

COMMONWEALTH OF AUSTRALIA

TRADE MARKS ACT 1995

IN THE MATTER OF Australian Trade  
Mark Application No. 530959 in the name  
of S C JOHNSON HOME STORAGE  
INC

STATUTORY DECLARATION

I, Robert James Strickland of 509 St. Kilda Road, Melbourne, Victoria 3004, Australia, do solemnly and sincerely declare as follows:

1. I am a Principal of Griffith Hack, Patent and Trade Mark Attorneys of 509 St. Kilda Road, MELBOURNE VICTORIA 3004, AUSTRALIA ("my firm") and am authorised to make this Declaration on behalf of my firm.
2. I am authorised to make this Declaration by and on behalf of INTERNATIONAL CONSOLIDATED BUSINESS PTY LTD the applicant for removal.
3. The applicant for removal has conducted investigations into the use of the trade mark in respect of the goods specified in registration no. 530959 and the investigation has revealed that during the three years ending one month before the day this removal application was filed, the registered owner has not used the trade mark in Australia in respect of any of the goods for which it is registered, or did not use the trade mark in good faith in Australia in respect of any other goods of the registration.

INTERNATIONAL CONSOLIDATED BUSINESS PTY LTD is a person aggrieved by virtue of the following:

- (a) It is the applicant for registration of the trade mark ZIPLOC under an application lodged on 19 November 2001 in respect of, goods in Class 16, namely "*Bags in this class, including plastic bags; kitchen tidy bags and garbage bags; plastic bags for food*"

*storage, snacks and sandwiches; plastic freezer bags and plastic bags for medical products; cling wrap".*

- (b) It proposes to use the trade mark ZIPLOC on goods in Class 16, namely "*Bags in this class, including plastic bags; kitchen tidy bags and garbage bags; plastic bags for food storage, snacks and sandwiches; plastic freezer bags and plastic bags for medical products; cling wrap".*

**AND I MAKE** this solemn declaration by virtue of the Statutory Declarations Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at Melbourne        )  
 Victoria                            )  
 on 22nd November 2001        )

*[Handwritten Signature]*  
 \_\_\_\_\_

Before me:

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Signature of Witness

**A. J. F. WARD**  
**GRIFFITH HACK**  
 Name and Capacity of **509 St. Kilda Road, Melbourne 3004**  
**A Registered Patent Attorney within the**  
**meaning of the Patents Act 1990.**

**Australia***Trade Marks Act 1995*

**IN THE MATTER** of Trade Mark Registration  
530959 in the name of S. C. Johnson Home  
Storage Inc.

- and -

**IN THE MATTER** of Application for Removal  
Under Section 92 by International Consolidated  
Business Pty Ltd

- and -

**IN THE MATTER** of Opposition by S. C.  
Johnson Home Storage Inc.

**Statutory Declaration**

I, Gerard James Skelly, of 31 Market Street, Sydney, New South Wales 2000, Australia, do solemnly and sincerely declare as follows:

1. I am a Principal of Spruson & Ferguson and am responsible for the conduct of this case.
2. I refer to my Declaration made on 19 December 2002. The further Statutory Declaration referred to therein has now been prepared and forwarded to Cecilia Howard for execution.
3. The present extension is required to allow time for this Declaration to be returned to us and to thereafter file it and serve a copy on the removal Applicant's attorneys which are based in Melbourne.
4. I believe the Howard Declaration will complete the Opponent's evidence in support.

**AND I MAKE** this solemn declaration by virtue of the Statutory Declarations Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

**DECLARED** at SYDNEY

This SEVENTEENTH day of  
JANUARY 2003

Before me:

  
Solicitor

D. R. C. Jackson

  
\_\_\_\_\_

IRN: T062696M

**Australia***Trade Marks Act 1995*

**IN THE MATTER** of Trade Mark Registration  
530959 **ZIPLOC** in the name of S. C. Johnson  
Home Storage Inc.

- and -

**IN THE MATTER** of Application for Removal  
under Section 92 by International Consolidated  
Business Pty Ltd

- and -

**IN THE MATTER** of Opposition thereto by S.  
C. Johnson Home Storage Inc.

**Statutory Declaration**

I, Gerard James Skelly, of 31 Market Street, Sydney, New South Wales 2000, Australia, do solemnly and sincerely declare as follows:

1. I am a Principal of Spruson & Ferguson and am responsible for the conduct of this case.
2. Part of the Opponent's evidence-in-support has been filed and served.
3. I believe further time is required to arrange for preparation and execution of a further Statutory Declaration corroborating sales of the ZIPLOC Goods through the staff store of S.C. Johnson & Son Pty Ltd.
4. I believe this further Declaration is likely to be made by Cecilia Howard, a Marketing Director of S.C. Johnson & Son Pty Ltd. It is anticipated this Declaration will be filed and served within the period of the present extension so as to complete the evidence-in-support.

**AND I MAKE** this solemn declaration by virtue of the Statutory Declarations Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

**DECLARED** at Sydney

This 19<sup>th</sup> day of December 2002

Before me: *TRACY BERGER*

*Tracy Berger*  
Solicitor

  
Gerard James Skelly

IRN: T062696M

## AUSTRALIA

*Trade Marks Act 1955*

**IN THE MATTER** of Trade Mark  
Registration No. 530959 **ZIPLOC** in the  
name of S. C. Johnson Home Storage Inc.  
- and -

**IN THE MATTER** of Application for  
Removal under Section 92 by International  
Consolidated Business Pty Ltd

- and -

**IN THE MATTER** of Opposition thereto  
by S. C. Johnson Home Storage Inc.

### Statutory Declaration

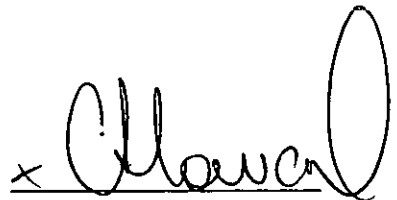
I, Cecilia Mary Catherine Howard, of 160 Epping Road, Lane Cove New South Wales 2066, do solemnly and sincerely declare as follows:-

1. I am Marketing Director of S. C. Johnson & Son Pty Ltd ("SCJ Australia") and am authorised to make this Declaration on behalf of SCJ Australia.
2. I have been employed by SCJ Australia since August 2002 and have been in my present position since that date. I have full access to the records of SCJ Australia relating to trade mark matters. The information contained in this Declaration is derived from those records, from information provided to me by employees of SCJ Australia and its associate companies.
3. I am aware that International Consolidated Business Pty Ltd has applied for removal of the trade mark ZIPLOC registered in Australia under No. 530959 on the ground of non-use of the ZIPLOC trade mark in relation to "plastic bags for wrapping and packing" (the "ZIPLOC Goods") during the three year period 22 October 1998 to 22 October 2001 (the "Relevant Period").
4. I believe SCJ Australia and S C Johnson Home Storage Inc are both wholly owned subsidiaries of S C Johnson & Son, Inc.
5. I have read the Statutory Declaration by Thomas S Simpson filed in this matter and specifically refer to paragraph 7 of that Declaration relating to sale of the ZIPLOC Goods through SCJ Australia's staff store.


- 6. Attached to this Declaration and marked "Annexure CH-1" are copies of invoices dated 20 October 2000 and 1 August 2001 relating to sales of ZIPLOC Goods from S C Johnson & Son, Inc to SCJ Australia. I believe these ZIPLOC Goods were subsequently sold through SCJ Australia's staff store to employees and retirees as well as their families and non-relative guests.

AND I MAKE this solemn Declaration by virtue of the Statutory Declarations Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

X  
X  
DECLARED at  
this 19th day  
of JANUARY 2003

X   
Cecilia Howard  
CECILIA HOWARD

BEFORE ME:

X   
Justice of the Peace/Solicitor

## AUSTRALIA

*Trade Marks Act 1955*

**IN THE MATTER** of Trade Mark  
Registration No. 530959 **ZIPLOC** in the  
name of S. C. Johnson Home Storage Inc.

- and -

**IN THE MATTER** of Application for  
Removal under Section 92 by International  
Consolidated Business Pty Ltd

- and -

**IN THE MATTER** of Opposition thereto  
by S. C. Johnson Home Storage Inc.

### Statutory Declaration

I, Thomas S Simpson, of 1525 Howe Street, Racine, Wisconsin USA, do solemnly and sincerely declare as follows:

1. I am Assistant Secretary of S. C. Johnson Home Storage, Inc ("my Company"), a wholly-owned subsidiary of S.C. Johnson & Son, Inc., and am authorized to make this Declaration on my Company's behalf.
2. I have been employed by S.C. Johnson & Son, Inc. since July 1, 1980, and have been an officer of my Company since February 8, 1999. I have full access to my Company's records relating to trade mark matters. The information contained in this Declaration is derived from those records, from information provided to me by employees of my Company and its associate companies, or from my own personal knowledge.
3. I am aware that International Consolidated Business Pty Ltd has applied for removal of the trade mark ZIPLOC registered in Australia under No. 530959 on the ground of non-use of the ZIPLOC trade mark in relation to "plastic bags for wrapping and packing" (the "ZIPLOC Goods") during the three year period 22 October 1998 to 22 October 2001 (the "Relevant Period").
4. My Company has registered, or applied to register, its ZIPLOC trademark in 95 countries throughout the world. Attached to this Declaration and marked "Annexure TSS-1" is a document setting out details of my Company's worldwide registrations and pending applications for the ZIPLOC trade mark.
5. I believe ZIPLOC Goods are offered for sale and sold by, or with the authority of, my Company in over 40 countries throughout the world. I believe that worldwide sales of ZIPLOC Goods have, on average, exceeded US\$400 million each year over the last five years.

- 6. I am informed by Cecilia Howard, Marketing Director, and Paul Harris, Brand Manager of my Company's associated company, S C Johnson & Son Pty Ltd (SCJ Australia) and believe that, in August 1998, SCJ Australia commenced marketing research studies preparatory to the public launch of ZIPLOC Goods in Australia. I believe these studies included placement of ZIPLOC Goods into selected Australian households. Attached to this Declaration and marked "Annexure TSS-2" is a document listing the types of research studies undertaken in Australia between August 1998 and September 2001.
- 7. I am further informed by Cecilia Howard and Yvonne Brennan and believe that, during the Relevant Period, SCJ Australia offered for sale and sold ZIPLOC Goods to employees, retirees, their families and non-relative guests of SCJ Australia through its staff store. SCJ Australia does not keep detailed records of product sales through the staff store.
- 8. I am further informed by Paul Harris of SCJ Australia and believe that, during the Relevant Period, SCJ Australia made a presentation in 1998 to the mass market retailer Coles to encourage the retailer to begin carrying in its stores numerous ZIPLOC Goods for sale to consumers. Attached to this Declaration and marked Annexure "TSS-3" is a copy of the SCJ Australia presentation to Coles.
- 9. I have read the Statutory Declaration of Jeanette Marie Bertino made on 18 September 2002 and have inspected the samples of ZIPLOC Goods in Exhibit JB2 to that Declaration.
- 10. I confirm the ZIPLOC Goods imported and sold in Australia by USA Foods during the Relevant Period are genuine products and that the ZIPLOC trade mark has been applied to these Goods with the authority of my Company which is a financially controlled subsidiary of S.C. Johnson & Son, Inc.
- 11. The financial information contained in paragraph 5 of this Declaration is confidential and is submitted solely for the purpose of the present Opposition. It is not to be disclosed or used for any other purpose whatsoever and I submit it is exempt from disclosure under the provisions of the Freedom of Information Act.

**AND I MAKE** this solemn Declaration by virtue of the Statutory Declarations Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

S.C. JOHNSON HOME STORAGE, INC.

By: Thomas S. Simpson *SSD*  
 Name: Thomas S. Simpson  
 Title: Assistant Secretary

Subscribed and Sworn to Before me  
 This 9<sup>th</sup> day of December, 2002.  
Sereen L. Oillard  
 Notary Public, Racine County, WI  
 My Commission Expires Oct. 5, 2003



## AUSTRALIA

*Trade Marks Act 1955*

**IN THE MATTER** of Trade Mark  
Registration No. 530959 **ZIPLOC**  
in the name of S. C. Johnson Home Storage  
Inc.

- and -

**IN THE MATTER** of Application for  
Removal under Section 92 by  
International Consolidated Business Pty Ltd

- and -

**IN THE MATTER** of Opposition thereto  
by S. C. Johnson Home Storage Inc.

### Statutory Declaration

I, Jeanette Marie Bertino, of 11 Nicholson Street, Bentleigh, Victoria 3204, Australia, do solemnly and sincerely declare as follows:-

1. I am a director of PTB Consulting Pty Ltd trading as USA Foods ("my Business") which has, since April 1997, conducted a retail store business based in Melbourne specialising in the sale of grocery items made in the United States or popular in the United States.
2. In addition to my Business's retail supermarket outlet, which is situated at 11 Nicholson Street, Bentleigh, Victoria 3204, my Business has also generated sales of American grocery items throughout all States and Territories in Australia through its website at <http://www.usafoods.com.au>.

Now shown to me and marked Annexure **JB 1** is a print-out of the home page downloaded from this website.

3. I am aware that a subsidiary of S. C. Johnson & Son, Inc., called S. C. Johnson Home Storage Inc., is the registered owner in Australia of the trade mark ZIPLOC covering "*Plastic bags for wrapping and packing*" ("the ZIPLOC Goods") and that a third party has applied to the Trade Marks Office for removal of this registration on the ground that the ZIPLOC trade mark has not been used in Australia in relation to the ZIPLOC Goods in the course of trade at any time during the three year period 22 October 1998 to 22 October 2001 (the "Relevant Period").
4. My Business has been importing ZIPLOC Goods from distributors of S. C. Johnson Home Storage Inc in the United States of America and selling these Goods in Australia continuously since approximately August 2000 up until the present time. The ZIPLOC Goods that have been offered for sale and sold by my Business are:

- (a) ZIPLOC Gallon freezer bags (15 bags per box);
- (b) ZIPLOC SLIDELOC bags (also sold as ZIPLOC EASY ZIPPER) Quart (20 bags per box); and
- (c) ZIPLOC SLIDELOC bags (also sold as ZIPLOC EASY ZIPPER) Gallon (15 bags per box).

Now shown to me and marked Exhibit **JB 2** are samples of the ZIPLOC Goods my Business has sold to consumers in Australia during the period of approximately August 2000 to 22 October 2001.

- 5. Now shown to me and marked Annexure **JB3** is a copy of an invoice dated 10 March 2001 from a distributor in the United States of America. This invoice includes an item description "EZ ZIPPER STOR GAL". I confirm this item corresponds to ZIPLOC brand Easy Zipper Storage Gallon plastic bags, a sample of which is included in Exhibit **JB2**.
- 6. As mentioned in paragraph 2 above, my Business has also generated sales of ZIPLOC Goods throughout Australia by means of the website at <http://www.usafoods.com.au>. I believe these Goods have been advertised on my business's website continuously since approximately August 2000 to date.

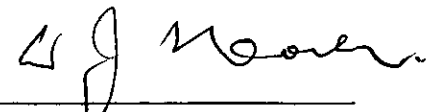
Now shown to me and marked Annexure **JB 4** is a hard copy of the relevant page from my Business's website showing the way in which my Business advertises ZIPLOC Goods. This page was downloaded on 28 February 2002 but I believe it is consistent with the manner in which these Goods were offered for sale between August 2000 and 22 October 2001.

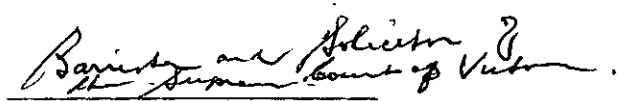
**AND I MAKE** this solemn Declaration by virtue of the Statutory Declarations Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

**DECLARED** at Perth  
 this 18 day  
 of September 2002

  
 Jeanette Marie Bertino

**BEFORE ME:**

  
 \_\_\_\_\_  
 Witness

  
 \_\_\_\_\_  
 Name and Title of Witness