machines, SnoWizard promulgated promotional material having photographic representations of the machines clearly showing the "patent pending" and "patented" false markings, and made many references to the supposed patented status in its promotional materials.

83. Ronald R. Sciortino, presumably on behalf of SnoWizard, obtained U.S. Patent No. 4,655,403 on 7 April 1987, which was a patent not on the whole ice-shaving machine, but on "stabilization means" which consisted of ridges and grooves on the interior bottom of the machine.

84. Ronald R. Sciortino allowed U.S. Patent No. 4,655,403 to go abandoned on 9 April 1995 due to non-payment of the maintenance fee.

85. After U.S. Patent No. 4,655,403 was abandoned on 9 April 1995, there was no patent covering even any part of the SnoWizard ice-shaving machine, and no patents pending.

86. After U.S. Patent No. 4,655,403 was abandoned on 9 April 1995, SnoWizard continued to claim that its whole ice-shaving machine was "patented", both by that false marking being prominently cast into the door, and by pictures and words making the same claims.

87. At some time in approximately 2009, SnoWizard changed to a molded plastic door that did not have the “patented” or “patent pending” false marking molded into it, at which point SnoWizard began relying on stickers for making its claims of patent protection, along with continuing the usual representations in the words of its promotional literature.

88. On 6 April 2011, SnoWizard’s principal Ronald R. Sciortino posted on the internet via interstate wire, on the group <Shaved_Ice_Discussion@yahoogroups.com> identified above, a claim that “[t]here are differences between the two machines in quality since Southern Snow did not have the patent to manufacture the SnoWizard machine exactly”.

89. On 12 April 2001 SnoWizard counter-sued Southern Snow for infringement of U.S. Patent No. 7,536,871 in Civil Action EDLA 10-4275.

90. Horizontal-block ice-shaving machines such as SnoWizard’s and Southern Snow’s are sold for about \$1800 and are sold at a very low profit because the snowball-vendor customers have a strong tendency to make their continuing, repeat purchases of supplies and flavor concentrates from the same company they chose to purchase their ice-shaving machine from, whose logo is prominently displayed on the door of the machine.

Group C Allegations
Allegations common to Counts 1, 23, 26, 53, 80, 81, 82, & 83;
Ratchet linkage.

91. Before 2002, SnoWizard’s ice-shaving machines contained an old-style ratchet linkage that functioned as a pinyon and transferred the counter-clockwise rotational movement of a handle pushed by the user into linear movement of a toothed bar that functioned as a rack, which pushed ice against a cutter wheel, after which the ratchet linkage pivoted to avoid the teeth on the bar during the clockwise return rotation which reset the machine for another push of the ice. SnoWizard’s old-style ratchet linkage was made of cut and drilled aluminum component parts held together with 3 steel pins, one of which formed a pivoting axis.

92. SnoWizard's old-style aluminum ratchet linkage would bend out of shape during use. When Southern Snow would perform repairs on a SnoWizard machine, a bent ratchet linkage was a commonly seen problem, which Southern Snow would fix by installing its own old-style ratchet linkage, which was made entirely of steel.

93. The length of SnoWizard's old-style aluminum ratchet linkage was such that the handle pushed by the user would not stop until it reached the 5-o'clock position, which tended to bring the users' knuckles in contact with the body of the machine. Southern Snow's old-style steel ratchet linkage was longer than SnoWizard's, and therefore stopped the travel of the handle at the 6-o'clock position, clear of the body of the machine.

94. Precision Metalsmiths, Inc., of Cleveland, Ohio, is in the business of manufacturing metal objects and is a specialist in the casting of metal objects.

95. SnoWizard began communicating with Precision Metalsmiths not later than the year 2001 for the purpose of having Precision Metalsmiths manufacture a new-style ratchet linkage part for SnoWizard's ice-shaving machines.

96. SnoWizard and Precision Metalsmiths exchanged communications during the year 2001 using interstate telephone, interstate fax, interstate email, and delivery of papers and sample parts by presently unknown delivery means. These communications were for the purpose of modifying SnoWizard's existing ratchet linkage part so that it could be made out of cast steel, and then arranging for the manufacture and purchase of a production quantity of the parts.

97. In its Purchase Order No. 4232, dated 3 January 2002, SnoWizard ordered 350 units of a cast-steel component part of its new ratchet linkage from Precision Metalsmiths, who faxed back a copy of the purchase order to SnoWizard on 18 January 2002.

98. SnoWizard did not have any confidentiality agreement with Precision Metalsmiths, and therefore the manufacture of the components of the new ratchet linkage was a "public use" under federal patent law.

99. SnoWizard placed the new ratchet linkage into its ice-shaving machines at a presently unknown precise date in 2002, and sold those ice-shaving machines.

100. Federal patent law, at 35 USC §102(b), forbids the issuance of a patent on an invention that has been used, offered, or sold in the U.S. more than one year before the filing of a patent application.

101. The changes from the old-style to the new cast-steel ratchet linkage are all consequences of changing to the cast-steel manufacturing process, where an exact copy of the old style would not have cast properly, could not have been removed from the molds, and would have been wasteful of metal. It is presently unknown whether Ronald R. Sciortino of SnoWizard was solely responsible or even partially responsible for devising the changes to the design of the ratchet linkage to make it suitable for cast-steel manufacturing, or whether personnel from Precision Metalsmiths—the specialists in cast-metal manufacturing—devised some or all of the changes.

102. If anyone other than Ronald R. Sciortino devised the single elongated structure, or the gradual taper, or the indented cavity in the new ratchet linkage, then that other person is, under federal patent law, an inventor or co-inventor of the new ratchet linkage, and is required to be named on any resulting patent.

103. Ronald R. Sciortino filed a provisional patent application, No. 60/542549 on 6 February 2004, using the U.S. Express Mail, Receipt No. EV320436835US, for the new ratchet linkage, notwithstanding that the new ratchet linkage had been both publicly used and sold in the U.S. more than one year before the 6 February 2004 application date, which fact was known to Sciortino.

104. Ronald R. Sciortino filed the provisional patent application, No. 60/542549 on 6 February 2004, using the U.S. Express Mail, Receipt No. EV320436835US, for the new ratchet linkage, listing only himself as the only inventor, when in fact any “invention” that may have been embodied in the new ratchet linkage was a consequence of changing to a cast-metal manufacturing method, and was developed with personnel from Precision Metalsmiths as co-inventors, which facts were known to Sciortino.

105. Ronald R. Sciortino filed a non-provisional patent application, No. 11/047,425 on 31 January 2005, using the U.S. Express Mail, Receipt No. EV402351411US, claiming the benefit of the 6 February 2004 provisional application, for the new ratchet linkage, notwithstanding that the new ratchet linkage had been both publicly used and sold in the U.S. more than one year before the 6 February 2004 application date, which fact was known to Sciortino.

106. Ronald R. Sciortino filed the non-provisional patent application, No. 11/047,425 on 31 January 2005, using the U.S. Express Mail, Receipt No. EV402351411US, for the new ratchet linkage, listing only himself as the only inventor, when in fact any “invention” that may have been embodied in the new ratchet linkage was a consequence of moving to a cast-metal manufacturing method, and was developed with personnel from Precision Metalsmiths as co-inventors, which facts were known to Sciortino.

107. Statements made by an applicant to the USPTO are made under duties of candor and of reasonable inquiry, as set forth in 37 CFR §1.56.

108. Ronald R. Sciortino signed, on 26 January 2005, and caused to be sent to the USPTO by U.S. Express Mail, Receipt No. EV402351411US, on 31 January 2005, a solemn declaration under 37 CFR §1.63, acknowledging the “duty to disclose information which is material to patentability as defined in 37 CFR 1.56” and “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 patent issued thereon”.

109. Ronald R. Sciortino caused his attorney to sign on 31 January 2005, and caused to be sent to the USPTO by U.S. Express Mail, Receipt No. EV402351411US, on 31 January 2005, a Nonpublication Request under 35 USC §122(b)(2)(B)(i), causing the patent application not to be published 18 months after filing, but to be held as a secret until the day the patent issued more than 4 years later on 26 May 2009.

110. Ronald R. Sciortino's withholding the truth known by Sciortino, regarding the public use and sale in the U.S. of the new ratchet linkage more than one year before filing the patent application, was an intentional, material misstatement which was made for the purpose of obtaining a patent to which Sciortino was not entitled because of the on-sale bar of 35 USC §102(b), where the truth of the matter, if known to the USPTO, would have resulted in the denial of the patent application.

111. Ronald R. Sciortino's withholding the truth known by Sciortino, regarding the true inventorship of the new ratchet linkage, was an intentional, material misstatement which was made for the purpose of obtaining a patent to which Sciortino was not entitled because the USPTO requires the truthful identification of all inventors, where the truth of the matter, if known to the USPTO, would have resulted in the denial of the patent application.

112. Relying on the intentional material misrepresentations made by Ronald R. Sciortino, the USPTO on 12 March 2007 approved the patent application and required an issue fee to be paid within 3 months.

113. Patent Application No. 11/047,425 went abandoned on 13 June 2007, for non-payment of the issue fee.

114. Patent Application No. 11/047,425 remained abandoned for 1 year and 8 months, or 20 months, from 13 June 2007 through 3 March 2009.

115. Federal patent law at 35 USC §41(a)(7) and regulations at 37 CFR §1.137(b) require a solemn statement from an applicant, under duties of candor and reasonable inquiry, that the abandonment and the entire delay in seeking revival of a patent application after abandonment was unintentional, with extensive guidelines about the meaning and significance of "entire delay" and "unintentional".

116. Ronald R. Sciortino signed on 16 February 2009 a solemn statement that the "entire delay" in seeking revival of Patent Application No. 11/047,425 was "unintentional", which statement was transmitted by interstate fax to the USPTO on 3 March 2009.

117. The 16 February 2009 solemn statement by Ronald R. Sciortino was an intentional, material misstatement which was made for the purpose of obtaining a patent that Sciortino was not entitled to because of the intentional abandonment and 20-month delay in seeking revival of the patent application, where the truth of the matter, if known to the USPTO, would have resulted in the denial of any revival of the patent application.

118. Relying on the false 16 February 2009 solemn statement by Ronald R. Sciortino, the USPTO granted a petition to revive and issued U.S. Patent No. 7,536,871 for “Icemaker with Improved Cam Assembly”, on 26 May 2009.

Group D Allegations
Allegations common to Counts 1, 23, 27, 53, 80, 81, 82, & 83;
Leg design.

119. The National Sanitation Foundation (NSF) promulgated a new Standard No. 8 requiring that the legs of food preparation equipment have a 2-inch clearance.

120. SnoWizard modified the design of the legs of the SnoWizard ice-shaving machine in order to meet the new version of NSF Standard No. 8, and switched the material of the legs to plastic instead of the former, more expensive, metal.

121. Ronald R. Sciortino filed a provisional patent application, No. 60/540172 on 29 January 2004, using the U.S. Express Mail, Receipt No. EV320436827US, for the leg design.

122. Ronald R. Sciortino filed a non-provisional patent application, No. 11/047,392 on 31 January 2005, using the U.S. Express Mail, Receipt No. EV402351371US, claiming the benefit of the 29 January 2004 provisional application, for the new leg design.

123. Ronald R. Sciortino caused his attorney to sign on 31 January 2005, and caused to be sent to the USPTO by U.S. Express Mail, Receipt No. EV402351371US, on 31 January 2005, a Nonpublication Request under 35 USC §122(b)(2)(B)(i), causing the patent application not to be published 18 months after filing, but to be held as a secret until the day the patent issued more than 4 years later on 9 June 2009.

124. The USPTO on 12 March 2007 approved the patent application and required an issue fee to be paid within 3 months.

125. Patent Application No. 11/047,392 went abandoned on 13 June 2007, for non-payment of the issue fee.

126. Patent Application No. 11/047,392 remained abandoned for 1 year and 8 months, or 20 months, from 13 June 2007 through 3 March 2009.

127. Federal patent law at 35 USC §41(a)(7) and regulations at 37 CFR §1.137(b) require a solemn statement from an applicant, under duties of candor and reasonable inquiry, that the abandonment and the entire delay in seeking revival of a patent application after abandonment was unintentional, with extensive guidelines about the meaning and significance of “entire delay” and “unintentional”.

128. Ronald R. Sciortino signed on 16 February 2009 a solemn statement that the “entire delay” in seeking revival of Patent Application No. 11/047,392 was “unintentional”, which statement was transmitted by interstate fax to the USPTO on 3 March 2009.

129. The 16 February 2009 solemn statement by Ronald R. Sciortino was an intentional, material misstatement which was made for the purpose of obtaining a patent that Sciortino was not entitled to because of the intentional abandonment and 20-month delay in seeking revival of the patent application, where the truth of the matter, if known to the USPTO, would have resulted in the denial of any revival of the patent application.

130. Relying on the false 16 February 2009 solemn statement by Ronald R. Sciortino, the USPTO granted a petition to revive and issued U.S. Patent No. 7,543,459 for “Leg Support Assembly for an Icemaker”, on 9 June 2009.

**Count 1, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of patent rights in ice-shaving machine.**

131. Groups A, B, C, & D Allegations are referenced here.

132. The mail and interstate wire communications used in furtherance of this

scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, asserting “patented” or “patent pending”; the 6 April 2011 posting; the identified mail and interstate wire communications with the USPTO in attempts to obtain patents to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

133. The fraudulent representations complained of here were relied on by the various Plaintiffs, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO, who granted undeserved patent rights in reliance on the fraudulent statements, as set forth herein.

134. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

135. Distributor Raggs Sno-Cone Supplies of Keller, Texas, formerly purchased SOUTHERN SNOW brand ice-shaving machines as well as SnoWizard ice-shaving machines for resale to customers in the 1990s and up through 2004. In 2005, relying on SnoWizard’s assertions of having patent protection on its ice-shaving machines, Raggs ceased purchasing SOUTHERN SNOW brand ice-shaving machines and began purchasing and reselling only SnoWizard machines, in reliance on SnoWizard’s fraudulent assertions of patent rights.

136. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to the lost opportunities to continue distributing and reselling SOUTHERN SNOW brand ice-shaving machines from 2005 through 2010.

137. Plaintiff Special T Ice, a distributor of SOUTHERN SNOW brand, but not of SnoWizard ice-shaving machines, suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers in reliance on SnoWizard’s fraudulent assertions of patent rights.

138. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of FLAVOR SNOW brand ice-shaving machines, in reliance on SnoWizard's fraudulent assertions of patent rights.

139. Plaintiff Southern Snow suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of SOUTHERN SNOW and FLAVOR SNOW brand ice-shaving machines, in reliance on SnoWizard's fraudulent assertions of patent rights.

140. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely purchase and use other brands of horizontal-block ice-shaving machines besides SnoWizard's, in reliance on SnoWizard's fraudulent assertions of patent rights.

141. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

142. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group E Allegations
Allegations common to Counts 2, 23, 28, 29, 30, 53, 80, 81, 82, & 83;
ORCHID CREAM VANILLA.

143. The snowball flavor and the flavor name ORCHID CREAM VANILLA, having a purple color and a creamy vanilla flavor, was created and developed in the 1940s by Sid Williams, the first owner of Plum Street Snoballs. ORCHID CREAM VANILLA became a signature flavor of Plum Street Snoballs, as shown by many mentions in the media, and even in SnoWizard's own promotional literature.

144. The snowball flavor ORCHID CREAM VANILLA, with the recipe for making it, was a separately listed asset in the sale of the Plum Street Snoball business to its present owners Donna and Claude Black, in approximately 1979.

145. Through over 50 years of use and association in the minds of the snowball-consuming public in the New Orleans area, ORCHID CREAM VANILLA acquired

distinctiveness and secondary meaning as a trademark of Plum Street Snoballs.

146. The use of the mark ORCHID CREAM VANILLA by Plum Street Snoballs has been continuous from the 1940s to the present.

147. Without authorization or permission from Plum Street Snoballs, SnoWizard copied the flavor, the purple color, and the name ORCHID CREAM VANILLA and offered its own flavor *concentrate* product under that name starting in 1998.

148. A SOUTHERN SNOW brand of ORCHID CREAM VANILLA flavor *concentrate* was offered and sold in 2004 and 2005, with the permission of Plum Street Snoballs. The name of this product was changed to “Orchid” after the receipt of SnoWizard’s 23 March 2005 “cease and desist” letter.

149. SnoWizard’s use of the ORCHID CREAM VANILLA mark was never exclusive because Plum Street Snoballs was using the mark continuously.

150. SnoWizard sold “Orchid Cream Vanilla” flavor concentrate for five years from 1998 to 2003 with no claim of trademark or exclusivity.

151. SnoWizard applied for federal trademark registration for ORCHID CREAM VANILLA in International Class 030, for “flavor concentrate for non-nutritional purposes, namely, flavor concentrate for shaved ice confections”, on 12 May 2003, in application No. 78248640, which was granted as Registration No. 2901592 on 9 November 2004.

152. SnoWizard applied for registration of ORCHID CREAM VANILLA notwithstanding SnoWizard’s having no ownership of the mark, and notwithstanding Plum Street Snoballs’ ownership of the mark.

153. The trademark application No. 78248640 dated 12 May 2003 was transmitted to the USPTO by SnoWizard’s attorney Raymond G. Areaux via interstate wire, specifically the electronic filing system of the USPTO.

154. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration dated 9 May 2003 in the ORCHID CREAM VANILLA application, acknowledging the Declaration’s warning “that willful false statements and the like so made are

punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

155. SnoWizard stated in a solemn declaration to the USPTO on 9 May 2003 that SnoWizard was the owner of the trademark ORCHID CREAM VANILLA sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance. This solemn declaration was transmitted to the USPTO on 12 May 2003 via interstate wire, specifically the electronic filing system of the USPTO.

156. SnoWizard stated to the USPTO on 12 May 2003 that its first use and first use in commerce for ORCHID CREAM VANILLA was 1 June 1999.

157. In response to a specific query from the USPTO on 16 November 2003, which shows that the matter was material, SnoWizard caused its attorney Seth Nehrbass to make the material misstatements: “Orchid is an arbitrary word added to cream vanilla to create an arbitrary and fanciful trademark. It has no significance in the relevant trade, no geographical significance, [...] Further, the flavoring concentrate sold under the mark does not feature a scent or odor of orchids, contain orchids as an ingredient or additive, or in any way feature orchids [...]”, and transmit those misstatements in a response to an office action via interstate wire, specifically a fax to the USPTO, on 12 May 2004.

158. In reliance on the material misstatement made on behalf of SnoWizard to the USPTO on 12 May 2004, the USPTO granted registration of ORCHID CREAM VANILLA.

159. SnoWizard claims a trademark in ORCHID CREAM VANILLA by affixing a “circle-R, ®” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and interstate wire.

160. SnoWizard caused “cease and desist” letters to be sent via U.S. Mail on 23 March 2005 and 8 April 2005, from SnoWizard’s attorney Seth Nehrbass, to

Southern Snow and Simeon's principal officer Milton G. Wendling, Jr., asserting the fraudulently obtained trademark registration in ORCHID CREAM VANILLA.

161. The Trademark Trial and Appeal Board (TTAB) of the USPTO, in an Opinion issued 10 December 2009, ordered cancellation of the registration of ORCHID CREAM VANILLA because the term is merely descriptive of SnoWizard's flavor concentrate goods.

162. The question whether SnoWizard exclusively used the mark in commerce as a trademark for a significant time is a material question because such use is required in order to overcome a finding of descriptiveness, as was made by the TTAB.

163. SnoWizard's false statement about its ownership of the mark ORCHID CREAM VANILLA through exclusive use in commerce is a false statement regarding a material fact because acquired distinctiveness or secondary meaning, through exclusive use in commerce for a significant period, is required in order to overcome a finding of descriptiveness, as was made by the USPTO.

164. SnoWizard's false statements regarding Defendant's right to the mark ORCHID CREAM VANILLA, the absence of any others' right to the mark, and purported exclusive use of the term, are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

165. Plaintiffs Simeon, Inc., Southern Snow, Snow Ingredients, Raggs, and Special T Ice changed the name of their "Orchid Cream Vanilla" flavor concentrate to "Orchid" for over 4 years from receipt of SnoWizard's "cease and desist" letter in March 2005 through the TTAB decision in December 2009.

166. SnoWizard's assertions about ORCHID CREAM VANILLA are fraudulent statements to existing and potential customers, distributors, and competitors, and to the USPTO, as set forth in detail herein.

167. SnoWizard's actions were perpetrated willfully, and with full knowledge of SnoWizard's having no legitimate trademark rights in ORCHID CREAM VANILLA.

168. SnoWizard's actions regarding ORCHID CREAM VANILLA are ongoing and continuing.

169. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling legitimate ORCHID CREAM VANILLA flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

170. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to lost sales and profits from its own trademarked ORCHID CREAM VANILLA snowballs, and its inability to freely sell legitimate ORCHID CREAM VANILLA snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

171. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited to lost sales to potential customers and distributors of ORCHID CREAM VANILLA flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

172. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of ORCHID CREAM VANILLA flavor concentrate, and the inability to continue freely selling legitimate ORCHID CREAM VANILLA flavor concentrates, in reliance on SnoWizard's fraudulent assertions of trademark rights.

173. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of ORCHID CREAM VANILLA flavor concentrate, and the inability to continue freely selling legitimate ORCHID CREAM VANILLA flavor concentrates, in reliance on SnoWizard's fraudulent assertions of trademark rights.

174. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and distributors of ORCHID CREAM VANILLA flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

175. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of ORCHID CREAM VANILLA flavor concentrate, and the inability to continue freely selling legitimate ORCHID CREAM VANILLA flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

**Count 2, Civil-RICO Mail & Wire Fraud:
Infringement & fraudulent registration of trademark in
ORCHID CREAM VANILLA.**

176. Groups A & E Allegations are referenced here.

177. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a registered trademark in ORCHID CREAM VANILLA; "cease and desist" letters; the identified interstate wire communications with the USPTO in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

178. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

179. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

180. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

181. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group F Allegations
Allegations common to Counts 3, 4, 23, 53, 80, 81, 82, & 83;
Former distributor Raggs.

182. Plaintiff Raggs Sno-Cone Supplies of Keller, Texas, was a distributor and authorized reseller for SnoWizard for 19 years, from 1991 to 2010. In 2009, Raggs bought 1732 gallons of flavor concentrate and paid SnoWizard \$43,057.66 for ice-shaving machines and flavor concentrates re-sold to Raggs' customers.

183. In May 2010, one bottle in a 6-bottle order was mis-labeled by Raggs by affixing the wrong flavor name to a label bearing the correct SNOWIZARD trademark.

184. SnoWizard delayed shipments to Raggs, and Ronald R. Sciortino emailed to Raggs, via interstate wire, an aggressive "cease and desist" notice on 8 June 2010. The "cease and desist" notice made assertions about SnoWizard's trademarks and about the requirements under the distributorship.

185. The standard practice for all snowball distributorships, and the 19-year practice between manufacturer SnoWizard and distributor Raggs specifically, was that the distributor buys 4-unit cases of gallons at a discount, and the manufacturer only has to ship out 4-gallon cases, which is the most economical and convenient format for handling and shipping the flavor concentrate. If a distributor's customer wants to purchase a quart or a half-gallon, the distributor divides a gallon into a new bottle and places a new label on the new bottle, truthfully identifying the product as a SnoWizard product. The distributor realizes an additional profit from this arrangement because the gallon price is equal to 3, not 4, quarts.

186. Ronald R. Sciortino and SnoWizard falsely asserted, in the email of 8 June 2010 and in other communications around that time, that the repackaging and the relabeling of half-gallons and quarts by Raggs was a violation of the distributorship

arrangement and a violation of SnoWizard's trademark rights.

187. The shipments delayed by SnoWizard included products ordered by customers of Raggs, with promised delivery premised on no delay of the shipments.

188. In response to the delayed shipments from SnoWizard and new distributorship requirements attempted to be imposed by SnoWizard, Raggs terminated its distributorship, cancelled the delayed orders, and informed its own customers of the terminated distributorship and orders in June 2010.

189. Before June 2010, Raggs had been distributing flavor concentrates from Parasol and SOUTHERN SNOW brand flavor concentrates from Simeon, Southern Snow, and Snow Ingredients, in addition to SNOWIZARD brand flavor concentrates and ice-shaving machines. After dropping SnoWizard, Raggs increased its purchases of Parasol and SOUTHERN SNOW brand flavor concentrates, and resumed its distributorship of SOUTHERN SNOW brand ice-shaving machines that it had suspended in 2005 because of SnoWizard's assertions of patents on the machine.

190. Because the goods sold by Raggs were "genuine goods bearing a true mark", and the re-sales were authorized by SnoWizard for 19 years, there was no trademark infringement, and SnoWizard's assertions and threats about trademark infringement were false.

191. SnoWizard had already, in 2005, caused Raggs to believe that SnoWizard owned patent rights on its ice-shaving machine, in reliance of which Raggs discontinued distributing SOUTHERN SNOW brand ice-shaving machines.

192. As a long-term distributor of SnoWizard, Raggs saw and relied on SnoWizard's mailings, faxes, emails, and internet-published promotional literature regarding SnoWizard's portfolio of asserted trademarks and trademark registrations.

193. SnoWizard filed a lawsuit, Civil Action No. 11-0515-ILRL-JCW in the Eastern District of Louisiana, against Texas resident Raggs, for infringement of the SNOWIZARD trademark both before and after that mark was registered, for dilution, and for defamation.

194. SnoWizard's attorney, Jack E. Morris, sent a copy of the complaint and summons, but no request for waiver of service, to Raggs on or about 13 March 2011, via U.S. Mail, Certified.

**Count 3, Civil-RICO Extortion:
Extortion & attempted extortion against distributor Raggs.**

195. Groups A & F Allegations are referenced here.

196. On the pretense of investigating and responding to an improperly handled order, and using an improper assertion of trademark rights as leverage, Ronald R. Sciortino and SnoWizard attempted to extort from Raggs a forced, unfavorable change to the 19-year distribution arrangement yielding increased payments to SnoWizard for the same volume of product by imposing a new requirement that Raggs purchase more-expensive quarts from SnoWizard in addition to the gallons that Raggs had been purchasing for 19 years, as set forth in detail above.

197. In the certified mailing on or about 13 March 2011, because no request for waiver of service was sent, and because the mere certified mailing of a complaint and summons is not effective service of a civil action in federal court, it is unclear whether the mailing of the lawsuit was meant to be another threat and another step in the attempted extortion of Raggs, or was just a botched service.

198. The actions of Defendants Ronald R. Sciortino and SnoWizard, as set forth in detail above, comprise extortion and attempted extortion against Raggs through threats and abusive litigation, as set forth above.

199. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to loss of the profits on sales of products ordered by customers of Raggs but delayed by SnoWizard, and the direct, incidental, and reputational costs of having to abruptly discontinue the 19-year distributorship.

200. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

201. Plaintiff Raggs is entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

**Count 4, Civil-RICO Mail & Wire Fraud:
Abusive fraudulent litigation against distributor Raggs.**

202. Groups A & F Allegations are referenced here.

203. The mail and interstate wire communications used in furtherance of this scheme were the identified interstate wire communications from Ronald R. Sciortino to Raggs on 8 June 2010; the identified sending of the complaint by U.S. Mail, Certified, on or about 13 March 2011; the use of wire transmissions of presently unknown interstate character in electronic filings with the court using the internet; plus specific communications, of which records are in the sole possession of SnoWizard.

204. The fraudulent representations complained of here were relied on by Plaintiff Raggs, by the court, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements.

205. The 11-0515 lawsuit makes claims against Raggs for trademark infringement which have absolutely no basis in fact or law because Raggs was a long-term authorized distributor of the trademarked goods and sold them as "genuine goods bearing a true mark".

206. The 11-0515 lawsuit makes claims against Raggs for trademark dilution which have absolutely no basis in fact or law because Raggs' authorized use of the mark since 1991 pre-dated by many years both the registration of the SNOWIZARD trademark and the effective date of the Trademark Dilution Revision Act of 2006, and besides, relief for dilution is equitable and injunctive, and Raggs had already stopped all sales of SnoWizard products a year before.

207. The 11-0515 lawsuit makes claims against Raggs for defamation under Louisiana law which have no basis in fact or law because Louisiana law does not reach a Texas resident making statements in Texas to recipients in Texas, because SnoWizard cannot allege any fault or resulting injury, and because the alleged statements can be proven true.

208. The 11-0515 lawsuit falsely asserted trademark infringement against authorized distributor and reseller Raggs, even though, by law, the authorized sale of “genuine goods bearing a true mark” cannot be trademark infringement, as punishment for Raggs refusing to be extorted into an unfavorable change to the former distributorship.

209. After dropping SnoWizard in June 2010, Raggs became a major distributor and reseller of Parasol and SOUTHERN SNOW brand products, and SnoWizard did not have any distributor in the DFW area, and therefore Raggs had become a major competitive threat to SnoWizard.

210. SnoWizard’s abusive litigation against Raggs is an improper attempt to harm or eliminate a major competitive threat to SnoWizard, by improper claims of trademark infringement, where no infringement can possibly exist.

211. Ronald R. Sciortino and SnoWizard knew from their own litigation experience that any liability insurance policy in favor of Raggs would contain an exclusion of coverage for the claims asserted by SnoWizard’s lawsuit, and the lawsuit was tailored to ensure that Raggs would have to pay for its defense out of pocket.

212. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to the direct, incidental, and reputational costs of having defend a lawsuit filed in an improper venue, and with no basis or support in fact or law, in reliance on SnoWizard’s fraudulent abusive litigation.

213. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

214. Defendants’ pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiff Raggs as contemplated by 18 USC §1964(c), as set forth above.

215. Plaintiff Raggs is entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group G Allegations
Allegations common to Counts 5, 23, 31, 53, 80, 81, 82, & 83;
SILVER FOX.

216. The snowball flavor SILVER FOX, and the flavor concentrate, were devised by Eisenmann Products on St. Claude Avenue in New Orleans before 1980.

217. Through many years of exclusive and continuous use, SILVER FOX became a signature flavor, and became a trademark of Eisenmann Products.

218. Eisenmann Products developed the FLAVOR SNOW house brand for snowball equipment and supplies, and SILVER FOX became a signature flavor and a trademark of Eisenmann's FLAVOR SNOW brand, which was acquired by the Simeon-Snow-Ingredients-Southern-Snow interests in 2006.

219. The SOUTHERN SNOW brand sold a trademarked SILVER FOX flavor concentrate under the authority and with a licence from the Eisenmann and FLAVOR SNOW interests.

220. FLAVOR SNOW and SOUTHERN SNOW brand interests claim a trademark in SILVER FOX by affixing a "TM" to the term in their advertising and promotional material.

221. Ronald R. Sciortino and SnoWizard appropriated the SILVER FOX flavor name, changed the flavor composition, and offered a SILVER FOX flavor concentrate.

222. SnoWizard is using the SILVER FOX trademark in commerce without any authority or licence from the trademark owner.

223. SnoWizard is infringing the SILVER FOX trademark.

224. SnoWizard claimed SILVER FOX as a "SnoWizard Original", falsely claiming SnoWizard's origination and development of a flavor that was in fact a signature flavor and a trademark of Eisenmann Products and its successors and licensees.

225. SnoWizard's actions regarding SILVER FOX constitute a fraud upon the Plaintiffs and the customers and potential customers of Plaintiffs' businesses.

226. SnoWizard's actions regarding SILVER FOX are ongoing and continuing.

227. Plaintiff Eisenmann suffered injury to his business and property, and

damages, including but not limited to the devaluation of the Eisenmann Products and FLAVOR SNOW business, and lost sales to potential customers and to existing and potential distributors of SILVER FOX flavor concentrate, by SnoWizard's infringement of SILVER FOX.

228. Plaintiffs Simeon, Inc., and Snow Ingredients suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of SILVER FOX flavor concentrate, by SnoWizard's infringement of SILVER FOX.

229. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of SILVER FOX flavor concentrate, by SnoWizard's infringement of SILVER FOX.

230. Plaintiff Raggs, a distributor of SILVER FOX flavor concentrate, suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of SILVER FOX flavor concentrate, by SnoWizard's infringement of SILVER FOX.

231. Plaintiff Special T Ice, a distributor of SILVER FOX flavor concentrate, suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of SILVER FOX flavor concentrate, by SnoWizard's infringement of SILVER FOX.

**Count 5, Civil-RICO Mail & Wire Fraud:
Trademark infringement of SILVER FOX.**

232. Groups A & G Allegations are referenced here.

233. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, offering infringing SILVER FOX for sale by SnoWizard, plus specific communications, of which records are in the sole possession of SnoWizard.

234. The fraudulent representations complained of here were relied on by the

various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements.

235. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

236. Plaintiffs Eisenmann, Parasol, Simeon, Inc., Southern Snow, Snow Ingredients, Raggs, Special T Ice, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

237. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

238. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group H Allegations
Allegations common to Counts 6, 23, 50, 53, 80, 81, 82, & 83;
SNOBALL.

239. The term "snowball" and the alternative spellings such as "snow-ball", "snoball", and "sno-ball" have been used substantially forever.

240. The grandfather of Plaintiff Southern Snow's principal had his photograph taken in the 1950s in the doorway of his snowball stand in Algiers, Louisiana, next to a sign saying "snoballs", spelled that way.

241. Plaintiff Plum Street Snoballs uses the "snoball" spelling without the "w" in the very name of the stand and the business.

242. SnoWizard's founder George Ortolano did not come up with the term "snoball" and he did not come up with the spelling. In fact, his single brochure, which he used from the 1950s through the 1980s, spelled it in several different ways: "SNOW BALLS", "Snowball", "Snow-ball", and "SNOWBALL" on the front, and "snow-ball", "snow ball", and "snowball" on the back. "Snoball" is not used at all.

243. SnoWizard has asserted a trademark, including a federally registered trademark, in SNOBALL for decades, as is shown here.

244. SnoWizard asserted a federally registered trademark in SNOBALL by placing the “circle-R, ®” on the word in its promotional materials, including but not limited to its advertisements in the Greater New Orleans Yellow Pages® from 1983 through at least 2002, and distributions via mail and interstate wire.

245. After falsely asserting a federally registered trademark in SNOBALL since at least 1983, SnoWizard in 2000 applied for and tried to obtain the federal registration that it had been falsely asserting for many years, as is shown here.

246. Between 2003 and 2006, SnoWizard discontinued placing the “circle-R, ®” on SNOBALL, and began placing a “TM” on SNOBALL instead.

247. SnoWizard continues to claim a trademark on SNOBALL by, among other things, placing a “TM” on SNOBALL in its advertising and promotional literature, which are distributed via mail and internet transmissions over interstate wire.

248. SnoWizard’s attorneys made the written assertion, filed in court in the Eastern District of Louisiana, by electronic filing via the internet, on 31 January 2011, in Record Document 06-9170-246, p.4, n.1, that SnoWizard no longer asserted a trademark in SNOBALL.

249. SnoWizard’s assertion was noted, and apparently accepted, by the court in an order, Record Document EDLA-06-9170-332, p.2, n.2.

250. Notwithstanding SnoWizard’s assertion to the court on 31 January 2011, SnoWizard does still assert a trademark in SNOBALL by, among other things, placing a “TM” on SNOBALL in its advertising and promotional literature distributed by mail and interstate wire.

251. The question of whether SnoWizard continued to assert a trademark in SNOBALL was a material question on 31 January 2011 because SnoWizard was defending claims in Civil Action No. EDLA-06-9170 on that very issue.

252. SnoWizard’s assertion to the court on 31 January 2011 was an intentional, material misstatement, made for the purpose of obtaining dismissal or denial of claims against SnoWizard, the truth of which, if known to the court, would have

resulted in a result other than the court's accepting and noting that the trademark was no longer being asserted.

253. SnoWizard never owned a federally registered trademark in SNOBALL, and the "circle-R, ®" that SnoWizard caused to be displayed on SNOBALL was an unlawful, fraudulent false marking.

254. Ronald R. Sciortino, on behalf of SnoWizard, applied for federal trademark registration for SNOBALL in International Class 007, for "ice shaving machines for sale to retail businesses selling shaved ice confections", on 30 May 2000, in application No. 76059333.

255. SnoWizard's application for registration for SNOBALL was rejected by the USPTO, and the rejection was appealed to the Trademark Trial and Appeal Board (TTAB) where the rejection was upheld in a decision of 5 August 2004, concluding that "[a]pplicant's term SNOBALL is generic for the goods recited in the application and, in the event that the term is not generic, applicant has not demonstrated that its mark has acquired distinctiveness".

256. Defendant continued and still continues to claim a trademark in SNOBALL even after having the genericness and the non-distinctiveness of the term fully analyzed and explained by the TTAB of the USPTO.

257. Ronald R. Sciortino, SnoWizard's President, signed Declarations in the SNOBALL application and attested to the truthfulness and accuracy of the statements made, acknowledging the Declarations' warning "that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration".

258. Ronald R. Sciortino stated in a solemn declaration to the USPTO on 27 June 2001 that SnoWizard was the owner of the trademark SNOBALL sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

259. Ronald R. Sciortino SnoWizard stated in a sworn affidavit notarized on 27 June 2001 that SNOBALL had become distinctive of its goods through “substantially exclusive” use for more than forty (40) years.

260. The solemn declaration and the sworn affidavit signed by Ronald R. Sciortino on 27 June 2001 were transmitted by SnoWizard’s attorney to the USPTO via U.S. Mail, Express Mail No. EL816056698US, on 29 June 2001.

261. SnoWizard stated to the USPTO on 27 June 2001 that its first use and first use in commerce date for SNOBALL was 15 June 1955.

262. “Snoball”, “snowball”, and “snow-ball” have a pseudo-mark relationship and are substantially the same mark.

263. “Snoball” is a *generic* identifier for the snowball shaved ice confection that results from using snowball equipment and supplies as directed.

264. “Snoball” is a *functional* identifier for snowball equipment and supplies.

265. The USPTO, in an Office Action issued 29 December 2000 and a second Office Action issued 25 October 2001, refused the application because, *inter alia*, “Snoball” is merely descriptive of the goods.

266. The question whether SnoWizard exclusively used the mark in commerce as a trademark for a significant amount of time is a material question because such use is required in order to overcome a finding of descriptiveness.

267. SnoWizard’s false statement on 27 June 2001 about its ownership of the mark SNOBALL through exclusive use in commerce is a false statement regarding a material fact because acquired distinctiveness or secondary meaning, through exclusive use in commerce for a significant period, is required in order to overcome a finding of descriptiveness, as was made by the USPTO.

268. SnoWizard’s false statements on 27 June 2001 regarding SnoWizard’s right to the mark SNOBALL, the absence of any others’ right to the generic term, and purported exclusive use of the term, are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent

to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

269. SnoWizard's assertions about SNOBALL are fraudulent statements to existing and potential customers, distributors, and competitors, and to the USPTO, as set forth in detail herein.

270. SnoWizard's actions were perpetrated willfully, and with full knowledge of SnoWizard's having no legitimate trademark rights in SNOBALL.

271. SnoWizard's actions regarding SNOBALL are ongoing and continuing.

272. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell "Snoball" or snowball equipment and supplies to customers without exposure to a claim of trademark infringement from SnoWizard.

273. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely use its own business name, purchase "snoball" equipment and supplies, and sell "snoballs" to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

274. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and to existing and potential distributors of snowball equipment and supplies, in reliance on SnoWizard's fraudulent assertions of trademark rights.

275. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of snowball equipment and supplies, in reliance on SnoWizard's fraudulent assertions of trademark rights.

276. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of snowball equipment and supplies, in reliance on SnoWizard's fraudulent assertions of trademark rights.

277. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of snowball flavor concentrates and supplies, in reliance on SnoWizard's fraudulent assertions of trademark rights.

278. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of snowball equipment and supplies, in reliance on SnoWizard's fraudulent assertions of trademark rights.

**Count 6, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in SNOBALL.**

279. Groups A & H Allegations are referenced here.

280. The mail and interstate wire communications used in furtherance of this scheme were the general and specific mailing and electronic communication described above, asserting trademarks and registered trademarks in SNOBALL, plus specific communications, of which records are in the sole possession of SnoWizard.

281. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements.

282. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

283. Plaintiffs Raggs, Special T Ice, Eisenmann, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

284. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

285. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group I Allegations
Allegations common to Counts 7, 23, 32, 34, 53, 74, 75, 80, 81, 82, & 83;
SNOW SWEET & SNOSWEET.

286. In late 2007 and early 2008, Plaintiff Parasol made preparations to change the name of its sugar-free simple syrup mix for snowballs to SNOW SWEET, formerly “Simply Sweet”, after researching the availability of that name, ordering labels, beginning to ship SNOW SWEET labeled product in the slow months of January and February 2008, and having the name SNOW SWEET added to the computerized sales system by March 2008.

287. Parasol owns a trademark in SNOW SWEET for sugar-free simple syrup mix for snowballs by virtue of its exclusive use of the term.

288. Parasol contacted attorney Xavier Morales in March 2008, for the purpose of filing a federal trademark application for SNOW SWEET, which was eventually filed on 14 December 2008, Application No. 77632738.

289. Although Parasol was already in the process of developing a new name, the process became urgent when Parasol received a “cease and desist” letter dated 25 February 2008 from the owners of the trademark SIMPLY SWEET. Unknown to Parasol at the time, Ronald R. Sciortino of SnoWizard had sent an email to the owners of the trademark SIMPLY SWEET, which provoked the “cease and desist” letter, and showed that Sciortino was monitoring Parasol’s product.

290. SnoWizard applied on 17 July 2008 for federal trademark registration for SNOSWEET in Class 030, for “sugar and sugar substitutes”, in application No. 77524703, granted as Registration No. 3580056 on 24 February 2009.

291. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the SNOSWEET application on 17 July 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

292. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 17 July 2008 that SnoWizard was the owner of the trademark SNOSWEET sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

293. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 17 July 2008.

294. Under Lanham Act §71 (15 USC §1141k), a specimen “showing current use of the mark in commerce” is required to be submitted, under oath, with a trademark application. SnoWizard submitted to the USPTO on 17 July 2008, as a specimen, a computer-generated design for a label showing no evidence of being affixed to any goods, which is in fact an altered version of the label for SnoWizard’s SNOLITE goods, where only the word “SnoLite” has been replaced by “SnoSweet”, and the other information, including the ingredients, is the same. This specimen showed SNOSWEET to be a SNOWIZARD-branded product, not a private labeling.

295. SnoWizard stated to the USPTO on 17 July 2008 that SnoWizard had been *continuously* using and using in commerce the mark SNOSWEET since 16 February 2008.

296. SnoWizard applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2796 for SNOSWEET for “sugar substitute for baked and frozen desserts, snoballs, snow cones and shaved ice confections” in Class 30, with a claimed date first used and date first used in Louisiana of 16 February 2008.

297. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to the ownership of SNOSWEET.

298. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

299. SnoWizard was not using the mark SNOSWEET and was not using the mark SNOSWEET in commerce on 16 February 2008.

300. SnoWizard has never used the mark SNOSWEET, and is not using the mark SNOSWEET even at present.

301. SnoWizard's false statement regarding use of the mark SNOSWEET and SnoWizard's falsified specimen purporting to show the mark in use on Defendant's goods are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

302. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 17 July 2008 that Defendant was the owner of the trademark SNOSWEET sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

303. SnoWizard did not own a trademark in SNOSWEET at the time of making its solemn declaration because it was not selling or offering goods having the mark SNOSWEET at the time of making the declaration nor at any time before or since.

304. SnoWizard knew it did not offer and did not have a trademark in SNOSWEET on 17 July 2008 and 25 July 2008 when it made solemn declarations to the contrary.

305. Parasol was offering identical goods under the valid trademark SNOW SWEET (two words) since at least March 2008.

306. The marks SNOW SWEET and SNOSWEET have a pseudo-mark relationship to each other and are identical or nearly-identical.

307. Even though SnoWizard never used SNOSWEET in commerce, the applications for federal and state registrations are constructive uses, and SnoWizard has infringed upon Parasol's trademark SNOW SWEET by unlawfully registering the trademark SNOSWEET, as set forth in detail herein.

308. Before SnoWizard's application for registration on 17 July 2008, Plaintiff Parasol was already using the identical mark SNOW SWEET on identical goods in interstate commerce for several months.

309. Plaintiff Parasol had a right to continue using the nearly-identical mark SNOW SWEET in commerce on 17 July 2008 and 25 July 2008 when SnoWizard made solemn declarations to the contrary.

310. Ronald R. Sciortino and SnoWizard maintain an awareness of Parasol's product offerings and the offerings of other competitors, as is evidenced by Sciortino's email to the owners of SIMPLY SWEET and SnoWizard's "cease and desist" letter to Parasol on 22 April 2009.

311. SnoWizard knew that Plaintiff Parasol was using, and had a right to use the trademark SNOW SWEET on 17 July 2008 and 25 July 2008 when SnoWizard made its solemn declarations to the contrary.

312. SnoWizard's false statements in its solemn declaration regarding SnoWizard's right to the mark SNOSWEET and Plaintiff's right to the trademark SNOW SWEET are a fraud upon the USPTO, being false statements and the withholding of material information by Defendant, made willfully, in bad faith, and with the intent to obtain a registration to which the Defendant was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

313. SnoWizard's false statements regarding SNOSWEET are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

314. On 22 April 2009, SnoWizard caused its attorney Kenneth L. Tolar to send a "cease and desist" letter to Parasol via U.S. Mail and fax. This letter asserted, *inter alia*, that SnoWizard owned federal and Louisiana registered trademarks in SNOSWEET, and that Parasol must cease offering its SNOW SWEET product.

315. In pending litigation regarding SNOSWEET, SnoWizard's attorneys filed in court false evidence purporting to show that SNOSWEET appeared on SnoWizard's

2006 Wholesale Price List, on “each price list”, to a “target class of purchasers”, when in fact SNOSWEET did not appear on the price lists distributed in 2006 or in any of the years 2007 through at least 2009. The false document was filed on 15 March 2011, via the Eastern District of Louisiana CM/ECF electronic filing system, and is Record Document EDLA-06-9170-280-3, p.7. This false document bears on the issue of whether SnoWizard continuously offered SNOSWEET in commerce, and is therefore material.

316. SnoWizard’s actions were perpetrated willfully, and with knowledge of SnoWizard’s having no legitimate trademark rights in SNOSWEET.

317. SnoWizard’s assertions about SNOW SWEET and SNOSWEET are fraudulent statements to existing and potential customers, distributors, and competitors, as set forth in detail herein.

318. SnoWizard’s actions regarding SNOSWEET are ongoing and continuing.

319. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and distributors, and lost opportunities to sell SNOW SWEET, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

320. Plaintiff Raggs, a distributor of Parasol products, suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and lost opportunities to distribute and resell SNOW SWEET, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

321. Plaintiff Special T Ice, a distributor of Parasol products, suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and lost opportunities to distribute and resell SNOW SWEET, in reliance on SnoWizard’s fraudulent assertions of trademark rights..

322. Plaintiff Plum Street Snoballs, a customer of Parasol, suffered injury to its business and property, and damages, including but not limited to its inability to freely purchase and use SNOW SWEET, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 7, Civil-RICO Mail & Wire Fraud:
Trademark infringement of SNOW SWEET,
and fraudulent trademark registration of SNOSWEET.**

323. Groups A & I Allegations are referenced here.

324. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a registered trademark in SNOSWEET; the interstate wire communication email to the owners of SIMPLY SWEET in February 2008, the “cease and desist” letter sent by U.S. Mail on 22 April 2008 from SnoWizard’s attorney to Parasol; the 15 March 2011 false evidence filed in court; the identified interstate wire communications to the USPTO and mail communication to the State of Louisiana in attempts to obtain registrations to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

325. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO and the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

326. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

327. Plaintiffs Parasol, Raggs, Special T Ice, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

328. Defendants’ pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

329. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group J Allegations
Allegations common to Counts 8, 23, 37, 38, 53, 66, 67, 80, 81, 82, & 83;
HURRICANE.

330. The SOUTHERN SNOW brand, and Special T Ice, have continuously offered and sold a “Hurricane” snowball flavor concentrate since at least 1991.

331. The Eisenmann FLAVOR SNOW brand, and Raggs, have continuously offered and sold a “Hurricane” snowball flavor concentrate since at least before 2000.

332. Parasol has continuously offered and sold a “Hurricane” snowball flavor concentrate since at least March 2004.

333. SnoWizard sold a “Hurricane” flavor concentrate for at least fifteen (15) years with no claim of trademark or exclusivity, from at least as early as 1992 to at least as late as 2007.

334. SnoWizard applied for federal trademark registration for HURRICANE in International Class 030, for “food flavorings”, on 13 May 2008, in application No. 77472650, and obtained Registration No. 3540276 on 2 December 2008.

335. Under Lanham Act §71 (15 USC §1141k), a specimen “showing current use of the mark in commerce” is required to be submitted, under oath, with a trademark application. SnoWizard, on 13 May 2008, submitted, as a specimen of use, a label from a bottle of snowball flavor concentrate. The specimen failed to show use of the mark HURRICANE for “food flavoring” as claimed in the application, but instead showed use of the mark for snowball flavor concentrates.

336. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the HURRICANE application on 13 May 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

337. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 13 May 2008 that SnoWizard was the owner of the trademark

HURRICANE sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

338. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 13 May 2008.

339. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2751 for HURRICANE for “food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections” in Class 30, with a claimed date first used and date first used in Louisiana of 30 April 1988.

340. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of HURRICANE.

341. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

342. SnoWizard claims a federally-registered trademark in HURRICANE by affixing a “circle-R, ®” to the flavor name in promotional materials and advertising, which are distributed via mail and internet transmissions over interstate wire.

343. On 22 April 2009, SnoWizard caused its attorney Kenneth L. Tolar to send a “cease and desist” letter to Parasol via U.S. Mail and fax. This letter asserted, *inter alia*, that SnoWizard owned federal and Louisiana registered trademarks in HURRICANE, and that Parasol must cease offering its HURRICANE product.

344. SnoWizard was aware of the sale by Plaintiffs and other vendors of a “Hurricane” snowball flavor concentrate over several years. SnoWizard was also aware of its own sale of a “Hurricane” snowball flavor concentrate, without any claim of trademark, over several years. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in HURRICANE, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors

had a right to use the generic term “Hurricane” after they had been selling the goods for several years with no action or protest from SnoWizard.

345. SnoWizard’s own promotional literature has described its “Hurricane” snowball flavor concentrate as “[r]um base with berries. Like the original Pat O’Brien’s Hurricane cocktail”.

346. “Hurricane” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

347. “Hurricane” is a *generic* term for the flavor imitating the generic “Hurricane” beverage sold all over the French Quarter in New Orleans.

348. “Hurricane” is a functional term for a flavor concentrate which produces “Hurricane” ready-to-use snowball syrup when used as directed.

349. “Hurricane” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of a “Hurricane” adult beverage.

350. “Hurricane” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

351. SnoWizard’s false statements regarding SnoWizard’s right to the mark HURRICANE, the absence of any others’ right to the term, exclusive use of the term, and identification of goods are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

352. SnoWizard’s false statements regarding HURRICANE are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

353. SnoWizard’s assertions about HURRICANE are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and

to the State of Louisiana, as set forth in detail herein.

354. SnoWizard's actions were perpetrated willfully, and with full knowledge of SnoWizard's having no legitimate trademark rights in HURRICANE.

355. SnoWizard's actions regarding HURRICANE are ongoing and continuing.

356. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling "Hurricane" flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

357. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell HURRICANE snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

358. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and to existing and potential distributors of HURRICANE flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

359. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of HURRICANE flavor concentrate, and the inability to continue freely selling "Hurricane" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

360. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of HURRICANE flavor concentrate, and the inability to continue freely selling "Hurricane" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

361. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of HURRICANE flavor concentrate, and the inability to

continue freely selling “Hurricane” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

362. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of HURRICANE flavor concentrate, and the inability to continue freely selling “Hurricane” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 8, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in HURRICANE.**

363. Groups A & J Allegations are referenced here.

364. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in HURRICANE; plus the identified interstate wire communications with the USPTO and mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

365. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO and the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

366. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

367. Plaintiffs Raggs, Special T Ice, Parasol, Eisenmann, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

368. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

369. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group K Allegations
Allegations common to Counts 9, 23, 47, 53, 68, 69, 80, 81, 82, & 83;
KING CAKE.

370. Parasol has offered and sold, and Raggs and Special T Ice have distributed, a "King Cake" snowball flavor concentrate since at least March 2006.

371. The SOUTHERN SNOW brand offered and sold, and Raggs and Special T Ice distributed, a "Mardi Gras King Cake" snowball flavor concentrate since 2007.

372. SnoWizard did not offer or sell any "King Cake" snowball flavor concentrate at any time before 2008.

373. SnoWizard manufactured and sold a flavoring agent for the baking of actual king cakes, which is a different product with a different composition and color, sold in multi-gallon quantities in a different channel of trade than snowball flavor concentrates. This type of product is called a baking emulsion. The baking emulsion is colored a pale yellow. The snowball flavor concentrate is colored a strong purple.

374. SnoWizard applied on 14 May 2008 for federal trademark registration for KING CAKE in International Class 030, for "food flavorings", in application No. 77473810, which was approved and published for opposition on 26 May 2009.

375. Under Lanham Act §71 (15 USC §1141k), a specimen "showing current use of the mark in commerce" is required to be submitted, under oath, with a trademark application. SnoWizard, on 14 May 2008, submitted, as a specimen of use, a label from a bottle of snowball flavor concentrate. The specimen failed to show use of the mark KING CAKE for "food flavoring" as claimed in the application, but instead showed use of the mark for snowball flavor concentrates.

376. SnoWizard's attorney stated to the USPTO on 2 April 2009, in a petition to revive the abandoned application and response to office action, "[t]he product sold

under the trademark KING CAKE is a flavored concentrate that is purchased by snow ball vendors, or snow ball vendor suppliers, to produce a ready-to-use flavored syrup. The snow ball vendor, in turn, produces the ready-to-use syrup and pours it over shaved ice to make a snow ball, a/k/a, a snow cone. Applicant does not sell flavored concentrate to the general public”, providing further proof that the applied-for goods are snowball flavor concentrates, and not “food flavorings”.

377. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the KING CAKE application on 14 May 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

378. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 14 May 2008 that SnoWizard was the owner of the trademark KING CAKE sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

379. SnoWizard stated to the USPTO on 14 May 2008 that its first use and first use in commerce date for KING CAKE was 30 November 1996.

380. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 14 May 2008.

381. SnoWizard was not offering or selling “King Cake” flavor concentrate for snowballs on 30 November 1996, as claimed in the federal trademark application, and did not offer or sell “King Cake” flavor concentrate for snowballs at any time prior to 2008, when “King Cake” was introduced by SnoWizard as “New!”.

382. SnoWizard’s own promotional literature in the years 2009 and 2010 describe the “King Cake” flavor concentrate for snowballs as being “New!”.

383. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 15 August 2008, Louisiana Trade Mark Registration No. 60-3067 for KING CAKE

for “light beverages” in Class 32, and for “advertising & business/miscellaneous” in Class 35, with a claimed date first used and date first used in Louisiana of 30 November 1996.

384. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of KING CAKE.

385. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

386. SnoWizard claims a trademark in KING CAKE by affixing a “TM” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and interstate wire.

387. On 22 April 2009, SnoWizard caused its attorney Kenneth L. Tolar to send a “cease and desist” letter to Parasol via U.S. Mail and fax. This letter asserted that SnoWizard owned an applied-for federal trademark and a Louisiana registered trademark in KING CAKE, and that Parasol must cease offering KING CAKE product.

388. SnoWizard’s promotional literature, including its internet website entry, identifies the “King Cake” flavor concentrate as having the color “Royal Purple”, and the description: “For decades SnoWizard has furnished New Orleans area bakeries with King Cake™ flavoring for the making of this traditional Mardi Gras cake. King Cake™ is a unique blend of cake flavoring, rum, butter, pure vanilla extract- and of course, secret flavoring ingredients that make this delicious concentrate unique to SnoWizard. The taste of King Cake™ can now being enjoyed on shaved ice by everyone with this newest flavor release”.

389. The USPTO, in an Office Action issued 12 August 2008, refused the application for descriptiveness because “‘king cake’ is a recognized food”, and “[h]ere, ‘king cake’ refers both to the flavor of applicant’s product, as well as its use.”

390. The questions whether SnoWizard exclusively used the mark in commerce as a trademark for a significant amount of time and whether the product is used in

the making of king cakes are material questions, as shown by their being noted in the Trademark Examiner's refusal.

391. SnoWizard's false statement on 14 May 2008 about its exclusive use of KING CAKE in commerce since 30 November 1996 is a false statement regarding a material fact because acquired distinctiveness or secondary meaning, through exclusive use in commerce for a significant period, is required in order to overcome a finding of descriptiveness, as was made by the USPTO. This false statement is material because it caused the USPTO to withdraw its rejection and allow registration of KING CAKE. This statement is false because SnoWizard only started offering the flavor concentrate in 2008, and there were already "King Cake" snowball flavor concentrates on the market under the PARASOL and SOUTHERN SNOW brands.

392. SnoWizard's attorney, Kenneth L. Tolar, made the material, false, and misleading statement to the USPTO on 2 April 2009, that "[t]he product is not used in the production or flavoring of king cakes". This false statement is material because it caused the USPTO to withdraw its rejection and allow registration of KING CAKE. This statement is false because the only "King Cake" product sold by Defendant during the years 1996 through 2008 was a yellow-colored baking emulsion specifically formulated and sold for flavoring actual king cakes, and not suitable for or offered for the making of snowballs.

393. The statement of 2 April 2009 was sent by SnoWizard's attorney Kenneth L. Tolar to the USPTO via interstate wire, specifically the USPTO e-filing system.

394. SnoWizard was aware of the sale by Plaintiffs of "King Cake" and "Mardi Gras King Cake" snowball flavor concentrate prior to SnoWizard's offering the same goods. SnoWizard was also aware that its own sale of "King Cake" snowball flavor concentrate only began in 2008 at the time of applying for the trademark registration. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in KING CAKE, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to

use the term “King Cake” after they had been selling the goods for several years with no action or protest from SnoWizard.

395. SnoWizard, and SnoWizard’s attorney, knew the truth of the matters that SnoWizard’s snowball flavor concentrate was a different product than its baking emulsion, that the snowball flavor concentrate was only offered by SnoWizard beginning in 2008, and that the baking emulsion, which was the “food flavoring” sold since 1996, was used in the “production and flavoring of king cakes”.

396. The intentional, material misstatements from SnoWizard to the USPTO were fraudulent statements made via interstate wire, specifically the electronic filing system of the USPTO, on 14 May 2008 and 2 April 2009, as further specified herein.

397. The falsity of the 2 April 2009 statement to the USPTO, and the falsity of claiming the baking emulsion and the snowball flavor concentrate to be the same goods, was uncovered on 17 December 2009 in a deposition of SnoWizard’s principal Ronald R. Sciortino, and pointed out to SnoWizard’s attorneys. SnoWizard never sent any corrected version of those statements to the USPTO under its continuing duties of candor and reasonable inquiry to the USPTO.

398. SnoWizard’s false statements regarding SnoWizard’s right to the mark KING CAKE, the absence of any others’ right to the term, exclusive use of the term, identification of goods, and date of first use are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

399. SnoWizard’s false statements regarding KING CAKE are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

400. “King Cake” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

401. “King Cake” is a *generic* term for the flavor name of the cinnamon cake flavor imitating the “King Cake” sold in New Orleans during Carnival season.

402. “King Cake” is a *functional* term for a flavor concentrate which produces “King Cake” ready-to-use snowball syrup when used as directed.

403. “King Cake” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of a King Cake.

404. “King Cake” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

405. SnoWizard’s assertions about KING CAKE are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and to the State of Louisiana, as set forth in detail herein.

406. SnoWizard’s actions were perpetrated willfully, and with full knowledge of SnoWizard’s having no legitimate trademark rights in KING CAKE.

407. SnoWizard’s actions regarding KING CAKE are ongoing and continuing.

408. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard’s complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling “King Cake” and “Mardi Gras King Cake” flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

409. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell KING CAKE snowballs to its customers, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

410. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and to existing

and potential distributors of KING CAKE flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

411. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of KING CAKE flavor concentrate, and the inability to continue freely selling "King Cake" flavor concentrates, in reliance on SnoWizard's fraudulent assertions of trademark rights.

412. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of KING CAKE flavor concentrate, and the inability to continue freely selling "King Cake" and flavor concentrates, in reliance on SnoWizard's fraudulent assertions of trademark rights.

413. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of KING CAKE flavor concentrate, and the inability to continue freely selling the "King Cake" flavor concentrate which Parasol originated, in reliance on SnoWizard's fraudulent assertions of trademark rights.

414. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of KING CAKE flavor concentrate, and the inability to continue freely selling "Mardi Gras King Cake" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

**Count 9, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in KING CAKE.**

415. Groups A & K Allegations are referenced here.

416. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in KING CAKE; plus the identified interstate wire communications with the USPTO and mail communications with the State of

Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

417. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO and the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

418. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

419. Plaintiffs Parasol, Raggs, Special T Ice, Eisenmann, Simeon, Inc., Southern Snow, Snow Ingredients, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

420. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

421. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group L Allegations
Allegations common to Counts 10, 23, 52, 53, 78, 79, 80, 81, 82, & 83;
WHITE CHOCOLATE & CHIPS.

422. A SOUTHERN SNOW brand of "White Chocolate & Chips" flavor concentrate has been continually offered and sold since not later than 1999, and Raggs and Special T Ice have distributed "White Chocolate & Chips" flavor concentrate.

423. SnoWizard sold a "White Chocolate & Chips" flavor concentrate for sixteen (16) years from 1986 to 2002 with no claim of trademark or exclusivity.

424. SnoWizard "White Chocolate & Chips" flavor concentrate was sold non-exclusively for at least the 6-year period 1999 to 2005.

425. SnoWizard caused a "cease and desist" letter to be sent via U.S. Mail on 8 April 2005, from SnoWizard's attorney Seth Nehrbass, to Southern Snow and

Simeon's principal officer Milton G. Wendling, Jr., asserting non-existent trademark rights in WHITE CHOCOLATE & CHIPS.

426. In March 2006, Southern Snow filed a lawsuit against SnoWizard for, *inter alia*, falsely asserting a trademark in WHITE CHOCOLATE & CHIPS. The lawsuit was filed in the 24th Judicial District of Louisiana, and was removed by SnoWizard as Civil Action No. EDLA-06-9170-JCZ-SS.

427. Ronald R. Sciortino, on behalf of SnoWizard, on an application for state trademark registration sent to the Louisiana Secretary of State via U.S. Mail on or about 17 November 2006, obtained Louisiana state Trade Mark Registration No. 59-4008 for WHITE CHOCOLATE & CHIPS for "flavor concentrate for shaved ice confections" in Class 30, with a claimed date first used and date first used in Louisiana of 1 May 1986.

428. Ronald R. Sciortino and SnoWizard did not disclose to the Louisiana Secretary of State, on 17 November 2006 or any time after, that WHITE CHOCOLATE & CHIPS was the subject of a pending civil action filed 8 months before.

429. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 17 November 2006 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of WHITE CHOCOLATE & CHIPS.

430. This notarized solemn statement was sent via U.S. Mail on or about 17 November 2006 from SnoWizard to the Louisiana Secretary of State.

431. The notarized solemn statement of ownership is a material statement because it is a required condition of Louisiana trademark registration, and because ownership of a trademark is a necessary prerequisite for registration of a trademark.

432. The 17 November 2006 solemn statement to the Louisiana Secretary of State was a knowing, intentional, material misstatement which was made for the purpose of obtaining a Louisiana trademark registration that SnoWizard was not entitled to because SnoWizard did not own a trademark in WHITE CHOCOLATE &

CHIPS because, *inter alia*, another vendor had been continuously selling identical goods under an identical mark for over 6 years, where the truth of the matter, if known to the Louisiana Secretary of State, would have resulted in the denial of the trademark application.

433. Two years after suit was filed on same trademark, SnoWizard applied for federal trademark registration for WHITE CHOCOLATE & CHIPS in International Class 030, for “food flavorings”, on 12 May 2008, in application No. 77471425.

434. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the WHITE CHOCOLATE & CHIPS application on 12 May 2008 and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

435. Ronald R. Sciortino stated in a solemn declaration to the USPTO on 12 May 2008 that SnoWizard was the owner of the trademark WHITE CHOCOLATE & CHIPS sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

436. Ronald R. Sciortino and SnoWizard did not disclose to the USPTO, on 12 May 2008 or at any time after, that WHITE CHOCOLATE & CHIPS was the subject of a pending civil action filed 2 years before.

437. SnoWizard stated to the USPTO on 12 May 2008 that its first use and first use in commerce date for WHITE CHOCOLATE & CHIPS was 1 May 1986.

438. The 12 May 2008 statements and solemn statements to the USPTO were knowing, intentional, material misstatements which were made for the purpose of obtaining a trademark registration that SnoWizard was not entitled to because SnoWizard did not own a trademark in WHITE CHOCOLATE & CHIPS because, *inter alia*, another vendor had been continuously selling identical goods under

an identical mark for over 6 years, where the truth of the matter, if known to the USPTO, would have resulted in the denial of the trademark application.

439. The fraudulent statements in the application for registration of WHITE CHOCOLATE & CHIPS were transmitted from Ronald R. Sciortino on behalf of SnoWizard, via interstate wire, specifically the USPTO electronic filing system, on 12 May 2008.

440. The USPTO, in an Office Action issued 12 August 2008 and a final Office Action issued 15 October 2009, refused the application because, *inter alia*, “White Chocolate & Chips” is merely descriptive of the goods.

441. The question whether SnoWizard exclusively used the mark in commerce as a trademark for a significant time is a material question because such use is required in order to overcome a finding of descriptiveness, as was made by the USPTO.

442. The USPTO allowed registration of WHITE CHOCOLATE & CHIPS on the Supplemental Register, in reliance on SnoWizard’s intentional, material misstatements.

443. SnoWizard claims a trademark in WHITE CHOCOLATE & CHIPS by affixing a “TM” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and interstate wire.

444. “White Chocolate & Chips” is a *generic* identifier for the flavor name of the snowball shaved ice confection that results from using SnoWizard’s “White Chocolate & Chips” flavor concentrate as directed.

445. “White Chocolate & Chips” is a *functional* identifier for a flavor concentrate which, when used as directed, produces a generic and functional “White Chocolate & Chips” ready-to-use syrup for pouring over shaved ice to be sold to the customers of SnoWizard’s customers.

446. “White Chocolate & Chips” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of white chocolate, and having “chips” or “specks”, and has not acquired any distinctiveness because of the long period of SnoWizard’s non-exclusive use.

447. “White Chocolate & Chips” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

448. SnoWizard’s false statement about its ownership of the mark WHITE CHOCOLATE & CHIPS through exclusive use in commerce is a false statement regarding a material fact, because acquired distinctiveness or secondary meaning, through exclusive use in commerce for a significant period, is required in order to overcome a finding of descriptiveness, as was made by the USPTO.

449. SnoWizard’s false statements regarding SnoWizard’s right to the mark WHITE CHOCOLATE & CHIPS, the absence of any others’ right to the generic term, and purported exclusive use of the term, are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which the Defendant was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

450. SnoWizard’s false statements regarding WHITE CHOCOLATE & CHIPS are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

451. SnoWizard’s assertions about WHITE CHOCOLATE & CHIPS are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and to the State of Louisiana, as set forth in detail herein.

452. SnoWizard’s actions were perpetrated willfully, and with full knowledge of SnoWizard’s having no legitimate trademark rights in WHITE CHOCOLATE & CHIPS.

453. SnoWizard’s actions regarding WHITE CHOCOLATE & CHIPS are ongoing and continuing.

454. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling "White Chocolate & Chips" flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

455. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell WHITE CHOCOLATE & CHIPS snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

456. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of WHITE CHOCOLATE & CHIPS flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

457. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of WHITE CHOCOLATE & CHIPS flavor concentrate, and the inability to continue freely selling "White Chocolate & Chips" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

458. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of WHITE CHOCOLATE & CHIPS flavor concentrate, and the inability to continue freely selling "White Chocolate & Chips" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

459. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and distributors of WHITE CHOCOLATE & CHIPS flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

460. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered

injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of WHITE CHOCOLATE & CHIPS flavor concentrate, and the inability to continue freely selling “White Chocolate & Chips” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 10, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in WHITE CHOCOLATE & CHIPS.**

461. Groups A & L Allegations are referenced here.

462. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in WHITE CHOCOLATE & CHIPS; plus the identified interstate wire communications with the USPTO and mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

463. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO and the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

464. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

465. Plaintiffs Raggs, Special T Ice, Eisenmann, Simeon, Inc., Snow Ingredients, Southern Snow, Parasol, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

466. Defendants’ pattern of unlawful actions are violative of 18 USC §1962(c),

causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

467. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group M Allegations
Allegations common to Counts 11, 23, 42, 53, 56, 57, 80, 81, 82, & 83;
CAJUN RED HOT.

468. Manufacturers and distributors of snowball flavor concentrates have offered and sold “Red Hot” and “Cajun Red Hot” flavor concentrates for many years.

469. SnoWizard sold a “Cajun Red Hot” flavor concentrate for at least nine (9) years with no claim of trademark or exclusivity, from at least as early as 1992 to at least as late as 2001.

470. SnoWizard applied on 13 May 2008 for federal trademark registration for CAJUN RED HOT in International Class 030, for “food flavorings”, later amended to “flavor concentrate for non-nutritional purposes, namely, flavor concentrate for shaved ice confections”, in application No. 77472649.

471. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the CAJUN RED HOT application on 13 May 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

472. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 13 May 2008 that SnoWizard was the owner of the trademark CAJUN RED HOT sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

473. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 13 May 2008.

474. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 25 July 2008, a Louisiana state Trade Mark Registration No. 60-2744 for CAJUN

RED HOT for “food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections” in Class 30.

475. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of CAJUN RED HOT.

476. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

477. SnoWizard was aware of the sale by Plaintiffs and other vendors of “Cajun Red Hot” and “Red Hot” snowball flavor concentrates over several years. SnoWizard was also aware of its own sale of a “Cajun Red Hot” snowball flavor concentrate, without any claim of trademark, over several years. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in CAJUN RED HOT, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to use the generic term “Cajun Red Hot” after they had been selling the goods for several years with no action or protest from SnoWizard.

478. SnoWizard’s promotional literature, including its 2007 “Flavor-Color-Description” list, identifies the “Cajun Red Hot” flavor concentrate as having the color “Red”, and the description: “Hot, Cinnamon flavor. Tastes like ‘Red Hot Candies’”.

479. The USPTO, in an Office Action issued 12 August 2008 and a final Office Action issued 15 October 2009, refused the application because, *inter alia*, “Cajun Red Hot” is merely descriptive of the goods.

480. The question whether SnoWizard exclusively used the mark in commerce as a trademark for a significant time is a material question because such use is required in order to overcome a finding of descriptiveness, as was made by the USPTO.

481. SnoWizard’s false statements regarding SnoWizard’s right to the mark CAJUN RED HOT, the absence of any others’ right to the term, and exclusive use of the term, are a fraud upon the USPTO, being false statements of material

information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

482. SnoWizard's false statements regarding CAJUN RED HOT are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

483. SnoWizard's assertions about CAJUN RED HOT are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and to the State of Louisiana, as set forth in detail herein.

484. The USPTO allowed registration of CAJUN RED HOT on the Supplemental Register, in reliance on SnoWizard's intentional, material misstatements.

485. SnoWizard claims a trademark in CAJUN RED HOT by affixing a "TM" to the flavor name in SnoWizard's promotional materials and advertising, which are distributed via mail and interstate wire.

486. "Cajun Red Hot" is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

487. "Cajun Red Hot" is a *functional* term for a flavor concentrate which produces "Cajun Red Hot" ready-to-use snowball syrup when used as directed.

488. "Cajun Red Hot" is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of a "Cajun Red Hot" candy.

489. "Cajun Red Hot" has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

490. SnoWizard's actions were perpetrated willfully, and with knowledge of SnoWizard's having no legitimate trademark rights in CAJUN RED HOT.

491. SnoWizard's actions regarding CAJUN RED HOT are ongoing and continuing.

492. Plaintiffs claim damages, cognizable injury, and ascertainable losses

resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling "Cajun Red Hot" and "Red Hot" flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

493. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell CAJUN RED HOT snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

494. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited to lost sales to potential customers and distributors of CAJUN RED HOT flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

495. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of CAJUN RED HOT flavor concentrate, and the inability to continue freely selling "Red Hot" and "Cajun Red Hot" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

496. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of CAJUN RED HOT flavor concentrate, and the inability to continue freely selling "Red Hot" and "Cajun Red Hot" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

497. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of CAJUN RED HOT flavor concentrate, and the inability to continue freely selling "Red Hot" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

498. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered

injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of CAJUN RED HOT flavor concentrate, and the inability to continue freely selling “Red Hot” and “Cajun Red Hot” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 11, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in CAJUN RED HOT.**

499. Groups A & M Allegations are referenced here.

500. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in CAJUN RED HOT; plus the identified interstate wire communications with the USPTO and mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

501. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO and the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

502. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

503. Plaintiffs Raggs, Special T Ice, Parasol, Eisenmann, Simeon, Inc., Southern Snow, Snow Ingredients, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

504. Defendants’ pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

505. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group N Allegations
Allegations common to Counts 12, 23, 46, 53, 64, 65, 80, 81, 82, & 83;
GEORGIA PEACH.

506. Parasol has offered and sold, and Raggs and Special T Ice have distributed, a “Georgia Peach” snowball flavor concentrate since at least July 2002.

507. The SOUTHERN SNOW brand has offered and sold a “Peach” snowball flavor concentrate since at least 1983, and a “Georgia Peach” flavor concentrate since April 2010, and Raggs and Special T Ice have distributed these flavor concentrates.

508. Other vendors of snowball flavor concentrates have offered and sold “Georgia Peach” and “Peach” snowball flavor concentrates for several years.

509. SnoWizard offered and sold a “Georgia Peach” snowball flavor concentrate for at least thirteen (13) years with no indication of any claim of trademark, from 1988 through at least 2001.

510. SnoWizard applied on 12 May 2008 for federal trademark registration for GEORGIA PEACH in Class 030, for “food flavorings”, later amended to “artificially flavored concentrates for shaved ice confections”, in application No. 77471426, which was approved and published for opposition on 19 October 2010.

511. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the GEORGIA PEACH application on 12 May 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

512. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 12 May 2008 that SnoWizard was the owner of the trademark GEORGIA PEACH sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

513. SnoWizard stated to the USPTO on 12 May 2008 that its first use and first use in commerce date for GEORGIA PEACH was 31 May 1988.

514. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 14 May 2008.

515. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2749 for GEORGIA PEACH for “food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections” in Class 30, with a claimed date first used and date first used in Louisiana of 31 May 1988.

516. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of GEORGIA PEACH.

517. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

518. SnoWizard claims a trademark in GEORGIA PEACH by affixing a “TM” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and interstate wire.

519. On 22 April 2009, SnoWizard caused its attorney Kenneth L. Tolar to send a “cease and desist” letter to Parasol via U.S. Mail and fax. This letter asserted, *inter alia*, that SnoWizard owned an applied-for federal trademark and a Louisiana registered trademark in GEORGIA PEACH, and that Parasol must cease offering its GEORGIA PEACH product.

520. SnoWizard’s promotional literature, including its website, identifies the “Georgia Peach” flavor concentrate as having the color “Reddish Orange”, and the description: “Peach flavor so true that you can taste the ‘fuzz’. *Really!!*”.

521. The USPTO on 12 August 2008 and 26 October 2009 refused Defendant’s purported trademark in “Georgia Peach” as being merely descriptive, and Defendant

is required to show a long period of exclusive use in order to overcome the refusal.

522. The USPTO, in an Office Action issued 24 May 2010, maintained the refusal for mere descriptiveness, and also added a new refusal for “Georgia Peach” being geographically deceptive and geographically deceptively misdescriptive.

523. The questions whether SnoWizard exclusively used the mark in commerce as a trademark for a significant amount of time is a material question in light of the Trademark Examiner’s refusals.

524. SnoWizard was aware of the sale by Plaintiffs and other vendors of “Georgia Peach” snowball flavor concentrate before SnoWizard’s applications for registration. SnoWizard was also aware of its own sale of a “Georgia Peach” snowball flavor concentrate, without any claim of trademark, over several years. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in GEORGIA PEACH, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to use the generic term “Georgia Peach” after they had been selling the generic goods with no action or protest from SnoWizard.

525. SnoWizard’s false statement on 12 May 2008 is a false statement regarding a material fact because acquired distinctiveness or secondary meaning, through exclusive use in commerce for a significant period, is required in order to overcome a finding of descriptiveness, as was made by the USPTO.

526. The intentional, material misstatements from SnoWizard to the USPTO were fraudulent statements made via interstate wire, specifically the electronic filing system of the USPTO, on 12 May 2008, as further specified herein.

527. SnoWizard’s false statements regarding SnoWizard’s right to the mark GEORGIA PEACH, the absence of any others’ right to the term, exclusive use of the term, identification of goods, and date of first use are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in

disallowance of registration.

528. SnoWizard's false statements regarding GEORGIA PEACH are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

529. SnoWizard's false statements regarding GEORGIA PEACH are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which the SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

530. "Georgia Peach" is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

531. "Georgia Peach" is a *generic* term for the flavor of Georgia peaches.

532. "Georgia Peach" is a *functional* term for a flavor concentrate which produces "Georgia Peach" ready-to-use snowball syrup when used as directed.

533. "Georgia Peach" is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of Georgia peaches.

534. "Georgia Peach" is geographically deceptive and geographically deceptively misdescriptive for Defendant's goods.

535. "Georgia Peach" has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

536. In 2010, Ronald R. Sciortino of SnoWizard refused to allow Plum Street Snoballs to purchase GEORGIA PEACH flavor concentrate when Plum Street Snoballs sent an employee to SnoWizard to make the purchase.

537. SnoWizard's assertions about GEORGIA PEACH are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and to the State of Louisiana, as set forth in detail herein.

538. SnoWizard's actions were perpetrated willfully, and with full knowledge of SnoWizard's having no legitimate trademark rights in GEORGIA PEACH.

539. SnoWizard's actions regarding GEORGIA PEACH are ongoing and continuing.

540. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling "Georgia Peach" flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

541. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell GEORGIA PEACH snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

542. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of GEORGIA PEACH flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

543. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of GEORGIA PEACH flavor concentrate, and the inability to continue freely selling "Georgia Peach" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

544. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of GEORGIA PEACH flavor concentrate, and the inability to continue freely selling "Georgia Peach" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

545. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of GEORGIA PEACH flavor concentrate, and the inability to

continue freely selling “Georgia Peach” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

546. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of GEORGIA PEACH flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 12, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in GEORGIA PEACH.**

547. Groups A & N Allegations are referenced here.

548. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in GEORGIA PEACH; plus the identified interstate wire communications with the USPTO and mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

549. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO and the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

550. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

551. Plaintiffs Parasol, Raggs, Special T Ice, Eisenmann, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

552. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

553. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group O Allegations
Allegations common to Counts 13, 23, 39, 53, 80, 81, 82, & 83;
BUTTERCREAM.

554. SOUTHERN SNOW brand offered a "Butter Cream" flavor concentrate since 1991, seventeen (17) years before Defendant started claiming a trademark in BUTTERCREAM in 2008 or 2009, which was distributed by Raggs and Special T Ice.

555. Parasol offered a "Buttercream" flavor concentrate since 2006, two (2) years before Defendant started claiming a trademark in BUTTERCREAM in 2008 or 2009. "Buttercream" was distributed by Raggs and Special T Ice.

556. SnoWizard offered and sold a "Buttercream" snowball flavor concentrate for at least twenty-two (22) years with no indication of any claim of trademark, from 1985 through at least 2007.

557. Since 2008 or 2009, SnoWizard claims a common-law trademark in the purported mark BUTTERCREAM, as evidenced by SnoWizard's placing a "TM" adjacent to the flavor concentrate name in its promotional literature, which is distributed by U.S. Mail and by interstate wire over the internet.

558. SnoWizard's promotional literature describes "Buttercream" flavor concentrate as follows: "Rich creamy, buttery, Vanilla taste. ... Color: Caramel".

559. "Buttercream" is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

560. "Buttercream" is a *generic* term for the flavor that tastes like butter-cream.

561. "Buttercream" is a *functional* term for a flavor concentrate which produces "Buttercream" ready-to-use snowball syrup when used as directed.

562. "Buttercream" is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of butter-cream.

563. “Buttercream” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

564. SnoWizard has not sold its “Buttercream” flavor concentrate exclusively for a sufficient time to acquire distinctiveness or establish secondary meaning.

565. “Buttercream” is generic, functional, and merely descriptive under the common law of trademark, and cannot serve as a trademark.

566. SnoWizard was aware of the sale by Plaintiffs and other vendors of a generic “Buttercream” or “Butter Cream” snowball flavor concentrate over several years. SnoWizard was also aware of its own sale of a generic “Buttercream” snowball flavor concentrate over several years. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in BUTTERCREAM, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to use the generic term “Buttercream” or “Butter Cream” after they had been selling the generic goods for several years with no action or protest from SnoWizard.

567. SnoWizard’s assertion of a common-law trademark in BUTTERCREAM is therefore unsupported and unsupportable, and is made in bad faith.

568. SnoWizard’s assertions about BUTTERCREAM are fraudulent statements to existing and potential customers, distributors, and competitors.

569. SnoWizard’s actions were perpetrated willfully, and with full knowledge of SnoWizard’s having no legitimate trademark rights in BUTTERCREAM.

570. SnoWizard’s actions regarding BUTTERCREAM are ongoing and continuing.

571. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard’s complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling “Butter Cream” and “Buttercream” flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

572. Plaintiff Plum Street Snoballs suffered injury to its business and property,

and damages, including but not limited to its inability to freely sell BUTTERCREAM snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

573. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and to existing and potential distributors of BUTTERCREAM flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

574. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of BUTTERCREAM flavor concentrate, and the inability to continue freely selling "Butter Cream" and "Buttercream" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

575. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of BUTTERCREAM flavor concentrate, and the inability to continue freely selling "Butter Cream" and "Buttercream" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

576. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of BUTTERCREAM flavor concentrate, and the inability to continue freely selling "Buttercream" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

577. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of BUTTERCREAM flavor concentrate, and the inability to continue freely selling "Butter Cream" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

**Count 13, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in BUTTERCREAM.**

578. Groups A & O Allegations are referenced here.

579. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above asserting a trademark in BUTTERCREAM, plus specific communications, of which records are in the sole possession of SnoWizard.

580. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements.

581. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

582. Plaintiffs Parasol Raggs, Special T Ice, Eisenmann, Simeon, Inc., Southern Snow, Snow Ingredients, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

583. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

584. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

**Group P Allegations
Allegations common to Counts 14, 23, 40, 53, 54, 55, 80, 81, 82, & 83;
BUTTERED POPCORN.**

585. SOUTHERN SNOW brand has continuously offered and sold a "Buttered Popcorn" snowball flavor concentrate since 2007, which was distributed by Raggs and Special T Ice.

586. Parasol has continuously offered and sold a generic "Buttered Popcorn" snowball flavor concentrate since at least 11 February 2008, which was distributed by Raggs and Special T Ice.

587. SnoWizard did not offer or sell any “Buttered Popcorn” snowball flavor concentrate at any time before 2008.

588. SnoWizard manufactured and sold a buttered-popcorn-tasting flavoring agent for baking and cooking, which was a different product with a different composition, sold in a different channel of trade than snowball flavor concentrates.

589. SnoWizard applied for federal trademark registration for BUTTERED POPCORN in Class 030, for “food flavorings” on 24 April 2008, in application No. 77457380.

590. Under Lanham Act §71 (15 USC §1141k), a specimen “showing current use of the mark in commerce” is required to be submitted, under oath, with a trademark application. SnoWizard, on 24 April 2008, submitted, as a specimen of use, a label from a bottle of snowball flavor concentrate. The specimen failed to show use of the mark BUTTERED POPCORN for “food flavoring” as claimed in the application, but instead showed use of the mark for snowball flavor concentrates.

591. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the BUTTERED POPCORN application on 24 April 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

592. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 24 April 2008 that SnoWizard was the owner of the trademark BUTTERED POPCORN sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

593. SnoWizard stated to the USPTO on 24 April 2008 that its first use and first use in commerce date for BUTTERED POPCORN was 8 May 2002.

594. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 24 April 2008.

595. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2743 for BUTTERED POPCORN for “food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections” in Class 30, with a claimed date first used and date first used in Louisiana of 8 May 2002.

596. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of BUTTERED POPCORN.

597. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

598. SnoWizard was not offering or selling “Buttered Popcorn” flavor concentrate on 8 May 2002, as claimed in the federal and state trademark applications, and did not offer or sell “Buttered Popcorn” flavor concentrate for snowballs at any time prior to 2008, when “Buttered Popcorn” was introduced by SnoWizard as “New!”.

599. SnoWizard did not offer or sell “Buttered Popcorn” flavor concentrate for snowballs at any time prior to 2008.

600. SnoWizard’s own promotional literature in 2009 describes the “Buttered Popcorn” flavor concentrate for snowballs as being “New!”.

601. The USPTO on 12 August 2008 refused SnoWizard’s purported trademark in BUTTERED POPCORN as being merely descriptive, and Defendant is required to show a long period of *exclusive* use in order to overcome the refusal, making the issues of date of first use and exclusivity material issues in the application.

602. Ronald R. Sciortino, on behalf of SnoWizard, signed a sworn, notarized Affidavit on 10 February 2009 which was submitted to the USPTO on 11 February 2009 in response to an office action from the USPTO.

603. SnoWizard’s sworn affidavit of 10 February 2009 purported to prove that a company named “Ronald Reginald’s”, not “SnoWizard”, had been offering “Buttered

Popcorn Flavor” as a food flavoring, not as a snowball flavor concentrate, since the January 2003 effective date printed on a price list for Ronald Reginald’s food flavorings.

604. SnoWizard’s sworn affidavit of 10 February 2009 stated that SnoWizard’s use of the purported BUTTERED POPCORN mark had been exclusive since its first use, meaning that no other, such as the Plaintiffs here or another vendor, had offered or sold any “Buttered Popcorn” goods.

605. The sworn affidavit of 10 February 2009 was sent by SnoWizard’s attorney Kenneth L. Tolar to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 11 February 2009.

606. SnoWizard was aware of the sale by Plaintiffs and other vendors of a “Buttered Popcorn” snowball flavor concentrate before SnoWizard’s first offer and sale. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in BUTTERED POPCORN, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to use the term “Buttered Popcorn” after they had been selling the goods with no action or protest from SnoWizard.

607. In a Response to Office Action filed 31 March 2009 and signed by SnoWizard’s attorney of record Kenneth L. Tolar, who elected not to submit a signed declaration, SnoWizard amended the description of goods to be “flavor concentrate for non-nutritional purposes, namely, flavor concentrate for shaved ice confections”, but did not correct the erroneous and misleading information that the dates of first use and first use in commerce were still claimed to be 8 May 2002.

608. The Response to Office Action filed 31 March 2009 was sent by SnoWizard’s attorney Kenneth L. Tolar to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 31 March 2009.

609. SnoWizard, and SnoWizard’s attorney, knew the truth of the matters that SnoWizard’s “Buttered Popcorn” snowball flavor concentrate was a different product than its buttered-popcorn-tasting flavoring agent for baking and cooking, that the

snowball flavor concentrate was only offered by SnoWizard beginning in 2008, and that the buttered-popcorn-tasting flavoring agent for baking and cooking, which was the “food flavoring” sold since 2002, was not the snowball flavor concentrate.

610. The intentional, material misstatements from SnoWizard to the USPTO were fraudulent statements made via interstate wire, specifically the electronic filing system of the USPTO, on 24 April 2008, 11 February 2009, and 31 March 2009, as further specified herein.

611. The USPTO, in a Final Office Action issued 7 December 2009, refused the application because, *inter alia*, “Buttered Popcorn” is generic for the goods.

612. SnoWizard’s false statements regarding SnoWizard’s right to the mark BUTTERED POPCORN, the absence of any others’ right to the term, exclusive use of the term, identification of goods, and date of first use are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

613. SnoWizard’s false statements regarding BUTTERED POPCORN are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

614. SnoWizard’s promotional literature, including its internet website entry, identifies the “Buttered Popcorn” flavor concentrate as having the color “Yellow”, and the description: “Unbelievable fresh Pop-Corn taste drizzled with butter - just like at the movie theater”.

615. SnoWizard claims a trademark in BUTTERED POPCORN by affixing a “TM” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and internet transmissions over interstate wire.

616. On 22 April 2009, SnoWizard caused its attorney Kenneth L. Tolar to send a “cease and desist” letter to Parasol via U.S. Mail and fax. This letter asserted, *inter alia*, that SnoWizard owned an applied-for federal trademark and a Louisiana registered trademark in BUTTERED POPCORN, and that Parasol must cease offering its BUTTERED POPCORN product.

617. “Buttered Popcorn” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

618. “Buttered Popcorn” is a *generic* term for the flavor of buttered popcorn.

619. “Buttered Popcorn” is a *functional* term for a flavor concentrate which produces “Buttered Popcorn” ready-to-use snowball syrup when used as directed.

620. “Buttered Popcorn” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of buttered popcorn.

621. “Buttered Popcorn” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

622. SnoWizard’s assertions about BUTTERED POPCORN are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and to the State of Louisiana, as set forth in detail herein.

623. SnoWizard’s actions were perpetrated willfully, and with full knowledge of SnoWizard’s having no legitimate trademark rights in BUTTERED POPCORN.

624. SnoWizard’s actions regarding BUTTERED POPCORN are ongoing and continuing.

625. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard’s complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling “Buttered Popcorn” flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

626. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell BUTTERED

POPCORN snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

627. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of BUTTERED POPCORN flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

628. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of BUTTERED POPCORN flavor concentrate, and the inability to continue freely selling "Buttered Popcorn" flavor concentrates, in reliance on SnoWizard's fraudulent assertions of trademark rights.

629. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of BUTTERED POPCORN flavor concentrate, and the inability to continue freely selling "Buttered Popcorn" flavor concentrates, in reliance on SnoWizard's fraudulent assertions of trademark rights.

630. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of BUTTERED POPCORN flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

631. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of BUTTERED POPCORN flavor concentrate, and the inability to continue freely selling "Buttered Popcorn" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

**Count 14, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in BUTTERED POPCORN.**

632. Groups A & P Allegations are referenced here.

633. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in BUTTERED POPCORN; plus the identified interstate wire communications with the USPTO and mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

634. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

635. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

636. Plaintiffs Raggs, Special T Ice, Eisenmann, Parasol, Simeon, Inc., Southern Snow, Snow Ingredients, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

637. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

638. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group Q Allegations
Allegations common to Counts 15, 23, 41, 53, 58, 59, 80, 81, 82, & 83;
CAKE BATTER.

639. Parasol offered a “Yellow Cake Batter” flavor concentrate since 2005, distributed by Raggs and Special T Ice, before SnoWizard first offered its “Cake Batter” flavor concentrate, or made its Louisiana trademark filing on 25 July 2008.

640. SOUTHERN SNOW brand offered and sold a “Cake Batter” flavor concentrate since April 2010, distributed by Raggs and Special T Ice.

641. SnoWizard did not offer or sell any “Cake Batter” snowball flavor concentrate at any time before 2008.

642. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2745 for CAKE BATTER for “food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections” in Class 30, with a claimed date first used and date first used in Louisiana of 12 February 2008.

643. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of CAKE BATTER.

644. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

645. SnoWizard was aware of the sale by Plaintiffs of “Yellow Cake Batter” and “Cake Batter” snowball flavor concentrate prior to SnoWizard’s offering the same goods. SnoWizard was also aware that its own sale of “Cake Batter” snowball flavor concentrate only began in 2008 at the time of applying for the trademark registration. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in CAKE BATTER, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to use the term “Cake Batter” after they had been selling the goods for several years with no action or protest from SnoWizard.

646. SnoWizard claims a trademark in CAKE BATTER by affixing a “TM” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and internet transmissions over interstate wire.

647. SnoWizard’s promotional literature, including its internet website, identifies the “Cake Batter” flavor concentrate as having the color “Golden Yellow”, and the description: “Everyone remembers wiping the side of a bowl with their finger to taste the cake batter mix their mother was preparing. Well, SnoWizard has captured that taste in our new Cake Batter™ concentrate. The taste of REAL cake mix is the hot, new flavor sensation”.

648. “Cake Batter” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

649. “Cake Batter” is a *generic* term for the flavor that tastes like cake batter.

650. “Cake Batter” is a *functional* term for a flavor concentrate which produces “Cake Batter” ready-to-use snowball syrup when used as directed.

651. “Cake Batter” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of cake batter.

652. “Cake Batter” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

653. SnoWizard did not offer or sell “Cake Batter” flavor concentrate for snowballs at any time prior to 2008.

654. SnoWizard’s own current promotional literature describes the “Cake Batter” flavor concentrate for snowballs as being “New!”.

655. SnoWizard has not sold its “Cake Batter” flavor concentrate exclusively for a sufficient time to acquire distinctiveness or establish secondary meaning.

656. “Cake Batter” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

657. SnoWizard’s false statements regarding rights to the mark CAKE BATTER, the absence of any others’ right to the term, and exclusive use of the term, are a

fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

658. SnoWizard's assertions about CAKE BATTER are fraudulent statements to existing and potential customers, distributors, and competitors, and to the State of Louisiana, as set forth in detail herein.

659. SnoWizard's actions were perpetrated willfully, and with full knowledge of SnoWizard's having no legitimate trademark rights in CAKE BATTER.

660. SnoWizard's actions regarding CAKE BATTER are ongoing and continuing.

661. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling "Cake Batter" and "Yellow Cake Batter" flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

662. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell CAKE BATTER snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

663. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of CAKE BATTER flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

664. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of CAKE BATTER flavor concentrate, and the inability to continue freely selling "Cake Batter" and "Yellow Cake Batter" flavor concentrates, in reliance on SnoWizard's fraudulent assertions of trademark rights.

665. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of CAKE BATTER flavor concentrate, and the inability to continue freely selling “Cake Batter” and “Yellow Cake Batter” flavor concentrates, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

666. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of CAKE BATTER flavor concentrate, and the inability to continue freely selling “Yellow Cake Batter” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

667. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of CAKE BATTER flavor concentrate, and the inability to continue freely selling “Cake Batter” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 15, Civil-RICO Mail & Wire Fraud:
Unauthorized appropriation and assertion of non-existent trademark
rights in CAKE BATTER.**

668. Groups A & Q Allegations are referenced here.

669. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in CAKE BATTER; the identified mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

670. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements,

and by the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

671. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

672. Plaintiffs Raggs, Special T Ice, Eisenmann, Parasol, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

673. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

674. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group R Allegations
Allegations common to Counts 16, 23, 43, 53, 80, 81, 82, & 83;
CHAI LATTEA.

675. The SOUTHERN SNOW brand has offered and sold a "Chai" snowball flavor concentrate since 2007, distributed by Raggs and Special T Ice.

676. SnoWizard did not offer or sell any "Chai Lattea" snowball flavor concentrate at any time before 2008.

677. SnoWizard claims a common-law trademark in the purported mark CHAI LATTEA, as evidenced by, *inter alia*, SnoWizard's placing a "TM" adjacent to the flavor concentrate name in its promotional literature, which are distributed via mail and internet transmissions over interstate wire.

678. SnoWizard's promotional literature describes "Chai Lattea" flavor concentrate as follows: "Chai Lattea™ is our *latte* milk creation of Chai tea. Chai is pronounced as a single syllable and rhymes with *pie*. It is the word for tea in many parts of the world and is a centuries-old beverage. The taste comes from a blend of rare teas, milk exotic spices and pure vanilla extract. Color: Opaque Yellow".

679. “Chai Lattea” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

680. “Chai Lattea” is a *functional* term for a flavor concentrate which produces “Chai Lattea” ready-to-use snowball syrup when used as directed.

681. “Chai Lattea” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of tea and milk.

682. “Chai Lattea” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

683. SnoWizard has not sold its “Chai Lattea” goods exclusively for a sufficient amount of time for the term to acquire distinctiveness or secondary meaning. The goods have only been offered by SnoWizard since approximately 2008, and are not offered exclusively.

684. “Chai Lattea” is generic, functional, and merely descriptive under the common law of trademark, and cannot serve as a trademark.

685. SnoWizard’s claim of a common-law trademark in CHAI LATTEA is therefore unsupported and unsupportable, and is made in bad faith.

686. SnoWizard’s assertions about CHAI LATTEA are fraudulent statements to existing and potential customers, distributors, and competitors.

687. SnoWizard’s actions were perpetrated willfully, and with full knowledge of SnoWizard’s having no legitimate trademark rights in CHAI LATTEA.

688. SnoWizard’s actions regarding CHAI LATTEA are ongoing and continuing.

689. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard’s complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling “Chai” and “Chai Latte” flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

690. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell “Chai” and “Chai

Latte” snowballs to its customers, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

691. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of “Chai” and “Chai Latte” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

692. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of “Chai” and “Chai Latte” flavor concentrate, and the inability to continue freely selling “Chai” and “Chai Latte” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

693. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of “Chai” and “Chai Latte” flavor concentrate, and the inability to continue freely selling “Chai” and “Chai Latte” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

694. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of “Chai” and “Chai Latte” flavor concentrate, and the inability to continue freely selling “Chai” and “Chai Latte” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

695. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of “Chai” and “Chai Latte” flavor concentrate, and the inability to continue freely selling “Chai” and “Chai Latte” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 16, Civil-RICO Mail & Wire Fraud:
Assertion of non-existent trademark rights in CHAI LATTEA.**

696. Groups A & R Allegations are referenced here.

697. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in CHAI LATTEA; plus other communications, of which records are in the sole possession of SnoWizard.

698. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, as set forth herein.

699. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

700. Plaintiffs Parasol, Raggs, Special T Ice, Eisenmann, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

701. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

702. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

**Group S Allegations
Allegations common to Counts 17, 23, 44, 53, 60, 61, 80, 81, 82, & 83;
COOKIE DOUGH.**

703. SnoWizard did not offer or sell any "Cookie Dough" snowball flavor concentrate at any time before 2008.

704. SnoWizard applied for federal trademark registration for COOKIE DOUGH in Class 030, for "food flavorings", on 16 July 2008, in application No. 77524268.

705. Under Lanham Act §71 (15 USC §1141k), a specimen “showing current use of the mark in commerce” is required to be submitted, under oath, with a trademark application. SnoWizard, on 16 July 2008, submitted, as a specimen of use, a label from a bottle of snowball flavor concentrate. The specimen failed to show use of the mark COOKIE DOUGH for “food flavoring” as claimed in the application, but instead showed use of the mark for snowball flavor concentrates.

706. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the COOKIE DOUGH application on 16 July 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

707. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 16 July 2008 that SnoWizard was the owner of the trademark COOKIE DOUGH sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

708. SnoWizard stated to the USPTO on 16 July 2008 that its first use and first use in commerce date for COOKIE DOUGH was 21 April 2007.

709. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 16 July 2008.

710. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2747 for COOKIE DOUGH for “food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections” in Class 30, with a claimed date first used and first used in Louisiana of 21 April 2008.

711. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of COOKIE DOUGH.

712. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

713. SnoWizard was not offering or selling “Cookie Dough” flavor concentrate on 21 April 2007, as claimed in the federal trademark application.

714. SnoWizard did not offer or sell “Cookie Dough” snowball flavor concentrate at any time prior to 2008.

715. SnoWizard’s own promotional literature in 2009 describes the “Cookie Dough” snowball flavor concentrate as being “New!”.

716. The USPTO on 23 October 2008 and 16 June 2009 rejected Defendant’s purported trademark in COOKIE DOUGH as being merely descriptive, and Defendant is required to show *exclusive* use in order to overcome the rejection, making the issue of date of first use and exclusivity material issues in the application.

717. On 16 June 2010, the Trademark Trial and Appeal Board (TTAB) of the USPTO found COOKIE DOUGH to be merely descriptive of food flavorings, and affirmed the refusal to register the trademark.

718. “Cookie Dough” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

719. “Cookie Dough” is a *functional* term for a flavor concentrate which produces “Cookie Dough” ready-to-use snowball syrup when used as directed.

720. “Cookie Dough” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of cookie dough.

721. “Cookie Dough” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

722. SnoWizard’s false statements regarding SnoWizard’s right to the mark COOKIE DOUGH, the absence of any others’ right to the term, exclusive use of the term, identification of goods, and date of first use are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of

the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

723. SnoWizard's false statements regarding COOKIE DOUGH are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

724. SnoWizard's promotional literature, including its internet website entry, identifies the "Cookie Dough" flavor concentrate as having the color "Brown", and the description: "The delicious and playful taste of cookie dough just like Mom used to make but without the mixing bowl".

725. SnoWizard claims a trademark in COOKIE DOUGH by affixing a "TM" to the flavor name in SnoWizard's promotional materials and advertising, which are distributed via mail and internet transmissions over interstate wire.

726. SnoWizard's assertions about COOKIE DOUGH are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and to the State of Louisiana, as set forth in detail herein.

727. SnoWizard's actions were perpetrated willfully, and with full knowledge of SnoWizard's having no legitimate trademark rights in COOKIE DOUGH.

728. SnoWizard's actions regarding COOKIE DOUGH are ongoing and continuing.

729. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling "Cookie Dough" flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

730. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell COOKIE DOUGH snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

731. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of COOKIE DOUGH flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

732. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of COOKIE DOUGH flavor concentrate, and the inability to continue freely selling "Cookie Dough" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

733. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of COOKIE DOUGH flavor concentrate, and the inability to continue freely selling "Cookie Dough" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

734. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and distributors of COOKIE DOUGH flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

735. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of COOKIE DOUGH flavor concentrate, and the inability to continue freely selling "Cookie Dough" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

**Count 17, Civil-RICO Mail & Wire Fraud:
Assertion of non-existent trademark rights in COOKIE DOUGH.**

736. Groups A & S Allegations are referenced here.

737. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in COOKIE DOUGH; plus the identified interstate

wire communications with the USPTO and mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

738. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

739. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

740. Plaintiffs Raggs, Special T Ice, Eisenmann, Parasol, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

741. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

742. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group T Allegations
Allegations common to Counts 18, 23, 45, 53, 62, 63, 80, 81, 82, & 83;
DILL PICKLE.

743. SOUTHERN SNOW brand offered and sold a "Dill Pickle" flavor concentrate since at least 1999, before SnoWizard first offered its "Dill Pickle" flavor concentrate, and nine (9) years before SnoWizard made its Louisiana trademark filing on 25 July 2008. SOUTHERN SNOW "Dill Pickle" is distributed by Raggs and Special T Ice.

744. SnoWizard did not offer or sell any "Dill Pickle" snowball flavor concentrate at any time before 2001.

745. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2748 for DILL PICKLE

for “food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections” in Class 30, with a claimed date first used and date first used in Louisiana of 30 April 1998.

746. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of DILL PICKLE.

747. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

748. SnoWizard did not offer or sell a “Dill Pickle” flavor concentrate in 1998 as claimed, and did not start offering “Dill Pickle” flavor concentrate until 2001.

749. SnoWizard offered and sold a “Dill Pickle” snowball flavor concentrate for at least six (6) years with no indication of any claim of trademark, from 2001 through at least 2007.

750. SnoWizard was aware of the sale by Plaintiffs of “Dill Pickle” snowball flavor concentrate prior to SnoWizard’s offering the same goods. SnoWizard was also aware that its own sale of “Dill Pickle” snowball flavor concentrate only began in 2001. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in DILL PICKLE, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to use the term “Dill Pickle” after they had been selling the goods for several years with no action or protest from SnoWizard.

751. SnoWizard claims a trademark in DILL PICKLE by affixing a “TM” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and internet transmissions over interstate wire.

752. SnoWizard’s promotional literature, including its internet website, identifies the “Dill Pickle” flavor concentrate as having the color “Bright Green”, and the description: “Zowie! *REAL* Dill Pickle™ juice flavor that will make you pucker your lips”.

753. “Dill Pickle” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

754. “Dill Pickle” is a *generic* term for the flavor that tastes like dill pickles.

755. “Dill Pickle” is a *functional* term for a flavor concentrate which produces “Dill Pickle” ready-to-use snowball syrup when used as directed.

756. “Dill Pickle” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of dill pickles.

757. SnoWizard has not sold its “Dill Pickle” flavor concentrate exclusively for a sufficient time to acquire distinctiveness or establish secondary meaning.

758. “Dill Pickle” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

759. SnoWizard’s false statements regarding rights to the mark DILL PICKLE, the absence of any others’ right to the term, date of first use, and exclusive use of the term, are a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

760. SnoWizard’s assertions about DILL PICKLE are fraudulent statements to existing and potential customers, distributors, and competitors, and to the State of Louisiana, as set forth in detail herein.

761. SnoWizard’s actions were perpetrated willfully, and with full knowledge of SnoWizard’s having no legitimate trademark rights in DILL PICKLE.

762. SnoWizard’s actions regarding DILL PICKLE are ongoing and continuing.

763. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard’s complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling “Dill Pickle” flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

764. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell DILL PICKLE snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

765. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of DILL PICKLE flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

766. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of DILL PICKLE flavor concentrate, and the inability to continue freely selling "Dill Pickle" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

767. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of DILL PICKLE flavor concentrate, and the inability to continue freely selling "Dill Pickle" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

768. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and distributors of DILL PICKLE flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

769. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of DILL PICKLE flavor concentrate, and the inability to continue freely selling "Dill Pickle" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

**Count 18, Civil-RICO Mail & Wire Fraud:
Assertion of non-existent trademark rights in DILL PICKLE.**

770. Groups A & T Allegations are referenced here.

771. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in DILL PICKLE plus the identified mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

772. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

773. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

774. Plaintiffs Raggs, Special T Ice, Eisenmann, Parasol, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

775. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

776. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group U Allegations
Allegations common to Counts 19, 23, 48, 53, 70, 71, 80, 81, 82, & 83;
MUDSLIDE.

777. Southern Snow has offered and sold a “Mudslide” snowball flavor concentrate since early 2008, before SnoWizard filed for registration of MUDSLIDE.

778. SnoWizard did not offer or sell any “Mudslide” snowball flavor concentrate at any time before 2008.

779. SnoWizard applied for federal trademark registration for MUDSLIDE in Class 030, for “food flavorings” on 17 July 2008, in application No. 77524270.

780. Under Lanham Act §71 (15 USC §1141k), a specimen “showing current use of the mark in commerce” is required to be submitted, under oath, with a trademark application. SnoWizard, on 17 July 2008, submitted, as a specimen of use, a label from a bottle of snowball flavor concentrate. The specimen failed to show use of the mark MUDSLIDE for “food flavoring” as claimed in the application, but instead showed use of the mark for snowball flavor concentrates.

781. SnoWizard attempted on 23 April 2009 to amend the description of goods for MUDSLIDE to “flavor concentrate for non-nutritional purposes, namely, flavor concentrate for shaved ice confections”, but that amendment was rejected by the USPTO.

782. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the MUDSLIDE application on 17 July 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

783. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 17 July 2008 that SnoWizard was the owner of the trademark MUDSLIDE sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

784. SnoWizard stated to the USPTO on 17 July 2008 that its first use and first use in commerce date for MUDSLIDE was 6 April 2007.

785. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 17 July 2008.

786. Ronald R. Sciortino, on behalf of SnoWizard, applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2753 for MUDSLIDE for “food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections” in Class 30, with a claimed date first used and first used in Louisiana of 6 April 2007.

787. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to ownership of MUDSLIDE.

788. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

789. The USPTO on 23 October 2008 rejected SnoWizard’s purported trademark in “Mudslide” as being merely descriptive, and SnoWizard is required to show a date of first use and a period of *exclusive* use in order to overcome the rejection, making the issues of date of first use and of exclusivity material issues in this application.

790. SnoWizard was not offering or selling “Mudslide” flavor concentrate on 6 April 2007, as claimed in the federal and state trademark applications.

791. SnoWizard did not offer or sell “Mudslide” snowball flavor concentrate at any time prior to 2008.

792. SnoWizard’s own promotional literature in 2009 describes the “Mudslide” snowball flavor concentrate as being “New!”.

793. “Mudslide” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

794. “Mudslide” is a *generic* term for the flavor of the “Mudslide” adult beverage.

795. “Mudslide” is a *functional* term for a flavor concentrate which produces

“Mudslide” ready-to-use snowball syrup when used as directed.

796. “Mudslide” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of a “Mudslide” beverage.

797. “Mudslide” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

798. SnoWizard was aware of the sale by SOUTHERN SNOW brand and other vendors of a “Mudslide” snowball flavor concentrate before Defendant’s first offer and sale. SnoWizard was also aware that it had not been selling “Mudslide” exclusively, or even selling “Mudslide” at all, for a sufficient amount of time to acquire any trademark rights. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in MUDSLIDE, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to use the generic term “Mudslide”.

799. SnoWizard’s false statements regarding SnoWizard’s right to the mark MUDSLIDE, the absence of any others’ right to the term, exclusive use of the term, identification of goods, and date of first use are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

800. SnoWizard’s false statements regarding MUDSLIDE are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

801. SnoWizard’s promotional literature, including its “New Flavors” internet website in 2008, identifies the “Mudslide” flavor concentrate as having the color “Creamy Tan”, and the description: “This new flavor captures the real taste of the

popular drink. Mudslide™ is a blend of cane rum flavor, real coffee, natural cocoa and milk. Pure vanilla extract rounds out the flavor for a really delicious taste”.

802. SnoWizard claims a trademark in MUDSLIDE by affixing a “TM” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and internet transmissions over interstate wire.

803. SnoWizard’s assertions about MUDSLIDE are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and to the State of Louisiana, as set forth in detail herein.

804. SnoWizard’s actions were perpetrated willfully, and with full knowledge of SnoWizard’s having no legitimate trademark rights in MUDSLIDE.

805. SnoWizard’s actions regarding MUDSLIDE are ongoing and continuing.

806. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard’s complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling “Mudslide” flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

807. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell MUDSLIDE snowballs to its customers, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

808. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of MUDSLIDE flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

809. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of MUDSLIDE flavor concentrate, and the inability to continue freely selling “Mudslide” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

810. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of MUDSLIDE flavor concentrate, and the inability to continue freely selling “Mudslide” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

811. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and distributors of MUDSLIDE flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

812. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of MUDSLIDE flavor concentrate, and the inability to continue freely selling “Mudslide” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 19, Civil-RICO Mail & Wire Fraud:
Assertion of non-existent trademark rights in MUDSLIDE.**

813. Groups A & U Allegations are referenced here.

814. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in MUDSLIDE; plus the identified interstate wire communications with the USPTO and mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

815. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

816. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

817. Plaintiffs Raggs, Special T Ice, Eisenmann, Parasol, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

818. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

819. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group V Allegations
Allegations common to Counts 20, 23, 49, 53, 80, 81, 82, & 83;
PRALINE.

820. SOUTHERN SNOW brand has offered and sold a "Praline" snowball flavor concentrate since at least 1986, distributed by Special T Ice since at least 1986 and by Raggs since at least 2000.

821. Plaintiff Parasol has offered and sold a "Cajun Praline" snowball flavor concentrate since at least June 2002, distributed by Raggs and Special T Ice.

822. Eisenmann Products FLAVOR SNOW brand has offered and sold a "Praline" snowball flavor concentrate since at least 1999.

823. SnoWizard offered and sold a "Praline" snowball flavor concentrate for at least twenty-two (22) years with no indication of any claim of trademark or exclusivity, from 1985 through at least 2007.

824. SnoWizard applied for federal trademark registration for PRALINE in Class 030, for "food flavorings" on 15 May 2008, in application No. 77474648.

825. Under Lanham Act §71 (15 USC §1141k), a specimen "showing current use of the mark in commerce" is required to be submitted, under oath, with a trademark application. SnoWizard, on 15 May 2008, submitted, as a specimen of use, a label from a bottle of snowball flavor concentrate. The specimen failed to show use of the

mark PRALINE for “food flavoring” as claimed in the application, but instead showed use of the mark for snowball flavor concentrates.

826. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the PRALINE application on 15 May 2008, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

827. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 15 May 2008 that SnoWizard was the owner of the trademark PRALINE sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

828. SnoWizard stated to the USPTO on 15 May 2008 that its first use and first use in commerce date for PRALINE was 31 May 1985.

829. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 15 May 2008.

830. SnoWizard was aware of the sale by Plaintiffs and other vendors of “Praline” snowball flavor concentrates over several years. SnoWizard was also aware of its own sale of a “Praline” snowball flavor concentrate, without any claim of trademark, over several years. SnoWizard could not have formed a reasonable, good-faith belief that it owned a trademark in PRALINE, as it solemnly declared, nor could it have formed a reasonable, good-faith belief that none of the other vendors had a right to use the generic term “Praline” after they had been selling the goods for several years with no action or protest from SnoWizard.

831. SnoWizard’s promotional literature, including its internet website entry, identifies the “Praline” flavor concentrate as having the color “Golden Brown”, and the description: “Like New Orleans Praline™ candies. Nutty, very sweet Caramel made with Pure Vanilla extract”.

832. “Praline” is a *generic* term for the flavor name of the snowball resulting from using the flavor concentrate as directed, and for the flavor that tastes like pralines.

833. “Praline” is a *functional* term for a flavor concentrate which produces “Praline” ready-to-use snowball syrup when used as directed.

834. “Praline” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of pralines.

835. “Praline” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

836. The USPTO on 12 August 2008 refused SnoWizard’s purported trademark in “Praline” as being descriptive, and SnoWizard is required to show *exclusive* use to overcome the rejection, making the issue of exclusivity material in this application.

837. SnoWizard’s false statements regarding SnoWizard’s right to the mark PRALINE, the absence of any others’ right to the term, and exclusive use of the term, are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

838. The USPTO, in an Office Action issued 26 October 2009, refused the PRALINE application because, *inter alia*, “Praline” is generic for the goods.

839. SnoWizard claims a trademark in PRALINE by affixing a “TM” to the flavor name in SnoWizard’s promotional materials and advertising, which are distributed via mail and interstate wire.

840. SnoWizard’s assertions about PRALINE are fraudulent statements to existing and potential customers, distributors, and competitors, and to the USPTO, as set forth in detail herein.

841. SnoWizard’s actions were perpetrated willfully, and with knowledge of SnoWizard’s having no legitimate trademark rights in PRALINE.

842. SnoWizard’s actions regarding PRALINE are ongoing and continuing.

843. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard's complained-of actions, including but not limited to the costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling "Praline" flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

844. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell PRALINE snowballs to its customers, in reliance on SnoWizard's fraudulent assertions of trademark rights.

845. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and to existing and potential distributors of PRALINE flavor concentrate, and the inability to continue freely selling "Praline" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

846. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of PRALINE flavor concentrate, and the inability to continue freely selling "Praline" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

847. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of PRALINE flavor concentrate, and the inability to continue freely selling "Praline" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

848. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of PRALINE flavor concentrate, and the inability to continue freely selling "Cajun Praline" flavor concentrate, in reliance on SnoWizard's fraudulent assertions of trademark rights.

849. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of PRALINE flavor concentrate, and the inability to continue freely selling “Praline” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 20, Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in PRALINE.**

850. Groups A & V Allegations are referenced here.

851. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in PRALINE; plus the identified interstate wire communications with the USPTO in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

852. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements.

853. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

854. Plaintiffs Southern Snow, Simeon, Inc, Snow Ingredients, Raggs, Special T Ice, Parasol, Eisenmann, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

855. Defendants’ pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

856. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group W Allegations
Allegations common to Counts 21, 23, 35, 36, 53, 72, 73, 80, 81, 82, & 83;
SNOFFREE.

857. SnoWizard has never made any qualifying use in commerce of SNOFFREE, and therefore does not own any trademark rights in SNOFFREE.

858. SnoWizard applied for federal trademark registration for SNOFFREE in Class 030, for “unflavored, unsweetened syrup mixes”, on 5 February 2009, in application No. 77664442, which was granted as Registration No. 3580057 on 18 August 2009.

859. Ronald R. Sciortino, SnoWizard’s President, signed the Declaration in the SNOFFREE application on 5 February 2009, and attested to the truthfulness and accuracy of the statements made, acknowledging the Declaration’s warning “that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration”.

860. Ronald R. Sciortino, on behalf of SnoWizard, stated in a solemn declaration to the USPTO on 15 May 2008 that SnoWizard was the owner of the trademark SNOFFREE sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

861. SnoWizard stated to the USPTO on 5 February 2009 that SnoWizard had been *continuously* using and using in commerce the mark SNOFFREE since 1 November 1994.

862. The application and declaration were sent by SnoWizard to the USPTO via interstate wire, specifically the USPTO electronic filing system, on 5 February 2009.

863. Under Lanham Act §71 (15 USC §1141k), a specimen “showing current use of the mark in commerce” is required to be submitted, under oath, with a trademark application. SnoWizard submitted to the USPTO on 5 February 2009, as a specimen, a computer-generated design for a label— not an actual, usable label— which shows no evidence of being affixed to any goods, and which is in fact an altered version of

the label for Defendant's SNOLITE goods, where only the word "SnoLite" has been replaced by "SnoFree", and where the ingredients and all other information are the same. This specimen showed SNOFREE to be a SNOWIZARD-branded product, not a private labeling.

864. SnoWizard's specimen of the mark SNOFREE submitted to the USPTO on 5 February 2009 shows on its face that the goods are a sugar-free sweetener mix, and not the "unflavored, unsweetened syrup mixes" claimed in the application.

865. SnoWizard applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2754 for SNOFREE for "sugar substitute for baked and frozen desserts, snoballs, snow cone and shaved ice confections" in Class 30, with a claimed date first used and date first used in Louisiana of 16 February 2008.

866. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to the ownership of SNOFREE.

867. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

868. SnoWizard was not using the mark SNOFREE and was not using the mark SNOFREE in commerce on 1 November 1994 or 16 February 2008.

869. SnoWizard has never used the mark SNOFREE, and is not using the mark SNOFREE even at present.

870. SnoWizard previously obtained a federal registration of the mark SNOFREE for "non-flavored syrup mixes for shaved ice confections" in Class 030, Registration No. 2555059, granted 2 April 2002 and cancelled 10 January 2009.

871. Although SnoWizard's cancelled Registration No. 2555059 may be a constructive use of the mark as of the 30 May 2000 filing date, SnoWizard's non-use of the mark for nine years 2000 through 2009 is an abandonment of the mark.

872. SnoWizard's false statement regarding use of the mark SNOFREE and

SnoWizard's falsified specimen purporting to show the mark in use on SnoWizard's goods are a fraud upon the USPTO, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

873. Ronald R. Sciortino, on behalf of SnoWizard, stated in solemn declarations to the USPTO on 5 February 2009 and to the Louisiana Secretary of State on 25 July 2008 that SnoWizard was the owner of the trademark SNOFREE sought to be registered and that no other firm has the right to use the mark in commerce in identical form or in near resemblance.

874. SnoWizard did not own a trademark in SNOFREE at the time of making its solemn declarations because it was not selling or offering goods having the mark SNOFREE at the time of making the declaration nor at any time before or since.

875. SnoWizard knew it did not offer and did not have a trademark in SNOFREE on 5 February 2009 and 25 July 2008 when it made solemn declarations to the contrary.

876. SnoWizard's false statements in its solemn declaration regarding SnoWizard's right to the mark SNOFREE is a fraud upon the USPTO, being a false statement and the withholding of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the USPTO, would have resulted in disallowance of registration.

877. SnoWizard's false statements regarding SNOFREE are also a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

878. "SnoFree", "SnowFree", and "Snow Free" are all pseudo-marks and are substantially the same term.

879. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow made plans to use the name “Snow Free” for their own sugar-free syrup mixes, to be distributed by Plaintiffs Raggs and Special T Ice, relying on the 10 January 2009 cancellation of SnoWizard’s previous Registration No. 2555059, and relying upon SnoWizard’s non-use of the mark for over five years. Such plans by Plaintiffs included the expenditure of time and money in preparing to label and offer the product.

880. Plaintiffs were forced to abandon and recall their projected and prepared-for use of “Snow Free” when SnoWizard was improvidently granted a new Registration No. 3669190 for SNOFREE on 18 August 2009.

881. SnoWizard’s actions were perpetrated willfully, and with knowledge of SnoWizard’s having no legitimate trademark rights in SNOFREE.

882. SnoWizard’s assertions about SNOFREE are fraudulent statements to existing and potential customers, distributors, and competitors, to the USPTO, and to the State of Louisiana, as set forth in detail herein.

883. SnoWizard’s actions regarding SNOFREE are ongoing and continuing.

884. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered damage, cognizable injury, and ascertainable loss as a result of SnoWizard’s actions, including but not limited to the costs of the abandoned and recalled preparations for offering the “Snow Free” product, Plaintiffs’ lost sales of the product, the value of any sales by SnoWizard of the product, if any such sales there be, and the inability to freely sell “Snow Free” product, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

885. Plaintiff Raggs, a distributor of SOUTHERN SNOW brand products, suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and lost opportunities to distribute and resell “Snow Free”, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

886. Plaintiff Special T Ice, a distributor of SOUTHERN SNOW brand products, suffered injury to its business and property, and damages, including but not limited

to lost sales to potential customers and lost opportunities to distribute and resell “Snow Free”, in reliance on SnoWizard’s fraudulent assertions of trademark rights..

887. Plaintiff Plum Street Snoballs, a customer of SOUTHERN SNOW brand, suffered injury to its business and property, and damages, including but not limited to its inability to freely purchase and use “Snow Free”, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 21, Civil-RICO Mail & Wire Fraud:
Assertion of non-existent trademark rights in SNOFREE.**

888. Groups A & W Allegations are referenced here.

889. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in SNOFREE; plus the identified interstate wire communications with the USPTO and mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

890. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs’ customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO and the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

891. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard’s sales and impede competition, using mail and interstate wire, as set forth with specificity above.

892. Plaintiffs Raggs, Special T Ice, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

893. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

894. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Group X Allegations
Allegations common to Counts 22, 23, 51, 53, 76, 77, 80, 81, 82, & 83;
TIRAMISU.

895. SnoWizard sold a snowball flavor concentrate variously named "Tiramisu" or "Tira Misu", from 2001 to 2004, with no claim of trademark or exclusivity. Then SnoWizard did not offer "Tiramisu" or "Tira Misu" in 2005 through 2007. Then SnoWizard re-introduced "Tira Misu" in 2008.

896. SnoWizard applied for and obtained, on 25 July 2008, Louisiana Trade Mark Registration No. 60-2758 for TIRAMISU for "food flavor concentrate for baked and frozen desserts, snoballs and shaved ice confections" in Class 30, with a claimed date first used and date first used in Louisiana of 13 February 2008.

897. Ronald R. Sciortino, on behalf of SnoWizard, submitted a solemn notarized statement on 25 July 2008 to the Louisiana Secretary of State, attesting to the truth and accuracy of the statements made in obtaining Louisiana registration, and to the ownership of TIRAMISU.

898. The application and solemn notarized statement were sent by SnoWizard to the Louisiana Secretary of State via U.S. Mail on or about 25 July 2008.

899. SnoWizard claims a trademark in TIRAMISU by affixing a "TM" to the flavor name in SnoWizard's promotional materials and advertising, which are distributed via mail and internet transmissions over interstate wire.

900. SnoWizard's promotional literature, including its internet website, identifies the "Tiramisu" flavor concentrate as having the color "Light Brown", and the description: "TiramisuTM is an Italian dessert that is world renowned. It consists of sponge cake dipped in espresso, drizzled with rum, layered with mascarpone cream and topped with cocoa powder. If you have never tasted the real dessert, you can now

taste it in our newest flavor concentrate. The flavor is really rich and captures all the tastes of the authentic dessert, even the mascarpone cream finish”.

901. “Tiramisu” is a *generic* term for the flavor name of the snowball that results from using the flavor concentrate as directed.

902. “Tiramisu” is a *functional* term for a flavor concentrate which produces “Tiramisu” ready-to-use snowball syrup when used as directed.

903. “Tiramisu” is merely *descriptive* of a flavor concentrate for producing a snowball having the taste, color, and smell of a tiramisu dessert.

904. SnoWizard’s own promotional literature in the year 2009 describes the TIRAMISU flavor concentrate for snowballs as being “New!”.

905. Defendant has not sold its “Tiramisu” flavor concentrate exclusively for a sufficient time to acquire distinctiveness or establish secondary meaning.

906. “Tiramisu” has not acquired distinctiveness or secondary meaning as a trademark of SnoWizard.

907. SnoWizard’s false statements regarding rights to the mark TIRAMISU, the absence of any others’ right to the term, and exclusive use of the term, are a fraud upon the State of Louisiana, being false statements of material information by SnoWizard, made willfully, in bad faith, and with the intent to obtain a registration to which SnoWizard was not entitled, where the truth of the matter, if disclosed to the State of Louisiana, would have resulted in disallowance of registration.

908. SnoWizard’s assertions about TIRAMISU are fraudulent statements to existing and potential customers, distributors, and competitors, and to the State of Louisiana, as set forth in detail herein.

909. SnoWizard’s actions were perpetrated willfully, and with full knowledge of SnoWizard’s having no legitimate trademark rights in TIRAMISU.

910. SnoWizard’s actions regarding TIRAMISU are ongoing and continuing.

911. Plaintiffs claim damages, cognizable injury, and ascertainable losses resulting from SnoWizard’s complained-of actions, including but not limited to the

costs and lost profits resulting from not being able to offer or sell, and not being able to continue offering and selling “Tiramisu” flavor concentrate to customers without exposure to a claim of trademark infringement from SnoWizard.

912. Plaintiff Plum Street Snoballs suffered injury to its business and property, and damages, including but not limited to its inability to freely sell TIRAMISU snowballs to its customers, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

913. Plaintiff Eisenmann suffered injury to his business and property, and damages, including but not limited lost sales to potential customers and distributors of TIRAMISU flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

914. Plaintiff Raggs suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of TIRAMISU flavor concentrate, and the inability to continue freely selling “Tiramisu” flavor concentrates, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

915. Plaintiff Special T Ice suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers of TIRAMISU flavor concentrate, and the inability to continue freely selling “Tiramisu” flavor concentrates, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

916. Plaintiff Parasol suffered injury to its business and property, and damages, including but not limited to lost sales to potential customers and distributors of TIRAMISU flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

917. Plaintiffs Simeon, Inc., Snow Ingredients, and Southern Snow suffered injury to their business and property, and damages, including but not limited to lost sales to potential customers and to existing and potential distributors of TIRAMISU flavor concentrate, and the inability to continue freely selling “Tiramisu” flavor concentrate, in reliance on SnoWizard’s fraudulent assertions of trademark rights.

**Count 22 Civil-RICO Mail & Wire Fraud:
Fraudulent assertion of trademark rights in TIRAMISU.**

918. Groups A & X Allegations are referenced here.

919. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns a trademark in TIRAMISU; plus the identified mail communications with the State of Louisiana in attempts to obtain the registration to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

920. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

921. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

922. Plaintiffs Parasol, Raggs, Special T Ice, Eisenmann, Simeon, Inc., Snow Ingredients, Southern Snow, and Plum Street Snoballs suffered injury to their businesses and property, and damages, as set forth in detail above.

923. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

924. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

**Count 23, Civil-RICO Extortion, Mail & Wire Fraud:
Extortion, attempted extortion, and fraud against competitors.**

925. Groups A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, & X Allegations are referenced here.

926. The actions of Defendants Ronald R. Sciortino and SnoWizard, as set forth in detail above, comprise extortion and attempted extortion against Plaintiffs, constantly trying, with occasional success, to get the Plaintiffs to give up their legitimate rights to sell snowball equipment and supplies under threats of intellectual-property-rights enforcement, and actual enforcement actions of non-existent and fraudulently obtained intellectual property rights.

927. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and impede competition, using mail and interstate wire, as set forth with specificity above.

928. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and interstate wires described above, consisting of assertions to present and potential customers, distributors, and competitors, that SnoWizard owns patents and registered and unregistered trademarks; the 21 March 2007 posting; "cease and desist" letters; plus the identified interstate wire communications to the USPTO and mail communications to the State of Louisiana in attempts to obtain the registrations to which SnoWizard was not entitled; plus other communications, of which records are in the sole possession of SnoWizard.

929. The fraudulent representations complained of here were relied on by the various Plaintiffs, as set forth herein, and by the Plaintiffs' customers and potential customers, who made purchasing decisions in reliance on the fraudulent statements, and by the USPTO and the State of Louisiana, who granted undeserved trademark rights in reliance on the fraudulent statements, as set forth herein.

930. Ronald R. Sciortino, speaking for SnoWizard, makes constant assertions of SnoWizard owning patents, and trademarks and registered trademarks in a large

number of flavor names, with these assertions being made to actual and potential customers, distributors, and competitors, for the purpose of convincing these participants in the snowball business that SnoWizard has some kind of government-sanctioned exclusive right to sell certain equipment, supplies, and flavor names.

931. Ronald R. Sciortino's and SnoWizard's false assertions of bogus patent and trademark rights are made with knowledge of their falsity, and are made with the intent of misleading customers and distributors into thinking that SnoWizard has legitimate, government-sanctioned rights to exclusive sales of snowball flavor concentrates, ice-shaving machines, equipment, and supplies.

932. Ronald R. Sciortino, acting on behalf of SnoWizard, attempted to obtain, and did obtain, by knowing, intentional, material misstatements to the USPTO and to the State of Louisiana, as set forth with specificity above, patents and trademark registrations that are asserted to laypersons as conferring some kind of government-sanctioned exclusivity, making the SnoWizard products superior to competitors'.

933. Plaintiffs Plum Street Snoballs, Eisenmann, Raggs, Special T Ice, Parasol, Simeon, Inc., Southern Snow, and Snow Ingredients suffered injury to their businesses and property, and damages, as set forth in detail above.

934. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

935. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

**Count 24, Civil-RICO Mail & Wire Fraud:
Fraudulent attempt to remove Yellow Pages advertisement.**

936. Group A Allegations are referenced here.

937. On 11 January 2002, SnoWizard's attorney Raymond G. Areaux, on behalf of SnoWizard, sent to John Robertson, President of BellSouth Advertising and Publishing Corporation, by Federal Express, Airbill No. 792476789580, a letter protesting Southern Snow's Yellow-Pages advertisement, making false assertions

about SnoWizard's intellectual property rights, and demanding that Southern Snow's advertisement not be allowed to be published.

938. BellSouth, in turn, informed Southern Snow of the 11 January 2002 letter of complaint, and required Southern Snow to respond to the complaint that Southern Snow was violating and infringing SnoWizard's alleged intellectual property rights.

939. Many of the false statements made to Bellsouth about the Yellow-Pages advertisement were repeated to the group <Shaved_Ice_Discussion@yahoogroups.com> on 21 March 2007 in a posting via interstate wire by Ronald R. Sciortino.

940. The mail and interstate wire communications used in furtherance of this scheme were the general mailing and electronic communication described above; the 11 January 2002 Federal Express communication from SnoWizard's attorney to BellSouth; the 21 March 2007 posting to <Shaved_Ice_Discussion@yahoogroups.com>; plus other specific communications, of which records are in the sole possession of SnoWizard.

941. BellSouth's policies regarding allowance or disallowance of advertising required that a complainant's valid intellectual property rights be violated in order to disallow a competitor's Yellow-Pages advertising, making SnoWizard's misstatements of valid intellectual property rights material misstatements.

942. SnoWizard, and SnoWizard's attorney, knew that SnoWizard's assertions of valid intellectual property rights were false.

943. The assertions made by SnoWizard to BellSouth on 11 January 2002 were therefore intentional, material misstatements made for the purpose of obtaining a disallowance of SOUTHERN SNOW brand's Yellow-Pages advertising.

944. The fraudulent representations complained of here were relied on by Plaintiffs Simeon, Inc., and Southern Snow, and by BellSouth regarding Yellow-Pages advertising.

945. The actions of Defendants Sciortino and SnoWizard, as set forth in detail above, comprise a fraudulent scheme to unfairly increase SnoWizard's sales and

impede competition, using mail and interstate wire, as set forth with specificity above.

946. Plaintiffs Simeon, Inc., Southern Snow, and Snow Ingredients suffered injury to their businesses and property, and damages, including but not limited to the costs of responding to the false assertions made by SnoWizard.

947. Defendants' pattern of unlawful actions are violative of 18 USC §1962(c), causing injury to Plaintiffs as contemplated by 18 USC §1964(c), as set forth above.

948. Plaintiffs are entitled to relief, including damages, treble damages, and reasonable attorney fees under the civil-RICO statutes.

Federal Patent-Law Claims

Count 25, Patent False Marking.

949. Group B Allegations are referenced here.

950. SnoWizard has falsely claimed "patented" or "patent pending" status on its whole ice-shaving machine even when there were not any patents issued or patents applied-for on the whole or any component of the machine.

951. SnoWizard has also falsely claimed "patented" or "patent pending" status on its whole ice-shaving machine notwithstanding that it had applied for or received patents on only small components of, or improvements to, the machine.

952. SnoWizard has a deceitful purpose for its false marking and false assertions of patents, to cause customers and potential customers to view SnoWizard's ice-shaving machines, and entire product line, to be "patented" and "original", and competitors' machines and products to be infringing, counterfeited knock-offs whose purchase is likely to cause some kind of intellectual-property-rights trouble.

953. Each sale of a falsely-marked machine is an offense under 35 USC §292.

954. 35 USC §292 provides that an entity violating the law "[s]hall be fined not more than \$500 for every such offense".

955. Defendant SnoWizard owes a penalty of \$500 for each falsely-marked ice-shaving machine sold during the relevant period of time, such penalty to be shared among the Plaintiffs and the United States, as provided for in 35 USC §292.

Count 26, Declaratory Judgment, Invalidity of U.S. Patent No. 7,536,871.

956. Group C Allegations are referenced here.

957. SnoWizard publicly used and sold its new ratchet linkage in the U.S., as alleged above, in 2002, more than one year before its earliest patent application date of 6 February 2004.

958. Under 35 USC §102(b), a patent cannot be obtained on an invention that has been used, offered, or sold more than 1 year before the filing of a patent application.

959. SnoWizard's U.S. Patent No. 7,536,871 is invalid because SnoWizard used, offered, and sold the invention in the U.S. in 2002, which was more than one year before the 6 February 2004 earliest priority filing date of the patent application.

960. Ronald R. Sciortino and SnoWizard's "entire delay" in waiting 20 months after the known abandonment of the patent application was not "unintentional" under the guidelines published in the Manual for Patent Examination (MPEP) and invoked on the face of the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR §1.137(b) signed by SnoWizard under duties of candor and of reasonable inquiry.

961. Ronald R. Sciortino and SnoWizard's solemn statement to the USPTO, regarding the "entire delay" being "unintentional" as those terms are defined in the MPEP, was a material misrepresentation because the patent would not have issued if the USPTO had known the truth of the matter.

962. Ronald R. Sciortino and SnoWizard's solemn statement to the USPTO, regarding the "entire delay" being "unintentional" as those terms are defined in the MPEP, was made with the specific intent to deceive the USPTO, because SnoWizard knew the truth of the matter, knew of its duty to reasonably inquire into the truth of the matter, and knew that the published guidelines prevented issuance of the patent in the absence of this false statement being made.

963. Ronald R. Sciortino and SnoWizard's intentional deception on a material matter is inequitable conduct.

964. Plaintiffs are entitled to a declaratory judgment under 28 USC §2201(a) that U.S. Patent No. 7,536,871 for “Icemaker with Improved Cam Assembly” is invalid and unenforceable against Plaintiffs.

965. Plaintiffs are entitled to an order declaring that U.S. Patent No. 7,536,871 is invalid under the on-sale bar of 35 USC §102(b), and is invalid due to the abandonment and the improvidently granted revival of the application resulting from SnoWizard’s inequitable conduct.

966. If deception regarding the inventorship of the new ratchet linkage is proved, Plaintiffs are further entitled to an order declaring that U.S. Patent No. 7,536,871 is invalid for inequitable conduct in misidentifying the inventors.

Count 27, Declaratory Judgment, Invalidity of U.S. Patent No. 7,543,549.

967. Group D Allegations are referenced here.

968. Ronald R. Sciortino and SnoWizard’s “entire delay” in waiting 20 months after the known abandonment of the patent application was not “unintentional” under the guidelines published in the Manual for Patent Examination (MPEP) and invoked on the face of the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR §1.137(b) signed by SnoWizard under duties of candor and of reasonable inquiry.

969. Ronald R. Sciortino and SnoWizard’s solemn statement to the USPTO, regarding the “entire delay” being “unintentional” as those terms are defined in the MPEP, was a material misrepresentation because the patent would not have issued if the USPTO had known the truth of the matter.

970. Ronald R. Sciortino and SnoWizard’s solemn statement to the USPTO, regarding the “entire delay” being “unintentional” as those terms are defined in the MPEP, was made with the specific intent to deceive the USPTO, because SnoWizard knew the truth of the matter, knew of its duty to reasonably inquire into the truth of the matter, and knew that the published guidelines prevented issuance of the patent in the absence of this false statement being made.

971. Ronald R. Sciortino and SnoWizard's intentional deception on a material matter is inequitable conduct.

972. Plaintiffs are entitled to a declaratory judgment under 28 USC §2201(a) that U.S. Patent No. 7,543,459 is invalid and unenforceable against Plaintiffs.

973. Plaintiffs are entitled to an order declaring that U.S. Patent No. 7,543,459 for "Leg Support Assembly for an Icemaker" is invalid due to the abandonment and the improvidently granted revival of the application resulting from SnoWizard's inequitable conduct.

Federal Lanham-Act Claims

Count 28, Trademark Infringement: ORCHID CREAM VANILLA.

974. Group E Allegations are referenced here.

975. Plaintiff Plum Street Snoballs makes this claim for infringement under Lanham Act §43(a) (15 USC §1125(a)) of Plaintiff's unregistered trademark ORCHID CREAM VANILLA, as set forth in detail above.

976. Plaintiff Plum Street Snoballs is entitled, under Lanham Act §35 (15 USC §1117), to recover damages, enhanced damages, profits, and litigation costs, even in the absence of a finding of fraud or willfulness.

Count 29, Trademark Fraudulent Registration: ORCHID CREAM VANILLA.

977. Group E Allegations are referenced here.

978. Defendants Ronald R. Sciortino and SnoWizard have violated Lanham Act §38 (15 USC §1120) by the complained-of actions regarding ORCHID CREAM VANILLA, causing injury and damages to Plaintiffs, as set forth in detail above.

979. Plaintiffs are entitled, under Lanham Act §37 (15 USC §1119), to an order cancelling U.S. Registration No. 2901592 for ORCHID CREAM VANILLA.

Count 30, Trademark Declaratory Judgment: ORCHID CREAM VANILLA.

980. Group E Allegations are referenced here.

981. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in ORCHID CREAM VANILLA.

**Count 31, Trademark Infringement:
SILVER FOX.**

982. Group G Allegations are referenced here.

983. Plaintiffs Eisenmann, Simeon, Inc., and Snow Ingredients, make this claim for infringement under Lanham Act §43(a) (15 USC §1125(a)) of Plaintiffs' unregistered trademark SILVER FOX, as set forth in detail above.

984. Plaintiffs are entitled, under Lanham Act §35 (15 USC §1117), to recover damages, enhanced damages, profits, and litigation costs, even in the absence of a finding of fraud or willfulness.

**Count 32, Trademark Infringement:
SNOW SWEET.**

985. Group I Allegations are referenced here.

986. Plaintiff Parasol makes this claim for infringement under Lanham Act §43(a) (15 USC §1125(a)) of Plaintiff's unregistered trademark SNOW SWEET, as set forth in detail above.

987. Plaintiff is entitled, under Lanham Act §35 (15 USC §1117), to recover damages, enhanced damages, profits, and litigation costs, even in the absence of a finding of fraud or willfulness.

**Count 33, Trademark Fraudulent Registration:
SNOSWEET.**

988. Group I Allegations are referenced here.

989. Defendants Ronald R. Sciortino and SnoWizard have violated Lanham Act §38 (15 USC §1120) by the complained-of actions regarding SNOSWEET, causing injury and damages to Plaintiffs, as set forth in detail above.

990. Plaintiffs are entitled, under Lanham Act §37 (15 USC §1119), to an order cancelling U.S. Registration No. 3580056 for SNOSWEET.

**Count 34, Trademark Declaratory Judgment:
SNOSWEET.**

991. Group I Allegations are referenced here.

992. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in SNOSWEET.

**Count 35, Trademark Fraudulent Registration:
SNOFREE.**

993. Group W Allegations are referenced here.

994. Defendants Ronald R. Sciortino and SnoWizard have violated Lanham Act §38 (15 USC §1120) by the complained-of actions regarding SNOFREE, causing injury and damages to Plaintiffs, as set forth in detail above.

995. Plaintiffs are entitled, under Lanham Act §37 (15 USC §1119), to an order cancelling U.S. Registration No. 3580056 for SNOFREE.

**Count 36, Trademark Declaratory Judgment:
SNOFREE.**

996. Group W Allegations are referenced here.

997. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in SNOFREE.

**Count 37, Trademark Fraudulent Registration:
HURRICANE.**

998. Group J Allegations are referenced here.

999. Defendants Ronald R. Sciortino and SnoWizard have violated Lanham Act §38 (15 USC §1120) by the complained-of actions regarding HURRICANE, causing injury and damages to Plaintiffs, as set forth in detail above.

1000. Plaintiffs are entitled, under Lanham Act §37 (15 USC §1119), to cancellation of U.S. Registration No. 3540276 for HURRICANE.

**Count 38, Trademark Declaratory Judgment:
HURRICANE.**

1001. Group J Allegations are referenced here.

1002. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in HURRICANE.

**Count 39, Trademark Declaratory Judgment:
BUTTERCREAM.**

1003. Group O Allegations are referenced here.

1004. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in BUTTERCREAM.

**Count 40 Trademark Declaratory Judgment:
BUTTERED POPCORN.**

1005. Group P Allegations are referenced here.

1006. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in BUTTERED POPCORN.

**Count 41, Trademark Declaratory Judgment:
CAKE BATTER.**

1007. Group Q Allegations are referenced here.

1008. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in CAKE BATTER.

**Count 42, Trademark Declaratory Judgment:
CAJUN RED HOT.**

1009. Group M Allegations are referenced here.

1010. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in CAJUN RED HOT.

**Count 43, Trademark Declaratory Judgment:
CHAI LATTEA.**

1011. Group R Allegations are referenced here.

1012. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in CHAI LATTEA.

**Count 44, Trademark Declaratory Judgment:
COOKIE DOUGH.**

1013. Group S Allegations are referenced here.

1014. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in COOKIE DOUGH.

**Count 45, Trademark Declaratory Judgment:
DILL PICKLE.**

1015. Group T Allegations are referenced here.

1016. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in DILL PICKLE.

**Count 46, Trademark Declaratory Judgment:
GEORGIA PEACH.**

1017. Group N Allegations are referenced here.

1018. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in GEORGIA PEACH.

**Count 47, Trademark Declaratory Judgment:
KING CAKE.**

1019. Group K Allegations are referenced here.

1020. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in KING CAKE.

**Count 48, Trademark Declaratory Judgment:
MUDSLIDE.**

1021. Group U Allegations are referenced here.

1022. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in MUDSLIDE.

**Count 49, Trademark Declaratory Judgment:
PRALINE.**

1023. Group V Allegations are referenced here.

1024. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in PRALINE.

**Count 50, Trademark Declaratory Judgment:
SNOBALL.**

1025. Group H Allegations are referenced here.

1026. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in SNOBALL.

**Count 51, Trademark Declaratory Judgment:
TIRAMISU.**

1027. Group X Allegations are referenced here.

1028. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in TIRAMISU.

**Count 52, Trademark Declaratory Judgment:
WHITE CHOCOLATE & CHIPS.**

1029. Group L Allegations are referenced here.

1030. In light of the matters set forth in detail above, Plaintiffs are entitled to a declaratory judgment, under 28 USC §2201(a) of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights in WHITE CHOCOLATE & CHIPS.

Count 53, Lanham-Act Unfair Competition.

1031. Groups A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, & X Allegations are referenced here.

1032. Defendants Ronald R. Sciortino and SnoWizard's complained-of fraudulent assertions of patent and trademark rights, to existing and potential customers, distributors, and competitors, as set forth in detail above, causing the injury and damages set forth in detail above, are unfair competition under Lanham Act §43(a) (15 USC §1125(a)).

1033. Plaintiffs are entitled, under Lanham Act §35 (15 USC §1117), to recover damages, enhanced damages, profits, and litigation costs, even in the absence of a finding of fraud or willfulness.

Federal Exceptional Case

1034. Plaintiffs are entitled to reasonable attorney fees in this exceptional case under patent law at 35 USC §285.

1035. Plaintiffs are entitled under Lanham Act §35 (15 USC §1117) to recover reasonable attorney fees for Defendants' fraudulent and/or willful acts which make this case exceptional.

Louisiana State-Law Claims

**Count 54, Louisiana Trademark Cancellation:
BUTTERED POPCORN.**

1036. Group P Allegations are referenced here.

1037. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2743 for BUTTERED POPCORN.

**Count 55, Louisiana Damages for Fraudulent Trademark Registration:
BUTTERED POPCORN.**

1038. Groups A & P Allegations are referenced here.

1039. In light of the allegations and damages set forth in detail above, Plaintiffs

are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2743 for BUTTERED POPCORN.

**Count 56, Louisiana Trademark Cancellation:
CAJUN RED HOT.**

1040. Group M Allegations are referenced here.

1041. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2744 for CAJUN RED HOT.

**Count 57, Louisiana Damages for Fraudulent Trademark Registration:
CAJUN RED HOT.**

1042. Groups A & M Allegations are referenced here.

1043. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2744 for CAJUN RED HOT.

**Count 58, Louisiana Trademark Cancellation:
CAKE BATTER.**

1044. Group Q Allegations are referenced here.

1045. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2745 for CAKE BATTER.

**Count 59, Louisiana Damages for Fraudulent Trademark Registration:
CAKE BATTER.**

1046. Groups A & Q Allegations are referenced here.

1047. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2745 for CAKE BATTER.

**Count 60, Louisiana Trademark Cancellation:
COOKIE DOUGH.**

1048. Group S Allegations are referenced here.

1049. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2747 for COOKIE DOUGH.

**Count 61, Louisiana Damages for Fraudulent Trademark Registration:
COOKIE DOUGH.**

1050. Groups A & S Allegations are referenced here.

1051. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2747 for COOKIE DOUGH.

**Count 62, Louisiana Trademark Registration Cancellation:
DILL PICKLE.**

1052. Group T Allegations are referenced here.

1053. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2748 for DILL PICKLE.

**Count 63, Louisiana Damages for Fraudulent Trademark Registration:
DILL PICKLE.**

1054. Groups A & T Allegations are referenced here.

1055. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2748 for DILL PICKLE.

**Count 64, Louisiana Trademark Cancellation:
GEORGIA PEACH.**

1056. Group N Allegations are referenced here.

1057. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2749 for GEORGIA PEACH.

**Count 65, Louisiana Damages for Fraudulent Trademark Registration:
GEORGIA PEACH.**

1058. Groups A & N Allegations are referenced here.

1059. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2749 for GEORGIA PEACH.

**Count 66, Louisiana Trademark Cancellation:
HURRICANE.**

1060. Group J Allegations are referenced here.

1061. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2751 for HURRICANE.

**Count 67, Louisiana Damages for Fraudulent Trademark Registration:
HURRICANE.**

1062. Groups A & J Allegations are referenced here.

1063. In light of the matters and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2751 for HURRICANE.

**Count 68, Louisiana Trademark Cancellation:
KING CAKE.**

1064. Group K Allegations are referenced here.

1065. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-3067 for KING CAKE.

**Count 69, Louisiana Damages for Fraudulent Trademark Registration:
KING CAKE.**

1066. Groups A & K Allegations are referenced here.

1067. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-3067 for KING CAKE.

**Count 70, Louisiana Trademark Cancellation:
MUDSLIDE.**

1068. Group U Allegations are referenced here.

1069. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2753 for MUDSLIDE.

**Count 71, Louisiana Damages for Fraudulent Trademark Registration:
MUDSLIDE.**

1070. Groups A & U Allegations are referenced here.

1071. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2753 for MUDSLIDE.

**Count 72, Louisiana Trademark Cancellation:
SNOFREE.**

1072. Group W Allegations are referenced here.

1073. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2754 for SNOFREE.

**Count 73, Louisiana Damages for Fraudulent Trademark Registration:
SNOFREE.**

1074. Groups A & W Allegations are referenced here.

1075. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2754 for SNOFREE.

**Count 74, Louisiana Trademark Cancellation:
SNOSWEET.**

1076. Group I Allegations are referenced here.

1077. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2796 for SNOSWEET.

**Count 75, Louisiana Damages for Fraudulent Trademark Registration:
SNOSWEET.**

1078. Groups A & I Allegations are referenced here.

1079. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2796 for SNOSWEET.

**Count 76, Louisiana Trademark Cancellation:
TIRAMISU.**

1080. Group X Allegations are referenced here.

1081. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 60-2758 for TIRAMISU.

**Count 77, Louisiana Damages for Fraudulent Trademark Registration:
TIRAMISU.**

1082. Groups A & X Allegations are referenced here.

1083. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 60-2758 for TIRAMISU.

**Count 78 Louisiana Trademark Registration Cancellation:
WHITE CHOCOLATE & CHIPS.**

1084. Group L Allegations are referenced here.

1085. In light of the allegations set forth in detail above, Plaintiffs are entitled under La. R.S. 51:219(4) to an order cancelling Louisiana Trade Mark Registration No. 59-4008 for WHITE CHOCOLATE & CHIPS.

**Count 79, Louisiana Damages for Fraudulent Trademark Registration:
WHITE CHOCOLATE & CHIPS.**

1086. Groups A & L Allegations are referenced here.

1087. In light of the allegations and damages set forth in detail above, Plaintiffs are entitled under La R.S. 51:221 to damages in consequence of SnoWizard's fraudulently obtained Louisiana Trade Mark Registration No. 59-4008 for WHITE CHOCOLATE & CHIPS.

Count 80, Louisiana Unfair Competition & Business Practices.

1088. Groups A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, & X Allegations are referenced here.

1089. Defendants Sciortino and SnoWizard's complained-of fraudulent assertions of patent and trademark rights, to existing and potential customers, distributors, and competitors, as set forth in detail above, causing the ascertainable losses, injury, and damages set forth in detail above, are unfair competition and violations of the Louisiana Unfair Trade Practices Act (LUTPA), La. R.S. 51:1405, *et seq.*

1090. Louisiana Plaintiffs Plum Street Snoballs, Special T Ice, Parasol Flavors, Simeon, Inc., Southern Snow, and Snow Ingredients are entitled, under the LUTPA, to recover damages for Defendants' actions, even in the absence of a finding of fraud or willfulness.

1091. Louisiana Plaintiffs Plum Street Snoballs, Special T Ice, Parasol Flavors, Simeon, Inc., Southern Snow, and Snow Ingredients are entitled, under the LUTPA, to recover treble damages and reasonable attorney fees for Defendants' fraudulent or willful actions.

Count 81, Louisiana Civil Code Article 2315 Damages.

1092. Groups A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, & X Allegations are referenced here.

1093. Defendants Ronald R. Sciortino and SnoWizard are liable under Louisiana Civil Code Article 2315 for damages caused by the complained-of fraudulent assertions of patent and trademark rights, to existing and potential customers, distributors, and competitors, as set forth in detail above.

Texas State-Law Claims

Count 82, Texas Unfair Competition & Business Practices.

1094. Groups A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, & X Allegations are referenced here.

1095. Defendants Ronald R. Sciortino and SnoWizard are liable under the Texas Business & Commerce Code, Title 2, Chapters 16 & 17, and the Texas common-law of unfair competition, to the Texas Plaintiffs for damages caused by the complained-of fraudulent assertions of patent and trademark rights, to existing and potential customers, distributors, and competitors, as set forth in detail above.

Count 83, Texas Declaratory Judgment.

1096. Groups A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, & X Allegations are referenced here.

1097. In light of the matters set forth in detail above, Texas Plaintiffs are entitled to a declaratory judgment, under Tex. Civ. Prac. & Rem. Code Ann. § 37.004, of the invalidity and unenforceability of Defendant SnoWizard's purported trademark rights.

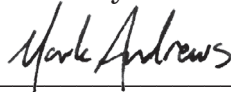
Jury Demand

1098. Plaintiffs demand trial by jury of all issues so triable.

WHEREFORE Plaintiffs Plum Street Snoballs, Theodore Eisenmann, Raggs Supply, LP, Special T Ice Co., Inc., Parasol Flavors, LLC, Simeon, Inc., Southern Snow Mfg. Co., Inc., and Snow Ingredients, Inc., pray that, after due proceedings, the Court render judgment against Defendants SnoWizard, Inc., and Ronald R. Sciortino, for damages, treble damages, costs, reasonable attorney fees, and injunctive and other equitable relief, under federal civil-RICO, patent, and Lanham-Act laws, Louisiana law, Texas law, and any other equitable or legal remedies authorized by law.

RESPECTFULLY SUBMITTED:

Attorney for Plaintiffs



Mark Edw. Andrews

Louisiana Bar No. 26172

Andrews Arts & Sciences Law, LLC

7104 Coliseum St.

New Orleans, LA 70118

504-383-3632

mea@mealaw.com