

01-11-2002



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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Ron Schutte; and Calavocado.com Company

- Individual(s) [checked] Association [] General Partnership [] Limited Partnership [] Corporation-State [checked] Other []

Additional name(s) of conveying party(ies) attached? [] Yes [checked] No

2. Name and address of receiving party(ies)

Name: Calavo Growers of California

Internal ATTN: Bruce Spurrel Address:

Street Address: 2530 Red Hill Avenue

City: Santa Ana State: CA Zip: 92705-5542

- Individual(s) citizenship [] Association [] General Partnership [] Limited Partnership [] Corporation-State California [checked] Other []

If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [checked] No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? [] Yes [checked] No

3. Nature of conveyance:

- Assignment [] Merger [] Security Agreement [] Change of Name [] Other Court Judgment [checked]

Execution Date: September 19, 2001

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,142,844

JAN - 4 2002

Additional number(s) attached [] Yes [checked] No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Charles C.H. Wu & Associates

Internal Address: ATTN: Charles C.H. Wu

Street Address: 7700 Irvine Center Drive,

Ste. 710

City: Irvine State: CA Zip: 92618

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed [checked] Authorized to be charged to deposit account []

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Charles C.H. Wu

Name of Person Signing

[Signature]

Signature

November 6, 2001

Date

Total number of pages including cover sheet, attachments, and document:

7

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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TRADEMARK REEL: 002419 FRAME: 0908

1 Charles C.H. Wu, SBN 166756
2 Mark H. Cheung, SBN 150690
3 Gene W. Arant, SBN 21440
4 Members of **CHARLES C.H. WU & ASSOCIATES**
5 **A PROFESSIONAL CORPORATION**
6 7700 Irvine Center Drive, Suite 710
7 Irvine, California 92618-3043
8 (949) 251-0111

01 SEP 18 AM 9:46

BY: [Signature] CLERK

9 Attorneys for Plaintiff
10 Calavo Growers of California

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 CALAVO GROWERS OF CALIFORNIA, a
14 California corporation,

CASE NO. 01CV00621-W (AJB)

[Hon. Thomas J. Whelan]

15 Plaintiff,

DEFAULT JUDGMENT

16 vs.

Date: Sept 17, 2001
Time: 10:30 a.m.
Ctrm: 7

17 CALAVOCADO.COM COMPANY and RON
18 SCHUTTE,

19 Defendants.

**[NO ORAL ARGUMENT PURSUANT
TO COURT'S REQUEST.]**

20 PLEASE TAKE NOTICE that Plaintiff's motion for entry of default
21 judgment came on regularly for a hearing on September 17, 2001, at 10:30
22 a.m., in Department 7 of this court, the Honorable Thomas J. Whelan
23 District Judge presiding.

24 Charles C.H. Wu of CHARLES C.H. WU & ASSOCIATES, a professional
25 corporation, appeared on behalf of plaintiff Calavo Growers of
26 California, Inc. ("Calavo Growers"). There was no appearance on behalf
27 of defendants Calavocado.com company and Ron Schutte, default having
28 been entered against each said defendant on May 31, 2001.

ENTERED ON 9/19/01

1-19/01
DEFAULT JUDGMENT
CASE NO. 01CV00621-W (AJB)

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1 The court, having read and considered the papers filed in support
2 of plaintiff's motion for entry of default judgment and having heard and
3 considered the arguments of counsel, finds that:

4
5 1. Since at least as early as 1926, Calavo Growers has used the
6 "CALAVO" mark in connection with the services of packaging, managing,
7 and marketing of agricultural products and to identify Calavo Growers'
8 services and to distinguish them from those provided and sold by others;

9
10 2. Calavo Growers registered "CALAVO" as a service mark with the
11 United States Patent and Trademark Office on December 9, 1980 under
12 Registration No. 1,142,844 for services related to agricultural products
13 in class 35;

14
15 3. Calavo Growers' marketing services and products have been
16 promoted, distributed and sold throughout the United States and the
17 world;

18
19 4. The "CALAVO" service mark has been registered in 30 countries
20 and has been used by Calavo Growers in connection with its promotion,
21 distribution and sale of its marketing services and products in the
22 United States and throughout the world;

23
24 5. Calavo Growers registered "CALAVO" as a second level Internet
25 domain name in connection with its web site operating at
26 "www.calavo.com" for the promotion and sale of its services and
27 products;

28

1 6. Calavo Growers has extensively and actively marketed its
2 CALAVO" services and products;

3
4 7. The "CALAVO" mark has developed public recognition such that
5 purchasers of agricultural business management services for agricultural
6 products have come to associate the "CALAVO" mark with Calavo Growers as
7 the source of the services;

8
9 8. Defendants Ron Schutte and Calavacado.com Company have
10 infringed on plaintiff's "CALAVO" service by incorporating the "CALAVO"
11 mark into their "CALAVOCADO.COM" mark and using the "CALAVOCADO.COM"
12 mark in connection with their agricultural picking and farming services
13 and in connection with their advertisement and promotion of those
14 services;

15
16 9. Defendants' use of the mark "CALAVOCADO.COM" has created a
17 likelihood of confusion and is likely to continue to cause confusion
18 among purchasers of such services as to the origin of the services of
19 the respective parties;

20
21 THEREFORE, in order to prevent defendants from engaging in service
22 mark infringement, unfair competition and unfair business practices
23 against plaintiff, plaintiff's motion for entry of default judgment is
24 granted and judgment is entered as follows:

25 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

26
27 Judgment is entered in favor of plaintiff Calavo Growers of
28

1 California, Inc. and against defendants Calavocado.com Company and Ron
2 Schutte, jointly and severally, on all causes of action with an award of
3 costs to plaintiff per a cost bill that plaintiff may hereinafter file.

4
5 IT IS FURTHER ORDERED ADJUDGED AND DECREED THAT:

6 Defendant Ron Schutte and his servants, agents, employees,
7 licensees, successors, assigns and those in privity with him, as well as
8 Defendant Calavocado.com Company and its owners, officers, directors,
9 shareholders, employees, agents, parents, subsidiaries, affiliates and
10 representatives, are permanently enjoined from:

11
12 (a) directly or indirectly infringing on the "CALAVO" mark in any
13 manner including, but not limited to, (1) the operation, promotion or
14 advertising of any Internet web site or related business which is likely
15 to cause confusion, mistake or deception of the public, and injury to
16 Plaintiff's business reputation and (2) the sale, offering for sale or
17 advertisement of services for packaging, managing or marketing of
18 agricultural products or related business which is likely to cause
19 confusion, mistake or deception of the public, and injury to Plaintiff's
20 business reputation;

21 (b) using any names, emblems, symbols, service marks, trademarks,
22 terminology or designations which relate, connect, associate or tend to
23 relate connect or associate themselves in any way to Plaintiff or to any
24 goods, services or products marketed, offered, sponsored, approved by or
25 connected with Plaintiff or any related company;

26 (c) using any names, emblems, symbols, service marks, trademarks,
27 terminology, or designations which tend to falsely represent, or which
28

1 are likely to confuse, mislead or deceive the public that the business
2 operated, promoted and advertised by Defendants originates from
3 Plaintiff or that any such business is sponsored, approved or licensed
4 by Plaintiff or associated, connected or affiliated with Plaintiff;

5
6 (d) engaging in any conduct that tends falsely to represent, or is
7 likely to confuse, mislead or deceive the public to believe or conclude
8 that the actions of Defendants are sponsored, approved or licensed by or
9 connected or affiliated with Plaintiff;

10 (e) affixing, applying, annexing or using in connection with the
11 operation, promotion or advertising of any goods, products or services,
12 a false description or representation, including the "CALAVO" service
13 mark or any other words or symbols, tending to falsely describe or
14 represent their goods, products or services as being those of Plaintiff;

15
16 (f) registering and/or maintaining any internet domain names that
17 are confusingly similar to plaintiff's "CALAVO" mark; and

18 (g) applying to the United States Patent and Trademark Office for
19 registration of any names that are confusingly similar to Plaintiff's
20 "CALAVO" mark.

21
22 IT IS FURTHER ORDERED ADJUDGED AND DECREED THAT:

23 The "CALAVOCADO.COM" internet domain name shall be deemed assigned
24 to and in favor of plaintiff as against defendants.

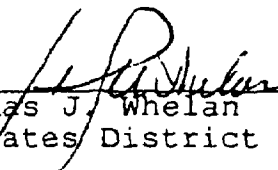
25
26 IT IS FURTHER ORDERED ADJUDGED AND DECREED THAT:

27 Within fourteen (14) days after defendants' notice of the entry of
28 this judgment, defendants shall deliver to Plaintiff all products,

1 devices, packaging, signs, literature, advertising, and any other
2 materials bearing the "CALAVO" mark.

3
4 Dated:

4/17/01


5 Hon. Thomas J. Whelan
6 United States District Court Judge