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

| | |
|------------------------|---|
| Proceeding | 91161954 |
| Party | Plaintiff PABST BREWING COMPANY |
| Correspondence Address | WILLIAM B. NASH JACKSON WALKER L.L.P. 112 E. PECAN STREET, SUITE 2100 SAN ANTONIO, TX 78205 UNITED STATES bnash@jw.com |
| Submission | Plaintiff's Notice of Reliance |
| Filer's Name | William B. Nash |
| Filer's e-mail | lstuder@jw.com, bnash@jw.com, mfassold@jw.com |
| Signature | /WILLIAM B. NASH/ |
| Date | 03/09/2009 |
| Attachments | 2009-03-09 Second Notice of Reliance.pdf (37 pages)(1324349 bytes) |

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

In the Matter of Application:

Serial No.: 75/883,254 and 75/883,253
Filed: December 29, 1999
Applicant: Lone Star Steakhouse & Saloon, Inc.
Mark: LONE STAR (AND DESIGN)
Classes: 25
Published in the *Official Gazette* on March 2, 2004 and March 23, 2004

| | | |
|--------------------------------|---|--|
| PABST BREWING COMPANY, |) | |
| Opposer |) | |
| |) | |
| v. |) | |
| |) | Opposition No. 91161954 |
| LONE STAR STEAKHOUSE & SALOON, |) | Application Serial Nos. 75/883,254 and |
| INC., |) | 75/883,253 |
| Applicant |) | |
| |) | |

OPPOSER’S SECOND NOTICE OF RELIANCE

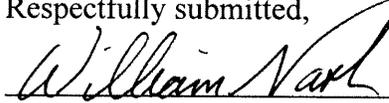
Opposer, Pabst Brewing Company (“Pabst”), by and through its attorney of record, submits this Second Notice of Reliance pursuant to 37 CFR § 2.120(j). Specifically, Opposer relies on Applicant Lone Star Steakhouse & Saloon, Inc.’s (“Applicant”) Response to Opposer’s First Request for Admissions and Applicant’s Response to Opposer’s First Set of Interrogatories and submits a true and correct copy of which are attached as Exhibit A and Exhibit B, respectively. Opposer hereby introduces:

Exhibit A: Applicant’s Response to Opposer’s Request for Admissions.

Exhibit B: Applicant’s Response to Opposer’s First Set of Interrogatories.

Dated: 3/9/09

Respectfully submitted,



William B. Nash, Reg. No. 33,743

Jackson Walker, L.L.P.

112 East Pecan St., Suite 2100

San Antonio, Texas 78205

(210) 978-7700

(210) 978-7790 (Fax)

Attorneys For Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on this 9th day of March, 2009, a true and correct copy of the foregoing Opposer's Second Notice of Reliance was served via first class U.S. mail addressed to:

Phillip L. Free, Jr., OBA #15765
Marie S. Johnston, OBA # 19847
Crowe & Dunlevy, P.C.
20 North Broadway, Suite 1800
Oklahoma City, OK 73102-8273

Attorney for Lone Star Steakhouse & Saloon



William B. Nash

Attorney for Opposer

Exhibit

A

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

Application Serial Nos. 75/883,254 and 75/883,253

Published in the *Official Gazette* on March 2, 2004

| | |
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| Pabst Brewing Company Opposer v. Lone Star Steakhouse & Saloon, Inc. Applicant | Opposition No. 91161954 Opposition No. 91161955 |
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**APPLICANT'S RESPONSE TO OPPOSER'S
FIRST REQUEST FOR ADMISSIONS**

Applicant Lone Star Steakhouse & Saloon, Inc. ("Lone Star") hereby submits its answers to Opposer's Requests for Admissions as follows:

GENERAL OBJECTIONS

1. Lone Star objects to Opposer's Requests for Admissions to the extent they attempt to obtain information that is beyond the scope of discovery set out in the Federal Rules of Civil Procedure. Lone Star will answer Opposer's Requests for Admission in accordance with the Federal Rules.

2. Lone Star objects to Opposer's Requests for Admissions to the extent that they are intended to reach communications, information or documents covered by the attorney/client privilege or work product immunity. Lone Star's response herein is not a waiver of any privilege or of Lone Star's right to withhold any documents and information that are subject to the claims of attorney/client privilege or work product.

3. The above General Objections apply to each of the responses below. Subject to such General Objections and without waiving the General Objections, Lone Star responds as follows:

RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that prior to February 17, 1959, Applicant made no commercial use of Applicant's LONE STAR Mark in the United States for the goods listed in Serial No. 75883253.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Admitted.

REQUEST FOR ADMISSION NO. 2:

Admit that prior February 1977, Applicant made no commercial use of Applicant's LONE STAR Mark in the United States for the goods listed in Serial No. 75883253.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that prior to October 1989, Applicant made no commercial use of Applicant's LONE STAR Mark in the United States for the goods listed in Serial No. 75883253.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Admitted.

REQUEST FOR ADMISSION NO. 4:

Admit that prior to February 17, 1959, Applicant made no commercial use of Applicant's LONE STAR & DESIGN Mark in the United States for the goods listed in Serial No. 75883254.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Admitted.

REQUEST FOR ADMISSION NO. 5:

Admit that prior to February 1977, Applicant made no commercial use of Appellant's LONE STAR & DESIGN Mark in the United States for the goods listed in Serial No. 75883254.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Admitted.

REQUEST FOR ADMISSION NO. 6:

Admit that prior to October 1989, Applicant made no commercial use of Applicant's LONE STAR & DESIGN Mark in the United States for the goods listed in Serial No. 75883254.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Admitted.

REQUEST FOR ADMISSION NO. 7:

Admit that Applicant is aware of actual confusion by a relevant consumer of Opposer's Mark and Applicant's LONE STAR Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Denied.

REQUEST FOR ADMISSION NO. 8:

Admit that Applicant is aware of actual confusion by a relevant consumer of Opposer's Mark and Applicant's LONE STAR & DESIGN Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Denied.

REQUEST FOR ADMISSION NO. 9:

Admit that Applicant's intended customers are the same as Opposer's intended customers.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Denied.

REQUEST FOR ADMISSION NO. 10:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since February 17, 1959.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Applicant admits that its representatives were generally aware of Opposer's use of LONE STAR, but does not admit that it was aware of Opposer's use of LONE STAR as of any specific date.

REQUEST FOR ADMISSION NO. 11:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since February 1977 for beer.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Applicant admits that its representatives were generally aware of Opposer's use of LONE STAR for beer, but does not admit that it was aware of Opposer's use of LONE STAR as of any specific date.

REQUEST FOR ADMISSION NO. 12:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since February 1977 for clothing.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Denied.

REQUEST FOR ADMISSION NO. 13:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since February 1977 for stein.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Denied.

REQUEST FOR ADMISSION NO. 14:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since February 1977 for glassware.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Denied.

REQUEST FOR ADMISSION NO. 15:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since October 1989 for beer.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Applicant admits that its representatives were generally aware of Opposer's use of LONE STAR in commerce since October 1989 for beer.

REQUEST FOR ADMISSION NO. 16:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since October 1989 for clothing.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Denied.

REQUEST FOR ADMISSION NO. 17:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since October 1989 for stein.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Denied.

REQUEST FOR ADMISSION NO. 18:

Admit that Applicant was aware of Opposer's use of LONE STAR in commerce since October 1989 for glassware.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Denied.

REQUEST FOR ADMISSION NO. 19:

Admit Opposer's Mark and Applicant's LONE STAR Mark are similar in appearance.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Applicant admits that Opposer's Mark and Applicant's LONE STAR Mark contain the same words, but denies that that they are similar in any other respect.

REQUEST FOR ADMISSION NO. 20:

Admit Opposer's Mark and Applicant's LONE STAR & DESIGN Mark are similar in appearance.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Applicant admits that Opposer's Mark and Applicant's LONE STAR & DESIGN Mark contain the same words, but denies that that they are similar in any other respect.

REQUEST FOR ADMISSION NO. 21:

Admit Opposer's Mark and Applicant's LONE STAR Mark are similar in sound.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Admitted.

REQUEST FOR ADMISSION NO. 22:

Admit Opposer's Mark and Applicant's LONE STAR & DESIGN Mark are similar in sound.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Admitted.

REQUEST FOR ADMISSION NO. 23:

Admit Opposer's Mark and Applicant's LONE STAR Mark are similar in meaning.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Admitted.

REQUEST FOR ADMISSION NO. 24:

Admit Opposer's Mark and Applicant's LONE STAR & DESIGN Mark are similar in meaning.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Admitted.

REQUEST FOR ADMISSION NO. 25:

Admit that Applicant's LONE STAR Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark when used for "beer."

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Denied.

REQUEST FOR ADMISSION NO. 26:

Admit that Applicant's LONE STAR Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark when used for "clothing."

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Denied.

REQUEST FOR ADMISSION NO. 27:

Admit that Applicant's LONE STAR Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark when used for "stein."

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Denied.

REQUEST FOR ADMISSION NO. 28:

Admit that Applicant's LONE STAR Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark when used for "glassware."

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Denied.

REQUEST FOR ADMISSION NO. 29:

Admit that Applicant's LONE STAR Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark as shown in Registration No. 674,291.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Denied.

REQUEST FOR ADMISSION NO. 30:

Admit that Applicant's LONE STAR Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's mark as shown in Registration No. 2,191,783.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Denied.

REQUEST FOR ADMISSION NO. 31:

Admit that Applicant's LONE STAR & DESIGN Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's mark when used for "beer."

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Denied.

REQUEST FOR ADMISSION NO. 32:

Admit that Applicant's LONE STAR & DESIGN Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark when used for "clothing."

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Denied.

REQUEST FOR ADMISSION NO. 33:

Admit that Applicant's LONE STAR & DESIGN Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark when used for "stein."

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Denied.

REQUEST FOR ADMISSION NO. 34:

Admit that Applicant's LONE STAR & DESIGN Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark when used for "glassware."

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Denied.

REQUEST FOR ADMISSION NO. 35:

Admit that Applicant's LONE STAR & DESIGN Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark as shown in Registration No. 674,291.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Denied.

REQUEST FOR ADMISSION NO. 36:

Admit that Applicant's LONE STAR & DESIGN Mark is likely to cause confusion or mistake, or to deceive, the relevant consuming public with Opposer's Mark as shown in Registration No. 2,191,783.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Denied.

REQUEST FOR ADMISSION NO. 37:

Admit that Applicant's use of Applicant's LONE STAR Mark causes consumers of Opposer's goods to be likely to purchase Applicant's goods assuming that they were purchasing Opposer's goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Denied.

REQUEST FOR ADMISSION NO. 38:

Admit that Applicant's use of Applicant's LONE STAR & DESIGN Mark causes consumers of Opposer's goods to be likely to purchase Applicant's goods assuming that they were purchasing Opposer's goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Denied.

REQUEST FOR ADMISSION NO. 39:

Admit that the Opposer's LONE STAR mark for beer is famous.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Denied.

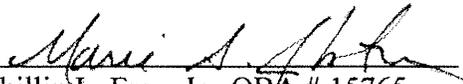
REQUEST FOR ADMISSION NO. 40:

Admit that the products sold under Opposer's LONE STAR mark are of high quality.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Denied.

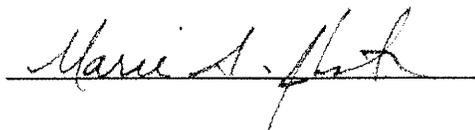
Respectfully submitted,


Phillip L. Free, Jr., OBA # 15765
Marie S. Johnston, OBA # 19847
Crowe & Dunlevy
20 N. Broadway, Ste. 1800
Oklahoma City, OK 73102
Telephone: (405) 235-7700
Fax: (405) 239-6651

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Response to Opposer's First Request for Admissions has been served on William B. Nash by mailing said copy on August 28, 2006, via First Class Mail, postage prepaid to:

William B. Nash
JACKSON WALKER LLP
112 E. Pecan, Suite 2100
San Antonio, Texas 78205

A handwritten signature in cursive script, appearing to read "Marie A. Nash", is written over a horizontal line.

Exhibit

B

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

Application Serial Nos. 75/883,254 and 75/883,253

Published in the *Official Gazette* on March 2, 2004

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| Pabst Brewing Company Opposer v. Lone Star Steakhouse & Saloon, Inc. Applicant | Opposition No. 91161954 Opposition No. 91161955 |
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**APPLICANT'S RESPONSE TO OPPOSER'S
FIRST SET OF INTERROGATORIES**

Applicant, Lone Star Steakhouse & Saloon, Inc. ("Lone Star"), pursuant to Fed.R.Civ.P. 33, submits these Answers to Opposer's First Set of Interrogatories ("Interrogatories").

GENERAL OBJECTIONS

The following objections and conditions qualify each and every response of Lone Star to Opposer's Interrogatories and are incorporated by this reference into each and every response, as if set forth fully therein:

1. Lone Star objects to the definitions and instructions contained in Opposer's Interrogatories to the extent they attempt to impose obligations or requirements upon Lone Star beyond those imposed by the applicable procedural rules. Lone Star will respond to Opposer's Interrogatories in accordance with the applicable procedural rules.

2. Lone Star objects to each of Opposer's Interrogatories to the extent they call for the disclosure of information which is protected from discovery and privileged for the reason that it: (a) is subject to the attorney-client privilege; (b) is

covered by the "work product" immunity; (c) was generated in anticipation of litigation or for trial by or for Lone Star or its representatives, including their attorneys, consultants or agents; (d) relates to the identity or opinions of experts who have been retained or employed in anticipation of litigation and who are not expected to be called as witnesses at trial; (e) is protected as a trade secret; (f) is subject to a protective or confidentiality agreement or order; and/or (g) is otherwise privileged or beyond the scope of discovery under applicable rules and laws. Lone Star will not be producing privileged information or documents and Lone Star's Responses should be read accordingly.

3. By responding to Opposer's Interrogatories, Lone Star concedes neither the relevancy nor the admissibility of any information provided or documents produced in response to such requests. The production of information or documents in response to a specific Interrogatory does not constitute an admission that such information is probative of any particular issue in this case.

4. Lone Star objects to Opposer's Interrogatories to the extent they seek public disclosure of personal and confidential and proprietary information, the disclosure of which could result in harm to Lone Star. Lone Star will only disclose such information subject to Opposer's agreement to enter into an acceptable Confidentiality Agreement and the approval and entry of an appropriate Protective Order.

5. Lone Star reserves the right to supplement and/or revise these responses to Opposer's Interrogatories.

Subject to the foregoing objections and conditions, and subject to the specific additional objections made with respect to each discovery request, Lone Star responds to Opposer's Interrogatories as follows:

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify Applicant in accordance with the instructions to these Interrogatories including the identity of its officers, directors and shareholders, and describe its principal type of business.

RESPONSE TO INTERROGATORY NO. 1:

Applicant is a Delaware corporation that owns and operates the following casual dining restaurants: Lone Star Steakhouse & Saloon; Sullivan's Steakhouse; Texas Land & Cattle; Del Frisco's; Frankie's Italian Grill; and Lone Star Cafe.

Applicant's officers are as follows, and can be contacted at Applicant's headquarters at 224 East Douglas, Suite 700, Wichita, KS 67202:

Gerald T. Aaron
Senior Vice President – Counsel & Secretary

Pat Barth
Regional Vice President

Jamie B. Coulter
Chief Executive Officer

Robert R. Crawford
Vice President – Taxes

Scottie Cronin
Vice President Quality Assurance

Ryan Franklin
Regional Vice President

Jon Howie

Chief Accounting Officer

Deidra Lincoln
Co-founder & Vice President Operations - Del Frisco's

Mark Mednansky
Chief Operating Officer

John D. White
Executive Vice President, Chief Financial Officer, and Treasurer

Applicant's directors are as follows:

Fred B. Chaney, Ph.D.
Chairman of the Board
Business Consultant

William B. Greene, Jr.
Carter County BanCorp
Chairman
BancTenn Corporation

Anthony Bergamo
Chairman of the Audit Committee

Tommy LaSorda
Senior Vice President of the Los Angeles Dodgers

Michael Ledeen, Ph.D.
Author, Scholar, Strategic Consultant

Clark R. Mandigo
Chairman of the Executive Committee
Business Consultant & Papa John's Pizza Franchisee

Mark G. Saltzgeber
Venture Partner
Dorset Capital

John D. White
Executive Vice President, Chief Financial Officer, and Treasurer
Lone Star Steakhouse & Saloon, Inc.

Lone Star objects to Interrogatory No. 1 as overly broad and unduly burdensome to the extent that it asks for a list of Lone Star's shareholders, because Lone Star is a publicly traded company.

INTERROGATORY NO. 2:

If Applicant is or ever has been engaged in any business not described in response to Interrogatory No. 1, describe the goods and/or services you provided and the time period during which you provided them.

RESPONSE TO INTERROGATORY NO. 2:

Applicant has previously operated a Mexican restaurant concept from approximately 1995-2002.

INTERROGATORY NO. 3:

Describe your first use of the Mark in a commercial transaction with any person in the United States, including the date, parties, nature of the goods or services provided, and price of the goods or services.

RESPONSE TO INTERROGATORY NO. 3:

On October 12, 1989, Applicant sold a "Lone Star Steakhouse & Saloon" t-shirt to a customer at its first Lone Star restaurant in Winston-Salem, North Carolina. Applicant has no record of the name of the customer or the price of the t-shirt. Applicant also owns the mark LONE STAR CAFE, which has been used on hats and t-shirts first sold in February, 1977.

INTERROGATORY NO. 4:

Describe in detail Applicant's selection and adoption of Applicant's Mark including, without limitation, the date of adoption, the reasons for selecting and

adopting Applicant's Mark, all details as to the origin of Applicant's Mark, the meaning or impression intended to be conveyed by Applicant's Mark, and the identity of each person who participated in your design and selection of the Mark.

RESPONSE TO INTERROGATORY NO. 4:

Applicant has been using the mark "Lone Star Steakhouse & Saloon" for restaurants since October, 1989, and the mark "Lone Star Cafe" has been used since 1977. Applicant decided to offer t-shirts at its restaurants using the same design on the t-shirts as used for the restaurants. Applicant's t-shirts and clothing are meant to suggest to consumers the restaurant services provided by Applicant. Applicant is conducting a reasonable investigation into the identity of the persons who participated in the design and selection of the Mark, and will supplement this response.

INTERROGATORY NO. 5:

If you acquired ownership of the Mark from any person at any time, describe the transaction by which you acquired ownership, including identification of the parties, date, and terms of agreement.

RESPONSE TO INTERROGATORY NO. 5:

Applicant acquired ownership of the entire interest and goodwill in the LONE STAR CAFE marks, Reg. Nos. 1155907 and 1318227, in 1992 from Max Shayne, Inc. and Texas Lone Star, Ltd. Use of the LONE STAR CAFE mark on clothing dates back to February, 1977.

INTERROGATORY NO. 6:

To the extent you have not already done so, state the complete factual basis for any affirmative defenses or counterclaims you have raised or may raise.

RESPONSE TO INTERROGATORY NO.6:

As stated in Applicant's Answer to Notice of Opposition, the doctrine of laches, acquiescence, waiver and/or estoppel bar Opposer from contesting the registration for Applicant's Mark. Specifically, Applicant affirmatively alleges that the Opposer has acquiesced to numerous third party uses of the mark LONE STAR in connection with clothing related goods and services as evidenced by the presence of numerous third party registrations in class 25 containing the term "lone star." Therefore, Opposer should be estopped from opposing Applicant's Marks.

INTERROGATORY NO. 7:

Identify all persons who you believe have knowledge of facts relevant to this lawsuit, and describe the issues upon which you believe they have knowledge.

RESPONSE TO INTERROGATORY NO. 7:

Gerald T. Aaron
Senior Vice President – Counsel & Secretary
Lone Star Steakhouse & Saloon, Inc.
224 East Douglas, Suite 700
Wichita, KS 67202
Knowledge relating to the filing and use of Applicant's Mark.

Applicant is conducting a reasonable investigation into the identity of other persons who have knowledge of facts relevant to this lawsuit, and will supplement this response.

INTERROGATORY NO. 8:

Identify each and every person whom Applicant intends to call as a witness in the testimony or discovery periods of this lawsuit, including, but not limited to,

expert witnesses, and describe the nature of each witness's expected testimony, including the identification of all documents about which each witness is expected to testify.

RESPONSE TO INTERROGATORY NO. 8:

Gerald T. Aaron
Senior Vice President – Counsel & Secretary
Lone Star Steakhouse & Saloon, Inc.
224 East Douglas, Suite 700
Wichita, KS 67202
Testimony relating to the filing and use of Applicant's Mark.

Applicant is conducting a reasonable investigation into the identity of other persons who Applicant will call as witnesses, and will supplement this response.

INTERROGATORY NO. 9:

Describe the nature of Applicant's actual and anticipated business under the Applicant's Mark, including business conducted through licensees.

RESPONSE TO INTERROGATORY NO. 9:

Applicant's business under Applicant's Mark is selling souvenir/promotional clothing such as t-shirts and hats at Applicant's restaurants. Applicant has also sold hats under its Mark on the Internet and at Nascar events in connection with corporate sponsorship of its Nascar racing team.

INTERROGATORY NO. 10:

Identify and describe in detail each product or service on or in connection with which Applicant has at any time used, or intend to use, the Applicant's Mark or similar versions thereof. Please identify the date, location, seller, buyer, and manner in which each of Applicant's Mark was used in connection with the goods, amount of goods sold, and any evidence of such first use.

RESPONSE TO INTERROGATORY NO. 10:

Applicant objects to Interrogatory No. 10 as overly broad and unduly burdensome. Applicant cannot identify the requested information as to every sale it has made under the Mark, as the Interrogatory requests. Without waiving the stated objection, Applicant has used the “Lone Star Steakhouse & Saloon” or some variation thereof in connection with restaurant services and clothing since 1989, and use of Applicant’s LONE STAR CAFE mark on hats and t-shirts dates back to 1977.

Applicant will produce documents according to Fed. R. Civ. P. 33(d) regarding the amount of goods sold under Applicant’s Marks for clothing, and will supplement this response as to dates and locations of first use for Lone Star Marks.

INTERROGATORY NO.11:

For each product or service identified in response to Interrogatory Nos. 1-3, identify the individuals who are most familiar with Applicant’s production, packaging, marketing, selling and merchandising of products and services under Applicant’s Mark, advertising and promotion of the products and services identified by the Applicant’s Mark, enforcement and maintenance of trademark rights in Applicant’s Mark, sale of the products and services identified by Applicant’s Mark, and the trade channels through which the products and services bearing Applicant’s Mark are and have been sold.

RESPONSE TO INTERROGATORY NO. 11:

Applicant has begun a reasonable investigation into the identity of the requested persons, and will supplement this response.

INTERROGATORY NO. 12:

Indicate each state, territory or possession of the United States in which Applicant has ever sold, offered for sale, advertised or distributed any of Applicant's goods or services under or in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 12:

Applicant has sold or offered for sale its goods under Applicant's Mark in all of the United States except Connecticut, District of Columbia, Hawaii, Massachusetts, Minnesota, Montana, New Hampshire, Oregon, Rhode Island, Texas, Vermont, Washington, and Wyoming.

INTERROGATORY NO. 13:

Identify and describe in detail all types of media including, without limitation, publications, billboards, signs, advertisements, internet, radio and television, where Applicant has advertised or offered for sale, or intends to advertise or offer for sale, in the United States each of Applicant's services or goods under Applicant's Mark, and state the amounts, by type of media and by date, which have been or will be expended by Applicant in promoting, advertising or offering each of Applicant's services or goods under Applicant's Mark for each calendar year from 2000.

RESPONSE TO INTERROGATORY NO. 13:

Applicant has not advertised goods under Applicant's Mark, except by using signs in at least some of Applicant's restaurants.

INTERROGATORY NO. 14:

For each of Applicant's services or goods under Applicant's Mark state, by number of units and dollar volume, the amount of sales in the United States for each calendar year from 2000.

RESPONSE TO INTERROGATORY NO. 14:

Applicant will produce documents responsive to this Interrogatory according to Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 15:

Describe the type of retail outlets, wholesale outlets and/or other outlets (i.e., licensees, representatives, distributors, jobbers, catalog or mail order sales outlets, etc.) through which Applicant's goods or services under Applicant's Mark have been or will be sold, offered for sale, rendered and/or distributed.

RESPONSE TO INTERROGATORY NO. 15:

Applicant's goods under Applicant's Mark have been sold and will be sold in Applicant's restaurants. Applicant also sells hats under its Mark on the Internet and at Nascar events in connection with corporate sponsorship of its Nascar racing team.

INTERROGATORY NO. 16:

Identify any third parties who have used, are using or intend to use any mark or name identical or similar to Applicant's Mark either alone or with other wording, letters, or designs, on or in connection with products or services relating to beverages.

RESPONSE TO INTERROGATORY NO. 16:

LONE STAR SPRINGS, Reg. No. 3003078

LONE STAR, Application Ser. No. 74/658,225

INTERROGATORY NO. 17:

Has Applicant requested or received, or does Applicant have knowledge of any opinions regarding the right of Opposer to use or register the mark LONE STAR? If the answer to this Interrogatory is other than an unqualified “no,” then identify: (a) the person or persons requesting such opinion; (b) each such opinion; (c) the person rendering such opinion; and (d) all documents evidencing, relating or referring to each such opinion.

RESPONSE TO INTERROGATORY NO. 17:

Applicant object to Interrogatory No. 17 as requesting information protected by the attorney-client privilege. Without waiving the stated objection, Applicant has not requested or received, and has no knowledge of any such opinion.

INTERROGATORY NO. 18:

Identify any instances of confusion or false association between Applicant’s use of Applicant’s Mark and Opposer or Opposer’s Mark. For illustrative purposes only and without limiting the foregoing such instances would include misdirected mail, telephone calls, inquiries, orders, complaints, or returns of goods.

RESPONSE TO INTERROGATORY NO. 18:

Applicant is not aware of any instances of confusion or false association.

INTERROGATORY NO. 19:

Identify all instances in which Applicant has objected to the use, registration, or application for registration by any third party of any mark or name containing “Lone Star” or any similar work.

RESPONSE TO INTERROGATORY NO. 19:

In 2004, Applicant filed opposition no. 91162580 against JBT Wings, Inc. for use of the mark LONE STAR WINGS CHICKEN WITH A KICK, for “restaurant services.”

In 2002, Applicant filed opposition nos. 91125131 and 91125263 against Industrial Catering, Inc. for use of the mark LONE STAR DELI, for “fast food restaurant services rendered in gas stations, travel rest stops, and other similar establishments.”

In 1995, Applicant filed opposition no. 91098238 against Lonestar Coffee Co. for use of the mark LONESTAR COFFEE CO., for “specialty restaurant and ice cream parlor services in the field of desserts, ice cream, yogurt, juices, coffee and specialty beverages, for consumption on and off the premises.”

Lone Star Steakhouse & Saloon Inc. v. Alpha of Virginia Inc., 33 USPQ2d 1481 (4th Cir. 1995).

Lone Star Steakhouse & Saloon Inc. v. Longhorn Steaks Inc., 44 USPQ2d 1217 (11th Cir. 1997).

Lone Star Steakhouse & Saloon Inc. v. Longhorn Steaks Inc., 41 USPQ2d 1896 (11th Cir. 1997).

INTERROGATORY NO. 20:

Identify any instances in which Applicant’s use, registration, or application to register a mark containing Applicant’s Mark has been the subject of an objection of any kind by a third party.

RESPONSE TO INTERROGATORY NO. 20:

In 1993, Lone Star Steaks, Inc. filed Opposition No. 91093713 against Applicant regarding Applicant's LONE STAR STEAKHOUSE & SALOON mark.

In 1993, Kyle H. Sexton filed Opposition Nos. 91092440, 92022098 and 92022099 against Applicant regarding Applicant's LONE STAR STEAKHOUSE & SALOON mark.

INTERROGATORY NO. 21:

Describe any agreements or understandings constituting or relating to the settlement or resolution, or attempted settlement or resolution, of any controversy concerning Applicant's Mark that Applicant has ever entered into, intended or intends to enter into and identify all the parties to the understanding or agreement.

RESPONSE TO INTERROGATORY NO. 21:

Applicant has entered into no such agreements.

INTERROGATORY NO. 22:

With the exception of this proceeding, identify each dispute, including but not limited to lawsuits, administrative proceedings, contracts, objections, or cancellations, to which Applicant was or is a party concerning the use of Applicant's Mark or any other similar term, used by Applicant. Identify all persons with knowledge or information concerning each dispute and identify all documents relating to such dispute.

RESPONSE TO INTERROGATORY NO. 22:

In 2004, Applicant filed opposition no. 91162580 against JBT Wings, Inc. for use of the mark LONE STAR WINGS CHICKEN WITH A KICK, for "restaurant services."

In 2002, Applicant filed opposition nos. 91125131 and 91125263 against Industrial Catering, Inc. for use of the mark LONE STAR DELI, for “fast food restaurant services rendered in gas stations, travel rest stops, and other similar establishments.”

In 1995, Applicant filed opposition no. 91098238 against Lonestar Coffee Co. for use of the mark LONESTAR COFFEE CO., for “specialty restaurant and ice cream parlor services in the field of desserts, ice cream, yogurt, juices, coffee and specialty beverages, for consumption on and off the premises.”

Lone Star Steakhouse & Saloon Inc. v. Alpha of Virginia Inc., 33 USPQ2d 1481 (4th Cir. 1995).

Lone Star Steakhouse & Saloon Inc. v. Longhorn Steaks Inc., 44 USPQ2d 1217 (11th Cir. 1997).

Lone Star Steakhouse & Saloon Inc. v. Longhorn Steaks Inc., 41 USPQ2d 1896 (11th Cir. 1997).

In 1993, Lone Star Steaks, Inc. filed Opposition No. 91093713 against Applicant regarding Applicant’s LONE STAR STEAKHOUSE & SALOON mark.

In 1993, Kyle H. Sexton filed Opposition Nos. 91092440, 92022098 and 92022099 against Applicant regarding Applicant’s LONE STAR STEAKHOUSE & SALOON mark.

The person with knowledge concerning each of the above disputes is Gerald T. Aaron, Senior Vice President of Applicant.

Applicant objects to this Interrogatory as overly broad and unduly burdensome with regard to the request to identify all documents relating to such disputes.

INTERROGATORY NO. 23:

Provide the date and describe the circumstances when Applicant first became aware of Opposer's Mark and use of Lone Star.

RESPONSE TO INTERROGATORY NO. 23:

Applicant's representatives have generally been aware of Lone Star beer for several decades, but the specific dates and circumstances leading to this awareness are unknown.

INTERROGATORY NO. 24:

Describe in detail the procedures employed and the results obtained from each trademark search or searches prior to or subsequent to its adoption of Applicant's Mark, including the persons conducting the search.

RESPONSE TO INTERROGATORY NO. 24:

Applicant objects to Interrogatory No. 24 as requesting information subject to attorney-client privilege.

INTERROGATORY NO. 25:

Identify all persons having any knowledge or responsibility, directly or indirectly, relating to any applications, assignments, or other documents filed with the United States Patent and Trademark Office, or any state agency or office, to register Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 25:

Gerald T. Aaron
Senior Vice President – Counsel & Secretary, Lone Star Steakhouse &
Saloon, Inc.
224 East Douglas, Suite 700
Wichita, KS 67202

Phillip L. Free, Jr.
Crowe & Dunlevy
20 N. Broadway, Suite 1800
Oklahoma City, OK 73102

Joseph J. Ferretti
Trademark Counsel, Frito Lay, Inc.
7701 Legacy Dr.
Plano, TX 75024

INTERROGATORY NO. 26:

Explain how Applicant's Mark is used and promoted, or intended to be used and promoted, to create a public perception of such Mark as an indication of source.

RESPONSE TO INTERROGATORY NO. 26:

Applicant has promoted its souvenir/promotional clothing by signs at some of Applicant's restaurants. Applicant has also sold hats under its Mark on the Internet and at Nascar events in connection with corporate sponsorship of its Nascar racing team.

INTERROGATORY NO. 27:

Identify all periods of non-use of Applicant's Mark on Applicant's services or goods in the United States and set forth in detail the reason for such non-use and the reasons for resumption of use, if any.

RESPONSE TO INTERROGATORY NO. 27:

Applicant's Mark has been used consistently since the date of first use listed in Applicant Nos. 78/883253 and 78/883,254.

INTERROGATORY NO. 28:

Describe each alteration which has been made, or proposed, in the design, wording, presentation or use of Applicant's Mark for any reason, including as a result of the findings of any search or investigation, give the circumstances surrounding each such alteration, or proposed alteration.

RESPONSE TO INTERROGATORY NO. 28:

No alterations to Applicant's Mark have been made or proposed.

INTERROGATORY NO. 29:

Identify all information, to the extent possible, regarding any and all documents responsive to the foregoing Interrogatories which are lost, destroyed or are otherwise no longer in the custody or control of Applicant.

RESPONSE TO INTERROGATORY NO. 29:

Applicant knows of no documents responsive to the foregoing Interrogatories which are lost, destroyed, or no longer in the custody or control of Applicant.

INTERROGATORY NO. 30:

With respect to any document or thing called for in Opposer's requests to produce which is withheld because it is asserted to contain information relating to matters claimed by Appellant to be privileged or exempt from discovery, state the nature of the privilege (including work product), or other exemption from discovery which is being claimed and the facts which support such claim of privilege or exemption and provide the following additional information:

- i. the date, identify, and general subject matter of each document;
- ii. the identity of each person (other than stenographic or clerical assistants) participating in the preparation of the document;

iii. the identity of each person to whom the contents of the document were communicated by copy, distribution, reading or substantial summarization;

iv. a description of any document or other material transmitted with or attached to the document; and

v. whether any business or non-legal matter is contained or discussed in the document.

RESPONSE TO INTERROGATORY NO. 28:

Applicant will provide a privilege log.

As to objections:



Phillip L. Free, Jr., OBA # 15765

Marie S. Johnston, OBA # 19847

Crowe & Dunlevy

20 N. Broadway, Ste. 1800

Oklahoma City, OK 73102

Telephone: (405) 235-7700

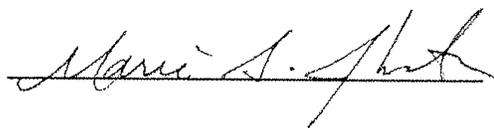
Fax: (405) 239-6651

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Response to Opposer's First Set of Interrogatories has been served on William B. Nash by mailing said copy on August 28, 2006, via First Class Mail, postage prepaid to:

William B. Nash
JACKSON WALKER LLP
112 E. Pecan, Suite 2100
San Antonio, Texas 78205

A handwritten signature in cursive script, appearing to read "Marie S. Smith", written over a horizontal line.