



RE: Trailblazer Food Products, Inc. v. Silgan White Cap LLC - Case No. 3:17-cv-00417-AC
Parker, Joel

to:

Parker, Christopher, John_Acosta@ord.uscourts.gov

11/13/2017 04:21 PM

Cc:

"Anderson, Dave", "Gibson, Debbie", "paul_gale@ord.uscourts.gov", "Xochihua, Paul R.",
"Keller, Rayna L."

Hide Details

From: "Parker, Joel" <JParker@SCHWABE.com> Sort List...

To: "Parker, Christopher" <cparker@davisrothwell.com>, "John_Acosta@ord.uscourts.gov"
<John_Acosta@ord.uscourts.gov>,

Cc: "Anderson, Dave" <DAnderson@SCHWABE.com>, "Gibson, Debbie"

<DGibson@SCHWABE.com>, "paul_gale@ord.uscourts.gov"

<paul_gale@ord.uscourts.gov>, "Xochihua, Paul R." <PXOCHIHUA@davisrothwell.com>,

"Keller, Rayna L." <rkeller@davisrothwell.com>

3 Attachments



Specimen Redacted PSR.PDF 6_SWC000224_image.pdf

Judge Acosta. My understanding from the Court's order today is that the court has taken under advisement the issue of what constitutes "work product" for the purpose of the parties' internal communications. We do not intend to respond further unless instructed by the Court. With respect to the PSR issue, I wanted to give the Court some additional information that I hope will be of assistance in resolving this issue. As I indicated at the hearing, the PSR data that Trailblazer seeks is relevant to determine whether Silgan designed the Trailblazer lid correctly by applying a one layer coating instead of two layers. The other customer PSRs are relevant to determine if Silgan followed its own procedures and to test witness testimony about why the Trailblazer lid had one coat.

I've included two documents with this email. The document titled "Specimen Redacted PSR" is the objecting customer's proposed PSR with redactions. The problem with the attached redactions is that they go backwards. Not only do they omit the pH field on page 2, which is relevant to whether the acidity levels and corrosive nature of the applicable product were similar, but more importantly, they redact the Reverse Coating field on page 4 which indicates the type of coating and number of layers that Silgan specified. That is, from these redactions Trailblazer can't determine what coating was applied and how many layers. Without that information, Trailblazer cannot determine whether the comparative closure has a comparative coating.

The second document that is attached (SWC000224) is an example of a PSR that was previously produced by Silgan, which redacted the customer (a different customer) information. The PSR redactions in this document allow Trailblazer to know everything it needs to know – disclosed pH, bisulfate disclosure, alcohol, vinegar, and number of coatings selected by Silgan – except the PSR redactions do not allow Trailblazer to ascertain the substance held by the container because Silgan's definition of Jams is not necessarily consistent with the CFR's standard of identity for these terms. This matters because Trailblazer cannot meaningfully compare the lid designs unless it knows the substance held by the comparable container.

Although Trailblazer wishes to respect the undisclosed customer's desire to protect confidential information, the PSR form is important to Trailblazer's investigation in this action. At the hearing I suggested a two-step

alternative that will work for Trailblazer, and I believe Silgan. First, the objecting customer's PSRs would be produced with redactions that are consistent with the enclosed document SWC 000224. That is, they would redact the customer identity but disclose the relevant information that is necessary for Trailblazer to determine what coating should be applied according to Silgan's testimony and procedure, and what coating was actually specified. Second, Silgan's counsel would inform Trailblazer's attorney as to how the substance being packaged is actually marketed to the consumer. For example, if it sits on the shelf as grape jelly, or raspberry preserves, or mint jelly, etc.

Of course, in addition to the above, Trailblazer stipulates that any disclosure shall be designated confidential pursuant to the Court's previously entered protective order and Trailblazer will be bound by the restrictions set forth in that order.

Please let me know if we can provide any additional information. Thanks.

Joel Parker

Schwabe Williamson & Wyatt

Shareholder

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From: Parker, Christopher [<mailto:cparker@davisrothwell.com>]

Sent: Friday, November 10, 2017 3:43 PM

To: John_Acosta@ord.uscourts.gov

Cc: Anderson, Dave <DAnderson@SCHWABE.com>; Gibson, Debbie <DGibson@SCHWABE.com>; Parker, Joel <JParker@SCHWABE.com>; 'paul_gale@ord.uscourts.gov' <paul_gale@ord.uscourts.gov>; Xochihua, Paul R. <PXOCHIHUA@davisrothwell.com>; Keller, Rayna L. <rkeller@davisrothwell.com>

Subject: RE: Trailblazer Food Products, Inc. v. Silgan White Cap LLC - Case No. 3:17-cv-00417-AC

Judge Acosta:

Per the Court's Order, this email is to report that the parties and the customer were not able to reach an agreement regarding the proposed redacted PSR.

I have not copied the customer on this email, but I will send them a copy separately and will let them know once we receive instruction from the Court on how to proceed from here. Thank you.

Chris

From: Parker, Christopher

Sent: Friday, November 10, 2017 11:34 AM

To: 'John_Acosta@ord.uscourts.gov' <John_Acosta@ord.uscourts.gov>

Cc: Anderson, Dave <DAnderson@SCHWABE.com>; Gibson, Debbie <DGibson@SCHWABE.com>; Parker, Joel <JParker@SCHWABE.com>; 'paul_gale@ord.uscourts.gov' <paul_gale@ord.uscourts.gov>; Xochihua, Paul R.

<PXOCHIHUA@davisrothwell.com>; Keller, Rayna L. <rkeller@davisrothwell.com>

Subject: Trailblazer Food Products, Inc. v. Silgan White Cap LLC - Case No. 3:17-cv-00417-AC

Dear Judge Acosta and Counsel:

Attached is Silgan's response to Trailblazer's motion to compel, with the referenced declarations and exhibits. We will file this shortly.

We also wanted to let Your Honor and Counsel know that we followed up to see if there were any additional internal correspondence from before or after 11/14/16. We received some additional correspondence, and we are in the process of reviewing. In the event there is more to produce from before 11/14/16, we plan to produce to counsel ASAP (likely today) per the discussion at the hearing last Friday.

We will notify the Court if there is any potential additional internal correspondence from on or after 11/14, since those may need to be added to the *in camera* review materials (*i.e.*, potentially may not have been included on the thumb drive provided last Friday for Your Honor's *in camera* review). Thank you.

Christopher M. Parker
ATTORNEY IN OREGON & WASHINGTON

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Package Specification Review - Rev 24	No. 15-056-M
Metal (Steel)	
CAS TO COMPLETE THIS SECTION (ALL GREEN SHADED CELLS)	

SUBMITTED BY (CAS/Sales Rep): Blake Windeler

CAS EXT. # : _____ DATE: 07/30/15

CUSTOMER: REDACTION

CUSTOMER CONTACT: REDACTION CUSTOMER PHONE: REDACTION

BUSINESS INFORMATION

First Time Order _____ New Product/Current Customer _____

CUSTOMER INFORMATION

Closure Material: Metal (Steel)

Customer: REDACTION Size: 58 Type: RTB

Location: REDACTION Silgan COC#: _____

Product: Preserves + Honey Product End Use Code: 29420

Initial Order Quantity: _____ Estimated Annual Volume: _____

Date Closures Needed: _____

Special Issues: New product for current REDACT design REDACT 58mm RTB. Grape Flavor.

THIS SECTION TO BE COMPLETED BY PSR ADMINISTRATOR (ALL YELLOW SHADED CELLS)

STATUS: APPROVED

PSR No.: 15-056-M

DATE: 8/3/15 INITIALS: J.C.

COMMENTS:

Package Specification Review - Rev 24
Metal (Steel)

No. 15-056-M

CUSTOMER SECTION- PLEASE COMPLETE ALL BLUE CELLS ON PAGES 2& 3
CLICK ON EACH BLUE CELL FOR DESCRIPTION OF WHAT IS REQUIRED
CLICK ON DOWN ARROW (▼) FOR LIST OF CHOICES

CUSTOMER: REDACTION

DATE: 7/30/15

CLOSURE INFORMATION

Customer Project Name: Fruit and Honey - Grape Flavor

Size/Type: 58RTB

Cap Shell Color: _____

Is there a design on the face? Yes _____ Type: Printed

Are there prints on the reverse(UTC)? No

Special Instructions: Print according to artwork layout

CONTAINER INFORMATION

Container Type: Glass

Finish Number: 58-2020

(Please include copy of finish drawing if not a GPI or Silgan White Cap number)

Manufacturer: REDACT

Capacity (volume): 231.3 ml

Comments: _____

PRODUCT INFORMATION

(Click Yes/No for each item and fill in blanks with details)

Oil or Fat on Surface? No _____

Beverage? No _____

Dietetic or Low Caloric? No

pH? pH 4.6 or Below _____

Actual pH if known: REDACT

Vinegar Present? No _____

Sodium Bisulfite (SO₂) Present? No _____

Alcohol Present? No

Shelf Life of Packed Product? REDACT

FDA FOOD CATEGORIES

Type II: Acidic Aqueous Products; May Contain Salt or Sugar or Both, and Including Oil in Water
Emulsions of Low or High Fat Content

FDA CONDITIONS OF USE

C. Hot filled or pasteurized above 150 deg. F

Package Specification Review - Rev 24	No. 15-056-M
Metal (Steel)	
CUSTOMER SECTION- PLEASE COMPLETE ALL BLUE CELLS ON PAGES 2& 3 BY CLICKING ON CELL FOR INSRUCTIONS AND ON DOWN ARROW (▼) FOR CHOICES	

SEALING INFORMATION

Packer Name and Address: **REDACTION**

Per Cent of Headspace (not in inches): **REDACT** Product Fill Temperature: **REDACTI**

How Applied? Capper With Steam
 Type of Capper Straight_Line

Out of Capper Vacuum (in-Hg): **REDACT**

PACKAGING PROCESS (Pick Only One From Drop-Down Box Below)

03 - Pasteurization - Continuous or Open Bath. For Acid Products.

Water Temp: **REDA** Pasturization Time: **REDACTI** Product Temp: **REDACTI**

Finished Package Vacuum (in-Hg): **REDACT**

Are Packages Tray Packed? Yes

How many pallets high? 4

Trays per layer? 28

Weight per Pallet of Product (Lbs.): **REDACT**

How many packages per tray? 8

Layers per pallet? 10

Trays per pallet: 280

WAREHOUSE STORAGE CONDITIONS

Temperature ? Ambient

Humidity ? Dry

RETAIL DISPLAY CONDITIONS

Temperature ? Ambient

Humidity ? Dry

Special warehouse, shipping or display issues: _____

Is regulatory compliance other than FDA required? No

SUBMITTER Customer Contact Name & Title: **REDACTION**

Date Information Submitted: 7/30/15

Mailing Address: **REDACTION**

Customer Phone: **REDACTION**

E-mail Address: _____

When completed PSR Administrator will place on PSR "Share Point" site in PENDING folder

Package Specification Review - Rev 24

No. 15-056-M

Metal (Steel)

SILGAN WHITE CAP LLC SUMMARY

THIS SECTION TO BE COMPLETED BY PSR TEAM AND REVIEWED BY PSR REVIEW COMMITTEE FILL IN ALL TAN COLORED CELLS

PSR Team

	<u>Approved</u>	<u>Date</u>
Bob Blazick	Bob Blazick	07/31/15
Art Hurley	Art Hurley	08/03/15
Cathy Brady	Cathy Brady	08/03/15
Bill Kapolas	WJKapolas	08/03/15

CLOSURE INFORMATION

Customer: REDACTION
 Size/Type: 58RTB COC#: _____
 Product: Preserves + Honey End Use Code: _____
 Face/ Reverse Design Requirements: #NAME? _____
 Special Instructions: Print according to artwork layout _____
 Packing Process: 03 - Pasteurization - Continuous or Open Bath. For Acid Products. _____
 Compound: 765

Cap Shell Color: _____ Steel Coat: REDACTION Steel Weight.: _____
 Face System: _____ Face Coatings: REDACTION _____
 Reverse System: _____ Reverse Coatings: _____
 Button? Yes Down Flip (In. Hg): _____

CONTAINER INFORMATION

Container Type: Glass
 Finish Number: 58-2020
 Manufacturer: REDACTI Capacity (volume): 231.3 ml
 Comments: _____

SEALING INFORMATION

Per Cent of Headspace (not in inches): REDACTIO Product Fill Temperature: REDACTION
 How Applied? Capper With Steam Type of Capper Straight Line
 Out of Capper Vacuum(In-Hg) REDACTION
 Finished Package Vacuum(In-Hg) _____
 Comments: _____

**Package Specification Review - Rev 24
Composite**

No. 16-106-C

CAS TO COMPLETE THIS SECTION (ALL GREEN SHADED CELLS)

SUBMITTED BY (CAS/Sales Rep): Kelli Miller

CAS EXT. #: 805-453-8798

DATE: 08/23/16

CUSTOMER: [REDACTED]

CUSTOMER CONTACT: [REDACTED]

CUSTOMER PHONE: [REDACTED]

BUSINESS INFORMATION

First Time Order

New Product/Current Customer

CUSTOMER INFORMATION

Closure Material: Composite

Customer: [REDACTED]

Size: 63 **Type:** BDP

Location: [REDACTED]

Silgan COC#: [REDACTED]

Product: Jams

Product End Use Code: [REDACTED]

Initial Order Quantity: 304,000

Estimated Annual Volume: 304,000

Date Closures Needed: [REDACTED]

Special Issues: None

THIS SECTION TO BE COMPLETED BY PSR ADMINISTRATOR (ALL YELLOW SHADED CELLS)

STATUS: APPROVED

PSR No.: 16-106-C

DATE: 8/26/16

INITIALS: J.C.

COMMENTS:

[REDACTED COMMENTS]

Composite

**CUSTOMER SECTION- PLEASE COMPLETE ALL BLUE CELLS ON PAGES 2& 3
 CLICK ON EACH BLUE CELL FOR DESCRIPTION OF WHAT IS REQUIRED
 CLICK ON DOWN ARROW (▼) FOR LIST OF CHOICES**

CUSTOMER: [REDACTED]

DATE: 7/24/15

CLOSURE INFORMATION

Customer Project Name: Red/gold caps

Size/Type: 63BDP

Fitment Color: Red

Disk Color: Gold

Is there a design on the face? No

Are there prints on the reverse(UTC)? No

Special Instructions: none

CONTAINER INFORMATION

Container Type: Plastic

Plastic Type: PET

Finish Number: [REDACTED]

(Please include copy of finish drawing if not a CCMA or Silgan White Cap number)

Manufacturer: Graham Pkg

Capacity (volume): 46oz

Comments: Finish dimension specification E=2.347+/-0.015", T=2.444+/-0.015", H1=0.879+/-0.015"

PRODUCT INFORMATION

(Click Yes/No for each item and fill in blanks with details)

Oil or Fat on Surface? No

Beverage? No

pH? 2.8-3.3

Actual pH if known: 2.8-3.3

Vinegar Present? No

Sodium Bisulfite (SO₂) Present? No

Alcohol Present? No

Shelf Life of Packed Product? 1 Year

FDA FOOD CATEGORIES

Type II: Acidic Aqueous Products; May Contain Salt or Sugar or Both, and Including Oil in Water Emulsions of Low or High Fat Content

FDA CONDITIONS OF USE

C. Hot filled or pasteurized above 150 deg. F

Composite

CUSTOMER SECTION- PLEASE COMPLETE ALL BLUE CELLS ON PAGES 2& 3 BY CLICKING ON CELL FOR INSRUCTIONS AND ON DOWN ARROW (▼) FOR CHOICES

SEALING INFORMATION

Packer Name and Address

Per Cent of Headspace (not in inches): 4.00%

Product Fill Temperature: 180F

How Applied? Capper With Steam

Type of Capper Rotary

Capper Mfg: Zalkin

Chuck Type: Segmented Out of Capper Vacuum (in-Hg): 0"

PACKAGING PROCESS (Pick Only One From Drop-Down Box Below)

02- Hot Fill (For Acid Products)- B. Hold & Force Cool

Finished Package Vacuum (in-Hg): <5"

Are Packages Tray Packed? No

WAREHOUSE STORAGE CONDITIONS

Temperature ? Ambient

Humidity ? Dry

RETAIL DISPLAY CONDITIONS

Temperature ? Ambient

Humidity ? Dry

Special warehouse, shipping or display issues: None

Is regulatory compliance other than FDA required? No

SUBMITTER Customer Contact Name & Title:

Date Information Submitted: 7/24/15

Mailing Address:

Customer Phone:

E-mail Address:

When completed PSR Administrator will place on PSR "Share Point" site in PENDING folder

Composite

SILGAN WHITE CAP LLC SUMMARY

THIS SECTION TO BE COMPLETED BY PSR TEAM AND REVIEWED BY PSR REVIEW COMMITTEE FILL IN ALL TAN COLORED CELLS

PSR Team

	<u>Approved</u>	<u>Date</u>
Bob Blazick	Bob Blazick	08/26/16
Darren Neputy	Darren Neputy	08/26/16
Brad Kiss	BCKiss	08/25/16
Art Hurley	Art Hurley	08/25/16

CLOSURE INFORMATION

Customer: XXXXXXXXXX
 Size/Type: 63BDP COC#: _____ Disk #: _____

Product: Jams End Use Code: XXXXXXXXXX
 Face/ Reverse Design Requirements: No Design on Face or Reverse

Special Instructions: none

Packing Process: 02- Hot Fill (For Acid Products)- B. Hold & Force Cool
 Compound: 146 Fitment Resin: M90RP001 Fitment #: XXXXXXXXXX

Lube Added: No

Cap Shell/Fitment Color: Red Colorant #: XXXXXXXXXX %LDR XXXXXXXXXX

Disk Color: Gold Steel Coat: TFS Steel Weight.: XXXXXXXXXX

Face System: XXXXXXXXXX Face Coatings: G.27.7 O.93.5 XXXXXXXXXX

Reverse System: XXXXXXXXXX Reverse Coatings: S.C.12.3 V.50.5 XXXXXXXXXX

Button? No

CONTAINER INFORMATION

Container Type: Plastic Plastic Type: PET

Finish Number: _____

Manufacturer: Graham Pkg Capacity (volume): 46oz

Comments: Finish dimension specification E=2.347+/-0.015", T=2.444+/-0.015", H1=0.879+/-0.015

SEALING INFORMATION

Per Cent of Headspace (not in inches): 4.00% Product Fill Temperature: 180F

How Applied? Capper With Steam Type of Capper Rotary

Capper Mfg: Zalkin Chuck Type: Segmented

Out of Capper Vaccum(In-Hg): 0"

Finished Package Vaccum(In-Hg): <5"

Comments: