

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

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

PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451



07-21-2005

U.S. Patent &amp; TMOfc/TM Mail Rcpt Dt. #74

OPPOSER'S NOTICE OF RELIANCE IN REBUTTAL

Opposer, Perfect Foods, Inc., hereby gives notice that it intends to rely on the Applicant's deemed admissions to Opposer's Requests For Admission Nos. 1-10 that were served to Applicant on November 12, 2004. Opposer relies on the deemed admissions for the purpose of rebutting the witness testimony given by John D. Gullahorn and Jean R. Gullahorn during Applicant's testimony period.

Opposer therefore requests, pursuant to Fed. R. Civ. P. 36, that the following matters be deemed conclusively established as fact and entered as rebuttal evidence:

Applicant has not used Applicant's mark as a trademark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address in the State of Florida;

Applicant has not used Applicant's mark as a trademark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address outside of the State of Florida;

Applicant has not used Applicant's mark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address in the State of Florida prior to May 8, 2003;

Applicant has not used Applicant's mark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address outside of the State of Florida prior to May 8, 2003;

Applicant has not used Applicant's mark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address in the State of Florida prior to January 1, 2002;

Applicant has not used Applicant's mark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address outside of the State of Florida prior to January 1, 2002;

at the time Applicant filed U.S. Trademark Application Serial No. 78/247,326, Applicant was aware of the Opposer's mark and its wheatgrass product as set forth in Opposer's U.S. Trademark Application Serial No. 78/254,092; and

at the time Applicant filed U.S. Trademark Application Serial No. 78/247,326, Applicant was aware of the Opposer, Perfect Foods, Inc.

A true and correct copy of Opposer's First Set of Requests for Admission Nos. 1-10 as served by Opposer to Applicant is attached hereto (Exhibit A).

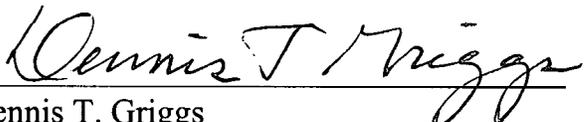
\* \* \* \* \*

Statement in compliance with 37 C.F.R. §2.120(j)(3)(i)

Applicant failed to timely respond to Opposer's Requests for Admission No. 1-10 that were served on November 12, 2004. Opposer inquired by letter and facsimile dated December 30, 2004 (Exhibit B) regarding Applicant's plans to respond. The Applicant answered *pro se* by letter (Exhibit C) and late service of responses on December 30, 2004. The Applicant also filed a copy of his responses with the Board. The Applicant has not requested an enlargement of time to respond to the requests. The Applicant has not filed a request for withdrawal of the deemed admissions.

Respectfully submitted,  
Perfect Foods, Inc.  
OPPOSER

Date: July 18, 2005

By:   
Dennis T. Griggs  
Attorney for Opposer

Griggs Bergen LLP  
17950 Preston Road, Suite 1000  
Dallas, Texas 75252  
(972) 447-4567

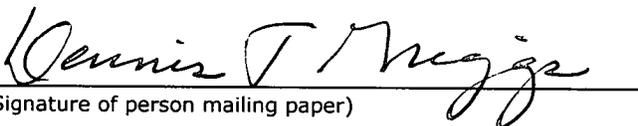
CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this OPPOSER'S NOTICE OF RELIANCE IN REBUTTAL (along with Exhibits A, B and C 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  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dennis T. Griggs  
(Typed name of person mailing paper)

Date: July 18, 2005

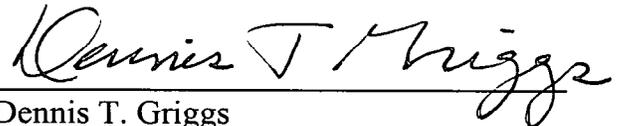
  
(Signature of person mailing paper)

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing OPPOSER'S NOTICE OF RELIANCE IN REBUTTAL (along with Exhibits A, B and C referred to as being attached or enclosed) has been forwarded this 18th day of July 2005, by first class mail, postage prepaid and addressed to:

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

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JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

In re App. Serial No. **78/247,326**  
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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:

OPPOSER'S REQUESTS FOR ADMISSION NO. 1- 10 TO APPLICANT

Pursuant to 37 C.F.R. §2.120(h) and Rule 36(a) of the Federal Rules of Civil Procedure, Opposer hereby requests that Applicant admit the following. The instructions and definitions set forth in OPPOSER'S INTERROGATORIES NO. 1-23 TO APPLICANT served herewith will be applicable hereto and are incorporated herein by reference. If Applicant denies or objects to any of the requests below, it will state in detail the reasons for the denial or objection.

OPPOSER'S  
REQUESTS FOR ADMISSION NO. 1-10

**EXHIBIT A**

L1937.5324.4916

COPY

ADMISSION REQUEST NO. 1

All documents produced by Applicant in response to Opposer's Interrogatories No. 1-23 and Requests for Production of Documents and Things No. 1-21 are authentic.

RESPONSE:

ADMISSION REQUEST NO. 2

All documents and responses served by Applicant in response to Opposer's Interrogatories No. 1-23, Requests for the Production of Documents and Things No. 1-21, and these Requests for Admissions No. 1- 10, may be relied on by either party during the testimony period.

RESPONSE:

ADMISSION REQUEST NO. 3

For each product and/or service identified by Applicant in its response to Interrogatory No. 3, admit that Applicant has not used Applicant's mark as a trademark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address in the State of Florida.

RESPONSE:

ADMISSION REQUEST NO. 4

For each product and/or service identified by Applicant in its response to Interrogatory No. 3, admit that Applicant has not used Applicant's mark as a trademark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address outside of the State of Florida.

RESPONSE:

ADMISSION REQUEST NO. 5

For each product identified by Applicant in its response to Interrogatory No. 3, admit that Applicant has not used Applicant's mark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address in the State of Florida prior to May 8, 2003.

RESPONSE:

ADMISSION REQUEST NO. 6

For each product and/or service identified by Applicant in its response to Interrogatory No. 3, admit that Applicant did not use Applicant's mark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address outside of the State of Florida prior to May 8, 2003.

RESPONSE:

ADMISSION REQUEST NO. 7

For each product identified by Applicant in its response to Interrogatory No. 3, admit that Applicant has not used Applicant's mark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address in the State of Florida prior to January 1, 2002.

RESPONSE:

ADMISSION REQUEST NO. 8

For each product and/or service identified by Applicant in its response to Interrogatory No. 3, admit that Applicant did not use Applicant's mark in connection with the actual, bona fide sale and shipment of a product to a customer located at an address outside of the State of Florida prior to January 1, 2002.

RESPONSE:

ADMISSION REQUEST NO. 9

Admit that at the time Applicant filed U.S. Trademark Application Serial No. 78/247,326 Applicant was aware of the Opposer's mark and its wheatgrass product as set forth in Opposer's U.S. Trademark Application Serial No. 78/254,092..

RESPONSE:

ADMISSION REQUEST NO. 10

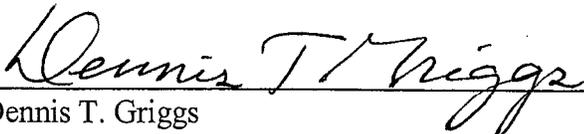
Admit that at the time Applicant filed U.S. Trademark Application Serial No. 78/247,326 Applicant was aware of the Opposer, Perfect Foods, Inc..

RESPONSE:

Respectfully submitted,

PERFECT FOODS, INC.  
OPPOSER

Date: November 12, 2004

By:   
Dennis T. Griggs  
Attorney for Opposer

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

---

CERTIFICATE OF SERVICE

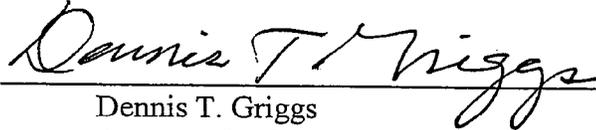
I hereby certify that the foregoing

OPPOSER'S REQUESTS FOR ADMISSION NO. 1- 10

were served on the attorney for Applicant this 12th day of November 2004 by First Class  
Mail addressed to:

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

By:



Dennis T. Griggs  
Attorney for Opposer

# GRIGGS BERGEN LLP

ATTORNEYS AT LAW

PRESTON ROAD AT FRANKFORD  
PRESTON PLAZA, SUITE 1000  
17950 PRESTON ROAD  
DALLAS, TEXAS 75252 USA

Writer's Direct Dial  
972-447-4569

PATENT, TRADEMARK  
and COPYRIGHT matters

Main 972-732-1001  
Fax 972-732-9218

Writer's email  
dennis@griggslaw.com

December 30, 2004

VIA FACSIMILE (904) 470-4102  
CONFIRMATION BY FIRST CLASS MAIL

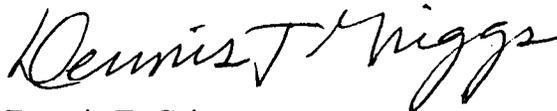
Cheryl Meide, Esq.  
Meide Law Firm, P.A.  
6622 Southpoint Drive South, Suite 150  
Jacksonville, Florida 32216

Re: Perfect Foods, Inc. v. John D. Gullahorn  
TTAB Opposition No. 91160978  
Our File: L1937.5324.4916

Dear Ms. Meide:

We have received no response to our discovery requests that were served on November 12, 2004. We would like to know whether Mr. Gullahorn has any plans to defend the opposition. Objections to discovery are waived and the Requests for Admission are now deemed admitted. We need to discuss with you your client's plans to respond to our discovery requests in order to fulfill the "meet and confer" requirements before obtaining instructions from our client on whether to file a motion to compel. If we do not hear from you by Friday, January 7, 2005, we will assume that our efforts to "meet and confer" have failed.

Very truly yours,



Dennis T. Griggs  
Attorney for Opposer

DTG/smt

cc: Perfect Foods, Inc.  
Ira S. Matsil, Esq.

**EXHIBIT B**

# GRIGGS BERGEN LLP

ATTORNEYS AT LAW

PRESTON ROAD AT FRANKFORD  
PRESTON PLAZA, SUITE 1000  
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Writer's Direct Dial  
972-447-4569

PATENT, TRADEMARK  
and COPYRIGHT matters

Main 972-732-1001  
Fax 972-732-9218

Writer's email  
dennis@griggslaw.com

December 30, 2004

## FACSIMILE TRANSMITTAL SHEET

PLEASE DELIVER 2 PAGES (INCLUDING COVER SHEET) TO:

NAME: Cheryl Meide, Esq.

COMPANY: Meide Law Firm, P.A.

FACSIMILE NO.: (904) 470-4102

TELEPHONE NO.: Client I.D. 5324

RE: Perfect Foods, Inc. v. John D. Gullahorn  
TTAB Opposition No. 91160978

MESSAGE:

*If there are any problems with this transmission,  
call MARIA TEDESCO -- (972) 447-4569*

ORIGINAL WILL NOT FOLLOW

ORIGINAL WILL FOLLOW VIA:

- First Class Mail
- Federal Express
- Local Courier
- Hand Delivery
- Air Mail

STATEMENT OF CONFIDENTIALITY: This facsimile message may be legally privileged and confidential. It is intended only for the use of the addressee. Dissemination, distribution and copying are prohibited. If you have received this facsimile in error, please notify us by telephone (collect) or email to [dennis@griggslaw.com](mailto:dennis@griggslaw.com) for further instructions. Thank you.

# HP LaserJet 4100 MFP



Slater & Matsil, L.L.P.  
9727329218  
12/30/2004 04:26 PM

## Fax Call Report

Job	Date/Time	Type	Identification	Duration	Pages	Result
11295	12/30 04:25 PM	Send	19044704102,,,,5324	00'43	2	OK



**COOL CAT PRODUCTS**

**John D. Gullahorn**  
4111 Calico Drive  
Cantonment, FL 32533  
850-478-CATS  
Email: DanG@erec.net

December 30<sup>th</sup>, 2004

Griggs Bergen LLP  
17950 Preston Road, Suite 1000  
Dallas, Texas 75252

Re: Perfect Foods, Inc. v. John D. Gullahorn  
TTAB Opposition No. 91160978

Dear Mr. Griggs,

Please be advised that Ms. Meide has been dismissed and all future contact regarding this matter will be handled by myself & my wife personally.

Enclosed for your attention are the following:

1. Applicants Answers to Opposer's Interrogatories
2. Applicants Answers to Opposer's Admission Requests
3. Applicants Answers to Opposer's Requests & Exhibits

Please let us know if you have any questions regarding this information.

Sincerely,

John D. Gullahorn

Enclosures

**RECEIVED**

JAN 03 2005

**DENNIS GRIGGS**

**EXHIBIT C**