

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

AVI AVRAHAM ZINGER and
AMERICAN QUALITY PRODUCTS
LTD.,

Plaintiffs,

-against-

BEN & JERRY'S HOMEMADE, INC.,
UNILEVER UNITED STATES, INC.
and CONOPCO, INC.,

Defendants.

Civ. No. 2:22-cv-01154-ES-JBC

Hon. Esther Salas

ORAL ARGUMENT
REQUESTED

Motion Day: April 12, 2022

**DECLARATION OF GARY A. BORNSTEIN, ESQ., IN SUPPORT
OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

I, GARY A. BORNSTEIN, declare as follows:

1. I am a partner at the law firm of Cravath, Swaine & Moore LLP, and I am one of the attorneys representing Ben & Jerry's Homemade, Inc., Unilever United States, Inc. and Conopco Inc. (collectively, "Defendants") in the above-captioned litigation. I am admitted to appear before this Court *pro hac vice*.

2. I submit this declaration in connection with Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction. The contents of this declaration are based on my personal knowledge.

3. Attached hereto as **Exhibit 1** is a true and correct copy of a letter that I sent to Plaintiffs' counsel, Edward J. Dauber and Linda G. Harvey, on March 17, 2022.

4. Attached hereto as **Exhibit 2** is a true and correct copy of a letter that I received from Plaintiffs' counsel, Edward J. Dauber, on March 22, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 29, 2022

s/ Gary A. Bornstein

Gary A. Bornstein

Exhibit 1

CRAVATH, SWAINE & MOORE LLP

WORLDWIDE PLAZA
825 EIGHTH AVENUE
NEW YORK, NY 10019-7475

TELEPHONE: +1-212-474-1000
FACSIMILE: +1-212-474-3700

CITYPOINT
ONE ROPEMAKER STREET
LONDON EC2Y 9HR
TELEPHONE: +44-20-7453-1000
FACSIMILE: +44-20-7860-1150

WRITER'S DIRECT DIAL NUMBER
+1-212-474-1084

WRITER'S EMAIL ADDRESS
gbornstein@cravath.com

JOHN W. WHITE
EVAN R. CHESLER
STEPHEN L. GORDON
ROBERT H. BARON
CHRISTINE A. VARNEY
PETER T. BARBUR
MICHAEL S. GOLDMAN
RICHARD HALL
STEPHEN L. BURNS
KATHERINE B. FORREST
KEITH R. HUMMEL
DAVID J. KAPPOS
DANIEL SLIFKIN
ROBERT I. TOWNSEND, III
PHILIP J. BOECKMAN
RONALD E. CREAMER JR.
WILLIAM V. FOGG
FAIZA J. SAEED
THOMAS E. DUNN
MARK I. GREENE
DAVID R. MARRIOTT
MICHAEL A. PASKIN
ANDREW J. PITTS
MICHAEL T. REYNOLDS
ANTONY L. RYAN
GEORGE E. ZOBITZ
GEORGE A. STEPHANAKIS
GARY A. BORNSTEIN

TIMOTHY G. CAMERON
KARIN A. DEMASI
DAVID S. FINKELSTEIN
RACHEL G. SKAISTIS
PAUL H. ZUMBRO
ERIC W. HILFERS
GEORGE F. SCHOEN
ERIK R. TAVZEL
CRAIG F. ARCELLA
LAUREN ANGELILLI
TATIANA LAPUSHCHIK
ALYSSA K. CAPLES
MINH VAN NGO
KEVIN J. ORSINI
MATTHEW MORREALE
JOHN D. BURETTA
J. WESLEY EARNHARDT
YONATAN EVEN
BENJAMIN GRUENSTEIN
JOSEPH D. ZAVAGLIA
STEPHEN M. KESSING
LAUREN A. MOSKOWITZ
DAVID J. PERKINS
J. LEONARD TETI, II
D. SCOTT BENNETT
TING S. CHEN
CHRISTOPHER K. FARGO
DAVID M. STUART

AARON M. GRUBER
O. KEITH HALLAM, III
OMID H. NASAB
DAMARIS HERNÁNDEZ
JONATHAN J. KATZ
DAVID L. PORTILLA
RORY A. LERARIS
MARGARET T. SEGALL
DANIEL K. ZACH
NICHOLAS A. DORSEY
ANDREW C. ELKEN
JENNY HOCHENBERG
VANESSA A. LAVELY
G.J. LIGELIS JR.
MICHAEL E. MARIANI
LAUREN R. KENNEDY
SASHA ROSENTHAL-LARREA
ALLISON M. WEIN
MICHAEL P. ADDIS
JUSTIN C. CLARKE
SHARONMOYEE GOSWAMI
C. DANIEL HAAREN
EVAN MEHRAN NORRIS
LAUREN M. ROSENBERG
MICHAEL L. ARNOLD
HEATHER A. BENJAMIN
MATTHEW J. BOBBY
DANIEL J. CERQUEIRA

ALEXANDRA C. DENNING
HELAM GEBREMARIAM
MATTHEW G. JONES
MATTHEW M. KELLY
DAVID H. KORN
BRITTANY L. SUKIENNIK
ANDREW M. WARK
ANDREW T. DAVIS
DOUGLAS DOLAN
SANJAY MURTI
BETHANY A. PFALZGRAF
MATTHEW L. PLOSZEK
ARVIND RAVICHANDRAN

PARTNER EMERITUS
SAMUEL C. BUTLER

OF COUNSEL
MICHAEL L. SCHLER
CHRISTOPHER J. KELLY
KIMBERLEY S. DREXLER
LILLIAN S. GROSSBARD
KIMBERLY A. GROUSSET
ANDREI HARASYMIK
JESSE M. WEISS
MICHAEL J. ZAKEN

CONFIDENTIAL

March 17, 2022

Zinger et al v. Ben & Jerry's Homemade, Inc. et al,
Case No. 2:22-cv-01154 (D.N.J.)

Dear Ed:

I write on behalf of defendants Ben & Jerry's Homemade, Inc. ("B&J"), Unilever United States, Inc. and Conopco, Inc. (collectively, "Defendants") in the above-captioned action commenced by your clients, American Quality Products Ltd. ("AQP") and Avi Zinger (collectively, "Plaintiffs"), on March 3, 2022 (the "Action").

As I presume you know, Section 32.2 of the License Agreement dated January 10, 2004, as amended (the "License Agreement"), provides that "upon written demand of either party, any claim or controversy concerning the subject matter hereof shall be submitted to arbitration pursuant to the then prevailing American Arbitration Association rules". This letter constitutes a written demand for arbitration of all claims and controversies in the Action that are subject to Section 32.2.

Nevertheless, as a compromise and in the interest of narrowing the range of potential disputes among the parties, Defendants are prepared to proceed in the Action, in court, by responding to Plaintiffs' motion for preliminary injunction and moving to dismiss all claims in the Action, *provided* that Plaintiffs agree (a) not to argue that Defendants have waived any right to require arbitration of any claim that survives the motion to dismiss, and (b) to extend Defendants' deadline to respond to the Complaint to May 2, 2022. If any of Plaintiffs' claims survive the motion to dismiss, the parties can address any disputes about the arbitrability of any surviving claims at that time.

Please confirm Plaintiffs' agreement to the above by no later than March 21, 2022 at 5:00 p.m. Eastern.

Defendants reserve all rights.

Sincerely,

/s/ Gary A. Bornstein

Gary A. Bornstein

Edward J. Dauber, Esq.
Linda G. Harvey, Esq.
Greenberg Dauber Epstein & Tucker, P.C.
1 Gateway Center, Suite 600
Newark, New Jersey 07102
edauber@greenbergdauber.com
lharvey@greenbergdauber.com

Encl.

VIA EMAIL AND FEDEX

Copies w/encl. to:

American Quality Products Ltd.
1 Hameisav Street
Yavne 70600
Israel
Attention: Avi Zinger

Adv. Zvi Chowers
Glusman, Chowers, Broid & Co.
8 Shaul Hamelech Boulevard
Tel Aviv 64733
Israel
Facsimile: 972-3-693-8680

VIA FEDEX AND FACSIMILE

Exhibit 2

EDWARD J. DAUBER

March 22, 2022

VIA ELECTRONIC MAIL

Gary A. Bornstein, Esq.
Cravath Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475

Re: **Zinger, et al. v. Ben & Jerry's Homemade, Inc., et al.**
Civil Action No. 2:22cv01154(KM)(JBC)

Dear Gary:

Thank you for your letter of March 17, 2022. Subject to the terms of this letter, we agree that proceeding with the preliminary injunction motion is not a waiver of defendants' or plaintiffs' positions with respect to the arbitrability of issues in the case. Furthermore, subject to the terms set forth in this letter, we consent to defendants' request to answer or otherwise move on or before May 2, 2022. With respect to any potential motion to dismiss or other pleading you may file, we reserve the right on behalf of plaintiffs to assert all claims, defenses, arguments and positions, substantive and procedural, and our agreement herein is not a waiver of any position we may take in response to a motion to dismiss or other pleading.

Very truly yours,



Edward J. Dauber

EJD:lac