

TRADE MARKS ORDINANCE (CAP. 559)

APPLICATION NO. : 300441017
MARK : POUR N' WHIP
APPLICANT : WHITEWAVE SERVICES, INC.
CLASSES : 29, 30

STATEMENT OF REASONS FOR DECISION

Background

1. This is an application of WhiteWave Services, Inc. of Texas, United States of America (“the applicant”). On 17 June 2005, the predecessor of the applicant applied to register the mark shown below under the Trade Marks Ordinance (Cap. 559) (“the Ordinance”).

POUR N' WHIP

2. The registration of the subject mark is sought in respect of the goods in Classes 29 and 30 (“the goods applied for”), the specifications of which are reproduced at Appendix A of this statement of reasons for decision.
3. At the examination stage, objections were raised under sections 11(1)(b) and (c) of the Ordinance on the basis that the subject mark consists exclusively of signs which may serve, in trade or business, to designate the characteristics of the goods applied for, and is devoid of any distinctive character.
4. By a letter of 21 November 2006, the applicant requested a hearing on the registrability of the subject mark. After various requests for the postponement of the hearing date, the hearing was eventually set down to take place on 2 March 2007 before me. On 26 February 2007, the applicant filed the Statutory Declaration of Mr. Hsu Yen Shun (“SD1”) declared on 14 February 2007 in support of the subject application.

Preliminary issue

5. On 2 March 2007, Mr. Allan Woodley of Messrs. Lovells appeared on behalf of the applicant. After making submissions in support of the subject application and before the conclusion of the hearing, Mr. Woodley made an application for leave to file

further evidence, which consisted of copies of invoices showing the use of the subject mark by the applicant's Hong Kong exclusive distributor during the relevant period. Mr. Woodley submitted that a period of fourteen (14) days would be sufficient to prepare and file the further evidence. Having considered the relevant facts and circumstances, including but not limited to the relevance of the evidence, the relatively short delay of two weeks and the fact that the evidence had already been obtained and was ready to be filed, leave was granted for the applicant to file further evidence of sales in Hong Kong, in the form of copies of invoices on or before 16 March 2007. The hearing on the registrability of the subject mark was adjourned to 20 March 2007 for further submissions accordingly.

6. On 16 March 2007, the applicant filed the Statutory Declaration of Ms. Huang Fang Yu ("SD2"), declared on 16 March 2007. The copies of invoices were exhibited to it.
7. At the adjourned hearing on 20 March 2007, Mr. Woodley for the applicant made an application for further adjournment of one (1) month to file more copies of invoices showing use of the subject mark by the applicant's exclusive distributor in Hong Kong during the relevant period ("the additional evidence"). Despite the fact that it was Mr. Woodley himself who requested to adjourn the hearing for two weeks on the last occasion, Mr. Woodley contended that the two-week adjournment was insufficient for the applicant's Hong Kong distributor to obtain all of the relevant invoices, and the additional evidence would be relevant to the subject application. Unlike the previous application for leave to file further evidence, Mr. Woodley was not able to show me any of the additional evidence purportedly to be filed. Other than Mr. Woodley's bare assertion, there was nothing to indicate that the additional evidence would be relevant to the subject application. On the other hand, if the additional evidence were indeed of the same nature as those exhibited to SD2, Mr. Woodley did not explain why the additional evidence could not have been prepared and filed at the same time as those filed during the two-week adjournment. Furthermore, according to Mr. Woodley, the applicant's Hong Kong distributor *should be* able to provide more invoices to the applicant by the end of the one month adjournment. It appeared that there was uncertainty as to whether additional evidence would indeed be obtained and ready to be filed by the end of the further adjournment, if granted.
8. I note that earlier on 23 August 2006, the Registrar issued a letter pursuant to rule 13(4) of the Trade Marks Rules, Cap. 559A ("the Rules") suggesting that the applicant might file "further evidence of distinctiveness if before the date of application the mark has in fact acquired a distinctive character as a result of the use made of it" in order to overcome the objections to the application for registration. Instead of filing evidence as suggested or applying for an extension of time to file evidence under rule 13(6)(b) of the Rules, the applicant chose to request for a hearing on the registrability of the

subject mark, indicating that the matter was ready to be heard. Since August 2006, the applicant had had more than half a year to collect and prepare the evidence of use.

9. In this application for further adjournment to file further evidence, I was not shown the relevance of the evidence nor was the delay explained to me. Having considered the relevant facts and circumstances carefully, I was not satisfied that it was an appropriate case to adjourn the hearing further. Mr. Woodley's application for further adjournment of the hearing was refused.
10. Upon the determination of the preliminary issue, Mr. Woodley carried on to make submissions in relation to the subject application. I reserved my decision at the conclusion of the adjourned hearing.

The Ordinance

11. The absolute grounds for refusal of an application for registration are set out in section 11 of the Ordinance. The relevant provisions under section 11 read as follows:-

- “(1) Subject to subsection (2), the following shall not be registered –
- (a) ...;
 - (b) trade marks which are devoid of any distinctive character;
 - (c) trade marks which consists exclusively of signs which may serve, in trade or business, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of goods or rendering of services, or other characteristics of goods or services; and
 - (d) ...”

12. Notwithstanding the prohibitions against registration set out in sections 11(1)(b), (c) and (d), section 11(2) provides that:-

- “(2) A trade mark shall not be refused registration by virtue of subsection (1)(b), (c) or (d) if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

The applicant's submissions and evidence of use

Inherent registrability

13. Mr. Woodley submitted that while “N” on its own or with an apostrophe in front of it meant “and”, “N” followed by an apostrophe was not an abbreviation of the conjunction. Mr. Woodley further submitted that the subject mark, not to be mistaken as “POUR AND WHIP”, was neither inherently indistinctive nor did it consist exclusively of signs that might serve to designate the characteristics of the goods applied for under the Ordinance.

Acquired distinctiveness

14. In the alternative, Mr. Woodley submitted that the subject mark, with reference to the sales figures dating back to 2000, had acquired a distinctive character as a result of the use made of it in Hong Kong for the purpose of section 11(2) of the Ordinance.
15. It is stated in SD1 that Rich Products Corporation (“RPC”) trading as Presto/Avoset Group (“PAG”), the exclusive licensee of the applicant or its predecessor, has been using the subject mark in Hong Kong in respect of “milk and cream products, non-dairy toppings, icings and fillings for cakes, pastries, confectionery and desserts, which are artificial creams or cream substitutes” since 1986.
16. By a distribution agreement on 1 December 1999, Sims Trading Company, Ltd. (“Sims”) has become the exclusive distributor of PAG in Hong Kong.
17. Materials such as copies of invoices, lists of wholesalers in Hong Kong, promotional materials including advertisements in a traders’ magazine and leaflets are exhibited to both SD1 and SD2, with a view to establishing that the subject mark has acquired distinctiveness as a result of the use of it in Hong Kong during the relevant period.

Decision

Inherent registrability

Section 11(1)(c) of the Ordinance

18. I will, first of all, consider the inherent registrability of the subject mark. Section 11(1)(c) of the Ordinance precludes from registration marks consisting exclusively of signs which may serve, in trade or business, to designate the kind, quality,

quantity, intended purpose, value, geographical origin, time of production of goods, or other characteristics of the goods in respect of which registration is sought.

19. Referring to *Proctor & Gamble Co. v. OHIM ("BABY-DRY")* [2002] R.P.C. 17, "*CYCLING IS ...*" *Trade Mark Applications* [2002] R.P.C. 37 and other cases, Mr. Woodley submitted that the capital letter N followed by an apostrophe in the subject mark was "cryptic" as it was not commonly known as "and". According to Mr. Woodley, the subject mark as a whole was not of ordinary usage to describe the goods applied for, and it did not consist exclusively of signs that served to designate the characteristics of the goods applied for.
20. Mr. Woodley also submitted that "N" followed by an apostrophe could be understood as the diminutive form of the gerundial participle "ing" or a suggestion that there was a missing vowel between "N" and "WHIP". According to Mr. Woodley, the subject mark should not be precluded from registration under section 11(1)(c) of the Ordinance owing to its possible meanings other than "pour and whip".
21. I do not agree. The subject mark consists of the words "POUR" and "WHIP", adjoining with "N" in the middle. To my mind, in the context of the subject mark, "N" is interchangeable with "N" and "N", all of which stand for the conjunction "and". The goods applied for are general products which a member of the general public in Hong Kong would purchase and consume from time to time. I am not persuaded by Mr. Woodley that by having the apostrophe behind the letter "N", the relevant consumers, who are presumed to be reasonably well informed, circumspect and observant, would perceive the mark in its entirety as something different from where there is no apostrophe or where the apostrophe is placed in front of the letter "N". I do not consider it likely that upon first seeing the subject mark, the relevant consumers would immediately distinguish "N" from "N" or "N", with the latter two conceded by Mr. Woodley to be the abbreviations of "and". My view is supported by the copies of invoices exhibited to SD1 and SD2. In Exhibit HYS-9 of SD1, "Pour N Whip" appeared in one of the invoices issued by RPC (SUZHOU) to Sims, the exclusive distributor in Hong Kong. "POUR'N WHIP" appeared in an order placed by Sims with PAG. In Exhibit HFY-2 of SD2, out of the 8 copies of invoices issued by Sims to various companies in Hong Kong, "POUR'N WHIP" appeared in 5 of them.
22. As I find that "N" would be perceived to mean "and", the subject mark as a whole conveys the direct and immediate message of the action of pouring and whipping. According to *Merriam-Webster's Online Dictionary*, 10th edition, "pour" means "to dispense from a container" and "whip" means "to beat (as eggs or cream) into a

froth with a utensil”. When used in relation to the goods applied for, the subject mark tells the consumers directly the characteristics of the goods applied for, namely, they can be prepared by dispensing from a container and then beating.

23. As to Mr. Woodley’s submission that the subject mark could be understood in more than one way, the European Court of Justice (“the ECJ”) in *Wm. Wrigley Jr. Company v OHIM* [2004] 1 W.L.R. 1728 (“the *DOUBLEMINT* case”) held that, at paragraph 32:

“In order for OHIM to refuse to register a trade mark under Article 7(1)(c) of Regulation No 40/94 [*broadly similar in terms to section 11(1)(c) of the Ordinance*], it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provisions itself indicates, that such signs and indications could be used for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned.”

24. Additionally, in *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* [2005] 3 W.L.R. 649 (“the *Postkantoor* case”), it was held by the ECJ, at paragraph 104, that:

“For the purposes of determining whether Article 3(1)(c) of the Directive [*First Council Directive 89/104/EEC - again broadly similar in terms to section 11(1)(c) of the Ordinance*] applies to such a mark, it is irrelevant whether or not there are synonyms capable of designating the same characteristics of the goods or services mentioned in the application for registration or that the characteristics of the goods or services which may be the subject of the description are commercially essential or merely ancillary.”

25. In light of the legal principles above, to be precluded from registration under section 11(1)(c) of the Ordinance, a mark does not have to be the normal way of describing the goods in question. It is sufficient if the mark could be used for such a purpose. A mark is therefore objectionable if at least one of its possible meanings designates a characteristic of the goods in question. In any event, as shown in the Internet references provided by the examiner to the applicant during the examination stage on 16 November 2005, “pour and whip” is indeed a phrase often used in trade to describe how easily the goods similar to those applied for are used or prepared. Excerpts of these Internet references are provided at Annex B.
26. The subject mark, which is made up of words directly descriptive of the ways how the products in question may be prepared or consumed, consists exclusively of signs

which may serve to designate the characteristics of the goods applied for. The subject mark is therefore objectionable under section 11(1)(c) of the Ordinance.

Section 11(1)(b) of the Ordinance

27. Section 11(1)(b) of the Ordinance operates as a ground of objection separate and independent from that under section 11(1)(c), it precludes from registration signs which are devoid of any distinctive character. In *British Sugar Plc v James Robertson & Sons Ltd* [1996] R.P.C. 281 at 306, Mr. Justice Jacob said:

“What does *devoid of any distinctive character* mean? I think the phrase requires consideration of the mark on its own, assuming no use. Is it the sort of word (or other sign) which cannot do the job of distinguishing without first educating the public that it is a trade mark?”

28. Additionally, in assessing the distinctive character of a sign, Sir Andrew Morritt in *Nestle SA’s Trade Mark Application (“Have a Break”)* [2004] F.S.R. 2, at 26 stated that:

“The distinctiveness to be considered is that which identifies a product as originating from a particular undertaking. Such distinctiveness is to be considered by reference to goods of the class for which registration is sought and consumers of those goods. In relation to the consumers of those goods the court is required to consider the presumed expectations of reasonably well informed, and circumspect consumers.”

29. It follows that the distinctive character under section 11(1)(b) of the Ordinance means that the mark, assuming no use of it for the purpose of section 11(2), must be capable of identifying the product as originating from a particular undertaking, and thus distinguishing it from those of other undertakings. The distinctiveness of the mark must be assessed by reference to the goods for which registration is sought and the perception of the relevant consumers.
30. Mr. Woodley submitted that the “deliberate stylisation” and the use of the apostrophe placed after the letter “N” showed the applicant’s intention to use the subject mark to indicate origin. According to Mr. Woodley, therefore, the mark as a whole would be perceived immediately as an indication of trade origin and not devoid of distinctive character.
31. While it might be the applicant’s intention to use the mark to indicate origin, whether the relevant consumers would perceive the mark as a badge of origin in

respect of the goods in question is a separate matter. As explained above, the subject mark “POUR N' WHIP” denotes the action of pouring and whipping. When used in relation to the goods applied for, the subject mark immediately informs the consumers that the cream, cream products and other baking ingredients *etc.* can be prepared or consumed by pouring and then whipping them. I am not satisfied that without first educating the relevant consumers, the relevant consumers would regard the subject mark, being a direct description of how the goods applied for can be prepared or consumed, as an indicator identifying a particular undertaking from which these goods originate.

32. In *Deutsche SiSi-Werke GmbH & Co. Betriebs KG* [2006] E.T.M.R. 41 (Case C-173/04P) at paragraph 60, the essential function of a trade mark is described by the ECJ as:

“to guarantee the identity of the origin of the marked product or service to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin”

33. Having considered the subject application carefully, I am not persuaded that when the relevant consumers view the subject mark in respect of the goods applied for, they will perceive it as a guarantee of trade origin without any possibility of confusion. The subject mark is devoid of any distinctive character and is precluded from registration on a *prima facie* basis under section 11(1)(b) of the Ordinance as well.

Other registered trade marks

34. Mr. Woodley drew my attention to the registered trade marks, “STORE ‘N CUT”, “WASH ‘N’ DRI”, “TENDER ‘N EASY” and “FRESH ‘N’ FRUITY”. According to Mr. Woodley, given that “N” in the subject mark did not stand for “and”, the subject mark was more distinctive than these registered trade marks.
35. I have considered the registered trade marks but do not find them to be comparable to the subject mark. Each case must be considered on its own merits. The state of the register is of little relevance when there are valid grounds for refusal against the subject application.

Foreign registrations of the subject mark

36. Mr. Woodley sought to rely on the registration of the subject mark in Singapore. National trade mark rights are territorially limited and granted independently of each other. The bare fact of registration in other countries is not sufficient to establish that a sign is eligible for registration here (*Automotive Network Exchange Trade Mark* [1998] R.P.C. 885). The registration of the subject mark in Singapore does not serve to overcome the objections raised under section 11(1)(b) and (c) as stated above.

Acquired distinctiveness

37. Although I have found that the subject mark has no inherent distinctive character and not registrable under sections 11(1)(b) and (c), if the subject mark has in fact acquired a distinctive character as a result of the use made of it in respect of the applied for goods for the purpose of section 11(2), the application for registration of the subject mark should not be refused. I shall therefore proceed to consider whether the subject mark has in fact acquired a distinctive character with reference to the evidence of use filed by way of the statutory declarations.
38. To assess the acquired distinctiveness of a mark, the ECJ stated in *Windsurfing Chiemsee Produktions Und Vertriebs GmbH v. Boots-Und Segelzubehor Wlaler Huber* (Joined Cases C-108 and 109/97), [2000] Ch. 523 at 556:

“a trade mark acquires distinctive character following the use which has been made of it where the mark has come to identify the product in respect of which registration is applied for as originating from a particular undertaking and thus to distinguish that product from goods of other undertakings”

39. Although the above case is concerned with the interpretation of Article 3(3) of the First Council Directive 89/104/EEC, the provisions of the article are broadly similar to section 11(2) of the Ordinance and I find that the relevant principle is applicable to the subject application. Further to the principle above, the competent authority must make an overall assessment of the evidence in determining the question.
40. It was averred in SD1 that the mark was first used in Hong Kong in 1986 in relation to the following products:

“milk and cream products, non-diary toppings, icings and fillings for cakes, pastries, confectionery and desserts, which are artificial creams or cream substitutes”

41. Despite the claim of first use since 1986, SD1 only provides the sales figures from 2000 to 2006 and advertising expenses between 2000 and 2004. The sales figures and advertising expenses are not broken down to reflect the sales and promotions in respect of the different goods applied for. Exhibit HYS-14 consists of copies of “Today’s Baking” magazine covers. According to the information provided in Exhibits HYS-15 and HYS-16, about 1,600 copies of the magazine were distributed to people or companies in the bakery field in Hong Kong every two months. However, as the documents containing this piece of information are not dated, its accuracy cannot be ascertained as of the date of application. In any event, there is no suggestion that the magazine was available to the general public in Hong Kong.
42. Pictures of pastry topping in tins and carton boxes bearing the subject mark are shown on the covers of the magazine, the earliest edition of which is January 1999. In these pictures of pastry topping, “POUR N’WHIP” always appears on the tins and carton boxes in conjunction with “AVOSET” and “Sims”. On the magazine covers as shown in Exhibit HYS-14, “Sims” and “AVOSET” together with a bicolour device or “AVOSET” in a blue oval are always displayed at prominent places. On all of these magazine covers, “美國「愛護牌」- 奶油產品系列” (which means “U.S.A. ‘Avoset Brand’ – cream product series”) always appears beneath the pictures of the pastry topping.
43. Random copies of invoices issued before the application date of 17 June 2005 are provided in Exhibits HYS-9, HYS-10 and HFY-2, the earliest date of the relevant invoices showing the subject mark is 24 May 2001. A vast majority of these invoices were issued to restaurants, hotels and bakeries. In the invoices and advertising invoices exhibited to both SD1 (Exhibit HYS-9, HYS-10, HYS-20) and SD2 (Exhibit HFY-2), the subject mark is always used together with the brand “Avoset”. In particular, in the official order issued by Sims to PAG (Exhibit HYS-9), the brand of product is specifically stated as “AVOSET” whereas the subject mark appears in the description column, along with other products such as “CREAM WHIPPING” and “CREAM NON-DIARY CREAMER”.
44. Other materials such as the leaflets, brochures and photographs showing the packaging of the pastry topping are exhibited to SD1. In these materials, the date of use is either not shown or a date which is after the date of application is shown. These materials therefore do not serve to establish that the subject mark has acquired a distinctive character as a result of the use made of it prior to the application date.

45. Evidence in relation to the sales and promotion of the subject mark in other regions such as Taiwan and the mainland China is also provided. It is, however, not suggested that the relevant consumers in Hong Kong have been educated to treat the subject mark as an indicator of trade origin as a result of the sales and promotions of the subject mark outside Hong Kong. In the circumstances, these materials do not assist the applicant in establishing that the subject mark has indeed acquired a distinctive character in Hong Kong as a result of the use made of the subject mark.
46. Apart from pastry topping, the evidence submitted does not show the use of the subject mark in respect of the goods applied for.
47. When assessing the evidence of use submitted by the applicant, I have borne in mind the decision of the ECJ in *Société des Produits Nestlé SA v Mars UK Ltd. ("Have a Break")* [2006] F.S.R. 2 (Case C-353/03), in which it is stated at paragraphs 27 to 31 that in regard to acquisition of distinctive character through use, the mark in respect of which registration is sought need not necessarily have been used independently. Distinctive character may be acquired in consequence of the use of that mark as part of or in conjunction with a registered trade mark if the class of persons actually perceive the product, designated *exclusively* by the mark applied for, as originating from a given undertaking.
48. To assess whether the mark has acquired a distinctive character through use, I must therefore consider the manner of the actual use of the mark and decide whether the trade origin of the goods concerned is designated exclusively by the mark.
49. Pastry topping is by nature something that can be consumed in household cooking from time to time. The relevant consumers are likely to be the members of the general public in Hong Kong, as well as those in the business of bakery and catering. In view of the manner of actual use of the subject mark as considered in paragraphs 42 and 43 above, and the facts that the magazines are distributed to people and companies in the bakery field and the invoices were issued to business in the bakery and catering fields mainly, I am not satisfied that the general purchasing public have been educated to identify a particular undertaking as trade origin of the pastry topping by reference to the subject mark. To my mind, the relevant consumers would identify the pastry topping by reference to "AVOSET" and/or "Sims", both of which are consistently used and promoted in relation to the pastry topping. The general public would perceive the subject mark as a mere description of how the pastry topping can be used or prepared. Upon careful consideration of the

evidence filed, I am not prepared to accept that the subject mark has indeed, on a date prior to the application, acquired a distinctive character in respect of pastry topping or any other goods applied for as a result of the use made of it in Hong Kong for the purpose of section 11(2) of the Ordinance. The evidence filed fails to overcome the objections raised under section 11(1)(b) and (c) of the Ordinance.

Conclusion

50. In this decision, I have carefully considered all of the materials filed, together with the written and oral submissions made by and on behalf of the applicant. For the reasons given above, I consider that the subject mark is precluded from registration by sections 11(1)(b) and 11(1)(c) of the Ordinance. The subject application is accordingly refused under section 42(4)(b) of the Ordinance.

Original Signed

Margaret K.W. YU
for Registrar of Trade Marks
31 May 2007

Class 29

milk and milk products; cream and cream products; non-dairy products used as a substitute for milk and cream; artificial cream; non-dairy toppings; fillings for pastry and desserts; margarine; milk-based beverages (milk predominating); milk-based dessert (milk predominating), milk-based products (milk predominating), milk, cream, milk powder and cream powder (other than for babies); whipped cream, cream cheese, cream dessert toppings; cream desserts, cream preparations containing milk, cream stabilizers, yoghurt, yoghurt-based drinks, yoghurt beverages, yoghurt desserts, yoghurt powder, yoghurt preparations, yoghurt products; protein concentrates for foodstuffs, protein derived from soya beans for use as substitutes for dairy products; non-dairy products derived from soya bean oil; edible essence for foodstuffs (oils), edible oils, edible fats, edible gelatine, edible nuts, edible products made from nuts, edible seeds, soya based edible oils, soya bean extracts, soya bean milk, soya cream, soya desserts, soya milk, soya oil for food, soya protein food products for use as substitutes for food, soya yoghurt; meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs; pastry topping; dairy-based non-alcoholic beverages; dairy and nondairy whipped, nonwhipped, fruit and nut toppings, all being frozen or non-frozen, and being ready-to-use; dairy and non-dairy whipped, nonwhipped and fruit-based fillings, all being frozen or non-frozen, and being ready-to-use or not ready-to-use; fruit toppings and fillings for bakery products, pastry and confectionery; carmel nut topping for bakery products, pastry and confectionery, creams for use in the manufacture of bakery goods or confectionery; barbecue poultry and barbecue pork; smoked beef, pork and poultry; frozen meals consisting primarily of meat and poultry, namely, pork barbecue, beef barbecue, poultry barbecue; whipped vegetable spread used as a substitute for margarine or butter; processed meats; frozen or refrigerated processed meat and meat entrees; artificial dairy based beverages and concentrates and bases thereof; and vegetable-based food, beverages and concentrates and bases therefor; frozen meals consisting primarily of beef with a gravy meat sauce; fruit fillings, milk powder, bases for making milk shakes.

Class 30

cakes, pies, pastries, crackers; fillings, icings, flavoured fillings and toppings for desserts, pastry and confectionery; non-dairy confectionery products used as a substitute for milk and cream; non-dairy icings, toppings and fillings; confectionery, desserts, breads, biscuits, doughs, cookies, brownies, cocoa, coffee, artificial coffee; confectionery fillings, toppings and icings for bakery products and desserts; ice, ice cream, tea, rice, tapioca, sago; flour and preparations made from cereals; yeasts, baking powder; bakery goods; non-dairy cream for pastry, cakes, biscuits, confectionery and desserts; cream powder for use in food; frozen yoghurt (confectionery ices) and yoghurt-based ice cream (ice cream predominating); edible decorations, edible essences for foodstuffs, edible fibres for use as foodstuffs, edible yeast, salt for cooking and food, salt for preserving foodstuffs, sugar; thickeners, thickening agents, thickening preparations and thickening substances for cooking foodstuffs; soya-based ice cream products, soya flour; non-dairy products derived from soya bean oil; flavourings (other than essential oils); pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; non-dairy based non-alcoholic beverages; chocolate, artificial chocolate, marshmallow and artificial marshmallow toppings for cakes and desserts, being frozen or non-frozen, and being ready-to-use or not ready-to-use; chocolate and artificial chocolate toppings, icings and fillings; liquid topping syrup for cakes and desserts; mixes for making bakery products; mixes for making desserts in the nature of cakes, cheesecakes, brownies, cookies, pies, or cupcakes; puddings; moussecake; cheesecake; ice cream cake; frozen yogurt cakes; ice cream; fruit sorbets; fondants for use in the manufacture of bakery goods or confectionery; gravy mixes; dry versions of gravy sauces and cheese sauces; stuffed pasta shells; icings and fillings for cakes; barbecue sandwiches.

Appendix B

1. <http://www.instantwhip.com/products.htm>
“INSTANTWHIP WHIP 'N TOP For quality performance, this non-dairy product is a milk-free, creamy-white, smooth-textured topping with a satisfying taste of cream for all your pastries and desserts. Easy and convenient to use, just **pour and whip**. Also available in chocolate.”
2. http://www.westhillfarm.org/price_list.htm
“Fresh Pourable Cream 250ml Gold Thicker than double, needs a spoon to encourage it out! Silver Half way between whipping and double, will **pour and whip**.”
3. http://www.findarticles.com/p/articles/mi_hb021/is_199207/ai_hibm1G143113688
“Frostin Pride is a new non-dairy icing and filling from Presto Food Products, City of Industry, Calif., also the makers of Pastry Pride whipped topping. Thaw Frostin Pride, **pour and whip** for a light frosting that can be used for intricate cake decoration, cake icings or a buttercream-style filling.”