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

Proceeding	91167151
Party	Defendant Independent Marketing Alliance LP
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FLOWERS BAKERIES BRANDS, INC.	§	OPPOSITION NO. 91167151
	§	
OPPOSER	§	
	§	
VS.	§	IN THE MATTER OF
	§	APPLICATION NO. 78/432642
	§	MARK: COBBLESTONE MARKET
	§	
INDEPENDENT MARKETING ALLIANCE LP,	§	FILING DATE: DECEMBER 6, 2005
APPLICANT	§	PUBLISHED: SEPTEMBER 30, 2005

ORAL DEPOSITION TRIAL TESTIMONY OF

ROBERT FONTANA
VOLUME TWO

SEPTEMBER 20, 2007

COPY

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FLOWERS BAKERIES	)	
BRANDS, INC.,	)	Opposition No. 91167151
	)	
Opposer	)	
	)	
V.	)	In the Matter of Application
	)	Serial No. 78/432642
	)	Mark: COBBLESTONE MARKET
INDEPENDENT MARKETING	)	
ALLIANCE LP,	)	
	)	Filing Date: December 6, 2005
Applicant.	)	Published: September 30, 2005

ORAL DEPOSITION TRIAL TESTIMONY OF

ROBERT FONTANA

SEPTEMBER 20TH, 2007

VOLUME 2

ORAL DEPOSITION TRIAL TESTIMONY of Robert Fontana, produced as a witness at the instance of the Opposer, and duly sworn was taken in the above-styled and numbered cause on the 20th of September, 2007, from 10:08 a.m. to 1:44 p.m., before SUSAN L. GRAHAM, CSR in and for the State of Texas, reported by machine shorthand, in the office of Pagel, Davis & Hill, P.C., 1415 Louisiana, 22nd Floor, Houston, Texas, 77002, pursuant to the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Notice, and the provisions stated on the record or attached hereto.

I N D E X

ORAL DEPOSITION TRIAL TESTIMONY OF ROBERT FONTANA
SEPTEMBER 20TH, 2007
VOLUME 2

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A P P E A R A N C E S

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ALSO PRESENT:

Holland C. Kirbo, Flowers Foods
Robert D. Planck, Independent Marketing Alliance

(Taken pursuant to the FRCP & the TRP; Witness to read and sign.)

(Fontana Exhibits Nos. 8 through 13 marked.)

ROBERT FONTANA

having been first duly sworn, testified as follows:

EXAMINATION

QUESTIONS BY MR. HILL:

Q. Sir, could you state your name for the record, please?

A. Robert Fontana.

Q. And how are you currently employed?

A. I'm employed with Independent Marketing Alliance.

Q. Okay. Is that a party to this opposition proceeding?

A. Yes.

Q. And it's the party that has applied for the Cobblestone Market?

A. Yes.

Q. Just briefly, what is your educational background?

A. I graduated in 1982 from Cornell University School of Hotel Administration.

Q. What emphasis did you have when you were at Cornell?

A. It was a business curriculum slanted towards the hospitality field.

Q. After school what did you do next in that field of work?

A. I joined Sysco Corporation.

Q. And what year would that be?

A. 1982.

Q. And how long did you work for Sysco Corporation?

A. Approximately 20 years.

Q. And what did you do while you were at Sysco?

A. Various capacities starting with a sales position for six years, moved into brand management for two years, and then transferred to their corporate headquarters in Houston where I ran their frozen procurement department for approximately 12 years.

Q. And does Sysco focus on any particular segment of the market?

A. Sysco focuses on all segments of the food service market.

Q. And is there a distinction between food service market and some other market?

A. Very much so and in our business food service is a separate channel from the retail channel and completely different businesses.

Q. Give us some examples of the food service channel.

A. Food service is typically distributed to institutional end users, schools, hospitals, restaurants. The

goods are typically distributed in bulk packages as opposed to retail, which is consumer-driven, through grocery store outlets in smaller consumer oriented packages.

Q. So, for example, if you were to look at Anderson -- and we've utilized the numbering system to be able to refer back to Janis Anderson's trial testimony, or I guess it's going to be Volume 2, from a few days ago where they introduced their packaging, it's Anderson Exhibit No. 12. If you would look at that for a moment. What type of a package would you call that?

A. That is a typical retail style package.

Q. Okay. And how many rolls or buns are in that package?

A. There are six according to this exhibit.

Q. I'm sorry, you said you -- that that's -- you call it a retail pack?

A. Yes.

Q. Is that the kind of packaging that you would find when you were at Sysco?

A. No, the pack size at Sysco in a food service pack is much larger and typically that would be probably 12 dozen, 144 but they're bulk packages versus six individual rolls.

Q. Okay. And does each plastic bag have some kind of packaging on it when you were at Sysco for this type of a product or was it on the box instead of the plastic bag?

A. It can be both depending on the supplier. You can

have preprinted internal packaging or you can have generic plain poly. It really depends on the supplier.

Q. Is there a distinction between the food service segment of the market then and what I think you referred to as retail?

A. Very much so.

Q. Could you describe the distinction with the retail as compared to the food service?

A. Again, retail is targeted at the household, the household consumer for food to be purchased and brought home. Food service institutional distribution focuses on delivering bulk goods to again restaurants, hotels, schools, hospitals, institutional establishments.

Q. In the food service business who are the decision makers to buy product?

A. Typically the restaurant owner or the food service director at a hotel or a chef at a restaurant would be the typical buyer.

Q. When you were at Sysco where did Sysco aim its branding advertising?

A. To -- to those individuals I just mentioned. They want that chef or that food service director to recognize their brand and their products.

Q. In the retail segment of the market as contrasted with the food service, do you know who is -- who the

advertising is typically targeted toward?

A. Typically towards the head of the household. Typically the female head of the household would be the major decision maker when it comes to the purchase at a retail grocery store.

Q. You heard Ms. Anderson's testimony a few days ago, correct?

A. Yes.

Q. And do you recall her describing the advertising of Flowers where they targeted?

A. Yes, I do.

Q. And where was that was your understanding?

A. That was targeted towards a female upscale consumer.

Q. Is any of the targeted advertising while you were at Sysco and managing their brands in any way comparable to or overlap the targeted advertising you heard Ms. Anderson talk about that Flowers utilizes?

A. In no way, shape, or form was it in any ways comparable.

Q. Okay. You said you stayed with Sysco for 20 years?

A. Yes, that's correct.

Q. After you left Sysco where did you go?

A. I left Sysco and went to Independent Marketing Alliance.

Q. I understand you said Sysco was a food service distributor. What does IMA and its member constituents do?

A. IMA is owned by six independent distributors. They are our member owners.

Q. And if you take IMA and its member owners together, are they comparable to Sysco in terms of the market and the business model?

A. As far as the actual model from each individual distributor, yes.

Q. So what is the business of IMA and its member -- is it fair to say member constituents or member owners?

A. Member owners would be a good term.

Q. Okay. What business are they in as contrasted with Sysco? Just --

A. They are in the same business, that is, food service distribution to that institutional food service customer.

Q. Are they in the retail business?

A. No, our member owners are not -- one member owner does have a dairy that they do market to a retail segment but our specific six member owners, as -- as they exist, are food service oriented.

Q. Similar to Sysco?

A. Yes.

Q. And so what did you start doing when you first came

to work at IMA? I'm just going to use IMA unless the context requires otherwise to refer to IMA itself, as well as its constituent member owners, is that fair?

A. That's fair.

Q. Okay. So when you joined IMA, what initially did you do?

A. Basically two areas I focused on were the marketing and the merchandising aspects of IMA.

Q. What advantage does IMA bring to its member owners? I mean what's the basic concept of that?

A. Twofold. We roll up their volumes and we take those volumes and shop them by category in the -- in the food service supplier arena to get them the best cost of goods.

Q. Are you -- do you have any focus on developing or promoting particular brands or trademarks and labels?

A. That is the second portion of what we do. We provide them with their own proprietary brands that we as a group come up with to provide them with their own franchise proprietary stand-alone brands in the marketplace to go against Sysco and their other competitors who have similar private label brands.

Q. In general, how -- what comes first? Do you come up with the brand first or do you come up with a category of goods? I mean what's -- let's say potato chips or potato salad, whatever, how does that work?

A. Let me explain. We are governed by committees set up from our member owners. We at IMA act as facilitators and we let various boards make the decisions that they want to guide their organization. So there is a procurement advisory council made up of senior purchasing people that determine what categories that they would like to pursue under a private brand. Then there is a marketing and advisory council that is made up of senior marketing execs of the company's that create brand positions and fit the products into the those brand positions so they work in tandem to develop these brands and determine the needs.

Q. And so is it, in layman's terms, that you develop a product or a group of products that the decision maker may desire to pursue under a particular brand?

A. Yes.

Q. What's the general process for doing that once a category or a group of products has been selected for branding?

A. We determine that there is a need for a branding position and we employ the assistance of an outside ad agency called Newhall Klein and Newhall Klein will create ideation for review by the MAC council for consideration.

Q. And that process takes a little while typically?

A. Typically it does.

Q. And then after that what's the next stage or what needs to be decided in order to even go to the next stage?

A. Well, once we have a list of potential brand names the ad agency runs them through various trademark searches to make sure those marks are clean on the top line basis and we can pursue a occult list of potential names.

Q. And then what happens just generally next?

A. Generally next we'll refer to our attorneys for further review to make sure those marks are clear. We want to make certain that our marks are clean and clear and we can move forward with a clear conscience.

Q. Has Bartt Thompson been your attorney for handling that process for at least the last few years?

A. Yes.

Q. And even though you don't know in detail maybe everything he does, do you have a general idea of what he does to look at the trademark issues?

A. Yes.

Q. And what is that?

A. That is, again, utilize the resources of a trademark attorney to research as thoroughly as possible the cleanliness of a potential mark.

Q. In a typical type of a situation with IMA in terms of developing a brand, is it the situation that IMA doesn't really care if there's confusion in the marketplace with its brand or is it important to IMA that it have brand awareness and that it be able to build its brand?

A. It's very important that there's brand awareness and that the market is again not -- is going to be a clean market.

Q. Okay. In the particular situation that we're here for today, you understand that IMA has requested and applied for a trademark Cobblestone Market, correct?

A. Correct.

Q. And did you have some personal involvement in that process?

A. Yes.

Q. If you could, just briefly tell us how that came out and I have -- I have marked as Exhibits 8 through 9, 10, 11, 12, and 13 as Fontana exhibits. We have done it this way for simplification. We'll use those same exhibits for other testimony in this case. So all of them may not necessarily be your exhibits but as you come across my questions and need to refer to any of these feel free to do so. Okay?

A. Okay.

Q. The first exhibit that may or may not be helpful to you is Exhibit 8, which is an e-mail with Sandy Klein from Klein Newhall or Newhall Klein that's marked as Exhibit No. 8. Could you -- before you look at the document or just before you start talking about the document, in general what was going on that caused IMA and its member owners to desire a brand which ultimately turned out to be the Cobblestone Market brand?

A. Well, again, we were trying to determine a, a, a brand for a line of deli products, food service deli products that would be acceptable to the group.

Q. Okay. And so somebody determined that you needed to have a brand for would you say a food service line of deli products?

A. That is correct.

Q. Okay. And was your committee -- I --

A. The marketing advisory council.

Q. Okay.

A. We refer to it as the MAC.

Q. M-A-C?

A. M-A-C.

Q. And so that was the job that -- were you assigned that job or --

A. I -- I'm assigned the task to oversee the process of the brand development to make sure that the MAC committee is moving along, that the ad agency is timely in what they're charged to do. I facilitate the process.

Q. Okay. So if you look at Exhibit 8, does that refresh your recollection of some of the issues that were brought up either by you or the ad agency?

A. Yes.

Q. What in general was going on at that time that you sent this e-mail?

A. Again, I referred to the first calling of the initial list, the first top line search to determine if there are any potential problems with the brands that have been initially offered.

Q. Okay. So we look at No. 8, Exhibit No. 8, we're referring to it as Fontana Exhibit 8, this is sort of the report from Sandy Klein?

A. (Witness reading.)

Q. Is this e-mail from Sandy Klein?

A. Oh, I'm sorry. There was a question in there. I believe it is.

Q. The second page says Sandy Klein. The first page looks like it says to Rob?

A. Yeah, "Best regards Sandy." Yes, you're right.

Q. Okay. And it was a copy -- CC'd to you, what it appears to be on the front page?

A. Yes. No, Bob Planck.

Q. I'm sorry, maybe that's why you don't recognize it much. Have you seen this document before?

A. No.

Q. Have you typically seen these types of documents where they list out various marks and any kind of potential issues, like the number of hits on a particular word, for example?

A. Typically I will.

Q. But you don't have any recollection of seeing this particular document before?

A. This specific document, no.

Q. Did you have an understanding of the content even if you don't remember this specific document before?

A. Yes, this is typical of the processes we go through on all our brands we develop.

Q. Do you have any recollection of -- I see the word Oakwood on here and it says it has 62 hits and it talks about Oakwood Foods out of New York. Do you remember anything about Oakwood?

A. You know, I don't. I view this process really from a 20 thousand foot view. I rely heavily on the advice of our ad agency and our attorneys to guide us to the correct conclusions. I do not question the findings of the professionals when they bring us results.

Q. Now who is Sandy Klein again?

A. She's the owner of Newhall Klein.

Q. And Newhall Klein is?

A. Our ad agency.

Q. And how long have they been your ad agency for?

A. Oh, approximately I would say five out of the six years out of IMA's existence.

Q. So just in big terms, your ad agency sort of gives it the first pass; is that right?

A. That is correct.

Q. And even if you don't know the details of this particular document, was there a sort of first pass approval by the ad agency to go forward with the Cobblestone Market brand?

A. Yes.

Q. So then Exhibit 9, I don't know if you've seen this document either since it also is referenced to Bob Planck. Have you seen Exhibit 9 before?

A. No.

Q. Okay. Even if you haven't seen it, have you participated in a discussion of Cobblestone Corner at some point in time?

A. I do recall that.

Q. What's your general recollection of the mark Cobblestone Corner?

A. That mark was rejected as being not a clean mark to pursue.

Q. And who actually rejected it? It wasn't the Patent and Trademark Office, was it?

A. No, it was the MAC committee upon consideration from the recommendations of Newhall Klein and I believe your -- this agency, this law firm.

Q. Okay. And do you know what the considerations were that you gave as instructions or Mr. Planck gave as instructions for trying to determine whether a mark would go

forward or not go forward?

A. Again, I don't. I take it at face value when we are told that the mark is not clean that we are not -- we're probably not going to pursue that avenue and opt for something that is a clean mark that will give us a clean brand down the road.

Q. So is it that the -- the initial issue was to see if we could pursue Cobblestone Corner?

A. That is correct.

Q. And at some point it came back what, that Cobblestone Market would be better?

A. That is my recollection, yes.

Q. And less troublesome?

A. That is my recollection, yes.

Q. Whether it be Cobblestone Corner or the Cobblestone Market, what was the image IMA and its member owners were trying to evoke in the minds of someone who would see that mark?

A. We were trying to create a image of an old-fashioned deli, neighborhood deli, neighborhood marketplace where you could go and get fresh meats and cheeses. That's what we were trying to accomplish. Yeah, my -- as you know, under our brand positioning statement, to elaborate on that, you know, under Cobblestone Market our brand positioning statement is "Cobblestone Market is the place for delicious

deli meats, cheeses, pickles, fresh salads, and more. Our premium quality and consistency will remind everyone of their favorite neighborhood deli."

Q. Is that what's currently on your Web site?

A. Yes.

MR. DAVIS: Marty, just like to note for the record the witness is reading from a piece of paper. Can we marked that as exhibit?

MR. HILL: Yeah, I don't have any objection. We can mark that as No. 14 if you want to.

(Fontana Exhibit No. 14 marked.)

Q. (By Mr. Hill) So you read from Exhibit 14, correct?

A. Correct.

Q. And when you came up with Exhibit 14, was that by having someone look at the Web site and read it to you verbatim?

A. Yes.

Q. Is that a position statement that you recall?

A. Yes.

Q. Was it prompted by your examination of a positioning statement that was produced during Ms. Anderson's deposition testimony, which I think is marked as Anderson Exhibit, is it 10?

A. Yes. Yes, it was.

Q. And so after you read the positioning statement of Janis Anderson, and really it's the positioning statement of Flowers Bakeries, as it relates to their Cobblestone Mill brand and mark that that prompted you to think about your own positioning statement?

A. Yes, it did.

Q. Did you see any overlap between the positioning statement of Ms. Anderson, as articulated in Anderson Exhibit 10, versus what's going to be Planck Exhibit 14, which is the positioning statement of IMA?

A. None whatsoever.

Q. Exhibits 10, 11, and 12, which are in front of you, are documents that are actually out of the Patent and Trademark Office file. Were you the primary person involved with that process or was Mr. Planck?

A. Mr. Planck I believe was more involved in this process than I was.

Q. I'll save those questions then for Mr. Planck. Let's go to Exhibit 13, which is a sample of your logo and actually it's the same logo I believe as Exhibit No. 6. You can look at Exhibit No. 6 if you want to. This was -- we're pulling in Exhibit 6 from the first volume of your deposition and I believe that to be the same stylistic, to the extent a stylistic mark, the same logo as you see in Exhibit 13, correct?

A. Yes.

Q. Generally describe that mark. Not just the word mark but the context the trade dress in which it's depicted.

A. Again as I described, we're trying to depict an old-fashioned market type deli that invokes the old world goodness in what we're trying to offer.

Q. And if you look at Anderson Exhibit No. 12, and you were at Ms. Anderson's deposition, right?

A. Yes.

Q. Her trial testimony, and if you look at the left side of Anderson Exhibit 12, you will see their Cobblestone Mill mark. Do you see that?

A. Yes, I do.

Q. And do you see what I think Ms. Anderson referred to as a relatively busy depiction of a -- of an old gristmill or mill?

A. It's vague but I can see it.

Q. Okay. And have you seen better pictures of that than the one that's Exhibit 12 before?

A. No.

Q. Okay. Does that show you or you refer to the old version of that of some cobblestone either in the street or on the side of the building next to the mill?

A. It's tough to make out in this but it looks like that's what they're trying to get across.

Q. Okay. And then you can see -- well, first of all, before we ever go to Flowers change to their new logo, does -- when you see the Cobblestone Mill mark with this old mill with that whatever it is that's vague that you say is hard to make out, what's the image that's evoked in your mind?

A. Looks like they're trying to depict in an old-fashioned mill where they used to grind wheat into flour.

Q. And is that, at least from your understanding, consistent with the fact that they're a bakery?

A. Exactly. I would think that the wheat flour bread connotation is what they're trying to invoke.

Q. In your mind when you compared the image of an old-fashioned mill that grinds wheat with IMA's image of an old-fashioned deli market where you sell -- buy meats and cheeses, was there any confusion in your mind?

A. None whatsoever. One is where product is ground up and manufactured, and another a market is where you sell product.

Q. Okay. Now if you'll notice on the left it's what they said was the old of Anderson Exhibit 12 and then they have now switched to what they call -- what did they say? What tomorrow brings, is that what it say?

A. Yes, that's what it says.

Q. So the new image that Ms. Anderson testified to is the one that depicts the larger wheel on the right. Do you see

that?

A. Yes, I do.

Q. In the new style of the Cobblestone Mill mark, as utilized by Flowers, did they do away with anything?

A. It looks like they completely did away with the mill.

Q. The stone building is the mill?

A. The stone building is not there.

Q. Okay. But is the part of the mill there that's the wheel?

A. Yeah, the only thing that remains looks like the mill wheel, yes.

Q. Okay. So the old building's done away with but the new or the old mill wheel is still there?

A. Yes.

Q. And more prominently displayed?

A. Yes.

Q. Again, as Flowers has revised their mark to focus on the mill wheel as opposed to the old cobblestone building, does that create any confusion in your mind or a possibility that someone could be confused as to a source of the bakery products that Flowers makes versus the deli hams, meats, and cheeses that are sold by IMA and its stitch constituent members under the Cobblestone Market brand?

A. I would think there would be no confusion at all

one's a mill and one is a market.

Q. When did IMA and its member owners start actually using the Cobblestone Market brand?

A. That would be a guesstimate on my part. Probably somewheres around year 2004, 2005.

Q. Okay. What kind of investment did first IMA make itself as the organization I guess that pursues the brands in the brand Cobblestone Market?

A. Generally it's approximately $25,000 to create a brand through Newhall Klein.

Q. Okay. So you've got the ad agency expense and that's really not any marketing at that point. Is that just creation of the brand?

A. That's just ideation and creation of the brand and logo.

Q. And then you go through the label process and that has additional expenses?

A. Right.

Q. And then does IMA also invest in any marketing materials?

A. Each project generally has a point of sale piece attached to it that can cost anywhere between 15 thousand and $30,000. I believe this project was around $25,000.

Q. Okay. So that's really not dissemination of advertising material or marketing material. That's just the

creation at the creative level. Right?

A. Correct.

Q. So all total what would you estimate that IMA has spent in just in developing the brand? I'm not talking about marketing it, just developing the Cobblestone Market brand?

A. Between 40 and $50,000 for the ideation and brand creation and the initial point of sale runs.

Q. Okay. Then to use this material you have to market it, disseminate it, advertise it to certain people, right?

A. Correct.

Q. And how does that work?

A. That takes place at the local level where we -- after the point of sale is developed we send each company a CD-rom where they customize the point of sale for their marketplace and they begin to incur additional expenses at the local market level.

Q. What level of brand marketing support was targeted by your member owners for the Cobblestone Market brand?

A. Approximately two percent goes into their local marketing funds to promote this item locally.

Q. And what were the sales last year, or through this year, the annual sales of the Cobblestone Market brand product?

A. Approximately 80 million dollars.

Q. You heard Ms. Anderson testify that they hoped to do 76 million I think it was this year, maybe as much as 80

million, something in that neighborhood?

A. I don't recollect the exact figure but that may be correct.

Q. So IMA's Cobblestone Market brand does at least as much business, if not more, than the Cobblestone Mill bread products that Ms. Anderson testified about?

A. If those numbers are correct, yes.

Q. So what do you believe to be the amount of money that's been spent by IMA and its member owners to promote the brand Cobblestone Market on an annual basis?

A. Well, at the local level at two percent that would be approximately 1.6 million between all our member owners to -- and that would encompass food somehow allowances, flier allowances, they have local magazines that target the food service operator that I referred to, the chef and the food service managers, and they circulate those so all those activities cost money but the two percent equals about 1.6 million.

Q. And in spending all the 1.6 million, is that on an annual basis?

A. Correct.

Q. On all that advertising and all those sales, have you found any time that a customer came to you, or anybody, and said "Gee, are you the bread people?"

A. Never.

Q. Would you be surprised if somebody came and said "I thought maybe that bakery started making hams"?

A. Yes.

Q. In your industry, or your experience in the industry, are bakeries usually focused on baked and bread products?

A. Yes.

Q. And has it been your experience that they expand into something like making turkey or deli ham or salads?

A. No.

Q. And by comparison, is IMA's Cobblestone Market brand selling any bread products under the Cobblestone Market brand?

A. No. And to further elaborate, we actually have a separate stand-alone brand of bread so there's no confusion.

Q. Okay. What is the brand that you sell for breads?

A. Brickfire Bakery.

Q. And again, your market image that you're trying to evoke, is the process of baking the bread, Brickfire Bakery, right?

A. Correct.

Q. Did you hear Ms. Anderson talk about the fact that the -- that food -- that Flowers has a food service division?

A. Yes, Flowers Specialty I believe.

Q. And you also heard her say that Flowers Specialty,

their food division, cannot and will not sell the Cobblestone Mill brand because that's a different distribution mechanism?

A. As I understood it, that would be an actual violation of the contracts that Flowers Bakery has with their distributors.

Q. Do you know if IMA and its member owners purchased any bread products from the food service division which is Flowers Specialties of Flowers?

A. We have two members that purchase from Flowers Specialties.

Q. And does Flowers Specialties have its own brands that are not in any way associated with Cobblestone Mill?

A. It's my understanding they do.

Q. Do you know what those brands are?

A. I think Mrs. Smith's is one of them but that's the only one I've heard reference to.

Q. So the Flowers Bakeries does in fact have brands that they sell through food service but they are Mrs. Smith's or brands other than the Cobblestone Mill brand?

A. The Flowers Specialties does, yes.

Q. In terms of the advertising budget that you spent, I know you generally described it a few moments ago, do you also advertise in magazines?

A. The companies have a local publication that they customize for their customer base. We do not do any other

advertising in trade magazines, no.

Q. Do you know what trade magazines that the owner members advertise the Cobblestone Market brand in?

A. Again, it's their local self-publication that they write and customize.

Q. And who would the target audience of that publication be?

A. Again, the chefs, food service managers, the people that run institutional food service establishments.

Q. Have you ever seen or do you anticipate that there will ever be any advertising focused on the upscale female retail consumer?

A. No.

Q. Have you understood my questions?

A. Yes.

Q. Is there anything you need to clarify that you have testified to that's unclear that you think needs clarification at this time?

A. No.

MR. HILL: With that I will pass the witness.

MR. DAVIS: Why don't we take a quick break.

MR. HILL: Okay.

(Brief recess from 10:48 a.m. to 11:08 a.m..)

EXAMINATION

QUESTIONS BY MR. DAVIS:

Q. Mr. Fontana, as you know, my name is Ted Davis and I represent Flowers in this proceeding. Mr. Hill covered earlier the fact that you had given a discovery deposition in this case and the parties have agreed to try and streamline the proceedings to allow discovery depositions to be used at the trial in this matter, which is where we otherwise are. I'm going to be referring to your discovery deposition testimony. I don't -- in a couple of spots. I don't believe it will be necessary for you to take a look at it to respond, but if you would feel more comfortable doing is so I have a copy of it here as well as the exhibits.

MR. HILL: I'd like you to just that you're clear as to the context.

Q. (By Mr. Davis) If I refer to specific pages in the discovery deposition I'll tell you what pages those are.

A. Okay.

MR. HILL: Ted, do you have a extra copy for me or do you want me to go get his depo? I've got his depo in the other room. You just tell me the pages and that way I can look at it too.

MR. DAVIS: We have extra copies I believe.

MR. HILL: Of those excerpts?

MR. DAVIS: I think it's the whole thing.

MR. HILL: Let me just go grab it.

(Mr. Hill leaves room and returns.)

Q. (By Mr. Davis) Mr. Fontana, you previously have testified about an exhibit that was labeled earlier as Fontana No. 6. I'd like for you to take a look that and do you recognize that document still?

A. Yes.

Q. And what is that document?

A. It looks like some pages out of some point of sale material.

Q. And this is a document generated by IMA?

A. Correct.

Q. I'd like, if you could, to ask you some questions going through this page by page. Can you tell me what the two items on the first page of this document are up at the top? Not the advertising agency material at the bottom.

A. It's looks like point of sale for our ham.

Q. And who developed those materials?

A. Newhall Klein.

Q. And you've described them as point of sale materials. How do they wind up being used at point of sale?

A. Well, they're put in front of a customer or left with a customer to describe the attributes of a product.

Q. And by customer here you mean?

A. The restaurateur, the chef, the food service manager at a hotel, at a restaurant, at a school.

Q. Okay. Could you take a look at the second page of

that document, please? The second page features what seem to be similar material. Would your characterization of those two be the same?

A. Yes, just different products.

Q. Yes. The third page as well?

A. Yeah, the same, different products.

Q. The next page also?

A. The same, different products.

Q. And then proceeding on to the page following that, which is numbered page five, I'd like to ask you some questions about the items displayed on that page.

A. Okay.

Q. Could you describe generally what these items are?

A. These are merchandising materials designed to outfit kiosks that our products are merchandised through typically in a college, institutional food service setting.

Q. And when you use the word kiosk, what do you mean by that?

A. Kiosk can be a stand-alone cart similar that you see in many food courts or this can be used to dress up a typical food service stainless steel counter at a college food service line to give the students the feel that they're actually purchasing from a food service deli environment.

Q. So these items would go into a pre-existing location of one of your customers?

A. Generally, yes.

Q. And if we could go through these just very briefly, if you could describe what they are and how they are used. I apologize there are a few of them. I just want to make sure we get them in the record. I would suggest we start with A and go from there?

A. Okay. A would be a poster that would go, you know, as a backdrop against the wall of the food service line to again help dress it up and make it look like a food service deli.

Q. So your customer would take that product and display it to the ultimate consumer?

A. Yes.

Q. And to make sure I'm using consumer literally, the individual actually consuming the item?

A. Yes.

Q. What about item number B?

A. B is the counter -- looks like a table -- it would go on the counter again to give the feel that they are purchasing a product from a food service deli.

Q. What about item C?

A. C is a pickle jar again merchandising pickles.

Q. And D?

A. Looks like a visor to make the worker look like they're working at a food service deli.

Q. And when you say worker, that would be an employee of one of your customers?
A. Correct.
Q. E?
A. Again, it's a hat to achieve the same purpose.
Q. And F?
A. F is -- it looks like price tags to merchandise the price of a product.
Q. And how would those be displayed?
A. Typically in a deli case on a -- to advertise the price of whatever product they're trying to sell a dollar for the pickle.
Q. Item G?
A. Looks like holders to hold that price tag.
Q. H?
A. It's a static cling that would go on the window of the deli case and stick to it to again merchandise the Cobblestone Market brand.
Q. So an end consumer looking at a particular food item through that window might see that as they examine the items that they might purchase?
A. It would actually be on the outside of the window.
Q. But it would be the window through which they would look to see the food item?
A. Yes.

Q. Okay. Moving on to I?

A. I is -- looks like the same thing, smaller.

Q. J?

A. It's an apron again to again give the consumer the feel that they're buying from a deli.

Q. Next is K?

A. Let's see. H, I, J, K.

Q. These are a little bit cryptic.

A. Oh, no. They're ceiling danglers. You dangle them from the rafters in the ceiling again to merchandise your products and brands.

Q. And again, these would be displayed by your customers?

A. Yes.

Q. L?

A. L, again it's a static cling design to cling onto the outside of a glass or stainless steel case.

Q. Moving on to M?

A. I'm trying to find it on here. I'm trying to find the reference M. Looks like outdoor signage but there's nothing displayed there.

Q. There does seem to be an empty box for that one. Has the company ever produced outdoor signs?

A. Not to my knowledge. I do not know if that ever came to fruition or not.

Q. What about item N?

A. It looks like a menu board to menu your items.

Q. And again, that would be -- I see there's some blank spaces in that menu board, and those spaces, would they be filled in by your customers?

A. Yeah, they would customize whatever they want to slide into that menu board.

Q. And then display it to the ultimate consumer?

A. Correct.

Q. O looks like to be the -- more or less the same thing?

A. Same thing, yes.

Q. P?

A. P, server buttons. They would go on the lapel of the apron.

Q. What about Q?

A. Q is looks like deli wrap to wrap the product in.

Q. And so if an end consumer were to purchase a product from one of your customers, it would be delivered in that wrapper?

A. You know, I don't think so. I believe we did away with sandwich wraps and they no longer exist in the line of products.

Q. Did they ever exist?

A. No, they didn't. It was proposed and we decided

not to go forward with sandwich wrap so they are not in existence.

Q. What about item R?

A. R, it looks like a table umbrella, again, to help merchandise the brand.

Q. And so that would be used, say, on a patio by your customers?

A. I would say again more in a college dining setting to help give the feel that you're on a patio but in fact you would be inside an institutional food service environment trying to give the feel of that overall deli in what's generally a very sterile food service environment. A lot of colleges are trying to upscale their food service to the students and that's how you do that utilizing that type of imagery to accomplish that.

Q. Okay. Why don't we see if we can streamline this. If you could just go through S, T, U, and V and finish this up.

A. Okay. S and T look like shirts again to dress up the employees to get the brand image across and luncheon napkins again to complement the experience along with sandwich wrap stickers, which I believe along with the sandwich wrap have -- did -- never did come into fruition.

Q. A customer -- an end consumer walking into one of your customer's establishments in which these items are displayed would see these at the point of sale, would they not?

A. Correct. Right.

Q. Do your customers have female end consumers as shoppers?

A. Yes.

Q. Do your customers typically make distinctions between end consumers' relative wealth, for example?

A. In an institutional food service setting, no.

Q. So --

A. If you have three dollars to buy a sandwich they're going to wait on you, whether you're a millionaire or not.

Q. Even if you're an upscale female consumer?

A. Even if you're an upscale female consumer, and again environment for this typically is the institutional food service setting of a college campus or a hospital which has various clientele running through it at any given time.

Q. I would think especially the hospital?

A. Yes.

Q. You've referred in your testimony today to the food service channel distribution and you have just described different institutions falling into that category. Are there others that you would include?

A. Well, I think I pretty much covered it. I think prisons may be one that I left out, but I think for the most part I touched on the larger segments of the distribution channel.

Q. What about supermarket delis?

A. Supermarket delis can be a potential customer for a food service distributor.

Q. You said they can be. Do you know if they are or are not?

A. They are.

Q. They are?

A. Yeah. A smaller segment but they are.

Q. You testified earlier, as you characterized it, that your members are food service oriented. Do you mean by that that that's all they do?

A. That is the majority of what they do.

Q. What would be the other activities not falling into the majority of their activities?

A. Okay. To reference more and more the supermarket deli has become more of a food service entity than a retail entity. The deliveries to those units are -- can be food service driven and are -- have more of a food service look than a retail look.

Q. Which of your members -- sorry, let me withdraw that. Let me make sure I understood your last testimony correctly. The supermarket deli is becoming an increasingly larger segment of the food service channel?

A. The food -- the retail deli is acting and looking more like a food service channel than a retail channel.

Q. And if that is the case, would that mean that your six members would have a greater share of that supermarket deli market, say, than they did ten years ago?

A. Yes. Potentially, yes.

Q. You said potentially. Do you think it is or is not a larger setting?

A. I think it is a larger setting than it was ten years ago.

Q. And your six members are servicing that?

A. I can't speak for certainty that all six service that segment.

Q. But at least some of them do?

A. I would think so.

Q. Okay. Mr. Hill has marked as an exhibit or as four exhibits in your earlier testimony some material from the file wrapper history of your application. I'm not sure we necessarily need to mark those as exhibits but I'll go ahead and do the same thing.

MR. HILL: You've got some other sections from the file wrapper?

MR. DAVIS: I've got something that I don't believe that you marked. It's --

MR. HILL: Oh. For the record, I don't mind you showing him a document that references the same scope of testimony that we took on direct but since he's our witness,

since I have a limited testimony, in fact no testimony from him regarding the actual application process I may object to but let's go ahead and mark it as an exhibit, but I may object to it as being outside the scope of this -- of the direct.

MR. DAVIS: I understand. I don't think it is outside the scope of the direct.

MR. HILL: Do you want to mark this --

MR. DAVIS: I'm sorry, Marty, which one did I hand you?

MR. HILL: You handed me something that's the Motion to Amend the Application.

MR. DAVIS: That's it.

MR. HILL: Is that what you want me to mark?

MR. DAVIS: Yes.

THE COURT REPORTER: 15.

MR. HILL: 15?

THE COURT REPORTER: Mh-mh.

(Fontana Exhibit No. 15 marked.)

Q. (By Mr. Davis) Mr. Fontana, I'd like to show you a document, as I mentioned. It is from what we call the file wrapper history of your application. It is -- you'll see it is a document filed by your counsel to amend the application and I'd like for you to turn to the second page of that and you'll see in the middle towards -- the upper middle part of that document a revised identification of goods for the application.

A. Okay.

Q. Is that identification of goods restricted in any way to the food service channel distribution?

MR. HILL: Object to the extent it calls for a legal conclusion but to the extent that he knows the answer he can answer it.

MR. DAVIS: I believe it's a factual question.

A. I don't believe so.

Q. (By Mr. Davis) Thank you. Mr. Fontana, I'd like to ask you a question about an exhibit about which you testified earlier.

MR. HILL: That's fine.

Q. (By Mr. Davis) This one is marked Anderson Exhibit 12. You testified about the packaging of the products shown on this exhibit and I believe you testified that IMA's products would not be shipped in similar packaging; is that correct?

A. I testified that typically a food service pack is a much larger pack than six Philly style hoagie rolls, that this is a typical retail pack and a food service pack would be much larger. I believe I said 12 dozen or 144 rolls. I think that's what I said.

Q. Okay. That's fine. In your experience in the industry, do you believe that producers of goods that are targeted for retail sale ship their products in that pack -- that type of packaging to the retail outlets?

A. This what I'm looking at?

Q. Yes.

A. I believe this is how you ship it to the retail outlets in bread trays.

Q. Do you believe there would be any additional packaging that went along with what you see in Anderson Exhibit 12?

A. Not being familiar with the retail, per se, and Flowers Distribution specifically I couldn't answer that.

Q. Based on your experience in the industry and as a consumer --

A. There is no outer packaging. There's no corrugate -- I've seen it wheeled in on hand trucks with plastic trays stacked up and the delivery person typically will wheel that in and stock the shelves with packages similar to this stacked in plastic trays. That's just my experience.

Q. That's all I'm asking for. And so in your experience, you don't believe that bags like this are simply tossed on a truck and then unloaded when they reach the retail outlet?

A. No, I think they're put in trucks on plastic trays and wheeled into the retail outlet.

Q. Okay. You testified earlier as to the -- I'd like to refer you back to Fontana Exhibit 6, which I believe you testified were some examples of point of sale marketing

material?

A. Mh-mh.

Q. You also testified about the percentage of advertising expenditures made by your local customers?

A. Correct.

Q. How much -- what percentage of the advertising budget for this project would be spent on items like this? I'm referring to --

A. That would be -- again, the development of the concept would be part of the 40 to $50,000 I mentioned. Going forward, the purchase of these materials by our member owners would be an expense incurred by either them or the charge be passed on to the food service operator, who would be purchasing the kit. In some instances the member owner may opt to purchase the product and give it to the customer or the customer may be required to purchase it. It can happen both ways.

Q. Okay. Mr. Fontana, you testified earlier as -- about the search process that went along with the adoption of the Cobblestone Market Trademark, did you not?

A. Yes.

Q. I believe you testified about what has been marked as Fontana Exhibit No. 8?

A. Yes.

Q. But this is not a document with which you're

familiar before --

A. No, I was not copied on this document and I -- I'm not familiar with this to the best of my recollection.

Q. Are you familiar with any of the search process that took place after that document was generated?

A. In a very general sense that I described.

Q. You've testified I believe that your market is intended to create the impression of an old style market or --

A. Right.

Q. The depiction of the trademark shown in Fontana No. 6 though features the word "Cobblestone" in a larger font size than the word "market," does it not?

A. It does.

Q. Are you aware that during the application process to register your trademark your company disclaimed rights to the word "market"?

A. I'm not aware of that.

MR. HILL: Object to the extent it calls for a legal conclusion. You're asking him about legal matters but to the extent he knows he can answer it.

MR. DAVIS: I understand I'm asking him a factual question.

Q. (By Mr. Davis) Do you know whether the company investigated the availability of the word "market" before proceeding with this trademark?

A. I do not know if they specifically researched the word "market" as a stand-alone market.

MR. HILL: I'll give you two to one odds how that would have ended.

Q. (By Mr. Davis) Based on your experience in the marketing industry, do you believe it's standard practice to roll out a trademark, a brand like this, without conducting a search?

A. Well, there was a search conducted on Cobblestone Market. Your question specifically asked me if there was a search done on the word "market."

Q. Let me rephrase my earlier question then.

A. Thank you.

Q. Was there any search run for Cobblestone Market?

A. I believe there was.

Q. Do you know whether your company has produced that search to us?

A. I believe they have.

Q. Are you certain that that is not the search for Cobblestone Corner?

A. I'm -- I believe you've also seen that search but I'm not certain of everything that's been given to you by our counsel.

Q. Do you believe that there are two trademark searches?

A. I believe there were numerous trademark searches in this process to develop a deli brand for IMA.

Q. Let me show you a document that we have previously marked as Planck Exhibit 6. I'll represent to you that this was a document produced by your counsel to us and that it appears to be a search for Cobblestone Corner. Have you ever seen a corresponding document for Cobblestone Market?

A. Not to my recollection, no.

Q. Okay. You testified earlier about the Mrs. Smith's brand. Your -- are you familiar with that brand?

A. I was told that it would -- that it is one of Flowers Specialties food service brands.

Q. You were told by whom?

A. One of our member companies who distributes the product it buys from Flowers Specialties.

Q. And which one is that?

A. That would be our Conco member.

Q. You've anticipated a -- one of the questions that I'll jump to now. We've had testimony in this case that the parties do have a relationship of sorts on the business side?

A. Of sorts.

Q. What is your understanding of that relationship?

A. Not -- I have a very vague understanding of the relationship other than two of our member companies distributes product from Flowers Specialties through their distribution

companies.

Q. And you've identified one of those already?

A. Yes.

Q. And which is the other?

A. The IGA Company out of Knoxville, Tennessee.

Q. What's your understanding of which products those companies distribute of Flowers Specialties?

A. Vaguely I was told they distribute bulk food service packed product that is really going to prisons as a primary customer and that's what I recollect from my conversation.

Q. And again, by whom were you told this?

A. By Tommy Lamb from our Conco member and through Bob Planck, a conversation he had with a John Combas from the IGA Company.

Q. Based on your employment by -- with Sysco, are you aware of the Block and Barrel brand?

A. Yes.

Q. What's your understanding of the goods sold under that brand?

A. That it is a bundled offering of deli-related items.

Q. And by deli-related items, what do you mean by that?

A. The items that you would typically find in our

Cobblestone Market brand cheeses, meats, pickles, etcetera.

Q. Any bread?

A. I am not sure if Block and Barrel has a bread component to it or not.

Q. Are you familiar with the Sara Lee Company?

A. Somewhat.

Q. Are you aware that Sara Lee sells meat items?

A. Yes.

Q. Are you aware that Sara Lee also has a line of bread items?

A. Yes.

Q. I'll borrow a word that you used earlier. Would you be surprised if a consumer thought that Sara Lee Bread and Sara Lee Meat came from the same company?

A. No.

Q. Is that something you would expect?

A. What?

Q. That a customer encountering Sara Lee Bread and Sara Lee Meat would assume it was the same company?

A. They -- I would assume they would believe it's the same company.

Q. Are you familiar with the Boar's Head brand?

A. Yes.

Q. What is your understanding of the -- what is sold underneath that brand?

A. I believe it's a line of deli meats.
Q. Anything else?
A. I'm not certain.
Q. Do you know their channels -- anything about their channels of distribution?
A. Very little. They're a very -- I really don't understand much about Boar's Head and their products or their distribution channels.
Q. I believe you testified earlier that you were unaware of any instances of actual confusion between the trademarks at issue in this proceeding; is that correct?
A. Right.
Q. What mechanisms does IMA have in place to collect that sort of information?
A. Well, we really don't have any mechanism to do those types of studies.
Q. And to the best of your knowledge, the company has not conducted a scientific survey of consumers' reactions to the two trademarks?
A. No.

MR. DAVIS: Why don't we go off the record.

(Discussion off the record.)

(Brief recess from 11:41 a.m. to 12:02 p.m..)

Q. (By Mr. Davis) We just have a few more questions. I'd like to show you a document, again it's from the file

wrapper history of your trademark application. I don't believe it's been marked as an exhibit yet.

MR. HILL: I think this one is not so we'll --

(Fontana Exhibit No. 16 marked.)

Q. (By Mr. Davis) Mr. Fontana, have you ever seen this document before?

A. I don't believe so.

Q. If you could turn to Page 42, as that document is numbered on the lower right-hand corner, and take a look at the last full paragraph and, in particular, the fourth sentence of that paragraph.

A. Okay. Okay.

Q. There is a reference in that sentence to, I'm going to quote here, "credible probative evidence of widespread significant unrestrained use by third parties."

A. I see that.

Q. Are you aware of any evidence that IMA has collected falling within that category?

A. Concerning Cobblestone Market?

Q. More specifically, any third party use that the company believes is relevant to this proceeding?

MR. HILL: I object as I'm confused but if you know what he's talking about --

A. I don't. I need clarification on the question.

Q. (By Mr. Davis) I'll try and clarify it. Are you

aware of other parties actually using the phrase Cobblestone?

MR. HILL: Parties? People in any period?

Q. (By Mr. Davis) Are you aware of any people who are currently using the word Cobblestone as part of a trademark or a service mark?

A. Yes, Flowers Bakeries.

Q. Any other than Flowers?

A. Not -- no, no entity that I could name.

Q. Just to clarify, my original question was about people. Are you aware of any company that uses the word Cobblestone as part of a trademark or service mark?

A. Flowers Bakery.

Q. Any other company other than Flowers Bakery?

A. IMA.

Q. Any other company other than Flowers or IMA?

A. No.

Q. Thank you. I'd like to jump back to Planck Exhibit 15 or, excuse me, Fontana Exhibit 15.

MR. HILL: Okay.

Q. (By Mr. Davis) And address again the amended identification of goods covered by this application. I'd like to ask you to -- have you review that description and then once you're done ask you a few questions about it.

A. Okay. Go ahead.

Q. Is IMA currently or IMA's members are they

providing deli meats in connection with the Cobblestone Market trademark?

A. Yes.

Q. How is the trademark used in connection with deli meats?

A. I'm not sure I understand the question.

Q. I asked whether you were aware if anybody -- either IMA or its member companies is using Cobblestone Market in connection with deli meats?

A. Yes, they are.

Q. How are they using it?

A. They are using it as portrayed in Exhibit 6 on various deli meat items such as ham and turkey and other meat items.

Q. Is the mark affixed to any packaging in which deli meat is shipped?

A. Yes.

Q. What type of packaging is it?

A. Generally it's a plastic cryovac packaging.

Q. And the trademark is embossed onto that or affixed to it somehow?

A. It's embossed right into the packaging, the plastic cryovac packaging, or it can be a sticker or a label.

Q. Are those packages that you just described enclosed in, say, cardboard boxes as they're shipped?

A. Yes, they are.
Q. What is on the outside of those boxes?
A. Cobblestone Market emblem, logo.
Q. Similar to as it's portrayed in Fontana Exhibit 6?
A. Right.
Q. Moving on to the next item, which appears to be cooked deli items, namely soups, is the company or its member companies currently using the Cobblestone Market mark with soups?
A. Yes.
Q. How is it using the mark with soups?
A. In one instance on corrugate only and on both instances just on the outer corrugate.
Q. And just to clarify things for me and the layperson, by corrugate you mean cardboard?
A. Cardboard.
Q. How would the soups be shipped inside the cardboard box?
A. One is -- one method of packaging is plastic tubs and another are plastic bags.
Q. Moving to the next item, cheese, is the company currently using the Cobblestone Market in association with cheese?
A. Yes.
Q. How is that use being made?

A. Similar to the meat items where the internal packaging will be a wrapped plastic cryovac bag with either it embossed embedded brand or a sticker and it is shipped in printed corrugate, slash, cardboard boxes.

Q. What about the next item, refrigerated salads?

A. They would be packaged with a printed internal carton encased in a Cobblestone corrugate cardboard box.

Q. When you say Cobblestone cardboard corrugate box, do you mean a box with Cobblestone Market on the outside?

A. Yes.

Q. What about the next item, pickles?

A. Pickles would either come in a bulk bucket with a Cobblestone sticker on it or in gallon jars with a Cobblestone sticker on it.

Q. What about bagged potato chips?

A. They are preprinted Cobblestone internal bags in a Cobblestone printed corrugate cardboard case.

Q. What about frozen soups?

A. We did that already.

Q. We did cooked soups. If the answer's the same that's fine.

A. The answer is the same.

Q. Frozen entries?

A. They would be packaged in a metal tray with a Cobblestone sticker on the tray with a Cobblestone corrugate on

the -- for the outer shipper.

Q. For each of the products -- just to clarify, for each of the products that remain in that identification, these uses actually are occurring of the Cobblestone Market mark?

A. Yes, they are.

Q. Are you aware that Pepridge Farm sells frozen entries?

A. No, I'm not.

Q. But you're aware Pepridge Farm sells bread?

A. Yes.

Q. You testified earlier about 1.6 million dollars in advertising. Is that an accurate number?

A. That is an estimate.

Q. Okay. And that was an estimate of advertising for what?

A. For the local marketing spent by our member companies.

Q. And would that be spent on Cobblestone Market goods specifically?

A. Yes.

Q. And just to clarify, what would be the overall budget for advertising for this trademark again?

A. We take the 1.6 million and add it to the 40 or 50,000 dollar total figure that I gave you to come up with the total.

Q. And that total figure would be for Cobblestone Market specifically?

A. Correct.

Q. Okay.

MR. DAVIS: Your witness, Marty.

MR. HILL: Done. Nothing. Off the record.

(Lunch recess from 12:13 p.m. to 1:43 p.m..)

MR. HILL: I think we concluded Mr. Fontana's deposition, trial deposition before lunch but as sort of a agreement and stipulation we're clear on the documents, it's my understanding that the Fontana Exhibit 6, which is produced here, is a clear color copy and that there's a desire that that be attached to Mr. Fontana's current deposition, even though that should be a color copy of the Exhibit 6 that was of Volume 1 of Mr. Fontana's prior deposition; is that right, Ted?

MR. DAVIS: That's correct.

MR. HILL: Okay.

ORAL DEPOSITION TRIAL TESTIMONY OF ROBERT FONTANA

CORRECTION PAGE

VOLUME 2

Please indicate changes on this Signature and Correction Page giving the page and line number, the change, and the reason for the change. Reasons for change are: (1) to clarify the record; (2) to conform to the facts; (3) to correct transcription errors.

PAGE/LINE	CORRECTION	REASON

WITNESS SIGNATURE PAGE

I, Robert Fontana, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the above Correction Page.

ROBERT FONTANA

THE STATE OF TEXAS)

COUNTY OF Harris

Before me Cheryl J. Martin, on this day personally appeared Robert Fontana, known to me (or proved to me under oath or through) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER my hand and seal of office this 26th day of November, 2007.

Notary Public in and for
The State of Texas
My Commission Expires: 10-28-2011

CHERYL J. MARTIN
Notary Public, State of Texas
My Commission Expires
October 28, 2011

THE STATE OF TEXAS

I, Susan L. Graham, Certified Shorthand Reporter in and for the State of Texas, hereby certify that at the time and place stated the witness, Robert Fontana, personally appeared before me and after being by me first duly sworn to tell the truth, was examined by counsel for the respective parties hereto; that the testimony of said witness was taken in shorthand by me, later reduced to typewriting under my direction, and the foregoing pages are a true and correct transcript of said testimony; that the transcript was submitted to the witness to read and sign.

GIVEN under my hand and seal of office on this the 15th day of October, 2007.

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Subject

Re: Oakwood - digging deeper

Rob,
Our process that IMA approved is for us to do a very surface search for all the names we submit. (sometimes we are searching hundreds of names before we submit them to IMA) Our search includes live, singular, plural versions of each name. We use TESS and NameProtect.com.
Our search for Oakwood Deli and then Oakwood Market show no direct hits for the name in its entirety which is how we would use it.

Our process also requests that IMA (or any client) pick a top three just in case the more detailed search doesn't allow us to move further on a specific name, giving us fall back options.

Breaking each name down (if it has more than one name to it) takes additional time, that we understood was Bob's preference to turn over to his attorney once the top three were picked. I did take the time this morning (of course at no additional charge) to break all top three names down:
Oakwood – 62 hits
-1 - Oakwood (foods) out of NY
Market – 2000+
Oakwood Market – 0 hits

Cobblestone – 68 hits
- 1 – Cobblestone Kitchens (foods) out of Canada
- 1 – Cobblestone Mill (bakery) out of Georgia
Corners –503
Cobblestone Corners – 1 hit – Housewares and Glass

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Counter – 991 hits
Classics – 1987 hits
Counter Classics – 4 hits – all cancelled or abondoned

Looking more carefully at the Oakwood document, it appears that this was founded in 1940. The last date of renewal was 1987, back when renewals were good for 20 years (today it's 10).
The company that currently has a trademark for Oakwood is out of Yonkers, NY. I can't find a listing of them in my Food and Beverage Marketplace guide under the company name (which is the same as the owner's name) or the brand name. Further search in our meat and poultry guide for establishment numbers (as a manufacturer) turns up nothing either.
I even called directory assistance in Yonkers and Stamford and came up with no listing under Oakwood or the owner's company name. A web search of company listings in NY turned up nothing.

It appears this company is very small. I checked with NK's trademark attorney and he agrees with the following recommendation:
Further research into the company to find evidence that they still exist.
If they do not, we can easily file a petition to cancel the registration.
If they are in business, and, depending on their specific business (store, manuf., etc.) our filing of Oakwood Market with a broader scope than meats may not be an obstacle.

Will advise on our findings.
Best regards,
Sandy

--
Sandy Klein

Newhall Klein, Inc.
6109 West KL Ave
Kalamazoo, MI 49009
269.544.0844
269.544.0848 fax

sandy@newhallklein.com
http://www.newhallklein.com

From: Rob_Ahrensdorf@shamrockfoods.com
Date: Tue, 13 Apr 2004 16:49:33 -0700
To: sandy@newhallklein.com
Subject: Fw: Oakwood

Sandy,

All the trouble/time of what NHK and I went through and now we can't use Oakwood Market...

Any idea how we could have missed the direct trademark hit on meats for Oakwood in our initial search?

Rob Ahrensdorf
Director Corporate Marketing
Shamrock Foods Corp.
5080 N. 40th Street, Suite 400
Phoenix AZ. 85018
ph: 602-477-2515
fx: 602-477-2535

----- Forwarded by Rob Ahrensdorf/EMKT/ShamrockPhx/US on 04/13/2004 04:46 PM -----

"Bob Planck" <rdplanck@independentmarketingalliance.com> 04/13/2004 04:38 PM
Please respond to
<rdplanck@independentmarketingalliance.com>
To
"Brent Cady \(E-mail\)" <bcady@ijcompany.com>, "Cecelia E. Enault LDN, Rd \(E-mail\)" <cenault@concofoods.com>, "Chadwick, Win \(E-mail\)" <Wchadwick@aol.com>, "Ed Sanford \(E-mail\)" <ecsanfor@reinhartfoodservice.com>, "Fontana, Bob \(E-mail\)" <bfontana@independentmarketingalliance.com>, "Ocana, Ann \(E-mail\)" <annocana@comcast.net>, "Phil Morgan \(E-mail\)" <phil.morgan@malnes.net>, "Planck, Robert \(E-mail\)" <rdplanck@independentmarketingalliance.com>, "Rob Ahrensdorf" <rob_ahrensdorf@shamrockfoods.com>, "Rob Goluba" <Rob_Goluba@shamrockfoods.com>, "Stephen Krefft \(E-mail\)" <skrefft@CONCOFOODS.com>
cc
"Bob Fontana" <bfontana@independentmarketingalliance.com>, "Jim Nesbitt \(Jim Nesbitt\)" <jnesbitt@independentmarketingalliance.com>, "Mike Gentry \(Mike Gentry - Office\)" <mgentry@independentmarketingalliance.com>
Subject
FW: Oakwood

Sorry to be the bearer of bad news but it looks like "Oakwood...." Will not work for us as a deli Brand as it is active for fresh and prepared meats (documents attached). Sounds like it is back to the drawing boards.

Robert D. Planck

MEMORANDUM

To: Bob Planck
From: Bartt Thompson
Date: April 21, 2004
Re: Cobblestone Corner

IMA is considering adopting the use of the trademark "Cobblestone Corner" for deli items such as cooked deli items, cheese, refrigerated salads, refrigerated pickles, deli mustard, bagged potato chips and frozen soups and entrees. These items come under two of the classes for trademark registrations as follows:

Class 29 – Meats and Processed Foods
- Cooked deli items
- Cheese
- Refrigerated salads
- Refrigerated pickles
- Bagged potato chips
- Frozen soups and entrees

Class 30 – Staple foods
- Deli mustard

The Mark "Cobble Stone" or "Cobblestone"

A search for the mark "cobble stone" reveals that there are a few uses of the mark, in each case combined with another word, for products under Class 30:

Mark	Status	Class	Description
Cobblestone Bread	Pending	30	Fresh baguette breads
Cobblestone Mill	Registered	30	Bakery products, namely bread, buns and rolls
Cobblestone Mill Healthy & Hearty	Registered	30	Bakery products, namely Bread
Cobblestone Kitchens	Registered	30	Staple Goods, namely Hot Chocolate and Coffee

There are a couple of uses of the mark, in each case combined with another word, for products under Class 29:

Boston Cobblestone	Registered	29	Cheese
Cobblestone Kitchens	Registered	29	Dairy-Based Food Beverages

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The search also revealed that "cobble stone" is in use for several other products or services outside of Classes 29 and 30. Some examples of these:

Cobblestone Pizza	Pending	42	Restaurant services
Cobblestone Creek	Pending	3	Cosmetic and cleaning (soaps)
Cobblestone Bridge	Registered	16	Paper goods and Printed Matter
" "	"	35	Advertising and Business
" "	"	28	Toys and Sporting goods
(plus several other registrations for Cobblestone Bridge)			
Cobblestone Small Group Tours			
	Registered	39	Transportation and Storage
Cobblestones	Registered	25	Clothing
Cobblestone	Registered	33	Wines and Spirits
Cobblestones	Registered	19	Non-metallic Building Materials
Cobblestone	Registered	42	Golf course services

The use of the mark Cobblestone has established several meanings through the registrations and pending registrations listed above.

The Mark "Cobblestone Corner"
The mark "Cobblestone Corners" was previously registered in 1975 under class 42 and cancelled in April 1982 (registrant was a third party).
The mark "Cobblestone Corner" was subsequently registered in October 1984 by Flowers Industries, Inc., which may be the owner of the mark "Cobblestone Mill" and "Cobblestone Mill Healthy & Hearty" under class 30 for bakery products-namely, breads, buns and rolls. The "Cobblestone Corner" mark was cancelled in February 1991. Finally, in April 2000 the Four Star International Trading Company registered the mark "Cobblestone Corners" under class 21 for collectible figures made of porcelain. This mark is live.

Analysis
As we have previously noted, the trademark rules emphasize the impression that is left with the viewer. When a mark is comprised of a word or words the dominant sounds that the viewer observes is the feature of the mark to be analyzed for purposes of determining likelihood of confusion.

When a word has been used in multiple classes it is said to be diluted since no single owner has sole ownership of the mark. With "cobble stone" or "cobblestone" the word has some dilution since there are several different owners of variations of marks containing the word cobblestone.

With the variations of cobblestone and the fact that the existing "cobblestone corners" is for a different product in a different class IMA should expect the trademark office to raise the existence of the "corner" mark in their investigation. IMA will have to be

prepared to respond that the goods are in different channels, and involve different buyers that are not only not identical, but are not even related.

The examiner will look for the similarity or dissimilarity of the marks as to appearance, sound, connotation and commercial impression and will compare the goods to see if they are related. We believe that IMA has a good chance at getting the mark "Cobblestone Corner" published for opposition under classes 29 and 30 for various deli items, but as you know the success of the registration process often depends on the individual examiner that is assigned the application.

Assuming publication for opposition, the owner of the "Cobblestone Mill" mark for bakery products, and possibly the owner of "Cobblestone Bread" mark for fresh baguette breads could try to oppose registration – note that the owner of "Cobblestone Mill" mark is Flowers Bakeries Brands, Inc. The owner of the "Boston Cobblestone" mark might try to oppose registration as well. We are curious as to why the trademark office did not require a disclaimer of the use of "Cobblestone" without the use of the other words in connection with these registrations. Should an opposition be filed, IMA would show the dissimilarities of the marks and the lack of confusion. We do not think IMA would be accused of trading upon the goodwill of any of these marks.

S:\PDH Files\Active\IMA011Trademarks\Cobblestone Corner\MEMO.20040421.Cobblestone.doc

Document Description: **Application** Mail / Create Date: **09-Jun-2004**

First Page of Doc | Next Page | You are currently on page 1 of 3

PTO Form 1478 (Rev 6/2005)
OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78432642
Filing Date: 06/09/2004

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK	COBBLESTONE MARKET
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	COBBLESTONE MARKET
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Independent Marketing Alliance LP
STREET	16000 Memorial Drive, Suite 200
CITY	Houston
STATE	TX
ZIP/POSTAL CODE	77079
COUNTRY	USA
PHONE	281-531-0007
FAX	281-531-0022
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	LIMITED PARTNERSHIP

FONTANA
EXHIBIT NO. 10
S. GRAHAM

STATE/COUNTRY UNDER WHICH ORGANIZED	Delaware
NAME(S) OF GENERAL PARTNER(S) & CITIZENSHIP/INCORPORATION	Distribution Marketing Services LLC, a Delaware limited liability company
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	029
DESCRIPTION	Deli meats, cooked deli items, cheese, refrigerated salads, pickles, bagged potato chips, frozen soups and entrees
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	030
DESCRIPTION	Deli mustard
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
SIGNATORY FILE	\\ticrs\EXPORT10\IMAGEOUT 10\784 \326\78432642\xml1\ APP0003.JPG
SIGNATORY NAME	Robert D. Planck
SIGNATORY POSITION	President of Distribution Marketing Services LLC, General Partner
PAYMENT SECTION	
NUMBER OF CLASSES	2
NUMBER OF CLASSES PAID	2
SUBTOTAL AMOUNT	670
TOTAL AMOUNT	670
ATTORNEY	
NAME	Bartt G. Thompson
FIRM NAME	Pagel, Davis & Hill, P.C.
STREET	1415 Louisiana, 22nd Floor
CITY	Houston
STATE	TX
ZIP/POSTAL CODE	77002

COUNTRY	USA
PHONE	713-951-0160
FAX	713-951-0662
AUTHORIZED EMAIL COMMUNICATION	No
OTHER APPOINTED ATTORNEY(S)	Martyn B. Hill
CORRESPONDENCE SECTION	
NAME	Bartt G. Thompson
FIRM NAME	Pagel, Davis & Hill, P.C.
STREET	1415 Louisiana, 22nd Floor
CITY	Houston
STATE	TX
ZIP/POSTAL CODE	77002
COUNTRY	USA
PHONE	713-951-0160
FAX	713-951-0662
AUTHORIZED EMAIL COMMUNICATION	No
FILING INFORMATION	
SUBMIT DATE	Wed Jun 09 18:04:27 EDT 2004
TEAS STAMP	USPTO/BAS-64217113118-200 40609180427897573-7843264 2-200f0645184cd6ac39c1e3e 5ea136fcedf0-CC-505-20040 609180035405078

Defendant IMA's Trial Testimony of Robert Fontana

PTO Form 1478 (Rev 6/2005)
OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78432642
Filing Date: 06/09/2004

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of COBBLESTONE MARKET.

The applicant, Independent Marketing Alliance LP, a limited partnership organized under the laws of Delaware, comprising of Distribution Marketing Services LLC, a Delaware limited liability company, residing at 16000 Memorial Drive, Suite 200, Houston, TX, USA, 77079, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 029: Deli meats, cooked deli items, cheese, refrigerated salads, pickles, bagged potato chips, frozen soups and entrees
International Class 030: Deli mustard

The applicant hereby appoints Bartt G. Thompson and Martyn B. Hill of Pagel, Davis & Hill, P.C., 1415 Louisiana, 22nd Floor, Houston, TX, USA, 77002 to submit this application on behalf of the applicant.

A fee payment in the amount of $670 will be submitted with the application, representing payment for 2 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the

goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature:
Signatory's Name: Robert D. Planck
Signatory's Position: President of Distribution Marketing Services LLC, General Partner

Signatory's Signature: Signature

Mailing Address:
Bartt G. Thompson
1415 Louisiana, 22nd Floor
Houston, TX 77002

RAM Sale Number: 505
RAM Accounting Date: 06/10/2004

Serial Number: 78432642
Internet Transmission Date: Wed Jun 09 18:04:27 EDT 2004
TEAS Stamp: USPTO/BAS-64217113118-200406091804278975
73-78432642-200f0645184cd6ac39c1e3e5ea13
6fcedf0-CC-505-20040609180035405078

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***NOTE**: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.*

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/432642

APPLICANT: Independent Marketing Alliance LP

JAN 10 2005

CORRESPONDENT ADDRESS:
Bartt G. Thompson
Pagel, Davis & Hill, P.C.
1415 Louisiana, 22nd Floor
Houston, TX 77002

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: COBBLESTONE MARKET

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

RE: Serial Number 78/432642

The assigned trademark examining attorney has reviewed the referenced application and has determined the following.

Likelihood of Confusion – Section 2(d)

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 1037938, 1920539, and 2741252. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq*. See the enclosed registrations.

A likelihood of confusion determination requires a two-part analysis. First the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq*.

FONTANA
EXHIBIT NO. 11
S. GRAHAM

Here, applicant has applied to register the mark COBBLESTONE MARKET.

The mark in U.S. Registration No. 1037938 is BOSTON COBBLESTONE.

The mark in U.S. Registration No. 1920539 is COBBLESTONE KITCHENS.

The mark in U.S. Registration No. 2741252 is COBBLESTONES RESTAURANT & BAR

Comparison of the Marks

The applicant's mark is highly similar to the registrants' marks and will lead to consumer confusion. Specifically, the marks are similar in that COBBLESTONE(S) is the dominant portion of each mark. The marks are compared in their entireties under a Section 2(d) analysis. Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); TMEP §1207.01(b)(viii). The dominant portions are virtually identical in sound appearance and meaning, except for Registration No. 2741252, which simply uses COBBLESTONE in the plural.

Accordingly, since the marks are so similar in sound, appearance and overall commercial impression, confusion as to source is likely.

Comparison of the Goods and Services

Here, the applicant's goods are highly related to the goods and services of the registrants. The applicant's goods are deli meats, cooked deli items, cheese, refrigerated salads, pickles, bagged potato chips, frozen soups and entrees; deli mustard.

The goods in U.S. Registration No. 1037938 are cheese. In this case, applicant also has cheese. Thus it appears that registrant and applicant have identical goods.

The goods in U.S. Registration No. 1920539 are staple goods, namely, hot chocolate and coffee; dairy-based food beverages. The services in U.S. Registration No. 2741252 are restaurant services; catering services; take-out services; providing banquet and social function facilities. Many entities provide both the type of goods or services provided by each registrant as well as the type of goods provided by applicant. In this regard, attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods and/or services as those of applicant and the registrants in this case. These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein are of a kind that may emanate from a single source. *In re Infinity Broadcasting Corp. of Dallas*, 60 USPQ2d 1214, 1218 (TTAB 2001), *citing In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 at n.6 (TTAB 1988).

Please also note that the goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods and/or services come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

Accordingly, registration must be refused because the average purchaser would be likely to conclude that applicant's goods and the goods and services in the cited registrations emanate from a common source.

Prior Pending Applications

Additionally, information regarding pending Application Serial Nos. 78348740 and 76589400 is enclosed. The effective filing dates of the referenced applications precede the applicant's filing date. There may be a likelihood of confusion under Trademark Act Section 2(d) between applicant's mark and the referenced marks. If one or more of the referenced applications mature into a registration, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208.01 and 1208.01(b).

Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. If applicant chooses to respond to the refusal(s) to register, then applicant must also respond to the following requirement(s).

Identification of Goods

Some of the wording in the identification of goods needs clarification because it is overly broad. Specifically, "cooked deli items" is overly broad. Applicant must specify the common commercial name for the goods. TMEP §1402.01.

"Refrigerated salads" in the identification also is overly broad. In this regard, applicant must specify the type of salads. Please note that some salads, e.g., macaroni salad are in Class 30.

Applicant also must specify the type of frozen entrees. In this regard, please note that some entrees are in Class 30, e.g. frozen entrees consisting primarily of rice.

Applicant may adopt the following identification, if accurate:

Deli meats; cooked deli items, namely, _____ [specify common commercial name for each item]; cheese; refrigerated salads, namely, _____ [specify type, e.g., "salads except macaroni, rice, and pasta salad]; pickles, bagged potato chips, frozen soups; frozen entrees, namely, entrees consisting primarily of meat, fish, poultry or vegetables, in Class 29

Deli mustard, in Class 30.

Please note that, while the identification of goods may be amended to clarify or limit the goods, adding to the goods or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may **not amend the identification to include goods that are not within the scope of the goods set forth in the present identification.**

Additionally, please note that fees are based upon the number of classes covered in an application. If applicant adopts a suggested description of goods that covers more than two classes, then an additional fee will be required. In this regard, applicant should note the following multiple-classification requirements.

Multiple-classification Requirements

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b):

(1) Applicant must list the goods and/or services by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and

(2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid. 37 C.F.R. §2.86(a)(2); TMEP §§810.01 and 1403.01.

Disclaimer

Applicant must disclaim the descriptive wording "MARKET" apart from the mark as shown because it merely describes a feature of applicant's goods. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a). Specifically, it appears the goods will be sold in a market.

The Office can require an applicant to disclaim exclusive rights to an unregistrable part of a mark, rather than refuse registration of the entire mark. Trademark Act Section 6(a), 15 U.S.C. §1056(a). Under Trademark Act Section 2(e), 15 U.S.C. §1052(e), the Office can refuse registration of the entire mark where it is determined that the entire mark is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. Thus, the Office may require the disclaimer of a portion of a mark which, when used in connection with the goods or services, is merely descriptive, deceptively misdescriptive, primarily geographically descriptive, or otherwise unregistrable (e.g., generic). TMEP §1213.03(a). If an applicant does not comply with a disclaimer requirement, the Office may refuse registration of the entire mark. TMEP §1213.01(b).

A disclaimer does *not* physically remove the disclaimed matter from the mark, but rather is a written statement that applicant does not claim exclusive rights to the disclaimed wording and/or design separate and apart from the mark as shown in the drawing.

The computerized printing format for the Office's *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use "MARKET" apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm'r Pats. 1983).

If applicant has any questions, please do not hesitate to contact the undersigned.

/mld/

Maureen L. Dall
Trademark Attorney, Law Office 110
United States Patent and Trademark Office
Phone: 571-272-9714

NOTICE: TRADEMARK OPERATION RELOCATION

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at http://www.uspto.gov/teas/index.html.

How to respond to this Office Action:

You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit http://eteas.uspto.gov/V2.0/oa242/WIZARD.htm and follow the instructions therein, but you must wait until at least 72 hours after receipt if the office action issued via e-mail). PLEASE NOTE: Responses to Office Actions on applications filed under the Madrid Protocol (Section 66(a)) **CANNOT** currently be filed via TEAS.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at **http://tarr.uspto.gov/**

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at **http://www.uspto.gov/main/trademarks.htm**

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/432642

APPLICANT: Independent Marketing Alliance LP

AUG 2 2005

CORRESPONDENT ADDRESS:
Bartt G. Thompson
Pagel, Davis & Hill, P.C.
1415 Louisiana, 22nd Floor
Houston, TX 77002

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: COBBLESTONE MARKET

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and email address.

RE: Serial Number 78/432642

EXAMINER'S AMENDMENT

OFFICE RECORDS SEARCH: The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

ADVISORY – AMENDMENTS TO GOODS/SERVICES: If the identification of goods and/or services has been amended below, any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

AMENDMENT(S) AUTHORIZED: As authorized by Bartt G. Thompson on August 1, 2005, the application is amended as noted below. *If applicant disagrees with or objects to any of the amendments below, please notify the undersigned trademark examining attorney immediately.* Otherwise, no response is necessary. TMEP §707.

Identification of Goods

The identification of goods is amended to read as follows. TMEP §1402.01.

FONTANA
EXHIBIT NO. 12
S. GRAHAM

Deli meats; cooked deli items, namely, soups, and vegetables; cheese; refrigerated salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely, entrees consisting primarily of meat, fish, poultry or vegetables, in Class 29.

Deli mustard; cooked deli items, namely, sandwiches, in Class 30.

Please also note that the refusal under Section 2(d) is withdrawn and the citation of the pending applications is withdrawn. The disclaimer of "MARKET" is acknowledged.

If applicant has any questions, please do not hesitate to contact the undersigned.

/mld/

Maureen L. Dall
Trademark Attorney, Law Office 110
United States Patent and Trademark Office
Phone: 571-272-9714

COBBLESTONE MARKET™

SALAD BAR TOPPING
SHREDDED IMITATION CHEDDAR CHEESE

KEEP
REFRIGERATED

7"

Nutrition Facts

Serving Size 1/3 cup (28g)
Servings Per Container About 80

Amount Per Serving	
Calories 80	Calories from Fat 40
	% Daily Value*
Total Fat 4.5g	7%
Saturated Fat 1g	5%
Trans Fat 1.5g	
Cholesterol 0mg	0%
Sodium 270mg	11%
Total Carbohydrate 9g	3%
Dietary Fiber 0g	0%
Sugars 3g	
Protein 0g	
Vitamin A 6% • Vitamin C 0%	
Calcium 2% • Iron 0%	

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less Than	65g	80g
Sat. Fat	Less Than	20g	25g
Cholesterol	Less Than	300mg	300mg
Sodium	Less Than	2,400mg	2,400mg
Total Carb.		300g	375g
Dietary Fiber		25g	30g

INGREDIENTS: WATER, MODIFIED FOOD STARCH, PARTIALLY HYDROGENATED SOYBEAN OIL, WHEY, MALTODEXTRIN, CORN SYRUP, SALT, POTATO STARCH AND POWDERED CELLULOSE ADDED TO PREVENT CAKING, GUAR GUM, LOCUST BEAN GUM, CARRAGEENAN, SODIUM HEXAMETAPHOSPHATE, ENZYME-MODIFIED CHEESE (CULTURED MILK, SKIM MILK, WATER, CREAM, SALT, SODIUM CITRATE, SODIUM PHOSPHATE, SORBIC ACID [PRESERVATIVE], LACTIC ACID, CITRIC ACID, ACETIC ACID, ARTIFICIAL COLOR, ENZYMES), SORBIC ACID (PRESERVATIVE), ARTIFICIAL COLOR, ARTIFICIAL FLAVOR.

CONTAINS MILK, SOY.

Marketed by
Independent Marketing Alliance
Houston, TX 77079

H160N

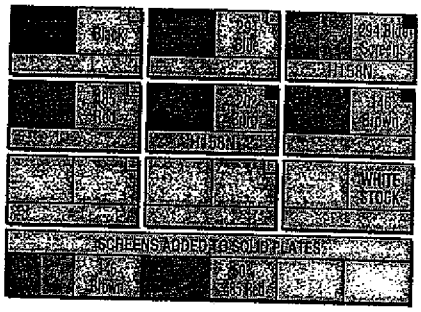
NET WT. 5 LBS.
(2.27 kg)

FOR POSITION ONLY
8 22486 11640 8

3"

1/16" Bleed
1/8" Corner Radius

* 20 LB SLAB
* 5 LB & 10 LB CHUB
* 2 LB & 5LB
INTERNAL SHREDDED



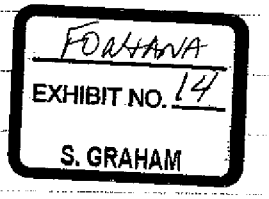
FONTANA
EXHIBIT NO. 13
S. GRAHAM

Brand Positioning Statement

Cobblestone Market

Is the place for delicious deli meats, cheeses, pickles, fresh salads, and more

Our Premium quality and consistency will remind everyone of their favorite neighborhood deli.



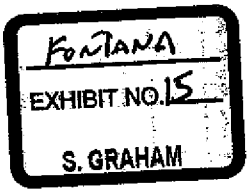
Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA105335**

Filing date: **10/20/2006**

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

Proceeding	91167151
Party	Defendant Independent Marketing Alliance LP Independent Marketing Alliance LP 16000 Memorial Drive, Suite 200 Houston, TX 77079
Correspondence Address	Bartt G. Thompson Pagel, Davis & Hill, P.C. 1415 Louisiana, 22nd Floor Houston, TX 77002 mbh@pdhlaw.com
Submission	Motion to Amend Application
Filer's Name	Martyn B. Hill
Filer's e-mail	mbh@pdhlaw.com
Signature	/s/ Martyn B. Hill
Date	10/20/2006
Attachments	PLD0.20061020.MOT to Amend Application.pdf (3 pages)(12337 bytes)



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

FLOWERS BAKERIES BRANDS, INC.,	)	Opposition No. 91167151
Opposer	)	
v.	)	In the Matter of Application Serial No. 78/432642 Mark: COBBLESTONE MARKET
INDEPENDENT MARKETING ALLIANCE LP,	)	
Applicant.	)	Filing Date: December 6, 2005 Published: September 20, 2005

APPLICANT'S UNOPPOSED MOTION
FOR LEAVE TO AMEND APPLICATION

Now comes Applicant, Distribution Marketing Services, L.P., formerly Independent Marketing Alliance, L.P., and submits this Unopposed Motion for Leave to Amend Application pursuant to 37 C.F.R. §2.133. Applicant seeks to amend its Intent to Use Application ("Application") because Applicant believes it is entitled to registration of the mark, COBBLESTONE MARKET, as amended. Opposer has consented to the proposed amended application but otherwise reserves all rights.

The amendment of any application or registration which is the subject of an inter partes proceeding before the Trademark Trial and Appeal Board (the "Board") is governed by 37 C.F.R. §2.133. TBMP §514.01. 37 C.F.R. §2.133 permits an applicant to request that the identification of goods and services in its own application be restricted, if such a restriction would avoid likelihood of confusion. *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990). The application will be amended as long as the amendment is supported by or is not inconsistent with evidence adduced at trial. *Id.*

A proposed amendment to any application or registration that is the subject of an inter partes proceeding must also comply with all other applicable rules and statutory provisions. TBMP §514.01. Section 2.71(a) of the Rules of Practice in Trademark Cases permits an applicant to amend its application to clarify or limit, but not broaden, the identification of goods and/or services. 37 C.F.R. §2.71(a). Again, Opposer has consented to the proposed amended application.

Applicant requests that the identification of goods in its Application be amended as follows:

(a) "Deli meats; cooked deli items, namely, soups~~, and vegetables~~; cheese; refrigerated salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely, entrees consisting primarily of meat, fish, poultry or vegetables, in Class 29"

(b) "~~Deli mustard; cooked deli items, namely sandwiches, in Class 30~~"

By removing the stricken text above from the identification of goods, the proposed amendment to the Application limits the identification of goods and, therefore, is proper under 37 C.F.R. §2.71. The proposed amendment makes no attempt to broaden the identification of goods or services and the mark, as amended, is not likely to cause confusion with the mark for Opposer's goods.

Applicant believes the Application, as amended, will narrow the issues in dispute before the Board thereby saving time and resources of the parties and the Board. Applicant therefore requests approval of the amendment by the Board. Should the Board find that additional amendment to the Application is necessary, Applicant

respectfully requests that the Board allow Applicant to amend its Application to conform to the findings of the Board.

Respectfully submitted,

/s/ Martyn B. Hill
Martyn B. Hill
Bartt G. Thompson
PAGEL, DAVIS & HILL, P.C.
1415 Louisiana, 22nd Floor
Houston, Texas 77002
Telephone: 713-951-0160
Facsimile: 713-951-0662
Attorneys for Applicant

CERTIFICATE OF SERVICE

This is to certify that on this the 20th day of October, 2006, a copy of this Unopposed Motion for Leave to Amend Application was served via facsimile upon:

Theodore H. Davis Jr.
Olivia Maria Baratta
KILPATRICK STOCKTON, LLP
1100 Peachtree Street
Atlanta, Georgia 30309-4530

/s/ Marty B. Hill
Martyn B. Hill

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: December 8, 2006

Opposition No. 91167151

Flowers Bakeries Brands, Inc.

v.

Independent Marketing Alliance LP

Frances S. Wolfson, Interlocutory Attorney:

On October 20, 2006, applicant filed a proposed amendment to its application Serial No. 78432642, with opposer's consent.

By the proposed amendment applicant seeks to change the identification of goods from "Deli meats; cooked deli items, namely, soups, and vegetables; cheese; refrigerated salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely, entrees consisting primarily of meat, fish, poultry or vegetables; Deli mustard; cooked deli items, namely, sandwiches " to "Deli meats; cooked deli items, namely, soups; cheese; refrigerated salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely, entrees consisting primarily of meat, fish, poultry or vegetables."

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(b), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a). Please note that because opposer's written consent to the abandonment is not of record, that *with respect to goods of Class 30 only*, judgment is hereby entered against applicant, the opposition is sustained and registration is refused. See Trademark Rule 2.135; TBMP § 602.01 (2d ed. rev. 2004).

If this resolves the dispute herein, opposer is allowed until thirty days from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended. See Trademark Rule 2.106(c).

Opposer's consented motion (filed September 20, 2006) for leave to amend the notice of opposition is hereby granted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: INDEPENDENT MARKETING ALLIANCE LP

SERIAL NO.: 78/432,642 CLASSES: 29, 30

FILED: June 9, 2004 EXAMINER: Dall, M.

MARK: COBBLESTONE MARKET LAW OFFICE: 110

AMENDMENT "A"

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

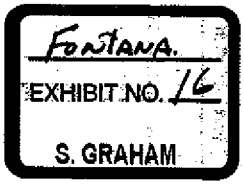
In response to the Official Action of January 10, 2005, a response being due by July 10, 2005, please amend the above-identified application as follows:

IN THE APPLICATION

In the identification of the Applicant, please insert the following names of the general partners -- having Distribution Marketing Services GP, L.L.C., a limited liability company of Delaware, as its general partner.--.

In the identification of goods in International Class 29, please delete the previous recitations and insert therefor -- Deli meats; cooked deli items, namely, sandwiches, soups, and vegetables; cheese; salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely, entrees consisting primarily of meat, fish, poultry or vegetables, in International Class 29.--.

Please insert the following disclaimer -- No claim is made to the exclusive right to use "MARKET" apart from the mark as shown.--.



INFORMALITIES

In reply to the Official Action, Applicant has amended the present application so as to comply with the Examiner's requirements. In particular, Applicant has amended the identification of goods in order to comply with the Examiner's suggestions. Applicant has also amended the application to include the name and citizenship of the general partner. Applicant has further included a disclaimer of the descriptive term "MARKET".

REMARKS

In the Official Action, the Examiner has initially refused registration on the Principal Register because of the "likelihood of confusion" of the mark with three prior registered marks. As to each mark, Applicant's attorney disagrees, and believes that the Examiner has failed to make a *prima facie* showing of likelihood of confusion.

I. No likelihood of confusion between Applicant's mark and U.S. Reg. No. 1,037,938

A. The marks are dissimilar in appearance

In making the argument for the rejection as to confusing similarity, the Examiner points to only a portion of the mark, specifically the term "COBBLESTONE". However, Applicant's mark is "COBBLESTONE MARKET" and the cited registrant's mark is "BOSTON COBBLESTONE", as such the mark must be reviewed for likelihood of confusion as a whole and should not be broken into component parts to reach a conclusion of confusing similarity. *In re Hearst Corp.*, 25 U.S.P.Q.2d 1238, 1239 (Fed. Cir. 1992) ("marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight.". . . ."When GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely.). It is well established that there is nothing improper, under certain circumstances, to give more or less

weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed.Cir. 1985). The cited registrant's mark is the word mark "BOSTON COBBLESTONE". Applicant's mark is for the word mark "COBBLESTONE MARKET". Accordingly, the marks are obviously not similar in appearance, connotation, or sound. As such, the Applicant feels that the above arguments show that the marks are not similar enough for a finding of a likelihood of confusion.

B. Applicant's mark and the reference mark differ in commercial impression

It is conceded that Applicant's mark and the reference mark share the common term "COBBLESTONE". It is submitted, however, that Applicant's mark and the reference mark differ in commercial impression because an addition, subtraction or substitution of letters or words, may or may not be sufficient to make the marks dissimilar in appearance, depending on the overall commercial impression given to the relevant public. T.M.E.P. § 1207.01(b)(ii). It is also well established that there is nothing improper, under certain circumstances, to give more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed.Cir. 1985).

The cited registrant's mark is a word mark consisting of the term "BOSTON COBBLESTONE" for use in association with cheese. The commercial impression of the cited registrant's mark is the mental image of a northeastern area handmade cheese. The term "COBBLESTONE" is often used to suggest a handcrafted good similar to old cobblestone roads, and the use of the term "BOSTON" is often used as a positive suggestive term for association with the northeastern United States area products. More importantly, since Boston is not particularly known for producing cheese (notice the registrant is a Wisconsin company),

Defendant IMA's Trial Testimony of Robert Fontana

consumers would retain and recognize the "BOSTON" portion of the mark over the laudatory "COBBLESTONE" portion of the mark.

The Applicant's mark is for the term "COBBLESTONE MARKET" in association with deli meats, cooked deli items, cheese, salads pickles, potato chips, soups, entrees, and mustard, in International Classes 29 and 30. The commercial impression is different because the mark "COBBLESTONE MARKET" is a suggestive term used to associate the goods of the Applicant with the impression of handcrafted goods being offered for sale in a market or delicatessen.

The marks "COBBLESTONE MARKET" and "BOSTON COBBLESTONE" are not similar in either appearance, spelling, pronunciation, or commercial impression to the degree to cause confusion between the two. The marks also have distinct meanings that are separate and independent of each other. As can be seen from the above arguments, there is no likelihood of confusion.

C. Third party usage evidence shows that "COBBLESTONE" is a weak mark

The cited registration is for the common term "BOSTON" in conjunction with another common term "COBBLESTONE". The connection between the Applicant's mark and the cited registration which forms the basis of the Examiner's refusal is the same term "COBBLESTONE". The term "COBBLESTONE" in relation to trademarks has a varied and widespread use. The TTAB has given weight to credible and probative evidence of widespread, significant, and unrestrained use by third parties of marks containing elements in common to demonstrate that confusion is not, in fact, likely. *Miles Labs. Inc. v. Naturally Vitamin Supplements Inc.*, 1 U.S.P.Q.2d 1445, 1462 (TTAB 1986). Applicant contends that the mark "COBBLESTONE" is a weak mark which is used to describe numerous goods and services outside of the scope of the

Registrant's goods. The accompanying sample of a *TESS* list of registrations and applications (80 Records) is probative to demonstrate that the term "COBBLESTONE" has been adopted by a number of other users as a good or service designation. *Attached hereto as Attachment "A".* In the case of weak marks, even slight differences between the marks may be deemed sufficient to avoid a finding that confusion is likely. *See In re Dayco Products -Eaglemotive Inc.*, 9 U.S.P.Q.2d 1910, 1912 (TTAB 1988) ("As such, we find the term to be a relatively weak mark and we agree with applicant that the scope of protection afforded such a mark is considerably narrower than that afforded a more arbitrary designation."); *see also In re Copytele Inc.*, 31 U.S.P.Q.2d 1540, 1542 (TTAB 1994). The Applicant's mark includes the additional term "MARKET" to make the mark "COBBLESTONE MARKET". Due to the dilute nature of the mark "COBBLESTONE" the scope of protection afforded such a mark is considerably narrower than that afforded a more arbitrary designation. As such, the additions and deletions in the Applicant's mark are as such that the purchasing consumer would not be confused as to the source of the respective goods. The term "COBBLESTONE" is a very dilute mark similar to such a degree that the public is inundated with this term in day to day life on an assortment of goods and services, and therefore it should be granted very narrow protection on this basis. As can be seen from the above arguments, there is no likelihood of confusion.

II. No likelihood of confusion between Applicant's mark and U.S. Reg. No. 1,920,539

A. The marks are dissimilar in appearance

In making the argument for the rejection as to confusing similarity, the Examiner points to only a portion of the mark, specifically the term "COBBLESTONE". However, Applicant's mark is "COBBLESTONE MARKET" and the cited registrant's mark is "COBBLESTONE

Defendant IMA's Trial Testimony of Robert Fontana

KITCHENS", as such the mark must be reviewed for likelihood of confusion as a whole and should not be broken into component parts to reach a conclusion of confusing similarity. *In re Hearst Corp.*, 25 U.S.P.Q.2d 1238, 1239 (Fed. Cir. 1992) ("marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight.". . . ."When GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely.). It is well established that there is nothing improper, under certain circumstances, to give more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed.Cir. 1985). The cited registrant's mark is the word mark "COBBLESTONE KITCHENS". Applicant's mark is for the word mark "COBBLESTONE MARKET". Accordingly, the marks are obviously not similar in appearance, connotation, or sound. As such, the Applicant feels that the above arguments show that the marks are not similar enough for a finding of a likelihood of confusion.

B. Applicant's mark and the reference mark differ in commercial impression

It is conceded that Applicant's mark and the reference mark share the common term "COBBLESTONE ". It is submitted, however, that Applicant's mark and the reference mark differ in commercial impression because an addition, subtraction or substitution of letters or words, may or may not be sufficient to make the marks dissimilar in appearance, depending on the overall commercial impression given to the relevant public. T.M.E.P. § 1207.01(b)(ii). It is also well established that there is nothing improper, under certain circumstances, to give more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed.Cir. 1985).

The cited registrant's mark is a word mark consisting of the term "COBBLESTONE

KITCHENS" used in association with hot chocolate, coffee, and dairy based beverages. The commercial impression of the cited registrant's mark is the idea of a handmade kitchen or restaurant. The term "COBBLESTONE" is often used to suggest a handcrafted good similar to old cobblestone roads, and the use of the term "KITCHENS" is often used to describe restaurants.

The Applicant's mark is for the term "COBBLESTONE MARKET" in association with deli meats, cooked deli items, cheese, salads pickles, potato chips, soups, entrees, and mustard, in International Classes 29 and 30. The commercial impression is different because the mark "COBBLESTONE MARKET" is a suggestive term used to associate the goods of the Applicant with the impression of handcrafted goods being offered for sale in a market or delicatessen.

The marks "COBBLESTONE MARKET" and "COBBLESTONE KITCHENS" are not similar in either appearance, spelling, pronunciation, or commercial impression to the degree to cause confusion between the two. The marks also have distinct meanings that are separate and independent of each other. As can be seen from the above arguments, there is no likelihood of confusion.

C. Different channels of trade

Relatedness, or channels of trade, means, in this context, that the goods or services of applicant and the registrant are related in some manner or some circumstance surrounding the marketing such that they are likely to be encountered by the relevant public under circumstances that will give rise to the mistaken belief that they originate from or in some way are associated with or sponsored by the same producer. The nature of the respective party's goods or services, and thus their relatedness, is determined on the basis of the goods or services set forth in the

application or registration. *In re Dixie Restaurants Inc.*, 41 U.S.P.Q.2d 1531, 1534 (Fed. Cir. 1997)("Indeed, the second *DuPont* factor expressly mandates consideration of the similarity or dissimilarity of the services as described in an application or registration."). Applicant's channels of trade are limited to deli meats, cooked deli items, cheese, salads pickles, potato chips, soups, entrees, and mustard. The cited registrant's channels of trade are for restricted to hot chocolate, coffee, and dairy based beverages. These goods are not related in function and would never be purchased at the same time, nor would they be encountered by the relevant public under circumstances that will give rise to the mistaken belief that they originate from or in some way are associated with or sponsored by the same producer.

The Examiner is correct in stating that the goods need not be identical or directly competitive to find confusion, as they need only be related in some matter that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. The Applicant respectfully asserts that the Examiner is incorrect in stating "The goods of the applicant and of the registrants' are similar if not identical in that all of the marks in question are for health consumable related items...The goods of the applicant and of the registrant are likely to travel in the same channels of trade, namely, health food stores, grocery stores, et al.". *See Examiner's Official Action at Page 2.* The Applicant respectfully disagrees with this reasoning. By using this same rationale, it could be said that a purchaser at a large store could come into contact with goods as different as a bottle of aspirin and a package of ground beef. Is a consumer going to be confused between a company that makes aspirin and a company that packages ground beef as to believe they come from the same source? The answer is no. This same rationale would support a finding of a likelihood of

confusion between the cited registrant's goods and such varied goods as bread, beer and salad dressing,...etc. Just because the Applicant's goods and the cited registrant's goods may be orally consumed by humans does not mean these goods travel in the same channels of trade. Nor does the fact that a modern supermarket with goods as various as makeup and dog food support that the goods travel in the same channels of trade. It is well settled that the fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). A wide variety of products, not only from different manufacturers within an industry, but also from diverse industries, have been brought together in the modern supermarket for the convenience of the consumer. The mere existence of such an environment should not foreclose further inquiry into the likelihood of confusion arising from the use of similar marks on any goods so displayed. *See Id.* As such, as can be seen from the above arguments, there is no likelihood of confusion.

D. Third party usage evidence shows that "COBBLESTONE" is a weak mark

The cited registration is for the common word "COBBLESTONE" in conjunction with another common term "KITCHENS". The connection between the Applicant's mark and the cited registration which forms the basis of the Examiners refusal is the same term "COBBLESTONE". The term "COBBLESTONE" in relation to trademarks has a varied and widespread use. The TTAB has given weight to credible and probative evidence of widespread, significant, and unrestrained use by third parties of marks containing elements in common to demonstrate that confusion is not, in fact, likely. *Miles Labs. Inc. v. Naturally Vitamin Supplements Inc.*, 1 U.S.P.Q.2d 1445, 1462 (TTAB 1986). Applicant contends that the mark

"COBBLESTONE" is a weak mark which is used to describe numerous goods and services outside of the scope of the Registrant's goods. The accompanying sample of a *TESS* list of registrations and applications (80 Records) is probative to demonstrate that the term "COBBLESTONE" has been adopted by a number of other users as a good or service designation. *Attached hereto as Attachment "A".* In the case of weak marks, even slight differences between the marks may be deemed sufficient to avoid a finding that confusion is likely. *See In re Dayco Products -Eaglemotive Inc.*, 9 U.S.P.Q.2d 1910, 1912 (TTAB 1988) ("As such, we find the term to be a relatively weak mark and we agree with applicant that the scope of protection afforded such a mark is considerably narrower than that afforded a more arbitrary designation."); *see also In re Copytele Inc.*, 31 U.S.P.Q.2d 1540, 1542 (TTAB 1994). The Applicant's mark includes the additional term "MARKET" to make the mark "COBBLESTONE MARKET". Due to the dilute nature of the mark "COBBLESTONE", the scope of protection afforded such a mark is considerably narrower than that afforded a more arbitrary designation. As such, the additions and deletions in the Applicant's mark are as such that the purchasing consumer would not be confused as to the source of the respective goods. The term "COBBLESTONE" is a very dilute mark similar to such a degree that the public is inundated with this term in day to day life on an assortment of goods and services, and therefore it should be granted very narrow protection on this basis. As can be seen from the above arguments, there is no likelihood of confusion.

III. No likelihood of confusion between Applicant's mark and U.S. Reg. No. 2,741,252

A. The marks are dissimilar in appearance

In making the argument for the rejection as to confusing similarity, the Examiner points

Defendant IMA's Trial Testimony of Robert Fontana

to only a portion of the mark, specifically the term "COBBLESTONE". However, Applicant's mark is "COBBLESTONE MARKET" and the cited registrant's mark is "COBBLESTONE RESTAURANT & BAR", as such the mark must be reviewed for likelihood of confusion as a whole and should not be broken into component parts to reach a conclusion of confusing similarity. *In re Hearst Corp.*, 25 U.S.P.Q.2d 1238, 1239 (Fed. Cir. 1992) ("marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight."... ."When GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely.). It is well established that there is nothing improper, under certain circumstances, to give more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed.Cir. 1985). The cited registrant's mark is the word mark "COBBLESTONE RESTAURANT & BAR". Applicant's mark is for the word mark "COBBLESTONE MARKET". Accordingly, the marks are obviously not similar in appearance, connotation, or sound. As such, the Applicant feels that the above arguments show that the marks are not similar enough for a finding of a likelihood of confusion.

B. Applicant's mark and the reference mark differ in commercial impression

It is conceded that Applicant's mark and the reference marks share the common term "COBBLESTONE ". It is submitted, however, that Applicant's mark and the reference mark differ in commercial impression because an addition, subtraction or substitution of letters or words, may or may not be sufficient to make the marks dissimilar in appearance, depending on the overall commercial impression given to the relevant public. T.M.E.P. § 1207.01(b)(ii). It is also well established that there is nothing improper, under certain circumstances, to give more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224

USPQ 749 (Fed.Cir. 1985).

The cited registrant's mark is a word mark consisting of the term "COBBLESTONE RESTAURANT & BAR" used in association with restaurant services. The commercial impression of the cited registrant's mark is the idea of an old eatery and bar. The term "COBBLESTONE" is often used to suggest a handcrafted good similar to old cobblestone roads, and the use of the term "RESTAURANT & BAR" is obviously used to describe restaurant and bar services.

The Applicant's mark is for the term "COBBLESTONE MARKET" in association with deli meats, cooked deli items, cheese, salads pickles, potato chips, soups, entrees, and mustard, in International Classes 29 and 30. The commercial impression is different because the mark "COBBLESTONE MARKET" is a suggestive term used to associate the goods of the Applicant with the impression of handcrafted goods being offered for sale in a market or delicatessen.

The marks "COBBLESTONE MARKET" and "COBBLESTONE RESTAURANT & BAR" are not similar in either appearance, spelling, pronunciation, or commercial impression to the degree to cause confusion between the two. The marks also have distinct meanings that are separate and independent of each other. As can be seen from the above arguments, there is no likelihood of confusion.

C. Different channels of trade

Relatedness, or channels of trade, means, in this context, that the goods or services of applicant and the registrant are related in some manner or some circumstance surrounding the marketing such that they are likely to be encountered by the relevant public under circumstances that will give rise to the mistaken belief that they originate from or in some way are associated

with or sponsored by the same producer. The nature of the respective party's goods or services, and thus their relatedness, is determined on the basis of the goods or services set forth in the application or registration. *In re Dixie Restaurants Inc.*, 41 U.S.P.Q.2d 1531, 1534 (Fed. Cir. 1997)("Indeed, the second *DuPont* factor expressly mandates consideration of the similarity or dissimilarity of the services as described in an application or registration."). Applicant's channels of trade are limited to deli meats, cooked deli items, cheese, salads pickles, potato chips, soups, entrees, and mustard. The cited registrant's channels of trade are for restricted to restaurant services. There is no *per se* rule which mandates a finding that confusion is likely whenever foods and restaurant services are sold under similar marks. *See, e.g.: Jacobs v. International Multifoods Corp.*, 668 F.2d 1234, 212 USPQ 641 (CCPA 1982) [no likelihood of confusion between BOSTON TEA PARTY for tea and BOSTON SEA PARTY for restaurant services; "a party must show something more than that similar or even identical marks are used for food products and for restaurant services"]; and *In re Central Soya Company, Inc.*, 220 USPQ 914 (TTAB 1984) [no likelihood of confusion between POSADA (stylized) for Mexican style prepared frozen enchiladas and LA POSADA for lodging and restaurant services]. The Examiner has not shown the requisite "something more" other than the alleged similar marks used for food products and restaurant services. These goods and services are not related in function and would never be purchased at the same time, nor would they be encountered by the relevant public under circumstances that will give rise to the mistaken belief that they originate from or in some way are associated with or sponsored by the same producer. It is well settled that the fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *See Federated Foods,*

Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). As such, as can be seen from the above arguments, there is no likelihood of confusion.

D. Third party usage evidence shows that "COBBLESTONE" is a weak mark

The cited registration is for the common word "COBBLESTONE" in conjunction with another common term "RESTAURANT & BAR". The connection between the Applicant's mark and the cited registration which forms the basis of the Examiners refusal is the same term "COBBLESTONE". The term "COBBLESTONE" in relation to trademarks has a varied and widespread use. The TTAB has given weight to credible and probative evidence of widespread, significant, and unrestrained use by third parties of marks containing elements in common to demonstrate that confusion is not, in fact, likely. *Miles Labs. Inc. v. Naturally Vitamin Supplements Inc.*, 1 U.S.P.Q.2d 1445, 1462 (TTAB 1986). Applicant contends that the mark "COBBLESTONE" is a weak mark which is used to describe numerous goods and services outside of the scope of the Registrant's goods. The accompanying sample of a *TESS* list of registrations and applications (80 Records) is probative to demonstrate that the term "COBBLESTONE" has been adopted by a number of other users as a good or service designation. *Attached hereto as Attachment "A".* In the case of weak marks, even slight differences between the marks may be deemed sufficient to avoid a finding that confusion is likely. *See In re Dayco Products -Eaglemotive Inc.*, 9 U.S.P.Q.2d 1910, 1912 (TTAB 1988) ("As such, we find the term to be a relatively weak mark and we agree with applicant that the scope of protection afforded such a mark is considerably narrower than that afforded a more arbitrary designation."); *see also In re Copytele Inc.*, 31 U.S.P.Q.2d 1540, 1542 (TTAB 1994). The Applicant's mark includes the additional term "MARKET" to make the mark "COBBLESTONE

MARKET". Due to the dilute nature of the mark "COBBLESTONE" the scope of protection afforded such a mark is considerably narrower than that afforded a more arbitrary designation. As such, the additions and deletions in the Applicant's mark are as such that the purchasing consumer would not be confused as to the source of the respective goods. The term "COBBLESTONE" is a very dilute mark similar to such a degree that the public is inundated with this term in day to day life on an assortment of goods and services, and therefore it should be granted very narrow protection on this basis. As can be seen from the above arguments, there is no likelihood of confusion.

IV. Conclusion

Based on the foregoing analysis, Applicant requests that the Examiner reconsider the original rejection of this application. As such, Applicant believes there will be no buyer confusion as to the source of the goods and services and respectfully requests that the present mark be passed to publication at an early date.

Respectfully submitted,

Date

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Attorney for Applicant

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: INDEPENDENT MARKETING ALLIANCE LP

SERIAL NO.: 78/432,642 CLASSES: 29, 30

FILED: June 9, 2004 EXAMINER: Dall, M.

MARK: COBBLESTONE MARKET LAW OFFICE: 110

CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

I hereby certify that the attached correspondence comprising:

AMENDMENT "A"

is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Respectfully submitted,

Date

Bartt G. Thompson
Attorney for Applicant

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Houston, Texas 77002
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ATTACHMENT "A"

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Current Search: S2: (cobblestone)[COMB] docs: 80 occ: 170

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	78360946		COBBLESTONE WALKING MATS	TARR	DEAD
2	78584315		CAROLINA COBBLESTONE	TARR	LIVE
3	78583747		COBBLESTONE CHILDREN'S CENTER	TARR	LIVE
4	78459494		COBBLESTONE	TARR	LIVE
5	78570274		COBBLESTONE PARK	TARR	LIVE
6	78348740		COBBLESTONE PIZZA	TARR	LIVE
7	78305944		MALIBU COBBLESTONE/MALIBU STONE	TARR	DEAD
8	78317071	2888028	HISTORIC EUROPEAN COBBLESTONE	TARR	LIVE
9	78276262		COBBLESTONE BREAD	TARR	DEAD
10	78459489		COBBLESTONE	TARR	LIVE
11	78459483		COBBLESTONE	TARR	LIVE
12	78459497		COBBLESTONE	TARR	LIVE
13	78432642		COBBLESTONE MARKET	TARR	LIVE
14	76507702	2888462	COBBLESTONE CREEK	TARR	LIVE
15	76039444	2762164	QUALITY BREAD COBBLESTONE MILL A FAMILY OF BAKERS SINCE 1919 SAN FRANCISCO SOURDOUGH CLASSIC RECIPE	TARR	LIVE
16	76589400		COBBLESTONE COFFEE ROASTERY	TARR	LIVE
17	76394394	2741252	196 COBBLESTONES RESTAURANT & BAR	TARR	LIVE
18	76253518		CIALOTTO BREAD	TARR	DEAD
19	76251468		CHRISTMAS IN COBBLESTONE VILLAGE	TARR	DEAD
20	76226086		THE LIGHTS OF COBBLESTONE VILLAGE	TARR	DEAD
21	76191141	2617089	COBBLESTONE BRIDGE	TARR	LIVE
22	76191140	2606988	COBBLESTONE BRIDGE	TARR	LIVE

23	76191139	2606987	COBBLESTONE BRIDGE	TARR	LIVE
24	76191138	2609051	COBBLESTONE BRIDGE	TARR	LIVE
25	76191137	2617088	COBBLESTONE BRIDGE	TARR	LIVE
26	76191136	2609050	COBBLESTONE BRIDGE	TARR	LIVE
27	76191134	2648357	COBBLESTONE BRIDGE	TARR	LIVE
28	76191133	2706067	COBBLESTONE BRIDGE	TARR	LIVE
29	76009872	2457130	COBBLESTONE SMALL GROUP TOURS	TARR	LIVE
30	76009809	2457129	COBBLESTONE TOURS	TARR	LIVE
31	76009808	2457128	COBBLESTONE SMALL GROUP TOURS	TARR	LIVE
32	75463721	2292240	COBBLESTONE	TARR	LIVE
33	75072652	2086553	COBBLESTONES	TARR	DEAD
34	75323904	2345932	COBBLESTONE CORNERS	TARR	LIVE
35	75977375		COBBLESTONE GOLF GROUP	TARR	DEAD
36	75866254		COBBLESTONE SUITES	TARR	DEAD
37	75635109	2427924	COBBLESTONES	TARR	LIVE
38	75595745		COBBLESTONE CLASSIC	TARR	DEAD
39	75534815	2285216	DOOR COUNTY COBBLESTONE	TARR	LIVE
40	75460443	2293598	COBBLESTONE TOURS	TARR	LIVE
41	75309165	2371928	COBBLESTONES	TARR	LIVE
42	75231447		COBBLESTONE GOLF GROUP	TARR	DEAD
43	75204042		COBBLESTONE AUTO SPA & MARKET	TARR	DEAD
44	75055567		COBBLESTONE	TARR	DEAD
45	74348138	1836321	COBBLESTONE MILL HEALTHY 'N HEARTY	TARR	DEAD
46	74712640	1991258	COBBLESTONE MILL	TARR	LIVE
47	74661524	2044677	COBBLESTONE MILL BREAKFAST BREADS	TARR	DEAD
48	74053891	1637581	COBBLESTONE WAY	TARR	LIVE
49	74684633	2053390	COBBLESTONE GLOVES	TARR	DEAD
50	74689789	2049796	COBBLESTONE	TARR	LIVE

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Current Search: S2: (cobblestone)[COMB] docs: 80 occ: 170

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
51	74564394	1949707	COBBLESTONE CROSSING	TARR	DEAD
52	74408648		COBBLESTONE CREATIONS	TARR	DEAD
53	74346999	1840002	COBBLESTONES	TARR	DEAD
54	74293139	1772989	SAN FRANCISCO COBBLESTONE	TARR	LIVE
55	74231108	1801353	COBBLESTONE	TARR	DEAD
56	74200844	1920639	COBBLESTONE KITCHENS	TARR	LIVE
57	74053888	1663007	COBBLESTONE WAY	TARR	DEAD
58	73442931	1326230	COBBLESTONE MILL	TARR	LIVE
59	73834269	1615981	COBBLESTONE VINEYARD	TARR	DEAD
60	73786359	1567650	COBBLESTONE	TARR	DEAD
61	73603004	1446326	COBBLESTONE PRINTS	TARR	DEAD
62	73532330	1416333	COBBLESTONES	TARR	DEAD
63	73517870	1350843	GOBBLESTONE	TARR	DEAD
64	73481540		COBBLESTONE VINEYARDS	TARR	DEAD
65	73481539		COBBLESTONE	TARR	DEAD
66	73449628		COBBLESTONES	TARR	DEAD
67	73416278	1301983	COBBLESTONE CORNER	TARR	DEAD
68	73406753	1362006	COBBLESTONE CLASSIC	TARR	DEAD
69	73364292	1251694	COBBLESTONE MILLS	TARR	DEAD
70	73295932	1181241	COBBLETONE	TARR	DEAD
71	73286799		ROMAN COBBLESTONE	TARR	DEAD
72	73285522		CALIFORNIA DRIFT COBBLESTONE	TARR	DEAD
73	73260976	1191719	COBBLESTONE KIDS	TARR	DEAD
74	73242533	1163722	COBBLESTONE	TARR	LIVE

75	73192439	1145190	COBBLESTONE FARM	TARR	DEAD
76	73185220	1138357	COBBLESTONE	TARR	DEAD
77	73068958	1037938	BOSTON COBBLESTONE	TARR	LIVE
78	73013974	1009060	COBBLESTONE	TARR	DEAD
79	81025929	1025929	COBBLESTONE CORNERS	TARR	DEAD
80	72373703	0927746	COBBLESTONE	TARR	DEAD

Natural texture and homestyle taste

Already roasted or ready to cook

Skinless or skin on

Roast and breast sizes

Customer favorite

Cobblestone Market™ whole turkey products feature what you like best. Whether already roasted or ready to cook, count on us to make turkey convenient for you and appealing to patrons. Breasts and roasts can be sliced thick or thin, diced or julienne cut; they're great for everything from traditional sandwiches and wraps to party trays, entrées, soups and salads. Serve Cobblestone Market turkey with confidence in its flavor, quality—and profit potential.

TURKEY

Old-fashioned goodness for your latest applications

A real crowd-pleaser

Many whole-product choices, plus diced and chopped

Slow-smoked, tender and juicy

The slow-cured, savory flavor of Cobblestone Market™ ham. Our hams get the old-fashioned treatment, with natural hardwood smoking for delicious taste and tender texture. Our complete line of superior-quality, fully-cooked products makes it simple to offer great gourmet sandwiches, delightful salads and excellent entrées. Cobblestone Market is your choice for great tasting, versatile ham—and satisfied customers.

HAM

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DATE: 12/21/05 CLIENT: IMA LOCATION: RC	☐ OK TO RELEASE ARTWORK
JOB REFERENCE: 4912 SHAM Merch Prod Catalog	☐ OK TO SUBMIT WITH ABOVE CORRECTIONS
ARTWORK NAME: CM Merchandising Catalog 0-1.ai	☐ PLEASE SUBMIT NEW LAYOUT(S)
SUBSTRATE: Catalog	
FONTS: Clearface, Futura, NewBaskerville	
DIMENSIONS: L n/a x W 5.5 x H 8.5	
QUALITY CONTROL / CREATIVE DIRECTOR / ACCOUNT MANAGER	DATE

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FONTANA
EXHIBIT NO. 6
S. GRAHAM

Your one-stop shop for quality cheeses

All the most popular flavors

Sliced, shredded and blocks

Adds perceived value as well as taste benefits

It's Cobblestone Market™. Superior quality, fresh flavor and wholesome ingredients–Cobblestone Market Brand offers nothing less. Plus versatile options such as Provolone, Swiss, Cheddar, American and Blue Cheese. Visit Cobblestone Market to stock up on delicious cheese for any time or any application, from wraps to salads, sandwiches to party trays.

CHEESE

Add color, convenience and variety to your menu

Incredible selection of favorites

Premium, fresh ingredients

Quality sides increase the value of soups, sandwiches

With Cobblestone Market™ prepared salads, only high quality, fresh ingredients are used. We ensure the finest flavor and texture in a quick, open-and-serve format for all your business needs. On-trend recipes, whether traditional favorites or bold ethnic flavors, are carefully researched and time-tested. You can offer your customers distinctive salad choices–just open and serve Cobblestone Market salads!

PREPARED SALADS

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JOB REFERENCE: 4912 SHAM Merch Prod Catalog	☐ OK TO SUBMIT WITH ABOVE CORRECTIONS
ARTWORK NAME: CM Merchandising Catalog 4-5.ai	☐ PLEASE SUBMIT NEW LAYOUT(S)
SUBSTRATE: Catalog	
FONTS: Clearface, Futura, NewBaskerville	
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Trimmed, seasoned, and cooked just right

USDA Choice and Select

Premium sandwich choices

Homestyle taste for foodservice needs

Whole product presents well

Cobblestone Market™ pot roast and prime rib are roasted with your customers' high expectations always in mind. Our roast beef, corned beef and pastrami are every bit as delicious–and just as convenient. It's easy to offer wonderful COP presentations, spectacular sandwiches, pleasing appetizers and delightful deli trays with Cobblestone Market.

PREMIUM MEATS

Sliced meats that will always please

Save prep time and labor

Authentic deli flavor and eye appeal

Great portion control

Cobblestone Market™ makes a great sandwich, terrific party tray or impressive appetizer. We select premium cuts of meat, then trim, cook, season and slice them–for your satisfaction and convenience. From turkey to ham to roast beef, a variety of delicious options and handy pack sizes will meet your needs. Cobblestone Market Brand is the choice for sliced meats.

SLICED MEATS

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ARTWORK NAME: CM Merchandising Catalog 2-3.ai	
SUBSTRATE: Catalog	
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COBBLESTONE MARKET

A warm bowl of satisfying soup is a cinch

Traditional and trendy options

Made-from-scratch flavor and appearance

No chopping or cooking!

We start with fresh, premium ingredients. Then preserve all that goodness in our state-of-the-art freezing process. Whether you select boil-in-bag options or add your own water or milk, you'll find our selection perfect for soup du jour, a soup-and-salad bar, or the regular menu. Cobblestone Market™ soups help you save time and labor without compromising quality.

SOUPS

COBBLESTONE MARKET

Pickles are a deli tradition

Whole, spears and chips

Customer-pleasing, fresh taste

Convenient pack sizes!

Crisp and delicious is the best way to describe Cobblestone Market™ pickles. As an accompaniment, ingredient or condiment, our pickles add authentic flavor to deli favorites. Accent sandwiches, appetizers, salads and relish trays with the tasty crunch that we know and love. The best deli items come with Cobblestone Market pickles.

PICKLES

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JOB REFERENCE: 4912 SHAM Merch Prod Catalog	
ARTWORK NAME: CM Merchandising Catalog 6-7.ai	
SUBSTRATE: Catalog	
FONTS: Clearface, Futura, NewBaskerville	
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KIT #1

Great Basic Setup

A. 1 Wall Poster (choose from 6)
B. 1 Counter Talker (choose from 6)
C. 1 Pickle Jar
D. 5 Visors
E. 5 Hats
F. 12 Price Tags
G. 12 Price Tag Holders
H. 1 Door Static Cling 11" x 17" Reverse
I. 2 Window Static Clings 4" x 5.5"
J. 5 Aprons

KIT #2

Impress Customers

A. 3 Wall Posters (choose from 6)
B. 2 Counter Talkers (choose from 6)
C. 1 Pickle Jar
D. 8 Visors
E. 8 Hats
F. 24 Price Tags
G. 24 Price Tag Holders
H. 1 Door Static Cling 11" x 17" Reverse
I. 4 Window Static Clings 4" x 5.5"
J. 8 Aprons
K. 1 Ceiling Dangler 11" circle, 4/C logo
L. 5 Deli Case Static Clings 17" x 5.5"

KIT #3

Everything You Need

A. 4 Wall Posters (choose from 6)
B. 2 Counter Talkers (choose from 6)
C. 1 Pickle Jar
D. 10 Visors
E. 10 Hats
F. 24 Price Tags
G. 24 Price Tag Holders
H. 1 Door Static Cling 11" x 17" Reverse
I. 4 Window Static Clings 4" x 5.5"
J. 10 Aprons
K. 2 Ceiling Danglers 11" circle, 4/C logo
L. 10 Deli Case Static Clings 17" x 5.5"
M. 1 Flexible Outdoor Sign 3' x 5' single sided w/hanger grommets
N. 1 Center Menu Board 20" x 37.5", 4/C logo
O. 2 Side Menu Boards 20" x 32", 1/C logo
P. 25 2.25" Server Buttons

a la Carte

Q. Sandwich Wrap 14" x 14", grease resistant
R. Table Umbrella 105" x 56", 1/C logo
S. Navy 50/50 Blend T-shirt 1/C logo
T. Navy 65/35 Pique Knit Polo Shirt 4/C logo
U. Luncheon Napkins 13" x 17", 2-ply, 1/6 fold 1/C logo
V. Sandwich Wrap Stickers 2", 500 roll, 1/C logo

See order form for pricing

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NEWHALL KLEIN INC.
6109 WEST KL AVENUE
KALAMAZOO, MI 49009
www.newhallklein.com
EMAIL: info@newhallklein.com
PHONE: 269.544.0844 • FAX: 269.544.0848

CLIENT/VENDOR APPROVAL

DATE: 01/06/06 CLIENT: IMA LOCATION: RC
JOB REFERENCE: 4912 SHAM Merch Prod Catalog
ARTWORK NAME: CM Merchandising Catalog 8-9.ai
SUBSTRATE: Catalog
FONTS: Clearface, Futura, NewBaskerville
DIMENSIONS: L n/a x W 5.5 x H 8.5

☐ OK TO RELEASE ARTWORK
☐ OK TO SUBMIT WITH ABOVE CORRECTIONS
☐ PLEASE SUBMIT NEW LAYOUT(S)

QUALITY CONTROL	CREATIVE DIRECTOR	ACCOUNT MANAGER	DATE

MAGENTA YELLOW BLACK CYAN

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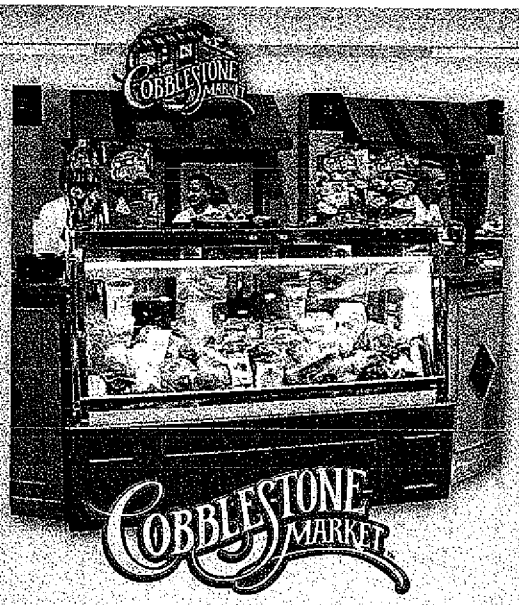

Traditional deli offerings with premium quality and time-honored taste.

Welcome to Cobblestone Market,™ the place for classic deli delights. You will enjoy savoring a wide variety of favorites, created with all the flavor offered by the old-fashioned neighborhood deli.

See order form for additional ordering information.

Marketed by Independent Marketing Alliance • Houston, TX 77079

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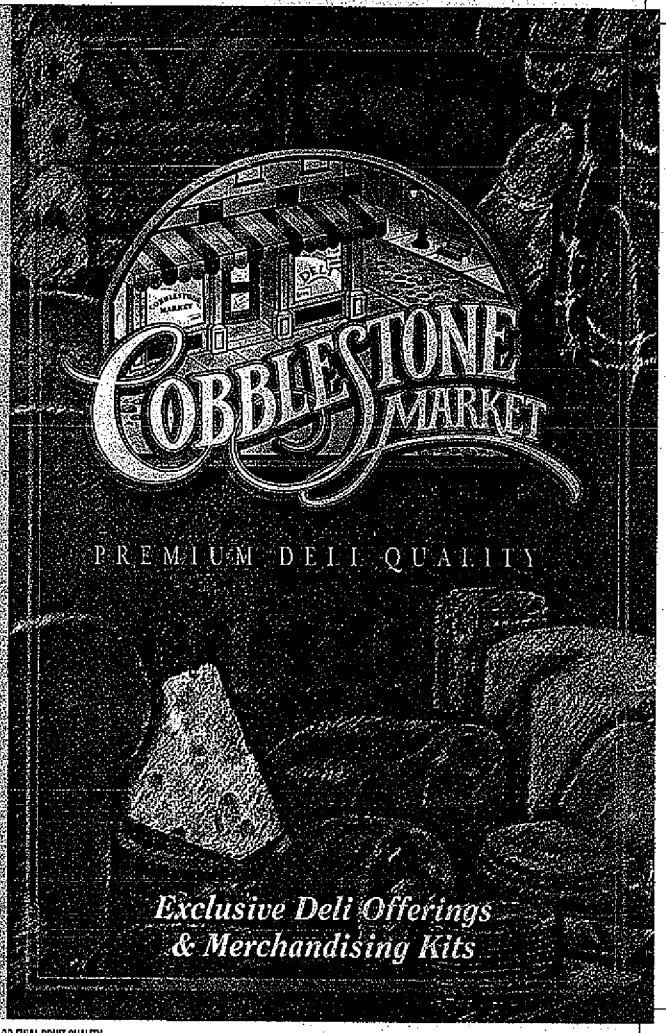
Cobblestone Market™ Brand is a trademark of Independent Marketing Alliance



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DATE: 12/21/05 CLIENT: IMA	LOCATION: RC	☐ OK TO RELEASE ARTWORK
JOB REFERENCE: 4912 SHAM Merch Prod Catalog		☐ OK TO SUBMIT WITH ABOVE CORRECTIONS
ARTWORK NAME: CM Merchandising Catalog Cov.ai		☐ PLEASE SUBMIT NEW LAYOUT(S)
SUBSTRATE: Catalog		
FONTS: Clearface, Futura, NewBaskerville		
DIMENSIONS: L n/a x W 5.5 x H 8.5		
QUALITY CONTROL	CREATIVE DIRECTOR / ACCOUNT MANAGER	DATE

MAGENTA YELLOW BLACK CYAN

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	QUANTITY	PRICE	TOTAL
Kit Replacement Items			
Wall Poster *(choose from 6, enter quantity in the spaces provided)* ___Pickles ___Sliced Meats ___Ham ___Prepared Salads ___Turkey ___Cheese			
Counter Talker *(choose from 6, enter quantity in the spaces provided)* ___Pickles ___Sliced Meats ___Ham ___Prepared Salads ___Turkey ___Cheese			
Pickle Jar			
Visor – Blue, 1/C logo			
Hat – Blue, 1/C logo			
Price Tag			
Price Tag Holder			
Door Static Cling – 11" x 17" reverse			
Window Static Cling – 4" x 5.5"			
Apron – Blue, 1/C logo			
Ceiling Dangler – 11" circle, 4/C logo on both sides & string hole			
Deli Case Static Cling – 17" x 5.5", 4/C logo with blue background			
Flexible Outdoor Sign – 3' x 5' single sided w/ banner grommets			
Center Menu Board – 20" x 37.5", 4/C logo			
Side Menu Board – 20" x 32", 1/C logo			
Server Button – 2.25" round, white, 1/C logo			
a la Carte ***Additional Items Available***			
T-shirt – 50/50 blend, blue, 1/C logo *(indicate size and quantity)* ___Small ___Medium ___Large ___ X-Large			
Polo Shirt – 65/35 pique knit, blue, 4/C logo *(indicate size and quantity)* ___Small ___Medium ___Large ___ X-Large			
Table Umbrella – 105" x 56", 1/C logo			
Luncheon Napkins – 13" x 17", 2-ply, 1/C logo, 1/6 fold			
Sandwich Wrap – 14" x 14", white, grease resistant			
Sandwich Wrap Stickers – 2" oval, 500 roll, 1/C logo			

Shipping & Handling:
Morbi commodo, ipsum sed pharetra gravida, orci magna rhoncus neque, id pulvinar odio lorem non turpis. Morbi commodo, ipsum sed pharetra gravida, orci magna rhoncus neque, id pulvinar odio lorem non turpis.

TOTAL *(this side)*	
TOTAL *(from side 1)*	
SUBTOTAL	
SHIPPING & HANDLING	
TOTAL	

ORDER FORM

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DATE: 01/06/06 CLIENT: IMA LOCATION: RC

JOB REFERENCE: 4912 SHAM Merch Prod Catalog

ARTWORK NAME: CM MerCatalog OrderForm.ai

SUBSTRATE: Paper, front & back

FONTS: Clearface

DIMENSIONS: L x W 8.5" x H 11"

QUALITY CONTROL	CREATIVE DIRECTOR	ACCOUNT MANAGER

CLIENT/VENDOR APPROVAL

- ☐ OK TO RELEASE ARTWORK
- ☐ OK TO SUBMIT WITH ABOVE CORRECTIONS
- ☐ PLEASE SUBMIT NEW LAYOUT(S)

DATE

BLACK

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COBBLESTONE MARKET™

Customer Information

Name _____

Company _____

Street Address _____

City _____ State ____ ZIP ____

Phone ( ) _____

Email _____

Instructions:

Morbi commodo, ipsum sed pharetra gravida, orci magna rhoncus neque, id pulvinar odio lorem non turpis.
Morbi commodo, ipsum sed pharetra gravida, orci magna rhoncus neque, id pulvinar odio lorem non turpis.

KITS	PRICE
KIT 1: Great Basic Setup **1 Wall Poster** *(choose 1 from 6)* ☐ Pickles ☐ Sliced Meats ☐ Ham ☐ Prepared Salads ☐ Turkey ☐ Cheese **1 Counter Talker** *(choose 1 from 6)* ☐ Pickles ☐ Sliced Meats ☐ Ham ☐ Prepared Salads ☐ Turkey ☐ Cheese **1 Pickle Jar, 5 Visors, 5 Hats, 5 Aprons, 12 Price Tags, 12 Price Tag Holders,** **1 Door Static Cling, 2 Window Static Clings**	$XXX.XX ☐
KIT 2: Impress Customers **3 Wall Posters** *(choose 3 from 6)* ☐ Pickles ☐ Sliced Meats ☐ Ham ☐ Prepared Salads ☐ Turkey ☐ Cheese **2 Counter Talkers** *(choose 2 from 6)* ☐ Pickles ☐ Sliced Meats ☐ Ham ☐ Prepared Salads ☐ Turkey ☐ Cheese **1 Pickle Jar, 8 Visors, 8 Hats, 8 Aprons, 24 Price Tags, 24 Price Tag Holders,** **1 Door Static Cling, 4 Window Static Clings, 1 Ceiling Dangler, 5 Deli Case Static Clings**	$XXX.XX ☐
KIT 3: Everything You Need **4 Wall Posters** *(choose 4 from 6)* ☐ Pickles ☐ Sliced Meats ☐ Ham ☐ Prepared Salads ☐ Turkey ☐ Cheese **2 Counter Talkers** *(choose 2 from 6)* ☐ Pickles ☐ Sliced Meats ☐ Ham ☐ Prepared Salads ☐ Turkey ☐ Cheese **1 Pickle Jar, 10 Visors, 10 Hats, 10 Aprons, 24 Price Tags, 24 Price Tag Holders,** **1 Door Static Cling, 4 Window Static Clings, 2 Ceiling Danglers, 10 Deli Case Static Clings,** **1 Flexible Outdoor Sign, 1 Center Menu Board, 2 Side Menu Boards, 25 Server Buttons**	$XXX.XX ☐

ORDER FORM

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