

ESTTA Tracking number: **ESTTA604225**

Filing date: **05/14/2014**

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

Proceeding	91186148
Party	Defendant The Great Atlantic & Pacific Tea Company, Inc.
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Date	05/14/2014
Attachments	Curran Notice of Filing Trial Testimony (Non-Confidential) Part 1 of 4.pdf(4863992 bytes )

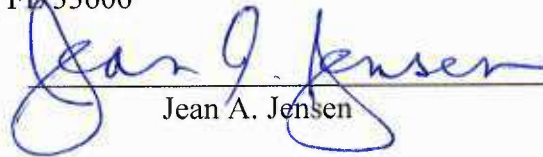


**NOTICE OF FILING TRIAL TESTIMONY**  
Opposition No. 91186148, 91186863  
(Consolidated as 91186148)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Notice of Filing Trial Testimony has been served on opposer by first class mail, postage prepaid on May \_\_, 2014 addressed to its attorneys as follows:

James Lake, Esq.  
Thomas & LoCicero, PL  
601 South Boulevard  
Tampa, FL 33606

  
Jean A. Jensen

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CERTIFIED COPY

**In The Matter Of:**

*PUBLIX ASSET MANAGEMENT COMPANY*

*v.*

*THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.*

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*BETH CURRAN - Vol. 1*

*October 3, 2013*

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***CONFIDENTIAL PORTIONS PAGES 11 TO 13  
AND PAGES 47-52***

**MERRILL CORPORATION**

**Legalink, Inc.**

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New York, NY 10014  
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CERTIFIED COPY

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

-----x  
PUBLIX ASSET MANAGEMENT COMPANY,

Opposer,

-against-

THE GREAT ATLANTIC & PACIFIC TEA  
COMPANY, INC.

Applicant.

-----x  
October 3, 2013  
10:12 a.m.

Deposition of BETH CURRAN, Confidential  
portions pages 11 to 13 and pages 47-52,  
taken by Applicant, pursuant to Notice,  
at the offices of Cowan, Liebowitz &  
Latman, P.C., 1133 Avenue of the  
Americas, New York, New York, before  
Jowell Falsetta, a certified Shorthand  
Reporter and Notary Public within and  
for the State of New York.

1

2 A P P E A R A N C E S:

3

4

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7

BY: JAMES LAKE, ESQ.

8

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9

10

11

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12

13

14 BY: ARLANA COHEN, ESQ.

15

16

17 ALSO PRESENT:

18 GABRIELLE SCALISE, in-house counsel,  
The Atlantic & Pacific Tea Company

19

20

21

22

23

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25



1  
2 S T I P U L A T I O N S  
3 IS HEREBY STIPULATED AND AGREED  
4 By and between the attorneys for the  
5 respective parties herein, and in  
6 compliance with Rule 221 of the Uniform  
7 Rules for the Trial Courts  
8 THAT the parties recognize the provision  
9 Of Rule 3115 subdivisions (b), (c)  
10 and/or (d).  
11 All objections made at a deposition  
12 shall be noted by the officer before  
13 whom the deposition is taken, and the  
14 answer shall be given and the deposition  
15 shall proceed subject to the objections  
16 and to the right of a person to apply  
17 for appropriate relief pursuant to  
18 Article 31 of the CPLR.

19 THAT every objection raised  
20 during a deposition shall be stated  
21 succinctly and framed so as not to  
22 suggest an answer to the deponent and,  
23 at the request of the questioning  
24 attorney, shall include a clear  
25 statement as to any defect in form or  
26 other basis of error or irregularity,  
27 Except to the extent permitted by CPLR  
28 Rule 3115 or by this rule, during the  
29 course of the examination persons in  
30 attendance shall not make statements or  
31 comments that interfere with the  
32 questioning.

33 THAT a deponent shall answer  
34 all questions at a deposition, except  
35 (i) to preserve a privilege or right of  
36 confidentiality, (ii) to enforce a  
37 limitation set forth in an order of a  
38 court, or (iii) when the question is  
39 plainly improper and would, if answered,  
40 cause significant prejudice to any  
41 person.

42 An attorney shall not direct  
43 a deponent not to answer except as  
44 provided in CPLR Rule 3115 or this  
45 subdivision. Any refusal to answer or  
46 direction not to answer shall be  
47 accompanied by a succinct and clear

1

2 Of the basis therefore. If the deponent  
3 does not answer a question, the  
4 examining party shall have the right to  
5 complete the remainder of the  
6 deposition. THAT an attorney shall not  
7 interrupt the deposition for the purpose  
8 of communicating with the deponent  
9 unless all parties consent or the  
10 communication is made for the purpose of  
11 determining whether the question should  
12 not be answered on the grounds set forth  
13 in section 221.2 of these rules and, in  
14 such event, the reason for the  
15 communication shall be state for the  
16 record succinctly and clearly.

17 THAT failure to object to any  
18 question or to move to strike and  
19 testimony at this examination shall not  
20 be a bar or waiver to make such  
21 objection or motion at the time of the  
22 trial of this action, and is hereby  
23 reserved; and

24 THAT this examination may be  
25 signed and sworn to by the witness  
26 examined herein before any Notary  
27 Public, but failure to do so or to  
28 return the original of the examination  
29 to the attorney on whose behalf the  
30 examination is taken shall not be deemed  
31 a waiver of the rights provided by Rules  
32 3116 and 3117 of the CPLR, and shall be  
33 controlled thereby, and

34 THAT certification and filing  
35 of the original of this examination are  
36 waived; and

37 THAT the questioning attorney  
38 shall provide counsel for the witness  
39 examined herein with a copy of this  
40 examination at no charge.

41

42

43

1                   BETH CURRAN  
2    B E T H   C U R R A N,  
3    P.O. Box 1211, Greenwood Lake, New York,  
4    being first duly sworn by Jowell  
5    Falsetta, a Notary Public of the State  
6    of New York, was examined and testified  
7    as follows:

8    DIRECT EXAMINATION BY MS. COHEN:

9           Q.    Ms. Curran, where do you  
10   work?

11          A.    I work at A&P.

12          Q.    And I understand that your  
13   position changed recently.

14                What is your current position?

15          A.    Yes, it did. My current  
16   position is director of marketing and  
17   advertising, that changed in July.

18          Q.    And prior to that, what  
19   was your position?

20          A.    I was the manager of Own  
21   brands.

22          Q.    And can you tell me what  
23   is Own brands -- is it O-W-N?

24          A.    O-W-N, yes. It is the  
25   department at A&P where we develop

1 BETH CURRAN

2 and produce items to market in our  
3 stores.

4 Q. Are these what are known  
5 as private label items?

6 A. Yes, they are.

7 Q. Has private label changed,  
8 has the business of private label  
9 changed over the years?

10 A. It has. Private label  
11 used to be known more as generics,  
12 just sort of a me-too copy brand.  
13 But now people are developing brands  
14 that are more stand-alone brands,  
15 developing them, still competing  
16 against national brands. But really  
17 kind of live on their own merits and  
18 don't just copy a specific national  
19 brand.

20 Q. Do private liable brands  
21 use of the name of the store as part  
22 of the product?

23 A. Some do and some don't.

24 Q. What is, which brands were  
25 you in charge of as manager of Own

1 BETH CURRAN

2 brands?

3 A. I had Food Basics, Home  
4 Basics, Green Way and Mid Atlantic  
5 Country Farms.

6 Q. And these are private  
7 label brands?

8 A. Yes.

9 Q. And Food Basics and Home  
10 Basics, are they also names of  
11 stores?

12 A. We have Food Basics  
13 stores, so those actually relate back  
14 to the store they are in. Green Way  
15 and Mid Atlantic Country Farms do not  
16 have any branding that associates  
17 them to our banners.

18 Q. And banners meaning store  
19 names?

20 A. Store name, so A&P,  
21 Pathmark, Super Fresh, Waldbaums,  
22 Food Basics and Food Emporium.

23 Q. So Mid Atlantic Country  
24 Farms --

25 A. Yes.

1 BETH CURRAN

2 Q. And what kind of products  
3 are those?

4 A. Sure, it was developed in  
5 the meat department. They are  
6 locally-raised, antibiotic free meat  
7 and poultry products.

8 Q. And Food Basics and Home  
9 Basics?

10 A. It is really our  
11 entry-level price point brand. So it  
12 is just as it says in its name, very  
13 basic. So it is really for our  
14 price-conscious consumer.

15 Q. What about Green Way, is  
16 Green Way another private label  
17 product developed by Own brands?

18 A. Yes, it is. It is  
19 different than like we just talked  
20 about, Food Basics/Home Basics, it  
21 has no association to the banner. It  
22 was developed to really be a stand  
23 alone brand.

24 Q. Why would you not want to  
25 use the store name?

1 BETH CURRAN

2 MR. LAKE: Objection,  
3 calls for speculation.

4 MS. COHEN: Okay.

5 Q. Go ahead.

6 A. So we developed that brand  
7 and marketed it so that it was not  
8 associated with any of our banners,  
9 so that customers could come purchase  
10 the brand, become attached and become  
11 loyal to the brand regardless of the  
12 banner it was sold in.

13 Sometimes there are  
14 preconceived notions with the banners  
15 you're shopping in or something like  
16 that. This would just be that they  
17 would gain loyalty to the brand like  
18 they would any other national brand.

19 And then if the brand was  
20 successful, you could take it out of  
21 market if you so wish because it  
22 didn't have any association to any of  
23 our banners.

24 Q. And what does "out of  
25 market" mean?



1 BETH CURRAN

2 A. Sold in places we don't  
3 have stores. So you might sell it  
4 off to other retailers so they could  
5 also market the brand.

6 Q. And why is it when -- why  
7 does a product get marketed with a  
8 store name?

9 A. There are times when it  
10 makes sense if you have great  
11 association with the banner or people  
12 are really looking for using the  
13 banner name to promote the brand. So  
14 they really want to have association  
15 with the banner and the product.

16 Q. So I suppose from our  
17 discussions, you're familiar with a  
18 line of products called Green Way?

19 A. Yes.

20 Q. Do you know when they were  
21 first sold?

22 A. Yes, the brand was  
23 launched Earth Day of 2009, which is  
24 April of 2009.

25 Q. What types of products are



1 BETH CURRAN

2 Q. Who is the competition of  
3 Green Way?

4 A. It is a national brand  
5 within our stores.

6 Q. So what do you mean by it  
7 is a national brand?

8 A. So if you were looking at,  
9 you know, cereal and we have a raisin  
10 bran, like this box of raisin bran,  
11 you would be competing against the  
12 other raisin brans on the shelf. So  
13 Post has a raisin bran and someone  
14 else has a raisin bran but it is  
15 escaping me right now.

16 But essentially you would be  
17 competing against those other brands  
18 on the shelf.

19 Q. The national brands?

20 A. Yes.

21 Q. What is known as the  
22 national brands?

23 A. The large CPG companies  
24 have the national brands. So the  
25 things that are sold across the

1 BETH CURRAN

2 country at all retailers.

3 Q. What is a CPG?

4 A. A consumer product goods  
5 company.

6 Q. Like Kraft?

7 A. Kraft, Kelloggs, Post,  
8 Quaker, Coke-a-Cola, those large  
9 scale companies.

10 Q. So we had gone over the  
11 list of products with I have some of  
12 them today here. I hope not to mark  
13 300 products, so we will look at some  
14 of them today.

15 I would like to show you a box  
16 of cereal, which I have here, Green  
17 Way organic raisin bran.

18 Was that the raisin bran which  
19 you were referring to?

20 A. Yes.

21 MS. COHEN: Can we please  
22 have this box marked as  
23 Applicant's KKK.

24 (Box of cereal marked  
25 in evidence, Applicant's Exhibit

1 BETH CURRAN

2 KKK.)

3 (Photograph of box of  
4 cereal marked in evidence,  
5 Applicant's Exhibit KKK.)

6 Q. Ms. Curran, is this a  
7 cereal that is currently sold as  
8 Green Way cereal?

9 A. Yes, it is.

10 Q. Do you know where the  
11 cereal is shelved?

12 A. In the standard cereal  
13 aisle.

14 Q. Do you know if this  
15 product has been sold since the  
16 launch of Green Way continuously?

17 A. Yes, it has.

18 Q. So would that be since  
19 approximately 2009?

20 A. 2009, yes.

21 MS. COHEN: I would like  
22 to offer Applicant's KKK into  
23 evidence.

24 MR. LAKE: I object only  
25 because as I look at this, I

1 BETH CURRAN

2 don't think this has been  
3 produced before today.

4 MS. COHEN: Yes, it has.

5 MR. LAKE: I see the  
6 bates number on it but I don't  
7 believe I have seen it before.

8 MS. COHEN: It has been  
9 produced. It's been in my office  
10 for I think about five years.

11 MR. LAKE: I'll stand by  
12 my objection. Obviously if I  
13 review the production and it is  
14 in there, then we can reflect  
15 that in the record.

16 MS. COHEN: Well there is  
17 no way I could produce to you  
18 300 products. I didn't even buy  
19 300 products.

20 MR. LAKE: I understand.

21 MS. COHEN: So in any  
22 event, Applicant's KKK is  
23 offered into evidence.

24 I am also going to show  
25 you another product, this is --

1 BETH CURRAN

2 well you tell.

3 Q. Well you tell me what it  
4 is?

5 A. This is our Green Way all  
6 purpose cleaner, lemongrass flavor,  
7 scent.

8 Q. And is this a product that  
9 is currently sold as a Green Way  
10 product?

11 A. Yes, it is.

12 Q. And do you know where this  
13 product would be shelved?

14 A. This would be in the  
15 household cleaners section of the  
16 store.

17 Q. Do you know if this  
18 product has been sold since the  
19 launch of Green Way in 2009?

20 A. Yes, I believe it was one  
21 of the original SKUs that were  
22 launched.

23 MS. COHEN: I would like  
24 to have this marked as Exhibit  
25 LLL, which is bates stamped A&P

1 BETH CURRAN

2 2550.

3 (Green Way all purpose  
4 cleaner bottle marked for  
5 identification, Applicant's  
6 Exhibit LLL.)

7 MR. LAKE: May I have a  
8 moment, please.

9 MS. COHEN: Yes.

10 (Off the record.)

11 Q. I'm showing you now an  
12 actual product.

13 As you had said, it is the all  
14 purpose cleaner in lemongrass flavor?

15 A. Yes.

16 Q. I also have a -- which was  
17 previously produced to Publix as A&P  
18 1590, a photograph of which was  
19 produced to A&P 1590.

20 Is the photograph of A&P 1590  
21 showing a picture of the product  
22 which is A&P 2550?

23 A. Yes, it is.

24 MS. COHEN: Okay, I would  
25 like to mark as A&P LLL -- okay

1 BETH CURRAN

2 you had done that.

3 And then we are going to,  
4 I have a duplicate Applicant's  
5 LLL, which is the front and  
6 back. So I don't have to send  
7 the board the bottle.

8 (Photograph of cleaner  
9 bottle marked in evidence,  
10 Applicant's Exhibit LLL.)

11 MS. COHEN: I would like  
12 to offer into evidence  
13 Applicant's LLL. Any objection?

14 MR. LAKE: I don't have  
15 any objection to offering LLL.  
16 I would note this particular  
17 document was not produced in  
18 discovery, another photo of the  
19 same product was.

20 That is the source of my  
21 confusion and the reason for the  
22 objection is that this bates  
23 number range 2550 was not  
24 produced.

25 Obviously if there are

1 BETH CURRAN

2 other copies of the same label  
3 that were produced, we have no  
4 objection to using those.

5 MS. COHEN: We have also  
6 determined that you did not ask  
7 for it to be produced. So there  
8 is no basis for an objection for  
9 something not being produced  
10 when there was not a request for  
11 each and every product sold  
12 bearing Green Way.

13 MR. LAKE: I disagree  
14 that that is an accurate  
15 characterization of the  
16 situation but in any event, we  
17 state our objection.

18 MS. COHEN: Can we go off  
19 the record.

20 (Off the record.)

21 Q. I am going to show you,  
22 Ms. Curran, another product which is  
23 an empty bag of -- well, tell me what  
24 it is?

25 A. Our frozen cut green



1 BETH CURRAN

2 beans.

3 Q. Is that a Green Way  
4 product?

5 A. Yes, it is.

6 Q. I'm also going to show you  
7 what has been previously produced as  
8 A&P 1516.

9 Is the actual product bag in  
10 front of you the same as the  
11 photocopy of the bag previously  
12 produced as A&P 1516?

13 A. Yes, it is.

14 MR. LAKE: I'm sorry is  
15 the bag numbered?

16 MS. COHEN: Yes, the bag  
17 is 2551.

18 MR. LAKE: Thank you.

19 Q. And where would the beans  
20 be sold?

21 A. They would be in the  
22 frozen vegetable section.

23 MS. COHEN: I would like  
24 to mark the beans as Applicant's  
25 Exhibit MMM.

1 BETH CURRAN

2 (Bag of green beans  
3 marked in evidence, Applicant's  
4 Exhibit MMM.)

5 Q. Do you know how long you  
6 have been selling Green Way cut green  
7 beans?

8 A. These would have been  
9 introduced in the launch, 2009.

10 Q. Thank you.

11 MS. COHEN: If you would  
12 mark this as Applicant's MMM.

13 (Photograph of bag of  
14 green beans marked in evidence,  
15 Applicant's Exhibit MMM.)

16 MS. COHEN: I'm going to  
17 offer Applicant's MMM into  
18 evidence.

19 MR. LAKE: No objection.

20 Q. I am going to show you a  
21 product bearing A&P 2548.  
22 If you could tell me what that  
23 is?

24 A. Sure, this is Green Way  
25 organic peanut butter.

1 BETH CURRAN

2 Q. And I am going to show you  
3 what has been previously produced as  
4 Applicant's 1561.

5 And I am going to ask you if  
6 that is a photocopy of the same  
7 product that is shown in 2548?

8 A. Yes, it is.

9 Q. And do you know where the  
10 Green Way organic peanut butter would  
11 be shelved?

12 A. It is in the peanut butter  
13 and jelly section.

14 MS. COHEN: I would like  
15 this marked as NNN, Applicant's  
16 NNN.

17 (Jar of peanut butter  
18 marked in evidence, Applicant's  
19 Exhibit NNN.)

20 MS. COHEN: And if you  
21 could mark the picture of the  
22 peanut butter as NNN. Off the  
23 record.

24 (Off the record.)

25 (Photograph of jar of

1 BETH CURRAN

2 peanut butter marked in evidence,  
3 Applicant's Exhibit NNN.)

4 MS. COHEN: I would like  
5 to offer into evidence  
6 Applicant's NNN, Green Way  
7 organic peanut butter.

8 MR. LAKE: No objection.

9 Q. I'm going to show you  
10 another product. This is a bottle  
11 of, it appears to be Green Way  
12 organic apple essence water marked as  
13 A&P 2547.

14 Do you see that?

15 A. Yes, I do.

16 Q. Is this a more recently  
17 launched product?

18 A. Yes, it is. It was only  
19 launched in maybe the past four  
20 months.

21 Q. And so is it fair to say  
22 there was a number of flavored waters  
23 added to the Green Way line?

24 A. Yes, there was.

25 Q. And this is a bottle of

1 BETH CURRAN

2 water that is actually sold in the  
3 store?

4 A. Yes, it is.

5 MS. COHEN: I would like  
6 to have marked as Applicant's  
7 Exhibit 000, the organic water,  
8 please. And the photocopy  
9 marked as well.

10 (Bottle of water marked  
11 in evidence, Applicant's Exhibit  
12 000.)

13 (Photograph of bottle  
14 of water marked in evidence,  
15 Applicant's Exhibit 000.)

16 MS. COHEN: I would like  
17 to offer in evidence Applicant's  
18 000, the bottle of organic Green  
19 Way water.

20 MR. LAKE: No objection.

21 Q. I'm going to show you some  
22 photographs of products and ask you  
23 if they are photographs of actual  
24 Green Way products as sold.

25 First A&P 1364, if you can tell

1 BETH CURRAN

2 me what it is?

3 A. Yes, that is a Green Way  
4 natural liquid egg whites.

5 Q. Is that an actual Green  
6 Way product that is sold at your  
7 store?

8 A. Yes.

9 Q. Do you know if this  
10 product has been available for sale  
11 since the launch?

12 A. This came in after the  
13 launch. Not one of the original  
14 ones.

15 Q. Do you know approximately  
16 when?

17 A. I don't really recall, I'm  
18 sorry.

19 Q. Some time after 2009?

20 A. Yes, some time after 2009.

21 Q. I want to show you another  
22 label.

23 If you could tell me what this  
24 is in A&P 1363?

25 A. These are the Green Way

1 BETH CURRAN

2 natural garden veggie burgers,  
3 frozen.

4 Q. Is this a photograph of a  
5 product that is actually sold?

6 A. Yes, it is.

7 Q. I am going to show you  
8 another photograph of a product, A&P  
9 1356.

10 Can you tell me what that is?

11 A. It is Green Way organic  
12 light string cheese.

13 Q. Is this a photograph of a  
14 product that is actually sold?

15 A. Yes, it is.

16 Q. I am going to show you a  
17 photograph of another product.

18 If you could tell us what it  
19 is?

20 A. Green Way organic cheese  
21 raviolis.

22 Q. There is a picture of a  
23 can of --

24 A. Yes, canned ravioli.

25 Q. There is a bates number

1 BETH CURRAN

2 A&P 54.

3 And this is a photograph of a  
4 product that is actually sold?

5 A. Yes.

6 Q. I am going to show you  
7 another photograph of a product,  
8 which is bates stamped A&P 56.

9 If you could tell me what this  
10 says?

11 A. It is our Green Way  
12 organic snicker doodle flavored  
13 instant oatmeal.

14 Q. Is this a product that is  
15 actually sold?

16 A. Yes, it is.

17 Q. Do you know when the  
18 organic snicker doodle product became  
19 available?

20 A. It was after 2009.

21 Q. I am going to show you a  
22 picture of another product, A&P 48.

23 Can you tell me what it is?

24 A. Green Way organic black  
25 bean and corn salsa.



1 BETH CURRAN

2 Q. Is that a product that is  
3 actually sold by you?

4 A. Yes, it is.

5 Q. Do you know for  
6 approximately how long you have been  
7 selling this product?

8 A. This one was close to the  
9 launch of the brand. So I would say  
10 probably from late 2009.

11 Q. I'm going to show you  
12 another photograph which is A&P 1353.

13 If you could identify that,  
14 please?

15 A. Yes, this a Green Way all  
16 natural chicken sausage, apple  
17 flavored.

18 Q. Is that a photograph of a  
19 product that is actually sold?

20 A. Yes.

21 Q. Do you know how long you  
22 have been selling this product?

23 A. This one came in after the  
24 launch, I would say it was 2010.

25 Q. I am going to show you a

1 BETH CURRAN

2 photograph of a product marked A&P  
3 60.

4 If you could tell me what that  
5 is?

6 A. Green Way organic soy  
7 milk, vanilla flavored.

8 Q. Is this is photograph of a  
9 product that is sold in the store?

10 A. Yes, it is.

11 Q. Do you know approximately  
12 how long you have been selling that  
13 product?

14 A. I believe this one is from  
15 2009.

16 MS. COHEN: Okay, I would  
17 like to have marked as  
18 Applicant's PPP all of these  
19 photos as one exhibit. If that  
20 would okay with Mr. Lake.

21 MR. LAKE: That is fine.

22 MS. COHEN: That would be  
23 the egg whites, veggie burger,  
24 string cheese, ravioli, snicker  
25 doodle, salsa, sausage and soy

1 BETH CURRAN

2 milk.

3 (Photographs of  
4 products marked in evidence,  
5 Applicant's Exhibit PPP.)

6 MS. COHEN: And I would  
7 like to offer into evidence  
8 Applicant's PPP.

9 MR. LAKE: No objection.

10 Q. Ms. Curran, we have  
11 previously looked at the list of  
12 products which we marked as  
13 Applicant's JJJ.

14 And we identified that there is  
15 over, well currently 331 products on  
16 the list; is that correct?

17 A. Correct.

18 Q. And this is products that  
19 are sold in the last 12 weeks?

20 A. Correct.

21 Q. Bearing Green Way?

22 A. Correct.

23 Q. So as to not mark 331  
24 products here today, is there any  
25 common characteristics among the

1 BETH CURRAN

2 packaging of each of the products?

3 A. Yes.

4 Q. What, can you tell us --

5 A. The brand's design  
6 architecture is common across all of  
7 the products in that there are a few  
8 features that are key.

9 They are always developed with  
10 the white background, with the green  
11 G logo, with the two words Green Way  
12 sitting below the G logo.

13 And then the product name is  
14 usually large across the front. And  
15 they are all identified as organic,  
16 natural or echo-friendly.

17 Q. I see, so by product name  
18 in the center, you mean the generic  
19 name?

20 A. Yes, peanut butter, raisin  
21 bran, liquid egg whites, the product  
22 identifier.

23 Q. Is in the center --

24 A. Yes, there might be a  
25 secondary description, smaller and

1 BETH CURRAN

2 below that, a flavor or styles. We  
3 call that all of the brand  
4 architecture, so that remains all  
5 consistent.

6 Q. Thank you. And I think  
7 the board thanks you.

8 I'm going to show you the box,  
9 Applicant's KKK, the raisin bran.  
10 There is a bunch of writing on the  
11 box.

12 What is the purpose of that?

13 A. We usually tell a brand  
14 story on products, where it can fit  
15 to get consumers understanding what  
16 our brand stand for. So they have a  
17 point of difference between our brand  
18 and other brands on the shelf.

19 Q. I notice a slogan on the  
20 side panel?

21 A. Yes.

22 Q. It states "there is their  
23 way and there is Green Way."

24 Is that a slogan that you used  
25 in connection with in product?

1 BETH CURRAN

2 A. Correct, that was used as  
3 sort of an ending to the brand story  
4 just to show, again try to educated  
5 our consumers, looking for the  
6 differentiation between our products  
7 and other products on the shelf.

8 Q. And the side panel is  
9 shown on A&P 2237 B of Applicant's  
10 KKK; is that correct?

11 A. Yes.

12 Q. Speaking of advertising,  
13 do you know how much has been spent  
14 annually on Green Way advertising  
15 since the launch?

16 A. Not specifically for this  
17 brand. Our marketing budget is  
18 really just in one line for Own  
19 brands marketing.

20 Q. Meaning it is not broken  
21 up --

22 A. By brand. So all of the  
23 Own brands marketing efforts get  
24 lumped into one line.

25 Q. But have you advertised

1 BETH CURRAN

2 the Green Way products?

3 A. We have, yes. We are  
4 always advertising them, they either  
5 live in the circular when they are on  
6 sale. So we use them in some e-mail  
7 communications.

8 We have in-store signage if  
9 there is a new product launch. We  
10 utilize in store radio to talk about  
11 the brand in stores.

12 Q. I am going to show you an  
13 item and if you could tell me if this  
14 is the type of advertising that you  
15 are referring to, it bears A&P 2535  
16 through 2546?

17 A. Yes, this is one of our in  
18 store vehicles, it is called an in  
19 store guide.

20 Q. And if you look on the  
21 back, I found a Green Way frozen  
22 fruit, two for \$7, is that one of the  
23 Green Way products?

24 A. Yes, it is.

25 Q. And is there another Green

1 BETH CURRAN

2 Way product there?

3 A. There is Green Way  
4 vitamins and supplements.

5 Q. Also advertised on the  
6 back?

7 A. Yes, buy one, get one  
8 free. Good deal.

9 Q. And where are these flyers  
10 available?

11 A. These are in the circular  
12 racks when you walk in the store.

13 Q. Are these also mailed to  
14 anyone?

15 A. Not this particular  
16 vehicle. The larger, full-sized  
17 circular is available both in store  
18 and mailed to homes and distributed  
19 to newspapers.

20 This particular vehicle is  
21 extra savings that we offer. So it  
22 is kind of a secondary placement for  
23 Green Way. It is also in the main  
24 circular and then it would be this,  
25 and this is just available in the



1 BETH CURRAN

2 store.

3 There would be different items  
4 from the circular, the mainframe  
5 circular to this in store guide  
6 (indicating).

7 MS. COHEN: Okay, I would  
8 like to mark as Applicant's QQQ,  
9 the circular.

10 (Circular marked in  
11 evidence, Applicant's Exhibit  
12 QQQ.)

13 MS. COHEN: I would like  
14 to offer into evidence  
15 Applicant's QQQ.

16 MR. LAKE: No objection.

17 Q. I am also going to show  
18 you another document, which is bates  
19 stamped A&P 1315.

20 If you could tell me what this  
21 is?

22 A. Sure, these are a series  
23 of coupons. One is just a generic  
24 basket offer and the others are for  
25 six different products. Three of

1 BETH CURRAN

2 them being Green Way products.

3 Q. And where would coupons  
4 such as these be available?

5 A. They would be distributed  
6 in store. And these are actually a  
7 series of coupons we call friends and  
8 family coupons. So they would be  
9 given out in store and also given to  
10 associates to share. So they could  
11 distribute them however they choose.

12 So they would have been  
13 distributed to all their friends and  
14 family. They would have been  
15 distributed via e-mail and also in  
16 store.

17 Q. And associates are  
18 employees?

19 A. Yes.

20 MS. COHEN: I would like  
21 to have this marked please as  
22 Applicant's RRR.

23 (Coupons marked in  
24 evidence, Applicant's Exhibit  
25 RRR.)

1 BETH CURRAN

2 Q. Would coupons similar to  
3 the type of coupons shown in  
4 Applicant's RRR be used with Green  
5 Way discounts from time to time?

6 A. Yes, they would be.

7 Q. But different products  
8 would be offered instead of the Green  
9 Way yogurt or the Green Way salad  
10 dressing or --

11 A. Yes, they could be used  
12 for potentially any Green Way items.

13 MS. COHEN: I would like  
14 to offer Applicant's RRR into  
15 evidence.

16 MR. LAKE: No objection.

17 Q. I'm going to show you  
18 another type of ad. If you could  
19 identify this for us, it is A&P 0009.

20 A. This would have been the  
21 Green Way ad when it was done on a  
22 full page of our circular.

23 Q. And it states on it "Green  
24 Way, introducing Green Way"?

25 A. Yes.

1 BETH CURRAN

2 Q. So this would be from the  
3 launch?

4 A. This would be from the  
5 Earth Day 2009 launch, yes.

6 Q. This ad shows, there are  
7 only Green Way products shown on this  
8 sheet?

9 A. Correct.

10 MS. COHEN: I would like  
11 to mark this Applicant's SSS.

12 (Advertisement marked  
13 in evidence, Applicant's Exhibit  
14 SSS.)

15 MS. COHEN: I would like  
16 to offer Applicant's SSS into  
17 evidence.

18 MR. LAKE: No objection.

19 Q. I am going to show you a  
20 couple of more pieces, A&P 1318.

21 Is this another advertisement  
22 for Green Way products?

23 A. Yes, it is.

24 Q. And what is the type of ad  
25 this is?

1 BETH CURRAN

2 A. This is what we would call  
3 an item and price sign. So this  
4 would actually be used in store at  
5 shelf to announce -- this is when we  
6 would have an new everyday price. So  
7 we dropped the price and made it a  
8 consistent, 79 cents. So we used  
9 this at the point of sale.

10 MS. COHEN: Okay, I would  
11 like to have this marked as  
12 Applicant's TTT.

13 (Advertisement marked  
14 in evidence, Applicant's Exhibit  
15 TTT.)

16 MS. COHEN: I would like  
17 to offer into evidence  
18 Applicant's TTT.

19 MR. LAKE: No objection.

20 Q. I would like to show you  
21 another ad and it is A&P 1319. It  
22 was actually previously marked as  
23 Opposer's Exhibit 25.

24 And if you could tell me what  
25 this is?

1 BETH CURRAN

2 A. Sure, this is another in  
3 store sign calling out an item of the  
4 month. It was a program that we used  
5 for a while for the launch of Green  
6 Way, where we would pick an item and  
7 it would actually stay on sale for  
8 the entire month. So it would be  
9 highlighted as such in the store,  
10 using this type of sign (indicating).

11 MS. COHEN: I don't think  
12 I need to mark this again. It  
13 is already in evidence. I would  
14 like to offer it as well  
15 Opposer's Exhibit 25.

16 Q. Also I would like to show  
17 you another ad, which I believe was  
18 previously marked as Opposer's 26.

19 If you could tell me what that  
20 is?

21 A. Sure, this is called a  
22 floor graphic and they are used for  
23 any number of reasons. But what they  
24 are done, they are placed on the  
25 floor in front of a product to draw

1 BETH CURRAN

2 attention to the specific location of  
3 products in the store.

4 Q. Is this a common type of  
5 advertisement?

6 A. Yes, we use it for several  
7 different brands, even national  
8 brands we use them in store.

9 Q. You stated that you used  
10 in store radio.

11 You don't use actual broadcast  
12 radio?

13 A. No, we don't use any large  
14 scale media, no TV, no radio.

15 Q. And is there a reason for  
16 that?

17 A. Well, we really advertise  
18 to our market but we also keep the  
19 budgets low. TV and radio are quite  
20 expensive. So we use our in store  
21 where our customers are and our  
22 circulars.

23 Q. Is it also to keep the  
24 price down of the Own brands  
25 products?

1 BETH CURRAN

2 A. Yes, I mean anything we do  
3 in the budgets, you know, at times  
4 can roll into the price to cover  
5 marketing expenses and things like  
6 that.

7 So this way we keep it price  
8 competitive in the stores.

9 Q. Is that another reason why  
10 the national brands are generally  
11 higher priced than an Own brand  
12 product?

13 MR. LAKE: Objection to  
14 the form, leading.

15 A. I mean they have much  
16 larger marketing dollars that they  
17 put against their products. So that  
18 could be one of the reasons they are  
19 higher priced.

20 Q. Is it generally a fact  
21 that the national brand product is  
22 higher priced than a private label  
23 product or in your case an Own brand  
24 product?

25 A. Yes, that should typically



1 BETH CURRAN

2 be the rules for an Own brand  
3 product, that it should never be a  
4 higher price than the national brand.

5 Q. In terms of Green Way, do  
6 you know if it is true that the Green  
7 Way products are priced lower than  
8 the national brand?

9 A. Yes, they are. It is one  
10 of the purposes of the brand is to be  
11 sort of the affordable options for  
12 people who want to purchase organic  
13 products or natural products, as they  
14 are typically quite expensive in the  
15 marketplace.

16 So this is a way for customers  
17 to -- you know if they we to make a  
18 change to that life-style, they could  
19 do it through Green Way.

20 Q. Would you say that these  
21 are -- strike that.

22 I am going to now show you  
23 something which is -- you could tell  
24 me what it is.

25 MS. COHEN: This is going

1 BETH CURRAN

2 types of products. Trying not to  
3 make it limiting.

4 Q. Do you think that  
5 consumers are familiar with different  
6 products selling green branded  
7 products, different stores selling  
8 green branded products?

9 A. Yes, I mean there are  
10 traditional brands that also have  
11 green branded products, green in the  
12 name which are sold by many stores.

13 Q. And there are also other  
14 products than the traditional  
15 products?

16 A. Than the traditional  
17 products, yes. I mean there is green  
18 in the type of product green but  
19 there are also green in brand names  
20 that are traditional. So there are  
21 Green Giant, things like that where  
22 green has been in the brand in the  
23 traditional way.

24 Q. I am going to show you a  
25 report that is listed as trade

1 BETH CURRAN

2 secret, commercially sensitive A&P  
3 2497 to A&P 2526.

4 MS. COHEN: I don't think  
5 that we need to put this on the  
6 confidential portion because I  
7 don't think we are going to  
8 discuss anything confidential.

9 Q. But in any event, let me  
10 just show you that for a moment.

11 If you could tell me what this  
12 report is?

13 A. This is a report showing  
14 all of the brands carried in our  
15 store with the word green in the  
16 brand.

17 Q. And where is the brand  
18 name shown on this report?

19 A. It is column C, it is  
20 under the heading low brand.

21 Q. And that means, that is  
22 where the brand name is?

23 A. Yes, low brand is just  
24 something in our system, that is  
25 brand name.

1 BETH CURRAN

2 Q. And who prepared this  
3 report?

4 A. This was from our data  
5 management department.

6 Q. So is this a report that  
7 is the type that is off of your  
8 system?

9 A. Yes, it is.

10 Q. And this report also  
11 includes the Green Way products?

12 A. Yes, it does.

13 Q. And how many items did  
14 this report find that had green in  
15 the brand name?

16 A. Sure, it shows 989  
17 products.

18 Q. And so these are of all of  
19 the products sold in your stores, all  
20 of the different banners or --

21 A. Yes, all banners. So  
22 across A&P corporate is what we  
23 called it to be inclusive of all  
24 banners.

25 Q. So each of these products

1 BETH CURRAN

2 are sold in an A&P store?

3 A. Yes.

4 Q. And what is shown on the  
5 column A?

6 A. Column A is the UPC, so  
7 that is the scannable code at store  
8 level to identify the product.

9 Q. And column B?

10 A. It is the UPC description  
11 so that is really the product  
12 description, usually a lot of  
13 abbreviations noted there. So it  
14 would be the size and the product  
15 description.

16 Q. And this report is recent,  
17 do you know?

18 A. Yes.

19 Q. So this is what is  
20 currently on sale in your stores?

21 A. Yes.

22 Q. With the name green in the  
23 name?

24 A. Yes.

25 Q. I noticed a product on

1 BETH CURRAN

2 this list, which was Green Giant  
3 chips and I bought a bag. I'm going  
4 to show you A&P 2552.

5 Do you see that product on the  
6 list?

7 A. Yes, page nine, Green  
8 Giant multi grain sweet potato.

9 Q. So that is on A&P 2505,  
10 Green Giant salty snacks?

11 A. Yes.

12 Q. So would it be fair to say  
13 that some of these products are green  
14 in the new way of speaking and also  
15 in the green traditional way?

16 A. Yes, some of these like  
17 Green Giant is obviously a long  
18 standing traditional brand.

19 And some of the other products  
20 in here pride themselves to be what  
21 people refer to as green, meaning  
22 organic or natural or clean kind of  
23 products. I see Clorox Greenworks  
24 here.

25 MS. COHEN: I would like



1 BETH CURRAN

2 MR. LAKE: No objection.

3 MS. COHEN: Off the  
4 record.

5 (Off the record.)

6 Q. We were talking before  
7 about other supermarkets selling  
8 green brand products.

9 Do you recall that?

10 A. Yes.

11 Q. I'm going to show you a  
12 couple of products and ask if you are  
13 familiar with them.

14 Well just generally there seems  
15 to be a number of different items  
16 here and we could look at them here  
17 individually but generally.

18 Have you ever heard of the  
19 Bright Green line of products?

20 A. Yes, I have. These are  
21 sold in Safeway stores.

22 Q. Who is Safeway stores?

23 A. Safeway is another large  
24 grocery retailer, mostly on the west  
25 coast but they do have stores on the



1 BETH CURRAN

2 east, in Pennsylvania.

3 Q. How did you learn about  
4 the Bright Green products?

5 A. After this case kind of  
6 started, I was curious to see what  
7 else was out there. So I came across  
8 this brand in, I think it was an  
9 article I read in a publication,  
10 grocery publication and found that it  
11 was for Safeway.

12 Q. I am going to show you  
13 some pages previously marked A&P 2216  
14 to 2223. If you could look at them  
15 please.

16 A. Okay.

17 Q. And tell me if you recall  
18 ever seeing this, if you could tell  
19 me what those pages are?

20 A. Looks to be the page from  
21 Safeway's website, talking about  
22 their Bright Green products.

23 Q. And if you look in the  
24 middle it states a wide range of  
25 choices. If you could read that in

1 BETH CURRAN

2 the middle.

3 A. Sure, it says, "A wide  
4 range of choices, Bright Green is  
5 unique in it fresh, convenience and  
6 affordability. We offer more than 20  
7 choices to meet all of your household  
8 needs. And they are available at a  
9 price that is comparable with leading  
10 national brands in these categories."

11 Q. Okay.

12 A. I could read the whole  
13 thing.

14 Q. You're good.

15 And here I have some of these  
16 products -- strike that.

17 Did you purchase these products  
18 that you have here?

19 A. We had an employee  
20 purchase these products.

21 Q. So do you know where the  
22 employee went?

23 A. I believe it was a store  
24 in Pennsylvania that the employee  
25 went to.

1 BETH CURRAN

2 Q. And do you believe these  
3 products are available in every  
4 Safeway store across the country?

5 MR. LAKE: Objection,  
6 calls for speculation.

7 A. I assume so just because  
8 they talk about it on their corporate  
9 website.

10 MS. COHEN: I would like  
11 to have marked this document  
12 from the Internet, A&P 2216 to  
13 2223.

14 (Safeway advertising  
15 marked in evidence, Applicant's  
16 Exhibit XXX.)

17 MS. COHEN: I would like  
18 to offer Applicant's XXX in  
19 evidence.

20 MR. LAKE: I object to it  
21 being used for the truth of  
22 anything asserted in it but  
23 otherwise I don't object to it  
24 being admitted.

25 MS. COHEN: Let's see if

1 BETH CURRAN

2 we can talk about the 20  
3 products that they claim to be  
4 in their line of Bright Green  
5 goods.

6 Q. I think we have 10  
7 products here bearing the mark Bright  
8 Green from Safeway; is that correct?

9 A. Yes.

10 Q. I would like to show you a  
11 few of them. I'll show you these two  
12 together, these products are --

13 A. These are two different  
14 size of compact florescent light  
15 bulbs, Bright Green.

16 Q. And these products were  
17 purchased in the -- by your employee?

18 A. Correct.

19 Q. At your behest?

20 A. Correct.

21 Q. And I have taken a picture  
22 of the two products, so I don't have  
23 to have the light bulbs smashed.

24 But does this photograph appear  
25 to be the photograph of the two light

1 BETH CURRAN

2 bulb types in front of you?

3 A. Yes, it is.

4 MS. COHEN: I would like  
5 to have marked as Exhibit YYY  
6 the two types of light bulbs.  
7 Maybe we could put a rubber band  
8 around them.

9 (Box of light bulbs  
10 marked in evidence, Applicant's  
11 Exhibit YYY.)

12 (Photograph of light  
13 bulbs marked in evidence,  
14 Applicant's Exhibit YYY.)

15 MS. COHEN: I would like  
16 to offer Applicant's YYY into  
17 evidence.

18 MR. LAKE: No objection.

19 Q. I'm going to show you a  
20 number of different cleaning products  
21 that have the name GreenWise --  
22 excuse me Bright Green on it.

23 If you could tell me which  
24 products those are?

25 A. Sure, there is the Bright



1 BETH CURRAN

2 Q. Ms. Curran, I am going to  
3 show you some photographs and tell me  
4 if they appear to be photographs of  
5 the front and back of the Bright  
6 Green products we looked at, the  
7 toilet bowl cleaner?

8 A. Yes.

9 Q. And glass and surface  
10 cleaner?

11 A. Yes.

12 Q. A dishwashing liquid?

13 A. Yes.

14 Q. A dishwashing gel?

15 A. Yes.

16 Q. And a laundry detergent?

17 A. Yes.

18 MS. COHEN: If we could  
19 maybe put other ZZZs on each of  
20 these just for fun.

21 (Five products marked  
22 for identification, Applicant's  
23 Exhibit ZZZ.)

24 Q. I believe there are also  
25 some paper products here with Bright

1 BETH CURRAN

2 Green; is that correct?

3 A. Yes.

4 Q. And we have three types I  
5 think?

6 A. Yes, bath tissue, napkins  
7 and paper towels.

8 Q. They all have the name  
9 Bright Green on them?

10 A. Yes, they do.

11 Q. And these were all  
12 purchased by your employee at  
13 Safeway?

14 A. Yes.

15 MS. COHEN: Okay, I would  
16 like to have marked as Exhibit  
17 AAAA, the three different types  
18 of paper products.

19 (Photograph of paper  
20 products marked in evidence,  
21 Applicant's Exhibit AAAA.)

22 Q. I am going to show you  
23 some photographs and ask you if they  
24 appear to be the same of the products  
25 in front of you, a photo of the paper



1 BETH CURRAN

2 towels?

3 A. Yes.

4 Q. Photo of the bathroom

5 tissue?

6 A. Yes.

7 Q. And a photo of the Bright

8 Green napkins?

9 A. Yes.

10 MS. COHEN: So I would

11 like to mark as Exhibit AAAA

12 also the napkins, bathroom

13 tissue and the paper towels,

14 please.

15 (Paper products marked

16 in evidence, Applicant's Exhibit

17 AAAA.)

18 MS. COHEN: I would like

19 to offer Applicant's AAAA into

20 evidence.

21 MR. LAKE: No objection.

22 Q. I want to show you the

23 receipt which says on top Safeway and

24 on the bottom 9-22-13 and it lists a

25 bunch of items, I have here the

1 BETH CURRAN

2 original.

3 And if you could look at that  
4 receipt, does this appear to be the  
5 receipt brought back from your  
6 employee?

7 A. Yes.

8 Q. When he went to Safeway to  
9 buy the products that we just marked?

10 A. Yes, yes.

11 MS. COHEN: I would like  
12 to mark as BBBB this receipt.

13 (Copy of receipt marked  
14 in evidence, Applicant's Exhibit  
15 BBBB.)

16 MS. COHEN: Okay, why  
17 don't we take a break for lunch.

18 (A recess was taken.)

19 Q. Good afternoon, Ms.  
20 Curran, we were talking before about  
21 other supermarkets that have products  
22 that have green in the name. We  
23 looked at the Safeway products this  
24 morning.

25 Do you know of any other stores



1 BETH CURRAN

2 A. Super Fresh store.

3 Q. That A&P used to own?

4 A. That we used to own,  
5 correct.

6 Q. I am going to show you  
7 some pages from the Internet, A&P  
8 1887 to 1893. If you could tell me  
9 what this is?

10 A. This is the website of the  
11 Mrs. Greens Natural Market.

12 Q. Have you seen this website  
13 before?

14 A. I have.

15 Q. I think you had said that  
16 some of your employees had recently  
17 gone to work for Mrs. Greens?

18 A. Yes, a few people left  
19 unfortunately and are working for  
20 Mrs. Greens.

21 MS. COHEN: I would like  
22 to mark these pages as CCCC.

23 (Pages from website  
24 marked in evidence, Applicant's  
25 Exhibit CCCC.)

1 BETH CURRAN

2 MS. COHEN: I would like  
3 to offer Applicant's CCCC into  
4 evidence, any objection?

5 MR. LAKE: No objection.

6 Q. How about Publix  
7 GreenWise, did you ever hear of  
8 Publix GreenWise?

9 A. I have heard of it, yes.

10 Q. Are you aware they sell a  
11 line of food called GreenWise?

12 A. Yes.

13 Q. Do you know if they use  
14 the Publix name in connection with  
15 the GreenWise products?

16 A. Yes, it's usually attached  
17 to GreenWise. So it is usually  
18 referred to as Publix GreenWise.

19 Q. How do you know that?

20 A. Obviously through this  
21 case and things I have read and in  
22 trade articles and their website, it  
23 is always referred to as Publix  
24 GreenWise.

25 Q. Have you ever heard of

1 BETH CURRAN

2 anyone being confused between Green  
3 Way and Publix GreenWise?

4 A. No, I have not.

5 Q. Have you ever heard of  
6 anyone being confused between Green  
7 Way and GreenWise products?

8 A. No.

9 Q. Would this have come to  
10 your attention, if this had occurred,  
11 how would you know?

12 A. Yes, usually if an inquiry  
13 came in about Green Way the brand  
14 through our customer service line, I  
15 would have been informed of it.

16 Q. Have you ever heard of the  
17 term snow birds?

18 A. Yes.

19 Q. What are they?

20 A. We have customers who are  
21 snow birds. They are people who  
22 typically move down south in the  
23 winter and move back east in the  
24 summer.

25 Q. Have you ever heard of

1 BETH CURRAN

2 them being confused between Green Way  
3 and GreenWise?

4 A. No, I have not.

5 Q. You stated you would  
6 always use Green Way as two words; is  
7 that correct?

8 A. Yes.

9 Q. And why is that?

10 A. It was just how the brand  
11 was developed. It has always been  
12 set as two ways. I believe in some  
13 of the original brand documents, it  
14 was the emphasis on green being the  
15 type of product and the brand and  
16 what it represents to customers.

17 It was that way from, you know,  
18 obviously I was in the development of  
19 the brand but we marketed it that way  
20 and it has always been on the  
21 products that way.

22 MS. COHEN: Okay I have  
23 no further questions. I thank  
24 you.

25 MR. LAKE: I have a few.

1 BETH CURRAN

2 I should say fewer as well, we  
3 won't be too long. But I do  
4 have a few things I want to get  
5 you to clarify.

6 CROSS EXAMINATION BY MR. LAKE:

7 Q. Ms. Curran, I just had a  
8 question as I was looking at Exhibit  
9 UUU.

10 Do you have that in front of  
11 you?

12 A. Yes, I do.

13 Q. If you would look at the  
14 last two pages of that exhibit, the  
15 last page -- well, it is the last  
16 page in particular.

17 The first column has, it is the  
18 same on all of the, every line, Green  
19 Way PLU.

20 Do you see that?

21 A. Yes, uh-huh.

22 Q. I want to know what that  
23 stands for?

24 A. Sure so, PLU is used when  
25 a product is normally sold in bulk or



1 BETH CURRAN

2 by weight.

3 So UPC is for a specific  
4 weighted item. If you could put a  
5 net weight on a package, then you use  
6 UPC.

7 If you could not put a net  
8 weight on it because there is no  
9 defined weight, it would be by the  
10 pound, then a PLU is used.

11 Q. Does that stand for  
12 something, PLU?

13 A. It does and it is just  
14 escaping me. I think it is price  
15 look up, product look up.

16 Q. Thank you.

17 A. You could see how the  
18 numbers change in the UPC column very  
19 drastically from what a UPC would be.  
20 A UPC is much longer and a PLU is a  
21 much shorter number normally.

22 Q. I see.

23 Ms. Cohen asked you a little  
24 bit about brands that compete with  
25 Green Way. And I'm just trying to

1 BETH CURRAN

2 paraphrase what I heard which is you  
3 mentioned some of the national brands  
4 that are in your store.

5 A. Uh-huh.

6 Q. Are there also some brands  
7 that are not sold in your company  
8 stores but you would say are Green  
9 Way competitors?

10 A. Normally when we talk  
11 about Own brands, we don't really  
12 compare -- people don't usually shop  
13 private labels to private labels in  
14 different retailers. So your  
15 comparison for private label brand is  
16 usually done within the store at  
17 shelf.

18 We don't typically find that  
19 somebody would look at a competitor  
20 of ours and be Shop Rite. They don't  
21 look at a Shop Rite private label and  
22 compare that to a private label of  
23 our store. It is mostly done within  
24 the store at the set, where they look  
25 at the private label versus the

1 BETH CURRAN

2 national brand.

3 Q. So are you aware of other  
4 private label brands though that are  
5 marketed as natural, organic and  
6 earth-friendly products?

7 A. Yes.

8 Q. I think you talked about  
9 some today. I think you mentioned  
10 Green Missions a few minutes ago.

11 Would you consider that one of  
12 them?

13 A. Whole Foods brand, yes.  
14 Whole Foods has a few different  
15 brands of their own but I wouldn't  
16 really consider that brand a  
17 competition of Green Way.

18 The retailer might be a  
19 competition of our corporate stores  
20 overall but not brand to brand.

21 Q. Got you.

22 Is Whole Foods a competitor to  
23 Green Way?

24 A. Whole Foods is a  
25 competitor to A&P or Super Fresh or

1 BETH CURRAN

2 Waldbaums to the actual banner store,  
3 depending on geography. If they are  
4 within our area, then we would  
5 consider them a competitor, because  
6 they obviously take grocery shoppers  
7 out of the market. So anybody doing  
8 that would be a competitor of ours.

9 Q. I think the next exhibit I  
10 wanted to ask you about is VVV. This  
11 is the list of products with green in  
12 the name, if you could find that.

13 MR. LAKE: Ms. Cohen, did  
14 we end up not designating the  
15 discussion as confidential?

16 MS. COHEN: The  
17 discussion was not but the  
18 document was.

19 Q. Looking through column C  
20 in this document, it looks like a  
21 number of the products, particularly  
22 starting on page 14 are Green Way  
23 products?

24 A. Uh-huh.

25 Q. Is that correct?

1 BETH CURRAN

2 A. Yes.

3 Q. I want to ask you a few  
4 questions about the products, other  
5 than Green Way and certainly take  
6 your time to review the whole  
7 document if you want. But my  
8 questions do not relate to that.

9 Of the products other than  
10 Green Way that you found in this list  
11 reports, how many of them identify  
12 grocery company's private label line?

13 A. I would have to go page by  
14 page to identify that, if I knew  
15 every bodies.

16 Q. I understand.

17 A. Sorry, this is only our  
18 store. So it would only be our  
19 private label. This is not outside  
20 of our store. This is run from what  
21 is sold within our store. It would  
22 either be national brand or our Green  
23 Way.

24 Q. Thank you.

25 And let me ask you one other

1                   BETH CURRAN  
2           question about the products again  
3           other than Green Way that your list  
4           found.

5                   How many of them you found  
6           combine the word green with a one  
7           syllable word that starts with a W?

8           A.       I would have to read line  
9           by line to figure that out.

10                   MS. COHEN:    You want her  
11           to do that and go through the  
12           989 products?

13                   MR. LAKE:    Not all 989, I  
14           am setting aside Green Way.

15           A.       So 689?  So can I keep  
16           track and write these down?

17           Q.       Sure.

18                   MS. COHEN:    Again what  
19           was the criteria.

20                   MR. LAKE:    I want to know  
21           how many use the word green and  
22           combine that with a one syllable  
23           word that starts with a W.

24           A.       That starts with a W?

25           Q.       Right.

1 BETH CURRAN

2 A. Okay. So I see two  
3 different brands. One being Green  
4 Works with 21 items and the other  
5 being Green Wood with four items.

6 Q. And the Green Works ones  
7 you identified are on the first page  
8 of the exhibit?

9 A. Correct.

10 Q. Is it fair to say those  
11 are cleaning products; right?

12 A. Yes.

13 Q. And you're not aware of  
14 any Green Works food products; are  
15 you?

16 A. No.

17 Q. Any Green Works vitamins?

18 A. No.

19 Q. So the only Green Works  
20 products you're familiar with are the  
21 cleaning products that are listed  
22 here; is that right?

23 A. Yes.

24 Q. The second you mentioned  
25 is Green Wood; is that right?

1 BETH CURRAN

2 A. Yes.

3 Q. Would you help me find  
4 that?

5 A. Starting with 28, 28 to  
6 29.

7 Q. Thank you.

8 And those products are beets,  
9 beets, beets and red cabbage; right?

10 A. Yes.

11 Q. And are you aware of any  
12 other Green Wood branded products  
13 besides those four?

14 A. I am not very familiar  
15 with that brand, so I don't know the  
16 extent that line covers.

17 Q. But you're not aware of  
18 any others except for what is on  
19 here?

20 A. Not other than what is on  
21 this list.

22 Q. Help me understand your  
23 role today as opposed to say six  
24 months ago with regard to Green Way.

25 Are you still involved in



1                   BETH CURRAN  
2           decisions about whether to expand the  
3           Green Way line?

4           A.       I am involved in decision.  
5           I still manage the packaging, design,  
6           development for all private label  
7           products. So that is still my  
8           responsibility.

9           If there is a development of a  
10          new Green Way item, I'm still  
11          involved in the development of the  
12          item.

13          Q.       Okay.

14          And let me ask you this, both  
15          in your time as the brand manager and  
16          in your current role, have you ever  
17          had an occasion to say no, we are not  
18          going to brand this product as Green  
19          Way?

20          MS. COHEN:   Objection, no  
21          foundation. But you could  
22          answer if you understand.

23          A.       It would be the only time  
24          that situation may arise is if  
25          somebody suggested a product like a

1                   BETH CURRAN  
2           category manager this happens and  
3           they just like the brand, so they  
4           want the product to be in that brand  
5           but it does not fit the profile of  
6           the brand. Then we would have to say  
7           no, it needs to be one of our other  
8           brands. It may be more traditional,  
9           so it needs to fit America's choice  
10          and follow the rules.

11           Q.     So you don't recall an  
12          instance where you said, no we are  
13          not going to use Green Way because  
14          someone else has that same product  
15          with a similar name?

16           A.     No.

17           Q.     We talked a little or you  
18          talked a little about the Bright  
19          Green product line. I just have one  
20          question about your familiarity with  
21          that.

22                   Do you know when that line was  
23          introduced?

24           A.     From what I read when I  
25          was looking into it a little bit, I

1 BETH CURRAN

2 believe it was back in 2009, 2010,  
3 it's been out for a few years.

4 Q. Do you have any role today  
5 in deciding whether your company will  
6 challenge someone else's trademark?

7 A. No.

8 MR. LAKE: Let's go off  
9 the record for a second.

10 (Off the record.)

11 MR. LAKE: Thank is all I  
12 have, thank you.

13 MS. COHEN: I just have  
14 one other question to the extent  
15 it just did not come up.

16 RE DIRECT EXAMINATION BY MS. COHEN:

17 Q. Would you think these  
18 products are impulse purchase  
19 products?

20 A. No, I would not.

21 Q. So Green Way products are  
22 not impulse purchase type products?

23 A. I would not classify them  
24 as such, no.

25 Q. Of the 300 or so SKUs of

1 BETH CURRAN

2 Green Way, you would not believe any  
3 of them are impulse purchase  
4 products?

5 A. No.

6 MR. LAKE: Why would you  
7 say that?

8 THE WITNESS: Typically  
9 impulse purchases are things you  
10 would not have planned to have  
11 purchased at the grocery store.  
12 And they are normally last  
13 minute things.

14 So things towards the  
15 front of the store, what we all  
16 typically as grocers display  
17 along the register so, gum,  
18 candy, single serve soda  
19 bottles. Usually we think of  
20 those more of impulse buys than  
21 traditional in the set.

22 You may be shopping and  
23 getting other things but you  
24 would really not consider them  
25 impulse purchases.

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BETH CURRAN

It is usually the front of  
the register, highly consumable  
items that we call impulse  
items.

MR. LAKE: No more  
questions.

MS. COHEN: I have  
nothing further.

(TIME NOTED: 1:22 p.m.)

BETH CURRAN



Subscribed and sworn to before  
me

this 1 day of Nov.  
, 2013.

  
Notary Public

**SUSAN D. KIJOWSKI**  
**NOTARY PUBLIC OF NEW JERSEY**  
**I.D. # 2199511**  
**My Commission Expires 3/20/2017**

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C E R T I F I C A T E

STATE OF NEW YORK )

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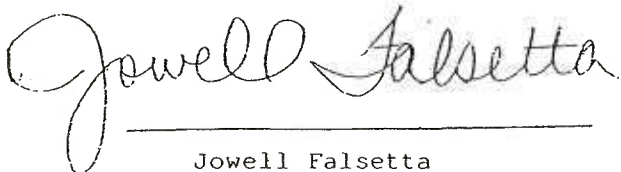
COUNTY OF NEW YORK )

I, JOWELL FALSETTA, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That BETH CURRAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 10<sup>th</sup> day of October, 2013.

  
\_\_\_\_\_  
Jowell Falsetta

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EXHIBITS

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report marked in evidence,

13

6

Applicant's Exhibit JJJ

7

box of cereal marked in

15

8

evidence, Applicant's Exhibit

9

KKK

10

photograph of box of cereal

16

11

marked in evidence, Applicant's

12

Exhibit KKK

13

Green Way all purpose cleaner

19

14

bottle marked for

15

identification, Applicant's

16

Exhibit LLL

17

photograph of cleaner bottle

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18

marked in evidence, Applicant's

19

Exhibit LLL

20

bag of green beans marked in

23

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evidence, Applicant's Exhibit

22

MMM

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photograph of bag of green

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24

beans marked in evidence,

25

Applicant's Exhibit MMM

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STATE OF NEW YORK )

ss:

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I wish to make the following changes,  
for the following reasons:

PAGE LINE 11 5  
CHANGE FROM: echofriendly  
ecofriendly  
CHANGE TO:  
wrong spelling  
REASON:

33 16 CHANGE FROM: echofriendly

CHANGE TO:  
ecofriendly REASON:  
wrong spelling

52 17 CHANGE FROM:  
echofriendly

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Subscribed and sworn to before me  
this 1 day of Nov, 2013.



**SUSAN D. KIJOWSKI**  
**NOTARY PUBLIC OF NEW JERSEY**  
**I.D. # 2199511**  
**My Commission Expires 3/20/2017**