

ESTTA Tracking number: **ESTTA42249**

Filing date: **08/15/2005**

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

<b>Proceeding</b>	91160978
<b>Party</b>	Plaintiff PERFECT FOODS, INC ,
<b>Correspondence Address</b>	DENNIS T. GRIGGS GRIGGS BERGEN, LLP 17950 PRESTON ROAD, SUITE 1000 DALLAS, TX 75252
<b>Submission</b>	Opposer's opposition to Applicant's motion to withdraw or amend admissions and opposition to Applicant's motion to strike Opposer's notice of reliance on admissions
<b>Filer's Name</b>	Dennis T. Griggs
<b>Filer's e-mail</b>	dennis@griggslaw.com
<b>Signature</b>	/Dennis T. Griggs/
<b>Date</b>	08/15/2005
<b>Attachments</b>	opposers.opposition.motions.081505.pdf ( 14 pages ) opposers.opposition.exhibit.A.pdf ( 1 page ) opposers.opposition.exhibit.B.pdf ( 4 pages ) opposers.opposition.exhibit.C.pdf ( 5 pages ) opposers.opposition.exhibit.D.pdf ( 3 pages ) opposers.opposition.exhibit.E.pdf ( 1 page ) opposers.opposition.exhibit.F.pdf ( 4 pages )

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

**OPPOSER'S OPPOSITION TO APPLICANT'S  
MOTIONS TO WITHDRAW OR AMEND AND STRIKE**

The Opposer, Perfect Foods, Inc., submits its opposition to Applicant's motion to withdraw or amend deemed admissions and motion to strike Opposer's notice of reliance on deemed admissions.

Background.

Opposer served discovery requests including its requests for admission No. 1-10 by first class mail on November 12, 2004. Letter to Cheryl Meide, Attorney, dated November 12, 2004 (Exhibit A).

Opposer's counsel received telephone voice mail messages from Applicant's counsel on or about December 8, 2004 and December 14, 2004 requesting settlement negotiations. Declaration of S. Maria Tedesco (Exhibit B) and Declaration of Dennis T. Griggs (Exhibit C).

Opposer's counsel made a request to Applicant's counsel that the Applicant's settlement proposal be submitted in writing, preferably by facsimile or email. Declaration of S. Maria Tedesco (Exhibit B) and Declaration of Dennis T. Griggs (Exhibit C).

Applicant failed to timely respond to Opposer's requests for admission No. 1-10 that were served on November 12, 2004. Applicant's responses were due to be served not later than December 17, 2004.

Opposer inquired by letter (Exhibit D), sent to Applicant's counsel by first class mail, facsimile and email dated December 30, 2004 indicating that Opposer considered the requests as being "deemed admitted" and inquired about the Applicant's plans to respond to the requests. Declaration of Dennis T. Griggs (Exhibit C).

The Applicant responded *pro se* by letter (Exhibit E) and late service of responses by first class mail on December 30, 2004. The Applicant also filed a copy of

his late responses with the Board. See Board's Order (by Andrew P. Baxley, Interlocutory Attorney) dated March 9, 2005, advising the Applicant that discovery papers should not be filed with the Board except under certain defined circumstances.

At no time did Opposer's counsel receive a request for Opposer's consent to an extension of time for Applicant to respond, withdraw or amend the requests for admission. Declaration of Dennis T. Griggs (Exhibit C).

Both parties took trial testimony during the assigned periods. All testimony periods were closed by July 22, 2005.

Opposer filed a notice of reliance on the admissions Nos. 1-10 during Opposer's rebuttal testimony.

The Applicant failed to file a request to withdraw or amend the admissions prior to the close of Opposer's rebuttal testimony. Declaration of Dennis T. Griggs (Exhibit C).

On August 2, 2005, after close of all testimony, the Applicant filed the present motions.

Opposer's trial brief is due September 20, 2005.

Issues presented:

I. whether Applicant has established excusable neglect sufficient to relieve him of the untimeliness of his response, so that the admissions should not be deemed admitted as put; and

II. whether the interests of justice are best served by allowing the Applicant to withdraw the effective admissions and submit amended responses, and whether in doing so the Opposer will not be prejudiced in maintaining its opposition on the merits.

I. Applicant has not shown excusable neglect

The requisite showing for reopening an expired period is that of excusable neglect. See Fed. R. Civ. P. 6(b). Four factors should be considered, within the context of all the relevant circumstances, to determine whether a party's neglect of a matter is excusable. Those factors are: (1) prejudice to the non-moving party; (2) the length of delay and its impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the moving party; and (4) whether the moving party has acted in good faith. See Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

Prejudice to Opposer. Under the first part of the test, the Opposer would be unfairly prejudiced by the withdrawal of the admissions and the allowance of amended admissions or responses at this late date, because Opposer is now precluded from taking

discovery on those admitted matters that Applicant is attempting to withdraw or amend, which include issues relating to common law priority. Moreover, Opposer is now precluded from offering testimony on the newly contested matters, since Opposer's testimony period has closed. Opposer is justified in relying on the truth of the matters admitted, since Opposer immediately put Applicant on notice that it was treating the requests as admitted. See Opposer's letter to Applicant's counsel, Cheryl Meide, Attorney, dated December 30, 2004 (Exhibit D). Applicant took no action to withdraw or amend the admissions until after all trial testimony proceedings closed.

Length of delay. With respect to the second Pioneer factor, the length of Applicant's delay is excessive (229 days) and the impact of the delay on this proceeding is substantial, now that evidentiary proceedings are closed. Applicant only recently filed his request for relief, long after the responses were due (December 17, 2004), after close of discovery (January 8, 2005) and after the close of all trial testimony periods. Opposer cannot take any further discovery and cannot offer additional testimony or rebuttal on the matters Applicant now seeks to contest at this late date. Indeed, Opposer's trial brief is due in just over a month from now (on September 20, 2005).

Applicant failed to seek relief when he clearly had an opportunity to do so, and at a time when the matters Applicant now seeks to contest could have been explored and tested under oath, and when fact witnesses could have been cross-examined. Because

Applicant has delayed his response until after close of evidentiary proceedings, Applicant has forfeited his right to withdraw the admissions or object to the requests on their merits.

Applicant's delay was caused by reasons under Applicant's control. With respect to the third Pioneer factor, i.e., the reason for the delay and whether it was within Applicant's control, Opposer respectfully submits that the reasons alleged by the Applicant do not demonstrate that his delay was caused by matters outside of his control.

The Applicant claims that he was hindered in serving a timely response because of alleged inaction on the part of Opposer's counsel. Contrary to Applicant's assertions, Opposer's counsel did respond to Applicant's voice mail messages about settlement, and did so by requesting that Applicant submit the settlement proposal in writing. Declaration of S. Maria Tedesco (Exhibit B) and Declaration of Dennis T. Griggs (Exhibit C). Applicant could have made a timely request for a stipulated or consented motion for relief, but did not. Applicant could have made a timely request to the Board for relief without Opposer's consent, but did not. There is no evidence in the record that supports Applicant's claim that inaction on the part of Opposer's counsel contributed in any material way to the Applicant's delay in filing a timely response.

The Applicant alleges that his response was delayed because of weather-related interference occurring in September 2004, two months before the discovery requests were served (November 12, 2004) and long before a response was due (December 17, 2004). The Opposer concedes that the alleged weather-related interference was not within the

Applicant's control. However, there is no evidence in the record showing the extent of such interference or that such interference contributed in any material way to Applicant's delay in serving a response by the December 17 due date.

Opposer submits that Applicant's weather-related interference claim is not credible, in view of Applicant's allegations stated in his motion that he was able during the same time period in question to launch a real estate business venture (alleged in November 2004); took part in Thanksgiving and Christmas holiday activities (alleged in November and December 2004); went on a family vacation (alleged in December 2004); took part in family birthday celebrations (alleged in November and December 2004); and attended a trade show at an undisclosed location (alleged in November 2004).

Applicant's participation in the alleged family events and personal business activities was clearly discretionary on his part. Applicant should be presumed to be in control over his family matters and personal business priorities. In this instance, it would appear that the Applicant neglected his obligation to serve a timely response and instead gave his attention and priority to family and personal business matters. Opposer submits that such neglect is not excusable. Moreover, there is no evidence in the record that supports Applicant's claim that the alleged family matters and personal business activities contributed in any material way to his delay in serving a timely response.

The Applicant alleges that his response was delayed because of his inability to seek assistance of legal counsel. That claim is not credible in view of the record of this proceeding, which shows that Applicant was represented by counsel, Cheryl Meide, Attorney, at the time the discovery requests were served. Although Applicant has indicated that he has since then discharged his counsel, Opposer has not received service of a withdrawal motion from Applicant's counsel, and no such withdrawal is of record in this proceeding. Applicant's decision to retain counsel or proceed *pro se* is clearly under his complete personal control.

There is no evidence in the record that supports Applicant's claim that his alleged inability to seek assistance of legal counsel contributed in any material way to his delay in filing a timely response. Compliance with the Trademark Rules of Practice and the applicable Federal Rules of Civil Procedure is expected of all parties in Board proceedings, whether or not they are represented by counsel. Consequently, the Applicant's alleged inability to seek assistance of counsel cannot excuse his failure to serve a timely response.

Applicant's good faith. Applicant's good faith is brought into question by his representations to the Board that he was unable to seek the assistance of counsel. The Applicant urges the Board to accept that reason to excuse his delay in serving a timely response. That claim is inconsistent with the record, since the Applicant was in fact represented by counsel, Cheryl Meide, Attorney, at the time the admission requests were

served on November 12, 2004, and at least through December 16, 2004, one day before the response deadline. Applicant asserts (Applicant's motion, page 4, lines 1-5) that he decided to proceed without legal representation on December 16, 2004. However, the Opposer has not received service of a withdrawal motion from Applicant's counsel, and no such withdrawal is of record.

Applicant's good faith is further brought into question by the contrary position the Applicant now urges the Board to accept. On the one hand, the Applicant would have the Board believe that he was unable to seek the assistance of counsel, but now seeks to rely on his counsel's representation during the time period in question. Specifically, the Applicant alleges that his counsel, Ms. Cheryl Meide, attempted to enter into settlement negotiations, but received no response from Opposer's counsel (which is controverted). The Applicant now urges the Board to consider his counsel's efforts on his behalf and find that the alleged inaction on the part of Opposer excused his service of a timely response.

Opposer submits that the Applicant's conduct in urging these inconsistent and conflicting positions falls short of the good faith and candor expected of parties in Board proceedings.

Applicant has failed to establish excusable neglect.

There can be no doubt that the Applicant was fully aware of his obligation to respond to the discovery requests that Opposer served on Applicant's counsel, including the requests for admission. The events at issue were within his meaningful control. That

is, at least upon receipt of the discovery requests, the Applicant could have responded to the requests in a timely manner, or sought an extension of time to respond, with or without Opposer's consent. Moreover, after Opposer notified Applicant that Opposer deemed the requests to be admitted, the Applicant took no immediate action to withdraw or amend the deemed admissions, and comes now with his request for relief only after close of evidentiary proceedings.

## II. Interests of justice

By failing to timely respond to Opposer's requests for admissions, the Applicant has effectively admitted every allegation set forth in the admission requests. See Fed. R. Civ. P. 36(a). This result may be avoided according to Fed. R. Civ. P. 36(b) which permits a motion to amend or withdraw the admissions, provided that to do so (1) will aid in the presentation of the merits of the action and (2) will not prejudice the party who made the requests for admission.

Effect on the merits. If the admissions are allowed to stand, the Applicant will have effectively conceded certain common law priority issues. Allowing relief from those admissions would allow those common law priority issues to be resolved on the merits. Thus, the presentation of the merits of this action would appear to be served, with respect to those issues.

It should be noted, however, that Applicant filed his application under Section 1(b) on the basis of intent to use, and Applicant thus established constructive priority by

operation of law effective as of his application filing date. Applicant's admissions do not have any effect on Applicant's right to rely on his constructive priority date. Applicant's admissions do not relieve Opposer from its obligation to prove priority and a prima facie case under Section 2(d).

Prejudice to Opposer. Opposer would be unfairly prejudiced by the withdrawal of the admissions or the allowance of amended admissions or responses at this late date. Opposer is now precluded from taking discovery or offering testimony focused on newly contested matters since discovery and evidentiary proceedings have closed.

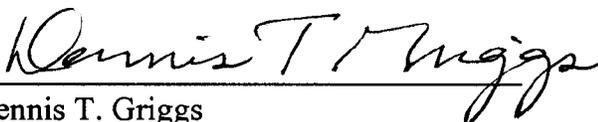
Opposer is justified in relying on the truth of the matters admitted, since Opposer immediately put Applicant on notice that it intended to rely on the requests as being "deemed admitted." See Opposer's letter to Applicant's counsel, Cheryl Meide, Attorney, dated December 30, 2004 (Exhibit D). The Applicant took no action to withdraw or amend the admissions until after close of Opposer's rebuttal testimony, a delay of 229 days.

Applicant failed to respond or seek relief when he clearly had the obligation and opportunity to do so, and at a time when contested matters and allegations could have been explored and tested under oath. Moreover, the Applicant has failed to show that his delay in requesting relief, which was made only after the close of evidentiary proceedings, was for good reason or because of reasons outside of his control.

For these reasons, the Opposer requests the Board to (1) deny the Applicant's motion to withdraw or amend the Applicant's admissions Nos. 1-10 and (2) deny Applicant's motion to strike Opposer's notice of reliance on the Applicant's admissions Nos. 1-10.

Respectfully submitted,

Date: August 15, 2005

  
Dennis T. Griggs  
Attorney for Opposer

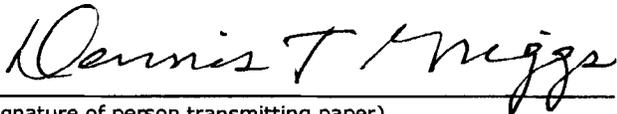
Griggs Bergen LLP  
17950 Preston Road, Suite 1000  
Dallas, Texas 75252  
972-447-4569 Office  
972-732-9218 Facsimile

CERTIFICATE OF TRANSMISSION

I hereby certify that this OPPOSER'S OPPOSITION TO APPLICANT'S MOTIONS TO WITHDRAW OR AMEND AND STRIKE (along with any paper referred to as being attached or enclosed) is being transmitted electronically via ESTTA to the Trademark Trial and Appeal Board on the date shown below.

Dennis T. Griggs  
(Typed name of transmitting paper)

Date: August 15, 2005

  
(Signature of person transmitting paper)

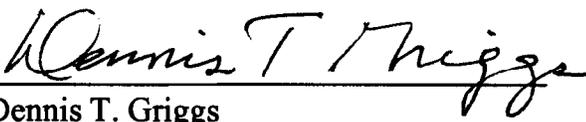
CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing OPPOSER'S OPPOSITION TO APPLICANT'S MOTIONS TO WITHDRAW OR AMEND AND STRIKE has been forwarded this 15th day of August 2005, by first class mail, postage prepaid and 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

By:   
Dennis T. Griggs  
Attorney for Opposer

# GRIGGS BERGEN LLP

ATTORNEYS AT LAW

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Writer's Direct Dial  
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PATENT, TRADEMARK  
and COPYRIGHT matters

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

Writer's email  
dennis@griggslaw.com

November 12, 2004

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

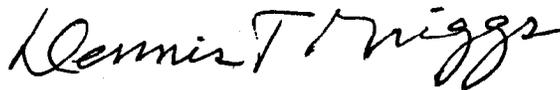
Re: Perfect Foods, Inc. v. John D. Gullahorn  
TTAB Opposition No. 91160978  
Our File: L1937.5324.4916

Dear Ms. Meide:

Enclosed for your attention are the following:

1. Opposer's Interrogatories No. 1-23 to Applicant;
2. Opposer's Request for the Production of Documents and Things No. 1-21 to Applicant; and
3. Opposer's Request for Admission No. 1-10 to Applicant.

Very truly yours,



Dennis T. Griggs  
Attorney for Opposer

DTG/smt  
Enclosures

cc w/enc.: Perfect Foods, Inc.

**EXHIBIT A**

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

AFFIDAVIT OF S. MARIA TEDESCO

I, S. Maria Tedesco, being duly sworn, declare that the following facts are true:

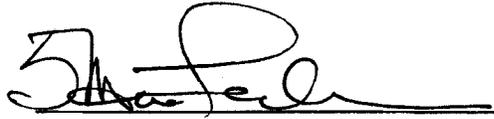
1. I am a legal assistant and secretary to Dennis T. Griggs, attorney for Opposer herein.
2. On or about December 8, 2004, I received a call from Attorney Cheryl Meide regarding the Perfect Foods opposition. I told Ms. Meide that Mr. Griggs was unavailable and invited her to leave a message. Ms. Meide then left a voice mail message for Mr. Griggs.

3. On or about December 14, 2004, we received another call from Mr. Meide regarding the Perfect Foods opposition. I told Ms. Meide that Mr. Griggs was unavailable to take her call and that Mr. Griggs requested that she send the settlement proposal to him by facsimile or by e-mail.

4. I asked Ms. Meide if she needed our facsimile number or Mr. Griggs' email address, and Ms. Meide replied that she had that information as given on our letterhead.

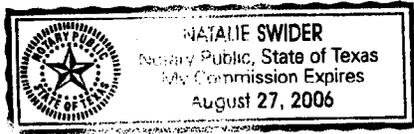
5. We did not receive any further communications from Ms. Meide.

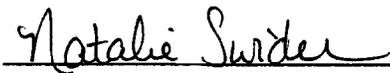
Date: August 15, 2005

  
S. Maria Tedesco

State of Texas  
County of Dallas

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE this 15th day of  
August, 2005.



  
Notary Public in and for State of Texas

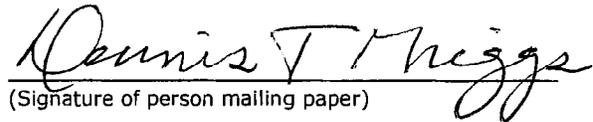
CERTIFICATE OF TRANSMISSION

I hereby certify that this AFFIDAVIT OF S. MARIA TEDESCO (along with any paper referred to as being attached or enclosed) is being transmitted electronically to the Trademark Trial and Appeal Board via ESTTA on the date shown below.

Dennis T. Griggs

(Typed name of person transmitting paper)

Date: August 15, 2005

  
(Signature of person mailing paper)

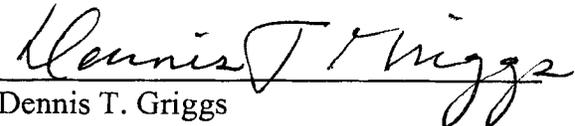
CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing AFFIDAVIT OF S. MARIA TEDESCO has been forwarded this 15th day of August 2005, by first class mail, postage prepaid and 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

By:   
Dennis T. Griggs

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  
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PERFECT FOODS, INC.

Opposer

v.

JOHN D. GULLAHORN

Applicant

Opposition No. 91160978

AFFIDAVIT OF  
DENNIS T. GRIGGS

AFFIDAVIT OF DENNIS T. GRIGGS

I, Dennis T. Griggs, being duly sworn, declare that the following facts are true:

1. I am a partner of Griggs Bergen LLP, attorneys for the Opposer herein.
2. On November 12, 2004, I served Opposer's requests for admissions Nos. 1-

10 to Applicant by first class mail to Applicant's counsel:

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

3. On or about December 8, 2004, my secretary, Ms. Maria Tedesco, informed me that Attorney Cheryl Meide was calling regarding the Perfect Foods opposition.

4. I was not available to take her call so I asked my secretary to invite Ms. Meide to leave a message.

5. My secretary, Ms. Tedesco, notified me that Ms. Meide had left a voice mail message. I reviewed the voice mail message and noted that Ms. Meide wanted to discuss settlement on behalf of the Applicant.

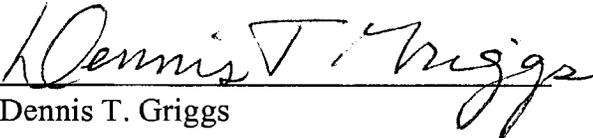
6. On or about December 14, 2004, we received another call from Ms. Meide regarding a settlement proposal. I was not available to take her call so I asked my secretary to invite Ms. Meide to leave a message and to request Ms. Meide to present Applicant's settlement in writing, preferably by facsimile or email.

7. Opposer received late service of responses to the discovery requests on December 31, 2004, which Applicant certified as being deposited in Post Office Express mail service, next day delivery, on December 30, 2004.

8. At no time did Opposer receive a request from Applicant for Opposer's consent to an extension of time for Applicant to respond to the discovery requests or to withdraw or amend the admissions.

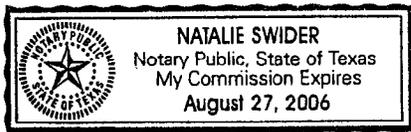
9. Opposer did not receive a response or objection of any kind from the Applicant regarding the requests for admission during the scheduled time for responding as set by the TTAB.

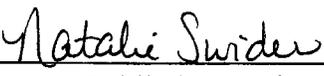
Date: August 15, 2005

  
Dennis T. Griggs

State of Texas  
County of Dallas

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE this 15th day of August, 2005.



  
Natalie Swider  
Notary Public in and for State of Texas

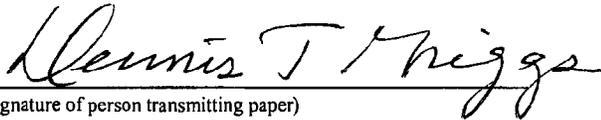
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Dennis T. Griggs

(Typed name of person transmitting paper)

Date: August 15, 2005



(Signature of person transmitting paper)

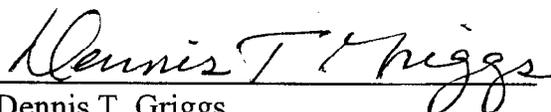
CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing AFFIDAVIT OF DENNIS T. GRIGGS has been forwarded this 15th day of August 2005, by first class mail, postage prepaid and 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

By:   
Dennis T. Griggs  
Attorney for Opposer

# GRIGGS BERGEN LLP

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and COPYRIGHT matters

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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 D**

# GRIGGS BERGEN LLP

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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

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- 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

**Dennis Griggs**

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**From:** Dennis Griggs [dennis@griggslaw.com]  
**Sent:** Thursday, December 30, 2004 3:32 PM  
**To:** 'cmeide@meidelaw.com'  
**Cc:** MATSIL, IRA (matsil@slater-matsil.com)  
**Subject:** Perfect Foods, Inc. v. John D. Gullahorn  
**Importance:** High

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

Re: 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.

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

+1 972-447-4569  
+1 972-732-9218 Fax  
[dennis@griggslaw.com](mailto:dennis@griggslaw.com)

**EXHIBIT E**

12/30/2004

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

AFFIDAVIT OF DENNIS T. GRIGGS

I, Dennis T. Griggs, being duly sworn, declare that the following facts are true:

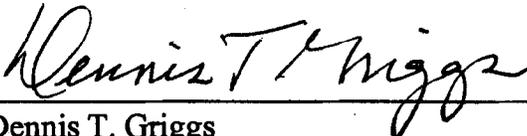
The following papers attached to this affidavit are true and correct copies of correspondence taken from my pleading file for the above-identified opposition proceeding:

Exhibit A - letter dated November 12, 2004 and addressed to Cheryl Meide, Esq., Attorney for John D. Gullahorn.

Exhibit D - letter dated December 30, 2004 and addressed to Cheryl Meide, Esq., Attorney for John D. Gullahorn, sent by first class mail and facsimile.

Exhibit E - message dated December 30, 2004 and addressed to Cheryl Meide,  
Esq., Attorney for John D. Gullahorn, and transmitted electronically via email to  
cmeide@meidelaw.com.

Date: August 15, 2005

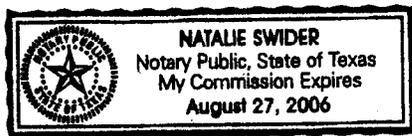
  
\_\_\_\_\_

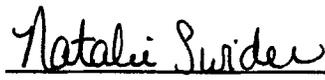
Dennis T. Griggs

State of Texas

County of Dallas

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE this 15th day of  
August, 2005.



  
\_\_\_\_\_

Notary Public in and for State of Texas

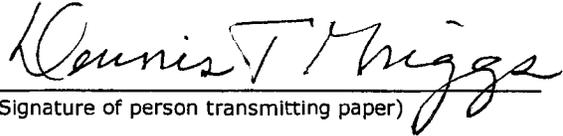
CERTIFICATE OF TRANSMISSION

I hereby certify that this AFFIDAVIT OF DENNIS T. GRIGGS (along with any paper referred to as being attached or enclosed) is being transmitted electronically to the Trademark Trial and Appeal Board via ESTTA on the date shown below.

Dennis T. Griggs

(Typed name of person transmitting paper)

Date: August 15, 2005

  
(Signature of person transmitting paper)

CERTIFICATE OF SERVICE

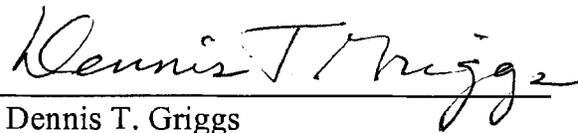
The undersigned certifies that a true copy of the foregoing AFFIDAVIT OF DENNIS T. GRIGGS has been forwarded this 15th day of August 2005, by first class mail, postage prepaid and addressed to:

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

By:



Dennis T. Griggs  
Attorney for Opposer