

Avoiding Recipes for Disaster

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- **A leading international** law firm with a diversified business practice, representing a wide range of commercial, industrial and financial enterprises, both privately and publicly held.
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Health

Intellectual Property

International Taxation

International Trade

Labor & Employment

Legislative/Government
Relations

Life Sciences & Medical
Devices

Mergers & Acquisitions

OSHA

Private Equity

Products Liability

Real Estate

Restructuring & Insolvency

Securities

Taxation

Telecommunications

Trial & Dispute Resolution

White-Collar Criminal
Defense

- Strategic IP Analysis and Planning
- Patent Prosecution (Domestic & Foreign)
- Portfolio Management and Evaluation
- Litigation/ITC Proceedings
- Counseling and Opinions
- Due Diligence Investigations
- Negotiation/Drafting of IP Agreements

When to Think About Intellectual Property

Matters to Likely involve IP

- **Company Name/House Mark/Slogan**
- **Creation or Introduction of New Product or Brand**
- **Acquisition, Sale or Merger of Companies or Products**
- **Hiring Independent Contractors**
- **Advertising Campaigns**
- **Hiring new Employees**
- **Name or Likeness of Individual**
- **Creating/Changing Web Site Content**
- **Doing Business in New Locations**

- Trademarks protect source of origin of goods
- What is a Trademark?
 - Anything that can designate the source of a product or service
 - Names
 - Slogans
 - Designs
 - Sounds
 - Color

■ Sources of Trademark Rights

- Federal ®
- State registrations ™
- Common Law ™

■ How Do I Register A Trademark?

- Search
- Application To US Patent and Trademark Office or Corporation Division of Secretary of State
- Registration
- **YOU MUST ACTUALLY USE THE MARK TO GET A FEDERAL REGISTRATION**

- A **fanciful / inherently distinctive** trademark comprises an entirely invented word or "fanciful" sign.
 - STARBUCKS for Coffee
 - EXXON for petroleum
 - KODAK for photographic supplies
 - FRISBEE

- An **arbitrary** trademark is usually a common word which is used in a meaningless context in connection with products or services unrelated to the word's dictionary meaning.
 - APPLE for computers
 - AMAZON for online book and music distribution
 - SUBWAY for restaurant services.

- A **suggestive** trademark tends to indicate the nature, quality, or a characteristic of the products or services in relation to which it is used, but does not directly describe this characteristic.
 - COPPERTONE for sun tanning products
 - LONDON FOG for rain coats
 - HOME DEPOT for home improvement centers

■ Descriptive

- A **descriptive** mark is a term having a dictionary meaning which is used in connection with products or services directly related to that meaning.
 - Such terms are registrable only if it can be shown that the mark has acquired distinctiveness through use in the marketplace.

■ Generic

- A **generic** term is the common name for the products or services in connection with which it is used.
 - Famous marks which became generic through misuse:
 - Linoleum, escalator, cellophane, kerosene, mimeograph, trampoline, shredded wheat, dry ice, thermos, yo-yo, corn flakes

■ Federal Registration

- Enforceable throughout United States
- Requires use in interstate commerce
- May be filed as use based or intent to use
- Term of 10 years
- Unlimited renewals
- Can become uncontestable after 5 years
- Automatically get you into Federal court for infringement actions.

■ State Registrations

- Usually handled by Corporations Division of Secretary of State
- Are only valid within the state registered
- Vary in term (Florida is 5 years)
- Unlimited renewals

■ Copyrights

- Protects original works of authorship
 - Written works
 - Audiovisual
 - Art works
 - Computer software
 - Sound Recordings
 - Performing Arts
- Protects expression not concept

- Protects expression not concept
 - Will not protect a list of ingredients
 - May protect detailed language describing how to combine the ingredients.

■ How do I Register a Copyright?

- www.loc.gov
- Complete appropriate application
- Submit it with copy of the work
- Pay a Fee
- Wait 2-4 months for the certificate

■ TIP

- Notice of Copyright is no longer required to enforce a registration
- There are procedural advantages to providing notice in a conspicuous location on your work
- Protects against innocent infringer defense
- **(C) 2009 Michael J. Keller**

- Trade Secret
 - What is a trade secret?

- Protect secrets by
 - Restricting dissemination of information
 - Restricting use of information

- Anything that you maintain as a secret.
- Information must not be generally known or in plain view of the public.

- Customer lists
- Formulations
- Business plans
- Financial information
- Patent applications
- Product specifications
- Clinical Protocols

- **Anything You Keep Secret**

- Customer lists
- Recipes
- Business plans
- Financial information
- Suppliers

- **How Do I Protect My Secret?**
 - Tell no one
 - If the Information is public, it's not a secret
 - Disclose only under a written confidentiality agreement
 - Employee Non Disclosure Agreements

- You must maintain the information as confidential.
- Any disclosure to a third party without a confidentiality agreement may render other agreements unenforceable with respect to the disclosed information.

- Information already in receiving party's possession
- Information in the public domain
- Information provided by a third party not under confidentiality obligation to discloser
- Independently discovered

- What is a Patent?

- Government granted right to exclude others from practicing the invention.
- A patent is not a right for you to practice the patented invention

■ Requirements for a Patent

- Invention must be:
 - New
 - Useful
 - Non-Obvious
 - Not sold or disclosed to public within 1 year of patent application filing date
- Patent application should be filed within 1 year of any public disclosure, public use or commercial use, offer for sale, importation or sale of the invention

■ Patent Term

- 20 years from filing date or 17 years from issue for patents filed before June 1995
- Extensions are available for time a product spends in FDA regulatory process up to 5 years.

■ What Can I Patent?

- Devices
 - Novel equipment or modifications to known equipment to do something better or different
- Compositions of Matter
 - Ingredients having new properties
 - Changes to a recipe to allow automation
- Processes
 - Novel industrial/commercial process for making something
- Designs having useful element
 - Packaging
 - Product shape?
- Plants

United States Patent Office

3,582,358

Patented June 1, 1971

1

3,582,358

PEANUT BUTTER AND JELLY COMBINATION
Robert H. Bundus, Riverside, Ill., assignor to Beatrice
Foods Co., Chicago, Ill.

Filed Dec. 6, 1967, Ser. No. 688,311

Int. Cl. A23I 1/38

U.S. Cl. 99—128

8 Claims

ABSTRACT OF THE DISCLOSURE

Water-in-oil emulsifiers are added to peanut butter and the peanut butter is then stable when in contact with jelly, jam or marshmallow. Some oil-in-water emulsifier can be included to obtain increased stiffness of the peanut butter.

The present invention relates to a stable peanut butter and jelly, jam or marshmallow combination.

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IM to peanut butter prevented fat separation in the peanut butter and eliminated moisture migration to the peanut butter from an adjacent layer of jelly, e.g., apple jelly.

5 A control made from layers of peanut butter without any emulsifier and jelly resisted moisture migration but had some oil separation. When the peanut butter had added thereto mono and diglycerides there was considerable migration of moisture from the jelly to the peanut butter with visible discoloration of the peanut butter to
10 a depth of $\frac{3}{16}$ inch.

The peanut butter and jelly are not in intimate admixture but instead are stratified in contacting layers. The layer can either be vertical or horizontal or they can be
15 swirled, e.g., to give a vertically disposed spiral design.

The volume of peanut butter to jelly, jam or marshmallow can be from about 25:75 to about 95:5 but this is not a critical limitation.

20 Any jelly can be employed, e.g., apple jelly, grape jelly, raspberry jelly, plum jelly, blackberry jelly, blue-

US006874409B2

(12) **United States Patent**
Valenzky, Jr. et al.

(10) **Patent No.:** **US 6,874,409 B2**

(45) **Date of Patent:** **Apr. 5, 2005**

(54) **METHOD AND APPARATUS FOR MAKING COMMERCIAL CRUSTLESS SANDWICHES AND THE CRUSTLESS SANDWICH MADE THEREBY**

2,780,163 A 2/1957 Lee
3,044,883 A 7/1962 Ferguson

(Continued)

FOREIGN PATENT DOCUMENTS

(75) Inventors: **Robert John Valenzky, Jr.**, Akron, OH (US); **Duane Nathan Eberhart**, Wooster, OH (US)

AU A-40334/95 6/1996

OTHER PUBLICATIONS

(73) Assignee: **The J. M. Smucker Company**, Orrville, OH (US)

Letter Dated May 5, 2000.

Selected Excerpts From a Book *Pasta, Pies and Pasteries—Tart Recipes From Around the World*, Authored by Ursula Kaiser, undated.

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

OTHER PUBLICATIONS

(21) Appl. No.: **10/803,240**

Primary Examiner—Timothy F. Simone

(22) Filed: **Mar. 18, 2004**

(74) *Attorney, Agent, or Firm*—Fay, Sharpe, Fagan,; Brian E. Turung; Robert V. Vickers

(65) **Prior Publication Data**

(57) **ABSTRACT**

US 2004/0180115 A1 Sep. 16, 2004

A method of making a crustless sandwich from two slices of bread with outer crusts, the method comprising: placing a first slice of bread on a platen; forming a mass of a first food spread onto the central portion of the first slice of bread in a position spaced inwardly from a marginal area where the mass is formed with an inner lower layer with an outer rim extending upwardly from the lower layer to define a closed pocket or receptacle recess in the mass; placing a second food spread in the receptacle recess; closing the receptacle recess with a layer of the first food spread generally coextensive with the mass and supported on the outer rim of the mass to encapsulate the second food spread into a center composite food layer; placing a second slice of bread over the first slice to cover the center composite food layer; cutting the bread slices in unison in a cut pattern to remove the crusts of the slices; and, pressing the two bread slices together by force through the slices against a pressure surface on the platen to crimp the slices into a crustless sandwich.

Related U.S. Application Data

(62) Division of application No. 10/331,031, filed on Dec. 27, 2002, which is a continuation of application No. 09/797,553, filed on Mar. 2, 2001, now abandoned.

(51) **Int. Cl.**⁷ **A23L 1/00**; A23L 1/31; A21C 9/04; A21C 15/00

(52) **U.S. Cl.** **99/450.4**; 99/450.1; 99/450.5

(58) **Field of Search** 99/450.4, 450.5, 99/450.6, 450.7, 450.8, 450.1, 450.2, 450.3, 494, 516, 537, 538, 484, 485; 426/94, 275, 297, 138, 274

(56) **References Cited**

U.S. PATENT DOCUMENTS

How Do I Get A Patent?

- Patent Search
- Prepare Patent Application
- Pay Fee
- Wait

What Happens After I File?

- Patent Examiner reviews application
- Patent Examiner issues an Office Action
 - Allowing Application- Patent issues
 - Rejecting Application

My Application Was Rejected?

- You file a response explaining why the Examiner was wrong.
- You get two tries until the rejection is final and the application goes abandoned.
- Application can be re-filed or appealed.

- Confidentiality
- Ownership of Intellectual Property
- Non-compete
- Restriction on Publication
- Look in university or corporate handbooks for policies

- Register your business and product names as trademarks.
- Keep your recipes a secret
- If you can, prevent employees from learning the recipe.
- If you develop new techniques or machines consider patents
- Register the domain names for the business and products.
- Make employees sign employment and confidentiality agreements. Non Compete agreements for anyone dealing with a flagship product.
- Don't copy your competitors

You Want More Information?

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