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

Proceeding	91186148
Party	Plaintiff Publix Asset Management Company
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Publix Asset Management Company,

Opposer,

v.

Opposition No. 91186148

Opposition No. 91186863

The Great Atlantic & Pacific Tea
Company, Inc.,

Applicant.

**NOTICE OF FILING EXHIBITS TO
PAUL KALINOWSKI TRIAL TESTIMONY**

Publix Asset Management Company gives notice of filing the exhibits marked 71 and YYYYY to BBBBB entered into evidence during Paul Kalinowski's trial testimony taken on November 21, 2013. (This notice and its attachment were inadvertently included in document 105 filed May 15, 2014.)

Dated: May 16, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 16, 2014, a true and complete copy of the foregoing notice with attachments has been sent by E-mail Facsimile Express Mail

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Opposer's Ex. 71

Publix v. The Great Atlantic & Pacific
Tea Co., Opp. Nos.
91186148 & 91186863



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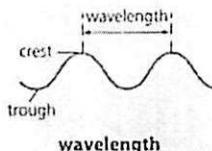
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Manufactured in the United States of America

waveband

way-out



waxwing
cedar waxwing
Bombycilla cedrorum

e. A maneuver in which fans at a sports event simulate an ocean wave by rising quickly in sequence with arms upraised and then quickly sitting down again in a continuous rolling motion. 6. A widespread persistent meteorological condition, esp. of temperature: a *heat wave*. 7. *Physics* a. A disturbance traveling through a medium by which energy is transferred from one particle of the medium to another without causing any permanent displacement of the medium itself. b. A graphic representation of the variation of such a disturbance with time. c. A single cycle of such a disturbance. —*phrasal verb*: *wave off* 1. To dismiss or refuse by waving the hand or arm. 2. *Sports* To cancel or nullify by waving the arms, usu. from a crossed position: *waved off a goal because time had run out*. [ME *waven* < OE *wafian*. See *webh-* in App.] —*wav'er* *n.*

waveband (wāv'bānd') *n.* A range of frequencies, esp. radio frequencies, such as those assigned to broadcasting.

wave equation *n.* 1. A partial differential equation used to represent wave motion. 2. The fundamental equation of wave mechanics.

waveform (wāv'fōrm') *n.* The mathematical representation of a wave, esp. a graph obtained by plotting a characteristic of the wave against time.

wave front *n.* The continuous line or surface including all the points in space reached by a wave or vibration at the same instant as it travels through a medium.

wave function *n.* A mathematical function used in quantum mechanics to describe the propagation of the wave associated with any particle or group of particles.

waveguide (wāv'gīd') *n.* A solid dielectric rod or dielectric-filled tubular conductor capable of guiding high-frequency electromagnetic waves.

wavelength (wāv'lēngkth', -lēngkth') *n.* The distance between one peak or crest of a wave and the next corresponding peak or crest. —*idiom*: *on the same wavelength* *Informal* In complete accord.

wavelet (wāv'līt) *n.* A small wave; a ripple.

Wavell (wāv'vəl), Archibald Percival, 1st Earl Wavell, 1883–1950, British field marshal in North Africa (1940–41) and viceroy of India (1943–47).

wavelite (wāv'vā-līt') *n.* A colorless to greenish yellow or black mineral, $Al_2(PO_4)_2(OH)_2 \cdot 5H_2O$, having finely acicular, radiating crystals. [After William Wavell (died 1829), British physician.]

wave mechanics *n.* (used with a *sing.* or *pl. verb*) A theory that ascribes characteristics of waves to subatomic particles and attempts to interpret physical phenomena on this basis.

wave number *n.* The reciprocal of the wavelength of a wave.

waver (wāv'vər) *intr.v.* -vered, -ver'ing, -vers 1. To move unsteadily back and forth. 2a. To exhibit irresolution or indecision; vacillate. b. To become unsteady or unsure; falter. 3. To tremble or quaver in sound, as of the voice. 4. To flicker or glimmer, as light. 5. *n.* The act of wavering. [ME *waveren*. See *webh-* in App.] —*wav'er'er* *n.*

wave train *n.* *Physics* A succession of similar wave pulses.

wavy (wāv'vī) *adj.* -i'er, -i'est 1. Abounding or rising in waves: a *wavy sea*. 2. Marked by or moving in a wavelike form or motion; sinuous. 3. Having curls, curves, or undulations: *wavy hair*. 4. Characteristic or suggestive of waves. 5. Wavering; unstable. —*wav'i'ly adv.* —*wav'i'ness n.*

waw (wāv, vāv) *n.* Variant of *vav*.

waw-waw (wāv'wāv') *n.* Variant of *wah-wah*.

wax¹ (wāks) *n.* 1a. Any of various natural, oily or greasy heat-sensitive substances, consisting of hydrocarbons or esters of fatty acids. b. Beeswax. c. Cerumen. 2a. A plastic solid or semisolid, such as paraffin, originating from petroleum and used in coatings, as insulation, and in crayons. b. A preparation containing wax used for polishing floors and other surfaces. 3. A resinous mixture used by shoemakers to rub on thread. 4. A phonograph record. 5. Something suggestive of wax in being impressionable or readily molded. 6. *adj.* Made of wax. 7. *tr.v.* waxed, wax'ing, wax'es 1. To coat, treat, or polish with wax. 2. *Informal* To make a phonograph record of. —*idiom*: *on wax* In the medium of phonograph recordings. [ME < OE *wax*.]

wax² (wāks) *intr.v.* waxed, wax'ing, wax'es 1. To increase gradually in size, number, strength, or intensity. 2. To show a progressively larger illuminated area, as the moon does in passing from new to full. 3. To grow or become as specified: *waxed poetic*. [ME *waxen* < OE *waxan*.]

wax bean *n.* A variety of string bean having yellow pods.

waxberry (wāks'bēr'ē) *n.* The waxy fruit of the wax myrtle or the snowberry.

waxbill (wāks'bil') *n.* Any of various tropical Old World birds of the genus *Estrilda* and related genera, having a short, often brightly colored waxy beak.

waxed paper (wāks't) *n.* Wax paper.

waxen (wāks'sən) *adj.* 1. Made of or covered with wax. 2. Pale or smooth as wax: *waxen skin*. 3. Weak, pliable, or impressionable.

waxer (wāks'sər) *n.* One that polishes with or applies wax.

wax moth *n.* See *bee moth*.

wax museum *n.* A place where life-size wax figures, usu. of famous people, are exhibited.

wax myrtle *n.* An evergreen shrub (*Myrica cerifera*) of the south-

east United States having usu. serrate leaves and small berrylike fruit with a waxy coating.

wax palm *n.* Any of several palm trees that yield wax, as *Copernicia prunifera*, the source of carnauba wax, or *Ceroxylon alpinum* of South America.

wax paper *n.* Paper that has been made moistureproof by treatment with wax, used esp. in cooking and in food storage.

wax-wing (wāks'wīng') *n.* Any of several birds of the genus *Bombycilla*, having crested heads, grayish-brown plumage, and waxy red tips on the wing feathers.

wax-work (wāks'wŭrk') *n.* 1. The art of modeling in wax. 2. A figure made of wax, esp. a life-size wax effigy of a famous person. 3. *waxworks* (used with a *sing.* or *pl. verb*) An exhibition of wax figures in a museum.

waxy (wāks'sē) *adj.* -i'er, -i'est 1. Resembling wax, esp.: a. Pale. b. Smooth and lustrous. c. Pliable or impressionable. 2. Consisting of, abounding in, or covered with wax. 3. *Pathology* Containing amyloid deposits, as an organ.

way (wā) *n.* 1a. A road, path, or highway affording passage from one place to another. b. An opening affording passage: *the only way into the attic*. 2a. Space to proceed. b. Opportunity to advance: *the way to peace*. 3. A course that is or may be used in going from one place to another: *the shortest way home*. 4. Progress or travel along a certain route or in a specific direction. 5. A course of conduct or action. 6. A manner or method of doing; *no way to reach her*. 7. A usual or habitual manner or mode of being, living, or acting. 8. An individual or personal manner of behaving, acting, or doing. 9. also *ways* (wāz) (used with a *sing. verb*) *Informal* Distance: *a long way*. 10a. A specific direction: *He glanced my way*. b. A participant. Often used in combination: *a three-way conversation*. 11a. An aspect, particular, or feature: *in no way comparable*. b. Nature or category: *not much in the way of a plot*. 12. Freedom to do as one wishes. 13. An aptitude or a facility: *a way with words*. 14. A state or condition. 15. Vicinity. 16. A longitudinal strip on a surface that serves to guide a moving machine part. Often used in the plural. 17. *ways* (used with a *sing.* or *pl. verb*) *Nautical* The structure on which a ship is built and from which it slides when launched. 18. *Nautical* Motion through the water: *The ship had too much way on*. 9. *adv.* *Informal* 1. By a great distance or to a great degree; far. 2. *Slang* Very; extremely: *way cool*. 3. From this place; away: *Go way*. —*idioms*: *all the way* From beginning to end; completely. *by the way* Incidentally. *by way of* 1. Through; via. 2. As a means of. *go out of one's (or the) way* To inconvenience oneself in doing something beyond what is required. *in a way* 1. To a certain extent; with reservations. 2. From one point of view. *in the way* In a position to obstruct, hinder, or interfere. *no way* *Informal* Certainly not. *on one's (or the) way* In the process of coming, going, or traveling. *on the way* On the route of a journey. *out of the way* 1. In such a position as not to obstruct, hinder, or interfere. 2. Taken care of. 3. In a remote location. 4. Of an unusual character; remarkable. 5. Improper; amiss. [ME < OE *weg*. See *wegh-* in App.]

SYNONYMS *way, route, course, passage, pass, artery* These nouns refer to paths leading from one place or point to another. *Way* is the least specific: "*Many ways meet in one town*" (Shakespeare). *Route* refers to a planned, well-established, or regularly traveled way: "*Their one purpose of speed over the great ocean routes was achieved by perfect balance of spars and sails to the curving lines of the . . . hull*" (Samuel Eliot Morison). *Course* suggests the path or channel taken by something that moves: "*earth's diurnal course*" (William Wordsworth). *Passage* denotes a traversal over, across, or through something: "*The shortcut was a passage between the buildings*. *Pass* usually refers to a way affording passage around, over, or through a barrier: "*They had reached one of those very narrow passes between two tall stones*" (George Eliot). An *artery* is a main route for the circulation of traffic: "*An accident on the central artery backed up traffic*. See also *Syns at method*.

USAGE NOTE In American English *way* is often used as an equivalent of *way* in phrases such as *a long ways to go*. The usage is acceptable but is widely regarded as informal.

waybill (wā'bil') *n.* A document giving details and instructions relating to a shipment of goods.

wayfarer (wā'fār'ər) *n.* One who travels, esp. on foot. [ME *wafarere*; *wēf*, *way*; see *WAY* + *faren*, to go on a journey (< OE *faran*; see *per-* in App.).]

wayfaring (wā'fār'ing) *n.* Traveling, esp. on foot. [*<* ME *wāfaringe*, journeying < OE *wefarēnde*; *weg*, *way*; see *WAY* + *faren*, *pr. part.* of *faran*, to go on a journey; see *per-* in App.] —*way'far'ing adj.*

way-lay (wā'la') *tr.v.* -laid (-lad'), -lay'ing, -lays 1. To lie in wait for and attack from ambush. 2. To accost or intercept unexpectedly. —*way'lay'er n.*

Wayne (wān), Anthony Known as "Mad Anthony." 1745–96. Amer. Revolutionary general at Brandywine (1777) and Monmouth (1778).

Wayne, John 1907–79. Amer. film actor who played tough heroes in Westerns such as *Red River* (1948).

way-out (wā'out') *adj.* *Slang* Very unconventional, unusual, or strange.

ā	pat	oi	boy
ā	pay	ou	out
ār	care	ōō	took
ā	father	ōō	boat
ē	pet	ū	cut
ē	be	ūr	urge
ī	pit	th	thin
i	pie	th	this
īr	pier	hw	which
ō	pot	zh	vision
ō	toe	ɔ	about,
ō	paw		item

Stress marks:
' (primary);
' (secondary), as in
lexicon (lĕk'si-kŏn')

A
P
P.

A standardized system of wire sizes.

wire glass *n.* Sheet glass reinforced with wire netting.

wire grass (wīr'grās') *n.* Any of various grasses, such as Bermuda grass, having tough wiry roots or rootstocks.

wire-hair (wīr'hār') *n.* See **wire fox terrier**.

wire-haired (wīr'hārd') *adj.* Having a coat of stiff wiry hair. Used esp. of breeds of dogs.

wirehaired pointing griffon *n.* Any of a breed of medium-sized hunting dog originating in the Netherlands and having a rough steel-gray coat with patches of chestnut.

wirehaired terrier *n.* See **wire fox terrier**.

wire-less (wīr'līs) *adj.* 1. Having no wires: a *wireless security system*. 2. Chiefly British Of or relating to radio communication. 3. Chiefly British 1. A message transmitted by wireless telegraph or telephone. 2. Radio. 4. *tr. & intr.v.* -lessed, -less-ing, -less-es Chiefly British To communicate with or send communications by wireless.

wireless telegraphy *n.* Telegraphy by radio rather than by long-distance transmission lines.

wireless telephone *n.* See **radiotelephone**.

wire-man (wīr'mān) *n.* 1. One who works with electric wiring. 2. Slang One who taps telephone lines; a wiretapper.

wire-photo (wīr'fō'tō) A trademark used for a photograph electrically transmitted over telephone wires.

wire-pull-er (wīr'pūl'ər) *n.* 1. Slang One who uses private influence or underhand means to reach a goal. 2. One who pulls wires or strings, as of puppets. —**wire/pull'ing** *n.*

wire rope *n.* Rope made of twisted strands of wire.

wire service *n.* A news-gathering organization that distributes syndicated copy electronically, as by teletype or the Internet, usu. to subscribers.

wire-tap (wīr'tāp') *n.* 1. A concealed listening or recording device connected to a communications circuit. 2. The act of installing such a device. 4. *v.* -tapped, -tap'ping, -taps —*tr.* 1. To connect a wiretap to. 2. To monitor (a telephone line) with a wiretap. —*intr.* To install a wiretap or use it to monitor communications. —**wire/tap'per** *n.*

wire-worm (wīr'wūrm') *n.* 1. The yellowish hard-bodied larva of various click beetles that feeds on the roots and seedlings of many crop plants. 2. Any of various millipedes.

wir-ing (wīr'ing) *n.* 1. The act of attaching, connecting, or installing electric wires. 2. A system of electric wires.

wir-ra (wīr'ra) *interj.* Irish Used to express sorrow or anxious concern. [*Ir. Gael.* a *Mhuire*, Virgin Mary: *n.* O (< Oir. *ū*) + *Muire*, Mary.]

wiry (wīr'ē) *adj.* -i-er, -i-est 1. Of or relating to wire. 2. Resembling wire in form or quality, esp. in stiffness: *wiry red hair*. 3. Sinewy and lean. 4. Produced by or as if by wire being vibrated. Used of sounds. —**wir/i-ly** *adv.* —**wir/i-ness** *n.*

Wis. *abbr.* 1. Wisconsin 2. Bible Wisdom of Solomon

Wis-con-sin (wīs-kōn'sin) A state of the N-central US; admitted as the 30th state in 1848. The region became part of the Northwest Terr. in 1787. Cap. Madison. Pop. 5,363,675. —**Wis-con/sin'-ite** *n.*

Wis-con-sin (wīs-kōn'sin) *adj.* Of the fourth glacial stage of the Pleistocene Epoch in North America.

Wisconsin River A river of central and SW WI flowing c. 692 km (430 mi) to the Mississippi R.

wis-dom (wīz'dəm) *n.* 1. The ability to discern or judge what is true, right, or lasting; insight. 2. Common sense; good judgment. 3a. The sum of learning through the ages; knowledge. b. Wise teachings of the ancient sages. 4. A wise outlook, plan, or course of action. 5. Wisdom of Solomon. [ME < OE *wīsdōm*. See **weid-** in App.]

Wisdom of Jesus, the Son of Si-rach (sī'rāk') *n.* Ecclesiasticus.

Wisdom of Solomon *n.* See table at Bible.

wisdom tooth *n.* One of four rearmost molars on each side of both jaws in humans.

wise (wīz) *adj.* **wis-er, wis-est** 1. Having the ability to discern or judge what is true, right, or lasting; sagacious: *a wise leader*. 2a. Exhibiting common sense; prudent: *a wise decision*. b. Shrewd; crafty. 3. Having great learning; erudite. 4. Provided with information; informed. Used with *to*. 5. Slang Rude and disrespectful; impudent. —**phrasal verb:** **wis-e up** Slang To make or become aware, informed, or sophisticated. [ME < OE *wīs*. See **weid-** in App.] —**wise/ly** *adv.* —**wise/ness** *n.*

wise (wīz) *n.* Method or manner of doing; way; *in no wise; in any wise*. [ME < OE *wīs*. See **weid-** in App.]

Wise, Stephen Samuel 1874–1949. Hungarian-born Amer. founder of the World Jewish Congress (1936).

-wise *suff.* 1. In a specified manner, direction, or position: *clock-wise*. 2. Usage Problem With reference to; in regard to: *profit-wise*. [ME < OE *-wīsan* < *-wīse*, manner. See **weid-** in App.]

USAGE NOTE The suffix *-wise* has a long history of use to mean "in the manner or direction of," as in *clockwise*, *otherwise*, and *slantwise*. Since the 1930s, however, the suffix has been widely used in the vaguer sense of "with reference to," as in *This has not been a good year sales-wise*. This usage has always been associated with informal prose and is still considered by many to be awkward. It can be avoided by using paraphrases: *This has not been a good year with respect to sales*.

wis-a-cre (wīz'ā'kər) *n.* Slang A person regarded as disagreeably egotistical and self-assured. [Alteration (by folk ety.) of MDU. *wijsseggher*, soothsayer, transl. of MHGer. *wissage* < OHGer. *wissago*, seer, alteration of *wizago* < *wizag*, knowledgeable. See **weid-** in App.]

wis-e-ass also **wis-e-ass** (wīz'ās') *n.* Vulgar Slang A smart aleck.

wis-e-crack (wīz'krāk') Slang *n.* A flippant, usu. sardonic remark. 4. *intr.v.* -cracked, -crack'ing, -cracks To make or utter a wisecrack. —**wis-e-crack'er** *n.*

wis-e-guy *n.* Slang A smart aleck.

wis-e-man *n.* 1. One of the magi who paid homage to the baby Jesus; a magus. 2. A sage.

wis-en-heim-er also **wis-en-heim-er** (wīz'en-bī'mər) *n.* Informal A smart aleck. [WIS + Ger. *-enheimer* (in such surnames as *Oppenheimer*),]

wi-sent (vē'zənt) *n.* The European bison (*Bison bonasus*) having a smaller and higher head than the North American bison. [Ger. < MHGer. < OHGer. *wisunt*.]

wish (wīsh) *n.* 1. A desire, longing, or strong inclination for a specific thing. 2. An expression of a wish; a petition. 3. Something desired or longed for. 4. *v.* wished, wish'ing, wish'es —*tr.* 1. To long for; want. See **Syns** at **desire**. 2. To entertain or express wishes for; bid: *He wished her good night*. 3. To call or invoke upon: *I wish them luck*. 4. To order or entreat: *I wish you to go*. 5. To impose or force; foist. —*intr.* 1. To have or feel a desire. 2. To express a wish. [ME *wish* < *wisshen*, to wish < OE *wyscan*. See **weid-** in App.] —**wish'er** *n.*

USAGE NOTE When *wish* precedes a subordinate clause containing a contrary-to-fact statement, strict grammatical correctness requires that one use *were* rather than *was*: *I wish I were lighter on my feet*. However, precedent for using the indicative *was* in such clauses can be found in the works of many good writers. See Usage Notes at **if, want**.

wish-bone (wīsh'bōn) *n.* 1. The forked bone anterior to the breastbone of most birds, formed by the fusion of the clavicles. 2. Football An offensive formation in which the halfbacks are positioned behind and to the left and right of the fullback. [*<* the superstition that when two people pull the bone apart, the one with the longer part will get a wish.]

wish-ful (wīsh'fəl) *adj.* Having or expressing a wish or longing. —**wish/ful-ly** *adv.* —**wish/ful-ness** *n.*

wish fulfillment *n.* 1. Gratification of a desire. 2. In psychoanalytic theory, the satisfaction of a desire, need, or impulse through a dream or other exercise of the imagination.

wishful thinking *n.* Identification of one's wishes or desires with reality.

wish list *n.* An often mental list of things wanted.

wish-wash (wīsh'wōsh', -wōsh') *n.* Informal 1. Speech or writing deemed banal or foolish. 2. A thin watery drink. [Reduplication of **WASH**.]

wish-y-wash-y (wīsh'ē-wōsh'ē, -wō'shē) *adj.* -i-er, -i-est Informal 1. Thin and watery, as tea or soup; insipid. 2. Lacking in strength of character or purpose; ineffective. [Reduplication of **WASHY**, thin, watery < **WASH**.] —**wish/y-wash/i-ness** *n.*

wisp (wīsp) *n.* 1. A small bunch or bundle, as of straw, hair, or fog. 2a. One that is thin, frail, or slight. b. A thin or faint streak or fragment, as of smoke or clouds. 3. A fleeting trace or indication; a hint. 4. A flock of birds, esp. snipe. 5. See **Ignis fatuus** 1. 4. *v.* wisped, wisp'ing, wisps —*tr.* To twist into wisps or a wisp. —*intr.* To drift in wisps. [ME.] —**wisp/i-ly** *adv.* —**wisp/i-ness** (wīsp'ē-nīs) *n.* —**wisp/y** *adj.*

wist (wīst) *v.* Archaic Past tense and past participle of **wit**?

Wister (wīst'ər), Owen 1860–1938. Amer. writer known esp. for his novel *The Virginian* (1902).

wis-ter-i-a (wī-stīr'ē-ə) also **wis-tar-i-a** (wī-stār'-) *n.* Any of several climbing vines of the genus *Wisteria* in the pea family, having pinnately compound leaves and drooping racemes of purplish or white flowers. [NLat. *Wisteria*, genus name, after Caspar Wistar (1761–1818), American physician.]

wist-ful (wīst'fəl) *adj.* 1. Full of wishful yearning. 2. Pensively sad; melancholy. [*<* obsolete *wistly*, intently.] —**wist/ful-ly** *adv.* —**wist/ful-ness** *n.*

wit (wīt) *n.* 1. The natural ability to perceive and understand; intelligence. 2a. Keenness and quickness of perception or discernment; ingenuity. Often used in the plural. b. Wits Sound mental faculties; sanity. 3a. The ability to perceive and express in an ingeniously humorous manner the relationship between seemingly incongruous or disparate things. b. One noted for this ability, esp. one skilled in repartee. c. A person of exceptional intelligence. —**idioms:** at (one's) wits' end At the limit of one's mental resources; utterly at a loss. have (or keep) (one's) wits about (one) To remain alert or calm, esp. in a crisis. [ME < OE. See **weid-** in App.]

wit (wīt) *v.* **wit** (wīt), **wit-ting** (wīt'ing), **first and third person singular present tense wot** (wōt) Archaic —*tr.* To be or become aware of; learn. —*intr.* To know. —**idiom:** to wit That is to say; namely. [ME < OE *witan*. See **weid-** in App.]

wire glass

wit²

wisent
Bison bonasus

ā	pat	oi	boy
ā	pay	ou	took
ā	care	oo	boot
ā	father	oo	boot
ē	pet	ū	cut
ē	be	ūr	urge
i	pit	ih	thin
i	pie	ih	this
ir	pier	hw	which
ō	pot	zh	vision
ō	toe	ɔ	about
ō	paw		item

Stress marks:
' (primary);
' (secondary), as in
lexicon (lĕk'si-kōn')



FILE

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November 5, 2013

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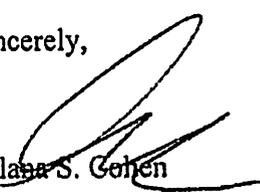
Re: Publix Asset Management Company v. The Great Atlantic & Pacific Tea Co, Inc.
Opp. Nos. 91186148 and 91186863 (Consolidated)

Dear Jim:

We are writing to voice our objection to your Notice of Trial Testimony and your recently received Pretrial Disclosures. It is my understanding from our conversation and from your disclosures that the witness was designated by you as a rebuttal witness and that the subject matter to be explored pertains to the meaning of GREENWISE vis-à-vis GREEN WAY. As you know, although we initially stipulated to allow for Mr. Kalinowski's testimony to be taken out of sequence if needed for scheduling purposes.

To be clear, we object to any improper testimony pertaining to the meaning of your mark or any other new area of testimony not properly raised during your main testimony. The use during your rebuttal testimony period of Mr. Kalinowski for new areas of testimony severely prejudices my client and due to the trial schedule, precludes them of a corresponding rebuttal period.

Sincerely,


Arlana S. Cohen

APPLICANT'S EXHIBIT *YYY*
PUBLIX v. THE GREAT ATLANTIC &
PACIFIC TEA COMPANY
Opp. No. 91186148 and
Opp. No. 91186863

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ELEVENTH
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Opp. No. 91186148 and
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APPLICANT'S EXHIBIT AAAAA
PUBLIX v. THE GREAT ATLANTIC &
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Opp. No. 91186148 and
Opp. No. 91186863

*Dedicated to the memory of
Jess Stein*

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New York Toronto London Sydney Auckland

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

PUBLIX ASSET MANAGEMENT COMPANY,

Opposer,

v.

Opposition No.: 91186148
Opposition No. 91186863

THE GREAT ATLANTIC & PACIFIC TEA
COMPANY, INC.,

Applicant.

**OPPOSER'S OBJECTIONS AND ANSWERS TO
APPLICANT'S FIRST SET OF INTERROGATORIES**

Opposer PUBLIX ASSET MANAGEMENT COMPANY ("Opposer") serves the following objections and answers to the First Set of Interrogatories from Applicant THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC. ("Applicant" or "A&P").

General Objections

1. Opposer objects to the definitions and instructions to the extent that the definition of Opposer includes all of Opposer's "officers, directors, shareholders, employees, successors, assigns, predecessors-in-interest, parents, subsidiaries, affiliates and any other entities which it directs or controls," because the requests would then be overly broad and unduly burdensome and would seek work-product privileged and attorney-client privileged communications.
2. Opposer objects to each interrogatory to the extent that interrogatory seeks privileged information, proprietary information or other information that has been gathered or prepared in the course of litigation or which is otherwise subject to the lawyer-client privilege, the accountant-client privilege, the joint-defense privilege, the husband-wife privilege, the work product doctrine, reporter's privilege, or any other applicable privilege or immunity, including trade secrets, proprietary information, information that is confidential pursuant to a statute or court order, confidential business information, or other information subject to an expectation of privacy or confidentiality. Information described by this paragraph is referred to herein as "privileged."
3. Opposer objects to each interrogatory to the extent that interrogatory conflicts with, or seeks to impose any obligation beyond, the applicable rules and law.
4. Opposer objects to each interrogatory to the extent that interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

APPLICANT'S EXHIBIT **BBB BB**
PUBLIX v. THE GREAT ATLANTIC &
PACIFIC TEA COMPANY
Opp. No. 91186148 and
Opp. No. 91186863

5. Opposer objects to each interrogatory to the extent that interrogatory is unduly burdensome.

6. Opposer specifically reserves the right to object, as appropriate, to the admission of these answers as evidence at trial or for any other purpose.

7. An objection does not mean that Opposer possesses information responsive to the objectionable paragraph.

8. Opposer has not completed discovery and reserves the right to supplement or to amend its answers.

Answers and Objections to Interrogatories

INTERROGATORY NO. 1:

With respect to Opposer's Mark, separately identify each type of product on or in connection with which Opposer has used such mark or provided services under Opposer's Mark.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory is overly broad and unduly burdensome, in that the GREENWISE® mark has been used in connection with many different products and services, and requiring Opposer to list all of them is unnecessary. Subject to and without waiving this objection, Opposer states that Opposer has used the GREENWISE® mark through one or more related companies on numerous products and services, including (but not necessarily limited to) salads, romaine hearts, spinach, fruits, vegetables, beef, chicken, seafood, shellfish, shrimp, packaged entrees, soy crumbles, vegetarian and soy burgers, cereal, chips, apple sauce, tomato paste, tomato sauce, salsa, beans, ketchup, mustard, vinegar, honey, candy, raisins, ginger, nuts, seeds, dried fruits, soymilk, milk, eggs, juice, bleach, paper products, cat litter, wood chips for grilling, charcoal briquettes, a newsletter, retail grocery store services, delicatessen services, bakery services, café services, coffee-bar services, and retail store services featuring chocolate confectionary, candy, edible gifts, organic wines, and beers. The GREENWISE® retail grocery store services include sales of the products listed in this answer as well as numerous other organic, all-natural and earth-friendly products.

INTERROGATORY NO. 2

With respect to each type of product or service identified in Interrogatory No. 1 separately state:

(a) the date the product or service was first used, or is intended to be used, in interstate commerce;

(b) whether the mark is currently used on such products or services.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory is overly broad and unduly burdensome. The GREENWISE® mark has been used in connection with many different products, and the first-use date of the mark on each of those products is not material to this proceeding. Requiring Opposer to research and to report to Applicant the first-use date and current status of each GREENWISE® product and service, therefore, is unduly burdensome. Subject to and without waiving these objections, Opposer states that the GREENWISE® mark is currently used on essentially all of the products listed in the answer to the proceeding interrogatory. Additional information responsive to this interrogatory, including approximate first-use dates, may be determined by examining business records. The burden of deriving or ascertaining the answer would be substantially the same for either party. Opposer agrees to give Applicant a reasonable opportunity to examine the records and to make copies, compilations, abstracts or summaries.

INTERROGATORY NO. 3

State the facts surrounding Opposer's selection of Opposer's Mark, including but not limited to, the reason the mark was selected, and identify each document that refers or relates to the adoption or selection by or decision of Opposer to use Opposer's Mark upon or in connection with each product or service identified in response to Interrogatory No. 1.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In particular, the reason for Opposer's selection of the GREENWISE® mark is immaterial to the issues in this proceeding. In addition, this request seeks information protected by the attorney-client privilege and attorney work-product doctrine and seeks confidential and proprietary business information. Subject to and without waiving these objections and the General Objections, and without waiving the attorney-client privilege and attorney work-product doctrine, Opposer agrees to produce trademark search reports relating to selection of the GREENWISE® mark.

INTERROGATORY NO. 4

Identify by name, address and position of employment (if applicable), each person who was responsible for or who participated in the adoption or selection by or decision of Opposer to use Opposer's Mark for each product or service identified in response to Interrogatory No. 1.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In particular, the reason for selection of the GREENWISE® mark is immaterial to the issues in this proceeding. In addition, this

request seeks information protected by the attorney-client privilege and attorney work-product doctrine and seeks confidential and proprietary business information. Subject to and without waiving these objections and the General Objections, Opposer states that Mark Irby was responsible for selection of the GREENWISE® mark and has general supervisory responsibility for the scope of use of that mark. Mr. Irby is president of Publix Asset Management Company. Mr. Irby's address for purposes of this proceeding is c/o James B. Lake, Thomas, LoCicero & Bralow PL, 400 N. Ashley Dr., Suite 1100, Tampa, FL 33602.

INTERROGATORY NO. 5

Identify each document that comprises, refers or relates to each trademark search or other inquiry conducted by or for Opposer concerning the use or prospective use of Opposer's Mark.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. In particular, the reason for selection of the GREENWISE® mark is immaterial to the issues in this proceeding. In addition, this request seeks information protected by the attorney-client privilege and attorney work-product doctrine. Subject to and without waiving these objections and the General Objections, and without waiving the attorney-client privilege and attorney work-product doctrine, Opposer agrees to produce trademark search reports relating to selection of the GREENWISE® mark.

INTERROGATORY NO. 6

Describe each written or oral opinion of counsel regarding the use of Opposer's Mark on any or all of the products identified in response to Interrogatory No. 1 by stating the author(s), recipient(s) and date thereof and the conclusions of the author(s) and the general grounds therefore.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory seeks information protected by the attorney-client privilege and attorney work-product doctrine. In addition, this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 7

Identify any and all documents that set forth, refer or relate to any written or oral opinions of counsel regarding the use of Opposer's Mark on any or all of the products identified in response to Interrogatory No. 1.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory seeks information protected by the attorney-client privilege and attorney work-product doctrine. In addition, the request for "all documents that set forth, refer or relate to any written or oral opinions" is vague, ambiguous, overly broad, and unduly burdensome. In addition, this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 8

Identify each document in Opposer's possession, custody or control that refers or relates to Applicant's Mark.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory seeks information protected by the attorney-client privilege and attorney work-product doctrine. Subject to these objections and the General Objections, Opposer agrees to produce copies of these documents (if any) in its possession, custody and control at a mutually convenient time and place.

INTERROGATORY NO. 9

Identify each state to which Opposer sells its goods under Opposer's Mark.

ANSWER: Subject to the General Objections, Opposer states that GREENWISE® products are sold through related companies without any restriction on their resale, distribution, or use by consumers. Consequently, the sale of GREENWISE® products is not limited to a particular state or states. Opposer's related companies sell GREENWISE® products in retail stores in Alabama, Florida, Georgia, South Carolina, and Tennessee.

INTERROGATORY NO. 10

Describe in detail the trade channels through which Opposer's products or services bearing Opposer's Mark identified in response to Interrogatory No. 1 are or are intended to be sold.

ANSWER: Subject to the General Objections, Opposer states that GREENWISE goods and services are distributed through retail stores, by U.S. Mail, and online.

INTERROGATORY NO. 11

Identify all advertisements, catalogs, flyers, price lists, or other items of advertising or promotional material of Opposer which use or refer to Opposer's Mark.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory is vague, overly broad, and unduly burdensome insofar as the interrogatory seeks identification of all advertising or marketing materials that use or refer to the GREENWISE® mark. That mark regularly appears in numerous print and online publications and advertising and promotional materials. Subject to and without waiving these objections, Opposer agrees to provide examples at a mutually convenient time and place.

INTERROGATORY NO. 12

State whether Opposer owns or operates any retail supermarkets in the United States.

ANSWER: Subject to the General Objections, no. However, Opposer licenses various trademarks to related companies that own or operate retail supermarkets in the United States.

INTERROGATORY NO. 13

Describe the relationship between Opposer and Publix Supermarkets Inc., and identify all documents evidencing the same.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory is vague, overly broad, and unduly burdensome insofar as the interrogatory seeks identification of "all documents evidencing" the relationship between two corporations. Subject to these objections and the General Objections, Opposer states that Publix Asset Management Company licenses various trademarks to Publix Super Markets Inc., in a written license agreement.

INTERROGATORY NO. 14

State whether Opposer sells any product identified in Interrogatory No. 1 in stores other than those owned by Opposer or by Publix Supermarkets, Inc.

ANSWER: Subject to the General Objections, Opposer states that, at this time, GREENWISE® products are sold by Publix Super Markets, Inc., and related companies pursuant to license agreements. However, GREENWISE® products are sold without any restriction on their resale, distribution, or use by consumers. Consequently, the sale of GREENWISE® products is not limited to sales by Opposer alone.

INTERROGATORY NO. 15

State whether Opposer is aware of any grocery product other than Opposer's products sold under Opposer's Mark or Applicant's products sold or intended to be sold under Applicant's

Mark which includes that word "green" and list all such product names and identify all documents relating to or evidencing same.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory is vague, overly broad, and unduly burdensome, in that the interrogatory seeks to compel Opposer to conduct a survey and research concerning third-party trademarks. In addition, insofar as this interrogatory seeks discovery of Opposer's legal research, this request seeks information protected by the attorney work-product doctrine. Furthermore, the request that Opposer "identify all documents relating to or evidencing" third-party goods is vague, ambiguous, and overly broad. Subject to these objections and the General Objections, Opposer states that information concerning some other "green" marks may be found in certain business records. The burden of deriving or ascertaining the answer would be substantially the same for either party. Opposer agrees to give Applicant a reasonable opportunity to examine the records and to make copies, compilations, abstracts or summaries.

INTERROGATORY NO. 16

State whether Opposer has taken action against the owner of any trademark or service mark containing or comprised of the phrase "green."

ANSWER: Subject to the General Objections, yes.

INTERROGATORY NO. 17

If the answer to Interrogatory No. 16 is anything other than an unqualified "no," for each such action taken by Opposer, state:

- (a) the mark or marks against which action was taken;
- (b) the goods and/or services for which each such mark or marks were used, or in the case of an application filed with the U.S. Patent and Trademark Office on the basis of a future intent-to-use, the goods and/or services upon which that mark or marks were intended to be used;
- (c) the owner of each said mark or marks;
- (d) the nature of the action taken against each such mark or marks (*i.e.*, cease and desist letter, trademark opposition, lawsuit, etc.);
- (e) the outcome of each such action; and

- (f) identify all documents related to (a)-(c) above.

ANSWER: Opposer reiterates the General Objections and, in particular, objects that this interrogatory is vague, overly broad, and unduly burdensome, in that the interrogatory seeks to compel Opposer to conduct research concerning third-party trademarks. In addition, Opposer objects insofar as this interrogatory seeks attorney-client communications and attorney work product. Subject to and without waiving this objection Publix states that information concerning the actions described in this interrogatory may be determined by examining certain business records. The burden of deriving or ascertaining the answer would be substantially the same for either party. Opposer agrees to give Applicant a reasonable opportunity to examine the records and to make copies, compilations, abstracts or summaries.

INTERROGATORY NO. 18

(a) Identify any persons or entities Opposer has authorized, licensed or otherwise granted the right to use any of Opposer's Marks cited in its Notice of Opposition in the United States.

(b) For each of Opposer's Marks for which third-party use has been authorized or licensed, describe the nature of the authorized use or license.

ANSWER: Opposer objects that this interrogatory calls for the production of confidential business information. Subject to this objection and the General Objections, Opposer states that information responsive to this interrogatory may be determined by examining business records. The burden of deriving or ascertaining the answer would be substantially the same for either party. Upon the entry of an appropriate protective order, Opposer agrees to give Applicant a reasonable opportunity to examine the records and to make copies, compilations, abstracts or summaries.

INTERROGATORY NO. 19

(a) Describe any instance of actual confusion between any of Opposer's Marks cited in its Notice of Opposition and Applicant's Mark, including, without limitation, any misdirected mail, telephone calls or orders and any inquiries concerning association between the parties.

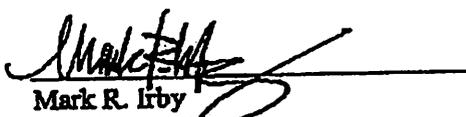
(b) Identify the person or persons most knowledgeable about any such instances of confusion identified in response to Interrogatory No. 18(a) above.

ANSWER: Subject to the General Objections, and given the recent, limited use by

Applicant of its claimed GREEN WAY mark, Opposer is not aware of any actual confusion at this time.

VERIFICATION

I verify under penalty of perjury that the foregoing is true and correct. Executed on this 28th day of April, 2009.

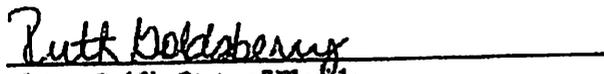

Mark R. Irby
President
Publix Asset Management Company

STATE OF FLORIDA
COUNTY OF POLK

BEFORE ME, the undersigned authority, personally appeared Mark R. Irby, who, being first duly sworn and being personally known to me, deposes and says that he has read and signed the foregoing interrogatory answers and that the answers are true and correct to the best of his knowledge, information, and belief.

SWORN TO and subscribed before me this 28th day of April, 2009.




Notary Public State of Florida
Printed Name: Ruth Goldsberry
Commission No.: DD 697751

My Commission Expires: 10-21-2011