

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

Commissioner for Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3514

Sir:

TRANSMITTAL

Enclosed for filing are the following:

1. Transcript of Harley B. Matsil;
2. Transcript of Alyse M. Matsil;
3. Index of Exhibits 1-15; and
4. Exhibits 1-15.

TRANSMITTAL

-1-

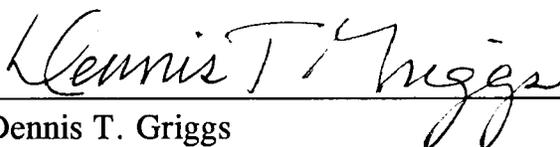
L1937.5324.4916



05-09-2005

PERFECT FOODS, INC.

Date: May 3, 2005



Dennis T. Griggs
Attorney for Opposer

Griggs Bergen LLP
17950 Preston Road, Suite 1000
Dallas, Texas 75252
(972) 447-4569

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I certify that this TRANSMITTAL (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3513.

S. Maria Tedesco
(Typed name of person mailing paper)

Date: May 3, 2005


(Signature of person mailing paper)

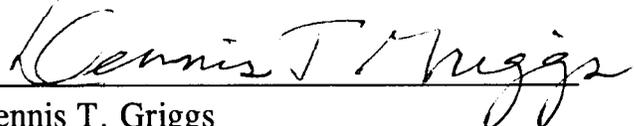
CERTIFICATE OF SERVICE

I hereby certify that the foregoing TRANSMITTAL was served on the Applicant, attorney of record for Applicant and Opposer's co-counsel by first class mail this 3rd day of May, 2005 addressed to:

Cheryl Meide, Esq.
Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

John D. Gullahorn
4111 Calico Drive
Cantonment, Florida 32533

Angela Garcia-McSweeney, Esq.
Benjamin Ostrer & Associates, P.C.
111 Main Street, P.O. Box 509
Chester, New York 10918


Dennis T. Griggs
Attorney for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

Commissioner for Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3514

Sir:

TRANSCRIPT OF HARLEY B. MATSIL
DEPOSITION TESTIMONY WITH EXHIBITS 1-15

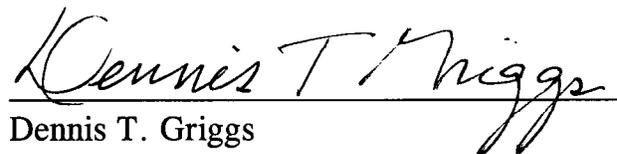
The original notarized transcript of the deposition testimony of Harley B.

Matsil (with original Exhibits 1-15) is enclosed.

Opposer previously filed a Notice of Reliance on the testimony of Mr. Matsil and the original exhibits. The deposition transcript was not available at the close of Opposer's testimony.

PERFECT FOODS, INC.

Date: May 3, 2005


Dennis T. Griggs
Attorney for Opposer

Griggs Bergen LLP
17950 Preston Road, Suite 1000
Dallas, Texas 75252
(972) 447-4569

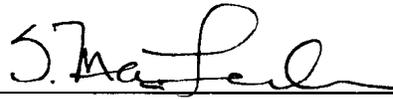
CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I certify that the TRANSCRIPT OF HARLEY B. MATSIL DEPOSITION TESTIMONY WITH EXHIBITS 1-15 (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3513.

S. Maria Tedesco

(Typed name of person mailing paper)

Date: May 3, 2005



(Signature of person mailing paper)

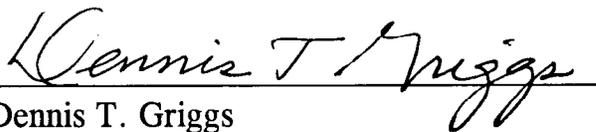
CERTIFICATE OF SERVICE

I hereby certify that the foregoing TRANSCRIPT OF HARLEY B. MATSIL DEPOSITION TESTIMONY WITH EXHIBITS 1-15 was served on the Applicant, attorney of record for Applicant and Opposer's co-counsel by first class mail this 3rd day of May, 2005 addressed to:

Cheryl Meide, Esq.
Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

John D. Gullahorn
4111 Calico Drive
Cantonment, Florida 32533

Angela Garcia-McSweeney, Esq.
Benjamin Ostrer & Associates, P.C.
111 Main Street, P.O. Box 509
Chester, New York 10918


Dennis T. Griggs
Attorney for Opposer

ORIGINAL

IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL
BOARD

----- x
PERFECT FOODS, INC.,

Opposer,

OPPOSITION NO. 91160978

-against-

JOHN D. GULLAHORN,

Applicant.

----- x

111 Main Street
Chester, New York
April 5, 2005
10:35 A.M.

EXAMINATION BEFORE TRIAL of PERFECT FOODS,
INC., the Opposer in the above-entitled action, by
HARLEY B. MATSIL, held pursuant to Notice at the
above place and time, and before a Notary Public
within and for the State of New York.

RODNEY C. CONROW
REPORTER
175 Lily Pond Road
Parksville, New York 12768
(845) 292-3534

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

GRIGGS BERGEN, LLP

Attorneys for Opposer
Office & P.O. Address
17950 Preston Road, Suite 1000
Dallas, Texas 75252

BY: BENJAMIN OSTRER & ASSOCIATES, P.C.
111 Main Street

Chester, New York 10918

BY: ANGELA GARCIA McSWEENEY, ESQ., of Counsel

CHERYL MEIDE, ESQ.

Attorney for Applicant
Office & P.O. Address
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216
(no appearance)

Also Present

Alyse M. Matsil

1
2
3 IT IS HEREBY STIPULATED AND AGREED, by and
4 between the attorneys for the respective parties
5 hereto, that all rights provided by the Civil
6 Practice Law and Rules, including the right to
7 object to any question, except as to form, or to
8 move to strike any testimony of this examination are
9 reserved, and, in addition, the failure to object to
10 any question, shall not be a bar or waiver to make
11 such motion at, and is reserved for the trial of
12 this action.

13 IT IS HEREBY STIPULATED AND AGREED, that this
14 examination may be sworn to by the witness being
15 examined before a Notary Public other than the
16 Notary Public before whom this examination was
17 begun, but the failure to do so, or to return the
18 original of this examination to counsel, shall not
19 be deemed waiver of the rights provided by Rule
20 3116, Civil Practice Law and Rules, and shall be
21 controlled thereby.

22 IT IS FURTHER STIPULATED AND AGREED, that the
23 filing of the original of this examination is
24 waived.
25

1
2 HARLEY B. MATSIL, having
3 been first duly sworn by a Notary
4 Public of the State of New York,
5 testified as follows:

6 EXAMINATION BY MS. McSWEENEY:

7 Q What is your full name and address?

8 A Harley B. Matsil, 4 Hawks Nest Road,
9 Monroe, New York 10950.

10 MS. McSWEENEY: My name
11 is Angela McSweeney. I am an attorney
12 with Benjamin Ostrer & Associates.

13 Q I understand that you agree with my
14 appointment as co-counsel in order to conduct this
15 deposition for Mr. Dennis Griggs, who is the
16 attorney of record.

17 Do you agree with my appointment?

18 A Yes.

19 MS. McSWEENEY: A notice of
20 deposition was sent to the opposing side,
21 Mr. John D. Gullahorn, as well as his
22 attorney, Cheryl Meide, Esq., located
23 in Jacksonville, Florida.

24 It is our understanding she
25 is no longer representing Mr. Gullahorn.

1
2 The notice of deposition is
3 dated March 29th.

4 However, we will continue with
5 this deposition without them.

6 Q Mr. Matsil, what do you do for a
7 living?

8 A I grow and distribute fresh wheat
9 grass.

10 Q And when did you begin doing that?

11 A '82.

12 Q And is this a corporation?

13 A Yes. We are incorporated in New York
14 as Perfect Foods.

15 Q How long has the corporation been in
16 business?

17 A Like a year later; '83.

18 Q What is your position?

19 A I'm the president, the owner.

20 Q What are your duties as president and
21 owner of Perfect Foods?

22 A I oversee the day to day operations and
23 I direct the business.

24 Q What does the day do day operations
25 entail?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A It entails the growing of the wheat grass, the deliveries of the wheat grass, the developing of customers and particularly developing of new products.

Q And you have been doing this since when?

A Since 1982.

Q What is the major product that you're selling since 1982?

A Fresh wheat grass, like all grain, is in the form of grass and it is typically used at juice bars. People drink the juice out of a one ounce shot.

Q Is this also used for animals such as cats?

A In about 1987 or '88 we noticed health food stores were cutting up trays into small squares.

Incidentally, a tray is a standard flat, 11 by 21, and when we questioned why, who was using these little squares, we found out people were buying it for their cats.

Q That was since 1987?

A Approximately '87 is when it came to my

1
2 attention that consumers were buying small patches
3 of wheat grass for their cats.

4 Q When did you develop Cool Cat?

5 A In 1988 we simply made a small sign
6 that said Cool Cat Wheat Grass so that consumers
7 could see that there was a tray that was cut up in
8 small pieces for them and thinking that may be they
9 could get it for their cat.

10 Q That was as a result of the sales that
11 you noticed that these businesses were doing around
12 1987?

13 A That's correct, yes.

14 Q How did you identify the Cool Cat
15 product for cats?

16 A We simply drew a picture of a cat's
17 face. My wife drew a picture of a cat's face on a
18 piece of cardboard, and we affixed it to the wall
19 just above the tray that was cut up into small
20 pieces, and it said the words Cool Cat above the
21 head.

22 Q So that identified the product?

23 A Yes.

24 Q And people were able to understand that
25 this product was for the cats?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I believe.

Q As a pet treat?

A That's correct.

Q Your first sale for the Cool Cat Wheat Grass, was that an in state sale or out of state sale?

A That was in state.

Q Can you recall who the first customer was?

A Yes. That was Down-To-Earth.

(Receipts to Down-To-Earth were received and marked Opposer Exhibit 1 for Identification.)

Q You had previously stated that your first sale was an in state sale to Down-To-Earth, correct?

A Yes.

Q And do you recall what year that sale was made?

A That was in '88.

Q I am now handing you Opposer's Exhibit 1, which is approximately 6 pages long, and these are receipts showing sales to Down-To-Earth, is that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

correct?

A That is correct.

Q Now, the oldest receipt on the first page, what is that receipt dated?

A That's 1/5/88.

Q What did you sell to Down-To-Earth?

A I sold them 15 trays of wheat grass.

Q That wheat grass was sold for what purpose?

A Fourteen of them would be sold to consumers or juiced and one would be used for the Cool Cat Wheat Grass; cat treat product.

Q Down-To-Earth is located where?

A It was on 7th Avenue between 10th and 11th Street, West 10th and 11th Street. They are no longer in business.

Q So you're currently not selling to them?

A That's correct.

Q Why is that?

A They are no longer in business.

Q When did they stop being in business, approximately?

A I would say approximately '95.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Do you still have any in state sales to date?

A In state, yes.

Q Do you recall who else you were selling to in state around this period of time, 1988?

A We had dozens of customers at that time.

There was also a private customer that we were delivering Cool Cat Wheat Grass to, J.B. Brown.

Q Where is J.B. Brown located?

A She is now in Brooklyn.

Q Do you recall when the sale occurred?

A That was in '88 as well.

(Receipts to J.B. Brown were received and marked Opposer's Exhibit 2 for Identification.)

Q Opposer's Exhibit 2 consists of a total of 8 pages, one of which is a cover page. If I may show you these receipts real quick. The name on this receipt?

A J.B. Brown.

Q Can you tell by looking at these

1
2 receipts when you first started doing business with
3 Ms. Brown?

4 A 6/28/88.

5 Q What did you sell Ms. Brown on 6/28/88?

6 A A half a tray of Cool Cat Wheat Grass.

7 Q For what purpose?

8 A For her cats.

9 Q How did you identify this product?

10 A We affixed a small card with a similar
11 picture of a cat that said Cool Cat Wheat Grass.

12 Q Was this card similar to the hand
13 written notes when you first started doing business?

14 A Yes, it was. It was also handwritten.

15 Q And your next sale to her was when?

16 A I see here 7/16/88, but I believe that
17 she was getting it like weekly.

18 Q Once again what was she ordering?

19 A She was ordering regularly half a tray
20 of Cool Cat Wheat Grass.

21 Q For her cats?

22 A For her cats.

23 Q Are you still doing business with Ms.
24 Brown?

25 A No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q When did you stop doing business with her?

A Also around '95.

Q What is the date on this receipt?

A It looks like January 28, '95.

Q What was the last product you sold to her?

A Half a tray of Cool Cat Wheat Grass.

Q In '95 how did you identify that product?

A The same way every time we delivered to her; we would make a little card that was hand drawn that said Cool Cat Wheat Grass.

Q Going back to Opposer's Exhibit 1 regarding sales to Down-To-Earth; you have previously stated that the sales began also in 1988, correct?

A That's correct.

Q How did you identify that product?

A Cool Cat Wheat Grass Pet Treat.
That was only for one of the trays.

Q That one tray, that was for?

A For cats.

Q These notes were also handwritten?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q Did you have any out of state sales?

A Yes, we did.

Q When did you start selling out of state?

A The Third Day, a health food store in East Rutherford, New Jersey.

Q What were you selling to this health food store?

A Fresh wheat grass, and sunflower sprouts, and a tray of Cool Cat Wheat Grass.

Q How did you identify that product, the Cool Cat?

A The same exact way; we made a sign that we hand drew, that we affixed to the wall just above the tray of wheat grass that was cut into small pieces.

(Receipts to third Day were received and marked Opposer Exhibit 3 for Identification.)

Q Now for identification purposes here are 3 pages labeled Opposer's Exhibit 3. What are these?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A These are copies of receipts, somewhat randomly chosen, to indicate that we were doing business consistently with this store.

Q What is the name of the store?

A The Third Day.

Q They are located where?

A They were located at 220 Park Avenue, East Rutherford, New Jersey.

Q Are you still doing business with them?

A They went out of business in maybe 2000.

Q How did you ship to your out of state buyers?

A We delivered it on our own trucks.

Q What kind of trademark label or insert was used for the out of state buyers?

A We had a hand drawn cardboard poster that said Cool Cat Wheat Grass Pet Treat.

Q Did you use any packing slips?

A No, we did not.

Q How about the receipts, did the receipts identify --

A They simply -- no, they did not specifically identify. That tray that was to be cut

1
2 up into small pieces was just included among the
3 trays that we delivered for their juice bar
4 consumption.

5 Q So what you used, just for clarifi-
6 cation purposes, to identify the product with your
7 out of state sales at that time was the --

8 A Just a poster, hand drawn poster.

9 Q Where did you place that?

10 A It was affixed to the wall above the
11 single tray that was cut into pieces for people to
12 buy for their cats.

13 This was a way to identify one of the
14 trays that looked not too different then the others
15 as a tray that was cut into small pieces, and to let
16 the consumer think about getting a small patch of
17 wheat grass for their cat.

18 Q Are you currently selling to any out of
19 state buyers?

20 A Yes, we are.

21 We have Healthy Thymes.

22 (Receipts to Healthy
23 Thymes was received and
24 marked Opposer Exhibit 4 for
25 Identification.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q I am showing you now Opposer's Exhibit 4, and if you could please identify this exhibit.

A This is a receipt from 9/3/04 from Healthy Thymes Health Food Store in Vernon, New Jersey that indicates that we sold one tray of pet grass that was in fact Cool Cat Wheat Grass Pet Treat.

Q How did you identify this product?

A This product is identified by our current way of identifying, which includes inserts into each of 18 3 and a half inch by 3 and a half inch pots.

(The above referred to insert was received and marked Opposer Exhibit 5 for Identification.)

A I have something more to say about this.

You can see on this receipt that we are charging more for the one tray of Cool Cat Wheat Grass Pet Treat than we are for the other trays because now it comes in 18 pots. It's a better developed product and we are charging more for it now.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q You have previously explained how you identified the product.

I am showing you Opposer Exhibit 5. Can you please identify this exhibit?

A This is a sample of our current insert that we use. We call it a label. We actually stick this into the soil on each pot of Cool Cat Wheat Grass Pet Treat.

Q When was this tray insert developed?

A About 2002 that we printed that.

Q Prior to 2002, prior to you developing this tray insert, how did you identify the product?

A From approximately 2001, until the development of this label, we had a computer printed and developed poster.

(The above-referred to poster was received and marked Opposer Exhibit 6 for Identification.)

Q I am now showing you Opposer's Exhibit 6. Can you please identify this?

A Yes. This is a computer generated poster that we affixed to a styrofoam board and delivered with our 18 pots of Cool Cat Wheat Grass

1
2 Pet Treat to the stores that bought our Cool Cat
3 Wheat Grass Pet Treat. This was displayed nearby
4 the trays of pet grass, very similar to the way we
5 did it when we did it by hand for many years before.

6 Q You did it by hand from what period of
7 time to what period of time, if you can recall?

8 A From '88 until 2001.

9 Q Now, did you attach anything else with
10 the poster, Exhibit 6?

11 A Yes. As a matter of fact, we had what
12 we call a tear off. This was like a pad of printed
13 information that was also placed nearby the product,
14 and consumers could simply tear off a copy of it and
15 take it home with them.

16 Q Did the tear off also identify the
17 product?

18 A Cool Cat Wheat Grass was identified on
19 the tear off.

20 (The above-referred to
21 tear off was received and marked
22 Oposser Exhibit 7 for Identifi-
23 cation.)

24 Q Now, in 2001, the tear off, which is
25 Exhibit 7, and the poster, which is Exhibit 6, did

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

you use this to identify the pots for both the in state sales and the out of state sales?

A That is correct.

Q Going back to Healthy Thymes that you had stated is a buyer out of state in Vernon, New Jersey, correct?

A Yes.

Q Are you still doing business with them?

A Yes.

Q What are they still purchasing?

A They are still purchasing the trays of pet grass, Cool Cat Wheat Grass Pet Treat.

Q And today how is that being identified?

A We use our current identification, the Exhibit 5 insert.

Q That is the tray insert?

A Yes.

This goes along with that (indicating).

Q Do you identify the product in any other manner since 2002?

Other than with the tray insert is the product identified in any other manner?

A Yes. We have a poster that we include

1
2 with the tray of Cool Cat Wheat Grass Pet Treat, and
3 this poster which is inserted into the back of the
4 tray identifies it as Cool Cat Pet Treat on the
5 cat's tee shirt, and shows photographs, actually
6 drawings, of the individual pots of Cool Cat.

7 Q It appears that you have two forms of
8 identification.

9 A Absolutely.

10 (The above-referred to
11 poster was received and marked
12 Oposser Exhibit 8 for Identi-
13 fication.)

14 A Basically Exhibit 8, the poster, has
15 taken the place of Exhibit 6, the computer generated
16 poster, and Exhibit 5, the insert as we call it, the
17 label, has taken the place of Exhibit 7, the tear
18 off.

19 A Yes

20 Q All four items identify the product as
21 what?

22 A As Cool Cat Wheat Grass Pet Treat.

23 Q Do you have any other out of state
24 customers that you can recall right now?

25 A We have sold to a number of other

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

customers over the years. Seed and Sprout.

Q Where is Seed and Sprout located?

A They are in Vernon, New Jersey also.

It is actually the same store, or the same owners, I should say, as Healthy Thymes.

Q But a different store?

A A different location.

Q Where are they located?

A They are also in Vernon. They were in Aviva Plaza on Route 94.

Q When did you first begin selling to them, if you can remember?

A I see 12/95.

Q What were you selling to Seed and Sprout?

A We were selling them assorted products, including frozen wheat grass juice, and sunflower greens, but we also sold them a tray of wheat grass that we identified as Cool Cat Wheat Grass for their customers.

Q How did you ship the product to Seed and Sprout?

A We delivered that in our own trucks.

Q Were there any packing slips?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No. There is just the receipt and we would identify the product with a handwritten poster that said Cool Cat Wheat Grass.

Q Do you happen to have a copy of that handwritten poster?

A No.

Q Why not?

A We stopped using them years ago, and any one that we have made was given out to the stores at that time, and I don't think that we would be able to find one. But if we did it would be a collectors item.

Q Is Seed and Sprout your customer today?

A Healthy Thymes is owned by the same people and they are our customer today.

I'm just going to say there was a small number of other stores that got samples and ordered one or two times.

Q Primarily where were these stores located, what state?

A They were in New Jersey.

Q Do you have invoices here with you?

A No, we do not.

Q Why is that?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A They only got once or twice and their invoices were difficult for us to locate.

Q What were you selling to them, if you recall?

A We sold them trays of Cool Cat Wheat Grass.

Q How did you identify those products?

A We had the same identification that we had everywhere else.

Health Hand is the name of the store.

Q Do you remember the city where they were located?

A Sorry.

Q Just New Jersey?

A Oh, yeah.

It was within our primary area that would be delivered on our own vehicle.

Q Do you recall which insert you used? Were they the ones used in '01 or '02?

A It was our most recent and current insert, the ones from '02.

Q And that is the tray insert?

A Yes, the tray insert with the cardboard poster.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Were there any other identifiers that were used?

A No. Just the normal receipt that we would use to deliver to any store.

Again, you know, when we delivered to a store one time their records are -- if it's paid COD, we don't keep careful track of the history. That's why we don't have receipts from these few out of state stores, or we haven't been able to find them. I'm sure we have.

MS. McSWEENEY: Off the record.

(Discussion off the record.)

Q Did you ever take photographs of your products?

A Yes.

Q What was the purpose of that?

A To further develop market potential, internet marketing, that's all.

Q When did you start posting these photographs on the internet?

A These are not posted on the internet. They are being held privately at this time, but

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that's what they were taken for.

Q Are you using them now for anything?

A No, I'm not.

Q What do these pictures identify?

A They identify our most modern and our current packaging. They include a photograph of a single 3 and a half inch by 3 and a half inch pot of Cool Cat Wheat Grass Pet Treat with a label in it, and our current plastic zip lock bag of green gold wheat grass, and baby sunflower greens.

Q When were these pictures taken?

A '04.

Q Do you plan on using these at any time?

A Yes, I do.

Q Are you planning on posting these on the internet?

A Yes, I am.

Q For further marketing?

A For further marketing.

Q Are there any other uses that you're planning on?

A Yes. I made copies of them and brought them with me. I have given them to the drivers to just show the stores. If I do sales work I might

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

leave a copy of that with a customer just to show them.

Q Have you left copies of these pictures with your current customers?

A Yes.

Q And businesses?

A Yes.

Q Are any of these businesses out of state?

A Yes.

Q Do you recall which customers, these out of state customers, that you left these photographs with?

A Just dozens of stores. We Actually gave them to the drivers to just give out. We have like a health shop in Morristown.

Q What about Seed and Sprout?

A Seed and Sprout actually gets the product and they didn't need to be prompted with photographs.

(The above referred to photographs were received and marked Opposer Exhibit 9 for Identification.)

1
2 Q Previously we were discussing out of
3 state sales and one of the businesses called Seed
4 and Spout, and they are located in Vernon, New
5 Jersey, correct?

6 A Yes.

7 Q You identified some receipts.

8 A Yes I have. We have a receipt here
9 from 12/95, that indicates one tray at \$10. That
10 was a tray of wheat grass, Cool Cat Wheat Grass Pet
11 Treat. At that time we delivered to them a hand-
12 written poster that said Cool Cat Wheat Grass Pet
13 Treat that was affixed to the wall just above this
14 tray of wheat grass that was cut up into small
15 pieces, and this was to prompt consumers to buy
16 these small pieces for their cat.

17 There is also other receipts.
18 '98. There is a business card from the store.

19 Q They are still in existence today, that
20 business?

21 A That store has moved to a new location
22 and changed their name to Healthy Thymes.

23 Q And you're still doing business with
24 them?

25 A And still doing business with them.

(Receipts to Seed and
Sprout were received and
marked Opposer Exhibit 10
for Identification.)

Q Are there any other sales that you
recall with in state buyers or out of state buyers?

Let's start with in state buyers.

A We have here Natures Pantry, which is a
local health food store in Newburgh.

Q What did you sell to them?

A We sold to them Cool Cat Wheat Grass
Pet Treat products.

Q How much of it did you sell?

A We would sell a tray or two of 18 pots.

Q What was the purpose?

A They would sell it to their customers
in their produce department.

I see here from March, '02 two trays of
pet grass. In '02 they were getting the old 2001
poster and tear off that said Cool Cat Pet Treat,
and then starting in '05 -- '02, later in '02, we
had the current and modern Cool Cat Wheat Grass Pet
Treat insert and poster.

Q This is referred to as the tray insert,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

correct?

A Yes.

Q What would the tray insert be in place that is put into each individual pot?

A Exhibit 5. And 8 was put on the back of it, affixed to the back of the tray.

Q Exhibit 8?

A Yes.

Q The customer could clearly see that the product name was what?

A Cool Cat.

Natures Pantry, they are continuing to get it.

Q They are still customers today?

A Yes, they are. Here's 1/7/05.

Q How do you deliver the product to them?

A We deliver it in our own trucks.

Q Do you have any other inserts or identifiers?

A There is just these two. Exhibit 5 and Exhibit 8 is what we use to identify the Cool Cat.

Q Did you sell to a business called Laurden Kennels?

A Laurden Kennels, yes. They used to

1
2 come to our place of business and buy it.

3 (The above referred to
4 receipts to Natures Pantry
5 were received and marked
6 Opposer Exhibit 11 for
7 Identification.)

8 Q Going back to Laurden Kennels; what
9 type of business is there?

10 A It's a kennel.

11 A What type of kennel?

12 A You know, I really -- I've never been
13 there and never spoken to them.

14 Q What did you sell to Laurden Kennels?

15 A We sell them Cool Cat Wheat Grass Pet
16 Treat.

17 Q Do they feed this to dogs and cats or
18 just dogs?

19 A I don't know.

20 Q Are you aware if you are still doing
21 business with them?

22 A No, we are not.

23 Q How did you identify the product that
24 she picked up from your store?

25 A The handwritten ones.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And your handwritten inserts?

A They were simply given a handwritten poster to use as they wished at the time of purchasing. A hand written poster saying Cool Cat Pet Treat.

(Receipts to Laurden

Kennels were received and marked Opposer Exhibit 12 for Identification.)

Q Did you ever sell to a business called Adams?

A Yes. Adams has 3 supermarkets, up-scale supermarkets, in the Hudson Valley, and we have been selling them the pet grass, the Cool Cat Pet Grass, for years.

Q Do you know what their street address or the city and state?

A There is one in Newburgh, there is one in Kingston and there is one in Poughkeepsie.

Q When did you start doing business with them?

A 12/01.

Q The products that were sold to Adams, what was that product used for?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A It was used for cats. It was identified with the computer generated poster, which is exhibit 6, and the tear off, which is Exhibit 7.

Q That was back in 2001 when you first started doing business?

A That's correct.

Q Are you still doing business with them today?

A Yes, we are.

Q How do you identify the product now?

A Now when we developed the modern and current insert and poster, Exhibit 5 and Exhibit 8, we started to use that.

Q Off the top of your head how much do they order, approximately?

A They order 3 to 4 trays for each store each week.

Q How do you deliver the product?

A We deliver it in our own trucks.

Q Do you include any other type of inserts to identify the product Cool Cat?

A Only the ones that we use currently as identified by Exhibit 5 and Exhibit 8.

Q In 2001 when you developed the computer

1
2 generated Cool Cat Pet Grass printout, which is
3 Exhibit 6, was there any other identifying item that
4 you used to promote your sales or --

5 A Yes, we had a computer printed flier
6 that we handed to store managers and produce
7 managers to bring to their attention that we have
8 this product we are trying to sell now to other
9 stores, not necessarily ones that we currently
10 deliver to.

11 Q What did the flier say?

12 A It identified our product as Cool Cat
13 Pet Grass.

14 Q Did it identify the name of your
15 company?

16 A Perfect Foods, yes, Inc., Cool Cat Pet
17 Treat. It identified that it was now in the 18
18 individual pots, at the price, free display sign and
19 promotional literature.

20 The display sign and promotional
21 literature that's referred to in this flier is in
22 fact Exhibit 6 and Exhibit 7.

23 Basically at this time of 2001 when we
24 made this computer generated Exhibit 6 and Exhibit 7
25 is when we started to grow the Cool Cat Pet Treat

1
2 product in the individual flats in the 18 flats --
3 pots, excuse me.

4 Q Are those pots identified in any of the
5 photographs?

6 A An individual pot is identified in
7 Exhibit 9.

8 Q This flier that you presented to the
9 managers of the stores when you were marketing the
10 product, did you present this flier to any of the
11 out of state businesses?

12 A This flier was given to my delivery men
13 and they handed it out to many stores. Many of
14 which I don't really necessarily know.

15 But we do have routes in New Jersey and
16 Connecticut that is within our primary area, and so
17 there may be many stores that received that.

18 MS. McSWEENEY: Off the
19 record.

20 (Discussion off the
21 record.)

22 (Receipts to Adams and
23 a the above-referred to flier
24 were received and marked Opposer
25 Exhibits 13 and 14 respectively

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for Identification.)-

Q Going back to J.B. Brown, who was one of your former buyers; when did you start selling to J.B. Brown?

A '88.

Q Was she just an individual or a business?

A Just an individual.

Q Where did she reside?

A She resided at that time in Manhattan, in '88, then she moved to Brooklyn. I don't know exactly when.

Q And she purchased what product?

A She purchased Cool Cat Wheat Grass. She saw the sign, that was the hand drawn sign, the original one that was drawn. She saw it at Down-To-Earth, and she got our phone number and started calling us directly and having us deliver to her home, and we actually contacted her recently and so she wrote this letter (indicating)?

I could read the letter.

MS. McSWEENEY: No.

That's fine.

Q What did she order in accordance with

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the letter?

A Tray and half tray that were delivered to her door under the trade mark Cool Cat, which was identified by a hand drawn poster with a picture of a cat.

(A letter from J.B. Brown dated March 24, 2005 was received and marked Opposer Exhibit 15 for Identification.)-

MS. McSWEENEY: Off the record.

(Discussion off the record.

MS. McSWEENEY: I have no further questions.

Harley B. Matsil

HARLEY B. MATSIL

Sworn to before me this 29
day of April, 2005.

John Piatsch

Notary Public

John Piatsch
Notary Public State of New York
Orange County
Commission Expires

14/7/06

EXHIBITS1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OPPOSER	PAGE
1 Receipts-Down-To-Earth-	8
2 Receipts-J.B. Brown-	10
3 Receipts-Third Day-	13
4 Receipts-Healthy Thymes-	15
5 Tray Insert-	16
6 Computer Generated Poster-	17
7 Tear Off-	18
8 Poster-	20
9 Photographs-	26
10 Receipts-Seed and Sprout-	28
11 Receipts-Natures Pantry-	30
12 Receipts-Laurden Kennels-	31
13 Receipts-Adams-	34
14 Flier-	34
15 Letter-J.B. Brown-3/24/05-	36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, RODNEY C. CONROW, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth, was duly sworn by me, and that the transcript of said examination is a true record of the testimony given by the said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.



RODNEY C. CONROW

\$
\$10 (1) 27:9
0
01 (1) 23:20
02 (6) 23:20,22 28:19,20,22,22
04 (1) 25:13
05 (1) 28:22
1
1 (4) 8:14,24 12:15 37:5
1/5/88 (1) 9:6
1/7/05 (1) 29:16
10 (4) 10:1 28:4 37:6,14
1000 (1) 2:5
10918 (1) 2:7
10950 (1) 4:9
10th (2) 9:15,16
11 (4) 6:21 11:1 30:6 37:15
11th (2) 9:16,16
12 (3) 12:1 31:9 37:16
12/01 (1) 31:23
12/95 (2) 21:14 27:9
13 (4) 13:1 34:25 37:7,17
14 (3) 14:1 34:25 37:18
15 (5) 9:8 15:1 36:9 37:8,19
150 (1) 2:10
16 (2) 16:1 37:9
17 (2) 17:1 37:10
17950 (1) 2:5
18 (8) 16:12,23 17:25 18:1 28:15 33:17 34:2 37:11
19 (1) 19:1
1982 (2) 6:8,10
1987 (3) 6:17,24 7:12
1988 (3) 7:5 10:6 12:17
2
2 (4) 2:1 10:18,20 37:6
20 (2) 20:1 37:12
2000 (1) 14:12
2001 (7) 17:14 18:8,24 28:20 32:5,25 33:23
2002 (3) 17:11,12 19:22
2005 (1) 36:8
21 (2) 6:21 21:1
22 (1) 22:1
220 (1) 14:8
23 (1) 23:1
24 (2) 24:1 36:8
25 (1) 25:1
26 (2) 26:1 37:13
27 (1) 27:1
28 (3) 12:6 28:1 37:14
29 (1) 29:1
29th (1) 5:3
3
3 (1) 3:1 13:21,24,24 16:12,12 25:8,8 31:13 32:17 37:7
30 (2) 30:1 37:15
31 (2) 31:1 37:16
3116 (1) 3:20
32 (1) 32:1
33 (1) 33:1
34 (3) 34:1 37:17,18
35 (1) 35:1
36 (2) 36:1 37:19
37 (1) 37:1
38 (1) 38:1
4
4 (6) 4:1,8 15:24 16:3 32:17 37:8
5
5 (10) 5:1 16:16 17:4 19:16 20:16 29:6,21 32:13,24 37:9

6
6 (12) 6:1 8:24 17:19,22 18:10,25 20:15 32:4 33:3,22,24 37:10
6/28/88 (2) 11:4,5
6622 (1) 2:10
7
7 (8) 7:1 18:22,25 20:17 32:4 33:22,24 37:11
7/16/88 (1) 11:16
7th (1) 9:15
8
8 (11) 8:1 10:21 20:12,14 29:6,8,22 32:13,24 37:5,12
82 (1) 5:11
83 (1) 5:17
87 (1) 6:25
88 (6) 6:17 8:22 10:15 18:8 35:6,12
9
9 (4) 9:1 26:25 34:7 37:13
9/3/04 (1) 16:4
94 (1) 21:11
95 (4) 9:25 12:4,6,10
98 (1) 27:18
A
able (3) 7:24 22:12 24:10
about (6) 6:17 14:22 15:16 16:18 17:11 26:18
above (8) 7:19,20 13:16 15:10 16:14 26:22 27:13 30:3
above-referred (4) 17:17 18:20 20:10 34:23
absolutely (1) 20:9
accordance (1) 35:25
action (2) 3:12 38:15
actually (6) 17:7 20:5 21:5 26:15,19 35:20
adams (4) 31:12,13,24 34:22
addition (1) 3:9
address (2) 4:7 31:17
affixed (7) 7:18 11:10 13:16 15:10 17:24 27:13 29:7
again (2) 11:18 24:6
ago (1) 22:9
agree (2) 4:13,17
agreed (3) 3:3,13,22
along (1) 19:19
alyse (1) 2:13
among (1) 15:2
angela (1) 4:11
animals (1) 6:15
anything (2) 18:9 25:3
appearance (1) 2:11
appears (1) 20:7
applicant (1) 2:9
appointment (2) 4:14,17
approximately (6) 6:25 8:24 9:24,25 17:14 32:16
area (2) 23:17 34:16
around (3) 7:11 10:6 12:4
associates (2) 2:6 4:12
assorted (1) 21:17
attach (1) 18:9
attention (2) 7:2 33:7
attorney (4) 2:9 4:11,16,22
attorneys (2) 2:4 3:4
avenue (2) 9:15 14:8
aviva (1) 21:11
aware (1) 30:20
B
baby (1) 25:11
back (8) 12:15 19:5 20:3 29:6,7 30:8 32:5 35:3
bag (1) 25:10
bar (2) 3:10 15:3

bars (1) 6:13
basically (2) 20:14 33:23
because (1) 16:23
before (4) 3:15,16 18:5 36:22
began (1) 12:17
begin (2) 5:10 21:12
begun (1) 3:17
believe (2) 8:2 11:16
benjamin (2) 2:6 4:12
better (1) 16:23
between (2) 3:4 9:15
blood (1) 38:15
board (1) 17:24
both (1) 19:2
bought (1) 18:2
bring (1) 33:7
brooklyn (2) 10:13 35:12
brought (1) 25:23
brown (11) 10:11,12,16,24 11:3,5,24 35:3,5 36:7 37:6
brown-3/24/05 (1) 37:19
business (26) 5:16,23 9:17,22,23 11:2,13,23 12:2 14:4,10,11 19:9 27:18,20,23,25 29:23 30:2,9,21 31:11,21 32:6,8 35:8
businesses (5) 7:11 26:7,9 27:3 34:11
buy (3) 15:12 27:15 30:2
buyer (1) 19:6
buyers (7) 14:14,17 15:19 28:7,7,8 35:4
buying (2) 6:23 7:2
C
call (3) 17:7 18:12 20:16
called (3) 27:3 29:23 31:11
calling (1) 35:19
came (1) 6:25
can (8) 8:9 10:25 16:20 17:5,22 18:7 20:24 21:13
card (4) 11:10,12 12:13 27:18
cardboard (3) 7:18 14:18 23:24
careful (1) 24:8
cat (54) 7:4,6,9,14,20 8:5 9:13,13 10:10 11:6,11,11,20 12:9,14,21 13:12,14 14:19 15:17 16:7,21 17:8,25 18:2,18 19:13 20:2,4,6,22 21:20 22:4 23:6 25:9 27:10,12,16 28:12,21,23 29:12,22 30:15 31:5,15 32:22 33:2,12,16,25 35:15 36:4,6
cat's (3) 7:16,17 20:5
cation (5) 8:15 13:22 15:6 16:17 18:23
cats (12) 6:16,23 7:3,15,25 11:8,21,22 12:24 15:12 30:17 32:2
certify (2) 38:8,14
changed (1) 27:22
charging (2) 16:21,24
cheryl (1) 4:22
chester (1) 2:7
chosen (1) 14:3
city (2) 23:12 31:18
civil (2) 3:5,20
clarifi (1) 15:5
clearly (1) 29:10
co-counsel (1) 4:14
cod (1) 24:8
collectors (1) 22:13
come (1) 30:2
comes (1) 16:23
company (1) 33:15
computer (8) 17:15,23 20:15 32:3,25 33:5,24 37:10
conduct (1) 4:14
connecticut (1) 34:16
conrow (1) 38:6
consistently (1) 14:4
consists (1) 10:20
consumer (1) 15:16
consumers (5) 7:2,6 9:12 18:14 27:15

consumption (1) 15:4
contacted (1) 35:20
continue (1) 5:4
continuing (1) 29:13
controlled (1) 3:21
cool (48) 7:4,6,14,20 8:5 9:13 10:10 11:6,11,20 12:9,14,21 13:12,14 14:19 16:7,21 17:8,25 18:2,18 19:13 20:2,4,6,22 21:20 22:4 23:6 25:9 27:10,12 28:12,21,23 29:12,22 30:15 31:5,15 32:22 33:2,12,16,25 35:15 36:4
copies (3) 14:2 25:23 26:4
copy (3) 18:14 22:5 26:2
corporation (2) 5:12,15
correct (13) 7:13 8:4,18 9:2,3,20 12:18,19 19:4,7 27:5 29:2 32:7
counsel (1) 3:18
cover (1) 10:21
current (9) 16:11 17:6 19:15 23:21 25:7,10 26:5 28:23 32:13
currently (4) 9:18 15:18 32:23 33:9
customer (6) 8:9 10:9 22:14,16 26:2 29:10
customers (10) 6:4 10:7 20:24 21:2,21 26:5,12,13 28:17 29:15
cut (7) 7:7,19 13:17 14:25 15:11,15 27:14
cutting (1) 6:18
D
date (2) 10:3 12:5
dated (3) 5:3 9:5 36:8
day (9) 5:22,22,24,24 13:7,20 14:6 36:23 37:7
deemed (1) 3:19
deliver (7) 24:5 29:17,18 32:19,20 33:10 35:20
delivered (9) 12:12 14:15 15:3 17:25 21:24 23:18 24:6 27:11 36:3
deliveries (1) 6:3
delivering (1) 10:10
delivery (1) 34:12
dennis (1) 4:15
department (1) 28:18
deposition (4) 4:15,20 5:2,5
develop (2) 7:4 24:20
developed (5) 16:24 17:10,16 32:12,25
developing (3) 6:4,4 17:12
development (1) 17:15
didn't (1) 26:20
different (3) 15:14 21:7,8
difficult (1) 23:3
direct (1) 5:23
directly (1) 35:19
discussing (1) 27:2
discussion (3) 24:14 34:20 36:13
display (2) 33:18,20
displayed (1) 18:3
distribute (1) 5:8
does (1) 5:24
dogs (2) 30:17,18
doing (6) 5:10 6:6 7:11 11:2,13,23 12:2 14:3,10 19:9 27:23,25 30:20 31:21 32:6,8
door (1) 36:4
down-to (1) 8:12
down-to-earth (7) 8:11,17,25 9:7,14 12:16 35:18
dozens (2) 10:7 26:15
drawings (1) 20:6
drawn (6) 12:13 14:18 15:8 35:17,17 36:5
drew (3) 7:16,17 13:16
drink (1) 6:13
drive (1) 2:10
drivers (2) 25:24 26:16

duly (2) 4:3 38:10
duties (1) 5:20

E

each (5) 16:12 17:8 29:5 32:17, 18
earth (1) 8:13
east (2) 13:8 14:9
else (3) 10:5 18:9 23:10
entail (1) 5:25
entails (1) 6:2
esq (1) 4:22
ever (2) 24:16 31:11
every (1) 12:12
everywhere (1) 23:10
exact (1) 13:15
exactly (1) 35:13
examination (8) 3:8,14,16,18,23 4:6 38:9,11
examined (1) 3:15
except (1) 3:7
excuse (1) 34:3
exhibit (45) 8:14,23 10:18,20 12:15 13:21,24 15:24 16:2,3,16 17:4,5,21 18:10,22,25,25 19:16 20:12,14,15,16,17 26:24 28:4 29:6,8,21,22 30:6 31:9 32:4,4,13,13,24,24 33:3,22,22,24,24 34:7 36:9
exhibits (2) 34:25 37:2
exhibit (1) 17:19
existence (1) 27:19
explained (1) 17:2

F

face (2) 7:17,17
fact (3) 16:7 18:11 33:22
failure (2) 3:9,17
feed (1) 30:17
few (1) 24:9
fication (3) 10:19 17:20 20:13
fied (1) 32:3
filing (1) 3:23
find (2) 22:12 24:10
fine (1) 35:24
first (9) 4:3 8:5,9,17 9:4 11:2,13 21:12 32:5
flat (1) 6:21
flats (2) 34:2,2
flier (8) 33:5,11,21 34:8,10,12, 23 37:18
florida (1) 4:23
follows (1) 4:5
food (5) 6:18 13:7,10 16:5 28:10
foods (3) 5:14,21 33:16
form (2) 3:7 6:12
former (1) 35:4
forms (1) 20:7
forth (1) 38:10
found (1) 6:22
four (1) 20:20
fourteen (1) 9:11
free (1) 33:18
fresh (3) 5:8 6:11 13:11
frozen (1) 21:18
full (1) 4:7
further (6) 3:22 24:20 25:19,20 36:16 38:14

G

gave (1) 26:16
generated (6) 17:23 20:15 32:3 33:2,24 37:10
gets (1) 26:19
getting (3) 11:17 15:16 28:20
give (1) 26:16
given (5) 22:10 25:24 31:3 34:12 38:12
goes (1) 19:19
god (1) 25:10
gold (3) 22:18 23:2 35:18
grain (1) 6:11

graphs (1) 26:14
grass (55) 5:9 6:3,3,11,12 7:3,6 8:6 9:8,9,13 10:10 11:6,11,20 12:9,14,21 13:11,12,17 14:19 15:17 16:7,7,22 17:9,25 18:3,4, 18 19:13,13 20:2,22 21:18,19, 20 22:4 23:7 25:9,11 27:10,10, 12,14 28:12,20,23 30:15 31:15, 16 33:2,13 35:15
green (1) 25:10
greens (2) 21:19 25:11
griggs (1) 4:15
grow (2) 5:8 33:25
growing (1) 6:2
gullahorn (2) 4:21,25

H

half (8) 11:6,19 12:9 16:12,12 25:8,8 36:3
hand (12) 11:12 12:13 13:16 14:18 15:8 18:5,6 23:11 27:11 31:5 35:16 36:5
handed (2) 33:6 34:13
handing (1) 8:23
handwritten (7) 11:14 12:25 22:3 30:25 31:2,3
happen (1) 22:5
harley (34) 4:2,8 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1
having (2) 4:2 35:19
hawks (1) 4:8
head (2) 7:21 32:15
health (7) 6:17 13:7,9 16:5 23:11 26:17 28:10
healthy (7) 15:21,22 16:5 19:5 21:6 22:15 27:22
held (1) 24:25
here (6) 11:16 13:23 22:23 27:8 28:9,19
here's (1) 29:16
hereby (3) 3:3,13 38:8
hereinbefore (1) 38:10
hereto (1) 3:5
history (1) 24:8
home (2) 18:15 35:20
how (20) 5:15 7:14 11:9 12:10, 20 13:13 14:13,22 16:9 17:2,13 19:14 21:22 23:8 28:14 29:17 30:23 32:11,15,19
however (1) 5:4
hudson (1) 31:14

I

identi (4) 10:18 17:19 20:12 32:2
identified (1) 33:17
identifi (4) 8:14 13:21 16:16 18:22
identification (1) 13:23 15:25 19:15 20:8 23:9 26:25 28:5 30:7 31:10 35:2 36:10
identified (13) 7:22 16:10 17:3 18:18 19:14,24 21:20 27:7 32:24 33:12 34:4,6 36:5
identifiers (2) 24:2 29:20
identifies (1) 20:4
identify (27) 7:14 11:9 12:10,20 13:13 14:23,25 15:6,13 16:3,9 17:5,13,22 18:16 19:2,21 20:20 22:3 23:8 25:5,6 29:22 30:23 32:11,22 33:14
identifying (2) 16:11 33:3
inc (1) 33:16
inch (4) 16:12,13 25:8,8
incidentally (1) 6:20
include (3) 19:25 25:7 32:21
included (1) 15:2
includes (1) 16:11

including (2) 3:6 21:18
incorporated (1) 5:13
indica (1) 19:19
indicate (1) 14:3
indicates (2) 16:6 27:9
indicating (1) 35:21
individual (7) 20:6 29:5 33:18 34:2,6 35:7,9
information (1) 18:13
insert (18) 14:16 16:15 17:6,10, 13 19:16,17,23 20:16 23:19,22, 23,24 28:24,25 29:4 32:13 37:9
inserted (1) 20:3
inserts (4) 16:11 29:19 31:2 32:22
interested (1) 38:16
internet (4) 24:21,23,24 25:17
invoices (2) 22:23 23:3
item (2) 22:13 33:3
items (1) 20:20

J

j.b (7) 10:10,12,16,24 35:3,5 36:7
jacksonville (1) 4:23
january (1) 12:6
jersey (9) 13:8 14:9 16:6 19:7 21:4 22:22 23:15 27:5 34:15
john (1) 4:21
juice (4) 6:13,13 15:3 21:18
juiced (1) 9:12

K

keep (1) 24:8
kennel (2) 30:10,11
kennels (6) 29:24,25 30:8,14 31:8 37:16
kind (1) 14:16
kingston (1) 31:20
know (6) 24:6 30:12,19 31:17 34:14 35:12

L

label (5) 14:16 17:7,15 20:17 25:9
labeled (1) 13:24
last (1) 12:7
later (2) 5:17 28:22
lauren (5) 29:24,25 30:8,14 31:7
law (2) 3:6,20
leave (1) 26:2
left (2) 26:4,13
let (1) 15:15
let's (1) 28:8
letter (4) 35:21,22 36:2,7
letter-j.b (1) 37:19
like (6) 5:17 6:11 11:17 12:6 18:12 26:17
literature (1) 33:21
literture (1) 33:19
little (2) 6:22 12:13
living (1) 5:7
local (1) 28:10
locate (1) 23:3
located (10) 4:22 9:14 10:12 14:7 8 21:3,9 22:21 23:13 27:4
location (2) 21:8 27:21
lock (1) 25:10
long (2) 5:15 8:24
longer (3) 4:25 9:17,22
looked (1) 15:14
looking (1) 10:25
looks (1) 12:6

M

made (6) 7:5 8:21 13:15 22:10 25:23 33:24
major (1) 6:9
make (2) 3:10 12:13
managers (3) 33:6,7 34:9
manhattan (1) 35:11

manner (2) 19:22,24
many (4) 18:5 34:13,13,17
march (3) 5:3 28:19 36:8
mark (1) 36:4
marked (4) 8:13 10:17 13:20 15:24 16:15 17:18 18:21 20:11 26:24 28:4 30:5 31:9 34:24 36:9
market (1) 24:20
marketing (4) 24:21 25:19,20 34:9
marriage (1) 38:16
matsil (36) 2:13 4:2,8 5:1,6 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1
matter (2) 18:11 38:17
may (4) 3:14 7:8 10:21 34:17
maybe (1) 14:11
mcsweeney (9) 4:6,10,11,19 24:12 34:18 35:23 36:11,15
meide (1) 4:22
men (1) 34:12
might (1) 25:25
modern (3) 25:6 28:23 32:12
monroe (1) 4:9
more (3) 16:18,21,24
morristown (1) 26:17
most (2) 23:21 25:6
motion (1) 3:11
move (1) 3:8
moved (2) 27:21 35:12
ms (11) 4:6,10,19 11:3,5,23 24:12 34:18 35:23 36:11,15
much (2) 28:14 32:15

N

name (8) 4:7,10 10:22 14:5 23:11 27:22 29:11 33:14
natures (3) 28:9 29:13 30:4
nearby (2) 18:3,13
necessarily (2) 33:9 34:14
need (1) 26:20
nest (1) 4:8
never (2) 30:12,13
new (16) 2:7 4:4,9 5:13 6:5 13:8 14:9 16:5 19:6 21:4 22:22 23:15 27:4,21 34:15 38:8
newburgh (2) 28:10 31:19
next (1) 11:15
normal (1) 24:4
notary (4) 3:15,16 4:3 38:7
notes (2) 11:13 12:25
notice (2) 4:19 5:2
noticed (2) 6:17 7:11
now (16) 8:23 9:4 10:13 13:23 16:2,23,25 17:21 18:9,24 20:24 25:3 32:11,12 33:8,17
number (3) 20:25 22:18 35:19

O

object (2) 3:7,9
occurred (1) 10:14
off (17) 18:12,14,16,19,21,24 20:18 24:12,14 28:21 32:4,15 34:18,20 36:11,13 37:11
oh (1) 23:16
old (1) 28:20
oldest (1) 9:4
once (2) 11:18 23:2
one (9) 6:13 9:12 10:21 12:22, 23 15:13 16:6,21 22:10,12,19 24:7 27:3,9 31:19,19,20 35:3, 17
ones (5) 23:20,22 30:25 32:23 33:9
only (3) 12:22 23:2 32:23
operations (2) 5:22,24
opposer (2) 18:22 20:12
opposer (14) 2:4 8:14 13:21 15:

24 16:16 17:4,19 26:24 28:4
30:6 31:9 34:24 36:9 37:4
opposer's (7) 8:23 10:18,20 12:
15 13:24 16:2 17:21
opposing (1) 4:20
order (4) 4:14 32:16,17 35:25
ordered (1) 22:18
ordering (2) 11:18,19
original (3) 3:18,23 35:17
ostrer (2) 2:6 4:12
other (16) 3:15 16:22 19:22,23,
24 20:23,25 22:18 24:2 25:21
27:17 28:6 29:19 32:21 33:3,8
others (1) 15:14
ounce (1) 6:14
out (22) 6:13,22 8:6 13:3,5 14:
11,13,17 15:7,18 19:3,6 20:23
22:10 24:9 26:9,13,16 27:2 28:
7 34:11,13
outcome (1) 38:17
over (1) 21:2
oversee (1) 5:22
own (5) 14:15 21:24 23:18 29:
18 32:20
owned (1) 22:15
owner (2) 5:19,21
owners (1) 21:6

P

p.c (1) 2:6
packaging (1) 25:7
packing (2) 14:20 21:25
pad (1) 18:12
page (3) 9:5 10:21 37:4
pages (3) 8:24 10:21 13:24
paid (1) 24:7
pantry (4) 28:9 29:13 30:4 37:15
park (1) 14:8
particularly (1) 6:4
parties (2) 3:4 38:15
patch (1) 15:16
patches (1) 7:2
people (5) 6:13,22 7:24 15:11
22:16
perfect (3) 5:14,21 33:16
period (3) 10:6 18:6,7
pet (30) 8:3 12:21 14:19 16:6,7,
22 17:9 18:2,3,4 19:13,13 20:2,
4,22 25:9 27:10,12 28:13,20,
21,23 30:15 31:6,15,16 33:2,
13,16,25
phone (1) 35:18
photo (1) 26:13
photograph (1) 25:7
photographs (7) 20:5 24:16,23
26:21,23 34:5 37:13
picked (1) 30:24
picture (4) 7:16,17 11:11 36:5
pictures (3) 25:5,12 26:4
piece (1) 7:18
pieces (8) 7:8,20 13:18 15:2,11,
15 27:15,16
place (5) 15:9 20:15,17 29:4 30:
2
placed (1) 18:13
plan (1) 25:14
planning (2) 25:16,22
plastic (1) 25:10
plaza (1) 21:11
please (3) 16:3 17:5,22
position (1) 5:18
posted (1) 24:24
poster (26) 14:18 15:8,8 17:16,
18,24 18:10,25 19:25 20:3,11,
14,16 22:3,6 23:25 27:12 28:
21,24 31:4,5 32:3,13 36:5 37:
10,12
posting (2) 24:22 25:16
pot (4) 17:8 25:8 29:5 34:6
potential (1) 24:20
pots (9) 16:13,23 17:25 19:2 20:
6 28:15 33:18 34:3,4

poughkeepsie (1) 31:20
practice (2) 3:6,20
present (2) 2:12 34:10
presented (1) 34:8
president (2) 5:19,20
preston (1) 2:5
previously (4) 8:16 12:17 17:2
27:2
price (1) 33:18
primarily (1) 22:20
primary (2) 23:17 34:16
printed (4) 17:11,15 18:12 33:5
printout (1) 33:2
prior (2) 17:12,12
private (1) 10:9
privately (1) 24:25
produce (2) 28:18 33:6
product (36) 6:9 7:15,22,25 9:
13 11:9 12:7,11,20 13:13 15:6
16:9,10,24 17:3,13 18:13,17
19:21,24 20:20 21:22 22:3 26:
20 29:11,17 30:23 31:25 32:11,
19,22 33:8,12 34:2,10 35:14
products (6) 6:5 21:17 23:8 24:
17 28:13 31:24
promote (1) 33:4
promotional (2) 33:19,20
prompt (1) 27:15
prompted (1) 26:20
provided (2) 3:5,19
public (4) 3:15,16 4:4 38:7
purchased (2) 35:14,15
purchasing (3) 19:11,12 31:5
purpose (4) 9:10 11:7 24:19 28:
16
purposes (2) 13:23 15:6
put (2) 29:5,6

Q

question (2) 3:7,10
questioned (1) 6:21
questions (1) 36:16
quick (1) 10:22

R

randomly (1) 14:3
read (1) 35:22
real (1) 10:22
really (2) 30:12 34:14
recall (10) 8:9,20 10:5,14 18:7
20:24 23:5,19 26:12 28:7
receipts (1) 28:2
receipt (9) 9:4,5 10:23 12:5 16:
4,20 22:2 24:4 27:8
receipts (16) 8:12,25 10:16,22
11:2 13:19 14:2,22,23 15:22
24:9 27:7,17 30:4 31:7 34:22
receipts-adams (1) 37:17
receipts-down-to-earth (1) 37:
5
receipts-healthy (1) 37:8
receipts-j.b (1) 37:6
receipts-laurden (1) 37:16
receipts-natures (1) 37:15
receipts-seed (1) 37:14
receipts-third (1) 37:7
received (15) 8:13 10:17 13:20
15:23 16:15 17:18 18:21 20:11
26:23 28:3 30:5 31:8 34:17,24
36:8
recent (1) 23:21
recently (1) 35:21
record (8) 4:16 24:13,15 34:19,
21 36:12,14 38:12
records (1) 24:7
referred (5) 16:14 26:22 28:25
30:3 33:21
regarding (1) 12:16
regularly (1) 11:19
related (1) 38:14
remember (2) 21:13 23:12
reporter (1) 38:6

representing (1) 4:25
reserved (2) 3:9,11
reside (1) 35:10
resided (1) 35:11
respective (1) 3:4
respectively (1) 34:25
result (1) 7:10
return (1) 3:17
right (2) 3:6 20:24
rights (2) 3:5,19
road (2) 2:5 4:8
rodney (1) 38:6
route (1) 21:11
routes (1) 34:15
rule (1) 3:19
rules (2) 3:6,20
rutherford (2) 13:8 14:9

S

said (10) 7:6,20 11:11 12:14 14:
19 22:4 27:12 28:21 38:11,13
sale (8) 8:5,6,7,17,17,20 10:14
11:15
sales (13) 7:10 8:25 10:2 12:16,
17 13:3 15:7 19:3,3 25:25 27:3
28:6 33:4
same (6) 12:12 13:15 21:5,6 22:
15 23:9
sample (1) 17:6
samples (1) 22:18
saw (2) 35:16,18
say (5) 9:25 16:18 21:6 22:17
33:11
saying (1) 31:5
scale (1) 31:14
see (6) 7:7 11:16 16:20 21:14
28:19 29:10
seed (9) 21:2,3,15,22 22:14 26:
18,19 27:3 28:2
sell (11) 9:7 11:5 28:11,14,15,17
29:23 30:14,15 31:11 33:8
selling (12) 6:10 9:18 10:5 13:5,
9 15:18 21:12,15,17 23:4 31:15
35:4
sent (1) 4:20
set (1) 38:10
shall (3) 3:10,18,20
ship (2) 14:13 21:22
shirt (1) 20:5
shop (1) 26:17
shorthand (1) 38:6
shot (1) 6:14
should (1) 21:6
show (3) 10:22 25:25 26:2
showing (4) 8:25 16:2 17:4,21
shows (1) 20:5
side (1) 4:20
sign (6) 7:5 13:15 33:18,20 35:
16,17
similar (3) 11:10,12 18:4
simply (5) 7:5,16 14:24 18:14
31:3
since (5) 6:6,8,10,24 19:22
single (2) 15:11 25:8
slips (2) 14:20 21:25
small (13) 6:18 7:2,5,8,19 11:10
13:17 15:2,15,16 22:17 27:14,
16
soil (1) 17:8
sold (10) 9:8,9,11 12:7 16:6 20:
25 21:19 23:6 28:12 31:24
some (1) 27:7
something (1) 16:18
somewhat (1) 14:2
sorry (1) 23:14
south (1) 2:10
southpoint (1) 2:10
specifically (1) 14:25
spoken (1) 30:13
spout (1) 27:4
sprout (9) 21:2,3,16,23 22:14
26:18,19 28:3 37:14

sprouts (1) 13:12
squares (2) 6:19,22
standard (1) 6:20
start (5) 13:5 24:22 28:8 31:21
35:4
started (6) 11:2,13 32:6,14 33:
25 35:19
starting (1) 28:22
state (29) 4:4 8:6,6,8,17 10:2,4,6
13:3,6 14:13,17 15:7,19 19:3,3,
6 20:23 22:21 24:10 26:10,13
27:3 28:7,7,8 31:18 34:11 38:7
stated (3) 8:16 12:17 19:6
stick (1) 17:7
still (12) 10:2 11:23 14:10 19:9,
11,12 27:19,23,25 29:15 30:20
32:8
stipulated (3) 3:3,13,22
stop (2) 9:23 12:2
stopped (1) 22:9
store (16) 13:7,10 14:4,5 16:5
21:5,7 23:11 24:5,7 27:18,21
28:10 30:24 32:17 33:6
stores (12) 6:18 18:2 22:11,18,
20 24:10 25:25 26:15 33:9 34:
9,13,17
street (3) 9:16,16 31:17
strike (1) 3:8
styrofoam (1) 17:24
such (2) 3:11 6:15
suite (2) 2:5,10
sunflower (3) 13:11 21:18 25:
11
supermarkets (2) 31:13,14
sure (1) 24:11
sworn (4) 3:14 4:3 36:22 38:10

T

take (2) 18:15 24:16
taken (4) 20:15,17 25:2,12
tear (10) 18:12,14,16,19,21,24
20:17 28:21 32:4 37:11
tee (1) 20:5
tell (1) 10:25
testified (1) 4:5
testimony (2) 3:8 38:12
that's (11) 7:13 8:4 9:6,20 12:19
24:9,21 25:2 32:7 33:21 35:24
thereby (1) 3:21
think (2) 15:16 22:11
thinking (1) 7:8
third (3) 13:7,19 14:6
those (2) 23:8 34:4
thymes (8) 15:21,23 16:5 19:5
21:6 22:15 27:22 37:8
time (14) 10:6,8 12:12 15:7 18:7,
7 22:11 24:7,25 25:14 27:11
31:4 33:23 35:11
times (1) 22:19
ting (1) 19:20
today (6) 19:14 22:14,16 27:19
29:15 32:9
top (1) 32:15
total (1) 10:20
track (1) 24:8
trade (1) 36:4
trademark (1) 14:16
transcript (1) 38:11
tray (33) 6:20 7:7,19 11:6,19 12:
9,23 13:12,17 14:25 15:11,15
16:6,21 17:10,13 19:17,23 20:
2,4 21:19 23:23,24 27:9,10,14
28:15,25 29:4,7 36:3,3 37:9
trays (11) 6:18 9:8 12:22 15:3,14
16:22 18:4 19:12 23:6 28:19
32:17
treat (23) 8:3 9:13 12:21 14:19
16:8,22 17:9 18:2,3 19:13 20:2,
4,22 25:9 27:11,13 28:13,21,24
30:16 31:6 33:17,25
trial (1) 3:11
trucks (4) 14:15 21:24 29:18 32:

<p>20 true (1) 38:12 trying (1) 33:8 twice (1) 23:2 two (5) 20:7 22:19 28:15,19 29: 21 type (3) 30:9,11 32:21 typically (1) 6:12</p>
U
<p>under (1) 36:4 understand (2) 4:13 7:24 understanding (1) 4:24 until (2) 17:14 18:8 up (7) 6:18 7:7,19 15:2 27:14 30:24 31:13 us (3) 23:3 35:19,19 use (9) 14:20 17:7 19:2,15 24:5 29:22 31:4 32:14,23 used (12) 6:12,15 9:12 14:17 15: 5 23:19,20 24:3 29:25 31:25 32:2 33:4 uses (1) 25:21 using (4) 6:22 22:9 25:3,14</p>
V
<p>valley (1) 31:14 vehicle (1) 23:18 vernon (5) 16:5 19:6 21:4,10 27:4 very (1) 18:4</p>
W
<p>waived (1) 3:24 waiver (2) 3:10,19 wall (4) 7:18 13:16 15:10 27:13 way (6) 12:12 13:15 15:13 16:11 18:4 38:16 week (1) 32:18 weekly (1) 11:17 well (2) 4:21 10:15 west (1) 9:16 wheat (46) 5:8 6:2,3,11 7:3,6 8:5 9:8,9,13 10:10 11:6,11,20 12:9, 14,21 13:11,12,17 14:19 15:17 16:7,21 17:8,25 18:3,18 19:13 20:2,22 21:18,19,20 22:4 23:6 25:9,11 27:10,10,12,14 28:12, 23 30:15 35:15 whom (1) 3:16 wife (1) 7:17 will (1) 5:4 wished (1) 31:4 within (3) 23:17 34:16 38:7 without (1) 5:5 witness (3) 3:14 38:9,13 words (1) 7:20 work (1) 25:25 written (3) 11:13 27:12 31:5 wrote (1) 35:21</p>
Y
<p>year (2) 5:17 8:20 years (4) 18:5 21:2 22:9 31:16 york (5) 2:7 4:4,9 5:13 38:8</p>
Z
<p>zip (1) 25:10</p>

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

Commissioner for Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3514

Sir:

TRANSCRIPT OF ALYSE M. MATSIL
DEPOSITION TESTIMONY

The original notarized transcript of the deposition testimony of Alyse M.

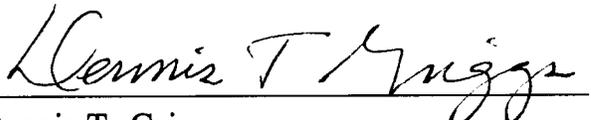
Matsil is enclosed.

Opposer previously filed a Notice of Reliance on the testimony of Mrs. Matsil.

The deposition transcript was not available at the close of Opposer's testimony.

PERFECT FOODS, INC.

Date: May 3, 2005


Dennis T. Griggs
Attorney for Opposer

Griggs Bergen LLP
17950 Preston Road, Suite 1000
Dallas, Texas 75252
(972) 447-4569

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I certify that the TRANSCRIPT OF ALYSE M. MATSIL DEPOSITION TESTIMONY (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3513.

S. Maria Tedesco
(Typed name of person mailing paper)

Date: May 3, 2005


(Signature of person mailing paper)

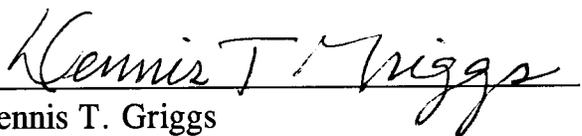
CERTIFICATE OF SERVICE

I hereby certify that the foregoing TRANSCRIPT OF ALYSE M. MATSIL DEPOSITION TESTIMONY was served on the Applicant, attorney of record for Applicant and Opposer's co-counsel by first class mail this 3rd day of May, 2005 addressed to:

Cheryl Meide, Esq.
Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

John D. Gullahorn
4111 Calico Drive
Cantonment, Florida 32533

Angela Garcia-McSweeney, Esq.
Benjamin Ostrer & Associates, P.C.
111 Main Street, P.O. Box 509
Chester, New York 10918


Dennis T. Griggs
Attorney for Opposer

ORIGINAL

IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL
BOARD

----- x
PERFECT FOODS, INC.,

Opposer,

OPPOSITION NO. 91160978

-against-

JOHN D. GULLAHORN,

Applicant.

----- x

111 Main Street
Chester, New York
April 5, 2005
11:35 A.M.

EXAMINATION BEFORE TRIAL of PERFECT FOODS,
INC., the Opposer in the above-entitled action, by
ALYSE M. MATSIL, held pursuant to Notice at the
above place and time, and before a Notary Public
within and for the State of New York.

RODNEY C. CONROW
REPORTER
175 Lily Pond Road
Parksville, New York 12768
(845) 292-3534

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

GRIGGS BERGEN, LLP
Attorneys for Opposer
Office & P.O. Address
17950 Preston Road, Suite 1000
Dallas, Texas 75252

BY: BENJAMIN OSTRER & ASSOCIATES, P.C.
111 Main Street
Chester, New York 10918

BY: ANGELA GARCIA McSWEENEY, ESQ., of Counsel

CHERYL MEIDE, ESQ.
Attorney for Applicant
Office & P.O. Address
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216
(no appearance)

Also Present

Harley B. Matsil

1
2
3 IT IS HEREBY STIPULATED AND AGREED, by and
4 between the attorneys for the respective parties
5 hereto, that all rights provided by the Civil
6 Practice Law and Rules, including the right to
7 object to any question, except as to form, or to
8 move to strike any testimony of this examination are
9 reserved, and, in addition, the failure to object to
10 any question, shall not be a bar or waiver to make
11 such motion at, and is reserved for the trial of
12 this action.

13 IT IS HEREBY STIPULATED AND AGREED, that this
14 examination may be sworn to by the witness being
15 examined before a Notary Public other than the
16 Notary Public before whom this examination was
17 begun, but the failure to do so, or to return the
18 original of this examination to counsel, shall not
19 be deemed waiver of the rights provided by Rule
20 3116, Civil Practice Law and Rules, and shall be
21 controlled thereby.

22 IT IS FURTHER STIPULATED AND AGREED, that the
23 filing of the original of this examination is
24 waived.
25

1
2 ALYSE M. MATSIL, having
3 been first duly sworn by a
4 Notary Public of the State of
5 New York, testified as follows:

6 EXAMINATION BY MS. McSWEENEY:

7 Q What is your full name and address?

8 A Alyse M. Matsil, 4 Hawks Nest Road,
9 Monroe, New York 10950.

10 MS. McSWEENEY: I am going
11 to ask you some questions. If you
12 don't understand the question just ask
13 me to rephrase it.

14 THE WITNESS: Okay.

15 MS. McSWEENEY: You
16 must respond verbally because the
17 court reporter is typing everything.
18 If you nod your head he won't know
19 what you're saying, okay?

20 THE WITNESS: Im-hm.
21 Right.

22 Q What is the name of your business?

23 A Perfect Foods, Inc.

24 Q When did you start that business?

25 A It was started in 1982 and incorporated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

in, I think, January, '83.

Q Where is it incorporated?

A In New York.

Q What is the address of Perfect Foods, Inc.?

A Our physical address is 862 Pulaski Highway in Goshen, New York. Our mailing address is 4 Hawks Nest Road in Monroe, New York.

Q Since 1982 you have been doing business in this area, correct?

A Well, in 1982 we were in Brooklyn. In about -- I'm not sure -- 9 years later we moved to Goshen.

Q What type of product were you developing?

A We were growing fresh wheat grass and as we were selling it we realized there were different markets for the same product. We were looking into using it for animals, marketing it for animals, as well as we started making frozen wheat grass juice. It is the same product that we are marketing in different ways.

Q When did you start marketing it for animals?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A In about 1988. 1987 or '88, is when we started seeing stores were cutting it up into patches for cats.

Q What did you call the product? What was its name?

A It was Cool Cat Wheat Grass or Cool Cat Pet Grass.

Q That is how you marketed the product?

A Yes.

Q How was the product identified?

A At that time with a handwritten sign that we made on cardboard and gave it to the store to put above the tray.

Q And the sign said what?

A Cool Cat Wheat Grass.

Q This was a handwritten sign, correct?

A Right.

Q When did you stop using that handwritten sign?

A In December of 2001 I made a computer sign that we started distributing to the stores. That's Exhibit 6.

Q Did you distribute anything else with that?

1
2 A Yes. There was a little pad that we
3 had printed. I made it on my computer in 2001, then
4 we had Gross Printers in Brooklyn print the pads up
5 for us that said Cool Cat Grass, and that is Exhibit
6 7.

7 Q Are these two identifiers used today?

8 A No. This is no longer used (indica-
9 ting).

10 Q How is the product identified today?

11 A Today we have a plastic insert that we
12 put into each of the 18 pots. It says Cool Cat
13 Wheat Grass Pet Treat and we also have a large
14 poster made of cardboard that goes into the back of
15 the flat where the 18 pots are held.

16 Q Your husband previously stated that you
17 did have out of state buyers, is that correct?

18 A Yes.

19 Q Off the top of your head do you recall
20 what the name of those out of state buyers were?

21 A In New Jersey we had The Third Day; The
22 Third Day in East Rutherford, and we had Seed and
23 Sprout, which was in Vernon, and now Seed and Sprout
24 is called Healthy Thymes, also in Vernon. We
25 probably have had others, but we can't locate

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

invoices.

Q Do you recall what year your first out of state sale was made?

A That was in about 1988, Third Day.

Q Are you still doing business with Third Day?

A No. They went out of business.

Q Are you still doing business with any of the out of state buyers?

A Healthy Thymes in Vernon and there was another store, Healthy Hands, but I don't remember which town it is in in New Jersey.

Q Seed and Sprout?

A Seed and Sprout is out of business because they turned into Healthy Thymes.

Q When did you start selling to Healthy Thymes?

A Well, Healthy Thymes -- when they changed their name, I'm not sure. I'm not sure of it. It was Seed and Sprout and we were selling to them.

'95 and 98 I have invoices from Exhibit 10, and then when they changed their name, probably about that time, I guess maybe '98 or '99 they

1
2 became Healthy Thymes.

3 Q Are you still doing business with
4 Healthy Thymes?

5 A Yes, we are.

6 Q Now are you doing business with Adams?

7 A Yes, we are. Adams has 3 stores; in
8 Newburgh, Kingston and Poughkeepsie, and we are also
9 doing business with Natures Pantry in Newburgh.

10 Q How do you identify the product to
11 Natures Pantry and Adams?

12 A All the stores that we sell the Cool
13 Cat Wheat Grass to now get the insert, Exhibit 5 and
14 the poster, which is Exhibit 8.

15 Q What do the inserts say?

16 A The inserts say Cool Cat Wheat Grass
17 Pet Treat.

18 Q And the poster?

19 A The poster has a picture of a cat with
20 the logo on his tee shirt Cool Cat Pet Treat and the
21 poster says Fresh Wheat Grass Pet Treat.

22 Q Since 1987, '88, the product has always
23 been identified as Cool Cat?

24 A Yes.

25 MS. MCSWEENEY: I have

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Alyse Matsil

no further questions.

The time now is 11:45,
and the Applicant, John D.
Gullahorn, as well as his
former attorney, Cheryl
Meide, Esq. have not ap-
peared at this deposition
and we note their default.

Alyse M. Matsil
ALYSE M. MATSIL

Sworn to before me this 29
day of April, 2005.

John Pietsch

Notary Public

John Pietsch
Notary Public State of New York
Orange County
Commission Expires

147/06

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, RODNEY C. CONROW, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth, was duly sworn by me, and that the transcript of said examination is a true record of the testimony given by the said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.


RODNEY C. CONROW

LAWYER'S NOTES/ERRATA SHEET

Page	Line	
7	5	4. Cool Cat Pet Grass ₁
25	25	probably definitely
8	12	Healthy Hands 6 HealthLand

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004.

INDEX OF EXHIBITS 1-15

<u>Opposer's Exhibit No.</u>	<u>Title</u>	<u>Offered By:</u>
1	Sales Receipts: Down to Earth	Deposition of Harley B. Matsil Page 8, Line 14 Page 8, Lines 23-24 Page 12, Line 15
2	Sales Receipts: J. B. Brown	Deposition of Harley B. Matsil Page 10, Line 18 Page 10, Line 20

3	Sales Receipts: Third Day	Deposition of Harley B. Matsil Page 13, Line 21 Page 13, Line 24
4	Sales Receipts: Healthy Thymes	Deposition of Harley B. Matsil Page 15, Line 24
5	Tray Insert	Deposition of Harley B. Matsil Page 16, Line 16 Page 17, Line 4 Page 20, Line 16 Page 29, Line 6 Page 32, Line 13 Page 32, Line 24
6	Computer Generated Point of Sale Poster	Deposition of Harley B. Matsil Page 17, Line 19 Page 17, Lines 21-22 Page 18, Line 10 Page 18, Line 25 Page 20, Line 15 Page 32, Line 4 Page 33, Line 3 Page 33, Line 22 Page 33, Line 24

7 Tear Off Packing Slip Deposition of
Harley B. Matsil
Page 18, Line 22
Page 18, Line 25
Page 20, Line 17
Page 32, Line 4
Page 33, Line 22
Page 33, Line 24

8 Point of Sale Poster Deposition of
Harley B. Matsil
Page 20, Line 12
Page 20, Line 14
Page 29, Line 6
Page 29, Line 8
Page 32, Line 13
Page 32, Line 24

9 Product Photograph Deposition of
Harley B. Matsil
Page 26, Lines 24-25

10 Sales Receipts:
Seed and Sprout Deposition of
Harley B. Matsil
Page 28, Line 4

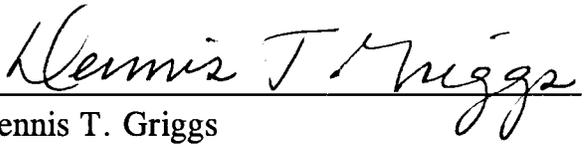
11 Sales Receipts:
Natures Pantry Deposition of
Harley B. Matsil
Page 30, Line 6

12 Sales Receipts:
Laurden Kennels Deposition of
Harley B. Matsil
Page 31, Line 9

13	Sales Receipts: Adams	Deposition of Harley B. Matsil Page 34, Line 25
14	Advertising Flyer	Deposition of Harley B. Matsil Page 34, Line 25
15	Customer Testimonial Letter from J. B. Brown 3/24/2005	Deposition of Harley B. Matsil Page 36, Line 9

PERFECT FOODS, INC.

Date: May 3, 2005


Dennis T. Griggs
Attorney for Opposer

Griggs Bergen LLP
17950 Preston Road, Suite 1000
Dallas, Texas 75252
(972) 447-4569

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I certify that the INDEX OF EXHIBITS 1-15 (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3513.

S. Maria Tedesco
(Typed name of person mailing paper)

Date: May 3, 2005


(Signature of person mailing paper)

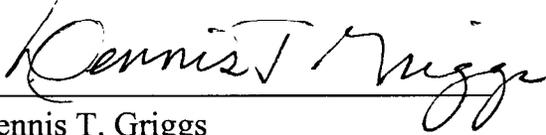
CERTIFICATE OF SERVICE

I hereby certify that the foregoing INDEX OF EXHIBITS 1-15 was served on the Applicant, attorney of record for Applicant and Opposer's co-counsel by first class mail this 3rd day of May, 2005 addressed to:

Cheryl Meide, Esq.
Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

John D. Gullahorn
4111 Calico Drive
Cantonment, Florida 32533

Angela Garcia-McSweeney, Esq.
Benjamin Ostrer & Associates, P.C.
111 Main Street, P.O. Box 509
Chester, New York 10918


Dennis T. Griggs
Attorney for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004.

OPPOSER'S EXHIBIT 1

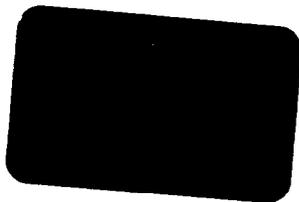
Sales Receipts: Down to Earth

Offered by Deposition of Harley B. Matsil

Page 8, line 14

Down to Earth
33 Seventh Ave
NY, NY 10011

Invoices from
1988, '89, 2'90, '94,
+ '95



Down to Earth

1988

ACCOUNT *Down to Earth* DATE *10-22-88*

QNTY	DESCRIPTION	PRICE
	<i>@ 9/11</i>	
<i>15</i>	<i>trays wgrass</i>	<i>135.00</i>
		<i>-27.00</i>
<i>3</i>	<i>trays credit</i>	<i>108.00</i>
<i>NO pay</i>		
<i>ent</i>		
BALANCE		
TOTAL		<i>108.00</i>



PERFECT FOODS INC.
 3748 Oceanic Avenue
 Brooklyn, New York
 11234
Ronnie Flores
 (718) 946-0004
 No 4511

ACCOUNT *D.T.E.* DATE *1-5-88*

QNTY	DESCRIPTION	PRICE
<i>15</i>	<i>trays wgrass</i>	<i>135.00</i>
	<i>@ 9/11</i>	
<i>Yes Per.</i>		
<i>NO pay</i>		
<i>ent</i>		
BALANCE		
TOTAL		<i>135.00</i>



PERFECT FOODS INC.
 3100 Ocean Parkway
 Brooklyn, New York
 11235
 (914) 783-9683
 or
 (718) 946-0004
 No 5582

ACCOUNT *Down to Earth* DATE *12/6/88*

QNTY	DESCRIPTION	PRICE
<i>20</i>	<i>trays wgrass</i>	<i>180.00</i>
<i>6</i>	<i>1/4 lb S.F.</i>	<i>9.00</i>
		<i>189.00</i>
<i>ent</i>		
BALANCE		
TOTAL		<i>189.00</i>



PERFECT FOODS INC.
 3100 Ocean Parkway
 Brooklyn, New York
 11235
 (914) 783-9683
 or
 (718) 946-0004
 No 5181

ACCOUNT *Down to Earth* DATE *11-10-88*

QNTY	DESCRIPTION	PRICE
<i>15</i>	<i>trays wgrass</i>	<i>135.00</i>
	<i>@ 9/11</i>	
<i>6 1/4</i>	<i>lb S.F.</i>	<i>9.00</i>
		<i>144.00</i>
<i>NO pay</i>		
<i>ent</i>		
BALANCE		
TOTAL		<i>144.00</i>



PERFECT FOODS INC.
 3748 Oceanic Avenue
 Brooklyn, New York
 11224
ent
 (718) 946-0004
 No 4793

Down to Earth 1989

ACCOUNT D.T.E. DATE 1-31-89

QNTY	DESCRIPTION	PRICE
20 trays	wgrass @ 9/14	180.00
6 1/4 lb	S.F. @ 1 ³⁵ / _{ea}	8.10
		188.10
NO pay		
E. Magano		
	BALANCE	
	TOTAL	188.10



PERFECT FOODS INC.
 3100 Ocean Parkway
 Brooklyn, New York 11235
 (914) 783-9683
 or
 (718) 946-0004
 No 5968

ACCOUNT D.T.E. DATE 1-12-89

QNTY	DESCRIPTION	PRICE
15 trays	wgrass @ 9/14	135.00
NO pay		
BALANCE		
TOTAL		135.00



PERFECT FOODS INC.
 3100 Ocean Parkway
 Brooklyn, New York 11235
 (914) 783-9683
 or
 (718) 946-0004
 No 5685

ACCOUNT D.T.E. DATE 4-28-89

QNTY	DESCRIPTION	PRICE
15 trays	wgrass @ 9/14	135.00
NO pay		
E. Magano		
	BALANCE	
	TOTAL	135.00



PERFECT FOODS INC.
 3100 Ocean Parkway
 Brooklyn, New York 11235
 (914) 783-9683
 or
 (718) 946-0004
 No 7388

ACCOUNT Down to Earth DATE 5-25-89

QNTY	DESCRIPTION	PRICE
10 trays	of wheatgrass	90.00
NO pay		
BALANCE		
TOTAL		90.00



PERFECT FOODS INC.
 3100 Ocean Parkway
 Brooklyn, New York 11235
 (914) 783-9683
 or
 (718) 946-0004
 No 7801

13781

1995

13990

PERFECT FOODS, INC.
2 Hawks Nest Road
Monroe, NY 10950
800-933-3288 (914) 294-8411

PERFECT FOODS, INC.
2 Hawks Nest Road
Monroe, NY 10950
800-933-3288 (914) 294-8411

SOLD TO: DTE DATE: 10/7/95

ADDRESS:

SOLD TO: Down To Earth DATE: 10/21/95

ADDRESS:

12	tax	700	84.00
		<u>10/7/95</u>	
		<u>[Signature]</u>	
		TAX	
		TOTAL	

12	tax	700	84.00
4	Rubber Feet Fee Rmly	200	80.00
			<u>92.00</u>
		TAX	
		TOTAL	

Thank You

Thank You

FORM 65833, RAPIDFORMS, INC.: TO REORDER CALL 800-257-8354 C0394

FORM 65833, RAPIDFORMS, INC.: TO REORDER CALL 800-257-8354 C0394

VILLAGEPATH ORGANIC, INC.
DBA DOWN TO EARTH

Perfect Foods, Inc.

11/17/95 13368

- Invoice #13781, 10/7/95 84.00 ✓
- Invoice #13823, 10/10/95 42.00 ✓
- Invoice #13874, 10/14/95 84.00 ✓
- Invoice #13917, 10/17/95 84.00 ✓
- Invoice #13980, 10/19/95 84.00 ✓
- Invoice #13990, 10/21/95 106.00 ✓
- Invoice #13990, 10/21/95 92.00 ✓
- Invoice #14034, 10/24/95 92.00
- Invoice #14263, 10/28/95 84.00 ✓
- Invoice #14306, 10/31/95 84.00 ✓

10/11 84 13867 applied to

DOWN TO EARTH

DTE

pd. inv. #13867 with dup payment of \$92

*****836.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 2

Sales Receipts: J. B. Brown

Offered by Deposition of Harley B. Matsil

Page 10, line 18

Private Customer JB Brown

bought Cool Cat wheatgrass
from pre-'88 thru 1995. He
received home delivery.

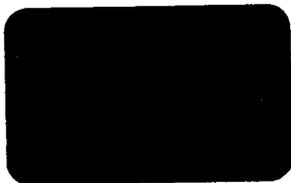
Oldest sample invoice

I could find was 7/16/88.

She prepaid for her deliveries
by check.

(See Christmas card 1988)

(see current letter
faxed to us
confirming she
bought our product)



Hi.

Sorry for the delay - I'm up
to my hair in moving clothes -

The date now is the 30th
of December so I'll then
I maybe it will be only
one delivery, please, continue
to deliver to 80 St. Marks.

Enclosed is my check for \$52.
That's 4 deliveries basically -
has a wonderful 88!

QB Brown

246 Cumberland St. 718. 834. 8030
Bethan 11205-

Merry Christmas
Happy New Year

(JB Brown)

3/8/88

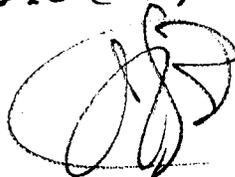
Alyse-

Sorry for the delay in payment-

I've enclosed this payment for which there are 2 deliveries yet to be made, AND NEXT payment of 4 deliveries. - All together 6 more deliveries-

Thank you I appreciate your letting me know as you do of out standing bills.

Sincerely



PERFECT FOODS, INC.

2 HAWKS NEST ROAD
MONROE, NY 10950
(914) 783-9683
(718) 946-0004

STATEMENT
August 23, 1989

NO 1614

JB Brown
246 Cumberland
Brooklyn, NY 11205

RE: Unpaid Invoices

DATE	INVOICE #	DESCRIPTION	AMOUNT
6-21-89	8311	wheatgrass	8.00
7-8-89	8520	"	10.00
7-22-89	8737	"	10.00
8-5-89	8899	"	10.00

AMOUNT DUE: 38.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 3

Sales Receipts: Third Day

Offered by Deposition of Harley B. Matsil

Page 13, line 21

ACCOUNT Third Day DATE 11-3-88

QNTY	DESCRIPTION	PRICE
14	trays w grass @ 10/ea	140.00
NO pay		
BALANCE		
TOTAL		140.00

PERFECT FOODS INC. 3748 Oceanic Avenue Brooklyn, New York 11224 (718) 946-0004 No. 4706

ACCOUNT THE Third Day DATE 8/18/88

QNTY	DESCRIPTION	PRICE
10	Trays w grass	100.00
1	lb w grass	8.00
		108.00
NO pay		
BALANCE		
TOTAL		108.00

PERFECT FOODS INC. 3748 Oceanic Avenue Brooklyn, New York 11224 (718) 946-0004 No. 3721

ACCOUNT Third Day DATE 7-27-89

QNTY	DESCRIPTION	PRICE
15	trays w grass	150.00
1	tray 1/2 SF 1/2	10.00
6	1/4 lb SF.	8.10
3	1/4 lb B-W	4.05
		172.15
NO pay		
BALANCE		
TOTAL		172.15

PERFECT FOODS INC. 3100 Ocean Parkway Brooklyn, New York (914) 783-9683 or (718) 946-0004 No. 8761

ACCOUNT Third Day DATE 7/20/89

QNTY	DESCRIPTION	PRICE
15	trays w grass	150.00
1	tray 1/2 SF 1/2	10.00
3	1/4 lb SF	4.05
3	1/4 lb B-W	4.05
1	choprite juicer	18.10
		186.20
NO pay		
BALANCE		
TOTAL		186.20

PERFECT FOODS INC. 3100 Ocean Parkway Brooklyn, New York 11235 (914) 783-9683 or (718) 946-0004 No. 8700

OPPOSER'S EXHIBIT

PERFECT FOODS, INC.

2 HAWKS NEST ROAD

MONROE, N.Y. 10950

(914) 783-9683

(718) 946-0004

STATEMENT

4-3-90

The Third Day Natural
220 Park Ave.
East Rutherford, NJ

07073

1/29/90	73.50	Inv. #19148 (Harley delivered when he was together with Dan)
1/18	11.50	#11295 (balance due - driver made error)
3-1	16.00	#11916 (balance due - driver's error)
3/15	18.00	#12133 (balance due - driver's error)
3/22	16.25	#12237 (balance due - driver's error)
TOTAL:	<u>127.25</u>	

(Corrected Invoices were sent for 1/18, 3/1, 3/15 & 3/22)

lwt



PERFECT FOODS INC.
 NO 11502

(914) 783-9683
 (718) 946-0004

2 Hawks Nest Road
 Monroe, N.Y. 10950

QNTY	DESCRIPTION	PRICE	DATE
	Third Day		2-1-98
30	Third Day	815.00	
	Wholesale Ygrass		
1	Third Day 1/2 1/2	12.00	
	@ 1/2 each	329.00	
	NO		
	pay		
	BALANCE		
	TOTAL	329.00	

The Third Day
 220 Park Ave.
 E. Rutherford, NJ
 07073

35080

PERFECT FOODS, INC.
 4 Hawks Nest Road
 Monroe, NY 10950
 800-933-3288 • (914) 294-8411

DATE: 12/2/98

SOLD TO: Third Day

ADDRESS:

1	T	10.99	63 -
6	1/4 SF		8 10
3	1/4 BW		4 05
			<u>74 15</u>
	Literature		
	Joe New York #20837		
	TAX		
	TOTAL		

14758

PERFECT FOODS, INC.
 2 Hawks Nest Road
 Monroe, NY 10950
 800-933-3288 • (914) 294-8411

DATE: 12-21-98

SOLD TO: Third Day

ADDRESS:

10	T	8.50	85 00
6	1/4 SF		8 10
2	1/4 BW		2 70
	PAID		
	12/21/98 #16839		
	HUST		
	TAX		
	TOTAL		95 80

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 4

Sales Receipts: Healthy Thymes

Offered by Deposition of Harley B. Matsil

Page 15, line 24

104958

PERFECT FOODS, INC.
4 Hawks Nest Rd.
Monroe, NY 10950
(800) 933-3288 • (845) 294-8411

✓E

P A I D

Dep. 9/23

DATE: 9.3.04

SOLD TO: Healthy Thymes

ADDRESS:

4 TC 875 35 -

3 1/4 SF 4 05

3 1/4 p 4 05



1/1 pet grass 20 -

8/20 55.45 63 10

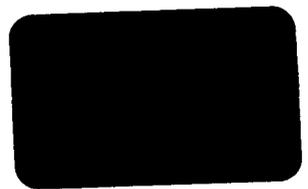
8/27 56.10

TOTAL 1216

Thank You

FORM 6583, RAPIDFORMS, INC. TO REORDER CALL 800-267-8354

Healthy Thymes
Route 94
Box 919
Vermon, NJ 07462



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 5

Tray Insert

Offered by Deposition of Harley B. Matsil

Page 16, line 16

COOL CAT™ Wheatgrass



Pet Treat

A healthy treat your cat will love.
Rich in vitamins & minerals.
Satisfy your pet's craving for grass.
No more nibbling on your plants.

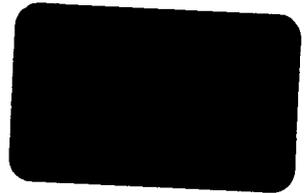
Directions

Just place this container of wheatgrass by your pet's food. It lasts for 5 to 6 days so your favorite cool cat can nibble all week long at his whim.

It's fun to feed wheatgrass to birds, rabbits, mice & lizards. Just trim off small pieces and feed them sparingly.

If your pet spits up after eating wheatgrass, don't worry. It's perfectly natural.

To extend the life of your wheatgrass, water and refrigerate it. Replace it with a fresh patch of grass weekly. Your pet will kiss you on the lips.



COOL CAT™ Wheatgrass



Pet Treat

A healthy treat your cat will love.
Rich in vitamins & minerals.
Satisfy your pet's craving for grass.
No more nibbling on your plants.

Directions

Just place this container of
wheatgrass by your pet's food.
It lasts for 5 to 6 days so your
favorite cool cat can nibble
all week long at his whim.

It's fun to feed wheatgrass to
birds, rabbits, mice & lizards.
Just trim off small pieces
and feed them sparingly.

If your pet spits up after
eating wheatgrass,
don't worry.
It's perfectly natural.

To extend the life of
your wheatgrass,
water and refrigerate it.
Replace it with a fresh
patch of grass weekly.
Your pet will kiss you
on the lips.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 6

Computer Generated Point of Sale Poster

Offered by Deposition of Harley B. Matsil

Page 17, line 19

Cool Cat



Pet Grass



A Fresh Wheatgrass Treat for Your
Pet Cat, Bird, Rabbit, Lizard, Mouse,
Mountain Gorilla...

Grown by Perfect Foods, Inc. Goshen, NY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004.

OPPOSER'S EXHIBIT 7

Tear Off Packing Slip

Offered by Deposition of Harley B. Matsil

Page 18, line 22

Cool Cat Pet Grass

"A Taste of the Outdoors for the Indoor Cat"

- **Cool Cat Pet Grass** satisfies your pet's natural craving for grass! It's grown from wheat and is known as "wheatgrass." It aids digestion in all animals and provides them with a natural source of vitamins, minerals, enzymes and chlorophyll. What a healthy treat!
- Great for pet cats, dogs, birds, reptiles, rabbits, guinea pigs, mice and all small animals.
- Cats love it! Place the container by their food. It helps them with fur balls and keeps them from eating houseplants.
- For birds, reptiles rabbits, and guinea pigs, it's best to trim off small pieces of pet grass and feed it to them.
- To extend the life of Cool Cat Pet Grass, it can be refrigerated. Replace with a fresh patch of grass weekly.

Call us to find out more about the amazing properties of wheatgrass!
Perfect Foods, Inc. Goshen, NY 800-933-3288



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 8

Point of Sale Poster

Offered by Deposition of Harley B. Matsil

Page 20, line 12

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 9

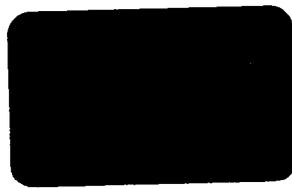
Product Photograph

Offered by Deposition of Harley B. Matsil

Page 26, lines 24-25



photo 2004



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 10

Sales Receipts: Seed and Sprout

Offered by Deposition of Harley B. Matsil

Page 28, lines 4

34490

PERFECT FOODS, INC

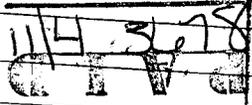
4 Hawks Nest Road
Monroe, NY 10950
800-933-3288 • (914) 294-8411



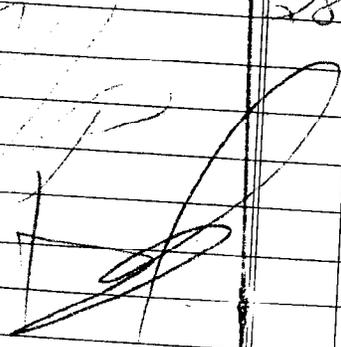
DATE: 10-16-98

SOLD TO: SEED + SPROUT

ADDRESS: 114-3-18



2T @ 10	30	-
6 1/4 SF	8	10
	38	10
TAX		
TOTAL		



Thank You

FORM 65833, RAPIDFORMS, INC. TO REORDER CALL 800-257-8354 0394

34327

PERFECT FOODS, INC

4 Hawks Nest Road
Monroe, NY 10950
800-933-3288 • (914) 294-8411

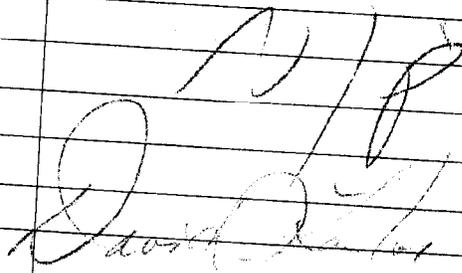


DATE: 10-9-98

SOLD TO: SEED + SPROUT

ADDRESS:

2T @ 10	30	-
6 1/4 SF	8	10
	38	10
TAX		
TOTAL		



Thank You

FORM 65833, RAPIDFORMS, INC. TO REORDER CALL 800-257-8354 0394

Seed + Sprout
Aviva Plaza
Rte 94 - PO Box 914
Vernon, NJ 07462

seed • n • sprout



natural food
market

• food with heart •

AVIVA PLAZA
route 94 • po. box 914
vernon • n.j. 07462
(201) 209-8555

Gail M. Fahnestock

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004.

OPPOSER'S EXHIBIT 11

Sales Receipts: Natures Pantry

Offered by Deposition of Harley B. Matsil

Page 30, lines 6



Nature's Pantry started purchasing Cool Cat in 2/02 + still purchases today 11/2005.

70684

PERFECT FOODS, INC.
4 Hawks Nest Rd.
Monroe, NY 10950
(800) 933-3268 • (845) 294-8411

S

SOLD TO: Nature's Pantry
DATE: 2/28/02

ADDRESS:

6 1/4 STE	8	40	
6 1/4 BUD	8	10	
6 1/4 BUD Buds E/O	3	6.00	
3 Single potatoes	3	75	
	1		
		56.95	
		56.95	
TOTAL			
TAX			

Handwritten notes:
 1 container potato
 1/2 per gal
 1/2 per gal
 1/2 per gal
 1/2 per gal

FORM 6583, RAFFORDS, INC. TO REORDER CALL 800-257-8394

Thank You

71657

PERFECT FOODS, INC.
4 Hawks Nest Rd.
Monroe, NY 10950
(800) 933-3268 • (845) 294-8411

S

SOLD TO: Nature's Pantry
DATE: Mar 14/02

ADDRESS:

6 1/4 STE	8	10	
6 1/4 buds	8	10	
3 1/4 BUD	2	1.05	
2 Tpot grass	20	40	
	1		
		61.25	
		61.25	
TOTAL			
TAX			

Handwritten notes:
 1/2 per gal
 1/2 per gal

FORM 6583, RAFFORDS, INC. TO REORDER CALL 800-257-8394

Thank You

74329

72823

PERFECT FOODS, INC.
4 Hawks Nest Rd.
Monroe, NY 10950
(800) 933-3238 • (845) 294-3111

PERFECT FOODS, INC.
4 Hawks Nest Rd.
Monroe, NY 10950
(800) 933-3238 • (845) 294-3111

DATE: 0-13-02

DATE: 4-18-02

SOLD TO: Natures Pantry

SOLD TO: Natures Pantry

ADDRESS:

ADDRESS:

1/2 pet grass	20 -
3/4 ysf - 1.35	4.05
3/4 ysf sprouts	4.05
del	1 -
	<u>29.10</u>

2 1/2 pet grass	20 -
del	1 -
	<u>41 -</u>

rest #3969

check 3712

TAX
TOTAL

TAX
TOTAL

Thank You

Thank You

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

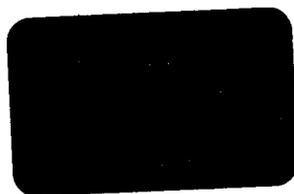
In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 12

Sales Receipts: Laurden Kennels

Offered by Deposition of Harley B. Matsil

Page 31, line 9



56497

PERFECT FOODS, INC.
4 Hawks Nest Road
Monroe, NY 10950
800-933-3288 • (845) 294-8411

DATE: Dec 26 '00

SOLD TO: *Laurinda Kennels*

ADDRESS:

37511

32 -

*pd
POK
2106*

TAX
TOTAL

Thank You

FORM 6583, RAPIDFORMS, INC. TO REORDER CALL 800-257-8354

55650

PERFECT FOODS, INC.
4 Hawks Nest Road
Monroe, NY 10950
800-933-3288 • (845) 294-8411

DATE: 12/17/00

SOLD TO: *Laurinda Kennels*

ADDRESS:

37511

111

*pd
POK
2109*

TAX
TOTAL

Thank You

FORM 6583, RAPIDFORMS, INC. TO REORDER CALL 800-257-8354

Dec. 2000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004

OPPOSER'S EXHIBIT 13

Sales Receipts: Adams

Offered by Deposition of Harley B. Matsil

Page 34, line 25

68207

PERFECT FOODS, INC.

4 Hawks Nest Rd.
Monroe, NY 10950
(800) 933-3288 • (845) 294-8411

Ed-2
#118246

DATE *12-13-01*

SOLD TO:

Adams (POK)

ADDRESS:

3T PET GRASS 20

Amount
1.99

60.00

Box of 20
NOT
POK

POK /w 12/13/01

TOTAL

Thank you

RAPIDFORMS, INC. TO ORDER CALL 800-257-8354

ADAMS FAIRACRE FARMS, INC.

DATE	INVOICE NO.	DESCRIPTION	AMOUNT	DISCOUNT	NET AMOUNT
12/13/01	68207	PRODUCE	60.00		60.00
** CHECK TOTALS:			60.00		60.00

We have been selling to
"Adam's Fairacres Farms" since 12/01.

They have 3 stores: Newburgh, NY
Poughkeepsie, NY
Kingston, NY

We are still selling Cool Cat Wheatgrass
to them today in 2005.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004.

OPPOSER'S EXHIBIT 14

Advertising Flyer

Offered by Deposition of Harley B. Matsil

Page 34, line 25

Attention Produce Managers!

Perfect Foods, Inc. presents:

Cool Cat Pet Grass

*A new fresh wheatgrass treat for cats, birds,
rabbits, lizards, mice, guinea pigs!*

The same nutritious wheatgrass sold at juice bars is now available for pets! Easy to use individual pots with special potting mixture that retains moisture so you don't have to water it and adds weight so it won't tip over.

Your pet lovers will love this product! Now offered for the first time FRESH and ready to use! No hassle or fuss with grow-your-own-kits! A taste of the outdoors for the indoor cat! Critters of all kinds love this healthy green food!

Once a week delivery

Pet Grass should be refrigerated and stays fresh for 1 week

18 individual pots per tray - retails for only 1.99/pot

Your cost: 20.00/tray (1.12/piece)

Your profit: $35.82 - 20.00 = 15.82$ / tray or .87/pot

Pet Grass products are a hot item in fruit and vegetable stores, gourmet shops, and health food stores in Chicago and Los Angeles. It's time for pet grass to come to New York!

Free Display Sign and Promotional Literature
Available

Attention Produce Managers!

Perfect Foods, Inc. presents:

Cool Cat Pet Grass

*A new fresh wheatgrass treat for cats, birds,
rabbits, lizards, mice, guinea pigs!*

The same nutritious wheatgrass sold at juice bars is now available for pets! Easy to use individual pots with special potting mixture that retains moisture so you don't have to water it and adds weight so it won't tip over.

Your pet lovers will love this product! Now offered for the first time FRESH and ready to use! No hassle or fuss with grow-your-own-kits! A taste of the outdoors for the indoor cat! Critters of all kinds love this healthy green food!

Once a week delivery

Pet Grass should be refrigerated and stays fresh for 1 week

18 individual pots per tray - retails for only 1.99/pot

Your cost: 20.00/tray (1.12/piece)

Your profit: 35.82 - 20.00 = 15.82 / tray or .87/pot

Pet Grass products are a hot item in fruit and vegetable stores, gourmet shops, and health food stores in Chicago and Los Angeles. It's time for pet grass to come to New York!

**Free Display Sign and Promotional Literature
Available**



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**
Mark: COOL CAT PRODUCTS and Design
Filed: May 8, 2003
Class: 18
Applicant: John D. Gullahorn
Published in the *Official Gazette* at TM 433 on May 11, 2004.

OPPOSER'S EXHIBIT 15

Customer Testimonial
Letter from J. B. Brown
3/24/2005

Offered by Deposition of Harley B. Matsil

Page 36, line 9

Testimonial from JB

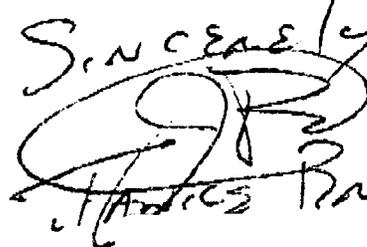
3/24/05

to whom it May Concern:

Even before 1988, when I moved from Manhattan to Brooklyn, NY, I purchased Cool Cat wheat grass from Perfect Foods. TRAYS & 1/2 TRAYS were delivered to my door long before they were available for purchase in health stores let alone Pet Stores.

At the time I had nine cats with no access to outside

Thank you

Sincerely

JB Brown