

October 31, 2017

Joel A. Parker

Admitted in Oregon and Washington

T: 503-796-2975

jparker@schwabe.com

VIA E-MAIL (JOHN_ACOSTA@ORD.USCOURTS.GOV)

Honorable Magistrate Judge John V. Acosta
United States Courthouse
1000 SW Third Ave, Room 1127
Portland, OR 97204-2941

RE: Trailblazer Food Products, Inc. v. Silgan White Cap LLC
United States District Court (Oregon) Case No. 3:17-cv-00417-AC
Our File No.: 119960-219810

Dear Judge Acosta:

This letter is plaintiff Trailblazer Food Products, Inc.'s ("TBF") response to the October 30, 2017 letter from defendant Silgan's customer ("Customer").

The documents that TBF seeks are both relevant and necessary for TBF to fully prepare its case and refute the defenses put forward by Silgan. Silgan has produced the requested documents in unredacted form for every other Silgan customer. For the reasons set forth below, TBF asserts that it is also appropriate for Silgan to produce Customer's documents in unredacted form, although ultimately TBF is proposing an alternative to doing so in an effort to address Customer's concern.

To help the Court evaluate the issue, I have enclosed the package specification review (the "PSR") for TBF. The enclosed PSR is the one at issue in this case. Customer's PSRs will be a similar form. As you will see, the PSR itself does not have any of Customer's formulas or recipes. Rather, the form identifies the type of product being manufactured, in this case jams/jellies, and is then used to determine the specifications for the closure (a lid) Silgan will manufacture. Most importantly for this case, this form is used to determine the type of coating that will be applied to the underside of the closure at issue.

Pages 2 and 3 of the PSR are the information that Silgan solicits from its customers to provide Silgan with the necessary information to determine the necessary specifications for the closure. The form asks for, amongst other things, issues such as acidity level (pH), whether the product is a beverage, whether alcohol is present, whether vinegar is present, and whether sodium bisulfate is present. With this information, Silgan determines what type of coating to apply to the underside of the closure and how many coats should be applied.

The Silgan closures at issue in this case suffered corrosion after they were used to package TBF's organic fruit spread. One of the issues to be decided in this case is whether Silgan

properly specified the closure by applying only one layer of coating to the underside of the closure, as opposed to two layers. TBF has sought discovery of other Silgan customer PSRs to determine if the specification applied to TBF's closure is consistent with Silgan's practices and procedures.

It is important to note that Silgan does not object to production of the documents at issue on the grounds of relevance, or otherwise. Nor could it do so because the documents are relevant to show whether Silgan improperly specified the TBF closures. Rather, Silgan has thus far refused to produce the documents because it is concerned that production may constitute a violation of a non-disclosure agreement it has with Customer. But again, Silgan has produced all other Customer PSRs in unredacted form and no other customer has claimed that the PSR information is confidential.

The Customer's identity is an important part of TBF's discovery and investigation for two reasons. First, we believe that what Silgan considers and defines as "jams/jellies" is inconsistent and overly broad. Accordingly, when a Silgan PSR identifies the product as a Jam and Jelly, that might not actually be the case. Or at the very least, the product might be significantly different than the one at issue in this case (i.e., a pepper spiced jelly is different than strawberry jam). By disclosing the identity of the Customer, TBF can investigate what is actually being manufactured and packaged using publicly available information, such as store shelves. Second, and more importantly, once TBF is able to determine if the product being packaged is similar to the TBF product, TBF can then evaluate whether the Customer's product received the same specification as the TBF product.

There is presently a protective order in place that allows documents to be designated, which prevents TBF from using these documents for any purpose other than this litigation. For this reason, and because no formulas or recipes are being disclosed, it is TBF's position that the documents should be produced in unredacted form. Nevertheless, TBF appreciates Customer's concern and it is willing to take reasonable steps to address those concerns. Accordingly, TBF proposes that the Court issue an order providing as follows:

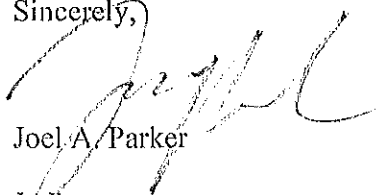
- (1) that the documents be produced in a manner that redacts Customer's identity so as to avoid them being mistakenly circulated in a manner inconsistent with this Order;
- (2) that the documents be produced under the designation "Confidential" as set forth in the parties' Stipulated Protective Order;
- (3) that Customer's identity be disclosed to TBF's attorney under the same "Confidential" designation but with the further restriction that the identity may be shared with only one TBF representative; and
- (4) that the TBF designated representative not disclose Customer's identity to any other individual.

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TBF is already bound by the "confidential" designation of this Court's order that it not use the materials for any purpose other than this litigation. The above proposal provides an extra layer of protection to Customer and allows TBF access to the relevant and important information. It also provides TBF's counsel with the ability to fully prepare its case by obtaining assistance from a representative at TBF, whom has significantly more knowledge and experience in the industry.

We are happy to have a phone call with the Court to discuss these issues if that would be helpful.

Sincerely,



Joel A. Parker

JAP:asc

Enclosure

cc: Paul R. Xochihua (*via e-mail*)
Christopher M. Parker (*via e-mail*)
Dave Anderson (*via e-mail*)

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**Package Specification Review - Rev 23
Metal (Steel)**

No. 14-096-M

CAS TO COMPLETE THIS SECTION (ALL GREEN SHADED CELLS)

SUBMITTED BY (CAS/Sales Rep): Kelli Miller
CAS EXT. # : 805-453-8798 **DATE:** 08/07/14
CUSTOMER: Riekens Packaging
CUSTOMER CONTACT: Dennis Lakin **CUSTOMER PHONE:** 503-313-9874

BUSINESS INFORMATION

First Time Order New Product/Current Customer

CUSTOMER INFORMATION

Customer: Riekens Packaging **Closure Material:** Metal (Steel)
Location: Portland, OR **Size:** 82 **Type:** RSB
Product: jams/jellies **Silgan COC#:** _____
Product End Use Code: _____

Initial Order Quantity: _____ **Estimated Annual Volume:** 4 million
Date Closures Needed: _____
Special Issues: _____

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

STATUS: APPROVED **PSR No.: 14-096-M**

DATE: 8/21/2014 **INITIALS:** LQ

COMMENTS:

Package Specification Review - Rev 23
Metal (Steel)

No. 14-096-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: TrailBlazer Foods

DATE: 8/7/14

CLOSURE INFORMATION

Customer Project Name: Organic Red print

Size/Type: 82RSB Cap Shell Color: white

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

Are there prints on the reverse(UTC)? No

Special Instructions: Red on White negative print - "organic" on skirt. Design services has the a

CONTAINER INFORMATION

Container Type: Glass

Finish Number: GPI 2040

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

Manufacturer: China

Capacity (volume): 1 liter

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 Calorie? No

pH?

Actual pH if known:

Vinegar Present? No

Sodium Bisulfite (SO₂) Present? No

Alcohol Present? No

Shelf Life of Packed Product? 2 yrs

FDA FOOD CATEGORIES

Type I: Non-Acid Aqueous Products; May Contain Salt or Sugar or Both (pH Above 5.0)

FDA CONDITIONS OF USE

C. Hot filled or pasteurized above 150 deg. F

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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

Trail Blazer Foods

Per Cent of Headspace (not in inches): 6.00%

Product Fill Temperature: 185

How Applied? Capper With Steam

Type of Capper Straight_Line

Out of Capper Vacuum (in-Hg): 4-6 in

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): 12-14 in

Are Packages Tray Packed? Yes

How many pallets high? 8

Trays per layer? 8

Weight per Pallet of Product (Lbs.): 2,160

How many packages per tray? 6

Layers per pallet? 6

Trays per pallet: 48

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):

Dennis Lakin Regional Manager

Date Information Submitted: _____

Mailing Address: _____

Customer Phone: 503-313-9874

Customer Fax: _____

E-mail Address: dlakin@riekepkg.com

Package Specification Review - Rev 23
Metal (Steel)

No. 14-096-M

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

Package Specification Review - Rev 23
Metal (Steel)

No. 14-096-M

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>
Wayne Hohl	W. Hohl	08/14/14
Art Hurley	Art Hurley	08/13/14
Cathy Brady	Cathy Brady	08/15/14
Bill Kapolas	WJKapolas	08/21/14

CLOSURE INFORMATION

Customer: Riekes Packaging
Size/Type: 82RSB COC#: _____
Product: jams/jellies End Use Code: _____
Face/ Reverse Design Requirements: #NAME?
Special Instructions: Red on White negative print - "organic" on skirt. I
Packing Process: 02- Hot Fill (For Acid Products)- B. Hold & Force Cool
Compound: 772

Cap Shell Color: white Steel Coat: .20/.20# Tin Steel Weight.: 65# DR
Face System: _____ Face Coatings: W.43.7 O.93.5
Reverse System: _____ Reverse Coatings: B.31.7
Button? Yes Down Flip (In. Hg): 8

CONTAINER INFORMATION

Container Type: Glass
Finish Number: GPI 2040
Manufacturer: China Capacity (volume): 1 liter
Comments: _____

SEALING INFORMATION

Per Cent of Headspace (not in inches): 6.00% Product Fill Temperature: 185
How Applied? Capper With Steam Type of Capper Straight Line
Out of Capper Vaccum(In-Hg): 4-6 in
Finished Package Vaccum(In-Hg): 12-14 in
Comments: Steel changed due to the closure been made in Evansville.