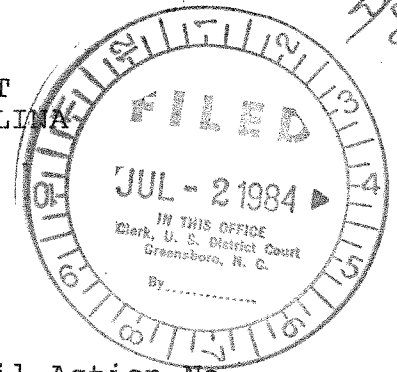


UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM DIVISION



-----X
LIGGETT GROUP INC.

Plaintiff

v.

Civil Action No.

BROWN & WILLIAMSON TOBACCO
CORPORATION

Defendant
-----X

C-84-617-D

VERIFIED COMPLAINT

1. This is an action for statutory and common law unfair competition and common law trademark infringement by Liggett Group Inc. ("LIGGETT") against Brown & Williamson Tobacco Corporation ("BROWN & WILLIAMSON").

THE PARTIES

2. Plaintiff, Liggett, is a Delaware corporation having its principal place of business at West Main and Fuller Streets, Durham, North Carolina.

3. Upon information and belief, defendant, Brown & Williamson, is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in Louisville, Kentucky. Brown & Williamson is owned by a multi-billion dollar British conglomerate, B.A.T. Industries. Brown & Williamson is the third largest cigarette manufacturer in the U.S., with annual sales exceeding \$1.5 billion.

4. Upon information and belief, Brown & Williamson is registered with the North Carolina Secretary of State; is authorized to transact business as a corporation in the State

of North Carolina; has named and appointed CT Corporation System (which maintains its offices in Durham, North Carolina, within this District) as its registered agent for service of process in the State of North Carolina and maintains an office and place of business in Forsyth County, North Carolina, within this District.

5. Upon information and belief, Brown & Williamson regularly manages, conducts and is doing business in Winston-Salem, North Carolina.

6. The infringing and tortious acts complained of herein have been committed by defendant within this judicial district or have impacted upon this judicial district.

7. Upon information and belief, Brown & Williamson is the dominant force behind certain acts of trademark infringement and unfair competition.

JURISDICTION AND VENUE

8. The court has jurisdiction over this action under Title 28 United States Code §1331 in that this action arises under the Trademark Laws of the United States, 15 U.S.C. §1025 et seq. Jurisdiction is also founded upon 28 U.S.C. §§1338(a) and (b), 15 U.S.C. §1221 and the doctrines of pendent and ancillary jurisdiction. This Court has venue under the provisions of 28 United States Code, §1391(c).

FIRST CLAIM

9. This is a claim for federal unfair competition, comprising false designations of origin and false descriptions and representations under the Lanham Act.

PLAINTIFF'S PRODUCTS AND REPUTATION

10. Since the beginning of the century Liggett has been a well-known manufacturer of high-quality cigarettes in the United States. The company has produced such cigarettes as CHESTERFIELD, LARK, L&M, and EVE.

11. During the last 25 years, Liggett's fortunes have declined and by 1980 Liggett was on the verge of liquidation. In 1980, Liggett, departing from the long established practice of the trade and undertaking a substantial business risk, introduced into the United States marketplace "generic" cigarettes. These cigarettes, although all manufactured from the same source, did not bear on their package or advertising material any particular brand name or symbol.

12. Since 1980, Liggett has used most of its limited resources in the production and distribution of generic cigarettes. Liggett's generic cigarettes are its lifeline, keeping Liggett in business.

13. As a result of Liggett's persistent efforts, generic cigarettes, although still a minor factor in the cigarette industry, have grown in popularity.

14. In 1980, Liggett investigated possible ways to assure consumers that generic cigarettes are of consistent high quality and that this quality is guaranteed by one manufacturer.

15. In 1982, Liggett conceived the plan of using a unique symbol which could serve as an assurance to the public that each pack of cigarettes is of the same high quality and freshness. After considering numerous designs and symbols, Liggett created and developed its QUALITY SEAL trademark and its QUALITY SEAL PROGRAM. The program was founded upon the use and national promotion of the "QUALITY SEAL" symbol (Exhibit 1). This symbol was purposefully designed to be commercially unique and visually distinctive. The contrasting colors black and gold were chosen in order to attract consumer attention. The central geometric design in the symbol is the oval. The central portion of the symbol contains the letter "Q" within an oval. Within the letter "Q" itself, there appears a dark oval area. Around the area outer oval, there appears the words "QUALITY BLEND TRADEMARK". The double oval is surrounded by strikingly distinct black and gold lines. The general appearance of the symbol is that of an "oval within a square". Finally, the "oval within a square" portion of the symbol is surrounded by two rectangular areas which contain the words "CIGARETTES" and "CLASS A". The number "20" is written within a semi-circular design.

16. At the time that Liggett selected its symbol, no other company in the cigarette industry had used any symbol or emblem that was confusingly similar to the appearance of the QUALITY SEAL trademark.

17. Only Liggett and its authorized distributors may lawfully use and display the QUALITY SEAL symbol.

18. Since July 1983, plaintiff has nationally sold approximately 908,100,000 cigarette packs, with each pack prominently bearing its symbol of quality guarantee (Exhibit 2).

19. The retail sales from the QUALITY SEAL cigarettes is approximately \$681,075,000.

20. It is estimated that by September, 1984, approximately 1.4 billion packs of cigarettes will have been sold to the public and, consequently, billions of mental impressions of the QUALITY SEAL symbol will have been made upon consumers. Each pack of cigarettes is the functional equivalent of an advertisement since the symbol is displayed on each and every cigarette pack so that consumers must always view the QUALITY SEAL symbol.

21. In order to gain maximum exposure of its distinctive QUALITY SEAL symbol, applicant has engaged in nationwide advertising which has linked the QUALITY BLEND trademark solely with Liggett and Liggett's authorized distributors. Specifically, Liggett has been involved in an aggressive nationwide advertising effort to promote the QUALITY BLEND designation in at least 120 newspapers reaching at least 60 percent of the major markets in the United States. The newspapers include The Asheville Citizen, The Durham Sun, The Greenville News, San Antonio News, The San Diego Union,

Columbus Citizen Journal, New York Post, Los Angeles Herald Examiner, Los Angeles Times, Newsday, New York Times, Boston Globe, Dallas Morning News, Chicago Tribune, Miami Herald News and Washington Post. Representative samples of these newspaper ads are attached hereto as Exhibit 3.

22. Liggett has already expended over \$5.1 million for a national QUALITY SEAL advertising campaign and has, for the period October 1983 through September 1984, allocated \$12.1 million for national and local advertising and promotion.

23. Liggett is sponsoring a cooperative program for local retailers which has cultivated awareness in the markets of the QUALITY SEAL symbol. Liggett creates and monitors all advertising materials used in this cooperative program (Exhibit 4). As the major contributor to the cooperative program, Liggett has allocated an additional \$7 million for the period October 1983 through September 1984 to promote and distribute advertising materials for local retailers.

24. Liggett is promoting and selling its QUALITY SEAL cigarettes in about 150,000 retail stores across the nation.

25. The QUALITY SEAL trademark and program serve as major tools used by plaintiff in obtaining additional distributors for its products and in maintaining plaintiff's existing distributors and retailers. As evidenced by Exhibit 5, the QUALITY SEAL trademark is the focal point in all

materials used to solicit prospective distributors for plaintiff.

26. To further instill a lasting impression upon consumers that the QUALITY SEAL symbol is exclusively owned by plaintiff and identified with plaintiff and its authorized distributors, numerous point-of-sale materials, including shelf displays, carton cards, window posters, carton rack labels, and product displays, are used by retailers to provide maximum in-store visibility of the QUALITY SEAL symbol (Exhibit 6).

27. The QUALITY SEAL symbol has made a substantial impact upon the cigarette trade at both the wholesale and retail level and this impact has been recorded in various news articles (Exhibit 7).

28. All these activities have caused QUALITY SEAL to become Liggett's signature of quality and the consumer comments show recognition of this symbol (Exhibit 8).

29. To gain maximum national exposure, plaintiff is sponsoring the Liggett & Myers QUALITY SEAL Amphitheater at the 1984 World Exposition (World's Fair). The Liggett QUALITY SEAL Amphitheater prominently displays the words QUALITY SEAL and the letter "Q" on the outside and inside of the structure (Exhibit 9). As part of the exhibition, Liggett has sold various promotional products bearing the QUALITY SEAL symbol, such as t-shirts, hats, bumper stickers and cigarette lighters

(Exhibit 10), all of which enhance the association between the QUALITY SEAL symbol and Liggett. Also, plaintiff has distributed cigarettes bearing the QUALITY SEAL symbol and the World's Fair official logo.

30. To promote the Liggett & Myers QUALITY SEAL Amphitheater, plaintiff has expended approximately \$1.5 million for public relations. Samples of the media releases are attached hereto as Exhibit 11. Since the Liggett & Myers QUALITY SEAL Amphitheater serves as the central forum for entertainment events occurring at the World's Fair, the national attention drawn to the amphitheater has increased public awareness of the QUALITY SEAL cigarettes.

31. Liggett's QUALITY SEAL cigarettes are the "official cigarette of the World's Fair". To communicate this fact, point-of-sale materials have been used by Liggett's authorized distributors (Exhibit 12).

32. As a result of the aforesaid activities, the QUALITY SEAL symbol has become well and favorably known in the United States and has become a valuable element of plaintiff's reputation and goodwill and is known and recognized as such by the consuming public. The continued commercial success and viability of plaintiff is largely dependent upon the QUALITY SEAL trademark, an asset totally developed by plaintiff's expense and effort.

33. Since 1981, Liggett has sold, promoted and distributed in the United States, cigarettes identified by a distinctive leaf design (Exhibit 13).

34. At the time of the adoption of the leaf design, Liggett was the only cigarette company which displayed a distinctive leaf design on the front of cigarette packaging.

35. Liggett has sold nationwide about 71,866,930 packs of cigarettes, with each pack exhibiting the leaf design on the front portion of the pack.

36. The retail sales volume for leaf design cigarettes is about \$53,900,197.

37. Liggett has nationally advertised the leaf design cigarettes. Samples of this advertising are annexed hereto as Exhibit 14. In all the ads, the leaf design is displayed so that consumers can associate the design with the cigarettes.

38. All leaf design cigarette packs bear the QUALITY SEAL trademark.

39. Point-of-sale materials are used by retail stores across the nation in order to promote the leaf design cigarette as a member of the QUALITY SEAL family (Exhibit 15).

EFFECTS OF DEFENDANT'S UNLAWFUL AND UNFAIR ACTS

40. Upon information and belief, defendant Brown & Williamson has been and is presently engaged in the offering for sale, promotion and distribution of cigarettes in the Middle District of North Carolina.

41. On or about the first week of June 1983, plaintiff learned of defendant's unauthorized offering for sale and promotion of cigarettes bearing a symbol with a striking similarity to plaintiff's QUALITY SEAL trademark.

42. Upon information and belief, defendant is embarking on a national campaign or plan to sell, offer for sale, or promote cigarettes bearing the imitation QUALITY SEAL trademark.

43. Upon information and belief, defendant alone and/or in connection with others unknown to plaintiff, deliberately, willfully, and intentionally caused to be manufactured, offered for sale, and promoted cigarette packs and/or packaging bearing a symbol blatantly imitating the QUALITY SEAL trademark for the purpose of taking advantage of the valuable goodwill associated with plaintiff's trademark.

44. By copying the collocation of elements used by plaintiff, defendant's imitative mark is confusingly similar to plaintiff's trademark. Similar to plaintiff's trademark, defendant's mark shows an oval design and the oval appears within a double circle. The double circle design is surrounded by black and gold lines, giving the center portion of the design the appearance of an "oval within a square". The oval design is encompassed by the words "BRANDED QUALITY" which sound and appear so similar to the words QUALITY BLEND, as used by plaintiff.

45. Upon information and belief, defendant has, in promotional sales materials, identified its cigarettes as "Ovals".

46. The other words and features of defendant's mark are revealingly similar to corresponding features in plaintiff's mark. Defendant's design is surrounded, like plaintiff's mark, by two rectangular areas including the words CIGARETTES and CLASS A. Also, the number "20" is shown within a "racetrack" design. Furthermore, defendant has placed its mark on the top center portion of its packaging. This mimics the exact position that plaintiff has placed its QUALITY SEAL mark on its packaging. Plaintiff's and defendant's marks are annexed hereto as Exhibit 16.

47. Upon information and belief, defendant, recognizing the importance of plaintiff's QUALITY SEAL trademark, has displayed its infringing trademark in sale presentations to prospective customers. Annexed hereto as Exhibit 17 is a photograph of defendant's infringing use of the QUALITY SEAL trademark.

48. Upon information and belief, defendant, and/or in concert with others unknown to plaintiff, is offering for sale, selling and promoting cigarettes bearing on its packaging an imitation of plaintiff's leaf design for the purpose of taking advantage of the valuable goodwill associated with plaintiff's leaf design mark. Defendant's infringing merchandise also

shows the QUALITY SEAL symbol and the leaf design imitations. Photographs of defendant's unauthorized merchandise bearing the imitation leaf design and plaintiff's genuine merchandise is attached hereto as Exhibit 18. Plaintiff's product is identified by the term QUALITY LIGHTS while defendant's infringing merchandise bears the word BRANDED.

49. Defendants started to use their imitations of the QUALITY SEAL symbol and the leaf design mark after plaintiff had come to be widely identified thereby.

50. Upon information and belief, defendant's infringing cigarettes have a noticeably different taste than that of plaintiff's QUALITY SEAL cigarettes.

51. Upon information and belief, defendant has so slavishly and unthinkingly copied the proprietary aspects of plaintiff's packaging that defendant has, on certain packaging, even copied plaintiff's tax permit number, TP42-NC, exclusively assigned to plaintiff by the United States Bureau of Alcohol, Tobacco and Firearms. Annexed hereto is a copy of plaintiff's permit (Exhibit 19) and photographs of defendant's packaging (Exhibit 20) showing use of plaintiff's tax number.

52. Since long before the acts of defendant complained of herein, plaintiff has continuously used the QUALITY SEAL mark and the leaf design to identify itself and

its goods and distinguish them from the goods offered by others, by, among other things, prominently displaying said marks on their goods and on advertising and promotional materials. Said advertising, promotional materials and goods have been distributed in the trade area where defendant is doing business. As a result of the use by plaintiff of said marks, said marks have developed and have resulted in the creation of an association in the minds of the consuming public indicating that the goods originate with or are otherwise sponsored or endorsed by plaintiff. As a result of said association by purchasers of said marks with plaintiff, defendant's acts set forth above are likely to cause confusion, deception and misrepresentation as to origin.

53. Upon information and belief, defendant's infringing cigarettes are being offered for sale, and promoted in the same or similar channels of trade as plaintiff's cigarettes.

54. Plaintiff believes that defendant's offering for sale, promotion and distribution of merchandise bearing an imitation QUALITY SEAL trademark and/or an imitation leaf design creates a likelihood of confusion, deception and passing off, and such unlawful activities divert sales from plaintiff, prevent plaintiff from controlling the quality of merchandise bearing trademarks simulative of its own trademarks, and tarnish plaintiff's reputation for high quality cigarettes.

55. Defendant's alleged marks are direct imitations of plaintiff's QUALITY SEAL symbol and leaf design mark and because of such similarity, defendant's business and goods are likely to be mistaken or confused with plaintiff, its business or goods, and defendant's use thereof is likely to create (or permit or induce others to create) the erroneous impression that defendant and/or its goods are endorsed or are sponsored by plaintiff or are connected in some way with plaintiff or possess the advantages, benefits or quality of plaintiff's goods.

56. Upon information and belief, defendant's knowing and deliberate unauthorized use and imitation of the QUALITY SEAL symbol and the leaf design mark has the immediate effect of creating a false designation of origin, and false descriptions and representations as to the source of products made available by defendant such that consumers of such products are likely to be confused and mistakenly believe that defendant's goods are endorsed by, sponsored by or are connected in some way with plaintiff; or that defendant's goods originate with or emanate from plaintiff; or possess the advantages, benefits and quality of plaintiff's goods. Defendant has caused its goods to be offered and promoted in interstate and intrastate commerce in connection with such false designations, descriptions and representations.

57. Upon information and belief, such acts of defendant were undertaken with intent to cause (or with knowledge and intent that others would use defendant's goods to cause) confusion and deception of the public and with intent to profit unfairly from plaintiff's name and reputation associated with the QUALITY SEAL symbol and the leaf design mark.

58. Plaintiff is likely to be damaged by defendant's use of said false designations, descriptions and representations in that the purchasing public is likely to be induced into availing itself of defendant's goods in the erroneous belief that defendant's goods are plaintiff's goods or that defendant's goods are endorsed by plaintiff or are sponsored by plaintiff or are connected in some way with plaintiff; or originate with or are in any way connected with plaintiff; or possess the advantages, benefits and quality of plaintiff's goods.

59. The acts of defendants complained of herein constitute a violation of 15 U.S.C. §1125(a) of the Trademark Act of July 5, 1946, (§43(a) of the Lanham Act).

60. The aforesaid acts of defendant have caused and will continue to cause irreparable damage to plaintiff, unless restrained. Plaintiff has no adequate remedy at law.

SECOND CLAIM - COMMON LAW TRADEMARK INFRINGEMENT

61. This is a claim for trademark infringement under the common law of the State of North Carolina.

62. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 58.

63. Upon information and belief, defendant's imitations of plaintiff's distinctive QUALITY SEAL symbol and leaf design mark was deliberate and intentional and designed to create confusion and mistake in the public mind and to deceive (or to permit or induce others to deceive) persons into the belief that the goods offered by defendant are those of plaintiff, and that defendant and/or its goods are endorsed by plaintiff or are sponsored by plaintiff or are connected in some way with plaintiff, or possess the advantages, benefits or quality of plaintiff's goods, all with the intent and purpose of appropriating and trading upon plaintiff's goodwill and reputation associated with plaintiff's QUALITY SEAL symbol and leaf design common law trademark.

64. The acts and conduct of defendant as herein averred are without license or permission of plaintiff and infringe plaintiff's common law trademark rights in the distinctive QUALITY SEAL symbol and leaf design mark.

65. The acts of defendant as herein averred have damaged plaintiff and will, unless restrained, further impair, if not destroy, the value of plaintiff's QUALITY SEAL symbol and leaf design mark and related goodwill, and cause plaintiff irreparable damage. Plaintiff has no adequate remedy at law.

THIRD CLAIM - COMMON LAW UNFAIR COMPETITION

66. This is a claim for unfair competition under the common law of the State of North Carolina.

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 58.

68. Upon information and belief, said acts of defendants constitute unfair competition in that defendant has intentionally and willfully attempted to pass off its merchandise bearing the imitation QUALITY SEAL symbol and the leaf design mark as plaintiff's merchandise.

69. Upon information and belief, defendant has infringed the QUALITY SEAL symbol and the leaf design mark as alleged herein with the intent to deceive (or with knowledge and intent that others would use defendant's goods to deceive) the public into believing that defendant and the goods offered by defendant are approved by, endorsed by, sponsored by or affiliated with plaintiff or possess the advantages, benefits and quality of plaintiff's goods; and defendant's acts as alleged herein were committed with the intent to pass off and palm off defendant's goods as those of plaintiff, and with the intent to deceive the public and benefit unfairly from plaintiff's name and reputation associated with the QUALITY SEAL symbol and/or the leaf design mark.

70. The aforesaid acts of defendants have caused and will continue to cause irreparable damage to plaintiff unless restrained. Plaintiff has no adequate remedy at law.

FOURTH CLAIM - STATUTORY INJURY

71. This is a claim for violation of the statutory law protecting businesses from unfair or deceptive acts and practices in the State of North Carolina.

72. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 58.

73. Upon information and belief, defendant has deceptively passed off its merchandise as that of plaintiff's or as possessing the qualities of plaintiff's merchandise, and defendant has intentionally and willfully usurped the commercial benefits accruing to plaintiff's trademarks in violation of §75-1 et seq. of the North Carolina General Statutes.

74. The aforesaid acts of defendant have caused and will continue to cause irreparable damage to plaintiff's goodwill in the QUALITY SEAL symbol and the leaf design, unless restrained. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays:

A. That defendant, and its officers, directors, stockholders, partners, owners, agents, representatives, employees and attorneys, and any and all persons actively in privity or concert with them, be preliminarily and permanently restrained and enjoined from:

1. palming off defendant's goods as plaintiff's;

2. falsely representing or implying that defendant's goods originate with plaintiff or that they or defendant has any connection with plaintiff;

3. falsely representing or implying that the taste of defendant's accused tobacco products is the same or identical to plaintiff's QUALITY SEAL cigarettes;

4. offering for sale, soliciting orders for, promoting, advertising, shipping, selling, importing, exporting or manufacturing any goods bearing symbols similar to the QUALITY SEAL symbol and/or the leaf design mark.

B. That defendant, its officers, stockholders, partners, owners, directors, servants, agents, employees and attorneys, and any and all persons acting in concert or privity with them be preliminarily and permanently enjoined and restrained from using in their business or in selling any goods, any and all false designations or origin, false descriptions or representations that defendant's goods are plaintiff's goods or possess the quality of plaintiff's goods or that defendant and/or its goods are sponsored by plaintiff or endorsed by plaintiff or are connected in any way with plaintiff.

C. That all order forms, brochures, labels, signs, prints, wrappers, advertisements, catalogs, packages, packs, clothing merchandise, and the like, in the possession, custody,

or control of defendant which bear designs which are substantially identical to or confusingly similar to or are colorable imitations of the QUALITY SEAL symbol and/or the leaf design mark or which violate the injunction herein granted, be delivered up and destroyed as the Court shall direct and defendant be ordered to report that such delivery and destruction has occurred in writing under oath to the Court pursuant to 15 U.S.C. §1116.

D. That all plates, molds, materials, computer tapes and other means of placing infringing marks upon any goods or upon labels, signs, prints, advertisements, catalogs, packages, clothing and the like, in the possession, custody, or control of defendant, be delivered up and destroyed as the Court shall direct, and defendant be ordered to report that such delivery and destruction has occurred in writing under oath to the Court pursuant to 15 U.S.C. §1116.

E. That defendant be required to account to plaintiff for any and all profits derived by it by reason of its acts of trademark infringement, unfair competition, false designation of origin, false descriptions and representations, deceptive trademark practices and for all damages sustained by plaintiff by reason of said acts.

F. That the Court award plaintiff treble the amount of actual damages suffered by plaintiff due to defendant's willful infringement pursuant to 15 U.S.C. §1051 et seq. and §75-1 et seq. of the North Carolina General Statutes.

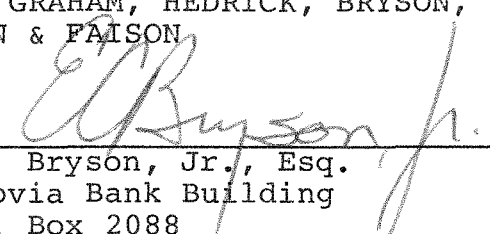
G. That plaintiff recover the costs of this civil action, including reasonable attorneys' fees and interest.

H. That in view of defendant's deliberate illegal schemes, plaintiff be awarded punitive damages consistent with the net worth of defendant, which has annual sales which exceed \$1.5 billion.

I. That plaintiff have such other and further relief as to the court may seem just and equitable.

NEWSOM, GRAHAM, HEDRICK, BRYSON,
KENNON & FAISON

By


E. C. Bryson, Jr., Esq.
Wachovia Bank Building
P. O. Box 2088
Durham, North Carolina 27702
(919) 682-5671
Attorneys for Plaintiff

OF COUNSEL:

Philip T. Shannon, Esq.
Joseph Diamante, Esq.
PENNIE & EDMONDS
330 Madison Avenue
New York, New York 10017
(212) 986-8686

Lawrence G. Meyer, Esq.
Garret G. Rasmussen, Esq.
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D. C. 20037

VERIFICATION OF COMPLAINT

STATE OF NORTH CAROLINA)

) SS:

COUNTY OF DURHAM)

Josiah S. Murray, being duly sworn, deposes and says that he is Vice President of Liggett Group Inc., the plaintiff herein; that he has read the foregoing Verified Complaint and knows the contents thereof and that same are true of his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.



Subscribed and sworn to before
me this 2nd day of July, 1984


Notary Public

My commission expires: July 14, 1985.