

HAMILTON BEACH BRANDS, INC.,)
HERSHEY CREAMERY COMPANY and)
PAUL MILLS d/b/a MILLS BROTHERS)
MARKETS,)
Defendants.)

DECLARATION OF ERICA FRANK

I, Erica R. Frank, declare:

1. I am the Manager, Intellectual Property at Rich Products Corporation (“Rich”) and have served in this position since 2012. My responsibilities in this position include supporting the development of Rich’s patent/trademark portfolios and managing other intellectual property projects. I also work with legal counsel in intellectual property related activities, including contracts, potential policy changes and legal proceedings.

2. I was not directly involved in preparing the legal documents for Rich’s acquisition of freal Foods, LLC (“freal”) in December, 2012, but I was generally aware of how the deal was supposed to be structured. As I understood it, the deal was structured as a reverse triangular merger. Specifically, freal was merged into a holding company set up by Rich, called RPC Revolution, LLC, where, at the end of the merger, freal was the surviving entity with a new owner (i.e., Rich). The deal was structured to keep all of freal’s assets in freal so that freal could continue operating after the merger as it had done before (i.e., as a stand-alone entity).

freal's patent had been retained in freal's name. When freal acquired additional patents after the acquisition, I directed that title to these patents also be held in freal's name. When the time came to enforce the patents-in-suit against the defendants in this action, it was again my understanding in working with freal's litigation counsel that the patents-in-suit belonged to freal.

4. The first time I recall seeing that a patent assignment had been executed during the acquisition process purporting to assign freal's patent portfolio, including the patents-in-suit, to Rich was in January, 2016 when this was brought to my attention by freal's litigation counsel. As noted, this was contrary to the intended structure of the acquisition. I have no reason to believe that this was other than an honest mistake.

5. After learning of this mistaken assignment, Rich executed an agreement returning the patents-in-suit to freal.

6. I declare under penalty of perjury under the laws of the State of Delaware that, to the best of my knowledge, the foregoing is true and correct. Executed this ___ day of February, 2016 in Buffalo, New York.


Erica R. Frank